

Trials regarding Crimeans who stand against Russian army's military aggression (eighteen months of war)

The full-scale invasion in Ukraine sparked a wave of protests both inside the Russian society and in the occupied territories. One of the tools widely used to oppress anti-war and pro-Ukrainian sentiment was article 20.3.3 of the Code of administrative offense which penalizes for 'public actions aimed at discrediting of the use of military forces of the Russian Federation for protection of interests of the Russian Federation and its citizens, support for international peace and security, in particular, public calls for interference with the use of the armed forces of the Russian Federation for the above stated objective and directed at the oppression of the use of the Russian armed forces of the Russian Federation for the above stated objective, and for the call for use of the Russian army.' The new norm was introduced on March 4, 2022.

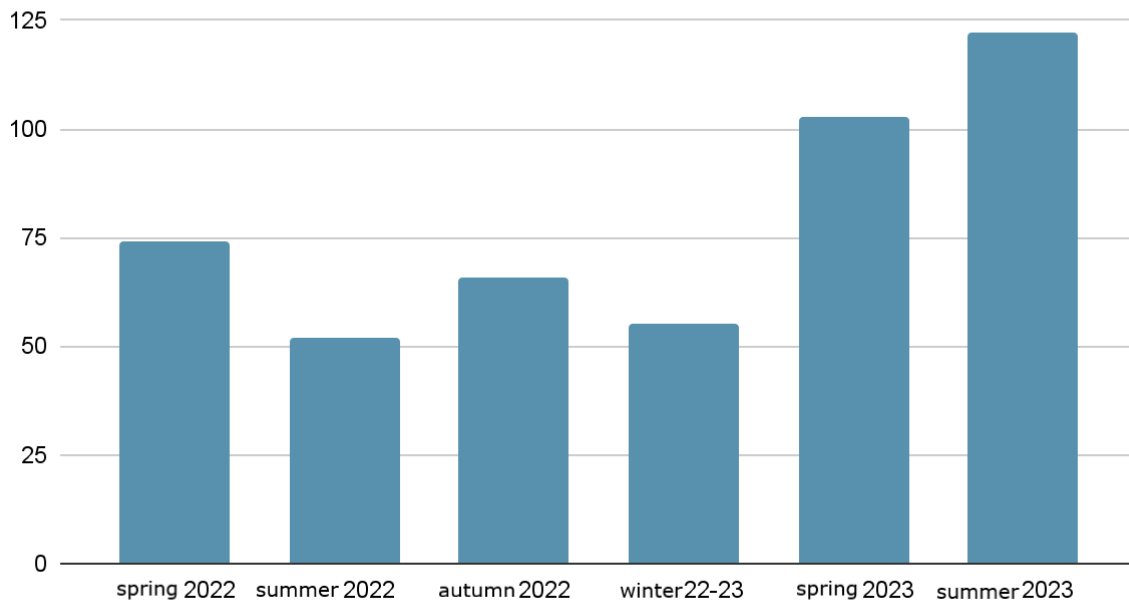
Since then, the 'Crimean Process' human rights defending organization has analyzed the implementation of this norm in courts in the territory of the Crimean peninsula every three months, and summarized the data on violation of the standards of access to fair justice, adherence to which is required by IV Geneva Convention relative to the Protection of Civilian Persons in Time of War and art. 6 of the European Convention on Human Rights and Fundamental Freedoms. This report represents the summary results of 18 months' research conducted since the beginning of the full-scale military invasion in Ukraine.

General Information

During the research period, administrative offense materials against 472 individuals under art. 20.3.3 of the Code of administrative offense were conveyed to the courts of Crimea and Sevastopol. The court issued a decision to impose an administrative sentence in 424 cases, the protocol was returned in order to remove the violations in 25 cases, it was not re-considered (in particular, 4 during the last quarter), a person was acquitted in 1 case, the trial was terminated due to other circumstances (in particular, 4 during the last quarter) in 10 cases, and the hearings were postponed to the date which goes beyond the time limits of the research in 12 cases. At the same time, a continuous rise in number of persecutions should be noted: 122 protocols were issued against 103 individuals during 3 months in the period between March and May.

