CASE SUMMARY OF THE PROSECUTION

of

ALEXANDER LUKASHENKO
MAJOR GENERAL VADIM ZAITSEV
ANATOLY KULESHOV

for

CRIMES OF TORTURE AND HOSTAGE TAKING

DEVELOPED BY MCCUE & PARTNERS LLP
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INTRODUCTION

1. This proposed private prosecution is brought on behalf of a number of opposition Belarus presidential candidates and victims of torture who, following the disputed presidential elections of December 2010, allege that they were taken hostage and thereafter subjected to torture by Alexander Lukashenko and other public officials of the Republic of Belarus under his command, including Major General Vadim Zaitsev, Head of the KGB, and Anatoly Kuleshov, Minister of Interior,

The allegations

2. In summary, the prosecution alleges that at 22:00 on 19 December 2010 Messrs. Andrei Olegovich Sannikov, Alaksiej Michalevic and Vladimir Neklyaev and Ms. Natalia Koliada were, on the orders of the accused, taken hostage in Minsk, Belarus, after protesting the presidential election results and were tortured with the specific intention to compel all opposition leaders, their organisations and supporters to abstain from voicing dissent about the electoral malpractice perpetrated by Lukashenko for the purpose of securing him an unchallenged fourth term as President of Belarus.

The purpose of the prosecution file

3. Following investigation of these allegations, a Prosecution File has been assembled for use by both private and public prosecutors in different jurisdictions around the world in order to help bring Lukashenko and his co-conspirators to justice.

4. The File has been compiled with three objectives in mind. Firstly, to provide prosecutors with prima facie evidence of crimes of universal jurisdiction with which to prosecute Lukashenko and his co-conspirators, particularly for torture and hostage taking. Secondly, to ensure that Belarus officials who are accused of torture cannot travel to foreign jurisdictions without fear of possible public or private criminal enquiry and/or sanction. In this way the File acts as a de facto travel ban by providing governments, NGOs and private lawyers with immediate access to requisite evidence and witnesses should any of the accused enter the their
jurisdictions. Thirdly, to provide European civil society with the evidential and legal means by which to challenge, where possible, impunity in respect of allegations of torture made against public officials and former heads of state who come within the European legal order and seek to rely upon a claim of state immunity.

**England and Wales**

5. As regards the jurisdiction of England and Wales, the File takes the form of a private prosecution in respect of an Indictment variously alleging substantive counts of torture by each defendant of each of the four alleged victims cited, and two joint counts of conspiracy to torture and hostage take in respect of all four victims.

6. A private prosecution in the jurisdiction of England and Wales is “a prosecution started by a private individual who is not acting on behalf of the police or any other prosecuting authority or body which conducts prosecutions”.¹ The right of a private individual to bring a criminal prosecution is a historical one originating in the earliest days of the legal system. As Lord Wilberforce noted in 1978, even though the Crown nowadays undertakes most prosecutions, the right remains “a valuable constitutional safeguard against inertia or partiality on the part of authority”. In the same case it was described as a “useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders against the criminal law”.² Thus a member of the public can bring a private prosecution for any offence, unless the offence is one for which the consent of the Attorney General (AG) or the Director of Public Prosecutions (DPP) is required before a prosecution can take place. S.6(1) of the **Prosecution of Offences Act 1985** (POA). Such consent would be required for crimes of universal jurisdiction.

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² *Gouriet v Union of Post Office Workers* [1977] 3 All ER 70; [1978] AC 435 at 439-440 per Lord Wilberforce: “Enforcement of the law means that any person who commits the relevant offence is prosecuted. The individual ... who wishes to see the law enforced has a remedy of his own: he can bring a private prosecution. *This historical right ... goes right back to the earliest days of our legal system...*” [emphasis added]. See also at 497 per Lord Diplock: “In English public law every citizen still has the right, as he once had a duty [though of imperfect obligation], to invoke the aid of courts of criminal jurisdiction for the enforcement of the criminal law by this procedure.”
7. Proceedings for an offence of torture under s.134 of the Criminal Justice Act (CJA) may not be commenced in England without the consent of the AG. CJA s.135. Likewise, proceedings relating to hostage taking, contrary to section 1 of THA 1982 are not to be instituted in England or Wales without the consent of the AG under s.2(1)(a). A person guilty of the offence under this Act shall be liable, on conviction on indictment, to imprisonment for life according to s.1(2).

8. The private prosecution is commenced by laying an ‘information.” Rule 7.2 of the Criminal Procedure Rules (Crim.PR). Thereafter a Magistrate must then decide whether to issue a summons or a warrant. The present Government has recently legislated to require the consent of the DPP before an arrest warrant can be issued to a private prosecutor in respect of offences of universal jurisdiction.

9. McCue and Partners stand ready to lay an information and seek consent for an immediate summons or warrant of arrest should any of the accused enter the jurisdiction of England and Wales or plan to do so. It is for these reasons that the victims in this case invite Lukashenko and his co-conspirators to come to the U.K. or elsewhere in the world to rebut the prosecution case as pleaded and to present any evidence to the contrary concerning their innocence.
THE CHARGES

Torture

10. The importance of this File to those Belarus victims who have suffered at the hands of the Lukashenko Regime cannot be over-estimated. The intended prosecution relates to crimes of universal jurisdiction. In the view of this prosecution it is the duty of all states, particularly within Europe, to ensure that torturers cannot operate with impunity and go unpunished. The underlying assumption is that the crimes of universal jurisdiction are offences against the law of nations or against humanity and that the prosecuting nation is acting for all nations. Demjanjuk v. Petrovsky, 776 F.2d 571, 583 (6th Cir. 1985), cert. denied, 475 U.S. 1016 (1986)

11. The special status of the absolute prohibition of torture is well established in international law, including under the European Convention on Human Rights (ECHR). It is reinforced by the fact that the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (‘CAT’) has to date been ratified by 146 states, including Belarus (which ratified the CAT in 1987) and all 47 member states of the Council of Europe. Furthermore, Belarus ratified the International Covenant on Civil and Political Rights (“ICCPR”) on 12 November 1973, Article 7 of which states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Both the CAT and the ICCPR are controlling authority. The Belarus Constitution also states that Belarus must conform to recognised international law. Torture is widely recognised as a crime

3 Shamayev and Others v. Georgia and Russia, no. 36378/02 ECHR (2005), §335
under international law for which individuals, as well as states, have responsibility on the international level. The European Court of Human Rights (ECtHR) together with other international bodies and domestic courts has further recognised that the prohibition against torture has attained the status of a peremptory norm of international law. The prohibition on torture as a *jus cogens* gives rise to certain obligations, which states are required to fulfil in order to enforce the prohibition. The fulfilment of those obligations is the physical manifestation of the prohibition. Further these obligations, such as the duty to provide an effective remedy for victims of torture, are essential to enforcement of the prohibition. A failure to fulfil these obligations, simply put, is failure to prohibit torture.


13. Such developments also require a review of the nexus requirements that are routinely cited in order to institute a private prosecution or civil claim for damages in respect of allegations of torture and hostage taking. In this regard further clarification will be sought from state authorities in the light of these intended prosecutions. According to *Amnesty International’s* interpretation of customary

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9 Demir and Baykara v. Turkey [GC], no. 34503/97, ECHR (2008), § 73.
international law, states are permitted to exercise universal jurisdiction over crimes under international law (and treaties require states parties to do so with respect to certain crimes of international concern if they fail to extradite suspects) without requiring any specific link to the forum – such as presence in the territory at the time of an investigation (as opposed to time of trial) or a request for extradition – other than the presence of the accused at the time of trial.

14. It would be egregious and contrary to the principles underpinning the universal prohibition of torture for a serving head of state to use torture and hostage taking during the election process and its aftermath to unlawfully secure his continuing status as a serving head of state and then claim absolute state immunity against prosecution for that torture.

Hostage Taking

15. The other crime of universal jurisdiction with which we seek to prosecute the accused is that of hostage taking. Article 1 of the INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES 1979 provides:

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:
   a. attempts to commit an act of hostage-taking, or
   b. participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.

16. In England and Wales the International Covenant was implemented by way of the TAKING OF HOSTAGES ACT 1982 (THA 1982). Section 1 of the Act provides:

1. A person, whatever his nationality, who, in the United Kingdom or elsewhere, —
   a. detains any other person ("the hostage"), and
b. in order to compel a State, international governmental organisation or person to do or abstain from doing any act, threatens to kill, injure or continue to detain the hostage, commits an offence.

17. This makes it an offence for anyone, anywhere in the world, to detain another and, in order to compel “a State, international organization or person” to do or abstain from doing any act, threaten to kill, injure or continue to detain the hostage. The explicit use of the term ‘third party’ makes clear that the intention was to refer to an entity separate from the suspect and the person seized or detained. The Oxford Dictionary definition of the word ‘hostage,’ is “a person seized or held as a security for the fulfilment of a condition”. The word ‘security’ would clearly imply that there is a requirement to seek to influence a third party, others or another.

18. Thus, if a person in a position of influence and authority, such as an opposition presidential candidate, is detained by another, for the purpose of seeking to compel others, whether individuals, the detainees’ party members, supporters or other organisations to cease opposition activity, then an offence of hostage taking is committed.

19. In this case, opposition candidates such as Mr. Sannikov were abducted because they exercised their right to engage in the political process and thereafter sought to dispute the election result. Mr. Sannikov was the most popular opposition candidate in the 2010 election\(^{10}\), which was widely criticised by independent observers.\(^{11}\) He promoted a peaceful demonstration of the results of that election and called for a multi-party system and democratic elections precisely so that he and other citizens could participate in the conduct of public affairs in Belarus. Although Belarusian law endows presidential candidates with immunity for such political participation, the Chair of the Central Election Commission (CEC) announced that the immunity would end at 20:00 on 19 December. A short while later police began operations against

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\(^{11}\) Belarus still has considerable way to go in meeting OSCE commitments, despite certain improvements, election observers say, OCSE, 20 Dec 2010, available at: [http://www.osce.org/odihr/elections/74656](http://www.osce.org/odihr/elections/74656) (accessed 26 September 2011)
opposition candidates in the Square at that time. At a press conference after those security forces operations had taken place Mr. Lukashenko revealed the true basis for the crackdown and detentions: “That's enough of that. There won't be any more silly democracy, muddle-headed democracy in the country.”

20. The burden of proving that the hostage taker sought to compel others would be on the prosecution, although the actual influence need not be achieved. It is clear from the wording of the statute that recklessly influencing others would not suffice and there appears to be a requirement for further or ulterior intent. The Prosecution submit there was nothing negligent or reckless about the crackdown. Lukashenko's press statement is a pure admission to ulterior intent.

21. As regards any potential claim to absolute state immunity as a serving head of state, the prosecution views the allegation of hostage taking as a continuing offence that straddles Lukashenko’s time in office as President both before and after his third term of office, which expired on 31 March 2011. Likewise, some of the allegations of torture raised by the alleged victims in this case also fall on either side of that date. It will be for Lukashenko to raise and then prove any claim to absolute state immunity in respect of these offences on the basis that at the relevant times he was the lawfully constituted President of Belarus and a head of state and, moreover, that he can currently claim to be a head of state.

