



**The report:
The case of Nadiya Savchenko**



In protest against the illegal prosecution, the Ukrainian woman went on hunger strike

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1. Introduction

Nadiya Savchenko, a Ukrainian soldier and a member of the Verkhovna Rada of Ukraine and one of the delegates of the Parliamentary Assembly of the Council of Europe from Ukraine, remains in custody in Russia facing trumped-up charges of involvement in the death of Russian journalists in Ukraine.

Nadiya Savchenko's counsels have provided the court and investigators with irrefutable evidence of her innocence as regards the alleged crime. The Ukrainian woman's prosecution should cease immediately and she should be released from custody given the lack of elements of a crime in her actions, and according to international legal bases (POW status and a delegate of PACE), which grant her immunity from prosecution.

The court, however, has steadily continued to support the prosecutor's line. On 22 December, 2014, during one of the court sessions, despite all motions of the defence, Nadiya Savchenko's arrest was extended until 13 February, 2015.

In protest against the illegal incarceration, as well as falsification of charges, on 13 December, 2014, Nadiya Savchenko declared a hunger strike, which she has continued until now.

A campaign in support of Nadiya Savchenko continued to gather pace globally. The international community demands her immediate release from the Russian authorities. On 26 January, 2015, on the opening day of the PACE winter session (one of the delegates of PACE in the quota of Ukraine is Nadiya Savchenko), her counsel, Mark Feygin, initiated a worldwide campaign to support the captured Ukrainian woman.

2. The counsels received irrefutable evidence of Nadiya Savchenko's innocence

In early December 2014, Nadiya Savchenko's counsels received from the Security Service of Ukraine lists of communication activity [\[1\]](#) from her phone and the phones of the killed Russian journalists Igor Kornelyuk and Anton Voloshin. The information obtained allowed them to determine the approximate location of Nadiya Savchenko and the journalists on the first half of the day of 17 June, 2014.

Let us remind ourselves that, according to the investigators, Nadiya Savchenko is accused of ordering the redirection of a mortar towards journalists Igor Kornelyuk and Anton Voloshin, which resulted in their fatal injuries. According to investigators, she allegedly gave the exact coordinates of the location of the journalists to mortar gunners between 11.00 a.m. and 1:00 p.m. on 17 June, 2014 and therefore, she was involved in bringing about their deaths.

It is a well-known fact that in the morning of 17 June, 2014, Nadiya Savchenko was captured by pro-Russian militants, and for a long time, the time of her capture – whether it was before or after the death of journalists - remained uncertain. Analysis of her phone records indicates that at 10.40 a.m. she was already in the centre of Lugansk, where she was taken immediately following her capture. This information was also confirmed by eyewitnesses who reported that Nadiya was captured at approx. 10.30 a.m.

At the same time, the lists of communication activity from the phones of journalists show that at 10.26 a.m., they were still in Lugansk. [\[2\]](#) According to the criminal case file, the journalists were killed at approx. 12.00 p.m. Thus, at the time that the journalists were killed, Savchenko had been a prisoner of the pro-Russian militants for over an hour and could not have committed the offence of which she is accused.

Russian lawyers emphasise that based solely on these data, the charges against Nadiya Savchenko should have been dropped, as the elements of a crime are clearly absent here.

The information, received by the counsels from the SSU, was transferred by them to the Investigative Committee of the Russian Federation. On 26 December, 2014, it was included in the file of the criminal case against Nadiya Savchenko. [3] On 20 January, 2015, the counsels filed in the Investigative Committee of the Russian Federation a motion to dismiss the criminal case against Nadiya Savchenko in view of her alibi.

