

CRIMEAN PROCESS



PROBLEMS OF COMPLIANCE WITH FAIR JUSTICE STANDARDS IN POLITICALLY MOTIVATED CASES



2023



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INTRODUCTION

This report was prepared by the expert group for the analysis of the results of monitoring separate trials in Crimea in the period of 2023. Cases that bear signs of politically motivated persecution of an individual or a group of individuals were the subject of the monitoring. The trials that began a year or two before the full-scale invasion appeared in the spotlight, as well as cases that had become one of the consequences of the escalation of the Russian military aggression after February 24, 2022.

A special feature of this very research is the investigation of new court practices in politically motivated cases which became a response of the judicial system to the challenges of the long full-scale war. What to do if witnesses for the prosecution were liquidated during the military aggression? How to justify the legality of the defendant's violent abduction from the newly occupied territories? In which way, during a trial, to fix the testimony previously given by the FSB officers who later have been sent to the war zone?

Solving such specific issues by the court became the subject of scrutiny, in addition to the constant analysis of violations of the norms of access to fair trial enshrined in art. 6 of the European Convention on Human Rights and compulsory for adherence in the occupied territories during armed conflicts in accordance with the requirements of the Geneva Convention relative to Protection of Civilian Persons in Time of War.

A presentation of a 18-month research of the use of the judiciary system of Crimea as a tool of legalization of struggle with the

population's sympathy to Ukraine and anti-military sentiment is also among the peculiarities of this report. The legal part of the repression process secured by the Crimean courts took a form of persecutions for 'public actions aimed at discrediting' the Russian military forces.

Let us remind that a part of the Ukrainian territory – the Autonomous Republic of Crimea and the city of Sevastopol – has been occupied by the troops of the Russian Federation since late February 2014. The above mentioned actions of the Russian Federation were defined on the international level and by Ukraine as the occupation of the Crimean peninsula. Accordingly, Russia is responsible for adherence to human rights in this territory and has a range of obligations and restrictions enshrined in the Geneva Convention (IV) relative to Protection of the Civilian Persons in Time of War of August 12, 1949.

In numerous reports of human rights defending organizations, resolutions and presentations of international and inter-governmental organizations, the systematic deterioration of the situation with the human rights has been marked in the occupied Crimean peninsula since 2014. The situation has aggravated even more after the beginning of the full-scale invasion to Ukraine. A complete absence of access to Crimea for international missions that monitor the situation with human rights, impossibility of work for non-governmental human rights defending organizations, independent journalists and attorneys worsen the situation. This boosts the rise in the



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level and scale of persecutions of individuals or groups of individuals and gross violations of human rights in Crimea.

The judicial system and fair justice play the key role in supporting democratic standards. In connection with this, adherence to standards of fair justice, especially in cases of persecution of the opposition (in politically¹ and religiously motivated cases) is an important indicator of the human rights situation on the occupied peninsula and clear demonstration of the repression policy chosen as priority and actively used by the occupying authorities.

The given report is the fourth work in this regard.¹ It considers systemic analysis of separate aspects of functioning of the Russia-controlled judicial system in Crimea and adherence to some standards of fair justice and is a continuation of the research initiated in 2016 and based on the results of a long-term and comprehensive monitoring of trials in separate politically motivated cases grounded on direct observations.

The TASK of the report was not only to establish the degree of adherence to international standards of fair justice in trials in Crimea, but also to investigate the specificity of administration of justice under the conditions of the armed conflict escalation, in particular on the example of

politically motivated cases. One of key research questions was the issue: to which extent the judicial system created under the conditions of the occupation of Crimea provides protection from illegal politically motivated persecutions of individuals or group of individuals and from the oppression of human rights and freedoms in Crimea under the conditions of the full-scale armed conflict.

The SUBJECT of the monitoring and further analysis was four court cases on the fact of politically motivated (particularly, religious) criminal persecutions in Crimea. Among them, cases connected with persecutions of journalists, religious activists, leaders of the Mejlis of the Crimean Tatar people, participants of the civilian blockade of Crimea were proportionally included. Apart from that, a complex analysis of the processes on administrative offenses against Crimean Tatar human rights defender Abdureshit Dzheparov and independent attorney Olexsiy Ladin was included in the research. These cases were selected for monitoring due to the obvious political motif and pressure on the human rights defenders and lawyers' community and also due to the fact that, however we speak about persecution within the framework of the Code of administrative offenses in this case, it can be equated to criminal-legal influence measures because a sanction connected with imprisonment was applied.

The terminology, concepts and definitions used in documents of international organizations (the UN, the Council of Europe, OSCE) and also the terminology and names of the bodies of power

¹ <https://crimean-process.org/krymskij-procress-problemy-soblyudeniya-standartov-spravedlivogo-pravosudiya-v-politicheski-motivirovannyh-delah-s-2016-po-2018-gg/>;
<https://crimean-process.org/obzor-problemy-soblyudeniya-standartov-spravedlivogo-pravosudiya-v-politicheski-motivirovannyh-delah-za-2018-2021-gody-eng/>;
<https://crimean-process.org/obzor-problemy-soblyudeniya-standartov-spravedlivogo-pravosudiya-v-politicheski-motivirovannyh-delah-za-2022-god-eng/>



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accepted in occupied Crimea after March 2014 were used for the objectives of the report. Due to the factual spreading of the Russian legislation in the territory of Crimea since 2014, the cases that were in the spotlight of monitoring and research were qualified and considered by the courts within the framework of the Russian federal legislation.

The report does NOT assess the political situation on the peninsula. The analysis is based on the principles and standards of international law. This report continues work on observation and analysis of the situation with politically motivated cases in Crimea, as well as with trials in such cases.

The document is thematically linked to the previous 'The Crimean Process: problems of adherence to the standards of fair justice in politically motivated cases' reviews. The report is designed for representatives

of state bodies of power, media, general public and expert community of international structures and non-governmental organizations. It can be useful as one of the elements of documenting violations of art. 64-71 and other provisions of IV Geneva Convention relative to Protection of Civilian Persons in Time of War, provides better understanding how the judicial system works under the conditions of the occupation of Crimea, and during the analysis and investigation of the situation in concrete politically motivated cases. Moreover, the report can be used by lawyers and victims of human rights violations during work with national courts and law enforcement bodies, with the European Court of Human Rights, the International Criminal Court and other international human rights defending mechanisms.

METHODOLOGY

THE OBJECTIVE OF THE RESEARCH

The objective of the research is the analysis of the level of correspondence of trials in politically motivated cases in Crimea to international standards of fair justice, and detection of possible specific violations of the standards under the armed conflict escalation and the occupation.

MAIN TASKS:

The main tasks were:

1) to collect and analyze the amount of materials received as a result of monitoring of trials in 5 politically motivated cases in Crimea;

2) to evaluate:

- adherence to the standards of fair court consideration² during court observation of four politically motivated criminal cases and one cases on administrative offense against independent lawyer;
- the level of ensuring the protection from unlawful politically motivated persecutions of separate residents or groups of residents of Crimea by the judicial system created under the occupation of Crimea, and also from oppression of rights and freedoms in politically motivated cases.

² trial by an independent and impartial court; public consideration; Equality of the parties, presumption of innocence.

OBJECTS OF THE ANALYSIS:

The objects of the analysis were 5 trials (4 criminal and 1 administrative), selected with the consideration of criteria presented below. It is important to specify that the experience of the OSCE³ and OHCHR⁴ methodologies in the area of justice monitoring was taken as the basis of the criteria formation.

CRITERIA FOR CASE SELECTION:

1. Cases that meet the criteria of politically motivated persecutions: Cases that meet one or several criteria listed below are defined as politically motivated cases for the purposes of this report:
 - Cases in which persecution of individuals is conducted with violating one of fundamental rights guaranteed by the ECHR and its protocols, particularly the freedom of thought, conscience and religion, freedom of speech and information and the freedom of assembly and association;
 - Cases in which persecution of individuals is conducted due to exclusively political reasons with no connection to any offense;
 - Cases in which persecution of individuals is conducted exclusively for non-violent activity aimed at the protection of human rights and fundamental freedoms;

³ Trial Monitoring. A Reference Manual for Practitioners / Office for Democratic Institutions and Human Rights (ODIHR), 2012

⁴ <https://www.ohchr.org/sites/default/files/Documents/Publications/RuleoflawVettingen.pdf>

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- Cases in which, due to political motifs, the duration of imprisonment, detention conditions and the punishment do not obviously correspond with the level of the offense which the individual is accused or suspected of;
- Cases in which persecution of individuals and/or groups of individuals in Crimea is done on the basis of the criminal legislation of the RF for the deeds that do not serve as a cause for criminal persecution in Ukraine (for example, accusation of extremism and separatism, and also persecution of groups of individuals whose activity is not prohibited in Ukraine);
- Cases in which sentencing on the accusation connected with the support (real or imaginary) of Ukraine as a side of the conflict was held with violation of fundamental guarantees of international humanitarian law (in the part of provisions of art. 5, 8, 47, 147 of the Geneva Convention (IV) relative to Protection of Civilian Population in Time of War of August 12, 1949);

2. A court consideration on the merits took place in courts in the territory of Crimea.

3. A court consideration in two judicial authorities was completed in the period until December 2023;

4. The information is present, according to the results of attendance, about at least 30% of the total number of hearings in the case;

5. A sufficient amount of information and materials was collected for further analysis of each case.

LIST OF CASES:

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

- the case against Nariman Dzhelal, Asan and Aziz Akhtemov, better known as the case of the "gas pipeline bombing" (based on the criteria: a) the prosecution of individuals is carried out in violation of one of the fundamental rights guaranteed by the ECHR and its protocols, in particular freedom of expression and information, as well as freedom of assembly and association; b) the prosecution of individuals is carried out solely for political reasons without any connection to any offence; c) the prosecution of individuals is carried out solely for non-violent activities aimed at protecting human rights and fundamental freedoms);
- the case against human rights activist and journalist Iryna Danilovych (based on the criteria: a) the persecution of individuals is carried out in violation of one of the fundamental rights guaranteed by the ECHR and its protocols, in particular freedom of expression and information, as well as freedom of assembly and association; b) the persecution of individuals is carried out solely for political reasons without any connection to any offence; c) the persecution of individuals is carried out solely for non-violent activities aimed at protecting human rights and fundamental freedoms);

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- the case against Vladimir Sakada, Yevgeny Zhukov and Vladimir Maladyka (based on the criteria: a) the prosecution of individuals is carried out in violation of one of the fundamental rights guaranteed by the ECHR and its protocols, in particular freedom of thought, conscience and religion; b) the prosecution of individuals in Crimea is carried out on the basis of the criminal legislation of the Russian Federation for acts that are not punishable in Ukraine);
- the case against Oleksiy Kiselyov (based on the criterion: a) the conviction on charges related to support (real or perceived) of Ukraine as a party to the conflict was in violation of the fundamental guarantees of international humanitarian law, b) the prosecution of persons in Crimea is based on the criminal legislation of the Russian Federation for acts that are not punishable in Ukraine);
- the case of persecution of lawyer Oleksiy Ladin⁵ (based on the criteria: a) the persecution of individuals is carried out in violation of one of the fundamental rights guaranteed by the ECHR and its protocols, in particular freedom of thought, conscience and religion, as well as freedom of speech and information; b) the persecution of individuals is carried out exclusively for non-violent activities aimed at protecting human rights and fundamental freedoms; c) the persecution of individuals and/or

⁵ these are administrative offences involving deprivation of liberty, which, according to the position of the Constitutional Court of the Russian Federation, "is comparable to measures of criminal law enforcement", <http://sutyajnik.ru/documents/4788.pdf>

groups of individuals in Crimea is carried out on the basis of Russian legislation for acts that are not grounds for prosecution in Ukraine)

DATA COLLECTION:

Work on collecting and systematizing relevant information about the selected trials was done with the help of the following resources:

1. Materials of judicial monitoring by the 'Crimean Process' initiative group. The monitoring materials were selected on the basis of questionnaires of trial monitoring during the actual attendances. The questionnaire developed with the consideration of the OSCE approaches contained more than 40 questions about various aspects of fair trial. The answers to the questions became the primary material for the systematization of the trials monitoring data.

In total, the group of experts analyzed the observation results received during 89 trials in 6 Crimean courts.

2. The results of interviews and written explanations. The interviews were held in oral and written form with the actual monitors and participants of the trials. The collection of information was held by experienced interviewers and journalists according to the principles of fact collection.

3. The analysis of audio, video and photo materials. The information was collected from available sources: official websites of the courts, different media,



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private archives, audio recordings made by the monitors and the lawyers.

4. The results of analysis of internet publications and printed materials. A search of publications connected with coverage of trials posted on the Crimean and Russian media, informational agencies, internet outlets, on the websites of TV channels (at least 71 publications in 56 sources) was conducted.

5. Other sources of information, in particular, the documents of international structures, information from the websites of the Ukrainian authorities, Russia and Russia-controlled authorities in Crimea.

INFORMATION PROCESSING:

In their work, the group of experts used multi-staged analysis of the available data set. The collected information and facts were systematized and analyzed in order to draw a credible picture on adherence to separate standards of fair justice and to present either proof or disproof of hypotheses and conclusions.

Methods and kinds of analysis:

1. Systematization of the monitoring questionnaires during trials, structuring of information from the monitoring questionnaires in accordance with four separate standards of a fair trial:

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

The mentioned standards were chosen based on their significance for administering fair justice and completeness

of the information collected by the group. At this, problems with adherence to other standards of justice in the cases selected for the research are not excluded.

2. The analysis of the whole set of the structured information on the number of violations of standards of fair justice in total and for each case separately.

3. A content-analysis of information from the media and other collected sources in the part of coverage of cases selected for the research.

4. The assessment of the actions and behaviour of the representatives of the Russia-controlled Crimean judicial power regarding the adherence to standards of fair court consideration, and also a possible influence of other circumstances, statements and actions of the authorities on the course of the trials.

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

NOT SUBJECTED TO THE ANALYSIS

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

REVIEW OF POLITICALLY MOTIVATED CASES OF 2023



RUSSIAN SPECIAL FORCES ARE PREPARING FOR MASS DETENTIONS OF PEOPLE GATHERED OUTSIDE THE COURT IN SIMFEROPOL, JANUARY 2023. PHOTO: CRIMEAN SOLIDARITY

This year has seen the continuation of intense politically motivated persecution in Crimea, which has increased significantly since the start of the full-scale invasion. This can be explained by two parallel reasons: a) the security forces in Crimea continued their policy of intimidating the population and neutralising the most active citizens on the occupied peninsula by fabricating criminal cases; b) before the establishment of Russian judicial bodies in the newly occupied territory, politically imprisoned residents from such regions were illegally transferred, including to the territory of the temporarily occupied Crimea, to legalise their persecution by fabricating criminal cases;

As part of the trend of intimidation of the local population and activists, pressure on independent lawyers continued, primarily the arrest of Oleksiy Ladin, who was a media

personality and regularly covered the facts of torture, abductions and falsification of criminal cases by the FSB. Another striking example was the systematic persecution and sporadic arrests of human rights defender Abdureshit Dzhepparov, whose trial is still pending.

Among the examples of criminal prosecutions, the case against the First Deputy Chairman of the Mejlis of the Crimean Tatar people Nariman Dzhelialov and the Akhtemov brothers, who were tortured into confessing to sabotage, and the criminal prosecution of civilian journalist and human rights activist Irina Danilovich, who was abducted in the street, tortured and accused of possessing an explosive device, are the most exemplary.

REVIEW OF POLITICALLY MOTIVATED CASES OF 2023



WAGNER PRIVATE MILITARY COMPANY ADVERTISEMENT NEAR THE SUPREME COURT OF THE REPUBLIC OF CRIMEA, MARCH 2023

The second trend, related to the legalisation of persecution of people from the newly occupied territories, began to gain momentum in the summer of 2022 and by the end of this year, a decline in such processes was recorded. This is apparently due to the illegal establishment of Russian courts in the newly occupied territories and the referral of cases to these newly established bodies. However, this study still pays attention to this trend. The peculiarities of the proceedings against political prisoners abducted and transferred to Crimea were analysed in the case against Oleksiy Kysylov, a resident of the Kherson region and former commander of a Ukrainian naval ship, who was accused of intending to carry out a naval blockade of the Kerch Strait on a fishing boat.

It is also worth noting that against the backdrop of these two trends, the planned prosecutions that were typical of the previous 9 years of occupation of Crimea did not stop. In particular, another criminal trial was completed in the framework of the persecution of a group of followers of the Jehovah's Witnesses religious association and 3 more court cases were initiated against their fellow believers. The persecution of Muslims from the political and religious party 'Hizb ut-Tahrir' also continued, with both criminal and administrative cases. Threats and mass detentions by Russian security forces of like-minded people who gathered outside courts in support of their fellow believers have become almost routine.

