

CRIMEAN PROCESS



PROBLEMS OF COMPLIANCE WITH FAIR JUSTICE STANDARDS IN POLITICALLY MOTIVATED CASES



2018-2021

CONTENT

Introduction	3
Methodology	5
Case review. 2018	10
Case review. Case of Ukrainian Seamen	11
Case review. Case of lawyer Emil' Kurbedinov	17
Case review. 2019	21
Case review. Case of Dilyaver Gafarov	22
Case review. Case of Oleg Prihod`ko	25
Case review. Case of the 'Vedzhie Kashka' group	30
Case review. 2020	36
Case review. Case of Artem Gerasimov	37
Case review. Case of Yunus Masharipov	40
Case review. Case of Lenur islyamov	45
Case review. 2021	49
Case review. Case of Refat Chubarov	50
Case review. Case of Edem Bekirov	56
Case review. Case of Ivan Yatskin	60
Conclusions	62
Recommendations For Ukraine	72
Recommendations For global community, civil society	73
List of sources	74

INTRODUCTION

The following report was prepared by an expert group on the analysis of monitoring separate trials in Crimea between 2018 and 2021. The subjects of the monitoring process were the cases that show signs of politically motivated persecutions of a person or a group of people. Since late February, 2014, part of Ukrainian territory – the Autonomous Republic of Crimea and the city of Sevastopol - have been occupied by the military forces of the Russian Federation. Thereafter, in late March, 2014, Federal Constitutional Law №61 and changes in Art. 65 part 1 of the Constitution of Russia were adopted according to which Russia proclaimed Crimea part of its territory. Since the time mentioned, the Russian Federation has performed factual control over the territory of the peninsula where bodies of power that act on behalf of the Russian Federation were established. Since March 18, 2014, the legislation of Ukraine in the occupied Crimea has been completely replaced by the legislation of the Russian Federation. Since the time stated, criminal legislation and criminal procedure legislation of the Russian Federation started to be applied during consideration of criminal cases, and since May 5, 2014, the criminal law has acquired retroactive effect, therefore the Criminal Code of the Russian Federation started to be applied also on actions committed before the occupation had taken place.

The stated actions of the Russian Federation were recognized, both internationally and by Ukraine, as the occupation by the Crimean

peninsula. Accordingly, Russia bears responsibility for the adherence to human rights on this territory, and also it incurs a number of obligations and restrictions provided by the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949.

In numerous reports by human rights defending organizations, resolutions and presentations by international and intergovernmental organizations, systematic deterioration of the human rights situation on the occupied peninsula has been noted since 2014. Complete absence of access to Crimea for international missions monitoring the situation with the state in the realm of human rights and impossibility of work for non-governmental human rights defending organizations aggravate the situation and prevent from the protection of persons and groups of people from severe human rights violations in Crimea.

Judicial system and fair justice play the key role in the support of democracy standards. In connection with this, the adherence to the standards of fair justice, especially in cases on persecution of dissent (in politically motivated and religious cases) is an important indicator of the human rights situation on the occupied peninsula and a clear demonstration of repression policy that the occupational bodies of power have prioritized and actively used.

Undoubtedly, the fact of non-recognition of the status of Crimea as occupied territory by the Russian Federation and enforcement of its legislation there create many challenges before explorers and international law in general during

INTRODUCTION

research about the adherence to the standards of fair justice in the conditions of the armed conflict. However, the situation of virtually complete absence of systemic research in the realm of human rights in general and studies of various aspects of functioning of the Crimean judicial system after 2014 in particular indicates the need for regular conducting of such research with the consideration of actual circumstances that have been developed on the peninsula at the present time.

The report is the second work in this regard. It applies to the systemic analysis of separate aspects of functioning of the Russia-controlled judicial system in Crimea and adherence to a number of standards of fair justice and is a continuation of the research which was started in 2016 and based on the results of long-term and comprehensive monitoring of trials on separate politically motivated cases, grounded in direct observations.

THE TASK of the report was not only to determine the degree of compliance with international standards of fair justice of trials in Crimea but also to investigate the specificity of administration of justice in the conditions of the armed conflict and occupation, particularly on the example of politically motivated cases. One of the key research issues questioned if the judicial system established in the conditions of the occupation of Crimea provides protection from illegal politically motivated persecutions of persons or groups of people and from the suppression of human rights and freedoms in Crimea.

THE SUBJECTS of the monitoring process and the following analysis were twelve court cases based on the fact of politically (and also religiously) motivated persecutions in Crimea. Some cases connected with the persecution of lawyers, social activists with clearly expressed political views, religious activists, leaders of the Mejlis of Crimean Tatar People, participants of the civil blockade of Crimea and also the cases the true purpose of which was politically motivated and did not correspond with the publicly stated purpose, were included proportionally.

The terminology, concepts and definitions used in the documents of international organizations (UNO, Council of Europe, OSCE) and also terminology and names of authorities adopted in Crimea since March, 2014, were used to support the aims of the report. In connection with factual enforcement of the Russian legislation on the territory of Crimea since the spring of 2014, the cases that were in the focus of the monitoring and research process, were qualified and observed by courts within the Russian legislation framework.

The report DOES NOT ASSESS the political situation on the peninsula. The analysis is based on the principles and standards of international law. The report continues work on observation and analysis of the situation with politically motivated cases in Crimea and also with legal proceedings on such cases. The document is thematically connected with the first part of the 'Crimean process: problems with adherence to standards of fair justice in politically motivated cases' report.¹

¹ <https://crimean-process.org/krymskij-procress-problemy-soblyudeniya-standartov-spravedlivogo-pravosudiya-v-politicheski-motivirovannyh-delah-s-2016-po-2018-gg/>

METHODOLOGY

The report is designed for representatives of public authorities, media, general public, and international structures and non-governmental organizations. It can be useful for the comprehension of the judicial system working process in the conditions of the occupation of Crimea, and also during the analysis and study of the situation on concrete politically motivated cases. In particular, the report can be used by lawyers and victims of human rights violations during work with national courts and law-enforcement agencies, with the European Court of Human Rights and other mechanisms of human rights protection.

THE AIM:

The aim of the following research was to identify and present the degree of compliance of trials in Crimea with international standards of fair justice, and also to show possible specific violations of the standards in the conditions of the armed conflict and occupation, in particular, using the example of politically motivated proceedings in Crimea.

THE MAIN TASKS:

The main tasks were:

- 1) to collect and analyze the amount of materials which were received on the basis of the results of a monitoring process of trials on fourteen politically motivated cases in Crimea;
- 2) to assess:
 - adherence to standards of fair trial during court observation of eleven politically motivated criminal cases;

- the level of ensuring protection by the judicial system created in the conditions of the occupation of Crimea from illegal politically motivated persecutions of individual residents or groups of residents of Crimea, and also from suppression of rights and freedoms in politically motivated cases.

THE OBJECTS FOR ANALYSIS

The objects for analysis were 11 court proceedings selected with the consideration of criteria that were established during the preparation of the 'Crimean Process: problems of adherence to the standards of fair justice in politically motivated cases' report and with consideration with the experience of OSCE² and OHCHR³ methodologies in the realm of justice monitoring.

CASE SELECTION CRITERIA

1. Cases that correspond with the criteria of politically motivated persecutions. Politically motivated cases for the purposes of the report are defined as cases that correspond with one or several criteria enumerated below:

- cases in which persecution of individuals is carried out with violation of one of basic rights guaranteed by ECHR and its protocols, in particular, freedom of thought, conscience and religion, freedom of speech

²Trial Monitoring. A Reference Manual for Practitioners / Office for Democratic Institutions and Human Rights (ODIHR), 2012

³<https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawVettingen.pdf>

METHODOLOGY

- cases in which persecution of individuals is exercised for purely political reasons with no connection with any offense;
Cases in which persecution of individuals is carried out solely for non-violent activity directed at defending human rights and basic freedoms;
- cases in which, due to political motifs, duration of imprisonment, conditions of detention and penalty measure do not correspond with the degree of offense that the individual is accused or suspected of;
- cases in which persecution of individuals and/or groups of individuals is exercised on the basis of the criminal legislation of the Russian Federation for actions not punishable in Ukraine (for example, accusation of extremism and separatism and persecution of groups of people whose activity is not prohibited in Ukraine);
- cases in which conviction on a charge connected with support (real or imaginary) of Ukraine as a side of the conflict took place with violation of fundamental guarantees of international humanitarian law (regarding provisions of articles 5, 8, 47, 147 of The IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, August 12, 1949).

2. Judicial proceedings on the stage of trial on the merits were held in courts in the territory of Crimea. The exceptions were 2 cases the observation of which was held until the case was transferred to the courts of Russian jurisdiction in the territory of Russia (1 case in point regarding the persecution of a political activist and the case against the captured Ukrainian seamen);

3. The criminal proceedings lasted from November, 2018 until December, 2021;

4. Information is available on the results of attendance of at least 30% from the total number of hearings of the case;

Enough information and materials have been collected for further analysis of each case.

LIST OF CASES

In correspondence with the above stated criteria the following cases were selected:

- case of Ivan Yatskin (on the criterion: trial on charges of supporting Ukraine was held with the violation of fundamental guarantees of international humanitarian law);
- case of Refat Chubarov (on the criteria: a) persecution of individuals is exercised with violation of one of basic rights guaranteed by ECHR and its protocols, in particular freedom of speech and information, and freedom of assembly and association; b) persecution of individuals is carried out on purely political reasons with no connection with any offense);
- case of Edem Bekirov (on the criterion: persecution of individuals is carried out due to purely political reasons with no connection with any offense);
- case of Lenur Islyamov (on the criterion: persecution of individuals is exercised due to purely political reasons with no connection with any offense);
- case of Yunus Masharipov (on the criterion: persecution of individuals is held solely for non-violent activity aimed

METHODOLOGY

at defending human rights and basic freedoms);

- case of Artyom Gerasimov (on the criteria: a) persecution of individuals is carried out with violation of one of basic rights guaranteed by ECHR and its protocols, in particular freedom of thought, conscience and religion; b) persecution of individuals in Crimea is exercised on the basis of criminal legislation of the Russian Federation for actions not punishable in Ukraine);
- case of Dilyaver Gafarov (on the criterion: persecution of individuals is carried out due to purely political reasons with no connection with any offense);
- case of the 'Vedzhiye Kashka' group (on the criterion: persecution of individuals is exercised due to purely political reasons with no connection with any offense);
- case of Emil' Kurbedinov⁴ (on the criteria: a) persecution of individuals is carried out with violation of one of basic rights guaranteed by ECHR and its protocols, in particular freedom of thought, conscience and religion, and freedom of speech and information; b) persecution of individuals is exercised solely for non-violent activity aimed at defending human rights and basic freedoms; c) persecution of individuals and/or groups of individuals in Crimea is carried out on the basis of criminal legislation of the Russian Federation for actions not punishable in Ukraine (for example, accusations of extremism and separatism, and persecution of groups of people whose activity is not prohibited in Ukraine).

In correspondence with the criteria stated above, with the exception of the point about the trial on the merits in a court in the territory of Crimea, the following cases were selected:

- case of Oleg Prihod'ko (on the criterion: persecution of individuals is carried out due to purely political reasons with no connection with any offense);
- case of Ukrainian seamen (on the criterion: persecution of individuals is exercised due to purely political reasons with no connection with any offense).

DATA COLLECTION

Work on collection and systematization of relevant information about the selected trials was performed from the following public sources:

1. Materials on court monitoring by the 'Crimean Process' initiative group. The monitoring materials were collected on the basis of trial monitoring questionnaires during their direct visiting. The questionnaire developed with the consideration of OSCE approaches, consisted of more than 40 questions about various aspects of fair trials. Answers to the questions served as the primary material for the systematization of the presented trial monitoring processes. In total, the group of experts analyzed the monitoring results received during 280 trials in 10 Crimean courts.

2. The results of interviews and written explanations. Interviews with

⁴ we are talking about an administrative offense related to deprivation of liberty, which, according to the position of the Constitutional Court of the Russian Federation, is "comparable to measures of criminal law influence", <http://sutyajnik.ru/documents/4788.pdf>

METHODOLOGY

the direct monitors and participants of trials were conducted orally and in writing. Data collection was held by experienced interviewers and journalists in accordance with the principles of fact collection.⁵

3. Analysis of audio, video and photo materials. Information was collected from available sources: different media, private archives.

4. The results of online publications and printed materials analysis. Search of publications connected with coverage of trials on 11 cases published in Crimean and Russian media, information agencies, online editions, on websites of TV-channels was conducted (more than 300 materials in 52 sources).

5. Other sources of information, including documents of international structures, information from the authorities of Ukraine, Russia and Russia-controlled Crimean authorities.

DATA ANALYSIS

The group of experts used multi-stage analysis of the amount of information available in their work. The collected information and facts were systematized and analyzed with the aim of forming a true picture of adherence to separate standards of fair justice in 11 trials in Crimea, for confirmation or refutation of hypotheses or conclusions.

⁵ Guidelines on International Human Rights Fact-Finding Visits and Reports by Non-Governmental Organisations https://www.ibanet.org/Fact_Finding_Guidelines.aspx

METHODS AND TYPES OF ANALYSIS

1. Systematization of questionnaires on monitoring during trials, structuring of information received from monitoring questionnaires on four separate standards of fair trial:

- trial by an independent and impartial court;
- public hearing;
- equality of the parties;
- presumption of innocence.

The stated standards were selected based on their significance for the implementation of fair justice and the completeness of the information collected by the group. With this, problems with adherence to other standards of justice in the cases selected for the research are not excluded.

2. The analysis of complete amount of the structured information regarding a number of violations of fair justice standards in general and for each case in particular.

3. Content analysis of data from media and other collected sources dedicated to coverage of the cases selected for the analysis.

4. Assessment of actions and behaviour of the representatives of Russia-controlled judicial bodies of Crimea regarding adherence to the standards of fair trial and possible influence of other circumstances, statements and actions of the authorities on the course of the trial.

METHODOLOGY

5. The comparative analysis of the results of trial monitoring and additionally collected information about the course of the trials regarding their correspondence with international law and human rights standards.

THE FOLLOWING WAS NOT ANALYZED

- evidence of the parties, grounds of the charge and the verdicts upheld;
- procedural violations of the Russian Federation legislation;
- standards of access to fair justice, except 4, that were included in the research focus;
- other violations of human rights and international law.

CASE REVIEW. 2018



COURT TRIAL IN THE CASE OF THE UKRAINIAN SEAMEN, PHOTO: CRIMEAN PROCESS

The main part of politically motivated cases of 2018 being of interest from the point of view of trial organization according to the standards of access to fair justice was presented in the first part of the research. However, the decision to address this period again was prompted by the presence of two important trials that were held in the territory of Crimea after the preparation and publication of the first part of the research. We are talking about a trial against famous Crimean Tatar lawyer and human rights defender Emil' Kurbedinov and about the case of 'Ukrainian seamen' which was selected due to the reason of its extreme importance not only in the region but in fact in the global political agenda because it concerned the legitimization of the Russian actions in the occupation of the Azov Sea water area.

The case described is not of complete correspondence with all the criteria of the methodology mentioned above, insofar as the factual trial on the merits did not take place due to the exchange of all the seamen with Russian citizens on September 7, 2019. At the same time, we considered it important to assess the level of Crimean courts' approach to the issue of the election of the restraint measure according to the criminal legislation of Russia for the 24 military officers whom the authorities refused to recognize as prisoners of war.

CASE REVIEW. CASE OF UKRAINIAN SEAMEN

DESCRIPTION OF EVENTS

On the day of November 25, 2018, to the south of the 'Crimean Bridge' a ship of the Russian Navy rammed the Ukrainian tugboat 'Yany Kapu', which, along with small armoured boats 'Berdyansk' and 'Nikopol', was following from Odessa to Mariupol. The occupants did not allow the navy group to the Sea of Azov, and in the evening, when the group reversed course, they attacked the group with hostile fire at the exit of the Kerch Strait in approximately 25 km from the coast of Crimea. From three to six seamen were wounded, according to various estimates. Afterwards, the ships were seized by border units of the Russian military, all the crew members were detained.

According to the statements of the Russian authorities, the Ukrainian ships ignored multiple demands of Russian border guards when approaching the Kerch Strait, violated the procedure of the passage through the Strait, conducted dangerous maneuvering and did not make contact. The Ukrainian authorities claim that the notification about the passage through the Strait was filed in advance. Ukraine also refers to the freedom of navigation for Ukrainian ships in the Strait provided by the Agreement of 2003 between the Russian Federation and Ukraine about cooperation in the use of the Sea of Azov and the Kerch Strait and does not recognize the belonging of the territorial waters at the coast of Crimea to Russia. The conflict became the demonstration from the Russia's side of the fact that it considers the Sea of Azov exclusively its inland sea and the passage to the sea as its state border. In connection with this, all the detained Ukrainian seamen were charged with attempts to commit a crime

stated in Art. 322 of Russian Criminal Code - 'Illegally crossing the state border of the Russian Federation', which also had a symbolic nature for the external politics of Russia.



FSB convoy leading one of the Ukrainian seamen into the court, photo: pravda.com.ua

DEFENDANTS:

1. Sergey Tsybizov
2. Vladimir Voromez
3. Andrey Oprysko
4. Victor Beshpal'chenko
5. Yuri Budzylko
6. Vladimir Tereshchenko
7. Sergey Popov
8. Sergey Chuliba
9. Vladislav Kostyshyn
10. Mikhail Vlasyluk
11. Bogdan Golovash
12. Roman Mokryak
13. Andrey Eyder
14. Andrey Artyemenko
15. Vasiliy Soroka
16. Andrey Drach
17. Vladimir Lisovoy
18. Vyacheslav Zinchenko
19. Andrey Shevchenko
20. Yevgeniy Semidotsky
21. Yuri Bezyazychny
22. Bogdan Nebylitsa
23. Denis Gritsenko
24. Oleg Melnichuk

CASE REVIEW. CASE OF UKRAINIAN SEAMEN

THE COURT PROCEEDINGS

Court of First Instance:

Kievsky district court of Simferopol/Kerch city court

Judges:

Belousov Mikhail Nikolaevich, Dolgoplov Andrei Nikolaevich, Mozhelyansky Victor Anatolyevich/Zakharova Ekaterina Pavlovna

Prosecutors:

unknown

Lawyers:

Polozov Nikolai, Kurbedinov Emil, Ladin Aleksei, Mambetov Mambet, Semedlyayev Edem, Zheleznyak Oksana, Lesovoy Aleksandr, Omelchenko Taras, Avamileva Emine and others

Dates:

27-28 November 2018

Results of Hearings:

in all cases the court elected a measure of restraint in the form of detention until 25 January 2019

Court of Appeal:

Supreme Court of the Republic of Crimea

Judges:

Ovchinnikova Alla Yuryevna, Paliy Andrei Yuryevich, Rubanov Sergei Georgievich, Red'ko Galina Vladimirovna, Pogrebnyak Sergei Nikolaevich, Posledov Aleksei Yuryevich, Mel'nik Tatyana Aleksandrovna, Kryuchkov Igor' Igorevich

Prosecutors:

Ametova D. S., Gorb Bogdan, Novoselchuk S. I., Petrikovskaya N. V., Turobova A. S.

Lawyers:

Polozov Nikolai, Kurbedinov Emil, Ladin Aleksei, Mambetov Mambet, Semedlyayev Edem, Zheleznyak Oksana, Lesovoy Aleksandr, Omelchenko Taras, Avamileva Emine and others

Dates:

19-26 December 2018

Results of Hearings:

amendments were made into the order of the Court of First Instance in response to all complaints – the period under custody was shortened to 24 January 2019



Prior to the trial regarding first mate Vyacheslav Zinchenko, photo: smotrim.ru/

The main violations of separate standards of fair justice:

CASE REVIEW. CASE OF UKRAINIAN SEAMEN

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. Cases in the first instance were observed by former Ukrainian judges who later swore allegiance to Russia, in connection with which the Prosecutor General of Ukraine's Office started criminal proceedings against them according to Art. 111 'High Treason'. In such circumstances, impartiality of the court towards military officers of Ukraine including those who did not break the oath in 2014 causes obvious doubts.

