# 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)

# COUNTER-MEMORIAL ON THE CASE CONCERNING APPLICATION OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

SUBMITTED BY THE RUSSIAN FEDERATION

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As the Russian Federation repeatedly noted, Ukraine's Application to the International Court of Justice of 16 January 2017 is formally directed jointly against alleged violations of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination. It actually concerns two entirely separate cases which have in common only the use of the Court's forum in an attempt to stigmatise Russia for alleged aggression against, and violation of sovereignty of, Ukraine. Accordingly, Russia submits two Counter-Memorials dealing separately with each of these cases.

The present Counter-Memorial deals with the case concerning the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD").

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#### **INTRODUCTION**

1. On 16 January 2017, Ukraine introduced an Application against the Russian Federation (hereafter "Russia") formulating grave accusations under the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD") (I). As will be shown in the present Counter-Memorial, the said allegations present major flaws heightened by Ukraine's attempt to disguise its territorial claim over Crimea as a case of systematic racial discrimination (II). Russia is confident that the Court will protect the integrity of CERD and dismiss these artificial allegations (III).

#### I. Nature and Scope of Ukraine's Claim

2. The Court has identified the subject-matter of the present dispute and limited the scope of its jurisdiction to an alleged *systematic campaign* of ethnic discrimination in violation of CERD, following Ukraine's own characterisation of its claims.<sup>1</sup>

- 3. In order to succeed, Ukraine must thus prove the following *cumulative* elements:
  - (i) The disputed acts are attributable to Russia;
  - (ii) The disputed acts constitute a violation of CERD, namely that each alleged act constitutes:
    - a distinction, exclusion, restriction or preference,
    - based on race or ethnic origin within the meaning of the Convention,
    - that impairs or nullifies the recognition, enjoyment or exercise,
    - on an equal footing, of human rights and fundamental freedoms, and
    - that has no objective and reasonable justification;
  - (iii) The disputed acts form part of a systematic campaign or policy, which in turn requires Ukraine to establish that these acts, taken together as a composite whole, constitute:

- a "policy", a "campaign" directed against the Crimean Tatar and Ukrainian ethnic groups in Crimea, targeting them as such;

- a discriminatory intent, as evidenced by the consistent use by Ukraine in its Application and pleadings of terms such as "policy",<sup>2</sup> "campaign",<sup>3</sup> "systematic",<sup>4</sup>

<sup>&</sup>lt;sup>1</sup> See below, Chapter II.

<sup>&</sup>lt;sup>2</sup> 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), Application instituting proceedings, 16 January 2017 ("Ukraine's Application of 16 January 2017" or "Application"), paras. 5, 36, 86, 98, 110, 114, 118, 119, 131, 133, 137, and 138; Memorial of Ukraine, 12 June 2018 ("Memorial" or "MU"), paras. 3, 22, 27, 345, 383, 453, 532, 589, 593, 594, 597, 598, 603, 653(f), and various chapter titles; Written Statement of Observations and Submissions on the Preliminary Objections of the Russian Federation, 14 January 2019 ("WSU"), paras. 260, 298, 305.

<sup>&</sup>lt;sup>3</sup> Application, paras. 5, 14, 15, 81, 92, 93, 97, 115, 118, 123, 133, 137; MU, paras. 15, 27, 28, 341, 342, 347, 348, 349, 363, 375, 382, 383, 384, 388, 389, 390, 391, 413, 419, 420, 421, 453, 477, 587, 593, 601, 640, and various section titles.

"coordinated",<sup>5</sup> "concerted",<sup>6</sup> "strategy",<sup>7</sup> "goal",<sup>8</sup> "target",<sup>9</sup> "aim",<sup>10</sup> "sponsor",<sup>11</sup> "punish",<sup>12</sup> etc.; and

- a violation of the Convention that is committed on a widespread scale and in a systematic manner.

#### II. Ukraine's Artificial Case-Construction and Evidential Flaws

4. Pursuant to the Court's established case law, "claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive"; in other words, "the Court requires proof at a high level of certainty appropriate to the seriousness of the allegation."<sup>13</sup> A claim that a State is involved in a systematic campaign of racial discrimination and cultural erasure is indeed exceptionally grave. Accordingly, the Court must, in the present case, "be fully convinced that the allegations made in the proceedings […] have been clearly established. The same standard applies to the proof of attribution for such acts".<sup>14</sup> Yet, Ukraine's claims are fraught with a number of telling omissions (A), as well as inconsistencies and significant evidentiary flaws (B), with specific consequences regarding claims alleging the wrongfulness of domestic judicial decisions (C). These flaws cannot be overcome by its misplaced reliance on, and misconstruction of OHCHR Reports (D).

#### A. UKRAINE'S EXCLUSIVE FOCUS ON CRIMEA EVIDENCING ITS SOVEREIGNTY DISPUTE

5. Ukraine's claims focus exclusively on the alleged systematic campaign or policy of racial discrimination against Crimean Tatars and ethnic Ukrainians *in Crimea*.<sup>15</sup> Ukraine says nothing of the numerous Crimean Tatars and ethnic Ukrainians living in other parts of Russia. In fact, the

<sup>&</sup>lt;sup>4</sup> Application, paras. 137(a), 93, 115, 123; MU, paras. 22, 27, 341, 388, 389, 392, 455, 477, 485, 587, 593, 597; WSU, paras. 260, 280, 281, 303, 308, 370, 378 and 386; CR 2019/10, p. 53, para. 5, p. 54, para. 7, p. 58, para. 11, p. 59, para. 14, p. 66, para. 3, and p. 75, para. 37; CR 2019/12, p. 12, para. 3, and p. 16, para. 14.

<sup>&</sup>lt;sup>5</sup> MU, paras. 421 and 601.

<sup>&</sup>lt;sup>6</sup> MU, para. 595.

<sup>&</sup>lt;sup>7</sup> MU, paras. 346, 413, 505, and 533.

<sup>&</sup>lt;sup>8</sup> MU, paras. 346, 375, 534, and 597.

<sup>&</sup>lt;sup>9</sup> MU, paras. 347, 365, 390, 391, 392, 393, 399, 413, 426, 437, 443, 444, 450, 452, 507, 514, 518, 533, 595, 602, 607, and 608.

<sup>&</sup>lt;sup>10</sup> MU, paras. 27, 28, 390, and 619.

<sup>&</sup>lt;sup>11</sup> MU, paras. 592, 610, and 653(g).

<sup>&</sup>lt;sup>12</sup> Application, paras. 14, 81, 93, 102; MU, paras. 15, 412, 495, 598; WSU, paras. 273, 286, 305. In these occurrences Ukraine refers at times to "collective punishment".

<sup>&</sup>lt;sup>13</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 26 February 2007, I.C.J. Reports 2007 (I), pp. 129-130, paras. 209-210, referring to Corfu Channel (United Kingdom v. Albania), Judgment, I.C.J. Reports 1949, p. 17.

<sup>&</sup>lt;sup>14</sup> *Ibid.*, p. 129, para. 209.

<sup>&</sup>lt;sup>15</sup> See e.g. MU, para. 477, concerned that such alleged campaign "raises the specter of the total erasure of these distinct cultures from the Crimean peninsula".

number of ethnic Ukrainians living elsewhere in Russia is much higher than the number of those living in Crimea.<sup>16</sup> Ukraine does not explain why a systematic campaign or policy of discrimination carried out by a State and allegedly targeting specific groups based on racial or ethnic grounds should stop at the administrative limits of one constituent unit of the State. This silence is compelling and reflects Ukraine's attempt to disguise its sovereignty dispute with Russia over Crimea under the ill-fitting clothes of racial discrimination.

# B. UNSUPPORTED STATEMENTS AND INCONSISTENCIES ARTIFICIALLY CONFLATING UKRAINE'S CLAIMS

6. To support the charge of exceptional gravity made against Russia, Ukraine's Memorial repeatedly relies on unsubstantiated allegations.<sup>17</sup>

7. Ukraine merely asserts the existence of a policy or campaign and attributes discriminatory intent to Russia without submitting anything other than pure assumptions as to the existence of an overarching concerted plan<sup>18</sup> it yet has the burden of proving.<sup>19</sup> This fact is, in and by itself, fatal to Ukraine's case.

8. At best, Ukraine attempts to artificially create an accumulation effect of individual claims in order to suggest a widespread scale and systematic nature of the charges. In particular,

- (i) Ukraine alleges that the impugned measures have caused "hundreds of thousands" of victims across Crimea,<sup>20</sup> without providing any element at all to substantiate such an extraordinary allegation.
- (ii) Less excessively, but yet unconvincingly, Ukraine refers, in Section A of Chapter 9 of its Memorial, on alleged disappearances, murders, abductions and torture, inflicted to 13 individual alleged cases, in the period from 2014 to 2017 and covering both ethnic Ukrainians and Crimean Tatars.<sup>21</sup> No reasonable observer could possibly infer any pattern from such sparse and disparate alleged cases.<sup>22</sup>

<sup>&</sup>lt;sup>16</sup> President of the Russian Federation official website, "Meeting with representatives from Crimean ethnic groups' public associations", Yalta, 17 August 2015 (Annex 460): Ethnic Ukrainians constitute "the third largest ethnic group in Russia after ethnic Russians and Tatars. We have five million Tatars residing in Russia and three million ethnic Ukrainians, without counting those who are here temporarily and are Ukrainian citizens – we have another 3 million people who fit that description".

<sup>&</sup>lt;sup>17</sup> See e.g. MU, para. 378 which constitutes empty speculations without any supporting evidence.

<sup>&</sup>lt;sup>18</sup> MU, para. 595, alleging a "broad assault on political and civil rights […] designed to shut down opposition to the annexation. This assault has been both comprehensive and concerted."

<sup>&</sup>lt;sup>19</sup> See above, para. 4 and below, para. 92 et seq.

<sup>&</sup>lt;sup>20</sup> WSU, para. 378, as well as para. 16 and para. 386 *in fine*; CR 2019/12, 7 June 2019, p. 53, para. 34 (Gimblett).

<sup>&</sup>lt;sup>21</sup> MU, paras. 392-411.

<sup>&</sup>lt;sup>22</sup> Ukraine even seems to consider that the disappearance of 4 individuals in unrelated circumstances constitutes a pattern: see MU, para. 397, referring to the disappearances described at paras. 395-396.

- (iii) Moreover, it is striking that the names of the same few individuals keep being repeated in various sections of its Memorial, while forming a single and very limited set of facts.<sup>23</sup> The truth is that Ukraine's case of an alleged systematic campaign or policy of racial discrimination against entire ethnic communities is premised on the conduct of a small circle of agitators, violent activists, extremists and criminals who know each other well. These persons do not reflect the situation of the Crimean Tatar or Ukrainian communities in Crimea generally.
- (iv) Ukraine's strategy is otherwise to assemble a series of vague allegations many of them logically or causally unrelated with each other – in order to suggest a narrative rather than demonstrate facts attributable to Crimean authorities or otherwise to Russia. As an illustration, Ukraine contends that "[t]he walls and gates of Crimean Tatar houses were marked with crosses on their doors, a chilling reminder of a practice used by the Soviet authorities in 1944 to round up members of that people for deportation."<sup>24</sup> Instead of identifying the authors of the alleged acts, Ukraine makes speculative parallels with the deplorable events of 1944, which Russia has expressly and unequivocally condemned.<sup>25</sup>

9. While Russia has used its best efforts to identify where possible the significant number of Ukraine's unspecified individual allegations,<sup>26</sup> it is compelled to reserve its rights to complete its submissions and present further evidence should this prove necessary at any further stage of the proceedings. As to the limited number of specific cases, the assessment of the relevant facts made in the present Counter-Memorial confirms that none of Ukraine's individual claims constitutes an instance of racial discrimination.

10. Another flaw in Ukraine's case points to a logical deficiency as well as confused or inconsistent statements.<sup>27</sup> For instance, Ukraine contends that the attack allegedly carried out by Russia on educational rights affects both the ethnic Ukrainian and Crimean Tatar communities, whereas in its own words the number of students receiving education in the Crimean Tatar language "has remained relatively steady" since 2014,<sup>28</sup> which is an understatement given that this number has in fact *increased*.<sup>29</sup>

<sup>&</sup>lt;sup>23</sup> This small circle of persons includes in particular Refat Chubarov, Mustafa Dzhemilev, and Lenur Islyamov. See further below, paras. 167, 187-192 and Appendix E.

<sup>&</sup>lt;sup>24</sup> MU, para. 372.

<sup>&</sup>lt;sup>25</sup> See notably the 2014 Decree of the President of Russia on rehabilitation of formerly oppressed peoples referred to below, paras. 56-62.

<sup>&</sup>lt;sup>26</sup> See e.g. Ukraine's allegations relating to home searches of Crimean Tatars, MU, paras. 444-445.

<sup>&</sup>lt;sup>27</sup> See e.g. CR 2019/10, 4 June 2019, p. 61, para. 23 (Koh), referred to below, para. 115.

<sup>&</sup>lt;sup>28</sup> MU, para. 544.

<sup>&</sup>lt;sup>29</sup> See below, para. 289.

#### C. CLAIMS ALLEGING THE WRONGFULNESS OF DOMESTIC JUDICIAL DECISIONS

11. Besides, a significant part of Ukraine's claims takes issue with Russian domestic judicial decisions which cannot be reviewed by the Court. Obvious examples of this include Ukraine's claims of political suppression and the ban on the *Mejlis*, claims in relation to law-enforcement measures, public events, or the media. However, at all material times the Russian judicial system has provided an appropriate and accessible forum for the resolution of any complaint against such measures. It is uncontroversial that, as a matter of international law, States are to be presumed to act in good faith and in compliance with their obligations.<sup>30</sup> This presumption applies to the assessment of Russia's conduct in the present case, including the conduct of the Russian judiciary. It is for the Claimant to rebut that presumption of good faith – and not by mere inferences and conjectures, "but by clear and convincing evidence which compels such a conclusion".<sup>31</sup>

12. The fact that Ukraine's claims turn on the wrongfulness of *judicial* conduct has a further important consequence. It is well-established that international law *allows* national judicial systems to self-correct where they may have erred,<sup>32</sup> and that the Court is not an appeal jurisdiction in respect of the soundness of decisions of national courts. It follows that where, as here, a claim arises out of judicial conduct, the recourse to available local redress and the exhaustion of local remedies, or alternatively the establishment that such recourse would have been futile, is a *pre-condition* of any finding of responsibility, as a material element of the wrongful conduct.<sup>33</sup> As to the standard of review of judicial conduct, Ukraine has itself correctly argued before an international tribunal that the applicable test is as follows: "Where tribunals were called upon to review judicial decisions, they had concluded that state courts provide appropriate legal protection [...] when the court's rulings on those rights are legally tenable and made in good faith."<sup>34</sup>

<sup>30</sup> See for instance Lake Lanoux Arbitration (France v. Spain), Award, 16 November 1957, UNRIAA, vol. XII, p. 305, para. 9, available at https://legal.un.org/riaa/cases/vol XII/281-317 Lanoux.pdf (in French); Nuclear Tests (Australia v. France), Judgment, 20 December 1974, I.C.J. Reports 1974, p. 268, para. 46, and p. 271, p. 56; WTO, European Communities – Measures concerning Meat and Meat Products (Hormones), Original Complaint by the United States, Recourse to arbitration by the European Communities under Article 22.6 of the DSU, Decision by the 1999, Arbitrators, 12 July WT/DS26/ARB, para. 9. available at: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/26ARB.pdf&Open=True.

<sup>&</sup>lt;sup>31</sup> Arbitration on the *Tacna-Arica Question (Chile/Peru)*, Award, 4 March 1925, *UNRIAA*, vol. II, p. 930, available at <u>https://legal.un.org/riaa/cases/vol\_II/921-958.pdf</u>; *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), Judgment, 5 December 2011, I.C.J. Reports 2011*, p. 685, para. 132.

<sup>32</sup> ILC, Second Report on State Responsibility submitted by James Crawford, Special Rapporteur, UN Doc. A/CN.4/498 (1999) para. 75, in *ILC* Yearbook 1999, vol. II(1), p. at 26, available at https://legal.un.org/ilc/documentation/english/a cn4 498.pdf, noting that systematic considerations come into play when establishing the breach of certain types of obligations, such as the obligation to provide a fair and efficient system of justice: "an aberrant decision by an official lower in the hierarchy, which is capable of being reconsidered, does not of itself amount to an unlawful act."

<sup>&</sup>lt;sup>33</sup> Jan Paulsson, *Denial of Justice in International Law*, Cambridge University Press, 2005, p. 90 and 100.

<sup>&</sup>lt;sup>34</sup> OAO Tatneft v. Ukraine, PCA Case No. 2008-8, Award, 29 July 2014, para. 341, available at <u>https://www.italaw.com/sites/default/files/case-documents/italaw8622.pdf</u>.

13. Accordingly, to the extent Ukraine's claims arise out of court-approved law enforcement measures and other court decisions, Ukraine must demonstrate that recourse to local remedies have proved to be futile or that the rulings rendered by courts acting in last resort were not reasonably and legally tenable or were not adopted in good faith. Yet, Ukraine has not even attempted to engage in that analysis. The truth is that Ukraine does not claim that at least some of its allegations of racial discrimination have been formulated before domestic courts and does not provide any example of a complaint raised before domestic courts for racial discrimination against Crimean Tatars or Ukrainians.

#### D. MISPLACED RELIANCE ON, AND ERRONEOUS CONSTRUCTION OF, OHCHR REPORTS

14. In the Memorial, as previously at the provisional measures phase, Ukraine heavily relies on OHCHR reports to support its allegations of systematic racial discrimination in relation to law enforcement measures.<sup>35</sup> These reports do not however evidence Ukraine's claims under CERD.

15. First, it is important to stress that the OHCHR reports on which Ukraine relies do not establish, or even say that there exists, systematic racial discrimination in Crimea. Actually, *none* of the OHCHR reports concludes or mentions that Russia committed racial discrimination in Crimea, let alone a campaign of systematic violation of CERD.

16. Second, the reports cannot assist Ukraine in supporting its allegations in the present case. They only relate to a few individual cases. The samples used by the OHCHR are always very limited, only covering some individual cases, sometimes even only one or two cases. The reports do not rely on any statistical data, or statistical samples of sufficiently large dimension to enable the drawing of any meaningful conclusion in terms of racial discrimination. Likewise, the OHCHR did not engage in any comparison with the treatment of other ethnic groups. In addition, the reports have been drafted without the benefit of first-hand evidence as no representative of the OHCHR visited Crimea, despite Russia having expressed its readiness to host a mission to Crimea.<sup>36</sup> The OHCHR reports do not suggest otherwise. Moreover, the standard followed by the OHCHR in preparing its reports by no means satisfies the standard required to establish facts before a Court of law, which the OHCHR does not claim to do either. As is clear from Russia's factual account of the same alleged events in the present Counter-Memorial, the OHCHR reports referred to by Ukraine did not explore or address significant factual elements in relation to specific events. In previous cases, the Court has declined to take into account United Nations reports in similar situations.<sup>37</sup>

<sup>&</sup>lt;sup>35</sup> MU, para. 444-446 and fns. 940-947, paras. 447-448 and fns. 949-951, para. 449 and fn. 954, para. 450 and fns. 956-958.

<sup>&</sup>lt;sup>36</sup> Third Committee of the UN General Assembly, 74<sup>th</sup> session, Summary record of the 45<sup>th</sup> meeting, 14 November 2019, UN Doc. A/C.3/74/SR.45, Statement of the Russian Federation (Mr. Kuzmin), at para. 64. See also *TASS*, "Crimea is ready to welcome UN representatives in the Republic", 21 March 2014 (Annex 897).

<sup>&</sup>lt;sup>37</sup> See for instance Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 19 December 2005, I.C.J. Reports 2005, p. 225, para. 159.

17. Third, and in any event, the picture that Ukraine intends to draw on the basis of selective quotes from the OHCHR reports does not bear any resemblance whatsoever with what the actual record shows, as will be demonstrated in the present Counter-Memorial.

18. The artificiality of Ukraine's case-construction permeates its claims which lack both legal and factual merits. It should be kept in mind by the Court when assessing the present Counter-Memorial.

## III. Outline of the *Present* Counter-Memorial

19. As Ukraine has recalled, at the adoption of CERD in 1965, the UN Secretary General noted that the Convention was "a most valuable instrument" in helping the United Nations eradicate racial discrimination.<sup>38</sup> Indeed the Convention today counts among the universal core instruments on human rights and a common heritage of mankind. This is an additional reason for the Court to firmly reject Ukraine's claims. As the guardian of this common good that is international law, the Court should not tolerate any attempts of misuse of it, in particular when it comes to such an essential instrument as CERD.

20. It is obvious that the existence of a systematic campaign or policy of racial discrimination attributable to Russia and directed at the Crimean Tatar and ethnic Ukrainian communities in Crimea as a means of political and cultural suppression is an invention by Ukraine for the purpose of securing this Court's jurisdiction and is unsupported by its own case, as confirmed by the assessment of both the law and the relevant facts.

21. This Counter-Memorial will establish the absence of any racial discrimination at all under CERD with respect to all of Ukraine's claims. Russia firmly stands by its statement to the Committee on the Elimination of Racial Discrimination ("CERD Committee") that "[p]ersons living in the territories of the Republic of Crimea and the city of Sevastopol enjoy all the human rights and freedoms, on an equal footing and without any discrimination, that are guaranteed by the federal Constitution and by Russian law and the international treaties of the Russian Federation."<sup>39</sup>

22. As Russia will show in this Counter-Memorial, each of Ukraine's allegations under CERD is unfounded and Ukraine's claim must be thus rejected by the Court.

23. As a preliminary and necessary contextual point however, Russia will bring to light the real context of Ukraine's claims in **Chapter I**. It will denounce some of Ukraine's threatening policies towards certain ethnic groups living on its territory, which show that Ukraine is far from being the

<sup>&</sup>lt;sup>38</sup> MU, para. 342, referring to U.N. General Assembly, 20th Session 1406th Plenary Meeting, Official Records, U.N. Doc. A/PV.1406, para. 135 (21 December 1965) (Annex 782 to MU).

<sup>&</sup>lt;sup>39</sup> CERD Committee, Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation, Addendum: Information received from the Russian Federation on follow-up to the concluding observations (received by the Committee on 29 March 2019), 21 May 2019, UN Doc. CERD/C/RUS/CO/23-24/Add.1, para. 5.

fierce advocate of the fight against racial discrimination it pretends to be. Ukraine's policies and claims stand in stark contradiction with the reality prevailing in Russia who has specifically adopted a series of practical measures for the benefit of the Crimean Tatar and/or ethnic Ukrainian communities in Crimea.

24. **Chapter II** exposes the conclusions to be drawn from the Court's previous rulings in the present case. While the scope of Ukraine's claims has been precisely and limitedly defined, several issues relating to the scope of CERD are still to be considered by the Court at the merits stage and thus remain undecided at this juncture. This is the case of the definition of ethnic groups protected under CERD, which will be addressed in **Chapter III**, as well as of the interpretation of their specific rights, which will be further developed in light of the merits examined in the remaining chapters.

25. **Chapter IV** focuses on the ban on the *Mejlis*. The ban is based on security reasons, has no racial or ethnic considerations and does not constitute racial discrimination, let alone a part of a systematic campaign thereof. As already explained in the preliminary objections, the Convention does not provide for a right of minorities to have and maintain a representative body. In addition, the ban was taken following due process, which is justified by the extremist, violent nature of *Mejlis* leaders' activities that have been condemned by Crimean Tatars themselves. The ban therefore is based on an objective and reasonable justification.

26. **Chapter V** concerns the absence of racial discrimination, *a fortiori* a systematic campaign thereof, with respect to education. As a matter of law, CERD does not provide for a right to education in a minority native language, and this reality is not affected by the status of State language granted to the Crimean Tatar and Ukrainian languages in Crimea under Russian domestic law. This notwithstanding, the allegation of a systematic campaign of cultural erasure through discrimination is clearly inconsistent with the numerous supporting measures that Russia has implemented for the Crimean Tatar and Ukrainian communities in this field. In reality, the decrease in education in the Ukrainian language is explained by considerations that have nothing to do with racial discrimination, and education in Crimean Tatar and Ukrainian languages is provided on a non-discriminatory basis.

27. **Chapter VI**, together with the relevant **Appendices**,<sup>40</sup> evidence the unfounded character of all the remaining allegations of Ukraine, which the Court found to be implausible at the provisional measures stage and which obviously do not constitute acts of racial discrimination prohibited under CERD, let alone a systematic campaign or policy thereof.

<sup>&</sup>lt;sup>40</sup> Appendices A to F.

## CHAPTER I THE REAL CONTEXT OF UKRAINE'S CLAIMS

28. The picture portrayed by Ukraine is distorted not only since, as will be shown in the following Chapters, it is manifest that no wrongful conduct under CERD can be attributed to Russia in Crimea; but also because it is markedly both biased and partial.

29. At the outset, Russia considers it important to alert the Court to a sad irony: despite Ukraine's stance as a strong promoter of the fight against racial discrimination, it has long been subverting the interests of minorities (I). Its policy regarding the rights of the ethnic groups living on its territory actually stands in stark contrast with that prevailing in Russia that, since the spring of 2014, has adopted a series of practical measures to enhance the rights and welfare of the Crimean Tatar community, as well as of other parts of the Crimean population, including ethnic Ukrainians. The existence of such positive measures, taken collectively and individually, is simply incompatible with Ukraine's claim of a systematic campaign or policy of racial discrimination specifically aiming at political and cultural erasure of the Crimean Tatar and ethnic Ukrainian communities in Crimea (II).

30. Ukraine's allegations against Russia must be appreciated against this dual background which makes them all the more baseless.

# I. Ukraine Has Long Been Subverting the Interests of Minorities

31. Russia deems it necessary, as a matter of context, to present to the Court in the present Section Ukraine's wrongful policies for the peaceful coexistence of various ethnic groups. In particular, Ukraine has threatened and discriminated against both the Crimean Tatar community it now purports to protect (A), and the ethnic Russians living on its territory (B) – not to mention the violations affecting Roma and Jews which have similarly been an enduring issue.<sup>41</sup>

<sup>41</sup> See notably Committee on the Elimination of Racial Discrimination, 90th session, Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine, 23 August 2016, UN Doc. CERD/C/UKR/CO/22-23, paras. 13, 19-22; Congress of Ethnic Communities of Ukraine and National Minority Rights Monitoring Group, Xenophobia in Ukraine in 2018, Annual Monitoring Report, 2019, https://www.ohchr.org/Documents/Issues/Religion/Submissions/UKRAINE Annex2.pdf; United Jewish Community of Ukraine", 2018, Ukraine. "Anti-Semitism in Report https://jewishnews.com.ua/DOCS/Report%20Anti-Semitism%20in%20Ukraine%202018%20(UJCU%20REPORT).pdf; Minority Rights Group, "Roma in Ukraine - A Time for Action: Priorities and Pathways for an Effective Integration Policy", May 2019, pp. 26-27 (timeline on major attacks), https://minorityrights.org/wp-content/uploads/2019/05/MRG Rep Ukraine EN Apr19.pdf; OHCHR, Report the Human Rights Situation in Ukraine, 1 August 2020 to 31 January 2021, on https://www.ohchr.org/Documents/Countries/UA/31stReportUkraine-en.pdf, paras. 85-86.

### A. MEASURES TAKEN BY UKRAINE AGAINST CRIMEAN TATARS

32. The sincerity of Ukraine's declared concern for Crimean Tatars appears questionable in light of its failure to address the difficulties of this community, coupled with the measures actually taken against it throughout the post-Soviet period until today.

33. Many concerns in respect of issues that Ukraine now artificially invokes before this Court as accusations against Russia have in fact been repeatedly expressed over the years by various UN treaty bodies and international organizations, as well as by the parties concerned, with regard to Ukraine's own behaviour, as illustrated by the following non-exhaustive examples.<sup>42</sup>

34. In 1998, the CERD Committee expressed its concern about the difficulties "experienced by members of minority groups, including the Crimean Tatars, who were deported decades earlier and are now returning to resettle in Ukraine, in acquiring [Ukrainian] citizenship".<sup>43</sup>

35. In 2006, the CERD Committee also observed "that Crimean Tatars reportedly remain underrepresented in the public service of the Autonomous Republic of Crimea (arts. 5 (c) and 2 (2))".<sup>44</sup> The Committee further expressed its concern about reports that only 20 per cent of Crimean Tatars "obtained plots of land, mainly in areas considered undesirable by them." It noted "with concern that most Crimean Tatars have been excluded from the agrarian land privatization process [...] and that many Crimean Tatars live in settlements which lack basic infrastructure (art. 5 (d) (v) and (e) (iii))."<sup>45</sup>

<sup>42</sup> See also CERD Committee, 90th session, Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine, 23 August 2016, UN Doc. CERD/C/UKR/CO/22-23, paras. 23-24; Appeal of the interregional Crimean Tatar civil movement Kyrym to the United Nations General Assembly and the European Parliament for the recognition of the declaration of independence (secession) of the Republic of Crimea and its free association with the Russian Federation, for compliance by States Members of the United Nations with the Universal Declaration of Human Rights and for the lifting of sanctions against and an end to the blockading of the Russian Federation, the Republic of Crimea and the city of Sevastopol, 10 December 2016, annexed to UN Doc. A/71/769, p. 3; Qirim Birligi, "Restoration of the Rights of the Crimean Tatars and Creation of Conditions for their Revival and Development as Part of the Integration of Crimea into the Russian Federation", Report submitted to CERD Committee, 93rd session, 31 July - 25 August 2017, doc. INT/CERD/NGO/RUS/28092, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ RUS/INT CERD NGO RUS 28092 E.doc. See also 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), Preliminary Objections of the Russian Federation, 12 September 2018 ("Preliminary Objections" or "PORF"), para. 299. For a fuller list, see "International organizations on the situation with the Crimean Tatars in the 'Ukrainian' period (1992-2014)", in Documents submitted to the Registry of the ICJ by the Russian Federation in connection with Ukraine's Request for the indication of provisional measures and Judges' Folder submitted by the Russian Federation for the Hearings on Provisional Measures, 6-9 March 2017 (Annex 1267), pp. 46-62.

<sup>&</sup>lt;sup>43</sup> CERD Committee, 52nd session, Concluding observations on the 13<sup>th</sup> and 14<sup>th</sup> periodic reports of Ukraine, 18 March 1998, UN Doc. CERD/C/304/Add.48, paras. 11 and 15.

<sup>&</sup>lt;sup>44</sup> CERD Committee, 69th session, Concluding observations on the 17th and 18th periodic reports of Ukraine, 17 August 2006, UN Doc. CERD/C/UKR/CO/18, para. 14.

<sup>&</sup>lt;sup>45</sup> *Ibid.*, para. 15.

36. In 2011, the CERD Committee reiterated its strong concern over "difficulties experienced by Crimean Tatars who have returned to Ukraine". The Committee drew attention to insufficient possibilities for studying their mother tongue, hate speech against them, and access to justice. It recommended to Ukraine to ensure the restoration of political, social and economic rights of Crimean Tatars in Crimea, in particular the restitution of property including land or the compensation for its loss.<sup>46</sup>

37. The Council of Europe had also repeatedly pointed at the "discrimination suffered by Crimean Tatars in all areas of life, including in access to employment, housing and land" prior to 2014 and had urged Ukraine to take action, in vain.<sup>47</sup>

38. In a 2013 report, the OSCE concluded, among other serious concerns, that "[t]he lack of a comprehensive legal and political agreement on the restoration of rights of the [formerly deported peoples] has presented formidable obstacles to their full integration into public and socio-economic life."<sup>48</sup>

39. Ukraine's lack of concern for the interests and rights of the Crimean Tatars has also been deplored by representatives of this community.<sup>49</sup>

40. After the change of status of Crimea in 2014, Ukraine decided to interrupt the delivery of water to the peninsula, supported the so-called civil blockade and adopted additional embargo measures on food products, which had a dramatic impact on the humanitarian situation of the people it purports to protect in the present case.<sup>50</sup> It also turned a blind eye to, and effectively

<sup>&</sup>lt;sup>46</sup> CERD Committee, 79th session, Concluding observations on the 19<sup>th</sup> to 21<sup>st</sup> periodic reports of Ukraine, 29 August 2011, UN Doc. CERD/C/UKR/CO/19-21, para. 17.

<sup>&</sup>lt;sup>47</sup> Council of Europe, Report of the European Commission against Racism and Intolerance on Ukraine (fourth monitoring cycle), adopted on 9 December 2011, doc. CRI(2012)6, para. 86, <u>https://rm.coe.int/fourth-report-on-ukraine/16808b5ca5</u>. The report noted the absence of meaningful progress in the overall situation of Crimean Tatars since the previous report (para. 92).

<sup>&</sup>lt;sup>48</sup> OSCE, The integration of formerly deported people in Crimea, Ukraine: Needs assessment, 16 August 2013, p. 30, <u>https://www.osce.org/files/f/documents/e/a/104309.pdf</u>.

<sup>&</sup>lt;sup>49</sup> See for instance Qirim Birligi, "Restoration of the Rights of the Crimean Tatars and Creation of Conditions for their Revival and Development as Part of the Integration of Crimea into the Russian Federation", Report submitted to CERD Committee, 93rd session, 31 July – 25 August 2017, p. 2-4, doc. INT/CERD/NGO/RUS/28092, <u>https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT\_CERD\_NGO\_RUS\_28092\_E.doc;</u> Statement of

<sup>&</sup>lt;sup>50</sup> See Decree No. 1035 of the Cabinet of Ministers of Ukraine, 16 December 2015 on restriction of supply of certain goods (works, services) from the temporarily occupied territory to the other territory of Ukraine and/or from the other territory of Ukraine to the temporarily occupied territory, and the appended list of embargoed basic food products, reproduced in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 65-66; Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea (25-31 January 2016), contained in doc. SG/Inf(2016)15 rev of 11 April 2016 (Annex 825 to MU), para. 58; OHCHR, Report on the human rights situation in Ukraine, 16 August to 15 November 2016, para. 13 (Annex 773 to MU). See also *Regnum*, "Poroshenko said that the

approved of the sabotage of power transmission lines from Ukraine to Crimea organized by *Mejlis* associates with support of its leaders, which led to a blackout in the whole of Crimea, as is explained further below.<sup>51</sup> Indeed Ukraine did nothing to prevent what may properly be described as an act of terrorism, which was committed from its territory, in the Kherson region.

#### B. MEASURES TAKEN BY UKRAINE AGAINST ETHNIC RUSSIANS

41. Since 2014, Ukraine's wrongful policies have focused on threatening the interests of the ethnic Russians living on its territory, notably through the suppression of the Russian language in all spheres of life defining the Russian identity, the incitement of hate speech directed at members of ethnic minorities and other acts of ethnic hatred, together with the persecution of the Ukrainian Orthodox Church. Most of these issues have already been raised by Russia both before and since the Application of Ukraine in the present case,<sup>52</sup> but unfortunately to no avail. In parallel, Crimean Tatars and ethnic Ukrainians living in Crimea have been instrumentalised by Ukraine in its disguised attempt to put forward its sovereignty dispute with Russia for which the Court lacks jurisdiction in the present case. It is to be further noted that the following is without prejudice to the way Russia might elect to frame and solve its dispute against Ukraine in the future on these matters.

42. During the Soviet era as well as after its independence in 1991, Ukraine has been a deeply bilingual society, with ethnic Russians and Ukrainians peacefully coexisting on its territory for centuries. The Russian language has always been widely used in Ukraine and until the *coup* d'État,<sup>53</sup> it was effectively recognised as a medium of instruction at all levels of education; by administrative and judicial authorities; by radio and television programmes as well as newspapers; in all aspects of economic and social life and in cultural activities. In fact, nearly one third of the population of Ukraine – 29.6% according to the last census in 2001 – consider their native language to be Russian – with 2.9% indicating other minority languages as their native tongues.<sup>54</sup> In addition to identity aspects, a significant part of the population still uses Russian in everyday life. As a

aim of the blockade is the return of Crimea to Ukraine", 22 September 2015, in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 166.

<sup>&</sup>lt;sup>51</sup> See para. 167. *Interfax Ukraine*, "Dzhemilev after talking to Poroshenko: The incident in the area of the power transmission line in the Kherson Region was caused by a misunderstanding, and we will solve this issue", 21 November 2015 (Annex 937).

<sup>&</sup>lt;sup>52</sup> As regards languages, see Statement of the State Duma regarding the violation of fundamental human rights in Ukraine following new bans on the use of the Russian language, annexed to the letter of 12 February 2021 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN Doc. A/75/751. As regards ethnic hatred, see in particular Note Verbale No. 14500-n/dgpch of the Ministry of Foreign Affairs of the Russian Federation to the Embassy of Ukraine in Moscow, 30 December 2016 (Annex 518). As regards the Ukrainian Orthodox Church, see notably Note Verbale No.13091-n/dgpch of the Ministry of Foreign Affairs of the Russian Federation to the Embassy of Ukraine in Moscow, 28 November 2016 (Annex 515) and Note Verbale No. 14453-n/dgpch of the Ministry of Foreign Affairs of the Russian Federation to the Embassy of Ukraine in Moscow, 29 December 2016 (Annex 517).

<sup>&</sup>lt;sup>53</sup> See below, para. 43.

<sup>&</sup>lt;sup>54</sup> State Statistics Committee of Ukraine, "The language structure of Ukraine, according to the All-Ukrainian census data", 2001, <u>http://2001.ukrcensus.gov.ua/eng/results/general/language</u>.

matter of fact, according to an all-Ukrainian poll conducted in 2019, less than half of the population (i.e. 46%) actually speak only or mostly Ukrainian – while the amount of Russian speakers remained relatively stable (i.e. 28.1% speaks mostly or only Russian and another 24.9% speaks Ukrainian and Russian in equal proportion).<sup>55</sup> The question of languages thus arises in a radically different way as compared to virtually monoethnic countries. It is particularly worth noting that following Ukraine's Declaration of Independence on 24 August 1991, the special status of the Russian language was protected by the Declaration on the Rights of Nationalities of Ukraine adopted on 1 November 1991,<sup>56</sup> by Ukraine's Constitution<sup>57</sup> and its legislation,<sup>58</sup> thus clearly indicating Ukraine's intention at the time to work to promote harmony in inter-ethnic relations in the country and to promote the cultural development of all national minorities. It is against this background that the right to linguistic self-determination has also been included in the Package of Measures for the Implementation of the Minsk agreements.<sup>59</sup>

43. Soon after the *coup d'État*, the OSCE High Commissioner on National Minorities insisted that, "[w]hile maintaining Ukrainian as the State language, the specific role of the Russian language in Ukraine should be clearly recognized in the legal framework".<sup>60</sup> But not only did Ukraine repel the legislative protection of Russian,<sup>61</sup> it has also incrementally limited the use of that language, in

<sup>&</sup>lt;sup>55</sup> The all-Ukrainian public opinion poll was conducted by the Kyiv International Institute of Sociology (KIIS) from 28 February to 11 March 2019, see "Thoughts and views of the population on teaching the Russian language in Ukrainian-speaking schools and granting autonomy as a part of Ukraine to the uncontrolled territories of Donbas: March 2019", 15 March 2019, at <u>http://kiis.com.ua/?lang=eng&cat=reports&id=832&page=1;</u> see also the Concept of the State target social program of national and patriotic education for the period until 2025, approved by the Order of the Cabinet of Ministers of Ukraine No. 1233-r, 9 October 2020 (Annex 758), pp. 2-3.

<sup>&</sup>lt;sup>56</sup> Article 3: "The Ukrainian State guarantees the right of its citizens to freely use the Russian language. In regions, where several national groups live compactly, along with the state Ukrainian language, a language acceptable to the entire population of the area may function." Declaration  $N_{2}$  1771-XII of the Rights of Nationalities of Ukraine, 1 November 1991 (Annex 744).

<sup>&</sup>lt;sup>57</sup> Article 10 provides that "the free development, use, and protection of Russian, and other languages of national minorities of Ukraine, shall be guaranteed" – it specifically identifies Russian, whereas other minority languages are referenced collectively and generically, see Constitution of Ukraine, 28 June 1996 (Annex 747). See also Article 11, the non-discrimination clause in Article 24(2), as well as the guarantee of acquired rights in Article 22(3) and other minority rights in Article 53(5).

<sup>&</sup>lt;sup>58</sup> See Law of Ukraine No. 5029-VI "On the principles of State language policy", 3 July 2012 (Annex 750) (the "2012 Law"). In accordance with Article 7, the Russian language was recognized as a regional language in nine regions of Ukraine as of 2016 – see European Charter for Regional or Minority Languages, Third periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter (Ukraine), 12 January 2016, p. 6, <u>https://rm.coe.int/16806f0f08</u>. Articles 5, 7 and 20 in particular required the application of the principle of plurilingualism and defined measures aimed at the use of Russian, among others, as a right in the sphere of education, mass media, State and municipal bodies, economic activities, as well as in social life.

<sup>&</sup>lt;sup>59</sup> United Nations Security Council, Resolution 2202 (2015), UN Doc. S/RES/2202 (2015), Annex I "Package of Measures for the Implementation of the Minsk Agreements", 12 February 2015, measure 11 and fn. i.

<sup>&</sup>lt;sup>60</sup> OSCE High Commissioner on National Minorities, Human Rights Assessment Mission in Ukraine, 12 May 2014, p. 124, <u>https://www.osce.org/files/f/documents/d/3/118476.pdf</u>.

<sup>&</sup>lt;sup>61</sup> See the first attempt of the Verkhovna Rada (the Ukrainian Parliament) to repeal the 2012 Law in the aftermath of the Euromaidan protests, on 23 February 2014, *RT*, "Canceled language law in Ukraine sparks concern among Russian and EU diplomats", 27 February 2014, https://www.rt.com/news/minority-language-law-ukraine-035/ (Annex 894), and Decision N° 2-p/2018 of the Constitutional Court of Ukraine (Annex 798) finally ruling the law unconstitutional on a procedural basis on 28 February 2018.

an attempt to eventually entirely suppress it. Concerns among institutions such as the Venice Commission<sup>62</sup> were raised in particular with regard to Ukraine's Law No. 2145-VIII "On education",<sup>63</sup> hastily adopted on 5 September 2017 with "no real consultation" with the representatives of national minorities in Ukraine<sup>64</sup> (the "2017 Law"); and Law No. 2704-VIII "On supporting the functioning of the Ukrainian language as the State Language"<sup>65</sup> of 25 April 2019 (the "2019 Law").

44. The 2017 Law aims at the disappearance of freestanding minority language schools. In addition, after primary school, "it will no longer be possible for speakers of languages of [certain] minorities – [...] *very significantly, Russian* – to receive *any* education [...] through the medium of their language."<sup>66</sup> What is especially problematic is that the 2017 Law places Russian speakers "at a disadvantage"<sup>67</sup> compared, first, with the previous linguistic regime<sup>68</sup> and, second, with other categories of Ukrainian citizens whose respective languages remain protected.<sup>69</sup> Indeed, indigenous peoples will keep the right to study in their language throughout their education;<sup>70</sup> and national minorities speaking an official language of the European Union may be taught at least some disciplines in their language.<sup>71</sup>

45. Unsurprisingly, the 2017 Law aroused "serious concerns […] on a number of legal issues"<sup>72</sup> among Ukraine's neighbouring States,<sup>73</sup> NGOs<sup>74</sup> and international organizations. In particular, the

<sup>70</sup> Article 7(1) of the 2017 Law.

<sup>72</sup> PACE Resolution 2189 (2017), paras. 3 and 6.

<sup>&</sup>lt;sup>62</sup> See below, paras. 45 and 49.

<sup>&</sup>lt;sup>63</sup> Law of Ukraine No. 2145-VIII "On education", 5 September 2017 (Annex 753), the Law entered into force on 28 September 2017.

<sup>&</sup>lt;sup>64</sup> See Parliamentary Assembly of the Council of Europe, Resolution 2189 (2017) on "The new Ukrainian law on education: a major impediment to the teaching of national minorities' mother tongues", 12 October 2017, <u>https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24218&lang=en</u> (English) and <u>http://semanticpace\_net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbncveG1sL1hSZWYvWDJILURXLWV4dHI uYXNwP2ZpbGVpZD0yNDIxOCZsYW5nPUZS&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYv <u>WFJIZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTI0MjE4</u> (French), para. 2 (hereinafter "PACE Resolution 2189 (2017)"); Venice Commission, Opinion No. 902/2017 on "The provisions of the Law on Education", CDL-AD(2017)030, 11 December 2017, <u>https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)030-f</u> (French), para. 53 (hereinafter "Opinion No. 902/2017").</u>

Law of Ukraine No. 2704-VIII "On supporting the functioning of the Ukrainian language as the state language",
 April 2019 (Annex 755).

<sup>&</sup>lt;sup>66</sup> Venice Commission, Opinion No. 902/2017, para. 48 (emphasis added).

<sup>&</sup>lt;sup>67</sup> *Ibid*.

<sup>&</sup>lt;sup>68</sup> See above, para. 42. See also PACE Resolution 2189 (2017), para. 9: "the new law entails a strong reduction in the rights previously conferred [...] this is not conducive to 'living together'."

<sup>&</sup>lt;sup>69</sup> See in particular Venice Commission, Opinion No. 902/2017, paras. 106-107.

<sup>Article 7(4) of the 2017 Law. See also Article 48(3) of the Law of Ukraine No. 1556-VII "On higher education",
1 July 2014 (Annex 751).</sup> 

Press release of the Embassy of Hungary in Kiev, "Protest against the new Ukrainian education law", 5 September
 2017 (Annex 810), <u>https://kijev.mfa.gov.hu/eng/news/tiltakozas-az-uj-ukran-oktatasi-toerveny-ellen</u>. See also

Venice Commission issued an opinion according to which, "[t]aking into account the particular place of the Russian language in Ukraine", its "less favourable treatment" is "not justifiable in the light of the principle of non-discrimination".<sup>75</sup> Yet, this discriminatory approach was repeated by Law No. 463-IX "On complete general secondary education" of 16 January 2020,<sup>76</sup> which raised some concerns even among domestic parliamentary committees.<sup>77</sup> Obviously, the purpose of these laws is to infringe on the interests of the Russian-speaking minority who already suffer acutely from the impact of these changes.<sup>78</sup>

46. This policy of eradicating the Russian language from the Ukrainian education system is progressively achieving its objectives: during the academic year 2010/2011, almost 700,000 students were educated in Russian in 1,240 institutions; in 2019/2020, the numbers had dropped to approximately 281,000 students in 129 institutions, while the ratio for other minorities languages remained practically stable.<sup>79</sup>

47. Ukraine's attempt at suppressing the Russian language was crowned by the 2019 Law. This allows a radical change on short notice<sup>80</sup> of the previous language regime, towards a system focused

Hungarian Government official website, "Ukraine has stabbed Hungary in the back by amending its education act", 8 September 2017, available at: <u>https://hungarytoday.hu/hungarian-foreign-minister-ukraine-stabbed-hungary-back-79260/</u>. See also Romania Ministry of Foreign Affairs official website, "The position of the MFA on the promulgation of the Law on Education in Ukraine", 26 September 2017, <u>https://www.mae.ro/en/node/43365</u>; "Teodor Melescanu on a visit to Chernivtsi: 'Until concrete solutions are identified, Romania will keep the subject of the Education Law on the agenda of the bilateral talks"", 11 January 2018, <u>https://www.mae.ro/en/node/44635</u>.

<sup>&</sup>lt;sup>74</sup> See notably Institute for the Study of National Policy and Interethnic Relations, European International Tolerance Centre, Centre for Monitoring and Comparative Analysis of Intercultural Communications (Moscow Institute of Psychoanalysis) and European Centre for Democracy Development, Annual Report, "Xenophobia, Radicalism, and Hate Crime", 2018, p. 26, <u>https://www.osce.org/files/f/documents/3/e/395336.pdf</u> describing the Law as "[t]he most aggressively discriminatory legislation [...] stripping millions of Ukrainian citizens of their basic human rights."

<sup>&</sup>lt;sup>75</sup> Venice Commission, Opinion No. 902/2017, paras. 112, 114 and 124. See also para. 109.

<sup>&</sup>lt;sup>76</sup> Law of Ukraine No. 463-IX "On full general secondary education", 16 January 2020 (Annex 757).

<sup>&</sup>lt;sup>77</sup> Conclusions of the Main Scientific Expert Department of the Verkhovna Rada on the draft law of Ukraine "On full general secondary education", 15 May 2019 (Annex 801), p. 1, <u>http://w1.c1.rada.gov.ua/pls/zweb2/</u>webproc34?id=&pf3511=66333&pf35401=491403.

<sup>78</sup> See notably MFA of Russia official website, "Permanent Representative of the Russian Federation to the OSCE Alexander Lukashevich's remarks on Ukraine's education law delivered at a meeting of the OSCE Permanent Council, Vienna, 2017", 28 September https://www.mid.ru/en/foreign\_policy/humanitarian\_cooperation/-/asset publisher/bB3NYd16mBFC/content/id/2879370; MFA of Russia official website, "Comment by the Information and Press Department on information about transitioning Russian-speaking schools in Ukraine to the State language of education September 2019, https://www.mid.ru/en/kommentarii/starting 2020", 7 October /asset publisher/2MrVt3CzL5sw/content/id/3836711; MFA of Russia official website, "Permanent Representative of Russia to the OSCE Alexander Lukashevich's remarks at a meeting of the OSCE Permanent Council about Ukraine's May 2018", https://www.mid.ru/en/web/guest/foreign policy/news/-Law on Education, Vienna, 17 /asset publisher/cKNonkJE02Bw/content/id/3230080. See also Committee on Culture, Science, Education and Media, Report, "The new Ukrainian law on education: a major impediment to the teaching of national minorities' mother tongues", 10 October https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-2017, para. 6, en.asp?fileid=24125&lang=en.

<sup>&</sup>lt;sup>79</sup> See Ukrainian Institute of Politics, "Dynamics of the number of schools and students by language of instruction", 5 June 2020 (Annex 836).

<sup>&</sup>lt;sup>80</sup> See the final and transitional provisions under Section IX (Annex 755). See also the statement in October 2019 of the Ukrainian Minister of Education and Science, Anna Novosad, that as of September 2020, Russian-speaking schools

on the mandatory use of the Ukrainian language by all citizens and in all spheres of life,<sup>81</sup> on a daily basis, with exceptions discriminating again between different categories of languages. The 2019 Law extends the problematic differential treatment from education<sup>82</sup> to other areas, including scientific publications<sup>83</sup> and computer software<sup>84</sup> (which shall be "in the State language, English and/or other official languages of the European Union", to the exclusion of Russian). It also imposes stringent requirements on foreign-language book distribution (except for books in the official languages of the EU and "specialised bookstores"),<sup>85</sup> as well as in print media (which however do "not apply to the print mass media published exclusively in the Crimean Tatar language, other languages of indigenous peoples of Ukraine, in the English language or another official language media to have Ukrainian-language versions, which involves large financial costs that some traditional media are not able to bear. In sum, here again, the considerable Russian-speaking minority is deprived of the protection granted to the speakers of other languages.

48. Discrimination issues are coupled with restrictions in the enjoyment of the right to freedom of expression as the provisions regarding broadcasting tighten the language quota requirements and leave very little room for the use of minority languages.<sup>87</sup> This adds to a very charged context regarding the treatment of Russian-speaking media which includes numerous bans on broadcasting and distribution;<sup>88</sup> refusals to provide accreditation;<sup>89</sup> as well as forcible expulsions, systematic

in Ukraine would switch to the State language, in *Gordon*, "Novosad: From September 2020, Russian-language schools will switch to the Ukrainian language of instruction", 4 October 2019 (Annex 1010).

<sup>&</sup>lt;sup>81</sup> See notably 2019 Law (Annex 755), Preamble para. 3, Article 1(7). In its decision No. 10-rp/99 of 14 December 1999, the Constitutional Court of Ukraine (referred to in para. 3 of the Preamble to the Law) stated that "[t]he public spheres in which the State language is used primarily cover the spheres of exercise of powers of the legislative, executive and judicial authorities, other State and local self-government bodies (the language of work, acts, records and documentation, the language of relations between these bodies, etc.)". See Decision of the Constitutional Court of Ukraine No. 10-rp/99 on the official interpretation of the provisions of Article 10 of the Constitution of Ukraine regarding the use of the state language by the state authorities, local self-government bodies and its use in the educational process in educational institutions of Ukraine (case on the use of the Ukrainian language), 14 December 1999 (Annex 770). Section V of the 2019 Law specifically prescribes the rules of use of Ukrainian in the following "public spheres": employment, education, science, culture, TV and radio distribution, print media, book publishing, public events, healthcare, communications, transport, etc.

<sup>&</sup>lt;sup>82</sup> See above, para. 44 and Article 21 on the State language in the field of education.

<sup>&</sup>lt;sup>83</sup> See Article 22 on the State language in the field of science, paragraph 2.

<sup>&</sup>lt;sup>84</sup> See Article 27 on the State language in the field of computer software and website user interfaces, paragraph 1.

<sup>&</sup>lt;sup>85</sup> See Article 26 on the State language in the field of book publishing and distribution, paragraph 2.

<sup>&</sup>lt;sup>86</sup> See Article 25 on the State language in the field of print mass media, paragraph 5.

<sup>&</sup>lt;sup>87</sup> Articles 9 and 10 on the State language in the field of television and radio broadcasting. See, in the same line, the Law of Ukraine No. 2054-VIII "On amendments to certain laws of Ukraine regarding the language of audio-visual (electronic) mass media", 23 May 2017 (Annex 752), which came into full force on 13 October 2017 and obliges the national channels to broadcast at least 75% of their content in the Ukrainian language.

See notably *Lenta.ru*, "Ukrainian authorities banned the broadcast of the Russian-speaking Euronews", 14 August 2014 (Annex 911); *BBC News Russian Service*, "Russian TV channel 'Dozhd' banned from broadcasting in Ukraine", 12 January 2017 (Annex 966); Committee to Protect Journalists, "Ukraine bans Russia's independent Dozhd TV station", 13 January 2017, <u>https://cpj.org/2017/01/ukraine-bans-russias-independent-dozhd-tv-station.php</u>; Committee to Protect Journalists, "Ukraine bans Russia", 17 May 2017, <u>https://cpj.org/2017/05/ukraine-bans-russias-independent-dozhd-tv-station.php</u>;

harassment and "increasingly violent attacks" against Russian journalists which, coupled with "systemic impunity", "fuel[] intolerance and discrimination".<sup>90</sup>

49. These concerns from the perspective of non-discrimination were also shared by the Committee on Economic, Social and Cultural Rights, which recommended reviewing the 2017 and 2019 Laws to ensure compliance with the Covenant, "particularly with regard to the different treatment of the languages" of Ukraine's minorities.<sup>91</sup>

50. Russia does not deny the right of any country to identify the language that is to be compulsory in official and educational matters. However, the purpose of the laws at issue is different;<sup>92</sup> it is actually not the advancement of the Ukrainian language, but the forced change of linguistic identity of ethnic Russians as an impermissible retaliation for the reunification of Crimea with Russia. As shown below, Ukraine's policy regarding the rights of minorities stands in stark contrast with that prevailing in Russia, including in Crimea where the Ukrainian and the Crimean Tatar languages have been promoted to State language status and are largely offered as educational languages, and where there is no discrimination between the various non-Russian languages.<sup>93</sup>

<sup>&</sup>lt;u>bans-russian-media-outlets-websites.php</u>; Committee to Protect Journalists, "Ukraine extends ban on Russian news agencies, journalists", 24 May 2018, <u>https://cpj.org/2018/05/ukraine-extends-ban-on-russian-news-agencies-journ.php</u>.

<sup>&</sup>lt;sup>89</sup> See notably *BBC News Russian Service*, "Moscow called 'discrimination' the decision of the Rada on media", 17 February 2015 (Annex 913); OSCE Press Release, "OSCE Representative on Freedom of the Media meets with Ambassador of Ukraine", 3 February 2021, <u>https://www.osce.org/representative-on-freedom-of-media/477451</u>; OSCE Press Release, "OSCE media freedom representative reiterates that foreign media outlets as such should not be included on sanctions lists", 25 May 2021, <u>https://www.osce.org/representative-on-freedom-of-media/382522</u>.

<sup>90</sup> OHCHR, Report on the human rights situation in Ukraine, 16 August to 15 November 2018, https://www.ohchr.org/Documents/Countries/UA/24thReportUkraineAugust November2018 EN.pdf, paras. 11, 114. See also Appeal of Commissioner for Human Rights in the Russian Federation to UN Secretary-General Ban Ki-moon, United Nations, 23 May 2014, http://eng.ombudsmanrf.org/upload/files/int docs/announce 4 rtf; Investigative Committee of the Russian Federation official website, "Criminal case opened against head of Ukrainian Security Service Valentin Nalyvaichenko", 19 December 2014, <u>https://en.sledcom.ru/news/item/886715/?print=1;</u> Reporters without borders, Summary of attacks on media, 31 August 2015, https://rsf.org/en/news/summary-attacks-media; Note Verbale No. 5787-n/dgpch of the Ministry of Foreign Affairs of the Russian Federation to the Embassy of Ukraine in Moscow, 27 May 2016 (Annex 513); OHCHR, Report on the human rights situation in Ukraine 16 August to 15 November 2016, https://www.ohchr.org/Documents/Countries/UA/UAReport16th EN.pdf, para. 105; OHCHR, Report on the human rights situation in Ukraine 16 November 2018 to 15 February 2019, UN Doc. A/HRC/40/CRP.3, para. 12; OHCHR, Report on Civic space and fundamental freedoms ahead of the presidential, parliamentary and local elections in Ukraine in 2019-2020, 21 March 2019, UN Doc. A/HRC/40/CRP.4, para. 1; MFA of Russia, official website, "Foreign Minister Sergey Lavrov's remarks at the opening of the plenary session of the Conference on Media Freedom Russia and OSCE Region, Moscow, November 6, 2019", 6 November 2019. the in https://www.mid.ru/en/foreign\_policy/rso/osce/-/asset\_publisher/bzhxR3zkq2H5/content/id/3887099.

<sup>&</sup>lt;sup>91</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the seventh periodic report of Ukraine, UN Doc. E/C.12/UKR/CO/7, 2 April 2020, para. 48.

<sup>&</sup>lt;sup>92</sup> See in this sense Venice Commission, Opinion No. 960/2019 "On the Law on supporting the functioning of the Ukrainian Language as the state language", CDL-AD(2019)032, 9 December 2019, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)032-e, para. 44.

<sup>&</sup>lt;sup>93</sup> Article 10 of the Constitution of the Republic of Crimea, 11 April 2014 (Annex 62). See below, Chapter V(III). See also Qirim Birligi, "Restoration of the Rights of the Crimean Tatars and Creation of Conditions for their Revival and Development as Part of the Integration of Crimea into the Russian Federation", Report submitted to CERD

51. In downgrading the status of the Russian language through specific discriminatory legislation, Ukraine has clearly targeted ethnic Russians, thus fostering inter-ethnic tensions. Since the entry into force of the new legislation, the OHCHR, which also recommends amending the laws on State Language, on Education, and on Secondary Education, has observed a wave of threats and acts of hatred towards members of national minorities and individuals who openly criticize the Laws, express positive views about the Russian language, or simply speak Russian.<sup>94</sup> Ukraine's legislation, combined with both censorship<sup>95</sup> and an aggressive anti-Russian-language campaign, indeed have grave consequences for ethnic Russians who not only see their rights to speak Russian freely and use it in the public domain severely impeded, but also risk stigmatisation, if not violent attacks.<sup>96</sup>

52. In Ukraine, the "alarming spread of ultra-nationalism, xenophobia, and hate speeches are seriously underestimated, if not ignored."<sup>97</sup> The Ukrainian authorities tolerate and condone, if not incite, ethnic hatred. This is so, on the one hand, through their failure to prevent, investigate and prosecute the persons responsible for promoting discrimination and committing violence against members of national minorities<sup>98</sup> – and in particular ethnic Russians. On the other hand, Ukraine's policy not only legitimizes theories of racial supremacy and glorifies Nazi collaborators,<sup>99</sup> it also

Committee, 93rd session, 31 July – 25 August 2017, doc. INT/CERD/NGO/RUS/28092, <u>https://tbinternet.ohchr.org/</u> <u>Treaties/CERD/Shared%20Documents/RUS/INT\_CERD\_NGO\_RUS\_28092\_E.doc</u>.

<sup>&</sup>lt;sup>94</sup> OHCHR, Report on the human rights situation in Ukraine, 1 August 2020 to 31 January 2021, <u>https://www.ohchr.org/Documents/Countries/UA/31stReportUkraine-en.pdf</u>, paras. 11, 84, 91-92. See also the *"Myrotvorets" (Mirotvorets)* website, denounced by the Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 16 March 2020 (Annex 496).

<sup>&</sup>lt;sup>95</sup> See notably *Lenta.ru*, "Ukrainian TV channels banned from speaking about the protection of the Russian-speaking population", 14 January 2021, available at: https://lenta.ru/news/2021/01/14/otake/ (Annex 1039).

<sup>&</sup>lt;sup>96</sup> See notably Remarks by Permanent Representative of the Russian Federation to the OSCE Alexander Lukashevich at the online meeting of the OSCE Permanent Council on the violation by the Ukrainian authorities of minority rights, Vienna, 4 June 2020, <u>https://special.mid.ru/en/web/guest/foreign\_policy/rso/osce/-asset\_publisher/bzhxR3zkq2H5/content/</u>

id/4149023, denouncing "forced Ukrainization" and "open Russophobia", leading notably to disruptions of peaceful rallies and harassment of teachers.

<sup>&</sup>lt;sup>97</sup> IADL, Statement on human rights in Ukraine presented at UN Human Rights Council, 29 September 2015, <u>https://iadllaw.org/2015/09/iadl-statement-on-human-rights-in-ukraine-presented-at-un-human-rights-council/</u>. See also Note Verbale No. 14500-n/dgpch of the Ministry of Foreign Affairs of the Russian Federation to the Embassy of Ukraine in Moscow, 30 December 2016 (Annex 518).

<sup>&</sup>lt;sup>98</sup> See notably OHCHR, Report on the human rights situation in Ukraine, 16 November 2018 to 15 February 2019, https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019.pdf, para. 94, and OHCHR, Report on the human rights situation in Ukraine, 1 August 2020 to 31 January 2021, https://www.ohchr.org/Documents/Countries/UA/31stReportUkraine-en.pdf, paras. 8, 72, 92.

<sup>&</sup>lt;sup>99</sup> See notably Open Letter from Scholars and Experts on Ukraine Re. the So-Called "Anti-Communist Law", April 2015, <u>https://krytyka.com/en/articles/open-letter-scholars-and-experts-ukraine-re-so-called-anti-communist-law;</u> IADL, Statement on human rights in Ukraine presented at UN Human Rights Council, 29 September 2015, <u>https://iadllaw.org/2015/09/iadl-statement-on-human-rights-in-ukraine-presented-at-un-human-rights-council/</u>. See also the resolutions of the Verkhovna Rada to celebrate at State level the anniversary of some of Nazi collaborators, in particular Resolution of the Verkhovna Rada of Ukraine No. 325-IX concerning the celebration of commemorations and anniversaries in 2020, 3 December 2019 (Annex 756), and related reaction by the Ministry of Foreign Affairs of Israel, The Israeli Embassy in Ukraine Protests Against Recommendation to Honor Nazi Collaborators, 9 December 2019 (Annex 811).

actively supports radical nationalist groups<sup>100</sup> which the CERD Committee has denounced as "promot[ing] activities that amount to incitement to racial hatred and racist propaganda" and as being "responsible for racially motivated violence against persons belonging to minority groups that has not been always punished (arts. 2 and 4)."<sup>101</sup>

53. Against the background of the growth of anti-Russian sentiments in Ukraine, there is also an increase in intolerance and attacks based on religion.<sup>102</sup> While religious discrimination is not covered by CERD,<sup>103</sup> the various actions taken against the Ukrainian Orthodox Church ("UOC") since 2014 actually form part of Ukraine's policy to discriminate against ethnic Russians and clearly aggravate their isolation. The actions include legislative measures such as the mandatory renaming of the UOC to associate it with the so-called occupation denounced by Ukraine,<sup>104</sup> or fabricated investigations into allegations of incitement to religious hatred.<sup>105</sup> At the same time, attacks on the UOC faithful and the clergy,<sup>106</sup> violent seizures of churches,<sup>107</sup> acts of vandalism,<sup>108</sup>

<sup>103</sup> See below, paras. 127-128.

<sup>100</sup> Instead of publicly and unambiguously condemning ethnic hatred and declaring racist organizations illegal, the Ukrainian Ministry of Justice has officially registered as political parties Ukrainian ultra-nationalist movements, such as the Right Sector on 22 May 2014, see notably Interfax Ukraine, "Right Sector registered as official party", 22 May 2014 (Annex 906); Ministry of Justice of Ukraine, Register of Ukrainian political parties (Annex 804). For its part, the Azov Battalion, an ultra-nationalist militia that openly welcomes neo-Nazis into its ranks and engages in terrorism, was incorporated into Ukraine's armed forces on 12 November 2014, see notably The Nation, "Neo-Nazis and the Far Right Are On the March in Ukraine", 22 February 2019 (Annex 998). As regards funding, see notably, HRW, "Ukrainian Court Penalizes News Outlet for Calling Far-Right Group 'Neo-Nazi'", 8 2019. August https://www.hrw.org/news/2019/08/08/ukrainian-court-penalizes-news-outlet-calling-far-right-group-neo-nazi;

*Hromadske*, "Far-Right Group C14 Wins Funding From Ukrainian Government", 14 June 2018, https://en hromadske.ua/posts/far-right-group-c14-wins-funding-from-ukrainian-government (Annex 1318); *Gordon*, "A project of the leader of nationalists from S14 received state funding", 14 June 2018 (Annex 985); *UNIAN*, "Baloha admits involvement in funding Right Sector", 23 July 2015, https://www.unian.info/politics/1104268-baloha-admits-involvement-in-funding-right-sector html (Annex 1317).

<sup>&</sup>lt;sup>101</sup> CERD Committee, 90th session, Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine, 23 August 2016, UN Doc. CERD/C/UKR/CO/22-23, para. 15. See also Note Verbale No. 14500-n/dgpch of the Ministry of Foreign Affairs of the Russian Federation to the Embassy of Ukraine in Moscow, 30 December 2016 (Annex 518).

<sup>&</sup>lt;sup>102</sup> A. Semenov, CIS-EMO Political Analyst, Discrimination on the basis of religion and the problem of hate speech in Ukraine, HDIM.NGO/0161/2018/EN, 13 September 2018, <u>https://www.osce.org/odihr/394283?download=true</u>.

<sup>104</sup> See Law of Ukraine No. 2662-VIII "On amendments to Article 12 of the Law of Ukraine "On Freedom of Conscience and Religious Organizations" regarding the names of religious organizations (associations) that are integrated into the structure (are part) of any organization (association), management center (administration) of which is located outside Ukraine in the state recognized by law as having committed military aggression against Ukraine and/or temporarily occupied part of the territory of Ukraine", 20 December 2018 (Annex 754), Article 1. This law has no practical effect but to target UOC communities; see the concerns expressed in the Written statement submitted by Public Organization "Public Advocacy" (a non-governmental organization with special consultative status) to the Human Rights Council, "On the victimization law on forcible renaming of 12 000 communities of the Ukrainian Orthodox Church", 30 May 2019, UN Doc. A/HRC/41/NGO/26; OHCHR, Report on the human rights situation in Ukraine, 16 November 2018 to 15 February 2019, https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019.pdf, para. 92.

<sup>&</sup>lt;sup>105</sup> See, e.g., *UNIAN*, "SBU searched the senior priest of the Kiev-Pechersk Lavra Pavel: details", 30 November 2018 (Annex 993); OHCHR, Civic space and fundamental freedoms ahead of the presidential, parliamentary and local elections in Ukraine in 2019-2020, 21 March 2019, UN Doc. A/HRC/40/CRP.4, p. 9, para. 31.

 <sup>&</sup>lt;sup>106</sup> See, e.g., Union of Orthodox Journalists, "ROC: There's real persecution against the Ukrainian Orthodox Church",

 1 March 2018,
 <u>https://spzh news/en/news/51756-rpc-v-ukraine-samyje-nastojashhije-gonenija-na-ukrainskuju-</u>

or interference in, as well as disruption of, religious services<sup>109</sup> are neither prevented nor investigated or repressed by Ukraine. In certain cases, law-enforcement agencies even actively support and participate in such acts.<sup>110</sup> Information campaigns releasing hundreds of false and biased publications in various mass-media outlets<sup>111</sup> are other straightforward examples of harassment. Measures against the UOC are effectively directed against ethnic Russians, which form a huge majority of its followers.

54. All of the above violations shed a relevant light on Ukraine's artificial accusations in the present case: they show that Ukraine in fact does not care about the values underlying CERD, its implementation and States' adherence to its principles, nor about the protection of ethnic groups; rather the sole purpose of its claims, which are baseless as will be shown in the next chapters, is to put before the Court the change of status of Crimea and effectively assert its sovereignty over it.

pravoslavnuju-cerkovy; *TvZvezda.ru*, "Supporters of the Orthodox Church of Ukraine beat parishioners and a priest of the Ukrainian Orthodox Church", 17 March 2019 (Annex 1000).

<sup>107</sup> See, e.g., Moscow Patriarchate official website, "Speech by Metropolitan Onufriy of Kiev and All Ukraine at the Bishops' Council of the Russian Orthodox Church, 2-3 February 2016", 2 February 2016 (Annex 946); Legal department of the UOC official website, Map of UOC church seizures, https://law.church.ua/; Statement by Mr Alexander Lukashevich, Permanent Representative of the Russian Federation, at the 1235th meeting of the OSCE Permanent Council on violations by the Ukrainian Government of religious rights and persecution of the Ukrainian Orthodox Church in Ukraine, 12 July 2019, C.DEL/863/19, https://www.osce.org/permanentcouncil/428258?download=true; NGO Public Advocacy, Statement on violation of the rights of the Ukrainian Orthodox Church communities in Ukraine, 1 October 2015, https://www.osce.org/odihr/188076.

<sup>&</sup>lt;sup>108</sup> See, e.g., MFA of Russia, White book on violations of human rights and the rule of law in Ukraine, November 2013 – March 2014, transmitted to the UN Secretary-General by a letter from the Permanent Representative of the Russian Federation to the United Nations of 12 May 2014, UN Doc. A/68/875–S/2014/331, p. 62, <u>https://www.mid.ru/documents/10180/7172cfd9-6ec2-48a7-98dd-fe371fd69b26?t=1406667601566</u> (hereinafter "White Book"); OHCHR, Report on the human rights situation in Ukraine 16 November 2017 to 15 February 2018 (Annex 779 to MU), para. 95; Statement by Permanent Representative of the Russian Federation at the 1235th meeting of the OSCE Permanent Council, 12 July 2019, C.DEL/863/19, <u>https://www.osce.org/permanent-council/428258?download=true</u>.

<sup>109</sup> https://www.mid\_ru/documents/10180/7172cfd9-6ec2-48a7-98dd-See e.g., White Book, p. 61, fe371fd69b26?t=1406667601566; NGO Public Advocacy, "Chudnytsia village, Hoshcha district, Rivne region", https://www.protiktor.com/38hrcsession/all-cases/chudnytsia-village/; NGO Public Advocacy, "Badyvka village, Ostroh district, Rivne region", https://www.protiktor.com/38hrcsession/all-cases/badyvka-village/; OHCHR, Report on the human rights situation in Ukraine, 16 November 2018 to 15 February 2019, https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019.pdf, para. 92. See also above, fn. 52.

<sup>&</sup>lt;sup>110</sup> See e.g., NGO Public Advocacy, "Facts, evidence and claims regarding violations of the rights of believers and religious organizations of the Ukrainian Orthodox Church in 2014-2016. Collection of information materials and documents", <u>https://sb8511b05c8a21905.jimcontent.com/download/version/1530605303/module/6756821863/name/</u><u>Ukraine%20Orthodox%20Report%202016.pdf;</u> OHCHR, Report on the human rights situation in Ukraine, 16 February to 15 May 2019, <u>https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Feb-15May2019 EN.pdf</u>, paras. 86-87.

<sup>&</sup>lt;sup>111</sup> S. Mudrov, "The autocephaly of the Ukrainian Orthodox Church: a new dividing line for Ukraine?", *Journal of Contemporary Central and Eastern Europe*, 2019, Vol. 27, Nos. 2-3, p. 272. Over three years from 2015, nearly 700 negative news pieces about the UOC were published in various media, according to Public Advocacy (see <u>https://golos.ua/i/590663</u>).

#### II. Crimean Tatars and Ethnic Ukrainians in Crimea Have Been Supported by Russia

55. Ukraine's claims are completely divorced from the reality on the ground. When Crimea became part of Russia, one of the immediate priorities was to take adequate measures for the rehabilitation of historically oppressed peoples, including the Crimean Tatars, and to ensure full protection of their rights on an equal footing with the rest of the Crimean population. This took the form of special measures, which is authorized under Article 1(4) of CERD.

56. As early as 11 March 2014, the Parliament of Crimea, anticipating a result favourable to a change of status for Crimea in the upcoming referendum, adopted a Resolution aimed at developing and protecting the rights of Crimean Tatars as a historically disadvantaged community, to be guaranteed in Crimea's future Constitution.<sup>112</sup> The planned measures included: (i) promoting the Crimean Tatar language as Crimea's State language alongside the Russian and Ukrainian languages; (ii) ensuring the proportional representation of Crimean Tatars in the Crimean Parliament and within the executive organs of the future Crimean Government, with a guaranteed minimum threshold of 20%;<sup>113</sup> (iii) recognition of Crimean Tatar ethnic self-government organs, including the Qurultay and organs formed thereunder (thus including the Mejlis); (iv) establishing Crimean Tatar development plans and securing financial resources therefor, solving land, financial and organizational issues facing Crimean Tatars as part of their resettlement in Crimea; (v) preserving Crimean Tatar culture and historical heritage; (vi) ensuring education in the Crimean Tatar language; (vii) restoring previous place names that had been modified after the 1944 deportation; (viii) fostering the development of electronic and print media outlets in the Crimean Tatar language; (ix) and ensuring religious equality. This resolution obviously pointed to issues that had not been settled or rights that had not been protected or ensured when Crimea was under Ukrainian control. It also provided for an agenda of reforms that Russia, including the Crimean local authorities, have been carrying out since 2014.

57. Shortly after Crimea's accession to Russia, on 21 April 2014, the President of Russia adopted Decree No. 268 "On measures aimed at rehabilitation of Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German peoples and state support of their revival and development" (the "Rehabilitation Decree").<sup>114</sup> This text forms the basis for the development of a series of measures and institutional initiatives aimed at promoting the rehabilitation of historically oppressed minorities, including Crimean Tatars and other formerly deported minorities, developing and

<sup>&</sup>lt;sup>112</sup> Verkhovna Rada of the Autonomous Republic of Crimea, Resolution No. 1728-6/14 on guarantees of restoration of the rights of the Crimean Tatar people and their integration into the Crimean community, 10 March 2014 (Annex 789).

<sup>&</sup>lt;sup>113</sup> It should be recalled that at the 2014 census, Crimean Tatars accounted for 10.2% of the Crimean population – Federal Service of State Statistics of the Russian Federation, Results of the Population Census of 2014 in the Crimean Federal District, 2015 (Annex 440), p. 108. In this regard, a 20% guaranteed representation threshold is particularly favourable to the Crimean Tatar community.

<sup>&</sup>lt;sup>114</sup> See Decree of the President of the Russian Federation No. 268 "On measures aimed at rehabilitation of Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German peoples and state support of their revival and development" (as amended on 12 September 2015), 21 April 2014 (Annex 63).

ensuring protection of their human rights and gradually bringing these communities to a position of equal footing with other segments of the population in Crimea. The key provisions of the Decree confirm Russia's obvious intent to adopt positive measures on restauration aimed at supporting the Crimean Tatars and improving their legal, political, economic, social and spiritual situations<sup>115</sup> – there is no equivalent in the period under Ukrainian sovereignty.

58. Through the Decree, the President of Russia directs the Russian Government, together with the competent authorities of the Republic of Crimea and the city of Sevastopol, to define and carry out a series of measures of redress. The first provision of the Decree, contained in Article 1(a), first paragraph, is of general scope and potentially far-reaching. The competent authorities shall

"adopt measures on restoration of historical justice, political, social and spiritual revival of the Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German Peoples, who suffered illegal deportation and political repressions on ethnic and other grounds".

59. This general principle provides the basis for the adoption of more specific measures of application in various fields, as is shown further below. This general measure refers to peoples – as a whole – that have been exposed to deportation and other repressions; as the application measures confirm, this refers not only to members of the targeted communities who have survived the deportation period, but also any of his or her relatives, including his or her offspring. Therefore, the Decree applies to the Crimean Tatars and other communities as a whole.

60. Article 1(b) directs the competent authorities to

"determine the peculiarities of application of the Federal Law [...] 'On introduction of changes to some legislative acts of the Russian Federation on registration in a simplified procedure of the rights of citizens on certain real estate units' on the territories of the Republic of Crimea and the city of Sevastopol with regard to the necessity to provide protection of human rights and legitimate interests of the Armenian, Bulgarian, Greek, Italian, Crimean Tatar, German and other peoples".

61. This provision specifically addresses the Crimean Tatars' longstanding difficulties – that have only piled up in the Ukrainian period – to lawful access to land and real estate property upon their return to Crimea.

62. Article 1(c) of the Decree provides that the federal target program of social-economic development of the Republic of Crimea and the city of Sevastopol should include measures aimed at the national-cultural and spiritual revival of the targeted peoples and the social development of

<sup>&</sup>lt;sup>115</sup> See Article 1(a), first paragraph of the Decree, directing the competent authorities to adopt such measures. See also in this sense the statement of the President of the Russian Federation during "Direct Line with Vladimir Putin", annual interview, Moscow, 17 April 2014, <u>http://en.kremlin ru/events/president/news/20796</u> (Annex 51 to MU), p. 43: "We certainly need to do everything we can to rehabilitate and restore the legitimate rights and interests of the Crimean Tatar people". See in the same line the announcement of the rehabilitation process made in the Address by the President of the Russian Federation to the State Duma deputies, Federation Council members, heads of Russian regions and civil society representatives, 18 March 2014, <u>http://en.kremlin ru/events/president/news/20603</u>.

the Republic of Crimea and Sevastopol, and should determine the sources or financing of the program accordingly. Article 1(d) encourages the creation and development of cultural autonomies and other associations and organizations to provide ethnic communities with the means to preserve their identity, and guarantees basic general education in the languages of the targeted peoples. It also reflects Russia's recognition of the issues faced by Crimean Tatars and other formerly repressed peoples, a policy consistently carried out by Russia not only in Crimea.<sup>116</sup>

63. The Rehabilitation Decree sets general orientations that are implemented in Crimea by local legislation.<sup>117</sup> For example, the Crimean Law of 31 July 2014 No. 38-ZRK <sup>118</sup> provides for a simplified transitional procedure for registration/legalization of land and real property in order to address the core problems encountered before 2014 by Crimean Tatars, who may not always possess official documents proving their ownership title to a land plot. The transition period for the

<sup>&</sup>lt;sup>116</sup> President of the Russian Federation official website, "Meeting of the Commission for rehabilitation of victims of political repressions", 28 October 2015 (Annex 461).

<sup>117</sup> Implementing acts include, among others, Order of the Council of Ministers of the Republic of Crimea No. 436-r "On approval of the Action Plan for the implementation of the Decree of the President of the Russian Federation of 21 April 2014 No. 268", 27 May 2014 (Annex 68); Order of the Government of Sevastopol No. 578 "On approval of the Set of Measures for the restoration of historical justice, political, social and spiritual revival of the Armenian, Bulgarian, Greek, Crimean Tatar and German peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2014-2016 in Sevastopol", 31 December 2014 (Annex 79); Order of the Council of Ministers of the Republic of Crimea No. 227-r "On approval of the Event Plan for the implementation in the Republic of Crimea of the Set of Measures for the restoration of historical justice, political, social and spiritual revival of the Armenian, Bulgarian, Greek, Crimean Tatar and German peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2015-2016 years", 23 March 2015 (Annex 85); Decree of the Council of Ministers of the Republic of Crimea No. 451-r "On approval of the Event Plan for the implementation in the Republic of Crimea of the set of measures for the restoration of historical justice, political, social and religious revival of the Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2016", 5 May 2016 (Annex 104); Order of the Council of Ministers of the Republic of Crimea No. 968-r "On the Event Plan for the implementation in the Republic of Crimea of the Set of Measures for the restoration of historical justice, political, social and religious revival of the Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German Peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2017-2019", 29 August 2017 (Annex 110). For a detailed account of the implementation of the Decree in Crimea, see Information Note on measures taken for the implementation of Presidential Decree No. 268 in Council of Ministers of the Republic of Crimea, Information note on measures taken to implement the Decree No. 268 of the President of the Russian Federation and other activities aimed at promoting cultures of Ukrainian and Crimean Tatar peoples, as attached to the Letter No. 1/01-46/8775/3/1, 5 June 2020 (Annex 498), pp. 84-138. Another critical basis for supporting measures in Crimea is the Federal Constitutional Law No. 6-FKZ "On the admission of the Republic of Crimea to the Russian Federation and the formation of new constituent entities of the Russian Federation: The Republic of Crimea and the federal city of Sevastopol", 21 March 2014 (Annex 888 to MU).

<sup>&</sup>lt;sup>118</sup> See Law of the Republic of Crimea No. 38-ZRK "On the specifics for the regulation of property and land relations in the territory of the Republic of Crimea", 30 July 2014 (Annex 71), together with its subsequent amendments, including\_the Law of the Republic of Crimea No. 221-ZRK/2016 "On introducing amendments into the Law of the Republic of Crimea 'On specifics of regulation of property and land relations in the territory of the Republic of Crimea", 17 February 2016 (Annex 100) and Law of the Republic of Crimea No. 573-ZRK "On introducing amendments into Article 13 of the Law of the Republic of Crimea 'On the specifics of regulation of property and land relations in the territory of the Republic of Crimea", 5 March 2019 (Annex 116).

regularization of property titles has subsequently been extended, confirming the authorities' concern not to leave any community behind with the recognition and exercise of their rights.<sup>119</sup>

64. Over the period of 2016-2017 more than 4,000 rehabilitated persons have benefited from a decision to allocate parcels of land to them.<sup>120</sup> Free registration procedures of real estate and substantial discounts on the cost of permitting documents for the supply network (i.e. electricity, water and sewerage, gas and communication lines) have also been granted.<sup>121</sup>

65. In addition, many other measures aimed at improving the life of Crimeans – including Crimean Tatars and Ukrainians, regardless of whether they have obtained Russian citizenship – have been adopted both at the federal<sup>122</sup> and local<sup>123</sup> levels since 2014.

66. Local civil society, including public associations of Crimean Tatars, are encouraged to participate in the implementation of the Rehabilitation Decree, with the financial support of the State.<sup>124</sup> There are about 30 Crimean Tatar organizations in Crimea that represent about 20,000 members.<sup>125</sup>

67. Russia has further created means enabling direct communication between the authorities and the Crimean Tatar community. For instance, the Council of Crimean Tatars,<sup>126</sup> composed of senior figures of the Crimean Tatar community, is tasked to analyze the specific problems faced by the Crimean Tatars, propose measures to solve these, and assess their due implementation as part of the work towards "restoring historical justice, political, social and spiritual revival of the Crimean

<sup>&</sup>lt;sup>119</sup> See for example Federal Constitutional Law No. 3-FKZ "On introducing amendments into Article 12-1 of the Federal Constitutional Law 'On the admission of the Republic of Crimea to the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the Federal City of Sevastopol", 25 December 2018 (Annex 114).

<sup>&</sup>lt;sup>120</sup> Council of Ministers of the Republic of Crimea, Information note on measures taken to implement the Decree No. 268 of the President of the Russian Federation and other activities aimed at promoting cultures of Ukrainian and Crimean Tatar peoples, as attached to the Letter No. 1/01-46/8775/3/1, 5 June 2020 (Annex 498), pp. 75-76.

<sup>&</sup>lt;sup>121</sup> *Ibid*.

<sup>&</sup>lt;sup>122</sup> Federal Law No. 421-FZ "On specifics of the legal regulation of relations pertaining to the provision of social protection (support) measures, as well as compulsory social insurance payments to certain categories of citizens living in the territories of the Republic of Crimea and the federal city of Sevastopol", 22 December 2014 (Annex 76).

<sup>&</sup>lt;sup>123</sup> Law of the Republic of Crimea No. 35-ZRK/2014 "On measures of social support for certain categories of citizens and persons living in the territory of the Republic of Crimea, 17 December 2014 (Annex 75).

<sup>&</sup>lt;sup>124</sup> See the Fund for presidential grants (Annex 1411). See also President of the Russian Federation official website, "Meeting with representatives from Crimean ethnic groups' public associations", Yalta, 17 August 2015 (Annex 460), <u>http://en.kremlin.ru/events/president/news/50140.</u>

<sup>&</sup>lt;sup>125</sup> Case No. 2A-3/2016, Decision of 26 April 2016 of the Supreme Court of the Republic of Crimea concerning the appeal of the ban of the Mejlis (Annex 913 to MU), p. 4 and 20; Case No. 127-APG16-4, Decision of 29 September 2016 of the Supreme Court of the Russian Federation concerning the appeal of the ban of the Mejlis (Annex 915 to MU), p. 7. See further below at Chapter IV(IV)(A).

<sup>&</sup>lt;sup>126</sup> Decree of the Head of the Republic of Crimea No. 93-U "On establishing the Council of Crimean Tatars under the Head of the Republic of Crimea", 29 March 2018 (Annex 112). See further below, paras. 232-235.

Tatars".<sup>127</sup> In doing so, the Council is empowered to consult with all relevant stakeholders, public and private.<sup>128</sup>

68. Among organs involved in supporting measures are the Council for Inter-ethnic Relations under the President of the Russian Federation,<sup>129</sup> the representative of the President of Russia in the Southern Federal District,<sup>130</sup> the State Committee for Inter-ethnic Relations of the Republic of Crimea,<sup>131</sup> the Commission of the Republic of Crimea on the restoration of the rights of rehabilitated victims of political repression.<sup>132</sup> Substantial financial resources have been budgeted yearly for the socio-economic development of the targeted peoples as part of their rehabilitation under the Federal Target Program for the period till 2025 (from 10.36 million rubles in 2015 to 2.497 billion rubles in 2018 and 3.473 billion rubles in 2022).<sup>133</sup>

69. Improvements in the field of housing include an active construction and acquisition process of facilities for the needs of formerly deported people, including Crimean Tatars. For instance:

a. In 2016-2017, 4,355 land plots were allocated to citizens included in the register of citizens who had chosen a land plot for individual housing construction by actually occupying it prior to the adoption of Federal Constitutional Law No. 6-FKZ "On the

<sup>&</sup>lt;sup>127</sup> *Ibid.* (Annex 112), Appendix 2, Articles 1.1, 2.1.

<sup>&</sup>lt;sup>128</sup> *Ibid.* (Annex 112), Appendix 2, Article 3.2.

<sup>&</sup>lt;sup>129</sup> Created by Decree of the President of the Russian Federation No. 776 "On the Council for Inter-ethnic Relations under the President of the Russian Federation", 5 June 2012 (Annex 57); Official website: <u>https://sovetnational\_ru/sovet/</u>. See also Witness Statement of Chingiz Fevzievich Yakubov, Rector of Fevzi Yakubov Crimean Engineering and Pedagogical University (Annex 8), paras. 32-33.

<sup>&</sup>lt;sup>130</sup> Official website: <u>http://ufo.gov.ru/</u>.

<sup>&</sup>lt;sup>131</sup> Official website: <u>https://gkmn rk.gov.ru/ru/index</u>. See also Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 18 January 2019 (Annex 483), paras. 62-65. The State Committee is an active actor in adopting and implementing supporting and rehabilitation measures in Crimea, see for example the State Committee for Inter-ethnic Relations of the Republic of Crimea official website, "Report on the activities of the State Committee for 2016" (Annex 470).

<sup>&</sup>lt;sup>132</sup> Resolution of the State Council of the Republic of Crimea No. 379-1/14 "On formation of the Commission of the Republic of Crimea on the restoration of the rights of rehabilitated victims of political repressions", 24 December 2014 (Annex 77).

<sup>133</sup> Resolution of the Government of the Russian Federation No. 790 adopting Federal Target Program "Social and economic development of the Republic of Crimea and the City of Sevastopol until 2020", 11 August 2014 (Annex 72), p. 84 of Appendix 3. This Program is expressly mentioned in Article 1(c) of Decree of the President of the Russian Federation No. 268 (Annex 63), and the Decree is expressly referred to in the Program as a legal basis therefor. The Program has been amended since its initial adoption. Its various versions (in Russian) may be consulted at https://fcp.economy.gov ru/cgi-bin/cis/fcp.cgi/Fcp/ViewFcp/View/2020/429. For figures see Federal Target Program, budgetary allocations on measures aimed at national, cultural and spiritual revival of the Armenian, Bulgarian, Italian, Greek, Crimean Tatar and German peoples and on social infrastructure development of the territories of the Republic of Crimea and the City of Sevastopol, June 2021, https://faip.economy.gov ru/cgibin/uis/faip.cgi/G1/ObjectHistory/51204252206082 (Annex 509).

admission of the Republic of Crimea and the federal city of Sevastopol into the Russian Federation" of 21 March 2014.<sup>134</sup>

- b. in 2018 an apartment block of 72 apartments and a preschool for 260 children were completed, along with construction of elements of gas, electricity and water supply infrastructure to provide services to 1100, 750 and 400 families, respectively.<sup>135</sup>
- c. In 2019, local authorities acquired 47 housing properties for the rehabilitated people, and provided 161 persons one-time financial assistance to complete construction of their individual housing.<sup>136</sup>

70. Overall, 623 families from among the rehabilitated peoples of Crimea were provided with their own housing over the course of 2015-2019, and 600 individuals received financial support for home construction.<sup>137</sup>

71. As part of *social and health* improvement measures, it should be noted that over the past 5 years 4,625 persons who had suffered from political repressions (including Crimean Tatars) received documents confirming their right to a social safety net.<sup>138</sup> With respect to health, a Consultative and Diagnostic Center for the Needs of Deported Peoples and two specialized old people's homes for Crimean Tatars operate in Simferopol.<sup>139</sup>

72. Russia has further taken diverse measures and regulations in relation to education in native language.<sup>140</sup> For example, in 2015-2016, 46,686,300 rubles from the Crimean budget were allocated for the translation and printing of over 63 textbook titles and in 2018, about 49,747,200 rubles were allocated for the translation and printing of further 36 textbook titles, mainly printed in the Crimean Tatar language, but also including the Ukrainian language.<sup>141</sup> Higher educational programs have

<sup>138</sup> *Ibid.* 

<sup>&</sup>lt;sup>134</sup> Council of Ministers of the Republic of Crimea, Information note on measures taken to implement the Decree No. 268 of the President of the Russian Federation and other activities aimed at promoting cultures of Ukrainian and Crimean Tatar peoples, as attached to the Letter No. 1/01-46/8775/3/1, 5 June 2020 (Annex 498), p. 66 et seq.

<sup>&</sup>lt;sup>135</sup> Information from the official website of the State Committee for Inter-ethnic Relations and Deported Citizens of the Republic of Crimea on activities of the Committee in 2018, https://gkmn.rk.gov.ru/uploads/gkmn/attachments//d4/1d/8c/d98f00b204e9800998ecf8427e/phpOnX3ms\_2.pdf (Annex 486), p. 4.

<sup>&</sup>lt;sup>136</sup> State Committee for Inter-ethnic Relations of the Republic of Crimea, Report on implementation of the State Program of the Republic of Crimea on strengthening the unity of the Russian Nation and ethnocultural development of the peoples of the Russian Federation "The Republic of Crimea - the territory of inter-ethnic harmony" for 2019 (Annex 485), p. 2.

<sup>&</sup>lt;sup>137</sup> Council of Ministers of the Republic of Crimea, Information note on measures taken to implement the Decree No. 268 of the President of the Russian Federation and other activities aimed at promoting cultures of Ukrainian and Crimean Tatar peoples, as attached to the Letter No. 1/01-46/8775/3/1, 5 June 2020 (Annex 498), p. 70.

<sup>&</sup>lt;sup>139</sup> Consultative and Diagnostic Center for the Needs of Deported Peoples at <u>https://mcdep ru/</u>, and Nursing home for old people and persons with disabilities from among Crimean Tatars, <u>http://geriat.ru/o-филиале</u>, both in Simferopol.

<sup>&</sup>lt;sup>140</sup> See Chapter V below.

<sup>&</sup>lt;sup>141</sup> See Chapter V below. Also see List of textbooks prepared and published in 2015-2016, List of textbooks supplied to educational institutions of the Republic of Crimea in 2018, and List of textbooks supplied to educational institutions

been developed to offer, among others, "Crimean Tatar language and literature" and "Ukrainian language and literature". They also provide students with the possibility to prepare candidate and doctoral theses on Crimean Tatar and Ukrainian languages issues.<sup>142</sup> A Youth Centre of Multi-Ethnic Culture, for the benefit of all Crimean ethnic groups, including Ukrainians and Crimean Tatars, is being constructed as part of the federal program.<sup>143</sup> The Centre is planned to be an international scientific, cultural, and educational platform for students. The Centre should consist of living facilities, sports forum, classes for workshops and a library. The Centre will operate under the auspices of the Crimean Engineering and Pedagogical University in Simferopol.

73. Additionally, and more generally, for the past seven years, hundreds of ethnic and cultural events have been held in Crimea on an annual basis, among them art contests, festivals and concerts aimed at the preservation, multiplication, popularization of the cultural heritage of the Crimean Tatar and Ukrainian peoples.<sup>144</sup> The authorities have taken steps to officially recognize Crimean Tatar public holidays, among others, and provide for their observance.<sup>145</sup>

74. In relation to the media, the Crimean authorities have been taking various initiatives to develop the capacities of Crimean Tatar TV and radio channels and to support the activities of Crimean Tatar and Ukrainian media outlets in Crimea, as explained elsewhere in the present Counter-Memorial.<sup>146</sup>

75. When it comes to permanent residency and citizenship,<sup>147</sup> on the accession of Crimea to Russia, a transitional period enabled Crimeans to opt for the citizenship or citizenships of their

- of the Republic of Crimea in 2019, *in* Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450).
- <sup>142</sup> Witness Statement of

Annex 10), para 29; See also Taurida Academy of the Vernadsky Crimean Federal University, Student newspaper, Issue No. 11, 2016 (Annex 1062), pp. 4-5.

<sup>143</sup> Witness

(Annex 8), para. 29.

<sup>&</sup>lt;sup>144</sup> In 2018 alone, more than 300 ethnic and cultural events were held – see Information from the official website of the State Committee for Inter-ethnic Relations and Deported Citizens of the Republic of Crimea on activities of the Committee in 2018, https://gkmn.rk.gov.ru/uploads/gkmn/attachments//d4/1d/8c/d98f00b204e9800998ecf8427e/ phpOnX3ms\_2.pdf (Annex 486), p. 5-6; Table of some cultural events held in the Republic of Crimea as part of the work to promote, develop and preserve the Crimean Tatar and Ukrainian cultures for 2014-2021 (Annex 501); Council of Ministers of the Republic of Crimea, Information note on measures taken to implement the Decree No. 268 of the President of the Russian Federation and other activities aimed at promoting cultures of Ukrainian and Crimean Tatar peoples, as attached to the Letter No. 1/01-46/8775/3/1, 5 June 2020 (Annex 498), pp. 1-12, 23-66, 82-116.

<sup>&</sup>lt;sup>145</sup> Law of the Republic of Crimea No. 55-ZRK "On public holidays and memorable dates in the Republic of Crimea", 29 December 2014 (Annex 78). It notably officially consecrates 18 May as the day of memory of victims of deportation, obviously referring to the date of the *Sürgün* in 1944. See also the Crimean Tatar national holiday "Hidirlez" held annually in May: Fevzi Yakubov Crimean Engineering and Pedagogical University official website, "Hidirlez - all-Crimean spring holiday!", 10 May 2017 (Annex 1069).

<sup>&</sup>lt;sup>146</sup> See Appendix E, para. 25-26; see examples of media available in the Crimean Tatar and Ukrainian languages in Crimea: *Arzy*, No. 13-14, 2020 (Annex 1117); *Yildiz*, No. 1 (259), 2021 (Annex 1153); *Krymskiy visnik*, No. 1, 2020 (Annex 1118); *Krym syogodni*, No. 1 (4), 2021 (Annex 1163); see also the Ukrainian and Russian languages Internet Portal "Pereyaslavska Rada 2.0" (<u>http://pereyaslavskayarada.com/</u>).

<sup>&</sup>lt;sup>147</sup> See Chapter VI(III) and Appendix C(I).

choice, including acquiring or relinquishing Russian citizenship, and retaining or relinquishing Ukrainian citizenship. This regime secured the position of persons who were otherwise unable to produce the relevant documentation and benefited those Crimean Tatars who had resettled in Crimea without Ukraine properly addressing their situation.

76. In respect of cultural heritage, Ukraine's claim purporting to describe the restoration of the Khan's Palace as cultural erasure is fundamentally a supporting measure to the Crimean Tatar community. Russia recognized the Palace, together with some other Crimean sites, as cultural heritage of federal significance,<sup>148</sup> thus providing them with the same level of protection as other renowned Russian sites like the Kremlin.<sup>149</sup> In light of this, the decision to call for and to finance the renovation of the site (benefiting from an allocation of almost 2 billion rubles)<sup>150</sup> can hardly be seen as reflecting an intent to destroy it or to discriminate against Crimean Tatars. Rather, it was a supporting measure aimed to ensure efficient preservation of the site after Ukraine failed to do so for 23 years.<sup>151</sup>

77. Similarly, Russia has supported Crimean Tatars' endeavours – which Ukraine had stalled for the last two decades – to build the Simferopol Cathedral Mosque, which is planned to be the largest in the region, accommodating around 4,000 people.<sup>152</sup> At its construction site, the three flags – Russian, Crimean and Crimean Tatar – wave side by side as a demonstration of respect and unity.<sup>153</sup>

78. The above-mentioned description of supporting measures is by no means exhaustive.<sup>154</sup> It suffices, however, to show how unfounded Ukraine's allegations are and reflects the strong commitment of Russia to protect and care for all citizens and communities in Crimea without any racial discrimination and to secure the advancement of Crimean Tatars as well as ethnic Ukrainians.

<sup>153</sup> See Witness Statement of (Annex 19), para. 38, photograph 2.

, 9 June 2021 (Annex

<sup>&</sup>lt;sup>148</sup> Order of the Government of the Russian Federation No. 2073-r approving the List of cultural heritage sites of federal significance located in the territory of the Republic of Crimea and the City of Sevastopol, 17 October 2015 (Annex 92).

<sup>&</sup>lt;sup>149</sup> See Information from the Unified State Register of Cultural Heritage Sites (Historical and Cultural Monuments) of the Peoples of the Russian Federation, entries for the "Moscow Kremlin" and the "Khan's Palace" (Annex 1319). Both complexes are classified as objects of cultural heritage of federal significance, the highest level of protection and significance under Russian law.

<sup>&</sup>lt;sup>150</sup> *TASS*, "Palace of the Crimean Khans in the Crimean Bakhchisaray will be restored in 2022", 6 December 2020 (Annex 1035).

<sup>&</sup>lt;sup>151</sup> Witness statement of

<sup>20),</sup> paras. 22-26.

<sup>&</sup>lt;sup>152</sup> Witness Statement of **152** Witness Statement of **153**, 9 June 2021 (Annex 19), paras. 35-38. For further supporting measures in the religious field, see OSCE Human dimension implementation meeting (Warsaw, 16-27 September 2019), Written Contribution by the Spiritual Directorate of Muslims of Crimea, HDIM.CS/0404/19/EN, 24 September 2019 (Annex 835).

<sup>&</sup>lt;sup>154</sup> For additional examples of measures, see for instance CERD Committee, 93th session, Summary record of the 2553rd meeting held on 4 August 2017, UN Doc. CERD/C/SR.2553, para. 24 (Lukiyantsev); Statement by Mr Alexander Lukashevich, Permanent Representative of the Russian Federation, at the 1186th meeting of the OSCE Permanent Council, "On the anniversary of the deportation of the Crimean Tatars", Doc. PC.DEL/630/18, 17 May 2018 (Annex 481).

79. Ukraine fails to explain how Russia could possibly since 2014 adopt and implement such numerous supporting measures that specifically benefit the Crimean Tatars and ethnic Ukrainians while in parallel (supposedly) plan and carry out a systematic campaign or policy of political and cultural erasure through racial discrimination that targets the very same groups. The obvious conclusion is that the two simply did not, and could not, both be taking place.

80. In contrast to Ukraine's attempt to present a falsified picture of the situation, the measures taken by Russia have been praised by Crimean Tatars throughout Crimea, who for the first time feel that their voice is being heard and that their core problems (including for example integration, access to land, means to preserve their identity) are being taken into account.<sup>155</sup>

81. In fact, when placed in the perspective of the recent decades, the series of supporting measures is unprecedented and represents a huge improvement for these communities. By contrast, Ukraine even denied at times that CERD was applicable to the situation in Crimea, including to the situation of Crimean Tatars living there.<sup>156</sup> In light of this, Ukraine's spectacular U-turn on the relevance of CERD for purposes of the present case appears quite extraordinary. Thanks to the supporting measures carried out by Russia, the welfare, prosperity, development and standard of living of Crimean Tatars and of the population as a whole have increased in Crimea since 2014 much more than what they were for 23 years under Ukrainian sovereignty. In that context, the *Mejlis*'s and Ukraine's propaganda alleging Crimean Tatars' fear of living under Russian sovereignty and of a new *Sürgün*, is obviously false and offensive.

<sup>&</sup>lt;sup>155</sup> *RIA Novosti Krym*, "Crimean Tatars named important results of the rehabilitation decree", 20 April 2019 (Annex 1004). See also various Statements of representatives of the Crimean Tatar and Ukrainian communities at pp. 167-179 of the Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267). In particular, in his Statement made during the OSCE Human dimension implementation meeting (Warsaw, 19-30 September 2016), deputy mufti of Crimea Ayder Ismailov described some of the supporting measures taken by the Russian Federation and observed: "In the last 23 years in the Ukrainian times no laws on rehabilitation or restoration of the indigenous peoples, the Crimean Tatars, were adopted in Ukraine" (see *ibid.*, at pp. 179-180).

<sup>&</sup>lt;sup>156</sup> See below, para. 112.

# CHAPTER II THE CONCLUSIONS TO BE DRAWN FROM THE COURT'S PREVIOUS DECISIONS IN THE PRESENT CASE

82. Russia's position on the merits in the present proceedings is formulated by reference to the Court's findings on plausibility at the stage of provisional measures (I) and the scope of the Court's jurisdiction as established in its Judgment on Preliminary Objections which clarified and limited the subject-matter and scope of Ukraine's claims (II). On the other hand, the Court took no position on the interpretation and scope of the specific rights invoked by Ukraine under CERD, which thus remains a matter to be addressed at the present stage of the proceedings (III).

## I. The Court's Findings on Plausibility at the Stage of Provisional Measures

83. Examining Ukraine's claims at the stage of provisional measures on the basis of a large number of materials submitted by both Parties, the Court found Ukraine's allegations to be largely implausible. With regard to the (only) two allegations in respect to which it indicated provisional measures, namely the banning of the *Mejlis* and the alleged restrictions on the educational rights of ethnic Ukrainians, the Court merely stated that "*it appears* that [these acts] fulfil th[e] condition of plausibility."<sup>157</sup> As results from this finding, all other claims do not even have the appearance of plausibility.

84. This is the case in particular of Ukraine's request that "[t]he Russian Federation shall refrain from any act of racial discrimination against persons, groups of persons, or institutions in the territory under its effective control, including the Crimean peninsula" and that "[t]he Russian Federation shall take all necessary steps to halt the disappearance of Crimean Tatar individuals and to promptly investigate those disappearances that have already occurred".<sup>158</sup> Nor did the Court indicate any provisional measure with respect to education in the Crimean Tatar language.<sup>159</sup> This shows *a fortiori* that Ukraine had made no plausible claim that a campaign of systematic racial discrimination is attributable to Russia.

85. Even the two limited provisional measures indicated by the Court are not identical to those requested by Ukraine and were not granted on the same basis. The Court indeed concluded that "having considered the terms of the provisional measures requested by Ukraine and the

<sup>&</sup>lt;sup>157</sup> 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), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, p. 104 ("Order of 19 April 2017"), para. 83 (emphasis added).

<sup>&</sup>lt;sup>158</sup> Ukraine's Request for the indication of provisional measures of 16 January 2017, para. 24(b) and (d); Order of 19 April 2017, para. 14(b) and (d).

<sup>&</sup>lt;sup>159</sup> While Ukraine did not request the Court to order a provisional measure in this regard, it nevertheless made a claim that the Russian Federation allegedly "suppressed educational rights" of Crimean Tatars, see Order of 19 April 2017, para. 34.

circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested".<sup>160</sup> Such discrepancies are not without consequences on the plausibility of each of these claims.

- (i) First, whereas Ukraine requested the Court to order that "[t]he Russian Federation shall cease and desist from acts of political and cultural suppression against the Crimean Tatar people, including suspending the decree banning the *Mejlis* of the Crimean Tatar People and refraining from enforcement of this decree and any similar measures, while this case is pending",<sup>161</sup> the Court only indicated that Russia must, in accordance with its obligations under CERD, "[r]efrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*".<sup>162</sup> This measure ordered by the Court did not uphold Ukraine's description of the ban of the *Mejlis* as being part of a series of acts of "political and cultural suppression against the Crimean Tatar people".
- (ii) Second, while Ukraine requested the Court to order that "[t]he Russian Federation shall cease and desist from acts of political and cultural suppression against the ethnic Ukrainian people in Crimea, including suspending restrictions on Ukrainian-language education and respecting ethnic Ukrainian language and educational rights, while this case is pending",<sup>163</sup> the Court limited its Order to indicating that Russia must "[e]nsure the availability of education in the Ukrainian language".<sup>164</sup> Again, this does not amount to, and is very far from, a finding of plausibility of the existence of an alleged systematic campaign or policy of political and cultural suppression.

86. While plausibility is not the standard to assess a case at the merits stage, Ukraine's Memorial brings no new convincing evidence that could advance Ukraine's case beyond the position at the stage of provisional measures. Ukraine's claims do not correspond to, and are manifestly not supported by, the relevant facts as will be confirmed by Chapters IV to VI below.

<sup>&</sup>lt;sup>160</sup> Order of 19 April 2017, para. 101.

<sup>&</sup>lt;sup>161</sup> Ukraine's Request for the indication of provisional measures of 16 January 2017, para. 24(c); Order of 19 April 2017, para. 14(c).

<sup>&</sup>lt;sup>162</sup> Order of 19 April 2017, para. 106(1)(a).

<sup>&</sup>lt;sup>163</sup> Ukraine's Request for the indication of provisional measures of 16 January 2017, para. 24(e); Order of 19 April 2017, para. 14(e).

<sup>&</sup>lt;sup>164</sup> Order of 19 April 2017, para. 106(1)(b).

## II. The Clarification and Limitation of the Subject-Matter and Scope of Ukraine's Claims

87. The Court has identified the subject-matter of the present dispute and defined the scope of its jurisdiction as regards Ukraine's claims on two occasions.

88. First, in its Order on Provisional Measures of 19 April 2017, the Court noted that "Ukraine contends that, following the purported annexation of the Crimean peninsula in March 2014, the Russian Federation has used its control over this territory to impose a policy of Russian ethnic dominance, 'pursuing the cultural erasure of non-Russian communities through a systematic and ongoing campaign of discrimination'."<sup>165</sup>

89. Second, the Judgment on Preliminary Objections of 8 November 2019 confirmed that "the case before the Court is limited in scope".<sup>166</sup> It is limited

- (i) *ratione temporis* to events that occurred "from the spring of 2014",<sup>167</sup> onwards;
- (ii) *ratione loci* to "the situation in Crimea";<sup>168</sup> and
- (iii) ratione materiae to an alleged systematic campaign of ethnic discrimination in violation of CERD. The Court stressed in particular that "Ukraine's claims are based solely upon CERD"<sup>169</sup> to the exclusion, therefore, of any rules of international law enshrined in other treaties or customary international law such as rules of international humanitarian law (IHL) and it concluded that "the subject-matter of the dispute [...] is whether the Russian Federation breached its obligations under CERD through discriminatory measures allegedly taken against the Crimean Tatar and Ukrainian communities in Crimea."<sup>170</sup>

90. More specifically, the question now to be addressed by the Court at the merits stage of the proceedings is limited to "whether the Russian Federation has actually engaged in the *campaign* of racial discrimination alleged by Ukraine".<sup>171</sup> The narrow but grave subject-matter of the dispute is also expressed through equivalent allegations noted by the Court, such as "a campaign directed at depriving the Crimean Tatars and ethnic Ukrainians in Crimea of their political, civil, economic, social and cultural rights",<sup>172</sup> a "campaign of cultural erasure"<sup>173</sup> and a "systematic campaign of

<sup>&</sup>lt;sup>165</sup> Order of 19 April 2017, para. 33.

<sup>&</sup>lt;sup>166</sup> 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), Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 558 ("Judgment of 8 November 2019"), para. 23.

<sup>&</sup>lt;sup>167</sup> *Ibid*. See also para. 130.

<sup>&</sup>lt;sup>168</sup> *Ibid*.

<sup>&</sup>lt;sup>169</sup> *Ibid*.

<sup>&</sup>lt;sup>170</sup> *Ibid.*, para. 32.

<sup>&</sup>lt;sup>171</sup> *Ibid.*, para. 131 (emphasis added). See also paras. 88, 126, 130.

<sup>&</sup>lt;sup>172</sup> *Ibid.*, para. 26.

racial discrimination",<sup>174</sup> or "a policy and practice of racial discrimination against those communities".<sup>175</sup>

91. The Court's Judgment in this respect reflects the description of the dispute as described in Ukraine's Memorial – which presents its claim as having three limbs as set out in Chapter 8 entitled "The Russian Federation's Campaign of Cultural Erasure in Crimea", Chapter 9 entitled "The Russian Federation's Policy of Discrimination in Political and Civil Affairs" and Chapter 10 entitled "The Russian Federation's Policy of Cultural Discrimination and Suppression". Equally, *inter alia*,

- a. paragraph 3 of Ukraine's Memorial accuses Russia of leading a "policy of racial discrimination and cultural erasure directed against those ethnic communities that dared to oppose its purported annexation of the peninsula";
- b. paragraph 15 alleges "an open campaign of discrimination and cultural erasure directed against the Crimean Tatar and Ukrainian communities"; or
- c. paragraph 22 denounces "systematic breaches of [Russia's] obligations under [...]
   CERD" and "a systematic policy of racial discrimination".<sup>176</sup>

92. The seriousness of these accusations, which the Court has taken note of in its Judgment of 8 November 2019, has consequences both on the nature of the alleged wrongful acts to be established by Ukraine<sup>177</sup> and on the required standard of proof.<sup>178</sup>

93. To constitute such a campaign or policy of systematic racial discrimination, the measures allegedly taken by Russia must constitute intentional acts of racial discrimination of a systematic nature. As the Court noted, "[i]t is the Applicant's position that these measures were principally aimed against the ethnic groups of Crimean Tatar and Ukrainian communities in Crimea and had the 'purpose and/or effect' of disproportionately affecting these communities less favourably than other ethnic groups in Crimea."<sup>179</sup> All these elements, combined with the requirements of Article 1(1) of CERD,<sup>180</sup> must be *cumulatively* proven, namely:

(1) the systematic nature of "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin" (A),<sup>181</sup>

<sup>179</sup> Judgment of 8 November 2019, para. 88.

<sup>&</sup>lt;sup>173</sup> *Ibid.*, para. 88.

<sup>&</sup>lt;sup>174</sup> *Ibid.*, paras. 27 and 126.

<sup>&</sup>lt;sup>175</sup> *Ibid.*, para. 26. See also notably para. 88.

<sup>&</sup>lt;sup>176</sup> See also MU, paras. 27, 341, 347, 388, 389, 392, 587.

<sup>&</sup>lt;sup>177</sup> See below, section II(A) to (C).

<sup>&</sup>lt;sup>178</sup> See above, para. 4.

<sup>&</sup>lt;sup>180</sup> See below, para. 109.

<sup>&</sup>lt;sup>181</sup> Article 1(1) of CERD.

(2) the disproportionate effect on Crimean Tatar and Ukrainian communities (as compared to persons of other ethnic origin or other residents in a similar situation) (B),

(3) as a result of the intent to specifically and "directly target" these communities "as such"<sup>182</sup> (in other words, the victims must be "targeted *by reason of* their membership"<sup>183</sup> in a national or ethnic group) (C).

## A. THE SYSTEMATIC NATURE OF THE ALLEGED DISCRIMINATION

94. In the present case, Ukraine does not – and cannot, both on the facts and because of issues of admissibility – challenge individual instances of alleged racial discrimination. This is so for an obvious reason: the absence of exhaustion of local remedies would have barred as inadmissible such claims in the present case. Ukraine must accordingly now prove a "*pattern* of conduct of the Russian Federation",<sup>184</sup> that is, "the non-accidental repetition of similar [...] conduct on a regular basis",<sup>185</sup> engaged into as part of a campaign, that is "an organized course of action to achieve a goal".<sup>186</sup> Indeed, such an alleged intentional pattern is the reason why the Court dismissed Russia's preliminary objection regarding the application of the rule of exhaustion of local remedies. After noting

"that, according to Ukraine, the Russian Federation has engaged in a sustained campaign of racial discrimination, carried out through acts repeated over an appreciable period of time starting in 2014, against the Crimean Tatar and Ukrainian communities in Crimea[, t]he Court also notes that the individual instances to which Ukraine refers in its submissions emerge as illustrations of the acts by which the Russian Federation has allegedly engaged in a campaign of racial discrimination. It follows, in the view of the Court, that, in filing its Application under Article 22 of CERD, Ukraine does not adopt the cause of one or more of its nationals, but challenges, on the basis of CERD, the alleged pattern of conduct of the Russian Federation with regard to the treatment of the Crimean Tatar and Ukrainian communities in Crimea. In view of the above, the Court concludes that

<sup>&</sup>lt;sup>182</sup> See CERD Committee, *A.W.R.A.P. v. Denmark*, Communication No. 37/2006, CERD/C/71/D/37/2006, 8 August 2007 (Annex 799 to MU), para. 6.2.

<sup>&</sup>lt;sup>183</sup> See ICTY, *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Trial Chamber, Judgment of 2 August 2001 (Annex 993 to MU), para. 561.

<sup>&</sup>lt;sup>184</sup> Judgment of 8 November 2019, paras. 126 and 130 (emphasis added).

<sup>&</sup>lt;sup>185</sup> ECCC, *Case 002-02*, Judgment of 16 November 2018, para. 303; ICC, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Case No. ICC-01/04-01/07, Pre-Trial Chamber I, Decision on the confirmation of charges of 30 September 2008, para. 397; ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, Appeals Chamber, Judgement of 12 June 2002, para. 94, upholding Trial Judgement of 22 February 2001, para. 429; ICTR, *Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. ICTR-95-1-T, Trial Chamber II, Judgment of 21 May 1999, para. 123; ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, Judgment of 2 September 1998, para. 580.

<sup>&</sup>lt;sup>186</sup> Oxford Dictionary, Definition of "campaign" at <u>https://www.lexico.com/definition/Campaign</u>.

the rule of exhaustion of local remedies does not apply in the circumstances of the present case."  $^{187}$ 

95. In the words of the International Law Commission (ILC), and as follows from its ordinary meaning, "the term 'systematic' excludes isolated or unconnected acts"<sup>188</sup> which are "not committed as part of a broader [preconceived] plan or policy";<sup>189</sup> or put positively, "[t]o be regarded as systematic, a violation would have to be carried out in an organized and deliberate way";<sup>190</sup> thus, "evidence of a pattern or methodical plan"<sup>191</sup> to carry out the violations must be adduced.

96. Therefore, to assess Ukraine's claims on the merits, the Court must consider, and Ukraine must evidence, the existence of identical or analogous breaches which are sufficiently numerous and inter-connected to amount not merely to isolated incidents or exceptions but to a pattern or system. This requires the Court to determine in particular the scope and number of measures, their primary object and their circumstances, their occurrence in several locations, whether or not they are interconnected, the means and methods used, the gravity of their consequences, the participation of officials or authorities whose actions can be attributed to Russia, the number of victims, as well as the intent to violate the norm.<sup>192</sup> At the same time, the existence of an objective or reasonable basis for individual measures constitutes evidence that such measures do not form part of a discriminatory pattern.

# B. THE DISPROPORTIONATE EFFECT OF THE ALLEGED DISCRIMINATION ON CRIMEAN TATAR AND UKRAINIAN COMMUNITIES AS COMPARED TO OTHERS

97. Furthermore, Ukraine must establish "a differentiation of treatment" on the one hand and "an unjustifiable disparate impact" upon an ethnic group as such on the other hand for the

<sup>&</sup>lt;sup>187</sup> Judgment of 8 November 2019, para. 130.

<sup>&</sup>lt;sup>188</sup> Draft articles on Prevention and Punishment of Crimes Against Humanity with commentaries, *Yearbook of the International Law Commission*, 2019, vol. II, Part Two, A/74/10, p. 33, para. (15) of the commentary to Article 2.

<sup>&</sup>lt;sup>189</sup> Draft Code of Crimes against the Peace and Security of Mankind with commentaries, *Yearbook of the International Law Commission*, 1996, vol. II, Part Two, p. 47, para. (3) of the commentary to Article 18.

<sup>&</sup>lt;sup>190</sup> Draft articles on Responsibility of States for Internationally Wrongful Acts with commentaries, *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, p. 113, para. (8) of the commentary to Article 40.

<sup>&</sup>lt;sup>191</sup> Draft articles on Prevention and Punishment of Crimes Against Humanity with commentaries, *Yearbook of the International Law Commission*, 2019, vol. II, Part Two, p. 33, para. (15) of the commentary to Article 2. See also Draft Code of Crimes against the Peace and Security of Mankind, *Yearbook of the International Law Commission*, 1991, vol. II, Part Two, p. 103, para. (3) of the commentary to Article 21; ICTY, *Prosecutor v. Duško Tadić a/k/a "Dule"*, Case No. IT-94-1-T, Trial Chamber, Opinion and Judgment of 7 May 1997, para. 648.

<sup>&</sup>lt;sup>192</sup> See in this sense the factors taken into account to establish the "widespread or systematic" element of crimes against humanity and to explain the expression "directed against" in ICTY, *Kunarac et al.*, Appeal Judgement of 12 June 2002, paras. 91 and 95; as well as the factors to establish a systematic breach in Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, p. 113, para. (8) of the commentary to Article 40.

provisions of the Convention to apply.<sup>193</sup> Indeed, the comparability test lies at the heart of the principle of non-discrimination.<sup>194</sup> This, in particular, is the reason why reliable statistical data have been important in the work and practice of the CERD Committee<sup>195</sup> and the same, of course, holds true for enabling the Court to decide on Ukraine's allegations. Still, as the Court put it in its 2021 Judgment on Preliminary Objections in the Oatar v. UAE case, CERD "was clearly not intended to cover every instance of differentiation between persons" but to "condemn[] any attempt to legitimize racial discrimination by invoking the superiority of one social group over another".<sup>196</sup> Accordingly, it is not sufficient to claim, as Ukraine does, that members of an ethnic group have been affected by the alleged measures;<sup>197</sup> nor is the mere identification of a disproportionate effect of measures on an ethnic group sufficient to establish Ukraine's case. Rather, Ukraine "must identify an appropriate comparator"<sup>198</sup> and establish that Russia has adopted measures which discriminate against Crimean Tatar and Ukrainian communities as a distinct social group as compared to persons of other ethnic origin or other residents that find themselves in a similar situation. In other words, it falls on Ukraine to carry out a genuine comparative exercise in respect of each allegation in order to establish the existence of an unjustified differential treatment in comparison with the rest of the population or other relevant sections thereof in comparable circumstances. In the context of diplomatic relations, the Court recently applied a similar test to determine whether a State acted in a "discriminatory manner" and it concluded that the claimant had failed to demonstrate the existence of such conduct by the respondent.<sup>199</sup>

98. In addition, inasmuch as a measure can be reasonably justified or deemed legitimate, it does not qualify as discriminatory.<sup>200</sup> Possible justifications include, among others, reasonable limitations to human and/or civil rights as may be necessary in a democratic society, provided for under applicable law and subject to due process, in order to protect public order from acts such as

<sup>&</sup>lt;sup>193</sup> CERD Committee, General Recommendation No. 14, para. 2 (Annex 788 to MU). See also for instance, *mutatis mutandis*, ECtHR, *Andrejeva v. Latvia*, No. 55707/00, Judgment (GC), 18 February 2009, para. 81: "discrimination means treating differently, without an objective and reasonable justification, persons in similar situations."

<sup>&</sup>lt;sup>194</sup> See L. Hennebel, H. Tigroudja, *Traité de droit international des droits de l'homme*, Pedone (Paris), 2016, pp. 757 *et seq*.

<sup>&</sup>lt;sup>195</sup> See L.-A. Sicilianos, "L'actualité et les potentialités de la Convention sur l'élimination de la discrimination raciale", *Revue trimestrielle des droits de l'homme*, Vol. 2005(61), 2005, p. 873.

<sup>&</sup>lt;sup>196</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, 4 February 2021, para. 87.

<sup>&</sup>lt;sup>197</sup> CERD Committee, *A.W.R.A.P. v. Denmark*, Communication No. 37/2006, Opinion, UN Doc. CERD/C/71/D/37/2006, 8 August 2007, para. 7 (Annex 799 to MU). See also CERD Committee, General Recommendation No. 14, para. 2 (Annex 788 to MU).

<sup>&</sup>lt;sup>198</sup> I. Diaconu, *Racial Discrimination*, Eleven International Publishing, 2011, p. 33.

<sup>&</sup>lt;sup>199</sup> See Immunities and Criminal Proceedings (Equatorial Guinea v. France), merits, Judgment, 11 December 2020, para. 115.

<sup>&</sup>lt;sup>200</sup> See fn. 193. See also CERD Committee, 66th session, *Sefic v. Denmark*, Communication No. 32/2003, Opinion, UN Doc. CERD/C/66/D/32/2003, 7 March 2005, para. 7.2 (referring to "reasonable and objective grounds").

terrorism, extremism, etc.<sup>201</sup> In fact, enabling the undermining of the public order could generate ethnic tensions. Further, special measures taken for the advancement of certain ethnic groups are not forbidden by the Convention.<sup>202</sup> In the present case, Russia has never pursued racial discrimination, let alone a campaign of racial discrimination. On the contrary, it has provided support for the Crimean Tatar and other communities in Crimea who suffered from repression during the Soviet time such as economic incentives, as well as various other kinds of supporting measures, like social and cultural support for all ethnic groups, including Ukrainians.<sup>203</sup>

### C. THE INTENTIONAL NATURE OF UKRAINE'S ALLEGATIONS

99. Despite Ukraine's affirmation that the definition of racial discrimination "does not require that discrimination be intentional",<sup>204</sup> Ukraine's case, by its very nature and as correctly recorded by the Court in the Judgment of 8 November 2019, is based on the existence of a specific intent or purpose. In fact, as noted above,<sup>205</sup> any alleged "systematic" "campaign" or "policy" "aimed" or "directed against" the Crimean Tatar and Ukrainian communities – a vocabulary ingrained all over Ukraine's Memorial<sup>206</sup> – cannot be conducted without an underlying intent. The intent that Ukraine seeks to attribute to Russia is actually two-fold: specifically, Ukraine contends that "[t]he desired end result is as transparent as it is abhorrent to the multi-ethnic heritage of Crimea: the cultural erasure of the Crimean Tatar and Ukrainian communities on the peninsula";<sup>207</sup> and more generally, Ukraine's whole case – including the submissions relating both to ICSFT and to CERD – is based on the assumption of the existence of an overarching policy strategy or plan aiming at Russia's hegemony in Crimea and Eastern Ukraine.<sup>208</sup>

100. Russia notes that Ukraine's Memorial also includes some sparse, vague and unspecified references to the expression "purpose or effect" of Article 1(1) of CERD, but with no attempt to connect such to the facts.<sup>209</sup> Even its allegations of pretextual measures<sup>210</sup> assume the existence of

<sup>&</sup>lt;sup>201</sup> See for instance CERD Committee, 83rd Session, General Recommendation No. 35 on combating racist hate speech, UN Doc. CERD/C/GC/35, 26 September 2013, para. 26: "The right to freedom of expression is not unlimited but carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but only if they are provided by law and are necessary for protection of the rights or reputations of others and for the protection of national security or of public order, or of public health or morals."

<sup>&</sup>lt;sup>202</sup> CERD, Article 1(4).

<sup>&</sup>lt;sup>203</sup> See above, Chapter I(II).

<sup>&</sup>lt;sup>204</sup> MU, para. 566 (emphasis added). See also Expert Report of Professor Sandra Fredman (Annex 22 to MU), para. 4 (*inter alia*).

<sup>&</sup>lt;sup>205</sup> At para. 93.

<sup>&</sup>lt;sup>206</sup> See in particular the quotes above at paras. 3 and 90-91.

<sup>&</sup>lt;sup>207</sup> MU, para. 346.

<sup>&</sup>lt;sup>208</sup> See *ibid*.: "[f]ollowing its unlawful occupation of Crimea, the Russian Federation now seeks to entrench Russian dominance there". See also MU, para. 8; Application, paras. 1-5.

