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Peaceful protesters standing trial in Bolotnaya case should be immediately released

Amnesty International calls for the immediate and unconditional release of all those who were not involved in violence or any other unlawful activities during the mass protests in Moscow on 6 May 2012 but who are nonetheless standing trial in court in Moscow in the so-called “Bolotnaya” case. On the basis of the available evidence and the completed testimony heard in court, Amnesty International believes that it is already possible to identify at least three of the co-defendants in this case, Vladimir Akimenkov, Artiom Saviolov and Mikhail Kosenko, as prisoners of conscience. They were deprived of their liberty over a year ago for the peaceful exercise of their rights to freedom of expression and assembly. It is possible, indeed likely, that other co-defendants are also prisoners of conscience, but hearings relating to their behavior during the demonstration are still ongoing.

The Bolotnaya trial relates to a demonstration in Moscow on 6 May 2012, on the eve of Vladimir Putin's inauguration as the newly elected president. On that day, a march and demonstration was planned on Bolotnaya square in the centre of Moscow, to protest against the return of Vladimir Putin to the presidency following an election marred by numerous reports of electoral fraud. Both the march and the rally, and their respective locations and timing, had been agreed between the organizers and the city authorities.¹

Initially, the organizers were expecting around five thousand people at the rally. However, as the day of the event drew closer, it became clear that tens of thousands of people were likely to turn up for the demonstration, and the organizers duly informed the authorities of this in the course of negotiations on the route, security arrangements and other related issues. Nevertheless, on the day of the demonstration, the police left a much narrower passage for the protesters to access Bolotnaya square than had been agreed with the organizers and without informing them. The police sealed two of the three entrances to the square and installed additional metal detector frames at the only remaining entrance, despite the fact that protesters had to pass through metal detectors at the beginning of the march. The resulting bottleneck increased pressure at the front of the column. The first line of police at the entrance to the square was broken and dozens of people went through this gap, but the swelling crowd was held in check by a second line of police.

Eyewitness accounts and extensive video footage of the event suggest that up until the breach of the police line, only a few isolated incidents of violence occurred in which limited number of protesters, alleged by some to have been provocateurs, were involved. Pressure on front rows decreased significantly after the breaking of the police line and no attempts to break the second police line were reported. Nonetheless, the police proceeded to disperse the entire gathering and detained hundreds of participants, many of them arbitrarily. There are numerous well documented accounts of the use of excessive force by the police, and several demonstrators sustained various bodily

¹ For a more detailed description of the events on 6 May 2012, see Amnesty International, *Russian Federation: Freedom under threat: The clampdown against freedoms of expression, assembly and association in Russia* (Index: EUR 46/011/2013), available at <http://www.amnesty.org/en/library/info/EUR46/011/2013/en>.

injuries, including concussion, serious bruising, hematomas and lacerations. At the same time pieces of asphalt and various other objects were thrown at the police, and a number of police officers reportedly sustained injuries. Some toilet portacabins were displaced or turned over. The city authorities also claimed that some of the road surface was damaged, however so far the prosecution has not provided any evidence to attest to that claim. According to a number of eye-witnesses who testified in court, clashes between some of the protesters and the police were the reaction to the police brutality and arbitrary arrests. Eyewitnesses Amnesty International has spoken to, insist that that only a very small proportion of the demonstrators were directly involved in violence and this is corroborated by the extensive video footage available.

It is clear that what started as a peaceful street protest led to localized violence, the dispersal of the entire rally and mass detentions of protesters. A criminal investigation into the use of violence by protesters against police officials was opened, resulting in the event being qualified by the investigating authorities as a “mass riot”. This highly disputed qualification has formed the basis of the criminal charges brought against most of those now standing trial in connection with the Bolotnaya protest – namely “participation in a mass riot”. Some of the defendants have also been accused of violence against police officials. Two individuals have pleaded guilty and have been convicted in separate proceedings and sentenced to imprisonment; 24 individuals continue to face criminal prosecution. Of these, thirteen are currently standing trial, 10 of whom have been remanded custody for over a year. The remaining 11 continue to be under investigation; of these five are in pre-trial detention, five are subject to travel restrictions and one is under house arrest.²

None of the numerous allegations of excessive use of force by police have been effectively investigated, and not a single law enforcement official has been held accountable or been disciplined in any way for the police’s role in the events that led to violence.

Of those currently standing trial in court, Vladimir Akimenkov and Artiom Saviolov were detained within minutes of the breaking of the police line. Video footage is available in which they can be identified, covering almost the entire period of time between the breaking of the police line and their detention. At no stage does it show them engaged in any violent act. While the prosecution initially claimed that it could prove that they had been involved in violent activities, it has now completed presenting its key evidence against Vladimir Akimenkov and Artiom Saviolov, and has quite clearly failed to present any credible evidence to substantiate the criminal charges that the two men both deny.