THE GAS PIPELINE 'BLOW UP' CASE

DESCRIPTION OF EVENTS:

On August 23, 2021, the Russian media informed that a gas pipeline located in the village of Perevalnoe, not far from a military unit, had been damaged. The 'Crimean Platform' international summit dedicated to the issue of de-occupation of Crimea was taking place in Kyiv on that day, and the first deputy chairman of the Mejlis of the Crimean Tatar people Nariman Dzhelyal (Dzhelyalov in the documents of the court) was participating in the summit.

On September 3, after a search was conducted, Eldar Odamanov was driven away in an unknown direction; the same happened to cousins Asan and Aziz Akhtemov in the night from September 3 to September 4. On September 4, the FSB officers drove away the first deputy chairman of the Mejlis of the Crimean Tatar people Nariman Dzhelyal. Shevket Useinov was abducted on the same day. During a long period of time, the law enforcement refused to admit being involved in the detention, to reveal the whereabouts of the abducted persons and to allow attorneys to them. These actions provoked a gathering of people in front of the FSB building which ended with detentions en mass.⁶

On September 6 when the restraint measure was being selected, it became known Nariman Dzhelyal, Asan and Aziz Akhtemov are suspected of committing an act of sabotage on the gas pipeline in Perevalnoe

village as well as in illegal storage of explosives. Later, charges with smuggling and storage of explosives appeared. Odamanov and Useinov, abducted at the same time, testified as witnesses in this criminal case, however, they were arrested for 15 and 14 days respectively for 'non-compliance with the police officer's legal requirements, immediately after the FSB finished interrogating them. On September 10, Asan Akhtemov was able to inform his lawyer that in the period after he had been detained, he was continuously subjected to tortures - he underwent electrocution, non-judicial imitated execution, threats that his family members would be killed. He was forced to sign some documents and incriminate himself for a video recording. Aziz Akhtemov claimed that he had undergone psychological pressure and threats that he would be tortured like his cousin. He also fulfilled all the requirements of the FSB officers. Nariman Dzhelyal informed that he had undergone psychological pressure, in particular, interrogation with a sack on his head and fixation of all his



Nariman Dzhelyal (centre), Asan Akhtemov (left) and Aziz Akhtemov (right) - during the announcement of the verdict in the Supreme Court of Crimea

⁶ More information about the '4 September case' and the prosecution of the detainees can be found here: <https://crimean-process.org/delo-4-sentyabrya-kak-sudy-rassmatrivali-protokoly-posle-massovogo-zaderzhaniya-v-simferopole/>

THE GAS PIPELINE 'BLOW UP' CASE

limbs to a chair.

Subsequently, all three persons were charged with art. 281 of the Criminal code of the Russian Federation ('Sabotage'), art. 221.1 ('Illegal purchase, transfer, selling, storage, transportation or carrying of explosives or explosive devices') and art. 226.1 for alleged smuggling of explosives. All the charges have the definition 'crime committed by an organized group of individuals'. According to the FSB's version, on August 23, the accused Akhtemovs, by order of the Ukrainian special services to whom Nariman Dzhelyal had introduced them, intentionally installed an explosive on the gas pipeline in the village of Perevalnoe, Simferopol district. This resulted in an outage of the gas supplies in the village, which affected the work of the social services and caused damage in the sum of 105 000 rubles, and, according to the prosecutor's version, was aimed at undermining the defensive capabilities of the Russian military stationed near the gas pipeline.

Nariman Dzhelyal estimated the charges as revenge for his participation in the 'Crimean Platform' international summit, and the Akhtemov cousins believe that they appeared to be participants of this case only because they are closely acquainted with Dzhelyal.

In 2021, investigation of this criminal case was completed, and the case was transferred to the Supreme court of Crimea on January 21. It is important to note that, during the court investigation stage, facts of applying tortures and other forms of

pressure on witnesses Odamanov and Useinov were established. Making these facts public resulted in unprecedented pressure on two attorneys from the group



Police detain lawyer Emine Avamileva formally for violating the mask regime, but in fact for disclosing the facts of torture of witnesses

of the defendants in this criminal case, and they were arrested under a far-fetched pretext.⁷

The court of first instance found the defendants guilty and sentenced Akhtemov Asan Islamovich to 15 years in a strict regime colony, a fine of 500,000 rubles and restriction of liberty for 1 year. Akhtemov Aziz Eskenderovich to 13 years in a strict regime colony, a fine of 500 thousand rubles and restriction of liberty for 1 year. Dzhelyalov Nariman Enverovich to 17 years in a strict regime colony, a fine of RUB 700,000 and restriction of liberty for 1 year 6 months.

The appellate instance aggravated the sentence, noting that all convicts should spend the first 3 years in prison, and the remainder of their sentence should be served in a strict regime colony.

⁷ the details of the prosecution of independent lawyers were studied in last year's research, which is available at the link https://crimean-process.org/wp-content/uploads/2023/09/crp_ua22.pdf



THE GAS PIPELINE 'BLOW UP' CASE

THE TRIAL:

The court of the first instance:

Supreme court of Crimea

Board of judges:

Zinkov Viktor Ivanovich (presiding judge), Kozyrev Aleksey Viktorovich, Pogrebnyak Sergey Nikolaevich

State prosecutors

Lobov Roman, Supryaga Anastasia

Attorneys:

Polozov Nikolay Nikolaevich, Avamileva Emine Radionovna, Azamatov Ayder, Yunusov Refat Memetovich, Shabanova Safie Enverovna, Velilyaev Islyam Shevketovich

Dates of hearings:

18.02.22 - 21.09.22

Results of consideration:

Akhtemov Asan Islamovich – 15 years of imprisonment in a strict regime colony.
Akhtemov Aziz Eskenderovich – 13 years of imprisonment in a strict regime colony.
Dzhelyalov Nariman Enverovich – 17 years of imprisonment in a strict regime colony

The court of appeal:

Third court of appeal of general jurisdiction

Board of judges:

Udod Elena Valentinovna (presiding judge), Aleksandrov German Ivanovich, Stogniy Ilona Anatolievna

State prosecutor:

Gordeeva Svetlana Nikolaevna

Attorneys:

Avamileva Emine Radionovna, Azamatov Ayder, Yunusov Refat Memetovich, Shabanova Safie Enverovna

Dates of hearings:

19.07.23-28.07.23

Results of consideration:

The verdict remained unchanged, for everyone - to serve time in prison for the first 3 years, the rest of the time – in a strict regime colony

The main violations of separate standards of fair justice:

THE GAS PIPELINE 'BLOW UP' CASE

PROCEEDINGS BY INDEPENDENT AND IMPARTIAL COURT

In the court of the first instance:

1. Nariman Dzhelyal is the first deputy chairman of the Mejlis of the Crimean Tatar people. Both its leader and Dzhelyal himself regularly raised the issues of violations of the indigenous people's rights in the period of occupation, and Dzhelyal's participation in the first international summit 'Crimean Platform' was a clear demonstration of his stance in favour of the de-occupation of Crimea and restoration of Ukraine's territorial integrity. Considering this circumstance, in order to estimate the impartiality of the court, it is a matter of special importance whether the judges involved in consideration of the case are former Ukrainian judges, participants of criminal cases, accomplices in criminal cases on the territory of Ukraine, participants in the facts of human rights violations or political persecutions in the occupied territory of Ukraine.

The presiding judge of the board of judges **Viktor Zinkov** is a former Ukrainian judge (the Court of appeal of the ARC) who betrayed his oath. In June 2015, the Prosecutor General's Office of Ukraine initiated criminal proceedings against him on the fact of a crime committed under paragraph 1 art. 111 of the Criminal code of Ukraine (high treason), Zinkov was later found suspect in the criminal case investigated by the Directorate General of the National Police of Ukraine in the Republic of Crimea and

the city of Sevastopol. According to the subpoena of 09.06.2021 he is suspected of committing crimes under 7 articles of the Criminal code of Ukraine. As a presiding judge of the board, Viktor Zinkov had earlier participated in a political trial – consideration of the criminal case against the deputy chairman of the Mejlis of the Crimean Tatar people Akhtem Chiygoz. He also presided in the board which extended arrest of Ukrainian activist Vladimir Balukh.

Member of the board of judges **Sergey Pogrebnyak** is a former Ukrainian judge (the Court of appeal of the ARC) who betrayed his oath. In June 2015, the Prosecutor General's Office of Ukraine initiated criminal proceedings against him on the fact of a crime committed under paragraph 1 art. 111 of the Criminal code of Ukraine (high treason). Sergey Pogrebnyak had earlier participated in politically motivated persecutions of Crimean Tatars for the events of February 26, 2014, religious activists of the party 'Hizb ut-Tahrir', Euromaidan activist Aleksandr Kostenko, the Ukrainian seamen, and the World Congress of Crimean Tatars vice-president Lenur Islyamov.



Nariman Dzhelyal talks to his lawyer Mykola Polozov before the court hearing

THE GAS PIPELINE 'BLOW UP' CASE

Judge of the board **Aleksey Kozyrev** is a judge who moved to Crimea from the Russian city of Saratov and administers justice violating the norms of international humanitarian law which forbids judges of the occupying country to take part in trials in the occupied territory. On 15.10.2021, the President of Ukraine's order added judge Kozyrev to the list of persons to whom personal economical and other restrictions are applied. As a member of the board, Aleksey Kozyrev had earlier participated in a political trial – consideration of a criminal case against the deputy chairman of the Mejlis of the Crimean Tatar people Akhtem Chiygoz. He also single-handedly extended arrest of 4 veterans of the Crimean Tatar national movement in the 'Vedzhie Kashka' case.

2. The number of recusals raised by the defendants and the defense within the course of the court investigation in this criminal case can be one of the indicators of the court's dependence due to its obvious interest in the results of the case. At least 7 recusals were raised against the separate judges and the board as a whole during the whole trial, including one of the first hearings, due to the judges' participation in other politically motivated persecutions. Also, the defendants continuously objected to the presiding judge's actions.

3. The following circumstances may indicate the dependence of the judges in the court of the first instance on the FSB's stance in the mentioned case:

- On May 24, the court ignored witness Shevket Useinov's claim that his testimony had been obtained under psychological pressure – the FSB officers had interrogated him without an attorney, with a bag on his head and handcuffs on his wrists, screaming at him. The court showed no reaction to this statement, no extra verification was appointed within the framework of a separate proceeding, his testimony was not subsequently excluded from the body of evidence.
- On May 25, the court ignored witness Eldar Odamanov's claim that his testimony about this case had been obtained under electrocution torture by the FSB officers. 'There was one man there who was saying all the time that I was telling lies. Then he brought a device of some kind, put it on my ears and electrocuted me', said Odamanov to the court. The court showed no reaction to this statement, no extra verification was appointed within the framework of a separate proceeding, his testimony was not subsequently excluded from the body of evidence.

This contradicts the logic of applying the criminal procedural code and the stance of the European Court of Human Rights that notes that 'in case when the fact of violating the fundamental rights is established, the court can not limit itself with a statement on this topic' (D. K. Basu against West Bengal).

THE GAS PIPELINE 'BLOW UP' CASE

- On July 25, the court did not make any remarks to witness Dmitry Kitaev, an FSB officer who allowed himself inappropriate expressions during the interrogations, 'look up in the protocol', 'how will I tell you this now?', 'what do I have to do with it?' Similarly, the court ignored the provoking manner of speaking of another witness, FSB officer Anton Panin. In particular, the court left his answers 'that's your problem that you didn't hear that', 'let me ask you a question, too', 'what wonderful knowledge you possess', etc. without any serious remarks.
- On June 27, 2022, the court actively assisted in the interrogation of a witness, FSB officer Vitaly Vlasov who had led the investigative group in this criminal case. So, judge Kozyrev intentionally interpreted the defense's questions and claimed that the attorneys were trying to 'model the situation'. It is also important to point out that the court did not make any remarks to the witness in those numerous cases when he allowed himself such expressions as 'I consider', 'what does it have to do with the case?', 'you know this from the case materials' in his answers or gave his evaluation to the defense's questions 'this is an inappropriate question', 'why are you beating around the bush all the time?', etc. At the same time, the court made remarks to defendant Nariman Dzhelyal for incorrect statements.
- On July 27, 2022, when active FSB officer Makhail Ezhikov was being interrogated, one of the judge board members Aleksey Kozyrev prompted the witness that he could refer to the state secret and not answer the defense's



Lawyer Nikolai Polozov The attorney telling the public about the course of the preliminary court hearing

question about the witness's role in this criminal case.

- On July 28, 2022, with no reasoned explanation, the state prosecutor raised a motion about FSB officer Vlasov, who was a witness in this case, to be present during the interrogation of witness Mikhail Ezhikov so that Vlasov could later be interrogated additionally as a witness. According to the provisions of art. 278 of the criminal procedural code of the Russian Federation, witnesses are interrogated separately, with no presence of witnesses who were not yet interrogated. Later, the court interrogated Vlasov additionally about the circumstances which he had heard in the court room during Ezhikov's interrogation. It is important to note that both of them are FSB officers and had time and opportunity to produce complete, coherent and cohesive answers.
- On August 8, 2022, when witness Evgeny Bobrov was being interrogated, it became clear that he was confused and giving controversial testimony. Judge Aleksey Kozyrev interfered with the course of the interrogation and attempted

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to help the witness to provide testimony which would coincide with the materials of the case.

4. The following facts may indicate the absence of impartiality in the court's actions:

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- On April 20, 2022, defendant Nariman Dzhelyal demanded from the presiding judge to influence judge Aleksey Kozyrev 'so that he would stop asking mocking questions'.
- On July 27, 2022, defendant Nariman Dzhelyal made an objection to the judges' actions 'due to the fact that some of you allow yourselves different ironic remarks' when head of the investigative group Vitaly Vlasov was being interrogated.
- On August 4, 2022, when defendant Nariman Dzhelyal was being interrogated, the court asked questions about his Mejlis activity and attendance of the international summit 'Crimean Platform'. These circumstances have no obvious connection with the body of indictment charged to Dzhelyal and indicate the political context which the court was interested in.
- On August 25, 2022, when the defense and defendants were participating in the court debate, judge Aleksey Kozyrev continuously showed his complete lack of interest in the events, lolling in his armchair, rolling his eyes and signing. Two other judges occasionally grinned when the defendants were speaking.

5. Special attention must be paid to the absence of visible reaction of the court to the defendants' claims about the tortures that had been applied to them and resulted in obtaining the main evidence of their guilt in the criminal case. Moreover, the defendants not only provided the details of the tortures but also pointed at some other evidence that prove their testimonies. Verification of this evidence had a formal character, the proof obtained during the tortures was not excluded as unacceptable.

In accordance with the ECHR practice, special considerations are applied regarding the use of evidence obtained with violating art. 3 (prohibition of torture) in criminal proceedings. The use of such evidence obtained with violation one of the fundamental and universal rights guaranteed by the Convention always raises serious questions about the fairness of trial, even if accepting such evidence was not decisive in solving the issue of finding the plaintiff guilty (Jalloh v. Germany [GC]), paragraphs 99 and 105; paragraph 63.

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In the court of appeal:

1. The board of judges in the court of appeal is represented by Russian judges appointed to administer justice in judicial bodies in the territory of the Russian Federation. This is an important circumstance, considering¹⁰ the fact that the convicts were accused of undermining the defensive capabilities of the Russian army, stood for de-occupation of their region from the Russian power and demonstrated their devotion to Ukraine which was subjected to the full-scale military attack at the time when the appeal was under consideration. In such circumstances, the independence and impartiality of the Russian judges who administered justice in the Russian territory raises doubt. Apart from that, considering the provisions of the Geneva Convention relative to Protection of Civilian Persons in Time of War that prohibits to administer justice against residents of an occupied territory outside this territory, the judges' actions violated the existing norms of international humanitarian law.

Unrestricted violations of these norms by the board of judges of the Third court of appeal of general jurisdiction also cast doubt on the independence of the rulings issued by the court of appeal.

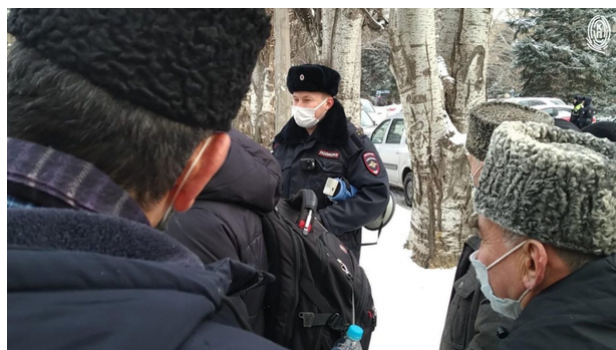
2. Special attention must be paid to a complete absence of the court's reaction to the defendants' claims that the tortures had been applied to them and resulted in obtaining the main evidence of their guilt in the criminal case. Moreover, the defendants not only provided the details of the tortures but also pointed at some other evidence

that serve as proof of their testimony. Verification of this data was not conducted in the court of appeal, the evidence obtained as a result of the tortures was not excluded as unacceptable.