<sup>&</sup>lt;sup>209</sup> MU, paras. 343, 566 and 587.

<sup>&</sup>lt;sup>210</sup> See e.g. MU, paras. 30, 426, 446, 449, 454, 511, 513, 595, 608, 619, 621 and 639.

direct discrimination, because the pretext is meant to hide a discriminatory intent. What is at issue in Ukraine's allegations is not the mere existence of "collateral or secondary effects"<sup>211</sup> on the Crimean Tatar and Ukrainian communities, but the alleged (disguised) intent behind these measures that are considered by Ukraine as forming part of a systematic campaign of racial discrimination.

101. In addition, each of the specific acts of discrimination alleged by Ukraine (and listed by the Court in its 2019 Judgment) require, by their nature, that Ukraine establish intent to commit them as part of a systematic policy. This is so in respect to:

"targeted murders and acts of torture; forced disappearances and abductions; arbitrary searches and detentions; the imposition of Russian citizenship on the residents of Crimea; and the ban on the *Mejlis* [...] imposing restrictions on Crimean Tatar and Ukrainian media outlets; the degradation of their cultural heritage; the suppression of culturally significant gatherings of these communities; and the suppression of minority rights relating to education, and in particular restrictions placed on education in the Crimean Tatar and Ukrainian languages."<sup>212</sup>

102. The Court must thus decide the case on the basis of the alleged "intentional or purposeful discrimination"<sup>213</sup> as put forward by Ukraine itself, not more, not less. Indeed, in accordance with the principle *ne ultra petita* notably affirmed by the Court in the *Asylum (Request for Interpretation)* case, "it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions".<sup>214</sup> Ukraine framed its case as a case of intentional or purposeful discrimination which thus forms the exclusive subject-matter of its Application and of the dispute as defined by the Court in its Judgment on Preliminary Objections of 8 November 2019. It is therefore the only question pending before the Court. Yet, as will be more precisely shown in the following Chapters, there is no evidence *at all* of the requisite intent or purpose in the present case.

# III. The Court Took No Position on the Interpretation and Scope of the Specific Rights Invoked by Ukraine under CERD

103. The Judgment of 8 November 2019 did not consider all the questions relating to the scope of CERD as set out in Russia's Preliminary Objections at paragraphs 294 to 359. The Court's determination of its jurisdiction *ratione materiae* under the Convention consists of just three paragraphs specifying what it did and did not need to do at the jurisdictional stage of the

<sup>&</sup>lt;sup>211</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, 4 February 2021, para. 112.

<sup>&</sup>lt;sup>212</sup> Judgment of 8 November 2019, para. 88; see MU, paras. 600-641.

<sup>&</sup>lt;sup>213</sup> MU, para. 566.

<sup>&</sup>lt;sup>214</sup> Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case (Colombia v. Peru), Judgment, 27 November 1950, I.C.J. Reports 1950, p. 402.

proceedings. Importantly, paragraph 94 of the Judgment implies that at the merits phase the Court will

"need to satisfy itself that the measures of which Ukraine complains actually constitute 'racial discrimination' within the meaning of Article 1, paragraph 1, of CERD [... and ...] need to establish whether, and, if so, to what extent, certain acts [are] covered by Article 1, paragraphs 2 and 3, of CERD. Both determinations concern issues of fact, largely depending on evidence regarding the purpose or effect of the measures alleged by Ukraine, and are thus properly a matter for the merits".<sup>215</sup>

104. Indeed, the 2019 Judgment limited itself to asserting that "taking into account the broadly formulated rights and obligations contained in the Convention [...] and the non-exhaustive list of rights in Article 5, [...] the measures of which Ukraine complains [...] are *capable* of having an adverse effect on the enjoyment of certain rights protected under CERD",<sup>216</sup> without further analysis.

105. As pointed out by Judge Donoghue,

"[the] Judgment does not set out the Court's interpretation of the provisions of CERD on which the Applicant relies. The rejection of the preliminary objection in relation to CERD does not mean that the Court has accepted the interpretations of that treaty advanced by the Applicant. The question whether the acts of which the Applicant complains give rise to violations of CERD will depend on interpretations of CERD to be made when the Court addresses the merits, as well as the Court's conclusions on the evidence."<sup>217</sup>

106. As regards the interpretation of the specific rights invoked by Ukraine, Russia refers the Court to, and reiterates, its argumentation in its Preliminary Objections,<sup>218</sup> in particular to the points which the Judgment summarises as follows (without drawing any conclusions or providing any answers):

"81. [... T]he claims that [Russia] discriminated between citizens and non-citizens[<sup>219</sup>] are beyond the scope of CERD, in so far as they are incompatible with Article 1, paragraphs 2 and 3, of the Convention, which expressly excludes from its scope 'distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens', and does not affect 'in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization'.

82. [... A] number of rights invoked by Ukraine are not protected under CERD. [...] Ukraine's argument that Article 5 of CERD includes a right 'to return to one's country',

<sup>&</sup>lt;sup>215</sup> Judgment of 8 November 2019, para. 94.

<sup>&</sup>lt;sup>216</sup> *Ibid.*, para. 96 (emphasis added).

<sup>&</sup>lt;sup>217</sup> *Ibid.*, Separate opinion of Judge Donoghue, para. 26. See also Separate Opinion of Judge Tomka, paras. 13-14.

<sup>&</sup>lt;sup>218</sup> See in particular PORF, paras. 323-331. See also further, Chapters IV to VI and Appendices A to F.

<sup>&</sup>lt;sup>219</sup> MU, paras. 455-476, 612, 616-618, 624, or 626.

allegedly breached by Russian citizenship laws, was only made to circumvent Article 1 of the Convention, since such a right is not protected under CERD unless the person concerned is subject to racial discrimination within the meaning of the Convention. On this basis, [...] the alleged imposition of Russian citizenship in Crimea could not be a breach of CERD.

83. In relation to the ban on the *Mejlis* of the Crimean Tatar People, [...] the political right of the Crimean Tatars to retain their representative institutions is not protected under Article 5, paragraphs (c) and (e), of CERD, as those provisions protect only individual and not collective, political rights.

84. [... T]he right to education and training, to which Article 5, paragraph (e) (v), of CERD refers, does not guarantee an absolute right to be educated in one's native language, since this provision only aims to ensure the right of everyone to have access to a national educational system, irrespective of ethnic origin.[ $^{220}$ ]"<sup>221</sup>

Russia will further develop these points below in Chapters IV to VI and Appendices A to F in light of the merits.

107. In this regard, it is worth recalling that according to the CERD Committee,

"Article 5 of the Convention, apart from requiring a guarantee that the exercise of human rights shall be free from racial discrimination, does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights. The Convention obliges States to prohibit and eliminate racial discrimination in the enjoyment of such human rights".<sup>222</sup>

108. In conclusion, at the present stage of the proceedings, the Court will need to address both the interpretation of CERD and the evidence on the facts.

<sup>&</sup>lt;sup>220</sup> See also in this sense Article 13 of the International Covenant on Economic, Social and Cultural Rights, 16 December 1966, *UNTS*, vol. 993, p. 3 and Article 5.1(c) of the Convention against Discrimination in Education, 14 December 1960, *UNTS*, vol. 429, p. 100.

<sup>&</sup>lt;sup>221</sup> Judgment of 8 November 2019, paras. 81-86.

<sup>&</sup>lt;sup>222</sup> CERD Committee, 48th session, General Recommendation No. 20 (48) on Article 5 of the Convention, UN Doc. CERD/48/Misc.6/Rev.2, 1996, para. 1.

# CHAPTER III THE PROPER DEFINITION OF RACIAL DISCRIMINATION UNDER CERD

109. CERD does not protect human rights in general, in and by themselves. Its application is limited to *racial* discrimination in the enjoyment of human rights and fundamental freedoms. According to Article 1, paragraph 1:

"In this Convention, the term 'racial discrimination' shall mean [(i)] any distinction, exclusion, restriction or preference [(ii)] based on race, colour, descent, or national or ethnic origin [(iii)] which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, [(iv)] on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

110. It is for Ukraine to establish, in support of its allegations of systematic racial discrimination, that *each of* the criteria listed in this provision are met with respect to each instance of alleged systematic violation of CERD.<sup>223</sup>

111. While Russia refers the Court back to its Preliminary Objections dealing with the scope of CERD, it wishes again to emphasize the second criteria relating to ethnicity and the fact that the list of grounds of discrimination is exhaustive. In its 2021 Judgment on Preliminary Objections in the *Qatar v. UAE* case, the Court confirmed that the "elements of the definition of racial discrimination, as set out in Article 1, paragraph 1, of the Convention" – in particular "national or ethnic origin" – are "characteristics that are inherent at birth",<sup>224</sup> and it accordingly concluded that measures based on nationality or "declarations criticizing a State or its policies cannot be characterized as racial discrimination within the meaning of CERD".<sup>225</sup> Also excluded are factors such as religion or "political opinion".<sup>226</sup>

112. From the outset, Russia wishes to make absolutely clear that it firmly condemns religious discrimination or political persecution and does not condone or practice it either. However, these matters do not fall within the jurisdiction of the Court in the present case, which concerns exclusively the application of CERD in Crimea. It is worth noting that Ukraine itself, embracing

<sup>&</sup>lt;sup>223</sup> See notably in this sense *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, para. 162: "in accordance with the well-established principle of *onus probandi incumbit actori*, it is the duty of the party which asserts certain facts to establish the existence of such facts". See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, para. 101; UNHCR, *Bordes and Temeharo v. France*, Communication No. 645/1995, U.N. Doc. CCPR/C/57/D/645/1995, 22 July 1996, para. 5.5; Inter-American Court of Human Rights, *Velásquez-Rodríguez v. Honduras, Judgement on the Merits, 29 July 1988*, para. 123; *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008*, para 45; Article 24(1) of the Rules of the Iran–US Claims Tribunal.

<sup>&</sup>lt;sup>224</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, 4 February 2021, para. 81.

<sup>&</sup>lt;sup>225</sup> *Ibid.*, para. 112. See also para. 105.

<sup>&</sup>lt;sup>226</sup> See below, paras. 119-122.

this distinction, has attempted in the past to exclude from scrutiny under CERD the situation in Crimea before the Committee, arguing that the status of Crimean Tatars "was based not on issues of nationality or race, but rather on political conflicts and that therefore it did not come within the scope of the Convention."<sup>227</sup>

113. As the Court noted in its Judgment of 8 November 2019, "both Parties agree that Crimean Tatars and ethnic Ukrainians in Crimea constitute ethnic groups protected under CERD."<sup>228</sup> However, it is apparent that, on its own terms, Ukraine's case is *not* actually framed or substantiated as a case of racial discrimination against Crimean Tatar and Ukrainian communities as an ethnic group protected under CERD.

114. In fact, Ukraine wrongly attempts to import political opinions and the legal status of Crimea in the definition of "ethnic groups" within the meaning of CERD. In particular, Ukraine defines the Ukrainian community as an ethnic group in Crimea "encompassing both Ukrainian speakers and others who self-identify as Ukrainian on civic grounds",<sup>229</sup> and who have "a shared outlook with regards to Crimea remaining part of Ukraine's sovereign territory and the importance of defending individual freedoms".<sup>230</sup> In other words – still the words of Ukraine, "a key part of [their] identity rests on the conception of Crimea as part of Ukraine".<sup>231</sup> Similarly, Ukraine contends that "[f]or the community identifying as of Ukrainian ethnicity, such social identity and political beliefs may include, since March 2014, the conviction that Crimea is part of Ukraine, and that the Russian occupation of the peninsula is unlawful."<sup>232</sup> Ukraine also asserts that "[t]he Crimean Tatar and Ukrainian communities are, in part, defined by their loyalty to the principle that Crimea is part of Ukraine's sovereign territory and that Russia's purported annexation of the peninsula is therefore illegitimate".<sup>233</sup>

115. The artificiality of Ukraine's definition of ethnicity and racial discrimination is also apparent from its allegation that Russia adopted "a policy of racial discrimination and cultural erasure directed against those ethnic communities that dared to oppose its purported annexation of the peninsula",<sup>234</sup> or that the alleged acts "were based on a racial or ethnic distinction, in that they targeted members of the two communities known to oppose Russia's annexation of Crimea, with

<sup>&</sup>lt;sup>227</sup> United Nations General Assembly, 48th Session, *Official Records, Supplement No. 18*, Report of the CERD Committee on Ukraine's 11<sup>th</sup> and 12<sup>th</sup> reports submitted under Article 9 of the Convention, UN Doc. A/48/18, 15 September 1993, para. 57, answering a concern by Members "that the human rights of the population of Pridnestrovye had been violated and that the Crimean Tartar [sic] problem had not yet been solved" at para. 47.

<sup>&</sup>lt;sup>228</sup> Judgment of 8 November 2019, para. 95.

<sup>&</sup>lt;sup>229</sup> MU, para. 583. See also paras. 576 and 579.

<sup>&</sup>lt;sup>230</sup> *Ibid.*, para. 584.

<sup>&</sup>lt;sup>231</sup> *Ibid.*, para. 365.

<sup>&</sup>lt;sup>232</sup> *Ibid.*, para. 585.

<sup>&</sup>lt;sup>233</sup> *Ibid.*, para. 596.

<sup>&</sup>lt;sup>234</sup> *Ibid.*, para. 3.

the purpose and/or effect of intimidating those communities into submission".<sup>235</sup> Ukraine further insisted during the hearings on preliminary objections that what it has "alleged is that Russia is collectively punishing the Crimean Tatar and Ukrainian communities *based on* Russia's identification of these ethnic communities as a whole as hostile to annexation", although it then immediately seemed to concede that political (and religious) reasons cannot serve as a basis for discrimination prohibited under CERD.<sup>236</sup> All this confirms Russia's point: Ukraine's claims are not based on race or ethnicity but on political opposition to the change of status of Crimea, which is beyond the scope of the Convention.

116. Specific measures in respect of certain members of Crimean Tatar and Ukrainian communities are also presented by Ukraine as motivated by their political opinions, while pro-Russian sympathizers are purportedly protected. Ukraine offers no evidence of any other factors for its accusations. This is particularly obvious in respect of all the measures described in Chapter 9 of Ukraine's Memorial, entitled "The Russian Federation's Policy of Discrimination in Political and Civil Affairs",<sup>237</sup> and the case, for instance, of Mr Umerov who Ukraine claims to have been the victim of a violation of CERD, stating that he

"remained a strong voice for Crimean Tatars after Russia's military intervention, giving numerous interviews in which he forthrightly described the occupation and purported annexation of the peninsula by Russia as a violation of international law. Given his outspokenness on this issue of evident sensitivity to the Russian occupation authorities, it is perhaps unsurprising that he became a target of their repressive tactics".<sup>238</sup>

117. The materials put forward by Ukraine, including the OHCHR reports,<sup>239</sup> nowhere refer to alleged acts of "racial discrimination" nor to alleged breaches of CERD, but allege for instance that

*"Most affected* by these restrictions were *individuals opposed to the March 2014 referendum or criticizing Russian Federation control of Crimea*, such as journalists, bloggers, supporters of the Mejlis, pro-Ukrainian and Maidan activists, as well as persons with no declared political affiliation but advocating strict compliance with the tenets of Islam, who are often accused of belonging to extremist groups banned in the Russian Federation, such as Hizb ut-Tahrir".<sup>240</sup>

<sup>&</sup>lt;sup>235</sup> *Ibid.*, para. 393.

<sup>&</sup>lt;sup>236</sup> Hearings on Preliminary Objections, 4 June 2019, CR 2019/10, pp. 61-62, para. 23 (Koh) (emphasis in the original).

<sup>&</sup>lt;sup>237</sup> See notably the case of Mr Chiygoz and the trial of "six other Crimean Tatar *activists*" (Witness Statement of Akhtem Chiygoz, Annex 19 to MU, para. 22 – emphasis added), addressed below at Chapter IV, paras. 208-216.

<sup>&</sup>lt;sup>238</sup> MU, para. 437 (emphasis added, footnote omitted). See further examples in PORF, para. 352.

<sup>&</sup>lt;sup>239</sup> As to the limited value of the OHCHR reports in the present case, see above paras. 14-17.

<sup>&</sup>lt;sup>240</sup> OHCHR, "Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine)", 25 September 2017 (Annex 759 to MU), para. 9 (emphasis added and footnotes omitted); see also Witness Statement of Andriy Shchekun (Annex 13 to MU), paras. 13-17. See further PORF, para. 352.

118. In sum, Ukraine's self-serving definition of ethnic groups that are to be identified by their position on the status of Crimea is meant to dress up claims related to the status of Crimea as constituting violations under CERD.

119. In its Memorial, Ukraine does not establish that under CERD ethnicity can be based on the sharing of the same political opinions or that political opposition can seek protection under CERD. The expert report attached to its Memorial does not point to any relevant State practice or case law that would support this claim.<sup>241</sup> Ukraine's logic would stretch the scope of application of CERD well beyond the ordinary meaning of the text of the Convention, the intent of its drafters and the object and purpose of the Convention since it would result in converting any claim related to political disputes into instances of racial discrimination. There is no doubt that the Convention would not have received so many ratifications if such had been the understanding of the States at the time of exercising their sovereign decision to become Parties to the Convention. Clearly, ethnicity is not equivalent to political opposition.

120. As circumscribed by the Court in the *Qatar v. UAE* case, ethnicity is an "inherent" characteristic, "a person's bond to [an ...] ethnic group at birth".<sup>242</sup> That excludes by definition any relationship with political considerations. The *Max Planck Encyclopedia of Public International Law* accordingly characterises ethnicity as "a social status that permits the classification of groups on the basis of cultural characteristics associated with particular communities";<sup>243</sup> or in the words of the UN Working Group on Minorities, it "is generally defined by a broad conception of culture, including a way of life".<sup>244</sup> The ICTR for its part, affirms that "[a]n ethnic group is generally defined as a group whose members share a common language or culture".<sup>245</sup> And according to the CERD Committee, ethnic characteristics are "race, colour, descent, or national or ethnic origins", but also "mother tongues, languages commonly spoken or other indicators of ethnic diversity".<sup>246</sup> Ukraine itself recognises that the "objective factors" that – in its view – usually define ethnic groups are the "sharing [of] a common culture, religious affiliation, and physical appearance".<sup>247</sup> Nothing in international law suggests that ethnicity and its defining objective factors can be based on

<sup>247</sup> MU, para. 578.

<sup>&</sup>lt;sup>241</sup> Expert Report of Professor Sandra Fredman (Annex 22 to MU), paras. 48-51.

<sup>&</sup>lt;sup>242</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, 4 February 2021, para. 81. See also above para. 111.

<sup>&</sup>lt;sup>243</sup> A. Dundes Renteln, "Ethnicity", *Max Planck Encyclopaedia of Public International Law*, 2011, para. 2, see also para. 11, available at <u>https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1849?prd=OPIL</u>.

<sup>&</sup>lt;sup>244</sup> UN Working Group on Minorities, Commentary on the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, E/CN.4/Sub.2/AC.5/2005/2, 4 April 2005, para. 6.

<sup>&</sup>lt;sup>245</sup> ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trial Chamber I, Judgment of 2 September 1998 (Annex 988 to MU), para. 513.

<sup>&</sup>lt;sup>246</sup> CERD Committee, Guidelines for the CERD-Specific Document to be Submitted by States Parties under Article 9, paragraph 1, of the Convention, UN Doc. CERD/C/2007/1, 13 June 2008, para. 11.

political views; on the contrary the definition of ethnicity results from factors that do not include political considerations<sup>248</sup> – and this is also true as regards self-identification in the present case.<sup>249</sup>

121. It is necessary to go back to the first occurrence of the concept of ethnicity in an international instrument to unveil its intended scope. It was added at a late stage during the drafting of the Genocide Convention in order to better define the type of groups protected and ensure that the term "national" would not be understood as encompassing political groups.<sup>250</sup> While the latter are "based on a body of theoretical concepts",<sup>251</sup> which one joins through individual voluntary commitment<sup>252</sup> and which thus lack homogeneity and permanency, ethnic groups are bound together by "sentiment or tradition"<sup>253</sup> and relatively stable "cultural, physical and historical characteristics",<sup>254</sup> and their membership is "not challengeable by its members".<sup>255</sup> The categories could thus not be more different and, as already underlined by the case-law of the ICTR – misinterpreted by Ukraine,<sup>256</sup> "it is particularly important to respect the intention of the drafters of the [...] Convention, which [...] was patently to ensure the protection of any stable and permanent group",<sup>257</sup> to the exclusion of "mobile" groups.<sup>258</sup> Similarly, general definitions of minorities –

<sup>&</sup>lt;sup>248</sup> Expert Report of Dmitry Anatolievich Funk, Roman Alexandrovich Starchenko, Valery Vladimirovich Stepanov and Sergey Valeryevich Sokolovsky (Annex 21), Addendum 1.

<sup>&</sup>lt;sup>249</sup> See below, paras. 123-124. As regards the importance of self-identification, see in particular CERD Committee, 38th session, General recommendation No. 8 concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention, 21 August 1990 in United Nations General Assembly, 45<sup>th</sup> Session, *Official Records, Supplement No. 18*, UN Doc. A/45/18, p. 79.

<sup>&</sup>lt;sup>250</sup> See the 73<sup>rd</sup> and 74<sup>th</sup> meetings on 13 and 14 October 1948, 6<sup>th</sup> Committee, General Assembly, 3<sup>rd</sup> session, UN Doc. A/C.6/SR.73 and A/C.6/SR.74, during which the Swedish representative, Mr Petren, proposed to add the word "ethnical" after the word "national" in the list of protected groups as a distinct category from political groups since their inclusion met strong opposition. See also United Nations General Assembly, 3<sup>rd</sup> Session, 6<sup>th</sup> Committee Report to the General Assembly, UN Doc. A/760, 3 December 1948, showing that their inclusion was thoroughly debated and eventually rejected.

Ad hoc Committee on Genocide, Summary Record of the 13<sup>th</sup> meeting, UN Doc. E/AC.25/SR.13, 20 April 1948, p. 2 (statement of the Rapporteur). See also Report of the Ad Hoc Committee on Genocide to the UN Economic and Social Council, From 5 April to 10 May 1948, UN Doc. E/794, 24 May 1948, p. 13. For discussions in the Sixth Committee, see Summary Record of the 69<sup>th</sup> meeting, UN Doc. A/C.6/SR.69, 7 October 1948, p. 57 (Amado, Brazil), p. 59 (Raafat, Egypt), p. 61 (Wikborg, Norway); Summary Record of the 74<sup>th</sup> meeting, UN Doc. A/C.6/SR.74, 14 October 1948, p. 99 (Abdoh, Iran); Summary Record of the 75<sup>th</sup> meeting, UN Doc. A/C.6/SR.75, 15 October 1948, pp. 110-111 (Lachs, Poland).

<sup>&</sup>lt;sup>252</sup> ICTR, *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Trial Chamber I, Judgment of 6 December 1999, para. 57; ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trail Chamber I, Judgment of 2 September 1998 (Annex 988 to MU), para. 511.

<sup>&</sup>lt;sup>253</sup> Ad hoc Committee on Genocide, Summary Record of the 13<sup>th</sup> meeting, UN Doc. E/AC.25/SR.13, 20 April 1948, p. 2 (statement of the Rapporteur).

<sup>&</sup>lt;sup>254</sup> Sub-Commission on Prevention of Discrimination and Protection of Minorities, 3<sup>rd</sup> session, Summary Record of the 48<sup>th</sup> Meeting, E/CN.4/Sub.2/SR.48, 16 January 1950, para. 16 (statement of the Chairman). See also Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities by F. Capotorti (Special Rapporteur), E/CN.4/Sub.2/384/Rev.1, 1979, p. 34, paras. 196-197.

<sup>&</sup>lt;sup>255</sup> ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trail Chamber I, Judgment of 2 September 1998 (Annex 988 to MU), para. 511.

<sup>&</sup>lt;sup>256</sup> Expert Report of Professor Sandra Fredman (Annex 22 to MU), paras. 14-15.

<sup>&</sup>lt;sup>257</sup> ICTR, *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Trail Chamber I, Judgment of 2 September 1998 (Annex 988 to MU), para. 516.

often used in reference to ethnic groups $^{259}$  – do not include political views as a component element.<sup>260</sup>

122. Accordingly, there is no basis to import political opinions under the terms "national or ethnic origin"; they are "obviously outside" the scope of CERD which "only deals with *racial* discrimination".<sup>261</sup> The elimination of political discrimination – whether generally or in certain respects only – is specifically addressed in other instruments, including the International Covenant on Civil and Political Rights,<sup>262</sup> the UNESCO Convention against Discrimination in Education<sup>263</sup> or the European Convention on Human Rights<sup>264</sup> – which Russia complies with, but this is not the question in the present proceedings because the Court lacks jurisdiction over these.

123. In the present case, not only is Ukraine's attempt to depict political identification as an objective criterion of an ethnic group wrong as a matter of the correct interpretation of the Convention, but there is in any event no proof that Ukrainians and Crimean Tatars actually self-identify on the basis of political views as a matter of fact.<sup>265</sup> There is however evidence that, on the one hand, Russia is adopting supporting measures in favour of those ethnic groups<sup>266</sup> and, on the other hand, members of these ethnic groups hold different political views, with a number of them

<sup>266</sup> See above, Chapter I(II).

<sup>&</sup>lt;sup>258</sup> *Ibid.*, para. 511.

<sup>&</sup>lt;sup>259</sup> See notably A. Dundes Renteln, "Ethnicity", *Max Planck Encyclopaedia of Public International*, 2011, para. 7; Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45<sup>th</sup> Session, Report: Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities by Special Rapporteur Mr Asbjørn Eide, UN Doc. E/CN.4/Sub.2/1993/34, 10 August 1993, paras. 4, 9, 35, 88, 116 with the apparent understanding that minorities are to be understood as including minority ethnic groups.

<sup>260</sup> See notably UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities by F. Capotorti, UN Doc. E/CN.4/Sub.2/384/Add.1-7, 1977; Council of Europe, Proposal for a European Convention for the Protection of Minorities, prepared by the European Commission for Democracy through Law, CDL (91) 7 (1991), 8 February 1991; I. Diaconu, Racial Discrimination, Eleven International Publishing, 2011, p. 87. It should also be noted that none of the many States that acceded to the Convention for the Protection of National Minorities and made declarations defining the latter term referred to political opinions (see Reservations and Declarations for Treaty No. 157 - Framework Convention for the Protection of National Minorities, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/157/declarations?p auth=8CaEGkZo).

<sup>&</sup>lt;sup>261</sup> N. Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination*, Brill/Nijhoff, 2015, p. 36 (emphasis added).

<sup>&</sup>lt;sup>262</sup> Article 26: "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

<sup>&</sup>lt;sup>263</sup> Article 1(1): "For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education".

Article 14: "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". For a general prohibition of political discrimination – as opposed to the above provision limited to discrimination in the enjoyment of rights guaranteed by the Convention – see Protocol No. 12 to the ECHR.

<sup>&</sup>lt;sup>265</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), paras. 15-23, Addendum 1.

supporting the current governmental authorities and participating in their activities.<sup>267</sup> Relying on Ukraine's amalgamation of political and ethnic identity would make it impossible to differentiate between communities of Ukrainians, Crimean Tatars as well as ethnic Russians who oppose the change of status, including those living and residing outside of Crimea, while it would amount to saying that Ukrainians and Crimean Tatars who support the change cannot be part of these ethnic groups, bearing in mind that some members may not have a firm position on that issue.

124. Even according to Ukraine's witnesses and experts, it is undisputed that at least parts of Crimean Tatar community support the integration of Crimea into the Russian Federation.<sup>268</sup> Further, in addition to the examples already provided in Russia's Preliminary Objections,<sup>269</sup> many others can be found on the Ukrainian extremist website "Mirotvorets" ("Peacekeeper"). This website is known for posting personal information about individuals that are arbitrarily depicted as "enemies" of Ukraine, "pro-Russian terrorists, separatists, mercenaries, war criminals and murderers",<sup>270</sup> no matter what their ethnic origin may be:

a. One example – among many others – is that of 271 who, despite maintaining a strong sense of Ukrainian identity
 publishing in Ukrainian, as well as holding cultural events, also provides positive

remarks with regard to the development of the Ukrainian language and Ukrainian culture in Crimea.<sup>272</sup>

b. Mr Seytumer Nimetullaev,<sup>274</sup> President of the Regional Public Organization "Qirim Birligi" and former delegate to the Qurultay of the Crimean Tatars, similarly shows full support for the Russian policy with regard to Crimean Tatar people and the integration of Crimea into the Russian Federation.<sup>275</sup>

<sup>&</sup>lt;sup>267</sup> See below, para. 124. See also Witness Statement of (Annex 16) at paras. 1, 8-11, and *Regnum*, "Ukrainians of Crimea: we want Ukraine and Russia to be together", 27 February 2020 (Annex 1020). See also Chapter IV(IV)(A).

<sup>&</sup>lt;sup>268</sup> See for instance regarding Crimean Tatars: Witness Statement of Mustafa Dzhemiliev, para. 8 (Annex 16 to MU); Expert report of Professor Paul Magocsi, para. 84 (Annex 21 to MU); MU, para. 474.

<sup>&</sup>lt;sup>269</sup> See the examples given in the PORF, para. 319.

<sup>&</sup>lt;sup>270</sup> Website of the "Myrotvorets.center" ("*Mirotvorets*") (Annex 1286).

Website "*Mirotvorets*", page dedicated to , 4 January 2018 (Annex 1269).

<sup>&</sup>lt;sup>274</sup> Website "*Mirotvorets*", page dedicated to Mr Seytumer Nimetullaev, 18 January 2015 (Annex 1256).

<sup>&</sup>lt;sup>275</sup> Qirim Birligi, "Restoration of the Rights of the Crimean Tatars and Creation of Conditions for their Revival and Development as Part of the Integration of Crimea into the Russian Federation", Report submitted to CERD Committee,

- c. Mr Eyvaz Umerov,<sup>276</sup> head of the former Crimean Regional National and Cultural Autonomy of Crimean Tatars, also regularly highlights that Crimean Tatars have seen considerable improvements since the reunification with Russia.<sup>277</sup> In parallel, he has long criticised, together with Mr Lenur Usmanov,<sup>278</sup> a representative of the Crimean Tatar community of Sevastopol, and many others, the activities of the *Mejlis* who are clearly not representative of all of the Crimean Tatar people.<sup>279</sup>
- d. For his part, ,<sup>280</sup>, describes

how many problems and issues of the Crimean Tatar people were solved after the integration of Crimea into the Russian Federation.<sup>281</sup> A former member of the *Mejlis* and a former Chairman of the Committee on Ethnicities and Deportees of the Republic of Crimea, Mr Zaur Smirnov,<sup>282</sup> insists that Crimean Tatars are well represented in all spheres of the political, social and cultural life.<sup>283</sup> Moreover, it should be recalled that Crimean Tatars and Ukrainians are represented in the state organs of the Republic of Crimea.<sup>284</sup>

125. Following Ukraine's logic, all these individuals should have to be considered, against their will, to have changed their ethnicity by supporting Russia's policy in Crimea.

126. In addition to being inaccurate, Ukraine's approach constitutes a breach of the right of people to have their own opinion and would result in the disqualification of a significant part of the membership of these communities from being ethnic Crimean Tatars or Ukrainians and, accordingly, if the Court were to follow Ukraine's logic and argumentation, to their being denied protection under the Convention. That clearly cannot be right.

127. Ukraine also seeks to include religion within the scope of CERD and claims that Crimean Tatars are being targeted based on allegations of religious Muslim extremism.<sup>285</sup> In so doing, it

<sup>277</sup> Vesti Krym, "Crimean Tatars told how their life changed in Russia", 4 November 2020 (Annex 1034).

<sup>280</sup> Website "*Mirotvorets*", page dedicated to (Annex 1237).

<sup>281</sup> Witness Statement of 9 June 2021 (Annex 19), paras. 28-38.

<sup>282</sup> Website "*Mirotvorets*", page dedicated to Mr Zaur Smirnov, 29 April 2014 (Annex 1250).

<sup>93</sup>rd session, 31 July – 25 August 2017, doc. INT/CERD/NGO/RUS/28092, <u>https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT\_CERD\_NGO\_RUS\_28092\_E.doc.</u>

<sup>&</sup>lt;sup>276</sup> Website "*Mirotvorets*", page dedicated to Mr Eyvaz Umerov, 20 September 2015 (Annex 1261).

<sup>&</sup>lt;sup>278</sup> Website "*Mirotvorets*", page dedicated to Mr Lenur Usmanov, 29 March 2015 (Annex 1259).

<sup>&</sup>lt;sup>279</sup> SEVAS, "Lenur Usmanov: Crimean Tatars have been used as a club against Russia for the last 20 years", 26 February 2014 (Annex 893); *Regnum*, "Lenur Usmanov: 'Participation of the majority of Crimean Tatars in the referendum on 16 March is a deliberate step towards Russia", 12 April 2014 (Annex 903).

<sup>&</sup>lt;sup>283</sup> *RIA Novosti*, "Smirnov: No one is going to play the Crimean Tatar card in Crimea any more", 24 April 2016 (Annex 953).

<sup>&</sup>lt;sup>284</sup> Hearings on Provisional Measures, 7 March 2017, CR 2017/2, p. 57, para. 15 (Lukiyantsev). See also Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), paras. 174-176.

<sup>&</sup>lt;sup>285</sup> MU, paras. 391, 447, 595, 602, 608, 640.

again misconstrues CERD. It is well known that the process of elaboration of CERD was launched by the Economic and Social Council's recommendation to the General Assembly to adopt a draft resolution on "Manifestations of racial prejudice and national and religious intolerance".<sup>286</sup> After the adoption of this resolution, a draft resolution on the preparation of an international convention on the elimination of all forms of racial discrimination was suggested. In the discussion of the draft, it was proposed that the instrument deal with both racial and religious discrimination. The Third Committee of the UN General Assembly eventually adopted two separate resolutions, similarly worded, one asking for the preparation of a draft declaration and a draft convention on the elimination of all forms of racial discrimination, and one on the preparation of a draft declaration and a draft convention on the elimination of all forms of religious intolerance.<sup>287</sup> This shows that the United Nations intended to deal with racial discrimination and religious discrimination in separate instruments and that CERD was not intended to encompass discrimination on religious grounds. This is in line with the subsequent practice of the General Assembly which distinguishes between religious discrimination and racial discrimination.<sup>288</sup>

128. It is true that in General Recommendation No. 32, the CERD Committee said that religious considerations could be relevant in cases of discrimination on multiple grounds.<sup>289</sup> But the Committee made it clear that the primary ground of discrimination must always be within the scope of Article 1 of CERD, and confirmed that religion as a freestanding ground of discrimination was not covered by CERD:

"The Committee recognises the importance of the interface between race and religion and considers that it would be competent to consider a claim of 'double' discrimination on the basis of religion and another ground specifically provided for in article 1 of the Convention, including national or ethnic origin. However, this is not the case in the current petition, which exclusively relates to discrimination on religious grounds. The Committee recalls that the Convention does not cover discrimination based on religion alone, and that Islam is not a religion practised solely by a particular group, which could otherwise be identified by its 'race, colour, descent, or national or ethnic origin."<sup>290</sup>

<sup>&</sup>lt;sup>286</sup> See the Report of the 13<sup>th</sup> Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, E/CN.4/815, 1961. See further Resolution 1779 (XVII) of 7 December 1962 on "Manifestations of racial prejudice and national and religious intolerance", A/RES/1779(XVII). On the same day, the General Assembly adopted resolution 1780 (XVII) by which it requested the "Preparation of a draft declaration and a draft convention on the elimination of all forms of racial discrimination", A/RES/1780(XVII).

<sup>&</sup>lt;sup>287</sup> See N. Lerner, *The UN Convention on the Elimination of All Forms of Racial Discrimination*, Brill/Nijhoff, 2015, pp. 3-4, quoting UNGA Resolutions 1780 (XVII) and 1781 (XVII).

<sup>&</sup>lt;sup>288</sup> See notably Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by General Assembly resolution 36/55 of 25 November 1981, which does not mention CERD, but the ICCPR.

<sup>&</sup>lt;sup>289</sup> MU, para. 565 and fn. 1177, referring to Annex 790 to UM: CERD Committee, General Recommendation No. 32, para. 7.

<sup>&</sup>lt;sup>290</sup> CERD Committee, *A.W.R.A.P. v. Denmark*, Communication No. 37/2006, CERD/C/71/D/37/2006, 8 August 2007, para. 6.3 (Annex 799 to MU). The Committee further observed: "The *Travaux Préparatoires* of the Convention

129. This fully applies in the present case: Ukraine cannot base its accusations of "racial discrimination" exclusively on religious grounds (or on political opposition for that matter). Instead, it must establish that the specific criteria in Article 1 of CERD are met.

130. To conclude, Russia wishes to make clear again that it plainly rejects the factual allegations made in Ukraine's Application and Memorial (and addresses the relevant facts in considerable detail in Chapters IV to VI and Appendices A to F below). But even if these allegations were true (*quod non*), the relevant point is that on their own terms, Ukraine's claims and allegations do not qualify as instances of racial discrimination under CERD. They relate instead to alleged political opposition to the change of status of Crimea and religious extremism by a number of persons of different origins.

reveal that the Third Committee of the General Assembly rejected the proposal to include racial discrimination and religious intolerance in a single instrument, and decided in the ICERD to focus exclusively on racial discrimination".

## **CHAPTER IV**

# THE BAN ON THE MEJLIS DOES NOT CONSTITUTE RACIAL DISCRIMINATION

131. To support its accusation that the Russian Federation has been orchestrating and conducting a systematic campaign or policy of racial discrimination targeting the Crimean Tatars as such, Ukraine relies on the ban on the *Mejlis*, or more exactly the ban on the activities of its members. According to Ukraine, this ban violates the ability of the Crimean Tatar community to conserve its representative institutions and thus constitutes a breach of the rights protected by CERD.<sup>291</sup>

132. The ban of the *Mejlis*, however, does not support in any way Ukraine's accusation under CERD.

133. The decision at issue was adopted and upheld by the Russian courts in 2016, following a thorough investigation and a series of warnings served on the *Mejlis* and its members over the two preceding years. The decision of the Supreme Court of the Republic of Crimea has been confirmed by the Supreme Court of the Russian Federation, on the basis of a thorough and detailed reasoning that confirmed the legitimate nature of the ban, which has nothing to do with racial discrimination. The justification for the ban, that is to say the fight against extremist activities that pose a threat to national security, to citizens' rights, public order and other legitimate considerations, is an objective and reasonable ground that, moreover, reflects a general practice in all democratic States.

134. Ukraine chooses to ignore the relevant facts, and in particular to omit the crucial elements that are dispositive for explaining the adoption of the said measures. In light of the applicable rules and the relevant facts, it is manifest that Ukraine's case based on the ban on the *Mejlis* does not support a case of racial discrimination, let alone an alleged campaign or policy of systematic racial discrimination.<sup>292</sup>

135. First, as a matter of applicable law, CERD does not include any right of minority groups to establish and maintain their own representative institutions (I). Therefore, Ukraine's case fails on that ground alone.

136. Second, and in any case, the measures adopted against the *Mejlis* and its leading members were based on security reasons, i.e. a valid ground under the applicable rules, both domestic and international. As a result, there is no sound basis for the contention that the enjoyment of individual rights has been affected in the present case under Article 5 of CERD. The measures taken by Russia against the *Mejlis* (II) and some of its members (III) were based on objective and reasonable grounds and have nothing to do with racial discrimination.

137. In any event, Ukraine did not evidence any discrimination, let alone racial discrimination, in the enjoyment of the said rights. The truth is that there is today, and there has been since Crimea's

<sup>&</sup>lt;sup>291</sup> See, *inter alia*, MU, para. 606.

<sup>&</sup>lt;sup>292</sup> MU, para. 412. The same can be observed at para. 416 where Ukraine asserts without a shred of evidence a link between individual bans and an alleged increase in the vulnerability of the community.

accession to the Russian Federation, no impediment to the representation of the Crimean Tatar Community, which is represented by many organisations and associations in Crimea, while the *Mejlis* has discredited itself due to its violent and subversive activities. Among the organizations that purport to represent Crimean Tatar interests in Crimea, the *Mejlis*, because of its extremist activities, has been the only one to be banned, for legitimate reasons (IV).

#### I. No Right under the Convention to a Representative Body

138. As Russia pointed out in its Preliminary Objections, there is no right under CERD for ethnic groups to have representative bodies.<sup>293</sup> Therefore, Ukraine's claims related to the so-called right of the Crimean Tatar people under CERD to have and conserve its representative institutions does not fall within the scope of the Convention. Actually, during the hearings on preliminary objections, Ukraine no longer claimed that such a special right exists.<sup>294</sup> In addition, it has never officially recognised the *Mejlis* as a representative body at any material time between 1991 and 2014.<sup>295</sup>

### A. NO RIGHT TO A REPRESENTATIVE BODY UNDER ARTICLE 5(C) OF CERD

139. Article 5(c) of CERD only provides for a general right to political participation on an equal basis for all. This right is a right of individuals belonging to all racial groups to participate in the domestic political life of the State, which is usually understood as including the right to participate in elections and to run for elections, to apply to government and administrative positions, or to establish and become a member of political parties. It does not provide for a "political right" of national minorities to establish and maintain their own representative institutions.<sup>296</sup> The use of the term "everyone" in Article 5(c) confirms the individual character of the rights concerned. Such interpretation is not only in conformity with the general rule of treaty interpretation under customary international law, as reflected in Article 31 of the Vienna Convention on the Law of Treaties. It is also confirmed by the *travaux préparatoires* of CERD.<sup>297</sup>

<sup>&</sup>lt;sup>293</sup> PORF, para. 328.

<sup>&</sup>lt;sup>294</sup> CR 2019/10, 4 June 2019, p. 62, para. 24 (Koh).

<sup>&</sup>lt;sup>295</sup> CR 2017/2, 7 March 2017, p. 60, para. 33 (Lukiyantsev).

<sup>&</sup>lt;sup>296</sup> See also Order of 19 April 2017, separate opinion of Judge Skotnikov, *I.C.J. Reports 2017*, pp. 222-223, para. 2.

<sup>&</sup>lt;sup>297</sup> At early stages of the *travaux* the Sub-Commission working group agreed that the provisions of the Convention should apply to the rights set out in the Universal Declaration on Human Rights ("UDHR"), see Sub-Commission on Prevention of Discrimination and Protection of Minorities, 16<sup>th</sup> session, summary record of the 423<sup>rd</sup> meeting, 24 January 1964, E/CN.4/Sub.2/SR.423, pp. 4-5 (Mr Ketrzynski). A proposal by Mr Ivanov to introduce a reference to group rights in respect of participation in governance processes was opposed by Mr Ferguson who feared that "the proposal departed from the sphere of individual rights" and was eventually not adopted (E/CN.4/Sub.2/SR.423, p. 7). At a later stage, before the Commission on Human Rights, the term "everyone" in Article 5 replaced the initial reference to "citizen" that was contained in a proposal put forward by Poland. An alternative proposed by Ecuador but not eventually adopted tended to replace "citizen" by "person" (Commission on Human Rights, 20<sup>th</sup> session, summary record of the 796<sup>th</sup> meeting, 4 March 1964, E/CN.4/SR.796, p. 9 (Lebanon), p. 10 (Ecuador), p. 11 (Italy)). All these alternatives clearly point to a shared understanding that the Convention was to cover individual rights only. The term "everyone" was adopted and included in the final text of the Convention.

140. What is more, CERD does not protect human rights in general.<sup>298</sup> As established by Article 5, it seeks to protect the equality before the law in the exercise of human rights protected under other instruments. No such instruments provide for the right to representative institutions for ethnic groups that Ukraine alleges in the Memorial, including in particular the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,<sup>299</sup> or the European Convention on Human Rights, despite most of these instruments having been adopted after CERD.<sup>300</sup>

141. This is understandable, as the contrary would endanger the public order within States and their stability, in particular in multi-ethnic societies. This in turn would have dire repercussions on the maintenance of international peace and security. This risk had been anticipated by Francesco Capotorti, in his famous Study on minority rights:

"The fact of granting rights to minorities and thus endowing them with legal status might increase the danger of friction between them and the State, in so far as the minority group, as an entity, would seem to be invested with authority to represent the interests of a particular community vis-à-vis the State representing the interests of the entire population. Moreover, the freedom of each individual member of a minority to choose between voluntary assimilation with the majority and the preservation of his own distinctive characteristics might be disregarded by the organs of the entity formed by the minority group, in its concern to preserve the unity and strength of the group."<sup>301</sup>

142. The Capotorti Study played a significant role in the preparation of the 1992 UN Declaration and the latter is largely based on this basic understanding of minority rights as essentially consisting of individual rights, to be exercised in community with others. Before preparing this Study, Mr Capotorti, an eminent human rights specialist, had also participated in the *travaux préparatoires* of CERD. Therefore, he cannot be suspected of not being aware of the impact of his statement on the potential scope of CERD with respect to its beneficiaries. As the Russian Federation previously

<sup>&</sup>lt;sup>298</sup> This is confirmed by the *travaux préparatoires*; see for example Commission on Human Rights, 20<sup>th</sup> session, summary record of the 796<sup>th</sup> meeting, 4 March 1964, E/CN.4/SR.796, p. 15 (Netherlands): "the purpose of the article was not to proclaim that the rights which it enumerated must be fully respected, but merely to prohibit racial discrimination with regard to their enjoyment"; Third Committee, 1306th meeting, 15 October 1965, A/C.3/SR.1306, para. 16 (Ghana): "the Convention was intended to eliminate racial discrimination and not to grant rights which might not yet be recognized in certain countries".

<sup>&</sup>lt;sup>299</sup> United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, annexed to Resolution 47/135 of the UN General Assembly of 18 December 1992.

<sup>&</sup>lt;sup>300</sup> See also CR 2019/9, 3 June 2019, p. 73, para. 23 (Forteau); Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 4 April 2005, E/CN.4/Sub.2/AC.5/2005/2, paras. 38-50 (commentary to Article 2.3), and para. 51.

<sup>&</sup>lt;sup>301</sup> Francesco Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, 1979, UN Doc. E/CN.4/Sub.2/384/Rev.1, p. 35, para. 209. See also CR 2019/9, 3 June 2019, p. 72, para. 22 (Forteau).

recalled, no so-called right of minorities to establish and maintain their representative institutions has been recognized by the CERD Committee either.<sup>302</sup>

143. The very danger Mr Capotorti warned against materialized precisely with the *Mejlis*' conduct as early as 1991, and Ukraine then reacted in the very same manner that it now holds against the Russian Federation. Indeed, right from the start when it was established under Ukrainian rule, the *Mejlis*' clear objective was to achieve secession from Ukraine and establish an independent State in Crimea.<sup>303</sup> While Ukraine admits this in its Memorial, it carefully omits to add that *before 2014* this agenda and conduct led the Crimean Parliament to declare the Qurultay unconstitutional.<sup>304</sup> This stands in marked contrast with Ukraine's current characterization of the *Mejlis*' activities in the pre-2014 period as an expression of healthy democracy.<sup>305</sup>

144. In fact, the *Mejlis'* sponsoring and condoning of violent actions was clear from its early times.<sup>306</sup> For example, the mass riots organized by the *Mejlis* in Simferopol in October 1992 led the Crimean authorities to declare these activities to be anti-constitutional and to take firm measures to bring the *Mejlis* to responsibility.<sup>307</sup> The 1992 riots, incited and condoned by the *Mejlis* in relation to law-enforcement measures against illegal occupation of land, were notably violent. Law-enforcement officers were severely beaten and injured by protesters acting under the influence of the *Mejlis*, including with stones and knives, and M. Dzhemilev called for the formation of a self-defence unit and for the defection of Crimean Tatars serving in the Ukrainian army to support the action, and blackmailed the local authorities into freeing the authors of the incident.<sup>308</sup> Other violent

<sup>&</sup>lt;sup>302</sup> CR 2019/9, 3 June 2019, p. 72, para. 21 (Forteau).

<sup>&</sup>lt;sup>303</sup> Declaration of national sovereignty of the Crimean Tatar people, 28 June 1991 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 77-78; Extract from the *Mejlis* Presidium Statement "On situation in Crimea", 19 February 1992 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 80.

<sup>&</sup>lt;sup>304</sup> Ruling of the Supreme Council of Crimea "On the gathering (qurultay) of the Crimean Tatar representatives", 29 July 1991 (extract) in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 79.

<sup>&</sup>lt;sup>305</sup> MU, para. 358.

<sup>&</sup>lt;sup>306</sup> See various excerpts from Crimean newspapers: Krymskaya Pravda, Yuzhnaya Stolitsa, Alushtinskiy vestnik, Krymskie izvestiya, 1992 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 81-83. See also further article excerpts from Krymskaya Pravda, Regnum, Novoross, Novy Den, and Areket in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 91-113.

<sup>&</sup>lt;sup>307</sup> Decree of the Supreme Council of the Crimean ASSR, 8 October 1992 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 180. The extremist groups of persons representing *Mejlis*' violent and unlawful conduct during this episode was also condemned by the then Ukrainian president himself, see "Meeting of President of Ukraine L. M. Kravchuk with Chairman of the Supreme Council of the Republic of Crimea N. V. Bagrov", *Krymskiye izvestia*, No. 201, 14 October 1992 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 183.

<sup>&</sup>lt;sup>308</sup> "Black Echo of Krasny Rai" and "The Government Betrayed Us!", *Yuzhnaya Stolitsa*, 9 October 1992 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 81-82; Supreme Council of the Republic of Crimea, Minutes of the Plenary Meeting No. 19 of the Ninth Session of the First Convocation, 8 October 1992 (extracts) in Documents from the Dossier and Judges'

episodes involving members of the *Mejlis* that happened during the Ukrainian period included beating Ukrainian and Russian journalists who tried to report on the *Mejlis* illegal seizure of land near the village of Simeiz;<sup>309</sup> invading a local bar in Simferopol with knives, threatening its visitors<sup>310</sup> and then leading violent protests when the perpetrators of the bar incident were undergoing trial;<sup>311</sup> the use of firebombs to protect illegally constructed commercial attractions for tourists near the Ai-Petri mountain;<sup>312</sup> violent clashes in Bakhchisaray when the government refused to accede to the *Mejlis* ' demands to relocate a market.<sup>313</sup>

145. As the Russian Federation has previously explained, the *Mejlis* did not purport to be a public association (or a national-cultural autonomy) and to operate along the lines of classical political representation in a democratic society, or even within the legal order of the State:

"Both the Qurultay and the Mejlis consistently opposed themselves to [Ukrainian] State authorities. One of the consequences of this position was that they have never registered under the laws of Ukraine. That tactic was clearly chosen to avoid responsibility and maintain a self-awarded status of "alternative authorities". That way, its members were also able to carry out and condone violent and unlawful actions with the Mejlis as an organization remaining mostly out of reach of the authorities' sanction.[<sup>314</sup>] Ukraine never recognized the Mejlis as a representative organ".<sup>315</sup>

<sup>309</sup> Expert Report of Valery Viktorovich Engel (Annex 22), para. 435. See also Appendix D, para. 49 and footnote 121.

<sup>310</sup> See Appendix D, para. 49 and footnote 121.

<sup>311</sup> Expert Report of Valery Viktorovich Engel (Annex 22), para. 435; Judgment of the Zheleznodorozhniy District Court of Simferopol in the case of Zair Sitbellyalovich Smedlyaev, 30 January 2012 (extracts) in Documents submitted to the Registry of the ICJ by the Russian Federation in connection with Ukraine's Request for the indication of provisional measures and Judges' Folder submitted by the Russian Federation for the Hearings on Provisional Measures, 6-9 March 2017 (Annex 1267), pp. 87-88.

<sup>312</sup> Press reports: events on the Ai-Petri mountain, 2007, in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 97-104.

<sup>313</sup> Press reports: events around the Bakhchisaray Central Market, 2006, in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 105-108.

<sup>314</sup> See for instance the Judgment of the Zheleznodorozhniy District Court of Simferopol in the case of Zair Sitbellyalovich Smedlyaev, 30 January 2012 (extracts) in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 87-88. The Ukrainian authorities have remained largely inactive to combat the violent activities of this unregistered organization, effectively granting it an exception from the local laws. Local members of parliament attempted to investigate the activities of the *Mejlis* and protested against various illegalities, but that had no impact: see Requests of Mr Oleg Rodivilov, Deputy of the Verkhovnaya Rada of the Autonomous Republic of Crimea, 21 June 2006 and 19 November 2007 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 112.

Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 84-86. The *Mejlis*' violent activities continued unabated, see for example the Requests of Mr Oleg Rodivilov, Deputy of the Verkhovnaya Rada of the Autonomous Republic of Crimea, 21 June 2006 and 19 November 2007 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 112.

<sup>&</sup>lt;sup>315</sup> CR 2017/2, 7 March 2017, p. 60, para. 33 (Lukiyantsev). See also in this vein Supreme Council of the Republic of Crimea, Minutes of the Plenary Meeting No. 19 of the Ninth Session of the First Convocation (extracts), 8 October

146. Such position did not change in Crimea's new legal environment after 2014 and the *Mejlis* never registered with the Russian authorities under any legal form of association or sought to acquire the now claimed representative status.<sup>316</sup>

## B. NO RIGHT TO A REPRESENTATIVE BODY UNDER ARTICLE 5(D) OF CERD

147. There is similarly no such right of minority groups to establish and maintain their own representative bodies under Article 5(d), in particular under Article 5(d)(ix) on the right to freedom of peaceful assembly and association, and certainly not a right to use violent means in this endeavour. In fact, the *Mejlis*' radical political agenda as well as the violent methods and statements of its leaders and close associates confirm that it could not fall under this provision.

148. In relation to the scope of the protection extended under Article 5(d)(ix), the CERD Committee has highlighted that demonstrations ought to be "peaceful" and "respect[...] the human rights of others".<sup>317</sup> This undoubtedly applies to all conduct and statements of assemblies, associations and other groupings. It is thus evident that the protection of Article 5(d)(ix) does not extend to assemblies, associations or other groupings that carry out violent activities. As will be confirmed below, under no circumstances can the activities and statements of the *Mejlis*, its leading members, and the persons associated therewith that formed the basis for the ban be qualified as "peaceful". Quite to the contrary, the two decisions of Crimea's and Russia's Supreme Courts show that such violent conduct undoubtedly falls within the definition of extremism as provided for in Russian law<sup>318</sup> and within the meaning of the word that is commonly accepted in many countries.<sup>319</sup>

# C. NO RIGHT TO A REPRESENTATIVE BODY UNDER ARTICLE 5(E) OF CERD

149. In addition, to the extent Ukraine alleges such a right as part of cultural rights, Article 5(e) of CERD only extends to the "right to equal participation in cultural activities". As confirmed by the examination of the *Mejlis*' violent and radical activities both before 2014 and in the period leading up to its ban, Ukraine's invocation of cultural rights in that context does not reflect the situation of the *Mejlis*.

<sup>1992,</sup> Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 84-86, in particular statements by A.S. Danelyan and K.D. Apostolidi.

<sup>&</sup>lt;sup>316</sup> Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 7 June 2018 (Annex 483), para. 22; Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU).

<sup>&</sup>lt;sup>317</sup> CERD Committee, 75th session, Concluding observations of the Committee on the 14th to 17th periodic reports of Peru, UN Doc. CERD/C/PER/CO/14-17, 24 August 2009, para. 15.

<sup>&</sup>lt;sup>318</sup> See below, para. 178.

<sup>&</sup>lt;sup>319</sup> Expert Report of Valery Viktorovich Engel (Annex 22), paras. 1-37.

# II. The Measures Taken Against the Mejlis Were Adopted for Legitimate Reasons

150. Even if Ukraine's claims in relation to the measures taken against the *Mejlis* could qualify as falling under the scope of CERD, *quod non*, such measures do not evidence racial discrimination, nor *a fortiori* do they form part of a policy of racial discrimination, as Ukraine claims. To the contrary, the measures are based on objective and reasonable grounds.

151. There is no doubt that, "[w]hatever is the legal basis for the exercise of control and jurisdiction in the territory of Crimea by the Russian Federation and the applicability of the International Convention on the Elimination of All Forms of Racial Discrimination, the Russian Federation must be able to take measures necessary to ensure public order and safety."<sup>320</sup> The relevant facts leave no doubt about the existence of legitimate security concerns raised by the activities of the *Mejlis* and its leading members that led up to the decision of the Supreme Court of Crimea, confirmed by the Supreme Court of the Russian Federation, to declare the *Mejlis* as an extremist organization and to uphold the ban of its activities.

152. On the basis of the applicable legal framework (A), the Russian Federation will in the present section rebut in turn each of the unfounded allegations articulated in Ukraine's Memorial in relation to the measures taken against the *Mejlis* to show that the measures are based on objective and reasonable grounds (B and C).

# A. THE APPLICABLE LEGAL FRAMEWORK

153. As the CERD Committee stated, "a differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of article 1, paragraph 4, of the Convention."<sup>321</sup> Thus, imposing a legitimate limitation to the exercise of a right does not qualify as discrimination, let alone racial discrimination under the Convention.

154. As has been noted, individual rights are "not unlimited."<sup>322</sup> The principle that legitimate limitations may be placed to human rights in certain specific circumstances is a well-established principle of international law and forms an intrinsic component of these rights. Such limitations may be legitimately placed on the exercise of human rights for instance in cases of threat to essential interests pertaining to national security, public safety, public order, health and morals, or the free exercise of other citizens' human rights and fundamental freedoms.<sup>323</sup> Legitimate

<sup>&</sup>lt;sup>320</sup> Order of 19 April 2017, declaration of Judge Peter Tomka, *I.C.J. Reports 2017*, p. 153, para. 7.

<sup>&</sup>lt;sup>321</sup> CERD Committee, General Recommendation No. 14, para. 2 (Annex 788 to MU).

<sup>&</sup>lt;sup>322</sup> Order of 19 April 2017, declaration of Judge Peter Tomka, *I.C.J. Reports 2017*, p. 151, para. 5.

See e.g. Articles 29(2), 29(3), and 30 of the UDHR, 1948; Articles 5(1), 19(3), 20, 21, 22(2), and 25 of the International Covenant on Civil and Political Rights ("ICCPR"), 1966; Articles 4 and 5(1) of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), 1966. See also Human Rights Committee, General comment No. 10: Article 19 (Freedom of opinion), 1983, para. 4, <u>https://www.ohchr.org/Documents/ Issues/Opinion/CCPRGeneralCommentNo10.pdf</u>; General comment No. 11: Article 20 (Prohibition of propaganda for

limitations also contribute to the protection of the human rights and freedoms of others. Since legitimate limitations placed on the exercise of human rights do not entail a violation, impairment or nullification of such rights, it follows that – to the extent that such legitimate limitations give rise to a differential treatment – they constitute an objective and reasonable justification that excludes by definition any discriminatory treatment under CERD.

155. On that basis, the two decisions of the Supreme Court of the Republic of Crimea and of the Supreme Court of the Russian Federation on the ban on the Mejlis are entirely lawful and appropriate in light of the relevant facts. These two decisions refer both to international law and Russian law as providing for limitations applicable in the case of the Mejlis. The Constitution of the Russian Federation recognizes and protects universal human rights, including the right of association. It prohibits, however, "propaganda or agitation inciting social, racial, national or religious hatred or hostility, propaganda of social, racial, national, religious or linguistic superiority, as well as the creation and activities of public associations whose objectives or actions are directed at changing the foundations of the constitutional order and violating the integrity of the Russian Federation, undermining the security of the state, creation of armed militias, inciting social, racial, national and religious hatred".<sup>324</sup> Article 55(3) of the Russian Constitution provides the legal basis for legitimate limitations in Russian law: "Human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the foundations of the constitutional order, morality, health, the rights and lawful interests of other people, the defence of the country and the security of the state." The Supreme Court of the Republic of Crimea referred to this provision as reflecting in particular Articles 19 and 20 of the ICCPR.<sup>325</sup>

156. The existence and activities of "public associations" are governed by Federal Law of 19 May 1995 No. 82-FZ, which allows for the winding up of an association and the prohibition of its activities on the grounds of and in accordance with the procedure provided by the Federal Law "On counteracting extremist activities".<sup>326</sup> As part of the definition of extremism it provides, Federal Law of 25 July 2002 No. 114-FZ "On counteracting extremist activities" lists a series of specific activities that are deemed extremist and ought to be prohibited.<sup>327</sup>

157. The Law on counteracting extremist activities also provides for a mechanism to end such activities once they have been identified. Article 7(1) provides:

war and inciting national, racial or religious hatred), 1983, para. 2, <u>https://www.ohchr.org/Documents/Issues/</u><u>Opinion/CCPRGeneralCommentNo11.pdf</u>; General comment No. 34: Article 19 (Freedoms of opinion and expression), 2011, CCPR/C/GC/34, paras. 21-36; General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 27.

<sup>&</sup>lt;sup>324</sup> Constitution of the Russian Federation, 12 December 1993, Articles 13, 29, 30, 34 (as described in Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 8).

<sup>&</sup>lt;sup>325</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 9.

<sup>&</sup>lt;sup>326</sup> Federal Law No. 82-FZ "On public associations", 19 May 1995 (Annex 30), Article 44(6).

<sup>&</sup>lt;sup>327</sup> Federal Law No. 114-FZ "On counteracting extremist activities", 25 July 2002 (Annex 876 to MU), Article 1(1)(1).

"In the event of the uncovering of facts pointing to the presence of characteristics of extremism within their activities, including in the activities of a single one of their regional or other structural sub-divisions, a public or religious organisation or other organisation shall be served with written notice of the inadmissibility of such activity, with an indication of the concrete grounds for serving the notice, including the violations committed. In the event of it being possible to take steps to eliminate the violations committed, the notice shall also set a time limit for eliminating those violations, of no less than two months from the date on which notice was served."

158. The notice – or warning – may be challenged before the courts. Under Article 7(4), if the notice is not challenged or if the court validates it, and if the notified organization fails to eliminate the violation that provided the basis for the notice within the specified deadline, or if new facts pointing to the presence of characteristics of extremism within its activities are uncovered within 12 months following the date on which the notice was served, the public or religious association or other organization concerned shall be wound up according to the procedure defined in the Law and the activity of the respective public or religious association that is not a legal entity shall be banned.

159. Under Article 9(2),

"[i]n the event provided for in the fourth paragraph of Article 7 of the present Federal law or in the event of the carrying out by public or religious associations or other organisations or their regional or other structural sub-divisions of extremist activity resulting in a violation of human and civil rights and freedoms, damage to an individual, citizens' health, the environment, public order, public safety, property, the lawful economic interests of physical individuals and/or legal entities, society and the State or creating a real threat of causing such damage, the corresponding public or religious association or other organisation may be wound up and the activity of the respective public or religious association that is not a legal entity may be banned by decision of a court on the basis of an application by the Prosecutor General of the Russian Federation or the respective prosecutor subordinate to them."

160. It should be noted that, as a preventive act, a warning served to an individual does not entail the criminal liability of its addressee. A warning provides an opportunity to cease or correct identified and proscribed conduct before any further, judicial step is taken. Such mechanism of monitoring forms part of the preventive aspect of the legal framework combating extremism, which places upon the authorities an obligation to take appropriate measures in order to detect and prevent manifestations of extremism.<sup>328</sup> The warning procedure exists not only in respect of the activities of individuals or public organizations and associations,<sup>329</sup> but also regarding the prevention of the broadcasting of extremist materials and content by media outlets.<sup>330</sup>

<sup>&</sup>lt;sup>328</sup> Federal Law No. 114-FZ "On counteracting extremist activities", 25 July 2002 (Annex 876 to MU), Articles 2, 3 and 5.

<sup>&</sup>lt;sup>329</sup> *Ibid.*, Article 7.

<sup>&</sup>lt;sup>330</sup> *Ibid.*, Article 8. See also Appendix E, para. 69.

161. The limitations provided for in Russian law comply with the principle of legality in international law: the applicable domestic law offers a clear and specific understanding of the targeted offences. As will be seen below, the conduct of the *Mejlis*, its members and close associates that provided the basis for the ban undoubtedly fall within the category of conduct that gives rise to legitimate limitations, and the argument that the law has been applied in a discriminatory or arbitrary fashion is untenable. To *Mejlis'* members the ban was a fully predictable outcome when they deliberately opted to engage in their violent conduct.

162. In reaching their conclusion to declare the *Mejlis* an extremist organization and to ban its activities, both Supreme Courts relied on the above-described Russian domestic legal framework and relevant international instruments.<sup>331</sup> They also verified that the limitation did not infringe on the Crimean Tatars' legitimate interests and rights and was not contrary to supporting measures such as the 2014 presidential Rehabilitation Decree.<sup>332</sup>

163. On the other hand, the *Mejlis* did not claim in the course of these domestic proceedings that the ban constituted racial discrimination. Only Ukraine did in the present proceedings. In addition, Ukraine refers to the ban on the *Mejlis* and measures against other related acts by *Mejlis* members and like-minded activists as "political suppression of Crimean Tatars".<sup>333</sup> Such accusation, on its own terms, does not relate to racial discrimination. In any case, it does not correspond to what the record and relevant materials actually show.

# B. THE EXTREMIST AND VIOLENT ACTIVITIES OF THE MEJLIS

# 1. The Factual Basis of the Russian Court Decisions Declaring the Mejlis an Extremist Organization and Banning Its Activities

164. To support its claims related to the ban on the *Mejlis*,<sup>334</sup> Ukraine only refers, in vague terms, to "alleg[ations] that the Mejlis was an 'extremist' organization because, among other reasons, it had organized a pro-Ukraine rally on 26 February 2014".<sup>335</sup> That does not correspond *at all* to the relevant evidence submitted to the competent domestic courts. As their decisions made clear, the

<sup>&</sup>lt;sup>331</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 9-10, 19; Supreme Court of the Russian Federation, Case No. 127-APG16-4, Decision, 29 September 2016 (Annex 915 to MU), p. 2-3, 8-9. International instruments expressly referred to, sometimes in detail, include the 1948 UDHR, the 1950 ECHR, the 1966 ICCPR, the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the 2001 Shanghai Convention on Combatting Terrorism, Separatism and Extremism, the Resolution 1344 (2003) of the Parliamentary Assembly of the Council of Europe on the threat posed to democracy by extremist parties and movements in Europe, and the 2007 UN Declaration on the Rights of Indigenous Peoples.

<sup>&</sup>lt;sup>332</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), pp. 20-21; Supreme Court of the Russian Federation, Case No. 127-APG16-4, Decision, 29 September 2016 (Annex 915 to MU), pp. 7-8.

<sup>&</sup>lt;sup>333</sup> MU, paras. 412-441, and title of subsection B.

<sup>&</sup>lt;sup>334</sup> MU, paras. 425-427.

<sup>&</sup>lt;sup>335</sup> MU, para. 425.

ban was based on the invocation of anti-extremism laws in a context of combating violent political activities that have gone as far as jeopardizing the electric infrastructure of the whole Crimea, impeding the functioning of State organs in Crimea and putting the health and welfare of the whole Crimean population at risk, relating both to electricity and food procurement.

165. The 13<sup>th</sup> OHCHR report on the situation of human rights and freedoms in Ukraine pointed in explicit terms to the illegal character of the blockade of Crimea organized by the *Mejlis* in 2015 and urged the investigation of allegations of human rights violations committed during the blockade.<sup>336</sup> In such a case, a ban is plainly legitimate, contrary to what Ukraine alleges.

166. Contrary to Ukraine's allegations, the judgment of 26 April 2016 of the Supreme Court of Crimea relied on an abundant series of extremist actions attributable to *Mejlis* members, stretching over an extensive period of time, usually in connection to contesting Crimea's change of status.

167. As a determining feature of the case it is essential to recall the chronology of critical factual elements that form part of the violent and subversive activities undertaken by the *Mejlis* and its close associates in the autumn and winter of 2015. A number of these facts have already been submitted to the attention of this Court at the provisional measures phase, but Ukraine failed to address any of them in its Memorial. While in no sense exhaustive,<sup>337</sup> the chronological account of violent conduct associated with the *Mejlis* up to its ban includes in particular the following acts – bearing in mind that *at no point in time* the *Mejlis* claimed, nor even suggested, that the measures taken against them in relation to these acts constitute racial discrimination.

- The *Mejlis*' violent activities started as early as 1992, in Krasny Rai. In 2004 the *Mejlis* had organized a campaign to destroy property of the Orthodox Holy Dormition Monastery in Bakhchisaray, and later continued with violent clashes at Ai-Petri, Simferopol and other localities in Crimea.<sup>338</sup> Since 2008, still during the Ukrainian period, the *Mejlis* had organized a number of actions to block the activities of district and city councils, district police departments and the prosecutor's office.<sup>339</sup>

- On 26 February 2014, the *Mejlis* organized an unauthorized event before the Crimean Parliament, during which around 80 persons were wounded and 2 were killed, and property of the Parliament was damaged and destroyed. The crucial role of *Mejlis* members in raising the level of tension and inciting participants to commit acts of violence during the event was later

<sup>&</sup>lt;sup>336</sup> OHCHR, Report on the human rights situation in Ukraine: 16 November 2015 to 15 February 2016 (Annex 314 to MU), paras. 197-200.

<sup>&</sup>lt;sup>337</sup> For further actions, see Prosecutor General's Office of the Russian Federation, Information on the outcomes of the analysis of arguments set out in the letter of the Permanent Delegation of Ukraine to UNESCO, 23 October 2015 (Annex 911 to MU), p. 4-8.

<sup>&</sup>lt;sup>338</sup> See above, para. 144. Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 1; Supreme Court of the Russian Federation, Case No. 127-APG16-4, Decision, 29 September 2016 (Annex 915 to MU), p. 1.

<sup>&</sup>lt;sup>339</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 1-2.

acknowledged by the Central district Court of Simferopol in decisions predating the ban of the *Mejlis*.<sup>340</sup>

On 2 May 2014 the Mejlis decided to organize an unauthorized event the next day to meet Mr Mustafa Dzhemilev who was to attempt to illegally cross the border back from Ukraine.<sup>341</sup> On 3 May 2014, the Mejlis held this unauthorized gathering near Armyansk which transformed into a violent riot with the use of physical force in which participants violently forced the members of the Border Guard Service of the Russian Federation and the police from the border crossing, captured and held it for about 5 hours until the arrival of additional law enforcement forces. Refat Chubarov's public calls and citizens joining him on the ground led to riots on the territory of Armyansk as well as the blocking of roads in several districts and localities in Crimea. Taken together with the violent riots of 26 February 2014, these incidents led the Prosecutor of Crimea to issue 17 warnings on the impermissibility of Mejlis members' unlawful activities.<sup>342</sup> A warning was served on 3 May 2014 to Mr Chubarov, in his capacity as Chairman of the Mejlis.<sup>343</sup> Mr Chubarov did not challenge it under applicable statutory law. The warning explicitly put Mr Chubarov on notice that the Mejlis could be banned and its activities prohibited should such extremist conduct continue in the future. The circumstances of these violent riots also gave rise to a series of criminal cases against participants who were sentenced by the Armyansk City Court for use of violence against Russian state officials.344

- Since new signs of extremism had arisen during the two-month period following the second warning served to Mr Chubarov on 3 May 2014, on 5 July 2014 the Prosecutor's Office in Crimea again served a new warning to Mr Chubarov in his capacity as Chairman of the *Mejlis*, against the

<sup>&</sup>lt;sup>340</sup> Judgment of the Central District Court of Simferopol in the case of Mr Eskender Nebiev, 12 October 2015, and Judgement of the Central District Court of Simferopol in the case of Mr Talyat Yunusov, 28 December 2015, *in* Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 115-126. It is to be noted that the *Mejlis*' inflaming discourse and confrontational attitude towards the authorities has been happening both before and after 2014 (see Expert Report of Valery Viktorovich Engel (Annex 22), para. 446).

<sup>&</sup>lt;sup>341</sup> Website of the Mejlis, Resolution of the Mejlis of the Crimean Tatar people "On the situation regarding the Russian official travel ban for Mustafa Dzhemilev, prohibiting Dzhemilev from entering his native land — Crimea", 2 May 2014 (Annex 1251), para. 4.

<sup>&</sup>lt;sup>342</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 2.

<sup>&</sup>lt;sup>343</sup> Prosecutor of the Republic of Crimea, Warning issued to Mr Refat Chubarov, Chairman of the *Mejlis*, on the impermissibility of carrying out extremist activities, 3 May 2014 (Annex 523). Another warning had been served to him shortly before, see Acting Prosecutor of the Republic of Crimea, Warning issued to Mr Refat Chubarov, Chairman of the *Mejlis*, on the impermissibility of violating the law, 23 April 2014 (Annex 522).

<sup>&</sup>lt;sup>344</sup> For examples of such cases, which also contain further details on the unfolding of events and the unlawful acts committed, see for instance Armyansk City Court of the Republic of Crimea, Case No. 1-78/2015, Decision, 28 May 2015 (Annex 238); Armyansk City Court of the Republic of Crimea, Case No. 1-112/2015, Decision, 3 August 2015 (Annex 243); Judgment of the Armyansk City Court in the case of Mr Edem Osmanov, 7 December 2015, Case No. 1-113/2015, and Judgment of the Armyansk City Court in the case of Mr Tair Smedlyaev, 10 December 2015, Case No. 1-114/2015, *in* Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 127-143. See also Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 12; Supreme Court of the Russian Federation, Case No. 127-APG16-4, Decision, 29 September 2016 (Annex 915 to MU), p. 5.

conduct of extremist activities.<sup>345</sup> The warning explicitly put again Mr Chubarov on notice that the *Mejlis* would be banned and its activities prohibited should the impugned illegal conduct continue in the future. Mr Chubarov did not challenge this new warning either.

- On 1 April 2015, Mr Chubarov gave an interview to Ukrainian TV Channel 5 in Kiev and said: "for us the war is over only when Crimea is in the Ukrainian State." He also stated: "Ukraine should prepare for a full-scale military conflict with Russia", "I am one of those who urged to prepare for the worst – open war with Russia."<sup>346</sup>

- On 8 September 2015 at a press conference in the Ukrainian Crisis Media Centre in Kiev the leaders of the *Mejlis*, including Mr Chubarov and Mr Dzhemilev, as well as Mr Islyamov, a close associate and financial contributor of the *Mejlis*, declared the so-called "people's (civilian) blockade of Crimea" which consists in attempting to block all roads and communications between Crimea and Ukraine.<sup>347</sup> In particular, this included blocking of roads for freight transportation and disconnecting power supply, affecting the whole population of the peninsula. This action was designed to have a significant impact on power and food supply of the whole population on the peninsula. On 14 September 2015, Mr Chubarov gave a statement at Ukraine's Parliament in Kiev to call for supporters to join the civilian blockade, and on 18 September 2015, he held a meeting of the council in Genichesk, Kherson region, to organize the "blockade of Crimea" and determine the campaign sites. Mr Chubarov also confirmed that the organizer of the energy blockade of the peninsula, Mr Lenur Islyamov, acted under his and the *Mejlis*' instructions.<sup>348</sup>

- The blockade started on 20 September 2015, involving the organization of protest actions near the border by *Mejlis* members and the Ukrainian extremist organization "Right Sector", which was and remains banned in the Russian Federation.<sup>349</sup> The blockade took the form of blocking transport communications and all three border crossing points of Kalanchak, Chaplinka and Chongar between Ukraine and Crimea.<sup>350</sup> On 20 September 2015, the day the unauthorized protest

<sup>&</sup>lt;sup>345</sup> See para.190; Prosecutor of the Republic of Crimea, Warning (repeated) to Mr Refat Chubarov, Chairman of the *Mejlis*, on the impermissibility of carrying out extremist activities, 5 July 2014 (Annex 527).

<sup>&</sup>lt;sup>346</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 13.

<sup>&</sup>lt;sup>347</sup> Ukraine Crisis Media Center, Civil blockade of Crimea: how it will be, available at: https://www.youtube.com/watch?v=RBS9FgXCBtg, transcript of the video record, 8 September 2015 (Annex 1220); Senior operative officer on High-Priority Cases of the Counter-Extremism Centre of the Ministry of Internal Affairs for the Republic of Crimea, Record of observing the Internet-source, 11 February 2016 (Annex 268). This resulted in the opening of a criminal investigation, see Appendix E, para. 84.

<sup>&</sup>lt;sup>348</sup> *Interfax Ukraine*, "Crimean Tatars to block administrative border with Crimea on Sept 20-21 - Chubarov", 14 September 2015 (Annex 930).

<sup>&</sup>lt;sup>349</sup> Banned by Decision of the Supreme Court of the Russian Federation, 17 November 2014, Case No. AKPI14-1292C; see Ministry of Justice of the Russian Federation, List of public associations and religious organisations in respect of which the court has taken a legally effective decision to liquidate them or ban their activities on the grounds provided for by Federal Law of 25 July 2002 No. 114-FZ "On counteracting extremist activities", as at 7 April 2021 (Annex 503).

<sup>&</sup>lt;sup>350</sup> The organization and participation of the *Mejlis* and the Right Sector in the blockade was acknowledged and encouraged by the Ukrainian President, see "Poroshenko said that the aim of the blockade is the return of Crimea to

actions started, Mr Chubarov gave a public statement in the Genichesky district, inciting people to participate in the actions aimed at forced return of Crimea to Ukraine:

"Our goal is to unoccupy Crimea and restore the territorial integrity of Ukraine [...]. We understand that this objective will be achieved by our actions to be established step by step and other steps will follow, step by step, in September, October. Dear friends, today we start the first steps. We do not pass a single car, truck with any cargo, which wants to cross the administrative border to Crimea. To avoid any inconveniences associated with traffic jams and congestion, we do not pass any truck; we do not pass unloaded trucks, if any. At each point we will have senior people who will be coordinating our activities. This is very important; this is the way it was on the Maidan in Kiev and other cities of Ukraine."<sup>351</sup>

- In his interview of 16 October 2015, Mr Chubarov stated that the blockade should be comprehensive and that it should include cutting off electricity supply.<sup>352</sup>

- On 20 November 2015 four pylons supporting electricity transmission lines from Ukraine to Crimea were targeted by explosives, resulting in the destruction of two pylons and serious damage to two other pylons. On 21 November 2015 the staff of trunk lines of the South Energy System was blocked by the protesters led by Mr Islyamov at a distance of 500 metres from the scene. On 22 November 2015, the remaining two pylons were downed by further explosive detonations; Mr Lenur Islyamov, an associate of the *Mejlis*, was found guilty by the Russian court for organising this further attack.<sup>353</sup> In the following weeks *Mejlis* members blocked representatives of Ukrenergo –

Ukraine", *Regnum*, 22 September 2015, Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 166. Ukraine took no steps to prevent and repress the organization and implementation on its territory of the so-called civilian blockade and electric blockade. For the complicity and support from the Ukrainian authorities, see also "Trade blockade? Ukrainian activists block food trucks on checkpoints to Crimea", *Russia Today*, 20 September 2015, *in* Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 63. Ukraine's inaction against extremist groups such as the Right Sector was pointed and deplored by the CERD Committee (Committee on the Elimination of Racial Discrimination, Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine, 90<sup>th</sup> session, 23 August 2016, UN Doc. CERD/C/UKR/CO/22-23, para. 15).

<sup>&</sup>lt;sup>351</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 2-3 and 15.

<sup>&</sup>lt;sup>352</sup> Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 21 June 2018 (Annex 483), p. 3. See also further statements in Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 16.

<sup>&</sup>lt;sup>353</sup> On 10 December 2020, the Supreme Court of the Republic of Crimea found L. Islyamov guilty of organising a sabotage, creating an illegal armed formation, and publicly calling for violating the territorial integrity of Russia (crimes under paras. a, b of Part 2 of Article 281 of the Criminal Code of the Russian Federation, Part 1 of Article 208 of the Criminal Code of the Russian Federation (as amended by Federal Law No. 130-FZ of 5 May 2014), Part 2 of Article 280.1 of the Criminal Code of the Russian Federation). See, Supreme Court of the Republic of Crimea, Case No. 1-11/2020, Decision, 10 December 2020 (Annex 430), p. 94. On 8 April 2021, the Judicial Chamber on Criminal Cases of the Third Court of Appeal of General Jurisdiction upheld the sentence of the Supreme Court of the Republic of Crimea in respect of L. Islyamov regarding the sabotage and the creation of the illegal armed formation. As for charges under Part 2 of Article 280.1 of the Criminal Code of the Russian Federation (public calls for violating the territorial integrity of the Russian Federation using the mass media), the sentence was quashed in view of decriminalization of this offence committed for the first time within a period of a year. See Third Court of Appeal of General Jurisdiction, Case No. 55-116/2021, Appellate Decision, 8 April 2021 (Annex 432), pp. 20-21. "Destruction of the Remaining Electric Power Line Poles in Ukraine Led to Blackout in Crimea", *RBC*, 22 November 2015 in Documents from the Dossier and

the then Ukrainian state enterprise exercising operational and technological control over the Ukraine power systems and interstate transmission lines – from repairing the transmission line.<sup>354</sup>

- During the electric blackout the Crimean authorities declared the state of emergency and companies had to interrupt activities in order to save electricity,<sup>355</sup> which provoked economic disruptions. On 22 November 2015, Mr Islyamov stated: "We are blocking, staying where we are, strengthening our positions here. We accept new patriots who come here. Now, a whole bunch of people are coming here on buses, so we now place them, they arrive, we install more tents here and wait for further decision of the Mejlis of the Crimean Tatar People." As the Acting Director of Ukrenergo, Mr Kovalchuk, said at his press conference, representatives of the so-called "Crimean Blockade" conditioned access of the repair team to the pylons by assurances of non-delivery of electricity to Crimea until a number of political issues raised in connection with their act are resolved.<sup>356</sup> Another similar explosion occurred again at the end of December 2015.<sup>357</sup>

- In 2015 Crimea's power supply was mainly dependent on four electricity lines supplying electricity to the Peninsula from Ukraine. As a result of these explosions, Crimea was left without electricity supply, and had to use backup generators for the most important facilities (hospitals, schools, etc.), while the local population mostly survived without any source of energy. For about three weeks, the interruption of energy deliveries to Crimea caused widespread disruptions, affecting daily life on the peninsula, notably food conservation, public transportation and economic activity, as reported by Ukraine's own evidence.<sup>358</sup> The humanitarian situation thus created was all the more difficult for the population as winter was coming with its hard weather and low temperatures. Electric supply from Ukraine to Crimea has never resumed to this day; instead, since December 2015 the only power supply to Crimea has been provided from the Krasnodar region (mainland Russia).

Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 70-71. See also: "Islyamov on blowing up the pylons: Crimean Tatars are tired of waiting", Hromadske TV, 20 October 2015, available in Ukrainian at <u>https://www.youtube.com/watch?v=PxwUFjSk80U</u> *in* Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 145; "Initiator of the Crimean Blockade Lenur Islyamov put forward the demands to Russian authorities", News One, 22 November 2015, available in Russian at https://www.youtube.com/watch?v=Wac9WEUWVyc (at 0:05), *in* Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), *ibid*.: "We want at least one political prisoner for one pylon".

<sup>&</sup>lt;sup>354</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), pp. 16-17; Supreme Court of the Russian Federation, Case No. 127-APG16-4, Decision, 29 September 2016 (Annex 915 to MU), p. 5.

<sup>&</sup>lt;sup>355</sup> "Ukraine Gave Some Light to Crimea", *RIA*, 8 December 2015 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 72.

<sup>&</sup>lt;sup>356</sup> *RIA Novosti,* "Participants of the blockade of Crimea stated the conditions for admission of power engineers to power lines", 23 November 2015 (Annex 939).

<sup>&</sup>lt;sup>357</sup> "Aksyonov Called the Blasting of the Pole of Electric Power Supply Line in Kherson Region A Terrorist Attack", *Lenta.ru*, 31 December 2015 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 75.

<sup>&</sup>lt;sup>358</sup> See for instance OHCHR, Report on the human rights situation in Ukraine: 16 November 2015 to 15 February 2016 (Annex 314 to MU), para. 185.

- On 7 December 2015, Mr Islyamov was reported to declare: "We have passed repairmen according to the decision of the leaders of the Mejlis of the Crimean Tatar People. We, as activists, as the Mejlis, created a humanitarian catastrophe in Crimea."<sup>359</sup> It confirms that the *Mejlis* orchestrated the blockade but also was fully aware of its dire consequences on the whole Crimean population. The Supreme Court of the Republic of Crimea found in particular that in the period from November to December 2015 the Mejlis directly participated in organising a blockade of repair works – aimed at restoring the pylons supporting electricity transmission lines – by representatives of Ukrenergo.<sup>360</sup> The activists only announced the end of the civilian blockade on 17 January 2016 after the Ukrainian government had partially acceded to their demands by adopting a decree on 18 December 2015 that imposed strict restrictions on the delivery of goods, services, food and personal belongings to and from Crimea,<sup>361</sup> thus openly confirming its complicity with the organizers of the blockade.

- In the aftermath of the electric blockade in December 2015, Mr Islyamov established a Crimean Tatar armed unit, the so-called Noman Çelebicihan battalion. The declared goal of the battalion is to compromise the territorial integrity of the Russian Federation by means of guerilla warfare aiming at effecting Crimea's secession from the Russian Federation through the use of violence.<sup>362</sup> On 10 December 2020, Mr Islyamov was found guilty of creating an illegal armed formation (prohibited by Article 208(1), paragraphs "a", "b" of the Russian Criminal Code).<sup>363</sup>

- In a speech delivered on 26 February 2016, eleven days after the Prosecutor of Crimea applied for the ban on the *Mejlis*, Mr Chubarov declared: "At a meeting of the National Security and Defense Council on Crimea in 2014, I would have encouraged all to declare a state of war with Russia".<sup>364</sup> On 17 March 2016, Mr Chubarov gave an interview to Radio Liberty in Prague and said: "during the occupation, the first to enter will be the military, they will ensure public order. Russia will leave Crimea, together with it those will run whom we call collaborators etc".<sup>365</sup>

168. In the period from 23 April 2014 to 16 February 2015, the Prosecutor's Office of Crimea served no less than 11 warnings to prevent acts of extremism in relation to the illegal activities of

<sup>&</sup>lt;sup>359</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p.
18.

<sup>&</sup>lt;sup>360</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 18.

<sup>&</sup>lt;sup>361</sup> OHCHR, Report on the human rights situation in Ukraine: 16 November 2015 to 15 February 2016 (Annex 314 to MU), para. 197.

<sup>&</sup>lt;sup>362</sup> *Komsomolskaya Pravda*, "Inglorious extremists: How a runaway businessman wanted to 'advance to Crimea' but failed", 14 January 2020 (Annex 1015).

<sup>&</sup>lt;sup>363</sup> Supreme Court of the Republic of Crimea, Case No. 1-11/2020, Decision, 10 December 2020 (Annex 430), p. 94; Third Court of Appeal of General Jurisdiction, Case No. 55-116/2021, Appellate Decision, 8 April 2021 (Annex 432), pp. 20-21.

<sup>&</sup>lt;sup>364</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 14; see also Supreme Court of the Russian Federation, Case No. 127-APG16-4, Decision, 29 September 2016 (Annex 915 to MU), p. 7.

<sup>&</sup>lt;sup>365</sup> *Ibid.*, p. 14 (Annex 913 to MU).

the leaders of the *Mejlis*, including planning and organizing provocative unsanctioned rallies. The Supreme Court of the Republic of Crimea does not mention that any such warnings had been challenged, despite the possibility to do so being provided for under statutory law.<sup>366</sup>

169. The *Mejlis* did not contest the reality of the statements or acts submitted by the Prosecutor. In addition, it did not complain of - nor even suggested that there had been - racial discrimination.

170. In reaching its decision based on the above-listed offences, the Supreme Court of Crimea noted that "the nature of violations made by the public organization, as well as their effects are so significant that the restoration of the rule of law is only possible by banning its activities." It added that "[t]he balance of the rights to freedom of assembly and association and the coercive measures aimed at safeguarding interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or the protection of the rights and freedoms of the persons is respected."<sup>367</sup>

# 2. The Continuing Extremist Conduct of the Mejlis

171. Despite the declaration of the *Mejlis* as an extremist organization and the ban on its activities in 2016, the *Mejlis* and its leaders did not put an end to their extremist rhetoric inciting to violence. They continued to take actions aimed at destabilizing Crimea and its population at any cost, that is, in line with their endorsement of violent methods and with Mr Chubarov's stated goal of waging an open war with Russia. As is shown below, the *Mejlis* continued in particular to incite to violence against the constitutional foundations of the Russian Federation and its territorial integrity, to violate other citizens' human rights, and to use or threat to use or advocate for violence to create impediments in the work of government authorities. In addition, Mr Chubarov, who became a member of the Verkhovna Rada (Ukraine's Parliament), established in Kiev a so-called "Council of the *Mejlis*", consisting of 9 members residing in Ukraine's capital. In 2016, this organization received 60 million Ukrainian grivens – equivalent to more than 2 million USD – from the state budget of Ukraine.<sup>368</sup>

172. The continuation of the *Mejlis*' and its leaders' unlawful activities in breach of the Russian courts' decisions is greatly facilitated by the fact that the *Mejlis* leaders mostly involved in such violent actions have relocated in Kiev. They benefit from the complicity and active support of the

<sup>&</sup>lt;sup>366</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 14.

<sup>&</sup>lt;sup>367</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 20.

<sup>&</sup>lt;sup>368</sup> "Prime-Minister of Ukraine Arseniy Yatsenyuk declared that the Government is for the first time planning to allocate 60 million grivens to finance the needs of the Mejlis of the Crimean Tatar people. According to the website *"Business Media"*, Mr Yatsenyuk announced such a measure this Sunday, on 27 December, at a "10 minutes with the Prime-Minister" programme" (*Business Media*, "Yatsenyuk: 60 million Ukrainian hryvnias allocated to the Mejlis from the state budget", 27 December 2015 (Annex 944)). See also Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 21 June 2018 (Annex 483), p. 4.

Ukrainian authorities, which finance them and which do not take any action to bring their violent actions to an end, despite the fact that most of such actions (like the 2015 blockades) have been committed or prepared on Ukrainian territory. On the contrary, the *Mejlis'* leaders participate in meetings of various international organizations and other fora as representatives of Ukraine, or serve as members of parliament. Mr Chubarov himself is a Member of the Ukrainian Parliament and is part of Ukraine's delegation in the present case, as "Adviser" of the Applicant State.<sup>369</sup> It shows that Ukraine condones the violent conduct and strategy of the *Mejlis*, which is indeed effectively acting today as an instrumentality of the Government of Ukraine and not as a representative institution of the Crimean Tatars living on the peninsula.

173. In this regard, it is also telling that the website of the infamous "Mirotvorets [Center]"<sup>370</sup> controlled and sponsored by Ukraine<sup>371</sup> blacklists respected Crimean Tatar community leaders, some of them being former members of the *Mejlis* or Qurultay or individuals cooperating with the local authorities in Crimea, based on their political opinions, thus putting their security and even lives at risk.<sup>372</sup> Such practice of publicly listing designated enemies and their personal information is known to have led to assassinations of individuals.<sup>373</sup> As the Court will recall, the Mirotvorets [Center] has gone as far as publicly listing Agents and Counsel of the Russian Federation before the ECtHR and the ICJ on its website as traitors and enemies of Ukraine, thus threatening their security and attempting to intimidate them in these proceedings.<sup>374</sup> The respective outcomes of these grave incidents before both Courts amply confirmed that Ukraine is exercising control over the activities of this infamous extremist organization, whatever it stated in this respect.

174. The Russian Federation has previously pointed to the Court some examples of violent acts attributable to the *Mejlis* and its leaders since the ban.<sup>375</sup>

175. In addition, Mr Chubarov has repeatedly stated that all Russian nationals currently living in Crimea – and those who intend to move to Crimea – would be expelled from the peninsula.<sup>376</sup> In its

<sup>&</sup>lt;sup>369</sup> See the official list of the representatives of Ukraine as it appears in the verbatim records of the Hearings on Preliminary Objections (CR 2019/9 to CR 2019/12, 3 to 7 June 2019) and in the Court's Judgment on Preliminary Objections (*I.C.J. Reports 2019*, p. 562).

<sup>&</sup>lt;sup>370</sup> Website of the "Myrotvorets.center" ("*Mirotvorets*") (Annex 1286).

<sup>&</sup>lt;sup>371</sup> *RNS*, "Ukrainian website 'Mirotvorets' announced termination of its activities", 10 December 2019 (Annex 1012); Facebook page of Anton Gerashchenko, former Deputy of Verkhovna Rada, "I, as well as many well-known journalists...", 16 December 2014 (Annex 1255); *RIA Novosti*, "Ministry of Internal Affairs of Ukraine promised to create new resources similar to Mirotvorets website", 13 May 2016 (Annex 956); *RBC*, "Politician involved with the 'Mirotvorets' was appointed Deputy Minister of Internal Affairs of Ukraine", 25 September 2019 (Annex 1009). To be sure, the organization is still active.

<sup>&</sup>lt;sup>372</sup> See Chapter III above, para. 124.

*Strana.ua*, "Murder of Buzina and calls for ISIS. Story of Mirotvorets", 12 May 2016 (Annex 955). See also Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 16 March 2020 (Annex 496), p. 2.

<sup>&</sup>lt;sup>374</sup> Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 16 March 2020 (Annex 496) with annexes 1 to 5.

<sup>&</sup>lt;sup>375</sup> Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 21 June 2018 (Annex 483), p. 5.

appeal of 12 March 2018 to the Crimean Tatars and the Crimean population in general, the *Mejlis* declared that it would "continue to take all measures to ensure the state sovereignty of Ukraine over the Crimean peninsula, and restore the status of Crimea on the basis of the right of Crimean Tatar people to self-determination as an indigenous people of Ukraine."<sup>377</sup> It should be highlighted that in this statement, Mr Chubarov deliberately used the expression "*any* measures", not "any *legal* measures" or "any *peaceful* measures". For any objective observer the use of this expression undoubtedly reflects its author's intention to include violent conduct and the use of force in the measures referred to.

## C. UKRAINE'S CLAIMS ARE UNFOUNDED

176. In light of the above, Ukraine's claim that the measures against the *Mejlis* constitute a racially oriented "oppression" is patently baseless.

177. As examined above,<sup>378</sup> the two domestic judicial decisions banning the *Mejlis* as an extremist organization and prohibiting its activities in 2016 relied on a detailed examination of the publicly available record of the conduct of the organization, its members and close associates and concluded that such conduct was of an extremist nature.

178. A consideration of the general practice of the Supreme Court of the Russian Federation indicates that the decision to ban the *Mejlis*, taken by this Court on 29 September 2016 in confirmation of the decision of the Supreme Court of the Republic of Crimea of 26 April 2016, was fully in line with such general practice and therefore did not reflect any arbitrary or discriminatory application of relevant domestic law against extremism. Under the Court's general practice, "[a] gross breach of the Constitution of the Russian Federation, federal constitutional laws, federal laws or other regulations, committed by an association of citizens, may be in the form of actions aimed at denying the fundamental democratic principles, rights or freedoms recognized by the Constitution of the Russian Federation, federal law and other regulations; aimed at war propaganda or stirring up national, race or religious hatred, calls for discrimination, hatred or violence."<sup>379</sup> As seen above,

<sup>&</sup>lt;sup>376</sup> Crimean News Agency QHA, "Chubarov told how to 'cleanse' Crimea after de-occupation", 16 June 2017 (Annex 974). He again recalled that Russians would have to leave Crimea in his interview on "5th Channel" (Ukraine) on 10 March 2018 (See 5th Channel, "Time. Daily Round-up", Interview with Mr Refat Chubarov, 8 March 2018 (Annex 1227).

<sup>&</sup>lt;sup>377</sup> Website of the Mejlis, "Appeal of the Mejlis of the Crimean Tatar people", 12 March 2018 (Annex 1270).

<sup>&</sup>lt;sup>378</sup> See paras. 164-170 above.

<sup>&</sup>lt;sup>379</sup> Plenum of the Supreme Court of the Russian Federation, Resolution No. 64 of 27 December 2016 on certain matters arising when Courts review cases on the suspension of activities or liquidation of non-commercial organizations, and on the ban on activities of public or religious associations which are not legal entities, *in* Information on the implementation by the courts of the Russian Federation of the International Convention on the Elimination of All Forms of Racial Discrimination prepared in connection with the examination of the 23rd and 24th reports of the Russian Federation by CERD Committee, August 2017 (Annex 477), p. 25, italics in the original.

the activities of the *Mejlis* relied on to ban this organization fully fall within this description of the Court's general practice.

179. The decision of the Russian Supreme Court to ban the *Mejlis* is also in line with that Court's general practice in understanding of extremism generally, as relying both on Russian constitutional and statutory law and on relevant instruments of international law.<sup>380</sup> As is evident from the facts analysed above, the conduct of the *Mejlis*' leaders undoubtedly meet the criteria of extremism that are uniformly applied by the Supreme Court in all cases without distinction.<sup>381</sup>

- a. As results from the above and the Russian courts' 2016 decisions, declaring the *Mejlis* an extremist organization and banning its activities was warranted, adequate, proportionate and necessary to ensure the preservation of legally-protected rights and interests of other citizens and the State.
- b. In addition, it results from the balancing exercise required by the application of legitimate limitations that the ban does not breach any of the Crimean Tatars' rights and certainly not under CERD. The extent and gravity of the identified extremist activities, their extensive negative impact on the free exercise by other citizens of their human and lawfully guaranteed rights and the threat to the constitutional order and the integrity of the Russian Federation, the fact that the activities were performed or condoned by the leading members at the highest level of the organization, including its Chairman and Deputy Chairman, thereby being attributable to the organization as a whole, the persistent repetition of such conduct during an extended period despite repeated warnings from the authorities, all these elements compelled the ban on the activities of the *Mejlis* as a whole and its qualification as an extremist organization.
- c. The facts stated above clearly meet any threshold that may be required to establish the existence of extremist activities and a breach of the law, including under the most restrictive possible approaches. The accumulation of repeated conduct despite warnings, the tolerant approach of the authorities involving multiple warnings before taking action<sup>382</sup> –, the clear and unambiguous language used by Mr Chubarov, other leaders and close associates, the gravity of the blockade and of the destruction of

<sup>&</sup>lt;sup>380</sup> Plenum of the Supreme Court of the Russian Federation, Resolution No. 11 of 28 June 2011, as amended on 3 November 2016, on Court practice of criminal cases of an extremist nature, *in* Information on the implementation by the courts of the Russian Federation of the International Convention on the Elimination of All Forms of Racial Discrimination prepared in connection with the examination of the 23rd and 24th reports of the Russian Federation by CERD Committee, August 2017 (Annex 477), pp. 26-27.

<sup>&</sup>lt;sup>381</sup> *Ibid*.

<sup>&</sup>lt;sup>382</sup> Russia served no less than 11 warnings between 23 April 2014 and 16 February 2015 in connection with illegal activities of the *Mejlis*: Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 14. The Russian Federation only took action to ban the *Mejlis* after more than two years had elapsed since Crimea's accession, which confirms that the *Mejlis* had been left with ample and repeated opportunities to change course and renounce violence before the ban.

electric transmission lines as well as their negative economic<sup>383</sup> and humanitarian<sup>384</sup> impact on the entire population of the peninsula in terms of power and food supply leave no doubt about it.

180. Ukraine contends that the ban was a "political measure directed at the Crimean Tatar community as a whole"<sup>385</sup> and relies on a report of the Council of Europe to claim that a ban on the *Mejlis* "would indicate a new level of repression targeting the Crimean Tatar community as a whole". However, in relying on what constitutes a political statement made prior to – and without the benefit from – the ban decisions, Ukraine carefully omitted to quote the paragraph that precedes the sentence it refers to, which reads: "the perception of the [human rights] delegation [of the Council of Europe] is that the cases of repression, as severe as they may be, seem more targeted against individual opponents, whether they are Crimean Tatars, Ukrainians or others, rather than reflecting a collective repression policy against the Crimean Tatars as an ethnic group."<sup>386</sup>

181. Ukraine's position also overlooks the important fact that the Application of Crimea's Prosecutor that led to the ban was partly based on a request *by members of the Crimean Tatar community*. On 2 February 2016, the Prosecutor's Office of the Republic of Crimea had received a letter from several Crimean Tatar organizations, including "Qirim Birligi", the "Committee of Crimean Tatar Youth" and "The Council of Elders of Crimean Tatars", requesting a ban of the *Mejlis* and accusing its leaders of participating in the blockade of Crimea.<sup>387</sup> In so doing, the applicants strongly dissociated themselves from the *Mejlis*' violent, subversive and self-interested agenda.

182. Ukraine is also elusive on the decision of the Supreme Court of the Russian Federation issued on the *Mejlis*' appeal. In fact the decision confirmed all material findings of the first judgment.

183. In this context, Ukraine cannot pretend to be surprized that the ban was enforced against eight *Mejlis* members, including fines, for illegally holding a *Mejlis* meeting at the home of one of

<sup>&</sup>lt;sup>383</sup> In Simferopol only, the economic loss for enterprises in this period was reported to be over 1,3 billion Russian rubles, see "Bakharev: Blackout Caused Over a Billion in Damages to Simferopol Enterprises", *RIA Novosti Krym*, 11 May 2016 *in* Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 144.

<sup>&</sup>lt;sup>384</sup> Council of Europe, Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea (25-31 January 2016), 11 April 2016 (Annex 825 to MU), para. 57.

<sup>&</sup>lt;sup>385</sup> MU, para. 426 and footnote 894, citing Council of Europe, Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea (25-31 January 2016), 11 April 2016 (Annex 825 to MU), p. 4.

<sup>&</sup>lt;sup>386</sup> Council of Europe, Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea (25-31 January 2016), 11 April 2016 (Annex 825 to MU), p. 4. To be sure, the Russian Federation disagrees with the report's allegation of severe cases of repression.

<sup>&</sup>lt;sup>387</sup> Appeal from the representatives of 5 Crimean Tatar organizations to the Office of the Prosecutor of the Republic of Crimea, 2 February 2016 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 146-147.

them, Deputy Chairman Ilmi Umerov,<sup>388</sup> as this was in breach of the Prosecutor's decision to suspend the *Mejlis*' activities pending the final decision in the matter.<sup>389</sup> Ukraine specifically refers to the two individual cases of Mr Shevket Kaybullayev, who was fined 500 rubles (about USD 8.00),<sup>390</sup> and Mr Mustafa Maushev, who was fined 750 rubles (about USD 11.60).<sup>391</sup> As confirmed in the court judgment for Mr Maushev, Mr Umerov himself, the vice-chairman of the *Mejlis* who hosted the meeting at his home, confirmed that he had been indeed organizing a *Mejlis* meeting there, as opposed to merely receiving friends' private visits. As reported by the Court, Mr Umerov's explanations leave no doubt as to the character of the meeting.<sup>392</sup>

184. As part of factual elements that are supposed to establish an alleged "strategy targeting the Crimean Tatar community as a whole" through individual measures,<sup>393</sup> Ukraine also relies on a statement attributed to Mr Alexander Formanchuk, Co-chair of the Association of political scientists of Crimea and former Deputy Chairman of the Civic Chamber of the Republic of Crimea (currently – Chairman of the Civic Chamber of the Republic of Crimea). This is but another of Ukraine's attempts to re-write events.

a. According to Ukraine, in substance Alexander Formanchuk allegedly publicly identified the Crimean Tatar community as the main obstacle to the integration of Crimea into the political and legal space of the Russian Federation.<sup>394</sup> However, the context of the whole excerpt contained in the relevant Annex confirms that what Mr Formanchuk actually said was very different from Ukraine's distorted account of it. In fact, Mr Formanchuk, who spoke as a political scientist and not as a State official commenting on a specific policy or decision, was only making the point that Crimean Tatars faced challenges in terms of integration in Crimea, both under Ukrainian and then Russian sovereignty. He was also pointing to the confrontational and separatist trends of the *Mejlis* – as opposed to the Crimean Tatar community – as part of the problem to this integration. Thus, this statement does not support, but to the contrary contradicts, Ukraine's allegations.

<sup>&</sup>lt;sup>388</sup> MU, para. 427.

<sup>&</sup>lt;sup>389</sup> Prosecutor of the Republic of Crimea, Decision on suspension of activities of the Mejlis, 12 April 2016 (Annex 272); Ministry of Justice of the Russian Federation, Order No. 595-r "On the inclusion of a public association into the List of public associations and religious organisations whose operation is suspended in view of their extremist activities", 18 April 2016 (Annex 466).

<sup>&</sup>lt;sup>390</sup> MU, para. 427, and Bakhchisaray District Court of the Republic of Crimea, Case No. 5-1591/2016, Ruling, 4 October 2016 (Annex 916 to MU).

<sup>&</sup>lt;sup>391</sup> MU, para. 417, and Bakhchisaray District Court of the Republic of Crimea, Case No. 5-1588/2016, Ruling, 23 November 2016 (Annex 917 to MU).

<sup>&</sup>lt;sup>392</sup> Bakhchisaray District Court of the Republic of Crimea, Case No. 5-1588/2016, Ruling, 23 November 2016 (Annex 917 to MU), p. 2; Mr Ilmi Umerov's written explanation, 27 September 2016 (Annex 297) confirming that the meeting held at his home on 22 September 2016 was aimed at resolving organizational issues of the *Mejlis*.

<sup>&</sup>lt;sup>393</sup> MU, para. 413.

<sup>&</sup>lt;sup>394</sup> MU, para. 413 and fn. 866, referring to extracts of a press article: *Kommersant*, "The Crimean Tatar Ego", 23 March 2015 (Annex 1050 to MU).

b. The understanding of the *Mejlis* as a radical organization prone to inflaming tensions was shared at large in Crimea prior to its ban, as confirmed by a meeting that President Putin held with local community leaders at the time. At this meeting, held on 17 August 2015 in Yalta, the *Mejlis* and Mr Chubarov were already mentioned several times by local community leaders themselves, including the leader of Crimean Tatar movement "Qirim" (himself a former member of the *Mejlis*), as the main problem standing in the way of peace and development on the peninsula.<sup>395</sup> Given Mr Formanchuk's position as an adviser to Mr Aksyonov who has been initiating many measures in favour of the Crimean Tatars,<sup>396</sup> it is not possible to read any discriminatory intent into his statement, contrary to Ukraine's assertions.

#### III. Other Measures Related to Mejlis Members Were Adopted for Legitimate Reasons

185. Besides the ban of the *Mejlis* and in light of the same relevant factual context, Ukraine's other related claims are also manifestly unfounded, including allegations concerning restrictions of movement of *Mejlis* leaders (A), specific allegations of oppression of the *Mejlis* (B), prosecutions and convictions related to the demonstrations of 26 February 2014 (C), and the arrest and detention of Mr Ilmi Umerov (D).

#### A. Alleged Restrictions on the Movements of Crimean Tatar Leaders

186. Ukraine claims that a number of measures restricting the movement of Crimean Tatar leaders constitute racial discrimination under CERD. Here again, Ukraine's allegations are baseless and have nothing to do with racial discrimination.<sup>397</sup> Actually, *none* of the individuals concerned complained of racial discrimination in respect of those sets of facts. In addition, Ukraine's allegations either overlook the objective and reasonable basis as well as legal ground for the impugned measures, or rely on a misleading factual account. The present section will deal with each of these cases in turn.

#### 1. Allegations concerning Mr Mustafa Dzhemilev

187. With regard to the bans from entering Crimea imposed on Mr Dzhemilev in April 2014 and on Mr Chubarov in July 2014, Ukraine contends that these measures are another illustration of the

<sup>&</sup>lt;sup>395</sup> President of the Russian Federation official website, "Meeting with representatives from Crimean ethnic groups' public associations", Yalta, 17 August 2015 (Annex 460).

<sup>&</sup>lt;sup>396</sup> See elsewhere in this Counter-Memorial and the present Chapter, para. 233. See also footnote 117. In particular, supporting measures under the authority of Mr Aksyonov include, *inter alia*, the creation of the contact group on disappearances in October 2014, and the creation of the Council of Crimean Tatars under the Head of the Republic of Crimea on 29 March 2018 (consisting of the members of the *Shura* elected by the extraordinary Qurultay of Muslims of Crimea on 17 February 2018). He also has authority over the State Committee for Inter-ethnic Relations of the Republic of Crimea.

<sup>&</sup>lt;sup>397</sup> MU, paras. 414-420.

Russian Federation's systematic campaign of racial discrimination targeted at the Crimean Tatar community as a whole.<sup>398</sup> However, Ukraine completely omits to mention the relevant context and the reason for such measures.

Mr Dzhemilev's 5-year entry ban to Crimea was served to him on 22 April 2014 based on 188. applicable statutory law allowing competent authorities to deny to foreign citizens and stateless persons entry to the territory of the Russian Federation in specific circumstances, including among others "ensuring the defense capability or security of the state or public order".<sup>399</sup> Mr Dzhemilev's judicial challenge of the ban was unsuccessful. While he failed to initiate such challenge within the statutory time-limit, the Court nevertheless proceeded to a full examination of the arguments and evidence put before it, together with the applicable legal framework. Against this analysis the Court confirmed the legitimate character of the ban as determined by the competent authorities.<sup>400</sup> In particular, the Court confirmed that Mr Dzhemilev, a Ukrainian citizen, had not acquired Russian citizenship because his permanent residence in Crimea as of 18 March 2014 had not been established. Thus, this episode falls outside of the purview of CERD, which does not govern distinctions between citizens and non-citizens.<sup>401</sup> In any event, his appeal of the decision before the Russian Supreme Court was dismissed.<sup>402</sup> Indeed, both the competent authorities and Russian courts had every reason to consider that Mr Dzhemilev might pose a tangible threat to public order and the State's security as he had been recently using his status as former leader of the Mejlis to make explicit public threats in this regard.<sup>403</sup> As the Ukrainian Prime Minister publicly admitted shortly after Mr Dzhemilev's entry ban and the 3 May 2014 riots, Ukraine and Mr Dzhemilev actively cooperated to set up a plan and program with the objective of returning Crimea to Ukraine.<sup>404</sup> Thus it is only natural that such public radical statements and activities drew the attention of Russian authorities in charge of public safety protection and lead to an appropriate and legitimate response.

<sup>&</sup>lt;sup>398</sup> MU, para. 414.

<sup>&</sup>lt;sup>399</sup> Federal Law No. 114-FZ "On the procedure for exit from the Russian Federation and entry into the Russian Federation", 15 August 1996 (Annex 33) ("Federal Law No. 114-FZ of 15 August 1996"), Article 27(1).

<sup>&</sup>lt;sup>400</sup> Moscow City Court, Case No. 3a-0836/2016, Decision, 20 May 2016 (Annex 275).

<sup>&</sup>lt;sup>401</sup> See paras. 380-382 below.

<sup>&</sup>lt;sup>402</sup> Supreme Court of the Russian Federation, Case No. 5-APG16-81S, Appellate Decision, 14 December 2016 (Annex 303).

<sup>&</sup>lt;sup>403</sup> UNIAN, "Dzhemilev promises to 'surprise' the occupants if they don't let him enter Crimea", 22 March 2014 (Annex 898): "For now, my actions in case I'm not allowed in there will remain a secret and surprise for the occupation government. We will not give them the opportunity to prepare"; *Censor.NET*, "War with Ukraine will mark the beginning of the end for Russia and lead to the country's collapse, – Dzhemilev", 14 March 2014 (Annex 895), suggesting that the conflict between Ukraine and Russia will lead to the downfall of the latter; Website of the *Mejlis*, "Mustafa Dzhemilev: Crimean Tatars will hold their own referendum to determine the future of Crimea", 27 March 2014 (Annex 1247), announcing that Mr Dzhemilev was planning to hold its own referendum regarding the status of Crimea.

<sup>&</sup>lt;sup>404</sup> *iPress.ua*, "Yatsenyuk re-assured that he works on a plan to return Crimea", 8 August 2014 (Annex 910): "We are currently looking for funding, and together with Mustafa Dzhemilev, we are working on a stage-by-stage plan and programme to return Crimea".

189. In these circumstances, Mr Dzhemilev's attempt to cross the border on 3 May 2014 was a blatant deliberate provocation and an illegal act since the entry ban against him was already in force. The provocative character of his act is all the more obvious that he had already unsuccessfully attempted to enter the Russian Federation the day before, having been blocked at the border control of Sheremetyevo airport after disembarking from a flight from Kiev.<sup>405</sup> Mr Dzhemilev's attempt to violate the entry ban issued against him resulted in the opening of a criminal case, pursuant to applicable law.<sup>406</sup>

## 2. Allegations concerning Mr Refat Chubarov

190. Under the same circumstances, the entry ban that followed on Mr Chubarov,<sup>407</sup> who had organized the 3 May 2014 violent action and who had been publicly expressing radical views and inflamed tensions, was justified and would have been expected. This 5-year ban from entering the territory of the Russian Federation was served to him on 5 July 2014.<sup>408</sup> As clarified in a Letter from the Federal Migration Service to Mr Chubarov of 8 January 2015 that is submitted by Ukraine itself, Mr Chubarov's expulsion is "necessary to ensure the defense or security of the state, public order, or public health" under Article 27(1) of Federal Law No. 114-FZ of 15 August 1996, which governs restrictions to entry of foreign citizens and stateless persons on the territory of the Russian Federation.<sup>409</sup> Here again, Mr Chubarov's entry ban falls outside the purview of CERD, which does not prohibit distinctions between citizens and non-citizens as long as they do not discriminate against any particular nationality. The entry ban would have been all but unexpected: since March 2014 and up to it, Mr Chubarov had, in his capacity as *Mejlis* Chairman, already been served with at least three warnings from the Crimean Prosecutor on the impermissibility of extremist activities.<sup>410</sup>

<sup>&</sup>lt;sup>405</sup> Moscow City Court, Case No. 3a-0836/2016, Decision, 20 May 2016 (Annex 275).

<sup>&</sup>lt;sup>406</sup> Border Control Department of the Federal Security Service of Russia in the Republic of Crimea, Criminal Case No. 2014818017, Resolution on initiation of the criminal case, 11 August 2014 (Annex 167). The case was later suspended due to the absence of Mr Dzhemilev, who currently resides outside Russia: Senior Forensic Investigator of the Investigative Department of the Directorate of the Federal Security Service of Russia for the Republic of Crimea and the city of Sevastopol, Criminal Case No. 2014818017, Resolution on suspension of preliminary investigation, 8 April 2016 (Annex 271). See also *RIA Novosti Krym*, "Russian Investigative Committee finished the investigation of the case of Dzhemilev, ex-leader of the Mejlis\*", 5 May 2020 (Annex 1022).

<sup>&</sup>lt;sup>407</sup> MU, para. 414.

<sup>&</sup>lt;sup>408</sup> *Kryminform*, "Poklonskaya warns Chubarov on the possibility of declaring the Mejlis an extremist organisation (VIDEO)", 8 July 2014 (Annex 908).

<sup>&</sup>lt;sup>409</sup> MU, para. 414, footnote 868, referring to Letter from Federal Migration Service to R. Chubarov, 8 January 2015 (Annex 849 to MU), and Letter from FSB to R. Chubarov, 13 March 2015 (Annex 858 to MU).

<sup>&</sup>lt;sup>410</sup> See para. 167 above; Acting Prosecutor of the Republic of Crimea, Warning issued to Mr Refat Chubarov, Chairman of the *Mejlis*, on the impermissibility of violating the law, 23 April 2014 (Annex 522); Prosecutor of the Republic of Crimea, Warning issued to Mr Refat Chubarov, Chairman of the *Mejlis*, on the impermissibility of carrying out extremist activities, 3 May 2014 (Annex 523); Prosecutor of the Republic of Crimea, Warning (repeated) to Mr Refat Chubarov, Chairman of the *Mejlis*, on the impermissibility of carrying out extremist activities, 5 July 2014 (Annex 527).

191. When he was served with the entry ban when attempting to cross the border checkpoint from Ukraine, Mr Chubarov was returning from a Mejlis meeting held in the Kherson region on 4 July 2014 and discussing the implementation of a Qurultay decision "on the realization of the right of the Crimean Tatar people to self-determination".411 This followed similar acts and statements, including a call for boycotting elections to the State Council of Crimea made only a few days earlier at the occasion of the celebration of Crimean Tatar flag day, on 26 June 2014.<sup>412</sup>

192. Mr Chubarov did not challenge the entry ban before the competent courts. Instead, he continued conducting activities aimed at undermining the territorial integrity of the Russian Federation, such as giving public speeches through the media calling for extremism and as one of the key actors of the so-called "people's (civilian) blockade of Crimea" that blocked all roads and communications between Crimea and Ukraine in 2015, as described above.<sup>413</sup> Thus the competent authorities had every reason to impose and maintain a ban on Mr Chubarov's entry to the country to ensure the defence or security of the state, public order, or public health under Article 27(1) of Federal Law No. 114-FZ of 15 August 1996.

## 3. Allegations concerning Mr Ismet Yuksel

193. Mr Yuksel was the general coordinator of the Crimean Tatar media outlet QHA and an adviser to the *Mejlis*. On 30 June 2014, Mr Yuksel was banned from entry in Crimea for a 5-year period by an FSB decision. He was notified of this decision while he unsuccessfully attempted to enter Crimea on 10 August 2014. Ukraine takes issue with this measure and claims that it "increased the political vulnerability of the Crimean Tatar community".<sup>414</sup> As in other cases, the decision was lawful and based on legitimate reasons. A Turkish citizen living in Crimea, Mr Yuksel was denied entry into Crimea based on the same provisions of Russian domestic law as in the case of the entry bans against Mr Dzhemilev and Mr Chubarov, which provide for the possibility for competent authorities to deny foreign citizens and stateless persons entry into the territory of the Russian Federation in certain circumstances, including *inter alia* "ensuring the defense capability or security of the state or public order".<sup>415</sup> Once again, Mr Yuksel's case falls outside of the scope of CERD, which does not apply to distinction between citizens and non-citizens.

<sup>&</sup>lt;sup>411</sup> Prosecutor of the Republic of Crimea, Warning (repeated) to Mr Refat Chubarov, Chairman of the *Mejlis*, on the impermissibility of carrying out extremist activities, 5 July 2014 (Annex 527).

<sup>&</sup>lt;sup>412</sup> Prosecutor of the Republic of Crimea, Warning (repeated) to Mr Refat Chubarov, Chairman of the *Mejlis*, on the impermissibility of carrying out extremist activities, 5 July 2014 (Annex 527).

<sup>&</sup>lt;sup>413</sup> See para. 167 above.

<sup>&</sup>lt;sup>414</sup> MU, para. 416.

<sup>&</sup>lt;sup>415</sup> Federal Law No. 114-FZ "On the procedure for exit from the Russian Federation and entry into the Russian Federation", 15 August 1996 (Annex 33), Article 27(1); Head of the Department of the Federal Security Service in the Republic of Crimea and the city of Sevastopol, Letter of response No. Yu-1329/Yu-1336 on consideration of the request of I. Yuksel, 29 October 2014 (Annex 198).

194. Mr Yuksel challenged the decision before the Moscow City Court, which rejected his request on 14 May 2015 based on a thorough examination of the arguments and evidence put before it as well as the applicable legal framework.<sup>416</sup> He then appealed the decision to the Supreme Court of the Russian Federation, which rejected it on 18 November 2015, on the basis of legitimate reasons.<sup>417</sup> The Supreme Court confirmed that "the temporary restrictive measures applied by the Russian Federal Security Service against Yuksel Ismet pursue a legitimate goal, are proportional and necessary, and do not violate his rights." It is evident that the authorities' concern was similar to that later underlying the ban on the *Mejlis*. Like in the two 2016 *Mejlis* decisions, a key provision relied on by the Court was Article 55 of the Russian Constitution whereby "human and citizen rights and freedoms may be limited by federal legislation only to the extent necessary, including to ensure the country's defense and security."<sup>418</sup> As with the 2016 decisions that followed, the Supreme Court referred to applicable international instruments, such as the ECHR and the ICCPR.

# 4. Allegations concerning the Controls over Messrs Eskender Bariiev, Sinaver Kadyrov, and Abmedzhit Suleimanov

195. Ukraine's and Mr Bariiev's portrayal of the episode of the check and alleged detention of Mr Bariiev, Mr Sinaver Kadyrov and Mr Abmedzhit Suleimanov on 22-23 January 2015 as they were attempting to cross the border, are also deeply misleading.<sup>419</sup> The law enforcement authorities conducted an investigation for inciting to hatred or enmity and for establishing a non-commercial organization for such purposes. Contrary to what Mr Bariiev alleges, no criminal charges were raised against any of these three individuals in connection with this episode: in fact, one month later, on 24 February 2015, the investigating officer decided to close the investigation and declined to raise formal criminal charges, concluding that the collected evidence did not support such charges.<sup>420</sup>

196. Nevertheless, Mr Bariiev alleges having learnt that criminal charges had been raised against him by consulting a webpage published on the website of the Office of the Prosecutor of the Republic of Crimea on 29 January 2015.<sup>421</sup> This statement is not credible.

a. First, as a rule criminal charges are communicated to an accused by way of formal delivery of the act of accusation, not through the posting of a mere press release on the

<sup>&</sup>lt;sup>416</sup> Moscow City Court, Case No. 3-247/2015, Decision, 14 May 2015 (Annex 231).

<sup>&</sup>lt;sup>417</sup> Supreme Court of the Russian Federation, Ruling No. 5-APG15-110s, 18 November 2015 (Annex 912 to MU).

<sup>&</sup>lt;sup>418</sup> *Ibid.*, *p.* 2.

<sup>&</sup>lt;sup>419</sup> MU, para. 417; Witness Statement of Eskender Bariiev, 6 June 2018 (Annex 15 to MU), paras. 32-33.

<sup>&</sup>lt;sup>420</sup> High-Priority Cases Investigator of the First Investigative Department for the Investigation of High-Priority Cases of the Main Investigative Directorate of the Investigative Committee of the Russian Federation in the Republic of Crimea, Inquiry material No. 15pr-15, Resolution on refusal to initiate a criminal case, 24 February 2015 (Annex 218). See also Acting Head of the General Investigative Office of the Investigative Committee of the Russian Federation of the Republic of Crimea and the city of Sevastopol, Letter No. Ishsk. 201-08-2020/9779, 20 April 2020 (Annex 422).

<sup>&</sup>lt;sup>421</sup> Witness Statement of Eskender Bariiev, 6 June 2018 (Annex 15 to MU), para. 33.

Prosecutor's website. Tellingly, Mr Bariiev submits no copy of such formal notification, nor could he do so.

- b. Secondly, far from supporting Mr Bariiev's accusations, the relevant press release published on the website of the Office of the Prosecutor of the Republic of Crimea actually does not mention his name once. Instead, it contains a general statement made by the Prosecutor of the Republic of Crimea in the context of a meeting of a working group on the fight against extremism.<sup>422</sup> The statement mentioned six ongoing investigations without disclosing any names covering five discrete heads of charges. The Prosecutor did not say that all five heads of charges cited by M. Bariiev related to any of these particular cases, and certainly not to Mr Bariiev's case<sup>423</sup>; nor did the Prosecutor say that formal criminal charges had been raised in relation to any of these investigations. Thus, that Mr Bariiev could have read the opening of non-existent criminal proceedings against him into such general communication is simply not credible.
- c. Nothing in this episode suggests any arbitrary or discriminatory application of the law, contrary to Ukraine's contention.<sup>424</sup> The distinct administrative proceedings raised against Mr Kadyrov upon the episode of 22-23 January 2015 relate to an entirely different matter, namely the violation of migration laws, as is examined elsewhere.<sup>425</sup>

197. Based on the above, it is extraordinary for Ukraine to contend that "Mr. Bariiev was ultimately forced to relocate to Kyiv with his wife and two sons after the Russian occupation authorities brought fabricated criminal charges against him of engaging in and funding extremist activity, organizing public disturbances, and compromising the territorial integrity of the Russian Federation."<sup>426</sup> Such criminal charges were never raised. Besides, nowhere does Ukraine attempt to engage in a genuine examination of the facts that gave rise to the investigation against him. In this regard, it is useful to recall that Mr Bariiev was already within the inner circle of suspected persons who were apprehended and home searched by the authorities in September 2014 in connection with the criminal investigation relating to the violent riots of 3 May 2014.<sup>427</sup>

 <sup>422</sup> Crimean Prosecutor's Office official website, "Natalia Poklonskaya: any destructive activities will be suppressed",
 29 January 2015 (Annex 454).

<sup>&</sup>lt;sup>423</sup> As mentioned, the investigation relating to Mr Barilev, Mr Kadyrov and Mr Suleimanov were only conducted in respect of two material heads of charges under the Criminal Code of the Russian Federation, namely inciting to hatred or enmity (Article 239.2) and establishing a non-commercial organization that infringes on the person and rights of citizens (Article 282.2).

<sup>&</sup>lt;sup>424</sup> As an example, with respect to Mr Kadyrov Ukraine alleges a discriminatory application of the law at paras. 417 and 473 of MU, but it makes no attempt to establish it.

<sup>&</sup>lt;sup>425</sup> See Appendix C, section II(I), paras. 65-66.

<sup>&</sup>lt;sup>426</sup> MU, para. 418.

<sup>&</sup>lt;sup>427</sup> See Appendix B, paras. 31-33.

#### 5. Allegations concerning Mr Ali Ozenbash

198. Ukraine also reports that "Mr. Ali Ozenbasha [sic], Chairman of the Audit Committee of the Qurultay of Crimean Tatars and a member of the Mejlis", was removed from a train while attempting to cross the border into Ukraine for medical treatment, on or about 11 September 2014.<sup>428</sup> As Ukraine eludes but the OSCE confirms, he was eventually able to cross the border into Ukraine.<sup>429</sup> Ukraine provides no further element or explanation as to why it alleges that this act should point to racial discrimination.

