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Disappeared persons in Belarus

Report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Christos Pourgourides, Cyprus, Group of the European People's Party

Summary

The report presents the results of the investigatory work carried out by the Rapporteur and the ad hoc sub-committee to clarify the fate of four well-known persons who disappeared in Minsk in 1999 and 2000. The conclusions which are drawn gravely impugn certain high representatives of the Government of Belarus. The draft resolution and recommendation call on the Council of Europe and its member and observer states to follow up on these findings, including by sanctions against the Belarusian authorities until they take the measures that must be taken against those responsible.

I. Draft resolution

1. The Parliamentary Assembly has been concerned for over two years by the disappearances of Yuri Zakharenko, former Minister of the Interior (disappeared on 7 May 1999), Victor Gonchar, former Vice-President of the Parliament of Belarus (disappeared on 16 September 1999), Anatoly Krasovskí, businessman (disappeared with Mr Gonchar) and Dmitri Zavadski, cameraman for the Russian TV channel ORT (disappeared on 7 July 2000).

2. Allegations made in public that these disappearances had a political background were the subject of an ad hoc sub-committee of the Committee on Legal Affairs and Human Rights set up in September 2002 and of a motion for a resolution in April 2003. The Assembly commends the ad hoc sub-committee and the Rapporteur for their thorough work under difficult circumstances.

3. The Belarusian authorities refused to allow the ad hoc sub-committee to visit Minsk in order to meet with persons who could not or would not come to Strasbourg and they cancelled a second round of meetings requested by the Rapporteur after they found out about his preliminary findings by intercepting confidential communications with the Secretariat and his contacts in Minsk. The Assembly protests vigorously, in particular against the refusal of the Belarusian authorities to invite Mr S. Kovalev and the ad hoc sub-committee presided by him.

4. The Assembly expresses its respect for those Belarusian officials and human rights defenders who sacrificed their careers and took risks even for their personal safety in order to advance the cause of truth.

5. It thanks those countries who granted protection and asylum to a number of such officials, including the Russian Federation, the United States of America, Germany and Norway, and seizes the opportunity to recall the importance of the practical availability of political asylum as a last resort to protect defenders of human rights and democracy.

6. The Assembly recalls Article 1 of the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearances which states that "*Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights*", and Article 13 of the Declaration, which calls for investigations to be continued "*as long as the fate of the victim of enforced disappearance remains unclarified*".

7. It notes that the UN Commission on Human Rights, in its Resolution 2003/14 adopted on 17 April 2003, urged the Government of Belarus

"(a) To dismiss or suspend from their duties law enforcement officers implicated in forced disappearances and/or summary executions, pending an impartial, credible and full investigation of those cases;

(b) To ensure that all necessary measures are taken to investigate fully and impartially all cases of forced disappearance, summary execution and torture and that perpetrators are brought to justice before an independent tribunal and, if found guilty, punished in a manner consistent with the international human rights obligations of Belarus".

8. The Assembly considers it an inadmissible conflict of interest that a person who has been accused of masterminding serious crimes is subsequently put in charge, as Prosecutor General, of the official investigation of said crimes. Under the circumstances, the Assembly strongly condemns this appointment.

9. On the basis of the solid results of the Rapporteur's work separating mere rumours from facts established by evidence or well-founded conclusions, the Assembly concludes that a proper investigation of the disappearances has not been carried out by the competent Belarusian authorities. On the contrary, the elements collected by the Rapporteur have led it to believe that steps were taken at the highest level of the State to actively cover up the true background of the disappearances, and to suspect that senior officials of the State may themselves be involved in these disappearances.

10. The Assembly therefore requests the Belarusian executive authorities:

- i. to launch a truly independent investigation into the above-mentioned disappearances by the competent national authorities, after the resignation of the current Prosecutor General, Mr Sheyman, who has been accused of having himself orchestrated the disappearances in his previous function, and to keep the families of the missing persons fully informed of the progress and results of this investigation;
- ii. to initiate criminal investigations with a view to clarifying, and punishing, as the case may be:
 - a. the alleged involvement of the current Prosecutor General, Mr Sheyman, the current Minister of Sports (previously Minister of the Interior), Mr Sivakov, and a high-ranking officer of the special forces, Mr Pavlichenko, in these disappearances, and
 - b. the possible crime of perversion of the course of justice committed by certain other high-ranking officials who have been involved in the investigations carried out so far and who have falsified, dissimulated or suppressed evidence in their possession in order to protect the true perpetrators of the crimes.

11. The Assembly further invites the Belarusian parliament:

- i. to establish a parliamentary committee of inquiry, complete with proper investigatory resources at its disposal;
- ii. to take the necessary action vis-à-vis the Executive to ensure that the requests under paragraph 10. above are fulfilled, including demanding the resignation of certain high-ranking officials accused of being involved in the disappearances in order to enable a truly independent investigation.

12. Until substantial progress is made regarding the Assembly's demands under paragraphs 10 and 11 above, the Assembly does not consider it appropriate to reconsider the suspension of the special guest status in favour of the Belarusian parliament decided by the Bureau on 13 January 1997. As long as no substantial progress is made as regards paragraph 11 above, the Assembly considers inappropriate the presence, even informal, of Belarusian parliamentarians during its sessions.

II. Draft recommendation

1. The Parliamentary Assembly refers to its Resdution ... (2004), and recommends that the Committee of Ministers

- i. request the competent Belarusian authorities
 - a. to launch a truly independent investigation into the above-mentioned disappearances by the competent national authorities, after the resignation of the current Prosecutor General, Mr Sheyman, who has been accused of having himself orchestrated the disappearances in his previous function, and to keep the families of the missing persons fully informed of the progress and results of this investigation.
 - b. to initiate criminal investigations with a view to clarifying, and punishing, as the case may be
 - the alleged involvement of the current Prosecutor General (previously Head of the Security Council), Mr Sheyman, the currrent Minister of Sports (previously Minister of the Interior), Mr Sivakov, and a high-ranking officer of the special forces, Mr Pavlichenko, in these disappearances,
 - the possible crime of perversion of the course of justice committed by certain other high-ranking officials who have been involved in the investigations carried out so far and who may have falsified, dissimulated or suppressed evidence in their possession in order to protect the true perpetrators of the crimes.
- ii. to consider suspending the participation of Belarus in various Council of Europe agreements and activities as well as any contacts between the Council of Europe and the Belarusian government on a political level until sufficient progress has been made regarding the request under paragraph 1. above and meanwhile to step up its co-operation with civil society in Belarus in view of encouraging respect for human rights.
- iii. to invite its member states and observer states
 - a. to apply political pressure (including sanctions) on the Belarusian government in order to send it a strong signal that impunity for forced disappearances is not tolerated by the international community, and
 - b. to continue protecting, to the best of their ability, those women and men in Belarus who are working for the establishment of the truth.

2. It urges the member states of the Council of Europe and the international community at large to exercise a maximum of political pressure on the current leadership of Belarus, including through sanctions, until a credible, independent investigation of the alleged involvement of high-ranking officials in the disappearances or their cover-up has been carried out.

3. It invites in particular the judicial authorities of those countries whose laws foresee the international jurisdiction of their national courts for cases of serious human rights abuses, either in general, or in the presence of certain territorial links, to open proceedings against certain high-ranking Belarusian officials for the alleged murder, for political reasons, of one or more of the four disappeared persons.

III. Explanatory memorandum
by Mr Pourgourides, Rapporteur

A. Introduction

1. The Assembly has been concerned for over two years by the disappearances of Yuri Zakharenko, former Minister of the Interior (disappeared on 7 May 1999), Victor Gonchar, former Vice-President of the Parliament of Belarus (disappeared on 16 September 1999), Anatoly Krasovski, businessman (disappeared with Mr Gonchar), and Dmitri Zavadski, cameraman for the Russian TV channel ORT (disappeared on 7 July 2000). Allegations made in public were brought to the attention of the Committee on Legal Affairs and Human Rights that these disappearances had a political background.

2. Consequently, the Committee on Legal Affairs and Human Rights established in September 2002 an Ad Hoc Sub-Committee to clarify the circumstances of disappearances for allegedly political reasons in Belarus. The Ad Hoc Sub-Committee, chaired by S. Kovalev, has heard statements in January 2003 in Strasbourg by family members of the disappeared persons and by Mr Alkayev, former head of the Minsk SIZO-1 prison¹ who has obtained political asylum in Germany. It has also taken note of a report dated 20 January 2003 addressed to the families of Gonchar and Krasovski by Mr Chumachenko, Senior Investigator of the Minsk Public Prosecution Service, and of a reply by Prosecutor General Sheyman to Mr Frolov, Head of the "Respublica" group in the Belarusian parliament. The Belarusian authorities turned down several requests of the Ad Hoc Sub-Committee to hold a meeting in Minsk with a view to hearing other persons that may have information on the fate of the missing persons.

3. In parallel, the Committee on Legal Affairs and Human Rights, at its meeting on 5 June 2003, appointed me as Rapporteur on the same issue. After some hesitations on the Belarusian side², I was invited to visit Minsk from 5-8 November 2003. I should like to thank Mr Konoplev, Vice-President of the Belarusian Chamber of Representatives, for his valuable help in arranging this visit and the hospitality he has shown during my stay in Minsk. Mr Konoplev explained to me that it was outside his competence to arrange meetings with all the persons that I had asked to meet³. He informed me in Minsk that I should address my request to meet the other persons mentioned in my letter in writing to the Minister of the Interior, Mr Naumov, and the Prosecutor General, Mr Sheyman, respectively. Such meetings could then be arranged on the occasion of my second visit to Minsk in early December, as Rapporteur for the Committee on Political Affairs on the freedom of the press.

¹ Also named Uzh-15/IZ-1 (Minsk) prison.

² My letter of 25 June 2003 having remained without reply, the Secretary General of the Assembly, Bruno Haller, by a letter dated 22 July, proposed a specific date for my visit as Rapporteur (early September). I received an invitation at the end of September, following which Mr Kovalev and I proposed to visit Minsk jointly, as the Belarusian authorities still refused a meeting in Minsk of the whole ad hoc sub-committee. In their reply, the Belarusian authorities insisted that I should visit Minsk without Mr Kovalev. In order to allow a visit to take place at all, I was authorised by the Ad hoc Sub-Committee, with the support of Mr Kovalev, to carry out the visit on my own, accompanied only by the Secretary of the Committee on Legal Affairs and Human Rights and an interpreter from the Council of Europe.

³ I asked to meet the following persons (underlined are those I actually met): Victor Sheyman, Prosecutor General and Oleg Bozhelko, his predecessor; Vladimir Chumachenko, Senior Investigator in the Public Prosecutor's Office; Major-General Lapatik, head of the Chief Directorate of the Criminal Police, Vladimir Naumov, Minister of the Interior and Y.L. Sivakov, his predecessor; A.A. Chvankin, former Deputy Minister of the Interior, Colonel Pavlichenko, and Mr V.A. Ignatovich, Mr. M.M. Malik, Mr. A.V.Guz and Mr S.N. Sanshkin. In addition to these, Mr Konoplev also arranged a courtesy visit with the Minister of Foreign Affairs, Mr Martinov, and a meeting with several of his colleagues of the Belarusian Parliament (Mr Vaganov, Mrs Abramova, Mr Novosjad and Mrs Yurkevich).

4. As I explained to my interlocutors in Minsk, my mission was not to conduct myself a full-y-fledged criminal investigation into these disappearances with a view to identifying those responsible. The purpose of my visit was merely to examine in a completely unbiased way whether a proper investigation of the disappearances has been conducted by the competent Belarusian authorities.

5. Unfortunately, despite having followed in every detail the procedural advice I had been given, all my meeting requests for 3 December were turned down, and the Secretary of our Committee, whom I had asked to join me in Minsk for that day, was refused his visa. I should like to inform you that the reason Mr Konoplev gave me in a closed meeting was that the Belarusian side had managed to procure for itself a copy of the first draft of this Memorandum and that the President himself had been upset by its contents. I strongly protested against such unacceptable and unethical behaviour⁴ and expressed my regrets to Mr Konoplev that his Government would not avail itself of the opportunity, through the additional interviews with Belarusian officials I had proposed, to present in more detail the Government's version of events.

6. **The nature of the Belarusian regime, as illustrated by this episode, is an important factor also in assessing the facts at issue.** Belarus is a former Soviet Republic in which fundamental democratic reforms have not yet taken place. The system of Government is highly centralised, and all the powers of the Executive are directly or indirectly controlled by the President. The vertical decision-making structures are based on the constant supervision of the citizens by a powerful security apparatus which obviously has state of the art means at its disposal and no qualms over using them.⁵ The credibility of the official "version" that such high-profile political personalities have simply "disappeared", with the Government unable to determine their whereabouts, must also be seen against this general background.

7. **I had stressed in the introductory memorandum I presented to the Committee on Legal Affairs and Human Rights at its December 2003 meeting that my conclusions are based on the information that was in my possession as of then.** While I had already given the Belarusian authorities ample opportunity to present their version of the events, I transmitted the introductory memorandum to Minsk, with the agreement of the Committee, and invited the authorities to comment on any points they do not agree with, and present any new information that may justify changing the conclusions that I hope to be able to present in this final report.

8. Unfortunately, the Belarusian government has not used this opportunity. I received no comments at all from the Belarusian authorities. I have, however, received comments providing some additional information from the spouses of the missing persons and one of their lawyers. This additional information⁶ only confirms the conclusions I laid out in my introductory memorandum.

B. Conclusions

9. **On the basis of the information made available to me, I have come to the conclusion that a proper investigation of the disappearances has not been carried out by the competent Belarusian authorities. On the contrary, the interviews I conducted in Minsk, in**

⁴ The Secretary assured me that he had not made available outside his own hierarchy any copy of the draft that he had started to prepare following my instructions. The Belarusian side could only have obtained a copy either by intercepting an email between Strasbourg and Cyprus, or by secretly photocopying a printout, either from the Secretary's desk or from my briefcase at the hotel in Minsk during the weekend. I would also not exclude that the Belarusian side did not actually obtain a copy of the draft report, but found out about its likely content by way of eavesdropping on certain conversations in Minsk during my first visit, for example the meeting with Ambassadors at the Hotel "Minsk" on 6 November.