3. Circumstances exempting Nadiya Savchenko from criminal responsibility under international law

3.1. Diplomatic immunity

On 26 October, 2014, Ukraine held early parliamentary elections, which resulted in the election of Nadiya Savchenko, heading the electoral list of the party 'Batkivshchyna' ('Fatherland'), for the Verkhovna Rada of Ukraine. On 19 November, 2014, the Central Election Commission registered Nadiya Savchenko as a Member of Parliament of Ukraine. She took the parliamentary oath *in absentia* by signing it in the presence of a Russian lawyer in the detention facility. [4]

Her status as a member of parliament opened up the possibility of appointing Nadiya Savchenko as a candidate for the delegation to the Parliamentary Assembly of the Council of Ukraine. This decision was agreed upon by participants of the parliamentary coalition of the Verkhovna Rada of Ukraine.

25 December, 2014, the Verkhovna Rada of Ukraine officially elected Nadiya Savchenko as a member of the Permanent Delegation of Ukraine to PACE. An appeal of the Ukrainian Parliament to PACE calls on international institutions to intervene in the process of liberating Nadiya Savchenko and other citizens of Ukraine, held in Russian captivity. [5]

At the next session of PACE, to be held from 26 to 30 January 2015, Nadiya Savchenko will be officially confirmed as a PACE delegate.

According to international legal agreements, PACE members have diplomatic immunity. For example, Article 40 of the Statute of the Council of Europe states that members of the Parliamentary Assembly of states which have ratified the Statute of the Council of Europe shall be inviolable and immune from arrest and other legal procedures. [6] The Russian Federation ratified the law on accession to the Statute of the Council of Europe in 1996.

Domestic legislation of the Russian Federation guarantees the inviolability of persons who enjoy this right in accordance with international legal standards.

According to the Criminal Code (Article 11, section 4), diplomatic inviolability is granted to persons enjoying diplomatic immunity under Russia's international treaties. [7] But, according to the Code of Criminal Procedure of the Russian Federation (Article 3, section 2), proceedings in respect of a person enjoying diplomatic immunity are carried out upon the consent of an international organisation in which the person participates. [8] The Constitution of the Russian Federation establishes the prevalence of international law over domestic law.

Thus, following the receipt by Nadiya Savchenko of the official status of PACE delegate and obtainment of diplomatic immunity, the Russian Federation will not have the right to conduct a criminal case against the Ukrainian MP or hold her in custody.

On 12 January, 2015, Nadiya Savchenko's defence filed a motion with the Head of the Investigative Committee of the Russian Federation, Alexander Bastrykin to release the arrested Ukrainian woman so that she could participate in the PACE session, the opening of which be held on 26 January, 2015. [\[9\]](#)

The Investigative Committee did not respond to the request, and so, on 19 January, 2015, Nadiya Savchenko's counsels filed a complaint with the Basmany Court of Moscow over the inaction of the Investigative Committee in connection with their motion. [\[10\]](#) Under law, the court has to consider the complaint by 26 January, 2015.

3.2. Prisoner of war status

Despite the existence of numerous pieces of evidence corroborating the fact that the Russian army are participating in a military conflict in the Donbas, Russia and Ukraine are not officially at war. Due to this fact, Russia does not recognise Nadiya Savchenko as prisoner of war.

However, according to international legal standards, Nadiya Savchenko is indeed a prisoner of war. For example, Article 45 of the Additional Protocol to the Third Geneva Convention indicates that in cases where doubt is present, the presumed status of prisoner of war is applied. *"Should any doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, be protected by the Third Convention and this Protocol until such time that his status has been determined by a competent tribunal."* [\[11\]](#) - the document states. That is, Nadiya Savchenko is a prisoner of war until the contrary is established by the court. No other documents or evidence (international resolutions and opinion letters) are required to determine her status as a prisoner of war.

On 12 December, 2014, Nadiya Savchenko filed formal applications to the International Committee of the Red Cross, as well as Head of the Investigative Committee of the Russian Federation, Alexander Bastrykin, in which she stated that she considers herself prisoner of war. *"I request that all investigative activities carried out against me be discontinued until the decision of the competent court on the issue of my status is handed down"*, [\[12\]](#) - the statement to the head of the Investigative Committee of the Russian Federation reads.

