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UKRAINE: RUSSIA'S REPRISALS AGAINST PROMINENT UKRAINIAN HUMAN RIGHTS DEFENDER WHO JOINED THE ARMED FORCES OF UKRAINE

10 August 2023 marked five months since Ukrainian human rights defender Maksym Butkevych, a prisoner of war captured by Russian forces, was “sentenced” to a long prison term by a court established by Russian-supported armed groups in eastern Ukraine in 2014. By decision of this so-called Supreme Court of the Luhansk People’s Republic, Maksym Butkevych will spend 13 years in a Russian prison for purported war crimes.¹ Ever since Maksym Butkevych was taken captive by the Russian forces in eastern Ukraine on 24 June 2022, his family, friends and colleagues have been running a campaign for his release and justice, #FreeMaksymButkevych. At the same time, the Russian Investigative Committee, a stand-alone agency responsible for investigation of serious crimes, and state-controlled Russian media and social media have been circulating manifestly false claims about Maksym Butkevych and details of their case against him. His imprisonment and the concurrent smear campaign appear to be retribution against one of Ukraine’s most prominent human rights defenders.

On the first day of Russia’s full-scale invasion of Ukraine, 24 February 2022, Maksym Butkevych signed up as a volunteer with the Armed Forces of Ukraine. He became an officer in charge of a platoon in early March, and remained regularly in touch with his family and his friends until 18 June. The following day, his unit was deployed to the active front line in eastern Ukraine. A few days later, he was captured by Russian forces.

The Russian Investigative Committee has claimed that Maksym Butkevych on 4 June 2022 deliberately fired at a group of civilians from a hand-held anti-tank rocket-propelled grenade launcher, wounding two and damaging a residential building.² The Committee’s report is supplemented by a video compilation in which Maksym Butkevych and two other Ukrainian prisoners of war, Viktor Pohozei and Vladyslav Shel (also subjected to sham trials), are seen individually sitting at a desk in front of uniformed Investigative Committee officers, each of them apparently with their hands tied up, answering questions about their ranks and military units, making monotonous statements incriminating themselves in deliberate attacks against civilians and admitting their guilt. Notably, Maksym Butkevych states that the site of his alleged crime was Severodonetsk in the “Lugansk People’s Republic”, the name used by the Russian forces and Russian-backed armed groups to denote Russian-occupied Luhansk Region of Ukraine; this is not the name for the location Maksym Butkevych would have used freely.

Maksym Butkevych’s interrogator is seen wearing a balaclava hiding his face. There is no sign in the video of a lawyer, a legal requirement under Russian and international humanitarian and human rights law. Amnesty International is aware from Maksym Butkevych’s family³ that the Russian lawyer whom they engaged was not allowed to see Maksym Butkevych at any point, nor was given any information regarding the case’s progress, including the timing of the hearings. All these details and allegations both show complete disregard for fair trial guarantees and Russian efforts to apparently force captives to incriminate themselves in violation of international humanitarian and human rights law.

On 10 March 2023, the same day the Investigative Committee’s report was published online, the Russian newspaper Kommersant published an article about Maksym Butkevych.⁴ This publication seemingly had access to criminal case materials held by the Investigative Committee and emphasized Maksym Butkevych’s journalistic background. Kommersant supplemented the article with a photo⁵ (later reproduced in other media) credited to the Investigative Committee and

¹ Amnesty International, “Ukraine: Prisoners of war ‘sentenced’ to prison following sham trials in Russian-occupied territories”, 10 March 2023, <https://www.amnesty.org/en/latest/news/2023/03/ukraine-prisoners-of-war-sentenced-to-prison-following-sham-trials-in-russian-occupied-territories/>

² Новости - Следственный комитет Российской Федерации (sledcom.ru), <https://sledcom.ru/news/item/1772598/>

³ Maksym Butkevych’s father, Oleksandr Butkevych, in interview with Amnesty International, 23 May 2022, Kyiv, Ukraine.

