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LIST OF ABBREVIATIONS AND ACRONYMS

(in alphabetical order)

CC	Criminal Code
Convention	Convention for the Protection of Human Rights and Fundamental Freedoms
CPC	Criminal Procedure Code
ECHR or European Court	European Court of Human Rights
GC	Grand Chamber of the European Court of Human Rights
IAP	International Advisory Panel
MID	Main Investigation Department
MoD	Ministry of Defence
MoI	Ministry of the Interior
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
Ombudsperson	Commissioner for Human Rights of the Verkhovna Rada
PGO	Prosecutor General's Office
SES	State Emergency Service
SID	Special Investigations Division
SSU	Security Service of Ukraine
TIC	Temporary Investigation Commission of the Verkhovna Rada

INTRODUCTION

The International Advisory Panel

The International Advisory Panel ("the IAP" or "the Panel") was established by the Secretary General of the Council of Europe in April 2014, with the role of overseeing that the investigations of the violent incidents which had taken place in Ukraine from 30 November 2013 onwards met all the requirements of the European Convention on Human Rights and the case-law of the European Court of Human Rights ("the ECHR" or "the European Court").

The members of the Panel are Sir Nicolas Bratza (Chair), a former President of the European Court, Mr Volodymyr Butkevych, a former Judge of the European Court and Mr Oleg Anpilogov, a former prosecutor of Ukraine.

The Mandate of the Panel, the full terms of which are set out in Annex I to the Report, provided that the investigations into the violent incidents in question would be conducted by the relevant Ukrainian authorities in accordance with Ukrainian law; that the Panel should receive regular reports from the Prosecutor General's Office ("the PGO") on the progress of the investigations and should have full access to all relevant information and the right to request and receive any additional information as it deemed necessary; and that civil society should have the right to contact and communicate freely with the Panel. The Mandate further provided that at the end of the Panel's Mission, a final report should be prepared by the Chair of the Panel and presented to the Secretary General of the Council of Europe and the Ukrainian authorities.

The scope of the Panel's review

The Mandate of the Panel explained that the Secretary General had first proposed to create an International Advisory Panel in the light of the then existing political crisis in Ukraine and the need to create public confidence in the investigation into the violent incidents. The proposal was first made in December 2013, immediately following the violent events during the protest demonstrations in the Maidan area of Kyiv on the night of 29/30 November and on 1 December and prior to the violent events in that city in January and February 2014, which resulted in the tragic loss of life of numerous protesters and police. In April 2014 the final member of the Panel was appointed and the Panel was thereby constituted. In the same month, the Panel's Mandate was sent by the Secretary General to the Prime Minister of Ukraine. In a letter of response dated 1 May 2014, the Minister of Foreign Affairs of Ukraine affirmed that the Ukrainian Government welcomed the constitution of the Panel and undertook to facilitate its work. This undertaking was subsequently repeated by Mr Petro Poroshenko, the President of Ukraine, during his visit to Strasbourg in June 2014.

On 2 May 2014 the tragic events in Odesa occurred, during which six persons were killed and very many were injured during mass disorder in the streets of the city and some 42 persons died as a result of a fire in the city's Trade Union Building. Soon after those events, numerous calls were made, notably by the Council of the European Union and by President Poroshenko, for the Panel to review the investigation to be conducted into those events. In a letter of 12 September 2014, the Permanent Representative of Ukraine to the Council of Europe reiterated the full support of the Government of Ukraine to the review of the Maidan-related investigations. While underlining that the main focus of the Panel's work

should continue to be the Maidan investigations, the letter went on to confirm the Ukrainian Government's acceptance that the investigation into the events in Odesa on 2 May should also be regarded as covered by the Panel's Mandate. The letter concluded by stating that the Mandate of the Panel would be fulfilled on completion of the review of the Maidan and Odesa investigations.

The Panel announced its readiness to undertake a review of the investigation of the Odesa events but indicated that it would begin work on those events only after its review of the Maidan-related investigations had reached an advanced stage.

On 31 March the Panel delivered the Report on its inquiry into the Maidan investigations.

In February 2015 the Panel began its review of the Odesa investigations by requesting information from the Ukrainian authorities and various non-governmental organisations ("NGOs").

As in the case of its Maidan inquiry, the Panel interpreted its role under the Mandate as relating to the compliance with Articles 2 and 3 of the Convention, and the relevant case-law of the European Court, of the investigations into the incidents of deaths and serious injuries in Odesa, to the exclusion of incidents which might have given rise to violations of other Convention rights of those participating in acts of mass disorder. In particular, the Panel did not see it as its role to examine whether the treatment of those detained or the conditions of their detention complied with Article 3 or whether the arrest, detention and trial of numerous persons for acts of disorder or other offences, or the investigation into those events, were in compliance with the requirements of Articles 5 or 6 of the Convention. Nevertheless, as appears from the Report, the charges and court proceedings arising out of the violent events were of a certain relevance to the Panel's assessment of the effectiveness of the investigations. The Panel further interpreted its Mandate as extending not only to the investigations of the deaths and serious injuries of civilians but as including injuries caused to those responsible for law enforcement, in particular members of the police forces, of whom some 34 sustained injuries.

As is clear from the terms of the Mandate, it was never the role of the Panel to conduct or assist the investigation into, or to establish the facts concerning, the violent incidents in question. This was and is exclusively the responsibility of the Ukrainian investigatory authorities, namely the PGO and the Ministry of the Interior ("the MoI"), both of which were charged with responsibility for certain of the casefiles in the Odesa-related investigations. Nor did the Panel have the role of determining whether the investigation of any individual case satisfied the requirements of the Convention. Its role was essentially a supervisory one, the Panel reviewing in broad terms whether the investigations carried out at national level into the deaths and injuries complied with international standards. In making this assessment, the Panel has on various occasions scrutinised the adequacy of the investigation of individual incidents that had attracted particular public attention. This was done not for the purpose of arriving at a conclusion on the quality of the specific investigation but rather as providing useful indications of the adequacy and effectiveness of the investigations seen as a whole.

The Panel's working methods

The procedural steps taken by the Panel in carrying out its review are fully set out in Annex II to the Report. In summary, the Panel made a series of detailed requests for information in writing from the various Ukrainian authorities and officials and, through its Internet page, invited NGOs to submit written material. In early June and late July 2015, the Panel held a series of meetings in Kyiv and in Odesa with representatives of the relevant

Ukrainian authorities, with the Chair of the Verkhovna Rada's Temporary Investigation Commission ("TIC") and with representatives of the NGOs, to follow up on the information provided in writing. In August 2015 the Panel made further requests for information and set 31 August as the cut-off date for the formal submission of material to it.

As in the case of the Maidan inquiry, in carrying out its review, the Panel was confronted with a task of exceptional difficulty. The violent events in Odesa, which resulted in considerable loss of life, were of the utmost gravity and the investigations which followed were and are of some complexity. As an international body, the Panel was, throughout its review, required to follow the investigations by working through interpretation and translation. Its task was not assisted by the fact that it was refused access to certain classified documents which were of direct relevance to its work. The Panel would nevertheless wish to acknowledge the assistance that in general it received during the course of its review from the authorities, particularly the investigators based in Odesa, from the chair of the TIC and the Commissioner for Human Rights of the Verkhovna Rada ("Ombudsperson"), as well as from the NGOs (in particular, the 2 May Group).

The Panel would wish to record its appreciation in the preparation of this Report of the professional assistance given to it by its Legal Adviser, Ms Clare Ovey; its legal assistants, Ms Gaiane Nuridzhanian and Mr Michael Siroyezhko; its administrative assistant, Ms Anastasiia Sheina; and its two interpreters, Mr Vadym Kastelli and Ms Larysa Sych.

The Panel's Report

The functions of the persons referred to in the Report may be found at Annex III. In order to provide the fullest information, the Panel has also included at Annex VI the main public statements made by the investigating authorities between May 2014 and August 2015. All references in the Report are to the bodies and laws of Ukraine unless otherwise indicated.

The Panel would underline that the descriptions of the facts emerging from the pre-trial investigations should not be interpreted as prejudging any facts that may be found at trial or the liability of any suspect to whom reference is made.

Most of the materials referred to in the Report are in Ukrainian or Russian; the case law of the European Court and documents of international organisations and NGOs are in English or French. Hyperlinks are provided for ease of reference. The Panel accepts no responsibility for the accuracy of the sites linked to.

The Report may be subject to editorial revision.

THE FACTS

I. BACKGROUND FACTS

A. Events in Ukraine

1. In late November 2013, following the decision of the Ukrainian authorities not to sign the long-awaited EU-Ukraine Association Agreement, pro-European and anti-government demonstrations took place in Kyiv. The Ukrainian authorities' ensuing attempts to disperse those demonstrations led to an increase in the number of protesters, the scope of their activity and their geographical spread. Between November 2013 and February 2014 a number of clashes took place, resulting in more than 100 protest-related deaths and more than 1,000 injuries (civilians and law enforcement officers) and some missing persons. The conflict between the Ukrainian authorities and EuroMaidan protesters ended in late February 2014 when several high-ranking individuals (including President Yanukovych) fled or resigned and there was a change in the government of Ukraine.[1]

2. In spring 2014, following the political changes in Ukraine, groups of protesters (variously referred to in this Report as "pro-federalism" activists or as "the pro-federalists")[2] took positions ranging from mere opposition to the newly formed government to claims for the federalisation of Ukraine, and even secession of certain regions and their further annexation to the Russian Federation. EuroMaidan activists, for their part, countered the pro-federalists by holding demonstrations in support of a united Ukraine (also referred to in this Report as "the pro-unity" activists).

B. The situation in Odesa prior to 2 May 2014

3. By May 2014 Odesa was unstable following numerous mass demonstrations, seizures of official buildings, incitements to violence and clashes between the pro-federalism and pro-unity activists. On 3 March 2014 the Odesa Regional Council held an extraordinary session dedicated to the situation in the region and Ukraine as a whole. In the course of the meeting, pro-federalism protesters stormed the building of the Regional State Administration,[3] where the Regional Council was based, trying to force the Council to adopt decisions in favour of federalisation and a local referendum. They also raised a Russian flag on a flagpole in front of the building, having taken down the Ukrainian flag. The Regional Council adopted a decision in which it deplored extremism and any attempt to breach the territorial integrity of

[1] For a more detailed overview of those events, see International Advisory Panel, *Report of the International Advisory Panel on its review of the Maidan Investigations*, 31 March 2015 (hereinafter referred to as "IAP Maidan Report"), §§ 1-124.

[2] It is the understanding of the Panel that the AntiMaidan movement was not homogeneous and that not all its members supported the idea of federalisation as such, still less separatism or the use of violence. Therefore, the terms "pro-federalism" protesters or "pro-federalists" – which, along with "AntiMaidan" activists, are used in the present Report interchangeably – should not be understood literally but as terms of art used to denote one of the activist groups that took part in the events under examination.

[3] Regional Councils are local self-government bodies at regional level, members of which are elected, whereas the Regional State Administrations are the executive bodies representing central government in a given region; heads of the Regional State Administrations are appointed and dismissed by the President of Ukraine.

Ukraine, held unacceptable the deployment of foreign troops on the territory of Ukraine and urged political parties, movements and people in Odesa to avoid any illegal mass action and to seek a compromise through democratic means.[4] The pro-unity activists also arrived on the scene and, to avoid serious clashes, the police, reinforced by extra personnel, formed a cordon between the two sides. The confrontation lasted until late evening when, following negotiations, the protesters dispersed.[5]

4. According to the media,[6] on 17 March 2014 the law enforcement authorities arrested Mr Anton Davydchenko, alleged to be the leader of AntiMaidan in Odesa during this period and a person who had actively participated in the incident of 3 March 2014. He was charged under Article 110 §§ 1 and 2 of the Criminal Code ("CC") (offence against the territorial integrity and inviolability of Ukraine) for his repeated public statements and actions. He pleaded guilty and on 22 July 2014 the Shevchenkivskyi District Court of Kyiv sentenced him to five years' imprisonment but commuted it to three years' probation. He was released in the courtroom.[7] Following his failure to report on a regular basis to the authorities in accordance with the terms of his sentence,[8] he was put on a wanted list.[9] Although incitements to violence and clashes had not ceased, the law enforcement authorities do not appear to have arrested any other activist.

5. Against this background, the Odesa municipal authorities planned to hold the Victory Day (9 May) commemorations on a square near the railway station called Kulykove Pole, the usual place for such events.[10] As this square had been occupied by AntiMaidan protesters, living in tents, the authorities began negotiating with them to remove the camp. The Temporary Investigation Commission of the Verkhovna Rada ("TIC")[11] explained in its report[12] that, after the local police and the Odesa City Council had agreed with the AntiMaidan representatives gradually to move the camp to another site chosen by the authorities on the outskirts of Odesa, the Odesa Regional State Administration announced the forced removal of the camp on its website. As a result, some of the AntiMaidan protesters refused to leave and started to erect barricades on Kulykove Pole.

6. Representatives of the 2 May Group[13] told the Panel that there had been an unofficial arrangement, which was favoured by all stakeholders (namely, the local authorities, including the police, the EuroMaidan and the AntiMaidan leaders), whereby, after the football match on 2 May 2014 (see below), the football fans were to be allowed to demolish the remaining tents on Kulykove Pole, the police being present to check that excessive force was not used. This would have liberated the square for the Victory Day commemorations and allowed the

[4] Odesa Regional Council website, decision no. 1072-VI.

[5] See the description of events (with pictures and video footage) by, among others, Odesa news web-site, *Dumskaya*, 3 March 2014.

[6] See, for instance, Odesa news web-site, *Timer*, 17 March 2014.

[7] Unified State Register of Judicial Decisions, case no. 761/17442/14-к, judgment of 22 July 2014 (all names of private persons omitted).

[8] See, for instance, *Timer*, 26 August 2014.

[9] MoI website, Wanted Persons. According to this webpage, Mr Anton Davydchenko fled on 30 October 2014.

[10] See the map of the relevant part of Odesa in Annex VIII.

[11] For detailed information about the TIC and its activity, see paragraph 42 et seq. below.

[12] *Report of the Temporary Investigation Commission of the Verkhovna Rada on its Inquiry into the Facts of Citizens' Deaths in Odesa, Mariupol and Other Cities in the Donetsk and Luhansk Regions*, 2 September 2014 (hereinafter referred to as the "TIC Report").

[13] For detailed information about the 2 May Group and its activity, see paragraph 53 et seq. below.

AntiMaidan leaders to depart without losing face. However, because of disunity among the AntiMaidan groups, the agreement was not implemented.

7. According to the TIC, on 28 April 2014 the local office of the State Security Service ("the SSU") obtained intelligence that there was a risk of possible incitements to violence, clashes and disorder taking place during the demonstrations by football fans and their opponents scheduled for 2 May 2014. On the same day an inter-agency meeting was held between the heads of the local offices of the SSU and the MoI, the Prosecutor's Office and the head of the Odesa Regional State Administration, during which the intelligence was communicated.

8. The following day, according to the TIC, a meeting was held in Odesa chaired by Mr Andrii Parubii, the then Secretary of the National Security and Defence Council, concerning the challenges and threats to national security, as well as the joint responses to such threats. The meeting was attended by the heads of the local offices of the SSU, the MoI, the State Emergency Service ("the SES") and the Ministry of Defence ("the MoD").

9. On 30 April 2014, in a letter addressed to Mr Petro Lutsiuk, the then Head of the MoI Office in the Odesa Region, the local SSU office noted that the possibility of incitements to violence, clashes and other unlawful acts in Odesa "was not excluded".[14] In doing so, the SSU took into account the fact that about 500 football fans were to arrive in Odesa for the football match on 2 May and that before the match the fans planned to hold a rally in support of a united Ukraine. The local SSU office also referred to the tense social and political atmosphere and the experience of similar demonstrations in other parts of Ukraine which had been accompanied by disorderly conduct.

10. According to the SSU,[15] no official reply was received from the MoI Office in the Odesa Region regarding the measures to be taken to avert the risk. Nevertheless, certain measures to secure public order during the football match were taken in accordance with a standard contingency plan prepared for such sporting events.[16]

11. On the same day (30 April) a briefing was held by Mr Dmytro Fuchedzhy, the then Deputy Head of the Odesa Regional MoI Office and Head of the Regional Public Order Police, in the course of which he reported on the measures taken to secure public order during the May holidays.[17] In particular, he announced that the police in Odesa were on alert; that is, that they were policing around the clock and that the number of officers involved in the protection of public order had been increased. With respect to the football match to be held on 2 May, he explained that an additional 700 officers would be engaged that day, making more than 2,100 police officers in total. Mr Fuchedzhy further underlined that "the police in Odesa [were] ready to keep the public order protected during the holidays" and that they "[would] do their best to make people feel safe".

C. The events of 2 May 2014 in Odesa

12. On 2 May 2014 a football match was to take place in Odesa at 5 p.m. between a local club, *Chornomorets*, and the *Metalist* team from Kharkiv. Before the match the fans of both

[14] It is alleged by the representatives of the 2 May Group with whom the Panel met that, by sending this letter, the local SSU office, which had been aware of the arrangement described above, renounced responsibility for any problem which might arise in the course of its implementation – oral submissions, June 2015.

[15] SSU written submissions, July 2015.

[16] See paragraph 15 below.

[17] Website of the Odesa Regional MoI Office, news of 30 April 2014.

clubs, local EuroMaidan activists and city residents (about 2,000 persons in total) planned to hold a rally at 3 p.m. in support of a united Ukraine.[18]

13. Being aware of the arrival of the football fans, and allegedly fearing that the fans would be allowed to break up the camp on Kulykove Pole, some AntiMaidan activists, having spread the message through social networks, started to gather at around 1.30 p.m. a few blocks from the assembly point of the pro-unity activists.[19]

14. In the meantime, at noon, the then Deputy Prosecutor General, Mr Mykola Banchuk, held a meeting on separatism and other public order challenges in the Odesa region with local senior prosecutors, law enforcement and military officers. According to the website of the MoI, Mr Arsen Avakov, Minister of the Interior, said that "this meeting lasted until 4 p.m. … with the telephones of those present switched off".[20] However, according to the TIC, the meeting was over by 2.30 p.m. and certain officers had been contacted from outside during the meeting. According to the PGO, during the meeting most of the heads of the law enforcement bodies were keeping an eye on their telephones to see if anyone was trying to contact them.[21]

15. According to the submissions to the Panel of the PGO and the MoI, 827 law-enforcement officers were engaged in public order protection in Odesa that day, in accordance with the contingency plan for policing the city during the football match. According to the account given by the 2 May Group, the officers had been deployed as follows: some 700 officers were deployed at the stadium; a further 100 officers followed the pro-unity rally; a few dozen were deployed at Kulykove Pole and about 100 officers were standing by in the vicinity.[22] According to the MoI, the officers were equipped with shields, helmets, bulletproof vests, truncheons, and handcuffs; firearms were also issued. Referring to relevant issue-and-return records, the PGO concluded that 745 firearms were issued that day to law enforcement officers, but that they used firearms only once, at 5 p.m., "to attempt to stop, by shooting at, a driverless fire engine which had put at risk the lives and health of citizens and law-enforcement officers";[23] however, they also maintained that "all firearms and cartridges were [eventually] returned".

16. In addition to the standard contingency plan applied in the case of a football match, other contingency plans were available to the Ukrainian authorities designed for specific situations. Thus, for example, the "Wave" ("*Хвиля*") plan was designed to counter mass disorder and the "Thunder" ("*Грім*") plan was designed to neutralise armed persons. Implementation of either plan could be triggered by the head of the MoI Office in a given region, subject to certain approvals. Each plan was intended to make available additional personnel and equipment to the authorities and to ensure better coordination.[24] It appeared from the subsequent investigations that neither of these two plans was in fact implemented on 2 May 2014 in Odesa.[25]

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[18] According to information from the 2 May Group, on the eve of 2 May 2014 information about the planned rally was widely distributed in social networks – post of 8 August 2014.

[19] See the map of the relevant part of Odesa in Annex VIII.

[20] MoI website, news of 4 May 2014, summarised in Annex VI, paragraph 14.

[21] PGO oral submissions, June 2015.

[22] 2 May Group, *Chronology*, Part 1.

[23] See paragraph 18 below.

[24] For more details on the plans and their implementation procedure, see paragraph 50 below.

[25] See paragraph 81 below.

17. At about 3.20 p.m., during the march towards the stadium, the rally was attacked near Hretska Square by some 300 pro-federalism protesters.[26] By 3.50 p.m. law enforcement officers had formed a cordon separating the two sides but the clashes continued, with protesters throwing stones and stun grenades over the cordon.[27] Later, firearms, airguns and Molotov cocktails were used, resulting in the first casualties: at about 4.10 p.m. the first victim received a fatal firearm injury.

18. At about 4.30 p.m. a fire engine, which had been sent in response to an emergency call was hijacked by unidentified persons and used as a battering ram. The fire engine was released a few hours later, following negotiations between the protesters and Mr Volodymyr Bodelan and his deputies.[28] Mr Bodelan was at that time the head of the SES in the Odesa Region, under which authority the fire service falls.[29]

19. According to the PGO, in the course of the clashes some pro-federalism protesters broke into the Afina Shopping Centre, a building on Hretska Square,[30] and seized it.[31] They also resisted police officers by using firearms and other weapons.[32] Following negotiations with the police,[33] who threatened to storm the Centre,[34] 47 pro-federalism protesters surrendered later in the evening and were placed in custody. The TIC stated that Sokil Special Forces stormed the Centre and detained 48 persons and that there had been a large quantity of Molotov cocktails, firearms and other weapons in the building.

20. Law enforcement officers were reported to have taken certain measures during the early phases of the clashes but later it appears that they made little, if any, effort to intervene and stop the violence. In addition to the impression of general passivity, video footage posted on the Internet gave rise to allegations of collusion between some members of the police force and pro-federalism protesters. Thus, numerous files posted on the Internet show armed pro-federalism protesters standing, and at least one of them, believed to be Mr Vitalii Budko, shooting, from behind the police cordon, police officers making no attempt to arrest them.[35] Another video[36] shows Mr Fuchedzhy, who had been lightly injured in the arm, climbing into an ambulance in which Mr Budko was sitting, apparently uninjured. A few seconds later a seriously injured police officer, assisted by two other officers, was apparently refused entry to the ambulance, which then drove off. Another circumstance which raised suspicion was the use by a number of police officers of red adhesive tape around the protective gear on their arms, similar tape being used by certain pro-federalism protesters as arm-bands to identify themselves.[37]

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[26] See the map in Annex VIII.

[27] See also the relevant MoI press releases summarised in Annex VI, paragraphs 1 and 3.

[28] See the findings of the SES internal inquiry report summarised at paragraph 169 below.

[29] For more details on the SES, see paragraphs 166-167 below.

[30] See the map in Annex VIII.

[31] PGO written submissions, May 2015.

[32] Ibid.

[33] PGO oral submissions, June 2015. See also the relevant MoI press release summarised in Annex VI, paragraph 4.

[34] 2 May Group, *Chronology*, Part 1.

[35] See, for instance, 2 May Group, post of 8 August 2014, with links to the footage and commentary thereon. Generally, the events of 2 May in Odesa, except for those inside the Trade Union Building, were largely covered by the media and individuals posting images and video footage on the Internet.

[36] Ibid.

[37] According to the TIC Report, the officers explained that usually they used adhesive tape bandages to attach their protective equipment and on 2 May 2014 they had used the red tape as the only material available to them at that time. For more details of the investigation into this aspect, see paragraphs 78-79 below.

21. The police were also reported not to have responded to emergency calls. According to the Ombudsperson's inquiry report,[38] between 2.09 p.m. and 5.22 p.m. there were some 15 calls to the police informing them about various violations of law and public order (including a death resulting from firearm injuries). However, the police did not make their first arrests until after 5 p.m., by which time five persons had already died as a result of firearm injuries.

22. The clashes on and around Hretska Square lasted until about 7 p.m. Six persons died as a result of injuries sustained during them and several dozen people were hospitalised.

23. At a certain point the pro-unity protesters prevailed in the clashes and pursued their retreating opponents towards Kulykove Pole. In the meantime, some of the leaders of the pro-federalism protesters who remained at Kulykove Pole, aware of the clashes in the city centre and of the approaching pro-unity protesters, advised their followers to flee, while others proposed that they should retreat into the Trade Union Building, a five-floor building facing the square.[39] At around 6.50 p.m. pro-federalists broke down the door and brought inside various materials, including boxes containing Molotov cocktails and the products needed to make them. Using wooden pallets which had supported tents in the square, they blocked the entrances to the building from the inside and erected barricades.[40]

24. When they arrived at the square at around 7.20 p.m., the pro-unity protesters destroyed and set fire to the tents of the AntiMaidan camp. The remaining pro-federalism protesters entered the Trade Union Building, from where they exchanged shots and Molotov cocktails with their opponents outside. One of the pro-unity gunmen, who was captured on video footage, was subsequently identified as Mr Mykola Volkov.[41] Several attempts by the pro-unity protesters to storm the building proved to be unsuccessful, although a few of them managed to enter the building through the back door.[42]

25. At about 7.45 p.m. a fire broke out in the Trade Union Building. Forensic examinations subsequently indicated that the fire had started in five places, namely the lobby, on the staircases to the left and right of the building between the ground and first floors, in a room on the first floor and on the landing between the second and third floors. Other than the fire in the lobby, the fires could only have been started by the acts of those inside the building. The forensic reports did not find any evidence to suggest that the fire had been pre-planned.[43] The closed doors and the chimney effect caused by the stairwell resulted in the fire's rapid spread to the upper floors and a fast and extreme rise in the temperature inside the building.

26. The dispatch centre for the fire brigade was first called at 7.31 p.m.,[44] immediately after the first tents on Kulykove Pole had been set on fire, and was thereafter repeatedly

[38] *Report on the Special Inquiry Concerning Violations of Human Rights and Freedoms during the Mass Disorder in Odesa on 2 May 2014*, not public; for a summary description of the Ombudsperson's inquiry and findings, see paragraph 48 et seq. below. Details of the inquiry can also be found in the Ombudsperson's Annual Report, 2015, pp. 134-138.

[39] See the map in Annex VIII.

[40] See, for instance, 2 May Group, *Chronology*, Part 2.

[41] For details of the proceedings concerning Mr Volkov, see paragraphs 134 and 136 below.

[42] See, for instance, 2 May Group, *Chronology*, Part 2.

[43] For more details on the findings concerning the fire, see paragraph 118 below and also the findings of the 2 May Group, set out in Annex VII.

[44] On the SES internal inquiry findings, see paragraph 170 below.

called.[45] Although the closest fire station was less than five minutes' drive from Kulykove Pole,[46] the first fire engines did not arrive until over thirty minutes later: in its internal inquiry the SES determined the time as 8.09 p.m.[47] What purports to be the audio recording of the telephone calls to the dispatch centre was later posted on the Internet. The dispatcher can be heard telling callers that there was no risk involved in burning tents in an open space, and then hanging up; at some point she consulted a superior as to whether she should continue to respond in this way and was instructed to do so. When the first calls were made about the fire inside the Trade Union Building, the dispatcher responded that the information had been taken into account; however, there was a delay of approximately ten minutes between the first call concerning the Trade Union Building and the order to send the first fire engine.

27. According to the TIC Report, there were two reasons for the delay. First, Mr Bodelan (the then head of the SES in Odesa Region), who was at that moment on Kulykove Pole, called the dispatch centre at 7.32 p.m. and instructed the controllers that fire engines were only to be deployed upon his express command: Mr Bodelan informed the TIC that he had taken personal responsibility for the sending of fire crews to avoid risking their lives, given the seizure of a fire engine three hours earlier.[48] According to the evidence given to the TIC by representatives of the SES, aggressive behaviour on the part of protesters prevented the fire crews from performing their tasks and operations to extinguish the fire could start only after negotiations with the protesters had resulted in a safe corridor being provided for the fire crews.[49] However, the 2 May Group told the Panel that its inquiry was not able to find any evidence of access by fire crews having been obstructed.[50]

28. By 7.54 p.m. the fire was reaching its peak and some of those in the building desperately tried to escape by jumping out of the windows on the upper floors. A number of persons were killed in falling. Video footage on the Internet shows others being assaulted by pro-unity protesters outside the building after they had jumped.[51] However, there is also footage showing pro-unity protesters creating makeshift ladders and platforms from the stage which had been erected for speakers on the square and using them to rescue pro-federalists trapped in the building, who were then evacuated to safe zones.[52]

29. According to the SES,[53] the fire was extinguished at 8.50 p.m. Three hundred and thirty persons were rescued and evacuated from the building; 31 people were found to have died inside the building and eight more bodies were found within its curtilage.

30. Law enforcement officers reportedly did not intervene in the events on Kulykove Pole and the Trade Union Building. According to the Ombudsperson's inquiry report, they started

[45] According to information from the 2 May Group, between 7.45 p.m. and 7.58 p.m. eleven emergency calls were made, including several from an on-duty police officer, but the order to send a fire engine was made at 7.56 p.m. only – *Chronology*, Part 2. According to the SES, "a call [about the fire in the Trade Union Building had been] made at 7.54 p.m." – SES website, news of 3 May 2014.

[46] See the map in Annex VIII.

