INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING
APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

(UKRAINE *v.* RUSSIAN FEDERATION)

VOLUME XXV OF THE ANNEXES
TO THE MEMORIAL

SUBMITTED BY UKRAINE

12 JUNE 2018

TABLE OF CONTENTS

Annex 959

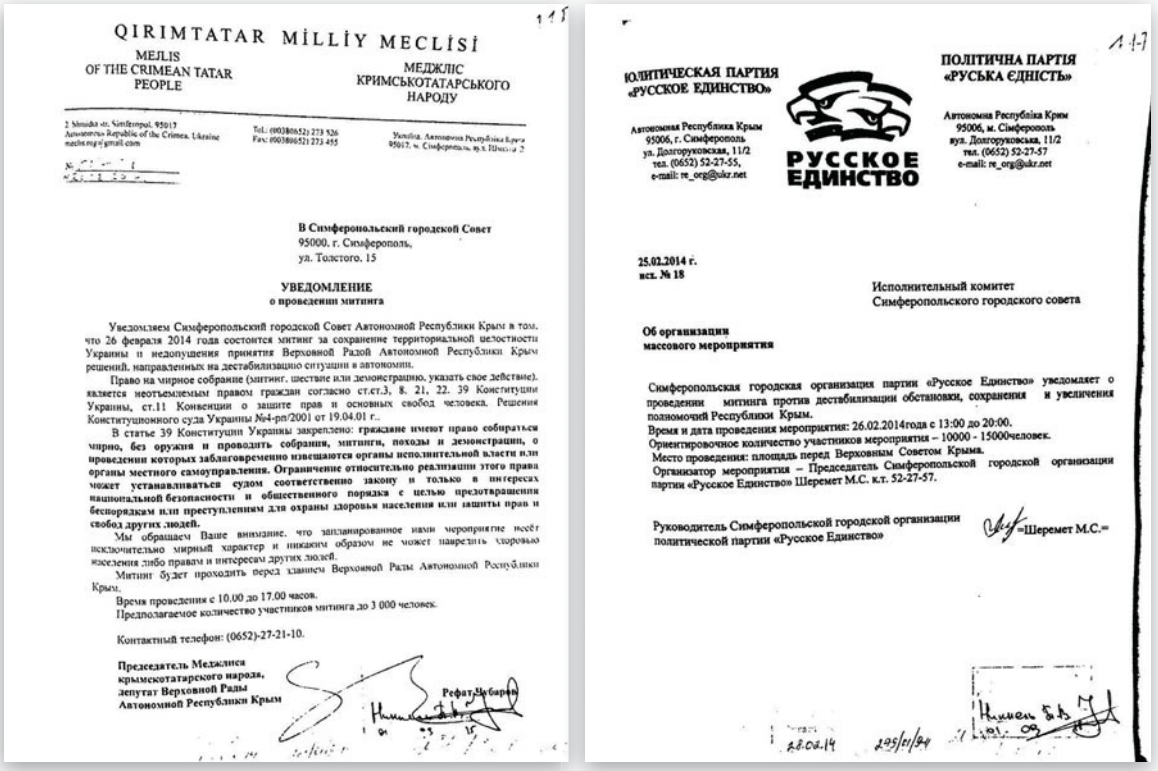
Mejlis of the Crimean Tatar People, Notification to Simferopol City Council (inserted in Ukrainian Helsinki Human Rights Union, Report of the International Expert Group: February 26 Criminal Case (2017)

Pursuant to Rules of the Court Article 50(2), Ukraine has provided only an extract of the original document constituting this Annex. In further compliance with this Rule, Ukraine has provided two certified copies of the full document with its submission.

SECTION 1. RECONSTRUCTION AND ANALYSIS OF THE EVENTS OF 26 FEBRUARY 2014

1.1. General description and background of the events

On 26 February 2014, two rallies organized by the "Russian Unity" party and the Mejlis of the Crimean Tatar People were held outside the building of Supreme Council of the Autonomous Republic of Crimea in Simferopol. The "Russian Unity" party initiated a rally in order to "resist destabilization of the situation, preserve and extend the authority of the Republic of Crimea". The Mejlis initiated a rally in order to "prevent the SC ARC from the adoption of decisions aimed at destabilizing the situation in the autonomy"[16].



QIRIMTATAR MİLLİY MECLİSİ
MEJLIS OF THE CRIMEAN TATAR PEOPLE
МЕДЖЛІС КРИМСЬКОТАТАРСЬКОГО НАРОДУ

В Симферопольский городской Совет
95000, г. Симферополь,
ул. Толстого, 15

УВЕДОМЛЕНИЕ
о проведении митинга

Уведомляем Симферопольский городской Совет Автономной Республики Крым в том, что 26 февраля 2014 года состоится митинг за сохранение территориальной целостности Украины и недопущения принятия Верховной Радой Автономной Республики Крым решений, направленных на дестабилизацию ситуации в автономии.

Право на мирное собрание (митинг, шествие или демонстрацию, указать свое действие), является неотъемлемым правом граждан согласно ст.ст.3, 8, 21, 22, 39 Конституции Украины, ст.11 Конвенции о защите прав и основных свобод человека, Решения Конституционного суда Украины №4-рп/2001 от 19.04.01 г..

В статье 39 Конституции Украины закреплено: **граждане имеют право собираться мирно, без оружия и проводить собрания, митинги, походы и демонстрации, о проведении которых заблаговременно извещаются органы исполнительной власти или органы местного самоуправления. Ограничение относительно реализации этого права может устанавливаться судом соответственно закону и только в интересах национальной безопасности и общественного порядка с целью предотвращения беспорядков или преступлениям для охраны здоровья населения или защиты прав и свобод других людей.**

Мы обращаем Ваше внимание, что запланированное нами мероприятие носит исключительно мирный характер и никаким образом не может нанести здоровью искажения либо правам и интересам других людей.

Митинг будет проходить перед зданием Верховной Рады Автономной Республики Крым.

Время проведения с 10.00 до 17.00 часов.

Предполагаемое количество участников митинга до 3 000 человек.

Контактный телефон: (0652)-27-21-10.

Председатель Меджлиса крымскотатарского народа, депутат Верховной Рады Автономной Республики Крым Рефат Чубаров

ПОЛИТИЧЕСКАЯ ПАРТИЯ «РУССКОЕ ЕДИНСТВО»
Автономная Республика Крым
95006, г. Симферополь
ул. Долгоруковская, 11/2
тел. (0652) 52-27-55,
e-mail: re_org@ukr.net

РУССКОЕ ЕДИНСТВО

ПОЛІТИЧНА ПАРТІЯ «РУСЬКА ЄДНІСТЬ»
Автономна Республіка Крим
95006, м. Сімферополь
вул. Долгоруковська, 11/2
тел. (0652) 52-27-57
e-mail: re_org@ukr.net

25.02.2014 г.
исх. № 18

Исполнительный комитет
Симферопольского городского совета

Об организации массового мероприятия

Симферопольская городская организация партии «Русское Единство» уведомляет о проведении митинга против дестабилизации обстановки, сохранения и увеличения полномочий Республики Крым.
Время и дата проведения мероприятия: 26.02.2014года с 13:00 до 20:00.
Ориентировочное количество участников мероприятия – 10000 - 15000человек.
Место проведения: площадь перед Верховным Советом Крыма.
Организатор мероприятия – Председатель Симферопольской городской организации партии «Русское Единство» Шеремет М.С. к.т. 52-27-57.

Руководитель Симферопольской городской организации политической партии «Русское Единство» =Шеремет М.С.=

* translating page 98-99

The reason for holding two rallies at the same time near the building of the Supreme Council of Crimea on 26 February 2014 was the decision of the Chairman of the SC ARC, Vladimir Konstantinov about the conduct of an extraordinary session on that day[17].

The rally announced by the Mejlis of the Crimean Tatar people at the walls of the SC ARC began around 10:00. Participants of the rally of the "Russian Unity" party began to gather in the same place before the announced time, namely from 9:00. During the confrontation of the rallyers, two people perished and several rallyers were gravely and lightly injured.

The Extraordinary Session of the SC ARC did not take place on 26 February due to the lack of quorum. Only 49 deputies out of 100 attended the session.

The rallies of 26 February were preceded by a series of events: peaceful actions of Evromaydan and Avtomaydan against the actions of the existing authorities (since November 2013), violent dispersals of protesters, administrative persecution of civil activists, adoption of "laws of 16 January"[18] and

[16] Quotations from official notifications about holding a rally of the party "Russian Unity" and the Mejlis of the Crimean Tatar people.

[17] http://news.allcrimea.net/news/2014/2/25/deputaty-verhovnoi-rady-kryma-sobirajutsya-na-vneocherednuju-sessiju-5818/

[18] http://www.osce.org/odihr/111370?download=true

“RUSSIAN UNITY”
POLITICAL PARTY

Autonomous Republic of Crimea
95006, Simferopol
Dolgorukovskaya St. 11/2

Tel.: (0652) 52-27-55
e-mail: re_org@ukr.net

25.02.2014
Ref. No. 18

To the Executive Committee
of the Simferopol City Council

Re: Organization of a mass event

Herewith the Simferopol city organization of the party “Russian Unity” notifies of a rally to be held against destabilization of the situation, for preservation and extension of powers of the Republic of Crimea.

Time and date of the event: 26.02.2014 from 13:00 to 20:00.

The expected number of participants of the event is 10000 - 15000 people.

Venue: the square in front of the Supreme Council of Crimea.

Organizer of the event – Chairperson of the Simferopol city organization of the party “Russian Unity” M.S. Sheremet, contact phone number 52-27-57.

Head of the Simferopol city organization
of the party “Russian Unity” **/signature/ M.S. Sheremet**

MEJLIS
OF THE CRIMEAN TATAR
PEOPLE

2, Shmidt St., Simferopol, 95017
Autonomous Republic of Crimea, Ukraine
meclis.org@gmail.com

Tel.: (00380652) 273 526
Fax: (00380652) 273 455

To Simferopol City Council
95000, Simferopol,
Tolstoy St. 15

NOTIFICATION
of holding a rally

Herewith we notify Simferopol City Council of the Autonomous Republic of Crimea that on 26 February 2014 there will be a rally for the preservation of Ukraine's territorial integrity and the prevention of taking by the Supreme Council of the Autonomous Republic of Crimea the decisions aimed to destabilize the situation in the autonomy.

The right to peaceful assembly (rally, march or demonstration, specify) is an essential right of citizens according to arts. 8, 21, 22, 39 of the Constitution of Ukraine, art. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Decision of the Constitutional Court of Ukraine No. 4-rp/2001 of 19.04.01.

Article 39 of the Constitution of Ukraine reads: **citizens have the right to assemble peacefully, without weapon, and hold assemblies, rallies, marches and demonstrations, of which the executive authorities or local self-government authorities are notified in advance. The restriction on the exercise of this right can be imposed by the court pursuant to the law and only in the interests of national security and public order in order to prevent disorder or offences, to protect public health or rights and freedoms of other people.**

We draw your attention to the fact that the planned event has exclusively peaceful nature and by no means can interfere with public order or rights and freedoms of other people.

The rally will be held in front of the Supreme Council of the Autonomous Republic of Crimea.

Time of the rally is from 10:00 to 17:00.

The expected number of participants of the rally is up to 3000 people.

Contact phone number: (0652)-27-21-10.

Chairperson of the Mejlis
of the Crimean Tatar People,
Deputy of the Supreme Council
of the Autonomous Republic of Crimea **/signature/ Refat Chubarov**

Annex 960

Human Rights Information Centre, Crimean Tatar Media in Crimea: Situation in 2014 – 2016
(10 April 2017)

Crimean Tatar Media in Crimea: situation in 2014 – 2016

10 April 2017

Crimean Tatars – an indigenous people of the peninsula – started proactively developing their media immediately after beginning their mass return to motherland from the places of deportation carried out by Stalin. This return commenced at the end of the 80s and continued throughout the 90s.

Despite some bureaucratic hindrances, by the time that the peninsula underwent occupation by Russia in March 2014, Crimea had two socio-politically themed Crimean Tatar newspapers in Crimean Tatar language (Qirim and Yeni Dunya), two newspapers in Russian (Golos Kryma and Avdet), Crimean Tatar tele- and radio-departments with the State Television and Radio Company Krym that aired shows in Crimean Tatar language, ATR TV-channel and Meydan radio station (part of the Atlant-SV private holding) that ran shows in Crimean Tatar, Russian and Ukrainian languages.

All newspapers, apart from Avdet received state aid in some format.

In addition, there was one full-scale news-agency, QHA that published materials in Russian, Turkish and English, as well as private news-sites on the web: Crimeantatars.org (Atlant-SV, functioning in Crimean Tatar and Russian), Qirim-Vilayeti.org, Teraze.org.ua and Qirimtatar.org in Russian.

FIGHTING FOR THE PRINCIPLES

Throughout the first months of the occupation of Crimea that was opposed by the absolute majority of Crimean Tatars, all media of this native people continued unbiased reporting of the events that were unfolding. Even the Crimean Tatar department of **State TV and Radio Company Krym** (the channel was seized by the Russians on 1 March 2014) tried to engage in unbiased reporting as much as possible until the end of April 2014.

Yet, since end of April, the department was instructed not to allow footage of the leader of the Crimean Tatar people, Mustafa Dzhemilev, head of the Medjlis of the Crimean Tatar People, Refat Chubarov, as well as Medjlis members. An enforced leave was initiated for the head of the department, Seitislam Kishveev (who had been director of the department for many years), as well as editor-in-chief for news-programming, Shevket Ganiev.

Kishveev confirmed imposition of “hard-core censorship”. “*I cannot work under such conditions, and so I have to go on leave*”, - he noted. On 27 June, Kishveev was fired. He noted that he would not renew himself in this position. "*It is not worthwhile working with these authorities any more*", - he noted, adding that only those loyal to the occupants were welcome in the department.

It happened as predicted. The new director of the Crimean Tatar department, Seiran Mambetov, fired 7 staff members who had a multi-year track record, in September. Those who remained on payroll were only his wife, Susanna Beitulaeva, and her co-anchor, Susanna Khalilova. As staff members reported, the terminations were initiated by the new director general of the TV-channel, Yekaterina Kozyr. Mambetov explained the firings by “professional inadequacy” of those who were given the notice.

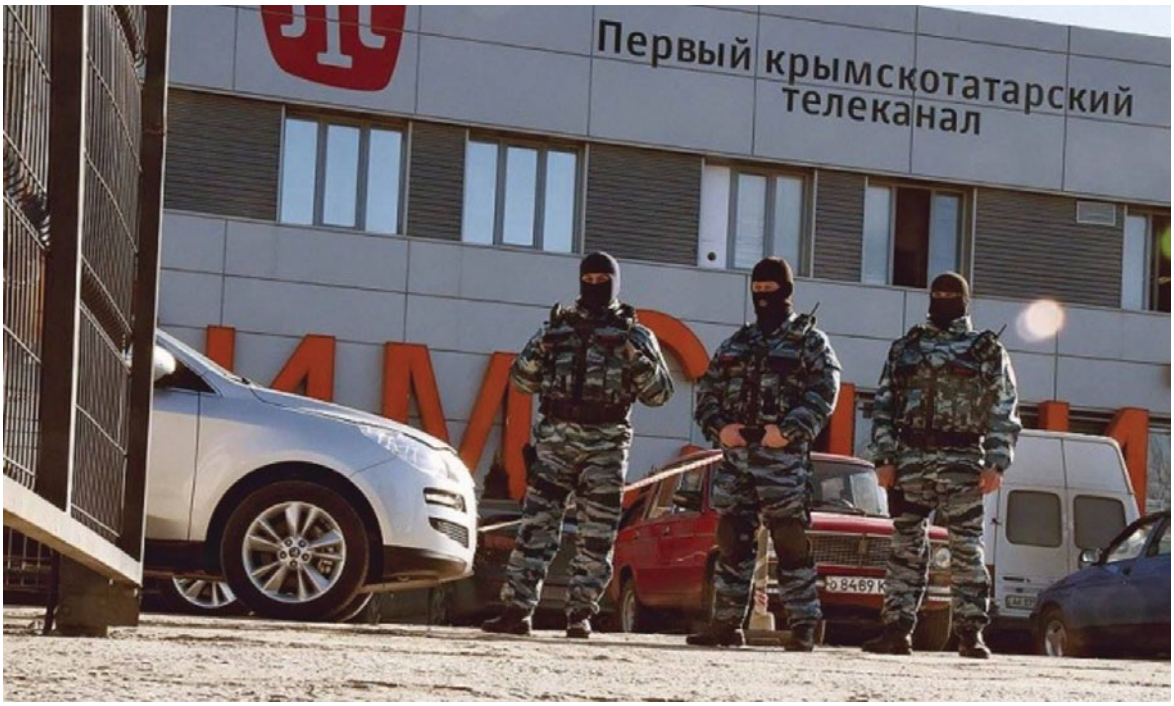
Until the end of 2014, the **Yeni Dunya** weekly dependent on budgetary allocations, also tried to keep certain neutrality in their reports and pieces. At the same time, in January 2015, the weekly underwent total censorship.

By that time, the **Qirim-Vilayeti.org** and **Qirimtatar.org** ceased functioning as well.

Out of the media outlets that were licensed by the Federal Service for Supervision of Communications, Information Technology, and Mass Media, Roskomnadzor, and tried to retain neutrality in publications, if at all possible, were the **Qirim** and **Golos Kryma (New)** newspapers.

UNDERMINING THE ATLANT-SV-HOLDING MEDIA OUTLETS

On 31 March 2015, the **Meydan** radio-station stopped airing its programmes, followed by the **ATR** television channel the next day. This happened after Roskomnadzor, denied them registration and right to air on the territory of Crimea. The channel that in the non-stop mode objectively reported live on all stages of occupation from the first days of peninsula annexation, became target to attack of the occupying authorities, law enforcers and "samooborona" *[so-called self-defence militia]* combatants.



ATR

Throughout 2014, reporters of the channel were deprived the right of access to many events, the editorial premises of the media outlets that belonged to the

holding were cut off internet supply, and at least on three occasions the camera crews of ATR were attacked when they performed their professional duties.

Throughout 2015, the ATR reporters were continuously cut off from official events and one premises search was conducted on 26 January that year, prior to complete cessation of broadcasting. On 21 April, in Simferopol, the officers of the Investigative Committee organized a house search in the home of ATR cameraman, Eskender Nebiev. He, himself, was arrested on suspected participation in the mass unrest that emerged throughout the rallies of pro-Russian separatists and Crimean Tatars on 26 February 2014 close to the Autonomous Republic of Crimea Supreme Council building.

On 19 March 2015, the head of the annexed Crimea, Sergey Aksyonov, openly stated that ATR would stop functioning on the occupied peninsula, since it raised *"hope that Crimea would return to Ukraine"* and, also, *"instigated people to action"*.

On 17 June ATR re-launched its broadcasting from Kyiv .This enraged the authorities of the republic. Re-launch of the broadcasting by ATR meant that the channel *"would work against Crimea and against Russia by defending the interests of its western patrons"* noted the then "Deputy Prime Minister", Rouslan Balbek. The official

warned that Russian law enforcers would launch charges against journalists who would *“work to promote a negative image of the Russian Crimea”*.

After this, on 12 October, the court sentenced Eskender Nebiev to 2 years and 6 months of a suspended sentence (probation).

On 2 November at about 6 a.m. the houses of ATR ex-director, Elzara Islyamova, former deputy director, Liliya Budzhurova, Lenara Islyamova and Edem Islyamov (the sister and father of the TV-channel owner, Lenur Islyamov) were subjected to a search. A search was also organized in the Moscow apartment of Lenur Islyamov himself. The warrant was issued under a criminal case against him. Yet, neither open-access documents nor the court warrant indicated the criminal code article that had been put in motion. The status of other individuals who had their properties searched also remained unknown under the said criminal case.

On 9 December about 6 a.m. a second search was organized in the home of Elzara Islyamova, and on 10 December the law enforcers searched the apartment of the

former ATR editor, Roman Spiridonov, and his parents.

In August 2016 Crimea faced blockage of the ATR TV-channel website.

On 26 February 2016, radio Meydan announced re-launch of its broadcasting from Kyiv. On 28 June, it won the competition for the available 98 MHz frequency organized by the National Television and Radio Broadcasting Council of Ukraine in Genichesk, Kherson oblast, where a sizeable Crimean Tatar community resides.

On 27 December 2016, it became known that the National Television and Radio Broadcasting Council issued licenses to 4 radio-stations that would be able to broadcast to the occupied Crimea. Amongst them was Meydan.

In December 2015, the media outlet **15 Minut**, also belonging to the Atlant-SV holding, re-launched its operations from Kyiv. Access to it is blocked from Crimea starting 3 August 2016. The resource that was originally launched as an all-Crimean one, re-focused on the Crimean Tatar audience.

The **Crimeantatars.org** website that stopped its operations on 31 March 2015 never came back online again.

All in all, 10 Crimean media outlets, including Crimean Tatar ones, had to move to mainland Ukraine after the occupation. The relocation was provoked by varied types of persecution and limitations, and the media unable to continue operation on the territory of the Crimean peninsula.

Crimean Tatar media that had relocated to mainland Ukraine have significantly lost steam on exclusive materials due to the absence of a reporter network in Crimea.

UNDERMINING THE QHA NEWS-AGENCY AND AVDET NEWSPAPER

On the day that ATR stopped its broadcasting, the editorial board of the Crimean Tatar news agency QHA announced its relocation to Kyiv, as it was not able to

receive the Roskomnadzor license to work in the annexed Crimea.

Gayana Yuksel

Prior to this decision in May 2014, reporters of the news agency found it impossible to join meetings and other events organized by the occupying authorities – for instance, journalists were denied access to the events held in the Council of Ministers of Crimea noting that the reporters were blacklisted for “misreporting” on the referendum in Crimea.

On 9 August 2014, the owner of the agency, adviser to the head of the Medjlis, Ismet Yuksel, was banned from entry onto the peninsula for 5 years.

On 22 April 2015, director of the QHA news agency, Gayana Yuksel, was summoned to the Centre for Countering Extremism (so-called Centre “E”). She was faced with administrative charges for articles that had been published in 2006 and 2009.

Starting from August 2016, access to the QHA website is blocked in Crimea.

On 1 April 2015, after having received a denial in registration from Roskomnadzor, the weekly Avdet stopped being published to its former full capacity. It had to reduce its print-run to 999 copies, as in accordance with the Russian law, unregistered newspapers may be printed only if the number of copies in one issue is lower than 1000. Editor-in-chief of Avdet, Shevket Kaibullaiev, by that time had already received 4 warnings from Russian law enforcers regarding prohibition on engaging in extremist activities.

The editorial premises that were located in the building of the Medjlis were subjected to search on 16 September, and the next day the newspaper as well as other organizations quartered in the building were given 24 hours to vacate the offices.

The media outlet had to move to the office of the regional Medjlis of Simferopol. Yet, on 15 July 2016, Medjlis member who began working with the occupying authorities, Teifuk Gafarov, who was then “deputy head” of the Simferopol city administration, tampered with a lock on the office door and, de facto, occupied the rooms.

ESTABLISHING NEW MEDIA IN CRIMEA

On 1 September 2015, the **Millet** television channel, created by the new authorities of the republic, started its broadcasting. Its programming is issued in Crimean Tatar and Russian languages. At the same time, the television and radio departments of **STRC Krym** were closed.

There is no objective data regarding the ratings of this television channel. Yet, conversations with different groups of the Crimean Tatar population suggest that it is not popular.

On 20 November 2015, the authorities launched a Russian-language newspaper with the Crimean Tatar name **Mehraba** that aims at the Crimean Tatar audience. The paper is published on a weekly basis with a print run of 1000 copies.

On 13 February 2017, a new radio station was launched into action by the authorities. It is a Crimean Tatar-language radio station called **Vatan Sedasi**. So far the channel broadcasts only to Simferopol and Simferopol district, but it has received frequencies to air in the largest cities of the peninsula.

ALTERNATIVE

Under omnipresent censorship and limited access to independent Crimean Tatar media to work in Crimea, many Crimean Tatars started receiving information from social networks, reading the posts made by the leaders of the Medjlis, human rights defenders and civic activists.

Nonetheless, Russia tries to block this information channel as well. Thus, in February 2015, the Russian social network "Odnoklassniki" blocked and then deleted a popular group "Crimea and Crimean Tatars". That online community had over 14.5 thousand subscribers.

In addition, as lawyer for a number of political prisoners Emil Kurbedinov, noted, there are administrative cases launched against activists who are "*videotaping arrests, searches, detentions, court processes, taking interviews from the population and lawyers for subsequent publication on the internet*". "*We await repressions against the said activists and "field" reporters*" – stated Kurbedinov.

AS A RESULT

The above-noted facts of systemic persecutions of the Crimean Tatar media have led to a shrinking number of independent Crimean Tatar media outlets, as well as the share of Crimean Tatar-language productions limiting the ability to receive unbiased information about the events on the peninsula.

According to official data provided by Roskomnadzor, the peninsula has 30 registered outlets that operate in Crimean Tatar. Yet, detailed analysis of these media showed that only 9 media outlets actually use Crimean Tatar language, and 5 out of them are journals and info-bulletins with religious content.

Apart from this, an experimental selective analysis of print materials in Russian and Crimean Tatar languages in the Mehraba weekly demonstrated that only 1.7% of the text was indeed in Crimean Tatar.

FORECAST

Keeping in mind the low professional capacities of the pro-authority Crimean Tatar media, as well as evident propaganda and a small number of such media, the demand for receiving alternative information within the Crimean Tatar community will remain on the rise.

This will foster development of independent media-projects irrespective of the legal restrictions imposed on the territory of Crimea. Consequently, activity of such media-projects will attract attention of law enforcers and lead to other rights violations in reporting activities. Therefore, we may expect a negative impact on the situation in the freedom of speech area and violations will continue to happen.

Human Rights Information Centre

Photo by ATR and ua.krymr.com

RELATED NEWS:

"Dark" judges. A list of judges who illegally imprison Ukrainian citizens in Crimea is published

Tags: ATR media

LATEST NEWS

19 January 2018

Ukrainian court keeps putting off vital trial over Russian human trafficking scam

31 August 2017

44 people disappeared in Crime during the annexation – CrimeaSOS

29 August 2017

In Crimea a new criminal case was opened against Ukrainian activist Volodymyr Balukh

28 August 2017

Ukrainian authorities should release journalist Muravitsky: the Committee to Protect Journalists

Ukrainian citizen Stanislav Klykh, who is imprisoned in Russia, was transferred to hospital – lawyer

22 August 2017

Prosecutor's Office published a video that depicts prisoners of Odessa SIZO being beaten and opened a number of proceedings

21 August 2017

Law enforcement officers disrupted a commemorative event in Crimea and detained its organizer

17 August 2017

For the second time in two weeks an activist was attacked in Ivano-Frankivsk

16 August 2017

Human rights defenders consider crimes committed by Crimean paramilitary formations as war crimes

A suspicion is announced against anti-corruption activist Shabunin

15 August 2017

In July-August, the authorities of occupied Crimea imprisoned 9 Ukrainians for political reasons

14 August 2017

In Simferopol pensioners, who organized a protest in support of Karametov, were detained

11 August 2017

Amnesty International calls for immediate release of Crimean activist Karametov

10 August 2017

Suleymanov, defendant in the "case of saboteurs", is sentenced to almost 2 years of imprisonment in a colony and fined 3.5 million rubles

In Crimea, law enforcers are searching the house of a large family from Bilohirsk district

9 August 2017

Human rights defenders named 20 people, who are involved in persecution of activist Balukh and demand to impose sanctions against them

Like in Russia? State Special Communication Service of Ukraine wants to collect data on all owners of sim-cards

8 August 2017

The presentation of the "Rozstrilny Calendar" of Stalin's repressions was canceled due to author's participation in the Equality March

7 August 2017

Deputy of the local council from the Svoboda political party called dark-skinned students "cockroaches"

Dark-skinned students attacked in Lutsk

CHILDREN'S RIGHTS

I don't care my brother has Down syndrome. I love him for being in my life!

The neighbors changed their opinion about the children with Down syndrome as soon as they saw our Artem.

CONTACT US

HUMAN RIGHTS INFORMATION CENTER

Support to the website is provided by the
International Renaissance Foundation
Embassy of the Kingdom of the Netherlands in Ukraine
OSCE
Freedom House

OUR CONTACTS

Chief editor: Olga Padiryakova

E-mail: op@humanrights.org.ua

Contact us at (044) 272-42-52, (067) 502 08 01

Address: Ukraine 01001, Kyiv, post box B-261, Human Rights Information Centre

Legal address: 01054, Kyiv, Yaroslaviv Val Street, 33B

Annex 961

Crimean Human Rights Group, Unsanctioned Freedom (May 2017)

Analytical review on violation of right to peaceful assembly in Crimea

UNSANCTIONED FREEDOM

March 2014 – March 2017

CRIMEAN
HUMAN RIGHTS
GROUP

UNSANCTIONED FREEDOM

Analytical review on violation of right
to peaceful assembly in Crimea
(March 2014 – March 2017)

May
2017
Kyiv

УДК 342.729.03(477.75)(048.83)
Н55

Н55 Unsanctioned Freedom: Analytical review on violation of right to peaceful assembly in Crimea (March 2014 – March 2017) / produced by A. Sedov, under the general editorship of O. Skrypnyk and literary editorship of M. Budzar. — Kyiv, 2017. — 48 p.

ISBN 978-966-2544-27-5

The review has summed up outcomes of the consistent and comprehensive work of the Crimean Human Rights Group on monitoring and documenting the facts of violating the freedom of peaceful assemblies on the territory of Crimea after the occupation and unlawful annexation of the peninsula. The review is made in line with the international human rights law standards, following the relevant documents. The review includes also conclusions and recommendations for international organizations, authorities of Ukraine and authorities of the Russian Federation.

УДК 342.729.03(477.75)(048.83)
Н55

The Crimean Human Rights Group (CHRG) is an initiative of Crimean human rights defenders and journalists aimed at supporting the observance and defense of human rights in Crimea through attracting a wide attention to the issues of human rights and international humanitarian law on the territory of the Crimean Peninsula as well as searching and elaborating instruments for defending human rights in Crimea.

The CHRG activities are regulated, first of all by standards of fundamental human rights documents, namely Universal Declaration of Human Rights, Helsinki Final Act, Convention on Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, etc.

The CHRG follows principles of fairness, accuracy and timeliness in preparing and distributing the information. The CHRG team is composed of experts, human rights defenders and journalists from various countries who have been participating in monitoring and documenting violations of human rights in Crimea since February 2014. The CHRG pays a major attention to the human rights violations due to the unlawful actions of the Russian Federation in Crimea.

The Crimean Human Rights Group appreciates a contribution of **Mr. Aleksandr Burmagin,** a media lawyer, Human Rights Platform NGO expert, an expert of the European Commission for Democracy through Law (Venice Commission) of Council of Europe, a member of Independent Media Council, to the review preparation.

British Embassy Kyiv

The review publication has become possible thanks to the financial support of the Embassy of the United Kingdom to Ukraine within the framework of Support to Journalists and Human Rights Defenders in Crimea Project that is being implemented by the Center for Human Rights Information together with the Crimean Human Rights Group. The opinions expressed in this publication are those of the authors and may not reflect the official position of the UK Government.

ISBN 978-966-2544-27-5

STATUTORY REGULATIONS OF THE RUSSIAN FEDERATION THAT ARE MOSTLY USED TO VIOLATE THE FREEDOM OF PEACEFUL ASSEMBLIES IN CRIMEA*

CODE OF ADMINISTRATIVE OFFENCES OF THE RUSSIAN FEDERATION (RF CAO)[1]

Article 19. 3. Failure to follow a lawful order of a policeman, a military man, an officer of the federal security service bodies, an officer of state guard service bodies, an officer of bodies authorized to exercise the functions of control and supervision in the field of migration or an officer of the body of institution of the criminal punishment system or an officer of the Russian Federation National Guard troops.

Article 20. 2 Violation of the established procedure for arranging or conducting an assembly, a rally, a demonstration, a procession or picket

Article 20. 28 Organization of activity of a non-government or religious association in which respect a decision has been taken to suspend its activity

CRIMINAL CODE OF THE RUSSIAN FEDERATION (RF CC)[2]

Article 205. 5 Organization of activity of a terrorist organization and participation in the activity of such organization

Article 212 Mass riots

Article 318 Use of violence against a representative of the power

FEDERAL LAW 'ON ASSEMBLIES, RALLIES, DEMONSTRATIONS, PROCESSIONS AND PICKETING', FZ54, OF 19 JUNE 2004[3]

**Hereinafter these regulations are referred to in abbreviation.*

1 http://www. consultant. ru/document/cons_doc_LAW_34661/3262fd14537fe74196521d1f5da6bc9ae5508786/
2 http://www. consultant. ru/document/cons_doc_LAW_10699/
3 http://www. consultant. ru/document/cons_doc_LAW_48103/

VIOLATIONS OF FREEDOM OF PEACEFUL ASSEMBLIES AND ASSOCIATIONS IN CRIMEA
March 2014 – March 2017

Due to actions of local authorities and RF state bodies, since February 2014 many public activists, human rights defenders, independent experts and journalists have been forced to leave the peninsula due to the persecution. The Russian de-facto authorities on the territory of Crimea has resulted into a large-scale rollback of fundamental rights and freedoms. The Crimean Human Rights Group has documented numerous violations of freedom of assemblies and associations on the territory of Crimea that are system-based and testify a deliberate policy of the Russian authorities focused on rolling back fundamental rights and freedoms on the peninsula.

1 UNJUSTIFIED BANS AND RESTRICTIONS ON PEACEFUL ASSEMBLIES

Article 21, International Covenant on Civil and Political Rights (hereinafter ICCPR), and Article 11, European Convention on Human Rights, states a right of peaceful assemblies that shall not be subject to any restrictions other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of other[4].

Before the occupation, numerous public events had been held rather freely in Crimea. They were not restricted either by place or by political slogans of the protesters. Organizers had just to notify the authorities in advance about the time and the place of such peaceful assembly.

When the Russian authorities established their control in Crimea, they started using any possibility to prevent public events other than those that supported and welcomed acts of the Russian governance. Public assembly restrictions are grounded by the RF laws that establish much more restrictions of peaceful assembly freedom than the Ukrainian ones. First of all, this is a permission on every public event issued in advance by municipal or district administration. The fact of applying a permit system to authorize peaceful assemblies instead of notification one is an evidence of violating the standards in the peaceful assembly freedom sphere.

Lack of legitimate determination in the Russian legal statutory regulations on the peaceful assemblies entitles the representatives of authorities de facto to interpret them in their discretion, to apply them on a case by case basis, restricting, without any grounds, these assemblies and permitting others depending on whether the convictions of their organizers coincide with the views of administration or contradict them.

1.1 RESTRICTIONS ON PEACEFUL ASSEMBLIES DEDICATED TO MEMORIAL DATES AND EVENT ANNIVERSARIES

On June 17th 2014 the City Council of Simferopol rejected a request of the Crimean Tatar People Mejlis on holding a cultural public event dedicated to the Day of Crimean Tatar Flag in the city center on 26 June 2014. The authorities grounded their rejection by the statement that 'many people assembling on the limited area that is not intended for placement of the number of participants

[4] http://www. un. org/ru/documents/decl_conv/conventions/pactpol. shtml

additionally declared may create conditions for violating the public order, rights and legally protected interests of other citizens. [5] Such grounds for rejection do not meet the criteria on assembly freedom restrictions in the democratic society.

On June 18th the Simferopol City Council denied 'no-objection' for a motor rally route to the Crimean Tatar Flag date suggested by the Mejlis. The city authorities proposed to change this route, excluding the central streets from it[6]. Such restriction deprived the event organizers from the opportunity to achieve 'sight and sound' of the target audience.

In August 2014 the authorities de facto forbad the KARDASHLYK Crimean Tatar NGO to hold a mourning rally dedicated to the European Day of Remembrance for Victims of Stalinism and Nazism of August 23rd. The reason for refusal — 'too hot weather' — does not meet criteria of acceptable restrictions due to interests of national or public safety, public order, protection of health and the morals or rights and freedoms of others[7].

On November 28th 2014 the Committee for Protection of Crimean Tatar People Rights submitted a notification to the Simferopol city administration on holding several events dedicated to the International Human Rights Day. Having been refused, the Committee addressed the administration with the request on organizing a picket against the restriction on the freedom of peaceful assemblies. On December 9th 2014 the Committee representatives received a refusal on holding the picket at the place requested by the organization. The same day the Committee coordinators addressed the Simferopol city administration verbally and in writing, confirming the Committee readiness to hold the picket at any place in the city of Simferopol that would be approved. At 10.00pm the refusal for holding the picket was received.

On December 7th 2014 the Crimean Prosecutor's Office rendered a caveat to Mr. Akhtem Chiygoz, deputy Chairman of the Crimean Tatar Mejlis, on inadmissibility of non-authorized rallies.

On February 5th 2015 the Bakhchisarai Town Council received a request of Mr. Ilmi Umerov on holding a rally 'to support unreasonably seized Akhtem Chiygoz, deputy Chairman of the Crimean Tatar Mejlis' on February 19th in

Denial of Simferopol City Council to issue 'no objection' on holding a mourning rally dedicated to the European Day of Remembrance for Victims of Stalinism and Nazism by KARDASHLYK Crimean Tatar NGO, 15 August 2014, Simferopol

5 http://qha. com. ua/ru/politika/krimskim-tataram-zapretili-provodit-den-flaga-v-parke-treneva/137163/
6 http://ru. krymr. com/a/25426854. html
7 http://zn. ua/UKRAINE/krymskim-tataram-zapretili-pominat-zhertv-stalinizma-151149_. html

Bakhchisarai. The rally was to be held at the central square of Bakhchisarai, with 250 to 300 people present, from 11.00am to noon. However, Mr. Umerov was refused to hold the rally. The reason for rejection was stated as incompliance of the request submitted with the provisions of Law FZ54. The refusal was signed by acting as head of the Bakhchisarai Town administration Mr. V.A. Verkhovod[8].

On May 8th 2015 the head of Simferopol City Administration office Mr. G. V. Aleksandrov denied the request of the Crimean Tatar Mejlis on holding a mourning rally dedicated to the 71st anniversary of the Crimean Tatar People Deportation on May 18th. The rejection was justified by the statement that requests on holding the assemblies on May 18th 2015 at the places allowed for the public assemblies had been submitted already[9].

In addition to the rejection, the 'Prosecutor's Office' of Crimea made a caution to several Crimean Tatar activists on inadmissibility of holding public assemblies on May 18th 2015. For instance, Mr. Nariman Djelial reported that the Prosecutor's Office of Crimea rendered a caution to the Mejlis on inadmissibility of public events on the Deportation Day of May 18th. On May 15th Mr. **Shevket Kaibullayev**, a member of the Crimean Tatar People Mejlis, AVDET Newspaper editor-in-chief, was called to the Prosecutor's Office of Crimea where he was handed a caution on inadmissibility of holding mourning events on May 18th by the Crimean Tatar People Mejlis representatives.

On May 15th Mr. **Leonid Kuzmin**, activist of the Ukrainian Cultural Center, received a caution from the Prosecutor's Office on responsibility for organizing the mourning assemblies on May 16th and May 18th. The caution was made verbally, with no documents in writing presented by the Prosecutor's Office staff.

In early June 2015 representatives of youth organizations that participated every year in organizing the Crimean Tatar National Flag Day created an organizing committee to hold events dedicated to this day. The Organizing Committee notified the city administration of Simferopol on holding a public event dedicated to the Crimean Tatar Flag Day on June 26th 2015 in the Fontany residential area of Simferopol. However, this notification was denied. The reason for refusal was that other organizations had submitted the notifications and got 'no objection' on holding the public events on June 26th. Since then the Organizing Committee had submitted twice the notification with the event time and place changed, but the replies were identical to the first one. The Organizing Committee was also denied on approving a motor rally.

On July 18th 2015 it became known that the local authorities of Bakhchisarai Town and the police forbad the town Muslim community to hold a cultural event within the Uraza Bayram Festival. The event was planned in the Khan Chaiyr residential area close to the mosque. Earlier this event had been annually held close to this mosque. The authorities' grounds to refuse were that a lot of people came to this event. The refusal reason is not grounded since there is no evidence that this cultural event threatens the safety and the public order[10]

On August 11th 2015 activists **Veldar Shukurdjiyev and Irina Kopylova** made photos with the Ukrainian flag at the monument to Lenin on one of the squares of Simferopol and then were detained by the police. The detention report referred to Article 20.2 of RF CAO though this article regulates rallies, demonstrations, processions or picketing, while the process of taking photos does not fall within the scope of the article. The actual reason for the detention as the activists think, was their using the Ukrainian flag.

8 CHRG review for February 2015, annexes 10 and 11. — http://crimeahrg. org/wp-content/uploads/2016/10/Crimea_Field_Mission_Review_February_2015_RU. pdf

9 goo. gl/GIb1r5

10 http://gordonua. com/news/crimea/v-bahchisarae-policiya-ne-razreshila-musulmanam-otprazdnovat-uraza-bayram-90250. html

On August 18th 2015 the activists of the **Ukrainian Cultural Center** made a notification on holding the events dedicated to the Independence Day of Ukraine in Simferopol including the planned laying of flowers in front of the monument to Ukrainian poet Taras Shevchenko in Simferopol. However, the Simferopol administration objected to this peaceful assembly and warned that participants and organizers of the public event would face the consequences in case of violating the Russian legislation standards[11]. The reason for rejection was stated as incompliance with the notification submission timing set by the RF laws. The organizers were to submit the notification at least 10 days prior to the event, i. e. 10 days before August 24th, while this was done on August 18th. So the activists were rejected to hold the peaceful assembly due to the formal grounds.

On August 22nd 2015 Mr. Veldar Shukurdjiyev, an activist of the Ukrainian Cultural Center, was handed a ruling on inadmissibility to hold objected public events on August 23rd (Ukraine Flag Day) and August 24th (Independence Day of Ukraine).

On January 22nd 2016 Mr. A.A. Katsala sent a notification to the Internal Policy Department of Sevastopol City on holding a cultural and musical event — St Patrick's Parade — on March 19th, 2016, from 03.00pm to 04.00pm. But, having considered the notice of intent, the department denied the procession on January 26th due to the emergency situation announced in the city of Sevastopol[12].

On March 1st 2016 the activists of the Ukrainian Cultural Center were informed that the administration of Simferopol City denied them to hold a public event by which the activists wanted to celebrate the birthday of Taras Shevchenko on March 9th. In their reply addressed to Ms Aliona Popova, the city authorities of Simferopol referred to the ordinance of Mr. Sergey Aksionov, the head of the current Crimean government, dated November 22nd 2015 'On introducing the emergency situation regime' and 'On restricting mass, public, cultural entertainment and other events' as well as on the minutes of meeting of the head office on eliminating the emergency situation consequences that suspended temporarily organizing the public events starting from November 22nd 2015 till 'a special notice'[13]. The representative of the Ukrainian Cultural Center Mr. Leonid Kuz'min was, in addition to this, called to the 'Prosecutor's Office of Simferopol City and handed a 'caution on inadmissibility of violating the laws on anti-extremist actions and laws on assemblies, rallies, demonstrations, processions and picketing'[14].

In 2017 Ms G.V. Aleksandrova, a representative of Simferopol administration, denied again Mr. Leonid Kuz'min, activist of the Ukrainian Cultural Center, to hold a rally in front of the monument to Taras Shevchenko on March 9th — the poet's day of birth. Grounds for the refusal were not stated, but the RF MIA (Ministry of Internal Affairs) issued additionally 'a caution on inadmissibility of law violations', referring to RF CC and RF CAO which violations would be imputed should the 'objected rally' be held. [15]

The administration of Yalta Town denied the local residents to hold an event on May 3rd 2016 in the settlement of Koreiz to celebrate the Crimean Tatar HIDIRLEZ Festival. The reason for refusal was 'lack of possibility to secure the safety' that was grounded by the local authorities by a need to secure the safety of the festival held in the SHAKHEREZADA Cultural and Entertainment Center.

[11] CHRG Review for July — August 2015, Annex 7. — http://crimeahrg. org/wp-content/uploads/2016/02/Crimean_Human_Rights_Group_July_August_2015_ENG. pdf

[12] CHRG Review for January 2016, Annex 4. — http://crimeahrg. org/wp-content/uploads/2016/02/Crimean_Human_Rights_Group_January_2016_Eng. pdf

[13] CHRG Review for March 2016, Annex 3. — http://crimeahrg. org/wp-content/uploads/2016/04/Crimean-Human-Rights-Group_March_2016-Eng. pdf

[14] http://crimeahrg. org/wp-content/uploads/2016/04/Predosterezhenie-Kuzminu. pdf

[15] https://www. facebook. com/photo. php?fbid=10203082838467619

This event was organized by the local authorities so in the letter of refusal the Yalta authorities suggested the Koreiz residents to visit this particular event instead of organizing their own[16].

On May 4th 2016 **Ms Sanie Ametova**, a representative of the regional Crimean Tatar People Mejlis, submitted a request on holding a rally on May 18th dedicated to the Memorial Day of Crimean Tatar Deportation Victims. On May 13th 2016 the administration of Voinka Village of Krasnoperekopsk District represented by Ms Ekaterina V. Maksimova, chairman of the village council and head of administration, denied to permit the rally.

The reason for refusal was land improvement works to be carried by the local authorities on the territory of the park where the event was planned. Therefore, the administration forbad any public events there on May 18th, except laying the flowers to the memorial sign to the deportation victims initiated by the local authorities[17]. On May 16th Ms Ametova, a rally organizer, filed an administrative claim for actions of Ms E. Maksimova in the court. On May 17th Ms Olga V. Shevchenko, 'judge of Krasnoperekopsk district court', rejected the claim[18]. Having considered the appeal, the 'Supreme Court of Crimea' remitted the case. On October 4th Mr. Aleksandr Savchenko, 'judge of Krasnoperekopsk district court', rejected again the Ametova's claim for the administration head[19]. On January 11th 2017 the 'Supreme Court of Crimea' confirmed the claim rejection judgement.

Denial of Voinka Village administration to issue 'no objection' on holding a public event at the memorial sign to the Crimean Tatar Deportation Victims on May 18 2016. Document, 13 May 2016. Voinka

The day before May 18th 2016 some educational establishments of Crimea informed teachers and pupils that it was forbidden to be absent at school on May 18th, and the school administrations were obliged to report the number and reasons of absence on May 18th, including 'separately for the Crimean Tatar children'. [20]

On August 23rd 2016 Mr. **Mikhail Batrak**, activist of the Ukrainian Cultural Center in Crimea, was called to the Prosecutor's Office of Crimea. He was handed a 'caution on inadmissibility of violating RF Law on anti-extremist actions and RF Law on assemblies, rallies, demonstrations, processions and picketing'. The reason for issuing the caution was information on a planned public event dedicated to Independence Day of Ukraine that seemed to have been received by the Prosecutor's Office from the RF FSB (Federal Security Bureau) [21].

16 CHRG Review for May 2016, Annex 11. — http://crimeahrg. org/wp-content/uploads/2016/07/Crimean-Human-Rights-Group_May_2016-Eng. pdf

17 CHRG Review for May 2016, Annex 9. — http://crimeahrg. org/wp-content/uploads/2016/07/Crimean-Human-Rights-Group_May_2016-Eng. pdf

18 https://krasnoperekopskiy--krm. sudrf. ru/modules. php?name=sud_delo&srv_num=1&name_op=doc&number=223413547&delo_id=1540005&new=0&text_number=1

19 https://krasnoperekopskiy--krm. sudrf. ru/modules. php?name=sud_delo&srv_num=1&name_op=doc&number=223414876&delo_id=1540005&new=0&text_number=1

20 CHRG Review for May 2016, Annex 10. — http://crimeahrg. org/wp-content/uploads/2016/07/Crimean-Human-Rights-Group_May_2016-Eng. pdf

21 http://voicecrimea. com. ua/main/predstavnika-ukra%D1%97nskogo-kulturnogo-centru-v-krimu-vizvali-do-prokuraturi. html

On October 25th 2016 the Sevastopol City Court legitimized a rejection of Sevastopol Government on authorizing the organizers to hold a gay pride march on May 6th–7th 2016. The Government of Sevastopol grounds to reject were that the pride march was supposed to be held on the streets and squares where children's establishments and play grounds were located.

The organizers appealed against the decision. However, 'Leninsky District Council' of Sevastopol and 'Sevastopol City Council' found the refusal to hold the assembly legal. The court, justifying the judgement, referred to Federal Law 'On protecting children against the information adversely affecting their health and development'. This law forbids 'propaganda of non-traditional sexual relations among the non-adults'. So, invoking this law, the local authorities may block any public event to support the LGBT community since there would be always probable for a non-adult to appear 'within the event space'. [22]

1.2 RESTRICTIONS ON PEACEFUL ASSEMBLIES CRITICIZING THE ACTIONS OF AUTHORITIES

On August 25th 2014 a Sevastopol policeman forbad the ZASCHITIM SEVASTOPOL ('Let's Defend Sevastopol') NGO to hold an anti-corruption rally at Nakhimov Square. The policeman informed that the rally would be considered unlawful because it obstructed a motor show.

In September 2014 the Simferopol authorities denied the SOBOL Russian Community to hold rallies against the seizure of the KRYMAVTOTRANS Company property, at Lenin Square.

On April 15th 2017 activists of the DEFEND SEVASTOPOL public movement assembled at Nakhimov Square for the public event 'Pose a Question to Putin' that was aimed at criticizing the local authorities. Before the public event started, a person who introduced himself as Vladimir Kolesnikov, an officer of Internal Policy Department of the Government, had demanded to stop the event. He explained his demands by the fact that the rally had not been authorized. Mr. Vasiliy Fedorin, the movement head, informed that the notification on holding the rally had been submitted according to the established timing on April 5th, but no answer on 'no-objection' had been received from the Sevastopol administration. The participants refused meeting the demand and continued the assembly. Then the policemen detained three assembly organizers to draw up administrative reports. This having been done, they were released. Earlier, on April 5th, the police demanded to stop the similar public events held in another part of the city.

Detention of activists of the Defend SEVASTOPOL public movement during the the public event 'Pose a Question to Putin', 15 April , 2015. Nakhimovskaya Square. Sevastopol. Photo: KRYM REALII

[22] http://gs. sev. sudrf. ru/modules. php?name=press_dep&op=1&did=127

On April 24th 2015 the administration of Alushta Town denied the organizers to authorize and hold the public event 'Defend Native Town — Preserve Gardens and Parks' to be held on April 26th, at 10.00 am in front of the town administration building. In addition, a lot of police and special police troops as well as two special purpose trucks (prison buses) had appeared on the square in front of the town administration several hours before the event. The organizers and participants came to the square but due to the presence of the police called all to leave. Then, as reported by the witnesses, several people including the activists with fly sheets dedicated to Victory Day were detained by the policemen.

On December 3rd 2015 the Simferopol administration denied the Crimean Tatar People Mejlis to hold a picket on December 10th at the building of the Crimean Prosecutor's Office, Sevastopolskaya Street, Simferopol. It was planned to use the Crimean Tatar symbols for the picket that demanded to release the political prisoners and to stop political persecutions[23].

On December 11th 2015 the police detained picketers at the Belogorsk District Court of Crimea who came out in support of Mr. Oleg Zubkov, owner of SKAZKA Yalta Zoo. The court found the activists guilty pursuant to Article 20.2 of RF CAO — all picket participants were fined for RUR 20,000.00 each[24].

On February 14th 2016 the city administration of Simferopol City forbad a picket against fouling the Crimean villages with garbage. According to the rally organizers' words, they were warned by Simferopol police department on responsibility for holding the unauthorized public event though on February 2nd the officials permitted the picket, having notified the organizers of a need to comply with the public event holding regulations[25].

On May 6, 2016 representatives of the Crimean Kozacks came to the public event protesting against closing the Crimean Kozack Cadet Detachment in Simferopol. The event organizers submitted a notification on the assembly but the no-objection was denied, referring to the other event to be held on the same place and at the same time. However, since there were no other public events at the same time and place coordinates, the assembly participants decided to held the planned one. The policemen demanded to stop it since it had not been authorized by the city administration. The organizer was informed in advance on drawing up an administrative offence report against him. The event participants refused to depart, and justified their refusal stating that they did not break the public order, did not obstruct the pedestrians to move or other public events to be held here. However, the policemen started dispersing the event participants using the force. The video record

Use of force of the RF police for dispersing the Crimean Kozack protect event, 6 May 6 2016. Simferopol. Screenshot of the ARGUMENTY NEDELI — KRYM video news agency

[23] CHRG Review for December 2015, Annex 6. — http://crimeahrg. org/wp-content/uploads/2016/02/Crimean-Human-Rights-Group_December_2015_RU. pdf

[24] http://ru. krymr. com/a/news/27422812. html

[25] http://ru. krymr. com/a/news/27548868. html

showed that minimum two event participants were detained and put into the prison bus, with force and special means applied to one of them. [26]

On June 4th 2016 a peaceful assembly against the development of the Central Embankment started at 10.00am at the Central Embankment of the town of Alushta. The assembly participants (about 50 people) used slogans 'Power Neglects Opinion of Alushta Residents', ' Embankment — Property of People', 'Let's Clear Embankment of Illegal Amusements', etc. Mr. Pavel Stepanchenko, member of the town council, came to meet with the assembly participants. The police started blocking the assembly, and three people — assembly activists **Mr. Leonid Litvinchuk, Mr. Ruslan Marinkov** and **Mr. Pavel Stepanchenko**, the council member, were detained. [27]. Mr. Stepanchenko spent about seven hours in the police station, and was released when the administrative offence report had been drawn up. Other two participants were left in the police cell till the court passed the judgement. On June 5th defence lawyer Mr. Andrey Loginov came to the police station to meet with the activists, his clients. But the lawyer was not allowed to see the detained. The lawyer informed that he was rejected because the police station front office was 'technically unable' to provide such meetings. The lawyer was also said that he would be able to see his clients only at the court[28]. Such acts of the policemen constitute a serious violation of right to defense.

On June 6th it became known that two detained assembly participants — Mr. Leonid Litvinchuk and Mr. Ruslan Marinkov — were released from the police station. One more activist — Mr. Valentin Lomov — informed that the policemen tried to make him accountable for the participation in the assembly a month later, on July 4th. He informed the TVOYA GAZETA periodical about a call from the authorizing office of the town police station which officers notified him about the questions they had to him and asked him to come to the station. When he came it became clear that he was called to draw up an administrative report for his defiance as it was said to the policemen's demands during the June 4th assembly. But Mr. Lomov stated that no policeman came to him during the June 4th assembly, no demands were made, and no dialogue was started. He considers drawing up the report against him unlawful since he did not commit the offence he is imputed. When the report was drawn up Mr. Lomov was convoyed to the Alushta town court to get a judgement made upon the report consideration. But no judge was present there since the work hours were over. The policeman asked Mr. Lomov to return to the police station but he refused[29].

Residents of Gurzuf submitted a request on holding a rally close to GUROVSKIYE KAMNI Beach (they got to know that the RF authorities were planning to transfer this beach to the ARTEK Children's Center). But the local authorities denied to hold the rally in the settlement and authorized it in the town of Yalta though Yalta is located 15km far from Gurzuf and the place authorized for the rally in Yalta — a small public garden named after T. Shevchenko — is far from the town authorities location. Moreover, with a high air temperature and substantial occupancy of the public transport as well as taking into account that many of the Gurzuf residents who wanted to participate in the rally are retired age people, it would be difficult for them to get to Yalta. Thus, the authorities de-facto violated severely the freedom of peaceful assemblies and deprived the people of opportunity to hold the assembly within the 'sight and sound' of the target audience, i. e. in Gurzuf. On June 26th the Gurzuf residents held the rally, though in Yalta, at the place authorized by the authorities de-facto. During the assembly they also voiced a complaint on violating the peaceful assembly freedom due to ban on the event in Gurzuf.[30]

---

26 https://www. youtube. com/watch?v=gdMIeM5EeFU

27 https://vk. com/video138152152_456239038?hash=6b8e8493e7535f90

28 http://www. tvoya-gazeta. com/news-alushta/4173-policejskij-bespredel-v-alushte-prodolzhaetsja-k-zaderzhannym-ne-dopuskajut-advokata-video. html

29 https://www. youtube. com/watch?v=5l0vEi4VO8k

30 http://openbereg. ru/?p=6118

On July 2nd 2016 Simferopol activists, including **Mr. Aleksey Shestakovich**, came to the street to hold a picket to support the Ukrainian political prisoners in the RF. When the picket started, the police arrived including Mr. Konstantin Gapanovich, 'police major, head of public order protection of the RF MIA Simferopol City Department'. He demanded to show documents on the picket 'no-objection' by the city administration. The activists showed the document — a notification on holding the public event addressed to the Simferopol City administration. However, Mr. Gapanovich stated that this was not enough to hold the event since the activists were to receive a written answer with the city administration 'no-objection' to the event, i. e. to have a permission. The police major also informed that all public events were banned at that place since according to the Simferopol city administration ordinance, public events were admitted only in four allowed places in the city. The policemen demanded to stop the picket because they considered it 'non-authorized', and then convoyed several activists to the police station to make written explanations[31].

The event was a voluntary peaceful assembly, its participants were attracting the attention to the destiny of the political prisoners. Its slogans and signs had no appeals to violence, hostility or discrimination, it did not prevent the pedestrians to walk or the traffic to run, and its holding had been notified. Therefore, the authorities de facto had no grounds to force the assembly to stop. The authorities de-facto violated the principle of proportionality of peaceful assembly restrictions, the presumption in favor of holding assemblies, and neglected the authorities duty to defend the peaceful assembly freedom.

On November 2nd 2016 Mr. Aleksey Puchkov, Simferopol Prosecutor assistant, handed Crimean activist Aleksey Shestakovich a further caution on inadmissibility of holding unauthorized rallies by the anarchist organization[32]. The caution was issued due to the information of the MIA Anti Extremism Center. According to Mr. Shestakovich's words, this is the third caution of this kind. And he informed that the information of the Anti-Extremism Center did not correspond to the reality and was not verified with the facts.

On July 8th 2016 the activists of **DEFEND SEVASTOPOL** public movement notified the 'Government' of Sevastopol on holding the rally 'Instructions of Sevastopolers to Candidates to the RF State Duma Members' on July 22nd, 06:00pm — 08:00pm at Nakhimov Square. [33]. However, the same day the rally organizers received an answer of Mr. Vladimir Tiunin, acting as head of the Sevastopol internal policy department, that objected the public event place indicated by the activists. Mr. Tiunin suggested the activists to hold the rally in another place and indicated three locations where the activists would be permitted to hold the meeting (a site at the SOLDIER AND SAILOR Monument, Kapitanskaya Street; Svobody Square (1 P. Korchagina Street); a site around the monument to St George in the Pobedy Park). To achieve the public event targets it was necessary for the activists to hold the rally specifically at Nakhimova Square, so on July 12th they filed an objection on the V. Tiunin's answer. In respond to the objection, Mr. Tiunin denied again to issue 'no objection' on holding the public event at Nakhimova Square. He explained his restriction, stating that 'a number of institutions with a specific working regime including the Plenipotentiary Representative Office of President in the Crimean Federal Area and the engineering department of the RF Black Sea Navy, are located on Nakhimova Square, and in order to avoid any disruptions of their operations it is not recommended to hold the public events in the close vicinity to them. '

Since the refusal was not grounded, the activists came to Nakhimova Square on July 22nd in order to hold the planned event. When they mounted an information stand with inscription 'For

[31] https://www. youtube. com/watch?v=a_f3DyAgWkg&feature=youtu. be
[32] https://www. youtube. com/watch?v=k_7PJd_zC3k&feature=share
[33] http://sevsps. com/2016/07/pravitelstvo-sevastopolya-opyat-ne-razreshilo-provedenie-mitinga-na-ploshhadi-naximova/

Resignation of Meniyalo. For Direct Voting for Governor' they were approached by the police who forbad the public event.

The activists appealed the restriction of the Sevastopol authorities de facto to hold the rally at Nakhimova Square at Leninsky District Court of Sevastopol. Judge O. V. Prokhorchuk satisfied the claim on declaring the decision on the public event restriction illegitimate[34]. But the activists did not manage to hold the rally because the judge statement was made after July 22nd.

On August 20th 2016 the police and administration of Simferopol City did not allow to hold the '**OBMANUTYI KRYM**' (Deceived Crimea) rally where the activists intended to express their claims to the local authorities. The organizers wanted to hold the rally at Lenin Square but the city administration restricted the rally place. The organizers transferred the rally to the Trade Unions Palace of Culture that was notified to the local administration[35]. But, according to the words of **Mr. Ilya Bolshedvorov,** chairman of CRIMEAN REPUBLICAN ANTI-CORRUPTION COMMITTEE NGO, the police and representatives of the city administration who appeared when the event was starting, forbad it, referring to the fact that the public event had been objected by the city authorities[36].

Activists of Alushta town and Partenit settlement submitted a notification on holding a rally to express their distrust to members of YEDINAYA ROSSIYA party in Alushta on September 3rd 2016. The notification was submitted on August 24th. On August 25th Mr. Igor Sotov, head of Alushta town administration, issued his 'non-objection' to the rally and appointed Mr. T. N. Garvriliuk to represent the town authorities[37].

However, the day before the rally, on September 2nd, Mr. Aleksey Nazimov, the event organizer, found two documents in his entrance door split: notification of the town administration on forbidding the earlier 'non-objected' event and a caution of the police town unit on inadmissibility of violating the law on public events. The reason for restriction was that a public event of 'MOLODAYA GVARDIA YEDINOY ROSSII' of Alushta would be hold at the same place at the time indicated by the organizers[38]. The MOLODAYA GVARDIA event did not occur though this became a reason for depriving the Partenit activists from the possibility to exercise the right to peaceful assemblies.

Activist Sergey Akimov after detention for holding a single-person picket. Dye on his hands after fingerprinting at the police station. 7 February 2017. Simferopol. Photo from Ilia Bolshedvorov Facebook page

On December 12th in Simferopol at Lenina Square the police detained activist **Sergey Akimov** who was on the single-person picket, and **Mr. Ilia Bolshedvorov**, who was photographing the event.

''At 05.00 pm Sergey Vladimirovich Akimov, due to the restriction on holding a group picket 'For Russia, For Constitution' came to Lenin Square to hold a single-person picket. Five minutes later he was detained by the police. Police lieutenant colonel Nikitin explained the detention in the straightforward way: 'One is

[34] http://sevnews. info/rus/view-news/Sud-reshil-chto-Vladimir-Tyunin-byl-ne-prav-Sevastopolcy-imeyut-pravo-sobiratsya-na-ploshadi-Nahimova-i-vyskazyvat-svoyo-mnenie/27447

[35] http://an-crimea. ru/page/news/142832

[36] http://echo. msk. ru/news/1824114-echo. html

[37] http://www. tvoya-gazeta. com/news-alushta/4268-v-partenite-alushta-sostoitsja-miting. html

[38] http://www. tvoya-gazeta. com/news-alushta/4277-vlast-alushty-zapretila-razreshennyj-eju-zhe-miting-video. html

Denial of Yevpatoria Town administration to issue 'no-objection' on holding a picket at the RF MIA Yevpatoria department building to attract attention of the public to political repressions. Document. 25 November 2016. Yevpatoria.

Activists detained in VERONA Café when planning the single person pickets. Photo of Dmitriy Kisiyev made in the police bus. 26 February 2017. Simferopol.

standing with the picket sign, the other is recording a video at a distance of less than 50m, you have been seen together before', — Ilya Bolshedvorov wrote at his Facebook site. The video of detention was published at 'Anticorruption. Crimea' YouTube channel. [39] Both Crimeans were taken to the police station where reports on violating the picket regulations were drawn up against them. On February 6th 2017 Mr. Bolshedvorov and Mr. Akimov were detained again, under the same circumstances, during the single-person picket 'Stolen Simferopol — Wall of Shame'[40] In February 2017 activists Sergey Akimov and Yuriy Belov were detained during the single-person picket at the Prosecutor's Office building. [41].

On November 23rd 2016 a group of citizens notified the administration of Yevpatoria Town on intention to hold a picket at the Yevpatoria RF MIA unit on November 26th. The notification declared the aim of the picket as 'to attract attention of the public to political repressions' and indicated the number of participants — 10-15 people[42]. The Yevpatoria Town Administration restricted the picket explaining that the chosen place was not on the list of sites for public events[43].

But the places allowed for the public events deprive the activists from the possibility to achieve the target audience, namely the MIA staff. Since the participation in the objected picket results into an administrative punishment, the organizers had to refuse the picket. On November 26th the single-person picket that did not require the administration 'non-objection' was hold at the planned place next to the MIA unit building. The police did not prevent the single-person event. [44]

On March 17th 2017 the Sevastopol city authorities objected holding the 'Rally to Support a Demand to Investigate Facts of Corruption of Highest State Officials of Russia' planned for March 26th 2017. The Department of

39 https://www. youtube. com/watch?v=ipMFfsnRqjA

40 https://www. facebook. com/ilya. bolshedvorov/videos/1028193430619503/

41 https://www. facebook. com/ilya. bolshedvorov/videos/1029362457169267/

42 CHRG Review for November 2016, Annex 2. — http://crimeahrg.org/wp-content/uploads/2016/12/Crimean-Human-Rights-Group_Nov_2016_ENG. pdf

43 CHRG Review for November 2016, Annex 3. — http://crimeahrg.org/wp-content/uploads/2016/12/Crimean-Human-Rights-Group_Nov_2016_ENG. pdf

44 https://www. facebook. com/aleksej. shestakovich/posts/1255833564480008

Public Communications of Sevastopol' restricted the rally twice: close to the monument to St George due to the pavement tiling replacement, and at Nakhimova Square due to the fact that the rally might obstruct the movement of pedestrians [45].

On March 22nd 2017 the similar rally was also objected by the Simferopol administration. It referred to the incompleteness of the submitted documents package. According to the words of activist **Dmitriy Kisiyev**, the reason for objection was that only copy of Kisiyev's passport was attached to the notification on the rally though three organizers were mentioned in it[46]. Having been refused, 7 activists tried to organize a number of single-person pickets but were detained by the police when they were meeting at the café[47]. Mr. Dmitriy Kisiyev was among the detained. On March 26th he wrote that he was arrested for 10 days[48]. One of the detained — **Mr. Aleksey Yefremov** — informed on March 26[49] in the afternoon, that he was detained again by the plain-clothed people, and one of them showed him an MIA identification card. He was told that he was being transported for examination. Later he wrote that upon the court ruling he was fined for RUR 500.00 for violating Article 19.3 of RF CAO 'Failure to follow a lawful order of a policeman'. Mr. Yefremov pointed out that the same article was used to sentence Dmitriy Kisiyev for 10 days in prison.

1.3 DISCRIMINATION IN AUTHORIZING THE PUBLIC EVENTS

One of illustrations of the discrimination in issuing permits to hold public events is ANTIMAIDAN assembly hold in Simferopol on February 21st 2015. The public event was aimed at supporting the 'state sovereignty of Russia and political course of Vladimir Putin'. The event organizers were Crimean branch of VELIKOYE OTECHESTVO Party, ANTIMAIDAN Movement and NIGHT WOLVES Russian bikers. The event was held just in the center of the city, where streets Karla Marksa and Pushkina cross. In addition, the Crimean authorities allowed the organizers to drive cars and bikes on the pedestrian zone. Apart from this, the rally place was not on the list of those identified by the local authorities for holding the public events in Simferopol.

1.4 OTHER CASES OF UNLAWFUL RESTRICTIONS OF PEACEFUL ASSEMBLY FREEDOM

On March 4th 2017 the headmaster and the local police officer interrupted a football march between neighborhood teams. The headmaster did not want the match to be played on the school stadium. According to the match participants, the reason for dispersal was a declaration that the 'rally' had not been authorized by the administration of Feodosiya [50].

A contest of drawings 'My Mother is the Best' was held on March 11th in the House of Culture of the Crimean settlement of Oktiabrskoye, Krasnogvardeysk District. Mr. Vladimir Melnik, head of the settlement, accused the contest organizers of holding an unauthorized rally and filed a report on them to the RF MIA, stating that they had violated Article 20.2 of RF CAO. As Mr Melnik informed the KRYMSKIY TELEGRAPH News Agency, he was outraged that the event had been hold without his authorization and this was a principle for him to get the organizers punished[51].

45 https://www. facebook. com/crimeahrg/posts/1870179933267639
46 http://ru. krymr. com/a/news/28383734. html
47 https://vk. com/wall64972578_10489
48 https://vk. com/wall412152752_156
49 https://vk. com/wall64972578_10513
50 https://www. youtube. com/watch?v=yU8WSu5SnqA
51 http://ktelegraf. com. ru/8973-iniciativa-nakazuema. html

2 POLITICALLY MOTIVATED PERSECUTION OF PEACEFUL ASSEMBLY ORGANIZERS AND PARTICIPANTS

2.1 CASE OF MAY 3RD

On May 3rd 2014 a peaceful assembly of Crimean Tatars to support Mr. Mustafa Djemilev, Member of Parliament of Ukraine, Leader of the Crimean Tatar People that was not allowed by the Russian border guards to enter Crimea, was held in Crimea (Armiansk). The assembly was participated by several thousands of Crimean Tatars, and afterwards Prosecutor of Crimea Ms Natalia Poklonskaya sent a resolution to the Investigation Committee and the RF FSB 'to initiate a criminal prosecution against the people guilty due to articles 212, 318 and 322 of RF CC (mass riots, violence to an official representative and illegal crossing of the state border). No violence was used by the participants during the peaceful assembly. In a week the event participants started receiving requests for summons. As a result about 200 people were fined for amounts of RUR 10thou to 40thou according to articles 19.3 and 20.2 of RF CAO. This was followed with a wave of searches in the house of 'May 3rd peaceful assembly' participants. Five participants were detained from October 2014 to January 2015 within the criminal prosecution of the participants according to Article 318 of RF CC:

- **Mr. Musa Abkerimov**: *was in the detention facility from October 14 2014 to December 11 2014. On May 28 2015 he was given a 4 year and 4 month suspended sentence.*
- **Mr. Rustam Abrurakhmanov**: *was in the detention facility form October 17 2014 to December 11 2014. He left to the non-occupied territory of Ukraine before the sentence.*
- **Mr. Tair Smedliayev**: *was in the detention facility from October 22 2014 to December 11 2014. On December 10 2015 he was given a 2-year suspended sentence.*
- **Mr. Edem Ebulisov**: *was in the detention facility from November 25 2014 to December 17 2014. On August 14 2015 he was sentenced to RUR 40,000.00 fine.*
- **Mr. Edem Osmanov**: *was in the detention facility from January 20 2015 to February 2015. On December 8 2015 he was given a year suspended sentence.*

Representative of the RF law enforcement agencies blocked the road at the 'administrative border' of Crimea during the assembly to support Mustafa Djemilev. 3 May 2014. Armiansk. Photo from the news.allcrimea.net. website.

2.2 CASE OF FEBRUARY 26TH

Persecution of the participants of the peaceful assembly held on February 2014 in Simferopol raises a particular concern. That day a rally to support the status of the Autonomous Republic of Crimea organized by the Crimean Tatar People Mejlis was held in Simferopol at the Parliament of the Autonomous Republic of Crimea. Several thousands of Crimeans who protested against an extraordinary session of the Supreme Council of Crimea that was to adopt an unlawful resolution on the referendum in Crimea, participated in the event.

Rally at the building of the Supreme Council of AR Crimea. 26 February 2014. Simferopol. Photo from GOSSOVET KRYMA website.

In January 2015 the RF Investigation Committee initiated a criminal case for organizing and participating in the mass riots (Article 212 of RF CC). The first who was detained within this case on January 29th 2015 was **Mr. Akhtem Chiygoz**, deputy Chairman of the Crimean Tatar People Mejlis. He was accused of organizing the mass riots (Article 212. 1 of RF CC). He has been still in the Detention Facility No 1 of Simferopol, and the court hearings on his case are still going in.

Seven people more are accused of participating in the mass riots within the February 26th Case (Article 212.2 of RF CC):

- **Mr. Eskender Kantemirov***: was in the detention facility from February 7 2015 to April 6 2015. As at May 2017, the court hearings are in progress.*
- **Mr. Eskender Yemirvaliye:** *was in the detention facility from February 18 2015 to April 17 2015. As at May 2017, the court hearings are in progress.*
- **Mr. Taliat Yunusov***: was in the detention facility from March 11 2015 to April 17 2015. On December 28 2015 he was given a 3 year and 6 month suspended sentence by 'Tsentralny District Court' of Simferopol City*
- **Mr. Eskender Nebiyev***: was in the detention facility from 22 April 2015 to 18 June 2015 and October 9 2015 to October 12 2015. On October 12 2015 he was given a 2 year and 6 month suspended sentence by 'Tsentralny District Court' of Simferopol City*
- **Mr. Ali Asanov***: was in the detention facility all the time from April 15 2015 to April 6 2017. As at May 2017, the court hearings are in progress.*
- **Mr. Mustafa Degermendji***: was in the detention facility all the time from May 7 2015 to April 6 2017. As at May 2017, the court hearings are in progress.*
- **Mr. Arsen Yunusov***: is named in the case as accused. As at May 2017, the court hearings are in progress.*

All persons accused within the case are citizens of Ukraine, the peaceful assembly was held on the territory of Ukraine, the participants of this peaceful assembly did not violate the Ukrainian law standards. Russia has no grounds to apply the Russian jurisdiction to the events of February 26th 2014, and only Ukraine has a right to consider these actions in terms of legal offences.

2.3 CRIMINAL PROSECUTION FOR THE PARTICIPATION IN THE PEACEFUL ASSEMBLIES IN KYIV

Participants of protests at Maidan in Kyiv held in January — February 2014 are being prosecuted in Crimea.

Aleksandr Kostenko at the court session

On February 5th 2015 **Mr. Aleksandr Kostenko** was arrested in Simferopol. He was tortured when he was being detained and then interrogated. The 'Prosecutor's Office' of Crimea accused him of attacking an officer of BERKUT MIA of Ukraine detachment during the protests at Maidan Nezaleshnosti in Kyiv in February 2014 and found guilty of violating Article 115. 2. b of RF CC (intentional infliction of light injury by reason of political, ideological, racial, national or religious hatred or enmity, or by reason of hatred or enmity with respect to some social group). After the search carried with violations of the RF CC when the investigators announced that they had found a tube at his home, he was accused also of possession of weapon. On May 15 2015 'Kiyevsky District Court of ' sentenced Mr. Kostenko to 4 years and 2 months in the standard regime penal colony. At the moment he is serving the sentence given on the politically motivated criminal case in the penal colony No 5 in the town of Kirovo-Chepetsk, Kirov Region, RF.

Andrey Kolomiyets at the court session

On May 15 2015 **Mr. Andrey Kolomiyets** was detained in Kabardino-Balkaria (RF). Then he was transported to Crimea where he was accused of violating Article 105, Article 228, Article 30 RF CC (assault to murder). He was accused that he seemed to have tossed a bottle with incendiary mixture into the officers of the BERKUT MIA of Ukraine detachment during the protests at Maidan Nezaleshnosti in Kyiv. According to the information of Mr. Kolomiyets and his defense lawyer, he was tortured during the interrogation. On 10 June 2016 Andrey Kolomiyets was sentenced to 10 years in the maximum security penal colony. At the moment he is serving the sentence given on the politically motivated criminal case in the penal colony No 14 of Krasnodar, RF.

The RF law enforcement bodies have no legal grounds for such actions since these events were on the territory of Kyiv (Ukraine). Mr. Kostenko and Mr. Kolomiyets are citizens of Ukraine as well as BERKUT officers considered to be injured. Criminality and penality are determined by the criminal law in force at the moment of competing a specific action. This case is regulated by the criminal law of Ukraine. Article 12. 3 of RF Criminal Code states that foreign nationals and stateless persons who do not reside permanently in the Russian Federation and who have committed crimes outside the boundaries of the Russian Federation shall be brought to criminal liability under this Code in cases where the crimes run against the interests of the Russian Federation or a citizen of the Russian Federation or a stateless person permanently residing in the Russian Federation, and also in the cases provided for by international agreements of the Russian Federation, and unless the foreign citizens and stateless persons not residing permanently in the Russian Federation have been convicted in

a foreign state and are brought to criminal liability on the territory of the Russian Federation. Therefore, actions that the RF law enforcement bodies incriminate to Mr. Kostenko and Mr. Kolomiyets are not subject to the Criminal Code of the Russian Federation.

2.4 ADMINISTRATIVE PERSECUTION OF PEACEFUL ASSEMBLY PARTICIPANTS

On August 24 2014 GIBDD (State Traffic Safety Inspectorate) officers detained **Mr. Viktor Neganov**, organizer of the Ukrainian rally in Sevastopol. He was unlawfully searched, his personal belongings were exempted, and his car was searched without his presence. No reports were made. Previously the Crimean authorities had declared that they would not draw up reports and make accountable people for violation of the vehicle glass filming requirements within the transition period (up to 1 January 2015). Mr. Neganov is the only person on the territory of Crimea who was made accountable for this violation. The CHRG believes that the actual reason for stopping his vehicle and drawing up reports on administrative offence was that on that day (Independence Day of Ukraine) Mr. Neganov, with the national flag of Ukraine and wearing the scarf in the colors of the national flag of Ukraine, laid flowers to the basement where the monument to Hetman Sahaidachny had been before. Later, being threatened with criminal prosecution, Mr. Neganov had to leave Crimea.

On March 30th 2015 the RF police detained seven students who planned to make a video to support ATR TV channel. On April 1st 2015 Kiyevsky District Court of Simferopol City session found one of the students — **Mr. Aleksey Yefremov** guilty according to Article 20.2.1 of RF CAO. He was fined for RUR 20,000.00. In addition, the court found him guilty according to Article 19.3 of RF CAO (resistance to police) and fined for RUR 500.00 more. Mr. Yefremov himself denied completely his guilt and insisted that he had not resisted detention.

On April 15th 2015 the Commission for Minor Citizen Cases and their Rights Defense of Simferopol City found two under the legal age students detained together with Mr. Yefremov, guilty according to Article 20.2.5 of RF CAO and issued a ruling on applying the administrative punishment as fine amounting to RUR 10,000.00 to each of them[52].

The court and the Commission members found the students guilty in 'violating the established procedure for conducting an assembly, a rally, a demonstration, a procession or picket'. However the actions of students (an attempt to record a video to support the ATR Crimean Tatar TV Channel) do not come within the definition of 'meeting, rally, demonstration, procession or picket' as stated in Article 2 RF FZ 'On meetings, rallies, demonstrations, processions and picketing'. Therefore, the situation occurred when the judge and commission members interpret arbitrarily the Russian legal standards, bringing an administrative action against the people.

Several Crimean Tatars were brought to the administrative action because they hold a mourning rally dedicated to the anniversary of the Crimean Tatar people deportation on May 18th 2015. On May 19th 2015 law enforcement officers called the head of regional Mejlis of Krasnoperekopsk district **Ms Sanie Ametova** on whom the administrative report on violating the procedure of holding the public event had been drawn up, to the interrogation. Ms Ametova informed that grounds for drawing up the report were use of self-made banners dedicated to the Memorial Day of the Deportation Victims at the rally. The 'Krasnoperekopsk District Court' sentenced her to a fine of RUR 1,000.

[52] CFM Review for April 2015, Annex 17. — http://crimeahrg. org/wp-content/uploads/2016/10/Crimea_Field_Mission_Review_April_2015_RU. pdf

On June 26th 2015 imam of Dolinka village of Krasnoperekopsk District **Yunus Nemetullayev** was also brought under the administrative action due to the participation in the same rally. The 'Krasnoperekopsk District Court' sentenced him to a fine of RUR 10,000. On November 26th 2015 the court cancelled its sentence.

On June 30th judge of 'Krasnoperekopsk District Court' Mr. O. V. Shevchenko heard a case of administrative offence against **Ms Zeinep Aidogan**. On May 26 2015 the report was drawn up against her that stated that she had organized and held a picket, without the notification of the authorities, in the village of Voinka as well as demonstrated picket signs calling to return the Crimean Tatar language the status of state one. Ms Aidogan did not agree with the report, claiming that she had no intention to violate the laws. The 'judge' changed the qualification and decided to make Ms Aidogan accountable not as organizer but as participant. The 'court' found her guilty according to Article 20.2.5 of RF CAO and sentenced to the fine of RUR 10,000.

On May 18th 2015 the participants of motor rally dedicated to the Memorial Day of the Deportation Victims were stopped at the Simferopol City exit by OMON (special police troops) and GIBDD officers. The participants stated that the motor rally in terms of its organization was not a public event. As a result administrative reports for creating a traffic accident situation were drawn out against 8 participants.

A year later on May 18th 2016 motor rallies dedicated to the Memorial Day of Deportation Victims were also held in several cities and towns of Crimea. The motor rallies did not create traffic accident situations on the roads, did not obstruct the motor traffic. However, several participants of such motor rallies were detained and held liable.

Mr. Eskender Ganiyev, 17 years' old, was detained on the way to Bakhchisarai and drawn up a report on administrative offence as well as recovery of fine for RUR 4,000, and then he was released.

In L'govskoye village of Kirov District four motor rally participants **S. Kurukch, R. Yapalakhov, U. Fakhriyev** and **E. Berberov** were detained, with drawing up the reports according to Article 20. 2 of CAO. On May 19th 'judge of Kirov District Court' Roman Mikhailov found them guilty of administrative offence according to Article 20.2.6.1 of RF CAO[53]. For each of them the 'judge' made a ruling on an administrative punishment of 20 mandatory work hours[54].

Four Crimean Tatars were detained in Sudak: **Abliakim Abliakimov, Seitmamut Seitumerov, Enver Chavush** and **Alim Musliadinov**. On May 18th 2016 they drove cars with the Crimean Tatar

Participants of the motor rally dedicated to the deportation victim memory who were stopped by the RF MIA staff, 18 May 2016. Photo from 15minut.org website

53 https://kirovskiy--krm. sudrf. ru/modules. php?name=sud_delo&srv_num=1&H_date=19.05.2016

54 https://www. facebook. com/nariman. dzhelalov/posts/1107699962627196

symbols through Sudak and stopped at the monument to deportation victims in order to participate in the 'Light Candle' Event. At the monument they were detained by the police and convoyed to the police city station where reports were drawn up against them according to Article 20.2.2 of RF CAO. On June 7th 'judge of Sudak City Court' Yelena Kharaman issued an order to terminate the proceedings on the administrative offence case against all four Crimean Tatars[55]. On July 19th it became known that 'acting as head of Sudak City MIA of Russia Department' Dmitriy Krekov made a complaint on the decision to terminate the proceedings on the administrative offence case against four Crimean Tatars[56]. 'The Supreme Court of Crimea' satisfied the complaint of Dmitriy Krekov and remitted the case.

On October 27th the administrative case against four Crimean Tatars was reconsidered. This time Alim Musliadinov, Abliakim Abliakimov, Enver Chavush, Seitmamut Seitumerov were found guilty and sentenced to a fine of RUR 20,000 each[57]. In December the 'Supreme Court of Crimea' reduced the fine amount to RUR 10,000.

On August 24th 2016 the Supreme Court of Crimea dismissed the appeal of **Seiran Saliyev**. Earlier 'Bakhchisarai District Court' had sentenced him to fine of RUR 20,000 for 'organizing an unauthorized rally' on May 12th 2016. On May 12th 2016 Mr. Seliyev announced by microphone from the local mosque minaret that the FSB officers were searching the houses of Crimean Tatars. This action was qualified as call to non-authorized rally[58].

On December 6th 2016 'judge of Bakhchisarai District Court' Marina I. Nikischenko sentenced **Mr. Enver Sherfiyev** to a fine of RUR 15,000. He was accused of violating Article 20. 2. 6. 1 of CAO for coming to SALACHIKE café in Bakchisarai on May 12th 2016 when the Muslims were being arrested within the Hizb-Ut-TAHRIR case. Earlier the fines for the same 'offences' were sentenced to Bakhchisarai residents: **Marlen Asanov, Emin Belialov, Emil Belialov, Seiran Saliyev**. They were also fined for supporting their compatriots during the searches and detentions of May 12th 2016. All previous sentences on fines were also made by 'judge' Nikischenko.

On February 21st 2017 the house of Marlen Mustafayev in the village of Kamenka was searched. 10 people who came to record this were detained: **Remzi Bekirov, Osman Arifmemetov, Riza Izetov, Ruslan Suleymanov, Seran Murtazayev, Alim Karimov, Abliakim Abdurakhmanov, Medjit Abdurakhmanov, Enver Tasinov, Valeriy Grigor'**. The police officers announced that all present violated the laws on public events. All detained were found guilty according to article 20.2 of RF CAO and sentenced to 5 days in custody.

55 https://sudak--krm. sudrf. ru/modules. php?name=sud_delo&srv_num=1&H_date=07.06.2016

56 CHRG Review for July 2016, Annex 1. — http://crimeahrg. org/wp-content/uploads/2016/09/Crimean-Human-Rights-Group_July_2016-Eng. pdf

57 https://www. facebook. com/lenora. dyulber/videos/vb. 100001852246809/1244940598911003/?type=2&theater

58 http://qha. com. ua/ru/obschestvo/sud-ne-udovletvoril-apellyatsionnuyu-jalobu-seirana-salieva/164624/

3 OBSTRUCTION OF PEACEFUL ASSEMBLIES WITH THE HELP OF LAW ENFORCEMENT AGENCIES AND CRIMEAN SELF DEFENSE PARAMILITARY ORGANIZATION

Numerous facts of using the law enforcement agencies and Crimean Self Defense paramilitary organization to disperse peaceful assemblies or obstruct them have been recorded in Crimea.

On March 3 2014, Mr **Reshat Ametov** was holding a single person picket against the occupation of Crimea at the square in front of the building of the Council of Ministers of Crimea. There is an open access video that shows how several people wearing camouflage took Mr Ametov away from the square and forced him to sit in the car. The body of Mr Ametov was found on March 15 2014 in the field close to Zemlianichnoye Village of Belogorsk District with marks of torture, head wrapped with sticky tape, and feet in handcuffs. Persons who took Mr Ametov away from the square have been identified but are qualified as witnesses in the criminal case. Up to date nobody has been brought to responsibility for a brutal murder of the activist.

On May 18th 2014 to restrict the peaceful assembly — mourning events on the 70th anniversary of the Crimean Tatar deportation — the central streets of Simferopol were blocked with the Russian troops, law enforcement personnel, with military machinery used, too.

On August 24th 2014 (Independence Day of Ukraine) the law enforcement officers and representatives of 'Citizens in Arms' cordoned off the monument to T. Shevchenko in Simferopol. On December 10th 2014, International Human Rights Day, central streets of Simferopol were cordoned off with the law enforcement officers and representatives of 'Citizens in Arms'. Journalists were forbidden to take photo and video records.

On May 17th 2016 in Sevastopol a spontaneous assembly of protesting local entrepreneurs started on Istoricheskyi boulevard. The protest became a reaction of small trading stand owners on the attempt of the local authorities to move away one of the stands. A truck of the SEVAVTODOR state unitary company loaded one of the stands on it but entrepreneurs — stand owners — blocked the truck movement, demanding a court decision on the stand demolition[59].

The situation lasted until the evening. Late at night there was an attempt of forced dispersal of the entrepreneurs and release of truck with the stand on it. According to the words of entrepreneurs and witnesses, these actions were performed by the police personnel, representatives of local authorities and local self-defense. As a result it was decided to unload the stand from the truck and return it to its previous place, then the entrepreneurs de-blocked the truck and it left Istoricheskyi boulevard[60].

59 http://sevastopol. su/news. php?id=87075
60 http://sevastopol. su/news. php?id=87104

4 APPLICATION OF RUSSIAN AND LOCAL LAWS TO RESTRICT FREEDOM OF ASSEMBLIES

The International Covenant on Civil and Political Rights, Article 21, and European Convention on Human Rights, Article 11, admits restrictions on the right of peaceful assembly if they are imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. However, the Russian and local laws in Crimea contain some substantial formal restrictions of the peaceful assembly freedom that are of no necessity in the democratic society. In addition, the authorities de-facto take decisions on the total temporary ban of all peaceful assemblies on the territory of Crimea.

4.1 RF REGULATIONS RESTRICTING THE FREEDOM OF PEACEFUL ASSEMBLIES

On July 21st 2014 Law FZ 258 'On amending certain laws of the Russian Federation in terms of improving the legislation on public events' that introduced criminal sanctions for repeated violation of the procedure for arranging or conducting the public events, came into force in the RF.

In October 2014 Article 9 of Federal Law 'On assemblies, rallies, demonstrations, processions and picketing' was amended. A public event shall not commence before 07:00am and finish after 10:00pm of the current day, local time, except the public events dedicated to the memorial dates of Russia, public cultural events. Therefore, one more restriction of the peaceful assembly freedom forbidding peaceful assemblies after 10:00pm was introduced.

The freedom of associations including the territory of Crimea is threatened by Federal Law 'On amending certain legal documents of the Russian Federation' adopted by the State Duma of the RF on May 19th 2015. The law was titled 'Law on undesirable foreign and international organizations'. The law provides for prohibiting activities of the organizations which, in the judgement of the authorities, constitute a threat for the constitutional system, national defense capability or security. The law introduces severe sanctions for its violations, up to imprisonment. In addition, the law makes it possible to bring to a criminal responsibility for collaboration with 'undesirable organizations' or distribution the information about them. Many provisions of law lack legal determination that enables its selective application.

Pursuant to this law, on July 7th 2015 the RF Federal Council published the 'Patriotic Stop List' that included 12 organizations: Open Society Institute (Soros Fund), National Endowment for Democracy, International Republican Institute, National Democratic Institute for International Affairs, John D. and Catherine T. MacArthur Foundation, Freedom House, Charles Stewart Mott Foundation, Education for Democracy Foundation, East European Democratic Centre, the Ukrainian World Congress, the Ukrainian World Coordinating Council, the Crimean Field Mission on Human Rights. Afterwards the Crimean Field Mission on Human Rights stopped its activities on the peninsula.

On March 9th 2016 the State Duma of RF approved amendments to Federal Law 'On assemblies, rallies, demonstrations, processions and picketing', and consequently, such actions as motor rallies and stand installation were set equal to the public events. Moreover, according to the law amendments, a form of public expression of opinion through installing fast mounted assembling/ disassembling structures at the picketed facility was defined as picketing. Therefore,

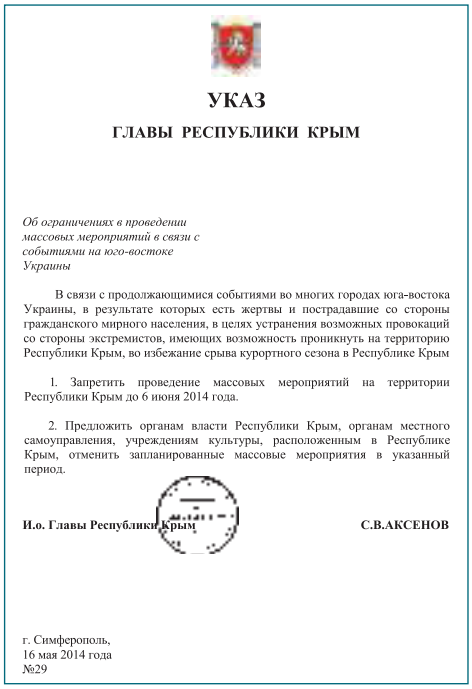
the legislation on assemblies, rallies, demonstrations, processions and picketing subject to the authorization was extended to cover motor rallies and tent camps. In addition, notification is required if a picket held by single man presumes using the fast mounted assembling/ disassembling structure that obstructs the movement of pedestrians and vehicles[61].

4.2 REGULATIONS OF AUTHORITIES DE-FACTO RESTRICTING FREEDOM OF PEACEFUL ASSEMBLIES

On May 16th 2014 'Prime Minister' of Crimea Sergey Aksionov issued Edict No 29[62] that prohibited peaceful assemblies on the territory of Crimea till June 6th that year. Such wide restriction on peaceful assemblies was justified by Mr Aksionov by 'eliminating possible provocations of extremists who are able to enter the territory of Republic of Crimea in order to prevent the obstruction of holiday season in the Republic of Crimea'. The local authorities had no verifications for such threats.

The ban on peaceful assemblies was applied also to the mourning events of May 18th 2014 dedicated to the 70th anniversary of the Crimean Tatar deportation. Earlier the Crimean Tatars had held these events on annual basis.

On August 8th 2014 the 'State Council of Republic of Crimea' adopted Law 'On securing the conditions of exercising the rights of the Russian Federation citizens to hold assemblies, rallies, demonstrations and picketing in the Republic of Crimea' that restricted substantially the freedom of peaceful assemblies in Crimea. The Law obliges to submit a notification in writing directly to the local self-government body of municipal formation 15 days the earliest and 10 days the latest before the public event day. Specifically assigned places to hold the peaceful assemblies are introduced and shall be established by the Council of Ministers of the Republic of Crimea, in line with the requirements of Federal Law ''On assemblies, rallies, demonstrations, processions and picketing'.



УКАЗ

ГЛАВЫ РЕСПУБЛИКИ КРЫМ

Об ограничениях в проведении массовых мероприятий в связи с событиями на юго-востоке Украины

В связи с продолжающимися событиями во многих городах юга-востока Украины, в результате которых есть жертвы и пострадавшие со стороны гражданского мирного населения, в целях устранения возможных провокаций со стороны экстремистов, имеющих возможность проникнуть на территорию Республики Крым, во избежание срыва курортного сезона в Республике Крым

1. Запретить проведение массовых мероприятий на территории Республики Крым до 6 июня 2014 года.

2. Предложить органам власти Республики Крым, органам местного самоуправления, учреждениям культуры, расположенным в Республике Крым, отменить запланированные массовые мероприятия в указанный период.

И.о. Главы Республики Крым С.В.АКСЕНОВ

г. Симферополь,
16 мая 2014 года
№29

Edict of Sergey Aksionov, 'head of Republic of Crimea' 'On restrictions for holding public events due to the events in the South and the East of Ukraine', document, 16 May 2014, Simferopol.

On November 12th 2014 the 'Council of Ministers of Crimea' issued resolution No 452 'On approving the list of places for holding public events on the territory of the Republic of Crimea'[63], that indicates the places for holding peaceful assemblies. For instance, in Simferopol (city with 400thou residents) the peaceful assemblies may be held only in four places.

On July 4th 2016 the 'Council of Ministers of Crimea' — by resolution no 315[64] — reduced significantly a short already list of places allowed for holding peaceful assemblies. For instance, the list of places for public events in Kerch went down from 15 to 3. For the whole Crimea the total number of places for holding peaceful assemblies decreased from 717 to 360. The resolution does not state reasons for selecting these places, and does not include

61 http://www. garant. ru/hotlaw/federal/701246/
62 http://rk. gov. ru/rus/file/pub/pub_232588. pdf
63 http://rk. gov. ru/rus/file/pub/pub_235446. pdf
64 http://rk. gov. ru/rus/file/pub/pub_298128. pdf

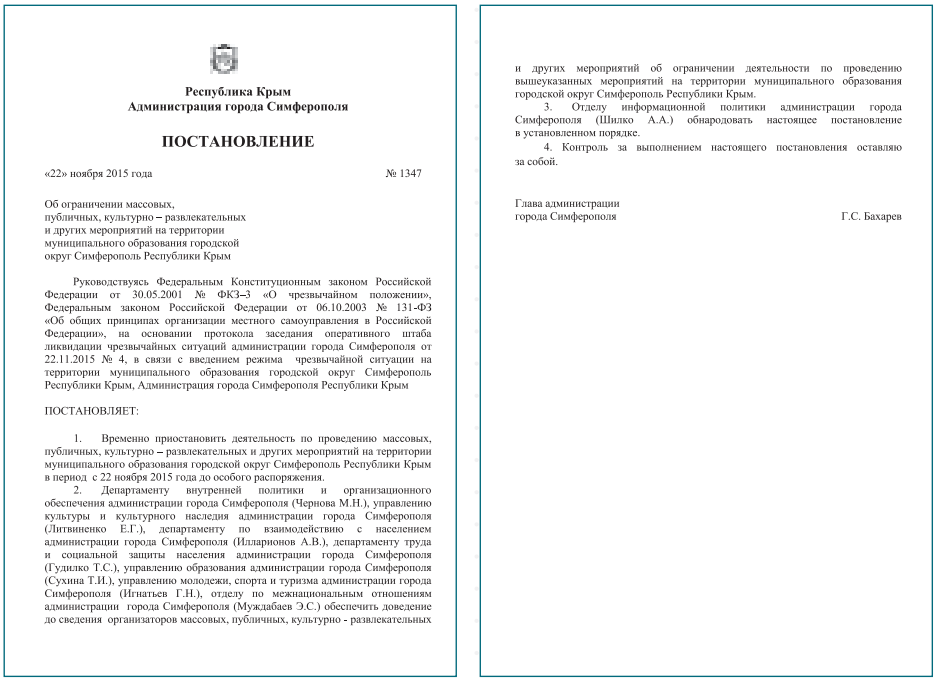
grounds for restricting the peaceful assemblies in other places of cities and towns. A substantial limit on the number of places to hold peaceful assemblies violates the freedom of assemblies and restricts considerably the possibilities for the Crimean residents to hold a peaceful assembly within the 'sight and sound' of the audience they want to address.

On September 27th 2015 Mr G. Bakharev, head of Simferopol Administration, issued resolution No 953 'On actions of response due to the situation created on the 26th September 2015' on the territory of Simferopol[65]. The resolution purpose is to restrict public and other events in the city. The reason was an armed attack on the emergency health service substation on September 26th.

The resolution recommended the persons who had announced holding mass, public events that were approved by the Administration of Simferopol City within the established procedure, to postpone the date and time of their holding till a special instruction. The physical persons and legal entities were recommended not to hold mass and public events on the territory of Simferopol starting from September 27th and till the specific instruction. This resolution was for an indefinite period and remained in force till the relevant ordinance of the administration head. On October 9th the restrictions were cancelled by resolution No 1070[66].

On 22nd November 2015, due to announcing an emergency situation in Crimea because of electric energy shutdown, a new moratorium on holding public events was introduced on the territory of Simferopol. Mr G. Bakharev, head of Simferopol Administration, decided 'to suspend temporarily actions on holding mass, public, cultural and entertainment and other events' on the territory of Simferopol starting from November 22nd 2015 and till the specific instruction[67]. On March 7th 2016 the resolution was amended. Words 'suspend temporarily' and 'restrict' were replaced with 'forbid'. Only events held by the current authorities were excluded from the resolution scope[68]. Ban on holding public events was cancelled on March 22nd 2016[69].

Resolution of Simferopol City Administration 'On restricting mass, public, cultural and entertainment and other events on the territory of 'Simferopol City Area of Republic of Crimea' municipal formation', 22 November 2015, document. Simferopol



Республика Крым
Администрация города Симферополя

ПОСТАНОВЛЕНИЕ

«22» ноября 2015 года № 1347

Об ограничении массовых, публичных, культурно – развлекательных и других мероприятий на территории муниципального образования городской округ Симферополь Республики Крым

Руководствуясь Федеральным Конституционным законом Российской Федерации от 30.05.2001 № ФКЗ–3 «О чрезвычайном положении», Федеральным законом Российской Федерации от 06.10.2003 № 131-ФЗ «Об общих принципах организации местного самоуправления в Российской Федерации», на основании протокола заседания оперативного штаба ликвидации чрезвычайных ситуаций администрации города Симферополя от 22.11.2015 № 4, в связи с введением режима чрезвычайной ситуации на территории муниципального образования городской округ Симферополь Республики Крым, Администрация города Симферополя Республики Крым

ПОСТАНОВЛЯЕТ:

1. Временно приостановить деятельность по проведению массовых, публичных, культурно – развлекательных и других мероприятий на территории муниципального образования городской округ Симферополь Республики Крым в период с 22 ноября 2015 года до особого распоряжения.
2. Департаменту внутренней политики и организационного обеспечения администрации города Симферополя (Чернова М.Н.), управлению культуры и культурного наследия администрации города Симферополя (Литвиненко Е.Г.), департаменту по взаимодействию с населением администрации города Симферополя (Илларионов А.В.), департаменту труда и социальной защиты населения администрации города Симферополя (Гудилко Т.С.), управлению образования администрации города Симферополя (Сухина Т.И.), управлению молодежи, спорта и туризма администрации города Симферополя (Игнатьев Г.Н.), отделу по межнациональным отношениям администрации города Симферополя (Муждабаев Э.С.) обеспечить доведение до сведения организаторов массовых, публичных, культурно - развлекательных и других мероприятий об ограничении деятельности по проведению вышеуказанных мероприятий на территории муниципального образования городской округ Симферополь Республики Крым.
3. Отделу информационной политики администрации города Симферополя (Шилко А.А.) обнародовать настоящее постановление в установленном порядке.
4. Контроль за выполнением настоящего постановления оставляю за собой.

Глава администрации
города Симферополя Г.С. Бахарев

65 https://goo. gl/oYwVMK
66 http://simadm. ru/media/acts/2015/10/12/_1070_%D0%BE%D1%82_09. 10. 2015_. pdf
67 http://simadm. ru/media/acts/2015/11/22/_1347_%D0%BE%D1%82_22. 11. 2015. pdf
68 https://goo. gl/lUz58C
69 goo. gl/c27IWD

5 VIOLATION OF FREEDOM OF PEACEFUL ASSOCIATIONS

ICCPR, Article 22, and European Convention on Human Rights, Article 11, establishes the right to freedom of association with others, including the right to form and join trade unions for the protection of the interests.

The freedom of associations is systematically violated on the territory of Crimea, first of all, regarding the Crimean Tatar associations.

The property of numerous public associations that had been active on the territory of Crimea earlier, was transferred, without their consent, to the disposal of other organizations. Among examples are All-Ukrainian **PROSVITA** Society named after T. H. Shevchenko in Sevastopol, All-Ukrainian Information and Cultural Center, Guest House for Writers named after A. P. Chekhov in Yalta, termination of tenancy contract with the SOVET UCHITELEY (Council of Teachers) NGO for a building in Bakhchisarai Town, where the district Crimean Tatar People Mejlis was located, termination of tenancy contract for premises with CHATYR DAG Organization (Alushta).

On October 19th 2016 the police inspected a room of the **YUSTI*S** Scientific Society of Law Students and Post-Graduate Students NGO. The organization provided a free-of-charge legal support to the low income people. The inspection was performed by policemen Aleksey Fedorinin, Andrey Savchenko and Yevgeniy Kryme, though they were not in the uniform. Mr Konstantin Sizarev, the NGO founder, filed a complaint to the MIA on the police actions. In this complaint he pointed out procedure violations, use of force to the organization members, and obstruction to the organization activities[70].

5.1 PERSECUTION OF THE CRIMEAN TATAR PEOPLE MEJLIS

On September 16th 2014, in Simferopol the representatives of 'Crimean Self-defense' and the police, on the pretext of investigation, blocked the building where the Crimean Tatar People Mejlis was located. The building is owned by 'FOND KRYM' (Crimea Foundation) Charity Organization (hereinafter CO). On September 17th Mr Rize Shevkiyev, FOND KRYM Director General, was informed that the Crimean Tatar People Mejlis, FOND KRYM CO and AVDET newspaper office should vacate the premises within 24 hours. The Prosecutor's Office of Crimea presented as one of the Russian laws violations the fact that Mr M. Djemilev, citizen of Ukraine, that was sentenced to be an undesirable person on the territory of Russia, was one of the organization founders. The same day the court of Simferopol issued a decision that imposed a ban on the FOND KRYM Co to use its property at seven addresses (including the building where the Mejlis was), froze the bank accounts and prohibited opening new ones. On November 18th the court of Simferopol passed a judgement on imposing a fine of RUR 4.5 mln on the FOND KRYM CO and a fine of RUR 350 thou on its Director Mr Riza Shevkiyev. The judgement was grounded by repairs works carried in one of the organization premises together with the Committee for Monument Protection. At the end of 2014 the Prosecutor's Office of Crimea prepared and sent a claim on withdrawing the Foundation property (building in Shmidta Street) out of the Foundation ownership. On December 18th the department of Ministry of Justice of RF in Crimea rejected the FOND KRYM CO application on registering as non-commercial organization. The rejection was grounded by using two names in different documents: 'charity organization' and 'public charity organization'. The second reason for rejection was stated as absence of indication of the non-commercial organization operational territory in its name.

[70] CHRG Review for November 2016, Annex 4. — http://crimeahrg. org/wp-content/uploads/2016/12/Crimean-Human-Rights-Group_Nov_2016_RU. pdf

Gunmen without identification signs at the entrance to the building where the Crimean Tatar People Mejlis was located at that moment, 16 September 2014, Simferopol, Photo: from vesti-ukr.com website

On February 15th 2015, 'Prosecutor of Crimea' Ms Natalia Poklonskaya made an application 'On imposing a ban on activities of public association according to the procedure and due to the grounds stated by articles of Federal Law FZ-114 of 25 July 2002 'On anti-extremism actions' to the 'Supreme Court of Crimea'. Ms Poklonskaya requested to declare the Crimean Tatar People Mejlis an extremist organization and to impose a ban on its activities on the territory of the Russian Federation. On March 7th Mr Nariman Djelial, first deputy chairman of the Crimean Tatar People Mejlis, informed that the defence team of the Mejlis ban case received the related documents on the claim. On March 17th court proceedings on the case of declaring the Crimean Tatar People Mejlis an extremist organization and banning its activities were started.

On April 12th 2016, Prosecutor of Crimea Ms Poklonskaya took a 'decision on suspending the activities of the public associations' regarding the Crimean Tatar People Mejlis[71]. According to Poklonskaya's decision, activities of the Crimean Tatar People Mejlis were suspended until the 'Supreme Court of Crimea' examined her application on the Mejlis ban.

The same day, based on the prosecutor's decision, the Crimean Tatar People Mejlis was included into the list of public and religious associations which activities were suspended due to their extremist activities. The list was published at the website of the Ministry of Justice of RF[72].

Thus, as early as on April 12th, before the court judgement to ban the Crimean Tatar People Mejlis, substantial restrictions were imposed on the association and its members according to the Russian laws. Having been written down into the RF MinJustice list, the Mejlis was forbidden to continue its activities, distribute information on its activities and documents, and the access to the official website was limited. The Mejlis members were imposed a restriction to work at educational establishments, be engaged into private investigation and security business, they were not allowed to hold public events with the Mejlis symbols and attributes. The Mejlis members were restricted to be founders of a public or religious association or any other non-commercial organization on the territory of Crimea.

On April 26th 2016 Ms Natalia Terentyeva, 'judge of the Supreme Court of Crimea' determined to declare the Crimean Tatar People Mejlis an extremist organization and to forbid its activities on the territory of the Russian Federation.

On September 26th 2016 several members of Crimean Tatar People Mejlis and Quriltai (Congress) delegates were summoned for questioning to the Anti-Extremism Center of MIA in Simferopol.

[71] CHRG Review for April 2016, Annex 4. — http://crimeahrg. org/wp-content/uploads/2016/05/Crimean-Human-Rights-Group_April_2016-Eng. pdf

[72] http://minjust. ru/nko/perechen_priostanovleni

The MIA officers put questions regarding recent decisions of the Mejlis to suspend mandates of certain Mejlis members.

On September 27th Mr **Ali Khamzin**, a Crimean Tatar People Mejlis member, after the questioning in the Bakhchisarai District MIA department, with participation of the Anti-Extremism Center personnel, was accused of violating Article 20.28.1 of RF CAO. The same day Ms Olga Morozko, 'judge of Bakhchisarai District Court' sentenced Mr Khamzin to fine at a rate of RUR 1,000.

On September 28th Mr Aleksandr Skisov, 'judge of Bakhchisarai District Court', found Mr **Ilmi Unerov**, deputy Mejlis chairman, guilty according to the same article — 20.28.1 of RF CAO — and imposed a fine at a rate of RUR 750.

On September 29th the proceedings on the case 'On imposing a ban on activities of the Crimean Tatar People Mejlis public association' according to the procedure and on the grounds specified by Article 9 of RF Federal Law 'On anti-extremism activities' were held at the Supreme Court of Russian Federation. At the session Mr Vladimir Chukhrin, Senior Prosecutor of Crimea, insisted that 'the Mejlis activities constitute a threat for the security of state and society'. The RF Supreme Court rejected an appealing complaint of the defence team on the 'Mejlis Ban Case and affirmed the decision of the 'Supreme Court of Crimea' of April 26th 2016 on banning the Mejlis activities.

On September 30th, reports, according to Article 20.28.1 of RF CAO, were drawn up on six Crimean Tatars (**Emine Avamilev, Diliaver Akiyev, Mustafa Maushev, Bekir Mamut, Sadykh Tabakh, Shevket Kaybullayev**) at the Anti-Extremism Center in Bakhchisarai.

On October 4th the 'Bakhchisarai District Court' imposed fines on Bekir Mamut (RUR 750), Sadykh Tabakh (RUR 750), Shevket Kaybullayev (RUR 500), for participation in the Mejlis meetings 'as public organization banned on the territory of the RF and Crimea'.

On October 14th the 'Bakhchisarai District Court' sentenced Ms **Emine Avamileva**, head of Mejlis department for education, to imposition of fine at a rate of RUR 750. On October 20th Mr **Adburaman Egiz**, a Mejlis member, was sentenced by the 'court' to a fine of RUR 750. On October 24th the 'court' imposed a RUR 500 fine on **Mr Diliaver Akiyev**[73]. According to Article 20.28.1 of RF CAO, the 'Bakhchisarai District Court' imposed a fine of RUR 750 on Mr **Zeinur Yakubov** on November 1st and on Mr **Mustafa Maushev** on November 23rd[74].

5.2 'HIZB-UT-TAHRIR' CASE

Since February 2015 the Muslims imputed of membership in the Hizb-ut-Tahrir organization forbidden in the RF have been persecuted in Crimea. They all are accused of violating Article 205. 5 of RF CC.

Totally 19 people were detained within the case.

4 people — in Sevastopol. These are **Yuriy Primov, Rustem Vaitov, Ruslan Zeitullayev** who were detained on January 23rd 2015, and **Feirat Saifullayev** detained on April 2nd same year. They all were first in the detention facility no 1 of Simferopol, then they were transported to the RF for hearings at the North Caucasian Area Military Court in Rostov-na-Donu. On September 7th 2016 Yuriy Primov, Rustem Vaitov and Feirat Saifullayev were given a five-year sentence. Mr Ruslan Zeitullayev was given a seven year sentence but the Supreme Court of RF, upon the prosecutor's request, remitted

[73] CHRG Review for October 2016. — http://crimeahrg. org/wp-content/uploads/2016/11/Crimean-Human-Rights-Group_ October_2016-ENG. pdf

[74] https://bahchisarai--krm. sudrf. ru/modules. php?name=sud_delo&srv_num=1&name_op=doc&number=205282029&delo_ id=1500001&new=0&text_number=1

Yuriy Primov, Rustem Vaitov, Ruslan Zeitullayev, Ferat Saifullayev at the session of the North Caucasian Area Military Court in Rostov-na-Donu, RF. Photo from KRYM REALII website

the case. After the re-consideration on April 26th 2017 the North Caucasian Area Military Court found Mr Zeitullayev guilty in creating the Crimean Hizb-ut-Tahrir organization and gave him 12 year sentence in the maximum security penal colony.

6 people — in Yalta. **Emir Usein Kuku, Inver Bekirov, Muslim Aliyev, Vadim Siruk** were detained on February 11th 2016. **Refat Alimov** and **Arsen Djepparov** on April 18th same year. In January 2017 the accusation of Muslims detained in Yalta was topped up with Article 30. 1 and Article 278 of RF CC (Attempt of violent upheaval).

4 people — in Bakhchisarai. These are **Enver Mamutov, Rustem Abiltarov, Zevri Abseitov, Remzi Memetov** — all were detained on May 12th 2016.

5 people — in Simferopol. These are **Teimur Abdullayev, Uzeir Abdullayev, Rustem Ismailov, Aider Saledinov, Emil Djemadenov**.

All 15 people detained in 2016 are in the detention facility No 1 of Simferopol. The cases are at the prejudicial enquiry stage.

6 COMPULSION TO PARTICIPATE IN EVENTS AND ASSEMBLIES

There are cases recorded in Crimea when the local authorities de facto interfere rudely into the freedom of peaceful assemblies, forcing the people to participate in the events organized by the power.

On February 15th 2016 the department for education of Sevastopol City issued an order that instructed the schools of Sevastopol City to ensure the presence of 10thou children at Nakhimova Square for celebrating the Defender of Motherland Day. The order was enclosed with a schedule of children participation in the celebration, where the time for presence 'on- duty' at the square for pupils of each city school as well as quotas fixing the number of the pupils to be provided by each school were indicated. Thus, according to the order of Sevastopol City department for education, 20 to 700 pupils of each school had to come to the square on February 22nd and spend there several hours[75].

On April 27th 2016 Mr A. Zh. Kurenkov, acting as head of department for education of the Simferopol District of Crimea, issued order 'On participating in the events dedicated to celebration of the Hidirlez Crimean Tatar national holiday'. Mr Kurenkov instructed masters of 15 educational establishments of the Simferopol District to participate obligatorily in the public events of the Simferopol District administration on the occasion of the holiday[76].

[75] http://sevastopol. su/news. php?id=84716

[76] CHRG Review for April 2016, Annex 5. — http://crimeahrg. org/wp-content/uploads/2016/05/Crimean-Human-Rights-Group_April_2016-Eng. pdf

CONCLUSIONS AND RECOMMENDATIONS

Freedom of assembly and the right to express one's views through it are among the paramount values in a democratic society. The essence of democracy is its capacity to resolve problems through open debate. Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles — however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be — do a disservice to democracy and often even endanger it.

In a democratic society based on the rule of law political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means (Assessment of the European Court of Human Rights, Case Stankov and United Macedonian Organization Ilinden v. Bulgaria, 2 October 2001).

The violations of the right to freedom of peaceful assemblies and associations being recorded by the Crimean Human Rights Group for the last three years on the territory of the Autonomous Republic of Crimea (ARC) and City of Sevastopol annexed from Ukraine, and presented in the review, testify a systematic and repressive nature of the Russian authorities' actions regarding the internationally developed standards in this sphere. Such conclusion can be easily made if the fundamental international principles are compared with the practices applied widely today in the ARC and Sevastopol City as well as if procedure and other standards are compared with the present-day reality on the peninsula.

Pursuant to the Guidelines on Freedom of Peaceful Assembly (edition 2, prepared by the Office for Democratic Institutions and Human Rights OSCE/ODIHR Panel of Experts on the Freedom of Assembly and by the Council of Europe's European Commission for Democracy through Law (Venice Commission), the following **major guiding principles** are stated:

- *The presumption in favour of holding assemblies*
- *The state's positive obligation to facilitate and protect peaceful assembly*
- *Legality*
- *Proportionality*
- *Non-discrimination*
- *Good administration*
- *The liability of the regulatory authority*

THE PRESUMPTION IN FAVOUR OF HOLDING ASSEMBLIES

As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so. A presumption in favour of this freedom should be clearly and explicitly established in law (Guidelines of OSCE/ODIHR and Venice Commission).

The assessment of recent amendments to the RF laws valid today on the ARC territory states that the authorities practice the approaches that are precisely opposite to the abovementioned principle. So when the ARC and Sevastopol City had been annexed in 2014, the following legislative documents were adopted at the federal level:

- Federal Law, RF No 258 FZ 'On amending certain laws of the Russian Federation in terms of improving the legislation on public events' (21 July 2014)
- Federal Law, RF No 292 'On amending Article 9 of Federal Law 'On assemblies, rallies, demonstrations, processions and picketing' (9 October 2014)

The authorities implemented several 'legislative initiatives' directly in the ARC in 2014 and 2015, too. One should mention among them:

- Law of Republic of Crimea No 56-ZRK 'On securing the conditions of exercising the rights of the Russian Federation citizens to hold assemblies, rallies, demonstrations and picketing in the Republic of Crimea'(21 August 2014) that is almost identical to the RF Federal Law No 54-FZ 'On assemblies, rallies, demonstrations and picketing' (4 July 2004);
- Ordinance of Council of Ministers of Republic of Crimea no 452 'On approving the list of places for holding public events on the territory of the Republic of Crimea' (12 November 2014)
- Resolution 'On procedure for organizing and holding public events on the territory of 'Simferopol City Area of Republic of Crimea' municipal formation, public events on the territory of the Simferopol City Municipality' (28 January 2015) (from the report of the Human Rights Assessment OSCE/ODIHR Mission on Crimea (6–18 July 2015)

Such legal and regulative documents have empowered the authorities with the following instruments, in addition to existing ones already, for formal and selective restrictions:

- Only Russian citizens may be organizers of public events
- A request for permission to hold an assembly shall be placed 15 days the earliest and 10 days the latest before the planned event day
- Additional place restrictions for public assemblies are in place (in Simferopol they may be held only at four officially allowed locations)
- Criminal punishment for physical persons in case of the repeated violation of the assembly organizing rules
- Ban for presence of children under 14 at the political assemblies has been introduced
- Time for holding the authorized assemblies is restricted: from 07:00am to 10:00pm

How in fact these innovations are applied is perfectly demonstrated by this analytical review. Bans due to hot weather, repairs works, a need to receive a permission (authorization procedure), places for peaceful assemblies allocated in the outskirts — all this testifies that in fact the presumption in favor of the authorities is in force in the ARC.

An obvious illustration to the absence of even slightest signs of compliance with the international standard is Edict of Sergey Aksionov of May 16th 2014 (issued two days before the 70th anniversary of the Crimean Tatar Deportation on the May 18th 2014) on imposing the ban on all public events in Crimea up to 6 June 2014.

THE STATE'S POSITIVE OBLIGATION TO FACILITATE AND PROTECT PEACEFUL ASSEMBLY

It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom is practically enjoyed and not subject to undue bureaucratic regulation. In particular, the state should always seek to facilitate and protect public assemblies at the organizers' preferred location and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded. (Guidelines of OSCE/ODIHR and Venice Commission).

As the analytical review demonstrated, the 'state' exercising today the power on the peninsula does everything the other way around. The locations for holding are selected by the authorities; they issue (in most cases forbid) a permission to hold peaceful assemblies; people coming to the event are regularly attacked by 'john does' who later remain anyway unidentified and are not made liable. At the same time, to oppose holding the peaceful assemblies in a more efficient way, the authorities use law enforcement and subordinate bodies: the prosecutor's office — to disseminate letters threatening with criminal sanctions among organizers or just related people or those who have just an intention to express or have expressed already their position on participation in the events; the police — to disperse the people who have come anyway; courts — to hold liable those whom the police have detained. The facts presented in the review show that when the contents of peaceful assembly are forbidden by the authorities or when the people or associations (ethnic, sexual minorities, pro-Ukrainian organizations) planning to hold it are 'forbidden' by the authorities — the event would not occur under any circumstances. All instruments to implement 'the ban' will be used: prosecutor's office letters, a force dispersal, detentions and criminal or administrative sanctions.

LEGALITY

Any restrictions imposed must have a formal basis in law and be in conformity with the European Convention on Human Rights and other international human rights instruments. To this end, well-drafted legislation is vital in framing the discretion afforded to the authorities. The law itself must be compatible with international human rights standards and be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, as well as the likely consequences of any such breaches. (Guidelines of OSCE/ODIHR and Venice Commission).

As abovementioned, since the moment of annexation, the RF jurisdiction has come in force on the territory of peninsula. Moreover, it is after the annexation when a number of legislative innovations were adopted at the federal and local levels that referred solely to additional restrictions on exercising the right to peaceful assemblies and freedom of associations. On one hand, the RF legislation which validity covers the territory of Crimea is the most formalized in this sphere today, on the other, it is the most vague and 'of poor quality' in terms of the European Court of Human Rights standards since many provisions afforded the authorities unframed discretion to choose grounds for bans or interpret these or those events for the purpose of restriction.

One of convincing illustrations for this 'quality' of the Russian laws is definitions of the forms of peaceful assemblies in Article 2 of Federal Law 'On assemblies, rallies, demonstrations, processions and picketing' http://www. consultant. ru/document/cons_doc_LAW_48103/

Let's mention some of them:

'Assembly means a joint presence of citizens in the specially allocated or adapted for the purpose place to discuss together any socially significant issues'.

Such definition allows the authorities to disperse or persecute any unwelcome group of people that assemble at any place. For instance, there are benches or seats, presence of 2 citizens sitting is enough, what kind of issues are 'socially significant' will be defined by the authorities, too.

'Picketing means a form of expressing publicly the opinions without moving and using sound amplifying technical means and by one or more citizens using signs, banners and other visual propaganda means as well as fast mounted assembling/ disassembling structures placed at the picketed facility' (edition of 2016).

Other propaganda means can be any object. To be subject to sanctions for an unauthorized rally, in fact, it is enough to stop at the place defined by the authorities as 'forbidden'. If you happen to be holding a flag of this or other country in the hands, a poster then this is definitely the picket which holding requires to pass the entire authorization procedure and to obtain a permission.

The entire legislative framework valid on the territory of the ARC in the sphere of peaceful assemblies contains such defected standards starting from the definitions and finishing with procedure aspects. The courts when considering issues and disputes related to imposing sanctions, violating the holding procedure or breaching the rights to peaceful assemblies, take a side with 'the state agents' — executive power.

PROPORTIONALITY

Any restrictions imposed on freedom of assembly must be proportional. The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference. The principle of proportionality requires that authorities do not routinely impose restrictions that would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city. A blanket application of legal restrictions tends to be over-inclusive and, thus, will fail the proportionality test, because no consideration has been given to the specific circumstances of the case. (Guidelines of OSCE/ODIHR and Venice Commission).

Proportionality is one more fundamental principle of exercising the right to peaceful assemblies that is explicitly neglected by the authorities acting on the territory of the peninsula. For the period of study cases when the authorities 'detached' the people from the locations where they would like to express their opinion were recorded many times. Finally, the authorities started indicating specific places where an assembly might be held in general. In 95% cases these are sites remote from the public agencies, local self-governance, and busy areas of settlements. If you want to rally — please but make you invisible and inaudible. This is more or less a concept implemented by the authorities today on the territory of Crimea.

NON-DISCRIMINATION

Freedom of peaceful assembly is to be enjoyed equally by everyone. In regulating freedom of assembly the relevant authorities must not discriminate against any individual or group on any grounds. The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, sexual and

religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, women and men; to law-enforcement personnel; and to persons without full legal capacity, including persons with mental illnesses. (Guidelines of OSCE/ODIHR and Venice Commission).

Regarding this aspect, serious breaches of this fundamental principle on the ARC territory may be stated, too. Starting with the laws — when a right to hold the assemblies is granted only to RF citizens (Article 2. 1. 1 of Federal Law 'On assemblies, rallies, demonstrations and picketing') and restrictions are implied for sexual minorities, non-registered associations — to their implementation practices — in fact, a comprehensive ban has been introduced for pro-Ukrainian events, events of the Crimean Tatar people, public events criticizing the current authorities, and LGBT community actions.

GOOD ADMINISTRATION

The public should be informed which body is responsible for taking decisions about the regulation of freedom of assembly, and this must be clearly stated in law. The regulatory authority should ensure that the general public has adequate access to reliable information about its procedures and operation. Organizers of public assemblies and those whose rights and freedoms will be directly affected by an assembly should have the opportunity to make oral and written representations directly to the regulatory authority. The regulatory process should enable the fair and objective assessment of all available information. Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizer, with an explanation of the reason for each restriction. Such decisions should be taken as early as possible so that any appeal to an independent court can be completed before the date provided in the notification for the assembly. (Guidelines of OSCE/ODIHR and Venice Commission).

This may be the single principle that to certain extent is observed today at the ARC in the sphere of peaceful assemblies, except the promptness of taking decision and communicating it to the event organizers as well as fair assessment of all available information. It is true that where and whom to address to obtain a permission in Crimea is known, and the people are communicated in writing about the decisions, sometimes even in the cases when they did not plan to participate or organize (a preventive intimidation by the prosecutor's office bodies). Cases when a ban notice was received just a few hours before the event start are numerous, cases when the administrative bodies changed several times grounds for denial or, if a permission had been issued, informed a day before the event that the decision had changed and now the organizers were rejected to hold peaceful assemblies are not also exceptional.

THE LIABILITY OF THE REGULATORY AUTHORITY

The regulatory authorities must comply with their legal obligations and should be accountable for any failure — procedural or substantive — to do so. Liability should be gauged according to the relevant principles of administrative law and judicial review concerning the misuse of public power. (Guidelines of OSCE/ODIHR and Venice Commission).

As the study performed, and other reports of human rights organizations (report of the Human Rights Assessment OSCE/ODIHR Mission on Crimea (6–18 July 2015) testify, liability on the ARC territory exists only for those who want to organize and hold peaceful assemblies. There is no

judicial review over the administrative bodies as such. The executive power, applying a wide defected legal relation regulation, use the afforded discretion for any and all restrictions that often sound clearly absurd.

The grounds for the restrictions that you may find in the report:

- Gathering of a lot of people on the limited territory that is assigned for location
- Creation of conditions for breaching the public order, rights and legal interests of other citizens
- Too hot weather
- Incompliance with the notification submission timing (absolute non-flexible rule of 10 days)
- Lack of possibility to ensure the security measures
- Works on the land improvement are carried by the local authorities on the territory of the park where the event was planned
- Gay pride parade in the streets and on the squares where children's establishments and play grounds are located
- The rally will impede the motor show
- The other event will take place at the same time and at the same place (sometimes this turned out to be true, sometimes nobody held anything)
- Ordinance of Simferopol City administration that public events may be held only at four locations allowed in the city
- a number of institutions with a specific working regime including the Plenipotentiary Representative Office of President in the Crimean Federal Area and the engineering department of the RF Black Sea Navy, are located on Nakhimova Square, and in order to avoid any disruptions of their operations it is not recommended to hold the public events in the close vicinity to them. '
- The place chosen is not on the list of locations allowed for the public events

All the abovementioned demonstrates that breach of basic and fundamental international principles by the authorities in the ARC results into failure to comply with all other rules and standards in force for exercising the right to peaceful assemblies and freedom of associations.

For instance, "**Sight and sound**". *Public assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within "sight and sound" of their target audience.*

For instance, **Spontaneous assemblies**. *Where legislation requires advance notification, the law should explicitly provide for an exception from the requirement where giving advance notice is impracticable. Such an exception would only apply in circumstances where the legally established deadline cannot be met. The authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature.*

The situation with compliance in the ARC with rules and standards regulating the simultaneous assemblies and counter-demonstrations is absolutely obvious.

Simultaneous assemblies. *Where notification is provided for two or more unrelated assemblies at the same place and time, each should be facilitated as best as possible. The prohibition of a public assembly solely on the basis that it is due to take place at the same time and location as another public assembly will likely be a disproportionate response where both can be*

reasonably accommodated. The principle of non-discrimination requires, further, that assemblies in comparable circumstances do not face differential levels of restriction.

Counter-demonstrations. *Counter-demonstrations are a particular form of simultaneous assembly in which the participants wish to express their disagreement with the views expressed at another assembly. The right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate. Indeed, demonstrators should respect the rights of others to demonstrate as well. Emphasis should be placed on the state's duty to protect and facilitate each event where counter-demonstrations are organized or occur, and the state should make available adequate policing resources to facilitate such related simultaneous assemblies, to the extent possible, within "sight and sound" of one another. (Guidelines of OSCE/ODIHR and Venice Commission).*

It should be noted that such principles and approaches to exercise the right to freedom of peaceful assemblies in most cases are based on the principles and approaches developed in the practice of European Court of Human Rights which resolutions are binding for all countries, members of Council of Europe.

So in terms of counter-demonstrations the ECHR, in its judgement for the CASE OF PLATTFORM "ÄRZTE FÜR DAS LEBEN" v. AUSTRIA (1985), stated:

'32. A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate. Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 (art. 11). Like Article 8 (art. 8), Article 11 (art. 11) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be'.

The list of ECHR judgements that established standards in the field of the right to peaceful assemblies and freedom of associations, may be found after the conclusions and recommendations.

One of the most popular grounds used by the authorities on the ARC territory to restrict the peaceful assemblies and to ban the freedom of associations is 'extremism prevention', ' fight against extremism'.

Regarding this, an approach developed in the Guidelines of OSCE/ODIHR and Venice Commission, referring to the international legal instruments, may be applied.

Efforts to tackle terrorism or extremism and to enhance security must never be invoked to justify arbitrary action that curtails the enjoyment of fundamental human rights and freedoms. The actions free of any limits that prejudice exercising the fundamental human rights and freedoms must not under any circumstances be justified by a need to take actions to fight the terrorism or extremism or to strengthen the safety. The International Commission of Jurists 2004 Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism (the Berlin Declaration) 142 emphasized that "the odious nature of terrorist acts cannot serve as a basis or pretext for states to disregard their international obligations, in particular in the protection of fundamental human rights". Similarly, both the Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis (2007)143 and the OSCE manual Countering Terrorism, Protecting Human Rights (2007)144 caution against the imposition of undue restrictions on the exercise of freedom of expression and assembly during crisis situations.

Criminal prosecution of the peaceful assembly participants as such is a non-proportional interference of the authorities. But imposing administrative sanctions as fines is clearly opposite to the standard that has been established in the ECHR judgement long ago: irrespective to the difficulties the state may face to ensure the peaceful assembly, an individual shall not be subjected to a sanction for participation in such a demonstration, so long as this person does not himself commit any reprehensible act on such an occasion (CASE OF GALSTYAN v. ARMENIA, 15 November 2007).

The review of facts on restricting the freedom of peaceful assemblies and freedom of associations made testifies systematic breaches of the international standards in this sphere both in terms of law quality and its enforcement practices. The legislative regulation results into a factual rejection of the authorities to ensure enjoyment of the fundamental human rights, while their actions are repressive in nature. Since the moment of annexation of Crimea policies of 'total bans' on holding peaceful assemblies and activities of associations that for any reasons are unwelcome for the authorities acting on the peninsula, have been implemented.

RECOMMENDATIONS

FOR THE AUTHORITIES OF THE RUSSIAN FEDERATION:

1. To stop unjustified administrative and criminal persecutions of peaceful assembly participants and organizers
2. To set free immediately the persons who were deprived of liberty due to their political, religious and other beliefs, or due to exercising the freedom of speech and expression of opinion, freedom of peaceful assemblies and associations or other rights guaranteed by the International Covenant on Civil and Political Rights or the European Convention on Human Rights and Fundamental Freedoms, to rehabilitate them and reimburse them the damage caused by the unlawful imprisonment, tortures or other unhuman and degraded ways of treatment
3. To cancel all decisions taken on imposing penalties and other sanctions on the peaceful assembly organizers and participants which adoption was a breach of international human rights standards
4. To investigate the facts of politically motivated criminal and administrative persecution of the peaceful assembly organizers and participants and make accountable the persons that employed unlawfully violence to the peaceful assembly participants and issued unjustified decisions on restricting the freedom of peaceful assemblies
5. To make the territory of Crimea accessible for international organizations, UN, OSCE, EU, Council of Europe structures and independent representatives, representatives of international human rights organizations and human rights organizations of Ukraine, ombudsmen of the Parliament of Ukraine to monitor the observance of the right to freedom of associations and other fundamental rights and freedoms as well as for journalists from Ukraine and other countries and not to obstruct politically and in other way such missions and visits.
6. To observe as the Occupying Power exercising the effective control rights guaranteed by the International Covenant on Civil and Political Rights or the European Convention on Human Rights and Fundamental Freedoms as well as meet the commitments under the international humanitarian law

FOR THE AUTHORITIES OF UKRAINE:

1. To investigate the facts of breaching the freedom of peaceful assemblies and associations, persecution of peaceful assembly participants and organizers, inflicting injury to them, and make a legal assessment of such facts

2. To legitimize guarantees for defence and restoration of the rights violated on the territory of Crimea due to the politically motivated persecution for expressing political, ethnic, religious and other beliefs, participating in the peaceful assemblies and events of nonviolent resistance to the Russian Federation actions including drafting and adopting a law on protection of political prisoners and other persons who suffered due to the unlawful actions and decisions of the Russian Federation as a result of the Crimean Peninsula occupation and annexation

3. To monitor on regular basis breaches of the peaceful assembly freedom and other fundamental human rights in Crimea with involvement of the human rights ombudsman of the Parliament of Ukraine and in cooperation with the relevant human rights organizations of Ukraine

4. Ministry of Information Policy of Ukraine, Ministry of Culture of Ukraine, State TV abd Radio Broadcasting Committee of Ukraine — to initiate and manage the work on creating a media content to highlight the issues of breaching the human rights in Crimea including the freedom of assemblies and associations as well as to communicate the information on events and other nonviolent actions of the residents of Crimea to defend human rights and internationally recognized borders of Ukraine to the Ukrainian and international communities .

FOR INTERNATIONAL ORGANIZATIONS (INCLUDING THE UN, EUROPEAN UNION, COUNCIL OF EUROPE, OSCE) AND HUMAN RIGHTS ORGANIZATIONS:

1. To keep on monitoring the situation in Crimea to document facts of breaching the right to freedom of peaceful assemblies and associations as well as other fundamental rights on the peninsula and to communicate them to the international human rights institutions
2. To hold reporting events in the relevant UN, EU, CoE, OSCE structures and within their authorities on a regular basis to present findings of the monitoring of breaches of the human rights and international humanitarian law standards in Crimea
3. To establish a multilateral monitoring group to monitor violations of the freedom of assemblies and associations in Crimea
4. To initiate a discussion on preparing and holding the negotiations at the international level dedicated to restoring the violated human rights in Crimea, to set free political prisoners and to reintegrate Crimea as well as to re-establish a legitimate control of Ukraine over the peninsula
5. To apply all possible international legal and diplomatic instruments to defend human rights in Crimea, to set free political prisoners and to cease politically motivated persecution of Crimean residents
6. To expand the existing sector sanctions and to introduce additional ones against the Russian Federation due to the regular violations of the human rights in Crimea and failure to meet international commitments in the sphere of human rights and international humanitarian law
7. To expand personal sanctions against the persons who are personally responsible for serious human rights violations in Crimea
8. To respond promptly and publicly on the facts of serious or mass violations of human rights in Crimea

ANNEX

PRACTICES OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING THE FREEDOM OF PEACEFUL ASSEMBLIES AND FREEDOM OF ASSOCIATIONS

- Acik v. Turkey (Application no. 31451/03, judgment of 13 January 2009)
- Ahmed and Others v. United Kingdom (Application no. 22954/93, judgment of 2 September 1998)
- Aldemir (Nurettin) and Others v. Turkey (Applications nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, judgment of 18 December 2007)
- Amann v. Switzerland [GC] (Application no. 27798/95, judgment of 16 February 2000)
- Anderson v. United Kingdom (Application no. 33689/96, Commission admissibility decision of 27 October 1997);
- Appleby v. United Kingdom (Application no. 44306/98, judgment of 6 May 2003)
- A. R. M. Chappell v. United Kingdom (Application no. 12587/86, admissibility decision of 14 July 1987); (1987)
- Ashingdane v. the United Kingdom (Application no. 8225/78, judgment of 28 May 1985);
- Ashughyan v. Armenia (Application no. 33268/03, judgment of 17 July 2008)
- Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia (Application no. 74651/01, judgment of 15 January 2009)
- Axen v. Germany (Application no. 8273/78, judgment of 8 December 1983); (1983)
- Bączkowski and Others v. Poland (Application no. 1543/06; judgment of 3 May 2007)
- Balcik and Others v. Turkey (Application no. 25/02, judgment of 29 November 2007)
- Balkani (Zeleni) v. Bulgaria (Application no. 63778/00, judgment of 12 April 2007)
- Barankevich v. Russia (Application no. 10519/03, Judgment of 26 July 2007)
- Barraco v. France (Application no. 31684/05, judgment of 5 March 2009, in French only)
- Bukta v. Hungary (Application 25691/04, judgment of 17 July 2007)
- Castells v. Spain (Application no. 11798/85, judgment of 23 April 1992)
- Chassagnou and Others v. France [GC] (Application nos. 25088/94, 28331/95, 28443/95, judgment of 29 April 1999)
- Cetinkaya v. Turkey (Application 75569/01, judgment of 27 June 2006, in French only)
- Christian Democratic People's Party v. Moldova (Application no. 28793/02, judgment of 14 February 2006)
- Christian Democratic People's Party v. Moldova (No. 2) (Application no. 25196/04, judgment of 2 February 2010)
- Christians Against Racism and Fascism (CARAF) v. United Kingdom (Application no. 8440/78, Commission admissibility decision of 16 July 1980)
- Christodoulidou v. Turkey (Application no. 16085/90, judgment of 22 September 2009)
- Chrysostomos and Papachrysostomou v. Turkey (Applications 15299/89 and 15300/89; admissibility decision of 4 March 1991, Commission decision of 8 July 1993)

- Chorherr v. Austria (Application no. 13308/87, judgment of 25 August 1993); (1993)
- Cetinkaya v. Turkey (Application no. 75569/01, judgment of 27 June 2006)
- Çiloğlu and Others v. Turkey (Application no. 73333/01, judgment of 6 March 2007, judgment in French only)
- Çiraklar v. Turkey (Application no. 19601/92, judgment of 28 October 1998)
- Cisse v. France (Application no. 51346/99, judgment of 9 April 2002)
- Cyprus case (1958-59) Yearbook ECHR
- Demir and Baykara v. Turkey (Application no. 34503/97, judgment of 12 November 2008)
- Djavit An v. Turkey (Application no. 20652/92, judgment of 20 February 2003)
- Ekşi and Ocak v. Turkey (Application no. 44920/04, judgment of 23 February 2010)
- Enerji Yapi-Yol Sen v. Turkey (Application no. 68959/01, judgment of 21 April 2009)
- Ezelin v. France 14 EHRR 362 (Application no. 11800/85, judgment of 26 April 1991)
- Foka v. Turkey (Application no. 28940/95, judgment of 24 June 2008)
- Freedom and Democracy Party (Özdep) v. Turkey [GC] (Application no. 23885/94, judgment of 8 December 1999)
- Friedl v. Austria (Application no. 15225/89, judgment of 31 January 1995)
- G v. Federal Republic of Germany (Application no. 13079/87, admissibility decision of 6 March 1989); (1989)
- Galstyan v. Armenia (Application no. 26986/03, judgment of 15 November 2007)
- Garaudy v. France (Application no. 65831/01, admissibility decision of 24 June 2003, in French, English translation)
- Gasparyan v. Armenia (No. 1) (Application no. 35944/03, judgment of 13 January 2009)
- Gasparyan v. Armenia (No. 2) (Application no. 22571/05, judgment of 16 June 2009)
- Gillan and Quinton v. UK (Application no. 4158/05, judgment of 12 January 2010)
- Glimmerveen and Hagenbeek v. the Netherlands (Application nos. 8348/78 and 8406/78, admissibility decision of 11 October 1979)
- Gómez v. Spain (Application no. 4143/02, judgment of 16 November 2004)
- Giuliani and Gaggio v. Italy (Application no. 23458/02, judgment of 25 August 2009)
- Gülec v. Turkey (Application no. 21593/93, judgment of 27 July 1998)
- Güneri and Others v. Turkey (Application nos. 42853/98, 43609/98, 44291/98, judgment of 12 July 2005, in French only)
- Guenat v. Switzerland (Application no. 24722/94, admissibility decision of 10 April 1995)
- Gustafsson v. Sweden [GC] (Application no. 15573/89, judgment of 24 April 1996; dismissal of revision request 30 July 1998)
- Guzzardi v. Italy (Application no. 7367/76, judgment of 6 November 1980); (1980) 3 EHRR 333
- Hajibeyli v. Azerbaijan (Application no. 16528/05, judgment of 10 July 2008)
- Handyside v. United Kingdom (Application no. 5493/72, judgment of 7 December 1976)
- Haas v. Netherlands (Application no. 36983/97, judgment of 13 January 2004)
- Hashman and Harrup v. United Kingdom [GC] (Application no. 25594/94, judgment of 25 November 1999)

- Herbecq and Another v. Belgium (Applications nos. 32200/96 and 32201/96, admissibility decision of 14 January 1998)
- Hyde Park and Others v. Moldova (No. 1) (Application no. 33482/06, judgment of 31 March 2009)
- Hyde Park and Others v. Moldova (No. 2) (Application no. 45094/06, judgment of 31 March 2009)
- Hyde Park and Others v. Moldova (No. 3) (Application no. 45095/06, judgment of 31 March 2009)
- Incal v. Turkey (Application no. 22678/93, judgment of 9 June 1998)
- Ireland v. the United Kingdom (Application no. 5310/71, judgment of 18 January 1978)
- Jordan v. United Kingdom (Application no. 24746/94, judgment of 4 May 2001)
- Kaya v. Turkey (Application no. 22729/93, judgment of 19 February 1998)
- Kandzhov v. Bulgaria (Application no. 68294/01, judgment of 6 November 2008)
- Kelly and Others v. United Kingdom (Application no. 30054/96, judgment of 4 May 2001)
- Kimlya and Others v. Russia (Applications nos. 76836/01 and 32782/03, judgment of 1 October 2009)
- Kuolelis, Bartosevicius and Burokevicius v. Lithuania (Applications nos. 74357/01, 26764/02 and 27434/02, judgment of 19 February 2008)
- Kuznetsov v Russia (Application no. 10877/04, judgment of 23 October 2008)
- Lawless v. Ireland (Application no. 332/57, judgment of 1July 1961);
- Leander v. Sweden (Application no. 9248/81, judgment of 26 March 1987; Series A no. 116
- Lehideux and Isorni v. France [GC] (Application no. 24662/94, judgment of 23 September 1998)
- Lucas v. UK (Application no. 39013/02, admissibility decision of 18 March 2003)
- Makhmudov v. Russia (Application no. 35082/04, judgment of 26 July 2007)
- Mammadov (Jalaloglu) v. Azerbaijan (Application no. 34445/04, judgment of 11 January 2007)
- McCann and Others v. United Kingdom [GC] (Application no. 18984/91, judgment of 27 September 1995)
- McKerr v. United Kingdom (Application no. 28883/95, judgment of 2001)
- McShane v. United Kingdom (Application no. 43290/98, judgment of 28 May 2002)
- Mkrtchyan v. Armenia (Application no. 6562/03, judgment of 11 January 2007)
- Molnár v. Hungary (Application no. 10346/05, judgment of 7 October 2008)
- Müller and Others v. Switzerland (Application no. 10737/84, judgment of 24 May 1988)
- Muradova v. Azerbaijan (Application no. 22684/05, judgment of 2 April 2009)
- Nachova and Others v. Bulgaria [GC] (Application nos. 43577/98 and 43579/98, judgment of 6 July 2005)
- Nicol and Selvanayagam v. United Kingdom (Application no. 32213/96, admissibility decision, 11 January 2001)
- Norris v. Ireland (Application no. 10581/83, judgment of 26 October 1988)
- Observer and Guardian v. United Kingdom (Application no. 13585/88, judgment of 26 November 1991)
- Öllinger v. Austria (Application no. 76900/01, judgment of 29 June 2006)
- Olymbiou v. Turkey (Application no. 16091/90, judgment of 27 October 2009)

- Opuz v. Turkey (Application no. 33401/02, judgment of 9 June 2009)
- Otto-Preminger-Institut v. Austria (Application no. 13470/87, judgment of 20 September 1994)
- Osman v. United Kingdom (Application no. 23452/94, judgment of 28 October 1998)
- Oya Ataman v. Turkey (Application no. 74552/01, judgment of 5 December 2006)
- Papi v. Turkey (Application no. 16094/90, judgment of 22 September 2009)
- Patyi v. Hungary (Application no. 5529/05, judgment of 7 October 2008)
- Perry v. the United Kingdom (Application no. 63737/00, judgment of 17 July 2003)
- P. G and J. H. v. United Kingdom (Application no. 44787/98, judgment of 25 September 2001)
- Plattform "Ärzte für das Leben" v. Austria (Application no. 10126/82, judgment of 21 June 1988)
- Protopapa v. Turkey (Application no. 16084/90, judgment of 24 February 2009)
- Rai and Evans v. United Kingdom (Applications nos. 26258/07 and 26255/07, admissibility decision of 17 November 2009)
- Rai, Almond and "Negotiate Now" v. United Kingdom (Application no. 25522/94, admissibility decision of 6 April 1995)
- Rassemblement Jurassien & Unité Jurassienne v. Switzerland (Application no. 8191/78, admissibility decision of 10 October 1979)
- Refah Partisi (The Welfare Party)and Others v. Turkey [GC] (Application nos. 41340/98, 41342/98 and 41343/98, judgment of 13 February 2003)
- Rekvényi v. Hungary [GC] (Application no. 25390/94, judgment of 20 May1999)
- Rosca, Secareanu and Others v. Moldova (Applications nos. 25230/02, 25203/02, 27642/02, 25234/02 and 25235/02, judgment of 27 March 2008)
- Rotaru v. Romania [GC] (Application no. 28341/95, judgment of 4 May 2000)
- S v. Austria (Application 13812/88, admissibility decision of 3 December 1990)
- S. and Marper v. United Kingdom (Applications nos. 30562/04 and 30566/04, judgment of 4 December 2008)
- Samüt Karabulut v. Turkey (Application no. 16999/04, judgment of 27 January 2009)
- Saya and Others v. Turkey (Application no. 4327/02, judgment of 7 October 2008)
- Sdružení Jihočeské Matky c. la République tchèque (Application no. 19101/03, judgment of 10 July 2006, in French only)
- Sejdić and Finci v. Bosnia and Herzegovina (Applications nos. 27996/06 and 34836/06, judgment of 22 December 2009)
- Shanaghan v. United Kingdom (Application no. 37715/97, judgment of 4 May 2001)
- Simsek and Others v. Turkey (Applications nos. 35072/97 and 37194/97, judgment of 26 July 2005)
- Solomou and Others v. Turkey (Application no. 36832/97, judgment of 24 June 2008)
- Soulas v. France (Application no. 15948/03, judgment of 7 October 2008, in French only)
- Stankov and the United Macedonian Organisation Ilinden v. Bulgaria (Applications nos. 29221/95 and 29225/95, admissibility decision of 29 June 1998; judgment of 2 October 2001)
- Steel and Others v. United Kingdom (Application no. 24838/94, judgment of 23 September 1998)

- Steel and Morris v. United Kingdom (Application no. 68416/01, judgment of 15 February 2005)
- Strati v. Turkey (Application no. 16082/90, judgment of 22 September 2009)
- Társaság a Szabadságjogokért v. Hungary (Application no. 37374/05, judgment of 14 April 2009)
- Thlimmenos v. Greece (Application no. 34369/97, judgment of 6 April 2000); (2000) 31 EHRR 15
- Thorgeir Thorgeirson v. Iceland (Application no. 13778/88, judgment of 25 June 1992)
- Tsonev v. Bulgaria (Application no. 45963/99, judgment of 13 April 2006)
- United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (Application no. 44079/98, judgment of 20 October 2005)
- United Macedonian Organisation Ilinden and Others v. Bulgaria (Application no. 59491/00, judgment of 19 January 2006)
- Vajnai v. Hungary (Application no. 33629/06, judgment of 8 July 2008)
- Vrahimi v. Turkey (Application no. 16078/90, judgment of 22 September 2009)
- Women and Waves v. Portugal (Application no. 31276/05, judgment of 3 February 2009)
- X v. UK (Application no 5877/72, admissibility decision of 12 October 1973)
- X and Y v. The Netherlands (Application no. 8978/80, judgment of 26 March 1985)
- Young, James and Webster v. the United Kingdom (Application no. 7601/76; 7806/77, judgment of 13 August 1981)
- Zdanoka v. Latvia [GC] (Application no. 58278/00, judgment of 16 March 2006)
- Ziliberberg v. Moldova (Application no. 61821/00, admissibility decision of 4 May 2004; judgment of 1 February 2005) Communicated Cases before the European Court of Human Rights
- Alekseyev (Nikolay Aleksandrovich) v. Russia (Applications nos. 4916/07, 25924/08 and 14599/09, lodged on 29 January 2007, 14 February 2008 and 10 March 2009)
- Dinc et Saygili v. Turkey (Application no. 17923/09, lodged on 9 March 2009, in French only)
- Hmelevschi (Boris) and Moscalev (Vladimir) v. Moldova (Applications nos. 43546/05 and 844/06, lodged on 1 and 8 December 2005)
- Juma Mosque Congregation and Others v. Azerbaijan (Application no. 15405/04, lodged on 28 April 2004).
- Mătăsaru v. Moldova (Application no. 44743/08, lodged on 22 August 2008)
- Mătăsaru v. Moldova (Application no. 20253/09, lodged on 20 April 2009)
- Mocanu (Sergiu) v. Moldova (Application no. 24163/09, lodged on 11 May 2009)
- Popa (Radu) v. Moldova (Application no. 29837/09, lodged on 8 June 2009)
- Primov and Others v. Russia (Application no. 17391/06 lodged on 30 May 2006)
- Ryabinina (Yelena Zusyevna) v. Russia (Application no. 50271/06, lodged on 20 November 2006)
- Stati and Marinescu v. Moldova (Application no. 19828/09, lodged on 16 April 2009)
- Sultanov (Vidadi) v. Azerbaijan (Application no. 21672/05, lodged on 2 June 2005)
- Zengin (Lütfiye) and Others v. Turkey (Application no. 36443/06, lodged on 14 August 2006)

The list of ECHR' decisions is presented in the OSCE Guidelines on Freedom of Peaceful Assembly Second edition.