⁵ Another example is the fact that elements of my dinner conversation with two Belarusian friends that I invited to a restaurant in Minsk on Saturday evening were referred to by Mr Konoplev two days later.

⁶ This additional information was corroborated by the statements of Mr Petrushevich and Mr Sluchek, two former Belarusian investigators currently residing in the United States, whom the Secretary of our Committee has interviewed extensively by telephone, at my request. I should like to use this opportunity to thank the American Consul General, Christopher Davis, for his help in contacting the two gentlemen.

conjunction with Mr Alkayev's deposition before the Ad hoc Sub-Committee and the documents or copies thereof that are in my possession, have led me to believe that steps were taken at the highest level of the State actively to cover up the true background of the disappearances, and to suspect that senior officials of the State may themselves be involved in these disappearances.

10. I am fully aware that these are serious allegations, and I shall present hereafter a summary of the elements in my possession that have led me to these conclusions⁷, and finally, the consequences which I propose the Assembly may draw from these conclusions.

C. Basis for my conclusions

11. My conclusions are based on information relating in particular to the following issues and the serious contradictions and, in some cases, outright lies that became apparent on analysing this information and confronting my interlocutors in Minsk with it:

- (1) the official execution pistol, which was signed out of SIZO-1 prison on two occasions, coinciding with the disappearances of Zakharenko, Gonchar and Krasovski;
- (2) witness statements and material evidence regarding the scene of the abduction of Gonchar and Krasovski;
- (3) the handwritten accusation by Police General Lapatik dated 21 November 2000;
- (4) the arrest and rapid liberation of Colonel Pavlichenko in November 2000;
- (5) the alleged letter from former Prosecutor General O. Bozhelko to his Russian counterpart asking for specialised equipment;
- (6) other details of former Prosecutor General Bozhelko's story as told by Mr Leonov;
- (7) personnel changes at the highest level of the power organs in November 2000;
- (8) the secret trial of the "Ignatovich gang".

12. Before presenting these issues, I should like to point out that my official interlocutors in Minsk had obviously agreed on a common position beforehand. All three pointed out that the Belarusian special services had enough weapons at their disposal enabling them to carry out any operations without borrowing the official execution gun from Mr Alkayev. All three (along with Foreign Affairs Minister Martinov) also stressed that a high number of persons (several hundreds) disappeared each year in Belarus, some of whom turned up again sooner or later (incl. Mrs Vinnikova, the former head of the Central Bank, who the opposition had alleged had been "disappeared" for political reasons until she re-surfaced in London).

1. The official execution pistol

13. The "version" presented by the victims' families and their lawyers is that the official PB-9 execution pistol was signed out in accordance with legal procedures as part of an enactment of the "official" execution of a secret death penalty against the three persons seen as "traitors", thus providing a psychological prop for the soldiers employed to commit the acts. At first glance, this version appears far-fetched.

14. But it is now certain (and could easily be proved formally) that the official execution pistol kept by Mr Alkayev, who had been in charge of the unit executing the death penalty in Belarus, was indeed signed out twice by order of the then Minister of the Interior, Mr Sivakov, during periods coinciding with the disappearances of Mr Zakharenko on 7 May 1999 and Mr Gonchar and Mr Krasovski on 16 September 1999.

15. It is also certain that a SOBR (special forces of the Ministry of the Interior) -soldier named Pavlichenko (who drove a red BMW car – such a car was seen at the site of the abduction of

⁷ A more detailed presentation of these elements is appended hereto.

Gonchar and Krasovski), had observed one of the executions carried out by Mr Alkayev's group, behaving "suspiciously", according to Mr Alkayev. In November 2000, Mr Alkayev made a detailed deposition before the investigators of the prosecutor's office, and the pistol and logbook were seized as evidence.

16. **The authorities cannot provide any alternative explanation for the temporary removals of the pistol.** During my visit in Minsk, Mr Sivakov purported to present an explanation for the first signing-out of the pistol, in May 1999, but not for the second, in September 1999. He asserted that the fact that the execution pistol had been signed out at the same time as two of the events linked to the "disappearances" was a pure coincidence.

17. **As to the first withdrawal of the pistol** in question, Mr Sivakov explained in some detail that the signing-out of the pistol was motivated by a **detailed study of the penitentiary system**, including the system in place to execute the death penalty that he - as a death penalty sceptic - had asked to be carried out when he took office. He had entrusted this task to Mr Pavlichenko, a promising, highly skilled officer in the special forces of the Ministry of the Interior (SOBR), who had attracted his attention due to his excellent combat records and who was beloved by his soldiers - Mr Pavlichenko was currently Mr Sivakov's deputy as president of a social association of serving and retired special forces soldiers and their families. **In reply to my question, Mr Sivakov stated that the study on the workings of the penitentiary system had been presented only orally**, in view of the sensitive nature of the matters involved. Mr Sivakov confirmed that the study in question involved signing the pistol out of the SIZO-1 prison, as the above-mentioned study included the question of whether a new gun should be purchased. Currently, there were plans to build a new prison, with a facility for executions, 40 km outside of Minsk. The current practice of shooting convicts in a prison situated right in the centre of Minsk had become unacceptable. Mr Sivakov stressed that all his decisions had been related to the question of the introduction of a death penalty moratorium, as recently demanded by the Belarusian parliament.

18. In reply to my further question why the pistol had been signed out a second time, four months later, he stated that he did not even remember giving orders to this effect. I reminded Mr Sivakov that his Deputy Minister Chvankin had indicated to Prosecutor Chumachenko that the pistol was used for carrying out **"special measures but not for shooting training."** Following Mr. Chvankin's refusal to provide more specific information on the use of the pistol, Prosecutor Chumachenko had asked the Ministry of the Interior whether operational measures of any kind had been carried out with that weapon, and contented himself with a reply from which he could only conclude that **"it is impossible to arrive at a definite conclusion as to whether the weapon issued to V.N. Dik and V.P. Kolesnik was used in operational and search measures carried out by employees of the Ministry of Internal Affairs"**.

19. **I asked Mr Sivakov if he could be more specific. He could not.** He merely maintained that the second signing-out must have also had operational, technical reasons.

20. As regards the first signing-out, in May 1999, Mr Sivakov explained in some detail that it was linked to the above-mentioned study on the Belarusian penitentiary system in general and the method of the execution of the death penalty in particular. I leave it to you to appreciate the credibility of the explanation involving inter alia a comparison with the methods used for the execution of capital punishment in other European countries (sic⁸), and the assertion that such a wide-ranging study was only conducted orally and was entrusted to a special forces soldier - Mr Pavlichenko - with no relevant qualifications. Mr Sivakov did in the end not exclude that written records on the examination of the pistol may be found, if looked for. But until today, despite my repeated requests to Mr Konoplev and other officials to present me with a written record, none has been submitted, which in my view indicates that none exists.

21. **Whatever credit may be given to Mr Sivakov's explanation, it must be stressed that it covers in any event only one instance of signing out the pistol.** Most significantly, Mr Sivakov's explanations for the two signings-out have undergone important changes since he was questioned by Prosecutor Chumachenko. In addition, Mr Sivakov's then adjutant, V.P. Kolesnik, who had first admitted to the investigators that on his instructions he had handed the pistol over to Mr Sivakov, had also changed his statement on this important issue later⁹.

⁸ No European country was executing in 1999 any death penalties by any means.

⁹ See appendix, para. 14

22. The fact that the Prosecutor's Office did not insist on clarifying the incomprehensible, and apparently suspicious answer received from Mr Chvankin and the Ministry of the Interior in reply to their requests for information on the precise use made of the gun also shows that the investigation of this crucial point was not conducted with the required vigour.

2. Witness statements and material evidence (paint traces, car fragments) relating to the scene of the abduction of Gonchar and Krasovski

23. Prosecutor Chumachenko's report gives a detailed account of statements of witnesses who saw a red BMW car parked near the sauna in front of which Gonchar and Krasovski were abducted, and observed suspicious activity by a number of young men wearing uniforms. Chumachenko also indicates that during the examination of the scene, various car fragments, blood stains and skidmarks were discovered, including signs of a red car having collided with a tree, from which samples of red paint were taken for analysis. Forensic tests on two splinters of wood submitted for analysis *"concluded that they contained "ground-in micro-particles of scarlet-coloured acrylic/melamine paint. **The paint may be¹⁰ used for a comparative analysis to establish its common type through sample matching. The traces on the wood are the result of a strong impact at speed"***.

24. I asked Interior Minister Naumov whether an analysis comparing the traces of red paint found on the site of Gonchar's and Krasovski's abduction with Mr Pavlichenko's red BMW had been conducted. He answered that this would have been up to the investigators in the Prosecutor's office. When I put the same question to Prosecutor General Sheyman at my meeting with him later in the day, the Minsk Chief Prosecutor answered in his place saying that the Prosecution had seen no reason to take paint from Pavlichenko's car for a comparative study, as witnesses interrogated in the course of the investigation mentioned no such car, but only Russian-made cars such as Schigulis, Moskviches and so on. In addition, the paint traces found were not red, but cherry-coloured, as was the Jeep belonging to Krasovski.

25. When I confronted Mr Sheyman with the findings of Chumachenko, he offered to provide a "written clarification" by Mr Chumachenko. I recalled that I had asked to meet Chumachenko in person.

26. Given that Colonel Pavlichenko had been named as a suspect not only by the victims' families, but also by the Chief of the Criminal Police in charge of the investigation, General Lapatik, **I consider the failure to match the paint as a clear effort of collusion and cover-up.** This simple investigative act, and some others listed in a request addressed to the prosecution by the families' lawyers that had been turned down explicitly, might have placed Mr Pavlichenko's car at the scene of the abduction and constituted an extremely important link in the circumstantial evidence against him.

3. The handwritten accusation by Police General Lapatik of 21 November 2000

27. The Chief of the Criminal Police of Belarus, General Lapatik, addressed a handwritten note dated 21 November 2000 to the Minister of the Interior, Naumov. In this note, he accused V. Sheyman (at the time Secretary of the Belarusian Security Council, currently Prosecutor General) of having ordered the former Minister of the Interior, Y. Zakharenko, to be physically annihilated. This order was allegedly carried out by SOBR commander Pavlichenko with the assistance of the then Minister of the Interior, Sivakov, who had provided Pavlichenko with the PB-9 pistol temporarily removed from SIZO-1 prison. The same weapon, General Lapatik concluded, was used on 16 September 1999, when Gonchar and Krasovski went missing.

28. After this handwritten note (complete with a handwritten visa/instruction by Interior Minister Naumov asking General Lapatik to "implement") was leaked, it was denounced as a fake by the authorities¹¹. Only after I had pointed out the possibility of performing a graphological examination,

¹⁰ Highlighting added

¹¹ cf. press release by the prosecutor's office, and interview by Mr Sivakov (cited in the Appendix, para. 31 and 32)

even on the basis of the photocopy that we had in our possession, the genuineness of the leaked note was admitted: during my visit in Minsk, both Interior Minister Naumov, the addressee of Lapatik's note, and Prosecutor General Sheyman confirmed, quite to my surprise, that the handwritten note in question was indeed written by General Lapatik and visa'ed by Minister Naumov. Mr Naumov and Mr Sheyman now say that Mr Lapatik's findings were simply erroneous, and that there were other "versions" of this note which were more serious. Those who had leaked this document, and a number of others, from the official case file, had made a biased selection to support one "version" that would discredit the President, as part of the opposition's electoral campaign. Please note that although I said that I had seen no other "version" of Mr Lapatik's note than the one that had been made public, no other versions have been presented to me to date.

29. I asked both Mr Naumov and Mr Sheyman what they had done to follow up on the allegations made by Police General Lapatik.

30. Mr Naumov said that he had passed the note on to the investigators of the prosecutor's office, for further investigation. **It was thus Mr Sheyman who was in charge of investigating accusations made by the chief of police that he himself had ordered several political murders whilst in his previous function.**

31. Mr Sheyman stated that the information presented in the note had been "subjected to scrutinising investigation", but, despite my questions, **did not give any detail as to any particular investigative measures taken.**

32. **I regard the unsubstantiated allegation that a thorough investigation had been carried out as completely untenable in view of the fact that even the comparison of the red paint found on the scene of the crime with that of the red car driven by the suspect named in General Lapatik's note was not done.**

33. Given that both the Minister of the Interior and the General Prosecutor had come to the conclusion that General Lapatik's accusations were unfounded, I asked what legal or disciplinary action had been taken against General Lapatik

34. I was told – in similar terms by Mr Naumov and Mr Sheyman – that no harsh measures were taken against General Lapatik for essentially humanitarian reasons, as he had fallen seriously ill in early 2001 and was forced to retire four months before his normal term.

35. Frankly, I do not believe that "humanitarian reasons" would stop the authorities of any country that I can think of from imposing disciplinary sanctions on, or prosecuting for defamation, a high state official who accuses senior representatives of the state of having ordered the murder by special forces of three important opposition figures, and who does not go back on his allegations even after they are made public, all the while refusing to disclose his sources, even to his Minister, and refusing to testify, even under subpoena. The authorities clearly preferred to avoid a public trial where evidence would have to be taken and witnesses would have to be heard.