[47] See paragraph 170 below. The TIC report and the Office of the United Nations High Commissioner for Human Rights ("OHCHR"), certain representatives of which were present during the events, refer to a similar time frame – OHCHR, *Report on the Human Rights Situation in Ukraine*, 15 June 2014, § 46 and *Report on the Human Rights Situation in Ukraine*, 17 August 2014, § 88.

[48] A similar account was given in the SES internal inquiry report – see paragraph 170 below. On the seizure of the fire engine, see paragraph 18 above.

[49] Similar findings were made in the SES internal inquiry report – see paragraph 170 below.

[50] 2 May Group oral submissions, June 2015. See also 2 May Group, *Chronology*, Part 2.

[51] See, for instance, 2 May Group, *Chronology*, Part 2 with relevant footage.

[52] Ibid.

[53] SES website, news of 3 May 2014 and 5 May 2014.

to arrest protesters only after 41 persons had already died. When the fire had been extinguished the police entered the building and arrested 63 pro-federalists who were still inside or on the roof.

31. According to official statistics, as a result of the clashes on 2 May, 48 persons died (seven women and 41 men). Six persons died as a result of firearm injuries they had received during the clashes on and around Hretska Square and 42 died as a result of the fire in the Trade Union Building. Of those 42, 34 died as a direct result of the fire and eight died as a result of jumping or falling from a height;[54] no other violent cause of death was established.[55] Likewise, it was not established that any gas was present in the building, other than the gases produced by the fire.[56]

32. There have reportedly been problems in the identification of some bodies and one of them is still not formally identified.[57] Notwithstanding the allegations that there were foreigners among those who died on 2 May 2014 in Odesa,[58] it emerged that all the deceased were Ukrainian nationals.[59]

33. According to the official statistics,[60] 208 persons (including 34 law enforcement officers, six of whom received firearm injuries) were injured.[61] As during the EuroMaidan events,[62] many who were treated in hospital did not give their real names and addresses.[63] Moreover, some persons, even those seriously injured during the violence, allegedly did not go to hospital for fear of reprisals.[64]

34. As noted above, 47 persons were detained in the Afina Shopping Centre and 63 persons in the Trade Union Building; a few other persons were detained elsewhere during the following days.[65] After 63 detainees had been released by a mob of protesters on 4 May 2014 (see below), the other detainees were transferred for security reasons to detention facilities outside Odesa.

[54] For more details, see Annex IV. There has been speculation that the number of persons killed was higher than the official statistics suggest. However, a non-official investigation casts doubt on the veracity of such speculations – see the 2 May Group, *Preliminary Findings*, 10 July 2014, § 10. International organisations and NGOs also refer to the official statistics or give numbers close to the official ones – see e.g. OHCHR, *Report on the Human Rights Situation in Ukraine*, 15 June 2014, §§ 41 and 47; Human Rights Watch, *Ukraine: Amnesty International and Human Rights Watch Call for Impartial Inquiry into Events in Odessa on May 2*, 8 May 2014.

[55] For the results of the forensic medical examinations, see paragraph 119 et seq.

[56] Ibid.

[57] PGO written submissions, September 2015; for more details, see paragraph 121 below. See, however, *Dumskaya*, 25 June 2015, stating that the last body was identified by family members in June 2015.

[58] See, for instance, TSN (a Ukrainian TV news service), news of 2 May 2014.

[59] PGO written submissions, May 2015.

[60] MoI written submissions, May 2015.

[61] According to information provided by the OHCHR, 247 persons were brought from the scene requiring medical assistance: 27 persons with gunshot wounds, 31 with stab wounds, 26 with burns and intoxication caused by combustible products and 163 with injuries caused by blunt objects. Of these, 99 persons were hospitalised, including 22 policemen, with 35 in a serious condition – *Report on the Human Rights Situation in Ukraine*, 15 June 2014, § 49.

[62] See the IAP Maidan Report, § 96.

[63] See, for instance, the MoI website, news of 2 June 2014, summarised in Annex VI, paragraph 33.

[64] See, for instance, OHCHR, *Report on the Human Rights Situation in Ukraine*, 15 June 2014, § 49.

[65] Compare with the numbers referred to in the first press releases by the MoI and PGO summarised in Annex VI, paragraphs 7-8 and 10-11, respectively.

D. Other relevant events

35. During the following days the authorities deployed additional police units and took other protective measures.[66] A number of high-ranking officials (for instance, Mr Vitalii Yarema, First Vice-Prime Minister; Mr Mykola Banchuk, Deputy Prosecutor General; and Mr Serhii Chebotar, Deputy Minister of the Interior) arrived in Odesa to coordinate the measures to be taken. Several high-ranking local officials (among others, the head of the MoI regional office) were dismissed.[67] Criminal investigations into the events of 2 May were opened within a few hours.[68]

36. Although the streets adjacent to Hretska Square, the Square itself, Kulykove Pole and the Trade Union Building were crime scenes, according to the 2 May Group they were hastily examined and cleaned, and were open to the public thereafter.[69] Photographs on the Internet indicate that the Trade Union Building, in particular, quickly became a symbolic place for mourners who left flowers and candles and painted graffiti on the interior walls.[70]

37. On the evening of 4 May a group of several hundred pro-federalism protesters attacked the local police station where those who had been arrested inside the Trade Union Building were being held. As a result 63[71] detainees were released without any formal decision being taken. An investigation into the events of 4 May was opened and later joined to that concerning the events of 2 May.[72]

38. On 16 May Mr Chebotar reported that in the course of the investigation into the events on 2 May the authorities had uncovered the criminal activities of two gangs, with the involvement of Odesa police officers.[73] In late 2014 and early 2015 the Malynovskyi District Court of Odesa found guilty two police officers and another person of having attempted to sell Makarov pistol cartridges and bulletproof vests on 30 April 2014.[74] Although it is not evident from the publicly available text of the judgments, it is alleged that they were selling the material to pro-federalists.[75]

39. On 16 January 2015 three Members of Parliament introduced a draft law,[76] proposing an amendment to the Application of Amnesty in Ukraine Act, to add a list of 49 persons

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[66] See, for instance, MoI website, news of 5 May and 7 May 2014, summarised in Annex VI, paragraphs 18 and 22, respectively.

[67] See, for instance, MoI website, news of 3 May and 4 May 2014, summarised in Annex VI, paragraphs 6 and 14, respectively.

[68] For more details, see paragraphs 63 and 111 below. The investigation into the conduct of the SES staff was opened several months later – see paragraph 178 below. See also the press releases of the MoI and PGO summarised in Annex VI, paragraphs 3 and 10.

[69] 2 May Group oral submissions, June 2015. For more details on the measures taken to secure evidence, see paragraph 126 et seq.

[70] Furthermore, there are some photographs showing the bodies still present at the crime scene.

[71] In fact 67 detainees were released as a result of the attack (see MoI website, news of 4 May 2014 summarised in Annex VI, paragraph 13 below) but, according to the PGO written submissions, four of them had been detained for reasons unrelated to the events of 2 May 2014.

[72] For more details, see paragraphs 64-65 below. See also the press releases of the PGO and Prosecutor's Office in Odesa Region summarised in Annex VI, paragraphs 15-16.

[73] MoI website, news of 16 May 2014, summarised in Annex VI, paragraph 29.

[74] See the Unified State Register of Judicial Decisions, case no. 521/11464/14-к, judgment of 16 October 2014; case no. 521/20240/14-к, judgment of 28 November 2014; and case no. 521/11602/14-к, judgment of 2 February 2015 – all names of individuals omitted.

[75] See *Dumskaya*, news of 13 December 2014.

[76] Draft Law Concerning the Complete Rehabilitation of Political Prisoners – Verkhovna Rada website, draft law no. 1781.

subject to individual amnesty. The list included, among others, two pro-unity activists, namely, Mr Serhii Khodiak, suspected of, *inter alia*, committing murder on 2 May 2014 in Odesa,[77] and Mr Vsevolod Honcharevskyi, suspected of assaulting with a wooden club those who had been jumping from the burning Trade Union Building and preventing them from obtaining medical help.[78] The draft law is still under examination by the Verkhovna Rada.[79] To date, in the course of its progress through parliament, two opinions have been lodged to the effect that, having regard to several shortcomings, the draft law should be refused or returned for amendment.[80]

40. On 18 May 2015 a Member of Parliament proposed to release from criminal responsibility and punishment some of those who had taken part in the mass disorder on 2 May 2014 in Odesa.[81] This proposal would cover those who are suspected, charged or convicted of crimes committed in Odesa on that date, except for a number of serious violent crimes including murder, acts of terrorism, attempted murder of a law enforcement officer, excess of power by a law enforcement officer and negligence in office resulting in grave consequences. In addition, no amnesty would be given to those suspected or charged with having organised mass disorder under Article 294 of the CC. It has been claimed that passing such an act would "contribute to the relaxation of social tension and demonstrate Ukraine's attitude to those who, by their actions, [had] expressed their willingness to protect the territorial integrity of the homeland and a negative attitude to the Russian aggressors and anti-Ukrainian-minded persons."[82] The draft law is still under examination by the Verkhovna Rada.[83]

II. INQUIRIES OTHER THAN THOSE CARRIED OUT BY THE INVESTIGATIVE AUTHORITIES

41. Because of the unprecedented nature of the events at issue, a number of inquiries were carried out by public and private bodies, outside the framework of the criminal justice system, but in parallel to the pre-trial investigations carried out by the MoI and the PGO. In the present section the Panel summarises those inquiries and their findings.

A. Parliamentary inquiry

42. On 13 May 2014 the Verkhovna Rada set up the TIC to establish, *inter alia*, what had happened in Odesa on 2 May 2014.[84] The TIC was composed of ten Members of Parliament and chaired by Mr Anton Kisse, a Member of Parliament from the Odesa Region. Initially, the Verkhovna Rada planned to consider the TIC's report not later than 15 June 2014. On

[77] On the proceedings concerning Mr Khodiiak, see paragraphs 134 and 155 et seq.
[78] On the proceedings concerning Mr Honcharevskyi, see paragraphs 140-141 below.
[79] See the Verkhovna Rada website, workflow of the draft law no. 1781.
[80] Loc. cit., Opinion of the Main Research Department of the Verkhovna Rada of 2 February 2015 and Opinion of the Anti-Corruption Committee of the Verkhovna Rada of 4 March 2015.
[81] Loc. cit., draft law no. 2885.
[82] Loc. cit., explanatory note appended to draft law no. 2885.
[83] Loc. cit., workflow of draft law no. 2885.
[84] Loc. cit., Resolution no. 1264-VII. The Commission's mandate also covered the tragic events in other parts of Ukraine; for the purposes of the present Report, only the part dealing with the events in Odesa on 2 May 2014 are summarised.

20 June 2014, having considered the TIC's preliminary report, the Verkhovna Rada decided to extend its mandate, setting 5 September 2014 as the deadline for its final report.[85]

43. In the course of its inquiry the TIC held a number of meetings with, among others, representatives of the PGO, MoI, SSU, MoD, National Security and Defence Council, SES, and the Odesa State Regional Administration, a member of the Odesa Regional Council who chaired the Council's temporary commission,[86] forensic experts, relatives of those detained on 2 May, journalists and experts who were pursuing their own inquiry in parallel, the head of the UN Human Rights Monitoring Mission in Ukraine and representatives of the OSCE Special Monitoring Mission to Ukraine. The TIC noted, however, that despite its repeated invitations, Messrs Parubii, Avakov, Chebotar and Nalyvaichenko, the Chief of the SSU, failed to attend its meetings.

44. On 2 September 2014 the TIC adopted its report and submitted it to the Verkhovna Rada for debate and further action. It was proposed, among other things, to forward the report to the investigatory authorities and to request the latter to inform the Verkhovna Rada within two weeks of the measures taken; in addition, it was planned to hear at a future parliamentary session the Prosecutor General, the Minister of the Interior and the Head of the SSU on the relevant investigations within their competence.[87]

45. In addition to various factual details established and set out in its report,[88] the TIC found a number of shortcomings in the preparedness of the police to deal with the anticipated mass disorder: for example, it was found that the police officers who had been expected to implement the contingency plan had not actually been informed of this; that the mobility of the police squads deployed at the stadium had not been adequate; and that the collection and analysis of intelligence reports as to possible incitements to violence before and during the match had not been properly coordinated and organised. During the clashes on and around Hretska Square, the report continued, the police had failed to take adequate measures to arrest those taking part in the mass disorder and for the most part had not intervened at all. In its conclusions the TIC recommended the Verkhovna Rada to forward its report to the PGO, MoI and SSU and to invite those organs to report back on their follow-up.

46. On 27 November 2014, following the parliamentary elections, the new Verkhovna Rada was formed. Under the Rules of the Verkhovna Rada this terminated the mandate of the TIC,[89] as it had been set up by the former legislature. The draft resolution was, accordingly, withdrawn.[90]

47. On 9 December 2014 a draft resolution, proposing to set up a new TIC, was introduced in the Verkhovna Rada.[91] According to the draft resolution, the new TIC was to focus on the causes of the mass disorder; the identification of those who had organised, aided and abetted, and committed crimes in the course of, the mass disorder; the existence of any prior conspiracy to commit crimes; the infliction of bodily injuries, including those that had led to death; compliance with the law during the organisation of the demonstrations on 2 May 2014; and compliance with the law by the police during the mass disorder. According to the website of the Verkhovna Rada, the draft resolution is still under examination.[92]

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[85] Loc. cit., Resolution no. 1544-VII.
[86] On the Odesa Regional Council's Commission and its activity, see paragraphs 52-52 below.
[87] See the Verkhovna Rada website., draft resolution no. 5041.
[88] The TIC's findings of fact are referred to where relevant throughout the "Statement of Facts".
[89] Section 88 § 6 (3) of the Act no. 1861-VI of 10 February 2010 (with further amendments).
[90] See Verkhovna Rada website, workflow of the draft resolution no. 5041.
[91] Verkhovna Rada website, draft resolution no. 1299 (with further amendments).
[92] Loc. cit., workflow of the draft resolution no. 1299.

B. Ombudsperson's inquiry

48. Under the Ombudsperson Act,[93] the Ombudsperson is charged with carrying out a parliamentary control aimed, *inter alia*, at protecting human rights and freedoms (sections 1 and 3). To carry out this function he or she is entitled, *inter alia*, to institute an inquiry of his or her own motion (section 16) and, on the basis of the inquiry's findings, to request State organs to take relevant measures (section 15). The latter are obliged to cooperate with the Ombudsperson (section 22).

49. Shortly after the events of 2 May, the Ombudsperson decided to carry out an inquiry to determine what had happened on that day, what the authorities had been expected to do according to the existing legal framework and what they had actually done. To ensure the transparency of that inquiry, representatives of civil society and of the mass media were included in the inquiry team. The fact-finding part of the inquiry was carried out between 6 and 23 May 2014 and included the questioning of 64 witnesses, including eye witnesses and representatives of local authorities, and the examination of confidential official documents.

50. In her report the Ombudsperson found that, according to the existing legal framework, the law enforcement authorities had been required to activate contingency plans "Wave" and "Thunder".[94] In addition to an order triggering those plans, the law required the head of the local MoI office to adopt an order on the use of force in the course of the implementation of the plans, subject to its approval by a Regional State Administration, prosecutor's office and the MoI itself. However, the Ombudsperson concluded that the "Wave" plan had not actually been implemented and that there had been an attempt to have the order on the use of force signed retrospectively. The Ombudsperson referred to a number of facts in support of that conclusion, in particular that the order on the use of force had not been registered and dated, and had not been approved by the Regional State Administration; moreover, the relevant logbooks (such as books recording the issue and return of weapons, incoming messages logbooks and reports of changes of shift) did not contain any indication that the plan had been implemented. Accordingly, the report concluded, the superiors of the Odesa Regional MoI Office had failed to take adequate measures, as required by the domestic legislation, to tackle the situation in Odesa on 2 May 2014.

51. Subsequently the Ombudsperson notified the PGO about her findings and requested the latter to carry out an objective and impartial investigation into the events in question. In the ensuing exchange of correspondence, provided to the Panel, the PGO responded that investigations had been instituted into the events of 2 and 4 May.

C. Activity by the Odesa Regional Council

52. On 16 May 2014 the Odesa Regional Council set up a Temporary Control Commission to oversee the investigations conducted by the investigative authorities.[95] The Commission was composed of ten members of the Council and chaired by Mr Hryhorii Yepur. It held three sessions[96] and was dismissed by the Council on 12 September 2014,

[93] Loc. cit., Act no. 776/97-BP of 23 December 1997 (with further amendments).
[94] For additional information on the contingency plans, see paragraph 16 above.
[95] Odesa Regional Council website, decision no. 1116-VI.
[96] Loc. cit., report of Mr Yepur on his activity in 2014 as a member of the Odesa Regional Council.

since it was found to be impossible to carry out any scrutiny of the investigations.[97] The materials it had collected up to that point were transferred to the Verkhovna Rada's TIC.

D. Inquiry by the 2 May Group

53. Soon after the events of 2 May 2014, a group of ten Odesa activists,[98] representing a range of political views and calling themselves "the 2 May Group", came together to carry out their own inquiry in parallel to the official investigations. The group includes several journalists and experts in ballistics, chemistry and toxicology, some of whom were also eye-witnesses of the events. It is co-ordinated by Ms Tetiana Herasymova, a local journalist.[99]

54. According to the statement of principles set out on the Group's website, their inquiry is to be carried out in an open, independent and objective manner, using all fact-finding means available under Ukrainian law (for instance, media files posted on the Internet, witness testimony, requests for information to the State authorities), with the aim of establishing in as much detail as possible what happened in Odesa on 2 May 2014, so as to inform the public and avoid politically-motivated speculation. All their findings, before being published, are subject to approval by all members, although individual members may additionally publish their personal views on the Group's website or elsewhere.[100] To date, the Group has published, among other things, one of the most thorough accounts of the events on 2 May 2014 available[101] and an expert examination of the fire in the Trade Union Building.[102] The Group also monitors the court hearings in cases concerning the 2 May events.

55. Consistent with the Group's aims, two journalist members requested the Odesa Regional Bureau of Forensic Examinations and the Main Investigation Department ("MID") of the MoI to provide them with the information contained in the autopsy reports (with personal details redacted), relating to the 48 persons who died as a result of the mass disorder and fire. On being refused, in December 2014 they instituted proceedings before the Odesa District Administrative Court. After several interlocutory hearings to determine whether the case should be examined under the criminal, civil or administrative procedure,[103] the court proceeded to the merits phase. Before the court, the Bureau, the PGO and the MID of the MoI, as non-party interveners on the side of the defendant, argued that the requested reports were part of the criminal casefile and that, under the Code of Criminal Procedure ("CPC"), access could be granted only to persons with the relevant procedural status; as neither of the claimants had procedural status in the criminal investigation, their access to the information should be denied. On 20 May 2015 the Odesa District Administrative Court upheld the claims and ordered the Bureau to provide the claimants' access to the information contained

[97] Ibid., decision no. 1156-VI.

[98] Subsequently its composition and the number of its members have varied.

[99] In addition to Ms Tetiana Herasymova, the Panel met with Mr Serhii Dibrov, a journalist at *Dumskaya*; Mr Vladyslav Serdiuk, a retired lieutenant-colonel and law-enforcement expert; Mr Vladyslav Balynskyi, an expert in chemistry; Mr Volodymyr Sarkisian, an expert in toxicology; and Mr Yurii Tkachov, a journalist and editor-in-chief of *Timer*. A full list of members can be found on the 2 May Group website, *History and Principles*.

[100] Ibid.

[101] Loc. cit., *Chronology*, Part 1 and Part 2.

[102] For a summary of its findings, see Annex VII.

[103] Unified State Register of Judicial Decisions, case no. 815/6959/14, ruling of 11 December 2014, ruling of 10 March 2015 and ruling of 8 April 2015 (all names of private persons omitted).

in the autopsy reports in question.[104] In reaching its decision the court weighed the public interest in being provided with the information against the competing interest in confidentiality. As the defendant had failed to prove that the release of the information would harm the effectiveness of the investigations, or any other matter of public importance, the public interest in the release of the information prevailed. The PGO appealed against the judgment but, according to the information provided by the 2 May Group,[105] the Odesa Administrative Court of Appeal upheld the judgment.

III. RELEVANT DOMESTIC LAW ON PRE-TRIAL INVESTIGATIONS

56. An overview of the domestic law is set out in Annex V below.

IV. THE STRUCTURE AND STATUS OF THE INVESTIGATIONS

57. Three separate investigations were opened into the violent events in Odesa on 2 May 2014. The investigations covered (i) the conduct of the police on 2 May 2014 and the release of detainees on 4 May 2014 (casefile no. 186); (ii) the mass disorder in the city centre and Kulykove Pole, as well as the fire in the Trade Union Building (casefiles nos. 3700, 263, 558, 2190 and others); and (iii) the conduct of SES staff (casefile no. 154). The conduct of the police is being investigated by the PGO and the other cases – the mass disorder, the fire at the Trade Union Building and the conduct of SES staff – are being investigated by the MID of the MoI.

58. The PGO explained to the Panel that the current division of investigations between the PGO and the MoI was based on the provisions of the CPC, which require the public prosecution service to investigate crimes committed by law enforcement officers and the MoI to investigate most of the crimes committed by private individuals.[106]

59. The PGO and MoI representatives confirmed before the Panel that there was a certain overlap between the main investigations, in particular as regards the gathering of evidence and the questioning of witnesses. However, there was a constant exchange of information and materials between the two investigating authorities.

60. In the opinion of the Mr Serhii Horbatiuk, the Head of the Special Investigations Division ("SID") of the MID of the PGO, it would have been better if all the proceedings had been consolidated at the outset; however, to join and transfer them to the PGO at the present stage, more than a year after they had begun, would not benefit the investigations and would lead to considerable delay, given that the PGO investigators would have to study a large volume of unfamiliar material.

61. The following description of the structure and current status of the investigations is based on the oral and written submissions received by the Panel from the investigatory authorities, namely the PGO and the MoI, unless otherwise specified.

[104] Loc. cit., resolution of 20 May 2015 (all names of private persons omitted).
[105] 2 May Group website, 16 September 2015.
[106] The investigative jurisdiction of the investigating authorities is set out in Article 216 of the CPC. For more details concerning the domestic law on pre-trial investigations, see Annex V.

A. Investigation of the police conduct

62. The case concerning police conduct during the events of 2 May 2014 in Odesa is being investigated by the investigators of the PGO.[107] The role of the MoI in the case is limited to carrying out internal inquiries concerning the conduct of the police. Operational support, including searches for missing suspects, is provided by the SSU.

1. Pre-trial investigations

63. On 2 May 2014 the Odesa Regional Prosecution Office instituted criminal proceedings under Article 367 § 2 of the CC (neglect of duty), concerning the failure of the police to fulfil their public order protection duties during the mass disorder on 2 May 2014 in Odesa (casefile no. 186).

64. On 4 May 2014 the Odesa Regional Prosecution Office instituted criminal proceedings under Article 365 § 3 of the CC (exceeding authority by a law enforcement officer) and Article 367 § 2 of the CC (neglect of duty) against the officials of the Odesa City MoI Department, whose actions had resulted in the unjustified release on the same day of 63 individuals placed in the temporary detention facility of the Odesa City MoI Department, as well as in the seizure of those premises (casefile no. 189).

65. On 6 June 2014 the two criminal proceedings were merged into casefile no. 186, which covers the investigations into the events of both 2 and 4 May 2014. On 6 May 2014 the Deputy Prosecutor General decided to assign the case for investigation to the PGO. The case materials were transferred to the PGO on 7 May.

66. According to the PGO submissions to the Panel, the following investigative acts were carried out in the case: 470 witnesses were questioned concerning the events of 2 May 2014, including staff of the MoI, the SSU, the Prosecution and SES offices in the Odesa Region, military units, the Odesa City Council and the Odesa State Administration; five expert examinations were carried out concerning the cause of the fire and damage resulting from it; 30 examinations were carried out relating to documents and video materials recording the events; court decisions were obtained concerning five instances of access to documents and materials and five searches; 90 requests were submitted to different organisations to obtain copies of relevant materials, including photographs and videos; the personnel files of officials of the MoI Office in the Odesa Region and documents regulating their duties were requested; 20 instructions were sent to MoI departments and to the SSU to obtain relevant information.

67. Four internal inquiries were conducted by the MoI with regard to the events investigated in case no. 186. The Panel was denied access to the documents relating to the MoI internal inquiries, despite the fact that these were of direct relevance to the subject matter of its review and would have facilitated its tasks. The Panel was thus required to base its account of the results of the internal inquiries on the submissions received by it from the authorities.

68. According to these submissions, the first internal inquiry concerned the conduct of officials of the MoI Office in the Odesa Region and was completed on 30 May 2014. As a result of the internal inquiry, several senior officials of the MoI Office in the Odesa Region who had failed to act, or had taken inadequate action during the 2 May events, were dismissed or resigned from the MoI, including Mr Lutsiuk, the Head of the MoI Office in the

[107] See paragraphs 101-109 for detailed information concerning staffing.

Odesa Region, and Mr Fuchedzhy, the Deputy Head of the MoI Office in the Odesa Region and Head of the Regional Public Order Police (order no. 500).[108]

69. The internal inquiry of 3 June 2014 was ordered in connection with the injuries received by police officers. It established that 34 police officers had been injured.

70. Another internal inquiry was ordered into the events of 4 May 2014, during which detainees were released from the Temporary Detention Facility of the Odesa City MoI Department. The inquiry was completed on 4 June 2014 and led to disciplinary action being taken against four MoI officials.[109]

71. An additional internal inquiry concerning the conduct of MoI officials on 2 May 2014 was initiated by the MoI, at the request by the PGO, and was completed by the MoI on 17 June 2015.[110]

(a) Events of 2 May

(i) Scope of the investigations

72. **Breach of duty by the police.** The investigation in casefile no. 186 relating to the events of 2 May covers both intentional and unintentional breach of duty on the part of police officers. The PGO informed the Panel that they were investigating whether there had been any deliberate failure to act by police officers, any police conduct that had facilitated the criminal activities of certain persons and/or any deliberate collusion.

73. The PGO confirmed that there was a large volume of video footage and commentaries indicating intentionally passive conduct on the part of police officers, which would be a grave breach of their duty to protect public order. However, the investigation to date had not established any direct evidence that any police officer had deliberately failed to act in exchange for payment or other benefit.

74. According to the PGO, investigators were also assessing the actions of mid-level commanders and their failure to perform their duties. The PGO confirmed in particular that the inaction of police officers when activists discharged firearms in their presence could raise an issue under the criminal law as they were under a general duty to prevent such crimes and would not have required any special order to do so.

75. The PGO cited a further example of police inactivity which occurred on 2 May before the start of the clashes on, when about 300 AntiMaidan protestors, equipped with bats and shields, were gathering near the pro-unity activists. The police were present on the scene but took no action. A team of police officers allegedly approached an organised group of about 30 AntiMaidan activists who were armed and equipped; instead of cordoning off the group or arresting their leaders, as the situation required, the police escorted them, as the group explained that they had only wanted to defend the tent camp on Kulykove Pole from pro-unity protesters.

76. In July the PGO submitted to the Panel that mid-level commanders had been questioned and testified that they had given orders to ensure public order protection. The details of such orders were being investigated. The PGO also submitted that certain mid-level

[108] Among other officials dismissed were Mr Kuzmenko, the Head of the Regional Department for Fighting Organised Crime; Mr Netrebskyi, the Head of the Odesa City MoI Department. Two other officials, the Deputy Head of the Odesa City MoI Department, who was also Head of the City Public Order Police; and the Head of the Regional Public Security Department, received disciplinary warnings.

[109] For more details as to the results of the internal inquiry, see paragraph 98 below.

[110] For more details as to the results of the internal inquiry, see paragraph 82 below.

officers had failed to take relevant measures for the protection of public order and that they would be charged.

77. At the same time, Mr Ihor Zinkovskyi, the head of the investigative team in this case, expressed the view that the lack of action on the part of lower rank police officers was related to the allegations against Mr Lutsiuk, who had failed to ensure that sufficient numbers of officers were deployed. According to Mr Zinkovskyi, there were not enough police officers present in the city centre to be able to prevent clashes between one group of approximately 1,500 participants and another group of approximately 600 participants, let alone sufficient numbers to carry out arrests. There were a maximum of 100 police officers present and all they could do was to form a cordon to separate the two crowds. It would have been too dangerous for any of the officers to leave the cordon to detain an activist. The investigation had not obtained any evidence of deliberate dereliction of duty on the part of lower-ranking police officers and, in the absence of such evidence, no charges could be brought.

78. The question whether there had been any collusion between activists and the police was also the subject of investigation. According to the representatives of the PGO, all the evidence indicating the possibility of collusion, such as footage showing police officers wearing the same red adhesive tape on their arms as AntiMaidan activists, or showing an activist shooting unobstructed from behind the backs of police officers and later getting into an ambulance with the Deputy Head of the MoI Office in the Odesa Region, was being examined. However, investigators faced difficulty in proving collusion, in that it required them to find evidence of deliberate intent rather than mere negligence on the part of the police.

79. Mr Zinkovskyi confirmed the above information and added that conclusions would be drawn soon. As to the video recordings showing police officers wearing the same red adhesive tape on their arms as AntiMaidan activists, Mr Zinkovskyi explained that it had been established that officers had used the red tape to fix protective equipment to their arms. After the Maidan events such equipment was in an unsatisfactory state. As could be seen in the video footage and was later confirmed by the police officers, the use of red adhesive tape was unsystematic, being seen variously on the left arm or the right arm or on both. This explanation of the use of red adhesive tape by the police officers on 2 May 2014 was supported by the prosecutors of the PGO as well as by members of the 2 May Group;[111] the same explanation was obtained by the TIC in the course of its inquiry.

