

CRIMEAN PROCESS



TRIALS AGAINST CRIMEANS WHO OPPOSE THE MILITARY AGGRESSION OF THE RUSSIAN ARMY (ONE YEAR OF FULL-SCALE WAR)



The war against Ukraine triggered a wave of protests within the Russian society as well as in the occupied territories. One of the tools of suppressing the anti-war and pro-Ukrainian sentiment was a new article 20.3.3 of the Russian Code of Administrative Offense which provides for punishment for 'public actions aimed at discrediting the use of the armed forces of the Russian Federation in the protection of the interests of the Russian Federation and its citizens, maintenance of international peace and security, including public calls to obstruct the use of the armed forces of the Russian Federation for the aims stated above, as well as directed at the discrediting the performance of duties by the state bodies of the Russian Federation outside the territory of the Russian Federation according to the above stated aims'. The new norm was implemented on

March 4, 2022.

Since the time mentioned, the 'Crimean Process' initiative group has analyzed the implementation of this norm quarterly in the courts in the territory of the Crimean peninsula and summarized the information about the violation of standards in the access to fair justice, the adherence to which is required by IV Geneva Convention Related to the Protection of Civilian Population in Time of War and art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The following report presents summary results of the research covering one year since the full-scale invasion in Ukraine started.

GENERAL INFORMATION



Materials about administrative offense against 247 persons on art. 20.3.3 of the Code of Administrative Offense of the Russian Federation were transferred to the courts of Crimea and Sevastopol during the research period. The court decided to impose an administrative penalty in 235 cases; the protocol was returned in order to eliminate violations and was not re-examined in 5 cases;

judicial proceedings were terminated in 3 cases, and court hearings were postponed to the date over the timescales of the research in 4 cases. Most court orders were issued by the with this, direct monitoring was done during 10 trials only, and the main research methods

were: interviews with the persons subjected to administrative persecution on art. 20.3.3, the analysis of court decisions and the analysis of open sources.

Documentation was performed with the use of direct observation instruments, analysis of the court orders, and interviews with the participants of the trials.

FORMS OF 'DISCREDITING'



In terms of practice in the implementation of the above stated norm, actions considered by Crimean courts as the 'public discrediting of the russian army's actions' administrative offense are of the greatest interest. Out of all court decisions published or issued by other means on art. 20.3.3 in the courts of Crimea and Sevastopol, persecutions of residents for posting on various web resources comprises a significant share. In total, it is known about 82 cases which were connected with action on social media and other information platforms. This amounts to 45% of all the facts of persecution. At this, such questionable court decisions

as sending a private message in a messenger or posting a video with military equipment without commentaries of any kind were recorded.

Oral statements which caused 57 citizens to be held accountable for administrative offense hold the first place by the number of persecutions. This amounts to 32% of all the number of persecution facts. At this, such doubtful court decisions as an oral appeal with the words 'Glory to Bendera' or the statement 'russians took Crimea away from Ukraine' were recorded.



Graffiti "No war" in Simferopol

Persecutions for various forms of demonstrating anti-war or pro-Ukrainian position comprised 10% of all the quantity. Out of 18 court decisions, such dubious cases as '...publicly pinned a needle with a flag of Ukraine on food (frozen meat product)...' or '...demonstrated a tattoo wording 'Dick of the War' on his left

shoulder' are worth mentioning. Other actions regarded by the courts as public discrediting of the Russian army include singing Ukrainian songs – 14 cases (8%), writing inscriptions, and other actions regarding the symbols of Russian military invasion – 9 cases (5%).

PUBLICITY AND OPENNESS



1. Out of 243 court orders in this category of cases, court decisions were announced publicly in 179 cases, which amounts to 74% of the total number. At the same time, it is noted that court orders are frequently posted with the delay in several months.

2. In 155 cases, information about the time and place of the court proceedings was released late. On average, relevant information appeared either on the following day or 2 days after the administrative case had been reviewed,

however some cases were recorded when the data was posted on the website in 14 days only.

3. Out of 10 court proceedings in connection with which it was possible to organize direct monitoring process, 8 cases were held in a closed mode without the participation of viewers and press. Court bailiffs mostly refused to allow people in, referring to the regime against the spread of the



Bailiffs don't allowed into the court building, where the trial about discreditation of army

coronavirus infection according to which only participants of the trial are allowed to enter the building. In the case with the consideration of the administrative case against Zair Smedlyaev, viewers and media representatives were not allowed into the building, with the reference to the order about the increased

counter-terrorist security measures; and during the consideration of the case against Edem Smedlyaev, viewers and media representatives were not allowed into the building, with the reference to the absence of free seats since the court hearings were being held in a small room.

INDEPENDENCE AND IMPARTIALITY OF THE COURT



1) In connection with the fact that art. 20.3.3 of the Code of Administrative Offense was introduced after the start of the full-scale war against Ukraine, it is quite possible that the people condemning the war can be citizens of Ukraine and/or have a clear sympathy to Ukraine. In connection with this, information confirming or denying that the Crimean judge involved in the observation of cases about administrative offense on the article mentioned above is a former Ukrainian judge has considerable importance in terms of adherence to impartiality and independence of the court. Out of 99 judges who participated in the consideration of this category of cases in courts of the first instance, 53 are or can be proclaimed wanted on the suspicion of committing the crime enshrined in art. 111 of the Criminal Code of Ukraine as 'High Treason'. Other 22 judges were transferred to Crimea from the regions of Russia and administer justice with violation of

norms of the international humanitarian law.