36. **I therefore consider the very existence of General Lapatik's¹² report, its content, and especially the way it has been "investigated", as powerful support for my above Conclusions. In view of the prevailing presidential system and the way the country is generally run, I also find it hard to believe that the above could have taken place without the knowledge of the President.** I feel comforted in my view by the President's statements cited in Mrs Gonchar's and Mrs Krasovski's appeal to Mr Latypov, Head of the Presidential Administration, Mr Nevyglas, Secretary of the Security Council, and Mr Erin, Chair of the Committee for State Security. Please note that these statements, as reprinted below, were not denied by the Belarusian authorities, who had received the preliminary report for comments.¹³

¹² General Lapatik was also not alone with his accusations – as I will show later, there are strong elements allowing to conclude that then Prosecutor General Bozhelko, and then KGB Chief Matskevich had come to the same conclusion, at about the same time – after which they were removed from their posts.

¹³ The following statements are cited by the two wives:

(a) In a speech before the "standing conference of leading employees in republican and local authority bodies for improving ideological work" (Minsk, 27 March 2003), Mr Lukashenka is alleged to have uttered the following sentence with regard to Mr Kravchenko, former ambassador of

4. The arrest and rapid liberation of Colonel Pavlichenko in November 2000

37. Mr Pavlichenko was arrested on 22 November 2000, i.e. one day after General Lapatik's accusations were brought to the attention of Interior Minister Naumov. The arrest warrant signed by the then Chief of the Belarusian KGB, Matskevich and sanctioned by the then Prosecutor General, Bozhelko¹⁴, reads as follows:

38. *"The materials of the operational investigation contain trustworthy data confirming that Dmitry Vasiliyevich **Pavlichenko is the organiser and head of a criminal body engaged in abduction and physical elimination of people**. In particular, the criminal group headed by D.V. Pavlichenko was involved in assassinating G. V. Samoylov, the leader of the RNE, Belarusian unregistered regional organisation, as well as in murdering other individuals. Taking into consideration the fact that D.V. Pavlichenko and his criminal group may commit further crimes of particular violence, [...], decided [to apply a preventive detention for 30 days]"*

39. Despite the period of detention indicated in the warrant, Mr Pavlichenko was freed in the following days¹⁵. In a letter of November 2002¹⁶ to Mr V.D. Frolov, member of the House of Representatives of Belarus, who had asked for information on the disappearances, Prosecutor General Sheyman specified that Mr Pavlichenko had been arrested on suspicion of having committed acts of violence against A.V. Grachev¹⁷ in a criminal case before the Republican Prosecutor's Office. On the next day, Pavlichenko had been released "on the instruction of senior KGB officers on the ground that the detention was unlawful", as I was told by Mr Sheyman and as stated in the above-mentioned letter by the Prosecutor General to Mr V.D. Frolov to which I will again refer below. Mr Sheyman thus gave false information to Mr Frolov, because Mr Pavlichenko, according to the wording of the arrest warrant, was not arrested on the ground indicated by him, but for the alleged murder of Mr Samoylov, and other murders. The additional comments received in January from the Zakaharenko family's lawyer, Mr Volchek, which were confirmed by Mr Petrushkevich, the former investigator now living in the United States, indicate that a crime against Mr Grachev may after all be one of the reasons behind Mr Pavlichenko's arrest. The new information received about the Grachev case strongly confirms the link between Mr Pavlichenko and the "Ignatovich gang", convicted for the abduction of the missing cameraman, Mr Zavadski. Mr Petrushkevich confirmed that Mr Grachev had recognised Mr Pavlichenko, but also Mr Ignatovich and Mr Malik in a police line-up as being one of the men who had abducted him, taken him to the northern cemetery, put a pistol to his head and threatened to kill him if he did not stop "going after" a circus director he was investigating as a Ministry of Culture auditor. Mr Petrushkevich confirmed that this case, which was practically proven, was dropped as soon as Mr Sheyman became Prosecutor General. The method used by

Belarus to Japan: "I have already instructed the special services, excuse my frankness, to abduct him and to return to the country".

(b) In speech televised in "Panorama", Belarusian TV, on 29.10.2001: "Yes indeed, in Minsk, and to a lesser extent in Gomel, I made it clear five years ago, through thugs – God forbid, if you create a criminal environment somewhere, I'll cut all your heads off. The thing is, we know how many of these "thieves-in-law" there are, and who they are ... Yes, lads, Batka [nickname for Lukashenka] said kill them. There were incidents when they behaved wrongly. Do you remember Schavlik and others? Where are they now?"

(c) From a speech on 28.11.2000 to the KGB leadership, when appointing Mr Erin as successor of Matskevich: "So, in order not to torment journalists any longer about all these sensational cases and crimes [the reference is to the missing persons in Belarus], I should like to say the following ... I emphasise once again: do not try to find the perpetrators. I alone am responsible."

¹⁴ The warrant was in fact signed on the Prosecutor General's behalf by his deputy, Mr Snegir

¹⁵ See appendix, para. 52 and 53 for detail – it is not clear when exactly, and on whose order, Mr Pavlichenko was released

¹⁶ AS/Jur/AHBelarus (2003) 04

¹⁷ An employee of the Ministry of Culture (a financial auditor) who had been abducted and beaten by unknown attackers wearing special forces uniforms

Pavlichenko, Ignatovich, and Malik in executing the crime against Mr Grachev was, according to the findings of the prosecutors working on the case before it was dropped, extremely similar to that used in the abduction of Gonchar and Krasovsky, as described in Prosecutor Chumachenko's official account of the witnesses' statements concerning this case.

40. The families of the disappeared and their lawyers, as well as Mr Alkayev, claim that KGB Chief Matskevich had ordered the arrest in the framework of the investigation into the four "disappearances", the arrest warrant being based on other accusations in order to facilitate the arrest.

41. The former Minister of Agriculture, Leonov¹⁸, whom I met in Minsk, said that President Lukashenko himself had violently criticised the KGB for arresting Pavlichenko. This allegation seems to be credible in view of the fact that **Pavlichenko was released from custody shortly after his arrest, despite the fact that he had been arrested on the basis of a warrant signed by the head of the KGB and sanctioned by the Prosecutor General. Who, I wonder, had the power to release him from arrest for a series of murders?** Mr Leonov also confirmed to me that then Prosecutor General Bozhelko had told him personally that he also shared Lapatik's and Matskevich's point of view. The families of the disappeared allege that during his detention, Pavlichenko confessed to the murders of the "disappeared" and their background and that his confession was computer-taped by the KGB. I have asked the authorities for transcripts of Pavlichenko's interrogation during his custody.

42. While there is still some uncertainty on this issue, as long as I have not seen the transcript of Mr Pavlichenko's interrogation¹⁹, and Mr Bozhelko and Mr Matskevich remain silent, I must admit that **I am taken aback by the undisputed fact that the trusted, promising career officer described to me in the warmest terms by the former Minister of the Interior, Sivakov, had been arrested on the order of the Chief of the KGB and of the Prosecutor General as suspected "organiser and head of a criminal body engaged in abduction and physical elimination of people".**

43. **The fact that the Prosecutor General wrote to a Parliamentarian giving false or incomplete information is another clear indication of a cover-up.** In addition, given that the arrest warrant, signed by the Chief of the KGB (and sanctioned by the then Prosecutor General) was issued for one month, how could mere "senior KGB officials", as Sheyman wrote to Frolov, release him after 24 hours?²⁰ What could have possibly been the investigative measures, carried out in these 24 hours, that proved Pavlichenko's innocence? According to Mr Volchek, President Lukashenko, in acknowledging that he personally ordered Pavlichenko's release, had openly admitted to violating the applicable Belarusian legislation.

5. The alleged letter from former Prosecutor General O. Bozhelko to his Russian counterpart asking for specialised equipment

44. I was told by lawyers of the disappeared, and by Mr Leonov that former Prosecutor General Bozhelko had come to similar conclusions to those of Police General Lapatik. On 21 November 2000, he had allegedly written to his Russian counterpart, Prosecutor General V. Ustinov, to request the use of special equipment and experienced staff to locate buried bodies. This request was – again, allegedly – cancelled by another letter dated 27 November 2000, the day of the dismissal of O. Bozhelko and of V. Matskevich, the chief of the Belarusian KGB.

¹⁸ A former colleague and friend of Mr Zakharenko, one of the « disappeared », and a friend and former superior of ex-Prosecutor General Bozhelko.

¹⁹ This record is one of the documents that should normally be in the case file that former investigator Petrushkevich could not find when he looked for it after the case file came back from the office of the Security Council, to which it had been taken for two months. But Mr Petrushkevich had also not seen it himself before the file (consisting of 35 volumes, stored in his office) was temporarily removed from the prosecutor's office.

²⁰ Mr Volchek and Mr Petrushkevich insist that the order to release Pavlichenko came from the Security Council. This could be confirmed by the former deputy head of the KGB prison in which Pavlichenko was detained, Mr Fedor Yumanov. Mr Yumanov reportedly "got into trouble" and lost his job subsequently to this episode.

45. Prosecutor General Sheyman, Mr Bozhelko's successor, in reply to my question flatly denied that such letters existed. The Deputy General Prosecutor specified that there was no official record of such a letter in the case file. But he could not exclude that "privately", such a letter may have been sent by Bozhelko's office.

46. It would clearly be interesting to know if such a letter was indeed sent²¹, as it would make sense only if the approximate location of the buried body or bodies was already known to investigators.

47. In a letter that Mrs Krasovksi and Mrs Zavadski sent me on 4 January, Mrs Zavadski declares that she and her lawyer, Mr Tsurko, saw themselves, in May 2001, when they were given the opportunity to view the case file, the letter signed by Prosecutor General Bozhelko addressed to the Russian Prosecutor General, Mr Ustinov.²²

6. Other details of former Prosecutor General Bozhelko's story as told by Mr Leonov

48. Mr Leonov further told me in Minsk that Mr Bozhelko, who still lived in Minsk but did not answer any telephone calls, had informed him personally, in front of other witnesses, including the well-known Russian journalist Pavel Sheremet,²³ that the disappearances in question had been orchestrated by Mr Sheyman and carried out by a special unit set up by former Interior Minister Sivakov and led by Colonel Pavlichenko. Bozhelko had also made a reference to the existence of a videotape of Pavlichenko's confession. Mr Leonov told me that during the last election campaign, he had been offered videotapes of Pavlichenko's confession and of the executions, but that he had refused to accept them, thinking that it was a provocation by the special services.

49. During our conversation in Minsk, Mr Leonov also directly accused President Lukashenka of having given the order to Sheyman. He told me that Bozhelko had informed him of a meeting with the President, during which Bozhelko, who was then still Prosecutor General, had heard Police Chief Lapatik ask the President who had given him the right to kill the general (meaning General Zakharenko, the first of the "disappeared"), following which the President reportedly had not denied the fact but accused those present of undermining his authority and of forcing him to take medicines by persistently upsetting him.

50. According to the families' lawyers, Matskevich and Bozhelko were never even questioned by investigators dealing with the disappearance cases. In my view, this is another very grave omission. Mr Leonov is an interesting "indirect witness", but if these two key persons were to speak out themselves, this would of course be most helpful.

²¹ If such a letter (and its cancellation) were indeed sent, Russian Prosecutor General Ustinov may have kept a copy. I am trying through different channels to sound the Russian Prosecutor General whether he would be prepared to cooperate with me on this issue. I have good reasons to believe that these letters do indeed exist.

²² "I, Svetlana Zavadskaya, and my lawyer Sergei Tsurko have seen by ourselves the official letter written and signed by Prosecutor General O.Bozelko to Russian Prosecutor General V. Ustinov with a request to use a special equipment and experienced staff to locate buried bodies dated by the 21st of November, 2000 (case ? 414100, vol.21, page 269). We also saw the official letter signed by M. Snegir, Deputy General Prosecutor dated by the 27th of November of 2000 with the request to cancel the above-mentioned letter(case ? 414100, vol.21, page 270). We had the opportunity to see those letters in May of 2001 when we read the materials on incrimination Ignatovich's group case."

²³ Pavel Sheremet was the former superior of the disappeared cameraman Zavadski and had conducted an investigation of his own, coming to a conclusion similar to the families' « version ». Mr Sheremet produced a documentary broadcast by Russian Public Television ("The Wild Hunt") which cast considerable doubt on the Belarusian authorities' investigation into the disappearances of Zavadski and the other missing persons. In 2003, he also published a book about the workings of Lukashenka's regime, including details of the "disappearances" case.

7. Personnel changes at the highest level of the power organs in November 2000

51. We were informed by the families' lawyers and by Mr Leonov that on 27 November 2000, Prosecutor General Bozhelko was fired and replaced by Mr Sheyman, former head of the national security council. According to the families' lawyers, Mr Sheyman did not hold a law degree when he was appointed, although the law requires that the Prosecutor General be a lawyer. The President himself, who had been criticised for this appointment, had publicly taken responsibility for it.

52. On the same day, the President of the KGB, General Matskevich was fired. According to Mr Leonov, he had been scolded on Television by President Lukashenka for having arrested Colonel Pavlichenko. Shortly afterwards, the Chief of the Police, General Lapatik, fell seriously ill and ended up taking early retirement on health grounds.

53. The families of the disappeared presume that Bozhelko, Matskevitch and Lapatik were either fired or retired because they had come too close to the truth in the "disappearances" cases. By contrast, a presidential spokesman explained on 27 November that the personnel reshuffle was partially a result of the President's "dissatisfaction that many important [investigation] cases have dragged on for too long without justification"²⁴.

54. In my view, while the President's dissatisfaction is quite understandable, **the timing of the personnel changes, coinciding very closely with important events related to the disappearance cases (General Lapatik's handwritten accusations, Pavlichenko's arrest ordered by Matskevich and Bozhelko, Alkayev's depositions) gives rise to grave suspicions.**

55. The account given by Mr Petrushkevich of the climate of fear prevailing in the prosecution team dealing with these cases after the personnel changes at the top, including the highly suspicious and uninvestigated deaths of a key witness and two law enforcement officers working on these cases confirms these suspicions.

