



BY AIRMAIL

Alexander Vladimirovich Konovalov
Minister of Justice
The Ministry of Justice of the Russian Federation
Zhitnaya street, 14
MOSCOW 119991
RUSSIAN FEDERATION

Amsterdam, 22 October 2018

Subject: Sentencing of lawyer **Mikhail Benyash**

Your Excellency,

Lawyers for Lawyers is an independent and non-political foundation that seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession.

Lawyers for Lawyers is concerned about ongoing criminal proceedings against **Mikhail Benyash**, a defence lawyer practicing in the Russian Federation, who is charged with use of force against the police and impeding justice.

According to our information, on 9 September 2018, Mr. Benyash went to the city centre of Krasnodar to provide legal assistance to participants in a peaceful rally against pension reform during which police had arbitrarily arrested dozens of people. While approaching the rally Mr. Benyash was aggressively pushed and shoved into a car by police officers wearing civilian clothes. According to Mr. Benyash, the police officers did not introduce themselves or state the reason for his arrest. They took away his phone and beat and violently choked him both in the car and at the police station where they took him, causing injuries and bruises. A lawyer who came to represent Mr. Benyash as his legal counsel was denied access to his client for seven hours. On the morning of 11 September, Mr. Benyash was brought before the Leninsky court of Krasnodar city which found him guilty of “resisting the police’s legitimate orders” (under Article 19.3 of the Russian Code of Administrative Offenses) and sentenced him to 14 days of “administrative detention”.

On 23 September, the day of his release, Mr. Benyash was arrested again. He was charged with two additional offences: first, violence against a representative of authority (Criminal Code Article 318(1)) based on an allegation - seemingly not raised at the time of his earlier charge and conviction in relation to the same incident - that in the course of his arrest on 9 September he allegedly bit a police officer and hit another. Secondly, he was also charged with obstruction of justice (Criminal



Code Article 294(1)). This charge was reportedly on the basis of an allegation that Mr. Benyash, in a court hearing on 6 May 2018, had “repeatedly interrupted, gave instructions and objections to the decisions of the judge” and “continued unlawful behaviour”, after he had been removed from the courtroom.

Lawyers for Lawyers – as well as various other organizations - are concerned that these acts of harassment against Mr. Benyash are connected to, and serve to curb his legitimate activities as an attorney.

The criminal obstruction charge against Mr. Benyash appears to relate at least in part to statements he made in court in the course of carrying out his professional duties of representation of his clients.

We would like to draw your attention to the United Nations Basic Principles on the Role of Lawyers¹, and more in particular Article 16, 17, and 20, which read:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

We would further like to emphasize that under international human rights law, states have obligations to investigate allegations of treatment that may amount to torture or inhuman or degrading in violation of **Article 3 of the European Convention on Human Rights**, as well as other international law norms binding on the Russian Federation.

There are no grounds to hold Mr. Benyash in custody pending the investigation into the officer assault charge. The Russian Federation is a party to the European Convention on Human Rights, and the European Court of Human Rights case law has repeatedly clarified that the courts should not rely on “general and abstract” reasons for pre-trial detention.

¹ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.



In view of the above, Lawyers for Lawyers respectfully urge you to immediately:

- Immediately release Mr. Benyash, drop any charges against him, including those charges relating to his conduct of professional duties in the courtroom, and put an end to all acts of harassment against him, including at the judicial level;
- investigate allegations of ill-treatment of Mr. Benyash by police following his arrest on 9 September promptly, effectively and impartially and ensure that any persons responsible will be brought to justice;
- guarantee in all circumstances that all lawyers in the Russian Federation are able to carry out their legitimate professional rights and duties without fear of reprisals and free of all restrictions of any quarter including judicial harassment.

Thank you for your attention to this very important matter. We are confident that the government of the Russian Federation will give this case the attention it deserves, and we will continue to monitor this case closely.

Yours sincerely,

LAWYERS FOR LAWYERS (L4L)

P.D. 

Judith Lichtenberg, Executive Director

Letter concerning the same topic was also sent to Minister of Interior, Vladimir Kokoltsev, Ministry of the Interior of the Russian Federation, Ul. Zhitnaya d. 16, 119049 Moscow, Russian Federation

Copies of this letter were sent to:

- Prosecutor General's Office of the Russian Federation, Yury Yakovlevich Chaika
Email: transgprf@mail.ru ; international@genproc.gov.ru
- Permanent Mission of Russia to the United Nations in Geneva, Switzerland,
Email: mission.russian@vtxnet.ch
- Commissioner for Human Rights in Krasnoyarsk Territory, E-mail: public@ombudsmankk.krsn.ru
- Russian Federal Chamber of Lawyers, Email: mail@fparf.ru