⁴ Nikolai Sergeev, “Запустил Panzerfaust соседям”, Kommersant, 10 March 2023, <https://www.kommersant.ru/doc/5864658>

⁵ Nikolai Sergeev, “Запустил Panzerfaust соседям”, Kommersant, 10 March 2023, <https://www.kommersant.ru/doc/5864658>

characteristic of Russian criminal case materials.⁶ In it, Maksym Butkevych is seen pointing unnaturally at the building he had purportedly damaged. The photo is typical of Russian official investigation practices whereby criminal suspects are brought to the alleged crime scene and photographed pointing at the signs of or objects used in the investigated crime. Such photos are supposed to be material evidence against a criminal suspect. In the photo, Maksym Butkevych is seen shaven bald and having lost considerable weight since the moment he was captured. He is pointing at a metal door entrance to a block of flats, “Gagarina St. 46”, its walls showing what appear as multiple shrapnel impacts, and two windows on the ground floor with missing glass.

The article also identified the weapon that Maksym Butkevych had purportedly used as a Panzerfaust-3 loaded with a fragmentation rocket-propelled grenade; which he allegedly shot from the first floor in “a building opposite”. At Gagarina St. 46 in Severodonetsk,⁷ the town officially named as the place of this alleged attack, the buildings which could be plausibly used to do so are only 40 or so metres away. Notably, the photo shows no damage typical of a rocket-propelled grenade launched at this distance, anywhere within the frame of this photo. This photo, by its nature, is supposed to be material evidence in the case against Maksym Butkevych. It is therefore highly doubtful that such damage is present in the vicinity but left outside of the frame of this photo. The metal door at which Maksym Butkevych is pointing appears to have dents caused by small shrapnel but no evidence of a preceding direct impact by a rocket-propelled grenade anywhere near his purported target.

The reported details of the criminal case against Maksym Butkevych contain nothing that would plausibly link him to the purported crime, other than his videorecorded self-incriminating statement which has all the hallmarks of a forced confession obtained under torture or other forms of duress. Yet, every known detail pertaining to his captivity and trial consistently point to numerous violations of his human rights, including his right to a fair trial, as well as violations of his rights as a prisoner of war under international humanitarian law.

Maksym Butkevych volunteered to join the Armed Forces of Ukraine on the first day of Russia’s full-scale invasion of Ukraine, 24 February 2022. In early March, he was summoned to join the forces and his military training began. Until his unit’s deployment to the active front line, Maksym Butkevych was regularly in touch with his family and his friends, which is documented by the messages he exchanged with them at the time and which indicate that his unit was not yet deployed to the front line. This only stopped when his unit was sent to eastern Ukraine around 19 June 2022. Maksym Butkevych’s latest message to his family is dated 18 June 2022.⁸

However, in their accusations against Maksym Butkevych, the Russian authorities claim that he was in Severodonetsk on 4 June. Based on the history of his correspondence at the time, this appears implausible.

On 24 June 2022, it transpired that Maksym Butkevych and his platoon had been taken captive in Luhansk region, likely on the same day. Two videos were published on that day by the Russian state media RIA Novosti on its Telegram channel featuring Maksym Butkevych among other Ukrainian captives, inside a long windowless corridor which appears to be inside a detention centre or prison.⁹ In one video, Maksym Butkevych is standing silently in a line of Ukrainian captives, and in another he is speaking about the circumstances of his platoon’s laying down arms. Media publications, including by Maksym Butkevych’s colleagues, stated that he was taken captive near the village of Myrna Dolyna in Luhansk region. Maksym Butkevych’s military unit communicated the news of his captivity to his family on 25 June 2022.

Already on 24 June, Maksym Butkevych’s captivity was covered in pro-Russian social media with smear comments. For instance, blogger Boris Rozhin published a sarcastic post calling it “a big catch” and used derogative language to describe Maksym Butkevych as an agent of Ukrainian “propaganda” and an active supporter of a “coup d’état” first in Ukraine and then in Kazakhstan.¹⁰

Like the overwhelming majority of Ukrainian prisoners of war held by Russian forces and their proxies, Maksym Butkevych has had no contact with the outside world. In contravention of international humanitarian law, Russia has consistently denied the ICRC unimpeded and repeated access to all prisoners of war despite its own persistent demands and those of

⁶ Nikolai Sergeev, “Запустил Panzerfaust соседям”, Kommersant, 10 March 2023, <https://www.kommersant.ru/doc/5864658>.

⁷ Naharina St, 46 - Google Maps, Location in Decimal Degrees: 48.94430566842154, 38.49824923525559, <https://goo.gl/maps/SWHMBjqvAZhMGrSH6>

⁸ Amnesty International has seen his latest messages sent to his father.