Vladimir Akimenkov is a political activist in the Left Front movement. He was detained on Bolotnaya square on 6 May just a few minutes after the police line was breached by protesters. Indeed, he was detained before most of the violence erupted. Available video footage confirms that Vladimir Akimenkov was present on the scene, but that he was not engaged in any violent activities or acting disorderly, and his detention appears arbitrary. He denies any involvement in violent activities or inciting violence.

Vladimir Akimenkov is charged with participation in mass riots on 6 May 2012 under Article 212(2) of the Russian Criminal Code. His indictment refers mostly to events in Bolotnaya square that occurred after his detention; these it describes at great length (violent clashes with the police, upturning of portaloos, etc.). The photo and video evidence presented by the prosecution in court fails to demonstrate that Vladimir Akimenkov was involved in any violent activities.

One of the prosecution’s claims is that prior to his detention he had participated in the breaking of the police line and thrown a flagpole at police officers. Vladimir Akimenkov denies these allegations.

² One further suspect in this case, Anastasia Rybchenko, currently lives in Estonia. She has been on the federal wanted list since September 2011.

The video evidence clearly shows that Akimenkov peacefully walked through a gap in the police line, but that this was already after it had been broken and the police did not attempt to prevent or stop him and he stopped in front of the other police line few meters later without any attempt to break it and go further. None of the extensive video footage on which he is visible shows him carrying, let alone throwing, flagpoles. A wide angle view of the part of the crowd, where Akimenkov was prior to his detention, does not show that any flagpoles or similar objects were being thrown at the police. On the contrary, the video footage shows him peacefully walking along the police line and not engaging in any violence, until the moment he is detained and taken away.

Vladimir Akimenkov was released on the day of his detention at Bolotnaya square. He was arrested again on 10 June 2012, and has been in detention ever since. He has a physical disability, a vision impairment which predated his arrest but which has since deteriorated due to his conditions of detention and the lack of adequate medical care. During the trial, Vladimir Akimenkov complained that he could not see the video evidence against him presented by prosecution, but the court ignored his complaints. According to the member of the Public Monitoring Commission who visited Akimenkov in detention and talked to the prison doctor, he only retains 20 percent of vision in one eye and 10 percent in the other, and is nearly blind. For over a year, the court has repeatedly approved the investigation's request for consecutive extensions of his term of detention and failed to consider any alternative restraining measures that are possible under Russian law. In January 2013, his lawyer submitted an application to the European Court of Human Rights on Vladimir Akimenkov's behalf complaining of arbitrary detention, and inhuman and degrading treatment on account of his conditions of detention.

Artiom Saviolov has no previous history of political activism. Like thousands of others, he came to Bolotnaya square to take part in an authorized rally to protest against the results of the presidential elections. He too, was detained within minutes of the first breach of the police line by protesters in Bolotnaya square. Artiom Saviolov is charged with participation in mass riots and using violence against a police officer, but as with Vladimir Akimenkov, his indictment mostly cites events that occurred after his detention. Artiom Saviolov insists that he did not actively participate in the breach of the police line but rather was pushed through it, and the available video footage corroborates this statement. There is video footage which shows him at the scene, acting calmly and taking part in the non-violent sit-in action together with other protestors who chose to sit on the ground in protest against police's actions. For a period of less than two minutes, Artiom Saviolov is not seen in any available video footage. He has consistently denied that he was engaged in any violence during this period while the prosecution has failed to present any compelling evidence to the contrary.

According to the prosecution, Artiom Saviolov used force to prevent a police officer from detaining another protester, causing the officer physical pain, and shouted slogans such as "Down with the police state". The prosecution has advanced the shouting of such slogans as evidence of his rioting, though it is entirely protected by right to freedom of expression. There are, in any case, rather serious doubts as to Artiom Saviolov's ability to shout slogans of any kind, as he has a serious speech impediment. Indeed, none of the available video footage indicates that Artiom Saviolov was shouting any slogans prior to his detention.

Artiom Saviolov firmly denies all these accusations, and claims that he was carefully avoiding any confrontation with, or obstruction to, the police, including when he himself was being arbitrarily detained.

The prosecution's case against him rests almost exclusively on the testimony of two police officers who purportedly detained him on 6 May 2012. There are serious doubts however as to whether these were indeed the officers involved in his detention. The credibility of the police witnesses has been undermined by serious inconsistencies between the testimony they have provided in court and

witness statements taken down during the investigation. Moreover, some of the testimony they have provided is directly contradicted by available video and photographic evidence.

