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CRIMINAL PROSECUTION OF UKRAINIAN CITIZENS FOR POLITICAL REASONS IN RUSSIA AND OCCUPIED CRIMEA

Russian military aggression against Ukraine is accompanied by a large-scale oppression of Ukrainian citizens. More than 60 people have been subjected to criminal prosecution for political reasons. Of these, 45 persons are being held in detention (16 have been convicted and 29 are still in being held custody awaiting court judgement). They have become victims of dubious criminal proceedings on charges of involvement in riots, extremism, terrorism, separatism, espionage, sabotage and others. These prosecutions are part of the Russian state propaganda, designed to mobilise the population of Russia against the imaginary enemy and justify the actions of the Russian authorities.

Most of the cases of criminal prosecution are connected with residents of Crimea. Following the Russian occupation, the peninsula has been covered with the wave of oppression, the victims of which are opponents of the 'new authorities'. On the territory of occupied Crimea, the work of international observers, human rights activists and journalists has become more difficult. As a result, the peninsula turned into a zone of lawlessness.

The Crimean Tatars who refused to cooperate with the occupation authorities, have become a particularly high-risk group of people in the peninsula. Following the annexation, oppression against the Tatars began. A Russian court banned a representative body of the Crimean Tatars – Majlis.¹ Also, criminal proceedings were initiated against the Crimean Tatar leaders: Akhtem Chygoz, Ilmi Umerov, Mustafa Dzhemilev, Refat Chubarov and others.

Crimean Tatars are also being subjected to prosecution on religious grounds – for belonging to the organisation 'Hizb ut-Tahrir'. Before the occupation of Crimea, the Muslim organisation legally operated on the peninsula. However, in Russia, the organization is considered a terrorist group. Therefore, thousands of followers of the organisation among the Crimean Tatars have faced the threat of prosecution. Four Crimean Tatars, namely: Ruslan Zeytullayev, Rustem Vaitov, Nuri Primov and Ferrat Sayfullayev have already been sentenced to prison terms, while dozens of others found themselves in the dock. The possession of banned religious literature or participation in religious gatherings may be a sufficient reason for prosecution. The number of the prosecuted is growing every day.

¹ <https://zona.media/news/2016/29/09/medzhlis-vs>

During the observation of politically motivated proceedings, common violations have been recorded, in particular:

- **Russia's lack of jurisdiction over the cases.** According to Russian law, the jurisdiction of the Russian justice system applies only to crimes committed on the territory of Russia, as well as in other countries, when Russian citizens have been affected by the crimes. Despite this, Russian law enforcement agencies initiated several criminal cases regarding acts, committed on the territory of Ukraine and Crimea before its annexation.

According to Art. 70 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, "*protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation*". On 19 December, 2016, the UN General Assembly adopted a resolution on Crimea, in which **Russia is recognised as a State which is the Occupying Power** and obligations of the Occupying Power are imposed on it.²

- **The use of torture.** Most of the prosecuted persons reported that they had been subjected to torture at the stage of a pre-trial investigation, thus being forced to give confessions. At the trial, they recanted their previous testimonies and requested that the incidents of torture be investigated into. However, each time, either investigation has not been carried out at all, or it was assigned to be carried out by the same bodies, whose employees had been accused of exerting torture. In all cases, the court accepted testimonies, obtained under torture.
- **Forceful assignment of a public attorney.** Immediately after the arrest, the prosecuted persons were provided with the assistance of a 'public attorney' who actually acted in the interests of the investigative bodies, namely: they recommended that the prosecuted person 'cooperate' with the law enforcement bodies and give the necessary testimony; they haven't filed any complaints in the interests of their client; they were passive at court hearings. At the same time, investigators prevented the involvement of independent counsels in the case. It was only after the prosecuted person gave a confession that an independent counsel was permitted to become involved in the case.
- **Forceful granting of Russian citizenship to the prosecuted residents of Crimea.** On 21 March, 2014, Russia adopted a law under which it incorporated occupied Crimea into the territory of the Russian Federation. According to the law, all inhabitants of Crimea were 'automatically' granted Russian citizenship, if they had failed to file an application to waive it within the given time limits. The prosecuted Crimeans were declared citizens of the Russian Federation against their will. For this reason, Russian authorities do not permit Ukrainian diplomats to visit the detainees and refuse to render them to Ukraine.
- **Complete isolation from any contact with relatives.** Some of the prosecuted have not been in contact with their relatives from the moment of detention, which is an element of the psychological pressure.
- **Classification of criminal cases.** Counsels are forced to sign a non-disclosure statement, which significantly limits their ability to defend their clients. Court hearings are held behind closed doors, without an access of the media or observers. The details of the criminal prosecution are not disclosed.

