

# CRIMEAN PROCESS:

Observance of Fair Trial Standards  
in Politically Motivated Cases



Crimean process: observance of fair trial standards in politically motivated cases / Editing by Daria Svyrydova. – Kyiv, 2018. – 74 p.

ISBN 978-966-2403-18-3

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The authors of the report are grateful to the RFE/RL's project Crimea Realities and journalist Anton Naumlyuk for providing photo illustrations.

**Cover photo:** *Member of the Feodosia regional Mejlis of the Crimean Tatar People Suleiman Kadyrov during a court hearing (by Anton Naumlyuk).*

This is a summary of the report presenting results of the analysis performed by the team of experts of 9 politically motivated trials in Crimea that took place between 2016 and 2018. The document contains an analysis of compliance with certain fair trial standards, examples based on observation of these trials, as well as conclusions and recommendations for the authorities of Russia and Ukraine and the international community. Working on the report, we used publicly available information, interviews with witnesses, case files, as well as the results of trial monitoring in Crimea conducted by the Crimean Process Initiative Group. One of the report's objectives was to analyze whether a judicial system created under the conditions of occupation is able to ensure efficient protection of individuals and groups from unlawful politically motivated persecution and from suppression of rights and freedoms in Crimea. This publication will be useful to all interested in the issues of the observance of international human rights standards and the human rights situation in Crimea since 2014.



**TRANSITION**  
Ministry of Foreign Affairs of the Czech Republic

The report was prepared with the support of the Ministry of Foreign Affairs of the Czech Republic and non-governmental organization People in Need. The information and views expressed in this report do not necessarily reflect the official position of the Ministry of Foreign Affairs of the Czech Republic or People in Need.

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## ABBREVIATIONS USED

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GCIV	Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.
ICCPR	International Covenant on Civil and Political Rights
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
PACE	Parliamentary Assembly of the Council of Europe
OHCHR	Office of the United Nations High Commissioner for Human Rights
CC	Criminal Code
CPC	Criminal Procedure Code
FL	Federal Law
FCL	Federal Constitutional Law
FSB	Federal Security Service



## INTRODUCTION

This report was prepared by a team of experts (hereinafter referred to as team) to analyze the results of monitoring of a number of trials in Crimea that were held between 2016 and 2018. The subject of monitoring were cases characterized by politically motivated persecution of individuals or groups of individuals.

Since the end of February 2014, a part of Ukrainian territory – the Autonomous Republic of Crimea and the city of Sevastopol – was occupied by the troops of the Russian Federation. Later, in March 2014, Russia adopted FCL No. 6<sup>1</sup> and amended part 1, Art. 65 of the Russian Constitution, declaring Crimea part of Russian territory. Since that time, Russia has exercised effective control over the peninsula, with newly created authorities acting on Russia's behalf. After March 18, 2014, Ukrainian legislation in occupied Crimea was completely replaced by Russian legislation. Since that time, Russia's criminal and criminal procedural legislation has applied to criminal cases. On May 5, 2014, Russia's criminal law became retroactive, as a result of which the Criminal Code also applied to acts committed before the start of the occupation<sup>2</sup>.

These actions by Russia were classified both at international level<sup>3</sup> and by Ukraine<sup>4</sup> as an occupation of the Crimean peninsula. As a consequence, Russia is responsible for the observance of human rights in this territory and also has a number of obligations and restrictions under the Convention (IV) relative to the Protection of Civilian Persons in Time of War of August 12, 1949<sup>5</sup>.

Numerous reports of human rights organizations<sup>6</sup>, resolutions, and reports of international and intergovernmental organiza-

<sup>1</sup> Federal Constitutional Law of 21 March 2014 No. 6-FCL *On Admission to the Russian Federation of the Republic of Crimea and the Forming within the Russian Federation of New Units – Republic of Crimea and City of Federal Significance Sevastopol* <http://static.kremlin.ru/media/acts/files/0001201403210014.pdf>

<sup>2</sup> Federal Law of 5 May 2014 No. 91-FL *On Applying the Provisions of the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation in the Territory of the Republic of Crimea and the City of Federal Significance Sevastopol* <http://base.garant.ru/70648922/>

<sup>3</sup> UN General Assembly Resolution A/RES/68/262 of 27.03.2014, UNGA Resolution A/RES/71/205 of 19 December 2016 <https://undocs.org/ru/A/68/L.39> ; <https://undocs.org/ru/A/RES/71/205>; Annual report of the Office of the Prosecutor of the International Criminal Court of 14 November 2016 (regarding Crimea) <https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-pe-ukraine.pdf>; Resolution of the PACE 2133 (2016) of 12 October 2016 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?file-id=23167&lang=en>; Resolutions of the European Parliament 2016/2556 (RSP) of 4 February 2016 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0043>

<sup>4</sup> The Law of Ukraine *On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine* of 15 April 2014 <http://zakon5.rada.gov.ua/laws/show/1207-18>

<sup>5</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (articles 64-66) [http://www.un.org/ru/documents/decl\\_conv/conventions/geneva\\_civilian.shtml](http://www.un.org/ru/documents/decl_conv/conventions/geneva_civilian.shtml)