199. As for the inconveniences that Mr Ozenbash experienced during the border control procedures, his identification data as checked at the initial control matched the data of another person wanted by the Russian authorities. As a consequence, additional verifications by the Border Guard Service of the FSB of the Russian Federation were required in order to resolve the issue and clarify that Mr Ozenbash was not the person wanted by the authorities. He was then left free to continue his journey. The Border control department of the FSB Border Guard Service clarified this in its response to Mr Ozenbash's subsequent request and also indicated that border control officials are instructed to minimize delays generated by such situations as far as possible.<sup>430</sup> Nothing is discriminatory in such border checking procedures, which apply to everyone.

### 6. Allegations concerning Mr Dzhelyalov and Mr Smedlyaev

200. According to Ukraine, "[a]bout a year later, several prominent Mejlis leaders were prevented from leaving Crimea to attend the World Congress of Crimean Tatars". It said: "The Crimean leaders who were prevented from attending this event included some of the most senior members of the Mejlis and the Qurultay, namely first deputy chairman [of the *Mejlis*] Nariman Dzheljalov and chairman of the central electoral commission of the Qurultay [and former Head of the Secretariat of the *Mejlis*], Zair Smedlyaev."<sup>431</sup> Ukraine does not provide any detailed information on this allegation, including on the context and the manner in which the two men were allegedly prevented from leaving Crimea. In support of its claim Ukraine only refers to a passage of an OSCE report that states that these persons had been summoned for questioning by the Russian intelligence services in Crimea on 1 August 2015.<sup>432</sup>

<sup>&</sup>lt;sup>428</sup> MU, para. 419.

<sup>&</sup>lt;sup>429</sup> OSCE, Latest from OSCE Special Monitoring Mission to Ukraine (SMM) Based on Information Received as of 18:00 (Kyiv time), 11 September 2014 (Annex 809 to MU), p. 4, referred to in MU, fn. 880.

<sup>&</sup>lt;sup>430</sup> First Deputy Head of the Border Control Department of the Federal Security Service of Russia, Letter No. 21/7/3/O-577 to Ozenbash A.A., 17 March 2015 (Annex 223).

<sup>&</sup>lt;sup>431</sup> MU, para. 419.

<sup>&</sup>lt;sup>432</sup> 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), 17 September 2015 (Annex 812 to MU), para. 155 (referred to in MU, para. 419 and fn. 883).

201. What the record shows is different. Mr Dzhelyalov and Mr Smedlyaev had indeed been summoned to provide testimony as witnesses on 1 August 2015 in a criminal case on the violent riots of 26 February 2014, which involved in particular Mr Chiygoz, among others. They did testify on that date before the competent department of the Investigative Committee of the Russian Federation for the Republic of Crimea in Simferopol<sup>433</sup> without any coercive procedural measures being applied upon them. By that time, the investigation was in an active phase and many witnesses were interrogated on or around that date. Besides, the witnesses had obviously been aware of the date of the summon in advance. Under Article 188(3) of the Russian Criminal Procedural Code, a summoned person shall appear for an interrogation at the scheduled terms or notify the investigator in advance of his/her reasons for failure to appear. However, neither Mr Dzhelyalov or Mr Smedlyaev made an attempt to inform the summoning authorities of their possible existing plans on the summon date and to request the testimony to be re-scheduled at a different date.

202. The Russian authorities imposed no formal restrictions of movement over Messrs Dzhelyalov and Smedlyaev preventing them from exiting Crimea. They were not subjected to any enforcement actions as witnesses. Therefore, Ukraine's accusations of "a campaign of discriminatory political suppression against Crimean Tatars [that] has affected [...] their ability to leave"<sup>434</sup> are baseless, to say the least.

#### B. ACCUSATIONS OF OPPRESSION OF THE MEJLIS

203. Ukraine's accusations of oppression of the *Mejlis* prior to its ban are also manifestly unfounded.<sup>435</sup> While the previous examination of the two judicial decisions banning the *Mejlis* is dispositive of the matter, it is necessary to put the record straight on a series of factual misrepresentations relied upon by Ukraine to support its forged allegation of "a coordinated campaign on the part of the Russian occupation authorities to put this representative institution (and through it the entire Crimean Tatar community) under maximum pressure."<sup>436</sup>

204. The building that *de facto* hosted the *Mejlis* in Simferopol was searched on 16 September 2014 and vacated to be placed under seizure on the following day pursuant to an order on interim

<sup>&</sup>lt;sup>433</sup> High-priority cases investigator of the First Investigative Department for the Investigation of High-Priority Cases of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Criminal Case No. 2014467091, Record of additional interrogation of witness (Dzhelyalov N.E.), 1 August 2015 (Annex 241); High-priority cases investigator of the First Investigative Department for the Investigation of High-Priority Cases of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Criminal Case No. 2014467091, Record of additional interrogation of witness (Smedlyaev Z.S.), 1 August 2015 (Annex 242).

<sup>&</sup>lt;sup>434</sup> MU, para. 419.

<sup>&</sup>lt;sup>435</sup> MU, paras. 421-431.

<sup>&</sup>lt;sup>436</sup> MU, para. 421.

measures of protection from the Simferopol central district court of 15 September 2014.<sup>437</sup> The building was occupied by the Crimea Foundation, which is presented as the *Mejlis*' charitable foundation, as well as the *Mejlis* and the media outlet *Avdet*. The order on interim measures was taken as part of ongoing proceedings initiated by the Prosecutor of Crimea before the same Court against the Crimea Foundation for non-compliance with applicable law relating to public organizations and associations. In particular, and as the Court would eventually rule,<sup>438</sup> the Crimea Foundation registered under Ukrainian law but not registered in Russia, had Mr Dzhemilev among its directors, a situation which was illegal since Mr Dzhemilev, a Ukrainian citizen, had been banned from entry in the Russian Federation a few months earlier due to the threat posed to the State security by his extremist activities in relation to the status of Crimea.<sup>439</sup> The Court ordered the Crimea Foundation to remedy the violation by taking necessary measures to remove Mr Dzhemilev from his directorship.

205. In this context, interim measures of protection were aimed at preventing the risk that the assets and resources of the Crimea Foundation might be used by Mr Dzhemilev, a then declared undesirable in Russia, in the service of his subversive political activities, which was a real possibility as long as he remained a director of the organization. To be sure, the order merely temporarily froze the Crimea Foundation's exercise of its property rights in respects of its assets pending final execution of the Court's decision; it did not permanently divest the Foundation therefrom. The ordered measures were obviously based on the Crimea Foundation's non-compliance with the law rather than any ethnic or racial ground. Their continuation was subsequently confirmed by the Supreme Court of the Republic of Crimea as the condition for their lifting had not been met, namely the Crimea Foundation had not submitted credible evidence that it had fulfilled its obligation to remove Mr Dzhemilev from its directors.<sup>440</sup>

206. Ukraine also briefly mentions the situation of a distinct building that had been occupied by the Bakhchisaray regional *mejlis*,<sup>441</sup> and that bears no relation to the previous episode. The building was not the property of the *mejlis*. It was in fact leased by the Bakhchisaray local authorities to a non-commercial organization, the Council of Teachers, which in turn let the Bakhchisaray regional *mejlis* occupy it. Rather than being based on ethnic or racial motives or targeting the regional *mejlis*, as Ukraine artificially alleges, the authorities' actions were determined by a number of contract-

<sup>&</sup>lt;sup>437</sup> Central District Court of Simferopol of the Republic of Crimea, Case No. 2-1688/14, Ruling on interim measures,
15 September 2014 (Annex 185); Central District Court of Simferopol of the Republic of Crimea, Case No. 2-1688/14,
Writ of Execution No. 011913686, 15 September 2014 (Annex 186). See MU, paras. 422 and 424.

<sup>&</sup>lt;sup>438</sup> Central District Court of Simferopol of the Republic of Crimea, Case No. 2-1688/14, Decision, 29 September 2014 (Annex 194).

<sup>&</sup>lt;sup>439</sup> Federal Law No. 7-FZ "On non-profit organizations", 12 January 1996 (Annex 31). Article 15(1.2) provides that a director (or founder) of such organizations cannot be a foreign citizen or stateless person whose presence or residence on the territory of the Russian Federation has been banned pursuant to applicable law.

<sup>&</sup>lt;sup>440</sup> Supreme Court of the Republic of Crimea, Case No. 33-1258/2017, Appellate Decision, 15 February 2017 (Annex 309).

<sup>&</sup>lt;sup>441</sup> MU, para. 424.

related breaches on the Council of Teachers side. The Council of Teachers, the lease tenant, had not paid the contractual rent for 6 months despite enjoying particularly favourable terms and did not insure the property, in violation of the lease agreement, which in particular contained a clause providing for its lapse in case of non-payment of the rent for three months.<sup>442</sup> In light of these circumstances it should be no surprise that the Bakhchisaray authorities decided to terminate the lease agreement, to which the Bakhchisaray regional *mejlis* was not even a party.<sup>443</sup> At this occasion the Bakhchisaray mayor clarified that the same treatment applied to all organizations alike without distinction of any kind and vigorously rejected any accusations that the authorities were specifically targeting the Crimean Tatar community.<sup>444</sup>

207. Nor is Ukraine's reliance on Mr Chubarov's and Mr Bariiev's communications and applications with various State organs of the Russian Federation in relation to the ban on the  $Mejlis^{445}$  of any assistance to its claims since the record confirms that they were rejected on procedural grounds and that they were not precluded from curing such defects.<sup>446</sup>

# C. Alleged Retroactive Prosecutions and Convictions Related to Demonstrations of 26 February 2014

208. Ukraine also accuses the Russian Federation of conducting retroactive prosecutions and convictions related to demonstrations of 26 February 2014<sup>447</sup> in order to exert pressure on *Mejlis* leaders.

209. According to Ukraine, "the Russian Federation has resorted to politically-motivated prosecutions of those Mejlis leaders who remained in Crimea."<sup>448</sup> Under this unilateral and misleading labelling Ukraine in fact refers to prosecutions for extremist activities, which, again, have nothing to do with racial discrimination.

<sup>&</sup>lt;sup>442</sup> *Kryminform*, "Authorities of Bakhchisaray decided to return the premises occupied by the regional *mejlis*", 30 July 2014 (Annex 909); *SEVAS*, "A new 'resident' in the Bakhchisaray *mejlis*' building", 3 April 2015 (Annex 920).

<sup>&</sup>lt;sup>443</sup> Lease agreement No. A-46/12, 28 September 2012 (Annex 1245); Economic Court of the Republic of Crimea, Case No. A83-944/2014, Decision, 25 September 2014 (Annex 193); Twenty First Arbitrazh Court of Appeal, Case No. A83-944/2014, Decision, 17 March 2015 (Annex 224).

Kryminform, "Authorities of Bakhchisaray decided to return the premises occupied by the regional *mejlis*", 30 July 2014 (Annex 909).

<sup>&</sup>lt;sup>445</sup> MU, paras. 429-430.

Letter from Russian Ministry of Foreign Affairs to R. Chubarov, 9 August 2017 (Annex 866 to MU); Letter of 27 September 2017 to R. Chubarov from the Prosecutor of Crimea, 27 September 2017 (Annex 867 to MU); Supreme Court of the Republic of Crimea, case No. 2A-3/2016, Decision, 21 July 2017 (Annex 922 to MU).

<sup>&</sup>lt;sup>447</sup> MU, paras. 432-435.

<sup>&</sup>lt;sup>448</sup> MU, para. 432.

210. Ukraine points to charges faced by the Deputy Chairman of the *Mejlis*, Mr Akhtem Chiygoz, as well as other individuals, with respect to offences committed during the demonstrations of 26 February 2014 before the Crimean Parliament building.<sup>449</sup>

211. The Crimean Supreme Court found that Mr Chiygoz's guilt in organizing mass riots on 26 February 2014 accompanied with violence, physical injuries, deaths and destruction of property was proved by 12 direct testimonies of witnesses. In particular, the Court established that protesters from the *Mejlis*, following Mr Chiygoz's instructions, initiated an open confrontation with the pro-Russian demonstrators, began to force them out of the yard, initiated a brawl, beat them with flagpoles and sprayed gas.<sup>450</sup> In any event, criminal prosecution against the leaders of the mass riot in front of the Crimean Parliament building on 26 February 2014 cannot be regarded as politically motivated – and certainly not racially discriminatory –, considering the dramatic consequences of this event: destruction of property, deaths of two persons and injuries suffered by numerous participants – over 80 persons.

212. Contrary to Ukraine's and Mr Chiygoz's unsupported allegations,<sup>451</sup> the record confirms that Mr Chiygoz's treatment in detention was lawful and not discriminatory, that he was treated with respect for his rights and provided with all necessary facilities prescribed under Russian law, on equal terms with other detainees.<sup>452</sup> During his pre-trial detention Mr Chiygoz never claimed or filed any petition on the allegedly horrible conditions of his confinement and on alleged "special" attitudes towards him. He repeatedly confirmed the absence of such claims.<sup>453</sup>

213. Neither does the record support Ukraine's allegation of long-term solitary confinement imposed on Mr Chiygoz.<sup>454</sup> Instead, he spent one single day in a solitary cell as a disciplinary penalty for repeated gross violations of the internal regulations of the pre-trial detention facility.<sup>455</sup> Every solitary and joint cell was kept in accordance with the sanitary rules, including the cell occupied by Mr Chiygoz.<sup>456</sup>

<sup>&</sup>lt;sup>449</sup> MU, para. 432 and fn. 911.

<sup>&</sup>lt;sup>450</sup> Supreme Court of the Republic of Crimea, Criminal Case No. 1-1/2017, Decision, 11 September 2017 (Annex 342).

<sup>&</sup>lt;sup>451</sup> MU, paras. 434-435, and Witness Statement of Akhtem Chiygoz, 4 June 2018 (Annex 19 to MU), paras. 13, 15.

<sup>&</sup>lt;sup>452</sup> Head of the Department of the Federal Penitentiary Service of Russia in the Republic of Crimea and the City of Sevastopol, Information note on the arguments of Ukraine about alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21.12.1965 on the territory of the Russian Federation concerning conditions of Mr. Chiygoz's pre-trial detention, 8 December 2020 (Annex 429).

<sup>&</sup>lt;sup>453</sup> Mr. Chiygoz's Explanatory Statements on the absence of claims on the conditions of the detention (Annex 210).

<sup>&</sup>lt;sup>454</sup> MU, para. 434, relying on Witness Statement of Akhtem Chiygoz, 4 June 2018 (Annex 19 to MU), paras. 8 and 12.

<sup>&</sup>lt;sup>455</sup> Information on Mr. Chiygoz's disciplinary penalty during the period of the pre-trial detention (Annex 230).

<sup>&</sup>lt;sup>456</sup> Head of the Department of the Federal Penitentiary Service of Russia in the Republic of Crimea and the City of Sevastopol, Information note on the arguments of Ukraine about alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21.12.1965 on the territory of the Russian Federation concerning conditions of Mr. Chiygoz's pre-trial detention, 8 December 2020 (Annex 429).

214. It is no secret that after his liberation Mr Chiygoz has remained an activist and has carried out spreading extremist messages about the need to take violent action for the "deoccupation of Crimea".<sup>457</sup> Moreover, in an interview in 2020, he confirmed in unequivocal terms his involvement in clearly extremist activities in February 2014:

"I handed [Mustafa Dzhemilev] these lists of 3,000 people [who were ready to fight against Russia in Crimea] in February 2014. And when they searched for these lists in my house during a raid, they even searched for them under the floor. Then Mustafa came from Kyiv. [...] He said that the issue of weapons from mainland Ukraine was being resolved, and in one day we made a list of people who were ready to fight — there were about three thousands of them. I did not make copies of the list, I handed over the original one to Dzhemilev, and he took it to Kyiv, so they didn't find anything during the raid. In those days, by the way, we were actively working on the creation of Crimean Tatar national self-defense units. All men began to guard populated localities and places of compact residence of Crimean Tatars. For example, Bakhchysarai was completely cordoned off by our guys. [...] So, if even one [Ukrainian] military unit had begun armed resistance, tens of thousands would have stood with them in the trenches."<sup>458</sup>

215. In relation to the alleged retroactive nature of these proceedings that apply Russian law to events that occurred prior to 18 March 2014,<sup>459</sup> Ukraine considers that Crimean Tatars and ethnic Ukrainians have been targeted and thereby discriminated by such retroactive proceedings because no ethnic Russians would have been subject to similar proceedings.<sup>460</sup>

216. Under Russian law, the criminality and punishment of acts committed in the territories of the Republic of Crimea and the city of Sevastopol before 18 March 2014 are determined on the basis of the criminal legislation of the Russian Federation as brought into application in Crimea under Federal Law No. 91-FZ of 5 May 2014.<sup>461</sup> However, Article 2 of this Law contains a prohibition of *reformatio in pejus*, whereby the application of the new law would place an accused in a worse position than that of the previous law. In light of this, application of Russian criminal law should follow the rules governing retroactivity, as provided in Article 10 of the Russian Criminal Code, ensuring that the situation of a person cannot be aggravated and the principle of *nulla poena sine* 

<sup>&</sup>lt;sup>457</sup> Ukrinform.net, "Akhtem Chiygoz, Deputy Chairman of Mejlis of Crimean Tatar People: Time has come to form international platform for de-occupation of Crimea", 1 August 2018 (Annex 986), also available at <u>https://www.ukrinform.net/rubric-polytics/2509723-akhtem-chiygoz-deputy-chairman-of-mejlis-of-crimean-tatar-</u> <u>people.html</u>.

<sup>&</sup>lt;sup>458</sup> Ukrinform, "Akhtem Chiygoz, former political prisoner, deputy chairman of Mejlis of Crimean Tatar people: I handed Dzhemilev the lists of 3,000 people who were ready to fight in Crimea", 26 February 2020 (Annex 1019), also available at <u>https://www.ukrinform.net/rubric-society/2884876-akhtem-chiygoz-former-political-prisoner-deputy-chairman-of-mejlis-of-crimean-tatar-people html</u>.

<sup>&</sup>lt;sup>459</sup> MU, para. 433.

<sup>&</sup>lt;sup>460</sup> MU, para. 433.

<sup>&</sup>lt;sup>461</sup> Federal Law No. 91-FZ "On the application of the provisions of the Criminal Code of the Russian Federation and the Criminal Procedural Code of the Russian Federation in the territories of the Republic of Crimea and the federal city of Sevastopol", 5 May 2014 (Annex 65). See also V.M. Lebedev (ed.), *Commentary to the Criminal Code of the Russian Federation*, Vol. 1, General Part, Urait, Moscow, 2017 (Annex 1202).

*lege* is complied with. The Russian Constitutional Court has found this legislation to comply with the Constitution and the principles of criminal law.<sup>462</sup> Moreover, this legislation does not provide for exceptions to the retroactive application of the Criminal Code, thus extending no basis for discrimination. Finally, there is no aggravation of Mr Chiygoz's position as a result of the application of Russian criminal law since the Criminal Code of Ukraine equally criminalizes the organization of a mass riot, and provides a definition thereof and sanctions therefor similar to those found in the Russian Criminal Code.<sup>463</sup>

# D. ARREST, DETENTION, AND TRIAL OF MR ILMI UMEROV

217. Ukraine also considers that the arrest, detention, and trial of Mr Ilmi Umerov, a Deputy Chairman of the *Mejlis* since April 2015 and one of its founding members since June 1991, constitute racial discrimination.<sup>464</sup> On 12 May 2016, Mr Umerov was charged with undermining the territorial integrity of the Russian Federation under Article 280(1) of the Criminal Code of the Russian Federation<sup>465</sup> in relation to the content of an interview calling for violence he had given in Kiev on 19 March 2016 and broadcast by ATR TV. On the same day, he was arrested and his home was searched. Having carefully examined the factual circumstances of the case, witness statements, video footage and other evidence, the competent court found him guilty of publicly calling for actions aimed at violating the territorial integrity of the Russian Federation on 27 September 2017.<sup>466</sup>

218. As reported by Ukraine, Mr Umerov claims that the enhanced security measures taken to arrest him and the search of his home was a "show of unnecessary force" which pointed to "an attempt to intimidate the wider Crimean Tatar community".<sup>467</sup> This is clearly not true. The security measures undertaken by Russian authorities were adequate and necessary to preserve public order due to the fact that Mr Umerov's escorting could potentially provoke mass riots, as it had occurred in Mr Dzhemilev's case, which had resulted in the violent riots of 3 May 2014. As the record and Mr Umerov himself confirm, his escorting and the interrogation were carried out according to due process and with his voluntary cooperation.<sup>468</sup>

<sup>&</sup>lt;sup>462</sup> Constitutional Court of the Russian Federation, Case No. 1707-O, Ruling, 19 July 2016 (Annex 287), para. 2.1.

<sup>&</sup>lt;sup>463</sup> Criminal Code of Ukraine, 5 April 2001 (Annex 748).

<sup>&</sup>lt;sup>464</sup> MU, paras. 436-441.

<sup>&</sup>lt;sup>465</sup> Decree for the Initiation of criminal proceeding and Pre-trial Investigation, 12 May 2016 (Annex 932 to MU). See also Investigator of the Investigation Department of the Department of Federal Security Service (FSB) of Russia in the Republic of Crimea and the city of Sevastopol, Decision to Prosecute as Defendant, 19 May 2016 (Annex 934 to MU).

<sup>&</sup>lt;sup>466</sup> Simferopol District Court of the Republic of Crimea, Criminal Case No. 1-171/17, Decision, 27 September 2017 (Annex 350).

<sup>&</sup>lt;sup>467</sup> MU, para. 438 and Witness Statement of Ilmi Umerov, 6 June 2018 (Annex 20 to MU), para. 15.

<sup>&</sup>lt;sup>468</sup> Witness Statement of Ilmi Umerov, 6 June 2018 (Annex 20 to MU), paras. 9-10; Investigator of the Investigation Department of the Federal Security Service of the Russian Federation for the Republic of Crimea and the city of Sevastopol, Protocol of Interrogation of the Suspect, 12 May 2016 (Annex 933 to MU).

219. Ukraine and Mr Umerov contend that the charges raised against him relied on an inaccurate Russian translation of his statement pronounced in the Crimean Tatar language.<sup>469</sup> While Russia rejects such allegation, whatever the linguistic version endorsed, the overall meaning of the relevant parts of his statement still conveys a call to as many persons as possible to help *Mejlis* members who remain in Crimea to reach a position where they can influence the situation towards a withdrawal of the Russian Federation from Crimea and a reestablishment of Ukraine's sovereignty over it. Therefore, Ukraine's linguistic argument is immaterial. On the other hand, what this episode shows again is that Ukraine's allegations have in fact nothing to do with racial discrimination.

220. Mr Umerov's allegation that the criminal proceedings conducted against him by the Russian Federation reflected "attempts to frighten the Crimean Tatars as a people",<sup>470</sup> is clearly unfounded. Ukraine itself, which admits that Mr Umerov was ultimately released, points to what is in its view "the political nature of the charges against him",<sup>471</sup> therefore conceding that its claims have in fact no relation to racial discrimination under CERD.

221. With regard to Mr Umerov's psychiatric assessment as part of the proceedings raised against him,<sup>472</sup> Ukraine's selective account is once again erroneous and misleading. The investigating officer took the decision to commit Mr Umerov to preliminary psychiatric examination pursuant to standard procedure on the basis of information on Mr Umerov's health-condition that his defence counsel expressly asked to be entered into his case file.<sup>473</sup> Mr Umerov's multiple health problems revealed by this information prompted the investigator to order a check of Mr Umerov's mental condition in order to assess whether he was at all relevant times mentally fit, fully understanding and controlling his actions. Obviously a finding that Mr Umerov was mentally impaired and not responsible for his acts at the time of his impugned acts would have altered his ability to stand trial. Therefore, in order to preserve Mr Umerov's own rights, his psychological state had to be verified prior to further investigation.<sup>474</sup>

222. The investigator's decision of 16 June 2016 committed Mr Umerov to psychiatric examination on an ambulatory (outpatient) basis, meaning that the assessment would be made upon a simple appointment with the medical expert and that no stay in a psychiatric hospital was

<sup>&</sup>lt;sup>469</sup> MU, para. 440 and Witness Statement of Ilmi Umerov, 6 June 2018 (Annex 20 to MU), para. 20. See also Excerpts of Hearing Transcript of Umerov, 1 January 2018 (Annex 935 to MU).

<sup>&</sup>lt;sup>470</sup> Witness Statement of Ilmi Umerov, 6 June 2018 (Annex 20 to MU), para. 23.

<sup>&</sup>lt;sup>471</sup> MU, para. 441.

<sup>&</sup>lt;sup>472</sup> MU, para. 439.

<sup>&</sup>lt;sup>473</sup> Investigator of the Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, case No. 2016427026, Resolution on outpatient forensic psychiatric examination, 16 June 2016 (Annex 281).

<sup>&</sup>lt;sup>474</sup> According to Article 196(3) of the Criminal Procedural Code of the Russian Federation appointment and execution of a court examination shall be obligatory if it is necessary to establish the mental or physical state of the accused where doubts arise concerning their sanity or ability to independently defend their rights in the criminal proceedings: see Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40).

required.<sup>475</sup> Based on medical experts' advice,<sup>476</sup> recalling that mental health checks of an accused do not require the accused's consent, and since Mr Umerov had failed to present himself to the appointment for ambulatory examination, the investigating officer subsequently requested that Mr Umerov be instead committed to an inpatient psychiatric examination in a designated hospital.<sup>477</sup> This motion was granted by the court.<sup>478</sup> It should be noted that Mr Umerov has never been detained as part of these proceedings and, apart from his short stay in the hospital for psychiatric assessment pursuant to standard procedure, he remained free until the guilty verdict. Mr Umerov also confirmed that he found the conditions of his stay at the hospital to be satisfactory.<sup>479</sup>

# IV. The Ban of the *Mejlis* Does Not Constitute Racial Discrimination Against the Crimean Tatar Community

223. The fact that among all existing institutions, organizations, and associations that purport to defend the interests of the Crimean Tatar community, including the Qurultay, the *Mejlis* was *the only one* to be banned confirms that the ban was not directed at the Crimean Tatar community as such, and was not part of a campaign designed to eradicate, as Ukraine contends, the said community for ethnic motives.

224. The absence of any racial discrimination directed at the Crimean Tatar community is confirmed by the mere fact that since the ban of the *Mejlis*, the Crimean Tatar community has never been deprived of representative institutions. To the contrary, there are a number of other public organizations that continue to represent the Crimean Tatars in Crimea, some of them enjoying very high degrees of representativeness and legitimacy (A). In contrast to the *Mejlis*, these public organizations reject violent methods. This explains why the *Mejlis* is rejected today by wide sections of the Crimean Tatar community and is the only one to have been banned (B).

<sup>&</sup>lt;sup>475</sup> Investigator of the Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, case No. 2016427026, Resolution on outpatient forensic psychiatric examination, 16 June 2016 (Annex 281).

<sup>&</sup>lt;sup>476</sup> Record of Questioning of G.M. Kushnir by the Investigator of the Investigative Office of the Department of the Federal Security Service of Russia in the Republic of Crimea and City of Sevastopol, case No. 2016427026, 5 August 2016 (Annex 291); Record of interrogation of S.A. Krasnovskiy by the Investigator of the Investigative Office of the Department of the Federal Security Service of Russia in the Republic of Crimea and City of Sevastopol, case No. 2016427026, 10 August 2016 (Annex 293). Both specialists confirmed that the Parkinson disease, which had been diagnosed to Mr Umerov, may cause psychiatric troubles, thus warranting a psychiatric examination.

<sup>&</sup>lt;sup>477</sup> Investigator of the Investigative Office of the Department of the Federal Security Service of Russia in the Republic of Crimea and City of Sevastopol, case No. 2016427026, Ruling on filing a motion to put an accused person (not in custody) in an inpatient psychiatric hospital for a forensic psychiatric examination, 8 August 2016 (Annex 292).

<sup>&</sup>lt;sup>478</sup> Kievskiy District Court of Simferopol, case No. 3/5-4/2016, Ruling on putting a person in an inpatient hospital for a forensic psychiatric examination, 11 August 2016 (Annex 294).

<sup>&</sup>lt;sup>479</sup> *Komsomolskaya Pravda.Krym*, "Ilmi Umerov, who is being 'moulded' into a second Savchenko: I am not a political prisoner!", 2 September 2016 (Annex 958).

#### A. THE EXISTENCE OF MULTIPLE ORGANIZATIONS REPRESENTING CRIMEAN TATARS IN CRIMEA

225. Ukraine refers to the *Mejlis* as allegedly the only truly legitimate representative institution of Crimean Tatars endowed with quasi-executive functions.<sup>480</sup> However, the *Mejlis* is not the only organization that purports to protect the rights and represent the interests of the Crimean Tatar community. The Court referred in the Order on Provisional Measures to the Crimean Tatars' "representative institutions, <u>including</u> the *Mejlis*".<sup>481</sup> Among these "institutions", only the *Mejlis*, for the reasons set out above, was banned in Crimea. The other "institutions" have all been operating in Crimea without any impediment since 2014. Moreover, as indicated above, the application to ban the *Mejlis* originated, *inter alia*, from a request sent *by Crimean Tatar organizations* to the Prosecutor of Crimea.<sup>482</sup>

226. As confirmed by the two 2016 judicial decisions banning the *Mejlis*, at the time the decisions were rendered there were about 30 such Crimean Tatar organizations in Crimea representing about 20,000 members.<sup>483</sup> Under the last census conducted in 2014, Crimean Tatars number 232,340 out of 2,284,769 inhabitants in Crimea – 10.2%.<sup>484</sup> The Qurultay of the Crimean Tatar people had 250 members and the *Mejlis* was composed of 33 members, while regional and local *mejlises* totalized a membership of about 2,500 people,<sup>485</sup> which points to a total of less than 2,800 members for the whole Qurultay/*Mejlis* system. This represents less than 14% of Crimean Tatars who are involved in representative public organizations, and less than 1.2% of the whole Crimean Tatar population living in Crimea. In light of these figures, it is blatantly not true to claim that the *Mejlis* is "the central self-governing institution of Crimean Tatar life"<sup>486</sup> with an unequalled level of legitimacy and representativeness.

227. As Messrs Funk, Starchenko, Stepanov and Sokolovsky explain in their expert report, in the 1991-2014 period several organizations following various ideological sensibilities developed in parallel, an important dividing line being endorsement or rejection of violent and confrontational methods and demands.<sup>487</sup> Among the numerous public organizations representing Crimean Tatar

<sup>&</sup>lt;sup>480</sup> See MU, paras. 412 and 478, *inter alia*.

<sup>&</sup>lt;sup>481</sup> Order of 19 April 2017, p. 140, para. 106(1)(a) (emphasis added).

<sup>&</sup>lt;sup>482</sup> See para. 181.

<sup>&</sup>lt;sup>483</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 4 and 20; Supreme Court of the Russian Federation, Case No. 127-APG16-4, Decision, 29 September 2016 (Annex 915 to MU), p. 7.

<sup>&</sup>lt;sup>484</sup> Federal Service of State Statistics of the Russian Federation, Results of the Population Census of 2014 in the Crimean Federal District, 2015 (Annex 440), p. 108. The census was conducted on 14 October 2014.

<sup>&</sup>lt;sup>485</sup> OHCHR, Report on the Human Rights Situation in Ukraine (16 August –15 November 2016) (Annex 773 to MU), para. 169.

<sup>&</sup>lt;sup>486</sup> CR 2017/1, 6 March 2017, p. 30, para. 18 (Koh).

<sup>&</sup>lt;sup>487</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), paras. 84-87, 90-91. See also below paras. 239 -240. As the report confirms, the Organisation of the Crimean Tatar National Movement (OCTNM, led by Mustafa Dzhemilev) "adopted an uncompromising stand toward the official authorities", while the National Movement of Crimean Tatars (NMCT, led by Yury Osmanov) "was willing to engage in a dialogue with them". Later on, Mustafa Dzhemilev continued the policy of the OCTNM being the leader of the *Mejlis*, whereas the close associates

rights and interests,<sup>488</sup> the largest and most dynamic at different points in time were "Milliy Firqa", "Interregional Public Movement of the Crimean Tatar People "Qirim",<sup>489</sup> the "Regional Public Organization to Promote the Revival of the Crimean Tatar People "Qirim Birligi",<sup>490</sup> the "Regional public organization Society of Crimean Tatars "Inkishaf",<sup>491</sup> and others.<sup>492</sup> Crimean Tatars have also created several local Crimean Tatars cultural-national autonomies, including for example in Simferopol, Sevastopol and Sudak.<sup>493</sup>

228. To focus only on one example, "Milliy Firqa" was created in 2006,<sup>494</sup> registered under Ukrainian law in 2007<sup>495</sup> and then re-registered under Russian law on 23 July 2014.<sup>496</sup> Its Chairman, Mr Vasvi Abduraimov, was a former Vice-President of the Council of Representatives of the Crimean Tatar People under the President of Ukraine between 2013 and 2014. As shown in its establishing Charter, its purpose is "to protect the legitimate rights and realize social, cultural, artistic, economic, sports and other common interests of the Crimean Tatars", among others, a purpose that is served by various activities.<sup>497</sup>

229. The difference between "Milliy Firqa" and the *Mejlis* in the context of their relationship with the authorities in Crimea is not so much about their respective agendas, as "Milliy Firqa" is also critical of the authorities and has also advocated for Crimean Tatar sovereignty.<sup>498</sup> The key

of Yury Osmanov after his murder established another Crimean Tatar organisation - "Milliy Firqa" which struggled for "a statutory rehabilitation of the repressed Crimean Tatar people, their organised return to the ancestral homeland, their settlement and development in multi-ethnic Crimea" without referring to violent methods.

<sup>&</sup>lt;sup>488</sup> List of Crimean Tatar Non-Governmental Organizations in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 31.

<sup>&</sup>lt;sup>489</sup> Website: <u>http://qirimtat.ru</u>, available via archive: <u>https://web.archive.org/web/20180314072734/http://qirimtat.ru/</u>. See also its declared goals and objectives contained in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 36-37.

<sup>&</sup>lt;sup>490</sup> Website: <u>http://www.qirimbirligi.ru/;</u> Charter of the Regional public organization to Promote the Revival of the Crimean Tatar People "Qirim Birligi", 9 June 2014, contained in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 38-39; Qirim Birligi, "Restoration of the Rights of the Crimean Tatars and Creation of Conditions for their Revival and Development as Part of the Integration of Crimea into the Russian Federation", Report submitted to CERD Committee, 93rd session, 31 July
25 August 2017, doc. INT/CERD/NGO/RUS/28092, p. 10-11, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT CERD NGO RUS 28092 E.doc.

<sup>&</sup>lt;sup>491</sup> Website: <u>https://www.facebook.com/inkishaff;</u> Charter of the Regional Non-Governmental Organisation "Society of Crimean Tatars 'Inkishaf", 2014 (Annex 826).

<sup>&</sup>lt;sup>492</sup> Witness Statement of **1**, 9 June 2021 (Annex 19), para. 27; Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 18 January 2019 (Annex 483), pp. 9-10.

<sup>&</sup>lt;sup>493</sup> Ministry of Justice of the Russian Federation, Federal register of non-commercial organisations, List of national and cultural autonomies of Crimean Tatars, as at 3 June 2021 (Annex 510).

<sup>&</sup>lt;sup>494</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), para. 90.

<sup>&</sup>lt;sup>495</sup> *Ibid*. Website: <u>http://milli-firka.org/</u>.

<sup>&</sup>lt;sup>496</sup> *Milliy Firqa website*, Russia recognised Milliy Firqa, 31 July 2014 (Annex 1311).

<sup>&</sup>lt;sup>497</sup> Charter of the Crimean regional public organization for social and cultural development "Milli Firqa", Simferopol, 2014, Article 2, in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 35.

<sup>&</sup>lt;sup>498</sup> "Crimean Tatars, 21<sup>st</sup> Century Strategy – Milliy Firqa Programme (extracts)" and "Examples of Information contained on the website of "Milli Firka" public organization", in Documents from the Dossier and Judges' Folder as

difference is about their respective methods: while the *Mejlis* endorses violence as a means of action and commits to act outside the established legal order, "Milliy Firqa" rejects violent means of action and commits to place its activities within the established legal order. It confirms that the ban which was imposed only on the *Mejlis* has nothing to do with racial discrimination.

230. In its intervention before the Supreme Court of Crimea in the case of the *Mejlis*, the State Committee on Inter-ethnic Relations and Deported Citizens of the Republic of Crimea (currently - State Committee for Inter-ethnic Relations of the Republic of Crimea) pointed to the diversity of Crimean Tatar representative organizations and commented that, in contrast to the *Mejlis*' promotion of violence, confrontation and exclusion,

"since 2014, the Crimean Tatar society has seen a significant increase in the activity of public associations of the Crimean Tatar people, registered in accordance with the laws of the Russian Federation, with the main objective being the protection of the rights of the Crimean Tatar people on the basis of a constructive attitude in cooperation with public authorities".<sup>499</sup>

231. In its reasoning the Supreme Court of Crimea relied specifically on the opinion of the State Committee as "a state authority whose jurisdiction includes the implementation of the state policy and functions in the sphere of interethnic relations, as well as the rehabilitation of the repressed peoples of the Republic of Crimea".<sup>500</sup> The Court provided substantial weight to the State Committee's material description of the number of organizations and of the activities of some of them. This information was decisive in the Court reaching the conclusion that the ban on the *Mejlis* "would not entail violation of the rights of the Crimean Tatar people to the political, economic, social and cultural development".<sup>501</sup>

232. Subsequent to the emergence of the above-mentioned organizations and the 2016 decisions on the ban of the *Mejlis*, a series of initiatives led to further developments in the representation of the rights and interests of the Crimean Tatar community in Crimea. On 17 February 2018, at the extraordinary session of the extended Qurultay of the Muslims of Crimea, the "Council" – "*Shura*" – was elected.<sup>502</sup> The main goal of the *Shura* is to facilitate interaction between the Crimean Tatar community and state bodies of the Republic of Crimea. The *Shura* consisted of 14 most prominent persons in relevant fields (religion, culture, education, and others), including an Olympic champion Mr Rustem Kazakov and the Chief Doctor of the Inkerman Hospital Mrs. Gaide Degirmendgi,

submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 28-30 and 32-34, respectively.

<sup>&</sup>lt;sup>499</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 4.

<sup>&</sup>lt;sup>500</sup> *Ibid.*, p. 20.

<sup>&</sup>lt;sup>501</sup> *Ibid.*, p. 21.

<sup>&</sup>lt;sup>502</sup> See Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 7 June 2018 (Annex 483), para. 14; Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 18 January 2019 (Annex 483), para. 6.

# , among other high profile community members.<sup>503</sup>

233. Following the meeting with members of the *Shura* on 26 February 2018 and upon their proposal, the Head of the Republic of Crimea Mr Sergey Aksyonov adopted on 29 March 2018 a decree establishing the "Council of Crimean Tatars under the Head of the Republic of Crimea" (the "Council of Crimean Tatars"), and determining its functioning and membership.<sup>504</sup> As explains, the body created by the decision of the Qurultay of Muslims of Crimea thus "becomes secular and cooperates with all Crimean Tatars irrespective of their religious affiliation".<sup>505</sup> All of the *Shura*'s members elected by the Qurultay were integrated into the newly-established Council headed by Mr Aksyonov with Hajji Emirali Ablaev appointed as a deputy head.<sup>506</sup> The main goal of this Council is to contribute to the restoration of historical justice, political, social and spiritual revival and development of Crimean Tatars who suffered from deportation and political repressions. Indeed, the participation of public organizations in consultative councils or otherwise cooperation with the authorities in decision format between minorities and the authorities in the Russian Federation.<sup>507</sup>

234. The Council of Crimean Tatars is active in the areas of religion, culture, education and others, with a specific member of the Council being responsible for each of them. Before the introduction of measures aimed at preventing the spread of the coronavirus infection (2019-nCoV) in Crimea, the Council met in person on a monthly basis. The agenda is formed based on Crimean Tatars' requests. The Crimean Tatar people can refer their concerns to the Council personally or by email.<sup>508</sup>

(Annex 8), para. 31.

<sup>&</sup>lt;sup>503</sup> See Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 7 June 2018 (Annex 483), para. 14; Witness Statement of (Annex 19), para. 22.

<sup>&</sup>lt;sup>504</sup> Decree of the Head of the Republic of Crimea No. 93-U "On establishing the Council of Crimean Tatars under the Head of the Republic of Crimea", 29 March 2018 (Annex 112). See also Witness Statement of

As explains, immediately after the ban several former *Mejlis* members and leaders of the existing organizations attempted to unite the Crimean Tatar people under one banner, but there were too many competing voices and "the Mejlis' destructive and clearly provocative activities and narratives of its former members made most people repulse that initiative". However, the Mufti, Hadji Emirali Ablaev, a former member of the *Mejlis* and the long-time spiritual leader of the Crimean Tatars suggested that the Qurultay of Muslims of Crimea could elect prominent members of the community that could compose a new representative council. Because the vast majority of Crimean Tatars are Muslim, the religious Qurultay has broadly the same audience and is able thus to represent the same interests as the secular Qurultay. See, Witness Statement of **Muslims** (Annex 19), footnote 8 and paras. 20-23.

<sup>&</sup>lt;sup>506</sup> Decree of the Head of the Republic of Crimea No. 93-U "On establishing the Council of Crimean Tatars under the Head of the Republic of Crimea", 29 March 2018 (Annex 112).

<sup>&</sup>lt;sup>507</sup> See for example the Civic Chamber of the Republic of Crimea, which is a body established by law and providing *inter alia* for dialogue between government organs and civil society actors, the latter being empowered to provide recommendations to the authorities in terms of law making and the adoption of measures. Official website: www.opcrimea.ru.

<sup>&</sup>lt;sup>508</sup> Witness Statement of **Control** (Annex 19), paras. 24-25. According to **Control**, the Council's headquarters is located in the centre of Simferopol and its address is widely known among the population.

235. The Council cooperates with the State Committee for Inter-ethnic Relations of the Republic of Crimea, which is the executive organ of the Crimean government in charge of implementing the policy of ensuring inter-ethnic harmony and fulfilling functions in the sphere of inter-ethnic and inter-religious relations, as well as the rehabilitation of oppressed peoples of Crimea.<sup>509</sup> The cooperation between these two bodies includes discussing measures to implement the long-waited<sup>510</sup> 2014 Decree of the President of the Russian Federation "On measures aimed at rehabilitation of Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German peoples and state support of their revival and development".<sup>511</sup>

236. In compliance with the Rehabilitation Decree, as described in detail by numerous measures have been implemented in the Republic of Crimea to support the revival and development of the Crimean Tatar people. These measures include reconstruction of one of the landmark sites for Crimean Muslims, the Seit-Settar Complex,<sup>512</sup> assistance in the organisation of the Hajj,<sup>513</sup> construction of an overwhelmingly important site for Crimean Tatars and Muslims, the Cathedral Mosque, the decision on its construction dating back to early 2000s.<sup>514</sup> Notably, according to **1000000**, in May 2015, the Spiritual Directorate received for its use the building of a Muslim spiritual school that forms part of the Zincirli Madrasa complex. After restoration of the complex, it is planned to open there a higher Islamic education institution.<sup>515</sup>

237. As a part of Crimean Tatars rehabilitation campaign books and albums dedicated to their contribution to the Victory in the Great Patriotic War are being published and distributed in Crimea. For instance, in 2017, a photo album titled "Crimean Tatars during the Great Patriotic War of 1941–1945"<sup>516</sup> was published with participation of the Ministry of Culture of the Republic of Crimea and

- <sup>512</sup> Witness Statement of (Annex 19), paras. 29-31.
- <sup>513</sup> Witness Statement of (Annex 19), paras. 32-34.
- <sup>514</sup> Witness Statement of (Annex 19), paras. 35-38.
- <sup>515</sup> Witness Statement of (Annex 19), paras. 41-42.

<sup>&</sup>lt;sup>509</sup> Website: <u>gkmn.rk.gov.ru</u>. See also Resolution of the Council of Ministers of the Republic of Crimea No. 159 "On approval of the regulations on the State Committee for Inter-ethnic Relations and Formerly Deported Citizens of the Republic of Crimea", 27 June 2014 (Annex 70). The State Committee's activities include, among others, taking measures to implement the 2014 presidential Rehabilitation Decree (see Information from the official website of the State Committee for Inter-ethnic Relations and Deported Citizens of the Republic of Crimea on activities of the Committee in 2018,

https://gkmn.rk.gov.ru/uploads/gkmn/attachments//d4/1d/8c/d98f00b204e9800998ecf8427e/phpOnX3ms\_2.pdf (Annex 486), pp. 1-5; State Committee for Inter-ethnic Relations of the Republic of Crimea, Report on implementation of the State Program of the Republic of Crimea on strengthening the unity of the Russian Nation and ethnocultural development of the peoples of the Russian Federation "The Republic of Crimea - the territory of inter-ethnic harmony" for 2019,

https://gkmn.rk.gov.ru/uploads/txteditor/gkmn/attachments//d4/1d/8c/d98f00b204e9800998ecf8427e/php8jVTXs\_%D0 %9E%D1%82%D1%87%D0%B5%D1%82.pdf (Annex 485), pp. 1, 3-4.

<sup>&</sup>lt;sup>510</sup> Witness Statement of (Annex 19), para. 28.

<sup>&</sup>lt;sup>511</sup> Decree of the President of the Russian Federation No. 268 "On measures aimed at rehabilitation of Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German peoples and state support of their revival and development" (as amended on 12 September 2015), 21 April 2014 (Annex 63).

<sup>&</sup>lt;sup>516</sup> *Participation of Crimean Tatars in the Great Patriotic War of 1941-1945: Photo Album*, compiled by G.A. Sichaeva, Tarpan, Simferopol, 2017 (Annex 1066).

the State Budgetary Institution of the Republic of Crimea "Crimean Tatar Museum of Cultural and Historical Heritage". In celebration of the 75<sup>th</sup> anniversary of the Victory in the Great Patriotic War, the Gasprinsky Media Centre published a book titled "Contribution of the Repressed Peoples of the USSR to the Victory in the Great Patriotic War of 1941–1945" which – relying on a vast amount of archival, field documents and material, accounts of witnesses – shows what contribution the five repressed peoples of the former USSR (Crimean Tatars, Bulgarians, Armenians, Greeks of Crimea and Meskhetian (Ahiska) Turks) made to the victory over Nazi Germany, and highlights the heroics of the Muslim clergy of the USSR and the believers.<sup>517</sup> The above printed publications aim to preserve the culture and history of the Crimean Tatar people and to impart them to the younger generation.

#### B. LACK OF REPRESENTATIVENESS OR LEGITIMACY OF THE MEJLIS

238. The assertion by the UN High Commissioner for Human Rights that "none can be considered to have the same degree of representativeness and legitimacy as the Mejlis and Kurultai"<sup>518</sup> does not refer in support to any specific materials. The Court's reliance on this statement in its Order on provisional measures<sup>519</sup> is not determinative for the purpose of the merits, since it was only made *prima facie*. The record shows that it does not correspond to the existing situation in Crimea.

239. As shown above, the *Mejlis* is far from enjoying the position it claims in respect of legitimate representation of the rights and interests of the Crimean Tatar people. In this regard, it has certainly never been officially recognized as an official representative body of Crimean Tatars.<sup>520</sup> In addition, whatever the degree of public support the *Mejlis* might have enjoyed in a distant past, this had weakened in the eyes of Crimean Tatars already before 2014 because of the ruthless self-interested policies, propensity to violence and subversive activities of the *Mejlis*.<sup>521</sup> The increase in the number of public organizations representing Crimean Tatar interests confirms the demise of the *Mejlis* and its leaders within the Crimean Tatar community itself. In this context, the emergence of rival organizations was bitterly opposed by the *Mejlis*, and its claim to have the exclusive right to speak for the Crimean Tatars came to express itself in more and more radical

<sup>&</sup>lt;sup>517</sup> *Contribution of the Repressed Peoples of the USSR to the Victory in the Great Patriotic War of 1941–1945*, Vol. 2, compiled by S. Akkieva, Simferopol, Gasprinsky Media Centre, 2020 (Annex 1123).

<sup>&</sup>lt;sup>518</sup> OHCHR, Report on the Human Rights Situation in Ukraine (16 August –15 November 2016) (Annex 773 to MU), para. 169.

<sup>&</sup>lt;sup>519</sup> Order of 19 April 2017, *I.C.J. Reports 2017*, p. 138, para. 97.

<sup>&</sup>lt;sup>520</sup> CERD Committee, 93rd session, Summary record of the 2553rd meeting held on 4 August 2017, UN Doc. CERD/C/SR.2553, para. 45 (Lukiyantsev).

<sup>&</sup>lt;sup>521</sup> See for example "Lentun Bezaziyev: Majlis has Never Been Engaged in Creation", *Krymskaya Pravda*, 13 March 2013 in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 148-157; "Crimean Tatars, 21<sup>st</sup> Century Strategy – Milli Firqa Programme (extracts)" in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 29-30 (developing on the current lack of legitimacy of the Qurultay and the *Mejlis*).

forms, inevitably decreasing its level of legitimacy and increasing the level of tension and violence.<sup>522</sup>

For example, pursuant to Mr Yuri Osmanov's words,<sup>523</sup> "the Mejlis was meant to inflame 240. the non-Tatar population in Crimea by hysterical, openly provocative and absolutely useless 'physical' campaigns and scandals. All of these campaigns were risky undertakings that have been played out exclusively for the empire's own interests or the plans for great national and political intrigues... The Mejlis is trade and arrangement of business affairs on the plight of the people".<sup>524</sup> Mr Osmanov was a human rights defender as well as founder and head of the National Movement of Crimean Tatars (NMCT) in the 1980's and early 1990's, a rival organization to the Mejlis that embraced a more moderate line and was supported by many Crimean Tatars.<sup>525</sup> While prior to 1991 there were already two competing Crimean Tatar movements, namely the NMCT and the Organisation of the Crimean Tatar National Movement (OCTNM, led by Mr. Dzhemilev), only members of the OCTNM became members of the Mejlis. Criticizing the results of the 1991 Qurultay Mr Osmanov said that "the [OCTNM] created the Qurultay according to the party's lists, with the Qurultay forming the Mejlis, thereby staging an election process. And on behalf of 400 people (the entire composition of the [OCTNM]) declared it (that is, themselves) 'the highest, plenipotentiary, and the only representative of the people".<sup>526</sup> A harsh critic of the *Meilis*' violent methods, Mr Osmanov had played a key role in development of the Declaration "On Declaring Repressive Acts against the Forcibly Resettled Peoples to be Illegal and Criminal and on the Observance of their Rights" and the Resolution "On Conclusions and Proposals of the Committee for Problems of Soviet Germans and the Crimean Tatar People" that recognized the Crimean Tatars' legal right to return to Crimea. Besides, he became the first Head of the Committee for Affairs of the Deported Peoples of the Crimean Regional Executive Committee.<sup>527</sup>

241. As reports dating from the Ukrainian period show, the *Mejlis* had long been trying to coerce Crimean Tatars who did not adhere to it to do so, practising economic racket and attempting to

<sup>&</sup>lt;sup>522</sup> Regarding confrontation between the *Mejlis* and Milliy Firqa see Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), paras. 90-91. See also Statement of Alexander Makar, presenter of the TV channel "Krym", in "Arria Formula" VTC of the member States of the UN Security Council on Crimea, 21 May 2020 (available at: <u>https://www.youtube.com/watch?v=dh5qqqLVrB0</u> at 31:51 to 32:25).

<sup>&</sup>lt;sup>523</sup> The time when the above statement was made is enlightening. Mr Osmanov cannot be suspected of complacency toward the new authorities in Crimea, as he was killed in 1993. The political motive behind that murder was never officially confirmed, however, as described by Messrs Funk, Starchenko, Stepanov and Sokolovsky, many people suspected OCTNM to be behind it. See Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), para. 86.

<sup>&</sup>lt;sup>524</sup> Milliy Firqa website, "Who was and remains the real leader of Crimean Tatars", 22 February 2016 (Annex 830).

<sup>&</sup>lt;sup>525</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), paras. 84-86.

<sup>&</sup>lt;sup>526</sup> Expert Report of Valery Viktorovich Engel (Annex 22), paras. 425-426, citing Yuri Osmanov in *Krymskie Izvestiya*, "Yuriy Osmanov: People won't bow to adventurists", No. 201 (210), 14 October 1992 (Annex 838). Factual elements also point to the procedural deficiency of that election (Expert Report of V.V. Engel (Annex 22), *ibid.*).

<sup>&</sup>lt;sup>527</sup> Civic Chamber of the Republic of Crimea official website, "Crimea celebrated the 80th anniversary of the birth of Yury Osmanov", 8 April 2021 (Annex 1045).

influence the authorities in order to secure impunity for its members.<sup>528</sup> In 1997 the *Mejlis* even sustained a major split as a significant range of its members were increasingly dissatisfied with Mr Dzhemilev's autocratic leadership style and corrupt practices. Sixteen of its 33 members expressed their grievances in a letter addressed to the Qurultay.<sup>529</sup> The Qurultay reacted by squarely expelling the dissenting members.<sup>530</sup>

242. In 2011, veterans of the National Movement of Crimean Tatars announced an impeachment to the Chairman of the *Mejlis*, Mr Dzhemilev, and the Deputy Chairman of the *Mejlis*, Mr Chubarov, who were "denied the right to represent the interests of the Crimean Tatar people in Ukraine and elsewhere in the world".<sup>531</sup> In 2013, Mr Ruslan Balbek, a Crimean Tatar who later became a member of the Russian State Duma, stated that fighters of the *Mejlis* actually act against the Crimean Tatars, that they did nothing positive for Crimean Tatars "apart from making the entourage of the Mejlis' leader richer".<sup>532</sup>

243. The *Mejlis* and its leaders continued to be criticised among members of the Crimean Tatar community and the wider Crimean community after 2014.<sup>533</sup>

244. In August 2018, in relation to the development of local racket on transporters organized by the *Mejlis* in the Kherson oblast in Ukraine, Mr Rustem Nimetullayev, the Head of the Crimean Tatar organization "Qirim Birligi", declared: "Every day we receive applications from Crimean Tatars living in Ukraine, and they ask us to somehow influence the situation that has developed in the Genichesky district [in the Kherson oblast, Ukraine] today. People are frightened, there are now

<sup>&</sup>lt;sup>528</sup> See for instance Statement of the Informational Working Group of the National Movement of Crimean Tatars, 20 February 1998 (extracts), Information Bulletin of the National Movement of Crimean Tatars (Areket), No. 2 (67), March 1998, in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 111.

<sup>&</sup>lt;sup>529</sup> Expert Report of Valery Viktorovich Engel (Annex 22), para. 440.

<sup>&</sup>lt;sup>530</sup> Resolution of the 2nd (Extraordinary) Session of the 3rd Qurultay of the Crimean Tatar People "On measures to overcome the crisis in the Mejlis of the Crimean Tatar People", in *Website of the Mejlis*, Documents of the 2nd (Extraordinary) Session of the 3rd Qurultay of the Crimean Tatar People, 19-21 December 1997 (Annex 1314).

<sup>&</sup>lt;sup>531</sup> Milliy Firqa website, "The world learnt about the impeachment of the *Mejlis*' leaders", 17 November 2011 (Annex 822), p. 2.

<sup>&</sup>lt;sup>532</sup> *Taurica*, "Dzhemilev's opponent is delegated to the board of the Republican Committee of the Autonomous Republic of Crimea for Inter-ethnic Relations and Deported Citizens", 20 February 2013 (Annex 882). See also Witness Statement of (Annex 19), paras. 10-12.

<sup>&</sup>lt;sup>533</sup> See for instance Statement by Chairman of the Russian Community of Crimea Sergei Tsekov at President of the Russian Federation official website, "Meeting with representatives from Crimean ethnic groups' public associations", Yalta, 17 August 2015 (Annex 460), pp. 6-7. *Lenta.ru*, "Crimean Tatars forbade the Mejlis to speak on behalf of the people", 19 December 2015 (Annex 943). The resolution adopted by the congress of the "Qirim" movement of Crimean Tatars in Simferopol in 2015 states that "The slipping of Dzhemilev, Chubarov and Islyamov into cooperation with extremist groups that are pursued all over the progressive world has deprived them of the right to represent the Crimean Tatars. From now on, all their statements in any forum must qualify as speeches of private individuals" see *Lenta.ru*, "Crimean Tatars forbade the Mejlis to speak on behalf of the people", 19 December 2015 (Annex 943). Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 5. See also *National News Service*, "Crimean mothers against the leaders of the Mejlis. How will the UN help?", 5 March 2016 (Annex 950).

many groups, various armed formations" and added that most Crimean Tatars in Ukraine do not support the rhetoric of the *Mejlis*.<sup>534</sup>

245. In May 2018, Mr Ruslan Balbek, commenting on the leadership of Mr Lenur Islyamov in organizing the electric blockade of Crimea in November-December 2015, observed that "[u]sing his influence on corrupt Kherson officials, he is going to monopolise the transport market between Crimea and Kherson region". He added: "They are going to be deprived of their only income. We receive complaints from the local population about the outrages being committed by Islyamov's radicals".<sup>535</sup> Mr Balbek is very well informed about the situation of Crimean Tatars in Crimea as he served as Deputy Chairman of the Council of Ministers of Crimea between May 2014 and October 2016. In that capacity, while informing local authorities at municipal level of the ban, he explained that the ban of the *Mejlis* was a consequence of the extremist activities of its leaders, and that the *Mejlis* had lost any connection with Crimea and Crimean Tatars because of its leadership in the organization of the blockade and since its leaders took the initiative of forming illegal armed groups on the territory of Kherson oblast (Ukraine), which involve not only *Mejlis* members but also members of international religious terrorist groups.<sup>536</sup>

246. The above clearly shows that the *Mejlis* is far from being the model of rectitude Ukraine describes in its submissions. It has a history of violent action and corruption and, in the years leading up to the ban, had seen the degree of support it initially enjoyed weakening, due to its subversive activities and tendency for evicting and discrediting any Crimean Tatar that attempted to oppose it. The rejection of the *Mejlis* and its leaders by Crimean Tatars both before and after the ban is crucial given that all of Ukraine's alleged individual cases under this chapter exclusively relate to *Mejlis* senior members and close associates, by definition all involved in the *Mejlis* extremist and violent conduct. Ukraine's artificial case is essentially built on the allegations of this non-representative minority which is clearly involved in violent and subversive political activities as established by the relevant domestic Courts. Ukraine's case does not relate to the Crimean Tatar community as such.

247. Ukraine contends that the low number of delegates attending the consultative conference of the Qurultay held in Kiev on 12 November 2018 was caused by the Russian Federation putting pressure on delegates coming from Crimea in order to deter them from crossing the border.<sup>537</sup> The competent Russian authorities, however, provided no instructions to block any exit from Russia by delegates and are unaware of any attempt to prevent any delegates from crossing the State border towards Ukraine in order to attend the gathering of the Qurultay, which in any event is not

<sup>&</sup>lt;sup>534</sup> *RIA Novosti Krym*, "Nimetullaev: the Mejlis\* usurped the Kherson region", 15 August 2018 (Annex 988).

<sup>&</sup>lt;sup>535</sup> *RIA Novosti Krym*, "Combat wings of the 'Mejlis'\*. Who is taking power from Kiev in the south of Ukraine?", 30 May 2018 (Annex 984).

<sup>&</sup>lt;sup>536</sup> Letter of Mr Ruslan Balbek, Deputy Chairman of the Council of Ministers of the Republic of Crimea, to the heads of municipal administrations, No. 1133/01-04, 13 May 2016 (Annex 572), p. 1.

<sup>&</sup>lt;sup>537</sup> Letter of the Agent of Ukraine to the President of the International Court of Justice, 18 January 2019 (Annex 1321), pp. 2-3.

concerned by the ban on the *Mejlis*. This is confirmed by the Qurultay's own admission that the conference *was* attended by members who travelled from Crimea.<sup>538</sup> The record also shows that, contrary to Ukraine's distortion of the facts, a significant part of Crimean Tatars, including former members of the *Mejlis* or Qurultay of the Crimean Tatar people, have simply gathered around new civil society and institutional initiatives in Crimea, rejecting violence as a means of communication and action in defending the interests of the community.<sup>539</sup>

248. In addition, the Qurultay of the Crimean Tatar people decided, on request of the Meilis itself, to expel those members who "collaborate with the aggressor", namely those who accept government positions within the Russian administration, including in Crimea.<sup>540</sup> This decision, that in effect punishes the defecting delegates themselves, is hardly compatible with Ukraine's allegation that these delegates were victims of Russian pressure that impeded their efforts to attend the gathering. With this decision, the Qurultay in fact admitted that the absence of so many delegates at its 2018 gathering in Kiev is best explained not by pressure placed on delegates from Crimea or difficulties to cross the State border, but instead by their preference to turn to other actors and institutions to represent and defend the interests of the Crimean Tatars in Crimea. That confirms that Ukraine's assertion that the Mejlis is "the central self-governing institution of Crimean Tatar life"<sup>541</sup> is simply not true. A majority of Crimean Tatars in Crimea desires peace and stability for their homeland, not violent confrontation that can only bring chaos. That desire underlies the various bodies and organizations in Crimea that defend the rights and interests of the Crimean Tatar community. As Mr Nimetullayev observed: "We, living in our Crimea, in our state, are losing in the info space. We must cover in the media the situation of Crimean Tatars living in Crimea as widely as possible. And our situation is like this: the people have become uninhibited, [...] people are working, doing business, schools are being built, the Cathedral Mosque is being built."542

#### V. Conclusion

249. The legitimate and non-discriminatory character of the measures against the *Mejlis*, *Mejlis* leading members and close associates is clear. These measures taken against the extremist and

<sup>&</sup>lt;sup>538</sup> See interview of Mr Ali Ozenbash, Chairman of the Audit Committee of the Qurultay of the Crimean Tatar people in *Krym.Realii*, "In emergency mode: what the delegates of the Qurultay of the Crimean Tatar People discussed in Kiev", 13 November 2018 (Annex 992).

<sup>&</sup>lt;sup>539</sup> Witness Statement of (Annex 19), paras. 20 and 22.

<sup>&</sup>lt;sup>540</sup> In August 2014 the *Mejlis* suspended the membership of Mr Smirnov Zaur, Mr Gafarov Teyfuk and Ilyasov Remzi for accepting positions in the authorities of the Republic of Crimea (see Decision of the Mejlis of the Crimean Tatar people No. 21 "On a member of the Mejlis of the Crimean Tatar people, the Head of the Mejlis of the Crimean Tatar people, Smirnov Zaur", 23 August 2014 (Annex 1253); Decision of the Mejlis of the Crimean Tatar people No. 22 "On a member of the Mejlis of the Crimean Tatar people, the Head of the Legal Department of the Mejlis of the Crimean Tatar people, Gafarov Teyfuk", 23 August 2014 (Annex 1254); Decision of the Mejlis of the Crimean Tatar people No. 24 "On a member of the Mejlis of the Crimean Tatar people Ilyasov Remzi", 23 August 2014 (Annex 1252)).

<sup>&</sup>lt;sup>541</sup> CR 2017/1, 6 March 2017, p. 30, para. 18 (Koh).

<sup>&</sup>lt;sup>542</sup> *RIA Novosti Krym*, "Public activist called for the media to cover more the situation of Crimean Tatars", 15 August 2018 (Annex 987).

violent conduct of the *Mejlis* constitute legitimate limitations permissible in a democratic society for the purpose of protecting the State's essential interests of national security, public order and safety, other citizens' lawfully protected rights and interests as well as the integrity and constitutional order of the Russian Federation. These grounds are provided under the Russian Federation's domestic law and comply with international law. Since they are based on an objective and reasonable justification, these measures cannot constitute discrimination in comparison with standard practice. In addition, they do not suggest any racially-oriented discriminatory or arbitrary application of the legal framework – let alone a campaign of systematic racial discrimination. The measures that the Russian Federation has adopted against the *Mejlis* and its leaders manifestly do not come under nor violate CERD.

250. Ukraine never recognized before 2014 the *Mejlis* as a representative organization of the Crimean Tatar community. To the contrary, it declared the *Mejlis* to be unconstitutional.<sup>543</sup> Its new characterization of the *Mejlis* as the sole legitimate representative institution of the whole Crimean Tatar people<sup>544</sup> and its claim that the measures taken against it constitute racial discrimination should be seen for what it is: a self-serving move, which exclusive purpose is to put before the Court a case which has nothing to do with racial discrimination.

<sup>&</sup>lt;sup>543</sup> CR 2017/2, 7 March 2017, p. 60, paras. 32-33 (Lukiyantsev).

<sup>&</sup>lt;sup>544</sup> Resolution of the Verkhovna Rada of the Ukraine No. 1140-VII "On the Statement of the Verkhovna Rada of Ukraine on Guaranteeing the Rights of the Crimean Tatar People in the State of Ukraine", 20 March 2014 (Annex 793).

# CHAPTER V NO RACIAL DISCRIMINATION WITH RESPECT TO EDUCATION

251. Ukraine contends that the Russian Federation "suppresses" "minority rights" relating to education, in particular by supposed "restrictions placed on education in the Crimean Tatar and Ukrainian languages".<sup>545</sup> According to Ukraine, Russia is responsible for "[a] strategy of cultural erasure [through ...] measures to prevent the target culture being passed on to future generations through the educational system".<sup>546</sup> Ukraine claims that the "apparent goal" of the said alleged measures is "erasing non-Russian cultures from Ukraine's history", as part of a general policy of systematic racial discrimination.<sup>547</sup>

252. As will be shown in the present Chapter, nothing supports Ukraine's allegations that Russia had the intent to "erase non-Russian cultures" in Crimea and that it violated "minority rights relating to education" in Crimea. Ukraine's claims are also surprising given the intolerant language policy towards minorities that it has adopted recently, as is explained in Chapter I of this Counter-Memorial.<sup>548</sup>

253. In light of Ukraine's misleading allegations, it is important to begin by making a number of preliminary clarifications to address the erroneous assumptions that affect Ukraine's whole case on educational rights in Crimea (I). It will then be shown that CERD does not provide for a right to education in the native language of national minorities and that therefore, Ukraine cannot, as a matter of jurisdiction and applicable law, claim that the Russian Federation has violated "minority rights in relation to education" under CERD in respect of Crimean Tatars and ethnic Ukrainians in Crimea (II). In any event, none of Ukraine's allegations is founded on the merits. First, Russian domestic law is more protective than international law with regard to the access to education in a native language (III). Second, there has been no decrease (to the contrary) in the number of students who receive education in the Crimean Tatar language (IV). Third, the decrease in the number of students who receive education in the Ukrainian language has nothing to do with racial discrimination (V). Fourth, there has been no artificial shortage of teachers in and of Ukrainian and Crimean Tatar (VI). Finally, the relevant facts confirm that education in Crimea is provided on a non-discriminatory basis and that there is no racial discrimination in relation to education in Crimea, let alone a systematic intent to erase non-Russian cultures, as Ukraine asserts (VII).

# I. Preliminary Clarifications

254. Ukraine's case concerning education rights is built on several erroneous assumptions that need to be addressed as a preliminary matter.

<sup>&</sup>lt;sup>545</sup> Judgment of 8 November 2019, para. 88.

<sup>&</sup>lt;sup>546</sup> MU, paras. 533 *et seq*.

<sup>&</sup>lt;sup>547</sup> *Ibid.*, para. 534.

<sup>&</sup>lt;sup>548</sup> See paras. 43-52.

255. *First*, Ukraine argues that the reorientation of the Crimean educational system towards that of the Russian Federation is unlawful in and by itself because it is contrary to international humanitarian law.<sup>549</sup> However, the argument goes nowhere. A State does not commit racial discrimination under CERD merely by subjecting a population to its education system. In any event, as explained elsewhere, Ukraine's CERD claims premised on international humanitarian law fall outside the Court's jurisdiction.

256. *Second*, Ukraine's case on education is predicated on the incorrect assumption that minorities should have specific educational rights in addition to the one conferred on the population as a whole.<sup>550</sup> This statement finds no basis in CERD. Crimean Tatars and ethnic Ukrainians are subject to the same treatment as the one applicable to the whole population.

257. *Third*, contrary to Ukraine's accusations, Russia's domestic legal system in relation to minority groups in fact goes *beyond* its international obligations. As will be seen further below, the Crimean education system provides extensive mechanisms to preserve and promote various ethnic and linguistic identities in the Russian multi-ethnic society, and it provides in particular Crimean Tatars and ethnic Ukrainians with ample opportunities to receive education in, and study, the Crimean Tatar and Ukrainian languages. There is thus absolutely no basis to claim that Russia has committed a systematic campaign of racial discrimination in relation to education in Crimea in violation of CERD.

258. In that regard, it is necessary to recall that the Russian Federation is one of the most multiethnic States in the world. The last Russian census conducted in 2010 reports no less than 144 main ethnic and national origins among the Russian population, but the actual number of identities by ethnic or national origin is higher because most of these registered identities are clustered into smaller communities, other origins were regrouped in a miscellaneous category and a number of persons did not answer the question.<sup>551</sup>

259. In Crimea itself, among a permanent population of less than 2,300,000, the 2014 census identified 23 main groups of ethnic or national origin, without mentioning additional, smaller groups.<sup>552</sup> The domestic legal order of the Russian Federation recognizes and protects this diversity and is premised on multi-ethnic, multinational, multicultural and multilingual principles. In

<sup>&</sup>lt;sup>549</sup> See e.g. MU, paras. 554-556. As with other parts of Ukraine's Memorial and for reasons repeatedly explained herein (see paras. 89, 383-387), the Russian Federation reiterates its general rejection of allusions to the applicability of international humanitarian law as well as terms such as "annexation", "occupation" or "aggression" made by Ukraine as part of its claim relating to education (MU, paras. 533-559, *inter alia*). Such allegations do not fall within the scope of the dispute and of CERD as identified by Ukraine and the Court, and their determination falls outside of the Court's jurisdiction *ratione materiae*. See actually WSU, para. 277.

<sup>&</sup>lt;sup>550</sup> See for instance MU, para. 627.

<sup>&</sup>lt;sup>551</sup> Federal Service of State Statistics of the Russian Federation official website, "National composition of the population", as part of the results of the All-Russian Population Census, vol. 4, Table 1, 2010 (Annex 438).

<sup>&</sup>lt;sup>552</sup> Federal Service of State Statistics of the Russian Federation, Results of the Population Census of 2014 in the Crimean Federal District, 2015 (Annex 440), p. 108. The census was conducted on 14 October 2014.

particular, Article 3 of the Russian Constitution recognizes that "[t]he bearer of sovereignty and the sole source of power in the Russian Federation shall be its multinational people". Article 19 prohibits any form of discrimination based in particular on national or ethnic origin or race, while Article 26 protects the right of every citizen to declare his or her national origin, use his or her native language, and choose language of communication, upbringing, education and creative work. Finally, Article 72 places the protection of the rights of national minorities as well as the protection of the traditional way of life of small ethnic communities, among other fields, within the joint jurisdiction of the Russian Federation and its constituent entities. Not all States have elected, as Russia does, to follow the path of expressly recognizing and protecting ethnic and national groups as such in various fields of individual and social life, including education, even if not bound to do so under international law.<sup>553</sup>

Crimean Tatars and ethnic Ukrainians benefit in particular from an extensive protection of 260. their language of education by the Russian system, which is more protective of local identities and languages than many other educational systems in the world, including the Ukrainian system.<sup>554</sup> In that context, as will be shown below, the measures taken within its education system with respect to education in, and teaching of, the Crimean Tatar and Ukrainian languages are not only objective, reasonable and proportionate to the difference of situation of these communities as compared to the rest of the population; they also constitute special measures that secure these ethnic groups adequate advancement and protection. In particular, Crimean Tatars and ethnic Ukrainians have been enjoying a particularly favorable treatment since 2014 because their languages have been recognized as State languages of Crimea. This is an unprecedented measure that Ukraine had never taken before,<sup>555</sup> even though the same ethnic groups were already present and the sole official language in Crimea (Ukrainian) was only native to a small minority. This new official status secures Crimean Tatars and ethnic Ukrainians a more significant protection than Crimean Tatars and ethnic Russians enjoyed before 2014. This drastically contrasts with Ukraine's unfounded allegations that Russia is responsible of a policy of "cultural erasure" of non-Russian ethnic groups in Crimea and a campaign of systematic racial discrimination against Crimean Tatars and Ukrainians.

261. *Fourth*, Ukraine's definition of ethnic groups is based on oversimplification and fails to accurately account for the complex sociological situation and peculiar circumstances in Crimea. Russian and Ukrainian identities in Crimea have always been more fluid and intermingled than, say,

<sup>&</sup>lt;sup>553</sup> As is visible from reports to the CERD Committee, a number of States do not recognize the ethnic identity or national origin of their citizens: see for example CERD Committee, *Combined twenty-second and twenty-third periodic reports submitted by France under article 9 of the Convention, due in 2017*, UN Doc. CERD/C/FRA/22-23, 9 May 2019, para. 7.

<sup>&</sup>lt;sup>554</sup> See paras. 43-46 above.

<sup>&</sup>lt;sup>555</sup> UNESCO, Executive Board, 195th Session, *Follow up of the Situation in the Autonomous Republic of Crimea* (*Ukraine*), 195 EX/5.INF.5, 21 October 2014, available at <u>https://unesdoc.unesco.org/ark:/48223/pf0000230360, p. 10</u> (quoting H.E. Mr Sergey Lavrov, Minister of Foreign Affairs of the Russian Federation).

in Kiev or in Moscow.<sup>556</sup> In particular, the discrepancy between native language and ethnicity with respect to these identities is significant in Crimea. Under the 2014 census, only 20.3% of persons who self-identified as ethnic Ukrainians (and these represented 15.1% of the Crimean population) reported Ukrainian as their native language, while 79.7% of these declared Russian as their native language.<sup>557</sup> Therefore, 3.3% of the Crimean population declared Ukrainian as their native language. Similarly, in the 2001 census, 24.3% of Crimeans had declared themselves as Ukrainians while only 10.1% declared Ukrainian as their native language.<sup>558</sup> Moreover, even those who declare Ukrainian as their native language usually also speak Russian with the same level of fluency, which questions Ukraine's suggestion of individuals necessarily having one single native language.<sup>559</sup> Besides, some of those who identify themselves as ethnic Ukrainians do not even speak the Ukrainian language at all, which questions the relevance of language as a systematic marker of ethnicity in Crimea.<sup>560</sup> Indeed the role of language as a marker of ethnic identity may at times be merely symbolic, as it is even the case that a certain number of Crimeans identifying Ukrainian as their native language have no command thereof,<sup>561</sup> and only speak Russian. Under the 2014 Crimean census, only 44.6% of those who declared Ukrainian as their ethnic identity spoke the Ukrainian language, while 99.8% of them spoke Russian.<sup>562</sup> More generally, 99.8% of the Crimean population speaks Russian.563

262. In light of these statistics, Ukraine has no basis to claim that "[i]t is hard to imagine a more brutal choice than to either leave your child uneducated or to allow him or her to be entirely indoctrinated into a foreign culture".<sup>564</sup> To the extent Ukraine purports to portray Russian and Ukrainian cultures in Crimea as being radically different, *quod non*, in any event Russian culture has never been a foreign culture in Crimea, neither for Crimean Tatars nor for Ukrainians. A telling example is **subservation** s observation that even within Feodosia School No. 20 that offers complete primary and basic general education in Ukrainian and where she works as a primary school teacher, "students themselves speak Russian out-of-class, during breaks, and in everyday life", they occasionally answer in Russian when questioned in class, basic everyday life steps such

<sup>&</sup>lt;sup>556</sup> See for example Expert Report of Dmitry Anatolievich Funk, Roman Alexandrovich Starchenko, Valery Vladimirovich Stepanov and Sergey Valeryevich Sokolovsky (Annex 21), paras. 5-10, 136-138, 187.

<sup>&</sup>lt;sup>557</sup> Federal Service of State Statistics of the Russian Federation, Results of the Population Census of 2014 in the Crimean Federal District, 2015 (Annex 440), p. 118.

<sup>&</sup>lt;sup>558</sup> Ukrainian Center for Independent Political Research, "Annexed" Education in Temporarily Occupied Crimea, Monitoring Report, 2015 (Annex 944 to MU), p. 22.

<sup>&</sup>lt;sup>559</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), para. 183: "In fact, Crimean residents quite often have two native languages, especially Ukrainians who named Ukrainian as their native language during the census, whereas most of them speak Russian which is their second native language."

 <sup>&</sup>lt;sup>560</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), paras. 121-123, 130, 183-184;
 Witness Statement of School No. 20 of Feodosia (Annex 5), para. 22.

<sup>&</sup>lt;sup>561</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), paras. 5, 119, 123, 129-131.

<sup>&</sup>lt;sup>562</sup> Federal Service of State Statistics of the Russian Federation, Results of the Population Census of 2014 in the Crimean Federal District, 2015 (Annex 440), p. 119.

<sup>&</sup>lt;sup>563</sup> *Ibid*.

<sup>&</sup>lt;sup>564</sup> MU, para. 559.

as making class schedules may be taken in both languages, and education exclusively in Ukrainian would be a difficult thing to imagine.<sup>565</sup> In fact, it is Ukrainian culture and language that were forcibly imposed on Crimeans as an alien element by Ukraine in the period 1991-2014,<sup>566</sup> as reflected by the rapidity with which Crimeans reverted to their previous, usual preferences in terms of education language after 2014.<sup>567</sup>

#### II. CERD Does Not Provide for a Right to Education in a Minority Language

263. As a matter of law and as the Russian Federation made clear at the preliminary objections phase,<sup>568</sup> Ukraine has no case under CERD in relation to the alleged "[s]uppression of Minority Education Rights"<sup>569</sup> because the right to education and training protected from discrimination under Article 5(e)(v) of CERD does not encompass a right to education in minority languages. While the Court noted that the list of rights protected from discrimination under Article 5 of CERD is not exhaustive,<sup>570</sup> it remains that CERD only refers to existing international human rights. However, none of the applicable binding human rights instruments provide for a *right* of national minorities to receive education in their own native language. What international law prohibits is discrimination between different ethnic groups in relation to access to *the same* education system, and Ukraine does not formulate any such claim in the present case.

264. Article 1(1) of the 1960 UNESCO Convention against Discrimination in Education ("CADE")<sup>571</sup> mentions language as a basis for prohibited discrimination in education, and in particular the fact of "establishing or maintaining separate educational systems or institutions for persons or groups of persons". By exception to Article 1, Article 2(b) provides that the following situation, "[w]hen permitted in a State", shall not be deemed to constitute discrimination in education:

<sup>570</sup> Judgment of 8 November 2019, para. 96.

<sup>&</sup>lt;sup>565</sup> Witness Statement of (Annex 5), para. 15.

<sup>&</sup>lt;sup>566</sup> Witness Statement of

Annex 10), paras. 20-21.

<sup>&</sup>lt;sup>567</sup> Ukraine itself admitted before the CERD Committee in 1992 that its policies in Crimea were perceived by sections of the local population as attempts to "ukrainize" the peninsula, accusing in turn these critics of being "separatists". It also admitted that, despite the fact that Crimea had been part of Ukraine since 1954, Ukrainian culture and language was still largely alien to the Crimean population: "there is still not a single Ukrainian school in Crimea, the only Ukrainian-language newspaper has ceased to exist and Ukrainian television programmes have great difficulty in 'penetrating' the Crimean peninsula", see CERD Committee, 43rd session, *Twelfth periodic reports of States parties due in 1992 – Ukraine*, UN Doc. CERD/C/226/Add.3, 19 July 1992, p. 11.

<sup>&</sup>lt;sup>568</sup> PORF, paras. 329-331; CR 2019/9, 3 June 2019, p. 73-75, paras. 24-28 (Forteau).

<sup>&</sup>lt;sup>569</sup> MU, p. 308, Section D.

<sup>&</sup>lt;sup>571</sup> Convention against Discrimination in Education, 14 December 1960, 429, *UNTS*, 93. Both the Russian Federation and Ukraine (then as the Union of Soviet Socialist Republics and as the Ukrainian Soviet Socialist Republic, respectively) have ratified the Convention, which entered into force for them on 1 November 1962 and 19 March 1963, respectively.

"The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level".

265. The mere existence of that provision confirms the absence of any right to benefit from a separate educational system. To the contrary, it is the establishment of such separate educational systems by a State that needs to be justified.

266. With regard to what national minorities can do on their own initiative, Article 5(1)(c) provides:

"It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional".<sup>572</sup>

267. Under Articles 1, 2 and 5(1)(c) of the CADE read together, the State has thus no obligation to guarantee education in minority native languages and the failure to provide such guarantee does not constitute, as a matter of principle, discrimination under Article 1 of the CADE. The education of national minorities in native language is a matter for the minorities themselves to organize, and is subject to the State policy in matters of education.

268. Similarly, Article 2(2) of the 1966 International Covenant on Economic, Social and Cultural Rights ("ICESCR")<sup>573</sup> provides for language as a basis for discrimination prohibited under this article and Article 13 provides for the right to education for individuals. They do not on the other hand oblige States to accord to minorities their own educational system.

As part of the follow-up measures on the implementation of the Convention, States Parties have reported as good practice devising policies to facilitate the teaching of the national official language to members of minorities. See e.g. UNESCO, General Conference, 39th Session, *Summary of the reports received from member States on the measures taken to implement the 1960 Convention and recommendation against discrimination in education*, 39 C/24, 23 October 2017, available at <u>https://unesdoc.unesco.org/ark:/48223/pf0000259737</u>, Annex I, paras. 11 and 23 (refugees and migrants), and para. 15 (indigenous peoples).

<sup>&</sup>lt;sup>573</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 *UNTS*, 3. Both the Russian Federation and Ukraine (then as the Union of Soviet Socialist Republics and as the Ukrainian Soviet Socialist Republic, respectively) have ratified the Convention, which entered into force for them on 3 January 1976.

269. In the same vein, while General Comment No. 13 of the Committee on ESCR<sup>574</sup> has clarified the scope of the provisions of Article 13 on the right to education, it has not consecrated any absolute right to education in a minority native language or any positive obligation for the State to provide for such education, and certainly not an obligation of result in this respect.

270. To the contrary, in its Concluding Observations concerning France, the Committee recommended "that the State party adopt all appropriate measures to reduce the significant disparities in terms of school performance between French pupils and pupils belonging to racial, ethnic or national minorities in the field of education, inter alia by *intensifying the provision of French-language courses for those students who lack adequate French-language proficiency*".<sup>575</sup> This approach echoes the above-mentioned good practice reported by States pursuant to the CADE. It is also recommended and regarded as good practice by the Special Rapporteur of the UN Human Rights Council on the right to education.<sup>576</sup>

271. The 1995 Framework Convention on the protection of minorities, which has been ratified by 39 States,<sup>577</sup> is in line with the previous instruments. Article 12 provides:

"1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities."

272. Article 13 provides:

"1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2. The exercise of this right shall not entail any financial obligation for the Parties."

<sup>&</sup>lt;sup>574</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 13: Article 13: The Right to Education*, UN Doc. E/C.12/1999/10, 8 December 1999.

<sup>&</sup>lt;sup>575</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations: France, UN Doc. E/C.12/FRA/CO/3, 9 June 2008, para. 49 (emphasis added). See also Committee on Economic, Social and Cultural Rights, Concluding Observations: Liechtenstein, UN Doc. E/C.12/LIE/CO/1, 9 June 2006, para. 36. On this point, see Ben Saul, David Kinley, Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, Oxford University Press, 2014, pp. 1132-1134.

<sup>&</sup>lt;sup>576</sup> Report of the Special Rapporteur on the right to education, UN Doc. A/73/262, 27 July 2018, paras. 78 and 92.

<sup>&</sup>lt;sup>577</sup> Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, *ETS* No. 157 (to which Ukraine and Russia are parties; entered into force for them on 1 May 1998 and 1 December 1998, respectively).

## 273. Article 14 provides:

"1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, *if there is sufficient demand*, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.

3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language."<sup>578</sup>

274. Of particular importance is the condition, highlighted in the second paragraph of this article, that there should be "sufficient demand" for education in a given minority language. This provision also recognizes that in such cases the State's conduct is subject to reasonableness and available resources, as well as compliance with domestic law.

275. Commenting on the above instruments, it has been observed that "[t]his international legal framework highlights a number of issues related to the right to education for minorities and indigenous groups which are reflected in the work of the CESCR. In particular, it indicates that the rights of minorities in relation to education include both the right to establish their own private educational and training establishments, and the right to access, and profit from, mainstream education on the basis of equality".<sup>579</sup> Again, it does not include any obligation for States to provide minorities with their own educational system.

276. In the *Belgian Linguistics* case decided in 1968 and subsequently confirmed, in particular in *Skender v. Macedonia*,<sup>580</sup> the ECtHR also denied that the right to education in a native language should be secured by each State to everyone within its jurisdiction. It held in particular:

"3. [...] the first sentence of Article 2 (P1-2) does not specify the language in which education must be conducted in order that the right to education should be respected. [...] However the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be.

[...]

11. In the present case the Court notes that Article 14, even when read in conjunction with Article 2 of the Protocol [...], does not have the effect of guaranteeing to a child or to his

<sup>&</sup>lt;sup>578</sup> Emphasis added.

<sup>&</sup>lt;sup>579</sup> Ben Saul, David Kinley, Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, Oxford University Press, 2014, p. 1131.

<sup>&</sup>lt;sup>580</sup> ECtHR, *Skender v. Former Yugoslav Republic of Macedonia*, No. 62059/00, Partial decision on admissibility, 22 November 2001.

parent the right to obtain instruction in a language of his choice. The object of these two Articles [...], read in conjunction, is more limited: it is to ensure that the right to education shall be secured by each Contracting Party to everyone within its jurisdiction without discrimination on the ground, for instance, of language. [...] [T]o interpret the two provisions as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results, for it would be open to anyone to claim any language of instruction in any of the territories of the Contracting Parties."<sup>581</sup>

277. The above-mentioned international human rights materials confirm the following points.

278. *First*, the prohibition of discrimination in relation to education refers to "the right of everyone regardless of ethnic origin to have access to a *national* educational system without discrimination."<sup>582</sup> In Crimea, all students are treated equally before the law and Ukraine does not claim otherwise. Statutory law governing education takes into account all circumstances that place different communities in different situations, so their members may exercise their rights on an equal footing. Ensuring equality before the law is precisely what the Crimean education system does, as will be illustrated further below.

279. *Second*, the right to education does not include a *right* of persons belonging to minorities to education in their native language. This is understandable for obvious practical, capacity and feasibility reasons. Indeed, no State would be in a position to guarantee and secure the proper exercise of such a right. The consequences of creating such a right would be unreasonably onerous for States, which have not accepted to include such right into an internationally binding instrument. For this reason, no provision mentioned above could plausibly be interpreted as including an obligation for all the States parties to CERD to protect and guarantee a right to education in one's native language for all citizens.

280. *Third*, some of these instruments insist on the fact that education is meant to prepare proper integration of children into the society they live in and to prepare them for their later professional life. In this regard, they emphasize the need for all to know the majority language and that teaching in minority native languages must not come at the expense of knowledge of the majority language. Thus, the preservation of minority language and culture should not result in isolating minority groups from the society they live in and come at the expense of their integration therein.

281. *Fourth*, securing education in a minority native language is generally regarded in these instruments as a mere possibility open to the State, not an obligation.<sup>583</sup> In addition, these

<sup>&</sup>lt;sup>581</sup> ECtHR, Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium v. Belgium (Merits) ("Belgian Linguistics case"), No. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64, Judgment, 23 July 1968, Section B, paras. 3 and 11.

<sup>&</sup>lt;sup>582</sup> PORF, para. 329 (emphasis added).

<sup>&</sup>lt;sup>583</sup> See also Council of Europe, European Charter for Regional or Minority Languages, 5 November 1992, *ETS* No. 148, Article 8; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 December 1992, UN Doc. A/RES/47/135, Article 4(3).

instruments take full account of the constraints and limited capacities of States in face of such an onerous burden, and they subject the possibility to provide education in native language to such capacity limits.

282. *Fifth*, even when they contemplate specifically the question of education in minority native language within the general right to education, these instruments are very cautious and specify that it is for the communities themselves to remain free to organize such community education, not a State obligation to provide for such education. Therefore, there is no basis to claim that under international law minorities have a general right to receive education in their native language, and there certainly is no unqualified right thereto.

# III. The Access to Education in a Native Language in Crimea is Afforded by Domestic Law subject to Legitimate Qualifications

283. As shown above, there is no obligation under international law for States to provide minority groups with a right to education in their own languages. Therefore, the Court does not have jurisdiction to entertain Ukraine's claim on "Suppression of Minority Education Rights."

284. In any event, international law does not preclude States from qualifying or restricting such a right when they provide it in their domestic system. When a State goes beyond its international obligations and affords a more protective regime than the one resulting from international law, it is non-sense to argue, as Ukraine does in the present case, that the State, in applying its domestic rules, commits racial discrimination under CERD.

285. Even if Russia's responsibility were to be assessed before the Court as a matter of domestic law, which would not fall within the Court's jurisdiction and functions, the relevant domestic rules have in any case been complied with in Crimea.

286. The right to education in a native language provided for under Russian law – including local regulations in Crimea – is qualified by a series of limitations that reflect the concerns mentioned above with respect to the onerous implications that an absolute and unqualified right would entail for the State and the risks for equal treatment of all citizens, peace and stability. Such concerns are particularly acute in States endowed with a highly multi-ethnic society and a large territory, like the Russian Federation.<sup>584</sup>

At federal level, education is governed by Federal Law of 29 December 2012 No. 273 FZ "On education in the Russian Federation" ("Federal Law on Education").<sup>585</sup>

<sup>&</sup>lt;sup>584</sup> In the Russian Federation, 277 languages and dialects are spoken, of which 97 languages are used within the education system, including 24 as teaching languages in the education system, and 73 being taught as a subject: A.S. Ablyatipov, *Crimea: Education in Native Languages*, Dolya Publishing House, Simferopol, 2018 (Annex 1078), p. 16.

<sup>&</sup>lt;sup>585</sup> Federal Law No. 273-FZ "On education in the Russian Federation", 29 December 2012 (Annex 58). See also Constitution of the Russian Federation, 12 December 1993 (Annex 28), Articles 26(2) and 43.

- b. In particular, the right to receive education in one's native language in the Russian Federation in general, and in Crimea in particular, cannot be exercised to the detriment of the knowledge of the State language of the Russian Federation, which is Russian, and which is the basic language of education for all citizens alike.<sup>586</sup>
- c. The right only extends to those languages that are recognized as languages of the peoples of the Russian Federation.<sup>587</sup>
- d. According to Article 14 of the Federal Law on Education and Article 9(2) of the Law "On the languages of the peoples of the Russian Federation", every Russian citizen has a right to receive preschool, initial and basic general education up to the 9th year at school in their native language subject to the capacity of the educational system.<sup>588</sup> This is an important qualification: the right to receive education in one's native language is subject to the capacities of the educational system and should be exercised within these limits.<sup>589</sup> It certainly does not entail for the State an obligation of result to provide for education in each and every native language that may exist on its territory.
- e. The situation is similar at the level of Crimea. The Constitution of the Republic of Crimea recognizes Russian, Crimean Tatar and Ukrainian as the State languages of Crimea<sup>590</sup> and provides for the right to receive education in one's native language.<sup>591</sup> The Crimean Law on Education provides for education in native language, naming expressly within them Russian, Crimean Tatar and Ukrainian languages, and also provides that this right shall be exercised within the limits of the possibilities provided by the education system.<sup>592</sup> There is no basis to contend in the present case that Russia did not comply with these domestic rules.

287. Under Russian domestic law, the recognition of Crimean Tatar and Ukrainian as State languages of Crimea does not entail any additional level of protection for these languages in terms of education *vis-à-vis* any other languages of the peoples of the Russian Federation. The republican state languages (Crimean Tatar and Ukrainian) can be used alongside the state language of the Russian Federation (Russian) in various spheres of life, including in the field of education, where teaching and learning of these languages can be introduced as mandatory (without prejudice to teaching and learning of the state language) in accordance with the republican legislation,<sup>593</sup>

Federal Law No. 273-FZ "On education in the Russian Federation", 29 December 2012 (Annex 58), Article 14(3).
 *Ibid.*, Article 14(4).

<sup>&</sup>lt;sup>588</sup> *Ibid.*, Article 14; Law of the Russian Federation No. 1807-1 "On the languages of the peoples of the Russian Federation", 25 October 1991 (Annex 25), Article 9(2).

<sup>&</sup>lt;sup>589</sup> Federal Law No. 273-FZ "On education in the Russian Federation", 29 December 2012 (Annex 58), Article 14(4).

<sup>&</sup>lt;sup>590</sup> Constitution of the Republic of Crimea, 11 April 2014 (Annex 62), Article 10(1).

<sup>&</sup>lt;sup>591</sup> *Ibid.*, Article 19(2).

<sup>&</sup>lt;sup>592</sup> Law of the Republic of Crimea No. 131-ZRK/2015 "On education in the Republic of Crimea", 6 July 2015 (Annex 91), Article 11(2).

<sup>&</sup>lt;sup>593</sup> Law on Education (Annex 58), Article 14(3).

although without creating corresponding individual right. At present the Crimean legislation does not envisage such mandatory teaching and learning of Crimean Tatar or Ukrainian, while learning in, and study of, these languages at the general education level is available on a voluntary basis and depending on the local capacities, and the study of these languages has been made part of the educational programme for students at the State Budgetary Educational Institution of Higher Education of the Republic of Crimea "Fevzi Yakubov Crimean Engineering and Pedagogical University".<sup>594</sup> However, of itself such local measure of promoting Crimean Tatar and Ukrainian as state languages in Crimea, while being aimed at promotion of the official languages of the Republic, does not augment or otherwise affect the right to receive education in the native language.

### IV. The Absence of Any Decrease of Students Studying in Crimean Tatar

288. As regards education in Crimean Tatar, Ukraine admits in the Memorial that there has been no drop of students and that, at a minimum, "the *number* of students receiving education in Crimean Tatar schools has remained relatively steady since [2014]".<sup>595</sup> This admission blatantly contradicts Ukraine's allegation that Russia had the intent to, and did, erase non-Russian cultures in Crimea, including the Crimean Tatars.

289. In fact, the number of students receiving education in the Crimean Tatar language has even increased, which is explained both by the natural growth of the population and the continued interest of Crimean Tatars to receive education in their language and to study it.<sup>596</sup>

a. Consistent with Ukraine's own statistics, the number of students receiving education in the Crimean Tatar language had been stable since the 2001-2002 academic year, fluctuating between 5,390 and 5,964. In the year 2013-2014, the number was 5,551,<sup>597</sup> which accounted for 3.1% of the Crimean students.<sup>598</sup> That year, education in the Crimean Tatar language was provided in 15 schools, covering 182 classes and 3,092 students, as well as in 202 classes among 48 schools with two or three languages of education, covering 2,459 students.<sup>599</sup>

<sup>594</sup> Witness Statement of

(Annex 12), para. 17; Witness Statement of Annex 9), para. 9.

<sup>595</sup> MU, para. 544.

<sup>596</sup> Witness Statement of

<sup>599</sup> *Ibid*.

Annex 12), para. 15; Ministry of Education, Science and Youth of the Republic of Crimea, Briefing note "On the study of native languages and education in native languages in the general educational institutions of the Republic of Crimea" as attached to Decision of the Collegium of the Ministry of Education, Science and Youth of the Republic of Crimea No. 4/2, 23 May 2018 (Annex 482), Section II.

<sup>&</sup>lt;sup>597</sup> Education Statistics from Ministry of Education of Ukraine, 2018 (Annex 735 to MU).

<sup>&</sup>lt;sup>598</sup> A. Ablyatipov, "Republic of Crimea: Instruction in native languages", *International Affairs Journal*, No. 12, 2019 (Annex 1097).

- b. In the 2017-2018 academic year, more than 5,600 students received education in Crimean Tatar, which represents about 3% of the total number of students that year.<sup>600</sup> In that academic year, education in Crimean Tatar was provided in 15 Crimean Tatar schools, covering 202 classes or 3,753 students, as well as in 133 classes disseminated among 31 schools with two or three languages of education and covering 1,879 students.<sup>601</sup> In addition, the number of students who study the Crimean Tatar language as a subject or Crimean Tatar literature, either as part of their curriculum or as an extra-curricular activity, has remained stable between 2014 and 2018 with 21,400 and 21,600 students, respectively, with fluctuations in-between.<sup>602</sup>
- c. In the 2019-2020 academic year, the number of students receiving education in Crimean Tatar had risen to 6.4 thousand,<sup>603</sup> and a new Crimean Tatar school was opened, bringing the number of those institutions to 16.<sup>604</sup>
- d. In the 2020-2021 academic year, the number of students receiving education in Crimean Tatar is 6.7 thousand with an increase of 14 classes (344 students) over the previous 2019-2020 academic year.<sup>605</sup>
- e. These statistical elements are clearly incompatible with Ukraine's accusation that the Russian Federation is responsible of a "strategy of cultural erasure" consisting in taking "measures to prevent the target culture being passed on to future generations through the educational system".<sup>606</sup>

<sup>&</sup>lt;sup>600</sup> Ministry of Education, Science and Youth of the Republic of Crimea official website, Briefing note "On the situation with education in the state (Crimean Tatar, Ukrainian) languages and the study of native languages in educational institutions of the Republic of Crimea in the 2017/2018 academic year", available in Russian at https://monmrk.gov.ru/file/Обучение на родных языках(1)(1).docx, *in* Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450).

<sup>&</sup>lt;sup>601</sup> *Ibid*.

<sup>&</sup>lt;sup>602</sup> Ministry of Education, Science and Youth of the Republic of Crimea, Briefing note "On the study of native languages and education in native languages in the general educational institutions of the Republic of Crimea" as attached to Decision of the Collegium of the Ministry of Education, Science and Youth of the Republic of Crimea No. 4/2, 23 May 2018 (Annex 482), Section II.

<sup>&</sup>lt;sup>603</sup> See Briefing note "On the instruction in and studying of languages of the Republic of Crimea, 1st half of the 2019/2020 academic year" in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450), also available at the Ministry of Education, Science and Youth of the Republic of Crimea official website: <u>https://monm.rk.gov/ru/uploads/txteditor/monm/attachments/d4/1d/8c/d98f00b204e9800998ecf8427e/phpWOhNyX %D0%A1%D0%B5%D1%82%D1%8C%20%D0%BD%D0%B0%20%D1%81%D0%B0%D0%B9%D1%82.docx.</u>

<sup>&</sup>lt;sup>604</sup> *Ibid.*, see also Witness Statement of

<sup>(</sup>Annex 8), para. 34.

<sup>&</sup>lt;sup>605</sup> See Briefing note "On the situation with education in the state (Crimean Tatar, Ukrainian) languages and the study of native languages in educational institutions of the Republic of Crimea in the 2020/2021 academic year" in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450), also available at the Ministry of Education, Science and Youth of the Republic of Crimea official website: <a href="https://monm-rk.gov.ru/uploads/txteditor/monm/attachments//d4/1d/8c/d98f00b204e9800998ecf8427e/phpuhSs1y-Ha">https://monm-rk.gov.ru/uploads/txteditor/monm/attachments//d4/1d/8c/d98f00b204e9800998ecf8427e/phpuhSs1y-Ha</a> <a href="https://caŭar(2).docx">caŭar(2).docx</a>.

<sup>&</sup>lt;sup>606</sup> MU, para. 533.

## V. The Decrease of Students Studying in Ukrainian Has Nothing to Do with Racial Discrimination

290. With regard to education in the Ukrainian language in Crimea, the Court indicated in 2017 that the Russian Federation must, as a provisional measure, "[e]nsure the availability of education in the Ukrainian language" [in the French, authoritative text of the Order, "[f]aire en sorte de rendre disponible un enseignement en langue ukrainienne"].<sup>607</sup> The Court relied on two sentences included in two reports, one of the OSCE Human Rights Assessment Mission on Crimea (6 to 18 July 2015), and one of the OHCHR Report on the human rights situation in Ukraine (16 August to 15 November 2016), to state that "[t]hese reports show, prima facie, that there have been restrictions in terms of the availability of Ukrainian-language education in Crimean schools."<sup>608</sup> These two sentences, which are not specifically reasoned, are of course not conclusive at the merits phase,<sup>609</sup> and, as will be shown below, are not supported by the relevant facts.

291. In addition, the wording employed by the Court confirms that it was not referring to a right, let alone an unqualified right, to education in native language. Indeed, "ensuring the availability" means making the said education available when requested. It is not a requirement to maintain the number of schools and classes that had been providing such education before 2014 at the price of empty classes. In other words, since Ukraine does not deny that education in, and of, the Ukrainian language is still being provided in Crimea, "ensuring the availability of education in the Ukrainian language" is not incompatible with a decrease in the corresponding facilities and programmes, such decrease being itself the direct consequence of a declining demand.<sup>610</sup>

292. As will be explained below, the decrease in the number of students receiving general education in the Ukrainian language since 2014 neither evidences nor results from racial discrimination, let alone a systematic campaign or policy of "cultural erasure". It is explained by other factors (A). Due to these factors, the authorities have to adapt the capacities to the declining demand. At the same time, they have taken measures that confirm their efforts to maintain opportunities for ethnic Ukrainians to receive education in their native language (B).

- <sup>609</sup> See *ibid.*, para. 105.
- <sup>610</sup> Witness Statement of
- paras. 7-8 and 24; Witness Statement of
- Witness Statement of
- Witness Statement of
- Witness Statement of

(Annex 2), (Annex 6), para. 9; (Annex 1), paras. 11 and 12; (Annex 3), para. 17; , 1 April 2021 (Annex 4), (Annex 17),

<sup>&</sup>lt;sup>607</sup> Order of 19 April 2017, para. 106(1)(b).

<sup>&</sup>lt;sup>608</sup> *Ibid.*, para. 97.

paras. 5 and 6; Witness Statement of para. 6.

## A. FACTORS EXPLAINING THE DECLINE IN THE DEMAND FOR EDUCATION IN UKRAINIAN LANGUAGE IN CRIMEA

293. Ukraine alleged that the decrease in the number of students receiving education in the Ukrainian language since 2014 would constitute proof of a policy of systematic racial discrimination.<sup>611</sup> Such a decrease, that Russia does not dispute as a matter of fact (1), results however from a series of factors that bear no relation whatsoever with racial discrimination and with Ukraine's grave accusation (2).

#### 1. Relevant Statistics

294. In the 2013-2014 academic year before Crimea's change of status, out of the 176,419 students receiving general education in Crimea, 158,174 students received education in the Russian language, or 89.7% of Crimean students, while 12,694 students received education in Ukrainian, or 7.2% of the students.<sup>612</sup> Education in the Ukrainian language was provided to 2,230 students in 103 classes within 7 Ukrainian schools, namely schools using exclusively this language as teaching language, and to 10,460 students in 726 classes among 161 schools that otherwise use other teaching languages.<sup>613</sup>

295. The number of students receiving education in Ukrainian had not been constant over the previous years but, according to Ukraine's statistics, had decreased slightly between 2010 and 2013.<sup>614</sup> Therefore, contrary to what Ukraine advances, there was no "increasing demand for minority language teaching" in Crimea before 2014.<sup>615</sup> Besides, under the Ukrainian system, it was compulsory for all students to learn Ukrainian as the official, national language of Ukraine.<sup>616</sup> The situation in relation to national and minority languages was thus very different to what it is now in Crimea since the change of status of the peninsula.<sup>617</sup> In addition, it is important to recall that the great majority of Crimean Ukrainians – nearly 80% – identify Russian, not Ukrainian, as their native language, while virtually all of them speak Russian with the same fluency.<sup>618</sup>

296. Since 2014, the numbers are as follows:

<sup>&</sup>lt;sup>611</sup> See in particular MU, paras. 540-543.

<sup>&</sup>lt;sup>612</sup> A. Ablyatipov, "Republic of Crimea: Instruction in native languages", *International Affairs Journal*, No. 12, 2019 (Annex 1097). See also Witness Statement of Ayder Serverovich Ablyatipov (Annex 13), para. 21; and Education Statistics from Ministry of Education of Ukraine, 2018 (Annex 735 to MU).

<sup>&</sup>lt;sup>613</sup> A. Ablyatipov, "Republic of Crimea: Instruction in native languages", *International Affairs Journal*, No. 12, 2019 (Annex 1097), p. 3.

<sup>&</sup>lt;sup>614</sup> Education Statistics from Ministry of Education of Ukraine, 2018 (Annex 735 to MU).

<sup>&</sup>lt;sup>615</sup> MU, para. 537.

<sup>&</sup>lt;sup>616</sup> Witness Statement of Mr Ablyatipov (Annex 13), para. 21; Witness Statement of Mr Ablyatipov (Annex 13), para. 21;

<sup>&</sup>lt;sup>617</sup> Witness Statement of (Annex 10), para. 10.

<sup>&</sup>lt;sup>618</sup> See para. 261.

- a. In the 2014-2015 academic year, which was the first academic year after Crimea's change of status, 1,990 students received education in Ukrainian, accounting for 1.1% of the 184,869 students receiving general education in Crimea that year.<sup>619</sup> This number fell to 894 during the 2015-2016 academic year, and to 371 in the 2016-2017 academic year.<sup>620</sup>
- b. In the 2017-2018 academic year, out of the 208,174 students receiving general education in Crimea, 318 students opted for receiving education in Ukrainian,<sup>621</sup> which represents about 0.1%. Of these 318 students, 146 studied in 9 classes open in one educational institution,<sup>622</sup> while other students opted for receiving education in Ukrainian classes in schools which otherwise provide education in the Russian language.
- c. In the year 2018-2019, 249 students received education in Ukrainian in one Ukrainian school (144 students in 9 classes) and in 8 Ukrainian classes among 5 schools otherwise providing education in Russian (105 students).<sup>623</sup>
- d. In the year 2019-2020, 206 students opted for receiving general education in the Ukrainian language in Crimea, including 152 students in 9 classes within one Ukrainian school,<sup>624</sup> as well as 54 students forming 3 classes in one school that otherwise provides education in Russian language.<sup>625</sup>
- e. Finally, in the year 2020-2021, 214 students received general education in Ukrainian language in one Ukrainian school, School No. 20 of Feodosia (162 students in 9 classes) and in 3 Ukrainian classes in the Simferopol Academic Gymnasium (52

<sup>&</sup>lt;sup>619</sup> Ministry of Education, Science and Youth of the Republic of Crimea, Briefing note attached to Decision of the Board of the Ministry of Education, Science and Youth of the Republic of Crimea No. 4/2 (Annex 482), Section II.

<sup>&</sup>lt;sup>620</sup> *Ibid*.

<sup>&</sup>lt;sup>621</sup> *Ibid*.

<sup>&</sup>lt;sup>622</sup> School No. 20 of Feodosia, Information on students studying between the 2008/2009 academic year and the 2020/2021 academic year (Annex 730).

<sup>&</sup>lt;sup>623</sup> See Briefing note "On the situation with education in the state (Crimean Tatar, Ukrainian) languages and the study of native languages in educational institutions of the Republic of Crimea in the 2018/2019 academic year" in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450), also available at the Ministry of Education, Science and Youth of the Republic of Crimea official website: <a href="https://monm.rk.gov.ru/uploads/monm/attachments/d4/1d/8c/d98f00b204e9800998ecf8427e/phpFIkuR2">https://monm.rk.gov.ru/uploads/monm/attachments/d4/1d/8c/d98f00b204e9800998ecf8427e/phpFIkuR2 %D0%BE%D 0%B1%D1%83%D1%87%D0%B5%D0%B8%D0%B8%D0%B8%D0%B8%D0%B7%D1%83%D1%87%D0%B5%D0%B5%D0%B8%D0%D0%B8%D0%D0%B8%D0%D0%B8%D0%D0%B8%D0%B8%D0%B8%

<sup>&</sup>lt;sup>624</sup> See Briefing note "On the situation with education in the Republic of Crimea in the 1st half of the 2019/2020 academic year" in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450); School No. 20 of Feodosia, Information on students studying between the 2008/2009 academic year and the 2020/2021 academic year (Annex 730).

<sup>&</sup>lt;sup>625</sup> See Briefing note "On the situation with education in the Republic of Crimea in the 1st half of the 2019/2020 academic year" in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450).

students).<sup>626</sup> Today, municipal school No. 20 in Feodosia provides primary general education (grades 1–4) and basic general education (grades 5–9) in the Ukrainian language.<sup>627</sup> Simferopol Academic Gymnasium also continues to provide education in Ukrainian in several Ukrainian classes.<sup>628</sup>

297. In addition to these statistics, it must be stressed that the language of general education is not the only way to maintain a link with the Ukrainian language. As Article 14(2) of the 1995 Framework Convention for the Protection of National Minorities indicates, such a link can be maintained through adequate opportunities for "receiving instruction in this language" "or" "being taught the minority language".<sup>629</sup> In Crimea, as part of the general education course, in the year 2014-2015, 39,100 students opted for learning Ukrainian language and literature, either as a subject, on an elective basis or as part of extra-curricular activities.<sup>630</sup> This number decreased to 22,700 in the 2015-2016 academic year, 12,900 in the 2016-2017 academic year, and 10,600 in the 2017-2018 academic year.<sup>631</sup> The number further fell to 6,050 in 2018-2019,<sup>632</sup> 5,621 in 2019-2020<sup>633</sup> and 4,155 in the year 2020-2021.<sup>634</sup> It is also important to bear in mind that, as part of the general education curriculum, the choice of a language for the study of the subject area "Native Language and Literature" is compulsory, and that Ukrainian is among the available options.<sup>635</sup>

<sup>630</sup> Ministry of Education, Science and Youth of the Republic of Crimea, Briefing note attached to Decision of the Board of the Ministry of Education, Science and Youth of the Republic of Crimea No. 4/2 (Annex 482), Section II.

<sup>&</sup>lt;sup>626</sup> See Briefing note "On the situation with education in the Republic of Crimea in the 2020/2021 academic year" in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450). See also School No. 20 of Feodosia, Information on students studying between the 2008/2009 academic year and the 2020/2021 academic year (Annex 730), Witness Statement of Annex 2), para. 7.

<sup>&</sup>lt;sup>627</sup> Witness Statement of **1** (Annex 5), para. 12. As is visible from **1** Witness Statement (para. 10) and the statistical information, see School No. 20 of Feodosia, Information on students studying between the 2008/2009 academic year and the 2020/2021 academic year (Annex 730), 186 children were studying at Feodosia School No. 20 in 2013-2014, an unprecedented peak since 2008. After having decreased to 155 students in 2014-2015 for reasons explained by her, the number has since been generally increasing again up to 181 students in 2020-2021, practically retrieving the level of 2013-2014.

<sup>&</sup>lt;sup>628</sup> Witness Statement of Ms Rimskaya (Annex 2), para. 7; Simferopol Academic Gymnasium, Information on number of students studying at Simferopol Academic Gymnasium between 2012/2013 academic year and 2020/2021 academic year (Annex 739).

<sup>&</sup>lt;sup>629</sup> Council of Europe, Framework Convention for the Protection of National Minorities, 1 February 1995, *ETS* No. 157, Article 14(2).

<sup>631</sup> Ibid.

<sup>&</sup>lt;sup>632</sup> A. Ablyatipov, "Republic of Crimea: Instruction in native languages", *International Affairs Journal*, No. 12, 2019 (Annex 1097).

<sup>&</sup>lt;sup>633</sup> *Ibid.*; See Briefing note on the situation with education in the Republic of Crimea in the 1st half of the 2019/2020 academic year" in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450).

<sup>&</sup>lt;sup>634</sup> See Briefing note on the situation with education in the Republic of Crimea in the 2020/2021 academic year" in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450).

<sup>&</sup>lt;sup>635</sup> Information materials on the study of the subject area "Native Language and Literature", as attached to the Letter of the First Deputy Minister of Education and Science of the Russian Federation to the Head of the Republic of Crimea No. VP-409/08, 16 February 2018 (Annex 480); See also Ministry of Education, Science and Youth of the Republic of Crimea, "The ministry of education of Crimea pays particular attention to establishment of conditions for studying of

#### 2. The Relevant Factors Have Nothing to Do with Racial Discrimination

298. The decline in the number of students opting for receiving general education in the Ukrainian language in 2014 and the years that followed is not due to any legal measure or constraint brought by the Russian Federation and have no relation whatsoever with racial discrimination. The combined effect of the factors considered below is decisive in leading to the observed result.

299. School teachers and headmasters who have worked in the education sector *both under Ukraine and since 2014* are particularly qualified to address the situation of education in native language in Crimea. In their Witness Statements annexed to the present Counter-Memorial,

- they record a significant decrease of the demand for receiving general education in the Ukrainian language as early as 2014;
- b. they also confirm that such decrease is not due to any legal measure, factor or constraint brought by the Russian Federation since 2014 but caused by subjective reasons, one of them is the lack of need for citizens to have their children receive education in the Ukrainian language.<sup>636</sup>

300. While the study of Ukrainian, as the State language of Ukraine, was mandatory in Crimea before 2014, it was not the only possible language of education. The choice of language of education by students and their parents was understandably based, to a certain extent, on a utilitarian or pragmatic relationship to the Ukrainian language. However, the great majority of students received education in the Russian language in Crimea before 2014,<sup>637</sup> only learning Ukrainian as a mandatory subject. On the other hand, a small minority – amounting to 7.2% of all Crimean students in 2013/2014 – opted to receive education in Ukrainian because they were living in Ukrainian was the state language used in the wider country and for higher education opportunities in Kiev, Lvov, Kharkov, and other Ukrainian cities. Considering that learning the

native languages" in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), p. 185-187.

636 Witness Statement of	(Annex 2), paras. 4-6 and 24; Witness Statement of	
(A	nnex 6), paras. 5 and 12; Witness Statement of	(Annex 1),
para. 7; Witness Statement of	(Annex 3), para. 15; Witness Statement of	(Annex 4),
paras. 4-5 and 10; Witness Statement of	(Annex 5), paras. 8-10; Witness Statement of	
(Annex 17), paras. 6 and 8; Witness Stat	tement of	
	(Annex 11), para. 8. In the field of higher	education,
see also Witness Statement of		
(Annex 9), paras. 7 and 12; W	Vitness Statement of (Annex 10), paras. 9-10.	
637 Saa fan anamala Witness Stateman	t of (Amer 5) non 2 (nainting that has school muss	luce day and

<sup>637</sup> See for example Witness Statement of (Annex 5), para. 2 (pointing that her school was already one of the few schools in Crimea with instruction in Ukrainian before 2014). According to Ukraine's own record, the 12,694 students receiving general education in Ukrainian in 2013-2014 accounted for a mere 7.2% of the overall number of students and is to be compared to 158,174 students receiving general education in Russian and 5,551 students receiving general education in Crimean Tatar (Permanent Delegation of the Russian Federation to UNESCO, Information on the Situation in the Republic of Crimea (the Russian Federation) within the Scope of UNESCO Competence as of April 8, 2015, 14 April 2015, p. 2 (Annex 785 to MU); see also Education Statistics from Ministry of Education of Ukraine, 2018 (Annex 735 to MU)). Ukrainian language was compulsory anyway, opting to receive general education in Ukrainian could have appeared for some as the rational choice to make, especially for those who planned to move to the then mainland Ukraine, since most higher education institutions in Ukraine provided higher education in the Ukrainian language. It was also an obvious choice to make for those who contemplated professional and career opportunities in Ukraine. Even in Crimea where Russian was spoken by the majority, knowledge of the Ukrainian language was a requirement for every person wishing to pursue a career in the public sector as a civil servant.<sup>638</sup>

301. After 2014, it became rational for these students to continue or opt to receive general education in Russian, which they know perfectly and that will be the most useful for higher education and for career opportunities.<sup>639</sup> Indeed, the Crimean education system has been reoriented towards that of the Russian Federation since 2014, and under federal law, higher education is in principle only guaranteed in the State language of the Russian Federation.<sup>640</sup> Such arrangement is common in many States in the world, including in Ukraine.<sup>641</sup>

302. Besides, any student wishing to pursue higher education in Ukraine met with utmost difficulties given that, since 2014, Ukraine itself does not accept certificates issued by Crimean schools.<sup>642</sup> Students who used to receive general education in Ukrainian before 2014 but consider both languages and cultures as native were no doubt particularly receptive to the above-mentioned powerful rationale or pragmatic considerations. This trend is confirmed by headmasters, who are acquainted in detail with the situation in the education sector in Crimea both before and since 2014, and have a first-hand experience of students' and their parents' choices and motives.<sup>643</sup>

<sup>643</sup> Witness Statement of (Annex 1), paras. 7 and 12-13; Witness Statement of (Annex 17), paras. 6 and 8; Witness Statement of (Annex 4), para. 10; Witness Statement of (Annex 3), para. 15; Witness Statement of (Annex 6), paras. 12-13. The professional careers of these

headmasters and teachers in Crimea cover both the Ukrainian period and the current situation, which provides an invaluable historical and comparative insight.

<sup>&</sup>lt;sup>638</sup> Witness Statement of (Annex 1), paras. 4-5; Witness Statement of (Annex 9), para. 5; Witness Statement of (Annex 3), para. 7.

<sup>&</sup>lt;sup>639</sup> As explained before, the use of the Ukrainian language in Crimea generally has been significantly low both before and after 2014: see para. 261.

<sup>&</sup>lt;sup>640</sup> Federal Law No. 273-FZ "On education in the Russian Federation", 29 December 2012 (Annex 58), Article 14.

<sup>&</sup>lt;sup>641</sup> Education in native language as regarded in international instruments usually does not concern higher education, and for obvious practical and capacity reasons no State can reasonably be expected to extend a multilingual education system to higher education generally or other non-mandatory curricula. This is especially the case in federal States like the Russian Federation where the use of a national State language is crucial.

<sup>&</sup>lt;sup>642</sup> According to information from the official website of the Ministry of Education and Science of Ukraine, diplomas and other educational documents issued in Crimea are not recognized and have no legal force in Ukraine: "The Ministry of education and science of Ukraine reminds that diplomas and other educational documents issued in the temporarily occupied territories of Donetsk and Luhansk regions and the Autonomous Republic of Crimea are not recognized and have no legal force either in Ukraine or in other countries of the world. The Ministry provides a corresponding explanation in response to numerous appeals from citizens on this issue", see Ministry of Education and Science of Ukraine official website, "Ukraine does not recognize any educational documents issued in the occupied territories explanation of the Ministry of Education and Science", 9 April 2018 (Annex 799). See also Witness Statement of (Annex 5), para. 9.

Another factor that accounts for the fall in the number of students who received general 303. education in Ukrainian after 2014 lies in the policy carried out by Ukraine before 2014, which consisted in forcibly imposing Ukrainian language on students in education programmes.<sup>644</sup> Prior to 2014, Ukrainian was the only State language in Crimea and learning Ukrainian language at school was mandatory, while ethnic Ukrainians only accounted for a demographic minority. The promotion of Ukrainian as Ukraine's State language in an environment where this language did not reflect the linguistic identity or preferences of a great part of the population eventually led to an overvalued position of this language in Crimea to the detriment of the Russian language, which was otherwise spoken by the vast majority of the Crimean population.<sup>645</sup> At the same time, education in the Russian language was always preferred by the Russian-speaking majority of the Crimean population before 2014,<sup>646</sup> and a general lack of interest in studying Ukrainian and in Ukrainian was clearly noticeable, especially where students and their parents were provided with a choice after 2014.647 With the Ukrainian language to a material extent being imposed on students, many of whom did not all regard it as their native or preferred language, the natural realignment after 2014 is unsurprising: the demand for studying Ukrainian and in Ukrainian declined objectively while demand for studying Russian and in Russian (which has been widely spoken in Crimea historically) naturally increased.

304. In addition, some ethnic Ukrainians left Crimea after March 2014, mostly for Ukraine. For example, in her witness statement **statement** mentions that 10 out of the 34 students in the class she was heading as a teacher at the Simferopol Academic Gymnasium moved to Ukraine – mostly children of military servicemen and public officials who relocated due to professional reasons after Crimea's accession to the Russian Federation.<sup>648</sup>

#### B. RUSSIA MAINTAINED THE AVAILABILITY OF EDUCATION IN THE UKRAINIAN LANGUAGE IN CRIMEA

305. The decline in the demand for education in Ukrainian in Crimea does not in any event constitute a breach of CERD since the Crimean system of education has been maintaining the possibility to receive general education in the Ukrainian language for everyone at all material times since 2014.

<sup>&</sup>lt;sup>644</sup> As an example in higher education, see Witness Statement of Statement of (Annex 11), para. 7; Witness Statement of

<sup>(</sup>Annex 10), paras. 20-21. See also Witness

<sup>(</sup>Annex 6), para. 4.

<sup>&</sup>lt;sup>645</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), paras. 121-135; Witness Statement of Control (Annex 6), paras. 3-4 (noting that education in Ukrainian was only introduced in this school in 2004, and not even for reasons due to any particular demand).

<sup>&</sup>lt;sup>646</sup> Witness Statement of Mr Ablyatipov (Annex 13), para. 21.

<sup>&</sup>lt;sup>647</sup> Witness Statement of (Annex 3), para. 17; Witness Statement of (Annex 5), paras. 910; Witness Statement of (Annex 11), paras. 7-8.
<sup>648</sup> Witness Statement of (Annex 2), para. 9. See also Witness Statement of (Annex 5),

paras. 5 and 8.

306. The Crimean authorities follow a demand-driven approach in order to allocate their resources in the most sensible way and in the best interest of the population, as will be seen below.<sup>649</sup> In this regard, the Crimean authorities proactively and closely monitor the needs in terms of education and the wishes expressed by students' parents in order to adapt the teaching offer and capacities to the demand, by either opening additional classes or schools with the needed language of teaching, or by closing the unneeded facilities.<sup>650</sup> While State resources are not unlimited, and while no State may be expected to build or maintain capacities that are not justified by education needs and demand, the Russian Federation makes genuine efforts to maintain an education system in Crimea that provides Crimean Tatars and ethnic Ukrainians who express a wish to receive education in their native language and to study it, a reasonable opportunity to do so.

307. As an illustration of the Russian Federation's commitment to secure education in native language, including in Ukrainian, teachers and headmasters have confirmed that their schools are ready to provide education in Ukrainian should a demand arise.<sup>651</sup> Pursuant to their mission under statutory law, the Crimean authorities have been closely monitoring the state of the needs and wishes expressed by parents and students in terms of language of education and studying of a native language.<sup>652</sup> The local authorities and the Crimean educational institutions as confirmed by numerous Witness Statements have endeavoured to maintain at all times the necessary capacities to cover the demand expressed by parents and students and to provide everyone who wishes it with the opportunity to study in Ukrainian or Crimean Tatar.<sup>653</sup>

308. This is exemplified by the procedure for selecting the desired language of education. Each year, parents are required to complete and submit to the authorities, through education institutions, a request specifying the language in which they wish their child to receive general education as well as the desired language to be studied as a subject.<sup>654</sup> The free character of the choice is confirmed by school headmasters and teachers, who have a first-hand knowledge of the process.<sup>655</sup> The

<sup>655</sup> Witness Statement of (Annex 1), paras. 8-9; Witness Statement of (Annex 2), paras. 4 and 8; Witness Statement of (Annex 5), para. 14.

<sup>&</sup>lt;sup>649</sup> See paras. 307-308 below.

<sup>&</sup>lt;sup>650</sup> Witness Statement of Mr Ablyatipov (Annex 13), para. 32.

<sup>&</sup>lt;sup>651</sup> Witness Statement of (Annex 1), para. 11; Witness Statement of (Annex 6), paras. 8-9 (confirming that her school would be able to accommodate even one single request from a student's parents for studying Ukrainian as a subject, should such a request arise); Witness Statement of (Annex 4), para. 6; Witness Statement of (Annex 3), para. 17.

<sup>&</sup>lt;sup>652</sup> Witness Statement of Mr Ablyatipov (Annex 13), paras. 29-32.

<sup>&</sup>lt;sup>653</sup> An example of this is the creation of a separate discipline entitled "State languages of the Republic of Crimea" within the university Bachelor programme at the Fevzi Yakubov Crimean Engineering and Pedagogical University; see Witness Statement of **1999** (Annex 12), para. 17; Witness Statement of **1999** (Annex 9), para. 9. The Fevzi Yakubov Crimean Engineering and Pedagogical University also implements programmes for training of preschool and primary school teachers with a right to teach schoolchildren in classes with Ukrainian or Crimean Tatar as the languages of instruction and to teach the Ukrainian or Crimean Tatar languages as elective courses, see Witness Statement of

<sup>(</sup>Annex 7). This obviously aims at maintaining and developing teaching capacities in the Russian, Ukrainian, and Crimean Tatar languages.

<sup>&</sup>lt;sup>654</sup> Witness Statement of Mr Ablyatipov (Annex 13), paras. 29-30.

authorities then examine applications and take expressed wishes into account in planning the next school year. The authorities closely monitor the implementation by the schools of the right to education in native language, and provide them with regular instructions in this respect.<sup>656</sup> For example, in 2017, the authorities shared with school directors a roadmap that provides them guidance for guaranteeing and implementing the constitutional right to education in one's native language; in particular the roadmap recalls the applicable law and contains model forms to be used.<sup>657</sup>

309. It should be highlighted that Crimean schools do not have strict regulations on minimum number of applications required in order to open a class in a specific language. Within the limits of the capacities available to them, they endeavour to meet the requests and wishes of students and their parents. If needs be, students may be regrouped in multi-grade classes. As for learning native languages, Crimean schools (if they have capacity) can provide courses on an extracurricular basis or as part of tutorial activities even for one student.<sup>658</sup>

310. As this system reflects the authorities' policy and legal domestic obligations to maintain as far as possible adequate capacities to meet the demand of education in Crimean Tatar and Ukrainian by monitoring, anticipating and adjusting the capacities, it is evident that the decrease in the number of classes providing general education in the Ukrainian language is the result, not the cause, of the decrease in the number of students who express desire for it.<sup>659</sup> A confirmation of this is the increase in the number of students receiving education in the Crimean Tatar language, which was accompanied by a development of further teaching capacity – one additional Crimean Tatar school was opened since 2014.<sup>660</sup>

311. Ukraine suggests however in the Memorial that parents' requests were ignored or that they were pressured into not choosing Crimean Tatar or Ukrainian as teaching languages.<sup>661</sup> This allegation is not only rebutted by the measures explained above; it is also unsupported by Ukraine's evidence.