At the moment, no special judicial rulings regarding the status of Nadiya Savchenko have been handed down in Russia, therefore, she is prisoner of war in accordance with international standards. As a result, all proceedings against her are prohibited by law (until the court establishes that she is not prisoner of war). The presentation of criminal charges and imposition of preventive measures are also illegal.

As stated by one of Nadiya Savchenko's counsels, Mark Feygin, the lack of official recognition of the military conflict between Russia and Ukraine cannot prevent the recognition of Nadiya Savchenko's status of prisoner of war. *"Even if we assume that the war is being waged exclusively between the Ukrainian government and rebels, then it is still subject to the Geneva Conventions as an 'internal armed conflict'. In this case, Savchenko is prisoner of war in the hands of rebels who illegally transferred her to Russia. Russia has no right to judge foreign combatants under its domestic criminal code. If it is not a state which is at war with Ukraine, it must immediately release Savchenko"* [\[13\]](#), - the counsel stated.

4. Nadiya Savchenko declares a hunger strike

On 13 December, 2014, in protest against her illegal incarceration, Savchenko went on hunger strike. In a statement addressed to the Director of the Federal Penitentiary Service of the Russian Federation, Gennadiy Kornilenko, Nadiya Savchenko stated that she shall remain on hunger strike *"until the day of her return to Ukraine or until the last day of her life in Russia"*. In the statement, she noted that, should her health condition deteriorate, she agrees to be put on a drip or to be given water with sugar to drink, but she categorically refuses to be fed by force. [\[14\]](#)

One of the motives behind Nadiya Savchenko's decision to go on hunger strike, was the untimely provision of necessary medical assistance to her in the detention facility after she began to suffer from the first minor inflammation of the right ear in September 2014 while she was being transferred from Voronezh to Moscow. On 11 December, 2014, the counsel Ilya Novikov reported that the inflammation had worsened, and Nadiya had partially lost her hearing. [\[15\]](#) She had not received professional medical care at that point. The authorities of the detention centre only permitted the administering of ear drops to the detainee. In order to attract the attention of the administration of the detention facility, Savchenko declared a hunger strike. On 16 December, 2014, she was examined by otolaryngologist, but the Ukrainian woman decided to continue the hunger strike until all charges against her are dropped and she is released from custody.

Immediately after the commencement of the hunger strike, Nadiya Savchenko was transferred to solitary confinement. Her condition has been monitored by physicians. Several times, she has been administered a drip in order to maintain the vitality of her body, attempts to force-feed her, however, have not yet been undertaken.

On 12 January, 2015, Nadiya Savchenko announced in a letter, which she released through her counsel, Nikolay Polozov, that she intends to continue her hunger strike until she is released. "With my protest - hunger, I want to invoke reasoned behaviour from the Russian authorities and appeal to the conscience of the Investigative Committee of the Russian Federation", - the Ukrainian woman stated in a letter. [\[16\]](#)

According to the counsels, Nadiya Savchenko has lost approx. 15 kg in weight over more than a month on hunger strike.

5. The Investigative Committee of the Russian Federation has deprived Nadiya Savchenko of the right to correspondence and continues to exert pressure on her family members

In her letter dated 12 January, 2015, Nadiya Savchenko stated that she has not received letters for two months, as the Investigative Committee of the Russian Federation has deprived her of the right to correspondence.

On 13 January, 2015, Nadiya Savchenko's defence filed a statement with Russia's General Prosecutor, Yuriy Chayka, in which they reported the illegal deprivation of her right to correspondence. [\[17\]](#) According to Article 20 of the Federal Law "On the detention of persons suspected or accused of committing crimes", suspects have the right to correspond with relatives and other persons with no limitation on the number of incoming and outgoing telegrams and letters.

On 19 January, 2015, Nadiya Savchenko again began to receive letters, but the arbitrariness of the Russian investigators is apparent. In the absence of any grounds for doing so, Nadiya Savchenko was deprived of the right to correspondence at precisely the moment when she most needed support from outside the detention facility. Thus, the Ukrainian woman was subjected to psychological pressure.