CONTENTS

crimeahrg.org

ISBN 978-966-2544-27-5

Annex 962

Human Rights Watch, Online and on All Fronts: Russia's Assaults on Freedom of Expression (July 2017)

Online and On All Fronts

hrw.org/report/2017/07/18/online-and-all-fronts/russias-assault-freedom-expression

July 18, 2017

July 18, 2017

Russia's Assault on Freedom of Expression

Russia: Assault on Freedom of Expression

Repressive Laws and Policies Restrict Online Speech, Stifle Critical Voices

July 13, 2017

Piecemeal Justice for Murder of Russian Opposition Leader

Masterminds Behind Killing of Boris Nemtsov Still at Large

Since 2012, the Russian authorities have intensified a crackdown on freedom of expression, selectively casting certain kinds of criticism of the government as threats to state security and public stability and introducing significant restrictions to online expression and invasive surveillance of online activity.

While new restrictions on freedom of expression appear to target political opposition or civic groups, they affect all Russians. Curbing free speech denies a voice to anyone dissatisfied with the ongoing economic crisis or even mildly critical of Russia's foreign policy.

Russia has introduced significant restrictions to online speech and invasive surveillance of online activity and prosecutes critics under the guise of fighting extremism.

The Russian government's clampdown on free speech comes as a part of a larger crackdown on civil society, unleashed after the 2011-2012 mass protests and Vladimir Putin's return to the presidency in May 2012. Since then, Parliament has adopted numerous laws that limit or can

be used to interfere with freedom of speech and information. The authorities have wasted no time in invoking many of these laws. Some of the more recently adopted laws threaten privacy and secure communications on the internet and, in effect, make no digital communication in Russia safe from government interference. Such unchecked surveillance has a stifling effect on freedom of expression online.

Authorities have unjustifiably prosecuted dozens on criminal charges for social media posts, online videos, media articles, and interviews. Today, many Russians are increasingly unsure about what is acceptable speech and what could land them a large fine or prison term.

State intrusion in media affairs has reached a level not seen in Russia since the fall of the Soviet Union. The laws passed since 2012 have dramatically increased the state's control over the media landscape. With few exceptions, mainstream media outlets have become the voice of the state and use elaborate propaganda tools to mobilize patriotic support for the government. State-driven media outlets promote biased reporting and, at times, blatant misinformation on many issues of the day, especially concerning the situation in Ukraine.

While the government can control the media narrative on politically sensitive issues on state-controlled television and other mainstream media, government critics can, potentially, reach most Russians online because of the growing use of social media. Most independent debate now takes place online, especially through social media. In the last four years, and especially following the revolution in Ukraine in 2014 and the subsequent Russian military intervention in Ukraine, Russian authorities have stepped up measures aimed at bringing the internet under greater state control.

Some of these measures relate to internet infrastructure. For example, in 2016, parliament passed a law requiring telecommunications and internet companies to retain the contents of all communications for six months and data about those communications for three years. The law makes it easier for the authorities to identify users and access personal information without judicial oversight, unjustifiably interfering with privacy and freedom of expression. A 2015 law which applies to email services, social media networks, and search engines prohibits storage of Russian citizens' personal data on servers located outside Russia. In November 2016, Russian authorities blocked access to LinkedIn, a business social networking service with over 400 million users worldwide, for noncompliance with the 2015 legislation.

For the most part, post-2012 laws concerning internet content, data storage, and online activity are in their early stages of implementation, and the manner and scope in which they will be enforced remain unclear.

Meanwhile, the authorities have vigorously enforced older laws to prosecute online speech. In doing so they have increasingly conflated criticism of the government with "extremism," especially on certain topics such as the occupation of Crimea, criticism or satire regarding the Russian Orthodox Church, or Russia's armed intervention in Syria. The number of criminal cases stemming from "extremism" charges, especially in connection with sharing statements

and opinions online, has soared. Based on data provided by the SOVA Center, a prominent Russian think-tank, the number of social media users convicted of extremism offences in 2015 was 216, in comparison with 30 in 2010.

Between 2014 and 2016, approximately 85 percent of convictions for “extremist expression” dealt with online expression, with punishments ranging from fines or community service to prison time. In the period between September 2015 and February 2017, the number of people who went to prison for extremist speech spiked from 54 to 94.

> In December 2015, a court sentenced a blogger from the Siberian city of Tomsk to five years in prison for “extremism” after he posted videos on YouTube and social media criticizing Russia’s military intervention in Ukraine, making discriminatory remarks about people arriving in Russia from eastern Ukraine, and alleging corruption by local officials. One year later, in December 2016 another blogger from Tyumen, Siberia, received a two-and-a-half year prison sentence for the extremist crime of “public justification of terrorism,” after writing a blog post criticizing Russia’s military involvement in Syria. While the first blogger’s sentence was severely disproportionate, the second was convicted of a crime and jailed simply for expressing his opinion.

In the three years of Russia’s occupation of Crimea, authorities have silenced dissent on the peninsula, claiming to be “combating extremism.” Russian authorities have aggressively targeted critics for harassment, intimidation, and, in some cases, trumped-up criminal charges. Crimean Tatars, an ethnic minority that is native to the Crimean peninsula and that has openly opposed Russia’s occupation, have been particular victims of the government’s crackdown. This report documents the most recent cases of persecution of Crimean Tatar activists, their lawyers, and others who publicly and peacefully expressed criticism of Russia’s actions in Crimea. The Russian authorities have forced the closure of all independent media outlets in Crimea.

The authorities have actively enforced legal provisions that make a criminal offense of “offending the feelings of religious believers.” Authorities introduced this crime into the Criminal Code in 2013, following the highly publicized unauthorized punk music performance in a Russian Orthodox cathedral in Moscow by the feminist group Pussy Riot. In 2016, the authorities charged at least six people under this provision. At this writing, five individuals were convicted and handed sentences ranging from a fine to two years’ imprisonment.

> In May 2017, a court convicted a 22-year-old video blogger, Ruslan Sokolovsky, on criminal charges ofincitement of hatred and insult to the religious feelings of believers. The charges stemmed from a prank video by Sokolovsky, which he shared on social media, playing Pokémon GO on his iPhone in a Russian Orthodox Church in Ekaterinburg. Sokolovsky also made several other satirical or critical videos or blog posts about the Orthodox Church. The court gave the blogger a three-and-a-half year suspended sentence (reduced on appeal to two years and three months).

Back to top

Related Content

At the same time, authorities used extremism laws offline as well to ban the Jehovah's Witnesses and to harass other minority religious groups with a smaller presence in Russia.

Russian authorities have actively enforced a 2013 law, which bans dissemination of information about so-called "nontraditional sexual relations," otherwise known as the anti-LGBT "propaganda" law. At this writing, Russian courts have found at least six people guilty of violating that federal law. Specifically, the law prohibits information that normalizes same-sex relationships or portrays them as acceptable and of equal value to heterosexual relationships. While Russian government officials and parliament members claim that the goal of the ban is to protect children from potentially harmful subject matter, the law directly harms children by denying them access to essential information and creating a stigma against LGBT children and LGBT family members.

Independent nongovernmental groups have also felt the noose tightening on their freedom of expression. Enforcement of the 2012 "foreign agents" law has served to discredit and demonize independent groups that accept foreign funding. Russians and Russian groups are also affected by the 2015 "undesirables" law, which empowers the prosecutor's office to ban, as "undesirable" foreign or international organizations that allegedly undermine Russia's security, defense, or constitutional order. The prosecutor can use the "undesirables" law not only to end a foreign organization's activity but also force Russian groups to cut off all contact with the targeted foreign organization. The purpose appears to be to further isolate independent Russian organizations from their international allies and partners.

Russia's Constitution guarantees freedom of thought and expression and prohibits censorship. Russia is a party to several international treaties that impose legal obligations on governments to protect freedom of expression and information. International law permits some justifiable interference with or limitations on freedom of expression, but any such measures must be taken in pursuit of a recognized legitimate goal, have a proper basis in law, be justified as necessary and proportionate in a democratic society, and cannot be discriminatory.

Freedom of expression constitutes one of the essential foundations of a democratic society and it extends not only to information and ideas that are received favorably but also to those that offend, shock or disturb. The Russian government should respect and uphold the right of people in Russia to freely receive and disseminate information and express diverging or critical views.

Recommendations

To the Government of the Russian Federation

- Immediately end the crackdown on freedom of expression. Remove all undue restrictions on the right of people in Russia to freely receive and disseminate independent information and express critical views.
- As a matter of urgency, amend Russia's vague and overly broad extremism legislation.

End politically motivated prosecutions on “extremism charges,” such as “public calls to separatism” or “incitement to hatred,” including for online statements. Immediately quash criminal convictions or drop all charges against individuals who have been unjustifiably prosecuted under anti-extremist legislation, including for online expression, including Alexei Kungurov, Rafis Kashapov, Ekaterina Vologzheninova, Mykola Semena, Ruslan Sokolovsky, Konstantin Zharinov, Vadim Tyumentsev, Darya Polyudova, Ilmi Umerov, and others; release those held in custody.

- Lift all measures directed at shutting down public debate and ensure that restrictions can only be placed on free speech by an independent judicial body on a case-by-case basis following an assessment that the speech constitutes a genuine and imminent threat to public or individual safety; any restrictions should be strictly necessary, proportionate, and nondiscriminatory.
- Ensure that the Russian government’s efforts to control expression on the internet are not in violation of Russia’s international human rights obligations, including the obligation to respect, promote and protect free speech, online and offline. Repeal legislation that expands the powers of law enforcement and security agencies to control online speech and keep dissenters in check. In the meantime, desist from implementing laws that inhibit public debate and encroach on human rights and immediately cease overly broad blocking of websites.
- Cease political censorship on the internet and ensure that restrictions apply only to information with legitimately harmful and illegal content, rather than to personal views and opinions. Cease the use of online censorship as a tool to persecute protected speech by government critics and silence online media and dissenting voices.
- Repeal the 2014 Bloggers’ Law and refrain from requiring social media users to register with their real name.
- Repeal the 2016 counterterrorism legislation requiring telecommunications providers and internet companies to store all communications data for six months and all metadata up to three years for potential access by security services. Also repeal the 2015 data storage law requiring service providers to store Russian personal data on Russian territory. These laws make it easier for the authorities to identify users and access personal information without sufficient safeguards, in violation of human rights protections. Ensure any request for user data complies with international human rights standards and is subject to prior judicial authorization;
- Ensure that independent nongovernmental groups can operate freely and without undue interference, including by prompt repeal of the 2012 “foreign agents” law and the 2015 “undesirables” law;
- Repeal the 2013 law banning LGBT “propaganda”;
- Immediately cease harassment, intimidation, and politically motivated prosecutions of Crimean Tatars, including under trumped up charges of “extremism”. Ensure that media in Crimea can operate freely and convey a plurality of views, even if they do not support Russia’s actions in Crimea;
- Cooperate fully with the special procedures of the United Nations Human Rights Council, including by issuing a standing invitation for country visits and responding positively to

pending requests for access to Russia by the UN special rapporteurs on the situation of human rights defenders, on the rights to freedom of association and of assembly, and on the promotion and protection of the right to freedom of expression.

- Request that European Commission for Democracy Through Law (the Venice Commission) examine the following laws, with a view to determining whether they, taken separately or in combination with each other, comply with Russia's obligations under the European Convention on Human Rights:
    - Federal Law № 139-FZ;
    - The 2013 amendment to article 148 of the criminal code criminalizing "a public action expressing clear disrespect for society and committed in order to insult the religious feelings of believers";
    - The Lugovoi law;
    - The 2013 amendment to article 280.1 of the criminal code, criminalizing "public, online calls aimed at violating the territorial integrity of the Russian Federation";
    - Federal Law № FZ-97 "On Amendments to the Federal Law 'On Information, Information Technologies and Protection of Information' and Separate Legislative Acts of Russian Federation concerning Information Exchange with the Use of Information-Telecommunication Networks;
    - Federal Law № 464-FZ "On Amendments to the Law on Mass Media and the Code of Administrative Offenses";
    - The 2013 amendment adding article 354.1 to Russia's Criminal Code, establishing fines of up to 300,000 rubles (about $8,300) or prison terms of up to five years to those convicted for "rehabilitation of Nazism";
    - Federal Law № 464-FZ "On Amendments to the Law on Mass Media and the Code of Administrative Offenses";
    - Federal Law № 242-FZ "On Amendments to Separate Legislative Acts Concerning Processing Personal Data in information and Telecommunication Technologies";
    - The "Yarovaya" amendments;
    - Federal Law № 208-FZ from June 23, 2016 "On Amendments to the Federal Law 'On Information, Information Technologies and Data Protection' and the Code of Administrative Offenses";
    - Draft law banning software which allows access to internet content that has been banned in Russia (VPNs and internet anonymizers);
    - Draft law banning anonymity for users of online messenger applications.

To Russia's International Partners

- The European Union, its individual member states, as well as OSCE participating states —including Canada, Norway, Switzerland, and the United States, as well as Russia's BRICS partners—including South Africa and Brazil—should raise concerns about the human rights violations documented in this report in all relevant multilateral forums, including at the UN Human Rights Council, the Organization for Security and Co-operation in Europe, and the Council of Europe, as well as in in their bilateral dialogues

with the Russian government. They should persistently press Russian authorities and those in Russian-occupied Crimea to promptly implement the recommendations addressed to them. In particular, as a matter of utmost urgency, they should insist that the authorities:

  - Amend Russia's vague and overly broad extremism legislation and end politically motivated prosecutions on "extremism charges," such as "public calls to separatism" or "incitement to hatred," including for online statements;
  - Immediately quash convictions or drop all criminal charges against Alexei Kungurov, Rafis Kashapov, Ekaterina Vologzheninova, Mykola Semena, Ruslan Sokolovsky, Konstantin Zharinov, Vadim Tyumentsev, Darya Polyudova, Ilmi Umerov, and others, unjustifiably prosecuted under anti-extremist legislation, including for online expression; release those held in custody;
  - Repeal legislation that expands the powers of law enforcement and security agencies to control online speech, including the Bloggers' Law, the Yarovaya laws, the Data Storage law, and the gay propaganda law;
  - Ensure that independent nongovernmental groups can operate freely and without undue interference, including by prompt repeal of the 2012 "foreign agents" law and the 2015 "undesirables" law;
- Press for immediate and unfettered access to Crimea for relevant human rights mechanisms of the OSCE, the UN, and the Council of Europe;
- Step up public contacts with civil society in Russia on the occasion of all high-level meetings with Russian authorities; continue support of Russia's civil society groups.

Additional Recommendations to the Council of Europe, the European Union, and the Organization for Security and Co-operation in Europe:

- The Committee of Ministers, the Secretary General, the Parliamentary Assembly of the Council of Europe, or the European Union (European Commission, European Council and the European External Action Service, and the European Parliament), or the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE) should request that the European Commission for Democracy Through Law (the Venice Commission), examine the laws listed above, with a view to determining whether they, taken separately or in combination with each other, comply with Russia's obligations under the European Convention.
- The OSCE Representative on Freedom of the Media, jointly with the OSCE Office for Democratic Institutions and Human Rights, should compile a joint report on freedom of expression in Russia that provides a comprehensive analysis of relevant legislation and recommendations to the Russian government.

To Internet Companies Operating in Russia (such as Twitter, Facebook, Microsoft, Google, VK, etc.):

- Assess government requests to censor content against international human rights standards and refrain from complying where the underlying law or specific request is inconsistent with those standards;
- Minimize the amount of user data stored in Russian territory, given the inadequate safeguards for the right to privacy in Russian law and practice. Require a court order that clearly articulates the legal justification before complying with any request for user data or to facilitate surveillance/interception. Refrain from complying where the request is overbroad or not consistent with international human rights standards;
- Adopt human rights policies outlining how the company will resist government requests for censorship or surveillance, including procedures for narrowing requests that may be disproportionate or challenge requests not supported by law;
- Publish semi-annual transparency reports, covering Russia and all markets where companies operate. At a minimum, such reports should provide information on:
    - number of government requests to restrict access to content or suspend/delete accounts received;
    - number of pieces of content or accounts affected by such requests;
    - number of such requests complied with, in whole or in part;
    - number of government requests for user data or other surveillance assistance (i.e. interceptions) received, and the number of accounts affected by such requests;
    - number of requests complied with, in whole or in part;
    - Incorporate end-to-end and strong encryption into products and services by default wherever possible, and refrain from complying with any demands to weaken security features or build “back doors” into encryption to facilitate abusive surveillance.

Back to top

Methodology

This report is based on research carried out by Human Rights Watch researchers through interviews and document reviews conducted between September 2015 and May 2017 and includes earlier research published in Human Rights Watch news releases and other public documents from 2012 to 2017.

Researchers conducted over 50 interviews with lawyers, staff and leaders of nongovernmental organizations (NGOs), as well as journalists, editors, political and human rights activists, and bloggers and their family members.

All interviews were conducted in Russian or English by Human Rights Watch researchers who are fluent in both languages. All interviewees were informed of the purpose of the interview, its voluntary nature and the goal and public nature of our reports. All interviewees gave their oral consent to participate in the interview. Pseudonyms have been used for some bloggers and

additional identifying details have sometimes been withheld. No interviewee received compensation for providing information. Most interviews were conducted by telephone or via internet communication.

Human Rights Watch researchers also reviewed laws, including legislative amendments adopted since 2012, and relevant government regulations and rules pertaining to internet content and freedom of expression. While the report discusses the implications of some of these laws on the right to privacy, a full discussion of Russia's surveillance systems, including the country's System of Operative Search Measures (SORM), and legal framework are beyond the scope of this report.

Researchers also obtained and analyzed copies of documents relevant to specific cases, including indictments and court judgments of persons convicted on politically motivated charges.

Human Rights Watch has closely monitored human rights developments in Russia throughout Russia's post-Soviet history. During that time, we have called on the authorities to repeal regressive laws and allow the unimpeded work of independent nongovernmental groups in accordance to Russia's international commitments to uphold freedom of expression, association, and assembly. We have also called on Russia's international partners to play a positive role in ensuring the government protects fundamental human rights in Russia.

Back to top

Glossary/Abbreviations

Center E – An abbreviation for the Russian Ministry of Internal Affairs' Center for Countering Extremism. Mandated to combat terrorism and extremism, the center also conducts surveillance and special operations.

DDoS (dedicated denial of service) – An attack that attempts to make a website or server unavailable by overwhelming it with traffic from multiple online sources, which prevents users from accessing that website or service. Such an attack is often the result of multiple compromised systems flooding the targeted system with traffic.

Domain name – A unique name that identifies a website.

DPI (deep packet inspection) – A type of data processing that enables the examination of the content of communications (an email or a website) as it is transmitted over an internet network. Once examined, the communications can be then copied, analyzed, blocked, or even altered. DPI equipment allows internet service providers or governments to monitor and analyze internet communications on a large scale in real time. While DPI does have some commercial applications, DPI can also enable internet filtering and blocking and highly intrusive surveillance.

FSB (Federal Security Service) – Russia's federal executive body with the authority to implement government policy on national security of the Russian Federation, counterterrorism, the protection and defense of state borders.

Gazprom – A Russia-based global energy company focused on geological exploration, production, transportation, storage, processing, and sales of gas, gas condensate, and oil, sales of gas as a vehicle fuel, as well as generation and marketing of heat and electric power. It holds the world's largest natural gas reserves.

ISP (internet service provider) – An organization that provides services for accessing and using the internet. An ISP may be organized in various forms, such as commercial, community-owned, nonprofit, or otherwise privately owned.

LiveJournal – An international online platform for over 50 million blogs.

Metadata – Data that describes other data and summarizes basic information about data, which can make finding and working with particular instances of data easier. For example, mobile phone calls produce metadata, including the phone numbers called, times of calls, durations of calls, and location information.

Roskomnadzor – Russia's federal executive authority responsible for overseeing online and media content. Its full name is the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications. Created in December 2008, it is authorized to carry out permitting and licensing activities, validation and supervision in the spheres of telecommunications, information technologies, and mass communications.

Server – A computer that is used only for storing and managing programs and information used by other computers.

VKontakte (international name: VK) - A social network with headquarters in St. Petersburg, Russia. It is the most popular social network site in Russia and several other countries in the region.

VPN (Virtual Private Network) - A network technology that creates a secure connection over a shared or public network such as the internet. VPNs are often used by large corporations, government agencies, and educational institutions to allow users to access private networks remotely. Security mechanisms, such as encryption, also allow VPN users to shield their communications from interception and circumvent internet filtering.

Back to top

I. Closing Civic Space

The years since the start of Vladimir Putin's third presidential term in 2012 have been the worst for human rights in the country's post-Soviet history. Persecution of the Kremlin's critics, accompanied by a barrage of repressive and discriminatory laws, have dramatically shrunk

public space for civic activism, independent media, and online freedom. The attack on activists and critics began immediately after President Putin's inauguration, ebbing only slightly in the lead up to the February 2014 Winter Olympic Games in Sochi. The backlash intensified considerably after the Games ended and as the political crisis in Ukraine, including Russia's occupation of Crimea and the Russia-backed armed conflict in eastern Ukraine, escalated.

Mobilizing 'Patriotic' Sentiment and Branding Critics as Traitors

The backlash against dissent began in response to unprecedented anti-government mass demonstrations that swept through Moscow and several other large Russian cities in 2011 and 2012. Tens of thousands protested against what they perceived to be rigged parliamentary and presidential elections.

With Putin's return to the presidency in May 2012, the Kremlin rammed through the parliament a raft of laws that severely curtailed freedom of assembly, introduced massive restrictions on the work of nongovernmental organizations (NGOs), re-criminalized libel, and expanded the definition of high treason to allow selective and arbitrary application, including against those taking part in routine discussions with foreign counterparts or presenting human rights reports at international conferences.

At the center of the government's crackdown on fundamental freedoms was the effort to discredit and marginalize Russia's vibrant human rights movement by accusing its members of promoting Western interests in exchange for funding. This effort found its legislative instrument in the so-called foreign agent law, adopted in 2012 and amended in 2014, which clearly sought to stifle independent advocacy and other activities by critical NGOs by branding them as "foreign agents" if they accepted any foreign funding."The law also provides individual criminal penalties for "malicious evasion" of the duty to file the documents required for inclusion in the register of nonprofit organizations "performing the functions of a foreign agent."

Government-controlled and pro-Kremlin broadcasters have aired numerous documentary-style programs portraying human rights defenders and groups as "national traitors" and spies.

At this writing, the "registry of foreign agents" by Russia's Ministry of Justice includes over 90 NGOs, practically all the country's leading domestic rights groups among them. Between 2012 and 2016 at least 30 groups closed down rather than accept the "foreign agent" label. In June 2016, authorities for the first time criminally prosecuted a human rights defender under the law, charging Valentina Cherevatenko, a chair of a human rights and peace-building group in the south of Russia, with "malicious evasion" of registration as a "foreign agent." If found guilty, Cherevatenko will face up to two years in prison.

Some government leaders repeatedly and publicly expressed profound contempt for certain human rights norms or alleged that foreign or foreign-funded organizations in Russia aimed to destabilize Russia and undermine its sovereignty.

A group of parliamentarians proposed to criminalize "anti-Russian" or "anti-patriotic" statements. Russian human rights lawyers remarked that if adopted, this bill would throw

Russia back to being an “ideological” state reminiscent of the USSR, with a single, obligatory state ideology.

In 2015, the Russian parliament adopted a law empowering the Constitutional Court to review rulings of international human rights bodies, including the European Court of Human Rights (ECHR), and to declare them “non-executable” in case of supposed contradictions with Russia’s Constitution. At this writing, the Constitutional Court has designated two ECHR rulings “unconstitutional.”

Also in 2015, a law on “undesirable organizations” entered into force. The law allowed the prosecutor general to extrajudicially ban foreign or international nongovernmental organizations deemed to undermine Russia’s “state security,” “national defense” or “constitutional order.” Most disturbingly, the law introduced administrative and criminal liability for Russian citizens who maintain any ties with “undesirable organizations” with penalties ranging from fines to six years in prison.

At this writing, the prosecutor general’s office has banned 11 foreign organizations as “undesirable.” All but one are American democracy promotion or civil society capacity-building organizations, including the Open Society Foundations and the National Endowment for Democracy, which for many years provided solid financial support to leading Russian human rights groups.

There has also been a sharp increase, since 2014, in the number of criminal cases on “high treason” charges, including a high-profile case that was ultimately dropped but seemed aimed at sending a chilling message to people in Russia to be extremely cautious about taking actions that might expose Russia’s role in the armed conflict in Ukraine.

Finally, in recent years the government has actively promoted “traditional values”–in partnership with the Russian Orthodox Church—as part of a new Russian national ideology. This is the context in which some of the religious insult “extremism” cases and the banning of LGBT speech, in certain circumstances documented below, has taken place. Since 2015, Russian nationalist and Russian Orthodox activists defending “traditional values” have forced the cancellation of at least two major productions at state theaters, claiming they offended feelings of religious believers. In 2016, such groups violently disrupted two art exhibitions in Moscow, causing one to close. Such developments have sparked questions about the future of artistic freedom in Russia.

II.Timeline of Restrictive Laws

Between 2012 and 2016, the Russian government established tighter control over freedom of expression through a raft of disturbingly regressive laws that provide the government with tools to restrict access to information, carry out unchecked surveillance, and censor information that the government deems “extremist,” “separatist,” or otherwise illegal and harmful to the public. The laws have been used to target a large variety of groups and people, ranging from individual social media users and bloggers to journalists, political opposition activists, large and

small online media outlets, and online businesses.

The purpose of some of these laws appeared to be to shrink the space, including online, for public debate in general and especially on issues the authorities saw as divisive or threatening, such as the armed conflict in Ukraine, or the rights of LGBT people. Others apparently aim specifically to undermine the privacy and security of internet users, by regulating data storage, unjustifiably restricting users' access to information, and ensuring that a wealth of data, including confidential user information and the content of communications, could be made available to authorities at their request often without any judicial oversight.

The timeline below summarizes the passage of these laws in chronological order. More detailed information on some of these laws and their implementation is provided in relevant thematic sections of this report.

2012

Creation of the Internet Blacklist Registry

In 2012, Russia's parliament (State Duma) passed Federal Law № 139-FZ "On Introducing Amendments to the Law on Protection of Children from Information Harmful to Their Health and Development." The law introduced a uniform registry of websites or URLs subject to blocking—or internet blacklist—to be managed by Roskomnadzor, the federal agency empowered to oversee online and media content. Once a website appears on the registry, Roskomnadzor gives the site's hosting provider 24 hours to notify the site owner to remove relevant material. If the owner does not comply, the hosting provider is required to restrict access to or remove the material itself. Hosting providers include social media companies and other platforms for user-generated content. If the material is not removed, internet service providers are then required to block access to the website. Roskomnadzor will remove the website from the registry only if the owner takes down harmful content and sends the agency a request for reinstatement, or successfully appeals the ban in court.

2013

"Gay Propaganda" Ban

Law № 135-FZ, which has the stated aim of "protecting children", prohibits "promoting the denial of traditional family values," by promoting, in particular, "non-traditional sexual relations." In Russia, "non-traditional sexual relations" are broadly understood to mean relationships among lesbian, gay, bisexual, and transgender (LGBT) people. Under law, promoting "non-traditional sexual relations" to children includes: "spreading information aimed at instilling in children non-traditional sexual arrangements, the attractiveness of non-traditional sexual relations and/or a distorted view that society places an equal value on traditional and non-traditional sexual relations or propagating information on non-traditional sexual relations making them appear interesting." The law consists of a series of amendments to the law "On

Protection of Children from Information Harmful to Their Health and Development and to the Code of Administrative Violations." Online information deemed to represent "propaganda of non-traditional sexual relations" can be added to the "internet blacklist" described above.

The "propaganda" ban applies to information provided via press, television, radio, and the internet, and encompasses anything portraying LGBT relationships as normal or healthy. Under the law, people found responsible for "promotion of non-traditional sexual relations" to any child under 18, an administrative infraction, face fines of up to 5,000 rubles (US$82); government officials face fines of 40,000 t0 50,000 ($660 to $826); and organizations, up to 1 million rubles ($16,521) or a suspension of activity for up to 90 days. Heavier fines may be imposed for the same actions if done through mass media and telecommunications, including the internet.

Offending Religious Feelings of Believers

A 2013 law makes it a crime to offend the "religious feelings of believers." The law was adopted one year after the 2012 conviction of several members of the feminist protest punk group Pussy Riot for criminal "hooliganism" in retaliation for their anti-Putin performance in a Moscow cathedral. The law amended article 148 of the criminal code to criminalize "a public action expressing clear disrespect for society and committed in order to insult the religious feelings of believers." Punishment ranges from a heavy fine to one year in prison. The law provides no definition of "religious feelings" and sets no threshold for "offending" them, allowing prosecutors and courts tremendous discretion to target critical speech.

"Lugovoi" Law

Federal Law № 398-FZ, adopted in December 2013, empowers the authorities to block—within 24 hours and without a court order—online sources that disseminate calls for mass riots, extremist activities, or participation in unsanctioned mass public events. This measure, named after the parliamentarian who proposed it, authorizes the prosecutor general or his deputies to ask Roskomnadzor to block access to media containing such content. Based on the law, the prosecutor's office must provide Roskomnadzor with the site's domain name, web address, and the specific webpages containing the banned content." Once Roskomnadzor receives the request, it must immediately notify internet service providers about the banned content. The provider then must block access to the website and has 24 hours to notify the website's owners, who must at once remove the banned content. Website owners can seek judicial appeal. Russia's Presidential Human Rights Council advised the president against signing the law, calling it excessively restrictive and warning about its potential for selective, arbitrary implementation. As described below, the authorities have repeatedly used the law to target critics.

Separatist Calls

Separatism is a form of extremism under Russian law, and making separatist calls is prohibited by article 280 of the country's criminal code. Nevertheless, in December 2013 parliament

adopted article 280.1, criminalizing “public, online calls aimed at violating the territorial integrity of the Russian Federation.” As described below, the authorities have used this new measure to prosecute and intimidate critics of Russia’s actions in Crimea.

2014

“Bloggers’ Law”

Adopted as part of broader counterterrorism legislation in April 2014, the “Bloggers’ Law” requires Russian bloggers with more than 3,000 unique visits per day to register with Roskomnadzor. The term “blogger” is defined broadly and may include anyone who posts on microblogs such as Twitter, or social networks, which could bring many popular social media users within the law. Once registered, those bloggers assume practically the same legal constraints and responsibilities as mass media outlets, without the same protections or privileges. They are held responsible for verifying information for accuracy, indicating the minimal age of the intended audience, ensuring data privacy protections, and complying with restrictions on support of electoral candidates. Also, they can be held liable for comments posted by third parties on their website or social media page. Bloggers registered in the “3,000 visitors” category are also required to provide their real surname, initials, and contact details on their websites or pages. If they fail to do this, Roskomnadzor may instruct blogging platform providers or site administrators to provide additional information about such users, including names and contact information, to the authorities.

The law also introduces the concept of “organizers of dissemination of information” on the internet, which is a person or entity “providing informational systems or software aimed at or used for receiving, transferring, delivering or processing users' electronic messages on the Internet.” Under this broad definition, any service which enables its users to communicate with each other will fall within the definition of an “information dissemination organizer,” including social media platforms and online messenger applications. The law instructs Roskomnadzor to create and manage the national database of organizers of information dissemination. Failure to register with Roskomnadzor is punishable by websites or mobile applications being blocked and/or fines of up to 3,000 rubles (US$49) for individuals, up to 30,000 rubles (US$493) for officials and up to 500,000 rubles (US$8,482) for entities. As with the registries of bloggers, news aggregators and banned websites, while it is possible to search the registry to verify whether a specific entry has been added to the list, the list itself is not publicly available. According to Roskomsvoboda, an activist group that advocates for internet freedom, at this writing the list consists of 85 online entities, including the email service Mail.ru, the search engine Yandex, and VKontakte. It does not, at this writing, include some major online messenger applications, such as WhatsApp, but in June 2017, the online messenger application Telegram was added to the list. Telegram Organizers of information dissemination are required to store certain user data for six months, raising privacy concerns by making it easier for authorities to identify internet users. They are also required to provide this information to law enforcement and security services at their request and install equipment to facilitate interception of communications.

Media Ownership Laws

In October 2014, parliament amended the Mass Media Law to, among other things, reduce the permissible percentage of foreign ownership of any print media, online media, television, or radio broadcasters from 50 to 20 percent. Another set of amendments to the Mass Media Law and the Code of Administrative Offenses, enacted in December 2015, requires media outlets, broadcasters, and publishers to report to Roskomnadzor all funding originating from "international sources," which is broadly defined.

Rehabilitation of Nazism

A May 2014 law added article 354.1 to Russia's Criminal Code, establishing fines of up to 300,000 rubles (about $4,956) or prison terms of up to five years to those convicted for "rehabilitation of Nazism," a formulation ostensibly aimed at glorifying Nazism. If the offense involves the use of public office or the media the maximum punishment rises to 500,000 rubles in fines (US$ 8,260) or up to three years in prison with a ban from certain posts and professions, for another three years. Experts criticized the law as vague and overly broad, with potential negative impact on journalists, archivists, museum curators, and historians. Its selective implementation has so far led to several unjust sentences.

2015

Data Storage Law

Federal Law № 242-FZ, which entered into force in September 2015, requires website operators and service providers to store and process personal data of Russian citizens on servers located inside Russia. The law applies to email services, social networks, and search engines, such as Facebook and Google, and requires certain service providers, foreign and domestic, to store all personal data of Russian citizens in databases located inside the country. Failure to comply can result in fines or even a blocking order against the website.

2016

"Yarovaya" Amendments

The "Yarovaya" amendments, named for their key author, Irina Yarovaya, a member of parliament from the ruling United Russia party, were signed into law by President Putin in July 2016. The amendments include numerous provisions that severely undermine the right to privacy and are detrimental to freedom of expression on the internet.

The amendments require telecommunications and certain internet companies to retain copies of all contents of communications for six months, including text messages, voice, data, and images. Companies must also retain communications metadata for up to three years, which

could include information about the time, location, and sender and recipients of messages. Internet and telecommunications companies will be required to disclose communications and metadata, as well as “all other information necessary,” to authorities on request and without a court order. Under the law, all the above-mentioned data must be stored on Russian territory. The law increases penalties for companies that fail to disclose requested information, with fines of up to one million rubles (US$16,521).

The Yarovaya amendments also require companies to provide security authorities the “information necessary for decoding” electronic messages if they encode messages or allow their users to employ “additional coding.” Since a substantial proportion of internet traffic is “encoded” in some form, this provision affects a broad range of online activity. At a minimum, it could require companies to hand over encryption keys. But the provision also raises questions about how it will apply to companies that do not retain copies of encryption keys, like some major online messenger applications. It could potentially lead to a ban of such services or a requirement that companies build “back doors” and weaken the security of encrypted tools.

The Yarovaya amendments also affect issues not directly related to online communication. For example, they ban proselytizing and public speaking outside of officially recognized religious institutions and cemeteries, with the objective of engaging others in the activities of a religious organization. The ban does not apply to priests, heads of registered religious organizations, and persons specifically designated by heads of registered religious organizations.

The amendments also criminalize “the failure to report” a wide range of crimes related to terrorism and extremism with little specificity on when such a reporting requirement would apply. The amendments increase penalties for “public justification of terrorism” online and penalize “inducing, recruiting, or otherwise involving” others in mass unrest. They also increase penalties for a wide range of other crimes related to terrorism and extremism.

2017

Law Regulating News Aggregators

Amendments to the federal law “On Information, Information Technologies and Protection of Information” and the administrative code, adopted in June 2016, entered into force in January 2017. They require owners of online news aggregator sites with more than one million daily users to be accountable for the content of all information posted on the sites, except when such content represents a verbatim reproduction of materials published by registered media outlets. The amendments apply to news aggregators, including search engines and potentially social media sites, that disseminate news in Russian or other languages of the Russia Federation and restrict the ownership of such news aggregators to Russian companies or citizens.

Draft Law Banning VPNs and Internet Anonymizers

In June 2017, a group of members of parliament introduced into parliament a draft law banning

software which allows access to internet content that has been banned in Russia. The bill prohibits owners of VPN services and internet anonymizers from providing access to banned websites and empowers Roskomnadzor to block sites which provide instructions on how to circumvent government blocking and use blocked sites.

Draft Law Banning Anonymity for Users of Online Messenger Applications

On June 14, 2017, State Duma adopted in first reading a draft law prohibiting anonymity for users of online messaging applications. The draft law requires companies registered in Russia as “organizers of information dissemination”, including online messaging applications, to identify their users by their cell phone numbers and prohibits them from working with unidentified users. Failure to comply is punishable by fines of up to 5,000 rubles (about US$82) for individuals, up to 50,000 rubles ($826) for officials and up to 1 million rubles (US$16,521) for companies. Under the draft law, applications that fail to comply with requirements to restrict anonymous accounts would also face blocking in Russia.

Back to top

III.Government Control of Mass Media

Today’s level of state intrusion in the media is unprecedented in Russia’s post-Soviet period. Over the last five years, much of the mainstream media, including television, print outlets, and websites, have become almost exclusively the voice of the state, as described below. Some mainstream media use elaborate propaganda tools, including in some cases blatant misinformation, to mobilize patriotic support for the government and its agenda. The laws passed since 2012, outlined above, above have dramatically increased the state’s control over the media landscape.

Formal and Informal State Control of Mass Media

The Russian government owns, partially owns, or exerts considerable influence over all the main television broadcasters. This includes three channels with nationwide coverage: Channel One (in which the government holds a 51 percent share), Russia One (run by the state-owned Russian State Television and Radio Broadcasting Company [VGTRK]), and NTV (run by the state-controlled Russian energy giant Gazprom). In addition, of the three main Russian news agencies, two, TASS and Rossiya Segodnya(formerly RIA Novosti) are state-owned, and Interfax is privately owned.

Media consumption patterns are clearly changing in Russia, particularly among the younger generation. The majority of people in Russia, 52 percent, still get their news from television, a significant drop since 2015, when this figure stood at 62 percent. The share of people who go online to get their news increased from 22 percent to 32 percent in the same time period. Among people aged 25 to 34 years old, this figure stands at 50 percent, and it is 65 percent among Russians aged 18 to 24.

Other forms of media—such as radio and print media—are unable to reach as wide an audience and thus struggle to influence public discourse. The most widely read publications support the Kremlin with the notable exception of the newspaper *Novaya Gazeta*, which has retained its editorial independence. Those media critical of the government regularly report pressure from the authorities and are compelled to exercise self-censorship. The selective and, at times, arbitrary nature of enforcement by the government's media and communications oversight agency also contributes to increasing self-censorship.

Since 2012, the Kremlin has forced several formerly independent media outlets to toe the line through forced ownership and editorial changes. This has included the 2013 reorganization of RIA Novosti, once the most independent of the state-run media, into Rossiya Segodnya. The new aim of Rossiya Segodnya, according to Sergei Ivanov, then President Putin's chief of staff, was "to explain to the world that Russia pursues an independent policy and is firmly committed to defending its national interests." A former RIA Novosti top manager told Human Rights Watch that with Rossiya Segodnya, the editorial mission of RIA Novosti changed "from reporting news and facts with professionalism, to becoming servants of the state. No one was forced to quit, there was no purge, but many people [including me] chose not to stay."

In the case of Lenta.ru, then the country's leading independent news agency, the authorities seized an opportunity to force out the agency's independent leadership. In 2014, Lenta.ru published an article with links to materials deemed by the authorities to be "extremist" (described below). Chief Editor Galina Timchenko was swiftly fired and almost the entire staff resigned in protest.

The 2014 media ownership law catalyzed the establishment of direct state influence on independent outlets by requiring some foreign stakeholders to sell their shares to Russian nationals, opening the door to political manipulation. For example, the editorial policy of the Russian language version of Forbes, formerly known for its critical reporting, has changed since the sale of foreign-held shares. The new Russian owner, Alexander Fedotov, stated publicly his intention to make the outlet "less political." The law also led to the selling, in the fall of 2015, of foreign stakes in Vedomosti, a prominent, critical business newspaper, by Finland's Sanoma Group, the Financial Times Group, and the Wall Street Journal, to entrepreneur Damian Kudryavtsev. Kudryavtsev is the former chief executive of Kommersant**,** one of Russia's largest media holdings, and an ex-business partner of controversial Russian oligarch Boris Berezovsky. Leonid Bershidsky, the paper's founding editor, criticized the deal for lack of transparency and for destroying Vedomosti'smeticulous commitment to impartiality. In the spring of 2017, Vedomosti editor-in-chief Tatiana Lysova resigned from the paper. Vedomosti's board member, professor Anna Kachkaeva told Human Rights Watch that, despite "dramatic" developments in the newspaper's management, Vedomosti's editorial policy has not changed so far.

In 2015, the Sanoma Group also sold to Kudryavtsev its stake in The Moscow Times, an English language newspaper, part of the same publishing house as Vedomosti. Kudryavtsev promised that the paper's editorial policy would not change. Oliver Carroll, managing editor at The Moscow Times, said its ownership structure and the fact it is an English language

publication both give it a degree of protection from censorship. However, Carroll noted that the paper needed to take into account “advertiser sensitivities” regarding its content since much advertising is controlled by Kremlin-friendly organizations. Because of the weakness of the advertising market in Russia, many publications are in competition for the same business and this fosters a risk-averse culture.

Stifling Independent Media Outlets

In the examples described below, authorities used inspections, warnings, lawsuits, and other mechanisms to interfere with independent media.

RBC

RBC is the leading independent news company in Russia. It includes a daily newspaper, online news website, and the only 24-hour business news television channel, which broadcasts both online and as a satellite TV channel.

RBC’s main website has a monthly audience of around 11 million from desktop traffic alone, making it one of Russia's top online news sources. RBC’s influence stems from this reach and from its funding. Since 2013, it has been owned by Russian oligarch Mikhail Prokhorov’s investment fund ONEXIM. Prokhorov invested heavily in the company, expanding the staff by recruiting from other media outlets.

RBC is known for hard-hitting investigative reporting. It was the only major, mainstream Russian outlet to cover the Panama Papers in 2016, which were leaked financial documents that included information on Putin’s ties to businessman and musician Sergei Roldugin. The leaked documents alleged that Roldugin funneled US$2 billion through offshore accounts. In April and May 2016, RBC published several articles about President Putin’s alleged luxury residence, and about the vast fortunes of his family and inner circle.

On May 13, 2016, RBC dropped its editor-in-chief Elizaveta Osetinskaya, the chief editor of RBC’s news agency Roman Badanin, and chief editor of RBC’s newspaper, Maxim Solyus. Over the next two months, more than half of the employees left the newspaper in protest. In July, Elizabeth Golikova and Igor Trosnikov of TASS, a state-owned news agency, took over as chief editors of RBC.

In an interview with the Financial Times, Osetinskaya emphasized RBC’s investigative reporting as the reason behind staff dismissal, in particular its investigations into the vast fortunes of members of Putin’s inner circle.

In the first half of 2016, police raided RBC offices, and authorities started fraud probes.In April 2016, law enforcement officers carried out a search in Mikhail Prokhorov’s offices.

In April 2016, the government-controlled oil company Rosneft, sued RBC seeking 3.179 billion rubles (approximately US$51,611,916) in damages, alleging business reputational damage from an RBC article about Rosneft requesting government protection. RBC lawyers argued

that the lawsuit was aimed at bankrupting RBC, since the damages sought significantly exceeded RBC's annual revenue. In December 2016, a court ordered RBC to remove the article and pay Rosneft the amount of 390,000 rubles (approximately US$6,443).

RBC survived financially and remains a major media outlet. A former RBC senior financial reporter told Human Rights Watch there have been no dramatic shifts in the outlet's editorial line and that it continues to do solid investigative reporting. But it has stopped doing reporting on such sensitive topics as Putin's family and inner circle. Moreover, the intense pressure and harassment RBC faced sends a chilling example to all outlets of the consequences to be faced for investigative reporting on such taboo issues.

In spring 2017, Mikhail Prokhorov began negotiating a deal with Grigory Berezkin, a major businessman close to the government who expressed interest in buying RBC. When commenting on the issue, the Kremlin's press secretary described RBC as "one of the best, dynamically developing business mass media outlets" and said that "negotiations about the sale are the owner's personal business.At this writing, the deal has not been finalized yet but appears imminent.

TV Dozhd

Dozhd, an independent TV channel which mostly broadcasts live, was launched in 2010. It frequentlyinvited to the studio public and political figures informally blacklisted by federal television channels and gave extensive coverage to politically sensitive events, including the 2011-2012 public protests and the Pussy Riot trial. A measure of its success during these years was the creation of Kontr-TV, established as a pro-Kremlin online alternative to Dozhd, and funded by the Kremlin-affiliated Institute for Social, Economic and Political Research.

Dozhdcame under pressure after airing acontroversial debate it broadcast in January 2014, which included an audience poll on whether the Soviets should have surrendered Leningrad during World War II to save lives.The poll coincided with the 70th anniversary of the lifting of the Nazis' 900-day siege of Leningrad. Several of Russia's largest TV providers dropped Dozhd immediately following the broadcast and, by February 10, 2014, Tricolor TV, Dozhd's remaining federal cable provider stopped airing it. With its removal from major cable networks, the number of households in Russia able to access TV Dozhd dropped by more than 80 percent: from 17.4 million to fewer than 500,000. As of February 2016, Dozhd is reported to have 72,000 online subscribers plus 20,000 who were subscribed on a trial basis.At this writing, Dozhd remains cut off from federal cable television viewers and is available only on the internet.

A group of parliament members from the ruling United Russia party strongly criticized the broadcast and called on the general prosecutor's office to investigate Dozhd for extremism. Putin's press secretary, Dmitry Peskov, said that the channel had crossed "a moral red line." Although Dozhd editors removed the poll and issued an apology, the station suffered scores of

problems in addition to loss of access to broadcasters: tax and labor authorities made unannounced audits; its landlord refused to renew its lease;and the majority of its advertisers withdrew.

TV Dozhd journalists argued that the decision to drop the channel was “a political move, planned for some months.”Tikhon Dzyadko, one of TV Dozhd’s leading journalists, wrote that the providers publicly said they dropped the channel due to the “offensive” debate/poll, but in private admitted to pressure from the Kremlin.

TV2

TV2 is one of the oldest TV stations in Russia, based in the Siberian city of Tomsk and known for its independent editorial policy. In December 2014, TV2 stopped airing after the state-run regional broadcasting center canceled its contract with the station. In January 2015, TV2 also stopped airing on cable channels.

Throughout January, thousands of Tomsk residents staged rallies in support of the station and in protest against what they viewed as part of the governmental crackdown on independent media.

Following the station’s closure, in February 2015, TV2 staff organized a crowdfunding campaign to help move its broadcasting online, and the station eventually resumed broadcasting through several websites. The channel also secured a grant from Sreda, a private foundation that supports independent media in Russia. Sreda was declared a foreign agent three months later. In February 2015, TV2’s editor-in-chief stated, “The only way we can survive is through the internet.”

Back to top

IV. Internet Freedom and Online Censorship

Most Russian mainstream media outlets have for years reproduced the official line on domestic and international issues, without providing a voice for dissenting or alternative views that the state considers undesirable or potentially dangerous to its agenda. Such alternative and critical views found expression online and on social media, but starting in 2012, and accelerating in 2014, authorities stepped up prosecution of the government’s critics for speaking out online, subjected internet content to new legal restrictions, blocked thousands of websites and webpages, and adopted or proposed further laws and measures designed to stifle freedom of expression. The restrictions targeted, first and foremost, information on public protests, political satire, information relevant to the LGBT community, and opinions about Russia’s actions in Crimea, eastern Ukraine, and Syria.

The Role of the Internet in Russia’s Media Landscape

The number of active internet users in Russia is around 100 million people, comprising about

70 percent of the country's population. When Putin left the Kremlin in 2008 after two consecutive presidential terms, only 26 percent of the population was regularly online (slightly higher to the then-global average of 23 percent). By 2012, this number had risen to 60 percent (well above that year's global average of 36 percent). When he returned to the Kremlin after a four-year gap, Putin faced a very different digital landscape.

The mid-2000's saw the rise of global platforms that allowed users to easily and instantly communicate, share user-generated content, and access independent information through social networks, e-mail services, search engines, and other cloud-based services, within countries and across borders. In Russia, these developments also allowed government critics to reach more Russians online. The country's political opposition actively uses social media, blog platforms, and independent news sites to reach their supporters. Russians actively use major international social networks, such as Facebook and Twitter, as well as VKontakte and Odnoklassniki, which are Russian-language social networks.

The Kremlin appears deeply apprehensive of the internet's ability to mobilize opposition and views it as a tool to disseminate dangerous ideas. In neighboring Ukraine, a Facebook post by a liberal journalist contributed significantly to mobilizing the November 2013 anti-government public protests, which eventually led to the overthrow of the Russia-backed government. Putin has called the internet "a CIA project," which threatens Russia's security. The former head of the FSB and Putin's Security Council chief, Nikolai Patrushev, expressed his deep distrust of the internet, which he once said was used by forces "interested in aggravating the socio-political situation."

Since 2012, Russian authorities have achieved a great degree of control over mass media, including some internet-based outlets, but independent internet users continue to openly challenge the government's actions and expose discrepancies in the official portrayal of current events.

It is unclear how far the Russian government is prepared to go to control the internet. Responding to a blogger's question in April 2017 about whether Russia would adopt a Chinese-style "firewall" around the Russian internet space, President Putin said,

> We prohibit propaganda of suicide, child pornography, terrorism, drug trafficking and so forth. These restrictions are all in effect; though, if you remember, when all of this was back at the discussion stage, there were numerous fears that the authorities would start shutting everything down, banning everything. But no, we have not banned everything. Everything is working normally... Personally, I believe that the [current] restrictions are sufficient at this point.

However, the government is still looking for ways to bring the internet under greater state control, including ways to switch off internet access at times of "crisis." In the spring of 2015, the authorities even ran a simulation of blocking internet access in Russia in case of a hypothetical political crisis. In 2016, Russia and China reportedly conducted several joint events and held a series of high-level meetings to discuss collaboration between the two countries on issues of "information security"—a term used in China to justify its comprehensive

online censorship practices—presumably aimed at helping the Russian government to gain more extensive control over online activity in Russia. VKontakte founder and CEO, Pavel Durov resigned and left the country in April 2014 because of government interference (described in more detail below).

Russia's new information security doctrine, which replaced the doctrine adopted in 2000, entered into force in December 2016. Among other things, it calls for "a national system of managing the Russian segment of the internet," but did not elaborate on how such a system would function. Another priority reflected in the document is "liquidating the dependence of domestic industries on foreign information technologies" and ensuring information security by developing effective Russian technologies.

Roskomnadzor

The government's main engine for enforcing censorship and limiting freedom of expression online is the country's media oversight agency, the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications, known by its shortened name–Roskomnadzor. Created by presidential decree in 2008, it is in charge of "licensing and permit issuing; control and supervision in telecommunications, information technology, and mass communications."

Roskomnadzor has the authority to extrajudicially establish whether information online includes "unacceptable content" and, if so, order media outlets, website owners, and content hosting providers to remove it. In practice, Roskomnadzor generally issues such orders in response to demands from other official agencies, including the prosecutor's office. If media outlets and website owners fail to cooperate with its directives, Roskomnadzor has the authority to blacklist webpages and entire websites and order internet service providers to block them. This chapter, and further chapters in this report, describe instances in which Roskomnadzor's blocking ability has been used for political purposes to block information about official corruption or that is critical of government policy, such as Russia's involvement in the armed conflict in eastern Ukraine, the occupation of Crimea, military operations in Syria, or discrimination against LGBT people.

Internet "Blacklists"

The authorities currently maintain at least three separate registries–or blacklists–of banned websites. As described above, authorities can seek to "blacklist" and block websites if they host content designated unlawful by a court ruling or, in the case of the "Child Protection" registry and Lugovoi registry, without a court order.

The authorities have legitimately blocked content that is not protected by free speech protections, for example child abuse images. But they have also blocked expression that may be offensive but should nonetheless enjoy protection from government interference.

It is difficult to conduct an overall assessment of the content that the government has banned

because of the lack of transparency in the registries described below. For instance, while it is possible to search the “Child Protection” and Lugovoi registries to verify whether a single specific website or webpage has been blacklisted, no full list of blocked websites is available. In addition, there is no publicly available information on how to track which websites have been blocked and then unblocked after the harmful content has been removed, and which websites have remained permanently blocked.

Unlike the “Child Protection” registry and Lugovoi registry, the Federal List of Extremist Materials includes a list of publications, audio and video materials, and images that have been banned by a court. The list, which has existed since 2002, is publicly available and maintained by the Ministry of Justice.

“Child Protection” Blacklist

The “Child Protection” blacklist, established by the 2012 legislative amendments to the law “On Protection of Children from Information Harmful to Their Health and Development” described above, targets websites hosting child abuse images, material related to illicit drugs, and information that “incites suicide” or contains “suicide instructions.” It is reasonable to ban access to such content. However, in the Russian context there are grounds for concern that authorizing government agencies to block content without a court order would lead to banning a much wider range of content that might be offensive or unusual, but that poses no harm to children. Civil society and industry groups have warned that the blacklist process lacks due process safeguards to prevent it becoming an “electronic curtain” that would limit access to information without sufficient checks and balances.

Roskomnadzor has administered the registry since its launch. Several other government agencies were authorized to submit websites for the Registry without a court order, including the Interior Ministry and Rospotrebnadzor, the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing. [sic]

Additionally, Russian citizens can also contact Roskomnadzor directly to report supposedly prohibited content. Aninvestigative report found that the largest number of complaints about websites hosting “prohibited” information comes from the Media Guard, a wing of the pro-Kremlin youth movement Young Guard of United Russia. The group’s Crowdsourcing Censors page on VKontakte publishes motivational pictures and reports on the number of blocked sites. The group does not hide its agenda. One image, for instance, depicts a man with a rainbow flag, above him a giant finger and the inscription: "You need to quash any plague immediately! LGBT, drug trafficking, perverse propaganda [are] designed to destroy the future.”

Lugovoi Blacklist

A separate blacklist was set up for websites under the 2013 Lugovoi Law, which authorized the prosecutor general or his deputies to immediately block access to media that “disseminates calls for mass riots, extremist activities, or participation in unsanctioned mass public events.”

According to a Roskomnadzor statement, 87,000 URLs have been banned in 2016, apparently a “record high” since the law’s adoption.

According to Roskomsvoboda, an activist group that advocates for internet freedom and conducts regular monitoring of websites and pages that have been banned, the number of blacklisted items has at this writing reached 77,084. The same group claims that 97 percent of that number were backlisted unlawfully, restricting content that is not actually illegal.

Pressure on Social Media, Online Messaging Apps, and News Aggregators

In November 2016, Russian authorities blocked access in Russia to LinkedIn, a professional social networking service with over 400 million users worldwide and six million in Russia. The blocking order followed a Moscow district court decision which found the company to be in violation of Russia’s data storage regulations. This was the first case in which a court found a major foreign company in violation of the 2015 Data Storage Law (described above), requiring websites to store the personal data of Russian citizens on servers in Russia. Russia’s internet ombudsman Dmitry Marinichev, whose mandate is rather widely defined as representing interests of the “entire internet industry,” acknowledged that the decision was not reasonable but it was in accordance with the law.

It is unclear why the authorities blocked only LinkedIn, though some have suggested this was meant as a warning that other major companies may face similar legal pressure. For example, Leonid Volkov, staff member of Alexei Navaly’s anti-corruption fund, characterized the blocking of LinkedIn in Russia as the authorities’ “intimidation campaign against Facebook and, first and foremost, Google.” German Klimenko, Putin’s internet advisor, has publicly stated that Google and Facebook, are “systematically” ignoring the law’s requirements and suggested they could be banned in Russia “sooner or later” if they do not follow Russian law.

> In April 2014, Pavel Durov, founder and CEO of VKontakte, the Russian language analogue of Facebook, with close to 250 million users from across the former Soviet Union, was forced to resign from the company and leave Russia after he refused to comply with demands by Russian authorities to block controversial users and communities. Several days before his resignation, Durov explained that he had received an order from the FSB demanding the personal data of the organizers of 39 groups on VKontakte allegedly linked to Ukraine’s Euromaidan movement. In March 2014, the prosecutor’s general office instructed VKontakte to shut down a group run by anti-corruption activist Alexei Navalny, threatening to block the whole service if the firm failed to cooperate.
>
> Durov responded on his blog: “[…] Neither I nor my team will engage in political censorship. We will not remove the anti-corruption community of Navalny or hundreds of other communities that we were ordered to block. Freedom of information is an inalienable right in a post-industrial society, and without this right the existence of VKontakte does not make sense.”
>
> Experts have said that after Durov’s resignation and the installation of more compliant leadership, the firm has regularly cooperated with the authorities, including by sharing their users’ information with the security services. Experts also agree that this is the main reason why, between 2014 and 2017, the majority of criminal charges of “extremism” brought against people for posts or shares online, was brought against users of VKontakte.”

Russian authorities have pressured social networks, in particular foreign networks, to also comply with the requirements of the 2014 “Blogger’s Law,” which requires bloggers with more than “3,000 unique visits” per day provide their real surname, initials, and contact details on their websites or pages.

In 2015, Roskomnadzor wrote to Facebook, Google, and Twitter warning them of the need to comply with the “Bloggers’ Law,” including the requirement to provide requested data on the number of daily visitors the pages of individual users, as well as information allowing the authorities to identify the owners of accounts with more than 3,000 daily visitors. The letter threatened the companies with closure in Russia should they fail to comply.

Targeting Online Messaging Apps

In April 2017, Roskomnadzor blocked online messaging apps BlackBerry Messenger (BBM), LINE, Imo.im, and a video chat Vchat for failure to comply with the “Bloggers’ Law.” A Roskomnadzor official confirmed to the media that the messengers were blocked for failure to share with authorities data about their users, as required by the “Bloggers’ Law,” as well as to provide Roskomnadzor with information necessary to register the messengers as “organizers of information dissemination.”

In May 2017, authorities also blocked the Chinese messaging application WeChat, but lifted the restrictions after the company complied with the government’s requirements.

Also in May, Vedomosti reported that Roskomnadzor petitioned the chat application Telegram, with around six million users in Russia, to provide information for the registry of “organizers of information dissemination.” In June 2017, Pavel Durov, the founder of Telegram, agreed to provide the required information, but stated that the messenger would not share confidential user data with the authorities.

Targeting News Aggregators

On January 1, 2017, the new law on news aggregators entered force, which, among other things, holds owners of internet news aggregators with more than one million daily users accountable for the content of disseminated information.

In February 2017, Roskomnadzor sent letters to six major news aggregators, including Yandex, Mail.ru, Google, Microsoft, and Rambler requiring them to provide information on their daily traffic. Roskomnadzor also established a separate Registry of News Aggregators.

At this writing, it is too early to tell the extent to and manner in which this law will be implemented. However, it has been criticized in Russia and abroad for being difficult to implement technically and for imposing excessive responsibility on internet search engines and websites for aggregation and distribution of online information. The then- Representative on Freedom of the Media for the Organization for Security and Co-operation in Europe, Dunja

Mijatović, stated that the law could result in “governmental interference of online information and introduce self-censorship in private companies.” She argued that search engines should be exempt from the requirement to verify content.

Implications of the “Yarovaya” Amendments

The bulk of Yarovaya amendments entered into force in July 2016, with some provisions delayed to July 2018. As with the law on news aggregators, described above, it is too early to tell how the Yarovaya amendments will be implemented in practice.

The amendments give the authorities unprecedented powers of mass digital surveillance, with the goal in effect to ensure that no digital communication in Russia is safe from government interference. The data retention and localization requirements introduced by the amendments (described in more detail above) intrude on the privacy of every Russian phone and internet user, the overwhelming majority of whom will never be linked to wrongdoing. The amendments would effectively create stores of sensitive data and grant security agencies access to this data without judicial oversight. With legal protections for privacy already weak in Russia, these provisions greatly increase the access by security services to every user’s communications, online activities, and movements. The anti-encryption provisions would also endanger activists and journalists who rely on encrypted messaging applications to communicate securely.

In addition to the privacy implications, the financial implications of implementing the amendments are staggering. Telecom companies estimate that the requirement for cellular and internet providers to store all communications data in full for six months and all metadata for three years coupled with the obligation to help authorities decode encrypted messaging services will cost more than US$33 billion to implement. The vice president of Mail.ru, a major internet company, said “This law will cause tremendous damage to the industry and is not compatible with its normal development.”

Initially, many analysts suggested the amendments would not be fully implemented, citing the lack of action taken by authorities to enforce the Data Storage law’s requirement for some companies to store the data of Russian users on Russian soil. However, Roskomnadzor’s decision to block LinkedIn in November 2016 for failure to comply with that requirement raised concerns about a similarly selective application of the Yarovaya amendments.

The anti-encryption provisions raise cybersecurity concerns, in addition to their impact on privacy, and may be ineffective at preventing terrorists or criminals from using encryption. Internet and telecommunications companies increasingly encrypt their services to protect users against cybercriminals and other malicious actors who seek to steal their information. In the digital age, sensitive data is routinely shared electronically, from financial information and commercial trade secrets to e-commerce transactions. If fully implemented, the amendments would force companies to weaken the security of their services, leaving Russian users and businesses vulnerable to unauthorized spying, data theft, and other harms. In contrast, sophisticated and determined malicious actors would still likely be able to shield their digital communications using tools made by companies not subject to Russian law.

Authorities are already looking into possible ways of accessing data on popular messaging services such as WhatsApp, Viber, Facebook Messenger, Telegram, and Skype, to fulfill the anti-encryption goals of the Yarovaya amendments. For example, the government is reportedly soliciting contractors to test solutions for interception and man-in-the-middle attacks on each chat service, with the most successful to receive full funding.

However, obtaining the level of access to data required by the amendments may be impossible, given the increasing prevalence of strong, end-to-end encryption. Such practices mean that companies are unable to disclose encryption keys, which raises the question of how the government intends to enforce the provision, including whether the government might ask companies like Google or Apple to remove encrypted messaging applications from their app stores in Russia.

There is also the potential for VPN providers to leave the Russian market rather than comply with the Yarovaya amendments, undermining the availability of secure internet connection tools in Russia that businesses and users rely on. This has already begun with VPN service Private Internet Access (PIA) withdrawing from the Russian market after discovering that some of its Russian servers were seized by authorities without notice or due process.

Online Censorship *in Practice*

Russian authorities have for years blocked websites on an ad hoc basis, rather than systematically. Since 2012 however, as the legal grounds for blocking significantly broadened, as described above, the practice of blocking websites has become more widespread.

Lack of transparency makes it difficult to analyze the authorities' policies and practices with regard to blocking of websites. In the cases described below it appears the authorities' aim was to prevent unsanctioned protests, and to silence and deter critical online commentary regarding Russia's actions in Crimea or, more generally, commentary challenging "traditional values."

Blocking Critical Websites

Grani.ru, Kasparov.ru, Alexey Navalny blog, Ej.Ru

In March 2014, weeks after massive street protests in Kyiv led to the ousting of the Russia-friendly Ukrainian government, Russian authorities blocked the opposition website Grani.ru, accusing it of "inciting illegal action," including unsanctioned political rallies. Grani.ru provided extensive coverage to public protests in Russia. It had closely followed the cases of protesters prosecuted for participation in the May 6, 2012, mass protest against Putin's inauguration on Moscow's Bolotnaya Square, which the authorities qualified as "mass rioting."

Yulia Berezovskaya, general director of Grani.ru, told Human Rights Watch that despite the law's requirements and her inquiries, Roskomnadzor never informed them what specific banned material their website contained, "therefore, we cannot correct anything until we know

what our fault was."

In March 2014, the government also blocked the LiveJournal blog of anti-corruption activist Alexei Navalny; Kasparov.ru, the website of former chess champion and opposition figure Gary Kasparov; and Ej.Ru, an opposition media outlet. The prosecutor's office instructed Roskomnadzor to blacklist the sites because they contained, according to the explanatory note on the Roskomnadzor website, "calls for illegal activity and participation in public events held in violation of the established order." Kasparov.ru and Ej.ru remain blocked at this writing.

Similar to the case of Grani.Ru, Kirill Poludin, editor for the Kasparov.ru website, also told Human Rights Watch that Roskomnadzor blocked the site without providing any information about which material violated the law so it could not remove it and unblock the site, "No one told us what exactly we are supposed to correct to remove the blocking of the website."

Rossiya 88

In February 2016, Roskomnadzor banned a YouTube page with a 2009 film about Russian neo-Nazis, titled "Russia 88."

The ban followed a ruling by a Naryan-Mar court, petitioned by a regional prosecutor, who argued that the entire documentary should be banned as extremist because a few fragments from it were used in another YouTube video that was banned as extremist by another court in 2012. The case caused public outcry and on February 3, Roskomnadzor removed the ban.

Open Russia and "March Against Hatred"

In February 2016, the Prosecutor General's office and Roskomnadzor requested Open Russia to remove an article, "Short Memory: City administration refuses to sanction gatherings in memory of Boris Nemtsov," from their website. Open Russia is an initiative promoting democracy and human rights that was founded by the former oligarch and Kremlin opponent Mikhail Khodorkovsky. According to the group's statement, the authorities claimed that the article contained calls to public riots and incitement to extremist activities. Although the authorities did not indicate which parts of the text were objectionable, Open Russia believed they were targeted because of criticism of how authorities in another city had banned a similar march, and perhaps also because the group said it would carry out the march even if Moscow authorities did not approve the route. Open Russia complied with the authorities' request.

In October 2016, VKontakte, at the Prosecutor General's request, took down pages set up by anti-fascist activists titled: "March against Hatred 2016." The activists told media that they were not told the reason behind the ban but they believed the authorities' aim was to prevent a mass gathering.

Public Control Group

On June 22, 2015, Roskomnadzor blocked the website of the consumer protection group Public Control for publishing a memo in which it called Crimea an "occupied territory." The memo warned Russian tourists of potential security concerns when traveling to Crimea,

including the risk of criminal prosecution for entering Crimea via Russia, and further warned against purchasing property in Crimea unless the purchases complied with Ukrainian law Russia's prosecutor general stated that the organization sought to undermine Russia's territorial integrity in violation of anti-extremism legislation. The prosecutor general's office said that it had also forwarded the case to the investigation authorities to open a criminal inquiry, which was later dropped, for making separatist calls.

Mikhail Anshakov, director of Public Control, told Human Rights Watch that the organization received no warning and only discovered it was blocked "when people started calling and saying they could no longer access our website."

After the website was blocked for three days, Roskomnadzor sent a request to Public Control demanding it remove the memo. It complied and access to the website was restored and, at this writing, remains accessible.

On June 23, 2015, in official remarks, Putin accused Public Control of "serving the interests of foreign states" under the guise of concern for Russian consumers. He said the legislation on nongovernmental organizations needs to be further toughened to prevent foreign countries from interfering in Russia's domestic matters.

Deti-404Online Group

Deti-404 is an online group that offers psychological support, advice, and a safe community for LGBT children who experience violence and aggression because of their real or perceived sexual orientation or gender identity. The "404" in the group's title is a reference to the standard internet "error 404" message indicating that a webpage cannot be found. The group was created on VKontakte in April 2013 by Elena Klimova, an LGBT activist from Nizhny Tagil, in Sverdlovsk region. In July 2016, the Deti-404 group had almost 66,000 followers.

In August 2015, a court in Barnaul, in Siberia, found that the group's information violated the law protecting "the informational security of children," and banned it. VKontakte subsequently removed access to the group's page. In September 2015, Deti-404 started a new VKontakte group under the same name, but yet another court ruling ordered the new group taken down. In April 2016, Deti-404 started yet a third group on VKontakte. At this writing, that online group is operational. However, Deti-404's website—www.deti404.com—has been blocked since October 2016, following a court decision.

Jehovah's Witnesses

In 2013, Russia blocked the website of the Jehovah's Witnesses, a US-based Christian denomination, for allegedly "extremist content". In 2015, the authorities banned the group's website permanently. Regional courts in Russia have also banned dozens of publications by the Jehovah's Witnesses for the same reason. In March 2017, the Ministry of Justice petitioned Russia's Supreme Court to ban Jehovah's Witnesses in Russia as an "extremist

organization." The Supreme Court ruled on April 20, that the Jehovah's Witnesses organization should be closed down and no longer allowed to operate legally in Russia. The ruling affected an estimated 100,000 Jehovah's Witness followers across Russia.

Artyom Loskutov

In 2014, authorities attempted to orchestrate a media blackout against a performance art project dedicated to the "federalization of Siberia," that took place in August 2014 in Novosibirsk, Russia's third largest city. The event was planned by well-known Siberian artist Artyom Loskutov, who mockingly called for more autonomy for Siberia from Moscow, as a satirical echo of the Russian government's call for Ukraine to grant more autonomy to the country's eastern regions. Roskomnadzor issued warnings to fourteen internet-based media outlets for announcing the event, including major sites such as Polit.ru, Regnum, Rosbalt,and Slon.ru. Roskomnadzor threatened to block the BBC Russian Service unless it removed its interview with Loskutov about the project. The BBC refused to do so, while Slon.ruhad removed the interview with Loskutov from their website at the prosecutor's office request. The event went ahead as planned.

"There is No God"

In May 2015, Roskomnadzor temporarily blocked the VKontakte group "There is No God" after a Chechnya court declared it "extremist." Without referring to any specific content, the Grozny prosecutor stated that the group had published "materials aiming to offend the religious feelings of the Orthodox, and their dissemination may precipitate the incitement of national, racial or religious hatred or enmity." The group, which had about 26,000 members, mostly posted parody memes of Russian Orthodox figures.

Back to top

V.Prosecution of Critics under Anti-Extremism Legislation

In recent years, the authorities have increasingly used vague and overly broad anti-extremism laws to stifle dissenting voices and promote self-censorship. They have selectively enforced anti-extremism measures against individuals for critical views of the government, even when such views did not call for violence, and in some cases conflated criticism of the government with extremism. Legislative amendments adopted since 2012 in the name of countering extremism have further increased the penalties for extremism violations, especially online. As a result, Russians are increasingly unsure about the threshold of acceptable speech and at the same time are increasingly anxious about the consequences of speaking up online.

Stepped Up Use of Anti-Extremism Charges

After Russia's occupation of Crimea and the start of the armed conflict in eastern Ukraine, authorities stepped up their practice of designating some social media posts critical of the government's actions as "extremist speech," namely "calls to mass rioting," "precursors to

incitement," and the like. The number of criminal cases stemming from charges of extremism, especially for online activities, soared.

Based on data provided by the SOVA Center, a prominent Russian think-tank, the number of social media users convicted of extremism offences in 2015 was 216, in comparison with 30 in 2010.Between 2014 and 2016, approximately 85 percent of convictions for "extremist expression" dealt with online expression, with punishments ranging from fines or community service to prison time. In the period between September 2015 and February 2017, the number of people who went to prison for extremist speech spiked from 54 to 94.

Some prosecutions under anti-extremism provisions are warranted. The SOVA Center, a Moscow-based independent think tank on nationalism, racism, religion, and political radicalism, says that the majority of extremism convictions have been well-grounded though at times disproportionate. Nonetheless many were not. And the number of such groundless cases has grown. SOVA Center explained:

> In fighting online extremism, the state has increased pressure on various categories of citizens, from members of the radical nationalist opposition or Muslim activists to people and organizations, who simply happened to appear on the radar of the anti-extremism campaign. Predictably, starting in 2014, these 'offenders' came to include opponents of state policy toward Ukraine.

In recent years, those facing prison terms or hefty fines for alleged extremist activities have increasingly included bloggers, journalists, political opposition activists, ethnic minority activists, and other critics of the government, as well as people who mock the Russian Orthodox Church. In several cases, editors were also penalized for simply reporting information which the authorities deemed extremist or otherwise illegal or dangerous to the public.

For example, in October 2015, a court in Syktyvkar, in northwestern Russia, fined the editor of the online outlet 7x7 because the outlet reported news about an appeal court hearing for a far-right activist, on trial for defacing a Jewish cultural center. Authorities took issue with a photo accompanying the articles that showed the offensive writing and swastika on the wall of the center. The article did not include any editorial comments in support of far-right views. However, the court imposed a fine of 150,000 rubles (approximately $2,478) and required the publication to blur out the swastika.

Authorities have automatically equated reposts of articles on social media and elsewhere as endorsements even penalizing simple citations of "extremist information," without taking the context into consideration.

Under Russian law, only statements that represent a "danger to the public" are considered unlawful. However, in the cases described below, Russian courts have handed down criminal verdicts for extremist online statements even though the content is protected speech and the

posts had a seemingly insignificant level of public danger as they were available to a very small group of people, sent in a group email, or made to a closed group of friends on social networks. Some criminal prosecutions have resulted in disproportionate punishments.

One of the starkest examples described below is the prosecution of Darya Polyudova, who is now serving a two-year prison sentence for a satirical comment she reposted that was implicitly about Crimea, that did not call for violence, and was seen by only by her very few followers.

The numbers of criminal extremism cases have risen dramatically, sending a powerful warning about the limits of free speech on certain topics, such as Russia's role in Ukraine and the promotion of traditional values. Pavel Chikov, a human rights lawyer, said:

> Internet users may not be afraid of being blocked but everyone fears jail time.

The vagueness of the law together with its haphazard and arbitrary application increases its chilling effect. The Venice Commission, the Council of Europe's advisory panel on legal matters, found that many definitions included in the Russian anti-extremism law are "too broad, lack clarity and invite arbitrary application through different interpretations in contravention of international human rights standards."

Two recent developments indicate the authorities are scaling back some of the more absurdly excessive applications of anti-extremism laws. In November 2016, Russia's Supreme Court issued a statement to clarify the use of charges of extremism for online actions. The court instructed judges, particularly in cases that involved the sharing of allegedly extremist material on social media, to "take into account the context, form, and content of the information available, and the presence of any commentary or expressions related to it." Second, on March 21, 2017, the Ministry of Communications proposed an amendment to the ban of display of the swastika to allow its use in scientific, literary, and artistic works.

Anti-extremism: The Legal Framework

The backbone of Russia's anti-extremism legislation is the Federal Law "On Combating Extremist Activities." Amended multiple times since its adoption in 2002, the law provides a list of specific extremist activities, ranging from deeds that are universally recognized as highly dangerous, such as violent overthrow of government or terrorism, to non-violent acts, such as "incitement to social, racial, national or religious discord," or making "knowingly false" public statements about extremist activities by public officials.

The framework legislation "On Combating Extremist Activities" also empowers the Ministry of Justice to create and maintain, based on court rulings, a list of materials that are considered extremist, including a wide variety of publications, audio, and video materials and images. The list is at times contradictory and difficult to comprehend. Approximately one-fourth of the items on the list are Islamist texts and other Muslim publications. Russia is also enforcing this legislation in occupied Crimea, where it has had a discriminatory impact on Crimean Tatars

who are predominantly Muslim. At this writing, the list includes over 4,000 items. Verkhovsky, the director of SOVA Center, told Human Rights Watch that according to the center's analysis, many items on the list were harmless and had been banned inappropriately.

In addition to FZ-114, "anti-extremism" measures are reflected in Russia's Criminal Code, including (but not limited to) Articles 282 ("incitement of hatred or enmity on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group"), 280 ("calls for extremist activities"), 280.1 ("calls for separatism"), 205.2 ("justification of terrorism"), 354.1 ("rehabilitation of Nazism"), 148.1 ("insulting religious feelings"), 282.1 ("participation in extremist group"), and 282.2 ("organizing activities of extremist group"), and the Code of Administrative Offenses, including articles 20.29 ("mass distribution of 'extremist materials'") and 20.3 ("public display of banned symbols").

Examples of Enforcement: from Politically Motivated to Absurd

The examples given below are of criminal prosecutions on various extremism-related charges in a dozen cities. Some cases involved political speech regarding Ukraine, others involved religion. While some of these cases involved speech that may have offended some people, none deserved to be subject to sanction, far less criminal prosecution leading to imprisonment. It is difficult to know why local authorities targeted these individuals, and whether other examples of similar speech went unpunished.

Justification of Terrorism Charges

Alexei Kungurov, Tyumen

In December 2016, a court convicted Alexei Kungurov, a 38-year-old blogger from Tyumen, in western Siberia, of justification of terrorism and sentenced him to two-and-a-half years in prison for criticizing Russia's role in the Syria crisis. The authorities prosecuted Kungurov on the basis of an October 2015 blog post he wrote after the first Russian airstrikes in Syria. In the post, Kungurov offered his analysis of the Syria conflict and vehemently criticized Russia's intervention as "helping," rather than fighting, terrorists. Notably, his post did not include any positive assessments of actions of anti-government groups in Syria.

Kungurov's wife told Human Rights Watch that her husband has filed an appeal which at this writing is pending. Kungurov has been in custody since June 2016.

Charges of Insulting Religious Feelings of Believers

Ruslan Sokolovsky, Yekaterinburg

On May 2017, a court convicted a 22-year-old video blogger, Ruslan Sokolovsky, on criminal charges of incitement to hatred and insult to the religious feelings of believers. The court gave the blogger a three-and-a-half-year suspended sentence. Citing the French satirical magazine *Charlie Hebdo* as his personal inspiration, Sokolovsky has created several satirical or critical

pieces about the Orthodox Church, calling, for instance, priests “comic book heroes” on his blog. The charges against him stemmed from an August 11, 2016 prank video Sokolovsky uploaded to his Youtube channel. In the video, Sokolovsky is seen playing Pokémon GO, the popular smartphone game, in the Russian Orthodox Church of All Saints in Yekaterinburg. For 40 seconds of the two-and-a-half minute video, a priest can be seen praying in the background. At the end of the video, Sokolovsky says: “I regret not catching the rarest of Pokémons: Jesus. They say he does not exist.” The video was widely shared online and reported in the media. The state-owned news channel Russia 24 reported that the video insulted the feelings of believers, and called Sokolovsky “mentally ill.”

Also in August 2016, Sokolovsky posted another video ridiculing the Russian Orthodox Church’s recommendations about marriage and family. A week later, police in Sverdlovsk region announced that they were investigating both videos, the first for extremism and the second for violating freedom of religion, and called for a five-year prison sentence.

On September 2, police obtained Sokolovsky’s keys, entered his apartment while he was sleeping, conducted a search, and arrested him. Police seized all Sokolovsky’s recording equipment and some printed materials.

On September 3, the Kirov court in Yekaterinburg remanded Sokolovsky to two months’ pre-trial custody; he was released under house arrest following appeal. He was returned to custody on October 28, after the court found him in violation of the terms of his bail.

In January 2017, authorities initiated a new criminal investigation against Sokolovsky for “trafficking in special technical devices [designed] for surreptitious obtainment of information” based on his possession of a pen with a video camera, which police officials seized from his apartment, and his pre-trial custody was extended. On February 13, Sokolovsky was released under house arrest until March, pending criminal trial.

Amnesty International designated Sokolovsky a “prisoner of conscience,” punished for peacefully expressing his views.

Sokolovsky’s lawyer Alexander Bushmakov, quoted the verdict as stating that Sokolovsky was found guilty of “denying the existence of Jesus Christ and the Prophet Muhammad.” He called Sokolovsky’s trial “a show trial” with the purpose of “frightening and intimidating” Russian people.

Torfyanka Park Defenders, Moscow

In 2016, authorities in Moscow initiated a criminal investigation against a group of people who protested the construction of a church in Torfyanka Park. Protests have delayed the church’s construction, which was approved in 2013.

In November 2016, masked and armed riot police raided the homes of some of the protesters. Police smashed the door of one apartment and cut through the lock of another. One activist said at least 15 armed policemen forced their way into his apartment. They threw him on the

floor, handcuffed him, and dragged him away in front of his children. The searches lasted several hours and police seized the phones and computers of the protestors. Police arrested the activists and interrogated them without a lawyer about their views on the Russian Orthodox Church and their affiliation with radical groups. Police released the activists the same day without charges but the investigation was ongoing at this writing.

A camera crew from the pro-Kremlin channel NTV was at the scene of most of the raids. NTV aired a story referring to the activists as “neo-pagans” and “cell members” alleging they had “ammunition and psychotropic drugs” in their apartments.

Maksim Kormelitsky, Berdsk

In May 2016, a city court in Berdsk, Novosibirsk region, found 21-year-old Maksim Kormelitsky, an activist and a former member of the opposition party Parnas, guilty of inciting religious hatred and sentenced him to one year in prison.

The case against Kormelitsky stemmed from a complaint filed by a group of Russian Orthodox activists in February that year about a post on Kormelitsky’s VKontakte page. Kormelitsky posted a photograph of people diving into icy water to emulate the baptism of Jesus and a comment, using crude language, mocking people for “jeopardizing their health for religion.” Kormelitsky told the court that his comment might have been offensive but denied allegations of extremism or criminal intent on his part.

Charges of Separatism, Public Calls to Extremist Activities, and Incitement to Hatred

Andrey Bubeyev, Tver

On August 28, 2015, a court in Tver sentenced Andrey Bubeyev, an engineer and father of two to one year in prison for sharing posts by several pro-Ukrainian VKontakte groups on his personal VKontakte page and possession of ammunition.

On May 5, 2016, in a second criminal trial, the court found Bubeyev guilty of “incitement to extremism” and “making separatist calls” for sharing, in an online post, an article called “Crimea is Ukraine” and a picture of a toothpaste tube with the words: "Squeeze Russia out of yourself!" He was sentenced to an additional two years and three months in prison. In July, Bubeyev lost his appeal. In January 2017, AGORA human rights group filed an application with the European Court of Human Rights (ECtHR) claiming that the prosecution violated Bubeyev’s right to free speech. Bubeyev’s lawyer, Svetlana Sidorkina, told Human Rights Watch that Bubeyev’s prosecution was a warning intended to deter others from expressing their opinions online. At the time of his arrest, Bubeyev’s VKontakte page had less than 20 followers.

Konstantin Zharinov, Chelyabinsk

In September 2015, a court in Chelyabinsk handed down a two-year suspended sentence to

author and blogger Konstantin Zharinov, for incitement to extremism because he reposted a statement by the Right Sector, a Ukrainian far-right nationalist group, calling on Russians and "Russia's enslaved nations" to fight Putin's "regime" on his VKontakte page.

Zharinov, who had published two books on the history of extremist organizations, told Human Rights Watch that his interest in the Right Sector and their publications was purely academic. He posted the statement on March 1, 2014, and deleted it two days later, he said, after realizing that it might not have been "the best idea." On March 4, 2014, the anti-extremism unit of the Chelyabinsk police questioned him regarding the re-post. On April 30, FSB officials opened a criminal investigation, and in August the authorities charged Zharinov with public incitement to extremism.

Russia's Supreme Court banned the Right Sector as an extremist organization in November 2014, eight months after Chelyabinsk law enforcement officials had opened the criminal case against Zharinov.

Zharinov told Human Rights Watch: "The case [against me] is purely political. Towards the beginning of the investigation, [the authorities] constantly tried to cheat with the evidence in order to make it fit their theory." Zharinov's lawyer, Andrei Lepyohin, told Human Rights Watch that during the trial anti-extremism police officials wiretapped Zharinov's phones and monitored his blog and social media accounts. Zharinov was an active participant in demonstrations led by opposition leader Alexey Navalny and also took part in a public protest against Russia's occupation of Crimea in early March 2014, facts relied on by the prosecution at trial.

Shortly after his sentencing, Zharinov benefited from a wide amnesty declared by the authorities on the occasion of 70th anniversary of victory in World War II. In March 2016, Zharinov lodged an application with the ECtHR claiming that his prosecution was politically motivated.

Rafis Kashapov, Naberezhnye Chelny

In May 2015, authorities charged 56-year-old Rafis Kashapov, director of the Tatar cultural center in Nabereznye Chelny, in Tatarstan, in central Russia, with "public calls for disintegration of Russia's territorial integrity" and "incitement of hatred towards the Russian authorities as a social group" for four articles he shared on his VKontakte page between July and December 2014, condemning Russia's actions in Crimea.

Following several months of pre-trial investigation, which Kashapov spent in custody, on September 15, 2015 the Naberezhnye Chelny City Court sentenced Kashapov to three years in prison and a two-year ban on the use of social networks. According to Kashapov's lawyer, the court took the fact of his ailing health into consideration when issuing the verdict, but also "recognized the high level of public threat presented by his actions."
On November 13, the Supreme Court of the Republic of Tatarstan upheld Kashapov's conviction and imprisonment, but removed the ban on the use of social networks.

The SOVA Center commenting on the case said that criticism of the authorities' action is not incitement to hatred and should not be prosecuted. Russia's Memorial Human Rights Center has designated Kashapov a political prisoner.[253]

Darya Polyudova, Krasnodar

On December 21, 2015, a court convicted Darya Polyudova, a 26-year-old woman from Krasnodar, in southern Russia, on charges of inciting separatism and public calls to extremist activities and sentenced her to two years in prison. The charges against her derived from three posts she published on her VKontakte page. The first post was a comment from another user, which Polyudova reposted on her account. The comment was satirical, about the supposed demands of local ethnic Ukrainians in the Krasnodar region to have the region incorporated into Ukraine.

The second post was a photo of Polyudova holding a poster that said, "No war in Ukraine but a revolution in Russia!" The third post included the suggestion that Russians should follow the example of Ukraine's Maidan activists, take to the streets, and bring down the government. None of the posts include any specific action plan or calls to violence. Polyudova's VKontakte page had only 38 followers, and most of her posts drew very few comments. Polyudova's criminal prosecution was widely criticized for being unlawful and arbitrary. International human rights groups have called for her immediate release. On March 30, 2016, the appeal court of Krasnodar region upheld Polyudova's prison sentence.

Evgeny Kort, Moscow region

On November 3, 2016, a district court in Moscow found 20-year-old Evgeni Kort guilty of "incitement of hatred" and "humiliation of human dignity" for posting on his VKontakte page an image of Maxim Martsinkevich, a prominent neo-Nazi (who at this writing is serving a prison sentence for violent extremism), and Alexander Pushkin, Russia's most famous poet one whose great-grandfather was of African descent. The image depicts Martsinkevich pressing Pushkin against a wall and shouting a racial slur at him. Kort's lawyer said that according to the investigation, the image included "a set of psychological and linguistic attributes humiliating non-Russians." Kort said in a media interview that he did not intend to publish the image but accidently saved it on his page. The court sentenced Kort to one year in jail, which was reduced to a fine of 200,000 rubles (US$3,304) on appeal.

The SOVA Center described Kort's criminal prosecution as "groundless," and his punishment "disproportionally severe."

Ekaterina Vologzheninova, Ekaterinburg

In February 2016, a court in Ekaterinburg convicted 46-year-old Ekaterina Vologzheninova of incitement to hatred towards "Russian people," "Russian volunteers fighting on the side of the insurgents in eastern Ukraine," and "authorities" and "residents of eastern Ukraine who do not support the political course of modern Ukraine" as ethnic and social groups. The charges

stemmed from several posts on Vologzheninova's VKontakte page, including a poem criticizing Russia's actions in Ukraine and images reminiscent of USSR period posters with captions, "Stop the plague," and "Death to Moscow invaders."

A Radio Liberty correspondent who closely monitored Vologzheninova's trial reported that during the trial the prosecutor said several of Vologzheninova's posts were against Russians as an ethnic group, including an image depicting Russian President Vladimir Putin leaning over a map of eastern Ukraine with a knife in his hands. The prosecutor also accused Vologzheninova of "discrediting [Russia's] political order" on the basis of "ideological differences" and underscored Vologzheninova's contact with "undesirable persons," such as representatives of human rights groups, who criticized her prosecution. At the time, Vologzheninova's VKontakte page had four followers.

Vologzheninova's lawyer Roman Kachanov told Human Rights Watch that during the trial the court rejected all defense motions. He said that the case appeared politically motivated and intended to intimidate. The court sentenced Vologzheninova to 320 hours of compulsory labor and ordered to destroy her laptop, mouse, and charger "as instruments of a crime." In April 2016, the verdict was upheld on appeal.

Charges of Storage and Distribution of Extremist Materials

Dmitry Semyonov, Cheboksary

Opposition activist Dmitry Semyonov has faced numerous criminal and administrative investigations for posts on his VKontakte page. In November 2016, a court in Cheboksary fined Semyonov 1,000 rubles (US$16) for "mass distribution of extremist materials"for sharing two photos of the far-right politician and current member of parliament Vitaly Milonov, wearing a t-shirt with the phrase "Orthodoxy or death"–a slogan of conservative Orthodox Christians. Milonov has not faced any sanctions in connection with wearing this t-shirt in public.

Previously, in September 2015, Semyonov was convicted for extremism because he re-posted a satirical photo of Prime Minister Medvedev in a traditional Caucasian robe with the caption, "Death to the Russian vermin" on VKontakte. Shortly after he had posted the photograph, in March 2015, the FSB raided Semyonov's apartment where he lived with his parents, and his work place, and seized his electronic devices. The court found Semyonov guilty of "making public calls for extremist activities" fined him 150,000 rubles ($2,484); he was immediately amnestied. In April 2016, Semyonov lodged an application with the ECtHR alleging violation of his rights to freedom of expression and fair trial for both cases.

Semyonov linked the prosecutions to his activism and specifically to his candidacy for the local parliamentary election.

Charges of Rehabilitation of Nazism

Vladimir Luzgin, Perm

In June 2016, a court in Perm convicted Vladimir Luzgin under the provisions of the rehabilitation of Nazism law for “falsifying history” by reposting an article saying that the Soviet Union shares responsibility for starting World War II and that the Soviet Union and Germany attacked Poland simultaneously. The court fined him 200,000 rubles (US$3,312), which was upheld on appeal. The court ruling referred to Luzgin’s high marks in history from grade school as proof of his competence in history and stated that Luzgin should have anticipated “harmful effects” of his re-post on the public at large, as the article promoted “persistent beliefs about the USSR's negative activities” during World War II.

Use of Anti-Extremism Laws to Curb Free Expression in Crimea

Since Russia’s occupation of Crimea in February 2014, the de facto Crimean and Russian authorities have imprisoned, attacked, disappeared, intimidated or exiled those who peacefully opposed or openly criticized Russia’s actions on the peninsula. Following the occupation, the authorities in Crimea have created a climate of pervasive fear and repression, in which free speech and media are virtually nonexistent. Authorities have also pressured and persecuted journalists who have openly criticized Russia’s actions in Crimea.

The authorities in particular targeted Crimean Tatars, a predominantly Muslim ethnic minority that is native to Crimea and that has openly opposed Russia’s occupation. The authorities have made Crimean Tatars pay for their principled stance by banning their leaders from the peninsula, harassing, and ultimately banning Mejlis, their representative body as extremist, imprisoning Crimean Tatar activists on trumped up charges and shutting down independent Crimean Tatar media outlets.

Authorities also arrested Mejlis members and searched their homes. Numerous Mejlis member received threats; some were attacked by individuals apparently acting in collusion with the authorities. At this writing, two deputy leaders of Mejlis, Akhtem Chiygoz and Ilmi Umerov, are being prosecuted on charges of separatism and rioting.

Harassment of Lawyers Nikolai Polozkov and Emil Kurbedinov

Russian authorities intimidated and harassed defense lawyers representing Mejlis members and other Crimean Tatars and brought “extremism” charges against them.

On January 26, 2017, officials from the anti-extremism police unit in Crimea detained Emil Kurbedinov, a local defense lawyer, in the city of Bakhchysarai. Kurbedinov was on his way to see a client when traffic police stopped his car, claiming they were making a routine check. Anti-extremism officials arrived and arrested him. Officials took Kurbedinov to the district court of Simferopol, Crimea’s capital city, where he was convicted of a misdemeanor for “public distribution of extremist materials” and sentenced to 10 days in detention.Police also searched Kurbedinov’s home and office and confiscated two laptops and several electronic storage devices.

On January 25, FSB officers in Crimea detained Nikolai Polozov, a defense lawyer from

Moscow, on his way to a court hearing on Akhtem Chiygoz's case. Six officers approached Polozov outside his hotel in Simferopol, forced him into a van and drove him to the Simferopol FSB, where officers questioned him without his lawyer. Two investigators asked him about his legal assistance to Chiygoz. Polozov asserted attorney-client privilege and declined to answer. Investigators released Polozov after two-and-a-half hours.

Criminal Prosecution of Ilmi Umerov

The case against Ilmi Umerov, a former chairman of Mejlis, is a stark example of the government using anti-extremism legislation to silence Crimean Tatars through criminal prosecution.

In May 2016, Russia's Federal Security Services detained Umerov in Bakhchisaray and charged him with separatism. Mark Feygin, one of Umerov's lawyers, told Human Rights Watch that the charges stemmed from a March 2016 live interview with the Crimean Tatar TV channel ATR, which was also posted on YouTube. Russian authorities forced the ATR to shut down in April 2015, and it relocated to Kyiv. Feygin said that based on an "expert linguistic analysis" of the Russian translation of Umerov's Crimean Tatar language interview, the FSB concluded that Umerov had threatened Russia's territorial integrity by making public calls to get Crimea back from Russia.

On August 11, during a court hearing in Simferopol to examine an FSB petition for a psychiatric evaluation of Umerov, Umerov became unwell from pre-existing high blood pressure and was hospitalized directly from the courtroom. The court approved the petition in Umerov's absence and his lawyers immediately appealed. On August 18, in breach of procedural law, Umerov was transferred to a psychiatric facility before an appeals court could rule on the appeal. He spent a total of three weeks in the psychiatric facility and was released on September 7.

Umerov's daughter, Ayshe Umerova, told Human Rights Watch that Umerov suffers from diabetes, Parkinson's disease, and heart disease. According to her, the forced psychiatric confinement had a negative effect on his general health condition. At this writing, Umerov's trial is ongoing.

Criminal Prosecution of Mykola Semena

Russian authorities charged Mykola Semena, a Crimea-based pro-Ukrainian journalist, with "making public calls threatening the territorial integrity of the Russian Federation." The "separatism" charges stemmed from Semena's September 2015 article, entitled "Blockade–the Necessary First Step for Liberation of Crimea." The article, which was published under a pseudonym, contained no direct calls for violence.

In the early hours of April 19, 2016, FSB officials searched Semena's home in Simferopol, seized his computers and phone, and took him in for questioning. Authorities charged him with making public calls threatening Russia's territorial integrity and banned him from leaving the peninsula. In addition, the authorities put Semena's name on Russia's federal list of

“extremists.” As a result, Semena is required to submit a written application to his bank every time he needs to withdraw funds–a common measure with regard to those prosecuted for extremism-related crimes. If convicted, Semena faces up to five years in prison.

VI.Access to Information: “Gay Propaganda” Ban

> Homophobia is the natural state of any person. If they come up with a day against homophobia, then we can create a day against homosexuality because homophobia is much less harmful than homosexuality.
>
> −Vitali Milonov, politician, member of the State Duma for United Russia

As described above, any positive information about “nontraditional sexual relations” is effectively prohibited from public discussion in Russia. The purported rationale behind Russia’s federal-level “gay propaganda” ban is that portraying same sex-relations as socially acceptable and of equal value to heterosexual relations supposedly threatens the intellectual, moral, and mental well-being of children.While purporting to protect children, the ban in fact directly harms them through denying them access to essential information and creating a stigma against LGBT children and LGBT family members.

On September 23, 2014, Russia’s Constitutional Court upheld the “gay propaganda” ban as protecting constitutional values such as “family and childhood.” The Court also found no interference with the right to privacy and did not view the ban as censoring debates about LGBT relations. Any information deemed to represent “propaganda of non-traditional sexual relations” can be included on the blacklist of banned websites established by the 2012 law aimed at protecting children from harmful information (see above).

A legal opinion issued in June 2013 by the Venice Commission, the Council of Europe’s advisory panel on legal matters, concluded that the draft of the adopted federal anti-LGBT law was “incompatible with [the European Convention on Human Rights] and international human rights standards” and should be repealed. The opinion found that the purpose of the law “is not so much to advance and promote traditional values and attitudes towards family and sexuality but rather to curtail nontraditional ones by punishing their expression and promotion.” The law drew widespread criticism from the Council of Europe, the Organization for Security and Co-operation in Europe, and the UN Office of the High Commissioner for Human Rights, among others.

During a periodic review in January 2014, the UN Committee on the Rights of the Child recommended that Russian authorities “repeal its laws prohibiting propaganda of homosexuality and ensure that children who belong to LGBTI groups or children of LGBTI families are not subjected to any form of discrimination by raising awareness of the public on equality and non-discrimination based on sexual orientation and gender identity.”

However, Russia has made no moves to comply with these recommendations and, at this writing, Russian courts have convicted at least six people for violating the federal anti-LGBT "propaganda" law.

Elena Klimova, Nizhny Tagil

In November 2014, Roskomnadzor filed a complaint against Elena Klimova, founder of the Deti-404 group (see above, Banning Critical Websites), and the administrator of the group's online activities, alleging that the group's activities contained "propaganda for nontraditional sexual relationships."

Roskomnadzor claimed that the information published by Deti-404 "could cause children to think that to be gay means to be a person who is brave, strong, confident, persistent, who has a sense of dignity and self-respect."

On January 23, 2015, a court in Nizhny Tagil found Klimova guilty of "spreading information containing propaganda about non-traditional sexual relations." The court fined Klimova 50,000 rubles (US$828). However, on March 25, 2015, an appeals court sent the case for retrial, citing numerous procedural violations in the lower court. On July 23, 2015, the Nizhny Tagil court again convicted Klimova and ordered her to pay the fine.

Sergei Alekseenko, Murmansk

On January 18, 2016, a court in Murmansk, in northwestern Russia, fined Sergei Alekseenko, an LGBT rights activist, for violating the gay propaganda ban.

Alekseenko is the former director of Maximum, a group in Murmansk that provided legal and psychosocial support to LGBT people. The court found that certain items posted on Maximum's website contained positive information about LGBT relations and imposed a fine of 100,000 rubles (US$1,656). The ruling, which came after Maximum's closure in October after being forced to register as a foreign agent, stated that as the head of the organization, Alekseenko was responsible for information posted on the group's VKontakte page and that Alekseenko was fully aware that children might have access to the page. On April 1, the Murmansk city court upheld the district court's decision.

Police told Alekseenko that they had received complaints from unidentified individuals about "illegal activities" on Maximum's VK account. It also said that a psycho-linguistic evaluation, which investigators ordered in May, had found that several posts on the account contained "linguistic and psychological elements of propaganda of non-traditional sexual relations."

Alekseenko told Human Rights Watch that one of the posts deemed "gay propaganda" was a re-post from another user's account stating, "Children! To be gay means to be a person who is brave, strong, confident, persistent, who has a sense of dignity and self-respect." Another post was a poem by the 19th century Russian writer Mikhail Lermontov, describing a sexual scene between two young men.

VII.Russia's Human Rights Obligations

Russia is a party to the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). Both the ECHR and ICCPR impose positive and negative legal obligations on governments to protect freedom of expression and information. These include the obligations to refrain from non-permissible interference with the rights to expression and information, to protect freedom of expression and information from harm including by private persons and entities, and to facilitate their exercise.

Russia's Constitution guarantees the right to privacy, including the privacy of correspondence, telephone communications, and other communications. Restrictions of this right shall be allowed only pursuant to a court order. The Constitution also separately states that it is not permissible to collect, store, use or disseminate information about the private life of a person without his or her consent.

Nevertheless, as outlined above, many of Russia's laws are overly broad and criminalize activities, and speech that are clearly protected by international law.

Article 19 of the ICCPR provides:

> Everyone shall have the right to hold opinions without interference; […]
>
> Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

It also allows "certain restrictions" on the right if provided for by law and deemed necessary for respect of the rights or reputations of others, or for the protection of national security or of public order, health or morals.

Article 10 of the ECHR protects freedom of expression and the right to impart ideas and information in similar terms and provides that limitations can only be imposed on freedom of expression that are prescribed by law and "established convincingly" to be necessary in pursuit of a legitimate goal in a democratic society.

Freedom of expression constitutes one of the essential foundations of a democratic society and extends not only to information or ideas that are favorably received, but also to those that offend, shock or disturb in such domains as "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse."

Media freedom and media plurality are a central part of the effective exercise of freedom of expression. While the media may be subject to some restrictions necessary for the protection of certain vital interests of the state, such as national security or public health, the media has a role and responsibility to convey information and ideas on political issues, even divisive ones and the public has a right to receive them. The ability to practice journalism free from undue

interference, to peacefully criticize government, and to express critical views are crucial to the exercise of many other rights and freedoms. The European Court of Human Rights has emphasized that the media has a vital role to play as “public watchdog” in imparting information of serious public concern and should not be inhibited or intimidated from playing that role.

The UN Human Rights Committee has stated that journalists include “bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.” In a 2012 resolution adopted by consensus, the UN Human Rights Council affirmed that “the same rights that people have offline must also be protected online.”

In December 2015, the Grand Chamber of the European Court of Human Rights ruled unanimously in *Zakharov v. Russia* that Russia’s overbroad and excessively intrusive surveillance laws breached the right to privacy of Roman Zakharov, a publisher and chairperson of a media freedom NGO, and violated Article 8. The court first found that Zakharov need not prove he had been under specific surveillance to bring his case because Russia’s secret surveillance measures were so broad in scope that they affected all users of mobile communications, and because there were no effective means to challenge (or even prove) alleged surveillance at the domestic level.

The court then examined several Russian laws that govern surveillance, including the Operational Search Activities Act of 1995, the Code of Criminal Procedure, and Order no. 70 (requiring mobile operators to given Russian authorities direct access to their networks). The court ruled that this system of surveillance did not provide adequate and effective guarantees against arbitrary interference with privacy or risk of abuse, as required by Article 8. The court found that the laws left authorities an “almost unlimited degree of discretion” in conducting surveillance for national security purposes. Although specific provisions required prior judicial authorization for surveillance, in practice, the European Court of Human Rights found that Russian courts do not verify or scrutinize whether the interception request is justified, often do not have sufficient information to do so, and play no role in continuing oversight. The court was “not convinced by the Government’s assertion that all interceptions in Russia are performed lawfully on the basis of a proper judicial authorization,” and concluded that its findings “indicate the existence of arbitrary and abusive surveillance practices.”

The Zakharov case addressed interception of mobile phone calls in Russian. However, the European Court of Human Rights’ findings also raise serious questions about the adequacy of safeguards that apply to other laws discussed in this report that enable Russian authorities to compel internet companies to disclose user data.

Everyone, including children, have a right to free expression. The Convention on the Rights of the Child guarantees freedom of expression (art. 13) for children in terms that are nearly identical to article 19 of the ICCPR, with the same strict test for permissible limitations. Having access to full information on health, sexuality, and identity is in the interest of every child, regardless of sexual orientation and gender identity. Having access to such information is in line with the aims of education as set out in the International Covenant on Economic, Social

and Cultural Rights as “directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms” and should “enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.”

Acknowledgments

Yulia Gorbunova, Russia researcher in the Europe and Central Asia division of Human Rights Watch, researched and wrote this report.

The report was edited by Tanya Lokshina, Russia program director and Rachel Denber, deputy director of the Europe and Central Asia division. It was reviewed by Cynthia Wong, senior researcher in the Business and Human Rights division; Michael Bochenek, senior counsel in the Children’s Rights division; and Kyle Knight, researcher in the LGBT Rights program. Philippe Dam, advocacy director, Jane Buchanan, associate director, and Allison Gill, consultant for the Europe and Central Asia division also reviewed the report. Aisling Reidy, senior legal advisor, provided legal review, and Tom Porteous, deputy program director, provided program review.

Tanya Cooper, Ukraine researcher in the Europe and Central Asia division, also provided research for the report. George Leech and Claudia Wagner, former Alfa fellows in the Europe and Central Asia division of Human Rights Watch, Anastasia Ovsyannikova, former Natalia Estemirova Fellow in the Europe and Central Asia division, and Thomas Callahan, former intern in the Europe and Central Asia division, provided extensive desk research for the report. Vladislav Lobanov, Natalia Estemirova fellow in the Europe and Central Asia division and Cornelius Runtsch, an intern at the Europe and Central Asia division, provided additional research assistance. Russian translation was provided by Igor Gerbich, translator for the Europe and Central Asia division.

Production assistance was provided by Vladislav Lobanov and Kathryn Zehr; Grace Choi, director of publications; Olivia Hunter, photo and publications associate; Fitzroy Hepkins, administrative manager; and Jose Martinez, senior coordinator. Jessie Graham, multimedia associate director, and Pierre Bairin, multimedia director, directed and produced the multimedia components of the report. This report would not have been possible without the important contributions from Alexander Verkhovsky, director of the SOVA Center for Information and Analysis; Andrei Soldatov and Irina Borogan of *Agentura.ru*, and Artyom Kozliuk of Roskomsvoboda.

Human Rights Watch is grateful to the many lawyers, activists, and others in Moscow, St. Petersburg, Tyumen, and Ekaterinburg who agreed to be interviewed for this report.

Annex 963

Freedom House, Freedom of the Press: Crimea 2015 (last visited 25 September 2017)

Crimea *

Country:
Crimea *
Year:
2015
Press Freedom Status:
NF
PFS Score:
94
Legal Environment:
30
Political Environment:
38
Economic Environment:
26

The media environment in Crimea was transformed in February 2014, when Russian forces occupied the peninsula. The move came after the collapse of the Ukrainian government of President Viktor Yanukovych, which had failed in its attempt to crush a protest movement calling for his resignation, anticorruption reforms, and European integration. The occupation authorities in Crimea quickly engineered a March referendum calling for union with Russia, and Moscow formally annexed the territory, imposing restrictive Russian media laws and taking other steps to control the work of the press.

The aggressive efforts by Russian and Russian-installed local authorities to establish control over what had been a fairly pluralistic media landscape meant that conditions in 2014 were worse than in Russia itself. Independent outlets were forcibly shut down, transmissions of Ukrainian stations were switched to broadcasts from Russia, and many journalists fled Crimea to escape harassment, violence, and arrests.

Legal Environment

After the March 18 annexation, which was not recognized internationally, the occupation authorities began enforcing Russia's constitution and federal laws. A local constitution based on the Russian model was imposed the following month. Although the Russian constitution provides for freedom of speech and of the press, a variety of restrictive laws and a politicized judiciary curb media independence in practice. Journalists are subject to trumped-up criminal charges for defamation, "extremism," and other offenses. A 2009 Russian law on freedom of information has not been effective in reducing government secrecy and bureaucratic obstructions. Federal regulators have

broad discretion in enforcing media registration and licensing rules and blocking online news outlets.

In addition to the restrictions it imposed, the Russian legal system failed to protect journalists, activists, and others from abuses by security forces and paramilitary “self-defense” units, which engaged in unlawful detentions and physical assaults during 2014.

In the months after the annexation, the occupation authorities harassed pro-Ukraine media outlets, shutting down some and threatening others with closure. All mass media—including online outlets—were given until January 2015 to register with Roskomnadzor, the Russian federal media regulator, and to obtain a license; editors were repeatedly warned by officials that they would not be allowed to register if they disseminated “extremist” materials. Criticism of the annexation or calls for Crimea’s return to Ukraine could also be deemed violations of a December 2013 Russian law against inciting separatism, which carries penalties of up to five years in prison.

Media outlets operated by the Crimean Tatar community, which generally opposed the occupation, were the main targets of this harassment. According to Human Rights Watch (HRW), the chief editor of the Crimean Tatar newspaper *Avdet*, Shevket Kaybullayev, was questioned in June by the public prosecutor’s office and received an official warning over “extremist content,” based on the paper’s coverage of opposition activities and even the use of terms like “occupation.” In September, *Avdet*’s office was raided and searched by unidentified members of the security forces, who did not show a warrant. The office was then sealed, and the paper’s bank accounts were frozen. The Federal Security Service (FSB) gave Kaybullayev an official warning that he could face five years in prison for extremism if *Avdet* continued to report on calls for a boycott of the September regional elections.

ATR, the Crimean Tatar television station, received an official warning from prosecutors in May after it reported on a Tatar protest. In September, the Interior Ministry demanded a range of documents from the station and said it was suspected of inciting extremism and distrust toward the authorities. An ATR deputy director told HRW that the station received regular calls and visits from FSB agents who applied editorial pressure backed by threats of closure.

Like other nongovernmental organizations (NGOs), journalists’ associations and groups dedicated to press freedom and freedom of expression became subject to onerous Russian laws, including measures restricting foreign funding. Many human rights and civic activists reportedly relocated to mainland Ukraine to escape legal restrictions as well as extralegal harassment, detentions, and intimidation in Crimea.

Political Environment

Crimea featured a relatively pluralistic media environment while under Ukrainian control, but the occupation authorities immediately began cutting off access to Ukrainian news outlets and replacing them with Russian alternatives. Television retransmission facilities were seized by armed men, and the signals of Russian state-owned broadcasters were substituted for those of the main Ukrainian stations. Local cable companies gradually dropped all but a few entertainment-themed Ukrainian channels.

Several local media organizations, including the nonprofit Center for Investigative Journalism and the independent television and radio company Chornomorska (Black Sea), reestablished themselves in mainland Ukraine after encountering official pressure in Crimea. Chornomorska was initially forced off the air in March, and the authorities seized its equipment and offices in August on the grounds that the station had failed to pay fees to a state broadcasting agency.

Individual journalists also joined the activists and others who fled Crimea due to intimidation by the authorities and self-defense forces. A popular anti-annexation blogger, Yelizaveta Bohutskaya, left in September after her home was raided by police, who confiscated equipment and detained her for six hours of questioning about her political views.

Many journalists and media workers were obstructed, detained, questioned, and had equipment seized or damaged while reporting in Crimea, including correspondents for Polish and mainland Ukrainian outlets. Some were also physically assaulted, including multiple employees of Crimean Tatar outlets. In one of the more severe cases, self-defense forces in June stopped Sergey Mokrushin and Vladen Melnikov of the Center for Investigative Journalism on a street in Simferopol for singing an anti-Putin song. The men were detained and badly beaten, then transferred to the police, who eventually released them. Self-defense units generally enjoyed impunity for their actions throughout the year.

Also in June, Ruslan Yugosh, one of the founders of the news website Sobytiya Kryma (Crimean Events), was summoned for questioning by police, but he refused, explaining that he was not in Crimea. The next day, the police instead interrogated the journalist's 73-year-old mother, threatening her with possible repercussions for her son if he continued to damage Crimea's reputation.

Economic Environment

The changes imposed by the occupation authorities during 2014 left Russian outlets, particularly state-owned television stations, with a dominant position in the Crimean media market. In addition to the exclusion of most Ukrainian broadcasters, distribution of Ukrainian print outlets was obstructed by Russian and Russian-backed Crimean officials; Ukraine's postal agency announced in September that it could no longer make deliveries of Ukrainian publications to the peninsula.

The Crimean Tatar outlets, including ATR, *Avdet*, and the news agency QHA, were among the last independent media operating in Crimea at year's end. Others continued to function after relocating to mainland Ukraine, and they generally attempted to reach Crimean audiences via the internet. U.S.-funded Radio Free Europe/Radio Liberty created a service offering Crimean news in Russian, Ukrainian, and Tatar.

Future access to non-Russian websites was threatened by Russian government efforts to gain control of all internet traffic on the peninsula. The state-owned telecommunications firm Rostelecom installed a submarine cable across the Kerch Strait and began providing service in July. Beginning in August, mobile service from Ukrainian carriers was disrupted, and they were replaced by Russian companies.

The broader economic environment in which the media operated was affected by a variety of other factors related to the occupation, including widespread and irregular expropriations by Russian-backed local authorities, Russian government subsidies, obstacles to trade and communications with mainland Ukraine, and international sanctions.

* Indicates a territory, as opposed to an independent country.

Annex 964

Human Rights Watch, Crimea: Persecution of Crimean Tatars Intensifies (14 November 2017)

November 14, 2017 12:00AM EST

Available In English Русский

Crimea: Persecution of Crimean Tatars Intensifies

Arbitrary Detentions; Separatism, Terrorism Charges

Law enforcement officials during a search in Bakhchysarai, Crimea on January 26, 2017 @ 2017 Anton Naumlyik RFE/RL

(Berlin) – Russian authorities in Crimea have intensified persecution of Crimean Tatars, under various pretexts and with the apparent goal of completely silencing dissent on the peninsula, Human Rights Watch said today. Crimean Tatars are a Muslim ethnic minority indigenous to the Crimean Peninsula. Many openly oppose Russia's occupation, which began in 2014.

"Russian authorities in Crimea have relentlessly persecuted Crimean Tatars for their vocal opposition to Russia's occupation since it began in 2014," said Hugh Williamson, Europe and Central Asia director at Human Rights Watch. "They have portrayed politically active Crimean Tatars as extremists and terrorists, forced many into exile, and ensured that those who choose to stay never feel safe to speak their mind."

Since Russia's occupation began, Russian authorities and their proxies have subjected members of Crimean Tatar community and their supporters, including journalists, bloggers, activists, and others to harassment, intimidation, threats, intrusive and unlawful searches of their homes, physical attacks, and enforced disappearances. Complaints lodged with authorities are not investigated effectively. Russia has banned Crimean Tatar media and organizations that criticized Russia's actions in Crimea, including disbanding and proscribing the Mejlis, the Crimean Tatar self-governing highest executive body.

In October 2017, Human Rights Watch researchers in Crimea documented criminal prosecutions for separatism against Crimean Tatars who had criticized Russia's actions in Crimea, as well as new and ongoing baseless terrorism-related prosecutions. Researchers also documented detention and fines for Crimean Tatars who peacefully staged single-person pickets to protest the arrest and prosecution of other Tatars. Under Russian law people who want to picket individually are not required to seek official permission.

Since 2015, Russian authorities have arrested at least 26 people on charges of involvement with the Islamist movement Hizb ut-Tahrir, banned as a terrorist organization in Russia since 2003 but not proscribed in Ukraine, nor in most of Europe. They were arrested on charges of participating in or organizing a terrorist group, solely for acts – often in private – of expression, assembly, opinion, or religious and political belief that the Russian authorities claim constitute affiliation with Hizb ut-Tahrir. They face from five years to life in prison. The arrests are consistent with Russia's practice of cracking down on Muslims who preach and study Islam outside official guidelines.

In several cases, Russian police and security services ill-treated people suspected or accused of

separatist, extremist, or terrorist activities and denied them due process. In one case, a former detainee said security agents beat him and gave him electric shocks to coerce him to become an informant.

In October, Russian authorities brought separatism charges against Suleiman Kadyrov, a Crimean Tatar activist, for posting a comment on social media criticizing the occupation of Crimea. The charges came several weeks after a Russian court convicted a Crimean Tatar leader, Ilmi Umerov, on separatism charges stemming from a media interview in which he criticized Russian actions in Crimea, and sentenced him to two years in prison.

In September, a Russian court in Crimea sentenced another prominent Crimean Tatar leader, Akhtem Chiygoz, to eight years in prison on bogus charges of organizing "mass riots."

On October 25, after negotiations between President Recep Tayyip Erdogan of Turkey and President Vladimir Putin of Russia, Russian authorities allowed Chiygoz and Umerov to leave Crimea for Turkey. On October 27, they arrived in Kyiv.

Under international law, the Russian Federation is an occupying power in Crimea as it exercises effective control without the consent of the government of Ukraine, and there has been no legally recognized transfer of sovereignty to Russia.

On September 25, the United Nations Human Rights Monitoring Mission in Ukraine released its first report on the human rights situation in Crimea, concluding that it "has significantly deteriorated under Russian occupation."

Russian authorities, and their proxies, should immediately stop persecution of Crimean Tatars including under the pretext of combating terrorism and extremism, cease all unjustified interference with freedom of association and assembly in Crimea, and ensure prompt, effective, and impartial investigations into all allegations of abuses perpetrated by law-enforcement against Crimean Tatars. Russian and Ukrainian authorities should ensure unfettered access to Crimea for independent human rights groups as well as humanitarian and intergovernmental organizations.

The UN Human Rights Office, the Organization for Security and Co-operation in Europe (OSCE), and the Council of Europe should continue to document and publicly report on the human rights situation in Crimea and urge Russian authorities to address both ongoing and past abuses. Russia's international partners, including the European Union and its member states, Turkey, and the US

should continue to call for the release of detained Crimean Tatar activists and for an end to the harassment and arbitrary actions against the Crimean Tatar community.

"It is good news that Chiygoz and Umerov are no longer at risk, but it's also outrageous that they have had to go into exile to bring their ordeal to an end, and that others in Crimea remain incarcerated," Williamson said. "Russia's international partners need to press the Kremlin and Crimean authorities end the persecution of the Crimean Tatar community."

Human Rights Watch researchers spoke with Crimean Tatar leaders and family members, lawyers, journalists, and others in Crimea in late October in the cities of Simferopol, Krasnogvardeyskoe, Belogorsk, and Yalta. Interviewees received no compensation and were fully informed of the purpose of the interview and on how Human Rights Watch would use the information they provided.

Prosecutions for Alleged Involvement in Hizb ut-Tahrir

Since 2015, Russian authorities in Crimea have charged at least 26 people, most of them Crimean Tatars, with participating in or organizing a terrorist group because of their alleged involvement in Hizb ut-Tahrir.

Hizb ut-Tahrir, established in 1953, is an international Islamist movement that seeks to establish a worldwide caliphate based on Sharia, but publicly denounces violence as a means to achieve its goal. In 2003, Russia banned Hizb ut-Tahrir as a terrorist organization. Hizb ut-Tahrir is not banned in Ukraine or in most of Europe, but is in Germany, and several former Soviet republics, including Uzbekistan and Kyrgyzstan, as well as China, Egypt, and most Arab countries. The European Court of Human Rights has held that bans on Hizb ut-Tahrir in Germany and Russia do not violate the European Convention on Human Rights.

According to Sova Center, a prominent Russian think tank, as of February, 47 people were serving prison terms in Russia for alleged involvement in the movement. In its 2016 report, Sova Center highlighted Russian authorities' and courts' practice of charging and convicting people solely for studying, distributing religious literature, or participating in discussions on religious topics linked to Hizb ut-Tahrir.

In the past several years, Memorial Human Rights Center has designated 40 people sentenced for

involvement with Hizb ut-Tahrir in Russia as political prisoners.

Prior to the occupation, although Ukrainian authorities did not ban Hizb ut Tahrir, in Crimea they kept lists of suspected followers. Some of those Human Rights Watch interviewed believed the Russian authorities used these lists to identify and prosecute Crimean Tatars for involvement in the organization.

Law enforcement search the house of a Crimean Tatar activist in Stroganovka, Crimea, May 2017. 2017 RFE/RL

In 25 of the cases of arrests documented, the terrorism-related charges were based solely on the suspects' alleged association with Hizb ut-Tahrir. In no case was the suspect accused of involvement in planning, carrying out, or otherwise being an accessory to, any act of violence.

Some of the detainees do not deny some level of affiliation with Hizb-ut-Tahrir, but all deny any involvement in a terrorist organization. Under Russian law, participation in a terrorist group (article 205.5, part 2 of the Russian Criminal Code) is punishable by a prison sentence of 5 to 10 years. Punishment for organizing the activities of a terrorist group (part 1 of article 205.5) ranges from 15 years to life.

In all the cases documented, law enforcement agents searched suspects' homes, confiscating computer equipment, telephones, flash drives, and other data storage, and Islamic literature, then detained them allegedly on suspicion of involvement in Hizb ut-Tahrir.

Activists and lawyers working on behalf of those detained told Human Rights Watch that most of the evidence investigators presented consists of video or audio recordings of meetings in people's apartments at which people discussed interpretations of the Quran or their disagreements with Russia's actions in Crimea; possession of religious literature; and meetings, conversations, and other actions allegedly aimed at recruiting new members.

The Russian Federal Security Service (FSB) reported that it had identified and eliminated Hizb ut-Tahrir cells in Yalta, Bakhchisarai, Simferopol, and Sevastopol. In each town, authorities detained on average four to six people, charging one person as a leader of a cell and the others as members.

In addition to the cases documented, in August 2016, a citizen of Kyrgyzstan, Akhmatzhon Abdulaev, was arrested in Crimea. According to Crimea SOS, a Ukrainian rights group monitoring the human rights situation in Crimea, authorities charged him with abetting terrorist activity and participation in Hizb ut-Tahrir and he is in pretrial detention in Simferopol.

Bakhchysarai- October 11, 2017

On October 11, 2017, at about 6 a.m., FSB agents searched the homes of six Crimean Tatars in Bakhchysarai, a city in central Crimea. They did not present a warrant.

After the searches, the authorities arrested Timur Ibragimov, Memet Belyalov, Server Zekeryayev, Seyran Saliyev, Ernest Ametov, and Marlen (Suleyman) Asanov, all of whom a court sent to pretrial custody for two months pending the investigation. Crimea SOS reported that Asanov was eventually charged with allegedly organizing a Hizb-ut-Tahrir "terrorist" cell, and the other five men, with alleged involvement in it. All deny the charges.

Zair Smedlyaev, a Crimean Tatar leader and a member of Kurultai, the elected council of the Crimean Tatar community, who monitored the developments around the searches, told Human Rights Watch that some of those subjected to the searches are devout Muslims and that all are also outspoken critics of Russia's occupation of Crimea.

Emil Kurbedinov, a lawyer representing Asanov, told Human Rights Watch that during Asanov's initial interrogation, the authorities claimed that he was involved in "anti-Russian" activities. On October 25, the authorities formally charged him with organizing a "terrorist cell" in Bakhchysarai.

Authorities committed several procedural violations in the arrests and searches. Two lawyers told Human Rights Watch that they were unable to observe the searches because security services and riot police blocked off the area and denied them entry, even after they said they were there to represent their clients. Kurbedinov said the authorities failed to present the necessary arrest and other procedural documents in a timely manner.

Alexey Ladin, another lawyer representing one of the detainees, told media that during interrogations, the security officials claimed the criminal charges were based on two audio recordings of conversations between those arrested. He said the conversations concerned various interpretations of the Quran and other religious topics, but none related to violence or any other criminal activity.

Kurbedinov said that Asanov is a successful businessman and an active supporter of a group called Crimea Solidarity. Created in 2016, the group includes Crimean Tatar activists, family members, lawyers, and human rights defenders and supports Crimean Tatars persecuted by the authorities. Kurbedinov said that Asanov on several occasions provided a venue for the group's meetings.

Nizhnegorskiy

Renat Paralamov is a Crimean Tatar who worked as a trader at a local market in Nizhnegorskiy. In September, security services detained him on suspicion of involvement with Hizb ut-Tahrir and allegedly tortured him to coerce him into becoming an informant. On September 13, 2017, a group of masked men in Nizhnegorskiy searched the house where he lived with his family. They said that they needed to search for "weapons and drugs." During the search, they seized Paralamov's laptop and tablet, as well as his mother-in-law's book on Islam.

After the search, the men put Paralamov in a van and drove off.

For more than 24 hours, his family and lawyer had no contact with him or information about his whereabouts. Paralamov's lawyer and a group of activists called and visited police and FSB departments in Nizhnegorskiy and Simferopol asking about him, but got no answers as to his whereabouts or even a confirmation of his arrest. On the morning of September 14, a policeman told Paralamov's family and friends, who had gathered outside a Nizhnegorskiy police station, that the local FSB department had released Paralamov the day before, but that he "voluntarily" went back to "provide further answers" to the authorities' questions.

At around about 12:30 pm on September 14, Paralamov called his family from a bus station in Simferopol. He said he had been badly beaten, and was shaken and unable to walk. Paralamov's family took him to a hospital in Simferopol to document his injuries, which included multiple hematomas and bruises.

At the end of September, Paralamov managed to leave Crimea with his family. After he arrived in Kyiv, he spent 15 days in a hospital to get treatment for his injuries.

During a news conference in Kyiv in early November, Paralamov described his detention and torture. He said that after the FSB took him to the station, they put a bag over his head, put tape

over his mouth, and tortured him with electric shocks. They also punched him in the chest and hit him on the back of his head. When he asked for a lawyer, an FSB agent punched him in the chest and told him, "I'm your lawyer."

Paralamov said the FSB agents asked him about his involvement with Hizb ut-Tahrir and demanded that he become an informant, attend Crimean Tatars' gatherings, collect information, and pass it on to the authorities. They also forced him to sign a document claiming that he left the FSB station in Simferopol on September 13 and voluntarily returned to confess to involvement with Hizb ut-Tahrir and that he voluntarily agreed to "cooperate" with the FSB.

Paralamov said that the next day, the authorities took him to a forest, where they made him repeat his confession on camera. The authorities told Paralamov that if he cooperated, he would get a three-year conditional sentence rather than real prison time and told him to not use a Crimean lawyer but the lawyer that they would provide.

Yalta

On February 11, 2016, the FSB searched 11 homes of Crimean Tatars in Yalta and surrounding towns. Edem Semedlyaev, a lawyer representing one of the suspects, said that law-enforcement officials knocked down doors and broke windows in several houses.

Following house searches, the FSB detained 14 people. Ten were released the next day and four were arrested: Emir-Usein Kuku, Enver Bekirov, and Vadim Siruk on suspicion of participating in Hizb ut-Tahrir, and Muslim Aliev for allegedly organizing a local Hizb ut-Tahrir cell. All are also charged under article 278 of the Russian Criminal Code for actions directed at the "violent takeover of power". Two months later, police in Yalta arrested two other men, Refat Alimov and Arsen Dzhepparov, for alleged participation as well. All six have been in custody awaiting trial since their arrest.

In October 2016, prison doctors, saying they were assessing the six detainees' mental health condition, questioned them about their religious practices and political views. Because all six refused to answer, they were forcibly placed in a psychiatric hospital in November 2016 for three to four weeks for evaluation. The authorities said they found no problems with the men's mental health and that they were therefore accountable for their actions.

Family members of one of those in custody, Aliev, told Human Rights Watch that at about 7 a.m.

on February 11, about 10 heavily armed and masked men came to search the house. The men did not present a search warrant or any identification and refused Aliev's request for a lawyer. They forced Aliev, who did not resist, to lie on the floor face down in front of his wife and children and told the family that they were looking for weapons and prohibited literature. They brought two witnesses for the search. When Aliev's wife asked if they could invite neighbors to witness the search instead, the armed men refused.

The men behaved aggressively toward Aliev's wife and children. One asked Aliev's 12-year-old son: "Who do you want to be when you grow up? Do you want to be like us and take down people like your father?" One of the men picked up the Quran from the table and threw it on the floor. When Aliev's wife attempted to pick it up, the man kicked it away.

During the search, the authorities seized three bags of books, including children's books, as well as Aliev's computer and cell phone. They eventually returned the books and the computer.

Emir-Usein Kuku, another of those in custody, is a human rights activist and a member of the Contact Human Rights Group, founded in October 2014 to pressure Russian authorities in Crimea to investigate abuses. Authorities briefly detained him in April 2015, questioned him in November 2015, and repeatedly attempted to recruit him as an informant, an offer which he refused and spoke about publicly.

In September 2016, the prosecutor's office in Crimea launched an investigation alleging that Kuku was neglecting his parental duties. In October 2016, a local police inspector made several attempts to meet with Kuku's children, 5 and 9, while they were at school without adults present, and on one occasion when he was able to, he asked Kuku's 9-year-old son questions that implied his father was neglecting his parental duties while in detention.

Dzhemil Temishev, a lawyer representing Dzhepparov, another of the six detainees, told Human Rights Watch that between April and May 2016, prison administration refused to provide him with necessary medical assistance for an ongoing health problem requiring surgery. After Temishev repeatedly complained, Dzhepparov was eventually hospitalized and underwent surgery. In May 2017, Dzhepparov's health deteriorated again but the authorities again refused to provide him with needed medical treatment, Temishev said. Temishev also said that prison authorities placed Dzepparov in solitary confinement twice for a total of 16 days under arbitrary pretexts, such as refusing to shave his beard or not opening the cell door fast enough.

Bakhchysarai – May 2016

Four residents of Bakhchysarai were arrested on May 12, 2016, and charged with membership in Hizb ut-Tahrir. They are Rustem Abiltarov, Zevri Abseitov, Remzi Memtov, and Enver Mamutov.

Police arrested all four following searches of five houses and a café in Bakhchysarai. Mamutov is accused of organizing and leading a cell, and the rest, with involvement in it. A former Russian prosecutor in Crimea stated that the detained men allegedly carried out "unconstitutional activity in the form of the propaganda work among the population." All four remain in custody, pending the investigation.

Simferopol

In October 2016, police arrested Aider Saleidinov, Rustem Ismailov, Uzair Abdullayev, Teimur Abdullaev, and Emil Dzhemadenov, after a wave of house searches in the city of Simferopol. Abullayev was accused of organizing a Hizb ut-Tahrir cell, and the four others of participation in it. All five have remained in custody, pending the investigation.

In December 2016, Saledinov, Ismailov, and Uzair Abdullaev said, FSB officers beat them while in transit to investigative facilities. In February 2017, Saledinov and Ismailov were sent for psychiatric evaluations at a hospital to determine the state of their mental health at the time of their alleged criminal acts. Kurbedinov, the lawyer, said that Teimur Abdullaev was placed in an isolation ward in March 2017 for writing a letter in Crimean Tatar language.

Sevastopol

In January 2015, police in Sevastopol arrested Ruslan Zeitullayev, Ferat Saifulaeyev, Rustem Vaitov, and Nuri Primov. Zeitullayev was charged with organizing a Hizb ut-Tahrir cell, and the others with participation.

On September 7, 2016, a military court in Rostov-on-Don in Russia, convicted all four men on charges of participation in a terrorist organization and sentenced Vaitov, Primov, and Saifulayev to five years in prison, and Zeitullayev to seven.

Following the prosecutor's appeal that Zeitullayev should have been convicted for "organizing" not

just "participation in" a terrorist group, on December 27, Russia's Supreme Court sent his case for retrial. The prosecution asked for a more severe charge and sentence because it considered Zeitullayev the leader of the Hizb ut-Tahrir group in Sevastopol.

At retrial, in April 2017, the court sentenced Zeitullayev to 12 years in a maximum-security prison for organizing a terrorist group. The prosecutor's office again appealed the verdict, demanding an 18-year sentence. In July, Russia's Supreme Court changed Zeitullayev's prison sentence to 15 years. The verdict, which Human Rights Watch reviewed, said that the case against him was built on testimony by a secret witness; conversations with others about prosecutions against Hizb ut-Tahrir members and criticism of the media; and the alleged possession of brochures, leaflets, and other Hizb ut-Tahrir publications.

In September 2017, all four men were transferred to various regions of Russia to serve their prison terms. Memorial Human Rights Center recognized them as political prisoners.

Separatism Prosecutions

On October 18, 2017, following a year-long investigation, Russia's security services charged Crimean Tatar activist Suleyman Kadyrov, 55, with separatism (article 280.1, part 2, of Russia's criminal code). Kadyrov is a former Mejlis member.

One of Kadyrov's lawyers, Alexey Ladin, told Human Rights Watch that in April, Russia's Federal Financial Monitoring Service included him in its official list of "active terrorists and extremists."

The criminal charges stem from comments Kadyrov made in March 2016 when he re-posted another user's Crimea-related video on his Facebook page. The comment said: "Suleyman Kadyrov agrees! Crimea is Ukraine. Always has been, always will be. Many thanks to the author of the video! I support it!"

Kadyrov is at liberty, awaiting trial.

Arrests for Single-Person Pickets

The Crimean authorities refuse Crimean Tatars' requests to hold peaceful gatherings under arbitrary pretexts and crack down on spontaneous protests. Between August and October 2017, authorities detained dozens and fined at least 10 Crimean Tatars for exercising their right to protest peacefully.

They included people who held single-person pickets, including to protest the trials of Crimean Tatar leaders and security service searches of Crimean Tatars' homes.

On August 8, Simferopol police detained 76-year-old Sever Karametov, who was picketing in front of the Crimea Supreme Court building in Simferopol to protest the trial of Akhtem Chiygoz. Three police officers approached Karametov and ordered him to follow them. When he insisted on remaining, they grabbed him and forcibly led him away. Karametov's lawyer said he had been diagnosed with advanced Parkinson's disease. On August 9, a judge refused to order a medical exam for Karametov, swiftly found him guilty of resisting police orders, and sentenced him to 10 days in prison, which he served. The court also fined Karametov 10,000 rubles (approximately US$165.)

On October 11, authorities in Bakhchysarai detained nine activists who were recording the searches of the homes of those suspected of involvement in Hizb ut-Tahrir and live streaming them on social media. Authorities charged them with participating in an unauthorized public gathering that led to disrupting public order, a misdemeanor. A lawyer present when the men were detained told the media that police struck several of the activists while transporting them to the police station.

In court hearings the same day, all nine were found guilty and fined for various amounts of up to 15,000 rubles (approximately US$261), for a total amount of 135,000 rubles (approximately US$2,350).

On October 14, more than 100 Crimean Tatars participated in single-person pickets at different locations around Crimea, protesting the October 11 arrests. The protesters stood along Crimea's highways, holding up signs demanding an end to the persecution of Crimean Tatars. According to media reports, the police detained at least 49 people for conducting single-person pickets. In a video statement uploaded to his Facebook page, Rustem Kyamilev, a Crimean lawyer who monitored the arrests, said that the police pressured those detained to be fingerprinted and denied them access to a lawyer. All were released the same day without charge.

Human Rights Watch researcher Tanya Cooper interviewing Zair Smedlyaev, Crimean Tatar leader in Krasnogvardeyskoe, Crimea on October 24, 2017 2017 Yulia Gorbunova/Human Rights Watch

In the following days, most of the activists detained on October 14 were summoned to their local police stations, Zair Smedlyaev told Human Rights Watch. The activists told Smedlyaev that during questioning the police pressed them for details about those organizing the October 14 protests, including asking who told them to participate in the protests and who prepared the signs for them.

Legal Framework

As an occupying power, Russia should respect, unless absolutely prevented from doing so, Ukrainian laws that were in force in Crimea when it commenced its occupation. However, Russia rejects its status as an occupying power and applies its federal laws to Crimea, including criminalizing activity not previously criminalized on the peninsula. This notwithstanding, all relevant human rights treaties, including the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture, apply in Crimea and all authorities, whether they are Russian or Crimean acting under Russian authority are bound by these treaties.

Russia is bound to respect the rights of Crimean residents, including those of freedom of opinion, expression, assembly and association, and religion, freedom from arbitrary detention and ill-treatment including torture, and rights to fair trial, due process, and privacy. The Russian actions against Crimean Tatars that Human Rights Watch documented violate these rights and in total may be considered to amount to a policy of persecution against Crimean Tatars.

While it may fall within Russia's discretion to proscribe Hizb ut-Tahrir and designate it as a terrorist organization, that does not give Russian authorities carte blanche to use the criminal law as a tool to suppress non-violent opposition, criticism or protest. Any and all application of the criminal law must comport with international standards on due process and focus on criminal conduct, not be used to punish exercise of basic rights such as free speech, assembly, and opinion.

The evidence against the Crimean Tatars prosecuted is not that they engaged in, advocated, or aided and abetted acts of violence. Rather the evidence presented against those accused of involvement in a terrorist organization is primarily discussions during meetings, often in private apartments, on interpretations of the Quran or Russia's actions in Crimea, or possession of religious literature. The prosecution on terrorism charges of Crimean Tatars for non-violent speech and, in particular, the equating of speech with acts of terrorism or extremism, is an unjustified interference with freedom of opinion, expression and religion.

Russia's use of the ban on Hizb ut-Tahrir to go after and lock up Crimean Tatars who have not engaged in criminal behavior, but who may oppose Russian occupation or are discussing their religious and political beliefs, is not only a violation of freedom of association but is a misuse of the criminal justice system for political ends. These actions are further compounded when the Russian authorities deny people the right to peacefully protest rights violations, whether in a collective or as individuals, and punish them for peaceful exercise of their right to protest.

Region / Country Europe/Central Asia, Russia, Ukraine
Topic Free Speech, Religious Freedom, Terrorism / Counterterrorism

MORE READING

Get Updates On Rights Issues From Around The Globe

Enter an email address Sign Up

Connect With Us

Contact Us | Corrections | Privacy Policy | Permissions | Site Map

Human Rights Watch | 350 Fifth Avenue, 34th Floor | New York, NY 10118-3299 USA | **t** 1.212.290.4700

Annex 965

Crimean Human Rights Group, Statement on Unlawful Searches and Detainments of Crimean Tatar National Movement Activists and Veterans in Crimea (24 November 2017)

24.11.2017

Statement on Unlawful searches and detainments of Crimean Tatar national movement activists and veterans in Crimea

STATEMENT

24 November 2017

Unlawful searches and detainments of Crimean Tatar national movement activists and veterans in Crimea

On the 23rd November 2017 the peaceful population of Crimean peninsula suffered the next wave of the attacks of representatives of the Crimean RF subordinate occupational authorities. And it was the FSB of Russia that performed a number of unlawful searches in the private houses of eight Crimean Tatar activists in the occupied Crimea. At the same time, five Crimean Tatar activists: Bekir Degermenji, Asan Chapukh, Kiazim Ametov, Kurtseit Abdullayev and Ruslan Trubach were detained in the city of Simferopol, with most of them being still unlawfully deprived from liberty. Mrs Vejie Kashka, a 83-year's old legendary veteran of the Crimean Tatar national movement, was present at the site of this inhuman security operation and was also subject to the force. She felt bad at the detainment place and later the same day she died in the ambulance car.

NEWS

10.05.2018

Open appeal of human rights organizations on the illegal conviction of Ihor Movenko

read more

04.05.2018

Children study in Russian in only Ukrainian school in Crimea

MONITORING REVIEWS

26.04.2018

Review on the human rights situation in Crimea in March 2018

read more

We are appealing to Government of Ukraine, Governments of foreign states and international organizations and requesting:

- To condemn absolutely a new wave of unlawful searches and detainments in Crimea that caused the death of Mrs Vejie Kashka, a Crimean Tatar movement veteran, and resulted into gross abuse of human rights;
- To demand the Russian Federation to investigate effectively the death of Mrs Kashka and bring all the guilty to justice as well as to monitor this investigation;
- To demand the Russian Federation to stop unlawful politically motivated persecutions of Ukrainians and Crimean Tatars on the territories occupied by it;
- To track the destiny of all unlawfully detained and their further possible criminal persecution by the Crimean occupational authorities;
- The law enforcement bodies of Ukraine to investigate the facts of death of Mrs Kashka, a Ukrainian citizen and a Crimean Tatar movement veteran, as well as unlawful deprivation of liberty of Crimean Tatar community activists, citizens of Ukraine
- To provide a comprehensive support and aid to civil activists, political prisoners of the Kremlin and their families as well as independent defence lawyers working in Crimea to defend human rights.

So on November 23rd 2017 unlawful searches took place in the private houses of eight Crimean Tatar activists in several towns of Crimea. Simultaneously with the searches in the houses six activists, five being Crimean Tatars, were detained in MEDOBORY and MARAKAND cafes in the city of Simferopol. They were detained by the Russian security agencies without any notification on the detainment reason and access of defence lawyers. These were Bekir Degermenji, 57-year's old father of one of the 'February 26th Case' persons involved, activists Asan Chapukh, Kiazim Ametov, Kurtseit Abdullayev,Ruslan Trubach, and Yuriy Baranov.

According to the Russian mass media referring to the occupational law enforcement agency source, detainments and searches were performed within the criminal case on the suspected extortion of money from Mr Yusuf Aitan, a Turkish citizen (Article 163.2, RF CC; up to 7 year's sentence). All searches and detainments took place with non-proportional use of force, and the procedure rights of detained including a right to defense were not respected. The activists detained in MEDOBORY café were kept lying handlocked on the floor for a long time. Most of the Crimean Tatar community members detained in the city of Simferopol were interviewed by the security officers and have been still kept unlawfully in custody.

One of the detained was also Mrs Vejie Kashka, a 83-year's old Crimean Tatar national movement veteran. Once detained, she felt bad due to unlawful force actions of the Crimean 'police'. Though the ambulance was called, she died on the way to the hospital due to heart attack. Later the occupational authorities published a video of detaining these people, though the moment of detaining the passed away was cut out.

ANALYTICS

29.03.2018

Hate Speech in the Media Landscape of Crimea: research

read more

20.03.2018

Freedom of Religion and Beliefs in Crimea

MEDIA

27.03.2018

Number of Ukrainian political prisoners in Crimea and Russia increased

read more

23.02.2018

Exiles In Their Country, Crimean Dissidents Resist Russian Rule

Then in the evening of November 23rd over twelve participants of single-man pickets on November 14 2017 were handed notices on issuing administrative offence protocols under Article 20.2.5 of RF CAF (Violation of the public event established procedure). For the time being the names of two affected are known: Diliaver Asanov and Eldar Kantemirov.