3. It was noted that the court showed partiality in its attitude to the defenders' work and interrupted them. In particular, judge Udod said to attorney Ayder Azamatov, 'If you have a question – ask it. There's no need to say extra words.'

PUBLICITY OF THE TRIAL

1. All the hearings regarding the proceedings (except the preliminary ones) were held openly in the court of the first instance. At the same time it is noteworthy that the judges had restricted the number of listeners in the court room depending on the number of free seats available, due to the active anti-coronavirus recommendations.
2. The verdict was pronounced to the full extent in the court of the first instance, which also indicates the court's aspiration for openness in the proceedings.



Police officers prohibit the people to stand and make videos in front of the court building

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However, despite this, gross violations in the realm of openness and publicity of trial were recorded during the process:

Within the course of all the hearings regarding this criminal case, the data about the defendants' surnames was hidden on the official website of the court, which hindered obtaining information about the time and place of the hearings.

- The data about the parties in this criminal case, members of the judge board considering the case is absent on the official website of the court
- The court ruling on the results of the case consideration in the court of the first instance is not published on the official website of the Supreme court of Crimea one year after it was pronounced (as of September 21, 2023).
- On February 21, 2022, a cordon of the police officers and several people wearing balaclava hats and 'MGB' badges were located around the square in front of the court building; the listeners were not allowed to approach the court building, the police did not allow people to gather near the cordoned square in front of the court building.



The defence during a routine court hearing, photo: Crimean Solidarity

- On March 3, 2022, the court denied a motion raised by journalists of the Russian media 'Kryminform' and 'Kommersant' about photo and video fixation of the trial.
- On March 22, 2022, the police officers attempted to ban civil journalists to make videos of the court building or people in front of the building, however, later they did not interfere.
- On April 6, 2022, prior to the start of the hearing, the bailiffs restricted the number of listeners to one person only because 'the number of seats is limited, part of the seats are reserved for the press'. Reservation of seats for the press contradicts Russian legislation and the regulation of the Supreme court of Crimea.
- On April 6, 2022, the police officers prohibited civil journalists to video the court building or people in front of the building as it is a 'guarded object'. Russian legislation does not prohibit making videos of objects from outside and does not attribute court buildings to a category of regime objects.
- On May 24, 2022, before the interrogation of one of key prosecution witnesses Shevket Useinov, the hearing was transferred to a small room with no possibility to place listeners. It could have been connected with a wish to avoid publicity of the testimony of the witness who later claimed that the FSB officers had applied pressure on him.
- On May 25, 2022, before the interrogation of one of key prosecution witnesses Eldar Odamanov, the hearing was

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- transferred to a small room with no possibility to place listeners. It could have been connected with a wish to avoid publicity of the testimony of the witness who later claimed that the FSB officers had applied tortures on him.
- On August 11, 2022, listeners were not allowed to the hearing after a break, with reference to a message that the court was mined. So, the restrictions regarded adherence to security measures. However, the hearings continued. It is notable that attorney Oleg Glushko, who had refused to react to his client's statement about the tortures and persuaded him to cooperate with the FSB, was being interrogated at the hearings. The reason for the restriction for listeners may have been the court's wish to avoid publicity of the witness's testimony.
- In at least 3 hearings (04.04.22, 08.04.22, 27.04.22), the court did not provide proper audibility in the court room. The state prosecutor's speeches and questions were not audible to the public because he was speaking very quietly and incomprehensibly. Also, similar problems with audibility, this time – of the judges, were recorded on 23.03.2022.

In the court of appeal:

Consideration of the case in the court of appeal fully contradicted the principles of publicity and openness of trial:

1. On July 27, the appeal was being considered with no listeners present. Although, the board of judges of the court of

appeal did not mind presence of listeners 'if there is technical possibility in the building of the Supreme court of Crimea'. According to the defense's motion, there was technical possibility: at least 15 free seats were available in the court room, however, the bailiffs of the Supreme court of Crimea did not allow listeners into the court building as the hearings were formally being held by the judge board of the Third court of appeal of general jurisdiction, and the Supreme court of Crimea only provided the participation of the defense and defendants by means of video conferencing.¹⁰

2. On July 27, 2023, the police officers began to detain the listeners en mass in front of the building of the Supreme court of Crimea under the pretext that they were breaking the public order. 13 persons were detained in total, including two journalists of the 'Crimean Solidarity'. According to one of them – Kulamet Ibrahimov, he was leaving the court building after submitting his motion about



Photo of a man who came to the hearings in the court of appeal as a listener and was detained

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his participation in the hearing as a media representative, however he was detained by the police as soon as he left the territory of the court. This information casts doubt on the police's version that the public order had been broken. Subsequently, 5 persons (including both journalists) out of 13 detained were charged with administrative offenses and fined as a result, and Kulamet Ibrahimov was arrested for 5 days.

3. On July 27, 2023, after the detentions en masse in front of the court building, the defense raised the second motion about a break to be announced in order to provide the presence of listeners part of whom had not been detained by the police. The court noted for the second time that it did not mind listeners to be present if the Supreme court of Crimea had technical possibility to place them in the court room. The court refused to announce a break for this, not seeing 'procedural necessity' in it.

4. During all the hearings in this criminal case, the data about the defendants' surnames was hidden on the official website of the court of appeal, which complicated obtaining information about the place and time of the hearings.

5. The data about the parties in this criminal case and members of the board of judges who considered the case is absent on the official website of the court.

EQUALITY OF THE PARTIES:

1. During the court investigation stage, the parties raised at least 45 motions in the court of the first instance, all of which were important for proving their positions. Out of those, the state prosecutor's motions were denied in 17% of the cases (3 motions out of 15 raised), the defense's motions were denied in 85% of the cases (23 motions out of 27 raised).

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2. Violation of the principle of equality can also be indicated by the fact that, during consideration in the court of the first instance, the defense and defendants raised 7 recusals to the board of judges due to the fact that it showed its obvious interest in the results of the case. Moreover, the defense made numerous objections to the presiding judge's actions. Meanwhile, the state prosecutor did not make any objections to the judge's actions during the trial.

3. The motions about demanding video materials recorded by the surveillance camera at a borderline checkpoint were another indicator of absence of equality of the parties. Based on the defense's



Сторона захисту та підсудні перед початком чергового судового засідання, фото: Кримська солідарність

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motion, the court sent a request to the FSB Border Department and subsequently investigated the video recording which showed witness Erfan Nebiev passing border and customs control. However, the court denied the defense's motion about demanding the video materials recorded by the same surveillance camera which showed defendants Asan and Aziz Akhtemov passing passport and customs control.

4. The most illustrative was the trend of restricting the right of defense in the part of interrogation of secret witnesses, on whose testimony the main part of prosecution evidence is based. The court continuously declined the defense's questions to the witnesses and interfered with their interrogation by other means.

- On April 8, when a secret witness under the nickname 'Baydachny A.N.' was being interrogated, the presiding judge of the board Viktor Zinkov and the board member Aleksey Kozyrev actively interfered with the defense's interrogation of the witness. They interrupted the attorneys, reminded the witness that he had the right not to answer the defense's questions. Also, the judges declined part of the questions even in the cases when the answers could by no means affect the disclosure of the secret witness's identity. For instance, 'what street did you drop the passengers at?'
- On April 20, when a secret witness under the nickname 'Danilov S. U.' was being interrogated, the court helped the witness with the questions 'can you remember?', 'do you remember?' so that

he would have an opportunity to say that he did not remember. Also, the court actively declined the defense's questions even in the cases when such questions were important for the case and could by no means affect the disclosure of the witness's identity. For example, 'could you repeat this phrase in the Crimean Tatar language?'. 18% of the defense's questions were declined (25 out of 140), most of which regarded verification of credibility of the witness's testimony. When the secret witness 'Danilov', who was not visible to the participants, was being interrogated, signs were found that he was not alone during the interrogation – this was indicated by very long pauses between the defense's questions and 'Danilov's' answers.

- On April 27, a secret witness under the nickname 'Byshovets Sergey Petrovich' had difficulty answering the defense's question, and judge Zinkov prompted him that he was allowed not to answer the questions if he thought that the answers could reveal his identity. When the witness could not answer the defense's question again, the judge stated that this question ('what was the defendant wearing?')



Батьки братів Ахтемових під будинком Верховного суду під час засідання

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was aimed at disclosing the witness's identity. After this, several times when the witness did not know what to answer, he claimed that the answer could disclose his identity but he never explained how.

Also, a significant part of the questions to the secret witness was declined by the court under a doubtful pretext, even in the cases when it could not obviously result in disclosure of the witness. For instance, 'tell Nariman Dzhelyal's phone number' or 'what is your creed?'. 25% of the defense's questions were declined (41 out of 163), most of which regarded verification of credibility of the witness's testimony. It is important to note that the main part of the prosecution evidence in the case is based on three secret witnesses' testimony. In all the three cases, the court interfered with the interrogation of the secret witnesses. When the secret witness 'Byshovets Sergey', who was not visible to the participants, was being interrogated, signs were found that he was reading his testimony from a prepared text (unusual pauses, absence of interjections, incorrect word stress.)

Paragraph 3 art 6 of the ECHR states: 'Everyone charged with a criminal offense has the following minimum rights: ...to examine or have examined witnesses against him', however, the court's intrusion restricted this right significantly.

5. Окрім прямого перешкоджання в допиті свідків стороною захисту, зафіксовано також випадки, коли суд взагалі відмовив у виклику для допиту свідків за клопотанням сторони захисту. Зокрема:

- 22 червня 2022 року судом було відхилено клопотання захисту про виклик для допиту понятих, які зазначені в матеріалах кримінальної справи як особи, що були присутні при проведенні слідчих дій. Важливо зазначити, що підсудні стверджували - під час слідчих дій проводилася фальсифікація доказів, тому допит понятих мав істотне значення для встановлення істини.
- 10 серпня 2022 року було відхилено клопотання підсудного Ахтемова Асана про виклик для допиту чотирьох свідків захисту - Бондарєва Андрія, Дідуха Сергія, Тишкіна Юрія та Даріуша Миколу, які перебували в одній камері з Ахтемовим Асаном і можуть підтвердити його фізичний стан після застосування до нього тортур.
- 11 серпня 2022 року було відхилено клопотання захисту про виклик для допиту понятих, які зазначені в матеріалах кримінальної справи як особи, присутні при проведенні впізнання Джелялова засекреченими свідками. Захист стверджував, що впізнання проводилося з порушеннями вимог законодавства і ставив під сумнів показання засекречених свідків. Тому допит цих понятих мав істотне значення для встановлення істини.

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В той же час суд задовольнив клопотання прокурора про виклик для допиту особи, що не допитувалась під час попереднього слідства, в якості свідка обвинувачення. Таким чином було вирішено складну ситуацію з доведенням факту впливу на обороноспроможність країни, як кваліфікуючої ознаки диверсії. Під час попереднього слідства ця роль була покладена на двох військовослужбовців частини в селі Перевальному біля якої відбувся вибух, але на час судового слідства оба цих свідки вже були ліквідовані у бойових діях на території України.

Згідно з практикою ЄСПЛ, можливість очної ставки обвинуваченого з важливим свідком у присутності судді є істотним елементом справедливого судового розгляду (Тарау проти Румунії (Taraui v. Romania), пункт 74; Гравіано проти Італії (Graviano v. Italy), пункт 38).

Відсутність обґрунтування відмови в розгляді або виклику свідка може призвести до обмеження прав захисту, несумісного з гарантіями справедливого судового розгляду (див. Попов проти Росії (Popov v. Russia), пункт 188; Бокос-Гуеста проти Нідерландів (Bocos-Cuesta v. the Netherlands), пункт 72; Вієрські проти Польщі (Wierzbicki v. Poland), пункт 45; Відал проти Бельгії (Vidal v. Belgium), пункт 34).

6. Не було забезпечено повною мірою рівність сторін у наданні доказів через відмову суду в призначенні експертиз, що мають значення для встановлення істини у справі. Так, 10 серпня 2022 року суд відмовив у проведенні повторної вибухотехнічної експертизи, а наступного дня - у проведенні експертизи, що мала б установити рівень шкоди, завданої обороноздатності РФ. Важливо зазначити, що заподіяння шкоди обороноздатності є кваліфікуючою ознакою злочину за статтею "Диверсія", і захист стверджував, що наявність шкоди не доведено. Тому проведення такої експертизи мало суттєве значення для встановлення істини.

7. Не було забезпечено повною мірою рівність сторін у наданні доказів через відмову суду в долученні стороною захисту до матеріалів справи відео- та фотодоказів, що мають значення для встановлення істини. Зокрема, суд відмовив у долученні відеоматеріалів, які побічно підтверджують факт тривалого утримання підсудних без доступу до них адвокатів. Також було відмовлено в долученні фотографій листування адвоката за угодою Айдера Азаматова з адвокатом за призначенням Олегом Глушком, який діяв в інтересах слідчого органу і не прийняв заходів належного адвокатського реагування.

8. Також в цьому розділі варто зазначити інші факти суттєвого обмеження права підсудних на захист:

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- 3 березня суд відмовив у клопотанні про відкладення судового засідання у зв'язку з неявкою одного з адвокатів Нарімана Джелялова - Миколи Полозова через припинення авіасполучення з Кримом у наслідок повномасштабної агресії. Незважаючи на формальне право суду відмовити в даному клопотанні у зв'язку з тим, що інтереси підсудного представляв ще один адвокат, у сукупності з іншими порушеннями права на захист, цей епізод є додатковим підтвердженням загального ставлення суду до питань рівності сторін та забезпечення права на захист.
- 20 квітня суд відмовив у 2 клопотаннях захисту про витребування в Київському районному суді Сімферополя матеріалів справи щодо обрання запобіжних заходів, як доказу фальсифікації матеріалів шляхом підробки підписів свідка обвинувачення в різних процесуальних документах. Захист стверджував, що підписи одного свідка на різних документах поставили різні люди.
- 29 серпня під час виступу підсудного Асана Ахтемова з останнім словом, суд заборонив йому говорити про насильницьки викрадених кримських татар, що сталися після окупації Криму, мотивуючи тим, що ці відомості не мають відношення до справи. "Вам надається можливість дати свої пояснення в межах цієї справи", - заявив головуєчий Віктор Зіньков. Згідно зі ст. 293 кримінально-процесуального кодексу, головуєчий справді може зупиняти підсудного,

який виступає з останнім словом, коли обставини не мають відношення до кримінальної справи, що розглядається. Однак, ця мотивація видається сумнівною оскільки під час судового слідства підсудні і їх захисники неодноразово вказували на факти насильницького викрадення підсудних і щонайменше двох свідків. Тож тема насильницьких викрадень є пов'язаною з матеріалами справи і суду про це було відомо. Таким чином, обмежуючи виступ з останнім словом у частині, яка стосувалася системної практики викрадень людей у Криму, суд порушив право Ахтемова на захист.

В апеляційній інстанції:

1. Судом було відмовлено у 5 клопотаннях захисту з 5 заявлених та задоволено 1 клопотання державного обвинувача з 1 заявленого.

Рівноправність сторін є невід'ємною рисою справедливого судового розгляду. Цей принцип вимагає, щоб кожній стороні було надано розумну можливість представити свої доводи у справі в таких умовах, які не ставлять її в істотно не вигідне становище по відношенню до протилежної сторони (Фуше проти Франції (Foucher v. France), пункт 34; Булут проти Австрії (Bulut v. Austria); Бобек проти Польщі (Bobek v. Poland), пункт 56; Климентьев проти Росії (Klimentyev v. Russia), пункт 95).

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2. Рівність сторін не була забезпечена повною мірою у зв'язку з відмовою апеляційного суду в призначенні експертиз, що мають значення для встановлення істини у справі. Так, 27 липня 2023 року Третій апеляційний суд відмовив у клопотанні про призначення повторної вибухотехнічної експертизи через непереборні суперечності в результатах наявної вибухотехнічної експертизи. Також було відмовлено в призначенні експертизи, яка мала встановити рівень шкоди, завданої обороноздатності РФ. Важливо зазначити, що заподіяння шкоди обороноздатності є кваліфікуючою ознакою злочину за статтею "Диверсія", і захист стверджував, що наявність шкоди не доведено. Тому проведення такої експертизи, в якій відмовив суд першої інстанції, мало істотне значення для встановлення істини.

3. Сторона захисту також була обмежена 27 липня 2023 року у допиті свідків, коли апеляційний суд відхилив клопотання захисту про виклик для допиту свідка обвинувачення, який зазначений у матеріалах кримінальної справи як особа, що була присутня під час проведення слідчих дій. Важливо зазначити, що засуджені стверджували - під час слідчих дій проводилася фальсифікація доказів, тому допит понятих, мав істотне значення для встановлення істини. Відмова про допит цього свідку в суді першої інстанції не була обґрунтованою і в апеляційному суді цей підхід залишено без змін.