In particular, the description initially given by one of the two police officers and the primary witness against Saviolov, of what Artiom had been wearing at the time of his arrest on that day was quite different from how Artiom Saviolov had in fact been dressed. The witness subsequently changed his testimony in court to make it consistent with the facts. Moreover, at the time of the investigation no formal identification (*opoznanie*) of the suspect was conducted prior to the face-to-face questioning (*och'naya stavka*). It is also notable that the same officer testified that he detained three other individuals on 6 May, but could not remember any details regarding those three unlike in Artiom Saviolov's case.

Moreover, it was the same police officer who had initially stated in his report that Artiom Saviolov was shouting anti-government slogans. Later, after the suspect's serious speech impediment became known, this witness appears to have altered his testimony in this regard. Besides, the time of Artiom Saviolov's detention cited by this witness differs considerably from the existing footage of the event. According to the police officer, Saviolov would have been detained some 30-40 minutes after the breach of police line, while according to the video footage this took place just five or 10 minutes later.

Evidence presented by the other police officer as witness is similarly inconsistent, and in a number of ways significantly differs from the testimony given by the first police officer.

Artiom Saviolov has been in detention since 10 June 2012.

Mikhail Kosenko has been in detention as a suspect in the Bolotnaya case since 8 June 2012. He is currently standing trial in separate court proceedings from the other Bolotnaya codefendants, as the prosecution is seeking to show that he presents a danger to himself or society and that he should therefore be subjected to involuntary medical treatment. The prosecution seeks his incarceration in a mental health institution on account of an alleged tendency to violence as purportedly evidenced by his conduct during the Bolotnaya protest. The prosecution claims that he participated in an attack against a police officer who sustained a serious injury. Another defendant, Maxim Luzianin, earlier pleaded guilty in connection with this particular incident, and has already been convicted in separate court proceedings. Mikhail Kosenko denies the allegation of criminal conduct and that he has violent tendencies.

Two video recordings of this incident taken by two different journalists clearly show that Mikhail Kosenko was peacefully standing at the front of a gathering of protesters when a police officer and a protester whom the officer was attempting to detain fell down and into the crowd. Mikhail Kosenko can be seen reaching towards the two and appears to be pushing them away. He is certainly not seen using violence or beating the police officer. It is also evident from the video footage that Mikhail Kosenko neither touched nor interfered any further with the police officer; a few seconds later the same officer can be seen being attacked by at least two violent protesters but not by Mikhail Kosenko. It is clear from the available video evidence that during this episode Mikhail Kosenko remained in front of the gathering of protesters, some distance away from the police and the attackers.

In addition to this video footage, which fails to link Mikhail Kosenko to any violent acts and, if anything, proves the opposite, the only other evidence presented by the prosecution in court has been the testimony of police officers. One of these officers stated during the investigation that he had seen Mikhail Kosenko punching and kicking the injured police officer at least once. However, the witness stated that during this episode the injured police officer was already on all fours on the ground and was being beaten by several men. These precise moments are captured on two video

recordings of the events that clearly contradict the police officer's testimony, as they show that at that moment Mikhail Kosenko was standing in the crowd, some distance away from police. This was confirmed by four witnesses for the defense who were present at the scene, three of them prominent human rights defenders who happened to be standing next to Kosenko, and another one a journalist who filmed the video of the incident. All of them testified that Mikhail Kosenko was standing approximately three or four meters away from the place where police officer was assaulted, and that he was not involved in this incident.

The defence requested that another piece of evidence - photo and video footage of the event taken by police helicopter from above, be included in the criminal case file on Mikhail Kosenko. According to the defense, this video recording had already been presented in another, civil case, upon request of the court. They argued that the recording would demonstrate that throughout the events Kosenko was not involved in any violence or unlawful actions. But the defense team were informed that the tape could only be produced at the request of the court. The request by the defense to force the disclosure of the tape was declined by the judge, however, on the curious grounds that it was unclear how the tape was relevant to the case and that the defense had not demonstrated that it had taken all the necessary steps to secure the tape itself.

Mikhail Kosenko does have a history of mental disability, which dates back to the years he spent as a conscript in the army. During his pre-trial detention, the prosecution arranged his examination by a panel which concluded that there had been a drastic deterioration in his condition and that he now represented a danger to society and required mandatory treatment. This is despite the fact that for years, he had been receiving treatment for his condition without hospitalization, and had never been deemed a danger to society or to himself.

The panel which reported the serious deterioration in Mikhail Kosenko's condition arrived to this conclusion after only a brief interview with him, that took place after he had been in detention for two months, during which he had been denied his regular medication. Even more problematically, the panel's conclusions, according to one of its members, took into consideration the materials of the criminal case against Mikhail Kosenko, such that the evidence of violent conduct relied on by the examining psychiatrists in reaching its conclusion that Mikhail Kosenko has violent tendencies, is precisely the evidence that is disputed in the case.

