

Statement of the International Advisory Panel on the occasion of the first anniversary of the events at Maidan of 30 November 2013

STRASBOURG, 27 November 2014. The International Advisory Panel was set up by the Secretary General of the Council of Europe with the current role of overseeing the investigation into the violent incidents in Kyiv during the Maidan demonstrations between 30 November of last year and 22 February of this year. The tragic events which occurred in those months resulted in the deaths of over a hundred civilians and some 13 members of the police force and in grave injuries being caused to very many more. The function of the Panel is to establish whether the investigations into those incidents meet all the requirements of the European Convention on Human Rights and the case-law of the European Court of Human Rights. Those requirements are in summary that the investigations are independent, that they are carried out promptly and expeditiously, that they are adequate and effective and that there is sufficient public scrutiny and sufficient involvement of the victims or the families of the victims.

As we approach the first anniversary of the original demonstrations in Maidan, which initiated the events which ended so tragically some three months later, the Panel considers it timely to provide an overview of its past and future work.

First and foremost, two common misconceptions about the Panel and its role should be corrected. The first is that, contrary to the belief of some in Ukraine and elsewhere, the Panel's function is not to conduct the investigations into the violent incidents in question. That is for the Ukrainian investigatory authorities themselves namely, the Prosecutor General's Office, the Ministry of the Interior and the State Security Service, all three of which are charged with responsibility for the various case-files in the Maidan-related investigations. Nor has the Panel the task of examining individual cases or of trying to establish for itself the facts which resulted in the deaths and serious injuries, whether of civilians or police. Its role is rather to examine and report on whether the authorities' own investigations into the events, seen as a whole, comply with international standards and, in particular, the requirements of the European Convention.

The second misconception is that the Panel has been working as such since November of last year and this misconception has given rise to concerns in some quarters about the speed with which the Panel is working: these concerns are unfounded. It is true that the establishment of the Panel was first proposed to the Ukrainian authorities in December of last year. But it was not until April of this year that its third member was appointed and that the Panel was finally constituted. In the same month, the Panel's Mandate was sent by the Secretary General to the Prime Minister of Ukraine. Pending a response, the Panel held its first working meeting in Strasbourg from 5-7 April. The response from the Minister of Foreign Affairs of Ukraine was received by letter of 1 May 2014: the Minister reiterated that the Ukrainian Government welcomed the composition of the Panel and undertook to facilitate its work.

The Panel, chaired by Sir Nicolas Bratza, former President of the European Court of Human Rights, is made up of three members, the other two members being Mr. Volodymyr Butkevych, a former judge of the European Court of Human Rights, and Mr. Oleg Anpilogov, a former prosecutor of Ukraine.

The work of the Panel to date, as well as a projected programme of its future work, is set out in a detailed Briefing document, which was published in September and is readily available on the Panel's [website](#).

In summary, the Panel's work to date can broadly be divided into two phases.

The initial phase consisted of a search for information. Immediately after it was constituted, the Panel sent out letters to the various authorities, requesting detailed information about the nature and scope of the investigations which were by then underway. These authorities included the Prosecutor General's Office, the Ministry of the Interior, the Ministry of Justice, the Ministry of Defence and the Ministry of Health, as well as the Mayor's Office in Kyiv. Requests were also addressed to certain Parliamentary Committees and to the Rada Interim Commission of Enquiry Chaired by Mr. Moskal. The Panel further sought information from the Parliamentary Commissioner for Human Rights and, through its internet page, invited Non-Governmental Organisations to make submissions. A deadline was set for the provision of the information with a view to a mission of the Panel to Kyiv at the end of June.

Several national human rights groups made joint submissions to the Panel, as did Amnesty International and Human Rights Watch. It is fair to say that the initial responses by the authorities were mixed: some departments did not reply to the Panel's requests at all; others replied, but in very general terms. The information received proved inadequate to allow the proposed meetings of the Panel to take place. This stemmed, it is considered, not from a general unwillingness to cooperate with the Panel but rather from a lack of full understanding of the role of the Panel as an entirely new institution. However, following a meeting with President Poroshenko during his visit to Strasbourg, in which he agreed to establish a Focal Point for the Panel within his own Administration and endorsed the work of the Panel, promising the further cooperation of the authorities, and following Sir Nicolas' subsequent visit to Kyiv to explain more fully the Panel's role, there was a marked improvement in the level of cooperation: much more detailed information was provided to the Panel, in particular, by the Prosecutor General's Office. As familiarity with the Panel's work and working methods has grown, so too has grown a greater trust and confidence in the Panel on the part of the authorities.