4. Сторона захисту також була обмежена 27 липня 2023 року у представленні доказів, коли апеляційний суд відхилив клопотання засудженого Нарімана

Джеліяла про дослідження письмових документів з метою встановлення ознак підробки підпису свідка обвинувачення. Важливо зазначити, що учасники процесу стверджували, що під час слідчих дій проводилася фальсифікація доказів, тому дослідження цих документів, у якому відмовив суд першої інстанції, мало суттєве значення для встановлення істини.

ПРЕЗУМПЦІЯ НЕВИНУВАТОСТІ

10

1. За час судового процесу не зафіксовано з боку суду очевидних дій, що порушують презумпцію невинуватості, за винятком утримання підсудних у спеціальному боксі-"акваріумі". Знаходження обвинувачених у клітці або спеціальному боксі-"акваріумі" саме по собі формує образ винного, а тиражування таких фотографій у ЗМІ поглиблює враження про винуватість осіб.



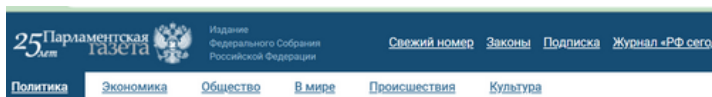
Адвокати і присутні під судом небайдужі кримчани після засідання записують відеокоментар про тортури свідків

2. Водночас у кримських медіаресурсах, підконтрольних окупаційній владі Криму і Росії, під час висвітлення подій злочину і судового процесу, було

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відзначено щонайменше 37 публікацій, у яких до вироку суду формується громадська думка щодо підсудних. Серед основних прийомів - заяви високопосадовців із необґрунтованими звинуваченнями і твердження про причетність підсудних до злочину, як про факт.

- Так, варто зазначити, що "Глава Криму" Сергій Аксьонов двічі виступав з приводу цієї кримінальної справи. 7.09.21 він зробив заяву, що Україна - це країна-терорист, а Меджліс - виконавець терористичних дій і за всім цим стоїть США.⁸ 15.09.21 Сергій Аксьонов публічно заявив, що "Наріман Джелалов - це іноземний агент і це буде встановлено в суді".⁹ З огляду на рівень влади і впливу глави регіону, такі заяви можна розцінювати як тиск на суд і як постановку перед ним завдань про те, що має бути встановлено під час судового процесу.

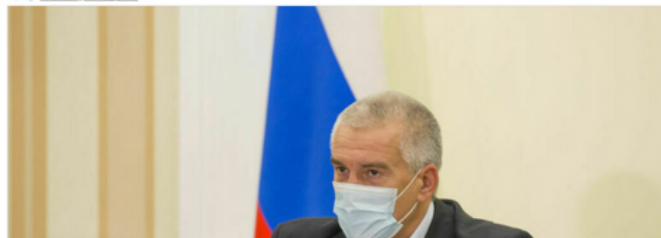


Глава Крыма назвал «Меджлис» инструментом для подрывной деятельности украинских спецслужб

Поделиться

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15.09.2021 15:38
Автор: [Александр Машинко](#)



⁸ <https://www.pnp.ru/politics/glava-kryma-nazval-medzhlis-instrumentom-dlya-podryvnoy-deyatelnosti-ukrainskikh-specsluzhb.html>

⁹ <https://ria.ru/20210915/agent-1750174912.htm>

- Другим за популярністю прийомом стало використання в заголовках і текстах тверджень про причетність підсудних до вибуху газопроводу, як про встановлений факт, а не як про підозру або обвинувачення в цих злочинах. Аналогічним чином у публікаціях часто стверджувалося про факти співпраці підсудних з органами української розвідки, але при цьому в ЗМІ не повідомлялося, що ці дані є версією слідства, а не встановленим у суді фактом.¹⁰



Украина ру

В Крыму за диверсию задержан замглавы запрещенного «меджлиса»



16:59 05.09.2021 (обновлено: 11:11 13.07.2022) 4795



Окремо варто відзначити факти відвертих інформаційних маніпуляцій, пов'язаних із висвітленням причетності підсудних до інкримінованого злочину. Зокрема:

- видання "Московский комсомолец" щонайменше 3 рази розмістило відверто неправдиві відомості про те, що Меджліс кримськотатарського народу визнано в Росії

¹⁰ <https://ukraina.ru/20210905/1032191316.html>

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терористичною організацією.¹¹ Цю неправдиву інформацію подавали в контексті висвітлення кримінальної справи щодо Нарімана Джеліяла і братів Ахтемових.

новости эксклюзивы политика экон

температуры?

Простуда, ОРВИ (острая респираторная вирусная инфекция), грипп – все эти состояния ассоциируются с повышением температуры тела, недомоганием, ломотой в мышцах и суставах. На самом деле простуда не всегда протекает с лихорадкой – в таких случаях...

Читать далее...

Один из арестованных, Нариман Джелялов, является бывшим первым заместителем председателя организации "Меджлис крымско-татарского народа" (организация признана террористической и запрещена в России). Двое других проходят под обозначениями "А и А".

По версии следствия, подозреваемые намеренно организовали подрыв газопровода в селе Перевальное, также снабжающий газом воинскую часть. Всего по делу задержали пять жителей Крыма. Им может грозить до 15 лет заключения по статье о "диверсии".

- у ФСБ заявили про те, що один з учасників справи Наріман Джелялов належить до осіб, які є "одним з основних провідників української реваншистської політики і модератором протестних і сепаратистських проявів у Республіці Крим".¹²

¹¹ <https://www.mk.ru/social/2021/09/06/arestovany-troe-podozrevaemykh-v-povrezhdenii-gazoprovoda-v-krymu.html>

¹² <https://ria.ru/20210915/fsb-1750160725.html?in=t>

При цьому жодних доказів цим твердженням у тексті публікації не наводиться.

- на "Кримському радіо" опублікували думку "експерта" про те, що екстремісти ніколи не визнають свою провину, оскільки їхні замовники їх цього навчають, а також для героїзації їхніх дій.¹³ Думка не була підкріплена ні аргументами, ні доказами, а також не була представлена збалансованою думкою інших експертів. Інформацію подавали в контексті висвітлення кримінальної справи щодо Нарімана Джеліяла та братів Ахтемових.

РАДИО КРЫМ Школа ТВ Пишите нам свои сообщения: VK Вконтакте Telegram

Главная / Все новости / Новости / Почему диверсанты и экстремисты никогда не признают свою вину, — мнение политолога

ПОЧЕМУ ДИВЕРСАНТЫ И ЭКСТРЕМИСТЫ НИКОГДА НЕ ПРИЗНАЮТ СВОЮ ВИНУ, – МНЕНИЕ ПОЛИТОЛОГА

Прямая трансляция

29 ноября 2023
В Крыму шторм в несколько раз снизил солёность знаменитого розового озера

26 января 2023

¹³ <https://crimea-radio.ru/pochemu-diversanti-i-yekestremisti-niko/>

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DESCRIPTION OF EVENTS:

Iryna Danylovych worked as a nurse, which is her specialty, but in her free time she conducted active information activity – she covered political trials for the 'Crimean Process' human rights defending initiative, wrote articles for the civil journalist project 'Inzhir-Media', administered her personal page 'Crimean medicine without cover' dedicated to violations of medical workers' rights and the state of healthcare on the peninsula. She was detained on the administrative border with Crimea several times and called to conversations to the local FSB unit, where she was asked about her ties with Ukrainian activists.

On April 29, 2022, when she was waiting for a bus at a bus stop, a car approached and several persons forced her inside it. Simultaneously, FSB officers conducted a search in the house where she resided with her parents. After this, nothing was known about the journalist's fate for 13 days. When the attorney by agreement managed to meet with his client, Danylovych informed him that she had been kept in the FSB basement for a week, where she was tortured, threatened to be killed and forced to sign a lot of papers, in particular, some empty blanks. On the seventh day, she was told that an explosive device had been allegedly found in her bag and she was now officially detained. Her bag was inspected in absentia of her and her lawyer.

On May 7, 2022, without informing her attorney, Kyivsky district court of Simferopol selected her a measure of restraint in the



Iryna Danylovych at work at the hospital a few months before her arrest, photo from the family archive

form of incarceration. On June 3, 2022, the Ministry of justice included human rights defender Iryna Danylovych into the list of 'media foreign agents'. On July 28, 2022, it became known that the FSB representatives continue to apply inhuman treatment to imprisoned human rights defender Iryna Danylovych and threaten her. On August 3, 2022, the case was transferred to the city court of Feodosia with charges under art. 222.1 of the Criminal code of the Russian Federation 'Illegal purchase, transfer, selling, storage, transportation, sending or carrying explosives or explosive devices'. According to the investigators' version, Iryna Danylovych by herself 'found' an explosive device made of plastid, she put it in her glasses case along with striking elements (medical needles) and carried this device in her bag.

While in detention, Irina Danilovich contracted otitis media and did not receive adequate medical care for 179 days. All this time, including during court hearings, she suffered from severe headaches and lost hearing in her left ear. It was later established that



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during this period she also suffered a micro-stroke in the detention centre. She did not receive effective treatment between November 2022 and July 2023.

The court of first instance found her guilty and sentenced her to 7 years' imprisonment and a fine of 50,000 rubles. The court of appeal, following a review of the sentence, reduced the sentence by 1 month.

THE TRIAL:

Court of the first instance:	Feodosia city court
Judge:	Kulinska Natalia Volodymyrivna
Prosecutors:	Lyashchenko Dmytro, Matveeva Yulia, Vasylyev Maksym
Attorneys:	Zheleznyak Oksana, Azamatov Ayder, Novikov Sergiy
Session dates:	22.08.22-28.12.22
Results of consideration:	7 years of imprisonment, fine of 50 000 rub

Court of appeal (First consideration):	Supreme court of the Republic of Crimea
Judges:	Mykhaylov Dmytro Olegovych (presiding judge), Grebennikova Natalia Oleksandrivna, Latynin Yuriy Anatoliyovych
Prosecutor:	Turobova Anna Sergiivna
Attorney:	Zheleznyak Oksana
Session dates:	02.05.2023
Results of consideration:	The case was returned to the court of the first instance in order to remove violations
<hr/>	
Court of appeal (second consideration):	Supreme court of the Republic of Crimea
Judges:	Chernetska Valeria Valeriivna, Mykhalkova Olena Oleksandrivna, Lebid Oleg Dmytrovych



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Prosecutor:	Turenko A.A.
Attorneys:	Zheleznyak Oksana, Azamatov Ayder
Session dates:	15-29.06.23
Results of consideration:	6 years 11 months of imprisonment

Main violations of separate standards of fair justice:

CONSIDERATION BY INDEPENDENT AND IMPARTIAL COURT:

In the court of the first instance:

1. Civil journalist Iryna Danylovych covered problems in the field of healthcare and co-worked with Ukrainian media outlets. On the stage prior to fabrication of the criminal case, she was suspected of working for Ukrainian special services, in particular, because of her openly anti-Russian statements in private messaging to which the FSB officers gained access. Earlier, she had closely communicated with the activists of the Ukrainian cultural center. Considering these circumstances, in order to assess the court's impartiality, it is a matter of special importance whether the judges who participated in consideration of the case are former Ukrainian judges, participants of

criminal cases in the territory of Ukraine, accomplices in the facts of human rights violations or political persecutions in the occupied territory of Ukraine.

- Judge **Kulinska Natalia Volodymyrivna** is a former Ukrainian judge (Feodosia city court of the ARC) who betrayed her oath. The Prosecutor General's Office of Ukraine initiated criminal proceedings against her and issued suspicion on the fact of the crime committed under paragraph 1 art. 111 of the Criminal code of Ukraine (high treason). Earlier, she had participated in consideration of cases on administrative offenses for 'discrediting the Russian army' which in particular concern any calls for peace or demonstration of support for Ukraine. These persecutions have signs of military crime.

2. The analysis of the audio recordings of the court process allows to establish that, in at least 5 out of 7 court hearings, the judge either interfered with the course of examination of the witnesses continuously and without any reason or demonstrated emotional incontinence towards the defendant and the defense. In particular:

- On 24.10.22, the judge told attorney Azamatov, 'you would at least stand up and show your respect to the court, which you probably don't have' and interrupted him many times during his speech.
- On 07.11.22, when the witness refused to give testimony, the judge said, 'I do not decline the question, but I can't force the person, either!' and did not take any measure,

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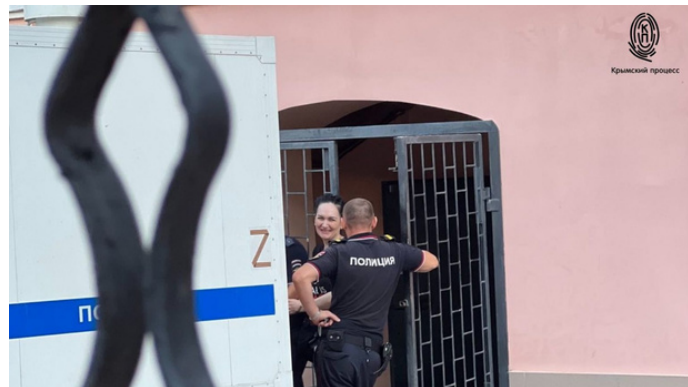
and when the attorney attempted to determine the witness's stance, the judge interrupted him, intruded and answered instead of the witness, 'Well, the witness has already answered the question that he refuses to provide this information... Well, how long will you be saying the same thing!'

- On 15.11.22, the defendant asks the witness of prosecution to lower the medical mask, which is concealing his face, so that she could recognize him. The witness lowers the mask several centimetres down, the defendant asks to put it down even lower, the judge interrupts her and says in a harsh voice, 'He has lowered it enough'.
- On 30.11.22, the judge asks the defendant to tell about the facts of tortures known to her and other illegal actions done by the FSB officers. At this, the judge adds abruptly, 'Be concise, leave all that acting stuff'.
- On 27.12.22, the defendant answers the question when she had complained about her health, the judge interrupts her and demands in a raised voice, 'You just answer me whether you complained or not! Be concrete, you are claiming about your health now, don't be abstract!'

3. Special attention must be paid to the judge's separate actions which could indicate the court's dependence on the position and interests of the FSB authorities that conducted preliminary investigation. The following 8 situations can be attributed to such actions:

a) On 22.08.22, when the issue about selecting the measure of restraint for the court investigation period was being

considered, the court did not investigate the reasons for the restraint measure selection. This is reflected in the ruling of the court of appeal which states, 'it is seen from the transcript and the audio recording of the court session that, during consideration of the the restraint measure issue, the court of the first instance did



Iryna Danylovych is escorted out of the court by a convoy after the end of the regular hearing in her case

not investigate the reasons for extension of the restraint measure, contrary to the requirements of the law'.

b) On 07.11.22, the judge read out the letter by the FSB Department in the Republic of Crimea and Sevastopol in which it was said that operational officers Suvorov and Chevalkov involved in the journalist's abduction had been 'in a long (more than 6 months) secondment', and offered to pronounce their testimony given on the stage of preliminary investigation. Art. 281 of the Criminal and procedural code does not contain such reasons for pronouncing testimony as 'long secondment', but the court included this circumstance in the line 'natural disaster or other force majeure which prevent from arriving in the court' in the FSB's interests.

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c) On 07.11.22, witness of prosecution Kostyantyn Vysokoglyad who had the status of 'representative of the public' and consolidated the investigators' version about the explosive device found in Danylovych's bag, refused to answer the defense's questions, hence committing a crime described in art.308 of the criminal code of the Russian Federation 'Refusal of the witness or the victim to provide testimony', however, the judge denied the defense's motion about initiating separate proceedings on that regard and refused to react to the crime. Subsequently, the court ignored the fact established by the attorneys that the witness had used the copies of the criminal case materials to provide his testimony to the court.

d) On 07.11.22, when FSB operational officer Ruslan Narimanov was being interrogated, the court interrupted the defendant's question to him, claiming that 'the witness has already explained everything'.

e) On 15.11.22, the court unreasonably declined the defense's question to witness Danyl Samokhin, who had the status of 'representative of the public' and



Iryna Danylovych in the boxing ring before the next court hearing

consolidated the investigators' version about the explosive device found in Danylovych's bag, about specifying who exactly had invited him to participate in the surveillance activity. Earlier, another 'representative of the public' had flatly refused to answer the similar question. The judge also prompted this witness that he could answer with 'I don't remember'.

f) On 30.11.22, the defense found that witness of prosecution Kostyantyn Vysokoglyad, who had the status of 'representative of the public' and consolidated the investigators' version about the explosive device found in Danylovych's bag, had provided the court with untrue testimony about his workplace, having hidden the fact that he is a MIA employee. The judge did not react to the signs of crime described in art. 307 of the RF criminal code 'Knowingly false testimony...' and refused to re-call for the witness in order to remove the contradictions.

g) On 30.11.22, the court added the documents presented by the prosecutor and submitted as the response of the military investigative committee based on the results of Iryna Danylovych's appeal regarding her abduction and non-procedural methods of pressure on her used by the FSB to the case materials. The defense drew the court's attention to the fact that the papers contain no features of the document (such as the reference number, the date, the stamp of the authorized agency) and objected against adding this document.

h) On 30.11.22, the court asked the defendant to inform about the facts of tortures and other illegal actions known to her and committed

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by the FSB officers against other persons. When she started to enumerate the victims' surnames, the judge interrupted her and asked the next question.