⁹ https://t.me/rian_ru/168565, https://t.me/rian_ru/168569.

¹⁰ Борис Рожин: Ценный улов (bovojistok.ru), <https://bovojistok.ru/35256-boris-rozhin-cennyj-ulov.html>

the UN and other stakeholders.¹¹ Only once, according to media reports, an investigator allowed Maksym Butkevych to make a quick call to his parents and inform them of the criminal proceedings against him.¹² After criminal proceedings were opened against Maksym Butkevych, Russian law required that he have regular and unimpeded confidential meetings with a lawyer of his choice. However, the Russian lawyer appointed by his family was consistently denied access to Maksym Butkevych or to any information about him with one exception only: the lawyer managed to secure an official letter from the Russian Ministry of Defence, dated 9 August 2022, confirming that Maksym Butkevych was “detained” on the territory of “Luhansk People’s Republic” and advising the lawyer to seek its “Administration’s” permission to contact him. At no point during the investigation against Maksym Butkevych and the proceeding against him was the lawyer given any access to him or to information about the timing of the hearings.

The above Kommersant source indicated that Maksym Butkevych had a state-appointed lawyer, suggesting that the Russian state had to pay for his lawyer because he could not afford to do so himself. Amnesty International has documented the practice in Russia whereby criminal suspects, particularly those held incommunicado, have a state-appointed lawyer imposed on them and are denied access to the lawyer of their choice. Amnesty International has previously documented how state-appointed lawyers imposed on detainees against their will effectively act in the interest of the prosecution and ignore human rights violations, including torture and other ill-treatment.¹³

The case against Maksym Butkevych was heard by the so-called Supreme Court of the Luhansk People’s Republic that was established by Russian-supported armed groups in eastern Ukraine in 2014 and has manifestly lacked independence and impartiality. No details of the hearings or any other proceeding against Maksym Butkevych are publicly known, and while the proceedings were likely held in camera, there is no information suggesting that this was a process held by a competent tribunal established by law or that the proceedings were public and in compliance of international standards on fair trials. Moreover, the process against Maksym Butkevych also appears to be in contravention of international humanitarian law since wilfully depriving a prisoner of war of the right to a fair and regular trial constitutes a war crime.¹⁴

After the sham trial of Maksym Butkevych and the two other Ukrainian prisoners of war shown in one of the videos featuring himself, Viktor Pohozei and Vladyslav Shel, the so-called supreme courts in Luhansk and Donetsk ordered to keep them in prison for 13, 8.5 and 18.5 years, respectively. The decision was based on charges of “use of prohibited means and methods of warfare”.¹⁵ Maksym Butkevych was also charged with attempted killing and damaging property, and ordered to pay for the damage.

Russia has consistently violated fair trial rights of Ukrainian prisoners of war throughout its war of aggression against Ukraine. In July 2022, the Head of Russia’s Investigative Committee, Aleksandr Bastrykin, announced that Russian authorities had enacted more than 1,300 criminal investigations against hundreds of Ukrainian nationals, including at least 220 suspected of committing “crimes against the peace and security of humanity”. This announcement followed the decision by the so-called Supreme Court of the Donetsk People’s Republic, which ordered the death of two captured British nationals and a captured Moroccan national (who were later released as part of a prisoner swap between Ukraine and Russia).¹⁶

The high profile given to Maksym Butkevych as a prisoner of war immediately following his captivity, the smear campaign unleashed against him in Russian media on the same day and the nature of the claims made about him, their manifestly false nature and the lack of any credible evidence against him, the seriousness of his purported crimes and the severe

¹¹ ICRC, “Russia-Ukraine: ICRC ready to visit all prisoners of war but access must be granted”, 16 October 2022, <https://www.icrc.org/en/document/russia-ukraine-icrc-ready-visit-all-prisoners-war-access-must-be-granted>.

¹² Грати, “Правозахисника Максима Буткевича засудили в «ЛНР» до 13 років за вистріл із гранатомета у мирних мешканців. «Грати» з’ясували, що його взагалі не було тоді на Донбасі”, 10 March 2023, <https://graty.me/news/pravozahisnika-maksima-butkevicha-zasudili-v-lnr-do-13-rokiv-za-vistريل-iz-granatometa-u-mirnih-meshkancziv-%D2%91rati-zyasuvali-shho-jogo-vzagali-ne-bulo-todi-na-donbasi/>.