<sup>&</sup>lt;sup>656</sup> See for example Letter No. 01-14/382 of N.G. Goncharova, Minister of Education, Science and Youth of the Republic of Crimea to directors of educational institutions "On the choice of language of education", 25 June 2014 (Annex 892 to MU), recalling that the respect for the right to education in one's native language depends on a "free, voluntary and informed choice" offered to the parents or students; Ministry of Education, Science and Youth of the Republic of Crimea, Recommendation on the application of legislative provisions with regard to ensuring the possibility to receive education in the native languages as attached to the Letter of the Deputy Head of the Department for State Policies in the Field of General Education No. 03-510, 20 December 2018 (Annex 484); Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-14/3417 to the heads of city, district education authorities, state budgetary educational institutions, 18 November 2019 (Annex 491).

<sup>&</sup>lt;sup>657</sup> Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-14/4442 "On the roadmap for choosing the instruction (studying) language in the educational institutions of the Republic of Crimea", 28 December 2017 (Annex 479).

<sup>&</sup>lt;sup>658</sup> Witness Statement of (Annex 6), paras. 8-9.

<sup>&</sup>lt;sup>659</sup> See for example Witness Statement of (Annex 17), para. 6; Witness Statement of (Annex 2), para. 24; Witness Statement of (Annex 3), para. 11.

<sup>&</sup>lt;sup>660</sup> Witness Statement of (Annex 8), para. 34.

<sup>&</sup>lt;sup>661</sup> MU, para. 538.

- a. For example, the passage of Ms Tyshchenko's Written Statement quoted by Ukraine is not credible: she cites no source and she expressly acknowledges that she relies on "reports" and "stories", namely hearsay or second hand sources that are not supported by any evidence.<sup>662</sup> As the Court previously confirmed, "[n]or is testimony of matters not within the direct knowledge of the witness, but known to him only from hearsay, of much weight".<sup>663</sup>
- b. The same lack of probative value may be observed with respect to the passage of the NGO report that Ukraine refers to, a document co-authored by Ms Tyshchenko, a pro-Ukrainian activist, and that contains no supporting reference for this factual allegation.<sup>664</sup>
- c. The third and last source on which Ukraine relies, an OSCE report, relies itself on the same NGO and on an interview with Mr Shchekun, who also provided a statement in the present case.<sup>665</sup> This is a manifestly circular approach to evidence.

312. The contention that applications for Ukrainian were systematically rejected<sup>666</sup> is also contradicted by statistics. Such an alleged systematic rejection is incompatible with the fact that a number of schoolchildren continue to receive education in the Ukrainian language in Crimea. Moreover, many witnesses working in the Crimean schools confirm that the Ukrainian language and literature have been studied either as part of the curriculum or as an extra-curricular activity up to this day<sup>667</sup> and that their institutions are ready to accommodate the demand irrespective of the number of students applying for that.<sup>668</sup>

313. In addition, when individual school directors observe that the Ukrainian language does not open as many higher education and career opportunities as Russian language in today's system in Crimea, it is a mere description of a factual reality that is an obvious consideration to take into account when deciding on the desired language of education; it is absurd to portray this as pressure

(Annex 2), para 8.

<sup>668</sup> Witness Statement of

<sup>&</sup>lt;sup>662</sup> Witness Statement of Yulia Tyshchenko, 6 June 2018 (Annex 17 to MU), paras. 25-27.

<sup>&</sup>lt;sup>663</sup> Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, 27 June 1986, I.C.J. Reports 1986, p. 42, para. 68.

<sup>&</sup>lt;sup>664</sup> Ukrainian Center for Independent Political Research, "Annexed" Education in Temporarily Occupied Crimea, Monitoring Report, 2015, p. 23 (Annex 944 to MU).

<sup>&</sup>lt;sup>665</sup> OSCE, Report on the Human Rights Assessment Mission on Crimea (6-18 July 2015) (17 September 2015), para. 190 (Annex 812 to MU).

<sup>&</sup>lt;sup>666</sup> Witness Statement of 6 June 2018 (Annex 17 to MU), para. 25.

<sup>&</sup>lt;sup>667</sup> Witness Statement of (Annex 5), para. 13; see also School No. 20 of Feodosia, Information on students studying between the 2008/2009 academic year and the 2020/2021 academic year (Annex 730); Witness Statement of (Annex 11), paras. 5 and 7; see also Crimean Boarding Gymnasium for Gifted Children, Information on the study of languages between 2011 and 2021 (Annex 733); Witness Statement of (Annex 12) (Annex 13) (Annex 14) (Annex 733); Witness Statement of (Annex 14) (Annex 14) (Annex 733); Witness Statement of (Annex 14) (Annex 15) (Annex

<sup>(</sup>Annex 17), paras. 4 and 9; see also Collegium School of Alushta, Curriculum for 2020/2021 academic year (Annex 738); Collegium School of Alushta, Statistical data on number of students studying between 2012/2013 academic year and 2020/2021 academic year (Annex 736); Witness Statement of

<sup>(</sup>Annex 1), para. 11; Witness Statement of (Annex 6), para. 9.

on parents, as Ukraine does.<sup>669</sup> Moreover, Ukraine does not specify in which context these observations were made.

314. The allegation of systematic rejection is in any case baseless. The truth is that the authorities made every effort to accommodate the expressed wishes of students and their legal representatives, which they did successfully in almost all cases.<sup>670</sup> Complaints are rare. In any event, should any such complaints arise, parents may apply to the Ministry of Education for settlement. As the above example shows, the authorities are committed to react swiftly and solve any capacity issues that may arise locally so as to fully satisfy parents' requests in relation to education language. That parents' choice of education language is natural, genuine and not subject to pressure is confirmed by parents' general unresponsiveness to some teachers' active encouragements to continue having their children learn Ukrainian.<sup>671</sup>

315. Relying in particular on Ms Tyshchenko's opinion, Ukraine takes issue with the decision made by the authorities in 2014 to retrain 300 Ukrainian language teachers to teach Russian and contends that this provides evidence of the Russian Federation's alleged true "purpose" to racially discriminate.<sup>672</sup> However, the order that Ms Tyshchenko invokes as support for this claim actually points to the opposite explanation and confirms the demand-driven approach of the Crimean authorities. Indeed the order expressly mentions that the decision was taken "in connection with the integration of the educational system of the Republic of Crimea into the educational system of the Russian Federation and changes in the labour market".<sup>673</sup> All other references relied on by Ukraine<sup>674</sup> do not contradict the demand-driven approach followed by the authorities in assessing the need for maintaining education capacities in the Ukrainian language. As explained by Mr Ablyatipov in his Witness Statement, the Crimean authorities proactively and closely monitored the needs in terms of education and the wishes expressed by parents in order to adapt the teaching offer and capacities to the demand. Thanks to the timely decision, Ukrainian language teachers were able to keep their jobs, teaching both Ukrainian and Russian in schools since then.<sup>675</sup>

#### VI. There Is No "Artificial Shortage" of Teachers in Crimea

316. Ukraine accuses Russia of "ending" certain teacher-programmes in Crimea. In particular, Ukraine refers to (i) the alleged "closing" of the Ukrainian Philology Faculty of the Taurida

<sup>&</sup>lt;sup>669</sup> MU, para. 538; Witness Statement of , 6 June 2018 (Annex 17 to MU), paras. 25-26.

<sup>&</sup>lt;sup>670</sup> See for example Witness Statement of (Annex 5), para. 14; Witness Statement of

<sup>(</sup>Annex 6), para. 8; Witness Statement of Mr Ablyatipov (Annex 13), para. 32.

<sup>&</sup>lt;sup>671</sup> Witness Statement of (Annex 6), para. 11.

<sup>&</sup>lt;sup>672</sup> MU, para. 548, relying in particular on Witness Statement of Yulia Tyshchenko, 6 June 2018 (Annex 17 to MU), para. 20.

<sup>&</sup>lt;sup>673</sup> Order of the Ministry of Education, Science and Youth of Crimea No. 116, 6 August 2014 (Annex 893 to MU).

<sup>&</sup>lt;sup>674</sup> MU, fns. 1150-1151.

<sup>&</sup>lt;sup>675</sup> Witness Statement of Mr Ablyatipov (Annex 13), para. 24; see also Witness Statement of (Annex 3), para. 13.

National V.I. Vernadsky University; (ii) the alleged "shrinking" of the Ukrainian-English programme of the Crimean Engineering and Pedagogical University (or Crimean Polytechnic Pedagogic University as Ukraine refers to it); and (iii) the alleged "cancellation" of "basic training for Crimean Tatar language teachers [at] the Crimean Polytechnic-Pedagogic University and Philology School of Tavrida National V.I. Vernadsky University."<sup>676</sup> Yet again, Ukraine's assertions are untenable.

317. *First*, the Faculty of Ukrainian Philology has been reorganized into the Department of Ukrainian Philology in order to face the significant decrease of the demand in 2014. As confirmed by the director of one of the structural units of the Vernadsky Crimean Federal University, the training programme "Philology (Ukrainian Language and Literature)" is still implemented and the University continued to form future teachers of the Ukrainian language and Ukrainian literature after 2014.<sup>677</sup> Indeed, in the 2020-2021 academic year more candidates for Ukrainian philology were admitted than the number of initially available places, which points to the possibility and willingness of the authorities to expand facilities in order to accommodate the demand where and when needed.<sup>678</sup>

318. *Second*, the decrease in the number of students studying the Ukrainian language, when it comes to philology faculties that instruct future teachers of the Ukrainian language, again relates to the steadily falling demand for the specialty of Ukrainian philologists. As

notes in her Witness Statement, while the interest in

studying the Russian, Crimean Tatar or English languages have continued unabated, the number of students who enrol in Ukrainian studies is steadily decreasing, and even students who specialized in both the English and Ukrainian languages end up more often choosing careers of teachers of English rather than the Ukrainian language.<sup>679</sup> As she notes, this trend remains significant notwithstanding the University's commitment to protect and promote Ukrainian language on an equal footing with other languages and despite staff's efforts to promote the Ukrainian language by organizing regular cultural and linguistic public events.<sup>680</sup>

<sup>677</sup> Witness Statement of (Annex 10), Section II.

(Annex

<sup>680</sup> Witness Statement of **1999** (Annex 9), paras. 12-18; see also Fevzi Yakubov Crimean Engineering and Pedagogical University, Results of the regional round of the Ukrainian language academic competition in the Republic of Crimea, 27 October 2016 (Annex 1060); Programme of the Research and Practical Conference "Taras Shevchenko and the Present", 2020 (Annex 1115); Franko Crimean Republican Universal Research Library official website, Reading Conference "Flower on a palm of eternity", 24 February 2021 (Annex 1156); Fevzi Yakubov Crimean Engineering and Pedagogical University, Photographs of the display of the Museum of Ukrainian ethnic studies (Annex 1232). See also Witness Statement of (Annex 10), paras. 17-19; Taurida Academy of the Vernadsky Crimean Federal University official website, "XVIII Annual Scientific and Practical Conference 'The work of Lesya Ukrainka

<sup>&</sup>lt;sup>676</sup> MU, paras. 545-547.

<sup>&</sup>lt;sup>678</sup> Witness Statement of (Annex 10), para. 15.

<sup>&</sup>lt;sup>679</sup> Witness Statement of (Annex 9), paras. 6, 7 and 18. See also Witness Statement of

<sup>10),</sup> paras. 9-10 and 12-13.

319. *Third*, in spite of the falling demand for learning the Ukrainian language and literature, there has been no interruption in the training of teachers of Ukrainian since 2014.<sup>681</sup>

320. *Fourth*, both the main Crimean Universities, i.e. Fevzi Yakubov Crimean Engineering and Pedagogical University and the Vernadsky Crimean Federal University, continue training for Crimean Tatar language teachers within bachelor, master and postgraduate programmes with the possibility to prepare theses on Crimean Tatar language issues.<sup>682</sup> Scientific, pedagogical staff and students of both Universities constantly hold scientific and practical conferences, seminars and symposia, within the framework of which important issues of linguistics, interaction and origin of the Turkic languages, contemporary issues of literature, history and culture of the Crimean Tatar people are discussed.<sup>683</sup>

321. Under the auspices of the Crimean Engineering and Pedagogical University in Simferopol a Youth Centre of Multi-Ethnic Culture is being constructed.<sup>684</sup> It will be an international scientific, cultural and educational platform for students, consisting of living facilities, sports forum, classes for workshops and a library. This University also includes a Research Institute of Crimean Tatar Philology, History, and Culture of Ethnic Groups of Crimea, which conducts research in philology, history, and culture of Crimean Tatars and other ethnic groups of Crimea.<sup>685</sup> A Scientific School of Crimean Tatar and Oriental Studies continues functioning under the auspices of the Vernadsky Crimean Federal University.<sup>686</sup>

322. Moreover, the Crimean Engineering and Pedagogical University continues to implement training programmes for primary school and preschool teachers with a right to teach students in classes and groups with Ukrainian or Crimean Tatar as the languages of instruction and to teach Ukrainian or Crimean Tatar as elective courses. As confirmed by the witness working at the Crimean Engineering and Pedagogical University, in recent years in Crimea several kindergartens and child development centres were opened with linguistic groups created at the parents' request, including those with Crimean Tatar.<sup>687</sup> According to information published at the official website of the Crimean Ministry of Education, in 2020-2021 academic year, about 1,200 children have

and other writers and artists of modern era in the context of tendencies of dramatization and theatricalization of the art process", 25-27 September 2019 (Annex 1108).

681	Witness Statement of	(Annex 10), para. 12; Witness Statement of (Annex 9), para	ras. 6 and 8;
Wit	ness Statement of	(Annex 7), paras. 6 and 13.	
682	Witness Statement of	(Annex 10), paras. 25 and 29; see also Taurida Academy of the	Vernadsky
Crin	nean Federal University, St	udent newspaper, Issue No. 11, 2016 (Annex 1062), pp. 4-5; Witness State	ement of
	(Annex 12), paras. 10-1	12.	
683	Witness Statement of	(Annex 12), paras. 5-7 and 18-23; Witness Statement of	(Annex 10),
para	as. 28, 30-32.	10 EUNIX	
684	Witness Statement of	(Annex 8), para 29.	
685	Witness Statement of	(Annex 12), para. 20.	
686	Witness Statement of	(Annex 10), para, 30.	

<sup>687</sup> Witness Statement of (Annex 7), para. 16; see also Kindergarten No. 7 "Zhemchuzhinka" of Simferopol official website, "Opening of a Crimean Tatar group", 6 November 2015 (Annex 1051).

attended Crimean Tatar linguistic groups and 93 children attended Ukrainian linguistic groups at preschool educational institutions of Crimea.<sup>688</sup>

323. To sum up, there is clearly no basis at all to claim that Russia breached CERD. CERD does not provide for a right of national minorities to receive education in their native language. In any event, the Russian education system provides, beyond what international law requires, for reasonable opportunities of education for all its citizens. In particular, as has been amply demonstrated above, the Russian Federation ensures as a matter of domestic law the availability of education in the Ukrainian and Crimean Tatar languages in Crimea as well as the opportunity to learn Ukrainian and Crimean Tatar languages and literature, and has always done so at all material times since 2014. While the right to education in native language in Russian Federation has been taking continued efforts in good faith to ensure that the capacities match the demand in terms of language of education.<sup>689</sup>

#### VII. Education in Crimean Tatar and Ukrainian Is Provided on Non-Discriminatory Basis

324. In addition to its claim on the alleged suppression of education in minority languages, Ukraine formulates a series of accusations suggesting that education in Crimean Tatar and in Ukrainian languages, as well as the learning thereof, is provided on a discriminatory basis. These allegations are also unfounded.

325. *First*, Ukraine attempts to portray the landscape of native language education in Crimea before 2014 as an ideal world in which multilingualism was on a steady rise.<sup>690</sup>

a. However, Ukraine's own statistical data points to a very different reality.<sup>691</sup> Ukraine contends that "[b]efore February 2014, numerous programs for multi-ethnic and multi-lingual education were developed and implemented in Crimea".<sup>692</sup> In fact the part of Ms Tyshchenko's witness statement that Ukraine relies on shows that there has never really been multilingual education in Crimea under Ukraine.<sup>693</sup> Indeed, Ms Tyshchenko admitted that in September 2013, only six months before the events of March 2014, the Ministry of Education of Crimea had merely adopted a decision to try to experiment

<sup>&</sup>lt;sup>688</sup> See Briefing note "On the situation with education in the Republic of Crimea in the 2020/2021 academic year" in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450).

<sup>&</sup>lt;sup>689</sup> Witness Statement of Mr Ablyatipov (Annex 13), paras. 11, 30, 32, 35, *inter alia*.

<sup>&</sup>lt;sup>690</sup> MU, paras. 535-536.

<sup>&</sup>lt;sup>691</sup> Education Statistics from Ministry of Education of Ukraine, 2018 (Annex 735 to MU).

<sup>&</sup>lt;sup>692</sup> MU, para. 536.

<sup>&</sup>lt;sup>693</sup> Witness Statement of Yulia Tyshchenko, 6 June 2018 (Annex 17 to MU), paras. 4-17, referred to in MU, para. 536.

multilingual education, and the experiment itself only started in early 2014.<sup>694</sup> In other words, Ukraine merely launched a programme of pilot school in the school year 2013-2014.

- b. To the extent that Ms Tyshchenko refers to students' desire to learn languages and cultures of other Crimean communities, the Russian system in Crimea provides for exactly that, including the study of two or more languages.
- c. In any event, multilingual education has nothing to do with the claims put forward by Ukraine in this case, which relate to the availability of education in native language and of studying one's native language as a subject.
- d. For the rest of the cited passage, Ms Tyshchenko only describes various activities of her NGO and cooperation with the authorities, unrelated to language or history teaching. Her activities and observations bear no relation with State policy and with Ukraine's claim.
- e. More importantly, she indicates that "[b]efore [...2014], instruction in Crimean schools was mostly done in Russian; Ukrainian and Crimean Tatar, as languages of instruction, were virtually exceptions to the general rule".<sup>695</sup>

326. *Second*, Ukraine misleadingly portrays as an "assault" the point made in a Letter of the Crimean Ministry of Education that studying the Crimean Tatar and Ukrainian languages "must not be conducted at the expense of instruction and study of the official language of the Russian Federation".<sup>696</sup>

- a. This is however nothing more than a reminder of what applicable federal law provides,<sup>697</sup> which echoes international law instruments.<sup>698</sup>
- b. It is customary for the Ministry to share directives or guidelines with educational institutions and other actors under its mandate and to remind them of their legal obligations.<sup>699</sup>
- c. Russian is the vernacular language in the whole country, but this situation does not harm local languages, which are sometimes, like Crimean Tatar and Ukrainian, recognized as official languages in Republics. Instead of announcing an "assault", the Minister was pointing to the need to prevent situations where Russian language is not

<sup>&</sup>lt;sup>694</sup> *Ibid.*, para. 6.

<sup>&</sup>lt;sup>695</sup> *Ibid.*, para. 11.

<sup>&</sup>lt;sup>696</sup> MU, para. 537.

<sup>&</sup>lt;sup>697</sup> See para. 286 above.

<sup>&</sup>lt;sup>698</sup> See paras. 266 and 271 above.

<sup>&</sup>lt;sup>699</sup> See for example at the federal level: Ministry of Education and Science of the Russian Federation, Letter No. TS-945/08 "On the exercise of the rights of citizens to receive education in their native language", 9 October 2017 (Annex 478).

taught at all locally. This is exactly what is indicated in the letter cited by Ukraine,<sup>700</sup> which otherwise expressly guarantees the right to education in native language.

d. As confirmed by Ms Tyshchenko herself, Ukraine adopted the very conduct it now holds against the Russian Federation. To recall, in Russian schools in Crimea before 2014 it was compulsory to study Ukrainian language and literature as a subject.

327. *Third*, Ukraine alleges a decrease in the "quality" of the teaching in the Crimean Tatar language, by referring to an alleged lack, and biased content, of textbooks.<sup>701</sup>

- a. It is difficult however to understand what Ukraine means when it refers to "the Russian Federation's biased teaching of history",<sup>702</sup> and Ukraine provides no evidence to support this allegation.
- b. Neither does Ukraine establish how a "reorientation" of the national history which is what it seems to refer to should qualify as racial discrimination under CERD.
- c. Besides, the education programmes approved by the Russian Federation include the teaching of Russian history as well as world history, which includes Ukraine.<sup>703</sup>
- d. Further, since 2014 the Russian Federation has taken measures for the publication of a significant number of textbooks in the Crimean Tatar and Ukrainian languages for general education needs in Crimea, covering many teaching disciplines.<sup>704</sup> However, as

<sup>&</sup>lt;sup>700</sup> Republic of Crimea, Ministry of Education, Science and Youth, Letter No. 01-14/ 382, 25 June 2014 (Annex 836 to MU), cited in MU, fn. 1127.

<sup>&</sup>lt;sup>701</sup> MU, para. 544.

<sup>&</sup>lt;sup>702</sup> MU, para. 550.

<sup>&</sup>lt;sup>703</sup> Witness Statement of (Annex 11), paras. 10-11.

<sup>704</sup> The issuance of new textbooks is being supervised by the Crimean Ministry of Education in order to comply with the standards of education issued by the Federal Ministry of Education. In 2015-2016, 46,686,300 rubles from the Crimean budget were allocated for the translation and printing of over 63 textbook titles: see List of textbooks prepared and published in 2015-2016 in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450). In 2018, further 36 textbook titles were provided to Crimean schools on preparation of which 49,747,200 rubles were allocated: see List of textbooks supplied to educational institutions of the Republic of Crimea in 2018 in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450). In 2019, 15 textbook titles, on preparation of which 34,999,700 rubles were allocated, were delivered to Crimean schools: see List of textbooks supplied to educational institutions of the Republic of Crimea in 2019 in Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 01-15/1294, 24 June 2021 (Annex 450). See also Witness Statement of Mr Ablyatipov (Annex 13). As examples of textbooks and study guides published in Crimean Tatar in 2016 and 2017 see A.A. Danilov, L.G. Kosulina, History of Russia in the XIX Century, 8th Grade, Textbook for general educational institutions with instruction in the Crimean Tatar language, Prosveshchenie, Moscow, 2016 (Annex 1055); A.A. Danilov, History of Russia in the XX - Early XXI Century, 9th Grade, Textbook for general educational institutions with instruction in the Crimean Tatar language, Prosveshchenie, Moscow, 2016 (Annex 1054); A. Memetov, L.A. Alieva, E. Akmallaev, Crimean Tatar Language (Native), 8th Grade, Study guide for general educational institutions with instruction in Crimean Tatar and Russian, Prosveshchenie, Moscow, 2017 (Annex 1081); A. Kokieva, Crimean Tatar Literature, 8th Grade, Study guide for general educational institutions with instruction in Crimean Tatar and Russian, Prosveshchenie, Moscow, 2017 (Annex 1082). As examples of study guides published in Ukrainian see N.M. Borisyuk, Ukrainian language (Native), 4th grade, Study guide for general educational institutions with instruction in Ukrainian and Russian, Prosveshchenie, Moscow, 2018 (Annex 1333); O.M. Kostikova, M.S. Lisenko, Literature Reading, 4th grade, Study guide for general educational institutions

such new textbooks could not be prepared instantly, the Ministry took the decision to continue using the previous Ukrainian textbooks on a temporary basis pending the publication of the new ones.<sup>705</sup>

e. Moreover, as evidenced by school headmasters and teachers in their Witness Statements, Crimean schoolchildren study the history of the Crimean Peninsula or the history of ethnic groups such as Ukrainians or Crimean Tatars. For instance, at School No. 20 of Feodosia, students have the course on "Crimean studies" which covers topics on the history, geography and culture of Crimea and of the peoples of the peninsula, including the cultural heritage of the Ukrainian and Crimean Tatar peoples.<sup>706</sup>

328. *Fourth*, with respect to the alleged discriminatory searches of Crimean Tatar schools,<sup>707</sup> Ukraine does not establish that these searches were discriminatory. The materials cited by Ukraine indicate that the operations took place mainly in religious schools and that the law enforcement authorities were looking for extremist literature.<sup>708</sup> This is unsurprising as part of the preventive strategy against extremist religious organizations active in Crimea.<sup>709</sup> In this regard, the experience of the Russian Federation in combating extremist literature and messages. As explained by representatives of Crimean schools, including the boarding school for gifted children at the village of Tankovoe, Bakhchisaray district, in their Witness Statements, schools hold various events aimed at combating extremism and other socially dangerous phenomena and school curriculum addresses such issues as anti-extremist thinking and anti-terrorist behaviour and conscious compliance with safety regulations. Besides, it is a standard practice that in compliance

with instruction in Ukrainian and Russian, Prosveshchenie, Moscow, 2018 (Annex 1332). See also School No. 20 of Feodosia, Photographs of study guides on the Ukrainian language and literature published by the Russian publishing house "Prosveshchenie" (Annex 1147); Collegium School of Alushta, Photographs of textbooks on the Ukrainian language and literature published by the Russian publishing house "Prosveshchenie" (Annex 1147).

<sup>&</sup>lt;sup>705</sup> Ministry of Education, Science and Youth of the Republic of Crimea, Letter No. 0114/2911 on the use of textbooks on the Crimean Tatar language and literature and Ukrainian language and literature published in Ukraine, 18 August 2016 (Annex 467); Prosecutor General's Office of the Russian Federation, Information on the outcomes of the analysis of arguments set out in the letter of the Permanent Delegation of Ukraine to UNESCO, 23 October 2015 (Annex 911 to MU), p. 16. As **Security Permanent** printing houses as teaching materials, which is permitted by the Crimean Ministry of Education: see Witness Statement of **Security 12** (Annex 2), para. 12. See also Witness Statement of **Security 12** (Annex 5), para. 16, attaching photographs of textbooks published in Ukrainian publishing houses and used in class in grades 5 to 11 (Annex 1148).

<sup>&</sup>lt;sup>706</sup> Witness Statement of (Annex 5), para. 17. For other examples of the teaching of courses with a regional component, such as history, geography, culture of Crimea and its peoples, see also Witness Statement of

<sup>(</sup>Annex 4), para. 11; Witness Statement of (Annex 2), para. 14; Witness Statement of (Annex 6), para. 14.

<sup>&</sup>lt;sup>707</sup> MU, para. 549.

<sup>&</sup>lt;sup>708</sup> Council of Europe, Report by Nils Muiźnieks following his mission in Kyiv, Moscow, and Crimea from 7 to 12 September 2014 (27 October 2014) (Annex 822 to MU), para. 21.

<sup>&</sup>lt;sup>709</sup> See paras. 370, 373 below and Appendix B(I)(B). See also Witness Statement of (Annex 19), paras. 47-48.

with the Russian legislation on countering extremist activity, schools' library collections are subject to a periodic reconciliation with the federal list of prohibited extremist materials.<sup>710</sup> As

first of all, at preventing the involvement of our students into extremist, terrorist and other radical organisations, which is becoming more and more relevant in our time".<sup>711</sup> Ms. Tyshchenko's misleading portrayal of such episode at the Tankovoe boarding school as a "raid" is inapposite.<sup>712</sup>

329. *Fifth*, when it comes to the examples of creative writing contests for Crimean students that Ukraine alleges "are also russified",<sup>713</sup>

- a. Ukraine takes these events out of their contexts and omits to specify that students' participation in such creative writing contests is not compulsory but instead on a voluntary basis,<sup>714</sup>
- b. Ukraine also omits to specify that these are only a few examples of existing creative writing contests and that there are also other contests with different topics, conferences and other public events aimed at promoting language and cultures of peoples living in Crimea and development of a multicultural environment and inter-ethnic harmony on the peninsula. Such events are also generally open to voluntary participation in all native languages, including for example in the context of the International Mother Language Day, and some of which have been organized on a yearly basis since before 2014.<sup>715</sup> Schools but also higher education institutions participate in such events and initiatives under various formats, including extracurricular activities, aimed at promoting the study and knowledge of native languages and cultures.<sup>716</sup> Teachers and headmasters reject the contention that they organize events or contests of a political or propagandistic nature as part of their education programmes and insist for clarity that students' participation is entirely free.<sup>717</sup>

710	Witness Statement of (Annex 4), para. 19; Witness Statement of (Annex 6), para. 16	5;
Wit	ess Statement of (Annex 2), para. 23.	
711	Witness Statement of (Annex 11), paras. 17-20.	
712	Witness Statement of , 6 June 2018 (Annex 17 to MU), para. 22.	
713	MU, para. 553.	
714 Wita	Witness Statement of (Annex 4), para. 15; Witness Statement of (Annex 5), para. 18 (Annex 6), para. 15.	3;
715 State	See among others Witness Statement of (Annex 17), paras. 15-17; Witness Statement of (Annex 2), paras. 13 and 15-19; Witness Statement of (Annex 5), paras. 19-20; Witness ment of (Annex 3), para. 16.	
-	Witness Statement of (Annex 12), paras. 18-19; Witness Statement of (Annex 9) . 12-13 and 16; Witness Statement of (Annex 8), paras. 23-27; Witness Statement of ex 10), paras. 17-18 and 31-32.	),
717 para	See e.g. Witness Statement of (Annex 1), para. 16; Witness Statement of (Annex 2)	),

330. *Sixth*, Ukraine's allegations with respect to the CERD Committee are also unfounded.<sup>718</sup> While the Russian Federation obviously agrees with the Committee that "[s]upport for education with an ethnic focus plays a major role in preserving ethnic identity", this is exactly what Russia does with respect to the protection of the identity of the numerous ethnic groups that compose the Russian people, including by attempting to provide, as much as possible, opportunity for education in native language. As has been developed above, the Russian education system grants – beyond what international law requires – a significant place to the preservation and expression of various ethnic identities, including through subject courses of regional components.<sup>719</sup> They also celebrate cultural and traditional events of national minorities, including Ukrainians and Crimean Tatars.<sup>720</sup> At the same time, as a large multicultural, multi-ethnic and multilingual society, the Russian Federation cannot be blamed for maintaining an education system that seeks to preserve social cohesion and prevent separatism, or social instability or tensions. That is precisely the meaning of the quote from the 2012 Report submitted by Russia to the CERD Committee that Ukraine relies on.

331. *Seventh*, Ukraine's allegations with respect to the reorientation of the Crimean educational system towards the Russian education system are also misplaced.<sup>721</sup> Such reorientation is only natural and logical in light of the majority's desire to pursue higher education and a professional career in Russia. On the other hand, this does not preclude Crimean students who so wish from pursuing higher education abroad, just like students from other parts of the Russian Federation. Contrary to Ukraine's allegation, the adoption of the Russian system in Crimea does not prevent students from pursuing studies in Europe or Ukraine if they so desire.<sup>722</sup> In fact, since 2014 *Ukraine* is blocking Crimean students from pursuing higher education in Ukraine, as Ukrainian higher education institutions generally have not been accepting education certificates issued by Crimean schools.<sup>723</sup>

332. *Eighth*, Ukraine obviously misunderstands the Concept of Patriotic, Spiritual and Moral Upbringing of the Population in the Republic of Crimea adopted by Crimea in December 2014<sup>724</sup> by

<sup>&</sup>lt;sup>718</sup> MU, para. 554.

<sup>&</sup>lt;sup>719</sup> See para. 326 above.

<sup>&</sup>lt;sup>720</sup> See among others Witness Statement of (Annex 6), para. 15; Yalta Secondary School No. 15, Photographs from cultural events held at school between 2014 and 2021 (Annex 1233); *Alushta 24*, "Kalina – Nasha Bereginya' festival was held at the Municipal Educational Institution Collegium School of the city of Alushta", 27 October 2017 (Annex 979); Witness Statement of (Annex 2), paras. 14-21; Simferopol Academic Gymnasium official website, "Anniversary of Amet-Khan Sultan", 25 October 2020 (Annex 1137); Simferopol Academic Gymnasium official website, "Day of Remembrance for the victims of the deportation of the peoples of Crimea (PHOTO)", 18 May 2015 (Annex 1059) (numerous various courses and events, including the yearly commemoration of the deportation of the peoples of Crimea).

<sup>&</sup>lt;sup>721</sup> MU, paras. 555-559.

<sup>&</sup>lt;sup>722</sup> MU, para. 556.

<sup>&</sup>lt;sup>723</sup> See para. 302 above. See also Witness Statement of (Annex 5), para. 9; Witness Statement of (Annex 8), para. 30.

<sup>&</sup>lt;sup>724</sup> MU, para. 557, referring to Decree of the Head of the Republic of Crimea, Approving the Concept of Patriotic, Spiritual and Moral Upbringing of the Population in the Republic of Crimea, 18 December 2014 (Annex 894 to MU).

attempting to portray it as a single-minded nationalistic propaganda programme. The Concept's objective is to extend to Crimea policies that are applied in the whole territory of the Russian Federation. Therefore, it entails the exact opposite of discrimination. Moreover, the Concept aims in particular at preserving ethnic diversity as well as the cultural and historical heritage of all ethnicities of the peninsula,<sup>725</sup> including Crimean Tatar culture and history.<sup>726</sup> Preservation for ethnic, cultural and linguistic diversity has been expressly recognized by the President of the Russian Federation, who observed that "Crimea is a unique blend of different peoples' cultures and traditions. This makes it similar to Russia as a whole, where not a single ethnic group has been lost over the centuries. Russians and Ukrainians, Crimean Tatars and people of other ethnic groups have lived side by side in Crimea, retaining their own identity, traditions, languages and faith."<sup>727</sup>

333. Ukraine's and Ms Tyshchenko's unsupported allegations of school teachers being encouraged to report Crimean Tatar children who are absent from school on 18 May<sup>728</sup> are also meritless in view of the authorities' active support for the yearly commemoration of the *Sürgün*, as is explained elsewhere.<sup>729</sup>

334. *Finally*, Ukraine alleges that the Russian Federation has violated Article 7 of CERD by implementing measures "that can only have the effect of increasing the prejudice that leads to racial discrimination" and accuses it of abandoning Ukraine's alleged efforts towards multiculturalism in Crimea before 2014.<sup>730</sup> However, when it comes to multiculturalism, Ukraine provides no credible evidence that it had established a more advanced system in Crimea in this respect. By contrast, as has been amply shown above, multiculturalism is a core part of the educational system of the Russian Federation, including in Crimea. Therefore, bold statements such as "the Russian Federation has set up its own culture as superior to those of other ethnic groups in Crimea"<sup>731</sup> are either the product of Ukraine's deep misunderstanding of the Russian educational system, or another illustration of accusations that only aim at casting the opprobrium on Russia for purely political reasons.

<sup>&</sup>lt;sup>725</sup> Decree of the Head of the Republic of Crimea, Approving the Concept of Patriotic, Spiritual and Moral Upbringing of the Population in the Republic of Crimea, 18 December 2014 (Annex 894 to MU), Appendix, Part I.

<sup>&</sup>lt;sup>726</sup> *Ibid.*, Appendix, Part II.

<sup>&</sup>lt;sup>727</sup> Address by President of the Russian Federation to State Duma deputies, Federation Council members, heads of Russian regions and civil society representatives, 18 March 2014, available at <u>http://en.kremlin ru/events/president/news/20603</u>. See also Witness Statement of (Annex 8), para. 32.

<sup>&</sup>lt;sup>728</sup> MU, para. 558, relying on Witness Statement of Yulia Tyshchenko, 6 June 2018 (Annex 17 to MU), para. 22.

<sup>&</sup>lt;sup>729</sup> See Appendix D, paras. 25-29. See also Witness Statement of (Annex 8), para. 25; Fevzi Yakubov Crimean Engineering and Pedagogical University official website, "CEPU honours the memory of the victims of the deportation", 22 May 2017 (Annex 1070); Simferopol Academic Gymnasium official website, "Day of Remembrance for the victims of the deportation of the peoples of Crimea (PHOTO)", 18 May 2015 (Annex 1059).

<sup>&</sup>lt;sup>730</sup> MU, paras. 637-638.

<sup>&</sup>lt;sup>731</sup> MU, para. 639.

#### VIII. Conclusion

335. Ukraine's allegations of discrimination with respect to education rights and opportunities are unfounded, as demonstrated in this Chapter. As a matter of law, there is no right to education in minority native language under CERD. Nor could such absolute right be brought under its purview through the provisions of Russian domestic law since these provisions strictly qualify and restrict such right. In any event, the Russian Federation has not restricted the opportunities for Crimean Tatars and ethnic Ukrainians to receive education in their native language. To the contrary, the education in Crimean Tatar did not drop but instead increased since 2014. So far as the education in Ukrainian is concerned, the decrease of students is explained by factors that have nothing to do with racial discrimination. The Russian Federation has always endeavoured to maintain adequate capacities to meet the education demand. Such conduct hardly points to any racial discrimination or violation of CERD, let alone a systematic campaign or policy thereof directed at the cultural erasure of Crimean Tatars or ethnic Ukrainians.

336. With respect to the quality of education, Ukraine's claims are unsupported and seem instead to amount to little more than an attempt to bring the question of the status of Crimea through the backdoor of education issues. In any event, as has been confirmed above, education programmes in Crimea are obviously not biased, truncated or discriminatory.

337. For all these reasons, Ukraine's claims with respect to education rights and opportunities do not establish any breach of CERD and *a fortiori* do not support its grave accusation on the existence of a systematic campaign or policy of racial discrimination allegedly conducted by the Russian Federation against Crimean Tatars and ethnic Ukrainians and aiming at their cultural erasure.

## CHAPTER VI UKRAINE'S OTHER ALLEGATIONS OF RACIAL DISCRIMINATION ARE UNFOUNDED

338. As demonstrated above, Ukraine's claims of systematic racial discrimination with respect to the ban on the *Mejlis* and to educational rights, the only claims that the Court considers as appearing to be plausible at the stage of provisional measures, are clearly unfounded when checked against the relevant facts. The remainder of Ukraine's allegations, that the Court did not even consider plausible *prima facie* at the provisional measures phase, are also totally unfounded and bear no link at all with CERD. In the Application and Memorial, Ukraine artificially portrays as cases of racial discrimination a series of sporadic and unrelated episodes concerning alleged disappearances, murders, abductions and torture (I), law-enforcement measures (detentions and searches) (II), citizenship issues (III), public events (IV), operation of the media (V), and preservation of cultural heritage (VI). Putting the record straight, this Chapter and the related appendices will show that Ukraine's allegations manifestly do not qualify as racial discrimination. Since these allegations are manifestly implausible, the present Chapter will only deal with them in a cursory way. It will provide in appendices, for the sake of completeness, more detailed information on each.

### I. No Enforced Disappearances, Murders, Abductions and Torture Directed at the Crimean Tatars and Ukrainians on Racial Grounds

339. In its Application, Ukraine alleges that "[t]he Russian occupation régime has further persecuted the Crimean Tatar community by instigating, or at least tolerating and encouraging, a pattern of disappearances and murders."<sup>732</sup> Likewise, in its Memorial Ukraine contends that "Russia and its agents targeted activists from those communities with extreme violence, including abduction, torture, disappearance and murder. The apparent purpose and certain effect of these heinous offenses against Crimean Tatars and Ukrainians was to intimidate and silence inconvenient critics and to warn others in those communities not to resist the Russian takeover."<sup>733</sup>

340. This grave allegation – which, on its own words, conflates the allegation of racial discrimination with the real dispute over the status of Crimea – is utterly unfounded, both factually and legally. First, Ukraine's case is but a disparate set of unsubstantiated allegations that bear no link at all with CERD, as is amply shown in Appendix A, which also establishes that the Russian Federation did properly investigate the incidents (A). Second, Ukraine articulates no serious case on the issue of attribution of any alleged SDF conduct to the Russian Federation (B).

<sup>&</sup>lt;sup>732</sup> Ukraine's Application of 16 January 2017, para. 103.

<sup>&</sup>lt;sup>733</sup> MU, para. 392. See also para. 393.

## A. NO BREACH OF CERD WITH RESPECT TO ALLEGED ENFORCED DISAPPEARANCES, MURDERS, ABDUCTIONS AND TORTURE

341. None of the acts alleged by Ukraine constitute racial discrimination in violation of CERD, let alone form part of a systematic campaign or a policy thereof.

342. *First*, it is striking to note that nowhere in the Application or the Memorial did Ukraine articulate that the acts it complains of constitute "enforced disappearances", "murders", "abductions" and "torture" under the applicable rules of international law. Ukraine does not articulate for instance on which grounds the acts it complains of constitute "torture" under CERD. Similarly, Ukraine does not articulate any concrete claim with regard to enforced disappearances under international law, nor does it elaborate at all on the legal definition and regime of enforced disappearances, torture, abductions, murders) as if they would not carry any legal meaning and as if their existence could be simply asserted by using these words, without any further legal and factual assessment of their existence in a given concrete case.<sup>735</sup>

343. *Second*, even if such allegations were established by Ukraine, CERD does not provide in any case a cause of action for any alleged breach of individual rights. CERD only applies if the alleged acts fall under its provisions, i.e. constitute racial discrimination, including by targeting specific ethnic groups as such or by taking measures that disproportionally affect an ethnic group absent any objective and reasonable justifications. This is clearly not the case so far as Ukraine's claims are concerned.

344. As is examined in further details in the relevant Appendix of the Counter-Memorial,<sup>736</sup> none of the claims advanced by Ukraine in respect of alleged enforced disappearances, murders, abductions and torture can plausibly constitute acts of racial discrimination and a consequential violation of CERD by the Russian Federation. In brief,

a. First, Ukraine partly relies on incidents that allegedly occurred prior to the accession of Crimea to the Russian Federation on 18 March 2014. They are thus not within the Court's jurisdiction *ratione temporis* as defined in the Court's judgment on preliminary objections in this case.<sup>737</sup>

<sup>&</sup>lt;sup>734</sup> Ukraine became a party to the UN Convention for the Protection of All Persons from Enforced Disappearance in August 2015. Russia is not a party to the Convention and it did not sign it.

<sup>&</sup>lt;sup>735</sup> For instance, Ukraine repeatedly claims in the Application and Memorial that "disappearances" took place, while international law addresses enforced disappearances only.

<sup>&</sup>lt;sup>736</sup> See Appendix A, section I.

<sup>&</sup>lt;sup>737</sup> See Appendix A, paras. 3-4.

- b. Second, the relevant circumstances of the alleged facts do not point at all to acts of racial discrimination. In addition, Ukraine fails to establish the necessary intent and pattern to support its claim of systematic campaign or policy of racial discrimination.<sup>738</sup>
- c. Third, with respect to investigations into the incidents, contrary to Ukraine's allegations, these were not conducted in a selective, arbitrary or discriminatory manner, let alone on racial grounds. On the contrary, the Russian Federation complied with its obligation to investigate.<sup>739</sup>

#### B. ISSUES OF ATTRIBUTION

345. Ukraine also fails to establish that the alleged acts relied on in its Application and Memorial are attributable to the Russian Federation under the applicable rules of the law of State responsibility. In particular, it does not even seek to establish that the alleged cases of enforced disappearances of Crimean Tatar and ethnic Ukrainian activists at paragraphs 394 to 398 of its Memorial are attributable to the Russian Federation. For the cases it refers to, i.e. those of Mr Reshat Ametov, Mr Timur Shaimardanov, Mr Leonid Korzh, Mr Seiran Zinedinov, Mr Ervin Ibragimov, Mr Vladislav Vaschuk, Mr Ivan Bonariets and Mr Vasyl Chernysh, Ukraine limits to alleging their disappearance or kidnapping without ever attempting to provide the slightest evidence of the attribution to the Russian Federation of the alleged acts. In particular, Ukraine does not attribute to anyone the alleged disappearances of Crimean Tatars. Insofar as Crimean Ukrainians are concerned, Ukraine contends that "Ukrainians also suffered similar harassment and violence at the hands of Russian forces"<sup>740</sup> but this allegation is not based on any credible evidence and Ukraine does not articulate its claim further.

346. As an alternative scenario, Ukraine seeks to hold the Russian Federation responsible for instigating, encouraging, or tolerating the said acts.<sup>741</sup> This calls for two observations. First, these allegations are also not supported by concrete evidence. Second, toleration, condoning, encouragement, or incitement are hardly compatible with investigations that were, and are being, thoroughly carried out, as shown in the relevant appendix.<sup>742</sup>

347. The truth is that the assessment of the individual cases advanced by Ukraine that is incorporated in Appendix A of the present Counter-Memorial<sup>743</sup> shows that in fact, none of the alleged individual acts of enforced disappearances, murders, abductions, and torture is attributable to the Russian Federation. *A fortiori* these acts cannot evidence a systematic campaign of racial discrimination engineered and implemented by the Russian Federation and targeting Crimean

<sup>&</sup>lt;sup>738</sup> See Appendix A, paras. 5-12.

<sup>&</sup>lt;sup>739</sup> See Appendix A, paras. 13-39.

<sup>&</sup>lt;sup>740</sup> MU, para. 398.

<sup>&</sup>lt;sup>741</sup> MU, paras. 27, 393, 404, and 610.

<sup>&</sup>lt;sup>742</sup> See Appendix A, paras. 13-39.

<sup>&</sup>lt;sup>743</sup> See Appendix A, paras. 43-58.

Tatars and Ukrainians. In addition, no act allegedly committed prior to Crimea's accession to the Russian Federation on 18 March 2014 may be attributed to the Russian Federation under Article 4 of the ILC Articles on State responsibility because the Russian Federation was not the authority in charge in Crimea prior to that date, which is undisputed even by Ukraine. Besides, as demonstrated above, the Russian Federation had no direction or control over the alleged acts, nor had it acknowledged and adopted them as its own.

## II. No Racial Discrimination with respect to Law Enforcement Measures (Detentions and Searches)

348. Ukraine accuses the Russian Federation of having conducted arbitrary searches and detentions as part of its alleged systematic campaign or policy of racial discrimination targeting the Crimean Tatar community as such.<sup>744</sup> Ukraine's accusation is unfounded on several grounds. First, Ukraine's general approach to its burden of proof is, at best, flawed (A). Secondly, most of Ukraine's factual allegations are not established or are incorrect (B). Thirdly, the alleged law enforcement measures are based on a lawful and legitimate basis (C). Finally, these measures are manifestly non-discriminatory and have nothing to do with racial discrimination (D).

## A. UKRAINE'S FLAWED APPROACH TO ITS BURDEN OF PROOF

349. Throughout Chapter 9(C) of its Memorial, Ukraine takes issue with a number of unconnected law enforcement measures which, the argument goes, demonstrate a "campaign of discrimination" against people of Crimean Tatar or Ukrainian background (the "Law Enforcement Claim").

350. The Law Enforcement Claim, for the most part, comprises short assertive paragraphs on a number of administrative and criminal proceedings. The presentation of these episodes follows a similar pattern: First, Ukraine singles out and describes a law enforcement measure in no more than a paragraph or two; Second, Ukraine identifies a small number of individuals (sometimes anonymous), allegedly of Crimean Tatar or Ukrainian origin, who were supposedly affected by the law enforcement measure in question; and, lastly, Ukraine unilaterally labels these measures as "racial discrimination".

351. It is to be noted that Ukraine has not adduced the procedural record of the impugned proceedings, nor does Ukraine appear to have even consulted those materials before advancing its claims. Yet, based on submissions which are almost entirely bereft of primary evidence and built on hearsay, Ukraine expects the Court to find that these measures constitute racial discrimination, individually and as part of an alleged systematic campaign directed against Crimean Tatars.

<sup>&</sup>lt;sup>744</sup> MU, paras. 442-454.

352. This claim is unsubstantiated on its face. But even if Ukraine's factual allegations were taken at face value, there would still be no evidence of any racial discrimination. That is because a showing of racial discrimination towards targeted groups presupposes a showing of *differentiation* in treatment in the first place. That case has not been made out here.

353. It is incumbent upon the party who alleges a differentiation to demonstrate its existence.<sup>745</sup> Ukraine contests the lawfulness of searches and detentions conducted by the Russian Federation's law enforcement authorities<sup>746</sup> but offers no evidence whatsoever to establish that the manner in which such alleged measures were pursued, or the fact that they were pursued, *differed*, to any extent, from the practice of Russian authorities in other cases, *because of racial grounds*. Ukraine's claims are therefore incapable of triggering CERD.<sup>747</sup>

354. In its submissions, Ukraine often invokes grievances of individuals whose racial, national or ethnic origin is left entirely unclear. In those instances, Ukraine omits not only to identify the *comparator* but even the *compared* element, which is required for the purpose of establishing a "racial discrimination claim". Ukraine also artificially conflates groups such as Crimean Tatars, Muslims and extremists in order to sustain its far-fetched theory of pretextual law enforcement measures.

355. Even where Ukraine alleges the aggrieved individuals to be of Crimean Tatar or Ukrainian origin, it is often not specified on what basis *Ukraine itself* has made this classification.<sup>748</sup> There is no evidence to suggest that such individuals identify themselves as Crimean Tatars or ethnic Ukrainians. Absent such identification, claims of racial discrimination fail on their own terms.<sup>749</sup>

356. As has been explained above,<sup>750</sup> to the extent Ukraine's Law Enforcement Claim arises out of court-approved law enforcement measures and other court decisions, Ukraine ought to demonstrate that recourse to local remedies have proved to be futile or that the rulings rendered by courts acting in last resort were not reasonably or legally tenable or were not adopted in good faith. Yet, Ukraine did not even deign to engage in that analysis, which *per se* is fatal to its Law Enforcement Claim in its entirety.

#### B. UKRAINE'S ALLEGATIONS ARE NOT ESTABLISHED AS A MATTER OF FACT

357. The foregoing, even without further elaboration, should be the end of the matter in respect of the Law Enforcement Claim. That being said, Ukraine's Law Enforcement Claim is not simply

<sup>&</sup>lt;sup>745</sup> ECtHR, *Chassagnou and others v. France*, Nos. 25088/94, 28331/95 and 28443/95, Judgment (GC), 29 April 1999, paras. 90-92.

<sup>&</sup>lt;sup>746</sup> MU, paras. 444-454.

<sup>&</sup>lt;sup>747</sup> PORF, paras. 340-359.

<sup>&</sup>lt;sup>748</sup> See e.g. MU, para. 446, referring to "ten Crimean Tatars".

<sup>&</sup>lt;sup>749</sup> ECtHR, *Chassagnou and others v. France*, Nos. 25088/94, 28331/95 and 28443/95, Judgment (GC), 29 April 1999, paras. 90-92.

<sup>&</sup>lt;sup>750</sup> See paras. 11-13.

unsubstantiated, but also rests on false factual allegations. The Russian Federation maintains that the impugned measures were entirely legitimate, and evidence no wrongdoing on the part of the authorities, let alone racial discrimination. As will be shown further below, Ukraine systematically distorts or omits relevant factual and legal circumstances of its alleged cases that do not fit, and in fact disprove, its narrative of systematic campaign of racial discrimination against the Crimean Tatars.<sup>751</sup>

358. Materials relied on by Ukraine lack probative value. This is the case of the OHCHR reports, for reasons that have been explained above.<sup>752</sup> Ukraine also relies on NGO materials. The Court has had the occasion to highlight that similar unconfirmed reports lack weight and are unconvincing.<sup>753</sup> Such is clearly the case with regard to the ones which Ukraine relies on.

359. For instance, in support of its allegation of "a broader policy and practice carried out by the Russian occupation authorities in Crimea",<sup>754</sup> Ukraine relies on three statements emanating from activist NGOs that contain a selective, if not distorted, account of the relevant facts.<sup>755</sup> The cited document from the Crimean Tatar Resource Center is particularly telling: the choice of narrative is clearly biased as it is deliberately very succinct, if not silent, on the reasons for the searches, only insisting on an alleged rude behaviour by the law enforcement authorities, allegations that are not supported by evidence in Ukraine's Memorial.<sup>756</sup>

360. In a similar vein, Ukraine heavily relies on press articles and reports as "evidence" of its allegations. But these documents are manifestly fraught with deficiencies. Such media articles often build their narrative on one or few assertions attributed to persons who are close to those searched or detained, and who often have an understandable but subjective tendency to defend them; the articles are also generally succinct or elusive about lawful and legitimate reasons for the measures and about the explanations of the law enforcement authorities.

361. For instance, in relation to the incident involving the search at a café on 23 November 2017 and the detention of four men, the article allegedly reports Mr Nariman Dzhelalov's comment that "[t]he Turkish man 'tried to get out of it, and the security services used the situation to apply

<sup>&</sup>lt;sup>751</sup> See subsections C and D below.

<sup>&</sup>lt;sup>752</sup> See paras. 14-17.

<sup>&</sup>lt;sup>753</sup> Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, para. 136 and para. 159; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015, para. 239.

<sup>&</sup>lt;sup>754</sup> MU, para. 453.

<sup>&</sup>lt;sup>755</sup> Crimean Tatar Resource Center, Security officers conducted regular searches in the houses of the Crimean Tatars in Crimea (23 January 2018) (Annex 969 to MU); Crimean Human Rights Group, Statement on Unlawful searches and detainments of Crimean Tatar national movement activists and veterans in Crimea (24 November 2017) (Annex 965 to MU); Human Rights Watch, Crimea: Persecution of Crimean Tatars Intensifies (14 November 2017) (Annex 964 to MU).

<sup>&</sup>lt;sup>756</sup> Crimean Tatar Resource Center, Security officers conducted regular searches in the houses of the Crimean Tatars in Crimea (23 January 2018) (Annex 969 to MU).

pressure on this group of activists<sup>757</sup> But this is a mere assertion based on a subjective opinion, and Mr Dzhelalov does not elaborate on any objective element that supports his view that the law enforcement authorities used the situation to apply pressure on the group – described as a group of "activists", not as an ethnic group. Furthermore, the article only describes him as a Crimean Tatar activist and does not specify who he is, in which capacity he speaks, and whether he attended the scene or not. The record actually shows a different story than the one alleged by Ukraine.<sup>758</sup>

362. With respect to the death of Ms Vedzhie Kashka, an 82-year-old Crimean Tatar activist who was present during a meeting in a café in Simferopol on 23 November 2017,<sup>759</sup> Ukraine once again relies on materials of no probative value.<sup>760</sup> One of the highlights within the article asserts in sensationalist terms that "they have come for our elders",<sup>761</sup> while the record shows that Ms Kashka's regrettable passing is in fact not attributable to the Russian Federation.<sup>762</sup>

## C. THE LEGITIMATE BASIS OF THE ALLEGED MEASURES OF ENFORCEMENT

363. In instances where Ukraine's claims correspond to measures of law enforcement by State authorities, the said measures were based on objective and reasonable grounds and taken in accordance with applicable domestic law, excluding any possibility of racial discrimination under CERD. These elements are addressed in detail in the relevant Appendix of the present Counter-Memorial.<sup>763</sup> They confirm that Ukraine's claims have clearly nothing to do with racial discrimination.

364. The lawful character as well as objective and reasonable grounds for these law-enforcement measures is evident. In particular, as has been specified before,<sup>764</sup> legitimate limitations to human rights constitute a standard of international human rights law. The fight against extremism, including but not limited to religious extremism, constitutes one of these legitimate limitations. While Ukraine takes issue with the Russian Federation's fight against extremism and terrorism, and in particular its ban of organizations such as *Hizb-ut Tahrir* or *Tablighi Jamaat*, these constitute justified measures and legitimate limitations, not racial discrimination.<sup>765</sup> In particular, the European Court of Human Rights has found the ban imposed by the Russian Federation on *Hizb-ut* 

<sup>764</sup> See paras. 153-154 above.

<sup>&</sup>lt;sup>757</sup> *Radio Free Europe / Radio Liberty*, "Veteran Crimean Tatar Activist Dies As Associates Detained By Russia" (23 November 2017) (Annex 1071 to MU), p. 2.

<sup>&</sup>lt;sup>758</sup> See Appendix B, paras. 64-66.

<sup>&</sup>lt;sup>759</sup> MU, para. 454.

Radio Free Europe / Radio Liberty, Veteran Crimean Tatar Activist Dies As Associates Detained By Russia (23 November 2017) (Annex 1071 to MU); Human Rights Watch, Another Day, Another Tragedy in Crimea (27 November 2017) (Annex 966 to MU).

<sup>&</sup>lt;sup>761</sup> *Radio Free Europe / Radio Liberty*, Veteran Crimean Tatar Activist Dies As Associates Detained By Russia (23 November 2017) (Annex 1071 to MU), p. 2.

<sup>&</sup>lt;sup>762</sup> See Appendix B, paras. 64-66.

<sup>&</sup>lt;sup>763</sup> See Appendix B(II).

<sup>&</sup>lt;sup>765</sup> See Appendix B, paras. 8-25.

*Tahrir* to be legitimate, a measure that was taken long before Crimea's accession to the Russian Federation.<sup>766</sup> Contrary to Ukraine's allegation, there is no basis thus to claim that the fight against *Hizb-ut Tahrir* and similar terrorist organizations as well as against *Tablighi Jamaat* and similar extremist organizations constitute racial discrimination against Crimean Tatars.

## D. THE NON-DISCRIMINATORY NATURE OF THE ALLEGED ENFORCEMENT MEASURES

365. In addition, as is demonstrated below, the measures complained of by Ukraine did not evidence a difference of treatment, let alone a discrimination based on race and *a fortiori* a campaign of systematic violations of CERD.

366. With respect to measures to fight against extremist or terrorist religious activities, which form the core of Ukraine's accusations with respect to law enforcement measures, Ukraine's allegation of "disproportionate affection" of Crimean Tatars relies on a confusion between Muslims and Crimean Tatars combined with a total obfuscation of the reasons for the measures, the legitimacy of which have been largely accepted, including by the European Court of Human Rights. Such confusion is not in line with CERD Committee practice (1). In any event, Ukraine has not established the discriminatory nature of the application of the impugned measures in comparison with the application of the Same measures in similar situations involving other ethnic groups and indeed the rest of the Crimean and Russian population. Here like elsewhere, a proper comparative exercise is lacking. Actually, as a matter of fact, no unjustified disproportionate impact on Crimean Tatars exists (2). As the Russian Federation already pointed out, the proportion between the annual numbers of crimes that were considered committed in Crimea by individuals from various ethnic group grossly reflects the general proportion between these ethnic groups among the Crimean population.<sup>767</sup> Ukraine did not challenge in the Memorial these figures, which are fatal to its case.

# 1. The Nature of the Measures and of the Groups of Persons Affected by Them

367. As explained previously, detentions and searches are part of the legal framework that applies to all suspected extremist activities and banned organizations. It is applied in the same way to everyone, including non-Crimean Tatar individuals and organizations that are banned or suspected of extremist activities.

368. In addition, the CERD Committee clarified that differential treatment will "constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and

<sup>&</sup>lt;sup>766</sup> See Appendix B, para. 20.

<sup>&</sup>lt;sup>767</sup> Statistical information on the number of crimes committed by ethnic groups in Crimea between 2014 and 2016, contained in Letter from N. Vodorezov, Deputy Plenipotentiary Representative of the President of the Russian Federation to the Crimean Federal District, to A. D. Viktorov, Director of the Department for Humanitarian Cooperation and Human Rights of the Ministry of Foreign Affairs of the Russian Federation, No. A-80-1313, 26 April 2016, in Documents from the Dossier and Judges' Folder as submitted by the Russian Federation for the Hearings on Provisional Measures (Annex 1267), pp. 5-6.

purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim".<sup>768</sup> On the contrary, "a differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate or fall within the scope of article 1, paragraph 4, of the Convention".<sup>769</sup>

369. In the present case, Ukraine bases its discrimination claim exclusively on the fact that some of the searched and detained people are Muslims and/or Crimean Tatars. That is obviously not enough to substantiate a claim of racial discrimination.

- a. As is shown under Appendix B, extremist activities or organizations that are legitimately prohibited in Russia, including in Crimea, are far from being limited to Crimean Tatar or Muslim activities or organizations, and searches in Crimea are far from affecting only Muslims or Crimean Tatars. They affect all types of profiles and ethnic backgrounds.
- b. In addition, the alleged measures were not based on the ethnic background of the persons concerned, but on their activities.
- c. Given that members of *Hizb ut-Tahrir* are Muslims by definition and that virtually all Crimean Tatars in Crimea are Muslim,<sup>770</sup> law enforcement authorities will obviously investigate individuals suspected of involvement with *Hizb ut-Tahrir* among the Muslim community and the chances are high that most of the individuals suspected of Muslim extremism will also incidentally be Crimean Tatars. But it does not mean of course that these individuals have been targeted by law enforcement measures on ethnic grounds. This flawed syllogism is precisely what Ukraine attempts to suggest but does not substantiate at all. These specific individuals are affected as a result of their suspected extremist or terrorist activities, not of their ethnicity.

370. Ukraine's fallacious picture of Crimean Tatars being targeted as an ethnic group under pretextual allegations of Muslim extremism is rebutted by basic considerations. For example, anti-terrorist measures against the banned organization *Hizb ut-Tahrir* and anti-extremist measures against the banned organization *Tablighi Jamaat* are being carried out in all relevant parts of the territory of the Russian Federation and against all suspects regardless of their ethnic background.<sup>771</sup>

<sup>&</sup>lt;sup>768</sup> CERD Committee, 65<sup>th</sup> session, General Recommendation No. 30 on discrimination against non-citizens, 2004 in United Nations General Assembly, 59th Session, *Official Records, Supplement No. 18* (A/59/18), p. 94, para. 4.

<sup>&</sup>lt;sup>769</sup> CERD Committee, General Recommendation No. 14, para. 2 (Annex 788 to MU). See also CERD Committee, General Recommendation No. 32, para. 8 (Annex 790 to MU). See also Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, Oxford University Press, 2016, p. 112.

<sup>&</sup>lt;sup>770</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), para. 92. See also Witness Statement of the second statement of th

<sup>&</sup>lt;sup>771</sup> By way of reference, see for 2015: *RIA Novosti*, "Alleged members of Tablighi Jamaat will be tried in Siberia", 15 June 2015 (Annex 925), *74.ru*, "Hizb-ut Tahrir adherents arrested in the South Urals for recruiting activists", 5 October

Both organizations were banned in the Russian Federation years before Crimea's accession. Besides, the only relevant consideration in all cases is whether the suspected individuals conducted activities in relation with *Hizb ut-Tahrir* or another similar banned organization.

371. Extremist organizations are proscribed regardless of religion, ethnicity, etc.<sup>772</sup> Moreover, the Federal list of extremist materials, established and maintained under Federal Law No. 114-FZ of 25 July 2002, contains *inter alia* religious materials – relating for example to the sect of scientology, the sect of the Jehovah Witnesses, Islam, Falun Gong – but also political materials – such as publications of the leadership of the Italian fascist party, of the leadership of the German Nazi party or of Russian ultranationalist parties or movements –, musical publications – with radical or racist messages –, or publications or books by individual authors – that include for example racist, holocaust denial, anti-Semitic, radical nationalistic messages, etc.<sup>773</sup>

372. Based on the foregoing, the fact that most of suspects in the impugned measures in Crimea happened to be Crimean Tatars<sup>774</sup> does not point to discriminatory treatment or disproportionate impact in relation to measures to combat specific organizations that carry out extremist or terrorist Muslim activities. It is only a reflection of the fact that Muslims in Crimea happen to be mostly Crimean Tatars, not ethnic Russians or ethnic Ukrainians.

373. In its Memorial Ukraine takes specific issue on law enforcement measures against suspected members of *Hizb ut-Tahrir* and *Tablighi Jamaat* and it lists several such cases. But as is shown with the factual review under Appendix B, these are measures taken in the field of the fight against

<sup>2015 (</sup>Annex 932) (Chelyabinsk region), RIA Novosti, "Investigation asks Moscow court to arrest the head of Hizb ut-Tahrir cell", 23 October 2015 (Annex 935) (Moscow), TASS, "Member of terrorist organisation Hizb ut-Tahrir sentenced to 5 years in penal colony in Saint Petersburg", 17 August 2015 (Annex 928) (Saint Petersburg); for 2016: Kommersant, "Hizb-ut Tahrir member Erik Karmatsky detained in the capital", 11 May 2016 (Annex 954) (Moscow/the Republic of Tatarstan), Sputnik, "A native of Tajikistan convicted for involvement in terrorist organisation", 29 September 2016 (Annex 962) (Moscow); for 2017: TASS, "Eight members of Hizb ut-Tahrir terrorist organization detained in Tatarstan", 18 October 2017 (Annex 978) (the Republic of Tatarstan), RAPSI, "Hizb ut-Tahrir al-Islami members sentenced to 15-18 years in penal colony", 15 June 2017 (Annex 973) (Moscow), RBC, "FSB detain leader of Hizb ut-Tahrir 'female cell' in Saint Petersburg', 24 November 2017 (Annex 981) (Saint Petersburg). See also Expert Report of Ilshat Amirovich Mukhametzaripov on Hizb ut-Tahrir and Tablighi Jamaat associations, 30 June 2021 (Annex 23) at pp. 34-44 and 87-88. In the Memorial Ukraine refers only to one case of law-enforcement measures being applied to Tablighi Jamaat members (para. 447). For prosecution of members of this banned organization in other regions of Russia see, by way of reference, RIA Novosti, "Alleged members of Tablighi Jamaat will be tried in Siberia", 15 June 2015 (Annex 925) (Novosibirsk Region), RIA Novosti, "Members of Tablighi Jamaat, banned in Russia, were detained in Tatarstan", 20 October 2016 (Annex 964) (the Republic of Tatarstan), RIA Novosti, "Criminal case is opened against the detained extremists from Tablighi Jamaat\*", 14 November 2017 (Annex 980) (Moscow), RIA Novosti, "Islamist Volga regions", 17 June cell exposed in four 2020, available at: https://ria ru/20200617/1573060506.html (Annex 1026) (Nizhny Novgorod, Penza, Saratov and Ulyanovsk Regions).

<sup>&</sup>lt;sup>772</sup> See Ministry of Justice of the Russian Federation, List of public associations and religious organisations in respect of which the court has taken a legally effective decision to liquidate them or ban their activities on the grounds provided for by Federal Law of 25 July 2002 No. 114-FZ "On counteracting extremist activities", as at 7 April 2021 (Annex 503).

<sup>&</sup>lt;sup>773</sup> See Ministry of Justice of the Russian Federation, Excerpts from the Federal list of extremist materials in accordance with Federal Law of 25 July 2002 No. 114-FZ "On countering extremist activities" (List as at 8 June 2021) (Annex 511).

<sup>&</sup>lt;sup>774</sup> See MU, para. 444, *inter alia*.

religious extremism, including suspected involvement in extremist or terrorist organizations, the prohibition of which is public knowledge, is viewed as legitimate by the European Court of Human Rights, and predates the impugned measures by years.<sup>775</sup> In this regard, the individual suspects could not have been unaware that the organizations they took part in had been banned as extremist or terrorist organizations.

374. Ukraine's narrative of racial discrimination carefully selects only cases in which the individuals searched and detained happen to be Crimean Tatars. It does not confirm, and even less demonstrate, that no similar measures have been taken with respect to non-Crimean Tatar individuals suspected of involvement in the same or other Muslim or non-Muslim extremist religious prohibited organizations.

## 2. The Absence of Any Difference of Treatment

375. Ukraine alleges a campaign of home searches affecting Crimean Tatars in August and September 2014 but bases this allegation on a total of 13 home searches and 2 detentions, as reported in the cited OHCHR report.<sup>776</sup> As is explained elsewhere,<sup>777</sup> most of these cases were based on suspicions relating to extremist or otherwise illegal activities as part of criminal investigations. Ukraine does not establish that no similar measures have been conducted with respect to suspects of extremist activities with other ethnic backgrounds.

376. Ukraine maintains that "[t]he occupation authorities have also raided public places such as markets, mosques, cafés, restaurants, or theaters. In these raids, like the searches of private homes, Crimean Tatars have particularly been targeted".<sup>778</sup> However, no comparative exercise is offered to establish the alleged disproportionate impact on Crimean Tatars or to explain why any such disproportionate impact should reflect racial discrimination, as opposed to measures resting on legitimate reasons. The same goes for the measures allegedly connected to the search of a café in Pionerskoe on 1 April 2016 that Ukraine alleges in the same paragraph, and in respect to which no comparative exercise or explanation are provided.<sup>779</sup>

377. Similarly, with respect to the strategic operational exercise "Barrier 2015",<sup>780</sup> Ukraine is unable to substantiate its allegations of arbitrary targeting of and discriminatory treatment against Crimean Tatars, in particular through a genuine comparative exercise. This would be particularly

<sup>&</sup>lt;sup>775</sup> See Appendix B, paras. 16-18.

<sup>&</sup>lt;sup>776</sup> MU, para. 444, referring to Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in Ukraine (16 September 2014) (Annex 765 to MU).

<sup>&</sup>lt;sup>777</sup> See Appendix B(II).

<sup>&</sup>lt;sup>778</sup> MU, para. 450.

<sup>&</sup>lt;sup>779</sup> MU, para. 450. On this episode, see Appendix B, paras. 53-57.

<sup>&</sup>lt;sup>780</sup> Ukraine fails to mention that it was nothing more than an exercise. See MU, paras. 451-452. Ukraine misleadingly refers to "arbitrary searches", "random checks", and "blockades and searches".

warranted though, given that Ukraine only echoes biased or uninformed materials and makes mere assertions based on subjective feelings and accounts rather than objective criteria.<sup>781</sup>

# III. No Racial Discrimination with respect to Citizenship

378. Ukraine claims that measures taken by Russia in Crimea in relation to the conferral of citizenship form part of the alleged policy and campaign of systematic racial discrimination. Such a claim is without any merit, as a matter of jurisdiction, law and facts.

# A. RESTRICTIONS BASED ON CITIZENSHIP DO NOT FALL UNDER CERD

379. With regard to jurisdiction, at the preliminary objections stage, the Court did not "establish whether, and, if so, to what extent, certain acts may be covered by Article 1, paragraphs 2 and 3, of CERD",<sup>782</sup> and left this issue to be determined at the merits stage. As Russia already demonstrated<sup>783</sup> and will develop below, restrictions based on citizenship<sup>784</sup> do not fall under CERD. This is obviously so whether such restrictions are considered against CERD on a self-standing basis (1), or as part of Ukraine's position that colludes citizenship conferral and international humanitarian law, the latter having clearly been excluded from the Court's jurisdiction (2).

# 1. Restrictions Based on Citizenship Do Not Fall under CERD

380. The Russian Federation categorically rejects any accusation that its conferral of citizenship upon the inhabitants of Crimea discriminates against Crimean Tatars and Ukrainians or was later used to discriminate against these ethnic groups. But in any event, discrimination on grounds of citizenship is excluded from the scope of CERD by virtue of Articles 1.1, 1.2 and 1.3 of the Convention. Restrictions based on citizenship as well as discrimination between citizens and non-citizens are expressly excluded indeed from CERD by these provisions. This has been unequivocally confirmed in *Qatar v. United Arab Emirates* in which, after interpreting the relevant

<sup>&</sup>lt;sup>781</sup> See paras. 6-10 above.

<sup>&</sup>lt;sup>782</sup> Judgment of 8 November 2019, para. 94.

<sup>&</sup>lt;sup>783</sup> See in particular PORF, paras. 324-326 and 343.

<sup>&</sup>lt;sup>784</sup> Notwithstanding nuances that are sometimes made between the terms "nationality" and "citizenship", in the context of CERD and in the present Counter-Memorial these terms refer to the same phenomenon of "legal bond" that denotes "the existence of reciprocal rights and duties" between an individual and the State conferring nationality (*Nottebohm (Liechtenstein v. Guatemala), Judgment, 6 April 1955, I.C.J. Reports 1955,* p. 23), which is excluded from the scope of CERD (in this regard, see the wording of Articles 1(2) and 1(3) of CERD). This is without prejudice to the fact that, from the perspective of Russian domestic law, the expression "nationality" ("национальность") may also refer to "ethnicity", or may have a close or similar meaning thereto, depending on the circumstances.

provisions of CERD, the Court concluded that "the measures complained of by Qatar [...] which are based on the current nationality of its citizens, do not fall within the scope of CERD".<sup>785</sup>

381. It is clear from Ukraine's own case that with respect to conferral of citizenship and alleged subsequent citizenship-based discrimination, Ukraine alleges discrimination based on nationality or citizenship, not national origin.<sup>786</sup> The impugned measures concern Crimean Tatars' and ethnic Ukrainians' citizen rights based on the change effected to their present nationality situation. Ukraine's claims concern in particular alleged harm suffered by Crimean Tatars and Ukrainians in the exercise of civil rights as a result of having received Russian citizenship<sup>787</sup> or having opted out of it.<sup>788</sup> As is clear from the ordinary meaning of the terms of Article 1, read in their context and in the light of the Convention's object and purpose, as confirmed by the *travaux préparatoires*<sup>789</sup> and by members of the Court,<sup>790</sup> nationality and national origin are not synonymous concepts and cover distinct legal fields for the purpose of CERD. Ukraine's claims do not fall thus within the jurisdiction of the Court.

382. Subsidiarily, and in any event, the conditions referred to by the Committee in General Recommendation No. 30 for a difference of treatment between citizens and non-citizens to be in conformity with CERD<sup>791</sup> are met, as is abundantly confirmed in Appendix C. In particular, at all material times persons living in Crimea have enjoyed the ability to opt for retaining exactly the citizenship or citizenships of their choice, namely only Russian citizenship, only Ukrainian citizenship (or any other foreign citizenship for that matter), or both (or multiple) citizenships. Besides, Russian measures and immigration laws do not discriminate against any particular nationality, and certainly not against Ukrainian citizens.

<sup>&</sup>lt;sup>785</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, 4 February 2021, para. 105.

<sup>&</sup>lt;sup>786</sup> The Court has confirmed that "the term 'national origin' in Article 1, paragraph 1, of the Convention does not encompass current nationality" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment, 4 February 2021, para. 105).

<sup>&</sup>lt;sup>787</sup> MU, paras. 464-469.

<sup>&</sup>lt;sup>788</sup> MU, paras. 470-476.

<sup>&</sup>lt;sup>789</sup> The heated debate over the various understandings of the expressions "national origin" and "nationality" within the Third Committee led to the adoption of the distinction between paragraphs 1, 2 and 3 of Article 1 in the final text: United Nations General Assembly, 1304<sup>th</sup> meeting of the Third Committee, 14 October 1965, A/C.3/SR.1304, paras. 9, 10, 13, 15, 21; 1305<sup>th</sup> meeting, 14 October 1965, A/C.3/SR.1305, paras. 9, 12, 26, 29, and 44; 1306<sup>th</sup> meeting, 15 October 1965, A/C.3/SR.1306, paras. 12 and 28; 1307<sup>th</sup> meeting, 18 October 1965, A/C.3/SR.1307, paras. 1, 24, 27, 28 and 30; Report of the Third Committee, 18 December 1965, A/6181, p. 11-14, paras. 28-37.

<sup>&</sup>lt;sup>790</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, Joint declaration of Judges Tomka, Gaja and Gevorgian, I.C.J. Reports 2018, p. 436, paras. 3-4; Dissenting opinion of Judge Crawford, p. 475, para. 1; Dissenting opinion of Judge Salam, p. 481-483, paras. 3 and 5-7.

<sup>&</sup>lt;sup>791</sup> CERD Committee, 65<sup>th</sup> session, General Recommendation No. 30 on discrimination against non-citizens, 2004 in United Nations General Assembly, 59<sup>th</sup> Session, *Official Records, Supplement No. 18* (A/59/18), p. 94, para. 4.

## 2. Ukraine's IHL Claims Are Outside The Jurisdiction of the Court

383. Ukraine refers in the Memorial to international humanitarian law and allegations of Russian occupation in Crimea to support its allegations related to citizenship. However, the Court made clear in its Judgment on Preliminary Objections that international humanitarian law is excluded from its jurisdiction. This finding is *res judicata*.

384. Ukraine's position with respect to the place of international humanitarian law in this case has fluctuated since the beginning of the proceedings. Ukraine initially sought to exclude the application of Articles 1.2 and 1.3 of CERD based on international humanitarian law considerations. In its Memorial, it held the view that "Russia may not invoke Articles 1(2) or 1(3) of CERD in defense of this conduct because any distinction in this regard between citizens and non-citizens is predicated on an underlying violation of IHL".<sup>792</sup> Its reasoning was that these provisions could not be applicable in the case of Crimea because the Russian Federation illegally occupied Crimea.

385. Ukraine's approach radically changed during the preliminary objections stage of the case. In its Written Statement and Submissions on the Preliminary Objections, Ukraine contended that any reference to the status of Crimea, "occupation" or to international humanitarian law in the context of Crimea was only contextual or atmospheric and was not part of its claims *per se*. In particular, Ukraine claimed:

"Russia cannot point to a single place in Ukraine's Application or Memorial where, in connection with its CERD claims, Ukraine asks the Court to rule on or grant relief for violations of international law by the Russian Federation other than the breach of its obligations under the CERD. Neither the substance of this case nor the relief requested concern the status of Crimea, even if Russia's unlawful intervention there is a necessary part of the story in explaining the roots of the subsequent campaign of racial discrimination against the Crimean Tatar and Ukrainian communities".<sup>793</sup>

386. Further, according to Ukraine, "Ukraine's description of Russia's conduct in 2014 as unlawful does not change the substance of its CERD claims, because Ukraine does not seek relief in this proceeding for Russia's prior acts of aggression".<sup>794</sup> Ukraine adds that "[a] determination that Russia is violating CERD does not require any determination, implicit or otherwise, about the legality of the occupation".<sup>795</sup> These observations clarify that references to international humanitarian law are not intended to play any material role in its claims in this case, and in fact are

<sup>&</sup>lt;sup>792</sup> MU, para. 625 (in relation to Article 5(c)), *inter alia*. See also PORF, paras. 321-322.

<sup>&</sup>lt;sup>793</sup> WSU, para. 277 (footnotes omitted).

<sup>&</sup>lt;sup>794</sup> WSU, para. 278.

<sup>&</sup>lt;sup>795</sup> WSU, para. 279.

not part of them. This clarification had been noted by the Court.<sup>796</sup> It is controlling for the present stage of the proceedings.

387. Moreover, in its Judgment on Preliminary Objections, the Court did not accept Ukraine's argument that international humanitarian law trumps the Russian Federation's position that Articles 1.2 and 1.3 of CERD apply, thus excluding discrimination based on nationality from the scope of the Convention. As the Court confirmed, "[w]ith regard to the situation in Crimea, Ukraine's claims are based solely upon CERD".<sup>797</sup> It is subject to this qualification that the Court further held that it does not "need to establish whether, and, if so, to what extent, certain acts may be covered by Article 1, paragraphs 2 and 3, of CERD. Both determinations concern issues of fact, largely depending on evidence regarding the purpose or effect of the measures alleged by Ukraine, and are thus properly a matter for the merits, should the case proceed to that stage".<sup>798</sup> The Court thus decided to examine the applicability of Articles 1.2 and 1.3 at the merits stage independently of the questions concerning the status of Crimea and the applicability of international humanitarian law, which are not part of the case and that it has no jurisdiction to rule on. Therefore, references to international humanitarian law, "occupation" or the status of Crimea are detached from Ukraine's claims, are not within the Court's jurisdiction, and are irrelevant for the purpose of the present case. Thus, Ukraine's hopeless attempt to bring such claims through the backdoor of "setting the context" of its case is to be rejected.

## B. RUSSIAN CITIZENSHIP IS NOT CONFERRED ON A DISCRIMINATORY BASIS

388. Even if distinctions or restrictions based on nationality or citizenship were to be considered as falling within the scope of CERD, *quod non*, the detailed review under the relevant Appendix of the present Counter-Memorial of the measures alleged by Ukraine in the present case confirms in any event that Ukraine's claim that such measures are discriminatory is supported by no evidence at all.<sup>799</sup>

389. In light of the above, Ukraine's allegations of forced citizenship and subsequent discrimination are thus to be rejected.

- a. First, citizenship-based measures are excluded by Articles 1.2 and 1.3 of CERD, and thus fall outside the scope of the Convention and of the jurisdiction of the Court.
- b. Second, even if the Court were to have jurisdiction (*quod non*), Ukraine does not establish, and there is no ground to claim that the relevant Russian law on citizenship is in itself discriminatory or has been applied selectively, arbitrarily or in a discriminatory manner.

<sup>&</sup>lt;sup>796</sup> Judgment of 8 November 2019, para. 93.

<sup>&</sup>lt;sup>797</sup> Judgment of 8 November 2019, para. 23. See also para. 29.

<sup>&</sup>lt;sup>798</sup> Judgment of 8 November 2019, para. 94.

<sup>&</sup>lt;sup>799</sup> See Appendix C.

- c. Third, Ukraine's allegation that the application of Russia's nationality, residency and immigration laws in Crimea "leads to disproportionate enforcement of these laws against members of the Crimean Tatar and Ukrainian communities in Crimea" as such, and thus "constitutes racial discrimination within the meaning of the Convention",<sup>800</sup> is supported by no evidence at all.
- d. *A fortiori*, Ukraine's claims related to nationality and citizenship do not evidence any policy or campaign of systematic racial discrimination in Crimea.

## IV. No Racial Discrimination with respect to Organization of Public Rallies and Protests

390. Ukraine accuses the Russian Federation of carrying out a systematic campaign of discrimination with respect to the organization of public gatherings, rallies and protests.<sup>801</sup> According to Ukraine, this alleged campaign "raises the specter of the total erasure of these distinct cultures from the Crimean peninsula".<sup>802</sup> To substantiate these accusations, Ukraine contends that the Crimean authorities apply the law on public gatherings arbitrarily and discriminatorily in order to suppress culturally significant gatherings for Crimean Tatars and Ukrainians.<sup>803</sup> This accusation is unfounded, as will be amply confirmed below.

391. The following explanations are subject to an important caveat. As explained in other chapters of the Counter-Memorial, Ukraine's references to international humanitarian law and the "annexation" or "occupation" of Crimea do not form part of this case. Ukraine itself and the Court's Judgment on Preliminary Objections confirmed that Ukraine bases its claims exclusively on CERD and that therefore IHL does not form part of the Court's jurisdiction *ratione materiae*.<sup>804</sup> This caveat applies to Ukraine's case in general; it also applies in particular with respect to Ukraine's claims on public gatherings. Ukraine cannot claim in the present proceedings, as it does,<sup>805</sup> that the Russian Federation has no right to apply its laws in Crimea because such application would allegedly violate IHL. Similarly, all allegations related to developments that happened prior to Crimea's accession to the Russian Federation fall outside of the Court's jurisdiction.<sup>806</sup>

#### A. THE RELEVANT LEGAL FRAMEWORK

392. In the Memorial, Ukraine addresses cursorily only and very partially the legal framework applicable to the holding of public events and gatherings in Crimea. By so doing, it misconstrues

<sup>&</sup>lt;sup>800</sup> MU, para. 476.

<sup>&</sup>lt;sup>801</sup> MU, paras. 480-504.

<sup>&</sup>lt;sup>802</sup> MU, para. 477.

<sup>&</sup>lt;sup>803</sup> For such general assertions, see MU, paras. 485, 495 and 503.

<sup>&</sup>lt;sup>804</sup> Judgment of 8 November 2019, paras. 23, 29, 93.

<sup>&</sup>lt;sup>805</sup> See MU, paras. 481, 483, 484, 485, 486, 495, 504 and title to subsection 1, above para. 482 ("unlawful"), *inter alia*.

<sup>&</sup>lt;sup>806</sup> See *supra*, paras. 89, 344(a).

the applicable rules that are decisive to establish whether or not there has been racial discrimination in their application to concrete cases. In the relevant Appendix,<sup>807</sup> the Russian Federation presents comprehensively the relevant legal framework.

393. As described in Appendix D, the Russian legal framework governing the holding of public events in Crimea relies on a system of prior notification of intended events by their organizers to the competent authorities. The holding of a notified public event may be refused, and the holding of a public event may be suspended or terminated. Reasons for refusing, suspending and terminating a public event are provided for by statutory law. They constitute legitimate limitations on the exercise of the right to freedom of peaceful assembly, and imposing such legitimate limitations does not constitute a violation of this human right.

## B. THE RELEVANT FACTS DO NOT EVIDENCE RACIAL DISCRIMINATION

394. Based on Ukraine's own case, its allegations with respect to public events are limited to public events of *cultural* dimension.<sup>808</sup> They are not to be assessed thus under any right to political representation. As is shown in the relevant Appendix, Ukraine has not established that in relation to these public events, the law has been applied discriminatorily or arbitrarily against any ethnic group in Crimea,<sup>809</sup> including the Crimean Tatars<sup>810</sup> and ethnic Ukrainians<sup>811</sup> in comparison to ethnic Russians,<sup>812</sup> let alone as part of a systematic campaign or policy of racial discrimination against these groups.

395. No such discriminatory or arbitrary application of the law occurred with respect to the individual incidents relied on by Ukraine. In each and every case, the conduct of the Russian authorities regarding the holding of public events was based on objective and reasonable grounds based on criteria provided for by law.

396. When it comes to evidence, Ukraine refers in the Memorial to a few individual cases only, that besides refer exclusively to Crimean Tatar and Ukrainian applicants. On the other hand, Ukraine does not conduct any proper comparative exercise. In particular, Ukraine does not even seek to establish that no applicants from Russian or any other ethnic backgrounds have also received a refusal from the authorities in response to their notice for the holding of a public event or

<sup>&</sup>lt;sup>807</sup> See Appendix D(I).

<sup>&</sup>lt;sup>808</sup> MU, para. 479 and title to section A. This labelling notwithstanding, the individual cases relied on by Ukraine are governed by the legal framework on public events described under Appendix D, as is shown by the factual record.

<sup>&</sup>lt;sup>809</sup> See Appendix D, paras. 5-19.

<sup>&</sup>lt;sup>810</sup> See Appendix D(II), paras. 20-43.

<sup>&</sup>lt;sup>811</sup> See Appendix D(III), paras. 44-54.

<sup>&</sup>lt;sup>812</sup> See Appendix D(IV), paras. 55-60.

that the authorities have taken no measures based on public order and safety reasons in their respect. As is confirmed in the relevant Appendix, such cases are in fact very numerous.<sup>813</sup>

397. Neither does it establish that refusal, suspension or termination were specifically based on the ethnic identity of the organizer or the participants. On the contrary, the facts confirm that such measures were based on an objective and reasonable justification, were legitimate and lawful, and bear no link at all with racial discrimination. In these circumstances, there is no ground to claim, as Ukraine does, that racial discrimination occurred and that Russia's intent would be to "expung[e] the[...] ethnic cultural identity" of Crimean Tatars and Ukrainians.<sup>814</sup>

# V. No Racial Discrimination with respect to Media

398. Ukraine's accusations of "media restrictions and harassment"<sup>815</sup> are no more founded than its other allegations against the Russian Federation.

399. At the outset, the Russian Federation recalls that in *Qatar v. United Arab Emirates*, the Court confirmed that "the Convention concerns only individuals or groups of individuals" and that legal entities such as media corporations fall outside its scope.<sup>816</sup> Ukraine does not establish that measures taken against media corporations were in fact specifically directed at the Crimean Tatar and Ukrainian communities as such. These claims thus fall outside of the Convention.

400. According to Ukraine's claim, "[t]he Russian Federation has followed a similar strategy to that used to restrict Crimean Tatar and Ukrainian public gatherings to limit those communities' opportunities to use print and broadcast media to nourish and invigorate their respective cultures".<sup>817</sup> However, as will be shown further below, this allegation relies on pure speculations concerning the Russian Federation's motives when applying its laws.

401. Ukraine fails, and in fact does not even seek, to establish that the legal framework applicable to the activities of the media in Crimea is discriminatory or that it has been applied arbitrarily or discriminatorily, on racial grounds, against members of the Crimean Tatar and ethnic Ukrainian communities because of their belonging to these ethnic groups. The relevant facts assessed under Appendix E confirm that this is not the case. *A fortiori*, Ukraine does not establish that the alleged measures Ukraine complains of would form part of a systematic campaign or policy of racial discrimination specifically targeted at these communities as such.

<sup>&</sup>lt;sup>813</sup> See Appendix D, para. 62.

<sup>&</sup>lt;sup>814</sup> MU, para. 388.

<sup>&</sup>lt;sup>815</sup> MU, paras. 505-521.

<sup>&</sup>lt;sup>816</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, 4 February 2021, para. 108.

<sup>&</sup>lt;sup>817</sup> MU, para. 505.

402. Ukraine's portraying of the Russian legal framework governing the activities of the media as being extraordinarily burdensome and allowing for the persecution of political opponents is unfounded. The truth is that mass media in Crimean Tatar and Ukrainian languages are available in Crimea with many registered in the Russian Federation (A). Besides, the individual measures challenged by Ukraine in its Memorial are based on objective and reasonable grounds, including procedural non-compliance with the law which can be corrected at any time, and extremist activities of some media outlets and their owners or journalists (B). They have nothing to do with racial discrimination.

403. In the section of its Memorial dedicated to the media, Ukraine once again relies quite extensively on international humanitarian law, as well as allegations of "aggression", "annexation" or "occupation" and other considerations related to the question of sovereignty over Crimea.<sup>818</sup> These allegations, which the Russian Federation considers to be without any merits, do not form part of the jurisdiction of the Court in the present case, as confirmed by the Court's Judgment on Preliminary Objections.<sup>819</sup> Thus they will not be addressed in the present section nor in the corresponding Appendix.

#### A. MASS MEDIA IN CRIMEAN TATAR AND UKRAINIAN ARE AVAILABLE IN CRIMEA

404. To evidence a campaign of systematic racial discrimination, Ukraine must establish the existence of a generalized pattern of racial discrimination. Ukraine does not do it in the Memorial, for a very simple reason: mass media in Crimean Tatar and Ukrainian are available in Crimea, as the Russian Federation already had the opportunity to show during the proceedings on provisional measures.<sup>820</sup> Besides, none of Ukraine's individual claims constitutes, even plausibly, racial discrimination.

405. Ukraine portrays a distorted picture of the general situation of the media in Crimea by proceeding through a limited number of so-called "examples"<sup>821</sup> and by selecting a small number of individual cases, which do not reflect this general situation, and whose treatment is in any case lawful and legitimate under the applicable rules, as will be shown below (see *infra*, B). Moreover, Ukraine frames its claims on media outlets in terms of repression of *political* opposition, which in and by itself confirms that Ukraine's case is not, even taken at face value, about racial discrimination against ethnic groups covered by CERD.<sup>822</sup> To be sure, the Russian Federation rejects any accusations of political repression.

<sup>&</sup>lt;sup>818</sup> See for instance MU, paras. 505, 506, 509-510, 512, 516, 518, *inter alia*.

<sup>&</sup>lt;sup>819</sup> Judgment of 8 November 2019, paras. 23, 29, 93.

<sup>&</sup>lt;sup>820</sup> CR 2017/2, 7 March 2017, p. 73, para. 32 (Forteau).

<sup>&</sup>lt;sup>821</sup> See for instance MU, paras. 508 or 511.

<sup>&</sup>lt;sup>822</sup> PORF, para. 352 (d), (e), (f), and (g), and para. 353.

406. Due to Ukraine's erroneous portrayal of Russian law governing media activities, the said legal framework needs to be accurately presented, which the Russian Federation does in the relevant Appendix.<sup>823</sup> The same Appendix then presents the general situation of the media in Crimea, which is diverse and provides full space for Crimean Tatar and Ukrainian media, in particular in terms of registration and language of broadcasting, contrary to Ukraine's false accusations.<sup>824</sup>

## B. REGISTRATION APPLICATIONS OF MEDIA CITED BY UKRAINE WERE RETURNED, AND LAW-ENFORCEMENT MEASURES WERE TAKEN, ON LEGITIMATE, NON-DISCRIMINATORY BASIS

407. Not only is the legal framework reasonable and non-discriminatory as reflected by an inclusive and vibrant media scene in Crimea, but as will be shown below, the individual cases relied on by Ukraine in the Memorial do not evidence any hint at discrimination, let alone a systematic campaign or practice of racial discrimination targeting Crimean Tatars and ethnic Ukrainians as such in violation of CERD. Indeed, none of the impugned measures bears any relation to racial discrimination. Many media outlets were able to register successfully since 2014, including Crimean Tatar and Ukrainian media outlets. Some of them might have seen their applications initially returned to them and might have needed several attempts because of their first contact with the new Russian procedure, but they eventually succeeded. As explained elsewhere, a return to the application or a refusal by the administration to register the media outlet; it is merely a procedural defect that may be cured by a resubmission of the application.

408. By contrast Ukraine builds its whole case of systematic racial discrimination on a few outlets only, which did not pursue the procedure of registration after their first administrative returns. As is shown in the relevant Appendix, all returns of applications Ukraine refers to were justified on procedural grounds under applicable law, and were therefore objectively justified, as were the registering authorities' consideration of information received from law enforcement authorities and pointing to extremist activities of the applicants' founder.<sup>826</sup>

409. Moreover, warnings sent to media outlets and measures taken with respect to media executives and journalists were legitimate limitations and again based on statutory legal grounds, in particular extremist activities or the prohibited publication of materials that qualify as extremist under statutory law.<sup>827</sup> In international human rights law, the fight against extremism is a standard limitation to the right to freedom of expression and freedom of the media (actually, the Russian

<sup>&</sup>lt;sup>823</sup> See Appendix E, section I.

<sup>&</sup>lt;sup>824</sup> See Appendix E, section II.

<sup>&</sup>lt;sup>825</sup> See Appendix E, section I.

<sup>&</sup>lt;sup>826</sup> See Appendix E, section III(B).

<sup>&</sup>lt;sup>827</sup> See Appendix E, section III(C).

legal framework governing media activities that Ukraine criticizes is similar to Ukraine's own legal framework).

410. With regard to extremist activities, Ukraine totally overlooks the fact that Roskomnadzor, the registering body, has a dual mission of both an administrative agency and a watchdog that participates in oversight of media activities and their compliance with applicable law, including on the fight against extremism.<sup>828</sup> Indeed, the Media Law that provides the legal basis for the registration of media outlets does not exist in a vacuum. Rather, it applies in the wider context of Russian domestic law, in combination with other legislative acts, including anti-extremism legislation, among others. Thus, there is nothing unusual that other State organs at times communicate requests and information to Roskomnadzor as part of a continuous coordination process among various State agencies for law enforcement purposes.

411. In any case, none of the impugned measures constitutes instances of racial discrimination; *a fortiori*, Ukraine's allegation of a strategy of media erasure as part of a systematic campaign or policy of racial discrimination targeted at Crimean Tatars and ethnic Ukrainians is manifestly unfounded and Ukraine presents no shred of evidence to support such accusations.

412. Ukraine's complaint related to journalists and media outlets confirms the political nature of its case, which concerns Crimea's status, and not racial discrimination. Ukraine itself presents its claims as allegedly attesting to political repression and censorship, not as measures based on ethnic identity. Nowhere in the relevant subsection of the Memorial does Ukraine even seek to establish that the alleged measures were inspired by ethnic motives. The fact that no claim of racial discrimination has been put before domestic courts in relation to these measures confirms the artificiality of Ukraine's claims.

# VI. No Racial Discrimination with respect to Preservation of Cultural Heritage

413. As part of the alleged all-encompassing plan or systematic campaign of racial discrimination specifically targeting Crimean Tatars and ethnic Ukrainians, Ukraine finally contends that "[t]he Crimean Tatar and Ukrainian communities have [...] suffered a more general assault on their respective cultural heritage".<sup>829</sup> This accusation is, like others, without any merit.

414. As for the alleged degradation of Crimean Tatar cultural heritage, Ukraine's allegation of destruction of the Khan's Palace (and specifically the Khan Mosque), the only case it relies on, is without any basis as a matter of fact. The relevant facts confirm that the restoration of the Khan's Palace (i.e. the Khan Mosque as one of its sites) is unrelated to racial discrimination (A). Ukraine's claim of degradation of Ukrainian cultural heritage is also remarkably odd. What Ukraine presents

<sup>&</sup>lt;sup>828</sup> Statute of the Federal Service for Supervision of Communications, Information Technology, and Mass Media, approved by the Resolution of the Government of the Russian Federation No. 228, 16 March 2009 (Annex 51); Expert Report of Valery Viktorovich Engel (Annex 22), paras. 272-273.

<sup>&</sup>lt;sup>829</sup> MU, paras. 522-532.

as "[h]arassment and [c]losure of Ukrainian [c]ultural [i]nstitutions"<sup>830</sup> consists of a disparate patchwork of allegations, some of them unrelated to cultural heritage, that are unfounded (B). As is made clear in Appendix F, none of these allegations, which amount to little more than speculation, relate to racial discrimination.

## A. THE RESTORATION OF THE KHAN'S PALACE DOES NOT EVIDENCE ANY RACIAL DISCRIMINATION

415. The fallacy of Ukraine's case is perhaps nowhere as evident as with respect to the Khan's Palace.<sup>831</sup> Ukraine purports to portray what is a *supporting* measure to the Crimean Tatar community as reflecting an intent to erase their cultural heritage and as being an element of the Russian Federation's alleged systematic campaign or policy of racial discrimination targeting Crimean Tatars. Far from having been "destroyed", as Ukraine surprisingly claims,<sup>832</sup> the Khan's Palace still stands today as a vibrant cultural symbol and historical treasure of the Crimean Tatar community and the Crimean population at large. It continues to be used in the service of the Crimean Tatar community, including for cultural events, and it is open to the public for visits, as it had been before 2014.

416. As the assessment of relevant facts under Appendix F shows,<sup>833</sup> works in the Palace had been rendered necessary by Ukraine's inability to take much needed steps in order to maintain the complex in good state during the preceding period.<sup>834</sup> As the Russian Federation observed at the UNESCO with respect to cultural heritage in Crimea generally, "under the Ukrainian jurisdiction, the objects of cultural-historical heritage in the territory of Crimea were falling into disrepair due to systematic underfunding. The authorities which maintained and supervised these objects were not taking necessary steps to restore them or to mitigate the destructive effects of natural phenomena. Some objects of cultural heritage were illegally privatized and also partly transferred to the Presidential Affairs Department of Ukraine or to individuals who were closely associated with the Ukrainian senior government officials".<sup>835</sup>

417. After Crimea's change of status, the Russian Federation has taken unprecedented steps to actively support and ensure the adequate protection of Crimea's cultural heritage. A Federal Law adopted in February 2015 brought Crimean cultural heritage under the Russian regime of protection

9 June 2021 (Annex

<sup>&</sup>lt;sup>830</sup> MU, title of subsection 2, above para. 527.

<sup>&</sup>lt;sup>831</sup> MU, paras. 523-526.

<sup>&</sup>lt;sup>832</sup> MU, title of subsection 1, above para. 523: "Destruction of the Khan's Palace".

<sup>&</sup>lt;sup>833</sup> See Appendix F, paras. 2-20.

<sup>&</sup>lt;sup>834</sup> The poor condition of the roof of the Khan Mosque was recorded by the Ukrainian Special Scientific Restoration Design Institute "Ukrproektrestavratsiya" back in 1989, to which Ukraine itself refers to in Annex 1030 to UM (see Witness statement of

<sup>20),</sup> para. 21).

<sup>&</sup>lt;sup>835</sup> Permanent Delegation of the Russian Federation to UNESCO, Information on the Situation in the Republic of Crimea (the Russian Federation) within the Scope of UNESCO Competence as of April 8, 2015 (14 April 2015) (Annex 785 to MU).

of cultural heritage, namely placed Crimea's cultural heritage under the protection of the State.<sup>836</sup> Moreover, in October 2015 the Khan's Palace, together with many other sites, including significant sites for Crimean Tatar and Ukrainian cultures, were recognized as cultural heritage sites of federal significance and entered into the register of objects of cultural heritage (historical and cultural monuments) of the peoples of the Russian Federation.<sup>837</sup> While under statutory law cultural heritage sites may also be declared of municipal or regional significance, the status of sites of federal significance represents the highest level of significance, which highlights the express recognition that the Russian Federation extended to the Khan's Palace, and its declared intent, and legal obligation, to provide adequate protection as required under statutory law.

418. In relation to the Khan's Palace, Ukraine does not establish the alleged failures in the priority emergency works and the subsequent repair and restoration works that it portrays, as the Russian Federation shows in the relevant Appendix.<sup>838</sup> It also fails to demonstrate the discriminatory character of the above works because it does not conduct any comparative exercise in relation to other comparable cases of repair and restoration.<sup>839</sup> Ukraine does not either demonstrate that the conduct of the priority emergency works and the subsequent repair and restoration works or whatever damage that might have happened during them (which is in any case a matter of domestic tort law regarding the conduct of a private company, not a case of State responsibility), reflect any specific intention of the Russian Federation to fail the repair and restoration and through it to culturally suppress Crimean Tatars.<sup>840</sup> In any event, the record flatly contradicts Ukraine's allegations of defective repair and restoration, which are wholly unsupported.<sup>841</sup>

#### B. ALLEGED HARASSMENT AND CLOSURE OF UKRAINIAN CULTURAL INSTITUTIONS

419. Ukraine's claims relating to alleged "harassment and closure of Ukrainian cultural institutions" are also unfounded.<sup>842</sup> Once again, the serious accusations of Ukraine, namely that

<sup>&</sup>lt;sup>836</sup> Federal Law No. 9-FZ "On specifics of legal regulation of relations in the field of culture and tourism in connection with the admission of the Republic of Crimea into the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the federal city of Sevastopol", 12 February 2015 (Annex 84), Article 2(1). Related provisions are also contained in Federal Law No. 73-FZ "On cultural heritage sites (historical and cultural monuments) of the peoples of the Russian Federation", 25 June 2002 (Annex 45); Law of the Republic of Crimea No. 68-ZRK "On cultural heritage sites in the Republic of Crimea", 11 September 2014 (Annex 73).

<sup>&</sup>lt;sup>837</sup> Order of the Government of the Russian Federation No. 2073-r approving the List of cultural heritage sites of federal significance located in the territory of the Republic of Crimea and the City of Sevastopol, 17 October 2015 (Annex 92), pp. 2-4.

<sup>&</sup>lt;sup>838</sup> See Appendix F, paras. 4-20.

<sup>&</sup>lt;sup>839</sup> See Appendix F, paras. 21-25.

<sup>&</sup>lt;sup>840</sup> See Appendix F, paras. 26-27.

<sup>&</sup>lt;sup>841</sup> See Appendix F, paras. 2-20.

<sup>&</sup>lt;sup>842</sup> MU, paras. 527-532.

"Ukrainian culture in Crimea is under siege across the board",<sup>843</sup> do not stand scrutiny. Each of Ukraine's allegations are addressed in turn under the relevant Appendix.<sup>844</sup>

420. As shown there, Ukraine's factual allegations are incorrect, selective, distorted and taken out of context, among other flaws. This is particularly visible with the cases of Mr Kuzmin's and the Ukrainian Cultural Center's activities, the repair and restoration of the Lesya Ukrainka Museum in Yalta, the closure of the children's drama studio "Svitanok" in Simferopol, or Ukraine's attempt of depicting an imagined climate of social fear in Crimea based on unverifiable "reports" of Hromadske International, a proven hardline pro-Maidan propagandist media. Moreover, Ukraine's reliance on Mr Shchekun's witness statement amounts to little more than pure extrapolation from what the statement actually states.

421. As Appendix F shows, Ukraine's allegation that "[t]he stigmatization of the Ukrainian language and speakers of it indicates the extreme pressure that Ukrainian identity is under in Crimea as a result of the Russian Federation's discriminatory policies"<sup>845</sup> is, here again, pure invention.

<sup>&</sup>lt;sup>843</sup> MU, para. 527.

<sup>&</sup>lt;sup>844</sup> See Appendix F, paras. 28-43.

<sup>&</sup>lt;sup>845</sup> MU, para. 532.

#### SUBMISSION

422. For the reasons set out in the present Counter-Memorial, and reserving its right to supplement or amend this Submission, the Russian Federation respectfully requests the Court to dismiss all of the claims made by Ukraine.

01

Dmitry A. LOBACH

Wiberry

Grigory E. LUKIYANTSEV

Agents of the Russian Federation

Moscow, 9 August 2021

## **CERTIFICATION**

We hereby certify that the annexes are true copies of the documents referred to and that the translations provided are accurate.

Dmitry A. LOBACH

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Grigory E. LUKIYANTSEV

Agents of the Russian Federation

Moscow, 9 August 2021

# **APPENDICES** A - F

# APPENDICES

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#### **APPENDIX A**

## NO ENFORCED DISAPPEARANCES, MURDERS, ABDUCTIONS AND TORTURE DIRECTED ON RACIAL GROUNDS AT THE CRIMEAN TATARS AND UKRAINIANS, LET ALONE A SYSTEMATIC CAMPAIGN THEREOF

1. As has been shown in Chapter VI<sup>1</sup> and as confirmed below, the allegations of enforced disappearances, murder, abductions and torture made by Ukraine do not evidence racial discrimination, let alone a systematic campaign thereof. The record shows that, for those allegations that fall within the Court's jurisdiction *ratione temporis*, the Russian Federation committed no racial discrimination and fulfilled its duty to investigate (I). Ukraine's accusations are also presented in a misleading or factually erroneous way or relate to acts that do not constitute enforced disappearances, murders, abductions or torture or bear no links with the Russian Federation whatsoever. In any event, Ukraine does not advance a serious case on attribution (II).

#### I. No Breach of CERD

2. None of Ukraine's allegations constitute instances of racial discrimination under CERD. *A fortiori*, these individual allegations cannot, taken together, reflect a systematic campaign or policy of racial discrimination carried out by the Russian Federation and directed at Crimean Tatars and ethnic Ukrainians in Crimea. Not only do some of Ukraine's claims fall outside the scope of the Court's jurisdiction *ratione temporis* (A); nothing in the record suggests that Ukraine's allegations constitute discrimination based on race (B). Besides, while none of the incidents are attributable to the Russian Federation, Ukraine's claim that the Russian Federation failed to comply with its duty to investigate in respect of disappearances is unfounded and relies in particular on a misled understanding of this duty and of the factual record. As will be shown in this regard, the Russian Federation has complied with its duty to investigate (C). Finally, Ukraine's flawed approach to evidence negates the very plausibility of its allegations (D).

#### A. JURISDICTION RATIONE TEMPORIS

3. As the Court confirmed in its Judgment on Preliminary Objections as part of defining the subject-matter of the dispute, "[t]he present proceedings were instituted by Ukraine following the events which occurred in eastern Ukraine and in Crimea from the spring of 2014".<sup>2</sup> Indeed, the critical date for these events is 18 March 2014, the day when Crimea and Sevastopol acceded to the Russian Federation.<sup>3</sup> From this date, the Russian Federation's obligations based on CERD extended

<sup>&</sup>lt;sup>1</sup> Counter-Memorial, Chapter VI, paras. 338-347.

<sup>&</sup>lt;sup>2</sup> Judgment of 8 November 2019, p. 575, para. 23.

<sup>&</sup>lt;sup>3</sup> Treaty between the Russian Federation and the Republic of Crimea on the accession of the Republic of Crimea to the Russian Federation and the formation of new constituent entities within the Russian Federation, 18 March 2014 (Annex 24), Article 10.

#### Appendix A

to the territory of Crimea and this date delimits the Court's jurisdiction *ratione temporis* in the present case.

4. Many of the incidents alleged by Ukraine had occurred prior to this critical date, at a period when Ukraine had sovereignty over Crimea. This is so with respect to the allegations concerning Mr Reshat Ametov whose body was found on 15 March 2014 bearing signs of violent death, Mr Vladislav Vaschuk and Mr Ivan Bonariets who allegedly disappeared on 7 March 2014, Mr Vasyl Chernysh who was reported missing on 15 March 2014, Mr Myhailo Vdovchenko who was allegedly abducted on 11 March 2014 (and released on 21 March 2014), Mr Andrii Shchekun and Mr Anatoly Kovalsky who were allegedly abducted on 9 March 2014 (and released on 20 March 2014).

## B. NO DISCRIMINATION BASED ON RACE

5. The allegations of enforced disappearances, murders, abductions, and torture that Ukraine advances in support of its claim of systematic campaign of racial discrimination do not point to any discrimination, let alone any discrimination based on race. In addition, commenting on the whole set of alleged incidents. Ukraine expressed the view that "[t]hese acts of violence and the physical harm that has resulted were based on a racial or ethnic distinction, in that they targeted members of the two communities known to oppose Russia's annexation of Crimea, with the purpose and/or effect of intimidating those communities into submission".<sup>4</sup> As the Russian Federation has developed before, evidence of an unambiguous intent is clearly necessary in order to establish the existence of a systematic campaign or policy. While Ukraine nominally refers at times to the "purpose or effect" distinction made in CERD, it admits that its claim is based on the existence of such an alleged intent: "[k]nowing in advance that its plan to annex Crimea would face opposition from those who self-identified as Crimean Tatar and Ukrainian, Russia and its agents targeted activists from those communities with extreme violence."<sup>5</sup> However, Ukraine provides no materials to support the contention that Russia had the intent to target Crimean Tatar or Ukrainian ethnic groups for racial motives.

6. To summarize Ukraine's claims relating to enforced disappearances, murders, abductions, and torture as presented in its Memorial,<sup>6</sup> Ukraine refers to 13 individual cases that allegedly affect two ethnic groups and that stretch over a period of three and a half years, form March 2014 to September 2017.

7. Ukraine fails to address the elements that need to be established to conclude that these allegations, if proven, constitute racial discrimination, and even more a systematic campaign of discrimination. It is not sufficient to rely on isolated individual cases to establish discrimination. An

<sup>&</sup>lt;sup>4</sup> MU, para. 393.

<sup>&</sup>lt;sup>5</sup> MU, para. 392.

<sup>&</sup>lt;sup>6</sup> MU, paras. 392-411.

essential element of discrimination, including racial discrimination, is comparison: there is discrimination when, and only when, different groups of people that are in the same situation are treated differently.<sup>7</sup> To establish such a difference of treatment in the present case, it is necessary in particular to look at available statistical data on criminal acts that Ukraine complains of and that cover the whole population of Crimea, namely all ethnic groups. Ukraine did not do it.

8. Statistical data confirms that Crimean Tatars and Ukrainians are not the only victims of kidnappings and murders in Crimea, and are not disproportionately affected by comparison with persons belonging to other ethnic groups. Criminal statistics shows that cases of disappearances of Crimean Tatars and Ukrainians remained an absolute minority of the total number of such cases in Crimea throughout the entire period from 2014 to the first half of 2020. In both 2014 and 2015 over 70 % of the disappeared persons in Crimea were Russians, and they have continued to form the absolute majority of the disappeared persons in Crimea during the 2016-2020 period.<sup>8</sup> When compared to the ethnic composition of the Crimea population under the 2014 census, the trend over the period from 2014-2020 actually shows that ethnic Russians are generally overrepresented while ethnic Ukrainians and Crimean Tatars tend to be underrepresented among cases of disappearances. These rates evidence no discrimination, and certainly not a campaign or policy of systematic racial discrimination targeting Crimean Tatars and ethnic Ukrainians. They also flatly belie Ukraine's unsupported allegation that 90 % of persons who disappeared or are still missing in Crimea are either Crimean Tatars or Ukrainians.<sup>9</sup>

9. During the bilateral discussions on CERD implementation that took place between the parties before Ukraine submitted its Application to the Court in this case, the Russian Federation had already drawn Ukraine's attention on the need to substantiate its allegations with concrete data.<sup>10</sup> The importance of proper statistical data for the purpose of the comparative exercise in determining whether discrimination has taken place has also been highlighted by the CERD Committee, which generally insists that States submit statistical data in their reports, and which has specifically pointed to Ukraine's failure to do so.<sup>11</sup>

<sup>&</sup>lt;sup>7</sup> See Counter-Memorial, Chapter II, para. 97.

<sup>&</sup>lt;sup>8</sup> Main Directorate of International and Legal Cooperation of the Prosecutor General's Office of the Russian Federation, Note on missing person cases opened by the internal affairs bodies in 2014-first half of 2020, 9 September 2020 (Annex 636).

<sup>&</sup>lt;sup>9</sup> MU, para. 398 and footnote 825. This assertion by Ukraine also relies on a flawed understanding of the OHCHR report it cites (MU, Annex 759, para. 102). Ukraine extrapolates this general assertion from a specific sample of 10 individual (unspecified) cases that the OHCHR referred to and that stretched over three years.

<sup>&</sup>lt;sup>10</sup> Note Verbale No. 5774-n/dgpch of the Ministry of Foreign Affairs of the Russian Federation to the Embassy of Ukraine in Moscow, 27 May 2016 (Annex 57 to PORF, p. 2). By contrast the Russian Federation readily provided statistical data during the discussion: Note Verbale No. 72/22-194/510-2006 of the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of the Russian Federation, 17 August 2015, Annex 56, p. 4 (p. 568 of vol. II); Note Verbale No. 72/22-194/510-1973 of the Ministry of Foreign Affairs of Ukraine to the Ministry of Foreign Affairs of Foreign Affairs of the Russian Federation, 18 August 2016 (Annex 58 to PORF, p. 5).

<sup>&</sup>lt;sup>11</sup> See e.g. CERD Committee, Concluding observations on the 19<sup>th</sup> to 21<sup>st</sup> periodic reports of Ukraine, 79<sup>th</sup> session, 29 August 2011, CERD/C/UKR/CO/19-21, para. 7.

#### Appendix A

10. Instead, Ukraine mostly relies on OHCHR reports. But these are of no avail to Ukraine for purposes of the comparative exercise. Indeed, these reports do not purport to establish as such the existence of racial discrimination (an expression that is absent from these reports) and their authors did not conduct any comparative exercise. They do not offer a full-scale statistical analysis of the reported cases in comparison with other ethnic groups and the whole population in Crimea. Instead, they are limited to mentioning allegations that have been reported to them, either directly or through second-hand sources. As a telling example that the OHCHR reports do not support a conclusion that racial discrimination occurred, as Ukraine misleadingly presents them to do, one of the reports makes the following specific and contextual statement: "OHCHR documented 10 cases of persons who disappeared and are still missing: six Crimean Tatars, three ethnic Ukrainians and one Russian-Tatar – all men. Seven went missing in 2014, two in 2015 and one in 2016."<sup>12</sup> Citing this paragraph of the report, Ukraine makes the allegation that "90 percent of persons who have disappeared and are still missing are either Crimean Tatar or Ukrainian".<sup>13</sup> This is highly misleading, to say the least. The only conclusion that could be drawn, at best, from the OHCHR report would be that 90 percent of the cases reported to it (which number is small) concern individuals who are Crimean Tatars and Ukrainians.

11. In addition, Ukraine's allegations of enforced disappearances, murders, abductions and torture mentioned in the Memorial are *not* presented *by Ukraine* as based on racial grounds. Ukraine alleged that they are based on political motivations. Ukraine's claims, whatever their own merits, thus have nothing to do with racial discrimination. As a clear indication of how Ukraine frames its claims, it is worth noting that the relevant titles in the Memorial purport to present "Disappearances of Crimean Tatar and ethnic Ukrainian *activists*" and "Abduction and torture of Crimean Tatar and Ukraine itself as being opponents to Crimea's change of status.

12. As an illustration, a document produced by Ukraine reports one of Mr Shchekun's and Mr Kovalsky's lawyers saying, while commenting on their alleged detainment: "There is no question why they were targeted. Both men are well-known activists, who organized local Euromaidan protests in Simferopol from the very beginning. They had received anonymous threats before."<sup>14</sup> Notwithstanding that these words reflect nothing more than the lawyer's personal opinion, admitting for the sake of reasoning that there was any targeting, such targeting would be political. No claim was made on the other hand that the alleged act constitutes racial discrimination.

<sup>&</sup>lt;sup>12</sup> OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017) (Annex 759 to MU), para. 102.

<sup>&</sup>lt;sup>13</sup> MU, para. 398 and fn. 825.

<sup>&</sup>lt;sup>14</sup> Human Rights Watch, Crimea: Attacks, 'Disappearances' by Illegal Forces, 14 March 2014 (Annex 938 to MU), p. 4.

#### C. INVESTIGATIONS OF DISAPPEARANCES

13. Ukraine accuses the Russian Federation of refusing to investigate and delays in investigations with respect to alleged disappearances<sup>15</sup> in spite of their forming a "pattern of ethnically-targeted disappearances".<sup>16</sup> This is factually false. Not only have investigations been carried out in the alleged cases, moreover for all cases the decision whether to open an investigation has been taken in an objective, non-discriminatory manner based on legally prescribed standards and usual practice. In addition, as will be shown later, in many cases Ukraine does not establish that the alleged disappearances are *enforced* disappearances, while this distinction is obviously decisive in legal terms (see below, paras. 15 and 40-43).

# 1. Obligation to Investigate Is an Obligation of Conduct and the Relevant Record Does Not Support Allegations of Discrimination in respect of Investigations

14. Although the nature and degree of scrutiny necessary in order to satisfy the minimum threshold regarding an investigation's effectiveness depends on the circumstances of each case, there is a minimum standard for the investigation of disappearances, as established and supported by both ECHR case-law and Russian criminal procedural law.<sup>17</sup> Such minimum standard requires competent authorities to carry out a number of reasonable steps that are necessary to secure relevant evidence, including, inter alia and where possible or appropriate, interviewing eyewitnesses, gathering forensic evidence, performing an autopsy, and performing other acts as may be necessary according to the circumstances of each case. According to this standard established by the ECHR, a proper criminal investigation is a matter of legal due process rather than achieving a particular result. Thus, the existence of an unsolved case is not indicative of a violation of the aforementioned standard as long as the relevant authorities have undertaken an investigation and used reasonable measures available to them in an attempt to solve the case.<sup>18</sup> As will be shown further below, the Russian Federation has satisfied this standard of conduct in relation to the cases pointed by Ukraine, and there is nothing in the record to suggest that the corresponding conduct of the Russian Federation evidences a campaign of racial discrimination in Crimea.

15. Investigations are subject to procedures provided for in Russian law. This is the case in every State. In Russian law, it is crucial for the investigation authorities to establish whether signs of crime are present in each case of disappearance in order to take further action to repress the crime

<sup>&</sup>lt;sup>15</sup> MU, paras. 399-404.

<sup>&</sup>lt;sup>16</sup> MU, para. 399.

<sup>&</sup>lt;sup>17</sup> See e.g. ECtHR, *Giuliani and Gaggio v. Italy*, Application No. 23458/02, Judgment (GC), 24 March 2011, para. 301; ECtHR, *Jaloud v. the Netherlands*, Application No. 47708/08, Judgment (GC), 20 November 2014, para. 186; ECtHR, *Mustafa Tunç and Fecire Tunç v. Turkey*, Application No. 24014/05, Judgment (GC), 14 April 2015, para. 173; ECtHR, *Güzelyurtlu and Others v. Cyprus and Turkey*, Application No. 36925/07, Judgment (GC), 29 January 2019, para. 219. See also Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Articles 176-183, 187, 195, which provide for a variety of investigatory and other actions available to the investigator or inquiry officer, including those mentioned by the ECtHR among the most crucial.

<sup>&</sup>lt;sup>18</sup> *Ibid*.

and to pursue an investigation if necessary. Indeed, not every case of disappearance involves acts of kidnapping or the unlawful deprivation of liberty. Russian legislation sets out a number of criteria for consideration when determining whether or not a disappearance is the result of some form of criminality.<sup>19</sup> When these criteria are met, a criminal case is opened and an investigation undertaken by Investigative Committee officers.<sup>20</sup> When these criteria are not satisfied, the investigation continues as a missing-person case and is conducted by Ministry of Internal Affairs ("MIA") officers.<sup>21</sup>

16. Russian legislation allows for any person or legal entity to report a crime or incident and every crime report is mandatory for review.<sup>22</sup> An investigation can be also initiated by a State official absent any report of a crime where there are other indications that a crime has occurred (for example if a mass media article mentions a crime that has not been officially reported).<sup>23</sup> Irrespective of the source of information regarding a possible crime, if there is sufficient evidence suggesting that a crime has been committed, then a criminal investigation is initiated.<sup>24</sup> With regard to cases of disappearance the presence of any criteria mentioned in paragraph 15 and footnote 19 above can be regarded as sufficient to initiate a criminal case.

17. The suspension or termination of investigations are always based on an objective reason that is provided for in law.<sup>25</sup> In particular investigations may be suspended or terminated for lack of

<sup>&</sup>lt;sup>19</sup> Most notably, see Joint Order of the Ministry of Internal Affairs of the Russian Federation (No. 38), the Prosecutor General's Office of the Russian Federation (No. 14), the Investigative Committee of the Russian Federation (No. 5) "On approval of the Instruction on the procedure for considering applications, crime reports and other information on incidents related to disappearance of persons", 16 January 2015 (Annex 80) (came into force on 3 April 2015), paras. 10-10.20, which set out possible indications that a person has disappeared against his/her own will, including, but not limited to the following: (1) the individual in question has a high-risk profile – for instance, a minor, law enforcement officer or a person who engages in prostitution or criminal activity, (2) the absence of any information regarding the disappeared person for at least 3 days; or (3) other circumstances, which could suggest that a crime had occurred.

<sup>&</sup>lt;sup>20</sup> Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Article 151(2)1)(a).

<sup>&</sup>lt;sup>21</sup> See Joint Order of the Ministry of Internal Affairs of the Russian Federation (No. 38), the Prosecutor General's Office of the Russian Federation (No. 14), the Investigative Committee of the Russian Federation (No. 5) "On approval of the Instruction on the procedure for considering applications, crime reports and other information on incidents related to disappearance of persons", 16 January 2015 (Annex 80) (came into force on 3 April 2015), para. 16; see also formerly: Joint Order of the Prosecutor General's Office of the Russian Federation (No. 70) and the Ministry of Internal Affairs of the Russian Federation (No. 122) "On the adoption of the Instruction on the procedure for considering applications, reports of crimes and other information on incidents related to disappearances of citizens", 27 February 2010 (Annex 53), para. 10. While generally providing the same criteria as set out above, the Former Instruction stipulated that the absence of any information regarding the disappeared person for "a long time" may suggest that the disappearance occurred against the individual's own will (Former Instruction, para. 5). The current Instruction refers instead to a period of 3 days.

<sup>&</sup>lt;sup>22</sup> Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Articles 141, 144(1).

 <sup>&</sup>lt;sup>23</sup> Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Articles 140, 143.

<sup>&</sup>lt;sup>24</sup> Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Article 140(2).

<sup>&</sup>lt;sup>25</sup> Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Articles 24-28.1, 208, 212.

evidence or result after a legally defined period has elapsed. This is quite a common principle in many countries as no State can be expected to keep forever all unsolved investigations open. In particular, the investigation of a criminal case shall be suspended where circumstances set forth by law exist, which temporarily impede further investigation or trial of the criminal case.<sup>26</sup> Likewise, a number of circumstances provided by law command the termination of the criminal investigation without the criminal case being successfully solved.<sup>27</sup>

18. While all criminal investigation systems are perfectible, the Russian procedure applied in Crimea is effective, and Ukraine has not established that this is not the case. The competent investigative authorities will only open an investigation when several elements are met, such as a serious claim. An investigation may be suspended or terminated for lack of evidence or after a certain period subject to statutory criteria. This system is not discriminatory, and Ukraine does not claim that it is. Moreover, it was not applied discriminatorily in the specific cases alleged by Ukraine.

# 2. No Evidence of Discriminatory Investigation with respect to Individual Incidents Relied on by Ukraine

19. Contrary to Ukraine's assertions, the document Ukraine refers to in its Memorial confirms that there was indeed no pattern to discern in relation to Ukraine's claims, even less a systematic campaign of racial discrimination directed at Crimean Tatars and ethnic Ukrainians.<sup>28</sup> In his statement delivered as he was visiting the parents of missing persons,<sup>29</sup> Mr Aksyonov referred to four cases of disappearance of Crimean Tatars but also to other cases of disappearance of persons "of Slavic appearance". He denied that disappearances reflected a "mass phenomenon", and further assured: "In some cases there are doubts as to whether there were instances of kidnapping. In some cases there were people who fought in Syria. The investigative authorities are doing all of the work necessary to determine the causes of what has happened" and "[w]e cooperate with all Crimean Tatar organizations and we have a very constructive relationship with the mufti".

20. As to investigations in individual cases, as of 12 September 2017, the OHCHR had "documented 10 cases of persons who disappeared and are still missing: six Crimean Tatars, three ethnic Ukrainians and one Russian-Tatar - all men. Seven went missing in 2014, two in 2015 and

<sup>&</sup>lt;sup>26</sup> For instance, if the accused has not been identified; the suspect or accused fled from the investigation authorities, or their whereabouts have not been established for other reasons; there is no real opportunity for the suspect or accused to participate in the criminal case even if their whereabouts have been established etc. Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Articles 208, 238.

<sup>&</sup>lt;sup>27</sup> For instance, investigation of the criminal case shall be terminated in case of absence of the event of the crime or *corpus delicti*; expiry of the criminal liability limitation period etc. Criminal case trial shall also be terminated if the prosecutor waives charges against the accused in court. Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Articles 24-28.1, 239.

<sup>&</sup>lt;sup>28</sup> Interfax, "Head of Crimean Acknowledges Disappearance of Crimean Tatars on Peninsula", 15 May 2018 (Annex 1048 to MU).

<sup>&</sup>lt;sup>29</sup> *Ibid*.