22. In this regard, the prosecution contends that no free or fair election took place in December 2010 such as to validate a fourth term presidency for the purposes of such a claim, particularly in relation to continuing offences that post date the expiry of his third term. The prosecution will rely upon the Appendix 5 containing reports and declarations of numerous States and International bodies concerning the validity of the 2010 elections in rebutting any claim of absolute state immunity in respect of Lukashenko. See paras. infra for a précis of the international reaction to

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13 *Id.*

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the election result and subsequent violence.
THE EVIDENCE

Generally

23. As regards the specific evidence supporting the factual allegations of hostage taking and torture, see infra.

24. In the view of the prosecution such evidence needs to be read in the light of other broader evidence concerning the political history of the Lukashenko regime in Belarus. In particular the prosecution submits the particulars of offence contained in the Indictment must be read in the light of the unique political command structure of the Regime in Belarus and its modus operandi concerning political dissent.

25. The Republic of Belarus is an authoritarian State. It gained independence in 1990 after the dissolution of the USSR.¹⁴ Governmental power in Belarus is nominally separated into legislative, executive, and judicial branches.¹⁵ In November 1996, after a sham referendum orchestrated by Lukashenko and opposed by Mr. Sannikov, a new Constitution was adopted, providing for expansion of powers for the President.¹⁶ Since then Lukashenko has exercised complete authority over all three branches of government and there has been no other president.¹⁷ His powers as president are enormous: he appoints the Prime Minster, Council of Ministers, Chairman of the Central Election Commission, the General Prosecutor, the Chairman of the National Bank, the Chairman of the Committee of State Control and can dismiss members of parliament and Judges, as well as issues decrees, edicts, orders, and directives effectively curtailing the legislative process.¹⁸

26. Despite Belarus’s republican constitution it is in effect a dictatorship with a history


¹⁵ id.

¹⁶ id.


¹⁸ id.
of repression, political violence, and one-party rule. Opposition parties have no representation in the National Assembly, and the pro-presidential parties serve only to validate Lukashenko’s decisions.¹⁹ The government completely controls religious, political, and media activity²⁰ and consistently violates fundamental freedoms protected by the ICCPR. The U.N., the Organisation for Security and Co-Operation in Europe (OSCE), the OSCE Parliamentary Assembly, the Council of Europe, the Parliamentary Assembly of the Council of Europe, the European Council, the European Parliament, the European Commission, and the NATO Parliamentary Assembly have consistently criticised Belarus for repeated violations of universal norms.²¹ Neither the judiciary nor the prosecutors are independent with trials usually predetermined.²² Fair trials are routinely disregarded, and even though the Belarusian Constitution prohibits the use of torture, detainees are routinely tortured and subjected to inhuman treatment.²³ As the U.N. Human Rights Council succinctly explained, the Belarusian “judiciary, like law enforcement and security agencies, is utilized as an instrument of political repression,”²⁴ and the “judicial system is still subservient to the executive branch and there is no genuine independent legislative branch”²⁵.

27. Expert evidence establishes that a total lack of rule of law prevails within Belarus with regard to the arrest, detention, defence and prosecution of individuals involved in political dissent. This orchestrated state of affairs concerning the rule of law allows Lukashenko to fix elections and run Belarus as a personal fiefdom, and to

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¹⁹ Id.
²⁰ Id.
²¹ Id.
²² Id.
²³ Id.
hostage take and torture at will in order to achieve his political objectives.

28. Thus, the fact that acts of hostage taking are often later cloaked by the Regime in a thin legal veneer of the language of detention, charge and prosecution does not by itself rebut the central factual contention underlying the charge of hostage taking. The evidence in this case suggests that all the victims were arbitrarily snatched off the streets of Minsk without arrest and then tortured in order to quell widespread dissent about the disputed election result. There is no evidence before the prosecution at present to rebut the inference that these abductions were anything other than prima facie unlawful, especially given evidence of the authoritarian command structure and absence of a functioning independent criminal justice system free of political interference.

29. The prosecution relies upon the expert evidence of Professor Bill Bowring and Dr. Andrew Wilson (Appendix 4), and the international reports on Belarus contained in Appendices 5 and 6, concerning the fairness of elections, the state of the rule of law and political freedom in Belarus. The expert findings not only prove the total absence of the rule of law in Belarus but also the prevalence of an authoritarian command structure that places all power in the hands of Lukashenko such as to enable him to override the will of the people.

30. The prosecution submits that such evidence establishes the modus operandi of the Regime and how it has habitually dealt with political opposition and dissent. In short, there is a well-established history of evidence of political repression in Belarus and of the rigging of elections by the KGB and other state organs. The political and security structure developed in Belarus was and is designed to snuff out all forms of political and cultural dissent particularly in relation to presidential elections. The individual prosecution statements concerning torture and hostage taking should therefore be read and evaluated within this broader evidential

26 Mr. Sannikov and other opposition presidential candidates were later charged with “organization or participation in disturbances, causing harm to people and the destruction of property” under Articles 293(1) and 293(2) of the Belarus Criminal Code.
context. Likewise, the particulars of offence contained in the Indictment should be considered against the long history of allegations of torture, disappearances and extra-judicial killings of political opponents hostile to the Regime that has blighted Belarus since Lukashenko took power.

31. It is submitted that if the evidence is approached in this manner then irresistible inferences can be drawn concerning the complicity of Lukashenko and the other high-ranking officials accused in this case.

32. The proposed prosecution further relies on Appendix 1, which contains proposed admissions concerning the political history of Belarus and the Lukashenko Regime since 1995, Appendix 2, which details some of the alleged past political murders and disappearances that have gone un-investigated by the KGB and Belarus authorities and Appendix 3 which lays out various witness statements and exhibits.

Other undisclosed evidence

33. It should be noted that additional evidence which implicates Lukashenko and his co-conspirators in the commission of the offences will be held back by McCue and Partners for security and safety reasons until such time as a prosecution is initiated somewhere in the world. On receiving proof that a prosecution has been initiated, McCue and Partners is prepared to disclose to the court or the prosecuting authority or individual further direct evidence of the defendants’ involvement and complicity in hostage taking and torture.
THE BACKGROUND FACTS OF THE CASE

The election and protests of 19 December 2010

34. On 19 December 2010 Belarus held a presidential election. The incumbent, President Alexander Lukashenko was declared the winner by the Central Electoral Commission of the Republic of Belarus (CEC) with 79.65% of the votes (or 5,122,000 voters). The CEC stated that the elections were valid with 90.65% of voter turnout. According to the CEC Mr. Sannikov received the next highest proportion of the vote after Lukashenko totalling 2.43 percent. The other candidates (in alphabetical order) are said to have acquired the following percentage of votes:

<table>
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<th>NAME</th>
<th>% OF THE VOTE</th>
</tr>
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<tr>
<td>Mr. Grigory Kostusev</td>
<td>1.97%</td>
</tr>
<tr>
<td>Mr. Alexei Michalevich</td>
<td>1.02%</td>
</tr>
<tr>
<td>Mr. Vladimir Neklyaev</td>
<td>1.78%</td>
</tr>
<tr>
<td>Mr. Yaroslav Romanchuk</td>
<td>1.98%</td>
</tr>
<tr>
<td>Mr. Vitaly Rymashevsky</td>
<td>1.09%</td>
</tr>
<tr>
<td>Mr. Andrei Sannikov</td>
<td>2.43%</td>
</tr>
<tr>
<td>Mr. Nikolai Statkevich</td>
<td>1.05%</td>
</tr>
<tr>
<td>Mr. Viktor Tereshchenko</td>
<td>1.19%</td>
</tr>
<tr>
<td>Mr. Dmitry Uss</td>
<td>0.39%</td>
</tr>
</tbody>
</table>


28 Id.
29 Id.
30 Id.
35. When news emerged on the evening of 19 December that that the incumbent, Lukashenko, dubbed "Europe's last dictator", had won 79.7 percent (reports vary) of the vote between 10,000 to 50,000 amassed in October Square in Minsk to demonstrate against alleged electoral fraud. Protesters publicly declared that they refused to recognize the results of the election and demanded negotiations with the authorities. Eyewitnesses in this case, cited in NGO reports at the time, confirm that this protest was peaceful.

36. At around 20.30 protesters in October Square were corralled by Belarus security forces into Independence Square where Government House is situated. At the same time riot police with shields and KGB operatives dressed in black converged on the Square. Shortly afterwards a small group of unidentified men tried to storm Government House, breaking windows and doors before being pushed back by riot police, who had been pre-stationed in surrounding streets. There was widespread suspicion voiced at the time that this attack on Government House was orchestrated by the KGB to serve as a pretext to beat and abduct leading opposition figures and dissenters. Eyewitnesses in this case report seeing men dressed in black (recognised as the unofficial uniform of the KGB) carrying out the attack, as opposed to civilian protesters. Other witness testimony describes the police’s use of force as “indiscriminate and disproportionate” given that virtually no resistance was encountered. In the event, the authorities violently dispersed the crowd and snatch and detained around six to seven hundred protestors, including opposition presidential candidates.

37. The prosecution will rely on the evidence contained in the statements of those who witnessed events in Independence Square. All of the witnesses confirm other

32 Id.
35 http://www.freedom-now.org/campaign/andrei-sannikov/
contemporary accounts given to NGOs at the time that the violence was orchestrated by the KGB and police, and the protest was peaceful with all opposition candidates calling for calm on the streets.

**The subsequent detentions and ill-treatment**

38. Over the next two weeks, administrative courts in Belarus sentenced at least 725 people to between ten and fifteen days “administrative detention”—or misdemeanour detention—for participating in an unsanctioned gathering.36

39. A number of opposition candidates and supporters were also detained in KGB pre-trial detention centres and subjected to torture and ill treatment during the course of their detention. These include Messrs. Michalevic, Sannikov and Neklyaev and Ms. Koliada, whose evidence now forms the basis of this prosecution. Each of these alleged victims has since spoken out about the treatment to which they and others were subjected. None of the alleged victims in this prosecution were reported to have been involved in the incident involving Government House. Indeed, witnesses in this case confirm that opposition leaders called on the demonstrators to remain peaceful.37

40. In addition to the 725 referenced at para. 38 *supra*, Messrs. Sannikov, Michalevic and Neklyaev were three of over fifty people, including four other opposition presidential candidates, who subsequently faced criminal prosecution for allegedly organizing a mass disturbance.38 Opposition presidential candidates Grigory Kostusev, Dmitry Uss, Alexei Vitaly Rymashevsky, and Nikolai Statkevich, also faced this charge.39

41. The prosecution submits that inferences can be drawn from the political positions of

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39 For a complete of those who were detained following the protests see http://spring96.org/en/news/41387 (accessed 26 September 2011)
those people who were detained and faced prosecution as to the likely political motivation of the Belarus authorities in detaining and prosecuting them.

42. A number of these individuals have now signed sworn witness statements as to the inhuman treatment they suffered during their detention while Mr. Sannikov’s oral testimony, given to the court during his trial, has been fully transcribed and authenticated. The testimony contained in these statements is consistent with other statements cited herein and with contemporaneous media and civil society reports of events filed in the prosecution case and variously referred to in footnotes of this case summary.