² https://www.un.org/ga/search/view_doc.asp?symbol=A/71/484/Add.3

- **Falsification of testimonies given by witnesses.** During the trials, there were repeated instances where the testimonies of witnesses, which were presented in the trial, differed from their statements given during the pre-trial investigation. This can be explained by the fact that the investigators drew up witness interview reports, and the witnesses only signed them.
- **Transfer of convicts to distant regions of Russia.** Following the handing down of judgements, convicts were transported to central and eastern regions of Russia, in order to hinder their communication with relatives and human rights activists. This practice violates the norms of the Russian legislation – according to Art. 73 of the Criminal Enforcement Code, convicts should serve their sentences in the region in which they reside or in which the court sentence was handed down.
- **Inadequate conditions of detention and imprisonment.** For example, in the Detention Facility No. 1 in Simferopol, prisoners share beds by sleeping in shifts due to overcrowding (instead of the planned 1100, as many as 2,500 people are held in detention there). In addition, in the summer, it is very hot and stuffy in cells; this situation is also exacerbated by overcrowding of cells.^{3,4}

Incidents of harassment of independent lawyers defending the interests of Ukrainian citizens and residents of occupied Crimea, have become more frequent. Counsels: Mark Feigin, Nikolay Polozov, Emil Kurbedinov and Edem Semydlyayev have been repeatedly subjected to harassment and pressure due to their professional activities.^{5,6,7,8} For example, in January 2017, counsel Emil Kurbedinov was subjected to administrative detention for an ‘extremist’ post, published by him on a social network as early as in 2013, before the occupation of Crimea. According to Ukrainian law, his actions were not considered a crime.

During the illegal criminal prosecution of Ukrainian citizens, the Russian Federation has violated a number of international treaties and international instruments, a signatory to which it is, namely: the Universal Declaration of Human Rights, the UN Convention against Torture, the Rome Statute of the International Criminal Court, rules of international humanitarian law, the Minsk Agreements, and bilateral agreements with Ukraine.

Russia is carrying out an aggressive policy not only towards Ukraine, but also Europe as a whole. As a permanent member of the UN Security Council, Russia has shown unprecedented disregard for international treaties and agreements, striving to forcibly restore its impact on the territory of Eastern Europe countries. It undermines the foundations of the existing system of security and protection of human rights, achieved within the framework of the OSCE, the Council of Europe and bilateral cooperation between Russia and the Western states. If the international democratic community fails to respond harshly and timely to the existing threats, it can lead to tragic consequences for the entire European continent.

Within the framework of the LetMyPeopleGo advocacy campaign, the Open Dialog Foundation and the Centre for Civil Liberties are hereby calling on the international community to increase pressure on the Russian authorities with the aim of bringing an end to politically motivated prosecutions

³ <http://ru.krymr.com/a/news/27860843.html>

⁴ http://news.liga.net/news/politics/12238089-v_sizo_simferopolya_zaderzhannye_spyat_po_ocheredi_polozov.htm

⁵ <http://www.interfax.ru/russia/524304>

⁶ <https://www.facebook.com/nikolay.polozov/posts/1232634533468607>

⁷ <http://ru.krymr.com/a/28257975.html>

⁸ <https://www.facebook.com/emil.kurbedinov/posts/1165685656829363>

against citizens of Ukraine and Russia in occupied Crimea. In order to achieve this goal, we believe it is necessary to:

1. Support with information, as well as politically and financially, the efforts of relatives of prisoners, and civic initiatives, aimed at prisoners release, in particular, the LetMyPeopleGo international campaign.
2. Demand that the Russian side allow an access of international UN and OSCE missions, conventional mechanisms of the Council of Europe, in particular, the Human Rights Commissioner of the Council of Europe, for the purpose of monitoring the observance of the basic rights of prosecuted individuals.
3. Demand that the Russian side provide information about the details of the criminal prosecution, the state of health and conditions of detention in detention facilities and prisons, in which citizens of Ukraine are being held.
4. Promote the provision of qualified legal assistance to the prosecuted persons.
5. Organise a permanent international monitoring of court trials.
6. Guarantors of the Budapest Memorandum, the governments of Great Britain, the USA and France,⁹ should take under special control the human rights situation on the Crimean peninsula, and provide support to the prosecuted persons.
7. Introduce personal sanctions against those involved in politically motivated prosecution of citizens of Ukraine.
8. Demand that the Russian side unconditionally release from detention, Ukrainian citizens, detained for political reasons in Russia and occupied Crimea.

⁹ France is not a signatory to the Budapest Memorandum; however, in a special declaration and the accompanying letter by President Francois Mitterrand dated 5 December, 1994, it also granted to Ukraine, security guarantees in connection with the accession of the latter to the Agreement on Non-Proliferation of Nuclear Weapons.