8. The secret trial of the "Ignatovich gang"

56. Beginning on 24 October 2001, four men (V. Ignatovich, M. Malik, A. Guz and S. Savushkin²⁵), were tried in camera²⁶ for the abduction of Mr Zavadski. Mr Axsonchik, the lawyer representing Zavadsky's mother, petitioned the court to allow the proceedings to be held in open session, which was refused. A number of requests calling for evidence filed by the Zavadski family's lawyers were refused by the court. On 14 March 2002, the four persons were convicted and sentenced to long prison terms for the abduction of Zavadski (but not for murder, as the body had not been found), on the basis, inter alia, of a spade with Zavadski's blood found in Ignatovich's car²⁷. The convicted reportedly continue to claim their innocence, calling the trial a farce. Former Prosecutor General Bozhelko, so I was told by one of the family's lawyers, attended the trial as a witness, but he largely refused to testify, on the basis of the provision in the criminal procedure code allowing investigators to protect their sources.

57. This conviction was presented to me in some detail by the Minister of Foreign Affairs, the Minister of the Interior and the Prosecutor General as the partial resolution of the Zavadski case.

²⁴ Radio Free Europe/Radio Liberty Newline 4/228, 27 November 2000, as quoted from the Amnesty International Paper cited before (p. 8).

I mentioned above that Mr Naumov and Mr Sheyman told me that Mr Lapatik had developed a serious heart condition requiring two operations and leading to his early retirement, this being the reason why no legal measures were taken against him following his allegations.

²⁵ Ignatovich and Malik were former members of the *Almaz* special police unit, Guz a former student of the police academy, and Savushkin a previously convicted criminal.

²⁶ According to Amnesty International, secret trials, which contravene international standards, are rare in Belarus.

²⁷ The background of the trial is reported in some detail in the Amnesty International document (pp. 11-14).

58. According to the prosecution, the motive for which Ignatovich and his gang had committed the crime against Zavadski was revenge, because Zavadski had publicly accused Ignatovich of having fought in Chechnya on the side of the rebels.

59. Most of my interlocutors on the families' side maintain that Zavadski's disappearance belongs to the same line of disappearances as those of Zakharenko, Gonchar and Krasovski, i.e. it had a similar political motive: retribution for "treason" against the President, for whom Mr Zavadski had once worked as a personal cameraman, before he began working against the President as a journalist for "hostile" media.

60. In my view, given that the execution pistol had not been signed out around the time of Mr Zavadski's disappearance, it may well be that there is no direct organisational link between this case and the other three²⁸, although as a result of the investigation into the Grachev case, as reported by former investigator Petrushkevich, the link between Pavlichenko and the "Ignatovich gang" seems to be established. But it could also be that the "Ignatovich gang" killed Zavadski to settle Mr Ignatovich's personal account with this journalist, whilst its members, or some of them, may coincidentally have been involved in the alleged secret execution squad in other cases, including those of the three other missing persons. In any event, the allegation made to support the need for holding the trial in camera – that witnesses would have otherwise been afraid to give evidence – does in my view not hold water: if the witnesses were afraid of the gang, the fact that the trial was held in camera made no difference whatsoever, as the gang members in question were in any case present during the trial.

D. Consequences

In view of the seriousness of the facts established so far and the grave suspicions arising from these facts against senior government officials, and even President Lukashenko himself, I consider it necessary to send a strong signal to the Belarusian regime. Beyond the message that the Council of Europe can send, it is my sincere hope that the international community at large, beyond the borders of our organisation, will join in the pressure that will need to be exercised in order for justice to be done.

In the draft resolution and recommendation, I have somewhat elaborated on the possibilities that I presented in the form of a "brainstorming" in the explanatory memorandum and on which we have had a first discussion during our Committee meeting in December,

²⁸ Cf. Appendix, para. 75

APPENDIX

DETAILED PRESENTATION OF THE BASIS OF MY CONCLUSIONS

1. The information on which I have based my conclusions relates to the following eight intertwined issues:

- (1) the official execution pistol, which was signed out of SIZO-1 prison on two occasions, coinciding with the disappearances of Zakharenko, Gonchar and Krasovski;
- (2) witness statements and material evidence regarding the scene of the abduction of Gonchar and Krasovski
- (3) the handwritten accusation by Police General Lapatik dated November 2000
- (4) the arrest and rapid liberation of Colonel Pavlichenko in November 2000
- (5) the alleged letter from former Prosecutor General O. Bozhelko to his Russian counterpart asking for specialised equipment
- (6) other details of former Prosecutor General Bozhelko's story as told by Mr Leonov
- (7) personnel changes at the highest level of the power organs in November 2000
- (8) the secret trial of the "Ignatovich gang".

2. Before presenting my findings on these issues in any detail, I should like to point out that my official interlocutors in Minsk – besides the Ministers of Foreign Affairs, Mr Martinov, who received me more for protocole purposes - the Minister of the Interior, Mr Naumov, his predecessor, Mr Sivakov, and the Prosecutor General, Mr Sheyman, had obviously agreed on a common position beforehand. All three pointed out that the Belarusian special services had enough weapons at their disposal enabling them to carry out any operations without borrowing the official execution gun from Mr Alkayev' prison. All three (and Mr Martinov, too) also stressed that a high number of persons (several hundreds) disappeared each year in Belarus, some of whom turned up again sooner or later. Reference was made inter alia to Mrs Vinnikova, the former head of the Central Bank, for whose "disappearance" political reasons had been alleged by the opposition until she re-surfaced in London. Finally, Mr Sheyman even referred expressly to my earlier conversation with Mr Naumov, when he said that the handwritten accusations by Police General Lapatik were just one of several "versions".

1. Information surrounding the official execution pistol

a. Deposition of Mr Alkayev

3. Mr Alkayev, in 1999/2000 head of SIZO-1 prison in Minsk, in charge of the unit executing the death penalty in Belarus, informed members of the ad hoc Sub-Committee at a meeting on 30 January 2003 in Strasbourg as follows: the PB-9 pistol no. PO57C that he was responsible for, and which was habitually used to execute the death penalty, was signed out twice by order of the then Minister of the Interior, Mr Sivakov, on dates coinciding with the disappearances of Mr Zakharenko on 7 May 1999 and Mr Gonchar and Mr Krasovski on 16 September 1999.²⁹

²⁹ For the first time, on 30 April 1999, Mr Alkayev had received a phone call from the then Minister of the Interior, who asked to borrow the execution pistol, and sent a Colonel Dik to fetch it. The pistol was returned by the same Colonel on 14 May 1999. The Minister of the Interior asked once more for the pistol on 16 September 1999. This time, his personal assistant, Mr Kolesnikov, fetched it and returned it two days later (all signatures recorded in the logbook kept by Mr Alkayev, the original of which he handed to Mr Kovalev for safekeeping; copies of the relevant pages are in my file).

4. Mr Alkayev went on to testify that a SOBR-soldier named Pavlichenko, who he knew drove a red BMW car, had behaved suspiciously when he observed one of the executions carried out by Mr Alkayev's group. When he read in the newspaper about the disappearances of Zakharenko, Gonchar and Krasovski, which coincided with the two times that the execution pistol had been borrowed by the Minister of the Interior, and furthermore read about traces of a red foreign-made car found at one of the disappearance sites, he feared that he might be "framed" for the murders. In April 2000, he told General Udovikov (temporarily acting as Minister of the Interior) about his suspicions, who said he knew everything about the case and instructed him to destroy the pistol and the logbook. Officially, he had the logbook destroyed, but in reality, he kept it at home as proof of his innocence. He also shot some of the bullets of the execution pistol into a tree, to retrieve the casings as evidence. When Alkayev's friend Naumov became Minister of the Interior in September 2000, he promised Alkayev to look into the matter. In mid-November, Colonel Pavlichenko was arrested, and Mr Alkayev was asked by the then Prosecutor General (Mr Bozhelko) to put his suspicions in writing. He did so, and was also interrogated. The pistol and logbook were seized by the Prosecutor's office. But on 27 November 2000, according to Mr Alkayev, Colonel Pavlichenko was freed from pre-trial detention on the President's orders. On the same day, the Prosecutor General (Bozhelko) and the Head of the KGB (Mr Matskevich) were replaced. A head of division in the Prosecutor's office, Mr Branchel, returned the pistol and the logbook to Mr Alkayev, saying that they had never spoken, he had not been interrogated etc. The person Mr Alkayev suspects "orchestrated" the disappearances – Mr Sheyman, former Presidential Chief of Staff³⁰ - was appointed Prosecutor General. When Mr Alkayev's report was "leaked" by an investigator who had fled abroad, Mr Alkayev in turn fled the country, via Moscow. When asked why he thought this particularly well-documented gun would have been used for any illegal assassinations by special forces, which were obviously in possession of numerous other guns, including ones confiscated from ordinary criminals, he advanced two "theories": either the soldiers did not know that the pistol underwent a legal expertise each time it had been fired, or the pistol was used as a psychological prop, making it easier for the soldiers to execute a "secret death sentence".

5. In a handwritten deposition dated 23 November 2000, addressed to the Minister of the Interior, Mr Naumov, Mr Alkayev reported the two "borrowings" of the pistol, after giving some more detail on Mr Pavlichenko's "strange behaviour". Mr Alkayev wrote that Mr Pavlichenko, upon the oral request by the then Minister of the Interior, Sivakov, observed on 22 October 1999³¹ the execution of five persons condemned to death. Colonel Pavlichenko asked the executioner why he aimed at the head and not the heart, the latter being more humane as it caused less bloodshed. He said that the executioner had been impressed by this statement as coming from someone who must have had practical experience of the consequences of wounds inflicted in different parts of the body. Alkayev also wrote that "already in December" Mr Pavlichenko had inquired with him about the dates of the next executions, and that he (A.) had explained to him (P.) that he was not empowered to decide on P.'s presence during such procedures.

6. In an interview with Irina Halip (Novaya Gazeta), Mr Alkayev gave further details of his contacts with former Minister of the Interior Sivakov, who had come to SIZO -1 prison on 24 May 1999 to ask why the official execution group did not use crematoria to dispose of the bodies of the executed convicts. Alkayev further stated that Colonel Pavlichenko had asked him where the execution squad buried these bodies. When he deposited his report, after the arrest of Colonel Pavlichenko, he thought that the case was "legally set on" and was ready to be a witness. He had also been asked by an investigator - Mr Kazakov – about the burial sites for executed convicts and whether he would be able to identify his "own" and "alien" burial sites.

b. Explanations given to me by Mr Sivakov, former Minister of the Interior

7. On the occasion of my visit to Minsk, Mr Sivakov gave me the following explanations regarding the background of the two gun withdrawals:

³⁰ As to Mr Sheyman's former function: Alkayev also said, in the Halip interview, that he was "State Secretary of the Security Council", the families' lawyer Pogonyailo, in his challenge of Chumachenko's report, said that he was "secretary of the Security Council".

³¹ According to Chumachenko's report, Pavlichenko said this was in November 1999

8. He stated that as a “professional”, he felt “insulted” by Mr Alkayev’s theory that the execution gun was used as a psychological prop, to allow him to “enact” an official execution. The fact that the gun had been signed out at the same time as two of the events linked to the “disappearances” was a pure coincidence. The special forces of the Ministry of the Interior were not short of weapons, and if it had been decided to commit unlawful killings, they would not have made use of this particularly well-documented weapon.

9. As to the first withdrawal of the PB-9 pistol in question, Mr Sivakov stated that, as a death penalty sceptic, he had decided early on after becoming Minister that the penitentiary system, which was an important part of his ministerial field of responsibility, needed a thorough study enabling him to fully understand its workings. When he took office, the execution of capital punishment was regulated by a classified Order, which, in his view, was out of date and did not meet the humanitarian requirements of the international community. Then as now, capital punishment was an acute issue, and he had received much negative information on the persons who executed capital punishment and the way they proceeded. As he needed to have reliable information, he set objectives to his collaborators to conduct a proper study, which included comparisons with the practice of the execution of capital punishment in other European countries. He entrusted this task to a promising, highly skilled officer in the special forces of the Ministry of the Interior (anti-terror rapid reaction force/“SOBR”), who had attracted his attention due to his excellent combat records and who was beloved by his soldiers - Mr Pavlichenko. Mr Pavlichenko was presently Mr Sivakov’s deputy as president of a social association of serving and retired special forces soldiers and their families.

10. In reply to my question, Mr Sivakov stated that the study on the workings of the penitentiary system had been presented only orally, in view of the sensitive nature of the matters involved (including the question whether or not the persons executing capital punishment by shooting were drunk on the job). Mr Sivakov confirmed that the study in question involved signed the pistol out of the SIZO -1 prison, as the above-mentioned study included the question whether a new gun should be purchased.

11. In reply to my further question why the pistol had been signed out a second time, four months later, he stated that he did not even remember giving orders to this effect³². As Minister, he was permanently carrying a heavy workload, under emotional strain, which meant that he could not remember every detail. I reminded Mr Sivakov of the passage in Prosecutor Chumachenko’s report that Deputy Minister Chvankin had indicated to the Prosecutor that the pistol was used for carrying out “special measures but not for shooting training”, whilst refusing to provide more specific information on the use of the pistol, and I asked Mr Sivakov if he could be more specific. Mr Sivakov maintained that the second signing-out must have also had operational, technical reasons. His deputy minister, Chvankin, and Colonel Dik, who were involved in signing out the pistol, were in charge of logistical tasks, not operative ones, and in his Ministry, the distribution of competences between different services had been well-respected. In reply to my question whether there was any written record on the studies carried out on the pistol, Mr Sivakov said that the Investigators may have such materials in their files. There had to be records somewhere, as this study had been carried out in the framework of a professional plan. With a proper search, some records might be found. Currently, there were plans to build a new prison, with a facility for executions, 40 km outside of Minsk. The current practice of shooting convicts in a prison situated right in the centre of Minsk had become unacceptable. Mr Sivakov stressed that all his decisions had been related to the question of the introduction of a death penalty moratorium, as recently demanded by the Belarusian parliament.