In total, the dynamics of repressions for anti-war speeches and support for Ukraine looks as follows:

Dynamics of persecution under art.20.3.3



Most rulings are issued by the courts on the day when the protocol is written, which significantly complicates the opportunity to organize personal monitoring of such trial sessions. In connection with this, the direct monitoring was performed only during several trials, and the main research methods were: interviews with individuals persecuted administratively under art. 20.3.3, the analysis of court decisions and the analysis of open sources. Documenting was done with the use of direct observation instruments, the analysis of court rulings and interviewing the participants of the trials.

The summary results of the 18-month research of yet another interim research, which covers the period between March 4, 2022 (the day the norm was introduced) and September 4, 2023 and continues the work initiated last year on documenting and analyzing the practice of using repressions against expressing pro-Ukrainian and pacifist views in the territory of Crimea, are represented below.

Forms of 'discrediting'

From the perspective of practice of applying this norm, the actions attributed by Crimean courts to the 'public discrediting of the russian army's actions' administrative offense are of the biggest interest.

Out of all decisions under art. 20.3.3 published or otherwise found in the courts of

Crimea and Sevastopol, virtually all the cases belong to one of the 4 categories:

- posts on social media and other online services
- oral statements (including interviews and performing Ukrainian songs)
- pickets or other forms of non-verbal demonstration of anti-war/pro-Ukrainian symbols
- writing inscriptions, graffiti of anti-war/pro-Ukrainian character or vandalizing the symbols of the war

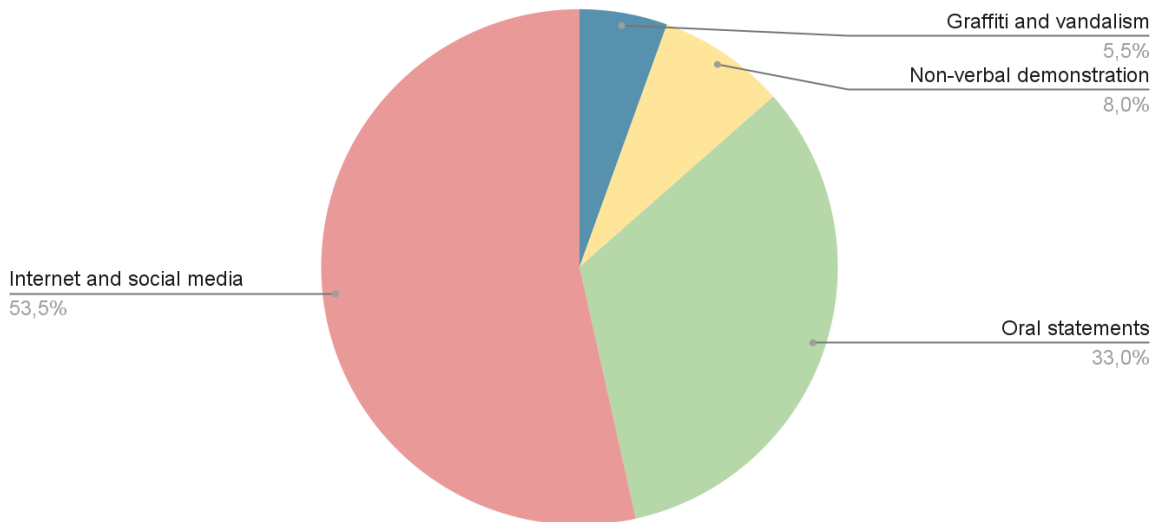
At this, the choice of protest forms is very disproportional: persecutions of locals for posting on various internet resources comprise the significant part: at least 129 cases (53,5%).

The second place by popularity is taken by oral statements of citizens, for which at least 79 individuals (33%) were held administratively accountable during 1,5 years. It is noteworthy that, during the past 3 months, the cases were recorded when Crimeans openly 'discredited' the russian army when speaking to the traffic police officers or used obscene and offensive language when speaking about russian servicemen on duty.

Persecutions for different non-verbal forms of demonstrating anti-war or pro-Ukrainian stance were popular at the very beginning of the full-scale invasion when a lot of people came out to the streets holding anti-war posters. In total, it is known only about 20 cases during 18 months that ended with persecution, which comprises 8% from the total number of reasons identified for application of art. 20.3.3 of the Code of administrative offense.