At the date of adoption of the Report, no police officer had been notified of suspicion in respect of any deliberate breach of duty.

80. **Failure to implement the "Wave" plan.** In casefile no. 186 the PGO is investigating the procedure relating to the implementation, or non-implementation, of the "Wave" plan, which was designed specifically to deal with mass disorder and to prevent risk to life and limb.[112] Two senior commanders of the MoI Office in the Odesa Region, Mr Lutsiuk and his deputy Mr Fuchedzhy, have been notified of suspicion on the ground that they failed properly to take into consideration information from the SSU about possible clashes and incitements to violence and to deploy the available forces appropriately. Instead, the MoI Office in Odesa Region took measures under a standard contingency plan used for dealing with confrontations between rival football fans. The investigating authorities believe that the police forces were not correctly deployed, in that the majority of the police were stationed at or near the stadium and only a small number accompanied the march and the activists in the city centre.

[111] Oral submissions of 2 May Group, June 2015.

[112] For more details concerning the "Wave" plan, see paragraph 16 above.

81. Initially the PGO took the view that the "Wave" plan had been implemented, but only partially and with a delay because of the meeting attended by the leaders of law enforcement authorities which was taking place at the time the clashes began.[113] Subsequently the PGO informed the Panel that they were also investigating the theory that the documents relating to the implementation of the "Wave" plan had been forged. Mr Zinkovskyi explained that investigators had been misled, in that they thought that the plan had been implemented. However, at some point in May 2015 the investigation established that this was not the case. The PGO had initiated an internal inquiry by the MoI "based on newly discovered circumstances" to confirm whether the documents had been forged.

82. As a result of this internal inquiry, whose findings were delivered on 17 June 2015, it was established that, on the night of 2 to 3 May, Mr Lutsiuk, with the intention of covering up his failure to ensure that the police were able to secure public order protection, instructed that a record be created purporting to show the implementation of the "Wave" plan at 3.30 p.m. on 2 May. It was the PGO's belief that the "Wave" plan was never, in fact, implemented; the documents concerning its implementation were backdated during the night of 2/3 May on Mr Lutsiuk's instructions.

83. The Panel observes that information concerning the alleged forgery of the "Wave" plan was brought to the attention of the PGO in a substantiated manner as early as 10 June 2014, when the Ombudsperson submitted to the PGO her report on the inquiry into the events in Odesa on 2 May 2014.[114] In June and September 2014 and January 2015 the Ombudsperson addressed the Prosecutor General, drawing attention to her report on Odesa, and requesting him to take it into consideration during the conduct of pre-trial investigations. The PGO submitted before the Panel that the Ombudsperson's report had been included in the casefile.

(ii) Individuals granted victim status

84. According to the PGO's July submissions to the Panel, in casefile no. 186 45 persons have been granted victim status in relation to the deaths that occurred on 2 May. Two persons declined to accept victim status and in relation to one death it was impossible to establish the whereabouts of the relatives.

85. It was established that 271 persons sustained injuries as a result of the events of 2 May, including 34 police officers. Eighty-three civilians and 24 police officers have been granted victim status. No persons have been granted victim status in the part of the case relating to the events of 4 May 2014.

(iii) Current status of the investigations

86. Following Mr Lutziuk's dismissal on 3 May 2014 from his position as the head of the MoI Office in the Odesa Region, Mr Fuchedzhy was appointed Acting Head, which position he held until 6 May 2014. On 5 May the investigators of the Odesa Regional Prosecution Office summoned him for questioning as a witness. However, he refused to appear, referring to his poor state of health and his treatment in hospital. On 6 May 2014 Mr Fuchedzhy fled Ukraine, crossing the border into Moldova. Thus, by the time the casefile was transferred to the PGO on 7 May 2014 he had already disappeared. In April 2015 the Deputy Prosecutor General reported that Mr Fuchedzhy was in Transdniestria.[115]

[113] See paragraph 14 above.
[114] For details of the inquiry conducted by the Ombudsperson see paragraph 48 et seq.
[115] PGO website, news of 22 April 2015.

87. When asked by the Panel about the circumstances in which Mr Fuchedzhy had absconded, Mr Zinkovskyi replied that he was not aware whether any action had been taken to ensure that Mr Fuchedzhy appeared for questioning; whether he had been summoned through the police officers of the same department where he had worked; or whether anyone had helped him to escape. Mr Zinkovskyi believed that the period of five days during which the evidence was being collected gave Mr Fuchedzhy time to abscond.

88. On 13 May 2014 a notification of suspicion of neglect of duty (Article 367 § 2 of the CC) and exceeding authority (initially under Article 365 § 3 of the CC and later under Article 365 § 1 of the CC) was issued to Mr Fuchedzhy. He was charged with a failure properly to organise and coordinate the police forces available to him and deployed on public order duties during the mass disorder that took place on Hretska Street, Kulykove Pole and at the Trade Union Building on 2 May 2014, as a result of which 48 persons died. He was also charged with ordering the unlawful release on 4 May 2014 of 63 persons arrested on suspicion of participation in the mass disorder on 2 May 2014.

89. On 15 May 2014 Mr Fuchedzhy was put on a wanted list and on 16 May 2014 the court issued a warrant for his arrest. The SSU is charged with searching for him. The request for Interpol to put him on an international wanted list was refused on the ground that the case was politically motivated.

90. On 17 October 2014 the case against Mr Fuchedzhy was separated from casefile no. 186 and became casefile no. 1126. On the same day the case was suspended, because of the absence of the suspect from the jurisdiction. The investigation could be resumed if certain measures were needed to be carried out or if Mr Fuchedzhy could be found and detained. Mr Zinkovskyi explained to the Panel that he intended to turn his attention to the case against Mr Fuchedzhy as soon as he had completed his work on the case against Mr Lutsiuk.

91. On 30 April 2015, nearly a year after the events of 2 May 2014, the PGO notified Mr Lutsiuk of suspicion of neglect of duty under Article 367 § 2 of the CC. According to the PGO submissions, it was established that the mass disorder, as a result of which 48 persons died, occurred as a consequence of the failure of the police leadership to ensure adequate protection of public order.

92. According to the representatives of the PGO, one of the causes of the delay in notifying Mr Lutsiuk of suspicion, was the re-organisation of the MID of the PGO, when for some time it remained unclear which department was to investigate the case. The Panel notes in this regard that Mr Lutsiuk was notified of suspicion shortly after the return on 8 April 2015 of Mr Zinkovskyi as the head of the investigative team in casefile no. 186, following his absence from June 2014.[116]

93. No measure of restraint was applied to Mr Lutsiuk because he was under medical treatment at the moment when he was notified of suspicion. Subsequently, on 13 May 2015, the Pecherskyi District Court of Kyiv granted the PGO's request to place Mr Lutsiuk under house arrest. The period of his house arrest was extended on 26 June 2015. Two months later, on 28 August 2015, the court refused to extend the term of Mr Lutsiuk's house arrest: it found that the prosecutors had failed to substantiate that there remained a risk of the suspect absconding or influencing the investigations or to show that it had not been possible to complete the pre-trial investigation before the measure of restraint imposed by the previous decision had expired.[117]

[116] See paragraph 102 below.
[117] Unified State Register of Judicial Decisions, case no. 757/31047/15-к, ruling of 28 August 2015.

94. Mr Zinkovskyi confirmed before the Panel that "ninety-nine per cent of the case" against Mr Lutsiuk had been completed and that the next step would be to bring charges against him and send the case to court. However, before this could be done it would be necessary to calculate the damage caused as a result of the crime. In this context, an expert assessment of the damage caused to the Trade Union Building had been ordered, but the assessment had been delayed by the fact that many documents relating to the building and its renovation had been burnt and that the process of reconstructing these documents was complicated owing to the building's status as a cultural heritage site.

95. No persons other than two senior officials of the MoI Office in the Odesa Region have been notified of suspicion and no indictment has been drawn up and lodged with a court in casefile no. 186 as regards the events of 2 May 2014.

(b) Events of 4 May

96. It appears that a number of activists remained in the Trade Union Building after the fire had been extinguished and between 2 and 4 May 2014 the police arrested 63 of them. They were taken to the Odesa city police station. On 4 May 2014 a crowd, including families of the detained activists, gathered at the police station and demanded their release. It was found by the investigation that Mr Fuchedzhy had given the order to release the detainees without any legal basis or formal decision. The investigation into this incident was opened on the same day.

97. On 8 May 2014 the PGO issued notifications of suspicion in connection with the release of the detainees on 4 May 2014, under Articles 365 § 1 (exceeding power by a law enforcement officer) and 367 § 1 (neglect of duty) of the CC, to three officials: the former Head of the Odesa City MoI Department, Mr Netrebskyi; the former head of the Temporary Detention Facility of the Odesa City MoI Department, Mr Pryima; and the inspector on duty at the Temporary Detention Facility of the Odesa City MoI Department, Mr Kondratov. A measure of restraint in the form of personal undertakings was applied to each of the three officials.

98. On 4 June 2014 the MoI completed its internal inquiry into the events of 4 May 2014. It confirmed that the three police officers who had been notified of suspicion on 8 May, as well as Mr Fuchedzy, in his capacity as Acting Head of the MoI Office in the Odesa Region, had committed a breach of duty by allowing the release of the detained activists.

99. On 27 October 2014 the indictment in respect of the release of the detainees on 4 May 2014 was sent to the Prymorskyi District Court of Odesa for trial. Preliminary court proceedings took place in December 2014. As at 31 August 2015, the case was still pending trial.

100. As noted above,[118] Mr Fuchedzhy is a suspect in the parts of the case concerning the events of 2 and 4 May 2014, but the case against him is suspended following his absconding from the jurisdiction.[119]

2. Staffing

101. The case concerning police conduct on 2 and 4 May 2014 was initially investigated by the Odesa Regional Prosecution Office. On 7 May 2014 the case was transferred to the second investigating unit of the Major Crimes Division of the MID of the PGO. As from

[118] See paragraph 88 above.
[119] See paragraph 90 above.

20 December 2014 the casefile was assigned to the newly created Special Investigations Division ("SID")[120] of the MID of the PGO, until it was transferred back to the second investigating unit of the Major Crimes Division of the MID of the PGO on 8 April 2015. On 25 May 2015 the casefile, together with the head of the investigative team, was transferred to the second investigating unit of the SID of the PGO, where it currently remains. It appears from the PGO's submissions to the Panel that, for some months while the SID was being set up within the MID, it was unclear which division was to take charge of the investigation of the case.

(a) Leadership

102. Since 7 May 2014 the investigating team has been headed by Mr Zinkovskyi, deputy head of the second investigating unit in the Major Crimes Division of the MID of the PGO. Between June and September 2014 Mr Zinkovskyi was on sick leave. He returned to work in October 2014. However, it was only on 8 April 2015 that he resumed leadership of the investigations in casefile no. 186. In his absence, the investigating group was headed by Mr Muzyka, a senior investigator in special cases from the MID of the PGO.

103. As the head of the investigative team in the case, Mr Zinkovskyi has been coordinating the investigation into the events of 2 and 4 May; however he told the Panel that he was principally concentrating on the investigation of the 2 May events, whereas Mr Muzyka was working primarily on the events of 4 May. During Mr Zinkovskyi's absence, Mr Muzyka completed his investigation into the 4 May events.

(b) Investigating team and procedural supervisors

104. According to the submissions of the PGO, a detailed account of which follows, there are currently two investigators deployed in Odesa working exclusively on the case concerning police conduct, together with eight to ten investigators who could be engaged in the investigations if the need arises. There is also one prosecutor working closely on this case.

105. In May 2015 the PGO submitted that the investigating group consisted of ten investigators from the PGO and the Odesa Regional Prosecution Office. At a June meeting with the Panel, the Head of the SID of the PGO explained that in Mr Zinkovskyi's investigating group there were two investigators from the PGO and two local investigators from Odesa. These four investigators were working exclusively on the Odesa case. The group also included four other investigators who combined work on casefile no. 186 with other tasks.

106. According to Mr Zinkovskyi, at the very beginning of the investigations the team included two investigators from the PGO and six investigators from regional offices,[121] working exclusively on the Odesa case. When he returned in April 2015 there were only two people working on the case, himself and another investigator from the Odesa Prosecution Office. Mr Zinkovskyi informed the Panel that most of the investigative acts had already been carried out and there was no need for additional staff.

107. In July 2015 the Panel was informed in the written submissions of the PGO that the investigating team in the case consisted of four investigators, including Mr Zinkovskyi.

[120] The SID was created in December 2014; its initial function was to deal with the investigations into the Maidan cases and also into allegations of unlawful seizure of power and embezzlement of State funds by the former government: see also the IAP Maidan Report, §§ 173-176.

[121] Namely, from the Odesa, Mykolayiv and Kherson regional offices.

108. At the meeting with the Panel in July 2015 the representatives of the PGO explained that the number of investigators who were included in an investigating group and who could potentially be involved in the investigation of a case might differ from the number of investigators actually working on it. Mr Zinkovskyi and another investigator were working exclusively on casefile no. 186, together with a supervising prosecutor. There were three more investigators from the PGO and five local investigators who were part of the investigating group and who could be called on if needed. The group of prosecutors providing procedural guidance in the case consisted of prosecutors from the PGO and four prosecutors from the Odesa Regional Prosecution Office, who were added to the group at a later stage. The group had been changing owing to personnel movements and to the re-organisation of the division. According to Mr Zinkovskyi, there were about ten prosecutors involved; they were also competent to take investigative actions.

109. In July 2015 the PGO stated in writing that the prosecutors' group had last changed on 28 May 2015 and now included 14 prosecutors from the PGO, the Odesa Regional Prosecutor's Office and the Kyiv City Prosecutor's Office.

B. Investigation of the mass disorder, fire at the Trade Union Building and conduct of the SES staff

110. The MoI is in charge of investigating the mass disorder of 2 May 2014 and the fire in the Trade Union Building, as well as the conduct of SES staff during the events on Kulykove Pole. The staffing in relation to both cases is virtually the same and is described in detail below.[122]

1. Case concerning the mass riots and the fire in the Trade Union Building (casefiles nos. 3700 and others)

(a) Scope of the investigations

111. On 2 May 2014 the Prymorskyi District MoI Department in Odesa instituted criminal proceedings concerning the organisation of, and participation in, the mass disorder and concerning the fire in the Trade Union Building. Owing to the high-profile nature of the case, the casefile was transferred to the MID of the MoI on 4 May 2014, by the decision of the Deputy Prosecutor General, Mr Banchuk.[123] Procedural guidance and supervision in the proceedings is provided by the PGO.

112. Casefile no. 3700 concerning the mass disorder and the fire in the Trade Union Building consists of ten separate proceedings and is referred to as casefile no. 3700. It covers several stages of the events of 2 May 2014, starting from the beginning of the clashes on Hretska Street and at the Afina Shopping Centre, and including the subsequent movement of the clashes to the Kulykove Pole, as well as the fire in the Trade Union Building. The following crimes are being investigated within this casefile: mass disorder (Article 294 §§ 1 and 2 of the CC), disorderly conduct (Article 296 § 2 of the CC), threats or violence towards a law enforcement official (Article 345 § 3 of the CC), murder (Article 115 § 1 and § 2 (5) and (7) of the CC), seizing state or public buildings or constructions (Article 341 of the CC), deliberate damage or destruction of property (Article 194 § 2 of the CC), public disturbances

[122] See paragraphs 183-189 below.
[123] PGO website, news of 4 May 2014.

committed in a group (Article 293 of the CC), and the unlawful possession of weapons other than firearms (Article 263 § 2 of the CC).

(b) Individuals granted victim status

113. Fifty persons were granted victim status in respect of the 48 deceased persons.[124] In respect of each of two of the deceased, two people were granted victim status. Two non-blood relatives claimed to be family members of an unidentified deceased person who had died as a result of the fire in the Trade Union Building,[125] but were not granted victim status.

114. Following the events of 2 May 2014, 208 persons requested medical help at various medical institutions in Odesa. Seventy persons were recognised as victims in casefile no. 3700 on the basis of injuries received. The remainder either did not apply for victim status or requested medical assistance under false names which made their identification difficult. The investigating authorities do not have information about any instances of missing persons.

115. Thirty-four police officers received injuries as a result of the 2 May events. Twenty-four police officers were recognised as victims; the others did not request victim status.

116. During the July meeting with the Panel, representatives of the 2 May Group submitted that most police officers had been refused victim status and that they were being questioned as witnesses but feared that at any moment they could be notified of suspicion, if it were felt that scapegoats were needed.

117. The PGO disputed the allegation about the refusal to grant victim status to police officers and submitted that, if officers had failed to present themselves as victims, this had been their own decision.

(c) Pre-trial investigations

(i) Forensic examinations

118. The PGO and the MoI submitted that more than 270 forensic examinations had been carried out in the case. Following the collection of evidence in the city centre and the Trade Union Building,[126] an expert explosives examination and a number of ballistics reports were ordered: fifteen in May-June 2014 and one in April 2015. The authorities, however, had failed to identify the guns from which the fatal shots were fired. The conclusions of the expert examinations as to the cause of the fire in the Trade Union Building and the causes of the deaths are discussed in detail below. The Panel's account is based on the submissions of the investigatory authorities concerning the relevant forensic examinations or on their public statements.

119. **Causes of the deaths.** The forensic examination of the causes of the deaths of the 48 deceased victims of the 2 May events was conducted by the Odesa Regional Bureau of Forensic Examinations. According to the information provided by the Odesa Regional Healthcare Department,[127] six victims died as a result of injuries received in the city centre, of whom one was killed by a shot fired from an airgun and others were killed by shots from firearm weapons (as the Panel understood from the MoI submissions,[128] the latter included a rifle, shotgun(s) and other unidentified weapons).

[124] For more details, see Annex IV.
[125] See paragraph 121 below.
[126] For details concerning the collection of evidence, see paragraph 126 et seq.
[127] For more details, see Annex IV.
[128] MoI written submissions, September 2014.

120. Thirty-four additional forensic examinations were commissioned in relation to those who had died in the Trade Union Building, with the exception of those who died as a result of jumping from the building. The medical expert examination established that the deaths inside the Trade Union Building had occurred as a result of carbon monoxide poisoning, burns and high temperatures. No traces of torture, beating, firearm or other injuries were established; claims about poisoning by toxic agents other than carbon monoxide were not confirmed either.[129] These findings were also confirmed by the 2 May Group.[130]

121. It appears that one victim who died at the Trade Union Building remains unidentified. It was reported that two persons who claimed to be related to the deceased by marriage and adoption filed a missing person report with the authorities in May 2014.[131] At first they failed to identify the body. A DNA test was carried out but did not establish any genetic relationship. An expert toxicologist[132] from the 2 May Group claimed that the identification was not properly conducted since the relatives were provided with photographs of the body, rather than being given direct access to it, as required by the rules, and since the authorities had delayed in commissioning a reconstruction of the facial features from the skull. The relatives identified the body on a second occasion in June 2015; however the authorities sought further confirmation of the identity by commissioning a forensic examination of the skull which appears still to be pending.

122. **Cause of the fire in the Trade Union Building.** It appears from the authorities' submissions to the Panel that the report of the forensic examination of the fire in the Trade Union Building, conducted by the Scientific Research and Forensics Centre of the MoI Department in Mykolayiv Region, was obtained on 7 July 2014.[133] The report concluded that the building could have caught fire as a result of one or more persons bringing combustible materials and a source of fire into the building. The forensic examination identified five independent fire centres: in the lobby of the building; on the left hand and on the right hand staircases between the ground and first floors; in a room on the first floor; and on the landing between the second and third floors. The fire centres other than in the lobby could only have been started as a result of the actions of persons inside the building.

123. According to the press release issued by the PGO in April 2015, the forensic examination established that the fire in the Trade Union Building started in the lobby. People died as a result of the rapid spread of the fire and the sharp rise in temperature, due to the chimney effect of the central stairwell, exacerbated by the blocking of interior doors with barricades. Almost all those who died inside the building were on or near the staircase. It was established in the course of the investigations that incendiary mixtures (Molotov cocktails) had been used by both parties to the conflict, including in the building itself. There was no evidence of pre-planned arson or of the use of potent toxic agents, including chloroform.[134] These findings appear to be confirmed by the findings of the 2 May Group.[135]

[129] PGO website, news of 22 April 2015.

[130] 2 May Group, written and oral submissions, June 2015 and oral submissions, July 2015. For details concerning the 2 May Group findings, see Annex VII.

[131] 2 May Group, 25 June 2015.

[132] Mr Sarkisian is a toxicologist and has previously worked for the Regional Bureau of Forensic and Medical Examinations.

[133] There have been allegations that the report of the expert examination consisted of six pages only. The PGO and MoI submitted that such information was inaccurate; it consisted of 24 pages.

[134] PGO website, news of 22 April 2015.

[135] See Annex VII for a summary of the findings made by the 2 May Group experts.

124. According to the submissions of the PGO and the MoI, in April 2015 an inter-agency complex fire expert examination was ordered. The additional examination was to determine how the fire had started and progressed, as well as whether the conduct of the SES staff could have contributed to the deaths in the Trade Union Building.[136] It was commissioned in the case concerning the conduct of the SES staff, but its results were subsequently to be joined to the materials of the cases concerning the police conduct and the mass disorder and fire at the Trade Union Building.

125. The representatives of the 2 May Group stated before the Panel that the initial expert report had been established without any examination of the Trade Union Building. The Group supported the idea of an additional expert examination; T their experts had shared with the MoI investigators their conclusions concerning the causes of the fire in the Trade Union Building and the causes of the deaths, and their conclusions had been joined to the materials of the investigation. Representatives of the 2 May Group regretted, however, that it had taken so long for the authorities to commission this additional expert examination.

(ii) Securing crime scenes and collecting evidence

126. The following places were considered by the investigatory authorities as the scenes of crimes committed on 2 May 2014: Hretska Street, Hretska Square, the Afina Shopping Centre, Kulykove Pole and the Trade Union Building. The investigative authorities indicated that there had been 12 site examinations and additional site examinations had been conducted in the case for the purpose of evidence collection.

127. According to the MoI, once the fire had been extinguished, three groups of investigators were deployed to examine the Trade Union Building. This took place on 3 and 4 May.

128. According to the information from the 2 May Group, all the investigative acts in the Trade Union Building were completed on 3 May. The bodies of those who had died as a result of jumping from the building were examined on-site during the night of 2 to 3 May and the bodies of those who had died inside the building were examined on-site between 9 a.m. and 6 p.m. on 3 May. On the following day, 4 May 2014, the Trade Union Building was opened to the public.[137]

129. It was not until 20 May 2014 that the Trade Union Building was placed under legal control at the request of the investigators, and on 14 July 2014 it was granted the status of material evidence in the case. The representatives of the MoI confirmed before the Panel that the Trade Union Building had remained freely accessible to the public immediately after the events. In the investigators' opinion, the initial measures used to secure the Trade Union Building had not complied with procedural requirements since the local police had taken a lax approach to public access until a fence was erected around the building some ten days after the fire.

130. The MoI investigators admitted that it had not been appropriate to leave the Trade Union Building open to public access shortly after the events; failing to restrict access to the Building might leave the prosecution open to attack at trial from either the accused or the victims. However, even though there had been open access to the Trade Union Building after

[136] See paragraph 181 below.
[137] 2 May Group, oral submissions, July 2015.

the events of 2 May 2014, the investigators did not consider that this had in any way prevented the collection or analysis of evidence relating to the causes of the fire.[138]

131. In addition to Kulykove Pole and the Trade Union Building, the other relevant sites included Hretska Street and Hretska Square, where six persons died as a result of injuries received during the clashes. However, these persons were pronounced dead in the hospital, and not at the places where they received their injuries, and the MoI investigators informed the Panel that it had been impossible to establish exactly where each person had died and who had brought them to hospital. The investigators had examined the area where people had been injured in the city centre immediately after the clashes ceased on 2 May, but the territory was not sealed off. According to the PGO, it would have been impossible to seal off such a large area in the centre of the city. All possible steps were taken to collect relevant evidence, although the prosecutors admitted that some evidence might unavoidably have been lost.

132. Among the evidence collected during the on-site examinations were: an explosive object of cylindrical form found on Oleksandrivskyi Avenue; a rifle; 38 objects of cylindrical form; six pistol magazines; six pistols; 43 objects which appeared to have been used as weapons; cartridges found in the city centre; bullets and fragments extracted from corpses; weapons such as pistols, bullets, a rifle and knives seized from the suspects; and 14 bullet casings found during the examination of the Trade Union Building.

133. As to the crime scenes in the city centre, the representatives of the 2 May Group claimed that the streets where the clashes had taken place had been cleaned by 7 a.m. on 3 May 2014, and that this had most probably led to the loss of evidence such as cartridges or bullet fragments. They also stated that on 12 May they had discovered traces of bullets in a window of the Trade Union Building and bullet holes on Derybasivska Street and that some journalists had found a knife on the roof of the Trade Union Building which had not been discovered by the police investigators. The supervising prosecutors in the case disputed these allegations and stated that they had received no written submissions in this respect.

(d) Current status of the investigations

134. In connection with the mass disorder on 2 May 2014, the police detained 47 persons in the Afina Shopping Centre and 63 persons in the Trade Union Building. In addition, seven other arrests were made: Mr Dolzhenkov, a pro-federalist activist suspected of a role in the organisation of the mass disorder, and Mr Krasilnikov, were detained on 6 May 2014 at their homes; Mr Mefiodov[139] was detained on 6 May in hospital; Mr Serebriakov was detained at the border on 7 May 2014; Mr Khodiak, a pro-unity activist suspected of killing one person and attempting to kill a law enforcement officer, was detained on 18 May 2014 at his home; and two pro-unity activists, Mr Volkov and Mr Honcharevskyi, were detained at their homes on 26 May and 14 August 2014 respectively.[140]

135. Subsequently 106 persons were released. The 63 persons detained in the Trade Union Centre were released on 4 May 2014 following the storming of the Odesa City Police

[138] According to an expert from the 2 May Group, the opening of the building to the public could not have affected the quality of the official investigation into the causes of the fire, since the traces left by the fire were enduring. He entered the Trade Union Building on 6 May and was still able to collect the evidence necessary to carry out an unofficial expert examination of the causes and progress of the fire. See Annex VII for a summary of findings made by the 2 May Group experts.

[139] Mr Mefiodov was among those who were in the Trade Union Building when it caught fire and he suffered carbon monoxide poisoning.

[140] PGO and MoI written submissions, July 2015.

Station.[141] Others were released following the application of other measures of restraint. As at August 2015, ten suspects remained in detention. According to media reports, on 27 August 2015 three detainees were released to house arrest.[142]

136. Since the beginning of the investigations 127 persons have been notified of suspicion. The cases against 85 of them, concerning participation in mass disorder (Article 294 § 2 of the CC) were terminated on 9 February 2015 on the grounds of insufficient evidence and the exhaustion of all possibilities to obtain such evidence (Article 284 § 1 (3) of the CPC). The case against another suspect, Mr Hrybovskyi, was terminated on the same grounds on 5 November 2014. One case, in respect of Mr Volkov, a pro-unity protester suspected of shooting into the Trade Union Building,[143] was terminated when he died of natural causes (Articles 284 § 1 (5) of the CPC).

137. In their written submissions in July, the PGO explained that after the termination of the cases under Article 284 § 1 (3) of the CPC, the persons concerned were no longer considered suspects. However, if additional evidence were subsequently found, the decision to close the proceedings could be set aside by a prosecutor at a higher level. Only one of the 85 cases[144] closed in February 2015 has been re-opened.

138. Thirteen persons have been put on the wanted list, including Mr Artem Davydchenko, one of the leaders of the AntiMaidan movement, and Mr Budko, an armed participant in the mass disorder.[145] The investigating authorities have identified eight persons from the AntiMaidan group and one pro-unity activist (in addition to Mr Volkov, whose case had been terminated[146]) who had been using firearms in the city centre or in or around the Trade Union Building on 2 May.

(i) Cases terminated on the basis of insufficient evidence

139. As noted above, the case against Mr Hrybovskyi, suspected of participation in the mass disorder which had led to deaths or other grave consequences, was terminated on 5 November 2014 on the basis of the insufficiency of evidence against him. However, representatives of the PGO informed the Panel that the casefile concerning Mr Hrybovskyi contained ample evidence of his participation in the mass disorder in Odesa on 2 May 2014 and that the case against him had been terminated at the request of the SSU, which had sought to exchange him and three suspects in cases unrelated to Odesa, for SSU officers held prisoner in the conflict zone in the East, some of whom were gravely ill. It was suggested that certain AntiMaidan activists who were active in the conflict zone had specifically requested the exchange of Mr Hrybovskyi. Since Ukrainian legislation did not contain any legal basis to terminate a criminal case for the purpose of such an exchange, the investigating authorities had closed the case under Article 284 § 1 (3) of the CPC. The SSU submitted to the Panel that they had not initiated any exchange of suspects.[147]

140. Another case which was terminated on the ground of insufficient evidence was that against Mr Honcharevskyi,[148] a pro-unity activist detained on 14 August 2014. On the same

[141] See paragraph 37 above.
[142] *Dumskaya*, 27 August 2015.
[143] See paragraph 24 above.
[144] See paragraphs 140-141 below.
[145] See paragraph 20 above.
[146] See paragraph 136 above.
[147] SSU written submissions, September 2015.
[148] Mr Honcharevskyi, together with Mr Khodiiak, is in the list of individuals proposed for inclusion in a draft amnesty law – see paragraph 39 above.

day he was notified of suspicion of organising and actively participating in mass disorder which had led to grave consequences. In particular, Mr Honcharevskyi was suspected of using a wooden club to inflict injuries on persons who had jumped from the burning Trade Union Building, and of preventing them from obtaining medical help, as well as of organising other persons to act in a similar manner which, according to the charges against him, had led to the death of eight persons.[149] He was placed under a measure of restraint in the form of a personal undertaking. On 9 February 2015 the case against him was terminated under Article 284 § 1 (3) of the CPC.

