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December 20, 2013

General Prosecutor of Ukraine
Pshonka Viktor Pavlovych
vul. Riznyts'ka 13/15,
Kyiv, Ukraine

Sent via facsimile: +380-44-2802603

Sent via email: interel@gp.gov.ua

Subject: Concerns regarding criminal investigations into events in Kyiv on November 30 and December 1, 2013

Dear Mr. Pshonka,

We are writing to express serious concern over the treatment of several people who have been legally recognized or are seeking recognition as victims in the criminal case of abuse of authority by the police during the events at Independence Square in Kiev on November 30, as well as those who are currently under investigation for rioting and disobeying police orders during the events of December 1 on Bankova Street.

Human Rights Watch researchers spoke separately with 10 participants of the November 30 events at Independence Square in Kiev and the December 1 events on Bankova Street. Seven have made consistent and serious allegations of pressure and intimidation by law enforcement officials conducting investigations into both sets of events. Some have alleged that investigators have not responded to their requests to be recognized as victims in the investigations or have refused, without explanation, to assign such status. At least two persons have alleged that investigators have failed to provide a crucial referral for a forensic medical examination to document the injuries they sustained from police beatings. Several refused to speak openly or share their names out of fear of negative repercussions from the authorities conducting criminal investigations.

We are concerned that the pressure, intimidation, and failure to take timely action seriously undermines the credibility of the important public pledge you made on December 1 to investigate riot police using violence against protesters at Independence Square on November 30. We urge you to ensure that every complaint be thoroughly investigated in a timely manner, before evidence fades, and that all pressure and intimidation against complainants cease immediately.

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Regarding people beaten by police on November 30 at Independence Square

Human Rights Watch researchers spoke to **Yevgeny Serdiuk**, 28, a television presenter from Kiev, who was at Independence Square on November 30, 2013. Serdiuk told Human Rights Watch that he was among protesters who formed a human chain around the monument in the center of the square in the early morning of November 30 when riot police violently dispersed the gathering, injuring dozens. He said that riot police had hit him many times on his back, hands, and legs with batons, and that he had suffered multiple cuts and bruises.

Serdiuk told Human Rights Watch that he filed a complaint about the police using violence against him and was among several people legally recognized as victims in the criminal investigation initiated by the authorities into those events.

Serdiuk told Human Rights Watch that on December 4 an investigator from the city prosecutor's office questioned him about the events of November 30. Serdiuk told Human Rights Watch that during a questioning that lasted four hours, the investigator asked him only one question about the police beatings – whether the beatings left any traces on his clothing. The investigator instead asked many leading questions that had no apparent relation to the police beatings and that appeared, to both Serdiuk and his lawyer, to implicitly accuse Serdiuk of improper conduct such as rioting or resisting police orders. These included such questions as: “Why did you take part in mass riots and who organized them?” “Why did you resist the police?” “How much were you paid to be there?” “Why did you try to stop the authorities from putting up a Christmas tree?” Serdiuk's lawyer, Oleksandr Bashuk, was present for most of the questioning.

After approximately three hours of such leading questioning, Serdiuk said, another official walked into the room and joined without introducing himself. Serdiuk and Bashuk told Human Rights Watch that they later found out that the second official was a prosecutor from the prosecutor general's office.

After the questioning ended, the prosecutor left, all participants signed the interview record, and his lawyer was called out of the room, Serdiuk said. At that moment, the prosecutor returned to the room and suddenly resumed questioning in the absence of Serdiuk's lawyer. The prosecutor asked Serdiuk: “So, now can you tell me, what really happened?” and began asking the same kinds of leading questions. The official then said that he needed to “amend something” and started writing something in the interview record, which had already been signed by the all of the participants in the questioning: the investigator and Serdiuk and his lawyer, Serdiuk told Human Rights Watch.

At that point, Serdiuk said, his lawyer returned to the room and requested that the official stop attempting to pressure his client. Serdiuk said that the questioning continued for at least another hour. When the questioning finally ended, Serdiuk had to immediately be taken to the emergency room to be treated for hypertension caused by the stress he suffered from the questioning.

No officials have questioned Serdiuk since December 4.

Human Rights Watch spoke separately with Oleksandr Bashuk, whose account of the questioning was consistent with Serdiuk's. The lawyer also said he was representing five other people who alleged that they were attacked by riot police on the morning of November

30. Three of them were invited for questioning on the same day as Serdiuk and were sitting outside the room in the corridor during his questioning, but refused to speak with the investigator after they saw that Serdiuk's questioning went on for four hours and that he had to be taken to a hospital immediately afterwards. Human Rights Watch researchers interviewed all three people separately, who each stated that they felt intimidated by what had happened to Serdiuk and refused to speak with criminal investigators because of a fear of possible negative repercussions from the authorities.

One of the five represented by Bashuk, **Iryna Zakharchenko**, 27, told Human Rights Watch that on November 30 riot policemen hit her several times with a baton on her head, arms, and legs. She suffered multiple cuts and bruises, a hematoma on her arm, and an open wound on her head for which she had to have five stitches. Zakharchenko said that she filed a complaint on the same day, November 30, about the police beating and that on December 2 her lawyer filed a request to recognize her as a victim in the criminal case. However, the case investigator to this date has not responded to Zakharchenko's request for a referral for a forensic examination and assigned her the status of witness in the case. Meanwhile, her injuries are healing. Since by law the results of a medical exam are crucial for assessing the bodily harm caused by beatings for the investigation, the failure to provide a timely referral is impeding Zakharchenko's ability to obtain justice for her beating.