43. The treatment metered out to the alleged victims included physical assault, abuse, sleep deprivation, humiliating and degrading treatment, uninhabitable and hazardous conditions, interrogations, lack of access to legal advice and assistance, intimidation, threats of harm to themselves and family, demands to sign and endorse pre-written statements falsely implicating them in violence and demonstrating support for the regime, lack of access to medical treatment and incommunicado detention. Mr. Michalevic, in his press statement described the prison as “a concentration camp in the center of Minsk.” Such treatment constitutes torture within the meaning of international law and s.134 of the CJA.

**The international response to the election and violence**

44. The international response to the alleged electoral fraud and the treatment of the opposition presidential candidates was largely one of condemnation with critical statements being released by both the E.U and the U.S. Russia and the People’s Republic of China both congratulated Lukashenko on his ‘victory’. The prosecution refers to the expert report of Professor Bill Bowring and Dr. Andrew Wilson contained in Appendix 4 and the international reports and declarations in respect of the election and violence contained in Appendix 5.

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45. On 20 December 2010 the British Foreign and Commonwealth Office Minister for Europe, David Lidington, issued an official statement which said:

“The United Kingdom strongly condemns all violence surrounding [the] Presidential Election in Belarus. We are gravely concerned that the authorities appear to have used excessive force against demonstrators at a rally in Minsk on 19 December. I am shocked and horrified at the beatings, arrests and detention of presidential candidates, journalists, civil society activists and other individuals. Many of these people have been detained in unknown locations. The United Kingdom calls on the Government of Belarus to apply the rule of law impartially and effectively, to inform the public of the location of those detained and to refrain from further acts of intimidation and violence.”

46. On the same day, the European Union High Representative Catherine Ashton, the European Union’s foreign policy chief, called on authorities to “immediately release those arrested.” The U.S. also condemned the violence and stated that the election results were not legitimate. Assistant Secretary of State Philip Crowley told reporters in Washington that the U.S. administration was concerned over the beating and detention of presidential candidates and called upon the government of Belarus to release them immediately. White House press secretary Robert Gibbs said the U.S. “cannot accept as legitimate” the official results and instead endorsed a report by the observer mission from the OCSE, which concluded that voting and counting were not free, fair or transparent.

47. The OSCE said the process was “marred by the detention of most presidential candidates and hundreds of activists”. Gibbs also reiterated a 1 December 2010 statement that “further development of relations is contingent upon the Government of Belarus’ respect for human rights and the democratic process”.

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45 Jan Cienski, Hundreds arrested in Belarus protests, Financial Times, (20 Dec 2010) available at: http://www.ft.com/cms/s/0/1c92f7a2-0c0f-11e0-b1a3-00144feabdc0.html#axzz1Z4k2k5Py (accessed 26 September 2011)
Gibbs called the post-election violence “a clear step backwards”.46 *Amnesty International* also condemned the “violent dispersal of a mainly peaceful demonstration”.47 It called on the Belarusian authorities to:

“[I]nvestigate all allegations of disproportionate use of force by riot police. They must also look very carefully into how the violence started. Those arrested for their peaceful participation in the protest must be immediately released. If they are sentenced to imprisonment, they will be considered prisoners of conscience ... The force with which the peaceful protests were dealt with demonstrate the degree to which the authorities in Belarus disregard the rights to freedom of speech and to peaceful protest, and the lengths to which they will go to hold on to power”.48

48. On 21 December 2010, Head of Mission of the Organisation for the OSCE Parliamentary Assembly, Mr. Tony Lloyd, stated: "[t]his election failed to give Belarus the new start it needed. The counting process lacked transparency. The people of Belarus deserved better".49 On 22 December the British Foreign Secretary, William Hague, released the following statement:

“The UK Government has extremely serious concerns about the conduct of the Belarus Presidential election and the reports that the Belarusian authorities responded with excessive and apparently coordinated violence. Seven Presidential Candidates and over six hundred protesters were reported to have been arrested on the day of the election. I understand that the conditions in which detainees are being held are utterly unacceptable and designed to punish and intimidate. I am also extremely concerned at what appear to be forced recantations, broadcast on Belarusian state media, reminiscent of the show trials of a previous era. I therefore call on the Belarusian authorities to release immediately all those detained for politically motivated reasons as a matter of urgency.”50

49. On 23 December 2010 the President of the European Parliament, Jerzy Buzek, said:


48 *Id.*


"It is important that we maintain pressure on the Lukashenko government at the highest levels following the violence in Belarus. The European Parliament will examine the conduct and aftermath of the Presidential elections including the excessive and disproportionate forces by the Belarusian authorities, the beating and detention of opposition presidential candidates and violence against journalists and civil society activists. We will also discuss the possible further responses from the side of the European Union. I repeat my call for the immediate release of political prisoners and for an immediate end to the violence by the authorities.”

50. On 23 December 2010 U.S. Secretary of State Hillary Rodham Clinton and European Union High Representative Catherine Ashton released the following joint statement on the post-presidential elections situation in Belarus.

“The United States and the European Union reiterate their call for the immediate release of the presidential candidates and the over 600 demonstrators who have been taken into custody in the wake of the presidential elections in Belarus. We strongly condemn all violence, especially the disproportionate use of force against presidential candidates, political activists, representatives of civil society and journalists. Taken together, the elections and their aftermath represent an unfortunate step backwards in the development of democratic governance and respect for human rights in Belarus. The people of Belarus deserve better. The European Union and the United States recognize the serious problems with the electoral process and the vote count as reported by the OSCE election observation mission and urge the Government of Belarus to meet its commitments to the OSCE to substantially reform the electoral process. The Government of Belarus should take the steps necessary to create political space for political activists, civil society representatives, and independent journalists. Respect for democracy and human rights remain central to improving Belarus’s relations with the United States and the European Union. Without substantial progress in these areas, relations will not improve. It is against this background that we will be assessing the Government of Belarus’s actions to address the current situation and to take developments into account as we review our relations with Belarus. The European Union and the United States

intend to continue their support for and engagement with the people of Belarus and civil society representatives."\(^{52}\)

51. On 23 December 2010 a number of European foreign ministers published an article in the *New York Times* condemning Lukashenko, stating that the elections had “no democratic legitimacy” and decried Lukashenko’s “siege regime”. They stated that: "[c]ontinued positive engagement with Mr Lukashenko at the moment seems to be a waste of time and money. He has made his choice ... Europe must not be mute".\(^{53}\)

52. Countries that have congratulated Lukashenko on his ‘victory’ include: Ukraine, Saudi Arabia, the UAE, Libya (under Muammar al-Gaddafi), Turkey, Palestine, Cuba, Armenia, Uzbekistan, Iran, Turkmenistan, Tajikstan, the People’s Republic of China; Kazakhstan; Russia; Syria; Venezuela; and Vietnam.\(^{54}\)

53. The Case Summary now turns to the specific evidence relating to the abduction and torture of the alleged victims.

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THE ABDUCTION AND TORTURE OF ANDREI SANNIKOV

Profile

54. Andrei Sannikov is a former diplomat and the most prominent member of the opposition in Belarus. Before joining the opposition, Mr. Sannikov worked as a diplomat and served as the Deputy Foreign Minister of Belarus. He resigned from his government post in 1996 to protest a controversial referendum that expanded the powers and extended the term of Lukashenko. He then co-founded Charter '97, an organization that promotes democracy in Belarus and maintains an independent news website. In 1998, Mr. Sannikov created the Coordinating Council of Democratic Forces of Belarus, an organization which represents Belarus's major opposition groups and seeks to promote an open, democratic society, primarily by seeking the release of political prisoners. Since then, he has engaged in peaceful and legal human rights activism. He organized non-violent protests in opposition to the presidential elections of 2001, 2004, 2006, and 2008. For his services to the cause of human rights, an international jury awarded Mr. Sannikov the Bruno Kreisky Award in 2005. Mr. Sannikov ran in the 2010 presidential election as an opposition candidate affiliated with the European Belarus Civil Campaign. Throughout the campaign, opposition candidates were faced with government harassment and had their phones were tapped. He is married to Iryna Khalip, a renowned Belarusian journalist who was arrested with him. Ms. Khalip has reported on government corruption and has been critical of Lukashenko in the


56 Sannikov Biography, supra

57 Id.


59 Bogdanova, supra
past.\textsuperscript{60} In 2009, she received the Courage in Journalism Award from the \textit{International Women’s Media Foundation}.\textsuperscript{61}

**Circumstances of his detention**

55. At about 22:00 on 19 December 2010, following protests about the presidential election results in Minsk, Mr. Sannikov was deliberately beaten in the street by riot police\textsuperscript{62} and struck continuously with clubs.\textsuperscript{63} No attempt was made to formally arrest Mr. Sannikov in accordance with any procedure known to law. Numerous people, many of whom have given statements in this case, witnessed the assault on Mr. Sannikov by Belarus state officials. The prosecution submits the attack on Mr. Sannikov was targeted and orchestrated from the outset.

56. Mr. Sannikov was eventually rescued and placed in a car by friends and supporters to be driven to hospital. After a few blocks ‘special unit members’ of the Belarus authorities stopped the car. Mr. Sannikov was removed from the vehicle and beaten once more before being placed in a government vehicle and driven away.\textsuperscript{64} No arrest procedure known to law was deployed.

57. Present with Mr. Sannikov at the protest was Ms. Khalip. Ms. Khalip is a journalist for the Belarusian publication \textit{Novaya Gazeta}. She was also taken from the car in which Mr. Sannikov was to be driven to hospital and beaten. Her head was hit against the car window.\textsuperscript{65} This all occurred while Ms. Khalip was live on the independent radio station \textit{Ekho Moskvy}.\textsuperscript{66} She was recorded saying: “What are you...
doing? ... OK, OK, I’m standing like in an American action film. They have pressed me up against the car. My husband is lying on the ground. Monsters! [Expletive]! Fascists! They’re hitting me in the face! They’re tying my hands behind my back.”

Ms. Khalip was taken to the detention centre at Okrestina\(^6\) and later transferred to a KGB detention centre.\(^6\)

**Further mistreatment**

58. Following his initial beating and abduction, Mr. Sannikov was taken and held at Amerikanka, the KGB pre-trial detention centre in Minsk. His lawyer, Pavel Sapelko, later described Mr. Sannikov’s condition as “horrendous.” Mr. Sapelko continued to voice concern about further mistreatment during pre-trial detention until he also came under intense professional and psychological pressure from the authorities and was eventually disbarred. Before doing so, Mr. Sapelko, contemporaneously informed the media that:

"Sannikov was brutally beaten upon detainment. He can barely move one of his legs. Moreover, he is not being provided with qualified medical assistance ... [a] local medic 'gave him a quick once over. He [the medic] said Sannikov is suffering either from a sprain or extensive bruising. [The medic] prescribed him some ointment and tablets for his headache".