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one in 2016.<sup>30</sup> "Of the 10 disappearances mentioned, criminal investigations were still ongoing in only one case as at 12 September 2017. They were suspended in six cases due to the inability to identify suspects, and in three cases no investigative actions have been taken as the disappearances were allegedly not reported.<sup>31</sup> This certainly does not point at all to instances of racial discrimination or of tolerating, encouraging or instigating acts of enforced disappearances of Crimean Tatars and ethnic Ukrainians. What the OHCHR report reflects is a mere description of the normal operation of domestic law in relation to investigation of alleged disappearances (and not alleged "enforced" disappearances in the meaning of international law). In such cases, there is obviously no basis to claim State responsibility.

# a. The case of Mr Reshat Ametov

21. In the case of Mr Reshat Ametov, the fact that the investigation has yielded no result so far and was suspended at some point as Ukraine contends,<sup>32</sup> does not trigger Russian Federation's responsibility. Not only did the Russian Federation have no involvement in Mr Ametov's kidnapping and murder, but it has done everything in its power in order properly to investigate this crime, find those responsible and bring them to justice.

22. Sources Ukraine refers to acknowledge that the Russian investigative authorities have done a lot in order to solve Mr Ametov's case. According to the data provided by Ukraine itself, more than 270 witnesses have been questioned and over 50 forensic analyses and 50 examinations have been carried out.<sup>33</sup> In Ukraine's own admission, "the individuals shown abducting him were initially interrogated as witnesses to the abduction, they were later released and the investigation was suspended, allegedly because Mr Ametov's suspected murderer was no longer in Crimea."<sup>34</sup> In fact the Russian investigative authorities have checked 143 persons with regard to their potential involvement in committing the crime in question while also adopting other comprehensive measures in order to solve the case.<sup>35</sup> This points to the existence, rather than the absence, of investigative efforts by the State.

23. The investigation of Mr Ametov's case has in fact stalled not least because of the lack of cooperation from Ukraine, which up to this date has been refusing to provide the Russian authorities with information in its possession and that is essential for the investigation. In particular, Russian investigative authorities issued a request for mutual legal assistance asking Ukraine to provide them

<sup>&</sup>lt;sup>30</sup> OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017) (Annex 759 to MU), para. 102.

<sup>&</sup>lt;sup>31</sup> *Ibid.*, para. 103.

<sup>&</sup>lt;sup>32</sup> MU, paras. 395 and 400.

<sup>&</sup>lt;sup>33</sup> OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017) (Annex 759 to MU), para. 81.

<sup>&</sup>lt;sup>34</sup> MU, para. 400.

<sup>&</sup>lt;sup>35</sup> Deputy Head of the Directorate for Investigation of High-priority cases of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea - Head of the First Investigative Department, Note regarding criminal case No. 2014417004 on murder of R.M. Ametov (Annex 417).

with dial-up connections and mobile phone location data, an information that is crucially needed in order to find the crime suspect and that is available exclusively to Ukrainian mobile network operators.<sup>36</sup> However, this request was rejected by Ukraine without any proper motivation.<sup>37</sup> Generally speaking Ukraine has repeatedly been declining to cooperate with Russian investigative authorities and to provide them with any data on grounds that Ukraine considers these authorities to be "illegitimate".<sup>38</sup> Had Ukraine really been concerned with a proper conduct of the investigation and with addressing the legitimate requests of Mr Ametov's relatives, it would certainly have promptly provided such critical information that is in its possession instead of deliberately obstructing the procedure and directly contributing to its suspension.

24. As for Ukraine's allegation that the Russian investigators refused to allow Mr Ametov's brother to read any case files,<sup>39</sup> this accusation is also based on a distorted and selective factual account, and is ultimately without merit. In 2014 the victims in Mr Ametov's criminal case, including Mr Ametov's brother, Mr Refat Ametov, waived the opportunity to read the case files. These refusals were made in written form and have been admitted as part of the criminal case file.<sup>40</sup> In 2017, which is the only episode that Ukraine refers to, the case files could not be provided to Mr Ametov's brother for review because the preliminary investigation into the criminal case had been suspended, as was explained in the Investigative Committee's response.<sup>41</sup> Pursuant to Article 42(2)(12) of the Russian Criminal Procedural Code the victim in a criminal case may only read the case files after the preliminary criminal investigation has been completed.<sup>42</sup> Ukraine cannot expect the Russian Federation to bypass applicable procedures and violate its own domestic law to show positive willingness to investigate. Once the suspension of the criminal case was lifted, Mr Ametov's brother was allowed to read the case files.<sup>43</sup> In his petition dated 16 February 2018

<sup>&</sup>lt;sup>36</sup> Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Request for legal assistance No. 201-04-2017/23765 addressed to the competent authorities of Ukraine, 15 December 2017 (Annex 519).

<sup>&</sup>lt;sup>37</sup> Letter No. 14/1/1-24474-18 of the Department of International Legal Cooperation of the Prosecutor General's Office of Ukraine to the Main Directorate of International Legal Cooperation of the Prosecutor General's Office of the Russian Federation, 23 April 2018 (Annex 521).

<sup>&</sup>lt;sup>38</sup> Letter No. 14/3-48vykh-15 of the Prosecutor General of Ukraine to the Prosecutor General of the Russian Federation, 20 November 2015 (Annex 512).

<sup>&</sup>lt;sup>39</sup> MU, para. 401.

<sup>&</sup>lt;sup>40</sup> Statement of waiver of Ametova Z.E., Criminal case No. 2014417004, 17 April 2014 (Annex 137), in which Ms Ametova refuses to read the files of criminal case No. 2014417004; Statement of waiver of Ametov R.M., Criminal case No. 2014417004, 28 October 2014 (Annex 197), in which Mr Ametov refuses to read the files of criminal case No. 2014417004.

<sup>&</sup>lt;sup>41</sup> Letter from the Central Investigative Directorate of the Investigative Committee of Russia in the Republic of Crimea to E.M. Kurbedinov, 24 July 2017 (Annex 865 to MU).

<sup>&</sup>lt;sup>42</sup> Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Article 42(2)(12).

<sup>&</sup>lt;sup>43</sup> Senior Investigator of the First Investigative Department for Investigation of High-priority cases of the Main Investigative Directorate of the Investigative Committee of the Russian Federation, Criminal Case No. 2014417004, Letter No. 201-11-2014/15223, 6 August 2018 (Annex 404).

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Mr Ametov's brother refers to specific materials of the criminal case, thus himself acknowledging that he had familiarized himself with the case files.<sup>44</sup>

b. The case of Messrs Shaimardanov and Zinedinov

25. With respect to the disappearances of Mr Shaimardanov and Mr Zinedinov in May 2014, Ukraine contends that the Russian Federation failed to open an investigation within a reasonable time.<sup>45</sup> Again, Ukraine only speculates that the explanation for this alleged state of affairs can only be related to racial discrimination and a violation of CERD, without investigating into the particulars of each case in regard to statutory procedural law. The existence of an unsolved case is not indicative of a violation of the minimum investigation standard as long as the relevant authorities have undertaken an investigation and used reasonable measures available to them in an attempt to solve the case. As is confirmed below it is precisely what happened in this case, which shows nothing distinctive or unique that would be constitutive of, or even suggest, racial discrimination.

26. The competent authorities have taken Mr Shaimardanov's case very seriously and have actively investigated from the moment his disappearance on 26 May 2014 was first reported by his ex-wife two days later.<sup>46</sup> This included multiple questioning of potential witnesses,<sup>47</sup> communication with other competent agencies from the Ministry of Internal Affairs,<sup>48</sup> requests for information with local medical facilities,<sup>49</sup> and scheduling other necessary preliminary investigative activities.<sup>50</sup> The time-period for conducting these preliminary checks required an extension, based

<sup>&</sup>lt;sup>44</sup> Petition filed by R.M. Ametov to Investigator of High-priority Cases at the First Investigative Office of the Directorate for Investigation of High-Profile Cases with the Central Investigative Directorate of the Investigative Committee, 16 February 2018 (Annex 1112 to MU).

<sup>&</sup>lt;sup>45</sup> MU, para. 402.

<sup>&</sup>lt;sup>46</sup> Record on acceptance of oral statement on crime of Olga Shaimardanova on Mr Shaimardanov's disappearance, 28 May 2014 (Annex 139); Operative Duty Officer of the Central District Department of the Simferopol City Directorate of the Main Directorate of the Ministry of Internal Affairs of the Republic of Crimea, Report on the detection of an offence, 28 May 2014 (Annex 140).

<sup>&</sup>lt;sup>47</sup> Operative Officer of the Special Investigations Division of the Central District Department, Explanation of O.V. Shaimardanova, 28 May 2014 (Annex 141); Operative Officer of the Special Investigations Division of the Central District Department, Explanation of Belashova K.A., 28 May 2014 (Annex 142); Operative Officer of the Special Investigations Division of the Zheleznodorozhny District Department of the Simferopol City Directorate, Explanation of Shaimardanova O.V., 30 May 2014 (Annex 143); Operative Officer of the Special Investigations Division of the Zheleznodorozhny District Department of the Simferopol City Directorate of the Ministry of Internal Affairs of the Russian Federation for the Republic of Crimea, Explanation of Chernyakova E.S., 31 May 2014 (Annex 144).

<sup>&</sup>lt;sup>48</sup> Deputy Acting Head of the Zheleznodorozhniy District Department of the Simferopol City Directorate of the Ministry of Internal Affairs of the Russian Federation for the Republic of Crimea, Letter No. 49/3-6598 with schedule of recipients, 4 June 2014 (Annex 150).

<sup>&</sup>lt;sup>49</sup> Operative Officer of the Police Station No. 1 "Zheleznodorozhny" of the Directorate of the Ministry of Internal Affairs of Russia for Simferopol, Report, 31 May 2014 (Annex 145).

<sup>&</sup>lt;sup>50</sup> Senior Investigator of the Investigative Department of Police Station No. 1 "Zheleznodorozhny" of the Directorate of the Ministry of Internal Affairs of the Republic of Crimea for Simferopol, Order No. 242so-2014 on carrying out certain investigative activities, 19 June 2014 (Annex 153); Head of Police Station No. 1 "Zheleznodorozhny" of the Directorate of the Ministry of Internal Affairs of the Russian Federation for the Republic of Crimea for Simferopol, Letter No. 49/3-7852, 3 July 2014 (Annex 157).

on applicable provisions of Russian criminal procedural law,<sup>51</sup> as additional time was needed in order for the above-mentioned steps to yield results, including attempts at tracing Mr Shaimardanov's potential location. Based on the results of these preliminary inquiries,<sup>52</sup> on 9 July 2014 the authorities eventually opened a criminal case because Mr Shaimardanov had not been found by that time.<sup>53</sup>

27. The investigation in Mr Zinedinov's case unfolded along similar lines. Between 31 May 2014, the day when his disappearance a day before was reported to the competent authorities,<sup>54</sup> to the opening of a criminal case on 24 July 2014,<sup>55</sup> the authorities actively conducted their preliminary inquiry and took various acts to gather information from different sources, which could help to determine Mr Zinedinov's whereabouts.<sup>56</sup> During this stage of the investigation the Crimean Prosecutor's Office also provided several answers to the requests of various social, political and other organizations regarding the course of the inquiry, confirming continuation of preliminary investigation activities.<sup>57</sup> The case was later suspended due to the fact that the person subject to prosecution as accused has not been identified.<sup>58</sup>

<sup>&</sup>lt;sup>51</sup> Deputy Head of the Police Department of the Directorate of the Ministry of Internal Affairs of Russia for the Krasnogorsky District, Resolution on Filing of a Motion on the Extension of the check time-period relating to the crime report, 1 June 2014 (Annex 148); Senior Investigator of the Investigative Department for the Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Resolution on filing of motion on the extension of the check time-period relating to the crime report, 12 June 2014 (Annex 152); Senior Investigator of the Investigative Department for the Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Department for the Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Department for the Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Department for the Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Department for the Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Committee of Russia for the Republic of Crimea, Resolution on filing of motion on the extension of the check time-period relating to the crime report, 19 June 2014 (Annex 154).

<sup>&</sup>lt;sup>52</sup> Criminal Investigator of the Criminal Investigative Department of Police Station No. 1 "Zheleznodorozhny" of the Directorate of the Ministry of Internal Affairs of Russia for Simferopol, Report, 3 July 2014 (Annex 158).

<sup>&</sup>lt;sup>53</sup> Senior Investigator of the Investigative Department for the Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Committee of Russia for the Republic of Crimea, Criminal Case No. 2014487098, Resolution on the initiation of a criminal case, 9 July 2014 (Annex 160).

<sup>&</sup>lt;sup>54</sup> Statement of L.A. Tokchi on disappearance of S.S. Zinedinov, 31 May 2014 (Annex 146); Assistant to the Head -Operational Duty Officer of the Kievskiy District Department of the Simferopol City Directorate of the Ministry of Internal Affairs of the Republic of Crimea, Report, 31 May 2014 (Annex 147).

<sup>&</sup>lt;sup>55</sup> High-Priority cases Investigator of the Investigative Department of the Kievsky District of Simferopol of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Criminal Case No. 2014477184, Resolution on the initiation of a criminal case, 24 July 2014 (Annex 162).

<sup>&</sup>lt;sup>56</sup> High-Priority cases Investigator of the Investigative Department of the Kievsky District of Simferopol of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Order No. 02-40-2014 On carrying out certain operative search activities, 27 June 2014 (Annex 156); High-Priority cases Investigator of the Investigative Department for the Kievskiy District of Simferopol, Order No. 02-40/746-2014 on carrying out certain operative search activities, 3 July 2014 (Annex 159); High-Priority cases Investigator of the Investigative Department for the Kievskiy District of Simferopol, Order No. 02-40-2014 on carrying out certain operative search activities, 14 July 2014 (Annex 161).

<sup>&</sup>lt;sup>57</sup> See, for instance, Acting Head of the Department of the Prosecutor's Office of the Republic of Crimea, Letter 15/1-224-2014/ON582-14 to E. Ablaev, 24 June 2014 (Annex 155); Prosecutor of the Republic of Crimea, Letter No. 15/1-228-2014/On2440-14 to the International Committee of Red Cross, 24 September 2014 (Annex 192).

<sup>&</sup>lt;sup>58</sup> Head of the Third Investigative Department (for the investigation of past years crimes) of the High-priority cases Directorate of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the

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28. The criminal investigations into the disappearances of Messrs. Shaimardanov and Zinedinov were merged in a single criminal case, in the course of which officers of the Investigation Committee of the Russian Federation conducted numerous procedural actions, questioned more than 50 witnesses, checked and verified alibi of 8 potential suspects, inspected places of living of the missing persons, carried out 2 genetic examinations.<sup>59</sup> At the same time, just as in Mr Ametov's case, the investigation of Timur Shaimardanov and Seyran Zinedinov was in fact stalled not least because of the intractability of Ukraine, which up to this date has been refusing to cooperate with the Russian Federation's request for mutual legal assistance, which is essential for the investigation.<sup>60</sup>

#### c. The allegation in respect of Mr Leonid Korzh

29. Ukraine also alleges *en passant* the disappearance of a certain Mr Leonid Korzh, described as a 24-year-old pro-Ukrainian activist, and implies that it may be linked to that of Mr Shaimardanov.<sup>61</sup> However, Ukraine provides no explanation beyond this mere assertion, and for understandable reasons. While the competent authorities have never received any report from relatives or from any other reliable source in respect of Ukraine's alleged disappearance of Mr Korzh, they did nevertheless carry out an in-depth investigation in response to, *inter alia*, the publication, on 28 May 2014 on the website of the Center of Investigative Journalism, of a post alleging the disappearance of two Ukrainian House activists, Simferopol residents Shaimardanov and Leonid Korzh.<sup>62</sup> In the course of the investigation the authorities ascertained that no such 24-year-old activist named Leonid Korzh was registered as living in Crimea.<sup>63</sup> Individuals identified as

Republic of Crimea, Note regarding criminal case No. 2014487098 concerning missing persons T.D. Shaimardanov and S.S. Zinedinov (Annex 418), p. 4.

<sup>&</sup>lt;sup>59</sup> Head of the Third Investigative Department (for the investigation of past years crimes) of the High-priority cases Directorate of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Note regarding criminal case No. 2014487098 concerning missing persons T.D. Shaimardanov and S.S. Zinedinov (Annex 418), p. 3.

<sup>&</sup>lt;sup>60</sup> Letter No. 14/1/1-24294-18 of the Department of International Legal Cooperation of the Prosecutor General's Office of Ukraine to the Directorate for International Cooperation of the Investigative Committee of the Russian Federation, 3 March 2018 (Annex 520).

<sup>&</sup>lt;sup>61</sup> MU, para. 396; Website of *Human Rights Watch*, "Crimea: Enforced Disappearances", 7 October 2014 (Annex 942 to MU); OHCHR, Report on the human rights situation in Ukraine, 15 June 2014 (Annex 764 to MU).

<sup>&</sup>lt;sup>62</sup> Criminal Investigator of the Criminal Investigative Department of Police Station No. 3 "Tsentralny" of the Directorate of the Ministry of Internal Affairs of Russia for Simferopol, Inquiry Material No. 5201, Resolution on the refusal to initiate a criminal case, 30 July 2015 (Annex 240).

<sup>&</sup>lt;sup>63</sup> Head of the Duty Unit of the Directorate of the Ministry of Internal Affairs of Russia for Sevastopol, Note Regarding Citizen Leonid Korzh, born in 1989 and (or) 1990 (Annex 425), confirming that the disappearance of Mr Korzh has not been reported to the MIA for Sevastopol city by anyone during the period from 18 March 2014 to 12 August 2020; Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea and the City of Sevastopol, Note regarding receipt of reports on disappearances of citizens (Annex 637), concerning Mr Leonid Korzh; Criminal Investigator of the Criminal Investigative Department of Police Station No. 3 "Tsentralny" of the Directorate of the Ministry of Internal Affairs of Russia for Simferopol, Statement of Residence, 30 August 2014 (Annex 173), Head of the Migration Directorate of the Directorate of the Ministry of Internal Affairs of the Russian Federation for Sevastopol, Address certificate No. 2968.8 concerning Leonid Korzh, born in 1990, 12 August 2020 (Annex 424), confirming the absence of any registration data in relation to anyone called 'Leonid Korzh' who would be born in 1990; Head of the Crimean Republican Institution Bureau of Forensic Medical Examination,

having the same name were unrelated to the activist alleged by the Center for Investigative Journalism, which is otherwise known for publishing untrue, unverified information and extremist content.<sup>64</sup> Based on these conclusions, the investigating authorities declined to open a criminal case because no criminal act had been identified.<sup>65</sup>

#### d. The case of Mr Ervin Ibragimov

30. With respect to the investigation into Mr Ervin Ibragimov's disappearance, it is misleading to state, as Ukraine does, that when Mr Ibragimov's father attempted to file a complaint, "the FSB office in Simferopol turned him away".<sup>66</sup> The document that Ukraine relies on to support its allegations points actually to the contrary, i.e. that an investigation was opened.<sup>67</sup>

31. Indeed, the competent investigative authorities opened a criminal case on Mr Ibragimov's disappearance on 26 May 2016, the very next day after his father reported him missing at the Bakhchisaray police station and indicated having found his son's car abandoned at the roadside near their neighbourhood.<sup>68</sup> After the criminal case was opened Mr Ibragimov filed another complaint, this time with the FSB office, in order to draw again the authorities' attention on his son's disappearance.<sup>69</sup> However, this request could not lead to any particular procedural result because a criminal investigative jurisdiction of the FSB does not extend to cases of disappearances or abductions.<sup>70</sup>

Letter Ref. No. 01-1788, 30 October 2014 (Annex 199) confirming the absence of any data in relation to anyone called 'Leonid Korzh' who would be born in 1990.

<sup>&</sup>lt;sup>64</sup> Criminal Investigator of the Criminal Investigative Department of Police Station No. 3 "Tsentralny" of the Directorate of the Ministry of Internal Affairs of Russia for Simferopol, Inquiry Material No. 5201, Resolution on the refusal to initiate a criminal case, 30 July 2015 (Annex 240); see also Appendix E, paras. 88-92.

<sup>&</sup>lt;sup>65</sup> *Ibid.* 

<sup>&</sup>lt;sup>66</sup> MU, para. 403.

<sup>&</sup>lt;sup>67</sup> OHCHR, Report on the human rights situation in Ukraine (16 May–15 August 2016) (Annex 772 to MU), para. 154.

<sup>&</sup>lt;sup>68</sup> Senior Investigator of the Investigative Department for the Bakhchisaray District of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Criminal Case No. 2016627042, Resolution on the initiation of a criminal case and proceedings, 26 May 2016 (Annex 277); Senior Investigator of the Investigative Department for the Bakhchisaray District of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Notification No. 16-2016627042/489, 26 May 2016 (Annex 278); Explanation of U.O. Ibragimov on the circumstances of the disappearance of his son E.U. Ibragimov, 25 May 2016 (Annex 276).

<sup>&</sup>lt;sup>69</sup> Directorate for written appeals of Citizens and Organisations of the Administration of the President of the Russian Federation, Letter No. A26-16-7216411, 24 January 2018 (Annex 391) with attached letter of Mr Ibragimov's father to the President of the Russian Federation with a list of his requests to different Russian authorities, including Crimean office of the FSB.

<sup>&</sup>lt;sup>70</sup> Pursuant to the Russian Criminal Procedural Code, such investigations fall within the investigative jurisdiction of the Investigation Committee of the Russian Federation, which conducted the investigation of Mr Ibragimov's criminal case. See Criminal Code of the Russian Federation, No. 63-FZ, 13 June 1996 (Annex 32), Article 126; Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Article 151.

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32. Officers of the Investigation Committee of the Russian Federation conducted numerous procedural actions as part of the investigation, including questioning over 500 potential witnesses, conducting various inspections and examinations, including the technical examination of the videotape of the kidnapping recorded by the CCTV camera in order to determine registration plate of the kidnappers' minibus as well as the identification and checking of 156 vehicles, conducting at least 7 searches and seizures, and performing at least 5 expert examinations.<sup>71</sup> Besides, Mr Ibragimov's father successfully exercised his right to participate in the criminal case.<sup>72</sup> Moreover, replying to an NGO's request for information on the status of the investigation, the Crimean Prosecutor's Office confirmed that the Russian authorities were actively attempting to determine Mr Ibragimov's whereabouts.<sup>73</sup> The criminal investigation was suspended in September 2017 pursuant to applicable procedural law because no suspect had been identified and all acts possible absent a suspect had been accomplished.<sup>74</sup>

# e. The cases of Messrs Bondarets, Vaschuk and Chernysh

33. In respect of Messrs Bondarets, Vaschuk and Chernysh to whom Ukraine refers very allusively,<sup>75</sup> despite the fact that their alleged disappearance has not been reported by any relatives or any other reliable source,<sup>76</sup> the Russian investigative authorities did conduct a proper investigation with regard to these individuals, based on the assertion of their disappearance made by a pro-Euromaidan activist and published on a news website on 11 July 2014. According to the results of this investigation, there is no evidence of presence of Messrs Bondarets, Vaschuk and

<sup>&</sup>lt;sup>71</sup> Prosecutor's Office of the Republic of Crimea, Letter No. 15/3-2140-16, 27 April 2017 (Annex 333) on the course of Mr Ibragimov's criminal case; Deputy Head of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Letter No. 224-4-18, 23 November 2018 (Annex 406), Acting Deputy Head of the First Investigative Department of the High-priority Cases Directorate of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Letter No. Otsk201-08-2017/13581, 19 July 2017 (Annex 335) on the course of Mr Ibragimov's criminal case; Head of the Third Investigative Department (for the investigation of past years crimes) of the Department for the Investigation of High-Priority Cases of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Note Regarding Criminal Case No. 2016627042 on disappearance of E.U. Ibragimov (Annex 419).

<sup>&</sup>lt;sup>72</sup> Mr Ibragimov's father submitted several motions to this effect, which were granted: Senior Investigator of the Investigative Department for the Bakhchisaray District of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Resolutions on satisfying of motions, 30 May 2016 (Annex 279).

<sup>&</sup>lt;sup>73</sup> Head of the Directorate for Supervision of Criminal Procedural and Operative Search Activities of the Prosecutor's Office of the Republic of Crimea, Letter No. 15/1-382-2016/On4261-2017, 29 August 2017 (Annex 339).

<sup>&</sup>lt;sup>74</sup> Deputy Head of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Letter No. 224-4-18, 23 November 2018 (Annex 406).

<sup>&</sup>lt;sup>75</sup> MU, paras. 398 and 403 and footnote 839.

<sup>&</sup>lt;sup>76</sup> Senior operations officer of the Activities Coordination Department of the Internal Affairs Bodies on the search for persons of the Criminal Investigative Directorate of the Ministry of Internal Affairs for the Republic of Crimea, Report, 17 September 2014 (Annex 187) confirming the absence of any data in relation to the disappearance of Messrs. Bondarets, Vashchuk and Chernysh; Duty Unit of the Directorate of the Ministry of Internal Affairs of Russia for Sevastopol, Note Regarding citizens Ivan Bondariets, born 1990, Ivan Bondarets, born 1990, Vladislav Vaschuk, born 1985, and Valery Vaschuk, born 1985 (Annex 426), Duty Unit of the Directorate of the Ministry of Internal Affairs of Russia for Sevastopol, Note Regarding citizens Vasiliy Chernysh, born 1978, Vasil Chernysh, born 1978 (Annex 427), which confirm the absence of reports on the disappearances of Messrs. Bondarets, Vashchuk and Chernysh.

Chernysh on the territory of Crimea in March 2014 and no evidence of their disappearance.<sup>77</sup> All possible leads were eventually discarded. On the other hand, official data of the Ministry of Internal Affairs of Ukraine indicate that Mr Chernysh disappeared not in Crimea but in the city of Donetsk, in Ukraine, on 14 March 2014.<sup>78</sup>

# f. The cases of Messrs Mykhailo Vdovchenko, Andrii Shchekun and Anatoly Kovalsky

34. The Russian Federation also conducted an investigation into the alleged disappearances of Messrs Mykhailo Vdovchenko, Andrii Shchekun and Anatoly Kovalsky.<sup>79</sup> Messrs Shchekun and Kovalsky allegedly went missing on 9 March 2014 and, according to Ukraine, they could be last seen at Simferopol's railway station, where they had come to pick up a parcel from Kiev which contained Ukrainian flags.<sup>80</sup> However, as part of the initial steps of the investigation carried out by Ukrainian authorities, the Ukrainian police officers who were on patrol on that day and who were questioned confirmed that their department did not detain anyone at the railway station on 9 March 2014.<sup>81</sup> In addition, two other witnesses declared having seen two persons, potentially Messrs Shchekun and Kovalsky, among a group of other men dressed in camouflage passing through the parking zone in front of the railway station – these witnesses denied having seen any signs of violence or coercion towards these two persons.<sup>82</sup> Without more, mere camouflage dressing, which is available to anyone on the open market, tells nothing of the identity of their wearers.

35. The criminal investigation originally initiated by the Ukrainian authorities with regard to the above-mentioned allegations was subsequently transferred by the Russian Prosecutor's Office to the Investigative Committee department in Simferopol in order to be continued.<sup>83</sup> The investigators checked, *inter alia*, the issue of possible involvement of Russian military officers in the alleged incident<sup>84</sup> and ascertained that no such involvement had taken place as it was reasonably established

<sup>&</sup>lt;sup>77</sup> Senior operations officer of the Activities Coordination Department of the Internal Affairs Bodies on the search for missing persons of the Criminal Investigative Directorate of the Ministry of Internal Affairs for the Republic of Crimea, Resolution on the refusal to initiate a criminal case, 19 September 2014 (Annex 189).

<sup>&</sup>lt;sup>78</sup> Ministry of Internal Affairs of Ukraine official website, Information on disappearance of V.V. Chernysh in Donetsk, 14 March 2014 (Annex 792).

<sup>&</sup>lt;sup>79</sup> MU, paras. 405-407. See also paras. 4, 12 above.

<sup>&</sup>lt;sup>80</sup> MU, para. 407.

<sup>&</sup>lt;sup>81</sup> Prosecutor's Office of Zheleznodorozhniy District of Simferopol, criminal proceedings No. 120140104100000898, Record of witness interrogation of S.V. Grishchenko, 9 March 2014 (Annex 787); Prosecutor's Office of Zheleznodorozhniy District of Simferopol, criminal proceedings No. 120140104100000898, Record of witness interrogation of V.V. Guzhva, 9 March 2014 (Annex 788).

<sup>&</sup>lt;sup>82</sup> Investigative Office of the Linear Department on the Simferopol railway station, criminal proceedings No. 120140104100000898, Record of witness interrogation of I.N. Kot, 14 March 2014 (Annex 790); Investigative Office of the Linear Department on the Simferopol railway station, criminal proceedings No. 120140104100000898, record of witness interrogation of V.V. Serdyukov, 14 March 2014 (Annex 791).

<sup>&</sup>lt;sup>83</sup> Prosecutor of the Zheleznodorozhny District of Simferopol, Check Material No. 1201401041000000898, Resolution on transferring materials on the crime report from one preliminary investigation body to another, 24 July 2014 (Annex 163).

<sup>&</sup>lt;sup>84</sup> Investigator of the Investigative Department of Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Committee of the Russian Federation, Resolution on transferring a crime report in accordance with the investigative jurisdiction, 27 July 2014 (Annex 164).

that no Russian forces were present in Simferopol city as of 9 March 2014.<sup>85</sup> Considering the lack of evidence pointing to the commission of the alleged crime, the investigating officer decided not to open a criminal case.<sup>86</sup>

36. Regarding the case of Mr Vdovchenko's purported kidnapping,<sup>87</sup> as in the previously addressed cases of Messrs Shchekun and Kovalsky, the Russian investigative authorities spared no efforts in attempting to find individuals involved in this incident, but this yielded no results.<sup>88</sup> Such individuals were not identified.

37. In addition, the investigators requested information from various sources in order to gather relevant evidence that may help establish the factual commission of the crime.<sup>89</sup> For example, Crimean medical facilities were asked whether Mr Vdovchenko sought medical attention during March 2014 and none of these requests received a positive response.<sup>90</sup> Authorities from the Ministry of Internal Affairs ascertained that no police officers were on patrol near the café where Mr Vdovchenko was allegedly kidnapped on 11 March 2014.<sup>91</sup> Likewise, the Self Defence Forces (Crimean People's Militia) were asked whether individuals affiliated to them were patrolling in the vicinity of the alleged crime scene<sup>92</sup> but their involvement was not established due to the fact that the organization was found not to have been in existence at the relevant time.<sup>93</sup> The Investigation authorities also requested additional information from the Military Commissariat of the Republic of Crimea as Messrs Vdovchenko, Shchekun and Kovalsky had allegedly been detained in the building hosting its office in Simferopol. However, this allegation could not be confirmed either due to the

<sup>&</sup>lt;sup>85</sup> Senior Investigator of the Military Investigative Department of the Investigative Committee for Abakan garrison, Resolution on transferring the Crime Report (re Shchekin and Kovalsky), 16 August 2014 (Annex 168).

<sup>&</sup>lt;sup>86</sup> Investigator of the Investigative Department of Zheleznodorozhniy District of Simferopol of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Resolution on the refusal to initiate a criminal case, 17 September 2020 (Annex 428).

<sup>&</sup>lt;sup>87</sup> MU, para. 407; Human Rights Watch, Crimea: Attacks, 'Disappearances' by Illegal Forces, 14 March 2014 (Annex 938 to MU), p. 7. See also para. 4. above.

<sup>&</sup>lt;sup>88</sup> Senior Investigator of the Military Investigative Department of the Investigative Committee for Abakan garrison, Resolution on transferring the Crime Report (re Vdovchenko), 16 August 2014 (Annex 169). Investigator of the Investigative Department of Zheleznodorozhniy District of Simferopol of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Resolution on the refusal to initiate a criminal case, 17 September 2020 (Annex 428).

<sup>&</sup>lt;sup>89</sup> Senior Investigator of the Investigative Department of the Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Order No. 1002-17 on carrying out certain investigative activities, 17 August 2017 (Annex 337).

<sup>&</sup>lt;sup>90</sup> Chief Medical Officer of the Simferopol Clinical Hospital of Emergency Medical Care No. 6 of the Republic of Crimea, Letters No. 1499/01-11, 29 August 2017 (Annex 340).

<sup>&</sup>lt;sup>91</sup> Head of the Police Station No. 1 "Zheleznodorozhny" of the Directorate of the Ministry of Internal Affairs for Simferopol, Letter No. 49/3-24575, 21 September 2017 (Annex 349).

<sup>&</sup>lt;sup>92</sup> Senior Investigator of the Investigative Department of Zheleznodorozhny District of Simferopol of the Main Investigative Directorate of the Investigative Committee of Russia for the Republic of Crimea, Letter No. 1001-17, 17 August 2017 (Annex 338).

<sup>&</sup>lt;sup>93</sup> The organised self-defence force that currently exists was established much later, in July 2014. Head of the Crimean Republican Headquarters of the People's Militia – the People's Guard of the Republic of Crimea, Letter No. 02-04/823, 29 August 2017 (Annex 341).

fact that the above-mentioned regional department of the Ministry of Defence occupied this building only since 5 September 2014.<sup>94</sup> Finally, investigators were unable to find any witnesses of the incident who could shed some light on the circumstances of Mr Vdovchenko's alleged disappearance.<sup>95</sup>

38. To sum up, while Ukraine contends that "[t]he failure to investigate such egregious crimes undermines protection against similar abuses in the future because it leads would-be perpetrators to assume that they can abduct, torture and kill with impunity",<sup>96</sup> it has not established any wrongdoing or irregularities by the investigative authorities. As has been confirmed above, the alleged lack of investigation or unjustified delay in the same is without basis. In each case pointed to by Ukraine, the authorities have done what they were able to do in the circumstances and subject to the applicable legal and procedural framework. Inquiries into all disappearances have been conducted, some of them have been successful, and the other cases could not be solved for objective reasons and the investigations have complied with due process requirements. The procedural rules relating to investigations were not applied in a selective or discriminatory manner, let alone on racial grounds.

39. In any event, at no point in the Memorial Ukraine engages in the discussion on whether or not its specific allegations constitute racial discrimination under the meaning of CERD. As a result, Ukraine's contention that "the Russian Federation has either directly engaged in acts of physical violence against Crimean Tatars and Ukrainians, or it has encouraged and tolerated such acts carried out by its agents"<sup>97</sup> is manifestly without any basis. In each individual case pointed to by Ukraine that the Russian Federation has become aware of, the authorities have duly investigated, therefore there can be no question of tolerance or incitation of enforced disappearances by the authorities. The evidence on investigation does not point to discriminatory exercise of investigation or a lack of efforts to investigate from the State.

# D. EVIDENCE ISSUES

40. Ukraine's flawed approach to evidence as described previously is particularly visible in the case of alleged enforced disappearances, murders, abductions and torture. As a general approach, Ukraine claims that these incidents affect Crimean Tatars and ethnic Ukrainians in Crimea disproportionally in relation to the rest of the population, but it only cites a total of 13 individual cases in support of this allegation, that is supposed to point to a systematic campaign or policy of racial discrimination. The individual cases Ukraine points to remain low in number, stretch over a period of several years, involve different types of incidents affecting various individual profiles, are

<sup>&</sup>lt;sup>94</sup> Military Enlistment Office of the Republic of Crimea of the Ministry of Defence of the Russian Federation, Letter No. 2304, 14 September 2017 (Annex 347).

<sup>&</sup>lt;sup>95</sup> Operative Investigator of the Criminal Investigation Department of Police Station No. 1 "Zheleznodorozhny" of the Directorate of the Ministry of Internal Affairs of Russia for Simferopol, Report (Annex 304).

<sup>&</sup>lt;sup>96</sup> MU, para. 404.

<sup>&</sup>lt;sup>97</sup> MU, para. 393.

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not even always presented by Ukraine itself as a breach of an individual right (a disappearance for instance is not necessarily an enforced disappearance) and, as has been shown above, have in any case manifestly nothing to do with a systematic campaign of racial discrimination. As already mentioned, no statistical data is offered to conduct a proper comparative exercise.

When it comes to supporting evidence, there is moreover an obvious gap between what 41. Ukraine claims and what the documents it cites in support in fact indicate. In its Application Ukraine alleges a "pattern" of disappearances and murders that has allegedly been described by "numerous international observers".<sup>98</sup> However the four materials it relies on do not substantiate this allegation: the cited OHCHR report mentions the term "pattern" in relation to Crimea only twice and not in relation to racial discrimination (which is in fact not addressed as such by the reports).<sup>99</sup> Neither do the Report of the Special Rapporteur on Minority Issues or Resolution 71/205 of the UN General Assembly refer to a "pattern" or mention the point at all. In its Memorial Ukraine likewise alleges that "numerous international observers have reported a pattern of disappearances and murders directed against members of the Crimean Tatar and Ukrainian communities."<sup>100</sup> However, the paragraph of the OHCHR report it purports to rely on does not echo such claim at all.<sup>101</sup> Instead, it merely refers to ten individual cases of unresolved disappearances involving three ethnic groups and that occurred over an extended period of three years. The report provides no information on the reasons for those disappearances and does not claim that they relate to racial discrimination or that they constitute enforced disappearances that are attributable to the Russian Federation.

42. Ukraine's claim is essentially based on sophisms to suggest discriminatory targeting by resorting to abusive syllogisms, speculative suggestions and juxtaposition of unrelated phrases, short of any serious demonstration. A good example of this may be found with Ukraine's presentation of Mr Shaimardanov's case: "Mr. Shaimardanov was a leader of a local activist group, and disappeared on 26 May 2014 – the day after he spoke about the disappearance of another activist, Leonid Korzh, a few days previously."<sup>102</sup> In this sentence, nowhere does Ukraine demonstrate that Mr Shaimardanov's activism or his mention of Mr Korzh were indeed the reason explaining his disappearance, or that there are indeed any links between these alleged facts, or that it is a case of *enforced* disappearance. Ukraine only suggests this to the reader's mind. The same can be observed with Ukraine's following statement: "another Crimean Tatar activist, Seiran Zinedinov, disappeared after trying to locate Shaimardanov", and again here: "All three activists

<sup>&</sup>lt;sup>98</sup> Ukraine's Application of 16 January 2017, para. 103.

<sup>&</sup>lt;sup>99</sup> OHCHR, Report on the Human Rights Situation in Ukraine (16 February to 15 May 2016) (Annex 771 to MU), para. 190 in relation to the retroactive application of the law in several cases, and para. 192 with respect to alleged violations of the right to peaceful public assembly.

<sup>&</sup>lt;sup>100</sup> MU, para. 394.

<sup>&</sup>lt;sup>101</sup> OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017) (Annex 759 to MU), para. 102.

<sup>&</sup>lt;sup>102</sup> MU, para. 396.

were members of the pro-Ukrainian group, Ukrainian House."<sup>103</sup> No causal link is in fact demonstrated; instead, the Russian Federation and the Court are left with grave accusations that are nothing more than pure speculations. And once again, none of these allegations are even presented by Ukraine as related to racial discrimination.

# II. Ukraine's Mischaracterizations and Issues of Attribution

# A. Alleged Enforced Disappearances and Murders

43. Disappearances of individuals is a phenomenon with many possible explanations and that is not unique to the Russian Federation,<sup>104</sup> including in Crimea.<sup>105</sup> Yet for allegations of disappearances to be relevant to Ukraine's claims of racial discrimination, Ukraine must first establish that they constitute cases of *enforced* disappearances, which in turn presupposes to show that the abduction itself is attributable to the Russian Federation, or that the Russian Federation has failed to investigate such abduction. The same goes for deaths of individuals. As is shown below, Ukraine fails to do so. *A fortiori*, Ukraine's claims of systematic campaign or policy of racial discrimination in this regard totally fail.

44. In the case of the disappearance and murder of Mr Reshat Ametov, Ukraine states that he was kidnapped by "uniformed men"<sup>106</sup> on 3 March 2014 in Simferopol and found dead on 15 March 2014 with signs of torture on his body. However, according to the document that Ukraine itself relies on to support its allegations, Mr Ametov was released shortly after he had been led away from the square where he was holding a one-man picket by men who are not even described as Russian officials.<sup>107</sup> The facts as alleged by Ukraine thus simply do not evidence any act attributable to the Russian Federation and are contradicted by the active efforts made by the Russian Federation to identify the perpetrators during the investigation that followed.<sup>108</sup>

45. Ukraine then refers briefly to the disappearances of Mr Timur Shaimardanov, Mr Leonid Korzh and Mr Serian Zinedinov, all in May 2014.<sup>109</sup> But Ukraine does not mention any information

<sup>109</sup> MU, para. 396.

<sup>&</sup>lt;sup>103</sup> MU, para. 396. See also at para. 397 regarding the case of Mr Ibragimov: "Like other Crimean Tatar individuals who have disappeared, Mr. Ibragimov was a prominent member of the community".

<sup>&</sup>lt;sup>104</sup> See for example in respect of the United Kingdom: *The Independent*, "The missing: Each year, 275,000 Britons disappear", 23 October 2011 (Annex 879), available at <u>https://www.independent.co.uk/news/uk/home-news/missing-each-year-275-000-britons-disappear-1801010.html</u>.

<sup>&</sup>lt;sup>105</sup> Main Directorate of International and Legal Cooperation of the Prosecutor General's Office of the Russian Federation, Note on missing person cases opened by the internal affairs bodies in 2014-first half of 2020, 9 September 2020 (Annex 636). As this document shows, Crimean Tatars and Ukrainians do not account for a disproportionate part of the overall number of missing persons.

<sup>&</sup>lt;sup>106</sup> MU, para. 395.

<sup>&</sup>lt;sup>107</sup> Office of the United Nations High Commissioner for Human Rights, Accountability for Killings in Ukraine from January 2014 to May 2016 (Annex 49 to MU), paras. 119–120, referred to in MU, para. 372, footnote 777.

<sup>&</sup>lt;sup>108</sup> See paras. 21-24 above.

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about the identity of the alleged abductors. In such circumstances it is difficult to see how such acts, to the extent they would amount to enforced disappearances under international law, could be attributable to the Russian Federation whatsoever.

46. The disappearance of Mr Ervin Ibragimov on 24 May 2016, as reported by Ukraine, is no different. In this case, Ukraine identifies Mr Ibragimov's abductors as "a group of men",<sup>110</sup> without any further specifying on which grounds it could be attributed to Russia under international law.

47. Further allegations of harassment and violence relate to ethnic Ukrainians. But again, Ukraine only refers in sweeping terms to several disappearances "under suspicious circumstances".<sup>111</sup> All Ukraine could say about the identity of the alleged abductors in mentioned individual cases was that Mr Vladislav Vaschuk and Mr Ivan Bonariets "disappeared together" on 7 March 2014 in Simferopol" and that Mr Vasyl Chernysh "was reported missing" on 15 March 2014.<sup>112</sup> Ukraine is not even consistent on these persons' names.<sup>113</sup> In any event, to the extent Ukraine purports to attribute these disappearances to the SDF, which it has clearly not established, they occurred before the critical date of 18 March 2014 and if their acts were to be attributable to a State, they would therefore be attributable to Ukraine as the SDF constituted one of these voluntary and spontaneous squads authorized and organized under Ukrainian domestic law.

## B. ALLEGED ABDUCTIONS AND TORTURE

48. With regard to allegations of abduction and torture of Crimean Tatar and Ukrainian activists, Ukraine cites the case of Mr Mykhailo Vdovchenko, allegedly abducted days before the March 2014 referendum and released on 21 March 2014.<sup>114</sup> In this regard, Ukraine alleges that his case, like the following cases, is an example of intimidation efforts that is unilaterally attributed to "the Russian Federation and its agents".<sup>115</sup> Ukraine also refers to his detention as "Russian captivity".<sup>116</sup> Again, these vague allegations are not supported by evidence. Whereas Ukraine keeps the identity of the authors of the kidnapping vague, using purposefully the ambiguous expression "Russian captivity", the documents Ukraine cites in support suggest that the abduction and detention were conducted by militants of the SDF.<sup>117</sup> Such act thus cannot be attributable to Russian Federation or

<sup>&</sup>lt;sup>110</sup> MU, para. 397.

<sup>&</sup>lt;sup>111</sup> MU, para. 398.

<sup>&</sup>lt;sup>112</sup> MU, para. 398.

<sup>&</sup>lt;sup>113</sup> Ukraine mentions the allegedly disappeared persons as *Vasyl* Chernysh, *Vladislav* Vaschuk and Ivan *Bonariets* (MU, para. 398) while the document it refers to, which also mentions their respective years of birth, refers to them as *Vasily* Chernysh, *Valery* Vashchuk and Ivan *Bondarets* (*See* Sergey Zayets (Regional Center for Human Rights) *et al.*, The Fear Peninsula: Chronicle of Occupation and Violation of Human Rights in Crimea (2015), p. 66 (Annex 976 to MU), p. 66).

<sup>&</sup>lt;sup>114</sup> MU, para. 406.

<sup>&</sup>lt;sup>115</sup> MU, para. 405.

<sup>&</sup>lt;sup>116</sup> MU, para. 406.

<sup>&</sup>lt;sup>117</sup> Mike Eckel, A Cry from Crimea, World Policy Journal (2014-2015), 30 September 2014 (Annex 1019 to MU).

that the authors acted under the direction or control of the Russian Federation when allegedly carrying out this specific conduct. Ukraine also does not highlight the facts that the abduction allegedly took place before 18 March 2014 and that the release took place very shortly thereafter.

49. With regard to Euromaidan activists Andrii Shchekun and Anatoly Kovalsky, as Ukraine reports, they were abducted in Simferopol on 9 March 2014 and released on 20 March 2014. In the paragraph concerning this case Ukraine identifies no specific author of the alleged acts whatsoever.<sup>118</sup> Ukraine fails to establish that these alleged acts are attributable to the Russian Federation. The absence of any links whatsoever with the Russian Federation in relation to Ukraine's allegations concerning Messrs Vdovchenko, Shchekun and Kovalsky was also confirmed by the investigation that was carried out by competent authorities in these cases.<sup>119</sup>

50. Being unable to substantiate its claims by factual evidence of the alleged attribution to the Russian Federation, Ukraine merely suggests it to the reader's mind by relying on fallacious insinuations. For example, Ukraine relies on Mr Shchekun's statement, which includes the following assertion: "[s]ome of my captors spoke with Russian language accents that differ from the accents common in Crimea. In particular, some of my captors appeared to be from either the Caucasus region or Chechnya."<sup>120</sup> One would need to be very experienced in various Caucasian accents to be able to identify specifically the Chechen accent in Russian. In any event, the Chechen accent, even if correctly discerned, does not identify the abductors. Here like elsewhere, Ukraine relies on subjective and unverifiable assertions and falls short (to say the least) of meeting the burden of proof that falls upon any applicant State that formulates grave accusation against a respondent State.

51. Equally ungrounded are the rest of Ukraine's accusations. The cases of Mr Aleksandr Kostenko and Renat Paralamov as misleadingly portrayed by Ukraine are factually wrong. The relevant inquiries undertaken by Russian law-enforcement agencies did not establish signs of torture or abduction.

52. Mr Kostenko's was charged with premeditated infliction of light bodily injuries while being driven by hatred or enmity towards a social group and with illegal possession of a firearm's major component, which constitute crimes under Article 115(2)(b) and Article 222(1) of the Criminal Code of the Russian Federation, respectively.<sup>121</sup>

53. Having studied Mr Kostenko's testimony, the factual circumstances of the case, witness statements, video footage and other evidence, the courts found Mr Kostenko guilty of the aforementioned offences, to which he had expressly or indirectly confessed, and convicted

<sup>&</sup>lt;sup>118</sup> MU, para. 407.

<sup>&</sup>lt;sup>119</sup> See paras. 34-37 above.

<sup>&</sup>lt;sup>120</sup> Witness Statement of Andriy Shchekun, 4 June 2018 (Annex 13 to MU), para. 23.

<sup>&</sup>lt;sup>121</sup> Criminal Code of the Russian Federation, No. 63-FZ, 13 June 1996 (Annex 32), Articles 115(2)(b) and 222(1).

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Mr Kostenko to 3 years and 6 months imprisonment.<sup>122</sup> Based on the evidence resulting from the investigation the courts established in particular that, on 18 February 2014, Mr Kostenko, who was affiliated with the nationalist party "Svoboda", participated in violent riots in Kiev and physically confronted the law enforcement authorities mandated with preserving order, in particular throwing a stone at law enforcement officer Mr Polienko and injuring him. It was also established that Mr Kostenko stored a firearm's major component illegally. As the courts pointed out, the criminal prosecution of Mr Kostenko was conducted to protect the rights and lawful interests of the victim – a Russian citizen – and thus fell within the jurisdiction of the Russian authorities in accordance with applicable Russian criminal law.<sup>123</sup>

54. Russian investigative authorities have also conducted two preliminary inquiries in response to allegations made by Mr Kostenko's counsel and in the media that he had been tortured while being in custody. Both inquiries established the absence of evidence suggesting that Mr Kostenko had been tortured or had suffered physical violence and the absence of *corpus delicti* in Russian officials' actions. Most importantly, in both cases Mr Kostenko's own testimony, which does not support what Ukraine alleges, was taken into account.<sup>124</sup>

55. Likewise, Ukraine's account of the case of Mr Renat Paralamov is simply wrong.<sup>125</sup> Mr Paralamov was suspected of being involved in activities of *Hizb ut-Tahrir*, which is listed as a terrorist organization in the Russian Federation. The investigative authorities had substantial grounds, reviewed and approved by the court, to conduct an inspection, at Mr Paralamov's home, for any elements that may bear a link with the terrorist activity, including weapons and other items forbidden on the territory of the Russian Federation.<sup>126</sup> The home inspection took place on 13 September 2017<sup>127</sup> and he was taken to the FSB for questioning that day. During the questioning Mr Paralamov himself revealed his involvement with *Hizb ut-Tahrir*, and disclosed a place in a forest near the Simferopol Reservoir where he had hidden ammunition and explosives,<sup>128</sup> which

<sup>&</sup>lt;sup>122</sup> Kievskiy District Court of Simferopol, Case No. 1-213/2015, Decision, 15 May 2015 (Annex 232); Supreme Court of the Republic of Crimea, Case No. 22-2258/2015, Appellate Decision, 26 August 2015 (Annex 245); Presidium of the Supreme Court of the Republic of Crimea, Case No. 44U-27/2016 (4U-284/2015), Decision, 24 February 2016 (Annex 269).

<sup>&</sup>lt;sup>123</sup> Kievskiy District Court of Simferopol, Case No. 1-213/2015, Decision, 15 May 2015 (Annex 232); Supreme Court of the Republic of Crimea, Case No. 22-2258/2015, Appellate Decision, 26 August 2015 (Annex 245); Presidium of the Supreme Court of the Republic of Crimea, Case No. 44U-27/2016 (4U-284/2015), Decision, 24 February 2016 (Annex 269); Criminal Code of the Russian Federation, No. 63-FZ, 13 June 1996 (Annex 32), Article 12.

<sup>&</sup>lt;sup>124</sup> Senior Forensic Investigator of the 534th Military Investigative Department of the Military Investigative Directorate of the Investigative Committee of the Russian Federation for the Black Sea Fleet, Resolution on the refusal to initiate a criminal case, 18 April 2015 (Annex 228); Investigator of the First Investigative Department for Investigation of High-Priority cases of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Resolution on the refusal to initiate a criminal case, 25 May 2015 (Annex 235).

<sup>&</sup>lt;sup>125</sup> MU, paras. 409-410.

<sup>&</sup>lt;sup>126</sup> Kievskiy District Court of Simferopol, Republic of Crimea, Case No. 444/2017, Ruling authorizing the inspection of R.R. Paralamov's house (Annex 343).

<sup>&</sup>lt;sup>127</sup> Record of inspection of R.R. Paralamov's house, 13 September 2017 (Annex 344).

<sup>&</sup>lt;sup>128</sup> Record of R.R. Paralamov's questioning, 13 September 2017 (Annex 345); Record of R.R. Paralamov's questioning, 14 September 2017 (Annex 346).

were indeed seized at the place designated by Mr Paralamov.<sup>129</sup> These circumstances gave rise to the opening of a criminal case against Mr Paralamov on 28 September 2017.<sup>130</sup>

56. On 17 October 2017, the 534<sup>th</sup> Department of Military Investigation Committee received claims from Mr Paralamov's lawyer regarding Mr Paralamov's alleged abduction. Contrary to Ukraine's meritless arguments, the preliminary inquiry, conducted by the authorized investigative authorities, established the absence of any evidence of crime allegedly committed by FSB officers. During the course of the inquiry initiated by the Military Investigation Committee, a number of FSB officers were questioned with regard to their actions performed in Mr Paralamov's house on 13 September 2017 and thereafter. All the officers engaged in investigative actions brought against Mr Paralamov, were questioned and confirmed that he had not been detained that day, and after his questioning he was free to leave the FSB office. The next morning, on 14 September 2017, Mr Paralamov identified the place where he kept explosives and ammunition. No physical violence or torture were applied towards Mr Paralamov during these two rounds of questioning.<sup>131</sup>

57. Therefore, the military investigator refused to open a criminal case on Mr Paralamov's allegations and concluded that Mr Paralamov's claims were groundless and should be considered as a part of his defense strategy aimed at escaping accountability.<sup>132</sup> The results of this preliminary inquiry were thoroughly reviewed by the 309<sup>th</sup> Military Prosecutor's office of garrison, which confirmed that the decision not to initiate the criminal case was legitimate due to the absence of evidence that a crime had been committed.<sup>133</sup>

<sup>&</sup>lt;sup>129</sup> Record of inspection of premises, buildings, structures, terrain and vehicles, 14 September 2017 (Annex 348); 534th Military Investigative Department of the Investigative Committee of the Russian Federation, Resolution on the refusal to initiate a criminal case, 27 October 2017 (Annex 371).

<sup>&</sup>lt;sup>130</sup> Inquiry Organization Department of the Ministry of Internal Affairs for the Republic of Crimea, Resolution No. 11701350001009033 on the initiation of a criminal case against R.R. Paralamov, 28 September 2017 (Annex 351).

<sup>&</sup>lt;sup>131</sup> 534th Military Investigative Department of the Investigative Committee of the Russian Federation, Resolution on the refusal to initiate a criminal case, 27 October 2017 (Annex 371). See also Prosecutor's Office of the Republic of Crimea, Letter No. 27-239-2017/Np10860-2017 to the Military Prosecutor's Office of the Black Sea Fleet, 20 December 2017 (Annex 584); Prosecutor's Office of the Republic of Crimea, Letter No. 27-239-2017/On6074-2017 to E.M. Kurbedinov, 20 December 2017 (Annex 585).

<sup>&</sup>lt;sup>132</sup> 534th Military Investigative Department of the Investigative Committee of the Russian Federation, Resolution on the refusal to initiate a criminal case, 27 October 2017 (Annex 371).

<sup>&</sup>lt;sup>133</sup> Military Prosecutor of the 309<sup>th</sup> Military Prosecutor's Office of the Garrison, Report on the examination of the legality of the decision to refuse to initiate criminal proceedings, 20 February 2018 (Annex 395).

#### **APPENDIX B**

# NO RACIAL DISCRIMINATION WITH RESPECT TO LAW ENFORCEMENT MEASURES (DETENTIONS AND SEARCHES), LET ALONE A SYSTEMATIC CAMPAIGN THEREOF

1. The law enforcement measures that Ukraine complains of under CERD have been adopted for legitimate reasons, to fight against extremism and terrorism.<sup>1</sup> As the record shows, there is no plausible case to make that these measures breach CERD and constitute acts of racial discrimination against Crimean Tatars as an ethnic group. It is noteworthy that, generally speaking, Crimean Tatars and Ukrainians do not account for a disproportionate part of committed offences in relation to their ethnic proportion of the overall population of Crimea.<sup>2</sup> The present Appendix will present the relevant factual and legal elements (I) on the basis of which each of the said measures were legitimately taken (II).

## I. Factual and Legal Relevant Elements

2. As has been developed elsewhere in relation to the ban of the *Mejlis*, the imposition of legitimate limitations to the exercise of human rights is a general standard of international human rights law that is also directly applicable in the Russian domestic legal order.<sup>3</sup> The fight against extremism and terrorism is a classic circumstance that gives rise to such legitimate limitations. Legitimate limitations placed on the exercise of human rights do not entail a violation of such rights and cannot thus constitute discriminatory treatment under CERD, since no individual right is impaired nor nullified. The Russian law applicable to the fight against extremist and terrorist activities in Russia includes in particular Federal Law No. 114-FZ of 25 July 2002 "On counteracting extremist activities" and Federal Law No. 35-FZ of 6 March 2006 "On combatting terrorism". A federal list of extremist materials has been established and is being maintained by the Russian Ministry of Justice under Article 13 of Federal Law 114-FZ of 2002.<sup>4</sup> In Crimea, one may

<sup>&</sup>lt;sup>1</sup> See also Chapter VI, paras. 347-376.

<sup>&</sup>lt;sup>2</sup> N. Vodorezov, Deputy Plenipotentiary Representative of the President of the Russian Federation to the Crimean Federal District, Letter No. A-80-1313, 26 April 2016, to A.D. Viktorov, Director of the Department for Humanitarian Cooperation and Human Rights of the Ministry of Foreign Affairs, in Documents submitted to the Registry of the ICJ by the Russian Federation in connection with Ukraine's Request for the indication of provisional measures and Judges' Folder submitted by the Russian Federation for the Hearings on Provisional Measures, 6-9 March 2017 (Annex 1267), p. 5-6.

<sup>&</sup>lt;sup>3</sup> See Chapter IV, paras. 152-154.

<sup>&</sup>lt;sup>4</sup> Ministry of Justice of the Russian Federation, Excerpts from the Federal list of extremist materials in accordance with Federal Law of 25 July 2002 No. 114-FZ "On countering extremist activities" (List as at 8 June 2021) (Annex 511).

also mention, among other measures, the adoption of a complex plan to counter the ideology of terrorism in 2015.<sup>5</sup>

3. Ukraine's general line of argument consists in claiming that the reasons for the law enforcement measures at stake are pretextual or arbitrary. In so doing, it takes liberty with the facts.

## A. THE EXISTENCE OF MUSLIM RADICALISM IN CRIMEA BEFORE 2014

## 1. Ukraine's Position

4. Ukraine alleges that one of the defining elements of Crimean Tatars is "adherence to a *moderate* form of Islam"<sup>6</sup> and that there was no religious extremism in Crimea before 2014, which would suggest, in Ukraine's view, that today's measures with respect to the fight against extremist religious organizations are only pretextual.<sup>7</sup>

# 2. The Facts

5. The existence of manifestations of religious extremism in Crimea has been a reality much before 2014.<sup>8</sup> Ukraine faced the threat of the radicalisation of Muslim Crimean Tatars as far back as 2004.<sup>9</sup>

6. Mr Dzhemilev, then the chairman of the *Mejlis*, admitted as early as 2004 that while Crimean Tatar Islam indeed used to follow a moderate form, "stricter forms, notably the Wahabbism [sic] of Saudi Arabia, is being preached by missionaries from the Middle East who have plenty of money to build mosques and set up religious education establishments".<sup>10</sup>

<sup>&</sup>lt;sup>5</sup> Decree of the Head of the Republic of Crimea No. 26-U "On approval of the Comprehensive Plan countering the ideology of terrorism in the Republic of Crimea, for 2015 - 2018", 30 January 2015 (Annex 81). The plan has since been replaced by a number of similar if less global plans and measures.

<sup>&</sup>lt;sup>6</sup> MU, para. 357 (emphasis added). See also paras. 603 and 608.

<sup>&</sup>lt;sup>7</sup> MU, para. 449.

Expert Report of Ilshat Amirovich Mukhametzaripov on Hizb ut-Tahrir and Tablighi Jamaat associations (Annex 23), p. 30, 41, 89, 135, 140; Expert Report of Valery Viktorovich Engel, 21 June 2021 (Annex 22), paras. 315, 348, 399-402.

<sup>&</sup>lt;sup>9</sup> Askold Krushelnycky, *Radio Free Europe - Radio Liberty*, "Ukraine: Crimea's Tatars - Clearing The Way For Islamic Extremism? (Part 4)", 26 August 2004 (Annex 1033 to MU). This article confirms that as early as 2004 religious radicalization was already an ongoing phenomenon in Crimea and had been affecting the Muslim community, which is mainly composed of Crimean Tatars, for some time.

<sup>&</sup>lt;sup>10</sup> As reported in Askold Krushelnycky, *Radio Free Europe - Radio Liberty*, "Ukraine: Crimea's Tatars - Clearing The Way For Islamic Extremism? (Part 4)", 26 August 2004 (Annex 1033 to MU). The rise of religious extremism, in particular groups related to *Hizb ut-Tahrir*, during the Ukrainian period and their manipulation by the *Mejlis* for political purposes has also drawn criticism from Crimean Tatar representatives: Qirim Birligi, "Restoration of the Rights of the Crimean Tatars and Creation of Conditions for their Revival and Development as Part of the Integration of Crimea into the Russian Federation", Report submitted to CERD Committee, 93<sup>rd</sup> session, 31 July – 25 August 2017, doc. INT/CERD/NGO/RUS/28092, p. 4-5, <u>https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/</u>

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Mr Dzhemilev also admitted that the spreading of extremist literature within the Crimean Tatar community was a reality: "Brochures of a provocative nature have appeared which say things like Muslims don't have to obey laws if the head of the state is not a Muslim. So what does that mean? That I should not obey Ukrainian law? That is provocation designed to spark a conflict. Fortunately, we are able to keep such things under control for the moment".<sup>11</sup>

7. The Russian Federation's current fight against organizations such as *Hizb ut-Tahrir* (an organization against which the European Court of Human Rights confirmed that it was legitimate to take measures based on security concerns)<sup>12</sup> relates to a situation in Crimea that Ukraine was already faced with in the past.

## B. THE BANS ON HIZB UT-TAHRIR AND TABLIGHI JAMAAT

As part of the fight against terrorist and extremist activities, a number of public 8. organizations and associations have been banned in Russia for extremist activities.<sup>13</sup> Searches and detentions are among the legitimate legal means at a State's disposal to fight against suspected unauthorized, extremist activity - like participating in public organizations that have been banned and the activities of which have been declared prohibited. The mere fact that these measures imply certain restrictions and inconveniences does not render them discriminatory or illegal.<sup>14</sup> They apply to all suspicions of unauthorized and extremist activities as defined under applicable law, i.e. activities that threaten public order and safety, public health, other citizens' lawfully protected rights and interests, or the integrity and legal order of the Russian Federation. Searches in relation to an individual are carried out when sufficient suspicion arises as to his/her possible extremist or terrorist activities, based on the information available to the investigating authorities. Obviously, not all searches lead to detentions and eventually convictions, and the absence of the latter does not mean that searches or detentions are pretextual. Moreover, Ukraine's accusations in the Memorial regarding the manner in which searches were carried out in various individual cases rely on a misconstruction of the measures, which are taken out of their context. In fact, the impugned

INT CERD NGO RUS 28092 E.doc; "Arria Formula" VTC of the member States of the UN Security Council on Crimea, 21 May 2020, <u>https://www.youtube.com/watch?v=dh5qqqLVrB0</u> (at 11:39 to 13:17).

<sup>&</sup>lt;sup>11</sup> Askold Krushelnycky, *Radio Free Europe - Radio Liberty*, "Ukraine: Crimea's Tatars - Clearing The Way For Islamic Extremism? (Part 4)", 26 August 2004 (Annex 1033 to MU).

<sup>&</sup>lt;sup>12</sup> See paras. 17-18 below.

<sup>&</sup>lt;sup>13</sup> See Ministry of Justice of the Russian Federation, List of public associations and religious organisations in respect of which the court has taken a legally effective decision to liquidate them or ban their activities on the grounds provided for by Federal Law of 25 July 2002 No. 114-FZ "On counteracting extremist activities", as at 7 April 2021 (Annex 503). This list contains not only the *Mejlis*, but also a vast majority of non-Crimean Tatar organizations, mostly extremist nationalist Russian movements. It also contains violent hooligan groups and religious extremist organizations.

<sup>&</sup>lt;sup>14</sup> Constitution of the Russian Federation, 12 December 1993 (Annex 28), Article 55(3), according to which the human and civil rights and freedoms may be limited by federal law to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State.

measures are in line with the standards usually applied in such situations in the context of combating terrorism and extremism.

9. It is also worth mentioning that the Russian Federation's approach to countering extremism is in line with the European approach, which not only seeks to prevent and eliminate acts of terrorism but also attempts to detect and prevent radicalization phenomena that are first steps towards the possible commission of extremist and terrorist acts.<sup>15</sup>

# 1. The Case of Hizb ut-Tahrir

10. Ukraine takes particular issue with the Russian Federation's measures to enforce the ban on *Hizb ut-Tahrir al-Islami* and *Tablighi Jamaat*, which are terrorist and extremist organizations, respectively, banned in the Russian Federation.<sup>16</sup>

11. *Hizb ut-Tahrir*, established in Jerusalem in 1953, is an international Islamist movement that seeks to establish a worldwide caliphate based on the *Sharia*,<sup>17</sup> functioning as a totalitarian State in which there can be no civil and political rights and where non-Muslims are not tolerated. While it publicly denounces violence as a means to achieve its goal, its objective is obviously incompatible with non-violent methods. It considers modern Muslim authorities as apostate and enemies to be overthrown, not to mention non-Muslim regimes and the West in its broader sense.<sup>18</sup>

12. Generally speaking, while some of the existing fundamentalist movements believe that the transition to the desired regime is possible by peaceful means – as a result of effective preaching, the majority is striving for revolution, the differences in opinions within this majority touching upon the degree of participation in modern politics. The well-known Muslim Brotherhood movement belongs to this majority.

13. The ideology of *Hizb ut-Tahrir* is based on two basic positions. The first is the rejection of all participation in the political life of non-Muslim societies. The second is the nominal rejection of violence, although this point is belied by the movement's documents, positions and actions.<sup>19</sup> For example, the movement does not call for killing Jews in general, but it calls for their extermination in Israel, it categorically rejects Israel's right to exist, and its statements are replete with anti-Semitic language.<sup>20</sup> Antisemitism is indeed the reason that ultimately led to the movement's ban in

<sup>&</sup>lt;sup>15</sup> Engel Report (Annex 22), paras. 83-111, 126-314; see also para. 28.

<sup>&</sup>lt;sup>16</sup> MU, paras. 409, 410, 447 and 448.

<sup>&</sup>lt;sup>17</sup> *Human Rights Watch*, "Crimea: Persecution of Crimean Tatars Intensifies", 14 November 2017 (Annex 964 to MU).

<sup>&</sup>lt;sup>18</sup> For a detailed account of the history and ideological bases of the organization, see Expert Report of Valery Viktorovich Engel, 21 June 2021 (Annex 22), paras. 350-422.

<sup>&</sup>lt;sup>19</sup> Engel Expert Report (Annex 22), paras. 363-368.

<sup>&</sup>lt;sup>20</sup> Engel Expert Report (Annex 22), para. 407.

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Germany in 2003.<sup>21</sup> The movement has also repeatedly approved terrorist acts and refused to condemn crimes committed by the so-called Islamic State.

observed that *Hizb ut-Tahrir* is banned in most Muslim countries in the world and in other countries because "their activity is aimed to destroy the political system, opposing Muslims to other people and deny the political and religious freedom of men."<sup>22</sup>

14. In 2003, the Supreme Court of the Russian Federation banned fifteen organizations as terrorist organizations, including *Hizb ut-Tahrir* and other groups such as *Al Qaida*.<sup>23</sup> In reaching its decision, which is in conformity with United Nations anti-terrorism action, the Supreme Court relied on the fact that *Hizb ut-Tahrir*'s goals included overthrowing non-Muslim governments in order to establish a universal Muslim Caliphate, first covering countries that have Muslim populations including Russia, intolerance towards other religions, and purposeful work to bring about social divisions, among others. The banned organization was consequently included into the Unified federal list of organizations recognized in accordance with applicable Russian legislation as terrorist organizations.<sup>24</sup>

15. While *Hizb ut-Tahrir* is not banned in Ukraine or in most countries of Europe, it is banned in Germany – where its assets have also been seized –, in several former Soviet republics, including Uzbekistan and Kyrgyzstan, as well as China, and most Muslim countries and countries with a large Muslim population, including Egypt. As an example among many others, 35 of *Hizb ut-Tahrir* members and supporters, including key leaders, were arrested in October 2009 under anti-terrorism legislation in Pakistan, where the movement is banned.<sup>25</sup> In countries where it is not banned, *Hizb ut-Tahrir* is nevertheless under strict surveillance by special services and regularly causes controversy in the media with radical statements, like in Australia, Denmark, the Netherlands or the United Kingdom, among others. Ukraine itself considered prohibiting *Hizb ut-Tahrir* before 2014, apparently due in particular to the activities of this organization in Crimea.<sup>26</sup>

<sup>&</sup>lt;sup>21</sup> ECtHR, *Hizb ut-Tahrir and others v. Germany*, Application No. 31098/08, Decision, 12 June 2012, para. 6.

<sup>&</sup>lt;sup>22</sup> "Arria Formula" VTC of the member States of the UN Security Council on Crimea, 21 May 2020, <u>https://www.youtube.com/watch?v=dh5qqqLVrB0</u> (at 11:14 to 11:24). See also OSCE Human dimension implementation meeting (Warsaw, 16-27 September 2019), Written Contribution by the Spiritual Directorate of Muslims of Crimea, HDIM.CS/0404/19/EN, 24 September 2019 (Annex 835).

<sup>&</sup>lt;sup>23</sup> Supreme Court of the Russian Federation, Case No. GKPI 03-116, Decision, 14 February 2003 (Annex 119).

<sup>&</sup>lt;sup>24</sup> Federal Security Service of the Russian Federation, Unified federal list of organizations, including foreign and international organizations, recognized terrorist according to the laws of the Russian Federation, 31 August 2020 (Annex 499), also available in Russian at: <u>http://www.fsb.ru/fsb/npd/terror.htm</u>.

<sup>&</sup>lt;sup>25</sup> Houriya Ahmed and Hannah Stuart, "Hizb ut-Tahrir: Ideology and Strategy", *Centre For Social Cohesion*, London, 2009, p. 55, <u>http://henryjacksonsociety.org/wp-content/uploads/2013/01/HIZB.pdf</u>.

<sup>&</sup>lt;sup>26</sup> *Kommersant*, "Security Service of Ukraine is demanded to ban Islamic party Hizb ut-Tahrir", 16 September 2009 (Annex 867).

16. The European Court of Human Rights has confirmed, in unequivocal terms, that bans on *Hizb ut-Tahrir* in Germany and the Russian Federation do not violate the European Convention on Human Rights.

17. In *Hizb ut-Tahrir and others v. Germany*, the Court concluded that *Hizb ut-Tahrir*'s ends "are clearly contrary to the values of the Convention, notably the commitment to the peaceful settlement of international conflicts and to the sanctity of human life."<sup>27</sup> As a result, the Court found that Article 17 of the Convention (which is resorted to by the Court in exceptional circumstances only)<sup>28</sup> prevented *Hizb ut-Tahrir* from enjoying the protection afforded by Article 11 of the Convention with respect to the freedom of association. This conclusion led the Court to also reject allegations of violation of the freedom of religion under Article 9 and of the freedom of expression under Article 10 of the Convention.<sup>29</sup>

18. In the case of *Kasymakhunov and Saybatalov v. Russia*, the Court likewise agreed with the ban declared by the Russian Federation on *Hizb ut-Tahrir*, recalling its earlier decision with regard to the German ban. Specifically, the Court found Article 17 to be applicable and denied that the criminal convictions of the two applicants for incitement to participating in the activities of a terrorist banned organization violated Articles 9, 10 or 11 of the ECHR.<sup>30</sup> These decisions confirm that States have a right to prosecute and ban organizations that reject human rights and democratic values and that support aggressive wars and methods.<sup>31</sup>

## 2. The Case of Tablighi Jamaat

19. *Tablighi Jamaat*, the other organization Ukraine refers to in the Memorial, was declared as an extremist organization and its activities banned by the Supreme Court of the Russian Federation in 2009, long before the 2014 events and the measures Ukraine takes issue with.<sup>32</sup> Prior to the imposition of such restrictions on this organization in Russia, some of the western intelligence authorities had already expressed their substantive concerns on *Tablighi Jamaat* as an Al-Qaeda's major secret recruitment agency, which adopted an extremely radical interpretation of Sunni

<sup>&</sup>lt;sup>27</sup> ECtHR, *Hizb ut-Tahrir and others v. Germany*, Application No. 31098/08, Decision, 12 June 2012, para. 74.

<sup>&</sup>lt;sup>28</sup> According to Article 17, on "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." (Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, 11 April 1950).

<sup>&</sup>lt;sup>29</sup> ECtHR, *Hizb ut-Tahrir and others v. Germany*, Application No. 31098/08, Decision, 12 June 2012, para. 78.

<sup>&</sup>lt;sup>30</sup> ECtHR, *Kasymakhunov and Saybatalov v. Russia*, Applications nos. 26261/05 and 26377/06, Judgment, 14 March 2013, paras. 106-114.

<sup>&</sup>lt;sup>31</sup> ECtHR, *Kasymakhunov and Saybatalov v. Russia*, Applications nos. 26261/05 and 26377/06, Judgment, 14 March 2013, para. 105.

<sup>&</sup>lt;sup>32</sup> Supreme Court of the Russian Federation, Case No. GKPI 09-525, Decision, 7 May 2009 (Annex 126), recognizing *Tablighi Jamaat* as an extremist organization and forbidding its activities in Russia.

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Islam.<sup>33</sup> Having cooperated with Al-Qaeda as early as the 1980's, *Tablighi Jamaat* is also thought to maintain close links with other extremist and terrorist active organizations, such as *Harkat ul-Mujahideen*, which is banned in countries such as India, the United Kingdom and the United States and is included in the sanctions list of the United Nations, and with *Harkat-ul-Jihad al-Islami*, which is also included in the UN sanctions list and is said to have been financially involved in the 9/11 terrorist attacks.<sup>34</sup>

20. The prohibition of organizations such as *Hizb ut-Tahrir* and *Tablighi Jamaat* long predates 2014 and the measures Ukraine complains of in the present case. Any person involved in a prohibited, extremist, terrorist organization breaches the law and is liable to prosecution. It is the same for every citizen. It should be emphasized that these bans equally apply everywhere on the territory of the Russian Federation.<sup>35</sup> This is evidenced, *inter alia*, by the fact that members of such organisations are criminally prosecuted in equal manner and without any double standards not only in Crimea, but in other regions of Russia as well.<sup>36</sup>

21. It is evident from the objectives and activities of *Hizb ut-Tahrir* and *Tablighi Jamaat* that their realization poses a direct threat to public order and safety, the integrity and legal order of the Russian Federation, which are legitimate and lawful basis under Russian and international law for declaring an organization to be extremist and prohibit its activities. Fighting against organizations such as *Hizb ut-Tahrir* and *Tablighi Jamaat* does not entail targeting of Crimean Tatars as an ethnic group, the majority of whom traditionally follow a moderate form of Islam, as Ukraine itself admits.<sup>37</sup> The Russian Federation has publicly expressed its opposition to any form of discrimination, including targeting based on the Islamic faith.<sup>38</sup>

22. Ukraine considers that *Hizb ut-Tahrir* does not publicly advocate for violence as a means to reach its objectives and that it is not banned in Ukraine or in other countries. Non-violence is not what a mere look at *Hizb ut-Tahrir*'s website suggests, which is replete with heinous, pejorative and

<sup>37</sup> MU, para. 581.

<sup>&</sup>lt;sup>33</sup> *The Telegraph*, "Army of darkness", 20 August 2006, https://www.telegraph.co.uk/news/1526793/Army-ofdarkness html (Annex 852). For a detailed account of the history and ideological bases of the organization, see Expert Report of Valery Viktorovich Engel, 21 June 2021 (Annex 22), paras. 326-349.

<sup>&</sup>lt;sup>34</sup> Expert Report of Valery Viktorovich Engel, 21 June 2021 (Annex 22), para. 345.

<sup>&</sup>lt;sup>35</sup> Supreme Court of the Russian Federation, Case No. GKPI 03-116, Decision, 14 February 2003 (Annex 119); Supreme Court of the Russian Federation, Case No. GKPI 09-525, Decision, 7 May 2009 (Annex 126), recognizing *Tablighi Jamaat* as an extremist organization and forbidding its activities in Russia.

<sup>&</sup>lt;sup>36</sup> See, for instance, Supreme Court of the Russian Federation, Case No. 5-004-227, Decision, 13 January 2005 (Annex 120), Supreme Court of the Russian Federation, Case No. 5-APU14-78, Apellate Decision, 11 December 2014 (Annex 202), Supreme Court of the Russian Federation, Case No. 92-APU15-4, Appellate Decision, 26 May 2015 (Annex 237), Supreme Court of the Russian Federation, Case No. 9-APU15-17, Appellate Decision, 7 October 2015 (Annex 248), Supreme Court of the Russian Federation, Case No. 201-APU15-17, Appellate Decision, 24 December 2015 (Annex 263).

<sup>&</sup>lt;sup>38</sup> Statement of the Delegation of the Russian Federation at the Working Meeting of OSCE to Review the Implementation of Human Dimension Commitments (Warsaw, 16-27 September 2019), Doc. HDIM.DEL/0576/19/EN, 27 September 2019 (Annex 490), HDIM.DEL/0576/19/EN, p. 2.

offensive language.<sup>39</sup> In any event, openly admitting and promoting the use of violence is not a necessary prerequisite for identifying an organization as violent, extremist or terrorist, nor is the absence of any admission of violence – or even the express rejection thereof – an unmistakable sign that the organization is indeed peaceful. In this regard, the ECHR rejected *Hizb ut-Tahrir*'s argument that it had formally accepted peaceful methods and found that organization to be extremist based on its actual deeds as reviewed by the German Federal Administrative Court.<sup>40</sup>

23. Nor is Ukraine's own treatment of *Hizb ut-Tahrir* relevant since countries other than Russia have also banned *Hizb ut-Tahrir*, and the ECtHR has accepted that measures of this sort against *Hizb ut-Tahrir* do not violate the ECHR.

24. It may also be added that what Ukraine terms as "activism" for the purpose of its pleadings also include violent and extremist acts that are prohibited on the territory of the Russian Federation as in Ukraine. The Russian Federation has no doubt that such acts would not be tolerated by any democratic society. This is the case for example of the Automaidan, which is a pro-Ukrainian self-styled group of motorists in Ukraine that oppose the rule of law and police public order operations against demonstrators: in principle they carry out illegal activities and cannot invoke in Ukraine any right to peaceful gathering.<sup>41</sup> Ukraine cannot at the same time consider that it has the right to prohibit such activities and that Russia is not allowed to do it.

25. The enforcement of the ban on *Hizb ut-Tahrir* and *Tablighi Jamaat* by the law enforcement authorities necessarily involves operations such as searches of suspects that, based on their results, may lead to detention and questioning. The main legal basis for undertaking searches is suspicion of membership in the organization itself. In particular, Article 282.2 of the Criminal Code of the Russian Federation, entitled "organizing the activities of an extremist organization", provides liability for any participation in an organization that has been banned as extremist.<sup>42</sup> Article 205 specifically provides for conditions of liability in relation to terrorist activities. The seizure of extremist literature or weapons during the search may constitute indicia or even aggravating factors pointing to the possible preparation of violent action, taken together with other relevant circumstances.

<sup>&</sup>lt;sup>39</sup> See for instance Media Office of Hizb ut-Tahrir in Wilayah, "*Neither America, nor Russia, nor Europe, Trusting these Kuffar is a Political and Military Suicide!*", 29 February 2020 (Annex 1274).

<sup>&</sup>lt;sup>40</sup> ECtHR, *Hizb ut-Tahrir and others v. Germany*, Application No. 31098/08, Decision, 12 June 2012, paras. 67-70 and 73-74.

<sup>&</sup>lt;sup>41</sup> MU, footnote 827, referring to Iryna Stelmakh and Claire Bigg, *RFE/RL*, "Activists on Wheels: Ukraine's Embattled Automaidan Protesters", 24 January 2014 (Annex 1035 to MU).

<sup>&</sup>lt;sup>42</sup> According to Article 1(1) of Federal Law No. 114-FZ "On Counteracting Extremist Activities", 25 July 2002 (Annex 876 to MU), terrorism is one of the forms of extremism.

# II. The Lawful, Objective, and Reasonable Grounds of the Measures Ukraine Complains of

### A. ALLEGED SEARCHES OF HOMES OF CRIMEAN TATARS

26. The first series of alleged measures Ukraine complains of cover searches of homes of Crimean Tatars.<sup>43</sup>

27. Ukraine shoehorns a number of unconnected instances of searches by Russian authorities on private premises into its brief section on "*searches of homes of Crimean Tatars*". Ukraine has put no primary evidence of the searches in question before the Court. In fact, Ukraine does not even identify – or indeed appear to be aware of the identity of – most of the individuals who it claims to have suffered grievances. Nor do the "reports" on which Ukraine relies provide further particulars, or specify the sources of their factual allegations. Ukraine's claims are thus unsubstantiated.

28. In these circumstances, Russia expended its best efforts to ascertain which events Ukraine refers to in particular. It fully reserves its rights to bring further evidence to the Court's attention at a later stage of the proceedings as may be appropriate.

# 1. The Case of Mr Ibraim Ibragimov

29. The *first* home search mentioned by Ukraine took place on 28 August 2014 in Bakhchisaray.<sup>44</sup> The search in question, on the premises of Mr Ibraim Ibragimov, was conducted in the context of criminal proceedings opened on 9 June 2014 and concerning goods stolen from another resident of Bakhchisaray.<sup>45</sup> The search itself was duly authorized by a Russian court, which thoroughly considered the circumstances of the criminal investigation and decided that there was a justified suspicion that the stolen goods could be found at Mr Ibragimov's home.<sup>46</sup> A reasonable suspicion to that effect provides sufficient basis to conduct searches in human rights law.<sup>47</sup> Contrary to Ukraine's insinuations, in addition to extremist literature, firearm and ammunition *were* found in the course of this search, which resulted in the commencement of further investigations<sup>48</sup> and eventually the opening of another criminal case for illegal possession of a firearm.<sup>49</sup>

<sup>&</sup>lt;sup>43</sup> MU, paras. 444-449.

<sup>&</sup>lt;sup>44</sup> MU, para. 444, fn. 940.

<sup>&</sup>lt;sup>45</sup> Acting Investigator of the Investigative Directorate of the Ministry of Internal Affairs for the Republic of Crimea, Resolution on the initiation of a criminal case, 9 June 2014 (Annex 151).

<sup>&</sup>lt;sup>46</sup> Bakhchisaray District Court of the Republic of Crimea, Ruling authorizing the search in Mr Ibragimov's house, 25 August 2014 (Annex 171).

<sup>&</sup>lt;sup>47</sup> ECtHR, *Gillan and Quinton v. the United Kingdom*, Application No. 4158/05, Judgment, 12 January 2010, paras. 83-86.

<sup>&</sup>lt;sup>48</sup> Lead Investigator of the Centre for Countering Extremism of the Ministry of Internal Affairs for the Republic of Crimea, Record of search in Mr Ibragimov's house, 28 August 2014 (Annex 172), describing the results of the search; Explanatory note of M.I. Yamkova, witness to the search conducted at Mr Ibragimov's house, 3 September 2014

30. The literature of extremist nature that was discovered during the search in Ibraim Ibragimov's home<sup>50</sup> was recognized as extremist by the Russian courts long before the events of 2014. For instance, "Hizb ut-Tahrir's Call" and "General Perception of Islam" were recognized as extremist in 2010,<sup>51</sup> the "Hizb ut-Tahrir's Program" in 2009,<sup>52</sup> and "Democracy: The System of Disbelief", "Islamic State" and the "Hizb ut-Tahrir's Political Concept" in 2007.<sup>53</sup> In this like in other cases where Ukraine erroneously refers to the publications seized as mere "religious literature",<sup>54</sup> the overwhelming majority of such publications originates or claims inspiration from the same author, Mr Taqi al-Din al-Nabhani (1909-1977), who is the founder and ideologist of *Hizb ut-Tahrir*.<sup>55</sup> As already mentioned, *Hizb ut-Tahrir* itself was deemed to be a terrorist organization as early as 2003.

#### 2. Home Searches of September 2014

31. The *second* category of "*home searches*" singled out in Ukraine's Memorial took place in September 2014.<sup>56</sup> Except for the cases of Mr Eskender Bariiev and Mr Mustafa Asaba,<sup>57</sup> Ukraine provides no further details of these alleged "incidents", nor as to the factual basis of its proposition that the premises in question belonged to Crimean Tatar individuals. Besides, Ukraine's record is contradictory and fails to establish a proper factual account.<sup>58</sup> Upon inquiry, the Russian Federation's law enforcement authorities have identified a number of searches conducted in September 2014. If these are indeed the measures Ukraine purported to challenge in these

<sup>53</sup> Tuimazinsky District Court of the Republic of Bashkortostan, Case No. 2-1508/2007, Decision, 5 September 2007 (Annex 123).

<sup>54</sup> MU, para. 445.

<sup>55</sup> Expert Report of Valery Viktorovich Engel, 21 June 2021 (Annex 22), para. 350. For an analysis of the openly violent, intolerant and hateful ideology proselytized by some of these books, see *Ibid.*, paras. 352-368; Mukhametzaripov's Expert Report, pp. 45-69.

<sup>56</sup> MU, para. 444, fns. 940-941.

<sup>57</sup> MU, para. 423.

<sup>(</sup>Annex 174), describing the results of the search; Explanatory note of R.Sh. Sarasha, witness to the search conducted at Mr Ibragimov's house, 3 September 2014 (Annex 175), describing the results of the search.

<sup>&</sup>lt;sup>49</sup> Inquiry officer of the Inquiry Department of the Department of the Ministry of Internal Affairs for the Bakhchisaray District, Resolution on the initiation of a criminal case, 8 December 2014 (Annex 200).

<sup>&</sup>lt;sup>50</sup> Lead Investigator of the Centre for Countering Extremism of the Ministry of Internal Affairs for the Republic of Crimea, Record of search in Mr Ibragimov's house, 28 August 2014 (Annex 172).

<sup>&</sup>lt;sup>51</sup> Moskovskiy District Court of Kazan of the Republic of Tatarstan, Case No. 2-320/10, Decision, 17 September 2010 (Annex 131); Maykop City Court of the Republic of Adygeya, Case No. 2-2/2010, Decision, 24 November 2010 (Annex 133).

<sup>&</sup>lt;sup>52</sup> Kalininskiy District Court of Ufa of the Republic of Bashkortostan, Decision, 29 July 2009 (Annex 127).

<sup>&</sup>lt;sup>58</sup> In particular, Ukraine relies on Witness Statement of Eskender Bariiev, 6 June 2018 (Annex 15 to MU) and a report of *Human Rights Watch*, "Rights in Retreat: Abuses in Crimea" (Annex 943 to MU) of November 2014. Mr Bariiev allegedly declared to Human Rights Watch that a group of approximately 15 men came to his home to participate in the search, which lasted for 2 hours (Annex 943 to MU, p. 16). By contrast, Mr Bariiev now claims in his Statement that 8 people came to his home to take part in the search, including witnesses, and that the search lasted for 4 hours (Annex 15 to MU, para. 28).

#### Appendix B

proceedings, the relevant procedural record confirms that these measures were entirely appropriate and justified in the circumstances, as further explained below.

32. The searches were part of criminal proceedings<sup>59</sup> concerning the violent attack on law enforcement authorities that had been carried out at the border on 3 May 2014 by a group of individuals, at the instigation of Mr Chubarov, which is described elsewhere in the present submissions.<sup>60</sup> The courts authorising the searches carefully assessed the submissions by law enforcement authorities, and concluded that the authorities had sufficient grounds to conclude that the premises in question may "store weapons and ammunition, objects excluded from civil use" and that "objects of potential importance to [a] criminal case might be located at the indicated address which makes it necessary to conduct the search of the living premises".<sup>61</sup> Thus, contrary to Ukraine's misleading portrayal of the facts,<sup>62</sup> the search was not limited to weapons but extended to any objects of potential relevance for the investigation. Ukraine has adduced no evidence which would cast into doubt these elements. It is also important to point out that Russian authorities had every reason to investigate Mr Mustafa Dzhemilev's potential affiliates, including within the *Mejlis*, who may have been involved in the aforementioned violent border incident. To recall, the riots of 3 May 2014 originated from an unauthorized public event called by the *Mejlis*.<sup>63</sup>

33. As for Ukraine's allegations concerning "a 10 September 2014 search of two Crimean Tatar homes in the village Kamenka (Leninskiy district)",<sup>64</sup> this case bears no signs of racial or any other discrimination as well. In September 2014, Russian investigative authorities conducted a number of

<sup>64</sup> MU, para. 444, fns. 940-941.

<sup>&</sup>lt;sup>59</sup> Investigative Department for the city of Armyansk of the Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Resolution on the initiation of a criminal case No. 2014687003, 4 May 2014 (Annex 138).

<sup>&</sup>lt;sup>60</sup> As described in Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 2. See Chapter IV, para. 166.

<sup>61</sup> Kievskiy District Court of Simferopol, Case No. 3/6-336/2014, Ruling authorizing the search in Mr Bariev's house, 3 September 2014 (Annex 176); Kievskiy District Court of Simferopol, Case No. 3/6-342/2014, Ruling authorizing the search in Mr Asaba's house, 3 September 2014 (Annex 177); Kievskiy District Court of Simferopol, Case No. 3/6-331/2014, Ruling authorizing the search in Mr. Ablaev's house, 3 September 2014 (Annex 178); Kievskiy District Court of Simferopol, Case No. 3/6-337/2014, Ruling authorizing the search in Ms. Bogutskaya's house (Lozovoye villiage), 3 September 2014 (Annex 179); Kievskiy District Court of Simferopol, Case No. 3/6-335/2014, Ruling authorizing the search in Ms. Bogutskaya's house (Mirnoye villiage), 3 September 2014 (Annex 180); Kievskiy District Court of Simferopol, Case No. 3/6-330/2014, Ruling authorizing the search in Mr. Paralamov's house, 3 September 2014 (Annex 181); Kievskiy District Court of Simferopol, Case No. 3/6-339/2014, Ruling authorizing the search in Mr. Salmanov's house, 3 September 2014 (Annex 182); and Kievskiv District Court of Simferopol, Case No. 3/6-340/2014, Ruling authorizing the search in Mr. Hairedinov's house, 3 September 2014 (Annex 183), p. 1, paras. 4, 9. The later searches conducted at Mr Asaba's home in April 2015 and mentioned in Witness Statement of Eskender Bariiev, 6 June 2018 (Annex 15 to MU), para. 29, relates to the entirely distinct case of the riots that occurred on 26 February 2014, as Mr Barilev himself admits; see Kievskiy District Court of Simferopol, Case No. 3/6-266/2015, Ruling authorizing the search in Mr. Asaba's house, 10 April 2015 (Annex 226).

<sup>&</sup>lt;sup>62</sup> MU, para. 444.

<sup>&</sup>lt;sup>63</sup> Website of the *Mejlis*, Resolution of the *Mejlis* of the Crimean Tatar people "On the situation regarding the Russian official travel ban for Mustafa Dzhemilev, prohibiting Dzhemilev from entering his native land — Crimea", 2 May 2014 (Annex 1251). See also Chapter IV, para. 167, fn. 341.

inquiries regarding illegal arms trafficking, within the framework of which two Kamenskoe village residents were questioned and their homes inspected.<sup>65</sup> During the inspection, one of the residents voluntarily handed an unregistered firearm to the authorities. This fact did not lead to his or the other resident's detainment or criminal prosecution and neither of the residents had any complaints regarding the authorities' actions.<sup>66</sup> The notebooks and other seized items, which Ukraine mentions, were in fact returned shortly after the inspection.<sup>67</sup>

# 3. Home Searches of 12 October 2016

34. Ukraine's *third* allegation relates to a number of supposedly "arbitrary" home searches that are said to have taken place two years later, on 12 October 2016.<sup>68</sup> Far from being arbitrary, a number of searches were carried out within the framework of a criminal case initiated on 11 October 2016 against several individuals for organizing and participating in activities of *Hizb ut-Tahrir*,<sup>69</sup> a terrorist organization banned in numerous jurisdictions, as described above.<sup>70</sup>

35. The searches carried out within the criminal case in question, as it was established by the Supreme Court of the Russian Federation, were duly authorized by the Russian court and were conducted in the presence of witnesses in full conformity with applicable Russian legislation.<sup>71</sup> During the review of the requests for the searches authorization, the court thoroughly considered the circumstances of the criminal investigation and decided that there was a justified suspicion that the objects and documents of importance to the investigation can be found at homes of the suspects.<sup>72</sup>

36. The materials seized in these proceedings were not "religious literature", as Ukraine contends,<sup>73</sup> but *propaganda materials of Hizb ut-Tahrir*, i.e., documents replete with incitement of

<sup>73</sup> MU, para. 445.

<sup>&</sup>lt;sup>65</sup> Main Investigative Directorate of the Investigative Committee of Russia for the Republic of Crimea and the City of Sevastopol, Letter No. AE 0097952, 15 March 2021 (Annex 643).

<sup>&</sup>lt;sup>66</sup> Main Investigative Directorate of the Investigative Committee of Russia for the Republic of Crimea and the City of Sevastopol, Letter No. AE 0097952, 15 March 2021 (Annex 643).

<sup>&</sup>lt;sup>67</sup> Main Investigative Directorate of the Investigative Committee of Russia for the Republic of Crimea and the City of Sevastopol, Letter No. AE 0097952, 15 March 2021 (Annex 643). I.I. Ametov, Acknowledgement of receipt of the seized items, 23 September 2014 (Annex 190).

<sup>&</sup>lt;sup>68</sup> MU, para. 445.

<sup>&</sup>lt;sup>69</sup> Senior Criminal Investigator of the Investigative Department of the Directorate of the Federal Security Service of Russia for the Republic of Crimea and the City of Sevastopol, Resolution on the initiation of criminal case No. 2016427051, 11 October 2016 (Annex 300).

<sup>&</sup>lt;sup>70</sup> See paras. 14-18 above.

<sup>&</sup>lt;sup>71</sup> Supreme Court of the Russian Federation, Case No. 224-APU19-13s, Appellate Decision, 24 December 2019 (Annex 416).

<sup>&</sup>lt;sup>72</sup> See for instance Kievskiy District Court of Simferopol, Case No. 3/6-593/2016, Ruling authorizing the search in Mr. Abdullaev's house, 11 November 2016 (Annex 301).

hatred, advocating intolerance towards the opponents of the "Caliphate".<sup>74</sup> Respondent notes that the discovered literature, reflecting and promoting *Hizb ut-Tahrir*'s ideology, had been recognized as extremist by the Russian courts long before the events of 2014, and in a context unrelated to Crimea, or the position of Crimean Tatars. In particular, the "Hizb ut-Tahrir's Concept" and the "Islamic Personality" were recognised as extremist in 2010,<sup>75</sup> while the "Hizb ut-Tahrir's Political Concept", the "Basics of the training program in the Islamic State" and the "Islamic State" were designated as extremist materials in 2007.<sup>76</sup> Based on this and other evidence the Russian courts found the accused guilty of organizing and participating in activities of *Hizb ut-Tahrir*, a terrorist organization banned in Russia, and convicted them to imprisonment.<sup>77</sup>

37. It results from the above that investigations into *Hizb ut-Tahrir* do not point to any plausible case of "racial discrimination" against Crimean Tatars as an ethnic group.<sup>78</sup> The ethnicity or national background of individuals is clearly entirely irrelevant in sanctioning the dissemination of such materials under Russian law and in international law.

38. For Ukraine, "[a]s the United Nations monitoring mission in Ukraine recently observed, these intrusive raids of private homes have "disproportionately affected the Crimean Tatars.""<sup>79</sup> But the OHCHR report in question does not point to any evidence to support the allegation that Crimean Tatar ethnic identity was the reason for the measures taken.

39. In fact the very same paragraph in the report states that "Crimean Tatars were particularly targeted [by the alleged actions] especially those with links to the Mejlis, which boycotted the March 2014 referendum and initiated public protests in favour of Crimea remaining a part of Ukraine".<sup>80</sup> This statement calls for two observations.

40. First, the report merely states but does not establish that the three considerations listed are indeed reasons that motivated and explain the searches and detentions. By contrast, it does not

<sup>&</sup>lt;sup>74</sup> North Caucasus District Military Court, Decision, 18 June 2019 (Annex 412); Supreme Court of the Russian Federation, Case No. 224-APU19-13s, Appellate Decision, 24 December 2019 (Annex 416).

<sup>&</sup>lt;sup>75</sup> Moskovskiy District Court of Kazan of the Republic of Tatarstan, Case No. 2-320/10, Decision, 17 September 2010 (Annex 131).

<sup>&</sup>lt;sup>76</sup> Tuimazinsky District Court of the Republic of Bashkortostan, Case No. 2-1508/2007, Decision, 5 September 2007 (Annex 123); Kuzminskiy District Court of Moscow, Decision, 26 October 2007 (Annex 124).

<sup>&</sup>lt;sup>77</sup> North Caucasus District Military Court, Decision, 18 June 2019 (Annex 412); Supreme Court of the Russian Federation, Case No. 224-APU19-13s, Appellate Decision, 24 December 2019 (Annex 416).

<sup>&</sup>lt;sup>78</sup> MU, para. 446.

<sup>&</sup>lt;sup>79</sup> MU, para. 445, fn. 944, quoting OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017) (Annex 759 to MU), para. 12.

<sup>&</sup>lt;sup>80</sup> MU, para. 445, fn. 944, quoting OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017) (Annex 759 to MU), para. 12.

mention the issue of extremist religious organizations that remain active in the Russian Federation despite their having been banned by the authorities.

41. Secondly, even if Ukraine's claim were to be true, as has been abundantly shown in Chapter IV of the Counter-Memorial, the violent and extremist activities of the *Mejlis* and its leaders justified the ban. These activities resulted in the imposition of legitimate limitations on the exercise of human rights, including searches and questionings of *Mejlis* individual members.

42. In these like in all other cases in this Appendix, the record indisputably shows that the searches and detentions were not based on the Crimean Tatar ethnic identity of the suspects, but on suspicions of their being involved in illegal activities including with various banned extremist or terrorist organizations, in particular the *Mejlis*, *Hizb ut-Tahrir* and *Tablighi Jamaat*.

# 4. The Case of Mr Marlen Mustafayev

43. Ukraine's *fourth* allegation refers to the case of Crimean Tatar activist Marlen Mustafayev whose home was allegedly searched by the authorities on 21 February 2017.<sup>81</sup> The documents relied on by Ukraine confirm that the measures taken had a legitimate basis as he was suspected of extremist activity.<sup>82</sup>

44. The administrative escorting and detention of Mr Mustafayev were part of proceedings against Mr Mustafayev concerning the dissemination of *Hizb ut-Tahrir*'s propaganda on social media,<sup>83</sup> an administrative offence under Article 20.3(1) of the Code of Administrative Offences of the Russian Federation. He was subsequently charged and convicted by Russian courts for the public dissemination of the symbols of the terrorist organization, and sentenced to 11 days of administrative arrest.<sup>84</sup> Notably, in 2018, Mr Mustafayev pleaded guilty to committing actions directed at incitement of hatred and enmity against other people on radical religious grounds.<sup>85</sup>

45. Ukraine also complains that certain other individuals – whom Ukraine again simply labels "*Crimean Tatars*" without any further specifications – were detained and sanctioned for their interference with the authorities' activities.<sup>86</sup> On the basis of the factual circumstances of the case,

<sup>&</sup>lt;sup>81</sup> MU, para. 446.

<sup>&</sup>lt;sup>82</sup> OHCHR, Report on the Human Rights Situation in Ukraine (16 February to 15 May 2017) (Annex 774 to MU), para. 144; *RFE/RL*, "Russia Detains 11 Crimean Tatars", 22 February 2017 (Annex 1064 to MU).

<sup>&</sup>lt;sup>83</sup> Chief Operative Investigator of the Centre for Countering Extremism of the Ministry of Internal Affairs for the Republic of Crimea, Report on discovery of the publication of Hizb ut-Tahrir's symbols by Mr Mustafayev on a social network Vkontakte, 9 January 2017 (Annex 305); Chief Operative Investigator of the Centre for Countering Extremism of the Ministry of Internal Affairs for the Republic of Crimea, Certificate of inspection of the Internet resource, 9 January 2017 (Annex 306).

<sup>&</sup>lt;sup>84</sup> Kievskiy District Court of Simferopol, Case No. 5-479/2017, Decision, 21 February 2017 (Annex 321); Supreme Court of the Republic of Crimea, Case No. 12-505/2017, Decision, 1 March 2017 (Annex 322).

<sup>&</sup>lt;sup>85</sup> Kievskiy District Court of Simferopol, Decision, 1 October 2018 (Annex 405).

<sup>&</sup>lt;sup>86</sup> MU, para. 446.

witness statements, video footage and other evidence, the court found the above-mentioned activists to have committed the offence of participation in a mass gathering leading to public nuisance under Article 20.2.2(1) of the Code of Administrative Offences of the Russian Federation and convicted them to five days of administrative arrest. It found in particular that the individuals in question disrupted public order, impeded the movement of civilians and prevented law enforcement officials from performing their duties, while also disobeying the latter's legitimate orders and repeatedly ignoring their warnings.<sup>87</sup> Again, these cases have nothing to do with CERD and racial discrimination.

# 5. Home Searches in January 2018

46. As a *fifth* assertion, Ukraine alleges that "all nine house searches conducted in Crimea in the month of January 2018 were of houses of Crimean Tatars".<sup>88</sup> Ukraine's point of reference in this regard is a slideshow authored by a so-called "Crimean Tatar Resource Center".<sup>89</sup>

47. There are a number of circumstances undermining the reliability of this "data set". Mr Bariiev himself is acting "Head of the Board" of the Center. The Center receives substantial funding from the United States Embassy to Ukraine and it openly supports Ukraine's territorial

<sup>87</sup> Kievskiy District Court of Simferopol, Case No. 5-483/2017, Decision, 21 February 2017 (Annex 310), Supreme Court of the Republic of Crimea, Case No. 12-504/2017, Decision, 2 March 2017 (Annex 323); Kievskiy District Court of Simferopol, Case No. 5-484/2017, Decision, 21 February 2017 (Annex 311), Supreme Court of the Republic of Crimea, Case No. 12-508/2017, Decision, 2 March 2017 (Annex 324); Kievskiy District Court of Simferopol, Case No. 5-489/2017, Decision, 21 February 2017 (Annex 312), Supreme Court of the Republic of Crimea, Case No. 12-513/2017, Decision, 2 March 2017 (Annex 325); Kievskiy District Court of Simferopol, Case No. 5-488/2017, Decision, 21 February 2017 (Annex 313) Kievskiy District Court of Simferopol, Case No. 5-488/2017, Ruling on correcting a typo, 21 February 2017 (Annex 314) Supreme Court of the Republic of Crimea, Case No. 12-506/2017, Decision, 2 March 2017 (Annex 326); Kievskiy District Court of Simferopol, Case No. 5-487/2017, Decision, 21 February 2017 (Annex 315), Supreme Court of the Republic of Crimea, Case No. 12-511/2017, Decision, 2 March 2017 (Annex 327); Kievskiy District Court of Simferopol, Case No. 5-485/2017, Decision, 21 February 2017 (Annex 316), Supreme Court of the Republic of Crimea, Case No. 12-509/2017, Decision, 2 March 2017 (Annex 328); Kievskiy District Court of Simferopol, Case No. 5-480/2017, Decision, 21 February 2017 (Annex 317), Supreme Court of the Republic of Crimea, Case No. 12-503/2017, Decision, 2 March 2017 (Annex 329); Kievskiy District Court of Simferopol, Case No. 5-482/2017, Decision, 21 February 2017 (Annex 318), Supreme Court of the Russian Federation, Case No. 12-569/2017, Decision, 25 April 2017 (Annex 332); Kievskiy District Court of Simferopol, Case No. 5-481/2017, Decision, 21 February 2017 (Annex 319), Supreme Court of the Republic of Crimea, Case No. 12-570/2017, Decision, 6 April 2017 (Annex 331) and Kievskiy District Court of Simferopol, Case No. 5-486/2017, Decision, 21 February 2017 (Annex 320), Supreme Court of the Republic of Crimea, Case No. 12-512/2017, Decision, 2 March 2017 (Annex 330). All the accused were sentenced each to 5 days of administrative arrest. The appeals lodged were dismissed.

<sup>&</sup>lt;sup>88</sup> MU, para. 446. This assertion is logically unrelated to the rest of the paragraph that contains it, which confirms the erratic character of Ukraine's narrative.

<sup>&</sup>lt;sup>89</sup> MU, para. 446, referring to Crimean Tatar Resource Center, Analysis of Human Rights Violations in the Occupied Crimea over January 2018 (presentation), 15 February 2018 (Annex 971 to MU), p. 5 of the pdf file.

claims against the Russian Federation.<sup>90</sup> For all intents and purposes, the publications of this organization must be considered with extreme caution.

48. In any event, the Russian Federation has applied its best efforts to ascertain the circumstances of the searches that took place in January 2018. The Center's "report" appears to refer to searches that have affected Mr Girai Kulametov, Mr Kemal Saityaev, Mr Enver Krosh and Mr Ebazer Islyamov.<sup>91</sup> These proceedings concerned, yet again, investigations into *Hizb ut-Tahrir*'s activities. *All* of the above individuals were eventually found guilty and convicted for the dissemination of the symbols of *Hizb ut-Tahrir* or other extremist materials.<sup>92</sup> Searches were conducted at their homes on account of a reasonable suspicion of their involvement in public incitement to terrorist activity, incitement of hatred and enmity against other people, as well as participation in the activity of a terrorist organization, acts that are regarded as crimes under Articles 205.2, 205.5 and 282 of the Criminal Code of the Russian Federation.<sup>93</sup> In particular, every search was duly authorized by the court in order to verify the investigative authorities' reasonable suspicions of involvement of Messrs Kulametov, Saityaev, Krosh and Islyamov in such criminal conduct.

#### 6. Home Searches and Arrests of 2 October 2017

49. *Sixth*, Ukraine refers to the house search and arrest of four Crimean Tatars on 2 October 2017 for engaging into extremist activities, being suspected members of *Tablighi Jamaat*,<sup>94</sup> a radical Muslim organization that was declared extremist and banned by the Supreme Court of the Russian Federation in 2009.<sup>95</sup> On 2 October 2017, searches were conducted at the premises of four individuals, where a substantial amount of extremist literature was found.<sup>96</sup> The suspects were

<sup>90</sup>CrimeanTatarResourceCenter,Annualreport,2019,https://ctrcenter.org/uploadfiles/Annual%20report2019.pdf?fs=41108c6d6f116f4b894e92448fa77c98, p. 4-6, 28.

<sup>&</sup>lt;sup>91</sup> MU, para. 446, referring to Crimean Tatar Resource Center, Analysis of Human Rights Violations in the Occupied Crimea over January 2018 (presentation), 15 February 2018 (Annex 971 to MU), p. 5 of the pdf file.

<sup>&</sup>lt;sup>92</sup> Kirovskoe District Court of the Republic of Crimea, Case No. 5-11/18, Decision, 18 January 2018 (Annex 389); Nizhnegorskiy District Court of the Republic of Crimea, Case No. 5-12/2018, Decision, 25 January 2018 (Annex 392); Supreme Court of the Republic of Crimea, Case No. 12-217/2018, Decision, 20 March 2018 (Annex 397); Dzhankoyskiy District Court of the Republic of Crimea, Case No. 5-49/2018, Decision, 25 January 2018 (Annex 393); Supreme Court of the Republic of Crimea, Case No. 12-202/2018, Decision, 31 January 2018 (Annex 394); Belogorsk District Court of the Republic of Crimea, Case No. 5-32/2018, Decision, 18 January 2018 (Annex 390).

<sup>&</sup>lt;sup>93</sup> Kievskiy District Court of Simferopol, Resolution No. 735, 16 January 2018 (Annex 385) (authorizing Mr Kulametov's house search); Kievskiy District Court of Simferopol, Resolution No. 736, 16 January 2018 (Annex 387) (authorizing Mr Saityaev's house search); Kievskiy District Court of Simferopol, Resolution No. 738, 16 January 2018 (Annex 386) (authorizing Mr Krosh's house search) and Kievskiy District Court of Simferopol, Resolution No. 739, 16 January 2018 (Annex 388) (authorizing Mr Islyamov's house search).

<sup>&</sup>lt;sup>94</sup> MU, para. 447, relying on OHCHR, Report on the Human Rights Situation in Ukraine (16 August - 15 November 2017) (Annex 776 to MU), para. 136 and footnote 218.

<sup>&</sup>lt;sup>95</sup> See para. 19 above.

<sup>&</sup>lt;sup>96</sup> Supreme Court of the Republic of Crimea, Case No. 1-1/2019, Decision, 22 January 2019 (Annex 407), which provides a summary of the offences committed by the individuals in question; Norilsk City Court of the Krasnoyarsk

subsequently found to have held meetings of their cell, disseminated extremist materials and encouraged people to join Tablighi Jamaat and were convicted based on Article 282.2 of the Criminal Code of the Russian Federation.<sup>97</sup> In the course of the proceedings, three out of four accused pleaded guilty and confessed that they were aware of the restrictions and prohibitions, proceeding with their activities regardless, whereas one of the accused made a partial admission.<sup>98</sup> Most importantly for the present purposes, similar proceedings concerning Tablighi Jamaat have been conducted broadly in the same period in other regions of the Russian Federation that are not characterized as being inhabited by Crimean Tatars.<sup>99</sup> This circumstance contradicts any suggestion that these measures would have been targeted at Crimean Tatars as an ethnic group. Instead of racial discrimination or a pretextual motive, this episode points once again to legitimate and lawful basis for the measures carried out by the law enforcement authorities, as explained previously.<sup>100</sup>

Krai, Case No. 2-3545/2014, Decision, 29 December 2014 (Annex 206) (on the recognition of "The Values of Ramazan" as an extremist literature); Abakan City Court of the Republic of Khakassia, Case. No. 2-3563/2009, Decision, 11 August 2009 (Annex 129) (on the recognition of "The Values of Tablighi" as an extremist literature); Pervouralsk City Court of the Sverdlovsk Region, Case No. A-235(2-259)2015, Decision, 16 February 2015 (Annex 217) (on the recognition of "The Values of Zikr" as an extremist literature); Kurgan City Court of the Kurgan Region, Case No. 2-3782/15, Decision, 6 April 2015 (Annex 225) (on the recognition of "The Fortress of the Muslim. From the words of remembrance of Allah, found in the Qur'an and Sunnah" as an extremist literature); Buguruslan City Court of the Orenburg Region, Case. No. 554/07g, Decision, 6 August 2007 (Annex 122) (on the recognition of "The Fundamentals of the Islam" as an extremist literature); Petukhovsky District Court of the Kurgan Region, Case No. 2-625/2014, Decision, 16 December 2014 (Annex 203) (on the recognition of "Abu Bakar As-Siddiq. The first righteous Caliph" as an extremist literature); Uspenskiy District Court of the Krasnodar Krai, Case No. 2-161/2009, Decision, 4 August 2009 (Annex 128) (on the recognition of "The Personality of the Muslim as Defined in Islam through Qur'an and Sunnah" as an extremist literature); Kievskiy District Court of Simferopol, Case No. 2-1201/2016, Decision, 9 February 2016 (Annex 267) (on the recognition of "The beliefs of the four imams" as an extremist literature); Sovetskiy District Court of Ulan-Ude, Case No. 2-3635/16, Decision, 22 August 2016 (Annex 295) (on the recognition of "The Fortress of the Muslim. Prayers to Allah. Treatment with spells, found in the Qur'an and Sunnah" as an extremist literature); Ussuriysk District Court of the Primorskiy Krai, Case. No. 2-5588/2014, Decision, 31 July 2014 (Annex 165) (on the recognition of "Call", "Three fundamentals", "Islam is the reality", "Muhammad in the Bible", "The Pearl of faith" as an extremist literature); Kotelnich District Court of the Kirov Region, Case No. 2-396/2015, Decision, 16 April 2015 (Annex 227) (on the recognition of "Interpretation of the beautiful names of Allah in the light of the Qur'an and Sunnah", "The Boundary of the prayer" as an extremist literature); Kirovskiy District Court of Ufa of the Republic of Bashkortostan, Case No. 2-900/2017, Decision, 1 February 2017 (Annex 308) (on the recognition of "The Selected Hadiths" as an extremist literature); Sol-Iletsk District Court of the Orenburg Region, Decision, 20 April 2010 (Annex 130) (on the recognition of "The Virtues of Salaat" and "Faza'il-e-Amal" as an extremist literature).

97 Supreme Court of the Republic of Crimea, Case No. 1-1/2019, Decision, 22 January 2019 (Annex 407), which provides a summary of the offences committed by Messrs Suleymanov, Abdurakhmanov, Kurbedinov, and Mustafaev. 98

Ibid.

<sup>99</sup> Zheleznodorozhniy District Court of Barnaul of the Altai Krai, Case No. 1-112/2018, Decision, 21 February 2018 (Annex 396); Zheleznodorozhny District Court of Barnaul, Case No. 1-242/16, Decision, 26 July 2017 (Annex 336); Chekmagush Interdistrict Court of the Republic of Bashkortostan, Case No. 1-3/2017, Decision, 30 June 2017 (Annex 334).

<sup>100</sup> See paras. 19 and 21 above.

#### 7. Home Searches and Detentions of 11 October 2017

50. Lastly, Ukraine presents an equally misleading account of home searches and detentions which allegedly took place on 11 October 2017, and that are suggested to be arbitrary or pretextual.<sup>101</sup> Ukraine refers to the "arrest of six Crimean Tatar men" and proceedings concerning certain activists. This represents another example of proceedings concerning suspected activities in relation to Hizb ut-Tahrir. A number of individuals were detained as part of a criminal investigation that had been opened on 9 October 2017.<sup>102</sup> They were suspected of having organized a terrorist cell linked to Hizb ut-Tahrir in Bakhchisaray. Individuals implicated in the underlying offences were found to have taken part in conspiracy gatherings, during which they studied the ideology of this terrorist organization, developed and adjusted further plans, goals and objectives of cell's activity in the region and induced citizens to take part in this terrorist organization's activity.<sup>103</sup> It is clear from the court decisions that the above finding was based on the assessment of extensive factual evidence, including expert findings, and thus rested on legitimate and lawful grounds.<sup>104</sup> All this suggests that the detentions were well-founded, justified, and relied on prior elements of information. Beyond the speculative assertion that the above measure would point to a "pretext for discrimination",<sup>105</sup> Ukraine remains silent on the findings of Russian courts.

51. As for the other activists, whose administrative prosecution Ukraine mentions,<sup>106</sup> it is important to point out that they were charged before the court with participation in a mass gathering that lead to public nuisance, an offence prohibited in Russia and punishable by up to 15 days'

<sup>106</sup> MU, para. 448.

<sup>&</sup>lt;sup>101</sup> MU, para. 448, relying on OHCHR, Report on the Human Rights Situation in Ukraine (16 August - 15 November 2017) (Annex 776 to MU), para. 137.

<sup>&</sup>lt;sup>102</sup> Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, Case No. 11707350001427055, Record of detention, 11 October 2017 (Annex 352); Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, Case No. 11707350001427055, Record of detention, 11 October 2017 (Annex 353); Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, Case No. 11707350001427055, Record of detention, 11 October 2017 (Annex 353); Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, Case No. 11707350001427055, Record of detention, 11 October 2017 (Annex 354); Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, Case No. 11707350001427055, Record of detention, 11 October 2017 (Annex 354); Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, Case No. 11707350001427055, Record of detention, 11 October 2017 (Annex 355); Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, Case No. 11707350001427055, Record of detention, 11 October 2017 (Annex 355); Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, Case No. 11707350001427055, Record of detention, 11 October 2017 (Annex 355); Investigative Department of the Federal Security Service Directorate of Russia for the Republic of Crimea and the City of Sevastopol, Case No. 11707350001427055, Record of detention, 11 October 2017 (Annex 356).

<sup>&</sup>lt;sup>103</sup> Kievskiy District Court of Simferopol, Case No. 3/1-274/2017, Ruling, 12 October 2017 (Annex 365); Kievskiy District Court of Simferopol, Case No. 3/1-271/2017, Ruling, 12 October 2017 (Annex 366), Kievskiy District Court of Simferopol, Case No. 3/1-273/2017, Ruling, 12 October 2017 (Annex 367); Kievskiy District Court of Simferopol, Case No. 3/1-275/2017, Ruling, 12 October 2017 (Annex 368) and Kievskiy District Court of Simferopol, Case No. 3/1-272/2017, Ruling, 12 October 2017 (Annex 369), p. 2.

<sup>&</sup>lt;sup>104</sup> Kievskiy District Court of Simferopol, Case No. 3/1-274/2017, Ruling, 12 October 2017 (Annex 365); Kievskiy District Court of Simferopol, Case No. 3/1-271/2017, Ruling, 12 October 2017 (Annex 366); Kievskiy District Court of Simferopol, Case No. 3/1-273/2017, Ruling, 12 October 2017 (Annex 367); Kievskiy District Court of Simferopol, Case No. 3/1-275/2017, Ruling, 12 October 2017 (Annex 368); Kievskiy District Court of Simferopol, Case No. 3/1-272/2017, Ruling, 12 October 2017 (Annex 368); Kievskiy District Court of Simferopol, Case No. 3/1-272/2017, Ruling, 12 October 2017 (Annex 368); Kievskiy District Court of Simferopol, Case No. 3/1-272/2017, Ruling, 12 October 2017 (Annex 368); Kievskiy District Court of Simferopol, Case No. 3/1-272/2017, Ruling, 12 October 2017 (Annex 369); Kievskiy District Court of Simferopol, Case No. 3/1-272/2017, Ruling, 12 October 2017 (Annex 369); Kievskiy District Court of Simferopol, Case No. 3/1-272/2017, Ruling, 12 October 2017 (Annex 369); Kievskiy District Court of Simferopol, Case No. 3/1-272/2017, Ruling, 12 October 2017 (Annex 369); Kievskiy District Court of Simferopol, Case No. 3/1-272/2017, Ruling, 12 October 2017 (Annex 369); p. 2.

<sup>&</sup>lt;sup>105</sup> MU, para. 449.

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administrative arrest under Article 20.2.2(1) of the Code of Administrative Offences of the Russian Federation.<sup>107</sup> On the basis of the factual circumstances of the case, witness statements, video footage and other evidence, the court found the above-mentioned activists liable of the aforementioned offence and imposed fines because, contrary to Ukraine's assertion, it was satisfied that the implicated individuals disrupted public order, impeded the movement of civilians and prevented law enforcement officials from doing their work.<sup>108</sup>

### B. ALLEGED RAIDS IN PUBLIC SPACES TARGETING CRIMEAN TATARS

52. Lawful grounds and legitimate reasons also explain the second set of law-enforcement measures that Ukraine portrays – on the basis of nothing more than second-hand, untested information – as alleged "raids in public spaces targeting Crimean Tatars".<sup>109</sup> Here again, the record shows that these allegations have nothing to do with racial discrimination.

### 1. Measures at the Café "Bagdad", Pionerskoe, 1 April 2016

53. Ukraine contends: "On 1 April 2016, for example, a group of armed and masked individuals entered a café in the village of Pionerske (Simferopol district) and began destroying furniture, allegedly in search of drugs. In connection with this search, dozens of Crimean Tatars were detained at the Simferopol police's Centre for Countering Extremism, where they were interrogated,

<sup>&</sup>lt;sup>107</sup> Code on Administrative Offences of the Russian Federation, No. 195-FZ, 30 December 2001 (Annex 41), Article 20.2.2(1).

<sup>108</sup> Bakhchisaray District Court of the Republic of Crimea, Case No. 5-354/2017, Decision, 11 October 2017 (Annex 357), Supreme Court of the Republic of Crimea, Case No. 12-1243/2017, Decision, 27 October 2017 (Annex 372); Bakhchisaray District Court of the Republic of Crimea, Case No. 5-356/2017, Decision, 11 October 2017 (Annex 358), Supreme Court of the Republic of Crimea, Case No. 12-1240/2017, Decision, 7 November 2017 (Annex 378); Bakhchisaray District Court of the Republic of Crimea, Case No. 5-362/2017, Decision, 11 October 2017 (Annex 359), Supreme Court of the Republic of Crimea, Case No. 12-1247/2017, Decision, 7 November 2017 (Annex 379); Bakhchisaray District Court of the Republic of Crimea, Case No. 5-357/2017, Decision, 12 October 2017 (Annex 370), Supreme Court of the Republic of Crimea, Case No. 12-1242/2017, Decision, 1 November 2017 (Annex 375); Bakhchisaray District Court of the Republic of Crimea, Case No. 5-361/2017, Decision, 11 October 2017 (Annex 360), Supreme Court of the Republic of Crimea, Case No. 12-1245/2017, Decision, 1 November 2017 (Annex 376); Bakhchisaray District Court of the Republic of Crimea, Case No. 5-359/2017, Decision, 11 October 2017 (Annex 361), Supreme Court of the Republic of Crimea, Case No. 12-1241/2017, Decision, 27 October 2017 (Annex 373); Bakhchisaray District Court of the Republic of Crimea, Case No. 5-355/2017, Decision, 11 October 2017 (Annex 362), Supreme Court of the Republic of Crimea, Case No. 12-1246/2017, Decision, 27 October 2017 (Annex 374); Bakhchisaray District Court of the Republic of Crimea, Case No. 5-358/2017, Decision, 11 October 2017 (Annex 363), Supreme Court of the Republic of Crimea, Case No. 12-1239/2017, Decision, 1 November 2017 (Annex 377) and Bakhchisaray District Court of the Republic of Crimea, Case No. 5-360/2017, Decision, 11 October 2017 (Annex 364), Supreme Court of the Republic of Crimea, Case No. 12-1244/2017, Decision, 7 November 2017 (Annex 380).

<sup>&</sup>lt;sup>109</sup> MU, para. 450-454.

photographed, and required to provide DNA samples and fingerprints."<sup>110</sup> It alleges that in this episode like in others, "Crimean Tatars have particularly been targeted".<sup>111</sup>

54. The OHCHR report Ukraine relies on indicates that it was compiled based on work in Kiev and through "contacts".<sup>112</sup> Russia submits that, as a matter of principle and as already made clear,<sup>113</sup> absent further clarification as to the sources of such reports, they lack evidentiary value, and their content in relation to the events in question cannot be relied upon.

55. That being said, even if it was possible to rely on this OHCHR report, it contradicts Ukraine's version of events. The report repeatedly indicates that the real reason and context of the operation is the search for suspects as part of defined preventive operations to combat religious extremism, which Ukraine avoids to mention. In this regard the report states that, during their detention at the Center for Countering Extremism, the suspects were "asked what form of Islam they followed and what mosque they attended. [...] They reported seeing other Muslim men – Chechens, Dagestanis, Azeris – who had previously been detained. [...] Attempts were reportedly made to recruit some as police informants. The Crimean 'prosecutor' declared on 2 April 2016 that actions of a 'preventive' character had been conducted in various night clubs and places of entertainment in the peninsula, stating that the police were looking for people who appeared in various 'wanted' lists."<sup>114</sup> Again, this points to a lawful and legitimate basis for the measures.

56. In fact, the 1 April 2016 operation was part of an ordinary preventive operation, conducted by officers of the Crimean offices of the Ministry of Internal Affairs, the Federal Drug Control Service, and the Federal Migration Service and was aimed in particular at combatting illegal drugs circulation and countering illegal migration.<sup>115</sup> In early 2016, i.e., in the period preceding the measure in question, there had been a noticeable increase in number of registered crimes as

<sup>&</sup>lt;sup>110</sup> MU, para. 450.

<sup>&</sup>lt;sup>111</sup> MU, para. 450.

<sup>&</sup>lt;sup>112</sup> OHCHR, Report on the Human Rights Situation in Ukraine (16 February to 15 May 2016) (Annex 771 to MU), para. 183, para. 8.

<sup>&</sup>lt;sup>113</sup> See Counter-Memorial, Introduction, paras. 14-17.

<sup>&</sup>lt;sup>114</sup> OHCHR, Report on the Human Rights Situation in Ukraine (16 February to 15 May 2016) (Annex 771 to MU), para. 183. The other cited document with respect to this set of measures is unspecific and refers to that contained in Annex 771 to MU: OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017) (Annex 759 to MU), para. 96.

<sup>&</sup>lt;sup>115</sup>*Regnum*, "Poklonskaya refutes reports of Ukrainian media regarding detentions of Crimean Tatars", 2 April 2016 (Annex 952). See also Head of the Department of the Prosecutor's Office of the Republic of Crimea, Reply No. 27-259-2016/On3727-2016, 22 July 2016 (Annex 288), Head of the Department of the Prosecutor's Office of the Republic of Crimea, Reply No. 27-257-2016/On3725-2016, 22 July 2016 (Annex 289) and Head of the Department of the Prosecutor's Office of the Republic of Crimea, Reply to No. 27-258-2016/On3726-2016, 22 July 2016 (Annex 290).

compared to the same period of the previous year,<sup>116</sup> including a large number of crimes related to circulation of illegal drugs. This explains the authorities' focus on preventive operations.

57. The Russian Federation attaches to the present submission explanatory statements of several individuals, who were among allegedly detained persons. These documents confirm that the said individuals were in fact cooperating with the state officials and answered the questions on a voluntary basis, without any sign of coercion.<sup>117</sup> None of them mentioned that during the operation officers would have destroyed furniture or demonstrated any aggressive behaviour – and none of them claimed that they were targeted on an ethnic basis. Generally speaking, individuals affected by such drug prevention operations include Russians, Ukrainians, Crimean Tatars and other ethnic groups.<sup>118</sup> Thus, the ethnic identity of the checked individuals was clearly immaterial to these measures.