Mikhail Kosenko's, defence requested a second, independent psychiatric examination for him, but this motion was declined by the judge.

It is self-evident that involuntary psychiatric treatment should only be used in cases of severe mental illness when it is likely that that person will cause immediate or imminent harm to themselves or others. The possible forcible hospitalization of Mikhail Kosenko without an independent examination confirming the need for it, and the judge's refusal to authorize such an examination, invokes unfortunate memories of the political dissenters during the Soviet era being punished by forcible incarceration in mental institutions.

In all three cases documented above, the indictments rest primarily on testimonies of police officers. Previously, Amnesty International has already raised concern about police officials being the main witnesses in cases against demonstrators and judges accepting their testimonies unquestionably and without corroborating them with evidence from other sources.³ Moreover, in the cases of these three individuals, the testimonies provided by police officers during the investigation and in court are often inconsistent; often they are flatly contradicted by available video evidence.

The prosecution's charges against Vladimir Akimenkov, Artiom Saviolov and Mikhail Kosenko are not

³ E.g., see <http://amnesty.org/en/library/info/EUR46/002/2011/en>.

corroborated by the video footage presented in court; if anything, this footage and the footage of the relevant events is available elsewhere but, in at least one case, not included in the criminal case file by the judge despite the defense's request, exculpates rather than indicts these three co-defendants. The overwhelming weight of reliable evidence in the cases of Vladimir Akimenkov, Artiom Saviolov and Mikhail Kosenko points to the conclusion that they were not involved in any violence on the day of the Bolotnaya Square protest and that they are, therefore, not guilty of the crimes they have been charged with. Their prosecution is linked to their peaceful protest, and these individuals are prisoners of conscience. They should be released immediately and unconditionally.

Amnesty International is concerned that there are likely to be other prisoners of conscience in Bolotnaya case, and that the case is, at its heart, a political one. The organization has observed the trial in court and is concerned about violations of the principles of fair trial, including the pronounced inequality of arms, as evidenced by the judges' arbitrary interference with the defense's questioning of prosecution witnesses, and the denial of the opportunity to cross examine them altogether. Defendants have also been repeatedly denied an opportunity to communicate confidentially with their lawyers during the court hearings.

At least one of the lawyers, Farid Murtazin acting as defence counsel for Artiom Saviolov, has been subjected to harassment. In August 2012, the Investigation Committee submitted a complaint against the lawyer alleging that he had repeatedly failed to take part in the criminal investigation proceedings involving his client. Farid Murtazin denied these allegations, which he believed were an attempt to have him stripped of his license to practice law.⁴ The lawyer has subsequently received assurances from the Bar Association of which he is a member that he would not be disciplined.⁵

Several defendants in the Bolotnaya case have already spent over a year in pre-trial detention, and continue to remain in custody during the trial. Amnesty International calls on the Russian authorities to ensure a prompt and fair trial, and to ensure that those presenting no risk of absconding, endangering public security or prejudicing the course of justice be released pending trial and during the court hearings.

Amnesty International is also concerned that despite strong allegations of excessive use of force by police on 6 May 2012, and considerable body of evidence supporting these allegations, including extensive photo and video footage from the demonstration, testimonies by eyewitnesses, medical examination records confirming various injuries sustained by detained protesters on the day, to date there have been no effective investigation into these allegations and no indication that such an investigation is going to be undertaken by the Russian authorities.

The right to the freedoms of expression and association, the rights not to be subjected to torture or other ill-treatment, or to arbitrary detention, and the right to a fair trial are fundamental human rights that are enshrined in a number of human rights treaties to which the Russian Federation is a party, including the 1966 International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. These rights are also enshrined in the Russian Constitution. They must be fully respected and protected in practice, including in relation to all the individuals under investigation and currently standing trial in connection with the events in Bolotnaya square on 6 May 2012.

Amnesty International will continue to monitor the trials and consider the cases of other defendants as the presentation of evidence is completed. Amnesty International is currently calling for the immediate and unconditional release of Vladimir Akimenkov, Artiom Saviolov and Mikhail Kosenko,

⁴ See Amnesty International, "Russian Federation: Lawyer at risk of being stripped of license: Farid Murtazin", UA: 228/13 Index: EUR 46/035/2013, 19 August 2013, <http://amnesty.org/en/library/info/EUR46/035/2013/en>.

⁵ See <http://amnesty.org/en/library/info/EUR46/037/2013/en>.

and reiterates its call on the Russian authorities to ensure prompt and fair trial of all the co-defendants and suspects in this case.

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