<sup>6</sup> See, for example, *The Peninsula of Fear: Chronicle of Occupation and Violation of Human Rights in Crimea* / Editing by O. Skrypnyk and T. Pechonchuk. Second edition, revised and corrected. – Kyiv: KBC, 2016. – 144 p. [https://helsinki.org.ua/wp-content/uploads/2016/05/Peninsula-Fear\\_Book.pdf](https://helsinki.org.ua/wp-content/uploads/2016/05/Peninsula-Fear_Book.pdf); *Crimea: In the Dark – the Silencing of Dissent* / Amnesty International, 2016 -<https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>; monthly monitoring reports of the Crimean Human Rights Group regarding the human rights situation in Crimea <https://crimeahrg.org/uk/category/monitor-3>; human rights situation in the occupied Crimea and Sevastopol / Ukrainian Helsinki Human Rights Union, 25 March 2016 <https://goo.gl/55shDF>; *Defeat of Rights: Violations in Crimea* / Human Rights Watch, 17 November 2014 [https://www.hrw.org/sites/default/files/reports/crimea1114ru\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/crimea1114ru_ForUpload.pdf)

tions<sup>7</sup> indicate a systematic deterioration of the human rights situation in the occupied Crimean peninsula since 2014. The total lack of access to Crimea for international human rights monitoring missions and the inability of human rights NGOs to work there also make it difficult to protect individuals and groups from gross human rights violations.

Under these circumstances, a judicial system could become one of the mechanisms that would protect Crimean residents from persecution and rights violations at the hands of Russia-controlled authorities.

The judiciary and fair justice play a key role in maintaining democratic standards. In this regard, observance of fair trial standards<sup>8</sup>, especially in dissent-related (politically motivated) cases is an important indicator of the human rights situation on the occupied peninsula and a possible demonstration of the general system of persecution used by Russia-controlled Crimean authorities.

Undoubtedly, the fact that Russia does not recognize the status of Crimea as an occupied territory and that it extends its legislation over the peninsula presents many challenges for researchers and for international law in general when examining observance of fair trial standards in the context of the armed conflict.

However, the fact that *there have been virtually no systematic studies of various aspects of the Crimean judicial system after 2014* testifies to the need for an analysis that would

account for the actual circumstances existing on the peninsula.

This report is the **first systematic analysis** of the work of the Russia-controlled judicial system in Crimea as well as of the observance of certain fair trial standards based on long-term, comprehensive, and direct monitoring of politically motivated trials.

The **goal** of the report was not only to assess the compliance of trials in Crimea with international fair trial standards, but also to study the specifics of the administration of justice during the armed conflict and occupation, particularly using the example of politically motivated cases. One of the study's key questions was whether the judicial system created under the conditions of Crimea's occupation is able to provide adequate protection from unlawful politically motivated persecution and violation of human rights and freedoms to individuals and groups in Crimea.

**The subjects of monitoring and subsequent analysis** were 9 politically motivated criminal trials in Crimea. They included cases related to prosecution for participating in peaceful assemblies, public statements in support of the territorial integrity of Ukraine and other public displays of Ukrainian identity, persecution of independent journalists and members of the Mejlis of the Crimean Tatar people, as well as cases with political agendas that were never disclosed.

The team that compiled the report included **representatives of 6 human rights organizations**: Educational Human Rights House Chernihiv, Regional Center for Human Rights, Resource Center for Human Rights (Moldova), Kharkiv Regional Foundation "Public Alternative," Ukrainian Helsinki Human Rights Union, and Human Rights Information Center. Given the multifaceted nature of the report, it was developed by a multidisciplinary team of experts, including lawyers, national and international experts in trial monitoring, human rights defenders, and journalists.

The report uses terminology, concepts, and definitions used in the documents of international organizations (UN, Council of Europe, OSCE), as well as terminology and names of

<sup>7</sup> *Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol, Ukraine* / Office of the United Nations High Commissioner for Human Rights, 2017 [https://www.ohchr.org/Documents/Countries/UA/Crimea2014\\_2017\\_RU.pdf](https://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_RU.pdf); *Report on the Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol, Ukraine* of 13 September 2017 – 30 June 2018 / Office of the United Nations High Commissioner for Human Rights, 2018 [https://www.ohchr.org/Documents/Countries/UA/CrimeaThematicReport10Sept2018\\_RU.pdf](https://www.ohchr.org/Documents/Countries/UA/CrimeaThematicReport10Sept2018_RU.pdf); *Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities* / Parliamentary Assembly of the Council of Europe, 2016 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23167&lang=en>; *Report of the Human Rights Assessment Mission in Crimea* (6–18 July 2015) / OSCE Office for Democratic Institutions and Human Rights, 8 September 2015 <https://www.osce.org/ru/odihr/180601>; *Access to Justice in the Context of the Conflict in Ukraine* / OSCE Special Monitoring Mission to Ukraine, 2015 <https://www.osce.org/ru/ukraine-smm/2123167/download=true>

<sup>8</sup> Standards enshrined in the ECHR [https://www.echr.coe.int/Documents/Convention\\_RUS.pdf](https://www.echr.coe.int/Documents/Convention_RUS.pdf) and Art. 14 of the ICCPR [http://www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml) ratified by Ukraine and Russia.



government bodies adopted in occupied Crimea after March 2014.

Due to the effective spread of Russian legislation to the territory of Crimea in the spring of 2014, the cases that were in the focus of the monitoring and study were classified and examined by courts under Russia's legislation.

The report gives no assessment of the political situation on the peninsula. The analysis is based on the principles and standards of international law.