We consider such searches and detainments as a new brutal wave of pressure on the civic activists and Crimean Tatar national movement members as well as further implementation of Russia's policy on persecuting all dissenters with occupational authorities' actions. The information disseminated by the RF subordinate mass media regarding the passed away and unlawfully detained Crimean Tatars contradicts the reality. According to the words of the detainees' families, in fact, Mr Yusuf Aitan, a Turkish citizen, owed a certain amount of money to Mrs Kashka, a national movement veteran. However, the occupational authorities used the false flag operation to suppress the activists and disseminate fake propaganda in the mass media, including also defamation of the Crimean Tatar Mejlis because the detainees were called its members. The searches and accusations of single man picket participants also indicate politically reasoned actions of the occupational authorities that since the seizure of Crimea have been constantly persecuting any manifestations of freedom of thought and freedom of peaceful assemblies on the peninsula.

We are condemning continuous unlawful and cynic actions of the Crimea Russian occupational authorities and appealing to the international community to take all possible actions to stop them immediately and to de-occupy the Crimean peninsula.

Tamila TASHEVA (Ms)
Co-founder and coordinator
CrimeaSOS NGO

Oleksandr PAVLICHENKO (Mr)
Executive Director
Ukraine Helsinki Human Rights Union

Olha SKRYPNYK (Ms)
Chairman
Crimean Human Rights Group

Oleksandra ROMANTSOVA (Ms)
Deputy Chairman
Center for Civil Liberties

Enver KADYROV (Mr)

Chairman

Human Rights Movement of Crimea
NGO

Annex 966

Human Rights Watch, Another Day, Another Tragedy in Crimea (27 November 2017)

HUMAN RIGHTS WATCH

NOVEMBER 27, 2017 4:31PM EST DISPATCHES

Another Day, Another Tragedy in Crimea

Prominent Crimean Tatar Activist Dies After Raid in Crimea

Tanya Cooper
Researcher, Ukraine
tanyacooper_

Vedzhie Kashka, 83, is a powerful name in Crimea for her prominent role in the Crimean Tatar national movement and her work to defend rights of Crimean Tatars. She died in Simferopol on November 23, after Russia's security services (FSB) raided a café where she was meeting with other leaders of the Crimean Tatar national movement. According to a journalist's account, Kashka felt unwell during the FSB operation and died in an ambulance on the way to the hospital.

Vedzhie Kashka, August 2017.

Russian authorities accuse the others at the meeting of extorting money from a Turkish national, who had allegedly borrowed money from Kashka.

In May 2014, a few months after Russia began its occupation of Crimea, Russian President Vladimir Putin met with representatives of the Crimean Tatar community to commemorate the 70th anniversary of the deportation of Crimean Tatars to Siberia, Kazakhstan, Uzbekistan, and other places. He promised support for cultural and political rehabilitation of Crimean Tatars to ensure, "a normal life for people and to create conditions for progressive development of the Crimean Tatar nation in their homeland."

Kashka's death is an important time to remember those words. The past few years have made clear they were meant only for Crimean Tatars who do not openly oppose Russia's occupation of Crimea. But many do oppose it

– according to the Ukrainian rights group Crimea SOS, around 25,000 Crimean Tatars left Crimea since the occupation began in 2014.

I was in Crimea in October and spoke with many Crimean Tatar activists about what happens to those who remain and speak out. They detailed relentless house searches, detentions, and criminal prosecution of their colleagues, friends, and family members, including an account of torture. I heard numerous stories of the FSB storming people's homes, breaking doors and windows, denying access to lawyers, and referring to those they detained as "terrorists." As Human Rights Watch documented in a recent report, Russian authorities in Crimea are carrying out a campaign of repression against Crimean Tatars who have persistently and peacefully opposed Russia's occupation of their homeland and the ensuing abuses. Authorities portray politically active Crimean Tatars as extremists and terrorists and send a clear message to those who choose to stay that they should never feel safe to speak their mind.

Kashka's death is a great loss for the Crimean Tatar national movement and for those documenting egregious abuses in Crimea.

Region / Country

- Europe/Central Asia
- Russia
- Ukraine

More Reading

- 

November 14, 2017 Report

Crimea: Persecution of Crimean Tatars Intensifies

- 

September 27, 2017 News Release

Crimea: Crimean Tatar Leader Convicted on Spurious Charges

Source URL: https://www.hrw.org/news/2017/11/27/another-day-another-tragedy-crimea

Links

[1] https://www.hrw.org/view-mode/modal/311842

[2] https://ru.krymr.com/a/news/28875224.html

[3] https://www.facebook.com/anton.naumlyuk/posts/1767984186569847

[4] https://www.hrw.org/europe/central-asia/turkey

[5] https://www.hrw.org/europe/central-asia/russia

[6] https://www.hrw.org/europe/central-asia/kazakhstan

[7] https://www.hrw.org/europe/central-asia/uzbekistan

[8] http://kremlin.ru/events/president/news/21028#sel=6:1:0kc,6:92:lZU

[9] https://www.hrw.org/europe/central-asia/ukraine

[10] https://www.ukrinform.net/rubric-society/2230685-crimean-tatars-leave-peninsula-because-of-unprecedented-persecution-crimeasos.html

[11] https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies

[12] https://twitter.com/intent/tweet?text=Another%20Day%2C%20Another%20Tragedy%20in%20Crimea%20https%3A//www.hrw.org/news/2017/11/27/another-day-another-tragedy-crimea

[13] https://www.facebook.com/sharer.php?u=https%3A//www.hrw.org/news/2017/11/27/another-day-another-tragedy-crimea

[14] whatsapp://send?text=Another%20Day%2C%20Another%20Tragedy%20in%20Crimea%20-

%20https%3A//www.hrw.org/news/2017/11/27/another-day-another-tragedy-crimea

[15] mailto:?subject=Another%20Day%2C%20Another%20Tragedy%20in%20Crimea&body=https%3A//www.hrw.org/news/2017/11/27/another-day-another-tragedy-crimea

[16] http://www.linkedin.com/shareArticle?mini=true&url=https%3A//www.hrw.org/news/2017/11/27/another-day-another-tragedy-crimea&title=Another%20Day%2C%20Another%20Tragedy%20in%20Crimea

[17] https://plus.google.com/share?url=https%3A//www.hrw.org/news/2017/11/27/another-day-another-tragedy-crimea

[18] http://reddit.com/submit?url=https://www.hrw.org/news/2017/11/27/another-day-another-tragedy-crimea&title=Another Day, Another Tragedy in Crimea

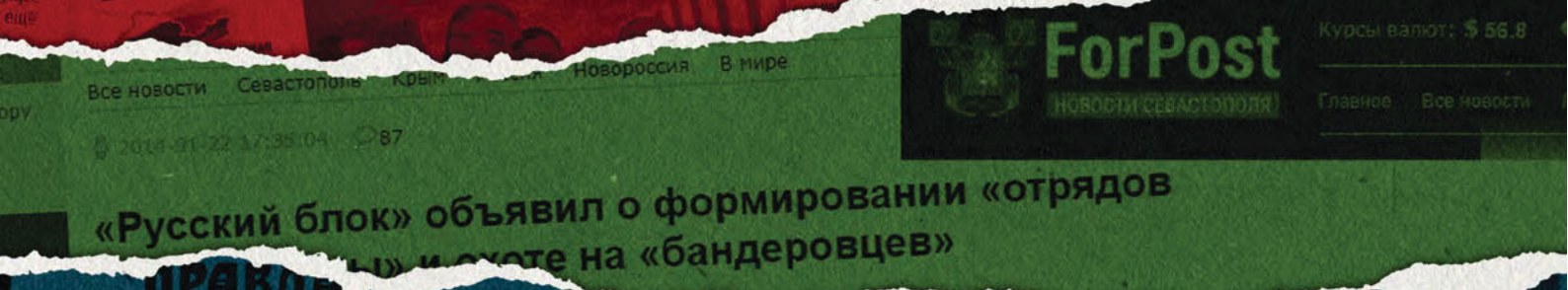
[19] https://telegram.me/share/url?url=https://www.hrw.org/news/2017/11/27/another-day-another-tragedy-crimea&text=Another Day, Another Tragedy in Crimea

Annex 967

Crimea Human Rights Group, Hate Speech in the Media Landscape of Crimea (2018)

Hate Speech in the Media Landscape of Crimea

Information and Analytical Report



HATE SPEECH IN THE MEDIA LANDSCAPE OF CRIMEA

AN INFORMATION AND ANALYTICAL REPORT ON THE SPREAD OF HATE SPEECH ON THE TERRITORY OF THE CRIMEAN PENINSULA (MARCH 2014 — JULY 2017)

Kyiv — 2018

UDC 32.019.5:323.266:327(477.75+47 0)

Authors:
Oleksandr Burmahyn
Tetiana Pechonchyk
Iryna Sevoda
Olha Skrypnyk

Review:
Viacheslav Lykhachev

Translation:
Anastasiia Morenets

Proofreading:
Steve Doyle

Hate Speech in the Media Landscape of Crimea: An Information and Analytical Report on the Spread of Hate Speech on the Territory of the Crimean Peninsula (March 2014 – July 2017) / under the general editorship of I. Sedova and T. Pechonchyk. – Kyiv, 2018. — 40 p.

ISBN 978-966-8977-81-7

This publication presents the outcome of documenting and classifying facts on the use of hate speech on the territory of the occupied Autonomous Republic of Crimea and city of Sevastopol from April 2014 to July 2017.

This publication uses material from mass media that have been disseminated in the territory of Crimea since the occupation of the peninsula by the Russian Federation, as well as information from open sources, including information resources from the authorities of Ukraine, Russian Federation and Crimean de-facto authorities, Crimean Human Rights Group and Human Rights Information Centre.

This publication is intended for the representatives of state authorities, educational and research institutions, diplomatic missions, international, non-governmental and human rights organizations

Crimean Human Rights Group (CHRG) — is an organization of Crimean human rights defenders and journalists aimed at promoting the observance and protection of human rights in Crimea by documenting the violations of human rights and international humanitarian law on the territory of the Crimean peninsula as well as attracting wide attention to these issues and searching for methods and elaborating instruments to defend human rights in Crimea. The CHRG team is composed of experts, human rights defenders and journalists from various countries who have been participating in monitoring and documenting the violations of human rights in Crimea since February 2014. The CHRG maintains a major focus on the human rights violations resulting from the unlawful actions of the Russian Federation in Crimea. The findings of the CHRG monitoring and documenting of human rights violations are presented in monthly monitoring reviews on the human rights situation in Crimea[1], as well as in the issue-related CHRG reports and articles[2].

Human Rights Information Centre (HRIC) — is a Ukrainian non-governmental organization which aims at promoting human rights, rule of law, and the ideas of civil society in Ukraine. Since March 2014, together with the Russian and Crimean human rights defenders, the organization has been taking part in the operation of the Crimean Human Rights Field Mission (CFM) – the only international human rights civic initiative that has been acting in Crimea on a continual basis. Once in the so-called 'patriotic stop-list' of the Federation Council of the Russian Federation, the CFM had to cease working in Crimea for its monitors were at risk of prosecution. The HRIC continues monitoring the situation regarding freedom of speech and expression in Crimea, as well as supporting local journalists and human rights defenders. The organization is involved in awareness-raising and research activities and advocates the human rights issues in Crimea at the national and international level.

UDC 32.019.5:323.266:327(477.75+47 0)

British Embassy Kyiv

This publication was funded by the British Embassy in Ukraine as part of the project implemented by Crimean Human Rights Group and Human Rights Information Centre. The views expressed in this publication are those of the authors and may not coincide with the official position of the UK Government.

ISBN 978-966-8977-81-7

[1] Monitoring reviews are available at: http://crimeahrg.org/category/monitor
[2] Issue-related reports and articles are available at: http://crimeahrg.org/category/analytic

CONTENTS

LIST OF ACRONYMS

BAF	Armed Forces
VCIOM	Russian Public Opinion Research Center
ECHR	European Court of Human Rights
AOC	Administrative Offences Code
CJE	Commission on Journalism Ethics
CHRG	Crimean Human Rights Group
MIA	Ministry of Internal Affairs
NGO	Non-Governmental Organization
UN	United Nations
RC	'Republic of Crimea'
RF	Russian Federation
HRRC	Human Rights Resource Center
CC	Criminal Code
UOC-KP	Ukrainian Orthodox ChurchKyiv Patriarchate
UHHRU	Ukrainian Helsinki Human Rights Union
HRIC	Human Rights Information Centre

FOREWORD

Since the occupation of Crimea by the Russian Federation in March 2014, the situation with freedom of speech and expression has dramatically changed for the worse on the peninsula.

On-air broadcasting of Ukrainian TV channels and radio stations on the peninsula's territory stopped at the very beginning of the occupation. Dozens of Crimean journalists and editorial departments had to leave the peninsula and move to mainland Ukraine, while some editorial offices closed down as they could not reregister and continue working under the Russian laws, and a lot of journalists retired from business in fear of persecution.

Pursuant to Freedom House's estimates, the degree of media freedom in Crimea in 2014 became one of the lowest in the world. The organization's report[1] gave the peninsula 94 points out of 100 (the worst score possible), so Crimea made the 'worst of the worst' territories list with Russia's score being 83.

The overwhelming majority of Crimean mass media which left the occupied peninsula and went on with their activity in mainland Ukraine remains blocked out in Crimea just like the main Ukraine-wide media.

Thus, according to data from the Human Rights Information Centre and Crimean Human Rights Group, the web-sites of 30 mass media are still completely or partially blocked on the territory of Crimea as of the beginning of March 2018[2]. These include the web-sites of information agencies highlighting Crimean events: Crimea. Realities, Center of Journalistic Investigations, Blackseanews.net, 15 Minutes, QHA, Crimea. SOS, Events of Crimea, Sevastopol Meridian, as well as Ukrainian-wide information and analytical publications: Ukrayinska Pravda, European Pravda, Hromadske Radio, UAinfo, Sled.net.ua, Glavnoe.ua Observer, RBC-Ukraine, Ukrinform, DePo, Gordon, Information Resistance, Focus, Censor.net. Furthermore, the web-sites of such TV channels as Chernomorskaya TV and Radio Company, ATR, Novyi Kanal, ICTV, 5 kanal, Espreso TV, UA: First and STB[3] have also been blocked.

The editorial departments of Ukrainian mass media cannot act in Crimea legally. The journalists of Ukrainian periodicals, even those who moved to mainland Ukraine and those working in Crimea covertly, are subjected to harsh persecution[4], including criminal prosecution[5].

The population of Crimea receives most of its information from Russian publications and TV channels, as well as from the Crimean mass media that showed loyalty to

[1] See Freedom of the Press 2017 / Freedom House — URL: https://freedomhouse.org/sites/default/files/FOTP_2017_booklet_FINAL_April28.pdf

[2] The check was performed on March 1-3, 2018 in Simferopol, Sevastopol, Bilohirsk, Yalta and Kerch. The resources to be checked were selected given the earlier statements about the mass media blocking, as well as by means of random checks of television channels and the most popular Ukrainian information and analytical web-sites.

[3] It should be noted that a part of these online media is blocked by the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor) — completely or partially (for instance, Hromadske Radio, 15 Minutes, Censor.net, RBC, Sled.net.ua etc.), while others cannot be accessed on the territory of Crimea without any legal justification. The majority of the abovementioned mass media is not blocked on the territory of the Russian Federation.

[4] Human Rights Defenders Claim About the Sweeping Purge of the Media in Crimea / Human Rights Information Centre, April 09, 2015 — https://goo.gl/gGG3ti

[5] Ukrainian Journalists Demand that the Russian Federation Should Cease Criminal Proceedings Against Their Colleges / Crimean Human Rights Group, October 27, 2016 — https://goo.gl/xZQKkE

Billboards on the Streets of Crimean Cities on the Eve of the So-Called 'Referendum', March 2014

the occupation authorities and, therefore, were allowed to work in Crimea openly.

With this in mind, hate speech manifestations in the media landscape of Crimea were monitored on the websites of the Crimean mass media whose editorial offices are located on the peninsula's territory, on the sites of the so-called 'authorities' of Crimea, and on the air of the top-rated television channels of the Russian Federation broadcasting on the peninsula.

The Committee of Ministers of the Council of Europe defines *hate speech* as the idea covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin[6].

It is worth noting that the problem of hate speech use in the media scene of Crimea had existed long before the peninsula was occupied by Russia. There were occasional hate-speech-related scandals and conflicts in the region.

However, since the beginning of the occupation, hate speech has been used in propaganda on an unprecedented scale with hate rhetoric becoming increasingly aggressive.

It was already in February 2014 that the pro-Russian mass media started calling Ukrainians **fascists** and **bloodthirsty Banderites**[7]. Billboards with messages about 'Ukrainian fascism' began to appear on the streets of Crimean cities, while public transport showed videos calling on Crimeans to stand up to the 'Banderites.'

Such statements have a rather wide range of use and target mainly those Ukrainians who do not abide by the aggressive actions of the Russian Federation. Since the armed conflict between the RF and Ukraine started, these notions became much more common, just like the mass accusations of Ukrainians of 'fascism' and submission to the 'fascist junta' that had allegedly seized the power in the country. Such deliberately misleading epithets were used to describe various social groups of Ukrainians: volunteers, civic activists, journalists, Euromaidan participants and supporters, population of Western Ukraine, Ukrainian-speaking citizens in general, advocates of the European integration of Ukraine and others. A wide use of the abovementioned terms in various contexts and projections created the general association and image of a Ukrainian that incites hatred and fear.

Hate speech as an element of RF government propaganda has become a real weapon intended to create a long-term negative image of the enemy and mobilize its active supporters of the seizure of Crimea. It yielded the desired results — the Russian-leaning part of population became radicalized fast and came down on the side of

[6] Recommendation No. R (97) 20 of the Committee of Ministers to Member States on 'Hate Speech' adopted on October 30, 1997 — https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d5b

[7] Members or supporters of Stepan Bandera's political movement who was a Ukrainian political activist and a leader of the nationalist and independence movement of Ukraine.

Funeral of Crimean Tatar Activist Reshat Ametov Who Became a Victim of Torture and Extralegal Execution, March 2014, Crimea

the Russian invaders. People with the opposite views were beaten up, kidnapped and tortured. Such violence was triggered by the Ukrainian language or the Flag of the Crimean Tatar people.

Thus, Reshat Ametov, a Crimean Tatar activist who initiated a one-man protest against the occupation of Crimea, was kidnapped by the 'Crimean Self-Defense' members on the central square of Simferopol on March 03, 2014. His body was found on March 15 with numerous marks of torture, his head bound with duct-tape, a pair of handcuffs beside him. The cause of death — a knife stab in the eye.

Two months later, the hate-filled Crimeans went to war in the Ukrainian Donbass and later in Syria.

The intensity of hate speech use in the media landscape of Crimea started gradually fading away as time passed. At the same time, hate speech is still rather common: it is used by the representatives of Crimean 'authorities,' politicians, local journalists and pro-Russian activists. Hate rhetoric peaks during high-profile events, mostly related to the armed conflict in Donbass as well as the activities of the Crimean Tatar national movement.

The authors of this research set out to document, systematize and demonstrate the scales of hate speech use in Crimea (using several time periods as an example for comparison) as well as reveal the main tendencies and ways of rousing hatred amid the ongoing international armed conflict on this territory.

We hope that the documented facts of hate speech use will be subject to a proper legal evaluation at both national and international levels, become the evidence base in various legal proceedings and will be used to ramp up international pressure on Russia as an occupant.

METHODOLOGY

The monitoring of hate speech use in the media landscape of Crimea has been carried out by the monitors and experts of the Crimean Human Rights Group and the Human Rights Information Centre pursuant to a set methodology based on the approaches of the SOVA Center for Information and Analysis[8] (Russian Federation) as well as those of the Without Limits project of the Social Action Center[9] (Ukraine) with some modifications.

Definition of Hate Speech

Despite the fact that hate speech is widespread in many areas of public and private life, there is no one common definition of what *hate speech* means exactly (*for more detail see Section: Overview of Hate Speech Laws*).

Many definitions of *hate speech* are based on establishing the fact of the incitement to hatred, humiliation or discrimination on certain grounds in statements, with the citation of such grounds, which makes such definitions simple and practical.

For this reason the basic definition for the purpose of this research is the definition used by the SOVA Center for Information and Analysis[10] with small changes:

> *'**Hate speech** is any inappropriate statements about ethnic, confessional or other social groups or communities, or separate persons who represent such communities.'*

Object of Monitoring

We chose the sources to be monitored among those that broadcast on the Crimean peninsula after its occupation by the Russian Federation[11], including the web-sites of the main Crimean 'authorities,' top-rated Crimean mass media with editorial offices located on the territory of Crimea as well as major Russian TV channels broadcasting in the media landscape of Crimea.

In particular, the objects of monitoring are as follows:

Web-sites of Crimean 'Authorities'

1. 'Government of the Republic of Crimea'[12]
2. 'State Council of the Republic of Crimea'[13]
3. 'Government of Sevastopol'[14]
4. 'Legislative Assembly of Sevastopol'[15]

[8] See Hate Speech against Society: (Collection of Articles) / compiled by: A. Verkhovsky. – Moscow: Sova Center, 2007. — 259 p.: tables. (Scientific (Use Academic in place of Scientific) Publication)

[9] See Without Limits project of the Social Action Center: Hate Speech and Mass Media: International Standards and Approaches. Kyiv, 2015.

[10] See, for instance: H. Kozhevnikova. Hate Speech: Typology of Journalist's Mistakes // Applied Conflictology for Journalists. Moscow, 2006. p. 95; H. Kozhevnikova. Applied Religious Studies for Journalists. Moscow: 'Human Rights,' 2009. p.48.

[11] We did not monitor Crimean mass media that moved out of the peninsula after its occupation by the Russian Federation and continue working in mainland Ukraine (e.g. ATR channel, QHA information agency, Center of Journalistic Investigations and others) as these mass media are blocked in Crimea.

[12] Web-site of the 'Government of the Republic of Crimea.' Available at: http://rk.gov.ru/

[13] Web-site of the 'State Council of the Republic of Crimea.' Available at: http://crimea.gov.ru/

[14] Web-site of the 'Government of Sevastopol.' Available at: https://sevastopol.gov.ru

[15] Web-site of the 'Legislative Assembly of Sevastopol.' Available at: https://sevzakon.ru/

5. 'Prosecutor's Office of the Republic of Crimea'[16]
6. 'Prosecutor's Office of Sevastopol City'[17]
7. 'Ministry of Internal Affairs for the Republic of Crimea'[18]
8. 'Department of the Ministry of Internal Affairs of Russia for Sevastopol'[19]

Crimean Mass Media

Web-sites of TV channels:

9. First Crimean[20]
10. NTS Sevastopol[21]

Web-sites of newspapers:

11. Krymskaya Pravda *[Crimean Truth]*[22]
12. Slava Sevastopolia *[Glory of Sevastopol]*[23]
13. Krymskiye Izvestia *[Crimean News]*[24]

Online media:

14. Crimeainform[25]
15. RIA Crimea[26]
16. ForPost Sevastopol[27]

It is worth noting that Pervyi Krymskiy TV channel and Krymskaya Pravda newspaper are funded from the budget of the Republic of Crimea, and Krymskaya Pravda is virtually controlled by the family of Konstantin Bakharev, the State Duma Deputy from the Republic of Crimea (his father Mikhail Bakharev is the editor-in-chief). The web-site of RIA Crimea is a unit of the Russian governmental news agency Rossiya Segodnya, while ForPost Sevastopol belongs to Sergey Kazhanov, the 'Deputy of the Legislative Assembly of Sevastopol.'

Web-Sites of Russian TV Channels Broadcasting in Crimea

We monitored the newscasts along with information and analytical programs aired at night (prime time) on three top-rated Russian TV channels broadcasting on the Crimean peninsula.

17. Russia-1[28]
18. NTV[29]
19. Channel One[30]

The monitoring established that the main examples of hate speech in news programs of the abovementioned channels are present in the form of oral statements of news presenters, journalists or speakers in news editions whose transcriptions are not publicly available. Such news items are posted on the web-sites of TV companies as videos[31].

Period of Monitoring

The monitoring covers the period from March 2014 to July 2017.

To show the dynamics of hate speech use on the mentioned media resources, we carried out a detailed monitoring, studying all newscasts and materials during two periods: from March 01, 2014 to September 31, 2014 and from January 01, 2017 to July 31, 2017.

We searched using key words applied to different vulnerable and discriminated-against groups *(see the list of key words below)* the list of which was compiled at the pilot stage of monitoring according to the results of a preliminary study of various Crimean and Russian information web-sites (those of authorities and mass media). The search was performed through the search box of web-sites and Google filters (by specific sites) using key words.

Furthermore, the monitors involved in the study watched all evening newscasts on three TV channels (Russia-1, NTV, Channel One) broadcasting in Crimea for six months: March, April and May 2014 and March, April and May 2017, as the main examples of hate speech exist in the form of oral statements of news presenters, journalists

[16] Web-site of the 'Prosecutor's Office of the Republic of Crimea.' Available at: http://www.rkproc.ru/

[17] Web-site of the 'Prosecutor's Office of Sevastopol City.' Available at: http://www.sevproc.ru/

[18] Web-site of the 'Ministry of Internal Affairs for the Republic of Crimea.' Available at: https://82.xn--b1aew.xn--p1ai/

[19] Web-site of the 'Department of the Ministry of Internal Affairs of Russia for Sevastopol.' Available at: https://92.xn--b1aew.xn--p1ai/

[20] Web-site of First Crimean. Available at: http://1tvcrimea.ru/

[21] Web-site of NTS Sevastopol. Available at: http://nts-tv.com/

[22] Web-site of Krymskaya Pravda. «Available at: http://c-pravda.ru/

[23] Web-site of Slava Sevastopolia. Available at: https://slavasev.ru/

[24] Web-site of Krymskiye Izvestia. Available at: http://crimiz.ru/

[25] Web-site of Crimeainform. Available at: http://www.c-inform.info/

[26] Web-site of RIA Crimea. Available at: http://crimea.ria.ru/

[27] Web-site of ForPost Sevastopol. Available at: http://sevastopol.su/

[28] 'Vesti' newscasts aired on weekdays at 8 P.M. (Moscow time) and 'Vesti Nedeli' weekly newscasts aired on Sunday at 8 P.M. (Moscow time). We monitored the Russia-1 web-site (available at: https://russia.tv/) and 'Vesti' web-site (available at: https://www.vesti.ru/) where these news items were posted.

[29] 'Segonia' newscasts aired on weekdays at 7 P.M. (Moscow time). 'Central Television' and 'Summing up the Week with Irada Zeynalova' news programs aired on weekends at 7 P.M. (Moscow time). We monitored the NTV web-site where these news items were posted (available at: http://www.ntv.ru/).

[30] 'Vremya' newscasts aired every day except Sunday at 9 P.M. (Moscow time). 'Sunday Vremya' newscasts aired on Sundays at 9 P.M. (Moscow time). We monitored the Channel One web-site where these news items were posted (available at: https://www.1tv.ru/).

[31] The monitors involved in the study watched all evening newscasts on three TV channels for six months: March, April and May 2014 and March, April and May 2017.

or speakers in news items, and the transcriptions of television programs are not publicly available.

Despite the fact that this method does not show the whole picture of how widely hate speech is spread in the media landscape of Crimea, it is efficient for processing a vast amount of text material.

Key Words

The study demonstrated that hate speech in relation to social and ethnical / national groups of people was expressed on the web-sites of the mass media and 'authorities' of Crimea with the use of the following negatively connoted lexemes:

Ukrainians[32]:

Banderites *[Translator's Note: members or supporters of Stepan Bandera's political movement],* **Bandar-logs, militants, extremist elements, our little brothers** *[literally; this phrase in Russian denotes pets]* **'wolves in sheep's clothing,' redneck Nazis, Galician Nazis** *[Galicia is a historical region in Central-Eastern Europe which now lies within western Ukraine]*, **Galicians, Westerners, Western Nazis, punishers, Kyiv terrorists, crypto-Banderites, common fence-sitters, Ukies** *[short and derogative for 'Ukrainians']*, **Ukiecitizens, Ukiegentlemen, puppets of the West, nazіocrats, the conscious and pseudo-educated, national extremists, Nazi junta, Nazi punitive squads, Nazi punishers, Nazis, savages, neonats** *[short for 'neonationalists']*, **neofascist threat, Hitlerites' henchmen, radical nationalists, Hitler's henchmen, the conscious** *[used in a derogatory sense]*, **douchebagulators** *[derogative for 'regulators']*, **trident-headed, gang, Ukrainian arias, Ukranazians, Ukes** *[another variant of 'Ukies']*, **Ukienazi, ultranationalists, racists, fascist scum, Little Russians** *[the Russian Empire gave Ukraine a colonial name Little Russia in 18th century]*, **neonazis, Shukhevych's followers** *[Roman Shukhevych was a Ukrainian politician and military leader]*, **Nazi collaborators, traitors, Nazi henchman, Russophobes, ultras, extremists**

Crimean Tatars:

Jihadists, punishers, Crimean Tatar radicals, radical Islamists, Russophobes, extremists

Euromaidan supporters:

Euromaidananas, Kyiv travelling circus, Heroes of Banderite Labor *[derogative for 'Heroes of Socialist Labor,' an honorary title of the Soviet Union given for exceptional achievements in economy and culture]*, **maidanuts, maidanshchyky** *[literally 'con artists']*, **maidan-brained, extremist imposters, anti-Semites**

Members and supporters of the Mejlis of the Crimean Tatar People:

rabble rousers, mujahideen, bandits, fifth column

Muslims:

Islamists, Tatar Wahhabis

Members of the Ukrainian Orthodox Church — Kyiv Patriarchate (UOC-KP):

dissenters

Members of the Ukrainian Greek Catholic Church (UGCC):

Uniates

Journalists and human rights defenders:

grant-eaters

Migrants:

gastarbeiters *[from German — 'migrant workers']*

Jehovah's Witnesses:

sectarians

The study revealed the use of Ukrainian words in Russian texts in a derogatory context with regard to Ukraine and people living in it, for instance **'ненька'** *[nenka, literally 'mother,' short for 'motherland']*, **незалежна** *[TN: nezalezhna, literally 'independent']*, **'цеевропа'** *[TN: tseyevropa, literally 'is Europe' — short for 'Ukraine is Europe']*.

We also registered the following descriptions of Ukraine (with the projection on all its citizens): **Ukrojunta, bloody junta, cannibalistic junta, fascist junta.**

Ukrainians' actions and initiatives are described with the following words:

vyshyvanka-dressed hysterics *[vyshyvanka is a traditional Ukrainian embroidered shirt]*, **blue and yellow chew, nazification, Banderization, Ukiecrap, Banderite asswipe, Ukiehouse, rushnyk and vyshyvanka nuthouse** *[rushnyk is a Ukrainian ritual embroidered cloth]*, **undividedcountrism, Ukrainian totalitarianism, fascism, nationalism, terror**.

It should be noted that when monitoring and assessing the consequences of hate speech use, it is important to take into account the ongoing international armed conflict[33] on the territory of Ukraine with regard to the

[32] Ukrainians in different contexts figure as ethnic and political subjects. In a number of cases, the line between Ukrainians as ethnic community and Ukrainians as civic community is blurred. Although in general it is allowed to criticize political subjects (citizens of Ukraine) but the authors noticed that occasionally citizenship (just like ethnicity) was also used to stir up hostility amid the international armed conflict between Russia and Ukraine.

[33] The Crimean events are qualified as an international armed conflict within the meaning of UN Resolution 71/205 as of December 19, 2016 and UN Resolution 72/190 as of December 19, 2017 on the

occupation of Crimea by the Russian Federation. Under such circumstances, stirring up hatred promotes the continuation of the conflict or even its escalation.

If we consider such lexicon in the context of the international armed conflict between the RF and Ukraine, we may see the tendency of creating an image of an enemy and kindling hatred towards Ukrainians as an ethnic and civic community,[34] especially together with the false accusations of Nazism[35] and constant comparison of Ukrainians with the Nazi criminals of World War II. In the context of the armed conflict, such words as **Nazis**, **junta**, **punishers**, **Banderites** and **fascists** in relation to Ukrainians should be regarded as the expressions used as part of the general policy to incite hatred and create an image of an enemy as well as present Ukrainians as the followers of the Nazi criminals of the Second World War.

The mass use of the expressions characterizing Ukraine as a junta-occupied country and its citizens as Nazis toeing the line of such junta allows the monitors to conclude that such appraisals go beyond the limits of criticism acceptable in a free democratic state and exemplify hate speech.

Types of Hate Speech

To evaluate the specific manifestations of hate speech by its potential negative impact and severity of possible consequences, we used the classification of the SOVA Center for Information and Analysis (Russian Federation)[36].

In particular, the study classified hate speech by the following types.

1. **Harsh** hate speech:

- calls for violence (in relation to a specific situation with the object of violence indicated; claiming violence to be acceptable in articles, messages of the mass media and so on, as well as in the form of direct calls for violence towards a certain social group);
- direct incitement to discrimination, including in the form of general slogans;
- covert calls for violence and discrimination (propaganda of 'positive,' historical or modern examples of violence or discrimination; expressions like *'It would be a good idea to make...,' 'It is high time...'* etc.);
- calls for not letting a certain ethnic or religious group be established in a region (district, city etc.), for instance, arguing the point that it is inadmissible to build a mosque in an 'Orthodox city.'

2. **Medium** hate speech:

- justifying the historical cases of violence and discrimination (expressions like *'Turks killed Armenians in self-defense in 1915'*);
- publications and statements that question generally acknowledged historical facts of violence and discrimination (for instance, diminishing the scale of Holocaust or saying that *'Crimean Tatars were exiled because they took Hitler's side'*);
- statements about the historical crimes of a certain ethnic or religious group as such (things like *'They always resorted to violence only,' 'They always conspired against us'*);
- statements about the criminal nature of a certain ethnic or religious group (for instance, *'They are all thieves'*);
- reflections on the disproportionate preference given to a certain ethnic or religious group in financial terms, or to a representative office in authorities, media etc.;
- accusations of a certain ethnic, religious or social group of producing a negative impact on society and the state (*'dilution of national identity,' 'erosion of traditional values'* etc.);

situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, as well as the Action Report Based on Preliminary Investigation (2016) of the Prosecutor's Office of the International Criminal Court that established that the situation in the territory of Crimea and Sevastopol equals to an international armed conflict between Ukraine and the Russian Federation. This international armed conflict started no later than February 26, 2014 when the Russian Federation deployed its military personnel to gain control of the parts of Ukraine's territory without the Ukrainian government's consent. The law on international armed conflicts is applicable to the period since March 18, 2014 to the extent the situation in the territory of Crimea and Sevastopol equals to an ongoing occupation.

[34] Such accusations and descriptions of Ukrainians as 'Nazis,' 'junta' etc., which are used to incite hatred, carry the consequences for the ethnic community of Ukrainians in general as well, because in many cases studied afterwards, it is impossible to say for sure whether the civic or ethnic community of Ukrainians was the object of hate speech use.

[35] In particular, the monitoring revealed different variants of false accusations of Ukrainians of Nazism and fascism projecting on the whole nation, although the legislation of Ukraine condemns the communistic and national socialist (Nazi) totalitarian regimes and prohibits the propaganda of their symbols, establishment and operation of political parties if their program goals or actions are intended to promote war, rouse interethnic, racial or religious hatred or advocate the communistic and/or national socialist (Nazi) totalitarian regimes. Furthermore, the share of the Ukrainian population supporting the nationalist political parties is relatively small: during the parliamentary elections in 2014, only 4.7% of electorate voted for the Svoboda All-Ukrainian Union, and 1.8% — for the Right Sector party, and this level of support of such parties is significantly lower than that in other countries.

[36] See, for instance: H. Kozhevnikova. Hate Speech after Kondopoga Events — in the Collection of Articles: A. Verkhovsky (editor). Hate Speech against Society. Moscow: Sova Center, 2007. p.12-13.

- pointing out the connection of a certain social group with political and government bodies to discriminate it;
- accusing a group of attempts to seize power or territorial expansion (literally, unlike calling for not letting it be established in the region);
- disclaiming the citizenship (that is mentioning citizens as foreigners depending on their ethnic identification).

3. **Soft** hate speech:

- creating a negative image of an ethnic, religious or social group (not specific event-related accusations, but conveyed in a wider sense with the help of time periods, general content or intonation of a text or text fragment);
- mentioning an ethnic, religious or social group or its members in a humiliating or insulting context (as well as in crime news or simply mentioning an ethnonym);
- statements about the inferiority (lack of culture, intellectual abilities, incapacity for creative work) of a certain ethnic, religious or social group as such (something like *'Street cleaning is their only trade'*);
- statements about the moral flaws of a certain ethnic or religious group ('The Jews are *greedy,' 'The Gypsies are deceitful'* — this type should be distinguished from the statements about cultural or intellectual inferiority);
- citing explicitly xenophobic statements and texts without the commentary that defines the line between an interviewee and an interviewer; similarly — providing space in a newspaper for clearly xenophobic propaganda without editorial commentary or other sort of controversy.

OVERVIEW OF HATE SPEECH LAWS

Both Ukraine which Crimea belongs to and the Russian Federation that occupied the Crimean peninsula are members of such international organizations such as the UN, OSCE and Council of Europe. A range of the norms of international laws and national legislations of both countries contain direct and indirect references intended to prevent hate speech from spreading.

DEFINITION OF HATE SPEECH IN INTERNATIONAL LAWS AND REGULATIONS

Despite the fact that hate speech is widespread in many spheres of public and private life, and there are a lot of discussions about the possibility or impossibility to legislatively regulate and prohibit it, as of today, there is no one common definition of what all parties to the discussion mean by *hate speech*.

There is no uniform standard of this term in Ukrainian either: sometimes *hate speech* is translated as мова ворожнечі, sometimes as мова ненависті, and other times even differently.

You may find several common definitions of the *hate speech* phenomenon in international practice below.

Paragraph 2, Article 20 of the **International Covenant on Civil and Political Rights**[37] (adopted by General Assembly resolution 2200 A (XXI) as of December 16, 1966) stipulates that any advocacy or national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 4 of the **International Convention on the Elimination of All Forms of Racial Discrimination**[38] (adopted by General Assembly resolution 2106 (XX) as of December 21, 1965) provides for the following:

> *'States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:*

> *a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;*

> *b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda*

[37] International Covenant on Civil and Political Rights. Available at: http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

[38] International Convention on the Elimination of All Forms of Racial Discrimination. Available at: http://www.un.org/ru/documents/decl_conv/conventions/raceconv.shtml

activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.'

Recommendation No. R (97) 20 of the Committee of Ministers to Member States on 'Hate Speech'[39] interprets this term as the notion *'...covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.'*

Furthermore, in the context of this study, we should take into consideration Principle 1 of the abovementioned Recommendation:

'The governments of the member states, public authorities and public institutions at the national, regional and local levels, as well as officials, have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.'

There are seven principles set forth in the Recommendation that define the basic rules and obligations of the member states of the Council of Europe to combat hate speech, inter alia, they stipulate that it is necessary to take into account when hate speech is disseminated through the media. For instance, Principle 6 says that:

'...national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech, on the one hand, and any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand.'

Another international document that should be mentioned in the context of combating hate speech is the **Additional Protocol to the Convention on Cybercrime**, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (Strasbourg, January 28, 2003)[40].

Pursuant to article 2 of this Protocol, racist and xenophobic material means *'any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.'*

Furthermore, articles 3-7 of this Protocol describe in detail the governments' obligations with regard to the criminalization of acts aimed at disseminating racist and xenophobic materials through computer systems.

The OSCE's recommendations[41] contain the following definition: *'Forms of expression that are motivated by, demonstrate or encourage hostility towards a group — or a person because of their membership of that group — are commonly referred to as 'hate speech.'*

PRACTICE OF EUROPEAN COURT OF HUMAN RIGHTS AS REGARDS HATE SPEECH

The European Court of Human Rights (ECHR) has considered a fairly large number of cases concerning the freedom of speech in the context of hate speech use and dissemination.

'..Tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ..., provided that any 'formalities,' 'conditions,' 'restrictions' or 'penalties' imposed are proportionate to the legitimate aim pursued,' the ECHR believes[42].

At the same time, the Court finds that *'Freedom of expression constitutes one of the essential foundations of*

[39] Recommendation No. R (97) 20 of the Committee of Ministers to Member States on 'Hate Speech.' Available at: http://zakon5.rada.gov.ua/laws/show/994_093

[40] Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Available at: http://zakon2.rada.gov.ua/laws/show/994_687

[41] Preventing and responding to hate crimes. A resource guide for NGOs in the OSCE region. Available at: http://www.osce.org/uk/node/180336?download=true

[42] Erbakan v. Turkey judgment of December 6, 2006, § 56.

[a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 [of the European Convention on Human Rights], it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'[43]*.'*

The balance between the need to ensure freedom of speech and, at the same time, prevent the dissemination and entrenchment of hate speech has been established by the European Court of Human Rights in the following cases[44].

Antisemitism, Islamophobia and Other Forms of 'Ideological' Intolerance

Pavel Ivanov v. Russia (February 20, 2007): the applicant, the owner and editor of a newspaper, was convicted for 'public incitement to hatred' in his article about ZOG[45].

Garaudy v. France (June 24, 2003): the book entitled *The Founding Myths of Modern Israel* denied Holocaust.

Norwood v. United Kingdom (November 16, 2004): the applicant had displayed in his window a poster supplied by the British National Party representing the Twin Towers in flame with the words *'Islam out of Britain — Protect the British People!'*

Leroy v. France (October 2, 2008): the cartoonist was convicted for publicly condoning terrorism following the publication in a Basque weekly newspaper of a drawing representing the attack on the Twin Towers with a slogan *'We all dreamt of it... Hamas did it!'*

Gündüz v. Turkey (November 13, 2003): the self-proclaimed leader of an Islamist sect was sentenced to a long-term imprisonment for saying that *'Every child born in a secular marriage is a bastard'* during a televised debate broadcast.

Soulas and others v. France (June 10, 2008): the applicants were convicted for publishing the book entitled *The Colonisation of Europe: Truthful Remarks About Immigration and Islam.*

[43] Ukrainian Media Group v. Ukraine judgment of March 29, 2005, §.40.

[44] Here you may find the list of the most interesting examples of this court's judgments classified by certain types of hate speech.

[45] ZOG stands for Zionist occupation government. In the anti-Semite discourse, this abbreviation is used in some versions of the Jewish conspiracy.

Racism, Migrantophobia

Glimmerveen and Hagenbeek v. the Netherlands (October 11, 1979): the applicant — the president of a political party claiming that 'Holland is for Dutchmen' — was convicted for possessing leaflets addressed to 'White Dutch people' and calling on 'white people' to take over in order to exile from the country *'hundreds of thousands of Surinamers, Turks and other undesired aliens...'*

Jersild v. Denmark (September 23, 1994): the applicant, a journalist, was convicted for making a documentary about the ultra-right youth which openly expressed the abusive and derogatory remarks about immigrants and ethnic groups.

Homophobia

Vejdeland and others v. Sweden (February 9, 2012): the applicant was convicted for distributing in an upper secondary school approximately 100 leaflets saying that homosexuality was a '*deviant sexual proclivity,*' had '*amorally destructive effect on the substance of society*' and was '*responsible for the development of HIV and AIDS.*'

It is also worth noting that all the standards set forth by the ECHR in its judgments are an inherent part of the Convention for the Protection of Human Rights and Fundamental Freedoms and obligatory for every member state of the Council of Europe. Moreover, in most countries, the international laws are higher in the legislative hierarchy than the national laws. And the international regulations must be applied in case of discrepancies. Russia is not an exception in this case.

The ECHR's position with regard to hate speech is highlighted in more detail in Issue No. 4 of *Crimea Beyond Limits*, a thematic review by the Regional Centre for Human Rights and the Ukrainian Helsinki Human Rights Union[46].

HATE SPEECH LAWS IN UKRAINE

The legal framework for combating hate speech is laid in the **Constitution of Ukraine** (articles 15, 21 and 24):

'Social life in Ukraine shall be based on the principles of political, economic and ideological diversity. No ideology shall be recognized as mandatory by the State[47].

[46] Crimea Beyond Rules, Issue No. 4. Thematic review of the human rights situation under occupation. Ukrainian Helsinki Human Rights Union 2018. https://helsinki.org.ua/wp-content/uploads/2016/04/4Kr_Ru_fin_18.12.2017.pdf

[47] Article 15 of the Constitution of Ukraine.

- All people shall be free and equal in their dignity and rights. Human rights and freedoms shall be inalienable and inviolable[48]*.*

- Citizens shall have equal constitutional rights and freedoms and shall be equal before the law. There shall be no privileges or restrictions based on race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, wealth status, place of residence, linguistic or other characteristics[49]*.'*

As we pointed out earlier, the international laws and regulations define hate speech as one of the forms of discrimination. In 2012, Ukraine approved the **Law of Ukraine on Principles of Preventing and Combating Discrimination**[50].

In accordance with article 1, clause 1, paragraph 2 thereof, **discrimination** is *a 'situation where an individual and/or group of individuals because of their race, skin color, political, religious or other beliefs, sex, age, disability, ethnic or social origin, nationality, property and marital status, place of residence, linguistic or other characteristics that existed, exist and may be real or assumed (hereinafter — certain characteristics), is limited in any form in recognition, exercise or use of their rights and freedoms established by this Law except when such limitation has a legal, objectively reasonable goal achieved in a proper manner.'*

In addition, this law defines the term **incitement to discrimination** — '*directions, instructions or calls for discrimination against an individual and/or group of individuals on any grounds.*'

As regards the mass media, we should take into account the following norms of effective legislation which may be referred to the combating of hate speech.

- Print media in Ukraine shall not be used for propaganda of war, violence and cruelty; incitement of ethnic, national and religious hatred[51].
- Court shall terminate the print publication if paragraph 1 of article 3 hereof is violated (if the above-mentioned restriction is applicable)[52].
- It shall be prohibited to use broadcasting organizations to agitate for launching a war or aggressive actions or promote the idea of such, and/or incite to national, racial or religious hatred; to promote the idea of exclusivity, superiority or inferiority of persons on the grounds of their religious beliefs, ideology, national or ethnic affiliation, physical or wealth status or social origin[53].
- The National Council may bring action seeking revocation of the broadcast license, where it is found that orders to eliminate violations of the legislation and license requirements have not been complied with[54].

Furthermore, the persons disseminating hate speech may be criminally indicted.

Article 161 of the **Criminal Code of Ukraine** *Violation of Citizens' Equality Based on Their Race, Nationality, Religious Preferences, Disability or on Other Grounds* provides for the following:

'Willful actions inciting national, racial or religious enmity and hatred, humiliation of national honor and dignity, or the insult of citizens' feelings in respect to their religious convictions, and also any direct or indirect restriction of rights, or granting direct or indirect privileges to citizens based on race, skin color, political, religious and other convictions, sex, disability, ethnic and social origin, wealth status, place of residence, linguistic or other characteristics shall be punishable by a fine of 200 to 500 tax-free minimum incomes, or deprivation of liberty for up to five years with or without the deprivation of the right to occupy certain positions or engage in certain activities for up to three years.'

Article 300 of the Criminal Code of Ukraine *Import, Creation or Distribution of Works Promoting Violence and Cruelty, Racial, National or Religious Intolerance and Discrimination* stipulates the following:

'Import into Ukraine for sale or distribution purposes, or creation, storage, transportation or other movement for the same purposes, or sale or distribution of works that promote violence and cruelty, racial, national or religious intolerance and discrimination, and also compelling others to participate in creation of such works shall be punishable by a fine up to 150 tax-free minimum incomes, or arrest for up to six months, or deprivation of liberty for up to three years.'

[48] Article 21 of the Constitution of Ukraine.

[49] Article 24 of the Constitution of Ukraine.

[50] Law of Ukraine on Principles of Preventing and Combating Discrimination. Available at http://zakon3.rada.gov.ua/laws/show/5207-17

[51] Article 3 of the Law of Ukraine on Print Media (Press) in Ukraine.

[52] Article 18 of the Law of Ukraine on Print Media (Press) in Ukraine.

[53] Article 6, clause 2 of the Law of Ukraine on Television and Radio Broadcasting.

[54] Article 37, clause 5 of the Law of Ukraine on Television and Radio Broadcasting.

HATE SPEECH LAWS IN RUSSIAN FEDERATION

The Constitution of the Russian Federation recognizes ideological diversity. No ideology may be established as state or obligatory one. Political diversity and multi-party system is recognized in the Russian Federation. Public associations are equal before the law. The creation and activities of public associations whose purposes and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, undermining its security, setting up armed units and instigating social, racial, national and religious strife is prohibited[55].

Moreover, the RF Constitution provides for the following:

> *'All people shall be equal before the law and court. The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned. Man and woman shall enjoy equal rights and freedoms and have equal possibilities to exercise them[56].*

> *Everyone shall be guaranteed the freedom of ideas and speech. The propaganda or agitation instigating social, racial, national or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious or linguistic supremacy shall be banned. No one may be forced to express their views and convictions or to reject them[57].'*

The Federal Law on Freedom of Conscience and Religious Associations contains the following norms[58]. Freedom of conscience and freedom of religious profession, including the right to profess individually or corporately with other persons any religion or not to profess any, and to choose and change freely, and to hold and disseminate religious and other convictions and to act in accordance with them, as well as by creating religious associations, are guaranteed within the Russian Federation. Creation of privileges, restrictions, or any form of discrimination on the basis of religious affiliation is not permitted. Citizens of the Russian federation are equal before the law in all areas of civil, political, economic, social, and cultural life irrespective of religious affiliation and religious adherence. Citizens of the Russian Federation whose convictions or religious profession preclude performance of military service have the right to substitute alternative civic service for it. No one is obliged to provide information about personal religious affiliation, nor can be subjected to duress for determining religious affiliation or confession or rejection of religious confession, or for participation or nonparticipation in religious services, or other religious rites and ceremonies or the activity of religious associations or religious education. Enticement of minors into religious associations is forbidden, as well as the teaching of religion to minors against their will and without the consent of their parents or guardians. Prohibition of the enjoyment of the rights to freedom of conscience and freedom of religious profession, including actions accompanied by violence against the individual, intentional offense to the sentiment of citizens with regard to their religious affiliation, propaganda of religious superiority, destruction or alienation of property or threat thereof, is prohibited and is prosecuted in accordance with federal law. The conduct of public ceremonies and the distribution of texts and illustrations that offend religious sentiments of citizens in the vicinity of objects of religious veneration are prohibited.

The Law of the Russian Federation on Mass Media, which is common for all types of media, dictates the following[59]:

- No provision shall be made for the use of mass media for purposes of committing criminally indictable deeds, divulging information making up a state secret or any other law-protective secret, disseminating materials containing the public calls for terrorism or publicly condoning terrorism, other extremist materials, including those promoting pornography, violence and cruelty.
- It shall be prohibited to use the journalist's right to disseminate information with an aim of defaming a citizen or certain categories of citizens solely on account of sex, age, race or nationality, language, religious beliefs, profession, place of residence and employment, as well as political convictions[60].

The Federal Law on Countering Extremist Activity widely used in the Russian Federation defines the notion of extremist activity (extremist)[61] and provides for the procedure of closing mass media, religious or non-governmental organizations if any of its norms are violated. Very general and ambiguous definitions are often used by the authorities to prosecute alternative points of view

[55] Article 13 of the RF Constitution.

[56] Article 19 of the RF Constitution.

[57] Article 29 of the RF Constitution.

[58] Article 3 of the Federal Law on Freedom of Conscience and Religious Associations.

[59] Article 4 of the Law of the Russian Federation on Mass Media.

[60] Article 51 of the Law of the Russian Federation on Mass Media.

[61] Article 1 of the Federal Law on Countering Extremist Activity.

rather than to combat hate speech. Thus, according to the Human Rights Information Centre, in Crimea, during four years of occupation, this law had been mostly applied for the purposes of politically motivated prosecutions.

Hate-speech-related criminal liability is provided for by the following norms of the **Criminal Code of the Russian Federation:**

- Incitement to hatred and strife (Article 282 of the RF CC);
- Calls for extremist activity (Article 280 of the RF CC) and separatism (Article 280.1 of the RF CC);
- Condoning terrorism (Article 205.2 of the RF CC);
- Nazism rehabilitation (Article 354.1 of the RF CC);
- Offending the feelings of religious believers (Article 148, clause 1 of the RF CC);
- Participation in a criminal community (Article 282.1 of the RF CC) or organization (Article 282.2 of the RF CC).

Furthermore, there are several articles of the **Administrative Offences Code of the Russian Federation** concerning hate speech:

- Dissemination of 'extremist materials' (Article 20.29 of the RF AOC);
- Displaying prohibited symbols (Article 20.3 of the RF AOC).

ETHICAL STANDARDS OF JOURNALISM AS REGARDS HATE SPEECH

Besides the legislation, hate speech is prohibited by the professional ethical standards of journalism.

'*The journalist shall be aware of the danger of discrimination being furthered by the media, and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins*[62],' states the IFJ Declaration of Principles on the Conduct of Journalists adopted at the World Congress of the International Federation of Journalists in Bordeaux on April 25-28, 1954.

Similar norms and requirements may be seen at the national level in professional standards regulating the activity of mass media in both Ukraine and Russia.

[62] Clause 7 of the IFJ Declaration of Principles on the Conduct of Journalists / adopted at the World Congress of the International Federation of Journalists in Bordeaux on April 25-28, 1954.

Thus, the Ethics Code of Ukrainian Journalists dictates:

> *'No one may be discriminated against because of gender, language, race, religion or ethnic, social origin or political preferences. This information may be pointed out only if it is a necessary part of the story*[63]*.'*

The observance of this code in Ukraine is monitored by the Commission on Journalism Ethics[64] which considers the ethical and professional conflicts arising between journalists or between journalists and the society with regard to the journalistic activity. The Commission regulates the work of journalists and editorial teams and allows them to offer the ways of solving conflicts based on the unified professional standard: the Ethics Code of Ukrainian Journalists. Its main purpose is to promote the observance of professional ethics standards by Ukrainian mass media and the formation of the public request for high quality journalism.

The Russian Federation has similar standards. For example, the Code of Professional Conduct of the Russian Journalist says the following:

> *'A journalist is fully aware of the danger of restrictions, harassment and violence, which can be provoked by their work. In carrying out their professional duties, a journalist opposes extremism and restriction of civil rights on any grounds, including gender, race, language, religion, political or other opinion, as well as social and national origin. A journalist respects the honor and dignity of the people who become the objects of their professional attention. They refrain from any derogatory allusions or comments regarding race, ethnicity, color, religion, social origin or gender, as well as in relation to a physical disability or illness of a person. They refrain from publishing such information, except in cases when these circumstances are directly related to the content of the published article. A journalist is unconditionally obliged to avoid offensive expressions which may harm the moral and physical health of people*[65]*.'*

The observance of this code in Russia is monitored by the Public Board on Press Complaints[66]. It is an independent civil society organization regulating and co-regulating the activity of mass media. The Board considers the complaints of the audience of mass media about the violations of the journalist's professional ethics and media ethics. The first and foremost task of the Board is to resolve specific media disputes extrajudicially.

[63] Clause 15 of the Ethics Code of Ukrainian Journalists.

[64] Commission's web-site: http://cje.org.ua

[65] Clause 5 of the Code of Professional Conduct of the Russian Journalist.

[66] Board's web-site: http://www.presscouncil.ru/

OUTCOMES OF HATE SPEECH MONITORING IN THE MEDIA LANDSCAPE OF CRIMEA

HATE SPEECH IN ACTIVITY OF CRIMEAN OCCUPATION AUTHORITIES

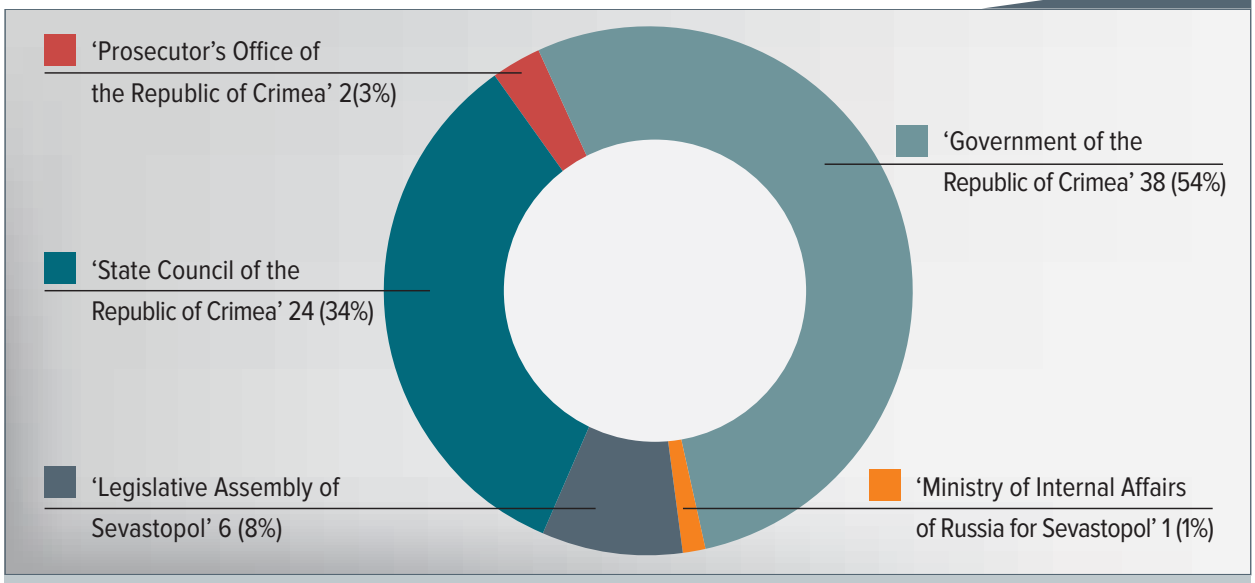
Hate speech in the media landscape of Crimea shows itself in different ways. In addition to a constant use of clichés inciting hatred in various mass media, such expressions are published on the official web-sites of the Crimean occupation authorities. The monitoring revealed a wide range of the tendencies of stirring up hatred on such resources.

We registered different types of soft hate speech on the web-sties of the Crimean 'authorities' under study *(see the detailed list of web-sites in the Methodology section)*. Thus, the soft form of hate speech was used in 59 out of 71 cases, medium form — in 12, harsh one — in one. The largest number of the examples of incitement of hatred is on the web-site of the 'Government of the Republic of Crimea.'

For instance, the 'Government of Crimea' published the article titled *Ukrainian Nazism Became the Basis of State Ideology of Ukraine — Sergey Aksyonov* in the News section of its web-site in June 2017, let us cite it:

> *'Today these **demons in human shape**, these **executioners who shed the blood of thousands of people** — not only that of Poles, but also that of Belarusians, Jews, Russians, Ukrainians — have*

Distribution of Hate Speech between Web-Sites of 'State Authorities' of Crimea



Monitoring period 01.03.2014 – 31.09.2014; 01.01.2017 – 31.07.2017

> *become the heroes of modern Ukraine. Their ideological followers* ***are spilling blood all over Donbass, killing*** *and sending dissentients to prison, declaring blockades,* ***committing acts of terrorism*** *against the population of Crimea*[67]*.'*

This publication projects the Nazi crimes of World War II on the citizens of Ukraine who are rhetorically linked to a generally denounced object.

The web-site also contains other similar expressions of Crimean politicians who are regularly quoted in the form of interviews or news items.

Furthermore, there are also PDF-versions of several Crimean budget-funded print media on the web-site.

The statements with hate speech published in Slava Trudu and Selskiy Truzhenik sociopolitical newspapers are available in PDF on the web-site of the Crimean 'government.'

For example, Slava Trudu newspaper mentioned the nationalities and ethnic origin of people in the context of crime news:

> *'There were few actual Crimean Tatars among those in the Asker's camp, but there were plenty of individuals with the strange past from here and there, including Islamists of Arab origin. They were likely to be* ***preparing provocations*** *and the* ***story with saboteurs*** *wasn't probably supposed to be the last one*[68]*.'*

The Selskiy Truzhenik newspaper called Ukrainian and Crimean Tatar activists who participated in the protest against the occupation of Crimea by the Crimean parliament building on February 26, 2014 **putschists, Mejlists** *[TN: members of the Mejlis of the Crimean Tatar People which was outlawed by Russia and listed as an extremist organization]* and **supporters of nationalists**. The people were accused of one-sided preplanned use of violence under the guise of Banderite terror:

> *'The supporters of* ***Ukrainian nationalists*** *use stones, sticks, bottles, tear-gas and other far from peaceful 'arguments.' It is obvious that such actions are planned beforehand rather than spontaneous. The confrontation reaches its climax when the* ***putschists' advocates*** *raise the* ***ominous black and red cloth*** *symbolizing the* ***Banderite terror*** *and* ***'Euromaidan' mayhem and fires***. ***Outrage-fueled Mejlists*** *and their brothers-in-arms* ***assault*** *the Crimean Parliament's building*[69]*.'*

On the web-site of the 'Crimean government' you may also find the PDF-version of the book entitled *Crimea: History of Return*.[70] The book's authors are Olga Kovitidi, the First Member of the Federation Council of the Federal Assembly of the Russian Federation from the executive authority of the 'Republic of Crimea,' and Maksim Grigoriev, the member of the Civic Chamber of the Russian Federation, PhD in Political Science. There are 17 examples of hate speech in the book mainly aimed at Ukrainians and Crimean Tatars.

For instance, page 63 of this book has the following statement of the Presidium of the Supreme Soviet of the Autonomous Republic of Crimea dated March 13, 2014:

> *'The participants of an unconstitutional coup have no moral right to judge about the legitimacy of the Crimean referendum.* ***Neonazies*** *and* ***their accomplices*** *have no moral right to impose their will on the autonomy's citizens — children and grandchildren of the* ***defeaters of fascism***. ***The murderers who shed the blood of Crimeans*** *— the fighters of Berkut [TN: special police force] and internal troops, as well as peaceful citizens — have no moral right to step on the* ***sacred Crimean land****.'*

Page 339 of the said book contains the following quotation of Vladimir Konstantinov, the 'Chairman' of the Crimean 'Parliament':

> *'Vladimir Konstantinov says that the situation in Crimea is extremely tense. He explained that the people* ***are afraid*** *that* ***Right Sector*** *will come to Crimea after Maidan, and together with the* ***militants of Hizb ut-Tahrir*** *and* ***Crimean Tatar radicals*** *they will perpetrate a* ***mass massacre and slaughter***. *Because there were people who openly threatened to* ***decimate the Russian population in Crimea****.'*

Such expressions in the context of the political repressions on the peninsula promote the incitement of hatred towards Ukrainians, Crimean Tatars and Muslims as the accusations of participating in such organizations like Right Sector[71]

[67] Publication Ukrainian Nazism Became the Basis of State Ideology of Ukraine — Sergey Aksyonov. Available at: http://glava.rk.gov.ru/rus/index.htm/news/367009.htm

[68] Article Spiders in the Jar. Available at: http://bahch.rk.gov.ru/file/bahchisarayskaya_rayonnaya_gazeta_laquoslava_trudura-quo__6_17022017.pdf

[69] Article The First Calendar Day of the Contemporary History of Crimea. Available at: http://simfmo.rk.gov.ru/file/laquoseljskiy_trujenik_krimaraquo__8_ot_11_marta_2017_goda.pdf

[70] Crimea: History of Return. Available at: http://rk.gov.ru/rus/file/krim_istoriya_vozvrascheniya.pdf

[71] Right Sector is a Ukrainian political party and non-governmental nationalist organization. It started as a civic movement having united the activists of Ukrainian radical organizations, manly nationalist and far-right ones. It was formed at the end of November 2013 when the revolution in Ukraine known as Euromaidan

or Hizb ut-Tahrir[72] are used in Crimea since the occupation as a pretext for systemic political persecutions of Ukrainians, Crimean Tatars and Muslims regardless of their affiliation with these organizations.

In particular, the false accusation of terrorism and affiliation with Right Sector led to the arrest and conviction of four citizens of Ukraine with a Ukrainian director Oleg Sentsov being one of them. But the four convicted Crimeans had nothing to do with Right Sector[73]. Reckoning all pro-Ukrainian activists and Euromaidan participants in Right Sector in a number of cases defocuses the scope of this notion and views the whole civic community of Ukrainians as radical nationalists.

Furthermore, the Russian Federation declared the Mejlis of the Crimean Tatar People an extremist organization on April 26, 2016. Although the Order of the International Court of Justice as of April 19, 2017[74] obliged the Russian Federation to lift this ban, it was ignored[75]. The members of the Mejlis of the Crimean Tatar People and regional Mejlises are subjected to politically motivated prosecution. The Mejlis is the only legitimate and internationally recognized self-government body of the Crimean Tatar people, and that is why a negative image of the Mejlis and its supporters which is being created on a large scale is projected on all Crimean Tatar people.

Twenty five people have already been arrested and taken into custody as of January 2018 with regard to the case of Crimean Muslims for allegedly participating in Hizb ut-Tahrir, although the accused Muslims denied their affiliation with this organization. All proceedings initiated against these Muslims have the sings of politically motivated prosecution, particularly for religious beliefs. There has not been a single case of terrorist threats, weapons or acts of violence as part of criminal proceedings related to participation in Hizb ut-Tahrir in Crimea. So the expression the **militants of Hizb ut-Tahrir** which is often used in the media landscape of Crimea is of deliberately misleading and negative nature.

Knowingly false accusations of the abovementioned social groups of the intentions to 'perpetrate a mass massacre and slaughter' are one of the elements of incitement to hatred and creating the image of an enemy for pro-Russian citizens of Crimea.

Hate speech is also present in official documents published on the web-sites of the 'Government of Crimea.' For instance, in the *National Population Composition* section of the document entitled *Municipal Program 'Strengthening the Russian Unity and Ethnocultural Development of Peoples Living in the Territory of the Municipal Settlement in the Urban District Feodosia of the Republic of Crimea for 2016-2018*,' Ukrainians were insultingly called **Little Russians** and **Ukies**[76].

At the same time, it is worth pointing out that we did not find examples of hate speech on the web-sites of the 'Government of Sevastopol,' 'Prosecutor's Office of Sevastopol' or the 'Ministry of Internal Affairs for the Republic of Crimea' throughout the monitoring period, even though we performed a search using all key words selected for monitoring.

The web-site of the 'State Council of the Republic of Crimea' contained hate speech mainly in the statements of Vladimir Konstantinov, the 'Speaker of the Crimean Parliament,' for example:

> *'This Victory Day is special for Crimeans: it coincides with the seventieth anniversary of liberation of Crimea from the German-Fascist occupants. And the current generation of Crimeans celebrates this date with dignity — we have managed to* ***stop neo-Nazis***

began. At the parliamentary elections in autumn 2014, the Right Sector party won only 1.8% of votes and failed to make it into the Ukrainian parliament (Verkhovna Rada). On November 17, 2014, the Supreme Court of the Russian Federation in the lawsuit filed by the Prosecutor General's Office of the Russian Federation declared Right Sector an extremist organization and prohibited its activity in Russia. The Crimean branch office of Right Sector was announced in Russia a terrorist organization.

[72] Hizb ut-Tahrir (Arabic: Party of Liberation) is a Sunni religious and political organization founded in 1953 in Jerusalem by Taqiuddin al-Nabhani, a sharia appeals court judge. One of the differences from other Islamist organizations is that it rejects violence as a means to an end in principle. It was declared a 'terrorist organization' in Russia, but its activity is allowed in Ukraine and other countries. In 2016, a range of human rights groups, including Memorial Human Rights Center, Civic Assistance Committee, SOVA Center for Information and Analysis and Human Rights Institute, in their joint application regarding the decision of the Supreme Court of the Republic of Bashkortostan to prolong the detention of R. M. Lapytov, the leader of the Muslim Problem Research Center human rights organization, who was accused of participating in the activity of Hizb ut-Tahrir, pointed out that 'this decision of the Supreme Court of the Russian Federation is unlawful because neither organizational documents, nor the practice of its activity gives reasons to accuse it of calls for terrorism or terrorism itself,' as well as noted that 'not a single European country has declared this party terrorist.'

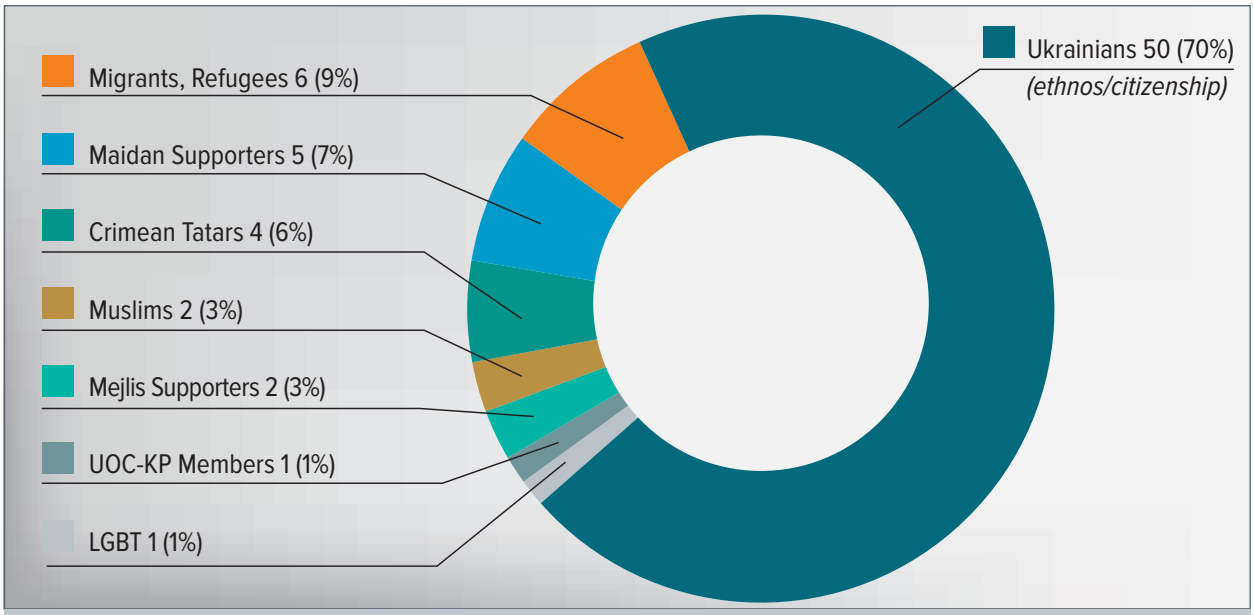
[73] Report Crimea: Ukrainian Identity Banned / p. 6-8 (Sentsov-Kolchenko Case) / Crimean Human Rights Group 2016 — http://crimeahrg.org/wp-content/uploads/2016/03/Kryim-ukrainskaya-identichnost-pod-zapretom_Ru_KPG.pdf

[74] A full text of the Order of the International Court of Justice on the claim Ukraine v. Russian Federation as of April 19, 2017 — https://www.slideshare.net/tsnua/ss-75181569?ref=https://www.unian.net/politics/1884196-isk-ukrainyi-protiv-rossii-opublikovan-polnyiy-tekst-resheniya-suda-oon.html

[75] The presentation of the Ukrainian delegation of the report of the International Court of Justice / Permanent Mission of Ukraine to the United Nations, October 26, 2017 — http://ukraineun.org/press-center/407-vystup-delegatsiy-ukrayny-na-plenarnomu-zasidanni-ga-oon-shchodo-zvitu-mizhnarodnogo-sudu-oon/

[76] Document: Municipal Program 'Strengthening the Russian Unity and Ethnocultural Development of Peoples Living in the Territory of the Municipal Settlement in the Urban District Feodosia of the Republic of Crimea for 2016-2018.' Available at: http://feo.rk.gov.ru/file/Feodosija_MP_ukreplenie_edinstv.pdf

Objects of Hate Speech on Web-Sites of 'State Authorities' of Crimea



Monitoring period 01.03.2014 - 31.09.2014; 01.01.2017 - 31.07.2017

> *on the threshold of our home, we haven't let them in the peninsula's territory. But the **enemy hasn't been defeated yet**. It tramples on the Ukrainian land, shoots and burns the people who hold the same views as we do in Odesa and Donbass. On the eve of Victory Day, let's swear to our veterans, to the memory of those who died during the Great Patriotic War, that we will do everything possible to **swat the enemy like a fly** — just like **our fathers and grandfathers did it in 1945!**'*[77]

On the web-site of the Legislative Assembly of Sevastopol, during the monitoring period, we observed examples of hate speech in the expressions of local 'deputies' as well as in reprinted articles from different information publications.

For instance, the web-site published an interview with Sevastopol deputy Viacheslav Gorelov where he calls Ukrainians **maidanuts**[78].

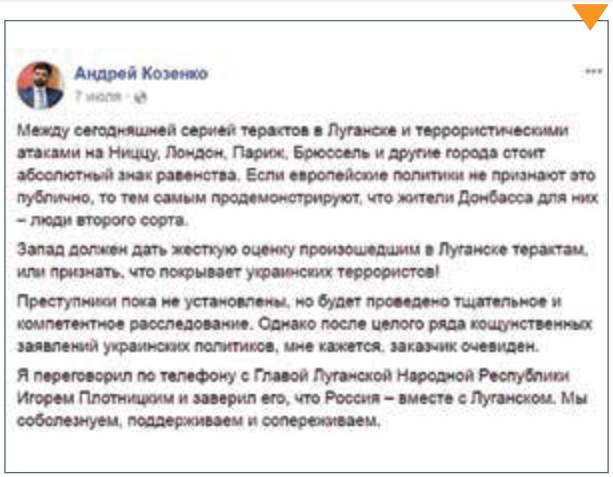
> *'At first **maidanuts will deal with us**, Russians and the Russian-speaking population, and then they will start **Ukrainizing Crimean Tatars**[79].'*

Overall, we registered 71 cases of incitement to hatred, with 70% concerning Ukrainians, on the web-sites of the 'Crimean authorities' during the monitoring period.

It should also be noted that hate speech is widely used by the representatives of the 'Crimean Authorities' de-facto in social media. Let's consider a couple of examples of hate speech use by Zaur Smirnov, the former chairman of the State Committee for International Relations and Deported Citizens, and Andrey Kozenko, a 'Duma member from the Republic of Crimea.'

Examples of Hate Speech Used by Representatives of 'Crimean Authorities' in Social Media

Andrey Kozenko: Today's series of terrorist attacks in Luhansk is no different from those in Nice, London, Paris, Brussels and other cities. If European politicians won't officially acknowledge it, it'll mean that they treat people in Donbass as an afterthought. The West must critically evaluate the attacks in Luhansk or admit that it covers for the Ukrainian terrorists!


Андрей Козенко

Между сегодняшней серией терактов в Луганске и террористическими атаками на Ниццу, Лондон, Париж, Брюссель и другие города стоит абсолютный знак равенства. Если европейские политики не признают это публично, то тем самым продемонстрируют, что жители Донбасса для них – люди второго сорта.

Запад должен дать жесткую оценку произошедшим в Луганске терактам, или признать, что покрывает украинских террористов!

Преступники пока не установлены, но будет проведено тщательное и компетентное расследование. Однако после целого ряда кощунственных заявлений украинских политиков, мне кажется, заказчик очевиден.

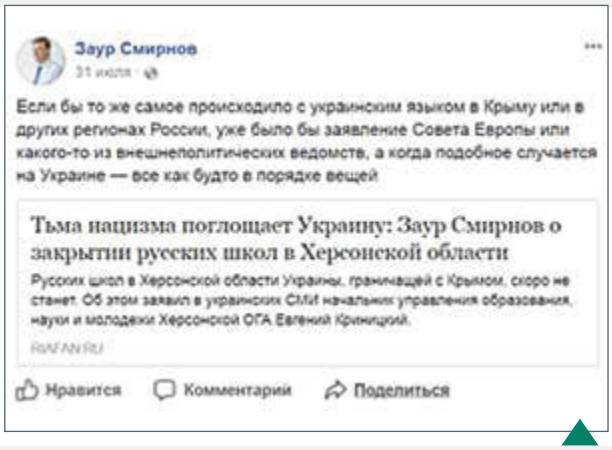
Я переговорил по телефону с Главой Луганской Народной Республики Игорем Плотницким и заверил его, что Россия – вместе с Луганском. Мы соболезнуем, поддерживаем и сопереживаем.

[77] Congratulatory speech of Vladimir Konstantinov, the chairman of the 'State Council of the Republic of Crimea,' on the occasion of Victory Day / web-site of the 'State Council of the Republic of Crimea,' 07.05.2014 — http://crimea.gov.ru/news/07_05_14

[78] An insult to Ukrainians as supporters of Euromaidan which consists of two elements: maidan (referring to the Maidan Nezalezhnosti — the main square in Kyiv where the revolution known as Euromaidan took place) and nuts, which is crazy.

[79] Article 20th Day of Russian Spring in Sevastopol. Available at: https://sevzakon.ru/view/pressa/1374/1375/1437/

The perpetrators haven't been established yet, but there will be a thorough and competent investigation. However, after a whole range of — profane statements from Ukrainian politicians, I think it's obvious who's behind it.
I talked on the phone to Igor Plotnitsky, the Head of the Luhansk People's Republic, and assured him that Russia is with Luhansk. We console and support you.



Zaur Smirnov: If the same happened with the Ukrainian language in Crimea or other regions of Russia, the Council of Europe or other foreign policy agency would have already filed a complaint, but when something like that happens in Ukraine — it is the order of the day.
Nazi Darkness Absorbs Ukraine: Zaur Smirnov on the Closing of Russian Schools in Kherson Oblast
Pretty soon there won't be any Russian schools in Kherson Oblast of Ukraine which borders with Russia. It was announced in — Ukrainian mass media by Yevhen Krynytskyi, the Head of the Department for Education, Science and Youth of the Kherson Oblast State Administration.

A regular use of hate speech on the web-sites fully funded from the budget is evidence of direct interest and involvement of the occupant in creating controlled hatred among the population of the Crimean peninsula.

The monitoring results show that hatred on such web-sites is incited intentionally, methodically and on a large scale. The citizens of Ukraine as well as migrants, Crimean Tatars and Muslims are the main groups that hatred is incited towards.

Creating a negative image of these social, ethnic/civic and religious groups in people's consciousness leads to an escalation of the armed conflict following the occupation of Crimea by the Russian Federation and the outbreak of war in Donbass. Moreover, such actions adversely affect the population of the peninsula with Ukrainians, Muslims and Crimean Tatars being a great part of them.

At the same time, hate speech was used to create in society an atmosphere of fear and hatred towards the 'Enemies of Russia.' According to the monitoring results, the people living in Crimea are made to believe that there is a constant external threat towards Crimea with the help of various means of propaganda.

The mass media and web-sites of the local de-facto 'authorities' acting in the territory of Crimea contain numerous publications calling on Crimeans to '*protect the Russian Federation from enemies*.' Ukrainians, Muslims and the population of Central Asia are the main enemies on such web-sites.

For instance, Vladimir Konstantinov, the 'Speaker of the Crimean Parliament,' made the following statement in an interview for the NTV news channel: '*They* **burn them alive**, *they* **make fun of it,** *they make a political show and hype about it. But we take it as a signal for mobilization. The* **enemy** *hasn't been defeated. There is only one thing you can do with* **Nazism** *— destroy it. No dialogue is possible with the* **Nazis**[80].'

This statement on NTV was presented without proper commentary, which is the use of hate speech in a soft form. Ukrainians were the object of hatred disguised as 'Nazis' as the Crimean politicians constantly operate with false facts that Nazism has become a part of the Ukrainian state ideology and Ukrainians support and agree with it on a large scale.

Moreover, such calls are disseminated by not only Crimean and Russian mass media, but the web-sites of different parties as well. For example, in January 2014, the Russian Bloc party posted on its web-site appeals for violence against Ukrainians who were called Banderite scum in the publication. Despite the fact that the web-site of the Russian Bloc (the source of the statement) does not work anymore, this text is still present on at least three other Crimean web-sites[81].

Such actions lead to an increasing hostility towards Ukrainians and a growing atmosphere of hatred and fear among the peninsula's population.

At the same time, Crimean media and web-sites of the 'state authorities' of Crimea regularly publish announcements about the recruitment for volunteer military service in the Russian Federation[82]. At the time of our study, at least five such announcements were present on the web-site of the 'government' of Crimea only. Such announcements are posted regularly on the web-sties of local administrations as well. Thus, on February 14, 2017, Sergey Ardashev, the recruitment officer of the Military Registration and Enlistment Office of the 'Republic of Crimea,' said that more than 4000 Crimeans were enlisted in volunteer military service during the period of occupation[83].

[80] Video: Segodnia newscast on NTV as of May 05, 2014. Available at: https://www.youtube.com/watch?v=_iycRjI5kZg

[81] Publication: Russian Bloc Party Announce the Formation of Self-Defense Squads and the Hunt for 'Banderites.' Available at: http://sevastopol.su/node/51927

[82] Announcement of the recruitment for volunteer military service on the web-site of the 'Government of Crimea.' Available at: http://krgv.rk.gov.ru/rus/info.php?id=630221

[83] Publication: About 4 Thousand People Have Been Enlisted in Military Service in Crimea. RIA Crimea: http://crimea.ria.ru/society/20170214/1109123060.html

On the web-sites controlled by the Ministry of Defence of the Russian Federation, propaganda of war and military service is interlaced with publications containing hate speech. For instance, there is an article on the web-site of the Zvezda TV channel of the Ministry of Defense entitled '*Western* **Factory of Lies***: the USA* **Made up Holodomor** *so that* **Ukrainians Become Russophobes**[84].' The article's author questions Holodomor, a historical fact of the genocide of the Ukrainian people. This is an example of hate speech use, particularly 'publications and statements that question the generally acknowledged historical facts of violence and discrimination.'

Such campaigns promoting the service in the Russian army are regularly conducted in Crimea as well, including among children and adolescents, with the support of the 'Ministry of Education' of Crimea. Such propaganda is mainly funded from the budgets of the Russian Federation and Crimea[85].

An aggressive propaganda of military service backed by the incitement of hatred towards Ukrainians helps local authorities recruit Crimeans more efficiently.

Such actions make the number of Crimeans who enter the Russian army grow, which is a violation of international humanitarian law and a military crime under the Rome Statute.

The frequent and organized activities of the Russian Federation in Crimea intended to create an image of the enemy of Ukrainians have resulted in an intensified military conflict between Russia and Ukraine, which not only impacts the situation inside Ukraine, but also generates serious security threats for the whole region.

HATE SPEECH ON AIR OF MAIN RUSSIAN CHANNELS BROADCASTING IN CRIMEA

We found 479 examples of hate speech use on the web-sites of Russian TV channels Russia-1, NTV and Channel One during the monitoring period: 1 example of harsh hate speech, 46 examples of medium hate speech, and 432 examples of the soft form of hate speech.

Hatred was incited towards the following groups in the Russian newscasts during the monitoring period:

Nationality/ethnicity/ citizenship	**324 examples**
Religious groups	**35 examples**
Social groups	**120 examples**

The most frequent object of hate speech was the groups of people who share the same nationality, ethnicity and/or citizenship or residence in some specific territory. Thus, our monitoring registered the use of hate speech with regard to 36 such groups. Among these groups, hate speech as regards Ukrainians (as an ethnos and/or civic community of citizens) was observed in 57% of cases.

The largest number of examples of incitement to hatred — 184 — concerned Ukrainians (based on citizenship and/or ethnic origin).

For instance, the 'Vremia' newscast on Channel One as of May 03, 2014[86] addressing the topic of the conflict in eastern Ukraine, cited Valeriy Bolotov who was announced a 'people's governor of Luhansk Oblast': '*We will protect our land from neo-fascist occupants and murderers.*' In his speech, Boltov called the citizens of Luhansk Oblast the '*people of Luhansk*' and presented the rest of Ukrainians as '*neo-fascist occupants and murderers*.'

Russian television propaganda forms the image of Ukrainians as fascists, Nazis, '**savages** *murdering their fellow-citizens in a grisly manner*.' The armed conflict in eastern Ukraine was called by the Russian news channels in spring 2014 the punitive operation and Ukrainians participating in it were viewed as punishers.

For example, the anchorman of 'Vesti' newscast on Channel One as of May 11, 2014[87] described the events in Mariupol the following way: '**Kyiv punishers drowned** *the main national holiday* **in blood**.'

The identification of Ukrainians as *punishers* was especially emphasized in spring 2014 when the war in Donbass began. The expressions *punishers* and *punitive operation* were used in the studied newscasts of the Russian channels more than 200 times in May 2014 alone.

It is worth noting that these expressions have an additional negative connotation, as after World War II Soviet mass media, and later Ukrainian and Russian mass media, had used the word *punishers* for many

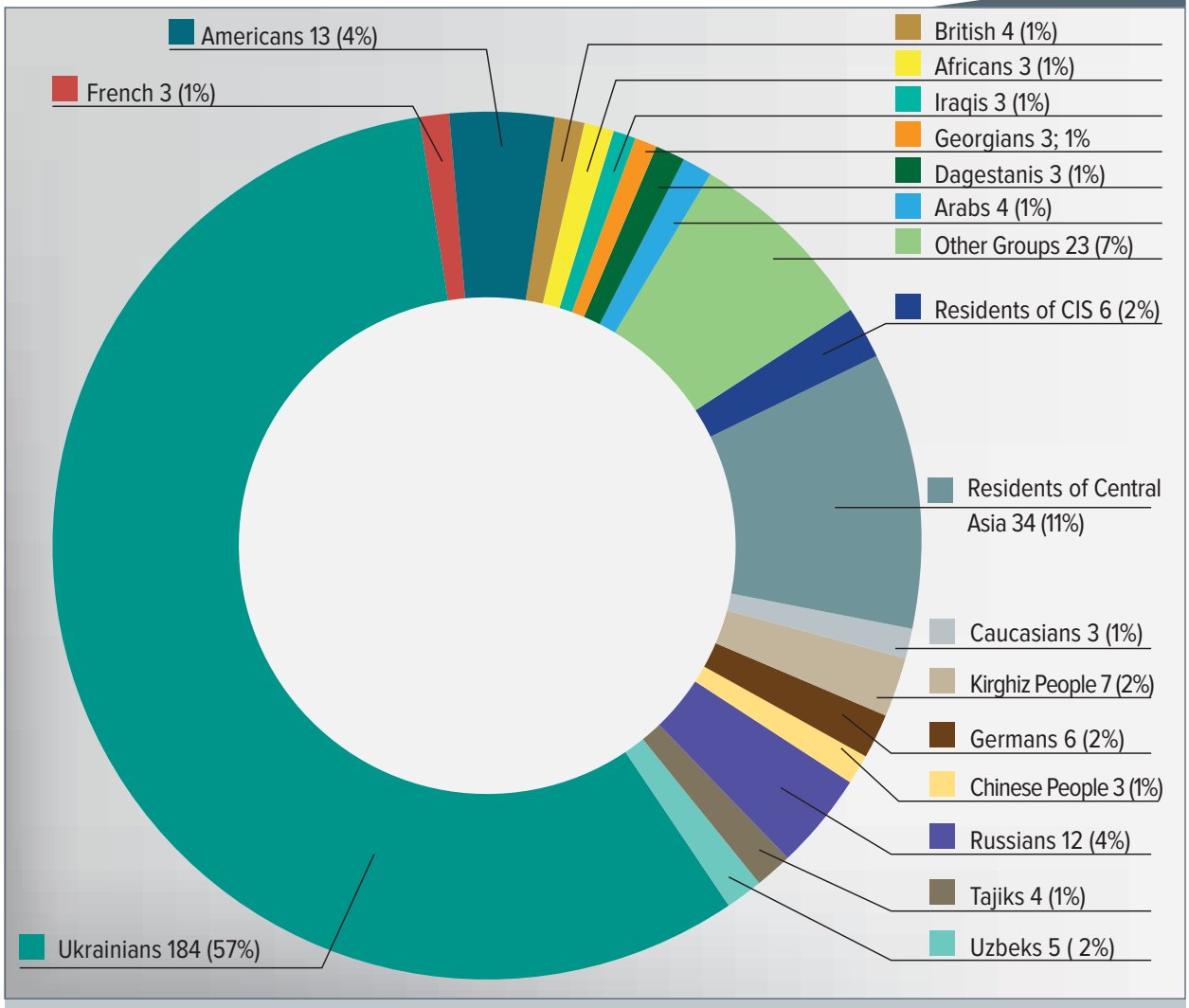
[84] Publication: Western Factory of Lies: the USA Made up Holodomor so that Ukrainians Become Russophobes. Available at: https://tvzvezda.ru/news/qhistory/content/201702130902-661z.htm

[85] Analytical Report: Human Rights Under Conditions of Militarization in Crimea. Available at:http://crimeahrg.org/wp-content/uploads/2017/09/book-RU_A4.pdf

[86] 'Vremia' newscast as of May 03, 2014. Available at: https://www.1tv.ru/news/issue/2014-05-03/21:00#10

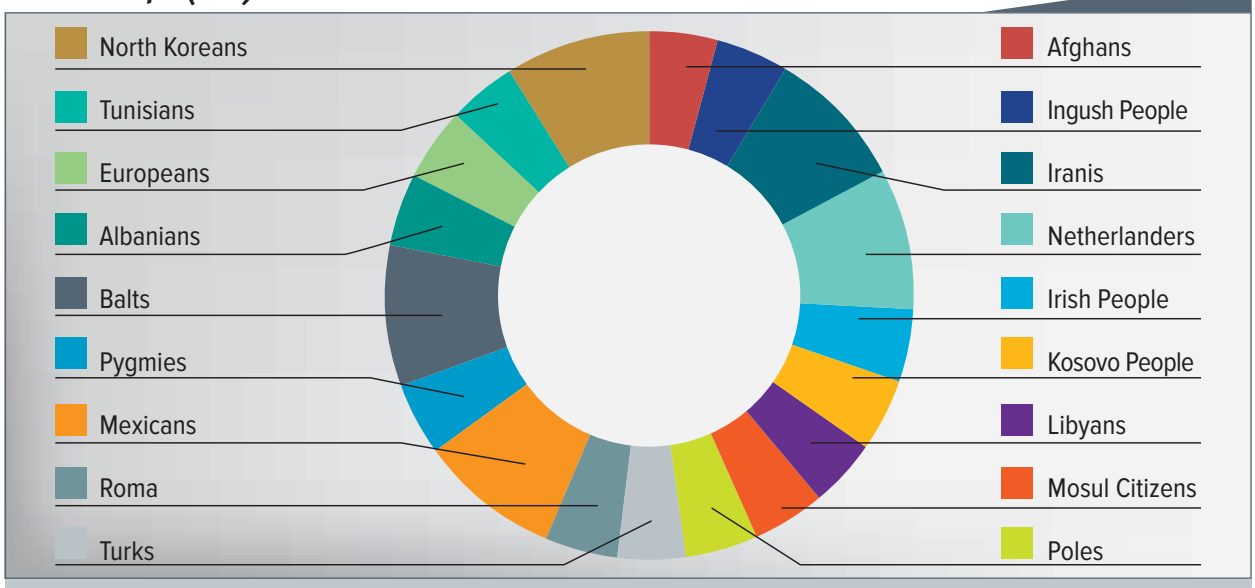
[87] 'Vesti' newscast as of May 11, 2014. Available at: https://russia.tv/video/show/brand_id/5402/episode_id/986747/

Objects of Hate Speech on Russian TV Channels
Ethnicity/Nationality/Citizenship



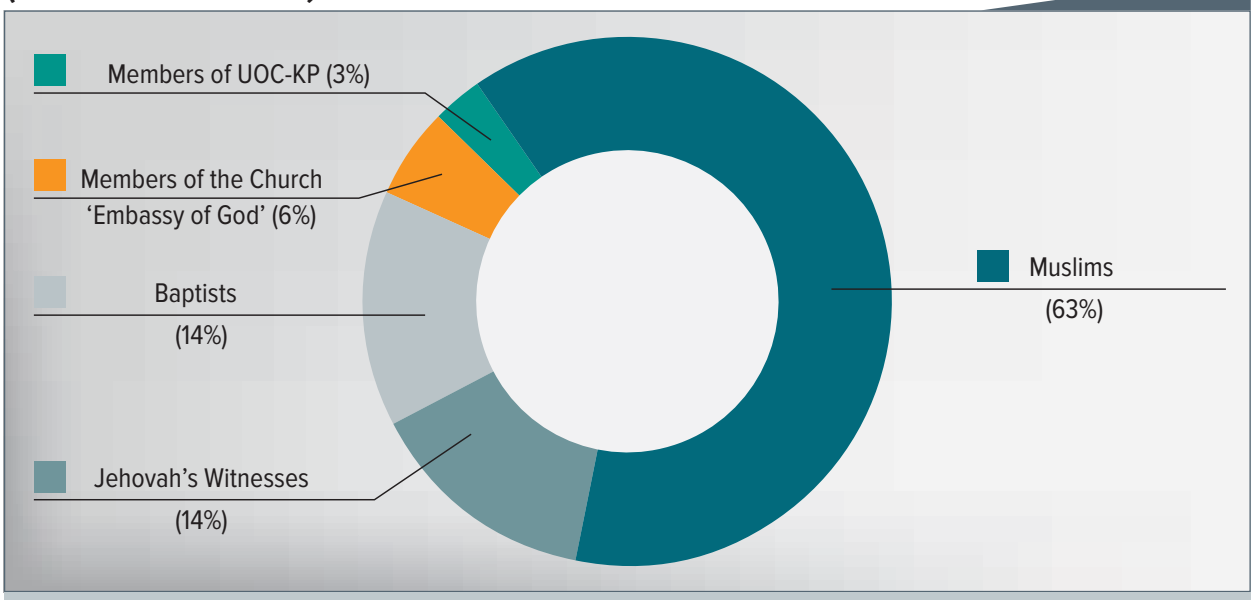
Monitoring period 01.03.2014 - 31.05.2014; 01.03.2017 - 31.05.2017

Other Groups (7%)



Monitoring period 01.03.2014 - 31.05.2014; 01.03.2017 - 31.05.2017

Hate Speech with Regard to Religious Groups *(Russian TV Channels)*



Monitoring period 01.03.2014 - 31.05.2014; 01.03.2017 - 31.05.2017

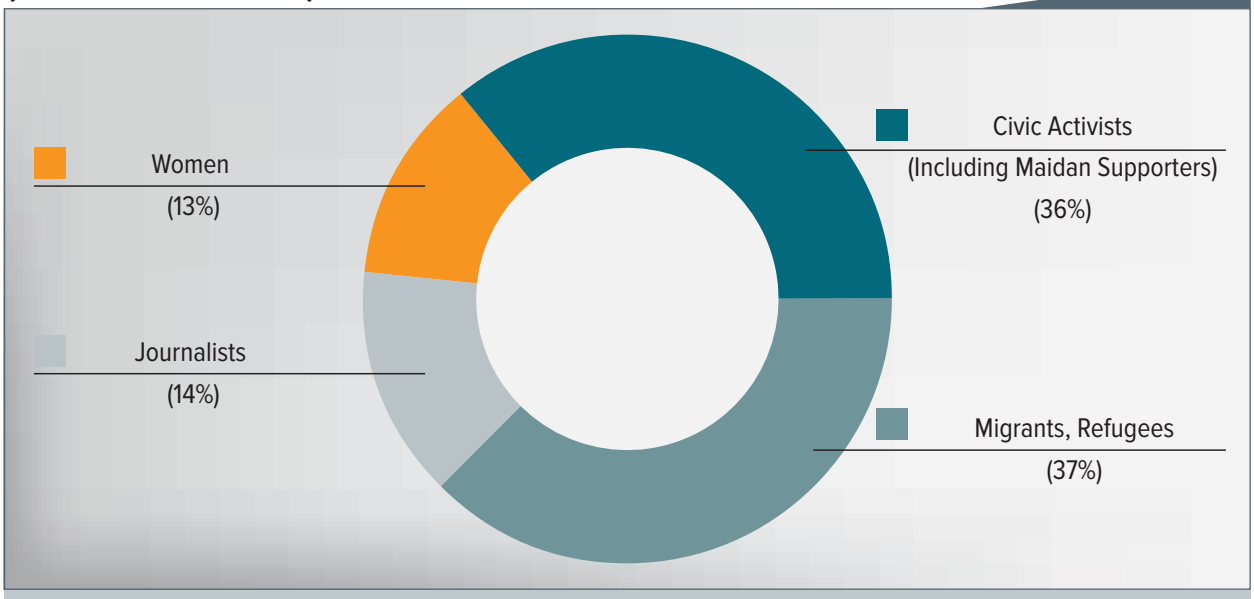
decades to describe the atrocities of SS battalions[88] and other fascists fighting on Hitler's side who were subsequently convicted by the Nuremberg Tribunal. That is why drawing similar parallels creates in the public conscience a strongly negative image of the whole modern Ukrainian society, an image of the 'enemy' who needs to be mercilessly destroyed like Nazis during World War II.

When highlighting the events in Odesa on May 02, 2014[89] and the armed conflict in Donbass, the Russian channels show only one point of view. At the same time, they often use such a form of hate speech as quoting xenophobic statements without commentary. Such statements sometimes contain direct calls for exterminating Ukrainians and most of the times accuse Ukrainians of criminality or inferiority.

[88] SS (short for German Schutzstaffel — Protection Squadron) — paramilitary formations of the National Socialist German Workers' Party (NSDAP). During 1933–1945, the SS ran the concentration camps and extermination camps where millions of people died.

[89] Confrontation in Odesa between the supporters of Euromaidan and pro-Russian activists on May 02, 2014 resulting in skirmishes in the city center and the fire in the Trade Unions Building leaving almost 50 people dead.

Hate speech with regard to social groups *(Russian TV Channels)*



Monitoring period 01.03.2014 - 31.05.2014; 01.03.2017 - 31.05.2017

For instance, 'Vremia' news cast on Channel One as of May 03, 2014[90] had the following things said about the events in Odesa: '*We need to stop this* **fascism***, they are* **not humans***, even fascists did not kill their fellow citizens.*' A similar quotation of an Odesa resident was given in 'Vesti Nedeli' weekly news edition on Russia One dated May 18, 2014: '**Beasts** — *they are* **inhuman monsters**[91].' 'Vremia' newscast dated May 17, 2017 cited a Donetsk protester: '*To get rid of the* **brown plague**[92]*. They are* **savages**[93].'

In the general context of the studied news editions, such utterances project not only on the people who perpetrated those crimes in Odesa, but on all citizens of Ukraine.

We also noticed that Russian channels accused all Ukrainians of historical crimes which is a medium level of hate speech.

For instance, Russian propaganda often calls Ukrainians **Banderites**. Moreover, news anchors occasionally mention the crimes committed by Stepan Bandera during World War II. Everybody who fought on Bandera's side during the war are also called **Banderites** and, at the same time, **bloodthirsty criminals**, **fascists** and **punishers**. By doing so, they equate the citizens of modern Ukraine as Banderites, putting such images in people's minds.

Due to the use of such methods of propaganda, the responsibility in the public consciousness for the crimes of a certain group of people committed more than 70 years ago falls on the citizens of modern Ukraine and Ukrainians as an ethnos. At the same time, the residents of Crimea and uncontrolled Donbass are opposed to the rest of Ukrainians, and thus their affiliation with Ukraine is eliminated.

Crimeans are called **Russians**, and Donbass residents — a **separate nation** which reportedly demands its right to self-determination. It should be noted that, according to the latest All-Ukrainian Population Census carried out in 2001[94], there is no separate nation in this territory, and the population mostly consists of ethnic Ukrainians and Russians.

Hence, the Russian TV channels help incite hatred towards Ukrainians not only in the consciousness of Russians who are their main target audience, but also among the citizens of the separate territories of Ukraine which are covered by the broadcasting of these mass media. Such actions of the Russian agitators are another way of escalating the conflict in eastern Ukraine and legalizing the occupation of Crimea in the eyes of the local population.

We also found statements in Crimean mass media about Ukraine being '*a Western part of Rus*' and that '*Eastern Rus must save its brothers from the* **Ukrainian occupation**.' For example, one such publication mentioned ethnic Ukrainians exclusively in the humiliating and insulting context (**crypto-Banderites**, **potential traitors**)[95]. The author continued by addressing the Russians living in Ukraine: '*The war goes on, even if you don't see it all the time. Restoring the original Russian boundaries is only a matter of time. Ukraine is doomed. It is autumn 1942 on the war calendar.*'

During the monitoring period, we also observed a lot of references towards Ukrainians in a humiliating and insulting context, including in news about crime.

It is noteworthy that the degree of hatred towards Ukrainians in 2017 became significantly lower as compared with 2014. The citizens of Ukraine were almost never referred to as **punishers** and **Banderites** in the news. At the same time, the residents of the uncontrolled territories in Donetsk and Luhansk Oblasts are no longer mentioned as a separate nation, and are rather called the 'citizens of self-proclaimed republics.'

In 2017, the number of cases of hate speech use with regard to Ukrainians reduced considerably when compared with the same period in 2014 (spring 2014 — 146 examples of hate speech, spring 2017 — 38). Overall the number of examples of incitement to hatred remained about the same (234 in 2014 and 245 in 2017). In addition to Ukrainians, in 2017, the Russian TV channels stirred up hatred mainly towards the residents of Central Asia, migrants and Muslims. It is notable that there were no cases of hate speech used concerning the residents of Central Asia and migrants in the television programs under study in 2014.

Russian propaganda in 2017 paid a lot of attention to the conflict in Syria and the situation in the Middle East. Muslims and migrants from Central Asia were often viewed as the main threat for people living in Russia and Crimea.

For instance, the news anchor of 'Vesti' on April 05, 2017[96] used the following phrase: '*A group of* **migrants**

[90] 'Vremia' news edition as of May 03, 2014. Available at: http://www.1tv.ru/news/issue/2014-05-03/21:00#4

[91] 'Vesti Nedeli' weekly news edition as of May 18, 2014. Available at: https://goo.gl/wh6n8y

[92] Brown Plague is the established metaphoric expression in Russian language for fascism.

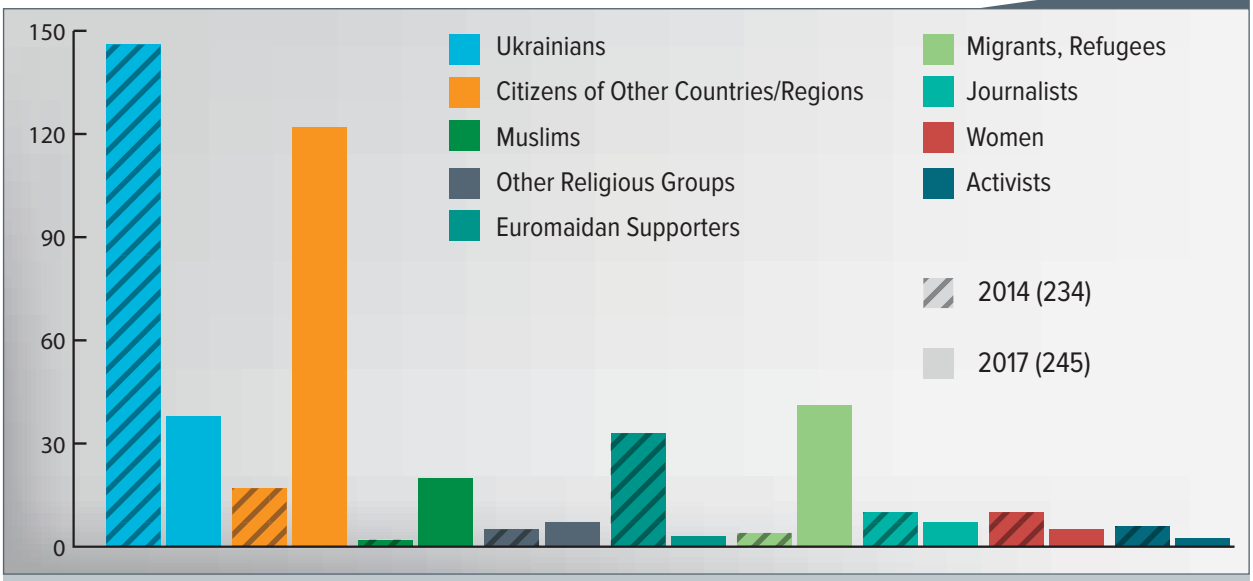
[93] 'Vremia' news edition as of May 17, 2014. Available at: https://www.1tv.ru/news/issue/2014-05-17/21:00#6

[94] All-Ukrainian Population Census 2001/ State Statistics Committee of Ukraine http://2001.ukrcensus.gov.ua/results/general/nationality/

[95] Do Not Require from Russia Ridiculous Actions and Meaningless Sacrifices / ForPost. News of Sevastopol, February 13, 2017 — http://sevastopol.su/node/128114

[96] 'Vesti' newscast as of April 05, 2017. Available at: https://russia.tv/video/show/brand_id/58500/episode_id/1488331/video_id/1611325/

Objects of Hate Speech on Russian TV Channels



Monitoring period 01.03.2014 - 31.05.2014; 01.03.2017 - 31.05.2017

who recruited **potential militants** *was detained in Saint-Petersburg.*' Mentioning migrants in crime news this way creates in the public perception an image of migrants from Central Asia as potential terrorists and radical supporters of the terrorist organization Islamic State of Iraq and the Levant (ISIL).

At the same time, the use of different types of hate speech formed an image of Muslims who are also potential **terrorists** because of their religion.

Hate speech with regard to these groups was used in the medium and soft form. For instance, 'Vesti' news on May 29, 2014[97] broadcast a story about the detention and shooting of a 'local gang' which accentuated the religion of suspects and their countrymen.

'His fellow-citizens told him about **the purest religion** *that he* **needed to give his life for** *— but to* **take the lives of other people** *was even better,'* the news anchor commented on the detention of one of the gang members.

The situation is aggravated by the fact that the program's authors, in violation of the presumption of innocence, said that the detained was going to be a suicide attacker and his fellow-citizens were **terrorists' accomplices**. Such practice of public accusations of people before court judgments is also very common in the case of Crimeans who were subjected to politically motivated persecutions. That is why calling some people criminals on account of their religious beliefs (Islam) is especially threatening for the residents of Crimea, particularly the Crimean Tatar people who are predominantly Muslims.

The residents of Central Asia were the objects of incitement to hatred mainly in the form of references in the humiliating or insulting context in crime news intended to create an image of these people as potential terrorists.

For example, the anchorman of 'Segodnia' news edition on NTV as of May 05, 2017[98] linked the detention of terrorist suspects with the fact that they live in a certain territory:

'*Six citizens of the republics of Central Asia were detained. They* **came to Russia to work**, *but in the last two years they have been* **recruiting Central-Asia-born individuals** *for* **terrorist activities**.'

Overall, within the monitoring period, we noted 34 examples of such hate speech relating to the residents of Central Asia as a group of people living in this territory. And their guilt of committing grave offences is claimed as a proven fact already at the stage of their detention, that is long before the court's judgment.

The main danger of such incitement to hatred for Crimeans is that most Crimean Tatars during deportation lived in the territory of Central Asia and are Muslims. Some of them are still citizens of the republics of Central Asia. During the period of the occupation of Crimea, there was a range of politically motivated criminal proceedings regarding Muslims and Crimean Tatars. A mass use of hate speech with regard to these groups leads to a more tolerant attitude of society towards the prosecution of these people on the part of the occupation authorities. This situation enables security officials in Crimea to enhance repressions against these discriminated groups.

[97] 'Vesti' newscast as of May 29, 2014. Available at: https://russia.tv/video/show/brand_id/5402/episode_id/991276/

[98] 'Segodnia' newscast as of May 05, 2017 — http://www.ntv.ru/video/1416193/

HATE SPEECH IN CRIMEAN ONLINE MEDIA

While monitoring the web-sites of Crimean mass media selected for the study, we revealed 168 examples of hate speech with 58% of them accounting from only two sources: the Sevastopol web-site ForPost which belongs to Kazhanov Sergey, a 'deputy of the Legislative Assembly of Sevastopol'[99], and that of Crimeainform controlled by Maksim Nikolayenko who ran as a candidate for the head of the occupation administration of Simferopol in September 2017[100].

94 registered examples of hate speech in Crimean online media refer to the monitoring period of 2014, 74 — to the period of 2017.

The main objects of hate speech were the groups of people who shared the same ethnicity, nationality and/or citizenship (130 examples) and social groups (26 examples). Ukrainians as an ethnic and/or civic community were the major objects of verbal attacks in one form or another (123 examples).

Ukrainians appear in the materials of the abovementioned mass media as fascists, Nazis, Banderites. Ukraine is called a neo-Nazi state, and its authorities — the military junta.

The authors of many examples of hate speech in the studied sources are politicians of different levels, public activists and experts quoted by publications, as well as materials' authors and editors themselves.

Thus, for instance, ForPost wrote the following in July 2014: *'Sustaining huge casualties,* **the Ukrainian junta** *is desperately trying to save the day and turn the tables in the information war. Things that the* **pro-fascist Kyiv administration** *protests so fiercely against are now used as propaganda. Even 'The Sacred War' [one of the most famous Soviet songs of the Second World War]* **song** *which is so odious to them has been changed.* **Covered in the American flag, the Ukrainian singer with crazy eyes** *sings this song to the accompaniment of the photos of* **maimed bodies of peaceful citizens of south-eastern Ukraine**[101]*.'*

And in June 2017, Yuriy Portov, a reporter from the Krymskiye Izvestia newspaper, asked a whole range of chauvinistic questions and gave no less chauvinistic answers to them himself: *'Why do we care about this alien-alien Ukraine, previously known as the Ukrainian Soviet Socialist Republic? Did enemies or, as they say, fraternal people live there before the demise of the Soviet Union? And where did these people go when they had suddenly become independent and self-sufficient? It seems like the* **citizens of Ukraine that we know have been replaced by con men**, *who pulled a stacked deck out of their sleeve, being mere puppets rather than intelligent, conscious and honest people,'* he wrote[102].

All abovementioned examples refer to different types of soft hate speech, like 92% of all examples found by the monitors.

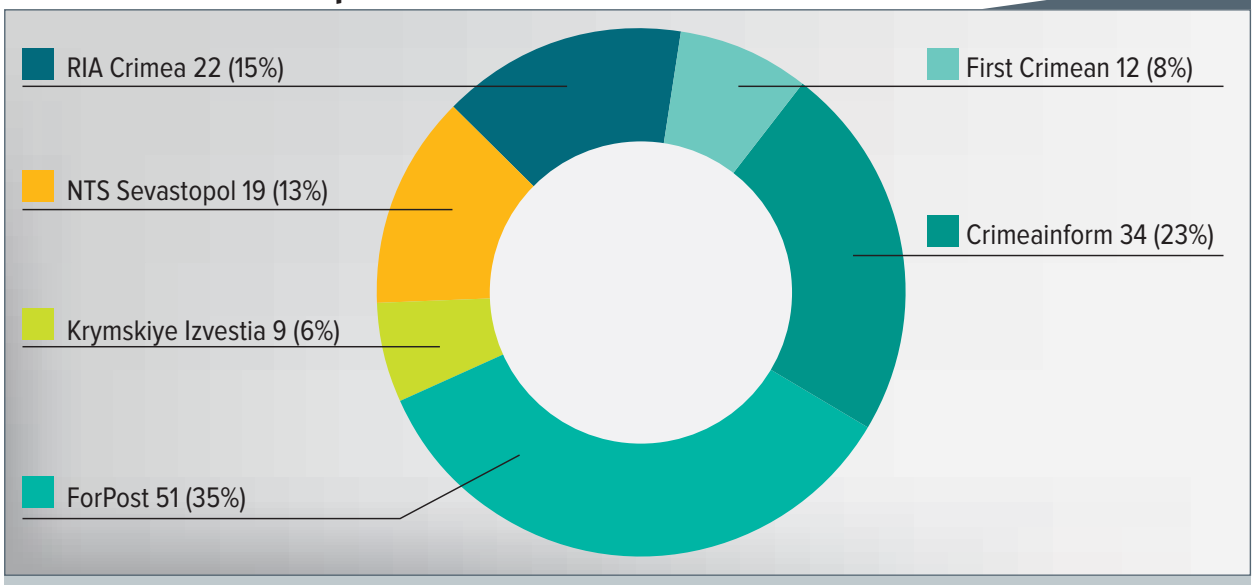
[99] Kazhanov Sergey Petrovich. Available at: http://sevastopol.su/node/111862

[100] Simferopol Has Elected the Mayor. Available at: https://ria.ru/politics/20170922/1505298751.html

[101] Article: Fascist Scum Uses 'The Sacred War' song to Boost the Morale of Ukrainian Punishers. Available at: http://sevastopol.su/news/fashistskaya-nechist-ispolzuet-pesnyu-svyashchennaya-voyna-dlya-podderzhaniya-boevogo-duha

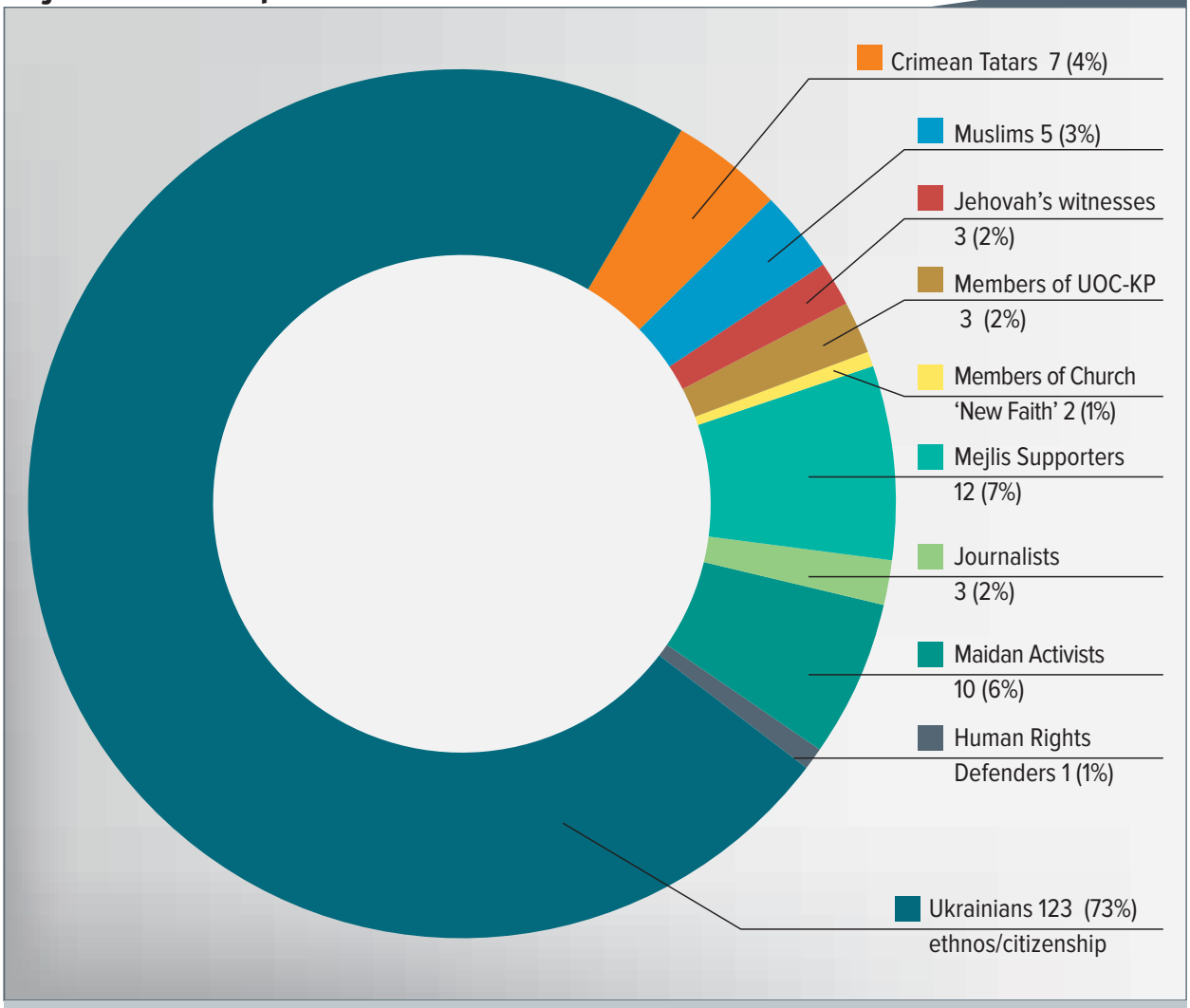
[102] Love and Hatred: Feel the Difference. Available at: http://new.crimiz.ru/rubriki/85-politika/4791-lyubov-i-nenavist-pochuvstvujte-raznitsu

Distribution of Hate Speech between Web-Sites of Crimean Mass Media



Monitoring period 01.03.2014 - 31.09.2014; 01.01.2017 - 31.07.2017

Objects of Hate Speech on Web-Sites of Crimean Mass Media



Monitoring period 01.03.2014 - 31.09.2014; 01.01.2017 - 31.07.2017

At the same time, almost all examples of medium and harsh hate speech have been observed in only two editions — Krymskaya Pravda daily newspaper which literally belongs to the family of Bakharev Konstantin[103], a Duma deputy from the 'Republic of Crimea,' and the official newspaper of the local 'parliament' — Krymskiye Izvestia.

Six of eleven medium hate speech examples were found in Krymskaya Pravda, two — in Krymskiye Izvestia, and the remaining ones in RIA Crimea, along with NTS Sevastopol and ForPost with one example of hate speech in each of them.

Thus, in June 2014, Krymskaya Pravda newspaper called for **smashing the fascist scum**. *'The leaders of New Russia chosen by the people and militias stand up against the Nazi junta that has seized power in former Ukraine. <...> This is a* **war with fascism**. *Just like 70 years ago, there is 'civilized' West behind the* **Nazi vermin**. *But just like always the truth is on our side. And that means that God is with us. We are proud of you, fellows.* **Smash the fascist scum**! *<...> We want all of you* **dead**, *we want every single one of you* **stone dead, bastards!**' *the newspaper wrote*[104].

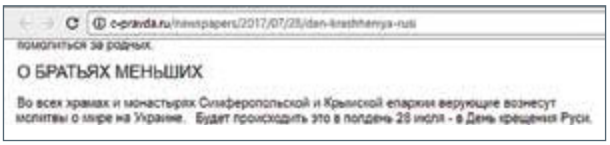
In February 2017, Krymskaya Pravda published an interview with Natalia Kiseleva, a pro-Russian political analyst, who literally called for fighting with Crimeans who support Ukraine: '*Crimeans, those who could, wanted to and did fight the* **Ukrainian neo-Nazism** *for 22 years during which time Crimea had been separated from its '***native***' country — the so-called '***nenka***.' We can't afford to turn a blind eye to the existence among us of the carriers of this ideology that came from beyond Perekop [a city that existed before 1920 which formed a link between the Crimean peninsula and the mainland] per se, but the people on the peninsula infected with the neo-Nazi virus — it is not for nothing that they were*

[103] See: Faces of Russian Propaganda: Owners of Crimean Newspapers. Available at: https://ru.krymr.com/a/27879631.html and Bakharev Konstantin Mikhaylovich. Available at: http://zampolit.com/dossier/bakharev-konstantin-mikhaylovich/

[104] God is Right rather Than Might. Available at: http://c-pravda.ru/newspapers/2014/06/06/ne-v-sile-bog-a-v-pravde

*called '***maidanuts***.' What do we usually do with* **sick people***? We treat them. Either therapeutically or surgically. In the former case, we can do everything possible at various fronts: informational, educational, awareness-raising… In the latter case, law-enforcement agencies, as the expression goes, have an open field for work.'*

One of the publications of Krymskaya Pravda called Ukrainians **little brothers**.[105]. It is worth noting that in Russian this phrase usually denotes pets.


помолиться за родных.

О БРАТЬЯХ МЕНЬШИХ

Во всех храмах и монастырях Симферопольской и Крымской епархии верующие вознесут молитвы о мире на Украине. Будет происходить это в полдень 28 июля - в День крещения Руси.

ABOUT OUR LITTLE BROTHERS

In the churches and monasteries of Simferopol and Crimean eparchy, the faithful will pray for peace in Ukraine. The prayer will start at noon on the 28th of July — the day of Christianization of Rus.

Aside from Ukrainians in general, the main objects of hate speech were also the following groups: the Mejlis supporters (12 examples), Crimean Tatars (7 examples) and Muslims (5 examples). These examples constitute 14% of the total number. Taking into account the fact that almost all supporters of the Mejlis of the Crimean Tatar People and the overwhelming majority of Muslims in Crimea are the representatives of the indigenous community[106], we may say that all these manifestations of hatred are aimed mostly at Crimean Tatars. It is also notable that this indicator gets significantly higher during some periods when there are high-profile events mostly related to the Russia-guided repressions against Crimean Tatars.

Most of the time, Crimean Tatars are depicted as radical Islamists and extremists, and their representative body — the Mejlis — as a terrorist and extremist organization.

For instance, in June 2014, ForPost published an indicative article titled *Kolomoiskyi, Yarosh and Dzhemilev Intend to* **Shed Russian Blood All Over the Crimean Land**. This article, among other things, said the following: *'Right now '***Tatar refugees***' are flowing into Dnipropetrovsk from Western Ukraine. Trains from Kovel and Lviv come at night.* **Militants** *from* **radical Islamist groups** *arrive at guarded platforms. They fled Crimea three months ago, on the eve of the referendum on reunion with Russia. They have been training in* **Galician camps** *all this time. And now it's time to fight. The new* **Punitive The Crimean Tatar Special Battalion** *is their main striking force. Locals say that the* **Islamists killed a few Azov fishermen** *— to* **intimidate** *all those who approach the Russian shore on their motor boats. And bring the* **Syrian nightmare** *to Crimea! It is not for nothing that the Mejlis headed by Mustafa Dzhemilev succeeded so much in* **recruiting young Tatars** *to form the squads of mujahideen.* **Militants high on drugs** *were speaking loudly on the phone and calling for an 'armed detachment.' Although no detachment arrived, the Islamic web-sites already started talking about the beginning of the insurgency*[107]*.'*

Given the tendencies revealed during the study, we may assume that Crimean mass media fulfill their common task of forming an image of an enemy of Ukrainians and the Crimean Tatar people which in its overwhelming majority did not recognize the occupation of the Crimean peninsula.

These assumptions are partly confirmed by the number of comments stirring up hatred which people leave not only under the articles with hate speech, but also under the materials without it.

Although we did not monitor the comments separately as part of this study, their shallow analysis showed that the tone of discussion on different platforms is set by the so-called 'professional trolls' using a range of one and the same accounts. And hate speech in such comments is used in much harsher forms than in articles themselves.

A series of niche Crimean online media systematically uses hate speech in their publications and impacts rather considerably the radically-minded segment of the pro-Russian population.

These are the Crimean information web-sites Novoross *[New Russian]* (novoross.info) with one of its founders Yuriy Pershykov, the former Deputy Minister of Information Policy of the so-called Luhansk People's Republic (LPR) and a current member of the Board of the 'Crimean Branch' of the Union of Journalists of Russia, as well as Unbowed Crimea (freetavrida.org) and the online newspaper Crimean Echo (c-eho.info). These resources use hate speech the most often.

For the sake of illustration, let's consider the headlines and leads[108] of the materials published during the first week of September 2017:

[105] Publication in Krymskaya Pradva http://c-pravda.ru/newspapers/2017/07/28/den-kreshheniya-rusi

[106] Crimean Tatars had been demanding from Ukraine that they should be given the status of indigenous people, and Ukraine must restore the historical justice as well as their rights as a nation that suffered the deportation out of Crimea arranged by Stalin's regime on May 18, 1944. After the occupation of Crimea by Russia on March 20, 2014, the Verkhovna Rada of Ukraine approved the resolution which recognized Crimean Tatars as the indigenous people.

[107] Kolomoiskyi, Yarosh and Dzhemilev Intend to Shed Russian Blood All Over the Crimean Land. Available at: http://sevastopol.su/news/kolomoyskiy-yarosh-i-dzhemilev-namereny-zalit-krymskuyu-zemlyu-russkoy-krovyu

[108] Lead — a summery or a 'header' of an article consisting of 3-5 lines (three sentences max) that formulates a problem and a conclusion. The opening paragraph of an article, an informative fragment that attracts the reader's attention to the given material. The main criterion of a lead is its compactness which makes it possible for a reader to understand what an author of an article/material wants to inform them about.

*'Simferopol Evicts the '**Filareterians**' [supporters of Patriarch Filaret] Because They Refused to Register under Russian Law. Russian law-enforcement bodies evict the **sectarians of the Ukrainian nationalist group Kyiv Patriarchate** from their rented quarters in Simferopol' (Novoross, September 01, 2017).*

*'Lutuhyne has Celebrated the Third Anniversary of Liberation from the **Ukrainian Invaders**' (Novoross, September 02, 2017).'*

*'**The Ukrainian aggressors** Have Not Yet Withdrawn Heavy Weaponry from Donbass' (Novoross, September 03, 2017).*

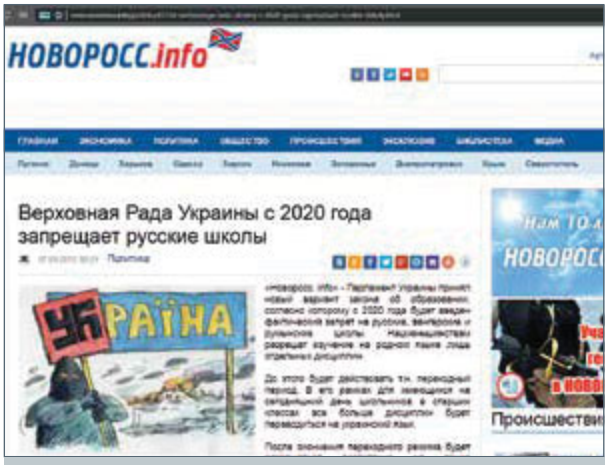
*'The Donetsk Gauleiter Demands That the "Representative Offices" of **Ukrainian Nazis** Should Be Established in LPR and DPR,' 'Shifting the Blame: the Head of the **Ukrainian Gestapo** Accused the Russian Intelligence Agencies of "Organizing Terrorist Attacks in Ukraine," 'The Ministry of Defense of the LPR Informed about Another **Crime of Drunk 'Warriors of Light'** [this is how Ukrainians were called in the song by Lyapis Trubetskoy of the same title devoted to the Euromaidan protesters] / '**Ukrainian punishers** in Donbass Who Are Pompously Called by the Propaganda of the Kyiv Regime 'Warriors of Light' Continue Committing Crimes against the Peaceful Population of Donbass..,' 'The Kyiv Regime Has Become the Guise of Maidan for the European Audience Hiding Its **Savage Grin** — the Political Analyst' (Novoross, September 04, 2017).*

*'How Long Are We Going to Feed You? The Driver Pushed the **Punisher's** Widow out of the Bus in Kyiv,' 'Amnesty for ATO Cutthroats Will Unlikely Promote a Resolution of the Donbass Conflict' (Novoross, September 05, 2017).*

*'**Kill a Fanatic Fascist**.' The Posters of the Great Patriotic War are Relevant Today as Well' (Novoross, September 06, 2017).*

*'**The Occupants Ukrainize** the Captured Regions of Donetsk Oblast' (Novoross, September 07, 2017).*

Novoross used hate speech in headlines and leads of 20 articles only in one week in September 2017. This web-site also often applies various illustrational tools to promote hatred.



The illustration on Novoross.Info showing a swastika against the Ukrainian flag

Hate speech is similarly used on the pages of another online newspaper Unbowed Crimea:

*'The Speaker of the Seimas of Lithuania Supported the Blockade of Crimea. The Henichesk District Authorities Demonstrated at the Chonhar Telecommunications Tower to Viktoras Pranckietis, the Speaker of the Seimas of Lithuania, Who Visited and Supported the **Mejlis Extremists** Who Have Arranged the Blockade of Crimea' (Unbowed Crimea, September 03, 2017).*

The illustration on Novoross.Info

*'Another **Banderite** Has Left Crimea. Leonid Kuzmin, One of the Main Activists of the 'Ukrainian Cultural Center,' Is No Longer in Crimea,' '**Banderite Authorities** Continue Torturing Journalist Vasyl Muravytskyi' (Unbowed Crimea, September 04, 2017).*

*'Two First Grade Students in Henichesk Refused to Study in **Ukie Language**. The Parents are Dead Set Against the Imposition of **Banderite ideology** on Their Children' (Unbowed Crimea, September 06, 2017).*

Ukraine and Ukrainians are the main object of hatred on these resources. Although the preliminary monitoring showed that Crimean Tatars and their representative body Mejlis, as well as Muslims, are also very often subjected to hate speech.

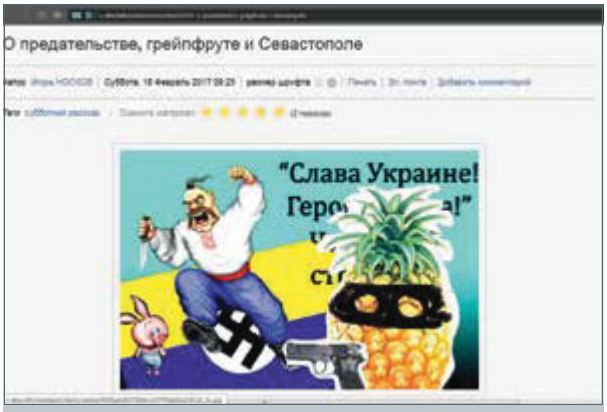
It is worth noting that these resources started using hate speech long before the occupation of Crimea by Russia. Ukrainians and Crimean Tatars were the main objects of hate speech attacks at that time. These online media used the harshest forms of hate speech, including calls for violence and repression. However, after the occupation of the peninsula, the number of hate speech examples increased significantly and the rhetoric became even more strident.

Thus, for instance, back in 2010, Novoross.info published a comment of Yuriy Pershykov who argued against naming a school in Partenit[109] the name of Abdul Teifuk, a Crimean Tatar hero of World War II, as well as practically approved of the fact that Crimean Tatars should not be allowed to live in this settlement.

'Koideshler is an organization established by Ibraim Voiennyi to obtain land on the south coast of Crimea. This organization has repeatedly tried to enter Partenit, but it hasn't managed to because of the **resistance on the part of the local Orthodox community**. *There are no Crimean Tatars there today. Yes, the Soviet law gives the Hero of the Soviet Union the right to have his bust installed in the territory he once lived in. Nevertheless, I think there is no point in naming a school after Teifuk in Partenit because the* **school is Russian**,' Pershykov claimed at that time[110].

In May 2014, the web-site published a statement from the militants of the so-called Self-Defense of Crimea that went to the South-East of Ukraine to combat, as the resource wrote, the **junta**. 'We are not in the prisoner-taking business, we are in the killing-junta business... We are going to help the people of the South-East and destroy everything on our way,' went the statement[111].

It also posted a statement from Aleksei Chaly, the 'people's mayor' of Sevastopol: *'Of course, I welcome the idea of* **Russia bringing its troops into Ukraine**. *I'm not only supporting the idea, I'm exasperated that Russia hasn't done*



The Illustration on Crimean Echo web site depicting a 'bloodthirsty Ukrainian' with a knife against the swastika background

it yet. We need to eliminate the hot spot. We also need to **protect our brotherly people** *who are begging for our help for the umpteenth time. I hope that the President of Russia makes up his mind to do so. I really-really hope so. And our* **troops are sure to march on the streets of Donetsk, Kharkiv, Odesa and Luhansk** *with the Victory Parade. Without a doubt. And out veterans will have no fear to walk outside wearing St. George Ribbons and other insignias and medals. Those that they earned protecting our lives, our country. Those that the* **Banderites**, *this* **scum** *that* **we should have wiped off the face of the Earth** *a long time ago, forbid them to wear.* **Rubbish** *needs to be removed*[112].'

In October 2016, Novoross claimed that 'a **great disaster** *may happen because of the Crimean authorities' flirtation with the* **Mejlists**.' The web-site informed that approximately 200 Crimean Tatars fight for the ISIL, that 'Crimean Tatars raped a Russian girl' and held a range of other demands against the representatives of the indigenous community of Crimea. 'Only an open, clear and tough attitude of the Head of the Republic and Crimean authorities will not let a great disaster happen at our friendly, multinational Crimean home,' the web-site summed up[113].

Calls for different reprisals may be found on the Crimean Echo web-site.

Thus, on May 1, 2014, the resource published a statement from Vladimir Konstantinov, the Chairman of the Parliament of the 'Republic of Crimea,' who threatened Ukraine with mass casualties: 'One person killed in Donbass will cost them ten people on their side. This is the law of war. It will be their last attack. These people are

[109] An urban-type settlement on the south coast of Crimea. It is situated 15 km south-west from Alushta and 59 km south-east from Simferopol.

[110] Coordinator of Youth Cossack Movement: Koideshler Tries to Position Itself As a Legitimate Organization on the South Coast of Crimea by Suggesting That a School in Partenit Should Be Named after Teifuk. Available at: http://www.novoross.info/economics/2479-koordinator-molodezhnogo-dvizheniya-kazakov-predlagaya-pridat-partenitskoj-shkole-imya-tejfuka-kojdeshler-pytaetsya-pozicionirovat-sebya-na-yubk.html

[111] Crimean Militiamen Threatened Junta to Send Two Battalions to Kramatorsk and Shoot to Kill. Available at: http://www.novoross.info/people/25678-krymskie-opolchency-prigrozili-hunte-vyd-vinutsya-dvumya-batalonami-na-kramatorsk-i-bit-na-porazhenie-video.html

[112] Aleksei Chaly Called for Brining in Troops into Ukraine: 'Banderites are Scum That We Should Have Wiped off the Face of the Earth a Long Time Ago. Available at: http://www.novoross.info/politiks/25698-aleksey-chalyy-prizval-k-vvodu-voysk-na-ukrainu-banderovschina-nechist-kotoruyu-uzhe-davno-nado-steret-s-lica-zemli.html

[113] The Shadow of the ISIL: Crimea on the Threshold of a Great Disaster. Available at: http://www.novoross.info/krim/33290-ten-igila-krym-na-poroge-bolshoy-bedy.html

The cartoon depicting Ukrainians as bloodthirsty pirates and Nazis whom Crimea tries to save itself from in a lifeboat

The cartoon depicting Euromaidan protesters as fascists with the Right Sector's flag and Nazi swastika on their back

insane — these who have taken over in Kyiv. *We, the Russians,* **will have to end this Nazi mayhem** *sooner or later. We'll have to come together and end it so that they don't disgrace the Russian world before the whole world*[114].'

In February 2015, Crimean Echo informed that the protesters in Yalta, taking into account that '*there is a war against Russia today,*' '*called for fighting against the 'fifth column,' Western-minded influence agents, for the sovereign economy and our own path of development*[115].'

In November 2015, highlighting another public meeting in Yalta, Crimean Echo claimed that the protesters '*...call on the Russian authorities to make every effort to* **protect the Russian population** *from discrimination and physical violence in Ukraine and the Baltic states.*' '*It is also necessary to draw the* **focus of law-enforcement bodies** *toward the active* **propaganda of Russophobia via the Ukrainian online media, Ukrainian libraries** *in Russia's territory or through the so-called* **national and cultural societies** *(like the Prosvita Society and others),*' the edition wrote[116].

Crimean Echo also described its vision of the solution of the so-called Crimean Tatar problem, having pointed out, inter alia, the following: '*The only way to solve this problem seems to be* **ceasing the concession and peace offering policy** *as regards the '***chosen ones***' in prejudice of* **others***. In this case, we mean the legalization of the land squatting, construction of cult institutions in any convenient territories, priority in the provision of housing on ethnic grounds, quotas for employment and civil service, invitation of* **migrants from Central Asia and Turkey** *for permanent residency in Crimea aimed at* **changing the ethnic composition** *etc*[117].'

In February 2016, Crimean Echo published an interview with Viktor Kharabuga, the pro-Russian political analyst who literally called on the security officials to deal with the supporters of the Mejlis of the Crimean Tatar People: '*This* **threat** *does exist in Crimea today; there was an* **ethnic conflict***; we saw its apotheosis, its climax in February 2014 at the building of the Supreme Council of Crimea. And it almost escalated into a hot stage... Let's put it this way: at least three thousand activists were brought by Refat Chubarov and Mustafa Dzhemilev. If it weren't for this* **gunpowder***, a match would have nothing to* **light***. And these* **people***, this '***gunpowder***,' are still here, so is the problem. Saying that they have no supporters and that the* **Mejlists** *have only two or three people as a back-up would be wrong: they do have supporters, and the number of them is pretty large. I'm not trying to say that they prevail, but they do exist and are supported by a certain number of people. Today,* **everything depends on the authorities, on the law enforcement agencies**[118].'

After a while, Crimean Echo called for removing all members of the opposition from Russia. '*We don't need to send them to prison. Let it be. But we may* **give them a cold shoulder though. Let them live among their brothers and friends** *who will welcome them as political refugees with open arms. Crimea once rose to the occasion and managed to get rid of such* **terrorists** *as Chubarov, Iliasov and* **senile** *Dzhemilev...*,' Igor Noskov, the author, wrote[119].

A little later, Noskov called for kicking out of Crimea all supporters of Ukraine: '*I personally, and all my friends and people that I know, want that all potential* **Ukrainian militants** *living in Crimea and who are waiting for the signal to begin* **terrorist actions be exiled from Crimea to prevent bloodshed***. Natalia Poklonskaya, the honored*

[114] These Streets Haven't Seen a March Like This. Available at: http://old.kr-eho.info/index.php?name=News&op=printpage&sid=12029

[115] Yalta against Maidan in Russia. Available at: http://old.kr-eho.info/index.php?name=News&op=article&sid=13459

[116] Relevant As Never Before. Available at: http://c-eho.info/tochka-na-karte/yalta/item/1791-aktualno-kak-nikogda

[117] It Is High Time We Ask Ourselves: How Are We Going to Live in Our Crimea? Available at: http://c-eho.info/diskussiya/item/1861-prishlo-vremya-sprosit-sebya-kak-budem-zhit-dalshe-v-nashem-krymu

[118] If There Is Indeed a Threat to Peace in Crimea, it Does Not Come from Crimean Tatars Who Are Citizens of Russia. Available at: http://c-eho.info/intervyu/item/2123-esli-ugroza-miru-v-krymu-i-est-to-ona-iskhodit-ne-ot-krymskikh-tatar-grazhdan-rossii

[119] Aliens. Available at: http://c-eho.info/diskussiya/item/2439-chuzhie

The cartoon depicting a Ukrainian as a Nazi with swastika behind his back. He holds a Molotov cocktail[122] and the Ukrainian flag

Prosecutor of Crimea, forced out **terrorists** *Chubarov and Dzhemilev [leaders of the Mejlis of the Crimean Tatar People] — and Crimea is still fine, nothing bad happed to it. The most trigger-happy American President has not atom-bombed Crimea before, he is unlikely to do it now because of* **several dozens of exiled Banderites**. *If Yankees love* **criminals** *so much,* **let them give shelter to them**[120]*.'*

Moreover, such publications use a range of cartoons and other graphic images containing hate speech in their visual content. They use the fascist and pirate symbols, as well as the pictures of weapons, evils spirits and death when creating an image of Ukrainians[121].

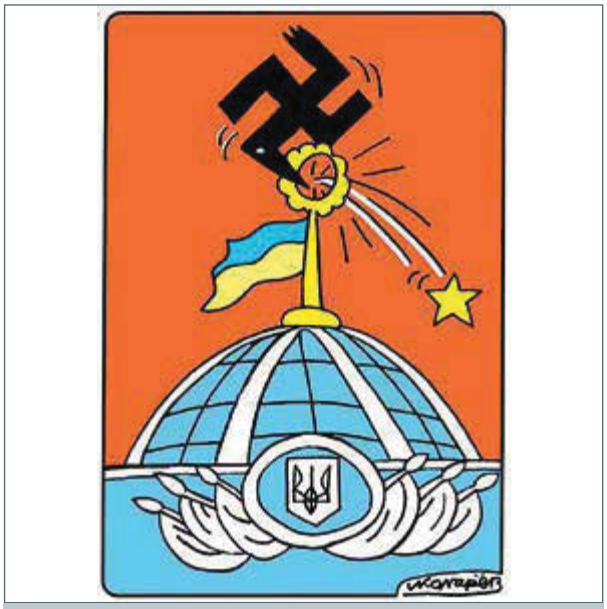
[120] Yes, We Are Russkies! And We Are Proud of It. Available at: http://c-eho.info/znat-i-pomnit/item/2554-da-my-moskali-i-etim-gordimsya

[121] Below you may find the images from the web-sites of Russkaya Pravda *[Russian Truth]*, Zaria Novorossii *[Dawn of New Russia]* and other newspapers.

[122] Molotov cocktails were used by the Euromaidan protesters in the clashes with security forces during the revolution in Kyiv in winter 2013-2014.

[123] The activists used these objects to protect themselves from the attacks of security forces during the revolution in Kyiv in winter 2013-2014.

The cartoon depicting Ukrainians as Nazis. A tire and a stick are additional attributes[123] referring to Euromaidan



The cartoon depicting a fascist swastika over the dome of Ukrainian Parliament – Verkhovna Rada

The cartoon depicting Euromaidan protesters as evil spirits. The devil wears a Ukrainian-flag-coloured coat with a burning tire, a Molotov cocktail and a bat before him. Beside him – the characters representing the European Court and the USA holding angel's wings and a halo over Ukraine

The cartoon depicting a Ukrainian in the humiliating and insulting context: with a piece of salo [cured slabs of fatback or pork belly] in his mouth and a bottle of vodka in his pocket. There is a chain with coat of arms of Ukraine on his neck and a rifle behind his back. The slogan above says 'Ukraine Is Europe'

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

In connection with the armed occupation of Crimea and the beginning of the military conflict in Eastern Ukraine, there has been a splash of hate speech use in the media landscape of Crimea, mostly against the citizens of Ukraine. Amid the fast-paced events, the mass media of the Russian Federation and Crimea were making covert attempts to legalize the peninsula's occupation process and the armed conflict in Donbass in people's minds. At the same time, Ukrainian channels were blocked in the territory of Crimea, and local journalists and editorial offices critically highlighting the occupation of Crimea were subjected to numerous attacks and various types of obstruction of their activity, which eventually forced them to leave Crimea and move to mainland Ukraine.

The problem of hate speech use in the media landscape of Crimea had existed long before the occupation of the peninsula by Russia. However, since the very first days of invasion, the propaganda has started using hate speech on an unprecedented scale accompanied by the ever aggressive hostile rhetoric.

During this period, hate speech continued to be applied to the supporters and participants of Euromaidan as a separate group of people advocating the European integration and taking part in protests all over Ukraine in winter 2013-2014. The Russian propaganda mentioned these people most of the time in relation to different crimes. The Euromaidan supporters and Ukrainians in general were called **fascists, neo-Nazis, junta's accomplices, Nazis' henchmen, Banderites, punishers** etc. Speculations on the historical memory and tragedy of the Second World War intensified the effect and aggravated the international strife between Ukrainians and Russians, stirred up hatred between the participants of the armed conflict in Donbass, as well as escalated the atmosphere of discord between the residents of Crimea and people living in mainland Ukraine.

On the whole, hate speech in the media landscape of Crimea shows itself in different ways. In addition to a constant use of clichés inciting hatred in various mass media, such expressions are published on the official web-sites of the Crimean occupation authorities.

The monitoring of hate speech in the media landscape of Crimea was carried out using examples of three main sources: (1) on the air of top-rated television channels of the Russian Federation broadcasting in Crimea, (2) on the web-sites of the main occupation authorities of Crimea and (3) on the web-sites of the most popular Crimean mass media who got the opportunity to work in Crimea legally and whose editorial offices are located on the peninsula.

In particular, the monitoring group studied the content of the web-sites of the following occupation authorities: the 'Government of the Republic of Crimea,' 'State Council of the Republic of Crimea,' 'Government of Sevastopol,' 'Legislative Assembly of Sevastopol,' 'Prosecutor's Office of the Republic of Crimea,' 'Prosecutor's Office of Sevastopol,' 'Ministry of Internal Affairs for the Republic of Crimea' and the 'Department of the Ministry of Internal Affairs of Russia for Sevastopol.' Furthermore, we also analyzed the materials on the web-sites of the Crimean mass media, including local TV channels (First Crimean, NTS Sevastopol), newspapers (Krymskaya Pravda, Slava Sevastopolia, Krymskiye Izvestia) and online media

(Crimeainform, RIA Crimea, ForPost Sevastopol). We also monitored the newscasts and information and analytical programs aired at night (prime time) on three top-rated Russian TV channels broadcasting on the Crimean peninsula (Russia-1, NTV and Channel One).

The monitoring covers two periods: spring — autumn 2014 and the first half of 2017.

We have registered a total of 718 examples of incitement to hate, predominantly in the soft form, on the studied resources. Medium hate speech was used in 8% of cases. Harsh hate speech constitutes less than 1% of the overall number of examples.