12. In reply to my question, he confirmed that the pistol in question was filed away as evidence.

c. Conclusions of Senior Investigator Chumachenko³³

13. After stating that “*claims made in the media that the commander of operations brigade no. 3214, Pavlichenko, was involved in the disappearance of V.I. Gonchar and A.S. Krasovski have been checked out*”, Chumachenko’s report confirms that the PB-9 pistol was twice signed out, on

³² But see below para. 13 and 14 (prosecutor Chumachenko’s findings)

³³ Decision to discontinue the preliminary investigation dated 20 January 2003, transmitted to Mrs Krasovskaya by letter of 20 January 2003 (AS/Jur/AHBelarus (2003) 05)

the dates indicated by Mr Alkayev and documented in the official registry. As to the first time, he refers to the testimony of Mr A.A. Chvankin retracing the signing-out of the pistol as follows: instruction from Minister Sivakov to Vice-Minister Chvankin, who gave orders to deputy head of the equipment department Dik for the issue of two Nagan revolvers and the PB-9 pistol. In Dik's report it was stated that the weapon in question was to be used for shooting practice³⁴ by staff of the central administration of the Ministry of the Interior. After receiving authorisation, Dik received the pistol complete with silencer at the SIZO-1 prison, and handed it over to Chvankin. Chumachenko concludes the report on Mr Chvankin's testimony as follows: *"Thereafter the pistol with silencer was used for carrying out special measures but not for shooting training."* The report further states that Mr Chvankin refused to provide information on the subsequent use of the weapon, exactly which measures had been carried out and who had used the gun. Following Chvankin's refusal to provide information on the use of the pistol, Prosecutor Chumachenko asked the Ministry of the Interior whether operational measures of any kind had been carried out with that weapon, and contented him self with a reply from which he could only conclude that *"it is impossible to arrive at a definite conclusion as to whether the weapon issued to V.N. Dik and V.P. Kolesnik was used in operational and search measures carried out by employees of the Ministry of Internal Affairs"*.

14. With regard to the second signing-out, Chumachenko's report relates that Mr Sivakov's former adjutant, Mr Kolesnik³⁵, stated in the course of the investigation that Mr Sivakov had instructed him to go to the confinement centre, collect the pistol and take it to Deputy Minister Chvankin, which he did. The report goes on to state that Mr Kolesnik later changed his submission, saying that after he had been issued with the weapon at the confinement centre, it was kept in his safe. Thereafter, on the instruction of Mr Sivakov, he returned the weapon to the confinement centre. **My conclusion is that Mr Kolesnik changed his submission in a clear effort to distort the true facts. It is impossible to accept that the execution pistol was removed from prison in order to be kept in the safe of Mr Kolesnik.**

d. The registry book and the pistol itself

15. The logbook, the original of which is in safe custody outside Belarus (copies of the relevant pages are in my file), establishes that the gun was indeed signed out and back in on the dates indicated by Mr Alkayev.

Mr Sivakov confirmed to me that the pistol is (still) part of the case file³⁶.

e. My own conclusions on this issue

16. It is certain that the gun was signed out, and in again, on the dates indicated by Mr Alkayev, which coincide with the dates of two "disappearances" (involving three persons: Zakharenko, Gonchar and Krasovski).

17. The "version" advocated by the victims' families and their lawyers is that the official execution pistol was signed out following legal procedures as part of an enactment of the "official" execution of a secret death penalty against the three persons seen as "traitors"³⁷, as a

³⁴ Alkayev stated that this pistol could not be used for shooting training as it was designed technically to shoot only at point-blank range.

³⁵ The name that Mr Alkayev gives in his hand-written deposition for Mr Sivakov's adjutant is Vladimir Pavlovich (which could correspond to the initials of Mr Kolesnik as given by Chumachenko)

³⁶ See above the summary of Alkayev's statement in Strasbourg: he was asked to destroy the gun, refused to do so, and that the gun was seized by the Prosecution, and later returned to him by an investigator, and that he shot some bullets into the tree to retrieve the casings as evidence.

³⁷ Family members and lawyers of the victims have told me that President Lukashenka had behaved in a threatening way towards their husbands, who were former political allies (General Zakharenko had been Minister of the Interior under President Lukashenka) turned opponents. Mrs Zakharenko said at the hearing in Strasbourg that President Lukashenka had stated on television, two days before her husband's disappearance, that her husband was a criminal at

psychological prop for the soldiers employed to commit the acts. This version appears far-fetched, at least at first glance. The Ministry of Interior is hardly short of weapons, including less well-documented ones. Also, the fourth disappearance at issue – that of Mr Zavadski – did not coincide with any documented withdrawal of the official “death gun”.

18. But the “version” presented by the former Minister of the Interior, Mr. Sivakov, has some remarkable weaknesses, too. Mr Sivakov explained in some detail that the pistol was signed out in the framework of a wide-ranging study on the Belarusian penitentiary system in general and the method of the execution of the death penalty in particular. I leave it to you to appreciate the credibility of the explanation involving inter alia a comparison with the methods used for the execution of capital punishment in other European countries (sic³⁸), and the assertion that such a wide-ranging study was only conducted orally, as Mr Sivakov confirmed in reply to my explicit question, and was entrusted to a special forces soldier – Mr Pavlichenko - with no relevant qualifications other than an outstanding combat record. Mr Sivakov did in the end not exclude that written records may be found, if looked for, on the examination of the pistol. But until today, despite my repeated requests to Mr Konoplev and other officials to present me with a written record, none was submitted, which in my view indicates that none exists. Even in a Western country, if such a sensitive item were removed for study purposes, there would be written records of that study. Even more so, in a centralised system such as that of Belarus, every move should have been recorded in writing.

Whatever credit may be given to Mr Sivakov’s explanation, it must be stressed that it covers in any event only one instance of signing out the pistol. Mr. Sivakov did not offer any explanation for the second signing-out, except to say that it must have also had “technical” and not “operative” reasons, as the Vice-Minister involved, Mr Chvankin, had been in charge of logistics only. Most interestingly, the rather general information given by Mr Chvankin to Investigator Chumachenko, and the unclear reply to the prosecutor’s further inquiry to the Ministry of the Interior, concern the first signing-out (via Mr Dik and Mr. Chvankin). The explanation Mr Sivakov offered to me in Minsk that the pistol had been signed out in the framework of the above-mentioned study (which according to Mr Sivakov also included the assessment of the need to purchase a new weapon for the execution of capital punishment) had *not* been given to Investigator Chumachenko when he first inquired about the reasons for signing out the gun. In Chumachenko’s report on Mr. Sivakov’s questioning during the criminal proceedings, the need for reliable information on the organisation and implementation of the death penalty procedure was only mentioned to explain why Mr. Sivakov had asked Mr Pavlichenko to attend an official execution procedure (as reported by Alkayev). As to the signing-out of the pistol, Mr Sivakov had stated during his questioning that he did not recall giving any such instructions. Later in his memorandum, Prosecutor Chumachenko reports that Vice-Minister Chvankin had confirmed that it was indeed on Minister Sivakov’s instructions that he had the pistol issued. During my conversation with Mr Sivakov, he used the “study” to explain the first signing-out of the pistol, whilst his memory failed him as to whether and why he gave the instruction to have the pistol signed out for the second time, three months later. On this point, according to Investigator Chumachenko’s report, Mr Sivakov’s then adjutant, V.P. Kolesnik, had first admitted to the investigators that he had handed the gun over to Sivakov, on his instructions, although he later he changed his statement³⁹.

19. The fact that the explanation of needing the pistol for the “study” was not given when Investigator Chumachenko first requested an explanation for the use of the pistol does not add credibility to this “version”.

20. The fact that the Prosecutor’s Office did not insist on clarifying the incomprehensible, and apparently suspicious answer received from Mr Chvankin and the Ministry of the Interior in reply to their requests for information on the precise use made of the gun also shows that the investigation was not conducted with the required vigour, on this crucial point.

large, but that this could not continue. It is also alleged that the “execution of the traitors” was video-taped. But I have not been able to obtain a copy of such a tape, or reliable information on the circumstances of its production, or current whereabouts.

³⁸ No European country was executing in 1999 any death penalties by any means.

³⁹ See above, para. 14

21. As a link between the well-documented gun and the disappearances could easily be established if the bodies (with bullets in them) were found, I am also surprised how little effort was made to find these bodies. Mr Alkayev's report of Minister Sivakov's and Colonel Pavlichenko's questions regarding the places of burial of the bodies of capital punishment victims and the arrest and trial of the "Ignatovich gang" for the abduction of Zavadski could have given rise to searches in the area of the burial places of official death penalty victims, or to a "deal" offered to members of the Ignatovich gang in return for information on where Zavadski was buried.⁴⁰

2. Witness statements and material evidence (paint traces, car fragments) relating to the scene of the abduction of Gonchar and Krasovski

a. Senior investigator Chumachenko's report

22. The Report gives a detailed account of statements of witnesses who saw a red BMW car parked near the sauna in front of which Gonchar and Krasovski were abducted, with at least three young people sitting in it, for virtually the entire second half of the day of the abduction (16 September 1999). Chumachenko's report also gives details of other witness statements relating suspicious appearances of young men who, in a coordinated way, stopped them from approaching the scene of the abduction, and of "strangers wearing some kind of uniform" barging into neighbouring buildings asking residents whether they had seen or heard something suspicious. One witness had gone outside and saw two cars of foreign make outside the sauna. One was across the roadway, with its front end in the bushes, and the other, a jeep, behind it, with its front windows smashed.

23. Chumachenko also indicates that during the examination of the scene of events, fragments of white and yellow glass, a scattering of transparent glass and brownish stains resembling blood were found on the tarmac road leading away from the sauna. A vehicle's skidmarks were also found, as well as signs of it having collided with a tree, from which samples of red paint were taken for analysis. Forensic tests on two splinters of wood submitted for analysis "concluded that they contained *ground-in micro-particles of scarlet-coloured acrylic/melamine paint. The paint may be*⁴¹ *used for a comparative analysis to establish its common type through sample matching. The traces on the wood are the result of a strong impact at speed*". On the basis of forensic tests of glass fragments and blood stains found on the site of the abduction, it had been established that different glass fragments corresponded to different parts of a 1990 Jeep Cherokee of the type driven that night by Mr Krasovski, and that the blood discovered at the scene of the event is almost certainly that of Mr Gonchar. By contrast, the lamp bulb and bulb-holder taken from the scene of the events by relatives of the victims did in all probability not belong to a 1990 Cherokee Jeep.

b. Explanations given by Interior Minister Naumov and Prosecutor General Sheyman

24. I asked Interior Minister Naumov whether an analysis comparing the traces of red paint found on the site of Gonchar's and Krasovski's abduction with that of Mr Pavlichenko's red BMW had actually been conducted. Such a car had been seen by witnesses on the site of the crime, and Prosecutor Chumachenko had said that such an analysis was feasible.

⁴⁰ With regard to such a « deal », the Minister of Foreign Affairs, Mr Martinov, said to me that such "deals" were legally impossible under Belarusian law, as were measures of "physical persuasion" that the Council of Europe would certainly not condone either. Interestingly, General Prosecutor Sheyman said to me that Mr. Malik, one of the "Ignatovich four" convicted for the abduction of Zavadski, had shown signs of being prepared to cooperate in return for a reduction of his prison term that the President could indeed decide to grant.

Zavadski's disappearance did not coincide with an instance of signing-out the execution pistol, so that finding his body alone would not be likely to provide the link with that pistol. But the case is joined together with the other three for purposes of the investigation by the Prosecutor's office, and a link is also drawn by Zavadski's wife and mother, who postulate a political background and a link to the "death squad" allegations made with regard to the other three missing men. If this postulate is correct, which I do not see as established from the information at my disposal to date, the bodies of the other victims may well be buried near that of Zavadski.

⁴¹ Highlighting added

Mr Naumov answered that this would have been up to the investigators in the Prosecutor's office. As Belarusian officials habitually used service cars for their missions, it never occurred to him to connect the paint traces found and the private car belonging to an officer of the special forces⁴².

25. When I put the same question to Prosecutor General Sheyman at my meeting with him later in the day, the Minsk Chief Prosecutor answered that the Prosecution had seen no reason to take paint from Pavlichenko's car for a comparative study, as witnesses interrogated in the course of the investigation mentioned no such car, but only Russian-made cars such as Schigulis, Moskviches and so on. In addition, the paint traces found were not red, but cherry-coloured, as the Jeep belonging to Krasovski⁴³.

26. When I confronted him with the written account by senior investigator Chumachenko, Mr. Sheyman offered to provide a written clarification by Chumachenko. I recalled that I had asked to meet Chumachenko in person.

c. My own conclusions on this issue

27. Investigator Chumachenko was quite specific about the witness who had seen a suspicious red BMW parked with a group of young men inside it near the site of the abduction, other witnesses who saw two cars (probably Audis or BMW's) drive away from the sauna; and yet another witness who saw a "foreign-made" car across the roadway with its front end in the bushes and another, a jeep, behind it, with its front windows smashed⁴⁴. The investigator's report was also quite specific as regards the colour of the paint found (red paint/scarlet-coloured acrylic-melamine paint). Given that Colonel Pavlichenko had been named as a suspect not only by the victims' families, but also by the Chief of the Criminal Police in charge of the investigation, General Lapatik, I consider the omission of a comparative test a serious flaw in the investigation. The failure to match the paint amounts in fact to a clear effort of collusion: this simple investigative act might have placed Mr Pavlichenko's car at the scene of the abduction and constituted an extremely important link in the circumstantial evidence against him.