This report continues the work of monitoring and analyzing the situation with politically motivated cases in Crimea, as well as the court proceedings in these cases. The document is thematically linked to part 1 of the report *Reconstruction and Legal Analysis of the*

*Events of February 26, 2014 near the Building of the Verkhovna Rada of the Autonomous Republic of Crimea in Simferopol*<sup>9</sup>, as well as the report of a group of human rights organizations *The Peninsula of Fear: Chronicle of Occupation and Violation of Human Rights in Crimea*<sup>10</sup>.

The report is intended for representatives of government agencies, mass media, the general public, as well international bodies and NGOs. It will help clarify how the justice system works under the conditions of Crimea's occupation, and will be of use when analyzing and studying specific politically motivated cases. The report can be used by lawyers and victims of human rights violations when dealing with domestic courts and law enforcement agencies, the European Court of Human Rights, and other human rights protection mechanisms.

<sup>9</sup> Report of the International Expert Team. *The February 26 Case. Part 1. Reconstruction and Legal Analysis of the Events of February 26, 2014 near the Building of the Verkhovna Rada of the Autonomous Republic of Crimea in Simferopol* / Editing by R. Martynovskiy, D. Svyrydova. – Kyiv, 2017. – 98 p. [https://helsinki.org.ua/wp-content/uploads/2017/03/Web\\_26\\_02\\_Crimea\\_Analit\\_Zvit.pdf](https://helsinki.org.ua/wp-content/uploads/2017/03/Web_26_02_Crimea_Analit_Zvit.pdf)

<sup>10</sup> *The Peninsula of Fear: Chronicle of Occupation and Violation of Human Rights in Crimea* / Editing by O. Skrypnyk and T. Pechonchyk. Second edition, revised and corrected. – Kyiv: KBC, 2016. – 144 p. [https://helsinki.org.ua/wp-content/uploads/2016/05/PeninsulaFear\\_Book.pdf](https://helsinki.org.ua/wp-content/uploads/2016/05/PeninsulaFear_Book.pdf)



## GENERAL CONCLUSIONS

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*Does the judicial system created under the conditions of Crimea's occupation ensure effective protection from unlawful politically motivated persecution and suppression of human rights and freedoms?*

(1) A detailed analysis of compliance with certain fair trial standards based on the observed cases leads to the conclusion that the judicial system created under the conditions of Crimea's occupation **is unable to provide effective protection** from unlawful politically motivated persecution.

This is evidenced by the following: the process of appointing judges in the courts of occupied Crimea (it is mostly people loyal to Russia that have been allowed to administer justice); extension of Russian legislation over the peninsula in violation of international humanitarian law; systematic non-observance of fair trial procedures; absence of acquittals in observed cases.

(2) The analysis carried out when preparing the report further suggests that in some cases, Crimean courts were inclined to make decisions that aggravated the accused's situation to a much greater extent than the prosecution demanded.

This gives grounds to conclude that the judicial system created under the conditions of Crimea's occupation **is an instrument of politically motivated persecution**. Testing this hypothesis will require an additional detailed study that would examine the circumstances of each monitored case, as well as an additional analysis of the existing judicial system, and the actions of Russia-controlled authorities in Crimea.

*Were fair trial standards observed during the judicial examination of the 9 monitored politically motivated criminal cases?*

### EXAMINATION OF CASES BY AN INDEPENDENT AND IMPARTIAL COURT ESTABLISHED IN ACCORDANCE WITH THE LAW.

The procedure for appointing judges is one of the key elements on which the trust in justice is built. Its inconsistency with international

standards resulted in well-founded doubts as to the independence and impartiality of Crimean courts.

Russia violated the provisions of Article 54 of the GCIV, which prohibits changing the status of judges appointed by Ukrainian authorities. Administration of justice in Crimea is mostly done by judges loyal to the Russian authori-

ties. As a result, courts take a passive attitude toward instances of abuse by the prosecution and the authorities in cases that the team has classified as politically motivated persecution. *For example, in the case of Akhtem Chygoz, Senator O. Kovitidi, the witness, allowed herself to make comments regarding the lawyers and the defendant, ignored questions asked by the defense, to which the court did not react at all; when questioning witness V. Konstantinov, Head of the State Council of the Republic of Crimea, the court rejected the clarifying questions of the defense and in some cases would explain “what the witness meant” on its own.*

Moreover, in some cases, the courts have taken an active stance that aggravates the accused’s situation to a much greater extent than is suggested by the prosecution’s initiative. *For instance, in the Igor Movenko case, the court imposed a more severe punishment than was requested by the prosecution; in the case of Ilmi Umerov, the court also ordered a stricter punishment in spite of the prosecutor’s request for a sentence with a probationary period).*

In violation of the provisions of Article 64 of the GCIV, Russia’s authorities extended Russian law over the territory of Crimea, which has created unfavorable conditions for the administration of justice in politically motivated cases.

## PUBLIC HEARINGS

The right to a public hearing has undergone severe restrictions and systematic violations in Crimea, which has led to the erosion of trust in the justice system as a whole.

Justice must not only be served, it should be seen as well. We have detected issues related to closed court proceedings, caused, among other things, by the spread of Russian legislation. The public is systematically denied access to information about trials (*information on court sessions was not published in advance in 34% of cases*). A significant number of court decisions are not published (*the verdicts were not published in 6 out of 9 cases in the first instance, and in one of 4 cases in the appellate instance*).