2. Appeals against orders issued were observed by 8 judges, 4 of whom are former Ukrainian judges who later swore allegiance to Russia, in connection with which the Prosecutor General of Ukraine's Office started criminal proceedings against them according to Art. 111 'High Treason'. In such circumstances, impartiality of the court towards military officers of Ukraine including those who did not break the oath in 2014 causes obvious doubts. 4 other judges had arrived in Crimea from different regions of Russia, ignoring the norms of international law about participation in transfer of proceedings in the occupied territory. In such circumstances, and with consideration of career growth of Russian judges seconded to Crimea, the judge's independence and impartiality cause doubt.

3. At least in 4 hearings, during observation of appeals by judge Sergei Rubanov, the judge's biased and prejudiced attitude was noted during the hearings. For example, on December 21, 2018 during observation of complaint about Vladislav Kostyshyn's arrest,

who is a seaman of the Naval Forces of Ukraine, Sergei Rubanov regularly raised his voice at the defendant and the lawyer, asked irrelevant rhetoric questions, made groundless assumptions about the level of Russian language fluency, admitted that during the case observation he 'got carried away at times'. In other cases that this judge had observed, also some signs of his negative attitude were noticed, especially after applications about classification of the arrested persons as prisoners of war were presented. The judge reacted anxiously, he demanded in a raised voice to inform him 'Where's the war?' 'Who declared war to whom?' and 'Who are you going to fight with?'

PUBLIC PROCEEDINGS

1. All the court sessions on election of restraint measure for the seamen of the Naval Forces of Ukraine took place in restrictive permit regime in Kievsky district court in Simferopol. Only representatives of media accredited in the court were allowed to enter, in two cases – because of defense motion and defendants' relatives. Further analysis of photo materials and questioning of the lawyers showed that the courtroom contained enough seats to place part of the viewers who wanted to participate in the observation of the court proceedings.

2. Information about all the hearings and election of the restraint measure for the seamen of the Naval Forces of Ukraine in Kievsky district court of Simferopol was absent on the official website of the court, and it was not further shown what

CASE REVIEW. CASE OF UKRAINIAN SEAMEN

decisions were made, and the contents of the decisions were not published.

3. 5 out of 20 court decisions on appeals about election of restraint measure for the seamen of the Naval Forces of Ukraine were not posted on the official website of the court. At the same time, it is noteworthy that all the court hearings on appeal observation were open to the public.

EQUALITY OF THE PARTIES

1. In all 20 cases of appeal observations, non-compliance with the standard of the defendant's personal participation in the proceedings was recorded

- observation of appeals took place with the absence of the accused persons, their participation was provided through videoconferencing. Although the practice of the European court allows such an approach during observation of proceedings in a court of second instance, we consider it important to note that defense is often disadvantaged, insofar as defenders were prevented from effective and confidential communication with their defendants during the proceedings in some cases.

2. In at least 2 cases the court refused to provide an interpreter for the Ukrainian citizens (on December 19 during observation of Vladimir Varimez's complaint and on December 20 during observation of Vladislav Kostyshyn's complaint). In another case, an interpreter was called not by the defense appeal but for the judge because the defendant refused to testify in a different language rather than Ukrainian. During the

hearings, the interpreter received repeated remarks and refusal translation of the defendant's answers not in full. So, the absence of translation disadvantaged one of the parties significantly.⁶

3. On December 20, during observation of appeal against Bogdan Golovash, judge Sergei Rubanov refused to grant the application in which it was asked to allow the defendant to study the case file, which was motivated by stressful conditions in which the defendant did not remember the contents of the charge brought against him. This points at the violation of standards of adversary of the parties that, according to the ECHR ideas, includes a balanced opportunity for the parties to study all the presented evidence.



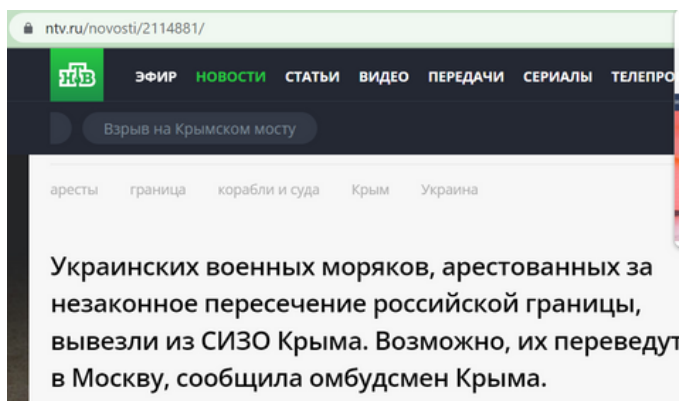
A picket in front of the court during consideration of the case of the Ukrainian seamen, photo: Crimean Process

⁶ https://www.echr.coe.int/Documents/Guide_Art_6_criminal_RUS.pdf

CASE REVIEW. CASE OF UKRAINIAN SEAMEN

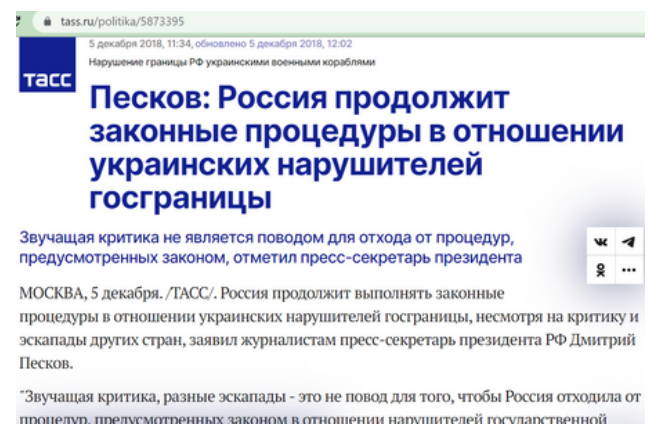
PRESUMPTION OF INNOCENCE

1. One must differ significantly between a claim that someone is just suspected of committing a crime and a clear statement made in the absence of forced verdict about the fact that a person committed the crime observed.⁷ The case against the seamen of the Naval Forces of Ukraine detained in the Kerch Strait, as it was already stated above, had a geopolitical context, so the election of restraint measure for the people involved in the incident was fraught with multiple informational performances. As part of the study, at least 25 publications were found that violated the principle of unacceptability of a statement about crimes before the court decision comes into force. For example, a message was posted on the NTV TV-channel with the following words in the subheading, 'The Ukrainian military seamen arrested for the illegal crossing of the Russian border were taken out from the Crimean detention unit.'⁸ It is noteworthy that only the beginning of the publication speaks about it as fact, and at the end it is said that the seamen were only presented a suspicion in commitment of such a crime.



Arrested Ukrainian seamen taken out of Crimea: The Ukrainian seamen arrested for the illegal crossing of the Russian border were taken out from the Crimean detention unit

Paragraph 2 of article 6 of ECHR prohibits claims of state officials about unfinished investigations of criminal cases, which support the public opinion about the accused person's guilt and do not predetermine the evaluation of the facts by a competent judicial body.⁹ Election of restraint measure for the seamen was accompanied by a big number of commentaries from officials of various kind, including presidents of different countries. In some cases their actions were mentioned as a crime, however, in fact, an investigation of criminal cases had not started at that moment. As part of the research, at least 20 claims of such nature were recorded. For instance, Dmitriy Peskov, press-secretary of president of Russia, stated on December 5, 2018 that 'Russia will continue to perform legal procedures regarding the Ukrainian *trespassers of the state border*'.¹⁰



Peskov, 'Russia to continue legal procedures regarding Ukrainian trespassers'

2. An unrestrained media campaign can have a negative impact on the fairness of a trial, influencing public opinion and encouraging the court to making certain decisions. As part of the research, 11 materials with the use of hatespeech and

⁷ Case "Ismoilov and Others v. Russia" (<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-86086%22%5D%7D>)

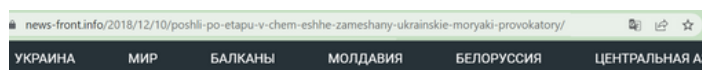
⁸ <https://www.ntv.ru/novosti/2114881/>

⁹ Case "Butkevicius v. Lithuania" (<https://hudoc.echr.coe.int>)

¹⁰ <https://tass.ru/politika/5873395>

CASE REVIEW. CASE OF UKRAINIAN SEAMEN

other manipulative technologies towards the suspected seamen of the Ukrainian Naval Forces were found. For example, on December 10, 2018 one of media resources used the expression 'they went under police escort' relevant for convicts sent to serve their sentence, called the people involved in the incident provocateurs and conveyed unverified opinion that the defendants might be involved in torturing as reliable information.¹¹



Пошли по этапу: в чем еще замешаны украинские моряки-provokatory?

10.12.2018 12:09 Поделиться

Московский адвокат Дмитрий Аграновский призвал правоохранительные органы Российской Федерации начать тщательную проверку информации о том, что среди украинских моряков, которые были задержаны погранслужбой ФСБ России в Керченском проливе, были люди, причастные к пыткам.

Conveyed under guard: what else are the Ukrainian seamen provocateurs involved in?



Keeping the Ukrainian seamen in a cage during the trial, photo: Crimean Process

3. The analysis of photos freely available and the questioning of the lawyers who were defenders in the court of the first instance showed that all the Ukrainian seamen were delivered to the court under guard, in handcuffs, and during the court hearings they were kept in a glass cage. For defendants, being in a glass cage forms the image of a guilty person, and spreading such photos in the media aggravates the impression that the person is guilty.

¹¹ <https://news-front.info/2018/12/10/poshli-po-etapu-v-chem-eshhe-zameshany-ukrainskie-moryaki-provokatory/>

CASE REVIEW. CASE OF LAWYER EMIL' KURBEDINOV

DESCRIPTION OF EVENTS

Crimean Tatar lawyer and human rights defender Emil' Kurbedinov repeatedly acted as a defender of Crimean Muslims who are subject to systemic repressions, he publicly claimed about tortures and falsifications in criminal cases done by investigating authorities.

In January 2017, Kurbedinov was detained on the charge of demonstrating symbolics forbidden in the Russian Federation. It was spoken about publication of a news item of 2013 in which a flag of the 'Hizb ut-Tahrir Islamic religious party on the lawyer's social media page. The court found him guilty in the administrative offense and elected restraint measure in the form of 10-day arrest.

Subsequently, this persecution served as one of the reasons why Kurbedinov was awarded with Front Line Defenders Prize for human rights defenders at risk. On December 6, 2018 Kurbedinov was re-detained on the suspicion of committing a similar offense. For the same post this time, but on different social media.

The case was taken for observation due to strong political motif of persecution and pressure on the human rights defending community, and also considering the fact that although persecution in the frame of administrative offense code is spoken about in this case, because of possibility of application of a sanction connected with imprisonment, it is comparable to measures of criminal effect.

THE COURT PROCEEDINGS

Court of First Instance:

Kievsky district court of Simferopol

Judges:

Tsykurenko Anton Sergeyevich

Prosecutors:

absent (since the case is within Administrative Offense Code)

Lawyers:

Temishev Dzhemil', Ladin Aleksei, Mambetov Mambet, Semedlyayev Edem, Velilyayev Islyam, Avamileva Emine, Kyamilev Rustem and others

Dates:

06-07 December 2018

Results of Hearings:

5 days of arrest

Court of Appeal:

Supreme Court of the Republic of Crimea

Judges:

Timoshenko Ekaterina Grigoryevna

Prosecutors:

absent (since the case is within Administrative Offense Code)

Lawyers:

Gemedzhi Lilya Ibragimovna, Temishev Dzhemil' Musayevich and Ladin Aleksei Aleksandrovich

Dates:

12 December 2018

Results of Hearings:

Left without change

CASE REVIEW. CASE OF LAWYER EMIL' KURBEDINOV

The main violations of separate standards of fair justice:

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. The case in the first instance was observed by judge Anton Tsykurenko who is a former Ukrainian judge that swore allegiance to Russia. In connection with this, the Ukrainian Prosecutor General's Office initiated criminal proceedings against him according to art. 111 'High Treason'. In such circumstances, the judge's impartiality towards the lawyer who defended inter alia the Ukrainian seamen and persons who had called for the deoccupation of Crimea, raises certain doubts.

2. The case in the court of appeal was observed by judge Ekaterina Timoshenko who is a former Ukrainian judge that swore allegiance to Russia. In connection with this, the Ukrainian Prosecutor General's Office initiated criminal proceedings against her according to art. 111 'High Treason'. In such circumstances, the judge's impartiality towards the lawyer who defended inter alia the Ukrainian seamen and persons who had called for the de-occupation of Crimea, raises certain doubts.

3. Also some features of the judge's behaviour are noted in the proceedings that can indicate a subjective approach towards the case observation. So, for all the time of the case

observation 5 recusals of the judge were applied for in 1 day and one more recusal was applied for on the following day. All the recusals were connected with the fact that the judge had unreasonably declined the defending party's plea to study or receive evidence in the case. The judge declined the recusals in all the cases. Such a number of recusals in such a short period of time indicates the fact that the court was not able to remove doubt in its impartiality and independence during the case observation process.



Lawyer Emil' Kurbedinov and the people who came to support him, photo: Crimean Process

4. Another revealing moment pointing at possible predestination of the court decision even before retiring to the deliberation room is lawyer Edem Semedlyaev's statement about the fact that on December 7, in the period when the court had just informed about retiring before rendering the judgement, the people who had gathered near the court building heard how the police officers standing in the cordon near the building were saying that everything was already decided about Emil' Kurbedinov and administrative arrest was going to be appointed on him. This circumstance is obliquely confirmed by the fact that at least 20 officers of riot police units had arrived at the court building in complete protective equipment.

CASE REVIEW. CASE OF LAWYER EMIL' KURBEDINOV

PUBLIC PROCEEDINGS

1. Information about the date, time and place of the hearing was not timely presented on the official website of Kievsky district court of Simferopol. Subsequently, examining of the application about early termination of administrative supervision was observed in this court, and the necessary information was not presented on time on the official website of the Kievsky district court of Simferopol again.

2. Information about the date, time and place of the trial hearings was not presented on time on the official website of the Supreme court of Crimea on the day of examining of the application.



Police officers in front of the court during the arrest of Kurbedinov, photo: Crimean Process

3. During preparation for the court proceedings on this case, the bailiffs of Kievsky district court refused to allow journalists into the court building except those who had accreditation in this court (accreditation procedure is absent for public use, which allows to give access only to the media who are loyal to the local authorities, using this tool) on December 6. Subsequently, 3 people were allowed into the building due to the defense appeal.

4. On December 6, a conflict arose at the bailiff post because of a refusal to allow the lawyer for Kurbedinov. One of civil journalists, Nuri Abdurashitov, started filming the situation on his mobile phone but bailiff Aleksandr Kholodkov took the telephone away by force. The civil journalist was detained, he was drafted a protocol for non-fulfillment of the court bailiff's legal requests, however in fact the bailiff did not make any requests but took the telephone away at once. At this, the journalists of Crimean media accredited at the court were freely filming the whole incident.

EQUALITY OF THE PARTIES

1. An obvious imbalance between the parties was the court's refusal to provide adversarial process and call a representative of the state prosecution to participate in the hearings. The court motivated the refusal by the fact that such representative's presence in cases on administrative offense is not compulsory. Along with that, the court took the responsibility to present the case materials from the prosecution party, by which it worsened the defense party's condition.

2. Another apparent violation of standards of equality of parties was the court's actions on transition from the appeals resolution stage to the judicial investigation stage since the moment when the defense finished presentation of the appeals. The court simply ignored the lawyers' objections about having some unresolved appeals at their disposal.

CASE REVIEW. CASE OF LAWYER EMIL' KURBEDINOV

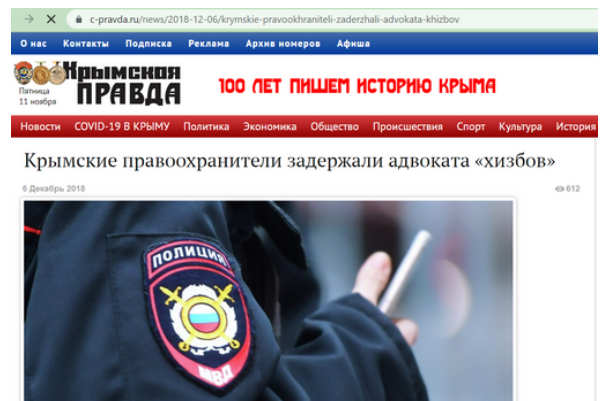
3. The person accused was deprived from the opportunity to question witnesses testifying against him or have the right to have the witnesses questioned. So, on December 6, 2018, the court refused to grant the defense's applications about questioning the witnesses stated in the protocol, about calling a witness - FSB officer Sushko to be questioned, and also questioning of expert Nikiforov who had provided expert opinion on the case.

4. The defense party was prevented from an opportunity to submit independent expertise into evidence and to request the materials of the case on administrative offense against Kurbedinov from a different court. Apart from that, the court deprived the lawyers entering the case of the opportunity to study the case file at least twice. All this points at violation of standards of adversarial parties which, according to the ECHR ideas, must presume a balanced possibility for the parties to study all the presented evidence.

5. It is especially noteworthy that the court demonstrated loyalty towards a person that had written the administrative protocol (a senior official of the Centre for Combatting Extremism – Ruslan Shambazov): the court did not expel him from the courtroom before questioning him as a witness, ignored the application about a person's violation of the court's rules of procedure for filming in the courtroom (for which civil journalist Abdurashitov had been formally detained). Such an approach indicates the court's loyal attitude towards the person who had written the administrative protocol.

PRESUMPTION OF INNOCENCE

1. As part of the research, 19 publications with the use of hatespeech and other manipulative technologies against the defendant were found. Among the main techniques in the publications, the stress is noted on the fact that the lawyer defended one of the Ukrainian seamen and that he is also a lawyer in many cases regarding persecution of the 'Hizb ut-Tahrir' religious party members and acted in defense in cases for a number of activists of the Mejlis of the Crimean Tatar people which is also considered a forbidden organization in Russia. At that, some media used the word 'Hizbs', which is derogatory contraction of the party's name 'Hizb ut-Tahrir' and adds additional negative connotation to the whole text. For example, the edition 'Krymskaya Pravda' presented an item of news under the title, 'Crimean law enforcement officers detained the Hizbs' lawyer.¹²



Crimean security forces detained lawyer of 'Hizbs'

¹² <https://c-pravda.ru/news/2018-12-06/krymskie-pravookhraniteli-zaderzhali-advokata-khizbov>

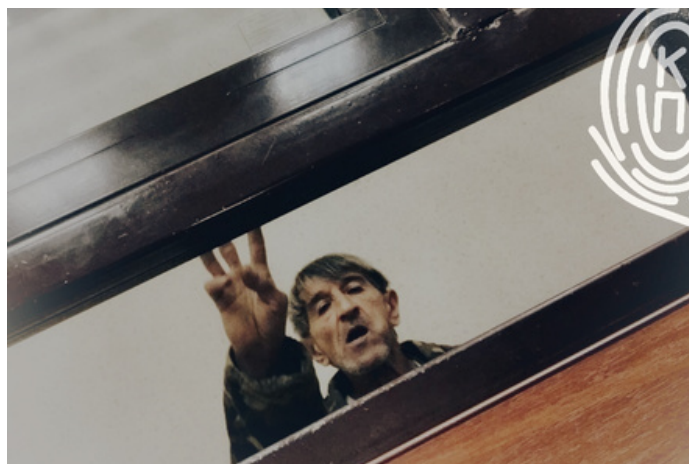
CASE REVIEW. 2019

In 2019, in politically motivated cases in the territory of Crimea there was a new trend – persecution for membership in voluntary battalion named after Noman Chelebidzhikhan. This is a public association of Crimean Tatars created and financed by businessman Lenur Islyamov in early 2016. Starting from 2017, FSB officers detained several members who later cooperated with the investigation and pleaded guilty. In 2019, cases were heard against 3 participants of this unit who did not plead guilty. These cases appeared in the focus of our research because of the fact that de-occupation of Crimea was claimed to be the aim of the association. The organization performed no other actions contradicting Russia's interests, it did not possess any small arms (as it is stated in Crimean court decisions on this category of cases) and was not relevant to the erosion of electrical towers (about which the court decisions state in this category of cases). One confirmation of this is the absence of criminal persecution of members of this unit by the Ukrainian law enforcement officers.