Mr. Sapelko also stated that Mr. Sannikov was in an isolation ward of the KGB.\(^7\) Mr. Sapelko later stated to the press that Mr. Sannikov had received blows to his head and had a suspected broken leg and that, despite Mr. Sapelko asking for the injury to be X-rayed, he had been refused. "He feels very bad and looks very bad," Mr.

\(^6\) More Than 600 Arrested As Standoff Between Lukashenka, Belarus Opposition Continues, RFE/RL, (22 Dec 2010), available at: [http://www.rferl.org/content/standoff_between_lukashenka_opposition_nears_third_day/2254886.html](http://www.rferl.org/content/standoff_between_lukashenka_opposition_nears_third_day/2254886.html) (accessed 26 September 2011)


Sapelko told the Associated Press.\textsuperscript{71} On 24 December 2010 Mr. Sapelko informed the media that "[Sannikov] was put in a cell designated for three people but there are four in there, and he is forced to sleep on a sheet of wood on the floor".\textsuperscript{72}

**Harassment of colleagues and family**

59. The mistreatment of Mr. Sannikov and his lawyer Mr. Sapelko was followed by harassment of his family and colleagues. Such harassment is indicative of KGB practice as evidenced by the expert reports of Professor Bill Bowring and Dr. Andrew Wilson in this case. It falls part of a known administrative practice of the KGB when dealing with opponents of the regime. According to Belarus’ *Viasna Human Rights Center*, early on Monday 20 December 2010 police raided the office of the website for *Charter ‘97* and arrested its editor, Natalya Radzina.\textsuperscript{73} *Charter ‘97* reported subsequently that Ms. Radzina had been able to send a text message to her colleagues saying that she and the several volunteers working that night had been taken to the Minsk headquarters of the KGB.\textsuperscript{74}

60. Ms. Khalip’s mother, Lyutsina Yuryevna Belazatskaya, told journalists at *Novaya Gazeta* that on Tuesday 21 December 2010 police officers searched Ms. Khalip and Mr. Sannikov’s apartment without a warrant.\textsuperscript{75} This search was part of a series of police raids on opposition members’ homes and offices which took place around this time. Police raided the homes and offices of a number of opposition leaders and confiscated their computers.\textsuperscript{76} It was further reported that on 25 December the KGB again searched Mr. Sannikov and Ms. Khalip’s home. Ms. Khalip’s father, Vladimir


\textsuperscript{74} Id.

\textsuperscript{75} Id.

\textsuperscript{76} *Belarus police raid opposition homes, offices: NGO*, AFP, (25 Dec 2010), available at: [http://www.google.com/hostednews/afp/article/ALeqM5i7Fv2ZwoxN7crOE2PDXrYISPapO7docId=CN69f35e312275753acb9bd147d6582f48.21](http://www.google.com/hostednews/afp/article/ALeqM5i7Fv2ZwoxN7crOE2PDXrYISPapO7docId=CN69f35e312275753acb9bd147d6582f48.21) (accessed 26 September 2011)
Khalip, was at the apartment along with the journalist's mother and 3-year-old son. Mr. Khalip told the news agency BelaPAN that Minsk city prosecutor Nikolai Kulik signed the search warrant. A second warrant also authorized a search of Vladimir Khalip's home, where agents confiscated a computer. Early searches were held at the place of Mr. Sannikov, and in the flat of his wife's parents, the Khalips.

61. On 24 December 2010, Belarusian social services tried to remove Mr. Sannikov and Ms. Khalip's three-year-old son from the care of Ms. Khalip's mother and place him in a state orphanage. Author and political analyst Valery Karbalevich has said such use of children is a standard tactic and has pointed to past cases of grown children being jailed to pressure political opponents. Belarusian orphanages have been described as “Dickensian”.

The charges and trial

62. On 29 December 2010 seven detained former presidential candidates in Belarus, including Mr. Sannikov, were charged with organizing mass riots, namely: Vladimir Neklyayev, Nikolai Statkevich, Vitaly Rymashevsky, Andrei Sannikov, Alaksej Michalevic, Grigory Kostusev and Dmitry Uss. These charges were brought under Parts One and Two of Article 293 of the BELARUSIAN CRIMINAL CODE.

63. The trial of Mr. Sannikov was held in the Partyzanski district court of Minsk. The trial has been described by the U.S. Department of State as “clearly politically motivated” and has been widely criticized as unfair. Commentators claim that

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78 Bogdanova


during the course of the proceedings the prosecution produced no evidence to suggest that Mr. Sannikov engaged in any violence during the protests on 19 December.\(^{64}\) It is alleged by some commentators that the evidence demonstrates that the provocation of violence by a small group of people was organized by the security services.\(^{85}\) Amongst the criticisms of the process, it has been stated that the court improperly allowed evidence of absent police officers to be read during the preliminary investigation and that there was collusion between officers in writing their statements.\(^{86}\)

64. None of the police officers whose evidence was relied upon alleged that Mr. Sannikov had engaged in any violence on the night. Defence witnesses which included human rights activists and journalists confirmed not only that Mr. Sannikov had neither used nor called others to violence but also that Mr. Sannikov had requested police to cease their actions and called upon the government to start negotiations. He is alleged to have stated:

“This was a deputy minister, so I know that some people work in the House of Government even on weekends, moreover, during the elections. It is always possible to reach a responsible official there. The one, who has the right to report to the government, the prime ministers or deputy prime ministers, who has the right to make decisions.”\(^{87}\)

65. On 12 May 2011, Mr. Sannikov was convicted and sentenced by the Partizanski District Court in Minsk to a five-year prison sentence. Mr. Sannikov’s counsel, Marina Kovaleyskaya (who replaced Mr. Sannikov’s former counsel Mr. Sapelko following his harassment and disbarment by the state) reported that a preliminary application for an appeal against the conviction was filed at the Criminal Division of the Minsk City Court on 23rd May 2011.\(^{88}\) Mr. Sannikov is currently being detained


\(^{86}\) Id.

\(^{87}\) Id.

at Babrujsk penal colony #2.89

Evidence of torture

66. In his recorded testimony to the court, Mr. Sannikov gave evidence of his treatment in custody in the KGB detention centre. Below is a summary of that testimony.

(1) Assaults

Sannikov was badly beaten immediately prior to his arrest and after being placed in detention.

(2) Arms twisted behind the body

Being transported from his cell to other places in handcuffs with arms lifted high behind him in order to inflict pain.

(3) Searches

Searches were carried out daily. Along with other detainees, he was rushed out of his cell with all his belongings including his mattress and herded down a steep staircase into a large, cold, concrete room. Masked men who behaved aggressively and in an offensive manner towards them conducted the searches. They were forced to strip naked and made to stand up by the wall, with their legs stretched wider than the width of their shoulders with their hands twisted for prolonged periods. They were forced to squat which exacerbated the injury to Mr. Sannikov's leg. While standing against the walls, the masked men hit the detainees on the back and legs. They also banged their batons on the wall while emitting inhuman sounding screams to create psychological pressure.

Once this procedure was complete, the detainees were allowed to dress and collect all their belongings which were hard to lift because of the treatment they had been subjected to. Mr. Sannikov believed that the masked men took delight in watching the detainees struggle to collect and lift their belongings.

(4) 24 hour illumination of lights in cells

At night, the lights remained switched on. Detainees were ordered to sleep face up, under the lights. Detainees who moved in their sleep were woken up and ordered to assume the required position.

(5) Threats and psychological pressure

When Mr. Sannikov wrote a letter of complaint to the head of the pre-trial wing, he was subsequently subjected to punitive actions. Other detainees had been told by the authorities to put pressure on Mr. Sannikov by telling him to follow the example of other candidates and support Lukashenko.

When Mr. Sannikov was charged, he discovered that his wife was being held in a cell nearby and that an attempt had been made to remove his son to a state orphanage. Investigators and senior officers told him that if he wished to help his wife, he was required to provide testimony in specified terms.

On 31 December Mr. Sannikov was forced to speak to Major General Zaitsev, the Chairman of the KGB, who threatened the lives of Mr. Sannikov's wife and son, stating that they would apply stricter measures to both if Mr. Sannikov refused to sign the prepared statement. Mr. Sannikov refused to sign the statement as it was untrue. Mr. Sannikov took the threats seriously particularly in light of his understanding that there were no female officers in the detention centre where his wife was detained.

He was also subjected to repeated interrogations.

(6) Uninhabitable conditions

Mr. Sannikov was held in a pre-trial KGB ward in Minsk. He alleges that the room temperature at all times was very cold. He alleges that the cells were overcrowded and he was forced to sleep on planks on the floor which came from under the plank bed. Despite having a serious injury to his leg, a suspected fracture, which caused great pain, he had no option but to sit on the planks. He was in a very bad state of health.

He was held initially for five hours and was not permitted to use the toilet.
(7) Denial of access to lawyers

He was denied access to his lawyers throughout the time of his detention until 22 March 2011. When his lawyer was finally allowed access to his client, he was not permitted to speak to him in private or even look at him. Requests for copies of the Belarusian constitution and the Universal Declaration of Human Rights made by Mr. Sannikov were refused. Rooms for confidential consultations were available as detainees saw them en route to their interrogations. However, confidential consultations with his lawyer were not permitted at any time during his detention. Interrogations took place without prior consultations with lawyers and without the presence of lawyers.

(8) Inadequate access to medical treatment

Mr. Sannikov did not have adequate access to medical treatment for injuries sustained during his arrest.

(9) Isolation from outside communication and information

Mr. Sannikov was not permitted any correspondence from anyone for the first month of his detention. Throughout his detention detainees were not permitted access to television or newspapers. The detainees were forced to watch propaganda programmes. The content of the programmes concerned criminal persecution in Russia, distressing images of Chechen bandits decapitating people, explicit violence towards children and dismembered bodies.

67. The prosecution contends that this ill treatment constitutes torture for the purposes of s.134 of the CJA.
THE ABDUCTION AND TORTURE OF ALAKSEIJ MICHALEVIC

Profile

68. Alaksej Michalevic is the former deputy chairman of the BNF (2004-2008), the leader of "For Modernization" Union and was an opposition presidential candidate in the 2010 presidential elections. In 1997 he graduated from the Faculty of Law of the Belarusian State University. Between 2003 and 2007 he was deputy of Pukhavichy district council and coordinator of the Local Council Deputies Assembly. From 2004-2008 he was deputy chair of the Belarusian Popular Front party. Since 2005 he has been accredited by the Belarusian Ministry of Economics as an anti-recession manager. From 2007 to 2008 he worked as legal counsel at the Soviet-Afghan War Disabled Veterans Association and from 2008 to 2010 as a legal counsel at the Belarusian Independent Trade Union. He is a former editor of the Rehiyon independent newspaper.90

69. Mr. Michalevic was not present at the time of the pro-democracy rally that took place following the presidential elections of 19 of December 2010. Nonetheless, KGB agents who broke down the doors to his home at 04:30 arrested him early the next morning. He had attended the site of the rally only after it had been dispersed and to drive injured civilians to hospital.