141. On 3 July 2015 the Prymorskyi District Court of Odesa, on the appeal of a victim, quashed the decision to terminate the case against Mr Honcharevskyi and returned it to the PGO for further pre-trial investigations. The court found that the decision to terminate the case had been premature, since the investigators had failed to exhaust all the available possibilities to collect sufficient evidence, such as questioning witnesses or conducting an identification procedure.[150] The pre-trial investigation in the case is pending (casefile no. 456). No measure of restraint has been applied to the suspect.

(ii) Completed pre-trial investigations and cases sent to court

142. According to the information provided to the Panel by the investigatory authorities, as at 31 August 2015 the following casefiles had been sent to court or were about to be sent to court.

143. *Casefile no. 380*, which initially concerned 24 suspects, all AntiMaidan activists, the majority of whom were detained in the Afina Shopping Centre. Two suspects absconded when the case materials were opened to the parties at the end of the pre-trial investigation and the proceedings against these two suspects were separated into another casefile (no. 558) and put on hold. As noted above,[151] proceedings against another suspect, Mr Hrybovskyi, were terminated to enable his exchange for SSU officers held captive in the East.

144. Thus, on 24 November 2014 the prosecution sent to court an indictment relating to 21 persons, accused of organising and participating in the mass disorder, which had resulted in death and the destruction and seizure of property, a crime under Article 294 § 2 of the CC. Since the lodging of the indictment, another accused has absconded. One person is additionally charged with unlawful possession of a weapon other than a firearm under Article 263 § 2 of the CC.

145. The case was initially sent to the Prymorskyi District Court of Odesa. However, after a number of recusals by judges, principally because of their participation at the interlocutory stages, it was transferred in December 2014 to the Malynovskyi District Court of Odesa, where it is currently being examined.

146. Lawyers representing the accused have complained about shortcomings in the indictment. In particular, they complained before the domestic courts and to the Panel that the charges against all 21 defendants were identical and had not been individualised. The Panel observes that the indictment, a copy of which was provided to it, does not specify the particular activities of which each accused person is charged; the text of the charges in respect of each of the accused is practically identical.

[149] A copy of the notification of suspicion in respect of Mr Honcharevskyi, dated 14 August 2014, was submitted to the Panel by a defence lawyer.

[150] A copy of the court decision of 3 July 2015 was submitted to the Panel by a defence lawyer.

[151] See paragraphs 136 and 139 above.

147. On 2 February 2015 the Malynovskyi District Court of Odesa, at the request of the defence lawyers, decided to return the casefile to the PGO because of shortcomings in the indictment.[152] The court agreed with certain claims made by the defence and found the following shortcomings in the indictment: a failure to attach originals rather than copies of civil claims to the indictment; a failure to attach written confirmation of the receipt of copies of civil claims by suspects; and the absence of the translator's signature on the translated copy of the indictment. The court also found a number of shortcomings in the registering of the case materials attached to the indictment, including the absence of notification to the suspects and their representatives of the close of the pre-trial investigations and of the granting of access to the materials of the case and the absence of notification to the victims and civil claimants of the opening of the case materials to the parties.

148. The defence lawyers appealed against the decision, repeating their claims about the lack of concrete and individualised charges in the indictment. On 20 March 2015 the Odesa Regional Court of Appeal rejected the claims and upheld the decision of the first-instance court of 2 February 2015.[153]

149. On 23 March 2015 prosecutors drew up a new bill of indictment, which was submitted to the court on 25 March 2015. On 27 April 2015, in response to the defence lawyers' claims about further defects in the indictment, the Malynovskyi District Court of Odesa decided to return it to the PGO for rectification of the shortcomings.[154] The court stated that the indictment contained information of a social and political character unrelated to the factual background of the case, and found a number of additional shortcomings, such as a failure to provide translated copies of the indictment and copies of the materials to the accused persons, and a failure to record properly all the procedural acts and decisions and to serve relevant notifications on victims and their representatives.

150. On 14 May 2015, on the prosecutor's appeal, the Odesa Regional Court of Appeal quashed the decision of the first instance court and sent the case for trial.[155] It found no shortcomings in the bill of indictment or the register of the case materials.

151. It appears that the hearing on the merits of the case did not start until the end of July 2015 when reading of the indictment commenced. Previous court hearings had been postponed on numerous occasions because of the absence of one of the parties (most frequently one of the defendants or their lawyers) or another participant in the trial (such as an interpreter), or because of the filing of procedural motions, including requests by the defence for recusal of judges or prosecutors, as well as decisions by judges to recuse themselves. It has also been reported that court hearings had been disrupted, either by the accused themselves, for instance by shouting offensive comments at the judges, or by pro-unity activists attending the hearings.[156]

152. As at the end of the August 2015, ten of the suspects had been detained continuously since their arrest on 2 May 2014. On 27 August 2015, according to local media, the measures of restraint in respect of three suspects were changed from detention to house arrest.[157]

153. No decision on the merits has been taken in the case.

[152] Unified State Register of Judicial Decisions, case no. 521/54/15-к, ruling of 2 February 2015.
[153] Loc. cit., case no. 521/54/15-к, ruling of 20 March 2015.
[154] Loc. cit., case no. 521/4695/15-к, ruling of 27 April 2015.
[155] Loc. cit., case no. 521/4695/15-к, ruling of 14 May 2015.
[156] 2 May Group, oral submissions, July 2015.
[157] See footnote 142 above.

154. *The case concerning Mr Posmichenko*, who was arrested in the Afina Shopping Centre and is accused of active participation in the mass disorder leading to grave consequences, was sent to court on 30 January 2015.

155. *The case against Mr Khodiak*, a pro-unity activist, was sent to the Prymorskyi District Court of Odesa on 22 April 2015. The indictment contains the following charges: murder (Article 115 § 2 (5) and (7) of the CC), attempted murder (Articles 15 § 2 and 115 § 2 (1), (5), (7) of the CC), attempt on the life of a law enforcement officer (Article 348 of the CC) and mass disorder (Article 294 § 2 of the CC). According to information provided by the PGO, it was established that during the mass disorder Mr Khodiak, armed with a grapeshot hunting gun, fired several times at a group of people who had attacked the pro-unity crowd. He is accused of killing one person and severely injuring a police officer.

156. According to local media reports, after the case was sent to court, on several occasions the judges of the Prymorskyi District Court of Odesa recused themselves;[158] the judges of the court also requested the higher court to allocate the case to another court.[159] Following a further recusal of two judges, at the beginning of August 2015 Mr Khodiak's case was transferred to the Malynovskyi District Court of Odesa. It has been alleged by a local Odesa newspaper that the judges of the Prymorskyi Court were pressured to recuse themselves by a member of the Radical Party.[160]

157. After his arrest at home on 18 May 2014, the investigating authorities requested the court to place Mr Khodiak in pre-trial detention. He was instead placed under house arrest by the decision of the Pecherskyi District Court of Kyiv. The prosecutors' appeal against the decision was unsuccessful. The measure of restraint in the form of house arrest has now expired and Mr Khodiak is accordingly subject to no measure of restraint. He has continued to attend the court hearings in his case.

158. Victims submitted to the Panel that there had been instances of harassment and intimidation, by pro-unity activists and supporters of Mr Khodiak, of victims and witnesses attending the court hearings in his case. During such incidents the police had allegedly remained inactive, with the result, it was claimed, that victims had refused to attend further hearings unless action was taken to ensure their safety. The investigatory authorities denied to the Panel that they had received any information concerning the refusal of victims and witnesses to attend the hearings.

159. It appears that there has been no hearing on the merits of the case since it was sent to court at the end of April 2015.

160. *Three separate cases* against three suspects, accused of active participation in the mass disorder resulting in grave consequences, accompanied with violence and resistance to state officials and/or of illegal possession of firearms, were sent to the Prymorskyi District Court of Odesa, after the indictments in two of the cases had been approved on 25 June 2015 and in the other case on 21 August 2015.

161. *The case against Mr Astakhov* (casefile no. 263), concerns an AntiMaidan activist suspected of active participation in the mass disorder and other unrelated offences, including three murders. The indictment is being drawn up and, according to the investigating authorities, will be sent to court in the near future.

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[158] See, for instance, *Dumskaya*, 2 July and 14 July 2015.

[159] Loc. cit., 26 June 2015.

[160] Loc. cit., 13 August 2015. Members of the Radical Party also initiated a draft law with the purpose of granting amnesty to, among others, Messrs Khodiiak and Honcharevskyi, two pro-unity activists involved in the 2 May events – see paragraph 39 above for further details.

(iii) Cases pending investigations

162. *Casefile no. 2190* concerns ten individuals suspected of participating in the mass disorder who disappeared and who have been put on the wanted list, among them Mr Budko,[161] who was notified of suspicion on 12 May 2014. The MoI investigators submitted before the Panel that Mr Budko should have been arrested by the Odesa police and that the blame for his escape lay with the local authorities, who had had charge of the early stages of the case. By the time the investigation was taken over by the MID of the MoI, Mr Budko had already absconded.

163. In *casefile no. 453*, Mr Artem Davydchenko, one of the leaders of the AntiMaidan movement, is suspected of the organisation of mass disorder. On 17 November 2014 the case was suspended because the suspect had absconded. According to the investigating authorities before the Panel, Mr Davydchenko disappeared immediately after the events of 2 May and was never detained by the authorities in connection with them.[162] Notification of suspicion was issued to him on 30 May 2014 and on 6 June 2014 he was put on a wanted list.

164. As to the *fire in the Trade Union Building*, no-one has been notified of suspicion of causing the fire, including the throwing of Molotov cocktails towards or into the building. Although the faces of some of those who prepared and threw Molotov cocktails are visible on video footage, the authorities claim not to have established their identities.

2. Case concerning the conduct of the SES staff

165. The case concerning the conduct of the SES staff is being investigated by the MID of the MoI. Immediately after the events of 2 May the SES carried out an internal inquiry into the conduct of its staff.[163] The criminal case was not opened until October 2014.[164]

166. The SES is a central State executive body, whose principal role is to ensure civil protection and the protection of the population and the national territory in emergency situations, as well as the prevention of such situations. It is also for the SES to ensure containment of emergencies and to conduct rescue and firefighting operations. The service has its own leader. However, from April 2014 the Cabinet of Ministers has been coordinating and directing the activity of the SES through the Minister of the Interior.[165] The Minister of the Interior is also responsible for making a proposal to the Prime Minister as to the appointment and dismissal of the Head of the SES. Following the Minister of the Interior's proposal, the Prime Minister in turn makes a proposal to the Cabinet of Ministers, which takes the decision.[166] The Minister of the Interior may also represent the SES in government. The SES is financially accountable to the MoI and is funded from the State budget through funds allocated to the MoI.[167]

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[161] See paragraph 20 above.

[162] Written submissions, September 2015. Compare, however, the MoI statement of 8 May 2014 summarised in Annex VI, paragraph 25.

[163] See paragraphs 168-177 below.

[164] See paragraph 178 below.

[165] Verkhovna Rada website, Resolutions of the Cabinet of Ministers no. 120 of 25 April 2014 and no. 442 of 10 September 2014.

[166] During a certain period in March-May 2015 the SES was headed by an Adviser to the Minister of the Interior. Thus, on 25 March 2015 the Cabinet of Ministers appointed Mr Shkiriak, an adviser to the Minister of the Interior since 2014, as Acting Head of the SES. Since 14 May 2015 the SES has been headed by Mr Chechotkin, formerly a senior official at the SES.

[167] SES written submissions, August 2015.

167. The PGO submitted to the Panel that the SES was a separate State agency within the structure of the MoI, over which the Minister had a certain influence. The MoI similarly submitted that the activity of the SES was coordinated by the Minister of the Interior but that it was a separate body.

(a) Internal inquiry by the SES

168. The following account is based on the internal inquiry conducted by the SES, a copy of which was supplied to the Panel by the MoI.

169. The internal inquiry was conducted by SES officials and the conclusion, issued on 3 June 2014, was approved by the then Head of the SES, Mr Bochkovskyi. The inquiry established that at 4.30 p.m. on 2 May 2014 a fire engine returning to the fire station was captured by unidentified individuals and damaged when used to batter down barricades. A successful attempt to secure the release of the fire engine was made by the Head of the Main Department of the SES in the Odesa Region, Mr Bodelan; his First Deputy, Mr Velykyi; the Deputy in charge of reacting to emergency situations, Mr Hubai; and the Head of the Odesa City SES Department, Mr Shushulkov. Subsequently Mr Hubai ordered that fire engines should be dispatched only on his order or on the order of Mr Bodelan or Mr Velykyi. According to Mr Bodelan, he instructed Mr Hubai to issue this order to prevent the capture of another fire engine or any risk to the lives of his staff caused by the disorder.

170. The fire service was first notified of the burning tents on Kulykove Pole at 7.31 p.m. At 7.32 p.m. Mr Bodelan informed the dispatch centre that he was at Kulykove Pole, where clashes were continuing, and directed that no fire engine should be sent until he gave the order. At 7.45 p.m. the dispatch centre received information about the fire in the Trade Union Building. The first order to send a fire engine to the scene came from Mr Bodelan at 7.55 p.m. The fire-fighting unit arrived at Kulykove Pole at 8.09 p.m. According to the fireman leading the unit, their work was complicated by the obstruction and threats of aggressive activists. Another unit arrived at 8.16 p.m.

171. According to the internal inquiry, Mr Bodelan, as the senior official, was responsible for leading and organising the fire-fighting efforts. It concluded that he had failed to appoint any person responsible for work safety on the spot.

172. At 8.50 p.m. Mr Hubai announced that the fire had been extinguished. The operation had been hindered by the constant throwing of bottles containing combustible substances into the building and other interferences by third persons. As a result of the rescue operations, 120 persons were rescued from the fire and a further 210 persons were evacuated from the building. The evacuation was delayed since people were afraid to come out because of the presence of aggressive activists.

173. In its conclusion, the internal inquiry stated that appropriately equipped fire-fighting units should have been sent to Kulykove Pole at 7.31 p.m. immediately on receipt of information about the burning tents there and also at 7.45 p.m. when the first calls were received about the fire in the Trade Union Building. The inquiry established that the documentation relating to operational work and to human resources management had not complied with the applicable rules and further identified certain breaches during the conduct of the operation. It recommended, among other things, that the Higher Personnel Review Commission should hold a hearing in respect of Mr Bodelan. Approving the conclusions of the internal inquiry, the Head of the SES ordered Mr Bodelan to be reprimanded.

174. Following the results of the internal inquiry, Mr Bodelan was reprimanded by a decision of 11 June 2014. He challenged the decision in court, and on 28 July 2014 the first instance court allowed the application and quashed the decision.[168] The decision of the first instance court was subsequently quashed by the appellate court[169] and the case is currently pending before the court of cassation.[170]

175. On 10 September 2014 Mr Bodelan left the SES when his contract was not renewed. Mr Vasyl Byrko, the head investigator in the case concerning the conduct of the SES staff, informed the Panel that Mr Bodelan had left Ukraine at some point towards the end of January or beginning of February 2015 and that his whereabouts were now unknown.

176. Both the MoI and the PGO submitted to the Panel that the internal inquiry had been carried out in a formalistic way and was not objective. For this reason, on 21 April 2015, the MID of the MoI requested the SES to conduct another internal inquiry, listing certain specific questions to be addressed. The questions were aimed at establishing, among other things, whether all necessary and adequate efforts and resources were engaged in fighting the fire at the Trade Union Building and whether the actions of all the staff members had complied with their duties and the requirements of the law. However, the SES had disregarded the request to conduct another internal inquiry and had confined itself to replying by sending a letter with answers to the investigator's questions and enclosing a number of documents.

177. The supervising prosecutor in the case submitted before the Panel that the SES had been negligent in their treatment of the request for an additional internal inquiry and that another internal inquiry would be initiated under the PGO's supervision. Neither the first internal inquiry, nor the response given to the request for an additional internal inquiry, fully reflected the circumstances established in the course of the investigations. In the PGO's opinion, better co-operation on the part of the SES, and the willingness of the service's leadership promptly to establish all the objective circumstances of the events, would have facilitated the progress of the investigation.

(b) Pre-trial investigation

178. The pre-trial investigation of the conduct of the SES officials was instituted on 16 October 2014, following a complaint lodged by the head of an NGO with the military prosecuting authorities. The investigation of the case was initially assigned to the Odesa Regional MoI Department. However, in December 2014 the PGO transferred the case to the MID of the MoI because of the lack of effective investigation by the local department.

179. The MoI investigators informed the Panel that the MoI had been competent to commence an investigation into the actions of the SES on its own initiative but had not done so. They explained that the SES was a public service and that cases against public officials were usually investigated by other authorities. Representatives of the PGO submitted to the Panel that they had not opened criminal proceedings against the SES after the 2 May events for lack of sufficient grounds.

180. The casefile is confined to the investigation of the actions of the SES staff, currently under Article 367 § 2 (neglect of duty) and Article 135 § 3 (failure to provide assistance to persons in dangerous situations) of the CC; it does not include an investigation into the

[168] Unified State Register of Judicial Decisions, case no. 815/4043/14, ruling of the Odesa District Administrative Court of 28 July 2014.
[169] Loc. cit., resolution of the Odesa Region Administrative Court of Appeal of 22 October 2014.
[170] SES written submissions, August 2015.

causes of the fire, which falls within the casefile concerning the mass disorder.[171] However, the forensic examination reports on the persons killed as a result of the fire have been included in the SES casefile, since the acts or omissions of the SES staff might have contributed to the loss of life. No one has been granted victim status in the casefile relating to the SES.

181. As noted above,[172] on 17 April 2015 an inter-agency expert examination was ordered in this case, the results being requested by the second half of August 2015; however, the examination had not been completed by the end of August. The representatives of both the PGO and the MoI claimed that the additional forensic report was necessary to establish any causal link between the acts and omissions of the SES staff and the deaths at the Trade Union Building, and also to determine the specific obligations imposed by law on SES officials and employees. The 2 May Group also supported the commissioning of this additional forensic report.

182. No person has been notified of suspicion in the case. The pre-trial investigation is pending.

3. Staffing

183. Based on the submissions of the PGO and the MoI, a detailed account of which follows, the Panel understands that there are three investigators from the MID of the MoI working exclusively on the casefiles concerning the mass disorder and the fire at the Trade Union Building and the conduct of the SES staff. Two of these investigators have been involved in the investigations since 5 May 2014, and the other, since June 2014. They are assisted by local investigators.

(a) Leadership

184. Since 5 May 2014 and until mid-August 2015 the group was headed by the Deputy Head of the Division of the Main Investigations Department of the MoI, Mr Rudnytskyi, who was based in Odesa. However, in mid-August 2015 he was recalled to Kyiv because of the needs of the service. According to the PGO, Mr Mykola Rudnytskyi continues to be engaged in the investigation of the Odesa cases. Since his departure from Odesa, the investigating team has been led by Mr Ruslan Sushko, an investigator from the MID of the MoI who has been engaged in the investigation of these cases since June 2014. Mr Byrko, an MID investigator, heads the investigations into the actions of the SES officials; he is engaged exclusively on this case and is based in Odesa.

(b) Investigating team and procedural supervisers

185. At the outset of the Panel's review, the PGO and the MoI stated that the investigating group in charge of investigating the cases concerning the mass disorder, the fire at the Trade Union Building and the conduct of the SES staff comprised eight investigators from the MID of the MoI and included investigators from the Odesa Regional and City MoI Departments as well as from four district divisions of the Odesa City MoI Departments.[173]

[171] See paragraph 111 et seq.

[172] See paragraphs 124-125 above.

[173] Namely, the Prymorskyi, Suvorovskyi, Kyivskyi and Malynovskyi Departments of the Odesa City MoI Office.

186. In July 2015 the MoI and the PGO submitted that initially the investigating group had consisted of nine MID investigators and that it had subsequently been reduced to three investigators. These three investigators (Messrs Rudnytskyi, Byrko and Sushko) had been part of the group from the beginning, working exclusively on the Odesa cases. This was also confirmed during the Panel meeting with these investigators in July. The others had been involved in the investigations at different periods of time: two between May and September 2014, one from June 2014 until March 2015, two between May 2014 and March-April 2015 and another between September 2014 and June 2015. They were assisted by eight local investigators.

187. The head of the investigating group submitted that each of the three MID investigators has three local investigators to assist him. Other investigators had been removed from the investigation and transferred to work in the East or other regions. The MoI investigators explained before the Panel that there was a lack of investigators because of the difficult situation in the country and the increased crime rate. In addition, there were no specialists in Ukraine who had investigated such a type of case, since tragedies similar to that in Odesa had never previously occurred in Ukraine. The MID investigators put in charge of the Odesa investigations came from the department specialised in investigating murders.

188. Procedural guidance in the case is carried out by the Main Department for Supervision in Criminal Proceedings of the PGO. In addition, the group of prosecutors also includes prosecutors from the Vinnytsya and Odesa Regions as well as prosecutors from the public prosecution offices of the Prymorskyi, Suvorovskyi, Kyivskyi and Malynovskyi districts of Odesa. The group of prosecutors, headed by Mr Hrytsiuk carrying out procedural supervision in casefile no. 3700 comprises 23 prosecutors. Seven prosecutors from the PGO, headed by Mr Kozyuba, carry out procedural supervision in casefile no. 154, with two or three of them engaged full-time and the others called on if needed.

189. The PGO representatives explained at a meeting with the Panel that in practice two prosecutors are involved in casefile no. 3700 and one prosecutor in casefile no. 154.

THE PANEL'S ASSESSMENT

I. PROCEDURAL REQUIREMENTS

190. Article 2 of the European Convention on Human Rights ("the Convention") protects the right to life and Article 3 guarantees protection from torture and inhuman or degrading treatment or punishment. The Mandate of the Panel, as interpreted by it, requires it to assess the compliance of the Odesa investigations as a whole with the procedural requirements of Articles 2 and 3. It is not the Panel's role to determine whether the investigation in any particular case satisfied the requirements of these Articles. For this reason, for the purposes of the procedural obligation under Article 3, the Panel has made the assumption that some, at least, of those injured during the mass disorder sustained injuries of sufficient seriousness to meet the threshold of Article 3, without seeking to identify the individuals whose cases would, indeed, fall within the scope of that provision. Moreover, in light of the converging

principles deriving from Articles 2 and 3, the Panel has examined the compliance of the relevant investigations with both provisions together. These principles are well established.[174]

191. In interpreting Articles 2 and 3, the European Court is guided by the principle that the object and purpose of the Convention, as an instrument for the protection of individual human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective. Article 3, like Article 2, must be regarded as one of the most fundamental provisions of the Convention and as enshrining the core values of the democratic societies making up the Council of Europe.

192. The obligation under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 2, imposes on States a duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.

193. The positive obligation of States under Article 3 requires them to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment, including such treatment applied by private individuals.[175] According to the well-established case law of the European Court,[176] this positive obligation requires that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries or has been subjected to ill-treatment. Although the scope of the State's positive obligation might differ between cases where treatment contrary to Articles 2 and 3 has been inflicted by, or with the involvement of, State agents and cases where violence is inflicted by private individuals, the requirements of an official investigation are substantially the same.[177]

194. The authorities must act on their own motion once the matter has come to their attention. In the case of death or injuries reaching the threshold of Article 3, they cannot leave it to the initiative of the victim or next-of-kin either to lodge a formal complaint or to request the adoption of any particular line of inquiry or investigative procedure. Even in the absence of an express complaint, an investigation should be undertaken if there are sufficiently clear indications that acts in violation of Convention rights might have occurred.[178]

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[174] They have been summarised in, for example, the judgments in *Nachova and Others v. Bulgaria* [GC], applications nos. 43577/98 and 43579/98, §§ 110-113, ECHR 2005-VII; *Al-Skeini and Others v. the United Kingdom* [GC], application no. 55721/07, §§ 162-167, ECHR 2011; *Association "21 December 1989" and Others v. Romania*, applications nos. 33810/07 and 18817/08, §§ 133-135, judgment of 24 May 2011; *Giuliani and Gaggio v. Italy* [GC], application no. 23458/02, §§ 298-306, ECHR 2011; *El-Masri v. "the former Yugoslav Republic of Macedonia"* [GC], application no. 39630/09, §§ 182-185, ECHR 2012. As regards cases against Ukraine, see, among many others, *Davidov and Others v. Ukraine*, applications nos. 17674/02 and 39081/02, judgment of 1 July 2010; *Nechiporuk and Yonkalo v. Ukraine*, application no. 42310/04, 21 April 2011; *Aleksakhin v. Ukraine*, application no. 31939/06, judgment of 19 July 2012; and *Savitskyy v. Ukraine*, application no. 38773/05, 26 July 2012.

[175] See, for instance, *M.C. v. Bulgaria*, application no. 39272/98, § 151, ECHR 2003-XII.

[176] *Assenov and others v. Bulgaria*, application no. 24760/94, § 102, judgment of 28 October 1998; *Menson and Others v. the United Kingdom* (dec.), application no. 47916/99, ECHR 2003-V; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, application no. 71156/01, §§ 96-97, judgment of 3 May 2007; *Angelova and Iliev v. Bulgaria*, application no. 55523/00, § 94, judgment of 26 July 2007; *Muravskaya v. Ukraine*, application no. 249/03, § 41, judgment of 13 November 2008; *Denis Vasilyev v. Russia*, application no. 32704/04, §§ 97-100, judgment of 17 December 2009; *Milanovic v Serbia*, application no. 44614/07, § 85, judgment of 14 December 2010; *Fedorchenko and Lozenko v. Ukraine*, application no. 387/03, § 41, judgment of 20 September 2012; *Danilov v. Ukraine*, application no. 2585/06, § 69, judgment of 13 March 2014; *Amadayev v. Russia*, application no. 18114/06, §§ 68-70, judgment of 3 July 2014.

[177] See, for instance, *Denis Vasilyev v. Russia*, cited above, § 100.

[178] See, for instance, *Begheluri and Others v. Georgia*, application no. 28490/02, § 99, 7 October 2014.

195. The European Court has already held that this obligation to investigate applies even in difficult security conditions, including in a context of armed conflict.[179] Even where the events leading to the duty to investigate occur in a context of generalised violence and investigators are confronted with obstacles and constraints which compel the use of less effective measures of investigation or cause an investigation to be delayed, Articles 2 and 3 require that all reasonable steps should be taken to ensure that an effective and independent investigation is conducted.[180]

196. The essential purpose of such an investigation is to secure the effective implementation of the domestic law safeguarding the right to life and prohibiting torture and inhuman or degrading treatment and punishment. More generally, an adequate response by the authorities in investigating allegations of serious human rights violations may generally be regarded as essential in maintaining public confidence in the rule of law and in preventing any appearance of impunity for, collusion in, or tolerance of, unlawful acts. Thus, in order to maintain public confidence in the criminal justice system the authorities must ensure an effective investigative response to unlawful killings or ill-treatment and to any failure on the part of State agents to fulfil their duty to protect life and provide protection from ill-treatment.

197. Once the investigative obligation is triggered, the investigation must comply with a number of particular requirements. The investigation must be **independent** and it must also be **effective**. A requirement of **promptness and reasonable expedition** are implicit in this context. **The victims or next-of-kin must be adequately involved** in the procedure and there must be a sufficient element of **public scrutiny** of an investigation and of its results. The Panel has addressed below each of these elements in turn.

II. PRELIMINARY REMARKS: CHALLENGES

198. Before turning to an assessment of whether the authorities have complied with the requirements of Articles 2 and 3 of the Convention, the Panel considers it necessary to set out some of the challenges which confronted the investigations, since the latter must be assessed "with regard to the practical realities of investigation work".[181]

199. As shown above,[182] the general situation in Ukraine and in Odesa was, and still is, far from being stable. By 2 May 2014 the authorities were already pursuing a range of complex investigations, including those concerning the violent events in Maidan, the abuse of power and economic crimes allegedly committed by high-ranking officials of the former regime and terrorist activity in the eastern regions. All these were a drain on the authorities' limited resources in terms of both the prevention and investigation of crime.[183]

200. The events of 2 May 2014 in Odesa were of an unprecedented nature, given the number of persons involved in the clashes and the resulting toll of dead and injured. The authorities admitted before the Panel that they had no specialists experienced in dealing with such large-scale disorder and violence and that they had instead assigned to the team investigators used to working on offences such as murder.[184] The geographical spread of the

[179] See, for instance, *Al-Skeini and Others v. the United Kingdom*, cited above, § 164 (with further references).
[180] Ibid.
[181] See, for instance, *Giuliani and Gaggio v. Italy*, cited above, § 302.
[182] See paragraph 1 et seq above.
[183] See, for instance, paragraph 187 above where the head of the investigative team was quoted as saying that investigators had been removed from the investigation and sent to work in the East or other regions.
[184] Ibid.

disorder presented a further challenge: several busy streets and buildings, including a shopping centre, became battlefields. In consequence, in order to investigate the crimes committed there, the authorities were required to seal and search the area as quickly and thoroughly as possible so as not unduly to disrupt life in the city.