Apart from that, persecution of the traditional group of Crimean Tatar activists related to the national movement and connections with the self-governing body – Kurultai - continued.



People praying prior to the trial in the case of 'Vedzhie Kashka' group, photo: Crimean Process



Oleg Prihod'ko in a glass cage during trial on his arrest, photo: Crimean Process

The most significant were the court proceedings against 4 elderly activists who were charged with extortion from a Turkish citizen. The process was entitled 'The case of Vedzhiye Kashka group', after the name of an elderly female activist, in whose interest these people had acted and who died at the place of detention.

Another characteristic of the year was the persecution of aged political activist Oleg Prihod'ko who did not hide his ultra-rightist pro-Ukrainian views. Similar to the Vladimir Balukh case, which was described in the first part of our research, an explosive device was detected on the territory of Prihod'ko's household; in the investigators' point of view, he had been planning to use the device in an act of terrorism. The court proceedings were subsequently held outside Crimea, however we selected this case in order to investigate the court's attitude on the stage of restraint measure election and extension due to the reason that the case is a model example of a politically motivated persecution, and Crimean judicial bodies' attitude to existing standards of fair trial is best unveiled in proceedings of such kind.

CASE REVIEW. CASE OF DILYAYER GAFAROV

DESCRIPTION OF EVENTS

On October 30, 2018, at approximately 3 am, FSB officers conducted a search in the household where Dilyaver Gafarov resided. His laptop and telephone were seized during the search, and Gafarov himself was detained on the suspicion of the crime described in paragraph 2 of art. 208 of the Russian Criminal Code 'Participation in the territory of a foreign state in an armed unit not stipulated by the legislation of this state with goals that contradict the interests of the Russian Federation.' According to the investigators' version, he was a participant of the Crimean Tatar battalion named after Noman Chelebidzhikhan and was also administering the organization's page in the V Kontakte social media network. During the court investigation process, Gafarov did not plead guilty. He explained during interrogation that if he had been a participant, he would not have returned to Crimea. The creator of the battalion, Lenur Islyamov, one of whose enterprises the defendant worked on, had been repeatedly convincing him to join the battalion but he continued to refuse and due to this reason he had to resign and later move to Crimea.

An extensive number of publications about the detention of and the verdict to Dilyaver Gafarov (at least 21 posts on Crimean and Russian media have been noted) and the general context of Crimean politicians' assessment demonstrating open hostility towards the creator of the battalion, Lenur Islyamov, and towards the battalion named after Noman Chelebidzhikhan, can indicate the

political matter of the case. This is explained with an opinion that the unit was involved in the erosion of the electrical towers, which led to the energy blockage of Crimea.

THE COURT PROCEEDINGS

Court of First Instance:

Judges:

Prosecutors:

Lawyers:

Dates:

Results of Hearings:

Kirovskoye district court of Crimea

Degtyaryov Igor' Aleksandrovich

Balema A. M.

Velilyaev Islyam Shevketovich, Muzyka Aleksandr Sergeevich, Panich Siyar Ametovich, Petrosyan Arman Grigoryevich

23 April 2019-28 August 2019

10 years of imprisonment with serving in strict regime colony, with one-year custody

Court of Appeal:

Judges:

Prosecutors:

Lawyers:

Dates:

Results of Hearings:

Supreme Court of the Republic of Crimea

Petyusheva Nana Nikolaevna, Karavaev Konstantin Niklaevich, Sobolyuk Mikhail Nikolaevich

Novosel'chuk S. I.

Muzyka Aleksandr Sergeevich

17 October 2019

Left without change

CASE REVIEW. CASE OF DILYAYER GAFAROV

The main violations of separate standards of fair justice:

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. The time spent by the judge in the deliberation room in order to assess all the evidence and pass the sentence was 1 day. This amount of time seems insufficient for thorough and objective study of the court investigation file during which at least 17 witnesses and the defendant were interrogated, and multiple photo materials and documents of the operational and investigative activities were presented.
2. All the three judges from the panel of judges who considered the appeal in the Supreme court of Crimea are former Ukrainian judges who later swore allegiance to Russia. In connection to this, the Ukrainian Prosecutor General's Office initiated criminal proceedings according to art. 111 'High Treason'. In such circumstances, the judges' impartiality towards a potential participant of a Ukrainian voluntary battalion raises reasonable doubt.
3. The estimated time that the panel of judges working on the consideration of the appeal spent in the deliberation room was 14 minutes. This amount of time is obviously not enough for thorough and objective assessment of the appeal's conclusion and

making a reasonable decision. It is doubtful that such an amount of time was sufficient even for technical typing of the appeal ruling that consisted of 16 pages.



Dilyaver Gafarov waiting for the court decision, photo: Crimean Process

PUBLIC PROCEEDINGS

1. 6 out of 9 trials in a court of the first instance were held in restricted access regime due to the judge's order – only the defendant's relatives were allowed into the courtroom. Such a selective approach towards publicity of court proceedings did not rely on the case facts and legal grounds; violation of the standards of public justice is stated in connection with this.
2. Only the introductory and the resolution parts were read by the court of the first instance during the sentencing, which, along with the absence of publication of the complete decision of the court, points at violation of paragraph 1 of art. 6 ECHR, '...Judgment shall be pronounced publicly...'. Concealing of the whole contents of the court decision from the public cannot be justified.¹³

¹³ case "Raza v. Bulgaria" <https://hudoc.echr.coe.int/>

CASE REVIEW. CASE OF DILYAYER GAFAROV

3. The defendant's personal information and the information about the case parties was hidden on the official website of the Supreme court of Crimea prior to the proceedings in the court of appeal. Apart from that, the appeal statement was also only partly announced (the introductory and the resolution parts), however the complete text of the court decision was subsequently presented on the court's official website.

EQUALITY OF THE PARTIES

1. The defendant was deprived of a possibility to interrogate the witnesses who testified against him or the right to have the witnesses interrogated. So, during the hearings on August 20, 2019, the court denied motions by the defense to call the investigator who had taken the material evidence in the case and the expert who had performed identification of the photos with the defendant's personality. This indicates violation of the standard of adversarial parties that, according to the ECHR ideas, must provide a balanced opportunity for the parties to review all the evidence presented.

2. The court also denied the defense party to conduct expertise for the identification of geographical coordinates of the images that served as the evidence in the case.

PRESUMPTION OF INNOCENCE

1. The defendant was kept in a cage during all the court trials (both in the court of the first instance and during the consideration of the first instance and during the consideration of the appeal). For a defendant, being in a cage in itself forms the image of a guilty person, which violates the presumption of innocence. Apart from that, the European Court of the Human Rights has repeatedly recognized keeping defendants in a cage as 'humiliating a person's dignity'.

2. Unrestrained media campaign can cause negative effect on the fairness of the trial, influencing the public opinion and encouraging the court to take certain decisions. In the research, 7 materials with the use of hatespeech and other manipulative technologies aimed at Dilyaver Gafarov were discovered. The main aim was 'demonization' of the defendant that was reached with the use of such phrases as 'an extremist' and 'militant',¹⁴ and in one case - with contextual interlinking with the act of terrorism in Kerch.¹⁵

Все новости Севастополь Крым Россия Новороссия В мире Политика Реклама на ForPost

01 ноября 2018 - 13:47 1021 1

Арестован проживавший в Крыму украинский боевик

ФСБ задержала парня, который участвовал в блокаде полуострова со стороны Украины.



Служба новостей ForPost



Ukrainian militant residing in Crimea was arrested: FSB detained a guy who participated in the blockade of the peninsula from the side of Ukraine

¹⁴ <https://sevastopol.su/news/arestovan-prozhivavshiy-v-krymu-ukrainskiy-boevik>

¹⁵ <https://versia.ru/otkuda-v-krymu-berutsya-podrostki-terroristy>

CASE REVIEW. CASE OF OLEG PRIHOD`KO

DESCRIPTION OF EVENTS

On October 9, 2019, in the village of Orekhovo, Saki district, FSB officers conducted a search in the garage belonging to Oleg Prihod'ko, a Ukrainian political activist. During the search, a TNT block, a fuse for it and submunitions were found. Prihod'ko himself repeatedly stressed during the court trials that he had informed the FSB officers before the search that he had the second garage but they did not show any interest in this information, which may indicate the fact of forgery of the explosive. In the same evening, Prihod'ko was detained.

A search in his household was conducted at his absence on the following day, and later the court elected him a measure of restraint in the form of detention. According to the petition of FSB investigator Ivan Romanets, the detainee was suspected of crimes described in art. 205 of the Russian Criminal Code 'Preparation of an act of terrorism' and art. 223.1 of the Russian Criminal Code 'Illegal manufacture of explosives, illegal manufacture, alteration or repair of explosive devices'. Subsequently, the case was transferred to the jurisdiction of Southern district military court that is located in Rostov-on-Don in the territory of the Russian Federation (which already is a violation of convention on protection of civilian population in occupied territories). In connection with this, monitoring of this case had to be terminated. However, all the material collected was included into the review due to numerous signs of politically motivated persecution.

In connection with this, the attitude of the Crimean judicial system is of undoubted research interest even on the stage of election/extension of the restraint measure. The following facts are worth attributing to the signs of political component in the case of Oleg Prihod'ko:

- extensive experience in political activity before the occupation as a member of the 'Svoboda' nationalistic party of Ukraine;
- participation in the 'Euromaidan' events;
- bringing to administrative responsibility for the refusal to replace Ukrainian car number plates to Russian registration plates in 2016;
- bringing to administrative responsibility in the form of arrest for a conflict with traffic police officers who demanded to replace the plates;
- warnings from prosecution officers against inadmissibility of extremist activities;
- inspection of the household according by court order in February, 2019 (with the withdrawal of a Ukrainian and other flags, archive leaflets, equipment);
- bringing to administrative responsibility for demonstration of Nazi symbols in June, 2019;
- placing of Ukrainian flags, symbolics, inscriptions on the territory of the household.



Oleg Prihod'ko's relatives during his delivery into the court, photo: Crimean Solidarity

CASE REVIEW. CASE OF OLEG PRIHOD`KO

THE COURT PROCEEDINGS

Court of First Instance:	Kievsky district court of Simferopol
Judges:	Tsykurenko Anton Sergeevich
Prosecutors:	not identified
Lawyers:	Sheykhmambetov Nazim Nuriyevich
Dates:	10 October 2019
Results of Hearings:	elect restraint measure in the form of detention until December 10, 2019



Oleg Prihod'ko being placed into a police van after the extension of his arrest, photo: Crimean Process

Court of Appeal:	Supreme Court of the Republic of Crimea
Judges:	Karavaev Konstantin Nikolaevich
Prosecutors:	Ametova D. S.
Lawyers:	Sheykhmambetov Nazim Nuriyevich
Dates:	31 October 2019
Results of Hearings:	Left without change

Court of First Instance:	Kievsky district court of Simferopol
Judges:	Kholodnaya Elena Izevna
Prosecutors:	not identified
Lawyers:	Sheykhmambetov Nazim Nuriyevich
Dates:	06 December 2019
Results of Hearings:	extend restraint measure in the form of detention until February 10, 2020

Court of Appeal:	Supreme Court of the Republic of Crimea
Judges:	Latynin Yuri Anatolyevich
Prosecutors:	not identified
Lawyers:	Sheykhmambetov Nazim Nuriyevich
Dates:	25 December 2019
Results of Hearings:	Left without change

The main violations of separate standards of fair justice:

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. 3 out of 4 judges that participated in the observation of the issues about the election or extension of restraint measure for Oleg Prihod'ko in the courts of the first

CASE REVIEW. CASE OF OLEG PRIHOD`KO

instance and the courts of appeal, are former Ukrainian judges who swore their allegiance to Russia. In connection to this, the Ukrainian Prosecutor General's office initiated criminal proceedings against them according to art. 111 'High Treason'. In such circumstances, the judges' impartiality towards the former member of a Ukrainian nationalist party and ideological supporter of Ukraine's integrity raises doubt.

2. In the course of study of the appeal ruling, the following definition was found, 'due to his political hate towards the Russian Federation and the fact of Crimea having become part of it, he is prone to continuing to be engaged in criminal activity'. It is not obvious from the text, yet probable, that the judge of the first instance came to such a conclusion, and it was confirmed in the court of appeal that the evaluation of the circumstances was given correctly. There is no information about the evidence that became grounds for the court to conclude in such manner about the defendant's personality, also any evidence is absent about the fact that the court had observed the issue about the impossibility to lower this risk to an acceptable level by using alternative preventive measures, as it is recommended by the Training materials of the Russian state university of justice under the Supreme court of the Russian Federation in the light of requirements of Russian legislation and ECHR.¹⁶

¹⁶ Kachalova O.V., Kachalov V.I. Handbook detention as a measure of restraint: validity of application and renewal <https://rm.coe.int/kachalov-handbook-detention-as-a-measure-of-restraint-rus/1680a1cb64>

PUBLIC PROCEEDINGS

1. Out of 4 trials monitored, unrestricted access for listeners was provided in the first 2 only. And on the stage of extension of restraint measure, the hearings were held in a closed mode, despite the defense motion to provide the publicity of the process. In both cases, the court denied in public pronouncement of its judgement, which also contradicts the requirements of paragraph 1 of art. 6 ECHR, '...Judgement shall be pronounced publicly...'.¹⁷

2. In all 4 cases, complete information about the case under observation was absent on the official websites of judicial bodies of power. Any information about the observation of this case is absent on the website of Kievsky district court, and the data about the defendant and the case parties is hidden on the website of the Supreme court of Crimea.

EQUALITY OF THE PARTIES

1. During the hearings of appeal complaints on issues connected with the measure of restraint, the defendant participated in the hearings via videoconferencing, which disadvantaged the defense party, both regarding the absence of the possibility for confidential communication and the equality of communication with the court, which was violated due to the technical features of videoconferencing (audio delay, image delay, gaps in audio, interference).

CASE REVIEW. CASE OF OLEG PRIHODKO

2. On 6 December, 2019, the court declined defense motion to interrogate the defendant's relatives in order to establish the fact of household ownership and absence of objections concerning the defendant's being under house arrest in the household mentioned. The motion concerned the essence of the issue under consideration – the extension of the measure of restraint, so the refusal to conduct the interrogation contains signs of violation of parties' equality.

3. In total, during 4 trials, 6 defense motions were recorded, 1 of which was granted. At the same time, 2 motions submitted by the prosecution were granted by the court in both cases.

PRESUMPTION OF INNOCENCE

1. During the trial on 10 October, 2019, the defendant was kept in a glass cage in the court of the first instance. During the consideration of the issue about the extension of the restraint measure in the court of the first instance, the defense proposed motion for the defendant to be placed next to his lawyer, but the court declined it. Keeping a defendant in a cage or a glass cage in itself forms the image of a guilty person, which violating the presumption of innocence.

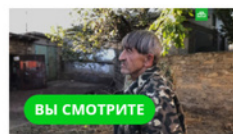
2. Unrestrained media campaign can cause a negative effect on the fairness of a trial, influencing public opinion and encouraging the court to take certain decisions. In the

research, at least 65 publications of different Crimean and Russian media about the case mentioned were found, among which at least 20 contained signs of manipulation, misrepresentation of information and blatant hatespeech. The most widespread example was the groundless statement about the defendant's involvement in extremist activity and statements about his intentions to commit an act of terrorism. For example, the NTV channel posted its news piece with the following caption, 'An extremist who prepared an explosion detained in Crimea'.¹⁷



10.10.2019, 19:07 1222 0

Подозреваемого в подготовке теракта крымчанина арестовали



В Крыму задержали готовившего взрыв экстремиста



В Южной Корее у 50 человек остановилось сердце в давке на Хэллоуин-вечеринке

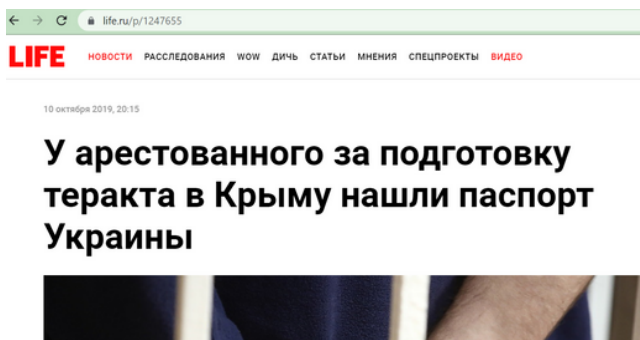
Extremist preparing act of terrorism in Crimea was detained

It is noteworthy, however, that, apart from this, some media used the defendant's ethnicity and Ukrainian citizenship in a negative connotation, as an additional circumstance that confirmed his guilt.

¹⁷ <https://www.ntv.ru/novosti/2242062/>

CASE REVIEW. CASE OF OLEG PRIHODKO

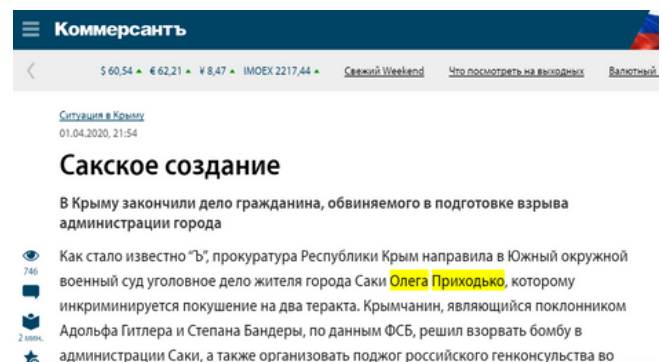
For instance, the Life edition posted the headline, 'Ukrainian passport found on the person arrested for preparing act of terrorism in Crimea',¹⁸ creating the image of an item 2 for circulation regarding the document of a different country.



Passport of Ukraine found on the man arrested for preparation of act of terrorism

¹⁸ <https://life.ru/p/1247655>

3. Another trend noted was the presence of direct and hidden insults in evaluation of the defendant's activity in the period of pre-trial and trial investigation. So, the 'Kommersant' edition used the headline 'The Saki creature'¹⁹ for its news, in which the last word carries a negative connotation with the meaning 'not a person but a creature of a neuter gender'.



Saki creature. A case against a citizen accused of preparation of explosion in the city hall was completed

¹⁹ <https://www.kommersant.ru/doc/4310412?query=%D0%9E%D0%BB%D0%B5%D0%B3%20%D0%9F%D1%80%D0%B8%D1%85%D0%BE%D0%B4%D1%8C%D0%BA%D0%BE>

CASE REVIEW. CASE OF THE 'VEDZHIE KASHKA' GROUP

DESCRIPTION OF EVENTS

On November 23, 2017, with the assistance of a SWAT team, Russian security forces detained a group of Crimean Tatars – Kazim Ametov, Asan Chapukh, Ruslan Trubach and Bekir Degermendzhi – on the suspicion of a crime described in art. 163 of the Criminal Code of Russia 'Extortion' for the extortion of money from Turkish citizen Yusuf Aytan. According to him, all of them demanded money that he had not borrowed, threatening violence and seizure of property to him.

All the four detained men were activists of Crimean Tatar national movement, they regularly came to support people during politically motivated court proceedings. Asan Chapukh was one of the heads of regional Mejlis (self-governance body of Crimean Tatars whose activity is prohibited in Russia). The law enforcement officers attempted to detain an elderly woman, a veteran of the Crimean Tatar national movement – Vedzhie Kashka - on the same day that the four accused men were detained. She became ill;



This elderly woman died when the special forces were operating, photo: Sevgil Musaeva

the woman died in an ambulance car. In November 2018, lawyer Nikolai Polozov claimed that during the detention process the woman had been hit with a stock of a machine gun.