2) Also, considering all the above stated peculiarities in the attitude that some members of the judiciary have towards Ukraine, it is noteworthy that, during the research period, appeals on art. 20.3.3 were considered by 5 judges exclusively – Sergei Yakovlev, Ekaterina Timoshenko and Lyubov Dyachenko, against whom the Prosecutor General's Office of Ukraine had initiated criminal proceedings on art. 111 'High Treason', and Oksana Shidakova and Vladimir Agin who are Russian judges and act with the violation of norms of the international law. In all the cases, the decisions of courts of the first instances were left unchanged.

3) The analysis of open data about the results of the court proceedings on art. 20.3.3 of the Russian Code of Administrative

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Offense did not reveal any cases of participation of the prosecutor's office representative in case observation. The people interviewed also stated that prosecutor's office representatives had not been present during the court proceedings. Courts in Crimea maintain the trend of not providing the call of a public prosecutor during the observation of cases about administrative offense, so, as a matter of fact, the judges themselves performed the function of prosecutor (announcement of protocols and witness testimony, presentation of photo charts and other evidence of the

offense). This can have significant influence on forming the judge's biased position in favour of the prosecution side.

4) In at least one case, the participants of court proceedings interviewed drew the attention to the obvious bias of the court in case observation. Before going to the deliberation room in order to issue a decision, judge of the Central District court Victor Mozhelyansky claimed that he evaluated the female defendant's actions as 'a shot in our guys' back'.

RIGHT TO DEFENSE



1) In the court, the persons charged with offense are often deprived of the opportunity to see the interrogation of the witnesses that gave testimony against them. This restricts their right to defense significantly and demonstrates the judges' biased attitude to the case result. The court does not call witnesses for interrogation in cases when it is necessary for all-round, complete and objective investigation of all the circumstances of the case as a whole. For example, the defendant explained to Saki district court that he had made a remark to two drunk persons who were disturbing the order and speaking in obscene language at a stop of public transport. Those persons slandered him later, claiming that he had been

shouting Ukrainian greetings aloud. The court considered written evidence compelling on the basis that the witness had been warned about the liability of perjury.



Заир Смедля

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**Сколько ещё должно
погибнуть мирных
жителей, женщин и
новорождённых детей,
чтобы мир начал отличать
геноцид от хрен знает
каких операций?**

The author of this post insisted on an expertise, but the court refused

2) Cases were recorded in which the court does not take any additional measures for a complete investigation of all the circumstances of the case, neglecting the verification of evidence about the defendant's innocence, and interprets the unsettled contradictions not in the defendant's favour. For instance, it is noted in a court ruling against a resident of Yevpatoria about administrative offense that, according to the defendant's words, he does not possess 'replay equipment which could allow listening to audio files loudly'. The court did not bother itself to determine the truth and settle the contradictions. According to the open data on the court website, the observation of the case lasted 5 minutes only.

3) The object of offense is the authority of the Russian army, and public discrediting is the method. A significant number of analyzed court orders raises doubt in the presence of the objective part or signs of discrediting which include 'accusations, escalation of negative factors, insults, name-calling, humiliating comparisons'. In some of the cases, linguistic expertise is necessary in order to conduct objective and all-round research. For example, the presence of obvious signs of public discrediting of the Russian army seems questionable in the actions of a Simferopol resident who was standing on a road 'holding in his hands an

object that looks like an agricultural tool – a scythe with a poster attached to it which contains the inscription 'Who is going to Kyiv Rus with me?' During the research period, no cases of expertise appointment were recorded, including those on the appeals of people held accountable for administrative offense.

4) In at least one case, the deprivation of the right to defend themselves in the court was recorded towards a person charged with administrative offense. During the consideration of a case on art. 20.3.3, Kerch resident Ilya Gantsevsky detained by FSB officers submitted an adjournment motion in order to exercise the right to defense. The trial was postponed from April 12 to April 21. On the following day, as Gantsevsky claims, he was held administratively liable for drug use and was sentenced to 14-day arrest. On the day when the case on art. 20.3.3 was to be considered, he was serving administrative sentence and was not delivered to the court to be able to defend himself. The court considered the case in absentia, since no adjournment motions had been submitted.

CONCLUSIONS:



Consideration of protocols on administrative offense for 'discrediting the actions of the russian army' on art. 20.3.3 of the Code of Administrative Offense of the russian federation in the courts of Crimea is paired with systemic violations of the basic standards of access to fair justice – the principles of publicity, adversarial parties, right to defense, and impartiality of the trial. The vast majority of the cases of court proceedings contain a number of signs of politically motivated persecution for the freedom of expression. The common nature of the violation of standards in access to fair justice and rote legalization of the law

enforcement's protocols may indicate the fact that the court consideration of such category of cases is not aimed at determination of truth and prevention of offense in the realm of public discussion of the russian military forces' activity and the war in the territory of Ukraine. There is enough ground to claim that the norm of art. 20.3.3 of the russian Code of Administrative Offense has been used exclusively as a tool to suppress anti-war and pro-Ukrainian sentiment in the territory of Crimea throughout the year.