## 2. The Operation "Barrier-2015", April 2015

58. Ukraine's second contention on "public raids" alleges the imposition by the Russian Federation of "blockades around towns" as well as searches and "full or random checks" of passing individuals in April 2015, qualifying them as "arbitrary".<sup>119</sup> Ukraine however fails to mention the nature and context of these measures.

59. In fact, in April 2015, the Russian Ministry of Internal Affairs conducted a large-scale strategic *training* exercise under the theme "use of forces in the circumstances of deteriorating operational environment in the regions of the Russian Federation" and entitled "Zaslon-2015" (the "Barrier-2015").<sup>120</sup> No claims or complaints in relation to any actions undertaken by the Russian authorities during the course of the exercise in question have been filed.<sup>121</sup> It is striking that Ukraine omits to mention such an essential fact.

<sup>&</sup>lt;sup>116</sup> Ministry of Internal Affairs for the Republic of Crimea official website, Information on criminal environment in Crimea for the period from January to March 2016 (Annex 465) showing an increase in number of registered crimes and reflecting a large number of crimes related to illegal drugs circulation.

<sup>&</sup>lt;sup>117</sup> Explanation, 13 July 2016 (Annex 284), Explanation, 14 July 2016 (Annex 285), Explanation, 14 July 2016 (Annex 286) (describing circumstances of the MIA's preventive operation in café "Bagdad" on 1 April 2016 and the consequent questioning).

<sup>&</sup>lt;sup>118</sup> *Regnum*, "Poklonskaya refutes reports of Ukrainian media regarding detentions of Crimean Tatars", 2 April 2016 (Annex 952).

<sup>&</sup>lt;sup>119</sup> MU, para. 451.

<sup>&</sup>lt;sup>120</sup> Ministry of Internal Affairs of the Russian Federation official website, "The internal troops of the Russian Ministry of Internal Affairs began the operational-strategic exercise 'Zaslon-2015' the day before", 3 April 2015 (Annex 457).

<sup>&</sup>lt;sup>121</sup> Ministry of Internal Affairs for the Republic of Crimea, Letter No. 24/3549 to the Head of the Directorate of the Prosecutor's Office of the Republic of Crimea, 30 July 2018 (Annex 604) to the Crimean Prosecutor's Office; Prosecutor's Office of the Republic of Crimea, Letter No. Isorg 15/3-7209-2015 to Mr Fedotov, Adviser to the President of the Russian Federation, Chairman of the Presidential Council for Civil Society and Human Rights, 28 August 2015 (Annex 556) to the Presidential Council for the Development of Civil Society and Human Rights.

60. As the Ministry of Internal Affairs explained, this exercise was carried out by its internal troops between 2 and 10 April 2015 in at least six federal districts of the Russian Federation, including the then Crimean Federal District.<sup>122</sup> Thus, Crimea was not the only area within the Russian Federation where "Barrier 2015" took place. Therefore, Crimea's inclusion in the exercise was obviously not governed by any discriminatory intent or systematic campaign of discrimination towards the Crimean Tatar community, and it is absurd for Ukraine to portray this nationwide training exercise as an operation "targeting Crimean Tatars".<sup>123</sup>

61. Ukraine contends that Crimean Tatars have been particularly targeted during random inspections as part of this exercise.<sup>124</sup> Ukraine however indicates that "*Slavic-looking people* needed only to show government-issued IDs" and "Crimean Tatars with the same documentation were *in many cases* accompanied to their homes, where authorities conducted searches".<sup>125</sup> "Slavic-looking" is a dubious and subjective criterion, to say the least, when differentiating between Crimean Tatars and the rest of the Crimean population.<sup>126</sup>

62. Further, Ukraine does not substantiate its allegation that all Slavic-looking persons were more lightly treated. Moreover, Ukraine is silent on the overall number of checks relied on to make these assertions, the criteria followed by the police in carrying out its exercise, whether other, objective factors could explain the checks allegedly performed, etc.

63. Besides, the Crimean Prosecutor confirmed being unaware of any acts targeting citizens based on their ethnic identity, and that no claims or complaints in relation to any actions undertaken by the Russian authorities during the course of the exercise in question have been filed.<sup>127</sup> Therefore, the "Barrier 2015" operational strategic exercise obviously did not constitute discriminatory treatment, not to mention a systematic campaign of racial discrimination.

<sup>&</sup>lt;sup>122</sup> Ministry of Internal Affairs of the Russian Federation official website, "The internal troops of the Russian Ministry of Internal Affairs began the operational-strategic exercise 'Zaslon-2015' the day before", 3 April 2015 (Annex 457); *TASS*, "Exercises of Russian internal troops commence in six federal districts, including Crimea", 2 April 2015 (Annex 919). Established in 2014, the Crimean Federal District was abolished in 2016 and Crimea was incorporated into the Southern Federal District.

<sup>&</sup>lt;sup>123</sup> MU, p. 263, title of section 2.

<sup>&</sup>lt;sup>124</sup> MU, para. 452.

<sup>&</sup>lt;sup>125</sup> MU, para. 452 (emphasis added).

<sup>&</sup>lt;sup>126</sup> Expert Report of Dmitry Anatolievich Funk, Roman Alexandrovich Starchenko, Valery Vladimirovich Stepanov and Sergey Valeryevich Sokolovsky (Annex 21), Addendum 1.

<sup>&</sup>lt;sup>127</sup> Ministry of Internal Affairs for the Republic of Crimea, Letter No. 24/3549 to the Head of the Directorate of the Prosecutor's Office of the Republic of Crimea, 30 July 2018 (Annex 604), to the Crimean Prosecutor's Office; Prosecutor's Office of the Republic of Crimea, Letter No. Isorg 15/3-7209-2015 to Mr Fedotov, Adviser to the President of the Russian Federation, Chairman of the Presidential Council for Civil Society and Human Rights, 28 August 2015 (Annex 556), to the Presidential Council for the Development of Civil Society and Human Rights.

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#### 3. Episode of 23 November 2017

64. The third specific instance of alleged "public raids" mentioned by Ukraine took place on 23 November 2017 at a café in Simferopol.<sup>128</sup> Again, Ukraine omits to mention the larger factual context of this episode, including the legitimate reasons for the operation of the law enforcement authorities. One of the materials produced by Ukraine points to circumstances that Ukraine omits from its narrative, namely that "Crimean Tatar activist Nariman Dzhelalov told RFE/RL that the Turkish citizen had duped Kashka out of a large amount of money, and that the detained men were trying to convince him to return the sum".<sup>129</sup> The term "convince" does not properly depict the reality of the four detained men's behaviour. Indeed, the law-enforcement operation that was carried out that day aimed at establishing facts as part of a criminal investigation into extortion of money from Mr Aitan in the amount of USD 7,000.<sup>130</sup> In particular, the point was to officially trace the fact of the money transfer and to confirm the identification of those persons involved in the misconduct forming the subject of the investigation. As a result, Messrs Ametov, Degermendji, Trubach and Chapukh were detained in accordance with Russian laws and eventually found guilty.<sup>131</sup> The existence of a financial dispute between Ms Kashka and Mr Aitan is attested by further court proceedings between Mr Aitan and Ms Kashka's heir.<sup>132</sup>

65. In any event, whatever their causes, there was a legitimate and lawful ground for the measures taken, as part of a regular law enforcement procedure under Russian law and as part of a criminal investigation, as opposed to a "raid" targeting persons on ethnic grounds. To recall, the law enforcement authorities have the duty to investigate into any event or complaint that raises suspicions of criminal activities.

66. In relation to the regrettable passing of Ms Vedzhie Kashka shortly after the above operation, contrary to Ukraine's misleading insinuation, the cause of Ms Kashka's death was an ischemic heart disease and it was found to be unrelated to the law-enforcement operation at the

<sup>&</sup>lt;sup>128</sup> MU, para. 454.

<sup>&</sup>lt;sup>129</sup> *RFE/RL*, "Veteran Crimean Tatar Activist Dies As Associates Detained By Russia", 23 November 2017 (Annex 1071 to MU), p. 2.

<sup>&</sup>lt;sup>130</sup> Investigator of the Investigative Unit of the Investigative Directorate of the Ministry of Internal Affairs for the Republic of Crimea, Record of detention, 23 November 2017 (Annex 381); Investigator of the Investigative Unit of the Investigative Directorate of the Ministry of Internal Affairs for the Republic of Crimea, Record of detention, 23 November 2017 (Annex 382); Investigator of the Investigative Unit of the Investigative Directorate of the Ministry of Internal Affairs for the Republic of Crimea, Record of detention, 23 November 2017 (Annex 382); Investigator of the Investigative Unit of the Investigative Of Crimea, Record of detention, 23 November 2017 (Annex 383); Investigator of the Investigative Unit of the Investigative Unit of the Investigative Of Crimea, Record of detention, 23 November 2017 (Annex 383); Investigator of the Investigative Unit of the Investigative Of Crimea, Record of detention, 23 November 2017 (Annex 383); Investigator of the Investigative Unit of the Investigative Of Crimea, Record of detention, 23 November 2017 (Annex 383); Investigator of the Investigative Of Crimea, Record of detention, 23 November 2017 (Annex 383); Investigator of the Investigative Of Crimea, Record of detention, 23 November 2017 (Annex 384).

<sup>&</sup>lt;sup>131</sup> Kievskiy District Court of Simferopol, Decision (operative part), 17 April 2019 (Annex 410).

<sup>&</sup>lt;sup>132</sup> Kievskiy District Court of Simferopol, Decision (operative part), 17 April 2019 (Annex 410); Simferopol District Court of the Republic of Crimea, Case No. 2-1123/2019, Ruling, 23 May 2019 (Annex 411) (on reversal of the decision rendered in absence of the defendant); Yu. Aitan, Case No. 2-1123/2019, Counter-claim, 18 June 2019 (Annex 413); Simferopolskiy District Court of the Republic of Crimea, Case No. 2-1941/2019, Ruling, 24 September 2019 (Annex 415) (pausing the civil proceedings).

café.<sup>133</sup> In fact it was with the *help* of Russia's authorities that an ambulance was called to her as she felt unwell, even though this could not ultimately save her life.<sup>134</sup> To be sure, the Russian Federation deeply regrets Ms Kashka's tragic passing. However, this regrettable incident and the context in which it occurred do not point to racial discrimination. The ethnic identity of the suspects are immaterial to Ukraine's claim; the fact that the FSB had grounds to suspect their involvement in a criminal conduct at the time of the intervention is dispositive for explaining the operation, which thus does not reflect any arbitrary or pretextual targeting attesting to racial discrimination.

#### 4. The Case of Mr Velilyaev and Mr Bariev

67. The last allegation cited by Ukraine as an example of "pervasive pattern of searches" is a law-enforcement measure taken in relation to a major food distributor in Crimea in relation to sanitary issues.<sup>135</sup> Ukraine asserts that: "On 26 April 2018, the Russian occupation authorities carried out a series of armed searches at the homes and businesses of Crimean Tatars, and detained prominent members of the Crimean Tatar community, on the absurd pretext that they possessed food products that were beyond their sell-by dates."<sup>136</sup> Ukraine's presentation is again clearly misleading. Actually, the very materials Ukraine refers to provide elements that discredit Ukraine's characterization of this episode as reflecting a policy of racial discrimination, or a specific intent at targeting Crimean Tatars.<sup>137</sup> In fact Ukraine's allegation relates to one single event that relies on lawful considerations and a legitimate concern for public health, and that is unrelated to discriminatory considerations or the ethnic identity of the suspects. One of the two articles on which Ukraine relies confirms that Ukraine's claim is based on speculations as it admits having no knowledge of the precise specifics of the case: "[t]he motives remain unclear."<sup>138</sup>

<sup>&</sup>lt;sup>133</sup> Senior investigator of the Investigative Department for the Kievskiy District of Simferopol of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Resolution on the refusal to initiate a criminal case, 20 April 2018 (Annex 398) (upon Ms Kashka's death describing the measures that were taken to establish the circumstances and the reasons of her death).

<sup>&</sup>lt;sup>134</sup> Senior investigator of the Investigative Department for the Kievskiy District of Simferopol of the Main Investigative Directorate of the Investigative Committee of the Russian Federation for the Republic of Crimea, Resolution on the refusal to initiate a criminal case, 20 April 2018 (Annex 398) (upon Ms Kashka's death describing the measures that were taken to establish the circumstances and the reasons of her death).

<sup>&</sup>lt;sup>135</sup> MU, para. 454.

<sup>&</sup>lt;sup>136</sup> MU, para. 454.

<sup>&</sup>lt;sup>137</sup> Kharkiv Human Rights Protection Group, "Crimean Tatar Businessman & Philanthropist Seized and New FSB Offensive in Russian-Occupied Crimea", 3 May 2018 (Annex 973 to MU); Unrepresented Nations and Peoples Organization, "Crimean Tatars: Russian Repression Continues with Arrest of Crimean Businessman", 8 May 2018 (Annex 974 to MU).

<sup>&</sup>lt;sup>138</sup> *Kharkiv Human Rights Protection Group*, "Crimean Tatar Businessman & Philanthropist Seized and New FSB Offensive in Russian-Occupied Crimea", 3 May 2018 (Annex 973 to MU).

#### Appendix B

The law enforcement measures at stake were taken as part of a criminal case initiated on 25 68. April 2018.<sup>139</sup> Mr Resul Velilyaev at that time was the owner of the company KrymOpt, the leading food wholesaler in Crimea since the 1990's, and the indirect owner of the retail network named Guzel, which consisted of over thirty stores across the peninsula. His business partner, Mr Ali Bariev, at that time was the director of KrymOpt. On 26 April 2018, both of them were detained.<sup>140</sup> They and employees of the business were charged for storage and sale of food products beyond their sell-by dates - spoilt products - under Article 238(2) of the Criminal Code of the Russian Federation. Thus the measures were obviously based on lawful and legitimate grounds. Moreover, the important size and position of Mr Velilyaev's KrymOpt/Guzel supply network, being allegedly a leading local supplier in Crimea with more than 6,000 customers,<sup>141</sup> amply justified the decision to investigate the matter as well as the handling of the case by the law enforcement authorities on the indicated legal basis due to the obvious serious risk for public health that would pose the sale of spoilt food to the population of the peninsula at large. Poisoning a population through a large food supply network is a serious crime and sanitary issue, and the authorities have an obvious duty to investigate any allegations or suspicions thereof.

In the course of the investigation, both Mr Velilyaev and Mr Bariev fully admitted their 69. guilt.<sup>142</sup> Mr Resul Velilyaev, Mr Ali Bariev and employees of KrymOpt were found guilty of the charges raised against them by decision of the Belogorskiy District Court of the Republic of Crimea on 26 March 2020.<sup>143</sup> The court took due account of mitigating circumstances, such as admission of guilt, infant children and active assistance to the investigation of the crime when deciding the sentence.<sup>144</sup> Both Mr Velilyaev and Mr Bariev were released upon delivery of the judgment as their sentence had been fully served during pre-trial detention.

<sup>139</sup> Senior Investigator of the Directorate for Investigation of crimes related to the use of prohibited means and methods of war, the Main Investigative Directorate of the Investigative Committee of the Russian Federation, Resolution on initiation of a criminal case No. 11802007703000117, 25 April 2018 (Annex 399).

<sup>140</sup> Senior Investigator of the Directorate for investigation of crimes related to the use of prohibited means and methods of warfare, the Main Investigative Directorate of the Investigative Committee of the Russian Federation, Record of detention of Mr. Velilyaev, 26 April 2018 (Annex 400), (describing the scope of the charges); Senior Investigator of the Directorate for investigation of crimes related to the use of prohibited means and methods of warfare, the Main Investigative Directorate of the Investigative Committee of the Russian Federation, Record of detention of Mr. Bariev, 26 April 2018 (Annex 401) (describing the scope of the charges).

<sup>141</sup> Kharkiv Human Rights Protection Group, "Crimean Tatar Businessman & Philanthropist Seized and New FSB Offensive in Russian-Occupied Crimea", 3 May 2018 (Annex 973 to MU).

<sup>142</sup> Senior Investigator of the Directorate for investigation of crimes related to the use of prohibited means and methods of warfare, the Main Investigative Directorate of the Investigative Committee of the Russian Federation, Record of interrogation of Mr. Bariev, 21 March 2019 (Annex 408); Senior Investigator of the Directorate for investigation of crimes related to the use of prohibited means and methods of warfare, the Main Investigative Directorate of the Investigative Committee of the Russian Federation, Record of interrogation of Mr. Velilyaev, 21 March 2019 (Annex 409).

<sup>143</sup> Belogorsk District Court of the Republic of Crimea, Case No. 1-53/2020, Decision, 26 March 2020 (Annex 421). 144

Ibid.

70. To conclude, the individual law enforcement measure that Ukraine complains of, once put back into their real context, show that there is no plausible case of racial discrimination in relation to these measures. Ukraine's contention that "[b]y carrying out this pervasive pattern of searches, the Russian Federation undermines the Crimean Tatar community's basic sense of safety and belonging in their indigenous homeland"<sup>145</sup> is thus clearly misplaced. Available statistics confirm that there was no significant increase in criminal prosecutions initiated under Article 238 of the Criminal Code since 2014 and that Crimea is not disproportionally concerned by these measures than other parts of Russia.<sup>146</sup> As is also evident from these statistics as well as from the Russian case law,<sup>147</sup> criminal prosecutions initiated under Article 238 of the Criminal Code are far from being unique to Crimea. Actually, Ukraine concedes that the said measures were clearly not taken for racial motives by, for instance, annexing to its Memorial Mr Chubarov's statement expressing the view that the Crimean Tatar activists were detained and charged for "activities related to terrorist and extremist organizations", not for racial motives.<sup>148</sup>

<sup>&</sup>lt;sup>145</sup> MU, para. 454.

<sup>&</sup>lt;sup>146</sup> Judicial Department of the Supreme Court of the Russian Federation, Statistics on consideration of criminal cases under Article 238 of the Criminal Code of the Russian Federation (from 2010 to the first half of 2020) (Annex 493).

<sup>&</sup>lt;sup>147</sup> See, for instance, First General Jurisdiction Court of Cassation, Case No. 77-375/2021 (77-3313/2020), Decision, 3 February 2021 (Annex 431); Third General Jurisdiction Court of Cassation, Case No. 77-671/2021, Decision, 13 April 2021 (Annex 434); Eighth General Jurisdiction Court of Cassation, Case No. 77-874/2020, Decision, 19 May 2020 (Annex 423).

<sup>&</sup>lt;sup>148</sup> Unrepresented Nations and Peoples Organization, "Crimean Tatars: Russian Repression Continues with Arrest of Crimean Businessman", 8 May 2018 (Annex 974 to MU), pp. 1-2. To be sure, Mr Chubarov's characterization of the charges in the case are factually erroneous, as is visible form the record.

### **APPENDIX C**

# NO RACIAL DISCRIMINATION WITH RESPECT TO CITIZENSHIP, LET ALONE A SYSTEMATIC CAMPAIGN THEREOF

1. The present Appendix<sup>1</sup> shows that, contrary to Ukraine's allegations, Russian citizenship law and practice in Crimea is not discriminatory (I) and that Ukraine's individual claims do not evidence any discrimination either, *a fortiori* racial discrimination (II). The relevant legal and factual elements show that Ukraine's related claims under the CERD lack any merits at all.

# I. Russian Citizenship Law and Practice in Crimea Is Not Discriminatory

# A. UKRAINE'S ACCUSATIONS

2. According to Ukraine, "the Law of Admission's provision for permanent residents of Crimea to automatically receive Russian nationality laid a foundation for systematic discrimination against Crimean Tatars and Ukrainians in Crimea."<sup>2</sup>

# B. THE APPLICABLE RUSSIAN LEGAL FRAMEWORK

3. Ukraine provides an incomplete and incorrect picture of the relevant domestic legal framework in the Russian Federation that is relevant in Crimea. It focuses exclusively on – and distorts – the provisions of the Admission Law<sup>3</sup> and the transitional system that in fact enabled residents of Crimea to acquire Russian citizenship quickly and *en masse*, while preserving the possibility to opt out of Russian citizenship.<sup>4</sup>

4. The system of access to citizenship in Crimea that has been put in place pursuant to the Admission Law – the "2014 special regime" – is an *ad hoc* mechanism that was designed to address the change of status of all citizens who live permanently on the peninsula, as an accompanying measure to Crimea's change of status. As such, it was a step the object of which was to promptly bring the permanent population of Crimea to an equal position with the rest of the Russian population. Today the legal framework governing citizenship, including issues of granting, renouncement and dual citizenship, is the same for the Crimean population and in the rest of the Russian Federation (with measures of positive discrimination for previously deported Crimeans or their relatives).

5. Like elsewhere, the possibility for an individual to acquire Russian citizenship under the general regime is subject to a series of requirements making it a rather complex and lengthy

<sup>4</sup> MU, paras. 456-463.

<sup>&</sup>lt;sup>1</sup> See this Counter-Memorial, Chapter VI, paras. 378-389.

<sup>&</sup>lt;sup>2</sup> MU, para. 455.

<sup>&</sup>lt;sup>3</sup> MU, paras. 455-476, *inter alia*; Federal Constitutional Law No. 6-FKZ "On the admission of the Republic of Crimea into the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the federal city of Sevastopol", 21 March 2014 (Annex 61) ("Admission Law").

procedure (the applicant is required to be resident in Russia for at least five consecutive years, have a lawful source of income, renounce his or her foreign citizenship and demonstrate sufficient proficiency in Russian, among others).<sup>5</sup> In the case of the Crimean population, however, the situation was singular. Under the 2014 special regime, Russian citizenship was granted to Crimeans automatically by virtue of two cumulative conditions: their having Ukrainian citizenship or being stateless and their permanently living in Crimea as of 18 March 2014.<sup>6</sup> Such simplified procedure reflected a pragmatic choice in face of the administrative challenge created by a Crimean population of about 2.3 Million suddenly falling within Russia's jurisdiction with the need to integrate it into the Russian system as quickly and smoothly as possible.

6. In this perspective, the simplified transitional regime aimed at avoiding the administratively more burdensome character of the ordinary procedure of applying for Russian citizenship, which would undoubtedly have been the source of challenges and disruptions if applied to the whole Crimean population at once, not to mention that it was manifestly unsuitable for the "new" population of the Russian Federation that had not met the ordinary requirements.<sup>7</sup> The 2014 special regime fully preserved individuals' freedom of choice and each person's preferences, without affecting their foreign citizenship and without any distinction as to ethnicity, race or others.

7. Ukraine takes special grievance with the Admission Law.<sup>8</sup> In reality, that instrument<sup>9</sup> allowed Crimeans to forego various cumbersome requirements including that of renouncing their previous citizenship in order to be admitted into Russian citizenship.<sup>10</sup> Thus, under the key provision of the 2014 scheme (Article 4(1) of the Admission Law),

"Since the admission of the Republic of Crimea to the Russian Federation and the formation of new constituent entities within the Russian Federation, Ukrainian nationals and stateless persons permanently residing in the Republic of Crimea or the federal city of Sevastopol shall be recognized as citizens of the Russian Federation, with the exception of individuals who within one month from that date declare their intention to preserve their other citizenship and (or) that of their minor children or to remain stateless."

8. In effect, those who met the two basic conditions and wished to acquire Russian citizenship did not need to take any steps to express their agreement to become Russian citizens. They only

<sup>&</sup>lt;sup>5</sup> See Federal Law 62-FZ "On citizenship of the Russian Federation" (as amended on 2 November 2013), 31 May 2002 (Annex 43), Article 13.

<sup>&</sup>lt;sup>6</sup> Admission Law (Annex 61), Article 4(1).

<sup>&</sup>lt;sup>7</sup> The ordinary procedure of acquisition of Russian citizenship is also obviously inadequate to the case of Crimea, in particular because it requires the applicant to be resident in the Russian Federation for at least 5 consecutive years since the acquisition of a residence permit: see Federal Law 62-FZ "On citizenship of the Russian Federation" (as amended on 2 November 2013), 31 May 2002 (Annex 43), Article 13. An older version of the law is contained in Annex 875 to UM.

<sup>&</sup>lt;sup>8</sup> MU, paras. 456-463.

<sup>&</sup>lt;sup>9</sup> Admission Law (Annex 61), Article 4.

<sup>&</sup>lt;sup>10</sup> Federal Law 62-FZ "On citizenship of the Russian Federation" (as amended on 2 November 2013), 31 May 2002 (Annex 43), Article 13(1).

would be required to demonstrate the presence of the two requirements (Ukrainian citizenship or statelessness and permanent residence in Crimea on the date of Crimea's accession to the Russian Federation) once they apply for a Russian passport.

9. Those Crimeans who chose to declare that they wish to preserve their Ukrainian citizenship, i.e. to remain Ukrainian citizens solely, or remain stateless, were not losing their right to reside in Crimea. They could obtain permanent residence permit in a simplified manner<sup>11</sup> and did in fact use such option.<sup>12</sup>

10. As for Crimean residents who were not Ukrainian citizens, nor stateless persons, they could continue to reside in Crimea based on Russian permanent residence permits issued in place of analogous Ukrainian documents.<sup>13</sup> For those who did not have such (including Ukrainian citizens without proof of permanent residence in Crimea), permanent or temporary residence permits could be issued according to the general regime.<sup>14</sup>

11. In addition to the above, those Crimeans who opted out of Russian citizenship in 2014 or were not eligible in the first place under the 2014 special regime (for instance, because they were not resident in Crimea at the time), could apply for Russian citizenship any time afterwards in accordance with the general procedure, which was later additionally simplified for those Ukrainians or stateless persons who left the peninsula before 18 March 2014, but were born and permanently resided in the territory of the Republic of Crimea or Sevastopol (as well as their children, spouses and parents), along with Crimean Tatars and other peoples deported from Crimea in Soviet times (as well as their lineal descendants, adopted children and spouses).<sup>15</sup>

12. Ukraine's contention that the Admission Law operated "a deviation from the general Russian practice of recognizing dual citizenship"<sup>16</sup> does not stand for several reasons. While Russian law indeed does not prevent individuals from having two or more citizenships,<sup>17</sup> this was at

<sup>16</sup> MU, para. 457.

<sup>&</sup>lt;sup>11</sup> See below, fn. 109.

<sup>&</sup>lt;sup>12</sup> See below, para. 22.

<sup>&</sup>lt;sup>13</sup> See below, fn. 109.

<sup>&</sup>lt;sup>14</sup> See Federal Law No. 115-FZ "On the legal status of foreign citizens in the Russian Federation" (as amended on 28 December 2013), 25 July 2002 (Annex 47), Articles 6, 6.1, 8.

<sup>&</sup>lt;sup>15</sup> Decree of the President of the Russian Federation No. 187 "On certain categories of foreign citizens and stateless persons entitled to apply for citizenship of the Russian Federation under the simplified procedure", 29 April 2019 (Annex 117), paras. 1(a), 1(b), 1(d). Foreign citizens who had themselves been formerly deported from Crimea or are relatives of formerly deported persons are also exempted from obtaining a temporary residence permit before they can apply for a permanent residence permit (Federal Law No. 115-FZ "On the legal status of foreign citizens in the Russian Federation" (as amended on 24 April 2020), 25 July 2002 (Annex 47), Article 8(2)(8).

<sup>&</sup>lt;sup>17</sup> Constitution of the Russian Federation, 12 December 1993 (Annex 28), Article 62.1; Federal Law 62-FZ "On citizenship of the Russian Federation" (as amended on 2 November 2013), 31 May 2002 (Annex 43), Article 6(1). Under the general rule, unless provided for under an international treaty or federal law, a Russian citizen also having the citizenship of another State is regarded by the Russian Federation as a Russian citizen. There is no such treaty between the Russian Federation and Ukraine. This principle is common in many countries and does not constitute in any way a denial of a citizen's other nationality. The expression "dual citizenship" or "dual nationality" in the present Counter-Memorial is used in its common meaning as referring to the fact of having two citizenships or nationalities, without

the time limited to Russian citizens acquiring a second citizenship; on the other hand, acquisition of the Russian citizenship by way of naturalization used to be in most cases conditioned upon renouncement of any prior nationality.<sup>18</sup> Under the 2014 special regime, Crimeans benefitted from a more liberal regime and were not required to renounce their Ukrainian citizenship as a condition to, or upon receiving Russian citizenship. By way of this regime, Russian citizenship is not called upon to replace Crimeans' previous Ukrainian citizenship, and accepting Russian citizenship did not and could not entail a forced renouncement of one's Ukrainian citizenship.

13. This is evident when looking at Article 4(3) of the Admission Law which confirms that dual citizenship is possible since it is based on this very premise. Article 4(3) provides:

"Restrictions on public and municipal offices, positions in the state and municipal government bodies provided for by the laws of the Russian Federation for citizens of the Russian Federation holding a foreign citizenship or a residence permit or another document confirming the right of a citizen of the Russian Federation to permanently reside in the territory of a foreign state, shall be applicable in the Republic of Crimea and the federal city of Sevastopol upon the expiry of one month since the date of admission of the Republic of Crimea to the Russian Federation and the formation of new constituent entities within the Russian Federation."

The above limitation applies on all parts of the Russian territory and is also standard and quite typical in most countries with respect to the occupation of public office by individuals having a foreign citizenship. This provision would make no sense if Article 4(1) were to be interpreted as excluding dual citizenship for Crimeans.

14. Such understanding has been confirmed by the Constitutional Court of the Russian Federation. Article 4 of the Admission Law is based on Article 5 of the Accession Treaty<sup>19</sup> that it transposes into Russian domestic law. Called upon to examine the constitutionality of the Accession Treaty, the Constitutional Court confirmed that Article 5 did not require Crimeans to renounce the citizenship they had when Crimea acceded to the Russian Federation and that it guarantees the possibility for Crimeans to acquire Russian citizenship should they so desire without having to undertake any specific step. It also confirmed that this approach was in line with the Russian Constitution.<sup>20</sup>

15. Therefore, not only did the Admission Law expressly allow for Crimeans to retain their Ukrainian citizenship, with or without obtaining Russian citizenship; such retention was indeed the

prejudice to its specific use in Russian domestic law in certain circumstances, including in relation to dual citizenship as recognized and organized by an international treaty between the Russian Federation and another State.

<sup>&</sup>lt;sup>18</sup> Federal Law 62-FZ "On citizenship of the Russian Federation" (as amended on 2 November 2013), 31 May 2002 (Annex 43), Article 13(1)(d). This condition was repealed as from 24 July 2020.

<sup>&</sup>lt;sup>19</sup> Treaty between the Russian Federation and the Republic of Crimea on the accession of the Republic of Crimea to the Russian Federation and the formation of new constituent entities within the Russian Federation, 18 March 2014 (Annex 24), Article 5.

<sup>&</sup>lt;sup>20</sup> Constitutional Court of the Russian Federation, Decision No. 6-P, 19 March 2014 (Annex 136).

default regime. Not opting out did not entail renouncing Ukrainian citizenship. Under the default regime, Ukrainian citizens living in Crimea were granted Russian citizenship, but this did not affect their existing nationality, and in law like in practice, no Crimeans were stripped of their Ukrainian nationality upon receiving Russian nationality.

16. Whereas the 2014 special regime removed the general requirement of renouncement of previous citizenship, it did not prevent in any way individual Crimeans from renouncing their Ukrainian citizenship, if they were willing to do so. Nor did it affect the right of any Crimean resident under the general regime to renounce his or her newly acquired Russian citizenship – subject to some commonly applied conditions.<sup>21</sup> Therefore, no option in terms of nationality has been closed to Crimeans by way of the 2014 special regime and thereafter. Since 2014 Crimeans have had the possibility to retain only Ukrainian citizenship, to have only Russian citizenship or to have both, a wide choice that leaves no room to Ukraine's allegations of discrimination.

17. The specificity of the situation in Crimea and the need for time to adapt and bring Crimea to the level of the general regime applicable in the Russian Federation have been recognized with further regulatory efforts and legislative activity, which apply in Russia as a whole. For example, Federal Law No. 142-FZ of 4 June 2014 introduced a new requirement for all Russian citizens who also have or obtain another nationality or permanent residency abroad to declare such other nationality or permanent residency to the competent authorities within 60 days of obtaining it.<sup>22</sup> Likewise, Russian citizens who possess another nationality or permanent residency abroad on the day of entry into force of the said Federal Law are subject to the same declaration requirement.<sup>23</sup> Such notification in practice allows the authorities to monitor compliance with restrictions introduced by law for those holding foreign citizenships – such as prohibition to hold public offices, for example. Russians who permanently live abroad are not subject to the disclosure obligations.

18. In relation to this general notification requirement that applies to all Russian citizens, Crimeans enjoyed a transition period, as well as simplified obligations.<sup>24</sup> Indeed, as an exception to the general regime, the notification obligation applies to Crimeans only from 1 January 2016 and only in respect of any foreign citizenship acquired after Crimea's accession to the Russian Federation; Crimeans are not required to notify their Ukrainian citizenship existing at the time of

<sup>&</sup>lt;sup>21</sup> Federal Law 62-FZ "On citizenship of the Russian Federation" (as amended on 2 November 2013), 31 May 2002 (Annex 43), Articles 19-20.

<sup>&</sup>lt;sup>22</sup> Federal Law No. 142-FZ "On introducing amendments into Articles 6 and 30 of the Federal Law 'On citizenship of the Russian Federation' and certain legislative acts of the Russian Federation", 4 June 2014 (Annex 69), Article 1(1)(a); Federal Law 62-FZ "On citizenship of the Russian Federation" (as amended on 13 July 2020), 31 May 2002 (Annex 43), Article 6(3).

<sup>&</sup>lt;sup>23</sup> Federal Law No. 142-FZ "On introducing amendments into Articles 6 and 30 of the Federal Law 'On citizenship of the Russian Federation' and certain legislative acts of the Russian Federation", 4 June 2014 (Annex 69), Article 6.1. The Law entered into force on 3 August 2014.

<sup>&</sup>lt;sup>24</sup> Federal Law No. 142-FZ "On introducing amendments into Articles 6 and 30 of the Federal Law 'On citizenship of the Russian Federation' and certain legislative acts of the Russian Federation", 4 June 2014 (Annex 69), Article 6.5.

accession.<sup>25</sup> Therefore, here as well Crimeans have been benefiting from a more, and not a less, favourable regime during the transition period and today.

19. A special regime was also developed for the renunciation of Ukrainian citizenship in Crimea. As noted above,<sup>26</sup> Ukrainian citizens residing in Crimea would normally be restricted from entering Russian state service. However, effective renunciation of Ukrainian citizenship under the general rules would require confirmation from the Ukrainian authorities, and the latter do not accept the choice of Russian citizenship in Crimea. A simplified procedure was, therefore, introduced in December 2014 whereby Crimeans may simply notify to the Russian authorities their desire to renounce Ukrainian citizenship. The formalities are limited to filing a statement with the FMS of Russia to the effect that the applicant is not willing to remain a citizen of another state.<sup>27</sup> Such statement is sufficient to lift foreign nationality restrictions in Russia. However, Ukraine may, of course, still consider these people to be its nationals, irrespective of the renunciation statement.

20. This special regime is another example of positive discrimination that ensures for all interested uninhibited access to employment in state civil service, municipal civil service,<sup>28</sup> standing for election for a public position in federal or regional state authorities.<sup>29</sup>

<sup>&</sup>lt;sup>25</sup> See for example statement by Mr P. Yarosh, head of the Federal Migration Service of Russia for the Republic of Crimea, presenting the official position of this agency: see *Kommersant*, "Peninsula residents are allowed not to declare their second passport", 23 October 2015 (Annex 933).

<sup>&</sup>lt;sup>26</sup> See above, para. 13.

<sup>&</sup>lt;sup>27</sup> Admission Law (as amended by Federal Constitutional Law No. 19-FKZ of 29 December 2014) (Annex 61), Article 4(4). Addressing the situation of civil servants and other employees in public office was precisely a reason underlying the establishment of this simplified procedure: see Explanatory note to the revised draft no. 588277-6 of the Federal Constitutional Law "On amending the Federal Constitutional Law 'On the admission of the Republic of Crimea into the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the federal city of Sevastopol'", http://sozd.duma.gov.ru/download/32D93D37-959D-46E6-8E13-4C6AE0722375, 14 August 2014 (Annex 445). See also Federal Migration Service of Russian Federation, Instruction No. NS-1/6-197 "On the persons recognized as citizens of the Russian Federation in accordance with the Federal Constitutional Law No. 6 FKZ of 21 March 2014" (with exemplary forms of application and confirmation attached thereto), 15 January 2015 (Annex 453).

<sup>&</sup>lt;sup>28</sup> For example, Russian law restricts access to employment in state civil and municipal service (including to state positions) to persons possessing only Russian citizenship. This rule is established at the federal level without discrimination between citizens, groups of citizens or federal subjects: see Federal Law No. 79-FZ "On state civil service in the Russian Federation" (as amended on 28 December 2013), 27 July 2004 (Annex 49), Articles 3(1), 16(1)(6), 16(1)(7), 21(1). Exceptions may exist for dual citizens with respect to state or municipal civil service employment to the extent provided by an international treaty, which is not the case between the Russian Federation and Ukraine: Federal Law No. 79-FZ "On state civil service in the Russian Federation" (as amended on 28 December 2013), 27 July 2004 (Annex 49), Article 16(1)(7); Federal Law No. 25-FZ "On municipal service in the Russian Federation", 2 March 2007 (Annex 50), Articles 13(1)(6), 13(1)(7).

<sup>&</sup>lt;sup>29</sup> Citizens of the Russian Federation who hold citizenship of a foreign state, a residence permit or any other document confirming the right of permanent residence of a citizen of the Russian Federation on the territory of a foreign state do not have the right to participate in elections and take part in the Government – see Article 4(3.1) of Federal Law No. 67-FZ "On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum", 12 June 2002 (Annex 44). By exception, citizens with foreign citizenship may stand for election in municipal (local self-governance) bodies if so provided by an international treaty, which is not the case between the Russian Federation and Ukraine, *ibid*.

That these restrictions can be effectively dis-applied by the special renunciation regime is confirmed by case law. See, for example, concerning the ability to stand for election for state and municipal parliaments, Judicial Chamber for

21. To sum up, the following options have been available to all Crimeans under the 2014 special regime and the general regime:

- to opt in Russian citizenship (retaining or not their Ukrainian citizenship) or to opt out of Russian citizenship (retaining Ukrainian citizenship, or their stateless status) – for Ukrainian citizens and stateless persons permanently residing in Crimea as at 18 March 2014;
- to obtain a permanent residence permit through a simplified procedure for those who opted out of Russian citizenship or those who were not eligible (were not Ukrainian citizens or stateless) but resided in Crimea on the basis of Ukrainian residence permits;
- to acquire a temporary residence permit for those who could not prove their permanent residence in Crimea as of 18 March 2014;
- to obtain Russian citizenship in accordance with the general procedure for those who did not accept Russian citizenship automatically, or were not eligible in the first place;
- to renounce Russian citizenship under the general regime for those who failed to timely opt out.

22. As statistical data shows, an overwhelming majority of people in Crimea opted for Russian citizenship, of which a significant part logically ended up having both Ukrainian and Russian citizenships. As confirmed by the Ministry of Internal Affairs of the Russian Federation, as at the first trimester of 2020, over 2 million Crimeans (with 2,284,769 recorded residents in Crimea according to the 2014 census)<sup>30</sup> had been recognized Russian citizens under the 2014 special regime. This number includes 83,369 persons who had to undergo a verification procedure before the courts in respect of their Ukrainian citizenship and/or their permanent residence in Crimea when primary evidence to either of these two elements was lacking.<sup>31</sup> 3,968 persons opted out of Russian citizenship before the deadline of 18 April 2014 (of these, 1,322 persons received permanent residence permits), 107,827 persons among those having obtained Russian citizenship notified the authorities of their desire not to remain citizens of a foreign State, and six persons renounced their Russian citizenship.<sup>32</sup>

Administrative Cases of the Supreme Court of the Russian Federation, Case No. 2A-102/2019, Appellate Decision No. 127-APA19-23, 26 August 2019 (Annex 414). See also Federal Constitutional Law No. 1-FKZ "On the admission of the Republic of Crimea into the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the federal city of Sevastopol", 11 June 2021 (Annex 1316).

<sup>&</sup>lt;sup>30</sup> Federal Service of State Statistics of the Russian Federation, Results of the Population Census of 2014 in the Crimean Federal District, 2015 (Annex 440), p. 2.

<sup>&</sup>lt;sup>31</sup> See below, paras. 26-29.

<sup>&</sup>lt;sup>32</sup> Information and reference material on procedure of acquiring citizenship of the Russian Federation by Crimean residents as attached to the Letter of the Main Migration Directorate of the Ministry of Internal Affairs of the Russian Federation No. 20/25495, 27 July 2021 (Annex 1330), Section 5. The Ministry of Internal Affairs of the Russian Federation has succeeded to the functions and powers of the Federal Migration Service of the Russian Federation in the sphere of migration in 2016. See also Types of Migration Statuses Acquired by Crimean Residents as a Result of Crimea's Accession to the Russian Federation (Annex 1234).

Contrary to Ukraine's allegation,<sup>33</sup> the 2014 special regime, and Russian domestic law more 23. generally, did not impose Russian citizenship on everyone without offering citizens an opportunity to opt out. Therefore, speculations over the allegedly short deadline or procedural shortcomings of the 2014 special regime miss the point because Crimeans have been continuously enjoying a genuine chance to opt out and to retain the citizenship(s) of their choice, either within the option period or at any moment thereafter under the general regime, albeit under different procedures. At the same time Russian citizenship remains available, mostly through simplified procedure. Nobody was forcefully deprived of their citizenship, and all Crimeans were offered a choice of whether to become Russian citizens (in a simplified – automatic fashion) or rather remain (only) Ukrainian citizens and receive a residence permit, thus settling their status for continued residence in Crimea. In this regard, the competent migration authorities have confirmed not being aware of any instances in which their implementation of the relevant regulations had been challenged in administrative or judicial proceedings, including for pressuring anyone to accept citizenship of the Russian Federation or to obtain a Russian passport, to declare one's unwillingness to retain Ukrainian citizenship, or for refusals of opting-out applications.<sup>34</sup>

# C. THE LIBERAL APPROACH OF RUSSIAN LAW AND RUSSIAN COURTS REGARDING THE EVIDENCE OF PERMANENT RESIDENCE FOR THE PURPOSE OF OBTAINING RUSSIAN CITIZENSHIP

24. Ukraine points to those Crimeans who allegedly were not able to obtain Russian citizenship because they had no valid documents proving their permanent residence in Crimea.<sup>35</sup>

25. The Russian Federation cannot be held responsible for a situation created by Ukraine's prior deficient administration of Crimea, in particular its long failure to ensure adequate conditions and a proper legal framework for the return of Crimean Tatars to Crimea, including registration of their residencies. As detailed elsewhere in this Counter-Memorial, the Russian Federation has addressed the situation immediately upon assuming sovereignty in Crimea and has taken an unprecedented set of measures for the redress of the Crimean Tatars and other minority ethnic and oppressed groups.<sup>36</sup>

26. Those Crimeans who were unable to produce formal evidence of their permanent residence in Crimea on 18 March 2014 were met with a pragmatic and accommodating approach of the law and Russian authorities. In order to be eligible for Russian citizenship under the applicable simplified regime, Crimeans had to meet two cumulative criteria, namely to be a Ukrainian national or stateless as of 18 March 2014, and to live permanently in Crimea on that date. While the conferral of Russian citizenship to eligible persons was automatic and did not require them to

<sup>&</sup>lt;sup>33</sup> See MU, para. 458.

<sup>&</sup>lt;sup>34</sup> Information and reference material on procedure of acquiring citizenship of the Russian Federation by Crimean residents as attached to the Letter of the Main Migration Directorate of the Ministry of Internal Affairs of the Russian Federation No. 20/25495, 27 July 2021 (Annex 1330), Section 2.

<sup>&</sup>lt;sup>35</sup> MU, para. 461.

<sup>&</sup>lt;sup>36</sup> See this Counter-Memorial, Chapter I, paras. 55-80; Decree of the President of the Russian Federation No. 268 "On measures aimed at rehabilitation of Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German peoples and state support of their revival and development" (as amended on 12 September 2015), 21 April 2014 (Annex 63).

undertake any step, evidence of these criteria does become important when a person needs to prove his or her citizenship for any reason or requests certain administrative documents, such as passport.

27. The criterion of permanent residence does not relate to any specific legal status but is rather a matter of fact. This criterion would usually be satisfied based on documents such as a Ukrainian passport or other identity documents having appropriate marks (stamps), extracts from the house register, or copies of financial personal accounts.<sup>37</sup> When no such documents are available, the migration authorities conduct a standard citizenship verification procedure,<sup>38</sup> consisting in locating and examining other means of evidence, such as employment record book, a copy of an employment agreement, certificates of employment, records from educational institutions, records from medical institutions, certificate of marriage, testimonies of relatives, neighbours, acquaintances, among others.<sup>39</sup> In case this procedure does not lead to the desired result, a person may seek a finding confirming the fact of permanent residence in court, where such fact could be proved by a variety of evidence, as any other fact of legal significance in accordance with the general provisions of Russian law.

28. The Constitutional Court of the Russian Federation<sup>40</sup> adopted a flexible approach as regards the application of the relevant rules, allowing persons who did not previously comply with the law to benefit from the new regime. In its decision of 4 October 2016,<sup>41</sup> a case in point, the Court was confronted with the case of a person who lived in Crimea but who was not registered there as a permanent resident on 18 March 2014. The Court considered that the existence of a factual, stable territorial link of the individual with Crimea is sufficient to accept the granting of Russian citizenship. Interpreting the condition for obtaining Russian nationality under Article 4(1) of the Admission Law, it held in particular: "Securing this condition, aimed at granting citizenship of the Russian Federation to those who are in the territory of the Republic of Crimea or in the territory of the city of federal significance of Sevastopol, who have a real connection with this territory or have expressed a clear desire to establish it and are part of the permanent population of the corresponding territory, which means, from 18 March 2014, with the Russian Federation as a whole, the federal

<sup>&</sup>lt;sup>37</sup> Information and reference material on procedure of acquiring citizenship of the Russian Federation by Crimean residents as attached to the Letter of the Main Migration Directorate of the Ministry of Internal Affairs of the Russian Federation No. 20/25495, 27 July 2021 (Annex 1330), Section 2.

<sup>&</sup>lt;sup>38</sup> Decree of the President of the Russian Federation No. 1325 "On approval of the Regulation on the procedure for addressing the issues of citizenship of the Russian Federation", 14 November 2002 (Annex 48), paras. 51-52.

<sup>&</sup>lt;sup>39</sup> Information and reference material on procedure of acquiring citizenship of the Russian Federation by Crimean residents as attached to the Letter of the Main Migration Directorate of the Ministry of Internal Affairs of the Russian Federation No. 20/25495, 27 July 2021 (Annex 1330), Section 2.

<sup>&</sup>lt;sup>40</sup> The Constitutional Court of the Russian Federation, upon requests of the authorized state bodies and state officials, considers cases on compliance with the Constitution of the Russian Federation of, inter alia, federal laws and regulations of the President of the Russian Federation, the Federation Council, the State Duma, the Government of the Russian Federation.

<sup>&</sup>lt;sup>41</sup> Decision of the Constitutional Court of the Russian Federation No. 18-P in the case of the constitutional review of Part 1 of Article 4 of the Federal Constitutional Law "On the admission of the Republic of Crimea into the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the Federal City of Sevastopol" in connection with the appeal of A.G. Olenev, 4 October 2016 (Annex 299).

legislator relied on an understanding of the citizenship of the Russian Federation as a stable legal link of the person with the Russian Federation, which is expressed in the totality of their mutual rights and obligations (Article 3 of the Federal Law of 31 May 2002 No. 62-FZ "On citizenship of the Russian Federation")".<sup>42</sup>

29. The Court thus admitted that permanent residency for the purpose of Article 4(1) of the Admission Law is a matter of fact and does not necessarily mean registered permanent residency. Permanent residency may be established based on any relevant factual evidence such as proof of continued life on the territory, evidence of work, housing, interpersonal relation or social interaction, evidence of daily activities and interests, testimonies from acquaintances, etc.<sup>43</sup> Therefore, prior regular status is not a precondition for a physical person to obtain Russian citizenship provided such person is able to present evidence of his or her permanent residency in Crimea. Evidence of effective residence and the expressed wish of the applicant are to be taken into account when formal registration is lacking. Such burden of proof is quite low, as suggested by the broad categories of evidence that the Court listed as acceptable.<sup>44</sup> This position from the Constitutional Court of the Russian Federation, the highest-ranking jurisdiction to address the issue, irrigates the whole citizenship regime and practice in the Russian Federation, including in Crimea.<sup>45</sup> This way, persons unable to produce evidence of registered residence saw their naturalization made easier. Thus, the citizenship regime is not discriminatory towards persons without settled legal status in Crimea, whatever ethnicity they might have.

# D. THE ABSENCE OF PRESSURE ON CRIMEANS' CHOICE OF CITIZENSHIP

30. As illustrated above, the Russian Federation has a quite liberal legal regime of citizenship. While this system does provide for limitations, these are reasonable and legitimate. In fact the only limitations in the Russian system are common and standard practice in most countries. They

<sup>&</sup>lt;sup>42</sup> Decision of the Constitutional Court of the Russian Federation No. 18-P in the case of the constitutional review of Part 1 of Article 4 of the Federal Constitutional Law "On the admission of the Republic of Crimea into the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the Federal City of Sevastopol" in connection with the appeal of A.G. Olenev, 4 October 2016 (Annex 299), para. 3.2.

<sup>&</sup>lt;sup>43</sup> *Ibid.*, para. 3.2 and point 1 of the operative part.

<sup>&</sup>lt;sup>44</sup> The Court also emphasized that, by virtue of Article 2 of the Russian Constitution, state authorities, including courts, are encouraged to minimize excessive formalities in their approach to the establishment of the existence of a person's connection with the relevant territory: Decision of the Constitutional Court of the Russian Federation No. 18-P in the case of the constitutional review of Part 1 of Article 4 of the Federal Constitutional Law "On the admission of the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the Federal City of Sevastopol" in connection with the appeal of A.G. Olenev, 4 October 2016 (Annex 299), para. 3.1.

<sup>&</sup>lt;sup>45</sup> Para. 2 of the operative part of the Decision of the Constitutional Court of the Russian Federation No. 18-P in the case of the constitutional review of Part 1 of Article 4 of the Federal Constitutional Law "On the admission of the Republic of Crimea into the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the federal city of Sevastopol" in connection with the appeal of A.G. Olenev, 4 October 2016 (Annex 299) specifies that the Court's interpretation of the meaning of Article 4.1 of the Admission Law "is binding, which excludes any other interpretation in law enforcement practice".

certainly do not point to any form of discrimination, let alone a systematic campaign of racial discrimination targeting Crimean Tatars and ethnic Ukrainians.

31. Ukraine contends that Crimean Tatars and ethnic Ukrainians sometimes felt a conflict of loyalties, which placed them in an uncomfortable situation.<sup>46</sup> The alleged uncomfortable situation of conflict of loyalties is blatantly disproved by the fact that, according to Messrs Funk, Starchenko, Stepanov and Sokolovsky, the absolute majority of Crimeans including ethnic Ukrainians and Crimean Tatars identified themselves as Russian citizens – 97.5%.<sup>47</sup>

32. Besides, Ukraine's allegations of pressure exercised on Crimean Tatars and ethnic Ukrainians not to opt out of Russian citizenship are supported by no evidence. Ukraine's portrayal of loyalties and fear of pressure is not credible in a context where, as explained above, access to citizenship is open and where individual choices are all freely available and all reversible.

33. As has been observed, "[a] key to ameliorating the situation of non-citizens is to grant citizenship – part of the 'reserved domain' intimated by [Article] 1(3)" of the CERD.<sup>48</sup> This is exactly what the Russian Federation did by simplifying its procedure for the granting of Russian citizenship to Crimeans, while at the same time making arrangements for aliens to have one or different citizenships, including retaining only their foreign citizenship, if they so desire. While containing accommodations to respect the will of each individual Crimean, the automatic granting of citizenship to the population living permanently on its territory has the advantage of alleviating a problem that has often been pointed as laying potential ground to discrimination, namely the unequal chances of access to citizenship for foreigners.<sup>49</sup>

34. The above presentation of the Russian domestic law regarding citizenship confirms that Crimeans were given and retain a genuine and meaningful choice over their citizenship(s). There can be no discrimination when persons have the choice, and, in fact, Ukraine does not evidence any concrete discrimination. Far from being arbitrary, the Russian framework respects the will of persons concerned and prevents the occurrence of cases of statelessness, in line with international standards. Even thus if issues of nationality were to be considered as coming within the scope of the CERD (*quod non*), it is clear that there has been no nationality-based discrimination or ethnicity-based discrimination through the citizenship regime in the present case.

<sup>&</sup>lt;sup>46</sup> See for example MU, para. 612.

<sup>&</sup>lt;sup>47</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), para. 20.

<sup>&</sup>lt;sup>48</sup> Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, Oxford University Press, 2016, p. 153.

<sup>&</sup>lt;sup>49</sup> Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, Oxford University Press, 2016, p. 153-154.

## II. Ukraine's Individual Claims Do Not Evidence Any Discrimination

35. Ukraine puts forward a series of individual claims in relation to its allegation of forced Russian citizenship and subsequent discrimination against non-Russians.<sup>50</sup> The relevant facts confirm the absence of any plausible relation between Ukraine's allegations and racial discrimination.

# A. UKRAINE'S ALLEGATIONS IN RESPECT OF THE APPLICATION OF THE CITIZENSHIP REGIME

36. Ukraine makes a certain number of accusations with respect to the implementation of the Admission Law and the 2014 special regime.<sup>51</sup>

37. Ukraine contends that "the number of people who were able to declare their desire to retain Ukrainian citizenship likely represented only a fraction of those who wanted to do so".<sup>52</sup> The use of hypothetical language, in particular the term "likely", confirms the speculative nature of Ukraine's allegation. Ukraine attempts to justify this allegation by adding that "[a]ccording to the Russian Federal Migration Service, 3,427 permanent residents of Crimea successfully opted out of Russian citizenship."<sup>53</sup> The number relied on does not support what Ukraine says. Besides, as the OHCHR report Ukraine relies on also highlights, Crimeans who did not opt out within the deadline set under the 2014 scheme were allowed to opt out after the close of the 2014 scheme by following the regular procedure under the Federal Law on citizenship.<sup>54</sup> Only six persons did so.<sup>55</sup>

38. Ukraine also attempts to suggest the existence of discriminatory treatment by comparing the practicalities of the opting-out procedure with those of the application to obtain a Russian passport.<sup>56</sup> But Ukraine compares what is not comparable. Opting out was a specific – nonburdensome – procedure that determined the citizenship situation of individual Crimeans, and for which, expectedly, a very low demand existed. Besides, it did not require personal presence for filing an application. By contrast, application for a Russian passport is a routine, formal procedure that was called upon to meet a substantial demand, in fact that of the overwhelming majority of the Crimean population, who were to apply, in person, for Russian passports within a relatively short

<sup>&</sup>lt;sup>50</sup> MU, paras. 455-476, 611-618, 623-626.

<sup>&</sup>lt;sup>51</sup> MU, paras. 456-463.

<sup>&</sup>lt;sup>52</sup> MU, para. 458.

<sup>&</sup>lt;sup>53</sup> MU, footnote 969, relying on OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine), A/HRC/36/CRP.3 (25 September 2017) para. 59 (Annex 778 to MU), relying in turn on RIA Novosti Ukraine, "[Federal Migration Service of the Russian Federation]: 3427 Crimeans opted out of Russian citizenship". The number relied on by Ukraine does not reflect the final counting. The correct number of Crimeans who opted out of Russian citizenship under the 2014 special regime is 3,968 (see para. 22. above).

<sup>&</sup>lt;sup>54</sup> OHCHR, Situation of Han Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine), A/HRC/36/CRP.3 (25 September 2017) para. 60 (Annex 778 to MU).

<sup>&</sup>lt;sup>55</sup> See above, para. 22.

<sup>&</sup>lt;sup>56</sup> MU, para. 458.

period of time.<sup>57</sup> In light of this, a difference in capacities deployed between these two situations with incomparable demands is only natural. Therefore, since the two situations cannot be equated, suggestions of discriminatory treatment are unfounded.

39. Ukraine lists a series of considerations that are supposed to explain the low number of Crimeans who elected to opt out.<sup>58</sup> These considerations include the alleged short deadline, deficient procedure, lack of facilities and other logistical difficulties for opting out,<sup>59</sup> an alleged fear of pressure, a deterrence induced by "likely implications", an intimidating climate fuelled by a hate-speech and disinformation campaign led by the Russian media and government against Ukrainians,<sup>60</sup> the material disadvantages of opting out, the situation of becoming a foreigner in one's own country, the inability to occupy government or municipal positions, and other unspecified forms of alleged discrimination.<sup>61</sup> Ukraine further refers to alleged difficulties for Crimeans unable to evidence permanent residency in Crimea to obtain Russian citizenship,<sup>62</sup> and the reluctance to lend legitimacy to Russian occupation by participating in its procedure.<sup>63</sup> Ukraine then concludes with the assertion that "[t]hese harms were generally not borne by members of the ethnic Russian community who supported annexation."<sup>64</sup>

40. This series of allegations calls for several observations.

41. First, no comparative exercise is carried out in support of them and Ukraine provides no material or reference to substantiate its discrimination claim.

42. Second, Ukraine's allegations are contradicted by the fact that, at all material times since Crimea's accession to the Russian Federation, Crimeans have been provided with a meaningful and free choice regarding determination of their status (citizenship) for future residence in the Russian Federation. That the transitional opting-out procedure was limited in time is thus immaterial. This situation has not ended with the close of the 2014 special regime but continues nowadays under the general regime. Therefore, it is disingenuous for Ukraine to complain on the status of foreigner that indeed logically results for anyone who freely made the choice to opt out from the default regime.<sup>65</sup>

43. Third, some purported explanations are simply not credible or are overly subjective to carry any real explanatory weight. This is the case for instance of the allegation that some Crimeans

<sup>&</sup>lt;sup>57</sup> It may be noted that the state fee for issuing a passport, which is due under the general regime, was not levied upon persons recognised as Russian citizens in accordance with Article 4(1) of the Admission Law: see Tax Code of the Russian Federation, part 2 (amended as of 29.12.2015), 5 August 2000 (Annex 37) as modified by Federal Law No. 157-FZ of 29 June 2015, Article 333.35(3)(29).

<sup>&</sup>lt;sup>58</sup> MU, paras. 458-463.

<sup>&</sup>lt;sup>59</sup> MU, para. 458.

<sup>&</sup>lt;sup>60</sup> MU, para. 459.

<sup>&</sup>lt;sup>61</sup> MU, para. 460.

<sup>&</sup>lt;sup>62</sup> MU, para. 461.

<sup>&</sup>lt;sup>63</sup> MU, para. 462.

<sup>&</sup>lt;sup>64</sup> MU, para. 463.

<sup>&</sup>lt;sup>65</sup> MU, para. 460.

might have abstained to participate in the opt-out process out of reluctance to lend legitimacy to Crimea's new authorities, or of the allegation that people could have felt pressure not to opt out. Additional objective or quantitative data would be particularly needed when seeking to establish claims that rely essentially on subjective feelings as explanations, but Ukraine provided none. Instead, it unilaterally attributes intentions and feelings to abstract, unidentified and unquantified groups of persons. No reference to any source is given to evidence these allegations.<sup>66</sup>

44. Fourth, other considerations are pure speculations that are unsupported by evidence. This is the case for example of the alleged link between the *coup d'État* in Kiev and the nationality choice of Ukrainians in Crimea, or the alleged hate speech and disinformation campaign as well as the latter's attribution to the Russian Federation.<sup>67</sup>

45. Fifth, Ukraine's portrayal of the facts is simply incorrect. For instance, Ukraine's allegation that "the Russian occupation authorities allowed people to opt out of Russian nationality at only four locations in the entirety of Crimea"<sup>68</sup> is plainly disproved by the facts. In the territory of Crimea opting-out applications could be submitted to any one of nine specifically identified divisions of the FMS of Russia in the Republic of Crimea and in Sevastopol,<sup>69</sup> which were available 7 days a week and sufficiently equipped to process the actual amount of applications received. In addition, Crimeans were allowed to submit their applications by registered post or via the Russian consulates abroad. The population was duly informed of these procedural options, including through the media and on the internet.<sup>70</sup>

46. Sixth, other purported difficulties are in fact directly attributable to Ukraine itself, such as the alleged disadvantage suffered by individual Crimeans who had not been properly registered at their place of residence in comparison with those who had been.<sup>71</sup>

## B. POSITION OF THOSE WHO DID NOT OPT OUT AND WHO BECAME RUSSIAN CITIZENS

47. With regard to the alleged harms suffered by those who did not opt out and were subsequently deemed to be Russian citizens,<sup>72</sup> Ukraine contends that "[f]or those self-identifying

<sup>72</sup> MU, paras. 464-469.

<sup>&</sup>lt;sup>66</sup> MU, paras. 459 (containing an unqualified reference to Chapter 8, Section A, which is irrelevant) and 462.

<sup>&</sup>lt;sup>67</sup> MU, para. 459.

<sup>&</sup>lt;sup>68</sup> MU, para. 458.

<sup>&</sup>lt;sup>69</sup> Applications could be submitted to the Directorate of the FMS of Russia in the Republic of Crimea (main office located in Simferopol), to any one of the seven divisions of the Directorate of the FMS of Russia in the Republic of Crimea (the Saki District, Evpatoria, the Belogorsk District, the Bakhchisaray District, Kerch, Yalta, Dzhankoy), and to the Directorate of the FMS of Russia in Sevastopol.

<sup>&</sup>lt;sup>70</sup> Information and reference material on procedure of acquiring citizenship of the Russian Federation by Crimean residents as attached to the Letter of the Main Migration Directorate of the Ministry of Internal Affairs of the Russian Federation No. 20/25495, 27 July 2021 (Annex 1330), Section 1.

<sup>&</sup>lt;sup>71</sup> MU, para. 461. On the way how this "disadvantage" was effectively addressed by the Russian Federation for the benefit of these individuals see also above, paras. 28-29 and 39 and footnote 77.

Crimean Tatars and Ukrainians who for these or other reasons did not opt out, the forcing upon them of Russian citizenship created an invidious conflict."<sup>73</sup>

48. Issues of nationality are distinct from issues of ethnicity. Therefore, the conferral of citizenship has no relationship whatsoever with Ukraine's case of a systematic campaign of racial discrimination against ethnic groups as such. The Crimean Tatar and Ukrainian ethnic identities are separate from a person's nationality or citizenship. It is perfectly possible for a person to be Crimean Tatar or ethnic Ukrainian and to have Russian nationality. This is precisely what the overwhelming majority of Crimean Tatars and ethnic Ukrainians in Crimea opted for.<sup>74</sup> It is important to recall that they were given a choice in this regard. Nothing in Ukraine's evidence establishes that Crimean Tatars and Ukrainians who did not opt out from Russian citizenship did it against their will.

## C. MILITARY SERVICE AND MILITARY OBLIGATIONS

49. Ukraine alleges that the group of Crimeans who did not opt out and have become Russian citizens "now faces the prospect of being conscripted into the Russian armed forces and potentially being made to fight against the very country with which they most identify."<sup>75</sup>

50. Conscription is unrelated to racial discrimination because it is citizenship-based. There is no room thus to equate in the present case a pure nationality-based rule with the scope of the CERD. In any event, the assessment of the relevant facts shows that there is nothing discriminatory in the application of the law.

51. Under applicable Russian law, all Russian citizens are called to fulfil their military obligations, including their military service, with a few exceptions provided for by law, which is quite standard in most countries.<sup>76</sup> However, those Crimeans who have completed their military service in the state of their previous nationality (meaning Ukraine), are exempted from the duty to perform it in Russia.<sup>77</sup> Subject to this and to eligibility criteria such as age, those Crimeans who have received and elected to keep Russian nationality while also electing to retain their Ukrainian

<sup>&</sup>lt;sup>73</sup> MU, para. 464.

<sup>&</sup>lt;sup>74</sup> As described by Messrs Funk, Starchenko, Stepanov and Sokolovsky, after Crimea's admission to the Russian Federation the absolute majority (97.5%) of Crimeans including ethnic Ukrainians and Crimean Tatars identified themselves as Russian citizens. See, Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), para. 20.

<sup>&</sup>lt;sup>75</sup> MU, para. 465.

<sup>&</sup>lt;sup>76</sup> Federal Law No 53-FZ "On military duty and military service", 28 March 1998 (Annex 35), Articles 22-23. Such exceptions may be based, *inter alia*, on health reasons or when the citizen has effectuated his military service in another State. For the sake of completeness, a modification brought to the Federal Law on military obligations and military service after Crimea's accession to the Russian Federation also exonerated from military obligations Crimeans who had been exempted under Ukrainian law for health reasons (see Federal Law No 58-FZ "On specifics of the legal regulation of relations pertaining to the performance of military duty by certain categories of citizens of the Russian Federation in connection with the admission of the Republic of Crimea to the Russian Federation and the formation of new constituent entities – the Republic of Crimea and the federal city of Sevastopol, within the Russian Federation, and amending the Federal Law 'On military duty and military service'", 30 March 2015 (Annex 86), Articles 1-2).

<sup>&</sup>lt;sup>77</sup> Federal Law No 53-FZ "On military duty and military service", 28 March 1998 (Annex 35), Article 23(1(d)).

nationality are thus called in principle to perform their military obligations, including their military service, in the Russian armed forces, on an equal footing with any other Russian citizens who also possess another citizenship, without any discrimination. Under certain conditions, they may instead opt for performing an alternative service.<sup>78</sup> Additionally, until 2017, Crimeans enjoyed a transition period throughout which their military service took place exclusively on the territory of Crimea and Sevastopol.<sup>79</sup> As has been amply shown above, obtaining and retaining Russian citizenship – to which military obligations are attached – ultimately reflect a person's own choice. Thus, electing to retain Russian citizenship entails accepting the obligation to perform their military service and the possibility of being conscripted in the Armed Forces of the Russian Federation.

# D. THE CASE OF DETAINEES AND PRISONERS

52. Just like any other Crimeans, those Crimeans who were being detained or serving a prison sentence during the application of the 2014 special regime were provided with a meaningful opportunity to opt out of Russian citizenship, if they so desired, contrary to what Ukraine alleges.<sup>80</sup> Persons serving their sentences in penitentiary facilities or those temporarily in detention facilities were informed of the applicable procedure and fully enabled to file their applications through the administration of the relevant facility. In particular, they were provided with a leaflet against signature explaining the procedure and were offered explanatory work organized by the administration of penitentiary institutions.<sup>81</sup> One copy of such application was placed in their personal files, while another was forwarded to the Directorate of the FMS of Russia for the Republic of Crimea.<sup>82</sup> Thus the opting-out procedure was fully adapted to the conditions of the penitentiary system and did not provide for, or result in, any differential treatment, and certainly not based on race. The Federal Penitentiary Service confirmed that no administrative or judicial appeals were received by the bodies of the penitentiary system of the Republic of Crimea or Sevastopol in respect to any allegation of forced acquisition of the citizenship of the Russian Federation, impediment to submissions of applications by the convicts or detainees for opting out of Russian citizenship - for example, by means of refusal to accept the relevant application - within the established time-limit.<sup>83</sup> Twenty-three detainees and convicts availed themselves of the opting out

<sup>&</sup>lt;sup>78</sup> Constitution of the Russian Federation, 12 December 1993 (Annex 28), Article 59(3).

<sup>&</sup>lt;sup>79</sup> *Interfax Russia*, "Crimean residents are to serve in the Russian Army in all regions of the country", 31 March 2017 (Annex 971).

<sup>&</sup>lt;sup>80</sup> MU, para. 466.

<sup>&</sup>lt;sup>81</sup> Directorate of the Federal Penitentiary Service of Russia for the Republic of Crimea and Sevastopol, Information note on measures taken to assist people confined in the penitentiary institutions of the Republic of Crimea and Sevastopol in exercising their right to obtain Russian citizenship in accordance with Federal Constitutional Law of 21 March 2014 No. 6-FKZ "On the Admission to the Russian Federation of the Republic of Crimea and Formation of New Constituent Entities in the Russian Federation – the Republic of Crimea and the Federal City of Sevastopol" and to decline to obtain it, 15 July 2021 (Annex 1328). See also an example of the leaflet (Annex 1246).

<sup>&</sup>lt;sup>82</sup> Federal Penitentiary Service of Russia, Information note on measures to assist people confined in the penitentiary institutions of the Republic of Crimea and Sevastopol to obtain or decline to obtain Russian citizenship (Annex 1328).

<sup>&</sup>lt;sup>83</sup> *Ibid*.

procedure and submitted applications, while 2,987 did not do so and thus became Russian citizens.<sup>84</sup>

# E. THE CASE OF TRANSFER OF PRISONERS SERVING THEIR SENTENCE FROM ONE PENITENTIARY FACILITY TO ANOTHER

53. Ukraine contends that "[b]ecause they are now considered Russian citizens, such prisoners [namely Ukrainian citizens who were in prison in Crimea between 18 March 2014 and 18 April 2014] are vulnerable to forced transfer to prisons anywhere in the Russian Federation, in contravention of international humanitarian law".<sup>85</sup> As explained elsewhere and as the Court recalled in its Judgment on Preliminary Objections, it is not called upon to decide on anything other than CERD obligations, and Ukraine's claims premised on international humanitarian law, as well as on issues of nationality, fall outside of the Court's jurisdiction.<sup>86</sup> In any event, the Russian penal enforcement legislation in general, and rules for transfer of convicts in particular, apply uniformly both to Russian and foreign citizens as well as to stateless persons in the entire territory of the Russian Federation, and Crimean residents are subject to no special treatment in this respect.<sup>87</sup>

54. Ukraine adds that "[t]he disproportionate use of such threats, and actual transfers, against Crimean Tatar and Ukrainian prisoners additionally constitutes racial discrimination within the meaning of the CERD."<sup>88</sup> But as is shown in the present Appendix, in the relevant part of its Memorial on this matter<sup>89</sup> Ukraine has only referred to unfounded allegations made by others as well as one individual case, that of Mr Sentsov – which is addressed below. Ukraine relied on a selected mediatized, though irrelevant, individual case, but it does not hold that the same alleged measures were not applied more generally or were not also applied to members of other ethnic groups. Therefore, Ukraine has not even provided the start of any evidence establishing the disproportionate use of threats and actual transfers against specific ethnic groups, let alone evidence that such conduct, if established, would be part of a systematic campaign of racial discrimination directed at Crimean Tatars and ethnic Ukrainians.

#### F. THE CASE OF MR OLEG SENTSOV

55. Ukraine contends that Mr Sentsov suffered harm because of his Russian citizenship.<sup>90</sup> Not only is distinction based on nationality excluded from CERD protection by Article 1.2; it is in any event difficult to see how Ukraine's allegations in respect of Mr Sentsov, including his prosecution

<sup>&</sup>lt;sup>84</sup> *Ibid*.

<sup>&</sup>lt;sup>85</sup> See MU, para. 466. See also footnote 981.

<sup>&</sup>lt;sup>86</sup> See this Counter-Memorial, Chapter VI, paras. 383-387.

<sup>&</sup>lt;sup>87</sup> See for example Penal Enforcement Code of the Russian Federation, No. 1-FZ, 8 January 1997 (Annex 34), Articles 73(1), 73(2), 73(4), 81(1), and 81(2).

<sup>&</sup>lt;sup>88</sup> MU, para. 469.

<sup>&</sup>lt;sup>89</sup> MU, paras. 466-469.

<sup>&</sup>lt;sup>90</sup> MU, paras. 467 and 617.

and conviction in relation to terrorism, his transfer<sup>91</sup> and alleged denial of a consular meeting,<sup>92</sup> relate to racial discrimination at all. Mr Sentsov's case only involved the application of the law without any discrimination and without any targeting. While Mr Sentsov had become a Russian citizen under applicable law, he had an opportunity to opt out until 18 April 2014<sup>93</sup>, but had elected not to do so.<sup>94</sup> Having been recognized as a Russian citizen, Mr Sentsov could obviously not benefit from a foreign state's consular protection. In its judgment determining the sentence to be imposed on Mr Sentsov in relation to his activities related to terrorism, the Court carefully examined the issue and confirmed Mr Sentsov's Russian nationality based on available evidence and applicable law, and took due account of the fact that he had also retained Ukrainian nationality.<sup>95</sup>

56. More essentially, the status of a person as a Russian citizen or a foreigner does not bear any significance for purposes of applying the Criminal Code or Penal Enforcement Code, particularly when this person is also a Russian citizen. Likewise, the issue of Mr Sentsov's citizenship(s) is immaterial to his transfer to facilities outside Crimea conducted in full accordance with the Russian penal enforcement legislation due to the occupancy level of the relevant penitentiary institutions in Crimea and the alleged threat to Mr Sentsov's personal safety.<sup>96</sup> Indeed, those Russian citizens having a second (or multiple) citizenship are treated on the territory of the Russian Federation as Russian citizens only,<sup>97</sup> and the Russian penal enforcement legislation applies uniformly both to Russian and foreign citizens alike on the entire territory of the Russian Federation.

<sup>97</sup> See fn. 17 above.

<sup>&</sup>lt;sup>91</sup> In order to ensure the safety of convicts and to prevent dissemination of terrorist propaganda, the penitentiary authorities may place persons convicted of especially serious crimes – including terrorist and extremist activities – to a designated penitentiary institution, based on the location and availability of such specifically adapted facility, regardless of the convict's place of residence or the place of conviction. See footnote 87 above.

<sup>&</sup>lt;sup>92</sup> Under rules of Russian law applicable to the treatment of Russian citizens (including dual nationals), there is no basis for the State to arrange consular meetings of a Russian citizen with officials of a foreign consulate. See Federal Law 62-FZ "On citizenship of the Russian Federation" (as amended on 2 November 2013), 31 May 2002 (Annex 43), Article 6(1).

<sup>&</sup>lt;sup>93</sup> Even on Ukraine's own case alleging arbitrary restrictions placed on detained persons' and convicts' ability to opt out of Russian citizenship – which the Russian Federation strongly rejects and has proved to be unfounded –, Mr Sentsov's right of option could not have been impeded by his detention as part of the case opened against him as he was arrested on 11 May 2014, almost a month after the expiry of the transitional opt-out period on 18 April 2014.

<sup>&</sup>lt;sup>94</sup> Federal Migration Service of the Russian Federation, Letter to the Investigative Directorate of the Federal Security Service of the Russian Federation No. Ms-2/6-6602gr, 18 July 2014 (Annex 528); Federal Migration Service of the Russian Federation, Letter No. Ms-2/6-3374gr to Penal Correction and Special Records Directorate of the Federal Penitentiary Service of Russia, 6 May 2016 (Annex 564); Senior Investigator for High-Priority Cases of the Investigative Directorate of the Federal Security Service of Russia, Resolution on clarification of personal data, 3 June 2014 (Annex 149); Main Migration Directorate of the Ministry of Internal Affairs of the Russian Federation, Letter No. 20/5610gr to International Law and Cooperation Department of the Ministry of Justice of the Russian Federation, 30 May 2016 (Annex 568).

<sup>&</sup>lt;sup>95</sup> North Caucasus District Military Court in Rostov-on-Don, Case No. 1-39/2015, Decision, 25 August 2015 (Annex 244), p. 36. The appellate Decision is silent on the question of nationality, which suggests that this was not a key point in issue: Military Collegium of the Supreme Court of the Russian Federation, Case No. 205-APU15-12s, Decision, 24 November 2015 (Annex 260).

<sup>&</sup>lt;sup>96</sup> Directorate of the Federal Penitentiary Service of Russia for the Republic of Crimea and Sevastopol, Information note on places where the convicts O.G. Sentsov and A.Z. Chiygoz served their sentences, 15 July 2021 (Annex 1329).

### G. THE CASE OF MR CHIYGOZ

57. Ukraine quotes Mr Chiygoz's report of alleged threats of detention transfer supposedly made to force him to withdraw his appeal.<sup>98</sup> While Ukraine advances this accusation within the section of its Memorial dedicated to Crimeans who allegedly suffered disadvantages as a result of being recognised as Russian citizens, it is unclear how Mr Chiygoz's case relates to such allegations, aside from the alleged violation of international humanitarian law claimed by Ukraine, which is outside the scope of the CERD and of the Court's jurisdiction in the present case. Moreover, Mr Chiygoz's citizenship is immaterial to Ukraine's claim as Russia's penal rules apply uniformly to its citizens and foreigners alike across its whole territory.

58. Mr Chiygoz's witness statement lacks credibility for the purpose of evidencing Ukraine's argument of prison transfers as illustration of a systematic campaign of racial discrimination against Crimean Tatars and ethnic Ukrainians. Mr Chiygoz, a Deputy Chairman of the *Mejlis*, has been encouraging and sponsoring many extremist actions that present a threat to the Crimeans' rights and safety and to Russia's essential interests of national security, and has persisted in such conduct despite the ban on the *Mejlis*. Additionally, Mr Chiygoz himself confirmed that he "ha[s] received no threats from either personnel or cell mates".<sup>99</sup> In any event, even if Mr Chiygoz's statement was accepted as true, *quod non*, it does not evidence that he was targeted based on his Crimean Tatar ethnic identity. To be clear, Mr Chiygoz was not transferred outside the constituent entity in which he had been convicted, and the Russian Federation is not aware of any threats Mr Chiygoz claims to have received to that effect.<sup>100</sup>

## H. THE POSITION OF CRIMEANS WHO DID NOT BECOME RUSSIAN NATIONALS

59. Ukraine then purports to report alleged harms suffered by inhabitants of Crimea who did not "receive Russian nationality", i.e., according to Ukraine, "either because they opted out or because they did not qualify for it".<sup>101</sup>

60. The mere fact "not to qualify" for receiving Russian nationality is nothing more than the product of the application of the law. It does not amount to discrimination. In addition, Russia has recognized the difficulties of Crimeans whose residency in Crimea had not been duly registered, and has followed a pragmatic and flexible approach taking into account evidence of effective

<sup>&</sup>lt;sup>98</sup> MU, para. 468, referring to Witness Statement of Akhtem Chiygoz, 4 June 2018 (Annex 19 to MU), para. 28. In relation to Mr Chiygoz's case, see also Counter-Memorial, Chapter IV, paras. 210-216.

<sup>&</sup>lt;sup>99</sup> Mr. Chiygoz's Explanatory Statements on the absence of claims on the conditions of the detention (Annex 210). See also Directorate of the Federal Penitentiary Service of Russia for the Republic of Crimea and Sevastopol, Information note on places where the convicts O.G. Sentsov and A.Z. Chiygoz served their sentences, 15 July 2021 (Annex 1329).

<sup>&</sup>lt;sup>100</sup> Directorate of the Federal Penitentiary Service of Russia for the Republic of Crimea and Sevastopol, Information note on places where the convicts O.G. Sentsov and A.Z. Chiygoz served their sentences, 15 July 2021 (Annex 1329).

<sup>&</sup>lt;sup>101</sup> MU, paras. 470-476.

residence and the wishes expressed by the applicants.<sup>102</sup> Bearing this in mind, it cannot be expected from the Russian Federation, or from any State for that matter, to treat foreigners and its own citizens alike since the two categories are not in a like position.<sup>103</sup>

61. The issue whether Crimeans who had opted out of Russian citizenships and who applied for and obtained residency permits as foreigners did, or did not, enjoy equal treatment with Russian citizens, is irrelevant. Besides the fact that such distinction between nationals and foreigners is precisely excluded from the scope of the CERD by Articles 1.2 and 1.3, such distinction does not constitute a discrimination. Differences of treatment between nationals and foreigners generally exist in all countries in the world, such as the ability to take employment in government or municipal positions, the ability to run for government or municipal office, the ability to "apply[...] to hold a public gathering or [to] own[...] a media entity".<sup>104</sup> The same goes for the fact that foreigners are subject to migration controls.<sup>105</sup>

62. As has been underlined, the Russian citizenship system being quite liberal, what Ukraine describes are in fact some of the basic features of the treatment of aliens by most, if not all, States, including itself. The Russian Federation has already recalled before the CERD Committee that the slightly more than 0.1% of Crimeans who opted to only retain Ukrainian citizenship "were able to obtain Russian residence permits that allowed them to work, to receive medical assistance, to access education and legal protection and to conduct business transactions",<sup>106</sup> in short, to live a normal life.

63. Besides, the OHCHR Report referred to by Ukraine confirms that "[r]esidents of Crimea who opted out of Russian Federation citizenship became foreigners. They could obtain residency permits through a simplified procedure, giving them certain rights enjoyed by Russian Federation citizens, such as the right to pension, free health insurance, social allowances, and the right to exercise professions for which Russian Federation citizenship is not a mandatory requirement."<sup>107</sup> Other measures of social support also apply to those individuals who qualify as victims of political repression, be they Russian citizens or foreigners having a permanent residence permit.<sup>108</sup> This

<sup>&</sup>lt;sup>102</sup> See above, paras. 26-29.

<sup>&</sup>lt;sup>103</sup> See MU, para. 470, alleging that Crimeans who did not receive Russian nationality "suffered in different ways".

<sup>&</sup>lt;sup>104</sup> To clarify Ukraine's ambiguous wording (MU, para. 471), foreigners are not barred from taking part in a public gathering; they are only barred from acting as organizers of public gatherings: see Federal Law "On Assemblies, Rallies, Demonstrations, Marches and Picketing" No. 54-FZ of 19 June 2004 of the Russian Federation, as amended by Federal Law No. 65-FZ of 8 June 2012, art. 5-6 (Annex 877 to MU).

<sup>&</sup>lt;sup>105</sup> Contrary to Ukraine's suggestion, see MU, para. 471.

<sup>&</sup>lt;sup>106</sup> CERD Committee, 93th session, Summary record of the 2553rd meeting held on 4 August 2017, CERD/C/SR.2553, para. 23 (Mr Lukiyantsev).

<sup>&</sup>lt;sup>107</sup> OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (2017), Annex 778 to MU, para. 61, cited in MU, footnote 989.

<sup>&</sup>lt;sup>108</sup> Law of the Republic of Crimea No. 218-ZRK "On measures of social support for rehabilitated persons and persons who have suffered from political repression", 18 February 2016 (Annex 101), Article 3. Such measures of social support include, among others, a monthly monetary payment (500 RUB); a 50 % reimbursement of expenses for

points to a rather liberal, not restrictive, regime, which includes necessary provisions to accommodate the special situation of Crimeans who have opted out or otherwise did not receive Russian citizenship.<sup>109</sup> As Crimeans have been continuously enjoying a genuine choice in terms of citizenship since 2014, there is no ground to claim that the statutory differences between citizenship and residency permit evidence the existence of racial discrimination, let alone a systematic campaign of racial discrimination aimed at Crimean Tatars and ethnic Ukrainians in breach of CERD.

64. While persons who could not evidence permanent residence in Crimea on 18 March 2014 did not receive Russian citizenship and were considered foreigners, the Russian Federation refers to what was already said above on the issue of non-compliance with applicable residency law by some Crimeans prior to 2014 as well as its flexible and pragmatic approach to these cases since 2014.<sup>110</sup>

## I. THE CASE OF MR SINAVER KADYROV

65. Ukraine refers to the case of Mr Sinaver Kadyrov as a purported example of "[d]iscriminatory enforcement of Russia's immigration laws."<sup>111</sup>

66. However, as is obvious from the judicial decisions related to this case,<sup>112</sup> nothing supports Ukraine's allegation of selective or arbitrary application of the law in Mr Kadyrov's case. Ukraine

- <sup>110</sup> See above, paras. 25-29.
- <sup>111</sup> MU, para. 473.

payment of residential premises and utilities; reduced prices (50 %) for utilities' connections; special reduced fares on public transport, etc.

<sup>109</sup> The simplified regime for obtaining permanent residence permits applied to Crimeans who were eligible to obtain the Russian citizenship under Article 4(1) of the Admission Law but who opted out and decided to retain their Ukrainian citizenship or remain stateless as well as foreigners who had a valid permanent residence permit issued by Ukrainian authorities as of 18 March 2014: Information and reference material on procedure of acquiring citizenship of the Russian Federation by Crimean residents as attached to the Letter of the Main Migration Directorate of the Ministry of Internal Affairs of the Russian Federation No. 20/25495, 27 July 2021 (Annex 1330), Section 3; Russian Federal Migration Service, Internal instruction No. AK-1/2/2-5770 "On the issuance of residence permits and temporary residence permits", 22 April 2014 (Annex 441), and Russian Federal Migration Service, Internal instruction No. AK-1/2/2-8358 "On the organization of work with foreign citizens permanently residing in the Republic of Crimea and Sevastopol", 9 June 2014 (Annex 444). The requirement of one-year prior residence in Russia were not applicable to them. A simplified procedure for obtaining residence permits was similarly adopted in 2017 for the benefit of persons who had been illegally deported from Crimea, their relatives and descendants: they could obtain permanent residence permits without first having to seek temporary residence permits: Federal Law No. 77-FZ "On introducing amendments into Articles 8 and 9 of the Federal Law 'On the Legal Status of Foreign Citizens in the Russian Federation'", 17 April 2017 (Annex 108), para 1(a).

<sup>&</sup>lt;sup>112</sup> Armyansk City Court of the Republic of Crimea, Case No. 5-49/2015, Decision, 23 January 2015 (Annex 207); Supreme Court of the Republic of Crimea, Case No. 12-225/2015, Decision, 6 February 2015 (Annex 214); Supreme Court of the Republic of Crimea, Case No. 4a-285/2015, Decision, 3 September 2015 (Annex 246); Armyansk City Court of the Republic of Crimea, Case No. 5-369/2015, Decision, 7 December 2015 (Annex 261); Supreme Court of the Republic of Crimea, Decision No. 12-123/2016, 13 January 2016 (Annex 264); Armyansk City Court of the Republic of Crimea, Case No. 5-22/2016, Decision, 22 April 2016 (Annex 273). See also Appeal of Mr Kadyrov against the Decision of the Armyansk City Court of the Republic of Crimea of 23 January 2015 in Case No. 5-49/2015, 30 January 2015 (Annex 208); Appeal of Mr Alexander Lesovoy against the Decision of the Supreme Court of the Republic of Crimea of 6 February 2015 in Case No. 12-225/2015, 21 July 2015 (Annex 239); Explanation of Sinaver Kadyrov in the case on the administrative offence envisaged by Part 1.1 of Article 18.8 of the Code on Administrative Offences of the

does not even establish any connection whatsoever between this individual case and racial discrimination against the Crimean Tatars as an ethnic group. Whatever grievances Mr Kadyrov may have had, his claimed rights were eventually accepted and restored by the Russian judicial domestic system despite his erratic attitude and changing positions with regard to having the Russian citizenship. Ukraine has thus no claim at all to make under international law in relation to this individual case.

# J. THE SECOND CASE INVOKED BY UKRAINE

67. Ukraine purports to establish the discriminatory character of the Kadyrov case by referring to another case in which a Ukrainian citizen living in Crimea was not expelled.<sup>113</sup> However, Ukraine overlooks the essential facts that distinguish this case from that of Mr Kadyrov.

68. In this second case, the applicant was a Ukrainian national who had been living in Crimea for six years, had a Russian wife and one child living there as well, and had relatives in Russia. However, he had never formally registered as a permanent resident in Crimea. He had not taken steps to prove his permanent residence in Crimea as of 18 March 2014 either – prior to the initiation of the administrative case against him, which is a prerequisite for being recognized as a Russian citizen. In 2016 the City Court of Sevastopol granted his appeal in part and quashed the order to deport him from Crimea, based on the requirement to protect his right to private and family life.<sup>114</sup>

69. Unlike Mr Kadyrov, the applicant in this case did not argue that he should have been granted Russian citizenship in 2014 and treated accordingly. Rather, while admitting his guilt, he only pleaded that the administrative sanction imposed upon him – expulsion to Ukraine – was inadequate to the offence he had committed. Specifically, it interfered with his right to family life guaranteed by the ECHR and posed a threat to his life and health, while other, less severe sanctions were available.

70. The applicant's mention of his role in the "Crimean Spring" was not made as an argument and did not induce the Court in extending an undue favourable treatment to the applicant or in giving him the benefit of the doubt in order to reward him. Rather, the applicant submitted that his past participation in the "Crimean Spring" was one among several elements that contributed to increase his fear for his and his family's safety in case of expulsion to Ukraine. In particular, the places in Ukraine where he had relatives were areas of armed conflict in Donbass, and he had also been in Ukrainian captivity for some time due to his participation in the "Anti-Maidan" movement. The OHCHR report that Ukraine invokes in support of its claim confirms that the court took its

Russian Federation before the Armyansk City Court, Case No. 5-369/2015, 18 October 2015 (Annex 252); Appeal of Sinaver Kadyrov against the Decision of the Armyansk City Court of the Republic of Crimea in Case of 7 December 2015 No. 5-369/2015, 24 December 2015 (Annex 262).

<sup>&</sup>lt;sup>113</sup> MU, para. 474.

<sup>&</sup>lt;sup>114</sup> Court of Appeal of Sevastopol, Case No. 12-401/2016 (administrative appeal), Appellate Decision, 17 November 2016 (Annex 302). The Court affirmed the fine he had been sentenced to pay by the Leninsky district Court.

decision based on the applicant's argument pertaining to his right to private and family life, not to his claimed role in the "Crimean Spring".<sup>115</sup>

71. Far from applying the law arbitrarily, the Russian court took into account the claimant's family ties and fears of threat to his life or health in case of expulsion. As an ancillary point, the Court took note of the applicant's effective permanent residency in Crimea, and of the fact that he had recently submitted a formal request with the authorities for regularizing his situation and obtaining Russian citizenship.

# K. UKRAINE'S ALLEGATIONS WITH RESPECT TO THE RIGHT TO PARTICIPATE IN ELECTIONS AND TAKE PART IN THE GOVERNMENT UNDER ARTICLE 5(C) OF CERD

72. In the Memorial, Ukraine makes a series of allegations with respect to the right to participate in elections and take part in government under Article 5(c) of CERD.<sup>116</sup> Ukraine insists on what it depicts as discrimination prohibited under CERD in relation to the difference of treatment between citizens and aliens.<sup>117</sup>

73. The distinction between citizens and aliens is legitimate and indeed common, including in Ukraine.<sup>118</sup> It is certainly not unlawful under the CERD since it falls within Articles 1.2 and 1.3, and thus outside of the scope of this instrument. Further, there can be no discrimination in this respect against those Crimeans who freely elected to opt out. In any event, under international law States are entitled to make distinctions between their citizens and foreigners, including in respect of access to public office and civil service.

74. Ukraine adds that "[t]here is no reasonable justification for this different treatment of non-Russian citizens and Russian citizens who hold a second nationality".<sup>119</sup> This assertion flies in the face of international law and State practice, which overwhelmingly upholds the principle of a different treatment to nationals and to aliens. The reasonable justification is obvious: both categories are not in the same position. In fact, their positions are very different. Many States exclude dual nationals from holding public or government employment, public office, do not allow them to participate in elections, or subject them to additional requirements or checks;<sup>120</sup> As

<sup>&</sup>lt;sup>115</sup> OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (2017), Annex 777 to MU, para. 67.

<sup>&</sup>lt;sup>116</sup> MU, paras. 611-613.

<sup>&</sup>lt;sup>117</sup> MU, para. 612.

<sup>&</sup>lt;sup>118</sup> See e.g. Law of Ukraine № 889-VIII "On civil service", 10 December 2015, available at: <u>http://www.center.</u> <u>gov.ua/en/press-center/articles/item/download/545\_0821b8518898627786a8e9e7f5036425</u>, Article 19.

<sup>&</sup>lt;sup>119</sup> MU, para. 613.

See for example U.S. Department of State, Dual Citizenship – Security Clearance Implications, 2016, available at: 120 https://careers.state.gov/wp-content/uploads/2016/02/Dual-Citizenship.pdf; Commonwealth of Australia Constitution amended 29 July July 1900, Act, (as on 1977), 9 Section 44(i), available at: https://www.aph.gov.au/~/link.aspx? id=074367F0015D42C2B005207F5642376A& z=z#chapter-01 part-04 44; the Republic of the Philippines, Citizenship Retention and Re-acquisition Act, 29 August 2003, Section 5(2), available at: https://www.lawphil.net/statutes/repacts/ra2003/ra 9225 2003.html.

previously explained,<sup>121</sup> enabling many Crimeans to continue working in the public office was one of the very reasons<sup>122</sup> for establishing a simplified procedure of notifying one's wish not to retain foreign citizenship in late 2014 since dual nationals are not allowed to hold public office in the Russian Federation.

L. UKRAINE'S ALLEGATIONS WITH RESPECT TO THE RIGHT TO FREEDOM OF MOVEMENT AND RESIDENCE WITHIN THE BORDER OF THE STATE AND THE RIGHT TO LEAVE AND RETURN TO ONE'S COUNTRY UNDER ARTICLES 5(D)(I) AND (II) OF CERD

75. The Judgment on Preliminary Objections of 8 November 2019 clarified that claims premised on an alleged violation of international humanitarian law are beyond the object of the dispute and the jurisdiction of the Court.<sup>123</sup> This applies to all claims, including in respect of Articles 5(d)(i) and (ii) on the right to freedom of movement and residence within the border of the State and on the right to leave and return to one's country.<sup>124</sup>

76. In any event, residents in Crimea do not face any additional immigration barriers to the extent they have obtained Russian citizenship, a permanent residence permit or a temporary residence permit.<sup>125</sup> Ukraine's claims in this respect are thus baseless, even taken at face value.

# M. Ukraine's Allegations with respect to the Right to Nationality under Article 5(D)(III) of CERD

77. The same observations are relevant with respect to Ukraine's allegations based on Article 5(d)(iii) of CERD on the right to nationality.<sup>126</sup> The Russian Federation has already rebutted Ukraine's wrong and unfounded allegations on the 2014 special regime and the various options that it entailed for Crimeans,<sup>127</sup> on the right to nationality and conflicting loyalties of dual citizens,<sup>128</sup> on military conscription,<sup>129</sup> on prisoner transfers,<sup>130</sup> on the role of international humanitarian law,<sup>131</sup> on

<sup>&</sup>lt;sup>121</sup> See above, para. 19.

<sup>&</sup>lt;sup>122</sup> Explanatory note to the revised draft no. 588277-6 of the Federal Constitutional Law "On amending the Federal Constitutional Law 'On the admission of the Republic of Crimea into the Russian Federation and the formation of new constituent entities within the Russian Federation - the Republic of Crimea and the federal city of Sevastopol", http://sozd.duma.gov ru/download/32D93D37-959D-46E6-8E13-4C6AE0722375, 14 August 2014 (Annex 445).

<sup>&</sup>lt;sup>123</sup> Judgment of 8 November 2019, *I.C.J. Reports 2019*, p. 594-595, para. 93.

<sup>&</sup>lt;sup>124</sup> MU, paras. 614-615.

<sup>&</sup>lt;sup>125</sup> Additionally, Ukrainian citizens are allowed to stay in the Russian Federation without a visa for a duration of up to 90 days within a 180-day period: Federal Law No. 115-FZ "On the legal status of foreign citizens in the Russian Federation" (as amended on 24 April 2020), 25 July 2002 (Annex 47), Article 5(1).

<sup>&</sup>lt;sup>126</sup> MU, paras. 616-618.

<sup>&</sup>lt;sup>127</sup> MU, para. 616; see paras. 7-21 above.

<sup>&</sup>lt;sup>128</sup> MU, para. 617; see paras. 30-34 above.

<sup>&</sup>lt;sup>129</sup> MU, para. 617; see paras. 49-51 above. The "right to nationality" is primarily intended at avoiding cases of statelessness as far as possible. The transitional provisions with respect to citizenship in Crimea, including the 2014 scheme and the opting-out system, indeed guaranteed that no Crimean would become stateless. In any event, these measures also respected the Crimeans' wishes and preferences with respect to nationality.

<sup>&</sup>lt;sup>130</sup> MU, para. 617; see paras. 53-54 above.

<sup>&</sup>lt;sup>131</sup> MU, para. 617; see Counter-Memorial, Chapter VI, paras. 383-387.

the alleged specific impairment of Crimean Tatars' and ethnic Ukrainians' right to nationality,<sup>132</sup> and on the absence of similar treatment of ethnic Russians who welcomed Crimea's new status.<sup>133</sup>

# N. UKRAINE'S ALLEGATIONS WITH RESPECT TO THE RIGHT TO WORK AND FREE CHOICE OF EMPLOYMENT UNDER ARTICLE 5(E)(I) OF CERD

78. Ukraine contends that the system of citizenship conferral in Crimea impaired the enjoyment by Crimean Tatars and ethnic Ukrainians of their right to work and free choice of employment under Article 5(e)(i) of CERD.<sup>134</sup>

79. For the purpose of CERD, equal enjoyment of these rights under Article 5(e)(i) is guaranteed subject to the persons being in a similar situation. Citizens and non-citizens are obviously not in the same situation or even in a comparable situation. This explains the rationale of the exceptions carved out by Articles 1.2 and 1.3 of CERD. As the Russian Federation has explained, the requirement in Article 1.3 that measures taken by States with respect to non-citizens must not discriminate against any particular nationality is complied with.<sup>135</sup> The operation of Article 4(3) of the Admission Law precisely brings Crimea on an equal level with the rest of Russian territory, and therefore there is no discrimination against any particular nationality. To the extent Ukraine refers to dual citizens, they are treated in Crimea like on all other parts of the territory of the Russian Federation.<sup>136</sup> The Russian Federation's treatment of dual citizens is also in accordance with international standards, for example with respect to access to public employment and public office.<sup>137</sup> Such provisions distinguishing between citizens and aliens in the field of employment may be found in the domestic legislation of other States in the world.<sup>138</sup> In this respect, dual citizens with Ukrainian nationality are treated on an equal footing with dual citizens with any other nationality. Ukraine cannot simultaneously allege that Crimeans who opted out and those who accepted Russian citizenship were victims of discrimination.<sup>139</sup>

80. In any event, as explained in some detail above, the Russian Federation has made steps to facilitate access to the state service for those willing to renounce their Ukrainian citizenship by a simple application. If anything, there is positive discrimination in this field for the Crimeans.<sup>140</sup>

<sup>139</sup> MU, para. 624.

<sup>140</sup> See above, para. 19.

<sup>&</sup>lt;sup>132</sup> MU, para. 618; see paras. 35 et seq. above.

<sup>&</sup>lt;sup>133</sup> MU, para. 618; see paras. 67-71 above.

<sup>&</sup>lt;sup>134</sup> MU, paras. 623-625.

<sup>&</sup>lt;sup>135</sup> See para. 61. above.

<sup>&</sup>lt;sup>136</sup> The provision of Article 4(3) of the Admission Law extends to Crimea the general restriction in Russian law concerning access to public office and employment in public services of Russian citizens who also hold the nationality of another State, and of Russian citizens who are permanent residents abroad.

<sup>&</sup>lt;sup>137</sup> See para. 12. above.

<sup>&</sup>lt;sup>138</sup> See for example French Administration official website, Conditions for access to public service, as a public servant or as a contractor in France, as at 2 June 2021 (Annex 805).

# O. UKRAINE'S ALLEGATIONS WITH RESPECT TO THE RIGHT TO PUBLIC HEALTH, MEDICAL CARE, SOCIAL SECURITY AND SOCIAL SERVICES UNDER ARTICLE 5(E)(IV) OF CERD

81. Finally, the same goes for Ukraine's allegations with respect to the right to public health, medical care, social security and social services under Article 5(e)(iv) of CERD.<sup>141</sup>

82. Not only does the distinction between citizens and non-citizens with respect to these rights reflect universal international practice, including in Ukraine; it is also excluded under Articles 1.2 and 1.3 of CERD.<sup>142</sup> A difference of treatment between Russian citizens and dual citizens, on the one hand, and foreigners, on the other, is subject to this exclusion. To be sure, the Russian legal framework guarantees access to various levels of health-care, social security and social services to foreigners with temporary and permanent residence permits in the Russian Federation, depending on the foreigner's situation and eligibility;<sup>143</sup> this regime applies equally to all foreigners alike on all parts of its territory, and no foreign nationality is treated discriminatorily in relation to other foreign nationalities.

83. With the above-examined special rules and transitional simplified procedures established by the Russian Federation in order to grant Russian citizenship or otherwise adequately settle the status of Crimean residents in Russia, the Russian legislation effectively ensured the availability and full applicability of the standard social security, healthcare insurance and employment opportunities to the vast majority of the Crimean population. In fact, in order to exclude himself/herself from this coverage, a Crimean who had been permanently residing in Crimea on 18 March 2014 would have to opt out of the Russian citizenship and abstain from applying for a permanent or temporary residence permit, and thus resolve deliberately to live in Crimea illegally, i.e. in defiance of Russian immigration laws.

84. As has been highlighted above, Crimean permanent residents who are not Russian citizens, like other foreigners permanently residing in Russia, enjoy to a large extent the same benefits as Russian citizens do.<sup>144</sup> These measures do not point to racial discrimination and are *a fortiori* contradictory with the existence of an alleged systematic campaign of racial discrimination directed at Crimean Tatars and ethnic Ukrainians.

<sup>&</sup>lt;sup>141</sup> MU, para. 626.

<sup>&</sup>lt;sup>142</sup> In MU, para. 626 like elsewhere in Ukraine's Memorial, the reference to international humanitarian law and the alleged "occupation" of Crimea are addressed by the Russian Federation's observations thereon in this Counter-Memorial.

<sup>&</sup>lt;sup>143</sup> Federal Law No. 165-FZ "On the fundamentals of compulsory social insurance", 19 July 1999 (Annex 36), Articles 1, 8; Federal Law No. 166-FZ "On state pensions in the Russian Federation", 15 December 2001 (Annex 38), Article 3.1; Federal Law No. 167-FZ "On compulsory pension insurance in the Russian Federation", 15 December 2001 (Annex 39), Article 7.1; Federal Law No. 326-FZ "On compulsory health insurance in the Russian Federation", 29 November 2010 (Annex 54), Article 10(1)-(2); Resolution of the Government of the Russian Federation No. 186 "On approval of the rules for provision of medical assistance to foreign citizens in the territory of the Russian Federation", 6 March 2013 (Annex 59), paras. 2-7; Ministry of Health of the Russian Federation, Letter No. 11-8/3077 "On compulsory health insurance of certain categories of citizens temporarily staying in the territory of the Russian Federation", 20 July 2017 (Annex 476).

<sup>&</sup>lt;sup>144</sup> See para. 63 above.

#### **APPENDIX D**

# NO RACIAL DISCRIMINATION WITH RESPECT TO PUBLIC EVENTS AND CULTURAL GATHERINGS, LET ALONE A SYSTEMATIC CAMPAIGN THEREOF

1. Ukraine opens Chapter 10 of its Memorial with the grave accusations that the Russian Federation "choked off cultural expression" in Crimea and "cracked down hard" on public events, which is claimed to threaten with the "total erasure" of the distinct cultures of the region.<sup>1</sup> These allegations lack any factual basis, credibility or plausible merit.<sup>2</sup>

2. Ukraine's arguments on public and cultural gatherings fall under two headings. *First*, Ukraine generally takes issue with the substance of what it claims to be a "repressive" Russian legislative framework "governing public gatherings".<sup>3</sup> Since Ukraine does not claim that the Russian legislative framework is as such discriminatory, Ukraine's contentions on this point are of no relevance for its "racial discrimination" claim under CERD. Adjudicating upon such allegations would fall beyond the remit of this Court's jurisdiction. Without prejudice to the foregoing, the Russian Federation provides in the present Appendix a brief and accurate description of its pertinent laws for the Court's benefit and to set proper context for rest of Russia's responses.

3. Second, the linchpin of Ukraine's "racial discrimination" case is a small number of events which could not proceed in the exact form, at the exact time or at the exact location their organizers would have preferred them to proceed. Ukraine's account of these events is outright deceptive. Many cultural events have been held in Crimea by Crimean Tatars and Ukrainians since 2014 – most of which are conveniently overlooked in Ukraine's biased narrative. As part of supporting measures that are described elsewhere, the authorities have adopted legal acts that specifically provide for these ethnic groups to celebrate culturally significant events.<sup>4</sup> The actual state of affairs

<sup>&</sup>lt;sup>1</sup> MU, paras. 477-478.

<sup>&</sup>lt;sup>2</sup> See also Chapter VI of this Counter-Memorial, paras. 390-397.

<sup>&</sup>lt;sup>3</sup> MU, para. 481.

<sup>4</sup> Decree of the President of the Russian Federation No. 268 "On measures aimed at rehabilitation of Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German peoples and state support of their revival and development" (as amended on 12 September 2015), 21 April 2014 (Annex 63); Council of Ministers of the Republic of Crimea, Information note on measures taken to implement the Decree No. 268 of the President of the Russian Federation and other activities aimed at promoting cultures of Ukrainian and Crimean Tatar peoples, as attached to the Letter No. 1/01-46/8775/3/1, 5 June 2020 (Annex 498); Council of Ministers of the Republic of Crimea, Resolution No. 103 "On measures aimed at the development of social and cultural spheres of life of the deported citizens and ensuring interethnic harmony in the Republic of Crimea for 2014", 27 May 2014 (Annex 67); Order of the Council of Ministers of the Republic of Crimea No. 332-r "On events dedicated to Day of Remembrance of the victims of the deportation of the peoples of Crimea", 22 April 2014 (Annex 64); State Committee on Inter-ethnic Relations of the Republic of Crimea, Information on the events held in the Republic of Crimea in implementation of Order of the Council of Ministers of the Republic of Crimea of 22 April 2014 No. 332-r "On events dedicated to the Day of Remembrance for the victims of the deportation from Crimea" (Annex 507); Decree of the Head of the Republic Crimea No. 136-U "On holding events dedicated to the Day of Remembrance of victims of deportation from Crimea", 13 May 2015 (Annex 89); Order of the Council of Ministers of the Republic of Crimea No. 227-r "On approval of the Event Plan for the implementation in the Republic of Crimea of the Set of Measures for the restoration of historical justice, political, social and spiritual revival of the Armenian, Bulgarian, Greek, Crimean Tatar and German peoples, who were illegally deported and politically

in Crimea is thus irreconcilable with the Claimant's case of a systematic campaign of racial discrimination. In addition, as the Russian Federation demonstrates below, none of the specific measures referred to by Ukraine entails racial discrimination.

4. Ukraine indeed has not established that in relation to public events, the law that is applicable in Crimea is racially discriminatory or arbitrary (I) or that it has been discriminatorily or arbitrarily applied against the Crimean Tatars (II) and ethnic Ukrainians (III) on ethnic grounds, in comparison to ethnic Russians (IV), let alone as part of a systematic campaign or policy of racial discrimination against these groups. No such racially discriminatory or arbitrary application of the law occurred with respect to the individual incidents relied on by Ukraine. In each case, the measures taken by the Russian authorities regarding the holding of public events were justified and rested on legitimate grounds. Ukraine's allegations have nothing to do with racial discrimination and have no basis under CERD.

### I. Peaceful Assembly under Russian Law

5. At the outset the Russian Federation reiterates that the issue of whether it is entitled to apply its own laws in Crimea is beyond the Court's jurisdiction.<sup>5</sup> Ukraine's repeated attempts to contest

repressed on ethnic and other grounds, for 2015-2016 years", 23 March 2015 (Annex 85); Council of Ministers of the Republic of Crimea, Information on the number and content of events held pursuant to Order No. 227-r "On approval of the Event Plan for the implementation in the Republic of Crimea of the set of measures for the restoration of historical justice, political, social and spiritual revival of the Armenian, Bulgarian, Greek, Crimean Tatar and German peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2015-2016 years" (Annex 506); Decree of the Council of Ministers of the Republic of Crimea No. 451-r "On approval of the Event Plan for the implementation in the Republic of Crimea of the set of measures for the restoration of historical justice, political, social and religious revival of the Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2016", 5 May 2016 (Annex 104); Decree of the Council of Ministers of the Republic of Crimea No. 452-r "On holding events dedicated to the Day of Remembrance of Victims of the Deportation from Crimea", 5 May 2016 (Annex 105); Order of the Council of Ministers of the Republic of Crimea No. 968-r "On the Event Plan for the implementation in the Republic of Crimea of the Set of Measures for the restoration of historical justice, political, social and religious revival of the Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German Peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2017-2019", 29 August 2017 (Annex 110); State Committee on Inter-ethnic Relations of the Republic of Crimea, Information on the events held in implementation of Order of the Council of Ministers of the Republic of Crimea of 29 August 2017 No. 968-r "On the Event Plan for the implementation in the Republic of Crimea of the Set of Measures for the restoration of historical justice, political, social and religious revival of the Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German Peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2017-2019" (Annex 508); Order of the Government of Sevastopol No. 578 "On approval of the Set of Measures for the restoration of historical justice, political, social and spiritual revival of the Armenian, Bulgarian, Greek, Crimean Tatar and German peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2014-2016 in Sevastopol", 31 December 2014 (Annex 79); Department of Public Communications of the City of Sevastopol, Information on the number and context of events held in implementation of Resolution of the Government of Sevastopol of 31 December 2014 No. 578 "On the approval of the set of measures for the restoration of historical justice, political, social and spiritual revival of the Armenian, Bulgarian, Greek, Crimean Tatar and German peoples, subjected to illegal deportation and political repression on ethnic and other signs, for 2014-2016 in Sevastopol", 17 February 2021 (Annex 640).

<sup>&</sup>lt;sup>5</sup> Judgment of 8 November 2019, paras. 23, 29 and 93.

#### Appendix D

the applicability of Russian laws to Crimea on international humanitarian law grounds<sup>6</sup> thus fall beyond the Court's jurisdiction *ratione materiae*.

6. Contrary to Ukraine's position, Russian law governing public gatherings is not "discriminatory" and is not incompatible thus with CERD.

7. Although Ukraine confuses these matters, there are in fact *two* distinct and relevant regulatory regimes in place under Russian law: a regulatory framework governing so-called "public events" and a distinct regime which applies to cultural gatherings. The legislation on public events does not apply to other mass events, such as cultural, entertainment, sporting or other similar events. As a rule, the relevant procedure for the latter category of events is determined by local self-government bodies.

8. Under Russian law, the distinguishing feature of a "*public event*" is its purpose. The purpose of public events is exercising the freedom of expression, shaping public opinion and articulating demands concerning various issues of political, economic, social and cultural life of the country or issues of foreign policy.<sup>7</sup> Such events are governed by federal laws, which apply uniformly and without discrimination in the entire territory of the Russian Federation. Under international law, the right to peaceful assembly is not absolute nor unlimited.<sup>8</sup> While it is guaranteed under Article 31 of the Russian Constitution, this guarantee is subject to Article 55(3) of the Constitution which reflects applicable international human rights standards and common State practice by providing that "[h]uman and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State."

9. Russian legislation explicitly regulates the procedure for organizing and holding public gatherings, while allowing citizens to exercise their constitutional rights to peaceful assembly. At the federal level, the Russian legislator establishes the forms and objectives of public gatherings,<sup>9</sup> the procedure for organizing a public event,<sup>10</sup> the list of places prohibited to hold public gatherings,<sup>11</sup> the composition of persons participating in the organization and holding of a public

<sup>&</sup>lt;sup>6</sup> MU, para. 483.

<sup>&</sup>lt;sup>7</sup> Federal Law No. 54-FZ "On Assemblies, Rallies, Demonstrations, Marches and Picketing", 19 June 2004 (Annex 877 to MU) ("Federal Law on Public Events"), Article 2(1). See also Law of the Republic of Crimea No. 56-ZRK "On Creating Conditions for the Exercise by Citizens of the Russian Federation of the Right to Hold Assemblies, Rallies, Processions, or Small Protests in the Republic of Crimea", 21 August 2014 (Annex 895 to MU) ("Crimean Law on Public Events"), Article 1(1)(1).

<sup>&</sup>lt;sup>8</sup> International Covenant on Civil and Political Rights, 19 December 1966, Article 21, *UNTS*, vol. 999 (1976), p. 178, available at <u>https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-9999-I-14668-English.pdf</u>.

<sup>&</sup>lt;sup>9</sup> Federal Law on Public Events (Annex 877 to MU), Articles 2(1)-2(6).

<sup>&</sup>lt;sup>10</sup> *Ibid.*, Articles 4, 7.

<sup>&</sup>lt;sup>11</sup> *Ibid.*, Article 8(2).

event, their rights and obligations as well as the competence of state bodies.<sup>12</sup> Such detailed regulation of public gatherings is aimed at providing the organizers and participants of public events with clear and precise rules for holding public gatherings. It also ensures the legality of actions of the authorities at all stages of the organization and conduct of public events in a peaceful manner.

10. Like in many countries, Russian law requires the organizers of an intended public event to notify the competent authorities in advance and to provide them with a series of specific information about the planned public event in order to enable the authorities to ensure security and law and order throughout of such public event.<sup>13</sup> In principle such notice should be addressed to the authorities within a period not earlier than fifteen and not later than ten days prior to holding of the public event.<sup>14</sup>

11. Ukraine erroneously suggests that the duty to notify Russian authorities in advance of public events unduly restricts the freedom of assembly.<sup>15</sup> This interpretation is erroneous. In fact, this very issue was raised before the European Court of Human Rights for instance in *Berladir and Others v. Russia*. The Court confirmed that notification and authorization procedures are *per se* consistent with human rights law:

"[N]otification, and even authorization, procedures for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention [i.e., the freedom of assembly and association] as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering, be it political, cultural or of another nature."<sup>16</sup>

12. In *Molnár v. Hungary*, the Court explained that notification or authorization procedures are in fact "common practice" among State parties to the European Convention on Human Rights, and

<sup>&</sup>lt;sup>12</sup> *Ibid.*, Articles 5-6, 12-14.

<sup>&</sup>lt;sup>13</sup> *Ibid.*, Articles 2(7), 4(1), 7(1) and 7(3). See also Crimean Law on Public Events (Annex 895 to MU), Article 2(2). In particular, the notice shall indicate the purpose of the public event; the form of the public event; the place (places) of holding the public event, routes of passage of participants, and, if the public event to be held with the use of means of transport, information on the use of means of transport; date, time of commencement and termination of the public event; expected number of participants in the public event; forms and methods to be used by the organiser of the public event to ensure public order, the organization of medical aid, intention to use sound-amplifying technical devices when holding the public event; family name, first name, patronymic or denomination of the organiser of the public event, data on his residential address or location and telephone number; family name, first name and patronymic of persons authorized by the organiser of the public event to perform managerial functions associated with the organization and holding of the public event; date of submission of the notice on holding the public event.

<sup>&</sup>lt;sup>14</sup> Federal Law on Public Events (Annex 877 to MU), Article 7(1). See also Crimean Law on Public Events (Annex 895 to MU), Article 2(1).

<sup>&</sup>lt;sup>15</sup> MU, para. 483. Ukraine is inconsistent with its own practice, which, in the same way as Russian regulation, requires prior notification of authorities of a public event. See Ukrainian Constitution, 8 December 2004 (Annex 732 to MU), Article 39: "Citizens shall have the right to assemble peacefully without arms and to hold rallies, meetings, processions, and demonstrations upon notifying executive or local self-government bodies in advance."

<sup>&</sup>lt;sup>16</sup> ECtHR, *Berladir and Others v. Russia*, judgment, 10 July 2012, application No. 34202/06, paras. 40, 42.

serve "the aim of reconciling, on the one hand, the right to assembly and, on the other hand, the rights and lawful interests (including the right of movement) of others, but also the prevention of disorder or crime".<sup>17</sup> By contrast, in 2014, the European Court of Human Rights found that Ukraine – not Russia – had lacked an adequate legislative framework to secure the freedom of assembly.<sup>18</sup>

13. Consistent with the foregoing, the notification procedure under Russian law is not aimed at unduly restricting the rights of citizens to peaceful assembly. The purpose of the procedure is to provide public authorities with the necessary information about the public event, well in advance of the event in question.<sup>19</sup> Without such information at the disposal of the authorities (including, for instance, on the expected turnout and the purpose of the event), a risk exists that state authorities may not be able to take appropriate steps to ensure safe conditions for both the participants of the public event and other persons. For completeness, the Russian Federation also notes that prior notification, or authorisation, is not even a necessary precondition in the case of smaller scale public events which do not raise such concerns.<sup>20</sup>

14. While every domestic regime has its own peculiarities, similar regulations of public events exist in most countries, including for instance in France, Germany, Italy, the United States or Ukraine. This is the case for the requirement of prior authorizations or permits for holding public events and the requirement for the organizer to provide specific information, to take specific steps beforehand and to ensure compliance with certain requirements during the public event.<sup>21</sup> This is

<sup>&</sup>lt;sup>17</sup> ECtHR, *Éva Molnár v. Hungary*, judgment, 7 October 2008, application No. 10346/05, para. 37. Nothing in the opinion of the Venice Commission, cited by Ukraine as Annex 816, undermines these points made by the Court. This opinion is immaterial to Ukraine's case of a systematic campaign or policy of racial discrimination.

<sup>&</sup>lt;sup>18</sup> ECtHR, *Vyerentsov v. Ukraine*, judgment, 11 April 2013, application No. 20372/11, para. 55; *Shmushkovych v. Ukraine*, judgment, 14 November 2013, application No. 3276/10, para. 40.

<sup>&</sup>lt;sup>19</sup> The Constitutional Court of the Russian Federation has confirmed a number of times that without the requisite knowledge of proposed public events (including their nature and scope), the public authorities would be unable to fulfill their obligations under Article 2 of the Russian Constitution, requiring that they observe and protect human and civil rights and freedoms and take necessary measures, including preventive and organizational measures, aimed at ensuring safe conditions both for the participants of the public event and other persons. See Constitutional Court of the Russian Federation, Decision No. 4-P, 14 February 2013 (Annex 135), para. 2.2; Constitutional Court of the Russian Federation, Decision No. 12-P, 18 May 2012 (Annex 134), para. 3; Constitutional Court of the Russian Federation, Ruling No. 1428-O, 7 July 2016 (Annex 283), para. 3.

<sup>&</sup>lt;sup>20</sup> Federal Law on Public Events (Annex 877 to MU), Articles 7(1), 7(1.1), 8(1.1).

<sup>21</sup> See Boston City Hall official website, "Rules and regulations for public events", 12 April 2021 (Annex 812), also available https://www.boston.gov/departments/consumer-affairs/rules-and-regulations-public-events at and https://www.boston.gov/departments/consumer-affairs-and-licensing/how-apply-host-public-event-boston; French Administration official website, "Organization of demonstrations, parades or public gatherings", 12 April 2021 (Annex 813), also available in French at https://www.service-public.fr/associations/vosdroits/F21899; Law of Hamburg on the protection of public security and order, HmbGVBI. S. 77, 14 March 1966 (Annex 809), section 31, also available in German at http://www.lexsoft.de/cgi-bin/lexsoft/justizportal nrw.cgi?xid=170635,43; Italy, Royal Decree No. 773 "Adoption of the consolidated legislation on public security", 18 July 1931 (Annex 808), Articles 68-69, also available http://www.prefettura.it/FILES/AllegatiPag/1160/NORM%20A%20-%20R.D.%2018-06-Italian at in 1931%20N.%20773%20-%20TULPS.pdf.

also the case in respect of sanctions for holding of unauthorized public events or for carrying out illegal conduct during a public event.<sup>22</sup>

15. Holding a public event without securing prior authorization or failure to ensure that the public event proceeds in line with the approved format will result in the imposition of administrative sanctions to the organizer and participants, as appropriate. This is standard practice, including in Ukraine.<sup>23</sup>

16. As regards the venue, as a general rule, a public event can be held at any place suitable for the proposed event, provided that it does not give rise to risk to the integrity of buildings or structures (for example, collapse), nor poses any other threat to participants' security during the event.<sup>24</sup> Article 8(1.1) of the Federal Law on Public Events provides for the designation of places that are specially assigned or equipped for public events (hereinafter – the "Specially Assigned Places"). Such places are designated by executive state power bodies of the constituent entities of the Russian Federation, and importantly due to their characteristics allow for more effective security support from the authorities, thereby making them more suitable for public events.<sup>25</sup> The definition of Specially Assigned Places does not prevent the organizer of a public event from choosing another place, not restricted by law, to hold it by sending a notice to the public authority in accordance with the general procedure.<sup>26</sup> However, it is easier to hold public events in Specially Assigned Places. For example, in order to hold a public event in a Specially Assigned Place, no

<sup>&</sup>lt;sup>22</sup> When amending its legislation on public events in 2012 (through Federal Law No. 65-FZ of 8 June 2012), the Russian Federation took into account sanctions applied in several other countries. See President of the Russian Federation official website, "Sanctions for offenses during the preparation and conduct of mass demonstrations, comparative table" (Annex 1281). In this respect, sanctions provided for under Russian law are reasonable when compared to those in force in these other countries. See Code on Administrative Offences of the Russian Federation, No. 195-FZ, 30 December 2001 (Annex 41), Articles 20.2(1),(2) and (5) (as of 9 June 2012), and Plenum of the Supreme Court of the Russian Federation, Resolution No. 28 "On certain issues encountered by the courts in consideration of administrative cases and of cases on administrative offences pertaining to application of legislation on public events", 26 June 2018 (Annex 403), para. 33.

<sup>&</sup>lt;sup>23</sup> See for example Ukraine, Leninsky District Court of Sevastopol, case No. 3-21573/2008, Decision, 24 October 2008 (Annex 775); Ukraine, Central District Court of Simferopol, case No. 3-2317/09, Decision, 24 June 2009 (Annex 776); Ukraine, Central District Court of Simferopol, case No. 3-3575/09, Decision, 8 October 2009 (Annex 777); Ukraine, Court of Appeal of the Kharkov Region, case No. 33-554/2010, Decision, 20 July 2010 (Annex 778); Ukraine, Kiev Court of Appeal, case No. 33-2182, Decision, 14 December 2010 (Annex 780).

<sup>&</sup>lt;sup>24</sup> Federal Law on Public Events (Annex 877 to MU), Article 8(1).

<sup>&</sup>lt;sup>25</sup> As an example, see the list of Specially Assigned Places for Simferopol: Resolution of the Council of Ministers of the Republic of Crimea No. 452 "On approval of the list of places specially assigned for public events in the territory of the Republic of Crimea", 12 November 2014 (Annex 74).

<sup>&</sup>lt;sup>26</sup> Plenum of the Supreme Court of the Russian Federation, Resolution No. 28 "On certain issues encountered by the courts in consideration of administrative cases and of cases on administrative offences pertaining to application of legislation on public events", 26 June 2018 (Annex 403), para. 17. This resolution addressed certain issues that arise in courts when considering administrative cases and cases of administrative offenses relating to the application of legislation on public events. This resolution refers to legal regulation, which has been in force long before 2018, including during the period from 18 March 2014 to the present.

notification is even required if the number of participants does not exceed the maximum number, as established by law of the constituent entity of the Russian Federation.<sup>27</sup>

17. If there are any suspicions of a possible violation of public order, the public authority may issue a written warning to the organizer on the inadmissibility of violating the law and potential liability.<sup>28</sup> Such warning is an additional way to inform the organizers about the provisions of the current legislation, allowing them to bring their actions in accordance with the requirements of the law.

18. As a reliable guarantee of the right to peaceful assembly there is a strictly limited list of grounds for refusal to hold a public event provided for by law.<sup>29</sup>

19. Citizens' right to freedom of peaceful assembly is further ensured by an effective judicial protection mechanism, allowing the adjudication of any disputes prior to the date of the public event.<sup>30</sup>

# II. No Racial Discrimination in Respect of Cultural Gatherings and Public Events of the Crimean Tatar Community

20. Ukraine contends that the "authorities have applied these repressive laws to systematically suppress the ability of the Crimean Tatar community to mark events of cultural significance."<sup>31</sup> As is confirmed below, these allegations are baseless; the Russian Federation has not applied its laws discriminatorily in respect of the specific situations referred to by Ukraine.

# A. GENERAL OBSERVATIONS

21. Before turning to the particular events Ukraine singles out, a number of cross-cutting observations are warranted (in respect of the public events of both the Crimean Tatar and the Ukrainian communities).

22. *First*, Ukraine generally does *not* compare and contrast the conduct of the Russian authorities in relation to Crimean Tatar and Ukrainian events with their treatment of the events organized by other national or ethnic communities, apart from a few misleadingly presented events. There is no evidence before the Court that in the Russian Federation public events organized by

<sup>31</sup> MU, para. 485.

<sup>&</sup>lt;sup>27</sup> Federal Law on Public Events (Annex 877 to MU), Article 8(1.1).

<sup>&</sup>lt;sup>28</sup> Ibid., Article 12(2). See also Federal Law No. 114-FZ "On counteracting extremist activities", 25 July 2002 (Annex 876 to MU), Article 16.

<sup>&</sup>lt;sup>29</sup> Federal Law on Public Events (Annex 877 to MU), Article 12(3). See also Articles 5(2), 5(5), 12(1)(1) and 12(1)(2).

<sup>&</sup>lt;sup>30</sup> *Ibid.*, Article 19. See also Plenum of the Supreme Court of the Russian Federation, Resolution No. 28 "On certain issues encountered by the courts in consideration of administrative cases and of cases on administrative offences pertaining to application of legislation on public events", 26 June 2018 (Annex 403), paras. 1-4.

ethnic Russians or any other national or ethnic groups enjoy more beneficial treatment in any respects when compared with the public events of Crimean Tatar and Ukrainian communities. As the Russian Federation has explained at length in the present submission, absent *a comparator* Ukraine's discrimination claim is without any basis. To the extent Ukraine purports to draw comparisons, its arguments are unavailing, and the parallels it purports to draw are inapposite, as demonstrated in section IV below.