Circumstances of his detention

70. Mr. Michalevic was taken by officers of the Belarusian Security Service, the KGB, at around midnight on 19th December 2010 and transported to a KGB detention centre known as Amerikanka. Following his detention, Mr. Michalevic was provided with a pre-written statement regarding his arrest and detention and told to read it on television in exchange for his release from detention, which he initially refused to do. He was forced to comply with the demand as he was told that his refusal to cooperate would result in a sentence of between five to fifteen years imprisonment.

71. Mr. Michalevic alleges that uniformed men who were not prison guards administered certain forms of ill treatment. The men wore uniforms which bore no insignia, name-tags, badges or labels and they wore masks or balaclavas that appeared to be similar to fisherman’s caps pulled down with holes cut out for the eyes and mouth. These men carried batons with them.

**Searches in Amerikanka**

72. Mr. Michalevic and other detainees were taken downstairs into a cell and forced to remove their clothing. They were made to stand naked facing a wall with their arms and legs spread very wide and made to maintain this position for a prolonged period of time. They assaulted the detainees by beating their legs with batons which caused extreme pain. The masked men stamped their feet loudly behind the detainees in order to induce fear of being further assaulted. The detainees were laughed at when they demonstrated this fear. This treatment was accompanied by the use of verbal abuse, insults and threats. Mr. Michalevic was told that his family would be put under pressure or harmed. Mr. Michalevic was singled out for particular abuse and offensive language, while other detainees were led to understand that the treatment to which they were being subjected was as a result of his refusal to co-operate. Mr. Michalevic was fearful that he would subject to further ill treatment.

**Conditions in Amerikanka**

73. Mr. Michalevic was placed in an overcrowded cell which did not have adequate sleeping facilities for the detainees. The room temperatures were very cold and well below comfort levels at all times during his detention in Amerikanka. He was repeatedly transferred between cells. Facilities for showering were only made available once a week during this time.

**24 hour illumination of lights**

74. For many nights during his detention in Amerikanka, the light in the cell remained illuminated for 24 hours. The light emitted a strong light which severely disrupted
sleep. He was ordered to sleep facing up to the light and was woken from sleep if he moved from this position. In addition to being deprived of sleep, the detainees were not permitted to wear watches in Amerikanka which caused disorientation. The only measure of time available to detainees was the service of meals at intervals.

**Transfer to Valadarka**

75. Mr. Michalevic was transferred to another detention centre, Valadarka, for several days during the period of his detention and while there he was kept in a special cell. At the time of his transfer he was denied any information as to the reasons or type of transfer, which caused fear as to where he would be taken or what was going to happen to him. Mr. Michalevic believed that the transfer was made in order to make conditions of detention more onerous for him and put him under greater pressure. Physical exercise, which he had been taking in his cell in Amerikanka, was made impossible when he was transferred, as there was no space in the new cell to do it. The conditions in Valadarka were equally difficult. There was no natural light in the cell as the metal shutters at the window were kept closed at all times. The light was also kept illuminated 24 hours a day, depriving the detainees of sleep.

76. Mr. Michalevic was transferred to another cell within Valadarka which was severely overcrowded with fifteen people sharing a cell designed to house eight. Sleep shifts were necessary due to the overcrowding and lack of sufficient beds. As a result he was often forced to forfeit any outdoor time for exercise in order to sleep. The cell was very dirty and many of his cellmates smoked in the cell. The food provided in Valadraka was inedible and of extremely poor quality.

77. Searches of the cells were carried out daily, during the course of which the detainees were placed in very small cells used for solitary confinement for periods up to an hour. As a result of the overcrowded conditions, lack of air and poor nutrition detainees would often fall ill or lose consciousness.

**Transfer back to Amerikanka**

78. Mr. Michalevic was transferred back to Amerikanka during his detention where he was subjected to further ill treatment. Transfers between cells and detention
centres were effected by placing him in handcuffs to the rear, with his head kept facing down to the floor. His arms were pushed up behind him causing extreme pain. He was repeatedly told to comply and refusals to do so resulted in his arms being pushed further upwards causing extreme pain.

79. Mr. Michalevic continued to be subjected to searches involving standing naked with arms and legs spread wide against a wall five or six times a day in temperatures of less than ten degrees centigrade. He was subjected to searches that were designed theoretically to expel any items hidden in anal passages, namely being ordered to stand and sit repeatedly whilst naked, sometimes alone and sometimes with others. Mr. Michalevic believed that this type of treatment was inflicted upon him to humiliate, wear him out and pressurize him. As a consequence he felt degraded and dehumanised.

80. The cells were designed with a line, approximately 30-40 cm wide, painted across the floor, behind which they were expected to stand whenever a prison officer opened the door. Over the course of several days, fresh coats of what may have been acetone-based paint were applied to the line repeatedly. The smell of the paint was found to be both unpleasant and had a deleterious effect on his health. A detainee who had suffered a heart attack the month previously, suffered further ill health as a result of the repeated applications of fresh paint.

**Other forms of intimidation or pressure**

81. When Mr. Michalevic was transferred to Valadarka, his lawyer was not informed of his client’s whereabouts by the authorities, but was able to discover whereabouts only through information from other detainees. Similarly when Mr. Michalevic was transferred back to Amerikanka neither his lawyer nor family was informed of the transfer. As a consequence most of his time in detention was *incommunicado.*

82. Mr. Michalevic was not afforded adequate or indeed any access at times to his lawyer throughout the period of his detention. He was not permitted adequate access to his family over the course of his detention, as they had been permitted to visit him on only one occasion during this time. He was repeatedly interrogated
without the presence of his lawyer and asked to give evidence against other opposition candidates such as Messrs. Sannikov, Statkovic and Neklyaev and repeatedly refused to do so.

83. Threats were made to Mr. Michalevic by his captors regarding the safety of his family. He did not have any means of communication with them to verify their safety. This caused him a great deal of distress and fear. He was repeatedly accused of attacking Lukashenko. After being subjected to physical pain, he became fearful that the authorities were capable of serious assault and even feared for his life.

84. Within two or three days of his detention, the detainees’ access to television and media was cut off entirely. Instead they were forced to watch anti-Semitic films involving the Russians fighting the ‘Jewish Mafia'; programmes such as the inauguration of Lukashenko and other propaganda material including how the KGB and Soviets caught spies and historic films about the KGB.

85. The prosecution contends that such ill treatment constitutes torture for the purposes of s.134 of the CJA.

The charges and trial

86. Mr. Michalevic was charged with organising and taking part in mass disturbances under Parts 1 and 2 of Article 293 of the Belarusian Criminal Code. On 19 of February Mr. Michalevic was released on conditional bail after he was forced to sign an agreement of cooperation with the KGB. After his release, Mr. Michalevic spoke out to officials regarding the torture that he and other prisoners underwent while detained. After these remarks, the KGB has threatened to make public Mr. Michalevic’s recorded interrogations with the alleged hope of ruining his career. On 14 March 2011 he fled Belarus after he was called to return to the KGB detention centre for further questioning, believing that compliance would result in his detention. On 18 March it was reported that he had fled to the Czech Republic, where on 24 March he was granted political asylum.
THE ABDUCTION AND TORTURE OF NATALIA KOLIADA

Profile

87. Natalia Koliada is the General Director, Theatre Producer and co-founder of the Belarus Free Theatre. She has been detained on a number of occasions for participation in peaceful political and theatrical activities, opposing enforced disappearances in Belarus and publishing human rights monitoring mechanisms on the Internet. The Belarus Free Theatre became an OBIE winning theatre in 2011 and has received the French Republic Human Rights Prize and the Europe Theatre Prize and ArtVenture Freedom to Create Prize when the Belarus Free Theatre was called as a Global Artistic Ambassador on Human Rights. Ms. Koliada also started the Global Campaign Free Belarus Now that is supported by well known figures of contemporary art and politics such Sir Tom Stoppard, President Vaclav Havel and Harold Pinter.91

88. Accompanying Mr. Sannikov and his wife, Ms. Koliada attended the rally at October Square on 19 December 2010. She neither participated in nor witnessed any violence used or instigated by opposition candidates.

Circumstances of her detention

89. At Independence Square she was in the company of presidential candidates Messrs. Sannikov, Statkevich and Rymashevsky as well as others. She recalls the gathering as peaceful and states that there were no announcements of violence. Indeed she recalls opposition candidates calling for peaceful negotiations and urging the crowds not to react to the provocation of one person hitting the doors of the House of Parliament.

90. She recalls the police moving in very quickly and indiscriminately attacking the crowds, hitting them with batons and kicking them. After attempting to assist those injured by police, as she tried to leave, she was physically forced by police into a waiting van with others. The other occupants of the police van were screaming. She

was ordered to get on the floor whilst police shouted abusive language calling them “animals” and “cunts” and “whores”. The police packed 68 people into the van, which caused a few people to lose consciousness as a result of the crush, panic and lack of air. They were kept in the van for over four hours during which time the police continued to be abusive, threatening them with rape and making comments that “the Nazis were a dream to us”.

**Okrestina**

91. They were taken to Okrestina, where they were subjected to detailed and inappropriate searches. Inside the centre, along with other detainees, she was forced to stand in a line in the corridor, facing the wall with her hands behind her back. Those detained spent the entire night standing in this way in the illuminated corridor until 14.30 the following day. Every effort was made to prevent detainees from being able to sleep or speak. Women, children, the elderly and those injured in the attacks were not allowed to leave, not allowed to be seated and were not given access to medical treatment. The women were subjected to threats of rape.

92. Those detained including Ms. Koliada were taken individually and asked to sign pre-written statements implicating them in violence and disobedience during the rally. Their personal possessions were seized from them, including telephones and personal items of jewellery.

**Further mistreatment**

93. Ms. Koliada was suffering from health problems which prevented her from standing for prolonged periods but was not permitted to sit down. She requested water to take prescription medication. The medication was confiscated in response. More people including men were brought into the corridor where she was being held throughout the night. Officers in charge engaged in behaviour to humiliate the male detainees, such as telling one individual that if he wanted to use the toilet, to “shit in [your] pants” in front of the women. The sounds of men and women screaming came from separate rooms whilst she was standing in the corridor.

94. Eventually, Ms. Koliada was taken to court the next day. She had not had access to a
lawyer or any information regarding the charges or evidence against her. Despite indicating whilst feeling the effects of sleep deprivation and severe tiredness that she did not understand what was going on, she was sentenced to an administrative fine on the basis that she had then a daughter under twelve years old.

**Political refugee**

95. On 31 December Ms. Koliada and her family fled Belarus and has since claimed political asylum in the U.K. Since her escape, she has been involved in campaigning for a free Belarus and has met with political leaders and media. As a result of her activities she has learned that the KGB have continued to harass her parents, family, friends, neighbours and colleagues in Belarus.