The study established several ethnic, religious and social groups that hatred was incited towards in the media landscape of Crimea. These are Ukrainians (as an ethnos and/or civic community), Crimean Tatars, members and supporters of the Mejlis of the Crimean Tatar People, Euromaidan activists, Muslims and migrants. Most of the time the mass media stirred up hatred towards the national/ethnic groups and those living in certain territories. Overall, there are 36 such groups. Ukrainians (as an ethnos and/or civic community) living in the government-controlled territories were the main object of hate speech among these groups.

The studied web-sites of the Crimean 'authorities' used hate speech mainly with respect to the groups based on their citizenship or residence in a certain territory, as well as migrants, Euromaidan supporters, LGBT community, members and supporters of the Mejlis of the Crimean Tatar People.

Overall, we found 71 examples of incitement to hatred on the web-sites of the occupation authorities of Crimea. The soft form of hate speech was used in 58 cases, medium form — in 12 and harsh one — in one. The largest number of the examples of incitement to hatred was registered on the web-site of the 'Government of the Republic of Crimea.'

Within the monitoring period, the evening newscasts of the TV channels broadcasting in Crimea (Russia-1, NTV and Channel One) used hate speech at least 479 times: 1 example of harsh hate speech, 46 examples of medium hate speech and 432 of soft one.

During the monitoring period, the Russian news programs stirred up hatred mainly towards the national and ethnic groups and groups united by citizenship (324 examples), which is 68% of the total number. Hate speech was applied to 36 such groups. Hate speech with regard to religious groups was used 35 times, and 120 times — regarding different social groups.

The largest number of examples of incitement to hatred in the newscasts of three Russian TV channels broadcasting in Crimea concerned Ukrainians (based on citizenship and/or ethnic origin) — 184 cases or 43% of the overall number.

For instance, in 2014, Russian propaganda often called Ukrainians **Banderites**. Moreover, news anchors occasionally mentioned the crimes committed by Stepan Bandera, a Ukrainian political actor, ideologist and theorist of Ukrainian nationalism, during World War II. Everybody who fought on Bandera's side during the war were also called **Banderites** and, at the same time, **fascists** and **punishers**. This way, the citizens of modern Ukraine are made equal with these images in the public perception.

Crimeans are called **Russians**, and Donbass residents — a **separate nation** which reportedly demands its right to self-determination, although there is no separate nation in this territory, and the population mostly consists of ethnic Ukrainians and Russians.

Hence, the Russian TV channels help incite hatred towards Ukrainians not only in the consciousness of Russians who are their main target audience, but also among the citizens of the separate territories of Ukraine which are covered by the broadcasting of these mass media.

While monitoring the web-sites of the Crimean mass media, we revealed 168 examples of hate speech with the majority of them on the Sevastopol web-site ForPost (51 examples) which belongs to Kazhanov Sergey, a deputy of the Legislative Assembly of Sevastopol, and that of Crimeainform (34 examples) owned by Maksim Nikolayenko who ran as a candidate for the head of the occupation administration of Simferopol in September 2017.

The groups of people who share ethnicity, nationality and/or citizenship (130 examples) and social groups (26 examples) were subjected to hate speech most of the time. Ukrainians as an ethnic and/or civic community were the major objects of verbal attacks (123 examples).

Hate speech was used in the form of quotations of different politicians, public activists and experts. But in a number of cases, the journalists of the studied publications were the ones to stir up hatred.

Besides Ukrainians in general, the main objects of hate speech were also the following groups: the members and supporters of the Mejlis Tatar People (12 examples), Crimean Tatars (7 examples) and Muslims (5 examples). These examples constitute 14% of the total number. Taking into account the fact that almost all supporters of the Mejlis of the Crimean Tatar People and the overwhelming majority of Muslims in Crimea are the representatives of the indigenous community, we may say that all these manifestations of hatred are aimed mostly at Crimean Tatars.

Crimean Tatars are mainly depicted as **radical Islamists** and **extremists**, and their representative body — the Mejlis of the Crimean Tatar People — as a **terrorist and extremist** organization.

Given the tendencies revealed during the study, we may assume that the Crimean mass media fulfill their common task of forming an image of an enemy of Ukrainians and the Crimean Tatar people which in its overwhelming majority did not recognize the occupation of the Crimean peninsula.

The intensity of hate speech use in the media landscape of Crimea started gradually fading away as time passed. At the same time, hate speech is still rather common: it is used by the representatives of Crimean 'authorities,' politicians, local journalists and pro-Russian activists. Hate rhetoric peaks during high-profile events mostly related to the armed conflict in Donbass as well as the activities of the Crimean Tatar national movement.

At the same time, the degree of controlled hatred towards Ukrainians in the media landscape of Crimea and the Russian Federation in 2017 became significantly lower as compared with 2014. The fighting in Donbass also got less intense in 2017 (as compared with 2014-2015). The main objects of hate speech in this period differ from those established in the first period of monitoring.

During all this time, the Russian and Crimean information landscape continues legalizing the occupation and justifying the prosecution of Crimeans for not agreeing with the Russian aggression. In 2017, the Crimean and Russian mass media focused a lot on the threat of terrorism, highlighting the military actions in Syria against the militants of the ISIL and other terrorist groups in the Middle East. In the newscasts and other programs, these threats are constantly projected on the situation in the Russian Federation and Crimea. In addition to Ukrainians, the main objects of hate speech in 2017 were the residents of the Central Asia and migrants.

Keeping high anxiety and hatred levels in Crimea through the mass media, Russia forms the platform for creating, if necessary, a controlled civil conflict. Moreover, hate speech was used to form in the occupied territory the public support of the Russian policy as regards Ukraine and all dissidents in Crimea.

A mass use of hate speech in the media landscape of Crimea is a grave violation of national and international laws and journalistic standards.

At the same time, Russian hate speech laws are actively applied to the citizens of Ukraine in Crimea as well as with a view to pressure public activists. Incitement of hatred towards Ukrainians, Crimean Tatars and Muslims inside Crimea leads to a destabilized situation and creates the environment for hatred-based crimes[124].

Controlled hatred is used to legalize in the public perception the repressions of activists and those discontented with the authorities' actions. The effect of hatred-inciting publications is multiplied by the stiff restrictions of the free speech on the peninsula[125]. A total clean-up of alternative points of view in the media landscape of Crimea and the Russian Federation enables the mass media to enhance its impact on the society by stirring up hatred towards the ethnic, religious and social groups who do not trust the occupation authorities.

Frequent use of hate speech on the air of TV channels and on web-sites partially or fully owned by the representatives of the occupation government is the evidence of direct interest of the Russian Federation in such actions. Such an interest is also manifested by the fact that the mass media quote in their publications people's deputies, politicians, various officials and the President of the Russian Federation[126].

At the same time, mass media, state-owned as well, cite xenophobic statements without any commentary condemning such actions. Hate speech is used even in laws and regulations, texts with hate speech are constantly posted on the official web-sites of the occupation authorities of the peninsula. As the monitoring demonstrated, in all these cases Ukrainians are the main objects of hate mongering based on both their citizenship and ethnic origin.

Taking into consideration the fact that the Russian Federation is engaged in an armed conflict with Ukraine, we may conclude that all the abovementioned examples of incitement to hatred towards Ukrainians with the use of state resources represent one of the tools of warfare. The study showed that hatred in the Russian mass media towards Ukrainians is imposed on a large scale not only in the territory of occupied Crimea, but across Russia as well. This information may be proven by the recent studies conducted by the Yuri Levada Analytical Center. Opinion polls published by this Center confirm that the attitude of Russians towards Ukrainians became much worse since the beginning of the armed conflict[127]. In December 2017, 29% of those polled called Ukraine the enemy of Russia, while there were zero such answers in October 2012[128].

[124] Publication: A Crimean Has Been Savagely Beat up in Crimea for Wearing Ukrainian Symbols – http://crimeahrg.org/kryimchanina-zhestoko-izbili-v-kryimu-za-ukrainskuyu-simvoliku/

[125] Crimea Beyond Rules, Issue No. 4. Thematic review of the human rights situation under occupation. — Issue No. 4 — Informational Occupation. Available at: https://helsinki.org.ua/wp-content/uploads/2016/04/4Kr_Ru_fin_18.12.2017.pdf

[126] Publication: They Have Chosen Two Jews and One Ukrainian: Putin Told Us About His Friends Who Were Put under Sanctions — http://www.ntv.ru/novosti/984616/

[127] Publication: Attitude towards Countries. Yuri Levada Analytical Center, February 12, 2018 https://www.levada.ru/2018/02/12/otnoshenie-k-stranam/

[128] Publication: Russia's Enemies. Yuri Levada Analytical Center, January 10, 2018 https://www.levada.ru/2018/01/10/vragi-rossii/

Such actions amid the armed conflict constitute a threat to the citizens of Ukraine who are always the objects of hate speech on the part of the aggressor.

Recommendations

Hate speech in the media landscape of Crimea, in our opinion, directly impacts the degree of aggression in the society. We may say that one of the consequences of hate speech being common in Crimea is the attacks at Ukrainians and Crimean Tatars as well as vandalism of the objects of Ukrainian and Crimean Tatar national and Muslim religious infrastructure.

Ukrainian society, just like the Ukrainian government, practically cannot influence the developments in occupied Crimea. Nevertheless, we cannot afford ourselves to steer clear from the situation, especially in the areas with serious violations.

We recommend the legitimate bodies of the Prosecutor's Office of the Autonomous Republic of Crimea to consider the sharpest statements to see if there are any elements of the crimes referred to in Article 161 of the Criminal Code of Ukraine. Initiating criminal proceedings in connection with the most outrageous cases may be a clear signal from the Ukrainian government that incitement of hatred by mass media and de-facto authorities of the occupied peninsula is not only frowned upon, but legally prosecuted as well.

Furthermore, the Ministry of Foreign Affairs of Ukraine may take into account the hate speech situation in the media landscape of Crimea to enhance the international pressure on Russia as an occupant.

In particular, we think that the UN Committee on the Elimination of Racial Discrimination should take into the consideration the situation in the media landscape of Crimea when analyzing the observance by Russia of the International Convention on the Elimination of All Forms of Racial Discrimination. The fact that hate speech is systematically used on the air of Russian TV channels broadcasting in Crimea and in the mass media controlled by the occupation authorities, officially as well, just like a large-scale use of hate speech by the representatives of the de-facto Crimean authorities, may serve as an argument in the proceedings on the merits as part of the case 'Ukraine vs. Russia' in the International Court of Justice as regards Russia's violation of the International Convention on the Elimination of All Forms of Racial Discrimination.

Given the dangerous consequences, we call on the field-specific international organizations, such as the European Commission against Racism and Intolerance (ECRI) the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (ODIHR OSCE), to treat the problem of hate speech dissemination through the mass media on the occupied peninsula with the utmost seriousness.

We demand that the government of the Russian Federation and occupation authorities in Crimea stop using hate speech, including oral and written statements or speeches, publications on web-sites or other resources of the occupation authorities in Crimea, as well as take all the necessary measures to prevent hatred and discrimination-driven crimes which may come as a result of hate speech use with regard to the mentioned vulnerable groups.

The individuals guilty of inciting to hatred, calling for discrimination and encouraging violence with the help of administrative, financial and other resources of the Russian and occupation authorities must be held accountable and punished accordingly.

As an occupant, Russia must observe in Crimea the norms of international humanitarian law and international human rights law and comply with the obligation to protect the civilian population from any acts of violence or intimidation and insults that are often present in hate speech; and not allow discrimination of civil population in Crimea based on race, religion or political convictions.

In addition, we request the journalistic community of the Russian Federation to critically consider the incitement of hatred in the Russian mass media in the context of the armed conflict between the Russian Federation and Ukraine and the occupation of Crimea.

HATE SPEECH IN THE MEDIA LANDSCAPE OF CRIMEA:
An Information and Analytical Report on the Spread of Hate Speech on the Territory of the Crimean Peninsula (March 2014 – July 2017)

Authors: *Oleksandr Burmahyn, Tetiana Pechonchyk*
Iryna Sevoda, Olha Skrypnyk
Review: *Viacheslav Lykhachev*
Translation: *Anastasiia Morenets*
Proofreading: *Steve Doyle*

ISBN 978-966-8977-81-7

Annex 968

Crimean Human Rights Group, Memorandum: Discrimination of Crimean Residents for Non-Possession of Russian Documents Issued Unlawfully by Russia in Crimea (2018)

КРИМСЬКА ПРАВОЗАХИСНА ГРУПА

CRIMEAN HUMAN RIGHTS GROUP

e-mail: crimeahrg@gmail.com website: http://crimeahrg.org

MEMORANDUM

Discrimination of Crimean Residents for Non-Possession of Russian Documents Issued Unlawfully by Russia in Crimea

Contents

1. Issue Description

On March 21st 2014 Mr Vladimir Putin, President of Russian Federation, signed the Federal Constitutional Law (hereinafter FKZ) # 6 'On admitting the Republic of Crimea to the Russian Federation and establishing new subjects – the Republic of Crimea and the federal city of Sevastopol – as parts of the Russian Federation'[1]. By this law Russia 'legitimized' the annexation of the part of Ukraine – the Autonomous Republic of Crimea and Sevastopol City – after the unlawful occupation of the peninsula. This done, the Russian laws were enforced on this territory, with the citizens of Ukraine living on the unlawfully occupied territory being 'automatically' declared the RF citizens.

The UN General Assembly Resolution of 27 March 2014 affirmed the territorial integrity of Ukraine within its internationally recognized borders[2]. On December 19th 2016 the UN General Assembly condemned the occupation of part of the territory of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation, reaffirmed the non-recognition of its annexation, and stated the worsening of the situation with human rights on the territory of Crimea[3].

In disregard of international norms and commitments, the RF is forcing citizens of Ukraine living in Crimea to obtain Russian documents (RF citizen passports, permanent or temporary residence permits, working licenses). The key method of forcing to obtain such documents is a discriminatory policy regarding the citizens of Ukraine who cannot or do not want to obtain the documents issued by the occupation authorities. This policy is implemented through depriving from the opportunity to work, holding such people administratively liable up to a forced deportation from the Crimean territory or a ban on entering Crimea.

The documents issued by the Russian authorities in Crimea are not legal according to the international and Ukrainian laws, since Crimea is a territory of Ukraine. Though forced to receive the Russian citizenship or obtain other Russian documents, many citizens of Ukraine in Crimea do not possess the RF documents for several reasons.

Some citizens of Ukraine who were in Crimea at the moment of occupation had no Crimean residence registration stamp in the Ukrainian passport. Their place of residence was registered in another region of Ukraine though they resided in Crimea on a permanent basis. Without such a registration in Crimea, the RF authorities deny issuing 'a RF passport' in Crimea. This is mainly the issue for those who, being registered in another region of Ukraine, had been living in Crimea at the moment of occupation.

Some citizens of Ukraine who lived in Crimea and were registered there do not want to obtain the RF documents in Crimea because they do not recognize the RF legality to issue the documents on the occupied territory and consider such documents illegitimate.

The citizens of Ukraine face problems with getting not only a RF passport but also other RF documents. Pursuant to FKZ # 6 of 21 March 2014 Article 4, everybody living in Crimea on a permanent basis at the moment of occupation, shall be automatically recognized a RF citizen. This does not refer to those who have filed a statement on citizenship renunciation. Only 4 offices for receiving such statements were opened on the territory of Crimea where over 2mln lived, and there was just a month, until 18th April 2014, to submit the statement. Therefore, even those who intended to submit such a statement were unable to do this because the time was so short and the offices were extremely overloaded.

[1] Federal Constitutional Law 'On admitting the Republic of Crimea to the Russian Federation and establishing new subjects – the Republic of Crimea and the federal city of Sevastopol – as parts of the Russian Federation http://pravo.gov.ru/proxy/ips/?docbody=&nd=102171897

[2] http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262&referer=/english/&Lang=R

[3] http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/205&Lang=R

These conditions have resulted in appearing a category of Ukrainian citizens in Crimea who turned out to be in a very vulnerable situation since they do not possess a RF citizen passport or other Russian documents. On one hand, in terms of work, access to a free medical aid or social insurance benefits the RF authorities consider these people as foreigners and demand them to obtain a permanent or temporary RF stay permit. Consequently, in order to be issued such a permit, there residents should not be considered as RF citizens by the occupation authorities.

But, on the other hand, the RF Federal Migration Service staff (FMS) treat them as RF citizens, irrespective to the RF passport possession. Doing this, the FMS officials refer to the fact that such Ukrainian citizens lived in Crimea on a permanent basis at the moment of occupation, i.e. should be automatically considered RF citizens due to the Russian law. However, if a person in 2014 did not apply for retaining the Ukrainian citizenship and lived permanently in Crimea, the FMS rejects them to issue a RF citizen passport. But when such persons apply for a job, ask for medical care or want to open a bank account, they, without a Russian passport, are not considered RF citizens, that means they cannot exercise many rights.

In addition, the fact that the person lived in Crimea on permanent basis is used by the RF FMS bodies to deny issuing a residence permit. They demand first to submit a RF citizenship renunciation statement even if the person has not obtained a RF passport. But when someone tries to submit such a RF citizenship renunciation statement the person has to present a RF citizen passport and a RF personal tax number that are unavailable.

Thus, the citizens of Ukraine who have not submitted a statement on retaining the Ukrainian citizenship to the Russian bodies (that contradicts the international law and Ukrainian legislation) and reside permanently in Crimea cannot be granted a Russian residence permit as foreigners (according to the Russian laws valid de facto in Crimea). Such a situation makes them to ask for a RF citizen passport as the only way to reside permanently in Crimea.

Crimea is a part of Ukraine occupied by the Russian Federation, consequently, the Russian Federation is forbidden to restrict the citizens of Ukraine in Crimea in their civil and social and economic rights by availability of a RF citizen passport issued unlawfully in Crimea.

2. Methodology for information collection

The following sources were used for collecting and assessing the information:

- RF legal and regulative documents valid when the memo was produced;
- Information on the practices of applying the Russian legal norms in Crimea collected from the 'Crimean courts' websites, judgement database of Russian courts – 'JUSTICE State Automated Russian Federation System'[4] and 'RF court and regulative documents'[5]
- Data received directly from the aggrieved when interviewing and/or receiving the supporting documents
- Data collected by the CHRG monitors in Crimea.

[4] https://bsr.sudrf.ru/bigs/portal.html
[5] http://sudact.ru/

3. Discrimination of Ukrainian citizens in Crimea when applying for job

One of the consequences of the RF denial to grant equal rights to the Ukrainian citizens who have not received the RF documents and those what have received them is a restriction on employment. The RF authorities treat the Ukrainian citizens without a RF citizen passport in Crimea as foreigners so they are subject to restrictions on finding employment and exercising labour rights.

These restrictions are officially justified by Article 13 of Federal Law # 115 of 25 July 2002 'On a legal status of foreign citizens in the Russian Federation'[6], that governs labour activities of the foreign citizens in the Russian Federation.

To be employed foreigners should obtain a residence permit, a permanent or temporary stay permit or, if they are unavailable, a labour licence. Such residents are in unequal situation comparing to those who have received the RF citizen passport. However, they all lived permanently on the territory of Crimea and had the equal rights in Ukraine before 2014. Moreover, extending the RF laws on their permanent residence territory did not depend on their will since the territory was occupied.

3.1. Exams on speaking the Russian language and knowing the RF history and RF laws

Federal Law # 115, Article 15-1 states that in order to be granted a permit for temporary stay, a residence card or a labour licence a foreign citizen shall pass an exam on speaking the Russian language, and knowing the RF history and laws. As the RF authorities consider the Ukrainian citizens in Crimea without the RF citizen passports as foreigners they are also demanded to pass first such exams.

This kind of examination creates an indirect discrimination for obtaining the licence for those citizens of Ukraine who do not speak Russian.

3.2. Persecution for violating the Russian legal norms on labour activities of foreigners

When the rules of foreigners staying in the RF, that have been extended by the Russia authorities on the Ukrainian citizens in Crimea, are violated, both employees and employers may be held liable. The liability is governed by RF CoAO (Code of Administrative Offences) Article 18.

3.2.1. Persecution under Article 18.10 'Unlawful labour activities of a foreigner or a stateless person in the Russian Federation'

As at 17 April 2018, a context-based search of court judgements under RF CoAO Article 18.10 in Crimea and in Sevastopol in the 'PRAVOSUDIYE' Russian Federation State Automated System (hereinafter JUSTICE RF SAS) [7] gives an information on 338 court judgements including 144 rulings on imposing an administrative punishment.

The review of the found judgements shows that in most cases citizens of Ukraine who have come to Crimea or lived in Crimea without a residence registration ('propiska') on the peninsula are persecuted.

You may find below samples of several 'court' judgements from various Crimean regions confirming that persecuting Ukrainian citizens by possession or non-possession a RF citizen passport has become a routine practice for the entire Crimean territory. A punishment amounts for RUR2,000 to 5,000. Apart from the fine, if the Ukrainian citizen has not lived earlier in Crimea on a permanent basis he is subject to a voluntary or forced expulsion from Crimea to the mainland Ukraine.

[6] http://www.consultant.ru/document/cons_doc_LAW_37868/c137c6f66afe76bc2b195f1d1743662a5fc3d372/
[7] https://bsr.sudrf.ru/bigs/portal.html

On August 15th 2016 Mr D.R.Nasyrov, a 'judge of Saki District Court of Republic of Crimea', passed a decree on Case # 5-1068/2016 against Mr. O.N.Vorona, Ukrainian citizen. He was fined for RUR2,000 for renting out rooms in the house owned by him without a labour licence[8].

On March 16th 2016 Mr. S.G.Smirnov, 'a judge of Yalta Town Court', passed a decree on Case # 5-739/2016 against Mr. I.N.Baslov, Ukrainian citizen. He was fined for RUR5,000 with a forced placement into the dedicated facility for temporary holding of foreign citizens in Sochi City (RF) with a further expulsion to Ukraine for working as unskilled worker without a labour licence[9].

On December 7th 2017 Mr P.V.Kryllo, 'a judge of Gagarinsky District Court of Sevastopol City', passed a decree on Case # 5-784/2017 against Ms Olesia Zvorygina, Ukrainian citizen, who resides in Sevastopol. She was fined for RUR2,000 for selling the vegetables without a labour licence[10].

On August 30th 2016 Mr. Ye.G.Rykov, 'a judge of Sudaksky District Court of Sevastopol City', passed a decree on Case # 5-294/2017 against Mr. Mekhti Memedov, Ukrainian citizen. He was fined for RUR5,000 with an administrative expulsion to the mainland Ukraine for selling the foodstuffs without a labour licence[11].

On February 13th 2018 the 'Yevpatoriya City Council' passed 23 rulings together on cases ## 5-48/2018 – 5-70/2018 against 23 citizens of Ukraine. All of them were sentenced to a fine of RUR5,000 with an administrative expulsion to the mainland Ukraine for participation in repairs of local nursery school since they had no labour licence (Annexes 1_1, 1_2)

These examples illustrate that Ukrainian citizens who are self-employed people, without any employer's involvement, are also persecuted.

3.2.2 Liability of employers for employing Ukrainian citizens without Russian documents in Crimea

When a Ukrainian citizen works at the employer without a labour licence, an employer is taken administrative actions against, too. This administrative fine under RF CoAO Article 18.15 (Unlawful employment of a foreign citizen or stateless person in the Russian Federation) for legal entities ranges from RUR250,000 to 800,000.

As at 17 April 2018, a context-based search of court judgements under RF CoAO Article 18.15 in Crimea and in Sevastopol at the 'PRAVOSUDIYE' Russian Federation State Automated System website (hereinafter JUSTICE RF SAS) [12] gives an information on 2,225 court judgements including 538 rulings on imposing an administrative punishment.

It should be noted that a fine may be imposed on the employer several times for each recorded case of employing a Ukrainian citizen without a labour licence. The fines in such a case may be amount to several millions of roubles.

For instance, on March 15th, 21st, and 28th 2016 'the Kievsky District Court of Simferopol' passed 20 rulings on a fine for RUR250,000 under RF CoAO Article 18.15-1 against FENIKSSTROY Ltd for each case of employing a foreign citizen (Ukrainian citizens were treated by the 'court' in Crimea as foreign citizens) without a labour licence.

---

[8] https://saki--krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_uid=9FE79300-6E3E-4559-8D07-FBACAEE1BCC7&_deloId=1500001&_caseType=0&_new=0&srv_num=1

[9] https://yalta--krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=440653423&_deloId=1500001&_caseType=0&_new=0&srv_num=1

[10] https://gagarinskiy--sev.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=1063773654&_deloId=1500001&_caseType=0&_new=0&_doc=1&srv_num=1

[11] http://sudact.ru/regular/doc/wcNzBV6ta3dQ/

[12] https://bsr.sudrf.ru/bigs/portal.html

In addition to the liability for employing Ukrainian citizens without a labour licence, the employers are imposed liability for a failure to report making a contract with a foreigner (Ukrainian citizen) to the RF MIA (Ministry of Internal Affairs) according to Federal Law # 115, Article 13.8. The article requires an employer to send a notice to the RF MIA even if the foreigner has a residence permit, a temporary stay permit or a labour licence.

For instance, on November 6th 2015, 'Leninsky District Court of Sevastopol City' passed a ruling on Case # 5-2399/2015 against ZENIT AVTOTRANS Ltd. The company was fined for RUR400,000 for a failure to notify the employment of citizens of Ukraine, Armenia and Georgia, though, as the ruling states, all of them had residence permits.[13]

Such punishments establish conditions when the employers refuse employing Ukrainian citizen without the documents issued by the RF authorities in Crimea. It is safer for the employers to employ the RF citizens or Ukrainian citizens possessing the documents of occupation authorities.

Therefore, one may say that the RF restricts selectively the peninsula residents for employment and self-employment by availability/ non-availability of documents issued by the occupation authorities, while the RF citizens and the Ukrainian citizens who have obtained the documents of occupation authorities, do not face such problems.

Given that the Russian language exam is to be passed for obtaining a labour licence, this could be considered as national origin discrimination. A political belief based discrimination is seen in the fact that the Ukrainian citizens who do not obtain Russian documents deliberately since they do not consider the RF to be authorized to issue documents on the territory of Ukraine, are deprived of possibility to work in Crimea.

4. Discrimination of Ukrainian citizens in Crimea when applying for medical care

To be provided a free medical care in the RF an obligatory medical insurance policy (OMI police/ 'OMS' in Russian) is required.

Pursuant to Article 10 of Federal Law # 326 of 29 November 2010 'On obligatory medical insurance in te Russian Federation'[14], an OMI police may be granted to:

- RF citizens;
- Foreign citizens and stateless persons residing in the RF on a permanent or temporary basis, namely the foreign citizens and the stateless persons with a residence permit or temporary stay permit on the RF territory;
- Persons entitled to a medical care according to Federal Law 'On refuges'.

The list is limited to these categories, and foreign citizens without the documents mentioned above have no access to a free medical care.

The Russian Federation has extended this law on the occupied territory of Ukraine – the AR of Crimea and Sevastopol City – and treats Ukrainian citizens on the occupied territory without a RF citizen passport as foreigners. Consequently, the Ukrainian citizens in Crimea are not equal in terms of access

[13] https://leninskiy--sev.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=90935510&_deloId=1500001&_caseType=0&_new=0&_doc=1&srv_num=1

[14] https://mzdrav.rk.gov.ru/rus/file/pub/pub_232835.pdf

to the medical care. If a Ukrainian citizen living in Crimea has obtained the documents issued by the RF in Crimea, a free medical care is accessible for him. Otherwise, there is no access.

The Crimean Human Rights Group has received repeatedly statements of the Crimean residents that they cannot visit a doctor because they have no OMI policy. This is applied not only to medical care cases but even for a physician's consultation.

There are announcements in the Crimean out-patient departments that medical care is provided only subject to OMI policy availability.

For instance, on April 20th 2018 a monitor recorded such a notice in the children's out-patient department of Yalta Town:

WHEN APPLYING FOR MEDICAL CARE THE FOLLOWING DOCUMENTS SHOULD BE PRESENTED PURSUANT TO FZ # 323:

1. OBLIGATORY MEDICAL INSURANCE POLICY

2. PERSONAL IDENTIFICATION DOCUMENT OF LEGITIMATE CHILD'S REPRESENTATIVE (Annex 2-1)

ATTENTION! Since 1 January 2015 patients in all town medical establishments will be seen by doctors only subject to presenting an OMI policy. An OBLIGATORY MEDICAL INSURANCE POLICY should be presented for filling an out-patient card. **(**Annex 2-2).

On April 20th 2018 the monitor snapped away an announcement in the Yalta Town out-patient department '**Patients without an insurance policy shall pay for the visit'** (Annex 2_3).

On April 23rd 2018 the **Crimean Human Rights Group** monitor **snapped away an announcement** in Kerch City out-patient department **'For visiting a doctor you should bring photocopies and originals of the following documents with you: 1. PASSPORT 2. SNILS[15] 3 MEDICAL INSURANCE (**Annex 2_4).

It should be noted that there is a list of medicines in the RF that are sold in the pharmacies only against doctor's prescription. Therefore the Ukrainian citizens in Crimea without RF documents may not be granted a free medical care or consulted by doctor as well as receive a doctor's prescription for buying medicines necessary for treatment.

Since lack of RF documents deprive Ukrainian citizens in Crimea of employment and, consequently, incomes as well as access to a free medical care, such people have no access to paid medical care because they cannot be employed.

[15] Personal insurance policy number

5. Persecution of Ukrainian citizens for staying in Crimea without RF documents

The RF considers Crimea as its territory, and treats Ukrainian citizens without RF citizen passport as foreigners. Thus, the Ukrainian citizens living in Crimea without RF documents and not registered in Crimea are persecuted administratively by the RF authorities. Persecution means an administrative fine of RUR2,000 to 5,000 and/or voluntary or forced expulsion from Crimea to the mainland Ukraine.

The review of court judgements in Crimea shows that Ukrainian citizens are mainly persecuted in Crimea for lack of RF documents. This persecution is grounded by RF CoAO Article 18.8 (Violation of rules of entrance to the Russian Federation or stay (residence) regime in the Russian Federation by a foreign citizen or a stateless person).

As at 23 April 2018, a context-based search of court judgements under RF CoAO Article 18.8 in Crimea and in Sevastopol in the 'PRAVOSUDIYE' Russian Federation State Automated System (hereinafter JUSTICE RF SAS) [16] gives an information on **4,822 court judgements** including **4,153 rulings** on imposing an administrative punishment. The context-based search of court judgements on the 'RF court and regulative acts'[17], by criterion – judgements passed in Crimea under RF CoAO Article 18.8 and containing the word 'UKRAINE' (УКРАИНА) – gave **1,458** positions. So it may be stated that as at 23 April 2018 at least 1,458 judgements have been passed against Ukrainian citizens in Crimea that do not possess RF documents for 'violating the stay regime on the RF territory'.

The most typical reason for giving a ruling under RF CoAO Article 18.8 in Crimea is 'residing without documents verifying the right to stay in the RF, i.e. non-possession of the documents issued by the RF on the occupied territory of Ukraine by a Ukrainian citizen.

The highest number of judgements were passed against Ukrainian citizens who had lived in Crimea before the occupation and had not received Russian documents. It should be noted that the RF authorities, according to Federal Constitutional Law # 6 treat them as RF citizens, though the 'judges' in Crimea subordinate to the RF authorities disregarded this law provisions. Several illustrations are given below.

On December 23rd 2016 'Nakhimovsky District Court of Sevastopol' passed a judgement on Case # 5-428/2016 against a resident of Yevpatoriya who had not obtained the RF documents. He was imposed a fine of RUR2,000 and sentenced to deportation despite his request not to be deported from the peninsula (Annex 3_1).

On October 13th 2016 'Razdol'noye District Court of Republic of Crimea' passed a judgement on Case # 5-653/2016 against a Crimean resident who had not obtained the RF documents. He was imposed a fine of RUR2,000 and sentenced to deportation (Annex 3_3)

On October 3rd 2017 'Yalta Town Court' passed a judgement on Case # 5-791/2017 against Mr. Sergey Fedorov, a resident of Yalta, who did not have a migration card. Mr. Fedorov explained that he had been permanently living in Crimea for several years and was unable to obtain a migration card. He was sentenced to a fine of RUR2,000 and deportation (Annex 3_4)

On October 4th 2017 'Nakhimovsky District Court of Sevastopol' passed a judgement on Case # 5-272/2017 against Mr. Aleksandr Kas'yanov, a Sevastopol resident. He was charged with violating a stay regime, i.e. lack of RF documents. Mr. Kas'yanov informed that he had been living in Sevastopol for 10

[16] https://bsr.sudrf.ru/bigs/portal.html
[17] http://sudact.ru

years already, lived with a partner and had minor children. He was sentenced to a fine of RUR2,000 and deportation despite his family in Crimea (Annex 3_5)

On October 3rd 2017 'Balaklavsky District Court of Sevastopol' passed a judgement on Case # 5-118/2017 against Mr. A. Gaydukevich, a Sevastopol resident. He was charged with violating a stay regime, i.e. lack of RF documents. Mr. Gaydukevich informed that he had been living in Sevastopol since 2011, lived with a partner and had a daughter. He was sentenced to a fine of RUR2,000 without deportation (Annex 3_6)

On April 26th 2016 'Armiansk Town Court' passed a judgement on Case # 5-179/2016 against Mr. R.Marchenko, an Armiansk resident. He was charged with a lack of migration registration. Mr. Marchenko informed that he had been living in Crimea since 2012 and had not obtained RF documents. He was sentenced to a fine of RUR2,000 without deportation (Annex 3_7)

On October 18th 2016 'Armiansk Town Court' passed a judgement on Case # 5-280/2017 against Ms. A. Skliar, an Armiansk resident. She was charged with violating a stay regime, i.e. lack of RF documents. Ms. Skliar informed that she had been living in Crimea since 2013. She was sentenced to a fine of RUR2,000 without deportation (Annex 3_8)

On October 3rd 2017 'Leninsky District Court of Sevastopol' passed a judgement on Case # 5-376/2017 against Mr. Dmitriy Morozov, a Sevastopol resident. He was charged with violating a stay regime, i.e. lack of RF documents. Mr. Morozov informed that he had been permanently living in Sevastopol but had been de-registered because the house had been sold. He was sentenced to a fine of RUR2,000 without deportation (Annex 3_9)

On October 5th 2017 'Leninsky District Court of Sevastopol' passed a judgement on Case # 5-381/2017 against Mr. Aleksey Dotsenko, a Sevastopol resident. He was charged with violating a stay regime, i.e. lack of RF documents. Mr. Dotsenko was sentenced to a fine of RUR2,000 with deportation (Annex 3_10)

On October 16th 2017 'Krasnogvardeysk District Court' passed a judgement on Case # 5-510/2017 against Mr. A.Makhortov, a Crimean resident. Mr Makhortov had been living on a permanent basis at his aunt's since November 2013. He was sentenced to a fine of RUR2,000 with deportation (Annex 3_11)

On October 14th 2016 'Tsentralny District Court of Simferopol' passed a judgement on Case # 5-2280/2016 against Mr. G.Dubrovsky, a Simferopol resident[18]. He was charged with violating a stay regime, i.e. lack of RF documents. He informed that he had been living in Crimea on a permanent basis, got married and had a small daughter. He was sentenced to a fine of RUR3,000 (Annex 3_12)

The other part of judgements was passed against Ukrainian citizens who arrived in Crimea after the occupation to their relatives or returned to Crimea after living in other regions of Ukraine. In such cases the fines are imposed with or without deportation. He was sentenced to a fine of RUR2,000 without deportation (Annex 3_13)

On October 17th 2017 'Feodosiya City Court' passed a judgement on Case # 5-394/2017 against Mr D.Ivaniuscheko, a Feodosiya resident. He was charged with violating a stay regime, i.e. avoiding the departure from Crimea. Mr. Ivaniuschenko informed that due to his studies in the professional college he had not been in Crimea and had been registered for the period of studies in Odesa. With the studies finished, he had returned to Crimea and was living with his mother in Feodosiya. He was sentenced to a fine of RUR2,000 without deportation (Annex 3_14)

[18] https://centr-simph--krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=199411827&_deloId=1500001&_caseType=0&_new=0&_doc=1&srv_num=1

On October 23rd 2017 'Gagarinsky District Court of Sevastopol' passed a judgement on Case # 5-687/2017 against Mr. D.Matveyev, a Sevastopol resident. He was charged with avoiding the departure. He confirmed that he had arrived in Crimea after the occupation, but his wife, his child and his parents lived in Crimea. Nevertheless, Mr Matveyev was found guilty and sentenced to a RUR2,000 fine and expulsion (Annex 3_15)

Ukrainian citizens who have obtained a residence permit or a temporary stay permit in Crimea from the RF occupation authorizes are persecuted, too. They are to report regularly to the supervising bodies, and if they miss a scheduled report, they are also persecuted under RF CoAO Article 18.8 and imposed a fine.

For instance, on October 4th 2017 'Krasnogvardeysk District Court of Republic of Crimea' passed a judgement on Case # 5-498/2017 against Mr. Anatoliy Volik, a Crimean resident. He, possessing a residence permit, failed to inform in time the Russian authorities on his residence. Mr. Volik was imposed a RUR2,000 fine (Annex 3_16)

Due to a great number of judgements passed in Crimea under RF CoAO Article 18.8, the Crimean Human Rights Group has used a random selection of judgements representing three time periods: October 2016, December 2016, and October 2017 - for illustration.

In addition to searching the judgements at the websites of 'courts' acting in Crimea and official collections of RF court decisions, the Crimean Human Rights Group contacted directly one of the victims. The information of **Mr. Aleksandr Koval'chuk, Ukrainian citizen**, illustrates how in fact a decision on deporting is taken.

Mr. Aleksandr Koval'chuk informed the CHRG that he had been permanently living in Yalta since 2011. In his Ukrainian passport he had Kyiv City registration stamp. Since September 2014 he had been trying – though without any success – to prove a fact of his staying in Crimea at the moment of occupation at the courts. A 'judge' considered the testimony of next-doors and utility payment receipts an insufficient evidence. When Mr Koval'chuk failed to verify his staying in Crimea at the court, two FSB men came to his home in Yalta on November 16th 2017. They informed him that he could not stay in Crimea with a Ukrainian passport and demanded to go with them to the migration department. There a report on violating CoAO Article 18.8-1.1 was drawn on him. The FSB men stated that Mr. Koval'chuk had crossed the border between the RF and Ukraine in the Briansk Region in 2016, though he claims that this did not happen and he did not leave Crimea. Next day – on November 17th 2017 a 'judge of Yalta Town Court' passed a judgement on Case # 5-926/2017 on a voluntary self-expulsion of Mr. Koval'chuk[19]. Before the court session the lawyer informed Mr Koval'chuk that if he did not plead guilty he would be detained and expelled forcedly without taking his belongings with him. The Crimean Human Rights Group has an original of Mr.Aleksandr Koval'chuk's evidence and a copy of judgement on his expulsion.

[19] https://yalta--krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=924680014&_deloId=1500001&_caseType=0&_new=0&srv_num=1

6. Conclusions

The facts presented above illustrate that the Russian Federation is implementing a consistent discrimination policy against the Ukrainian citizens who do not possess RF documents, on the occupied territory – the AR of Crimea and Sevastopol City.

Discrimination consists in depriving of possibility to work officially without RF documents, depriving of right to a free medical care without OMI policy. Lacking opportunity to work, the Crimean residents have a reduced capacity without RF documents to be cured for payment.

In addition to the abovementioned restrictions, the RF authorities persecute administratively the Ukrainian citizens who do not possess RF documents on the occupied territory of Ukraine. An administrative persecution consists in imposing fines and deporting such people from the territory of Crimea – a permanent residence place of these people. Examples of court judgements prove that a judgement on deportation is passed even when a Ukrainian citizen has strong social connections in Crimea. A reason for this persecution is 'lack of documents required for staying on the RF territory' and 'staying over the maximum time limit on the RF territory'.

Crimea is a territory of Ukraine, and the RF is committed to establish equal conditions for Crimean residents as state controlling the territory. Then, imposing restrictions on the Ukrainian residents as if on foreigners, by the RF authorities in Crimea constitutes a violation of international law provisions. A foreign state shall not limit rights and freedoms of the citizens staying on the territory of their own state. Such restrictions of the RF should be considered not as distinctions related to citizenship but as discrimination by national origin and political beliefs as well as by presence of documents issued unlawfully by Russia in Crimea.

The illustration presented confirm that the Russian Federation violates a right to free movement and residence, right to labour and a free job selection, right to health care, medical aid, social security and social services established by the International Convention on the Elimination of All Forms of Racial Discrimination, Article 5.

The RF as occupying power shall ensure such conditions on the occupied territory of Ukraine when non-possession of any Russian Federation documents by Ukrainian citizens would not constitute a reason for restricting their civil, social or economic rights.

CRIMEAN HUMAN RIGHTS GROUP

The Crimean Human Rights Group (CHRG) is an initiative of Crimean human rights defenders and journalists aimed at supporting the observance and defense of human rights in Crimea through attracting a wide attention to the issues of human rights and international humanitarian law on the territory of the Crimean Peninsula as well as searching and elaborating instruments for defending human rights in Crimea.
The CHRG follows principles of fairness, accuracy and timeliness in preparing and distributing the information. The CHRG team is composed of experts, human rights defenders and journalists from various countries who have been participating in monitoring and documenting violations of human rights in Crimea since February 2014. The CHRG pays a major attention to the human rights violations due to the unlawful actions of the Russian Federation in Crimea.

Annex 969

Crimean Tatar Resource Center, Security Officers Conducted Regular Searches in the Houses of the Crimean Tatars in Crimea (23 January 2018)

Security officers conducted regular searches in the houses of the Crimean Tatars in Crimea

23 January 2018

On Tuesday, January 23, Russian law enforcers conducted regular searches in the houses of representatives of the indigenous Crimean Tatar people in the village Novy Mir, Simferopol district, in the city of Stary Krym and in Primorskoe village of Feodosiya district. As a result, Ismail Ramazanov was detained. He was charged with propaganda of extremism, and was beaten on the way to the so-called Investigative Committee. During the search in Stariy Krym, law enforcers knocked out the windows, reports "Crimean solidarity".

Russian security officers broke into the house of Ramazanov family in the village of Novy Mir, Simferopol district, at 4 a.m. Before the search, all members of the family were seized telephones, tablets and Ukrainian documents. During the search they allegedly found 20 cartridges from the Makarov pistol. Law enforcers detained Ismail Ramazanov (son). He was immediately handcuffed and taken to the so-called Investigative Committee. He was charged with propaganda of extremism, and was beaten up on the way. This was reported by the attorney Mammet Mambetov. According to the activists of the "Crimean solidarity", the search was conducted in a rude form.

In Stary Krym, the search was carried out at Pionerskaya, 24 street. Security officers were interested in the 27-year-old Mukhsin Dzhambaz. At the time of the search, there was only an elderly mother in the house, but after receiving the information about the search he came home. According to the "Crimean solidarity", during the search the security officers knocked out the windows. At the moment the security officers went with a search to the house of Mukhsin Dzhambaz in Primorskoe village of Feodosiya district.

After the occupation of Crimea by Russia, systematic searches, detentions, interrogations and arrests became regular practice on the peninsula. According to experts of the Crimean Tatar Resource Center, this practice is an example of xenophobia towards the indigenous people of Crimea and a method of intimidation.

Reference: on January 18, Russian security officers conducted searches in the houses of Crimean Tatar activists, participants of one man protests held of October 14 - Girai Kulametov (Stary Krym) and Kemal Seityaev (Belogorsk). One was fined one thousand rubles, another was sentenced to 10 days of arrest.

On January 5, Russian security officers came with a search to the houses of two sisters-Khatidzhe Kantemirova and Zera Bazirova.

Annex 970

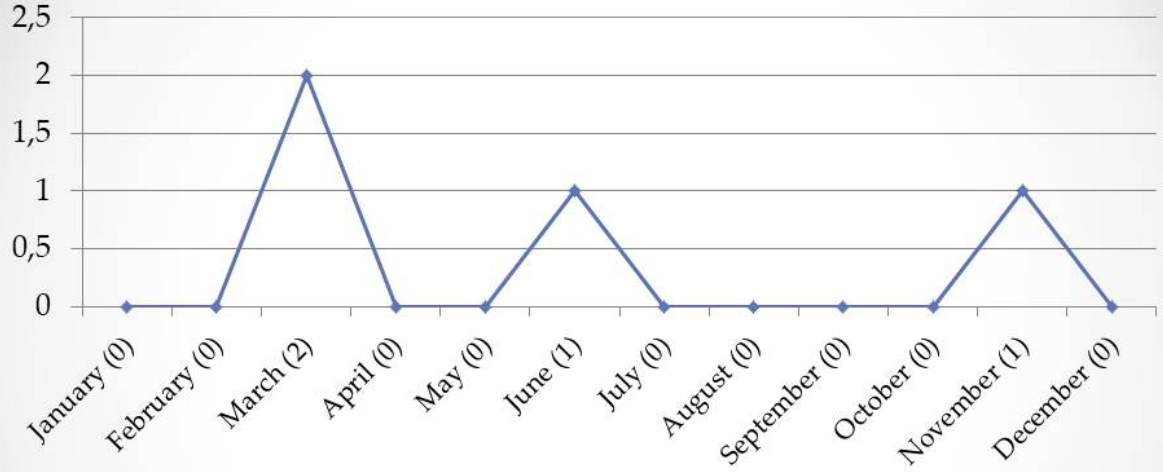
Crimean Tatar Resource Center, Analysis of Human Rights Violations in the Occupied Crimea in 2017 (presentation)(2 February 2018)

Analysis of violations of human rights in the occupied Crimea in 2017 (presentation)

2 February 2018

Right to life, liberty and physical integrity

VICTIMS

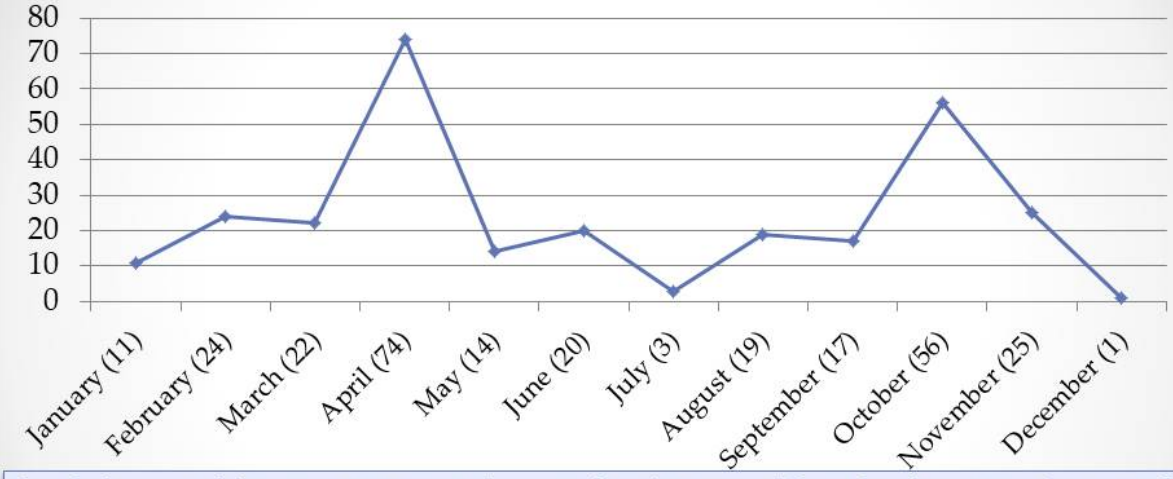


- On March 26, the corpse of Mudessir Isaev was found in a forest near Alekseyevka village (Belogorskiy district). The person had been missing since March 13.
- On March 29, another corpse was discovered in a wooded area near Korennoe village (Krasnogvardeyskiy district), identified as Crimean Tatar Enver Avush who had gone missing on March 18.
- On June 27, 67-year-old resident of Dzhankoy Vitaliy Arseniuk died after a court hearing. He had been found guilty of carrying out illegal missionary activities as a representative of Jehovah's Witnesses organization that is banned in the Russian Federation.
- On November 23, a veteran of the Crimean Tatar national movement, 82-year-old Vedzhiye Kashka, perished during the detention of the Crimean Tatar activists in Simferopol .

Right to life, liberty and physical integrity

ILLEGAL ACTIONS OF THE OCCUPATION AUTHORITIES

DETENTIONS



Since the beginning of the occupation, systematic detentions of people in occupied Crimea have become a regular practice. In 2017 law enforcers have been active in detaining streamers working at the sites of searches, as well as Ukrainian and Crimean Tatar activists. The cases when lawyers and journalists were detained were recorded .

Law enforcers have raided markets and detained people of non-Slavic appearance. Such a case was recorded in April, as evidenced by the graph. About 70 people were put in detention at that time.

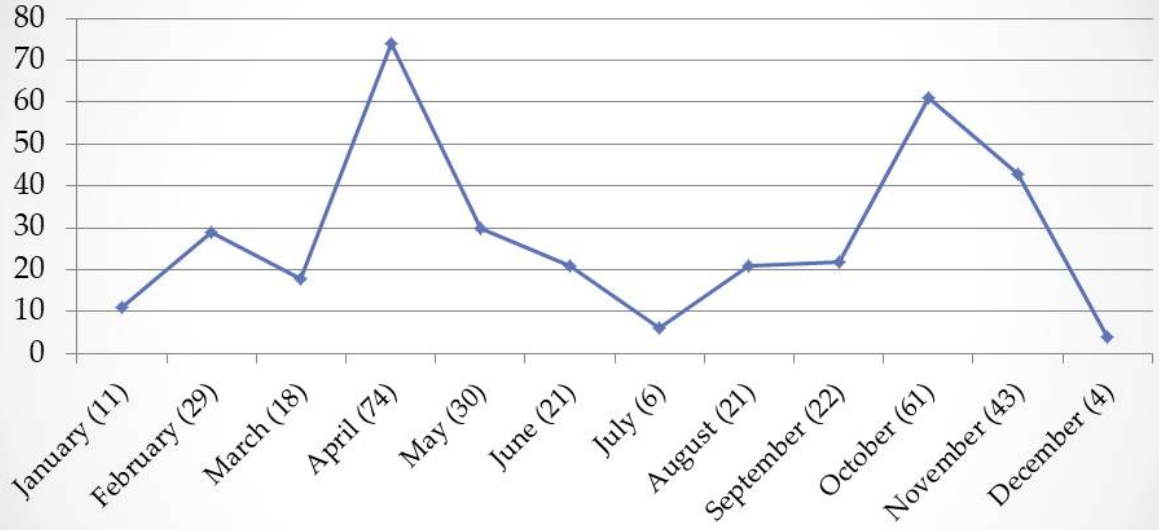
Mass detentions also occurred in October, when representatives of the indigenous Crimean Tatar people went massively on single pickets, protesting against persecutions in Crimea.

The so-called "law enforcement officers" have detained not only young people, but also older persons and women (as in case with Server Karametov and detention of the wives of the defendants in the "Hizb ut-Tahrir case" at the administrative border, etc.).

Right to life, liberty and physical integrity

ILLEGAL ACTIONS OF THE OCCUPATION AUTHORITIES

INTERROGATIONS

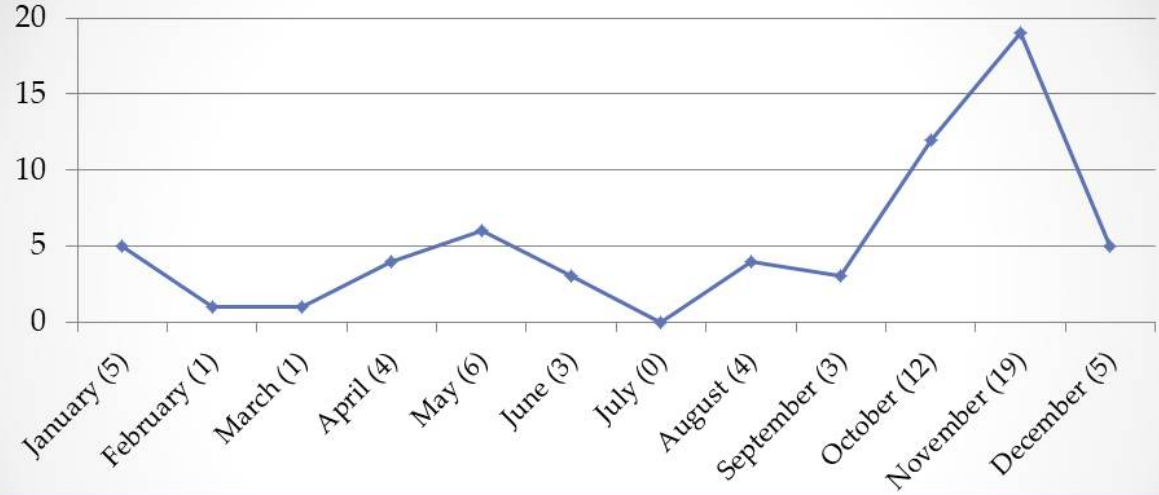


The so-called "law enforcement bodies of Crimea" systematically interrogate Crimean Tatar and Ukrainian activists. The interrogations are usually preceded by rude detentions and searches. After the detentions, search witnesses, streamers and civic activists are also interrogated. Numerous cases were recorded when the rights of the people being interrogated were grossly violated (e.g. fingerprints illegally collected after questioning, DNA samples taken for analysis). It is not uncommon for FSB officers to arrange interrogations at the administrative border with the Autonomous Republic of Crimea.

Right to life, liberty and physical integrity

ILLEGAL ACTIONS OF THE OCCUPATION AUTHORITIES

SEARCHES



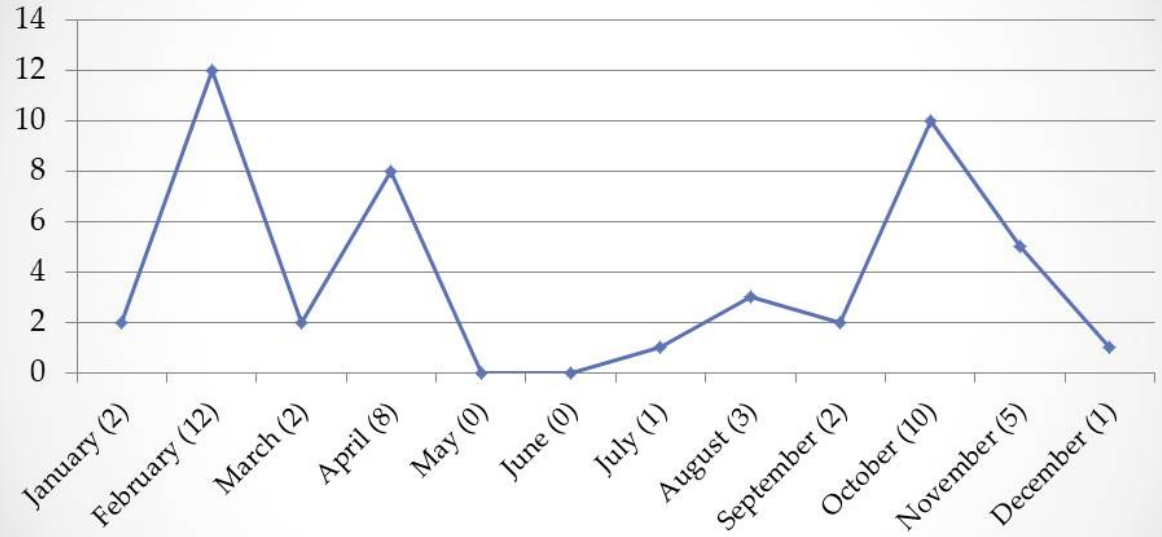
Since the beginning of the occupation, the searches have become systemic. As a rule, law enforcers break into the houses early in the morning, behave in a rude and inappropriate way. The cases were registered when doors and windows were broken, handcuffs were put on innocent people during a search. Such actions by law enforcers represent a gross violation. Mass searches were held in October and November, when enforcement officers detained 10 people and accused them of involvement in the activities of Hizb ut-Tahrir and Tablighi Jamaat. In the same period of time, numerous searches were conducted in the homes of Crimean Tatar activists and streamers.

Over the year, raids in the houses of Crimean Tatars were also recorded (these raids were considered to be single case, as the exact number of people who were visited by law enforcers remains unknown).

Right to life, liberty and physical integrity

ILLEGAL ACTIONS OF THE OCCUPATION AUTHORITIES

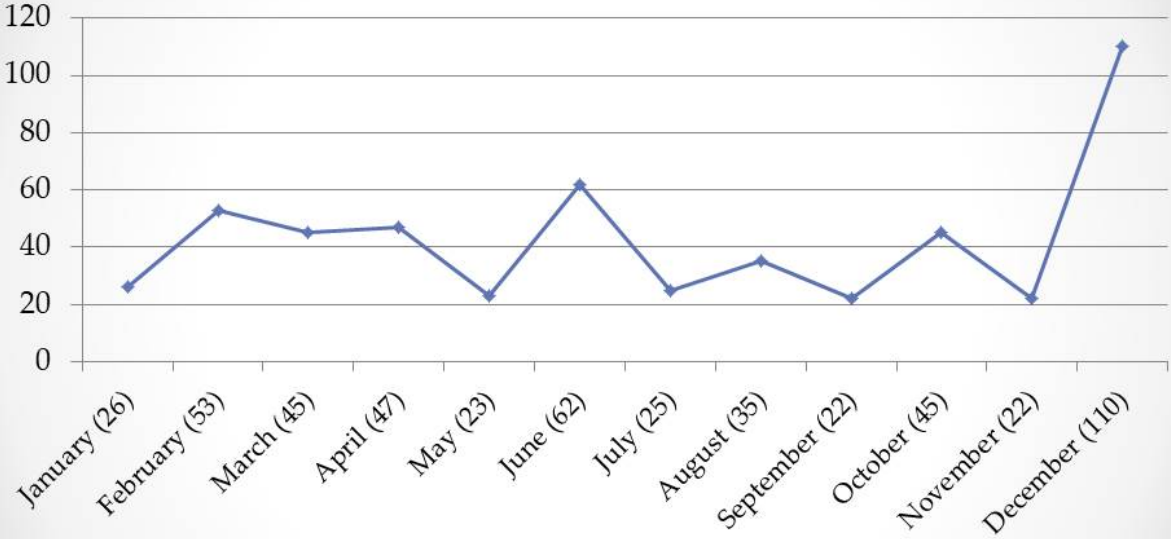
ARRESTS (placement in custody)



In 2017, the occupation authorities of the peninsula continued arresting Ukrainian and Crimean Tatar activists and initiating politically motivated cases. Witnesses of searches as well as streamers turned into victims in a wave of arrests. Administrative cases were initiated against them, and some of them were taken into custody.
In 2017, there were 16 new political prisoners, of which 15 are Crimean Tatars. Criminal proceedings were initiated against them.

Violations of the fundamental freedoms

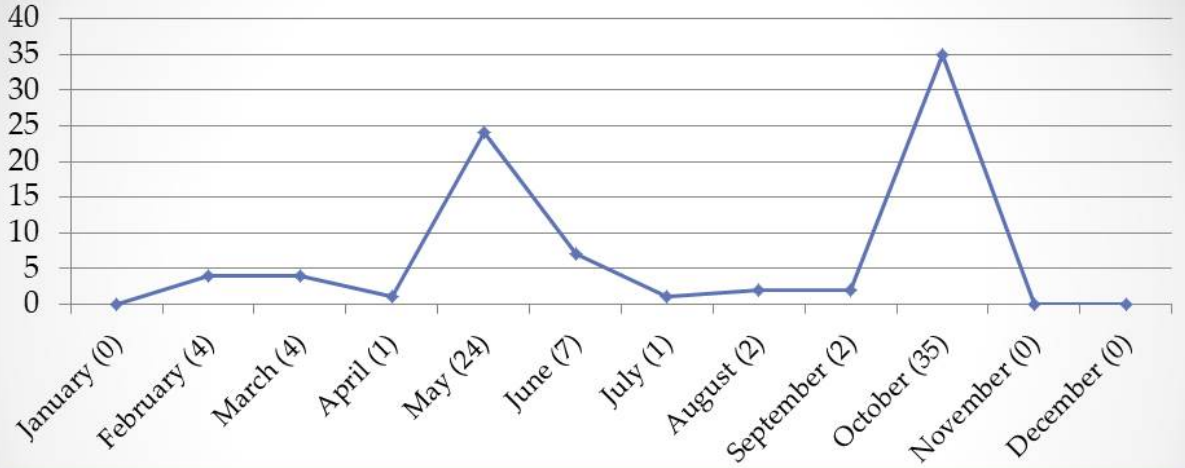
RIGHT TO A FAIR TRIAL AND TO ADEQUATE LEGAL AID



The graph demonstrates that focused efforts towards compulsory detention of Crimean Tatar and Ukrainian activists in custody are maintained in Crimea. At court hearings, the periods of detention are systematically unlawfully extended and appeals are rejected.

Violations of the fundamental freedoms

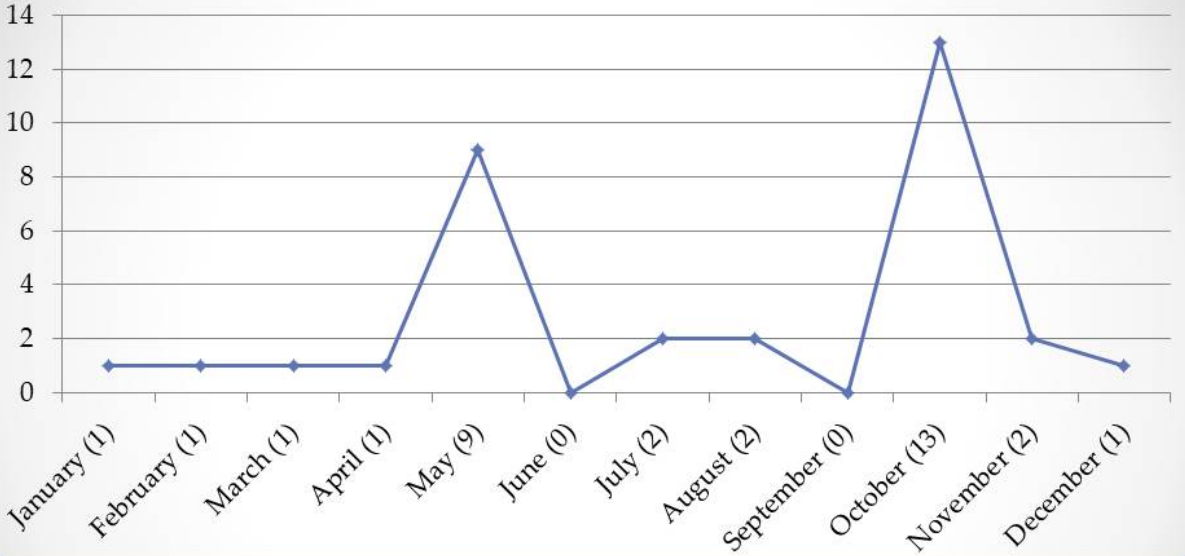
VIOLATIONS OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY



In 2017, the occupation authorities traditionally prohibited to hold an event dedicated to the birthday of Ukrainian writer Taras Shevchenko and events commemorating the anniversary of the deportation of the Crimean Tatar people. Law enforcers use various far-fetched pretexts to derail memorable events of the indigenous people. For instance, on August 20, Russian enforcers cordoned off the recreation center "Cowboy" in Ak-Kaya (Belaya Skala) village of Belogorsk region and did not let Crimean Tatars meet there for a planned event dedicated to the developments in Moscow in the summer of 1987. In October, enforcers detained participants of single pickets, thereby violating their right to peaceful assembly. At that time, about 35 cases of detention were known, however, the actual figure reflecting the number of persons whose right to freedom of peaceful assembly was violated was much higher. There were also cases where enforcers disrupted football games, allegedly taking them for unauthorized rallies.

Violations of the fundamental freedoms

VIOLATIONS OF THE RIGHT TO FREE MOVEMENT

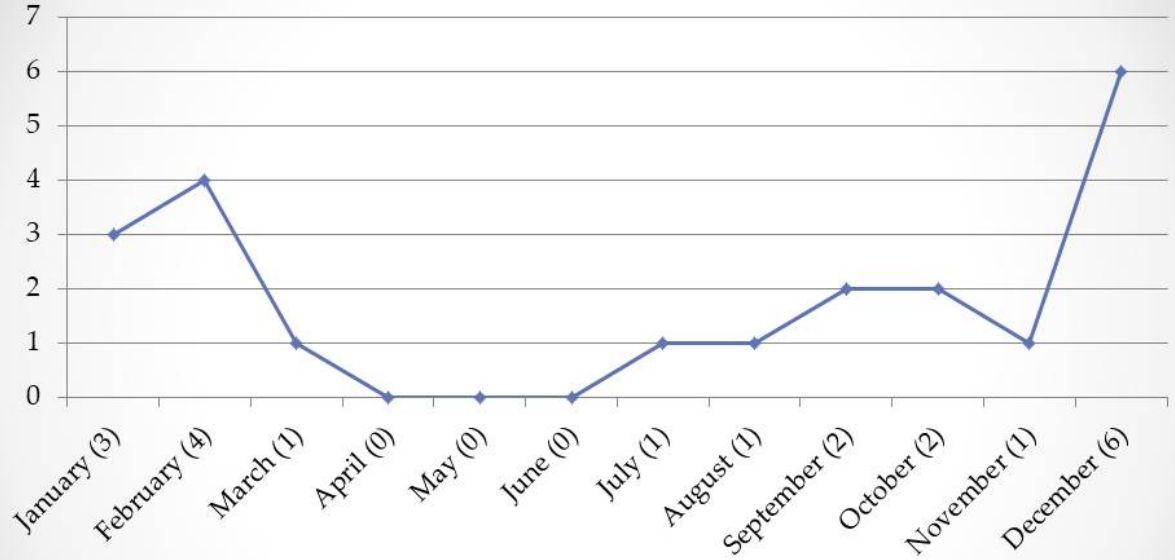


These violations consist in:
- illegal detentions of search witnesses;
- cordoning off the streets, blocks and villages by Russian enforcers;
- compulsory subscription of written pledges not to leave Crimea and putting under house arrests.

For instance, the right in question was violated against the persons involved in the "February 26 case" - Mustafa Dehermendzhi and Ali Asanov, and Ukrainian activists - Vladimir Balukh, Nikolay Semena, Larisa Kitayska and others.

Violations of the fundamental freedoms

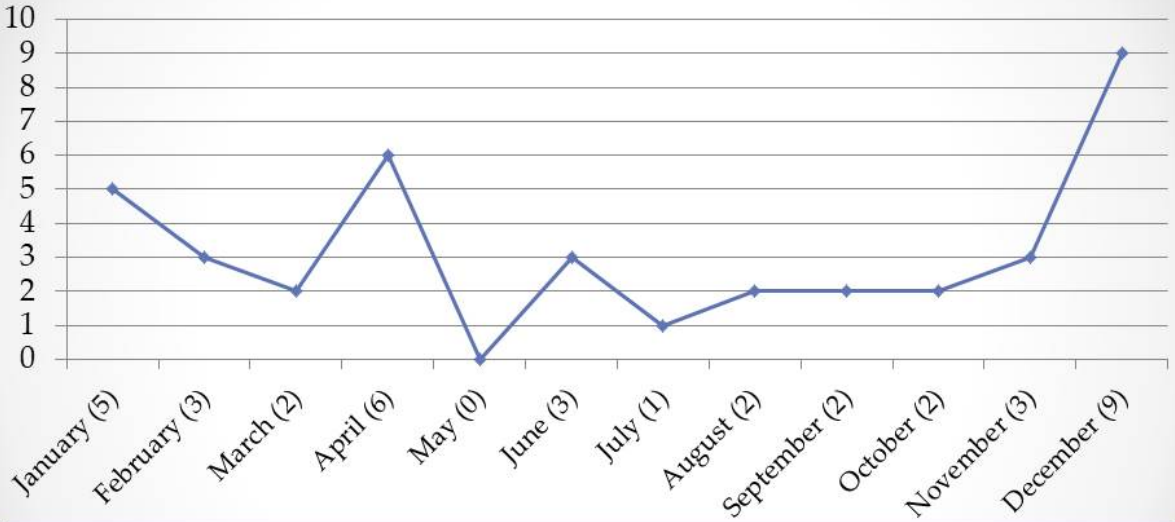
ILLEGAL TRANSFERS OF POLITICAL PRISONERS



In 2017, the defendants in Yalta "Hizb ut-Tahrir case" were illegally transferred to another prison. The defendants in the "Hizb ut-Tahrir case" and the "Crimean case", who had been transported to Russia back in 2016, were repeatedly transferred between various prisons within the territory of Russia.

Violations of the fundamental freedoms

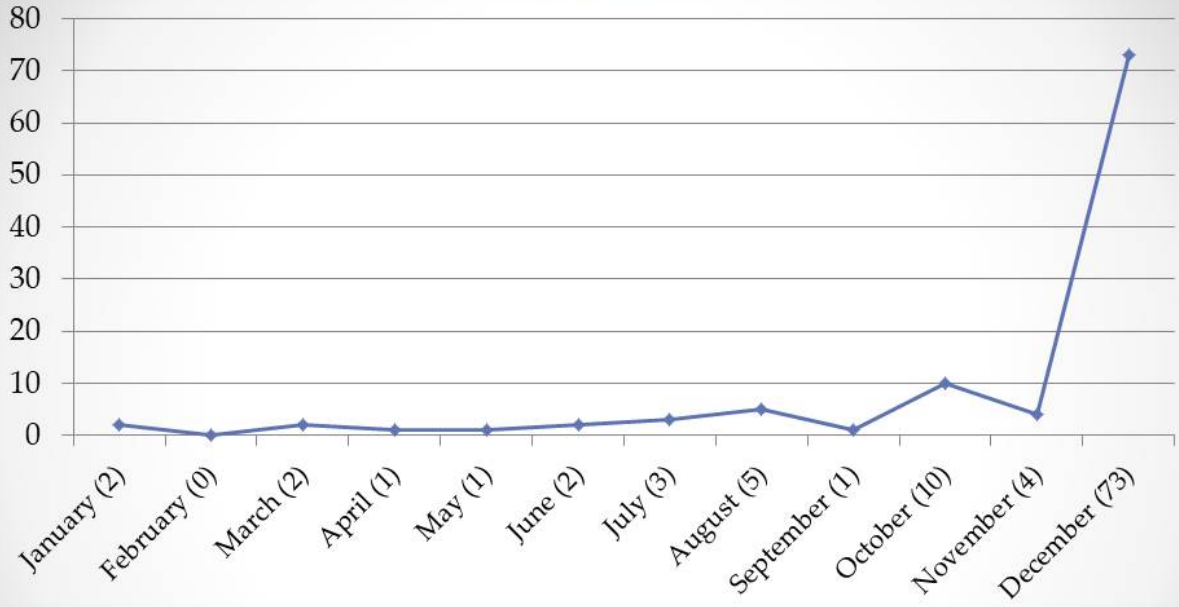
RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH



Violations of the right to the highest attainable standard of physical and mental health occur in respect to political prisoners who are kept in custody. They are not provided with proper medical care. In particular, this is true in respect to a number of persons involved in the "Hizb ut-Tahrir case", the "Ukrainian saboteurs case", and "Vedzhie Kashka case".

This right was also repeatedly violated against Vladimir Balukh, Ilmi Umerov and those political prisoners who were forcibly placed in a hospital for psychiatric examination. In addition, there were cases when this right was violated against particular individuals (Renat Paralamov, Abibe Reshatova and others).

Fines



According to the monitoring performed by the Crimean Tatar Resource Center, in 2017 the occupation courts in Crimea illegally fined 104 persons, including 99 Crimean Tatars, a total of more than 5 million rubles. The maximum fine of 3.5 million rubles was imposed on a defendant in the "Ukrainian Saboteurs" Case, Redvan Suleymanov. A resident of Bakhchisaray district, Zarema Umerova, was fined 300,000 rubles for comments on social networks. Another defendant in the "Ukrainian Saboteurs" Case, Dmitriy Shtyblikov, was charged a 200 thousand rubles fine. The fines of 150 thousand rubles were imposed by the occupation courts on activists Osman Belyalov and Emil Belyalov. Most of the fines of 10 to 20 thousand rubles were imposed under Article 20.2 of the Code of Administrative Offenses of the Russian Federation. In particular, in December about 70 Crimean Tatars were tried for one-man protests.

Violations of the fundamental freedoms

MILITARY CONSCRIPTION, ILLEGAL MILITARY EXERCISES, PROPAGANDA OF MILITARY SERVICE

- Military exercises and waves of propaganda of military service in the Armed Forces of the Russian Federation are frequent in occupied Crimea. About 15 such cases were recorded in 2017.
- In addition, the Russian Federation illegally conscripts residents of Crimea into its army. The number of recruits increases every year. Only in 2017, about **5,000** Crimean residents were recruited into the Armed Forces of the Russian Federation. A number of conscripts are sent to serve on the territory of mainland Russia (about 670 persons in 2017).
- These actions of the occupation authorities are in violation of Article 51 of the Geneva Convention ("The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.").

Violations of the fundamental freedoms

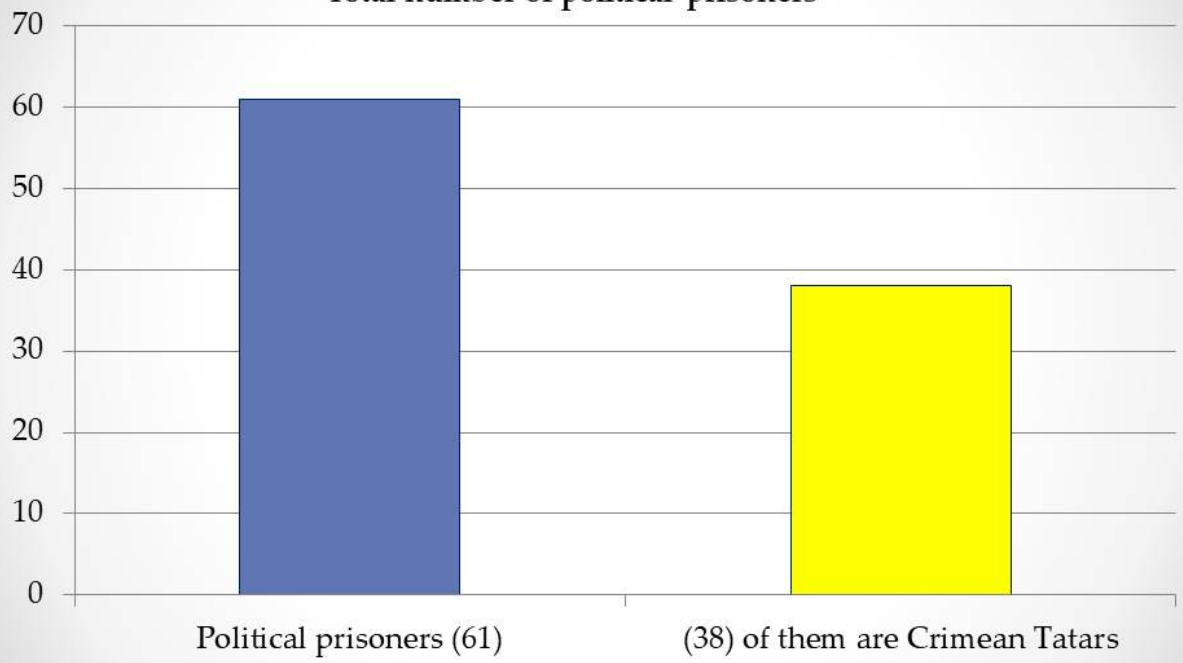
OTHER CASES OF VIOLATION OF HUMAN RIGHTS IN CRIMEA

- The rights of journalists are regularly violated on the peninsula: they are not allowed to attend court hearings, photo and video shooting is prohibited. In addition, a number of Ukrainian mass media have been blocked in Crimea.
- Several cases of vandalism of Crimean Tatar cemeteries and mosques were registered. The situation with the Khan's Palace in Bakhchisaray is of special concern: the occupants are destroying it under the disguise of "restoration".
- A number of cases of violation of the right to religion were recorded. Over the year, the land and property rights were also repeatedly violated.

Conclusions

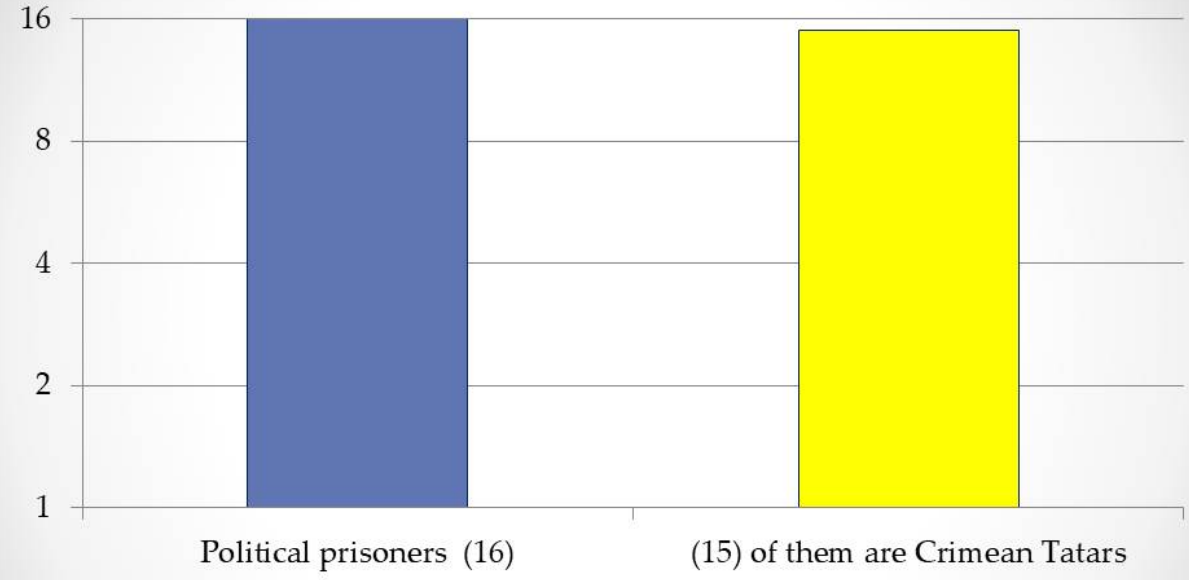
Political prisoners in Crimea

Total number of political prisoners



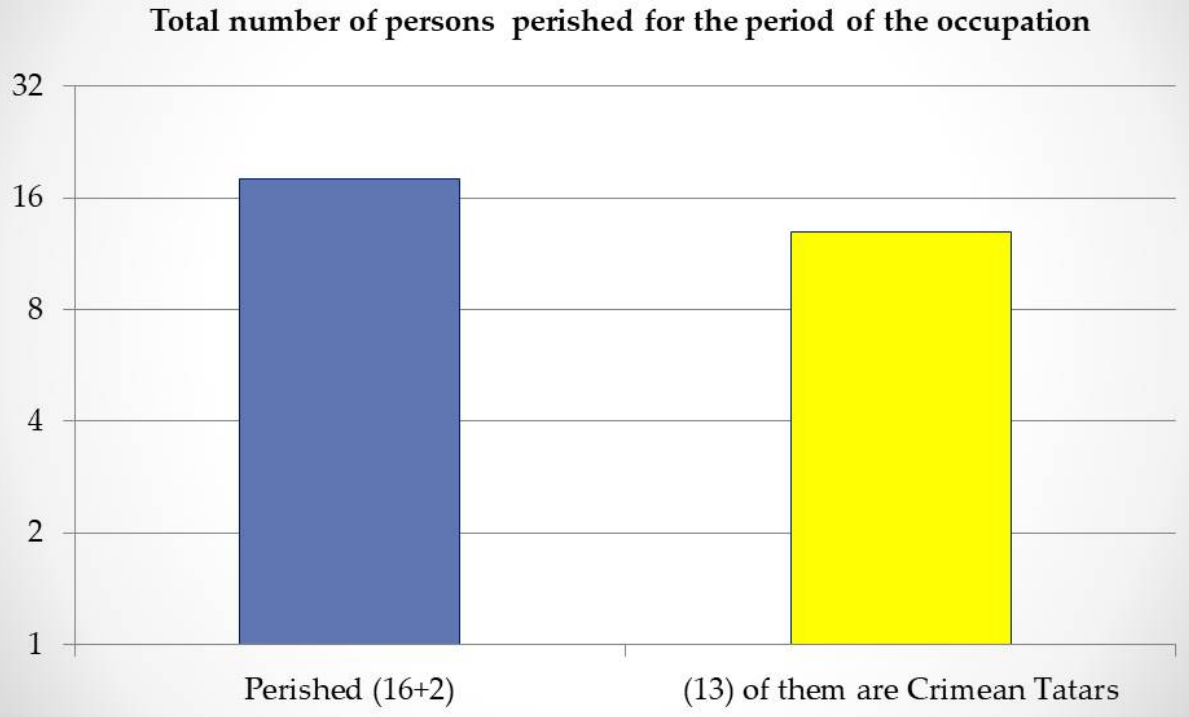
Political prisoners in Crimea

Political prisoners arrested in 2017

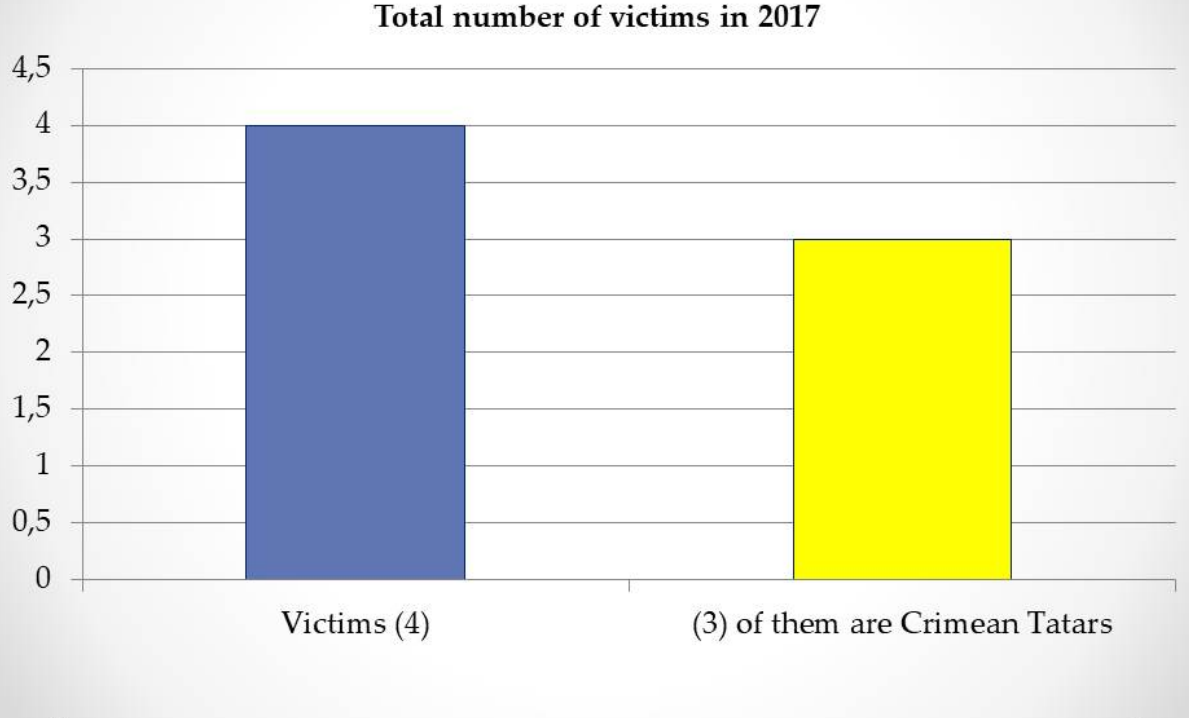


Four persons were arrested on suspicion of involvement in the activities of the international religious organization Tablighi Jamaat, banned in Russia;
Six persons were arrested on suspicion of involvement in the activities of "Hizb ut-Tahrir", banned in Russia;
Four persons (activists of the Crimean Tatar national movement) were arrested in relation to the case of Vedzhie Kashka.
One person was arrested in relation to the "Ukrainian saboteurs case". One more person was sentenced to 1 year and 3 months of imprisonment in a penal settlement for posts in social networks.

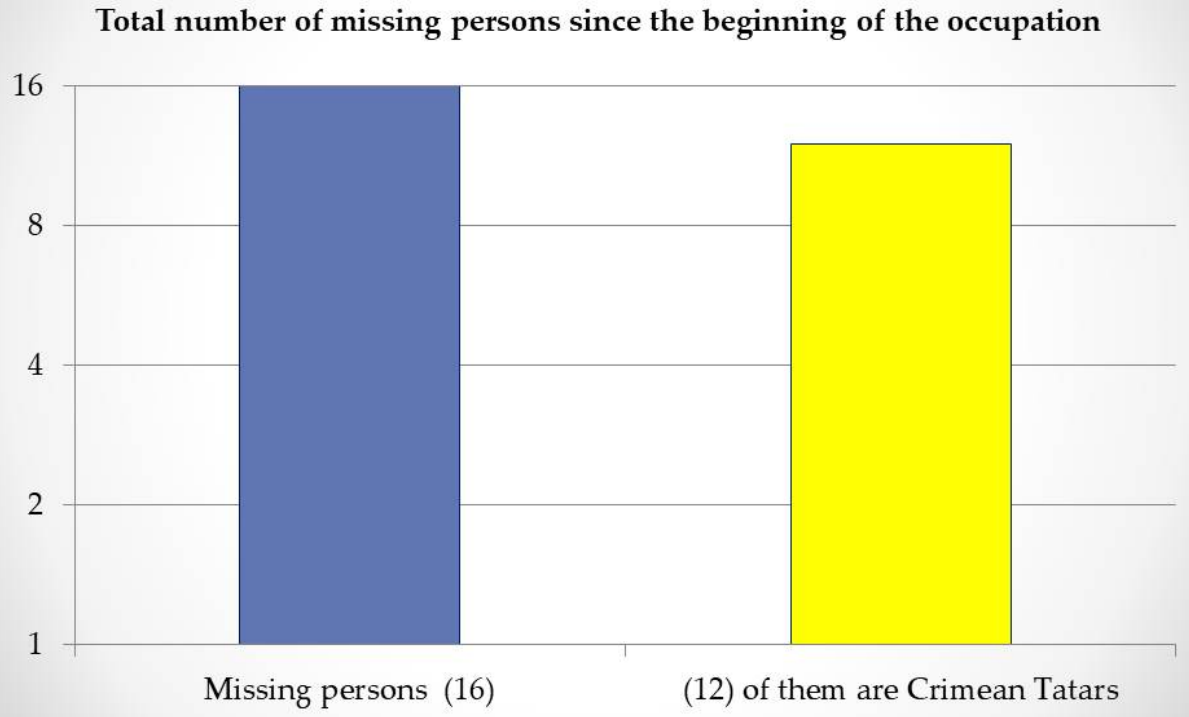
Perished persons in Crimea since the beginning of the occupation of peninsula



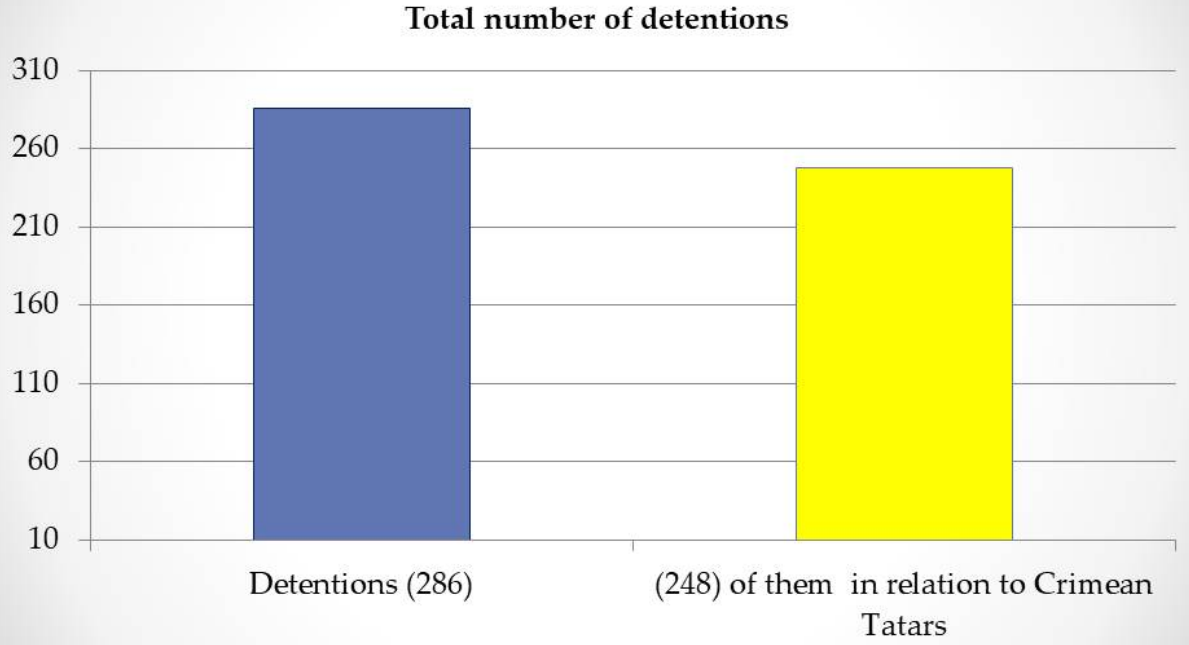
Right to life, liberty and physical integrity



Missing persons in Crimea since the beginning of the occupation of peninsula

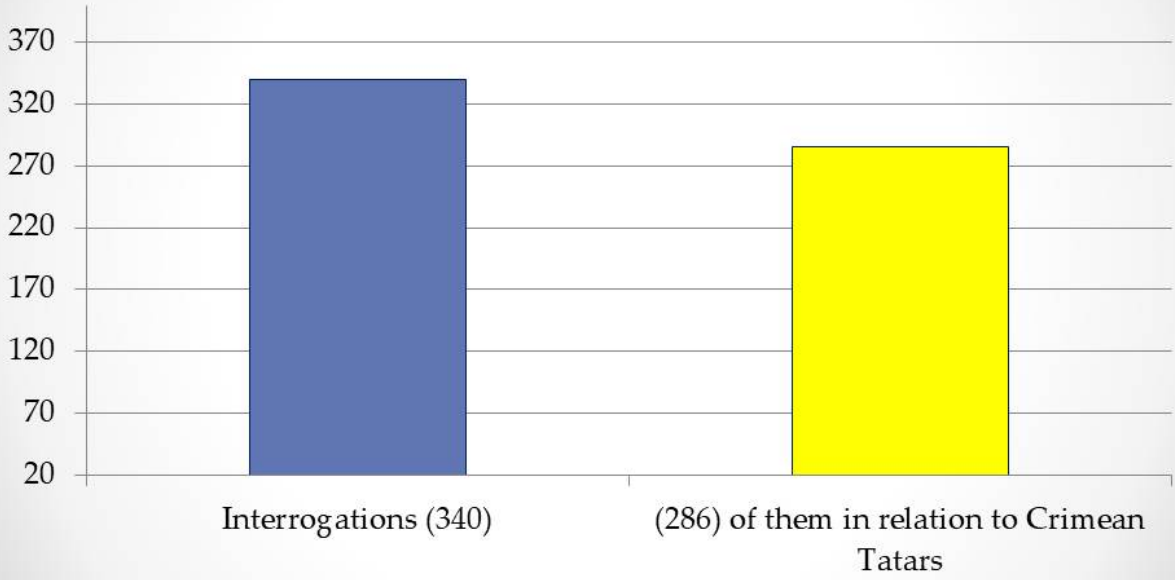


Right to life, liberty and physical integrity



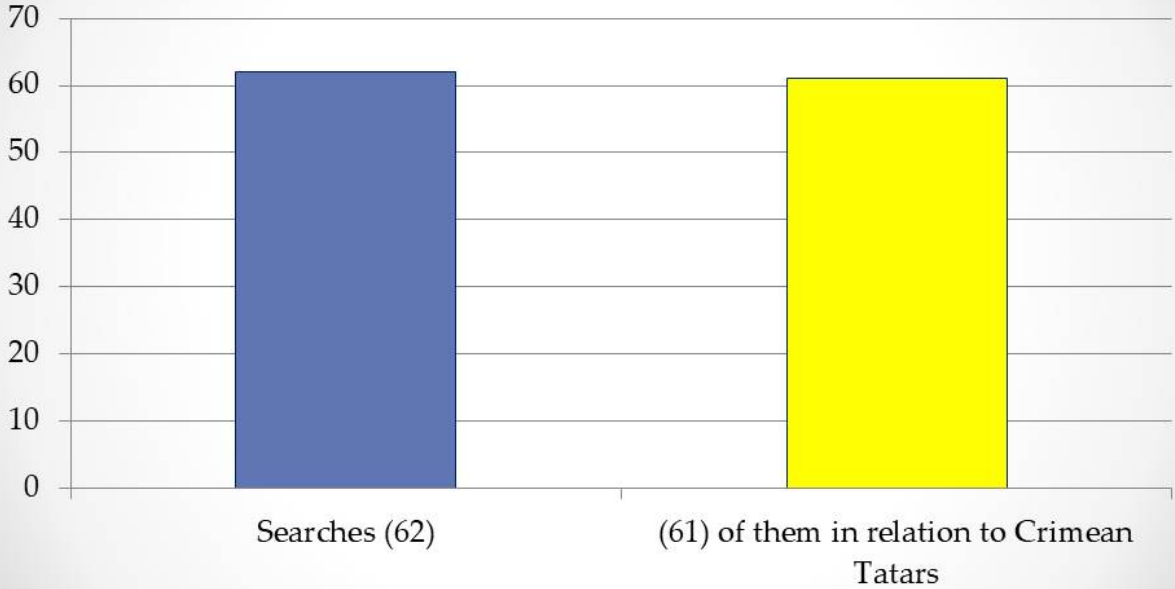
Right to life, liberty and physical integrity

Total number of interrogations

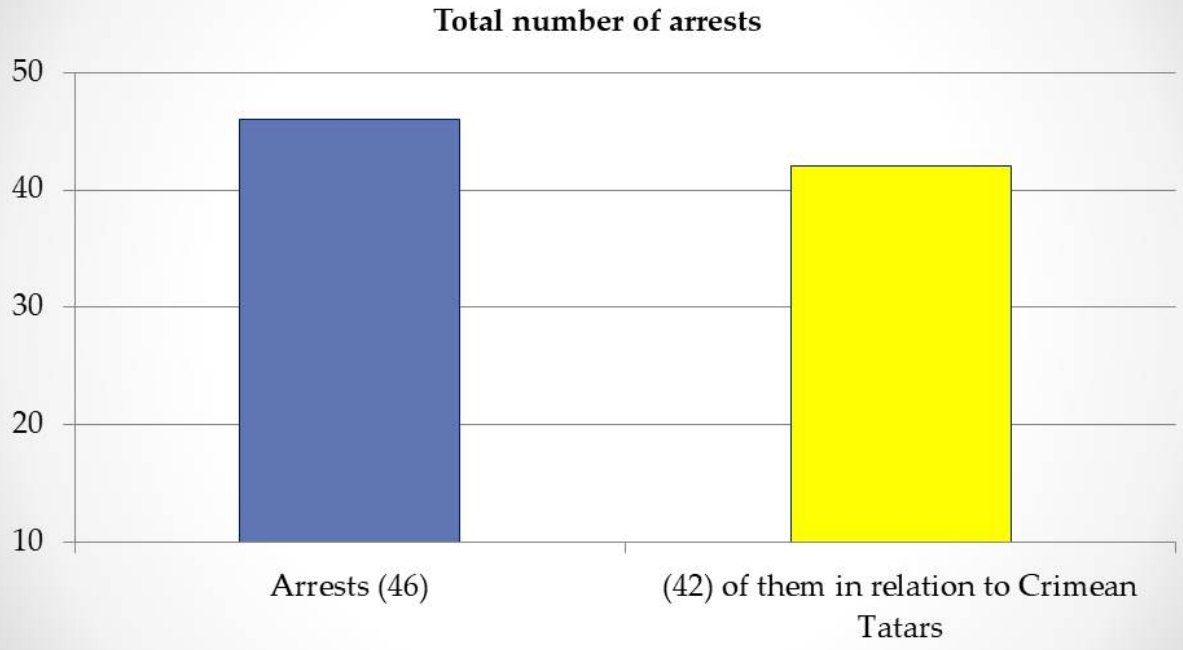


Right to life, liberty and physical integrity

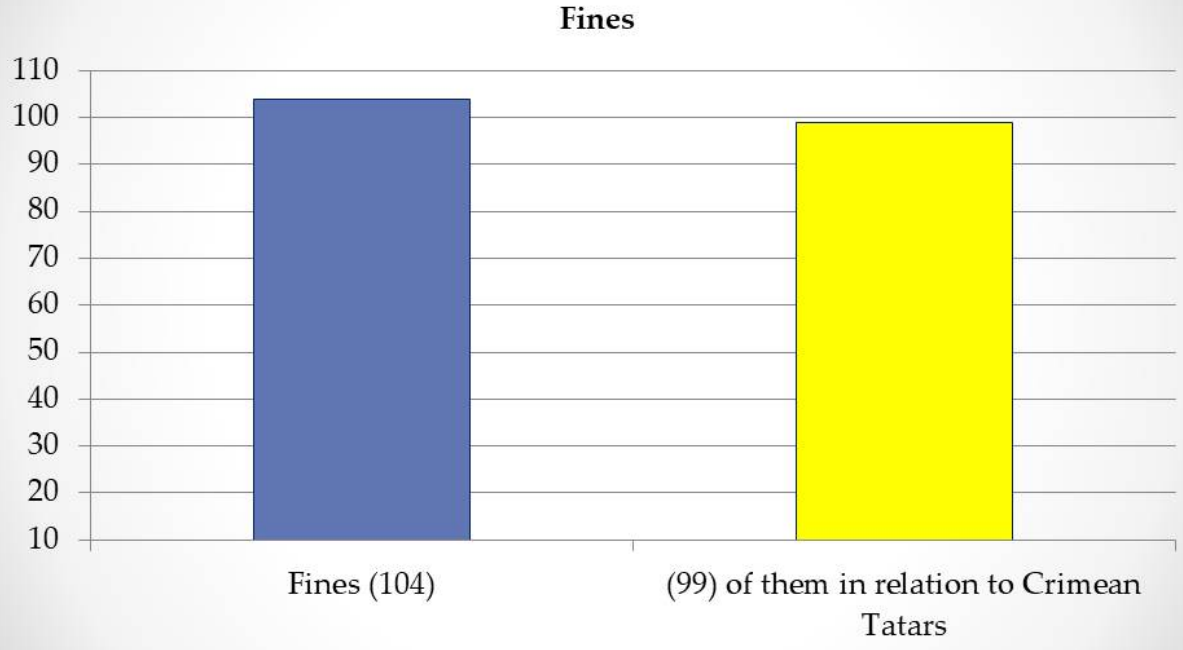
Total number of searches



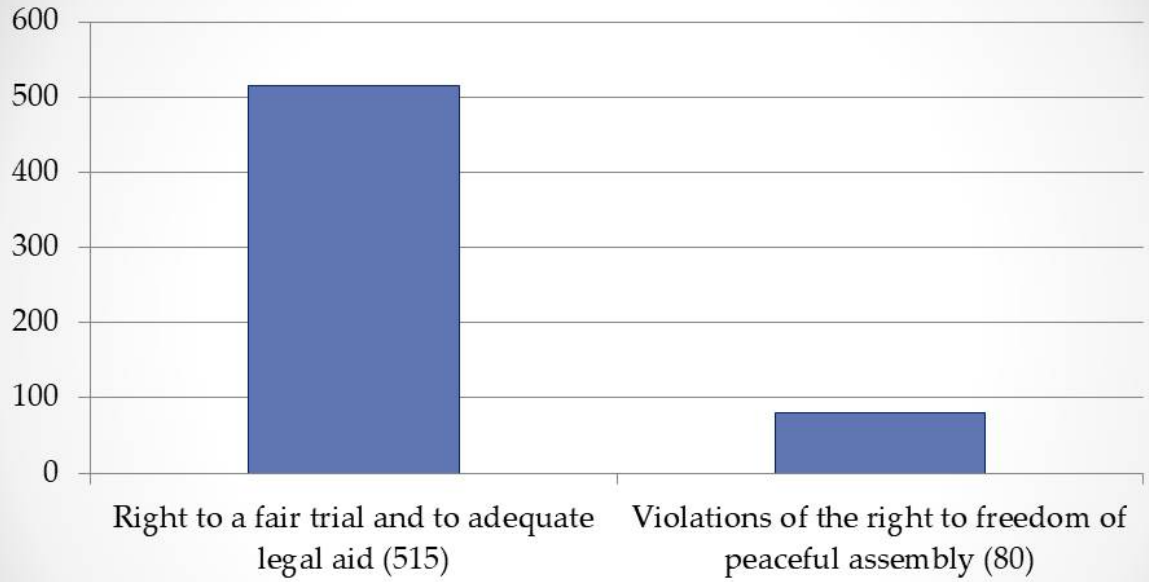
Right to life, liberty and physical integrity



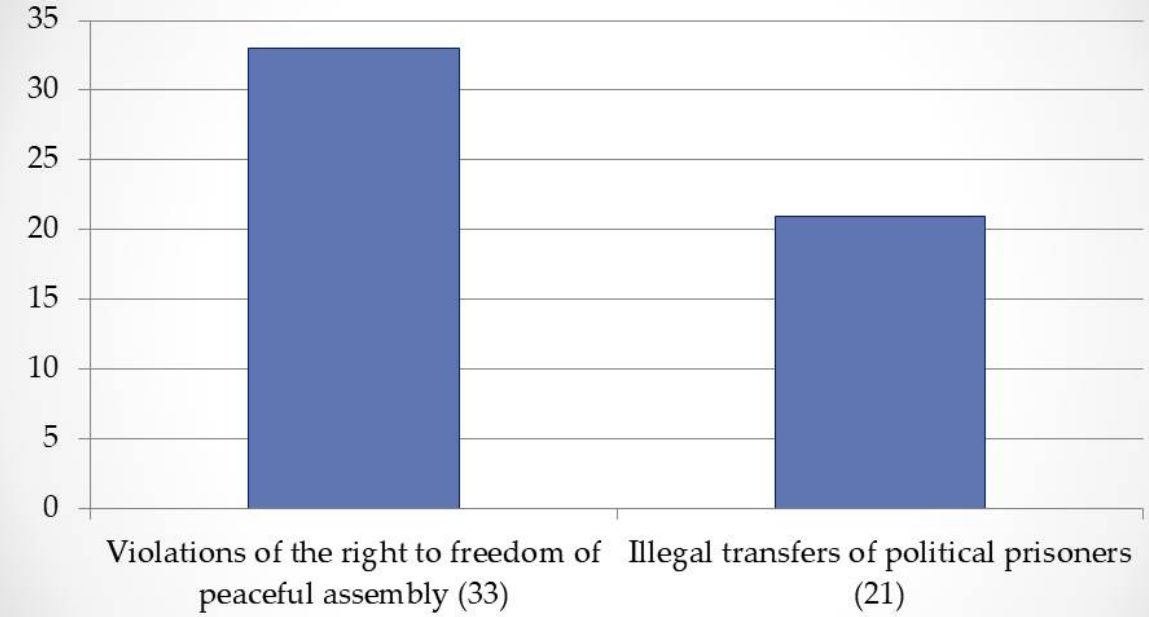
Violations of the fundamental freedoms



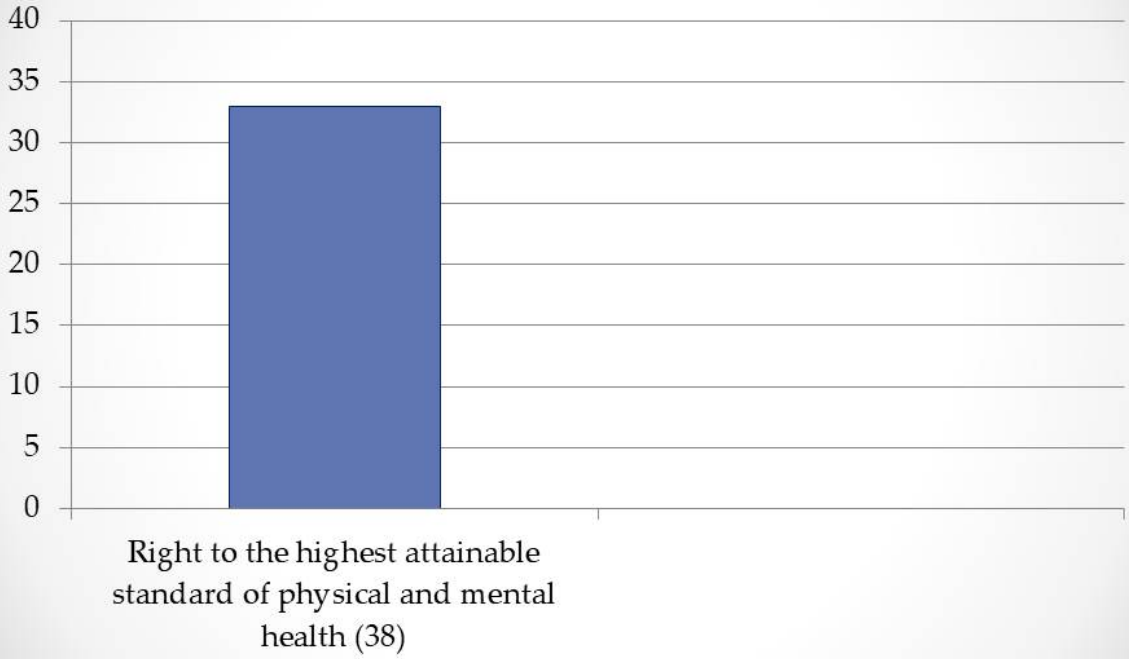
Violations of the fundamental freedoms



Violations of the fundamental freedoms



Violations of the fundamental freedoms



THANK YOU FOR YOUR ATTENTION!!!

www.ctrcenter.org

Annex 971

Crimean Tatar Resource Center, Analysis of Human Rights Violations in the Occupied Crimea over January 2018 (presentation) (15 February 2018)

CRIMEAN TATAR RESOURCE CENTER

CRIMEAN TATAR
RESOURCE CENTER

QT | UA | EN | RU

+38 067 343 74 54
+38 044 489 61 25

Search

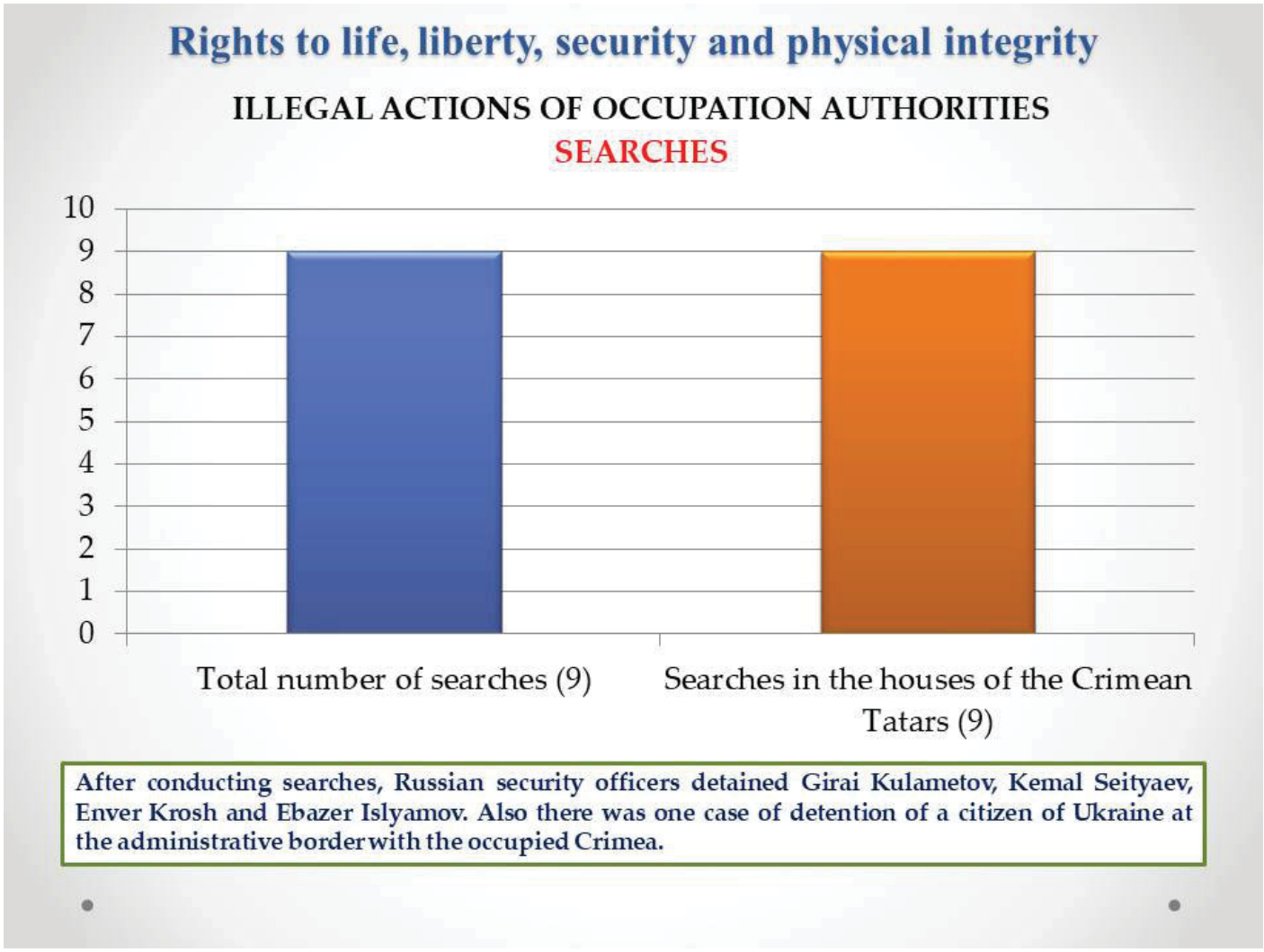
Правовая помощь

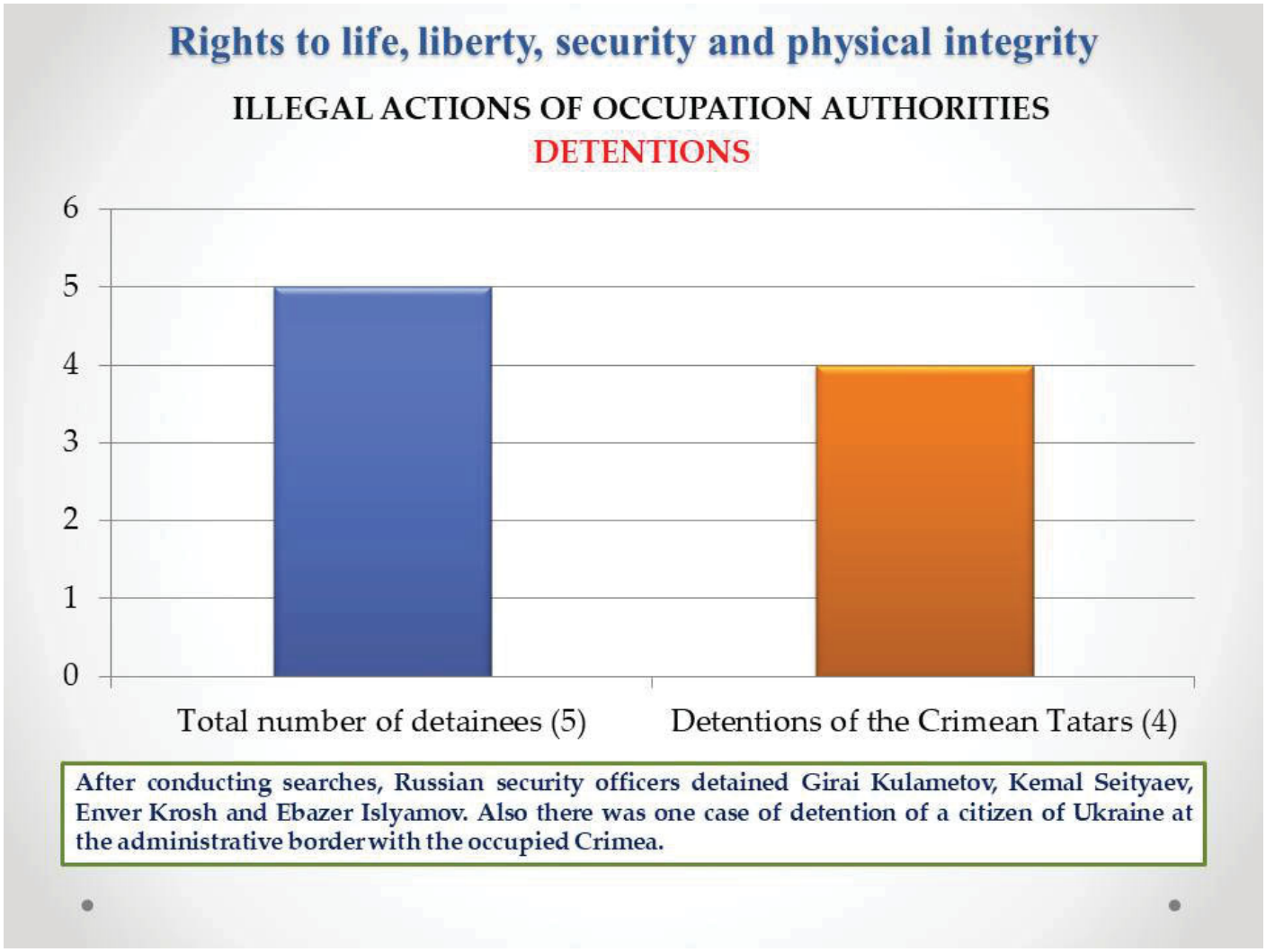
Analysis of human rights violations in the occupied Crimea over January 2018 (presentation)

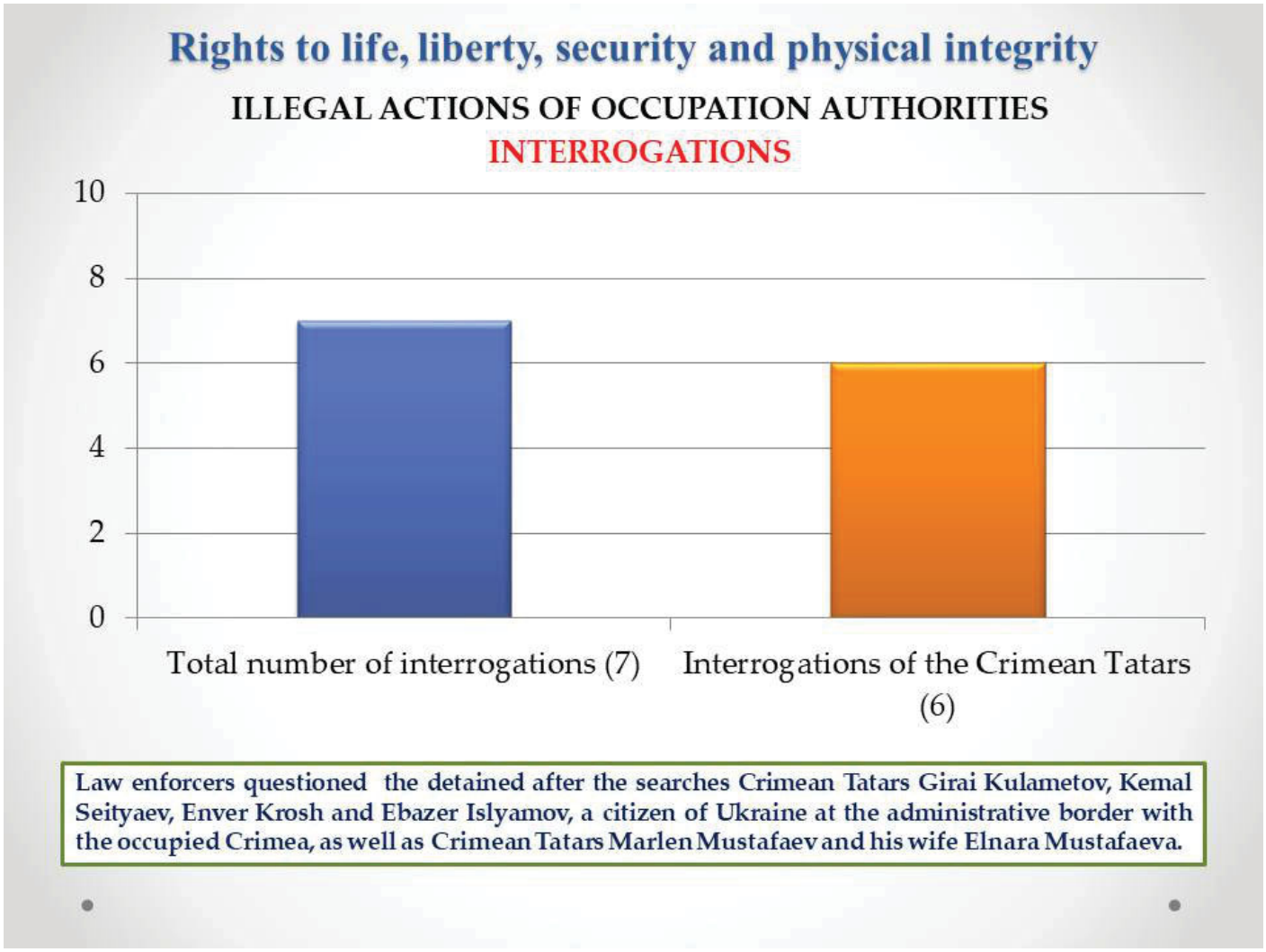
15 February 2018

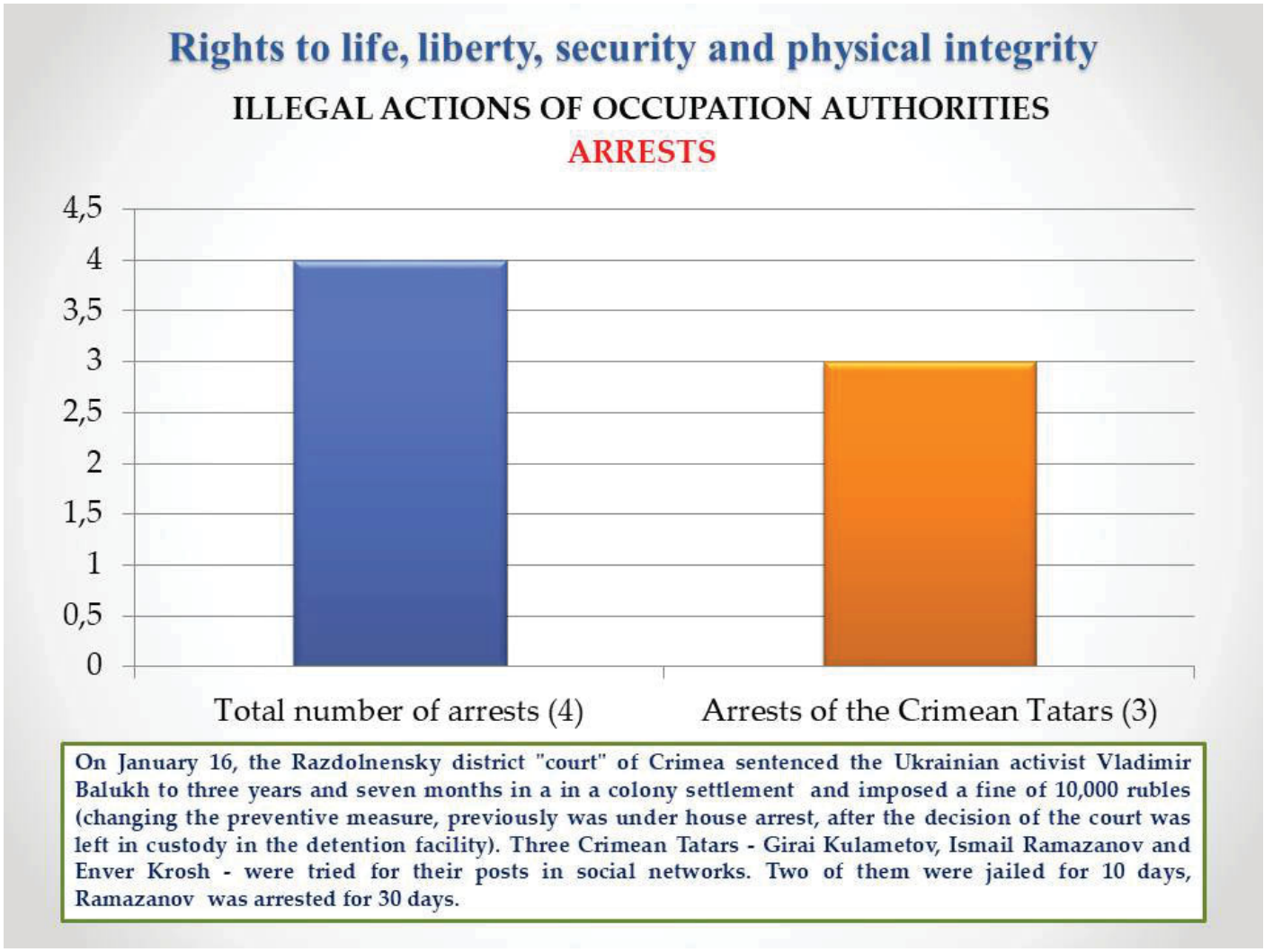
The Crimean Tatar Resource Center presents the analysis of the human rights violations in the occupied Crimea over January 2018. According to the organization, for over a month the Russian "security officers" conducted nine searches of the Crimean Tatars' houses. There were 5 detentions, 7 interrogations, 4 arrests registered. In January, the occupation courts of Crimea imposed 11 fines on Crimean Tatar and Ukrainian activists a total of which is 115 thousand rubles. 43 times the right to a fair trial was violated, 8 times to the highest attainable standard of physical and mental health. Also, once the Russian "security officers" violated the right to peaceful assembly and 8 times - to freedom of movement.

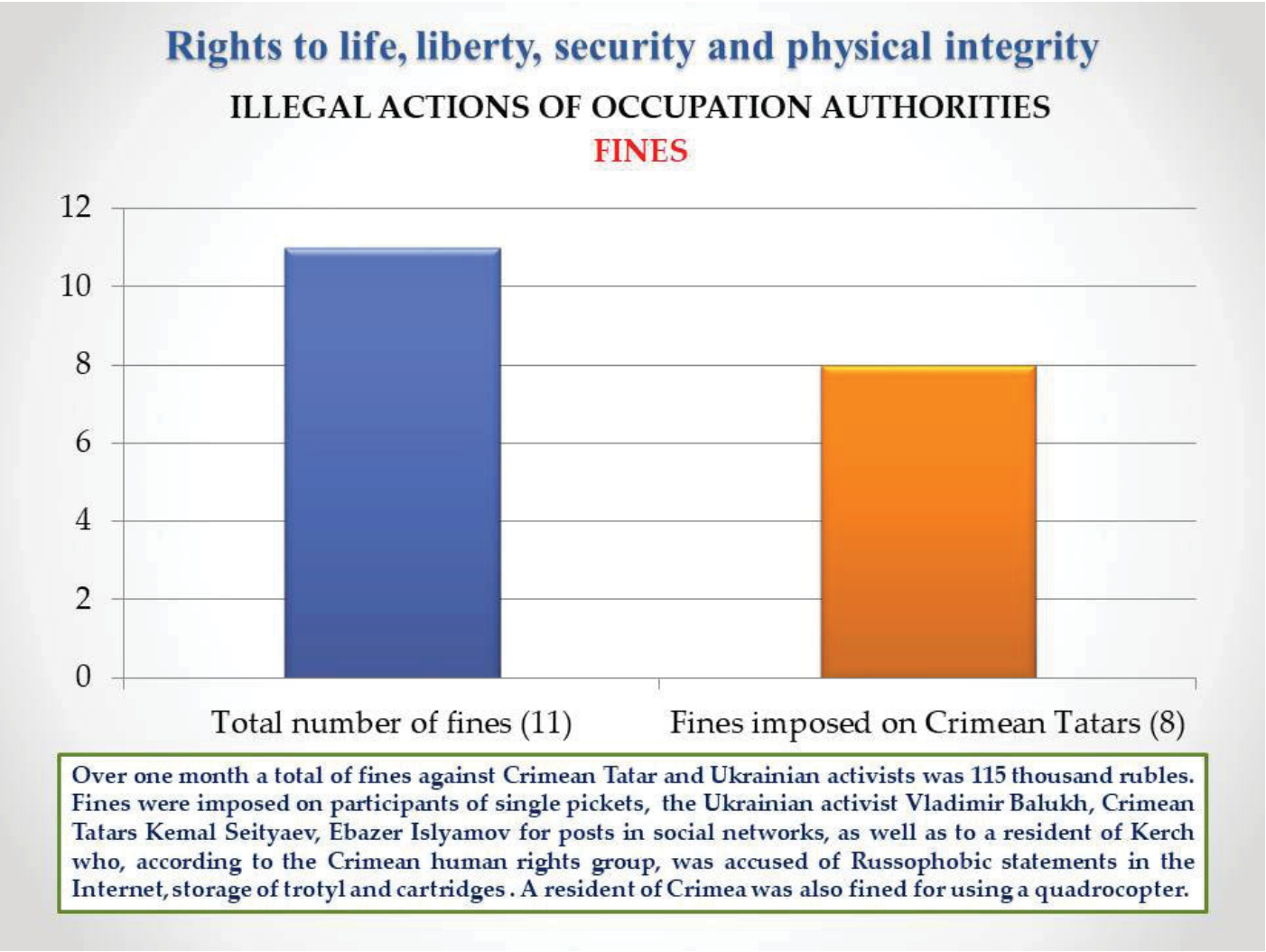

CRIMEAN TATAR
CTRC
RESOURCE CENTER
Mejlis
of the Crimean Tatar
People
Analysis of human rights violations in the occupied Crimea over January 2018
Prepared by the Crimean Tatar Resource Center

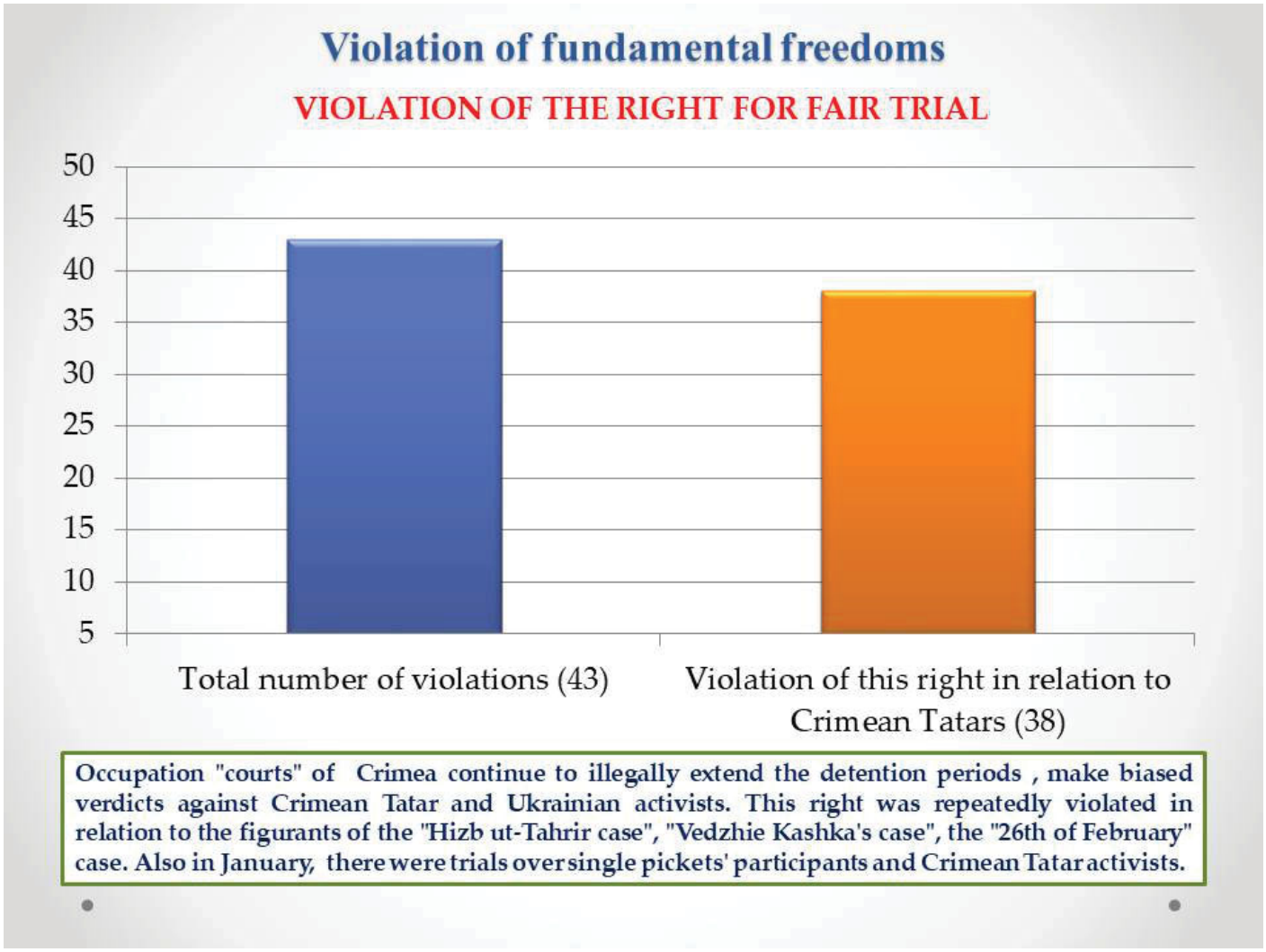

Rights to life, liberty, security and physical integrity
ILLEGAL ACTIONS OF OCCUPATION AUTHORITIES
SEARCHES
10
9
8
7
6
5
4
3
2
1
0
Total number of searches (9)
Searches in the houses of the Crimean Tatars (9)
After conducting searches, Russian security officers detained Girai Kulametov, Kemal Seityaev, Enver Krosh and Ebazer Islyamov. Also there was one case of detention of a citizen of Ukraine at the administrative border with the occupied Crimea.

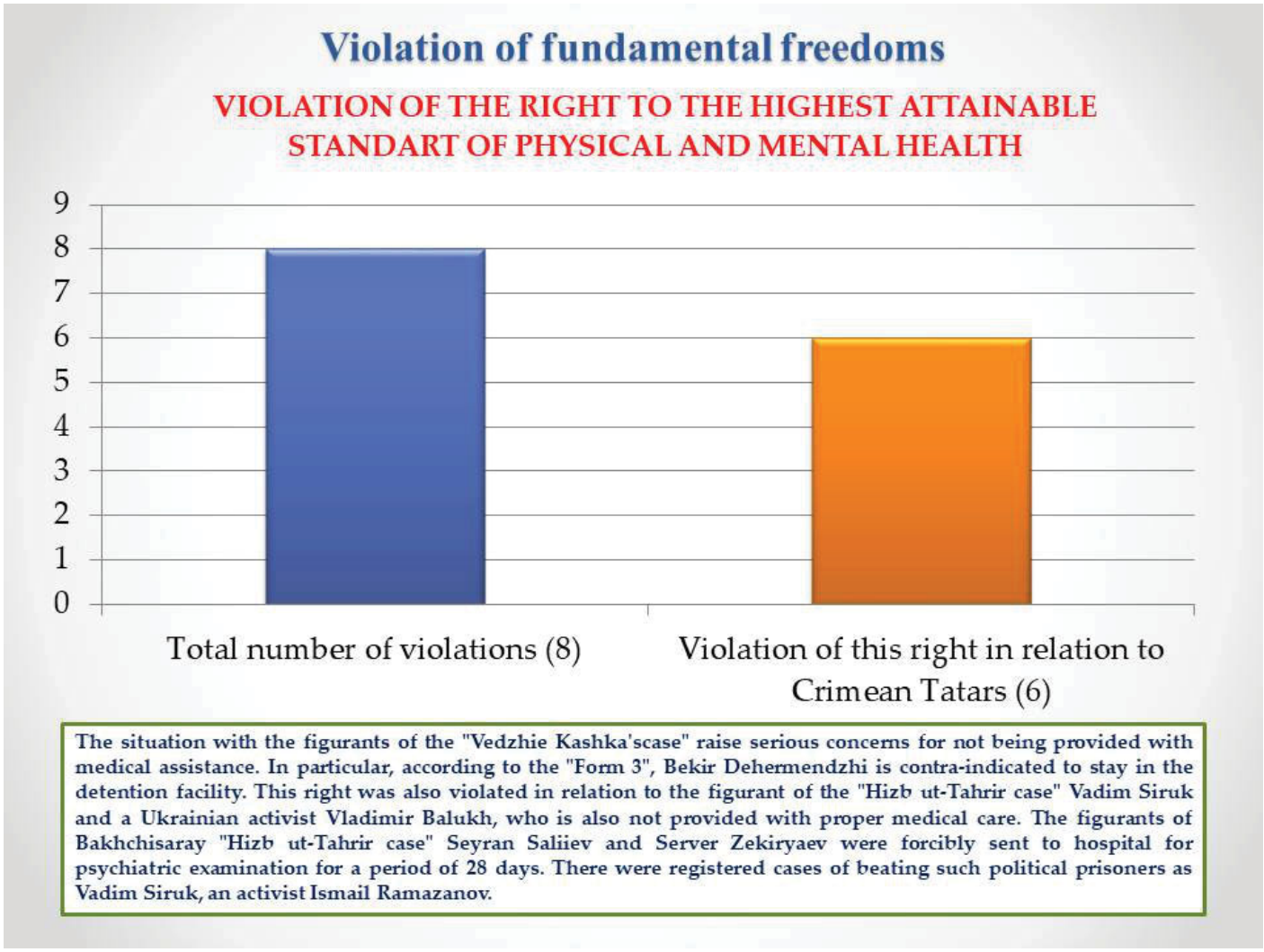

Rights to life, liberty, security and physical integrity
ILLEGAL ACTIONS OF OCCUPATION AUTHORITIES
DETENTIONS
6
5
4
3
2
1
0
Total number of detainees (5)
Detentions of the Crimean Tatars (4)
After conducting searches, Russian security officers detained Girai Kulametov, Kemal Seityaev, Enver Krosh and Ebazer Islyamov. Also there was one case of detention of a citizen of Ukraine at the administrative border with the occupied Crimea.

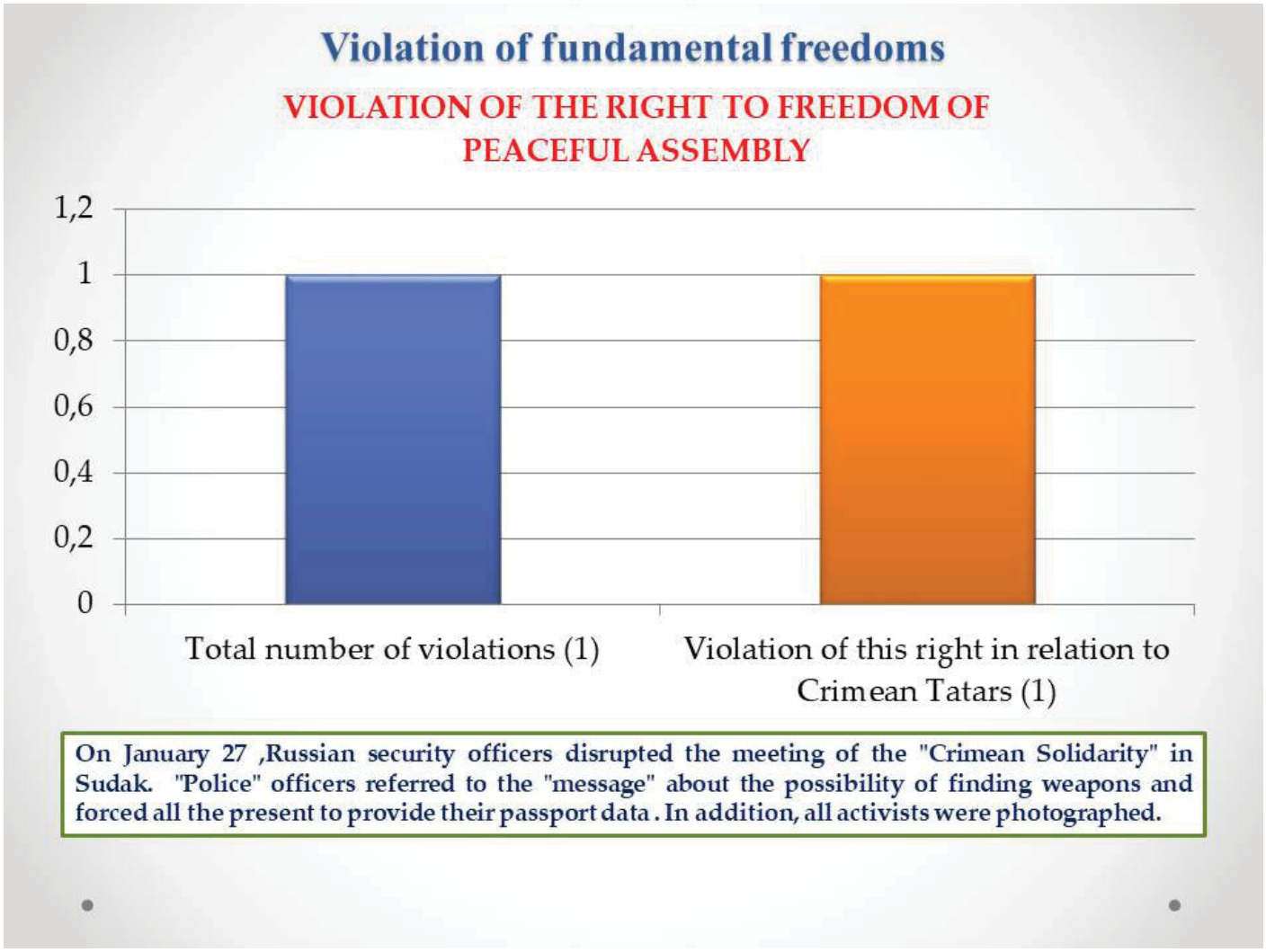

Rights to life, liberty, security and physical integrity
ILLEGAL ACTIONS OF OCCUPATION AUTHORITIES
INTERROGATIONS
10
8
6
4
2
0
Total number of interrogations (7)
Interrogations of the Crimean Tatars (6)
Law enforcers questioned the detained after the searches Crimean Tatars Girai Kulametov, Kemal Seityaev, Enver Krosh and Ebazer Islyamov, a citizen of Ukraine at the administrative border with the occupied Crimea, as well as Crimean Tatars Marlen Mustafaev and his wife Elnara Mustafaeva.

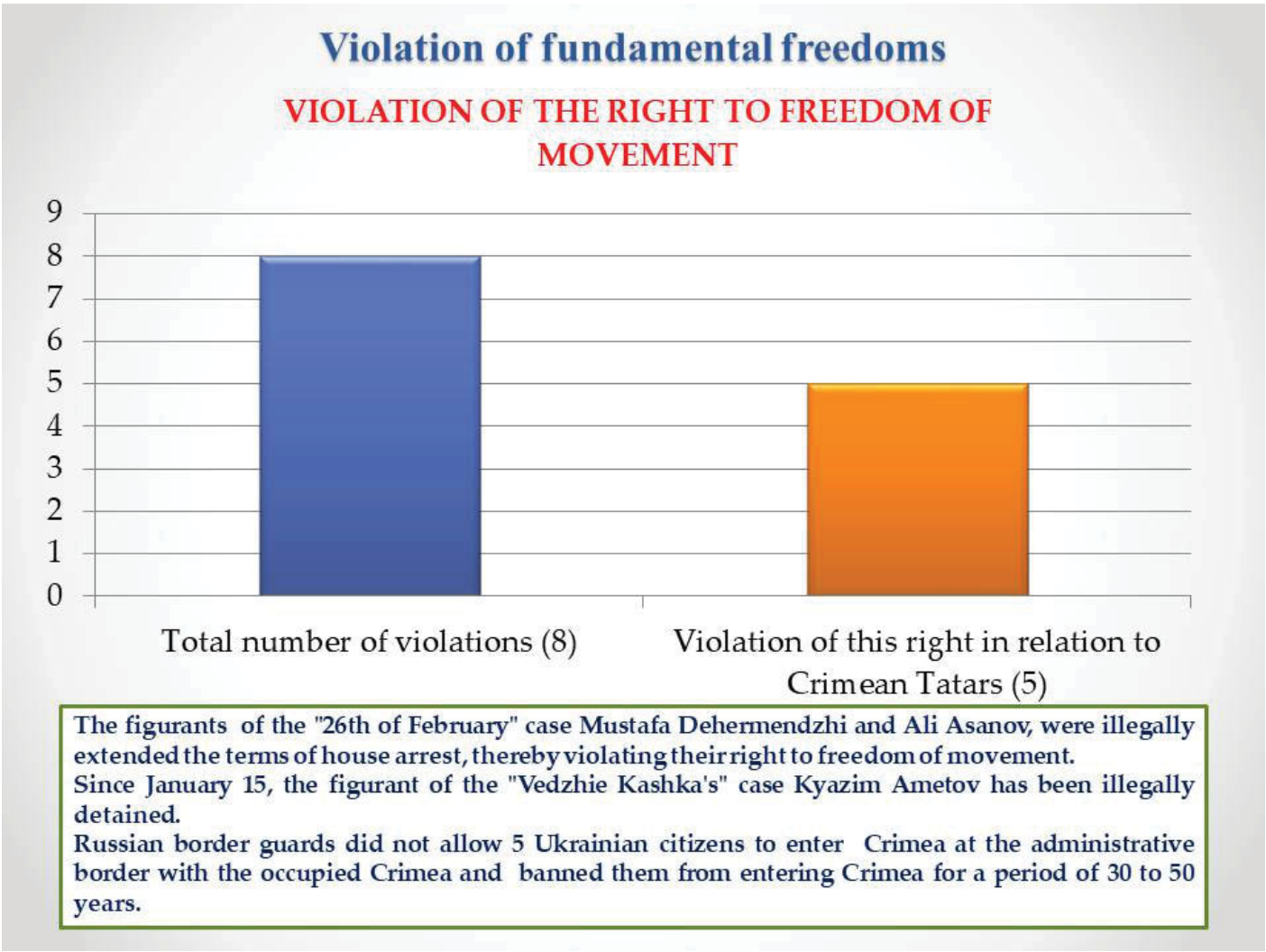

Rights to life, liberty, security and physical integrity
ILLEGAL ACTIONS OF OCCUPATION AUTHORITIES
ARRESTS
4,5
4
3,5
3
2,5
2
1,5
1
0,5
0
Total number of arrests (4)
Arrests of the Crimean Tatars (3)
On January 16, the Razdolnensky district "court" of Crimea sentenced the Ukrainian activist Vladimir Balukh to three years and seven months in a in a colony settlement and imposed a fine of 10,000 rubles (changing the preventive measure, previously was under house arrest, after the decision of the court was left in custody in the detention facility). Three Crimean Tatars - Girai Kulametov, Ismail Ramazanov and Enver Krosh - were tried for their posts in social networks. Two of them were jailed for 10 days, Ramazanov was arrested for 30 days.


Rights to life, liberty, security and physical integrity
ILLEGAL ACTIONS OF OCCUPATION AUTHORITIES
FINES
12
10
8
6
4
2
0
Total number of fines (11)
Fines imposed on Crimean Tatars (8)
Over one month a total of fines against Crimean Tatar and Ukrainian activists was 115 thousand rubles. Fines were imposed on participants of single pickets, the Ukrainian activist Vladimir Balukh, Crimean Tatars Kemal Seityaev, Ebazer Islyamov for posts in social networks, as well as to a resident of Kerch who, according to the Crimean human rights group, was accused of Russophobic statements in the Internet, storage of trotyl and cartridges . A resident of Crimea was also fined for using a quadrocopter.


Violation of fundamental freedoms
VIOLATION OF THE RIGHT FOR FAIR TRIAL
50
45
40
35
30
25
20
15
10
5
Total number of violations (43)
Violation of this right in relation to Crimean Tatars (38)
Occupation "courts" of Crimea continue to illegally extend the detention periods , make biased verdicts against Crimean Tatar and Ukrainian activists. This right was repeatedly violated in relation to the figurants of the "Hizb ut-Tahrir case", "Vedzhie Kashka's case", the "26th of February" case. Also in January, there were trials over single pickets' participants and Crimean Tatar activists.