On 20 January, 2015, Nadiya Savchenko's sister, Vira, arrived in Russia in order to meet with her in the detention facility. The Investigative Committee of the Russian Federation had given permission for a visit, but also attempted to question her on the case of Nadiya. [18]. Vira refused to participate in the questioning. This is not the first time that the Investigative Committee of the Russian Federation has attempted to question Vira Savchenko. [19] Such actions undertaken by law enforcement workers can be regarded as attempts to exert pressure on Nadiya Savchenko's family members.

6. International reaction

On 11 December, 2014, the Verkhovna Rada of Ukraine voted for the resolution to file an appeal to the Russian State Duma and the President of the Russian Federation demanding the release of Nadiya Savchenko. [20]

On 12 December, 2014, the Italian League for Human Rights addressed an open letter to the President of Italy, the Minister of Foreign Affairs of Italy, as well as to the President of the Commission for Human Rights of the Senate of the Republic. In the letter, the question is posed regarding the initiatives taken by the Italian authorities for the release of Nadiya Savchenko, against who, according to the organisation, an unfair prosecution is being carried out. *"The Italian League for Human Rights does not examine the essence of the establishment of the criminal liability, but states that the use of kidnapping, instead of filing an application to issue an international arrest warrant and to apply extradition procedures, calls into question both the legality of the detention in Russia, the investigative and judicial actions which have been carried out in relation to Ms. Nadiya Savchenko and any evidence given in her regard"*, [21] - the letter read.

On 5 January, 2015, an international action in support of Nadiya Savchenko was launched online. Activists create and distribute photo and video materials about Nadiya Savchenko and share them via popular social networks with the hashtag '#FreeSavchenko'.

On 6 January, 2015, the US State Department spokesperson, Jen Psaki, stated at a briefing that the US authorities have called for the immediate release of the detained Ukrainians in Russia, including Nadiya Savchenko and Oleg Sentsov. [22]

On 7 January, 2015, the French Foreign Ministry spokesman, Romain Nadal, stated that Nadiya Savchenko should be released under the agreement signed in Minsk on the exchange of prisoners of war. [23]

On 13 January, 2015, the Verkhovna Rada of Ukraine voted for a resolution to file an appeal with PACE, as well as to make appeals the leaders of France, Germany and Russia for the release of Nadiya Savchenko.

On 15 January, 2015, the European Parliament adopted a resolution on Ukraine, which cited the release of Nadiya Savchenko as one of the conditions for the lifting of sanctions against Russia and the halting of imposition of subsequent sanctions. [24]

On 16 January, 2015, President of Ukraine, Petro Poroshenko during a meeting with PACE President, Anne Brasseur, and the PACE delegation, urged them to make every effort to release Nadiya Savchenko. *"We elected her as a member of the delegation to the Parliamentary Assembly of the Council of Europe, and it would be natural for PACE to take the necessary decision on the release of the deputy, the pilot who was defending her country"*, [25] - the President of Ukraine enunciated.

On 16 January, 2015, during the visit to Ukraine, PACE President, Anne Brasseur, urged Russia to release Nadiya Savchenko. She also promised to personally raise the issue with the Russian authorities. [\[26\]](#)

On 16 January, 2015, a member of the lower house of the Italian parliament, Eleonora Cimbro, filed a written inquiry with the Government and the Ministry of Foreign Affairs of Italy regarding the practical steps which have been taken by Italy on a diplomatic level to secure the release of Nadiya Savchenko. [\[27\]](#)

On 18 January, 2015, within the framework of the global movement in support of Nadiya Savchenko, the Open Dialog Foundation held an action 'Plant a park for Nadiya', during which the park near the Russian Embassy in Warsaw was renamed in the honour of Nadiya Savchenko. The campaign was carried out online. The park was renamed using the online mode of Google maps, which allows all users to modify the names of places. [\[28\]](#)

7. Conclusions

The Open Dialog Foundation is joining the global action in support of Nadiya Savchenko, who has been unlawfully subjected to criminal prosecution and incarceration in the Russian Federation.