96. The prosecution contends that such ill treatment constitutes torture for the purposes of s.134 of the CJA.
THE ABDUCTION AND TORTURE OF VLADIMIR NEKLYAEV

Profile

97. Mr Neklyaev is Belarusian poet and writer and was an opposition presidential candidate in the December 2010 elections in Belarus. In 1971 he entered the department of poetry at Moscow Literature Institute. In 1973 he graduated from the department of philology at Minsk Pedagogical Institute. Upon his return to Minsk, from 1972 to 1975 he worked as a literature counsel in the newspaper Znamya Yunosti and from 1975 to 1987 was editor of the bulletin ‘Theatrical Minsk’. In 1978 he became member of the USSR Union of Writers and collaborated with the Belarusian State TV. In 1986 he was awarded the Order of the Badge of Honour for the contribution to literature. From 1987 to 1998 he was chief editor of one of the most popular periodicals of the time, the magazine Krynitsa. He was also chief editor of the weekly publication Literatura i Mastastva. From 1998 to 2001 Vladimir was chair of the Union of Belarusian Writers. At a Union meeting in 2001, he suggested adopting a resolution declaring President Lukashenka a usurper and not eligible for candidacy in the future elections. At the 13th special congress of the Union, Mr. Neklyaev proposed a resolution that Lukashenka was in power illegally. He soon left Belarus due to political reasons and settled in Poland. In 2003 he returned to Belarus. From 2005-2009 he was chair of the Belarusian PEN-Center. He is well known for numerous collections of poetry and song lyrics. Between 1979 and 2009 he received many awards for his poetry, including the Lenin Komsomol Prize, the Yanka Kupala Belarusian State Literature Prize and the first prize in the 1st International Festival of Slavic Poetry ‘Singing Letters’. In 2010 he initiated the creation of the civil campaign ‘Tell the Truth!’. On May 18, 2010 Mr. Neklyaev and two other activists were arrested and kept by the law enforcement agencies of Belarus; he was released on 21 May 2010.\(^{92}\)

Circumstances of his detention

98. On the evening of 19 December Mr. Neklyaev was travelling from his campaign office to attend the peaceful pro-democracy rally that was taking place at Independence Square in centre of Minsk.

99. At around 19:00 Mr. Neklyaev left his campaign office with a small group of supporters and started to walk to the where the rally was taking place. At around 19:10 police stopped him. When he informed them he was an opposition presidential candidate and asked to be allowed to carry on men in black masks arrived in blacked out mini-vans and flash grenades were let off.

100. Mr. Neklyaev was beaten in the head with a baton and sustained two hits to head. He lost consciousness. On regaining consciousness shortly thereafter his attackers started to kick him and he sustained a serious injury to his spine.

101. At around 19:20 after the attackers dispersed, Mr. Neklyaev was taken to hospital. En route and as a result of his injuries he suffered a hypertensive emergency. At the hospital he was taken directly to the intensive care unit with a diagnosis of second-degree head injuries.

102. Mr. Neklyaev was in the intensive care unit when around ten people dressed all in black and wearing ski masks entered his room. Mr. Neklyaev was lying in bed attached to a drip in his underwear and could not move properly. His wife was also in the room. Two of the men grabbed Mrs. Neklyaev because she immediately started screaming for help. They clapped her mouth shut, pulled her hands behind her back and pushed her out of the room and held her outside. The rest of them grabbed Mr. Neklyaev, wrapped him into a blanket and took him from the hospital. He was put on the floor of a minivan and driven away. Nobody showed him or his wife any papers or identification.

93 A severe increase in blood pressure that can lead to a stroke.
Amerikanka

103. Naked apart from his underwear, Mr. Neklyaev was taken to Amerikanka thrown onto the floor of a cold room and left there. After a while some men in uniforms, who Mr. Neklyaev recognized as military, came in, picked him up off the floor and handcuffed him to a chair. He was left there for three or four hours before being moved to a cell.

24 hour illumination of lights

104. At night, the electrical light was kept on so that Mr. Neklyaev could not sleep. He was also required to lay with face facing the door so that the prison guards could check on him. If he fell asleep and turned they would enter the cell and wake him up.

Physical and psychological torture

105. Mr. Neklyaev demanded to meet with his defence attorney but was denied and for ten days he was held in Amerikanka without his family or attorney being informed of his whereabouts.

106. Mr. Neklyaev was interrogated around ten times without the presence of a defence attorney. On a number of occasions the Chairman of the KGB, Major General Vadim Zaitsev, interrogated him. During the interrogations he was psychologically pressured. He was told that he would be charged with the offence of armed attack against the state and the punishment was execution. They told him that they would execute his family if he did not cooperate. They told him that his wife was part of the conspiracy and that she would be charged as well and sent to a prison where nobody knew what might happen to her. He was also told that his daughters did not live far enough from the KGB and it was easy to get to them.

107. Mr. Neklyaev was also beaten during these interrogations. This included being hit hard in the groin.
Stress-positions

108. Mr. Neklyaev was on more than one occasion taken from his cell and taken to a cellar room downstairs with other prisoners. He was stripped naked and told to put his face and hands to the wall. He was forced to stretch his feet and hands apart until it caused him pain. In this position he was beaten in the groin and on his legs and on the knee area with fists and batons. He was kept in this position for as long as he could stand before he would fall.

Lack of adequate medical care

109. In Amerikanka Mr. Neklyaev asked for medicines that he had been prescribed to treat his high blood pressure. He was denied these. He suffered four hypertensive emergencies while in detention meaning he was at risk of a stroke or even death.

The charges and trial

110. On 29 January 2011 Mr. Neklyaev was transferred to house arrest from Amerikanka.

111. On 20 May the court convicted him of the offence of organising mass disturbances and handed down a suspended sentence of two years in prison.

112. The prosecution contends that such ill treatment constitutes torture for the purposes of s.134 of the CJA.
THE DEFINITION OF TORTURE APPLIED TO THE COMPLAINANTS IN THIS CASE

113. It is submitted that the ill treatment set out above is cumulatively capable of amounting to torture and inhuman, degrading treatment within the meaning of s.134 of the CJA.

The definition of torture

114. Under s.134(1)\(^{94}\) of the CJA, a public official or person acting in an official capacity, \textit{whatever his nationality}, commits the offence of torture if in the UK \textit{or elsewhere}: (a) he intentionally inflicts; (b) severe pain or suffering; (c) on another; (d) in the performance of purported performance of his official duties. It is immaterial whether the pain or suffering is physical or mental or whether it is caused by an act or omission. CJA s.3. A person who is not a public official may still commit the offence of torture if he acts at the instigation or with the consent or acquiescence of a public official or a person acting in an official capacity. CJA s.134(2). See also: Article 5, \textsc{Universal Declaration of Human Rights}; Article 7, ICCPR; Article 3, ECHR; and Article 1 of CAT that defines torture in these terms:

\begin{quote}
“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected
\end{quote}

134.—Torture:

(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

(2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if—

(a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence—

(i) of a public official; or

(ii) of a person acting in an official capacity; and

(b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.
of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

115. Likewise, the Council of Europe’s Prohibition of Torture handbook95, suggests that the following three principles are essential elements of torture: (a) the infliction of severe mental or physical pain or suffering (severity: see Ireland v UK, (1979-80) 2 E.H.R.R. 25); (b) the intentional or deliberate infliction of the pain (Aksoy v Turkey, 1996 ECHR); (c) the pursuit of a specific purpose, such as gaining information, punishment or intimidation (Dikme v Turkey, 2000 No.20869/92 at 64).

116. It follows that in order to demonstrate that an individual has been subjected to ill-treatment amounting to torture under international law the prosecution must provide evidence that demonstrates the following: (1) that they have endured severe pain and suffering, whether physical or mental; (2) that such pain and suffering was inflicted intentionally by the perpetrator; (3) that the perpetrator's motivation was to obtain information or a confession either from the individual or a third party and/or to punish the individual for an act either he or a third party has committed and/or for any reason based on discrimination of any kind; (4) that such pain and suffering was inflicted by or at the instigation of a public official or other person acting in an official capacity; and (5) that such pain and suffering was not arising from, inherent in or incidental to lawful sanctions.

**Distinguishing torture from in human treatment**

117. In the *Greek Case* (5 November 1969, YB XII) the ECtHR sought to distinguish inhuman treatment from torture in the following way:

“The notion of inhuman treatment covers at least such treatment as deliberately causes suffering, mental or physical, which, in the particular situation is unjustifiable. The word

“torture” is often used to describe inhuman treatment, which has a purpose, such as the obtaining of information or confessions, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment. Treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others, or drives him to an act against his will or conscience.”

In this case there can be little doubt that the infliction pain was ordered for ulterior political purposes. Similarly, in *Ireland* the ECtHR differentiated between torture and other cruel, unusual, degrading or inhuman treatment or punishment by ruling that certain interrogation techniques used against prisoners, while representing inhuman treatment, did not amount to torture identified the following: “it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.” *Ibid* at 79.

118. However, this judgment is subject to the later ruling in *Selmouni v France* (2000) 29 E.H.R.R. 403, where the Court stated sufficiently abhorrent or violent acts can amount to torture irrespective of the condition of the victim (para. 103). It has also since recognised that the standard that it set is also subject to the international community’s ever-evolving standards of decency:

> “[H]aving regard to the fact that the convention is a ‘living instrument which must be interpreted in the light of present day conditions’, the court considers that certain acts that were classified in the past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in the future ... It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitable requires greater firmness in assessing breaches of the fundamental values of democratic societies.”

*Ibid* at 442.

119. As a consequence, in *Selmouni*, where the applicant had been beaten, dragged by the hair, urinated on and threatened with a syringe, in treatment perhaps cumulatively no worse than in *Ireland*, the ECtHR ruled that the respondent had crossed the threshold into torture. This is of particular relevance to the ‘five techniques’ in

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96 Including hooding, sleep deprivation, food deprivation, subjection to noise and wall-standing
Ireland which were not at the time regarded as torture (‘wall-standing’; forcing detainees to stand in a stressful position for hours; forcing detainees to wear a hood over their head for long periods; exposing them to loud and hissing noises; depriving them of sleep; withholding food and drink; or providing insufficient amounts thereof). In A & Others v SSHD No.2 [2006] 2 AC 221, both Lord Bingham and Lord Hoffman opined that the five techniques would (or are likely to) consist of torture. Moreover, as in this case, there is a presumption that:

“Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the state to provide a plausible explanation of how those injuries were caused. Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under art.3 of the Convention.”


The cumulative affect of different forms of ill-treatment

120. Further, it is generally accepted that individual acts can be considered cumulatively when determining whether the behaviour amounts to torture, e.g. Bati v Turkey (2006) 42 E.H.R.R. 37 at 123:

“In these circumstances, the Court finds that, taken as a whole and having regard to its purpose and duration, the acts of violence to which the applicants were subjected were particularly serious and cruel and capable of causing “severe” pain and suffering. They therefore amounted to torture within the meaning of Art.3 of the Convention.”

In Selmouni at 100 the Court stated that:

“It remains to establish whether the ‘pain or suffering’ inflicted on Mr. Selmouni can be defined as ‘severe’ within the meaning of Article 1 of the UN Convention. The Court considers that this ‘severity’ is, like the ‘minimum severity’ required for the application of Article 3, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.”