During the 18 months, the least common however consistent form of 'discrediting' has been the writing of inscriptions and graffiti of anti-war/pro-Ukrainian character or vandalizing the symbols of the war. In total, it is known about 13 cases (5.5%), 1-2 episodes per quartet are recorded on average. Also, during the past 3 months, at least 3 protocol has been issued: one for the act of stepping on the Russian flag, to a Sevastopol resident for writing 'No to War' on a concrete ring and one for desecrating symbols of the military invasion in Bakhchisarai.

Forms of expressing Protest



Analysis of adherence to separate standards of access to fair justice:

Openness and publicity

1) Out of 24 rulings in this category of cases, the court's decisions were openly made public in 252 cases, which is 59% of the total number. It is also noteworthy that, as a rule, such decisions are published by courts with a several months' delay.

2) In 279 cases (66%), the information about the time and place of hearings was untimely made public. On average, the respective information appeared on the following day or 2 days after the consideration of the administrative case, however some cases were recorded when the information about the place and time of the hearing was published only 21 days after the consideration of the case. Such practice makes efficient public control of justice and its openness impossible.

3) Out of 12 trials, in which it was manageable to organize direct monitoring, 10 took place in a closed mode without listeners and the press. In most cases, the court bailiffs refused to allow people to enter the court building, referring to the counter-coronavirus regime or the regime of increased anti-terrorist security, according to which only participants of the trial are allowed into the court building.

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ATTENTION TO CITIZENS!

Dear participants of the trials and visitors of Krasnogvardeyskoe district court of the Republic of Crimea!

In order to strengthen the measures of anti-terrorist security in the court and not to allow unlawful action in the court building, to raise the level of the judges', court officials' and visitors' security, according to measures planned by the joint order of the Court Department Management of the Republic of Crimea and Management of Federal Bailiff Service in the Republic of Crimea of 25.02.2022 #48/12 'On Strengthening Anti-terrorist Measures in district, city courts of the Republic of Crimea in the period between March 09, 2022 and till a special order, the entrance to the building of Krasnogvardeyskoe district court of the Republic of Crimea is restricted:

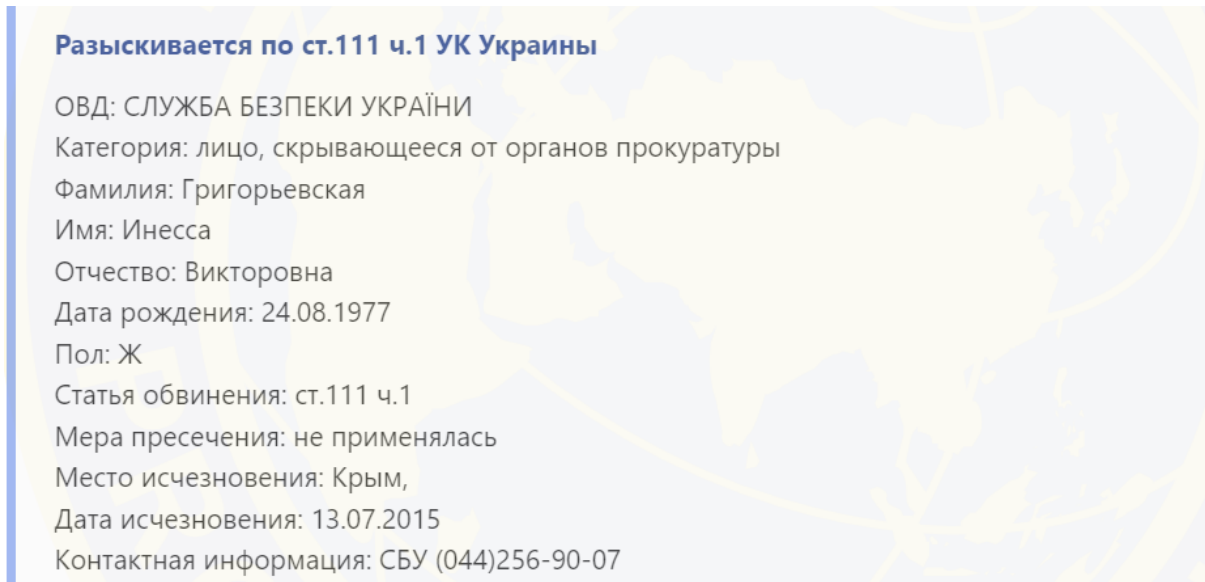
- the access for non-participants of trials is banned;
- persons who are not participants of trials should realize their rights by submitting applications, appeals via the internet portal GAS 'Pravosudie' or by mail.