Violation of fundamental freedoms
VIOLATION OF THE RIGHT TO THE HIGHEST ATTAINABLE STANDART OF PHYSICAL AND MENTAL HEALTH
9
8
7
6
5
4
3
2
1
0
Total number of violations (8)
Violation of this right in relation to Crimean Tatars (6)
The situation with the figurants of the "Vedzhie Kashka'scase" raise serious concerns for not being provided with medical assistance. In particular, according to the "Form 3", Bekir Dehermendzhi is contra-indicated to stay in the detention facility. This right was also violated in relation to the figurant of the "Hizb ut-Tahrir case" Vadim Siruk and a Ukrainian activist Vladimir Balukh, who is also not provided with proper medical care. The figurants of Bakhchisaray "Hizb ut-Tahrir case" Seyran Saliiev and Server Zekiryaev were forcibly sent to hospital for psychiatric examination for a period of 28 days. There were registered cases of beating such political prisoners as Vadim Siruk, an activist Ismail Ramazanov.


Violation of fundamental freedoms
VIOLATION OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY
1,2
1
0,8
0,6
0,4
0,2
0
Total number of violations (1)
Violation of this right in relation to Crimean Tatars (1)
On January 27 ,Russian security officers disrupted the meeting of the "Crimean Solidarity" in Sudak. "Police" officers referred to the "message" about the possibility of finding weapons and forced all the present to provide their passport data . In addition, all activists were photographed.


Violation of fundamental freedoms
VIOLATION OF THE RIGHT TO FREEDOM OF MOVEMENT
9
8
7
6
5
4
3
2
1
0
Total number of violations (8)
Violation of this right in relation to Crimean Tatars (5)
The figurants of the "26th of February" case Mustafa Dehermendzhi and Ali Asanov, were illegally extended the terms of house arrest, thereby violating their right to freedom of movement.
Since January 15, the figurant of the "Vedzhie Kashka's" case Kyazim Ametov has been illegally detained.
Russian border guards did not allow 5 Ukrainian citizens to enter Crimea at the administrative border with the occupied Crimea and banned them from entering Crimea for a period of 30 to 50 years.

It's necessary to remind that earlier the Crimean Tatar Resource Center and the Mejlis of the Crimean Tatar people presented the results and analysis of human rights violations in Crimea over 2017. According to the organization, in 2017, there were 286 detentions, 340 interrogations, 62 searches, 46 arrests, 104 fines a total of more than 5 million rubles, as well as 16 new political prisoners and 4 victims registered in Crimea. Most of the violations are commited in relation to the representatives of the indigenous Crimean Tatar people.

Twitts

facebook youtube

Latest news

Call for participation in the International Summer Liberal Camp

3 May 2018

CTRC and TNU have developed a joint cooperation plan

30 March 2018

The "Court hearing" on "Zarema Kulametova's case" was postponed until April 5

30 March 2018

The "Court" in Crimea changed the verdict to Ukrainian activist Larisa Kitaiskaya

15 March 2018

The "court" in Crimea rejects the appeal of defese of Ismail Ramazanov

14 March 2018

Multimedia

Gunther Fehlinger speaks about the illegal occupation of Crimea by the Russian Federation (video)

21 March 2018

Crimean Tatar Resource Center

Сайт разработан в компании WEBRA

Annex 972

Freedom House, Freedom of the Press: Crimea 2016 (last visited 8 March 2018)

Crimea *

Country:
Crimea *
Year:
2016
Press Freedom Status:
Not Free
PFS Score:
94
Legal Environment:
30
Political Environment:
38
Economic Environment:
26

Overview

The media environment in Crimea was transformed in February 2014, when Russian forces occupied the peninsula. The occupation authorities quickly engineered a March referendum calling for union with Russia, and Moscow formally annexed the territory, imposing restrictive Russian media laws and taking other steps to control the work of the press. The aggressive efforts by Russian and Russian-installed local authorities to establish control over what had been a fairly pluralistic media landscape made conditions in Crimea worse than in Russia itself. Independent outlets were forcibly shut down, transmissions of Ukrainian stations were replaced with broadcasts from Russia, access to a number of local and Ukrainian media outlets via the internet was blocked for users on the peninsula, and many journalists fled Crimea to escape harassment, violence, and arrests.

Key Developments

- Hundreds of media outlets were unable to obtain registration with Russian authorities by an April 2015 deadline, reducing the number allowed to operate in Crimea from more than 3,000 to just 232.
- Independent outlets serving the Crimean Tatar population, which generally opposes the occupation, were forced to relocate to mainland Ukraine after being denied registration and facing various forms of pressure from the authorities.

Legal Environment: 30 / 30

After the March 2014 annexation, which was not recognized internationally, the occupation authorities began enforcing Russia's constitution and federal laws. A local constitution based on the Russian model was imposed the following month. Although the Russian constitution provides for freedom of speech and of the press, a variety of restrictive laws and a politicized judiciary curb media independence in practice. Journalists are subject to trumped-up criminal charges for defamation, "extremism," incitement to separatism, and other offenses.

In addition to the restrictions it imposed, the Russian legal system failed to protect journalists, activists, and others from abuses by security forces and paramilitary "self-defense" units, which engaged in unlawful detentions and physical assaults through 2015.

A 2014 Russian law against inciting separatism—Article 280.1 of the penal code—was used to persecute Crimean journalists in 2015. In March, Russia's Federal Security Service (FSB) searched the family residences of two journalists with the Kyiv-based Crimean news agency Center for Investigative Reporting, Anna Andriyevskaya and Natalya Kokorina. Kokorina was detained and interrogated for six hours, and a colleague, Anna Shaidurova, was similarly questioned in April. The FSB opened a criminal case against Andriyevskaya under Article 280.1, which carries up to five years in prison, based on a story that examined a volunteer battalion fighting with Ukrainian government forces against Russian-backed separatists in eastern Ukraine. The Russian authorities claimed that the article contained calls for Crimea to be returned to Ukrainian control; it described the peninsula as "occupied." Andriyevskaya had been working from outside Crimea since 2014.

In the months after the annexation, the occupation authorities harassed pro-Ukraine media outlets, shutting down some and threatening others with closure. All mass media—including online outlets—were given until January 2015, later extended to April, to register with Roskomnadzor, the Russian federal media regulator, and to obtain a license; editors were repeatedly warned by officials that they would not be allowed to register if they disseminated "extremist" materials. After the deadline expired, Roskomnadzor reported that 232 media outlets had successfully registered, down from about 3,000 under Ukrainian rule. Those barred from reregistering included several outlets—television, radio, print, and online—that served the Crimean Tatar minority.

Like other nongovernmental organizations (NGOs), journalists' associations and groups dedicated to press freedom and freedom of expression are now subject to onerous Russian laws, including measures restricting foreign funding. Support from mainland Ukraine is hampered by the lack of banking connections between Ukrainian institutions and the occupied peninsula. Almost all human rights and civic activists have reportedly relocated to mainland Ukraine to escape legal restrictions as well as extralegal harassment, detentions, and intimidation in Crimea.

Political Environment: 38 / 40

Crimea featured a relatively pluralistic media environment while under Ukrainian control, but the occupation authorities immediately began cutting off access to Ukrainian news outlets and replacing them with Russian alternatives. Television retransmission facilities were seized by armed men, and the signals of Russian state-owned broadcasters were substituted for those of the main Ukrainian stations. Local cable companies gradually dropped all but a few entertainment-themed Ukrainian channels. After the reregistration process was completed in April 2015, virtually all Crimea-based news outlets carried content that was supportive of the Russian or local pro-Russian authorities.

Meanwhile, after facing official pressure or being denied registration, independent local media organizations and many of their journalists continued to migrate to mainland Ukraine during 2015. For example, the Crimean Tatar television station ATR ceased broadcasting from Crimea at the end

of March after failing to secure a registration with Roskomnadzor, then began transmitting from Kyiv via satellite in June. The Tatar news agency QHA made a similar move. In late 2015, Roskomnadzor began blocking online news outlets based in mainland Ukraine.

Foreign journalists and outlets require accreditation from Russia's Foreign Ministry to enter and operate in Crimea, and occupation authorities apply this rule to outlets based in mainland Ukraine, limiting their access to the peninsula. Family members of journalists working from exile face harassment by the authorities.

Journalists and media workers in Crimea are subject to obstruction, arbitrary detention, interrogation, and seizure or damage of equipment. In January 2015, before ATR ceased broadcasting from Crimea, the authorities raided its headquarters and confiscated equipment while ostensibly searching for footage of a 2014 protest. In March, a Polish television crew was confronted by aggressive members of Crimean "self-defense" units while interviewing a pro-Ukrainian activist and temporarily detained after calling police. ATR cameraman Eskender Nebiyev was arrested in April and charged with participating in a 2014 rally that he had covered as a journalist; he was released on bail after two months in detention and received a suspended prison sentence of two and a half years in October. Also in April, police searched the home of former ATR cameraman Amet Umerov after he allegedly posted criticism of the occupation authorities on a social-networking site.

Economic Environment: 26 / 30

The changes imposed by the occupation authorities since 2014 have left Russian outlets, particularly state-owned television stations, with a dominant position in the Crimean media market. After independent Tatar-language outlets were pushed out of the peninsula, Russian authorities began creating alternatives; the government-funded television station Millet started broadcasting in September 2015.

A flawed frequency tender in early 2015 further concentrated economic control over the radio sector. In December 2014, Roskomnadzor announced that bidding for radio frequencies would take place in February 2015, meaning stations wishing to participate would need to secure Russian registration by the end of January. This effectively excluded any Ukrainian and local Crimean outlets that did not enjoy official support in Moscow, and even pro-Russian Crimean broadcasters criticized the deadline, which favored incumbent Russian companies. As a result of the tender, the rights to frequencies belonging to existing Crimean stations were in many cases transferred to major Russian media holdings or well-connected local businessmen. For example, two dozen frequencies were assigned to six companies owned by a single businessman, Aleksey Amelin.

In addition to the exclusion of most Ukrainian broadcasters, distribution of Ukrainian print outlets has been obstructed by Russian and Russian-backed Crimean officials. In 2014 Ukraine's postal agency announced that it could no longer make deliveries of Ukrainian publications to the peninsula. According to a study by the organization Krymskyy Dim (Crimean House), print publications in Ukrainian, which previously made up about 15 percent of the market, had largely disappeared by the end of 2015.

Russian telecommunications regulators and providers control internet access for Crimean users. In April 2015, authorities reportedly shut down all internet service in a Tatar community during a series of raids to combat alleged extremism.

The broader economic environment in which the media operate has been affected by a variety of other factors related to the occupation, including expropriations by Russian-backed local authorities,

Russian government subsidies, obstacles to trade and communications with mainland Ukraine, and international sanctions.

Source URL: https://freedomhouse.org/report/freedom-press/2016/crimea

Annex 973

Kharkiv Human Rights Protection Group, Crimean Tatar Businessman & Philanthropist Seized and New FSB Offensive in Russian-Occupied Crimea (3 May 2018)

Crimean Tatar businessman & philanthropist seized in new FSB offensive in Russian-occupied Crimea

Human Rights Abuses in Russian-occupied Crimea
03.05.2018 | Halya Coynash

Resul Velilyaev

A prominent Crimean Tatar philanthropist and businessman has been arrested after what Crimean Tatar Mejlis leader Refat Chubarov called a '"black Thursday' of armed searches in Russian-occupied Crimea. The motives remain unclear, but he was immediately taken to the FSB's Lefortovo prison in Moscow which suggests that the minor infringement initially cited is simply a pretext.

Resul Velilyaev has been involved in business since the 1990s, with his КРЫМОПТ [Crimopt) company described as the leading food wholesaler in Crimea, with over six thousand clients. The family also has a retail network called Guzel.

Velilyaev's earlier involvement in politics ended in 2014, but his work as a public figure and philanthropist has continued.

He built one of Crimea's most beautiful mosques in his native Belogorsk, and around 15 years ago created the Bekir Çoban-zade Fund which, supports Crimean Tatar historical, literature and linguistic research. His Fund provides grants for talented children, funding for hospitals, schools and other institutions.

Krym.Realii reports that this is not the first trouble the family have experience since Russia's annexation of Crimea. In April 2015, Resul and his brother Remzi Velilyaev were subjected to searches, with Remzi taken away for interrogation. That occasion was apparently linked with the so-called '26 February case", where Russia imprisoned Crimean Tatar leader Akhtem Chiygoz, as well as Ali Asanov and Mustafa Degemendzhy on legally insane charges pertaining to a pre-annexation demonstration over which Russia can have no jurisdiction.

The searches on 26 April were of the homes of Resul Velilyaev and three relatives, as well as of their adult children who live separately, of **Ali Bariev**, Director of CrimOpt and at least one other person. It was reported on May 1 that Bariev has also been taken to Moscow.

The pretext is absurdly unconvincing. An unidentified number of products were allegedly found that were beyond their sell-by-date, with criminal charges initiated under Article 238 of Russia's criminal code. This deals with the production, storage, transportation or sale of goods, etc. which do not meet safety standards. Since there is nothing to suggest that anybody suffered, even a conviction would not result in a significant sentence.

Well-known Crimean Tatar journalist and civic activist Lilia Budzhurova calls all of this – the charges and Velilyaev's removal to Moscow "an EXTREMELY non-standard situation, even for Crimea."

She notes, for example, that the former Crimean prime minister Rustam Temirgaliev was charged with stealing a vast amount of money and gold from a Crimean bank. He not only remained at liberty, but was allowed to head the Tatarstan Representative Office in Kazakhstan.

She gives only two examples, but there have been very many in Crimea under Russian occupation and in Russia. This is not to mention the number of shops you could go into and find multiple infringements of safety precautions.

Why Velilyaev has been targeted is not known, but nobody believes that the FSB have become involved in a major operation over some packages beyond their sell-by-date. There may well be an economic reason – the desire to effectively steal Velilyaev's prospering business, for example, however the fact that he is in Lefortovo means that this is no local initiative.

Budzhurova is not alone in assuming two other reasons. These are, first of all, the fact that Velilyaev is supporting Crimean Tatar research, cultural and religious life.

The other has become all too familiar over the last four years – showing Crimean Tatars that nobody is safe from persecution.

“One thing is clear: nobody today in Crimea can feel safe: not the elderly, not the young, neither rich nor poor, healthy or ill. This is the main message that we have all been sent!”, Budzhurova writes.

These arrests have coincided with the forced closure in Bakhchysarai of the renowned Salachik Cultural and Ethnographic Café. The café has faced constant searches and more under Russian occupation, and in October 2017, its owner Marlen (Suleyman) Asanov was arrested, together with five other Crimean Muslims. At least three of them have been active in the Crimea Solidarity initiative, formed to help political prisoners and their families, and Asanov has long been known for his generosity in helping others in need. It was for this that he was named Ukraine’s Volunteer of the Year for 2017.

Those arrests were the latest in Russia’s conveyor belt of persecution for alleged and unproven involvement in the pan-Islamist Hizb ut-Tahrir party which is legal in Ukraine and not known to have committed an act of terrorism anywhere in the world. Russia’s Supreme Court never explained why it labelled the organization ‘terrorist’, yet it has long sentenced men to huge terms of imprisonment for alleged involvement, and Asanov and the other men are facing huge sentences.

As the number of political prisoners in Crimea continues to rise, it is difficult not to conclude that, even if there are other motives, Russia is targeting socially active members of the Crimean Tatar community, including those who use their money to support Crimean Tatar culture and those hit hardest by Russia’s occupation.

Annex 974

Unrepresented Nations and Peoples Organization, Crimean Tatars: Russian Repression Continues with Arrest of Crimean Businessman (8 May 2018)

May 08, 2018

Crimean Tatars: Russian Repression Continues with Arrest of Crimean Businessman

Russian security forces on the illegally-occupied Crimean peninsula have detained prominent Crimean Tatar businessman Resul Velilyaev in what is the latest of a series of arrests of Crimean Tatar activists, entrepreneurs and political and intellectual elites by Russian occupying forces. The Chair of the Crimean Tatar Mejlis, Refat Chubarov, claims that the retail stores of Velilyaev and another man were raided and closed on 26 April 2018 because of an alleged criminal violation regarding the sale and storage of spoiled products, after which the businessmen were sent to a prison on the Russian mainland. Chubarov continues that Velilyaev was denied lawyers and is being accused of the far more serious crime of "activities related to terrorist and extremist organizations" in the incident which he believes is the beginning of an even stricter wave of repression of the Crimean population.

The article below was published by Unian:

Chairman of the Mejlis of the Crimean Tatar People, Member of Parliament of Ukraine Refat Chubarov says the Federal Security Service (FSB) of Russia attempts to accuse Resul Velilyaev, a Crimean Tatar entrepreneur who owns a Crimean retail chain, of "activities related to terrorist and extremist organizations."

"They [FSB] want to eliminate the Crimean Tatar entrepreneurs, who, despite all forms of pressure, remain ordinary people. They do not go out on the squares to protest against the [Russian] occupation... However, they do not bow, they do not echo the invaders, and neither do they support their fake events," Chubarov said on Facebook. He noted that the cases against Velilyaev and other people from his team are the beginning of more threatening processes against the entire Crimean Tatar people.

"The formal reason for "closing" businesses of Resul Velilyaev and Ali Bariev is that they allegedly violated Part 2 of Article 238 of the Russian Criminal Code, which stipulates responsibility for storage and sale of spoilt products... It turns out that the FSB officers came to the stores allegedly selling overdue products, detained the businessmen and brought them to the Lefortovo detention center under an article that is unrelated to serious crimes," the politician said.

Furthermore, Deputy Chairman of the Mejlis of the Crimean Tatar people, Akhtem Chiygoz, on May 3 said that lawyers were denied access to Resul Velilyaev, kept in Moscow's Lefortovo detention center.

As UNIAN reported earlier, on April 26, Russian law enforcers raided Velilyaev's shops of the Guzel retail chain and the KrymOpt firm in the town of Bilohirsk in Russian-occupied Crimea. Following the searches, both Crimean Tatar businessmen were transferred from the peninsular to mainland Russia.

Photo courtesy of Kırım Derneği/Flickr

Annex 975

Open Society Justice Initiative, Human Rights in the Context of Automatic Naturalization in Crimea (June 2018)

OPEN SOCIETY
JUSTICE INITIATIVE

REPORT

Human Rights in the Context of Automatic Naturalization in Crimea

JUNE 2018

This report by lawyers of the Open Society Justice Initiative examines in depth the implications for the population of the Crimean peninsula of the imposition of Russian citizenship that followed Russia's seizure of the territory from Ukraine in 2014.

224 West 57th Street, New York, New York, 10019, United States | TEL +1-212-548-0600 | FAX +1-212-548-4662 | justice.initiative@opensocietyfoundations.org

TABLE OF CONTENTS

I. INTRODUCTION

1. The Open Society Justice Initiative conducts litigation, advocacy, legal empowerment and research globally in the service of individuals and communities who find themselves cast on the wrong side of a defining legal and ideological threshold between inclusion and exclusion in many societies today: citizenship law.[1]

2. The Open Society Justice Initiative has made written submissions on the international and comparative legal standards on the right to a nationality and the avoidance of statelessness before international and regional bodies including the U.N. Committee on the Elimination of Racial Discrimination, the Offices of the U.N. High Commissioners for Refugees and for Human Rights, the Inter-American Court of Human Rights, the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child. Examples of these include:

   - *Yean and Bosico v. Dominican Republic,* Inter-American Court of Human Rights (IACtHR), judgment of 8 September 2005 (discriminatory denial of the right to nationality), acting as intervenor.
   - *Sejdić and Finci v. Bosnia and Herzegovina,* European Court of Human Rights (ECtHR), Grand Chamber judgment of 22 December 2009 (denial of voting rights to ethnic minorities), acting as intervenor.
   - *Kurić and Others v. Slovenia,* ECtHR, Grand Chamber judgment of 26 July 2012 (arbitrary denial of legal status in violation of private life), acting as intervenor.
   - *Institute on Human Rights and Development in Africa and Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) v. Kenya*, African Committee of Experts on the Rights and Welfare of the Child (ACERWC), decision of 22 March 2011 (discriminatory denial of children's right to nationality), acting as co-counsel for applicant.
   - *Nubian Community in Kenya v. Kenya*, African Commission on Human and Peoples' Rights (ACmHPR), decision of 28 February 2015 (discriminatory denial of citizenship), acting as co-counsel for applicants.
   - *People v. Cote d'Ivoire*, ACmHPR, decision of 28 February 2015 (discriminatory denial of citizenship), acting as co-counsel for applicants.
   - *Bueno v. Dominican Republic*, Inter-American Commission on Human Rights (IACmHR), pending (discriminatory denial of citizenship), acting as co-counsel for applicants.
   - *Anudo v. Tanzania,* African Court on Human and Peoples' Rights (ACtHPR), judgment of 22 March 2018 (arbitrary deprivation of nationality without due process leading to statelessness), acting as intervenor.
   - *Huseynov v. Azerbaijan,* ECtHR, pending (arbitrary deprivation of nationality), acting as counsel.

[1] Rogers Brubaker, in his seminal work *Citizenship and Nationhood in France and Germany* (1992), memorably described citizenship as "internally inclusive" and "externally exclusive" (p. 21). Unless otherwise specified in this document, the terms "citizenship" and "nationality" are generally used as legal terms that are considered interchangeable in international law. For more information on the Open Society Justice Initiative's mission and activities, see back cover.

3. In a global reality where more than 15 million people are believed to be stateless[2] – having no nationality – with perhaps a billion more lacking in any means of proving their legal existence at all,[3] the deprivation and denial of nationality as a means of exclusion is a paramount concern.[4] This concern is reflected in international law, which prohibits arbitrary deprivation of nationality and imposes a duty on states to avoid statelessness.

4. Minority groups make up approximately 75% of the world's known stateless population.[5] Most of these groups are stateless in the country of their birth and neither they nor their children have a pathway to citizenship – they are permanent outsiders. That citizenship law has been consistently instrumentalized by the powerful as a means of ethnically discriminatory statecraft is simply beyond question.

5. This report examines in depth the *imposition* of Russian citizenship ("automatic naturalization") by Russian authorities and their agents in the occupied territory of the Crimean peninsula since 2014.[6] Because of its potent legal and ideological properties, citizenship is a multifaceted political tool, as history readily illustrates. In other words, as this report argues, citizenship is not only a tool of legal and social exclusion but also a powerful, coercive instrument of containment and assimilation.[7]

6. Here, we analyze the factual and legal background of the 18 March 2014, *Treaty on Accession*'s[8] citizenship provisions and their subsequent implementation in Crimea as an abuse of citizenship law in furtherance of a project rooted in ethnic discrimination, the rejection of territorial sovereignty and a prevailing disrespect for human dignity. A central claim of this report is that the arbitrary imposition of citizenship in the Crimean context requires examination as a deeply problematic and worrisome human rights violation. The aim is to provide a human rights framework for addressing this violation.

7. The *mass* nature of automatic naturalization in Crimea complicates any effort to articulate in full the many intersecting humanitarian and human rights law violations that flow from or are abetted by this action. For some, the devastating effects of their inability to acquire a residence permit may be more acutely felt than the wider discriminatory effort to redefine an entire population as "Russian." Others face persecution, arrest, or imprisonment as "extremists" based on their actual or perceived religious or political beliefs, both of which are closely bound up in the construction of ethnicity in Crimea's past and present. Those who were able to reject Russian citizenship and "retain" Ukrainian citizenship, and those without residence registration in Crimea at the time of occupation, became "foreigners" in their own country and have been at risk of unlawful expulsion ever since. The facts and analysis presented here do illustrate an overarching narrative, however: the abuse of human rights under a spurious color of law, all in the name of banishing "non-Russian" people and ideas from the territory.

---

[2] Institute on Statelessness and Inclusion, *The World's Stateless* 35 (2014), available at: http://www.institutesi.org/worldsstateless.pdf.

[3] *See* World Bank, Identification for Development (ID4D) Global Dataset, available at: https://datacatalog.worldbank.org/dataset/identification-development-global-dataset.

[4] *See* James Goldston, *Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens*, 20 Ethics & International Affairs 321-347 (2006).

[5] United Nations High Commissioner for Refugees (UNHCR), *Stateless Minorities and their Search for Citizenship* (2017), available at: http://www.unhcr.org/ibelong/stateless-minorities/.

[6] Throughout this report, we will refer to the territory of the Autonomous Republic of Crimea and the city of Sevastopol, collectively, as "Crimea."

[7] *See* Marc Morjé Howard, *The Politics of Citizenship In Europe* 50 (2009) ("The historical experience of individual countries in terms of both their past experiences as colonial power and onset of democracies correspond quite closely to their historical citizenship policies.").

[8] *See* paras. 72-83 below for a detailed description of relevant provisions.

8. Following this Introduction, the report provides an overview of comparative case studies in which citizenship law has been mobilized to exclude or forcibly suppress groups on the basis of race, ethnicity, religion or, oftentimes, a combination of these factors.[9] As is the case in Crimea, many of these cases reflect a pattern whereby citizenship law is used to exclude or erase a group's ethnic identity, even as the targeted group is redefined in the public imagination as a threat to society, completing a narrative of "otherness" that has in some chilling historical and contemporary cases been linked to genocidal processes.

9. The report then provides a legal analysis of automatic naturalization in Crimea in three dimensions:

- *A. The ethnically discriminatory character of automatic naturalization in Crimea*. Russia's campaign in Crimea seeks to reinstate an ethnic-based allegiance to Russia, entailing elimination of the indigenous Crimean Tatars, the idea of a separate Ukrainian "people" and the idea of a civic Ukrainian national identity.
- *B. Automatic naturalization in Crimea as a violation of the right to a nationality*. Automatic naturalization is discriminatory, involuntary, fails to respect due process, lacks a legitimate aim and is disproportionate to the harm it causes.
- *C. The collateral consequences of automatic naturalization in furtherance of ethnic cleansing in Crimea*. The operation of anti-extremism laws, population transfers and cultural erasure works in tandem with forced naturalization.

10. The report provides this analysis to help ensure that the human rights of those impacted, individually and collectively, are restored and the violations redressed.

II. FACTUAL BACKGROUND

A. Historical and comparative case studies

11. International legal scholars widely acknowledge that states retain considerable discretion in the establishment and administration of citizenship law, subject to the constraints imposed by international law.[10] Increasingly, international human rights law has become more influential in this sphere, however, and the below examples illustrate why. Without meaningful constraints on the definition and operation of domestic citizenship laws, efforts to combat human rights abuses would be severely compromised.

12. Importantly, citizenship law has long been used as an efficient and effective means of institutionalizing an exclusionary ideology against ethnic groups – establishing their psychological extermination from the "universe of moral obligation."[11] As noted in the

[9] The notion that different grounds of discrimination combine and overlap in various ways to produce a compound form of discrimination has been recognized as a component of international law. *See, e.g.* Committee on the Rights of Persons with Disabilities, General Comment No. 3 Article 6: Women and girls with disabilities (2016); Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 the Core Obligations of States Parties under Article 2, (2010); Committee on the Elimination of Discrimination against Women, General Recommendation No. 25 article 4 paragraph 1 - Temporary special measures, para. X (2004); and Committee on the Elimination of Racial Discrimination, General Recommendation No. 25 on gender related dimensions of racial discrimination (2000).

[10] *See, e.g.*, Laura van Waas, *Fighting Statelessness and Discriminatory Nationality Laws in Europe*, 14 European Journal of Migration and Law 243, 244 (2010) ("At both global and regional levels, [] international standards have come to impose significant restrictions on the freedom of states to regulate access to nationality in accordance with their own sovereign interests."); Peter J. Spiro, *New International Law of Citizenship*, 105 American Journal of International Law 694, 697-98 (2011) (States are not free to disregard the otherwise lawful establishment of the bond of nationality between an individual and a state, as Russia has done with respect to Ukrainian nationality within occupied Crimea).

[11] Hannah Arendt, *The Origins of Totalitarianism* 460-81 (1951).

Introduction, particularly when adopting a human rights approach, the coercive imposition of citizenship as part of a project of "cultural erasure"[12] cannot be meaningfully distinguished from racially discriminatory deprivation of citizenship. Many of the examples below also show how other forms of attacks on ethnic groups (*e.g.* the closure of schools and religious institutions or banning of languages), incitement and restrictions on free movement work in concert with the deployment of citizenship law.[13]

Jewish communities under Reich Citizenship Law in the 1930s and 1940s

13. The 1935 Reich Citizenship Law (one of two laws adopted at the September 1935 Nazi party national convention in Nuremberg, collectively known as the Nuremberg Laws) and Regulations denied all Jewish people of the rights deriving from German Reich citizenship.[14] The law formally defined a Reich citizen as "a subject of the state who is of German or related blood, and proves by his conduct that he is willing and fit to faithfully serve the German people and Reich."[15] The Nazis used this legal maneuver to facilitate further ostracism and marginalization of Jewish people, including baring access to a number of professions, occupations, and programs of study reserved for Reich citizens.[16]

14. The Regulations also defined "Jewishness" in meticulous detail on the basis of bloodlines, for the purposes of the Reich Citizenship Law and, consequently, for the purposes of implementing the Nazi party's program.[17]

> "This legal definition of a Jew in Germany covered tens of thousands of people who did not think of themselves as Jews or who had neither religious nor cultural ties to the Jewish community. For example, it defined people who had converted to Christianity from Judaism as Jews. It also defined as Jews people born to parents or grandparents who had converted to Christianity. The law stripped them all of their German citizenship and deprived them of basic rights."[18]

Kenyan Asians

---

[12] Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), para. 5 (16 January 2017), available at http://www.icj-cij.org/files/case-related/166/19314.pdf.

[13] Agnia Grigas, *Beyond Crimea: The New Russian Empire* (2016), describes a seven-stage "reimperialization policy" enacted by Russia, within which Russia's citizenship policies toward a widening population of "compatriots" in other states including Ukraine, figures prominently as a tool among several used to reassert territorial domination in the post-Soviet space. ("Some of the seven stages of this reimperialization trajectory can overlap, occur simultaneously, or occur in a slightly different order. The general trajectory, however, moves from co-optation of ethnic Russians and Russian speakers to territorial expansion under the guise of compatriot or minority protection, all under the veil of a blitz of information warfare.").

[14] *See* The Reich Citizenship Law (15 September 1935) and the First Regulation to the Reich Citizenship Law (14 November 1935), *German History in Documents and Images*, available at http://ghdi.ghi-dc.org/sub_document.cfm?document_id=1523; *Case No. 11, U.S. v. Ernst von Weizsäcker (the Ministries Case)*, U.S. Military Tribunal IV, N.M.T., Vol. XIV, p. 471 (1948-1949) ("The Jews of Germany were first deprived of the rights of citizenship. They were then deprived of the right to teach, to practice professions, to obtain education, to engage in business enterprises; they were forbidden to marry except among themselves and those of their own religion; they were subject to arrest and confinement in concentration camps, to beatings, mutilation and torture; their property was confiscated; they were herded into ghettos; they were forced to emigrate and to buy leave to do so; they were deported to the East, where they worked to exhaustion and death; they became slave labourers; and finally over six million were murdered."), cited in International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Kupreskic et al.* (Trial Judgement), IT-95-16-T (14 January 2000), available at http://www.refworld.org/cases,ICTY,40276c634.html.

[15] Reich Citizenship Law of 15 September 1935, Article 2, *U.S. Holocaust Memorial Museum*, available at https://www.ushmm.org/wlc/en/article.php?ModuleId=10007903.

[16] *See* The Reich Citizenship Law (15 September 1935) and the First Regulation to the Reich Citizenship Law (14 November 1935), *German History in Documents and Images*, available at http://ghdi.ghi-dc.org/sub_document.cfm?document_id=1523.

[17] *See* Reich Citizenship Law, First Regulation, 14 November 1935, Articles 2 and 5, *Jewish Virtual Library*, available at http://www.jewishvirtuallibrary.org/the-reich-citizenship-law-first-regulation.

[18] *See* United States Holocaust Museum, *Holocaust Encyclopedia: Nuremberg Laws*, https://www.ushmm.org/wlc/en/article.php?ModuleId=10007902.

15. In Kenya, after independence, residents of African origin were automatically granted Kenyan citizenship, while most people of Asian origin were given two years to apply for citizenship, and dual nationality was not allowed.[19] Most people did not apply for citizenship and those who attempted to exercise the option often met serious obstacles and delays in obtaining Kenyan nationality. The Kenyan Immigration Act of 1967 required all those without Kenyan citizenship to acquire work permits. The 1967 Trade Union Act limited the terms under which non-citizens could engage in trade. In the same period, most Kenyan Asians in public administration positions were replaced with Kenyans of African descent.[20] Trading was restricted to limited areas and determined commodities, and exchange of certain products was restricted exclusively to citizens.[21] These measures touched off an exodus of Kenyan Asians to the United Kingdom. In 1968, there were 344,000 Asians resident in five countries in East and Central Africa; by 1984 the estimated number had fallen to about 85,000 of whom 40,000 were in Kenya.[22]

Saddam Hussein's Decree 666 strips Feyli Kurds of nationality in 1980

16. On 7 May 1980, Saddam Hussein stripped the Feyli Kurds of Iraqi citizenship through Decree 666. The decree provided that "Iraqi citizenship be revoked from all those of foreign origin 'whose disloyalty to the nation, people and the higher social and political principles of the revolution had been revealed' and authorized the Minister of the Interior to expel all those whose nationality had been revoked." [23] By 1988, at least 300,000 Feyli Kurds had been deported to Iran.[24] Estimates of the total number of Feyli Kurds who were denationalized and deported range from 150,000 to 500,000. Decree No. 666 remained in place for 24 years, along with approximately 30 other decrees issued by the Revolutionary Command Council against the Feyli Kurds. Decree 666 was repealed by the 2006 Iraqi Nationality Law, reinstating Iraqi nationality to all persons that had been denaturalized by the former government.[25]

Myanmar's 1982 Citizenship Law, stripping ethnic groups of nationality

17. The 1982 Burma Citizenship Law granted full citizenship to those who could trace their origins in Myanmar back to 1823. This reflects the date of the first British military campaign on Myanmar, which catalyzed a wave of immigration from India and China. This proved problematic because transnational ties were common for many families of various ethnicities. But the legal distinctions had the effect of hardening ethnic identities following the law's adoption:

> "[The law] establishes group differences through legal and bureaucratic means, and these in turn constitute an affirmation of what cultural differentiations between groups are supposed to be in reality. Such a prescriptive enterprise may be distant from facts,

[19] *See* Randall Hansen, *Citizenship and Immigration in Postwar Britain* 158 (2000); *see also* Immigration and Refugee Board of Canada, *Information on the treatment of the Asian community in Kenya* (1 June 1991), available at http://www.refworld.org/docid/3ae6ab1518.html.
[20] *See* Randall Hansen, *Citizenship and Immigration in Postwar Britain* 158 (2000).
[21] *See* Minority Rights Group International, *World Directory of Minorities, Sub-Saharan Africa, Asians of East and Central Africa*, p. 222-225 (1989).
[22] *Ibid*.
[23] Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Iraq: Faili Kurds* (October 2014), available at http://www.refworld.org/docid/5a056c397.html.
[24] Refugees International, *The Faili Kurds of Iraq: Thirty Years Without Nationality* (2 April 2010), available at https://reliefweb.int/report/iraq/faili-kurds-iraq-thirty-years-without-nationality.
[25] Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Iraq: Faili Kurds* (October 2014), available at http://www.refworld.org/docid/5a056c397.html.

but the distance between myths and reality gets lost once a legal understanding of groups becomes widely accepted."[26]

18. The 1982 law created different classes of citizens on the basis of ethnicity.[27] The recent Advisory Commission on Rakhine State report describes the 1982 law and its implementing regulations:

> "The 1982 law and the accompanying 1983 procedures define a hierarchy of different categories of citizenship, where the most important distinction is that between "citizens" or "citizens by birth" on the one side, and "naturalised citizens" on the other. "Citizenship by birth" is limited to members of "national ethnic races", defined as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine and Shan and ethnic groups which have been permanently settled in the territory of what is now Myanmar since before 1823 (in 1990, an official list of 135 'ethnic races' was made public)."[28]

19. Among other groups, the Muslim Rohingya fit none of these categories and were rendered stateless.[29] As a consequence, Rohingya in Myanmar suffer severe restrictions on "their freedom of movement and right to a family life, difficulty in gaining access to civil services, violations of their right to health and education, land confiscations, and are subject to forced labour and arbitrary taxes. These deprivations have resulted in many Rohingya fleeing as refugees to neighbouring and other countries."[30]

Black Mauritanians, denationalization and Arabization in the 1980s and early 1990s

20. Between 1986 and 1992, amidst rising ethnic and racial tensions, the government of Mauritania engaged in a campaign of forced expulsion of at least 65,000 Black Mauritanians to Senegal.[31] In 1989, Mauritania's Arab-dominated government, pursuing its brutal policy of "Arabization," expelled an estimated 60,000-100,000 black Mauritanians, denying that they were Mauritanian citizens.[32] The African Commission of Human and People's Rights ultimately condemned the expulsions as a violation of Article 12(1) of the African Charter on Human and Peoples' Rights.[33]

Dominicans of Haitian descent in the Dominican Republic

21. On 23 September 2013, the Dominican Constitutional Court issued a decision stripping over 200,000 people of Dominican nationality, targeting Dominicans of Haitian

---

[26] Jose Maria Arraiza and Olivier Vonk, *Report on Citizenship Law: Myanmar*, EUDO Citizenship, p. 6-11 (October 2017), available at http://cadmus.eui.eu//handle/1814/48284.
[27] *See* Human Rights Watch, *Burmese Refugees in Bangladesh: Still No Durable Solution* (May 2000), available at https://www.hrw.org/reports/2000/burma/burm005-02.htm.
[28] Advisory Commission on Rakhine State, *Final Report: Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine*, p. 29 (August 2017), available at http://www.rakhinecommission.org/app/uploads/2017/08/FinalReport_Eng.pdf.
[29] *See* UN Human Rights Council, *Report of the independent expert on minority issues, Gay McDougall,* para. 59, UN Doc. A/HRC/7/23 (28 February 2008).
[30] *Ibid*.
[31] UNHCR, *Refugee Status, Arbitrary Deprivation of Nationality, and Statelessness within the Context of Article 1A(2) of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees*, p. 23-24 (October 2014) available at http://www.refworld.org/docid/543525834.html.
[32] *See* Laura M. Bingham and Julia Harrington, *Never-Ending Story: The African Commission Evolving Through Practice in Malawi Africa Association et al. v. Mauritania*, 1 HR&ILD 7 (2013); Open Society Foundations, *IHRDA v. Mauritania*, https://www.opensocietyfoundations.org/litigation/ihrda-v-mauritania (updated 1 April 2009).
[33] African Commission on Human and Peoples' Rights, *Malawi African Association and Others v. Mauritania Comm*. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98 (2000), para. 125, available at http://www.achpr.org/files/sessions/27th/comunications/54.91-61.91-96.93-98.93-164.97_196.97-210.98/achpr27_54.91_61.91_96.93_98.93_164.97_196.97_210.98_eng.pdf; *See also* Open Society Foundations (OSF), *Citizenship Law in Africa: A Comparative Study* (January 2016), available at https://www.opensocietyfoundations.org/sites/default/files/citizenship-law-africa-third-edition-20160129.pdf.

descent.[34] The decision and an implementing law effectively made retention of legal status in the country contingent on past access to civil registration. As the IACmHR described in a report on the decision,

> "In the Dominican Republic, Haitians are identified on the basis of ethnic and phenotypical characteristics. In practice, the decision as to which children would be registered and granted Dominican nationality and, which children would not…was often based on the parents' national origin or migratory situation, skin color (especially those with a dark-colored skin), command of the Spanish language, or surname."

22. The Constitutional Court's decision marked a new phase "in a denationalization process underway in the Dominican Republic" for decades:

> "Since the 1990s, thousands of people have been refused national ID cards, necessary to work, register children, get married, open bank accounts, attend public universities and participate in many other civil activities."[35]

23. One year later, the Inter-American Court of Human Rights held that the decision and an implementing law adopted in its wake violated regional and international human rights laws safeguarding the right to nationality. The Court noted that the criteria for Dominican nationality established through the Constitutional Court's decision were retroactively applied,[36] and were discriminatory *per se* against Dominicans of Haitian descent who as a group are "disproportionately affected by the introduction of this differentiated criteria [for nationality]."[37]

Imposed citizenship and forced assimilation

Indigenous peoples in the United States

24. In 1924, the United States Congress unilaterally imposed U.S. nationality on all indigenous peoples through the Indian Citizenship Act. U.S expansion was ensured through forced inclusion, and attempts to assimilate indigenous communities.[38] At least one scholar argues that not only did this continue the U.S.'s longstanding policy of forced assimilation, but also it constituted a genocidal act, meeting the requirements under the Genocide Convention.[39] In a 2015 opinion declining to extend *jus soli* U.S. citizenship to the "unincorporated territory" of American Samoa, a U.S. appellate circuit

---

[34] Inter-American Commission on Human Rights, *Preliminary observations on the IACHR's visit to the Dominican Republic: December 2 to 6, 2013*, p. 6-11 (6 December 2013), available at http://www.oas.org/es/cidh/actividades/visitas/2013RD/Preliminary-Observations-DR-2013.pdf; Refugee Studies Centre, *Forced Migration Review No. 32 - No legal identity. Few rights. Hidden from society. Forgotten. Stateless*, p. 25 (April 2010), available at: http://www.refworld.org/docid/4c6cefb02.html.

[35] Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in the Dominican Republic*, para 76 (31 December 2015), available at http://www.oas.org/en/iachr/reports/pdfs/DominicanRepublic-2015.pdf; *see also* Inter-American Court of Human Rights, *Case of the Expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*, Judgment of 28 August 2014.

[36] *Ibid.* at para. 298.

[37] *Ibid.* at para. 318.

[38] *See* Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (1999) cited in J. Kēhaulani Kauanui, *Hawaiian Blood* 18 (2008); *see also* Rogers Brubaker, *Ethnicity without Groups* 125 (2004); Lauren Berlant, The Queen of America Goes to Washington: Essays on Sex and Citizenship, (1997) cited in Audra Simpson, *Mohawk interruptus: Political life across the borders of settler states* 18 (2014); "Assimilation of Native Americans most clearly began with the Carlisle Indian School which was established in 1879. From this point on, Indians began to be formed in the image of the 'white American citizen,' largely because, as Stacy Camp argues, a group's ability to be granted citizenship depended almost completely upon their ability to dissolve into Anglo-American culture." "How Assimilation Can Lead to Citizenship," *History 90.01: Topics in Digital History, Dartmouth* (31 October 2016), available at https://journeys.dartmouth.edu/censushistory/2016/10/31/rough-draft-assimilation-and-citizenship-among-native-americans/ (internal citations omitted).

[39] Robert B. Porter, *The Demise of the Ongwehoweh and the Rise of the Native Americans: Redressing the Genocidal Act of Forcing American Citizenship upon Indigenous Peoples*, 15 Harvard Blackletter Law Journal 107 (1999).

judge for the District of Columbia, Justine Janice Rogers Brown, reasoned that granting such a request would require "that we forcibly impose a compact of citizenship—with its concomitant rights, obligations, and implications for cultural identity—on a distinct and unincorporated territory of people." The opinion deems "forcibly impos[ing]" citizenship as incompatible with "modern standards."[40]

Minority groups in interwar Europe

25. As the protection of minorities was one of Woodrow Wilson's Fourteen Points, a number of states signed so-called "Minority Treaties" at the Paris Peace Conference which aimed for the protection of minorities "under the guarantee of the League of Nations."[41] Hannah Arendt argued that these treaties were actually enacted with the intent, in some cases open, of their authors to assimilate rather than to protect minorities, through the imposition of legal nationality, depoliticization of the concept of a "minority," and by creating the fiction of equality.[42]

Germanization in Nazi occupied territory

26. A policy under the Nazi occupation of territories in Europe included the imposition of German nationality to the population of occupied territories, and through it subject the population to forced conscription and forced labor.[43]

> "Individuals who were forced to accept such citizenship or upon whom such citizenship was conferred by decree became amenable to military conscription, service in the armed forces, and other obligations of citizenship. Failure to fulfil these obligations resulted in imprisonment or death; the forced Germanization constituted the basis for such punishment. Those classes of persons deemed ineligible and those individuals who refused Germanization were deported to forced labor, confined in concentration camps, and in many instances liquidated."[44]

27. The Permanent Military Tribunal at Strasbourg and the U.S. Military Tribunal at Nuremberg sentenced Robert Wagner[45] and Gottlob Berger[46] for actions related to Germanization of the population in the occupied territories. These cases included the imposition of nationality as an objective element of crimes against humanity.[47]

---

[40] *Tuaua v. United States*, 788 F.3d 300, 311 (D.C. Cir. 2015), *cert. denied* 136 S. Ct. 2461 (2016). The *Tuaua* decision relies on U.S. case law on citizenship in U.S. territories that employs racialized classifications and has therefore been sharply criticized.

[41] Anna Mejknecht, "Minority Protection System Between World War I and World War II," *Oxford Public International Law*, para. 19 (October 2010), http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e848; Harris Mylonas, *The Politics of Nation Building* 7 (2012); Alexander Orakhelashvili (Ed.), *Research Handbook on the Theory and History of International Law* 487 (2011).

[42] Hannah Arendt, *The Origins of Totalitarianism* 272 n. 10 (1968).

[43] *See Trials of war criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, United States Military Tribunal at Nuremberg, paras. 44, 50 (October 1946-April 1949), available at https://archive.org/stream/TrialsOfWarCriminalsBeforeTheNurembergMilitaryTribunalsUnderControlCouncil/Trials%20of%20war%20criminals%20before%20the%20Nuremberg%20Military%20Tribunals%20under%20Control%20Council%20law%20no.%2010.%20-%20Nuremberg,%20October%201946-%20April,%201949%20Volume%2012_djvu.txt; *see* Rogers Brubaker, *Ethnicity without Groups* 118 (2004); Rogers Brubaker, *Citizenship and Nationhood in France and Germany* 165-168 (1992).

[44] *Trials of war criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, United States Military Tribunal at Nuremberg, paras. 40 (October 1946-April 1949).

[45] *Trial of Robert Wagner, Gauleiter and Head of the Civil Government to Alsace during the Occupation, and Six Others*, Permanent Military Tribunal at Strasbourg (23 April-3 May 1946) and Court of Appeal (24 July 1946).

[46] *Weizsaecker and Other (Ministries Trial)*, United States Military Tribunal at Nuremberg, p. 357-358 (14 April 1949).

[47] *See* Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, Article 45, 18 October 1907, 36 Stat. 2277 (1907).

Ethnic Koreans in Japan

28. The presence of ethnic Koreans in Japan is directly related to Japan's occupation of Korea (1910 to 1945). Koreans were brought to Japan throughout the 1930s and 1940s; during the occupation period Koreans were citizens of Japan, but they subsequently "lost Japanese citizenship after the Second World War."[48]At the end of World War II, roughly 2.4 million ethnic Koreans lived in Japan.

> "Many found themselves left stateless by the 1950s, with their Japanese nationality annulled but unable or unwilling to leave. In 1965, Koreans who came before and during the war were finally given the opportunity to naturalize, and in 1991 their descendants were granted status as 'special permanent residents' and the right to vote in local government elections."[49]

29. While most returned shortly thereafter, from 1950 to present their numbers have stayed around roughly 600,000.[50] Currently, "Zainichi Koreans" (from the Japanese word meaning "staying in Japan") are permanent residents of Japan of Korean ethnicity.[51] Zainichi Koreans face a range of discrimination, including employment discrimination. Many are pressured into adopting Japanese nationality to avoid discrimination.[52]

Western Sahara

30. The history of Western Sahara showcases the complexities associated with assigning nationality in regions where statehood itself has fueled decades of conflict. Sahrawi means "people of the desert" in Arabic, and the term that refers to various groups living on or originating from the territory of Western Sahara. Western Sahara, bordered by Morocco, Mauritania and Algeria, was administered by Spain until 1976. Both Morocco and Mauritania claim the territory, and both claims are opposed by the *Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro* (Polisario Front). The United Nations considers Western Sahara an occupied territory, and until today

> "the people of Western Sahara continue to be trapped by the lack of a definition of their citizenship status.…According to Moroccan law, those Saharans living in the area under Moroccan control are Moroccan nationals, thus eligible for passports and other official Moroccan documents.…Another group (of unknown size) of Western Saharans obtained Mauritian nationality, and the remainder (notably those living in refugee camps and the territories under [Sahrawi Arab Democratic Republic (SADR)]) obtained identity documents from the authorities of the SADR, which permit them to travel to few countries recognizing the self-proclaimed Sahrawi Republic (which include Mauritania). Finally, and in special situations, the Algerian authorities issue short term travel documents to Saharan refugees needing to travel to countries that do not recognize the SADR."[53]

---

[48] Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Japan: Koreans* (2008), available at http://www.refworld.org/docid/49749cfd41.html.

[49] Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2014 - Case study: The disturbing rise of hate speech against Koreans in Japan* (3 July 2014), available at http://www.refworld.org/docid/53ba8db85.html.

[50] Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Japan: Koreans* (2008), available at http://www.refworld.org/docid/49749cfd41.html.

[51] *Ibid*.

[52] UN Human Rights Council, *Summary: Universal Periodic Review, Japan*, para. 43, U.N. Doc. A/HRC/WG.6/14/JPN/3 (20 July 2012); Kanako Takahara, "Koreans Here Inclined to Assimilate to Dodge Racism," *Japan Times* (6 August 2005), https://www.japantimes.co.jp/news/2005/08/06/national/koreans-here-inclined-to-assimilate-to-dodge-racism/.

[53] Elspeth Guild, Cristina Gortázar Rotaeche and Dora Kostakopoulou, *The Reconceptualization of European Union Citizenship* 160-161 (2014) *cited in* European Asylum Support Office (EASO), *Sahrawi citizenship/nationality in Western Sahara, Morocco and Algeria*, p. 4 (16 November 2015), available at http://www.refworld.org/docid/577cc8684.html; *see also*

31. International law dictates that Morocco cannot impose nationality on the Sahrawis because it does not exert sovereignty over Western Sahara.[54]

B. The Crimean context and 2014 automatic naturalization

32. Mass protests in Ukraine began in 2013, spurred by the political context in Ukraine and in particular the Ukrainian government's 21 November 2013 decision not to sign an Association Agreement with EU. Ultimately, what became known as the "Maidan" protest movement, after Kyiv's Independence Square where protesters gathered, led to violent clashes as unrest spread and the protest movement "diversified."[55] On 22 February 2014, the Ukrainian parliament removed President Yanukovych from office. In late February 2014, in the eastern part of Ukraine including in Simferopol, the capital of the Autonomous Republic of Ukraine, protests erupted against the new Ukrainian government. With participation of Russian Federation military personnel, "mostly uniformed individuals wearing no identifying insignia seized control of government buildings in Simferopol, including the Crimean parliament building."[56] On 16 March 2014 a referendum was held purportedly approving the annexation of Crimea by the Russian Federation.

Imposition of the Russian Federation's legal system

33. On 18 March 2014, two days after the referendum on annexation, the Russian Federation and the "Republic of Crimea" signed a *Treaty on the Accession of the Republic of Crimea to the Russian Federation* ("*Treaty on Accession*") in Moscow, annexing the peninsula into the Russian Federation.[57] The *Treaty on Accession* stated that the Russian legal framework must be fully implemented in Crimea by 1 January 015.[58]

34. As emphasized throughout this report, these actions contravene international humanitarian law. Article 43 of the Hague Regulations (1907) provides that an "occupying power must respect the laws in force in the occupied territory respect the laws in force in the occupied territory, unless they constitute a threat to its security or an obstacle to the application of the Fourth Geneva Convention."[59] Article 27 of the Fourth Geneva Convention (1949), moreover, explicitly prohibits discrimination by an occupying power:

> "Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion."[60]

Elena Fiddian-Qasmiyeh, *Protracted Sahrawi displacement: Challenges and opportunities beyond encampment*, Refugee Studies Centre (May 2011), available at http://www.refworld.org/docid/4e03287b2.html.

[54] *See* UNHCR, *Expert Meeting: The Concept of Statelessness under International Law, Summary Conclusions, Prato, Italy,* para. 25 (27-28 May 2010), available at http://www.unhcr.org/en-us/protection/statelessness/4cb2fe326/expert-meeting-concept-stateless-persons-under-international-law-summary.html (raising the obligations of third states where purported statehood may come about through violations of jus cogens norms, including the prohibition on the use of force).

[55] Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 84 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

[56] *Ibid.* at para. 86.

[57] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* paras. 5, 26, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[58] *Ibid.* at para. 73.

[59] *Ibid.* at para. 43.

[60] Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Articles 4, 27, 12 August 1949, 75 U.N.T.S. 287 (1949); *see also Prosecutor v. Aleksovski*, Case No. IT-95-14/1, Judgment, paras. 151-52 (Mar. 24, 2000) (construing the nationality of a civilian population under the Convention so as to afford broad protection, as opposed to applying a strict reading of nationality laws at play).

35. In practice, the supplanting of Ukrainian law with the Russian Federation's legal system meant that both frameworks coexisted, "causing confusion for legal practitioners as well as legal uncertainty for rights-holders."[61]

36. Since March 2014, 1,557 new laws have been imposed.[62] According to human rights monitoring conducted by the Council of Europe "the general perception in the society [is] that legislation became more restrictive and had an impact on fundamental rights and freedoms."[63]

37. Russian laws have also been retroactively applied to acts and events that took place in Crimea prior to occupation and the application of Russian law. As reported by OHCHR, individuals have been charged and several convicted "in disregard of the principle of non-retroactive application of criminal law enshrined in international human rights and humanitarian law treaties."[64] For instance, the deputy chair of the Mejlis,[65] Akhtem Chyigoz, was convicted under Russian law for organizing mass protests on 26 February 2014 and was sentenced to an eight-year prison term.[66] Crimean Tatar activist Eskender Kantemirov was arrested on the same charges.[67] These actions have been widely condemned as contrary to international law.

Specific groups subject to targeted abuse under occupation

38. This report will focus on the treatment of two specific ethnic groups: Crimean Tatars and ethnic Ukrainians. These are the two largest non-Russian ethnic groups in the occupied peninsula.[68] In both cases, a clear pattern of coercive and occasionally violent suppression of ethnic identity has emerged under Russian occupation.

39. The rights of these two ethnic groups are also a particular focus of a pending case before the International Court of Justice (ICJ), taken by Ukraine against the Russian Federation, covering alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). In its application, Ukraine described automatic naturalization as a component in a broader campaign of "cultural erasure" of non-Russian identity in Ukraine:

> "The result has been a campaign to erase the distinct cultures of ethnic Ukrainian and Tatar people in Crimea, carried out through a broad-based pattern of discriminatory acts. The leaders and institutions of these communities have been persecuted and many of their leaders have been forced into exile outside Crimea. These communities have faced abductions, murders, and arbitrary searches and detentions. Their languages have come under assault. *Those who remained in Crimea have had automatic Russian*

[61] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 73, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[62] *See* Council of Europe, Parliamentary Assembly, *Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea,* para. 16 (11 April 2016), available at https://rm.coe.int/16806421 1f.

[63] *Ibid.* at para. 17.

[64] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 77, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (Articles 64, 65, 67, and 70 of the Geneva Convention IV and Article 15 of the International Covenant on Civil and Political Rights).

[65] *See* paras. 50-52. The Mejlis is a self-governing, "representative and executive body of the Crimean Tatar people." Official Website of the Crimean Tatar People, *General information about Mejlis*, http://qtmm.org/en/general-information-about-mejlis.

[66] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 77, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[67] *Written statement submitted by the Society for Threatened Peoples*, p. 2, U.N. Doc. A/HRC/28/NGO/97 (Feb. 23, 2015).

[68] Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation,* p. 7 (2016), available at http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf.

citizenship forced upon them. This deliberate campaign of cultural erasure, beginning with the invasion and referendum and continuing to this day, violates the International Convention on the Elimination of All Forms of Racial Discrimination."[69]

40. In this section, we briefly outline the history and characteristics of each group as relevant to the discussion that follows. These descriptions are provided with the understanding that there are innumerable approaches, cutting across different academic disciplines, to describing, measuring and studying groups in any political space, and acute challenges associated with any study of group identity in societies engulfed in military conflict. The aim of the descriptions is not to provide a definitive thesis of group identity in terms of self-identification, for example, but rather to trace relevant factors associated with group identities for analyzing the *Russian authorities' actions* as violations of international human rights laws.

Crimean Tatars

41. Crimean Tatars comprise only 0.5% of the population living in Ukraine, but are "concentrated geographically with 98% living in the Crimean peninsula, which is viewed as their ethnic homeland."[70] According to the last credible census, in 2001, Crimean Tatars make up about 12 percent of the Crimean population.[71]

42. A paper published by the European Parliament's Committee on Human Rights reported:

> "Crimean Tatars have found themselves in an unsafe position because, in addition to being a vulnerable ethnic minority, they are indigenous people of Crimea, with no kin-state to seek protection from. They have strong memories of the forcible deportation by the Soviet Union and of the earlier Russian colonization of Crimea….The Russian annexation of Crimea has evoked fears among Crimean Tatars of new persecutions, forced assimilation, or forced emigration."[72]

43. As a recent report by the Unrepresented Nations and Peoples Organization (UNPO) highlights, a generalized sense has emerged that the past horrors visited upon the Crimean Tatars may be resurfacing:

> "Many people are drawing parallels between the current Russian regime in Crimea and the Soviet Union under Stalin with regards to its treatment of and tactics used against Crimean Tatars. Enforced disappearances, abduction, forced exile and systematic intimidation have been used against Tatars in a bid to destabilise their position on the Peninsula."[73]

44. The following paragraphs provide a brief account of these historical events.

45. On 8 April 1783, imperial Russia annexed the Crimean Khanate, "which resulted in the emigration and deportation of the local populations of Crimean Tatars and Greeks, while the peninsula was colonized mainly by Russians."[74]

---

[69] Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), para. 5 (16 January 2017), available at http://www.icj-cij.org/files/case-related/166/19314.pdf.

[70] Holley E. Hansen and Vicki L. Hesli, *National Identity: Civic, Ethnic, Hybrid, and Atomised Individuals*, 61 Europe-Asia Studies 1, 4-5 (2010).

[71] *See* All-Ukrainian Population Census 2001, *National Structure of Population in the Autonomous Republic of Crimea*, http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea/.

[72] Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation,* p. 7 (2016), available at http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf.

[73] The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 10 (October 2017), available at http://unpo.org/downloads/2380.pdf.

[74] Agnia Grigas, *Beyond Crimea: The New Russian Empire* 101 (2016).

46. In October 1921, the Crimean Autonomous Soviet Socialist Republic (ASSR) was established by Vladimir Lenin, but just a few years later, in 1927, Crimean leaders were arrested and executed as "Bourgeois nationalists."[75] Mass deportations followed, resulting in many deaths.[76]

47. In the first half of 1944, Crimean Tatars again came under brutal attack, when Soviet leader Joseph Stalin accused the population of approximately 200,000 Crimean Tatars of collaboration with Germany during World War II.[77] The NKVD (Soviet Secret Police) published an order "On Measures to Clean the Territory of the Crimean Autonomous Republic of Anti-Soviet Elements" in May 1944 that paved the way for mass deportations.[78]

> "In 1944, on the night of 18 May Stalin deported the remaining Crimean Tatars to Uzbekistan, other Central Asian republics, and Siberia. Herded to railway stations and packed into cattle cars, many of the Tatars died during the journey, while starvation and disease also took their toll in the resettlement camps. As noted by Lilia Muslimova, aide to the Crimean Tatar leader Mustafa Jemilev, 'this tragic event resulted in the deaths of 46% of the Crimean Tatar population and achieved what many historians consider to be the Russian desired final solution— a Crimea without Crimean Tatars.' Muslimova adds that 'in the twenty-first century Crimean Tatars are once again struggling for their dignity and homeland because of the Crimea's brutal and illegal occupation by the Russian Federation.'"[79]

48. The ASSR was officially dissolved in 1945.[80]

49. In 1956, under Nikita Khrushchev's de-Stalinization program, Crimean Tatars regained civil rights, "but they were not allowed to return to Crimea, which had been incorporated into the Ukrainian S.S.R. in 1954. It was not until the early 1990s that many Crimean Tatars, taking advantage of the breakup of the Soviet central government's authority, began returning to settle in Crimea after nearly five decades of internal exile. In the early 21st century, they numbered about 250,000."[81]

50. On 26 June 1991, in Simferopol, the Crimean Tatar Qurultay (Parliament) was convened for the first time since 1917.[82] The Crimean Tatar National Mejlis, an executive body, was formed.[83]

51. Under the 2014 occupation following annexation, Crimean Tatars have been particularly targeted, "especially those with links to the Mejlis, which boycotted the March 2014 referendum on annexation and initiated public protests in favor of Crimea remaining a part of Ukraine."[84]

---

[75] The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 5 (October 2017), available at http://unpo.org/downloads/2380.pdf.

[76] *Ibid.*

[77] *Ibid.*

[78] *Ibid.*

[79] Agnia Grigas, *Beyond Crimea: The New Russian Empire* 101 (2016) (internal citations omitted).

[80] Encyclopedia Britannica, *Tatar People*, https://www.britannica.com/topic/Tatar.

[81] *Ibid.*

[82] The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 7 (October 2017), available at http://unpo.org/downloads/2380.pdf.

[83] *Ibid.*

[84] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 12, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

52. On 29 September 2016, Russia banned the Mejlis in Crimea, depriving the Crimean Tatars of political representation and stigmatizing the institution as an extremist organization.[85] Some representatives have been prosecuted as terrorists for continuing activities, as discussed below (paras. 149-154).

Ethnic Ukrainians and Ukrainian national identity in Crimea

53. Ukrainians are not generally described as a visible ethnic group in Crimea, but the Ukrainian national identity is, as argued below (paras. 182-184), a primary motivating factor in Russia's criminal, humanitarian and human rights violations in Crimea since 2014. *Presumed* ethnic or national identity is relatively easily ascribed in Crimea: the Ukrainian language is easily distinguishable from Russian, first and last names are easily identifiable as non-Russian, and Ukrainians attend different churches than Russians.

54. Ukrainian "national identity" encompasses both ethnic and political or civic dimensions, which cannot be neatly separated in terms of the role each dimension plays in propelling Russia's actions in Crimea. The ethnic and civic dimensions of Ukrainian national identity are particularly fluid for those born in Crimea after the fall of the Soviet Union, and even more intertwined today *because of* the ethno-political character of forced naturalization itself.[86]

55. "In the wake of the collapse of the USSR, the Crimea has been confronted with a multi-tiered crisis in its identity. Politically, the Crimean population is struggling to determine how its new political community is to be defined, whether in civic or ethnic terms."[87]

56. Many of the actions taken by modern Russian actors in Crimea have deep historical antecedents. Imperial Russia drew a reputation as "the prison house of nations" – a reference to "subtle and not so subtle pressures to Russify" applied to Ukrainians and other peoples "aspir[ing] to collective freedom."[88] Hallmarks of the Russian Empire's long-running Russification project were the banning of languages in public spaces, attacks on religious institutions and violent suppression of national liberation movements.[89]

57. In the Soviet era, Ukrainians comprised a "significant national minority" within the polyethnic USSR. Writing in 1975, Richard Pipes described Ukrainian national identity:

> "Ukrainians…are racially and linguistically close to Great Russians, and share with them the same religion. If nevertheless they are regarded as distinct nationalities, it is because for a period of five centuries (c. 1300 to c. 1800) they lived under Lithuanian and Polish rule, during which time they came under strong Western influence channelled through Poland and its Catholic church."[90]

---

[85] *See* The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 8 (October 2017), available at http://unpo.org/downloads/2380.pdf.

[86] Mykola Riabchuk, Ambivalence or Ambiguity? Why is Ukraine Trapped between East and West?" *in Ukraine, The EU and Russia: History, Culture and International Relations* 83-84 (2016).

[87] Jane I. Dawson, "Ethnicity, Ideology and Geopolitics in Crimea," 30(4) *Communist and Post-Communist Studies* 427-444 (1997).

[88] Azar Gat with Alexander Yakobson, *Nations: The Long History and Deep Roots of Political Ethnicity and Nationalism* 179 (2013).

[89] "In the nineteenth century the Ukrainian nation faced aggressive Russification policies from Moscow, including closure of its main institution of higher learning, the Kiev-Mohyla Academy, suppression of its culture, prohibition from publishing books and teaching in Ukrainian, and even banning of building churches in the Ukrainian Baroque style." Agnia Grigas, *Beyond Crimea: The New Russian Empire* 101 (2016).

[90] Richard Pipes, "Reflections on the Nationality Problems in the Soviet Union," *in* Nathan Glazer and Daniel P. Moynihan (eds.), *Ethnicity: Theory and Experience* 457 (1975).

58. During this period, the Ukrainian national identity within the USSR was consistently asserted and resistant to assimilation, often eliciting violent suppression:

> "The Ukrainians have been especially active in demanding by means of underground publications full rights for themselves and the other ethnic groups inhabiting the Soviet Union. In response, Soviet security organs have carried out in the past decade massive arrests and deportations of Ukrainian intellectuals. Because of the greater interest of Western media in Russian and Jewish dissidents, the facts bearing on these repressions have not been adequately reported."[91]

59. Cultural and political struggles after Ukraine's absorption within imperial Russia hinged on dueling interpretations of Ukrainian national identity in relation to Russia's mythological past, often drawing on (or rejecting) tropes of ethnic similarities ("sameness").[92] Vladimir Putin, for example, famously remarked to then U.S. President George W. Bush at a 2008 NATO summit that Ukrainians are "not a people," expressing the Russian nationalist view that Ukraine and Ukrainians are part of – and have always been part of – a Russian-dominated Eurasia.[93]

60. *Ethnic* Ukrainian identity in present-day Crimea is, in short, part of a "multi-tiered" process of self-definition that is inextricably welded to civic/political allegiances, bound up in the politics of control over a hotly contested geostrategic space.[94]

> "The [ongoing] war, as a Russophone scholar from the border city of Kharkiv aptly remarks, 'catalysed the creation of a political nation. Ukrainian identity, which for so long had been associated with ethnicity, language and historical memory, suddenly has become territorial and political and thus inclusive […]' (citing Zhurzhenko, 2014)."[95]

61. Attacks on ethnic Ukrainians, flowing from the official Russian position which denies altogether that Ukrainians are "a people," cannot, in turn, be fully disaggregated from the Russian project of eliminating a more inclusive, civic Ukrainian national identity, and reincorporating Crimea within the Russian state. In this way, Russia's campaign in Crimea – combining all its political, military and propagandist tactics – seeks to reinstate a nostalgic, ethnic-based sense of allegiance to Russia, entailing the elimination of *both* the idea of a separate Ukrainian "people" and the idea of a civic Ukrainian national identity.

> "The remarkable development of an overarching, civic identity in Ukraine, based primarily on common values rather than ethnic or linguistic markers, poses a puzzle for Russian propagandists who still promote [the] "*Russkii mir*" [Russian world] in terms of a common history and religion, language and culture, blood and soil, and still strive to 'protect Russian-speaking compatriots' in Ukraine and elsewhere."[96]

62. In the course of Russia's campaign, when ethnic Russian compatriotism (see para. 120-124, below) proved insufficient as a tool to galvanize support for territorial unification of

---

[91] *Ibid.* at p. 461.

[92] Mykola Riabchuk, Ambivalence or Ambiguity? Why is Ukraine Trapped between East and West?" *in Ukraine, The EU and Russia: History, Culture and International Relations* 83-84 (2016).

[93] *Ibid.* ("the 2008 Bucharest NATO summit where Putin told then President George W. Bush that Ukrainians are not a 'people' and when he made his first territorial claims on what he later termed 'NewRussia', or *Novorossia* (southern and eastern Ukraine).")

[94] Jane I. Dawson, "Ethnicity, Ideology and Geopolitics in Crimea," 30(4) *Communist and Post-Communist Studies* 427-444 (1997).

[95] Mykola Riabchuk, Ambivalence or Ambiguity? Why is Ukraine Trapped between East and West?" in Ukraine, The EU and Russia: History, Culture and International Relations 83-84 (2016).

[96] Mykola Riabchuk, Ambivalence or Ambiguity? Why is Ukraine Trapped between East and West?" *in Ukraine, The EU and Russia: History, Culture and International Relations* 83-84 (2016).

Crimea with Russia, full and automatic Russian citizenship was deployed alongside forcible territorial occupation.

63. **Specific infringements.** The automatic citizenship regime is addressed in the following section of the report, after brief descriptions of the actions taken by Russia since 2014 that directly target traditional aspects of Ukrainian ethnic identity: language rights, religious institutions and cultural institutions and symbols.

64. *Language rights.* Ukrainians have turned into a de facto minority in Crimea and their rights, especially linguistic, were immediately affected. The number of students receiving education in the Ukrainian language has drastically decreased by 97 percent since the occupation.[97] The CERD Committee expressed concern and recommended that Russia "take effective measures to ensure that the Ukrainian language is used and studied without interference."[98] The Russian Federation is currently subject to a preliminary measures order by the International Court of Justice directing it to "[e]nsure the availability of education in the Ukrainian language."[99]

65. *Religious institutions and Ukrainian national identity.* It is important to explain the historical and cultural implications of restrictions on the operation of the Ukrainian Orthodox Church. Ukrainian ethnicity has a complex historical, political and cultural character, as explained above. Similarly, appearances may deceive when it comes to suppression of the Ukrainian Orthodox Church, which from a universalist religious perspective may seem only superficially distinct from the Russian Orthodox Church. From medieval times until today, however, national identities in Eastern Europe have been "complemented and reinforced" by religious identities:

> "Most of the people of Eastern Europe achieved a sense of identity and some political expression of that identity in medieval times, long before the Age of Nationalism . . . Religion in Eastern Europe served a nation-building role and it acted as a surrogate state for people who had lost political independence . . . The Church has been literally militantly involved in movements for ethnic survival and wars for national independence in Eastern Europe from medieval times to the present."[100]

66. The Ukrainian Orthodox Church, in keeping with this tradition of interconnectedness of religious and national identity, supports independent Ukraine and took a public stance against occupation.

67. As noted by OHCHR, since occupation "freedom of religion or belief in Crimea has been jeopardized by a series of incidents targeting representatives of minority confessions and religious facilities belonging to them."[101]

68. After annexation, the Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) elected not to re-register the Russian Federation and therefore lacks legal recognition under Russian law.[102] According to OHCHR, "[s]ince 2014, five UOC-KP churches have been either seized by paramilitary groups or closed due to non-renewal of their property

---

[97] OHCHR, *Report on the human rights situation in Ukraine*, para. 13, UN Doc. A/HRC/37/CRP.1 (March 15, 2018).
[98] Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 20, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017).

[99] Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all forms of racial discrimination (Ukraine v. Russian Federation) (Request for the Indication of Provisional Measures Order), para. 106(1)(b) (19 April 2017), available at http://www.icj-cij.org/files/case-related/166/19394.pdf.

[100] Azar Gat, *Nations: The Long History and Deep Roots of Political Ethnicity and Nationalism* 222 (2013).

[101] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 137, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[102] *Ibid.* at para 145.

leases."[103] Another UOC-KP church was stormed by officials in August 2017 and ordered the vacancy of the office space and shop of the church's premises pursuant to a Russian court judgment.[104] As of September 2017, church services continued but with fewer attendees.[105]

69. The UN Human Rights Committee expressed concern regarding "[r]eports of violations of freedom of religion and belief on the territory of Crimea, such as intimidation and harassment of religious communities, including attacks on the Ukrainian Orthodox Church..."[106]

70. *Cultural institutions and symbols.* Room for public expression of Ukrainian culture and identity has contracted significantly under occupation. Those celebrating Ukrainian symbols, dates or historic figures receive court sanctions or warnings for violating public order or conducting unauthorized rallies.[107] For instance, in March 2015, four pro-Ukrainian activists were sentenced to corrective labor for displaying a Ukrainian flag with the inscription "Crimea is Ukraine" at a rally commemorating a national poet of Ukraine.[108]

71. Institutions celebrating Ukrainian culture and traditions have been closed. In February 2015, for example, the Museum of Ukrainian *Vyshyvanka*, a traditional Ukrainian embroidery was shut down, and books by Ukrainians were removed from the Simferopol Franko Library.[109] Since 2014, the Ukrainian Cultural Centre in Simferopol has been under surveillance.[110] Crimean authorities routinely call members for so-called "informal talks" and the Centre's activities—which include "paying tribute to Ukrainian literary, political or historic figures" are disrupted and some prohibited.[111] Unable to pay rent, the Centre closed in May 2017, and following threats and information that he would be arrested by the FSB, the director fled to mainland Ukraine.[112]

Automatic naturalization and its implementation

72. The following sections explain the mechanics of automatic naturalization and its purported legal underpinnings, enacted in the context of unlawful military occupation of Crimea. In order to undertake a complete analysis of the human rights implications of automatic naturalization in Crimea, we examine its application and individual human rights impacts in practice. Nothing in the description should be interpreted to suggest that the actions recounted are recognized as lawful under applicable international law, including most importantly the law of occupation. Throughout this section, for the purposes of context, we also highlight specific actions that are regarded to be in violation of international humanitarian law. This commentary should be understood as illustrative rather than exhaustive in its analysis of the application of international humanitarian law, which is not the main focus of this report.

---

[103] *Ibid.*

[104] *Ibid.*

[105] *Ibid.*

[106] Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 23(f), U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015).

[107] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 17, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[108] *Ibid.* at para 184.

[109] *Ibid.* at para 185.

[110] *Ibid.* at para 169.

[111] *Ibid.* at 169.

[112] *Ibid.*

73. The 18 March 2014 *Treaty on Accession* "had an immediate consequence for the status of residents of Crimea and rights attached to it."[113] The "treaty" automatically recognized all permanent residents in Crimea as Russian citizens.[114] The only way to "exempt" oneself (and one's minor child) was to affirmatively inform the *de facto* authorities, by 18 April 2014, of the intention to *opt out* of Russian citizenship.[115]

74. The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM) reported:

> "Under Article 5 of the Russian 'treaty' on incorporating Crimea into the Russian Federation, Ukrainian nationals permanently living in Crimea and Sevastopol are to be considered Russian nationals as of the date when the treaty enters in force, which under Article 1 is the date of the signature of the treaty, effectively 18 March 2014. The same Article gives the residents of Crimea and Sevastopol one month to 'choose' between Russian and other citizenships. This 'choice' appears to reflect the 'right of optation' enshrined in Article 17 of the Russian Citizenship Law, which provides that: 'When a change occurs in the State Border of the Russian Federation under an international treaty of the Russian Federation, the persons residing in the territory which switched its state shall have a right to choose citizenship (right of optation) in the manner and within the term established by a relevant international treaty of the Russian Federation.'"[116]

75. Russian citizenship or Crimean permanent residence were only open to established permanent residents in Crimea as of 18 March 2014, which automatically excluded those without proof of Crimean permanent residence—i.e., a residence registration stamp in the passport or a court's decision proving residence (see paras. 105-108 for further information on residence registration).[117]

76. On 21 March 2014, Russian enacted Federal Constitutional Law No. 6-FKZ "On Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities of the Republic of Crimean and the City of Federal Importance Sevastopol" which, like the *Treaty on Accession*, implies that automatic citizenship effectively "replaces" Ukrainian citizenship unless residents affirmatively take steps to "retain" their "previous" citizenship. In effect, law 6-FKZ and the provisions on dual nationality in existing Russian citizenship law, meant that for those acquiring Russian citizenship automatically under the *Treaty on Accession*, dual Russian-Ukrainian citizenship was not presented as a legally viable option in Crimea.

77. Automatic naturalization, in other words, also entailed the practical invalidation of Ukrainian citizenship under occupation. The law came into force on 1 April 2014,

---

[113] *Ibid.* at para 55.

[114] *Ibid.*

[115] *Ibid.*; The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 37 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[116] The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Human Rights Assessment Mission in Ukraine: Human Rights and Minority Rights Situation*, p. 117 (May 12, 2014), available at https://www.osce.org/odihr/118476?download=true.

[117] The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 37 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true; OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 55, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

leaving those who "chose" to opt out of Russian citizenship and "retain" Ukrainian citizenship just 18 days to do so.[118]

The "opt out" process

78. Article 4 of Law 6-FKZ states:

> "[F]rom the date of the admitting to the Russian Federation the Republic of Crimea [18 March 2014] and establishing within the Russian Federation the new constituent entities, Ukrainian nationals and stateless persons who had been permanently residing in the Republic of Crimea and the City of Federal Importance Sevastopol were recognized as nationals of the Russian Federation, except for persons who within one month thereafter declared their willingness to retain their and (or) their minor children's other nationality or remain stateless."

79. In order to exercise the option to "opt out" of Russian citizenship, residents who were Ukrainian citizens before occupation had to take proactive steps to confirm such citizenship within the prescribed period (effectively 18 days) or remain Russian citizens by default.[119]

80. The process available to Ukrainian citizens who wished to retain their citizenship was fraught with defects.[120] Some could not exercise their "right to retain" Ukrainian citizenship and Russian citizenship was imposed upon them.[121] Some endure harassment and intimidation for not wanting Russian citizenship.[122] In this environment, the imposition of Russian citizenship was deemed "coercive" by human rights groups.[123]

> "Deficiencies in implementation "made it impossible to make an informed choice about whether to accept Russian citizenship. NGOs working on these issues observed that the majority of Crimeans did not even attempt to make a choice and acquired the status of Russian citizens 'by default' at the end of the 18-day period."[124]

81. The Russian Federal Migration Service (FMS) reported that after 18 April 2014, 3,427 permanent residents of Crimea successfully opted out of automatic Russian citizenship.[125] As of May 2015, the High Commissioner for Human Rights of the Russian Federation (Ombudsperson) reported that that approximately 100,000 persons living in Crimea (4 percent of the population) did not hold Russian citizenship.[126]

82. Groups monitoring the situation in Crimea, including the UN Office of the High Commissioner for Human Rights (OHCHR) and Human Rights Watch, have cited

---

[118] *See* Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

[119] *See* Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, p. 29 (2014), available at https://www.hrw.org/sites/default/files/report_pdf/russia1114web.pdf.

[120] *Ibid*. at p. 27.

[121] *Ibid.*

[122] *Ibid.*

[123] *Ibid.*

[124] Sergei Zayets, *Enforced citizenship in Crimea*, European Human Rights Bulletin p. 5 (Winter 2017), available at http://ehrac.org.uk/wp-content/uploads/2018/01/EHRAC-Winter-2017-WEB.pdf ("RCHR data indicates a large number of people in Crimea, and those who left the peninsula, did not submit declarations of their intention not to acquire Russian citizenship and did not apply for Russian passports. According to Russian law, they are also regarded as citizens of the Russian Federation despite their lack of documents." *Ibid.* at n. 5),

[125] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 59, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[126] *Ibid.* at para. 56.

multiple obstacles in the practical exercise of the opt out process, including the limited time period during which the option applied, the limited information available about the procedure and the limited number of locations where individuals could declare their intention to opt out:

- The procedure was only effectively available for 18 days. The FMS did not provide instructions on the refusal procedure until 1 April 2014.[127]
- Information regarding FMS locations for opting out was not available until 4 April 2014.[128]
- From 4 through 9 April 2014, only two locations in Crimea were available to formally apply to renounce Russian citizenship, and a total of nine from 10 through 18 April.[129] Since these sites were also dually designated for those seeking to acquire Russian passports, queues of thousands of individuals resulted and those applying to reject Russian citizenship were intimidated and harassed.[130]
- These long lines surpassed the daily capacity of these offices and left some people unable to reach to the front of the line before the deadline expired.[131]
- Offices were difficult to access for Crimean residents living in the countryside.[132]
- On the other hand, Crimean residents who wished to receive *Russian* passports could do so either by mail or in-person at 160 designated offices around Crimea or any Russian consulate or embassy.[133]
- Those who were outside Crimea "during [the] one-month period had no clear recourse for declaring Ukrainian citizenship within the deadline due to conflicting information provided by the authorities on whether Russian embassies and consulates around the

[127] OHCHR, *Report on the human rights situation in Ukraine 15 May 2014*, para. 127 (15 May 2014), available at http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf; The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 38 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[128] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 58, UN Doc. A/HRC/36/CRP.3 (25 September 2017); The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 38 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[129] *See* The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 38 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true; *see also* OHCHR, *Report on the human rights situation in Ukraine 15 May 2014*, para. 127 (15 May 2014), available at http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf.

[130] *See* The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 39 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true; *see also* Council of Europe, Commissioner for Human Rights, *Report of Nils Muižnieks following his Mission in Kyiv, Moscow and Crimea from 7 To 12 September 2014,* para. 48 (27 October 2014), available at http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/102_muiznieksreport_/102_muiznieksreport_en.pdf.

[131] Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, p. 29-30 (2014), available at https://www.hrw.org/sites/default/files/report_pdf/russia1114web.pdf.

[132] *Ibid.* at p. 29.

[133] *Ibid.* at p. 30.

world accepted such applications."[134] Several cases were reported in which Ukrainian citizens who were abroad were unable to retain their Ukrainian citizenship because Russian consulates would not applications, "citing lack of clear instructions and absence of forms to process the requests."[135]

- Several of the requirements in the procedure for refusing Russian citizenship evolved over a short period of time, such as the requirement to make the application in person, whither both parents needed to be present to apply/reject on behalf of minors.[136]

83. In an environment of intense legal uncertainty, political upheaval, and physical insecurity, the circumstances were extremely dissuasive for anyone wishing to "opt out" of Russian citizenship. The Commissioner for Human Rights of the Republic of Crimea noted that an "ordinary person is lost" in the web of new rules and procedures, not to mention the coercive nature of the choice itself in terms of its legal implications. According to Ukrainian human rights monitoring groups:

> "[A]ny option of choice, which had to be made by the Crimeans, led to a deterioration in their situation: they had to choose between a significant restriction of rights (up to a complete loss of legal personality) and the oath of allegiance to the aggressor state."[137]

Categories of legal status created by the automatic naturalization laws

84. The imposition of Russian Federation citizenship had a particularly harsh impact on three groups: (1) those who formally rejected citizenship and became "foreigners"; (2) Crimean habitual residents who did not meet the legal criteria for Russian citizenship (lack of proof of residence registration) and became "foreigners"; and (3) civil servants who had to renounce their Ukrainian citizenship or lose their jobs.[138]

85. A fourth (4) vulnerable group includes those who were unable to reject Russian citizenship on account of particular circumstances, including being abroad during March and April 2014, held in places of detention, legal minors, persons with disabilities, or in social care institutions.

86. In addition to these categories, the collective application of automatic citizenship rules uniformly across the entire territory – making the entire population of Crimea "Russian" in an instant – figures centrally in establishing its unlawful character.

Those who formally rejected Russian citizenship and became "foreigners"

[134] *Ibid* ("On April 11, Russia's Federal Migration Service in Crimea officially confirmed on its Facebook page that Crimea residents with Ukrainian citizenship could declare their wish to retain Ukrainian citizenship at Russia's consulates and embassies worldwide. However, the same statement also acknowledged problems with applications possibly not arriving to the FMS due to postal services' glitches and encouraged people to apply in person in Crimea.")

[135] *Ibid.*

[136] OHCHR, *Report on the human rights situation in Ukraine 15 May 2014*, para. 127 (15 May 2014), available at http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15May2014.pdf; The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 38 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[137] Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 46-7 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

[138] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 56, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

87. Crimean residents "who opted out of Russian Federation citizenship became foreigners."[139]

88. Crimean residents could technically apply for residence permits, giving them access to some rights for which Russian citizenship is not required (e.g., pension, free health insurance). However, overall, as discussed further below (paras. 105-108), "persons holding a residence permit and no Russian Federation citizenship do not enjoy equality before the law and are deprived of important rights."[140] The Russian Federation prohibits the employment of Ukrainian citizens who lack Crimean residence registration.[141] They are also barred from accessing public hospitals and free health insurance.[142]

89. Most importantly, for individuals in this category, their "further stay on the peninsula became entirely dependent on the discretion of the occupation authorities as to permission to stay"[143] and/or grant residence permits.[144]

90. Crimean residents who opted out of Russian citizenship did not automatically obtain permanent residence status. Instead, they were required to provide multiple documents, including proof that they had been residing in Crimea prior to the annexation. Proof was evidenced by a Crimean residence registration stamp in the passport or court decision.[145] However, getting a residence stamp is mostly voluntary and as such, many residing in Crimea lacked a stamp in their passport or were officially registered in mainland Ukraine.[146]

91. In short, successfully opting out of Russian citizenship, thus not having a Russian passport, "makes it impossible to enjoy almost all of the rights and freedoms laid down in the Constitution."[147] As a foreigner, "these individuals are subjected to migration control, and a ban on participating in political activity or the management of community affairs," rendering Crimeans without Russian passport "foreign nationals in their home country."[148]

Crimean residents who did not meet the legal criteria for citizenship and became "foreigners"

[139] *Ibid.* at para. 61.

[140] *Ibid.* at para. 62.

[141] *Ibid.* at para. 68.

[142] *Ibid.* at para. 70.

[143] Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 40 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

[144] Sergei Zayets, *Enforced citizenship in Crimea*, European Human Rights Bulletin p. 5 (Winter 2017), available at http://ehrac.org.uk/wp-content/uploads/2018/01/EHRAC-Winter-2017-WEB.pdf.

[145] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 55, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[146] Human Rights Watch, *Rights in Retreat: Abuses in Crimea*, p. 31 (2014), available at https://www.hrw.org/sites/default/files/report_pdf/russia1114web.pdf.

[147] Sergei Zayets, *Enforced citizenship in Crimea*, European Human Rights Bulletin p. 5 (Winter 2017), available at http://ehrac.org.uk/wp-content/uploads/2018/01/EHRAC-Winter-2017-WEB.pdf.

[148] *Ibid.*

92. Citizens of Ukraine "living in Crimea whose passport stamps indicated they were registered in mainland Ukraine could not become citizens of the Russian Federation."[149] These individuals became "foreigners" under the automatic naturalization scheme. [150]

93. According to Russian law applicable to foreigners, individuals in this category could not remain in Crimea for longer than 90 days per 180 days any time they entered the peninsula.[151] Non-compliance with Russian immigration rules can lead to court-ordered deportations.[152]

94. Those unable to "prove" Crimean residence—as evidenced by a Crimean residence stamp in one's passports or court decision—were unable to obtain Russian citizenship or permanent residence status in Crimea.[153]

95. According to the Russian Ombudsperson, in the year after annexation at least 100,000 Crimean residents were unable to obtain Russian Federation citizenship—many of whom were longtime residents of Crimea, but never formally re-registered as Crimean after moving from other parts of Ukraine.[154]

96. According to the Ukrainian Center for Independent Political Research, many Crimean Tatars encountered similar complications proving residence, having returned to Crimea only recently after deportation. The Center reports that for these individuals they had missed registration in Crimea and "it was impossible to prove their place of residence in court (because courts decide [] applications for Russian citizenship or residence permits from people applying on the basis of long residence).[155]

97. OHCHR reported that "rules regulating stay were not consistently applied, sometimes favoring individuals who supported Crimea's accession to the Russian Federation."[156]

Civil servants and other employees forced to renounce Ukrainian citizenship or lose their jobs

98. Although the provisions of the *Treaty on Accession* and Law 6-FKZ imply that Russian citizenship supplants any previous citizenship (see paras. 72-77), Crimean residents who, before the referendum on annexation, held government and municipal positions (including members of the judiciary) and wished to keep these posts, were required by Russian law to surrender Ukrainian citizenship (or other citizenship/permanent residence status) and obtain a Russian passport. The Parliament of Crimea adopted a law that also required that they possess "a copy of the document confirming denial of existing citizenship of another State and the surrender of a passport of another State."[157]

---

[149] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 64, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[150] *Ibid.*

[151] *Ibid.*

[152] *Ibid.* at para. 65.

[153] The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015),* para. 37 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[154] *Ibid.* at para. 42.

[155] Ukrainian Center for Independent Political Research (UCIPR), *Citizenship, Land and Nationalization of Property in Occupied Crimea: Rights Deficit*, p. 5-6 (3 June 3, 2015), *available at* http://dhrp.org.ua/en/blog-publications/794-20150702-en-publication.

[156] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 67, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[157] *Ibid.* at para. 71 (citing Article 11 of the Law of the Republic of Crimea "On State Civil Service of the Republic of Crimea" (29 May 2014).

99. Before occupation, over 20,000 civil servants were employed Crimea. It is assumed that of the 19,000 Crimean residents who by May 2015 had applied to renounce Ukrainian citizenship, the majority were civil servants.158 Such a policy contravenes Article 54 of the Geneva Convention IV, that "[t]he Occupying Power may not alter the status of public officials or judges in the occupied territories."[159]

100. To keep their jobs, many employees outside the civil service may have similarly been compelled to renounce their Ukrainian citizenship due to widespread discrimination.[160]

Groups who due to specific personal circumstances were unable to reject Russian citizenship

101. Individuals held in closed institutions, such as jails, prisons, psychiatric facilities, geriatric housing, orphanages, experienced difficulties expressing their desire to reject Russian citizenships, including never been presented with an opportunity to reject.161 The following examples are illustrative and not exhaustive.

102. **Prisoners**. The State Penitentiary Service of Ukraine reported that at the time of annexation, there were over 2,000 prisoners in Crimea who were local residents.[162]

- Oleksandr Kolchenko filed a complaint to the European Court of Human Rights regarding "the compulsory imposition of the Russian nationality."[163]
- Russian authorities claimed that Oleh Sentsov, a prominent Ukrainian filmmaker, was Russian. They detained him in Crimea and he was sent to a Moscow.[164]
- Claiming that Kolchenko and Sentsov had acquired Russian nationality, Russian authorities deprived both of consular protection and their right under the Convention on the Transfer of Sentenced Persons (1983) to be transferred to the Ukraine to serve their sentences.[165] According to Ukrainian human rights experts, "this problem actually concerns hundreds of Ukrainian prisoners who as of today are being transferred from Crimea to the territory of the Russian Federation."[166]

---

[158] *Ibid.* at para. 72.

[159] Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 54, 12 August 1949, 75 U.N.T.S. 287 (1949).

[160] The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 202 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[161] *Ibid.* at para. 41; Council of Europe, Commissioner for Human Rights, *Report of Nils Muižnieks following his Mission in Kyiv, Moscow and Crimea from 7 To 12 September 2014,* para. 41 (27 October 2014), available at http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/102_muiznieksreport_/102_muiznieksreport_en.pdf.

[162] Public Statement by Serhiy Starenkyi, "There are conditions for the inmates transfer from the Crimea. But the sentenced persons are held there on the legal grounds," *State Penitentiary Service of Ukraine* (April 3, 2014), http://www.kvs.gov.ua/peniten/control/main/en/publish/article/715893.

[163] Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 34 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

[164] *Written statement submitted by the Society for Threatened Peoples*, p. 2, U.N. Doc. A/HRC/28/NGO/97 (Feb. 23, 2015).

[165] Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 45-6 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

[166] *Ibid.* at. Para 46.

- According to the Ombudsperson of the Russian Federation, "only 18 [convicts] rejected Russian citizenship in writing; 22 convicts filed in petitions asking to be extradited to Ukraine."[167]

103. OHCHR reported that "pressure was exerted on detainees who refused to accept automatic Russian Federation citizenship."[168]

- A female detainee who rejected Russian citizenship claimed that she was subjected to various forms of harassment, including the denial of family visits regularly having sunflower oil poured over her belongings.[169]
- Many detainees who refused Russian citizenship were transferred into smaller cells or placed in solitary confinement.[170]
- According to Ukrainian human rights organizations, "[t]here is also evidence of convicts who were tortured for refusing Russian citizenship; they were sent to a punishment cell or are put under pressure through other prisoners."[171]

104. **Children**. At the time of annexation, over 4,300 children in Crimea were without parental care and lived in social care institutions.[172] These institutions were brought under the control of the Russian Federation at the beginning of the occupation. Not a single declaration "of intent to retain their existing...citizenship"[173] was submitted on their behalf.[174]

Residence registration and residence permits for "foreigners"

105. Residence registration in Russia, the successor to the rigid Soviet "propiska" system, continues to restrict access to services, exercise of human rights and mobility. In 2006 and 2007, the European Court of Human Rights held that the system interferes with a number of human rights.[175] Although the policy may have liberalized since Soviet times, discrimination, corruption and lack of transparency continue to define it. In September 2017, the Committee on the Elimination of Racial Discrimination recommended specific changes to Russia's internal registration practices in its Concluding Observations on Russia's periodic report:

---

[167] Ombudsperson of the Russian Federation, *Report of the Commissioner for Human Rights in the Russian Federation in 2014*, at 95-96 (7 May 2015) *available at* http://eng.ombudsmanrf.org/www/upload/files/prezent/doklad_eng_Sample_view.pdf.

[168] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 115, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[169] *Ibid.*

[170] *Ibid.*

[171] Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation,* para. 13 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

[172] According to Ukraine's Ministry of Social Policy, there were 4,323 children with parental care. The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 41 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[173] Sergei Zayets, *Enforced citizenship in Crimea*, European Human Rights Bulletin p. 5 (Winter 2017), available at http://ehrac.org.uk/wp-content/uploads/2018/01/EHRAC-Winter-2017-WEB.pdf.

[174] Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation,* para. 33 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

[175] *See, e.g.*, *Bolat v. Russia*, ECtHR, Judgment of 5 October 2006, at paras. 64-70; *Tatishvili v. Russia*, ECtHR, Judgment of 22 February 2007, at paras 44-54.

> "[T]he Committee recommends that the State party take urgent measures to expedite the registration of all those seeking registration in a transparent manner. The Committee also recommends that the State party take measures to bring to an end any discriminatory or arbitrary behaviour by officials involved in registration activities. Moreover, the State party is requested to guarantee that the enjoyment of rights by all individuals in the Russian Federation is not dependent on residence registration."[176]

106. The sudden importation of the Russian Federation's residence registration system alongside Russian citizenship and immigration laws in Crimea ushered in a host of idiosyncratic obstacles to enjoyment of human rights that may be lost on observers unfamiliar with the devastating effects the registration system continues to have, in particular on ethnic minorities.

107. In July 2014, moreover, the Russian Federation established annual caps on the number of temporary residence permits issued, allowing at most 5,000 permits in Crimea and 400 permits in Sevastopol.[177] Such limits were "widely viewed as insufficient to cover even those foreigners (non-Ukrainians) already residing in Crimea at the time of the occupation, let alone anyone who wished to secure permanent residence status in the framework of the automatic Russian citizenship laws."[178]

108. It is likely, given the more liberal registration policies in Ukraine, that many people living in Crimea at the time of occupation would not have had residence registration, leaving them at the mercy of de facto authorities.[179] As noted above, these rules disproportionately impact individuals with registration in mainland Ukraine and many Crimean Tatars who recently returned to the peninsula and rules have been applied in favor of those who support annexation (see paras. 90, 96).

Widespread condemnation of automatic citizenship

109. Many intergovernmental and civil society actors have condemned the imposition of Russian citizenship in Crimea, both as an unlawful act in itself and in the manner in which it was implemented.

110. The UN General Assembly, in its resolution 72/190, included an operational clause:

> "**Condemning…the imposition of automatic Russian Federation citizenship on protected persons in Crimea**, which is contrary to international humanitarian law, including the Geneva Conventions and customary international law, and the regressive effects on the enjoyment of human rights of those who have rejected that citizenship."[180]

---

[176] Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 30, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017). *See also* Council of Europe, Parliamentary Assembly Resolution 1277 (2002) on honouring of obligations and commitments by the Russian Federation, para. 8(xii), 23 April 2002.

[177] The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 44 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[178] *Ibid.*

[179] *See* Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 14 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf ("In Russia, residence registration is far more important that in Ukraine. The absence of such registration at the place of actual residence generates a number of significant difficulties for citizens.").

[180] UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 72/190, p. 2 (19 December 2017).

111. The UN OHCHR warned that:

> "The human rights situation in Crimea has significantly deteriorated since the beginning of its occupation by the Russian Federation. **The imposition of a new citizenship and legal framework and the resulting administration of justice have significantly limited the enjoyment of human rights for the residents of Crimea.** The Russian Federation has extended its laws to Crimea in violation of international humanitarian law. In many cases, they have been applied arbitrarily."[181]

112. In the same report, OHCHR states that:

> "Imposing citizenship on the inhabitants of an occupied territory can be equated to compelling them to **swear allegiance** to a power they may consider as hostile, which is forbidden under the Fourth Geneva Convention. In addition to being in violation of international humanitarian law, the automatic citizenship rule raises a number of important concerns under international human rights law."[182]

113. The UN Human Rights Committee (UNHRC), in its 2015 review of Russia, while recognizing the enduring territorial integrity of Ukraine,[183] expressed its concern regarding "**the possibility for Crimean residents to make an informed decision on the free choice of their citizenship** owing to the very short period granted to them to refuse Russian citizenship. This disproportionately affected those individuals who could not apply in person at the designated locations to refuse citizenship, in particular persons in places of detention and other closed institutions, such as hospitals and orphanages. It also resulted in serious implications on the ability of Crimean residents who retained Ukrainian nationality to enjoy their rights under the Covenant…"[184]

114. The UN Committee on the Elimination of Racial Discrimination also urged the Russian Federation "to repeal any administrative or legislative measures adopted since the State party started to exercise effective control over Crimea that have the purpose or effect of discriminating against any ethnic group or indigenous peoples on grounds prohibited under the Convention, **including in relation to nationality and citizenship rights**…."[185]

115. The Council of Europe Commissioner for Human Rights stated:

> "The **consent of the person concerned should be the paramount consideration** in this regard, and this consent should be active and clearly stated."[186] "Otherwise this could be qualified as an interference with the person's private and family life, since the acquisition of citizenship may also entail certain obligations, such as military service."[187]

---

[181] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 220, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[182] *Ibid.* at para. 57.

[183] *See* Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 23, U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015) ("The Committee, having due regard for General Assembly resolution 68/262 on the territorial integrity of Ukraine, is concerned about reported violations of the Covenant in the Autonomous Republic of Crimea and the city of Sevastopol, which are under the effective control of the State party.").

[184] *Ibid.* at para. 23(c).

[185] Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 20, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017).

[186] Council of Europe, Commissioner for Human Rights, *Report of Nils Muižnieks following his Mission in Kyiv, Moscow and Crimea from 7 To 12 September 2014,* para. 47 (27 October 2014), available at http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/102_muiznieksreport_/102_muiznieksreport_en.pdf.

[187] *Ibid.* at para. 47 n. 40.

Ukrainian and Russian current positions on dual nationality and the legal effect of automatic naturalization

116. Ukraine does not recognize the validity of the referendum of 16 March 2014. Ukraine has subsequently, however, adopted legislation in light of the temporary occupation of Crimea that is relevant to understanding the impact of automatic naturalization following the referendum and subsequent annexation treaty between the Russian Federation and the "Republic of Crimea," signed on 18 March 2014.

117. Ukraine does not recognize dual-citizenship. Article 25 of Ukraine's Constitution provides that a citizen cannot be deprived of either their citizenship or their right to change it. [188] However, a recently passed law specifies that the forced automatic acquisition of Russian citizenship in Crimea is not recognized by Ukraine and is not accepted as a ground for loss of nationality of Ukraine.[189] In early 2017, Ukraine's President, Petro Poroshenko, tabled an urgent draft law (Draft law No. 6175) "which would automatically strip Ukrainians of their citizenship if they voluntarily took on citizenship of another country." [190] It is argued however, that those in Crimea who acquired Russian citizenship should not be affected by this draft law, as they cannot be considered to have *voluntarily* taken Russian citizenship.[191]

118. Russian law does allow for dual citizenship in limited circumstances, however, as noted above (paras. 72-77), the Russian federal constitutional law 6-FKZ "On Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities of the Republic of Crimean and the City of Federal Importance Sevastopol" of 21 March 2014, creates automatic Russian citizenship that is imposed as a binary choice between passive acceptance or acting to reject Russian citizenship and "retain" another citizenship that would otherwise be displaced.[192]

119. In June 2014, the Russian Federation amended federal law 62-FZ of 31 May 2002 "On citizenship of the Russian Federation," criminalizing failure to disclose a second citizenship (in force since 1 January 2016 for Crimean residents).[193]

120. **Compatriot policy**. Russia's position on dual citizenship has evolved alongside the decades-long implementation of Russia's Compatriot policy,[194] by which Russia extends

[188] Halya Coynash, "Poroshenko law could strip huge numbers of Ukrainians of their citizenship," *Kharkiv Human Rights Protection Group* (16 March 2017), http://khpg.org/en/index.php?id=1489593082.

[189] Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 21 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf (citing Article 5 of the Law of Ukraine "On guaranteeing the rights and freedoms of nationals and on the legal regime in the temporarily occupied territory of Ukraine").

[190] Halya Coynash, "Poroshenko law could strip huge numbers of Ukrainians of their citizenship," *Kharkiv Human Rights Protection Group* (16 March 2017), http://khpg.org/en/index.php?id=1489593082.

[191] *Ibid.*

[192] Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* p. 22 (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

[193] *See* Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation,* p. 25 (2016), available at http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf; *see also* The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 44 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[194] Knott dates the first policy to 1999, but Grigas discusses how the idea of compatriot outreach is much older. *See* Eleanor Knott, *Quasi-citizenship as a Category of Practice: Analyzing engagement with Russia's Compatriot policy in Crimea*, 21 Citizenship Studies 116, 118 (2016).

rights and benefits to those considered compatriots "across states with Russian populations both within and beyond the post-Soviet space."[195] Academic researchers have described the Compatriot policy, particularly as practiced under Vladimir Putin, as a tool of "extraterritorial nation-building,"[196] that has been increasingly used to foment separatist movements within kin-states, notably Ukraine, Georgia and Moldova.[197]

121. At first applicable to "ethnic Russians," understood as those with linguistic and/or family ties to Russia, the Compatriot policy has gradually expanded to accommodate a wider set of Russian speakers and others with vaguely constructed links to Russia:

> "Russia's definition of who is a Compatriot is fuzzy and deliberately open to multiple interpretations to provide the policy with a degree of flexibility. Russia has a very loose concept of 'compatriots' due to an amorphous conglomerate that the policy refers to, including former Soviet citizens speaking Russian and retaining some emotional links to Russia."[198]

122. In Crimea, particularly under Vladimir Putin, "the Compatriot policy was reserved for a minority [] who were the most pro-kin-state (i.e. pro-Russian and pro-Russia) and were politicized, in a pro-Russian way, based on their associations with pro-Russian organizations."[199]

123. Simultaneously, Russia has shifted away from tolerance of dual nationality for Compatriots, choosing more formal means of asserting political control, which aligns with the unprecedented imposition of "full citizenship" in Crimea and effective criminalization of Ukrainian citizenship.[200]

124. Since annexation, neither the Russian Federation nor Ukraine recognizes documentation issued by the other in relation to Crimea, leaving residents "caught between two overlapping and conflicting legal and regulatory systems."[201] As a result, many Crimean residents retain both Russian and Ukrainian passports, despite neither country recognizing dual citizenship of the other.[202]

Legal and human consequences of imposition of nationality, the opt out procedure and residence status

125. The following section presents several categories of human rights violations that trace their justifications and alleged legitimacy back to, or are otherwise applied in combination with, the imposition of Russian nationality in Crimea immediately following annexation. These are: (1) restrictions on free movement and forcible demographic shifts; (2) military conscription; and (3) application of Russian anti-extremism laws resulting in stigmatization, harassment and ill-treatment. Automatic naturalization is a prominent but not an exclusive enabling factor behind these abuses.

---

[195] *Ibid.* at p. 118.

[196] *Ibid.* at p. 119.

[197] Agnia Grigas, *Beyond Crimea: The New Russian Empire* 77 *et seq.* (2016).

[198] Eleanor Knott, *Quasi-citizenship as a Category of Practice: Analyzing engagement with Russia's Compatriot policy in Crimea*, 21 Citizenship Studies 116, 120 (2016).

[199] *Ibid.* at p. 117.

[200] Agnia Grigas, *Beyond Crimea: The New Russian Empire* 91-92 (2016).

[201] The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 14 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[202] *Ibid.*

Infringement of freedom of movement and forcible demographic shifts in Crimea

126. The Russian Federation's occupation of Crimea has severely hampered free movement, including the denial of access, and the denial to leave, the territory of Crimea, both which are permission-based.[203] Documents needed to access or leave Crimea have also been seized.[204] As noted above (paras. 105-108), residence registration controls access to rights and severely restricts free movement under Russian law.

127. The 2001 Population Census in Crimea identified over 125 nationalities in the population of approximately two million people, with the following breakdown: Russians (58.5%); Ukrainians (24.4%); Crimean Tatars (12.1 %); Belarusians (1.5%); Tatars (0.5%); Armenians (0.4%); Jews, Poles, Moldovans, Azeris (0.2% each), and other ethnic groups.[205]

128. In September 2014, the Russian Federation conducted a census on the peninsula, which was not recognized by the Government of Ukraine. According to its results, the population of Crimea and Sevastopol had decreased by 4.8 per cent since 2001.[206] The number of persons of Russian nationality increased to 1,492,078 (65.31 per cent), the Ukrainians dropped to 344,515 (15.08 per cent) and the Crimean Tatars decreased to 232,340 (10.17 per cent).[207]

129. A survey involving 2,000 face-to-face interviews with residents of Crimea conducted in March to May 2017 by the Centre for East European and International Studies (ZOiS) showed a "comprehensive reorientation of the social and political linkages of the Crimean population" since 2014.[208] Although the conditions in Crimea are not conducive for conducting field research, the results of the survey provide valuable insight into the restriction of free movement that coincides with occupation and the imposition of Russian law including automatic Russian citizenship in Crimea:

> "The survey clearly spells out the severe disruption of links to the rest of Ukraine, limited travel to [ ] Russia, the absence of personal international reference points, and a near-complete integration into the Russian media sphere."

130. **Forced deportation of non-Russians**. The Russian Federation has deported Ukrainian citizens from Crimea for violating Russian immigration regulations, despite UN General Assembly resolution 68/262, which provides that such regulations should not apply to the territory of Crimea.[209] Under international humanitarian law, transfer or deportation "of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of the motive."[210]

---

[203] Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation,* para. 22 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

[204] *Ibid.*

[205] All-Ukrainian Population Census 2001, *National Structure of Population in the Autonomous Republic of Crimea*, http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea/.

[206] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 48, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[207] *Ibid.* at 49 (In 2001, there were as an additional 13,602 Tatars. In the Russian census, "the Tatars - a group culturally affiliated with the Volga Tatars and the Crimean Tatars - whose numbers rose from 13,602 to 44,996.").

[208] Gwendolyn Sasse, "What is the public mood like in Crimea?" *Carnegie Europe* (6 November 2017), http://carnegieeurope.eu/strategiceurope/74635.

[209] *See* OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 126, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[210] Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 46, 12 August 1949, 75 U.N.T.S. 287 (1949)

131. Below are several examples, gathered from monitoring reports, of deportations linked to the rejection or inability to acquire Russian citizenship under occupation:

- In November 2016, two courts ordered the deportation to mainland Ukraine of Ukrainian citizens—one deportee owned property in Sevastopol, and the other had a wife and children in Crimea.[211]
- In 2012, the passport registration of a Crimean-born chairman of a legal aid NGO was cancelled on to procedural grounds, which under Russian law, prevented him from obtaining Russian citizenship.[212] In 2017, a court "found him to be a foreigner" and ordered his deportation for his "illegal stay" in Crimea. Following the ruling, he was transferred into Russian territory where he was detained for 27 days, and thereafter deported to mainland Ukraine.[213] Despite the fact that his wife and child live in Crimea, he is prohibited from entering until December 2021.[214]
- In route to Turkey for medical treatment, Sinaver Kadyrov, a Crimean Tatar activist and founder of the Committee for the Protection of Rights of Crimean Tatars, was detained at a checkpoint and thereafter ordered deported from Crimea for overstaying Russia's 90-day limit for foreigners. Kadyrov took no action regarding Russian citizenship, and retained his Ukrainian passport.[215]
- Russian immigration rules are at times arbitrarily applied, at times favoring those who support Crimea's accession.[216] For example, a Ukrainian citizen who claimed to be "an active participant of the Russian Spring in Sevastopol" claimed that his family was in Crimea and therefore deportation would "interfere with his private and family life."[217] Unlike those above, the Supreme Court of Crimea accepted his argument, preventing deportation.[218]

132. **Prisoner Transfers**. The de facto authorities have also reportedly transferred prisoners, including pre-trial detainees, from Crimea to prisons located in the Russian Federation.[219]

- Since annexation, the Russian Federation integrated all Crimean penitentiary institutions into its own system, resulting in the transfer and deportation of persons into the territory of the Russian Federation, in strict prohibition of international humanitarian law.[220] Article 49 of Geneva Convention IV, cited above, applies. Moreover, Article 76 notes that "[p]rotected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences

[211] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 65, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[212] *Ibid.* at para. 126.

[213] *Ibid.*

[214] *Ibid.*

[215] *Written statement submitted by the Society for Threatened Peoples*, p. 2, U.N. Doc. A/HRC/28/NGO/97 (Feb. 23, 2015).

[216] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 67, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[217] *Ibid.* (citing the Judgment of the Supreme court of the Republic of Crimea, No. 12-401/2016, 17 November 2016, available at http://sudact.ru/regular/doc/Q9mwes1Qfjb/).

[218] *Ibid.*

[219] Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 101 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

[220] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* paras. 14, 118 UN Doc. A/HRC/36/CRP.3 (25 September 2017); *see also* Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 7, 23 January 2018.

therein." Article 8(2) (a) (vii) of the Rome Statute of the International Criminal Court lists "[u]nlawful deportation or transfer" as a war crime.[221]

- A significant number of Crimea's detained population (prisoners and pre-trial detainees) have been transferred to the Russian Federation.[222] According to human rights organizations, "more than 4,700 civilian prisoners, Ukrainian citizens kept in places of detention, were transferred by the Russian authorities from Crimea" to penal colonies across the Russian Federation.[223]
- Crimea does not have prisons designated for women. Between 18 March 2014 and 15 June 2016, nearly 300 female detainees convicted by Crimean courts were sent to serve their sentences in the Russian Federation.[224]

133. OHCHR reported that Ukrainian filmmaker, Oleh Sientsov (Oleg Sentsov), was relocated to Moscow's Lefortovo prison on 23 May 2014, later moved to remand detention in Rostov-on-Don, Russian Federation, and ultimately sent to a high security penal colony in Siberia after his conviction on 25 August 2015.[225] The UN Human Rights Committee voiced concern over the "allegations that Oleg Sentsov has been deprived against his will of his Ukrainian nationality, tried in Moscow as a citizen of the Russian Federation and subject to legal proceedings that fail to meet the requirements of articles 9 and 14 of the Covenant."[226] (Sentsov was charged under Russian anti-extremism laws. For more on extremism definition and laws, see paras. 147-161).

134. **Inflow of Russian Citizens**. The Russian Federation has also engaged in increasing migration of its own civilian population into Crimea, thereby shifting the demographic composition of the population.[227] Such tactics also violate Article 49, which prohibits the transfer of an occupying power's "civilian population into the territory it occupies."

135. The Russian Federation has facilitated the migration and settlement of a sizable number of Russian citizens into Crimea—the majority of whom are elderly, public servants and servicepersons with their families—which has markedly changed the demographic structure of Crimea since the 2014 referendum.[228]

136. Many reporting agencies and NGOs have identified and condemned these practices as an effort to ethnically manipulate the population of Crimea to physically eliminate, chiefly, ethnic Ukrainians and Crimean Tatars.

- "OHCHR recommended that the Russian Federation refrain from forcibly deporting and/or transferring Ukrainian citizens who did not have Russian Federation passports

---

[221] Rome Statute of the International Criminal Court, Article 8(2) (a) (vii), 17 July 1998, 2187 U.N.T.S. 90 (1998).
[222] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 116-17, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (according to OHCHR, "one Ukrainian NGO claimed on 31 May 2016 that 2,200 prisoners had been transferred from Crimea to the Russian Federation.").

[223] Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation,* para. 26 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.
[224] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 116, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[225] *Ibid.* at para 117.

[226] Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 23(d), U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015).
[227] *See e.g.,* Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 7, 23 January 2018.

[228] Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 79 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf; OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 52, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

from Crimea, enable unimpeded freedom of movement to and from Crimea, and end deportations of Crimean residents pursuant to Russian Federation immigration rules."[229]

- UN General Assembly resolution 72/190 urged the Russian Federation "[t]o immediately release Ukrainian citizens who were unlawfully detained and judged without regard for elementary standards of justice, as well as those transferred or deported across internationally recognized borders from Crimea to the Russian Federation."[230]
- Parliamentary Assembly of the Council of Europe resolution 2198 "strongly condemns the Russian policy of shifting the demographic composition of the population of illegally annexed Crimea by forcing the pro-Ukrainian population and, in particular, the Crimean Tatars to leave their homeland, while at the same time increasing migration of the Russian population to the peninsula, and calls on the Russian Federation to put an end to this repression. The Parliamentary Assembly stresses that this Russian policy should be viewed as a violation of Article 49 of Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, according to which individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motivation."[231] The resolution goes on to urge the Russian Federation to "cease the policy of shifting the demographic composition of the population of annexed Crimea by moving its own population from Russian territory to the peninsula."[232]

Military conscription

137. Forced conscription of newly minted Russian citizens in occupied Crimea into the Russian military is a direct consequence of forced naturalization and also leads to instances of forcible transfers and flight from the territory of Crimea, discussed in the preceding section.

138. The Russian Federation's conscription of Crimean residents into its armed forces is a violation of both Article 45 of the Hague Regulation (1907) and Article 51 of the Fourth Geneva Convention IV. [233] Article 8(2)(a)(v) of the Rome Statute of the International Criminal Court lists "compelling a…protected person to serve in the forces of a hostile Power" as a war crime.[234]

[229] OHCHR, *Compilation on the Russian Federation for Universal Periodic Review*, para. 83, UN Doc. A/HRC/WG.6/30/RUS/2 (19 March 2018).

[230] UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 72/190, para. 3(e) (19 December 2017); UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 71/205, para. 2(c) (1 February 2016).

[231] Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 7, 23 January 2018.

[232] *Ibid.* at para. 10.8.

[233] Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, Article 45, 18 October 1907, 36 Stat. 2277 (1907) ("It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power."); Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 51, 12 August 1949, 75 U.N.T.S. 287 (1949) ("The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.").

[234] Rome Statute of the International Criminal Court, Article 8(2) (a)(vii), 17 July 1998, 2187 U.N.T.S. 90 (1998).

139. Since occupation, the Russian Federation has conscripted Crimean residents into its own armed forces.[235] In 2017, at least 4,800 Crimean residents were conscripted in two campaigns that year.[236]

140. Prosecutions under Russian criminal law for draft evasion have taken place in Crimea. As of February 2018, OHCHR reported that at least two Crimean residents had been convicted and sentenced.[237] Conviction of military draft evasion under Russian criminal law, carries a maximum sentence of two-years' incarceration.[238]

141. Men have fled Crimea to escape conscription or criminal prosecution.[239] Several Crimean Tatars have reportedly left Crimea in order to avoid serving in the Russian armed forces, stating that they cannot return as they could be prosecuted draft evasion.[240]

142. According to Article 7 of the *Treaty on Accession*, those conscripted in Crimea will serve on the territory of Crimea until 31 December 2016.[241]

143. Prior to 2017, those conscripted could only serve on the territory of the Crimean Peninsula. Since then, those conscripted may be transferred to serve on the territory the Russian Federation.[242]

144. On 10 April 2017, Anatoly Maloletko, the de facto military commissioner of Crimea, stated that approximately 20 Crimean residents would serve in the Russian Federation.[243] Maloletko and Vadim Meshalkin, another military official of Crimea "confirmed that Crimean citizens that were called for the military service have Ukrainian citizenship."[244]

145. On 25 May 2017, 30 residents of Sevastopol were conscripted and transferred to the Russian Federation.[245]

146. Since 25 April 2014, the situation in Ukraine has been under preliminary examination by the Office of the Prosecutor (OTP) of the International Criminal Court.[246] According to the OTP, it is monitoring the alleged crime of "compelled military service."[247] The OTP

[235] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 120, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[236] *Ibid.* Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 99 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

[237] OHCHR, *Report on the human rights situation in Ukraine 16 November 2017 to 15 February 2018*, para. 129 (19 March 2018), available at http://www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_EN.pdf (according to OHCHR, each received a criminal fine of 25,000 RUB each (approximately 430 USD)).

[238] *Ibid.*

[239] Office of the Prosecutor, *Report on Preliminary Examination Activities 2017*, International Criminal Court, para. 99 (4 December 2017), available at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf.

[240] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 121, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[241] Treaty on the Accession of the Republic of Crimea to Russia (unofficial translation), https://en.wikisource.org/wiki/Treaty_on_the_Accession_of_the_Republic_of_Crimea_to_Russia.

[242] *See* OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 120, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (according to Article 7 of the Treaty of Accession between the Republic of Crimea and the Russian Federation (18 March 2014)).

[243] Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation,* para. 55 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

[244] *Ibid.*

[245] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 120, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[246] Office of the Prosecutor, *Report on Preliminary Examination Activities 2016*, International Criminal Court, para. 146 (14 November 2016), available at https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

[247] *Ibid.* at para. 176.

noted that, "As a consequence of the imposed change of citizenship, men of conscription age residing in Crimea became subject to mandatory Russian military service requirements. There were reports of a number of young men leaving for mainland Ukraine to escape forced conscription notices from *de facto* authorities."[248]

Application of Russia's anti-extremism laws

147. This section provides a brief overview of the wide range of measures that constitutes the Russian anti-extremism legal framework, as well as illustrative examples that demonstrate the discriminatory manner in which that framework has been applied in occupied Crimea. The Russian Federation uses this framework to stigmatize those *identifying or identified* as pro-Ukrainian, including ethnic Ukrainians and Crimean Tatars, and their *perceived or actual* political and cultural institutions, labeling them instead as public enemies. Implementation of anti-extremism laws in Crimea has been facilitated – and offered a façade of legitimacy – through the imposition of Russian citizenship throughout the region.

148. **Legal framework**. The Russian Federation has imposed its framework of anti-extremist legislation in occupied Crimea, which includes the 2002 Federal Law No. 114-FZ **"**On Countering Extremist Activity" ("**Anti-extremism Law**"), provisions of the **Code of Administrative Violations of the Russian Federation,** the **Russian Criminal Code**, as well as relevant rules in other laws such as those regulating expression, religious activities, public associations and assemblies and the media.

- "Anti-extremism Law"

  Article 1.1. of the Anti-extremism Law lists a range of vaguely-defined actions deemed "extremist."[249] In its opinion on the law, the Venice Commission stressed that several of the actions listed in Article 1.1. were "too broad," "lack clarity" and risk violating rights and freedoms enshrined in international treaties, the ECHR and customary law binding the Russian Federation.[250] In the Commission's view, such "broad and imprecise wording… [gave] too wide discretion in its interpretation and application, thus leading to arbitrariness."[251] Furthermore, several of the actions listed in the law do not "require an element of violence" in order for the activity to be deemed extremist—contrary to state practice and the Shanghai Convention,[252] to which Russia is a party.[253] Many human rights monitoring institutions have reiterated these concerns,[254] including the Russian Federations' Ombudsperson who stated that in

[248] *Ibid.*

[249] E.g., The "stirring up of social, racial, ethnic or religious discord;" "propaganda of...superiority...of persons on the basis of their...ethnic, religious or linguistic affiliation;" and "violation of...lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion."
See Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 29 (20 June 2012); *see generally* SOVA Center for Information and Analysis, *The Structure of Russian Anti-Extremist Legislation* (November 2010), available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/201/201011/20101129_3_10sova_en.pdf.

[250] Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, paras. 11, 31-45 (20 June 2012).

[251] *Ibid.* at para. 74.

[252] "'Extremism' is an act aimed at seizing or keeping power through the *use of violence* or changing *violently* the constitutional regime of a State, as well as a *violent* encroachment upon public security..." (emphasis added) Shanghai Convention on Combating Terrorism, Separatism and Extremism, Article 1.1.3., 15 June 2001.

[253] Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 31 (20 June 2012).

[254] *E.g.*, Human Rights Committee: "The Committee remains concerned that the vague and open-ended definition of 'extremist activity' in the Federal Law on Combating Extremist Activity does not require any element of violence or hatred to be present and that no clear and precise criteria on how materials may be classified as extremist are provided in the law." Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 20, U.N.

relation to Crimea, officials should adopt "a well-balanced approach that rules out any arbitrary, excessively broad interpretation of the notion of 'extremism.'"[255] Reportedly, the Foreign Ministry of Russia admitted that the definition of extremism is "too broad."[256]

Article 6 of the Act criminalizes "preparatory acts with characteristics of extremism" empowering the Prosecutor-General to send written warnings to suspected transgressors to correct or cease such actions it deemed extremist. Failure to obey the warning[257] can result in the imposition of such punitive measures as the liquidation of an association or closure of a media outlet, among others.[258] The Venice Commission criticized this provision[259] noting that "written warnings and notices - and the related punitive measures…raise problems in the light of the freedom of association and the freedom of expression as protected by the ECHR..."[260]

Article 13 of the Act obliges the Ministry of Justice to publish online a "*Federal List of Extremist Materials*."[261] Enforcement agencies can "take administrative measures to restrict the distribution of extremist materials" on this list under Article 20.29 of the Code of Administrative Violations, which prohibits these items production and distribution.[262] The Venice Commission expressed concern regarding "the absence of any criteria and any indication in the Law on how documents may be classified as

Doc. CCPR/C/RUS/CO/7 (28 April 2015); The United Nations High Commissioner for Human Rights was concerned that the Federal Law on Combatting Extremist Activity might have been arbitrarily used to curb freedom of expression, including political dissent, as well as freedom of religion, due to a vague and open-ended definition of extremist activity. *See* OHCHR, "Item 2: Annual Report and Oral Update to the 34th session of the Human Rights Council" (8 March 2017), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21316&LangID=E.

[255] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 106, UN Doc. A/HRC/36/CRP.3 (25 September 2017) (citing the Annual Report of the High Commissioner for Human Rights of the Russian Federation for 2014, Moscow p. 99 (2015).

[256] Peter Roudik, "Legal Provisions on Fighting Extremism: Russia," *Library of Congress* (30 November 2015), https://www.loc.gov/law/help/fighting-extremism/russia.php.

[257] Under Article 17.7 of the Code of Administrative Offenses of the Russian Federation.

[258] "[W]illful failure to satisfy the demands of the prosecutor" which results in the imposition of administrative fines for "citizens" and legal entities. Organizations are issued warnings by the Federal Registration Service and media outlets are issued warnings by the Federal Supervision Agency for Information Technologies and Communications (*Roskomnadzor*). The local prosecutor's offices can issue warnings to both. *See* Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 53 (20 June 2012); *see also* Peter Roudik, "Legal Provisions on Fighting Extremism: Russia," *Library of Congress* (30 November 2015), https://www.loc.gov/law/help/fighting-extremism/russia.php.

[259] Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 55 (20 June 2012) (stating that "Article 6 of the Extremism Law lacks clarity and it does appear that an administrative offence is committed where a warning is not obeyed even though no extremist activity has been engaged in. It thus recommends to reformulate the Law to make it clear that prosecution will only be brought...if that person has engaged in extremist activity and has committed a criminal act and not for the mere failure to comply with the warning."

[260] Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 76 (20 June 2012).

[261] Article 13: "The dissemination of extremist materials and also the production or storage of such materials with the aim of dissemination shall be prohibited on the territory of the Russian Federation...A federal list of extremist materials shall be posted on the "Internet" worldwide computer network on the site of the federal state registration authority." Federal Law No. 114-FZ of 25 July 2002 "On combating extremist activity" (as amended on 27 July 2006, 10 May and 24 July 2007 and 29 April 2008) (unofficial translation), *Council of Europe*, available at http://www.legislationline.org/download/action/download/id/3707/file/RF_law_combating_extremist_activity_2002_am2008_en.pdf.

[262] Peter Roudik, "Legal Provisions on Fighting Extremism: Russia," *Library of Congress* (30 November 2015), https://www.loc.gov/law/help/fighting-extremism/russia.php.

extremist and believes that this has the potential to open the way to arbitrariness and abuse."[263]

- Code of Administration Offenses

  Article 20.29 of the Code of Administrative Offenses empowers authorities to prohibit "the production and distribution of extremist material."[264] The list currently includes over 4400 items, including books, audio, video, images and online resources.[265] The list is difficult to navigate and monitor, leaving individuals and organizations unaware that they may be distributing or storing listed items.[266] Moreover, there is no formal removal procedure when items are no longer classified as extremist.[267]

- Russian Federation Criminal Code

  Article 280.1 of the Russian Criminal Code criminalizes public "calls for separatism" or the "implementation of actions aimed at violation of the territorial integrity of the Russian Federation."[268] The law was amended in July 2014 adding harsher penalties along with a new ban on expressing certain opinions, such as "publicly acknowledging that 'Crimea is Ukraine' or calling the de facto authorities in Crimea 'occupying authorities' may lead to four to five years in jail."[269] In a recent review of Russia's state report, the Human Rights Committee recommended that "The State party…ensure that article 280.1…is not used to silence individuals critical of the State party's foreign policy, including with regard to Crimea."[270]

  Article 282 "defines extremist crimes as those motivated by ideological, political, racial, national, or religious enmity, as well as hatred or enmity towards a social group" and covers incitement to hatred or hostility, and humiliation of human dignity.[271] Article 282.2-bis criminalizes leading or participating in an extremist organization. Punishments for these crimes range from fines to corrective labor to imprisonment.[272]

- Other anti-extremism and related laws

---

[263] Venice Commission, Opinion 660/2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, Doc. CDL-AD(2012)016, para. 49 (20 June 2012).The Commission further noted that it "is aware from official sources that the court decision is systematically based on prior expert review of the material under consideration and may be appealed against in court. It nonetheless considers that, in the absence of clear criteria in the Law, too wide a margin of appreciation and subjectivity is left both in terms of the assessment of the material and in relation to the corresponding judicial procedure."

[264] Peter Roudik, "Legal Provisions on Fighting Extremism: Russia," *Library of Congress* (30 November 2015), https://www.loc.gov/law/help/fighting-extremism/russia.php.

[265] Федеральный Список Экстремистских Материалов ("Federal List of Extremist Materials"), *Ministry of Justice of the Russian Federation*, http://minjust.ru/ru/extremist-materials (last accessed 31 May 2018).

[266] U.S. Commission on International Religious Freedom (USCIRF), *Inventing Extremists: The Impact of Russian Anti-Extremism Policies on Freedom of Religion or Belief*, p. 4 (January 2018), available at https://www.uscirf.gov/sites/default/files/Inventing%20Extremists.pdf.

[267] Bureau of Democracy, Human Rights and Labor, *Russia 2013 International Religious Freedom Report*, U.S. State Department (28 July 2014), available at https://www.state.gov/documents/organization/222473.pdf.

[268] Уголовный кодекс Российской Федерации ("Criminal Code of the Russian Federation"), World Intellectual Property Organization (WIPO), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=467352.

[269] Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation,* p. 28 (2016), available at http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf.

[270] Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 21, U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015).

[271] Peter Roudik, "Legal Provisions on Fighting Extremism: Russia," *Library of Congress* (30 November 2015), https://www.loc.gov/law/help/fighting-extremism/russia.php.

[272] *Ibid.*

Criminal and administrative provisions used to target 'extremists', including by searches and raids at religious sites such as mosques. For example Federal Law No. 375-FZ (2016) on tightening punishments for terrorist activities and expanding the powers of investigative bodies,[273] and Federal Law No. 433-FZ (2013) regarding the prohibition of "public calls for actions aimed at violating the territorial integrity of the Russian Federation."

Internet filtering legislation for "extremist content." Federal Law No. 369-FZ (2013) on Internet Watching; No. 139-FZ on blacklisting of websites; and No. 374-FZ on Additional Anti-Terror Measures

149. **Implementation.** The application of anti-extremism laws is also frequently the legal predicate for discriminatory treatment, population transfers (discussed in the preceding section), and the suppression of fundamental freedoms of these groups in Crimea.

150. *Federal List of Extremist Materials*. Muslim groups have been particularly targeted by the *Federal List*, as several Islamic texts, including quotations from the Koran, have been deemed to be "extremist."[274] According to the Director of the Russian NGO SOVA Center, approximately one-fourth of the items on the list relate to Islamic literature, are widely used by the community and do not contain extremist content.[275]

151. *Banning of Mejlis as an extremist organization*. Numerous Mejlis serving in Crimea's local government and the Qurultay, the Crimean Tatars' national congress, have been banned from the region.[276] The Vice Prime Minister of Crimea has instructed local governments to report any public activity by Mejlis members to the prosecutor.[277] The ban implies that all members (approximately 2,500) are criminally liable for belonging to "an organization recognized as extremist," which carries a prison sentence of up to eight years.[278] Both the current and former chairpersons of the Mejlis, Refat Chubarov and Mustafa Dzhemilev (Jemilev) were banned from Crimea, and deputy head, Ilmi Umerov, was transferred to a psychiatric ward, before he was sentenced to two years in a colony settlement. [279]

152. According to the Unrepresented Nations and Peoples Organization (UNPO), the ban renders all Crimean Tatars "more vulnerable" as they now lack representation, and has

[273] It significantly expands the scope of Russian criminal procedure law, tightens penalties for crimes related to terrorism and extremism, reduces the age of criminal responsibility for these crimes, expands the rights of investigative bodies by limiting the role of courts and the rights of accused, and introduces new crimes into the Criminal Code.

[274] Resulting in individuals found guilty of committing extremism-related criminal and administrative offenses due to publication and distribution. Peter Roudik, "Legal Provisions on Fighting Extremism: Russia," *Library of Congress* (30 November 2015), https://www.loc.gov/law/help/fighting-extremism/russia.php (citing Geraldine Fagan, "Russia: Muslims Rush to Challenge Koran "Extremism" Ruling," *Forum 18* (27 September 2013), http://www.forum18.org/archive.php?article_id=1879).

[275] Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation,* p. 28 (2016), available at http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf; Human Rights Watch, *Rights in Retreat: Abuses in Crimea*,(2014), available at https://www.hrw.org/sites/default/files/report_pdf/russia1114web.pdf.

[276] SOVA Center (COBA), CrimeaSOS, International Federation for Human Rights (FIDH), ADC Memorial, *Racism, Discrimination and fight against "extremism" in contemporary Russia. Alternative Report on the Implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination*, p. 12 (2017), available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_NGO_RUS_28206_E.pdf.

[277] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 188, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[278] *Ibid.* at para. 190.

[279] ARTICLE 19, Mass Media Defence Centre, OVD-Info, PEN International, Roskomsvoboda, and the SOVA Center, *Joint submission to the Universal Periodic Review of the Russian Federation*, p. 13 (9 April 2018), available at https://www.article19.org/wp-content/uploads/2017/10/Russia-3rd-UPR-Updated-Submission-090418-FINAL.pdf. (In September 2016, Ilmi Umerov was convicted under Article 280.1 of the Criminal Code.)

enabled "repressive measures, such as massive identity checks [of] 'non-Slavic'-looking people" allowing the stigmatization of the group as "extremists," "suggesting that they might be a threat" to Crimea.[280]

153. Despite the Russian Federation's claim that its "decision to ban the Mejlis was taken on security grounds and…bore no relation to the ethnicity of its members,"[281] the International Court of Justice adopted a provisional order in April 2017 directing the Russian Federation to "refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis."[282]

154. The UN General Assembly urged the Russian Federation to "revoke immediately the decision declaring the Mejlis…an extremist organization and banning its activities" and to "repeal the decision banning leaders of the Mejlis from entering Crimea."[283] The CERD Committee and the PACE expressed similar concern regarding the ban and the strict limitations imposed on the Mejlis and other Crimean Tatar institutions. [284]

155. *Limitations on free press, expression and association.* Warnings pursuant to the Anti-extremism Law have preceded the shutdown of Crimean Tatar media outlets, claiming that the views, articles or programs contained content considered extremist—including the use of the words "annexation," "temporary occupation" or discussing ethnic repression.[285]

156. Ethnic Ukrainians and Crimean Tatars experience severe limitations on their right to association and expression on account of the anti-extremism framework. For instance, five Crimean Tatars were committed to a psychiatric facility for weeks, based on suspicion that they were members of a banned organization in the Russian Federation (though it is not banned in Ukraine).[286] Several individuals have been convicted and sentenced to prison terms for statements made, and articles posted or reposted, on their

[280] The Unrepresented Nations and People Organization (UNPO), *Member Profile: Crimean Tatars*, p. 8 (October 2017), available at http://unpo.org/downloads/2380.pdf.

[281] Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all forms of racial discrimination (Ukraine v. Russian Federation) (Request for the Indication of Provisional Measures Order), paras. 36, 93 (19 April 2017), available at http://www.icj-cij.org/files/case-related/166/19394.pdf.

[282] *Ibid.* at para. 106(1) (a).

[283] UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 72/190, para. 3(j) (19 December 2017); UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 71/205, para. 2(g) (1 February 2016).

[284] Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 19, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017); Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 10.4, 23 January 2018.

[285] For instance, the editor of *Avdet*, the Mejlis' newspaper, received several warnings that materials contained extremist content, "such as use of the terms 'annexation', and 'temporary occupation' of Crimea." Likewise, *ATR*, the Crimean Tatars' television channel was warned "against disseminating false rumours about repression on ethnic and religious grounds and promoting extremism." Both media outlets were denied re-registration by the Russian Federation, shutting down their operations in Crimea. OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 156, UN Doc. A/HRC/36/CRP.3 (25 September 2017); *see also* Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation,* para. 66 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

[286] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 92, UN Doc. A/HRC/36/CRP.3 (25 September 2017);

social media accounts, referring to such things as the "oppression of the Tatars" or stating that Crimea being "occupied" or "annexed."[287]

157. *Harassment, ill-treatment, surveillance and intimidation.* Evidence from human rights monitoring since 2014 suggests that the authorities regularly abuse the criminal system itself to harass and mistreat Crimean Tatars and those identified as pro-Ukrainian.

158. Law enforcement raids of mosques, madrassas and private homes of Muslims, usually Crimean Tatars, are frequent, with officials stating they are conducting searches for prohibited extremist literature or "proof of connections with extremist and terrorist groups."[288] Searches of mosques often interrupt prayers, many worshippers have been detained, and reportedly video cameras have been installed to track those who attend services.[289] Subjects of raids and searches state that such materials have been planted, false testimonies have been signed that declare possession of such items, and religious literature has been confiscated.[290]

159. In 2016, two pro-Ukrainian supporters were forced to confess to terrorism-related charges "through torture with elements of sexual violence," and "were kept *incommunicado*, tied, blindfolded, beaten up, subjected to forced nudity, electrocuted through electric wires placed on their genitals, and threatened with rape with a soldering iron and wooden stick."[291]

160. Nine Ukrainian citizens were detained in Crimea, subjected to torture which resulted in a forced admission that they were so-called "members of the terror sabotage group of Defense of Ukraine," without any evidence. As of 2017, three had received prison sentences.[292]

161. OHCHR has noted that for those tried for extremism and separatism-related crimes, "prosecutions often seemed to be tainted by bias and a political agenda."[293]

III. HUMAN RIGHTS VIOLATIONS REQUIRING REDRESS

[287] OHCHR, *Report on the human rights situation in Ukraine 16 May to 15 August 2017*, para. 139 (12 September 2017), available at http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf. In 2017, A Crimean Tatar was sentenced to prison for a year and three months for statements he had posted on Facebook in 2016 "mentioning the 'oppression' of the Crimean Tatars" and "referring to Crimea being 'occupied' and 'annexed'." For instance, Emil Kurbedinov, one of the lawyers of the two deputy chairpersons of the Mejlis who were arrested for organizing protests, found guilty in 2017 of "public distribution of extremist materials," for reposting an article on social media about a 2013 public meeting of supporters of a banned and sentenced to 10 days in prison. Human Rights Watch, "Crimea: Defense Lawyers Harassed" (30 January 2017), https://www.hrw.org/news/2017/01/30/crimea-defense-lawyers-harassed.

[288] Council of Europe, Parliamentary Assembly, *Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea,* para. 44 (11 April 2016), available at https://rm.coe.int/168064211f; OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 140, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[289] SOVA Center (COBA), CrimeaSOS, International Federation for Human Rights (FIDH), ADC Memorial, *Racism, Discrimination and fight against "extremism" in contemporary Russia. Alternative Report on the Implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination*, p. 16-18 (2017), available at http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_NGO_RUS_28206_E.pdf.

[290] *See* OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 107, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

[291] *Ibid.* at para. 92.

[292] Crimean Human Rights Group (CHRG), Human Rights Information Centre (HRIC), Regional Centre for Human Rights (RCHR), and Ukrainian Helsinki Human Rights Union (UHHRU), *Joint Submission to the UN Universal Periodic Review: Russian Federation,* para. 9 (2017), available at https://www.upr-info.org/sites/default/files/document/russie_federation_de/session_30_-_mai_2018/js2_upr30_rus_e_main.pdf.

[293] OHCHR, *Report on the human rights situation in Ukraine 16 November 2017 to 15 February 2018*, para. 202 (19 March 2018), available at http://www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_EN.pdf.

Introduction

162. This report argues that the imposition of Russian citizenship in Crimea violates international human rights law, and in particular the right to a nationality and the prohibition on racial and ethnic discrimination. The report provides a legal analysis of automatic naturalization in Crimea in three dimensions:

- *A. The ethnically discriminatory character of automatic naturalization in Crimea*. Russia's campaign in Crimea seeks to reinstate an ethnic-based allegiance to Russia, entailing the elimination of indigenous Crimean Tatars, the idea of a separate Ukrainian "people" and the idea of a civic Ukrainian national identity.
- *B. Automatic naturalization in Crimea as a violation of the right to a nationality*. Automatic naturalization is discriminatory, involuntary, fails to respect due process, lacks a legitimate aim and is disproportionate to the harm it causes.
- *C. The collateral consequences of automatic naturalization in furtherance of ethnic cleansing in Crimea*. The operation of anti-extremism laws, population transfers and cultural erasure works in tandem with forced naturalization.

163. The practice of state-sponsored ethnic discrimination and the instrumentalization of individuals in pursuit of territorial acquisition may arguably be described as so taboo in contemporary international relations that human rights law does not provide a ready remedy. In the drafting process of the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), for example, delegates expressly questioned whether institutionalized racism would outlive colonialism, at Patrick Thornberry points out in his commentary on the CERD:

> "Statements in the *travaux* suggesting that discriminatory action by States was 'unthinkable' are best understood as relating to the view that State-sponsored discrimination was a colonial aberration and not the global phenomenon discerned in Committee practice."[294]

164. Nevertheless, human rights law is capable of assigning and addressing state responsibility for actions so transgressive that they defy such assumptions about lines that would somehow no longer be crossed in our time. The following sections will demonstrate how human rights law can address forced naturalization.

International humanitarian law

165. As we have emphasized, automatic naturalization in Crimea is a gross violation of international humanitarian law. Forcing citizenship on Crimean residents effectively compels allegiance to the occupying power—the Russian Federation—which is forbidden under Article 45 of the Hague Regulations (1907).[295]

166. As noted by OHCHR, "the imposition of Russian Federation citizenship to residents of an occupied territory does not alter their status as protected persons"[296]—which includes civilians, including those detained.

167. International humanitarian law applies alongside human rights law, including the right to nationality, which must be respected by the Russian Federation as an occupying power.

---

[294] Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination* 180 (2016).

[295] "It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power." Hague Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, Article 45, 18 October 1907, 36 Stat. 2277 (1907).

[296] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 118, UN Doc. A/HRC/36/CRP.3 (25 September 2017).

It is the human rights dimensions of the Russian Federations obligations that the following sections scrutinize in detail, but these obligations must be read in concert with international humanitarian law. Nothing in the following analysis is intended to impugn the enduring territorial integrity of Ukraine. Crimea is considered for these purposes a temporarily occupied territory where the Russian Federation, at the time of writing, the occupying power.[297] As such, the Russian Federation must respect its international legal obligations over the territory.[298]

A. The ethnically discriminatory character of automatic naturalization in Crimea

168. The following section highlights several important concepts within the general framework of prohibition of race discrimination for application to the Crimean occupation and automatic naturalization in particular.

Different meanings of the term "national" under international law

169. It is widely recognized that the international legal norm prohibiting discrimination based on race covers other dimensions of discrimination based on innate characteristics such as ethnic or national identity.

170. The ECtHR has, for example, described the legal taxonomy of race discrimination for the purposes the European Convention on Human Rights:

> "Whereas the notion of race is rooted in the idea of biological classification of human beings into subspecies on the basis of morphological features such as skin colour or facial characteristics, ethnicity has its origin in the idea of societal groups marked in particular by common nationality, religious faith, shared language, or cultural and traditional origins and backgrounds. Discrimination on account of a person's ethnic origin is a form of racial discrimination."[299]

171. This report addresses both discrimination on account of *national identity* and violations of the *right to nationality* in Crimea. Thus, the term "national" is not used interchangeably throughout the legal analysis.

172. In the case of Crimea, *because of* the imposition of Russian nationality, Ukrainian nationality and Ukrainian national identity have become more closely connected. The impact of legal categorizations in Crimea therefore mirrors other examples, such as Myanmar's 1982 citizenship law, where "prescriptive" racial classifications have ossified into real-life ethnic divisions,[300] or "Arabization" in Mauritania, where ethnic classifications overwrote more fluid population dynamics that likely existed in pre-colonial times.[301] We maintain that the Russian Federation, through annexation and

[297] Charter of the United Nations and Statute of the International Court of Justice, Article 2(4), 26 June 1945, 59 Stat. 1031 (1945) (setting out the fundamental principle of respect for territorial integrity in international relations); Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G A. Res. 2625, U N. Doc. A/8028 (1970); UN General Assembly, Territorial integrity of Ukraine, G.A. Res. 68/262(1 April 2014); UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 71/205 (1 February 2016). The Russian Federation is party to the 1907 Hague Regulations, the Fourth Geneva Convention of 1949 and the 1977 Additional Protocol I to the 1949 Geneva Conventions. In 2016, the Office of the Prosecutor of the International Criminal Court determined that Crimea was under the occupation of the Russian Federation. *See* Office of the Prosecutor, *Report on Preliminary Examination Activities 2016*, International Criminal Court, para. 155-58 (14 November 2016), available at https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

[298] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 38, UN Doc. A/HRC/36/CRP.3 (25 September 2017);

[299] European Court of Human Rights, *Sejdic and Finci v. Bosnia and Herzegovina*, Judgment of 22 December 2009, at para. 43.

[300] *See above*, "Myanmar's 1982 Citizenship Law," paras. 17-19.

[301] *See above*, "Black Mauritanians, denationalization and Arabization," para. 20.

automatic naturalization, causes the suppression of both Ukrainian nationality (in a legal sense) and the rights of people not to be discriminated against based on their actual, attributed, or perceived Ukrainian national identity.

The right to exist

173. Non-discrimination law complements and is complemented by another body of norms safeguarding minority rights. For the purposes of the present report, we emphasize a key principle within the minority rights framework, which is the minority's right to exist.

> "Physical existence is the core claim demanded by ethnic groups; turning the right to life and the right to existence into the most basic human rights. The most relevant international norms to the protections of minorities' existence is the right to be protected against genocide."[302]

174. The CERD incorporates minority rights protection in part through inclusion of "national origin" as a ground of discrimination, which has been interpreted to refer to "politically organized" nations within a state, which continue to exist culturally and socially.[303] During the drafting process, for example, Poland supported inclusion of "national origin" "refer[ing] to a situation in which a politically organized nation had been included within a different State but 'continued to exist as a nation in the social and cultural senses even though it had no government of its own'; members of such a nation within a State might thus be discriminated against, 'not as members of a particular race or as individuals, but as members of a nation which existed in its former political form.'"

175. Other international norms that guarantee minorities' right to exist include Article 20 ICCPR and Article 1 of the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities ("Minority Declaration"), which requires that states "protect the existence of national or ethnic, cultural, religious, and linguistic minorities."

176. "Ethnic cleansing," is considered to "entail[] deportations and forcible mass removal or expulsion of persons from their homes in flagrant violation of their human rights, and which is aimed at the dislocation or destruction of national, ethnic, racial or religious groups." Ethnic cleansing, and its component acts, represent the antithesis of a minority group's right to exist.

177. In 2005, the CERD Committee elaborated a set of "indicators of patterns of systematic and massive racial discrimination," in line with its adoption of a declaration on the prevention of genocide. "Key indicators" of systematic discrimination capable of leading to violent conflict and genocide include the "compulsory identification against the will of members of particular groups, including the use of identity cards indicating ethnicity" and "systematic official denial of the existence of particular distinct groups."[304]

Discrimination and group membership

178. The discriminatory character of collective imposition of citizenship is potentially obscured due to the wide scale of its application – across the entire population of occupied Crimea – and the lack of detailed information about its application in practice. Opting out of Russian citizenship is by no means a reliable measure of those who suffered as a result of imposition of Russian citizenship and the effective nullification of

[302] Tina Kempin Reuter, *Dealing with Claims of Ethnic Minorities in International Law*, 24 Connecticut Journal of International Law 201, 206 (2009).
[303] Nathan Lerner, *The UN Convention on the Elimination of all Forms of Racial Discrimination* 29 (1980) (referencing Av.C.3v.SR.1304, p. 2v.3).
[304] Committee on the Elimination of Racial Discrimination, *Decision on follow-up to the declaration on the prevention of genocide: indicators of patterns of systematic and massive racial discrimination*, paras. 2, 4, U.N. Doc. CERD/C/67/1 (2005).

