



#### BACKGROUND FACTS:

**Date of Arrest:** September 9, 2018

**Charge:** Violence Against Authorities

**Release on Bail:** October 23, 2018

**Date Trial Began:** April 9, 2019

**Date of Judgment:** October 11, 2019

#### Clooney Foundation for Justice Responds to Conviction of Mikhail Benyash in Russia

The Clooney Foundation for Justice’s TrialWatch initiative monitored the trial in Russia of lawyer Mikhail Benyash. Benyash was convicted of the “use of violence ... against [a] representative of [the] authority” under article 318 of the Criminal Code of Russia and fined 30,000 rubles. While Mr. Benyash was given only a fine, the conduct of this trial raises serious questions regarding the impartiality of the court and respect for the right of the defendant to examine witnesses.

Mikhail Benyash is a Russian lawyer who represents individuals arrested for protesting and who has advocated against police brutality in Russia. On September 8, 2018, he traveled from Sochi to Krasnodar, Russia in order to provide legal assistance to participants in a protest against pension reform.

Benyash’s nightmare began when he was first charged with disobeying police orders and violating the rules on organizing protests under Articles 19.3 and 20.2 of the Russian Code of Administrative Offenses. As Benyash was walking to the protest on September 9, 2018, he was arrested. According to Benyash, the arresting officers beat and violently pushed him, causing him to fall facedown and suffer hearing damage. The defense introduced a medical examination into evidence during trial that reflected bruising and diagnosed Benyash with post-traumatic otitis. The authorities charged Benyash with having organized the protest, although the actual organizer stated that he had been the organizer and that Benyash had not been involved at all.

Then, on the day Benyash was to be released from detention for these administrative offenses, he was charged with a new criminal offense: “violence against a representative of the authority” under article 318 of the Criminal Code of Russia, a charge which carries a maximum sentence of five years imprisonment. This charge was based on an allegation that he hit one arresting officer in the head and ‘bit’ the other – the same officers who Benyash claimed assaulted him so severely as to cause hearing damage.

Benyash’s conviction by Judge Belyak took place despite the fact that an initial police report on his arrest made no mention of any violence on his part and an initial medical examination of the two

arresting officers did not reveal either a head injury or a bite mark on either officer (although both a head injury and bite mark were discovered twelve hours later by different individuals who examined the officers and without explanation for why they were only identified at that later point in time). In addition, the authorities' account of what transpired appeared to change over the course of the proceedings: the police report asserted that Benyash had beaten his head against a window while in a vehicle, but during closing arguments, the prosecution focused on the theory that Benyash had caused himself harm when 'attacking' the police.

The trial was marked by limitations on defense questioning of several witnesses and a number of jokes by the judge at the defendant's expense.

- First, the defense was denied the ability to examine several witnesses, including a witness offering testimony on a key piece of evidence: a video recording taken at the police station after the defendant's arrest. The defense asserted that the video had been edited to show only the 3-4 minutes most favorable to the prosecution; they sought therefore, and were denied, the right to question an investigator about the video's editing. Likewise, defense counsel sought to ask one of the police officers who alleged that Benyash had assaulted him approximately fifteen questions, but the court struck twelve of them.
- Further, during a hearing on August 6, after a medical expert had contradicted herself in response to questions about when the alleged bite could have taken place, the court prevented subsequent efforts by the defense to cross-examine. As one of Mr. Benyash's defense attorneys remarked during closing presentations, "the fact that a person wears shoulder straps on their uniform does not mean that he cannot violate the law."
- In addition, on at least two separate occasions defense counsel objected to the judge's behavior, arguing that it was disrespectful toward the defense and 'scoffing.' For instance, on April 9, as defense counsel sought to elicit details regarding the car in which Benyash was transported to the police station (to rebut the argument that Benyash had harmed himself while in the vehicle), the judge tauntingly asked defense counsel, "Do you want to buy a car?"

These irregularities, which were observed by the monitors, implicate the impartiality of the court and respect for the right of a defendant to examine witnesses as protected by Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights.

A full report by a TrialWatch expert assessing the fairness of Mr. Benyash's trial under international human rights law will be released soon and made available at <http://www.trialwatch.com>.

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#### **About The Clooney Foundation for Justice's TrialWatch initiative:**

The Clooney Foundation for Justice's TrialWatch initiative monitors criminal prosecutions of vulnerable persons around the world. This proceeding was monitored by Human Rights Embassy as part of the TrialWatch initiative.