201. Although the investigators had at their disposal a large volume of video footage, many active participants in the mass disorder had their faces hidden by masks, scarves or balaclavas, making their identification problematic.[185] Many participants either did not seek medical assistance for fear of reprisals or sought it under a false name.[186] Among those individuals who were identified as witnesses, there was a reluctance to cooperate with the authorities and to provide evidence,[187] given the significant political divisions and lack of trust which still affected the society. These factors undeniably put an additional burden on the investigative authorities in their attempts to unravel an already complex case.

202. As in its review of the Maidan-related investigations,[188] the Panel further observes that there had been a significant decrease in the number of investigative staff of the PGO over the preceding few years, in line with various Council of Europe and international recommendations to reduce its investigative role. As part of this process, the CPC was amended in 2012 to provide that the investigation of crimes by law enforcement officers and officials would be carried out by the State Bureau of Investigations. However, that body has not yet been established. Since one of the three Odesa-related sets of proceedings concerned crimes allegedly committed by law enforcement officials and officers, the public prosecution service became the primary investigative body for those crimes, at a time when its investigating capacity had been significantly reduced.

203. Nevertheless, while allowance must be made for the significant challenges confronting those responsible for the investigations into the events in Odesa on 2 May 2014 and their impact on the investigations, the Panel reiterates that these challenges cannot excuse any failings which did not inevitably flow from them.[189] The authorities clearly were, and are, under an obligation to take all reasonable steps to ensure that the investigations comply with the requirements of Articles 2 and 3 of the Convention.

Conclusion

204. **The challenges confronting those responsible for the investigations into the events in Odesa on 2 May 2014 have been significant and their impact on the investigations cannot be under-estimated. However, these challenges cannot excuse any failings which did not inevitably flow from them. The authorities clearly were, and are, under an obligation to take all reasonable steps to ensure that the investigations comply with the requirements of Articles 2 and 3 of the Convention.**

[185] See, for instance, the relevant statement summarised in Annex VI, paragraph 42.
[186] See paragraphs 33 and 114 above.
[187] See the relevant statement summarised in Annex VI, paragraph 33.
[188] See IAP Maidan Report, § 405.
[189] For example, *Al-Skeini and Others v. the United Kingdom*, cited above, § 164; *Mocanu and Others v. Romania* [GC], applications nos. 10865/09, 45886/07 and 32431/08, § 319, ECHR 2014 (extracts); and *Jaloud v. The Netherlands* [GC], application no. 47708/08, § 186, ECHR 2014.

III. COMPLIANCE WITH ARTICLES 2 AND 3 OF THE CONVENTION

A. Independence

205. The Convention requires that, in order for an investigation to be effective for the purposes of Articles 2 and 3, it must be ensured that the persons responsible for, and carrying out, the investigation are impartial and independent from those implicated in the events, both in law and in practice.[190] This means not only an absence of hierarchical or institutional connection but also a practical independence. Supervision of the investigative acts by another authority may not constitute a sufficient safeguard when the investigation itself has, for all practical purposes, been conducted by bodies connected with those under investigation.[191]

206. In assessing whether the investigations under review were independent, the Panel notes that, from the outset, there were allegations, supported by video evidence,[192] of collusion between certain members of the police force deployed to protect public order on 2 May 2014 and activists involved in the mass disorder. According to the PGO, the possibility of collusion between law enforcement officers and activists is being examined as part of the investigation in the case concerning police conduct, which is within the competence of the MID of the PGO. However, the investigation into the conduct of the activists involved in the mass disorder, including, presumably, those who may be suspected of having conspired with police officers, is being carried out by the MoI. It was submitted to the Panel that the police officers under investigation and the MID investigators in charge of the case belong to different and separate departments of the MoI. The Panel observes, however, that, given the evidence indicative of police complicity in this case, the Convention standards and European Court's case law cited above require that the mass disorder as a whole, including the conduct of both the police and activists, be investigated by an organ entirely independent from all the actors under investigation. It does not consider that the MID of the MoI meets this criterion.

207. For the same reasons, the decision to allocate the investigation of the conduct of the SES staff to the MoI raises a serious issue of lack of institutional and practical independence. However, since April 2014 the Cabinet of Ministers has coordinated and directed the activity of the SES through the Minister of the Interior, who also participates in the process of the appointment and dismissal of the head of the SES and may represent the SES in the Government.[193] The SES is financially accountable to the MoI and is funded from the State budget through funds allocated to the MoI. The Panel observes, therefore, that there is a relationship of hierarchy between the Minister of the Interior and the SES. Furthermore, in the words of the MoI investigators, because of the status of the SES as a State body, it would

[190] See e.g. the *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports of Judgments and Decisions* 1998-IV; *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports of Judgments and Decisions* 1998-IV; *Öğur v. Turkey* [GC], application no. 21594/93, § 91, ECHR 1999-III; *Hugh Jordan v. the United Kingdom*, application no. 24746/94, § 106, ECHR 2001-III; *Nachova and Others v. Bulgaria*, cited above, § 112; *Mikheyev v. Russia*, application no. 77617/01, §§ 110 and 115, judgment of 26 January 2006; *Boicenco v. Moldova*, application no. 41088/05, § 121, judgment of 11 July 2006; *Kolevi v. Bulgaria*, application no. 1108/02, § 193, judgment of 5 November 2009; *Savitskyy v. Ukraine*, cited above, § 100; and *Kulik v. Ukraine*, application no. 10397/10, §§ 49 and 53, judgment of 19 March 2015.

[191] *Hugh Jordan v. the United Kingdom*, cited above, § 120; and *Ramsahai and Others v. the Netherlands* [GC], application no. 52391/99, § 337, ECHR 2007-II.

[192] See paragraph 20 above; see also paragraph 38 above.

[193] For details concerning the status of the SES, see paragraphs 166-167 above.

not have occurred to them to institute a criminal investigation against SES officials of their own motion.[194]

208. According to the rules set out in the CPC covering the allocation of investigative jurisdiction, it is the State Bureau of Investigations and, pending its creation, the public prosecution service, which is competent to investigate crimes committed by judges, law enforcement officers, public officials holding particularly important positions in the State service and by public officials of I-III categories as defined by the State Service Act.[195] In the Panel's view, these rules are aimed at, among other things, strengthening independence guarantees and should apply equally to the investigation of the actions of the SES and its senior officials during the events of 2 May 2014.

209. More generally, the Panel emphasises the importance in the present context, where the trust of the public in the criminal justice system is at stake, of the appearance of both the independence and the impartiality of the bodies with investigative responsibilities.[196] The Panel observes in this connection that, although the mass disorder occurred in the course of a conflict between two opposing groups of activists, a year after the events all but one of the 23 suspects whose cases have been sent to court in respect of the mass disorder belong to the same group of activists, namely the pro-federalists. All these suspects were held in pre-trial detention at different periods and seven of them are still in detention since being arrested at the Afina Shopping Centre. In contrast, from the opposing group, only three persons have been notified of suspicion.[197] Apart from a few days following their arrests, none of them was placed in pre-trial detention, each being instead put under house arrest or made subject to a personal undertaking. Moreover, when the time-limit for these measures expired, no further measure of restraint was applied, even though the charges concerned, among other offences, crimes of murder and attempted murder.[198] In this regard the Panel considers that it is of central importance for the purposes of maintaining the confidence of all sectors of the public in the criminal justice system that the authorities, including the judicial authorities, are seen to act in an impartial and equal manner in the conduct of the investigations and court proceedings.

210. The Panel finds that the lack of independence in the investigations of the events of 2 May 2014 yet again highlights the need to complete, without further delay, the process of reforming the system of pre-trial investigations and to establish an independent body designed to investigate serious human rights violations committed by law enforcement officers and other public officials. In this context, the Panel welcomes the recent legislative steps taken towards the creation of the State Bureau of Investigations[199] and emphasises the need to set up such a body in full compliance with the European Court's case law and Council of Europe standards and recommendations.[200]

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[194] See paragraph 179 above.

[195] For a more detailed description of the domestic law concerning pre-trial investigations, see Annex V.

[196] *Bajic v. Croatia*, application no. 41108/10, § 102, judgment of 13 November 2012.

[197] See paragraphs 136, 140 and 155 above.

[198] See paragraphs 134, 140-141 and 157 above.

[199] See the Verkhovna Rada website, the Draft Law on the State Bureau of Investigations (no. 2114) currently pending before the parliament.

[200] See the IAP Maidan Report, §§ 376-384. See also the Comments of the Directorate General on Human Rights and the Rule of Law of the Council of Europe on the Draft Law of Ukraine on the State Bureau of Investigation, 8 June 2015.

Conclusion

211. **Given the evidence indicative of police complicity in the mass disorder of 2 May 2014 in Odesa, Articles 2 and 3 require that the investigation into the mass disorder as a whole be carried out by an organ entirely independent from the police. Similarly, the investigation into the conduct of the fire service cannot be regarded as independent, given the structural links between the SES and the MoI. These concerns again highlight the need for an independent and effective mechanism for the investigation of serious human rights violations committed by law enforcement officers and other public officials.**

212. **In addition, the Panel considers that it is of central importance for the purposes of maintaining the confidence of all sectors of the public in the criminal justice system that the authorities, including the judicial authorities, are seen to act in an impartial and equal manner in the conduct of the investigations and court proceedings.**

B. Effectiveness of the investigations

213. Articles 2 and 3 require that an investigation must be effective, in the sense that it must be capable of leading to the identification and, if appropriate, punishment of those responsible.[201] This means, *inter alia,* that the authorities should take all reasonable steps to secure the evidence concerning the incident. Although this is an obligation of means and not result, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness.

214. In particular, the investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible. Nevertheless, the nature and degree of scrutiny required to satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work.[202]

1. Organisation of the investigative work

215. As previously noted, the investigation of the events in Odesa was divided between the PGO and the MoI, the former having the responsibility to investigate police conduct and the latter being responsible for investigating the actions of civilians in connection with the mass disorder in the city centre and the fire at the Trade Union Building. When the case concerning SES conduct was opened in October 2014, its investigation was first assigned to the local MoI but was subsequently transferred to the MID of the MoI.

216. The Panel notes that, although separated into different casefiles, all three investigations relate to the same set of events, with the same consequences and the same victims. The representatives of both investigating authorities accepted before the Panel that the investigations overlapped to a certain extent, in particular in terms of the gathering of evidence and the interviewing of witnesses; they submitted that there was nonetheless a good

[201] See the General Principles and case law outlined above at paragraph 190 et seq.
[202] See, for instance, *Giuliani and Gaggio v. Italy*, cited above, § 302.

level of co-operation and a constant exchange of materials between the two authorities. The representatives of the PGO explained that the division of work was based on the provisions of the CPC and noted that, while the PGO would be entitled under the CPC to take over the investigations from the MoI in the event that they proved ineffective, no grounds for such transfer had as yet been established. The Head of the SID of the MID of the PGO admitted that it would had been better if the investigations had been consolidated from the outset. However, transferring the cases from the MoI to the PGO at this stage would be counter-productive, given the large amount of material with which the new investigators would have to familiarise themselves.

217. Quite apart from the issue of lack of independence discussed above, the Panel considers that this division of labour had a negative impact on the quality, effectiveness and progress of the investigations. Given that the actions of the police and activists were taking place in the same spatial and time frame, with allegations of collusion between the two, and a coincidence of evidence, witnesses and victims, it was not, in the view of the Panel, the best use of resources to split the investigation of these closely related cases between different investigative authorities, rather than entrusting the investigations as a whole to the PGO.

218. The Panel also questions the decision initially to allocate to the local MoI the investigation into the conduct of the SES. The investigation was not opened until October 2014, some six months after the events; thereafter there was a period of some two months when it would appear that no progress in the investigation was made by the Odesa Regional MoI Department, with the consequence that the case-file was transferred to the MID of the MoI. The Panel notes, in this respect, that such lack of effectiveness in the initial stages of an investigation not only inevitably affects the amount and quality of the evidence that can be collected but may also result in the disappearance of potential suspects.

Conclusion

219. **The Panel finds the division of investigative work between the PGO and the MoI to be inefficient and detrimental to the effectiveness of the investigations, given that they concern the same set of closely connected events and overlap to a certain extent as regards evidence, witnesses and victims. The Panel also finds that the quality, progress and effectiveness of the investigations were affected by the decision to allocate the investigation of the actions of the SES to the local MoI, which remained inactive during the crucial early stages.**

2. Staffing and resources

220. An account of the personnel assigned to the investigations carried out by the PGO and the MoI, based on information provided by these bodies to the Panel, is set out above.[203] It is regrettable that, despite repeated requests from the Panel, the authorities were unable to supply it with clear, detailed and consistent information on this point. Based on the information provided, however, the Panel makes the following findings about the levels of staffing and resources in the PGO and MoI.

(a) PGO

221. While initially, in May 2014, the team assigned to work specifically on Odesa-related cases included ten PGO and local investigators, by April 2015 the number of investigators

[203] See paragraphs 101-109 and 183-189.

working exclusively on these cases, according to Mr Zinkovskyi, the head of the investigative team, amounted to only himself and one other.[204] Moreover, Mr Zinkovskyi was on sick leave between June and September 2014. He returned to work in October 2014 but it was not until 8 April 2015 that he was again put in charge of the investigation concerning police conduct. While he was replaced during his absence by another investigator, it would appear that this person concentrated mainly on the investigation into the release of detainees on 4 May 2014,[205] and it was only after Mr Zinkovskyi's return in April 2015 that any apparent progress was made in the case concerning police misconduct in relation to the events of 2 May.[206] Further problems seem to have been caused by the fact that, throughout the year between May 2014 and May 2015, the investigation was transferred back and forth between two departments of the MID of the PGO, namely the Major Crimes Division and the SID.[207] According to the PGO, there was a period between the end of 2014 and the beginning of 2015 when it remained unclear within which MID division the case was to be investigated.

222. Mr Zinkovskyi submitted to the Panel that, following his return in April 2015, a considerable amount of work was done and that there was no need to appoint additional staff. The Panel considers, however, that the low numbers of staff devoted to the Odesa investigation had a significant effect on the progress made and has led to certain aspects of the investigation being put on hold. For example, as the Panel understood Mr Zinkovskyi, since his return he had concentrated on building the case against Mr Lutsiuk and would not be able to resume working on the investigation concerning Mr Fuchedzhy until Mr Lutsiuk's case had been sent to court.[208]

223. Viewed as a whole, the Panel commends the fact that Mr Zinkovskyi was again charged with the investigation, to ensure continuity. However, given the large scale of the events and the complexity of the issues relating to possible police misconduct, the Panel believes the current staffing arrangements to be inadequate. This is also borne out by the fact that, to date, only two persons have been notified of suspicion in this connection, one of whom has managed to escape under unclear circumstances.[209]

(b) MoI

224. The teams within the MoI investigating the mass disorder, the fire at the Trade Union Building and the conduct of the SES staff have also been cut back. In May 2014 they included nine investigators from the MID of the MoI and eight local investigators. However, by July 2015 there were only three investigators from the MID of the MoI working exclusively on the Odesa cases,[210] assisted by eight local investigators. In mid-August 2015, the head of the investigating team, Mr Rudnytskyi, was recalled from Odesa for work-related reasons. Although he is now based in Kyiv, the PGO explained that he continued to be engaged in the Odesa investigations. It does not appear that any new investigator has been sent to replace him in Odesa.

225. While the Panel commends the fact that the three remaining investigators have been involved in the investigation of the Odesa cases virtually from the beginning, the small size of the team and the recall of its leader to Kyiv must be detrimental to its investigative capacity.

[204] See paragraphs 105-106 above.
[205] See paragraph 103 above.
[206] See paragraphs 91-92 above.
[207] See paragraph 101 above.
[208] See paragraph 90 above.
[209] See paragraphs 86-87 above.
[210] See paragraphs 186-187 above.

226. This is borne out by the evidence of the MoI investigators themselves, who submitted to the Panel that the staff levels were not sufficient for the investigation of such complex cases. Although some progress has been made in the investigation of the clashes that took place in the city centre, on Hretska Square and Hretska Street, it appears that a considerable amount of work still lies ahead. Moreover, to date only one suspect has been notified of suspicion in respect of the violent acts committed on Kulykove Pole,[211] and no suspects have been yet identified and charged in the case concerning the conduct of the SES staff.

227. In view of the above mentioned circumstances, the Panel believes that reducing the investigating team has had an adverse impact on the progress, quality and effectiveness of the investigations.

Conclusion

228. **The Panel finds it commendable that both the PGO and the MoI have sought to ensure continuity as regards the main investigators in Odesa. However, it finds that the reduction of each authority's investigating team has had a detrimental effect on the progress, quality and effectiveness of investigations and it considers the current staffing levels to be inadequate.**

3. Quality of the investigations

229. It is implicit in the requirement of effectiveness that investigations should be both thorough and diligent.[212] Lack of diligence, especially at the outset of an investigation, compromises its overall effectiveness and this, in turn, undermines public confidence in the authorities' adherence to the rule of law.[213]

230. So far as concerns the investigations into the conduct of the police, the Panel observes, in the first place, that it took two weeks for the authorities to obtain a warrant for the arrest of Mr Fuchedzhy, giving him the opportunity to flee the country. The Panel notes the PGO's explanations that the pre-trial investigation had originally been led by investigators from the Prosecutor's Office in the Odesa Region and that its own investigators had only taken over the investigation on 7 May 2014, by which date Mr Fuchedzhy had already fled the jurisdiction.[214] The Panel, however, recalls that the effectiveness of an investigation must be assessed as a whole and the fact that the responsibility originally lay with another investigatory body is no excuse for a lack of diligence. Further, the Panel is not persuaded by the PGO's contention that there was insufficient evidence to justify measures being taken against Mr Fuchedzhy's so soon after the events of 2 May. There is no dispute that, on that date, Mr Fuchedzhy was in charge of public order protection in Odesa. Given the serious failure of the police to react to the mass disorder and the grave consequences which flowed therefrom, both of which facts were already known to the authorities on the same day or shortly thereafter, his conduct should have been the subject of immediate investigation. In the Panel's view, there were sufficient grounds for suspicion to justify the authorities in applying for some form of preventive measure. The Panel is not aware of any attempt to do so in the first days after 2 May 2014 and, in the absence of any preventive measure,

[211] See paragraphs 140-141 above.

[212] See, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], application no. 48939/99, §§ 94 and 113, ECHR 2004-XII.

[213] *Hugh Jordan v. the United Kingdom*, cited above, § 108.

[214] PGO written submissions, September 2015.

Mr Fuchedzhy succeeded in absconding; the investigation concerning him has, as a result, been suspended ever since.[215] The fact that the key suspect has disappeared has indisputably impaired the effectiveness of the investigation.

231. Secondly, it remains unclear why it took almost a year for the authorities to come to the conclusion that the "Wave" plan had not been implemented on 2 May 2014 and that the documents relating to its alleged implementation had been forged.[216] It is striking that in her report of June 2014, which was immediately communicated to the PGO, the Ombudsperson concluded, on the basis of evidence set out in the report, that the "Wave" plan had not been implemented and that the documents had been forged.[217] Despite the evidence identified by the Ombudsperson, Mr Lutsiuk was not notified of suspicion in this respect until 30 April 2015, almost one year after the events in question. As noted above, a failure promptly to follow up an obvious line of inquiry undermines the possibility to establish the full circumstances and falls foul of the required standard of effectiveness.

232. The Panel finds similar deficiencies in the effectiveness of the investigations into the mass disorder and the fire on 2 May 2014. In the first place, the Panel notes that the authorities failed to take sufficient measures to secure the evidence in a timely manner, a fundamental requirement of an effective investigation.[218] In particular, although the Trade Union Building was searched by the authorities immediately after the fire had been extinguished; it was opened to the public on 4 May[219] and was not placed under legal control until 20 May 2014, nearly three weeks after the events.[220] The Panel considers that this gave rise to a substantial risk of evidence being removed from, or brought into, the building. While the MoI investigators did not believe that the decision to grant public access had in fact impaired the task of gathering evidence, they acknowledged before the Panel that the decision to do so had not been correct.[221]

233. Similar concerns exist in relation to the authorities' handling of other crime scenes in the city centre. The PGO representatives accepted before the Panel that, owing to the widespread nature of the crime scenes, some evidence might have been overlooked.[222]

234. The Panel considers that, seen as a whole, there was no proper coordination of the measures taken to preserve and gather evidence during the days immediately after the events, despite the presence in Odesa of high ranking officials.[223] This may well have been related to the fact that, at that early stage, Mr Lutziuk and then Mr Fuchedzy, both subsequently notified of suspicion in relation to the events of 2 May, were still in charge of the local police force, which had the responsibility for carrying out the initial steps in the investigation.

235. Secondly, the Panel finds that certain forensic examinations were not diligently carried out. For example, the first forensic report on the fire was prepared in July 2014 without any on-site inspection of the Trade Union Building.[224] Nine months later, an inter-

[215] See paragraph 90 above.
[216] See paragraph 72 et seq. above.
[217] See paragraphs 50-51 above.
[218] See, among other authorities, *Giuliani and Gaggio v. Italy*, cited above, § 301; as regards forensic examinations, see, for example, *Gül v. Turkey*, application no. 22676/93, § 89, 14 December 2000; as regards crime scene inspection, see, for instance, *Mikheyev v. Russia*, cited above, § 112. See also OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Series No. 8/Rev.1, § 103 stating: "Any building or area under investigation must be closed off so as not to lose any possible evidence".
[219] See paragraph 128 above.
[220] See paragraph 129 above.
[221] See paragraph 130 above.
[222] See paragraph 131 above.
[223] See paragraph 35 above.
[224] See paragraph 124 above.

agency complex forensic examination was ordered in April 2015 and, at the end of August 2015, was still underway.[225] Although, formally, these examinations were ordered in two different sets of proceedings and the PGO denied that the latter examination was aimed at rectifying shortcomings in the former,[226] the Panel was left with the clear impression that this was at least one of its aims – an impression that was confirmed by the evidence of the MoI investigators.[227] By way of further example, the Panel notes the failure of the authorities, for over a year, to identify one of the bodies found in the Trade Union Building.[228]

236. The deficiencies in the investigation of the conduct of the SES staff remain the most striking example of a lack of diligence. This investigation was not commenced until 16 October 2014, and then only following the complaint of a third party.[229] On a question being put by the Panel, the authorities admitted that there was no justification for the delay,[230] although it was subsequently claimed that, initially, there had been no grounds justifying the opening of an investigation.[231] The Panel finds this latter qualification difficult to accept. The fact that there had been a fire in the Trade Union Building, which had resulted in a considerable loss of life, and that, despite numerous emergency calls, the fire brigade had only arrived on the scene after a substantial and unexplained delay, was known to the authorities at an early stage and provided ample grounds for the initiation of an investigation into the conduct of the SES staff. This was all the more the case, having regard to the findings of the SES internal inquiry, that appropriately equipped fire-fighting units should have been sent after receipt of information about burning tents on Kulykove Pole at 7.31 p.m. and information about the fire in the Trade Union Building at 7.45 p.m., findings which resulted in the reprimand of Mr Bodelan, the Head of the Main Department of the SES in the Odesa Region. Moreover, once the investigation had eventually been opened, over five months after the events, the Odesa Regional MoI, which was initially entrusted with its conduct, showed no diligence in pursuing it, with the result that some two months later it was transferred to the MID of the MoI.[232] The Panel considers unacceptable the fact that the first real efforts to carry out an investigation into the conduct of the SES staff were not made until December 2014, by which time Mr Bodelan had left the service and, since he had not been notified of suspicion, his whereabouts were, and continue to be, unknown to the authorities. Further progress in the investigation has not been assisted by the refusal of the SES to conduct a further internal inquiry, despite the express request of the MoI.[233]

Conclusion

237. **The Panel finds that, in respect of each of the matters under investigation, the relevant authorities failed to show sufficient thoroughness and diligence in initiating and/or pursuing the investigations, with the result that their overall effectiveness was compromised.**

[225] See paragraph 181 above.
[226] PGO written submissions, September 2015.
[227] MoI oral submissions, July 2015.
[228] See paragraph 121 above.
[229] See paragraph 178 above.
[230] PGO oral submissions, July 2015.
[231] PGO written submissions, September 2015.
[232] See paragraph 178 above.
[233] See paragraph 176-177 above.

4. Prosecution and trial

238. The Panel recalls that, under the procedural requirements of Articles 2 and 3 of the Convention, the investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and the identification and punishment of those responsible. This requirement goes beyond the stage of the pre-trial investigation. As the European Court has held and as the Panel observed in its Maidan Report, the conduct of criminal proceedings as a whole, including at the pre-trial and trial stage, must satisfy the requirements of the positive obligation to protect lives and prevent ill-treatment. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, any deficiency in the investigation which undermines its capacity to establish the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness.[234]

(a) Decisions to terminate pre-trial investigations

239. The authorities' decision to terminate the pre-trial investigations in two cases remains a matter of serious concern to the Panel.

240. The representatives of the PGO informed the Panel that the pre-trial investigation against Mr Hrybovskyi was terminated on the formal ground of insufficiency of evidence even though the case-file contained ample evidence against him, the real reason for the termination being the exchange of the suspect for SSU officers who were held captive in the East.[235] The Panel accepts that the authorities were faced with an acute dilemma, since the lives of the SSU officers were at risk. Nonetheless, however understandable or laudable the motive behind the decision might have been, the Panel cannot but note its concern, which was shared by the representatives of the PGO who were heard by it, about the decision to terminate the pre-trial investigation. Such a decision not only undermines the purpose of the criminal justice system and respect for the rule of law but risks rendering illusory the guarantees of Articles 2 and 3 of the Convention.

241. The Panel further notes that in February 2015 the investigatory authorities also decided to terminate, on the grounds of the insufficiency of the evidence against him, the case against Mr Honcharevskyi, a pro-unity activist suspected of assaulting pro-federalist activists jumping from the burning Trade Union Building.[236] The decision on termination of the criminal proceedings was subsequently quashed by the court and the pre-trial investigations were resumed. The court found that the decision had been premature in that the investigators had not taken all possible measures to collect sufficient evidence.[237] The Panel finds the original decision to close the case to be particularly disquieting when taken together with the initiative of certain Members of Parliament who, in January 2015, introduced a draft law proposing to grant an amnesty to Mr Honcharevskyi and Mr Khodiak, both pro-unity activists suspected of assault and murder respectively.

(b) Completing the pre-trial investigations and sending the cases to court

242. In November 2014 the prosecution sent to court the first case concerning 21 persons suspected of organising or participating in the mass disorder. The charges, which were laid in a single indictment running to 196 pages, are not individualised and do not specify the precise

[234] *Giuliani and Gaggio v. Italy*, cited above, §§ 301 and 306; *Enukidze and Girgvliani v. Georgia* [GC], application no. 25091/07, § 242, judgment of 26 April 2011.
[235] See paragraph 139 above.
[236] See paragraph 140 above.
[237] See paragraph 141 above.

acts of which each person is accused. The Panel considers that the lack of precision in the indictment may be symptomatic of deficiencies in the investigation. The suspects were arrested as part of a large group of persons at the Afina Shopping Centre and it is not apparent that the investigation established what particular part each person had played in the prior events. The inclusion of such a large number of suspects in a single indictment has already given rise to adjournments and delay, as noted just below. The Panel is further concerned that the lack of individualised charges may make the court's task very difficult and further delay the progress of the proceedings.

(c) Trial

243. The cases that have reached court have been marked by delays at the preliminary court hearing stage. Thus, the case concerning 21 suspects was sent to court in November 2014 but it was only at the end of June 2015 that the hearing on the merits commenced with the reading of the indictment. The commencement of the trial was delayed by a series of recusals of the judges of the Prymorskyi District Court of Odesa.[238] Once the proceedings had begun, the case was adjourned on several occasions owing to the absence of one or more of the participants or as a result of various motions lodged by the parties or following attempts to disrupt the hearings. The situation was undoubtedly exacerbated by the fact that 21 suspects, most of whom were represented by different counsel, were indicted in a single case.

244. The Panel further notes that the recusal of judges appears also to have caused delay in the commencement of the trial against Mr Khodiak.[239] The case was sent to court in April 2015 but it appears that, by August 2015, the hearing on the merits had still not commenced. It was reported to the Panel that judges of the Prymorskyi District Court of Odesa had sought to transfer the case to another court on the basis of their involvement at the interlocutory stages of the proceedings. However, according to the local media, the request was rejected by the Court of Appeal, which found that there remained a sufficient number of judges who could hear the case, as they had not previously been involved.[240] Subsequently, these judges also recused themselves. At the end of August 2015 the case was transferred from the Prymorskyi District Court to the Malynovskyi District Court of Odesa.[241]

Conclusion

245. **The Panel expresses serious concern about the decisions to terminate the proceedings against two suspects on the grounds of lack of evidence.**

246. **The Panel finds that the repeated recusals of judges led to delays in the commencement of the criminal proceedings as a whole. The Panel further finds that the decision to charge 21 individuals in a single indictment, without individualising the charges, has contributed to the delay and risks having an adverse impact on the progress of the court proceedings.**

[238] See paragraph 145 above.
[239] See paragraph 156 above.
[240] *Dumskaya*, 26 June, 2 July and 14 July 2015.
[241] Loc. cit., 13 August 2015.