28. In addition, Chumachenko's report mentions that relatives of the victims had handed in additional fragments that they had taken from the scene of the events. This makes me wonder about the degree of seriousness with which the official investigators had searched the scene of the crime to secure evidence. As with some other glass fragments found on the scene, these fragments had been examined in order to determine whether they belonged to a Jeep (which, according to Chumachenko, was the case with the other glass fragments, but not with the lamp bulb and bulb holder found by the relatives). But they were not checked in order to see whether they belonged to a BMW of the type driven by Colonel Pavlichenko. Mr Pogonyailo's legal challenge against Mr Chumachenko's decision to suspend the investigation, of which I received a copy only after my "official" meetings, was very specific as to the investigative measures that should have been taken in light of these witness statements: to question the members of the SOBR unit 3214⁴⁵, to carry out an inspection of the vehicles assigned to this unit,

⁴² According to the complaint introduced by Mr Pogonyailo on behalf of the families against Prosecutor Chumachenko's decision to suspend the investigation (p.10), the BMW (and an Audi, which had also been seen on the site by witnesses) belongs to the SOBR unit lead by Mr Pavlichenko.

⁴³ In a letter of 4 January 2004, Mrs Gonchar commented this as follows: "Prosecutor General Sheyman provided a fabricated information saying that "the paint traces found were not red but cherry-coloured as was the Jeep belonging to Krasovsky". I, Irina Krasovskaya, was on the scene of events that day on the 17th of September 1999 and there was not a dark cherry-coloured trace from my husband's car. And a lot of witnesses and I have seen bright red colour trace on the tree and near it. Pictures and film about the above-mentioned facts were made by Oleg Volchek, lawyer. He keeps the pictures and film yet"

⁴⁴ Though this had been denied by other workers of the firm when questioned later.

⁴⁵ One of whom allegedly made a statement reproduced in an article by Mrs Koktysh in Narodnaya Volya of 22 August 2001 that when they shot those people, they did so "in the name of the President". In this article, an anonymous informer named a number of SOBR servicemen: Koklin, Balynin, Murashko, Budko, Novatorskiy, Mekiyans.

examining them for signs of damage and identifying them on the basis of skidmarks, fragments etc. found on the scene, and to examine the log of outgoing vehicles for 16 and 17 September 1999.

29. I consider these omissions, despite the requests made by the relatives' lawyers, the flawed search of the site of the crime, and the contradiction between the version presented in Chumachenko's written report and that presented to me orally by his superiors⁴⁶ so obvious that they even make me wonder whether they were not mere mistakes, but part of a purposeful cover-up.

3. The handwritten accusation by Police General Lapatik of 21 November 2000

30. The Chief of the Criminal Police of Belarus, General Lapatik, addressed a handwritten note dated 21 November 2000 to the Minister of the Interior, Naumov. In this note, he accused V. Sheyman (at the time Secretary of the Belarusian Security Council, now Prosecutor General) of having ordered the former Minister of the Interior, Y. Zakharenko, to be physically annihilated. This order was allegedly carried out by Colonel Pavlichenko with the assistance of the then Minister of the Interior, Sivakov, who provided Pavlichenko with the PB-9 pistol temporarily removed from SIZO-1 prison. The same weapon, General Lapatik concluded, was used on 16 September 1999, when Gonchar and Krasovski went missing.

a. (Recent) recognition of the note as genuine

31. This handwritten note, with a handwritten visa/instruction by Interior Minister Naumov asking General Lapatik to "implement", had been leaked and published by Mr Goncharik, a presidential candidate, before the last presidential elections⁴⁷. On 18 July 2001, Mr Taranov, press officer at the public prosecutor's office, issued a statement that this document was "a *pre-election provocation aimed at discrediting the President*".

32. Mr Sivakov, in an interview in Belorusskaya Delovaya Gazeta on 24 July 2001⁴⁸, had stated that the document was fabricated: "*From the point of view of its contents – I know Lapatik too well. A professional would never write such a report – there are no arguments or facts there ... A teacher would not give a positive mark for such a document even to a second-year student at the police or investigation department.*"

33. As one of the questions that he had addressed to the Belarusian authorities in September 2003 on behalf of the Ad hoc Sub-Committee on the disappearances, Mr Kovalev had asked whether a graphological examination had been performed to ascertain the author of the handwritten note. I had also indicated, in a conversation in Strasbourg with Belarusian officials, that an expert examination could also be done on the basis of the photocopy of General Lapatik's note that was in our possession.

34. During my visit to Minsk, both Interior Minister Naumov, the addressee of Lapatik's note, and Prosecutor General Sheyman admitted, to my surprise, that General Lapatik's note was indeed genuine, i.e. written by General Lapatik and given the visa of Minister Naumov. Mr Sheyman, however, insisted that General Lapatik's findings set out in this note, which was part of the official case file, were simply erroneous. Please note that nothing until today was produced demonstrating that the findings of General Lapatik were erroneous.

⁴⁶ If the paint traces had come from Krasovski's Jeep, this could have been established in the same way as the fact that the different types of glass fragments found on the site belonged to a Jeep of the model driven by Krasovski.

⁴⁷ This was confirmed to me by Mr Goncharik, whom I met briefly in Minsk.

⁴⁸ Reported by the BBC on 31 July 2001, as cited from the Amnesty International documentation « Without trace » (AI Index EUR 49/13/2002).

35. I asked Mr Sheyman whether the above-mentioned statement by his press secretary Taranov had been made under his instruction or to his knowledge. In reply, Mr Sheyman informed me in general terms that Taranov is the press secretary of the public prosecutor's office, covering the office's current activities. Should any issue concern the Prosecutor General, relevant statements to the press must be agreed and visa'ed by the Prosecutor General in writing.

b. Follow-up given to General Lapatik's note and other "versions"

36. I asked both Mr Naumov and Mr Sheyman what they had done to follow up on the allegations made by Police General Lapatik.

37. Mr Naumov said that he had passed the note on to the investigators of the prosecutor's office, for further investigation. It was not the task of the Ministry of the Interior to investigate, although his Ministry often provided operational support for investigators, on their request. The operative information collected by the police did not have the quality of proof unless it was validated by investigators of the prosecutor's office. In reply to my question, as to precisely which investigative measures had been taken, he invited me to ask General Prosecutor Sheyman.

38. Mr Naumov repeatedly stated that Lapatik's note, as leaked to the press, was only one of many "versions" that he had seen, and visa'ed, including three to four more reports presented by General Lapatik later considered as "versions". Those who had leaked this document, and a number of others, from the official case file, had made a biased selection to support one "version" that would discredit the President, as part of the opposition's electoral campaign. When I reiterated that I only knew of the "version" of Lapatik's report that had been leaked to the press, he repeated that there were other, more serious reports, but they needed to be kept confidential. The authorities were fully responsible for the safety of their sources.

39. Mr Sheyman confirmed that the information presented in the note had been "subjected to scrutinising investigation", but, despite my questions, did not give any detail as to the particular measures taken. Referring to my earlier conversation with Minister Naumov (sic), he reiterated that this note was but one of many "versions", and that all "versions" had been thoroughly investigated. I could not obtain any more detail as to the investigative measures taken. I regard the allegation of a thorough investigation as completely untenable in view of the fact that even the matching of the red paint was not done.

40. Mr Naumov gave me some relatively unspacific "background" to explain the leaked "version" of Mr Lapatik's conclusions, alleging "complicated" personal relations between General Lapatik and Mr Sivakov, who were both "big plusses pushing each other". Lapatik had claimed one day that he did not get his due reward for uncovering a serious case, one of the "versions" having been presented by him. Mr Naumov further hinted that General Lapatik might have come up with his "version" because of another criminal investigation dating back to 1997 headed by Lapatik, concerning a serious terrorist act.

c. (Absence of) legal measures taken against General Lapatik

41. Given that both the Minister of the Interior and the General Prosecutor had come to the conclusion that General Lapatik's accusations were unfounded, I asked what legal or disciplinary action had been taken against General Lapatik – who had also refused to disclose his sources, even vis-à-vis his Minister.

42. I said that in my country, a senior government official raising such serious allegations against his superiors and refusing to disclose his sources would immediately be fired and prosecuted for libel and perversion of justice.

43. I was told – in similar terms by Mr Naumov and Mr Sheyman – that Mr Lapatik had fallen ill in early 2001 and was forced to retire four months before his normal term, after being given a job as a professor at the police academy for nine months. He had had to undergo heart surgery twice in six months and now lived as in invalid in the countryside, 70 km from Minsk. For essentially humanitarian reasons, and to avoid criticism from the opposition and the international community, who would have alleged "revenge" motives, no harsh measures had been taken against him.

44. The Chief Prosecutor of the City of Minsk specified that Mr Lapatik did not deny the allegations made in the report, but refused to testify, relying on Article 60 of the Criminal Procedure Code and Article 6 of the Law on Research Activities⁴⁹. In reply to my question, he confirmed that Mr Lapatik had been subpoenaed several times to testify. In reply to my further question whether someone under subpoena can refuse to testify, he referred to Mr Lapatik's serious condition, which had inspired the prosecution's sympathy⁵⁰.

d. Absence of legal action against journalists who published Lapatik's report

45. Journalists I met in Minsk who had published articles based on Lapatik's note confirmed that none of them had been prosecuted for defamation. This lenience is in stark contrast with the well-documented harshness of the Belarusian authorities vis-à-vis independent press organs, which are regularly sanctioned for lesser "inaccuracies". The journalists in question presume that the authorities preferred avoiding a (generally public) trial during which witnesses would have been called to prove the veracity of these allegations.

e. My own conclusions on this issue

46. I consider the very existence of General Lapatik's report, and especially the way it has been handled, as another element to support the conclusion that a proper investigation has not been carried out, and that high-ranking representatives of the state are covering up and were possibly involved in these disappearances. In view of the prevailing presidential system and the way the country is generally run, I find it hard to believe that the above could have taken place without the knowledge of the President. After all, it was the President's duty to make sure that a proper investigation is carried in such serious cases. I feel comforted in my view by the President's statements cited in Mrs Gonchar's and Mrs Kraskovski's appeal to Mr Latypov, Head of the Presidential Administration, Mr Nevyglas, Secretary of the Security Council, and Mr Erin, Chair of the Committee for State Security.⁵¹ Please note that the accuracy of these quotes, tell-tale as they are, have not been denied by the Belarusian authorities.

⁴⁹ At my request, a lawyer at a Western embassy in Minsk looked into these provisions, coming to the conclusion that it is true that investigators, under Article 60, cannot be obliged to be a witness concerning facts they came across in their official function; but in view of the procedural powers of the prosecution laid down in other provisions of the criminal procedure code, he considers the assertion as untenable that the allegations made by the police chief could not be further verified and the General Prosecutor was unable to take the necessary measures in this respect. Article 6 of the Law on Investigative Measures, according to this lawyer, does also not contain any language that would preclude investigations into Lapatik's allegations, including by hearing him as a witness.

Mr Pogonyailo, in his legal challenge of Chumachenko's decision (p.8) noted that "Lapatik's report is not a criminal procedure document, but rather an official document, filed on behalf of the Minister of Internal Affairs. Lapatik was not a member of the investigation team looking into case no. 41400 and cannot therefore be considered a participant in the criminal proceedings in this particular case."

⁵⁰ I was handed by the families' lawyers copy of a letter from General Lapatik addressed to Mrs Gonchar dated 6 December 2000, i.e. 2 weeks after his handwritten accusations, and one week after Pavlinchenko's liberation and Sheyman's new appointment. In this letter, Mr Lapatik said: "At one point, we had confidential information in our possession which we believed would lead to a positive outcome, as announced, moreover, by the first deputy minister of internal affairs, M.D. Udovikov, at the press conference on 12 October 1999. To our great regret, however, on closer examination, the reports proved unsubstantiated and today, the law enforcement agencies have no concrete information as to the fate of your missing husband."

According to this letter, it took Mr Lapatik more than a year (from 12 October 1999 to 21 November 2000) to arrive at the conclusions he addressed to his Minister, and only two weeks ("on closer examination"), to conclude vis-à-vis Mrs Gonchar that the reports "proved unsubstantiated".

⁵¹ The following statements are cited by the two wives:

(a) In a speech before the "standing conference of leading employees in republican and local authority bodies for improving ideological work" (Minsk, 27 March 2003), Mr Lukashenka is alleged to have uttered the following sentence with regard to Mr Kravchenko, former ambassador of Belarus to Japan: "I have already instructed the special services, excuse my frankness, to abduct him and to return to the country".

47. General Lapatik was also not alone with his accusations – as I will show later, there are strong indications that then Prosecutor General Bozhelko, and KGB Chief Matskevitch had come to the same conclusion.

48. Lapatik's handwritten accusations were first denounced as a fake, by Minister Sivakov and Prosecutor General Sheyman's press officer, and recognised as genuine only after Mr Kovalev had asked the Belarusian authorities whether a graphological expertise had been carried out and after I had indicated to them during a meeting in Strasbourg that we could have an examination carried out by a graphologist on the basis of the photocopy already in our possession. This is another clear sign of a cover-up.

49. Neither Mr Lapatik, nor journalists publishing his allegations, were disciplined or prosecuted for defamation. Frankly, I do not believe that "humanitarian reasons" would stop the authorities of any country that I can think of from imposing disciplinary sanctions or prosecuting for defamation a high state official who accuses senior representatives of the state of having ordered the murder by special forces of three important opposition figures, and who does not go back on his allegations even after they are made public, all the while refusing to disclose his sources, even to his Minister. I find the supposition of the journalists regarding the motive for the authorities' lenience more convincing: the authorities clearly preferred avoiding a public trial where evidence would have to be taken and witnesses would have to be heard.

50. Most importantly, neither Mr Naumov nor Mr Sheyman were willing or able to give me *any* detail on the concrete investigative measures that were carried out in order to follow up on the accusations made by Mr Lapatik, nor on the "other versions" of Lapatik's report referred to repeatedly by both of them. Mr Naumov did, however, make it quite clear to me that these investigations were the task of the Prosecution Service, whose chief, shortly after Lapatik's allegations were brought to Mr Naumov's attention, became Mr Sheyman, the key suspect, according to Mr Lapatik. It was thus Mr Sheyman who was in charge of investigating accusations made by the chief of police that he himself had ordered several political murders whilst in his previous function⁵².