During searches conducted in Asan Chapukh's household, three Kalashnikov machine guns and their ammunition were found. During the court proceedings, the defense insisted on the fact that the weapon and the ammunition had been planted during the searches.



Ruslan Trubach waiting for the pronouncement of the verdict, photo: Crimean Process

The defense also claimed that the defendants' actions were wrongly qualified as 'extortion' since civil law relations in the form of a debt slip were present between the complainant and Vedzhie Kashka, in whose interest the defendants had been acting.

Ametov, Degermendzhi and Trubach stayed in a detention unit until late January, 2019 and were transferred to house arrest afterwards. Asan Chapukh, who suffered a microstroke in the detention unit, was transferred to house arrest in October, 2018.

CASE REVIEW. CASE OF THE 'VEDZHIE KASHKA' GROUP

THE COURT PROCEEDINGS

Defendants

Ametov Kazim

Chapukh Asan

Degermendzhi Bekir

Trubach Ruslan

Court of First
Instance:

Judges:

Prosecutors:

Lawyers:

Dates:

Results of
Hearings:

Kievsky district court of
Simferopol

Belousov Mikhail
Nikolaevich

Logvinenko Alina

Kurbedinov Emil' and
Omelchenko Taras (for
Ametov), Semedlyayev
Edem and Solodkov
Aleksandr (for
Degermendzhi), Velilyaev
Islyam (for Trubach),
Azamatov Ayder and
Lesovoy Aleksandr (for
Chapukh)

04 December 2018-17
April 2019

Kazim Ametov, Ruslan
Trubach, Bekir
Degermendzhi – 3 years of
suspended sentence with
3-year probation period
Asan Chapukh – 3 years 6
months of suspended
sentence with 3 years 6
months of probation
period

Court of Appeal:

Judges:

Prosecutors:

Lawyers:

Dates:

Results of
Hearings:

Supreme Court of the
Republic of Crimea
Belousov Eduard
Feliksovich (presiding
judge), Lebed' Oleg
Dmitrievich, Petyusheva
Nana Nikolaevna

Novosel'chuk S.I.

Kurbedinov Emil' and
Omelchenko Taras (for
Ametov), Semedlyayev
Edem and Solodkov
Aleksandr (for
Degermendzhi), Velilyaev
Islyam (for Trubach),
Azamatov Ayder and
Lesovoy Aleksandr (for
Chapukh)

29 October 2019

punishment part is left
without change

The main violations of separate standards of fair justice:

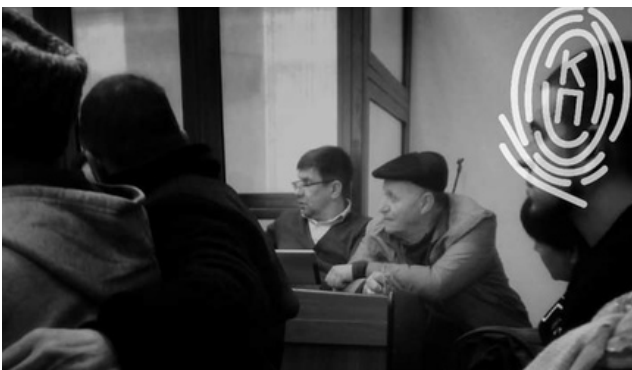
COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. Judge Mikhail Belousov is a former Ukrainian judge that later swore russian allegiance with violating current legislation of the Russian Federation (having double citizenship). Apart from that, Mikhail Belousov is suspected of committing a criminal offense

CASE REVIEW. CASE OF THE 'VEDZHIE KASHKA' GROUP

of 'High Treason', which could also influence the verdict pronounced, insofar as the defendants are activists of the Crimean Tatar national movement, whose leaders take a clear stand of territorial integrity of Ukraine in the issue of Crimea. In such circumstances, the judge's impartiality towards the case under consideration raises reasonable doubt.

2. During the case consideration in the court of appeal, 2 judges out of 3 could have a biased opinion towards the criminal case. As at 2015, the presiding judge of the Supreme court panel of judges, Eduard Belousov, was suspect in a criminal case of committing high treason which is investigated by the law enforcement agencies of Ukraine. A member of the same panel of the Crimean Supreme court, Nana Petyusheva, is also suspect in a criminal case on the fact of committing high treason. This could influence the court decision, insofar as the defendants are activists of Crimean Tatar national movement, whose leaders take a clear stand of territorial integrity of Ukraine in the issue of Crimea. In such circumstances, the judges' impartiality towards the case under consideration raises reasonable doubt.



Bekir Degermendzhi during the trial, photo: Crimean Process

3. Signs of the judge's biased attitude towards the proceedings and the judge's active intervention into the realization of the parties' rights were recorded in at least 3 out of 15 hearings in Kievsky district court of Simferopol:

- so, on January 30, 2019, the judge started to make claims to lawyer Omelchenko that he was constantly arguing and taking care about other defendants' interests. Omelchenko's remark that his position was dictated by his defendant's interests caused aggressive response – the judge made a remark to the defender. The lawyer continued to object to such interpretation of his position, then the judge made him the second remark and threatened that he would call the panel representative to the trial.
- on February 5, 2019, during the interrogation of a witness it became obvious that he made a number of contradictions (for example, about the number of machine guns found in Chapukh's household). When the lawyer asked what caused such divergence, the judge replied, instead of the witness, that the later had explained before, 'it seems to me that there were two, I don't remember exactly'. The judge asked the witness probing questions and in this manner demonstrated intrusion into the process of the judicial investigation.
- on February 12, 2019, during the interrogation of a witness, the judge interrupted lawyer Edem Semedlyaev. He claimed that the lawyer had to think

CASE REVIEW. CASE OF THE 'VEDZHIE KASHKA' GROUP

before asking questions that the witness could not answer clearly. While the lawyer was attempting to explain that his questions were considered and appropriate, the judge claimed to the witness, 'You can go now!' and stopped the interrogation.

4. An episode of the behaviour that the judge of the court of the first instance was showing during lawyer Azamatov's speech deserves special attention. The judge was explaining the state prosecutor with gestures that he did not understand the reason why lawyer Azamatov was asking clarifying questions to the witness. By such behaviour, the judge demonstrated not only his emotional response but also favorable attitude to one of the case parties.



Kazim Ametov after his release from the arrest, photo: Crimean Process

5. An indirect sign indicating the absence of independence and the presence of impartiality towards the case under consideration was the amount of time that the judge of the first instance needed in order to pronounce the verdict. The time that the judge spent in the deliberation room to assess all the evidence in the case and pass the sentence, was 4 hours 10 minutes. This amount of time seems insufficient for thorough and objective study

of the court investigation file during which at least 12 witnesses, 1 victim and 4 defendants were interrogated and procedural documents along with results of operational and investigative activities were present.

PUBLIC PROCEEDINGS

1. The information about the date, time and place of the hearings in the proceedings was not shown on the website of Kievsky district court of Simferopol to the full extent. The data about the forthcoming proceedings was not made public on time in at least 8 hearings out of 15. Information about the hearings of April 10, 2019, was made public on the court's website on the day of the proceedings only.

2. Great public interest towards the case described was not considered when the courtroom for the proceedings was being chosen. In Kievsky district court of Simferopol, the bailiffs repeatedly limited the number of seats for viewers, however the courtroom still contained some free benches. In particular, on January 30, 2019, only 15 viewers were allowed into the courtroom; on April 2, 2019, 9 seats remained unoccupied – the bailiffs had forbidden to occupy them; and on April 17, during the pronouncement of the verdict, part of the viewers could not enter the courtroom while 3 seats were remaining free.

3. In the Supreme court of Crimea, a small court room was chosen for consideration of complaints as well, where only 10 viewers were allowed.

CASE REVIEW. CASE OF THE 'VEDZHIE KASHKA' GROUP

Lawyer Samedlyayev's motion to transfer the proceedings into a more spacious room was declined.

4. Poor audibility was recorded in at least two hearings of the case in Kievsky district court since the judge was speaking in a low voice.

5. During the consideration of appeals in the Supreme court of Crimea on October 29, 2019, the panel of judges pronounced only the introductory and the resolute part of the verdict. This indicates violation of paragraph 1 of art. 6 ECHR, '...Judgement shall be pronounced publicly...'. Concealing of the whole contents of the court decision from publicity cannot be justified.

EQUALITY OF THE PARTIES

1. During the consideration of applications submitted by the parties, clear preference of the court to the prosecutor's party was observed. During the proceedings, at least 14 applications were submitted by the defense and the defendant, only 4 of which were granted, 10 were declined. It is noteworthy that at least 3 applications were submitted by the prosecution, 2 of which were granted.

2. In addition, violation of the right to defense was recorded which was expressed by ignoring the defendant's final speech. So, on April 17, 2019, during the final proceedings in the case of 'Vedzhie Kashka' group, defendant Ruslan Trubach started his final speech but the judge interrupted him and began ordering

to inform him what the defendant was asking from the court. Defendant Trubach clarified if he was being deprived of the right to say everything that was on his mind, and the judge stated for the second time that the defendant had had enough time for this during the court proceedings.

3. Violation of the principle of equality of the parties and right to defense was recorded in the cases when the defense party was addressing the court with applications about requesting of the documents and evidence from other bodies of power. So, for example, in the case of the 'Vedzhie Kashka' group, the court declined the application about requesting materials of civil action, which was of high importance for the defense as the proof of lack of evidence, from the Zheleznodorozhny court of Simferopol.



People praying in the memory of dead Vedzhie Kashka in front of the court, photo: Crimean Process

4. The fact that the court prevented the defense party from an opportunity to study the video files presented as evidence in the case materials draws special attention. According to the defense's opinion, the video contained evidence that the act of

CASE REVIEW. CASE OF THE 'VEDZHIE KASHKA' GROUP

forgery of the firearms had been committed in Asan Chapukh's household; on April 4 the judge declined the defense's application about this issue. The same decision was made by the panel of judges in the court of appeal.

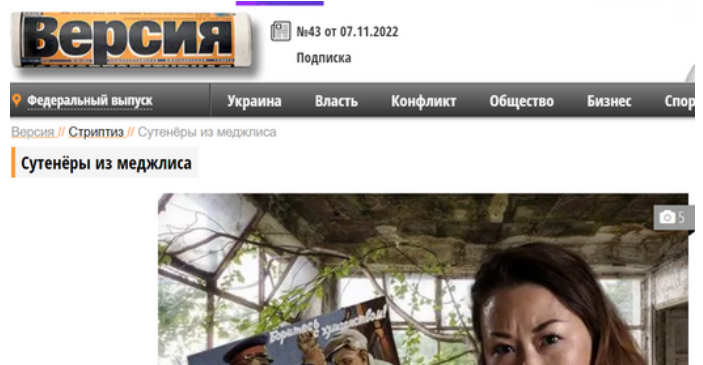
5. During the consideration of appeals, the defense party was deprived of the right to interrogate the individuals who testified against the defendants. In particular, the panel declined the appeal to call and interrogate the victim in the case.

PRESUMPTION OF INNOCENCE

1. It is necessary to note that during all the court proceedings (both in the court of the first instance and during consideration of the appeal) the defendants were placed next to their lawyers, which corresponds to the ideas of compliance with the standard of justice mentioned.

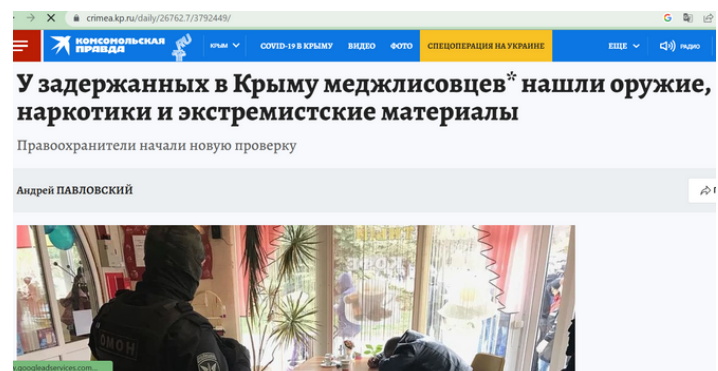
2. At the same time, a negative media campaign that could affect the fairness of the court proceedings by influencing public opinion and encouraging the court to take certain decisions was recorded. In the research, 14 materials with the use of hatespeech and other manipulative technologies aimed at the defendants were found on the media. The main manipulative method was the presentation of the prosecution's version, without presenting the other party's opinion. The main goal was to discredit the participants of the proceedings, to discredit the national movement of Crimean

Tatars and Mejlis of Crimean Tatar people in general. For instance, in several days after the criminal case was initiated, the 'Versiya' newspaper placed a publication with the heading 'Pimps from Mejlis'²⁰ with insulting remarks about the case participants and the elderly activist Vedzhie Kashka, who died during the detention process.



Pimps from Mejlis

3. Apart from that, a number of Russian editions spread false information about additional crimes that were irrelevant to the case mentioned. So, after the detention of the defendants, the 'Komsomolskaya pravda' edition posted data that drugs and extremist materials had been found during the searches.²¹ However, further observation of the court proceedings showed that this information was incorrect.



Weapon, drugs and extremist materials found on Mejlis members detained in Crimea

²⁰ <https://versia.ru/sutenyory-iz-medzhilisa>

²¹ <https://www.crimea.kp.ru/daily/26762.7/3792449/>

CASE REVIEW. 2020

In 2020, in total, a new trend in the application of standards of fair justice was recorded in the territory of Crimea – limitation of access for viewers into court buildings under the excuse of Covid-19 prevention. According to the Decision of the Judicial Service Council of Crimea №23 of June 9, 2020, it was recommended to 'limit the access for the individuals who are not participants in cases...'.²² However, it was recorded during monitoring process that most restrictions introduced in time of the pandemic had been removed and were not introduced again, even when the next peaks of incidence took place. The prohibition of access for the viewers in a broad sense is still in force today. Apart from that, a discriminatory approach was noticed in the application of these restrictions when courts, at their own discretion, allowed representatives of loyal media to the proceedings but prohibited other listeners to be present.



Police taking away religious activist Artyom Gerasimov arrested in the court room, photo: Crimean Process

Among latest trends noted in politically motivated court persecutions, it is worth highlighting the first sentences in criminal cases regarding regional leaders of the 'Jehovah's Witnesses' religious association, and the initiation of court persecutions



Lenur Islyamov's lawyer telling about the verdict in absentia pronounced by the court, photo: Crimean Process

regarding the leaders of Crimean Tatar political circles. The latter appeared in the focus of the court's attention after they conducted an action 'March of Dignity' whose aim was to draw the global community's attention to the human rights situation in Crimea. In 2020 Crimean courts started consideration of criminal cases regarding leader of Crimean Tatars Mustafa Dzhemilev, head of Mejlis of Crimean Tatar people Refat Chubarov, politician and owner of the Crimean Tatar TV-channel ATR Lenur Islyamov.

Apart from that, for the first time in politically motivated cases in the occupied territory of Crimea, a case of sentencing in the form of indefinite detention in a psychiatric institution was recorded. Such sentence was issued regarding Yalta resident Yunus Masharipov after the court of cassation remitted the case for newer consideration, having revealed some facts referring to the fabrication of the case. During the renewed consideration, the concerns were not allayed, however Masharipov, who had served almost a half of his sentence by that time, was sentenced to compulsory medical measures.

²² http://vs.krm.sudrf.ru/modules.php?name=docum_sud&id=143

CASE REVIEW. CASE OF ARTEM GERASIMOV

DESCRIPTION OF EVENTS

On March 20, 2019, in Yalta the local FSB chief office in the Republic of Crimea initiated a criminal case according to paragraph 1 of art. 282.2 regarding Artyom Gerasimov who was suspected of continuation of the activity of the 'Jehovah's Witnesses' community prohibited in the Russian Federation. On March 26, 2019, Gerasimov was indicted. He was accused of coordinating the work of a local religious association and they continued to conduct religious gatherings after the organization had been prohibited. On February 11, 2020, the state prosecutor demanded 6 years 6 months of imprisonment for him with serving in a colony of general regime and a 3-year ban to perform certain activity. The defendant himself claimed after his final speech that the prosecution could not prove him guilty during the court proceedings. Artyom Gerasimov from Yalta and Sergey Filatov from Dzhankoy became the first representatives of the 'Jehovah's Witnesses' religious association to be persecuted in Crimea after the Supreme court of the Russian Federation recognized the activity of 'The Jehovah's Witnesses Administrative centre in Russia' as extremist in 2017 having prohibited its activity and the activity of all its 395 branches in the territory of Russia.²³ Sentences in the cases of Gerasimov and Filatov were pronounced on the same day – Gerasimov was charged with a fine and Filatov was sentenced

to 6-year imprisonment. Subsequently, based on the results of the consideration of appeals, Gerasimov was sentenced to 6-year imprisonment as well.

THE COURT PROCEEDINGS

Court of First Instance:

Judges:

Prosecutors:

Lawyers:

Dates:

Results of Hearings:

Yalta city court

Romanenko Vladimir Viktorovich

Not identified

Markin G.E.

02 October 2019-05 March 2020

Sentenced to a fine of 400 000 rubles

Court of Appeal:

Judges:

Prosecutors:

Lawyers:

Dates:

Results of Hearings:

Supreme Court of the Republic of Crimea

Posledov Aleksei Yuryevich

not identified

Markin G. E.

19 May 2020, 04 June 2020

sentence reviewed. Instead of fine the defendant was sentenced to 6 years of imprisonment

²³ <https://www.bbc.com/russian/news-39660756>

CASE REVIEW. CASE OF ARTEM GERASIMOV

The main violations of separate standards of fair justice:

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. Despite the absence of obvious signs of the judges' partiality regarding the criminal case described, we consider it necessary to note the dependence of the position of the judge who considered the case in the court of the first instance. Judge Vladimir Romanenko is a former Ukrainian judge who later swore his allegiance to Russia after the occupation. Russian legislation excludes possibility to grant the status of a judge to individuals with double citizenship, and the procedure for renunciation of Ukrainian citizenship had not been realized at the moment of Romanenko being granted the status of a judge. So, the judge was granted his status illegally and can lose it at any moment. This circumstance calls his independence into question.

2. Insofar as the significant part of the court proceedings was held in a closed mode, it is impossible to evaluate the amount of evidence investigated in the court in order to assess the sufficiency of time spent by the judge in the deliberation room. 40 hours passed since the moment of withdrawal to the deliberation room and pronouncement of the sentence, which, in our view, is insufficient for objective and thorough evaluation of the evidence studied and the sentencing in the criminal

case, the consideration of which lasted 14 hearings.

3. Time for consideration of the appeal was 1 hour 20 minutes, which also seems insufficient for objective and thorough consideration of all circumstances that could convince the court in the necessity to significantly worsen the defendant's position (to elect punishment connected with imprisonment, not with a fine). Such approach can signify the absence of independence in the court's work, especially considering the circumstance that most sentences made in similar cases in other courts of the Russian Federation involved imprisonment for the same period of 6 years.



Artyom Gerasimov after the debate of the parties in Yalta court, photo: Crimean Process

PUBLIC PROCEEDINGS

1. On 21 November, 2019, the prosecutor filed a motion for the proceedings to be held in the closed mode in order to provide security for the participants of the proceedings. Despite the absence of evidence that the security was under threat, the judge granted the state prosecutor's motion. So, the principle of openness of the court process

CASE REVIEW. CASE OF ARTEM GERASIMOV

was significantly violated.

2. Consideration of appeals in the case in the Supreme court was held in a closed mode due to the measures of Covid-19 prevention, the viewers were not allowed into the court building.

3. The surname of the prosecutor who participated in the case consideration was hidden on the website of the court of the first instance. Also, the court of the first instance did not post the text of the sentence made in the case.