We are seeing systematic violations due to the creation of administrative and logistical barriers to the presence of the public and media at court hearings (*in 20% of court hearings in the February 23 Case and in the case of Suleyman Kadyrov, visitors were not admitted into the courtroom due to the lack of space*). Another frequent practice is refusal by the court to make audio recordings of court sessions, as well as refusal to allow the public and media to make photographs and videos of the sessions (*such requests made by the defense and/or the public were systematically rejected in 6 cases*). Additionally, in some cases, there was an atmosphere of courtroom intimidation of observers.

## EQUALITY OF ARMS

The violation of the principle of equality of arms and the adversarial system undermines the legitimacy of court decisions. The practices applied by the courts clearly favored the prosecution and put the defendants in a vulnerable situation.

The right of the accused to take part in the proceedings was often violated. *In the case of Akhtem Chygoz, the presence of the accused was not ensured in any court session, despite the constant requests made by the defense*. In several cases, the accused found it difficult to attend the sessions to get a chance to speak.

In a number of cases, the right of the accused to interview prosecution witnesses was restricted. *During the hearings in the case of Volodymyr Balukh and Igor Movenko, testimonies were often relayed in the absence of witnesses and their defense. Despite numerous requests, the defense was not given an opportunity to interview a number of the prosecution’s witnesses.*

The requests by the defense to receive and comment on written explanations of the prosecution, including witness testimonies (*as in the case of Volodymyr Balukh*), were also often rejected.

The adversarial system was not fully ensured due to the significant difficulties with using expert opinions for the defense. Such requests were constantly rejected by the court *in 6 out of 9* monitored cases.



In the case of Akhtem Chygoz, the court gave no explanation for the restrictions imposed on the use of secret informants and anonymous witnesses, or for the absence of witnesses in the courtroom, and failed to counterbalance the resulting difficulties that the defense faced.

The prosecution was clearly enjoying preferential treatment. In particular, in monitored trials, *65% of all requests made by the defense were denied, while 80% of those made by the prosecution were satisfied.*

The technical conditions in courtrooms often put the defense in a more vulnerable position, such as the constant technical issues with videoconference and communications with defendants who were not present in the courtroom (as in the *case of Akhtem Chygoz*), the inconvenient location of the video demonstration monitor, and an inability to ensure lawyer-client confidentiality (*for example, in the February 26 case*).

## PRESUMPTION OF INNOCENCE

*Attempts to convince society of a person's guilt without a final decision, including through public platforms, effectively supplants due process and reduces the court's role in determining the form of punishment.*

Influential pro-government media sources broadcasting in Crimea actively contributed to the creation of a guilty image for the persons involved in the monitored cases. During the tri-

als, the press cited statements of accusatory nature made by the leadership of occupying authorities (in particular, the Head of Crimea Sergey Aksyonov and Prosecutor Natalia Poklonskaya) containing hate speech, which in itself constituted significant pressure on the court and a violation of the presumption of innocence.

Thus, on the air of the Russia-24 federal channel, S. Aksyonov gave this comment regarding the case of Yevhen Panov: *"As for saboteurs, I think we should need treat them the same as farmers treat the crows that steal their crops. They are killed and strung up on the border, to discourage the others and let them know that no one is allowed to threaten the lives of civilians and soldiers in Crimea and Russia...."*

Volodymyr Balukh was kept in a cage during most of the court hearings, and in two other cases the defendants were in a security cage despite the requests of the defense. Keeping the defendants in a security cage in itself makes them look guilty, and disseminating such photos in the media only exacerbates this perception.

In at least three cases (*cases of Volodymyr Balukh, Igor Movenko and Akhtem Chygoz*), we have reason to believe that the authorities expected a guilty verdict in advance, because at the time of announcement, there were more police officers present at the hearing and other measures for restricting the defendants' freedom were used, as well as obstacles hindering the public's movement within the courtroom.



## RECOMMENDATIONS

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### FOR THE RUSSIAN FEDERATION

1. To ensure compliance with the provisions of international humanitarian law in the administration of justice in the territory of the Crimean peninsula, as well as to stop the practice of applying Russian legislation in the administration of justice in occupied Crimea.
2. To stop the unlawful politically motivated persecution of people, including persecution for positions and statements in the context of Crimea's Ukrainian identity.
3. As the occupying power, to guarantee the observance of fair trial standards in the territory of Crimea.
4. To eliminate the possibility of using the courts established in Crimea as a tool of politically motivated persecution.
5. Not to interfere with the activities of international and domestic independent monitoring human rights missions in Crimea, including intergovernmental and interstate human rights missions authorized to work in Ukraine.
6. To stop propaganda aimed at demonizing victims of politically motivated persecution in Crimea.

### FOR UKRAINE

1. To perform thorough investigations of violations of international humanitarian law in Crimea in connection with gross violations of fair trial standards in politically motivated cases, including by using international mechanisms.
2. To assist human rights monitoring missions that observe politically motivated cases in Crimea with getting access there, including simplifying the procedure for visiting the peninsula by human rights defenders and missions from other countries.
3. For independent national human rights bodies, including the Ukrainian Parliament Human Rights Commissioner, to take all possible measures within their power to protect victims of politically motivated persecution in Crimea, including by seeking visits to the occupied peninsula.

4. For the government, including diplomatic missions, to actively inform the population of Ukraine and the international community about the human rights situation in the occupied Crimea.
5. To develop and adopt legislation on the application of personal sanctions for systematic violations of human rights, as well as to persuade partner states to impose sanctions on violators of human rights in Crimea in politically motivated cases.