In the case with consideration of the administrative case against Edem Semedlyayev, listeners and media representatives were denied access to the court building, referring to the absence of seats since the hearing was taking place in a small room. This is a gross violation of the publicity standard since the court had to have taken all necessary measures in order to provide a bigger room or openness in any other possible manner.

Independence and impartiality of the court

1) Due to the fact that art. 20.3.3 of the Code of administrative offense was introduced after the beginning of the full-scale war against Ukraine, it is absolutely logical that people who condemn this war can have an obvious sympathy towards Ukraine. In connection with this, it is very important for adherence to impartiality and independence of the court to have evidence whether the Crimean judges involved in consideration of cases on administrative offense under this article were previously Ukrainian judges (because they are participants of criminal cases in Ukraine in this

case, which shapes their biased attitude to the conflict, this state and the individuals who demonstrate their support for Ukraine). Out of 131 judges who participated in consideration of this category of cases in the court of the first instance, 69 (53%) of them were proclaimed wanted with the suspicion of committing the crime described in art. 111 of the Criminal code of Ukraine 'High Treason'.



Разыскивается по ст.111 ч.1 УК Украины

ОВД: СЛУЖБА БЕЗПЕКИ УКРАЇНИ
Категория: лицо, скрывающееся от органов прокуратуры
Фамилия: Григорьевская
Имя: Инесса
Отчество: Викторовна
Дата рождения: 24.08.1977
Пол: Ж
Статья обвинения: ст.111 ч.1
Мера пресечения: не применялась
Место исчезновения: Крым,
Дата исчезновения: 13.07.2015
Контактная информация: СБУ (044)256-90-07

Wanted under art. 111 of the Criminal code of Ukraine

DIA: Security Service of Ukraine

Category: person hiding from prosecution bodies

Surname: Grigoryevskaya

Name: Inessa

Paternal Name: Viktorovna

Date of Birth: 24.08.1977

Gender: F

Article of charges: 111 part 1

Restraint Measure: not applied

Place of Disappearance: Crimea

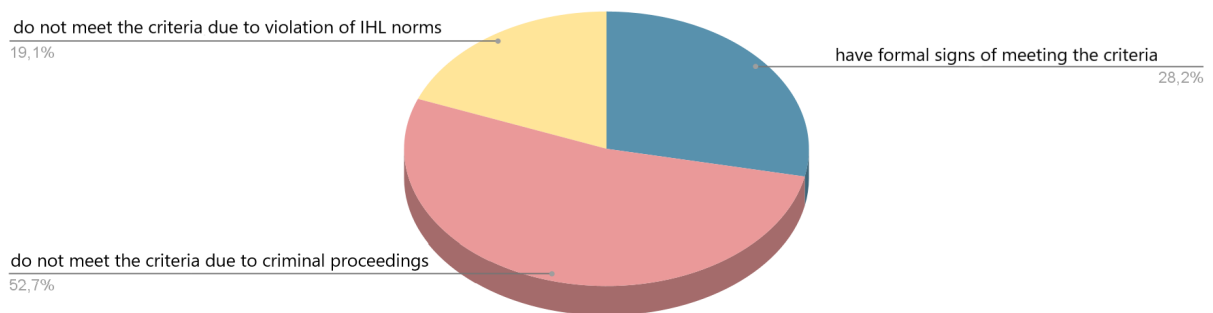
Date of Disappearance: 13.07.2015

Contact Information: SBU (044)256-90-07

Other 25 judges were transferred to Crimea from Russian regions and administer justice with violation of international humanitarian law norms. So, only 28% of the judges who participate in consideration of cases on discrediting the Russian army formally meet the criteria of independent and impartial judicial body.