¹³ Amnesty International, *Confronting the Circle of Injustice: Threats and pressure faced by lawyers in the North Caucasus*, report, March 2013, EUR 46/003/2013, p. 26 ff, <https://www.amnesty.org/en/documents/eur46/003/2013/en/>.

¹⁴ Rome Statute of the International Criminal Court, Article 8 (2) (a) (vi).

¹⁵ Amnesty International, “Ukraine: Prisoners of war ‘sentenced’ to prison following sham trials in Russian-occupied territories”, 10 March 2023, <https://www.amnesty.org/en/latest/news/2023/03/ukraine-prisoners-of-war-sentenced-to-prison-following-sham-trials-in-russian-occupied-territories/>.

¹⁶ See Amnesty International, “Russia: Charging 92 members of Ukraine’s military with ‘crimes against humanity’ brazenly undermines fair trial rights”, 25 July 2022, <https://www.amnesty.org/en/latest/news/2022/07/92-ukraine-military-charged-crimes-against-humanity/>.

penalty imposed, all point to selective targeting of Maksym Butkevych. Amnesty International believes that the sham trial and the penalties against him are reprisals for his previous activism and his prominent human rights work.

Prior to his decision to become a full-time human rights defender in 2008, Maksym Butkevych had been a prominent TV journalist notable for his frontline reporting from Ukraine and other countries, including conflict zones, for instance from the Middle East and Abkhazia during the August 2008 Russian-Georgian war. Earlier, in July 2006, Maksym Butkevych reported from the anti-globalization protest in St Petersburg, Russia, during a G8 Summit. He was observing the demonstration and taking photographs of the police crackdown on the protesters, and was arbitrarily arrested by police for doing so. He was sentenced to three days of administrative detention for purportedly disobeying police legitimate orders, and released after two days spent behind bars. Maksym Butkevych submitted a formal complaint against the Russian authorities for his arbitrary detention, and in 2018 won a case in the European Court of Human Rights.¹⁷

For several years, Maksym Butkevych conducted journalism and human rights activism. Among his numerous civic activism engagements, he served for several years on the Board of Amnesty International Ukraine. In 2008, he co-founded and led the project Bez Kordoniv, and it became one of Ukraine's most prominent NGO initiatives supporting refugees and stateless persons to find new homes and protection in Ukraine. He also co-founded Hromadske Radio, Ukraine's public radio broadcaster, and the prominent human rights NGO Zmina. He has retained a high media profile and has been an active supporter of several human rights-focused media initiatives. He has worked tirelessly against xenophobia and all manifestations of discrimination.

The decision handing down lengthy prison terms against Maksym Butkevych, Viktor Pohozei and Vladyslav Shel is unlawful under international humanitarian and human rights law as it has not met the minimum international standards of fairness. Under international humanitarian law, prisoners of war must be afforded the same fair trial safeguards as any other individual in the country. Russian authorities must ensure that the decisions handed down by the so-called supreme courts in Luhansk and Donetsk are quashed, and that Maksym Butkevych, Viktor Pohozei and Vladyslav Shel are released from the custody imposed by them, unless there is any credible evidence of internationally recognized crimes against them, in which case they must be afforded a re-trial that meets all international standards of fairness.

The Russian authorities must respect international humanitarian and human rights law, including in relation to Ukrainian prisoners of war. They must ensure that all prisoners of war in their custody accused of a crime are taken before an independent and impartial court respecting the generally recognized principles of a fair trial, including access to a lawyer of their choosing, the presumption of innocence and the prohibition to testify against oneself. Moreover, Russia must provide unimpeded and repeated access for ICRC representatives to all prisoners of war it holds.

Russia must not wilfully deprive any prisoner of war of the right to a fair and regular trial. Doing so constitutes a war crime, for which any person directly responsible for or complicit in it must be brought to account, in fair trial proceedings.

Russia must also end immediately all reprisals against civil society organizations and human rights defenders within Russia and in the territories it occupies.

Russia must fully abide by international law governing occupation.

Russia must also end immediately its war or aggression against Ukraine.

For all victims of all crimes under international law committed by its forces in Ukraine, Russia must provide full and adequate reparations.

¹⁷ Butkevich v. Russia, Application no. 5865/07, 13 February 2018, <http://hudoc.echr.coe.int/eng?i=001-180832>.