The second phase of the Panel's enquiries began with the longer substantive meetings held over 4 days in Kyiv in early September, when the Panel Members were able to follow up on the information already provided by putting detailed questions to the representatives of the various authorities. The Panel has also continued its contacts with the Parliamentary Commissioner for Human Rights, with certain national NGOs (namely, the recently formed 'Families of Heroes of Heaven's Hundred'), with those human rights groups which had made the joint submissions and with Amnesty International.

A further set of written questions was put to the key authorities and the Panel spent a further two days in Kyiv in mid-November, following up on the answers given by the Prosecutor General's Office, the Ministry of the Interior and the State Security Service.

Additional specific questions in writing have been most recently put to the key Departments and it is possible that there might be a further short visit to Kyiv next month. It remains the Panel's objective to conclude its enquires, to obtain final submissions and to receive up-to-date information on the state of the investigations as at 30 November with a view to the Panel's finalising and adopting its report in early 2015. In fulfilment of its current mandate the Panel will furnish its report to the Secretary General and to the Ukrainian authorities, making public the date of its submission.

It is apparent from the description of its work that the Panel is in many ways a rather unique model. The effective investigation of unlawful killings and serious ill-treatment is all the more crucial when those violent acts constitute a turning point in a State's history, as they were in the case of the Maidan demonstrations. In such cases, investigations and prosecutions, bringing as they should truth and accountability, constitute an important means of ensuring a solid transition from that episode of violence to the next more positive chapter. This is, indeed a form of transitional justice.

In many such transitional justice contexts, international criminal courts carry out the investigations and prosecutions themselves. In other cases, this is done by courts which are part of the national criminal justice system but which are supplemented with international investigators and judges. However, the Panel model is different. The investigatory responsibilities remain exclusively with the competent Ukrainian authorities. But through its work and reporting, the Panel can, in principle, make a direct and positive contribution in real time to that investigation process. More generally, it can contribute, along with other national and international actors, to evolving the national criminal justice system. The Panel believes this to be more constructive in the longer term than other more traditional transitional justice mechanisms which replace, rather than support, the national criminal justice system.

Last but not least, the tragic events in Odessa of 2 May 2014 should be mentioned. Almost immediately after those events, many calls were made for the Panel to review the investigations to be conducted into those events. These calls came, in particular, from the Council of the European Union and from President Poroshenko. Those investigations are of course now in progress.

In a letter of 12 September 2014 to the Secretary General, the Permanent Representation of Ukraine to the Council of Europe reiterated the full support of the Ukrainian Government for the Panel's review of the Maidan-related investigations. While underlining that the main focus of the Panel's work should continue to be the Maidan events, the letter went on to confirm the Ukrainian Government's acceptance that the events in Odessa on 2 May should also be covered by the Panel's Mandate.

The Panel has expressed its readiness to undertake a review of the investigations into the violent incidents in Odessa. Given the letter from the Ukrainian Government, the Panel will begin its review of the Odessa-related investigations as soon as its Maidan-related work has reached an advanced stage of completion. In practice this means that detailed requests for information will be sent out by the Panel to the relevant actors early in 2015.

The letter from the Ukrainian Government ended by indicating that the Panel's Mandate would be fulfilled on completion of its review of the Maidan and Odessa investigations.

The Panel understands that the expectations of the Panel on the part of the people in Ukraine and beyond its borders are high. It hopes that, with the continuing cooperation of the Ukrainian authorities and support of the Council of Europe, the International Advisory Panel will meet those expectations and will be able to make a lasting contribution to restoring public confidence and to bringing closure to both these unhappy chapters in Ukraine's history.