4. Information about the defendant and the surnames of individuals representing the case parties was hidden on the website of the court of appeal. Also, the court of appeal did not post the text of the sentence made in the case.



Artyom Gerasimov before the trial on which he would be arrested, photo: Crimean Process

same time, it is noteworthy that on January 14, the defense demanded recusal for the prosecutor because the state prosecutor had been trying to share details from the criminal case with the witness, an FSB officer, who was being interrogated. The recusal was declined by the court, which can signify the court's inclination towards the position of the prosecution.

PRESUMPTION OF INNOCENCE

1. It is worth noting that during all the court hearings (both in the court of the first instance and during consideration of the appeal) the defendant was placed near his lawyer, which corresponds with ideas of adherence to this standard of justice. Apart from that, the case was virtually not covered by Russian and local media, only 2 publications made after the coming of the court's decision into legal force and without obvious violations of professional standards were found.

EQUALITY OF THE PARTIES

1. In connection with the fact that the main part of the court proceedings was held in a closed mode, sufficient data necessary for analysis of the parties' balance of interests during the case consideration is absent. At the

CASE REVIEW. CASE OF YUNUS MASHARIPOV

DESCRIPTION OF EVENTS

According to the data presented by the prosecution, Yunus Masharipov manufactured two improvised explosive devices and drove them to an area of land on Sevastopol highway, in 50 m from the church of St. Michael the Archangel of Russian Orthodox church located in the village of Oreanda near Yalta. With the help of the devices, he allegedly planned to set fire to the forest in the territory of Yalta in order to destabilize the socio-political situation in the region. Apart from that, Masharipov allegedly purchased smoke powder illegally and stored it in the garage where he had been doing repair work. He was detained on September 27, 2017.

He was charged on the suspicion according to art. 222.1 'The illegal acquisition, transfer, sale, storage, transport or carrying of firearms, ammunition, explosive materials and explosive devices' and art. 223.1 of the Russian criminal code 'Illegal manufacturing of explosives'. After the detention, Masharipov made numerous claims that tortures and violence were used against him by the FSB officers. Masharipov calls himself a human rights defender and insists that since 2014 he has informed human rights 'organizations about the violation of children's, disabled people's, pensioners' rights' in Crimea, collected evidence from those who suffered from the law enforcement officers. It has been determined that he really gave commentaries to Ukrainian editions about the human rights situation as a Crimean Tatar activist.

The first sentence in the case was issued on October 29, 2018. According to the decision, penalty in the form of 4-year imprisonment was imposed on Masharipov with a fine of 110 000 rubles. The verdict was confirmed by the ruling of the court of appeal of March 13, 2019. The court of cassation ruled on July 10, 2019, that the case had to be reopened in the court of the first instance. After reopening the case in the court of the first instance, on March 3, 2020, a verdict of compulsory measures of medical nature – in-patient treatment in a psychiatric hospital – was issued. The court of appeal upheld the verdict in the part of application of forced measures of medical nature on June 25, 2020.

THE COURT PROCEEDINGS

Court of First Instance:

Yalta city court

Judges:

Smirnov Sergei Grigoryevich

Prosecutors:

Not identified

Lawyers:

Ladin Aleksei Aleksandrovich

Dates:

30 July 2019-03 March 2020

Results of Hearings:

ruling issued on imposition of coercive measures of medical nature

CASE REVIEW. CASE OF YUNUS MASHARIPOV

Court of Appeal:	Supreme Court of the Republic of Crimea
Judges:	Karavaev Konstantin Nikolaevich
Prosecutors:	not identified
Lawyers:	Ladin Aleksey Aleksandrovich
Dates:	25 June 2020
Results of Hearings:	Sentence reviewed, part of evidence declared inadmissible, one article removed, the decision regarding imposition of coercive measures of medical nature left unchanged

The main violations of separate standards of fair justice:

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. In connection with the fact that monitoring of the court proceedings started from the case review in the court of the first instance, we will note about all the previous phases that at all stages, from the first instance to the cassation instance, former Ukrainian judges had been participating in the consideration of the case. The Ukrainian Prosecutor General's Office initiated criminal proceedings according to art. 111 paragraph 1 (high treason) due to their transit from Ukrainian courts to work in

the courts formed illegally on the territory of Crimea. This could influence the court decision since the defendant claimed about his cooperation with Ukrainian human rights defending organizations and his appeals on the address of Ukrainian bodies of power (President of Ukraine, ombudsman of Ukraine).

2. During the case review in the court of the first instance, the presiding judge was Smirnov Sergei Grigoryevich, who was transferred to the occupied territory from the Kholmsk city court, Sakhalin region, in violation of Geneva convention requirements. His Russian citizenship and obvious career growth could influence the judge since the defendant repeatedly claimed about violation of international conventions and about his Ukrainian citizenship.

3. During the case review in the court of appeal, at least one member of the panel (whose surname was identified) could have biased attitude to the criminal case described. The Ukrainian Prosecutor General's Office initiated criminal proceedings according to art. 111 paragraph 1 (high treason) against reporting judge Konstantin Karavaev in connection with his transfer from a Ukrainian court to work in a court formed illegally in the territory of Crimea. This could influence the court decision since the defendant claimed about his cooperation with Ukrainian human rights defending organizations and his appeals on the address of Ukrainian

CASE REVIEW. CASE OF YUNUS MASHARIPOV

bodies of power (President of Ukraine, ombudsman of Ukraine).

4. During the case review in the court of the first instance, signs of the court's dependence on FSB's position was recorded in at least 2 out of 9 hearings. In other 2 hearings signs of the judge's biased attitude towards the proceedings were noted:

- so, on January 16, 2020, judge Sergei Smirnov announced a break after two FSB operations officers were interrogated. Having exited the courtroom, he invited both of the witnesses into his room. There was no necessity in such actions within the court proceedings.
- on January 16, 2020, the defendant applied for recusal for the judge and the state prosecutor on the basis that they had interest in the result of the case. The basis for this was the fact that, at the prosecutor's request, the court declined many questions asked by the defendant to the witnesses for the prosecution (the FSB officers).
- Both recusals were declined.
- on January 23, the court declined Masharipov's motion about issuing a particular ruling to the FSB officers who had applied tortures to him. This can indicate the judge's dependence on the FSB's position regarding this issue.

- On March 3, during Masharipov's final speech, the judge constantly interrupted him and demanded to finish the speech. After 20 minutes after the start of the speech, without waiting until the defendant would finish, the judge declared about his withdrawal to the deliberation room in order to complete the verdict.

5. The indirect sign of the absence of independence and impartiality towards the case under consideration was the time that the court of the first instance required to issue the verdict. The time that the judge in the case spent in the deliberation room in order to evaluate all the evidence and completing the verdict was approximately 3 hours. This amount of time seems insufficient for thorough and objective study of the materials of the court investigation during which at least 9 witnesses had been interrogated and there were materials of two various types of expertise including two contradictory forensic psychiatric expertises.

PUBLIC PROCEEDINGS

1. The review of the case described was held in a closed mode on the basis that the case contains data of medical nature about the defendant. On February 14, 2020, lawyer Alexei Ladin submitted an application about the provision of the openness of the trial in

CASE REVIEW. CASE OF YUNUS MASHARIPOV

the part which does not concern medical data. The court declined the application.

2. Information about the defendant's surname was always hidden on the official websites of the judicial bodies. So, it was impossible to learn about the date, time and place of the hearings of the proceedings via the official sources. Information about the surnames of the individuals that represented parties in this criminal case was absent as well.

3. During the pronouncement of the verdict on March 3, 2020, in the court of the first instance, judge Sergei Smirnov declined an application about performing photo and video fixation, both of the defendant only and of the defendant and his lawyer, without proper reasoning for such prohibition.

4. In connection with the application of compulsory measures of medical nature according to the sentence, any further court decisions on this criminal case have been absent for public access since the moment when the judgment was issued.

5. The announcements of the decisions issued by the courts of appeal after the review of the case and the verdict about implementation of compulsory medical measures were held in a closed mode, the viewers were not allowed. The information about the defendant and the case parties was hidden, the order of the court of appeal was not published.

EQUALITY OF THE PARTIES

1. Due to the absence of possibility to monitor the court proceedings, it was not manageable to assess the adherence to the principle of equality of the parties objectively and thoroughly.



The convoy taking away Yunus Masharipov after the court hearings, photo: Crimean Solidarity

2. At the same time, in the court of the first instance twice and subsequently, during the consideration of the appeal, the courts refused to interrogate the experts who had completed two expertises on the defendant's mental state contradictory with their conclusions. Considering the fact that the conclusions in one of the expertises served as the basis of the verdict about the compulsory psychiatric treatment of Masharipov, refusal to interrogate the experts mentioned is a significant limitation of the defense party in the presentation of evidence.

3. Apart from that, it was noted that the judge did not finish listening to the defendant's final speech, which also violates the principle of adversarial parties and the right for defense in the court.

CASE REVIEW. CASE OF YUNUS MASHARIPOV

PRESUMPTION OF INNOCENCE

1. During the whole court proceedings, in the court of the first instance, the defendant was kept in a glass cage. Keeping a defendant in a cage or a glass cage in itself forms the image of a guilty person and violates the presumption of innocence.

2. Apart from that, at least 22 publications were noted on the media, 8 of which used false information about the defendant's involvement into committing actions which he was not accused of: cooperation with

SBU, Mejlis, preparation of an act of terrorism and 'throwing syringes around on the beach' in their publications. A text in the 'Politnavigator' edition states that Masharipov was sentenced for the erosion of electrical towers and two gas pipelines on the South coast of Crimea.²⁴

← → ↺ politnavigator.net/podzhogi-vzryvy-i-shpricy-na-plyazhakh-medzhlisovskijj-diversant-soznalsy

ПОЛИТ НАВИГАТОР О проекте Форум

Поджоги, взрывы и шприцы на пляжах, – меджлисовский диверсант сознался во всём на камеру

Максим Карпенко. 15.11.2018 10:06 (Мск), Симферополь Просмотров: 6817

Криминал, Крым, Провокации, Россия, Спецслужбы, Сюжет дня, Украина

Ялтинский городской суд приговорил к четырем годам тюремного заключения и штрафу в 110 тысяч рублей диверсанта Юнуса Машарипова, взорвавшего ЛЭП и два газопровода на ЮБК в ноябре прошлого года. Об этом говорится в сюжете телеканала «Крым24», передает корреспондент «ПолитНавигатора».

Arsons, explosions and syringes on beaches – saboteur from Mejlis admitted everything in front of camera

²⁴ <https://www.politnavigator.net/podzhogi-vzryvy-i-shpricy-na-plyazhakh-medzhlisovskijj-diversant-soznalsya-obo-vsjom-na-kameru.html>

CASE REVIEW. CASE OF LENUR ISLYAMOV

DESCRIPTION OF EVENTS

In late 2019, Mustafa Dzhemilev, the leader of the Crimean Tatar people, claimed an intention to conduct an international non-violent action 'The World Against Violence and Occupation. March of Dignity' – an organized procession from the territory of mainland Ukraine to the territory of Crimea temporarily occupied by the Russian Federation. The declared aim of the action was the assistance for international organizations, including UNO, OSCE, the European Union, the Council of Europe and others to realize the decisions made by them in support of the sovereignty, political independence, unity and territorial integrity of Ukraine in its internationally recognized borders and, by this means, provision of protection of and adherence to the rights and freedoms of the Crimean Tatar people – an indigenous people of Crimea, ethnic Ukrainians, all citizens of Ukraine, regardless of their nationality.²⁵

During an interview, when answering the question about passing the Russian checkpoints, Mustafa Dzhemilev expressed an opinion that, seeking entrance to the occupied part, nobody was going to demonstrate their passports, insofar as they were not leaving the territory of Ukraine. At the same time, he noted that the organizers were aware of the fact that the danger of provocations from the occupants' side was present, although the participants of the march were going to walk weaponless.²⁶

Subsequently, a headquarters for the preparation of the action was created, which was joined by head of Mejlis of the Crimean Tatar people Refat Chubarov and owner of a Crimean Tatar TV-channel, politician Lenur Islyamov.

The representatives of the occupational administration of Crimea reacted very nervously on the action 'March to Crimea', all the top officials of the administration repeatedly exposed threats at the organizers of the action. Following this, criminal cases were initiated against Mustafa Dzhemilev, Refat Chubarov and Lenur Islyamov. In early May 2020, the Supreme court of Crimea began consideration of the criminal case against Lenur Islyamov, who was accused in absentia of the crimes described in art. 208 of Russian criminal code 'Organizing an illegal armed unit', art. 281 of Russian criminal code 'Sabotage' and 6 episodes on art. 280.1 of Russian criminal code 'Public calls for actions aimed at violating the territorial integrity of the Russian Federation'. Since the main part of the actions incriminated to Islyamov was committed in 2015-2016, and the case was initiated only in several years and solely after claims to conduct the 'March to Crimea', direct logical connection is seen between Islyamov's political activity and the judicial persecution of him on the territory of Crimea.

²⁵ <https://www.facebook.com/dogrujol/posts/2532600796835059>

²⁶ <https://www.ukrinform.ru/rubric-crimea/2865289-mars-dostoinstva-v-krym-planiruetsa-na-maj-dzemilev.html>

CASE REVIEW. CASE OF LENUR ISLYAMOV

THE COURT PROCEEDINGS

Court of First Instance:	Supreme court of the Republic of Crimea
Judges:	Khinevich Alla Nikolaevna, Evdokimova Vera Vasilievna, Pogrebnyak Sergej Nikolayevich
Prosecutors:	Lobov Roman Vladimirovich, Novosel`chuk S.I.
Lawyers:	Ladin Aleksei Aleksandrovich, Polozov Nikolai Nikolayevich, Poluyanov Tatiana Nikolayevna
Dates:	08 May 2020-10 December 2020
Results of Hearings:	guilty verdict was issued with penalty of 19 years of imprisonment, prohibition to participate in media activities for a period of 2 years and restriction of freedom for 1 year

The main violations of separate standards of fair justice:

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. The head of the panel and two panel judges is a former Ukrainian judge who later swore allegiance to Russia. In connection with this, the Ukrainian Prosecutor General's Office initiated criminal proceedings according to art. 111 'High treason'. In such circumstances, the judge's impartiality towards the creator of a Ukrainian voluntary battalion and one of the organizers of a Ukrainian political action raises reasonable doubt.

PUBLIC PROCEEDINGS

1. Complete information about the case under consideration was absent on the official website of the Supreme court– the defendant's personal data was hidden. So, it was impossible to learn about the date, time and place of the hearings in this case via official sources. The information about the parties in the case and two members of the court panel participating in the case consideration was hidden as well.
2. The court of the first instance did not publish the verdict in the case.
3. During the first hearing on the merits on May 12, the court allowed the representatives of the media loyal to the Russian authorities to cover the proceedings. Other viewers were not allowed into the courtroom under the excuse of Covid-19 preventive measures and the high alert regime active in the territory of Crimea.
4. Subsequently, the court did not undertake any attempts to provide openness of the court proceedings, and only on November 26, it granted the application of the defense to allow viewers into the courtroom. So, publicity was provided only in 3 hearings out of 21, and one of the hearings was the pronouncement of the verdict.
5. On November 26, during the interrogation of a witness in the criminal case via videoconferencing, the court did not provide an opportunity for the audience to see the TV screen where the defendant was being broadcast. So, the viewers and the victims could not visually observe the witness since the TV was located behind their backs.

CASE REVIEW. CASE OF LENUR ISLYAMOV

EQUALITY OF THE PARTIES

1. Violation of the standard of the defendant's personal participation in the proceedings was recorded. The court was held in absentia. However the court panel declined the motion of the defense about presenting a video recording with the defendant's position to the court.

2. The state prosecutor's party finished presenting their evidence on November 9. On the same day, and in a different hearing, the defense party had the opportunity to present evidence, then the court scheduled the date of the debate of the parties. A clear disparity of the parties' abilities in favour of the state persecutor, who had been presenting evidence freely during 18 days, is seen. The court limited this opportunity for the defense, having scheduled the date of the debates after 2 hearings.

3. The defense was deprived of the opportunity to interrogate the witnesses who testified against the defendant. So, during a hearing on November 9, the court granted the prosecutor's motion to read out the testimony of witness Vladimir Kuznetsov which he had given on the stage of preliminary investigation. However, the prosecutor did not present the arguments that, according to the current norms of the criminal procedure code, allowed to exclude interrogation of a witness and limit to reading out his testimony given on the stage of preliminary investigation. The defense also revealed that bringing of a witness was not provided due to search of him at his registration address and not at the address of his factual residence that was at the disposal in the materials of the criminal case.

4. The defense was prevented from interrogating important witnesses in the case: Refat Chubarov and Mustafa Dzhemilev since the court declined the motions applied because the witnesses were staying outside the Russian Federation.

5. The court declined twice the motions of the defense about the study of evidence present in the case in the form of video files. This fact indicated violation of the standard of adversarial parties which, according to ECHR ideas, provides balanced opportunity for the parties to familiarize themselves with all the evidence presented.

6. Out of 8 motions applied by the defense and recorded during the monitoring process, only in 2 cases the decision was made to grant them, while 1 motion applied by the prosecutor and known within the research was granted.

PRESUMPTION OF INNOCENCE

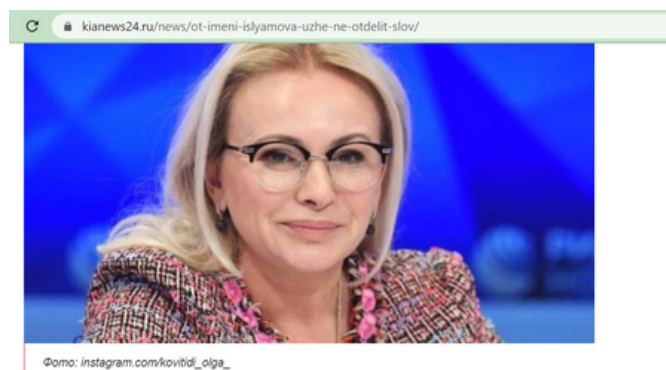
1. Since the defendant did not participate in the court proceedings, the main violations of the standard were recorded in the part of the coverage of the court proceedings.

2. Unrestricted media campaign can cause negative effect on the fairness of the court proceedings influencing public opinion and encouraging the court to take certain actions. At least 13 publications that can be attributed to this category were recorded.

The main part of them consists of statements by public and influential persons regarding the verdict of the court of the first instance while it had not come into legal force yet. For example, senator Olga

CASE REVIEW. CASE OF LENUR ISLYAMOV

Kovitidi publicly approved of the sentence on the same day when it was issued, having noted that 'Islyamov was the organizer of systemic illegal actions committed against Crimeans by the members of the 'mejlis' and 'the Pravy Sektor' nationalistic extremist organizations prohibited by the Russian Federation' in her commentary to the 'Crimean Informational Agency' However the verdict does not mention anything about involvement of Islyamov in illegal actions by the 'Pravy Sektor'.²⁷



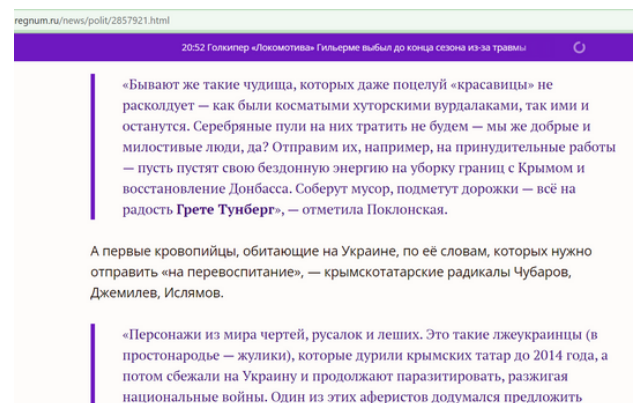
— Ленур Ислямов известен не только как организатор незаконного вооруженного формирования, но и как активный его участник, публично призывающий к осуществлению экстремистской деятельности. Именно Ислямов являлся организатором системных противоправных действий, совершенных против крымчан членами запрещенных в Российской Федерации националистических экстремистских организаций «меджлис» и «Правый сектор». Вынесенный Верховным судом Республики Крым приговор в отношении Ислямова

Islyamov himself was the initiator of systemic unlawful actions done against Crimeans by the members of nationalistic extremist organizations 'mejlis' and 'Pravy Sektor' forbidden in the Russian Federation.