It is submitted that when taken in their entirety, the acts to which the complainants were subjected are sufficiently severe to constitute torture.
Physical violence

121. As to physical violence, the complainants have been subjected to a variety of forms of physical violence, which, it is submitted, amount to torture. The physical violence inflicted included:

- Severe beatings prior to arrest, resulting in one complainant suffering a broken leg.
- Repeated beatings to the head and kicks to the body.
- Being struck with batons, especially to the back of the leg.
- Being forced to stand and stretch their legs wider than the shoulders, while their hands were twisted. This caused intense pain.
- Being forced to stand for prolonged periods of 12 ½ hours.
- Being forced to squat.
- Handcuffed behind the back. Whilst in this position their arms were raised in order to cause pain (analogous to strappado\(^97\)).

122. There is extensive case law to suggest that this type of treatment can amount to torture. In Selmouni the Court reiterated the principle of Ribitsch v Austria (1996) 21 E.H.R.R. 573, in which it was stated that in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the ECHR (paragraph 99). In the present case there was clearly no act performed by the complainants which would necessitate physical violence.

123. Further, sustained and severe beatings can contribute to a finding of torture. In Selmouni itself, the Court found that the applicant had been tortured following arrest by police. He had been subject to extensive and severe physical violence consisting of “repeated and sustained assaults over a number of days of questioning.” In Bati

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\(^97\) A form of torture in which the victim’s hands are first tied behind their back and suspended in the air by means of a rope attached to wrists
the applicants had been taken into police custody for being part of an illegal political party. During pre-trial detention they had been subject to extremely violent treatment, which the Court held amounted to torture: “the applicants presented serious injuries at the end of their stay in police custody”. The evidence adduced corroborated the applicants’ allegations that they were subjected to multiple acts of violence by the police officers. Accordingly, the Court accepted that they were subjected to various forms of ill treatment including suspension, spraying with water, repeated beatings and *falaka*98. In the light of the consistent statements and all the material before it, the Court was satisfied that they had been insulted, deprived of sleep for several days and subjected to assault which was liable to harm their mental integrity. p.737.

124. In *Menesheva v Russia* (2007) 44 E.H.R.R. 56 the Court found that a woman had been subject to torture by police officers. In particular:

“For about two hours they [the police] administered kicks and blows to her legs, threw her across the room, beat her with a baton and hit her head against the walls. While beating her they accused her of telling lies, insulted her and threatened her with rape and violence against her family.”

Para. 14.

In *Sheydayev v Russia* (2010) 51 E.H.R.R 7, the applicant had been arrested and was coerced by police in an attempt to extract a confession. He was repeatedly beaten, punched in the head, kicked whilst on the floor and hit with a chair leg. This was sustained over a period of days until a confession was made. The acts complained of were held to amount to torture. Para. 62. Much of the treatment suffered by the applicants in these cases is akin to the treatment suffered by the complainants in the present case, thus supporting the proposition that they have been tortured while in detention.

125. Likewise, in *Ilhan v Turkey* (2002) 34 EHRR 36, the applicant alleged that his brother Abdüllatif İlhan had been severely beaten by *gendarmes* when they

98 A form of corporal punishment in which the soles of the feet are beaten with an object such as a cane, rod or club, a stout leather bullwhip, or a flexible bat of heavy rubber.
apprehended him at his village and that he was not provided by them with the necessary medical treatment for his life-threatening injuries. The Court found that the applicant had been kicked and beaten and struck at least once on the head with a G3 rifle, which resulted in severe bruising and injuries to the head causing brain damage and long-term impairment of function, in addition to the 36-hour delay in bringing him to a hospital. The Court held that “[h]aving regard to the severity of the ill-treatment suffered by Abdüllatif Ilhan and the surrounding circumstances, including the significant lapse in time before he received proper medical attention, the Court finds that he was a victim of very serious and cruel suffering that may be characterised as torture.” Para. 87. This demonstrates that physical violence used at the time of apprehension is also capable of constituting torture.

126. The complainants have alleged that they were handcuffed behind their backs. The guards would raise their arms up in order to cause pain; the higher the arms were raised, the more intense the pain caused. This practice is mechanically analogous to ‘strappado’ or ‘Palestinian hanging’, in which prisoners’ arms are tied behind their back and raised through suspension. The practice has been held to constitute part of an act of torture on numerous occasions (see Aksoy v Turkey (1997) 23 E.H.R.R 553, para 137; Akkoc v Turkey (2002) 34 E.H.R.R. 51, paras 39(C327), 117; Dikme v Turkey 2000 app no 20869/92).

127. In respect of the complainants being forced to stand for prolonged periods, sometimes in painful positions, this was reconsidered by A & Others. Here the Court held that practices such as these, previously not considered to amount to torture in Ireland, would constitute part of torture in the modern day:

“That leaves the question of what counts as evidence obtained by torture. What is torture and who has the burden of proving that it has been used? In Ireland v United Kingdom (1978) 2 EHRR 25 the European court delicately refrained from characterising various interrogation techniques used by the British authorities in Northern Ireland as torture but nevertheless held them to be “inhuman treatment”. The distinction did not matter because in either case there was a breach of article 3 of the Convention. For my part, I would be content for the common law to accept the definition of torture which Parliament adopted in section 134 of the Criminal Justice Act 1988, namely, the infliction of severe pain or
suffering on someone by a public official in the performance or purported performance of his official duties. That would in my opinion include the kind of treatment characterised as inhuman by the European Court of Human Rights in Ireland v United Kingdom.”

Para. 97.

128. The case of Bati also refers to forcing detainees to stand for prolonged periods, a practice that intends to cause pain and discomfort. Para. 93. This was a contributing factor to a finding of torture. On this basis there is strong support for the proposition that the physical treatment to which the complainants have been subjected would count as torture.

**Psychological Violence**

129. It is submitted that the complainants were subjected to severe psychological pressure during detention through threats to themselves and their family, and the general creation of a state of mental anguish through the conditions and actions whilst detained. Psychological pressure or violence can be a form of torture. In Prosecutor v Kvocka (IT-98-30/1) the International Criminal Tribunal for the former Yugoslavia noted:

> “Beating, sexual violence, prolonged denial of sleep, food, hygiene, and medical assistance, as well as threats to torture, rape, or kill relatives were among the acts most commonly mentioned as those likely to constitute torture… The Trial Chamber notes that abuse amounting to torture need not necessarily involve physical injury, as mental harm is a prevalent form of inflicting torture.”

Paras. 144 and 149.

130. The UN Special Rapporteur on Torture, Question of Torture and other Cruel, Inhuman or Degrading treatment or punishment UN DOC A/56/156, 3rd July 1993, notes at paragraph 7 that the “fear of physical torture may itself constitute mental torture”, and “intimidation and coercion…including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or torture, especially when the victim remains in the hands of law enforcement officials.” Para. 7. In the Greek Case, the ECtHR stated that non-physical torture can be defined as infliction of mental
suffering by creating a state of anguish and stress by means other than bodily assault. In that case non-physical torture included mock executions and threats of death, various humiliating acts and threats of reprisals against the detainee's family.

131. The ECtHR has frequently held that a combination of physical violence and psychological pressure can result in torture. In particular being physically abused and threatened can lead to a torturous state of anxiety. For example in *Dikme* the Court stated at para. 95 that the treatment amounted to torture as the applicant “undeniably lived in a permanent state of physical pain and anxiety owing to his uncertainty about his fate”. Similarly, in *Bati* the Court noted that the applicants had been tortured when they were “indisputably kept in a permanent state of physical pain and anxiety owing to their uncertainty about their fate and to the level of violence to which they were subjected throughout their period in police custody”.

132. In the present matter the complainants underwent severe psychological trauma. Mr. Sannikov, having been subject to physical violence himself was told on 22 December 2010 that his wife was also being held and that if he wanted to 'help' his wife then he must comply with the demands of the investigators. Later, on 31 December, he was told that if continued to refuse to comply with their orders (and sign the document) then his wife and child would be killed. The chairman of the KGB had told him that they would apply 'stricter measures' to the wife and child. In *Akkoc v Turkey* (2002) 34 E.H.R.R. 51, the applicant was, in addition to physical violence, threatened that her children would be tortured. The Court held that the psychological pressure she suffered caused her intense fear and apprehension, and when regarded in the context of severe physical ill treatment was enough to constitute torture. Para. 116. Similarly, in the judgment of *Maritza Urruita v Guatemala*, November 27, 2003, Inter-Am. Ct. H.R., (Ser. C) No. 103 (2003), in the Inter-American Court of Human Rights, the Court found that State agents threatened to torture the applicant physically or to kill members of her family. Para. 85. This contributed to a violation.

133. In addition, Mr. Sannikov was forced to watch propaganda films, which depicted explicit violence against adults and children, decapitation and dismembered bodies.
In the circumstances this would inevitably cause him significant mental distress, especially given the physical violence he had already sustained at the hands of his captors. In Akkoc the applicant was forced to listen to others being tortured, which gave rise to intense fear and apprehension, contributing to a finding of torture. In the circumstances, it is submitted that Mr. Sannikov would have been subject to a similar level of fear and apprehension.

134. Messrs. Michalevic and Neklyaev were subject to severe mental trauma and threatening behaviour. The guards wore balaclavas and purposefully attempted to intimidate them through verbal abuse and physical threats. They were also told repeatedly that their families would be harmed, which caused them to fear for their safety. They were forced to perform acts, which were designed to humiliate or debase, such as squatting naked in the cold on a regular basis. In the case of Mr. Michalevic, they attempted to turn other prisoners against him by suggesting that they were being subject to bad treatment due to him. This had an isolating and intimidating effect. Mr. Michalevic was also shown anti-Semitic and propaganda films involving violence inflicted by the KGB. Given that he was aware the KGB was detaining him, this would have led him to fear that an equivalent level of violence would be inflicted upon him while in custody. Mr. Neklyaev suffered from severe health problems and was in constant fear that he may die as a result of a stroke due to the denial of adequate medical treatment by his captors.

135. Ms. Koliada was subject to similar threats of violence and intimidation as the other two complainants. In addition, she was threatened with rape on a number of occasions. Having been forced to get into a van and having been called abusive terms like “cunt” and “whore”, her captors subsequently told her that she would be raped, and said that “the Nazi’s were a dream to us”. She was later threatened with rape using a chair. In Campbell and Cosans v UK (1982) 4 EHRR 293 at para. 26 the Court noted that “provided it is sufficiently real and immediate, a mere threat of conduct prohibited by Article 3 may itself be in conflict with that provision. Thus, to threaten an individual with torture might in some circumstances constitute at least ‘inhuman treatment’”. In Aydin v Turkey (1998) 25 E.H.R.R. 251, the Court held that
rape can be sufficient to constitute torture when used with intent to extract information or a confession. The Court held that:

“Rape of a detainee by an official of the state must be considered to be an especially grave and abhorrent form of ill treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence.”

Para. 83.

136. It follows that the threat of rape can amount to at least inhuman treatment, if not torture itself. There are also strong suggestions that the law has now developed to the extent that a threat of rape can consist of torture. In Bati and Menesheva the applicants were threatened with rape, in addition to other treatment. Paras. 14, 34, 110. In Sheydayev officers threatened further physical abuse and anal rape. Para. 8. This contributed to a finding of torture. When considered cumulatively, the psychological violence inflicted by the authorities on the complainant is sufficient to demonstrate that they have been tortured.