51. Mr Petrushkevich, a former investigator now living in the United States who had worked on the team dealing with the disappearances, has given an account of the climate of fear prevailing among his colleagues, who had been well aware of "who was in power". He said that whilst there was a lot of "excitement" among his colleagues when Mr Pavlichenko was arrested, the climate changed completely after Mr Sheyman was appointed to replace Mr Bozhelko, and many leads were simply not followed without there even being the need for express instructions in this sense.

I cannot but conclude, therefore, that

- no serious and independent investigation of Mr Lapatik's accusations had been carried out and that

- the "version" published in the media, and of which I have received a copy, is indeed the one that reflects General Lapatik's views.

(b) In speech televised in "Panorama", Belarusian TV, on 29.10.2001: "Yes indeed, in Minsk, and to a lesser extent in Gomel, I made it clear five years ago, through thugs – God forbid, if you create a criminal environment somewhere, I'll cut all your heads off. The thing is, we know how many of these "thieves-in-law" there are, and who they are ... Yes, lads, Batka [nickname for Lukashenka] said kill them. There were incidents when they behaved wrongly. Do you remember Schavlik and others? Where are they now?"

(c) From a speech on 28.11.2000 to the KGB leadership, when appointing Mr Erin as successor of Matskevich: "So, in order not to torment journalists any longer about all these sensational cases and crimes [the reference is to the missing persons in Belarus], I should like to say the following ... I emphasise once again: do not try to find the perpetrators. I alone am responsible."

⁵² For Mr Pogonyailo and the victims' families, "following the appointment of Mr Sheyman, whom we suspect of being involved in the disappearances, to the post of Prosecutor General, the investigation was effectively suspended, and numerous items of evidence were removed from the case-file and destroyed." (legal challenge against Chumachenko's report, p. 9)

4. The arrest and rapid release of Colonel Pavlichenko in November 2000

52. Mr Pavlichenko was arrested on 22 November 2000, on the basis of an arrest warrant signed by the then Chief of the Belarusian KGB, Matskevich and sanctioned by the then Prosecutor General, Bozhelko⁵³. He was freed on 23 November 2000, as I was told by Mr Sheyman. Mr Alkayev, however, said in Strasbourg that the release took place on 27 November. Releasing him on 27 November appears more probable, as on that date we had the personnel changes as regards the Prosecutor General and the President of the KGB. The new head of the KGB may well have ordered his release. If he was really released on 23 November, clearly the order to release him must have come from the President of the Republic personally.

a. The official version

53. Prosecutor General Sheyman, in his letter to Mr V.D. Frolov, member of the House of Representatives of Belarus of November 2002⁵⁴ specified that Mr Pavlichenko had been arrested on the basis of Presidential Decree No. 21 of 21 October 1997 “on urgent measures to combat terrorism and other particularly dangerous violent crimes”, on suspicion of having committed acts of violence against A.V. Grachev⁵⁵ in a criminal case before the Republican Prosecutor’s Office. On the next day, Pavlichenko had been released “on the instruction of senior KGB officers⁵⁶ on the ground that the detention was unlawful”. Mr Sheyman thus gave false information to Mr Frolov, because Mr Pavlichenko was not arrested on the ground he indicated to him, but for the alleged murder of Mr Samoilov, and other murders.

54. During my meeting with him in Minsk, Mr Sheyman confirmed the version he had given to Mr Frolov, adding that the arrest was also based on suspicion of a crime against Mr Samoilov, the Leader of the Russian National Unity Party⁵⁷. He said that searches had been performed at Pavlichenko’s workplace. As no evidence had been found, he was released as there were no legitimate grounds to keep him in custody. He had been heard as a witness in the cases of the four “disappeared persons” subsequently to his release from custody.

b. The version of the families of the “disappeared”

55. The families of the disappeared and their lawyers, as well as Mr Alkayev, advocate the “version” that KGB Chief Matskevich⁵⁸ had ordered the arrest in the context of the investigation into the four “disappearances”, the arrest warrant being based on other accusations in order to facilitate the arrest. Pavlichenko was arrested one day after General Lapatik’s accusations, inter alia against Pavlichenko, were brought to the attention of Interior Minister Naumov. The next day, Mr Alkayev made his handwritten report, also incriminating Pavlichenko, having spoken to Naumov and others beforehand. The former Minister of Agriculture, Leonov⁵⁹, whom I met in

⁵³ A copy of the arrest warrant is in my file; the warrant was in fact signed on the Prosecutor General’s behalf by his deputy, Mr Snegir.

⁵⁴ AS/Jur/AHBelarus (2003) 04

⁵⁵ An employee of the Ministry of Culture who had been abducted and beaten by unknown attackers wearing special forces uniforms.

⁵⁶ Lawyer Pogonyailo (Legal challenge, p. 6) asked to establish by reference to the case file by whom exactly the order to release Pavlichenko had been given.

⁵⁷ An extreme nationalist group based in Russia, whose Minsk chapter had been headed by Mr Samailov.

⁵⁸ Mr Alkayev, in his deposition in Strasbourg, gave another date (27 November instead of 23 November) for Pavlichenko’s release, and said the release was ordered by “presidential decree”.

⁵⁹ A former colleague and friend of Mr Zakharenko, one of the « disappeared », and a friend and former superior of ex-Prosecutor General Bozhelko.

Minsk, said that President Lukashenko himself had violently criticised the KGB for arresting Pavlichenko. This allegation seems to be credible in view of the fact that Pavlichenko was released from custody after only 24 hours, despite the fact that he had been arrested on the basis of a warrant signed by the head of the KGB and the Prosecutor General. Who, I wonder, had the power to release him from arrest for a series of murders? Mr Leonov also confirmed to me that then Prosecutor General Bozhelko had told him that he also shared Lapatik's and Matskevich's point of view. The families of the disappeared allege that during his detention, Pavlichenko confessed to the murders of the "disappeared" and provided information on their background and that his confession was computer-taped by the KGB. Lawyer Pogonyailo even specified that the interviews with Pavlichenko were videotaped in accordance with the procedure laid down in Articles 192, 193 and 219 of the Code of Criminal Procedure.⁶⁰ The families allege that Mr Matskevich kept a copy of this recording, and that at least one other recording exists. They also allege that transcripts of the tapes could be obtained from the investigators who fled to the United States (Petrushkevich and Sluchek). Meanwhile, it turned out that this is not the case⁶¹. But Mr Petrushkevich has provided interesting new information on the Grachev case. According to him, Mr Grachev, whom he had questioned personally, had testified that Mr Pavlichenko (whom Mr Grachev had recognised in a police line-up, together with Mr Ignatovich and Mr Malik) and his accomplices dressed in special forces uniforms had taken him to the Northern cemetery, held a pistol to his head and threatened him if he did not "leave alone" a circus director whom Mr Grachev was investigating in his function as a Ministry of Culture financial auditor. According to Mr Petrushkevich, the method used by Mr Pavlichenko and his accomplices was very similar to that established by many witnesses in the case of the abduction of Gonchar and Krasovski. But the case, which according to Mr Petrushkevich, had been fully established, was quietly dropped after Mr Sheyman's appointment as Prosecutor General. As to the liberation of Mr Pavlichenko, Mr Petrushkevich stated that the order, which could only have come from the President, was transmitted by an official of the Security Council, as could be confirmed by the former Deputy Head of the KGB prison in question, Fedor Yumanov.⁶²

c. My own conclusions on this issue

56. My conclusion is still "preliminary" on this issue, because some crucial information is still outstanding (tapes? transcripts? records of Pavlichenko's interrogation during his custody). As Mr Pavlichenko had undisputedly been held in the KGB prison, there must be some record of his interrogation in the case file.

57. I must nevertheless admit that I am taken aback by the undisputed fact that the trusted, promising career officer described to me by the former Minister of the Interior, Sivakov, had been arrested on the order of the Chief of the KGB and of the Prosecutor General on the basis of a Presidential Decree to fight terrorism and violent crime, which reads as follows:

"The materials of the operational investigation contain trustworthy data confirming that Dmitry Vasiliyevich Pavlichenko is the organiser and head of a criminal body engaged in abduction and physical elimination of people. In particular, the criminal group headed by D.V. Pavlichenko was involved in assassinating G. V. Samoylov, the leader of the RNE, Belarusian unregistered regional organisation, as well as in murdering other individuals.

⁶⁰ Legal challenge against Chumachenko's report, p. 6

⁶¹ I asked the lawyer concerned for copies of these transcripts, and wrote to Mr Matskevich, in Belgrade, to ask for his cooperation. Meanwhile, Mr Matskevich replied that he was not in possession of a tape or transcript, and that he was currently not in position to help. I also contacted Mr Petrushkevich and Mr Sluchek and was told that they did not have copies of these transcripts either. Mr Petrushkevich said that the files, which had been stored in his office, had been taken to the Security Council for two months. He had looked for these transcripts after the files were brought back, but could not find them. As to videotapes, he confirmed having seen six or seven videotapes that had been confiscated at Mr Pavlichenko's office and flat, but they showed only footage of military exercises carried out by Mr Pavlichenko's unit. Mr Petrushkevich did not exclude that other cassettes had been confiscated which had not been shown to the members of his group.

⁶² Mr Petrushkevich said that Mr Yumanov had "gotten into trouble" after this incident and lost his job. I have not been able to contact him in the meantime.

Taking into consideration the fact that D.V. Pavlichenko and his criminal group may commit further crimes of particular violence, [...], decided [to apply a preventive detention for 30 days].”

58. Whilst the wording of the arrest warrant confirms that the arrest was based, as Mr Sheyman said, on suspected crimes against Mr Samoilov, no crime against Mr Grachev is mentioned, although Mr Petrushkevich's statements show that Mr Pavlichenko was also suspected of the abduction of Grachev. The findings in this case, as reported by Mr Petrushkevich, also establish a clear link between Mr Pavlichenko the “Ignatovich gang”, as Mr Grachev identified Pavlichenko, and at least two members of this gang in the police line-up as joint perpetrators of his abduction. In any event, the arrest warrant makes it very clear that the murder of Mr Samoilov is only an example. The fact that the arrest warrant also mentions “other murders” is to me a possible reference to the murders of the missing persons.

59. The fact that the Prosecutor General wrote to a Parliamentarian giving false and incomplete information is another clear indication of a cover-up. In addition, given that the arrest warrant, signed by the Chief of the KGB (and the then Prosecutor General) was issued for one month, how could mere “senior KGB officials”, as Sheyman wrote to Frolov, release him after only 24 hours? What could have possibly been the investigative measures, carried out in these 24 hours, that proved Pavlichenko's innocence?

5. The alleged letter from former Prosecutor General O. Bozhelko to his Russian counterpart asking for specialised equipment

60. I was told by lawyers of the disappeared, and by Mr Leonov⁶³ that former Prosecutor General Bozhelko had come to similar conclusions to those of Police General Lapatik. On 21 November 2000 he had allegedly written to his Russian counterpart, Prosecutor General V. Ustinov, to request the use of special equipment and experienced staff to locate buried bodies. This request was – again, allegedly – cancelled by another letter dated 27 November 2000, the day of the dismissal of O. Bozhelko and of V. Matskevich, the chief of the Belarusian KGB.

61. Prosecutor General Sheyman, Mr Bozhelko's successor, in reply to my question, flatly denied that such letters existed. Neither Mr Bozhelko nor any other representative of the Prosecutor General had ever sent such a letter to the Russian Prosecutor General. Investigators intended to ask their Russian counterparts for technical assistance in case they established the probable location of the bodies, but they had never approached their leaders with such a proposal.

62. The Deputy General Prosecutor repeated that there was no official record of such a letter in the case file. But he could not exclude that “privately”, such a letter may have been sent. Hinting that some “politics” had already been involved at that time, he could not exclude that an “unofficial letter” may have been sent by Bozhelko's office. Finally, he confirmed that oral discussions in relation to Zavadski's case had taken place in the Prosecutor's office suggesting that the approximate location of the body might become known.

⁶³ Former Minister of Agriculture of Belarus, and personal friend of one of the “disappeared”, Mr Zakharenko and of the former Prosecutor General, Bozhelko; has published a book on this affair in 2003

63. In my view, it would be interesting to know if such a letter was indeed sent⁶⁴, as it would make sense only if the approximate location of the buried body or bodies was already known to investigators. Although Mr Pavlichenko's arrest and alleged confession took place only two days after the letter requesting technical assistance from Moscow was allegedly written, the investigators may have been in possession of General Lapatik's note, which is also dated 21 November, and of other information on which Lapatik may have based his conclusions and on the basis of which Mr Pavlichenko would have been arrested on 22 November.

6. Other details of former Prosecutor General Bozhelko's story as told by Mr Leonov

64. Mr Leonov further told me in Minsk that Mr Bozhelko, who still lived in Minsk but did not answer any telephone calls, had informed him personally, in front of other witnesses, including the well-known Russian journalist Pavel Sheremet,⁶⁵ that the disappearances in question had been orchestrated by Mr Sheyman and carried out by a special unit led by Colonel Pavlichenko set up by former Interior Minister Sivakov. Mr Bozhelko had arranged with Mr Sheremet for an appearance on Russian TV, to disclose the truth on the disappearances. At the last moment, he refused to appear on television, but spoke to Mr Sheremet, in his (Leonov's) presence, confirming the above-mentioned "version". Bozhelko had also made a reference to the existence of a videotape of Pavlichenko's confession. Mr Leonov told me that during the last election campaign, he had been offered videotapes of the confession and of the executions, but that he had refused to accept them, thinking that it was a provocation by the special services.