Ukrainian citizenship, for example, as we know that in practice many would have been prevented from exercising this option.

179. A further question that requires clarification is: who may be a victim of discrimination against a group based on a protected ground, in this case ethnicity or national origin. What degree of identification with the group discriminated *against* is required? The victim's subjective self-identification with the protected group is an important factor, but the discriminator's own generalized motivations and/or the disparate impacts of impugned actions carry important weight as well, particularly for actions of collective or blanket nature, in determining whether an unlawful act of discrimination has occurred. One need look no further than the Reich Citizenship Law's regulations to find a devastating example of a deeply discriminatory definition of the Jewish "race" that covered many people who would not have previously fallen within the scope of "Jewishness."[305]

180. In *Nikolova v. CEZ*, Case C-83/14, for example, the Court of Justice of the European Union addressed whether a non-Roma, ethnic Bulgarian resident of a predominantly Roma district suffered discrimination under the EU Race Equality Directive due to the electricity company CEZ's practice of placing meters at a physically inaccessible height in Roma-majority districts, including Ms. Nikolova's. The Court answered that for the purposes of applying the equal treatment principles in EU law, Ms. Nikolova's particular ethnic origin did not exclude her as a victim of ethnic discrimination: "the fact remains that it is indeed Roma origin, in this instance that of most of the other inhabitants of the district in which she carries on her business, which constitutes the factor on the basis of which she considers that she has suffered less favourable treatment or a particular disadvantage."[306] The aim of the directive is to eliminate discrimination *on grounds of* race or ethnicity, with the emphasis properly placed, for the purposes of a geographically-based policy, on the actions of the discriminator, rather than the individual membership of victims in targeted groups.[307]

181. The Committee on the Elimination of Racial Discrimination has also clarified that "a distinction is contrary to the Convention if it has either the purpose or the effect of impairing particular rights and freedoms. This is confirmed by the obligation placed upon States parties by article 2, paragraph 1(c), *to nullify any law or practice which has the effect of creating or perpetuating racial discrimination*."[308]

Application to the situation in Crimea

182. The suppression of non-Russian national identity in Crimea entails systematic discrimination that unfolds across multiple dimensions:

- The 2014 occupation creates a class, consisting of the population of Crimea, who are targeted based on their actual, attributed or perceived Ukrainian ***national identity***. Discriminatory treatment extends across many aspects of daily life, including: forced naturalization, restrictions of free movement (especially for those without residence registration), involuntary exposure to military conscription, restrictions on access to judicial institutions, and restrictions on freedom of expression and political participation. As noted above (paras. 53-62), Ukrainian "national identity" has inseparable ethnic and political dimensions, particularly after annexation.

[305] *See above*, "Jewish communities under Reich Citizenship Law," paras. 13-14.

[306] Court of Justice of the European Union, *CHEZ v. Nikolova*, Case C-83/14, Judgment, para. 59.

[307] *Ibid.* para. 56.

[308] Committee on the Elimination of Racial Discrimination, General Recommendation No. 14, on article 1, paragraph 1, of the Convention, para. 114 (1993).

- Within this group, more bounded and cognizable ***ethnic minorities***, specifically ethnic Ukrainians and Crimean Tatars, suffer compound discrimination, including: disappearances, unlawful searches, restrictions on freedom of expression, attacks on cultural institutions, and denial of language rights.

183. The discriminatory character of the Russian Federation's actions toward the population of Crimea is, first, in relation to the elimination of a Ukrainian national identity. Legally and practically extinguishing Ukrainian citizenship through the imposition of Russian citizenship created a web of legal and ideological influence that enveloped the entire population. Self-identification of impacted individuals and the operation of individual choice in how to respond to Russia's actions are, for these purposes, secondary to the systematically discriminatory character of those actions.

184. The suggestion that ethnic Ukrainians and Crimean Tatars make up a minority of the ethnic groups in Crimea as of 18 March 2014, when automatic naturalization took effect, does not absolve Russia's actions of their essentially discriminatory character. The prohibition of race discrimination would be a blunt instrument indeed it if could not be rigorously applied to the misappropriation of citizenship law to so efficiently undermine national identity and abuse ethnic minorities.

B. Automatic naturalization in Crimea is a violation of the right to a nationality

185. Automatic naturalization violates international norms that safeguard various aspects of the human right to nationality, chiefly: (1) nationality laws must not discriminate, directly or indirectly, based on race or ethnicity; (2) any change in nationality must be voluntary; (3) measures that impact one's enjoyment of the right to nationality must respect due process; (4) measures that interfere with the enjoyment of the right to nationality must have a legitimate aim; and (5) such measures must also be proportionate in their impact on individual rights balanced against a legitimate aim.

186. The UN General Assembly's resolution 72/190 condemned automatic naturalization and called its effects "regressive"[309] – an apt term especially considering the undeniable similarities to policies like "Germanization" in Nazi occupied territories in the 1940s. These are actions that today's humanitarian and human rights laws were responding to and designed to stamp out.

187. "I wish to protest against attempts to deprive me of Ukrainian citizenship since I have been and I remain a citizen of Ukraine. *I am not a serf to be flung, together with land, into citizenship*. I did not write any applications to receive Russian citizenship and reject Ukrainian. I do not accept the Russian Federation's annexation and military seizure of the Crimea and consider any agreements which the illegitimate Crimean government makes with Russian to be invalid"[310]

188. Once considered a reserved domain of state sovereignty, nationality law has, particularly as a result of the progressive development of human rights law, increasingly come within the realm of international law.[311] Russia must comply with applicable international law in defining and applying its nationality laws, including in the context of occupation. The

[309] UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, G.A. Res. 72/190 (19 December 2017).

[310] Halya Coynash, "Russian Farce," *Kharkiv Human Rights Protection Group* (11 July 2014), http://khpg.org/en/index.php?id=1405030257 (emphasis added).

[311] *See, e.g.*, Laura van Waas, *Fighting Statelessness and Discriminatory Nationality Laws in Europe*, 14 European Journal of Migration and Law 243, 244 (2012) ("At both global and regional levels, [] international standards have come to impose significant restrictions on the freedom of states to regulate access to nationality in accordance with their own sovereign interests."); Peter J. Spiro, *New International Law of Citizenship*, 105 American Journal of International Law 694, 697-98 (2011) (States are not free to disregard the otherwise lawful establishment of the bond of nationality between an individual and a state, as Russia has done with respect to Ukrainian nationality within occupied Crimea.).

right to nationality and the prohibition against arbitrary deprivation of nationality have been increasingly incorporated into international human rights law, beginning with Article 15 of the Universal Declaration of Human Rights (UDHR), which prohibits arbitrary deprivation of nationality and arbitrary deprivation of the right to change nationality, and protects an individual's right to a nationality.[312]

189. In the *Nottebohm* case, the International Court of Justice (ICJ) described naturalization as a "translation into juridical terms of the individual's connection with the State which has made him its national." The ICJ, even in this 1955 case that predates many critical developments in human rights law, recognized that nationality concerns the individual "personally" and naturalization "may have far reaching consequences and involve profound changes in the destiny of the individual who obtains it."

190. Arbitrary deprivation of nationality is prohibited under many international human rights instruments.[313] "Deprivation of nationality" covers situations where individuals who have previously been recognized as citizens of a state are subsequently stripped of recognition of that nationality, whether this is by invocation of formal procedures provided under the law, or in violation of that law.[314]

Discriminatory

191. The prohibition on discrimination is the strongest legal constraint on state action in the realm of nationality law.

192. **Legal principles.** The UN Human Rights Council and its predecessor have both affirmed that the "arbitrary deprivation of nationality on racial, national, ethnic, religious, political or gender grounds is a violation of human rights and fundamental freedoms."[315] Article 9 of the 1961 U.N. Convention on the Reduction of Statelessness (the "1961 Convention") obliges States not to "deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."[316] Specific protection against arbitrary deprivation of nationality resulting from discrimination is dealt with in various other human rights treaties, including Article 5(d) (iii) of the Convention on the Elimination of All Forms of Racial Discrimination ("CERD").

---

[312] Universal Declaration of Human Rights, Article 15, 8 December 1948, G.A. Res. 217A (III) (1948) (That provision states that "everyone has the right to a nationality" and (Article 15(2)) "deprived of his nationality nor denied the right to change his nationality."); *see also* International Covenant on Civil and Political Rights, Article 24, 16 December 1966, 99 U.N.T.S. 171 (1967); International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(d)(iii), 7 March 1966, 660 U.N.T.S. 195 (1996); Convention on the Elimination of All Forms of Discrimination Against Women, Article 9, 18 December 1979, 1249 U.N.T.S. 13 (1980); Convention on the Rights of the Child, Articles 7 and 8, 20 November 1989, 1577 U.N.T.S. 3 (1989); American Convention on Human Rights, Article 20, 22 November 1969, 1144 U.N.T.S.123 (1970); African Charter on the Rights and Welfare of the Child, Article 6, 27 June 1981, 1520 U.N.T.S. 217 (1982). *See generally* Human Rights Council, *Report of the Secretary-General on Human rights and arbitrary deprivation of nationality*, U.N. Doc. A/HRC/13/34 (14 December 2009); UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")* (March 2014), available at http://www.refworld.org/docid/533a754b4.html.

[313] *See generally* Human Rights Council, *Report of the Secretary-General on Human rights and arbitrary deprivation of nationality*, U.N. Doc. A/HRC/13/34 (14 December 2009); UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")* (March 2014), available at http://www.refworld.org/docid/533a754b4.html.

[314] *See, e.g.*, Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*, Open Society Foundations (OSF), 43 (January 2016), available at https://www.opensocietyfoundations.org/sites/default/files/citizenship-law-africa-third-edition-20160129.pdf ("[A] retrospective finding that a person was not a national and was issued nationality documents in error, or arbitrary application of rules relating to loss by operation of law, are equally subject to rules prohibiting arbitrary deprivation of nationality").

[315] *See* UN Commission on Human Rights, *Human Rights and Arbitrary Denial of Nationality*, para. 1, UN Doc. E/CN.4/1997/36 (11 April 1997); UN Human Rights Council Res. 13/2, *Human rights and arbitrary deprivation of nationality*, at para. 2, U.N. Doc. A/HRC/RES/13/2 (14 April 2010).

[316] Convention on the Reduction of Statelessness, Article 9, 30 August 1961, 989 U.N.T.S. 175 (1961).

193. These legal principles must be read together with Russia's obligations as an occupying power under international humanitarian law, which imposes a duty not to discriminate on the basis of race, religion or political opinion.[317]

194. **Violations.** The CERD Committee recognized the discriminatory character of automatic naturalization in urging the Russian Federation to repeal administrative and legislative measures enacted since occupation of Crimea that discriminate against ethnic and indigenous groups "in relation to nationality and citizenship rights."[318]

195. As discussed in the factual background section above (paras. 72-108), the automatic naturalization law created different categories of effects depending on individual circumstances, but in the first instance the covered group should be understood as *all those to whom the laws are applicable* on the ground of Ukrainian national identity. The purpose of the law is to legally erase not only the notion of ethnic Ukrainians as a separate "people" but also to subjugate Crimean Tatars in Ukraine and to undermine the Ukrainian character of the population overall. Individuals may variously identify with different dimensions of Ukrainian national identity, but, as was the case in *Nikolova v. CEZ*, discussed above (para. 180) the essentially discriminatory legal framework applied to the entire geographic area, disadvantaging all affected persons in respect of enjoyment of the right to nationality.

196. The case of Nazi "Germanization" policy in occupied territories is instructive. Whereas different classes of the population were created with varying additional individualized or collective consequences, the overall scheme was held to be a grave criminal enterprise.[319] Similarly, the binary character of the automatic naturalization scheme – the implication that one must "choose" to be Russian or "retain" Ukrainian nationality – has the intended effect of hardening these identities. One can look to the Compatriot Policy as evidence that the Russian Federation is keenly aware of the linkage between ethnic affinity and nationality law. The fact that, under Vladimir Putin, the Compatriot Policy has been increasingly deployed to stoke nationalistic sentiments in the post-Soviet space likewise evidences a conscious effort to use nationality law to forge an ethnically and politically Russian populace.[320]

197. The automatic citizenship law is also *indiscriminate* – it applies to all residents uniformly regardless of their ethnicity, ability, statelessness, nationality, residence status, age, or presence in the territory during the critical month of March-April 2014. In this sense the law is discriminatory for failing to treat substantially differently situated individuals appropriately.[321] A parallel can be drawn here to the example of the Dominican Republic's Law 169-14, which appeared to create avenues for rehabilitation of nationality after the devastating 2013 Constitutional Court decision, but in reality the law enhanced the exclusionary effects of years of denial of birth registration and access to national identity cards, which disproportionately impacted Dominicans of Haitian descent.[322]

---

[317] Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Article 27, 12 August 1949, 75 U.N.T.S. 287 (1949).

[318] Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 20, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017).

[319] *See above*, paras. 26-27.

[320] *See* paras. 120-124, above, and accompanying notes.

[321] *See* European Court of Human Rights, *Thlimmenos v. Greece*, Application No. 34369/97, Judgment of 6 April 2000, at para. 47.

[322] *See above*, "Dominicans of Haitian descent in the Dominican Republic," paras. 21-23.

198. The CERD Committee's General Recommendation 32 reflects this principle of non-discrimination law:

> "To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same" (para. 8).

199. Given the extraordinarily compressed timeline for opting out of automatic naturalization, the disproportionate negative impacts of lack of residency registration on Crimean Tatars and Ukrainians with registration outside of Crimea, and the hasty adoption of the framework itself, it appears no attempt was made to account for hardships that would be suffered by some of the vulnerable groups mentioned. On the contrary, those vulnerabilities left these groups liable to further involuntary measures like prisoner and detainee transfers, ejection from Crimea, harsh penalties under anti-extremism laws and military conscription, all of which furthered the aim of psychologically redefining the Crimean population as "Russian" and physically altering its demographics.

Involuntary

200. A critical indicia that the automatic citizenship law transgresses the norm guaranteeing the right to nationality is the involuntary nature of its application.

201. **Legal principles.** The right to nationality in international human rights law includes the right to freely change nationality. Naturalization, as the ICJ has recognized, assumes individual choice or a "volitional predicate."[323] The *Nottebohm* case anchored the notion that *overextending* nationality – bending the rules to sweep more people within a state's political membership – was a nuisance to inter-state relations. "Historically, the only limits on state nationality practices involved over-claiming."[324] The 1930 Hague Convention, a foundational instrument in modern nationality law, Article 6, includes "the right of a person to renounce one of two nationalities if this nationality was acquired without any voluntary act on his part."

202. In the context of interstate arbitration claims brought on behalf of nationals in expropriation cases, tribunals have also rejected attempts to "over-claim" by imposing nationality involuntarily:

> "[T]he acquisition of a new nationality must contain an element of voluntariness on the part of the individual acquiring it, that it must not be conferred against the will of the individual."[325]

203. The ECtHR, in *D.H. and others v. Czech Republic* concerning segregation of Roma students in Czech schools, stressed that voluntariness requires an unfettered choice, not a false one. In *D.H.*, parents could not make decisions in respect of their children's schooling "without constraint" where they were presented with two equally harmful alternatives, leaving them with an "impossible dilemma."[326]

204. The Inter-American Commission has also stressed the importance of voluntariness in regulation of nationality:

> "... this right [to nationality] is properly considered to be one of the most important rights of man, after the right to life itself, because all the prerogatives, guarantees and

[323] Peter J. Spiro, *Citizenship Overreach*, 38 Michigan Journal of International Law 167, 172 (2017).
[324] *Ibid.* at 173.
[325] Paul Weis, *Nationality and Statelessness in International Law* 110 (2d ed. 1979).
[326] *D.H. and others v. Czech Republic*, ECtHR [GC], Grand Chamber Judgment of 13 November 2007, at paras. 202-03 (parents of Roma children required to choose between denying consent to special schooling and ordinary schools where their children would be ostracized).

> benefits man derives from his membership in a political and social community – the State – stem from or are supported by this right.[…] It is generally considered that since nationality of origin is an inherent attribute of man, his natural right, and is not a gift or favour bestowed through the generosity or benevolence of the State, **the State may neither impose it on anyone by force, nor withdraw it as punishment or reprisal**.

> "The deprivation of nationality ... always has the effect of leaving a citizen without a land or home of his own, forcing him to take refuge in an alien country. That is, it inevitably impinges on another jurisdiction, and no state may take upon itself the power to adopt measures of this sort. ... [T]he Commission believes that this penalty -- anachronistic, outlandish and legally unjustifiable in any part of the world -- is a thousand times more odious and reprehensible when applied in our own Americas, and should forever be banned from being applied by governments everywhere."[327]

205. Thus even traditional international legal instruments and norms prohibit the imposition of nationality as a nuisance in international relations, whereas the subsequent development of human rights law has crystallized separate considerations addressed to the harmful human impact of arbitrary, discriminatory and involuntary imposition of citizenship.

206. International humanitarian law also reflects the importance of free will by prohibiting the imposition of loyalty. Article 45 of the Hague Convention (IV) of 1907 forbids states from compelling inhabitants of occupied territory to swear allegiance to a hostile power.[328] Furthermore, under international humanitarian law, "allegiance to the displaced sovereign cannot be severed under duress."[329]

207. **Violations.** The Russian automatic naturalization approach in Crimea contradicts every principle set out in international law to protect the individual's free choice in acquisition, renunciation and change of nationality.

208. As noted above, multiple human rights monitoring mechanisms have condemned automatic citizenship, including the UN Human Rights Committee which specifically expressed concern regarding the inability of residents to make informed choices about how to respond to this measure.[330]

209. The language of the *Treaty on Accession* and Law 6-FKZ implies that residents must choose to be either Russian or Ukrainian, which is misleading at best given that Russian citizenship law permits dual nationality (see paras. 116-119). The framework was adopted in a time of upheaval and generalized legal uncertainty, undermining considerably any individual's ability to make informed choices based on full understanding of "the benefits and drawbacks" of either options. The facts reveal that the drawbacks of either option – military conscription resulting in transfer to Russian territory, for example, or the aggressive application of Russian anti-extremism laws to

---

[327] Inter-American Commission on Human Rights, *Third Report on the Situation of Human Rights in Chile*, p. 80-1, OEA/Ser/L/V/II.40 Doc 10 (11 February 1977).

[328] Regional Centre for Human Rights, Ukrainian Helsinki Human Rights Union & CHROT, *Crimea Beyond Rules: Thematic review of the human rights situation under occupation, Vol. 3, Right to nationality (citizenship)* (2017), available at https://helsinki.org.ua/wp-content/uploads/2016/04/Crimea_beyond_rules_-3_en-fin.pdf.

[329] The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 34 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true.

[330] Human Rights Committee, *Concluding Observations on the Seventh Periodic Report of the Russian Federation*, para. 23(c), U.N. Doc. CCPR/C/RUS/CO/7 (28 April 2015).

shutter cultural institutions – were unforeseeable at the time the automatic naturalization took effect.

210. The right of option, in addition to failing to provide for informed decision-making, was accompanied by a farcically inadequate infrastructure for those who wished to reject Russian citizenship and "retain" Ukrainian citizenship. Indeed, those who managed to locate the appropriate facilities to make their declaration faced intimidation and threats. Based on the criteria set out in international legal materials and jurisprudence, the "right of option" in the Crimean occupation is a misnomer, as the procedure would not meet the basic criteria of providing for a voluntary choice and respecting individual will.

211. In practice, residents of Crimea had 18 days to decide whether to make a declaration that they were rejecting Russian citizenship. Even assuming all of the above deficiencies were corrected, the time period is too short to afford a reasonable chance to make such a consequential decision.

Lack of due process

212. Even where international law allows states to withdraw or deny access to citizenship, such action must be accompanied by procedural and substantive safeguards.

213. **Legal principles.** Article 8(4) of the 1961 Convention provides that "Contracting States shall not exercise a power of deprivation … except in accordance with the law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body."[331] Article 17 of the International Law Commission's draft articles on nationality of natural persons state that the "minimum safeguards" should entail that decisions related to the acquisition, retention, loss or deprivation of nationality should be issued in writing and subject to effective review.[332]

214. The 1961 Convention sets out minimum standards for ensuring that processes of loss or deprivation of nationality respect international law. Article 8(4) obliges States, even in exercising the limited deprivation power in this area to do so "in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body."

215. This requirement is illustrative of a wider principle that laws, policies and practices restricting the right to nationality must accord with due process in order to "prevent abuse of the law" and ensure that "decisions on nationality matters do not contain any element of arbitrariness."[333]

216. Provision of due process in nationality matters also safeguards against coercion or duress. In the United States, for example, Japanese Americans interned at a "relocation center" during World War II were given the "option" to renounce their American nationality through an amendment to the Nationality Act.[334] Ultimately, the renunciation

[331] *Ibid.* Article 8(4). *See also* Human Rights Committee, General Comment No. 16 Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation) (1988) and Human Rights Committee, General Comment No. 27 Freedom of movement (Art.12) (1999) (the prohibition on arbitrary interference requires all state actions to be reasonable under the particular circumstances and respect the principle of proportionality); Council of Europe, European Convention on Nationality, Articles 5, 7(3), 12, Explanatory Report, 6 November 1997, 2135 U.N.T.S. 213 (1997); Human Rights Council, *Report of the Secretary-General on Human rights and arbitrary deprivation of nationality*, paras. 25-27, 43, U.N. Doc. A/HRC/13/34 (14 December 2009).

[332] *See* Yearbook of the International Law Commission, Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, p. 31, U.N. Doc. A/CN.4/SER.A/1999/Add.l (Part 2) (1999).

[333] UNHCR, *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, paras. 25-26 (March 2014), available at: http://www.refworld.org/docid/533a754b4.html.

[334] *See* Eric L. Muller, *Japanese American Cases–A Bigger Disaster Than We Realized*, 49 Howard Law Journal 417, 455 (2006).

requests were challenged on the ground that they were issued in a context of intense coercion. In his opinion in *Abo v. Clark*, Judge Louis E. Goodman observed:

> "[It was] shocking to the conscience that an American citizen be confined without authority and then, while so under duress and restraint, for his Government to accept from him a surrender of his constitutional heritage."[335]

217. **Violations.** Minimum due process in nationality determinations requires individualized treatment with fair hearings, written decisions and opportunity for review, Mass conferral of nationality necessarily fails to provide such basic protections.

218. The process of imposing Russian citizenship was also neither transparent nor equitable, providing an inadequate timeframe and insufficient locations for all those wishing to reject Russian citizenship to do so. After the deadline to reject automatic naturalization, Russian authorities also enacted criminal penalties for failure to disclose a second citizenship as well as caps on temporary residence permits for foreigners in Crimea. These inadequacies have negatively impacted non-Russian groups and those who oppose annexation. Historical examples like the situation of Kenyan Asians and ethnic groups excluded from nationality under the 1982 Burma Citizenship Law demonstrate how burdensome procedural requirements and unfair processes introduced in a context of sweeping nationality reforms leads to extensive violations of human rights of excluded groups.

219. As a result of the automatic citizenship law, those who opted out of Russian nationality and those who were unable to prove permanent residence or to acquire Russian passports would face hurdles in accessing justice for a wide variety of human rights violations. These burdens disproportionately impact ethnic Ukrainians and Crimean Tatars.

220. There is no remedy for the forced naturalization itself, which is exacerbated in cases where the individual opted out and therefore must pursue claims as a foreigner in a hostile judicial system.

No legitimate purpose and disproportionate

221. The blanket grant of nationality in the context of hostile occupation should be understood as *per se* unlawful and therefore illegitimate. In light of the negative impact that the action has had, in general and for specific groups, it cannot be justified.

222. **Legal principles.** A growing body of human rights decisions from international and regional tribunals have recognized the harmful impact that interference with the right to nationality can have. Most often, the nature of the harm is articulated as damaging to human dignity, in recognition of the quality of citizenship as a means of isolating, disarming and objectifying individuals.

223. In the case of *Kuric v. Slovenia* the ECtHR addressed the situation of Slovenia's "erased" people – a group of nearly 20,000 individual's, many of whom were members of ethnic minorities, whose names were erased from Slovenia's registry of permanent residents in the aftermath of independence and the inauguration of new citizenship laws. In a separate opinion, Judge Vucinic addressed the importance of respect for legal personality as a facet of private life:

[335] *Abo v. Clark*, 77 F. Supp. 806, 812 (N.D. Cal. 1948), *rev'd in part on other grounds*, *McGrath v. Abo*, 186 F.2d 766, 770 (9th Cir. 1951). Nearly all renunciations were ultimately invalidated. *See* Eric L. Muller, *Japanese American Cases–A Bigger Disaster Than We Realized*, 49 Howard Law Journal 417, 457 (2006) (92% of the 5409 applications for restoration of citizenship were successful). The total number of renunciations at Tule Lake was around 6,000. *Ibid*. at 454.

> "[T]he right to legal personality is a normal, natural and logical consequence of human personality and inherent human dignity; it is a natural and inherent part of every human being and his or her personality."[336]

224. In a case involving the denial of nationality to two school-girls in the Dominican Republic, the Inter-American Court of Human Rights recognized the importance of the right nationality in relation to the recognition of juridical personality and human dignity:

> "the failure to recognize juridical personality harms human dignity, because it denies absolutely an individual's condition of being a subject of rights and renders him vulnerable to non-observance of his rights by the State or other individuals."[337]

225. **Violations.** The structure of the automatic naturalization law and its sweeping application belie a legitimate aim to offer the voluntary option – already available in any case – to acquire Russian nationality (or remain stateless).

226. In light of the analysis provided in preceding sections concerning, in particular, the paramount importance of free will and the longstanding restriction against compelling occupied peoples to swear allegiance to a foreign power, at an individual level the most offensive aspect of Russia's actions is their affront to human dignity. The population of Crimea was literally and figuratively subjugated through this act.

227. In short, the process, substance and effects of automatic naturalization violate Russia's international legal obligations and cannot be justified as proportionate in light of the negative impact that the measure has upon individual rights.

C. Collateral consequences of automatic naturalization

228. Although the impacts of automatic naturalization are too wide-ranging and unpredictable to be captured in full in this report, the examples researched and included in the factual background section are briefly analyzed below as the more direct and interrelated collateral consequences of automatic naturalization in Crimea.

229. As discussed in earlier sections these factors work in tandem with forced naturalization in an effort to achieve the fundamental reshaping of the ethnic make-up of occupied Crimea, both physically and psychologically.

<u>Denial of freedom of movement and forcible transfers as a result of occupation and automatic naturalization</u>

230. The construction and application of citizenship laws have the well-recognized quality of influencing, disrupting and hardening political borders, which is a fact that Russia has exploited in Crimea and elsewhere.[338] This section will analyze the legitimacy of using citizenship law and practice in order to contain and shift populations for the purposes of manipulating political boundaries, focusing on the right to free movement and human rights protections against arbitrary expulsions.

231. **Legal principles.** With respect to freedom of movement, the CERD Committee has criticized states concerning efforts to use planning laws to achieve "demographic balance," in particular with respect to Israel and Occupied Territories, as well as the

---

[336] *Kurić and others v. Slovenia*, ECtHR [GC], Grand Chamber Judgment of 26 June 2012, Partly Concurring, Partly Dissenting Opinion of Judge Vučinić.

[337] Inter-American Court of Human Rights, *Case of the Yean and Bosico Girls v. Dominican Republic*, Judgment of 8 September 2005, para 180.

[338] *See, e.g.*, Walter Kemp, "Where are the borders? National identity and national security," *in Blood and Borders*, Kemp et al., eds. (2011).

Russian system of residence registration and denial of such registration on ethnically discriminatory grounds.[339] As noted above, the ECtHR has also found that the residence registration system violates an array of rights particularly for vulnerable populations (see para. 105).

232. The CERD Committee has also confronted states' efforts to "*sedentarize*" populations (nomadic groups) in order to extinguish their culture.[340]

> "Forced sedentarization and allied expulsionist policies inevitably involve violation of a spectrum of undifferentiated and differentiated (group-specific) human rights, civil and political, economic, social and cultural, individual and collective."[341]

233. The UN General Assembly called the forcible actions to shift population demographics contrary to international humanitarian law:

> "The Assembly stresses that this Russian policy should be viewed as a violation of Article 49 of Geneva Convention IV, according to which individual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motivation."[342]

234. UN General Assembly Resolution 68/262 also stressed that immigration regulations of the Russian Federation should not apply in occupied Crimea.[343]

235. Art 51 of the Fourth Geneva Convention states that "[t]he Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted."

236. Article 76 notes that "[p]rotected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein."

237. These actions also violate human rights norms – applicable to Russia as an occupying power – which prohibit the deprivation of nationality for the purposes of expulsion. Russia's automatic citizenship law has permitted the constructive expulsion of nationals from occupied Crimea, and in the case of prisoner transfers, these movements were across the political border between Ukraine and Russia.

238. The International Law Commission's *Draft Articles on expulsion of aliens* state:

> "A State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her."[344]

239. Article 12(4) of the ICCPR,[345] prohibits arbitrary deprivation of an individual's right to enter his "own country," a provision that is not subject to derogation. In its General Comment No. 27 on Freedom of Movement, the Human Rights Committee (UNHRC)

---

[339] *See* Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination* 337-38 (2016).

[340] *Ibid.* at 338.

[341] *Ibid.* at 338-39.

[342] Council of Europe, Parliamentary Assembly Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine, para. 7, 23 January 2018.

[343] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 126, UN Doc. A/HRC/36/CRP.3 (25 September 2017);

[344] UN General Assembly, *Expulsion of aliens: Texts and titles of the draft articles adopted by the Drafting Committee on second reading*, International Law Commission Sixty-sixth Session, A/CN.4/L.797 (24 May 2012).

[345] International Covenant on Civil and Political Rights, Article 12(4), 16 December 1966, 99 U.N.T.S. 171 (1967).

explained that Article 12(4) severely restricts contracting states' ability to engage in denationalization leading to expulsion:

> "The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country."[346]

240. A chief concern underlying Article 12 is the reality that states can, simply by declaring an individual a non-national, expel him or her and deny international responsibility, in circumvention of the entire framework of human rights protection.

241. The UNHRC in *Stewart v. Canada*, in relation to the protection granted by Article 12(4), established that the principle of non-expulsion of nationals should be understood broadly, maintaining that "his own country" is a concept that applies to individuals who are nationals as well as to certain categories of individuals, who while not nationals in a formal sense, are also not "aliens" within the meaning of Article 13. This would depend on "special ties to or claims in relation to a given country."[347]

242. **Violations.** Automatic naturalization has facilitated several modes of constraints on free movement and population shifts in Crimea since 2014.

243. First, contrary to CERD's express criticism of such practices, Russia has used citizenship law in order to effectively sedentarize the population, imposing both citizenship and residence registration requirements under Russian law in a discriminatory fashion that disadvantages those with registration in mainland Ukraine and Crimean Tatars and favors those who supported annexation (para. 108). At the same time, Russian immigration laws, which should not be applicable in Crimea at all, have instead been applied selectively to favor those who support annexation.[348]

244. Second, imposition of citizenship has facilitated forcible transfers of prisoners and detainees to Russian territory and military postings of forcibly conscripted Crimeans within Russian territory in violation of humanitarian law (paras. 130-146). More than 4,700 pretrial detainees and prisoners have been unlawfully transferred from Crimea to the Russian Federation. Human rights monitoring, individual complaints and reports of higher profile cases furnish reliable evidence to suggest that affected detainees were forced to acquire Russian nationality against their will.[349] Coupled with the integration of penal systems, the fact that these individuals were "Russian citizens" facilitated the unlawful transfers.

245. Finally, expulsions from the territory of Crimea not only violate directly applicable humanitarian laws, but also contravene human rights protections safeguarding against the manipulation of nationality law in order to expel nationals from their "own country." Interpretive bodies have chosen to ascribe a broad meaning to the concept of one's own country. The relevant provisions of humanitarian law cited above contain hard prohibitions that support the prerogative on the part of states not to recognize unlawful actions. Human rights norms safeguard individuals and human dignity universally. Non-recognition is not enough to provide redress. Thus, whatever the legal cover, actions that have the effect of interfering with enjoyment of human rights must be brought within the

[346] Human Rights Committee, General Comment No. 27 Freedom of movement (Art.12) (1999).
[347] UN Human Rights Committee, *Stewart v Canada*, Merits, Communication No 538/1993, 1 November 1996, para 12.3-12.5.
[348] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 67, UN Doc. A/HRC/36/CRP.3 (25 September 2017).
[349] *See* paras. 102-103 (prisoners unable to reject Russian citizenship).

sweep of human rights law. In this case, in effect, the Russian Federation has turned Ukrainian nationals into "foreigners" and expelled them from their own country.

246. As demonstrated above (paras. 127-128) in aggregate these actions have altered, physically, the population of Crimea in line with the clear intent behind imposition of Russian nationality there: to impose an ethnic Russian identity and supplant, physically and ideologically, the indigenous Crimean Tatars as well as both the Ukrainian "people" and Ukrainian civic nationalism.

Anti-extremism laws resulting in stigmatization, harassment and ill-treatment

247. The imposition of Russia's entire legal framework to the territory of Crimea in only a few months in 2014 caused tremendous upheaval and, on its own, violates international humanitarian law. The imposition of Russian citizenship, in particular, legitimized the use of Russia's extensive anti-extremism laws to stigmatize opposition to occupation as "separatist" and "extremism." Intimidation, harassment and threats permeate the atmosphere, restricting safety in public spaces and raids and surveillance in households, newsrooms, cultural institutions and businesses. Following the institution of criminal charges or administrative actions, ill-treatment and harsh punishments for pro-Ukrainians (actual or perceived) and Crimean Tatars are common. Pretrial detainees and prisoners are often transferred to Russian territory.

248. **Legal principles.** Many of the laws imposed on Crimean residents purportedly seek to combat extremism and separatism. Respecting human rights while countering terrorism is a challenge for many states. International legal guidance has underscored that states must respect peremptory human rights law prohibiting racial discrimination in efforts to fight terrorism. This includes the use of ethnic profiling and stereotypes. It also covers the use of overly broad anti-extremism laws to stigmatize cultural institutions, minority language press, religious institutions and peaceful public protests in Crimea as subversive or criminal.

249. On 5 October 2010, the Parliamentary Assembly of the Council of Europe (PACE) pressed states to ensure that in their quest to combat extremism, "the strictest respect for human rights and the rule of law" should be ensured.[350]

250. The CERD Committee has issued guidance on the application of Article 5(a) in the context of the fight against terrorism, emphasizing that measures cannot involve racial or ethnic profiling or stereotyping. In a 2002 Statement on racial discrimination and measures to combat terrorism the CERD Committee underscored that measures taken in the name of fighting terrorism must not discriminate "in purpose or effect," that anti-terrorism measures are only legitimate if they respect human rights and humanitarian law, and that racial discrimination is a peremptory norm from which no derogation is permitted.[351]

251. CERD's General Recommendation XXX (2004) calls on states to ensure "that non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law that complies with international human rights, refugee and humanitarian law."[352]

[350] Council of Europe, Parliamentary Assembly Resolution 1754 (2010) on the fight against extremism: achievements, deficiencies and failures, para. 13.2, 5 October 2010.
[351] CERD Committee, Report of the Committee on the Elimination of Racial Discrimination, U.N. Doc. A/57/18, 2002, at p. 106.

[352] Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 on discrimination against non-citizens, para. 20 (2004).

252. "Loosely drafted" anti-terror statutes have also been criticized in CERD Committee concluding observations.[353]

253. It is important to underscore that targeted prosecutions under Russian criminal law contravene both human rights law and international humanitarian law.[354] Key provisions of international humanitarian law include Article 58 of the Fourth Geneva Convention, which provides that an "Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities." Rule 104 of customary international humanitarian law similarly holds that the "convictions and religious practices of civilians…must be respected."[355]

254. **Violations.** The imposition of Russian nationality in Crimea legitimized claims that opposition to occupation, for example, or participating in the activities of the Mejlis, are "separatist" – defined against the Russian state and "Russian" citizenry. Russian authorities in Crimea have aggressively and widely used, including with retroactive effect,[356] anti-extremism laws "to prosecute those who oppose the annexation, including the Crimean Tatar community and pro-Ukraine activists."[357]

255. The Russian Federation's overly broad and ill-defined anti-extremism legislation has been used "to silence the dissent of Crimeans who opposed its annexation and to target non-Russian religious and ethnic groups, especially Crimean Muslims, most of whom are Crimean Tatars."[358]

256. The CERD Committee expressed particular concern that "such broad definitions can be used arbitrarily to silence individuals, in particular those belonging to groups vulnerable to discrimination, such as ethnic minorities, indigenous peoples or non-citizens."[359]

257. The use of these laws to facilitate prisoner and detainee transfers is addressed above (para. 244).

258. The Russian Federation has also prosecuted and convicted Crimean civilians for actions that occurred prior to occupation and application of Russian Federation legislation in contravention of international humanitarian law and international human rights law, which prohibit retroactive application of criminal law.[360]

259. Regardless of the consequences of prosecutions, however, the stigmatizing effect of anti-extremism laws in Crimea is deeply concerning, particularly given that the balance of

---

[353] Committee on the Elimination of Racial Discrimination, *Concluding observations on Chile regarding the application of anti-terrorism legislation to members of the Maphuche community engaged in protests*, para. 15, U.N. Doc. CERD/C/CHL/CO/15-18 (7 September 2009).

[354] The Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM), *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, para. 177 (17 September 2015), available at https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea?download=true (referencing Articles 64, 67 and 70 of the Geneva Convention (IV))

[355] Rule 104. Respect for Convictions and Religious Practices, *ICRC Database Customary IHL*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule104.

[356] OHCHR, *Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol,* para. 77, UN Doc. A/HRC/36/CRP.3 (25 September 2017);
Written statement submitted by the Society for Threatened Peoples, p. 2, U.N. Doc. A/HRC/28/NGO/97 (Feb. 23, 2015).

[357] Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation,* p. 27 (2016), available at http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf.

[358] *Ibid.* at 4.

[359] Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation*, para. 11, UN Doc. CERD/C/RUS/CO/23-24, (20 September 2017).

[360] *See* Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Articles 64, 65, 67 and 70, 12 August 1949, 75 U.N.T.S. 287 (1949); International Covenant on Civil and Political Rights, Article 15, 16 December 1966, 99 U.N.T.S. 171 (1967).

documented cases in human rights reporting involve Crimean Tatars. Human rights groups estimate that at least a quarter of the items on the Federal List of Extremist Materials relate to Islamic literature.[361] UNPO highlighted the stigmatizing impact of banning the Mejlis as an "extremist" organization. This trend suggests that the application of anti-extremism laws carries an ulterior motive of stigmatizing this group, with the potential to incite further violence against them.

260. The same concern extends to attacks on religious institutions, including Islamic groups but also the Ukrainian Orthodox Church, and journalists. Crimean Tatar leaders have been particularly affected and officials have impeded the free practice of the Muslim faith, in violation of Article 48 of the Fourth Geneva Convention and customary international humanitarian law.

261. These actions have perpetuated a clear propagandist narrative of separatism and extremism to shut down opposition to annexation and stamp out dimensions of individual identity that do not conform to a Russified vision of Crimea.

V. CONCLUSION

262. This report joins many other efforts to support accountability for international law violations committed in the context of the Crimean occupation. Our aim is to offer a sustained examination of automatic naturalization as an element in a defiant campaign to subjugate, repossess and redefine the Crimean population. Looking to history as a guide, unmistakable patterns emerge – of the misappropriation of citizenship and its bureaucratic administration leading to cruelty at massive scale. Human rights law has evolved to provide protections against the success and spread of harmful state projects of this nature and, where violations have occurred, to help define and create space for redress.

[361] Natalia Shapovalova, European Parliament, Policy Department, Directorate General for External Policies, *The situation of national minorities in Crimea following its annexation,* p. 28 (2016), available at http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578003/EXPO_STU(2016)578003_EN.pdf.

Annex 976

Sergey Zayets (Regional Center for Human Rights) et al., The Fear Peninsula: Chronicle of Occupation and Violation of Human Rights in Crimea (2015)

Pursuant to Rules of the Court Article 50(2), Ukraine has provided only an extract of the original document constituting this Annex. In further compliance with this Rule, Ukraine has provided two certified copies of the full document with its submission.

COMPOSITE AUTHORS:

Sergiy Zayets
Regional Center for Human Rights

Olexandra Matviychuk
Center for Civil Liberties

Tetiana Pechonchyk
Human Rights Information Center

Darya Svyrydova
Ukrainian Helsinki Human Rights Union

Olga Skrypnyk
Crimean Human Rights Group

This publication presents a summary of factual documentation of international law violation emanating from the occupation of the autonomous Republic of Crimea and the city of Sevastopol (Ukraine) by the Russian Federation military forces as well as of the human rights violations during February 2014 – February 2016.

The publication is intended for the representatives of human rights organizations, civil activists, diplomatic missions, state authorities, as well as educational and research institutions.

ISBN 978-966-2403-11-4

THE PENINSULA OF FEAR: CHRONICLE OF OCCUPATION AND VIOLATION OF HUMAN RIGHTS IN CRIMEA

THE PENINSULA OF FEAR:
CHRONICLE OF OCCUPATION AND VIOLATION OF HUMAN RIGHTS IN CRIMEA

УДК 341.223.1+342.7.03](477.75)"2014/2016"=111
ББК 67.9(4Укр-6Крм)412

Composite authors:
Sergiy Zayets (Regional Center for Human Rights),
Olexandra Matviychuk (Center for Civil Liberties),
Tetiana Pechonchyk (Human Rights Information Center),
Darya Svyrydova (Ukrainian Helsinki Human Rights Union),
Olga Skrypnyk (Crimean Human Rights Group).

The publication contains photographs from public sources, official websites of the state authorities of Ukraine, the Russian Federation and the occupation authorities, Crimean Field Mission for Human Rights, Crimean Human Rights Group, the online edition Crimea.Realities / Radio Svoboda and other media, court cases materials.

'**The Peninsula of Fear** : Chronicle of Occupation and Violation of Human Rights in Crimea' / Under the general editorship of O. Skrypnyk and T. Pechonchyk. Second edition, revised and corrected. – Kyiv: KBC, 2016. – 136 p.
ISBN 978-966-2403-11-4

This publication presents a summary of factual documentation of international law violation emanating from the occupation of the autonomous Republic of Crimea and the city of Sevastopol (Ukraine) by the Russian Federation military forces as well as of the human rights violations during February 2014 – February 2016. The publication is intended for the representatives of human rights organizations, civil activists, diplomatic missions, state authorities, as well as educational and research institutions.

УДК 341.223.1+342.7.03](477.75)"2014/2016"=111
ББК 67.9(4Укр-6Крм)412

ISBN 978-966-2403-11-4

Contents

3.4. Prosecution of Non-Violent Exercise of the Freedom of Thought, Conscience and Religion, Freedom of Expression and Information, Freedom of Peaceful Assembly and Association and Other Rights and Liberties

> *"The personnel of the ATR TV channel lawfully working in Crimea [...] became persona non-grata not only for the official authorities but also for "peers". Recently, the two Crimean Tatar cultural institutions warned us about the impossibility of filming. They referred to a letter from the Ministry of Internal Policy and Information of the RC, where it was recommended not to allow the journalists enter their territory [...] And can we breathe at home? If it goes on, we will be denied the medical care in outpatient clinics, not sold the goods in grocery stores, asked out of public transport, obliged to wear the Yellow star and tattooed with the camp number on our hands".*
> Deputy Director General of ATR TV channel Lily Bujurova.

Steering the course to the rapid establishment of an authoritarian regime, the self-proclaimed Crimean authorities began regarding the basic fundamental rights and freedoms as a threat to the consolidation and the existence of the occupation regime. This puts in danger anyone nonviolently exercising the inalienable and inviolable human rights, such as:

- Freedom of thought, conscience, and religion (the pogrom at the church of the Kyiv Patriarchate in the village of Perevalnoye in Simferopol district on July 1, 2014, followed by a refusal by the police to register a crime incident report, the kidnapping of father Bogdan Kostetsky in Yalta on September 2, 2014; a statement, in January 2016, of the Archbishop of Simferopol and Crimea of the Ukrainian Orthodox Church of Kyiv Patriarchate Clement about the dispossession by occupation authorities of premises due to the alleged financial debt, the case of the Crimean Muslims, according to which Nuri Primov, Ruslan Zeytullaev, Ferat Sayfullaev, Rustem Vaitov, Emir-Usein Kyky, Enver Bekirov, Muslim Aliyev and Vadim Siruk were detained);

- Freedom of expression (the seizure of the editorial office of the Center for Investigative Journalism by the representatives of the so-called 'Crimean self-defense' in June 2014 with the requirement to present the registration documents and the lease contract; soon after the incident, the landlord demanded the termination of the lease contract; persecution of journalists of the Crimean Tatar

TV channel ATR, the case of Vladimir Balukh, who was sentenced to 320 hours of compulsory work for planting the Ukrainian flag on the roof his house in February 2016[17]);

- Freedom of peaceful assembly (administrative prosecution of doctor Sergey Dub for taking part in a peaceful demonstration on the occasion of the Ukrainian National Flag Day on August 23, 2014, administrative prosecution of the Crimean Tatars Saniye Ametova and Yunus Nemetullaev for organization of flowers laying on May 18, 2015[18], members of the Ukrainian Cultural Centre Veldar Shukurdzhiev and Leonid Kuzmin for the events of March 9, 2015 and October 14, 2015);

- Freedom of association (criminal prosecution of the coordinator of the Committee on the Rights of the Crimean Tatar People for operating 'an unregistered organization', filed complaint of the so-called Crimean Prosecutor Natalia Poklonskaya on the recognition of the Mejlis of the Crimean Tatars an extremist organization[19], oppression in December 2015 of one of the oldest non-governmental organizations the League of Crimean Tatar Women, led by Safinar, the wife of the leader of the Crimean Tatar people Mustafa Dzhemilev in December 2015[20]).

For the unlawful restriction of the fundamental rights and freedoms, the occupation authorities use the repressive legislation of the Russian Federation. At the same time, while in Russia, as a rule, this legislation is used selectively against certain individuals, the Crimean authorities use a deliberate policy of the total prohibition to the individuals disloyal to the authorities of the non-violent exercise of the freedom of thought, conscience, and religion, freedom of expression and information, freedom of peaceful assembly and association, and of other rights and liberties.

In this way, the characteristic of the 'February 26th case' under which several people were arrested, including the Mejlis Deputy Chairman Akhtem Chiygoz, on allegations of organizing riots and participating in them (a peaceful assembly that took place on February 26, 2014) by the Ukrainian Parliamentary Commissioner for Human Rights Valeriya Lutkovska is also applicable to the general situation with ensuring the fundamental human rights and freedoms in Crimea:

> *"This is a legal surrealism, I cannot find another name for it, because this man had the right to peaceful assembly on the Ukrainian territory*

[17] http://www.novayagazeta.ru/society/71522.html
[18] http://avdet.org/node/12617
[19] http://investigator.org.ua/news/174184/
[20] http://www.ukrinform.ru/rubric-regions/1937220-okkupantyi-vyidvoryayut-iz-ofisa-ligu-kryimskotatarskih-jenschin.html

Pictured: **Searches in the Kholmovka village on February 11, 2016**

in accordance with the Ukrainian law. At present, there is no special law regulating the issues of peaceful assembly, but we have a direct constitutional norm, and this man could freely exercise his right to peaceful assembly. This is absolutely unobjectionable. In fact, he is now locked up, and this morning his home was searched because he exercised his right under the Ukrainian Constitution. This, in my opinion, is an indicator of how the occupying authorities disrespect the law, both Ukrainian national and international[21]*."*

The Russian lawyer Nikolay Polozov provided similar assessment of methods of persecution selected by the occupation authorities:

> "*Riots in Russia are the already tried political process; it took place within the "Bolotnaya Square case". Now the same technology is transferred to Crimea [...] if in other political cases the judges, prosecutors and investigators are only a mechanism, in this case there is a direct personal interest of both the judges and prosecutors, headed by Poklonskaya, which need to prove their loyalty to the Motherland, to prove to Kremlin that they are really good new Russians [...] The events took place in the territory of Ukraine, but Russia judges for some reason. In view of the law – it is an absolute absurdity*"[22]

Special attention should be paid to the discrimination based on such grounds as nationality, language, religion, political or other views, national origin, and ethnicity, which is now common in all spheres of public life. Any of these prohibited grounds (real or alleged) automatically limits the exercise of a person's social and economic rights. For instance, there is documented evidence of people without Russian passports being denied medical treatment, re-registration of private property, employment, even at a private enterprise etc.[23]

[21] http://www.ombudsman.gov.ua/ua/all-news/pr/30115-es-valeriya-lutkovska-aresht-vo-golovi-medzhlisu-krimskotatarskogo-narodu/

[22] http://news.liga.net/news/politics/8753614-advokat_nazval_delo_chiygoza_zakazom_kremlya.htm

[23] Based on the data of the Committee on the Rights of the Crimean Tatar people

3.5. Repressions Against the Crimean Tatar People as a Systemic Organized Opposition to the Occupation Regime

> *"Simply put, the occupation authorities currently prohibit the right of the Crimean Tatars to speak with their voice. Due to the fact that today the occupation authorities are disposing of Mejlis, which is an elected by the Crimean Tatars national authority in accordance with the international law, some experts said that Russia is preparing for worse actions towards the Crimean Tatars".*
> Refat Chubarov, Chairman of the Mejlis of the Crimean Tatars[24]

Crimean Tatars are a systematically organized community with their own self-government bodies having regional nuclei all over Crimea. They openly sabotaged both the quasi-referendum on March 16, 2014, and the illegal elections on September 14, 2014. To overcome the non-violent resistance, the occupation authorities launched a campaign to build the image of the 'enemy from within' and to prosecute Crimean Tatars using both legal and extra-legal mechanisms.

> *"With the arrival of Russia to Crimea, the repressions against the Crimean Tatars started ... The repressions against the Crimean Tatars with an active pro-Ukrainian position never ended since March 2014. These repressions are manifested in the form of abductions and murders of activists, mass raids, arrests, and fines for participation in protests. In this way, due to the repressions, about 10,000 out of 300,000 of the (Crimean Tatar, – author) population were forced to leave the territory of Crimea and are in the mainland Ukraine as of today," (February 2015, – author),* says one of the coordinators of the Committee on the Rights of the Crimean Tatar people and a member of the Mejlis, Abmedzhit Suleymanov.

Following are the examples of individual cases of repressions against the Crimean Tatar people giving a general idea of the diversity of the methods used and the conscious choice by the occupation authorities of such illegal policies:

- Illegal bans on entry to the territory of Crimea of the leaders and activists of the Crimean Tatar people (including Mustafa Dzhemilev, Refat Chubarov, Sinaver Kadyrov, Ismet Yuksel etc.);

[24] http://censor.net.ua/n374710

- Criminal prosecution of peaceful demonstration participants in connection with the ban on entry to the Crimea of the leader of the Crimean Tatar people Mustafa Dzhemilev on May 3, 2014 Tahir Smedlyaev, Edem Osmanov, Rustam Abdurakhmanov, Edem Ebulisov, Musa Abkerimov, who were found guilty of using violence against a representative of authorities and punished by a fine or conditional punishment[25];

- Criminal prosecution for participation in the peaceful meeting on February 26, 2014 of the Crimean Tatar TV channel cameraman Eskender Nebiev, Deputy Chairman of the Mejlis Akhtem Chiygoz and other Crimean Tatars Talyat Yunusov, Ali Asanov, Mustafa Degeremendzhy;

- Automatic ban on all public events on the eve of the prayer commemoration dedicated to the anniversary of the deportation of Crimean Tatars by a decree of the self-proclaimed head of Crimea, ban on celebration of the Muslim holiday Eid al-Fitr in July 2015;

- So-called 'preventive conversations' with the members of Mejlis, Crimean Tatar activists, and ordinary representatives of the Crimean Tatar people;

- Searches and seizures in the Crimean Tatar cafes, private homes, Muslim schools (madrassas), places of worship (mosques), in the premises of Avdet newspaper, Crimea Charity Fund, the mosque of the Islamic Cultural Centre[26], the editorial office of the Crimean Tatar newspaper Yani Dyunya[27], in the building of the Mejlis and houses the regional chairmen of the Mejlis by law enforcement agencies and the representatives of the so-called 'Crimean self-defense';

- Court judgment on finding the director of a madrassa guilty of possessing extremist materials delivered on August 27, 2014 in the Dzhankoy district of Crimea, sentencing of Mustafa Yagyaev, mosque Imam in Crimea, for two conditional years of prison term in July 2015 for openly opposing the Russia occupation of the peninsula[28];

- Court judgment on the eviction of the Mejlis of the Crimean Tatar people, Crimea Charity Fund and Avdet newspaper from their building, seizure of the organizations' accounts and the ban on 'exercising ownership powers with respect to the use and disposal of the property belonging to them';

[25] http://ru.krymr.com/content/news/27415938.html
[26] http://obozrevatel.com/crime/18360-repressii-v-kryimu-okkupantyi-podbrosili-v-mechet-zapreschennuyu-literaturu.htm
[27] http://investigator.org.ua/news/160650/
[28] http://ru.tsn.ua/bbc/imam-poluchil-dva-goda-uslovno-z-za-kritiki-anneksii-kryma-453631.html

- Compiling the liquidation lists of Crimean Tatars who should 'either leave or disappear';

- Abduction of Crimean Tatars by unknown persons and the representatives of the so-called 'Crimean self-defense' (Islyam Dzheparov, Dzhevdet Islyamov, Eskender Apselyamov and others);

- Forcible takeover on January 26, 2015 of the only Crimean Tatar TV channel ATR, earlier accused of extremism, on the charges that the channel 'stubbornly disseminates the idea of possible repressions on ethnic and religious grounds, promotes anti-Russian sentiments in society, deliberately fuels distrust in the government and its actions among Crimean Tatars, and constitutes an indirect threat of extremist activity'.

A logical outcome of the pressure on the Crimean Tatars is the preparation by the self-proclaimed Prosecutor Natalia Poklonskaya of the 'resolution on organization activity ban' under Article 9 of the Federal Law On Combating Extremist Activity[29]. The legal basis for such action was 'the requests of the Crimean Tatar organizations and movements' in the annexed peninsula[30]. According to the Russian legislation, the final decision should be taken by the occupation court. However, it is quite easy to predict this decision.

The ban on the activity of the Mejlis on the basis of the Russian Law on Combating Extremist Activity entails a trail of negative effects, from absolute prohibition of the use of symbols of the Mejlis, which is actually the Crimean Tatar flag, criminal liability for facilitating the work of the organization and its financing, the prohibition of dissemination of the organization's materials and to the prosecution of Mejlis members and their supporters.

> *"The ban on Mejlis as an extremist organization, which, however, had not killed even a mosquito, means that all these people, all Crimean Tatars are under the threat of criminal prosecution, even in case of complete inactivity, simply based on the fact of any relationship to the Mejlis. And what relationship – it will be decided by specific enforcers: all conditions for mass repression for ethnic descent have been created in Crimea ...The gate of the invisible Crimean Tatar ghetto is slamming"* – said the journalist Aider Muzhdabaev[31]

[29] http://www.unian.ua/society/1265607-okupanti-vruchili-zastupniku-glavi-medjlisu-dokument-pro-pripinennya-diyalnosti-organizatsiji.html

[30] http://15minut.org/article/dokument-na-osnovanii-kotorogo-zapretyat-deyatelnost-medzhlisa-foto-2016-02-15-18-33-18

[31] http://fakty.ua/212722-muzhdabaev-ob-iske-pro-zapret-medzhlisa-vorota-nevidimogo-krymskotatarskogo-getto-zahlopyvayutsya

Concurrently with the propaganda campaign, a hostile information background is created, when the Crimean Tatar people are indirectly blamed for all problems of the social life of the Crimean peninsula, whereby the image of the 'enemy from within' is created in the eyes of the population. In this connection, the cases of graffiti being drawn on the walls of private homes and places of worship of the Crimean Tatar people have become frequent, for example, with the following content: 'Tatars get out of Crimea'[32].

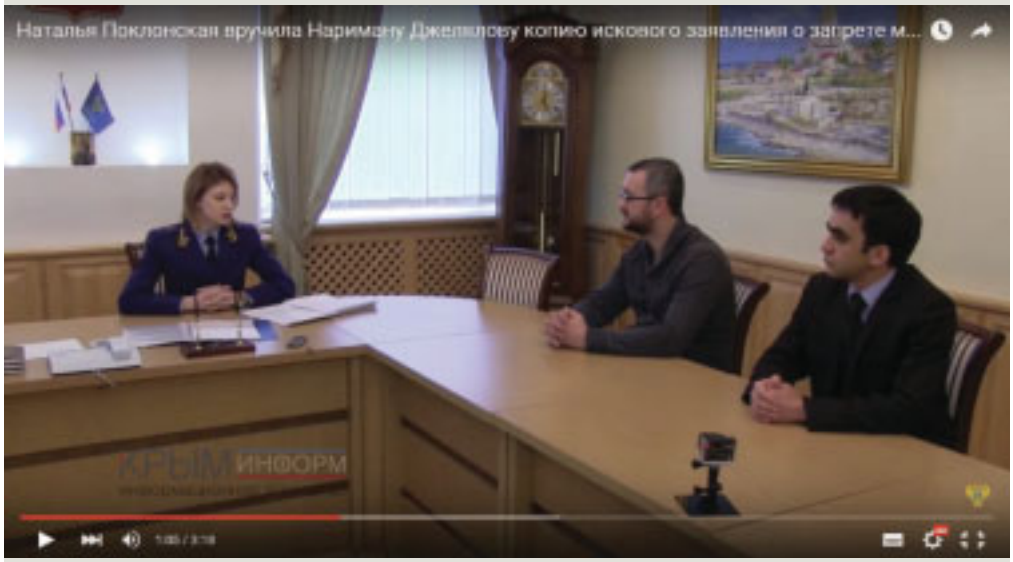
> *"Crimean Tatars are the natives of the peninsula. Due to speaking openly against the occupation of Crimea, they are now the most vulnerable group. De facto, the Crimean authorities have launched a systemic discrimination against Crimean Tatars on racial, ethnic, and religious grounds. The scale and nature of the repressions have become a threat to the lives and security of Crimean Tatars. They include a series of abductions and disappearances, gangster attacks on the Crimean Tatar and Ukrainian civil society representatives, large-scale searches of homes, mosques, madrassas, libraries, and schools. Without exaggeration, with respect to Crimea and Crimean Tatars once again, in the 21st century, the doctrine of the Russian Empire, 'Crimea without Crimean Tatars', is being used and has been adopted for implementation by a UN member state, the Russian Federation,"* said the Chairman of the Mejlis, Refat Chubarov.

3.6. Repressions Against any Forms of an Independent Civil Society

The occupation authorities perceive the existence of any uncontrollable public institutions in any area of public life as a direct threat. Just a few of them are listed below:

- Culture sector. Invitations for 'preventive conversations' with the management of Karman Art Center, which started in July 2014, were a vivid example. Karman Art Center is probably the only Crimean community center of contemporary culture, arts, and non-formal education. As a formal basis for such interest from the FSB, the case of the confined theater director Oleg Sentsov was used. It is impossible to identify the number of people from the cultural and other walks of life that were interrogated by the FSB in this case that is targeted at searching for potential members of the mythical 'terrorist organization' and are potentially under the threat of arrest for political reasons. Due to the real threat to her

[32] http://old.kpunews.com/krim_topic7_9614.htm



Pictured: **The so-called Prosecutor N. Poklonskaya, on February 15, 2016, handing a copy of the claim to Nariman Dzhelyalov on the prohibition of activity of the Mejlis of the Crimean Tatars**

personal freedom, health and even life, the head of Karman Art Center, director Galina Dzhikayeva, had to leave Crimea;

- Professional employment. Civil servants, teachers, doctors and other professions whose representatives belong to the professional groups or initiatives not controlled by the authorities and/or have not received Russian passports. In particular, Euromaidan SOS public initiative has documented evidence and a scanned document on the renunciation of Ukrainian citizenship signed by a court employee who, according to her, was forced to sign it and send it to the President of Ukraine by the court management under the threat of losing her job;

- Education sector. Occupying authorities continue to implement total control over the education system, the management of educational institutions, the curriculum, and the choice of academic disciplines. Anything that goes beyond the imposed concept of the 'Russian World' is ruthlessly rooted out. A good example is the repression against the staff of the only Ukrainian gymnasium in Simferopol[33]. The director of the educational institution was forced to quit by the threats of the so-called 'Crimean self-defense' and the pressure from the City Council back in April 2014. Currently, the gymnasium has been completely reoriented to exercise Russian language of instruction. For the last 6 months

[33] Prior to the annexation, Crimea had 7 schools with the Ukrainian language of instruction, 15 schools with the Crimean Tatar language of instruction and nearly 600 schools with the Russian language of instruction.

in 2014, according to official data only, the number of pupils in the Ukrainian-medium classes has been decreased by six times[34]. This picture is complemented by the facts of the demonstrative destruction of Ukrainian books and textbooks in front of students[35] by school management.

The situation in Crimea as seen by designer Liza Bogutskaya from Simferopol:[36]

> September 4, 2014 – *"Just came back from a school meeting [...] The class has 14 people. Most parents protested against the absence of the Ukrainian language and literature. They were outraged by the fact that their children cannot learn the state language of Crimea. As a result, we decided to write a collective petition on adding the Ukrainian and Crimean Tatar languages to the curriculum. I took the responsibility."*
> September 16, 2014: *"Crimea is overwhelmed with repressions. I blame them directly on the election results [...] My dear Crimeans. Those who feel that the repressive machine can be after you. Please hide your devices in a safe place. I'm asking you to buy at a market an old laptop and to use it to access the Internet. If they take it away, you won't regret it. All your memory cards, cameras, navigators, recorders need to be in safe places... Only now I have realized that I could have saved my computers, phones, and media."*
> September 24, 2014: *"After my departure from Crimea, journalists from Hromadske TV came to Simferopol. I saw this video for the first time today. This film is not about me. This film is about broken lives, the tragedies that came to every family. My husband, a Ukrainian, is holding back tears as he talks about our separation. Yesterday my friend, a Crimean Tatar, left from Simferopol to Lviv with her sister. Their mother cried at the train station, as if saying goodbye for good. My other friends, a family, Russians, husband and wife, are leaving next week, leaving their children and grandchildren in Simferopol. Rails lie ahead of them, with rows of trees on the sides. Then a long drive to nowhere. Another friend, a Jew, is closing his business. And selling the house. He leaves the day after tomorrow. This is the tragedy of all his life."*
> […]
> February 23, 2015: "*AGGRESSION! This is the main sign of the Russian presence in Crimea. Crimeans have never been so hostile to each other. They never raised the issues of national and territorial allegiance. The issue of citizenship has never been a priority. But today, hearts and minds are possessed by quiet hatred."*

[34] The official response of the Council of Ministers of the Republic of Crimea regarding the number of educational institutions and the children studying in Ukrainian, Russian, and Crimean Tatar language media dated December 24, 2014 No. 18357/01-27 by the request of the RF President's Council for Development of Civic Institutions and Human Rights.

[35] Based on the data of the Committee on the Rights of the Crimean Tatar people

[36] Published on her Facebook page at https://www.facebook.com/liza.bogutskaya

The self-proclaimed Crimean authorities deliberately implement the policy of destroying any uncontrolled public institutions, regardless of whether they are taking part in the non-violent resistance to the occupation regime or are simply doing their specific business.

Conclusions

The Russian Federation, acting through the self-proclaimed Crimean authorities, started political repressions against the civil society that are carried out using both legal and extra-legal mechanisms. These repressions are based on a clear political motive: a) consolidation and retention of the power of the occupying authorities in Crimea; b) involuntary discontinuation of public activities by civil society representatives having a point of view that differs from that of the authorities.

It should be noted that repressions in the Russian Federation in general do not have a total character and are used selectively against specific individuals. However, in Crimea the occupation authorities are actively using all the tools tried and tested in the law and practice of the Russian Federation to suppress any alternative point of view for the complete elimination of the independent civil society in the peninsula.

There is also an established opinion that in the peninsula the strict authoritarian models for further use in Russia in the event of mass dissatisfaction with the actions of the authorities are being tried.

Pictured: **Conditionally sentenced to 3 years and 6 months of imprisonment under the February 26th case Talyat Yunusov**

For the time being, in the peninsula there are no effective mechanisms of protection against the political repressions of the civil society actors organized by the occupation authorities. As a result, people involved in public activities not controlled by the authorities and/or having, actually or allegedly, a point of view that is different from the pro-government one are faced with the choice: either to leave Crimea or to stop any public activity and keep silent.

PART 4

A Year After: Main Violations of Human Rights in Crimea[1]

4.1. The First Victims of the Occupation

Active operations in Crimea deployed by the Russian Federation in March and early April 2014 resulted in at least three deaths. Two years later, none of these cases have been properly investigated and the murderers have not been brought to justice.

Reshat Ametov

Reshat Ametov, a 39-year-old Crimean Tatar, was the first person to disappear on the peninsula. He was last seen on March 3, 2014 at a pro-Ukrainian rally in the center of Simferopol, in front of the Council of Ministers of Crimea on Lenin square, where he stood in a one-man picket against the occupation of Crimea by Russia.

Some video recordings show people dressed in camouflage uniforms taking the activist away in an unknown direction[2].

[1] This section has been prepared by Tetiana Pechonchyk (Human Rights Information Center), Olga Skrypnyk (Crimea Human Rights Group), Sergiy Zayets (Regional Center for Human Rights), and Darya Svyrydova (Ukrainian Helsinki Human Rights Union).

[2] https://www.youtube.com/watch?v=11S2Vhkr-bc

One of Ametov's relatives said in the comment to the Human Rights Watch organization that Reshat was well-known among the Crimean Tatars, he often addressed the authorities on local problems, and he regularly commented on political affairs on his Facebook page.

Ametov's body with traces of violent death was found 10 days later in the village of Zemlyanichnoye in Belogorsk district. The death was caused by a knife stab into the eye.

> *'The body was terribly disfigured. He had knife wounds and bruises everywhere. One eye was missing. He had a plastic bag on his head.'*
> Ametov's wife Zarina, in her interview for *Der Spiegel* newspaper, September 2014.

At the beginning of April 2014, the Investigation Committee of the Investigation Department of the Russian Federation in the Republic of Crimea opened a criminal investigation of the murder of Reshat Ametov. However, in 2015 the case was suspended: the investigators failed to identify the persons involved in the crime.

> *"It was suspended on the grounds that the alleged killer is taking part in the war. But, sorry, the killer is not one person. There have been at least five-six people. All of this is a fairy tale, a pack of lies. In the video everything is clear and the faces are visible".*
> Zarina Ametova, in the interview for QHA, February 16, 2016

In February 2016, the investigation into the killing was resumed in Crimea.

Reshat Ametov had three children; at the time of his death, the youngest was 2.5 months old.

Sergey Kokurin

36-year-old warrant officer Sergey Kokurin died on March 18, 2014 in Simferopol during the storming of the 13th Photogrammetric Center of the Main Directorate of Operational Support of the Armed Forces of Ukraine.

According to the forensic examination, the Ukrainian military was killed by two 5.45 calibre bullets a Kalashnikov assault rifle, on an upward trajectory (Sergey was in the tower).

According to the military who were guarding the photogrammetric center, for three days before the attack the entire area around the military unit had been controlled by 'the Crimean self-defense' and the Russian military. The tower where the warrant officer Kokurin was killed and Ukrainian officers were wounded was under the fire from below, as evidenced by the bullet holes in the sheeting of the tower.

The Ministry of the Interior of the Crimea reported that the Ukrainian military man was shot by an 'unknown sniper', who allegedly was shooting at the representatives of 'the Crimean self-defense' too.

'According to preliminary reports, the shots were going in two directions from one place. An unknown sniper from the window of a building under construction located in close proximity to the military unit shot at the representatives of the 'self-defense', who were checking the unfinished building after a report on the presence of armed men there, and he shot in the direction of a Ukrainian military unit located nearby.'

From the statement of the Interior Ministry of the Crimea, Ukrinform, March 18, 2014.

The deceased Sergey Kokurin had a 4-year-old son, and his wife was expecting their second child.

Stanislav Karachevsky

The murder occured on April 6, 2014 in the village Novofedorovka in Crimea, in a hostel of the Ukrainian military personnel who served at the Saki base; the military were leaving for the mainland Ukraine.

That evening, Major Stanislav Karachevsky, 32, helped Captain Artem Yarmolenko pack things, as they were getting ready to be moved to mainland Ukraine.

He was going home with another friend. They passed the checkpoint of the military unit, where the armed invaders of Russia kept watch.

According to witnesses, the military quarreled 'on the basis of personal animosity'. The Russians were armed, the Ukrainian military were not. Stanislav Karachevsky

tried to run away and hide in the hostel, but was caught and shot with one bullet in the torso and one in the head. Captain Yarmolenko managed to hide in a room.

> *'I was also preparing to move when I heard some clapping sounds like shots. I went out to see stun grenades thrown inside the hostel. Russian military were running through the corridors with grenades. 'What are they doing here?' our men shouted. 'What's the matter?' The Russians did not respond and went on storming the hostel. Then I heard shots.'*
> Soldier Andrey (as his relatives still live in the Crimea, he asked not to mention his surname) in an interview to the Facts newspaper, March 2014.

The murder charge under Art. 105 of the Criminal Code of the Russian Federation was brought against Evgeny Zaytsev, a Russian sergeant.

The case was considered in the Crimean garrison military court by the judge Rizvan Zubairov, who previously worked in the Grozny garrison military court of the Russian Federation.

According to the Crimean Field Mission, on March 13, 2015 the sentence was imposed within this criminal case under Article 105 'Murder'. According to S. Karachevsky's brother-in-law, the Russian Sergeant Evgeny Zaytsev was conditionally sentenced to two years in prison for the murder of the Ukrainian Major. The defendant Evgeny Zaytsev has not been placed in custody during the investigation and the trial, continuing to perform military service in the same mode as before the murder of S. Karachevsky.

Stanislav Karachevsky is survived by his wife and two children.

4.2. Abductions and Tortures of Activists During the Occupation of Crimea

The seizure of Crimea by the Russian Federation was accompanied by abductions and tortures of pro-Ukrainian and Crimean Tatar activists, volunteers helping the Ukrainian army as well as journalists, photographers, workers of culture and art who openly spoke against the occupation of Crimea or documented the events taking place on the peninsula. However, some ordinary people have been mistaken for the alleged "representatives of radical organizations'.

The body of one of the abductees (Reshat Ametov, a Crimean Tatar) was later found with the signs of tortures. Another several individuals (Ivan Bondarets, Vladislav

Vashchuk, Vasily Chernysh, pro-Ukrainian activists) are still not found. Some of the abductees managed to escape. They told about interrogations, humiliation, tortures, and inhuman treatment they went through. Two years after, none of these cases have been investigated by the so-called Crimean authorities, nobody has been punished. Moreover, forced disappearances in the Crimean peninsula still continued in 2015.

Abducted persons, which were found

Andrey Shchekun and Anatoly Kovalsky

On March 9, 2014, a birth anniversary of famous Ukrainian writer Taras Shevchenko, 'the Crimean self-defense' of Simferopol abducted two Ukrainian activists, Andrey Shchekun and Anatoly Kovalsky.

Andrey Shchekun is one of the leaders of 'Euromaidan-Crimea' movement and the head of Crimean Center for Business and Cultural Partnership 'Ukrainian House'. He was involved in promotion of Ukrainian culture in Crimea, helped to open Ukrainian schools, represented the interests of Ukrainian community, openly supported the independence of Ukraine, organized demonstrations in the support of Euromaidan movement.

Anatoly Kovalsky is an economist, scientist, and civic leader.

> *'On March 9, a meeting in honor of Taras Shevchenko's birthday in addition to a rally against the March 16 referendum on Russia's annexation of Crimea was planned to take place. We received a small package from Kyiv with the Ukrainian national symbols, such as ribbons and flags... Anatoly Kovalsky and Crimean activist Andrey Shchekun went to the railway station to meet the package. Shchekun came on board, while my father remained on the platform. Shchekun was apparently recognized by his stubble. A large group of guys burst into the car, and the activist was literally pushed out from the car to the platform, my father was surrounded too. They were beaten, not so as to hurt physically, but rather in order to humiliate.'*
> From the interview of Sergey, Anatoly Kovalsky's son, to the Human Rights Information Center on March 9, 2014.

The activists were taken somewhere near Chongar and kept in basements in inhuman conditions. They were held by the representatives of 'Crimean liberation army' organized by Igor Strelkov (Girkin), a terrorist and retired FSB officer.

Pictured: **Andrey Shchekun**

Pictured: **Anatoly Kovalsky**

Andrey Shchekun was regularly severely tortured.

'They stripped me naked, put me on a chair, tortured with electric current, and beat on my shoulders. When I fell, they kicked me in the chest, hitting like they were obviously professionals... I was interrogated in turn by FSB and the guards. I was suspected to have contacts with Right Sector, though 'Euromaidan-Crimea' was not connected with this organization. They asked about our financial resources, but we were financed by ourselves. FSB officers suspected that I attempted to disrupt the 'referendum' planned on March 16, so they tried to find out on which electoral precincts I intended to do this. FSB were less cruel, but the guards completely took it out on us: in the morning, they used to come to the ward and to shoot at people from airguns, laughing idiotically. Once they shot through my hands.'

From the interview of Andrey Shchekun to the Center for Journalist Investigations and 'Fakty i Kommentarii' newspaper, February 27, 2015.

The Crimean Archbishop Kliment tried to negotiate for release of Andrey Shchekun and Anatoly Kovalsky. On March 20, 2014, the activists were released on the Crimean border as a result of an exchange. Andrey Shchekun was immediately directed to a hospital in the Kherson region. After his release, Anatoly Kovalsky said that he preserved the hope of freedom due to Ukrainian songs he sang while captive.

Yury Shevchenko

Yuri Shevchenko, a young man from Pavlohrad in Dnipropetrovsk region who was not an activist and was not interested in politics, happened to be put in the same basement previously shared by Shckekun and Kovalsky. He was visiting his friend in Simferopol but was detained on the Simferopol railway station because he was taken for 'an activist of some radical organization'.

Andrey Shchekun and Yury Shevchenko in the hospital after their release

'These people were very aggressive. When I asked whether they were the militiamen, they simply twisted my arms behind my back, handcuffed me, and threw me in a car, on the floor between front and rear seats. They yelled, 'You jerk, moron, came here to rain on our parade'. Then a man on a front seat drew out a knife and threatened to cut me in pieces right here. And he cut a piece of my ear … .'
From Yury Shevchenko's interview to the Belarusian edition 'Novy Chas', March 22, 2014.

According to Yury, he was brought to the unknown place, thrown out on the street, severely beaten right on the pavement, and then handed over to another group. If the former by description, was similar to so-called 'Crimean self-defense', the latter was dressed in 'Russian birch' uniform; they were masked men with radiosets and machine guns. Some of them said, 'Shoot his f…ing legs.' And Yury was shot in both legs; the bullets were extracted in Kherson, more than a week later.

In the Crimean capture, Yury Shevchenko had a piece of ear cut and his legs shot through. Photo by: novychas.info

Yury was dragged into some room, thrown face down on the floor, where he laid in a pool of his own blood, and then stripped to his underpants and tied to a chair with tape so that it was impossible to move.

Then Shevchenko was brought to the rest of the hostages. Here they were all blindfolded, they were not even taken out to the toilet and had to 'soil themselves' for several days. Yury says that he 'was still lucky' though. Because of his severe wounds he was not bothered in particular, and even was allowed to sleep on a mattress, while the others huddled either on the floor or on the chairs.

Aleksandra Ryazantseva, Ekaterina Butko, Elena Maksimenko, Oles Kromplyas, Evgeny Rakhno

On March 9, 2014, at Armyansk checkpoint near the entrance to Crimea from the Kherson region, the unidentified armed men detained two cars with AutoMaidan activists Alexandra Ryazantseva and Ekaterina Butko, journalist Elena Maksimenko, photographer Oles Kromplyas and their driver Evgeny Rakhno.

After the Ukrainian flag was found in the trunk, the girls were put on their knees, searched, during which a tattoo dedicated to the Heavenly Hundred was noticed on Alexandra Ryazantseva's hand.

> *'They wanted to cut off my hand, they cut off my hair. They began to drag women by hair, beat Katya Butko with a buttstock, they told us, 'Run in the field, and we'll shoot at you; those who are lucky will be wounded, the rest killed.'*
> From Alexandra Ryazantseva's speech in Ukrainian Crisis Media Center, March 18, 2014.

After several hours of abuse, the detained activists and journalists thrown into the basement of the traffic police station. The same evening, the prisoners were transferred near Sevastopol. They were held on the base of the Russian Black Sea Fleet in solitary confinement and interrogated about the actions organized by AutoMaidan, their financing and the Members of the Parliament supporting them.

> *'The group comprised men from "Berkut" riot police, the most angry, they attacked us and yelled at us. One of their alleged chiefs, obeyed by others, came up to me. He held a big knife, saying, 'I collect ears. Which do you prefer to have cut off, left or right?' Then he cut off both of my running shoes tongues. After that, he ordered to the others to put all our documents in the package and burn them. And he threatened to rape us first and then shoot.'*
> From the interview with Ekaterina Butko, Ukrainian Pravda. Life, March 20, 2014.

Aleksandra Ryazantseva and Ekaterina Butko

They were released on March 11, 2014. The girls said they survived by a miracle and owed their salvation to the activists who raised the alarm. They said that, when releasing them, the captors tried to make an impression that the situation in Crimea was stable and calm.

Aleksey Gritsenko, Natalia Lukyanchenko and Sergey Suprun

On the night of 13-14 March 2014, the AutoMaidan activists Aleksey Gritsenko, Natalia Lukyanchenko and Sergey Suprun were abducted. Aleksey is the son of Anatoly Gritsenko, Member of the Parliament of Ukraine.

Aleksey Gritsenko

The activists on two AutoMaidan cars carried humanitarian aid for Ukrainian soldiers in Crimea. The aid consisted of food, socks, underwear, electric torches, cigarettes, etc.

Before the abduction, the unidentified people chased the AutoMaidan activists by car and opened fire. Then the volunteers were taken to the recruit-

ment office in Simferopol. As a result of negotiations several days after the abduction, on March 20, they were released near Chongar.

> *'In our car there was also a guy with his legs shot. Then, he was taken to a hospital because his wounds began to fester. After that, the guys were tortured and interrogated for several days. And fortunately, that night we finally were taken away.'*
> From Aleksey Gritsenko's interview to UNN agency on March 20, 2014

Yury Gruzinov and Yaroslav Pilunsky

Yury Gruzinov and Yaroslav Pilunsky were abducted on March 16, 2014 the day of so-called 'referendum' in Simferopol.

Yury Gruzinov is a cameraman, a Russian citizen who filmed the events of Maidan and was wounded by a law enforcement officer on Grushevsky street in Kyiv. Yaroslav Pilunsky is a well-known Ukrainian cameraman. Both were the members of the Babylon 13 Cinematographers Association which filmed the protests at the Maidan Nezalezhnosty in Kyiv, the Crimean events, and then the eastern Ukraine hostilities.

They were asked to come to one of the election polling stations from where they were abducted.

> *'The self-defense perceived us to be very suspicious. Besides, we had no accreditation. They applied force and pulled us in the street and loaded us separately into separate vehicles. Then we saw weapons. There were 10-12 men. Eventually, we were taken to the headquarters.'*
> From the interview with Yaroslav Pilunsky, TSN, March 22, 2014

Pictured: **Yury Gruzinov and Yaroslav Pilunsky**

After the talk, the cameramen were about to be released, but the captors learned that Yaroslav's father was Leonid Pilunsky, the VR ARC deputy who opposed the referendum.

The cameramen of the Creative Association 'Babylon 13' were placed in different rooms without windows. For several days, they were held captives in Chongar; Yury Gruzinov was tortured and repeatedly beaten.

They were released on March 20, 2014 near Chongar as a result of negotiations of the Ukrainian side with the local self-proclaimed authorities and the RF leadership.

During the active occupation of Crimean peninsula by Russia, many other individuals were abducted. The exact number of missing persons, abductees, victims of tortures and abusive treatment remains unknown. Nobody has been brought to justice for these serious crimes.

Abductions and Disappearances of Individuals, whose Location is Currently Unknown

Since March 2014, numerous people disappeared in Crimea. As evidenced, at least 9 individuals have been violently abducted (see below).

As some of the abducted people were Crimean Tatars, and the reports of their disappearance have lately become more frequent, and the investigative actions of the authorities are not believed to be effective, the Crimean Tatar community of the peninsula is experiencing an increasing distrust towards the local authorities, which is extended to the Russian authorities in general.

Following the talks between the relatives of the missing Dzhepparov, Islyamov and Zinetdinov, Prime Minister Sergey Aksyonov and the representatives of the Investigative Committee of the Crimea in 2014 established a 'contact group' to facilitate the investigation of the disappearances.

A serious problem is the possible involvement of the so-called 'Crimean self-defense' in some of these episodes. As the authorities are often said to be involved in the kidnappings, and the actual perpetrators of crimes are never found and brought to justice, the people of Crimea suppose that the government either is directly involved in the crimes or covers them. The situation is exacerbated by the proposals of the Crimean authorities to release the 'people's militia of Crimea from criminal and administrative liability by recognizing their actions as 'committed in an emergency situation'.

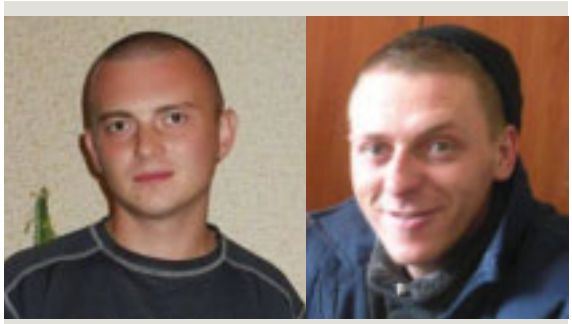
A case which stands out, is the recent disappearance Aleksander Kostenko's father. Aleksander Kostenko is charged by the Crimean investigating authorities for alleged involvement in the Maidan events. The relatives of the missing person and Kostenko's lawyer believe that the disappearance may be explained by the pressure on arrested Alexandr Kostenko, who had previously reported regular beatings, threats, and abuse.

Cases with evidence of forced abduction

One of the most high-profile cases is the kidnapping and subsequent killing of **Reshat Ametov**, a Crimean Tatar, taken on 3 March at the central square of Simferopol by unidentified men in camouflage uniforms (see the previous section).

Apart from Reshat Ametov's case, several cases with identified evidence of forced disappearance have been recorded since March 2014.

Ivan Bondarets and Valery Vashchuk



Two Euromaidan activists, Ivan Bondarets (born in 1990) and Valery Vashchuk (born in 1985) disappeared in early March 2014 in Simferopol.

The last time they got in contact with their relatives was on March 7, at about 7:30. Vashchuk called his sister and said that he and Bondartsev had arrived in Simferopol, and complained about documents checking and personal search at the station, he also said that "the coordinator would come for them", and then they would decide whether to stay in Crimea or return to Kyiv, to Maidan. Valery also told his sister that they came on to the platform with unfolded Ukrainian flag in their hands.

Neither of them got in touch with anyone after that. Both activists were members of pro-Ukrainian movements. For two years already there is no information on their whereabouts.

Both have young children in Rivne.

Vasily Chernysh

Vasily Chernysh (born in 1978), a resident of Sevastopol, also disappeared in March 2014. According to his relatives, he had earlier been a member of the Security Department of Ukraine, and participated in AutoMaidan movement. He was a Ternopil-native, and in Sevastopol he spoke Ukrainian.

People lost touch with him on March 15, 2014. The day before the 'referendum' on the status of the Crimea he wrote his last Facebook post, and since then he has never been seen or heard from.

> *'Vasily Chernysh has disappeared, and there is indirect evidence that he may be no longer alive ... Vasily was very bright, bold, and helpful person. He and Sergey Hadzhynov helped me in Sevastopol to go around all police stations and detention facilities to find Katya and Shura ...'*
> Alexey Gritsenko, one of the AutoMaidan leaders, Facebook, March 3, 2015.

One of the Automaidan leaders Alexey said that during Euromaidan protests Vasily was in Kyiv and then returned to Sevastopol, where he had an apartment. According to the activist, they found out that Chernysh was taken from his apartment by the police.

> *"The police came and took him with them. We found out through his neighbor" that he was taken off.*
> Alexey Gritsenko, one of Automaidan leaders, in an interview for 'Crimea. Realities', November 6, 2015.

One of those who actively joined the search for Chernysh in the spring of 2014 was the film director Oleg Sentsov, who was later arrested by the FSS and charged with terrorism.

Timur Shaymardanov, Seyran Zinedinov

At the end of May, 2014, two Crimean Tatars, members of the Ukrainian House organization, were reported missing in Simferopol – the 34-year-old businessman Timur Shaymardanov and the 33-year-old hauler Seyran Zinedinov. They were close associates, participated in demonstrations against annexation of Crimea and helped the Ukrainian military during the blockage of their military units by the 'self-defense' and 'little green men'.

According to Timur Shaymardanov, Leonid Korzh, one of the activists of the Ukrainian House, disappeared on May

22, 2014. On May 26, Timur Shaymardanov himself did not come home, and none of his relatives or friends has seen him since then. He left the house in the morning. At dinnertime, Timur was to pick up the child from school, but did not do so and the contact with him had been lost since then.

Seyran Zinedinov was one of the coordinators in the search for the missing activists. On May 30 he met Shaymardanov's wife and told her that he had reason to believe that both activists had been abducted by the 'Crimean self-defense'. After this meeting Seyran Zinedine did not return home.

According to Seyran Zinedinov's relatives, there is a recording from the video surveillance camera at the gas station where the activist was last seen before the abduction. The recording shows a car stopping near the filling station and near the activist (the distance does not allow telling the number and the make of the vehicle), and the man was forced into the car. The relatives of the abducted person have received no information about him or the results of the investigation since they filed their application to the police.

After Seyran's disappearance his relatives found out from the mobile operator the location of his phone, which was turned on several times after his disappearance. His mobile phone was connected to the network from the recreation and retreat center Dolphin, which is near Evpatoriya. When this became known, Zinedinov's friends tried to get there, but they were not allowed inside by the guards.

Shaymardanov's phones were turned on several times after his disappearance; his family also tried to find out from the operator the exact location where they got online. However, they got no reply.

On July 31, 2014, the Prosecutor's Office of the Republic of Crimea reported, in response to the request of the Crimean Field Mission on Human Rights, that criminal cases for murder were launched on the facts of the disappearance of Zinedinov and Shaymardanov.

During the 113th session of the UN Human Rights Committee in Geneva in March 2015 the Russian delegation stated that the investigation in Crimea was considering several versions in the cases of disappearances of Timur Shaymardanov and Seyran Zinedinov, the disappearance due to their commercial activities or voluntary departure from Crimea. In both cases, the investigation does not consider the versions of the violent nature of their disappearance and involvement of the 'Crimean self-defense', which was declared by the witnesses. In this regard, the effectiveness of investigation of these abductions raises doubts.

In November 2015, Shaymardanov's family lawyer Emil Kurbedinov reported that the Russian investigation has taken a number of investigative measures, but so far there has been no result.

> *"There are no suspects. Almost all the Russian institutions were applied to; requests were sent to all the morgues and police stations. The video from the gas station, which depicts the car into which Shaymardanov could have gotten had been investigated".*
> From an interview with the lawyer of the Shaymardanov's family Emil Kurbedinov for 'Crimea.Realities', November 4, 2015.

Due to the inaction of the Ukrainian and Russian investigating authorities in respect to the disappearance of Timur Shaymardanov, the human rights activists filed a complaint with the European Court of Human Rights against Ukraine and Russia. According to Darya Sviridova, Lawyer of the Ukrainian Helsinki Human Rights Union, the complaint was filed as the Crimean law enforcement officials refused to give the affected party the case materials, and the Ukrainian law enforcement officers did not conduct any investigation.

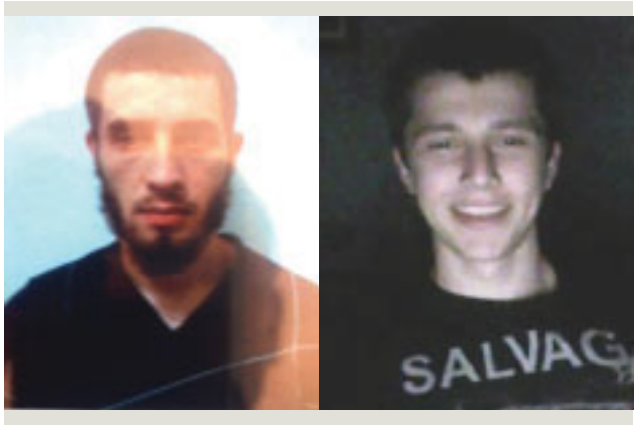
At the same time the case on the disappearance of Seyran Zinedinov was suspended by the Russian investigative authorities. The representative of the victim, the Crimean lawyer Alexander Lesovoy said that he did not try to appeal against the suspension of the investigation, since Zinedinov's relative have discontinued contact with him.

With regard to information about the disappearance of Leonid Korzh, he was found, and, according to Larisa Shaymardanova, he was not abducted.

Islyam Dzhepparov, Dzhevdet Islyamov

On September 27, 2014, the 18-year-old Islyam Dzhepparov and his 23-year-old cousin Dzhevdet Islyamov were kidnapped in the village of Sara-Su near Belogorsk. The young men were last seen on the road in the evening, not far from the shop 'Kysmet' (40th km of the Simferopol – Kerch highway): unknown people in black uniforms first searched the guys, and then pushed them in a blue Volkswagen Transporter minibus with tinted glasses (registration number 755, region 82) and left in the direction of Feodosia.

Dzhepparov's father Abdurashid immediately reported to the police about kidnapping of the son, but, according to him, law enforcement authorities were negligent in searching the young people.



A criminal case under the article 'kidnapping committed by a group of persons with prior intention,' was instituted after Dzhepparov and Islyamov's disappearance.

Another disappearance of the Crimean Tatars stirred up the public. A few days after the incident, near the Abdureshit Dzhepparov's house in Sary-Su of Belogorsk district a rally was held. On the same day, the Head of Crimea Sergey Aksenov met with Abdureshit Dzhepparov and the people that accompanied him. According to the activist, the authorities assured that "*the case would be brought to an end*". Two days later, Aksenov arrived at Belogorsk to communicate with the resentful public. Following the meeting, it was decided to establish the Crimean Human Rights Contact Group, which, in addition to Dzhepparov, included lawyers, social activists and relatives of the missing people.

More than a year passed since then, however, neither Russian nor Ukrainian law enforcement agencies achieved any results in the search for the missing persons.

In addition, according to Abdurashid Dzhepparov, the law enforcement officials, while investigating the cases, put pressure on the victims and witnesses.

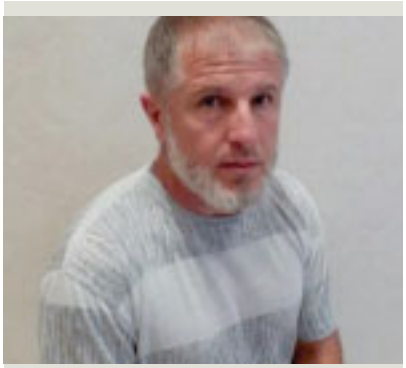
> *"They held us until after midnight, interrogated about Islam, its various branches, radicalism – as if I understood anything in it. I know that the investigators need to collect information, but they should understand me as a father – after all, my son is missing!"*
> From an interview with the father of Islyam Dzhepparov Abdurashid for Deutsche Welle, November 2014.

According to Deutsche Welle, Dzhepparov's eldest son Abdullah disappeared in Syria in 2012. Perhaps he took part in military operations for the opposition together with Dzhevdet Islyamov there. Later, Dzhevdet came back home, but Abdullah did not.

The investigating authorities of the Crimea are checking the facts of Dzhevdet Islyamov's participation in the military operations on the side of the opposition in

the Syrian Republic and the possible connection between the said circumstance and the incident.

Mukhtar Arislanov



On August 27, 2015, a resident of the Fountains district of Simferopol Mukhtar Arislanov was abducted. According to his wife, he went shopping and never returned home.

According to Nurfie Karakash, sister of Abducted Narislanov the locals saw a few people dressed in police uniforms putting Mukhtar Arislanov get into the Mercedes Vito minibus. After that, some of these people also got into the minibus, and some to LadaPriora and drove away in the direction of Simferopol.

The 45-year-old Mukhtar Arislanov worked as a PT teacher in one of the schools in Simferopol district. He was a judo coach. The telephone connection with him was lost in the afternoon of the same day.

The relatives went to the police, filed file a missing person report; the police said that they had nothing to do with the disappearance of Mustafa Arislanov. The Field Human Rights Center reported that the investigation authorities put psychological pressure on Arislanov's wife in order to force her to withdraw the application on the abduction.

As reported on the website of the Investigative Committee of the Russian Federation on the Republic of Crimea, a criminal case on the grounds of an offense under Part 1 of Art. 105 of the Criminal Code of the RF (murder) was opened.

Cases with no signs of forced disappearance

There are several more cases which give no reasons to suggest abduction, and some of these cases are under investigation, but distrust to the investigation in respect of the previous episodes (including, in particular, the murder of Reshat Ametov taken away from the central square of Simferopol by unidentified men in camouflage uniforms on March 3) give rise to a variety of versions, including the involvement of law enforcement agencies or paramilitary forces in all these episodes.

Edem Asanov

On September 29, 2014, the 25-year-old Edem Asanov disappeared on his way to work from Saki to Yevpatoria. According to Asanov's sister Feride, he left his house in Saki at 8:30 to catch the bus to Yevpatoria, where he worked as a rescuer at a spa resort.

He was found hung up in an abandoned holiday center in Yevpatoria on October 6. There was a suicide note near Asanov's body saying that he had a disease that allegedly made him commit suicide. The relatives of the dead first said that Asanov could not commit a suicide, but then urged journalists not to look for political implications of his death.

Right after Asanov's disappearance, it became known that a person with the same surname appeared in the case of 'Oleg Sentsov's group' which was allegedly preparing acts of terrorism on the peninsula. It turned out later that it was Asanov's namesake with a different patronymic.

> *'There is a version that Asanov had the same surname as the person in Sentsov's case, and, allegedly, he was kidnapped incidentally. But when they (kidnappers) found out that it was a different person, they organized a suicide to hide the crime. The relatives behave very strangely in this story. If we say that it was a suicide and that everything was transparent why were not we provided a death certificate? It gives rise to suspicion.'*
> From the interview of the Vice-Chairman of the Crimean Field Mission for Human Rights Olga Skripnik to the GORDON, February 2015.

The Crimean Field Mission noted that the relatives set Asanov's funeral for an earlier date so there was no possibility to establish traces of violence on his body.

Eskender Apselyamov

Eskender Apselyamov, 23, went missing on October 3, 2014, in Simferopol. Around 17.30 he went out from the rented apartment in Trubachenko street in Simferopol to work in a bakery (a 15-minute walk from home), but never turned up at work. He was last seen in a shop near

his work where he bought cigarettes. Apselyamov's phone turned on for 15–20 minutes in the evening on the day of his disappearance, but he discarded all calls. Apselyamov's relatives went to all hospitals, police stations, and mortuaries of Simferopol after his disappearance, but he could not be found anywhere. According to the relatives of the Crimean Tatar, he was fond of football and did not participate in the political life of the peninsula at all.

There is still no information on the missing Apselyamov on the web site of the Crimean Investigation Committee. Eskender's mother Aishe Apselyamova said that a criminal case for disappearance of her son was launched (she does not know under which article), and the parents periodically meet the investigator.

> *'I call him by phone and ask whether there is any news. Unfortunately, there is no news.'*
> From an interview with Eskender's mother, Aishe Apselyamova, for the GORDON, February 2015.

Fedor Kostenko

On March 4, 2015, friends and family lost touch with Fedor Kostenko, father of Euromaidan activist Alexander Kostenko arrested in Crimea.

Before his disappearance he had arrived in Kyiv to talk to the press about the arrest of his son but was forced to rush back to Crimea after his second son phoned him to say that the FSS had searched their apartment once again.

On March 3, he phoned and said that he entered Crimea, and then the contact with him was lost. To date, his whereabouts remain unknown.

According to the Crimean Field Mission, Fedor Kostenko's wife filed an application to the police about his disappearance. The document also states that on March 2 and 3 *"near our apartment there were suspicious people, who obviously watched the entrance and the apartment at the door and from the car"*. The application states that the presence of such "observers" can be confirmed by the neighbors.

Fedor Kostenko's son Alexander, a former Crimean policeman, has been charged with deliberate infliction of bodily harm on the grounds of ideological hatred, in January 2014 on the Maidan in Kyiv, against the fighters of Berkut riot police unit sent to Kyiv from Crimea (par. b of Part 2 of Art. 115 of the Criminal Code of the Russian Federation). He was beaten and tortured with electric current, and then forced to write a confession. Kostenko was sentenced to 4 years and 2 months in

prison. Later, the Supreme Court of Crimea reduced the term of imprisonment to 3 years and 11 months.

The relatives of the missing person and Kostenko's lawyer believe that the disappearance of the detainee's father may be related to the pressure upon his son who had previously reported regular beatings, threats, and abuse.

4.3. Criminal Prosecutions for Political Reasons, Unlawful Arrests and Searches

The Russian laws on extremism, and terrorism are used in Crimea for the purposes of exercising pressure on the Ukrainian and Crimean Tatar activists. Using Russian law as a means of protection for themselves, the FSS, prosecutors, and the police conducted more than a hundred illegal searches in the homes of the Crimean Tatars, Euromaidan activists, and journalists, as well as in mosques, madrassah, temples, editorial officers of TV channels and print media. The 'Crimean self-defense' often takes part in such searches, usually by surrounding the house under search and not allowing in any lawyers, as well as by taking away personal belongings.

A more severe manifestation is unreasonable arrests and imprisonments; the Crimea now has political prisoners. Criminal proceedings have been initiated even in respect of the events that had occurred before the establishment of Russian control over the Crimea or for the events that had taken place in Kyiv.

'The Case of May, 3'

The charge: The use of violence endangering the lives or health of the persons against a representative of authorities (part 2, Art. 318 of the Criminal Code of the Russian Federation), punishment: Imprisonment of up to ten years, illegal crossing the state border of the Russian Federation (Art. 322 of the Criminal Code), punishment: From a fine to imprisonment for up to six years.

The arrested persons: On October 16, 2014, Musa Apkerimov was arrested, followed by Rustam Abdurakhmanov on October 17, 2014, Tahir Smedlyaev on October 22, 2014, Edem Ebulisov on November 25, 2014, Edem Osmanov on January 20, 2015.

Mustafa Dzhemilev, a well-known ativist and the leader of the Crimean Tatar People was banned entry to Crimea on Marh 3, 2014. In response, the Crimean Tatars

Pictured: **Motor highway in Armyansk, Mustafa Dzhemilev attempts to enter Crimea with the support of Crimean Tatars**

came to the town of Armyansk, the entry point to Crimea, to support their leader and express their protest against the ban. The meeting was attended by several thousand Crimean Tatars, after which Natalia Poklonskaya, the prosecutor of the Crimea, sent a resolution to the Investigation Committee and the FSS in order to 'institute criminal proceedings against the persons responsible for the gathering, under Articles 212, 318, and 322 of the Criminal Code of the Russian Federation', i.e., riots, acts of violence against a representative of authority, and illegal crossing of the state border. The prosecutor's office and the court, which issued an order for the arrest of five people involved, did not even take into account the fact that on 3 May the border of the Russian Federation in the Crimea had not been equipped yet. The participants of the rally could not illegally cross the Russian border because the border crossings and the border itself appeared only in June.

A week later, the protesters began to receive subpoenas, and subsequently about 200 people were fined in the amount of RUB 10,000 to 40,000 for administrative articles on 'unauthorized meeting' (20.2 of the Administrative Code of the Russian Federation) and disobedience to the police (19.3 of the Administrative Code). This was followed by a wake of raids on the homes of the participants of the peaceful assembly of May 3 under the pretext of searching for weapons,

drugs, and forbidden extremist materials. In October, 4 Crimean Tatars were arrested: Musa Apkerimov, Rustam Abdurakhmanov, Tahir Smedlyaev, and Edem Ebulisov. On January 20, 2015, Eden Osmanov was arrested, the son of Mustafa Osmanov, the activist of Crimean Tatar national movement and the participant of Euromaidan in Kyiv.

Later all the five people were released from custody on bail. It is known that subsequently, four of them were found guilty under Art. 318 of the Criminal Code of the RF 'The use of violence against a representative of authority' and sentenced to various punishments: Musa Abkerimov – to 4 years and 4 months of conditional imprisonment, Edem Ebulisov – to a fine of 40,000 rubles, Edem Osmanov – to one year of conditional imprisonment, Tahir Smedlyaev – to 2 years of conditional imprisonment.

'The Case of February, 26'

The charge: Organization of and participation in the riots (Art. 212 of the Criminal Code of the Russian Federation), punishment: Imprisonment of three to fifteen years; causing death by negligence (Art. 109 of the Criminal Code of the Russian Federation), punishment: Imprisonment of up to two years.

The arrested persons: Akhtem Chiygoz, deputy chairman of the Mejlis of the Crimean Tatar people, was arrested on January 29, 2015, followed by Eskender Kantemirov on February 7, 2015, Eskender Emirvaliev on February 18, 2015, and Talyat Yunusov on March 11, 2015, and also Eskender Nebiev, Mustafa Degermendzhi, Ali Asanov and Arsen Yunusov.

Pictured: **Akhtem Chiygoz, the Deputy Head of the Crimean Tatar People Mejlis**

On February 26, 2014, a rally organized by the Mejlis of the Crimean Tatar people in support of Ukraine's sovereignty and the status of the Autonomous Republic of Crimea was held in Simferopol (the capital of the Crimea) near the Parliament of the Autonomous Republic of Crimea. The event was attended by several thousands of Crimeans.

On March 21, 2014, Russia adopted the law of the Russian Federation No. 6-FKZ on the inclusion of the Crimea into the Russian Federation. The law itself came into force on 1 April, 2014, so Russia recognizes its jurisdiction in the Crimea from that day. Despite this, the Investigative Committee of the Russian Federation began to institute criminal proceedings for the events that occurred before April 1, and are not in the jurisdiction of the Russian Federation. Meanwhile, according to Article 70 of Geneva Conventions of August 12, 1949 on protection of civilians during war, an occupying power shall not arrest, prosecute or convict protected persons for acts committed or opinions expressed before the occupation or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

In January 2015, the Investigative Committee of the Russian Federation instituted criminal proceedings for organizing of and participating in the riots on February 26, 2014. It is under this case that Akhtem Chiygoz, the deputy chairman of the Mejlis, was arrested and remains in custody. His house was searched. As a part of this case, FSB searched the premises of the Crimean Tatar channel ATR and removed the video recordings of the events of February 26. The investigators believe that two people died by accident during these events (one of them died from a heart attack). Three more Crimean Tatars were arrested and more than 150 people were questioned. The investigators intimidated the arrested Eskender Emirvaliev to give false testimony against Akhtem Chiygoz, but he refused to do that. Ahtem Chiygoz himself did not plea guilty and is sure that the charges are made up and have political reasons.

Under this case Talyat Yunusov was found guilty under Part 2 of Art. 212 of the Criminal Code of the RF (participation in mass riots, accompanied by violence and destruction of property) and sentenced to three and a half years of conditional imprisonment. Eksender Nebiev was found guilty of participation in mass riots under Part 2 of Art. 212 of the Criminal Code of the RF and sentenced to two and a half years of conditional imprisonment with two years' probation. Currently, six more persons are under investigation – Akhtem Chiygoz, Mustafa Degermendzhi, Ali Asanov, Eskander Emirvaliev, Eskander Kantemirov, Arsen Yunusov.

In February 2016, the Court of Crimea decided to return the case for further pre-trial investigation.

'The Case of Hizb ut-Tahrir'

The charge: Establishment of a terrorist organization and participation in the activities of such organization (Art. 205.5 of the Criminal Code of the Russian Federation), punishment: Up to life imprisonment.

The arrested persons: Ruslan Zeytullaev, Nuri Primov, and Rustem Vaitov were arrested on January 23.

In Ukraine, Hizb ut-Tahrir exists as a political Islamic movement involved in religious, political, and educational activities. Some followers of this movement lived in Crimea. Hizb ut-Tahrir members have not been involved in any terrorist activity. However, Russia is the only country where Hizb ut-Tahrir has been recognized as a terrorist organization, and its participants are pursued criminally.

The use of Russian legislation in the Crimea led to the arrest of three Crimean Tatars for alleged 'establishment of a terrorist organization and participation in the activities of this organization'. In particular, they are accused of the activities of Hizb ut-Tahrir. The court ruled on their detention for 2 months. But now, according to the Russian laws, one of the detainees may be sentenced between 15 and 20 years of imprisonment, or a life sentence, for organizing the activities, while the other two may be jailed for 5 to 10 years for taking part in such activities.

Relatives and friends claim that the detainees were not involved in any terrorist activities and were just Muslims. There is no conclusive evidence of the fact that the detainees belonged to Hizb ut-Tahrir, and many believe that this is an act of intimidation of the Crimean Tatars.

On February 16, Sevastopol City Court upheld its decision on the detention of one of the arrested, Ruslan Zeytullaev. He intends to appeal against the decision. His lawyer said that the hearing was conducted in the absence of the arrested person and his lawyer, which is a gross violation. The terms of detention of the four defendants are constantly extended.

To date, the sentences had not been imposed.

In 2016, the persecution of the alleged members of Hizb ut-Tahrir reached a new level. Thus, on February 11, 2016, there was a series of searches in the homes of Muslims in Yalta, Alushta and Bakhchisaray district. It is known that 13 Muslims were detained after these searches: Muslim Aliev, Enver Bekirov, Shamil Ilyasov, Emir-Usein Kyky, Nariman Mamedinov, Damir Minadirov, Aider Moskovsky and his son, Rustem Osmanov, Vadim Siruk, Bakhtiyar Topuz, Arsen Khalilov, Muslim Mazmanov. With respect to the four persons detained as a result of searches (Enver Bakirov, Vadim Siruk, Muslim Aliev and Emir-Usein Kyky) the Simferopol court passed a decision on the detention for 2 months until April 8. They are accused of the so-called "terrorist articles" – participation in a terrorist community or its organization, namely, the alleged participation in the activities of Hizb ut-Tahrir. On February 12 and 18, 2016 there were also searches in the homes of Muslims on suspicion of participation in Hizb ut-Tahrir.

'Kostenko's Case'

Pictured: **Alexander Kostenko**

The charge: Intentional infliction of bodily harm on the grounds of political, ideological, racial, ethnic or religious hatred or enmity or hatred or hostility toward a social group (part 2, Art. 115 of the Criminal Code of the Russian Federation), punishment: Up to two years in prison.

The person arrested: Alexander Kostenko was arrested on February 5, 2105.

The Kostenko's case is unprecedented. He is accused of involvement in the events that took place as early as in February 2014, and, what is more, not even in the Crimea but in Kyiv. Kostenko himself is a Euromaidan activist.

Alexander Kostenko was arrested on February 5 in Simferopol, but he was not taken to the police station until the following day. He claims that the FSB had spent the night torturing him to get his confession.

Investigators believe that Kostenko, 'with a sense of ideological hatred and hostility to the employees of the Department of the Ministry of the Interior', threw '10x10x12 cm stones (paving stones)' aiming them at warrant officer V.V. Polienko, who was standing in the cordon. The investigators insist that this led to injuries of an employee of the Crimean Berkut Unit 'in the form of a large hematoma in the middle and lower thirds of the left shoulder'. It remains unknown how the investigators from Simferopol were able to investigate the events that had taken place in Kyiv a year earlier.

Other activists who were on Maidan in Kyiv with Kostenko argued that Kostenko could not throw the stones because at that time was not on the street but in a building where he helped the wounded.

Kostenko wrote an open letter in which he reported being regularly tortured. Kostenko's lawyer also confirms that the arrested people were tortured. Bare wires were pushed under his nails, and he was tortured with electric current. He has noticeable bruises on his body, his arm and fingers have been broken. Kostenko is now subject to tortures in the pre-trial detention center, he is being forced to refuse the services of his attorney and give evidence against other Ukrainian activists of Euromaidan.

The apartments of other activists who were familiar with Alexander Kostenko have been searched within the framework of this criminal case. The prosecution was represented by the Crimean Prosecutor Natalia Poklonskaya.

In May, Alexander Kostenko was sentenced to 4 years and 2 months in a penal colony; he was found guilty of violating par. b of Part 2 of Article 115 (intentional infliction of bodily harm) and Part 1 of Article 222 (illegal possession of firearms) of the Criminal Code of the RF. On August 26, the Crimean Supreme Court changed the sentence to 3 years and 11 months cumulatively.

In the fall of 2015, Alexander Kostenko was taken out of Crimea and currently he is in the penal colony #5 in Kirovo-Chepetsk, Kirov region, Russian Federation.

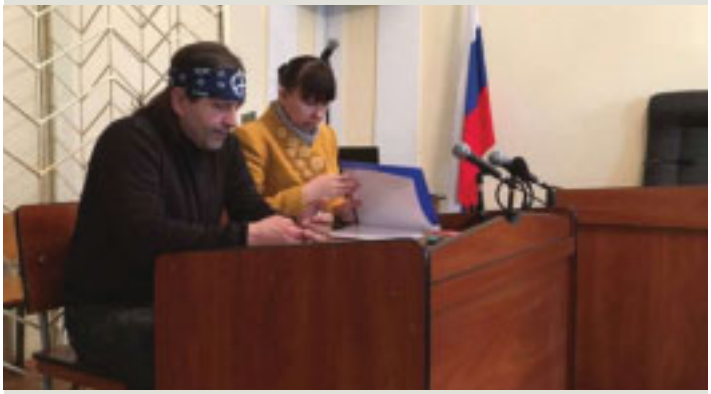
'Vladimir Balukh's case'

The charge: insulting a representative of authority (Article 319 of the Criminal Code of the RF).

In November 2013, Vladimir Balukh planted a Ukrainian flag on the roof of his wife's house, which he did not remove after the occupation of the peninsula. Vladimir Balukh was detained for the first time in July 2014. The police did not allow him to the meeting of residents of Serebryanka village with the Chairman of the "State Council" of Crimea, Vladimir Konstantinov. The police arrested him for "failure to comply with the legitimate demands of the police". Later, at the end of April 2015, the house where Vladimir Balukh lived with his partner in Serebryanka village was searched by the police together with the FSS officers, during which they took the flag of Ukraine off the roof of the house. The reason for the search was a statement about the theft of tractor spare parts in Chernyshevo village, located 30 km away from the place of the search, and application to the police from an unknown person stating that Balukh allegedly was selling the tractor spare parts. At the time of the search Balukh was out, and the search report was not drawn up.

Pictured: **Vladimir Balukh**

On November 14, 2015, the house of the Balukh's partner was searched again. The reason for the search this time was a criminal case on a car theft in the nearby Razdolnoe village. The main witness in the case on spare parts theft, and in the case on car theft was the same person, which



Pictured: **Sentenced to the 320 hours of compulsory labor Vladimir Balukh at one of the hearings in the Razdolnenskiy court**

indicated Balukh as a suspect. However, Balukh had never met this person before. Vladimir Balukh said that after the search started, the police officers took him outside, put him in the car and beat, as well as insulted him on account of his ethnic descent. However, the police officers had not been held accountable for such actions; instead the local court found Balukh guilty of disobedience to a police officer and imposed a penalty in the form of administrative detention for ten days. The activist spent 10 days in detention, repeatedly requested medical treatment, but was repetedly denied. In addition, during the Balukh's detention, the Razdolnensky department of the Investigative Committee of Russia on November 18, 2015, opened a criminal case against him. Balukh was charged with committing a crime of "publicly insulting a representative of authority during the performance of relevant duties". The criminal case was investigated for two days and submitted to the Razdolnenskiy district Prosecutor.

On February 5, 2016, the court found Vladimir Balukh, a Ukrainian, guilty under Art. 319 of the Criminal Code of the RF "insulting a representative of authority" and sentenced him to 320 hours of compulsory labor.

4.4. Forced Citizenship

According to the data provided by the Office for National Statistics of Ukraine in the statistical digest 'Population of Ukraine'[3], as of January 1, 2013, the total population of ARC and Sevastopol amounted ca. 2,350,000. The Federal Constitutional Law of RF No. 6 provides the granting of automatic Russian citizenship for all Ukrainian citizens who were domiciled and registered in Crimea at the moment of adoption of this law. Therefore, the inhabitants of Crimea, in fact, got a double citizenship

[3] http://ukrstat.org/uk/druk/publicat/Arhiv_u/13/Arch_nnas_zb.htm

from the point of view of the occupying country. Meanwhile, the laws of RF provide for possible criminal responsibility for concealment of the second citizenship (for Crimeans, this provision of the RF law will come into effect on January 1, 2016[4]). After this date all Ukrainian citizens domiciled and registered in Crimea will have to make notifications about their Ukrainian citizenship. The concealment of the information about citizenship may entail criminal responsibility (Article 330-2 of the RF Criminal Code – punishable by a fine of up to 200,000 rubles or in the amount of an annual income of the convicted person, or up to 400 hours of compulsory work). The citizens who fail to make such notifications in a due time or provide incomplete or knowingly false information, are subject to administrative fine in the amount of 500 to 1,000 rubles.

There are grounds to believe that this provision can be extended to the internally displaced persons, which currently reside in the mainland Ukraine. According to various estimates the number of the internally displaced persons from Crimea and Sevastopol amounts to 15 – 30 thousand people.

Importantly, the procedure for submission of such an application envisages having a passport of the citizen of the Russian Federation. Therefore, those who did not submit an application for renunciation of citizenship of the Russian Federation/retention of the Ukrainian citizenship (see below), and did not obtain a Russian passport, would not be able to submit such an application. The recognition of the inhabitants of the peninsula as Russian citizens was automatic, without considering each case separately. In fact, the Russian government can claim that all those whose place of residence was registered in Crimea and Sevastopol are Russian citizens – regardless of whether such persons actually resided in the territory of the peninsula.

The 'automatic citizenship' could be avoided only by filing personal application on the intention to retain Ukrainian citizenship before April 18, 2014 only in 4 offices for all Crimea (including Sevastopol), after standing in one line with those who wanted to receive a Russian passport. Although formally the period for filing such an application should have been one month (from March 18 to April 18, 2014), in fact, the procedure for acceptance of such applications was introduced on April 1 (the date of entry into force of the law On the accession of Crimea). In mid-April 2014, the additional offices for registration of refusals from Russian citizenship were open (while, according to the Russian Federal Migration Service (FMS), the number of the offices accepting documents on the RF passport was about 250). The actual term for filing such applications was about three weeks. Moreover, these were not the offices specifically designed for processing such applications, they accepted

[4] http://www.rg.ru/2014/06/06/grajdanstvo-dok.html

the applications for refusal of citizenship of the Russian Federation/retention of the Ukrainian citizenship together with applications for issuance of passports of Russian citizens, which constituted an additional obstacle.

In total, according to the data presented by the head of the Russian FMS regional department in Crimea, this option was used by 3,500 people. There were documented cases when the people willing to file the application just had no time to do this. In addition, these applications could not be filed by the people who were abroad, ill, etc. After filing such refusal, the citizens of Ukraine, in fact, became foreigners in Crimea for the RF authorities who are in a position to limit the period of their stay in Crimea, expulse them or even deny them the entry to their own places of residence.

Having the Russian passport is a prerequisite for the realization of a significant number of rights by Crimean residents. Namely, getting all kinds of social benefits, obtaining a driver's license, vehicle registration, work at certain positions (civil service, budgetary institutions), obtaining of land lots, free medical care, and re-registration of ownership rights. Civil servants of all levels are widely reported to be coerced to denounce their Ukrainian citizenship, as well as to hand over their Ukrainian passports to the heads of institutions where they work.

Thus, the system is created that forces Crimeans to acknowledge Russian citizenship. On December 29, 2014, the changes[5] were introduced to the Article 4 of the Federal Constitutional Law # 6, according to which the Crimean residents are able to abandon the second 'foreign citizenship' by filing an application and the foreign passport to the corresponding authorities of the RF. The provisions of the law are formulated in such a manner that a person residing in the RF shall be considered as not having the citizenship of another country. This regulation cannot apply to other countries. In this way, the Russian authorities are trying to deprive the Crimeans of Ukrainian citizenship, 'bypassing' the law of Ukraine and international standards, according to which this is possible only upon personal appeal of a citizen to the relevant Ukrainian authorities.

Especially vulnerable is the position of orphans and children in the care or custody of state authorities. According to the official data as per August 1, 2014, there were 4,228 such children in Crimea. Administrations of all Crimean institutions started to collaborate with the Russian authorities. The children are, in fact, denied the right to choose their citizenship (the RF passport is provided on reaching 14 years of age).

Separate category is presented by Ukraininan citizens who permanently resided in Crimea before the occupation, but were not registered there. Such persons became

[5] http://www.rg.ru/2014/12/31/krym-dok.html

foreigners in Crimea. In order to obtain a residence permit or the RF passport, they were forced to prove the fact of their residence in Crimea through court actions. Not only a recourse to the court is associated with considerable costs, but it also cannot guarantee the obtaining of Russian citizenship or residence permit to these people. Even upon the availability of the court's decision on establishing the fact of residence in Crimea or Sevastopol, the decision to issue the passport of the citizen of the Russian Federation /residence permit shall be adopted on the basis of a thorough check of all the circumstances of the case by officials of the Federal Migration Service.

The Russian authorities use the fact of 'automatic citizenship' for the criminal prosecution of pro-Ukrainian activists. The most widely known examples are the cases of Oleg Sentsov and Aleksander Kolchenko, who were detained and taken to Moscow, where they are currently in the detention center. Both are citizens of Ukraine, and lived in Crimea at the time of the occupation. They did nothing to obtain the RF citizenship, and do not recognize the fact of obtaining this citizenship. However, the criminal proceedings against them are held as against the citizens of the RF; the Consul of Ukraine is not allowed to meet with them. The refusal of preservation of the Ukrainian citizenship is contrary to the laws of the Russian Federation, the legislation of Ukraine and international acts.

At the same time, the Russian Federation manipulates the fact of acquisition of 'automatic citizenship', e.g., for the actual expulsion of undesirable persons from the territory of the peninsula. Thus, regardless of the recognition by the Russian Federation of all Crimeans as its citizens, Sinaver Kadyrov was forcibly deported from Crimea. The so-called Supreme Court of Crimea noted in its decision that there was no evidence that S. Kadyrov was a Russian citizen, and accordingly the court did not recognize his 'automatic citizenship'. Such court decision indicates the lack of independence of the court (in fact, they make political decisions), and the non-compliance of the law on citizenship to the requirements of stability and justice, the focus on security and the protection of fundamental rights which are the basic principles of the law-governed state and the rule of law in the modern world.

The European Convention on Nationality, ratified by Ukraine, and signed, but not ratified by the Russian Federation, defines the "nationality" as a legal bond between a person and a state without specifying the ethnic origin of a person. In addition, according to the position of the International Court of Justice in a decision (Nottebohm case), nationality is a legal bond having as its basis a social fact of attachment, interests and sentiments, together with the existence of reciprocal rights and duties.

Such 'automatic' obtaining of Russian citizenship by citizens of Ukraine in Crimea cannot be considered as legal, since the internal Russian procedures related to this

do not comply with the applicable international conventions, customary international law, and the principles of laws on citizenship.

In fact, Russia has not only occupied a part of the territory of Ukraine, but also took control over the majority of the population of this territory, depriving it of the freedom of choice. Such actions represent a terrible precedent of arbitrary determination of man's fate by an aggressive state. Such actions of the occupation authorities create serious legal issues; complicate the return of the Crimean peninsula under Ukraine's control as it is much easier to declare the granting of citizenship to the nationals of another country than to overcome the consequences of the lawlessness.

4.5. Violation of the Right to the Freedom of Movement[6]

The right to the freedom of movement is the right to move freely throughout the territory of own country, as well as the right to choose a place of residence, the right to leave and freely return to own country. This right is an international standard and is protected by Article 2 of Protocol No.4 to the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 12 of the International Covenant on Civil and Political Rights. Article 49 of the Convention for the Protection of Civilian Persons in Time of War of August 12, 1949 (IV Geneva Convention) prohibits, regardless of the motives, to carry out forced individual or mass displacement or deportation of civilians from the occupied territory both to the territory of the occupying state and to the territory of any other state, regardless of whether it is occupied or not.

The violation of the right to the freedom of movement leads to breaking the social, economic, family, cultural and other relations between the people, entails information isolation of the peninsula, when the people are fully influenced by the Russian propaganda and cannot get hold of an alternative point of view on the events in Ukraine and the world. The creation of such a situation meets the interests of the occupying authorities and allows to instill a climate of fear and make the residents of the peninsula feel hopeless.

The violation of the freedom of movement greatly increases a person's vulnerability before the state, when it becomes clear that there is no place to escape to. The vio-

[6] A more detailed study on the violation of the right to the freedom of movement under occupation can be found in the thematic review Crimea Without Rules// http://crimeahumanrights.org/wp-content/uploads/2015/11/Crimea_Beyond_Rules_RU._Issue_1.pdf

Annex 977

Freedom of the Press 2017, FREEDOM HOUSE (6 June 2018), accessed at https://freedomhouse.org/report/freedom-press/2017/ukraine

Published on *Freedom House* (https://freedomhouse.org)

Ukraine

Country:
Ukraine
Year:
2017
Press Freedom Status:
Partly Free
PFS Score:
53
Legal Environment:
13
Political Environment:
25
Economic Environment:
15

Key Developments in 2016:

- Regulators launched an ownership transparency mechanism for television and radio companies, requiring them to disclose detailed information about the identities of their owners.
- Efforts to transform the state radio and television companies into a public broadcaster continued, although organizational and funding challenges, as well as difficulties in the termination of some state companies, continued to delay the process.
- In November, the government approved plans for the privatization of 244 print outlets with the aim of safeguarding these publications' editorial independence from state influence.
- Violence, threats, intimidation, and harassment against media professionals and organizations continued; in the most alarming case of the year, a car bomb killed prominent journalist Pavel Sheremet in July.

Executive Summary

Ukraine's media environment has significantly improved since a change in government in 2014, and ongoing reforms continue to strengthen the legal and economic framework for journalists and outlets. However, there are several remaining challenges, including undue political interference with content as well as violence, harassment, and other abuse of journalists.

The government continued to adopt new media legislation in 2016, and implemented a number of positive reforms passed in the previous year. In June 2016, President Petro Poroshenko signed a law to facilitate transforming the country's state radio and television companies into a public broadcaster, a process that began in 2014. The government also took steps to reduce state

influence in the print sector in November, approving a list of 244 publicly owned local print outlets for privatization. Separately, to comply with legislation that came into force in October 2015, broadcasters began disclosing detailed information about the identities of their owners—including ultimate beneficiaries.

Journalistic access to the Donbas regions of Donetsk and Luhansk, partly held by separatists since 2014, remained restricted. Although violence against the press has significantly decreased since its peak in 2014, attacks on media professionals and houses nevertheless continued. In July, a car bomb killed Sheremet, who had a show on Radio Vesti and reported for the independent online paper *Ukrayinska Pravda*. In May, the vigilante website *Myrotvorets* published the personal information of approximately 5,000 Ukrainian and foreign media professionals who had received accreditation from separatist authorities in Donetsk and Luhansk to report on the conflict. Several journalists reported receiving threats following the publication of the list. Although authorities opened an investigation into the case, the website continued to update the data, and also published a separate list of information about Ukrainian journalists working in Russia.

Ongoing instability and violence in Donbas, as well as concerns about general Russian interference in Ukrainian affairs, continued to create tensions in the country's political environment and affected the government's attitude toward the media. At a press conference in June, Poroshenko requested that journalists refrain from covering negative stories about Ukraine, a statement that media watchdogs decried for undermining journalistic independence. After *Myrotvorets* exposed the personal details of thousands of journalists, Interior Minister Arsen Avakov and lawmaker Anton Herashchenko praised the website's actions.

Legal Environment: 13 / 30

The constitutional and legal framework for the media in Ukraine is among the most progressive in Eastern Europe, though its protections are not always upheld in practice. Legislation adopted in 2015 increased penalties for crimes against journalists and established mechanisms for financial assistance to journalists who are injured, and to the families of those who are killed, while performing their professional duties. Impunity for crimes against the media nevertheless remains a problem in Ukraine, with many incidents reportedly going unpunished.

A separate package of 2015 laws banned symbols related to "communist and Nazi totalitarian regimes"—with some exceptions, including for educational purposes—and penalized the denial of the "criminal nature" of these regimes. They also criminalized public denial of the legitimacy of several groups that fought for Ukrainian independence in the 20th century. Local and international media rights organizations expressed concerns that the broadly worded laws could discourage open debate and critical journalism about politically sensitive topics.

In a case that tested the legal system's tolerance for dissenting views on national security issues, journalist and blogger Ruslan Kotsaba was sentenced in May 2016 to three and a half years in prison for allegedly obstructing the armed forces by calling for a boycott of military conscription in a video posted to YouTube in 2015. In July, however, an appellate court overturned the conviction and released Kotsaba, who had spent a year and a half in detention.

In February 2016, the parliament adopted a law that criminalized the illegal seizure of journalists' materials and other actions that improperly obstruct their work, though the quality of enforcement of the new measure remained in doubt. Journalists have the legal right to protect the confidentiality of sources unless compelled by a court order. Libel was decriminalized in 2001, and in 2009 the Supreme Court instructed judges to follow the civil libel standards of the European Court of Human Rights, which granted lower levels of protection to public officials and clearly distinguished between value judgments and factual information. Officials nevertheless continue to use the threat of libel lawsuits to deter critical reporting.

The courts in Ukraine reputedly suffer from corruption and political dependence on the executive branch, affecting their impartiality when dealing with media-related cases. Conflicting laws on the media's ability to monitor and record courtroom proceedings have led to disputes between journalists and judges.

The 2011 law on access to public information, reinforced by a number of other laws, is considered one of the best of its kind in Europe, though implementation remains problematic. The Institute of Mass Information (IMI), a Ukrainian nongovernmental organization (NGO), has reported that restrictions on journalists' access to public information are most often imposed by local authorities. The February 2016 legislation to criminalize obstruction of journalists' work notably included a provision that would punish unlawful denial of journalists' requests for information.

Legal requirements for the establishment and operation of private media outlets are not unduly onerous, although print media must be formally registered with the state. Registration is not required for online media. Television and radio outlets must obtain licenses from the National Television and Radio Broadcasting Council, which has been criticized at times for opaque decision-making, bias in favor of major media holdings, and failure to punish content violations. A 2015 law required the council to release detailed explanations of its licensing decisions.

There are no burdensome restrictions on freedom to pursue the journalistic profession, and a number of groups and associations, including the National Union of Journalists and the Independent Media Trade Union of Ukraine, are able to support journalistic interests. However, Russian-backed separatist authorities in the eastern regions of Donetsk and Luhansk have been known to deny accreditation to both local and foreign journalists based on accusations of "propagandistic" or "negative" reporting.

In October 2016, prominent online newspaper *Ukrayinska Pravda* reported that it had obtained recordings suggesting that its staff had been under surveillance by the Security Service of Ukraine (SBU). The paper called on authorities to explain, but the SBU declined on national security grounds.

Political Environment: 25 / 40 (↓1)

The content of private media outlets is often influenced by the political or commercial interests of their owners. At least four major media groups, which together garner a television audience share of about 76 percent, are owned by powerful business magnates, or oligarchs, whose primary businesses are not in the media sector. Public media also reportedly face editorial interference. Zurab Alasania resigned as head of the public broadcaster in November 2016, citing government pressure over recent investigative reports on corruption as one of the reasons for his departure.

Freedom of access to official sources varies, depending on the public institution or official. Local officials in particular have been known to restrict media access to the activities of government bodies.

The constitution prohibits censorship, but some forms of de facto censorship have been used to control media content in the country. The National Television and Radio Broadcasting Council obtained court orders in 2014 to temporarily suspend the retransmission of certain Russian channels in Ukraine. The suspensions came after Russian state-controlled news outlets carried aggressively propagandistic content that was apparently designed to support the Russian occupation of Crimea, encourage pro-Russian separatism in eastern and southern Ukraine, and discredit the new government in Kyiv. The retransmission of a number of Russian channels remained barred during 2016.

In occupied areas of Donetsk and Luhansk, Russian-backed separatists retained control of broadcasting facilities that they had seized in 2014, and continued to block the transmission of most Ukrainian television channels. The self-proclaimed governments of these regions have also restricted access to numerous websites.

Ukrainian journalists have reported a degree of self-censorship on politically sensitive issues, such as alleged human rights abuses by the military in the Donbas conflict.

Despite the role of oligarchs and other pressures on journalistic freedom, the Ukrainian media collectively offer some diversity of viewpoints, ranging from the popular television channel Inter, which is regarded as pro-Russian, to President Poroshenko's 5 Kanal and anti-Russian outlets like the magazine *Ukrainian Week*. However, observers have noted growing nationalistic tendencies in Ukrainian journalism that damage objectivity and reduce reporters' and managers' willingness to challenge government narratives or pursue critical investigative work. Some outlets continue to focus on public-interest journalism, including the nonprofit Hromadske.TV and the state-owned television channel UA:First, though their market share is limited. The media's considerable reporting on official corruption rarely results in meaningful enforcement action by the authorities.

The government continues to restrict access to the country for some foreign journalists on national security grounds. In May 2016, Poroshenko issued a decree barring entry to 17 Russian journalists until the end of 2017. The SBU reported in December that it had denied entry to 61 Russian journalists during 2016.

In April 2016, the presenter of a well-known Russian-language political talk show, Canadian and Italian citizen Savik Shuster, was banned from working in Ukraine. The employment agency's decision on his work permit was reversed by a court in June. However, under pressure from an ongoing tax case and financial difficulties, Shuster's online television outlet announced in December that it would cease operations in early 2017.

IMI registered more than 100 cases of interference with journalistic activities, over 40 cases of threats or intimidation, and 30 cases of beatings or assaults on journalists in 2016, with most incidents perpetrated by individuals, law enforcement officers, or local officials. In July, journalist Pavel Sheremet, who wrote about topics such as corruption in Ukraine and Russian propaganda, was killed by a bomb in the car he was driving. The vehicle belonged to his partner Alena Pritula, owner of *Ukrainska Pravda*, suggesting that she might have been the intended target.

In May 2016, the Ukrainian website *Myrotvorets* published the names and personal information of about 5,000 journalists accredited by pro-Russian forces in Donbas. The journalists were then denounced by Interior Minister Avakov, and some faced harassment and death threats. Anton Herashchenko, the minister's adviser and a member of parliament who joined Avakov in praising the website's actions, was suspected of playing a role in the publication. Poroshenko criticized the website in June, but urged reporters not to write "negative" articles about Ukraine. The case remained under investigation at year's end.

The offices of the television station Inter were attacked or besieged by nationalist protesters on several occasions in 2016. In September, a group of masked assailants set fire to the building, injuring a number of employees. Separately, cyberattacks on media outlets were a routine occurrence during the year, according to IMI.

Economic Environment: 15 / 30 (↑1)

Most media in Ukraine are privately owned, and the most popular source of news is television. Officials have moved in recent years to transform Ukraine's state television and radio outlets into public-service broadcasters. A 2015 law established a new public broadcasting corporation that

would be overseen by a supervisory board with strong civil society representation. It was set to begin operations in January 2017. In June 2016, Poroshenko signed legislation requiring the merger of all state and regional media companies into the new entity, with provisions designed to overcome obstruction by the state enterprise Ukrtelefilm, which had resisted the reform.

A number of state television and radio companies duly merged into the new public broadcasting company during 2016, and in December the cabinet approved the charter of the organization, dubbed the National Public Broadcasting Company of Ukraine (UA:PBC). However, its initial budget allocations were substantially below the level expected, which Alasania cited as one of the reasons for his resignation in November.

A law adopted in December 2015 facilitated the privatization of print media owned by central, regional, and local government authorities, which watchdogs praised as an important step toward increasing pluralism in the sector. Implementation was slow, however, and the list of 244 print outlets to be privatized during the first stage of the reform was approved by the cabinet only in November 2016.

The private media sector is characterized by large holdings under the control of influential politicians and oligarchs. For example, the television station 5 Kanal is owned by President Poroshenko. The Inter group is owned by opposition lawmaker Serhiy Lyovochkin, oligarch Dmytro Firtash, and former SBU head Valeriy Khoroshkovskyi. Media Group Ukraine and the newspaper *Segodnya* are owned by oligarch Rinat Akhmetov, while oligarch Viktor Pinchuk owns Star Light Media.

Legislation that came into force in late 2015 banned individuals or entities from offshore economic zones or “aggressor or occupier states”—a designation determined by the government—from establishing or owning broadcasting or program service provider companies in Ukraine.

Ownership transparency among television and radio companies increased during 2016 as result of the same 2015 legislation, which required broadcasters and program service providers to disclose detailed information about their ownership structures, including the identities of ultimate beneficiaries. The companies consequently identified their ultimate beneficiaries on their websites. There is a lesser degree of transparency regarding ownership of print media, but ultimate beneficiaries in many cases can be ascertained via a registry maintained by the Justice Ministry. Online media are not subject to regulations on ownership transparency.

The government does not restrict access to the internet, which was used by about 49 percent of the population as of 2015. Ukrainians have increasingly turned to online platforms, including social media, for their news and information.

Although a crowded media market—with some outlets supported by wealthy owners—makes it difficult for new enterprises to become financially sustainable, the basic costs of establishing and operating media outlets are not generally prohibitive. Zeonbud, the country’s only digital terrestrial television transmission company, announced substantial price cuts for its services in August 2015. The company, which had obtained an exclusive license through an opaque process in 2010, was declared a monopoly in 2014 and fined by the state antimonopoly committee in December 2015 for abuse of its dominant position in the market. However, an economic court invalidated the finding on monopoly abuse and removed the penalty in May 2016; that ruling was confirmed by the Supreme Economic Court in October.

Difficult economic conditions in Ukraine have placed the media sector, particularly small outlets, under financial strain in recent years. Advertising revenue for print media has declined, leaving newspapers even more financially dependent on politicized owners. Paid content disguised as news (*jeansa*) remains widespread and weakens the credibility of journalists, especially during elections. IMI monitored *jeansa* materials from April until December 2016, finding that the city of Mykolaiv had the highest percentage in print media (15 percent), while the city of Dnipropetrovsk had the highest

percentage in online media (7 percent). The nonprofit outlet Hromadske.TV continued to rely in part on funding from foreign donors in 2016.

Note: The numerical ratings and status listed above do not reflect conditions in Crimea, which is examined in a separate report. *Freedom of the Press* country reports assess the level of media independence in a given geographical area, regardless of whether it is affected by the state, nonstate actors, or foreign powers. Disputed territories are sometimes assessed separately if they meet certain criteria, including boundaries that are sufficiently stable to allow year-on-year comparisons. For more information, see the report methodology and FAQ.

Annex 978

Human Rights Watch, Crimean Tatar Activist Confined in Psychiatric Hospital (26 August 2016)

Crimean Tatar Activist Confined in Psychiatric Hospital

hrw.org/news/2016/08/26/crimean-tatar-activist-confined-psychiatric-hospital

August 26, 2016

August 26, 2016 12:00AM EDT

Drop Separatism Charges, Allow Necessary Medical Care

(Berlin) – A Crimean Tatar activist has been involuntarily confined since August 18, 2016, in a psychiatric hospital, Human Rights Watch said today. The de-facto Russian authorities of Crimea should release the activist, Ilmi Umerov, drop criminal separatism charges against him, and ensure that he receives the medical care he requires.

Umerov, 59, is a former head of the Bakhchisaray district administration in Crimea and a former deputy chairman of Mejlis, the Crimean Tatars' elected representative body. Since Russian forces occupied Crimea in February 2014, Umerov has been an outspoken critic of the occupation and the Russian administration's persecution of Crimean Tatars, an ethnic minority who openly opposed Russia's occupation of Crimea, a part of Ukraine. The Supreme Court of Crimea in April 2016 declared Mejlis an extremist organization, and Crimean Tatar activists appealed the decision.

"Umerov's forced psychiatric confinement is an egregious violation of his rights," said Tanya Cooper, Ukraine researcher at Human Rights Watch. "It's also a shameful attempt to use psychiatry to silence him and tarnish his reputation, a popular practice against dissidents in the Soviet Union."

Expand

Ilmi Umerov, Crimean Tatar activist, July 6, 2015.

Russia's Federal Security Services (FSB) detained Umerov in May in Bakhchisaray, charged him with separatism under part 2 of Article 280.1 of the Russian criminal code and banned him from leaving Crimea during the investigation. Mark Feygin, one of Umerov's lawyers, told Human Rights Watch that on August 18, FSB officers forcibly moved Umerov from a Simferopol hospital, where he was receiving treatment for high blood pressure, to a psychiatric facility in the same city for an involuntary psychiatric evaluation, which can last up to 28 days or even longer.

Feygin said the charges stem from a March 2016 live interview with the Crimean Tatar TV channel ATR, which was posted on YouTube the next day. Russian authorities shut down the station in April 2015, and it relocated to Kiev.

Feygin said that based on a so-called expert linguistic analysis of the Russian translation of Umerov's Crimean Tatar language interview, the FSB concluded that Umerov had threatened Russia's territorial integrity by making calls to get Crimea back from Russia. "It's important to make Russia leave Crimea, Donbass and Luhansk, if it was only possible to restore Ukraine's former borders…" the transcript says. In July, Umerov went to court to try to halt the criminal investigation, but the court said it could continue.

On August 11, while the Simferopol court considered a petition from an FSB investigator to order the psychiatric evaluation, Umerov became unwell due to a pre-existing high blood pressure condition and was hospitalized. The court approved the psychiatric evaluation and Umerov's lawyers immediately appealed. But on August 18, Umerov was transferred to the psychiatric facility before an appeals court could hear the appeal, in breach of procedural law.

Umerov's daughter, Ayshe Umerova, said she was not allowed to see her father the day he was moved. Umerov was also initially banned from seeing his lawyers, receiving packages, or using a telephone. Later, his other lawyer, Nikolai Polozov, was allowed to see him. Umerov's daughter and his lawyers said they were very concerned about Umerov's health because he was not receiving the medical care he needed for his heart condition. Umerov also has diabetes, Parkinson's disease, and heart disease.

"Umerov should be allowed to continue medical treatment in a hospital, where he can get the care he requires," Cooper said. "The authorities should also drop their trumped up charges of separatism against Umerov for his peaceful exercise of the right to freedom of speech."

Under Russia's occupation of Crimea, the space for free speech and media and freedom of association in Crimea has shrunk dramatically. The authorities also have failed to conduct meaningful investigations into attacks and beatings of Crimean Tatar and pro-Ukraine activists and journalists. Under the pretext of combating extremism or terrorism, the authorities have harassed, intimidated, and taken arbitrary legal action against Crimean Tatars.

Local authorities declared two Crimean Tatar leaders personae non gratae and prohibited them from entering Crimea. They also have searched, threatened, or shut down Crimean Tatar media outlets and banned peaceful gatherings to commemorate historic events, such as the anniversary of the deportation of Crimean Tatars during the Soviet years.

Under international law, the Russian Federation is an occupying power in Crimea as it exercises effective control without the consent of the government of Ukraine, and there has been no legally recognized transfer of sovereignty to Russia. A referendum, held without the authorization of the Ukrainian government or any broad-based endorsement by other states, and Russia's unilateral actions afterward cannot be considered to meet the criteria under international law for a transfer of sovereignty that would end the state of belligerent occupation. Human Rights Watch documented a surge of human rights abuses in Crimea after

it was occupied by Russia.

“Russian authorities should stop persecuting people who challenge Russia’s actions in Crimea,” Cooper said. “Umerov should not be punished for speaking his mind about Crimea and its future.”

Annex 979

Laws of War: Laws and Customs of War on Land (Hague IV) (18 October 1907)

LAWS AND CUSTOMS OF WAR ON LAND (HAGUE, IV)

Convention signed at The Hague October 18, 1907, with annex of regulations
Senate advice and consent to ratification March 10, 1908
Ratified by the President of the United States February 23, 1909
Procès-verbal of first deposit of ratifications (including that of the United States) at The Hague dated November 27, 1909
Entered into force January 26, 1910
Proclaimed by the President of the United States February 28, 1910
Sections II and III of the regulations supplemented by convention of August 12, 1949,[1] relative to protection of civilians in time of war, as between contracting parties to both conventions; chapter II of the regulations complemented by conventions of July 27, 1929,[2] and August 12, 1949,[3] relative to treatment of prisoners of war, as between contracting parties

36 Stat. 2277; Treaty Series 539

[TRANSLATION]

IV

CONVENTION RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

His Majesty the German Emperor, King of Prussia; the President of the United States of America; the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; the President of the Republic of Bolivia; the President of the Republic of the United States of Brazil; His Royal Highness the Prince of Bulgaria; the President of the Republic of Chile; the President of the Republic of Colombia; the Provisional Governor of the Republic of Cuba; His Majesty the King of Denmark; the President of the Dominican Republic; the President of the Republic of Ecuador; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions

[1] 6 UST 3516; TIAS 3365.
[2] TS 846, *post*, vol. 2.
[3] 6 UST 3316; TIAS 3364.

219-915—68——41

Beyond the Seas, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Haiti; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; the President of the United States of Mexico; His Royal Highness the Prince of Montenegro; His Majesty the King of Norway; the President of the Republic of Panama; the President of the Republic of Paraguay; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; His Majesty the Emperor of the Ottomans; the President of the Oriental Republic of Uruguay; the President of the United States of Venezuela:

Seeing that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where the appeal to arms has been brought about by events which their care was unable to avert;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization;

Thinking it important, with this object, to revise the general laws and customs of war, either with a view to defining them with greater precision or to confining them within such limits as would mitigate their severity as far as possible;

Have deemed it necessary to complete and explain in certain particulars the work of the First Peace Conference,[4] which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and govern the usages of war on land.

According to the views of the High Contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert Regulations covering all the circumstances which arise in practice;

On the other hand, the High Contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.

---

[4] The First Peace Conference was held at The Hague May 18–July 29, 1899. See convention of July 29, 1899, respecting laws and customs of war on land (TS 403), *ante*, p. 247.

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

The High Contracting Parties, wishing to conclude a fresh Convention to this effect, have appointed the following as their Plenipotentiaries:

His Majesty the Emperor of Germany, King of Prussia:

His Excellency Baron Marschall von Bieberstein, His Minister of State, His Ambassador Extraordinary and Plenipotentiary at Constantinople;

Dr. Johannes Kriege, His Envoy on extraordinary mission to the present Conference, His Privy Counselor of Legation and Jurisconsult to the Imperial Ministry of Foreign Affairs, Member of the Permanent Court of Arbitration.

The President of the United States of America:

His Excellency Mr. Joseph H. Choate, Ambassador Extraordinary;

His Excellency Mr. Horace Porter, Ambassador Extraordinary;

His Excellency Mr. Uriah M. Rose, Ambassador Extraordinary;

His Excellency Mr. David Jayne Hill, Envoy Extraordinary and Minister Plenipotentiary at The Hague;

Rear Admiral Charles S. Sperry, Minister Plenipotentiary;

Brigadier General George B. Davis, Judge Advocate General of the United States Army, Minister Plenipotentiary;

Mr. William I. Buchanan, Minister Plenipotentiary.

The President of the Argentine Republic:

His Excellency Mr. Roque Saenz Peña, former Minister of Foreign Affairs, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Rome, Member of the Permanent Court of Arbitration;

His Excellency Mr. Luis M. Drago, former Minister of Foreign Affairs and Worship of the Republic, National Deputy, Member of the Permanent Court of Arbitration;

His Excellency Mr. Carlos Rodriguez Larreta, former Minister of Foreign Affairs and Worship of the Republic, Member of the Permanent Court of Arbitration.

His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary:

His Excellency Mr. Gaëtan Mérey de Kapos-Mére, His Privy Counselor, His Ambassador Extraordinary and Plenipotentiary;

His Excellency Baron Charles de Macchio, His Envoy Extraordinary and Minister Plenipotentiary at Athens.

His Majesty the King of the Belgians:

His Excellency Mr. Beernaert, His Minister of State, Member of the Chamber of Representatives, Member of the Institute of France and of the Royal Academies of Belgium and Roumania, Honor Member of the Institute of International Law, Member of the Permanent Court of Arbitration;

His Excellency Mr. J. van den Heuvel, His Minister of State, former Minister of Justice;

His Excellency Baron Guillaume, His Envoy Extraordinary and Minister Plenipotentiary at The Hague, Member of the Royal Academy of Roumania.

