

**3 October 2018**

### **Russian Federation: criminal proceedings against lawyer raise concerns**

Today, the ICJ expressed concern at ongoing criminal proceedings against Mikhail Benyash, a lawyer practicing in Russia, who is charged with use of force against the police and impeding justice. The lawyer has been detained until 23 November. The ICJ called on the responsible authorities to drop any criminal charge relating to his conduct of professional duties in the courtroom, and to ensure that the lawyer's rights are protected and that allegations of his ill-treatment are fully investigated.

Benyash alleges that following his apprehension by the police on 9 September, the police beat him up in the car. According to the police report he inflicted the injuries on himself, contrary to demands of the police that he stop doing so. He was charged with disobedience to the police, which according to the police report was due to "the fact that the police asked Benyash not to injure himself, but he continued self-beating". Benyash was convicted and sentenced to 14 days of imprisonment and 40 hours of correctional works.

On 23 September, the day of his release, Benyash was arrested again. He was charged with two further offences: 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.

On 23 September he was also charged with obstruction of justice (Criminal Code Article 294(1)), reportedly on the basis of an allegation that in a court hearing on 6 May 2018, Benyash had "repeatedly interrupted, gave instructions and objections to the decisions of the judge" and after he had been removed from the courtroom "continued unlawful behaviour". According to the lawyer, he was taken out of the courtroom by force due to his motions to allow certain members of the public to be present at the open hearing.

The ICJ is concerned that the criminal obstruction charge against Mikhail 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. The fact that this charge was only laid following his recent arrest, some five months after the alleged incident occurred, also raises questions as to the motivation for bringing the charge forward now.

"Benyash is currently charged on account of his alleged attack on a police officer and obstruction of justice. While the first charge requires an impartial and independent inquiry, the second charge should be of concern to the entire lawyers' community", said Karinna Moskalenko, ICJ honorary member. "We fear that this may lead to lawyers in Russia being charged with obstruction of justice simply for actively expressing their position and objections in accordance with the procedure prescribed by law", she added.

According to the UN Basic Principles on the Role of Lawyers, states must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference” and that they do 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” (Principles 16, 18). In particular, “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.” (Principle 20)

The Basic Principles also confirm that lawyers’ roles include assisting their clients in every appropriate way, including before courts and other authorities (Principle 13), and that lawyers “shall always loyally respect the interests of their clients” (Principle 15).

The Principles also provide that lawyers should “maintain the honour and dignity of their profession as essential agents of justice” (Principle 12). Where actions of a lawyer in a courtroom fall short of professional standards but do not constitute a crime, the lawyer may be subject to disciplinary proceedings, but is entitled to fair process and other safeguards in this respect (Principles 26 to 29).

Furthermore, the ICJ emphasises 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. The investigative authorities have duty to investigate allegations of ill-treatment of the lawyer by police following his arrest on 9 September promptly, effectively and impartially and any persons responsible should be brought to justice.

### **Background information**

Sochi-based lawyer Mikhail Benyash arrived in Krasnodar on the eve of a rally against pension reform, which took place on 9 September. Benyash reportedly planned to represent anyone arrested as a result of the rally in court. Benyash has worked as a lawyer for ten years specialising in criminal and civil cases.

Media has reported that on 23 September, Mikhail Benyash was detained for 48 hours and was conveyed from the special detention centre in Ust-Labinsk, where he was detained under administrative arrest, to Krasnodar. On September 25, the Leninsky District Court of Krasnodar extended Benyash's detention in custody to 72 hours. After the court session, the lawyer was hospitalized with a preliminary diagnosis of "bilateral pneumonia".