65. During our conversation in Minsk, Mr Leonov also directly accused President Lukashenka of having given the order to Sheyman. He told me that Bozhelko had informed him of a meeting with the President, during which Bozhelko, who was then still Prosecutor General, had heard Police Chief Lapatik ask the President who had given him the right to kill the general (meaning General Zakharenko, the first of the "disappeared"), following which the President reportedly had not denied the fact but accused those present of undermining his authority, forcing him to take medicines by persistently upsetting him. Mr Bozhelko had also told him that after the President announced his and KGB Chief Matskevich's dismissal, Matskevich had wanted to go to his office, but was denied access. Leonov had tried in 2001 to appeal to Matskevich, through the press, to speak out and say the truth, but he had preferred keeping silent. In reply to my question whether Mr Bozhelko may be prepared to speak with me, he refused to answer, saying that our meeting room was certain to be "bugged". I later came to the realisation that he was quite probably right.

⁶⁴ If such a letter (and its cancellation) were indeed sent, Russian Prosecutor General Ustinov may have kept a copy. I am trying through different channels to sound the Russian Prosecutor General whether he would be prepared to cooperate with me on this issue. Meanwhile, I have good reasons to believe that these letters do exist.

I also received a letter on 4 January 2004 from two of the wives, with the following declaration: "*I, Svetlana Zavadskaya, and my lawyer Sergei Tsurko have seen by ourselves the official letter written and signed by Prosecutor General O.Bozelko to Russian Prosecutor General V. Ustinov with a request to use a special equipment and experienced staff to locate buried bodies dated by the 21st of November, 2000 (case ? 414100, vol.21, page 269). We also saw the official letter signed by M. Snegir, Deputy General Prosecutor dated by the 27th of November of 2000 with the request to cancel the above-mentioned letter(case ? 414100, vol.21, page 270). We had the opportunity to see those letters in May of 2001 when we read the materials on incrimination Ignatovich's group case.*"

⁶⁵ Pavel Sheremet was the former superior of the disappeared cameraman Zavadski and had conducted an investigation of his own, coming to a conclusion similar to the families' «version». Mr Sheremet produced a documentary broadcast by Russian Public Television ("The Wild Hunt") which cast considerable doubt on the Belarusian authorities' investigation into the disappearances of Zavadski and the other missing persons. In 2003, he also published a book about the workings of Lukashenka's regime, including details of the "disappearances" case.

66. According to lawyer Pogonyailo⁶⁶, Matskevich and Bozhelko were never even questioned by investigators dealing with the disappearance cases. In my view, this is another very grave omission. Mr Leonov is an interesting “indirect witness” who appeared to have little fear for his own safety, given that he spoke to me in what he considered as “unsafe conditions” that made him refuse to say whether Mr Bozhelko may be willing to speak to me.

7. Personnel changes at the highest level of the power organs in November 2000

67. We were informed by the families’ lawyers and Mr Leonov that on 27 November 2000, Prosecutor General Bozhelko was fired and replaced by Mr Sheyman, former head of the national security council. According to the families’ lawyers, Mr Sheyman did not hold a law degree when he was appointed, although the law foresees that the Prosecutor General must be a lawyer. The President himself, who had been criticised for this appointment, had publicly taken responsibility for it. The lawyers pointed out another unusual feature of Mr Sheyman’s appointment: he had first been fired from his previous post, following a meeting with the President in the presence of Bozhelko, Lapatik and Matskevich (possibly the one reported by Leonov), and was appointed Prosecutor General only after at least another day. According to the families’ lawyers, Sheyman’s dismissal from his military post would not have been necessary before his new appointment, as there was a precedent for the appointment of a military man (a military prosecutor general) as – civilian - Prosecutor General without him being first dismissed from the military. The interpretation these lawyers give to this feature is that President Lukashenka, when he was first confronted with the evidence, had hesitated for a considerable period of time before siding with Mr Sheyman and ordering a cover-up. This may on the one hand speak against Mr Leonov’s thesis that the President had himself ordered the “disappearances”, as he would in this case perhaps not have shown such “hesitation”. On the other hand, the President may also just have hesitated over whether or not it was necessary to sacrifice Mr Sheyman.

68. On the same day, the President of the KGB, General Matskevich was fired. According to Mr Leonov, he had been scolded on television by President Lukashenka for having arrested Colonel Pavlichenko. Shortly afterwards, the Chief of the Police, General Lapatik, fell seriously ill and ended up taking early retirement on health grounds.

69. The families of the disappeared, as well as Mr Alkayev and Mr Leonov presume that Bozhelko, Matskevitch and Lapatik were fired (or retired) because they had come too close to the truth in the “disappearances” cases. By contrast, a presidential spokesman explained on 27 November that the personnel reshuffle was partially a result of the President’s “dissatisfaction that many important [investigation] cases have dragged on for too long without justification”⁶⁷.

70. In my view, while the President’s dissatisfaction is quite understandable, the timing of the personnel changes, coinciding very closely with important events related to the disappearance cases (General Lapatik’s handwritten accusations, Pavlichenko’s arrest ordered by Matskevich and Bozhelko, Alkayev’s depositions) gives rise to grave suspicions. I see my view confirmed by the description that former investigator Petrushkevich gave of the way these staff changes at the top were interpreted by him and his colleagues. The climate of fear, compounded by the unexplained and as yet uninvestigated deaths of a key witness (Mr Kobzar, a former OMON soldier) and two operations officers, and the threatening investigation into the “leaks” of documents that had occurred finally prompted him to flee abroad.

⁶⁶ Legal challenge, p. 9

⁶⁷ Radio Free Europe/Radio Liberty Newline 4/228, 27 November 2000, as quoted from the Amnesty International Paper cited before (p. 8).

I mentioned above that Mr Naumov and Mr Sheyman told me that Mr Lapatik had developed a serious heart condition requiring to operations and leading to his early retirement, as a reason why no legal measures were taken against him following his allegations.

8. The secret trial of the “Ignatovich gang”

71. Beginning on 24 October 2001, four men (V. Ignatovich, M. Malik, A. Guz and S.Savushkin⁶⁸), were tried in camera⁶⁹ for the abduction of Mr Zavadski. Mr Axsonchik, the lawyer representing Zavadski's mother, petitioned the court to allow the proceedings to be held in open session, which was refused. Access was granted to Mr Zavadski's wife and his mother and their lawyers on condition that they must not disclose information on the proceedings. Lawyer Igor Axsonchik was prosecuted for defamation, and lost his licence to practice law, after he publicly named state officials allegedly involved in Zavadski's disappearance. A number of requests calling for evidence filed by the Zavadski family lawyers were refused by the court. On 14 March 2002, the four persons were convicted and sentenced to long prison terms for the abduction of Zavadski (but not for murder, as the body had not been found), on the basis, *inter alia*, of a spade with Zavadski's blood found in Ignatovich's car⁷⁰. The convicted reportedly continue to claim their innocence, calling the trial a farce. Former Prosecutor General Bozhelko, so I was told by one of the family's lawyers, attended the trial as a witness, but he largely refused to testify, on the basis of the provision in the criminal procedure code allowing investigators to protect their sources.

72. This conviction was presented to me in some detail by the Minister of Foreign Affairs, the Minister of the Interior and the Prosecutor General as the partial resolution of the Zavadski case. Whilst the Minister of Foreign Affairs said that a “deal” (reduction of the penalty for disclosing the burial site of Zavadski's body) could not be offered to Ignatovich and his accomplices for legal reasons, the Prosecutor General stated that after such an offer had been made, one of the convicted, Mr Malik, may be ready to cooperate and point out the burial site.

73. According to the prosecution, the motive for which Ignatovich and his gang had committed the crime against Zavadski was revenge, because Zavadski had publicly accused Ignatovich of having fought in Chechnya on the side of the rebels.

74. Most of my interlocutors on the families' side maintain that Zavadski's disappearance belongs in the same line of disappearances as those of Zakharenko, Gonchar and Krasovski, i.e. that it had a similar political motive: retribution for “treason” against the President, for whom Mr Zavadski had once worked as a personal cameraman, before he began working against the President as a journalist for “hostile” media.

75. Lawyer Axsonchik hinted to us that the Zavadski case, which had been joined together with the other three high-profile disappearances for purposes of the investigation by the prosecution itself, may well be subject to the same politically-motivated cover-up effort as the other three. But he does not exclude that the killing itself was motivated, as alleged by the authorities, by personal revenge. He said that Ignatovich had indeed lost his function and the attached social status as leader of the Minsk chapter of a Russian ultra-nationalist group following the allegation made against him by Zavadski, possibly erroneously, that he had fought against the Russian

⁶⁸ Ignatovich and Malik were former members of the *Almaz* special police unit, Guz a former student of the police academy, and Savushkin a previously convicted criminal. According to Interior Minister Naumov, Malik served for 18 months in a special forces unit under the command of Pavlichenko, after which Pavlichenko had been promoted to a higher post in the special forces. According to Prosecutor General Sheyman, Ignatovich had previously served in *Almaz*, but was decommissioned for health reasons after suffering serious back injury; Malik still served as *Almaz* soldier when he was arrested. Guz and Savushkin had had nothing to do with *Almaz*. *Almaz* had also never been under Pavlichenko's command, as it belonged to a different entity within the Ministry of the Interior. In reply to my question whether any of the Ignatovich four had ever been under Pavlichenko's command, the Deputy Prosecutor General stated that that Malik had served a two-year army service term, but had been decommissioned from the unit where Pavlichenko had formerly served. Prosecutor General Sheyman reiterated that at the time when the crimes were committed, neither had been in any way related to a unit commanded by Pavlichenko.

⁶⁹ According to Amnesty International, secret trials, which contravene international standards, are rare in Belarus.

⁷⁰ The background of the trial is reported in some detail in the Amnesty International document (pp. 11-14).

forces on the Chechen side. Whilst Mr Axsonchik maintains that his requests for further evidence aimed at establishing links between Ignatovich and higher authorities had been rejected, he also said that during his own prosecution for defamation he – the only one among all the lawyers and journalists who had gone public with similar accusations – had been treated very mildly, both by the prosecution and by the court, and he was given only a suspended sentence.

76. Mr Axsonchik warned us against disinformation spread by the authorities, including an anonymous letter allegedly written by KGB officials accusing Mr Sheyman and linking Zavadski's case with the other three disappearances. Mr Axsonchik (and Mr Leonov) also said that the investigator who had allegedly escaped to Norway⁷¹ may be a "special operation" aimed at disinformation⁷².

77. In my view, given that the execution pistol had not been signed out around the time of Mr Zavadski's disappearance, it may well be that there is no direct link between this case and the other three. It could also be that the "Ignatovich gang" acted against Zavadski to settle Mr Ignatovich's personal account with this journalist, whilst it may have acted as (part of) the alleged secret execution squad in other cases. In any event, the allegation made to support the need for holding the trial in camera – that witnesses would have otherwise been afraid to give evidence – does in my view not hold water: if the witnesses were afraid of the gang, the fact that the trial was held in camera made no difference whatsoever, as the gang members in question were in any case present during the trial. Finally, the new information provided by Mr Petrushkevich concerning the crime against Mr Grachev establishes a clear link between Mr Pavlichenko and (other) members of the "Ignatovich gang", as Mr Grachev identified them in a police line-up as joint perpetrators of the abduction he was a victim of.

⁷¹ Mr Uglyanitsa.

⁷² Please note that I have never received copy of any such letter, and do not in any way base myself on a person now living in Norway.

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 9783, Reference No 2831 of 27 May 2003

Draft resolution and draft recommendation unanimously adopted by the Committee on 27 January 2004

Members of the Committee: Mr Lintner (*Chairperson*), Mr Marty, Mr Jaskiernia, Mr Jurgens (*Vice-Chairpersons*), Mrs Ahlqvist, Mr Akçam, Mr Alibeyli, Mr Arabadjiev, Mrs Arifi, Mrs Azevedo, Mr Barquero Vázquez, Mr Bartumeu Cassany, Mrs Bemelmans-Videc, Mr Berisha, Mr Bindig, Mr Bruce, Mrs Christmas-Møller, Mr Cilevics, Mr Coifan (alternate: Mr Chiliman), Mr Contestabile, Mr Daly, Mr Davis, Mr Dimas, Mr Engeset, Mrs Err, Mr Fedorov, Mr Fico, Mr Frunda, Mr Galchenko, Mr Gedei, Mr Goris, Mr Guardans, Mr Gündüz, Mrs Hajiyeva, Mrs Hakl (alternate: Mrs Stoitsits), Mr Holovaty (alternate: Mr Shybko), Mr Ionnadis, Mr Ivanov, Mr Kalezic, Mr Kaufmann (alternate: Mr Maissen), Mr Kelber (alternate: Mr Hoffmann), Mr Kelemen (alternate: Mr Németh), Mr Kroll, Mr Kroupa, Mr Kucheida, Mrs Leutheusser-Schnarrenberger, Mr Livaneli, Mr Manzella, Mr Martins, Mr Masi, Mr Masson, Mr McNamara, Mr Monfils, Mr Nachbar, Mr Olteanu, Mrs Pasternak, Mr Pehrson, Mr Pellicini (alternate: Mr Naro), Mr Pentchev (alternate: Mr Toshev), Mrs Pétursdóttir, Mr Piscitello (alternate: Mr Budin), Mr Poroshenko, Mrs Postoica, Mr Pourgourides, Mr Prica, Mr Pullicino Orlando, Mr Raguz, Mr Ransdorf (alternate: Mr Mezihorak), Mr Rochebloine, Mr Rustamyan, Mr Skrabalo, Mr Solé Tura, Mr Spindelegger, Mr Stankevic, Mr Symonenko, Mr Takkula, Mrs Tevdoradze, Mr Wilkinson, Mrs Wohlwend, Mr Zavgayev

N.B. The names of those members who were present at the meeting are printed in italics.

Secretaries to the Committee: Ms Coin, Mr Schirmer, Mr Cupina, Mr Milner