The President of the Republic of Bolivia:

His Excellency Mr. Claudio Pinilla, Minister of Foreign Affairs of the Republic, Member of the Permanent Court of Arbitration;

His Excellency Mr. Fernando E. Guachalla, Minister Plenipotentiary at London.

The President of the Republic of the United States of Brazil:

His Excellency Mr. Ruy Barbosa, Ambassador Extraordinary and Plenipotentiary, Member of the Permanent Court of Arbitration;

His Excellency Mr. Eduardo F. S. dos Santos Lisbôa, Envoy Extraordinary and Minister Plenipotentiary at The Hague.

His Royal Highness the Prince of Bulgaria:

Mr. Vrban Vinaroff, Major General of the General Staff, attached to His suite;

Mr. Ivan Karandjouloff, Director of Public Prosecution of the Court of Cassation.

The President of the Republic of Chile:

His Excellency Mr. Domingo Gana, Envoy Extraordinary and Minister Plenipotentiary of the Republic at London;

His Excellency Mr. Augusto Matte, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Berlin;

His Excellency Mr. Carlos Concha, former Minister of War, former President of the Chamber of Deputies, former Envoy Extraordinary and Minister Plenipotentiary at Buenos Aires.

The President of the Republic of Colombia:

General Jorge Holguin;

Mr. Santiago Pérez Triana;

His Excellency General Marceliano Vargas, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Paris.

The Provisional Governor of the Republic of Cuba:

Mr. Antonio Sanchez de Bustamante, Professor of International Law in the University of Habana, Senator of the Republic;

His Excellency Mr. Gonzalo de Quesada y Aróstegui, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Washington;

Mr. Manuel Sanguily, former Director of the Institute of Secondary Instruction of Habana, Senator of the Republic.

His Majesty the King of Denmark:

His Excellency Mr. Constantin Brun, His Chamberlain, His Envoy Extraordinary and Minister Plenipotentiary at Washington;

Rear Admiral Christian Frederik Scheller;

Mr. Axel Vedel, His Chamberlain, Chief of Division in the Royal Ministry of Foreign Affairs.

The President of the Dominican Republic:

Mr. Francisco Henriquez y Carvajal, former Secretary of State in the Ministry of Foreign Affairs of the Republic, Member of the Permanent Court of Arbitration;

Mr. Apolinar Tejera, Rector of the Professional Institute of the Republic, Member of the Permanent Court of Arbitration.

The President of the Republic of Ecuador:

His Excellency Mr. Victor Rendón, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Paris and at Madrid;

Mr. Enrique Dorn y de Alsúa, Chargé d'Affaires.

The President of the French Republic:

His Excellency Mr. Léon Bourgeois, Ambassador Extraordinary of the Republic, Senator, former President of the Council of Ministers, former Minister of Foreign Affairs, Member of the Permanent Court of Arbitration;

Baron d'Estournelles de Constant, Senator, Minister Plenipotentiary of class I, Member of the Permanent Court of Arbitration;

Mr. Louis Renault, Professor of the Faculty of Law of the University of Paris, Honorary Minister Plenipotentiary, Jurisconsult of the Ministry of Foreign Affairs, Member of the Institute of France, Member of the Permanent Court of Arbitration;

His Excellency Mr. Marcellin Pellet, Envoy Extraordinary and Minister Plenipotentiary of the French Republic at The Hague.

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions Beyond the Seas, Emperor of India:

His Excellency the Right Honorable Sir Edward Fry, G.C.B., Member of the Privy Council, His Ambassador Extraordinary, Member of the Permanent Court of Arbitration;

His Excellency the Right Honorable Sir Ernest Mason Satow, G.C.M.G., Member of the Privy Council, Member of the Permanent Court of Arbitration;

His Excellency the Right Honorable Donald James Mackay Baron Reay, G.C.S.I., G.C.I.E., Member of the Privy Council, former President of the Institute of International Law;

His Excellency Sir Henry Howard, K.C.M.G., C.B., His Envoy Extraordinary and Minister Plenipotentiary at The Hague.

His Majesty the King of the Hellenes:

His Excellency Mr. Cléon Rizo Rangabé, His Envoy Extraordinary and Minister Plenipotentiary at Berlin;

Mr. Georges Streit, Professor of International Law in the University of Athens, Member of the Permanent Court of Arbitration.

The President of the Republic of Guatemala:

Mr. José Ţible Machado, Chargé d'Affaires of the Republic at The Hague and at London, Member of the Permanent Court of Arbitration;

Mr. Enrique Gómez Carillo, Chargé d'Affaires of the Republic at Berlin.

The President of the Republic of Haiti:

His Excellency Mr. Jean Joseph Dalbémar, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Paris;

His Excellency Mr. J. N. Léger, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Washington;

Mr. Pierre Hudicourt, former Professor of Public International Law, Attorney at Law at Port au Prince.

His Majesty the King of Italy:

His Excellency Count Joseph Tornielli Brusati di Vergano, Senator of the Kingdom, Ambassador of His Majesty the King at Paris, Member of the Permanent Court of Arbitration, President of the Italian Delegation;

His Excellency Commendatore Guido Pompilj, Deputy to the Parliament, Under Secretary of State in the Royal Ministry of Foreign Affairs;

Commendatore Guido Fusinato, Counselor of State, Deputy to the Parliament, former Minister of Education.

His Majesty the Emperor of Japan:

His Excellency Mr. Keiroku Tsudzuki, His Ambassador Extraordinary and Plenipotentiary;

His Excellency Mr. Aimaro Sato, His Envoy Extraordinary and Minister Plenipotentiary at The Hague.

His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau:

His Excellency Mr. Eyschen, His Minister of State, President of the Grand Ducal Government;

Count de Villers, Chargé d'Affaires of the Grand Duchy at Berlin.

The President of the United Mexican States:

His Excellency Mr. Gonzalo A. Esteva, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Rome;

His Excellency Mr. Sebastian B. de Mier, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Paris;

His Excellency Mr. Francisco L. de la Barra, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Brussels and at The Hague.

His Royal Highness the Prince of Montenegro:

His Excellency Mr. Nelidow, now Imperial Privy Counselor, Ambassador of His Majesty the Emperor of All the Russias at Paris;

His Excellency Mr. de Martens, Imperial Privy Counselor, Permanent Member of the Council of the Imperial Ministry of Foreign Affairs of Russia;

His Excellency Mr. Tcharykow, now Imperial Counselor of State, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of All the Russias at The Hague.

His Majesty the King of Norway:

His Excellency Mr. Francis Hagerup, former President of the Council, former Professor of Law, His Envoy Extraordinary and Minister Plenipotentiary at The Hague and at Copenhagen, Member of the Permanent Court of Arbitration.

The President of the Republic of Panama:

Mr. Belisario Porras.

The President of the Republic of Paraguay:

His Excellency Mr. Eusebio Machaïn, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Paris;

Count G. du Monceau de Bergendal, Consul of the Republic at Brussels.

Her Majesty the Queen of the Netherlands:

Mr. W. H. de Beaufort, Her former Minister of Foreign Affairs, Member of the Second Chamber of the States-General;

His Excellency Mr. T. M. C. Asser, Her Minister of State, Member of the Council of State, Member of the Permanent Court of Arbitration;

His Excellency Jonkheer J. C. C. den Beer Poortugael, Lieutenant General Retired, former Minister of War, Member of the Council of State;

His Excellency Jonkheer J. A. Röell, Her Aide-de-Camp on Special Service, Vice Admiral Retired, former Minister of the Navy;

Mr. J. A. Loeff, Her former Minister of Justice, Member of the Second Chamber of the States-General.

The President of the Republic of Peru:

His Excellency Mr. Carlos G. Candamo, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Paris and at London, Member of the Permanent Court of Arbitration.

His Imperial Majesty the Shah of Persia:

His Excellency Samad Khan Momtazos Saltaneh, His Envoy Extraordinary and Minister Plenipotentiary at Paris, Member of the Permanent Court of Arbitration;

His Excellency Mirza Ahmed Khan Sadigh Ul Mulk, His Envoy Extraordinary and Minister Plenipotentiary at The Hague.

His Majesty the King of Portugal and of the Algarves, etc.

His Excellency the Marquis de Soveral, His Counselor of State, Peer of the Kingdom, former Minister of Foreign Affairs, His Envoy Extraordinary and Minister Plenipotentiary at London, His Ambassador Extraordinary and Plenipotentiary;

His Excellency Count de Selir, His Envoy Extraordinary and Minister Plenipotentiary at The Hague;

His Excellency Mr. Alberto d'Oliveira, His Envoy Extraordinary and Minister Plenipotentiary at Berne.

His Majesty the King of Roumania:

His Excellency Mr. Alexandre Beldiman, His Envoy Extraordinary and Minister Plenipotentiary at Berlin;

His Excellency Mr. Edgar Mavrocordato, His Envoy Extraordinary and Minister Plenipotentiary at The Hague.

His Majesty the Emperor of All the Russias:

His Excellency Mr. Nelidow, His present Privy Counselor, His Ambassador at Paris;

His Excellency Mr. de Martens, His Privy Counselor, Permanent Member of the Council of the Imperial Ministry of Foreign Affairs, Member of the Permanent Court of Arbitration;

His Excellency Mr. Tcharykow, His present Counselor of State, His Chamberlain, His Envoy Extraordinary and Minister Plenipotentiary at The Hague.

The President of the Republic of Salvador:

Mr. Pedro I. Matheu, Chargé d'Affaires of the Republic at Paris, Member of the Permanent Court of Arbitration;

Mr. Santiago Perez Triana, Chargé d'Affaires of the Republic at London.

His Majesty the King of Servia:

His Excellency General Sava Grouïtch, President of the Council of State;

His Excellency Mr. Milovan Milovanovitch, His Envoy Extraordinary and Minister Plenipotentiary at Rome, Member of the Permanent Court of Arbitration;

His Excellency Mr. Michel Militchevitch, His Envoy Extraordinary and Minister Plenipotentiary at London and at The Hague.

His Majesty the King of Siam:

Mom Chatidej Udom, Major General;

Mr. C. Corragioni d'Orelli, His Counselor of Legation;

Luang Bhuvanarth Narübal, Captain.

His Majesty the King of Sweden, of the Goths and Vandals:

His Excellency Mr. Knut Hjalmar Leonard Hammarskjold, His former Minister of Justice, His Envoy Extraordinary and Minister Plenipotentiary at Copenhagen, Member of the Permanent Court of Arbitration;

Mr. Johannes Hellner, His former Minister without portfolio, former Member of the Supreme Court of Sweden, Member of the Permanent Court of Arbitration.

The Swiss Federal Council:

His Excellency Mr. Gaston Carlin, Envoy Extraordinary and Minister Plenipotentiary of the Swiss Confederation at London and at The Hague;

Mr. Eugène Borel, Colonel of the General Staff, Professor in the University of Geneva;

Mr. Max Huber, Professor of Law in the University of Zürich.

His Majesty the Emperor of the Ottomans:

His Excellency Turkhan Pasha, His Ambassador Extraordinary, Minister of the Evkaf;

His Excellency Rechid Bey, His Ambassador at Rome;

His Excellency Mehemmed Pasha, Vice Admiral.

The President of the Oriental Republic of Uruguay:

His Excellency Mr. José Batlle y Ordoñez, former President of the Republic, Member of the Permanent Court of Arbitration;

His Excellency, Mr. Juan P. Castro, former President of the Senate, Envoy Extraordinary and Minister Plenipotentiary of the Republic at Paris, Member of the Permanent Court of Arbitration.

The President of the United States of Venezuela:

Mr. José Gil Fortoul, Chargé d'Affaires of the Republic at Berlin.

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:

ARTICLE 1

The Contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the Laws and Customs of War on Land, annexed to the present Convention.

219-915—68——42

ARTICLE 2

The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 3

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

ARTICLE 4

The present Convention, duly ratified, shall as between the Contracting Powers, be substituted for the Convention of the 29th July, 1899, respecting the Laws and Customs of War on Land.

The Convention of 1899 remains in force as between the Powers which signed it, and which do not also ratify the present Convention.

ARTICLE 5

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a procès-verbal signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the procès-verbal relative to the first deposit of ratifications, of the notifications mentioned in the preceding paragraph, as well as of the instruments of ratification, shall be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall at the same time inform them of the date on which it received the notification.

ARTICLE 6

Non-Signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 7

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the procès-verbal of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 8

In the event of one of the Contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 9

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 5, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 6, paragraph 2) or of denunciation (Article 8, paragraph 1) were received.

Each Contracting Power is entitled to have access to this register and to be supplied with duly certified extracts.

In faith whereof the Plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

1. For Germany: Under reservation of Article 44 of the annexed regulations.
MARSCHALL
KRIEGE

2. For the United States of America:
JOSEPH H. CHOATE
HORACE PORTER
U. M. ROSE
DAVID JAYNE HILL
C. S. SPERRY
WILLIAM I. BUCHANAN

3. For Argentina:
ROQUE SAENZ PEÑA
LUIS M. DRAGO
C. RÚEZ LARRETA

4. For Austria-Hungary: Under reservation of the declaration made in the plenary session of the Conference of August 17, 1907.[5]
   MÉREY
   BON MACCHIO

5. For Belgium:
   A. BEERNAERT
   J. VAN DEN HEUVEL
   GUILLAUME

6. For Bolivia:
   CLAUDIO PINILLA

7. For Brazil:
   RUY BARBOSA
   E. LISBÔA

8. For Bulgaria:
   GÉNÉRAL-MAJOR VINAROFF
   IV. KARANDJOULOFF

9. For Chile:
   DOMINGO GANA
   AUGUSTO MATTE
   CARLOS CONCHA

10. For China:

11. For Colombia:
   JORGE HOLGUIN
   S. PEREZ TRIANA
   M. VARGAS

12. For the Republic of Cuba:
   ANTONIO S. DE BUSTAMANTE
   GONZALO DE QUESADA
   MANUEL SANGUILY

13. For Denmark:
   C. BRUN

14. For the Dominican Republic:
   DR. HENRIQUEZ Y CARVAJAL
   APOLINAR TEJERA

15. For Ecuador:
   VICTOR M. RENDÓN
   E. DORN Y DE ALSÚA

16. For Spain:

17. For France:
   LÉON BOURGEOIS
   D'ESTOURNELLES DE CONSTANT
   L. RENAULT
   MARCELLIN PELLET

18. For Great Britain:
   EDW. FRY
   ERNEST SATOW
   REAY
   HENRY HOWARD

19. For Greece:
   CLÉON RIZO RANGABÉ
   GEORGES STREIT

20. For Guatemala:
   JOSÉ TIBLE MACHADO

21. For Haiti:
   DALBÉMAR JN JOSEPH
   J. N. LÉGER
   PIERRE HUDICOURT

22. For Italy:
   POMPILJ
   G. FUSINATO

23. For Japan: With reservation of Article 44.
   AIMARO SATO

24. For Luxemburg:
   EYSCHEN
   CTE. DE VILLERS

25. For Mexico:
   G. A. ESTEVA
   S. B. DE MIER
   F. L. DE LA BARRA

26. For Montenegro: Under the reservations formulated as to Article 44 of the regulations annexed to the present Convention and contained in the procès-verbal of the fourth plenary session of August 17, 1907.[6]
   NELIDOW
   MARTENS
   N. TCHARYKOW

---

[5] The declaration of Austria-Hungary reads, in translation, as follows: "The delegation of Austria-Hungary having accepted the new Article 22*a* [The proposed art. 22*a* became the last paragraph of art. 23.], on condition that Article 44 of the Convention now in force be maintained as it is, can not consent to the Article 44*a* proposed by the Second Commission."

[6] The reservations of Montenegro read, in translation, as follows: "The delegation of Montenegro has the honor to declare that having accepted the new Article 22*a*, proposed by the delegation of Germany, in the place of Article 44 of the existing Regulations of 1899, it makes reservations on the subject of new wording of the said Article 44*a*."

27. For Nicaragua:

28. For Norway:
F. HAGERUP

29. For Panama:
B. PORRAS

30. For Paraguay:
G. DU MONCEAU

31. For the Netherlands:
W. H. DE BEAUFORT
T. M. C. ASSER
DEN BEER POORTUGAEL
J. A. RÖELL
J. A. LOEFF

32. For Peru:
C. G. CANDAMO

33. For Persia:
MOMTAZOS-SALTANEH M. SAMAD KHAN
SADIGH UL MULK M. AHMED KHAN

34. For Portugal:
MARQUIS DE SOVERAL
CONDE DE SELIR
ALBERTO D'OLIVEIRA

35. For Roumania:
EDG. MAVROCORDATO

36. For Russia: Under the reservations formulated as to Article 44 of the regulations annexed to the present Convention and contained in the procès-verbal of the fourth plenary session of August 17, 1907.[7]
NELIDOW
MARTENS
N. TCHARYKOW

37. For Salvador:
P. J. MATHEU
S. PEREZ TRIANA

38. For Servia:
S. GROUÏTCH
M. G. MILOVANOVITCH
M. G. MILITCHEVITCH

39. For Siam:
MOM CHATIDEJ UDOM
C. CORRAGIONI D'ORELLI
LUANG BHÜVANARTH NARÜBAL

40. For Sweden:
K. H. L. HAMMARSKJÖLD
JOH. HELLNER

41. For Switzerland:
CARLIN

42. For Turkey: Under reservation of Article 3.
TURKHAN

43. For Uruguay:
JOSÉ BATLLE Y ORDOÑEZ

44. For Venezuela:
J. GIL FORTOUL

ANNEX TO THE CONVENTION

REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND

SECTION I. ON BELLIGERENTS

CHAPTER I. *The Qualifications of Belligerents*

ARTICLE 1

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;
2. To have a fixed distinctive emblem recognizable at a distance;
3. To carry arms openly; and
4. To conduct their operations in accordance with the laws and customs of war.

---

[7] The Russian reservations read, in translation, as follows: "The delegation of Russia has the honor to declare that having accepted the new Article 22*a*, proposed by the delegation of Germany, in place of Article 44 of the existing Regulations of 1899, it makes reservations on the subject of the new wording of the said Article 44*a*."

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army."

ARTICLE 2

The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents, if they carry arms openly and if they respect the laws and customs of war.

ARTICLE 3

The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

CHAPTER II. *Prisoners of War*

ARTICLE 4

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.

They must be humanely treated.

All their personal belongings, except arms, horses, and military papers, remain their property.

ARTICLE 5

Prisoners of war may be interned in a town, fortress, camp, or other place, and bound not to go beyond certain fixed limits; but they cannot be confined except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist.

ARTICLE 6

The State may utilize the labour of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed.

When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance.

ARTICLE 7

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging, and clothing on the same footing as the troops of the Government who captured them.

ARTICLE 8

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight.

ARTICLE 9

Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed.

ARTICLE 10

Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.

ARTICLE 11

A prisoner of war can not be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ARTICLE 12

Prisoners of war liberated on parole and recaptured bearing arms against the Government to whom they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and can be brought before the Courts.

ARTICLE 13

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.

ARTICLE 14

An inquiry office for prisoners of war is instituted on the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. It is the function of this office to reply to all inquiries about the prisoners. It receives from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The office must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is likewise the function of the inquiry office to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.

ARTICLE 15

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.

ARTICLE 16

Inquiry offices enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or

dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by the State railways.

ARTICLE 17

Officers taken prisoner shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount to be ultimately refunded by their own Government.

ARTICLE 18

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever Church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

ARTICLE 19

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.

ARTICLE 20

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.

CHAPTER III. *The Sick and Wounded*

ARTICLE 21

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.[8]

SECTION II. HOSTILITIES

CHAPTER I. *Means of Injuring the Enemy, Sieges, and Bombardments*

ARTICLE 22

The right of belligerents to adopt means of injuring the enemy is not unlimited.

---

[8] See conventions of Aug. 22, 1864 (TS 377), *ante*, p. 7, and July 6, 1906 (TS 464), *ante*, p. 516.

ARTICLE 23

In addition to the prohibitions provided by special Conventions, it is especially forbidden:

(*a*) To employ poison or poisoned weapons;
(*b*) To kill or wound treacherously individuals belonging to the hostile nation or army;
(*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;
(*d*) To declare that no quarter will be given;
(*e*) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
(*f*) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;
(*g*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;
(*h*) To declare abolished, suspended, or inadmissible in a Court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

ARTICLE 24

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

ARTICLE 25

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

ARTICLE 26

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

ARTICLE 27

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

ARTICLE 28

The pillage of a town or place, even when taken by assault, is prohibited.

CHAPTER II. *Spies*

ARTICLE 29

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.

ARTICLE 30

A spy taken in the act shall not be punished without previous trial.

ARTICLE 31

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.

CHAPTER III. *Flags of Truce*

ARTICLE 32

A person is regarded as bearing a flag of truce who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and interpreter who may accompany him.

ARTICLE 33

The commander to whom a flag of truce is sent is not in all cases obliged to receive it.

He may take all the necessary steps to prevent the envoy taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the envoy temporarily.

Article 34

The envoy loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery.

Chapter IV. *Capitulations*

Article 35

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties.

Chapter V. *Armistices*

Article 36

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

Article 37

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.

Article 38

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.

Article 39

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the inhabitants and between the inhabitants of one belligerent State and those of the other.

ARTICLE 40

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.

ARTICLE 41

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained.

SECTION III. MILITARY AUTHORITY OVER THE TERRITORY OF THE HOSTILE STATE

ARTICLE 42

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

ARTICLE 43

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

ARTICLE 44

A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence.

ARTICLE 45

It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

ARTICLE 46

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

ARTICLE 47

Pillage is formally forbidden.

ARTICLE 48

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

ARTICLE 49

If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.

ARTICLE 50

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

ARTICLE 51

No contribution shall be collected except under a written order, and on the responsibility of a Commander-in-chief.

The collection of the said contribution shall only be effective as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.

ARTICLE 52

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

ARTICLE 53

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depôts of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.

Article 54

Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

Article 55

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

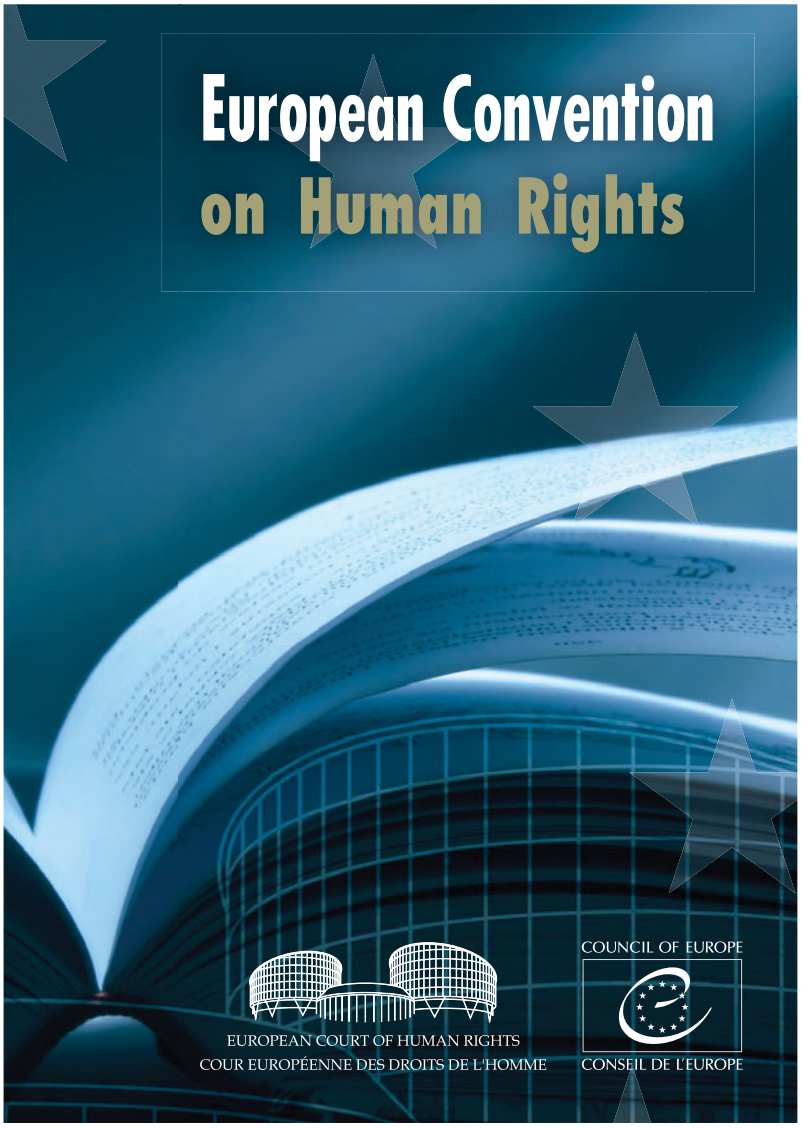
Article 56

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

Annex 980

European Convention on Human Rights (4 November 1950)


European Convention
on Human Rights
EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME
COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

as amended by Protocols Nos. 11 and 14

supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13

The text of the Convention is presented as amended by the provisions of Protocol No. 14 (CETS no. 194) as from its entry into force on 1 June 2010. The text of the Convention had previously been amended according to the provisions of Protocol No. 3 (ETS no. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS no. 55), which entered into force on 20 December 1971, and of Protocol No. 8 (ETS no. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS no. 44) which, in accordance with Article 5 § 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS no. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS no. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS no. 146) lost its purpose.

The current state of signatures and ratifications of the Convention and its Protocols as well as the complete list of declarations and reservations are available at www.conventions.coe.int.

Only the English and French versions of the Convention are authentic.

European Court of Human Rights
Council of Europe
F-67075 Strasbourg cedex
www.echr.coe.int

CONTENTS

Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

ARTICLE 1

Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I
RIGHTS AND FREEDOMS

ARTICLE 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.

ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and

in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and

freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18

Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II
EUROPEAN COURT OF HUMAN RIGHTS

ARTICLE 19

Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

ARTICLE 20

Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

ARTICLE 21

Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2. The judges shall sit on the Court in their individual capacity.

3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

ARTICLE 22

Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

ARTICLE 23

Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.

2. The terms of office of judges shall expire when they reach the age of 70.

3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

ARTICLE 24

Registry and rapporteurs

1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.

2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.

ARTICLE 25

Plenary Court

The plenary Court shall

(a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

(b) set up Chambers, constituted for a fixed period of time;

(c) elect the Presidents of the Chambers of the Court; they may be re-elected;

(d) adopt the rules of the Court;

(e) elect the Registrar and one or more Deputy Registrars;

(f) make any request under Article 26, paragraph 2.

ARTICLE 26

Single-judge formation, Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.

4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

ARTICLE 27

Competence of single judges

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

2. The decision shall be final.

3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

ARTICLE 28

Competence of Committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

(a) declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

(b) declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2. Decisions and judgments under paragraph 1 shall be final.

3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.(b).

ARTICLE 29

Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

ARTICLE 30

Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

ARTICLE 31

Powers of the Grand Chamber

The Grand Chamber shall

(a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;

(b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and

(c) consider requests for advisory opinions submitted under Article 47.

ARTICLE 32

Jurisdiction of the Court

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.

2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

ARTICLE 33

Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

ARTICLE 34

Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

ARTICLE 35

Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2. The Court shall not deal with any application submitted under Article 34 that

(a) is anonymous; or

(b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

ARTICLE 36

Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who

is not the applicant to submit written comments or take part in hearings.

3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

ARTICLE 37

Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

ARTICLE 38

Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

ARTICLE 39

Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.

3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

ARTICLE 40

Public hearings and access to documents

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

ARTICLE 41

Just satisfaction

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

ARTICLE 42

Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

ARTICLE 43

Referral to the Grand Chamber

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.

3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

ARTICLE 44

Final judgments

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
   (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
   (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
   (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

ARTICLE 45

Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 46

Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of

paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

ARTICLE 47

Advisory opinions

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.

2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the committee.

ARTICLE 48

Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

ARTICLE 49

Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.

2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

ARTICLE 50

Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

ARTICLE 51

Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

SECTION III
MISCELLANEOUS PROVISIONS

ARTICLE 52

Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

ARTICLE 53

Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental

freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

ARTICLE 54

Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

ARTICLE 55

Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 56

Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.

2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

ARTICLE 57

Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

2. Any reservation made under this Article shall contain a brief statement of the law concerned.

ARTICLE 58

Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.

2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been

performed by it before the date at which the denunciation became effective.

3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

ARTICLE 59

Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.

2. The European Union may accede to this Convention.

3. The present Convention shall come into force after the deposit of ten instruments of ratification.

4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

5. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

DONE AT ROME THIS 4TH DAY OF NOVEMBER 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

Protocol

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Paris, 20.III.1952

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ARTICLE 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

ARTICLE 3

Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

ARTICLE 4

Territorial application

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

ARTICLE 5

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

DONE AT PARIS ON THE 20TH DAY OF MARCH 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

Protocol No. 4

to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto

Strasbourg, 16.IX.1963

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

ARTICLE 1

Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

ARTICLE 2

Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

ARTICLE 3

Prohibition of expulsion of nationals

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

ARTICLE 4

Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

ARTICLE 5

Territorial application

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

3. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

4. The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol.

ARTICLE 6

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2. The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT STRASBOURG, THIS 16TH DAY OF SEPTEMBER 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory states.

Protocol No. 6

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty

Strasbourg, 28.IV.1983

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2

Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

ARTICLE 3

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 4

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 5

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into

force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

ARTICLE 6

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 8

Entry into force

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 9

Depositary functions

The Secretary General of the Council of Europe shall notify the member States of the Council of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 5 and 8;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT STRASBOURG, THIS 28TH DAY OF APRIL 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 7

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 22.XI.1984

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

   (a) to submit reasons against his expulsion,

   (b) to have his case reviewed, and

   (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1.(a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

ARTICLE 2

Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

ARTICLE 3

Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him.

ARTICLE 4

Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or

convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

ARTICLE 5

Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

ARTICLE 6

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and State the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

6. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

ARTICLE 7

Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the

Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 8

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 9

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 10

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 6 and 9;

(d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT STRASBOURG, THIS 22ND DAY OF NOVEMBER 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 12

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.2000

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of nondiscrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

ARTICLE 1

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

ARTICLE 2

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or

groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

ARTICLE 3

Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 4

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 5

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 6

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 2 and 5;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT ROME, THIS 4TH DAY OF NOVEMBER 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 13

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances

Vilnius, 3.V.2002

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 3

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 4

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration,

be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

ARTICLE 5

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 7

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 8

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 4 and 7;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

DONE AT VILNIUS, THIS 3RD DAY OF MAY 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.


European Convention
on Human Rights
European Court of Human Rights
Council of Europe
F-67075 Strasbourg cedex
www.echr.coe.int
ENG
Design: © ECHR - Photo: © Shutterstock

Annex 981

Budapest Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (5 December 1994)

Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons

Budapest, 5 December 1994

The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland,

Welcoming the accession of Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons as a non-nuclear-weapon State,

Taking into account the commitment of Ukraine to eliminate all nuclear weapons from its territory within a specified period of time,

Noting the changes in the world-wide security situation, including the end of the Cold War, which have brought about conditions for deep reductions in nuclear forces.

Confirm the following:

1. The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE Final Act, to respect the Independence and Sovereignty and the existing borders of Ukraine.

2. The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations.

3. The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE Final Act, to refrain from economic coercion designed to subordinate to their own interest the exercise by Ukraine of the rights inherent in its sovereignty and thus to secure advantages of any kind.

4. The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm their commitment to seek immediate United Nations Security Council action to provide assistance to Ukraine, as a non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used.

5. The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm, in the case of the Ukraine, their commitment not to use nuclear weapons against any non-nuclear-weapon State Party

to the Treaty on the Non-Proliferation of Nuclear Weapons, except in the case of an attack on themselves, their territories or dependent territories, their armed forces, or their allies, by such a state in association or alliance with a nuclear weapon state.

6. The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland will consult in the event a situation arises which raises a question concerning these commitments.

This Memorandum will become applicable upon signature.

Signed in four copies having equal validity in the English, Russian and Ukrainian languages.

Annex 982

Treaty on Friendship, Cooperation, and Partnership between the Russian Federation and Ukraine (31 May 1997)

No. 52240*

Ukraine
and
Russian Federation

Treaty on friendship, cooperation and partnership between Ukraine and the Russian Federation. Kiev, 31 May 1997

Entry into force: *1 April 1999, in accordance with article 39*

Authentic texts: *Russian and Ukrainian*

Registration with the Secretariat of the United Nations: *Ukraine, 2 October 2014*

**No UNTS volume number has yet been determined for this record. The Text(s) reproduced below, if attached, are the authentic texts of the agreement /action attachment as submitted for registration and publication to the Secretariat. For ease of reference they were sequentially paginated. Translations, if attached, are not final and are provided for information only.*

Ukraine
et
Fédération de Russie

Traité d'amitié, de coopération et de partenariat entre l'Ukraine et la Fédération de Russie. Kiev, 31 mai 1997

Entrée en vigueur : *1er avril 1999, conformément à l'article 39*

Textes authentiques : *russe et ukrainien*

Enregistrement auprès du Secrétariat des Nations Unies : *Ukraine, 2 octobre 2014*

**Le numéro de volume RTNU n'a pas encore été établi pour ce dossier. Les textes reproduits ci-dessous, s'ils sont disponibles, sont les textes authentiques de l'accord/pièce jointe d'action tel que soumises pour l'enregistrement et publication au Secrétariat. Pour référence, ils ont été présentés sous forme de la pagination consécutive. Les traductions, s'ils sont inclus, ne sont pas en form finale et sont fournies uniquement à titre d'information.*

[RUSSIAN TEXT – TEXTE RUSSE]

ДОГОВОР

о дружбе, сотрудничестве и партнерстве между Украиной и Российской Федерацией

Украина и Российская Федерация, далее именуемые "Высокие Договаривающиеся Стороны",

опираясь на исторически сложившиеся тесные связи, отношения дружбы и сотрудничества между народами Украины и России,

отмечая, что Договор между Украинской ССР и РСФСР от 19 ноября 1990 года способствовал развитию добрососедских отношений между обоими государствами,

подтверждая свои обязательства, вытекающие из положений Соглашения между Украиной и Российской Федерацией о дальнейшем развитии межгосударственных отношений, подписанного в Дагомысе 23 июня 1992 года,

считая, что укрепление дружественных отношений, добрососедства и взаимовыгодного сотрудничества отвечает коренным интересам их народов, служит делу мира и международной безопасности,

стремясь придать новое качество этим отношениям и укрепить их правовую основу,

преисполненные решимости обеспечить необратимость и поступательность демократических процессов в обоих государствах,

учитывая договоренности в рамках Содружества Независимых Государств,

подтверждая свою приверженность нормам международного права, прежде всего целям и принципам Устава Организации Объединенных Наций, и следуя обязательствам, взятым в рамках Организации по безопасности и сотрудничеству в Европе,

договорились о нижеследующем:

Статья 1

Высокие Договаривающиеся Стороны как дружественные, равноправные и суверенные государства основывают свои отношения на взаимном уважении и доверии, стратегическом партнерстве и сотрудничестве.

Статья 2

Высокие Договаривающиеся Стороны в соответствии с положениями Устава ООН и обязательствами по Заключительному акту Совещания по безопасности и сотрудничеству в Европе уважают территориальную целостность друг друга и подтверждают нерушимость существующих между ними границ.

Статья 3

Высокие Договаривающиеся Стороны строят отношения друг с другом на основе принципов взаимного уважения, суверенного равенства, территориальной целостности, нерушимости границ, мирного урегулирования споров, неприменения силы или угрозы силой, включая экономические и иные способы давления, права народов свободно распоряжаться своей судьбой, невмешательства во внутренние дела, соблюдения прав человека и основных свобод, сотрудничества между государствами, добросовестного выполнения взятых международных обязательств, а также других общепризнанных норм международного права.

Статья 4

Высокие Договаривающиеся Стороны исходят из того, что добрососедство и сотрудничество между ними являются важными факторами повышения стабильности и безопасности в Европе и во всем мире. Они осуществляют тесное сотрудничество в целях укрепления международного мира и безопасности. Они предпринимают необходимые меры с тем, чтобы способствовать процессу всеобщего разоружения, созданию и укреплению системы коллективной безопасности в Европе, а также укреплению

миротворческой роли ООН и повышению эффективности региональных механизмов безопасности.

Стороны прилагают усилия к тому, чтобы урегулирование всех спорных проблем осуществлялось исключительно мирными средствами, и сотрудничают в предотвращении и урегулировании конфликтов и ситуаций, затрагивающих их интересы.

Статья 5

Высокие Договаривающиеся Стороны проводят регулярные консультации с целью обеспечения дальнейшего углубления двусторонних отношений и обмена мнениями по многосторонним проблемам, представляющим взаимный интерес. Они в необходимых случаях координируют свои позиции для осуществления согласованных действий.

В этих целях по согласованию между Сторонами проводятся регулярные встречи на высшем уровне. Министры иностранных дел Сторон встречаются не реже чем два раза в год.

Рабочие встречи между представителями других министерств и ведомств Сторон для обсуждения вопросов, представляющих взаимный интерес, проводятся по мере необходимости.

Сторонами могут создаваться на постоянной или временной основе смешанные комиссии для решения отдельных вопросов в различных областях.

Статья 6

Каждая из Высоких Договаривающихся Сторон воздерживается от участия или поддержки каких бы то ни было действий, направленных против другой Высокой Договаривающейся Стороны, и обязуется не заключать с третьими странами каких-либо договоров, направленных против другой Стороны. Ни одна из Сторон не допустит также, чтобы ее территория была использована в ущерб безопасности другой Стороны.

Статья 7

В случае возникновения ситуации, которая, по мнению одной из Высоких Договаривающихся Сторон, создает угрозу миру, нарушает мир или затрагивает интересы ее национальной безопасности, суверенитета и территориальной целостности, она может обратиться к другой Высокой Договаривающейся Стороне с предложением безотлагательно провести соответствующие консультации. Стороны обмениваются соответствующей информацией и при необходимости осуществляют согласованные или совместные меры с целью преодоления такой ситуации.

Статья 8

Высокие Договаривающиеся Стороны развивают свои отношения в сфере военного, военно-технического сотрудничества, обеспечения государственной безопасности, а также сотрудничества по пограничным вопросам, таможенного дела, экспортного и иммиграционного контроля на основе отдельных соглашений.

Статья 9

Высокие Договаривающиеся Стороны, подтверждая решимость идти по пути сокращения вооруженных сил и вооружений, будут способствовать процессу разоружения и взаимодействовать в деле неукоснительного выполнения соглашений в области сокращений вооруженных сил и вооружений, в том числе ядерных.

Статья 10

Каждая из Высоких Договаривающихся Сторон гарантирует гражданам другой Стороны права и свободы на тех же основаниях и в таком же объеме, как и своим собственным гражданам, кроме случаев, установленных национальным законодательством Сторон или их международными договорами.

Каждая из Сторон защищает в установленном порядке права своих граждан, проживающих на территории другой Стороны, в соответствии с обязательствами по документам Организации по безопасности и сотрудничеству

[redacted] общепризнанными принципами и нормами международного [redacted] договоренностями в рамках Содружества Независимых Государств, участниками которых они являются.

Статья 11

Высокие Договаривающиеся Стороны принимают на своей территории необходимые меры, включая принятие соответствующих законодательных актов, для предотвращения и пресечения любых действий, представляющих собой подстрекательство к насилию или насилие против отдельных лиц или групп граждан, основанное на национальной, расовой, этнической или религиозной нетерпимости.

Статья 12

Высокие Договаривающиеся Стороны обеспечивают защиту этнической, культурной, языковой и религиозной самобытности национальных меньшинств на своей территории и создают условия для поощрения этой самобытности.

Каждая из Высоких Договаривающихся Сторон гарантирует право лиц, принадлежащих к национальным меньшинствам, индивидуально или совместно с другими лицами, принадлежащими к национальным меньшинствам, свободно выражать, сохранять и развивать свою этническую, культурную, языковую или религиозную самобытность и поддерживать и развивать свою культуру, не подвергаясь каким-либо попыткам ассимиляции вопреки их воле.

Высокие Договаривающиеся Стороны гарантируют право лиц, принадлежащих к национальным меньшинствам, полностью и эффективно осуществлять свои права человека и основные свободы и пользоваться ими без какой-либо дискриминации и в условиях полного равенства перед законом.

Высокие Договаривающиеся Стороны будут содействовать созданию равных возможностей и условий для изучения украинского языка в Российской Федерации и русского языка в Украине, подготовки педагогических кадров для

преподавания на этих языках в образовательных учреждениях, оказывать в этих целях равноценную государственную поддержку.

Высокие Договаривающиеся Стороны заключат по этим вопросам соглашения о сотрудничестве.

Статья 13

Высокие Договаривающиеся Стороны развивают равноправное и взаимовыгодное сотрудничество в экономике, воздерживаются от действий, могущих нанести экономический ущерб друг другу. В этих целях, сознавая необходимость поэтапного формирования и развития общего экономического пространства путем создания условий для свободного перемещения товаров, услуг, капиталов и рабочей силы, Стороны принимают эффективные меры для согласования стратегии осуществления экономических реформ, углубления экономической интеграции на основе взаимной выгоды, гармонизации хозяйственного законодательства.

Высокие Договаривающиеся Стороны будут обеспечивать широкий обмен экономической информацией и доступ к ней предприятий, предпринимателей и ученых обеих Сторон.

Стороны будут стремиться к согласованию своей финансовой, денежно-кредитной, бюджетной, валютной, инвестиционной, ценовой, налоговой, торгово-экономической, а также таможенной политики, к созданию равных возможностей и гарантий для хозяйствующих субъектов, будут содействовать формированию и развитию прямых экономических и торговых отношений на всех уровнях, специализации и кооперации технологически связанных производств, предприятий, объединений, корпораций, банков, производителей и потребителей продукции.

Высокие Договаривающиеся Стороны будут способствовать сохранению и развитию на взаимовыгодной основе производственной и научно-технической кооперации между промышленными предприятиями при разработке и производстве современной наукоемкой продукции, включая продукцию для нужд обороны.

Статья 14

Высокие Договаривающиеся Стороны обеспечат благоприятные условия для прямых торговых и иных экономических отношений и сотрудничества на уровне административно-территориальных единиц, в соответствии с действующими национальными законодательствами, уделяя особое внимание развитию экономических связей приграничных регионов.

Статья 15

Высокие Договаривающиеся Стороны обеспечивают благоприятные экономические, финансовые и правовые условия для предпринимательской и иной хозяйственной деятельности предприятий и организаций другой Стороны, включая стимулирование и взаимную защиту их инвестиций. Стороны будут поощрять различные формы кооперации и прямых связей между хозяйствующими субъектами обоих государств, независимо от форм собственности.

Статья 16

Высокие Договаривающиеся Стороны взаимодействуют в ООН и других международных организациях, включая экономические, финансовые, оказывают поддержку друг другу во вступлении в международные организации и присоединении к соглашениям и конвенциям, участником которых не является одна из Сторон.

Статья 17

Высокие Договаривающиеся Стороны расширяют сотрудничество в области транспорта, обеспечивают свободу транзита лиц, грузов и транспортных средств через территории друг друга в соответствии с общепризнанными нормами международного права.

Перевозки грузов и пассажиров железнодорожным, воздушным, морским, речным и автомобильным транспортом между обеими Сторонами и транзитом по их территории, включая операции через морские, речные и воздушные порты, железнодорожные и автомобильные сети, а также операции через линии связи, магистральные трубопроводные и электрические сети,

[illegible] на территории другой Стороны, осуществляются в порядке и на условиях, предусмотренных отдельными соглашениями.

Статья 18

Высокие Договаривающиеся Стороны будут сотрудничать в проведении поиска и аварийно-спасательных работ, а также в расследовании чрезвычайных происшествий на транспорте.

Статья 19

Высокие Договаривающиеся Стороны обеспечивают соблюдение правового режима государственного имущества, имущества юридических лиц и граждан одной Высокой Договаривающейся Стороны, находящегося на территории другой Высокой Договаривающейся Стороны, в соответствии с законодательством этой Стороны, если иное не предусмотрено соглашением между Сторонами.

Стороны исходят из того, что вопросы отношений собственности, затрагивающие их интересы, подлежат урегулированию на основе отдельных соглашений.

Статья 20

Высокие Договаривающиеся Стороны уделяют особое внимание развитию сотрудничества в обеспечении функционирования национальных топливно-энергетических комплексов, транспортных систем и систем связи и информатики, способствуя сохранению, рациональному использованию и развитию сложившихся в этих областях комплексов и единых систем.

Статья 21

Высокие Договаривающиеся Стороны на основе отдельных соглашений осуществляют сотрудничество в исследовании и использовании космического пространства, совместном производстве и разработке ракетно-космической техники на принципах равноправия, взаимной выгоды и в соответствии с международным правом. Высокие Договаривающиеся Стороны способствуют

сохранению и развитию сложившихся кооперационных связей предприятий ракетно-космической отрасли.

Статья 22

Высокие Договаривающиеся Стороны будут оказывать взаимное содействие при ликвидации возникших в результате чрезвычайных ситуаций аварий на представляющих взаимный интерес для обеих Сторон линиях связи, магистральных трубопроводах, энергетических системах, путях сообщения и других объектах.

Порядок взаимодействия при проведении аварийных и восстановительных работ определяется отдельными соглашениями.

Статья 23

Высокие Договаривающиеся Стороны сотрудничают в области образования, науки и техники, в развитии исследовательской деятельности, поощряя прямые связи между их научно-исследовательскими организациями и осуществление совместных программ и разработок, в особенности в области передовых технологий. Вопросы использования результатов совместных исследований, полученных в ходе сотрудничества, будут согласовываться в каждом конкретном случае путем заключения отдельных соглашений.

Стороны взаимодействуют в сфере подготовки кадров, поощряют обмен специалистами, учеными, аспирантами, стажерами и студентами. Они взаимно признают эквивалентность документов об образовании, ученых степенях и ученых званиях и заключат по данному вопросу отдельное соглашение.

Стороны осуществляют обмен научно-технической информацией, а также сотрудничают по вопросам защиты авторских и смежных прав, других видов интеллектуальной собственности в соответствии с национальным законодательством и международными обязательствами своих стран в этой области.

Статья 24

Высокие Договаривающиеся Стороны развивают сотрудничество в области культуры, литературы, искусства, средств массовой информации, туризма и спорта.

Стороны взаимодействуют в области сохранения, реставрации и использования их историко-культурного наследия.

Стороны всемерно содействуют укреплению и расширению творческого обмена и взаимодействия между коллективами, организациями и объединениями деятелей литературы и искусства, кинематографии, книгоиздательской сферы, архивного дела своих стран, проведению традиционных дней национальных культур, художественных фестивалей и выставок, гастролей творческих коллективов и солистов, обмена делегациями деятелей культуры и специалистов на государственном, региональном и местном уровнях, организации национальных культурных центров на территории своих государств.

Стороны оказывают государственную поддержку в разработке и реализации совместных программ возрождения и развития индустрии туризма, освоения новых перспективных рекреационных зон, сохранения, реставрации и эффективного использования культурно-исторических и религиозных памятников и объектов. Всемерно поощряются укрепление контактов между спортивными организациями и клубами, совместное проведение межгосударственных спортивных мероприятий.

Стороны совместно разрабатывают и реализуют взаимовыгодные программы развития материально-технической базы телевидения и радио, в том числе спутникового вещания, обеспечивают на паритетной основе организацию теле- и радиопередач в Украине - на русском языке, в России - на украинском языке.

Стороны будут содействовать развитию контактов между людьми, политическими партиями и общественными движениями, профсоюзами, религиозными организациями и объединениями, оздоровительными, спортивными, туристическими и другими объединениями и союзами.

Весь комплекс вопросов, предусмотренных настоящей статьей, явится предметом отдельных соглашений.

Статья 25

Высокие Договаривающиеся Стороны осуществляют сотрудничество в области защиты и улучшения состояния окружающей среды, предотвращения трансграничных загрязнений, рационального и ресурсосберегающего природопользования, ликвидации последствий чрезвычайных ситуаций природного и техногенного характера, способствуют согласованным действиям в этой области на региональном и глобальном уровнях, стремясь к созданию всеобъемлющей системы международной экологической безопасности.

Стороны исходят из того, что вопросы охраны окружающей среды и обеспечения экологической безопасности, в том числе вопросы охраны и использования экосистем и ресурсов реки Днепр и других трансграничных водотоков, действий в условиях чрезвычайных экологических ситуаций, подлежат регулированию на основе отдельных соглашений.

Статья 26

Высокие Договаривающиеся Стороны сотрудничают в ликвидации последствий аварии на Чернобыльской АЭС и заключат по этому вопросу отдельное соглашение.

Статья 27

Высокие Договаривающиеся Стороны развивают сотрудничество в области социальной защиты, включая социальное обеспечение граждан. Они заключат специальные соглашения с целью решения вопросов трудовых отношений, трудоустройства, социальной защиты, возмещения ущерба, причиненного увечьем или иным повреждением здоровья, связанными с несчастными случаями на производстве, социального обеспечения граждан одной Стороны, осуществляющих трудовую деятельность или приобретших

на территории другой Стороны, и по другим вопросам в этой области путем согласованных решений.

Стороны обеспечат свободный и своевременный перевод пенсий, пособий, выплат по возмещению вреда, причиненного увечьем или иным повреждением здоровья, и других социально значимых платежей гражданам одной из Сторон, постоянно проживающим или временно пребывающим на территории другой Стороны.

Статья 28

Высокие Договаривающиеся Стороны будут сотрудничать по вопросам восстановления прав депортированных народов в соответствии с договоренностями в рамках СНГ на двусторонней и многосторонней основе.

Статья 29

Высокие Договаривающиеся Стороны как причерноморские государства готовы и далее развивать всестороннее сотрудничество в деле спасения и сохранения природной среды Азово-Черноморского бассейна, проведения морских и климатологических исследований, использования рекреационных возможностей и природных ресурсов Черного и Азовского морей, развития судоходства и эксплуатации морских коммуникаций, портов и сооружений.

Статья 30

Высокие Договаривающиеся Стороны сознают важность сохранения технологически единой для Украины и Российской Федерации системы сбора, обработки, распространения и использования гидрометеорологической информации и данных о состоянии окружающей среды для обеспечения интересов населения и национальной экономики и будут всемерно содействовать развитию сотрудничества в области гидрометеорологии и мониторинга окружающей среды.

Статья 31

Высокие Договаривающиеся Стороны уделяют особое внимание развитию взаимного сотрудничества в области здравоохранения и улучшения санитарно-эпидемиологической обстановки, производства лекарственных препаратов и медицинской техники, подготовки высококвалифицированных кадров для лечебных учреждений Сторон.

Статья 32

Высокие Договаривающиеся Стороны будут сотрудничать в решении вопросов по регулированию миграционных процессов, включая меры по предупреждению и недопущению нелегальной миграции из третьих стран, для чего заключат отдельное соглашение.

Статья 33

Высокие Договаривающиеся Стороны сотрудничают в борьбе с преступностью, прежде всего с организованной, терроризмом во всех его формах и проявлениях, в том числе преступными деяниями, направленными против безопасности морского судоходства, гражданской авиации и других видов транспорта, незаконным оборотом радиоактивных материалов, оружия, наркотических средств и психотропных веществ, контрабандой, включая незаконное перемещение через границу предметов, представляющих культурную, историческую и художественную ценность.

Статья 34

Высокие Договаривающиеся Стороны будут сотрудничать в правовой сфере на основе отдельных соглашений.

Статья 35

Высокие Договаривающиеся Стороны способствуют развитию контактов и сотрудничества между парламентами и парламентариями обоих государств.

Статья 36

Настоящий Договор не затрагивает прав и обязательств Высоких Договаривающихся Сторон, вытекающих из других международных договоров, участниками которых они являются.

Статья 37

Споры относительно толкования и применения положений настоящего Договора подлежат урегулированию путем консультаций и переговоров между Высокими Договаривающимися Сторонами.

Статья 38

Высокие Договаривающиеся Стороны заключат между собой другие соглашения, необходимые для осуществления положений настоящего Договора, а также соглашения в областях, представляющих взаимный интерес.

Статья 39

Настоящий Договор подлежит ратификации и вступает в силу в день обмена ратификационными грамотами.

Со дня вступления в силу настоящего Договора прекращает свое действие Договор между Украинской Советской Социалистической Республикой и Российской Советской Федеративной Социалистической Республикой от 19 ноября 1990 года.

Статья 40

Настоящий Договор заключается сроком на десять лет. Его действие будет затем автоматически продлеваться на последующие десятилетние периоды, если ни одна из Высоких Договаривающихся Сторон не заявит другой Высокой Договаривающейся Стороне о своем желании прекратить его действие путем письменного уведомления не менее чем за шесть месяцев до истечения очередного десятилетнего периода.

Статья 41

Настоящий Договор подлежит регистрации в Секретариате Организации Объединенных Наций в соответствии со статьей 102 Устава ООН.

Совершено в г. Киеве "31 мая 1997 года в двух экземплярах, каждый на украинском и русском языках, причем оба текста имеют одинаковую силу.

ЗА УКРАИНУ

ЗА РОССИЙСКУЮ ФЕДЕРАЦИЮ

[UKRAINIAN TEXT – TEXTE UKRAINIEN]

ДОГОВІР

про дружбу, співробітництво і партнерство між Україною і Російською Федерацією

Україна і Російська Федерація, далі "Високі Договірні Сторони",

спираючись на тісні зв'язки, що історично склалися, відносини дружби і співробітництва між народами України і Росії,

відзначаючи, що Договір між Українською РСР і РРФСР від 19 листопада 1990 року сприяв розвитку добросусідських відносин між обома державами,

підтверджуючи свої зобов'язання, що випливають із положень Угоди між Україною і Російською Федерацією про подальший розвиток міждержавних відносин, підписаної у Дагомисі 23 червня 1992 року,

вважаючи, що зміцнення дружніх відносин, добросусідства і взаємовигідного співробітництва відповідає докорінним інтересам їхніх народів, служить справі миру і міжнародної безпеки,

прагнучи надати нової якості цим відносинам і зміцнити їх правову основу,

сповнені рішучості забезпечити необоротність і поступальність демократичних процесів в обох державах,

враховуючи домовленості в рамках Співдружності Незалежних Держав,

підтверджуючи свою прихильність до норм міжнародного права, перш за все до цілей і принципів Статуту Організації Об'єднаних Націй, і додержуючись зобов'язань, які взяті в рамках Організації з безпеки і співробітництва в Європі,

домовились про таке:

Стаття 1

Високі Договірні Сторони як дружні, рівноправні і суверенні держави засновують свої відносини на взаємній повазі та довірі, стратегічному партнерстві та співробітництві.

Стаття 2

Високі Договірні Сторони відповідно до положень Статуту ООН і зобов язань по Заключному акту Наради з безпеки і співробітництва в Європі поважають територіальну цілісність одна одної і підтверджують непорушність існуючих між ними кордонів.

Стаття 3

Високі Договірні Сторони будують відносини одна з одною на основі принципів взаємної поваги, суверенної рівності, територіальної цілісності, непорушності кордонів, мирного врегулювання спорів, незастосування сили або загрози силою, включаючи економічні та інші способи тиску, права народів вільно розпоряджатися своєю долею, невтручання у внутрішні справи, додержання прав людини та основних свобод, співробітництва між державами, сумлінного виконання взятих міжнародних зобов'язань, а також інших загальновизнаних норм міжнародного права.

Стаття 4

Високі Договірні Сторони виходять з того, що добросусідство і співробітництво між ними є важливими факторами підвищення стабільності і безпеки в Європі і в усьому світі. Вони здійснюють тісне співробітництво з метою зміцнення міжнародного миру і безпеки. Вони вживають необхідних заходів для того, щоб сприяти процесу загального роззброєння, створенню та зміцненню системи колективної безпеки в Європі, а також посиленню миротворчої ролі ООН і підвищенню ефективності регіональних механізмів безпеки.

Сторони докладають зусиль до того, щоб врегулювання всіх спірних проблем здійснювалося виключно мирними засобами, і співробітничають у відверненні та врегулюванні конфліктів і ситуацій, які зачіпають їхні інтереси.

Стаття 5

Високі Договірні Сторони проводять регулярні консультації з метою забезпечення подальшого поглиблення двосторонніх відносин і обміну думками щодо багатосторонніх проблем, які становлять взаємний інтерес. Вони у необхідних випадках координують свої позиції для здійснення узгоджених дій.

У цих цілях за згодою Сторін проводяться регулярні зустрічі на вищому рівні. Міністри закордонних справ Сторін зустрічаються не рідше ніж два рази на рік.

Робочі зустрічі між представниками інших міністерств і відомств Сторін для обговорення питань, що становлять взаємний інтерес, проводяться в міру необхідності.

Сторони можуть створювати на постійній чи тимчасовій основі змішані комісії для вирішення окремих питань у різних галузях.

Стаття 6

Кожна з Високих Договірних Сторін утримується від участі або підтримання яких би то не було дій, спрямованих проти іншої Високої Договірної Сторони, і зобов'язується не укладати з третіми країнами будь-яких договорів, спрямованих проти іншої Сторони. Жодна із Сторін не допустить також, щоб її територія була використана на шкоду безпеці іншої Сторони.

Стаття 7

В разі виникнення ситуації, яка, на думку однієї з Високих Договірних Сторін, створює загрозу миру, порушує мир або зачіпає інтереси її національної безпеки, суверенітету і територіальної цілісності, вона може звернутися до іншої Високої Договірної Сторони з пропозицією невідкладно провести відповідні консультації. Сторони обмінюються відповідною інформацією і при необхідності вживають узгоджених або спільних заходів з метою подолання такої ситуації.

Стаття 8

Високі Договірні Сторони розвивають свої відносини у сфері військового, військово-технічного співробітництва, забезпечення державної безпеки, а також співробітництва з прикордонних питань, митної справи, експортного та імміграційного контролю на основі окремих угод.

Стаття 9

Високі Договірні Сторони, підтверджуючи рішучість прямувати шляхом скорочення збройних сил і озброєнь, сприятимуть процесу роззброєння і взаємодіятимуть у справі неухильного виконання угод у галузі скорочення збройних сил і озброєнь, в тому числі ядерних.

Стаття 10

Кожна з Високих Договірних Сторін гарантує громадянам іншої Сторони права і свободи на тих же підставах і в такому ж обсязі, що й своїм власним громадянам, крім випадків, встановлених національним законодавством Сторін або їхніми міжнародними договорами.

Кожна із Сторін захищає в установленому порядку права своїх громадян, які проживають на території іншої Сторони, відповідно до зобов'язань по документах Організації з безпеки і співробітництва в Європі та інших загальновизнаних принципів і норм міжнародного права, домовленостей в рамках Співдружності Незалежних Держав, учасниками яких вони є.

Стаття 11

Високі Договірні Сторони вживають на своїй території необхідних заходів, включаючи ухвалення відповідних законодавчих актів, для відвернення і припинення будь-яких дій, що являють собою підбурювання до насильства або насильство проти окремих осіб чи груп громадян, яке ґрунтується на національній, расовій, етнічній або релігійній нетерпимості.

Стаття 12

Високі Договірні Сторони забезпечують захист етнічної, культурної, мовної та релігійної самобутності національних меншин на своїй території і створюють умови для заохочення цієї самобутності.

Кожна з Високих Договірних Сторін гарантує право осіб, що належать до національних меншин, індивідуально або разом з іншими особами, які належать до національних меншин, вільно висловлювати, зберігати і розвивати свою етнічну, культурну, мовну або релігійну самобутність і підтримувати і розвивати свою культуру, не зазнаючи будь-яких спроб асиміляції всупереч їх волі.

Високі Договірні Сторони гарантують право осіб, які належать до національних меншин, повністю і ефективно здійснювати свої права людини і основні свободи і користуватися ними без будь-якої дискримінації і в умовах повної рівності перед законом.

Високі Договірні Сторони сприятимуть створенню рівних можливостей і умов для вивчення української мови в Російській Федерації та російської мови в Україні, підготовки педагогічних кадрів для викладання на цих мовах у освітніх закладах, надаватимуть з цією метою рівноцінну державну підтримку.

Високі Договірні Сторони укладають з цих питань угоди про співробітництво.

Стаття 13

Високі Договірні Сторони розвивають рівноправне і взаємовигідне співробітництво в економіці, утримуються від дій, які можуть завдати економічної шкоди одна одній. У цих цілях, визнаючи необхідність постанного формування і розвитку загального економічного простору шляхом створення умов для вільного пересування товарів, послуг, капіталів і робочої сили, Сторони вживають ефективних заходів для погодження стратегії здійснення економічних реформ, поглиблення економічної інтеграції на основі взаємної вигоди, гармонізації господарського законодавства.

Високі Договірні Сторони забезпечуватимуть широкий обмін економічною інформацією і доступ до неї підприємств, підприємців та вчених обох Сторін.

Сторони прагнутимуть до узгодження своєї фінансової, грошово-кредитної, бюджетної, валютної, інвестиційної, цінової, податкової, торгово-економічної, а також митної політики, до створення рівних можливостей і гарантій для господарюючих суб'єктів, сприятимуть формуванню і розвитку прямих економічних і торговельних відносин на всіх рівнях, спеціалізації і кооперації технологічно пов'язаних виробництв, підприємств, об'єднань, корпорацій, банків, виробників і споживачів продукції.

Високі Договірні Сторони сприятимуть збереженню і розвитку на взаємовигідній основі виробничої і науково-технічної кооперації між промисловими підприємствами при розробці і виробництві сучасної наукоємної продукції, включаючи продукцію для потреб оборони.

Стаття 14

Високі Договірні Сторони забезпечать сприятливі умови для прямих торговельних та інших економічних відносин і співробітництва на рівні адміністративно-територіальних одиниць відповідно до діючих національних законодавств, приділяючи особливу увагу розвитку економічних зв'язків прикордонних регіонів.

Стаття 15

Високі Договірні Сторони забезпечують сприятливі економічні, фінансові і правові умови для підприємницької та іншої господарської діяльності підприємств і організацій другої Сторони, включаючи стимулювання і взаємний захист їхніх інвестицій. Сторони заохочуватимуть різні форми кооперації і прямих зв'язків між господарюючими суб'єктами обох держав незалежно від форм власності.

Стаття 16

Високі Договірні Сторони взаємодіють в ООН та інших міжнародних організаціях, включаючи економічні, фінансові, надають підтримку одна одній у вступі до міжнародних організацій і приєднанні до угод і конвенцій, учасницею яких не є одна із Сторін.

Стаття 17

Високі Договірні Сторони розширюють співробітництво в галузі транспорту, забезпечують свободу транзиту осіб, вантажів і транспортних засобів через території одна одної відповідно до загальновизнаних норм міжнародного права.

Перевезення вантажів і пасажирів залізничним, повітряним, морським, річковим і автомобільним транспортом між обома Сторонами і транзитом по їхній території, включаючи операції через морські, річкові і повітряні порти, залізничні та автомобільні мережі, а також операції через лінії зв'язку, магістральні трубопроводні та електричні мережі, розташовані на території другої Сторони, здійснюються в порядку і на умовах, передбачених окремими угодами.

Стаття 18

Високі Договірні Сторони будуть співробітничати у проведенні пошуку та аварійно-рятувальних робіт, а також у розслідуванні надзвичайних подій на транспорті.

Стаття 19

Високі Договірні Сторони забезпечують додержання правового режиму державного майна, майна юридичних осіб і громадян однієї Високої Договірної Сторони, яке знаходиться на території іншої Високої Договірної Сторони, відповідно до законодавства цієї Сторони, якщо інше не передбачене угодою між Сторонами.

Сторони виходять з того, що питання відносин власності, які зачіпають їхні інтереси, підлягають врегулюванню на основі окремих угод.

Стаття 20

Високі Договірні Сторони приділяють особливу увагу розвитку співробітництва в забезпеченні функціонування національних паливно-енергетичних комплексів, транспортних систем і систем зв'язку та інформатики, сприяючи збереженню, раціональному використанню і розвитку комплексів та єдиних систем, що склалися у цих галузях.

Стаття 21

Високі Договірні Сторони на основі окремих угод здійснюють співробітництво у дослідженні і використанні космічного простору, спільному виробництві і розробці ракетно-космічної техніки на принципах рівноправності, взаємної вигоди і згідно з міжнародним правом. Високі Договірні Сторони сприяють збереженню і розвитку коопераційних зв'язків, що склалися між підприємствами ракетно-космічної галузі.

Стаття 22

Високі Договірні Сторони будуть взаємно сприяти під час ліквідації аварій, що виникли в результаті надзвичайних ситуацій, на лініях зв'язку, магістральних трубопроводах, енергетичних системах, шляхах сполучення та інших об'єктах, які становлять взаємний інтерес.

Порядок взаємодії при проведенні аварійних і відновлювальних робіт визначається окремими угодами.

Стаття 23

Високі Договірні Сторони співробітничають в галузі освіти, науки і техніки, у розвитку дослідницької діяльності, заохочуючи прямі зв'язки між їхніми науково-дослідними організаціями і здійснення спільних програм і розробок, особливо в галузі передових технологій. Питання використання результатів спільних досліджень, отриманих в ході співробітництва, будуть погоджуватися в кожному конкретному випадку шляхом укладення окремих угод.

Сторони взаємодіють у сфері підготовки кадрів, заохочують обмін спеціалістами, вченими, аспірантами, стажистами і студентами. Вони взаємно визнають еквівалентність документів про освіту, вчені ступені і вчені звання і укладуть з цього питання окрему угоду.

Сторони здійснюють обмін науково-технічною інформацією, а також здійснюють співробітництво з питань захисту авторських і суміжних прав, інших видів інтелектуальної власності відповідно до національного законодавства і міжнародних зобов'язань своїх країн у цій галузі.

Стаття 24

Високі Договірні Сторони розвивають співробітництво в галузі культури, літератури, мистецтва, засобів масової інформації, туризму і спорту.

Сторони взаємодіють в галузі збереження, реставрації і використання їхньої історико-культурної спадщини.

Сторони всебічно сприяють зміцненню і розширенню творчого обміну і взаємодії між колективами, організаціями та об'єднаннями діячів літератури і мистецтва, кінематографії, книговидавничої сфери, архівної справи своїх країн, проведенню традиційних днів національних культур, художніх фестивалів і виставок, гастролей творчих колективів і солістів, обміну делегаціями діячів культури і спеціалістів на державному, регіональному і місцевому рівнях, організації національних культурних центрів на території своїх держав.

Сторони надають державну підтримку у розробці і реалізації спільних програм відродження і розвитку індустрії туризму, освоєння нових перспективних рекреаційних зон, збереження, реставрації та ефективного використання культурно-історичних і релігійних пам'яток і об'єктів. Всемірно заохочуються зміцнення контактів між спортивними організаціями і клубами, спільне проведення міждержавних спортивних заходів.

Сторони спільно розроблюють і реалізують взаємовигідні програми розвитку матеріально-технічної бази телебачення та радіо, в тому числі супутникового мовлення, забезпечують на паритетній основі організацію теле- і радіопередач в Україні - російською мовою, в Росії - українською мовою.

Сторони сприятимуть розвитку контактів між людьми, політичними партіями і громадськими рухами, профспілками, релігійними організаціями та об'єднаннями, оздоровчими, спортивними, туристичними та іншими об'єднаннями і союзами.

Весь комплекс питань, передбачених цією статтею, стане предметом окремих угод.

Стаття 25

Високі Договірні Сторони здійснюють співробітництво в галузі захисту і поліпшення стану навколишнього середовища, запобігання транскордонним забрудненням, раціонального і ресурсозберігаючого природокористування, ліквідації наслідків надзвичайних ситуацій природного та техногенного характеру, сприяють погодженим діям у цій галузі на регіональному і глобальному рівнях, прагнучи до створення всеохоплюючої системи міжнародної екологічної безпеки.

Сторони виходять з того, що питання охорони навколишнього середовища і забезпечення екологічної безпеки, в тому числі питання охорони і використання екосистем і ресурсів річки Дніпро та інших транскордонних водотоків, дій в умовах надзвичайних екологічних ситуацій, підлягають регулюванню на основі окремих угод.

Стаття 26

Високі Договірні Сторони співробітничають у ліквідації наслідків аварії на Чорнобильській АЕС і укладуть з цього питання окрему угоду.

Стаття 27

Високі Договірні Сторони розвивають співробітництво в галузі соціального захисту, включаючи соціальне забезпечення громадян. Вони укладуть спеціальні угоди з метою вирішення питань трудових відносин, працевлаштування, соціального захисту, відшкодування збитків, завданих каліцтвом або іншим ушкодженням здоров"я, пов"язаних із нещасними випадками на виробництві, соціального забезпечення громадян однієї Сторони, які здійснюють трудову діяльність або набули трудового стажу на

території іншої Сторони, та з інших питань у цій галузі, які потребують узгоджених рішень.

Сторони забезпечать вільний і своєчасний переказ пенсій, грошової допомоги, аліментів, коштів по відшкодуванню збитків, спричинених каліцтвом або іншим пошкодженням здоров'я, та інших соціально значущих платежів громадянам однієї із Сторін, які постійно проживають чи тимчасово перебувають на території іншої Сторони.

Стаття 28

Високі Договірні Сторони будуть співробітничати з питань відновлення прав депортованих народів згідно з домовленостями у рамках СНД на двосторонній і багатосторонній основі.

Стаття 29

Високі Договірні Сторони як причорноморські держави готові і надалі розвивати всебічне співробітництво у справі рятування і зберігання природного середовища Азово-Чорноморського басейну, проведення морських і кліматологічних досліджень, використання рекреаційних можливостей і природних ресурсів Чорного і Азовського морів, розвитку судноплавства та експлуатації морських комунікацій, портів і споруд.

Стаття 30

Високі Договірні Сторони усвідомлюють важливість збереження технологічно єдиної для України та Російської Федерації системи збору, обробки, розповсюдження та використання гідрометеорологічної інформації і даних про стан навколишнього середовища для забезпечення інтересів населення і національної економіки і будуть всебічно сприяти розвитку співробітництва в галузі гідрометеорології і моніторингу навколишнього середовища.

Стаття 31

Високі Договірні Сторони приділяють особливу увагу розвитку взаємовигідного співробітництва в галузі охорони здоров'я і поліпшення

санітарно-епідеміологічної обстановки, виробництва лікарських препаратів і медичної техніки, підготовки висококваліфікованих кадрів для лікувальних закладів Сторін.

Стаття 32

Високі Договірні Сторони співробітничатимуть у вирішенні питань по регулюванню міграційних процесів, включаючи заходи по попередженню і недопущенню нелегальної міграції з третіх країн, для чого укладуть окрему угоду.

Стаття 33

Високі Договірні Сторони співробітничають у боротьбі із злочинністю, передусім з організованою, тероризмом у всіх його формах і проявах, в тому числі злочинними вчинками, спрямованими проти безпеки морського судноплавства, цивільної авіації та інших видів транспорту, незаконним обігом радіоактивних матеріалів, зброї, наркотичних засобів і психотропних речовин, контрабандою, включаючи незаконне переміщення через кордон предметів, що становлять культурну, історичну і художню цінність.

Стаття 34

Високі Договірні Сторони співробітничатимуть у правовій сфері на основі окремих угод.

Стаття 35

Високі Договірні Сторони сприяють розвитку контактів і співробітництва між парламентами і парламентарями обох держав.

Стаття 36

Цей Договір не зачіпає прав і зобов'язань Високих Договірних Сторін, що випливають з інших міжнародних договорів, учасниками яких вони є.

Стаття 37

Спори відносно тлумачення і застосування положень цього Договору підлягають урегулюванню шляхом консультацій і переговорів між Високими Договірними Сторонами.

Стаття 38

Високі Договірні Сторони укладуть між собою інші угоди, необхідні для здійснення положень цього Договору, а також угоди в галузях, що становлять взаємний інтерес.

Стаття 39

Цей Договір підлягає ратифікації і набуває чинності в день обміну ратифікаційними грамотами.

Від дня набуття чинності цим Договором припиняє свою дію Договір між Українською Радянською Соціалістичною Республікою і Російською Радянською Федеративною Соціалістичною Республікою від 19 листопада 1990 року.

Стаття 40

Цей Договір укладається терміном на десять років. Його дія буде потім автоматично продовжуватися на наступні десятирічні періоди, якщо жодна з Високих Договірних Сторін не заявить іншій Високій Договірній Стороні про своє бажання припинити його дію шляхом письмового повідомлення не менше ніж за шість місяців до закінчення чергового десятирічного періоду.

Стаття 41

Цей Договір підлягає реєстрації в Секретаріаті Організації Об'єднаних Націй відповідно до статті 102 Статуту ООН.

Вчинено у м. Києві "31" травня 1997 року у двох примірниках, кожний українською і російською мовами, при цьому обидва тексти є автентичними.

ЗА УКРАЇНУ

ЗА РОСІЙСЬКУ ФЕДЕРАЦІЮ

[TRANSLATION – TRADUCTION]

TREATY ON FRIENDSHIP, COOPERATION AND PARTNERSHIP BETWEEN UKRAINE AND THE RUSSIAN FEDERATION

Ukraine and the Russian Federation, hereinafter referred to as the "High Contracting Parties",

Based on the historically close ties and relations of friendship and cooperation between the peoples of Ukraine and the Russian Federation,

Noting that the Treaty between the Ukrainian SSR and the RSFSR of 19 November 1990 fostered the development of good-neighbor relations between the two States,

Reaffirming their obligations proceeding from the provisions of the Agreement between Ukraine and the Russian Federation on the Further Development of Inter-state Legal Relations, which was signed at Dagomys on 23 June 1992,

Considering that the strengthening of friendly relations, good-neighborliness and mutually beneficial cooperation corresponds to the vital interests of their peoples and serves the cause of peace and international security,

Endeavouring to endow those relations with a new quality and to strengthen their legal basis,

Filled with the determination to ensure the irrevocability and continuation of democratic processes in both States,

Taking into account the agreements reached within the framework of the Commonwealth of Independent States,

Reaffirming their commitment to the norms of international law, above all, to the goals and principles of the United Nations Charter and honouring the obligations assumed within the framework of the Organization for Security and Cooperation in Europe,

Have agreed as follows:

Article 1

As friendly, equal and sovereign States, the High Contracting Parties shall base their relations on mutual respect and trust, strategic partnership and cooperation.

Article 2

In accordance with the provisions of the United Nations Charter and the obligations of the Final Act of the Conference on Security and Cooperation in Europe, the High Contracting Parties shall honour each other's territorial integrity and shall acknowledge the inviolability of the borders existing between them.

Article 3

The High Contracting Parties shall structure their relations with each other on the principles of mutual respect; sovereign equality; territorial integrity; inviolability of borders; peaceful settlement of disputes; non-use of force or the threat of force, including economic or other means

of pressure; the right of peoples to freely choose their own destiny; non-intervention in internal affairs; observance of human rights and fundamental freedoms; cooperation between states; and good-faith performance of international obligations undertaken, as well as other universally recognized norms of international law.

Article 4

The High Contracting Parties are proceeding from the premise that good- neighborliness and cooperation between them are important factors for increasing stability and security in Europe and in the rest of the world. They shall maintain close cooperation for purposes of strengthening international peace and security. They shall take the requisite measures to facilitate the process of universal disarmament and the creation and strengthening of a system of collective security in Europe, as well as the strengthening of the peacekeeping role of the UN and the increased effectiveness of regional mechanisms of security.

Article 5

The High Contracting Parties shall hold regular consultations in order to deepen the bilateral relations and exchange views on multifaceted problems of mutual interest. When necessary, they shall coordinate their positions to effect agreed-upon actions.

For those purposes, by agreement of the Parties, regular high-level meetings shall be held. The ministers of foreign affairs of the Parties shall meet at least twice a year.

Working meetings between representatives of other ministries and departments of the Parties shall be held, as necessary, to discuss issues of mutual interest.

The Parties may create permanent or provisional mixed commissions to resolve certain issues in various areas.

Article 6

Each of the High Contracting Parties shall refrain from participating in or supporting any actions whatsoever that are directed against the other High Contracting Party and shall obligate itself not to enter into any agreement with third countries that is directed against the other Party. Nor shall either of the Parties allow its territory to be used to the detriment of the security of the other Party.

Article 7

In the event that a situation arises that, in the opinion of one of the High Contracting Parties, creates a threat to peace, violates the peace, or affects the interests of its national security, sovereignty, or territorial integrity, it may propose to the other High Contracting Party the immediate conduct of relevant consultations. The Parties shall exchange information and, if necessary, take agreed-upon or joint measures to resolve the situation.

Article 8

The High Contracting Parties shall develop their relations in the sphere of military and military-technical cooperation and the provision of State security, as well as in cooperation on border issues, customs, and export and immigration control, on the basis of separate agreements.

Article 9

The High Contracting Parties, reaffirming their resolve to travel the path of reducing armed forces and armaments, shall facilitate, shall facilitate the disarmament process and shall cooperate in the matter of unwavering performance of agreements in the area of reducing armed forces and armaments, including nuclear weapons.

Article 10

Each of the High Contracting Parties shall guarantee the citizens of the other Party rights and freedoms on the same basis and to the same extent as it does its own citizens, except in cases established by the domestic law of the Parties or their international treaties.

Each of the Parties shall protect, in the established manner, the rights of its citizens residing in the territory of the other Party, in accordance with the obligations arising from the instruments of the Organization for Security and Cooperation in Europe and from other generally recognized principles and norms of international law and accords reached within the framework of the Commonwealth of Independent States to which they are a party.

Article 11

The High Contracting Parties shall, in their own territories, take the requisite measures, including the adoption of relevant legislative acts, to prevent and suppress any actions that constitute violence or incitement to violence against individuals or groups of citizens that is based on national, racial, ethnic or religious intolerance.

Article 12

The High Contracting Parties shall ensure the protection of the ethnic, cultural, linguistic and religious identify of national minorities in their territory and shall create conditions that encourage such identify

Each of the High Contracting Parties shall guarantee the right of persons belonging to a national minority, individually or together with other persons belonging to the national minority, to freely express, preserve and develop their ethnic, cultural, linguistic and religious identity and maintain and develop their culture without being subjected to any attempts to assimilate them against their will.

The High Contracting Parties shall guarantee the right of individuals who belong to national minorities to fully and effectively exercise their human rights and fundamental freedoms without any discrimination and with full equality under the law.

The High Contracting Parties shall facilitate the creation of equal opportunities and conditions for learning the Ukrainian language in the Russian Federation and the Russian language in Ukraine and for training teachers to lecture in those languages at educational institutions and shall provide equal State support for those purposes.

The High Contracting Parties shall enter into cooperation agreements in those matters.

Article 13

The High Contracting Parties shall develop economic cooperation on the basis of equal rights and mutual benefit and shall refrain from any actions that could cause economic harm to the other. To that end, recognizing the need for the gradual formation and development of a common economic space through the creation of conditions for the free movement of goods, services, capital and workforce, the Parties shall take effective measures to coordinate strategies for implementing economic reforms, for deepening economic integration on the basis of mutual benefit, and for harmonizing business law.

The High Contracting Parties shall ensure the broad exchange of economic information, as well as access to it by enterprises, entrepreneurs, and researchers of both Parties.

The Parties shall endeavour to coordinate their financial, monetary, budgetary, foreign-exchange, pricing, tax, and trade and economic policies, as well as customs policy, to create equal opportunities and guarantees for economic entities and shall facilitate the formation and development of direct economic and trade relations on all levels and specialization and cooperation between technologically linked industries, enterprises, associations, corporations, banks and commodity producers and consumers.

The High Contracting Parties shall facilitate the preservation and expansion, on a mutually beneficial basis, of production-related and scientific-technical cooperation between industrial enterprises in the development and production of state-of-the-art science-intensive products, including products for defense needs.

Article 14

The High Contracting Parties shall ensure favourable conditions for direct trade and other economic relations and cooperation at the level of administrative-territorial entities, in accordance with prevailing national law, while focusing special attention on the development of the economic ties between border regions.

Article 15

The High Contracting Parties shall ensure favourable conditions for economic, financial and legal conditions for entrepreneurial and other economic activities of enterprises and organizations of the other Party, including the promotion and mutual protection of their investments. The Parties shall encourage various forms of cooperation and direct ties between economic entities of both States, regardless of the form of ownership.

Article 16

The High Contracting Parties shall interact with the United Nations and other international organizations, including economic and financial organizations, and shall support each other in terms of admission to international organizations and accession to agreements and conventions in which one of the Parties is not a participant.

Article 17

The High Contracting Parties shall expand cooperation in the sphere of transportation and shall guarantee freedom of transit of persons, freight, and vehicles through each other's territory, in accordance with the generally recognized norms of international law.

The conveyance of freight and passengers by rail, air, maritime, river and automobile transport between the two Parties and via transit across their territories, including operations through seaports, river ports and airports and via rail and automobile networks, as well as operations via communication links, major pipelines and electrical networks on the territory of the other Party, shall be performed in the manner and under the terms stipulated by separate agreements.

Article 18

The High Contracting Parties shall cooperate in the conduct of searches and emergency rescue operations, as well as in the investigation of transportation accidents.

Article 19

The High Contracting Parties shall ensure compliance with the legal framework associated with State property and the property of legal entities and individuals of one High Contracting Parties that is located in the territory of the other High Contracting Parties, in accordance with the law of the latter Party, unless otherwise specified by agreement of the Parties.

The Parties shall proceed from the notion that property-relations issues that affect their interests shall be governed by separate agreements.

Article 20

The High Contracting Parties shall devote particular attention to the development of cooperation in ensuring the functioning of national fuel-and-energy complexes, transportation systems, and communication-and-information systems, facilitating the conservation, efficient use, and development of the complexes and individuals systems that have come about in those areas.

Article 21

On the basis of separate agreements, the High Contracting Parties shall cooperate in the research and use of outer space and in the joint production and development of aerospace technology, on the basis of equality and mutual benefit and in accordance with international law.

The High Contracting Parties shall facilitate the preservation and development of the cooperative ties that have been formed between aerospace enterprises.

Article 22

The High Contracting Parties shall provide mutual assistance in responding to accidents related to emergency situations on communication links, major pipelines, energy systems, transportation routes and other facilities that are of mutual interest to the Parties.

The rules for interaction in the performance of emergency response and reconstruction work shall be defined in separate agreements.

Article 23

The High Contracting Parties shall cooperate in the fields of education, science and technology and in the development of research, encouraging direct ties between their research organizations and the implementation of joint programmes and projects, particularly in the field of advanced technologies. Questions involving the use of the results of joint research achieved in the course of the cooperation shall be agreed upon on a case-by-case basis by means of separate agreements.

The Parties shall act in concert in the training of personnel and shall encourage the exchange of specialists, scientists, graduate students, interns, and undergraduates. They shall recognize the equivalence of each other's academic credentials, degrees, and titles and shall enter into a separate agreement on that matter.

The Parties shall exchange scientific-technical information and shall cooperate in matters involving protection of copyright and associated rights and other types of intellectual property in accordance with national law and the international obligations of their countries in that area.

Article 24

The High Contracting Parties shall develop cooperation in the fields of culture, literature, art, the mass media, tourism and sports.

The Parties shall act in concert to preserve, restore and use their historical and cultural heritages.

The Parties shall, in every possible way, facilitate the strengthening and broadening of the creative exchange and interaction between collectives, organizations

and associations of figures engaged in literature and the arts, cinematography, publishing, and archive-keeping of their countries; celebrating traditional days national culture and conducting art festivals and exhibitions and tours of art collectives and soloists, exchanging delegations of cultural figures and specialists at the national, regional, and local levels, and organizing national cultural centres in the territory of their States

The Parties shall provide State support of the development and implementation of joint programmes for the revival and expansion of the tourist industry, the development of promising new recreation areas and the preservation, restoration and effective use of cultural-historical and

religious monuments and sites. The strengthening of contacts between sports organizations and clubs and the joint conduct of inter-state sports events shall be encouraged in every way.

The Parties shall jointly develop and implement mutually beneficial programmes for the development of the material-technical base of television and radio, including satellite broadcasting, and shall ensure, on a parity basis, the organization of Russian- language television and radio broadcasts in Ukraine and Ukrainian-language broadcasts in Russia.

The Parties shall facilitate the development of contacts between individuals, political parties and public movements, trade unions, religious organizations and associations, and health, athletic, tourist and other associations and unions

All the issues addressed in this article shall be the subjects of separate agreements.

Article 25

The High Contracting Parties shall cooperate in the areas of environmental protection and improvement, transborder pollution prevention, efficient and resource- conserving land use and the response to natural and man-made disasters and shall facilitate coordinated actions in those areas at the regional and global levels, with an eye to creating a comprehensive system of international environmental safety.

The Parties shall proceed from the premise that the questions of environmental protection and environmental safety, including the protection and use of the ecosystems and resources of the Dnepr River and other transborder waterways and actions associated with environmental emergencies, are to be covered by separate agreements.

Article 26

The High Contracting Parties shall cooperate in the response to the Chernobyl Nuclear Power Plant accident and shall enter into a separate agreement on that issue.

Article 27

The High Contracting Parties shall develop cooperation in the field of social protection, including the social security of citizens. The Parties shall enter into special agreements with an eye to addressing the issues of labour relations, employment, social protection, compensation for losses caused by disabling or other injuries incurred in the workplace, social security for citizens of one Party who work or have an employment history in the territory of the other Party, and other issues m that field that require negotiated solutions.

The Parties shall ensure the free and timely transfer of pensions, benefits, child support, funds consisting of compensation for losses caused by disabling or other injuries incurred in the workplace, and other social payments to the citizens of one Party who reside permanently or temporarily in the territory of the other Party.

Article 28

The High Contracting Parties shall cooperate in matters involving the restoration of the rights of deported persons, in accordance with the arrangements made within the framework of the CIS on a bilateral or multilateral basis.

Article 29

The High Contracting Parties, as Black Sea states, are also prepared to further develop comprehensive cooperation in saving and preserving the natural environment of the Azov—Black Sea Basin, to conduct maritime and climatology research, to utilize the recreational potential and natural resources of the Black Sea and Sea of Azov and to develop maritime shipping and use sea lanes, seaports and maritime facilities.

Article 30

The High Contracting Parties recognize the importance of preserving a technologically unified system for Ukraine and the Russian Federation for the collection, processing, dissemination and use of hydrometeorological information and data on the state of the environment to safeguard the interests of the populace and the national economy and shall facilitate in every way possible the development of cooperation in the field of hydrometeorology and environmental monitoring.

Article 31

The High Contracting Parties shall devote particular attention to developing mutually beneficial cooperation in the field of health care and improvement of health- and-epidemiological conditions, the production of medicinal preparations and medical equipment, and the training of highly skilled personnel for the treatment facilities of the Parties.

Article 32

The High Contracting Parties shall cooperate in the addressing problems involving the regulation of migration processes, including measures to forestall and prevent illegal migration from third countries, for which a separate agreement shall be entered into.

Article 33

The High Contracting Parties shall cooperate in combating crime, above all, organized crime; terrorism in all its forms and manifestations, including criminal acts endangering maritime shipping, civil aviation, and other types of transport; and illegal trade in radioactive materials, arms, narcotics and psychotropic substances, and contraband, including the smuggling across the border of objects that are of cultural, historical, or artistic value.

Article 34

The High Contracting Parties shall cooperate in the legal sphere on the basis of separate agreements.

Article 35

The High Contracting Parties shall develop contacts and cooperation between the parliaments and parliamentarians of both States.

Article 36

This Treaty shall not prejudice the rights or obligations of the High Contracting Parties that arise from other international treaties to which they are a party.

Article 37

Disputes involving the interpretation or application of this Treaty shall be settled through consultation and negotiations between the High Contracting Parties

Article 38

The High Contracting Parties shall enter into other agreements with each other that are necessary for the implementation of the provisions of this Treaty, as well as agreements in fields that are of mutual interest

Article 39

This Treaty shall be subject to ratification and shall enter into force on the day of the exchange of ratification instruments

On the day of the entry into force of this Treaty, the Treaty between the Ukrainian Soviet Socialist Republic and the Russian Soviet Federative Socialist Republic of 19 November 1990 shall cease to be in force.

Article 40

This Treaty shall be concluded for a period of 10 years. It shall then be automatically renewed for successive 10-year periods if neither of the High Contracting Parties declares its wish to terminate it to the other High Contracting Parties by way of written notification at least six months before the expiry of the current 10-year period.

Article 41

This Treaty shall be subject to registration with the United Nations Secretariat in accordance with Article 102 of the United Nations Charter.

DONE at Kiev on 31 May 1997 in two copies, each in the Ukrainian and Russian languages, both texts being equally authentic.

For Ukraine:

For The Russian Federation:

[TRANSLATION – TRADUCTION]

TRAITÉ D'AMITIÉ, DE COOPÉRATION ET DE PARTENARIAT ENTRE L'UKRAINE ET LA FÉDÉRATION DE RUSSIE

L'Ukraine et la Fédération de Russie, ci-après dénommées Hautes Parties contractantes,

Se fondant sur les liens historiques étroits et les relations d'amitié et de coopération qui unissent les peuples de l'Ukraine et de la Fédération de Russie,

Notant que le Traité entre la République socialiste soviétique d'Ukraine et de la République socialiste fédérative soviétique de Russie du 19 novembre 1990 a favorisé le développement de relations de bon voisinage entre les deux États,

Réaffirmant les obligations qu'elles ont assumées en vertu de l'Accord entre l'Ukraine et la Fédération de Russie relatif au développement des relations entre les deux États, signé à Dagomys le 23 juin 1992,

Estimant que le renforcement de leurs relations d'amitié, de bon voisinage et de collaboration mutuellement profitable répond aux intérêts essentiels de leurs peuples et sert la cause de la paix et de la sécurité internationales,

Désireuses de donner une qualité nouvelle à ces relations et d'en consolider les fondements juridiques,

Déterminées à garantir le caractère irréversible et dynamique des processus démocratiques en marche dans les deux pays,

Tenant compte des accords conclus dans le cadre de la Communauté d'États indépendants,

Réaffirmant leur attachement aux normes du droit international, en premier lieu aux buts et principes énoncés dans la Charte des Nations Unies, et se conformant aux obligations assumées dans le cadre de l'Organisation pour la sécurité et la coopération en Europe,

Sont convenues de ce qui suit :

Article premier

Les Hautes Parties contractantes, États amis, égaux en droits et souverains, fondent leurs relations sur le respect et la confiance mutuels, le partenariat et la coopération stratégiques.

Article 2

Les Hautes Parties contractantes, conformément aux dispositions de la Charte des Nations Unies et de l'Acte final de la Conférence sur la sécurité et la coopération en Europe, respectent mutuellement leur intégrité territoriale et confirment l'inviolabilité de leurs frontières communes.

Article 3

Les Hautes Parties contractantes fondent leurs relations mutuelles sur les principes du respect réciproque, de l'égalité souveraine, de l'intégrité territoriale, de l'inviolabilité des frontières, du règlement pacifique des différends, du non-recours à l'emploi ou à la menace de la force, y

compris aux moyens de pression économiques et autres, du droit des peuples à disposer librement de leur sort, de la non-ingérence dans les affaires intérieures, du respect des droits de l'homme et des libertés fondamentales, de la coopération entre les États, de l'accomplissement en toute bonne foi des obligations internationales assumées, et des autres normes généralement reconnues du droit international.

Article 4

Les Hautes Parties contractantes prennent pour prémisse que leurs relations de bon voisinage et de coopération sont des facteurs importants pour le renforcement de la stabilité et de la sécurité en Europe et dans le monde. Elles collaborent étroitement dans le but de renforcer la paix et la sécurité internationales. Elles font le nécessaire pour favoriser le processus de désarmement général, la mise en place et la consolidation d'un système de sécurité collective en Europe, le renforcement du rôle de paix de l'Organisation des Nations Unies et l'amélioration de l'efficacité des mécanismes régionaux de sécurité.

Article 5

Les Hautes Parties contractantes procèdent régulièrement à des consultations afin d'approfondir encore leurs relations bilatérales et d'échanger des vues sur les problèmes multilatéraux présentant un intérêt réciproque. En cas de nécessité, elles coordonnent leurs positions en vue de mener une action concertée.

À cette fin, les Parties, selon qu'elles en auront décidé en coordination, tiennent régulièrement des réunions au sommet. Leurs ministres des affaires étrangères se réunissent au moins deux fois l'an.

Des réunions de travail entre représentants d'autres ministères et départements des Parties sont organisées selon que de besoin aux fins d'examen des questions présentant un intérêt réciproque.

Les Parties peuvent constituer à titre permanent ou temporaire des commissions conjointes chargées de régler des questions déterminées relevant de divers domaines.

Article 6

Chacune des Hautes Parties contractantes s'abstient de participer à toute action dirigée contre l'autre Partie ou de soutenir une telle action, et s'engage à ne conclure avec des pays tiers aucun accord dirigé contre l'autre Partie. En outre, aucune des Parties contractantes ne permet que son territoire soit utilisé au détriment de la sécurité de l'autre Partie.

Article 7

En cas de situation constituant de l'avis de l'une des Hautes Parties contractantes une menace contre la paix ou une rupture de la paix, ou portant atteinte aux intérêts de sa sécurité, de sa souveraineté nationale et de son intégrité territoriale, cette Partie peut s'adresser à l'autre Haute Partie contractante en lui proposant de procéder d'urgence aux consultations appropriées. Les

Parties échangent les informations voulues et prennent au besoin des mesures concertées ou conjointes en vue de maîtriser ladite situation.

Article 8

Les Hautes Parties contractantes développent par des accords distincts leurs relations de coopération visant les questions militaires et les techniques militaires, la sécurité d'État, les questions frontalières et douanières, et le contrôle des exportations et de l'immigration.

Article 9

Les Hautes Parties contractantes, se réaffirmant déterminées à progresser vers une réduction des forces armées et des armements, contribueront au processus de désarmement et œuvreront de concert pour le strict respect des accords conclus en matière de réduction des forces armées et des armements, notamment nucléaires.

Article 10

Chacune des Hautes Parties contractantes garantit aux ressortissants de l'autre Partie des droits et libertés équivalents dans leurs fondements et leur portée à ceux qu'elle garantit à ses propres ressortissants, sauf dans les cas visés par la législation nationale des Parties ou les accords internationaux auxquels elles sont parties.

Chacune des Parties défend selon les modalités fixées les droits de ses ressortissants résidant sur le territoire de l'autre Partie, conformément aux obligations découlant des documents de l'Organisation pour la sécurité et la coopération en Europe, des autres principes et normes généralement reconnus du droit international, et des accords conclus dans le cadre de la Communauté d'États indépendants auxquels elles sont parties.

Article 11

Les Hautes Parties contractantes font le nécessaire sur leur territoire, notamment en adoptant la législation voulue, pour prévenir et réprimer tout acte constituant une incitation à la violence ou un acte de violence dirigé contre un individu ou un groupe de personnes qui serait motivé par l'intolérance nationale, raciale, ethnique ou religieuse.

Article 12

Les Hautes Parties contractantes assurent la défense des particularismes ethniques, culturels, linguistiques et religieux des minorités nationales sur leur territoire, et créent des conditions propres à les encourager.

Chacune des Hautes Parties contractantes garantit aux personnes appartenant à une minorité nationale le droit de manifester, de préserver et de développer librement, à titre individuel ou avec d'autres personnes appartenant à une minorité nationale, leurs particularismes ethniques, culturels, linguistiques ou religieux, ainsi que de soutenir et développer leur culture, sans être soumises à aucune tentative d'assimilation contre leur gré.

Les Hautes Parties contractantes garantissent le droit des personnes appartenant à une minorité nationale d'exercer pleinement et effectivement leurs droits de l'homme et leurs libertés fondamentales, et d'en jouir sans aucune discrimination et dans des conditions de pleine égalité devant la loi.

Les Hautes Parties contractantes aideront à créer des possibilités et des conditions égales pour l'apprentissage de la langue ukrainienne en Fédération de Russie et de la langue russe en Ukraine et pour la formation des maîtres chargés d'enseigner ces langues dans les établissements d'enseignement, et fourniront à ces fins un soutien équivalent de l'État.

Des accords de coopération sur ces questions seront conclus entre les Hautes Parties contractantes.

Article 13

Les Hautes Parties contractantes développent dans l'égalité de droits une coopération mutuellement profitable dans le domaine économique; elles s'abstiennent de toute action susceptible de causer à l'autre Partie un préjudice économique. À cette fin, conscientes de la nécessité de constituer et de développer progressivement un espace économique commun en créant des conditions permettant la libre circulation des marchandises, des services, des capitaux et de la main-d'œuvre, les Parties prennent des mesures efficaces pour coordonner leur stratégie de réforme économique, pour faire progresser l'intégration économique mutuellement profitable et pour harmoniser leur législation économique.

Les Hautes Parties contractantes assureront un large échange d'informations économiques et en garantiront l'accès aux firmes, aux entrepreneurs et aux scientifiques des deux Parties.

Les Parties s'efforceront de coordonner leurs politiques en ce qui concerne les finances, la monnaie et le crédit, le budget, les devises, les investissements, les prix, la fiscalité, l'économie et les échanges ainsi que les douanes, et d'offrir des possibilités et des garanties égales aux agents économiques; elles favoriseront la constitution et le développement de relations économiques et commerciales directes à tous les niveaux, ainsi que la spécialisation et la coopération entre les secteurs de production, les entreprises, les groupes, les sociétés, les banques, les producteurs et les consommateurs liés par des rapports technologiques.

Les Hautes Parties contractantes favoriseront entre les industries le maintien et le développement d'une coopération mutuellement profitable en matière de production, de science et de technologie pour la mise au point et la fabrication de produits de pointe, y compris pour les besoins de la défense.

Article 14

Les Hautes Parties contractantes créeront des conditions favorables aux relations et à la coopération économiques directes d'ordre commercial et autres à l'échelon des divisions territoriales administratives, conformément aux législations nationales en vigueur, en s'attachant particulièrement au développement des relations économiques dans les régions frontalières.

Article 15

Les Hautes Parties contractantes assurent des conditions économiques, financières et juridiques favorables aux activités d'entrepreneur et autres activités économiques des firmes et organismes de l'autre Partie, notamment en stimulant et protégeant réciproquement leurs investissements. Les Parties encourageront la coopération et les relations directes sous différentes formes entre les agents économiques de l'un et de l'autre État, quel que soit le mode de propriété.

Article 16

Les Hautes Parties contractantes, dans leurs rapports au sein de l'Organisation des Nations Unies et d'autres organisations internationales, notamment économiques et financières, s'entraident pour l'admission dans les organisations internationales et l'adhésion aux accords et conventions auxquels l'une d'entre elles n'est pas partie.

Article 17

Les Hautes Parties contractantes élargissent leur coopération dans le domaine des transports; elles garantissent la liberté de transit sur leur territoire respectif des personnes, des marchandises et des moyens de transport conformément aux normes généralement reconnues du droit international.

Des accords distincts régissent les modalités et les conditions applicables aux transports ferroviaires, aériens, maritimes, fluviaux et automobiles de marchandises et de passagers entre les deux Parties, et au passage en transit sur les territoires respectifs de celles-ci, y compris aux opérations empruntant les ports maritimes et fluviaux, les aéroports, les réseaux ferrés et automobiles, les moyens de communication et les grands réseaux, de pipelines et électriques, implantés sur le territoire de l'autre Partie.

Article 18

Les Hautes Parties contractantes coopèrent pour les opérations de recherche et de sauvetage, ainsi que pour les enquêtes sur les accidents de transport.

Article 19

Les Hautes Parties contractantes assurent le respect du droit applicable aux biens publics, aux biens des personnes morales et des ressortissants de l'une d'entre elles se trouvant sur le territoire de l'autre, conformément à la législation de cette dernière, sauf disposition contraire convenue par accord entre les Parties.

Les questions concernant les relations de propriété susceptibles de porter atteinte aux intérêts des Parties sont soumises à des accords distincts.

Article 20

Les Hautes Parties contractantes s'attachent spécialement au développement de leur coopération concernant le fonctionnement des installations nationales dans les secteurs des combustibles, de l'énergie, des transports, des communications et de l'informatique, en favorisant la préservation, la mise en valeur et le développement durable des réseaux et systèmes mis en place dans ces secteurs.

Article 21

Des accords distincts régissent la coopération entre les Hautes Parties contractantes en ce qui concerne l'exploration et les utilisations de l'espace, ainsi que la fabrication et le développement conjoints des technologies spatiales, dans le respect de l'égalité en droits, de l'avantage mutuel et du droit international. Les Hautes Parties contractantes favorisent le maintien et le développement des relations de coopération établies entre entreprises des industries spatiales.

Article 22

Les Hautes Parties contractantes s'entraident pour l'élimination des pannes résultant d'accidents touchant des moyens de communication, des grands réseaux de pipelines, des réseaux énergétiques, des voies de communication et d'autres équipements présentant un intérêt réciproque pour les deux Parties.

Les modalités d'entraide pour les travaux de réparation et de remise en état font l'objet d'accords distincts.

Article 23

Les Hautes Parties contractantes coopèrent en matière d'éducation, de science et de technique, ainsi qu'en vue du développement de la recherche, en encourageant entre leurs établissements de recherche scientifique l'établissement de relations directes et la réalisation de programmes et de travaux conjoints, dans les technologies de pointe en particulier. Les modalités d'utilisation des résultats de recherches conjointes obtenus en coopération seront arrêtées au cas par cas par le biais d'accords distincts.

Les Parties s'entraident en matière de formation en encourageant les échanges de spécialistes, de scientifiques, de jeunes chercheurs, de stagiaires et d'étudiants. Elles reconnaissent mutuellement les équivalences de diplômes, certificats de fin d'études, grades et titres universitaires, qui feront l'objet d'un accord distinct.

Les Parties procèdent à des échanges d'informations scientifiques et techniques, et coopèrent à la défense des droits d'auteur et droits connexes et des autres types de propriété intellectuelle, conformément à la législation nationale et aux obligations internationales assumées à cet égard par l'un et l'autre pays.

Article 24

Les Hautes Parties contractantes développent leur coopération culturelle, littéraire, artistique, médiatique, touristique et sportive.

Les Parties s'entraident pour la conservation, la restauration et la mise en valeur du patrimoine historique et culturel.

Les Parties font en sorte de renforcer et d'élargir les échanges et interactions créatifs entre les groupes, les organisations et les fédérations d'écrivains et d'artistes, de cinéastes, d'éditeurs et d'archivistes des deux pays, et d'encourager la célébration des fêtes traditionnelles dans les minorités nationales, l'organisation de festivals et d'expositions d'art, de tournées de troupes et de solistes, les échanges de délégations culturelles et de spécialistes à l'échelon national, régional et local, ainsi que la mise en place de centres culturels nationaux sur le territoire des deux pays.

Les Parties assurent une aide de l'État pour la définition et l'exécution de programmes conjoints de relance et de développement du tourisme, la mise en valeur à long terme de nouvelles zones de loisirs, la sauvegarde, la restauration et l'utilisation rationnelle de bâtiments et sites culturels, historiques et religieux. Elles encouragent activement le resserrement des liens entre organisations et clubs sportifs, ainsi que l'organisation de manifestations sportives conjointes entre les deux pays.

Les Parties définissent et exécutent en commun des programmes mutuellement profitables de développement des équipements de télévision et de radiodiffusion, notamment de transmission par satellites, et assurent sur une base paritaire l'organisation d'émissions de radio et de télévision en langue russe en Ukraine, et en langue ukrainienne en Russie.

Les Parties favorisent le développement de rapports entre les particuliers, les partis politiques et les mouvements sociaux, les syndicats, les organisations et associations religieuses, et les associations et fédérations sanitaires, sportives, touristiques et autres.

L'ensemble des questions visées au présent article fera l'objet d'accords distincts.

Article 25

Les Hautes Parties contractantes coopèrent pour protéger l'environnement et en améliorer la situation, prévenir la pollution transfrontière, assurer une mise en valeur rationnelle et sans gaspillage des ressources naturelles, et éliminer les conséquences des accidents écologiques naturels et anthropiques, et favorisent à cet égard l'action concertée à l'échelon régional et mondial, en visant l'instauration d'un grand système international de sûreté écologique.

Les questions concernant la protection de l'environnement et la prévention des risques écologiques, notamment celles qui touchent la sauvegarde et l'utilisation des écosystèmes et des ressources du Dnepr et des autres cours d'eau transfrontières, ainsi que les mesures à prendre en cas d'accident écologique, feront l'objet d'accords distincts.

Article 26

Les Hautes Parties contractantes coopèrent en vue d'éliminer les séquelles de l'accident de la centrale nucléaire de Tchernobyl, et concluront à cette fin un accord distinct.

Article 27

Les Hautes Parties contractantes développent leur coopération en matière de protection sociale, et notamment de sécurité sociale. Elles concluront des accords spéciaux visant les relations professionnelles, l'emploi, la protection sociale, l'indemnisation des mutilés et invalides du travail, la sécurité sociale des ressortissants de l'un des deux pays qui travaillent ou ont travaillé sur le territoire de l'autre, ainsi que les autres questions relevant de ce domaine et appelant des solutions concertées.

Les Parties garantiront la possibilité de virer en toute liberté et sans délai les retraites, les prestations, les pensions, les indemnités de mutilé ou d'invalide, et les autres transferts sociaux versés aux ressortissants de l'un des deux pays résidant sur le territoire de l'autre à titre permanent ou temporaire.

Article 28

Les Hautes Parties contractantes coopéreront au sujet des questions relatives au rétablissement des droits des peuples déplacés, conformément aux accords conclus dans le cadre de la Communauté d'États indépendants, aux niveaux bilatéral et multilatéral.

Article 29

Les Hautes Parties contractantes, en tant qu'États riverains de la mer Noire, sont prêtes à renforcer encore la coopération multilatérale concernant la sauvegarde et la protection de l'environnement du bassin de la mer d'Azov et de la mer Noire, à effectuer des recherches marines et climatologiques, à mettre en valeur le potentiel touristique et les ressources naturelles de ces deux mers, à développer la navigation et à exploiter les communications, les ports et les installations maritimes.

Article 30

Les Hautes Parties contractantes reconnaissent qu'il est important pour l'Ukraine et la Fédération de Russie d'uniformiser sur le plan technique le système de rassemblement, de traitement, de diffusion et d'utilisation des informations et données hydrométéorologiques sur l'état de l'environnement, dans l'intérêt de la population et de l'économie nationale, et s'attacheront de concert, par tous les moyens, à développer la coopération dans le domaine de l'hydrométéorologie et de la surveillance de l'environnement.

Article 31

Les Hautes Parties contractantes attachent une importance particulière au développement de la coopération mutuellement profitable dans le domaine de la santé publique, ainsi qu'en vue d'améliorer la situation en matière sanitaire et épidémiologique, de fabriquer des produits pharmaceutiques et du matériel médical et de former du personnel hautement qualifié pour les établissements de santé des deux Parties.

Article 32

Les Hautes Parties contractantes coopéreront au règlement des problèmes concernant la réglementation des processus migratoires, notamment à l'aide de mesures visant à prévenir et à interdire les migrations illégales en provenance de pays tiers, en concluant à cette fin un accord distinct.

Article 33

Les Hautes Parties contractantes coopéreront à la lutte contre la criminalité, avant tout contre la criminalité organisée, le terrorisme sous toutes ses formes et manifestations, y compris les actes criminels visant la sécurité de la navigation maritime, de l'aviation civile et des autres modes de transport, le trafic de matières radioactives, d'armes, de stupéfiants et de substances psychotropes, et la contrebande, y compris l'exportation clandestine d'objets ayant une valeur culturelle, historique et artistique.

Article 34

Les Hautes Parties contractantes coopéreront dans le domaine juridique sur la base d'accords distincts.

Article 35

Les Hautes Parties contractantes encouragent le développement des contacts et de la coopération entre les Parlements et les députés des deux États.

Article 36

Le présent Traité ne porte pas atteinte aux droits et obligations des Hautes Parties contractantes découlant d'autres accords internationaux auxquels elles sont parties.

Article 37

Les différends concernant l'interprétation et l'amendement des dispositions du présent Traité seront réglés par voie de consultation et de négociation entre les Hautes Parties contractantes.

Article 38

Les Hautes Parties contractantes concluront entre elles d'autres accords nécessaires pour la mise en œuvre des dispositions du présent Traité, ainsi que des accords dans les domaines présentant un intérêt commun.

Article 39

Le présent Traité est soumis à ratification et entrera en vigueur à la date de l'échange des instruments de ratification.

Le Traité entre la République socialiste soviétique d'Ukraine et la République socialiste fédérative soviétique de Russie en date du 19 novembre 1990 cessera de prendre effet à compter de la date d'entrée en vigueur du présent Traité.

Article 40

Le présent Traité est conclu pour une période de 10 ans. Il sera par la suite automatiquement prorogé pour une autre période de 10 ans à moins que l'une des Hautes Parties contractantes ne notifie à l'autre Partie contractante par écrit, six mois au moins avant l'expiration de la période de 10 ans, son intention d'y mettre fin.

Article 41

Le présent Traité est soumis à enregistrement au Secrétariat de l'Organisation des Nations Unies, conformément à l'Article 102 de la Charte des Nations Unies.

FAIT à Kiev, le 31 mai 1997, en deux exemplaires, en langues ukrainienne et russe, les deux textes faisant également foi

Pour l'Ukraine :

Pour la Fédération de Russie :

Annex 983

The Charter of Fundamental Rights of the European Union (7 December 2000)

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2000/C 364/01)

PROCLAMACIÓN SOLEMNE

HØJTIDELIG PROKLAMATION

FEIERLICHE PROKLAMATION

ΠΑΝΗΓΥΡΙΚΗ ΔΙΑΚΗΡΥΞΗ

SOLEMN PROCLAMATION

PROCLAMATION SOLENNELLE

FORÓGRA SOLLÚNTA

PROCLAMAZIONE SOLENNE

PLECHTIGE AFKONDIGING

PROCLAMAÇÃO SOLENE

JUHLALLINEN JULISTUS

HÖGTIDLIG PROKLAMATION

El Parlamento Europeo, el Consejo y la Comisión proclaman solemnemente en tanto que Carta de los Derechos Fundamentales de la Unión Europea el texto que figura a continuación.

Europa-Parlamentet, Rådet og Kommissionen proklamerer højtideligt den tekst, der følger nedenfor, som Den Europæiske Unions charter om grundlæggende rettigheder.

Das Europäische Parlament, der Rat und die Kommission proklamieren feierlich den nachstehenden Text als Charta der Grundrechte der Europäischen Union.

Το Ευρωπαϊκό Κοινοβούλιο, το Συμβούλιο και η Επιτροπή διακηρύσσουν πανηγυρικά, ως Χάρτη Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, το κείμενο που ακολουθεί.

The European Parliament, the Council and the Commission solemnly proclaim the text below as the Charter of fundamental rights of the European Union.

Le Parlement européen, le Conseil et la Commission proclament solennellement en tant que Charte des droits fondamentaux de l'Union européenne le texte repris ci-après.

Forógraíonn Parlaimint na hEorpa, an Chomhairle agus an Coimisiún go sollúnta an téacs thíos mar an Chairt um Chearta Bunúsacha den Aontas Eorpach.

Il Parlamento europeo, il Consiglio e la Commissione proclamano solennemente quale Carta dei diritti fondamentali dell'Unione europea il testo riportato in appresso.

Het Europees Parlement, de Raad en de Commissie kondigen plechtig als Handvest van de grondrechten van de Europese Unie de hierna opgenomen tekst af.

O Parlamento Europeu, o Conselho e a Comissão proclamam solenemente, enquanto Carta dos Direitos Fundamentais da União Europeia, o texto a seguir transcrito.

Euroopan parlamentti, neuvosto ja komissio juhlallisesti julistavat jäljempänä esitetyn tekstin Euroopan unionin perusoikeuskirjaksi.

Europaparlamentet, rådet och kommissionen tillkännager högtidligt denna text såsom stadga om de grundläggande rättigheterna i Europeiska unionen.

Hecho en Niza, el siete de diciembre del año dos mil.

Udfærdiget i Nice den syvende december to tusind.

Geschehen zu Nizza am siebten Dezember zweitausend.

Έγινε στη Νίκαια, στις επτά Δεκεμβρίου δύο χιλιάδες.

Done at Nice on the seventh day of December in the year two thousand.

Fait à Nice, le sept décembre deux mille.

Arna dhéanamh i Nice, an seachtú lá de Nollaig sa bhliain dhá mhíle.

Fatto a Nizza, addì sette dicembre duemila.

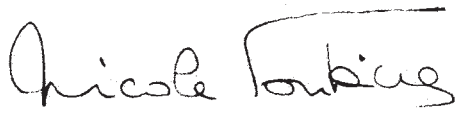
Gedaan te Nice, de zevende december tweeduizend.

Feito em Nice, em sete de Dezembro de dois mil.

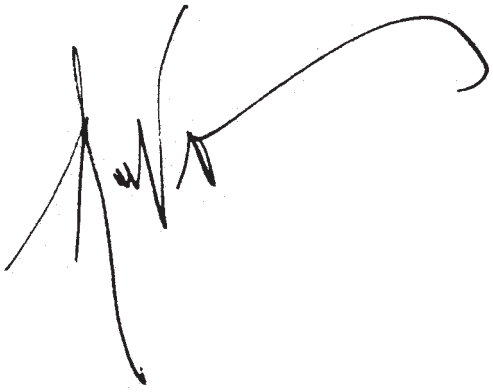
Tehty Nizzassa seitsemäntenä päivänä joulukuuta vuonna kaksituhatta.

Som skedde i Nice den sjunde december tjugohundra.

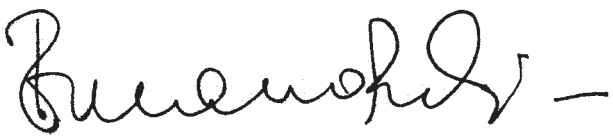
Por el Parlamento Europeo
For Europa-Parlamentet
Für das Europäische Parlament
Για το Ευρωπαϊκό Κοινοβούλιο
For the European Parliament
Pour le Parlement européen
Thar ceann Pharlaimint na hEorpa
Per il Parlamento europeo
Voor het Europees Parlement
Pelo Parlamento Europeu
Euroopan parlamentin puolesta
För Europaparlamentet



Por el Consejo de la Unión Europea
For Rådet for Den Europæiske Union
Für den Rat der Europäischen Union
Για το Συμβούλιο της Ευρωπαϊκής Ένωσης
For the Council of the European Union
Pour le Conseil de l'Union européenne
Thar ceann Chomhairle an Aontais Eorpaigh
Per il Consiglio dell'Unione europea
Voor de Raad van de Europese Unie
Pelo Conselho da União Europeia
Euroopan unionin neuvoston puolesta
För Europeiska unionens råd



Por la Comisión Europea
For Europa-kommissionen
Für die Europäische Kommission
Για την Ευρωπαϊκή Επιτροπή
For the European Commission
Pour la Commission européenne
Thar ceann an Choimisiúin Eorpaigh
Per la Commissione europea
Voor de Europese Commissie
Pela Comissão Europeia
Euroopan komission puolesta
För Europeiska kommissionen



PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER I

DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.

2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.

2. In the fields of medicine and biology, the following must be respected in particular:

— the free and informed consent of the person concerned, according to the procedures laid down by law,

— the prohibition of eugenic practices, in particular those aiming at the selection of persons,

— the prohibition on making the human body and its parts as such a source of financial gain,

— the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited.

CHAPTER II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV

SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V

CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

— the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

— the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

— the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII

GENERAL PROVISIONS

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Annex 984

Intentionally Omitted

Annex 985

Intentionally Omitted

Annex 986

Intentionally Omitted

Annex 987

Inter-American Court of Human Rights, Velásquez-Rodríguez v. Honduras, Judgment (29 July 1988)

Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988).

In the Velásquez Rodríguez case,

The Inter-American Court of Human Rights, composed of the following judges:

Rafael Nieto-Navia, President

Hector Gros Espiell, Vice President

Rodolfo E. Piza E., Judge

Thomas Buergenthal, Judge

Pedro Nikken, Judge

Hector Fix-Zamudio, Judge

Rigoberto Espinal Irias, Judge ad hoc

Also present:

Charles Moyer, Secretary

Manuel Ventura, Deputy Secretary

delivers the following judgment pursuant to Article 44(1) of its Rules of Procedure (hereinafter " the Rules of Procedure ") in the instant case submitted by the Inter-American Commission on Human Rights against the State of Honduras.

1. The Inter-American Commission on Human Rights (hereinafter " the Commission ") submitted the instant case to the Inter-American Court of Human Rights (hereinafter the " Court ") on April 24, 1986. It originated in a petition (No. 7920) against the State of Honduras (hereinafter " Honduras " or " the Government "), which the Secretariat of the Commission received on October 7, 1981.

2. In submitting the case, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter " the Convention " or " the American Convention ") and requested that the Court determine whether the State in question had violated Articles 4 (Right to Life), 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the Convention in the case of Angel Manfredo Velásquez Rodríguez (also known as Manfredo Velásquez). In addition, the Commission asked the Court to rule that " the consequences of the situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party or parties. "

3. According to the petition filed with the Commission, and the supplementary information received subsequently, Manfredo Velasquez, a student at the National Autonomous University of Honduras, " was violently detained without a warrant for his arrest by members of the National Office of Investigations (DNI) and G-2 of the Armed Forces of Honduras. " The detention took place in Tegucigalpa on the afternoon of September 12, 1981. According to the petitioners, several eyewitnesses reported that Manfredo Velasquez and others were detained and taken to the cells of Public Security Forces Station No. 2 located in the Barrio E1 Manchen of Tegucigalpa, where he was " accused of alleged political crimes and subjected to harsh interrogation and cruel torture. " The petition added that on September 17, 1981, Manfredo Velásquez was moved to the First Infantry Battalion, where the interrogation continued, but that the police and security forces denied that he had been detained.

4. After transmitting the relevant parts of the petition to the Government, the Commission, on various occasions, requested information on the matter. Since the Commission received no reply, it applied Article 42 (formerly 39) of its Regulations and presumed " as true the allegations contained in the communication of October 7, 1981, concerning the detention and disappearance of Angel Manfredo Velásquez Rodríguez in the Republic of Honduras " and pointed out to the Government " that such acts are most serious violations of the right to life (Art. 4) and the right to personal liberty (Art. 7) of the American Convention " (Resolution 30/83 of October 4, 1983).

5. On November 18, 1983, the Government requested the reconsideration of Resolution 30/83 on the grounds that domestic remedies had not been exhausted, that the National Office of Investigations had no knowledge of the whereabouts of Manfredo Velásquez, that the Government was making every effort to find him, and that there were rumors that Manfredo Velásquez was " with Salvadoran guerrilla groups. "

6. On May 30, 1984, the Commission informed the Government that it had decided, " in light of the information submitted by the Honorable Government, to reconsider Resolution 30/83 and to continue its study of the case. " The Commission also asked the Government to provide information on the exhaustion of domestic legal remedies.

7. On January 29, 1985, the Commission repeated its request of May 30, i984 and notified the Government that it would render a final decision on the case at its meeting in March 1985. On March 1 of that year, the Government asked for a postponement of the final decision and reported that it had set up an Investigatory Commission to study the matter. The Commission agreed to the Government's request on March 11, granting it thirty days in which to present the information requested.

8. On October 17, 1985, the Government presented to the Commission the Report of the Investigatory Commission.

9. On April 7, 1986, the Government provided information about the outcome of the proceeding brought in the First Criminal Court against those persons supposedly responsible for the disappearance of Manfredo Velasquez and others. That Court dismissed the complaints " except as they applied to General Gustavo Alvarez Martínez, because he had left the country and had not given testimony. " This decision was later affirmed by the First Court Of Appeals.

10. By Resolution 22/86 of April 18, 1986, the Commission deemed the new information presented by the Government insufficient to warrant reconsideration of Resolution 30/83 and found, to the contrary, that " all evidence shows that Angel Manfredo Velásquez Rodríguez is still missing and that the Government of Honduras... has not offered convincing proof that would allow the Commission to determine that the allegations are not true. " In that same Resolution, the Commission confirmed Resolution 30/83 and referred the matter to the Court.

11. The Court has jurisdiction to hear the instant case. Honduras ratified the Convention on September 8, 1977 and recognized the contentious jurisdiction of the Court, as set out in Article 62 of the Convention, on September 9, 1981. The case was submitted to the Court by the Commission pursuant to Article 61 of the Convention and Article 50(1) and 50(2) of the Regulations of the Commission.

12. The instant case was submitted to the Court on April 24, 1986. On May 13, 1986, the Secretariat of the Court transmitted the application to the Government, pursuant to Article 26(1) of the Rules of Procedure.

13. On July 23, 1986, Judge Jorge R. Hernández Alcerro informed the President of the Court (hereinafter " the President ") that, pursuant to Article 19(2) of the Statute of the Court (hereinafter " the Statute "), he had " decided to recuse (him)self from hearing the three cases that... were submitted to the Inter-American Court. " The President accepted the disqualification and, by note of that same date, informed the Government of its right to appoint a judge ad hoc under Article 10(3) of the Statute. The Government named Rigoberto Espinal Irias to that position by note of August 21, 1986.

14. In a note of July 23, 1986, the President confirmed a preliminary agreement that the Government present its submissions by the end of August 1986. On August 21, 1986, the Government requested the extension of this deadline to November 1986.

15. By his Order of August 29, 1986, having heard the views of the parties, the President set October 31, 1986 as the deadline for the Government's presentation of its submissions. The President also fixed the deadlines of January 15, 1987 for the filing of the Commission's submissions and March 1, 1987 for the Government's response.

16. In its submissions of October 31, 1986, the Government objected to the admissibility of the application filed by the Commission.

17. On December 11, 1986, the President granted the Commission's request for an extension of the deadline for the presentation of its submissions to March 20, 1987 and extended the deadline for the Government's response to May 25, 1987.

18. In his Order of January 30, 1987, the President made clear that the application which gave rise to the instant proceeding should be deemed to be the Memorial provided for in Article 30(3) of the Rules of Procedure. He also specified that the deadline of March 20, 1987 granted to the commission was the time limit set forth in Article 27(3) of the Rules for the presentation of its observations and conclusions on the preliminary objections raised by the Government. The President, after consulting the parties, ordered a public hearing on June 15, 1987 for the presentation of oral arguments on the preliminary objections and left open the time limits for submissions on the merits, pursuant to the above-mentioned article of the Rules of Procedure.

19. By note of March 13, 1987, the Government informed the Court that because

"the Order of January 30, 1987 is not restricted to matters of mere procedure nor to the determination of deadlines, but rather involves the interpretation and classification of the submissions, (the Government) considers it advisable, pursuant to Article 25 of the Statute of the Court and Article 44(2) of its Rules of Procedure, for the Court to affirm the terms of the President's Order of January 30, 1987, in order to avoid further confusion between the parties. As these are the first contentious cases submitted to the Court, it is especially important to ensure strict compliance with and the correct application of the procedural rules of the Court."

20. In a motion contained in its observations of March 20, 1987, the Commission asked the President to rescind paragraph 3 of his Order of January 30, 1987 in which he had set the date for the public hearing. The Commission also observed that " in no part of its Memorial had the Government of Honduras presented its objections as preliminary objections. " In its note of June 11, 1987, the Government did however refer to its objections as " preliminary objections. "

21. By Resolution of June 8, 1987, the Court affirmed the President's Order of January 30, 1987, in its entirety.

22. The hearing on the preliminary objections raised by the Government took place on June 15, 1987. Representatives of the Government and the Commission participated in this hearing.

23. On June 26, 1987, the Court delivered its judgment on the preliminary objections. In this unanimous decision, the Court:

"1. Reject(ed) the preliminary objections interposed by the Government of Honduras, except for the issues relating to the exhaustion of the domestic legal remedies, which (were) ordered joined to the merits of the case.

2. Decide(d) to proceed with the consideration of the instant case.

3. Postpone(d) its decision on the costs until such time as it renders judgment on the merits.

(Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Series C No. 1)."

24. On that same date, the Court adopted the following decision:

"1. To instruct the President, in consultation with the parties, to set a deadline no later than August 27, 1987 for the Government to submit its Counter-Memorial on the merits and offer its evidence, with an indication of the facts that each item of evidence is intended to prove. In its offer of proof, the Government should show how, when and under what circumstances it wishes to present the evidence.

2. Within thirty days of the receipt of the submission of the Government, the Commission must ratify in writing the request of proof already made, without prejudice to the possibility of amending or supplementing what has been offered. The Commission should indicate the facts that each item of evidence is intended to prove and how, when and under what circumstances it wishes to present the evidence. As soon as possible after receiving the Government's submission referred to in paragraph one, the Commission may also supplement or amend its offer of proof.

3. To instruct the President, without prejudice to a final decision being taken by the Court, to decide preliminary matters that might arise, to admit or exclude evidence that has been offered or may be offered, to order the filing of expert or other documentary evidence that may be received and, in consultation with the parties, to set the date of the hearing or hearings on the merits at which evidence shall be presented, the testimony of witnesses and any experts shall be received, and at which the final arguments shall be heard.

4. To instruct the President to arrange with the respective authorities for the necessary guarantees of immunity and participation of the Agents and other representatives of the parties, witnesses and experts, and, if necessary, the delegates of the Court."

25. In its submission of July 20, 1987, the Commission ratified and supplemented its request for oral testimony and offered documentary evidence.

26. On August 27, 1987, the Government filed its Counter-Memorial and documentary evidence. In its prayer, the Government asked the Court to dismiss " the suit against the State of Honduras on the grounds that it does not find the allegations to be true and that the domestic remedies of the State of Honduras have not yet been exhausted. "

27. In his Order of September 1, 1987, the President admitted the testimonial and documentary evidence offered by the Commission. On September 14, 1987, he also admitted the documentary evidence offered by the Government.

28. The Court held hearings on the merits and heard the final arguments of the parties from September 30 to October 7, 1987.

There appeared before the Court

a) for the Government of Honduras:

Edgardo Sevilla Idiaquez, Agent

Ramón Pérez Zúñiga, Representative

Juan Arnaldo Hernández, Representative

Enrique Gómez, Representative

Ruben Darío Zepeda, Adviser

Angel Augusto Morales, Adviser

Olmeda Rivera, Adviser

Mario Alberto Fortín, Adviser

Ramón Rufino Mejía, Adviser

b) for the Inter-American Commission on Human Rights:

Gilda M.C.M. de Russomano, President, Delegate

Edmundo Vargas Carreffo, Executive Secretary,

Delegate

Claudio Grossman, Adviser

Juan Méndez, Adviser

Hugo A. Muñoz, Adviser

Jose Miguel Vivanco, Adviser

c) Witnesses presented by the Commission to testify as to " whether between the years 1981 and 1984 (the period in which Manfredo Velásquez disappeared) there were numerous cases of persons who were kidnapped and who then disappeared, and whether these actions were imputable to the Armed Forces of Honduras and enjoyed the acquiescense of the Government of Honduras: "

Miguel Angel Pavon Salazar, Alternate Deputy

Ramón Custodio López, surgeon

Virgilio Carías, economist

Inés Consuelo Murillo, student

Efraín Díaz Arrivillaga, Deputy

Florencio Caballero, former member of the Armed Forces

d) Witnesses presented by the Commission to testify as to " whether between the years 1981 and 1984 effective domestic remedies existed in Honduras to protect those persons who were kidnapped and who then disappeared in actions imputable to the Armed Forces of Honduras: "

Ramón Custodio Lopez, surgeon

Virgilio Carías, economist

Milton Jiménez Puerto, lawyer

Inés Consuelo Murillo, student

René Velasquez Díaz, lawyer

Cesar Augusto Murillo, lawyer

José Gonzalo Flores Trejo, shoemaker

e) Witnesses presented by the Commission to testify on specific facts related to this case:

Leopoldo Aguilar Villalobos, advertising agent

Zenaida Velásquez Rodríguez, social worker

f) The following witnesses offered by the Commission did not appear at these hearings:

Leonidas Torres Arias, former member of the Armed Forces

Linda Drucker, reporter

José María Palacios, lawyer

Mauricio Villeda Bermúdez, lawyer

José Isaías Vilorio, policeman

29. After having heard the witnesses, the Court directed the submission of additional evidence to assist it in its deliberations. Its Order of October 7, 1987 reads as follows:

"A. Documentary Evidence

1. To request the Government of Honduras to provide the organizational chart showing the structure of Battalion 316 and its position within the Armed Forces of Honduras.

B. Testimony

1. To call as witnesses, Marco Tulio Regalado and Alexander Hernández, members of the Armed Forces of Honduras.

C. Reiteration of a Request

1. To the Government of Honduras to establish the whereabouts of José Isaías Vilorio and, once located, to call him as a witness."

30. By the same Order, the Court set December 15, 1987 as the deadline for the submission of documentary evidence and decided to hear the oral testimony at its January session.

31. In response to that Order, on December 14, 1987 the Government: a) with respect to the organizational structure of Battalion 316, requested that the Court receive the testimony of its Commandant in a closed hearing "because of strict security reasons of the State of Honduras " ; b) requested that the Court hear the testimony of Alexander Hernández and Marco Tulio Regalado " in the Republic of Honduras, in a manner to be decided by the Court and in a closed hearing to be set at an opportune time... because of security reasons and because both persons are on active duty in the Armed Forces of Honduras " ; and c) reported that Jose Isaías Vilorio was "

working as an administrative employee of the National Office of Investigations, a branch of the Public Security Forces, in the city of Tegucigalpa. "

32. By note of December 24, 1987, the Commission objected to hearing the testimony of members of the Honduran military in closed session. This position was reiterated by note of January 11, 1988.

33. On the latter date, the Court decided to receive the testimony of the members of the Honduran military at a closed hearing in the presence of the parties.

34. Pursuant to its Order of October 7, 1987 and its decision of January 11, 1988, the Court held a closed hearing on January 20, 1988, which both parties attended, at which it received the testimony of persons who identified themselves as Lt. Col. Alexander Hernández and Lt. Marco Tulio Regalado Hernández. The Court also heard the testimony of Col. Roberto Núñez Montes, Head of the Intelligence Services of Honduras.

35. On January 22, 1988, the Government submitted a brief prepared by the Honduran Bar Association on the legal remedies available in cases of disappeared persons. The Court had asked for this document in response to the Government's request of August 26, 1987.

36. On July 7, 1988, the Commission responded to a request of the Court concerning another case before the Court (Fairén Garbi and Solís Corrales Case). In its response, the Commission included some " final observations " on the instant case.

37. By decision of July 14, 1988, the President refused to admit the " final observations " because they were untimely and because " reopening the period for submissions would violate the procedure opportunely established and, moreover, would seriously affect the procedural equilibrium and equality of the parties. "

38. The following non-governmental organizations submitted briefs as amici curiae: Amnesty International, Association of the Bar of the City of New York, Lawyers Committee for Human Rights and Minnesota Lawyers International Human Rights Committee.

39. By note of November 4, 1987, addressed to the President of the Court, the Commission asked the Court to take provisional measures under Article 63(2) of the Convention in view of the threats against the witnesses Milton Jiménez Puerto and Ramón Custodio López. Upon forwarding this information to the Government of Honduras, the President stated that he " does not have enough proof to ascertain which persons or entities might be responsible for the threats, but he strongly wishes to request that the Government of Honduras take all measures necessary to guarantee the safety of the lives and property of Milton Jiménez and Ramón Custodio and the property of the Committee for the Defense of Human Rights in Honduras (CODEH)".... " The President also stated that he was prepared to consult with the Permanent Commission of the Court and, if necessary, to convoke the Court for an emergency meeting " for taking the appropriate measures, if that abnormal situation continues. " By communications of November 11 and 18, 1987, the Agent of the Government informed the Court that the Honduran government would guarantee Ramón Custodio and Milton Jiménez " the respect of their physical and moral integrity... and the faithful compliance with the Convention.... "

40. By note of January 11, 1988, the Commission informed the Court of the death of Jose Isaías Vilorio, which occurred on January 5, 1988 at 7:15 a.m. The Court had summoned him to appear as a witness on January 18, 1988. He was killed " on a public thoroughfare in Colonia San Miguel, Comayaguela, Tegucigalpa, by a group of armed men who placed the insignia of a Honduran guerrilla movement known as Cinchonero on his body and fled in a vehicle at high speed. "

41. On January 15, 1988, the Court was informed of the assassinations of Moisés Landaverde and Miguel Angel Pavón which had occurred the previous evening in San Pedro Sula. Mr. Pavón had testified before the Court on September 30, 1987 as a witness in this case. Also on January 15, the Court adopted the following provisional measures under Article 63 (2) of the Convention:

"1. That the Government of Honduras adopt, without delay, such measures as are necessary to prevent further infringements on the basic rights of those who have appeared or have been summoned to do so before this Court in the " Velásquez Rodríguez, " Fairén Garbi and Solís Corrales " and " Godínez Cruz " cases, in strict compliance with the obligation of respect for and observance of human rights, under the terms of Article 1(1) of the Convention.

2. That the Government of Honduras also employ all means within its power to investigate these reprehensible crimes, to identify the perpetrators and to impose the punishment provided for by the domestic law of Honduras."

42. After it had adopted the above Order of January 15, the Court received a request from the Commission, dated the same day, that the Court take the necessary measures to protect the integrity and security of those persons who had appeared or would appear before the Court.

43. On January 18, 1988, the Commission asked the Court to adopt the following complementary provisional measures:

"1. That the Government of Honduras inform the Court, within 15 days, of the specific measures it has adopted to protect the physical integrity of witnesses who testified before the Court as well as those persons in any way involved in these proceedings, such as representatives of human rights organizations.

2. That the Government of Honduras report, within that same period, on the judicial investigations of the assassinations of Jose Isaías Vilorio, Miguel Angel Pavón and Moisés Landaverde.

3. That the Government of Honduras provide the Court, within that same period, the public statements made regarding the aforementioned assassinations and indicate where those statements appeared.

4. That the Government of Honduras inform the Court, within the same period,on the criminal investigations of threats against Ramón Custodio and Milton Jiménez, who are witnesses in this case.

5. That it inform the Court whether it has ordered police protection to ensure the personal integrity of the witnesses who have testified and the protection of the property of CODEH.

6. That the Court request the Government of Honduras to send it immediately a copy of the autopsies and ballistic tests carried out regarding the assassinations of Messrs. Vilorio, Pavón and Landaverde."

44. That same day the Government submitted a copy of the death certificate and the autopsy report of Jose Isaías Vilorio, both dated January 5, 1988.

45. On January 18, 1988, the Court decided, by a vote of six to one, to hear the parties in a public session the following day regarding the measures requested by the Commission. After the hearing, taking into account " Articles 63(2), 33 and 62(3) of the American Convention on Human Rights, Articles 1 and 2 of the Statute of the Court and Article 23 of its Rules of Procedure and its character as a judicial body and the powers which derive therefrom, " the Court unanimously decided, by Order of January 19, 1988, on the following additional provisional measures:

"1. That the Government of Honduras, within a period of two weeks, inform this Court on the following points:

a. the measures that have been adopted or will be adopted to protect the physical integrity of, and to avoid irreparable harm to, those witnesses who have testified or have been summoned to do so in these cases.

b. the judicial investigations that have been or will be undertaken with respect to threats against the aforementioned individuals.

c. the investigations of the assassinations, including forensic reports, and the actions that are proposed to be taken within the judicial system of Honduras to punish those responsible.

2. That the Government of Honduras adopt concrete measures to make clear that the appearance of an individual before the Inter-American Commission or Court of Human Rights, under conditions authorized by the American Convention and by the rules of procedure of both bodies, is a right enjoyed by every individual and is recognized as such by Honduras as a party to the Convention.

This decision was delivered to the parties in Court."

46. Pursuant to the Court's decision of January 19, 1988, the Government submitted the following documents on February 3, 1988:

"1. A copy of the autopsy report on the death of Professor Miguel Angel Pavón Salazar, certified by the Third Criminal Court of San Pedro Sula, Department of Cortes, on January 27, 1988 and prepared by forensic specialist Rolando Tabora, of that same Court.

2. A copy of the autopsy report on the death of Professor Moisés Landaverde Recarte, certified by the above Court on the same date and prepared by the same forensic specialist.

3. A copy of a statement made by Dr. Rolando Tabora, forensic specialist, as part of the inquiry undertaken by the above Court into the deaths of Miguel Angel Pavón and Moisés Landaverde Recarte, and certified by that Court on January 27, 1988.

4. A copy of the inquiry into threats against the lives of Ramón Custodio and Milton Jiménez, conducted by the First Criminal Court of Tegucigalpa, Central District, and certified by that Court on February 2, 1988."

In the same submission, the Government stated that:

"The content of the above documents shows that the Government of Honduras has initiated a judicial inquiry into the assassinations of Miguel Angel Pavón Salazar and Moisés Landaverde Recarte, under the procedures provided for by Honduran law.

Those same documents show, moreover, that the projectiles were not removed from the bodies for ballistic study because of the opposition of family members, which is why no ballistic report was submitted as requested."

47. The Government also requested an extension of the deadline ordered above " because, for justifiable reasons, it has been impossible to obtain some of the information. " Upon instructions from the President, the Secretariat informed the Government on the following day that it was not possible to extend the deadline because it had been set by the full Court.

48. By communication of March l0, 1988, the InterInstitutional Commission of Human Rights of Honduras, a governmental body, made several observations regarding the Court's decision of January 15, 1988. On the threats that have been made against some witnesses, it reported that Ramón Custodio " refused to bring a complaint before the proper courts and that the First Criminal Court of Tegucigalpa, Department of Morazán, had initiated an inquiry to determine whether there were threats, intimidations or conspiracies against the lives of Dr. Custodio and Milton Jiménez and had duly summoned them to testify and to submit any evidence, " but they failed to appear. It added that no Honduran official " has attempted to intimidate, threaten or restrict the liberty of any of the persons who testified before the Court... who enjoy the same guarantees as other citizens. "

49. On March 23, 1988 the Government submitted the following documents:

"1. Copies of the autopsies performed on the bodies of Miguel Angel Pavón Salazar and Moisés Landaverde, certified by the Secretariat of the Third Criminal Court of the Judicial District of San Pedro Sula.

2. The ballistic report on the shrapnel removed from the bodies of those persons, signed by the Director of the Medical-Legal Department of the Supreme Court of Justice."

50. The Government raised several preliminary objections that the Court ruled upon in its Judgment of June 26, 1987 (supra 16-23). There the Court ordered the joining of the merits and the preliminary objection regarding the failure to exhaust domestic remedies, and gave the Government and the Commission another opportunity to " substantiate their contentions " on the matter (Velásquez Rodríguez Case, Preliminary Objections, supra 23, para. 90).

51. The Court will first rule upon this preliminary objection. In so doing, it will make use of all the evidence before it, including that presented during the proceedings on the merits.

52. The Commission presented witnesses and documentary evidence on this point. The Government, in turn, submitted some documentary evidence, including examples of writs of habeas corpus successfully brought on behalf of some individuals (infra 120(c)). The Government also stated that this remedy requires identification of the place of detention and of the authority under which the person is detained.

53. In addition to the writ of HABEAS corpus, the Government mentioned various remedies that might possibly be invoked, such as appeal, cassation, extraordinary writ of amparo, ad effectum videndi, criminal complaints against those ultimately responsible and a presumptive finding of death.

54. The Honduran Bar Association in its brief (supra 35) expressly mentioned the writ of HABEAS corpus, set out in the Law of Amparo, and the suit before a competent court " for it to investigate the whereabouts of the person allegedly disappeared. "

55. The Commission argued that the remedies mentioned by the Government were ineffective because of the internal conditions in the country during that period. It presented documentation of three writs of habeas corpus brought on behalf of Manfredo Velásquez that did not produce results. It also cited two criminal complaints that failed to lead to the identification and punishment of those responsible. In the Commission's opinion, those legal proceedings exhausted domestic remedies as required by Article 46(1)(a) of the Convention.

56. The Court will first consider the legal arguments relevant to the question of exhaustion of domestic remedies and then apply them to the case.

57. Article 46(1)(a) of the Convention provides that, in order for a petition or communication lodged with the Commission in accordance with Articles 44 or 45 to be admissible, it is necessary

"that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

58. The same article, in the second paragraph, provides that this requirement shall not be applicable when

"a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies."

59. In its Judgment of June 26, 1987, the Courtdecided, inter alia, that " the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective " (Velásquez Rodríguez Case, Preliminary Objections, supra 23, para. 88).

60. Concerning the burden of proof, the Court did not go beyond the conclusion cited in the preceding paragraph. The Court now affirms that if a State which alleges non-exhaustion proves the existence of specific domestic remedies that should have been utilized, the opposing party has the burden of showing that those remedies were exhausted or that the case comes within the exceptions of Article 46(2). It must not be rashly

presumed that a State Party to the Convention has failed to comply with its obligation to provide effective domestic remedies.

61. The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction (American Convention, Preamble).

62. It is a legal duty of the States to provide such remedies, as this Court indicated in its Judgment of June 26, 1987, when it stated:

"The rule of prior exhaustion of domestic remedies under the international law of human rights has certain implications that are present in the Convention. Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1). (Velásquez Rodríguez Case, Preliminary Objections, supra 23, para. 91)."

63. Article 46(1)(a) of the Convention speaks of " generally recognized principles of international law. " Those principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46(2).

64. Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable. For example, a civil proceeding specifically cited by the Government, such as a presumptive finding of death based on disappearance, the purpose of which is to allow heirs to dispose of the estate of the person presumed deceased or to allow the spouse to remarry, is not an adequate remedy for finding a person or for obtaining his liberty.

65. Of the remedies cited by the Government, habeas corpus would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty. The other remedies cited by the Government are either for reviewing a decision within an inchoate proceeding (such as those of appeal or cassation) or are addressed to other objectives. If, however, as the Government has stated, the writ of habeas corpus requires the identification of the place of detention and the authority ordering the detention, it would not be adequate for finding a person clandestinely held by State officials, since in such cases there is only hearsay evidence of the detention, and the whereabouts of the victim is unknown.

66. A remedy must also be effective - that is, capable of producing the result for which it was designed. Procedural requirements can make the remedy of habeas corpus ineffective: if it is powerless to compel the authorities; if it presents a danger to those who invoke it; or if it is not impartially applied.

67. On the other hand, contrary to the Commission's argument, the mere fact that a domestic remedy does not produce a result favorable to the petitioner does not in and of itself demonstrate the inexistence or exhaustion of all effective domestic remedies. For example, the petitioner may not have invoked the appropriate remedy in a timely fashion.

68. It is a different matter, however, when it is shown that remedies are denied for trivial reasons or without an examination of the merits, or if there is proof of the existence of a practice or policy ordered or tolerated by the government, the effect of which is to impede certain persons from invoking internal remedies that would normally be available to others. In such cases, resort to those remedies becomes a senseless formality. The

exceptions of Article 46(2) would be fully applicable in those situations and would discharge the obligation to exhaust internal remedies since they cannot fulfill their objective in that case.

69. In the Government's opinion, a writ of habeas corpus does not exhaust the remedies of the Honduran legal system because there are other remedies, both ordinary and extraordinary, such as appeal, cassation, and extraordinary writ of amparo, as well as the civil remedy of a presumptive finding of death. In addition, in criminal procedures parties may use whatever evidence they choose. With respect to the cases of disappearances mentioned by the Commission, the Government stated that it had initiated some investigations and had opened others on the basis of complaints, and that the proceedings remain pending until those presumed responsible, either as principals or accomplices, are identified or apprehended.

70. In its conclusions, the Government stated that some writs of habeas corpus were granted from 1981 to 1984, which would prove that this remedy was not ineffective during that period. It submitted various documents to support its argument.

71. In response, the Commission argued that the practice of disappearances made exhaustion of domestic remedies impossible because such remedies were ineffective in correcting abuses imputed to the authorities or in causing kidnapped persons to reappear.

72. The Commission maintained that, in cases of disappearances, the fact that a writ of habeas corpus or amparo has been brought without success is sufficient to support a finding of exhaustion of domestic remedies as long as the person does not appear, because that is the most appropriate remedy in such a situation. It emphasized that neither writs of habeas corpus nor criminal complaints were effective in the case of Manfredo Velásquez. The Commission maintained that exhaustion should not be understood to require mechanical attempts at formal procedures; but rather to require a case-by-case analysis of the reasonable possibility of obtaining a remedy.

73. The Commission asserted that, because of the structure of the international system for the protection of human rights, the Government bears the burden of proof with respect to the exhaustion of domestic remedies. The objection of failure to exhaust presupposes the existence of an effective remedy. It stated that a criminal complaint is not an effective means to find a disappeared person, but only serves to establish individual responsibility.

74. The record before the Court shows that the following remedies were pursued on behalf of Manfredo Velásquez:

"a. Habeas Corpus

i. Brought by Zenaida Velásquez against the Public Security Forces on September 17, 1981. No result.

ii. Brought by Zenaida Velásquez on February 6, 1982. No result.

iii. Brought by various relatives of disappeared persons on behalf of Manfredo Velásquez and others on July 4, 1983. Denied on September 11, 1984.

b. Criminal Complaints

i. Brought by the father and sister of Manfredo Velásquez before the First Criminal Court of Tegucigalpa on November 9, 1982. No result.

ii. Brought by Gertrudis Lanza González, joined by Zenaida Velásquez, before the First Criminal Court of Tegucigalpa against various members of the Armed Forces on April 5, 1984. The court dismissed this proceeding and the First Court of Appeals affirmed on January 16, 1986, although it left open the complaint with regard to General Gustavo Alvarez Martínez, who was declared a defendant in absence (supra 9)."