Moreover, a lot of attention from public and influential persons was dedicated to the evaluation of Lenur Islyamov's activity and his involvement in the preparation of the 'March to Crimea' action prior to the start of consideration of the criminal case in the court of the first instance. So, 2 months before the case was transferred to the court, the 'Regnum' edition published the statements of former head of the 'Prosecutor's Office of Crimea' and at that period a deputy of the Russian State Duma – Natalya Poklonskaya.,

²⁷ <https://kianews24.ru/news/ot-imeni-islyamova-uzhe-ne-otdelit-slov/>

who stated that Islyamov, along with other 'Crimean Tatar radicals' was a 'bloodsucker' and he had to be 'sent for re-education'. In particular, she offered to send him to do forced labour. Along with that, a text on behalf of a State Duma deputy also used such expressions as 'monsters', 'rural ghouls', 'devils' and 'crooks' regarding the radicals.²⁸



Journalist Aleksei Goncharov's publication in RIA 'News of Crimea' with the heading 'Political blackout of Lenur Islyamov' deserves even more attention, in it, the author calls the defendant 'a criminal sentenced for sabotage, organizing of an illegal national battalion and calls for extremism' 3 hours before the sentence was actually pronounced.²⁹



He came to politics as a successful businessman and media tycoon and leaves it as a criminal convicted for sabotage, organization of an illegal national battalion and calls for extremism

²⁸ <https://regnum.ru/news/polit/2857921.html>

²⁹ <https://crimea.ria.ru/20201210/Politicheskiy-blekaut-Lenura-Islyamova-1119033816.html>

CASE REVIEW. 2021

Year 2021 was marked by new restrictions of publicity during consideration of politically motivated cases. So, during consideration of a criminal case against Ivan Yatskin who was charged with high treason, not only court investigation was held in a closed mode but pronouncement of the verdict as well. The closeness was explained with the fact that the case contained some evidence connected with the state secret. At the same time it is noteworthy that during the announcement of the introductory and the resolute part the court was not restricted by any security reasons.

Another reason for noticeable folding of the openness of the court proceedings was misuse of the situation with the Covid-19 pandemic. So, during consideration of a criminal case in absentia against head of Mejlis of Crimean Tatar people Refat Chubarov, the viewers were not allowed into the courtroom for a long time, referring to the Covid-19 preventive measures. The actions mentioned were enshrined by the Crimean Judicial Service council's decision № 223 of 09 June 2020³⁰ and were not factually removed in the period when there were no restrictions connected with the pandemic in all other spheres of Crimean public life. At this, the temporary regulation of the organization of the court's activities was amended with correspondence with the Order of the Chief Justice of the Supreme court of the Republic of Crimea № 112/03-03,³¹ which canceled the ban for viewers, however the requirements were not followed by the court officials.

Moreover, it was noted subsequently that the preventive measures were used as conventionally legitimate tool for the reduction of the openness in the criminal proceedings described. This fact became



Announcement of the indictment in the case of Refat Chubarov, photo: Crimean Process

obvious after the representatives of the media loyal to the Russian authorities were allowed according to a provisional list to the hearing where a witness for the prosecution, Russian senator Olga Kovitidi, was being interrogated. It is indicative that, according to the lawyer's information who represented Refat Chubarov's interests in the court, many witnesses and victims did not testify about the defendant, and some of them stated that they had no claims to him.

So, the openness of the criminal proceedings described could reveal the insufficiency of evidence in this criminal case.

Another method of reduction of the openness that became widely used in politically motivated cases in 2021 was granting of the prosecutor's motions about conducting the proceedings in a closed mode due to security threat for the participants of the proceedings. In particular, such actions were recorded during consideration of criminal cases against Medzhit Ablyamitov (on art. 208 of Russian criminal code for membership in the voluntary battalion named after Noman Chelebidzhikhan) and Viktor Stashevsky (on art. 282.2 of Russian criminal code for participation in the 'Jehovah's Witnesses' religious association).³²

³² due to the closed nature of these trials, the information content of the observation turned out to be low and these cases were not included in this review. At the same time, it was noted that, in general, the violations were similar to similar cases analyzed in this work - the case Gafarov (Art. 208) and the case of Gerasimov (Art. 282.2)

³⁰ http://vs.krm.sudrf.ru/modules.php?name=docum_sud&id=143

³¹ http://vs.krm.sudrf.ru/modules.php?name=docum_sud&id=141

CASE REVIEW. CASE OF REFAT CHUBAROV

DESCRIPTION OF EVENTS

In late 2019, Mustafa Dzhemilev, the leader of the Crimean Tatar people, claimed an intention to conduct an international non-violent action 'The World Against Violence and Occupation. March of Dignity' – an organized procession from the territory of mainland Ukraine to the territory of Crimea temporarily occupied by the Russian Federation. The declared aim of the action was the assistance for international organizations, including UNO, OSCE, the European Union, the Council of Europe and others to realize the decisions made by them in support of the sovereignty, political independence, unity and territorial integrity of Ukraine in its internationally recognized borders and, by this means, provision of protection of and adherence to the rights and freedoms of the Crimean Tatar people – an indigenous people of Crimea, ethnic Ukrainians, all citizens of Ukraine, regardless of their nationality.

During an interview, when answering the question about passing the Russian checkpoints, Mustafa Dzhemilev expressed an opinion that, seeking entrance to the occupied part, nobody was going to demonstrate their passports, insofar as they were not leaving the territory of Ukraine. At the same time, he noted that the organizers were aware of the fact that the danger of provocations from the occupants' side was present, although the participants of the march were going to walk weaponless. Subsequently, a headquarters for the preparation of the action was created, which was joined by head of Mejlis of the Crimean Tatar people Refat Chubarov and owner of a Crimean Tatar TV-channel, politician Lenur Islyamov.

The representatives of Crimean and Russian authorities reacted to these claims with multiple threats for 'an attempt to invade Russian territory'. On March 23, 2020, it became known about the initiation of criminal case against Refat Chubarov. This happened in the same period when other criminal cases were initiated against another organizer of the action – Lenur Islyamov (the case was initiated in 2015 and had not been transferred to the court for 5 years). Such synchronicity can indicate a connection between claims about conducting an all-Ukrainian action and initiation/completion of criminal cases against the organizers of the action in the territory of Crimea.

On June 22, criminal proceedings began against Chairman of Mejlis of Crimean Tatar people Refat Chubarov. During the following hearings on July 17, an order was issued to consider the case in absentia of the defendant. He was charged with crimes described in art. 212 of Russian criminal code 'Mass riots' and two episodes according to art. 280.1 'Public calls for actions aimed at violating the territorial integrity of the Russian Federation'. All 50 court hearings were held without allowing viewers. On the results of the proceedings, the court found Chubarov guilty on all charges and sentenced him to 6 years of imprisonment on the article about the organization of mass riots and two episodes of calls to violation of the territorial integrity of the Russian Federation, and decriminalized the punishment.

In connection with the fact that Chubarov

CASE REVIEW. CASE OF REFAT CHUBAROV

is a political figure and persecution of him can be directly connected with an intention to conduct an all-Ukrainian action on the topic of the occupied territories, his case was included into this review as a politically motivated court persecution.

THE COURT PROCEEDINGS

Court of First Instance:

Judges:

Prosecutors:

Lawyers:

Dates:

Results of Hearings:

Supreme court of the Republic of Crimea

Vasiliev Viktor Yuryevich, Tsoraeva (Chesnokova) Yulia Nikolaevna, Khinevich Alla Nikolaevna

Lobov Roman Vladimirovich, Semenchuk Denis Aleksandrovich, Bigvava Adgur, Yevtushenko Diana

Osokin Aleksandr Vladimirovich

22 June 2020-01 June 2021

sentenced to 6 years of imprisonment (in absentia)

The main violations of separate standards of fair justice:

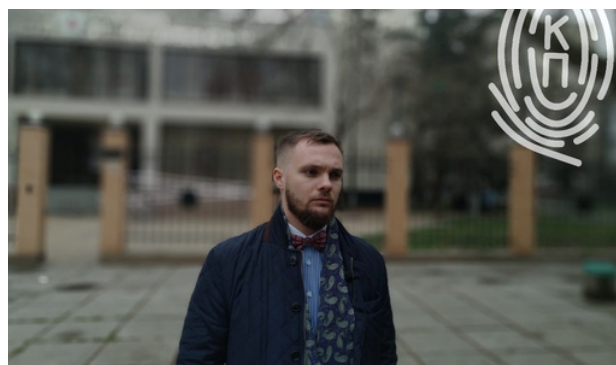
COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. Two out of three members of the judge panel considering the case – Khinevich Alla Nikolaevna and Tsoraeva (Chesnokova) Yulia Nikolaevna are former Ukrainian judges

against whom the Ukrainian Prosecutor General's Office initiated criminal proceedings on art. 111 paragraph 1 (high treason) in connection with their transfer from Ukrainian courts to work in the courts illegally formed in the territory of Crimea. This could influence the court decision since the defendant is a Ukrainian political figure who consistently advocated:

- de-occupation of Crimea;
- criminal responsibility for individuals involved in repressions against Crimean Tatars;
- international non-recognition of russian jurisdiction in the occupied territory. In such circumstances, the independence and impartiality of the judges, who are defendants in criminal cases, raise reasonable doubt.

2. The Chief Justice considering the case, Vasiliev Viktor Yuryevich, was transferred to the occupied territory from the North Caucasus regional military court of the Russian Federation, with violation of requirements of Geneva Convention. His russian citizenship and obvious career growth could influence the judge during the case proceedings on the abovementioned grounds.



Lawyer Aleksandr Osokin after the trial in the case of Refat Chubarov, photo: Crimean Process

CASE REVIEW. CASE OF REFAT CHUBAROV

PUBLIC PROCEEDINGS

1. The defendant's data was hidden on the official website of the court, which excluded the possibility to learn about the date, time and place of the court hearings regarding the criminal case on time.

2. The whole court trial regarding the case, being formally open, was factually held in a closed mode. Covid-19 restrictions, which were in the court even in the period when they were canceled in all other spheres, became the basis for this. The viewers were allowed in the courtroom only when the verdict was being pronounced.

At this, it is noteworthy that a large number of viewers who wanted to come to the pronouncement of the verdict were not able to do this – the court administration had reserved the main part of the seats for the media loyal to the russian authorities and accredited in the court's press service. Despite the fact that some of them did not come, the seats remained empty and viewers were not allowed to sit on them.

3. At least once, the court selectively canceled the restrictions connected with Covid-19. This was done on February 8, 2021 for the representatives of 4 media loyal to the russian authorities, during the interrogation of russian senator Olga Kovitidi. She was interrogated as a witness for prosecution. Kovitidi regularly makes public allegations about the criminal activity of Mejlis of Crimean Tatar people and its Chairman.



Pronouncement of the verdict in the case against Refat Chubarov, photo: Kryminform

EQUALITY OF THE PARTIES

1. The defendant was deprived of an opportunity to participate in the court proceedings in person. As materials of the appeal of July 28, 2020 against the judge's order about the return of the appeal against the judge's order of July 7, 2020 about stated, on the results of the preliminary hearing regarding the criminal case against Chubarov, a decision was made to consider the case in absentia of the defendant. The defense appealed the decision, having stated that the court had not complied with all the statutory requirements in order to consider the case in absentia. In particular,

- the case does not contain information that the defendant is outside the russian federation;
- the case does not contain information that the defendant does not serve the sentence for the alleged crime in the territory of another state;
- the court accepted that the defendant's whereabouts are unknown while the case materials contain information about the place of his registration in Crimea, place of registration and residence in Kiev;

CASE REVIEW. CASE OF REFAT CHUBAROV

- the court did not initiate any actions to inform the defendant on the address of his residence in Kiev about the date and place of preliminary hearings regarding the criminal case against him.

Considering the fact that the appeal was not satisfied, it can be stated that since the very beginning of the court proceedings a significant violation of adversarial parties and right to defense had been taking place.

2. During the preliminary hearings of the case, on July 17, 2020 it became known that the court had not allowed Nikolai Polozov, the lawyer by agreement, to participate in the court proceedings. Formally, the exclusion of the possibility of the lawyer to participate in the trial took place before the start of the court proceedings. But the approach itself to the exclusion of the defender from the case deserves special attention since it directly influences the adversarial parties and restricts the right for defense.



Lawyer Nikolai Polozov was not allowed to participate in the proceedings in the case of Refat Chubarov, photo: Crimean Process

The scheme of the lawyer's exclusion looked as follows:

- a) on the stage of preliminary investigation, the investigator conducting the case

applied for the recusal of lawyer by agreement Nikolai Polozov. The recusal was not grounded by the current legislation and the lawyer applied to the court against the investigator's order.

b) the court delayed the consideration of the appeal under various excuses;

c) the investigator issued an order about the completion of the criminal proceedings and transfer of the materials to the prosecutor's office. So, lawyer Polozov's appeal not considered by the court in time, could not become the subject of consideration since the preliminary investigation had already finished;

d) the investigator's order, not canceled by the court, about the recusal of Nikolai Polozov became grounds to prevent him from representing the defendant's interests on the stage of the court proceedings.

It is important to note that earlier lawyer Nikolai Polozov acted as a defender in the criminal case against deputy chairman of Mejlis of Crimean Tatar people Akhtem Chiygoz convicted for the crime that was incriminated to Chubarov – organization of mass riots in front of the Crimean parliament building on February 26, 2014. According to the results of the proceedings against Akhtem Chiygoz, lawyer Polozov managed to widely spread information about multiple violations made by the court on the stage of the case consideration and to provide details about the course of the trial that demonstrated lack of substance of the indictment and absence of true evidence of the defendant's guilt.

CASE REVIEW. CASE OF REFAT CHUBAROV

3. Due to the impossibility of direct monitoring of the course of the court investigation, a complete picture of correlation between satisfied and declined appeals of the parties is absent. At the same time it is noteworthy that the court satisfied at least 4 prosecutor's appeals about the announcement of the witnesses' and victims' testimony whose whereabouts was unknown. At this, in at least two cases, on February 17 and March 10, 2021, the defense objected to the announcement of the witnesses' and victims' testimony whose whereabouts remained unknown since, according to the lawyer's opinion, the announcement of this testimony was held with violation of the requirements of the criminal and procedural code of the Russian Federation.

PRESUMPTION OF INNOCENCE

1. Negative campaign on Russian and Crimean media during coverage of the court trial was widespread. In the research, 19 publications created before the enforcement of the court verdict, violating professional standards and aimed at forming negative public opinion about the defendant, were recorded.

Commentaries made by Olga Kovitidi, a witness in the case and senator of the Russian bodies of power, are worth attributing to such publications. Intentions to form public opinion, including the opinion of the judges' considering the case, are seen. In particular, the senior official claimed to the media, 'So

Chubarov, as I firmly believe, he is responsible for everything that happened on February 26. He led people to the square and in such a way exposed them to mortal danger'. However the defense's commentaries were not presented in the publication.³³



«26 февраля 2014 года был очень сложный день, и мы, депутаты Верховного Совета, кто-то с трудом входил (в здание – прим.), а часть – не смогли войти в Верховный Совет. Те беспорядки, которые были массовые на площади, сопротивление органам власти – в результате погиб человек. Ситуация была достаточно сложная, напряжённая. Это трагический день, переломный в истории Крыма. 26 февраля всё разделилось на до и после. Есть видеосъёмка, когда Чубаров зашёл в здание Верховного Совета и потребовал, чтобы мы все вышли из зала, и чтобы была прекращена сессия Верховного Совета, в противном случае представители «меджлиса» и «Правого сектора» (Запрещённая в Российской Федерации террористическая организация) ворвутся в здание Верховного Совета, и будет расправа над всеми теми, кто пытается провести сессию. Это было, я не сказала (в суде – прим.) ничего нового. Есть видеосъёмка, у нас с ним состоялся разговор, есть в кадре наша с ним перепалка, когда я попросила Чубарова выйти из зала, и после чего была активизация, была давка (у стен крымского парламента), и действительно, тогда толпа была достаточно агрессивная. Я ничего не придумала, и Сергей Валерьевич Аксёнов тогда был в центре этой толпы, пытаясь всех успокоить, была угроза», – рассказала Ольга Ковитиди.

Она уточнила, что в то время была боязнь, что **Сергей Аксёнов** раздавит разъярённая толпа, – передает **Крым 24**.

«Это всё было на моих глазах. Должны нести ответственность те, кто вывел людей на площадь. Поэтому Чубаров, я твердо уверена, он отвечает за всё то, что произошло 26 февраля. Он вывел на площадь людей и тем самым подверг смертельной опасности», – добавила Ольга Ковитиди.

*Запрещённая в Российской Федерации экстремистская организация

Источник: <https://kianews24.ru>

...And so Chubarov, I firmly believe, he is responsible for everything that happened on February 26.

2. News about the fact that the verdict in the criminal case was considered too lenient by the parliament of Crimea was widely spread. At this, the commentaries of the representatives of the body of power on the territory of Crimea were given on the day when the verdict was pronounced, long before its enforcement and its consideration in a court of appeal, whose opinion such statements made by the representatives of the State council of Crimea could influence significantly.

3. Informational campaign for the discrediting of the defendant in regards to the water crisis in Crimea which coincided

³³ <https://crimea-news.com/politics/2021/02/08/756513.html>

CASE REVIEW. CASE OF REFAT CHUBAROV

with the period when the court investigation in the case was being conducted, deserves special attention. Many political figures and officials stated that Refat Chubarov was one of the culprits in the circumstances.

4. Materials containing the use of informational manipulations were among other methods of forming negative attitude towards the defendant. So, when the court was in the deliberation room, the 'Politnavigator' edition issued a publication with the headline as a statement, 'Chubarov is looking at 9-year imprisonment and imminent punishment'.³⁴

Also, the text starts with an emotionally charged word 'ringleader', further the

publication presents opinions of 'politologists' which state without any evidence (prior to the court's decision) that the defendant took the path of extremism and '9 years is a fair sentence against Chubarov'.

← → ↻ politnavigator.net/chubarovu-svetit-devyatiletnijj-srok-i-neminuemaya-kara.html

ПОЛИТ НАВИГАТОР О проекте Форум

Чубарову светит девятилетний срок и неминуемая кара

Максим Карпенко. 24.05.2021 21:06 (Мск), Симферополь Просмотров: 4166

Дзен, Криминал, Крым, Общество, Политика, Россия, Украина, экстремизм

0:00 / 0:00

Главарь признанного в России экстремистским медреса крымско-татарского народа, экс-депутат Верховной рады Рефат Чубаров может быть осужден на девять лет колонии за организацию массовых беспорядков в 2014-м году.

Такой срок потребовал прокурор во время рассмотрения дела Чубарова, передает корреспондент «ПолитНавигатора».

Chubarov looking at 9 years of imprisonment and inevitable punishment

³⁴ <https://www.politnavigator.net/chubarovu-svetit-devyatiletnijj-srok-i-neminuemaya-kara.html>

CASE REVIEW. CASE OF EDEM BEKIROV

DESCRIPTION OF EVENTS

By the moment of his detention, Edem Bekirov was a political activist in Genichesk district, his spouse was head of the local organization of Mejlis of Crimean Tatar people. He was detained when passing a Russian checkpoint on the exit from Crimea where he had regularly come to visit his elderly relatives. The investigating authorities charged him of storage and later giving to another person approximately 200 cartridges and several packages of TNT.

Despite having many chronic illnesses, Edem Bekirov was kept in a detention unit on the stage of preliminary investigation where his state even worsened. On the first hearings of the criminal case on the merits, the court changed his detention to reporting obligation. However, right after the hearings finished, Bekirov was taken away by people in masks and nothing was known about his fate for a long time.