The criminal case against the Ukrainian woman has been completely fabricated. The investigators have no material proof of her guilt, on the contrary, the defence of Nadiya Savchenko has provided the court and the investigators with material evidence corroborating the accused's alibi. Still, the criminal case against her has not been closed, and the court continues to issue rulings extending the period of her detention.

Nadiya Savchenko is a member of the Ukrainian parliament, as well as a delegate to the PACE from Ukraine, which gives her diplomatic immunity. Under Russian law, diplomatic immunity protects its subject from potential criminal prosecution. In addition, Nadiya Savchenko cannot be prosecuted given that, in accordance with international legal standards, she has the status of prisoner of war.

All these factors indicate that the prosecution of the Ukrainian woman is illegal.

The Open Dialog Foundation hereby urges the competent authorities of the Russian Federation to cease the prosecution of Nadiya Savchenko and immediately release her from custody. We also call for an investigation into her kidnapping from the territory of Ukraine and the fabrication of a criminal case against her.

We urge the international community and the democratic countries of the West to exert pressure on Russia in connection with the case of Nadiya Savchenko.

In April 2014, the Russian delegation to PACE was denied the right to vote and to participate in meetings of the statutory bodies and the monitoring activities of the Assembly due to Russia's actions in Ukraine. One of the points on the agenda of the upcoming PACE session is consideration of the resumption of Russia's rights in the organisation. We hereby urge the PACE member states and the PACE President, Anne Brasseur, to present the issue of resumed Russian rights in PACE as completely dependent on the release of Nadiya Savchenko. Russia cannot participate in PACE as long as one of the delegates of this organisation is being prosecuted by Russian law enforcement agencies in a contrived criminal case.

All those wishing to support our demands are welcome to address their statements to the following persons and institutions:

- Head of the Cabinet of the President of PACE Mark Neville – Email: mark.neville@coe.int, tel: +33 88 41 23 41.
- High Representative for Foreign Affairs and Security Policy of the European Commission - European Commission Service for Foreign Policy Instruments, 1049 Brussels, tel.: +32 2 584 11 11;
- Administration of the President of the Russian Federation - 103132, Moscow, 23 Ilinka Street, entrance 11, tel.: +7 495 606-36-02;
- General Prosecutor's Office of the Russian Federation – 125993, Moscow, 15a Bolshaya Dmitrovka Street, GSP-3, tel.: +7 495 987 56 56;
- The Investigative Committee of the Russian Federation – 105005, Moscow, 2 Tekhnicheskij pereulok Street.

List of the used sources:

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The Open Dialog Foundation was established in Poland in 2009, on the initiative of Lyudmyla Kozlovska (who is currently the President of the Foundation). The statutory objectives of the Foundation include the protection of human rights, democracy and the rule of law in the post-Soviet area, with particular attention devoted to the biggest CIS countries: Russia, Kazakhstan and Ukraine.

The Foundation pursues its goals through the organisation of observation missions, including election observations and monitoring of the human rights situation in the CIS countries. Based on these activities, the Foundation produces reports and distributes them among the institutions of the EU, the OSCE and other international organisations, foreign ministries and parliaments of EU countries, analytical centres and media.

In addition to observational and analytical activities, the Foundation is actively engaged in cooperation with members of parliaments involved in foreign affairs, human rights and relationships with the CIS countries, in order to support the process of democratisation and liberalisation of internal policies in the post-Soviet area. Significant areas of the Foundation's activities also include support programmes for political prisoners and refugees.

00-580 Warsaw

11a Szucha Avenue, office 21

E-mail: odfoundation@odfoundation.eu

www.odfoundation.eu

+48 22 307 11 22

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For more detailed information, please contact:

Andriy Osavoliyk – andriy.osavoliyk@odfoundation.eu

Lyudmyla Kozlovska - lyudmylakozlovska@odfoundation.eu

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