Bashuk told Human Rights Watch that the investigator did not explain the decision to grant Zakharchenko the status of witness rather than victim and that he has filed a complaint about the investigator's failure to recognize Zakharchenko as a victim.

Zakharchenko told Human Rights Watch that starting on December 1 she has been receiving several phone calls every day insisting that she appear for questioning as a witness in the case, even after she would repeatedly say that she was still recovering from her injuries. The callers introduced themselves variously as being from the prosecutor general's office, the city prosecutor's office, and the police.

Bashuk told Human Rights Watch that on December 6 he filed two complaints with your office asking that it examine the alleged pressure and intimidation of his clients. He has not yet received a response, although as you know under Ukrainian law the deadline for such responses is 72 hours from the time they are filed.

Several people beaten by police on November 30 told Human Rights Watch about instances of intimidation. For instance, **Iryna Kosova** said that she was hit by riot police, sustained multiple bruises, and was assigned the status of victim in the case. She told Human Rights Watch that on December 5 someone claiming to be from the SBU, the Ukraine security service, had visited her apartment while she was asleep and left a note under her door with his contact details and a request for her to appear for questioning.

Regarding beatings on December 1 on Bankova Street

We spoke with several persons who are suspected of rioting and/or disobeying police orders during a series of violent clashes between police and protesters on December 1 on Bankova Street in Kiev. We are concerned that in at least two cases, investigators are not taking action to investigate a complaint filed by men who sustained injuries from police beating

and in at least one case are instead pressuring the person to confess to involvement in public disorders.

Mykola Lazarevsky, 23, told Human Rights Watch that he sustained a broken nose, a traumatic brain injury, several hematomas, cuts and bruises, and had to be hospitalized for 11 days. His lawyer, Anton Marchuk, told Human Rights Watch that on December 5 he filed a complaint with the city prosecutor's office in Kiev on Lazarevsky's behalf about the beating. After not hearing back in response to his complaint, he sent follow-up complaints on December 6 and December 10 asking to conduct necessary investigative activities, including questioning witnesses. He received no response to either complaint. On December 19 he made a complaint to the Main Directorate of the Ministry of Internal Affairs in Kiev about the investigators' failure to respond to his requests.

On December 4 the Shevchenkivsky District Court ordered two months of pretrial custody for nine people suspected of rioting and resisting the police during violent clashes on December 1, including Lazarevsky, who is now a suspect in rioting – a criminal offense punishable by a prison term of up to eight years. On December 11, Lazarevsky said, he was released from custody and placed under house arrest.

Lazarevsky told Human Rights Watch that an official from the prosecutor's office visited him while he was still in the hospital and promised him that if he would admit to participating in "public disorders," a milder crime that is punishable by a fine, the rioting charges against him would be dropped.

Lazarevsky said that on December 13 an investigator and a prosecutor came to his home to urge him and his family members, including his mother, his fiancée, and his fiancée's mother, to confess to participating in public disorders. Lazarevsky's fiancée told Human Rights Watch that the investigator suggested that if Lazarevsky admitted to participating in public disorder, he would "get away" with a small fine and "the nightmare for all of you will be over." Lazarevsky's fiancée also told Human Rights Watch that the investigator also said to Lazarevsky's mother that admitting to a lesser crime was an "easy way out" which would "end the ordeal for the entire family." Lazarevsky told Human Rights Watch that both officials came without prior warning and that in response to his request to wait for his lawyer to arrive, suggested that the conversation was in his "best interests" and that his lawyer's presence was not required. Lazarevsky refused to admit guilt or sign any documents.

Human Rights Watch spoke with **Oleksandr Pivovarov**, a doctor who was at Bankova Street on December 1 assisting those injured during violent clashes with police. Pivovarov said he was wearing a shirt marked with large red crosses on the front and back to identify him as a medic. He was assisting an injured man whom he earlier saw being beaten by a riot policeman and dressing his wounds, he said, when a riot policeman ordered him to stand up. He complied, put his hands up, turned around to face the policeman and said loudly that he was a doctor. At that moment, he said, riot policeman hit him with a baton on his right leg while another policeman sprayed tear gas directly into his face at a distance of one meter. Pivovarov fell on the ground, he said, and was temporarily blinded by the gas. Pivovarov said that on December 11 or 12 he filed a complaint with the prosecutor's office asking to be recognized as a victim and refer him for a forensic examination. Pivovarov's lawyer told Human Rights Watch that to date he has received no response to either of those requests.

As a party to the European Convention on Human Rights (ECHR), Ukraine is obligated to thoroughly and impartially investigate credible allegations of violations of rights and freedoms guaranteed under the convention, including the right to be free from ill-treatment and the right to an effective remedy when authorities violate rights.

A recent 2013 report by the Council of Europe’s human rights commissioner noted that European Court of Human Rights case law has established that “a state’s failure to conduct an effective official investigation where ‘an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents’ constitutes a violation of the ECHR.”

Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, issued in 2011, provide that such investigations should be prompt, thorough, impartial, capable of leading to the identification and punishment of those responsible, and open to public scrutiny. They also provide that: “protection measures are put in place for the physical and psychological integrity of victims and witnesses. States should ensure that victims and witnesses are not intimidated, subject to reprisals or dissuaded by other means from complaining or pursuing their complaints or participating in the proceedings.”

We ask that your office investigate all complaints into police beatings on November 30 and December 1 in line with Council of Europe standards for such investigations, and that those found responsible for abuse be appropriately disciplined or prosecuted.

We are looking forward to receiving information about the progress the investigation has made.

We thank you for your attention to this important matter.

Rachel Denber
Deputy Director
Europe and Central Asia Division