4. On 30.11.22, the defense raised a recusal against the judge in connection with her interest in the case results. The attorneys pointed at 10 facts of gross violations which demonstrate the court's obvious interest and non-objectivity during consideration of the case. The court denied the recusal.

5. The time which the judge spent in the deliberation room in order to estimate all the evidence and do sentencing, was 17 hours, 15 of which was the night time and time off work. This interval seems insufficient for comprehensive and objective study of the materials of the court investigation during which at least 5 witnesses and the defendant were examined and which contain 3 expertises, 7 surveillance activity materials, the conclusion of the pre-investigative inspection about torturing, video files, and a range of other evidence.

6. It became known during the court investigation that the judge who had considered the case received a promotion offer and was expecting to be transferred to the staff of the Supreme court of Crimea after finishing the case against Iryna Danylovych. Natallia Kulinska's career success probably depended on how she would consider this criminal case. From the summer of 2023, judge Kulinska was promoted and transferred to work in the Supreme court of Crimea.

In the court of appeal:

During the first consideration, the following

judges joined the board of judges: Mykhaylov Dmytro Olegovych (head of the board), Grebennikova Nataliya Oleksandrivna, Latynin Yuriy Anatoliyovych.

- Presiding in the court of appeal **Mykhaylov Dmytro Olegovych** has considered cases in the Supreme court since 2021. On September 16, 2021, he participated in consideration of the appeal on the verdict to the activist of the Crimean Tatar movement Edem Bekirov. On 26.05.2022, he was head of the board during consideration of an appeal in the case against the leader of the Crimean Tatar people Mustafa Dzhemilev. On 16.03.23, he was head of the board during consideration of an appeal in the case against the religious activists of the association 'Jehovah's Witnesses'.
- Judge **Latynin Yuriy Anatoliyovych** is a former judge of Ukraine (the District administrative court of the ARC) who betrayed his oath. In June 2015, the Ukrainian Prosecutor General's Office initiated criminal proceedings against him on the fact of committing the crime under paragraph 1 art. 111 of the Criminal code of Ukraine (high treason). He was declared wanted by the SBU authorities. In 2017, he sanctioned an attack on lawyer Mykola Polozov within the framework of the criminal case against deputy chairman of the Mejlis of the Crimean Tatar people Ilmi Umerov. In 2018, with gross violations (refusal to provide an interpreter) he considered

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an appeal on the court's verdict regarding Ukrainian activist Larysa Kytayska. In August 2019, he considered an appeal on extension of the restraint measure to Crimean Tatar blogger Nariman Memedeminov (the verdict was left unchanged); in December 2019, he considered an appeal regarding extension of the restraint measure to elderly Ukrainian activist Oleg Prihodko (the verdict was left without changes). In 2022, he took part in consideration of an appeal in the case against the leader of the Crimean Tatar people Mustafa Dzhemilev. He was a member of the board during consideration of an appeal in the case against the religious activists from the 'Jehovah's Witnesses' association.

- A member of the board of judges in the court of appeal, judge **Grebennikova Natalia Oleksandrivna** is a former Ukrainian judge (Bilohirsk city court of the ARC) who betrayed her oath. In June 2015, the Ukrainian Prosecutor General's Office initiated criminal proceedings against her and issued a suspicion on the fact of committing the crime under paragraph 1 art. 111 of the Criminal code of Ukraine (high treason). Earlier, she had been a member of the board during consideration of an appeal in the criminal case against journalist Vladyslav Yesypenko.

During the second consideration, judges Mykhalkova Olena Oleksandrivna, Chernetska Valeria Valeriivna, Lebid Oleg Dmytrovych joined the board of judges.

- Judge **Mykhalkova Olena Oleksandrivna** was transferred to the occupied territory from Novosibirsk regional court of the RF, violating the Geneva Convention

requirements. The Russian citizenship and obvious career growth could influence the judge during consideration of this case. Earlier, she had participated in consideration of appeals in politically motivated cases against Crimean Tatars: Yunus Masharipov and Suleyman Kadyrov.

- Judge **Chernetska Valeria Valeriivna** is a former Ukrainian judge (Nyzhnyohirsk district court of the ARC) who betrayed her oath. The Ukrainian Prosecutor General's Office initiated criminal proceedings against



Iryna Danylovych delivers her last speech in court

her and issued a suspicion on the fact of committing the crime under paragraph 1 art. 111 of the Criminal code of Ukraine (high treason). Earlier, she had taken part in consideration of cases on administrative offenses for 'discrediting the Russian army' which includes, in particular, any calls for peace or demonstrating support of Ukraine. These persecutions bear the signs of military crime.

- Judge **Lebid Oleg Dmytrovych** is a former judge of Ukraine (the Central district court of Simferopol, the ARC) who betrayed his oath. The Ukrainian Prosecutor General's Office

THE CASE OF CIVIL JOURNALIST IRYNA DANYLOVYCH

initiated criminal proceedings against him and issued a suspicion on the fact of committing the crime under paragraph 1 art. 111 of the Criminal code of Ukraine (high treason). Earlier, he had participated in consideration of an appeal in a politically motivated criminal case against a veteran of the Crimean Tatar national liberation movement known as 'the Vedzhi Kashka case'.

PUBLIC CONSIDERATION

1. The court hearings on selection, extension and appealing against the selected measure of restraint to Iryna Danylovych were held with no listeners allowed. And the information about the hearing on selection and extension of the measure of restraint for Danylovych is absent on the website of Kyivsky district court of Simferopol.
2. All the hearings in the court of the first instance on this criminal case (excluding the preliminary ones) were held openly. At the same time, it is noteworthy that the judge restricted the number of listeners to 3 people due to the current anti-coronavirus recommendations.
3. The court's verdict was pronounced to the full extent, which corresponds to the idea about the openness of trial.
4. On October 27, a journalist of the 'Grani.ru' outlet was not allowed to enter the court building as the application that he had sent by email was not considered. The basis for the entrance ban enumerates types of applications addressed to the court which cannot be considered if submitted via email, and an application about taking photos or making videos is not included in this list

It is also noteworthy that it was the court that had recommended the journalist to submit the application via email. It is also important to emphasize that an application about taking photos and making videos which was not considered cannot become the basis of denial for a journalist to attend a court hearing.

5. The ruling of the court of appeal was not made public on the court's official website within a reasonable time frame (the ruling is still absent on the court's official website 4 months after the ruling was considered).

EQUALITY OF THE PARTIES

1. The judge's decision to deny the defense in calling for interrogation 15 persons who were involved in pre-trial investigation in the case as experts, specialists, FSB operational officers, representatives of the public but were not examined as witnesses by the investigator is what draws attention in the first place. The court's denial to interrogate such a big number of witnesses limited the defense's possibilities of studying the evidence significantly.



Iryna Danylovych a few months before her arrest, photo from the family archive

THE CASE OF CIVIL JOURNALIST IRYNA DANYLOVYCH

2. On 24.10.22, the judge demanded from the attorney to stand up when the appeal was being read, whereas the representative of state prosecution was sitting while reading the document. Afterwards, the lawyer urged for making remarks to the state prosecutor for demonstrating his disrespect of the court, but this was not done. On 7.11.22, the judge said with inappropriate irony that the attorney was wishing to sit while presenting the document.

3. On 15.11.22, at the beginning of the hearing, the judge attempted to restrict the defendant's communication with her defenders, motivating that they had to coordinate their positions in the detention unit and not in the court room. Such a requirement is absent in Russian legislation.

4. During the hearings held on 27.12.22 and 28.12.22, the defendant was deprived of a possibility to defend herself efficiently due to poor health conditions. Since no medical aid had been provided to her in the detention unit, the defendant lost hearing and had other health problems as well. On 27.12.22, she submitted an application about postponing the court hearing due to her health condition, however, the court denied it. Subsequently, an ambulance was called to the defendant, however, after her condition was stabilized, the hearing continued. The defendant did not hear what the parties were saying, neither did she hear the questions asked to her. Due to the poor health, she was in a much more vulnerable condition than the prosecutor.

5. The situation with studying the transcripts of the court hearings (February-April 2023)



Iryna Danylovych in the courtroom

became another episode which demonstrates the unequal opportunities provided for the sides. The defendant, who had not been given medical aid, was not able to study the transcripts of the court hearings comprehensively and asked the court to postpone the study of the transcripts until her hearing would return. The court refused and subsequently restricted the time frame for the study, having deprived her of the possibility to submit her objections to the court's protocols.

6. The judge continuously demonstrated biased attitude to the defense – she interrupted the attorneys' speeches or questions from time to time, allowed herself to react to the defense's objections with a raised voice, 'just do your job' or 'stop juggling'. The judge's similar attitude to the state prosecutors was not recorded.

7. Out of 15 motions raised by the defense and recorded during observation, only 3 were granted, while all 3 motions raised by the prosecutor and recorded during observation were granted.

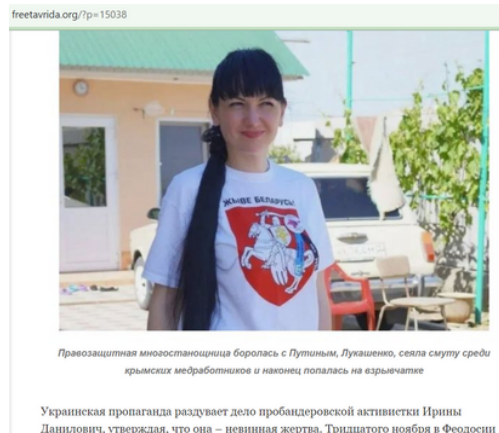
THE CASE OF CIVIL JOURNALIST IRYNA DANYLOVYCH

In the court of appeal:

1. The convict participated in the court sessions via video conferencing, which limited her possibilities to have immediate and confidential consultations with her attorneys. Along with technical problems with the connection, this could create unequal conditions for the sides during the trial.
2. The convict was deprived of the possibility to efficiently defend herself due to the poor health conditions. Because the medical aid had not been provided to her in the detention unit, the defendant lost her hearing and had other health problems as well. When the case was being considered in the court of appeal, her health condition was bad, and she claimed about it in the court. Ignoring this fact by the court deprived the defense of certain possibilities.

PRESUMPTION OF INNOCENCE

1. During the whole trial in the court of the first instance, the defendant was kept in a special enclosed 'aquarium'. Keeping defendants in a cage or an 'aquarium' forms an image of a guilty person, violating the presumption of innocence. Moreover, when the defendant was being escorted to and from the court, she was wearing handcuffs, which also forms an image of a guilty person and violates the presumption of innocence.
2. An unrestrained media campaign can also affect the fairness of court consideration, influencing the public opinion and pushing the court to making certain decisions. At least one publication was recorded which



states, prior to the court's decision, about the crime committed as a fact ('she was caught with an explosive', 'an explosive was found at her', 'a bomber who failed') and emphasizes the defendant's involvement in committing the actions that were not indicted to her.

In particular, information that the defendant had ties with Ukrainian special services ('she was broadly instructed for subversive activity, 'cover for subversive activity') was published, however none of the defendant's activity was a subject for court consideration. The text also contained insulting and emotionally charged words describing the defendant, such as 'Ukraine supporter', 'human rights defending multi-tasker', 'pseudo human rights defender' (original spelling retained).¹⁴

¹⁴ <https://www.freetavrida.org/?p=15038>

THE CASE OF CAPTAIN OLEKSIY KYSELYOV

DESCRIPTION OF EVENTS:

Prior to the occupation of Crimea, Oleksiy Kyselyov resided in Sevastopol, was a military pensioner, former captain of 'The Slavutykh' ship owned by the Administration of the Naval Forces of Ukraine. In 2015, he moved to Kherson region, the city of Genychesk. Together with other activists, he founded a civil organization 'Pereselenets.SOS' which cooperated with the Red Cross of Ukraine on social projects. As it soon became known, the organization provided consultation aid near the checkpoint on the administrative border with Crimea, having located itself on the territory where the voluntary Crimean Tatar battalion named after Noman Chelebidzhikhan was stationed.

Oleksiy Kyselyov was abducted on July 22, 2022, when he was walking along the street. Two persons wearing black uniforms forcedly pushed him into a shuttle bus. According to Kyselyov's words, he spent the following 5 days in the basement of a technical college in Genychesk where he was beaten, with demands to admit, for a video recording, that he is a leader of a partisan movement in Genychesk district and to show storages with explosives. On July 27, he was forced into a



Alexei Kiselyov during the pre-trial restraint, photo: ru.krymr.com

car, with some clothes wound around his head so that he could not see the route. The car stopped once for inspection, but Kyselyov was not asked any questions. Soon he found himself in Simferopol, in the FSB department, where he was declared suspect of involvement in illegal military formations and officially taken into custody.

In accordance with the case materials, in May 2016, Kyselyov joined the Crimean Tatar voluntary battalion named after Noman Chelebidzhikhan, shared its goal and tasks, stayed in touch with its head Lenur Islyamov and other members of the formation, provided the battalion with food and also taught the battalion members the skills of controlling sea vessels with the aim of sea blockade of Crimea as he had held a position connected with control of sea vessels and had the respective skills. He took part in an attempted act of sabotage in the Kerch Strait, but it was not completed due to the vessel's breakdown. On 18.10.2022, the case was transferred to Dzhankoy district court with the charges under paragraph 2 art. 208 of the Criminal code of the Russian Federation 'Participation in a military formation which is not prescribed by the law'.

It is noteworthy that, according to the version made public by the Prosecutor general's office of Russia, 'the battalion was formed in 2015 with the aim of food, energy, water and other types of blockade of the Republic of Crimea.'. 'The goal of creating the battalion is violation of the



THE CASE OF CAPTAIN OLEKSIY KYSELYOV

territorial integrity of the Russian Federation, and one of its main tasks – military seizure of the Republic of Crimea'.¹⁵ As the Ukrainian media believe, the battalion began its forming in 2016, but as of February 2017 it was still on the stage of forming and was not registered as a combat unit of the Armed Forces of Ukraine, the National Guard or other official military units. In 2015, the organizer of the formation, Crimean Tatar businessman Lenur Islyamov announced plans of the sea blockade of Crimea.

Since 2016, messages about detention of the participants of the formation by the FSB started to appear in Crimea, and in 2019 the process became systemic – at least 3 cases with charges of membership in the battalion named after Noman Chelebidzhikhan were transferred to Crimean courts. This type of repressions gained momentum after the beginning of the full-scale invasion when Chongar and Genichesk, which were the main places of dislocation of this formation, were seized. As of October 2023, it is known that 15 persons have been convicted in Crimea for their connection with the Crimean Tatar voluntary battalion since the beginning of the full-scale war, 4 other cases are under preliminary or court investigation. In at least 8 of these cases, facts of violent abductions and tortures were recorded.

Kiselyov was sentenced to 8 years and 6 months in prison, with the first year of his sentence to be served in prison and the remainder of his sentence to be served in a strict regime penal colony.

¹⁵ <https://tass.ru/obschestvo/14789255>

THE TRIAL:

The court of the first instance:	Dzhankoy district court of Crimea
Judge:	Solovyova Liliana Volodymyrivna
State prosecutor:	Mykhaylov A.A.
Attorney:	Ladin Oleksiy Oleksandrovich
Session dates:	07.11.22-17.02.23
Verdict:	8 years 6 months of imprisonment

The court of appeal:	the Supreme court of the Republic of Crimea
Board of judges:	Chernetska Valeria Valeriivna (presiding judge), Ovchinnikova Alla Yuriivna, Ermakova Maria Genadiivna
Prosecutor:	Turenko A.A.
Attorney:	Ladin Oleksiy Oleksandrovich
Dates:	22.08.23

THE CASE OF CAPTAIN OLEKSIY KYSELYOV

Verdict:

remained unchanged

Main violations of separate standards of fair justice:

CONSIDERATION BY INDEPENDENT AND IMPARTIAL COURT:

Oleksiy Kyselyov is a former officer of the Naval Forces of Ukraine who left Crimea after the occupation, which indicates his negative attitude to the events. Apart from that, he was charged with joining the formation that proclaimed liberation of occupied Crimea as its aim, and all his documents connected with actions of registering the formation in the system of the Armed Forces of Ukraine were withdrawn from him. In order to assess the court's impartiality, it is also important whether the judges who participated in the case consideration are former Ukrainian judges, participants of criminal cases in the territory of Ukraine, participants of human rights violations or political persecutions in the occupied territory.