23. Second, Ukraine does not point to a single instance where the parties organizing the public events in question challenged the conduct of the Russian authorities before Russian courts on the specific basis that they have been discriminated against on racial grounds. Actually, in the vast majority of cases, the actions and responses of the Russian authorities have not even been challenged and recognized illegal on any grounds.<sup>32</sup> This undermines Ukraine's attempts to portray retrospectively these events and instances as "racial discrimination", a claim that was not made when the events took place.

24. *Third*, while Ukraine glosses over the factual details of the particular events, as will be demonstrated below, the Russian authorities at all times attempt to provide participants and organizers of public events with full support to the extent an option exists, for example by suggesting alternative timing or venues whenever possible.<sup>33</sup>

25. *Fourth*, it is important to put the record straight concerning facts that Ukraine simply ignores. Ukraine claims that Crimean Tatars were obstructed in commemorating the *Sürgün*.<sup>34</sup> In fact, in May 2014, thousands commemorated the *Sürgün* in Simferopol at a meeting organized at that time by the *Mejlis*.<sup>35</sup> Similar events, such as a meeting of 1,500 people in Sudak,<sup>36</sup> combined with cultural events, including prayer services in mosques and laying flowers at the monuments,

<sup>&</sup>lt;sup>32</sup> Public Order Protection Department of the Directorate of the Ministry of Internal Affairs of Russia for the City of Sevastopol, Note on the legality of actions of officers of the Directorate of the Ministry of Internal Affairs of Russia for the city of Sevastopol when taking public enforcement action in respect of participants and organisers of public events (Annex 633); Public Order Protection Department of the Ministry of Internal Affairs for the Republic of Crimea, Note on the principles and legal regulation of the police (Annex 651).

<sup>&</sup>lt;sup>33</sup> For example, see the description of episodes related to the celebration of *Sürgün* in the Voinka village in 2016, as well as the holding of a picket on 10 December 2014, dedicated to the International Human Rights Day, paras. 30 and 34.

<sup>&</sup>lt;sup>34</sup> MU, paras. 485-486.

<sup>35</sup> YouTube, Video footage of the rally in Simferopol dedicated to Sürgün, 18 May 2014 (Annex 1211), also available at https://www.youtube.com/watch?v=pOjXkcF8T70&t=. The caption to the video on the YouTube page indicates that the meeting took place in Aqmescit, which is Simferopol in Crimean Tatar. See also Official website of the Mejlis, Sürgün, Photos of the rally in Simferopol dedicated to 18 May 2014. http://qtmm.org/ru/%D0%BC%D1%83%D0%BB%D1%8C%D1%82%D0%B8%D0%BC%D0%B5%D0%B4%D0%B 8%D0%B0/gid/629 (Annex 1213).

<sup>&</sup>lt;sup>36</sup> *YouTube*, Video footage of the rally in Sudak dedicated to Sürgün, 18 May 2014 (Annex 1212), also available at <u>https://www.youtube.com/watch?v=N17ILFo5V74</u>. See also State Committee on Inter-ethnic Relations of the Republic of Crimea, Information on the events held in the Republic of Crimea in implementation of Order of the Council of Ministers of the Republic of Crimea of 22 April 2014 No. 332-r "On events dedicated to the Day of Remembrance for the victims of the deportation from Crimea" (Annex 507), table line 9.

were held simultaneously all over Crimea.<sup>37</sup> The significant observable scale of the gatherings in question contradicts Ukraine's allegations. For the Court's convenience, and by way of illustration, the Russian Federation provides below a photograph of the *Sürgün* commemoration held on 18 May 2014 in Simferopol<sup>38</sup> – a commemoration that Ukraine claims was banned:<sup>39</sup>



Figure 1. Meeting dedicated to the Sürgün, held in Simferopol on 18 May 2014<sup>40</sup>

26. Similarly, in 2015, the following commemorative events were held in Crimea: (i) prayer services in mosques<sup>41</sup>; (ii) laying flowers at the monuments<sup>42</sup>; (iii) the event called "light a fire in

<sup>&</sup>lt;sup>37</sup> *Rossiyskaya Gazeta*, "In Crimea, Day of Remembrance of the victims of the deportation was commemorated without incidents", 18 May 2014 (Annex 904).

<sup>&</sup>lt;sup>38</sup> Official website of the Mejlis, Photos of the rally in Simferopol dedicated to Sürgün, 18 May 2014, http://qtmm.org/ru/%D0%BC%D1%83%D0%BB%D1%8C%D1%82%D0%B8%D0%BC%D0%B5%D0%B4%D0%B 8%D0%B0/gid/629 (Annex 1213).

<sup>&</sup>lt;sup>39</sup> MU, para. 485.

<sup>&</sup>lt;sup>40</sup> According to the information from the official website of Mejlis at <u>http://qtmm.org/ru</u>, 30,000 people took part in the meeting.

<sup>&</sup>lt;sup>41</sup> *YouTube*, Video footage of the prayer service dedicated to the victims of the deportation that took place in Simferopol, 18 May 2015 (Annex 1215), also available at <u>https://www.youtube.com/watch?v=cP6FE-QhupI</u>.

<sup>&</sup>lt;sup>42</sup> *Rossiyskaya Gazeta*, "Crimea commemorates the victims of the deportation", 18 May 2015 (Annex 924).

your heart"<sup>43</sup>; (iv) requiem concerts<sup>44</sup>; (v) foundation of the memorial to the victims of deportation in Bakhchisaray<sup>45</sup>; (vi) the climbing of Mount Chatyr-Dag<sup>46</sup> and other events.

27. Ukraine takes issue with the fact that an application by the *Mejlis* for a public event to commemorate the *Sürgün* was rejected in 2015,<sup>47</sup> but fails to mention that it was rejected because another organization, the Interregional Public Movement of the Crimean Tatar People, had previously notified the authorities of its intent to organize another event at the same time and at the same location, and due to a lack of alternative available specially designed venues.<sup>48</sup>

28. There has been no judicial challenges of any supposed refusal to commemorate *Sürgün* in 2015.<sup>49</sup> The Court ought to consider Ukraine's accusation of a systematic campaign of racial discrimination against this background. The *Sürgün* has continued to be one of the regularly celebrated events in Crimea in the subsequent years.<sup>50</sup>

<sup>46</sup> *Krym.Realii*, "Thousands of Crimean Tatars began ascent of Chatyr-Dag in memory of the victims of the deportation", 16 May 2015 (Annex 921).

<sup>47</sup> MU, para. 486.

<sup>&</sup>lt;sup>43</sup> *Kryminform*, "Light a fire in your heart' event was held in Simferopol in memory of the victims of the deportation /PHOTO/", 18 May 2015 (Annex 922).

<sup>&</sup>lt;sup>44</sup> State Council of the Republic Crimea official website, "A requiem meeting dedicated to Day of Remembrance of victims of the deportation from Crimea was held in Simferopol", 18 May 2015 (Annex 459).

<sup>&</sup>lt;sup>45</sup> *Kryminform*, "In the Bakhchisaray district, a capsule was laid in the foundation of a future monument to the victims of the deportation", 18 May 2015 (Annex 923). See also *YouTube*, Video footage entitled "Crimean authorities promise Crimean Tatars a memorial to the victims of the deportation (video)", that shows the foundation of the memorial to the victims of the deportation in Bakhchisaray, 18 May 2015 (Annex 1216), available at <u>https://www.youtube.com/watch?v=ba2Q96mBk9o</u>.

<sup>&</sup>lt;sup>48</sup> Interregional Public Movement of the Crimean Tatar people "Qirim", Notification No. 3 to the Administration of the City of Simferopol on holding a rally on 18 May 2015 in Simferopol, 5 May 2015 (Annex 546), received by the administration of Simferopol at 9.15 a.m.; Administration of the City of Simferopol, Response No. 5646/24/01-66 to the notification of Interregional Public Movement of the Crimean Tatar people "Qirim" on approval of the rally, 7 May 2015 (Annex 548); N.E. Dzhelyalov, Notification to the Administration of the City of Simferopol on holding a rally on 18 May 2015 in Simferopol, 5 May 2015 (Annex 547), received by the administration of Simferopol at 02.39 p.m.; Administration of the City of Simferopol, Response No. D-217/6597 to the notification of Mr Dzhelyalov, 7 May 2015 (Annex 549), according to which a previously agreed event of another Crimean Tatar organization is due to be held at the indicated place and time.

<sup>&</sup>lt;sup>49</sup> Department of Judicial Support for Administrative Cases of the Supreme Court of the Republic of Crimea, Note confirming the absence of cases challenging the decisions of the Crimean authorities not to approve the holding of certain events (Annex 649), para. 1.10.

<sup>&</sup>lt;sup>50</sup> As an example, see *YouTube*, Video footage of the mourning event dedicated to Sürgün, held in Sudak, 18 May 2017 (Annex 1226), also available at <u>https://www.youtube.com/watch?v=A5mBJyUFxn0</u>; Crimean Tatars Club website, Video footage of the commemorative events dedicated to Sürgün in Aqmescit (Simferopol), 18 May 2018 (Annex 1228), also available at <u>https://www.crimeantatars.club/life/society/v-den-skorbi-krymskih-tatar-podderzhivaet-edinstvo</u>. See also State Committee on Inter-ethnic Relations of the Republic of Crimea, Information on the events held in implementation of Order of the Council of Ministers of the Republic of Crimea of 29 August 2017 No. 968-r "On the Event Plan for the implementation in the Republic of Crimea of the Set of Measures for the restoration of historical justice, political, social and religious revival of the Armenian, Bulgarian, Greek, Italian, Crimean Tatar and German Peoples, who were illegally deported and politically repressed on ethnic and other grounds, for 2017-2019" (Annex 508).

29. With respect to the commemoration of the *Sürgün* generally, besides commemorations by citizens, this day is also officially marked in Crimea, including in particular under the form of State commemoration events attended by the Crimean authorities at their highest level, and also in schools.<sup>51</sup> This is a direct consequence of the Presidential Decree on rehabilitation adopted in 2014.<sup>52</sup> The Crimean Tatar flag is proudly displayed during these commemorations.<sup>53</sup>

#### **B.** SPECIFIC ALLEGATIONS

### 1. The Case of the Voinka Village Administration in 2016

30. Turning now to the specific events mentioned by Ukraine, Ukraine takes issue with a decision of the Voinka village administration of Krasnoperekopsky in 2016 concerning an application for a public gathering related to the *Sürgün*.<sup>54</sup> The Voinka village administration did *not* reject a request to hold a meeting for a commemoration of *Sürgün*. Since the request in question related to an area where development works were underway at the time (and lasted for weeks),<sup>55</sup> the authorities offered the organizer other options, including to hold the planned meeting in the morning at 9 a.m. before the works commence so as to avoid their interruption,<sup>56</sup> or to hold with other citizens a joint cultural event of laying flowers at the commemorative plaque, which had previously been planned at the indicated place and time.<sup>57</sup> The applicant refused to agree to any suggested solutions.<sup>58</sup> While it is the applicant's right to do so, the town administration cannot be

<sup>&</sup>lt;sup>51</sup> See this Counter-Memorial, Chapter V, paras. 329 and 332.

<sup>&</sup>lt;sup>52</sup> See this Counter-Memorial, Chapter I, paras. 57-63.

<sup>&</sup>lt;sup>53</sup> As an example, see photos from the official website of the Bakhchisaray city administration, available at <u>https://bahchisaray.rk.gov.ru/ru/article/show/1246</u> or <u>https://archive.md/ONNDl</u>.

<sup>&</sup>lt;sup>54</sup> MU, para. 486.

<sup>&</sup>lt;sup>55</sup> Decision of the Voinka Village Administration No. 361 "On the works to improve the park territory", 29 April 2016 (Annex 103).

<sup>&</sup>lt;sup>56</sup> Notification of Ms Ametova to the Voinka Village Administration on holding a rally in the park of the Voinka village on 18 May 2016 from 3:00 p m. to 5:00 p m., 4 May 2016 (Annex 563); Voinka Village Administration, Response to the notification of Ms Ametova with the proposal to hold a joint event of laying flowers at the memorial plaque in the Voinka village Administration consenting to hold a rally on 18 May 2016 (Annex 565); Letter of Ms Ametova to the Voinka Village Administration consenting to hold a rally on 18 May 2016 from 11:00 a m. to 12:30 p.m., 12 May 2016 (Annex 566); Voinka Village Administration, Response to the letter of Ms Ametova, 13 May 2016 (Annex 567), that (i) confirms the fact that the administration has proposed to Saniye Ametova the second option to hold the meeting on 18 May 2016 at 9:00 a m., (ii) states that it was impossible to hold the meeting at another time due to land improvement works in the park of the village of Voinka.

<sup>&</sup>lt;sup>57</sup> Voinka village administration, Decree No. 111 "On holding events on 18 May 2016", 28 April 2016 (Annex 1265); Division for Culture and Inter-ethnic Relations of the Administration of the Krasnoperekopsky District of the Republic of Crimea, Information on the activities performed in the village of Voinka for the purpose of implementing Resolution of 29 April 2016 No. 111, 9 June 2020 (Annex 624).

<sup>&</sup>lt;sup>58</sup> Krasnoperekopsk District Court of the Republic of Crimea, Case No. 2a-932/16, Decision, 17 May 2016 (Annex 274); Supreme Court of the Republic of Crimea, Case No. 33a-5959/2016, Appellate Decision, 5 September 2016 (Annex 296); Krasnoperekopsk District Court of the Republic of Crimea, Case No. 2a-1578/16, Decision, 4 October 2016 (Annex 298); Supreme Court of the Republic of Crimea, Case No. 33a-267/2017, Appellate Decision, 11 January 2017 (Annex 307).

blamed for their decision. In such context the authorities' decision was objective and reasonable; and it has clearly nothing to do with racial discrimination.

### 2. The 2017 Unauthorized Public Event in Bakhchisaray

31. In relation to another event in 2017 in Bakhchisaray, Ukraine alleges that the authorities imposed sanctions for "driving cars displaying the Crimean Tatar flag".<sup>59</sup> This allegation represents another blatant falsehood. The modest administrative fines<sup>60</sup> were imposed as the event in question<sup>61</sup> had not been notified to Russian authorities in advance pursuant to the requirement discussed above.<sup>62</sup> These administrative measures had nothing to do with the display of flags or symbols which are otherwise routinely displayed at various events in Crimea without any restriction.<sup>63</sup> The activists have not appealed the decisions against them before higher courts.<sup>64</sup>

### 3. Celebration of Human Rights Day in 2014

32. Ukraine extensively dwells on the alleged obstruction of celebrations of the International Human Rights Day in December 2014 and 2015 (the "December 2014 Events" and the "December 2015 Events" respectively).<sup>65</sup>

33. As to the December 2014 Events,<sup>66</sup> upon receipt of an application from the Committee on the Protection of Rights of the Crimean Tatar People (hereinafter the "Committee"), which was

<sup>&</sup>lt;sup>59</sup> MU, para. 486.

<sup>&</sup>lt;sup>60</sup> Bakhchisaray District Court of the Republic of Crimea, case No. 5-239/2017, Decision, 8 June 2017 (Annex 919 to MU); Bakhchisaray District Court of the Republic of Crimea, case No. 5-238/2017, Decision, 8 June 2017 (Annex 918 to MU); Bakhchisaray District Court of the Republic of Crimea, case No. 5-236/2017, Decision, 8 June 2017 (Annex 920 to MU).

<sup>&</sup>lt;sup>61</sup> Video footage of the public event in the form of a demonstration using automobiles in Bakhchisaray, 18 May 2017 as attached to the Letter of the Acting Chair of the Bakhchisaray District Court of the Republic of Crimea No. 2020-2/1265 of 20 May 2020 (Annex 1225).

<sup>&</sup>lt;sup>62</sup> Administration of the City of Bakhchisaray, Note No. 021-22/1786 confirming the absence of notifications on holding public events dedicated to commemoration of Sürgün in Bakhchisaray on 18 May 2017, 18 May 2017 (Annex 582).

<sup>&</sup>lt;sup>63</sup> As an example, see the description of the episode related to the celebration of the Crimean Tatar Flag Day in 2015, paras. 39.

<sup>&</sup>lt;sup>64</sup> Judicial Chamber for Administrative Cases of the Supreme Court of the Republic of Crimea, Letter on the absence of complaints challenging the decision of the Bakhchisaray District Court of the Republic of Crimea of 8 June 2017 in case No. 5-239/2017, 22 May 2020 (Annex 620); Judicial Chamber for Administrative Cases of the Supreme Court of the Republic of Crimea, Letter on the absence of complaints challenging the decision of the Bakhchisaray District Court of the Republic of Crimea of 8 June 2017 in case No. 5-238/2017, 22 May 2020 (Annex 621); Judicial Chamber for Administrative Cases of the Supreme Court of the Republic of Crimea, Letter on the absence of complaints challenging the decision of the Bakhchisaray District Court of the Republic of Crimea of 8 June 2017 in case No. 5-236/2017, 22 May 2020 (Annex 622).

<sup>&</sup>lt;sup>65</sup> MU, paras. 487-491.

<sup>&</sup>lt;sup>66</sup> MU, paras. 488-489.

dated 28 November 2014<sup>67</sup>, the Crimean authorities ascertained that the notice of the Committee did not contain an indication of the form of the event and the number of its participants.<sup>68</sup> As described earlier<sup>69</sup>, this information is necessary to ensure the safety of the participants of the event and to take preparatory measures for holding the event. Rejection of the notification in such circumstances was not definitive. Subsequently, the Committee had several possible options in light of the response it received from the authorities, in particular making the necessary adjustments to its notification or challenging the response in courts. The Committee has done neither. Instead, the Committee decided to hold a different event – a picket on Lenin Square on 10 December 2014.

34. Having considered the notice of the Committee on the picket<sup>70</sup>, the competent authorities were not in a position to issue an approval due to the simple fact that a number of events had already been scheduled to be held on the territory of Lenin Square by that time.<sup>71</sup> This prompted the authorities to propose another place for the picket – the Gagarin Park<sup>72</sup>, which is one of the places specially assigned to host public events<sup>73</sup> and, contrary to Ukraine's suggestion, is by no means "peripheral".<sup>74</sup> The designation of Gagarin Park as a Specially Assigned Place for public events is due to the characteristics of this venue, including its good transport accessibility, large capacity, and the ability of authorities to ensure the safety of public events' participants. One of the most important characteristics of Gagarin Park is its location. As can be seen from the map below, the Park is located in the central part of Simferopol and is approximately a kilometer away from the administrative center of the city where the building of the highest legislative body of the Republic of Crimea is located. It remains unclear to date which reasons prompted the rejection of this alternative locations,<sup>75</sup> taking into account the time of its submission, did not allow the

<sup>&</sup>lt;sup>67</sup> Committee for the Protection of the Rights of the Crimean Tatar People, Notification No. 001/11 on holding events on 10 December 2014, 28 November 2014 (Annex 531).

<sup>&</sup>lt;sup>68</sup> Executive Committee of Simferopol City Council of the Republic of Crimea, Response No. 9818/24/01-66 to the notification of the Committee on the Protection of Rights of the Crimean Tatar People dated 28 November 2014, 2 December 2014 (Annex 841 to MU).

<sup>&</sup>lt;sup>69</sup> See para. 13.

<sup>&</sup>lt;sup>70</sup> Committee on the Protection of Rights of the Crimean Tatar People, Letter No. 001/12 on holding the picket in Lenin square in Simferopol on 10 December 2014, 5 December 2014 (Annex 844 to MU).

<sup>&</sup>lt;sup>71</sup> Acting Head of the City Administration of Simferopol, Order No. 217-r "On celebration of the New Year 2015 and Christmas", 25 November 2014 (Annex 449).

<sup>&</sup>lt;sup>72</sup> Administration of the City of Simferopol, Response No. 24/01-66/12 to the notification of the Committee on the Protection of Rights of the Crimean Tatar People of 5 December 2014, 8 December 2014 (Annex 532).

<sup>&</sup>lt;sup>73</sup> Resolution of the Council of Ministers of the Republic of Crimea No. 452 "On approval of the list of places specially assigned for public events in the territory of the Republic of Crimea", 12 November 2014 (Annex 74).

<sup>&</sup>lt;sup>74</sup> MU, para. 489.

<sup>&</sup>lt;sup>75</sup> Committee on the Protection of Rights of the Crimean Tatar People, Letter No. 003/12 with a counter-proposal to hold the picket in alternative locations, 9 December 2014 (Annex 847 to MU).

authorities to ensure the safety of participants of the public event and to take preparatory measures for event.<sup>76</sup> Each time, the reasons for the decision were duly explained in the letters.

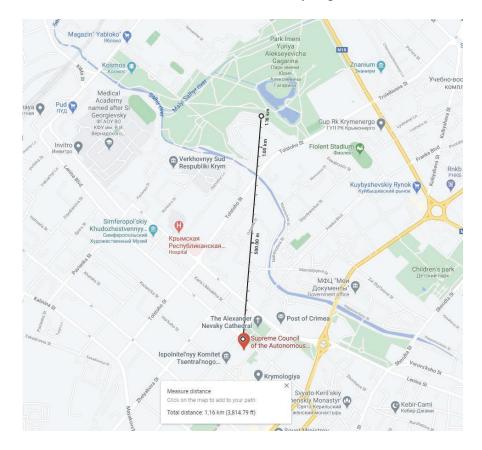


Figure 2. Location of the Gagarin Park in Simferopol<sup>77</sup>

## 4. Allegations in Relation to Private Events

35. In respect of the December 2014 Events, Ukraine also refers to certain altercations which took place at a press conference on 10 December 2014. The events in question did not involve the Russian authorities. As Ukraine itself states, the press conference was held in a private building.<sup>78</sup> Accordingly, it was the organizers themselves, and not the Simferopol authorities, who made security arrangements and controlled entry into and departure from the facility. The Russian Federation is not aware of any request or complaint by the organizers towards the Russian authorities in relation to the events which unfolded at the press conference. As a result, there is no conduct which could be attributed to the Russian Federation as a matter of State responsibility, nor was there any basis for investigating something that was never formally reported to the authorities.

<sup>&</sup>lt;sup>76</sup> Administration of Simferopol, Response No. 12154/24/01-66 to the Committee for Protection of Rights of the Crimean Tatars, 9 December 2014 (Annex 846 to MU).

<sup>&</sup>lt;sup>77</sup> Source: Google Maps at <u>https://www.google ru/maps</u> (accessed on 26 February 2021).

<sup>&</sup>lt;sup>78</sup> MU, para. 491.

36. Ukraine mentions in passing another conference organized in a private hotel in January 2015, stressing this time the presence of Russian police, and alleging its inaction in the face of disruptive conduct.<sup>79</sup> This is untrue. The police was not initially present at the conference and was called only after the scuffle started, as confirmed by video evidence. Once at the conference, police forces swiftly restored order and the conference could continue. In fact, based on the video evidence supplied by Ukraine, the altercations appear to have occurred as between conference attendees who had been affiliated with each other.<sup>80</sup>

## 5. Celebration of Human Rights Day in 2015

37. As to the December 2015 Events, the Court will note that Crimean authorities were compelled to introduce emergency laws on 22 November 2015, which temporarily interrupted the holding of public events during the state of emergency.<sup>81</sup> This was due to an energy system malfunction caused by destruction of four power line pylons in Kherson region of Ukraine as part of the so-called energy blockade committed by Ukrainian nationalist groups as well as members and associates of the *Mejlis*,<sup>82</sup> resulting in an almost complete shutdown of electricity supply to the Crimean Peninsula.<sup>83</sup> This state of affairs, which Ukraine made no efforts to alleviate and in fact only aggravated by its simultaneous water and food blockade at the time,<sup>84</sup> imposed an immense burden on the local population and the authorities alike and created a serious humanitarian situation. Due to the state of emergency, the Simferopol city authorities, as well as the authorities of several other regions of Crimea, were compelled to corresponding restrictions, including restrictions on holding mass gatherings,<sup>85</sup> which apply to anyone.<sup>86</sup> The authorities' reply to the *Mejlis*'s

<sup>&</sup>lt;sup>79</sup> MU, para. 491.

<sup>&</sup>lt;sup>80</sup> Video footage entitled "Bariiev Instructing the Crimean Tatars to Show Their Peaceful Intentions in the Face of Provocation", 17 January 2015 (Annex 1101 to MU). See also Table of contradictions in the evidence presented by Ukraine in connection with the scuffle that occurred at the conference in Simferopol on 17 January 2015 (Annex 1280).

<sup>&</sup>lt;sup>81</sup> Order of the Head of the Republic of Crimea No. 454-rg "On imposing the man-made emergency situation regime", 22 November 2015 (Annex 93).

<sup>&</sup>lt;sup>82</sup> *Ekho Kavkaza*, "Leader of the Crimean Tatars named the condition for lifting the blockade of Crimea", 23 November 2015 (Annex 938). See Chapter IV, para. 167and fn. 354 et seq.

<sup>&</sup>lt;sup>83</sup> *BBC*, "Video footage confirming the lack of urgent measures of the Ukrainian authorities required to restore power supply to Crimea", 26 November 2015 (Annex 1221). See also Chapter IV, para. 167 and fn. 354 et seq.

<sup>&</sup>lt;sup>84</sup> *VZGLYAD*, "UN: Ukrainian authorities violated human rights during the food 'blockade' of Crimea", 9 December 2015 (Annex 942). See also Chapter IV, para. 167, fns. 347-348 and 361.

<sup>&</sup>lt;sup>85</sup> Resolution of the City Administration of Simferopol No. 1347 "On restriction of mass, public, cultural, entertainment and other events in the territory of the municipality - the urban district of Simferopol of the Republic of Crimea", 22 November 2015 (Annex 94); Resolution of the City Administration of Simferopol No. 1348 "On imposing emergency situation regime for the forces of the municipal unit of the territorial subsystem of the unified state system of prevention and elimination of emergency situations (RSChS) in the municipality - the urban district of Simferopol of the Republic of Crimea", 22 November 2015 (Annex 95). Restrictions were not limited to public events, see also in other fields of life and activity: Resolution of the City Administration of Simferopol No. 1368 "On taking measures to eliminate the emergency situation in the territory of the municipality - the urban district of Simferopol of the Republic of Crimea", 24 November 2015 (Annex 96); Resolution of the City Administration of Simferopol No. 1377 "On the regulation of certain issues in connection with the emergency situation", 25 November 2015 (Annex 97); Resolution of

notification of 3 December 2015 regarding the organization of a public event for Human Rights Day 2015 was thus objective and reasonable and has certainly nothing to do with racial discrimination.<sup>87</sup>

38. It is misleading for Ukraine to contrast the treatment of an event held on 27 November 2015 with the International Human Rights Day.<sup>88</sup> That is because starting on 27 November 2015 the overall situation further deteriorated, and the availability of power supply was then reduced to 4 hours per day.<sup>89</sup> The authorities had no human resources to spare and would have been thus unable to ensure the safety of the participants of the event planned for 10 December 2015. In particular, the police, which ensures the safety of citizens during public events<sup>90</sup>, were deployed to protect socially significant objects and life-support facilities that were without energy supply given the disruption in the energy transmission system.<sup>91</sup> The circumstances described above plainly constitute an *emergency situation*.<sup>92</sup> Neither the resolutions which understandably restricted mass events in Simferopol in the light of the prevailing extraordinary circumstances, nor the position of the administrative bodies regarding the celebration of the International Human Rights Day have been challenged before Russian courts.<sup>93</sup> Once again, Ukraine's contention that this incident illustrates and forms part of a systematic campaign of racial discrimination lacks any credibility.

## 6. Crimean Tatar Flag Day 2015

39. Ukraine also complains about measures allegedly affecting the celebrations of the Crimean Tatar Flag Day on 26 June 2015.<sup>94</sup> There is no basis for such complaints. Cultural events that *were* held in Simferopol to commemorate the Crimean Tatar Flag Day in 2015 were unprecedented in

<sup>94</sup> MU, para. 493.

the City Administration of Simferopol No. 1 "On the regulation of certain issues in connection with the emergency situation", 5 January 2016 (Annex 99).

<sup>&</sup>lt;sup>86</sup> Council of Ministers of the Republic of Crimea, Information on the number and context of public events in the city of Simferopol of the Republic of Crimea scheduled for the period from 22 November 2015 to 22 March 2016, which were not approved by the Administration of the City of Simferopol due to the adoption of Decree of the Head of the Republic of Crimea of 22 November 2015 No. 454-rg, Resolutions of the Administration of the City of Simferopol of 22 November 2015 No. 1348, of 22 November 2015 No. 1347 (Annex 650).

<sup>&</sup>lt;sup>87</sup> Administration of the City of Simferopol, Letter No. U-160/20140 to Mr Ilmi Umerov, 3 December 2015 (Annex 560).

<sup>&</sup>lt;sup>88</sup> MU, para. 492.

<sup>&</sup>lt;sup>89</sup> *MKRU*, "In Simferopol, the power supply was reduced to 4 hours", 27 November 2015 (Annex 940).

<sup>&</sup>lt;sup>90</sup> Federal Law on Public Events (Annex 877 to MU), Article 14(3)(2).

<sup>&</sup>lt;sup>91</sup> Operational headquarters of the City Administration of Simferopol for the elimination of emergency situations, Minutes No. 4, 22 November 2015 (Annex 462), para. 8.

<sup>&</sup>lt;sup>92</sup> Federal Law No. 68-FZ "On protection of population and territories from natural and man-made emergency situations", 21 December 1994 (Annex 29), Article 1(1).

<sup>&</sup>lt;sup>93</sup> Department of Judicial Support for Administrative Cases of the Supreme Court of the Republic of Crimea, Note confirming the absence of cases challenging the decisions of the Crimean authorities not to approve the holding of certain events (Annex 649), paras. 1.2, 1.4-1.7.

scale and number of participants, and included raising the largest Crimean Tatar flag in the history of Crimea,<sup>95</sup> the largest motor rally in the history of Crimea<sup>96</sup> and a festive concert.<sup>97</sup>

40. Ukraine's version of the events is plainly at odds with the facts. The reply letter of the authorities of 29 May 2015 to the notice of 27 May 2015 confirms that at the date and place notified another Crimean Tatar organization had already submitted a notice of public event; therefore the Russian authorities could not approve two cultural events for the exact same time at the exact same location – which is what Ukraine appears to be complaining about.<sup>98</sup> Not only is this reason legitimate. It also makes the Ukrainian allegation of racial discrimination targeted against the Crimean Tatars unfounded because, as it appears from the reply letter, it is also a Crimean Tatar organization that had submitted an earlier notice. That blatantly contradicts Ukraine's allegation of racial discrimination.

## 7. Commemoration of the Death of Noman Çelebicihan in 2015

41. Lastly, Ukraine engages in a further array of misrepresentations in relation to the commemoration of the death of Noman Çelebicihan on 23 February 2015.<sup>99</sup> In the corresponding short section of its Memorial, Ukraine showcases its ignorance of Crimean Tatar history and tradition. Contrary to Ukraine's statements, the traditional location for paying tribute to the memory of Noman Çelebicihan is *Sevastopol*, and not Simferopol (where there had not been any monument to him at the time): a bas-relief is located on the wall of the prison in Sevastopol where Noman Çelebicihan was held before his death.<sup>100</sup> Moreover, public and cultural events dedicated to

<sup>&</sup>lt;sup>95</sup> *YouTube*, Video footage on raising the largest Crimean Tatar flag in the world, 27 June 2015 (Annex 1217); *Rossiyskaya Gazeta*, "Huge Crimean Tatar flag was unfurled in Simferopol", 27 June 2015 (Annex 926).

<sup>&</sup>lt;sup>96</sup> *YouTube*, Video footage entitled "Rally with Crimean Tatar flags" that shows the largest motor rally dedicated to Crimean Tatar Flag Day, 26 June 2015 (Annex 1218), also available at <u>https://www.youtube.com/watch?v=41qI6vsk-00</u>; *Kryminform*, "Largest motor rally in Crimea dedicated to the Day of the Crimean Tatar Flag will be included in the Simferopol Book of Records", 27 June 2015 (Annex 927).

<sup>&</sup>lt;sup>97</sup> *YouTube*, Video footage of the concert dedicated to Crimean Tatar Flag Day, 26 June 2015 (Annex 1219), the full video available at <u>https://www.youtube.com/watch?v=MuRbl2HlMs0</u>.

<sup>&</sup>lt;sup>98</sup> Interregional Public Movement of the Crimean Tatar people "Qirim", Notification No. 10 on holding cultural events to celebrate Crimean Tatar Flag Day on 26-28 June 2015, 25 May 2015 (Annex 550); Administration of the City of Simferopol, Response No. 6651/24/01-48 to the notification of Interregional Public Movement of the Crimean Tatar people "Qirim" No. 10 of 25 May 2015, 27 May 2015 (Annex 551); Administration of the City of Simferopol, Response No. 6651/24/01-48 to the notification of Interregional Public Movement of the Crimean Tatar people "Qirim" No. 10 of 25 May 2015, 3 June 2015 (Annex 554); Application of Mr Medzhitov and Ms Kefileva on holding cultural events to celebrate Crimean Tatar Flag Day on 26 June 2015, 27 May 2015 (Annex 552); Administration of the City of Simferopol, Response No. M-487/8040 to the application of Mr Medzhitov and Ms Kefileva of 27 May 2015, 29 May 2015 (Annex 553).

<sup>&</sup>lt;sup>99</sup> MU, para. 494.

<sup>&</sup>lt;sup>100</sup> Wikipedia, "Noman Ćelebicihan", 4 March 2021 (Annex 1278), also available at <u>https://en.wikipedia.org/wiki/Noman %C3%87elebicihan</u>.

the memory of Noman Çelebicihan are held annually throughout Crimea.<sup>101</sup> The main annual events involve commemorative rally and laying flowers at the bas-relief of Noman Çelebicihan in Sevastopol.<sup>102</sup>

42. Contrary to the erroneous claims of Ukraine, 2015 was not an exception. However, in 2015, mainly cultural events were held.<sup>103</sup> At the same time, the Sevastopol authorities did not in any way prevent the *Mejlis* or any other organization from holding a public event. By agreement of the governments of Sevastopol and the Republic of Crimea with the Crimean Tatar community, it was decided that the rally would be held in the Khan's Palace in Bakhchisaray.<sup>104</sup> Taking into account the history of the Khan's Palace, where the first Qurultay of the Crimean Tatar People was held under the chairmanship of Mr Çelebicihan<sup>105</sup>, the Khan's Palace was undoubtedly a suitable place for holding the event in question. However, eventually, the organizers decided not to hold the rally in the Khan's Palace. Ukraine's allegation that the event was not approved by the authorities of Bakhchisaray is thus not supported by any evidence.

<sup>&</sup>lt;sup>101</sup> Municipality - the urban district of Evpatoria of the Republic of Crimea official website, "The memory of Noman Ćelebicihan was honored in Evpatoria", 26 February 2020 (Annex 495); *Krym.Realii*, "Mosques in Crimea honored the memory of Noman Çelebicihan with prayers", 24 February 2017 (Annex 967); *Kryminform*, "Prayers in memory of the First Mufti of Crimea will be held in Crimean mosques", 22 February 2019 (Annex 997); *Krym.Realii*, "Simferopol: children's literature competition in memory of Noman Çelebicihan 'Ant etkenmen!' [I've pledged] (+photo)", 23 February 2019 (Annex 999); *YouTube*, Video footage entitled "A requiem evening in memory of Noman Ćelebicihan was held the CEPU", that shows the requiem concert held in Simferopol in memory of Noman Ćelebicihan, 24 February 2015 (Annex 1214); *Krym.Realii*, "In Sevastopol, the memory of Noman Çelebicihan was honored (+ photo)", 22 February 2020 (Annex 1017).

<sup>102</sup> YouTube, Video footage entitled "Memory of Noman Celebicihan has been honored in Sevastopol" that shows the ceremony of laying flowers at the memorial plaques of Mr Celebicihan in Sevastopol and the concert, 23 February 2019 (Annex 1230), also available at https://www.youtube.com/watch?v=XbKmhmQYl6s; Regional Public Organisation "Association of Crimean Tatars of the Sevastopol Region 'AK-YAR", Notification No. 42 on holding a rally dedicated to the anniversary of the death of Noman Celebicihan on 24 February 2018, 12 February 2018 (Annex 588); Department of Public Communications of the City of Sevastopol, Response No. 164/63-03-25/18 to the notification of the Regional Public Organisation "Association of Crimean Tatars of the Sevastopol Region 'AK-YAR" of 12 February 2018 No. 42 on approval of the rally, 14 February 2018 (Annex 590); Regional Public Organisation "Association of Crimean Tatars of the Sevastopol Region 'AK-YAR", Notification No. 77 on holding an event dedicated to the anniversary of the death of Noman Celebicihan on 24 February 2019, 7 February 2019 (Annex 608); Department of Public Communications of the City of Sevastopol, Response No. 157/01-08-01-18/02/19 to the notification of the Regional Public Organisation "Association of Crimean Tatars of the Sevastopol Region 'AK-YAR" of 7 February 2019 No. 77 on approval of the event, 13 February 2019 (Annex 609); Regional Public Organisation "Association of Crimean Tatars of the Sevastopol Region 'AK-YAR", Notification on holding a rally dedicated to the anniversary of the death of Noman Celebicihan on 22 February 2020, 11 February 2020 (Annex 611); Department of Public Communications of the City of Sevastopol, Response No. 215/01-08-01-16/02/20 to the notification of the Regional Public Organisation "Association of Crimean Tatars of the Sevastopol Region 'AK-YAR" of 11 February 2020 on approval of the rally, 20 February 2020 (Annex 612).

<sup>&</sup>lt;sup>103</sup> *IslamNews*, "On 23 February, Crimean Tatars commemorated the national hero and the first imam", 23 February 2015 (Annex 915).

<sup>&</sup>lt;sup>104</sup> Internal Policy Department of Sevastopol, Response to the notification of Mr Mamutdinov with a proposal to hold the event in the Khan's Palace in Bakhchisaray, 19 February 2015 (Annex 539).

<sup>&</sup>lt;sup>105</sup> Wikipedia in Russian, "Qurultay of the Crimean Tatar People", 4 March 2021 (Annex 1279).

43. As for alleged threats of administrative penalties in case of non-compliance,<sup>106</sup> Ukraine in fact refers to the standard procedure previously explained which is systematically applied in all relevant cases and which consists in reminding applicants of their legal obligations as organizers of a public event.<sup>107</sup> Warnings reminding the legal framework may also be sent to the organizers when the authorities become aware of indicia that they are planning to go ahead with an unauthorized event in spite of the authorities' prior refusal. Far from conveying any threat, such advance reminder is in fact a transparent and diligent way for the authorities to attempt precisely to avoid any situation which would give rise to such administrative penalties. Reminding the law to organizers, who in assuming this role accept additional obligations and responsibilities in comparison to a mere participant or any other citizen, is only reasonable and amounts to nothing more than applying the law.

## III. No Evidence of Racial Discrimination in Respect of Cultural Gatherings and Public Events of the Ukrainian Community

44. Ukraine paints a similarly misleading picture of public events and cultural gatherings organized by the Ukrainian community and its representatives.<sup>108</sup>

45. Contrary to what Ukraine alleges, no application of the law was based on a plan "to impede the celebration of anniversaries of cultural significance to ethnic Ukrainians".<sup>109</sup> As for Ukraine's allegation that the Russian Federation has "punished those who nonetheless sought to peacefully honor these occasions",<sup>110</sup> the truth is that the authorities have brought citizens who broke the law to accountability, including those who held unauthorized public events despite the authorities' prior refusal and those who performed illegal acts during public events. Once again, there is manifestly no basis to claim that these measures constitute racial discrimination under CERD.

### 1. Commemoration of Taras Shevchenko's Birthday in 2014

46. The first of those allegations relates to the commemoration of Taras Shevchenko's birthday on 9 March 2014.<sup>111</sup> It is unclear on what basis Ukraine seeks to attribute any alleged interference

<sup>&</sup>lt;sup>106</sup> MU, para. 484.

<sup>&</sup>lt;sup>107</sup> Issuing a warning has nothing to do with the agenda of a public event. As mentioned above (para. 17), such a warning serves as an additional reminder to the organizer of the public event and its participants of their legal obligations. See also Chapter IV, para. 161. As an example, see Prosecutor's Office of the Republic of Crimea, Warning to Mr Orlov on the impermissibility of violating the legislation during the public event to be held on 15 April 2017, 14 April 2017 (Annex 581).

<sup>&</sup>lt;sup>108</sup> MU, paras. 495-502.

<sup>&</sup>lt;sup>109</sup> MU, para. 495.

<sup>&</sup>lt;sup>110</sup> MU, para. 495.

<sup>&</sup>lt;sup>111</sup> MU, paras. 495-499. Taras G. Shevchenko (1814-1861) was a poet, writer, painter and engraver. While his figure is sometimes manipulated for political ends by Ukrainian nationalists, he is not generally associated with nationalism, and his works and poetry have been studied in schools both during the Soviet times and in Ukraine and the Russian

with this commemorating event to the Russian Federation. Russian authorities were neither responsible for, nor were they involved in, the regulation of public events or cultural gatherings in Crimea at the time. Russian Law did not apply in Crimea on this date. Regulatory conduct in this regard cannot be attributed thus to the Russian Federation.<sup>112</sup> Ukraine does not even appear to advance a clear case for attribution on this particular point. Thus, Ukraine's position is unsubstantiated and untenable. The cases of Mr Shchekun and Mr Kovalsky who were among the organizers of the public event planned in Simferopol,<sup>113</sup> are addressed in details under Appendix A.<sup>114</sup>

47. When it comes to the incidents that happened during the public event in Sevastopol, an event that *did* take place,<sup>115</sup> none of the acts of any participants in the riots is attributable to the Russian Federation, and Ukraine does not establish that the Russian Federation has planned, organized or encouraged the incidents in any way. The BBC video that Ukraine relies on<sup>116</sup> provides a good sense of this low-level incident between demonstrators, an episode that only opposes small groups of private individuals.

### 2. Commemoration of Taras Shevchenko's Birthday in 2015

48. As to the allegations concerning Shevchenko's birthday in 2015, the fact is that the meeting, organized by Mr Kuzmin, was approved and actually held.<sup>117</sup> The specially assigned venue of the Gagarin park was requested by the organizers themselves. The Simferopol authorities did not in any way intervene until the order of the meeting was violated. As confirmed by Ukraine's own pleadings and record<sup>118</sup> and contrary to the prior notification of the organizers, certain individuals

Federation today. His life within the 19th-century Russian Empire was influenced by several cultures, and it is safe to consider that Shevchenko himself would probably hesitate in answering the question whether he identified as a Ukrainian or a Russian poet. That he is not considered as a symbol of nationalists and extremists in Russia is confirmed by the many monuments and streets that are named after Taras Shevchenko in the Russian Federation today. The Ukrainian community of Crimea does celebrate Taras Shevchenko's birthday, holds public rallies and lays flowers to his monument without interference from the authorities, provided the legislation on the holding of public events is complied with, just like for any citizens. As an example, see House of Peoples' Friendship official website, "Solemn meeting on the occasion of the 203rd anniversary of the birth of Taras Shevchenko", 9 March 2017 (Annex 970).

<sup>&</sup>lt;sup>112</sup> See this Counter-Memorial, Chapter II, para. 89, Chapter VI, para. 391 above.

<sup>&</sup>lt;sup>113</sup> MU, para. 497.

<sup>&</sup>lt;sup>114</sup> See Appendix A, paras. 34-39 above.

<sup>&</sup>lt;sup>115</sup> MU, para. 498.

<sup>&</sup>lt;sup>116</sup> MU, footnote 1034, referring to BBC News, "Pro-Ukraine activists beaten up in Crimea", 9 March 2014, Annex 1040 to MU.

<sup>&</sup>lt;sup>117</sup> Notification of Mr Kuzmin and Ms Popova on holding a rally dedicated to the celebration of Taras Shevchenko's 201st anniversary on 9 March 2015, 26 February 2015 (Annex 540); Administration of the City of Simferopol, Response to the notification of Mr Kuzmin and Ms Popova on approval of the rally scheduled for 9 March 2015, 27 February 2015 (Annex 541). Contrary to Ukraine's assertion (MU, para. 499), the notification was not made by the Ukrainian Cultural Center, which did not exist at the time.

<sup>&</sup>lt;sup>118</sup> MU, para. 499; Organization for Security and Co-operation in Europe, Freedom of Assembly in Crimea Occupied by the Russian Federation, Supplementary Human Dimension Meeting, 17 April 2015 (Annex 810 to MU). See also

attending this event converted a peaceful gathering to celebrate the poet's birthday into a forum for political agitation. The approved purpose of the event was to celebrate the birthday of Mr Shevchenko. Contrary to that purpose, some participants began to conduct political agitation in favor of the fact that Crimea is part of Ukraine. Since these actions did not correspond to the purpose of the meeting, the violators and Mr Kuzmin as the organizer of the event were brought to administrative responsibility with a minimum amount of administrative fines.<sup>119</sup> The actions of the authorities were reasonable and lawful. The risk for public order is proven by the events of 9 March 2014 in Sevastopol, when the celebration of Mr Shevchenko's birthday was turned into political confrontation, which ended in a scuffle.<sup>120</sup>

49. In its Memorial Ukraine omits to mention that the initiator of the political agitation was Kurtseit Abdullayev, a person known to its law-enforcement authorities and notorious for his criminal activities in Crimea. In particular, in 2004 (under Ukraine's sovereignty), Mr Abdullayev was the organizer of riots with the use of weapons, for which he had been sentenced to 5 years. Mr Abdullayev and his accomplices had beaten a group of journalists who were making a film and, a few weeks later, also under the leadership of Mr Abdullayev, a group of criminals organized a massacre at the Simferopol bar "Cotton club".<sup>121</sup>

50. Moreover, Ukraine has not provided any evidence of any connection between Mr Kuzmin's dismissal from the position of a school teacher and his participation in the meeting on 9 March 2015. On the contrary, as can be seen from the evidence, he actually resigned from his job voluntarily, at his own request.<sup>122</sup> In any case, while Russia has an effective mechanism for judicial protection of employees' rights in the event of illegal dismissal,<sup>123</sup> Mr Kuzmin's dismissal has not

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), 17 September 2015 (Annex 812 to MU).

<sup>&</sup>lt;sup>119</sup> Supreme Court of the Republic of Crimea, Case No. 12-455/2015, Decision, 20 April 2015 (Annex 229); Supreme Court of the Republic of Crimea, case No. 12-454/2015, Decision, 21 May 2015 (Annex 234); Supreme Court of the Republic of Crimea, Case No. 12-580/2015, Decision, 26 May 2015 (Annex 236); Supreme Court of the Republic of Crimea, Case No. 12-450/2015, Decision, 19 May 2015 (Annex 233). The presence of Ukrainian flags at the event was not at issue – almost all participant held Ukrainian flags. The issue was the inscription that "Crimea is Ukraine" on the flags held by the apprehended individuals and related slogans should – and the organizer's failure to bring an end to these acts – that form the basis of the administrative offence.

<sup>&</sup>lt;sup>120</sup> MU, para. 498.

<sup>&</sup>lt;sup>121</sup> Supreme Court of Ukraine, case No. 1-750/04, Decision, 17 May 2007 (Annex 773).

<sup>&</sup>lt;sup>122</sup> Mr Kuzmin's employment record book (Annex 1244); Municipal State Budgetary General Educational Institution "Secondary School – Kindergarten No. 15", Certificate of confirmation No. 60, 3 June 2020 (Annex 623).

<sup>&</sup>lt;sup>123</sup> Labour Code of the Russian Federation, No. 197-FZ, 30 December 2001 (Annex 42), Articles 381-382, 394.

been challenged,<sup>124</sup> nor has Mr Kuzmin complained to the police with regard to his dismissal, which Ukraine attempts to present as forced and unlawful.<sup>125</sup>

### 3. Commemoration of Taras Shevchenko's Birthday in 2016

51. In respect of the commemoration of Shevchenko's birthday in early 2016, the Russian Federation respectfully refers the Court to the description of the emergency laws in place at that time.<sup>126</sup> Russia reiterates that it is not aware of any judicial challenge of the restrictions on holding mass events at the time, which signals that all interested parties fully appreciated the gravity of the then prevailing circumstances.<sup>127</sup>

### 4. Commemoration of Taras Shevchenko's Birthday in 2017

52. Lastly, Ukraine simply misstates the factual context of the 2017 commemoration, incorrectly contending that the notification was simply denied, without any explanation.<sup>128</sup> The Simferopol administration returned the notification filed by Mr Kuzmin and Ms Popova explaining that it did not comply with the requirements of specific provisions of the Federal and Crimean Laws on public events, and invited the applicants to submit an updated notification which would be duly considered.<sup>129</sup> The organizers had an opportunity to try to fix their notification or, in the event they considered their rights violated, challenge the Administration's response in court. They had not done so. Incidentally, it is worth pointing that there *was* in fact a commemoration of Shevchenko's birthday in 2017 in Simferopol, organized by the "Ukrainian Community of Crimea."<sup>130</sup>

<sup>&</sup>lt;sup>124</sup> Judicial Chamber for Civil Cases of the Supreme Court of the Republic of Crimea, Letter No. 05-01/2020 to the Deputy Chair of the Supreme Court of the Republic of Crimea, 22 May 2020 (Annex 619).

<sup>&</sup>lt;sup>125</sup> Police Operations Department of the Ministry of Internal Affairs for the Republic of Crimea, Note on the absence of complaints in connection with Mr Kuzmin's dismissal from the position of a schoolteacher (Annex 646).

<sup>&</sup>lt;sup>126</sup> See para. 37. The emergency situation decided at the end of 2015 was extended in early 2016: see Resolution of the City Administration of Simferopol No. 372 "On introducing amendments into Resolution of the City Administration of Simferopol of the Republic of Crimea of 22 November 2015 No. 1347 'On restriction of mass, public, cultural, entertainment and other events in the territory of the municipality - the urban district of Simferopol of the Republic of Crimea", 7 March 2016 (Annex 102).

<sup>&</sup>lt;sup>127</sup> Department of Judicial Support for Administrative Cases of the Supreme Court of the Republic of Crimea, Note confirming the absence of cases challenging the decisions of the Crimean authorities not to approve the holding of certain events (Annex 649), paras. 1.2, 1.4-1.7.

<sup>&</sup>lt;sup>128</sup> MU, para. 499.

<sup>&</sup>lt;sup>129</sup> Administration of the City of Simferopol, Response No. K-212/2910 to the notification of Mr Kuzmin and Ms Popova with the request to submit a notification containing the information required by the federal legislation on public events, 2 March 2017 (Annex 580).

<sup>&</sup>lt;sup>130</sup> House of Peoples' Friendship official website, "Solemn meeting on the occasion of the 203rd anniversary of the birth of Taras Shevchenko", 9 March 2017 (Annex 970).

### 5. The Case of Mr Sergei Dub (Ukrainian Flag Day 2014)

53. Claimant further alleges that Mr Sergei Dub – his surname was erroneously translated into Mr Oak in Ukrainian submissions – was fined 1,000 Rubles for using a Ukrainian flag on 23 August 2014, the Ukrainian Flag Day.<sup>131</sup> Ukraine claims, without evidence, that this fine (of a mere 500 Rubles<sup>132</sup> in reality) was based on a "false testimony" against Mr Dub accusing the latter of using foul language. On what basis Ukraine claims that evidence before local courts was falsified is left unexplained. The Russian Federation produces the relevant court decision – which Ukraine did not – which carries no hallmarks of impropriety, and was in fact left unchallenged by Mr Dub himself.<sup>133</sup> To the extent that Mr Dub had reasons to suspect that he was being subjected to discrimination or to doubt the veracity of the testimony against him, he would have been expected to pursue a challenge, but he has not done so.<sup>134</sup> Ukraine also insinuates that Mr Dub was removed from his prior position as a result of these events, but other than a bare assertion to that effect, this claim is not made out at all. Mr Dub's demotion has been left unchallenged.<sup>135</sup>

### 6. Celebration of Ukrainian Independence Day in 2014

54. Lastly, Ukraine refers to certain events on the Ukrainian Independence Day.<sup>136</sup> This point can be disposed of in short order. On 24 August 2014, a number of individuals held a public event in Sevastopol without complying with the prescribed notification rules, which have been addressed above.<sup>137</sup> Moreover, this was not a peaceful event. Participants of the meeting behaved aggressively, sprayed gas from a gas can on ordinary passers-by and threatened them with a stun gun.<sup>138</sup> In this circumstances, the administrative sanctions imposed on Mr Neganov (the organizer), and upheld by courts,<sup>139</sup> were proportionate and appropriate. The other individual mentioned by

<sup>&</sup>lt;sup>131</sup> MU, para. 501.

<sup>&</sup>lt;sup>132</sup> Equivalent to roughly 10 Euro, at the exchange rate applicable on 24 September 2014 (49,6912).

<sup>&</sup>lt;sup>133</sup> Central District Court of Simferopol of the Republic of Crimea, case No. 5-930/2014, Decision, 24 September 2014 (Annex 191).

<sup>&</sup>lt;sup>134</sup> Simferopol Central District Court of the Republic of Crimea, Letter No. K-2 on the entry into legal force of the court decision of 24 September 2014 in case No. 5-930/2014 on holding Sergey Dub administratively liable, 19 May 2020 (Annex 618).

<sup>&</sup>lt;sup>135</sup> Judicial Chamber for Civil Cases of the Supreme Court of the Republic of Crimea, Letter No. 05-01/2020 to the Deputy Chair of the Supreme Court of the Republic of Crimea, 22 May 2020 (Annex 619).

<sup>&</sup>lt;sup>136</sup> MU, para. 502.

<sup>&</sup>lt;sup>137</sup> Public Order Protection Department of the Directorate of the Ministry of Internal Affairs of Russia for the City of Sevastopol, Note on the legality of actions of officers of the Directorate of the Ministry of Internal Affairs of Russia for the city of Sevastopol when taking public enforcement action in respect of participants and organisers of public events (Annex 633), stating the reasons for the detention of Mr Neganov and Mr Kornienko.

<sup>&</sup>lt;sup>138</sup> Gagarinsky District Court of Sevastopol, case No. 5-373/2014, Complaint of Alexey Eskov, 24 August 2014 (Annex 170); Gagarinsky District Court of Sevastopol, case No. 5-373/2014, Explanations of Alexey Eskov (Annex 435).

<sup>&</sup>lt;sup>139</sup> Gagarinsky District Court of Sevastopol, Case No. 5-373/2014, Decision, 8 September 2014 (Annex 184); Sevastopol city Court of Appeal, Case No. 77-50/2014, Decision, 15 October 2014 (Annex 196).

Ukraine in connection with this "incident", Mr Sergey Kornienko, was not subject to any administrative sanctions. As for allegations of threats on Mr Neganov by the police,<sup>140</sup> Ukraine has adduced no evidence to support this allegation.

### IV. No Favourable Treatment Accorded to the Russian Community on Racial Grounds

55. Ukraine claims that in four instances Russian authorities approved certain events organized by who Ukraine claims were "Russian groups", and argues on this basis that the fact that such events were permitted reveals a discriminatory approach prohibited by CERD.<sup>141</sup> However, Ukraine fails to carry out a genuine comparative exercise to support its case of racial discrimination – and *a fortiori* its case of a systematic campaign or policy thereof –, not only because of the slim number of cases relied on but also because these cases do not evidence any more favourable treatment of the Russian community, as is shown below. Ukraine's case of a pattern of discrimination cannot be drawn or inferred from comparing a few individual cases. As CERD Committee practice confirms,<sup>142</sup> to evidence racial discrimination, recourse is needed to a sufficiently representative sample. Despite this well-established evidential requirement, Ukraine is silent on essential data such as the total number of events authorized, refused, suspended and terminated, by ethnicity and reason for the measure taken. By contrast, the elements provided below manifestly show that Ukraine's allegations are without any merit.

56. *First*, referring to Decree No. 29 of 16 May 2014<sup>143</sup> that temporarily prohibited mass gatherings in Crimea from 16 May 2014 to 6 June 2014 on public safety grounds due to the events and continued armed conflict in South-Eastern Ukraine, Ukraine states that Russian authorities should not have allowed public gatherings that took place in Simferopol on 6 June 2014 to mark the 215<sup>th</sup> anniversary of Alexander Pushkin's birthday and to dedicate a monument to Sergius of Radonezh.<sup>144</sup> Ukraine compares these events with public gatherings to commemorate the *Sürgün* on 18 May 2014, which, according to Ukraine, were not approved in view of the above-mentioned

<sup>&</sup>lt;sup>140</sup> MU, para. 502.

<sup>&</sup>lt;sup>141</sup> MU, para. 503.

<sup>&</sup>lt;sup>142</sup> See e.g. CERD Committee, General Recommendation XIV on Article 1(1), 1993, para. 2, *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18* (A/48/18), p. 115; L.-A. Sicilianos, "L'actualité et les potentialités de la Convention sur l'élimination de la discrimination raciale", *Revue trimestrielle des droits de l'homme,* Vol. 2005(61), 2005, p. 873. The CERD Committee regularly exhorts States Parties to provide statistical data as part of their reporting obligations; see e.g. Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine, 4 October 2016, CERD/C/UKR/CO/22-23, para. 14(c).

<sup>&</sup>lt;sup>143</sup> Head of the Republic of Crimea, Decree No. 29 "On Restrictions On Mass Gatherings In Connection With Events In Ukraine's Southeast" (Annex 890 to MU). As Decree No. 29 clearly indicates, the ban on holding mass gatherings was introduced in order to eliminate possible provocations by extremists and to avoid disruption of the holiday season in Crimea and in connection with recent events in many cities in the southeast of Ukraine as a result of which there have been victims including injured civilians. See Public Order Protection Department of the Ministry of Internal Affairs for the Republic of Crimea, Note on the activities of destructively-minded individuals in the territory of the Republic of Crimea, 2 June 2021 (Annex 652).

<sup>&</sup>lt;sup>144</sup> MU, para. 503, first point.

Decree No. 29<sup>145</sup>. However, as previously mentioned, despite the official temporary ban on mass events, the authorities were determined to allow citizens to hold peaceful gatherings, provided that the state had full confidence in its ability to ensure the safety of events' participants. Contrary to Ukraine's false statements, the Russian authorities did not prevent Crimean Tatars from marking the *Sürgün* in 2014. Thanks to the security measures undertaken by the Russian authorities, massive public events dedicated to the *Sürgün* were held all over Crimea.<sup>146</sup>

57. *Second*, Ukraine alleges that, in February 2015, the Russian authorities permitted an event at a location in the center of Simferopol which is "not a permitted location for gatherings".<sup>147</sup> These allegations are based on a fundamental misunderstanding of the Federal Law on Public Events and specifically the nature of the "Specially Designated Places" for holding public events. As a matter of Russian law, the fact that so-called "Specially Assigned Places" are designated for holding public events does not preclude the organizer of a public event from selecting *other* places to hold it.<sup>148</sup> The list of "Specially Assigned Places" is a list of *recommended* venues, not exclusive ones. It merely points to public venues that are especially adapted for the organization of public events, in particular those entailing a higher number of participants. However, as a general rule, a public event may be carried out at any place suitable for the purposes of the given event. Ukraine fails to point to any specific rule which would have prevented organizing the event in question at the location where it took place.

58. *Third*, Ukraine raises again the false comparison between a public event on 27 November 2015 in Simferopol and the December 2015 Events at the occasion of Human Rights Day.<sup>149</sup> Russia reiterates that the December 2015 restrictions were due to the emergency situation at that time, as already explained above.<sup>150</sup>

59. *Fourth*, Ukraine surprisingly complains about the fact that a Russian language international festival, the "Great Russian Word", was held in June 2017 in several municipalities in Crimea<sup>151</sup>. The festival in question is a cultural event with longstanding history in the region dating back to 2007<sup>152</sup> and that had been organized annually and budgeted by the Crimean authorities long before

<sup>&</sup>lt;sup>145</sup> MU, para. 485.

<sup>&</sup>lt;sup>146</sup> See para. 25.

<sup>&</sup>lt;sup>147</sup> MU, para. 503, second point.

<sup>&</sup>lt;sup>148</sup> Plenum of the Supreme Court of the Russian Federation, Resolution No. 28 "On certain issues encountered by the courts in consideration of administrative cases and of cases on administrative offences pertaining to application of legislation on public events", 26 June 2018 (Annex 403), para. 17.

<sup>&</sup>lt;sup>149</sup> MU, para. 503, third point.

<sup>&</sup>lt;sup>150</sup> See para. 37.

<sup>&</sup>lt;sup>151</sup> MU, para. 503, fourth point.

<sup>&</sup>lt;sup>152</sup> Official website of the International Festival Great Russian Word, "Overview on the International Festival GREAT RUSSIAN WORD", 14 February 2020 (Annex 1273).

2014.<sup>153</sup> Such event is not a public event organized by private individuals or organizations and that is not subject to the notification obligation. The purported "comparator" of Ukraine is an unnotified – and thus unauthorized – public event in May 2017 in Bakhchisaray. The comparison is plainly inapposite, and reveals no discrimination whatsoever.

60. Ukraine finally relies on celebrations that were held for the first anniversary of the Self Defence Forces and the referendum.<sup>154</sup> But again, it overlooks the fact that these were official events and ceremonies organized by the authorities, not citizens' public gatherings, as is evidenced by Ukraine's own materials.<sup>155</sup> These episodes do not point to any discriminatory treatment, and certainly not on basis of race. To the contrary, the authorities have also provided for the organization of events that are important in Crimean Tatar and Ukrainian cultures and traditions.<sup>156</sup>

61. To sum up, Ukraine's allegations do not lend any basis for finding any violations of CERD by the Russian Federation. Where restrictive measures were provisionally applied, or where certain notifications or applications were not approved, there is no evidence to suggest that the Russian authorities acted in a manner that is inconsistent with or different from their approach in other cases, in other regions of the Russian Federation, let alone on racial grounds. On the contrary, the above confirms that the measures were taken on an objective and reasonable basis, relied on legitimate considerations and were proportionate to the aim pursued.

62. The interpretation and application of relevant Russian laws are consistent regardless of the topic of an event or the ethnicity of the organizers, and public events with a so-called "pro-Russian" agenda have not been treated more favourably. For example, a great number of events in support of

<sup>156</sup> See para. 3.

<sup>&</sup>lt;sup>153</sup> See for example Verkhovna Rada of the Autonomous Republic of Crimea, Resolution "On the organization of the International Festival GREAT RUSSIAN WORD in the Autonomous Republic of Crimea" No. 290-6/11, 16 March 2011 (Annex 781); Resolution of the State Council of the Republic of Crimea No. 445-1/15 "On the organization of the International Festival Great Russian Word in the Republic of Crimea", 11 February 2015 (Annex 83); Resolution of the Council of Ministers of the Republic of Crimea No. 195 "On the organization of the International Festival Great Russian Word", 10 April 2015 (Annex 87); Program of Events of the XI International Festival "Great Russian Word", approved by the Head of the Republic of Crimea - Chairman of the Council of Ministers of the Republic of Crimea and the Chairman of the State Council of the Republic of Crimea, 16 May 2017 (Annex 474).

<sup>&</sup>lt;sup>154</sup> MU, para. 504.

<sup>&</sup>lt;sup>155</sup> Official website of the State Council of the Republic of Crimea, Photos of the first anniversary of the establishment of the People's Militia, 23 February 2015 (Annex 1095 to MU), also available at <u>http://crimea.gov.ru/foto/anniversaries/230220155</u>; Official website of the State Council of the Republic of Crimea, Photos of the First Anniversary of the Crimean Spring, 16 March 2015 (Annex 1098 to MU), also available at <u>http://crimea.gov.ru/foto/anniversaries/151503</u>; Official website of the State Council of the Republic of Crimea, Photos of the Anniversary of the General Referendum, 16 March 2015 (Annex 1097 to MU), also available at <u>http://crimea.gov.ru/foto/anniversaries/160315</u>; Official website of the State Council of the Republic of Crimea, Photos from a Crimean Spring Photo Exhibition, 16 March 2015 (Annex 1099 to MU), also available at <u>http://crimea.gov.ru/foto/society/16032015205</u>; Official website of the State Council of the Republic of Crimea, Photos for an event celebrating Crimea and Russia, 16 March 2015 (Annex 1096 to MU), also available at <u>http://crimea.gov.ru/foto/anniversaries/16032015090316</u>. See also Order of the Council of Ministers of the Republic of Crimean Spring" in the Republic of Crimea", 2 February 2015 (Annex 82).

the Russian President,<sup>157</sup> as well as events dedicated to the celebration of Russian holidays, in particular Defender of the Fatherland Day on 23 February,<sup>158</sup> Unity Day on 4 November,<sup>159</sup> Victory Day on 9 May,<sup>160</sup> National Flag Day of the Russian Federation on 22 August,<sup>161</sup> and Russia Day on

<sup>158</sup> Regional Public Organization for the Promotion and Prosperity of the Republic of Crimea "Crimea-New Life", Notification No. 11/02 on holding a rally to celebrate Defender of the Fatherland Day and the first anniversary of the establishment of the People's Militia on 23 February 2015, 5 February 2015 (Annex 536); Administration of the City of Simferopol, Response No. 1100/24/01-66 to the notification of the Regional Public Organization for the Promotion and Prosperity of the Republic of Crimea "Crimea-New Life" of 5 February 2015 No.11/02, 9 February 2015 (Annex 537); Liberal Democratic Party of the Russian Federation, Notification No. 3 on holding a rally dedicated to Defender of the Fatherland Day on 23 February 2016, 11 February 2016 (Annex 561); Administration of the City of Simferopol, Response No. 2571/24/01-28 to the notification of the Liberal Democratic Party of the Russian Federation No. 3 of 11 February 2016, 12 February 2016 (Annex 562); Communist Party of the Russian Federation, Notification No. 3 on holding a public event dedicated to the 100th anniversary of the creation of the Soviet Army and Navy on 23 February 2018, 12 February 2018 (Annex 589); Administration of the City of Simferopol, Response No. 2699/24/01-28 to the notification of the City of Simferopol, Response No. 2699/24/01-28 to the notification of the City of Simferopol, Response No. 2699/24/01-28 to the notification of the Communist Party of the Russian Federation, Notification No. 3 on holding a public event dedicated to the 100th anniversary of the City of Simferopol, Response No. 2699/24/01-28 to the notification of the Communist Party of the Russian Federation of 12 February 2018 No. 3 on holding a public event, 15 February 2018 (Annex 591).

<sup>159</sup> Liberal Democratic Party of the Russian Federation, Notification No. 165-PSH on holding a rally to celebrate Unity Day on 4 November 2015, 21 October 2015 (Annex 557); Administration of the City of Simferopol, Response No. 16189/24/01-48 to the notification of the Liberal Democratic Party of the Russian Federation No. 165-PSH of 21 October 2015, 23 October 2015 (Annex 558); Liberal Democratic Party of the Russian Federation, Notification on holding a public event to celebrate Unity Day on 4 November 2016, 20 October 2016 (Annex 576); Administration of the City of Simferopol, Response No. 23123/24/01-28 to the notification of the Liberal Democratic Party of the Russian Federation of 20 October 2016, 21 October 2016 (Annex 577).

<sup>160</sup> All-Russian Public Civil and Patriotic Movement "Immortal Regiment of Russia", Notification No. 22/03-18a on holding a public event in the form of a march on 9 May 2018 in Simferopol, 22 March 2018 (Annex 595); Administration of the City of Simferopol, Response No. 4885/24/01-28 to the notification of the All-Russian Public Civil and Patriotic Movement "Immortal Regiment of Russia" of 22 March 2018 No. 22/03-18a, 26 March 2018 (Annex 598); All-Russian Public Civil and Patriotic Movement "Immortal Regiment of Russia", Notification No. 23/03-18d on holding a public event in the form of a march on 9 May 2018 in Yalta, 23 March 2018 (Annex 596); Administration of the City of Yalta, Response No. 09-15/39 to the notification of the All-Russian Public Civil and Patriotic Movement "Immortal Regiment of Russia" of 23 March 2018 No. 23/03-18d, 29 March 2018 (Annex 600); All-Russian Public Civil and Patriotic Movement "Immortal Regiment of Russia", Notification No. 23/03-18d, on holding a public event in the form of a march on 9 May 2018 No. 23/03-18d, 29 March 2018 (Annex 600); All-Russian Public Civil and Patriotic Movement "Immortal Regiment of Russia", Notification No. 23/03-18g on holding a public event in the form of a march on 9 May 2018 in Feodosia, 23 March 2018 (Annex 597); Administration of the City of Feodosia, Response No. 2-41/5693/1 to the notification of the All-Russian Public Civil and Patriotic Movement "Immortal Regiment of Russia" of 23 March 2018 (Annex 597); Administration of the City of Feodosia, Response No. 2-41/5693/1 to the notification of the All-Russian Public Civil and Patriotic Movement "Immortal Regiment of Russia" of 23 March 2018 (Annex 599).

<sup>161</sup> United Russia Political Party, Notification No. 010-1-12/95 on holding a public event to celebrate National Flag Day of the Russian Federation on 22 August 2016, 15 August 2016 (Annex 573); Administration of the City of Feodosia, Response No. 2-14/9242/1 to the notification of the United Russia Political Party of 15 August 2016 No. 010-1-12/95, 17 August 2016 (Annex 574).

<sup>&</sup>lt;sup>157</sup> Public Movement "Civil Headquarters in support of President of the Russian Federation V.V. Putin", Notification on holding a public event in the form of a rally, 5 March 2018 (Annex 592); Department of Public Communications of the City of Sevastopol, Response No. 277/63-03-25/18 to the notification of the Public Movement "Civil Headquarters in support of President of the Russian Federation V.V. Putin" of 5 March 2018 No. KOL-2853/p on changing a place of the rally, 6 March 2018 (Annex 593); Directorate of the Ministry of Internal Affairs of the Russian Federation for the City of Sevastopol, Letter No. 6/311 to the Chairman of the Public Movement "Civil Headquarters in support of President of the Russian Federation V.V. Putin" on the non-approval of holding the rally in an unauthorized location, 12 March 2018 (Annex 594); Notification of Mr Fedotov on holding a public event in the form of a rally in support of Vladimir Putin on 15 March 2020 in Sevastopol, 27 February 2020 (Annex 613); Department of Public Communications of the City of Sevastopol, Letter No. 281/01-08-01-15/02/20 to the Directorate of the Ministry of Internal Affairs of Russia for the City of Sevastopol in connection with Mr Fedotov's notification, 27 February 2020 (Annex 614); Directorate of the Ministry of Internal Affairs of the Russian Federation for the City of Sevastopol, Letter No. 6/323 to the notification of Mr Fedotov on the non-approval of holding an unauthorized rally, 11 March 2020 (Annex 615).

12 June,<sup>162</sup> were *not* authorized when their organizers failed to comply with the relevant procedure applicable in Crimea. There is thus no indication that the Russian legal system, either by design or by effect, would accord on ethnic grounds a differential, let alone detrimental, treatment to Crimean Tatars or Ukrainians as ethnic groups as opposed to the representatives of other national or ethnic groups.

<sup>&</sup>lt;sup>162</sup> Russian Commune "Sobol", Notification on holding a public event to celebrate Russia Day on 12 June 2016, 1 June 2016 (Annex 570); Administration of the City of Simferopol, Response No. 11501/24/01-28 to the notification of the Russian Community "Sobol" of 1 June 2016, 3 June 2016 (Annex 571).

## APPENDIX E NO RACIAL DISCRIMINATION WITH RESPECT TO MEDIA, LET ALONE A SYSTEMATIC CAMPAIGN THEREOF

1. The present Appendix addresses the relevant factual and legal elements in respect of Ukraine's unfounded claims of racial discrimination in relation to the activities of media outlets, including an alleged systematic campaign or policy of racial discrimination and harassment aiming at bringing about cultural erasure of the Crimean Tatar and ethnic Ukrainian communities in Crimea.<sup>1</sup> In light of the applicable Russian legal framework, which is very similar to Ukraine's (I) and of the diverse and vibrant media landscape in Crimea (II), it is manifest that Ukraine's individual claims are baseless (III).

### I. The Russian Legal Framework Governing Media Activities

#### A. THE RELEVANT LEGAL FRAMEWORK IN THE RUSSIAN FEDERATION

2. The general legal framework currently applicable for the operation of the Media in the Russian Federation, including in Crimea, was adopted in 1991.<sup>2</sup> Pursuant to this framework, a media outlet may only carry out its activities upon registration with the authorities' competent agency.<sup>3</sup> This general obligation is subject to exemption in specific cases, including for media outlets established by public authorities and local self-governing authorities solely for publishing their regulations, for official communications and materials, for printed periodic Medias with a circulation of less than one thousand copies, for radio and television programs distributed via cable networks and limited by premises or territory of one state institution, one educational organization or one industrial enterprise or having no more than ten subscribers, and for audio and video programs circulated in no more than ten copies.<sup>4</sup> Therefore, satellite and internet TV and radio channels, including those operating from abroad, are not subject to prior registration. The competent authority to carry out the registration process and media supervision is the Federal Service for Supervision of Communications, Information Technology, and Mass Media - "Roskomnadzor" which is an agency of the Russian Ministry of Digital Development, Communications and Mass Media. Depending on the intended coverage of the media outlet, registration will either be with Federal Roskomnadzor in Moscow, or a regional department of Roskomnadzor.<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> MU, paras. 505-521. See also Chapter VI of the present Counter-Memorial, paras. 398-412.

<sup>&</sup>lt;sup>2</sup> Law of the Russian Federation No. 2124-1 "On mass media", 27 December 1991 (Annex 26) ("Media Law").

<sup>&</sup>lt;sup>3</sup> Media Law (Annex 26), Article 8. The registered mass media can be found on the website of the Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor) at <u>https://rkn.gov.ru/mass-communications/reestr/</u>.

<sup>&</sup>lt;sup>4</sup> Media Law (Annex 26), Article 12.

<sup>&</sup>lt;sup>5</sup> *Ibid.*, Article 8. See also Article 8 of the Media Law as amended by the Federal Law No. 239-FZ "On introducing amendments into the Law of the Russian Federation 'On mass media'", 29 July 2017 (Annex 109), and Order of Roskomnadzor (the Federal Service for Supervision of Communications, Information Technology and Mass Media) No. 255 "On approval of the procedure for filing an application for registration of a mass media outlet whose products are

#### 1. The Registration Process and Roskomnadzor's Role

3. The registration process is subject to procedural conditions that are all provided for by law. The registration application shall indicate the required information, shall include the required supporting documentation, and shall be submitted by the authorized representative of the media outlet in person or sent by certified mail with proof of delivery to the competent office of Roskomnadzor.<sup>6</sup> The authorities shall process the application within thirty days from its receipt and the media outlet shall be deemed registered on the date of the decision of the authorities to validate the application and make a corresponding entry in the register of media outlets.<sup>7</sup> As part of the required information, the application shall indicate such information about the founder or cofounders as necessary to establish his/her/its compliance with the requirements of the Media Law, the name or title of the media; the diffusion language(s), editorial address, the form of periodic dissemination of the media outlet; the envisaged territory of coverage, the approximate topics and (or) specialization, the estimated frequency of release, the maximum volume of the media outlet, the sources of financing, information on other media outlets of which the applicant is the founder, owner, principal editor, editing board, publisher or distributor, the domain name of the website for online publications, information on the payment of state duty.<sup>8</sup> The application shall also include supporting documentation as defined by an order of the Russian Government.<sup>9</sup> The list of required information and supporting documents to be provided is cumulative, which means that the application's failure to meet one of the procedural criteria will result in Roskomnadzor returning it to the applicant without consideration, as the Media Law mandates it to do.<sup>10</sup> Roskomnadzor can request additional clarifications or corrected documents as may be necessary in order to make sense

intended for distribution mainly in the territories of two or more constituent entities of the Russian Federation", 18 December 2017 (Annex 111), paras. 4 and 5.

<sup>&</sup>lt;sup>6</sup> Article 8 of the Media Law as amended by the Federal Law No. 239-FZ "On introducing amendments into the Law of the Russian Federation 'On mass media'", 29 July 2017 (Annex 109).

<sup>&</sup>lt;sup>7</sup> Ibid.

<sup>&</sup>lt;sup>8</sup> Media Law (Annex 26), Article 10. The last requirement was introduced in 2017 by the Federal Law No. 239-FZ "On introducing amendments into the Law of the Russian Federation 'On mass media'", 29 July 2017 (Annex 109). For all practical purposes and unless otherwise specifically indicated, in the present Counter-Memorial the term "founder" in this context is equivalent to the term "owner" and indicates the founder's overall control over a given media outlet.

<sup>&</sup>lt;sup>9</sup> Media Law (Annex 26), Article 10 (requirements at the relevant time). The list of documents to be submitted is determined by the Russian Government, see Order of the Government of the Russian Federation No. 1752-r approving the list of documents to be attached by the applicant to the application for registration (re-registration) of a mass media, 6 October 2011 (Annex 56). Information for applicants on the procedure, required supporting documents and payment details is provided online at both Federal Roskomnadzor and the regional offices websites. As an example, see Roskomnadzor official website, Information on mass media registration, retrieved on 19 May 2021, 19 May 2021 (Annex 505), also available in English at <u>http://eng.rkn.gov ru/mass-communications/mass media registration/</u>. See also Roskomnadzor official website, "Details for paying the state duty for registration of mass media outlets", 6 February 2015 (Annex 455); Roskomnadzor Directorate for the Republic of Crimea and the city of Sevastopol official website, "On filling in the details of payment order for payers – individuals and legal entities", 1 October 2014 (Annex 447).

<sup>&</sup>lt;sup>10</sup> Media Law (Annex 26), Article 13.

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of elements or documents contained in the application when such appear to be unclear or incomplete.<sup>11</sup>

4. Registration may only be refused in a limited number of cases, namely when the application was not submitted by a person authorized to establish media outlets under statutory law, when the application does not reflect factual reality, when the mentioned approximate topics and (or) specialization violates Article 4(1) of the Media Law, or when a prior registration already exists for the same name.<sup>12</sup> Article 4(1) prohibits any use of media outlets that constitutes or leads to the commission of criminal offences, the disclosure of lawfully protected state secrets, the distribution of materials or content calling for terrorist activities or justifying terrorism, the distribution of other extremist materials, or materials promoting pornography, the cult of violence and cruelty, or containing foul language.<sup>13</sup> Among restrictions on the founder's capacity, a founder or an editor-inchief of a media outlet cannot be a person serving a criminal sentence or an organization conducting activities prohibited by law.<sup>14</sup> The refusal of registration is thus strictly limited by objective and legitimate criteria, that apply equally to all applicants, the list of which in the relevant provision is limitative.<sup>15</sup> Roskomnadzor's decisions refusing registration is subject to judicial review and may be challenged in court.<sup>16</sup> Refusal of registration on one of the above-mentioned grounds is distinct from a return without consideration, which is made on procedural grounds and is without prejudice to any future corrected applications.

5. At the same time, Roskomnadzor's role is not limited to administrative or procedural aspects as its mission is also that of a watchdog.<sup>17</sup> In this capacity of oversight authority, Roskomnadzor supervises and contributes to ensure, within its sphere of competence, compliance of media activities with statutory law.<sup>18</sup> In this respect, Roskomnadzor communicates with other State administrations and may receive for example communications from the Office of the General

<sup>18</sup> *Ibid.*, para 5.1.1.1.

<sup>&</sup>lt;sup>11</sup> Such additional requests for clarification may be necessary, as in the cases advanced by Ukraine, when the information or documentation provided proves to be insufficient or contradicted by data known to the authorities, for instance in order to verify the capacity of the founder against the requirements of Article 7 of the Media Law by checking the founder's citizenship, interest in the media outlet or link with extremist or other illegal activities.

<sup>&</sup>lt;sup>12</sup> Media Law (Annex 26), Article 13.

<sup>&</sup>lt;sup>13</sup> *Ibid.*, Article 4(1).

<sup>&</sup>lt;sup>14</sup> *Ibid.*, Article 7. Since 2017, the prohibition was extended to citizens convicted for criminal use of media or for extremist activities (for a certain period after the conviction): see Article 7 of the Media Law as amended by the Federal Law No. 239-FZ "On introducing amendments into the Law of the Russian Federation 'On mass media'", 29 July 2017 (Annex 109).

<sup>&</sup>lt;sup>15</sup> Media Law (Annex 26), Article 13: "Refusal to register a mass media outlet is possible <u>only</u> on the following grounds" (emphasis added).

<sup>&</sup>lt;sup>16</sup> *Ibid.*, Article 61.

<sup>&</sup>lt;sup>17</sup> Statute of the Federal Service for Supervision of Communications, Information Technology, and Mass Media, approved by the Resolution of the Government of the Russian Federation No. 228, 16 March 2009 (Annex 51), paras. 4, 5.1.1, and 5.1.1.1, also available at <u>http://eng.rkn.gov/ru/about/</u>.

Prosecutor calling its attention to particular cases of non-compliant conduct of specific media outlets that have come to the Prosecutor's knowledge as part of its mandate.<sup>19</sup>

6. Once registered, a media outlet is obliged to operate in accordance with the registered information. The registration of a media outlet may be declared invalid by administrative court proceeding upon request of the registering authority when representations made in the application do not reflect the reality, when the media outlet does not publish or broadcast during a period exceeding one year, when the charter of the editorial office or any agreement replacing it is not sent to the registering authority within three months from the start of publishing or broadcasting by the media outlet, or when re-registration of the media outlet has taken place.<sup>20</sup>

7. The activities of a mass media outlet may only be terminated or suspended by a decision of its founder or by court order upon the application of the registration body. A repetition of breaches of the requirements of Article 4 of the Media Law (abuse of the freedom of the press) within 12 months of an initial written notification by the registration body to the founder and/or the editorial commission (editor-in-chief) or the non-fulfillment of a court ruling on the suspension of a mass media outlet shall be grounds for terminating the activity of a mass media outlet by court.<sup>21</sup> According to the Media Law, a warning is a non-normative act of the registering authority issued with the aim of preventing violations of the legislation on the media and indicating their impermissibility.<sup>22</sup> The activities of a mass media outlet can also be terminated on the grounds established by the Federal Law "On countering extremist activities."<sup>23</sup> The activities of a mass media outlet may also be suspended by court at the request of the registering authority on grounds of violation of other prohibitions and restrictions established by the Media Law.<sup>24</sup>

### 2. The 2013 Legislative Amendment

8. At paragraph 510 of the Memorial, Ukraine complains of the adoption of Federal Law No. 433-FZ of 28 December 2013 introducing Article 280.1 of the Criminal Code of the Russian Federation, that makes "public calls for the violation of territorial integrity of the Russian

<sup>&</sup>lt;sup>19</sup> Federal Law No. 2202-1 "On the Prosecutor's Office of the Russian Federation", 17 January 1992 (Annex 27), Article 27(3).

<sup>&</sup>lt;sup>20</sup> Article 15 of the Media Law as amended by the Federal Law No. 239-FZ "On introducing amendments into the Law of the Russian Federation 'On mass media'", 29 July 2017 (Annex 109).

<sup>&</sup>lt;sup>21</sup> Media Law (Annex 26), Article 16.

<sup>&</sup>lt;sup>22</sup> Article 16 of the Media Law as amended by the Federal Law No. 239-FZ "On introducing amendments into the Law of the Russian Federation 'On mass media'", 29 July 2017 (Annex 109).

<sup>&</sup>lt;sup>23</sup> Media Law (Annex 26), Article 16. See also Federal Law No. 114-FZ "On counteracting extremist activities", 25 July 2002 (Annex 876 to MU), Article 11.

Article 16 of the Media Law as amended by the Federal Law No. 239-FZ "On introducing amendments into the Law of the Russian Federation 'On mass media'", 29 July 2017 (Annex 109); Media Law (Annex 26), Articles 7, 19, 19.1.

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Federation" a criminal offence, punishable by up to 5 years in prison.<sup>25</sup> To recall, a similar modification had been brought to Article 4 of the Media Law as early as 2002 in order to take account of the newly adopted Federal Law on counteracting extremist activities.<sup>26</sup> Moreover, the 2013 amendment occurred prior to Crimea's change of status, having been introduced as early as autumn 2013. It is difficult to see on what basis the adoption of these prior amendments could evidence a systematic campaign of racial discrimination in Crimea since March 2014.

9. While the same provision had been in existence in the Ukrainian legal framework governing media activities before the Russian 2013 amendment,<sup>27</sup> in any event this amendment does not modify the legal situation or increase limitations on media activities. The 2013 amendment did not bring any substantive change to the existing law but merely clarified the regime established with the 2002 Federal Law on counteracting extremist activities. Newly inserted Article 280.1 in the Criminal Code of the Russian Federation addresses explicitly under a separate heading what had been hitherto covered more generally and by reference under Article 280, which refers to extremist activities in general and relies on the definition of extremism under Article 1(1) of the 2002 Federal Law "On counteracting extremist activities,"<sup>28</sup> the latter in turn defining extremism or extremist activities as consisting, among other forms of conduct, in "forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation."<sup>29</sup>

### 3. The Transition Period for Media Registration in Crimea

10. With the accession of Crimea to the Russian Federation, a transition period allowed for media outlets in Crimea to operate under their existing Ukrainian registration until 1 April 2015. All media outlets that are required to register under Russian law were required to do so by that deadline, following a simplified procedure with benefits, including exemption from the registration state duty.<sup>30</sup> Therefore, during the transition period Crimean media benefited from a more, not less, flexible framework than Russian media generally.

<sup>&</sup>lt;sup>25</sup> Criminal Code of the Russian Federation, 13 June 1996 (Annex 928 to MU), Article 280.1, as amended by Federal Law No. 433-FZ "On amending the Criminal Code of the Russian Federation", 28 December 2013 (Annex 60), introducing Article 280.1 that makes "public calls for actions aimed at violating the territorial integrity of the Russian Federation" a criminal offense, punishable by up to 5 years in prison. The amendment applies from 9 May 2014.

<sup>&</sup>lt;sup>26</sup> Federal Law No. 112-FZ "On amendments and additions to the legislative acts of the Russian Federation in connection with the adoption of the Federal Law 'On countering extremist activities'", 25 July 2002 (Annex 46), Article 1.

<sup>&</sup>lt;sup>27</sup> Law of Ukraine No. 2657-XII "On information", 2 October 1992 (Annex 745), Article 46 (Inadmissibility of Abuse of the Right to Information): "Information cannot be used to call for overthrow of constitutional order, violation of the territorial integrity of Ukraine, propaganda of war, violence, cruelty, incitement to racial hatred, national or religious hatred, commission of terrorist acts, encroachment on human rights and freedoms."

<sup>&</sup>lt;sup>28</sup> Criminal Code of the Russian Federation, No. 63-FZ, 13 June 1996 (Annex 32), Article 280.

<sup>&</sup>lt;sup>29</sup> Federal Law No. 114-FZ "On counteracting extremist activities", 25 July 2002 (Annex 876 to MU), Articles 1 (1).

<sup>&</sup>lt;sup>30</sup> Federal Law No. 402-FZ "On Specifics of Regulation in the Sphere of Mass Media in Connection with the Acceptance of the Republic of Crimea into the Russian Federation and the Formation within the Russian Federation of the New Subjects of the Republic of Crimea and the City of Federal Importance Sevastopol", 1 December 2014 (Annex

11. Moreover, even those media outlets which, for any reason, were not able to register or complete their registration by the deadline were not prevented from doing so at any time thereafter. Indeed, the return of an application for reasons of procedural non-compliance did not prevent applicants from re-submitting corrected applications until the application is procedurally valid and can be processed. As confirmed by the individual cases examined further below, when returning an application on procedural grounds, the authorities indicated clearly the said grounds as well as, where applicable, the way in which the application may be corrected.<sup>31</sup>

## B. THE UKRAINIAN LEGAL FRAMEWORK

12. Ukraine's legal framework governing activities of the media is strikingly similar to the Russian framework. Contrary to what Ukraine claims in the Memorial,<sup>32</sup> its own laws show that both countries consider as legitimate efforts to limits the use of the Media for spreading extremist materials or conduct otherwise extremist activities. For example, the Ukrainian Law on Print Media provides limits to print media activities by specifying a series of restrictions and prohibited activities (see in particular Articles 2 and 3).<sup>33</sup> The Law on Print Media also refers to Ukraine's Law on Information, including its Article 46.<sup>34</sup>

13. Ukraine's Law on Print Media further provides that any person whose legal rights and capacity have not been restricted may establish a media outlet.<sup>35</sup> No individual may found, co-found or control over 5% of a national or regional socio-political print media outlet.<sup>36</sup> As a matter of principle, all print media outlets have an obligation to register with the competent authorities before starting their activities.<sup>37</sup> Like under Russian Law, the application shall specify a series of information. The registering authority may ask the founder (co-founder) to submit documents that prove his (their) legal capacity and powers (passport of the citizen of Ukraine, charter, co-founders' agreement, agreement with a successor, power of attorney, etc.). Any change in the submitted information must also be notified.<sup>38</sup>

<sup>38</sup> *Ibid.*, Article 12.

<sup>879</sup> to MU); Tax Code of the Russian Federation, No. 117-FZ, 5 August 2000 (Annex 37), Article 333.35(3)(26) as amended by Federal Law No. 381-FZ of 29 November 2014. According to Article 2(1) of Federal Law No. 402-FZ, the transitional exemption of the payment of state duty for registration applied only in cases where a media outlet planned to operate exclusively in Crimea. Media outlets with nationwide dissemination had to register with the central office of Roskomnadzor in Moscow and could not benefit from the exemption of the state duty.

<sup>&</sup>lt;sup>31</sup> Media Law (Annex 26), Article 13.

<sup>&</sup>lt;sup>32</sup> MU, para. 510.

<sup>&</sup>lt;sup>33</sup> Law of Ukraine No. 2782-XII "On print mass media (press) in Ukraine", 16 November 1992 (Annex 746) ("Ukrainian Law on Print Media").

<sup>&</sup>lt;sup>34</sup> Law of Ukraine No. 2657-XII "On information", 2 October 1992 (Annex 745), Article 46 (Inadmissibility of Abuse of the Right to Information).

<sup>&</sup>lt;sup>35</sup> Ukrainian Law on Print Media (Annex 746), Article 8.

<sup>&</sup>lt;sup>36</sup> *Ibid.*, Article 10.

<sup>&</sup>lt;sup>37</sup> *Ibid.*, Article 11. The registration application must be submitted by the founder. Exceptions to the registration requirement are specified under Article 14.

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14. In Ukraine, the authorities must take their decision within a month from the application and notify the applicant in writing of their decision.<sup>39</sup> Registration may not be granted as long as the founder has not submitted all required documents supporting the application.<sup>40</sup> A granted registration may be declared invalid, in particular when the media outlet fails to start its activities within a year of registration.<sup>41</sup> Finally, the activities of a print media outlet may be terminated by court order in several cases, including when the print media outlet undertake prohibited activities in violation of Article 3.<sup>42</sup>

# C. THE STRONG SIMILARITY BETWEEN THE RUSSIAN AND UKRAINIAN LEGAL FRAMEWORKS

15. As it appears from this overview of both Russian and Ukrainian legislation governing media activities and contrary to Ukraine's assertions,<sup>43</sup> apart from minor divergences which are immaterial to Ukraine's claims, the legal frameworks of both States are virtually identical with respect to the two essential questions that underlie Ukraine's case.

16. First, both States require registration as a prerequisite for the activities of media outlets. They establish very similar procedures to govern this registration process, with a similar degree of formalism and procedural requirements. Both systems envisage return and refusal of registration, including on similar procedural grounds.

17. Secondly, both legal frameworks provide for legitimate limitations to the exercise of the right to freedom of expression and freedom of the media. In particular, they provide for termination of activities of a media by court order on similar grounds, such as impermissibility of extremist materials and language, incitement to violence, language against the state territorial integrity and legal order, disruption of public order, among others. While specific requirements obviously vary, registration procedures and legitimate limitations to the exercise of freedom of expression and freedom of media are quite standard in most democratic systems in the world.<sup>44</sup> *A fortiori*, there is absolutely no basis to consider, as Ukraine surprisingly and artificially claims, that these rules and regulations on media outlets form part of a systematic campaign of racial discrimination specifically targeted at Crimean Tatars and Ukrainians as ethnic groups.

<sup>&</sup>lt;sup>39</sup> *Ibid.*, Article 13.

<sup>&</sup>lt;sup>40</sup> *Ibid.*, Article 13.

<sup>&</sup>lt;sup>41</sup> *Ibid.*, Article 16.

<sup>&</sup>lt;sup>42</sup> *Ibid.*, Article 18.

<sup>&</sup>lt;sup>43</sup> MU, paras. 506, 509-510.

<sup>&</sup>lt;sup>44</sup> See for example ECHR, *Association Ekin v. France*, Application No. 39288/98, Judgment, 17 July 2001, paras. 22 and 29-30 (that the Court found a breach of Article 10 of the ECHR in that case is immaterial); ECHR, *Perna v. Italy*, Application No. 48898/99, Judgment, 6 May 2003, paras. 16, 39, and 48 (in regard of defamation); ECHR, *Stoll v. Switzerland*, Application No. 69698/01, Judgment, 10 December 2007, para. 44 (in relation to the unauthorized disclosure of State secrets); ECHR, *Leroy v. France*, Application No. 36109/03, Judgment, 2 October 2008, paras. 11-21; ECtHR, *Resul Taşdemir v. Turkey*, Application No. 38841/07, Decision as to admissibility, 23 February 2010 (apology of terrorism through slogans); ECHR, *Annen v. Germany*, Application No. 3779/11, Judgment, 18 October 2018, paras. 12-13. See also Human Rights Committee of the United Nations, General Comment No. 34 (Article 19: Freedoms of opinion and expression), 102<sup>nd</sup> session, UN doc. CCPR/C/GC/34, 12 September 2011, para. 21.

### D. CONCLUSION

18. To conclude, the registration procedure in Russia is accessible to all media outlets and applies equally to them without any distinction or disadvantage for Crimean Tatars or Ukrainians based on the information or documents to be provided. Furthermore, an application for registration may be submitted at any time; a returned application may be resubmitted with corrections an unlimited number of times and without any deadline for that. When the authorities return an application on procedural grounds, they clearly specify the ground for return and what steps may be taken to correct the application, should the media outlet so wish.

19. When it comes specifically to the transition regime established for Crimean media outlets, the deadline of 1 April 2015 only applied to the validity of Ukrainian registration documents; however, this deadline is immaterial to the question of Russian registration. Indeed, applications for Russian registration could be submitted at any time before and after this date, and application returned on procedural grounds could be resubmitted an unlimited number of times.

20. While media that had failed to register under the Russian system by 1 April 2015 may have decided to adjust their activities or close operations in Crimea and move to Ukraine, this was purely a business decision in order to avoid having their activities suspended until they could file a valid application and carry out registration under Russian law. Such decision is based on business and revenue considerations, in other words, on reasons of expediency and opportunity that only belong to the investor. They, again, have nothing to do with acts of racial discrimination.

## II. The General Situation of the Media in Crimea: A Diverse and Vibrant Activity

### A. THE GENERAL LANDSCAPE

21. The real situation of the media in Crimea is characterized by the existence of many media outlets with various editorial lines, languages of diffusion, including media outlets addressing the Crimean Tatar and Ukrainian communities. During the proceedings on provisional measures, the Russian Federation has already pointed to the existence of more than eighty registered media outlets in Crimean Tatar and Ukrainian language in Crimea as of the middle of 2016.<sup>45</sup> Overall, since 18 March 2014, more than one hundred mass media outlets have been registered in Crimea, whose products are primarily aimed at the Crimean Tatar and Ukrainian communities.<sup>46</sup> In addition, this figure does not include small and local media outlets which are not subject to the requirement to

<sup>&</sup>lt;sup>45</sup> List of Crimean Media Outlets in the Crimean Tatar and in the Ukrainian Language, in Documents submitted to the Registry of the ICJ by the Russian Federation in connection with Ukraine's Request for the indication of provisional measures and Judges' Folder submitted by the Russian Federation for the Hearings on Provisional Measures, 6-9 March 2017 (Annex 1267), pp. 12-26.

<sup>&</sup>lt;sup>46</sup> Mass media outlets registered during the Period from 18 March 2014 to 3 June 2021, whose products are mainly aimed at the Crimean Tatar and/or Ukrainian Community and are distributed/ was distributed (i) on the territory of the Republic of Crimea, (ii) on the territory of the city of Sevastopol, or (iii) on the territory of the Russian Federation with the editorial office address in the Republic of Crimea and the city of Sevastopol (Annex 1312).

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register and which exit in large numbers in Crimea.<sup>47</sup> Moreover, while some rare TV, print and radio outlets have opted to preserve their Ukrainian registration and move their operations in Ukraine, they mostly still broadcast in Crimea through cable networks and the Internet.<sup>48</sup>

The availability of media outlets in Crimean Tatar, Ukrainian, or any other language in 22. Crimea should be compared with the proportion of Crimean Tatars and ethnic Ukrainians, as well as native speakers of these languages, with the rest of the Crimean population, taking in particular into account that the number of persons who identify themselves as members of a given ethnic community usually does not coincide with the number of native speakers of the corresponding language. For example, Ukraine admits that the number of Ukrainian speakers in Crimea is much lower than the number of persons who identify as Ukrainian; in this regard it affirms that "[t]he census taken by the Ukrainian authorities in 2001 recorded some 492,000 Ukrainians, approximately 24 percent of Crimea's population. Only 40.4 percent of these, approximately 199,000 people, described Ukrainian as their native language."49 In the 2014 census taken by the Russian Federation, there were 344,515 persons who identified themselves as Ukrainians - 15.1% of the population -,<sup>50</sup> of which 79.7% identified Russian as their native language and 20.3% identified Ukrainian as their native language.<sup>51</sup> In that respect, most of those who identify Ukrainian as their native language usually speak Russian, name Russian as their second native languageand, therefore, do not form a totally separate community inclined to generate a significant demand for maintaining media outlets for itself in Ukrainian language.<sup>52</sup> Taking this element into account, the very significant number of media outlets that use Crimean Tatar or Ukrainian language in their activities, as well as the continued capacity of some media outlets that have moved their operations to Ukraine to further cover Crimea, confirm that Crimean Tatars and ethnic Ukrainians are certainly not the target of a campaign of racial discrimination aimed at their cultural erasure, as Ukraine claims.

<sup>&</sup>lt;sup>47</sup> *YouTube*, Statement of Ervin Musaev, Deputy Director-General of the Crimean Tatar TV channel "Millet", at the "Arria Formula" VTC of the member States of the UN Security Council on Crimea, 21 May 2020 (from 23:11 to 23:37), <u>https://www.youtube.com/watch?v=dh5qqqLVrB0</u>. In this video, Mr Musaev gives various examples of media outlets from different ethnic communities and notes that over 400 media outlets operate in Crimea.

<sup>&</sup>lt;sup>48</sup> See examination of the individual cases alleged by Ukraine at paras. 28-31. See also Deputy Head of Roskomnadzor, List of Ukrainian Printed Periodicals Which Were Issued a Permit to Distribute the Products of Foreign Periodicals on the Territory of the Russian Federation, 3 June 2021 (Annex 1313).

<sup>&</sup>lt;sup>49</sup> MU, para. 360.

<sup>&</sup>lt;sup>50</sup> Federal Service of State Statistics of the Russian Federation, Results of the Population Census of 2014 in the Crimean Federal District, 2015 (Annex 440), p. 108. The census was conducted on 14 October 2014.

<sup>&</sup>lt;sup>51</sup> *Ibid.*, p. 118.

<sup>&</sup>lt;sup>52</sup> See Expert Report of Dmitry Anatolievich Funk, Roman Alexandrovich Starchenko, Valery Vladimirovich Stepanov and Sergey Valeryevich Sokolovsky (Annex 21), paras. 133-134, 183. For instance, as described by Messrs Funk, Starchenko, Stepanov and Sokolovsky, in 2000s Ukrainian-language newspapers "*Krymska Svitlytsia*" and "*Dzvin Sevastopolya*" ["Bell of Sevastopol"] "had a circulation of no more than 1.5 thousand copies, with a low level of public demand being the reason behind that", Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21).

23. As of September 2015, Roskomnadzor's records identified 369 registered media outlets in Crimea, including 282 print media, 25 TV channels, 44 radio channels, 14 online publications and 4 news agencies. Of the total number of outlets, 44 registered media outlets worked in the Crimean Tatar language, including 6 TV channels, 8 radio channels and 30 periodicals.<sup>53</sup> Minorities are also well represented in State Medias. For example, the State Television and Radio Company "Crimea" broadcasts Crimean Tatar content 11 hours per week (44 hours per month), which represents approximately 10% of total TV broadcasting time. This proportion corresponds to the percentage of the Crimean Tatar population in the Republic.<sup>54</sup> In addition, as experts observe, "Russian-language media outlets absolutely dominated the mass media in the Autonomous Republic of Crimea throughout the entire post-Soviet period and until 2014. The total circulation of newspapers in Ukrainian, Crimean Tatar, and other languages did not exceed 5%. The Krym State Television and Radio Broadcasting Company and commercial television and radio broadcasting companies broadcast most of their programmes in Russian. By 2008, there were only five print media outlets in Crimea published in Ukrainian only; whereas there were 987 Russian-language ones."<sup>55</sup>

24. As these elements show, the situation of the Media in Crimea is diverse and the opposite to Ukraine's accusations of Russia conducting a campaign of systematic racial discrimination and cultural erasure against Crimean Tatars and Ukrainians as ethnic groups. Statistical information confirms that Crimean Tatar and Ukrainian media outlets do not suffer ethnic discrimination. As a matter of fact, in October 2015, well after the close of the re-registration process in Crimea, the Prosecutor's Office of the Republic of Crimea confirmed that it had received no complaints concerning pressure on the media.<sup>56</sup>

25. The authorities have also adopted supporting measures. For example, in 2015, the State Committee on interethnic relations and deported citizens of the Republic of Crimea adopted the Public Crimean Tatar TV and Radio Broadcaster as an autonomous non-profit organization, the aim of which is to assist in developing the capacities of Crimean Tatar TV and radio channels, and supporting their activities in Crimea.<sup>57</sup> As another example, the Millet TV channel was launched on 1 September 2015 under the auspices of the authorities.<sup>58</sup> Millet emits in Crimean Tatar and Russian languages and is viewed by the Council of Europe as reflecting the "recognition of the needs and

<sup>&</sup>lt;sup>53</sup> Prosecutor General's Office of the Russian Federation, Information on the outcomes of the analysis of arguments set out in the letter of the Permanent Delegation of Ukraine to UNESCO, 23 October 2015 (Annex 911 to MU), p. 2.

<sup>&</sup>lt;sup>54</sup> *Ibid.*, p. 7-8.

<sup>&</sup>lt;sup>55</sup> Expert Report of Messrs Funk, Starchenko, Stepanov and Sokolovsky (Annex 21), para. 133.

<sup>&</sup>lt;sup>56</sup> Prosecutor General's Office of the Russian Federation, Information on the outcomes of the analysis of arguments set out in the letter of the Permanent Delegation of Ukraine to UNESCO, 23 October 2015 (Annex 911 to MU), p. 3.

<sup>&</sup>lt;sup>57</sup> Charter of the Public Crimean Tatar TV and Radio Broadcaster adopted by Order No. 5-r of the State Committee on interethnic relations and deported citizens of the Republic of Crimea of 30 June 2015, in Documents submitted to the Registry of the ICJ by the Russian Federation in connection with Ukraine's Request for the indication of provisional measures and Judges' Folder submitted by the Russian Federation for the Hearings on Provisional Measures, 6-9 March 2017 (Annex 1267).

<sup>&</sup>lt;sup>58</sup> See Millet TV channel's website at <u>http://trkmillet ru</u>.

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expectations of the Crimean Tatar community."<sup>59</sup> The radio station *Vatan Sedasy* was launched on 13 February 2017 and emits in Crimean Tatar language.<sup>60</sup>

26. Non-exhaustive examples of magazines and newspapers available in Crimean Tatar include *Yildiz* or *Yany Dyunya*, while *Meraba*, launched on 20 November 2015, reports both in Crimean Tatar and in Russian.<sup>61</sup> Magazines of Crimean Tatar women, issued in Crimean Tatar and Russian, include *Arzy* and *Nenkedzhan*.<sup>62</sup> One may also mention *Armanciq*, a magazine for children in Crimean Tatar language.<sup>63</sup> The free operation of the media in Crimea, covering all types of views, is also confirmed by the activity of the Ukrainian public Channel "Inter+"<sup>64</sup> and that of the Internet portal "*Pereyaslavska Rada 2.0*", produced by the information agency "*Krym segodnya*" ("*Krym syogodni*") registered in 2020.<sup>65</sup> These few examples are only illustrative of the media available in Crimean Tatar and Ukrainian languages and of the media diversity in Crimea. The State-fund Gasprinsky Media Centre also publishes numerous books and newspapers in Crimean Tatar, Ukrainian and other minority languages, some of which have been mentioned above.<sup>66</sup>

### B. AVDET

27. The newspaper *Avdet* has been publishing in Crimea without interruption since 1990. From 1 April 2015 it adjusted its circulation in order to avoid re-registering with the new system. Indeed, by keeping the circulation under 1,000 copies per week<sup>67</sup> *Avdet* is not subject to the registration

; Krym syogodni, No. 1 (1), 2020 (Annex 1112); Krymskiy visnik, No. 1,

2020 (Annex 1118).

<sup>&</sup>lt;sup>59</sup> Council of Europe, Report to the Secretary General of the Council of Europe by Ambassador Gérard Stoudmann on his human rights visit to Crimea (25-31 January 2016), 11 April 2016 (Annex 825 to MU), para. 49.

<sup>&</sup>lt;sup>60</sup> See Vatan Sedasy's website: <u>http://vatan.fm/</u>.

<sup>&</sup>lt;sup>61</sup> Details and electronic copies are available at <u>https://mediacentr.org.ru/zhurnal-jyldyz/</u>, <u>https://mediacentr.org.ru/gazeta-yany-dyunya/</u>, and <u>https://mediacentr.org.ru/gazeta-meraba/</u>. See also *Yildiz*, No. 1 (259), 2021 (Annex 1153).

<sup>&</sup>lt;sup>62</sup> These two media outlets do not maintain a website. See *Arzy*, No. 13-14, 2020 (Annex 1117); *Arzy*, No. 15-16, 2020 (Annex 1116).

<sup>&</sup>lt;sup>63</sup> See Armanciq's website: <u>https://armanciq.ru</u>.

<sup>&</sup>lt;sup>64</sup> See the website of the TV channel at <u>https://inter.ua/</u>.

<sup>&</sup>lt;sup>65</sup> See *Pereyaslavska Rada* 2.0's website: <u>http://pereyaslavskayarada.com/</u>. It is published in Ukrainian and Russian. Its core message is that Ukrainian and Russian ethnic communities should co-exist in friendship and mutual respect. It is usually critical of Ukrainian nationalism.

<sup>&</sup>lt;sup>66</sup> Website: <u>https://mediacentr.org ru/;</u> see also Witness Statement of **1** (Annex 16), para. 8; N. Ryndich, *Lines like the Patterns of an Embroidered Towel: Poems, Songs, Dedications*, Gasprinsky Media Centre, Simferopol, 2020 (Annex 1111); *Songs Embroidered with Threads: Album of Embroidery and Patterns of Vera Roik*, compiled by Vadim Roik, Gasprinsky Media Centre, Simferopol, 2018 (Annex 1077); *Cherkez-Ali, Selected works*, compiled by R. Ametov, Gasprinsky Media Centre, Simferopol, 2020 (Annex 1119); Rustem Muedin, *Asanchik and Kashkachik*, Gasprinsky Media Centre, Simferopol, 2019 (Annex 1098); A. Veliev, *Crimean Tatar Women in the Great Patriotic War*, Crimean Tatars in World War II, Vol. IV, Gasprinsky Media Centre, Simferopol, 2020 (Annex 1120).

<sup>&</sup>lt;sup>67</sup> Avdet, "About the newspaper 'Avdet'", 7 January 2020 (Annex 1013).

requirement.<sup>68</sup> While initially *Avdet* attempted to register,<sup>69</sup> its two applications were returned to it without further consideration, based on procedural defects.<sup>70</sup> *Avdet* did not pursue the matter further, nor did it challenge the returns before the courts. Such decision reflects the founder's and editor's own choice and business strategy. Understandably it might make more sense for a relatively small media outlet to avoid the registration requirement, which might entail additional obligations and responsibilities, and to instead focus on Internet activity. Indeed, *Avdet*'s Internet website is active in Crimean Tatar, Russian and English languages, the journal is bilingual – in Crimean Tatar and Russian – and follows an editorial line that is often openly critical of the authorities, all this without any impediment.<sup>71</sup>

## C. SATELLITE AND INTERNET BROADCASTING

28. Media outlets that have moved to Ukraine are also able to broadcast in Crimea, in particular through satellite cable network and the Internet. An emblematic example is ATR Television channel and all other media outlets that are also owned or controlled by the ATR Holding, such as Lale TV channel for example. While ATR executives initially contemplated re-registering under the Russian system, they subsequently changed their strategy, abandoned their prior steps to apply for registration and instead decided to move their offices to Kiev. A probable explanation for ATR's decision to move its operations to Kiev is the anticipated temporary lack of revenue after the 1 April 2015 deadline and pending final approval of its re-registration with the Crimean authorities. This is a profit-related decision, which Mr Lenur Islyamov himself confirmed as ATR's founder and legal representative: "It [ATR] is like a blast furnace. If it doesn't work, if it isn't used, then it falls apart. And if you want to get it up and running again later, then you'll spend more money and more time than you did the first time".<sup>72</sup> In any event, today ATR TV is accessible on the whole peninsula through satellite cable network and the Internet and uses the Crimean Tatar, Ukrainian and Russian languages.<sup>73</sup>

<sup>71</sup> See <u>www.avdet.org</u>.

<sup>73</sup> See <u>www.atr.ua</u>.

<sup>&</sup>lt;sup>68</sup> See para. 2.

<sup>&</sup>lt;sup>69</sup> Avdet, "About the newspaper 'Avdet'", 7 January 2020 (Annex 1013).

<sup>&</sup>lt;sup>70</sup> Application to Roskomnadzor for registration of Avdet as a mass media outlet (Incoming No. 1681/91-smi of 2 December 2014), 26 November 2014 (Annex 530); Application to Roskomnadzor for registration of Avdet as a mass media outlet (Incoming No. 137/91-smi of 14 January 2015), 14 January 2015 (Annex 534); Roskomnadzor, Response No. 936-05/91 to application for registration of Avdet as a mass media outlet of 26 November 2014 (Incoming No. 1681/91-smi of 2 December 2014), 25 December 2014 (Annex 533); Roskomnadzor, Response to application for registration of Avdet as a mass media outlet of 14 January 2015, Incoming No. 137/91-smi, undated (Annex 647).

<sup>&</sup>lt;sup>72</sup> Andrii Ianitski, Crimean Tatar TV Back on Air, Open Democracy, 30 June 2015 (Annex 1058 to MU), p. 4 and 5. As the same document shows, Mr Islyamov's decision to move to Kiev was business and political: it comes as Ukraine's president Petro Poroshenko had sent a signal to Mr Islyamov by declaring in April 2015 having ordered "to do everything possible to restore ATR to the air across Ukraine, including Crimea".

29. Chernomorskaya TV is likewise available in Crimea via satellite cable TV and on the Internet.<sup>74</sup> The News Agency QHA also remains active and accessible in Crimea with an Internet portal displayed in six languages: Crimean Tatar, Russian, English, Ukrainian, Arabic, and Turkish.<sup>75</sup>

30. Far from being related to racial discrimination, the causes for the decline or departure of certain media outlets are linked with the critical financial situation in which they were under Ukraine's sovereignty prior to 2014. As a result, since 2014 these media outlets saw their financial situation worsen as a result of unpaid debts or underfunding and/or decided to move to Kiev in order to benefit from previously promised financial help from Ukraine. In this category, one may refer to the newspaper *Qirim*, the dire financial situation of which had already been publicly spotted back in 2011.<sup>76</sup> By 2013, while explaining the critical situation the editor in chief of the newspaper pointed to the lack of support from the Ukrainian authorities but also to an insufficient demand. The periodicals in Crimean Tatar language could not secure sufficient audience of subscribers and had to rely on public support, which was lacking.<sup>77</sup> *Qirim*'s financial difficulties continued after 2014. As is explained elsewhere, the seizure of Chernomorskaya TV's property by court order in 2014 is also explained by a critical financial situation,<sup>78</sup> and the coordinated decision to move a series of media outlets owned by Mr Islyamov to Ukraine appears also to have been motivated by business decisions in order to avoid financial losses they would have incurred pending their securing registration in Crimea. As explained further below, Krymska Svitlytsia had also been fraught with recurring financing issues.<sup>79</sup>

31. Therefore, the overall situation of the media in Crimea has not deteriorated since 2014. There are at least as many media outlets as during the pre-2014 period, covering diverse languages, editorial lines and community interests. This includes media outlets that are at times openly critical

<sup>79</sup> See paras. 38.

<sup>&</sup>lt;sup>74</sup> See <u>https://blackseatv.com/</u>.

<sup>&</sup>lt;sup>75</sup> See <u>www.qha.com.ua/en/</u>. The previous version of the website, which was active until the end of November 2018, is available at <u>http://old.qha.com.ua/en</u>.

<sup>&</sup>lt;sup>76</sup> See *Avdet*, "Crimeans are left without Crimea", 20 June 2011 (Annex 877). See also *Avdet*, "Open letter addressed to Ukrainian authorities", 18 July 2011 (Annex 878), which underlines the lack of concern and funding from Ukraine.

<sup>&</sup>lt;sup>77</sup> See *Avdet*, "Newspaper 'Qirim' is on the verge of being shut down", 2 December 2013 (Annex 891). See in particular the interview of Qirim's editor-in-chief, Mr Bekir Mamutov, within this article:

<sup>&</sup>quot;Bekir Mamutov said that there has been no funding for the publication for a long time, and all the appeals written by the employees of the newspaper remain unanswered.

<sup>&#</sup>x27;At the moment, the 'Qirim' newspaper is under the threat of closure and, accordingly, disappearance', he said. 'By far, out of UAH 300,000 allocated by the Ministry of Social Policy for the newspaper publication, 149 thousand remain in the accounts of the Treasury, while the newspaper's bills are not paid.'

The editor-in-chief noted that its subscribers have always been a huge source of support for the periodical. 'If the Crimean Tatars start subscribing to national newspapers, this would be the best help,' B. Mamutov said. However, in his opinion, the distribution of national newspapers and magazines is extremely limited.

<sup>&#</sup>x27;Due to various reasons, our circulation has now decreased from 4,000 to 3,000,' Bekir Mamutov emphasized and noted that at this time the newspaper has a debt to the Tavrida publishing house, which cannot be repaid."

<sup>&</sup>lt;sup>78</sup> See paras. 34-35 below.

of the authorities, such as the Crimean Tatar outlet *Avdet*. Besides, media outlets have openly pointed to the absence of pressure or discrimination exercised by the authorities on their activities.<sup>80</sup> While Ukraine's allegations relate to a small number of media outlets that have not re-registered under Russian law and of journalists who have elected to leave Crimea for reasons that have nothing to do with racial persecution or discrimination whatsoever as will be clarified further below, the overwhelming majority of media outlets operates legally and successfully in Crimea. Some of them have re-registered while others are new or are not required to register. When assessed against the ethnic composition of the Crimean population, Crimean Tatar and Ukrainian media outlets are clearly not underrepresented.

# III. Ukraine's Specific Allegations in Relation to The Media

32. As will be shown, for the sake of completeness, in this section, the cases Ukraine complains of under the disguise of CERD are without merit and have manifestly nothing to do with racial discrimination.

# A. ALLEGATIONS OF OPPRESSION AND FORCED CLOSURE OF MEDIA OUTLETS

33. Ukraine's wrongly accuses the Russian Federation to have subjected Chernomorskaya TV channel and the newspaper *Krymska Svitlytsia* to oppression and forced closure.<sup>81</sup>

# 1. Chernomorskaya TV

34. Ukraine focuses on the removal of Chernomorskaya TV from cable networks in Crimea on 28 June 2014 and the seizure of part of its property on 1 August 2014. These two episodes are part of a civil dispute between Chernomorskaya TV and Radio and Television Broadcasting Centre of the Autonomous Republic of Crimea, which started before 2014, and the Russian Federation was in no way involved in this proceeding. As part of long-standing financial problems that had been ongoing before 2014, Chernomorskaya TV had ceased the payment of its dues to the Broadcasting Centre under a contract for the provision of broadcasting services.

35. This situation led to the interruption of the broadcasting services, and the Broadcasting Center sued Chernomorskaya TV before Crimean courts, asking the court to order the seizure of Chernomorskaya TV's property as a measure of interim protection, given that the debt owed to its creditor exceeded its financial capacities. The debt at issue, which had been outstanding since July 2013, amounted to over 3 million rubles by the time the creditor applied to the Russian courts for

<sup>&</sup>lt;sup>80</sup> OSCE Human dimension implementation meeting (Warsaw, 16-27 September 2019), Address to the OSCE Representative on Freedom of the Media, appended to Written Contribution by the Crimean Tatar Television and Radio Broadcasting Company Millet, HDIM.CS/0039/19/RU, 17 September 2019 (Annex 834).

<sup>&</sup>lt;sup>81</sup> MU, paras. 507-508.

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interim measures in July 2014.<sup>82</sup> Thus, there is no room to claim, as Ukraine does, that the seizure of Chernomorskaya TV's property was a "raid".<sup>83</sup> It was a legally-based measure, which was carried out by the competent judicial authority in the interest of a private entity – the Broadcasting Centre. Contrary to Ukraine's allegations,<sup>84</sup> the seized property was later returned to Chernomorskaya TV in full, a fact that the latter itself admits.<sup>85</sup> The Russian Federation has no links with what is a process of debt recovery between two commercial entities in respect of a debt of Chernomorskaya TV that originates from facts prior to 18 March 2014.

36. The above-mentioned circumstances are further confirmed by the Office of the Prosecutor General of the Russian Federation, which additionally points out that it did not receive any claims or complaints from Chernomorskaya TV regarding the above.<sup>86</sup> In addition, both Roskomnadzor<sup>87</sup> and the Prosecutor General's Office<sup>88</sup> confirm that no application for registration was filed by Chernomorskaya TV.

# 2. Krymska Svitlytsia

37. In respect of the newspaper *Krymska Svitlytsia*, Ukraine alleges that the Russian Federation forced its closure.<sup>89</sup> However, Ukraine's own evidence confirms that the Russian Federation has no involvement whatsoever in this media outlet's business decision to move operations to Kiev in 2016.

38. The vacation of this media outlet in June 2014 from the premises it had been renting follows the termination of the lease agreement by the landlord,<sup>90</sup> a private person without any relation to the Russian Federation. The reasons are entirely *Krymska Svitlytsia*'s and in fact Ukraine's responsibility. To recall, *Krymska Svitlytsia* had been co-established in 1992 by the Ministry of

<sup>&</sup>lt;sup>82</sup> Sevastopol Economic Court of Appeal, case No. A83-112/2014, Decision, 31 July 2014 (Annex 166); Supreme Court of the Russian Federation, Case No. 308-ES14-4585, Ruling, 9 December 2014 (Annex 201). See also Main Directorate of International and Legal Cooperation of the Prosecutor General's Office of the Russian Federation, Note on the absence of claims and complaints with regard to registration and activity of the Ukrainian and Crimean Tatar media outlets in Crimea, 4 September 2020 (Annex 634).

<sup>&</sup>lt;sup>83</sup> MU, para. 507.

<sup>&</sup>lt;sup>84</sup> *Ibid.* 

<sup>&</sup>lt;sup>85</sup> Economic Court of the Republic of Crimea, Case No. A83-2841/2014, Ruling, 23 December 2014 (Annex 205).

<sup>&</sup>lt;sup>86</sup> Main Directorate of International and Legal Cooperation of the Prosecutor General's Office of the Russian Federation, Note on the absence of claims and complaints with regard to registration and activity of the Ukrainian and Crimean Tatar media outlets in Crimea, 4 September 2020 (Annex 634); Main Directorate of International and Legal Cooperation of the Prosecutor General's Office of the Russian Federation, Note on the absence of claims and complaints received with regard to registration and activity of Chernomorskaya TV, 4 September 2020 (Annex 635).

<sup>&</sup>lt;sup>87</sup> Roskomnadzor, Letter on the absence of applications from Chernomorskaya TV for registration as a mass media outlet (Annex 1334).

<sup>&</sup>lt;sup>88</sup> Main Directorate of International and Legal Cooperation of the Prosecutor General's Office of the Russian Federation, Note on the absence of claims and complaints with regard to registration and activity of the Ukrainian and Crimean Tatar media outlets in Crimea, 4 September 2020 (Annex 634).

<sup>&</sup>lt;sup>89</sup> MU, para. 508.

<sup>&</sup>lt;sup>90</sup> Witness Statement of Andriy Shchekun, 4 June 2018 (Annex 13 to MU), para. 27.

Culture and Tourism of Ukraine<sup>91</sup> and had been financed by the Ukrainian Government ever since.<sup>92</sup> Therefore, as a media business controlled by a foreign State and operating in Crimea, it is not in the same position as other, usually private media outlets. The reason for the termination of the lease agreement by the landlord in June 2014 originated in *Krymska Svitlytsia*'s failure to pay the contractual rent – a failure ultimately attributable to Ukraine as its financier. Over the course of a decade, the Ukrainian government had gradually reduced the financing of *Krymska Svitlytsia*, which led to an increase in debt, including for rent. Thus, the inability of *Krymska Svitlytsia* to fulfill its obligations to the landlord was solely the responsibility of the Ukrainian government and had nothing to do with the actions of the Russian authorities.<sup>93</sup>

39. The second incident mentioned by Mr Shchekun in his Statement annexed to Ukraine's Memorial<sup>94</sup> is yet another dispute between two private entities arising out of *Krymska Svitlytsia*'s fault and without any relation whatsoever to racial discrimination or the Russian Federation. While Mr Shchekun refers to a "breach" by the distribution company Krymsoyuzpechat JSC<sup>95</sup> of its distribution agreement with *Krymska Svitlytsia*, thus interrupting the distribution of the newspaper, the letter he relies on clearly does not support such claim. Instead, the letter confirms that Krymsoyuzpechat JSC in fact terminated the distribution agreement in June 2014 based on circumstances rendering it for the parties "impossible to perform the agreement.<sup>96</sup> As the termination letter explains, Crimea's change of status compromised the possibility and legality of financial transactions between Crimea and Ukraine and between the parties, and thus undermined their ability to continue to perform their respective contractual obligations under both Ukrainian and Russian laws, rendering their contractual relationship impossible to maintain. This is manifestly unrelated to the Russian Federation and to racial discrimination.

<sup>&</sup>lt;sup>91</sup> Zmina, "Newspaper 'Krymskaya Svetlitsa' may stop publishing in Kiev", 24 February 2017 (Annex 968).

<sup>&</sup>lt;sup>92</sup> 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), 17 September 2015 (Annex 812 to MU), para. 257.

<sup>&</sup>lt;sup>93</sup> *Radio Svoboda*, "Krymska Svitlytsia' is again threatened with destruction", 30 December 2009 (Annex 868); *Radio Svoboda*, "Ministry of Culture of Ukraine: 'Krymska Svitlytsia', 'Qirim' – what other newspaper will be shut down in Crimea?", 12 April 2011 (Annex 874); *Krym.Realii*, "'Krymska Svitlytsia': fighting for existence", 23 September 2018 (Annex 990); *Flot2017.com*, "'Krymskaya Svetlitsa' is back. So far only on the Internet", 29 October 2010 (Annex 873), which states that Krymska Svitlytsia experienced some serious financial problems long before 2014, which actually led to a temporary suspension of its activity in 2010; *Zmina*, "Ukrainian newspaper 'Krymskaya Svetlitsa' moved from Crimea to Kiev", 7 July 2016 (Annex 957). For the sake of completeness, it should be noted that even after its relocation to Ukraine in 2016 the newspaper has continued to experience financial problems that threatened its existence: see e.g. *Zmina*, "Newspaper 'Krymskaya Svetlitsa' may stop publishing in Kiev", 24 February 2017 (Annex 968).

<sup>&</sup>lt;sup>94</sup> Witness Statement of Andriy Shchekun, 4 June 2018 (Annex 13 to MU), para. 27.

<sup>&</sup>lt;sup>95</sup> Extract from the Uniform state register of legal entities in relation to JSC "Krymsoyuzpechat", 7 April 2020 (Annex 497).

<sup>&</sup>lt;sup>96</sup> Krymsoyuzpechat Private Joint-Stock Company, Letter No. 773 to the General Director of National Press Publishing State Enterprise, 18 June 2014 (Annex 862 to MU).

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40. Against this factual background it does not come as a surprise that *Krymska Svitlytsia* did not take any judicial action whatsoever in the Russian Federation against either JSC Krymsoyuzpechat or the Russian Federation<sup>97</sup> with respect to the contractual termination since there is no basis for such a claim. Nor have *Krymska Svitlytsia* or its journalists or other employees filed any complaints with the Ministry of Internal Affairs of the Republic of Crimea or the Ministry of Internal Affairs of the City of Sevastopol in relation to the alleged illegal eviction from the offices in 2014 or any other alleged violations of their rights.<sup>98</sup>

41. In any event, it is worth adding that *Krymska Svitlytsia* continued its activities in Crimea after these two incidents of June 2014 and only moved to Kiev in 2016, based on a deliberate business decision by Mr Shchekun, its founder and owner. Mr Shchekun's allegations that the media outlet was "forced to relocate to mainland Ukraine" or that it "had no choice but to relocate to Kyiv"<sup>99</sup> are misleading. His decision to relocate in Kiev in 2016 was likely motivated by his will to continue to seek financial support from Ukraine and his refusal to operate in Crimea.