## FOR THE INTERNATIONAL COMMUNITY AND CIVIL SOCIETY

1. When taking steps to protect the victims of human rights violations in politically motivated cases in Crimea, consider that the systemic issue with the right to a fair trial cannot be resolved simply by improving the established occupying regime's legislation. To be guided by human rights standards and international humanitarian law when addressing these issues.
2. To promote and organize monitoring of fair trial standards in politically motivated cases in Crimea. To seek systematic admission to occupied Crimea for interstate and intergovernmental human rights missions.
3. To initiate and conduct regular discussions regarding violations of fair trial standards in politically motivated cases in Crimea and aiming to inform the global community about the negative consequences both for human rights and the security system as a whole as a result of the occupation.
4. To facilitate the adoption of resolutions and recommendations (in particular, by the UN and the Council of Europe) in determining the criteria of unlawful politically motivated court proceedings in the context of an armed conflict.
5. To contribute to the development of guidelines and thematic reports (UN Special Rapporteurs, the OSCE Office for Democratic Institutions and Human Rights, reports by the Office of the UN High Commissioner for Human Rights) on the monitoring of unlawful politically motivated trials in an armed conflict.
6. To initiate, develop, and adopt an intergovernmental agreement regarding personal sanctions, including a legal mechanism for monitoring and prosecution for systematic gross violations of human rights during the armed conflict.

In addition, each of the items in the report's section Compliance with Individual Fair Trial Standards contains a number of immediate measures aimed at improving the situation with the observance of fair trial standards in those studies.



## METHODOLOGY

The *purpose* of this report was to study the compliance of judicial processes in Crimea with international fair trial standards, as well as to show possible specific violations of these standards in the context of the armed conflict and occupation, specifically by using the example of politically motivated cases in Crimea.

*Main goals* include:

- 1) to collect and analyze the materials obtained during the monitoring of 9 politically motivated trials in Crimea;
- 2) to evaluate: (a) whether certain fair trial standards<sup>11</sup> were respected during the 9 politically motivated cases; (b) whether the judicial system created under the conditions of Crimea's occupation provides sufficient protection from unlawful, politically motivated persecution and suppression of human rights and freedoms to individual and groups of Crimean residents.

For this, the authors agreed on the criteria and selected nine criminal cases involving individuals or groups in Crimea. In addition, described below are the methods used for the collection and analysis of information, taking into account the given limitations<sup>12</sup>.

<sup>11</sup> Examination of cases by an independent and impartial court established by the law; public hearings; equality of arms; presumption of innocence.

<sup>12</sup> The team also took into account the methodologies of the OSCE and OHCHR, specifically: Trial Monitoring. A Reference Manual for Practitioners / Office for Democratic Institutions and Human Rights (ODIHR), 2012 – <https://www.osce.org/odihr/94216?download=true>; Rule of Law Tools for Post-Conflict States. Vetting: an Operational Framework / United Nations, 2016 <https://www.ohchr.org/Documents/Publications/RuleofLawVettingen.pdf>

### CRITERIA FOR SELECTING CASES

For the purposes of this report, **9 cases**<sup>13</sup> meeting all the criteria given below were selected from many<sup>14</sup>:

- (1) Cases that meet the criteria of politically motivated persecution.

For the purposes of this report, politically motivated cases are cases that meet one or more of the following criteria:

1. Cases where prosecution 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, freedom of speech and information, as well as freedom of assembly and association<sup>15</sup>.
2. Cases where prosecution is carried out for purely political reasons without regard to any offense<sup>16</sup>.

<sup>13</sup> The team has information on other cases and monitored trials, which was not analyzed since it does not meet the established criteria.

<sup>14</sup> More than **70 cases** of political prisoners (according to a group of Ukrainian human rights organizations, Resolution of the European Parliament 2017/2596 (RSP) of 15 March 2017; at least **300 administrative and 12 criminal cases** on freedom of peaceful assembly (according to a study of the Ukrainian Helsinki Human Rights Union, Crimean Human Rights Group, Media Initiative for Human Rights); more than **30 criminal cases** on membership in organizations banned in the Russian Federation; more than **70 cases** within the framework of Russia's "anti-extremism" legislation.

<sup>15</sup> The definition of political prisoner / PACE Resolution 1900 (2012) – paragraph 3a <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en>

<sup>16</sup> The definition of political prisoner / PACE Resolution 1900 (2012) – paragraph 3b

3. Cases where criminal prosecution is carried out on a discriminatory basis in comparison with other persons<sup>17</sup>.
4. Cases where prosecution is carried out solely for non-violent activities aimed at protecting human rights and fundamental freedoms<sup>18</sup>.
5. Cases where, for political reasons, the term of imprisonment, conditions of detention, and the form of punishment is in obvious contradiction with the severity of offense of which the person is accused<sup>19</sup>.
6. Cases where prosecution of individuals and/or groups in Crimea is carried out under the criminal legislation of the Russian Federation for acts that are not punishable in Ukraine (for instance, charges of extremism and separatism, as well as prosecution of groups of persons whose activities are not banned in Ukraine, including due to retroactive application of criminal law)<sup>20</sup>.
7. Cases where conviction on charges related to the support (real or imaginary) of Ukraine as a party to the conflict was carried out in violation of the fundamental guarantees of international humanitarian law<sup>21</sup>.

- (2) the trial took place in a Crimean court;
- (3) the trial took place between December 2016 and September 2018;
- (4) there was information on attendance for at least 30% of the total number of sessions in the case;
- (5) there was enough information and materials for subsequent analysis of each case.