C. Promptness and reasonable expedition

247. A requirement of promptness and reasonable expedition is implicit in the context of the effectiveness of investigations, principles which have been applied by the European Court in cases against Ukraine.[242]

248. While there may be obstacles or difficulties which prevent the progress of an investigation in a particular situation, a prompt response by the authorities in investigating the use of lethal force or an allegation of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in, or tolerance of, unlawful acts.[243] The prompt opening of an investigation into credible allegations of a crime, followed by its active pursuit, is key to an effective investigation.[244] In cases of deaths in contentious situations, it is crucial that an investigation be prompt since the passage of time will inevitably erode the amount and quality of the evidence available to form the basis of the investigation.[245] Once promptly commenced, the investigation must be pursued with reasonable expedition.[246]

249. The Panel has already found that each of the investigations has been marked by serious deficiencies and considers that these deficiencies have significantly protracted the investigative response to the events of 2 May. In particular, the investigations in relation to the conduct of the police and to the mass disorder and fire have been protracted as a result of such deficiencies as the authorities' failure to secure the presence of a key suspect, the failure to follow an obvious line of inquiry and the failure to take prompt measures to secure evidence. The investigation into the conduct of the SES staff was instituted almost half a year after the events in issue and was not thereafter pursued with expedition. In addition, as noted above,[247] the conduct of the trials of the 21 suspects and Mr Khodiak have already been subject to certain delays. While, as the Panel has already noted, the authorities were confronted with significant challenges in conducting the investigations,[248] the Panel finds that these do not wholly explain the lack of promptness or expedition that has occurred.

Conclusion

250. **The Panel considers that the investigation into the conduct of the SES staff was neither promptly commenced nor pursued with reasonable expedition. The investigations into the mass disorder and the fire on 2 May 2014 and into the conduct of the police on 2 and 4 May 2014, while promptly instituted, have been subject to a number of deficiencies that have significantly protracted the investigative response.**

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[242] See *Myronenko v. Ukraine*, application no. 15938/02, §§ 36-37, judgment of 18 February 2010; *Kachurka v. Ukraine*, application no. 4737/06, §§ 53-57, judgment of 15 September 2011; and *Danilov v. Ukraine*, cited above, § 70.

[243] *Hugh Jordan v. the United Kingdom*, cited above, § 108.

[244] See *Isayeva, Yusupova and Bazayeva v. Russia*, applications nos. 57947/00, 57948/00 and 57949/00, § 218, judgment of 24 February 2005; and *Khashiyev and Akayeva v. Russia*, applications nos. 57942/00 and 57945/00, § 157, judgment of 24 February 2005.

[245] See *Trubnikov v. Russia*, application no. 49790/99, § 92, judgment of 5 July 2005; and *Jasinskis v. Latvia*, application no. 45744/08, § 79, judgment of 21 December 2010.

[246] *McCaughey and Others v. the United Kingdom*, application no. 43098/09, § 130, judgment of 16 July 2013.

[247] See paragraphs 243-244 above.

[248] See paragraph 199 et seq. above.

D. Public scrutiny of the investigations

251. The Panel recalls the European Court's jurisprudence to the effect that, where allegations of serious human rights violations are involved in the investigation, the right to the truth regarding the circumstances of the case does not belong solely to the victim of the crime and his or her family but also to other victims of similar violations and the general public.[249] An adequate response by the authorities in investigating allegations of serious human rights violations may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of impunity, collusion in or tolerance of unlawful acts. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory.[250]

252. The Panel recalls that in its Maidan Report, it noted the serious concerns expressed by the European Court, various Council of Europe bodies and certain NGOs about the climate of impunity of law enforcement officers in Ukraine.[251] It considers that these concerns remain relevant in the present context where there exist allegations of collusion between the police and pro-federalists and where suspicions of selective justice arise in relation to the investigations into the events in Odesa on 2 May 2014.[252] The Panel considers, therefore, that ensuring a sufficient degree of public scrutiny of the investigations is a means of responding to any perception of impunity or lack of impartiality and of securing accountability for the crimes committed during those events, as well as satisfying the public's right to know.

253. As noted by the Panel in its Maidan Report, while legitimate concerns of confidentiality and national security may exist, this does not mean that the investigating authorities enjoy complete discretion as regards the disclosure of information to the public.[253] The authorities must ensure, without unacceptably compromising national security or the necessary confidentiality of the investigations, that a sufficient degree of public scrutiny is maintained.

254. The required degree of public scrutiny of an investigation varies from case to case: the more important or grave the issues involved, the more intense the public scrutiny required.[254] The events in Odesa on 2 May 2014 resulted in 48 deaths and injuries to several hundreds of persons. After the tragic events during the Maidan demonstrations, the events in Odesa have become another painful landmark in the recent history of Ukraine. The violence and crimes committed that day were, as admitted by the authorities, of an unprecedented nature: for several hours the city centre became a virtual battlefield. Numerous photographs and video clips of the violence have been posted on the Internet and the events were immediately thrust into the limelight, domestically and internationally. The fact that the Panel's Mandate was extended to cover the investigations into those events signifies the importance of the issues involved. Allegations of fault, whether negligent or deliberate, on the part of the local police and fire brigade have further fuelled public distrust of the authorities. Last but not least, the events took place in a period of instability and divisions within Ukrainian society.

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[249] *Al Nashiri v. Poland*, application no. 28761/11, § 495, judgment of 24 July 2014 (with further references).

[250] Ibid.

[251] IAP Maidan Report, §§ 491 and 376-384.

[252] See paragraphs 20 and 209 above.

[253] *Al Nashiri v. Poland*, cited above, § 494.

[254] *Hugh Jordan v. the United Kingdom*, cited above, § 109.

Accordingly, the Panel considers that the events in Odesa on 2 May 2014 were of such importance that the authorities were required to provide sufficient information about the investigations so as to facilitate meaningful public scrutiny of them.

255. The Panel has therefore assessed the level and quality of the information provided to the public by the investigating and other authorities. For this purpose, the Panel has, as in the case of its Maidan Report, reviewed the Internet sites, press conferences, interviews and statements of representatives of the competent investigating authorities concerning the investigations under review. These public statements have been summarised in Annex VI to the Report; while not exhaustive, the summary includes the principal public information events.

256. The Panel notes at the outset that a considerable amount of information about the events of 2 May was made available to the public in the inquiry reports of the TIC and the Ombudsperson. It emphasises, however, that while the TIC inquiry report[255] is a public and official document and undoubtedly serves its purpose of keeping the public informed,[256] the findings and information contained in a parliamentary inquiry report are no substitute for public statements made by the investigative authorities in the course of a criminal investigation.[257] Similar considerations apply to the information provided in the Ombudsperson's inquiry report, her role and the purpose of her inquiry[258] being different from those of the investigative authorities in the criminal investigation.

257. Moreover, both inquiries were started and completed shortly after the events in issue: the TIC adopted its report on 2 September 2014 and the fact-finding part of the Ombudsperson's inquiry was carried out in May 2014 (although the findings were published in her *Annual Report* at the beginning of 2015). It was not, therefore, possible for either inquiry to take into account any subsequent developments. Furthermore, there was no follow-up to either report.

258. As for the information made available by the investigatory authorities, the Panel acknowledges that the authorities promptly provided the public with basic information and regular updates relating to the events at issue, such as the number of persons killed, injured or missing; the investigations instituted; the authority in charge of each investigation; the number of persons detained, put under house arrest or released; and the administrative measures taken in reaction to the events, such as the dismissal of high-ranking officers and the opening of internal inquiries. However, on closer examination, the Panel finds some shortcomings in the level of public scrutiny afforded.

259. Thus, for example, there was initially a failure to inform the public about the structure of the investigations in a comprehensible form. In the early stages the MoI reported in its press releases that one investigation had been instituted;[259] later it referred to three

[255] See paragraphs 44-45 above.

[256] See, for instance, European Commission for Democracy Through Law (Venice Commission), *Amicus Curiae Brief in the Case of Rywin v. Poland (Applications Nos. 6091/06, 4047/07, 4070/07) Pending Before the European Court of Human Rights (On Parliamentary Committees of Inquiry)*, CDL-AD(2014)013, 25 March 2014, § 28 noting that "the ultimate aim of the [parliamentary] committees' investigations is transparency with a view of ensuring that the public is informed of matters which affect the *res publica* (the public good)". See also Section 89 § 3 of the Constitution of Ukraine mentioning public interest in the underlying matter as a reason for setting up a TIC.

[257] See Venice Commission, Amicus Curiae *Brief on Parliamentary Committees of Inquiry*, § 28 and Section 89 § 4 of the Constitution of Ukraine stating that the findings and proposals of a TIC shall not be conclusive for the investigation and courts.

[258] See paragraph 49 above.

[259] See Annex VI, paragraph 1.

sets,[260] and then to ten.[261] Without clarifying which events and which suspects were covered by each investigation, these statements would have been unintelligible to the public.[262] By 15 May 2014, however, this problem had been largely remedied by the clear statement that one investigation was concerned with the examination of the conduct of civilians and one with the conduct of the police.[263] Information about the third investigation concerning the conduct of the SES staff was added later.[264]

260. A more serious point of concern relates to the release of inconsistent information. The Panel accepts that the various theories pursued by an investigation may change as it progresses. This requires caution on the part of the authorities when releasing information, especially that of a sensitive nature. By way of example, the Panel refers to the public announcements make by the authorities about the alleged use of a poisonous gas or chloroform inside the Trade Union Building, an issue which was of considerable public concern and importance given the major loss of life. At a press conference on 15 May 2014 Mr Ivan Katerynchuk, Head of the MoI Office in the Odesa Region, unequivocally denied that any particular gas had been used to poison those inside the Trade Union Building.[265] A few days later, on 19 May, Mr Vitalii Sakal, Deputy Minister of the Interior and the head of the MID of the MoI, stated, with reference to the complex forensic examination report, that samples of chloroform had been detected at the crime scene, that chloroform might have caused the death of those in the Trade Union Building and that further forensic expert examinations had been ordered to establish the quantity of chloroform used.[266] On 22 April 2015 Mr Volodymyr Huzyr, the first Deputy Prosecutor General, briefly stated that the information as to the use of poisonous gases or chloroform had not been confirmed in the course of the investigation.[267] The Panel finds it regrettable that definitive statements were made on the matter when it was still the subject of examination by forensic experts. Similar observations apply to the manner in which the authorities reported on another matter of public interest, the cause of the fire and the places where it had started inside the Trade Union Building. While the first statements were phrased in a very cautious way,[268] a chart displayed during a press conference on 19 May 2014 suggested that the fire had been started from the outside and that its epicentre had been in the right ground floor wing, seen from the outside of the main entrance.[269] On 22 April 2015 Mr Huzyr stated, with reference to forensic reports, that the fire had in fact broken out in the lobby and stairwell of the main entrance and had been caused by combustible substances used by both groups of protesters including inside the building.[270]

261. A further matter of concern is the unevenness in the presentation of the information. While, as noted above, the authorities provided a considerable amount of information with regard to the investigations, certain aspects were barely referred to. Allegations of collusion between the police and the pro-federalists were only touched upon in the interview of Mr Oleh Makhnitskyi.[271] Apart from several statements on the proceedings against

[260] Loc. cit., paragraph 7.
[261] Loc. cit., paragraph 8.
[262] See, *mutatis mutandis*, IAP Maidan Report, §§ 495-497.
[263] See Annex VI, paragraph 28.
[264] Loc. cit., paragraph 39.
[265] Loc. cit., paragraph 28.
[266] Loc. cit., paragraph 30.
[267] Loc. cit., paragraph 39.
[268] Loc. cit., paragraphs 9 and 21.
[269] Loc. cit., paragraph 30.
[270] Loc. cit., paragraph 39.
[271] Loc. cit., paragraph 21.

Messrs Lutsiuk and Fuchedzhy (and the other senior police officers standing trial concerning the release of detainees on 4 May), it was not clear from the available public statements what other matters relating to the conduct of the police the authorities had been investigating. In the same vein, in the proceedings concerning the conduct of the SES staff, no information was provided other than the statement that the investigation had been initiated, that it was still pending and that no suspect had as yet been identified. These matters were the subject of intense debate and their coverage, in the context of the public distrust of the authorities and an ongoing information war, was, in the Panel's view, of particular importance. Follow-up explanations on the part of the authorities would have made an important contribution to public awareness and to the public's trust in the justice system.

262. The regularity of communications to the public is a further problematic aspect. The Panel accepts that on 2 May 2014 and several days thereafter the events were covered quite intensively. However, from the end of May 2014 the coverage began to fade and the intervals between statements became longer. In this regard, the Panel notes that, while press releases were issued in the period between 13 August 2014 and 22 April 2015 referring to specific developments in the investigation, no general and comprehensive review of the investigations and the progress made was provided in the interval between those dates. The Panel considers this period to be too long. The same applies to the period after 26 May 2015, during which it appears that no statements were made prior to the Panel's cut-off date for information of 31 August 2015.

263. The matters referred to above illustrate, in the Panel's view, the lack of an effective communication policy, coordinated between the PGO and the MoI,[272] or within the MoI itself.

264. In their submissions to the Panel the PGO addressed the question of the reaction of the investigative authorities to requests for information on the investigations, stating that they had replied to hundreds of such requests for information from the public and that they had thus complied with their obligations.[273] The Panel notes, however, that the fact that requests were replied to does not as such signify that sufficient public scrutiny was afforded; for example, a mere reply refusing such a request with reference to confidentiality does not fulfil the requirement of ensuring public scrutiny. As noted above, while legitimate concerns of confidentiality may exist, this does not mean that the investigating authorities enjoy complete discretion as regards the disclosure of information to the public; instead, a proper balance must be struck between the public's right to know and maintaining the effectiveness of the investigation. In this regard, the Panel would note that, following a request made by two journalists, members of the 2 May Group, to obtain access to redacted forensic medical examination reports on the causes of death of the 48 people who had died as a result of the clashes and the fire on 2 May, a court found that the authorities, in refusing to disclose the report, had failed to strike the right balance.[274]

265. The Panel notes that, in their written submissions, the PGO reported that it was proposed to create, on the PGO website, a webpage specifically dedicated to the investigations of the events in Odesa on 2 and 4 May 2014, similar to the one created for the Maidan-related investigations.[275] The Panel welcomes this development and believes that such a webpage, provided that it is regularly and thoroughly updated, would remedy certain of the deficiencies referred to above and would facilitate the public's understanding of the events and of the current state and progress of the investigations.

[272] IAP Maidan Report, § 498.
[273] PGO oral submissions, June 2015 and written submissions, September 2015.
[274] See paragraph 55 above.
[275] PGO written submissions, May 2015.

Conclusion

266. **The Panel considers that the events in Odesa on 2 May 2014 were of such importance that the authorities were required to provide sufficient information about the investigations to facilitate meaningful public scrutiny. While the authorities provided a considerable amount of information, there was no effective communication policy in place, with the result that some of the information provided was difficult to understand, inconsistent, and unevenly presented and was provided with insufficient regularity.**

E. Involvement of victims and next-of-kin

267. The Panel recalls that the victims and next-of-kin of victims must be informed of, and involved in, the criminal procedure to the extent necessary to safeguard their legitimate interests.[276] It is essential that as much information as possible should be disclosed without compromising the secrecy of the investigation or other confidentiality concerns. The timely availability of information on the course of the investigation also enables the parties concerned to challenge the relevant decisions or acts of the authorities or any lack of activity on their part.[277] The European Court found a breach of this procedural requirement when victim status was denied, with the result that the persons concerned were prevented from participating in the investigations. It has also found a breach when the authorities failed to keep victims and next-of-kin informed concerning the progress of the investigations, or to ensure their appropriate involvement in, them.[278]

268. The Panel observes that it received a number of submissions, which were disputed by the investigatory authorities, to the effect that the rights of certain victims or their next-of-kin were not guaranteed. In particular, complaints were made of the authorities' refusals to grant victim status to police officers,[279] of the inability of the next-of-kin to obtain victim status because of the authorities' continuing failure to identify a body[280], and of the alleged manipulation of the casefiles by the authorities, which resulted in a situation where the next-of-kin of persons killed in the city centre were granted victim status in cases which, in their opinion, were not in any way related to the deaths of their relatives.[281] The Panel reiterates that it does not have the role of examining individual complaints. It therefore limits its conclusions in respect of these complaints to recalling the above-noted Convention requirements.

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[276] See the General Principles and case law outlined above and, in particular, *Anguelova v. Bulgaria*, application no. 38361/97, § 140, ECHR 2002-IV.

[277] *Karabet and Others v. Ukraine*, applications nos. 38906/07 and 52025/07, §§ 289-291, judgment of 17 January 2013. These principles have been stressed by other CoE bodies: see, for example, the Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, 12 March 2009, CommDH(2009)4.

[278] *Trubnikov v. Russia*, cited above, § 93; *Sergey Shevchenko v. Ukraine*, application no. 32478/02, § 74-75, judgment of 4 April 2006; and *Prynda v. Ukraine*, application no. 10904/05, § 56, judgment of 31 July 2012.

[279] 2 May Group oral submissions, July 2015.

[280] See paragraph 121 above.

[281] Oral submissions of the victims' representatives and lawyers, July 2015. An example was given that their clients had been recognised as victims in the case against the activists arrested in the Afina Shopping Centre, in respect of whom they had no complaints, rather than in the case of an activist suspected of shooting and killing in the city centre.

269. The Panel also received complaints that the supporters of a pro-unity suspect had harassed a relative of a deceased pro-federalist activist wishing to attend the court hearings, and complaints of the disrespectful treatment of victims and next-of-kin by the investigators.[282] The Panel would only observe, in this respect, that any such an attitude on the part of those responsible for ensuring the proper involvement of victims and next-of-kin, as well as any failure by the authorities to react to and prevent their harassment, may have the effect of discouraging victims and next-of-kin from taking part in the investigations and thereby prejudice their effectiveness.

270. The Panel notes in conclusion that, in contrast to the pre-trial investigations in Maidan cases,[283] where the PGO held monthly meetings with the next-of-kin of protesters who died during the Maidan events, the investigatory authorities in the present case do not appear to have taken any co-ordinated measures to ensure that victims and next-of-kin received regular updates on the progress of the pre-trial investigations. The Panel considers this regrettable and finds that the information provided to the general public concerning the investigations into the events of 2 May[284] is not in itself sufficient to protect the rights or the legitimate interests of the victims and next-of-kin.

Conclusion

271. **The Panel's role is not to determine whether the investigation of an individual case satisfied the requirements of the Convention and, in this regard, it limits its conclusions to recalling the case-law of the European Court relating to the involvement of victims and next-of-kin in any criminal investigation.**

The Panel notes with regret that, in contrast to the Maidan investigations, the investigatory authorities did not take any co-ordinated measures directly and regularly to ensure that victims and next-of-kin were informed about the progress of the investigations. It finds that the information provided to the general public was not of itself sufficient to protect the rights and legitimate interests of the victims and next-of-kin.

[282] Ibid.

[283] See IAP Maidan Report, § 506.

[284] For the Panel's assessment of compliance with the requirement of sufficient public scrutiny, see paragraph 251 et seq.

IV. THE PANEL'S EVALUATION OF THE CURRENT STATUS OF THE INVESTIGATIONS

272. Although as noted above, the investigative obligation is one of means and not result, serious deficiencies in an investigation may undermine its ability to establish the circumstances of the case and to identify those responsible.

273. Against the background of the deficiencies identified by it, the Panel has reviewed the status of the various investigations as at 31 August 2015, 14 months after the events in Odesa.

274. The material before the Panel reveals a marked lack of progress in the following important investigations.

275. In the investigation into the conduct of the police on 2 May 2014 only one person, the former Head of the MoI Office in the Odesa Region, is likely to stand trial within the near future. Another key suspect, the former deputy head of the same office, has absconded and the proceedings concerning him have since been suspended. No one else has been notified of suspicion in relation to this investigation. The authorities submitted to the Panel that the conduct of other police officers – the mid- and low-rank police officers, in particular – was being investigated. After 14 months of investigation the authorities are still not able to determine conclusively what was the role of the police in the violent events in Odesa on 2 May 2014 and whether there was any collusion between police officers and pro-federalist activists, as some of the available video footage appears to suggest.

276. As for the conduct of the police on 4 May 2014, three officers have been on trial since the end of 2014 and so far these proceedings have not yielded any decision on the merits. As noted above, the former Deputy Head of the MoI Office in the Odesa Region, also a key suspect in relation to this investigation, has absconded and the proceedings concerning his conduct on 4 May 2014 have since been suspended.

277. In the investigations into the mass disorder and fire on 2 May 2014, of the hundreds of persons allegedly involved in the clashes on both sides, 21 pro-federalists are on trial on virtually identical charges of participation in the mass disorder, with one of them additionally charged with its organisation. Although the court proceedings commenced at the end of 2014, they have not to date yielded any decision on the merits. In addition, five persons have recently been charged, mainly with participation in mass disorder, and the court proceedings concerning them are underway. Proceedings concerning another pro-federalist were terminated on the grounds of the insufficiency of evidence, when the true reason for the termination was his exchange for SSU officers held prisoner in the conflict zone in the East. Other key persons, including the alleged organiser of the mass disorder and another seen on video footage shooting into the crowd, have absconded and the proceedings concerning them have been suspended.

278. Of the pro-unity activists, three alone have been notified of suspicion: the proceedings concerning one were discontinued following his death; the proceedings concerning another person, suspected of assaulting those who had been jumping from the burning Trade Union Building, were terminated because of insufficient evidence and later resumed by court order; the proceedings concerning the third, suspected of having committed murder on 2 May 2014, have progressed to trial, which is on-going. The Panel has not been made aware of any other proceedings, pending or imminent, against any other person.

279. Out of the six instances of death caused by firearm or airguns, the authorities have not as yet identified the weapons by which the fatal injuries were inflicted. No person has been notified of suspicion of having caused the fire in the Trade Union Building.

280. The investigation into the conduct of the SES staff, which did not begin until over five months after the events in question, has made little progress. No person has been notified

of suspicion and the authorities appear to be still awaiting the conclusions of the inter-agency forensic examination.

Conclusion

281. **The Panel considers that substantial progress has not been made in the investigations into the violent events in Odesa on 2 May 2014.While this outcome may be explained to some extent by the contextual challenges,[285] the Panel considers that the deficiencies identified in this Report have undermined the authorities' ability to establish the circumstances of the Odesa-related crimes and to bring to justice those responsible.**

[285] See paragraph 198 et seq. above.

THE PANEL'S CONCLUSIONS

I. SUMMARY OF THE PANEL'S CONCLUSIONS

282. Based on its review of the investigations into the violent events in Odesa on 2 May 2014, the Panel has reached the following conclusions.

As regards the challenges facing the investigations:

283. The challenges confronting those responsible for the investigations into the events in Odesa on 2 May 2014 have been significant and their impact on the investigations cannot be under-estimated. However, these challenges cannot excuse any failings which did not inevitably flow from them. The authorities clearly were, and are, under an obligation to take all reasonable steps to ensure that the investigations comply with the requirements of Articles 2 and 3 of the Convention.

As regards the independence of the investigations:

284. Given the evidence indicative of police complicity in the mass disorder of 2 May 2014 in Odesa, Articles 2 and 3 require that the investigation into the mass disorder as a whole be carried out by an organ entirely independent from the police. Similarly, the investigation into the conduct of the fire service cannot be regarded as independent, given the structural links between the SES and the MoI. These concerns again highlight the need for an independent and effective mechanism for the investigation of serious human rights violations committed by law enforcement officers and other public officials.

285. In addition, the Panel considers that it is of central importance for the purposes of maintaining the confidence of all sectors of the public in the criminal justice system that the authorities, including the judicial authorities, are seen to act in an impartial and equal manner in the conduct of the investigations and court proceedings.

As regards the effectiveness of the investigations:

286. **Organisation of the investigative work:** The Panel finds the division of investigative work between the PGO and the MoI to be inefficient and detrimental to the effectiveness of the investigations, given that they concern the same set of closely connected events and overlap to a certain extent as regards evidence, witnesses and victims. The Panel also finds that the quality, progress and effectiveness of the investigations were affected by the decision to allocate the investigation of the actions of the SES to the local MoI, which remained inactive during the crucial early stages.

287. **Staffing and resources:** The Panel finds it commendable that both the PGO and the MoI have sought to ensure continuity as regards the main investigators in Odesa. However, it finds that the reduction of each authority's investigating team has had a detrimental effect on the progress, quality and effectiveness of investigations and it considers the current staffing levels to be inadequate.

288. **Quality of the investigations:** The Panel finds that, in respect of each of the matters under investigation, the relevant authorities failed to show sufficient thoroughness and

diligence in initiating and/or pursuing the investigations, with the result that their overall effectiveness was compromised.

289. **Prosecution and trial:** The Panel expresses serious concern about the decisions to terminate the proceedings against two suspects on the grounds of lack of evidence.

290. The Panel finds that the repeated recusals of judges led to delays in the commencement of the criminal proceedings as a whole. The Panel further finds that the decision to charge 21 individuals in a single indictment, without individualising the charges, has contributed to the delay and risks having an adverse impact on the progress of the court proceedings.

As regards requirement of promptness and of reasonable expedition:

291. The Panel considers that the investigation into the conduct of the SES staff was neither promptly commenced nor pursued with reasonable expedition. The investigations into the mass disorder and the fire on 2 May 2014 and into the conduct of the police on 2 and 4 May 2014, while promptly instituted, have been subject to a number of deficiencies that have significantly protracted the investigative response.

As regards public scrutiny of the investigations:

292. The Panel considers that the events in Odesa on 2 May 2014 were of such importance that the authorities were required to provide sufficient information about the investigations to facilitate meaningful public scrutiny. While the authorities provided a considerable amount of information, there was no effective communication policy in place, with the result that some of the information provided was difficult to understand, inconsistent, and unevenly presented and was provided with insufficient regularity.

As regards involvement of victims and next-of-kin:

293. The Panel's role is not to determine whether the investigation of an individual case satisfied the requirements of the Convention and, in this regard, it limits its conclusions to recalling the case-law of the European Court relating to the involvement of victims and next-of-kin in any criminal investigation.

The Panel notes with regret that, in contrast to the Maidan investigations, the investigatory authorities did not take any co-ordinated measures directly and regularly to ensure that victims and next-of-kin were informed about the progress of the investigations. It finds that the information provided to the general public was not of itself sufficient to protect the rights and legitimate interests of the victims and next-of-kin.

As regards the Panel's evaluation of the current status of investigations:

294. The Panel considers that substantial progress has not been made in the investigations into the violent events in Odesa on 2 May 2014.While this outcome may be explained to some extent by the contextual challenges, the Panel considers that the deficiencies identified in this Report have undermined the authorities' ability to establish the circumstances of the Odesa-related crimes and to bring to justice those responsible.

II. THE PANEL'S CONCLUDING REMARKS

295. In its Report relating to the Maidan investigations the Panel noted the deep scars left in Ukrainian society by the violent events in Kyiv and the important part played in any healing process by the conduct of an effective and independent investigation into those events. The Panel there found a clear lack of public confidence in Ukraine in any such investigation and a widespread perception of impunity on the part of the law enforcement agencies and of an unwillingness or inability on the part of the investigatory authorities to bring to justice those responsible for the deaths and injuries.

296. Very similar considerations apply in the case of the tragic events in Odesa on 2 May 2014, the evidence obtained by the Panel revealing a comparable lack of confidence in the adequacy of the investigations and in the ability of the authorities to bring to justice those responsible for causing or contributing to the many deaths and injuries on that day. In particular, despite the lapse of some eighteen months after the events in question, not a single charge has been brought in respect of the deaths resulting from the fire in the Trade Union Building. As in its Maidan Report, the Panel has in the current Report drawn attention to serious deficiencies, both structural and operational, in the independence and effectiveness of the investigations which have been so far carried out and which the Panel has found not to comply with the requirements of the European Convention or the case-law of the European Court.

297. The Panel was initially encouraged by the fact that, shortly after the events of 2 May, a series of inquiries was established, the results of which could have proved of considerable value in those investigations. Two such inquiries, set up by bodies not directly responsible for the investigations, were of particular significance.

298. The Temporary Investigation Commission established on 14 May by the former Verkhovna Rada under the Chairmanship of Mr Kisse was an important initiative, designed as it was to establish the facts of the events that had occurred ten days before. It found a series of shortcomings both in the readiness of the police to handle the anticipated mass disorder and in the measures taken by the police to deal adequately or at all with those participating in acts of violence on that day. It is, however, a matter of regret that several key figures refused to cooperate with the Commission, by repeatedly declining invitations to meet with it. It is similarly regrettable that, following the expiry of the mandate of the Commission after the parliamentary elections, its Report, adopted in September 2014, was never examined by the Verkhovna Rada and that a draft resolution to set up a new Commission, with the role, *inter alia*, of identifying those who had organised, aided and abetted crimes in the course of the mass disorder, is still under examination in the Verkhovna Rada, some ten months after the draft resolution was introduced.