On September 7, Bekirov appeared among Ukrainian political prisoners whom Russia transferred to the Ukraine in the course of the exchange procedure. Despite this fact, the court continued observation of his case which had been halted due to the defendant's long-term illness.

However, on February 5, 2021 the court renewed the consideration of the criminal case in absentia without any obvious reasons. Based on the results of the consideration, Bekirov was found guilty and sentenced to 7 years of imprisonment.

The fact of persecution of a political activist in

itself serves as a basis to include it in a number of politically motivated cases. Unreasonable renewal of the halted proceedings is an additional basis to include the case in the report.

THE COURT PROCEEDINGS

Court of First Instance:	Central district court of Simferopol
Judges:	Demenok Sergei Valeryevich
Prosecutors:	Vinogradov Sergei Vladimirovich, Sarbey D. D.
Lawyers:	Velilyaev Islyam Shevketovich, Ladin Aleksey Aleksandrovich
Dates:	27 August 2019-09 June 2021
Results of Hearings:	sentenced to 7 years of imprisonment in absentia with a fine of 150 000 rubles

Court of Appeal:	Supreme Court of the Republic of Crimea
Judges:	Red'ko Galina Vladimirovna, Tsoraeva (Chesnokova) Yulia Nikolaevna, Mikhaylov Dmitry Olegovich
Prosecutors:	Turobova Anna
Lawyers:	Ladin Aleksei Aleksandrovich, Velilyaev Islyam Shevketovich
Dates:	16 September 2021
Results of Hearings:	Left without change

CASE REVIEW. CASE OF EDEM BEKIROV

The main violations of separate standards of fair justice:

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. Judge Sergei Demenok is a former Ukrainian judge, against whom the Ukrainian Prosecutor General's Office initiated criminal proceedings according to art. 111 paragraph 1 (high treason) in connection of his transfer from a Ukrainian court to work in a court illegally formed in the territory of Crimea. Apart from that, the judge had already presided in a politically motivated trial against Crimean Tatars which is known as 'Case of 26 February'. In such circumstances, the court's impartiality regarding the Crimean Tatar political activist who was exchanged by the Ukrainian authorities raises certain doubt.

2. Two out of three judges of the panel considering the case in the court of appeal, Red'ko Galina Vladimirovna and Tsoraeva (Chesnokova) Yulia Nikolaevna are former Ukrainian judges, against whom the Ukrainian Prosecutor General's Office initiated criminal proceedings according to art. 111 paragraph 1 (high treason) in connection of their transfer from a Ukrainian court to work in a court illegally formed in the territory of Crimea. In such circumstances, the impartiality of the court of appeal regarding the consideration of the appeal to the verdict for the Crimean Tatar political activist exchanged by the Ukrainian authorities raises certain doubt.

3. In addition, the extremely short period of time of the judge's stay in the deliberation room draws attention. The court claimed about its withdrawal to the deliberation room for issuing the verdict at 5 pm on June 8, 2021, and the pronouncement of the verdict was conducted on the following day, on June 9, 2021, at 10 am. So, the judge needed 17 hours (out of which 14 hours are of non-working and night time) to evaluate the testimony of at least 14 witnesses, the defendant, an explosives expert, mobile connection specialist, and to examine 2 expertises, billing materials, operational and investigative activities and other materials of the court. The time interval mentioned is insufficient for objective and thorough assessment of all the case materials. Such a brief period of stay in the deliberation room can indicate the fact that the decision in the case was issued before the completion of the court investigation and debate of the parties. In its turn, this can indicate violation of the principles of independence and impartiality of the court.



Lawyer Islyam Velilyaev telling about the extension of Edem Bekirov's arrest, photo: Crimean Process

CASE REVIEW. CASE OF EDEM BEKIROV

4. It is necessary to pay special attention to the extreme severity of the sentence issued. During the debate, the state prosecutor's party demanded 4 years of imprisonment for Edem Bekirov while the court sentenced him to 7 years of imprisonment with a fine of 150 000 rubles, which exceeds significantly the amount of punishment demanded by the state prosecutor and can indicate the judge's biased attitude towards the criminal case.



Edem Bekirov in a glass cage during the trial, photo: Crimean Solidarity

PUBLIC PROCEEDINGS

1. The pronouncement of the verdict was held in a closed mode. Viewers were not allowed into the courtroom, with the explanation that there were no free rooms during the pronouncement of the verdict and the judge would pronounce the verdict in his room. The argument is insufficient since the court had the right to postpone the pronouncement until one of the rooms was free or to allow a certain number of viewers into his room to provide the openness of the proceedings.

2. Viewers were not allowed into the courtroom for a long time after the proceedings were renewed, referring to the court chairman's order that only the participants of the trial were allowed into the

court building. During a long period these actions excluded the publicity of the proceedings in the case against Edem Bekirov.

3. On the official website of the Central district court, the information about the case did not include data about the state prosecutor.

EQUALITY OF THE PARTIES

1. When the court proceedings were renewed, the defense informed the court that the defendant did not have a possibility to participate in the court proceedings since he was outside the Russian Federation and his health had not improved in order for him to be able to arrive in the court. Apart from that, the defense drew the court's attention to the active quarantine restrictions according to which entrance to the territory of Crimea by foreign citizens was prohibited, and this also excluded the possibility of the defendant's personal participation in the court proceedings. Despite this fact, the court made a decision to conduct the proceedings in absentia of the defendant, which brought to significant violation of standards of adversarial parties and right to defense.

2. The balance between the motions of the parties that were granted by the court during the monitoring process indicates advantages for the prosecution's party: the court granted all 3 motions submitted by the prosecutor. Only 2 out of 4 motions submitted by the defense were granted.

CASE REVIEW. CASE OF EDEM BEKIROV

3. Recommendation about equidistance of parties from the court is also included into the list of recommendations about the standards of adversarial parties. In the criminal proceedings described, the prosecutor's party was placed much closer (no less than 1 metre) to the court than the defense party.

PRESUMPTION OF INNOCENCE

1. In the period prior to the exchange procedure, Edem Bekirov participated in court trials being in a glass cage. Keeping defendants in a cage or a glass cage in itself forms an image of a guilty person, violating the presumption of innocence.

2. Apart from that, at least 45 publications on Crimean and Russian media were recorded, 7 of which used false information about the defendant's involvement in committing

actions which he was not charged of, or formed negative attitude towards the defendant in other ways before the enforcement of the verdict. So, the 'Kryminform' information agency points in its heading and text that the defendant was a participant of a Ukrainian nationalistic battalion.³⁵ As a matter of fact, Bekirov was not charged of such actions in the court.



Court in Crimea released Ukrainian nationalistic battalion participant due to illness

³⁵ <https://www.c-inform.info/news/id/78998>

CASE REVIEW. CASE OF IVAN YATSKIN

DESCRIPTION OF EVENTS

Ivan Yatskin was detained in Simferopol on October 16, 2019, in a rented premise where he resided with his second wife and two children. After election of the restraint measure in the form of detention, he was conveyed to the 'Lefortovo' detention centre in Moscow and was kept there in complete isolation for approximately two months. In that period, in the defense's opinion, the investigators exerted psychological pressure on him. Apart from that, in winter of 2021, the 'Lefortovo' officials took Yatskin for a walk compulsorily without proper footwear and he spent forty minutes in the yard wearing slippers at -15C. As a result, Yatskin was diagnosed with severe frostbite of lower limbs.

Ivan Yatskin was charged with high treason on art. 275 of Russian criminal code. According to the investigation's version posted on the website of the 'Memorial' human rights defending centre, when he was in Simferopol since February 14 to March 30, 2016, Yatskin communicated with his acquaintances from law enforcement circles, on the instructions of SBU, 'collecting personal data of the officers of the operative and search bureau of MIA in the Republic of Crimea'. When he was in the territory of Ukraine from April to July 2016, 'via the 'Internet' network and during personal meetings with SBU officers' he transmitted them this data that constitutes a state secret. According to the information of the 'Memorial' human rights defending centre, Yatskin could be an officer of the local law enforcement authorities before the occupation of Crimea.

All the trials, both regarding the measure of restraint and on the merits, were held in a closed mode because some witnesses connected with the state secret were present in the case. The participants of the process signed a non-disclosure agreement, so the details of the court proceedings are almost completely unidentified. The court found Yatskin guilty and charged him with 11 years of imprisonment.



Ivan Yatskin's mother came to say goodbye to her son on the day of the verdict, photo: Crimean Process

THE COURT PROCEEDINGS

Court of First Instance:	Supreme court of the Republic of Crimea
Judges:	Khinevich Alla Nikolaevna, not identified, not identified
Prosecutors:	not identified
Lawyers:	Polozov Nikolai Nikolaevich
Dates:	13.04.2021-21.05.2021
Results of Hearings:	sentenced to 11 years of imprisonment

CASE REVIEW. CASE OF IVAN YATSKIN

The main violations of separate standards of fair justice:

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

1. Judge Alla Khinevich is a former Ukrainian judge who later swore allegiance of a Russian judge with violation of current legislation of Russia (having double citizenship). Apart from that, Alla Khinevich is suspected of committing the crime of 'High treason' in the territory of Ukraine, which could also influence the verdict issued, since the defendant, in the opinion of 'Crimean Human Rights Group', had and did not hide his clear political stance regarding the territorial integrity of Ukraine, which became the reason for his persecution. It is also noteworthy that Judge Alla Khinevich repeatedly issued guilty verdicts in politically motivated cases earlier, in particular regarding Andrei Kolomoiyets, participant of political events on the Maidan, Lenur Islyamov, creator of the Crimean Tatar voluntary battalion, and Konstantin Shiring, accused of espionage.

PUBLIC PROCEEDINGS

1. All hearings in the court proceedings were held in a closed mode.

2. The announcement of the introductory and resolute part of the verdict (according to art. 241 of criminal procedure code of the Russian

Federation) is to be performed in an open court trial. The pronouncement of the verdict on the results of the court proceedings described was held in a closed mode.

3. The information about the defendant's surname, the jury board, parties in the case was hidden on the website of the Supreme court of Crimea.

4. The information about preliminary hearings of April 13, 2021, was not made public on the website of the court.

5. The verdict issued on the results of the case consideration is absent on the official website of the court.

EQUALITY OF THE PARTIES

1. Due to the absence of openness in the court trial, it was impossible to record criteria which would have allowed to assess the adherence to the principle of adversarial parties.

2. At the same time, it is necessary to note that on May 13, 2021, during the court trial, the defendant addressed the court with demand to provide him with security measures because one of witnesses for the prosecution had freely entered the detention centre and threatened him, and then he caused hostility to appear in his cellmates. Considering the rules of visiting the detention centre, their peculiarities and its working hours, the incident mentioned may indicate that at least one witness for

CASE REVIEW. CASE OF IVAN YATSKIN

the prosecution in the case against Ivan Yatskin has a very high level of influence in the law enforcement system and also could have hostile feelings towards the defendant.

PRESUMPTION OF INNOCENCE

1. Due to the absence of openness in the court trial, it was impossible to record the criteria that would allow assessment of the adherence to of the presumption of innocence principle. At the same time, according to the defendant's lawyer, Yatskin was in a cage

during the court trial. Keeping defendants in a cage or a glass cage in itself forms an image of a guilty person, violating the presumption of innocence, and being in a cage humiliates human dignity.

2. Apart from that, at least 60 publications on Crimean and Russian media were recorded, 9 of which used false information about the defendant's involvement in committing actions that he was not charged of. In all the cases it was said that the defendant was accused of espionage, although the court was held on the article about high treason.

CONCLUSIONS

Does the judicial system formed in the conditions of the occupation of Crimea provide efficient protection from illegal politically motivated persecutions, suppression of rights and freedoms?

1) Detailed analysis of adherence to separate standards of fair justice on the example of the cases monitored brings to the conclusion that the judicial system created in the conditions of the occupation of Crimea, is not able to provide efficient protection from illegal politically motivated persecutions. The following confirms this notion:

- the process of forming and appointment of judges in the courts of occupied Crimea (mostly those individuals were allowed to administer the justice who are loyal towards authorities of the Russian Federation);
- enforcement of Russian legislation in the territory of the peninsula with violation of norms of international humanitarian law;
- systematic non-adherence to procedural guarantees to fair court proceedings;
- the absence of acquittals in the cases monitored.

2) The analysis made during the preparation of the report also allows to claim that in separate cases the courts of Crimea were inclined to take decisions that worsened the defendants' position more than it was due to the prosecutor's

initiative. This gives grounds to presume that the judicial system formed in the conditions of the occupation of Crimea serves as a tool for politically motivated persecutions. To check the hypothesis mentioned, an additional detailed research of the circumstances of the basis in each case monitored, conducting of additional analysis of functioning of the court system and actions of Crimean Russia-controlled bodies of power are necessary.

Were separate standards of fair court proceedings during the court consideration of 11 researched politically motivated cases adhered to?

The answer to this question lies in the sequential analysis of each of the 4 standards that were studied on the example of 11 politically motivated cases.

COURT PROCEEDINGS BY FAIR AND IMPARTIAL COURT

Standard was not adhered to. In 9 out of 11 proceedings more than one signs, both obvious and oblique, indicating possible dependence and /or commitment of the court was recorded.

The procedure of the appointment of judges is one of the key elements on which trust to justice is based.

CONCLUSIONS

Its non-compliance with international standards results in reasonable doubt in the independence and impartiality of the courts in Crimea.

The Russian Federation violated the requirements of art. 54 of Geneva Convention (IV) that prohibits to change the status of judges appointed by the authorities of Ukraine. Mostly the judges who are loyal to the Russian authorities were allowed to the administration of justice in the territory of Crimea. This led to the fact that in separate cases, the court was passive towards the abuse from the prosecutor's party or even demonstrated interference with the court investigation process, based on the state prosecutor's interests (for example, on January 14, 2020, during the court proceedings in the criminal case regarding Artyom Gerasimov, the state prosecutor was trying to reveal as many details from the materials of the criminal case as possible in front of the witness during interrogation of a FSB officer, the court remaining absolutely passive; on February 12, 2019, in the court hearings regarding the 'Vedzhie Kashka' group, during the interrogation of a witness – FSB officer Artyom Alekseev, judge Mikhail Belousov interrupted lawyer Edem Semedlyaev and claimed that the lawyer had to think before asking questions to which the witness could not give clear answers. Afterwards, the judge stopped interrogating the witness despite the fact that the defense still had questions to him. In separate cases, undisguised contacts of the judge, who was considering the case, with FSB

representatives and other security forces interested in the case result were observed (so, on January 16, 2020, during the court trial in the case regarding Yunus Masharipov, judge Sergei Smirnov announced a break after completing the interrogation of two FSB operations officers and, having exited the court room, invited both of the witnesses into his room. There was no necessity in such actions within the framework of the court proceedings).

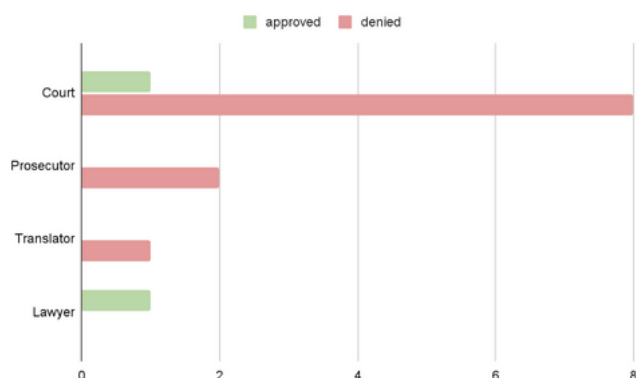
Moreover, in some cases the courts' expression of an active position that worsened the defendant's situation to a much greater extent that it was caused by the prosecution's initiative was recorded (for example, in the case regarding Edem Bekirov, state prosecutor D. Sarbey demanded the punishment in the form of 4 years of imprisonment with serving in a colony of general regime with the fine of 200 000 rubles, while the court issued the verdict in the form of 7 years of imprisonment with serving in a colony of general regime and the fine of 150 000 rubles.

The court's manifestation of its active position was repeatedly expressed with emotional actions which indicated the violation of the impartiality principle (for instance, on December 21, 2018, during the consideration of an appeal to the election of a restraint measure for Vladislav Kostyshyn

CONCLUSIONS

captured seaman of the Naval Forces of Ukraine, judge of the Supreme court of Crimea Sergei Rubanov constantly raised his voice at the defendant and the lawyer, asked rhetoric questions irrelevant to the case, made unreasonable assumptions about the level of fluency of the Russian language, admitted 'getting carried away occasionally'; on March 3, 2020, during consideration of the criminal case regarding Yunus Masharipov, judge of the Yalta city court Sergei Smirnov constantly interrupted the defendant's final speech and demanded to finish the speech quickly. As a result, in 20 minutes, without waiting until the defendant would finish his final speech, the judge announced his withdrawal to the deliberation room and left the court hearings, slamming the door loudly.

In at least 5 out of 14 cases analyzed, recusals were applied for the court and the state prosecutor in connection with actions that indicated their interest in the result of the case. Thus, 7 recusals were applied for the judge during the court proceedings in the case of the persecution of lawyer Emil'Kurbedinov, 5 of the recusals were applied within one day. All recusals for the prosecutor's office and the court were not granted (except one case of self-recusal.)

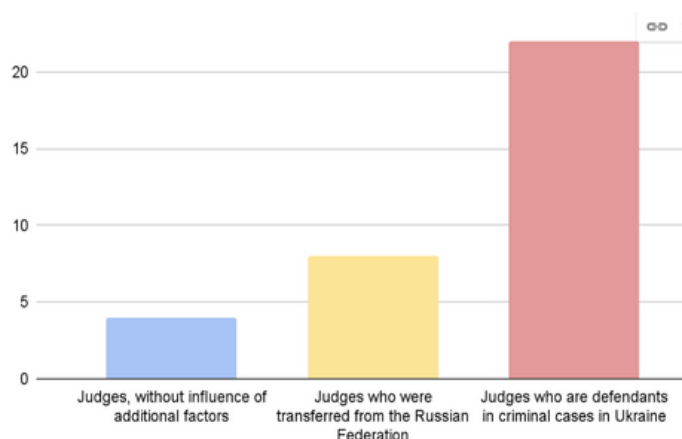


Great importance in providing independence and impartiality during consideration of politically motivated cases in Crimea belongs to such factors as:

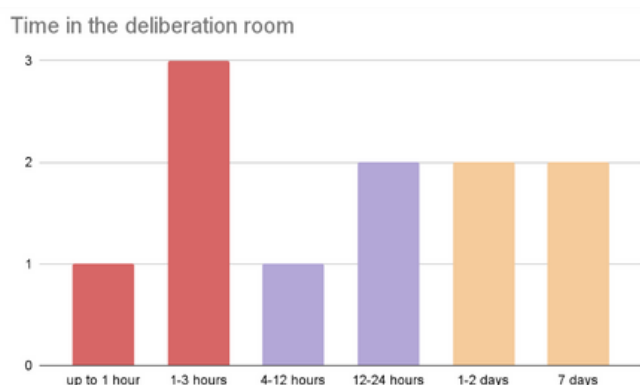
- whether the judge was a representative of the judicial bodies of Ukraine earlier;
- whether the judge is convict, defendant or suspect of criminal cases in the territory of Ukraine;
- whether the judge is involved in human rights violations or humanitarian law violations in the occupied territory of Ukraine;
- whether the judge was transferred to Crimea from the courts in the regions of the Russian Federation to administer justice in the occupied territory of Ukraine with violation of the requirements of art. 54 of(IV). Geneva Convention

Out of 32 judges who participated in the consideration of politically motivated cases on the stage of the first instance or the court of appeal, information about the influence of the abovestated factors is absent only regarding 4 of them. In 8 cases, the judges were earlier transferred from different regions of the Russian Federation (with promotion, as a rule), 20 cases were considered by former Ukrainian judges who were filed with suspicions, accusations or court decisions in absentia in criminal cases in the territory of Ukraine.