In the court of the first instance:

1. Judge **Liliana Solovyova** was appointed on the judge's position in 2017, so she had not held such a position before the occupation and is not a participant of criminal cases initiated by the Ukrainian law enforcement against Crimean judges for high treason. She

is also a resident of Crimea, so no external factors which could influence the judge's impartiality were found during preparation of this report.

2. Judge Liliana Solovyova demonstrated certain partiality towards the defense, and it was recorded in the following actions:

- On 07.11.22, the judge interrupted the attorney's speech multiple times. She communicated aggressively. For example, when the attorney asked if he could continue, the judge replied scornfully, 'Try'.
- On 21.12.22, when a witness under the nickname 'Petrov' was being interrogated, and the attorney asked an emotional question, the judge made him a remark, to which she added in a very irritated voice, 'Don't be sarcastic. Leave your taunts to yourself'. It is indicative that the witness soon started to be rude to the attorney ('I am already tired of answering this, you must listen!'), but the judge did not show immediate reaction and she did not give any aggressive commentaries to the witness.
- On 26.01.23, when the defense's motion about a request regarding Kyselyov's migration card was under consideration, the judge pretended continuously that she did not realize which card was spoken about, creating conditions for denial of the motion due to the vagueness of the term. It is noteworthy that at that time, the judge had experience of considering at least 7 criminal cases about an illegal crossing of the state border,

THE CASE OF CAPTAIN OLEKSIY KYSELYOV

which casts doubt on complete lack of understanding of the procedure and document provision of border crossing process which the judge demonstrated when the motion was being considered.

- On 26.01.23, the judge showed her biased attitude to the defense's argument in the form of distrust, 'Do I have to announce a break so that you would stop making things up?', - this was the judge's reaction to the attorney and defendant's reference to testimony of one of the interrogated witnesses.

3. The judge did not make any remarks to witness Vladyslav Stradetsky, operational FSB officer, for his provocative behaviour when he avoided answering the attorney's questions during his interrogation.

4. The judge's stay in the deliberation room took 27 hours (only 12 of which are working hours), which is an insufficient period of time to estimate the case materials objectively and comprehensively, as 7 witnesses were examined, 6 video recordings were studied, as well as procedural documents and 10 court rulings in other criminal cases within the framework of the case. Considering such amount, the short period of stay in the deliberation room can indicate the judge's partiality and a previously prepared verdict in the case.

In the court of appeal:

1. Judge **Chernetska Valeria Valeriivna** is a former Ukrainian judge (Nizhnyohirske district court of the ARC) who betrayed her oath. The Prosecutor General's Office of Ukraine initiated criminal proceedings against her on the fact of a crime committed under paragraph 1 art. 111 of the Criminal

code of Ukraine (high treason). She had taken part in consideration of cases on administrative offenses for 'discrediting the Russian army' which, in particular, concerns any calls for peace or demonstration of support of Ukraine. These persecutions have the signs of a military crime. She also participated in consideration of an appeal in the case against human rights defender and civil journalist Iryna Danylovykh.

Judge **Ovchinnikova Alla Yurievna** is a judge who moved to Crimea from the Russian city of Chelyabinsk and administers justice violating the norms of international humanitarian law which prohibits judges of the occupying country to take part in trials in the occupied territory. Earlier, Ovchinnikova participated in political court persecution of the Ukrainian seamen who were detained in the Kerch Strait; she left the



Oleksiy Kiselyov during a press conference a few years before his arrest, photo: IPC-Henchiesk

ruling about their arrest unchanged and refused to recognize them as POWs. Judge **Ermakova Maria Gennadiivna** is a judge who moved to Crimea from the Russian region of Volgograd and

THE CASE OF CAPTAIN OLEKSIY KYSELYOV

administers justice violating the norms of international humanitarian law which prohibits judges of the occupying country to take part in trials in the occupied territory. Earlier, in 2020, Ermakova was in charge of the first in Crimea political trial against member of the religious association 'Jehovah's Witnesses' Sergiy Filatov.

2. The fact that the court's position about Kyselyov's forced transfer across the Russian border from the occupied territory of Kherson region is absent in the ruling of appeal is an indicator of dependence of the court of appeal on the FSB's stance. The appeal marks this circumstance as one of the arguments of disagreement with the verdict of the court of the first instance and was specially emphasized by the attorney and the defendant during the court debate, but the judges of the Supreme court of Crimea did not estimate this circumstance at all.

PUBLICITY OF THE TRIAL

The court of the first instance:

1. All hearings in this trial were held openly in the court of the first instance.
2. At the same time, it is noteworthy that, during all the hearings in this criminal case, the data about the defendant's surname was absent on the official website of the court, which complicated obtaining information about the place and time of the hearings. Also, information about the parties of the criminal case is absent on the official website of the court.
3. The case verdict had not been published on the official website of the court during 8 months.

4. On 16.02.23, the court preventively banned photo and video fixation of the whole process, having noticed a 'Crimean Solidarity' reporter with a camera in the court room. The court announced the ban long before the defense raised a motion (where it asked the court to allow video and photo fixation of the defense only), thus making the consideration of this issue impossible. It is also necessary to add that the judge did not inform the listeners that they had the right to record the hearings on video, she only emphasized that the hearings were being recorded by the court video fixation system.

5. The reading of the verdict took place not to a full extent, only the introductory and resolute part was pronounced, which does not already violate the norms of the criminal procedural code of the RF¹⁵ but contradicts the stance of art. 6 of the European Convention of Human Rights in the part 'the verdict shall be pronounced in public' and the practice of European Court of Human Rights which allows such actions under some important circumstances.¹⁶



Oleksiy Kiselyov during his transfer to prison, photo: Crimean Investigator

¹⁵ Amendments to Article 241 of the CPC of the Russian Federation regarding the announcement of only the introductory and operative parts of the verdict entered into force on 29.12.2022

¹⁶ Welke and Bialek v. Poland, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103696>

THE CASE OF CAPTAIN OLEKSIY KYSELYOV

The court of appeal:

1. During consideration in the court of appeal, the data about the defendant's surname was hidden on the official website of the court, which complicated obtaining information about the time and place of the hearings. Also, the information about the parties in the case and the list of the judge board members who participated in the consideration is absent on the official website of the court.
2. The reading of the verdict in the court of appeal took place not to a full extent, only the introductory and resolute part was pronounced, which does not already violate the norms of the criminal procedural code of the RF but contradicts the stance of art. 6 of the European Convention of Human Rights in the part 'the verdict shall be pronounced in public' and the practice of European Court of Human Rights which allows such actions under some important circumstances.

EQUALITY OF THE PARTIES

The court of the first instance:

1. During the trial, the defense raised 8 motions that had significant importance for determination of the real circumstances, the court granted 5 of them (62%) while the court did not deny 3 motions that the state prosecutor raised (100%).

The court's refusal to examine the key witness of defense Lenur Islyamov via video conferencing was not reasoned enough, which grossly violated the defendant's right

to provide evidence of his innocence, since the mentioned witness, due to his position and testimony of other witnesses interrogated by the court, had important information connected with the charges incriminated to Kyselyov.

Not providing reasons of a refusal to consider or to call for a witness can result in restriction of the defense's rights, incompatible with the guarantees of fair trial (Popov v. Russia, paragraph 188, Bocos-Cuesta v. the Netherlands, paragraph 72; Wierzbicki v. Poland, paragraph 45; Vidal v. Belgium, paragraph 34).

3. It must be mentioned separately about an episode with realization of the defense's right to provide evidence, when the court formally granted a motion about demanding the materials of inspection of the violent abduction and torturing of Kyselyov in the city of Genychesk, however, having not received these materials from the military investigative committee, the court finished the court investigation despite the unresolved doubts.

The court of appeal:

1) The judgment based on the results of consideration of the appeal contains many coincidences with the state prosecutor's text pronounced during the court debate. Moreover, the court did not provide reasons of its position in 2 out of 6

THE CASE OF CAPTAIN OLEKSIY KYSELYOV

substantial violations which the defense pointed at in its appeal.

2) The convict participated in the hearings via video conferencing, and its quality was insufficient: Kyselyov did not occasionally hear the questions asked by the court, he could probably not hear everything said by the other participants of the process. When the court asked whether he could hear everything well, he informed that the quality is 3-4 points out of 5. Also, Kyselyov's participation via video deprived him of a possibility to receive his defender's consultations during the process, which could also affect equality of the parties.

PRESUMPTION OF INNOCENCE

1. During the process, no significant actions which would violate the presumption of innocence were recorded, except the fact that the defendant was kept in a special enclosed 'aquarium'. Keeping defendants in a cage or a special enclosed 'aquarium' forms in itself an image of a guilty person, and spreading such photos by the media aggravated the impression about the level of the persons' guilt.
2. A media campaign may affect the court verdict, however, no publications aimed shaping the public opinion about this case were recorded at during the process. Several publications made after the verdict was pronounced contained references to the Crimean FSB press service.

THE CASE OF JEHOVAH'S WITNESSES FROM SEVASTOPOL

DESCRIPTION OF EVENTS:

On October 1, 2020, the law enforcement officers conducted at least 9 searches in the places of residence of the 'Jehovah's Witnesses' religious organization members in Sevastopol. The searches were conducted within the framework of a criminal case initiated under paragraph 1 art. 282.2 of the criminal code (organizing activity of an extremist organization). After the searches, the married couple Natalia and Volodymyr Maladyka were brought to the investigative department as well as Yevhen Zhukov, Volodymyr Sakada and Igor Schmidt. The four men were placed in a detention unit, Natalia Maladyka was released after she had been interrogated.

Yevhen Zhukov used to lead the Sevastopol 'Jehovah's Witnesses' community. It was registered on November 12, 1997, and put on record in a tax office within the framework of Russian legislation in May 2015, however, in May 2017 it was eliminated in accordance with the court ruling after the organization had been recognized as extremist in Russia. The videos of 4 'Jehovah's Witnesses' worships recorded by the FSB after 2017 became the basis for the accusations.

On October 2, 2020, Leninskoe district court of Sevastopol arrested the suspects Zhukov, Sakada, Schmidt and Maladyka until late November. Later, the case of Igor Schmidt was separated, and he was convicted during a different trial. In 5 months, the court changed the measure of restraint to a home arrest for Volodymyr Maladyka and Volodymyr Sakada, and Zhukov was kept in a detention unit for another 2 months. Within this period, the case was transferred for consideration to judge

Olga Berdnikova in Nakhimovsky district court in the city of Sevastopol.

Consideration of the case in the court of the first instance was held since April 21, 2021 till October 7, 2022. Nakhimovsky district court declared all the three believers guilty and convicted to 6 years of imprisonment each. All of them were taken into custody in the court room. Consideration of the appeal began almost a year after – on August 28, 2023. The consideration was completed in the court of appeal on October 11, 2023 when the board of judges left the court's verdict unchanged.

The 'Jehovah's Witnesses' started to be persecuted in Crimea after 2017 when the Supreme court of the Russian Federation recognized the activity of 'The Managing Center of the Jehovah's Witnesses in Russia' as extremist, having banned its activity and the activity of all its 395 branches in the territory of Russia; the first verdicts were pronounced in 2020. The verdict in this case became the seventh verdict against the representatives of this religious group in the territory of Crimea. 6 other cases against 14 persons are under different stages of preliminary and court investigation or being appealed against in the court of appeal.



Vladimir Maladika, Evgeny Zhukov, Vladimir Sakada (from right to left), photo: jw-russia.org/



THE CASE OF JEHOVAH'S WITNESSES FROM SEVASTOPOL

THE TRIAL:

The court of first instance:	Nakhimovski district court of Sevastopol
Judge:	Berdnikova Olga Oleksandrivna
State prosecutor:	Yazev Valeriy Sergiyovych
Defendants:	Maladyka Volodymyr Ivanovych, Sakada Volodymyr Fedorovych, Zhukov Yevheniy Sergiyovych
Dates:	12.05.21 - 06.10.22
Verdict:	6 years of imprisonment for each of the defendants

CONSIDERATION BY INDEPENDENT AND IMPARTIAL COURT

1. The case was considered in the court of the first instance by judge **Olga Berdnikova**, about whom it is known that she was appointed for the position in 2018 and is a resident of Sevastopol. So, no circumstances which could significantly affect the judge's independence and impartiality in the court of the first instance were found during the preparation of the research.

The court of appeal:

Sevastopol city court

Board of judges:

Gennadiy Nikitin, Danila Zemlyukov, Elena Elanskaya

Prosecutors:

Yazev Valeriy, Gukasyan Kristina

Defendants:

Maladyka Volodymyr Ivanovych, Sakada Volodymyr Fedorovych, Zhukov Yevheniy Sergiyovych

Dates:

28.08.23-11.10.23

Verdict:

remained unchanged

2. Representative of the board of judges in the court of appeal **Nikitin Gennadiy Volodymyrovych** is a former Ukrainian judge (the Court of appeal of the city of Sevastopol) who betrayed his oath. In June 2015, the Prosecutor General's Office of Ukraine initiated criminal proceedings against him and issued suspicion on the fact of a crime committed under paragraph 1 art. 111 of the Criminal code of Ukraine (high treason). Despite the absence of a political component connected with Ukraine in the 'Jehovah's Witnesses'

THE CASE OF JEHOVAH'S WITNESSES FROM SEVASTOPOL

activity, presence of any political persecution of a judge is an indicator of his/her dependence.

Member of the panel of judges in the appellate instance, **Olena Eduardivna Yelanska** is a former judge of Ukraine (Court of Appeal of Sevastopol) who betrayed her oath of office. On 29 August 2023, she was sentenced in absentia to 14 years in prison. Despite the absence of a political component in the activities of Jehovah's Witnesses related to Ukraine, the existence of any criminal prosecution of a judge is a sign of his dependence.

Danila Zemlyukov, a member of the panel of judges in the appellate instance, was transferred to Crimea from the Altai Regional Court and is conducting court proceedings in violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War. In 2022, he took part in the consideration of an appeal against the sentence of another representative of the Jehovah's Witnesses religious organisation, Igor Schmidt, upholding the sentence of the first instance.

PUBLICITY OF TRIAL

In the court of the first instance:

The judge held the process in an open mode, however, she restricted the number of listeners, who could be present during the hearings, to 4 people. Such a decision was motivated by the anti-coronavirus measures. At the same time, it is noteworthy that about 30-40 comers gathered in front of the court building prior to each hearing in order to

enter the court room, but the court did not initiate any steps to provide publicity of the trial by any other means.

2. Full information about the case under consideration was absent on the official website of Nakhimovsky district court of Sevastopol – the defendants' personal data was hidden. Therefore, it was impossible to learn about the date, time and place of the hearings in this criminal case via the official resources.

Information about the parties in the case was also hidden.

3. The court of the first instance did not publish the verdict in this case within reasonable time limits.

In the court of appeal:

1. The court was held in an open mode. The court did not introduce any restrictions on the number of listeners, there were restrictions connected with the number of free seats available in the court room.

2. Full information about the case under consideration was absent on the official website of Sevastopol city court – the defendant's personal data was hidden. Therefore, it was impossible to learn about the date, time and place of the hearings in this criminal case via the official resources. Information about the parties in the case and the members of the judge board who considered the case was also hidden.

The court of appeal did not publish the verdict in this case within reasonable time limits.

THE CASE OF JEHOVAH'S WITNESSES FROM SEVASTOPOL



"Jehovah's Witnesses from Sevastopol during the appeal hearing, photo: jw-russia.org/"

EQUALITY OF THE PARTIES:

In the court of the first instance:

The defense continuously claimed that the audio recording which is the material evidence in the case had traces of editing, and raised a motion on conducting a respective audio and technical expertise. It would serve as substantial evidence of fabrication of the case and had significant importance for proving the defendants' innocence. However, the court refused to conduct such expertise.

In the court of appeal:

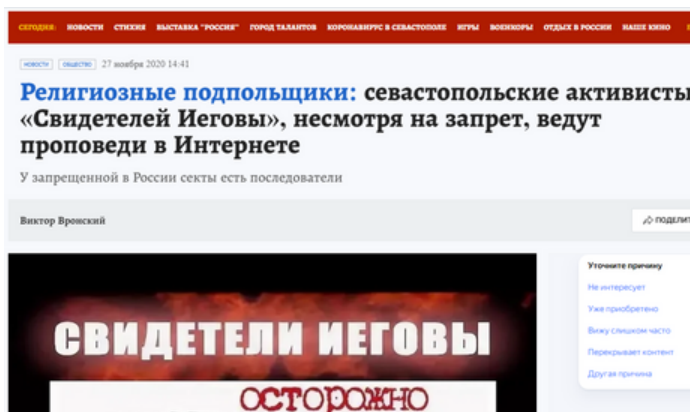
1. The format of video conferencing, which was used in order to provide the defendants' participation, affected equality of the parties. Because of this format, they were deprived of the possibility to have operational and private consultations with their attorneys.