299. The inquiry conducted by the Ombudsperson was similarly a valuable initiative, in the course of which numerous witnesses were questioned and official documents were examined and analysed. The Report of her inquiry, which was carried out between 6 and 23 May 2014, importantly concluded that the "Wave" plan had never been implemented on 2 May and that there been an attempt to have the order on the use of force signed and approved retrospectively. Although the Ombudsperson notified the PGO of her findings and requested the latter to carry out a comprehensive, objective and impartial investigation into the events, it is unclear what use if any was made of the findings, the PGO limiting its response to saying that the relevant investigations had been instituted and were underway.

300. The detailed work carried out by the 2 May Group, particularly the expert examination it conducted of the fire in the Trade Union Building, was, in the view of the

Panel, a further invaluable source of information for those responsible for the investigations. However, as in the case of the Ombudsperson's inquiry, the Panel finds no evidence that, at least in the early stages of the investigations, sufficient importance was attached by the investigating authorities to the results of the work carried out by the 2 May Group or to the need for closer cooperation with it.

301. There have, however, been positive developments. In particular, the Panel welcomes a more open approach on the part of the investigatory authorities. For example, while deficiencies remain in respect of the consistency, evenness and regularity of the information placed in the public domain, efforts have undoubtedly been made to keep the public informed about what happened on 2 May and what is being done to bring those responsible to justice. In addition, the Panel received good cooperation on the part of the authorities in carrying out its review.

302. As regards the conduct of the investigations themselves, the Panel commends the fact that both the MoI and the PGO have sought to ensure continuity as regards the main investigators working in Odesa. In this connection the Panel notes the apparent progress made in the case concerning police misconduct following the reappointment of Mr Zinkovskyi as the head of the PGO's investigative team, which resulted in the bringing of further charges in the case concerning police misconduct. It notes, too, the establishment by the MoI in April 2015 of an inter-agency group of experts, with the role of examining how the fire in the Trade Union Building started and progressed, as well as the conduct of the SES during the course of the fire and the MoI's investigators' assurances that further cases concerning the participants in the mass disorder are under preparation and will be sent to court soon. While these are promising developments, it is nevertheless right to recall the length of time that has now elapsed since the events that are the subject of the investigations. Moreover, the Panel remains concerned about the reduction in the staffing levels of the investigative teams in the PGO and MoI, which it finds have already had a detrimental effect on the progress, quality and effectiveness of those investigations.

303. The investigations into those events have once again reinforced the need for the establishment of the State Bureau of Investigations provided for under the Criminal Procedure Code. The Panel is encouraged by the active steps currently being taken by the Ukrainian authorities to set up the Bureau but would emphasise the importance that any such body should in all respects meet the requirements of independence and effectiveness under the European Convention.

304. There remain substantial challenges facing the investigation of the events in Odesa, which resulted in the tragic loss of life and serious injuries on 2 May 2014. As in the case of the Maidan investigations, it is to be hoped that, guided by the conclusions reached by the Panel in the current Report, further progress will be made in bringing to justice those responsible, in restoring public confidence in the legal system and in bringing closure to this further painful chapter in the history of Ukraine.

ANNEX I

MANDATE OF THE INTERNATIONAL ADVISORY PANEL[286]

1. In light of the existing political crisis in Ukraine, as well as the need to create public confidence in the investigations of the violent incidents which have taken place in Ukraine from 30 November 2013 onwards, Council of Europe Secretary General Jagland has proposed to create an International Advisory Panel (IAP).

2. The investigations will be conducted by the relevant Ukrainian authorities, in accordance with the Ukrainian law. The IAP will oversee that the investigations meet all the requirements of the European Convention on Human Rights and the case law of the European Court of Human Rights. To this end the IAP shall receive regular reports from the Prosecutor General's office on the progress of the investigations into mentioned incidents. The IAP shall have full access to all relevant information and the right to request and receive any additional information as it deems necessary. The IAP may issue advice and recommendations to relevant instances and bodies. Civil society shall have the right to contact and communicate freely with the IAP.

3. The Panel will be composed of three members: one to be appointed by the authorities, one by the opposition, and one from the international community - who will chair the Panel. All members should be legal professionals rather than politicians, and be widely respected within the Ukrainian society for their high level of professionalism and integrity.

4. At the end of the IAP's mission, a final report should be prepared by the Chair of the IAP and presented to the Secretary General of the Council of Europe and the Ukrainian authorities.

5. In view of ensuring the necessary working conditions of the IAP members, the Ukrainian Parliament may provide them with the necessary premises and tools.

6. Financial means for the mission of the IAP international member and his staff will be provided by the Council of Europe.

[286] For information concerning the extension of the Panel's Mandate so as to cover the events in Odesa, see "Introduction".

ANNEX II

PROCEDURE FOLLOWED BY THE PANEL

A. Written procedure

The Panel made several written requests for information to various authorities and NGOs, requesting detailed information about the nature and scope of the investigations:

- On 6 February 2015 a letter was sent to the PGO. The reply was received in due time.
- On 10 April 2015 letters were sent to the PGO, the MoI, the SSU, the Parliamentary Commissioner for Human Rights, the Chairperson of the Verkhovna Rada, the Mayor of Odesa, the Head of the Odesa State Administration and the Head of the Odesa Regional Healthcare Department.

  Responses were received from certain authorities, except the SSU and the Mayor of Odesa.
- On 13 May 2015 further letters of reminder were sent to the SSU and the Mayor of Odesa. Replies were received from both.
- On 15 and 27 May 2015 letters of invitation to meet were sent to the 2 May Group.
- On 21 and 27 May 2015 letters of invitation to meet were sent to the PGO, the MoI, the SSU, the Parliamentary Commissioner for Human Rights, the Chair of the TIC, the UN Human Rights Officer in Odesa and to various NGOs: Amnesty International, Centre for Civil Liberties, Human Rights Watch, Ukrainian Helsinki Human Rights Union.
- On 18 June 2015 a letter was sent to the MoI.
- On 22 June 2015 letters were sent to the PGO, the MoI, the SSU and the 2 May Group. Responses were received from all the authorities and the NGOs.
- On 30 June 2015 invitation letters were sent to certain lawyers of Odesa.
- On 23 July 2015 invitation letters were sent to the PGO, the MoI, certain lawyers practising in Odesa and the 2 May Group.
- On 17 August 2015 letters were sent to the PGO, the MoI, the SSU, the Ministry of Justice, the Council of Judges, the State Court Administration, the State Emergency Service, the Parliamentary Commissioner for Human Rights, the Chair of the TIC, the Chairperson of the Verkhovna Rada and the 2 May Group.

  Responses were received from the PGO, the MoI, the SSU, the Ministry of Justice, the State Court Administration, the State Emergency Service, and the 2 May Group.
- On 4 September 2015 a letter was sent to the PGO. The reply was received in due time.

Through its web page, the Panel also invited non-governmental organisations to make submissions. The 2 May Group accepted the invitation and made submissions to the Panel.

B. Oral procedure

The Panel held a series of meetings in Kyiv and Odesa with relevant authorities, lawyers and NGOs from June to July 2015:

- On 1-3 June 2015 the Panel held a series of meetings in Kyiv with:
  - Two representatives of the Parliamentary Commissioner for Human Rights;
  - Seven representatives of the PGO, including the Head of the Special Investigation Department Mr Serhii Horbatiuk. Two meetings on 2 and 3 June were organised.
  - Four representatives of the NGOs: Amnesty International, the Centre for Civil Liberties and the Ukrainian Helsinki Human Rights Union;
  - Eleven representatives of the MoI;
  - Two representatives of the SSU;
  - The Chair of the TIC, Mr Kisse and his assistant.
- On 4 June 2015 the Panel held meetings in Odesa with:
  - Four representatives of the 2 May Group;
  - Two representatives of the PGO.
- On 28 July 2015 the Panel held a meeting in Kyiv with the Head of the Special Investigation Department Mr Serhii Horbatiuk and four other representatives of the PGO.
- On 29-30 July the Panel held a series of meetings in Odesa with:
  - Two representatives of the PGO;
  - Three senior investigators of the Main Investigations Department of the MoI;
  - Head of the UN office in Odesa;
  - Six representatives of the 2 May Group;
  - Ten victims' and defence lawyers practising in Odesa.

ANNEX III

DRAMATIS PERSONAE

(in alphabetical order)

Name	Background
Arsen Avakov	Minister of the Interior since 27 February 2014.
Mykola Banchuk	Deputy Prosecutor General at the time of the events.
Volodymyr Bodelan	Head of the State Emergency Service in the Odesa Region at the time of the events.
Ihor Borshuliak	Head of the prosecution service in the Odesa region, 5 March to 21 May 2014.
Vitalii Budko	Suspected of having taken part in the mass disorder on 2 May 2014.
Vasyl Byrko	Senior investigator of the MID of the MoI; since 5 May 2014 in charge of the cases concerning the mass disorder, the fire in the Trade Union Building and the conduct of the SES staff; head of the investigative team in charge of the case concerning the conduct of the SES staff.
Serhii Chebotar	Deputy Minister of the Interior, March 2014 to May 2015.
Anton Davydchenko	Alleged to be a leader of AntiMaidan in Odesa in March 2014. On 22 July 2014 convicted for an offence against territorial integrity and inviolability of Ukraine. Brother of Artem Davydchenko.
Artem Davydchenko	Suspected of having organised the mass disorder on 2 May 2014. Brother of Anton Davydchenko.
Serhii Dolzhenkov	Suspected of having organised the mass disorder on 2 May 2014.
Dmytro Fuchedzhy	Deputy Head of the MoI Office in the Odesa Region and Head of the Regional Public Order Police by 3 May 2014. Acting Head of the MoI Office in the Odesa Region, 3-6 May 2014.

	Suspected of having neglected his duties on 2 May 2014 and having released the detainees on 4 May 2014.
Tetiana Herasymova	Journalist, co-ordinator of the 2 May Group.
Vsevolod Honcharevskyi	Suspected of, among others, assaulting those who had been jumping from the burning Trade Union Building.
Serhii Horbatiuk	(Senior) investigator at PGO since 2004. Since April 2014 Head of the second investigating unit of the Major Crimes Division of the MID of the PGO. Head of Special Investigations Division since December 2014.
Oleksandr Hrybovskyi	Suspected of having taken part in the mass disorder on 2 May 2014.
Volodymyr Huzyr	Deputy Prosecutor General, 14 February to 2 April 2015. First Deputy Prosecutor General since 2 April 2015.
Ivan Katerynchuk	Head of the MoI Office in the Odesa Region, 4 May 2014 to 16 June 2015.
Serhii Khodiak	Charged with having committed, *inter alia,* a murder on 2 May 2014 in Odesa.
Anton Kisse	Member of Parliament, Chairman of the Parliament's Temporary Investigation Commission charged with carrying out an inquiry into, inter alia, the events in Odesa on 2 May 2014.
Petro Lutsiuk	Head of the MoI Office in the Odesa Region by 3 May 2014.
Oleh Makhnitskyi	Acting Prosecutor General from February to June 2014.
Vitalii Muzyka	Senior investigator of the second investigative unit in the MID of the PGO. Head of the investigative team in the proceedings concerning the conduct of the police from July 2014 to 8 April 2015.
Valentyn Nalyvaichenko	Chief of the SSU, February 2014 to June 2015.
Volodymyr Nemyrovskyi	Head of the Odesa Regional State Administration, 3 March to 6 May 2014.
Andrii Parubii	Secretary of the National Security and Defence Council, 27 February to 7 August 2014.
Mykola Rudnytskyi	Senior investigator of the MID of the MoI; since 5 May 2014 in charge of the cases concerning the mass disorder, the fire in the Trade Union Building and the conduct of the SES staff; from

	5 May 2014 to August 2015 headed the investigative team in the case concerning the mass disorder and the fire in the Trade Union Building.
Vitalii Sakal	Deputy Head of MID of the MoI (January-February 2014). Head of the MoI Main Investigation Department (March 2014 to May 2015) and Deputy Minister of the Interior since (April 2014 to May 2015).
Ruslan Sushko	Senior investigator of the MID of the MoI; since June 2014 in charge of the cases concerning the mass disorder, the fire in the Trade Union Building and the conduct of the SES staff; since August 2015 has headed the investigative team in the case concerning the mass disorder and the fire in the Trade Union Building.
Mykola Volkov	Suspected of shooting into the Trade Union Building on 2 May 2014 in Odesa. Following his death in February 2015, the proceedings concerning him were discontinued.
Hryhorii Yepur	Member of the Odesa Regional Council, Chairman of the Council's Temporary Control Commission charged to exercise a control over the investigations led by the investigative authorities into the events in Odesa on 2 May 2014.
Ihor Zinkovskyi	Deputy Head of the second unit of the SID of the MID of the PGO. Head of the investigative team in the proceedings concerning the conduct of the police from 7 May to June 2014 and since 8 April 2015.

ANNEX IV

INFORMATION ON DEATHS RELATING TO THE EVENTS IN ODESA ON 2 MAY 2014[287]

Cause of death	**Clashes on and around Hretska square**	**Fire in the Trade Union Building**
Fall from a height	-	8[288]
Firearm injuries	6[289]	-
Carbon monoxide intoxication	-	9
Body burns	-	2
Burns of the respiratory tract and body	-	3
Burns of the respiratory tract and body combined with intoxication with an unidentified gas (combustion products)	-	5
Burns of the respiratory tract combined with intoxication with an unidentified gas (combustion products)	-	1
Intoxication with unidentified gases, fumes and vapours	-	14
TOTAL	**6**	**42**
	48	

[287] Based on the written submissions of the Odesa Healthcare Department of 23 April 2015 to the Panel.

[288] Seven persons died on the scene, one died later in a hospital.

[289] Including one person injured from an air gun weapon: four persons died on the scene, two died later in a hospital.

ANNEX V

(reproduced from the IAP Maidan Report, §§ 140-155)

RELEVANT DOMESTIC LAW ON PRE-TRIAL INVESTIGATIONS[290]

1. A pre-trial investigation, the initial stage of the criminal procedure, commences as a rule with the entry of information into the Unified Register of Pre-Trial Investigations (Unified Register). Under Article 214 § 1 of the CPC a prosecutor or an investigator is required to enter the information into the Unified Register within twenty four hours after he or she receives notice of a crime or discovers circumstances which may attest to the occurrence of a crime.

2. Article 38 of the CPC designates four bodies whose investigative departments are entitled to carry out pre-trial investigations. They are the law enforcement authorities (MoI), the Security Service of Ukraine (SSU), the authorities supervising compliance with tax law, and the State Bureau of Investigations.[291] Pending the establishment of the State Bureau of Investigations, its function remains with the public prosecution service.

3. According to Article 216 of the CPC, the law enforcement authorities carry out the pre-trial investigation of offences which entail criminal responsibility, unless the investigative jurisdiction is allocated to other investigating bodies. The SSU investigates, *inter alia*, cases concerning crimes against national security, peace, international order and territorial integrity. The State Bureau of Investigations will investigate crimes committed by officials who occupy a particularly important post in the state service[292] as well as by judges and officials of the law enforcement authorities.

4. Pre-trial investigations may be carried out by a single investigator or by an investigating group, the latter being created, for example, in complex cases. According to Article 40 of the CPC, the investigator in charge of a particular pre-trial investigation is to act independently when taking a procedural decision. He or she may only receive instructions from bodies authorised to give them. Certain actions may be taken by an investigator only with a prosecutor's approval. An investigator is obliged to comply with a prosecutor's instructions given in writing.

5. The public prosecution service, apart from carrying out pre-trial investigations pending the creation of the State Bureau of Investigations, supervises and provides procedural guidance in pre-trial investigations conducted by other investigating bodies and conducts the prosecution of the case in court.

6. The powers of a prosecutor, as regards supervision of pre-trial investigations, are set out in Article 36 of the CPC. A prosecutor is authorised, *inter alia*, to have full access to case materials, to instruct investigating authorities and operative units, to quash unlawful and unfounded decisions of an investigator, to approve, refuse to approve or amend an indictment and to submit the indictment to court.

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[290] For a detailed description of domestic law and procedure with regard to pre-trial investigations, and for CoE comments on certain provisions of the CPC adopted in 2012, see IAP Information Note No. 2 and IAP Information Note No. 3.

[291] The State Bureau of Investigations is not yet functioning: the CPC provides for its establishment, at the latest, by November 2017.

[292] The list of such officials is contained in Article 9 of the Law of Ukraine on State Service.

7. According to Article 36 § 5 of the CPC the Prosecutor General, his deputies, regional prosecutors or prosecutors of the same level are entitled to transfer an investigation to another pre-trial investigation authority, in the event of a lack of effective pre-trial investigations.

8. Article 36 of the CPC and Articles 6 and 7 of the Law on the Public Prosecution Service of 1991 provide for the independence of public prosecutors.

9. According to Article 41 of the CPC, in the course of pre-trial investigations, investigators and prosecutors are assisted by operative units. Operative units carry out investigative actions upon written instructions of an investigator or prosecutor, which instructions are obligatory for them. Operative units may not carry out investigative acts on their own initiative or address a prosecutor or investigator with such a request.

10. Under the above mentioned Article, operative units of the law enforcement authorities, the SSU, tax and customs authorities, the State Penitentiary Service and the State Border Guard Service are entitled to carry out investigative actions. The Law on Operative and Detective Actions of 1992 specifies the departments which carry out investigative actions (Article 5).

11. Having collected sufficient evidence allowing a person to be considered a suspect in a criminal case, a written notification of suspicion is issued to the suspect according to the procedure set out in Articles 276-279 of the CPC. The notification of suspicion is carried out in two stages: the drawing up of the written notice of suspicion itself and the serving of the notice on the suspect. The notice of suspicion should be given to the suspect on the same day it was drawn. If the suspect has absconded, the notice is served on the suspect after he or she is found.

12. Under Articles 280-282 of the CPC an investigator or prosecutor may suspend pre-trial investigations in certain cases: for instance, if a suspect is hiding from the investigating authorities and/or the court to avoid criminal responsibility and his location is unknown or in cases where there is a need to carry out procedural acts within the framework of international co-operation activities, such as extradition.

13. Article 217 of the CPC entitles a prosecutor to join several cases into one casefile at the pre-trial investigations stage (for instance, if materials concern several persons suspected of committing the same crime) or to separate cases (for instance, if the same person is suspected of committing several crimes).

14. Article 28 of the CPC provides that each procedural step and decision should be carried out and adopted, respectively, within reasonable time-limits. Under Article 219 of the CPC, pre-trial investigations concerning a crime should be completed within two months from the moment when a person is given a notice of suspicion. Depending on the gravity and complexity of the crime, that time-limit may be extended to six or twelve months.

15. The pre-trial investigation is completed when criminal proceedings are terminated or when one of the following documents is submitted to a court – an indictment, a request for the application of compulsory measures of a medical or educational character, or a request for release from criminal responsibility (Chapter 24 of the CPC).

16. Preliminary court proceedings and then the court trial follow, provided no grounds are found to terminate criminal proceedings or to release the person from criminal responsibility.

ANNEX VI

PUBLIC STATEMENTS BY THE INVESTIGATIVE AUTHORITIES WITH RESPECT TO THE EVENTS OF 2 MAY 2014 IN ODESA AND THE ENSUING INVESTIGATIONS[293]

A. Statements on 2 May 2014

1. At 4.43 p.m. the MoI reported that a confrontation between AntiMaidan activists, on the one hand, and football fans and EuroMaidan activists, on the other, had been unfolding on Hretska Street in Odesa; the law enforcement officers on the spot had been doing their best to stop the violence.[294]

2. At 4.55 p.m. the MoI stated that the confrontation had moved to Kulykove Pole[295] and at 5.01 p.m. (sic) that a fire had broken out in the Trade Union Building.[296]

3. At 6.43 p.m. the MoI added that the police had managed to separate the two sides with a cordon and to bring the conflict to an end; however, after a while the clashes had resumed. It also reported that by that time three persons had died and 15 persons had been taken to hospital with injuries of various degrees of seriousness as a result of clashes and that, in addition, three police officers had been injured. In the meantime, a criminal investigation had been instituted under Article 294 § 2 (mass disorder) of the Criminal Code and an investigative and operational team had been working at the crime scene.[297]

4. At 8.09 p.m. the MoI reported that the AntiMaidan activists had seized the Afina Shopping Centre and had barricaded themselves inside; some of them had been already been caught and taken to the police station. The police had been negotiating with the remaining activists to surrender and leave the building.[298]

5. At 9.38 p.m. the MoI announced that 31 persons had died as a result of a fire in the Trade Union Building and that 50 persons (including ten police officers) had requested medical aid; the final toll was still being clarified. The State Emergency Service ("SES") officers had already extinguished the fire.[299]

B. Statements after 2 May 2014

1. On 3 May 2014

6. In the morning, Mr Avakov announced that he had dismissed the head of the MoI Office in the Odesa Region, Mr Lutsiuk, and that an internal inquiry had been instituted into

[293] The aim of this Annex is to show how the investigative authorities informed the public of their activity. It contains a summary of statements provided by the PGO and MoI at the Panel's request and statements found by the Panel's researchers. The statements referred to in the Annex are not intended to be exhaustive and the summaries should not be used as substitutes for the original statements.

[294] MoI website, news of 2 May 2014 (at 4.43 p.m.).

[295] Loc. cit., news of 2 May 2014 (at 4.55 p.m.).

[296] Loc. cit., news of 2 May 2014 (at 5.01 p.m.).

[297] Loc. cit., news of 2 May 2014 (at 6.43 p.m.).

[298] Loc. cit., news of 2 May 2014 (at 8.09 p.m.).

[299] Loc. cit., news of 2 May 2014 (at 9.38 p.m.).

the behaviour of the Odesa police in general. According to the Minister, 42 persons had died and 125 persons (including 21 police officers) had been injured and hospitalised as a result of the clashes and the fire on 2 May.[300]

7. On the same day the MoI reported that 160 of the most active participants in the clashes had been detained and that three sets of criminal proceedings had been instituted: two under Article 294 § 2 (mass disorder) of the CC and one under Article 345 § 3 (threats or violence against a law enforcement officer) of the CC.[301]

8. Later that day it was announced that a special commission headed by Mr Chebotar, Deputy Minister of the Interior, had been set up to investigate the events of 2 May. Mr Chebotar was quoted as saying that "the police [had taken] all available measures to deescalate the conflict and to reduce the number of casualties". According to him, the MoI had instituted ten sets of criminal proceedings in connection with the events in question and had detained 172 persons. Following certain investigative measures, some of the detainees had been released on their personal undertakings, whereas 127 persons had been retained in custody as active participants in the mass disorder. He also noted that the extremists had been thoroughly prepared for the clashes, referring to the firearms (smooth-bore and rifles), traumatic weapons and considerable quantities of flammable materials seized by the police.[302]

9. According to the preliminary conclusions of the SES in the Odesa Region, following an on-site inspection, the fire in the Trade Union Building could have been caused by Molotov cocktails thrown from the upper floors of the building; the fire had spread from the upper floors over a considerable surface area of the building.[303]

10. The Acting Prosecutor General, Mr Makhnitskyi, reported that 46 persons had died, six as a result of firearm and other injuries inflicted on Hretska Square and 40 as a result of the fire in the Trade Union Building, of whom 32 had died from carbon monoxide poisoning and eight had died as a result of fatal injuries caused by falling from a height; at least 200 persons had sought medical assistance and 44 persons had been hospitalised (25 being in a serious condition) as a result of the clashes the day before. In addition, 14 police officers had sought medical assistance. It was also stated that "because the Trade Union Building had been bombarded with bottles containing flammable materials, a fire had started on the first, second, and third floors". 210 persons had however been evacuated from the building. Mr Makhnitskyi was quoted as saying that "the events on 2 May in Odesa have shown what can result from external agitation and from a lack of foresight on the part of certain officials who neglected their duty to protect public order". According to him, a special team from the PGO headed by Mr Banchuk had arrived in Odesa to oversee the investigations. A criminal investigation into the deaths had been opened under Articles 294 § 2 and 345 § 3 of the CC; 93 persons had been detained under Article 208 of the CPC on the grounds of their participation in mass disorder. In addition, it was reported, the Prosecutor's Office in the Odesa Region had instituted an investigation under Article 367 § 2 of the CC into the failure of the law enforcement officers to fulfil their duties, leading to grave consequences.[304]

11. The then head of the Prosecutor's Office in the Odesa Region, Mr Borshuliak, also held a briefing.[305] In his view, casualties could have been avoided if the police had taken

[300] Loc. cit., news of 3 May 2014 (at 9.46 a.m.).
[301] Loc. cit., news of 3 May 2014 (at 11.15 a.m.).
[302] Loc. cit., news of 3 May 2014 (at 2.30 p.m.).
[303] Loc. cit., news of 3 May 2014 (at 4.48 p.m.).
[304] PGO website, news of 3 May 2014.
[305] Website of the Prosecutor's Office in the Odesa Region, 3 May 2014.

effective and urgent measures. He stated that his Office had already instituted investigations under Article 367 § 2 of the CC into the failure of law enforcement officers to fulfil their duties. At the same time, the prosecution service were supervising a number of investigations led by the MoI. For the purposes of ensuring a proper investigation, the Prosecutor's Office had also set up an inter-agency investigative and operational group, which included representatives of the local offices of the MoI and the SSU. It was further reported that, as a result of the events of 2 May, nearly150 persons had already been detained.

2. On 4 May 2014

12. On 4 May Mr Banchuk was reported to have decided to transfer the casefile concerning the mass disorder from the MoI Office in the Odesa Region to the MID of the MoI, in order to ensure a comprehensive, objective and impartial investigation. Investigators of the Prosecutor's Office in the Odesa Region would continue to investigate, under Article 367 § 2, the failure of law enforcement officers to fulfil their duties.[306]

13. At 5.30 p.m. the MoI announced that 67 persons detained on grounds of their participation in the mass disorder on 2 May had been released on the directions of the Prosecutor's Office in the Odesa Region, following the demands of a mob of protesters.[307]

14. Later the same day, Mr Avakov admitted that the police in Odesa had acted "deplorably, perhaps criminally" and stated that he had dismissed all the police heads involved. Nonetheless, other "heroes" should also in his view be made known: first, on the day of the clashes, the prosecutor had summoned all the heads of the local police for a meeting, with their mobile telephones switched off; the meeting had lasted from 12 noon to 4 p.m., even though the rally had started at 3 p.m.; secondly, the police had intended, as a matter of urgency, to transfer to another region over 100 persons detained after the clashes on 2 May so as to prevent further possible clashes, but the prosecutor had forbidden this; thirdly, after groups of separatists had stormed the police station, the prosecutor had decided to release the detainees.[308]

15. Mr Makhnitskyi, expressing his surprise at the allegation which had been widely reported in the mass media that the release of detainees had taken place on the instruction of officials of the prosecution service, denied the allegations, noting that neither Mr Banchuk, the Deputy Prosecutor General, nor Mr Borshuliak, Head of the Prosecutor's Office in the Odesa Region, had given or could have given any order to release those detainees since "such actions [were] qualified as State treason and as direct support of separatism, something that the PGO [had been] fighting strenuously for a long time". The Prosecutor's Office in the Odesa Region had opened an investigation under Articles 365 (excess of power) and 367 (neglect of duty) of the CC into the actions of the police. The Acting Prosecutor General underlined that the PGO would open a new case against anyone who obstructed the progress of the investigation.[309]

16. The Prosecutor's Office in the Odesa Region also made a statement rejecting the allegation of its involvement in the release of 67 detainees. It was said that the decision to release the detainees had been taken by the management of the MoI Office in the Odesa Region itself without any involvement of the Prosecutor's Office. The Prosecutor's Office in

[306] PGO website, news of 4 May 2014.
[307] MoI website, news of 4 May 2014 (at 5.30 p.m.).
[308] Loc. cit., news of 4 May 2014 (at 11.25 p.m.).
[309] PGO website, news of 4 May 2014.

the Odesa Region had accordingly instituted an investigation into the actions of the police under Articles 365 § 2 and 367 § 1 of the CC.[310]

17. In the evening the MoI announced that Mr Katerynchuk had been appointed as the new head of the MoI Office in the Odesa Region.[311]

3. On 5 and 6 May 2014

18. On 5 May Mr Avakov announced that a special unit of the National Guard had arrived in Odesa to maintain public order.[312] According to him, 42 persons suspected of organising and participating in the mass disorder in Odesa on 2 May had been transferred to another region.[313]

19. On 6 May the MoI clarified the official toll as a result of the events on 2 May: 46 persons had died, of whom only 38 had been identified. In addition, five declarations about missing persons had been lodged with the police; two had been established as relating to persons who had died.[314]

20. Later that day Messrs Chebotar and Katerynchuk held a press conference.[315] Mr Chebotar stated that the investigations were underway and that 160 persons who had taken part in the events on 2 May had been detained. According to him, further arrests would be announced soon. Mr Chebotar also noted that all three deputy heads of the Odesa Regional MoI Office had been suspended pending the investigations.

21. On the same day, Mr Makhnitskyi gave an interview which partly covered the investigations into the events on 2 and 4 May in Odesa.[316] Replying to a question concerning the conflicting accounts as to whether the prosecution service or the police had been responsible for the release of the detainees on 4 May, Mr Makhnitskyi said that he had immediately ordered an internal inquiry into the actions of Mr Banchuk, the Deputy Prosecutor General, and the officials of the Odesa Regional Prosecution Office. In addition, criminal investigations into the release of detainees were pending, but it had already been established that the prosecution service had not been involved in the incident. According to the testimonies of the police officers, the order had been given by the Head of the Odesa City MoI Office, with the approval of the Acting Head of the Odesa Region MoI Office. This had already been established by the investigation.