In total, adherence to formal standards of independence and impartiality of the court looks as follows:

Impartiality of judges that consider cases under art. 20.3.3 Code of administrative offense



2) The analysis of open data about the results of consideration of cases under art. 20.3.3 of the Code of administrative offense revealed only 1 case of a prosecutor's representative participation in the consideration of the case, at the same time it is clear from the case materials that the prosecutor acted as a body that issued the administrative protocol but not exclusively to support prosecutor's party in the court. The individuals interviewed also stated that no representatives of the prosecutor had been present at the hearings. Courts in Crimea keep the trend of not providing a call of a state prosecutor's representative during consideration of cases on administrative offense, and, as a matter of fact, the function of prosecutor (reading protocols, witnesses' testimonies, presenting photo charts and other evidence of the offense) was performed by the judges themselves. This can have significant influence on forming the judge's biased position in favour of the prosecutor's party.

3) Biased approach of the court is periodically recorded during hearings dedicated to the topic of the military conflict. So, for example, during the trial against a Simferopol resident, judge of Central district court Viktor Mozhelyansky publicly claimed that he estimated the actions of the defendant as 'a shot in our boys' backs'. Thereafter, his bias reflected in at least one more court [decision](#) where the word 'Ukraine' systematically written with a small letter draws attention.

Equality of the parties and right to defense

1) Defendants in offense are often deprived of the possibility to question the witnesses who testified against them. The presence of contradictions between the

data stated in the protocols and the defendant's position is not removed by the court. During hearings, judges often ignore motions about questioning witnesses, assigning expertise, etc. Subsequently, the contradictions found are not interpreted in favour of the defendant.

[For instance](#), a Pervomayskoe district resident explained to the court that he had not pronounced the phrase 'Glory to Ukraine!' in a public place but was slandered by two persons who he did not get on well with. At this, the court did not call these persons and other witnesses for questioning but found the protocol on administrative offense and written explanations of the witnesses as sufficient.

Such an approach significantly restricts the right of one of the parties to defense, presumption of innocence, and right to give evidence.

2) The object of the offense is the authority of the Russian army and public discrediting is the method. A large number of rulings analyzed raise doubt in terms of presence of the objective part or signs of discrediting, which include 'accusation, escalation of negative factors, insults, labeling or giving diminutive comparisons'. For objective and comprehensive research, linguistic expertise is required in some cases. For example, presence of the object of public discrediting described in the article seems doubtful in commentaries posted by a resident of Kirovskoye district who posted the comment 'this kind of circus is taking place' about the video of a car rally dedicated to the ninth anniversary of the 'incorporation' of Crimea. The signs of discrediting are not obvious in the [phrase](#) 'a peaceful sky over the head' as well, especially considering the position of the defendant who did not plead guilty.

At this, during the research period, it is known only about one [case](#) when the court referred to the results of a 'scientific conclusion of MBUK 'Feodosia Museum of Antiquities'. It is worth pointing out that this document is marked with the 'reply about the conducted research' status in the court decision, i.e. it is not a conclusion of a linguistic expertise.

In all other cases, when the decisions contain texts that raise doubt in having signs of discrediting the Russian army, the court does not explain what kind of basis the content of the publications or the statements is estimated on as the one aimed at 'deprivation of trust to anything, undermining authority or image'. During the research period, no case of appointing linguistic expertise was recorded, in particular on the defendants' motion.

Conclusions:

1. Consideration of protocols on administrative offense for 'discrediting the Russian army's actions' under art. 20.3.3 of the Code of administrative offense in the courts of Crimea is connected with systemic violations of main standards of access to fair justice – the principles of publicity, adversarial

parties, right to defense and impartiality of the court consideration. The vast majority of cases of court consideration have signs of politically motivated persecution for expressing opinions.

2. The total character of the violations of standards of access to fair justice and automatic legalization of the protocols of the security forces can indicate that court considerations of this category of cases are not aimed at determination of truth and prevention of offense in the realm of public discussions about the activity of the Russian military forces and the war in the territory of Ukraine.
3. There are grounds to claim that the norm of art. 20.3.3 of the Code of administrative offense has been more and more actively used as a tool to oppress anti-war and pro-Ukrainian sentiment in the territory of Crimea for the 18 months.