2. The defense's motion regarding the audio protocols containing interrogations of an expert religious scientist and psychologists (which were significantly reduced in the materials of the case) in the court of the first instance, was partially granted by the court – the court added full transcripts but refused to allow listening of these audio protocols, having deprived the defense from the possibility to present this evidence to the full extent.

PRESUMPTION OF INNOCENCE

1. During the whole process in the court of the first instance, no obvious signs of violations of the presumption of innocence of the defendants were recorded. During consideration in the court of appeal, an image of the defendants behind the bars was being demonstrated. Using bars in court processes not only humiliates human dignity but also shapes perception of the people behind bars as guilty persons.

2. An unrestrained campaign in the press may have negative impact on the fairness of court consideration, influencing the public opinion and pushing the court to taking certain decisions. At least 4 such publications made long before the court investigation were recorded.



The main focus of the headlines and the publications was targeted at the defendants' involvement, not proved by the court in that period, in religious sects,¹⁷ extremist communities, conducting 'recruitment',¹⁸ 'secret gatherings' and the presence of 'units'.¹⁹ The materials also mention the FSB's role in termination of the crime, which could also affect the fairness of the court ruling.

¹⁷ <https://compromat.group/news/47258-fsb-zaderzhala-v-krymu-verbovschikov-svideteley-iegovy.html>

¹⁸ <https://www.sevastopol.kp.ru/online/news/4098217/>

¹⁹ <https://www.interfax.ru/russia/729780>

THE CASE AGAINST THE LAWYER OLEKSIY LADIN

DESCRIPTION OF EVENTS:

Attorney Oleksiy Ladin was detained on October 13, 2023, at 5:40 am when he had arrived in Simferopol from yet another court hearing held in the Southern district military court located in Rostov-on-Don. The heads of Simferopol Counter-Extremism Centre conducted the detention. Next, a search was conducted in his household, and, as a result, digital carriers were withdrawn from him and his wife, as well as documents which are attorney-client confidential. The search and withdrawal were conducted without presence of the members of the board of judges required by the procedure of actions regarding attorneys.

After the search, Ladin was brought to the Counter-Extremism Centre, where two protocols were written against him for administrative offenses – under art. 20.3 for demonstrating prohibited extremist symbols and art. 20.3.3 for discrediting the Russian army. Both offenses had been found during the operational measure 'observation of the internet page', namely Ladin's Facebook account. When the protocols were being



Russian security forces search lawyer Oleksiy Ladin during his detention

written, Ladin specified in them that an attorney was not provided to him, despite the requirements.

According to further consideration in the court, photos showing drawings created by former political prisoner Ismail Ramazanov, which depict the Crimean Tatar people's coat of arms intertwined with the Ukrainian one, became the formal basis for charges with the administrative accountability for extremist symbols. The law enforcement officers added expert conclusions that 'this coat of arms belongs to an illegal military formation' of the Crimean Tatar battalion named after Noman Chelebidzhikhan, however, as a matter of fact, they differ significantly.

A court hearing was conducted on the same day, where Ladin and his defender, attorney Emil Kurbedinov noted that the drawings are not similar to the Crimean Tatar battalion's coat of arms, and the specialist is not an expert both in heraldry and in extremist symbols but a scientist and philosopher at the branch of the MIA university in Crimea. The court refused to examine the specialist and imposed Oleksiy Ladin a punishment in the form of 14 days of administrative arrest. Due to the fact that we speak about imprisonment which, in accordance with the position of the Constitutional court of the Russian Federation, 'is comparable to the measures of criminal and lawful influence', this case was included in our research.²⁰

²⁰ <http://sutyajnik.ru/documents/4788.pdf>



THE CASE AGAINST THE LAWYER OLEKSIY LADIN

It is also important to specify that attorney Oleksiy Ladin has been famous in Crimea for his participation in politically motivated cases since 2017. He represented interests in cases connected with freedom of opinion, freedom of religion, persecutions of Crimean Tatar activists, Ukrainian seamen, and so on. After the full-scale invasion began, attorney Ladin became one of the few who started to deal with cases of persons transferred from the newly occupied territories and charged with partisan actions or participation in illegal military formations. In these cases, Ladin spreads information publicly about violent tortures of his clients by Russian servicemen, FSB investigators and prison guards, and demands punishment for them. So, his detention has the signs of persecution for his professional advocacy.

THE TRIAL:

The court of the first instance:

Kyivsky district court of Simferopol

Judge:

Chumachenko Kateryna Valeriivna

State prosecutor:

absent

Attorney:

Kurbedinov Emil Maksudovich

Date:

13.10.2023

Verdict:

14 days of administrative arrest

The court of appeal:

Supreme court of Crimea

Judge:

Agin Volodymyr Volodymyrovych

State prosecutor:

absent

Attorney:

Kurbedinov Emil Maksudovich

Date:

17.10.2023

Verdict:

leave the ruling unchanged

Main violations of separate standards of fair justice:

CONSIDERATION BY INDEPENDENT AND IMPARTIAL COURT

The court of the first instance:

1. In the court of the first instance, the case was considered by judge Kateryna Chumachenko, it is known about her that she was appointed to the position of a magistrate judge in 2015. So, during preparation of the research, no formal circumstances were found which could significantly influence the judge's independence and impartiality in the court of the first instance. But it is recorded that Chumachenko violated the

THE CASE AGAINST THE LAWYER OLEKSIY LADIN

standards of judicial proceedings during consideration of protocols issued as a result of the en mass detention of September 4, 2021, and issued at least 3 verdicts in the cases for 'discrediting the Russian army', including the case against political activist and supporter of Navalny – Oleksiy Yefremov.

2. During consideration of the case against attorney Ladin, the following indicators of the court's dependence and partiality were recorded:

a) The person who wrote the administrative protocol, Counter-Extremism Centre representative Roman Filatov participated in the process on the level of the parties – he stayed in the court room all the time, commented the defense's motions, took advantage of the opportunity to give replies, etc. Such an approach to organizing a court process does not correspond with the active norms regarding the complete list of persons who are participants in the consideration of cases on administrative offenses and their rights (chapter 25 of the Code of administrative offense). The intentional violation of these norms by the judge must be estimated as an indicator of the court's dependence on the law enforcement representatives.



Lawyers Alexey Ladin (right) and Emil Kurbedinov (left) near the court

b) The court ruling notes that 'the court relies on the individuals' responsible attitude to performing their official duties', which is also an indicator of preferential attitude to the persons who perform their official duties, as the other parts of the text do not mention the fact that the court relied on the responsibility of the other participants of the process, in particular, the defendant.

The court of appeal:

1. The appeal was considered by judge Volodymyr Agin, about whom it is known that, prior to the occupation, he was a judge of Olkhovsk district court in Volgograd region. With violating the norms of international humanitarian law, he takes part in trials in the occupied territory. The Russian citizenship and obvious career growth could influence the judge during consideration of the case and cast doubt on his independence and impartiality. Moreover, Agin is one of the judges who constantly leaves verdicts on 'discrediting the Russian army' unchanged, having considered at least 13 appeals in 18 months' period.

PUBLICITY OF THE TRIAL

In the court of the first instance:

1. The judge formally conducted the process in an open mode, however, as a matter of fact, it was impossible for listeners from outside to come to the hearing due to the inner order issued by the head of the court about strengthening the counter-terrorist security measures, according to

THE CASE AGAINST THE LAWYER OLEKSIY LADIN

which, entrance into the court building is not allowed for persons who are not the parties in the case. So, the hearing was held with significant violations of the principle of openness of trial.

2. Information about the date, place and time of consideration was made public on the official website 3 hours after the beginning of the process. At that time, the court had already pronounced the verdict. Such actions prevented from listeners' presence and directly influenced the violation of openness and publicity of the process.

In the court of appeal:

Information about the date, place and time of consideration of the appeal to the verdict of the court of the first instance was made public on the official website of the Supreme court of Crimea 55 minutes after the start of the hearing. At that time, the court had already finished consideration of the case, which indicates gross violations of the principle of openness of trial.

EQUALITY OF THE PARTIES:

In the court of the first instance:

1. Absence of the state prosecutor in the trial created a certain imbalance for the parties. Because of this, the court factually committed to the prosecutor's duties (it presented the case materials), by which it aggravated the defense's position.

2. The defendant was deprived of the possibility to examine witnesses who testify against him. The court denied the defense's motion about calling for specialist Natallia Chudina-Schmidt, whose conclusions had become the basis for creating circumstances for administrative persecution. The defense specified that the specialist is a philosophy teacher and her level of competence in the issues of heraldry and extremist symbols, to which the specialist's conclusion was related, is not clear. Also, the defense pointed at significant differences between the image on the attorney's page and the real emblem of the Crimean Tatar battalion. Despite this argumentation, the court refused to interrogate the witness. And it claimed in its ruling that 'the court relies on the responsible attitude of the persons to performing their official duties'.

Such actions directly contradict the requirements of paragraph d part 3 art. 6 of the European Convention of Human Rights: 'everyone charged with a criminal offense has the following minimum rights... to examine or have examined witnesses against him'.

3. Equality of the parties was subjected to significant imbalance due to blatant ignoring of facts of violating the defendant's right to defense by the court. This fact is enshrined in the administrative protocol, in which Ladin specified that, despite the requirements, his right to defense was not realized. In spite of the documented violation of the right to defense and the attorney and the defendant's position on this issue, the court did not conduct verification

THE CASE AGAINST THE LAWYER OLEKSIY LADIN

of these circumstances, it stated in its ruling that it had found no evidence that the right to defense had been violated.

In the court of appeal:

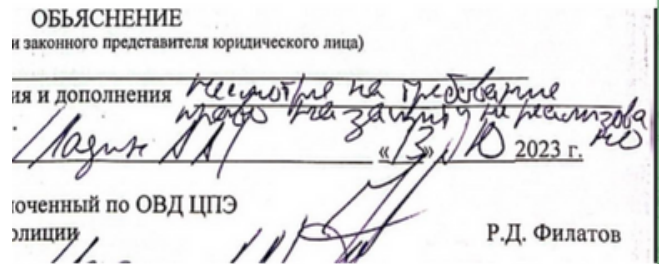
1. Absence of the state prosecutor in the trial created a certain imbalance. Because of this, the court factually committed to the duties of the prosecutor (it presented the case materials), by which it aggravated the defense's position.

2. The equality of the parties was violated due to the court's refusal to provide Ladin's participation in the process. The judge found that Ladin, being under arrest, had been informed about the date and time of the hearing on time, but since:

- technical possibility to provide video connection was absent,
- the time frame for consideration of the appeal was limited,
- arrested Ladin's attorney was participating in the hearing,

the judge decided that the consideration of the case in Ladin's absentia would not affect his right to defense. Oleksiy Ladin and his defender had insisted on providing the participation in the hearing for the arrested person.

And, however the ECHR practice contains some presumptions regarding consideration of an appeal in the defendant's absentia under certain circumstances, the court should have used the following recommendation: 'The principle of an open court hearing includes the defendant's right to present evidence in the court of appeal in person. From this point of view, the principle of publicity is aimed to guarantee the defendant's right to defense' (Tierce and Others v. San Marino).



A fragment of the protocol, in which Ladin indicates that he has no right to defence, photo: Kemsкая Volost

3. Equality of the parties was subjected to significant imbalance due to the court's blatant ignoring of the fact that the defendant's right to defense was violated. This fact is enshrined in the administrative protocol, in which Ladin specified that, despite the requirements, his right to defense was not realized. In spite of the documented violation of the right to defense, the court of the first instance did not conduct verification of these circumstances and claimed in its ruling that it did not find any evidence that the right to defense had been violated. The court of appeal ignored the present evidence of violation of the right to defense as well and, without estimating it, confirmed that the court of the first instance had come to the right conclusion.

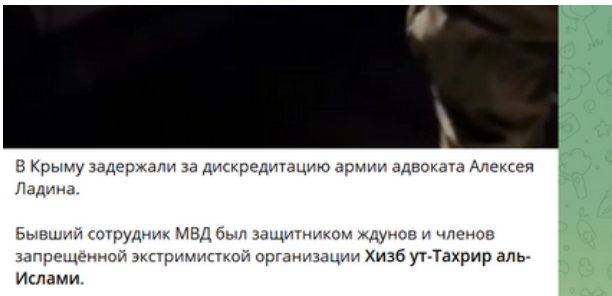
ПРЕЗУМПЦІЯ НЕВИНУВАТОСТІ

1. Using the phrase 'the court relies on the persons' responsible attitude to performing their official duties' in the ruling of the court of the first instance indicates the presumption of reliability of the public officials who perform their official duties. Such a position of the court indicates violation of the

THE CASE AGAINST THE LAWYER OLEKSIY LADIN

defendant's presumption of innocence by itself, since he has to prove that the public officials had performed their official duties in bad faith.

2. An unrestrained campaign in the press can negatively affect the fairness of the court consideration, influencing the public opinion and pushing the court to certain decisions. At least 5 publications containing the signs of violation of the principles of neutrality in presenting information



ПОЛИТ НАВИГАТОР

О проекте Форум

EN RU

В Крыму взят под стражу адвокат «ждунгов» и экстремистов

Любовь Смирнова · 13.10.2023 19:57 (Мск), Симферополь

Просмотров: 2570

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



▶ 0:00 / 0:00

Адвокат крымских «ждунгов», «хизбов» и «заукраинцев» Алексей Ладин арестован на 14 суток за дискредитацию Вооруженных сил России и демонстрацию символики нацбата им. Номана Челебиджихана, который признан в России террористической организацией.

Об этом сообщает подконтрольная СБУ группа в социальной сети «Крымская солидарность», именующая себя правозащитной, передает корреспондент «ПолитНавигатора».



were recorded prior to the case consideration in the court of the first instance or in the court of appeal. Among them, there are such emotionally marked expressions as 'he was the defender of snorps and members of the prohibited extremist organization Hizb ut-Tahrir al-Islami',²¹ 'the attorney of snorps', 'he helped Ukrainian captives',²² etc.

²¹ <https://www.politnavigator.net/v-krymu-vzyat-pod-strazhu-advokat-zhdunov-i-ehkstremistov.html>

²² <https://rosinform.press/v-krymu-zaderzhali-advokata-pomogavshego-ukrainskim-plennym/>

CONCLUSIONS

How did the judicial system created under the conditions of the occupation of Crimea, before and after the beginning of the full-scale invasion, during consideration of politically motivated persecutions in courts, change?

1) The detailed analysis of the separate standards of fair trial on the example of the observed cases and the comparative analysis containing the results of the previous periods allow to draw the conclusion that the judicial system created under the conditions of the occupation of Crimea and previously unable to provide efficient protection from illegal politically motivated persecutions became even less public, less impartial and obviously more dependent on the FSB officials before the beginning of the full-scale invasion. This trend increased after the start of the full-scale invasion both regarding Crimean political persecutions and cases against residents from the newly-occupied territories.

It is indicated by the following:

- in most cases, the judges whose past actions cast doubt on their independence and impartiality are appointed to consider politically motivated processes;
- the new Russian legislation (in particular, regarding discrediting of the Russian army) is extended on the occupied territories with violating the norms of international humanitarian law;

- the number of standards, in relation to which which systematic non-adherence to procedural guarantees to fair trial are recorded, is growing;
- This gives grounds to believe that the judicial system created under the conditions of the occupation of Crimea before the full-scale invasion and after its beginning still remains a tool of politically motivated persecutions with a high level of dependence on the objectives and tasks of the law enforcement structures in the occupied territory.
- An additional proof of the correctness of this statement will be the answer to the question of this research about

did Crimean courts adhere to the separate standards of fair trial during consideration of politically motivated cases in the period before the full-scale invasion and during the first twenty months of the war?

The answer to this question is found in the step-by-step analysis of each of the 4 standards which were studied on the example of the politically motivated cases mentioned above.



CONCLUSIONS

CONSIDERATION BY INDEPENDENT AND IMPARTIAL COURT

The standard was not fulfilled. In all the processes, more than one obvious or indirect signs indicating possible dependence and/or partiality of the court were recorded. The procedure of appointing judges is one of the key elements on which trust to justice is built. Its non-compliance with the international standards results in grounded doubts in the independence and impartiality of the courts in Crimea.