CONCLUSIONS



In some cases, time indicators needed by the courts to stay in the deliberation room and order the verdict can serve as the indirect signs of absence of independence in the administration of justice in politically motivated cases. Out of 11 politically motivated cases where the indicators were considered, in 7 cases the courts spent less than one day to assess all the materials and evidence and other actions which required thorough and objective study.



PUBLIC PROCEEDINGS

Standart was not adhered to. In all 11 proceedings multiple factors of violation of standards destined to provide openness and publicity of court proceedings were

recorded. A new form of violation of these principles was the use of the situation with the latest Covid-19 virus pandemic to regulate and restrict the publicity of politically motivated court proceedings.

The public nature of court hearings protects the parties from the administration of justice done without public control; it is one of the means that supports trust to the court.

The right to open trial undergoes significant restrictions and systematic violations in Crimea, which causes the undermining of trust to the judicial system in general. In comparison with the period of the first research (years 2016-2018), this part of fair justice standards provision has degraded most noticeably.

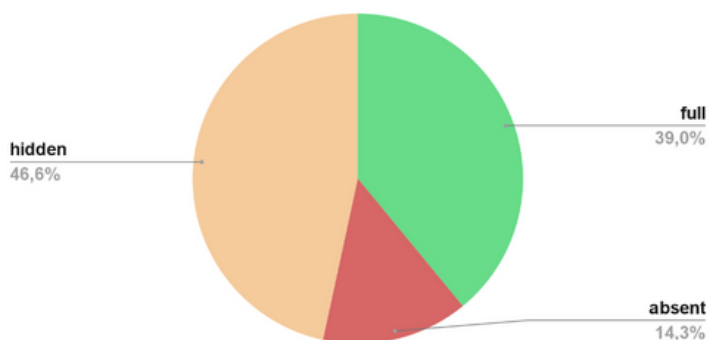
Justice must not only be administered, but its administration must be clearly seen. Problems with case consideration in a closed mode have been revealed, which was caused, among other things, by the abuse of the situation connected with Covid-19 pandemic and unreasonable restrictions under the disguise of anti-terrorist measures.

Practices of restriction of public access to the information about court proceedings are systemic (so, data about the defendant's/defendants'

CONCLUSIONS

surnames and the case parties was hidden in 46,6% of cases, the information about court hearings was neither posted nor published on time in 14,3% of cases.

Information on the websites of the Crimean courts



A significant part of court decisions in the segment of cases under research was not published (verdicts were published on the websites of courts of the first instance in 4 out of 11 cases, and in 3 cases out of 10 decisions concerning the consideration of appeals).

Pronouncement of verdicts in an open trial was in 8 out of 11 cases (no viewers were allowed during the pronouncement of verdict in the criminal cases of Ivan Yatskin and Edem Bekirov, an unlawful decision to allow only relatives to the pronouncement of the verdict to Medzhit Abyamitov was made). Out of 8 verdicts pronounced in an open trial, the verdict was pronounced without the motivational part in 3 cases.

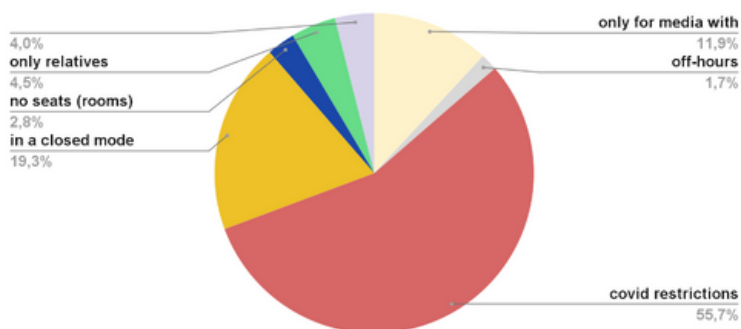
Regular violations of the publicity principles due to placement of administrative and logistical obstacles to prevent the public and journalists from their presence on court trials have been

noted. More than a half (52,9%) of court hearings available for viewers were held without consideration of public interest to the events – in low-capacious court rooms. As a result, not all the viewers and journalists had a possibility to be present on the trial. Also, limiting the number of viewers, court officials often allowed vacant seats in the court rooms (so, during verdict pronouncement in the case of the 'Vedzhie Kashka' group, the court bailiffs refused to allow viewers into the court room with the excuse that all the seats were occupied, however it was subsequently recorded that 3 seats remained vacant).

A systematic approach in the violation of justice publicity principles due to the abuse of the situation connected with Covid-19 pandemic restrictions is observed. So, aiming at prevention of new Coronavirus infection spread, according to the resolution of the Council of judges of the Republic of Crimea № 223 of June 9, 2020, 'only court officials and participants of trials are allowed into court buildings in the territory of Crimea.' Despite the fact that later the norm became advisory in nature, the practice of not allowing viewers to court hearings with the reference to prevention of new Coronavirus infection spread is widespread and has been widely applied to the present day. This became a reason

CONCLUSIONS

for refusal in 55% of cases recorded during the research.



Another trend aimed at the deterioration of the situation in the realm of publicity of justice was the use of state prosecution's motions to the court about court proceedings to be held in a closed mode, in order to provide security for the participants of the court proceedings. Considering the political nature of such cases, the absence of real precedents connected with security issues in court trials and the absence of compelling evidence pointing at an intention to impose a threat to the security of the case participants, it can be assumed that, during consideration of politically motivated cases in the research period, restrictions of the openness included in the Russian legislation were abused (for example, consideration of the case against Artyom Gerasimov, member of a religious organization, was held in a closed mode, insofar as the court had granted the state prosecutor's motion about the fact that open proceedings could threaten the participants of the trial, their relatives or loved ones).

Special attention must be paid to implementing practice of creating discriminatory preferences for journalists from the media that received their

accreditation in the judicial bodies of Crimea (so, on November 27 and 28, 2018, during court hearings regarding election of the measure of restraint for the captured seamen of the Naval Forces of Ukraine, only the representatives of accredited media could enter the court building. At this, the accreditation procedure and the names of the individuals responsible for the procedure were absent on the court website; on February 8, 2021, during interrogation of a witness (senator Olga Kovitidi) in the case regarding Refat Chubarov, only the representatives of accredited media were allowed into the court, Covid-19 pandemic restrictions being still active for the rest of viewers and journalists.

In total, in the court trials analyzed within the investigation of the court trials, 30 facts of violations of journalist rights were recorded (journalists were not allowed to be present in the court hearings in 25 cases, the defense party's motions about photo and video shooting were declined in 3 cases, all technical equipment was illegally seized for the whole period of the trial in 1 case, a journalist was detained with violations due to photo shooting in the court building).

CONCLUSIONS

EQUALITY OF THE PARTIES

Standart was not adhered to. In 9 proceedings out of 11 more than one fact of violation of standards destined to provide equality of the parties and adversarial parties were noted. In most cases, preferences for the prosecutor's party are recorded, and deliberate deprivation of the defense party of possibility to use all the opportunities to prove its position.

Violation of the principle of equality of the parties and adversarial parties undermines the legitimacy of court decisions. Common practice applied by courts puts defendants in the conditions of vulnerability, with the obvious advantage for the prosecution party. Violation of the principle of a defendant's participation in the trial has become a common occurrence. Some cases contained significant problems connected with the defendant's presence and an opportunity for them to be heard.

So, the court hearings against Lenur Islyamov were held without the defendant's participation, and the court numerously denied the defense of addition or review of the materials in which the defendant had expressed his position. The court trial regarding Refat Chubarov was held in absentia as well. The court proceedings in the criminal case of Edem Bekirov, who was released during the prisoners' exchange, were held partially in absentia – the judge declared Bekirov wanted after his official transfer to Ukraine and later made the decision

to finish the consideration of the case with a verdict in absentia.

In some cases, the defendant's right to interrogate witnesses testifying against them was restricted. (So, on December 6 and 7, 2018, during the consideration of the case regarding Emil' Kurbedinov, the court repeatedly declined the defense's motion about calling the witnesses in the case for interrogation; during the proceedings in the criminal case regarding Yunus Masharipov, on January 16, 2020, during the interrogation of the witness for the prosecution, the judge frequently declined the defendant's questions to the witnesses as irrelevant to the case.)

Adversarial parties and the right for defense were not provided to the full extent due to significant difficulties for the defense party with the engagement of expert opinions and interrogation of the experts who had presented their reports in the framework of pre-trial investigation. The defense's motions connected with this issue were declined by the court, which was recorded in 3 out of 7 cases that allowed the monitoring of the court investigation.

Violation of the principles of adversarial parties and the right for defense was noted similarly in the cases when the defense's party was addressing the court with the motions about the requesting of documents or evidence from other bodies of

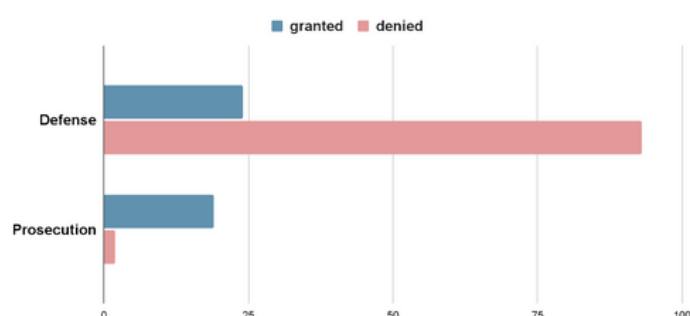
CONCLUSIONS

power (for example, in the case regarding the 'Vedzhie Kashka' group, the court declined the motion about the requesting of materials of the civil action from the Zheleznodorozhny district court of Simferopol which were important for the defense.)

A similar approach was recorded in the issues of resolution of the defense's motions about the review of photo and video files which served as physical evidence in the case materials (so, during the court proceedings in the case regarding Lenur Islyamov, on May 25, 2020, the defense submitted a motion about the review of the contents of the CDs present in the case file, but the court declined the motion. On November 9, the defense re-submitted the motion, emphasizing that the CDs present in the case file had the status of physical evidence, however the court declined the motion again.)

During the review of motions submitted by the parties, the court's clear preference for the prosecution party was observed. In particular, in the court proceedings monitored, the defense's motions granted by the court amounted to 21%, while the prosecution's motions granted by the court amounted to 90%.

Court's approach to consideration of motions of the parties



Technical conditions in the court rooms could often put the defense party into a more vulnerable position. For example, such were constant technical problems with providing videoconferencing and connection with the defendant who was not present in the court room (25 cases) and the impossibility to provide confidential conditions for the lawyers' communication with their defendant.

One of symbolic elements that provide equality for participants in court proceedings is the location of seats for the parties in the court room. According to the data analyzed, obvious attention is paid to this issue by Crimean courts, insofar as equidistance of the parties from the court is recorded in 65% of cases. The state prosecutor is seated closer to the court in 32,5% of the cases, the defense party – in 2,5%.

Moreover, in two cases, violation of the right for defense was recorded which was expressed by ignoring of the defendant's final speech. So, for example, on April 17, 2019, during the final court hearings regarding the 'Vedzhie Kashka' group, defendant Ruslan Trubach started his final speech but the judge interrupted him, began demanding to inform him what exactly the defendant was asking from the court. Defendant Trubach asked again if he was being deprived of the opportunity to say everything that was on his mind, and the judge claimed for

CONCLUSIONS

the second time that the defendant had had enough time during the court proceedings.

PRESUMPTION OF INNOCENCE

Standart was not fully adhered to. In 10 out of 11 processes the facts of violation of standards destined to keep the defendant's presumption of innocence are noted. In the vast majority of cases the violations were not connected with the court's actions but they concerned publications in the media and claims of political leaders and officials.

Convincing the society of a person's guilt without final judgment, also conveyed via public spaces, actually substitutes proper justice and reduces the court's role only to formal fixation of opinion and election of a measure of restraint. Influential pro-governmental media broadcasting in Crimea actively encouraged creating an image of guilty individuals out of the participants of the cases monitored, before the legal enforcement of the court's decision.

In the period of court trials, the occupational authority leaders' statements (in particular, of the head of Crimea Sergei Aksyonov, senator Olga Kovitidi, the Crimean parliament representatives), made in an accusatory manner and with the expression of hate speech and exerting significant pressure on the court and violating presumption of innocence, were quoted in the press.

So, for example, two months before the consideration of the criminal case regarding the accusation of Refat Chubarov of mass riots began, head of 'the Republic of Crimea' Sergei Aksyonov stated, 'The events of February 26, 2014, became the peak of this criminal activity. Our dead compatriots' blood is on the hands of Refat Chubarov and his partners in crime from Mejlis.'. In total, in the framework of the research in all the cases, at least 87 publications with the use of hate speech, statements not confirmed by the court and with opinions about the cases that did not have the final decision, were recorded.

Among other serious violations of the standard of the presumption of innocence, keeping defendants in a cage or a glass cage, contrary to the defense's motions, is noteworthy. For a defendant, being inside a cage or a glass cage creates an image of a guilty person, and spreading such photos on the media strengthens the impression about the individuals' guilt. Out of all the cases in the research focus, the defendants were near their lawyers during the whole court trial in 3 cases, the initial placement in a glass cage was terminated due to the change of the restraint measure or release of the imprisoned persons through a prisoners' exchange procedure in 2 cases, keeping the defendants in a glass cage during the whole process was recorded in 3 cases, in cages – in 2

CONCLUSIONS

cases. Circumstances could not be determined in other two cases because of the total publicity of the court proceedings.

In at least 3 cases (the case of Emil' Kurbedinov, the case about the detention of the seamen of the Naval Forces of Ukraine, the case of Artyom Gerasimov) there are grounds to believe the authorities knew about the accusatory character of the verdicts initially, since the bigger number of police representatives

than usual were present during the pronouncement of the verdict and other measures for subsequent restriction of the defendants' freedom and obstacles for the public to move around the building were noted. For example, on December 7, 2018, the staff of special forces of MIA in a number of not less than 20 people in full equipment surrounded the court building prior to the delivery of judgment in the case regarding lawyer Emil' Kurbedinov.

RECOMMENDATIONS FOR UKRAINE:

1. To conduct efficient investigations of violations of international humanitarian law norms in Crimea in connection with gross violations of fair justice in cases of politically motivated persecutions including the use of international mechanisms.

2. To assist with the access of human rights defending monitoring missions in order to monitor court proceedings in politically motivated cases in Crimea, including the simplification of the procedure of visiting the peninsula by human rights defenders and missions from other countries.

3. For independent national human rights defending authorities including the human rights Ombudsman of the Verkhovna Rada of Ukraine, to perform all possible actions

within their mandate in order to protect victims of politically motivated persecutions in Crimea, also to seek visiting the occupied peninsula.

4. For the authorities including diplomatic missions, to actively inform the population of Ukraine and the global community about the situation with human rights in occupied Crimea.

5. To draft and implement legislation concerning the application of individual sanctions for systematic human rights violation, and to seek the implementation of sanctions by partner countries on human rights violators in Crimea in cases of illegal politically motivated persecutions.

RECOMMENDATIONS FOR GLOBAL COMMUNITY, CIVIL SOCIETY

1. To facilitate and organize monitoring of adherence to the standards of fair justice in cases of politically motivated persecutions in Crimea. To seek systematic access for interstate and intergovernmental human rights defending missions to occupied Crimea.

2. To regularly initiate and conduct discussions about the violation of standards of fair justice in politically motivated cases in Crimea, including the aim to inform the global community about negative consequence for human rights and security system in general as a result of the occupation of Crimea.

3. While performing actions aimed at protection of victims of human rights violations in politically motivated cases in Crimea, to consider that the systemic

problem with the adherence to the right for fair court proceedings cannot be solved by improvement of the legislation of the country that established the occupational regime. To focus on human rights standards and international humanitarian law when seeking solutions to the abovementioned problems.

4. To initiate, develop and adopt an interstate agreement on a tool of implementation of individual sanctions including the legal framework of monitoring and accountability for gross and systematic violations of human rights in the conditions of the armed conflict.

LIST OF SOURCES

REFERENCES

1. Crimean process: problems of compliance with fair trial standards in politically motivated cases from 2016 to 2018, 2018 <https://crimean-process.org/krymskij-procress-problemy-soblyudeniya-standartov-spravedlivogo-pravosudiya-v-politicheski-motivirovannyh-delah-s-2016-po-2018-gg/>
2. Trial Monitoring. A Reference Manual for Practitioners / Office for Democratic Institutions and Human Rights (ODIHR), 2012
3. Rule of law tools for post conflict states, Vetting: an operational framework, 2006 https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawVetting_en.pdf
4. Determination of the Constitutional Court RF 05.02.2015, <http://sutyajnik.ru/documents/4788.pdf>
5. Guide to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 2014 https://www.echr.coe.int/Documents/Guide_Art_6_criminal_RUS.pdf
6. Judgments European Court of Human Rights, Case “Ismoilov and Others v. Russia” <https://hudoc.echr.coe.int/eng>

7. Judgments European Court of Human Rights, Case “Butkevicius v. Lithuania” <https://hudoc.echr.coe.int/eng>

8. Judgments European Court of Human Rights, case “Raza v. Bulgaria” <https://hudoc.echr.coe.int/eng>

9. Official site “Supreme Court of the Republic of Crimea”, http://vs.krm.sudrf.ru/modules.php?name=docum_sud&id=143

10. Official site “Supreme Court of the Republic of Crimea”, http://vs.krm.sudrf.ru/modules.php?name=docum_sud&id=141

11. Kachalova O.V., Kachalov V.I. Handbook detention as a measure of restraint: validity of application and renewal <https://rm.coe.int/kachalov-handbook-detention-as-a-measure-of-restraint-rus/1680a1cb64>

MEDIA

TV-channel NTV, <https://www.ntv.ru/novosti/2114881/>

News agency TASS, <https://tass.ru/politika/5873395>

LIST OF SOURCES

site “News-Front”, <https://news-front.info/2018/12/10/poshli-po-etapu-v-chem-eshhe-zameshany-ukrainskie-moryaki-provokatory/>

news paper “Crimean Thruth”, <https://cpravda.ru/news/2018-12-06/krymskie-pravookhraniteli-zaderzhali-advokata-khizbov>

site “ForPost”,
<https://sevastopol.su/news/arestovan-prozhivavshiy-v-krymu-ukrainskiy-boevik>

site “Version”, <https://versia.ru/otkuda-v-krymu-berutsya-podrostki-terroristy>

site “Version”,
<https://versia.ru/sutenyory-iz-medzhalisa>

news paper “Comsomolian Truth”
<https://www.crimea.kp.ru/daily/26762.7/3792449/>

news agency BBC,
<https://www.bbc.com/russian/news-39660756>

site “PolitNavigator”,
<https://www.politnavigator.net/podzhogi-vzryvy-i-shpricy-na-plyazhakh-medzhlisovskijj-diversant-soznalsya-obo-vsjom-na-kameru.html>

account in Facebook of Refat Chubarov,
<https://www.facebook.com/dogrujol/post/s/2532600796835059>

news agency “Ukrinform”,
<https://www.ukrinform.ru/rubric-crimea/2865289-mars-dostoinstva-v-krym-planiruet-sa-na-maj-dzemilev.html>

news agency “Crimean news agency”,
<https://kianews24.ru/news/ot-imeni-islyamova-uzhe-ne-otdelit-slov/>

news agency “Regnum”,
<https://regnum.ru/news/polit/2857921.html>

news agency “RIA-Crimea”,
<https://crimea.ria.ru/20201210/Politicheskiy-blekaut-Lenura-Islyamova-1119033816.html>

site “Crimean process”,
<https://crimean-process.org/verhovnyj-sud-kryma-izbiratelno-narushil-poryadok-rassmotreniya-v-zakrytom-procессе-dela-chubarova/>

news agency “Crimea news feed”,
<https://crimea-news.com/politics/2021/02/08/756513.html>

site “PolitNavigator”,
<https://www.politnavigator.net/chubarovu-svetit-devyatiletnijj-srok-i-neminuemaya-kara.html>