<sup>17</sup> The definition of political prisoner / PACE Resolution 1900 (2012) – paragraph 3d

<sup>18</sup> Guidelines on Definition of Political Prisoner / Viasna [https://spring96.org/files/misc/politprisoner-guidelines-final\\_en.doc](https://spring96.org/files/misc/politprisoner-guidelines-final_en.doc)

<sup>19</sup> The definition of political prisoner / PACE Resolution 1900 (2012) – paragraph 3c

<sup>20</sup> The criteria in paragraphs 1.6 and 1.7 were added by the team taking into account the specific situation in Crimea after the occupation in 2014.

<sup>21</sup> In particular, as regards the provisions of Articles 5, 8, 47, 147 of the GCIV.

## LIST OF CASES

In accordance with the above criteria, the following cases were selected: the February 26 case, Akhtem Chiygoz case (Deputy Head of the Mejlis of the Crimean Tatar People), case of Volodymyr Balukh (Ukrainian farmer)<sup>22</sup>, case of Suleyman Kadyrov (member of the Feodosia Regional Mejlis), case of Igor Movenko, case of Yevhen Panov, case of Mykola Semena (Radio Liberty journalist), case of Ilmi Umerov (Deputy Head of the Mejlis of the Crimean Tatar People). Detailed information on these cases is given in the Case Overview section.

## COLLECTION OF INFORMATION

Work was carried out to collect and systematize relevant information on selected court proceedings using the following public sources:

- 1) *Results of trial monitoring carried out by the Crimean Process initiative group*<sup>23</sup>. In total, the team of experts analyzed monitoring results for 174 court sessions in 8 Crimean courts, which accounts for about 47% of the total number of court sessions in the 9 selected cases. In 6 out of 9 cases, more than 50% of court sessions were monitored within the framework of the court proceeding; in three cases, 80-100% of the total number of sessions were attended. The collected data was updated and supplemented using other sources of information.
- 2) *Results of interviews and written explanations*. Interviews were conducted in oral and written form with observers and participants of the court sessions. Information was collected by experienced interviewers and journalists in accordance with the principles of fact collection<sup>24</sup>.

<sup>22</sup> Within the framework of the case of Volodymyr Balukh, monitoring of two different cases of his criminal prosecution by Russia-controlled Crimean authorities was conducted.

<sup>23</sup> Monitoring results were collected on the basis of monitoring questionnaires for court sessions during personal attendance. The questionnaires were developed based on OSCE approaches and consisted of more than 60 questions on various aspects of a fair trial. The answers served as the primary material for systematizing the results of trial monitoring. Monitoring questionnaires can be obtained from the authors upon request.

<sup>24</sup> Guidelines on International Human Rights Fact-Finding Visits and Reports by Non-Governmental Organisations [https://www.ibanet.org/Fact\\_Finding\\_Guidelines.aspx](https://www.ibanet.org/Fact_Finding_Guidelines.aspx)



- 3) *Analysis of video and photographic materials.* Information was collected from available sources: various media sources and private archives.
- 4) *Results of the analysis of articles and written materials.* A search was performed for written materials and articles related to the coverage of trials in the 9 cases in Crimean and Russian media outlets, published by news agencies, news websites, and journalists (77 materials in 53 sources).
- 5) *Analysis of law.* The norms of international humanitarian law, international human rights law in the field of fair trial standards, and Russia's criminal and criminal procedure legislation were analyzed.
- 6) *Other materials on this subject.* Information from a study of a partner organization regarding the judicial system in Crimea<sup>25</sup> was used.
- 7) *Other sources,* including documents of international bodies, and information from the official websites of Ukraine, Russia and Russia-controlled Crimean authorities.

For reasons of confidentiality, certain sources and methods of data collection are not disclosed.

## ANALYSIS OF INFORMATION

In their work, the team used a multi-stage analysis of the array of available information. The information and facts collected were systematized and analyzed in order to form a reliable picture of the observance of individual fair trial standards in 9 court cases in Crimea, to confirm or refute the hypotheses and conclusions.

The conclusions were made upon agreement of all experts of the team, taking into account the information and materials collected by individ-

<sup>25</sup> The study on judicial organization in Crimea after the occupation was conducted by the Regional Center for Human Rights for the thematic review *Crimea Beyond Rules*. Also, when preparing the section *Compliance with Individual Fair Trial Standards*, materials of Pavel Parkhomenko, Judge of the Bakhmach District Court of Chernihiv Oblast, were used: "The Right to a Fair Trial – Common Standards (Article 6 of the ECHR)", (training seminar on trial monitoring for civil society activists from Georgia and Armenia, July 10-12, 2017, Human Rights House Tbilisi).

ual team members and subsequently examined and approved by all team members.

## METHODS AND TYPES OF ANALYSIS

In the course of the study, the following methods and types of analysis were used.

- I. Systematization of monitoring questionnaires during court sessions, structuring of information from these questionnaires according to four separate fair trial standards: examination of cases by an independent and impartial court established in accordance with the law, public hearings, equality of arms, and presumption of innocence. These standards were chosen due to their importance for ensuring fair trial standards and to complete the information collected by the team. At the same time, the possibility of problems in regards to compliance with other fair trial standards in selected cases is not excluded.
- II. Analysis of the whole array of structured information to establish the quantitative presence of violations of fair trial standards in general and for each case in particular.
- III. Qualitative analysis of specific cases in the context of the most striking examples among the monitored court hearings.
- IV. Content analysis of information from the media and other collected sources in the context of case coverage.
- V. Evaluation of the actions and conduct of representatives of Russia-controlled Crimean judiciary in the context of compliance with fair trial standards, as well as possible influence of other circumstances, statements and actions of representatives of the authorities during the course of court proceedings.
- VI. Comparative analysis of the results of monitoring of trials, and of additional information collected in the course of trials, to establish their compliance with international law and human rights standards.