In order to provide independence and impartiality during consideration of politically motivated cases in Crimea, it should have been necessary to prevent from participation of the judges who:

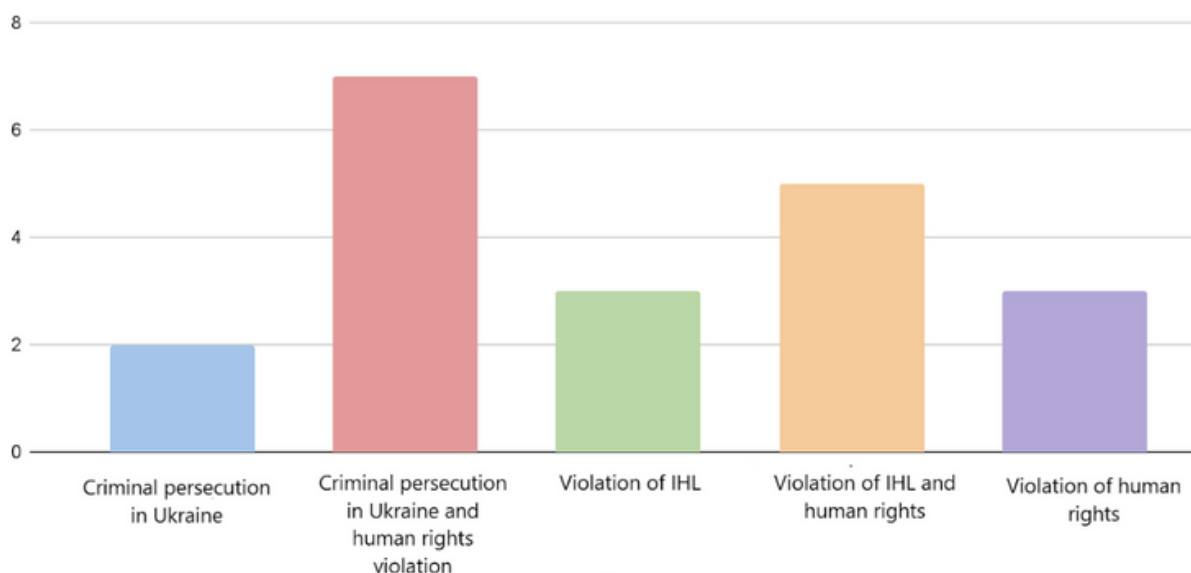
- are suspects, accused or convicted criminals in the territory of Ukraine;
- administer justice by violating IV Geneva Convention relative to Protection of Civilian Persons in Time of War;
- are involved in gross violations of human rights, humanitarian rights and

repressions against residents of the occupied territories;

Out of 23 identities of the judges who participated in consideration of politically motivated cases on the stage of the first instance or in the court of appeal found during the research, 22 belong to one (most of them to two) of the categories enumerated above.

The Russian Federation broke the requirements of article 54 of the Geneva Convention (IV) which prohibits to alter the status of the judges appointed by the Ukrainian authorities. The judges who are mostly loyal to the Russian authorities were allowed to administer justice in the territory of Crimea. As a result, the court was passive to the prosecutor's malpractices or even demonstrated intrusion in the court investigation process, based on the interest of the state prosecutor or the preliminary investigation in separate cases.

Categories of judges by presence of dependence affecting factors



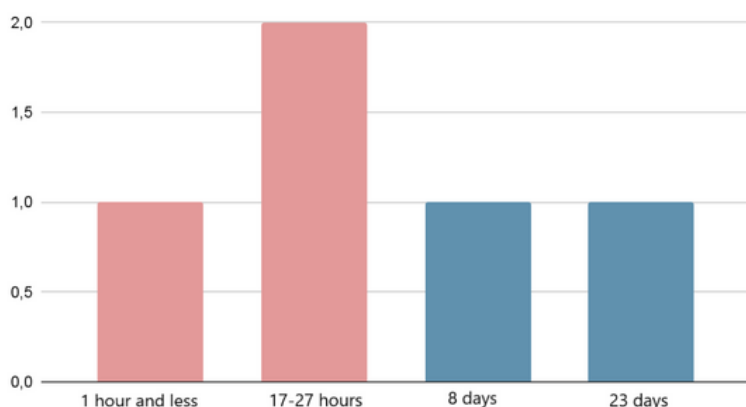


CONCLUSIONS

In some cases, the unhidden actions of the judge, who was considering the case, aimed at supporting the version of the state prosecutor and other law enforcement structures interested in the case result were observed. The courts' demonstration of their active position was continuously expressed with emotional actions which indicate violation of the impartiality principle.

In at least 2 out of 5 analyzed cases, recusals were raised against the court due to the fact that its actions showed its interest in the results of the case. All the recusals against the court were denied. The indicators of time that the courts needed to spend in the deliberation room and for sentencing can be an indirect sign of absence of independence in administering justice in some politically motivated cases. Out of 5 politically motivated cases which took these indicators into account, the courts issued quick rulings in 3 cases during examination of all the materials and the evidence, which required comprehensive and objective examination. So, for example, with the aim of sentencing in the criminal case against civil journalist and

Time spent in deliberation room



human rights defender Iryna Danylovych, the judge spend 17 hours in the deliberation room in order to estimate all the evidence and do the sentencing, 15 of which were night hours and time off work.

PUBLIC CONSIDERATION

The standard was not fulfilled. In 3 out of 5 analyzed processes, important and numerous facts of violating the standards destined to provide openness and publicity of court consideration were recorded, and in the other two – separate facts of violations which affected openness and publicity of trial. The misuse of the situation with the coronavirus pandemic and counter-terrorist security measures to regulate and restrict the publicity of the politically motivated trials became the main form of violating these principles.

The judges' common approach regarding this issue is not preserved in the occupied territory any longer. The judges explain the restrictions partially with the counter-coronavirus sanitary norms, not taking into consideration the circumstances that all the restrictions connected with the threat of coronavirus spreading had been cancelled in 2021 in the other areas of life and in the state bodies in the territory of Crimea. The other judges do not formally apply restrictions against openness of the processes, but it is impossible to be present at them

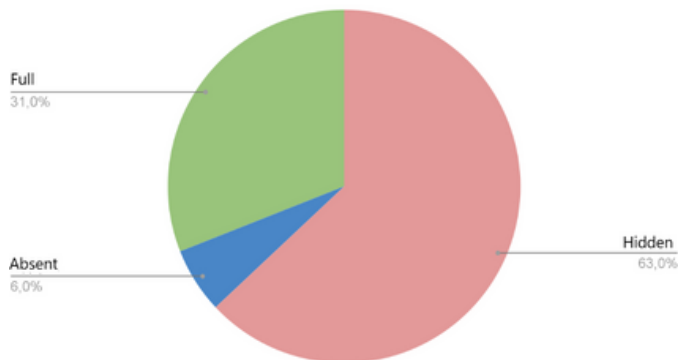


CONCLUSIONS

because of the inner orders of the court which prohibit entrance into the court building for persons who are not participants of the trials, with the aim of raising the level of anti-terrorist security. The public character of the hearings protects the sides from administering justice with no public control; it is one of the means by which trust to the court is supported. The right to the open trial is significantly restricted in Crimea, which results in undermining trust to the judicial system as a whole. Comparing to the previous periods of the research (2018-2022), this part of providing the standards of fair justice is still on the decline.

Practices of restriction to public access to information about the court consideration have systemic character (so, the data about the surname/surnames of the defendant/defendants and the parties was hidden in 63% of the cases, information about the hearings was not published at all or was not posted on time in 6%).

Information on official websites of courts

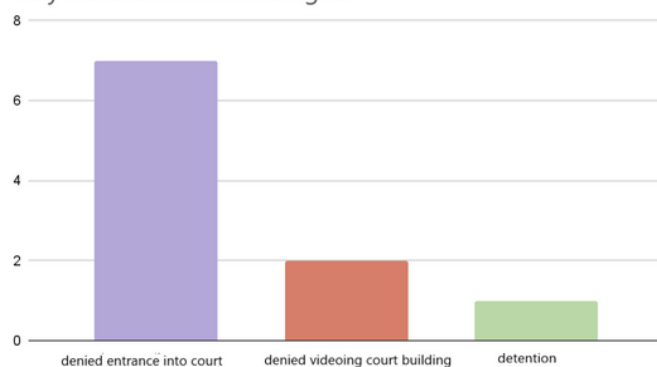


A significant part of the court rulings in the segment of cases under research was not published (verdicts were not published on the websites of the courts of the first instance in 4 out of 5 analyzed cases, and in 2 cases – out of 5 rulings regarding

consideration of appeals). The verdicts were pronounced fully at an open court session in 5 cases, partly – in 2 processes, it was impossible to identify the complete circumstances confidently in 3 other cases.

A significant number of cases when journalist activity was interfered into during coverage of politically motivated cases deserves special

Key violations of media rights



attention. 11 facts of gross violations of journalist rights were recorded in the analyzed court processes (journalists were not allowed to a court hearing in 7 cases, journalists were prohibited to video the court building in 2 cases, 2 journalists were detained - one was arrested afterwards and the second one was fined). 2 prohibitions for journalists to take photos and make videos are also worth mentioning, although it is not a violation but it demonstrates the courts' general attitude to the principles of openness and publicity of trials in politically motivated cases.

Practice of en mass detention of persons who arrive at court sessions in order to participate in them as listeners is another general trend in the realm of providing public

CONCLUSIONS

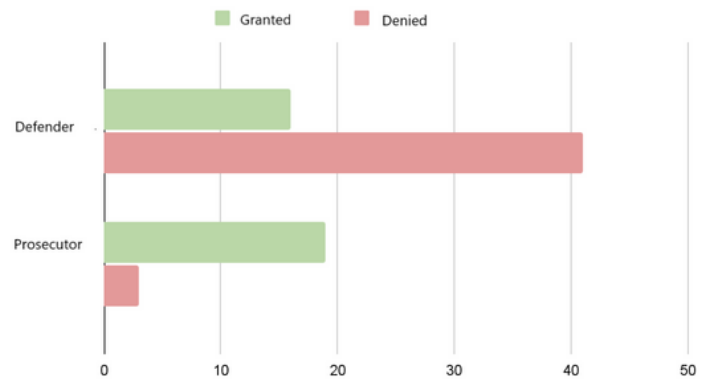
justice in Crimea (which was reflected in this research). In 2023, at least 3 measures were taken by the law enforcement that resulted in arresting and imposing administrative arrests on 56 persons, with 3 civil journalists being among them (the punishment was imposed on one of them for the second time during the year). 3 other civil journalists were detained but they were not arrested. Such practice affects general publicity of the courts significantly due to the fact that journalists are not ready to risk being imprisoned for their attempts to be present at politically motivated court processes.

EQUALITY OF THE PARTIES

The standard was not fulfilled. Violations of the standards designed to provide equality and adversarial parties were recorded in all the processes. In most cases, preferences for the prosecutor are recorded, as well as intentional deprivation of the defense's right to use all available possibilities for proving its position.

During consideration of motions raised by the parties, obvious advantage was observed in granting the prosecutor's motions. In particular, in the court processes which were the subject of monitoring, the defense's motions which were granted by the court were 28% whereas the prosecutor's motions were granted in 86%.

Court's attitude to considering parties-raised motions



Violation of the principle of equality and adversarial parties undermines the legitimacy of the court rulings. The practice applied by the courts puts the defendants in vulnerable conditions, with obvious advantage for the prosecutor. In particular, in 4 out of 5 cases, restriction of right of the defendant and the defense to examine witnesses testifying against them was found, which directly contradicts p. d part 3 art. 6 of the European Convention of Human Rights: 'everyone charged with a criminal offense has the following minimum rights... to examine or have examined witnesses against him'.

Refusals to interrogate witnesses of defense became a significant misuse which undermined the defense's possibilities. So, in the case against civil journalist Iryna Danylovykh, the court allowed to interrogate only one witness of defense and denied a motion about examination of 15 other witnesses whose testimony had significant importance in determination of the truth. In a different case (about the gas pipeline 'blow up'), the court

CONCLUSIONS

refused to call for at least 7 witnesses by the defense's motion, but it granted the prosecutor's motion about the interrogation of a person who had not been interrogated during the preliminary investigation.

The court's selectivity in appointing expertise by the defense's motions deserves special attention. So, for instance, in the case against the religious believers from Sevastopol, the defense numerously claimed that the audio recording, which is material evidence in the case, had signs of editing. The expertise would have had major importance for the evidential value, but the court refused to appoint it. Similarly, the courts of the first instance as well as the courts of appeal refused to appoint expertise which would evaluate the damage to the defensive capabilities in the case about the gas pipeline 'blow up', the presence of the damage is the qualifying indicator and was not proved by any means.

It was continuously noticeable that the court denied the defense's motions on demanding, adding and studying the documents which were important for determination of truth. So, for example, in the case against Oleksiy Kyselyov, the court granted the defense's motion about demanding the documents which verify the facts of torturing the defendant, but subsequently did not receive any reply and did not initiate any further actions on demanding the documents which had key evidential value. The same was recorded

when the defense raised a motion about demanding and studying the photo and video materials.

The practice of the court declining important questions asked to a witness who is being examined in the court has become a new approach in violating the standard of equality of the parties. Out of all the analyzed cases, this was recorded during interrogation of the secret witnesses in the case on the gas pipeline 'blow up', where the court extensively declined the defense's questions motivating its actions by saying that the answers could disclose the witness's personal data. The context of the interrogation and the content of the questions indicate that the court deliberately misused its right to decline uncomfortable questions.

Some other aspects also draw attention, such as:

- performing the prosecutor's functions by the court itself and transferring a part of the prosecutor's functions to a third person were recorded in the case against attorney Ladin;
- in the case against civil journalist and human rights defender Iryna Danylovych, the defense was deprived of the possibility of comprehensive defense because necessary medical aid was not provided to the defendant both during the court debate in the court of the first instance and on the stage of consideration of the appeal;

CONCLUSIONS

- the court limited the time of communication between the defenders during the process in the Iryna Danylovych case and also applied pressure during the examination of the transcript of court sessions in the court of the first instance in the cases against Iryna Danylovych and Oleksiy Kyselyov;
- the trend of violating the principle of the defendant's participation in the trial is preserved, which deprives the defendant of the possibility to defend themselves and to be listened to. Arrested attorney Ladin was not transported to the court in order to participate in the consideration of the appeal, nor was his participation via video provided.

PRESUMPTION OF INNOCENCE

The standard was not fulfilled. In all the processes, facts of violating the standards designed to preserve the presumption of the defendant's innocence are recorded. In 4 cases, the violations concerned the defendants being kept in 'aquariums', behind bars or being conveyed in handcuffs to the court sessions. This, in advance, creates an image of being guilty. Out of all the analyzed court hearings, 70% of them took place with the defendants being kept in special enclosed spaces ('aquariums').

In 4 out of 5 politically motivated cases, the presumption of innocence was violated due to the imbalanced content of the press

publications and statements made by the political leaders or officials. As a matter of fact, public confidence in a person's guilt, with no final decision made, in particular, via public spaces, replaces the necessary justice procedures and limits the court's role only to a formal consolidation of the idea and determination of the measure of restraint. The influential pro-governmental media which broadcast in Crimea actively encouraged shaping the image of guilty persons from the participants of the analyzed cases until the court's rulings came into legal force.

For instance, the press quoted the statements made by the authorities of the occupying power (in particular, the 'head' of Crimea Sergiy Aksyonov) which pointed what exactly the court had to determine, long before the court processes started. Also, publications containing 'hate speech' and blatant informational manipulations, which in itself is significant pressure on the court and violation of the presumption of innocence, were recorded.

RECOMMENDATIONS TO UKRAINE

1. To conduct efficient investigations of the violations of the norms of international humanitarian law in Crimea due to gross violations of standards of fair justice in cases of politically motivated persecutions, by in particular, including existing or new international mechanisms into the investigation process.

2. Regarding persons involved in politically motivated persecutions in the territory of occupied Crimea, to conduct work on qualifying their unlawful actions, measures on their search and placement in sanction lists.

3. To include the persons persecuted due to political motifs into a list of people who suffered from the military aggression and to provide for the possibility to give them

social and medical aid after their release, and before that period – social aid for their relatives.

4. To national human right defending bodies, including the Office of the Human Rights Ombudsman of the Verkhovna Rada of Ukraine, to do all possible actions within their mandate for the victims of politically motivated persecutions in Crimea to be released.

5. To the bodies of power, including diplomatic missions, to actively inform the population of Ukraine and the international community about the situation with human rights in occupied Crimea and also to make diplomatic steps for the victims of politically motivated persecutions in Crimea to be released.



RECOMMENDATIONS TO INTERNATIONAL INSTITUTIONS AND CIVIL SOCIETY

1. To assist organizing monitoring on adherence to the standards of fair justice in cases of politically motivated persecutions in Crimea. To demand maximum possible documenting of violations of these standards as one of indicators of war crimes of the occupying country.

2. To regularly initiate and hold discussions of programs and concrete actions on releasing the persons persecuted in Crimea on political motifs,

and also to inform the global community about violations of international humanitarian law and human rights in Crimea.

3. To initiate, develop and adopt an international agreement about the creation of an international institution whose objective would be the work on releasing illegally imprisoned civilians, including those who underwent politically motivated persecution.

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