75. Although the Government did not dispute that the above remedies had been brought, it maintained that the Commission should not have found the petition admissible, much less submitted it to the Court, because of the

failure to exhaust the remedies provided by Honduran law, given that there are no final decisions in the record that show the contrary. It stated that the first writ of habeas corpus was declared void because the person bringing it did not follow through; regarding the second and third, the Government explained that additional writs cannot be brought on the same subject, the same facts, and based on the same legal provisions. As to the criminal complaints, the Government stated that no evidence had been submitted and, although presumptions had been raised, no proof had been offered and that the proceeding was still before Honduran courts until those guilty were specifically identified. It stated that one of the proceedings was dismissed for lack of evidence with respect to those accused who appeared before the court, but not with regard to General Alvarez Martínez, who was out of the country. Moreover, the Government maintained that dismissal does not exhaust domestic remedies because the extraordinary remedies of amparo, rehearing and cassation may be invoked and, in the instant case, the statute of limitations has not yet run, so the proceeding is pending.

76. The record (infra Chapter V) contains testimony of members of the Legislative Assembly of Honduras, Honduran lawyers, persons who were at one time disappeared, and relatives of disappeared persons, which purports to show that in the period in which the events took place, the legal remedies in Honduras were ineffective in obtaining the liberty of victims of a practice of enforced or involuntary disappearances (hereinafter " disappearance " or " disappearances "), ordered or tolerated by the Government. The record also contains dozens of newspaper clippings which allude to the same practice. According to that evidence, from 1981 to 1984 more than one hundred persons were illegally detained, many of whom never reappeared, and, in general, the legal remedies which the Government claimed were available to the victims were ineffective.

77. That evidence also shows that some individuals were captured and detained without due process and subsequently reappeared. However, in some of those cases, the reappearances were not the result of any of the legal remedies which, according to the Government, would have been effective, but rather the result of other circumstances, such as the intervention of diplomatic missions or actions of human rights organizations.

78. The evidence offered shows that lawyers who filed writs of habeas corpus were intimidated, that those who were responsible for executing the writs were frequently prevented from entering or inspecting the places of detention, and that occasional criminal complaints against military or police officials were ineffective, either because certain procedural steps were not taken or because the complaints were dismissed without further proceedings.

79. The Government had the opportunity to call its own witnesses to refute the evidence presented by the Commission, but failed to do so. Although the Government's attorneys contested some of the points urged by the Commission, they did not offer convincing evidence to support their arguments. The Court summoned as witnesses some members of the armed forces mentioned during the proceeding, but their testimony was insufficient to overcome the weight of the evidence offered by the Commission to show that the judicial and governmental authorities did not act with due diligence in cases of disappearances. The instant case is such an example.

80. The testimony and other evidence received and not refuted leads to the conclusion that, during the period under consideration, although there may have been legal remedies in Honduras that theoretically allowed a person detained by the authorities to be found, those remedies were ineffective in cases of disappearances because the imprisonment was clandestine; formal requirements made them inapplicable in practice; the authorities against whom they were brought simply ignored them, or because attorneys and judges were threatened and intimidated by those authorities.

81. Aside from the question of whether between 1981 and 1984 there was a governmental policy of carrying out or tolerating the disappearance of certain persons, the Commission has shown that although writs of habeas corpus and criminal complaints were filed, they were ineffective or were mere formalities. The evidence offered by the Commission was not refuted and is sufficient to reject the Government's preliminary objection that the case is inadmissible because domestic remedies were not exhausted.

82. The Commission presented testimony and documentary evidence to show that there were many kidnappings and disappearances in Honduras from 1981 to 1984 and that those acts were attributable to the Armed Forces of

Honduras (hereinafter " Armed Forces "), which was able to rely at least on the tolerance of the Government. Three officers of the Armed Forces testified on this subject at the request of the Court.

83. Various witnesses testified that they were kidnapped, imprisoned in clandestine jails and tortured by members of the Armed Forces (testimony of Inés Consuelo Murillo, José Gonzalo Flores Trejo, Virgilio Carías, Milton Jiménez Puerto, René Velásquez Díaz and Leopoldo Aguilar Villalobos).

84. Inés Consuelo Murillo testified that she was secretly held for approximately three months. According to her testimony, she and José Gonzalo Flores Trejo, whom she knew casually, were captured on March 13, 1983 by men who got out of a car, shouted that they were from Immigration and hit her with their weapons. Behind them was another car which assisted in the capture. She said she was blindfolded, bound, and driven presumably to San Pedro Sula, where she was taken to a secret detention center. There she was tied up, beaten, kept nude most of the time, not fed for many days, and subjected to electrical shocks, hanging, attempts to asphyxiate her, threats of burning her eyes, threats with weapons, burns on the legs, punctures of the skin with needles, drugs and sexual abuse. She admitted carrying false identification when detained, but ten days later she gave them her real name. She stated that thirty-six days after her detention she was moved to a place near Tegucigalpa, where she saw military officers (one of whom was Second Lt. Marco Tulio Regalado Hernández), papers with an Army letterhead, and Armed Forces graduation rings. ThiS witness added that she was finally turned over to the police and was brought before a court. She was accused of some twenty crimes, but her attorney was not allowed to present evidence and there was no trial (testimony of Inés Consuelo Murillo).

85. Lt. Regalado Hernández said that he had no knowledge of the case of Inés Consuelo Murillo, except for what he had read in the newspaper (testimony of Marco Tulio Regalado Hernández).

86. The Government stated that it was unable to inform Ms. Murillo's relatives of her detention because she was carrying false identification, a fact which also showed, in the Government's opinion, that she was not involved in lawful activities and was, therefore, not telling the whole truth. It added that her testimony of a casual relationship with José Gonzalo Flores Trejo was not credible because both were clearly involved in criminal activities.

87. José Gonzalo Flores Trejo testified that he and Inés Consuelo Murillo were kidnapped together and taken to a house presumably located in San Pedro Sula, where his captors repeatedly forced his head into a trough of water until he almost drowned, kept his hands and feet tied, and hung him so that only his stomach touched the ground. He also declared that, subsequently, in a place where he was held near Tegucigalpa, his captors covered his head with a " capucha " (a piece of rubber cut from an inner tube, which prevents a person from breathing through the mouth and nose), almost asphyxiating him, and subjected him to electric shocks. He said he knew he was in the hands of the military because when his blindfold was removed in order to take some pictures of him, he saw a Honduran military officer and on one occasion when they took him to bathe, he saw a military barracks. He also heard a trumpet sound, orders being given and the report of a cannon (testimony of José Gonzalo Flores Trejo).

88. The Government argued that the testimony of the witness, a Salvadoran national, was not credible because he attempted to convince the Court that his encounters with Inés Consuelo Murillo were of a casual nature. The Government added that both individuals were involved in illicit activities.

89. Virgilio Carías, who was President of the Socialist Party of Honduras, testified that he was kidnapped in broad daylight on September 12, 1981, when 12 or 13 persons, armed with pistols, carbines and automatic rifles, surrounded his automobile. He stated that he was taken to a secret jail, threatened and beaten, and had no food, water or bathroom facilities for four or five days. On the tenth day, his captors gave him an injection in the arm and threw him, bound, in the back of a pick-up truck. Subsequently, they draped him over the back of a mule and set it walking through the mountains near the Nicaraguan border, where he regained his liberty (testimony of Virgilio Carías).

90. The Government indicated that this witness expressly admitted that he opposed the Honduran government. The Government also maintained that his answers were imprecise or evasive and argued that, because the

witness said he could not identify his captors, his testimony was hearsay and of no evidentiary value since, in the Government's view, he had no personal knowledge of the events and only knew of them through others.

91. A Honduran attorney, who stated that he defended political prisoners, testified that Honduran security forces detained him without due process in 1982. He was held for ten days in a clandestine jail, without charges, and was beaten and tortured before he was brought before the court (testimony of Milton Jiménez Puerto).

92. The Government affirmed that the witness was charged with the crimes of threatening national security and possession of arms that only the Armed Forces were authorized to carry and, therefore, had a personal interest in discrediting Honduras with his testimony.

93. Another lawyer, who also said that he defended political detainees and who testified on Honduran law, stated that personnel of the Department of Special Investigations detained him in broad daylight in Tegucigalpa on June 1, 1982, blindfolded him, took him to a place he was unable to recognize and kept him without food or water for four days. He was beaten and insulted. He said that he could see through the blindfold that he was in a military installation (testimony of René Velásquez Díaz).

94. The Government claimed that this witness made several false statements regarding the law in force in Honduras and that his testimony " lacks truth or force because it is not impartial and his interest is to discredit the State of Honduras. "

95. The Court received testimony which indicated that somewhere between 112 and 130 individuals were disappeared from 1981 to 1984. A former member of the Armed Forces testified that, according to a list in the files of Battalion 316, the number might be 140 or 150 (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga and Florencio Caballero).

96. The Court heard testimony from the President of the Committee for the Defense of Human Rights in Honduras regarding the existence of a unit within the Armed Forces which carried out disappearances. According to his testimony, in 1980 there was a group called " the fourteen " under the command of Major Adolfo Díaz, attached to the General Staff of the Armed Forces. Subsequently, this group was replaced by " the ten, " commanded by Capt. Alexander Hernández, and finally by Battalion 316, a special operations group, with separate units trained in surveillance, kidnapping, execution, telephone tapping, etc. The existence of this group had always been denied until it was mentioned in a communique of the Armed Forces in September 1986 (testimony of Ramón Custodio López. See also the testimony of Florencio Caballero).

97. Alexander Hernández, now a Lieutenant Colonel, denied having participated in the group " the ten, " having been a part of Battalion 316, or having had any type of contact with it (testimony of Alexander Hernández).

98. The current Director of Honduran Intelligence testified that he learned from the files of his department that in 1984 an intelligence battalion called 316 was created, the purpose of which was to provide combat intelligence to the 101st, 105th and 110th Brigades. He added that this battalion initially functioned as a training unit, until the creation of the Intelligence School, to which all its training functions were gradually transferred, and that the Battalion was finally disbanded in September 1987. He stated that there was never any group called " the fourteen " or " the ten " in the Armed Forces or security forces (testimony of Roberto Núñez Montes).

99. According to testimony on the modus operandi of the practice of disappearances, the kidnappers followed a pattern: they used automobiles with tinted glass (which requires a special permit from the Traffic Division), without license plates or with false plates, and sometimes used special disguises, such as wigs, false mustaches, masks, etc. The kidnappings were selective. The victims were first placed under surveillance, then the kidnapping was planned. Microbuses or vans were used. Some victims were taken from their homes; others were picked up in public streets. On one occasion, when a patrol car intervened, the kidnappers identified themselves as members of a special group of the Armed Forces and were permitted to leave with the victim (testimony of Ramón Custodio López, Miguel Angel Pavón Salazar, Efraín Díaz Arrivillaga and Florencio Caballero).

100. A former member of the Armed Forces, who said that he belonged to Battalion 316 (the group charged with carrying out the kidnappings) and that he had participated in some kidnappings, testified that the starting point was an order given by the chief of the unit to investigate an individual and place him under surveillance. According to this witness, if a decision was made to take further steps, the kidnapping was carried out by persons in civilian clothes using pseudonyms and disguises and carrying arms. The unit had four double-cabin Toyota pick-up trucks without police markings for use in kidnappings. Two of the pickups had tinted glass (testimony of Florencio Caballero. See also testimony of Virgilio Carías).

101. The Government objected, under Article 37 of the Rules of Procedure, to the testimony of Florencio Caballero because he had deserted from the Armed Forces and had violated his military oath. By unanimous decision of October 6, 1987, the Court rejected the challenge and reserved the right to consider his testimony.

102. The current Director of Intelligence of the Armed Forces testified that intelligence units do not carry out detentions because they " get burned " (are discovered) and do not use pseudonyms or automobiles without license plates. He added that Florencio Caballero never worked in the intelligence services and that he was a driver for the Army General Headquarters in Tegucigalpa (testimony of Roberto Núñez Montes).

103. The former member of the Armed Forces confirmed the existence of secret jails and of specially chosen places for the burial of those executed. He also related that there was a torture group and an interrogation group in his unit, and that he belonged to the latter. The torture group used electric shock, the water barrel and the " capucha. " They kept the victims nude, without food, and threw cold water on them. He added that those selected for execution were handed over to a group of former prisoners, released from jail for carrying out executions, who used firearms at first and then knives and machetes (testimony of Florencio Caballero).

104. The current Director of Intelligence denied that the Armed Forces had secret jails, stating that it was not its modus operandi. He claimed that it was subversive elements who do have such jails, which they call " the peoples' prisons. " He added that the function of an intelligence service is not to eliminate or disappear people, but rather to obtain and process information to allow the highest levels of government to make informed decisions (testimony of Roberto Núñez Montes).

105. A Honduran officer, called as a witness by the Court, testified that the use of violence or psychological means to force a detainee to give information is prohibited (testimony of Marco Tulio Regalado Hernández).

106. The Commission submitted many clippings from the Honduran press from 1981 to 1984 which contain information on at least 64 disappearances, which were apparently carried out against ideological or political opponents or trade union members. Six of those individuals, after their release, complained of torture and other cruel, inhuman and degrading treatment. These clippings mention secret cemeteries where 17 bodies had been found.

107. According to the testimony of his sister, eyewitnesses to the kidnapping of Manfredo Velásquez told her that he was detained on September 12, 1981, between 4:30 and 5:00 p.m., in a parking lot in downtown Tegucigalpa by seven heavily-armed men dressed in civilian clothes (one of them being First Sgt. José Isaías Vilorio), who used a white Ford without license plates (testimony of Zenaida Velásquez. See also testimony of Ramón Custodio López).

108. This witness informed the Court that Col. Leonidas Torres Arias, who had been head of Honduran military intelligence, announced in a press conference in Mexico City that Manfredo Velásquez was kidnapped by a special squadron commanded by Capt. Alexander Hernández, who was carrying out the direct orders of General Gustavo Alvarez Martínez (testimony of Zenaida Velásquez).

109. Lt. Col. Hernández testified that he never received any order to detain Manfredo Velásquez and had never worked in police operations (testimony of Alexander Hernández).

110. The Government objected, under Article 37 of the Rules of Procedure, to the testimony of Zenaida Velásquez because, as sister of the victim, she was a party interested in the outcome of the case.

111. The Court unanimously rejected the objection because it considered the fact that the witness was the victim's sister to be insufficient to disqualify her. The Court reserved the right to consider her testimony.

112. The Government asserted that her testimony was irrelevant because it did not refer to the case before the Court and that what she related about the kidnapping of her brother was not her personal knowledge but rather hearsay.

113. The former member of the Armed Forces who claimed to have belonged to the group that carried out kidnappings told the Court that, although he did not take part in the kidnapping of Manfredo Velásquez, Lt. Flores Murillo had told him what had happened. According to this testimony, Manfredo Velásquez was kidnapped in downtown Tegucigalpa in an operation in which Sgt. José Isaías Vilorio, men using the pseudonyms Ezequiel and Titanio, and Lt. Flores Murillo himself, took part. The Lieutenant told him that during the struggle Ezequiel's gun went off and wounded Manfredo in the leg. They took the victim to INDUMIL (Military Industries) where they tortured him. They then turned him over to those in charge of carrying out executions who, at the orders of General Alvarez, Chief of the Armed Forces, took him out of Tegucigalpa and killed him with a knife and machete. They dismembered his body and buried the remains in different places (testimony of Florencio Caballero).

114. The current Director of Intelligence testified that Jose Isaías Vilorio was a file clerk of the DNI. He said he did not know Lt. Flores Murillo and stated that INDUMIL had never been used as a detention center (testimony of Roberto Núñez Montes).

115. One witness testified that he was taken prisoner on September 29, 1981 by five or six persons who identified themselves as members of the Armed Forces and took him to the offices of DNI. They blindfolded him and took him in a car to an unknown place, where they tortured him. On October 1, 1981, while he was being held, he heard a moaning and pained voice through a hole in the door to an adjoining room. The person identified himself as Manfredo Velásquez and asked for help. According to the testimony of the witness, at that moment Lt. Ramón Mejía came in and hit him because he found him standing up, although the witness told the Lieutenant that he had gotten up because he was tired. He added that, subsequently, Sgt. Carlos Alfredo Martínez, whom he had met at the bar where he worked, told him they had turned Manfredo Velásquez over to members of Battalion 316 (testimony of Leopoldo Aguilar Villalobos).

116. The Government asserted that the testimony of this witness " is not completely trustworthy because of discrepancies that should not be overlooked, such as the fact that he had testified that he had only been arrested once, in 1981, for trafficking in arms and hijacking a plane, when the truth was that Honduran police had arrested him on several occasions because of his unenviable record. "

117. The Commission also presented evidence to show that from 1981 to 1984 domestic judicial remedies in Honduras were ineffective in protecting human rights, especially the rights of disappeared persons to life, liberty and personal integrity.

118. The Court heard the following testimony with respect to this point:

"a. The legal procedures of Honduras were ineffective in ascertaining the whereabouts of detainees and ensuring respect for their physical and moral integrity. When writs of HABEAS corpus were brought, the courts were slow to name judges to execute them and, once named, those judges were often ignored by police authorities. On several occasions, the authorities denied the detentions, even in cases in which the prisoners were later released. There were no judicial orders for the arrests and the places of detention were unknown. When writs of HABEAS corpus were formalized, the police authorities did not present the persons named in the writs (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Milton Jiménez Puerto and Efraín Díaz Arrivillaga).

b. The judges named by the Courts of Justice to execute the writs did not enjoy all the necessary guarantees. Moreover, they feared reprisals because they were often threatened. Judges were imprisoned on more than one occasion and some of them were physically mistreated by the authorities. Law professors and lawyers who defended political prisoners were pressured not to act in cases of human rights violations. Only two dared bring

writs of HABEAS corpus on behalf of disappeared persons and one of those was arrested while he was filing a writ (testimony of Milton Jiménez Puerto, Miguel Angel Pavón Salazar, Ramón Custodio López, Cesar Augusto Murillo, René Velásquez Díaz and Zenaida Velásquez).

c. In no case between 1981 and 1984 did a writ of HABEAS corpus on behalf of a disappeared person prove effective. If some individuals did reappear, this was not the result of such a legal remedy (testimony of Miguel Angel Pavón Salazar, Inés Consuelo Murillo, Cesar Augusto Murillo, Milton Jiménez Puerto, René Velásquez Díaz and Virgilio Carías)."

119. The testimony and documentary evidence, corroborated by press clippings, presented by the Commission, tend to show:

"a. That there existed in Honduras from 1981 to 1984 a systematic and selective practice of disappearances carried out with the assistance or tolerance of the government;

b. That Manfredo Velásquez was a victim of that practice and was kidnapped and presumably tortured, executed and clandestinely buried by agents of the Armed Forces of Honduras, and

c. That in the period in which those acts occurred, the legal remedies available in Honduras were not appropriate or effective to guarantee his rights to life, liberty and personal integrity."

120. The Government, in turn, submitted documents and based its argument on the testimony of three members of the Honduran Armed Forces, two of whom were summoned by the Court because they had been identified in the proceedings as directly involved in the general practice referred to and in the disappearance of Manfredo Velásquez. This evidence may be summarized as follows:

"a. The testimony purports to explain the organization and functioning of the security forces accused of carrying out the specific acts and denies any knowledge of or personal involvement in the acts of the officers who testified;

b. Some documents purport to show that no civil suit had been brought to establish a presumption of the death of Manfredo Velásquez, and

c. Other documents purport to prove that the Supreme Court of Honduras received and acted upon some writs of HABEAS corpus and that some of those writs resulted in the release of the persons on whose behalf they were brought."

121. The record contains no other direct evidence, such as expert opinion, inspections or reports.

122. Before weighing the evidence, the Court must address some questions regarding the burden of proof and the general criteria considered in its evaluation and finding of the facts in the instant proceeding.

123. Because the Commission is accusing the Government of the disappearance of Manfredo Velásquez, it, in principle, should bear the burden of proving the facts underlying its petition.

124. The Commission's argument relies upon the proposition that the policy of disappearances, supported or tolerated by the Government, is designed to conceal and destroy evidence of disappearances. When the existence of such a policy or practice has been shown, the disappearance of a particular individual may be proved through circumstantial or indirect evidence or by logical inference. Otherwise, it would be impossible to prove that an individual has been disappeared.

125. The Government did not object to the Commission's approach. Nevertheless, it argued that neither the existence of a practice of disappearances in Honduras nor the participation of Honduran officials in the alleged disappearance of Manfredo Velásquez had been proven.

126. The Court finds no reason to consider the Commission's argument inadmissible. If it can be shown that there was an official practice of disappearances in Honduras, carried out by the Government or at least tolerated by it, and if the disappearance of Manfredo Velásquez can be linked to that practice, the Commission's allegations will have been proven to the Court's satisfaction, so long as the evidence presented on both points meets the standard of proof required in cases such as this.

127. The Court must determine what the standards of proof should be in the instant case. Neither the Convention, the Statute of the Court nor its Rules of Procedure speak to this matter. Nevertheless, international jurisprudence has recognized the power of the courts to weigh the evidence freely, although it has always avoided a rigid rule regarding the amount of proof necessary to support the judgment (Cfr. Corfu Channel, Merits, Judgment, I.C.J. Reports 1949; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, paras. 29-30 and 59-60).

128. The standards of proof are less formal in an international legal proceeding than in a domestic one. The latter recognize different burdens of proof, depending upon the nature, character and seriousness of the case.

129. The Court cannot ignore the special seriousness of finding that a State Party to the Convention has carried out or has tolerated a practice of disappearances in its territory. This requires the Court to apply a standard of proof which considers the seriousness of the charge and which, notwithstanding what has already been said, is capable of establishing the truth of the allegations in a convincing manner.

130. The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.

131. Circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.

132. Since this Court is an international tribunal, it has its own specialized procedures. All the elements of domestic legal procedures are therefore not automatically applicable.

133. The above principle is generally valid in international proceedings, but is particularly applicable in human rights cases.

134. The international protection of human rights should not be confused with criminal justice. States do not appear before the Court as defendants in a criminal action. The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible.

135. In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

136. The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.

137. Since the Government only offered some documentary evidence in support of its preliminary objections, but none on the merits, the Court must reach its decision without the valuable assistance of a more active participation by Honduras, which might otherwise have resulted in a more adequate presentation of its case.

138. The manner in which the Government conducted its defense would have sufficed to prove many of the Commission's allegations by virtue of the principle that the silence of the accused or elusive or ambiguous

answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law. This result would not hold under criminal law, which does not apply in the instant case (supra 134 and 135). The Court tried to compensate for this procedural principle by admitting all the evidence offered, even if it was untimely, and by ordering the presentation of additional evidence. This was done, of course, without prejudice to its discretion to consider the silence or inaction of Honduras or to its duty to evaluate the evidence as a whole.

139. In its own proceedings and without prejudice to its having considered other elements of proof, the Commission invoked Article 42 of its Regulations, which reads as follows:

"The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion."

Because the Government did not object here to the use of this legal presumption in the proceedings before the Commission and since the Government fully participated in these proceedings, Article 42 is irrelevant here.

140. In the instant case, the Court accepts the validity of the documents presented by the Commission

and by Honduras, particularly because the parties did not oppose or object to those documents nor did they question their authenticity or veracity.

141. During the hearings, the Government objected, under Article 37 of the Rules of Procedure, to the testimony of witnesses called by the Commission. By decision of October 6, 1987, the Court rejected the challenge, holding as follows:

"b. The objection refers to circumstances under which, according to the Government, the testimony of these witnesses might not be objective.

c. It is within the Court's discretion, when rendering judgment, to weigh the evidence.

d. A violation of the human rights set out in the Convention is established by facts found by the Court, not by the method of proof.

f. When testimony is questioned, the challenging party has the burden of refuting that testimony."

142. During cross-examination, the Government's attorneys attempted to show that some witnesses were not impartial because of ideological reasons, origin or nationality, family relations, or a desire to discredit Honduras. They even insinuated that testifying against the State in these proceedings was disloyal to the nation. Likewise, they cited criminal records or pending charges to show that some witnesses were not competent to testify (supra 86, 88, 90, 92, 101, 110 and 116).

143. It is true, of course, that certain factors may clearly influence a witness' truthfulness.

However, the Government did not present any concrete evidence to show that the witnesses had not told the truth, but rather limited itself to making general observations regarding their alleged incompetency or lack of impartiality. This is insufficient to rebut testimony which is fundamentally consistent with that of other witnesses. The Court cannot ignore such testimony.

144. Moreover, some of the Government's arguments are unfounded within the context of human rights law. The insinuation that persons who, for any reason, resort to the inter-American system for the protection of human rights are disloyal to their country is unacceptable and cannot constitute a basis for any penalty or negative consequence. Human rights are higher values that " are not derived from the fact that (an individual) is a national of a certain state, but are based upon attributes of his human personality " (American Declaration of the Rights and Duties of Man, Whereas clauses, and American Convention, Preamble).

145. Neither is it sustainable that having a criminal record or charges pending is sufficient in and of itself to find that a witness is not competent to testify in Court. As the Court ruled, in its decision of October 6, 1987, in the instant case.

"under the American Convention on Human Rights, it is impermissible to deny a witness, a priori, the possibility of testifying to facts relevant to a matter before the Court, even if he has an interest in that proceeding, because he has been prosecuted or even convicted under internal laws."

146. Many of the press clippings offered by the Commission cannot be considered as documentary evidence as such. However, many of them contain public and well-known facts which, as such, do not require proof; others are of evidentiary value, as has been recognized in international jurisprudence (Military and Paramilitary Activities in and against Nicaragua, supra 127, paras. 62-64), insofar as they textually reproduce public statements, especially those of high-ranking members of the Armed Forces, of the Government, or even of the Supreme Court of Honduras, such as some of those made by the President of the latter. Finally, others are important as a whole insofar as they corroborate testimony regarding the responsibility of the Honduran military and police for disappearances.

147. The Court now turns to the relevant facts that it finds to have been proven. They are as follows:

"a. During the period 1981 to 1984, 100 to 150 persons disappeared in the Republic of Honduras, and many were never heard from again (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga, Florencio Caballero and press clippings).

b. Those disappearances followed a similar pattern, beginning with the kidnapping of the victims by force, often in broad daylight and in public places, by armed men in civilian clothes and disguises, who acted with apparent impunity and who used vehicles without any official identification, with tinted windows and with false license plates or no plates (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga, Florencio Caballero and press clippings).

c. It was public and notorious knowledge in Honduras that the kidnappings were carried out by military personnel or the police, or persons acting under their orders (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga, Florencio Caballero and press clippings).

d. The disappearances were carried out in a systematic manner, regarding which the Court considers the following circumstances particularly relevant:

i. The victims were usually persons whom Honduran officials considered dangerous to State security (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Efraín Díaz Arrivillaga, Florencio Caballero, Virgilio Carías, Milton Jiménez Puerto, René Velásquez Díaz, Inés Consuelo Murillo, José Gonzalo Flores Trejo, Zenaida Velásquez, Cesar Augusto Murillo and press clippings). In addition, the victims had usually been under surveillance for long periods of time (testimony of Ramón Custodio López and Florencio Caballero);

ii. The arms employed were reserved for the official use of the military and police, and the vehicles used had tinted glass, which requires special official authorization. In some cases, Government agents carried out the detentions openly and without any pretense or disguise; in others, government agents had cleared the areas where the kidnappings were to take place and, on at least one occasion, when government agents stopped the kidnappers they were allowed to continue freely on their way after showing their identification (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López and Florencio Caballero);

iii. The kidnappers blindfolded the victims, took them to secret, unofficial detention centers and moved them from one center to another. They interrogated the victims and subjected them to cruel and humiliating treatment and torture. Some were ultimately murdered and their bodies were buried in clandestine cemeteries (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Florencio Caballero, René Velásquez Díaz, Inés Consuelo Murillo and José Gonzalo Flores Trejo);

iv. When queried by relatives, lawyers and persons or entities interested in the protection of human rights, or by judges charged with executing writs of HABEAS corpus, the authorities systematically denied any knowledge of the detentions or the whereabouts or fate of the victims. That attitude was seen even in the cases of persons who later reappeared in the hands of the same authorities who had systematically denied holding them or knowing their fate (testimony of Inés Consuelo Murillo, José Gonzalo Flores Trejo, Efraín Díaz Arrivillaga, Florencio Caballero, Virgilio Carías, Milton Jiménez Puerto, René Velásquez Diaz, Zenaida Velásquez, Cesar Augusto Murillo and press clippings);

v. Military and police officials as well as those from the Executive and Judicial Branches either denied the disappearances or were incapable of preventing or investigating them, punishing those responsible, or helping those interested discover the whereabouts and fate of the victims or the location of their remains. The investigative committees created by the Government and the Armed Forces did not produce any results. The judicial proceedings brought were processed slowly with a clear lack of interest and some were ultimately dismissed (testimony of Inés Consuelo Murillo, José Gonzalo Flores Trejo, Efraín Díaz Arrivillaga, Florencio Caballero, Virgilio Carías, Milton Jiménez Puerto, René Velásquez Díaz, Zenaida Velásquez, César Augusto Murillo and press clippings);

e. On September 12, 1981, between 4:30 and 5:00 p.m., several heavily-armed men in civilian clothes driving a white Ford without license plates kidnapped Manfredo Velásquez from a parking lot in downtown Tegucigalpa. Today, nearly seven years later, he remains disappeared, which creates a reasonable presumption that he is dead (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Zenaida Velásquez, Florencio Caballero, Leopoldo Aguilar Villalobos and press clippings).

f. Persons connected with the Armed Forces or under its direction carried out that kidnapping (testimony of Ramón Custodio López, Zenaida Velásquez, Florencio Caballero, Leopoldo Aguilar Villalobos and press clippings).

g. The kidnapping and disappearance of Manfredo Velásquez falls within the systematic practice of disappearances referred to by the facts deemed proved in paragraphs a-d. To wit:

i. Manfredo Velásquez was a student who was involved in activities the authorities considered " dangerous " to national security (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López and Zenaida Velásquez).

ii. The kidnapping of Manfredo Velásquez was carried out in broad daylight by men in civilian clothes who used a vehicle without license plates.

iii. In the case of Manfredo Velásquez, there were the same type of denials by his captors and the Armed Forces, the same omissions of the latter and of the Government in investigating and revealing his whereabouts, and the same ineffectiveness of the courts where three writs of HABEAS corpus and two criminal complaints were brought (testimony of Miguel Angel Pavón Salazar, Ramón Custodio López, Zenaida Velásquez, press clippings and documentary evidence).

h. There is no evidence in the record that Manfredo Velásquez had disappeared in order to join subversive groups, other than a letter from the Mayor of Langue, which contained rumors to that effect. The letter itself shows that the Government associated him with activities it considered a threat to national security. However, the Government did not corroborate the view expressed in the letter with any other evidence. Nor is there any evidence that he was kidnapped by common criminals or other persons unrelated to the practice of disappearances existing at that time."

148. Based upon the above, the Court finds that the following facts have been proven in this proceeding: (1) a practice of disappearances carried out or tolerated by Honduran officials existed between 1981 and 1984; (2) Manfredo Velásquez disappeared at the hands of or with the acquiescence of those officials within the framework of that practice; and (3) the Government of Honduras failed to guarantee the human rights affected by that practice.

149. Disappearances are not new in the history of human rights violations. However, their systematic and repeated nature and their use not only for causing certain individuals to disappear, either briefly or permanently, but also as a means of creating a general state of anguish, insecurity and fear, is a recent phenomenon. Although this practice exists virtually worldwide, it has occurred with exceptional intensity in Latin America in the last few years.

150. The phenomenon of disappearances is a complex form of human rights violation that must be understood and confronted in an integral fashion.

151. The establishment of a Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights, by Resolution 20 (XXXVI) of February 29, 1980, is a clear demonstration of general censure and repudiation of the practice of disappearances, which had already received world attention at the UN General Assembly (Resolution 33/173 of December 20, 1978), the Economic and Social Council (Resolution 1979/38 of May 10, 1979) and the Subcommission for the Prevention of Discrimination and Protection of Minorities (Resolution 5B (XXXII) of September 5, 1979). The reports of the rapporteurs or special envoys of the Commission on Human Rights show concern that the practice of disappearances be stopped, the victims reappear and that those responsible be punished.

152. Within the inter-American system, the General Assembly of the Organization of American States (OAS) and the Commission have repeatedly referred to the practice of disappearances and have urged that disappearances be investigated and that the practice be stopped (AG/RES.443 (IX-0/79) of October 31, 1979; AG/RES.510 (X-0/80) of November 27, 1980; AG/RES.618 (XII-0/82) of November 20, 1982; AG/RES.666 (XIII-0/83) of November 18, 1983; AG/RES.742 (XIV-0/84) of November 17, 1984 and AG/RES.890 (XVII-0/87) of November 14, 1987; Inter-American Commission on Human Rights: Annual Report 1978, pp. 24-27; Annual Report, 1980-1981, pp. 113-114; Annual Report, 1982-1983, pp. 46-47; Annual Report, 1985-1986, pp. 37-40; Annual Report, 1986-1987, pp. 277-284 and in many of its Country Reports, such as OEA/Ser.L/V/II.49, doc. 19, 1980 (Argentina); OEA/Ser.L/V/II.66, doc. 17, 1985 (Chile) and OEA/Ser.L/V/II.66, doc. 16, 1985 (Guatemala)).

153. International practice and doctrine have often categorized disappearances as a crime against humanity, although there is no treaty in force which is applicable to the States Parties to the Convention and which uses this terminology (InterAmerican Yearbook on Human Rights, 1985, pp. 368, 686 and 1102). The General Assembly of the OAS has resolved that it " is an affront to the conscience of the hemisphere and constitutes a crime against humanity " (AG/RES.666, supra) and that " this practice is cruel and inhuman, mocks the rule of law, and undermines those norms which guarantee protection against arbitrary detention and the right to personal security and safety " (AG/RES.742, supra).

154. Without question, the State has the right and duty to guarantee its security. It is also indisputable that all societies suffer some deficiencies in their legal orders. However, regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends. The State is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any State action.

155. The forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee. The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty by providing that:

"1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies."

156. Moreover, prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person by providing that:

"1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

In addition, investigations into the practice of disappearances and the testimony of victims who have regained their liberty show that those who are disappeared are often subjected to merciless treatment, including all types of indignities, torture and other cruel, inhuman and degrading treatment, in violation of the right to physical integrity recognized in Article 5 of the Convention.

157. The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention, the first clause of which reads as follows:

"1. Every person has the right to have his life respected. m is right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."

158. The practice of disappearances, in addition to directly violating many provisions of the Convention, such as those noted above, constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention. The existence of this practice, more over, evinces a disregard of the duty to organize the State in such a manner as to guarantee the rights recognized in the Convention, as set out below.

159. The Commission has asked the Court to find that Honduras has violated the rights guaranteed to Manfredo Velasquez by Articles 4, 5 and 7 of the Convention. The Government has denied the charges and seeks to be absolved.

160. This requires the Court to examine the conditions under which a particular act, which violates one of the rights recognized by the Convention, can be imputed to a State Party thereby establishing its international responsibility.

161. Article 1(1) of the Convention provides:

"Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

162. This article specifies the obligation assumed by the States Parties in relation to each of the rights protected. Each claim alleging that one of those rights has been infringed necessarily implies that Article 1(1) of the Convention has also been violated.

163. The Commission did not specifically allege the violation of Article 1(1) of the Convention, but that does not preclude the Court from applying it. The precept contained therein constitutes the generic basis of the protection of the rights recognized by the Convention and would be applicable, in any case, by virtue of a general principle of law, iura novit curia, on which international jurisprudence has repeatedly relied and under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them (" Lotus ", Judgment No. 9, 1927, P.C.I.J., Series A No. 10, p. 31 and Eur. Court H.R., Elandyside Case, Judgment of 7 December 1976, Series A No. 24, para. 41).

164. Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.

165. The first obligation assumed by the States Parties under Article 1(1) is " to respect the rights and freedoms " recognized by the Convention. The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State. On another occasion, this Court stated:

"The protection of human rights, particularly the civil and political rights set forth in the Convention, is in effect based on the affirmation of the existence of certain inviolable attributes of the individual that cannot be legitimately restricted through the exercise of governmental power. These are individual domains that are beyond the reach of the State or to which the State has but limited access. Thus, the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power (The Word " Laws" in Article 30 of the American Convention on Human Rights, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21)."

166. The second obligation of the States Parties is to " ensure " the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.

167. The obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation - it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.

168. The obligation of the States is, thus, much more direct than that contained in Article 2, which reads:

"Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and

the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms."

169. According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention.

170. This conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority: under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.

171. This principle suits perfectly the nature of the Convention, which is violated whenever public power is used to infringe the rights recognized therein. If acts of public power that exceed the State's authority or are illegal under its own laws were not considered to compromise that State's obligation under the treaty, the system of protection provided for in the Convention would be illusory.

172. Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.

173. Violations of the Convention cannot be founded upon rules that take psychological factors into account in establishing individual culpability. For the purposes of analysis, the intent or motivation of the agent who has violated the rights recognized by the Convention is irrelevant - the violation can be established even if the identity of the individual perpetrator is unknown. What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court's task is to determine whether the violation is the result of a State's failure to fulfill its duty to respect and guarantee those rights, as required by Article 1(1) of the Convention.

174. The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

175. This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages. It is not possible to make a detailed list of all such measures, since they vary with the law and the conditions of each State Party. Of course, while the State is obligated to prevent human rights abuses, the existence of a particular violation does not, in itself, prove the failure to take preventive measures. On the other hand, subjecting a person to official, repressive bodies that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person, even if that particular person is not tortured or assassinated, or if those facts cannot be proven in a concrete case.

176. The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.

177. In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.

178. In the instant case, the evidence shows a complete inability of the procedures of the State of Honduras, which were theoretically adequate, to carry out an investigation into the disappearance of Manfredo Velásquez, and of the fulfillment of its duties to pay compensation and punish those responsible, as set out in Article 1(1) of the Convention.

179. As the Court has verified above, the failure of the judicial system to act upon the writs brought before various tribunals in the instant case has been proven. Not one writ of habeas corpus was processed. No judge had access to the places where Manfredo Velasquez might have been detained. The criminal complaint was dismissed.

180. Nor did the organs of the Executive Branch carry out a serious investigation to establish the fate of Manfredo Velasquez. There was no investigation of public allegations of a practice of disappearances nor a determination of whether Manfredo Velásquez had been a victim of that practice. The Commission's requests for information were ignored to the point that the Commission had to presume, under Article 42 of its Regulations, that the allegations were true. The offer of an investigation in accord with Resolution 30/83 of the Commission resulted in an investigation by the Armed Forces, the same body accused of direct responsibility for the disappearances. This raises grave questions regarding the seriousness of the investigation. The Government often resorted to asking relatives of the victims to present conclusive proof of their allegations even though those allegations, because they involved crimes against the person, should have been investigated on the Government's own initiative in fulfillment of the State's duty to ensure public order. This is especially true when the allegations refer to a practice carried out within the Armed Forces, which, because of its nature, is not subject to private investigations. No proceeding was initiated to establish responsibility for the disappearance of Manfredo Velásquez and apply punishment under internal law. All of the above leads to the conclusion that the Honduran authorities did not take effective action to ensure respect for human rights within the jurisdiction of that State as required by Article 1(1) of the Convention.

181. The duty to investigate facts of this type continues as long as there is uncertainty about the fate of the person who has disappeared. Even in the hypothetical case that those individually responsible for crimes of this type cannot be legally punished under certain circumstances, the State is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains.

182. The Court is convinced, and has so found, that the disappearance of Manfredo Velásquez was carried out by agents who acted under cover of public authority. However, even had that fact not been proven, the failure of the State apparatus to act, which is clearly proven, is a failure on the part of Honduras to fulfill the duties it assumed under Article 1(1) of the Convention, which obligated it to ensure Manfredo Velásquez the free and full exercise of his human rights.

183. The Court notes that the legal order of Honduras does not authorize such acts and that internal law defines them as crimes. The Court also recognizes that not all levels of the Government of Honduras were necessarily aware of those acts, nor is there any evidence that such acts were the result of official orders. Nevertheless, those circumstances are irrelevant for the purposes of establishing whether Honduras is responsible under international law for the violations of human rights perpetrated within the practice of disappearances.

184. According to the principle of the continuity of the State in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act that creates responsibility to the time when the act is declared illegal. The foregoing is also valid in the area of human rights although, from an ethical or political point of view, the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred.

185. The Court, therefore, concludes that the facts found in this proceeding show that the State of Honduras is responsible for the involuntary disappearance of Angel Manfredo Velásquez Rodríguez. Thus, Honduras has violated Articles 7, 5 and 4 of the Convention.

186. As a result of the disappearance, Manfredo Velasquez was the victim of an arbitrary detention, which deprived him of his physical liberty without legal cause and without a determination of the lawfulness of his detention by a judge or competent tribunal. Those acts directly violate the right to personal liberty recognized by Article 7 of the Convention (supra 155) and are a violation imputable to Honduras of the duties to respect and ensure that right under Article 1(1).

187. The disappearance of Manfredo Velásquez violates the right to personal integrity recognized by Article 5 of the Convention (supra 156). First, the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment which harms the psychological and moral integrity of the person, and violates the right of every detainee under Article 5(1) and 5(2) to treatment respectful of his dignity. Second, although it has not been directly shown that Manfredo Velásquez was physically tortured, his kidnapping and imprisonment by governmental authorities, who have been shown to subject detainees to indignities, cruelty and torture, constitute a failure of Honduras to fulfill the duty imposed by Article 1(1) to ensure the rights under Article 5(1) and 5(2) of the Convention. The guarantee of physical integrity and the right of detainees to treatment respectful of their human dignity require States Parties to take reasonable steps to prevent situations which are truly harmful to the rights protected.

188. The above reasoning is applicable to the right to life recognized by Article 4 of the Convention (supra 157). The context in which the disappearance of Manfredo Velasquez occurred and the lack of knowledge seven years later about his fate create a reasonable presumption that he was killed. Even if there is a minimal margin of doubt in this respect, it must be presumed that his fate was decided by authorities who systematically executed detainees without trial and concealed their bodies in order to avoid punishment. This, together with the failure to investigate, is a violation by Honduras of a legal duty under Article 1(1) of the Convention to ensure the rights recognized by Article 4(1). That duty is to ensure to every person subject to its jurisdiction the inviolability of the right to life and the right not to have one's life taken arbitrarily. These rights imply an obligation on the part of States Parties to take reasonable steps to prevent situations that could result in the violation of that right.

189. Article 63(1) of the Convention provides:

"If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

Clearly, in the instant case the Court cannot order that the victim be guaranteed the enjoyment of the rights or freedoms violated. The Court, however, can rule that the consequences of the breach of the rights be remedied and that just compensation be paid.

190. During this proceeding the Commission requested the payment of compensation, but did not offer evidence regarding the amount of damages or the manner of payment. Neither did the parties discuss these matters.

191. The Court believes that the parties can agree on the damages. If an agreement cannot be reached, the Court shall award an amount. The case shall, therefore, remain open for that purpose. The Court reserves the right to approve the agreement and, in the event no agreement is reached, to set the amount and order the manner of payment.

192. The Rules of Procedure establish the legal procedural relations among the Commission, the State or States Parties in the case and the Court itself, which continue in effect until the case is no longer before the Court. As the case is still before the Court, the Government and the Commission should negotiate the agreement referred to in the preceding paragraph. The recipients of the award of damages will be the next-of-kin of the victim. This does not in any way imply a ruling on the meaning of the word " parties " in any other context under the Convention or the rules pursuant thereto.

193. With no pleading to support an award of costs, it is not proper for the Court to rule on them (Art. 45(1), Rules of Procedure).

194. THEREFORE,

THE COURT:

Unanimously

1. Rejects the preliminary objection interposed by the Government of Honduras alleging the inadmissibility of the case for the failure to exhaust domestic legal remedies.

Unanimously

2. Declares that Honduras has violated, in the case of Angel Manfredo Velásquez Rodríguez, its obligations to respect and to ensure the right to personal liberty set forth in Article 7 of the Convention, read in conjunction with Article 1(1) thereof.

Unanimously

3. Declares that Honduras has violated, in the case of Angel Manfredo Velásquez Rodríguez, its obligations to respect and to ensure the right to humane treatment set forth in Article 5 of the Convention, read in conjunction with Article 1(1) thereof.

Unanimously

4. Declares that Honduras has violated, in the case of Angel Manfredo Velásquez Rodríguez, its obligation to ensure the right to life set forth in Article 4 of the Convention, read in conjunction with Article 1(1) thereof.

Unanimously

5. Decides that Honduras is hereby required to pay fair compensation to the next-of-kin of the victim.

By six votes to one

6. Decides that the form and amount of such compensation, failing agreement between Honduras and the Commission within six months of the date of this judgment, shall be settled by the Court and, for that purpose, retains jurisdiction of the case.

Judge Rodolfo E. Piza E. dissenting.

Unanimously

7. Decides that the agreement on the form and amount of the compensation shall be approved by the Court.

Unanimously

8. Does not find it necessary to render a decision concerning costs.

Done in Spanish and in English, the Spanish text being authentic, at the seat of the Court in San Jose, Costa Rica, this twenty-ninth day of July, 1988.

Rafael Nieto-Navia

President

Héctor Gros Espiell

Rodolfo E. Pieza E.

Thomas Buergenthal

Pedro Nikken

Héctor Fix Zamudio

Rigoberto Espinal Irías

Charles Moyer

Secretary

DISSENTING OPINION OF JUDGE PIZA

1. I would have had no reservation in approving the Judgment in its entirety had point 6 been drafted as follows:

"6. Decides that the form and amount of such compensation, failing agreement between the parties, with the intervention of the Commission, within six months of the date of this judgment, shall be settled by the Court and, for that purpose, retains jurisdiction of the case."

I would even have concurred with a less definitive decision to remit the agreement to the parties, without referring to the Commission, as the Court concluded in paragraph l91; but not with the conclusions of paragraph 192, to which I also dissent.

2. My dissent is not on the merits or the basic sense of that provision, insofar as it reserves to the Court the final decision on the compensation awarded in the abstract and leaves to the parties the initiative to reach an agreement within the time period stipulated, but only to the granting of the status of parties for that purpose, which the majority vote gives the Commission, but not the assignees of the victim.

3. I dissent, therefore, in order to be consistent in my interpretation of the Convention and of the Regulations of the Commission and Rules of Procedure of the Court, according to which the only active party in the proceeding before the Court, in a substantive sense, is the victim and his assignees, who possess the rights in question and are the beneficiaries of the provisions contained in the Judgment, in keeping with Article 63(1) of the Convention, which specifically provides that

"... fair compensation be paid to the injured party. "

The Commission, an impartial and instrumental party comparable to a public prosecutor (Ministerio Público) in the inter-American system of protection of human rights, is a party only in a procedural sense, as the prosecution, and not in a substantive or material sense, as beneficiary of the judgment (Arts. 57 and 61, Convention; l9.b of the Regulations of the Commission; and 28 of the Statute of the Court).

4. This thesis regarding the parties in the proceeding before the Court is the same that I have consistently urged, beginning with my Separate Opinions on the decisions of 1981 and 1983 in the Matter of Viviana Gallardo et al. (see, e.g., Decision of November 13, 1981, " Explanation of Vote " by Judge Piza, para. 8, and Decision of

September 8, 1983, " Separate Vote " of Judge Piza, paras. 36, 39 and operative point No. 8, where I argued, inter alia:

"39. ... in my judgment, the parties in the substantial sense are... : a) the State of Costa Rica as the " passive party, " which is charged with the violations and is the eventual debtor of its reparation... and b) as the " active party, " the person entitled to the rights claimed and, therefore, the creditor of any eventual estimatory sentence, the victims.... The Commission is not a party in any substantial sense because it is not the holder of the rights or the duties that might be or can be declared or constituted by the verdict)."

5. Although valid, the majority opinion is deficient because it does not recognize the assignees of Manfredo Velásquez as a party, in conformity with Article 63(1) of the Convention, and, also, insofar as what must be contained in the Judgment according to Article 45(2) and 45(3) of the Rules of Procedure, which read as follows:

"2. Where the Court finds that there is a breach of the Convention, it shall give in the same judgment a decision on the application of Article 63(1) of the Convention if that question, after being raised under Article 43 of these Rules, is ready for decision; if the question is not ready for decision, the Court shall decide on the procedure to follow. If, on the other hand, the matter has not been raised under Article 43, the Court shall determine the period within which it may be presented by a party or by the Commission.

3. If the Court is informed that an aqreement has been reached between the victim of the violation and the State Party concerned, it shall verify the equitable nature of such agreement."

6. In those Separate Opinions, I also explained my position regarding the procedural relationship of the parties, that is, not as beneficiary and debtor, but rather as plaintiff and respondent in the proceeding, as follows:

"40.... there is no valid reason to refuse to the victims, the substantial " active party, " their independent condition of " active party " in the proceedings.... in my judgment, the Convention only bars the individual from submitting a case to the Court (Art. 61(1)). This limitation, as such, is, in the light of the principles, a " repugnant matter " (materia odiosa) and should thus be interpreted restrictively. Therefore, one cannot draw from that limitation the conclusion that the individual is also barred from his autonomous condition of " party " in the procedures once they have begun (A)s concerns the InterAmerican Com mission, which must appear in all cases before the Court... this is clearly a sui generis role, purely procedural, as an auxiliary of the judiciary, like that of a " Ministerio Público " of the inter-American system for the protection of human rights (Decision of September 8, 1983)."

As I have said (supra 1), the foregoing forces me to dissent to paragraph 192, insofar as it recognizes the Commission as the sole procedural party other than the State or States that participate in a case before the Court, without recognizing the legal standing, even in a purely procedural sense, of the victims or their assignees, among others.

7. In addition, I believe that if the Convention and the Rules of the Commission and the Court generally authorize a friendly settlement both before and after the case is brought to the Court, and this process is always controlled directly by the victim with only the mediation or oversight of the Commission, it makes no sense to authorize a direct agreement after the Court has ordered, in the abstract, the payment of an indemnization, naming the Commission as the only party to deal with the State concerned rather than the assignees of Manfredo Velásquez to whom the indemnization is owed. The following provisions are self-explanatory:

"Convention

Article 48

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention,...

f. (It) shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

Regulations of the Commission

Article 45. Friendly Settlement

1. At the request of any of the parties, or on its own initiative, the Commission shall place itself at the disposal of the parties concerned, at any stage of the examination of a petition, with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention on Human Rights.

Rules of Procedure of the Court

Article 42. Discontinuance

2. When, in a case brought before the Court by the Commission, the Court is informed of a friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, it may, after having obtained the opinion, if necessary, of the delegates of the Commission, strike the case off its list."

With respect to this last provision, it is obvious that if the " party " in the friendly settlement were the Commission, it would be absurd that the Court would later have to obtain the opinion of the Commission in order to strike the case off its list.

8. Nothing in the foregoing means that I do not understand or share the concern that the majority decision appears to reveal, in the sense that the Commission, possibly, is in a better condition to oversee the interests of the assignees of Manfredo Velásquez, or that a specific agreement between the Government and the Commission could have the greater standing of an international agreement. Nevertheless, I hold as follows:

"a. Regarding the first point, that the Court is required to apply the norms of the Convention and its Rules in conformity with their ordinary meaning. In my opinion, the text of those norms does not support the interpretation adopted.

b. I did not mean to suggest at any time that the Commission should not actively participate in the negotiation of an agreement with the Government concerning the compensation ordered by the judgment. My draft specifically recognized that and my willingness to accept a simple reference to " the parties " implied the Commission's participation. Of course, the Court has reserved the right to confirm that agreement anyway (operative point 7, adopted unanimously).

c. Regarding the effectiveness of the agreement, I am not concerned whether the legal framework is national or international. In either case the validity and force of that agreement would derive from the Convention by virtue of the judgment itself and the confirmation or formal approval of the Court, which would be subject to execution at the international and the domestic level, as expressly provided by Article 68(2) of the Convention in the sense that

"2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state."

d. In addition, it must be kept in mind that the period established in the judgment is only six months, after which the Court shall hear the matter, either to confirm the agreement of the parties (operative point 7) or to set the amount of compensation and manner of payment (operative point 6) on the motion of the Commission or the interested parties, as provided by Article 45(2) and 45(3) of the Rules cited above, according to which

"2.... the Court shall determine the period within which it may be presented by a party or by the Commission.

3. If the Court is informed that an agreement has been reached between the victim of the violation and the State Party concerned, it shall verify the equitable nature of such agreement."

Rodolfo E. Piza E.

Charles Moyer

Secretary

Home / Treaties / Search / Links

Annex 988

International Tribunal for Rwanda, Prosecutor v Jean-Paul Akayesu, Case No. ICTR-96-4-T (2 September 1998)

ICTR-96-4-T
2.9.1998
(2637-2344)

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

ICTR
CRIMINAL REGISTRY
RECEIVED
1998 SEP -2 A 11:46

CHAMBER I - CHAMBRE I

OR : ENG

Before: Judge Laïty Kama, Presiding
Judge Lennart Aspegren
Judge Navanethem Pillay

Registry: Mr. Agwu U. Okali

Decision of: 2 September 1998

THE PROSECUTOR
VERSUS
JEAN-PAUL AKAYESU

Case No. ICTR-96-4-T

JUDGEMENT

The Office of the Prosecutor:

Mr. Pierre-Richard Prosper

Counsel for the Accused:

Mr. Nicolas Tiangaye
Mr. Patrice Monthé

3. GENOCIDE IN RWANDA IN 1994?

112. As regards the massacres which took place in Rwanda between April and July 1994, as detailed above in the chapter on the historical background to the Rwandan tragedy, the question before this Chamber is whether they constitute genocide. Indeed, it was felt in some quarters[52] that the tragic events which took place in Rwanda were only part of the war between the Rwandan Armed Forces (the RAF) and the Rwandan Patriotic Front (RPF). The answer to this question would allow a better understanding of the context within which the crimes with which the accused is charged are alleged to have been committed.

113. According to paragraph 2 of Article 2 of the Statute of the Tribunal, which reflects verbatim the definition of genocide as contained in the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter, "the Convention on Genocide")[53], genocide means any of the following acts referred to in said paragraph, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, namely, *inter alia*: killing members of the group; causing serious bodily or mental harm to members of the group.

114. Even though the number of victims is yet to be known with accuracy, no one can reasonably refute the fact that widespread killings were perpetrated throughout Rwanda in 1994.

115. Indeed, this is confirmed by the many testimonies heard by this Chamber. The testimony of Dr. Zachariah who appeared before this Chamber on 16 and 17 January 1997 is enlightening in this regard. Dr. Zachariah was a physician who at the time of the events was working for a non-governmental organisation, "Médecins sans frontières." In 1994 he was based in Butare and travelled over a good part of Rwanda upto its border with Burundi. He described in great detail

---

[52] See the cross examination of Dr. Zachariah (witness) by one of the defence counsel.

[53] The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly on 9 December 1948.

the heaps of bodies which he saw everywhere, on the roads, on the footpaths and in rivers and, particularly, the manner in which all these people had been killed. At the church in Butare, at the Gahidi mission, he saw many wounded persons in the hospital who, according to him, were all Tutsi and who, apparently, had sustained wounds inflicted with machetes to the face, the neck, and also to the ankle, at the Achilles' tendon, to prevent them from fleeing. The testimony given by Major-General Dallaire, former Commander of the United Nations Assistance Mission for Rwanda (UNAMIR) at the time of the events alleged in the Indictment, who was called by the defence, is of a similar vein. Major-General Dallaire spoke of troops of the Rwandan Armed Forces and of the Presidential Guard going into houses in Kigali that had been previously identified in order to kill. He also talked about the terrible murders in Kabgayi, very near Gitarama, where the interim Government was based and of the reports he received from observers throughout the country which mentioned killings in Gisenyi, Cyangugu and Kibongo.

116. The British cameraman, Simon Cox, took photographs of bodies in many churches in Remera, Biambi, Shangi, between Cyangugu and Kibuye, and in Bisesero. He mentioned identity cards strewn on the ground, all of which were marked "Tutsi". Consequently, in view of these widespread killings the victims of which were mainly Tutsi, the Chamber is of the opinion that the first requirement for there to be genocide has been met, the killing and causing serious bodily harm to members of a group.

117. The second requirement is that these killings and serious bodily harm, as is the case in this instance, be committed with the intent to destroy, in whole or in part, a particular group targeted as such.

118. In the opinion of the Chamber, there is no doubt that considering their undeniable scale, their systematic nature and their atrociousness, the massacres were aimed at exterminating the group that was targeted. Many facts show that the intention of the perpetrators of these killings was to cause the complete disappearance of the Tutsi. In this connection, Alison Desforges, an expert witness, in her testimony before this Chamber on 25 February 1997, stated as follows: "on the basis of the statements made by certain political leaders, on the basis of songs and

slogans popular among the Interahamwe, I believe that these people had the intention of completely wiping out the Tutsi from Rwanda so that-as they said on certain occasions - their children , later on , would not know what a Tutsi looked like, unless they referred to history books". Moreover, this testimony given by Dr. Desforges was confirmed by two prosecution witnesses, witness KK and witness OO, who testified separately before the Tribunal that one Silas Kubwimana had said during a public meeting chaired by the accused himself that all the Tutsi had to be killed so that someday Hutu children would not know what a Tutsi looked like.

119. Furthermore, as mentioned above, Dr. Zachariah also testified that the Achilles' tendons of many wounded persons were cut to prevent them from fleeing. In the opinion of the Chamber, this demonstrates the resolve of the perpetrators of these massacres not to spare any Tutsi. Their plan called for doing whatever was possible to prevent any Tutsi from escaping and, thus, to destroy the whole group. Witness OO further told the Chamber that during the same meeting, a certain Ruvugama, who was then a Member of Parliament, had stated that he would rest only when no single Tutsi is left in Rwanda".

120. Dr. Alison Desforges testified that many Tutsi bodies were often systematically thrown into the Nyabarongo river, a tributary of the Nile. Indeed, this has been corroborated by several images shown to the Chamber throughout the trial. She explained that the underlying intention of this act was to "send the Tutsi back to their place of origin", to "make them return to Abyssinia", in keeping with the allegation that the Tutsi are foreigners in Rwanda, where they are supposed to have settled following their arrival from the Nilotic regions.[54]

121. Other testimonies heard, especially that of Major-General Dallaire, also show that there was an intention to wipe out the Tutsi group in its entirety, since even newborn babies were not spared. Even pregnant women, including those of Hutu origin, were killed on the grounds that

---

[54] See *supra*, in the chapter on the history of Rwanda, the statements made by Léon Mugesera during the meeting of the MRND held on 22 November 1992, referred to the fact that Tutsi had supposedly come from Ethiopia and that, after they were killed, their bodies should be thrown into the Rwandan tributaries of the Nile, so that they can go back to where they supposedly came. See Prosecution Exhibit tendered and recorded as No. 74.

the foetuses in their wombs were fathered by Tutsi men, for in a patrilineal society like Rwanda, the child belongs to the father's group of origin. In this regard, it is worthwhile noting the testimony of witness PP, heard by the Chamber on 11 April 1997, who mentioned a statement made publicly by the accused to the effect that if a Hutu woman were impregnated by a Tutsi man, the Hutu woman had to be found in order "for the pregnancy to be aborted". According to prosecution witnesses KK, PP and OO, the accused expressed this opinion on other occasions in the form of a Rwandese proverb according to which 'if a snake wraps itself round a calabash, there is nothing that can be done, except to break the calabash' (" Iyo inzoka yiziritse ku gisabo, nta kundi bigenda barakimena)[55]. In the context of the period in question, this proverb meant that if a Hutu woman married to a Tutsi man was impregnated by him, the foetus had to be destroyed so that the Tutsi child which it would become should not survive. It should be noted in this regard that in Rwandese culture, breaking the "gisabo", which is a big calabash used as a churn was considered taboo. Yet, if a snake wraps itself round a *gisabo*, obviously, one has no choice but to ignore this taboo in order to kill the snake.

122. In light of the foregoing, it is now appropriate for the Chamber to consider the issue of specific intent that is required for genocide (*mens rea* or *dolus specialis*). In other words, it should be established that the above-mentioned acts were targeted at a particular group as such. In this respect also, many consistent and reliable testimonies , especially those of Major-General Dallaire, Dr. Zachariah, victim V, prosecution witness PP, defence witness DAAX, and particularly that of the accused himself unanimously agree on the fact that it was the Tutsi as members of an ethnic group which they formed in the context of the period[56] in question, who

---

[55] These are the Kinyarwanda words used by witness PP

[56] The term *ethnic group* is, in general, used to refer to a group whose members speak the same language and/or have the same culture. Therefore, one can hardly talk of ethnic groups as regards Hutu and Tutsi, given that they share the same language and culture. However, in the context of the period in question, they were, in consonance with a distinction made by the colonizers, considered both by the authorities and themselves as belonging to two distinct ethnic groups; as such, their identity cards mentioned each holder's ethnic group. In its findings in chapter 7 of the judgment, the Chamber will come back to this issue.

were targeted during the massacres[57].

123. Two facts, in particular, which suggest that it was indeed the Tutsi who were targeted should be highlighted: Firstly, at the roadblocks which were erected in Kigali immediately after the crash of the President's plane on 6 April 1994 and, later on, in most of the country's localities, members of the Tutsi population were sorted out. Indeed, at these roadblocks which were manned, depending on the situation, either by soldiers, troops of the Presidential Guard and/or militiamen, the systematic checking of identity cards indicating the ethnic group of their holders, allowed the separation of Hutu from Tutsi, with the latter being immediately apprehended and killed, sometimes on the spot. Secondly, the propaganda campaign conducted before and during the tragedy by the audiovisual media, for example, "Radio Television des Milles Collines"(RTLM), or the print media, like the Kangura[58] newspaper. These various news media overtly called for the killing of Tutsi, who were considered as the accomplices of the RPF and accused of plotting to take over the power lost during the revolution of 1959. Some articles and cartoons carried in the *Kangura* newspaper, entered in evidence, are unambiguous in this respect. In fact, even exhibit 25A could be added to this lot. Exhibit 25A is a letter from the "GZ" staff headquarters dated 21 September 1992 and signed by Deofratas Nsabimana, Colonel, BEM, to which is annexed a document prepared by a committee of ten officers and which deals with the definition of the term enemy. According to that document, which was intended for the widest possible dissemination, the enemy fell into two categories, namely:" the primary enemy" and the "enemy supporter". The primary enemy was defined as "the extremist Tutsi within the country or abroad who are nostalgic for power and who have NEVER acknowledged and STILL DO NOT acknowledge the realities of the Social Revolution of 1959, and who wish to regain power

---

[57] However, the Tutsi were not the sole victims of the massacres. Many Hutu were also killed, though not because they were Hutu, but simply because they were , for one reason or another, viewed as having sided with the Tutsi.

[58] It will be noted in this regard that in the *travaux preparatoires* of the Genocide Convention, the Yugoslav delegate indicated with regard to the genocide of Jews by the Nazis that the crimes began with the preparation and mobilization of the masses by means of the ideas spread by the necessary propaganda and in circles which financed this propaganda. See the Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September 1948-10 December 1948, Official Records of the General Assembly.

in RWANDA by all possible means, including the use of weapons". On the other hand, the primary enemy supporter was "anyone who lent support in whatever form to the primary enemy". This document also stated that the primary enemy and their supporters came mostly from social groups comprising, in particular, "Tutsi refugees", "Tutsi within the country", "Hutu dissatisfied with the current regime", "Foreigners married to Tutsi women" and the "Nilotic-hamitic tribes in the region".

124. In the opinion of the Chamber, all this proves that it was indeed a particular group, the Tutsi ethnic group, which was targeted. Clearly, the victims were not chosen as individuals but, indeed, because they belonged to said group; and hence the victims were members of this group selected as such. According to Alison Desforges's testimony, the Tutsi were killed solely on account of having been born Tutsi.

125. Clearly therefore, the massacres which occurred in Rwanda in 1994 had a specific objective, namely the extermination of the Tutsi, who were targeted especially because of their Tutsi origin and not because they were RPF fighters. In any case, the Tutsi children and pregnant women would, naturally, not have been among the fighters.

126. Consequently, the Chamber concludes from all the foregoing that genocide was, indeed, committed in Rwanda in 1994 against the Tutsi as a group. Furthermore, in the opinion of the Chamber, this genocide appears to have been meticulously organized. In fact, Dr. Alison Desforges testifying before the Chamber on 24 May 1997, talked of "centrally organized and supervised massacres". Indeed, some evidence supports this view that the genocide had been planned. First, the existence of lists of Tutsi to be eliminated is corroborated by many testimonies. In this respect, Dr. Zachariah mentioned the case of patients and nurses killed in a hospital because a soldier had a list including their names. There are also the arms caches in Kigali which Major-General Dallaire mentioned and regarding whose destruction he had sought the UN's authorization in vain. Lastly, there is the training of militiamen by the Rwandan Armed Forces and of course, the psychological preparation of the population to attack the Tutsi, which preparation was masterminded by some news media, with the RTLM at the forefront.

127. Finally, in response to the question posed earlier in this chapter as to whether the tragic events that took place in Rwanda in 1994 occurred solely within the context of the conflict between the RAF and the RPF, the Chamber replies in the negative, since it holds that the genocide did indeed take place against the Tutsi group, alongside the conflict. The execution of this genocide was probably facilitated by the conflict, in the sense that the fighting against the RPF forces was used as a pretext for the propaganda inciting genocide against the Tutsi, by branding RPF fighters and Tutsi civilians together, through dissemination via the media of the idea that every Tutsi was allegedly an accomplice of the Inkotanyi. Very clearly, once the genocide got under way, the crime became one of the stakes in the conflict between the RPF and the RAF. In 1994, General Kagame, speaking on behalf of the RPF, declared that a cease fire could possibly not be implemented until the massacre of civilians by the government forces[59] had stopped.

128. In conclusion, it should be stressed that although the genocide against the Tutsi occurred concomitantly with the above-mentioned conflict, it was, evidently, fundamentally different from the conflict. The accused himself stated during his initial appearance before the Chamber, when recounting a conversation he had with one RAF officer and Silas Kubwimana, a leader of the Interahamwe, that the acts perpetrated by the Interahamwe against Tutsi civilians were not considered by the RAF officer to be of a nature to help the government armed forces in the conflict with the RPF[60]. Note is also taken of the testimony of witness KK which is in the same vein. This witness told the Chamber that while she and the children were taken away, an RAF soldier allegedly told persons who were persecuting her that "instead of going to confront the Inkotanyi at the war front, you are killing children, although children know nothing; they have never done politics". The Chamber's opinion is that the genocide was organized and planned not only by members of the RAF, but also by the political forces who were behind the "Hutu-power",

---

[59] See the " Report of the United Nations High Commissioner for Human Rights on his mission to Rwanda, 11-12 May 1994" (E/CN.4?s-3?3, 19 May 1994), reproduced in annex "The United Nations and Rwanda, 1993-1996", Department of Public Information, United Nations, New York, 1996, p. 287.

[60] See transcript of the hearing of 12 March 1998, p. 152

that it was executed essentially by civilians including the armed militia and even ordinary citizens, and above all, that the majority of the Tutsi victims were non-combatants, including thousands of women and children, even foetuses. The fact that the genocide took place while the RAF was in conflict with the RPF, can in no way be considered as an extenuating circumstance for it.

129. This being the case, the Chamber holds that the fact that genocide was indeed committed in Rwanda in 1994 and more particularly in Taba, cannot influence it in its decisions in the present case. Its sole task is to assess the individual criminal responsibility of the accused for the crimes with which he is charged, the burden of proof being on the Prosecutor[61]. In spite of the irrefutable atrocities of the crimes committed in Rwanda, the judges must examine the facts adduced in a most dispassionate manner, bearing in mind that the accused is presumed innocent Moreover, the seriousness of the charges brought against the accused makes it all the more necessary to examine scrupulously and meticulously all the inculpatory and exonerating evidence, in the context of a fair trial and in full resect of all the rights of the Accused.

[61]In the opinion of the Chamber, it is not only obvious that an accused person could be declared innocent of the crime of genocide even when it is established that genocide had indeed taken place, but also, in a case other than that of Rwanda, a person could be found guilty of genocide without necessarily having to establish that genocide had taken place throughout the country concerned.

4. EVIDENTIARY MATTERS

130. The Chamber will address certain general evidentiary matters of concern which arose in relation to the evidence produced by the parties during this trial. These matters include the assessment of evidence, the impact of trauma on witnesses, questions of interpretation from Kinyarwanda into French and English, and cultural factors which might affect an understanding of the evidence presented.

Assessment of Evidence

131. In its assessment of the evidence, as a general principle, the Chamber has attached probative value to each testimony and each exhibit individually according to its credibility and relevance to the allegations at issue. As commonly provided for in most national criminal proceedings, the Chamber has considered the charges against the accused on the basis of the testimony and exhibits offered by the parties to support or challenge the allegations made in the Indictment. In seeking to establish the truth in its judgment, the Chamber has relied as well on indisputable facts and on other elements relevant to the case, such as constitutive documents pertaining to the establishment and jurisdiction of the Tribunal, even if these were not specifically tendered in evidence by the parties during trial. The Chamber notes that it is not restricted under the Statute of the Tribunal to apply any particular legal system and is not bound by any national rules of evidence. In accordance with Rule 89 of its Rules of Procedure and Evidence, the Chamber has applied the rules of evidence which in its view best favour a fair determination of the matter before it and are consonant with the spirit and general principles of law.

Unus Testis, Nullus Testis

132. The Chamber notes that during trial, only one testimony was presented in support of

Kagame. The FAR and RPF occupied different sides of a clearly demarcated demilitarised zone, and according to General Dallaire, the RPF comprised 12,000-13,000 soldiers deployed in three groups: two groups for reaction in the western flank of the demilitarised zone and another group in the eastern flank with six independent battalions. The RPF headquartered in Mulundi, and had a lightweight battalion stationed in Kigali. General Dallaire testified that the RPF troops were disciplined and possessed a well-structured leadership which was answerable to authority and which respected instruction.

165. In addition to the testimony of these witnesses, the Chamber takes judicial notice of the following United Nations reports, which extensively document the massacres which took place in Rwanda in 1994: notably, the *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 935 (1994)*, U.N. Doc. S/1994/1405 (1994); *Report of the Special Rapporteur of the Commission on Human Rights on Extrajudicial, Summary or Arbitrary Executions, Bacre Waly Ndiaye, on his mission to Rwanda from 8-17 April 1993*, U.N. Doc. E/CN.4/1994/7/Add.1 (1993); *Special Report of the Secretary-General on UNAMIR, containing a summary of the developing crisis in Rwanda and proposing three options for the role of the United Nations in Rwanda,* S/1994/470, 20 April 1994; *Report of the United Nations High Commissioner for Human Rights, Mr. José Ayala Lasso, on his mission to Rwanda 11-12 May 1994*, U.N. Doc. E/CN.4/S-3/3 (1994). See also, generally, the collection of United Nations documents in *The United Nations and Rwanda, 1993-1996,* The United Nations Blue Books Series, Volume X, Department of Public Information, United Nations, New York.

166. The Chamber notes that witnesses from Taba also attested to the mass killings which took place around the country.

Factual Findings

167. Paragraph 5 of the indictment alleges, "Unless otherwise specified, all acts and omissions set forth in this indictment took place between 1 January 1994 and 31 December 1994, in the commune of Taba, prefecture of Gitarama, territory of Rwanda". This allegation, which supports

the legal finding that the Chamber has territorial and temporal jurisdiction over the crimes charged, is not contested, and the Chamber finds that it has been established by the evidence presented.

168. Paragraph 6 of the indictment alleges that the acts set forth in each paragraph of the indictment charging genocide, i.e. paragraphs 12-24, "were committed with intent to destroy, in whole or in part, a national, ethnic or racial group". That acts of violence committed in Rwanda during this time were committed with the intent to destroy the Tutsi population is evident not only from the testimony cited above of Dr. Zachariah, Ms. Hilson, Mr. Cox, Dr. Desforges and General Dallaire, but also from the witnesses who testified with regard to events in the commune of Taba. Witness JJ testified that she was driven away from her home, which was destroyed after a man came to the hill near where she lived and said that the bourgmestre had sent him so that no Tutsi would remain on the hill that night. At the meeting which was held on the morning of 19 April 1994, at which the Accused spoke, Witness OO testified that it was said by another speaker that all the Tutsi should be killed so that some day a child could be born who would have to ask what a Tutsi had looked like. She also quoted this speaker as saying "I will have peace when there will be no longer a Tutsi in Rwanda.". Witness V testified that Tutsi were thrown into the Nyabarongo river, which flows towards the Nile, and told to "meet their parents in Abyssinia", signifying that the Tutsi came from Abyssinia (Ethiopia) and that they "should go back to where they came from" (hearing of 24 January 1997, p.7)

169. In light of this evidence, the Chamber finds beyond a reasonable doubt that the acts of violence which took place in Rwanda during this time were committed with the intent to destroy the Tutsi population, and that the acts of violence which took place in Taba during this time were a part of this effort.

170. Paragraph 7 of the indictment alleges that the victims in each paragraph charging genocide were members of a national, ethnic, racial or religious group. The Chamber notes that the Tutsi population does not have its own language or a distinct culture from the rest of the Rwandan population. However, the Chamber finds that there are a number of objective indicators

of the group as a group with a distinct identity. Every Rwandan citizen was required before 1994 to carry an identity card which included an entry for ethnic group (*ubwoko* in Kinyarawanda and *ethnie* in French), the ethnic group being Hutu, Tutsi or Twa. The Rwandan Constitution and laws in force in 1994 also identified Rwandans by reference to their ethnic group. Article 16 of the Constitution of the Rwandan Republic, of 10 June 1991, reads, "All citizens are equal before the law, without any discrimination, notably, on grounds of race, colour, origin, ethnicity, clan, sex, opinion, religion or social position". Article 57 of the Civil Code of 1988 provided that a person would be identified by "sex, ethnic group, name, residence and domicile." Article 118 of the Civil Code provided that birth certificates would include "the year, month, date and place of birth, the sex, the ethnic group, the first and last name of the infant." The Arusha Accords of 4 August 1993 in fact provided for the suppression of the mention of ethnicity on official documents (see Article 16 of the Protocol on diverse questions and final dispositions).

171. Moreover, customary rules existed in Rwanda governing the determination of ethnic group, which followed patrilineal lines of heredity. The identification of persons as belonging to the group of Hutu or Tutsi (or Twa) had thus become embedded in Rwandan culture. The Rwandan witnesses who testified before the Chamber identified themselves by ethnic group, and generally knew the ethnic group to which their friends and neighbours belonged. Moreover, the Tutsi were conceived of as an ethnic group by those who targeted them for killing.

172. As the expert witness, Alison Desforges, summarised:

> "The primary criterion for [defining] an ethnic group is the sense of belonging to that ethnic group. It is a sense which can shift over time. In other words, the group, the definition of the group to which one feels allied may change over time. But, if you fix any given moment in time, and you say, how does this population divide itself, then you will see which ethnic groups are in existence in the minds of the participants at that time. The Rwandans currently, and for the last generation at least, have defined themselves in terms of these three ethnic groups. In addition reality is an interplay between the actual conditions and peoples'

subjective perception of those conditions. In Rwanda, the reality was shaped by the colonial experience which imposed a categorisation which was probably more fixed, and not completely appropriate to the scene. But, the Belgians did impose this classification in the early 1930's when they required the population to be registered according to ethnic group. The categorisation imposed at that time is what people of the current generation have grown up with. They have always thought in terms of these categories, even if they did not, in their daily lives have to take cognizance of that. ... This practice was continued after independence by the First Republic and the Second Republic in Rwanda to such an extent that this division into three ethnic groups became an absolute reality".

173. Paragraph 8 of the indictment alleges that the acts set forth in each paragraph of the indictment charging crimes against humanity, i.e. paragraphs 12-24, "were committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic or racial grounds". As set forth in the evidence, the scale of the attack was extraordinary. Defence counsel called the events which took place in Rwanda in 1994 "the greatest human tragedy" at the end of this century. Around the country, a massive number of killings took place within a very short time frame. Tutsi were clearly the target of the attack - at roadblocks, in shelters, and in their own homes. Hutu sympathetic to or supportive of Tutsi were also massacred. That the attack was systematic is evidenced by the unusually large shipments of machetes into the country shortly before it occurred. It is also evidenced by the structured manner in which the attack took place. Teachers and intellectuals were targeted first, in Taba as well as the rest of the country. Through the media and other propaganda, Hutu were encouraged systematically to attack Tutsi. For these reasons, the Chamber finds beyond a reasonable doubt that a widespread and systematic attack began in April 1994 in Rwanda, targeting the civilian Tutsi population and that the acts referred to in paragraphs 12-24 of the indictment were acts which formed part of this widespread and systematic attack.

174. Paragraph 9 of the indictment states, "At all times relevant to this indictment, a state of internal armed conflict existed in Rwanda". The Chamber notes the testimony of General

Dallaire, a witness called by the Defence, that the FAR was and the RPF were "two armies" engaged in hostilities, that the RPF had soldiers systematically deployed under a command structure headed by Paul Kagame, and that FAR and RPF forces occupied different sides of a clearly demarcated demilitarised zone. Based on the evidence presented, the Chamber finds beyond a reasonable doubt that armed conflict existed in Rwanda during the events alleged in the indictment, and that the RPF was an organised armed group, under responsible command, which exercised control over territory in Rwanda and was able to carry out sustained and concerted military operations.

175. Paragraph 10 of the indictment reads, "The victims referred to in this indictment were, at all relevant times, persons not taking an active part in the hostilities". The victims referred to in the indictment, several of whom testified before the Chamber, were farmers, teachers and refugees. The Chamber notes that the Defence did not challenge the civilian status of the victims by making any submissions or leading any evidence connecting any of the victims to the RPF or the hostilities that prevailed in 1994.Since the allegations in Paragraphs 13, 17 and those pertaining to Juvenal Rukundakuvuga and Emmanuel Sempabwa in paragraph 15 of the indictment have not been proved beyond a reasonable doubt, the Chamber finds that it is futile to determine whether these alleged victims were in fact civilians, taking no active part in the hostilities that prevailed in 1994. In light of the evidence presented by the Prosecutor, the Chamber finds beyond a reasonable doubt that all the other victims referred to in the indictment were civilians, not taking any active part in the hostilities that prevailed in 1994.

176. Paragraph 10A was added to the indictment when it was amended to include charges of sexual violence, set forth in Paragraphs 12A and 12B of the indictment. It is not an allegation of fact, rather it appears to be a definition of sexual violence proposed by the Prosecutor.

177. Paragraph 11 of the indictment sets forth the definition of individual criminal responsibility in Article 6(1) of the Statute of the Tribunal and alleges that the Accused is individually responsible for the crimes alleged in the indictment. The Chamber does not consider this to be a factual allegation but rather a matter of legal issue, which is addressed in the legal

findings on each count. The Chamber notes that no general allegation has been made by the Prosecution in connection with Counts 13, 14 and 15, under which the Accused is charged with individual criminal responsibility under Article 6(3), as well as Article 6(1) of the Tribunal's Statute.

6.3. Genocide (Article 2 of the Statute)

6.3.1. Genocide

492. Article 2 of the Statute stipulates that the Tribunal shall have the power to prosecute persons responsible for genocide, complicity to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide.

493. In accordance with the said provisions of the Statute, the Prosecutor has charged Akayesu with the crimes legally defined as genocide (count 1), complicity in genocide (count 2) and incitement to commit genocide (count 4).

Crime of Genocide, punishable under Article 2(3)(a) of the Statute

494. The definition of genocide, as given in Article 2 of the Tribunal's Statute, is taken verbatim from Articles 2 and 3 of the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention")[91]. It states:

> " Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;

[91] The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly, on 9 December 1948.

(e) Forcibly transferring children of the group to another group."

495. The Genocide Convention is undeniably considered part of customary international law, as can be seen in the opinion of the International Court of Justice on the provisions of the Genocide Convention, and as was recalled by the United Nations' Secretary-General in his Report on the establishment of the International Criminal Tribunal for the former Yugoslavia[92].

496. The Chamber notes that Rwanda acceded, by legislative decree, to the Convention on Genocide on 12 February 1975[93]. Thus, punishment of the crime of genocide did exist in Rwanda in 1994, at the time of the acts alleged in the Indictment, and the perpetrator was liable to be brought before the competent courts of Rwanda to answer for this crime.

497. Contrary to popular belief, the crime of genocide does not imply the actual extermination of group in its entirety, but is understood as such once any one of the acts mentioned in Article 2(2)(a) through 2(2)(e) is committed with the specific intent to destroy "in whole or in part" a national, ethnical, racial or religious group.

498. Genocide is distinct from other crimes inasmuch as it embodies a special intent or *dolus specialis*. Special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged. Thus, the special intent in the crime of genocide lies in "the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

499. Thus, for a crime of genocide to have been committed, it is necessary that one of the acts

---

[92] Secretary General's Report pursuant to paragraph 2 of resolution 808 (1993) of the Security Council, 3 May 1993, S/25704.

[93] Legislative Decree of 12 February 1975, Official Gazette of the Republic of Rwanda, 1975, p.230. Rwanda acceded to the Genocide Convention but stated that it shall not be bound by Article 9 of this Convention.

listed under Article 2(2) of the Statute be committed, that the particular act be committed against a specifically targeted group, it being a national, ethnical, racial or religious group. Consequently, in order to clarify the constitutive elements of the crime of genocide, the Chamber will first state its findings on the acts provided for under Article 2(2)(a) through Article 2(2)(e) of the Statute, the groups protected by the Genocide Convention, and the special intent or *dolus specialis* necessary for genocide to take place.

Killing members of the group (paragraph (a)):

500. With regard to Article 2(2)(a) of the Statute, like in the Genocide Convention, the Chamber notes that the said paragraph states "*meurtre*" in the French version while the English version states "killing". The Trial Chamber is of the opinion that the term "killing" used in the English version is too general, since it could very well include both intentional and unintentional homicides, whereas the term "*meurtre*", used in the French version, is more precise. It is accepted that there is murder when death has been caused with the intention to do so, as provided for, incidentally, in the Penal Code of Rwanda which stipulates in its Article 311 that "Homicide committed with intent to cause death shall be treated as murder".

501. Given the presumption of innocence of the accused, and pursuant to the general principles of criminal law, the Chamber holds that the version more favourable to the accused should be upheld and finds that Article 2(2)(a) of the Statute must be interpreted in accordance with the definition of murder given in the Penal Code of Rwanda, according to which "*meurtre*" (killing) is homicide committed with the intent to cause death. The Chamber notes in this regard that the *travaux préparatoires* of the Genocide Convention[94], show that the proposal by certain delegations that premeditation be made a necessary condition for there to be genocide, was rejected, because some delegates deemed it unnecessary for premeditation to be made a requirement; in their

[94]Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September-10 December 1948, Official Records of the General Assembly.

opinion, by its constitutive physical elements, the very crime of genocide, necessarily entails premeditation.

Causing serious bodily or mental harm to members of the group (paragraph b)

502. Causing serious bodily or mental harm to members of the group does not necessarily mean that the harm is permanent and irremediable.

503. In the Adolf Eichmann case, who was convicted of crimes against the Jewish people, genocide under another legal definition, the District Court of Jerusalem stated in its judgment of 12 December 1961, that serious bodily or mental harm of members of the group can be caused

> " by the enslavement, starvation, deportation and persecution [...] and by their detention in ghettos, transit camps and concentration camps in conditions which were designed to cause their degradation, deprivation of their rights as human beings, and to suppress them and cause them inhumane suffering and torture"[95].

504. For purposes of interpreting Article 2 (2)(b) of the Statute, the Chamber takes serious bodily or mental harm, without limiting itself thereto, to mean acts of torture, be they bodily or mental, inhumane or degrading treatment, persecution.

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (paragraph c):

505. The Chamber holds that the expression deliberately inflicting on the group conditions of

---

[95] "Attorney General of the Government of Israel vs. Adolph Eichmann", "District Court" of Jerusalem, 12 December 1961, quoted in the "The International Law Reports", vol. 36,1968, p.340.

life calculated to bring about its physical destruction in whole or in part, should be construed as the methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction.

506. For purposes of interpreting Article 2(2)(c) of the Statute, the Chamber is of the opinion that the means of deliberate inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or part, include, *inter alia*, subjecting a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement.

Imposing measures intended to prevent births within the group (paragraph d):

507. For purposes of interpreting Article 2(2)(d) of the Statute, the Chamber holds that the measures intended to prevent births within the group, should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group.

508. Furthermore, the Chamber notes that measures intended to prevent births within the group may be physical, but can also be mental. For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.

Forcibly transferring children of the group to another group (paragraph e)

509. With respect to forcibly transferring children of the group to another group, the Chamber is of the opinion that, as in the case of measures intended to prevent births, the objective is not only to sanction a direct act of forcible physical transfer, but also to sanction acts of threats or trauma which would lead to the forcible transfer of children from one group to another.

510. Since the special intent to commit genocide lies in the intent to "destroy, in whole or in part, a national, ethnical, racial or religious group, as such", it is necessary to consider a definition of the group as such. Article 2 of the Statute, just like the Genocide Convention, stipulates four types of victim groups, namely national, ethnical, racial or religious groups.

511. On reading through the *travaux préparatoires* of the Genocide Convention[96], it appears that the crime of genocide was allegedly perceived as targeting only "stable" groups, constituted in a permanent fashion and membership of which is determined by birth, with the exclusion of the more "mobile" groups which one joins through individual voluntary commitment, such as political and economic groups. Therefore, a common criterion in the four types of groups protected by the Genocide Convention is that membership in such groups would seem to be normally not challengeable by its members, who belong to it automatically, by birth, in a continuous and often irremediable manner.

512. Based on the *Nottebohm* decision[97] rendered by the International Court of Justice, the Chamber holds that a national group is defined as a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties.

513. An ethnic group is generally defined as a group whose members share a common language or culture.

---

[96] Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September - 10 December 1948, Official Records of the General Assembly.

[97] International Court of Justice, 1995

514. The conventional definition of racial group is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors.

515. The religious group is one whose members share the same religion, denomination or mode of worship.

516. Moreover, the Chamber considered whether the groups protected by the Genocide Convention, echoed in Article 2 of the Statute, should be limited to only the four groups expressly mentioned and whether they should not also include any group which is stable and permanent like the said four groups. In other words, the question that arises is whether it would be impossible to punish the physical destruction of a group as such under the Genocide Convention, if the said group, although stable and membership is by birth, does not meet the definition of any one of the four groups expressly protected by the Genocide Convention. In the opinion of the Chamber, it is particularly important to respect the intention of the drafters of the Genocide Convention, which according to the *travaux préparatoires,* was patently to ensure the protection of any stable and permanent group.

517. As stated above, the crime of genocide is characterized by its *dolus specialis*, or special intent, which lies in the fact that the acts charged, listed in Article 2 (2) of the Statute, must have been "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".

518. Special intent is a well-known criminal law concept in the Roman-continental legal systems. It is required as a constituent element of certain offences and demands that the perpetrator have the clear intent to cause the offence charged. According to this meaning, special intent is the key element of an intentional offence, which offence is characterized by a

psychological relationship between the physical result and the mental state of the perpetrator[98].

519. As observed by the representative of Brazil during the *travaux préparatoires* of the Genocide Convention,

> "genocide [is] characterised by the factor of particular intent to destroy a group. In the absence of that factor, whatever the degree of atrocity of an act and however similar it might be to the acts described in the convention, that act could still not be called genocide."[99]

520. With regard to the crime of genocide, the offender is culpable only when he has committed one of the offences charged under Article 2(2) of the Statute with the clear intent to destroy, in whole or in part, a particular group. The offender is culpable because he knew or should have known that the act committed would destroy, in whole or in part, a group.

521. In concrete terms, for any of the acts charged under Article 2 (2) of the Statute to be a constitutive element of genocide, the act must have been committed against one or several individuals, because such individual or individuals were members of a specific group, and specifically because they belonged to this group. Thus, the victim is chosen not because of his individual identity, but rather on account of his membership of a national, ethnical, racial or religious group. The victim of the act is therefore a member of a group, chosen as such, which, hence, means that the victim of the crime of genocide is the group itself and not only the individual[100].

---

[98] See in particular: Roger Merle et André Vitu, " Traité de droit criminel", Cujas, 1984, (first edition, 1967), p.723 *et seg.*

[99] Summary Records of the meetings of the Sixth Committee of the General Assembly, 21 September - 10 December 1994, op. cit., p.109.

[100] Concerning this issue, see in particular Nehemiah Robinson, "The Genocide Convention. Its Origins as Interpretation", p.15, which states that victims as individuals *"are important not per se but as members of the group to which they belong"*.

522. The perpetration of the act charged therefore extends beyond its actual commission, for example, the murder of a particular individual, for the realisation of an ulterior motive, which is to destroy, in whole or part, the group of which the individual is just one element.

523. On the issue of determining the offender's specific intent, the Chamber considers that intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.

524. Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia also stated that the specific intent of the crime of genocide

> " may be inferred from a number of facts such as the general political doctrine which gave rise to the acts possibly covered by the definition in Article 4, or the repetition of destructive and discriminatory acts. The intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate the very foundation of the group- acts which are not in themselves covered by the list in Article 4(2) but which are committed as part of the same pattern of conduct"[101].

---

[101] International Criminal Tribunal for the former Yugoslavia, Decision of Trial Chamber 1, Radovan Karadzic, Ratko Mladic case (Cases Nos. IT-95-5-R61 and IT-95-18-R61), Consideration of the Indictment within the framework of Rule 61 of the Rules of Procedure and Evidence, paragraph 94.

Thus, in the matter brought before the International Criminal Tribunal for the former Yugoslavia, the Trial Chamber, in its findings, found that

> "this intent derives from the combined effect of speeches or projects laying the groundwork for and justifying the acts, from the massive scale of their destructive effect and from their specific nature, which aims at undermining what is considered to be the foundation of the group".[102]

6.3.2. Complicity in Genocide

The Crime of Complicity in Genocide, punishable under Article 2(3)e) of the Statute

525. Under Article 2(3)e) of the Statute, the Chamber shall have the power to prosecute persons who have committed complicity in genocide. The Prosecutor has charged Akayesu with such a crime under count 2 of the Indictment.

526. Principle VII of the "Nuremberg Principles"[103] reads

> "complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law."

Thus, participation by complicity in the most serious violations of international humanitarian law was considered a crime as early as Nuremberg.

---

[102] Ibid. Paragraph 95.

[103] "Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal," adopted by the International Law Commission of the United Nations, 1950.

527. The Chamber notes that complicity is viewed as a form of criminal participation by all criminal law systems, notably, under the Anglo-Saxon system (or Common Law) and the Roman-Continental system (or Civil Law). Since the accomplice to an offence may be defined as someone who associates himself in an offence committed by another[104], complicity necessarily implies the existence of a principal offence.[105]

528. According to one school of thought, complicity is 'borrowed criminality' (criminalité d'emprunt). In other words, the accomplice borrows the criminality of the principal perpetrator. By borrowed criminality, it should be understood that the physical act which constitutes the act of complicity does not have its own inherent criminality, but rather it borrows the criminality of the act committed by the principal perpetrator of the criminal enterprise. Thus, the conduct of the accomplice emerges as a crime when the crime has been consummated by the principal perpetrator. The accomplice has not committed an autonomous crime, but has merely facilitated the criminal enterprise committed by another.

529. Therefore, the issue before the Chamber is whether genocide must actually be committed in order for any person to be found guilty of complicity in genocide. The Chamber notes that, as stated above, complicity can only exist when there is a punishable, principal act, in the commission of which the accomplice has associated himself. Complicity, therefore, implies a predicate offence committed by someone other than the accomplice.

530. Consequently, the Chamber is of the opinion that in order for an accused to be found guilty of complicity in genocide, it must, first of all, be proven beyond a reasonable doubt that the crime

---

[104]The Osborn's Concise Law Dictionary defines an accomplice as :"any person who, either as a principal or as an accessory, has been associated with another person in the commission of any offence.", Sweet and Maxwell, 1993, p.6

[105] It appears from the *travaux préparatoires* of the Genocide Convention that only complicity in the completed offence of genocide was intended for punishment and not complicity in an attempt to commit genocide, complicity in incitement to commit genocide nor complicity in conspiracy to commit genocide, all of which were, in the eyes of some states, too vague to be punishable under the Convention.

of genocide has, indeed, been committed.

531. The issue thence is whether a person can be tried for complicity even where the perpetrator of the principal offence himself has not being tried. Under Article 89 of the Rwandan Penal Code, accomplices

> "may be prosecuted even where the perpetrator may not face prosecution for personal reasons, such as double jeopardy, death, insanity or non-identification"[unofficial translation].

As far as the Chamber is aware, all criminal systems provide that an accomplice may also be tried, even where the principal perpetrator of the crime has not been identified, or where, for any other reasons, guilt could not be proven.

532. The Chamber notes that the logical inference from the foregoing is that an individual cannot thus be both the principal perpetrator of a particular act and the accomplice thereto. An act with which an accused is being charged cannot, therefore, be characterized both as an act of genocide and an act of complicity in genocide as pertains to this accused. Consequently, since the two are mutually exclusive, the same individual cannot be convicted of both crimes for the same act.

533. As regards the physical elements of complicity in genocide (*Actus Reus*), three forms of accomplice participation are recognized in most criminal Civil Law systems: complicity by instigation, complicity by aiding and abetting, and complicity by procuring means[106]. It should be noted that the Rwandan Penal Code includes two other forms of participation, namely, incitement to commit a crime through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or

---

[106] See, for example, Article 46 of the Senegalese Penal Code, Article 121-7 of the *Nouveau code pénal français* (New French Penal Code).

printed matter in public places or at pubic gatherings, or through the public display of placards or posters, and complicity by harbouring or aiding a criminal. Indeed, according to Article 91 of the Rwandan Penal Code:

> "An accomplice shall mean:
>
> 1. A person or persons who by means of gifts, promises, threats, abuse of authority or power, culpable machinations or artifice, directly incite(s) to commit such action or order(s) that such action be committed.
>
> 2. A person or persons who procure(s) weapons, instruments or any other means which are used in committing such action with the knowledge that they would be so used.
>
> 3. A person or persons who knowingly aid(s) or abet(s) the perpetrator or perpetrators of such action in the acts carried out in preparing or planning such action or in effectively committing it.
>
> 4. A person or persons who, whether through speeches, shouting or threats uttered in public places or at public gatherings, or through the sale or dissemination, offer for sale or display of written material or printed matter in public places or at pubic gatherings or through the public display of placards or posters, directly incite(s) the perpetrator or perpetrators to commit such an action without prejudice to the penalties applicable to those who incite others to commit offences, even where such incitement fails to produce results.
>
> 5. A person or persons who harbour(s) or aid(s) perpetrators under the circumstances provided for under Article 257 of this Code."[107] [unofficial translation]

534. The Chamber notes, first of all, that the said Article 91 of the Rwandan Penal Code draws

---

[107] See Article 91 of the Penal Code in "Codes et lois du Rwanda", Université nationale du Rwanda, 31 December 1994 update, volume 1, 2nd edition: 1995, p. 395.

a distinction between "*instigation*" (instigation), on the one hand, as provided for by paragraph 1 of said Article, and "*incitation*" (incitement), on the other, which is referred to in paragraph 4 of the same Article. The Chamber notes in this respect that, as pertains to the crime of genocide, the latter form of complicity, i.e. by incitement, is the offence which under the Statute is given the specific legal definition of "direct and public incitement to commit genocide," punishable under Article 2(3)c), as distinguished from "complicity in genocide." The findings of the Chamber with respect to the crime of direct and public incitement to commit genocide will be detailed below. That said, instigation, which according to Article 91 of the Rwandan Penal Code, assumes the form of incitement or instruction to commit a crime, only constitutes complicity if it is accompanied by, "gifts, promises, threats, abuse of authority or power, machinations or culpable artifice"[108]. In other words, under the Rwandan Penal Code, unless the instigation is accompanied by one of the aforesaid elements, the mere fact of prompting another to commit a crime is not punishable as complicity, even if such a person committed the crime as a result.

535. The ingredients of complicity under Common Law do not appear to be different from those under Civil Law. To a large extent, the forms of accomplice participation, namely "aid and abet, counsel and procure", mirror those conducts characterized under Civil Law as "l'aide et l'assistance, la fourniture des moyens".

536. Complicity by aiding or abetting implies a positive action which excludes, in principle, complicity by failure to act or omission. Procuring means is a very common form of complicity. It covers those persons who procured weapons, instruments or any other means to be used in the commission of an offence, with the full knowledge that they would be used for such purposes.

537. For the purposes of interpreting Article 2(3)e) of the Statute, which does not define the concept of complicity, the Chamber is of the opinion that it is necessary to define complicity as per the Rwandan Penal Code, and to consider the first three forms of criminal participation

---

[108] See especially *Cour de cassation française* (French Court of Cassation): Crim. 24 December 1942. JCP 19 944, ruling out prosecuting an individual as an accomplice who simply gave advice on committing a crime.

referred to in Article 91 of the Rwandan Penal Code as being the elements of complicity in genocide, thus:

- complicity by procuring means, such as weapons, instruments or any other means, used to commit genocide, with the accomplice knowing that such means would be used for such a purpose;

- complicity by knowingly aiding or abetting a perpetrator of a genocide in the planning or enabling acts thereof;

- complicity by instigation, for which a person is liable who, though not directly participating in the crime of genocide crime, gave instructions to commit genocide, through gifts, promises, threats, abuse of authority or power, machinations or culpable artifice, or who directly incited to commit genocide.

538. The intent or mental element of complicity implies in general that, at the moment he acted, the accomplice knew of the assistance he was providing in the commission of the principal offence. In other words, the accomplice must have acted knowingly.

539. Moreover, as in all criminal Civil law systems, under Common law, notably English law, generally, the accomplice need not even wish that the principal offence be committed. In the case of National Coal Board v. Gamble[109], Justice Devlin stated

> "an indifference to the result of the crime does not of itself negate abetting. If one man deliberately sells to another a gun to be used for murdering a third, he may be indifferent about whether the third lives or dies and interested only the cash profit to be made out of the sale, but he can still be an aider and abettor."

---

[109] *National Coal Board v. Gamble*, [1959] 1 QB 11.

In 1975, the English House of Lords also upheld this definition of complicity, when it held that willingness to participate in the principal offence did not have to be established[110]. As a result, anyone who knowing of another's criminal purpose, voluntarily aids him or her in it, can be convicted of complicity even though he regretted the outcome of the offence.

540. As far as genocide is concerned, the intent of the accomplice is thus to knowingly aid or abet one or more persons to commit the crime of genocide. Therefore, the Chamber is of the opinion that an accomplice to genocide need not necessarily possess the *dolus specialis* of genocide, namely the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.

541. Thus, if for example, an accused knowingly aided or abetted another in the commission of a murder, while being unaware that the principal was committing such a murder, with the intent to destroy, in whole or in part, the group to which the murdered victim belonged, the accused could be prosecuted for complicity in murder, and certainly not for complicity in genocide. However, if the accused knowingly aided and abetted in the commission of such a murder while he knew or had reason to know that the principal was acting with genocidal intent, the accused would be an accomplice to genocide, even though he did not share the murderer's intent to destroy the group.

542. This finding by the Chamber comports with the decisions rendered by the District Court of Jerusalem on 12 December 1961 and the Supreme Court of Israel on 29 May 1962 in the case of Adolf Eichmann[111]. Since Eichmann raised the argument in his defence that he was a "small cog" in the Nazi machine, both the District Court and the Supreme Court dealt with accomplice liability and found that,

> "[...] even a small cog, even an insignificant operator, is under our criminal law

---

[110] *DPP for Northern Ireland v. Lynch*, [1975] AC 653.

[111] Eichmann, *Op. Cit.*, p. 340.

liable to be regarded as an accomplice in the commission of an offence, in which case he will be dealt with as if he were the actual murderer or destroyer".[112]

543. The District Court accepted that Eichmann did not personally devise the "Final Solution" himself, but nevertheless, as the head of those engaged in carrying out the "Final Solution" - "acting in accordance with the directives of his superiors, but [with] wide discretionary powers in planning operations on his own initiative," he incurred individual criminal liability for crimes against the Jewish people, as much as his superiors. Likewise, with respect to his subordinates who actually carried out the executions, "[...] the legal and moral responsibility of he who delivers up the victim to his death is, in our opinion, no smaller, and may be greater, than the responsibility of he who kills the victim with his own hands"[113]. The District Court found that participation in the extermination plan with knowledge of the plan rendered the person liable "as an accomplice to the extermination of all [...] victims from 1941 to 1945, irrespective of the extent of his participation"[114].

544. The findings of the Israeli courts in this case support the principle that the *mens rea*, or special intent, required for complicity in genocide is *knowledge* of the genocidal plan, coupled with the *actus reus* of participation in the execution of such plan. Crucially, then, it does not appear that the specific intent to commit the crime of genocide, as reflected in the phrase "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such," is required for complicity or accomplice liability.

545. In conclusion, the Chamber is of the opinion that an accused is liable as an accomplice to genocide if he knowingly aided or abetted or instigated one or more persons in the commission of genocide, while knowing that such a person or persons were committing genocide, even though the accused himself did not have the specific intent to destroy, in whole or in part, a national,

---

[112] *Ibid*, p. 323.

[113] District Court judgment, p. 179.

[114] *Ibid* p. 14.

ethnical, racial or religious group, as such.

546. At this juncture, the Chamber will address another issue, namely that which, with respect to complicity in genocide covered under Article 2(3)(e) of the Statute, may arise from the forms of participation listed in Article 6 of the Statute entitled, "Individual Criminal Responsibility," and more specifically, those covered under paragraph 1 of the same Article. Indeed, under Article 6(1), "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime." Such forms of participation, which are summarized in the expression "[...] or otherwise aided or abetted [...]," are similar to the material elements of complicity, though they in and of themselves, characterize the crimes referred to in Articles 2 to 4 of the Statute, which include namely genocide.

547. Consequently, where a person is accused of aiding and abetting, planning, preparing or executing genocide, it must be proven that such a person acted with specific genocidal intent, i.e. the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such, whereas, as stated above, there is no such requirement to establish accomplice liability in genocide.

548. Another difference between complicity in genocide and the principle of abetting in the planning, preparation or execution a genocide as per Article 6(1), is that, in theory, complicity requires a positive act, i.e. an act of commission, whereas aiding and abetting may consist in failing to act or refraining from action. Thus, in the Jefferson and Coney cases, it was held that "The accused [...] only accidentally present [...] must know that his presence is actually encouraging the principal(s)"[115]. Similarly, the French Court of Cassation found that,

> "A person who, by his mere presence in a group of aggressors provided moral support to the assailants, and fully supported the criminal intent of the group, is

---

[115] *Jefferson* case (1994) 1 All ER 270 - *Coney* case (1882) 8 QDB 534; See Blackstone A5.7, p. 72.

liable as an accomplice"[116] [unofficial translation].

The International Criminal Tribunal for the Former Yugoslavia also concluded in the Tadić judgment that :

> "if the presence can be shown or inferred, by circumstantial or other evidence, to be knowing and to have a direct and substantial effect on the commission of the illegal act, then it is sufficient on which to base a finding of participation and assign the criminal culpability that accompanies it."[117]

6.3.3. Direct and Public Incitement to commit Genocide

THE CRIME OF DIRECT AND PUBLIC INCITEMENT TO COMMIT GENOCIDE, PUNISHABLE UNDER ARTICLE 2(3)(c) OF THE STATUTE

549. Under count 4, the Prosecutor charges Akayesu with direct and public incitement to commit genocide, a crime punishable under Article 2(3)(c) of the Statute.

550. Perhaps the most famous conviction for incitement to commit crimes of international dimension was that of Julius Streicher by the Nuremberg Tribunal for the virulently anti-Semitic articles which he had published in his weekly newspaper *Der Stürmer*. The Nuremberg Tribunal found that: "Streicher's incitement to murder and extermination, at the time when Jews in the East were being killed under the most horrible conditions, clearly constitutes persecution on political and racial grounds in connection with War Crimes, as defined by the Charter, and constitutes a

---

[116] Crim, 20 January 1992: *Dr. pénal* 1992, 194.

[117] See Judgment of the International Criminal Tribunal for the Former Yugoslavia, Case No. IT-94-1-T, "The Prosecutor versus Dusko Tadić", 7 May 1997, paragraph 689.

Annex 989

Prosecutor v. Kayishema and Ruzindana., Case No. ICTR-95-1-T, Trial Judgment (21 May 1999)

ICTR-95-1-T
(1554 - 1319)
25: 05: 99

1554

International Criminal Tribunal for Rwanda
Tribunal Pénal International pour le Rwanda

Trial Chamber II - Chambre II

OR: ENG.

Before: Judge William H. Sekule, Presiding
Judge Yakov A. Ostrovsky
Judge Tafazzal Hossain Khan

Registrar: Mr. Agwu U. Okali

Decision of: 21 May 1999

ICTR
CRIMINAL REGISTRY
RECEIVED
1999 MAY 25 P 2 14

THE PROSECUTOR
versus
CLÉMENT KAYISHEMA
and
OBED RUZINDANA

Case No. ICTR-95-1-T

JUDGEMENT

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda
CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS
NAME / NOM: JOHN M. KIYEYEU
SIGNATURE: DATE: 26-5-1999

The Office of the Prosecutor:

Mr. Jonah Rahetlah
Ms. Brenda Sue Thornton
Ms. Holo Makwaia

Counsel for Clément Kayishema:

Mr. André Ferran
Mr. Philippe Moriceau

Counsel for Obed Ruzindana:

Mr. Pascal Besnier
Mr. Willem Van der Griend

3.4 Specificity of the Indictment

Introduction

81. The Indictment, in setting out the particulars of the charges against the accused, refers to events "around" and "about" a specific date, or between two specified dates. Kayishema is charged separately for massacres at the sites of the Catholic Church and Home St. Jean, the Stadium in Kibuye and Mubuga Church. Paragraphs 28, 35 and 41 of the Indictment detail these massacres as occurring on or about the 17, 18 and 14 April 1994 respectively. The fourth crime site for which both Kayishema and Ruzindana are charged is the Bisesero area between 9 April and 30 June. The question arises, therefore, as to whether sufficient certainty exists to enable an adequate defence to be advanced, thus to ensure the right of the accused to a fair trial.

The Allegations in Relation to the Massacres in the Bisesero Area

82. The Trial Chamber considers it appropriate to distinguish between the first three sites in the Indictment, and the charges raised in respect of the Bisesero area. The exact dates on which massacres occurred at the Catholic Church and Home St. Jean, the Stadium and Mubuga Church were identified in the course of the trial by the Prosecution's case-in-chief. Accordingly, the findings made by this Chamber are set out below in the Factual Findings Part.

83. The Chamber is aware of the difficulties of raising a defence where all of the elements of the offence are not precisely detailed in the Indictment. The difficulties are compounded because the alibi defence advanced by both accused persons does not remove them from the Bisesero vicinity at the time in question. The accused in the *Tadic* case faced similar difficulties.[35] In that instance the Trial Chamber observed the near impossibility of providing a 24-hour, day-by-day, and week-by-week account of the accused's whereabouts for an alibi defence which covers a duration of several months. The Trial Chamber is of the opinion that this is a substantive issue.

---

[35] *Prosecutor v. Dusko Tadic*, International Criminal Tribunal for the Former Yugoslavia, Case No. IT-94-1-T, 7 May 1997, para. 533. (*Tadic* Judgement.)

84. Nevertheless, it is important to note here that throughout the trial the burden of proving each material element of the offence, beyond a reasonable doubt, has remained firmly on the Prosecution. Whilst, *prima facie*, the accused should be informed in as greater detail as possible of the elements of the offence against them, such details will necessarily depend on the nature of the alleged crimes. The Trial Chamber finds that during its case-in-chief the Prosecution did focus upon various sites throughout the Bisesero region, but because of the wide-ranging nature of the attacks no further specificity was possible in the Indictment.

85. It is unnecessary, however, for the Prosecution to prove an exact date of an offence where the date or time is not also a material element of the offence. Whilst it would be preferable to allege and prove an exact date of each offence, this can clearly not be demanded as a prerequisite for conviction where the time is not an essential element of that offence.[36] Furthermore, even where the date of the offence is an essential element, it is necessary to consider with what precision the timing of the offence must be detailed. It is not always possible to be precise as to exact events; this is especially true in light of the events that occurred in Rwanda in 1994 and in light of the evidence we have heard from witnesses. Consequently, the Chamber recognises that it has balanced the necessary practical considerations to enable the Prosecution to present its case, with the need to ensure sufficient specificity of location and matter of offence in order to allow a comprehensive defence to be raised.

86. However, because of the foregoing observations, the Trial Chamber opines that where timing is of material importance to the charges, then the wording of the count should lift the offence from the general to the particular.[37] In this respect, the Trial Chamber notes that the *ratione temporis* of this Tribunal extends from 1 January 1994 to 31 December 1994, and the Indictment only refers only to events that occurred in the

[36] See, the *Tadic* Judgement, para. 534 and the cases cited therein.

[37] See, for example, the Canadian cases of, *G.B., A.B. and C.S. v. R.* (1990) 2 S.C.R. 30, and *R v. Colgan* (1986) 30 C.C.C. (3d) 193 (Court of Appeal), where Monnin C.J.M. found an offence specified as occurring at some point within a six year period to be sufficiently precise.

Bisesero area between the 9 April and 30 June. In fact, during its case-in-chief, and with the more precise definition of massacre sites within the Bisesero area, the Prosecution was able to pinpoint specific periods during which the alleged events occurred. Therefore, the date need only be identified where it is a material element of the offence and, where it is such a necessary element, the precision with which such dates need be identified varies from case to case. In light of this, the Trial Chamber opines that the lack of specificity does not have a bearing upon the otherwise proper and complete counts, and it did not prejudice the right of the accused to a fair trial.

IV. THE LAW

4.1 GENOCIDE

87. Article 2(2) of the ICTR Statute reads:

> *Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*
>
> *a. Killing members of the group;*
> *b. Causing serious bodily or mental harm to members of the group;*
> *c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
> *d. Imposing measures intended to prevent births within the group;*
> *e. Forcibly transferring children of the group to another group.*

The above definition reproduces Articles II and III of the Genocide Convention of 1948 and Article 17 of the International Law Commission Report 1996, Draft Code of Crimes Against the Peace and Security of Mankind (ILC Draft Code of Crimes).

88. The concept of genocide appeared first in the International Military Tribunal (Nuremberg) Judgement of 30 September and 1 October 1946, referring to the destruction of groups. The prohibition of genocide then was recognised by the General Assembly of the United Nations as a principle of international law. Resolution 260(A)(III) of 9 December 1948, adopting the Draft Genocide Convention, crystallised into international law the prohibition of that crime. The Genocide Convention became widely accepted as an international human rights instrument. Furthermore, the crime of genocide is considered part of international customary law and, moreover, a norm of *jus cogens*.

89. The definition of the crime of genocide was based upon that of crimes against humanity, that is, a combination of "extermination and persecutions on political, racial or religious grounds" and it was intended to cover *"the intentional destruction of groups in whole or in substantial part"* (emphasis added). The crime of genocide is a type of crime against humanity. Genocide, however, is different from other crimes against humanity. The

essential difference is that genocide requires the aforementioned specific intent to exterminate a protected group (in whole or in part) while crimes against humanity require the civilian population to be targeted as part of a widespread or systematic attack. There are instances where the discriminatory grounds coincide and overlap. This scenario is detailed in the present Judgement, in the Part VII on Cumulative Charges.

90. For the crime of genocide to be committed, two elements are required, namely, the *mens rea*, the requisite specific intent, and the *actus reus*, the prohibited act or omission.

4.1.1 The Mens Rea

91. A distinguishing aspect of the crime of genocide is the specific intent *(dolus specialis)* to destroy a group in whole or in part. The *dolus specialis* applies to all acts of genocide mentioned in Article 2(a) to (e) of the Statute, that is, all the enumerated acts must be committed 'with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.' It is this specific intent that distinguishes the crime of genocide from the ordinary crime of murder.[38] The Trial Chamber opines that for the crime of genocide to occur, the *mens rea* must be formed prior to the commission of the genocidal acts. The individual acts themselves, however, do not require premeditation; the only consideration is that the act should be done in furtherance of the genocidal intent.

92. Under Article 6(3) of the Statute, the superior is criminally responsible for the acts committed by his subordinates if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Proof of the Requisite Intent

93. Regarding the assessment of the requisite intent, the Trial Chamber acknowledges that it may be difficult to find explicit manifestations of intent by the perpetrators. The perpetrator's actions, including circumstantial evidence, however may provide sufficient evidence of intent. The Commission of Experts in their Final Report on the situation in

[38] Virginia Morris & Michael Scharf, THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, 167 (1998)

Rwanda also noted this difficulty. Their Report suggested that the necessary element of intent can be inferred from sufficient facts, such as the number of group members affected.[39] The Chamber finds that the intent can be inferred either from words or deeds and may be demonstrated by a pattern of purposeful action.[40] In particular, the Chamber considers evidence such as the physical targeting of the group or their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing. Furthermore, the number of victims from the group is also important. In the Report of the Sub-Commission on Genocide, the Special Rapporteur stated that "the relative proportionate scale of the actual or attempted destruction of a group, by any act listed in Articles II and III of the Genocide Convention, is strong evidence to prove the necessary intent to destroy a group in whole or in part."[41]

94. It is also the view of the Chamber that although a specific plan to destroy does not constitute an element of genocide, it would appear that it is not easy to carry out a genocide without such a plan, or organisation. Morris and Scharf note that "it is virtually impossible for the crime of genocide to be committed without some or indirect involvement on the part of the State given the magnitude of this crime."[42] They suggested that "it is unnecessary for an individual to have knowledge of all details of the genocidal plan or policy." The Chamber concurs with this view.

Destruction of a Group

95. The perpetrator must intend to destroy a group in whole or in part. This begs the question of what constitutes the "destruction of a group." The Prosecution suggests that the term should be broadly interpreted and encompass acts that are undertaken not only with the intent to cause death but also includes acts which may fall short of causing

---

[39] Cited in Bassiouni, in THE LAW OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, p. 524, and UN AND RWANDA, 1993-6, p. 432, para. 166.
[40] Wisconsin International Law Journal, 243 (1996).
[41] UN Doc. E/CN.4/Sub.2/1985/6, p. 16, para. 29.
[42] Morris & Scharf, *supra*, p. 168.

death.[43] In the *Akayesu* Judgement, acts of sexual violence, which occurred in Taba Commune were found to form an integral part of the process of destruction, specifically, targeting Tutsi women and contributing to their destruction and the destruction of the Tutsi as a group.[44] The Trial Chamber concurs with this view and that of the International Law Commission (ILC) which stated that "it is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe."[45]

Whole or in Part

96. Another aspect for consideration is that the intent to destroy the group must be "in whole or in part." The ILC stated that "the crime of Genocide by its very nature requires the intention to destroy at least a substantial part of a particular group."[46] In the Report of the Sub-Commission on Genocide, the Special Rapporteur stated that "in part" would seem to imply a reasonably significant number, relative to the total of the group as a whole, or else a significant section of a group such as its leadership. Hence, both proportionate scale and total number are relevant.[47]

97. The Trial Chamber opines, therefore, that "in part" requires the intention to destroy a considerable number of individuals who are part of the group. Individuals must be targeted due to their membership of the group to satisfy this definition.

A National, Ethnical, Racial or Religious Group

98. The intent must exist to "destroy a national, ethnical, racial or religious group, as such." Thus, the acts must be directed towards a specific group on these discriminatory grounds. An ethnic group is one whose members share a common language and culture; or, a group which distinguishes itself, as such (self identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others). A racial

[43] Prosecutor's Brief, 9 Oct. 1998, p. 30.
[44] *Akayesu* Judgement, para. 731.
[45] ILC Draft Code of Crimes, p. 42, para. 8.
[46] *Ibid.*
[47] Mr. Whitaker, in UN Doc. E/CN.4/Sub.2/1985/6, p. 16, para. 29.

group is based on hereditary physical traits often identified with geography. A religious group includes denomination or mode of worship or a group sharing common beliefs.

Destroying in whole or in part a National, Ethnical, Racial or Religious Group as Such

99. This phrase speaks to specific intent (the requisite *mens rea*). The "destroying" has to be directed at the group *as such*, that is, *qua group*, as stipulated in Article 2(2) of the Statute.

4.1.2 Actus Reus

100. Article 2(2)(a) to (e) of the ICTR Statute and Article II (a) to (e) of the Genocide Convention lists acts which, if committed with the specific intent, amount to genocide.

Killing Members of the Group

101. Article 2(2)(a) of the Statute, in the English language version, states that genocide means the act of "killing" committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. The French language version refers to *meurtre*, a term that requires the additional mental element of intent.

102. The Parties in their closing remarks addressed the differences between the English and French versions. The Prosecutor submitted that the term *meurtre* has a legal meaning in French law, that is, a deliberate homicide, whereas the term "killing" is merely the act of causing the death to another.[48] The Prosecutor contended that the language used in the English version is more flexible and would permit, if the need arises, a broadening of the meaning or interpretation.[49] The Defence teams submitted that "*meurtre*" should be applied, as it was in the *Akayesu* Judgement. The Defence submitted that where doubt exists then, as a general principle of criminal law, that doubt should be interpreted in favour of the accused.

103. The Trial Chamber agrees that if a doubt exists, for a matter of statutory interpretation, that doubt must be interpreted in favour of the accused. Therefore, the

[48] Trans., 21 Oct. 1998, p. 91.
[49] *Ibid.*

relevant act under Article 2(2)(a) is "*meurtre*," that is, unlawful and intentional killing. The Trial Chamber notes, however, that all the enumerated acts must be committed with intent to destroy a group in whole or in part. As stated by the ILC the enumerated acts "are by their very nature conscious, intentional or volitional acts which an individual could not usually commit without knowing that certain consequences were likely to result. They are not the type of acts that would normally occur by accident or even as a result of mere negligence . . . the definition of this crime requires a particular state of mind or a specific intent with respect to the overall consequences of the prohibited act."[50] Hence, there is virtually no difference between the two as the term "killing" is linked to the intent to destroy in whole or in part.

104. The Chamber observes that the *Akayesu* Judgement does not fully define the term "killing."[51] It is the opinion of the Trial Chamber that there is virtually no difference between the term "killing" in the English version and "*meurtre*" in the French version of Article 2 (2)(a) of the Statute within the context of genocidal intent. Hence "killing" or "meurtre" should be considered along with the specific intent of genocide, that is, the intent to destroy in whole or in part, a national, ethnical, racial or religious group as such.

Causing Serious Bodily or Mental Harm to Members of the Group

105. Pursuant to Article 2(2)(b) of the Statute states "causing serious bodily or mental harm to members of the group."

106. This phrase, which is not defined by the Statute, was the subject of contention during the closing submissions of the Parties. The Prosecution submitted that "causing a bodily or a mental harm" means: to undertake an action that might cause injury to the physical and mental fullness, the total being of a person; that a human being is to be considered as a whole with structures and elements functioning in concert and harmony; that the term "serious" is applicable to both the bodily and the mental part of a person and is dependant upon the extent to which the physical body or mental well being is injured.

---

[50] ILC Draft Code of Crimes, p. 42, (commenting upon sub-paragraph (a) to (e) of Article 17).
[51] Paras. 500 – 501, p. 206.

107. The Prosecution submitted that serious harm may include impact on one or more elements of the human structure, which disables the organs of the body and prevents them from functioning as normal. To this end, the harm caused need not bring about death but causes handicap such that the individual will be unable to be a socially useful unit or a socially existent unit of the group. The Prosecution submitted that blows and wounds inflicted would constitute serious harm when they are so violent or have such intensity that they immediately cause the malfunctioning of one or many essential mechanisms of the human body. The Prosecution also submits that non-physical aggressions such as the infliction of strong fear or strong terror, intimidation or threat are also serious mental harm.[52]

Serious Bodily Harm

108. The phrase serious bodily harm should be determined on a case-by-case basis, using a common sense approach. In the *Akayesu* Judgement, it was held that serious bodily harm does not necessarily mean harm that is permanent or irremediable.[53] The *Akayesu* Judgement further held that acts of sexual violence, rape, mutilations and interrogations combined with beatings, and/or threats of death, were all acts that amount to serious bodily harm.[54] The Trial Chamber concurs with these determinations.

109. It is the view of the Trial Chamber that, to large extent, "causing serious bodily harm" is self-explanatory. This phrase could be construed to mean harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses.

Serious Mental Harm

110. The phrase "serious mental harm" should also be determined on a case-by-case. The Prosecution submits that there is no prerequisite that mental suffering should be the result of physical harm. The Prosecution relies upon the Preparatory Committee's

[52] Rahetlah, submission, 21 October 1998, pp. 114 to 121.
[53] *Akayesu* Judgement, para 502.
[54] *Akayesu* Judgement, paras 706-07 and 711-12.

Definition of Crimes that suggests that serious mental harm should include "more than minor or temporary impairment on mental faculties."[55] The Prosecution suggested that the inflicting of strong fear or terror, intimidation or threat may amount to serious mental harm.

111. The Defence teams submitted that the serious bodily and mental harm alleged by the Prosecution was merely a consequence of attempts to kill and did not amount to genocidal offences in themselves. It argued that the Prosecution witnesses who had been wounded did not demonstrate that the perpetrators had intention to cause serious bodily or mental harm. The Defence contends therefore, that there was intention to cause murder and not to cause serious bodily or mental harm.

112. The Chamber considers that an accused may be held liable under these circumstances only where, at the time of the act, the accused had the intention to inflict serious mental harm in pursuit of the specific intention to destroy a group in whole or in part.

113. The Chamber opines that "causing serious mental harm" should be interpreted on a case-by-case basis in light of the relevant jurisprudence.

Deliberately Inflicting on the Group Conditions of Life Calculated to Bring About its Physical Destruction in Whole or in Part

114. Article 2(2)(c) of the Statute covers the act of "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." The Prosecution submits that Article 2(2)(c) applies to situations likely to cause death regardless of whether death actually occurs and allows for the punishment of the perpetrator for the infliction of substandard conditions of life which, if left to run their coarse, could bring about the physical destruction of the group.[56]

[55] Report of the Preparatory Committee on the Establishment of an International Criminal Court, Proceedings of the Preparatory Committee, March – April and August 1996, UN Doc. A/51/22 at p. 18.
[56] Prosecutor's Closing Brief, 9 October 1998, p.28.

115. The Trial Chamber concurs with the explanation within the Draft Convention, prepared by the U.N. Secretariat which interpreted this concept to include circumstances which will lead to a slow death, for example, lack of proper housing, clothing, hygiene and medical care or excessive work or physical exertion.[57]

116. It is the view of the Trial Chamber that "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part," includes methods of destruction which do not immediately lead to the death of members of the group. The Chamber adopts the above interpretation.[58] Therefore the conditions of life envisaged include rape, the starving of a group of people, reducing required medical services below a minimum, and withholding sufficient living accommodation for a reasonable period, provided the above would lead to the destruction of the group in whole or in part.

Imposing Measures Intended to Prevent Births Within the Group

117. Article 2(2)(d) of the Statute covers the act of imposing measures intended to prevent births within the group. The Trial Chamber concurs with the explanation provided in the *Akayesu* Judgement.

Forcibly Transferring Children of the Group to Another

118. Article 2(2)(e) of the Statute covers the act of forcibly transferring children of the group to another. The Trial Chamber concurs with the explanation provided in the *Akayesu* Judgement.

[57] Nehemiah Robinson, the Genocide Convention: A Commentary (1960), p. 123.
[58] Robinson, *supra*, pp. 63-64.

4.2 CRIMES AGAINST HUMANITY

119. Article 3 of the ICTR Statute states:

> The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:
>
> *a) Murder;*
>
> *b) Extermination;*
>
> *c) Enslavement;*
>
> *d) Deportation;*
>
> *e) Imprisonment;*
>
> *f) Torture;*
>
> *g) Rape;*
>
> *h) Prosecutions;*
>
> *i) Other inhumane acts.*

120. Crimes against humanity were prosecuted at the Nuremberg trials. The Charter of the International Military Tribunal of Nuremberg[59] in its Article 6(c) (Annex to the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis (London Agreement)), describes the crimes against humanity as follows:

> ...namely murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian populations, before or during the war; or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

121. Crimes against humanity were also applied under Article II of Law No. 10 of the Control Council Law[60] and went through a gradual evolution in the domestic

[59] Law No. 10 of the Control Council for Germany.
[60] International Law Reports (ILR), vol. 36, p. 31.

cases of *Eichmann*,[61] *Barbie*,[62] and *Touvier*. More recently, crimes against humanity have been applied in the International Criminal Tribunals for both Rwanda and the Former Yugoslavia.

4.2.1 The Attack

122. The enumerated crimes must be committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. The attack is the event in which the enumerated crimes must form part. Indeed, within a single attack, there may exist a combination of the enumerated crimes, for example murder, rape and deportation. The elements of the attack effectively exclude from crimes against humanity, acts carried out for purely personal motives and those outside of a broader policy or plan; a position which was adopted by the Defence.

Widespread or Systematic

123. The attack must contain one of the alternative conditions of being widespread or systematic.[63] A widespread attack is one that is directed against a multiplicity of victims.[64] A systematic attack means an attack carried out pursuant to a preconceived policy or plan. Either of these conditions will serve to exclude isolated or random inhumane acts committed for purely personal reasons.[65]

---

[61] 36 ILR.

[62] 125 ILR.

[63] Despite the French text containing the conjunctive 'and' instead of the disjunctive 'or' between the terms widespread or systematic, the Trial Chamber is in no doubt that the correct interpretation is the disjunctive. The matter has already been settled in the *Akayesu* Judgement and needs no further debate here.

[64] The ILC Draft Code of Crimes explained "large scale" (the term used in place of 'widespread') to mean acts that are "directed against a multiplicity of victims." Article 18, para. 4 of commentary.

[65] The ILC Draft Code of Crimes defines systematic as "meaning pursuant to a preconceived plan or policy. The implementation of this plan or policy could result in the repeated or continuous commission of inhumane acts. The thrust of this requirement is to exclude random acts that were not committed as part of a broader plan or policy." Article 18, para. 3 of commentary.

The Policy Element

124. For an act of mass victimisation to be a crime against humanity, it must include a policy element. Either of the requirements of widespread or systematic are enough to exclude acts not committed as part of a broader policy or plan. Additionally, the requirement that the attack must be committed against a "civilian population" inevitably demands some kind of plan and, the discriminatory element of the attack is, by its very nature, only possible as a consequence of a policy.

125. Who or what must instigate the policy? Arguably, customary international law requires a showing that crimes against humanity are committed pursuant to an action or policy of a State. However, it is clear that the ICTR Statute does not demand the involvement of a State. Guidance on this issue may be gained from the ILC who, in the Draft Code of Crimes, stated that crimes against humanity are inhumane acts "instigated or directed by a Government or by any organisation or group."[66] The ILC explains that this requirement was,

> intended to exclude the situation in which an individual commits an inhumane act whilst acting on his own initiative pursuant to his own criminal plan in the absence of any encouragement or direction from either a Government or a group or an organisation...The instigation or direction of a Government or any group, which may or may not be affiliated with a Government, gives the act its great dimension and makes it a crime against humanity imputable to private persons or agents of the State.[67]

126. The Trial Chamber concurs with the above view and finds that the Tribunal's jurisdiction covers both State and non-State actors. As *Prefect*, Kayishema was a State actor. As a businessman Ruzindana was a non-State actor. To have jurisdiction over either of the accused, the Chamber must be satisfied that their actions were instigated or directed by a Government or by any organisation or group.

[66] ILC Draft Code of Crimes Article 18.

[67] ILC Draft Code of Crimes Art. 18 para. 5 of commentary.

Civilian Population

127. Traditionally, legal definitions of 'civilian' or 'civilian population' have been discussed within the context of armed conflict. However, under the Statute, crimes against humanity may be committed inside or outside the context of an armed conflict. Therefore, the term civilian must be understood within the context of war as well as relative peace. The Trial Chamber considers that a wide definition of civilian is applicable and, in the context of the situation of Kibuye *Prefecture* where there was no armed conflict, includes all persons *except* those who have the duty to maintain public order and have the legitimate means to exercise force. Non-civilians would include, for example, members of the FAR, the RPF, the police and the Gendarmerie Nationale.

128. With regard to the targeting of any civilian population, the Trial Chamber concurs with the finding in the *Tadic* decision that the targeted population must be predominantly civilian in nature but the presence of certain non-civilians in their midst does not change the character of that population.[68]

129. In any event, the Defence teams did not challenge the assertion that the victims of the alleged attacks were civilians. And, the Prosecution submitted that the victims in the four massacre sites were farmers, teachers and those seeking refuge from the attacks.

Discriminatory Grounds

130. The Statute contains a requirement additional to both the Nuremberg Charter and the ICTY Statute; that the attack be committed on national, political, ethnic, racial or religious grounds. The Prosecution submits that the discrimination at issue was based on ethnic or, alternatively, political grounds.[69] The Prosecution asserted that the discrimination was on ethnic grounds because the victims were Tutsis and political grounds because the Tutsis were accomplices or supporters of the RPF. The

[68] *Tadic* Judgement, at para 638.
[69] Prosecutor's Closing Brief, p. 42.

Defence did not contest that the Tutsis were considered an ethnic group.[70] Political grounds include party political beliefs and political ideology.

131. The Prosecution submit that it is the intent of the perpetrator to discriminate against a group that is important rather than whether the victim was, in fact, a member of that targeted group. In this regard there are two issues for the Chamber to address. Firstly, in a scenario where the perpetrator's intention is to exterminate the Tutsi group and, in furtherance of this intent, he kills a Belgium Priest who is protecting the Tutsi, the Trial Chamber opines that such an act would be based on discrimination against the Tutsi group.

132. The second relevant scenario is where the perpetrator attacks people on the grounds and in the *belief* that they are members of a group but, in fact, they are not, for example, where the perpetrator believes that a group of Tutsi are supporters of the RPF and therefore accomplices. In the scenario, the Trial Chamber opines that the Prosecution must show that the perpetrator's belief was objectively reasonable - based upon real facts - rather than being mere speculation or perverted deduction.

The Mental Element

133. The perpetrator must knowingly commit crimes against humanity in the sense that he must understand the overall context of his act. The Defence for Ruzindana submitted that to be guilty of crimes against humanity the perpetrator must know that there is an attack on a civilian population and that his act is part of the attack.[71] This issue has been addressed by the ICTY where it was stated that the accused must have acted with knowledge of the broader context of the attack;[72] a view which conforms to the wording of the Statute of the International Criminal Court (ICC) Article 7.

---

[70] For detailed discussion regarding ethnicity see the Historical Context Part of the Judgement.

[71] Closing Arguments at p. 26.

[72] *Tadic* Judgement, at para. 656, "therefore in addition to the intent to commit the underlying offence the perpetrator must know of the broader context in which his acts occur."

134. The Trial Chamber agrees with the Defence. Part of what transforms an individual's act(s) into a crime against humanity is the inclusion of the act within a greater dimension of criminal conduct; therefore an accused should be aware of this greater dimension in order to be culpable thereof. Accordingly, actual or constructive knowledge of the broader context of the attack, meaning that the accused must know that his act(s) is part of a widespread or systematic attack on a civilian population and pursuant to some kind of policy or plan, is necessary to satisfy the requisite *mens rea* element of the accused. This requirement further compliments the exclusion from crimes against humanity of isolated acts carried out for purely personal reasons.

4.2.2 The Crimes

135. Article 3 entitles the International Criminal Tribunal for Rwanda to prosecute persons responsible for crimes enumerated within the Statute. The crimes must be committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. The crimes themselves need not contain the three elements of the attack (i.e. widespread or systematic, against any civilian population, on discriminatory grounds), but must form *part of* such an attack. Indeed, the individual crimes contain their own specific elements. For an accused to be found guilty under crimes against humanity the Prosecution must prove that the accused is responsible for one of the crimes charged pursuant to Article 6(1) and/or 6(3) of the Statute. The following crimes are charged in the Indictment: murder, extermination and other inhumane acts.

Murder

136. The Prosecution charges Kayishema with crimes against humanity for murder in Counts 2, 8, 14 and 20 of the Indictment, and Ruzindana with crimes against humanity for murder in Count 20 of the Indictment.

137. Article 3(a) of the English version of the Statute uses the term "murder," whilst the French version of the Statute uses the term "*assassinat*."[73] The use of these terms has been the subject of some debate because the *mens rea* for murder, as it is defined in most common law jurisdictions, includes but does not require premeditation; whereas, in most civil law systems, premeditation is always required for *assassinat*.[74] The *Akayesu* Judgement, which is the only case to have addressed the issue, stated that customary international law dictates that it is the act of murder that constitutes a crime against humanity and not *assassinat*. In *Akayesu*, the Chamber held that there were sufficient reasons to assume that the French version of the Statute suffers from an error in translation.[75] The Defence argued, *inter alia*, that the *Akayesu* solution of an error in translation was too simple and not convincing as both the French and the English versions of the Statute are originals. According to the Defence, murder was meant to be the equivalent of *assassinat*. However, the Prosecution argued that premeditation was not a necessary element and suggested that the "unlawful killing of a human being as the result of the perpetrator engaging in conduct which was in reckless disregard for human life" is enough.

138. The Trial Chamber agrees with the Defence. When interpreting a term from one language to another, one may find that there is no equivalent term that corresponds to all the subtleties and nuances. This is particularly true with legal terms that represent jurisprudential concepts. Here, the *mens rea* for murder in common law overlaps with both *meurtre* and *assassinat* (that is, a *meurtre aggravé*) in civil systems.[76] The drafters chose to use the term *assassinat* rather than *meurtre*. As a matter of interpretation, the intention of the drafters should be followed so far as

---

[73] Indeed, the Statute, Article 2(2)(a)(Genocide) refers to "killing" – "*meurtre*" in French, while Article 4(a) refers to "murder" – "*meurtre*" in French.

[74] Nouveau Code Pénal, Article 221-3 "Le meurtre commis avec préméditation constitute un assassinat. Il est puni de la réclusion criminelle á perpetuité. [...]"

[75] *Akayesu* Judgement, at para. 588.

[76] For example, at the high end of murder the *mens rea* corresponds to the *mens rea* of *assassinat*, i.e., unlawful killing with premeditation. Conversely, at the low end of murder where mere intention or recklessness is sufficient and premeditation is not required, the *mens rea* of murder corresponds to the *mens rea* of *meurtre*.

possible and a statute should be given its plain meaning.[77] Since the concepts of murder and *assassinat* can correspond to one another, in the opinion of this Trial Chamber, there is no need to change the wording of the Statute. Although it may be argued that, under customary international law, it is murder rather than *assassinat* that constitutes the crime against humanity (a position asserted by the Chamber in the *Akayesu* Judgement), this court is bound by the wording of the ICTR Statute in particular. It is the ICTR Statute that reflects the intention of the international community for the purposes of trying those charged with violations of international law in Rwanda. Furthermore, the ICTR and ICTY Statutes did not reflect customary international law at the time of drafting. This is evident by the inclusion of the need for an armed conflict in the ICTY Statute and the inclusion of the requirement that the crimes be committed with discriminatory intent in the ICTR Statute. Accordingly, it may be presumed that the drafters intended to use *assassinat* alongside murder. Indeed, by using *assassinat* in French, the drafters may have intended that only the higher standards of *mens rea* for murder will suffice.[78]

139. If in doubt, a matter of interpretation should be decided in favour of the accused; in this case, the inclusion of premeditation is favourable to the accused. The Chamber finds, therefore, that murder and *assassinat* should be considered together in order to ascertain the standard of *mens rea* intended by the drafters and demanded by the ICTR Statute. When murder is considered along with *assassinat* the Chamber finds that the standard of *mens rea* required is intentional and premeditated killing. The result is premeditated when the actor formulated his intent to kill after a cool

[77] Notably the text was drafted in English and French, both being original and authentic. The Statute was then translated into the four remaining official UN languages. Therefore, between English and French there was no translation. Accordingly, there can be no 'error in translation' as such; there can only be a mistake in the drafting of an original text. Notably, the term used in the ICTY Statute is also *assassinat* (ICTY Statute Article 5(a)).

[78] Of course, in common law, there is no crime of unlawful killing that provides for a higher standard of *mens rea* than that of murder. Therefore, even if the drafters intended that only the standard of *mens rea* for *assassinat* would suffice, the drafters would still need to use the term murder in English.

moment of reflection.[79] The result is intended when it is the actor's purpose, or the actor is aware that it will occur in the ordinary course of events.

140. The accused is guilty of murder if the accused, engaging in conduct which is unlawful:

1. causes the death of another;
2. by a premeditated act or omission;
3. intending to kill any person or,
4. intending to cause grievous bodily harm to any person.

Thus, a premeditated murder that forms part of a widespread or systematic attack, against civilians, on discriminatory grounds will be a crime against humanity. Also included will be extrajudicial killings, that is "unlawful and deliberate killings carried out with the order of a Government or with its complicity or acquiescence."[80]

Extermination

141. The Prosecution charges Kayishema with crimes against humanity for extermination in Counts 3, 9, 15 and 21 of the Indictment, and Ruzindana with crimes against humanity for extermination in Count 21 of the Indictment.

142. The crime of extermination was not specifically defined in the Statute or the Nuremberg Charter. Indeed, there is very little jurisprudence relating to the essential elements of extermination. In the *Akayesu* Judgement, Chamber I considered that extermination is a crime that by its very nature is directed against a group of individuals and differs from murder in that it requires an element of mass destruction that is not required for murder.[81] The Prosecution asserted that there is no need for a defined number of people to die for the killing to rise to an act of extermination; it is determined on a case-by-case basis even though there is the need for a numerical

[79] This explanation conforms to the French jurisprudence of the criminal court and to the United States Supreme Court case law.

[80] See Amnesty International's 14 Point Program for the Prevention of Extrajudicial Executions.

[81] *Akayesu* Judgement, at para. 591:

requirement.[82] Notably, Akayesu was found guilty of extermination for ordering the killing of sixteen people.[83] The Chamber agrees that the difference between murder and extermination is the scale; extermination can be said to be murder on a massive scale. The Defence did not address the numerical question but argues that "the essence of extermination lies in the fact that it is an indiscriminate elimination."[84]

143. Cherif Bassiouni states that extermination is murder on a massive scale and may include unintentional killing:

> Extermination implies intentional and unintentional killing. The reason for the latter is that mass killing of a group of people involves planning and implementation by a number of persons who, though knowing and wanting the intended result, may not necessarily know their victims. Furthermore, such persons may not perform the *actus reus* that produced the deaths, nor have specific intent toward a particular victim.[85]

The ICC Statute (Article 7(2)(b)), offers an illustrative rather than definitive statement regarding extermination: "Extermination includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population."

144. Having considered the above, the Chamber defines the requisite elements of extermination:

> The actor participates in the mass killing of others or in the creation of conditions of life that lead to the mass killing of others, through his act(s) or omission(s); having intended the killing, or being reckless, or grossly negligent as to whether the killing would result and; being aware that his act(s) or omission(s) forms part of a mass killing event; where, he act(s) or omission(s) forms part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.

145. The term "mass", which may be understood to mean 'large scale,' does not command a numerical imperative but may be determined on a case-by-case basis

---

[82] Prosecutor's Closing Brief, at p. 36.
[83] *Akayesu* Judgement, at para 735-744.
[84] Ruzindana Closing Argument, at p. 8.

using a common sense approach. The actor need not act with a specific individual(s) in mind.

146. The act(s) or omission(s) may be done with intention, recklessness, or gross negligence. The 'creation of conditions of life that lead to mass killing' is the institution of circumstances that ultimately causes the mass death of others. For example: Imprisoning a large number of people and withholding the necessities of life which results in mass death; introducing a deadly virus into a population and preventing medical care which results in mass death. Extermination includes not only the implementation of mass killing or the creation of conditions of life that leads to mass killing, but also the planning thereof. In this event, the Prosecutor must prove a nexus between the planning and the actual killing.

147. An actor may be guilty of extermination if he kills, or creates the conditions of life that kills, a single person providing the actor is aware that his act(s) or omission(s) forms part of a mass killing event.[86] For a single killing to form part of extermination, the killing must actually form part of a mass killing event. An 'event' exists when the (mass) killings have close proximity in time and place.

Other Inhumane Acts

148. The Prosecution charges Kayishema with crimes against humanity for other inhumane acts in Counts 4, 10, 16 and 22 of the Indictment, and Ruzindana with crimes against humanity for other inhumane acts in Count 22 of the Indictment.

149. Since the Nuremberg Charter, the category 'other inhumane acts' has been maintained as a useful category for acts not specifically stated but which are of comparable gravity. The importance in maintaining such a category was elucidated

---

[85] Cherif Bassiouni, Crimes Against Humanity in International Law (Martinus Nijhoff Publishers 1992).

[86] For example, if ten FAR officers fire into a crowd of 200 Tutsis, killing them all. FAR officer X is a poor shot and kills only a single person, whereas officer Y kills 16. Because both X and Y participated in the mass killing and were both aware that their actions formed part of the mass killing event, they will both be guilty of extermination.

by the ICRC when commenting on inhumane treatment contained in Article 3 of the Geneva Conventions,

> It is always dangerous to go into too much detail – especially in this domain. However much care was taken in establishing a list of all the various forms of infliction, one would never be able to catch up with the imagination of future torturers who wish to satisfy their bestial instincts; and the more specific and complete a list tries to be, the more restrictive it becomes. The form of wording is flexible and, at the same time, precise.[87]

150. Other inhumane acts include those crimes against humanity that are not otherwise specified in Article 3 of the Statute, but are of comparable seriousness. The ICC Statute (Article 7(k)), provides greater detail than the ICTR Statute to the meaning of other inhumane acts: "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health." The ILC commenting on Article 18 of its Draft Code of Crimes states

> The Commission recognized that it was impossible to establish an exhaustive list of the inhumane acts which may constitute crimes against humanity. First, this category of acts is intended to include only additional acts that are similar in gravity to those listed in the preceding subparagraphs. Second, the act must in fact cause injury to a human being in terms of physical or mental integrity, health or human dignity.

151. The Chamber notes the International Law Commission's commentary. In relation to the Statute, other inhumane acts include acts that are of similar gravity and seriousness to the enumerated acts of murder, extermination, enslavement, deportation, imprisonment, torture, rape, or persecution on political, racial and religious grounds. These will be acts or omissions that deliberately cause serious mental or physical suffering or injury or constitute a serious attack on human dignity. The Prosecution must prove a nexus between the inhumane act and the great suffering or serious injury to mental or physical health of the victim. The Chamber agrees with

[87] ICRC COMMENTARY ON THE GENEVA CONVENTIONS p. 54.

the Prosecution submission that the acts that rise to the level of inhumane acts should be determined on a case-by-case basis.[88]

152. The Defence asserts that for an accused to be found guilty of mental harm, there must be a direct relation between the assailant and the victim.[89] The Prosecution on the other hand suggests that victims have suffered mental harm amounting to other inhumane acts due to them having witnessed atrocities for which the accused is responsible. For example, in relation to Count 4 the Prosecution submits,

> [w]ith respect to serious mental harm, six survivors testified (and the survivors of all the other massacres testified) that they witnessed family members and friends being killed. As established by the evidence, Tutsi civilians were placed in an environment of fear and desperation and were forced to witness the killing and the severe injuring of friends, family and other Tutsi civilians. The killings were brutal in manner. The people saw carnage and heard the people singing exterminate them, exterminate them....The Prosecutor submits that such an environment inherently causes serious mental harm.[90]

153. The Chamber is in no doubt that a third party could suffer serious mental harm by witnessing acts committed against others, particularly against family or friends. However, to find an accused responsible for such harm under crimes against humanity, it is incumbent on the Prosecution to prove the *mens rea* on the part of the accused. Indeed, as stated above, inhumane acts are, *inter alia*, those which *deliberately* cause serious mental suffering. The Chamber considers that an accused may be held liable under these circumstances only where, at the time of the act, the accused had the intention to inflict serious mental suffering on the third party, or where the accused knew that his act was likely to cause serious mental suffering and was reckless as to whether such suffering would result. Accordingly, if at the time of the act, the accused was unaware of the third party bearing witness to his act, then he cannot be held responsible for the mental suffering of the third party.

[88] Prosecutor's Closing Brief, p. 37.
[89] See, Ruzindana's Closing Arguments, pp. 38-41.
[90] Prosecutor's Closing Brief, p. 80. See also pp. 93, 101, 105 and 134.

154. In summary, for an accused to be found guilty of crimes against humanity for other inhumane acts, he must commit an act of similar gravity and seriousness to the other enumerated crimes, with the intention to cause the other inhumane act, and with knowledge that the act is perpetrated within the overall context of the attack.