**Strip Searching causing both physical and psychological injury**

137. Messrs. Sannikov, Neklyaev and Michalevic were forced to strip naked in freezing conditions and were subject to searches by masked men in military clothing. The process Mr. Michalevic was forced to endure required him to stand and sit in a squatting motion up to five or six times per day, in order to expel any concealed items from the anal passage. This was often done in the presence of others, and was designed to humiliate. In Yankov v Bulgaria (2005) 40 EHRR 36, the Court commented that:

“While strip searches may be necessary on occasion to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner and must be justified. Even single occasions of strip-searches have been found to amount to degrading treatment in view of the manner in which the strip search was carried out, the possibility that its aim was to humiliate and debase and the lack of justification, strip-searches, albeit carried out in a “normal” manner, had a degrading effect and violated Art.3 of the Convention as they were performed systematically on a weekly basis as a matter of practice which lacked clear
justification in the particular case of the applicant.”

Para. 110.

There could have been no proper justification for the searches in the present matter as the detainees were not in contact with the outside. The frequency and volume of the strip searches could certainly not be justified; neither could the manner in which they were conducted (see Valasinas v Lithuania (44558/98), in which intimate searches in front of female officers with the intention of humiliate).

**Conditions of detention**

138. The conditions in which the complainants were kept during the period of detention serve to significantly exacerbate the severity of the treatment to which they were subjected, and on that basis support the proposition that they were tortured. In Kalashnikov v Russia (47095/99) (2003) 36 E.H.R.R. 34, the applicant was kept in conditions which were held to amount to degrading treatment violating Article 3 ECHR. These conditions included highly overcrowded cells (24 detainees held in 17 square metres), being surrounded by heavy smokers in a poorly ventilated area, being prevented from sleeping due to constant light in the cells, as well as constant commotion and noise from fellow inmates and the television. A lack of beds required inmates to sleep in shifts. In Kalshnikov the Court concluded that: “The resulting deprivation of sleep must have constituted a heavy physical and psychological burden on the applicant.” Para. 97.

139. This is factually akin to the conditions to which the complainants were subjected. Mr. Sannikov states that he was put in a cold and cramped cell, and made to sleep on planks. He was forced to sleep face up and the light was permanently on in order to prevent sleep. If he did fall asleep he was awoken by one of the guards. Mr. Michalevic was put in a cell in which there were insufficient beds (four beds for five people). Consequently they were required to sleep in shifts. The cell was approximately ten metres squared, allowing two metres squared per person. The European Committee for the Prevention of Torture has emphasised that a desirable guideline for a detention cell is at least seven metres squared per person. He was
also forced to lie face up whilst strong lights shone at all times, and was awoken if he fell asleep. This had the effect of sleep deprivation. Ms. Koliada was also subject to sleep deprivation through bright lighting and being forced to stand for prolonged periods.

140. It is further submitted that the complainants were kept in those conditions in order to break their spirit and encourage them to denounce other opposition members. This can be distinguished from *Kalashnikov*, in which the Court held that Article 3 had been violated even in absence of any intention to debase or humiliate the applicant. Since the intention is present in the current case, it is submitted that this aggravates the effect of the conditions on the subjects, making the violation of article 3 more severe. It should also be noted that the complainant’s requests for medical assistance, permission to contact a lawyer, and that her family be informed of her detention were all refused. *Menesheva v Russia*.

**Conclusions**

141. Accordingly, the prosecution submits that the physical and psychological ill-treatment metered out to the complainants, taken to together with the conditions of their detention, and threats to their person, family and friends manifestly qualifies as torture for the purposes of international law and s.134 of the CJA.
142. Alexander Lukashenko was born 30 or 31 August 1954 in the settlement of Kopys in the Vitebsk oblast of the Belorussian Soviet Socialist Republic. He has served as the President of Belarus since 20 July 1994. For a full chronology of Alexander Lukashenko’s rule see Appendix 1 and the prosecution proposed admissions.

143. Under Lukashenko's rule, Belarus has emerged to be viewed as a state whose conduct is out of line with international law and whose regime is considered to grossly violate human rights. Reference is made to Appendix 6 containing numerous international reports documenting these abuses. Belarus has never held a poll seen as fair by international monitors since Lukashenko began his presidency. The former U.S. Secretary of State Condoleezza Rice described Belarus as “the last true remaining dictatorship in the heart of Europe”. Its application to the Council of Europe was suspended for its failure to abide observe fundamental freedoms and act in accordance with the rule of law. Since then Lukashenko and other Belarusian officials have been made the subject of the sanctions imposed by the European Union for egregious human rights violations.

144. Given the centralised and authoritarian command structure of Belarus with which Lukashenko wields control over Belarusian state bodies and agencies, including the KGB and the Ministry of the Interior, there is a prima facie case that Lukashenko ordered or permitted the unlawful arrests of his political opponents on 19 December 2010 and their subsequent torture at the hands of the KGB.

**Major General Vadim Zaitsev**

145. Major-General Vadim Zaitsev was born in Ukraine in 1964 to the family of an army officer. He graduated from the Moscow Higher Border Guard Command School of the USSR KGB in 1986 and from the Military Academy of the General Staff of the Russian Armed Forces in 2004. He worked his way from deputy chief of a border outpost to first deputy chief of the State Border Committee of the Republic of
Belarus in which role he was in charge of Lukashenko’s personal security.

146. In July 2008, Zaitsev was appointed the Chairman of the State Security Agency of Belarus (KGB).

147. We say that the KGB was a party to the unlawful arrests of Lukashenko’s political opponents that took place on 19 December 2010 and was responsible for their subsequent torture at *Amerikanka* and its other detention centres.

**Minister of the Interior Anatoly Kuleshov**

148. As Minister of the Interior, Anatoly Kuleshov has direct command and responsibility of the police authorities of Belarus and thus has responsibility for the unlawful arrests of Lukashenko’s political opponents that took place on 19 December 2010 which, in turn, led to their torture at *Amerikanka* and other KGB detention centres.
COMPLICITY AND RESPONSIBILITY

Evidence of complicity

149. As to complicity, in summary, the prosecution contend that irresistible inferences exists that each defendant sanctioned and/or agreed to play a part through their office to take hostage and torture presidential candidates, Messrs. Sannikov, Neklyaev and Michalevic, as well as civil rights campaigner, Ms. Koliada, in order to compel them and their supporters to abstain from voicing criticism of the election result. It is inconceivable given the political command structure of the Lukashenko Regime that their abduction and subsequent holding and mistreatment was not ordered by Lukashenko and, in turn, the superiors of those security officials who abducted the alleged victims and went on to mistreat them. The nature of their abduction, treatment, including the putting of false confession, all point to a carefully orchestrated plan on the part of the Lukashenko Regime to extinguish any dissent about the election result.

150. Further, the treatment of these victims is wholly consistent with the systematic repression metered out to previous political opponents of the regime.

151. In this regard the prosecution relies upon the following evidence:

i. The expert evidence and findings of Professor Bill Bowring and Dr. Andrew Wilson concerning the state of the rule of law, particularly in respect of the persecution of political opponents in Belarus and the authoritarian command structure unique to Belarus that binds the three accused together to give Alexander Lukashenko unfettered power over all state institutions (See Appendix 4).

ii. The International Reports in Appendix 6 detailing the long history and modus operandi of political repression and breaches of fundamental rights in Belarus under the Lukashenko Regime particularly in respect of political freedom of expression and association.

iii. The statements and declaration of numerous States and International
Institutions in Appendix 5 concerning the flawed elections of 2010 and orchestrated state violence against opposition candidates and their supporters.

iv. The evidence contained in Appendix 2 concerning investigations into previous abductions, disappearances and murder of other political opposition figures in Belarus by Lukashenko and the KGB and Ministry of the Interior.

v. Various witness contained in Appendix 3.

vi. The evidence of the victims and eye witnesses in this case who confirm the orchestrated nature of the abduction, harassment and ill treatment, as well as of their family and supporters.

vii. Admissions made by Lukashenko at a press conference as to why he ordered police onto the streets to break up the protests of 19 December 2010.

viii. The statements presently withheld by McCue and Partners of witnesses who give direct evidence of the Accuseds’ involvement in ordering abductions and torture to Alexander Lukashenko’s order.

**Command responsibility**

152. Depending on the jurisdiction, the prosecution will also seek to rely upon the doctrine of command responsibility which has been accepted under customary international law, codified in the Additional Protocol 1 to the Geneva Conventions, and incorporated into article 7(3) of the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), article 6(3) of the Statute of the International Criminal Tribunal for Rwanda (ICTR), as well as article 28 of the Rome Statute for an International Criminal Court (ICC).

153. In the ICTY Celebici case a threefold requirement for the existence of command responsibility, was elaborated which was confirmed by subsequent jurisprudence:

i. the existence of a superior-subordinate relationship;

ii. that the superior knew or had reason to know that the criminal act was about to be or had been committed; and
iii. that the superior failed to take the reasonable measures to prevent the criminal act or to punish the perpetrator thereof.

154. The prosecution submits that it is also proper to bring criminal charges against those in positions of responsibility who either knew or consciously disregarded information which indicated that their subordinates were committing crimes of torture or ill-treatment and failed to take reasonable measures to prevent it or report this, especially where patterns of torture or ill-treatment emerge or there has been systematic failure to prevent them or hold the perpetrators to account, this could be taken as evidence that those in authority are effectively condoning such practices.

155. When this test is applied to the aforesaid evidence taken and read as a whole, together with the unique political circumstances and command structure pertaining in Belarus at the time of the commission of these offences, the prosecution submits that irresistible inferences can and should be drawn against both Lukashenko and his co-conspirators concerning their complicity in the offences alleged in this prosecution and proposed Indictment, irrespective of other evidence withheld and not released presently by McCue and Partners.
156. Accordingly, and in conclusion, all efforts should be made by both the international community and civil society to utilize this prosecution file to bring the aforesaid Lukashenko and his co-accused to justice in respect of the heinous international crimes of hostage taking and torture for which every member state of the U.N. has a responsibility to either extradite or prosecute should such opportunity arise in its jurisdiction, thereby satisfying the continuing obligation to make real for the people of world and Belarus the universal prohibition against torture under international law.

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23 September 2011
APPENDIX ONE

Proposed admissions concerning the political history of Belarus and the Lukashenko Regime. Available on request to enquiries@mccue-law.com.
APPENDIX TWO

Details of alleged past political murders and disappearances that have gone un-investigated by the KGB and Belarus authorities. Available on request to enquiries@mccue-law.com.
APPENDIX THREE

Various witness statements and exhibits. Available on request to enquiries@mccue-law.com.
APPENDIX FOUR

Expert evidence of Professor Bill Bowring and Dr. Andrew Wilson. Available on request to enquiries@mccue-law.com.
APPENDIX FIVE

Reports and declarations of numerous States and International bodies concerning the validity of the 2010 Belarus presidential elections. Available on request to enquiries@mccue-law.com.
APPENDIX SIX

Material detailing the long history and *modus operandi* of political repression and breaches of fundamental rights in Belarus under the Lukashenko Regime particularly in respect of political freedom of expression and association. Available on request to enquiries@mccue-law.com.