The conclusions regarding the observance of the right to a fair trial are based on comparison

of the existing reality and its compliance with fair trial standards established in international documents. The findings also contain recommendations on immediate measures aimed at addressing a number of violations of these standards. These recommendations provide advice on what needs to be done to overcome potential discrepancies between the actual situation and fair trial standards. The authors conclude that non-observance of a particular standard is systematic if the quantitative indicators of the violation constitute more than 10% of cases in all monitored court sessions or proceedings.

The conclusions regarding the efficiency of judicial protection from politically motivated persecution are based on the analysis of the following criteria: 1) The judicial system is able to guarantee a fair trial (procedural guarantees); 2) The judicial system is established in accordance with the law and meets the standards enshrined in international documents; 3) The ratio of acquittals and convictions.

Work on the preparation of the report lasted 5 months. Three general face-to-face expert team meetings were held, with online meetings and individual meetings in subgroups held in-between, as well as monitoring of the processes, collection and elaboration of information, research and analysis.

The work was based on the principles of the rule of law, competence, evidence, comprehensive assessment of facts, protection of information sources, voluntariness, independence, objectivity, impartiality, unanimity of decision-making, transparency of goals, and results.

#### **Limitations of methodology:**

- 1) The search for and collection of information was limited to public sources and materials voluntarily provided by participants, observers and parties to events.
- 2) The report is limited to analyzing compliance with four aspects of fair trial standards: (1) examination of cases by an independent and impartial court established in accordance with the law; (2) public hearings; (3) equality of arms; and (4) presumption of innocence, due to availability of sufficient information for evaluating these aspects only.
- 3) The report does not contain an analysis of all violations of human rights, international law and legislation of the Russian Federation in each of the 9 selected cases.

The study focuses on issues of compliance with procedural standards, without evaluating the evidence or validity of charges and sentences.



## CASE OVERVIEW

### CASE OF VOLODYMYR BALUKH



Volodymyr Balukh, farmer from Serebryanka village.

*Photo by Anton Naumlyuk*

The case of Volodymyr Balukh<sup>26</sup> meets at least two criteria of politically motivated persecution formulated for the purposes of this report: prosecution is done in violation of freedom of expression for political reasons; the duration of detention, its conditions, and the punishment are disproportionate compared to the offense of which the person is charged; prosecution is connected to V. Balukh's support of Ukraine's territorial integrity.

<sup>26</sup> Two court proceedings were monitored in the Volodymyr Balukh's case.

**Brief information about the defendant:** born in 1971, citizen of Ukraine, lived in the village of Serebryanka, Rozdolnenskiy Rayon, Autonomous Republic of Crimea. Farmer. Married, civil marriage. Aside from a short house arrest (from 1 December 2017 to 16 January 2018) he's been held at the Simferopol pre-trial detention facility.

#### Background

The persecution of Volodymyr Balukh began when he refused to remove the Ukrainian flag from the roof of his house after the beginning of the occupation. In the spring of 2015, the first search was conducted at his house under a false pretext: they were looking for stolen tractor parts. In November of the same year, his household was once again searched under a similar pretext. During the searches, V. Balukh was beaten, and subsequently administrative and criminal proceedings were brought against him for insulting a police officer on duty (Article 319 of Russia's Criminal Code "Insulting a representative of authorities"). The Rozdolnenskiy Court found him guilty, the Supreme Court of Crimea overturned the sentence, but after retrial the first instance court sentenced him to 320 hours of compulsory labor. During all this time, the farmer kept the Ukrainian flag on the roof of his house, and at the end of 2016 he placed a sign *Heavenly*



Volodymyr Balukh trial. Rozdolne, Crimea.  
Photo by Aleksandra Surgan / krymr.org

*Hundred Heroes' Street*<sup>27</sup> on the facade of his home. Soon it was searched for the third time, with 89 cartridges found, as well as TNT. The farmer was charged with possession of ammunition (Article 222 of Russia's Criminal Code "Illegal acquisition, transfer, sale, storage, transportation or carrying of weapons, its main parts, and ammunition") and was brought to the Simferopol pre-trial detention facility.

The Rozdolnenskiy District Court found him guilty and sentenced him to 3 years and 7 months in a penal colony, but the Crimean Supreme Court discovered violations upon examining the appeal and returned the case for retrial. According to Volodymyr Balukh and his lawyers, during the second trial, the head of the detention facility where the defendant was kept repeatedly attempted to provoke the latter to unlawful acts and conflict. In August 2017, the third criminal case was initi-

ated against Balukh under Art. 321 of Russia's Criminal Code "Interference with the activities of the detention facilities." In this case, Volodymyr Balukh was also found guilty by the court and, on the basis of all the articles, was sentenced to five years in a general regime penal colony.

Since 19 March 2018, after the Supreme Court of Crimea upheld the verdict in the case on possession of ammunition, Volodymyr Balukh went on a hunger strike to protest the judicial arbitrariness. According to the lawyers, he lost at least 30 kg as a result of the hunger strike.

Two applications were submitted to the ECtHR<sup>28</sup> regarding the unlawful detention of V. Balukh, the violations of the right to a fair trial, and a number of other human rights violations.