As to the alleged inactivity of the police during the events on 2 May, Mr Makhnitskyi said that at that stage one could already speak not only of the inactivity of police officers but of their complicity:

> "We have certain established facts. We also have information which suggests greater complicity on the part of the police but I cannot talk about that now. However, there is video footage showing that police officers remained passive when the thugs were shooting people."

[310] Website of the Prosecutor's Office in Odesa Region, news of 4 May 2014.
[311] MoI website, news of 4 May 2014 (at 8.01 p.m.).
[312] Loc. cit., news of 5 May 2014 (at 9.00 a.m.)
[313] Loc. cit., news of 5 May 2014 (at 9.13 a.m.).
[314] Loc. cit., news of 6 May 2014 (at 10.42 a.m.).
[315] Loc. cit., news of 6 May 2014 (at 7.01 p.m.).
[316] 5th TV Channel, Interview, 6 May 2014 (relevant discussion starts at 8.07).

A journalist claimed that gunmen had been shooting from behind the backs of police officers. Mr Makhnitskyi confirmed this, and added that:

> "we saw that the thugs wore red bands and police officers wore the same red bands. This shows that there was a joint criminal intent; they had prepared the red bands in advance, there was an agreement between police officers and the thugs, I cannot call them by any other word. Also, we saw that when the city police station where the detainees had been held was attacked, the police officers blatantly threw away their shields and joined the side of the thugs. There are grounds to consider this to be a criminal offence. The case is being examined by the PGO since I ordered Mr Bahanets, who is responsible for the investigation department of the PGO, to take the case over."

Replying to a question on what was the preliminary version of events – whether inactivity on the part of law enforcement officials or a pre-planned conspiracy – Mr Makhnitskyi stated that there had indeed been police inactivity and, as to the events of 2 May in general, it had been planned in advance. It had been organised in advance and the roles had been assigned as well. He said that details would be revealed after the investigations had been completed but could not be revealed at the moment to avoid the risk of the implicated persons absconding.

As to the causes of the fire in the Trade Union Building, Mr Makhnitskyi stated that this was being established in the course of the investigations. He said that, at that moment, it was too early to talk about the specific causes of the fire. In his opinion, foreign pyrotechnics experts, possibly from the United States, should be involved so that the forensic examination would be carried out by independent experts and that there could be no doubts about its results. However, it could already be said that AntiMaidan protesters, who had taken over the Trade Union Building, had been throwing Molotov cocktails at the pro-unity activists who had been trying to get into the building. This could have been the reason why the building had been set on fire. The theory of arson by pro-unity activists was also being investigated. All these theories were subject to verification in the course of the investigation by forensic experts, after which conclusions could be drawn.

4. On 7 May 2014 and later

22. On 7 May Mr Katerynchuk reported that the leaders and active participants of the events on 2 May were four well-known residents of Odesa and its region. Out of the four, one had fled to Crimea, two were in Moscow and one had been detained the day before and transferred to Kyiv, as the investigation was being carried out by the MID of the MoI. He also stated that several dozen of those who had attacked the police station on 4 May had been detained. Replying to a question concerning Mr Fuchedzhy, Mr Katerynchuk stated that Mr Fuchedzhy had offered his resignation and that his offer had been accepted.[317]

23. The PGO in its turn reported that its MID had been investigating the actions and/or omissions of the senior police officers in Odesa on 2 and 4 May 2014 under Articles 365 § 3 and 367 § 2 of the CC; the SSU was currently escorting three officers of the Odesa city police to Kyiv.[318]

24. Later that day Mr Avakov announced that Mr Fuchedzhy had left the territory of Ukraine at 5.00 p.m. and had been put on a wanted list. The Minister denied allegations that Mr Fuchedzhy had been released on his personal undertaking.[319]

[317] MoI website, news of 7 May 2014 (at 5.49 p.m.).
[318] PGO website, news of 7 May 2014.
[319] MoI website, news of 7 May 2014 (at 9.06 p.m.).

25. On 8 May Mr Chebotar reported that the police had detained Messrs Artem Davydchenko[320] and Dolzhenkov, both key suspects, and had transported them to Kyiv. According to him, a number of extremist organisations had been active in the Odesa region; they had been supported from abroad and their activity had been aimed at stirring discontent among pro-Russian residents and destabilising the situation in the region. The Deputy Minister also gave assurances that other suspects who, on instructions from abroad, had incited mass disorder in Odesa would soon be detained.[321] Later it was announced that the police had detained two other key suspects, in addition to Messrs Artem Davydchenko and Dolzhenkov, who had allegedly actively participated in the organisation of the mass disorder on 2 May – Messrs Mykola Serebriakov and Serhii Bovbalan, the latter of whom was a member of the Odesa City Council. It was also stated that two witnesses had identified Mr Dolzhenkov as the person who had organised the mass disorder.[322]

26. On 13 May Mr Chebotar stated that ten persons had expressed their wish to co-operate with the investigative authorities. According to their testimonies, the events in Odesa on 2 May had been planned by extremist organisations to destabilise the region. The investigation into those events was still pending and the authorities were continuing to arrest the persons involved.[323]

27. On 14 May the PGO reported that an internal inquiry into the behaviour of Messrs Banchuk and Borshuliak during the events on 2 May had been completed and that no breach of the law had been detected.[324]

28. At a press-conference[325] on 15 May Mr Katerynchuk stated that two aspects of the events in question were being investigated: first, an examination of the conduct of civilians on which a team from the MID of the MoI was currently working in Odesa with the support of local officers and, second, an examination of the conduct of the police, on which a team from the MID of the PGO was working in parallel.

Mr Katerynchuk also gave updated information about the death toll: 48 persons had died, of whom six had died as a result of firearm injuries, 32 had been suffocated by gases and fumes in the fire and ten had died having fallen from a height. Of those 48 persons, seven were women, one was a minor, and three were as yet unidentified. Only two of the 48 had been from other regions of Ukraine, the others being locals. The next-of-kin had been notified about the deaths and their causes. Mr Katerynchuk further described in detail the locations within the Trade Union Building where the bodies had been found. He also stated that, following the crime scene inspection, the authorities had found a revolver loaded with six cartridges; a charred sports pistol loaded with three cartridges, one cartridge having already been loaded in the chamber; 11 cartridge cases of various calibres; six wooden sticks; a nunchaku; four helmets; three gas masks; three knives; and two axes. In the Trade Union Building they had also found 24 half-litre glass bottles and a four-litre container with the remains of petroleum products. All those objects were the subject of forensic examinations which were currently being carried out. The authorities had also extracted, from five bodies, shot and metal fragments which appeared to be shot. A metal bullet of 5.45 calibre had also

[320] The brother of Anton Davydchenko, who had been tried earlier – see "The Facts", paragraph 4 above. In response to the Panel's question, the authorities denied that Mr Artem Davydchenko had ever been detained in respect of the events of 2 May; see paragraph 163 above.

[321] MoI website, news of 8 May 2014 (at 12.49 p.m.).

[322] Loc. cit., news of 8 May 2014 (at 4.46 p.m.).

[323] Loc. cit., news of 13 May 2014.

[324] PGO website, news of 14 May 2014.

[325] MoI website, news of 15 May 2014.

been extracted from one body. The authorities had ordered and were currently awaiting the conclusions of forensic medical examinations aimed at definitively establishing the causes of the deaths and whether the victims had had alcohol or carbohaemoglobin in their blood. A number of other forensic (complex, molecular and genetic and fingerprint) examinations were also currently pending.

As to the number of arrested persons, Mr Katerynchuk reported that 16 persons were being held in custody and 33 persons were under house arrest. In addition, the authorities were checking 12 other persons allegedly involved in the events in question and, if evidence in support of their guilt were found, the authorities would notify them of suspicion and apply to the court for preventive measures.

In reply to a question as to the political affiliations of the detained, Mr Katerynchuk stated that he did not differentiate; the only thing that mattered for him was whether a person kept the law.

Mr Katerynchuk further denied that any special gas had been used to poison those in the Trade Union Building; nor had any explosives been used. Nevertheless, forensic examinations aimed at identifying the substances in addition to petrol and diesel in the bottles that had burned in the building were underway. He also denied, as unfounded, allegations that there had been hundreds of deceased and missing persons.

As to whether people had been enticed into the Trade Union Building and whether the events on 2 May had been organised in advance, Mr Katerynchuk stated that the two versions were being checked by the investigative authorities and that he could not at the moment comment on them.

29. On 16 May Mr Chebotar reported that, in the course of the investigations into the events of 2 May, the authorities had tracked down the criminal activities of two gangs, which had involved Odesa police officers. Members of the gangs had been selling ammunition to extremists. As a result, the gangsters had been arrested and a hundred firearm cartridges had been seized from them. The police officers involved had been dismissed.[326]

30. On 19 May Mr Sakal, Deputy Minister of the Interior and head of the MID of the MoI, held a press conference.[327] According to him, the investigation into the events of 2 May had been instituted under six provisions of the CC: Articles 294 (mass disorder), 115 (murder), 341 (seizure of State and public buildings), 345 (threat or violence against a law enforcement officer), 296 (hooliganism) and 194 (deliberate destruction of or damage to property). A joint investigative and operational team had been set up, consisting of about 200 MoI and SSU officers, including nearly 150 investigators. The investigative authorities were pursuing four lines of inquiry, the principal one being that the mass disorder and murders had been organised at the request of extremist groups to destabilise Odesa, its region and other regions of Ukraine. Other theories were that the mass disorder had been organised by the local authorities, including the law enforcement authorities, with the aim of damaging the reputation of the newly established government; that it had resulted from the uncontrolled actions of football fans and pro-Russian groups with the connivance of the local authorities and the police; and that it had been caused by agitation by extremists.

Referring to the complex forensic examination report on combustibles and flammables, Mr Sakal announced that samples of chloroform had been detected at the crime scene. He assumed that chloroform might have caused the death of those in the Trade Union Building but the authorities had applied to the Israeli Embassy in Ukraine, seeking the assistance of

[326] Loc. cit., news of 16 May 2014.
[327] Loc. cit., news of 19 May 2014.

their experts to establish the quantity of chloroform used at the crime scene. As to the fire itself, according to the chart produced during the press conference, the building had been set alight from the outside and its epicentre had been on the ground floor to the right of the main entrance. The Deputy Minister stated that Molotov cocktails had been thrown by both sides, from the upper floors of the Trade Union Building and into the building from the outside.

Mr Sakal concluded by providing a list of twelve persons who were held in custody pending the conclusion of the investigations.

31. On 21 May the MoI reported that the investigative authorities had already established that the events in Odesa on 2 May 2014 had been planned and organised beforehand and that they had sufficient evidence that certain political parties had been involved in that organisation. In particular, the investigative authorities had established that certain members of the Odesa City Council – namely Mr Bovbalan and Mr Yevhen Khaikin, both of the *Rodyna* Party – had been involved in the organisation of the events. They would soon be notified of suspicion and put on a wanted list. Referring to the statement of the *Udar* Party about agitation against its Odesa mayoral candidate, it was clarified that in the course of the investigation the authorities had arrested Serhii Dolzhenkov. In addition, the investigative authorities had questioned his brother, Oleh Dolzhenkov, who was one of the heads of the electoral campaign office of the Odesa mayoral candidate of the *Udar* Party. No further steps had been taken concerning Oleh Dolzhenkov.[328]

32. In view of the forthcoming elections, the MoI issued a further statement with the aim of preventing the manipulation of public opinion through the use of its statements concerning the events in Odesa on 2 May 2014.[329] In particular, the MoI stated that the investigative authorities did not have information as to any involvement of Eduard Hurvits, an Odesa mayoral candidate, or of the Odesa branch of the *Udar* Party in the preparation of the crimes committed on 2 May. The Ministry also stated that it had taken into account the statement of the *Udar* Party that the Dolzhenkov brothers were not connected to the Party.

33. On 2 June Mr Hryhorii Mamka, Deputy Head of the MID of the MoI, reported on the progress of the investigations during the course of the month.[330] According to him, the investigation into the mass disorder in Odesa had been transferred to the MID of the MoI. The investigative and operational team consisted of the most experienced investigators and operative officers of the SSU and the MoI. The investigators had already ordered over 80 forensic examinations. Some reports were arriving but most of them, including autopsies, were still awaited. On receipt of those forensic reports, a complex forensic examination, with the engagement of foreign experts, would be ordered to establish the causes of death of those found in the Trade Union Building. Furthermore, one of the 48 persons who had died had not yet been identified and a DNA test had been ordered for that purpose.

The Deputy Head noted that currently 40 suspects were under house arrest and another 13 were being held in custody. To identify those who had taken part in the mass disorder, the investigators had had to study frame by frame a huge quantity of footage recording the events which had already been collected and was still being received. In addition, the investigators had already questioned over 340 persons. The Trade Union Building had been given the status of material evidence and the Odesa Regional MoI Office had been charged with preserving it.

[328] Loc. cit., news of 21 May 2014 (at 11.19 a.m.).
[329] MoI website, news of 21 May 2014 (at 11.08 p.m.).
[330] Loc. cit., news of 2 June 2014.

Mr Mamka also complained that investigators had been confronted with the problem that certain persons had given false personal data when seeking medical assistance. The investigators were doing their best to identify those persons or their next-of-kin in order to question them and to grant them victim status. Some of those persons, even after being identified, had refused to provide evidence.

34. On 13 August Mr Sakal, Deputy Minister of the Interior and the head of the MID of the MoI, provided a further update on the investigations. He recalled that, as a result of the events on 2 May, the police had detained 114 persons, "mostly pro-Russian", on the grounds of their participation in mass disorder. However, more than 60 had been released a few days later when the police station had been stormed. As to the remaining detainees, the investigators had already examined 54 persons, of whom 48 had been notified of suspicion. However, "because of the pressure on the local courts", only 13 of those 54 had been retained in custody, while the remaining persons had been placed under house arrest. As a result, some of the suspects had fled and had, accordingly, been put on a wanted list. The Deputy Minister referred to, among others, Messrs Budko,, Artem Davydchenko, Shabalin, Vinenko, Kukhar, Shparak, Kulta and Oleksii Fominov, among others.[331]

35. On 25 September the MoI reported that the pre-trial investigation in the case concerning 24 persons suspected of organising and participating in mass disorder, had been completed. They had been charged under Articles 294 § 2 (mass disorder) and 263 § 1 (illegal possession of weapons, ammunition or explosives) of the CC. Those persons and their counsel were currently studying the casefile; once this was completed, the case would be sent to court. Another nine persons, including the organisers and participants in the mass disorder and those who had committed murder, had been put on a wanted list and measures aimed at establishing their whereabouts were being taken. Investigations concerning other persons suspected of mass disorder on Kulykove Pole and in the Trade Union Building were still pending.[332]

36. On 30 September Mr Avakov gave an interview in which he commented on the investigations concerning the events on 2 May.[333] According to him, the MID of the MoI, which was responsible for the investigations, had already established those responsible and 40-50% of the cases had already been sent to the Odesa courts. He anticipated that the first judgments on the merits might be delivered in the autumn.

The interviewer asked, referring to the Ombudsperson's statement that the events had been caused by the inadequate reaction of the local police, whether a relevant internal inquiry had been carried out by the MoI. Mr Avakov expressed the view that the Ombudsperson had oversimplified the situation. In his view, the events had resulted from a number of factors: first and foremost, the lack of competence of both the local police and the Prosecutor's Office (in this regard he referred to the meeting arranged by the Prosecutor's Office which was responsible for the delay in the reaction of the police);[334] secondly, the "time-servers" in the local police force who had not performed their duties in a proper way; and thirdly, the "professional provocateurs and fools" who had fuelled the tensions without anticipating the possible consequences.

37. On 3 November the PGO reported that it had completed the pre-trial investigation in the case concerning the three former police officers who had released 63 detainees on 4 May.

[331] Loc. cit., news of 13 August 2014.
[332] Loc. cit., news of 25 September 2014.
[333] Loc. cit., news of 30 September 2014.
[334] For information on the meeting, see "The Facts", paragraph 14 above.

They had been charged under Articles 365 § 1 and 367 § 1 of the CC. As soon as the accused and their counsel had completed their study of the casefile, the cases would be sent to a court.[335]

38. On 28 November the PGO announced that it had transmitted to the Prymorskyi District Court of Odesa an indictment concerning 21 persons suspected of having committed crimes under Articles 294 § 2 and 263 § 2 (sic) of the CC. In the course of the preliminary court hearing the prosecutor had successfully applied to the court to extend the detention of ten of the accused. The investigations concerning other persons were still pending.[336]

39. On 22 April 2015 Mr Huzyr, the first Deputy Prosecutor General, held a briefing on the state of the investigations into the events of 2 May 2014 and the results achieved.[337] He reported that, in their investigations, the authorities (the MoI and PGO) had focused on three aspects of the tragedy. The first concerned the behaviour of the police on the date in question. As a result of the investigation a notice of suspicion had been served on Mr Fuchedzhy for his failure to take adequate measures aimed at protecting public order. Mr Fuchedzhy was currently on a wanted list as he had fled abroad. In addition, three other police officers had been indicted and the proceedings were pending before a trial court.

The second aspect concerned those who had organised and actively participated in the mass disorder. As a result of the investigation, the PGO had indicted 22 persons, 11 of whom were detained on remand, and the proceedings were pending before a trial court. Proceedings against one person, Mr Volkov, had been terminated because of his death; the investigation concerning another person, Mr Khodiak, was at an advanced stage and would soon be transmitted to a court. Thirteen other suspects were on a wanted list.

The third aspect concerned the fire in the Trade Union Building. According to the forensic medical examinations, those found in the building had no signs of torture or ill-treatment, or of firearm or other injuries. They had all died as a result of carbon monoxide and other combustible poisoning, as well as of the very high temperature. This had been caused by the rapid spread of the fire in the building itself and the increase in temperature caused by closing the interior doors, as well as by a chimney effect in the stairwell. Most of those who had died inside the building were in the stairwell or close to it; others who had been found in the rooms had died as a result of carbon monoxide poisoning. The use of poisonous gases or chloroform had not been confirmed in the course of the investigation. Nor was there any confirmation of the theory that the fire had been planned in advance. According to the forensic reports, the fire had broken out in the lobby and stairwell of the main entrance. It had been caused by the combustible substances used by both sides; the barricades erected near the staircase had contributed to the fire's spread.

In addition, the investigators had found that officers of the SES in the Odesa Region had negligently performed their duties and had belatedly sent fire engines to the building. The investigation was being pursued by the MID of the MoI.

40. On 28 April 2015 the PGO announced that on 22 April it had transmitted Mr Khodiak's case to the Prymorskyi District Court of Odesa. According to the PGO, on 2 May 2014 in Odesa Mr Khodiak had fired several canister shots from his hunting gun in the direction of a group of people who were attacking the football fans and law enforcement officers. As a result, one person had died and another, a law enforcement officer, had suffered grave and moderately severe bodily injuries. Mr Khodiiak was charged under

[335] PGO website, news of 3 November 2014.
[336] Loc. cit., news of 28 November 2014.
[337] Loc. cit., news of 22 April 2015.

Articles 115 § 2 (5) and (7) (murder), 15 § 2, 115 § 2 (1), (5) and (7) (murder), 294 § 2 (mass disorder), and 348 (attempted murder of a law enforcement officer) of the CC.[338]

41. On 2 May 2015 the PGO reported that on 30 April it had served the former head of the MoI Office in the Odesa Region, Mr Lutsiuk, with a notice of suspicion of the offence of negligence in office on 2 May 2014. The PGO also recalled that on 17 October 2014 it had notified Mr Fuchedzhy, the former deputy head of the MoI Office in the Odesa Region who was currently on a wanted list, of suspicion of having committed offences in office on 2 May 2014.[339]

42. On the same day Mr Roman Hovda, the recently appointed Head of the Prosecutor's Office in the Odesa Region, gave an interview to a local TV channel which touched upon, among other matters, the investigations into the events of 2 May 2014.[340] In reply to the question about the main reason for such a high number of victims, Mr Hovda stated that one of the reasons why these events had been allowed to happen and had resulted in such a high number of victims had been the lack of proper organisation and the failure to ensure public order protection on the part of the law enforcement bodies. There was evidence that the police had received information in advance from different sources of the possibility of such events happening. They should have taken proper measures to react to such information. It was apparent from the results of the pre-trial investigations that this had not happened.

Mr Hovda went on to repeat the information already given about the state of the investigations and the progress achieved to that point.

As to the work of the local SES and the medical service on 2 May, Mr Hovda noted that the actions of those services were the subject of investigation. No person had been notified of suspicion but, as far as he knew, the record in that case "would soon be set straight".

Mr Hovda concluded by highlighting the main obstacles that had made it impossible to complete the investigations more quickly. According to him, these were the very large number of people who had taken part in the mass disorder and the time needed to identify persons wearing balaclavas, masks or scarfs to hide their faces and to identify persons who had been caught on video footage but who had not been recognised by anyone. This was the reason why the investigations had not progressed quickly. Nevertheless, steps continued to be taken and new information was being added on a daily basis concerning the participants in the mass disorder, in particular those who had been recorded on video with weapons or taking other aggressive action. Referring to the secrecy of the investigations, Mr Hovda was unable to divulge that information but gave an assurance that the authorities possessed more information than he was currently able to share.

43. On 13 May 2015 the PGO reported that on the same day the Pecherskyi District Court of Kyiv had allowed its request to place the former head of the MoI Office in the Odesa Region, Mr Lutsiuk, under house arrest, the strongest preventive measure in respect of those suspected of negligence in office.[341]

44. On 26 May 2015 Mr Yurii Sevruk, head of the PGO Main Department for the Supervision of Criminal Proceedings, held a briefing to report on the work of his Department on cases concerning, among others, the events of 2 May 2014 in Odesa. According to him, as a result of the investigations, three bills of indictment concerning 23 persons had been sent to court, while another 13 persons (organisers and active participants) had been put on a wanted

[338] Loc. cit., news of 28 April 2015.
[339] Loc. cit., news of 2 May 2015.
[340] *Pervyi Gorodskoi* (Odesa TV Channel), Interview, 2 May 2015.
[341] PGO website, news of 13 May 2015.

list. On 2 May 2015 the Malynivskyi District Court of Odesa had returned one of the bills of indictment to the prosecution service, but on 14 May that decision had been quashed upon a prosecutor's appeal and the next first-instance court session had been scheduled for 29 May 2015. At the same time, investigations into possible negligence on the part of the SES in the Odesa Region were pending and the results of a forensic examination were awaited.[342]

45. The Panel is not aware of any subsequent public statements made by the authorities prior to its cut-off date of 31 August 2015.

[342] Loc. cit., news of 26 May 2015.

ANNEX VII

SUMMARY OF THE CONCLUSIONS OF THE 2 MAY GROUP AS TO THE FIRE IN THE TRADE UNION BUILDING AND THE CAUSES OF THE RELATED DEATHS

1. Experts[343] from the 2 May Group, who had conducted examinations of the causes and development of the fire at the Trade Union Building and the causes of the related deaths, offered the Panel the following explanations.

2. The fire in the Trade Union Building started when the barricade in front of the entrance to the building caught fire as a result of the exchange of Molotov cocktails between the opposing groups of activists. The fire subsequently spread through the entrance door into the lobby of the building. There were also other sources of fire, for example on the staircase between the third and fourth floors. These sources were secondary as they occurred as a result of the fire spreading from the lower floors.

3. The first phase of fire, in the lobby, lasted about nine minutes, during which time the temperature of the surfaces gradually increased. There were numerous flammable objects in the lobby, including the wooden pallets brought into the building from Kulykove Pole to use for barricades, old office furniture and an 18 litre oil tank which exploded. The complex interior design of the Trade Union Building, together with the barricades and closed passages, including parts of the left and right stairwells and the exit to the roof, compounded by heavy smoke and poor illumination, led to a situation where people were trapped inside and were not able to find escape routes. Tragically, many people fled to upper floors rather than attempting to leave the building through the other exits on the ground floor, possibly because they were afraid of the pro-unity activists outside.

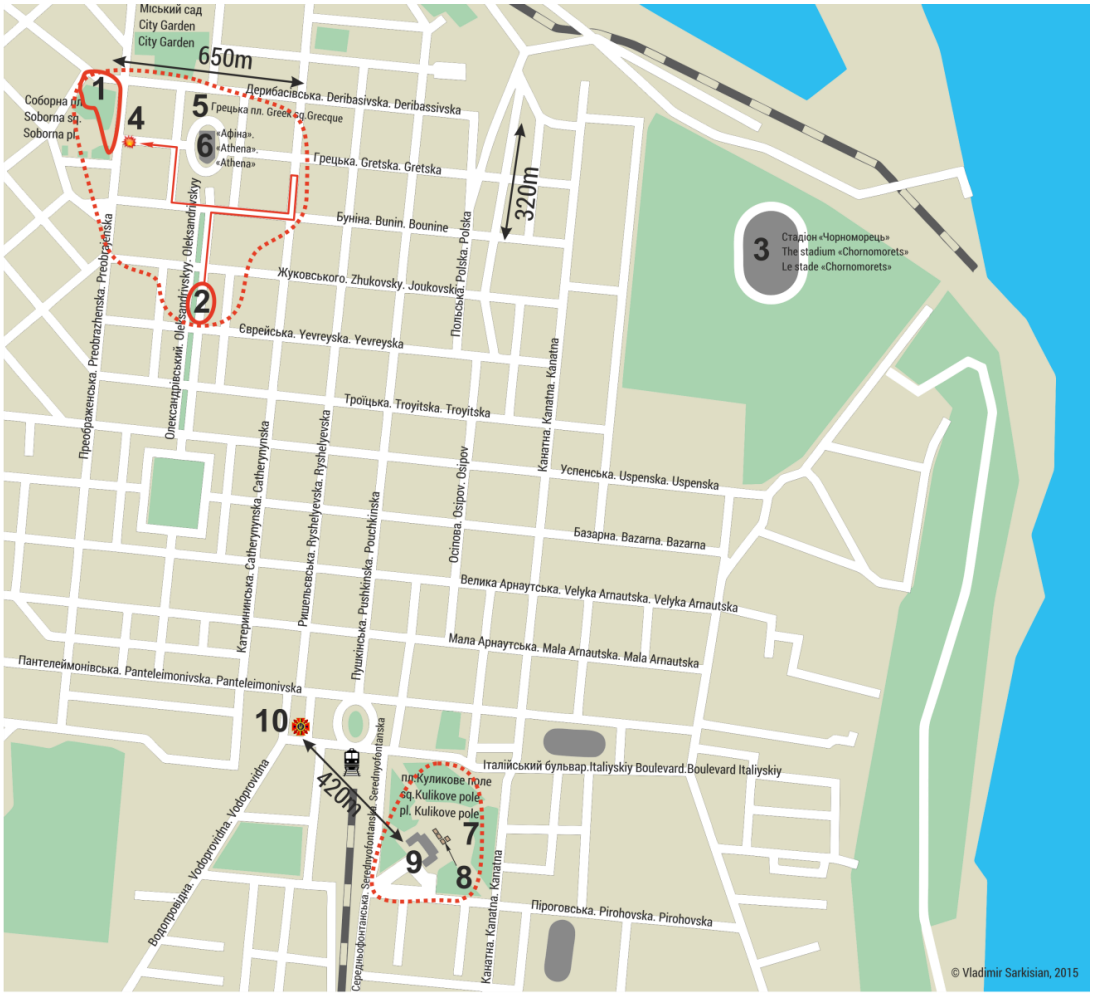
4. The second phase of the fire developed rapidly, as the central stairwell caught fire, causing the air temperature to increase up to 700 degrees Celsius and very hot air to rise to the upper floors. Many persons were in the stairwell at that moment. At this moment people started to jump out of the windows. The greatest number of casualties occurred during the second phase. Most of the victims died from carbon monoxide poisoning and burn injuries, with some others killed as a result of trying to escape the fire by jumping out of the building. According to the 2 May Group, no-one died in the Trade Union Building other than as a direct result of the fire.

5. The fire started at 7.44 p.m. Before that, at 7.27 p.m., the tents on Kulykove Pole in front of the Trade Union Building had caught fire. The first calls to the fire service were made at 7.31 p.m. During the first phase, it might have been possible to extinguish the fire and save lives if even only one fire engine had been there. However, the first fire engine arrived 45 minutes after the first calls. In the opinion of the 2 May Group, the high number of deaths was caused by the incompetent acts and omissions of the fire service, including the delay in arriving at the scene and the failure to take emergency reanimation measures.

[343] Mr Balynskyi, a biochemist, conducted an expert examination of the causes and development of the fire at the Trade Union Building, with an on-site visit on 6 May 2014. Mr Sarkisian, a toxicologist, carried out an expert examination into the causes of deaths in the Trade Union Building.

ANNEX VIII

MAP SHOWING THE MASS DISORDER IN ODESA ON 2 MAY 2014



1. Assembly point for the pro-unity rally
2. Assembly point for the "AntiMaidan" activists
3. Stadium
4. Place where the clashes started
5. Hretska Square
6. Afina Shopping Centre
7. Kulykove Pole
8. Tent camp
9. Trade Union Building
10. The nearest fire brigade station

Railway station

Manoeuvres by the "AntiMaidan" activists

Area of clashes in the city centre