42. Actually, two years before making his witness statement for Ukraine in the present case, Mr Shchekun declared in the media that the migration of Krymska Svitlytsia to Ukraine was necessary to receive Ukraine's financial support.<sup>100</sup> This statement blatantly contradicts the later statement annexed to Ukraine's Memorial. Ukraine's refusal to fund the media outlet unless it relocated to Ukraine appears as the real incentive underlying the decision. Such decision was not uncontroversial within the media outlet: Mr Viktor Kachula, its editor-in-chief, opposed the move and wanted to stay in Crimea – which confirms that this option was materially available – and was dismissed by Mr Shchekun due to this disagreement. As it appears, the staff of the newspaper was also opposed to the transfer of Krymska Svitlytsia to Ukraine and considered the decision to relocate the newspaper's offices to Kiev as "unfair".<sup>101</sup> Therefore, if Krymska Svitlytsia had been forced by anyone to discontinue operations in Crimea and to move to Ukraine, it was by Ukraine and Mr Shchekun, not the Russian Federation. In any case, the media outlet has remained available to Crimeans through the internet to this day.<sup>102</sup> The contractual relationship between private entities and Krymska Svitlytsia's business decision to move to Ukraine bear manifestly no relation whatsoever with the Russian Federation or with racial discrimination.

<sup>&</sup>lt;sup>97</sup> Electronic Justice, Court proceedings data confirming the absence of any legal action taken by Krymska Svitlytsya against "Krymsoyuzpechat" before Russian courts (Annex 1282).

<sup>&</sup>lt;sup>98</sup> Police Operations Department of the Ministry of Internal Affairs for the Republic of Crimea, Note on the absence of complaints of violations with regard to the newspaper "Krymskaya Svetlitsa" (Annex 648); Document Management and Regime Division of the Directorate of the Ministry of Internal Affairs of Russia for Sevastopol, Note on the absence of complaints of violations with regard to the newspaper "Krymskaya Svetlitsa", 11 August 2020 (Annex 629).

<sup>&</sup>lt;sup>99</sup> Witness Statement of Andriy Shchekun, 4 June 2018 (Annex 13 to MU), para. 27.

<sup>&</sup>lt;sup>100</sup> Zmina, "Ukrainian newspaper 'Krymskaya Svetlitsa' moved from Crimea to Kiev", 7 July 2016 (Annex 957).

<sup>&</sup>lt;sup>101</sup> Zmina, "Ukrainian newspaper 'Krymskaya Svetlitsa' moved from Crimea to Kiev", 7 July 2016 (Annex 957).

<sup>&</sup>lt;sup>102</sup> See *Krymska Svitlytsia*'s website at <u>http://svitlytsia.crimea.ua</u>. The website also makes previous issues of the newspapers publicly available in its "Archive" section.

## B. TREATMENT OF REGISTRATION APPLICATIONS

43. Ukraine wrongly alleges that the authorities "used this requirement [for media outlets to register] as a pretext to ban disfavored Crimean Tatar media entities for supposed minor defects in their re-registration documents."<sup>103</sup>

44. All mentioned applications were not rejected; rather they were returned to the applicant without consideration based on procedural grounds, namely on bases mandated by statutory law. As an OSCE report cited by Ukraine confirms, "[p]rocedural mistakes were the main reason cited by Roskomnadzor for rejections of applications."<sup>104</sup> As applicable under the Media Law presented above, procedural requirements are mandatory. Moreover, Ukraine does not even seek to establish that their application in the present case was discriminatory, let alone that such discrimination was based on racial grounds. Once again, Ukraine's allegations have manifestly nothing to do with racial discrimination and CERD.

# 1. Registration Applications of "ATR T" TV channel

45. Between October 2014 and March 2015 four applications for registration of ATR T were submitted to Roskomnadzor.<sup>105</sup>

46. The first application dated 28 October 2014 was received by the authorities on 5 November 2014.<sup>106</sup> It was submitted by Ms Elzara Islyamova, CEO of Atlant-SV Television Company.<sup>107</sup> In its reply letter dated 14 November 2014, Roskomnadzor returned the application to the applicant on grounds of lack of duly certified copies of the requested documents, as required under statutory law.<sup>108</sup> While the application had been returned without further examination as is the procedure for procedural defects, the letter included a long, transparent and detailed explanation of the procedural defect, pointing to the relevant legal texts governing the preparation of certified copies of original documents, and indicated to the applicant how to cure the procedural defect.

47. Ms Islyamova submitted a second application for re-registration of ATR T channel on behalf of its founder, Atlant-SV, dated 16 December 2014 and received by the authorities on 24 December

<sup>&</sup>lt;sup>103</sup> MU, para. 511.

<sup>&</sup>lt;sup>104</sup> 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), 17 September 2015 (Annex 812 to MU), para. 75.

<sup>&</sup>lt;sup>105</sup> MU, paras. 511-512; Witness Statement of Lenur Islyamov, 6 June 2018 (Annex 18 to MU), paras. 19-22; 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), 17 September 2015 (Annex 812 to MU), para. 77.

<sup>&</sup>lt;sup>106</sup> ATR T's application to Roskomnadzor for registration as a mass media outlet (incoming No. 1336/91-SMI dated 5 November 2014), 28 October 2014 (Annex 880 to MU).

<sup>&</sup>lt;sup>107</sup> Witness Statement of Lenur Islyamov, 6 June 2018 (Annex 18 to MU), paras. 1-8.

<sup>&</sup>lt;sup>108</sup> Roskomnadzor, Response No. 720-05/91 to ATR T's application dated 28 October 2014, 14 November 2014 (Annex 839 to MU).

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2014.<sup>109</sup> In its reply letter of 26 January 2015, Roskomnadzor again returned the application on procedural grounds.<sup>110</sup> The letter explains that the re-registration fee had been paid to the wrong bank account and that Roskomnadzor's account had therefore not been credited of the said fee.<sup>111</sup> Again the letter reminds to the applicant the proper procedure to follow.

48. A third application dated 6 February 2015 was received by Roskomnadzor on 9 February 2015.<sup>112</sup> In its letter dated 6 March 2015 Roskomnadzor explained that the information on the company's members provided by the applicant, in particular information on the size of the interests held by the said members in the company, did not match the information contained in the uniform State register of legal entities.<sup>113</sup> In so doing it mentioned the legal grounds on which it relied. The authorities also requested the applicant to submit information that match the register. Roskomnadzor needed such information in order to be in a position to ascertain the role and interest of Mr Islyamov in the applicant, especially since it had received a communication from Crimea's Prosecutor's Office pointing to Mr Islyamov's, Atlant-SV's and ATR's extremist activities.<sup>114</sup> Since ATR did not provide the requested information, the procedural defect remained and Roskomnadzor was unable to verify Mr Islyamov's interests in the applicant for the purpose of registration.

49. A fourth and last application dated 20 March 2015 was received by Roskomnadzor on 24 March 2015,<sup>115</sup> but was also returned as non-compliant. In this case, the shortcomings in the application have been confirmed by several court decisions, which have by now entered into legal force and which rejected ATR's claims as ungrounded and confirmed the legality of the challenged actions of Roskomnadzor.<sup>116</sup> In particular, the above-mentioned judicial decisions established that ATR's applications were incomplete and directly violated Article 10 of the Media Law in a number of ways, including by not providing the required information on ATR's founder(s) and by not providing the necessary confirmation of the state duty payment. Taking these facts into account, the

<sup>&</sup>lt;sup>109</sup> ATR T's application to Roskomnadzor for registration as a mass media outlet (incoming No. 127677-SMI dated 24 December 2014), 16 December 2014 (Annex 901 to MU).

<sup>&</sup>lt;sup>110</sup> Roskomnadzor, Response No. 04-6235 to ATR T's application dated 16 December 2014 (incoming No. 127677-SMI dated 24 December 2014), 26 January 2015 (Annex 850 to MU).

<sup>&</sup>lt;sup>111</sup> As ATR had indicated in its application the expected coverage territory to be the "Russian Federation and other countries", it was not covered by the transitional exemption of payment of the state duty for registration: see ATR T's application to Roskomnadzor for registration as a mass media outlet (incoming No. 127677-SMI dated 24 December 2014), 16 December 2014 (Annex 901 to MU), para. 8.

<sup>&</sup>lt;sup>112</sup> ATR T's application to Roskomnadzor for registration as a mass media outlet (incoming No. 11925-SMI dated 9 February 2015), 6 February 2015 (Annex 855 to MU).

<sup>&</sup>lt;sup>113</sup> Roskomnadzor, Response No. 04-21932 to ATR T's application dated 6 February 2015 (incoming No. 11925-SMI dated 9 February 2015), 6 March 2015 (Annex 855 to MU).

<sup>&</sup>lt;sup>114</sup> Prosecutor's Office of the Republic of Crimea, Letter No. Isorg-27-396-2015 to Roskomnadzor, 28 January 2015 (Annex 535). See also Prosecutor General's Office of the Russian Federation, Letter No. Isorg-27/3-1804-15/33170 to Roskomnadzor, 18 February 2015 (Annex 538).

<sup>&</sup>lt;sup>115</sup> ATR T's application to Roskomnadzor for registration as a mass media outlet, 20 March 2015 (Annex 909 to MU).

<sup>&</sup>lt;sup>116</sup> Moscow Arbitrazh Court, Case No. A40-124221/2015, Decision, 13 October 2015 (Annex 249); Ninth Arbitrazh Court of Appeal, Case No. A40-124221/15, Decision, 20 January 2016 (Annex 265); Moscow Circuit Arbitrazh Court, Case No. A40-124221/2015, Decision, 9 June 2016 (Annex 280).

Russian courts have rightfully established that Roskomnadzor had good reasons to return ATR's applications for correction as expressly stated in Article 13 of the Media Law.

50. It results from the four replies by Roskomnadzor that the authorities were transparent in citing the grounds for refusal as mandated by law and in indicating the steps forward to cure the identified procedural defect and resubmit a corrected application. While it has been at liberty to submit a new application at any time since the last return, ATR has not done so, for itself or any of the outlets it owns or controls. While Atlant-SV, ATR T's holding company, took the matter before domestic courts, the latter confirmed the legality of Roskomnadzor's decisions, including its examination of procedural defects, the insufficient evidentiary value of the extract from the Unified State Register of Legal Entities submitted by ATR, its request for additional information and its consideration of information received from the Crimean General Prosecutor.<sup>117</sup> It is perhaps not surprising that, instead of merely cooperating with Roskomnadzor and providing the required information about its founder – Mr Islyamov, who is otherwise well-known for his extremist activities as described elsewhere in the present Counter-Memorial<sup>118</sup> – Atlant-SV preferred to take its chance before the courts. In any event, Atlant-SV never claimed, neither did the courts found, that the relevant authorities were responsible of racial discrimination in relation to this case.

In the abovementioned court decisions<sup>119</sup> it has been established, inter alia, that while 51. requesting additional information on ATR's founder(s), Roskomnadzor in addition to formally adhering to the Media Law, also took into account the credible information it received from the Prosecutor General's Office as well as from the Republic of Crimea Prosecutor's Office, which provided reasonable grounds to suspect ATR's/its founder's involvement in extremist activities.<sup>120</sup> Roskomnadzor here found itself in a peculiar situation where the media was allowed to broadcast before the registration. The watchdog could not but take account of the contents of this broadcasting in the interim period. Roskomnadzor received a notice from the Prosecutor's Office informing them about the illegal broadcasting by ATR. In their letters the Prosecutor's Office pointed out that in May 2014 ATR's journalists conducted activity of extremist nature, which included recording and public broadcasting of extremist utterances, notwithstanding the fact that such activity is strictly forbidden by the Federal Law on counteracting extremist activities.<sup>121</sup> In addition to warning Roskomnadzor, the Prosecutor's Office of the Republic of Crimea also issued a separate warning addressed to ATR's founder, Lenur Islyamov, stating that the above-mentioned and other breaches of the Law on counteracting extremist activities, which have been additionally reported by citizens,

<sup>&</sup>lt;sup>117</sup> *Ibid*.

<sup>&</sup>lt;sup>118</sup> See Chapter IV, para. 167.

<sup>&</sup>lt;sup>119</sup> Moscow Arbitrazh Court, Case No. A40-124221/2015, Decision, 13 October 2015 (Annex 249); Ninth Arbitrazh Court of Appeal, Case No. A40-124221/15, Decision, 20 January 2016 (Annex 265); Moscow Circuit Arbitrazh Court, Case No. A40-124221/2015, Decision, 9 June 2016 (Annex 280).

<sup>&</sup>lt;sup>120</sup> Prosecutor's Office of the Republic of Crimea, Letter No. Isorg-27-396-2015 to Roskomnadzor, 28 January 2015 (Annex 535); Prosecutor General's Office of the Russian Federation, Letter No. Isorg-27/3-1804-15/33170 to Roskomnadzor, 18 February 2015 (Annex 538).

<sup>&</sup>lt;sup>121</sup> Federal Law No. 114-FZ "On counteracting extremist activities", 25 July 2002 (Annex 876 to MU), Articles 1, 11.

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are intolerable.<sup>122</sup> Later in 2014-2015 this warning was recognized as legal and justified after it had been challenged in the court by Mr Islyamov.<sup>123</sup>

## 2. Registration Applications of Lale TV Channel

52. Ukraine also takes issue with the case of Lale TV channel, a media outlet owned by ATR Holding (and Atlant-SV)<sup>124</sup> and targeting Crimean Tatar children audience.<sup>125</sup> Ms Islyamova, who is the CEO of Lale Children's TV Channel LLC, submitted an application for registration dated 17 December 2014.<sup>126</sup> In their reply letter from 27 January 2015 the authorities returned the application on grounds that the registration fee had been paid to the wrong bank account, and that the bank account of Roskomnadzor had therefore not been credited with the required amount.<sup>127</sup> The letter provided the legal basis for the return and indicated further information on payment details on the website in order to enable the applicant to correct its error. As the facts confirm, this episode is in substance identical to the return of the second application of Ms Islyamova for re-registration of ATR T channel.

53. Ms Islyamova resubmitted an application dated 6 February 2015.<sup>128</sup> In their reply letter of 6 March 2015 the authorities returned the application based on the applicant's failure to submit a list of company members that complies with applicable legal requirements.<sup>129</sup> The letter clearly identifies the legal basis of the refusal as well as the issue at stake: "the company must maintain a list of company members with the details of each company member, the size of this member's interest in the company's charter capital and how much if it has been paid up, as well as the size of interests owned by the company, the dates when these interests passed to the company or were acquired by the company." This procedural defect was the same as that identified by the authorities with respect to the third application for re-registration of ATR T channel.

<sup>124</sup> Witness Statement of Lenur Islyamov, 6 June 2018 (Annex 18 to MU), paras. 1-8.

<sup>&</sup>lt;sup>122</sup> Prosecutor's Office of the Republic of Crimea, Warning No. 27-271-14 to Mr Lenur Islyamov, 16 May 2014 (Annex 524).

<sup>&</sup>lt;sup>123</sup> Central District Court of Simferopol of the Republic of Crimea, Case No. 2-1920/14, Decision, 13 October 2014 (Annex 195); Supreme Court of the Republic of Crimea, Case No. 33-1016/2015, Decision, 2 March 2015 (Annex 221).

<sup>&</sup>lt;sup>125</sup> MU, para. 512.

<sup>&</sup>lt;sup>126</sup> Lale's application to Roskomnadzor for registration as a mass media outlet (incoming No. 130684-SMI dated 29 December 2014), 17 December 2014 (Annex 902 to MU).

<sup>&</sup>lt;sup>127</sup> Roskomnadzor, Response No. 04-6898 to Lale's application dated 17 December 2014 (incoming No. 130684-SMI dated 29 December 2014), 27 January 2015 (Annex 851 to MU). As Lale TV channel had indicated in its application the expected coverage territory to be the "Russian Federation and other countries", it was not covered by the transitional exemption of payment of the state duty for registration: see section 8 of the application (Annex 902 to MU).

<sup>&</sup>lt;sup>128</sup> Lale's application to Roskomnadzor for registration as a mass media outlet (incoming No. 11922-SMI dated 9 February 2015), 6 February 2015 (Annex 907 to MU) (also contained in Annex 856 to MU).

<sup>&</sup>lt;sup>129</sup> Roskomnadzor, Response No. 04-21905 to Lale's application dated 6 February 2015 (incoming No. 11922-SMI dated 9 February 2015), 6 March 2015 (Annex 856 to MU).

54. Ms Islyamova submitted a new application dated 20 March 2015.<sup>130</sup> The applicant provided this time the requested list of company members. Roskomnadzor replied on 24 April 2015, requesting additional information to confirm the founder's compliance with Article 7(2) of the Media Law. Lale challenged Roskomnadzor's reply in court, and its request was upheld on procedural grounds.<sup>131</sup> Ukraine makes no reference to this outcome. Again, the Applicant did not claim that it suffered from racial discrimination.

## 3. Registration Applications of "15 Minutes"

The same goes for the internet news website "15 Minutes" which is also mentioned by 55. Ukraine.<sup>132</sup> This media outlet is owned by Atlant-SV Television Company, LLC, with Ms Islyamova as its CEO, and ultimately controlled by ATR Holding and Mr Islyamov. Ms Islyamova applied for re-registration of "15 Minutes" on 19 December 2014.<sup>133</sup> By letter dated 2 February 2015 the authorities returned the application because the registration fee had been paid to the wrong bank account, namely that Roskomnadzor's bank account had not been credited with the required fee amount.<sup>134</sup> In respect of a further application received by Roskomnadzor on 27 March 2015, the latter requested additional information in order to ascertain the media outlet's compliance with Article 7(2) of the Media Law,<sup>135</sup> in particular that the founder is not an enterprise that carries out activities prohibited by law. Like for other media outlets controlled by Mr Islyamov, including ATR, such clarification request is unsurprising, given that Roskomnadzor had received information form the General Prosecutor of the Russian Federation pointing to the involvement of Atlant-SV in extremist activities.<sup>136</sup> While the media outlet challenged this reply, the courts confirmed the legality and legitimacy of Roskomnadzor's acts.<sup>137</sup> Again, the Applicant did not claim that it suffered from racial discrimination.

<sup>&</sup>lt;sup>130</sup> Lale's application to Roskomnadzor for registration as a mass media outlet, 20 March 2015 (Annex 910 to MU).

<sup>&</sup>lt;sup>131</sup> Moscow Arbitrazh Court, Case No. A40-131463/2015, Decision, 8 September 2015 (Annex 247); Ninth Arbitrazh Court of Appeal, Case No. A40-131463/15, Decision, 23 November 2015 (Annex 259); Moscow Circuit Arbitrazh Court, Case No. A40-131463/2015, Decision, 10 March 2016 (Annex 270).

<sup>&</sup>lt;sup>132</sup> MU, para. 512.

<sup>&</sup>lt;sup>133</sup> *15 minutes*'s application to Roskomnadzor for registration as a mass media outlet (incoming No. 36-SMI dated 12 January 2015), 19 December 2014 (Annex 905 to MU).

 <sup>&</sup>lt;sup>134</sup> Roskomnadzor, Response No. 04-8075 to *15 minutes*'s application (incoming No. 36-SMI dated 12 January 2015),
 2 February 2015 (Annex 853 to MU).

<sup>&</sup>lt;sup>135</sup> Roskomnadzor, Response No. 04-37090 to application for registration of "15 minutes" No. 83 of 24 March 2015 (Incoming No. 33248-smi of 27 March 2015), 24 April 2015 (Annex 544).

<sup>&</sup>lt;sup>136</sup> See paras. 48 and 51.

<sup>&</sup>lt;sup>137</sup> Moscow Arbitrazh Court, Case No. A40-119488/2015, Decision, 16 October 2015 (Annex 250); Ninth Arbitrazh Court of Appeal, Case No. A40-119488/15, Decision, 25 January 2016 (Annex 266); Moscow Circuit Arbitrazh Court, Case No. A40-119488/2015, Decision, 28 June 2016 (Annex 282).

# 4. Registration Applications of Meydan Radio Channel

56. Ukraine then refers to "other outlets", in fact only referring to the single case of the radio channel "Meydan".<sup>138</sup> Like ATR, Lale and 15 Minutes, Meydan is indirectly controlled by ATR Holding and Mr Islyamov through Atlant-SV, its founder and direct owner, of which Ms Islyamova is the CEO. Ms Islyamova submitted an application dated 29 October 2014 for re-registration of Meydan.<sup>139</sup> The authorities replied on 14 November 2014, returning the application based on the lack of duly certified copies of documents, as statutorily required.<sup>140</sup> The case was in substance identical to the return of the first application for ATR T. While Ms Islyamova made another filing which reached the authorities on 16 December 2014,<sup>141</sup> it was likewise returned by letter dated 2 February 2015.<sup>142</sup> As the letter highlighted, the name of the radio channel "c[ould] mislead consumers (the audience) as to the product of the mass media outlet". The authorities therefore suggested to the applicant to modify the proposed name of the media outlet in order to proceed with the registration and directed it to more detailed information and guidelines on acceptable names on its official website. Another application made in April 2015 was returned because it had been addressed to the federal office of Roskomnadzor instead of the relevant local office in Crimea.<sup>143</sup>

57. Considering the fact that Meydan radio channel, as well as Lale and 15 minutes, was affiliated with ATR Holding and Mr Islyamov,<sup>144</sup> it is unsurprising that Roskomnadzor also requested additional information on Meydan's founder(s). Roskomnadzor confirmed to Ms Islyamova that such request was fully lawful and appropriate as an implementing measure of applicable statutory requirements.<sup>145</sup> It is also unsurprising that these applicant media outlets sought to limit disclosure concerning their founder, considering that Mr Islyamov, a close associate of the *Mejlis*, had by that time already been spotted by the authorities as a supporter of violent and illegal methods of struggle against the accession of Crimea to the Russian Federation.

<sup>144</sup> Witness Statement of Lenur Islyamov, 6 June 2018 (Annex 18 to MU), para. 20.

<sup>&</sup>lt;sup>138</sup> MU, para. 512 and fn. 1080.

<sup>&</sup>lt;sup>139</sup> Meydan's application to Roskomnadzor for registration as a mass media outlet (incoming No. 1337/91-SMI dated 5 November 2014), 29 October 2014 (Annex 900 to MU).

<sup>&</sup>lt;sup>140</sup> Roskomnadzor, Response No. 721-05/91 to Meydan's application dated 29 October 2014 (incoming No. 1337/91-SMI dated 5 November 2014), 14 November 2014 (Annex 840 to MU).

<sup>&</sup>lt;sup>141</sup> Meydan's application to Roskomnadzor for registration as a mass media outlet (incoming No. 1901/91-SMI dated 16 December 2014), 29 October 2014 (Annex 860 to MU).

<sup>&</sup>lt;sup>142</sup> Roskomnadzor, Response No. 149-05/91 to Meydan's application dated 29 October 2014 (incoming No. 1901/91-SMI dated 16 December 2014), 2 February 2015 (Annex 931 to MU) (also contained in Annex 860 to MU).

<sup>&</sup>lt;sup>143</sup> Application to Roskomnadzor for registration of Radio Meydan as a mass media outlet (Incoming No. 37536-smi of 7 April 2015), 2 April 2015 (Annex 543), and Roskomnadzor, Response No. 04-39171 to application for registration of Radio Meydan No. 93 of 2 April 2015 (Incoming No. 37536-smi of 7 April 2015), 30 April 2015 (Annex 545).

<sup>&</sup>lt;sup>145</sup> Roskomnadzor, Letter No. 1404-05/91 to Ms Islyamova, General Director of Atlant-SV, 23 June 2015 (Annex 555).

# 5. Developments at the Level of Atlant-SV and ATR Holding

58. Ukraine refers to the meeting between the legal department of ATR Holding and Roskomnadzor that had been planned for 12 February 2015 in order to discuss legal issues relating to the difficulties encountered with the re-registration process of these media outlets which are all controlled or owned by Mr Lenur Islyamov and Ms Elzara Islyamova.<sup>146</sup> This meeting was postponed because of Roskomnadzor's heavy workload.<sup>147</sup>

59. As the deadline of 1 April 2015 was soon approaching and as a new row of re-registration applications for its various media outlets had just been submitted to the authorities, the Crimean Tatar National Movement submitted a request to the Russian President, the Russian Prime Minister, the Russian General Prosecutor, and the Council under the auspices of the President of the Russian Federation for the Development of Civil Society and Human Rights.<sup>148</sup> The request exposed ATR's grievances with respect to the refusals it had been receiving so far. In response, on 25 March 2015 the Council under the auspices of the President of the Russian Federation for the Development of Civil Society and Human Rights sent a letter to Roskomnadzor acknowledging the applicable legal framework but requesting Roskomnadzor not to let Crimean Tatar media outlets interrupt their activities and in particular to take appropriate measures in order to solve procedural issues in cooperation with the applicant in order to secure re-registration of its media outlets, in particular ATR, Lale and Meydan.<sup>149</sup> That clearly points to the absence of any discriminatory plan or policy to culturally erase Crimean Tatars by suppressing their Media. So far as Roskomnadzor is concerned, it conformed to the rules that are applicable to the assessment of the applications submitted to it and, as shown above, it indicated to the Applicants what was required from them for the Applications to be accepted under the said rules. In any event, its action was never challenged by the said Applicants under the accusation of racial discrimination.

# 6. Registration Applications of Avdet

60. When it comes to the newspaper *Avdet*, its decision to adapt its publishing strategy in order to avoid registration under the Russian system after its application failed has already been examined before.<sup>150</sup> Therefore, Ukraine's contention in relation to it is baseless and is not even supported by

<sup>&</sup>lt;sup>146</sup> MU, para. 512; Witness Statement of Lenur Islyamov, 6 June 2018 (Annex 18 to MU), para. 22.

<sup>&</sup>lt;sup>147</sup> ATR Holding, Letter No. 35 to Roskomnadzor, 12 February 2015 (Annex 834 to MU).

<sup>&</sup>lt;sup>148</sup> Council under the auspices of the President of the Russian Federation for the Development of Civil Society and Human Rights, "Crimean Tatars turned to Putin with a request to preserve the heritage of the people – ATR TV channel", 24 March 2015 (Annex 1258).

<sup>&</sup>lt;sup>149</sup> Advisor to the President of the Russian Federation, Chairman of the Presidential Council for the Development of Civil Society and Human Rights, Letter No. AU-9-545 to Mr Zharov, Head of Roskomnadzor, 25 March 2015 (Annex 542).

<sup>&</sup>lt;sup>150</sup> See para. 27.

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the document it relies on.<sup>151</sup> To be sure, *Avdet* was not "forced to either shut down or move [its] operations to [...] Ukraine"<sup>152</sup> and is still lawfully operating in Crimea today.

# 7. Continued Operation in Crimea of Media Outlets that did not Register under Russian law

61. Ukraine's accusation that "[a]fter the Russian [...] authorities refused re-registration to these entities, they could not lawfully operate in Crimea after 1 April 2015, and they were forced to either shut down or move their operations to mainland Ukraine"<sup>153</sup> is misled. Ukraine also makes the claim that "[t]hese moves [with respect to media re-registration requirement] significantly restricted Crimean Tatars' access to the media outlets that had historically served the community."<sup>154</sup> This is blatantly false.

62. As explained above, most media outlets Ukraine refers to in its Memorial are still able to broadcast in Crimea. While the choice of individual Medias not to register or to leave Crimea is their own decision, registration has been available to them at all material times since 2014, provided of course they comply with the registration procedure. They have never been forced to operate outside of Crimea.

63. Ukraine also alleges that "[t]he United Nations and other international organizations, as well as a variety of NGOs dedicated to media freedom, have reported that the re-registration requirements were applied in a manner that disproportionately disfavored Crimean Tatar media."<sup>155</sup> However, the sources Ukraine relies on<sup>156</sup> do not support this allegation; in fact they do not purport to make such a claim at all. These sources only report the difficulties encountered by some media outlets in reregistering, which, as shown above, have nothing to do with racial discrimination.

<sup>&</sup>lt;sup>151</sup> MU, para. 512 and footnote 1082, referring to *Crimea.Realities*, "The editors of the Crimean Tatar newspaper are summoned for interrogations on suspicion of extremism", 3 June 2014 (Annex 1047 to MU).

<sup>&</sup>lt;sup>152</sup> MU, para. 512.

<sup>&</sup>lt;sup>153</sup> *Ibid*.

<sup>&</sup>lt;sup>154</sup> *Ibid*.

<sup>&</sup>lt;sup>155</sup> MU, para. 513.

<sup>&</sup>lt;sup>156</sup> OHCHR, Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine) (22 February 2014 to 12 September 2017) (Annex 759 to MU), paras. 8, 156–157; 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), 17 September 2015 (Annex 812 to MU), paras. 75–79; Freedom House, Freedom of the Press: Crimea 2015 (last visited 25 September 2017) (Annex 963 to MU); Freedom House, Freedom of the Press: Crimea 2016 (last visited 8 March 2018) (Annex 972 to MU); *Human Rights Watch*, "Rights in Retreat: Abuses in Crimea" (Annex 943 to MU); referred to in MU, footnote 1084.

# 8. The Integrated Character of the Group of Media Outlets Ultimately Controlled by Mr Islyamov

64. The registration steps of ATR, Lale, 15 Minutes, Meydan and other media outlets (all part of ATR Holding)<sup>157</sup> invoked by Ukraine and examined above show that a series of applications for various media outlets were submitted to the authorities along the same timeline, bearing the same procedural defects and leading to the same replies by the authorities on the same or similar grounds. In fact all applications regarding these various media outlets were signed by Ms Islyamova and all reply letters were addressed to her.<sup>158</sup> Therefore, far from reflecting a concerted approach by the authorities amounting to systematic racial discrimination again Crimean or Ukrainian media outlets, the series of returns on the same or similar grounds submitted by Ukraine only points to the fact that these multiple applications were most presumably prepared by the same person or service within ATR Holding.

65. The Crimean Tatar media outlets on which Ukraine builds its whole case on re-registration thus form in fact a single business group controlled by a few number of related persons. This integrated relationship is visible from ATR's attempt to organize with Roskomnadzor a single meeting for discussing registration issues concerning its media outlets in a bid to settle the issue in a global manner.<sup>159</sup> As a result, it is misleading to approach the registration of these media outlet as distinct cases, the aggregation of which would reflect the Russian Federation's alleged systematic campaign of cultural erasure of the Crimean Tatar community through harassment of Crimean Tatar Medias. Likewise, the decision not to pursue registration further and instead to move media outlets concerned to Ukraine is likely to have been taken as part of a coordinated strategy of ATR Holding, instead of being peculiar to each individual media outlet.

66. The corporate link between these media outlets also explains their coordinated choice to stop applying for re-registration as being essentially based on profit and business considerations. Understandably, ATR Holding would have wished to avoid or minimize any loss of revenue that would have occurred between the lapse of Ukrainian registrations of its media outlets in Crimea on 1 April 2015 and their eventual securing Russian registration. Mr Islyamov explicitly confirms this, as noted previously.<sup>160</sup> In fact, this change of strategy and his decision to move his operations to Kiev was apparently taken after Ukrainian president Petro Poroshenko provided guarantees to this effect.<sup>161</sup>

<sup>&</sup>lt;sup>157</sup> Witness Statement of Lenur Islyamov, 6 June 2018 (Annex 18 to MU), paras. 1-8, 20; ATR Holding, Letter No. 35 to Roskomnadzor, 12 February 2015 (Annex 834 to MU).

<sup>&</sup>lt;sup>158</sup> In addition to the registration correspondence cited above, this is also visible in Roskomnadzor, Letter No. 04-22363 to Ms Islyamova, General Director of Atlant-SV, 10 March 2015 (Annex 857 to MU). The letter refers to two reregistration applications for ATR T television channel and Lale television channel that have the same date and were returned to the same applicant's address and to the same contact person.

<sup>&</sup>lt;sup>159</sup> ATR Holding, Letter No. 35 to Roskomnadzor, 12 February 2015 (Annex 834 to MU).

<sup>&</sup>lt;sup>160</sup> See para. 28.

<sup>&</sup>lt;sup>161</sup> See footnote 72.

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67. Based on the above examination, it is clear that the returns of re-registration applications referred to by Ukraine were based on procedural grounds, were wholly lawful and did not evidence in any case a discriminatory application of the law on the basis of race, let alone a systematic campaign of cultural erasure of Crimean Tatars and Ukrainians as ethnic groups through silencing their media outlets. Nothing of the sort manifestly happens.

## C. WARNINGS AND LAW ENFORCEMENT MEASURES AGAINST MEDIA OUTLETS ON BASIS OF EXTREMIST ACTIVITIES

68. Ukraine also makes certain accusations with respect to the alleged discriminatory enforcement of the Russian Federation's anti-extremism laws to harass and intimidate Crimean Tatar and Ukrainian media outlets.<sup>162</sup> The relevant facts show again to the contrary that the said measures were legitimate and wholly grounded in law and that, in any event, they have manifestly nothing to do with racial discrimination.

## 1. General Elements on Warnings

69. Warning media outlets when they do not comply with the legal framework that governs their activities is based on an objective and reasonable justification, and is indeed usually sufficient to prevent breach or further breach of the law, thus constituting in such cases a proportionate measure to the pursued aim.<sup>163</sup> It is *a fortiori* true when the said media outlets are associated with persons otherwise monitored and investigated for extremist activities and when they convey unlawful extremist materials.<sup>164</sup> As the Russian Federation has already observed, Russia "is rich in traditions of peaceful co-existence with different people and faiths and is especially sensitive to any manifestations of extremism, hate speech and the incitement of international conflicts. Together with [its] constant respect for and support of activities of ethnic organisations, [the Russian Federation] support[s] the strict observation of national law by them."<sup>165</sup> Given the gravity of the extremist activities associated with the *Mejlis*, media outlets associated with its leaders were legitimately closely monitored and reminded of the law when necessary.

<sup>&</sup>lt;sup>162</sup> MU, para. 514-521.

<sup>&</sup>lt;sup>163</sup> Human Rights Committee, General Comment No. 34 (Article 19: Freedoms of opinion and expression), 102<sup>nd</sup> session, 2011, UN doc. CCPR/C/GC/34, para. 34.

<sup>&</sup>lt;sup>164</sup> The service of warnings on the inadmissibility of extremist activities is provided for under Articles 7 and 8 of Federal Law No. 114-FZ "On counteracting extremist activities", 25 July 2002 (Annex 876 to MU), and Article 16 of the Media Law as amended by the Federal Law No. 239-FZ "On introducing amendments into the Law of the Russian Federation 'On mass media'", 29 July 2017 (Annex 109). Such warnings are delivered by the General Prosecutor of the Russian Federation or a corresponding Prosecutor subordinate to him, to persons or entities the conduct of which presents signs of extremism. As a preventive measure, a warning does not entail the criminal liability of its addressee. When applicable, warnings provide the addressee with a certain period in order to correct and cease the unlawful conduct before judicial action be taken.

<sup>&</sup>lt;sup>165</sup> Comment by the Information and Press Department of the Russian Ministry of Foreign Affairs regarding the statement by the OSCE Representative on Freedom of the Media, Dunja Mijatovic, regarding the situation around the Avdet newspaper, No. 2186-22-09-2014, 22 September 2014 (Annex 446).

70. The extremist content that justified measures lawfully taken by the Russian Federation against certain media outlets – including warnings – called for unrest, stirring up social and interethnic tensions, as well as violent and extremist actions, and created conditions facilitating or encouraging the commission of crimes, including but not limited to threats of revenge against "collaborators", thereby threatening public order and safety, other citizens' rights and the State's constitutional order and integrity, which constitute essential interests of national security.

71. It is striking to note that, when addressing the cases of Mr Yuksel and Mr Islyamov,<sup>166</sup> Ukraine omits to mention the media owners' close links to the *Mejlis* and their extremist record. In his witness statement, while he extensively glosses on elements that are immaterial to Ukraine's case, Mr Islyamov himself does not even make any mention of his links with the *Mejlis* despite being one of its close associates and financial contributors, and despite such links being crucial and dispositive in any appreciation of his case and activities.

72. As it already appears from the examination of re-registration issues, ATR, Lale, 15 Minutes, Meydan and Leader, among other outlets, are in fact all owned or controlled by ATR Holding and connected to one person, Mr Lenur Islyamov, who happens to be a close associate and financial contributor of the *Mejlis* as well as an active organizer of its violent activities.<sup>167</sup> The persons who have led these media outlets, such as Ms Budzhurova and Ms Islyamova, are Mr Islyamov's close associates. QHA News Agency is led by Mr Ismet Yuksel, who is an adviser to senior *Mejlis* members.

# 2. Mr Islyamov's Case

73. The connection between the Crimean Tatar media outlets invoked by Ukraine and *Mejlis* figures, who were otherwise known to the authorities for their extremist activities already back in early 2014, is illustrated by Mr Islyamov's own record since early 2014. While Mr Islyamov is part of the small circle of persons closely associated with and exerting decisive influence on the *Mejlis* who had opted for violent approaches, he appears to have initially offered a more cooperative face to the new authorities.<sup>168</sup> A close associate and financial contributor of the *Mejlis* and the owner of ATR Holding, Mr Islyamov served as acting Deputy Chairman of the Council of Ministers of the Republic of Crimea from 4 April to 30 May 2014.<sup>169</sup> He had been authorized to participate in the Crimean government by a decision of the *Mejlis*.<sup>170</sup> That decision was quite ambiguous. While

<sup>&</sup>lt;sup>166</sup> MU, para. 516-517.

<sup>&</sup>lt;sup>167</sup> See Chapter IV, para. 167.

<sup>&</sup>lt;sup>168</sup> Andrii Ianitski, Crimean Tatar TV Back on Air, Open Democracy, 30 June 2015 (Annex 1058 to MU), p. 3 (emphasizing ATR TV's change of editorial line and acceptance of the new authorities in the spring of 2014).

<sup>&</sup>lt;sup>169</sup> Acting Head of the Republic of Crimea, Decree No. 40-U "On L.E. Islyamov", 30 May 2014 (Annex 442). He was replaced by Mr Ruslan Balbek who took over as Deputy Chairman.

<sup>&</sup>lt;sup>170</sup> Website of the Mejlis, Decision of the Mejlis of the Crimean Tatar People "On Addressing Practical Matters Relating to the Settlement of the Crimean Tatar People under Actual Circumstances of Crimea", 1 April 2014 (Annex 1249), also available at <u>http://qtmm.org/en/news/4438-lenur-islyamov-and-zair-smirnov-are-not-...1</u>. As

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denying that this decision entailed any recognition of the new Crimean authorities, the Chairman, Mr Chubarov, explained that Mr Islyamov had been authorized to join the government in order to solve practical issues related to the resettlement of Crimean Tatars within Crimea, that he would play no political role, and that all decisions would be made by the *Mejlis*, to which Mr Islyamov would report regularly on his activities within the Government. During his tenure, Mr Islyamov encouraged the integration of Crimean Tatars into society and denied that any of the various ethnic groups living on the peninsula was being oppressed.<sup>171</sup>

74. After the end of his tenure, Mr Islyamov, as one of the leading figures among the Mejlis's close circle of influent persons, became visibly involved at the heart of this organization's extremist activities. In a context where the Mejlis is led by a limited number of persons who had been knowing each other very well, he used his position of power as a close associate and financial contributor of the Mejlis, and the owner of Crimean Tatar Medias in order to serve the Mejlis's violent escalation that led to its ban. To recall, Mr Islyamov was one of the instigators and organizers of the civilian (food) blockade. He was present together with Mr Chubarov and Mr Dzhemilev at the launching event of the blockade on 8 September 2015.<sup>172</sup> As part of a joint operation of the Mejlis and the banned extremist organization Right Sector, he also led the electric blockade, supervising the blowing up of the electric transmission pylons in November 2015 and preventing for a while their repair. At this occasion he proudly claimed to have created a humanitarian catastrophe in Crimea.<sup>173</sup> Mr Islyamov is also the founder, financer and leader of a Crimean Tatar paramilitary group, the so-called Noman Celebicihan battalion, which was established in the aftermath of the electric blockade and that volunteers on the Ukrainian side of the border with Crimea to allegedly assist the Ukrainian border police.<sup>174</sup> To recall, Mr Islyamov was criminally investigated for extremism as part of his activities with the Mejlis.<sup>175</sup>

75. It is thus no surprise that his media outlets extensively report on *Mejlis*'s extremist messages and provides *Mejlis* leaders a tribune for conveying their calls to unrest, an agenda Mr Islyamov fully endorses and has contributed to elaborate within the *Mejlis*. Thus, ATR published an interview with Mr Islyamov, in which he discusses the military method of returning Crimea to Ukraine and

explains in his Witness Statement, *Mejlis* leaders were quite divided on the issue of cooperating with the new authorities during the initial period, although the radical position eventually prevailed: Witness Statement of (Annex 19), paras. 13-16.

<sup>&</sup>lt;sup>171</sup> *Kryminform*, "Lenur Islyamov: Crimean Tatars should not remain indifferent to processes taking place in Crimea", 4 April 2014 (Annex 900).

<sup>&</sup>lt;sup>172</sup> See Counter-Memorial, Chapter IV, para. 167.

<sup>&</sup>lt;sup>173</sup> *Ibid.* 

<sup>&</sup>lt;sup>174</sup> "Crimean blockade organizer launches guerrilla 'Tatar battalion' with 'Turkish help'", RT News, 27 December 2015, in Documents submitted to the Registry of the ICJ by the Russian Federation in connection with Ukraine's Request for the indication of provisional measures and Judges' Folder submitted by the Russian Federation for the Hearings on Provisional Measures, 6-9 March 2017 (Annex 1267). Mr Islyamov commented that "[t]he objectives of this battalion is to strike everywhere we can." Obviously, this illegal paramilitary group under Mr Islyamov's leadership aims in fact at harassing and using violence against the Russian Federation in a bid to drive it out of Crimea by force.

<sup>&</sup>lt;sup>175</sup> See Chapter IV, para. 167 and fn. 353.

calls for creating "as many battalions of Crimean Tatars as possible." Further, Mr Islyamov says "[w]e have to strengthen the border, bring in troops. We have to be ready for the second [military] scenario and entry into Crimea."<sup>176</sup> The two Supreme Court 2016 decisions banning the *Mejlis* confirm that Mr Islyamov played a central role together with Mr Dzhemilev and Mr Chubarov in the *Mejlis*'s extremist actions, and, crucially, that ATR T broadcasted their actions.<sup>177</sup> The reporting by ATR T of the so-called civil and electric blockades mentioned in the 2016 decisions is particularly shocking. It includes, among others, interviews that Mr Islyamov in person gave to ATR, his own TV channel, while he was on the scene of the electric blockade and proudly claiming to have created a humanitarian catastrophe on instructions and pursuant to the policy of the *Mejlis*.<sup>178</sup>

## 3. Warnings to Mr Kaybullayev, Editor of Avdet

76. Ukraine takes issue with warnings that were issued to Mr Shevket Kaybullayev, the editor of Crimean Tatar newspaper *Avdet*.<sup>179</sup> However the warning letters that Ukraine refers to and submits are perfectly clear and transparent with respect to the description of the extremist character of the published material and the legal basis thereof.

77. With respect to the first warning letter produced by Ukraine and dated 3 June 2014,<sup>180</sup> the extremist material at issue was an address by a commission of the Qurultay to the *Mejlis* and to the wider public that *Avdet* had published on 19 May 2014.<sup>181</sup> In particular, the address called the wider community to disregard Russian law and not to recognize or comply with any decisions from Crimean Courts because such courts were deemed unlawful. It also characterized people who choose to cooperate with the new regime traitors or collaborators, who were guilty of State treason under Ukrainian law. It further decided to compile and maintain black lists of such persons considered to be "traitors", namely "all officials who willingly chose to serve the occupational

<sup>&</sup>lt;sup>176</sup> *ATR*, "Islyamov: There are only two options for returning Crimea under control of Ukraine", 13 February 2016 (Annex 947).

<sup>&</sup>lt;sup>177</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p. 5, 15-18; Supreme Court of the Russian Federation, Case No. 127-APG16-4, Decision, 29 September 2016 (Annex 915 to MU), p. 5-6.

<sup>&</sup>lt;sup>178</sup> Supreme Court of the Republic of Crimea, Case No. 2A-3/2016, Decision, 26 April 2016 (Annex 913 to MU), p.
18.

<sup>&</sup>lt;sup>179</sup> MU, para. 515.

<sup>&</sup>lt;sup>180</sup> Federal Security Service of the Russian Federation, Notice to Shevket Kaybullayev on the inadmissibility of violations of the law, 3 June 2014 (Annex 891 to MU).

<sup>&</sup>lt;sup>181</sup> Avdet, "Address of the audit commission of the VI Qurultay of the Crimean Tatar people to the Mejlis of the Crimean Tatar people", 19 May 2014 (Annex 905), p. 3.

government to the detriment of Ukraine's interests".<sup>182</sup> The warning was explicitly made on that basis and was clearly legitimate.<sup>183</sup>

78. The second warning letter that Ukraine mentions was sent to Mr Kaybullayev on 17 September 2014 in relation to a text published in *Avdet* on 23 June 2014 and calling for boycotting upcoming local elections.<sup>184</sup> More specifically, it had published a decision of the *Mejlis* calling to "boycott the elections of the so-called State Council in the temporarily occupied [Autonomous Republic of] Crimea and Sevastopol".<sup>185</sup> Again, such calls fall within the definition of extremism, which the letter clearly explained to Mr Kaybullayev.

79. The case of *Avdet* confirms the baseless nature of Ukraine's allegation as to the existence of a systematic campaign or policy to suppress for racial motives Crimean Tatar Medias. While *Avdet* is notoriously critical of the authorities and informally affiliated to the *Mejlis*, it has been broadcasting without interruption since 1990 to this day. By the time it adjusted its circulation on 1 April 2015 in order to avoid the re-registration requirement, *Avdet* had received four legally-based and legitimate warning letters from the law enforcement authorities for publishing extremist materials.<sup>186</sup> Yet at no point in time has *Avdet* been silenced or banned by the authorities, as Ukraine claims.

80. Ukraine also aggrieves the Russian Federation with conducting a search of *Avdet*'s offices on 16 September 2014.<sup>187</sup> *Avdet*'s offices are located in the same building as the *Mejlis* and the Crimea Foundation, the *Mejlis*'s charitable organization.<sup>188</sup> The search of *Avdet*'s offices was conducted within the framework of a preliminary investigation in a criminal procedure, which actually found another person, Mr E.M. Osmanov, to be responsible for use of violence against a state official.<sup>189</sup> Contrary to Ukraine's allegations the above-mentioned search is not even related to the aforementioned warnings or Mr Kaybullayev and was not directed specifically against the media outlet. *Avdet* continues operating today.

<sup>&</sup>lt;sup>182</sup> *Ibid*.

<sup>&</sup>lt;sup>183</sup> Federal Security Service of the Russian Federation, Notice to Shevket Kaybullayev on the inadmissibility of violations of the law, 3 June 2014 (Annex 891 to MU).

<sup>&</sup>lt;sup>184</sup> Federal Security Service of the Russian Federation, Official notice No. 171/17-993/1 to Shevket Kaybullayev, 17 September 2014 (Annex 897 to MU).

<sup>&</sup>lt;sup>185</sup> Prosecutor General's Office of the Russian Federation, Information on the outcomes of the analysis of arguments set out in the letter of the Permanent Delegation of Ukraine to UNESCO, 23 October 2015 (Annex 911 to MU), p. 3.

<sup>&</sup>lt;sup>186</sup> Human Rights Information Centre, Crimean Tatar Media in Crimea: Situation in 2014 – 2016, 10 April 2017 (Annex 960 to MU), p. 7.

<sup>&</sup>lt;sup>187</sup> MU, para. 515.

<sup>&</sup>lt;sup>188</sup> As is confirmed by Ukraine's own record, among other violations of the law by the Crimea Foundation, *Avdet*'s office had been established within the building of the Crimea Foundation without the required consent from competent authorities: see Prosecutor General's Office of the Russian Federation, Information on the outcomes of the analysis of arguments set out in the letter of the Permanent Delegation of Ukraine to UNESCO, 23 October 2015 (Annex 911 to MU), p. 1-2.

<sup>&</sup>lt;sup>189</sup> Main Investigative Directorate of the Investigative Committee of Russia for the Republic of Crimea and the City of Sevastopol, Letter No. Iskhsk-201-08-2020/9778 to the Ministry of Foreign Affairs of the Russian Federation, 20 April 2020 (Annex 617).

81. It is worth observing that while both the *Mejlis* and *Avdet* had already been spotted for extremist activities back in 2014, only the *Mejlis* was eventually banned, while *Avdet* and the Qurultay remained authorized until this day. This confirms the manifest absence of any systematic campaign or plan to target Crimean Tatars as an ethnic group to erase it culturally. What it shows is that the authorities' response was dictated by considerations of law enforcement, including fighting all forms of extremism which put multi-ethnic societies at risk. It also confirms the high threshold used by the authorities, which do not take such measures lightly and issue multiple prior warnings before considering resorting to them. Contrary to the Qurultay and *Avdet*, the *Mejlis* persistently pursued an illegal and violent path despite numerous warnings, which justifies the ban.<sup>190</sup>

## 4. The Case of QHA News Agency and Mr Yuksel

82. The Russian Federation has already addressed the case of Mr Ismet Yuksel, the General Coordinator of the news agency QHA, also close to the *Mejlis*, Mr Yuksel being an adviser to *Mejlis* leaders.<sup>191</sup> The law enforcement measures against Mr Yuksel are not connected to his role within QHA but for his involvement in *Mejlis* extremist activities. To recall, on 30 June 2014 Mr Yuksel was banned from entry in Crimea for a 5-year period. The judgment of the Supreme Court of the Russian Federation of 18 November 2015 on his appeal confirmed that the ban was based on his extremist activities and the threat of these to national security.<sup>192</sup>

## 5. The Case of ATR

83. Ukraine's reference to the searches simultaneously carried out at the home of Mr Islyamov, the home of ATR Television Stations' general director Ms Elzara Islyamova, and the home of senior editor at ATR and Mr Islyamov's associate, Ms Lilya Budzhurova, on 2 November 2015 situates these measures in the wrong context to convey an impression of persecution of ATR.<sup>193</sup> As the record confirms, these searches were part of the investigations carried out against the organizers of the civilian blockade, which was ongoing at that time, putting the whole Crimean population at food-stress. They were unconnected to ATR even though these three individuals were using ATR and other media outlets owned by ATR Holding to promote and provide visibility to this criminal enterprise.

84. In particular, Ukraine omits to specify that a criminal investigation had been opened against Mr Lenur Islyamov as soon as 22 October 2015 under Article 280.1(1) of the Russian Criminal Code for public calls to actions aimed at compromising the territorial integrity of Russia, committed through the use of mass media, in the context of his involvement as an organizer of the so-called

<sup>&</sup>lt;sup>190</sup> See Chapter IV of this Counter-Memorial, para. 167.

<sup>&</sup>lt;sup>191</sup> MU, para. 516. See Chapter IV, paras. 193-194 of this Counter-Memorial.

<sup>&</sup>lt;sup>192</sup> Supreme Court of the Russian Federation, Ruling No. 5-APG15-110s, 18 November 2015 (Annex 912 to MU), p. 4; See also Moscow City Court, Case No. 3-247/2015, Decision, 14 May 2015 (Annex 231).

<sup>&</sup>lt;sup>193</sup> MU, para. 517; Witness Statement of Lenur Islyamov, 6 June 2018 (Annex 18 to MU), para. 26.

civilian blockade, and that these searches were being conducted in that context.<sup>194</sup> In particular, on 8 September 2015 at a press conference held in the Ukrainian Crisis Media Centre in Kiev the leaders of the *Mejlis* and Mr Islyamov declared the so-called "Crimea civil blockade", the main purpose of which was to block all roads and communications between Crimea and Ukraine.<sup>195</sup> In his public speech that day Mr Islyamov declared, among other things, that "[i]f we're a state, if society has demand for its statehood, Crimea, gentlemen, should be returned. So I'm glad that I was one of those who made the blockade decision"<sup>196</sup> These circumstances lead to the initiation of the criminal case against him.

85. The investigators searched several living premises of Mr Islyamov, who was not in Crimea at that time.<sup>197</sup> As relevant search warrants confirm, the investigators also had reasons to believe that searches at the homes of Ms Islyamova and Ms Budzhurova, Mr Islyamov's close collaborators, might lead to the finding of relevant evidence for the investigation against Mr Islyamov.<sup>198</sup> In the weeks and days leading to the 2 November 2015 searches Mr Islyamov and *Mejlis* leaders had also been giving interviews to close TV channels, including ATR, announcing the preparation of the electric blockade, which would shortly lead to a humanitarian issue in Crimea.<sup>199</sup> The close position of Ms Islyamova and Ms Budzhurova in relation to Mr Islyamov, who had left Crimea by that time,<sup>200</sup> and their prominent role within ATR fully justify suspicions by law enforcement authorities in this kind of investigations and legitimate the searches at their homes. As is explained elsewhere, Mr Islyamov was then the subject of a second criminal investigation opened on 24 November 2015 in relation to his leading role in the establishment of the

<sup>&</sup>lt;sup>194</sup> Investigator of the Investigative Department of the Directorate of the Federal Security Service of Russia for the Republic of Crimea and the city of Sevastopol, Resolution on the initiation of a criminal case No. 2015427050 against Lenur Islyamov, 22 October 2015 (Annex 251).

<sup>&</sup>lt;sup>195</sup> See also Chapter IV of this Counter-Memorial, para. 167.

<sup>&</sup>lt;sup>196</sup> *YouTube*, Ukraine Crisis Media Center, "Civil blockade of Crimea: how it will be", available at: https://www.youtube.com/watch?v=RBS9FgXCBtg, 8 September 2015 (Annex 1220), from 22:12 to 22:24; Centre for Countering Extremism of the Ministry of Internal Affairs for the Republic of Crimea, Certificate of inspection of the Internet resource, 11 February 2016 (Annex 268).

<sup>&</sup>lt;sup>197</sup> Kievskiy District Court of Simferopol of the Republic of Crimea, Case No. 3/6-821/2015, Ruling authorizing a search in the dwelling of Lenur Islyamov located at: 3, Staromoskovskaya St., village of Glukhovo, Krasnogorsk District, Moscow Region, 28 October 2015 (Annex 254); Kievskiy District Court of Simferopol of the Republic of Crimea, Ruling authorizing a search in the dwelling of Lenur Islyamov located at: 2/16, Bor Chokrak Kaptor St., Simferopol, 28 October 2015 (Annex 253); Kievskiy District Court of Simferopol of the Republic of Crimea, Ruling authorizing a search in the dwelling of Lenur Islyamov located at: 4, Akademika Korolyova St., bld. 1, apt. 24, Moscow, 28 October 2015, 28 October 2015 (Annex 256); Kievskiy District Court of Simferopol of the Republic of Crimea, Ruling authorizing a search in the dwelling of Lenur Islyamov located at: 6, Mashkova St., bld. 1, apt. 4, Moscow, 28 October 2015 (Annex 255)

<sup>&</sup>lt;sup>198</sup> Kievskiy District Court of Simferopol of the Republic of Crimea, Case No. 3/6-833/2015, Ruling authorizing a search in the dwelling of Elzara Islyamova located at: 29, Edebiyat St., Simferopol, 29 October 2015, 29 October 2015 (Annex 257); Kievskiy District Court of Simferopol of the Republic of Crimea, Case No. 3/6-832/2015, Ruling authorizing a search in the dwelling of Lilya Budzhurova located at: 28, Stroiteley St., Simferopol, 29 October 2015, 29 October 2015 (Annex 258).

<sup>&</sup>lt;sup>199</sup> See above, para. 75; Chapter IV, para. 167.

<sup>&</sup>lt;sup>200</sup> Witness Statement of Lenur Islyamov, 6 June 2018 (Annex 18 to MU), para. 26.

so-called Noman Çelebicihan battalion. Mr. Islyamov was later found guilty in relation to counts raised by these three criminal investigations.<sup>201</sup>

86. ATR's complacent reporting and condoning of extremist statements from participants publicly inciting to ethnic and other hatred and violent images during the riots of 3 May 2014 that took place at the border post near Armyansk during an unauthorized event organized by the *Mejlis* during Mr Dzhemilev's attempt to illegally cross the border<sup>202</sup> owed ATR warning letters from the Prosecutor's Office of the Republic of Crimea.<sup>203</sup> Judicial challenges of these warnings were dismissed by competent courts in first instance and on appeal.<sup>204</sup> As the Russian Federation reported to the UNESCO, "[a]ccording to the Directorate of Roskomnadzor for the Republic of Crimea and Sevastopol, TV Company 'ATR' accompanies its reportages by extremely negative comments of radically-minded individuals and thus creates prerequisites for destabilizing the situation in the Republic of Crimea and creating a threat of extremism."<sup>205</sup> The dissemination of extremist content through media channels is prohibited under law.<sup>206</sup>

87. The warning letter of 27 May 2016 to Ms Lilya Budzhurova,<sup>207</sup> ATR's deputy director and Mr Islyamov's close associate, calls for the same explanations as for other warnings above. The warning related to a Facebook post shared on 2 April 2016<sup>208</sup> and an article published by Ms Budzhurova on 24 May 2016<sup>209</sup> and that had extremist content.<sup>210</sup> In particular, the Facebook post alleged that Crimean Tatars might be tracked on streets and public places and would be forced to wear yellow arm bands, an obvious reference to the treatment reserved to Jews under Hitler in the 1930's. The post also called for protests. Likewise, her article made allegations of fabrication of

<sup>&</sup>lt;sup>201</sup> See Chapter IV of this Counter-Memorial, para. 167 and footnote 353.

<sup>&</sup>lt;sup>202</sup> See Chapter IV of this Counter-Memorial, para. 167.

<sup>&</sup>lt;sup>203</sup> Prosecutor's Office of the Republic of Crimea, Warning No. 27-271-14 to Mr Lenur Islyamov, 16 May 2014 (Annex 835 to MU). See also Prosecutor's Office of the Republic of Crimea, Warning No. 27-272-14 to Ms Lilya Budzhurova, 16 May 2014 (Annex 525).

<sup>&</sup>lt;sup>204</sup> Central District Court of Simferopol city of the Republic of Crimea, Case No. 2-1676/14, Decision, 18 September 2014 (Annex 188); Central District Court of Simferopol of the Republic of Crimea, Case No. 2-1920/14, Decision, 13 October 2014 (Annex 195); Supreme Court of the Republic of Crimea, Case No. 33-472/2015, Decision, 12 March 2015 (Annex 222); Supreme Court of the Republic of Crimea, Case No. 33-1016/2015, Decision, 2 March 2015 (Annex 221).

<sup>&</sup>lt;sup>205</sup> Prosecutor General's Office of the Russian Federation, Information on the outcomes of the analysis of arguments set out in the letter of the Permanent Delegation of Ukraine to UNESCO, 23 October 2015 (Annex 911 to MU), p. 7. This has been brought to the attention of ATR, see for example Ministry of Internal Affairs for the Republic of Crimea, Letter to General Director of the ATR television channel, Ms Islyamova, No. 33/2012, 24 September 2014 (Annex 529): "ATR television channel changed the information content of the mass media and was persistently advancing an idea of potential repressions based on ethnicity and religion, promoting an anti-Russian public opinion, deliberately instigating mistrust in the government and its actions among Crimean Tatars, which indirectly poses risks of extremist activities."

<sup>&</sup>lt;sup>206</sup> Media Law (Annex 26), Article 4.

<sup>&</sup>lt;sup>207</sup> MU, para. 517.

<sup>&</sup>lt;sup>208</sup> Facebook page of Ms. Lilya Budzhurova, post dated 2 April 2016 (Annex 1264).

<sup>&</sup>lt;sup>209</sup> Center for Journalist Investigations, "Now they are our children", 24 May 2016 (Annex 1266).

<sup>&</sup>lt;sup>210</sup> Prosecutor's Office of Simferopol, Warning No. 01-1366v-2016 to Ms Lilya Budzhurova, 27 May 2014 (Annex 526).

criminal cases by the Russian authorities, incited to inter-ethnic discord and hatred, and called for Crimean Tatars to protest. The warning letter contained a thorough explanation of the legal grounds and Prosecutor's reasoning underlying the warning.

## 6. Case of Ms Andriyevskaya

88. Ukraine also puts forward a few accusations of pretextual application of anti-extremism laws by the Crimean authorities with the alleged intent to "silence media outlets and media representatives that adopt a pro-Ukrainian stance" - an allegation that, on its face, has once again nothing to do with racial discrimination.<sup>211</sup> In so doing it refers to the case of the Center for Journalist Investigations and alleges that "[d]ue to increased harassment and inspections, the Center was forced to move its activities to mainland Ukraine in September 2014, but the Russian Federation continued its attempts to silence the organization."212 However, Ukraine's only supporting reference for this accusation, the witness statement of Ms Anna Andriyevskaya, does not indicate anything close to this.<sup>213</sup> Nowhere does Ms Andriyevskaya's statement identify any trace of harassment or inspections of the Center for Journalist Investigations by the Russian Federation up to September 2014 and a fortiori any causal link between this and the Center's decision to relocate in Kiev, and there is no reference at all to racial discrimination. Instead, Ms Andriyevskaya's statement confirms that she stopped working for the Center back in 2011 and that she became involved again with it for some time only after it relocated in Kiev in September 2014.<sup>214</sup> Therefore, at all material times for the purpose of Ukraine's allegation she was not working for the Center and thus she could not be in a position to comment or offer first hand testimony on the alleged episode. In any event, this is not what her statement purports to do.

89. The investigation and measures carried out against Ms Anna Andriyevskaya bear no relation with a strategy of intimidation.<sup>215</sup> The facts of her case only evidence strict application of the law. The decision of the authorities to initiate an investigation in her case and to search her parents' home was lawful and reflects routine procedure when an individual is suspected of a crime, in her case the publication of extremist materials. Nor can these measures be characterized as racially oriented. The truth is that the conduct of Ms Andriyevskaya was related to the status of Crimea, not to Ukrainians as an ethnic community.

90. The criminal investigation against Ms Andriyevskaya for threatening the territorial integrity of the Russian Federation was opened indeed in relation to an article that she had published in December 2014 through the Center for Journalist Investigations and that glorified and called for

<sup>&</sup>lt;sup>211</sup> MU, para. 518.

<sup>&</sup>lt;sup>212</sup> *Ibid.* 

<sup>&</sup>lt;sup>213</sup> Witness Statement of Anna Andriyevskaya, 4 June 2018 (Annex 14 to MU), para. 13, referred to in MU, footnote 1093.

<sup>&</sup>lt;sup>214</sup> *Ibid.*, paras. 6 and 13.

<sup>&</sup>lt;sup>215</sup> MU, paras. 519-520.

supporting, joining and financing the so-called Crimea voluntary battalion fighting against the Russian Federation in Eastern Ukraine, and that is made up of voluntary fighters coming from Crimea and assisting Ukrainian troops. The article also conveyed the hope that such fight for "liberation" should also extend to Crimea.<sup>216</sup> Appealing to the wider audience to support, including financially, volunteer battalions fighting the Russian Federation in the context of the armed conflict in Donbass amounts to propaganda calling to support the enemy in time of war, an act of treason. With respect to the suggestion to extend the fight to Crimea, this directly violates Article 280.1 of the Criminal Code of the Russian Federation as well as anti-extremism and Media legislation. In such circumstances, the authorities' decision to open a criminal investigation against Ms Andriyevskaya and to initiate a search at here registered address in Crimea again has manifestly nothing to do with CERD.<sup>217</sup>

91. The decision of the investigating authorities to issue a warrant to search Ms Andriyevskaya's parent's home is explained by the fact that at that time Ms Andriyevskaya had moved to Ukraine, and this address was her only registered address in Crimea.<sup>218</sup> While she had not been living permanently at her parents' home for over ten years, this did not prevent her from storing materials there with possible relevance to the investigation, as she had left Crimea only recently.<sup>219</sup> Indeed the relevance of this place for the investigation is confirmed, and Ukraine's allegation is clearly belied by the facts since the law enforcement authorities in fact found objects belonging or connected to her and that bear relevance in the framework of the investigation. As reported by Ms Andriyevskaya herself, during the search that happened on 13 March 2015 the law enforcement authorities found and seized not only her father's computer and a four-gigabyte memory stick but also "several notebooks".<sup>221</sup> While searches are by nature based on suspicions as opposed to confirmed facts, the results of the search of Ms Andriyevskaya's parents' home proved the initial decision to be wholly justified for the purpose of the investigation.

92. Nor is it surprising, based on the above and the progress of the investigation, that "[i]n 2016, the Russian Federal Financial Monitoring Service added Andriyevska[ya] to its list of terrorists and

<sup>221</sup> MU, para. 520.

<sup>&</sup>lt;sup>216</sup> Anna Andriyevska, Volunteers of the Crimea Battalion, Center for Journalistic Investigations, 11 December 2014 (Annex 1049 to MU).

<sup>&</sup>lt;sup>217</sup> Senior Investigator for High Priority Cases of the Investigative Department of the Federal Security Service of Russia for the Republic of Crimea and the city of Sevastopol, Resolution on the initiation of a criminal case, 2 February 2015 (Annex 209); Kievskiy District Court of Simferopol of the Republic of Crimea, Case No. 3/6-147/2015, Resolution authorizing the search in the dwelling of Anna Andrievskaya located at: 46, apt. 39, village of Petrovka, Krasnogvardeisky district, Republic of Crimea, 27 February 2015 (Annex 219).

<sup>&</sup>lt;sup>218</sup> *Krym.Realii*, "Anna Andrievskaya: There will be no rule of law in Crimea while it is under occupation", 17 March 2015 (Annex 916).

<sup>&</sup>lt;sup>219</sup> Criminal Procedural Code of the Russian Federation, No. 174-FZ, 18 December 2001 (Annex 40), Article 182(1), according to which a search may be conducted if there are grounds to suspect a person of holding instruments of a crime, items or documents relevant to the criminal case.

<sup>&</sup>lt;sup>220</sup> Witness Statement of Anna Andriyevskaya, 4 June 2018 (Annex 14 to MU), para. 17.

extremists".<sup>222</sup> Ms Andriyevskaya comments her addition to the list as follows: "I have been branded a terrorist and extremist without any evidence of my guilt in violation of international law".<sup>223</sup> However, the preliminary investigation found Ms Andriyevskaya to be in violation of the 2002 Federal Law "On countering extremist activities" which prohibits using public communication networks for extremist activities.<sup>224</sup> In particular, it found that she publicly called for action aimed at violating the territorial integrity of the Russian Federation by using information and telecommunication networks, including the Internet. On 20 July 2015, Ms Andriyevskaya was formally charged with violation of Part 2 of Article 280.1 of the Criminal Code of the Russian Federation.<sup>225</sup> The criminal investigation was subsequently suspended due to Ms Andriyevskaya's unknown whereabouts.

## 7. Case of Ms Kokorina

93. The search in relation to Ms Natalia Kokorina and her detention by the FSB on 13 March 2015 in Simferopol<sup>226</sup> are also lawful<sup>227</sup> and legitimate. Ms Kokorina is a journalist working with the Center for Journalist Investigations, a colleague and friend of Ms Andriyevskaya. She was interrogated as a mere witness as part of the criminal investigation opened against Ms Andriyevskaya in relation to the article published through the Center.<sup>228</sup> While Ms Andriyevskaya had left Crimea, Ms Kokorina was still living in Crimea at that time. Although she was eventually released without charges, the investigation authorities' decision to interrogate her is quite expected, given her possible possession of information in relation of the published materials.

<sup>&</sup>lt;sup>222</sup> MU, para. 520. To be sure, this list does not contain information on persons convicted of criminal offences or organizations banned by the court; instead it is a list of organizations and individuals with regard to whom there is information that they are involved in extremist activities or terrorism: see List of Organizations and Individuals on which There is Information that They are Involved in Extremist Activity or Terrorism, Rosfinmonitoring, 16 May 2021 (Annex 926 to MU), accessed at <u>http://www.fedsfm.ru/documents/terrorists-catalog-portal-act</u>. Such procedure is not unique to the Russian Federation. Similar measures have been introduced by a number of countries after the terrorist attacks of 11 September 2001; for instance, the United Kingdom publishes a list of persons who are subject to financial sanctions for believed involvement in terrorist activity: see UK Government website providing the List of designated persons, terrorism and terrorist financing, available at: <u>https://www.gov.uk/government/publications/current-list-ofdesignated-persons-terrorism-and-terrorist-financing</u>. This contrasts with Ukraine's practice of condoning and controlling in effect violent actions of the infamous and so-called *Mirotvorets* Center for Studies of Signs of Crimes against the Ukraine's National Security, Peace, Human Security and World Public Order, see Letter of the Agents of the Russian Federation to the Registrar of the International Court of Justice, 16 March 2020 (Annex 496).

<sup>&</sup>lt;sup>223</sup> Witness Statement of Anna Andriyevskaya, 4 June 2018 (Annex 14 to MU), para. 19.

<sup>&</sup>lt;sup>224</sup> Federal Law No. 114-FZ "On counteracting extremist activities", 25 July 2002 (Annex 876 to MU), Article 1(1).

<sup>&</sup>lt;sup>225</sup> Prosecutor General's Office of the Russian Federation, Information on the outcomes of the analysis of arguments set out in the letter of the Permanent Delegation of Ukraine to UNESCO, 23 October 2015 (Annex 911 to MU), p. 17-18.

<sup>&</sup>lt;sup>226</sup> MU, para. 520.

<sup>&</sup>lt;sup>227</sup> Kievskiy District Court of Simferopol of the Republic of Crimea, Case No. 3/6-146/2015, Resolution authorizing the search in the dwelling of Natalia Kokorina located at: 143, Kievskaya St., apt. 4, Simferopol, Republic of Crimea, 27 February 2015 (Annex 220).

<sup>&</sup>lt;sup>228</sup> Center for Journalist Investigations, "Natalia Kokorina left the FSB building", 13 March 2015 (Annex 1257).

94. To conclude, the relevant facts show that, the cases invoked by Ukraine in relation to medias do not point to any violation of the law, let alone any discriminatory application of it. In any event, the relevant facts do not have any relation whatsoever with the ethnicity of the persons concerned and do not point, even *prima facie*, to racial discrimination.

#### **APPENDIX F**

# NO RACIAL DISCRIMINATION WITH RESPECT TO PRESERVATION OF CULTURAL HERITAGE, LET ALONE A SYSTEMATIC CAMPAIGN THEREOF

1. Ukraine's case related to cultural heritage is clearly unfounded.<sup>1</sup> As for the alleged degradation of Crimean Tatar cultural heritage, Ukraine only relies on one allegation – the alleged destruction of the Khan's Palace – which is without any merit. The record shows indeed that none of the individual steps taken as part of the repair and restoration works and pointed to by Ukraine involves racial discrimination (I). Ukraine's claim of degradation of Ukrainian cultural heritage is also remarkably baseless. What Ukraine presents as "[h]arassment and [c]losure of Ukrainian [c]ultural [i]nstitutions"<sup>2</sup> consists of a disparate patchwork of unfounded allegations, some of them totally unrelated to cultural heritage (II).

## I. The Restoration of the Khan's Palace Does Not Evidence Any Racial Discrimination

2. In relation to the repair and restoration of the Khan's Palace, Ukraine does not even establish the basic facts on which its contention is based, namely the alleged failures in the "renovation" and "restoration" works (A). It also fails to demonstrate the discriminatory character of the restoration works because it does not conduct an appropriate comparative exercise in relation to other comparable cases of repair and restoration (B). Ukraine does not either demonstrate that the conduct of the "renovation" and "restoration" works or whatever damage that might have happened during them – which is rejected by the Russian Federation and which is in any case a matter of domestic tort law regarding the conduct of a private company, not a case of State responsibility – reflect specific intention of the Russian Federation to fail the priority emergency works and the subsequent repair and restoration and through it to culturally suppress Crimean Tatars (C).

3. While Ukraine attempts to inflate its case by referring to the "Khan's Palace" without further specifications,<sup>3</sup> its specific allegations are essentially limited to the Great Khan Mosque,<sup>4</sup> one of the elements of the complex and a building distinct of the Main Building – the palace itself.<sup>5</sup> Ukraine's assertions in respect of the second phase of the works are but pure speculation.<sup>6</sup>

# A. UKRAINE DOES NOT ESTABLISH ITS ALLEGATIONS OF DESTRUCTION WITH RESPECT TO THE RENOVATION WORKS OF THE KHAN'S PALACE

4. Ukraine contends that "[t]he integrity of the Palace and the broader historical Preserve of which it forms part has, however, been seriously undermined by a culturally insensitive renovation

<sup>&</sup>lt;sup>1</sup> See also Chapter VI of this Counter-Memorial, paras. 413-421.

<sup>&</sup>lt;sup>2</sup> MU, title of subsection 2, para. 527.

<sup>&</sup>lt;sup>3</sup> MU, para. 523.

<sup>&</sup>lt;sup>4</sup> MU, para. 524.

<sup>&</sup>lt;sup>5</sup> Witness Statement of (Annex 20), para. 3.

<sup>&</sup>lt;sup>6</sup> MU, para. 525.

commissioned and managed by the Crimean authorities."<sup>7</sup> It further holds that the restoration "subverts the historical accuracy of the entire ensemble, and causes irreparable damage to the history and culture of the Crimean Tatars as a nation".<sup>8</sup> However, Ukraine utterly fails to substantiate this allegation. Neither does Ukraine provide any reliable evidence to back its allegations, namely accusations of negligence, lack of proper research, or failure to act.

5. In his Witness Statement,<sup>9</sup> Mr

, provides a detailed account of the priority emergency works as well as the repair and restoration works that have been carried out within the complex since 2016 against the backdrop of Ukrainian historical negligence. He describes the different stages of the process, including the initial expertise that was carried out to assess the state of the complex and determine the scope of needed priority emergency works as well as the repair and restoration works, the decision-making process, the various stages of the works, and the monitoring process to which the Crimean Tatar community was closely associated.

6. The Khan's complex was recognized as a cultural heritage site of federal significance and placed on the register of cultural heritage sites (historical and cultural monuments) of the peoples of the Russian Federation shortly after Crimea's accession to the Russian Federation.<sup>10</sup> The direction of the complex alerted the new authorities on the need for urgent action at the outset and the latter quickly reacted by envisaging the priority emergency works as well as other repair and restoration measures as part of the federal target program for the socio-economic development of Crimea.<sup>11</sup> As

describes in detail, the priority emergency and other works are based on initial controls and diagnostics carried out by highly competent experts in the field.<sup>12</sup> The preliminary assessment confirmed that the Khan Mosque had been badly deteriorating without adequate repair and restorations for decades before 2014 and identified a series of serious damages that required consolidation or square replacement, failing which the building would continue to pose a threat to people's safety.<sup>13</sup> Thus, in 2015 the authorities had recognized that the Khan Mosque posed a threat to visitors' safety and recommended to restrict access to the vicinity of the Mosque and to take

<sup>&</sup>lt;sup>7</sup> MU, para. 524.

<sup>&</sup>lt;sup>8</sup> MU, para. 525, quoting A.E. Antoniuk, National Coordinator of International Center for the Study of the Preservation and Restoration of Cultural Property in Ukraine, Letter No. 12, 27 April 2018 (Annex 1030 to MU), p. 1.

<sup>&</sup>lt;sup>9</sup> Witness Statement of (Annex 20), paras. 31-47. See also Witness Statement of

<sup>(</sup>Annex 15), paras. 10-15.

<sup>&</sup>lt;sup>10</sup> Order of the Government of the Russian Federation No. 2073-r approving the List of cultural heritage sites of federal significance located in the territory of the Republic of Crimea and the City of Sevastopol, 17 October 2015 (Annex 92).

<sup>&</sup>lt;sup>11</sup> Witness Statement of (Annex 20), paras. 27-28.

<sup>&</sup>lt;sup>12</sup> *Ibid.*, paras. 32-35.

<sup>&</sup>lt;sup>13</sup> Witness Statement of **Witness** uk (Annex 20), paras. 29-30, 32-35; Witness Statement of (Annex 15), paras. 19-22 and supporting annexes.

#### Appendix F

immediate measures to carry out the priority emergency works and the subsequent repair and restoration works.<sup>14</sup>

7. Such alarming state warranting repair had already been repeatedly reported to Ukraine prior to 2014 – in fact at least from 1989 – but Ukraine decided to ignore the warnings and undertook no adequate restoration works.<sup>15</sup> It is also Ukraine's lack of interest in committing resources to the complex that delayed its application to UNESCO's world heritage list.<sup>16</sup> After Crimea became part of the Russian Federation, the UNESCO took the unfortunate decision to sever contacts and refused to further consider the issue of the Khan's Palace's potential application.<sup>17</sup>

8. Ukraine's accusations of replacements since 2014 that allegedly denature the site's original authenticity, as opposed to restoration of existing elements,<sup>18</sup> is inapposite. It is clear indeed from the history of the building that many parts had been replaced in the past, before 2014, at several periods.<sup>19</sup> As abundantly confirmed by the document from the Center of Monument Studies submitted by Ukraine, at the time the restoration works were commissioned the Khan's Palace complex had long departed from its original state and materials. Indeed this document lists a series of successive layers of restorations, modifications and reconstruction of parts of the site, which make the last restoration look quite modest in comparison, and in any event less intrusive.<sup>20</sup> These

<sup>14</sup> Witness Statement (Annex 20), para. 30 and footnote 32.

- <sup>16</sup> *Ibid.*, para. 13.
- <sup>17</sup> *Ibid.*, para. 14.
- <sup>18</sup> MU, para. 524.

<sup>20</sup> Center of Monument Studies, "Restoration" of the Great Khan Mosque (Biyuk Khan-Djami) in Bakhchisaray: on the Tile Roofing, 14 March 2018 (Annex 1031 to MU), p. 2–3. For example, reference is made to a project "to redo the floor, ceiling with beams, walkway, and roof" as part of a restoration and reconstruction project of the mosque in the 1820's and 1830's. Further, an inspection of the mosque and connected galleries in 1909 and 1912 revealed that "the roof in many places was leaking, the tiles were old, the frame and lathing had rotted, the wooden hood was hanging over the main entrance, which was covered in tiles and sagged, risking collapse. In 1914 this work was extended in order to partially replace the tiles over the galleries, and a temporary wooden awning was installed over the entrance to the mosque." Again in 1923-1924, the document mentions that the tiles of the roof of the mosque were replaced. The

<sup>&</sup>lt;sup>15</sup> Witness Statement of (Annex 20), para. 21 (in 1989), paras. 22-23 (in 2003; the priority emergency works carried out on the roof of the Khan Mosque in 2003-2004 "were selective and incommensurate with the problems identified in 1989"); para. 24 (serious condition of the Mosque roof reported in 2010, including the proliferation of vegetation thereon, with the effect of increasing water infiltrations); para. 25; para. 26 (reporting that requests to the Ukrainian authorities in 2012-2013 were ignored).

<sup>19</sup> (Annex 20), paras. 15-26 generally; see also in particular paras. 12 and 20 Witness Statement of (noticing that the tiles of the Mosque roof had been completely replaced in 1967 and thus could not be regarded as authentic); para. 23 (noticing that the works performed in 2003-2004 were selective and incommensurate with the problems identified in 1989); para. 34 (mentioning that certain oak structures had been replaced with less dense wood, including conifers, during previous restoration works). Ukraine does not clarify how the architectural, technical discussion of replacement vs. restoration of elements should relate to the issue of racial discrimination under the CERD, let alone its main claim of a systematic campaign thereof. See also Witness Statement of (Annex 15), paras. 24-31, in particular paras. 24-25 (noting that the Mosque originally built in 1532 was destroyed by fire in 1736 and rebuilt in 1740 with a different type of roof - this makes Ukraine's assertions in relation to allegedly authentic wooden elements unreasonable), para. 26 (referring to a change of 50% of the tiles of the Mosque, replacement of wooden beams and setting of a new shed above the porch in 1905-1910, partial replacement of tiles in the 1950's, emergency restoration works in 1960-1965 and complete replacement of the tiles in 1967), para. 42 (presence of plastic lath in certain areas of the plaster layer, including those with calligraphy paintings).

episodes confirm that most of the measures Ukraine takes issue with have in fact already been taken throughout the history of the site, sometimes several times, including the replacement of tiles, beams and other parts, or the reinforcement of doors or structures, as was necessary.<sup>21</sup> It is thus difficult to understand why Ukraine makes now such a claim.

9. In any event, during the repair and restoration process undertaken by the Russian Federation the replacement or installation of elements has been strictly limited to those parts that had been damaged beyond repair and posed a threat to the building's stability and public safety, as is the case for example with beams in an advanced stage of decay.<sup>22</sup> Additionally, the removed tiles, which Ukraine takes issue with, have been stored in a designated place, and may possibly be used in the future to cover such other roof parts in the complex where this may constitute a technically feasible solution.<sup>23</sup>

10. All priority emergency works and the first stage of repair and restoration works were completed by August 2018, which was concerned with the most pressing issues, in particular in terms of safety.<sup>24</sup> A second phase of works is subsequently expected to start in 2021 to proceed with other aspects and needs.<sup>25</sup> The restoration process was decided by the competent authorities, which resorted to the Corporation ATTA Group LLC ("ATTA Group"), with Kiramet LLC ("Kiramet") acting as its subcontractor for specific tasks,<sup>26</sup> in particular the development of design documents relating to the preservation of the site during the priority emergency works and the first stage of repair and restoration works.<sup>27</sup> During the second phase of repair and restoration works, Kiramet acted as General Contractor for preparation of research and design documents.<sup>28</sup> The record attached to **Mutation** Witness Statements confirms the companies' experience and the absence of any concerns or issues in relation to these companies' right and ability to carry out their mission in the field of restoration works, which are the only works being completed so far

<sup>21</sup> See e.g. Witness Statement of (Annex 15), para. 27.

<sup>22</sup> *Ibid.*, paras. 18-23 (replacement of beams), paras. 24-31 (replacement of handcrafted tiles ("Tatarka") from the roof of the Mosque).

- <sup>23</sup> Witness Statement of (Annex 20), para. 39.
- <sup>24</sup> Witness Statement of (Annex 20), paras. 18, 36-37 and 50. Witness Statement of (Annex 15), paras. 12-13.
- <sup>25</sup> Witness Statement of (Annex 20), paras. 18 and 51-52; Witness Statement of

(Annex 15), paras. 12-15.

- <sup>26</sup> Witness Statement of (Annex 20), para. 31.
- <sup>27</sup> Witness Statement of (Annex 15), paras. 8-10.
- <sup>28</sup> *Ibid.*, para. 41.

tiles were further replaced during the 1950's and 1960's. See also Witness Statement of (Annex 15), paras. 24-31.

<sup>&</sup>lt;sup>29</sup> See e.g. Witness Statement of (Annex 15), paras. 3-7 and supporting annexes. See also Ministry of Culture of the Russian Federation, License No. MKRF 01019 issued to the "Corporation ATTA Group" LLC to carry out activity on preservation of cultural heritage sites (historical and cultural monuments) of peoples of the Russian Federation, 12 August 2013 (Annex 439).

at the Khan Mosque, have taken place in compliance with applicable law and procedures.<sup>30</sup>

, confirms that, since its creation in 2007 Kiramet has been engaged in preserving significant cultural heritage sites in Crimea relating to various cultural or religious communities, which is a strictly regulated activity that requires the approbation of the State in the form of issuance of special permits (licenses), and that Kiramet has received various awards and recognitions for its contribution to the preservation of cultural heritage.<sup>31</sup>

11. Besides, all necessary preparatory works were performed. After an assignment and a permit for relevant works were obtained, historical, archival and bibliographic examinations, historical, architectural, and full-scale, engineering and technical examinations, chemical, technological and mycological examinations, mechanical tests were all performed involving specialists from the relevant areas.<sup>32</sup> The expert review of the restoration plan submitted by ATTA Group and Kiramet approved it as being compliant with statutory requirements.<sup>33</sup>

12. Moreover, besides the technical and field supervision performed by ATTA Group, the Museum-Reserve has also been carrying, on its own initiative, a monitoring and information process in respect of the restoration works, involving Crimean government agencies, a representative of the Russian State Duma, the Bakhchisaray administration, the direction of the Museum-Reserve, the restoring companies as well as interested representatives of the Crimean Tatar community, such as the Council of Crimean Tatars under the Head of the Republic of Crimea, the Spiritual Directorate of Muslims of the Republic of Crimea and Sevastopol, Inkishaf and other civil society organizations.<sup>34</sup> These meetings serve as a channel for interested stakeholders to make observations, request or objections. The Museum-Reserve also actively seeks to provide visibility of the complex and its restoration to the public at large as a way to promote Crimean Tatar cultural heritage.<sup>35</sup> As a monitoring underlines, Crimean Tatars generally expressed satisfaction on the works and the way they have been conducted.<sup>36</sup>

shares the same views.<sup>37</sup> Besides, upon request of the Muslim religious community, religious

<sup>&</sup>lt;sup>30</sup> See e.g. the following documents appended to Witness Statement: Letter from Corporation ATTA Group LLC to the Chairman of the Local Muslim Organization "Mustafa-Dzhami", No. 134-K-18, 8 August 2018 (Annex 606).

<sup>&</sup>lt;sup>31</sup> Witness Statement of **Constant (Annex 15)**, paras. 3-7. Thus, Kiramet has obtained relevant approvals and licenses from the Ukrainian authorities prior to 2014 and from the Russian authorities since 2014.

<sup>&</sup>lt;sup>32</sup> Witness Statement of (Annex 15), paras. 38-41.

<sup>&</sup>lt;sup>33</sup> *Ibid.*, para. 11. See also paras. 38-41.

<sup>&</sup>lt;sup>34</sup> Witness Statement of (Annex 20), paras. 41-47. Moreover, members of the public were allowed to visit and in fact several times visited the Khan Mosque for monitoring purposes (para. 47). With respect to the involvement of the Spiritual Directorate of Muslims of Crimea and the Council of Crimean Tatars under the Head of the Republic of Crimea in discussions of the progress of the priority emergency works at the Khan Mosque, see Witness Statement of (Annex 19), paras. 64-65.

<sup>&</sup>lt;sup>35</sup> Witness Statement of (Annex 20), paras. 53-55.

<sup>&</sup>lt;sup>36</sup> Witness Statement of (Annex 20), para. 56.

<sup>&</sup>lt;sup>37</sup> Witness Statement of (Annex 19), para. 66.

service was resumed after the completion of the necessary works on the roof of the Khan Mosque, including the priority emergency works.<sup>38</sup>

13. In light of the above, there is manifestly no merit at all in Ukraine's allegations of purported acts of "depredations" carried out on the site during the restoration works.<sup>39</sup> Addressing each of Ukraine's allegations in detail from a technical perspective, **sector acts** witness statement leaves no doubt about their unfounded character.<sup>40</sup> Suffice it to provide below an overview of salient points.

14. For example, Ukraine bluntly alleges that the restoration works have cause a "[d]estruction beyond repair of the concourse to the complex"<sup>41</sup> without any further explanation. What Ukraine means is obscure, and the documents cited in support are of no avail to clarify the issue. To the extent Ukraine purports to refer to the installation of a temporary shed above the main building of the Khan Mosque, **Confirms** that such structure has nothing to do with the Mosque, is of a temporary nature in order to provide protection from atmospheric impact, is also widely used in other countries, and has been set up in compliance with relevant engineering rules so as not to adversely impact the building.<sup>42</sup>

15. Ukraine alleges the infliction of "[d]amage to the roof to the mosque in the Preserve by unnecessarily invasive work, with 104 original joists replaced with completely new ones built with modern technology, even though only six actually needed to be replaced and five more restored".<sup>43</sup> However, the source it relies on is a campaign brochure from the Ministry of Information Policy of Ukraine, a political document that was prepared in 2018 – after the present proceedings had been initiated and at a period when Ukraine was preparing its Memorial. The Court has treated this sort of documents with great caution,<sup>44</sup> and in the present case this document amounts to little more than a self-serving statement, which does not have any probative value. By the own admission of the Ministry, the author of the brochure mostly relied on open sources,<sup>45</sup> the only exception being out of date information collected by the Ukrainian Restoration Design Institute long before 2014.<sup>46</sup> That is, the Ministry admits that it has no recent first-hand or confirmed information to accurately and thoroughly appreciate the restoration works, and that it is therefore not in a position to formulate an informed opinion on them. If anything, this only amounts to an admission by Ukraine of its

- <sup>38</sup> Witness Statement of (Annex 20), paras. 50.
- <sup>39</sup> MU, para. 524.
- <sup>40</sup> Witness Statement (Annex 15), paras. 16-43.
- <sup>41</sup> MU, para. 524.
- <sup>42</sup> Witness Statement of (Annex 15), para. 37.
- <sup>43</sup> MU, para. 524.

<sup>44</sup> Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, 19 December 2005, I.C.J. Reports 2005, p. 201, para. 61.

<sup>45</sup> Ministry of Information Policy of Ukraine, Save the Khan's Palace (2018) (Annex 734 to MU), p. 6.

<sup>46</sup> Witness Statement of **Constant of Constant of Con** 

awareness that the problem already had been existing for some time before 2014,<sup>47</sup> and that it had done nothing to remedy the situation. **Constitution** confirms that the preliminary assessment revealed that, while part of the roof wooden beams suffered from biological degradation and mechanical damage, all were affected by technical damage undermining their wearing force, which warranted a total replacement thereof, and that removed elements were transferred to the Museum-Reserve.<sup>48</sup> As explained by **Constitution** and mentioned above,<sup>49</sup> Ukraine's awareness and inaction had in fact been lasting for decades. In contrast to Ukraine's flawed account, the preliminary expertise that was conducted as part of the restoration works revealed the full extent and serious character of the damage.<sup>50</sup>

16. Ukraine also refers to "[c]omplete replacement of the original oak anti-seismic belt supporting the roof [of the Khan Mosque] with a completely new one made of incongruous concrete and metal".<sup>51</sup> This claim is baseless. First, what Ukraine refers to as an original "anti-seismic belt" is nothing of the sort. The initial engineering examination stage of the restoration works confirmed that there was originally no anti-seismic belt at the level of boards in load-bearing walls.<sup>52</sup> Secondly, as indicated by the Ministry's campaign brochure called by Ukraine in support of this claim, what Ukraine refers to as an "anti-seismic belt" – but which is not one – had apparently already been partially replaced by Ukraine before 2014.<sup>53</sup> In her Witness Statement,

explains the comprehensive research and reasons that commanded the choice made to build an antiseismic belt given the circumstances and why this solution had no adverse effect on the Mosque.<sup>54</sup> Given that Crimea is situated in an active seismic zone,<sup>55</sup> such concerns are but legitimate in order to protect the integrity of the complex and ensure security of the visitors.

17. In respect of the replacement of historical handcrafted tiles from the Mosque's roof with modern Spanish tiles, Ukraine's allegation is also meritless.<sup>56</sup> As **sector** explains in her Witness Statement, by the time the restoration works were being contemplated, authentic tiles remaining on roofs of the whole complex were rather few in number and could only be found on several structures of the Khan's Palace complex, but that no such authentic tiles were left on the roof of the Khan Mosque. In this respect, she explains that "[t]he tiles that were on the Khan

<sup>&</sup>lt;sup>47</sup> MU, para. 524, second bullet point; Ministry of Information Policy of Ukraine, Save the Khan's Palace (2018) (Annex 734 to MU), p. 8.

<sup>&</sup>lt;sup>48</sup> Witness Statement of (Annex 15), paras. 18-23.

<sup>&</sup>lt;sup>49</sup> See paras. 5-7 above.

<sup>&</sup>lt;sup>50</sup> See para. 6 above and Witness Statement of (Annex 20), paras. 32-35.

<sup>&</sup>lt;sup>51</sup> MU, para. 524.

<sup>&</sup>lt;sup>52</sup> Witness Statement of (Annex 15), paras. 32-36.

<sup>&</sup>lt;sup>53</sup> Ministry of Information Policy of Ukraine, Save the Khan's Palace (2018) (Annex 734 to MU), p. 11.

<sup>&</sup>lt;sup>54</sup> Witness Statement of (Annex 15), paras. 32-36.

<sup>&</sup>lt;sup>55</sup> Witness Statement of **Control (Annex 15)**, para. 33. *Crimea News*, "Should we expect a big earthquake in Crimea: the Black Sea region is shaking", 28 December 2020, available at: https://crimea-news.com/society/2020/12/28/743239.html (Annex 1036).

<sup>&</sup>lt;sup>56</sup> MU, para. 524.

Mosque's roof in 2016 had been collected from buildings in the city and neighbouring villages during the previous restoration works".<sup>57</sup> She confirms that the structure itself of the roof of the Mosque had been modified in the past, and explains the scientifically justified character of the choice made and its compliance with relevant procedural rules.<sup>58</sup>

18. Ukraine further points to "[d]amage to the interior of the mosque because of a failure to adequately protect it from moisture during work on the roof".<sup>59</sup> However, the only purported evidence it offers consists in three poor quality photographs, the relevance and authenticity of which the Court and the Russian Federation are asked to accept without any verification.<sup>60</sup> Crucially, none of these photographs shows what Ukraine contends, namely traces of moisture undoubtedly caused by the conditions of the works. As is visible on the other hand in the photographs included in **Determine** Witness Statement,<sup>61</sup> the presence of moisture, explained by the poor state of the building – including its roof – allowing for water infiltrations, was already visible *before* the priority emergency works and other repair and restoration works, as a result of Ukraine's failure to provide adequate attention to the complex before 2014.

19. Similarly, Ukraine does not provide any evidence to support its claim that the second phase of the works would "further damage that may be inflicted on its most prized historical site".<sup>63</sup> Such assertion amounts to little more than pure speculation.

20. The truth is that the Khan's Palace has been preserved and still stands as a vibrant testimony to Crimean Tatar culture and tradition,<sup>64</sup> and as an invaluable part of Crimea's cultural heritage that is recognized, valued and actively protected by the Russian Federation. Far from a campaign of cultural suppression through the destruction of the Crimean Tatars' cultural heritage, pictures of the Khan's Palace attest to the proud rehabilitation and promotion of a key element of Crimean Tatar cultural heritage:

- <sup>61</sup> Witness Statement of (Annex 20), para. 24.
- <sup>62</sup> Witness Statement of (Annex 15), paras. 42-43.
- <sup>63</sup> MU, para. 525.

<sup>&</sup>lt;sup>57</sup> Witness Statement of (Annex 15), para. 27.

<sup>&</sup>lt;sup>58</sup> *Ibid.*, paras. 24-31.

<sup>&</sup>lt;sup>59</sup> MU, para. 524.

<sup>&</sup>lt;sup>60</sup> Ministry of Information Policy of Ukraine, Save the Khan's Palace (2018) (Annex 734 to MU), pp. 13-14.

<sup>&</sup>lt;sup>64</sup> See also Witness Statement of (Annex 20), paras. 53-55 and corresponding annexes, mentioning historical compilations and catalogues of items displayed in the Museum-Reserve, as well as cultural and educational events being organized in the Museum-Reserve to promote the cultural heritage of Crimean Tatars.

## Appendix F



7 July 2015



6 December 2018



27 April 2016



6 December 2018



7 February 2017



4 December 2018

# B. UKRAINE DOES NOT CONDUCT A PROPER COMPARATIVE EXERCISE

21. Ukraine's allegation of destruction of the cultural heritage of the Crimean Tatar community as part of an alleged systematic campaign of racial discrimination only rests on one single individual case, that of the restoration of the Khan's Palace, which, as shown above, has no merits.

Needless to say, this is in itself incapable of establishing any instance of racial discrimination in respect of the restoration works, let alone and discriminatory pattern in this field or a systematic practice or policy. Moreover, Ukraine offers no comparison whatsoever with any other comparable cases of preservation of cultural heritage pertaining to other communities.

22. Instead of conducting a proper comparative exercise, Ukraine merely purports to draw a flawed parallel between two judicial decisions as purported evidence of an alleged discriminatory treatment.<sup>65</sup> However, Ukraine's comparison is baseless because these two cases are simply not comparable with the case of the Khan's Palace.

23. With regard to the first case involving a Crimean Tatar individual applying to a local court in Crimea to have Kiramet removed from performing actions that allegedly damage the Khan's Palace, Ukraine claims that "[t]he Crimean Tatar community's efforts to have ATTA Group and Kiramet removed from the renovation project have been rebuffed by the Crimean courts".<sup>66</sup> Nevertheless, Ukraine does not elaborate on the fact that the case was rejected on procedural grounds.<sup>67</sup> Ukraine actually admits the lack of standing of the applicant in the relating footnote.<sup>68</sup> The application has been submitted on behalf of Ms Elmira Ablyalimova, the former director of the Bakhchisaray Historical, Cultural and Archaeological Museum-Reserve, which manages and promotes cultural heritage sites in Bakhchisaray, including the Khan's Palace.<sup>69</sup> The Court dismissed Ms Ablyalimova's claim for lack of standing because she had not established that she qualified as an interested person, namely that she was the holder of the right of which she was seeking protection. This decision is based on basic rule of civil procedure, which equally applies to all citizens. Ms Ablyalimova's appeal was likewise rejected.<sup>70</sup>

24. Ukraine contends that, by contrast, "when the same companies were engaged to renovate sites of cultural significance to the ethnic Russian community, the Lenin District court in the Rostov Oblast did not hesitate to intervene, finding that they had violated renovation standards".<sup>71</sup> The second judicial decision does not concern, however, a request against any of the two companies, but against Mr Sergey Efimov, the Chairman of the State Committee for Cultural Heritage Preservation, which is the administrative body responsible, inter alia, for granting and supervising renovation works of cultural heritage sites.<sup>72</sup> The request was brought by the Ministry of Culture of Rostov-on-

<sup>&</sup>lt;sup>65</sup> MU, para. 526.

<sup>&</sup>lt;sup>66</sup> MU, para. 526.

<sup>&</sup>lt;sup>67</sup> Zheleznodorozhny District Court of Simferopol of the Republic of Crimea, Case No. M-264/18, Ruling, 21 February 2018 (Annex 930 to MU).

<sup>&</sup>lt;sup>68</sup> MU, fn. 1111.

<sup>&</sup>lt;sup>69</sup> Witness Statement of (Annex 20), para. 14.

<sup>&</sup>lt;sup>70</sup> Supreme Court of the Republic of Crimea, Case No. 33-4423/2018, Decision, 26 April 2018 (Annex 402).

<sup>&</sup>lt;sup>71</sup> MU, para. 526.

<sup>&</sup>lt;sup>72</sup> Judgment in an administrative offence case, 11 October 2017, Leninsky District Court of Rostov-on-Don, Case No. 5-438/17 (Annex 925 to MU). The decision was upheld on appeal but the Supreme Court of the Russian Federation ultimately reversed the decisions of the lower courts and dismissed the case.

Don and alleged a violation of the administrative procedure applicable to the grant to ATTA Group of a renovation contract for the renovation of Aivazovsky House cultural heritage site in Feodosia in 2017. Contrary to Ukraine's allegation, the Court did not pronounce on the question whether ATTA Group "had violated renovation standards in [its] work".<sup>73</sup> Instead, the Court found in particular that the director of the State Committee had made an administrative offence by committing, among other, certain procedural violations related to the procedure of setting the repair and restoration. By contrast, when it comes to the priority emergency works, and further repair and restoration works of the Khan's Palace (i.e. the Khan Mosque) that Ukraine takes issue with, the contractors had all necessary licenses for the works to be performed and duly prepared research and design documents in compliance with applicable requirements. The judgment also confirms that the performance of the above works under Federal Russian law follows a strict procedure that precisely aims at preventing all excesses and flaws that Ukraine alleges.

25. These two court decisions are obviously not comparable for the purpose of Ukraine's claim. They involve different parties, different courts, different cultural heritage sites with different peculiarities and in different municipalities. Since the second decision relates to a dispute between two state bodies, it is difficult to see how this should relate to any "treatment" of Crimean Tatar cultural heritage for the purpose of the comparative exercise. On the other hand, Ukraine fails to note that no judicial procedure similar to that regarding the Aivazovsky House (a Russian cultural heritage artefact) was launched in the context of the Khan's Palace.

# C. UKRAINE DOES NOT EVIDENCE ANY SPECIFIC DISCRIMINATORY INTENT

26. Ukraine contends that the renovation was "commissioned and managed by the Crimean authorities".<sup>74</sup> Indeed, the State Committee for Cultural Heritage Preservation of the Republic of Crimea commissioned ATTA Group as principal contractor, which in turn engaged Kiramet as a subcontractor to perform the renovation works of the Khan's Palace. As the Russian Federation has shown above, there has been no defective handling of the renovation works. But even assuming that the works were undermined by some failures – *quod non* – Ukraine does not submit any evidence showing or even suggesting that Kiramet's conduct as a subcontractor would prove the Russian Federation's intent to destroy the Crimean Tatar cultural heritage. Needless to say that, in any event, no claim of racial discrimination was ever raised in relation to the renovation works of the Khan's Palace.

27. More generally, Ukraine's claim that the Russian Federation had the intent to carry out a systematic campaign or policy of racial discrimination through the destruction of Crimean Tatar cultural heritage is incompatible with a significant series of supporting measures and conduct that point to recognition, acceptance, respect and protection of cultural and other rights of the Crimean

<sup>&</sup>lt;sup>73</sup> MU, para. 526.

<sup>&</sup>lt;sup>74</sup> MU, para. 524.

Tatar community.<sup>75</sup> To recall, shortly after the accession of Crimea to the Russian Federation, the Russian Government placed the Khan's Palace, together with other sites pertaining to Crimean Tatar and Ukrainian cultures, on the register of cultural heritage sites (historical and cultural monuments) of the peoples of the Russian Federation,<sup>76</sup> which opened the way for the ambitious programme of restoration of the complex. Some of these sites were not previously included in the Ukrainian state register of immovable monuments. As has been developed elsewhere, the Russian Federation has also taken other supporting measures in favour of Crimean Tatar culture and cultural heritage.<sup>77</sup>

# II. Alleged Harassment and Closure of Ukrainian Cultural Institutions

28. Ukraine's claims relating to alleged "harassment and closure of Ukrainian cultural institutions" and the serious accusations that "Ukrainian culture in Crimea is under siege across the board",<sup>78</sup> do not stand any scrutiny. Each of Ukraine's allegations are addressed in turn below.

### A. ALLEGED CRACK-DOWN ON CRIMEA-BASED NGOS, ACTIVISTS AND MEDIA OUTLETS

29. Ukraine starts by claiming that before 2014 "Crimea-based NGOs were instrumental in promoting Ukrainian-language newspapers and the broadcasting of television programs in Ukrainian".<sup>79</sup> The section of Mr Shchekun's witness statement that is invoked in support of this allegation<sup>80</sup> does not purport to make that point. Mr Shchekun only describes his own experience and activity as a Media director and he mentions the names of a few other media outlets. This passage of Mr Shchekun's testimony does not purport to comment generally on the role of the NGOs and journalists on Ukrainian-language media outlets. In any event, the organizations and media outlets cited by Mr Shchekun had not reached the widespread popularity that he contends in Crimea.<sup>81</sup> Some of them had a circulation of less than one thousand copies and did not have their own website for online publications, instead circulating only paper copies. These media outlets stopped being published in Crimea before or after 2014, either because of a lack of financial support from Ukraine or based on a decision from the newspapers' editors and other staff members to

<sup>&</sup>lt;sup>75</sup> See Chapter I of this Counter-Memorial, paras. 55-80.

<sup>&</sup>lt;sup>76</sup> Order of the Government of the Russian Federation No. 2073-r approving the List of cultural heritage sites of federal significance located in the territory of the Republic of Crimea and the City of Sevastopol, 17 October 2015 (Annex 92). The Khan's Palace complex was classified as a cultural heritage site of federal significance. See also List of federal cultural heritage sites belonging to the Crimean Tatar culture and registered in the unified state register of cultural heritage sites (historical and cultural monuments) of the peoples of the Russian Federation (Annex 1238).

<sup>&</sup>lt;sup>77</sup> See Chapter I, paras. 76-77 of the Counter-Memorial.

<sup>&</sup>lt;sup>78</sup> MU, paras. 527-532.

<sup>&</sup>lt;sup>79</sup> MU, para. 527.

<sup>&</sup>lt;sup>80</sup> Witness Statement of Mr Shchekun, 4 June 2018 (Annex 13 to MU), paras. 5–6, referred to in MU, footnote 1113. Mr Shchekun's alleged kidnapping (MU, para. 527) is addressed elsewhere, see Appendix A, paras. 34-35.

<sup>&</sup>lt;sup>81</sup> Witness Statement of (Annex 16), para 16.

relocate to Ukraine and resume operations there.<sup>82</sup> No actions were taken by the Russian authorities in order to suppress their activity or close them, and they did not attempt to register with Roskomnadzor.<sup>83</sup>

### B. THE CASE OF THE UKRAINIAN CULTURAL CENTRE AND KRYMSKY TEREN

30. With respect to Mr Kuzmin and the Ukrainian Cultural Centre,<sup>84</sup> Ukraine's claim of harassment and forced closure is no more plausible. The measures Ukraine takes issue with in relation to certain Centre activists were connected with inspections and investigations for violations of the law, mainly in the context of combating extremism, not in relation to their activity within the Centre. Mr Kuzmin's case has already been addressed previously, confirming that the measures taken in respect of him are based on applicable law with respect to the fight against extremist activities.<sup>85</sup> To recall, Mr Kuzmin is mostly known for organizing unsanctioned public events and for carrying out or failing to prevent the use of extremist materials during public events under his responsibility. These repeated violations of the law undermined public order and safety, incited social unrest and tensions, and posed a threat to other citizens' rights, and to the integrity of the Russian Federation. They earned him multiple warnings from the authorities, and he has been sentenced by court decisions for violation of the law in this respect.<sup>86</sup>

31. In addition, from Ukraine's own record, *Krymsky Teren* is not a Ukrainian newspaper, as Ukraine now portrays it, and certainly not "Crimea's sole Ukrainian-language newspaper".<sup>87</sup> It is a mere leaflet<sup>88</sup> launched in August 2017 that was never registered as a media outlet and that had been announced to be published in Ukrainian and in Russian,<sup>89</sup> which also confirms that Ukrainian identity does not always coincide with Ukrainian language. Ms Olena Popova, an activist from the Ukrainian Cultural Centre, comments on the *Krymsky Teren* this way: "We're a bunch of amateurs. I'll tell you right now that we don't have any professional journalists, the publication is unregistered, we don't have any editorials. Our colleagues in Kyiv even called us a 'seminewspaper'. Well, let us be a semi-newspaper then."<sup>90</sup> As reported by

<sup>&</sup>lt;sup>82</sup> For example, after 2014, the newspaper "Krymska Svitlytsia" moved to Kiev, see *Zmina*, "Ukrainian newspaper 'Krymskaya Svetlitsa' moved from Crimea to Kiev", 7 July 2016 (Annex 957).

<sup>&</sup>lt;sup>83</sup> Russian Federal Service for Supervision of Communications, Information Technology, and Mass Media. See Appendix E, paras. 2-7.

<sup>&</sup>lt;sup>84</sup> MU, para. 528.

<sup>&</sup>lt;sup>85</sup> See Appendix D, paras. 48.

<sup>&</sup>lt;sup>86</sup> *Ibid.* 

<sup>&</sup>lt;sup>87</sup> MU, para. 528. See also Appendix E, para. 26.

<sup>&</sup>lt;sup>88</sup> See for instance *Krymsky Teren*, Issue No. 8(12), October 2018 (Annex 982).

<sup>&</sup>lt;sup>89</sup> *Krym.Realii*, "The first issue of the bilingual publication 'Krymsky Teren' released in Crimea", 26 August 2017 (Annex 976).

<sup>&</sup>lt;sup>90</sup> Hromadske International, The True Cost of Remaining Ukrainian in Crimea, 2 April 2018 (Annex 1076 to MU), p. 11.

the Ukrainian Cultural Centre distributed the *Krymsky Teren* on the streets of the city of Simferopol, handing it out to passers-by for free.<sup>91</sup>

32. Ukraine's reliance on a statement by the notoriously anti-Russian Kharkiv Human Rights Protection Group claiming the existence of "harassment" and "intimidation" is also misleading.<sup>92</sup> The few factual elements this source<sup>93</sup> reports confirm that Mr Kuzmin and other members of the Ukrainian Cultural Centre had been subject to warnings and sentences for extremist activities with respect to media publications and public gatherings. The source confirms that members of the Centre were summoned and interrogated by the FSB in early 2017 as witnesses as part of a criminal investigation initiated against Mr Veldar Shukurdzhiyev, another funding member of the Centre, for public calls to action aimed at violating the Russian Federation's territorial integrity. To recall, Mr Shukurdzhiyev had been condemned in March 2015, together with Mr Kuzmin, and another activist, for the administrative offence of failing to prevent the display of extremist materials by participants during a public gathering organized by Mr Kuzmin for the 201st anniversary of the birth of Taras Shevchenko.<sup>94</sup>

33. The article also refers to an investigation against Ms Nataliya Kharchenko, another Centre member and one of the four interrogated. It indicates that a case was being prepared against her under Article 280(2) of the Criminal Code of the Russian Federation on "public calls to carry out extremist activities carried out with the use of the media or the Internet".<sup>95</sup> Therefore, rather than harassment or intimidation, it appears that this article refers to regular investigative activities of law enforcement authorities that lie within their mandate and are based on legitimate suspicions of extremist activities toward persons who, for most of them, appear to be known recidivists.

34. Therefore, based on Ukraine's own record, members of the Ukrainian Cultural Centre, an NGO created in Simferopol on 7 May 2015, obviously did not conduct only activities in line with the Centre's declared limited objective of being apolitical and focusing on Ukrainian culture, history and language.<sup>96</sup> In the circumstances, the law enforcement measures Ukraine refers to against these individuals were not only lawful but also wholly warranted, and they do not point to any discriminatory conduct. Finally, contrary to another of Ukraine's inaccuracies,<sup>97</sup> the Ukrainian Cultural Centre was not forced to close, as Ukraine erroneously alleges, and its existence has

<sup>&</sup>lt;sup>91</sup> Witness Statement of (Annex 16), para 14.

<sup>&</sup>lt;sup>92</sup> MU, para. 528 and footnote 1117.

<sup>&</sup>lt;sup>93</sup> Kharkiv Human Rights Protection Group, Menacing FSB Interrogations of Ukrainian Cultural Centre Activists in Russian-Occupied Crimea, 23 March 2017 (Annex 937 to MU).

<sup>&</sup>lt;sup>94</sup> See Appendix D, para. 48, fn. 119. See also Supreme Court of the Republic of Crimea, Case No. 12-450/2015, Decision, 19 May 2015 (Annex 233).

<sup>&</sup>lt;sup>95</sup> Criminal Code of the Russian Federation, No. 63-FZ, 13 June 1996 (Annex 32), Article 280(2).

<sup>&</sup>lt;sup>96</sup> Kharkiv Human Rights Protection Group, Menacing FSB Interrogations of Ukrainian Cultural Centre Activists in Russian-Occupied Crimea, 23 March 2017 (Annex 937 to MU).

<sup>&</sup>lt;sup>97</sup> MU, para. 528.

continued after Ukraine submitted its Memorial.<sup>98</sup> Neither did its leaflet *Krymsky Teren* cease to exist after Ukraine's alleged events.<sup>99</sup>

### C. THE CASE OF THE LESYA UKRAINKA MUSEUM IN YALTA

35. Ukraine does not establish either its claim regarding the Lesya Ukrainka Museum in Yalta.<sup>100</sup> Indeed the source it refers to is unrelated to the museum.<sup>101</sup> Ukraine alleges that "[t]he museum shut down in 2016 for renovation; when it reopened, the museum's collection of Ukrainka's items had been diminished from an entire floor to a small corner of the building."<sup>102</sup> This calls for two observations.

36. First, Ukraine suggests that the described situation reflected the new, permanent reorganization of the museum after renovation works ended. This misrepresentation is factually incorrect, as confirmed by Ukraine's own record. A press article published in April 2018 and which Ukraine submits as part of annexes to its Memorial confirms that at the time of writing the renovation of the building was a pending matter.<sup>103</sup> As a result, the situation of the exhibition Ukraine refers to is obviously a temporary nature. This is confirmed by

in her Witness Statement appended to the present Counter Memorial.<sup>104</sup>

k also explains the measures that have been taken in order to secure safe storage and, to the extent possible, continued exhibition of the item collection pending repair and restoration works.<sup>105</sup> The Museum has also been continuously carrying out active initiatives, events and projects up to this day in order to promote the heritage of Lesya Ukrainka and Ukrainian culture more generally.<sup>106</sup>

37. Secondly, Ukraine does not provide any explanation for the alleged reduction of the museum's collection of Lesya Ukrainka's items. The same source indicates, however, that the building will undergo reparation works after the roof – in fact the ceiling – had caved in. Given that Lesya Ukrainka's collection items had been exhibited on the second floor of the building, the nature of such incident and the extent of necessary reparation works obviously require that those items,

<sup>103</sup> Hromadske International, The True Cost of Remaining Ukrainian in Crimea (2 April 2018), (Annex 1076 to MU), p. 13.

<sup>104</sup> Witness statement of (Annex 14), paras. 7-8, paras. 30-37. also confirms that the building was recognized as a cultural heritage site of regional significance included in the unified state register of cultural heritage sites (historical and cultural monuments) of the peoples of the Russian Federation (see at para. 4).

<sup>105</sup> Witness statement of (Annex 14), paras. 28 and 34-38.

<sup>106</sup> *Ibid.*, paras. 35-38.

<sup>&</sup>lt;sup>98</sup> *Krym.Realii*, "Ukrainian Cultural Centre in Crimea celebrated its four years anniversary", 7 May 2019 (Annex 1005).

<sup>&</sup>lt;sup>99</sup> Hromadske International, The True Cost of Remaining Ukrainian in Crimea, 2 April 2018, (Annex 1076 to MU), p. 12; *Krymsky Teren*, Issue No. 8(12), October 2018 (Annex 982).

<sup>&</sup>lt;sup>100</sup> MU, para. 529.

<sup>&</sup>lt;sup>101</sup> MU, footnote 1118, referring to footnote 1121 that refers in turn to Education Statistics from Ministry of Education of Ukraine (2018) (Annex 735 to MU).

<sup>&</sup>lt;sup>102</sup> MU, para. 529.

particularly close to the incident area, be removed and stored safely pending the reparation works.<sup>107</sup> Thus, far from evidencing Ukraine's suggestion of partial suppression of the museum's collection items, this instead reflects a temporary protective measure that was undertaken to protect the said collection of Lesya Ukrainka's items pending renovation works. It is clearly unrelated to any alleged discriminatory conduct. Ukraine's strikingly brief argument is belied by its own record.

38. Ukraine's claim with respect to the Lesya Ukrainka Museum is also quite extraordinary, given its own failure to adequately protect this and many other cultural heritage sites before 2014. As the Russian Federation observed in a statement to the UNESCO, "under the Ukrainian jurisdiction, the objects of cultural-historical heritage in the territory of Crimea were falling into disrepair due to systematic underfunding. The authorities which maintained and supervised these objects were not taking necessary steps to restore them or to mitigate the destructive effects of natural phenomena."<sup>108</sup> In fact this is exactly what happened with the Lesya Ukrainka Museum.<sup>109</sup> The Russian Federation's efforts to repair the complex stands in sharp contrast with Ukraine's prior neglect thereof.

39. As explains in her Witness Statement, Museum officials had been repeatedly alerting the Ukrainian authorities on the alarming state of disrepair of the Museum and the need for protection prior to 2014, but these requests were ignored by Ukraine.<sup>110</sup> By contrast, the Russian Federation took preventive steps even before the ceiling collapse occurred in February 2016 and before initiating restoration works.<sup>111</sup>

# D. THE CASE OF THE DRAMA STUDIO "SVITANOK" IN SIMFEROPOL

40. With respect to the closure of the children's drama studio "Svitanok", in Simferopol, Ukraine again makes a fallacious presentation of the facts. What Ukraine misleadingly portrays as a "drama school" is but a single class (organized as a studio) within an extra-curricular education institution that also has various other classes, and that offers children cultural activities and studies.<sup>112</sup> The class was closed after the teacher in charge, Ms Petrova, voluntarily resigned from her position for reasons unconnected to Ukraine's contentions.<sup>113</sup> The education institution confirmed being unaware of any pressures or conflicts between Ms Petrova and co-workers or the

<sup>&</sup>lt;sup>107</sup> *Ibid.*, paras. 7-8, paras. 25-29 and pictures 3-4.

<sup>&</sup>lt;sup>108</sup> Permanent Delegation of the Russian Federation to UNESCO, Information on the situation in the Republic of Crimea (the Russian Federation) within the scope of UNESCO competence, as of 8 April 2015, 14 April 2015 (Annex 458).

<sup>&</sup>lt;sup>109</sup> This is also confirmed by Ukraine's own records: Hromadske International, The True Cost of Remaining Ukrainian in Crimea, 2 April 2018 (Annex 1076 to MU), p. 13: commenting on the works, the museum staff indicated that "there was a shortage of funds back when Ukraine controlled Crimea."

<sup>&</sup>lt;sup>110</sup> Witness statement of (Annex 14), paras. 22-25, and in particular paras. 23-24 and Annexes referred to.

<sup>&</sup>lt;sup>111</sup> *Ibid.*, para. 26.

<sup>&</sup>lt;sup>112</sup> State Budgetary Educational Institution of Supplementary Education of the Republic of Crimea "Palace of Child and Youth Creativity", Letter No. 01-01-20/170, 5 April 2021 (Annex 644), p. 1.

<sup>&</sup>lt;sup>113</sup> *Ibid.*, p. 1.

Institution prior to her resignation, including in respect to the staging of the Amazon's song.<sup>114</sup> As each teacher is responsible for defining his or her own teaching and activity program within his or her class, the program that had been carried out by the resigning teacher naturally ceased to be taught. However, children from the closing class were offered to be transferred to other classes within the institution based on their parents' choice, including to a drama class that offers study of works and stage performances in Ukrainian.<sup>115</sup> The Institution offers a wide range of such activities, including relating to Ukrainian and Crimean Tatar culture.<sup>116</sup> Thus Ukraine's contention that the studio "was forced to shut down after local officials accused the school of promoting Ukrainian nationalism and western symbols"<sup>117</sup> and its claim that there is a causal link between the studio's closure and the children's play that attracted the authorities' attention is nothing more than speculation.

#### E. OTHER UNSPECIFIED ALLEGATIONS

41. As for the alleged fear of Crimean Ukrainians to express themselves culturally and in particular to speak in Ukrainian, Ukraine's quote it out of point.<sup>118</sup> Unsurprisingly this quote is chosen from a notoriously anti-Russian media outlet that surfed on the wave of social unrest in Ukraine to increase the number of its followers when it started its activities at the end of 2013, and which is primarily targeted at a pro-Maidan audience. As the article shows, it is a typical example of systematic Russian bashing. The quote itself is taken by Ukraine out of its original context. It relates specifically to conversations between journalists as part of the investigation, not to "Ukrainians in Crimea" in general or to a wider context. Moreover, the quoted passage of the article expresses subjective feelings of unidentified individuals; it is literally a hearsay. Finally, in any event, it makes allegations relating to the social climate, not the authorities' conduct. In fact, such negative portraying of an alleged general fear affecting the wider society is groundless and belied by other sources. For example, in her witness statement, an ethnic Ukrainian who lives in Crimea and who has a solid knowledge of Crimean realities in the Ukrainian culture and civil society domains, illustrates the freedom of ethnic Ukrainians to maintain and share their culture within the community, and the existence of successful and flourishing civil society initiatives to promote and preserve Ukrainian culture.<sup>119</sup> Another Crimean resident

<sup>&</sup>lt;sup>114</sup> *Ibid*.

<sup>&</sup>lt;sup>115</sup> *Ibid.*, p. 2.

<sup>&</sup>lt;sup>116</sup> *Ibid.*, commenting on the educational programme of the drama studio "Malvy", where students of the drama studio "Svitanok" were offered to be transferred; see also pp. 2-4, commenting other educational programmes realised in the institution, which include a regional component and are focused on the study of ethnic aspects of the multi-ethnic and polylingual and cultural Crimea.

<sup>&</sup>lt;sup>117</sup> MU, para. 530.

<sup>&</sup>lt;sup>118</sup> MU, para. 531, quoting Hromadske International, The True Cost of Remaining Ukrainian in Crimea, 2 April 2018 (Annex 1076 to MU), p. 10. In footnote 1120 of its Memorial, Ukraine erroneously refers to Annex 1075.

<sup>&</sup>lt;sup>119</sup> Witness Statement of Annex 16), paras. 6-11 and 19-23. Ukrainian cultural events she refers to include for example the annual festival of Ukrainian culture "Obzhinki", among others (paras. 10 and 19; see also Russian Community of Crimea official website, "Festival of Ukrainian Culture 'Obzhinki – 2017' took place in

an ethnic Ukrainian, who writes poems in Ukrainian language that are being published with support from the Crimean authorities, confirms that she has never seen any pressure on the Ukrainian identity in Crimea since 2014 and that in her region where she has been living almost all her life local people (both ethnic Ukrainians and Russians) speak Ukrainian unimpededly and feel free to explore and practice Ukrainian culture.<sup>120</sup>

42. There are other examples. A Youth Centre of multi-ethnic culture is being constructed as part of the federal program.<sup>121</sup> The Centre is planned to be an international scientific, cultural, and educational platform for students. The complex should consist of living facilities, sports forum, classes for workshops and a library. The Centre will operate under the auspices of the Crimean Engineering and Pedagogical University in Simferopol. Additionally, and generally speaking, for the past seven years hundreds of ethnic and cultural events have been held in Crimea on an annual basis, among them art and musical contests, festivals, concerts, religious holidays and remembrance days aimed at the preservation, multiplication, popularization of the cultural heritage of the Crimean Tatar and Ukrainian peoples.<sup>122</sup> Initiatives to support Ukrainian culture in Crimea are also recorded .<sup>123</sup> The State-funded Gasprinsky Media Centre, established by and by the State Committee on Inter-ethnic Relations of the Republic of Crimea in 2015, carries out the publication of books, newspapers and journals in native languages, including in Ukrainian and Crimean Tatar<sup>124</sup>. Within the framework of the implementation of the state nationality policy in the field of inter-ethnic and inter-confessional relations the Gasprinsky Media Centre has published

Crimea", 28 August 2017 (Annex 989); *Pereyaslavska Rada 2.0*, "Annual Festival of Ukrainian culture 'Obzhinki-2019' was held in Simferopol", 2 September 2019 (Annex 1008)).

<sup>120</sup> Witness Statement of (Annex 18), para. 3.

<sup>121</sup> Witness Statement of (Annex 8), para. 29.

<sup>122</sup> Council of Ministers of the Republic of Crimea, Information note on measures taken to implement the Decree No. 268 of the President of the Russian Federation and other activities aimed at promoting cultures of Ukrainian and Crimean Tatar peoples, as attached to the Letter No. 1/01-46/8775/3/1, 5 June 2020 (Annex 498); Table of some cultural events held in the Republic of Crimea as part of the work to promote, develop and preserve the Crimean Tatar and Ukrainian cultures for 2014-2021 (Annex 501); Witness Statement of (Annex 8), paras. 24-27; Witness Statement of (Annex 18), paras. 4, 6 and 11-12.

<sup>123</sup> Witness Statement of (Annex 16), among others paras. 6-11; Witness Statement of (Annex 18), paras. 4, 6-7, and 11-14.

<sup>&</sup>lt;sup>124</sup> Songs Embroidered with Threads: Album of Embroidery and Patterns of Vera Roik, compiled by Vadim Roik, Gasprinsky Media Centre, Simferopol, 2018 (Annex 1077); N. Ryndich, Lines like the Patterns of an Embroidered Towel: Poems, Songs, Dedications, Gasprinsky Media Centre, Simferopol, 2020 (Annex 1111); Krym syogodni, No. 1 (4), 2021 (Annex 1163); Krymskiy visnik, No. 1, 2020 (Annex 1118); Yildiz, No. 1 (259), 2021 (Annex 1153); Arzy, No. 15-16, 2020 (Annex 1116); Cherkez-Ali, Selected works, compiled by R. Ametov, Gasprinsky Media Centre, Simferopol, 2020 (Annex 1119); Rustem Muedin, Asanchik and Kashkachik, Gasprinsky Media Centre, Simferopol, 2019 (Annex 1098); A. Veliev, Crimean Tatar Women in the Great Patriotic War, Crimean Tatars in World War II, Vol. IV, Gasprinsky Media Centre, Simferopol, 2020 (Annex 1120); A.M. Chergeev, A.A. Chergeev, What the Animals are Talking about, Gasprinsky Media Centre, Simferopol, 2020 (Annex 1121); Blissful Peace. Works of M. Voloshin, compiled by H. Kadymova, Gasprinsky Media Centre, Simferopol, 2020 (Annex 1122); Crimean Tatar-Russian Dictionary, B. Terlekchi, Gasprinsky Media Centre, Simferopol, 2020 (Annex 1126).

literature on the peoples of Crimea, history, nature and architecture of the peninsula.<sup>125</sup> It confirms that Ukraine's allegation that "[t]he stigmatization of the Ukrainian language and speakers of it indicates the extreme pressure that Ukrainian identity is under in Crimea as a result of the Russian Federation's discriminatory policies"<sup>126</sup> is unfounded.

<sup>&</sup>lt;sup>125</sup> Peoples of Crimea. Photo Album, Salta, Simferopol, 2016 (Annex 1056); History of National Organisations of Crimea, compiled by B.S. Balayan, Global series: Nationals and times, Vol. X, Simferopol, 2020 (Annex 1125); Crimean Album. Photo project "We love Crimea", Salta, Simferopol, 2019 (Annex 1095).

<sup>&</sup>lt;sup>126</sup> MU, para. 532.

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