<sup>27</sup> The Heavenly Hundred is a collective name for the protesters killed during the Euromaidan in Ukraine in December 2013 – February 2014.

<sup>28</sup> Application No. 73271/16 Balukh v. Russia

## Court proceedings

Person involved:	Volodymyr Balukh
Case No.:	No. 1-4/2018 (1-165/2017;) (first instance, case under Art. 222 of Russia's CC) <sup>29</sup> No. 1-34/2018 (first instance, case under Art. 321 of Russia's CC) <sup>30</sup>
Court	Rozdolnenskiy District Court <sup>31</sup> (Town of Rozdolne, 44 Lenin Street)
Judges:	Yelena Tedeyeva (case under Art. 222 of Russia's CC) Tatyana Pyrkalo (case under Art. 321 of Russia's CC)
Prosecution:	Dmitriy Korolev, senior prosecutor's assistant, Rozdolnenskiy Rayon Prosecutor's Office (case under Art. 222 of Russia's CC) Dmitriy Shmelev, prosecutor, Rozdolnenskiy Rayon Prosecutor's Office (case under Art. 321 of Russia's CC)
Lawyers:	T. Omelchenko, O. Dinze, D. Dinze
Injured party:	V. Tkachenko (case under Art. 321 of Russia's CC)

Appellate instance	Supreme Court of the Republic of Crimea <sup>32</sup> (Simferopol, 2 Pavlenko Street)
Case No.:	No. 22-525/2018 (appeal in case under Art. 222 of Russia's CC) <sup>33</sup> No. 22-2356/2018 (appeal in case under Art. 321 of Russia's CC) <sup>34</sup>
Judge:	Timur Slezko (case under Art. 222 of Russia's CC) Yelena Spasenova (case under Art. 321 of Russia's CC)
Prosecution:	B. Gorb (case under Art. 222 of Russia's CC) Y. Maksimova (case under Art. 321 of Russia's CC)
Lawyers:	T. Omelchenko, O. Dinze, D. Dinze
Injured party:	V. Tkachenko (case under Art. 321 of Russia's CC)

Beginning of the first trial in the initial court:	07 Nov 2017
End of the last trial of the appellate process:	At the time of preparing this report, examination of the appeal was still ongoing
Total number of court hearings:	28
Total number of hearings attended by monitors:	25

<sup>29</sup> Website of Rozdolnenskiy District Court, case No. 1-4/2018 (1-165/2017); [https://razdolnenskiy—krm.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=case&\\_id=1345367218&\\_delold=1540006&\\_caseType=0&\\_new=0&srv\\_num=1](https://razdolnenskiy—krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=1345367218&_delold=1540006&_caseType=0&_new=0&srv_num=1)

<sup>30</sup> Website of Rozdolnenskiy District Court, case No.1-34/2018 [https://razdolnenskiy—krm.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=case&\\_id=1612563982&\\_delold=1540006&\\_caseType=0&\\_new=0&srv\\_num=1](https://razdolnenskiy—krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=1612563982&_delold=1540006&_caseType=0&_new=0&srv_num=1)

<sup>31</sup> Website of Rozdolnenskiy District Court <https://razdolnenskiy—krm.sudrf.ru>

<sup>32</sup> Website of the Supreme Court of the Republic of Crimea <https://vs—krm.sudrf.ru>

<sup>33</sup> Website of the Supreme Court of the Republic of Crimea, case No. 22-525/2018 [https://vs—krm.sudrf.ru/modules.php?name=sud\\_delo&srv\\_num=1&name\\_op=case&case\\_id=1702352221&result=1&delo\\_id=4&new=4](https://vs—krm.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=1702352221&result=1&delo_id=4&new=4)

<sup>34</sup> Website of the Supreme Court of the Republic of Crimea, case No. 22-2356/2018 [https://vs—krm.sudrf.ru/modules.php?name=sud\\_delo&srv\\_num=1&name\\_op=case&case\\_id=1978866943&result=0&delo\\_id=4&new=4](https://vs—krm.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=1978866943&result=0&delo_id=4&new=4)



## Results of court proceedings

16 January 2018 – initial court’s verdict announced in the case under Art. 222 of Russia’s CC (retrial).

14 March 2018 – appellate court’s verdict announced.

Requested by prosecution	Sentence	Requested by prosecution, appellate instance	Sentence, appellate instance
5 years and 1 month in a penal colony, 20,000 rubles fine	3 years and 7 months in a penal colony, 10,000 rubles fine	3 years and 5 months in a penal colony, 10,000 rubles fine	3 years and 5 months in a penal colony, 10,000 rubles fine

On 5 July 2018, the sentence in the case under Art. 321 of Russia’s CC was passed.

At the time of preparing this report, the defense has filed an appeal.

Requested by prosecution	Sentence	Verdict of the appellate court
6 years in a general regime colony, 10,000 rubles fine	5 years in a general regime colony, 10,000 rubles fine	Hearing scheduled for 24 September 2018

## Main violations of fair trial standards

Independent and impartial court	Equality of arms	Presumption of innocence	Public hearings
<p>The judge participated in the consideration of the appeal regarding the preventive measure for V. Balukh and during the announcement of the sentence in one of the trials.</p> <p>The cases were examined by former Ukrainian judges who swore allegiance to Russia.</p>	<p>Non-compliance with the standard on participation of the accused in the trial, due to the holding of court sessions in the absence of the accused.</p> <p>The right of the accused to the last word was violated.</p> <p>The accused was deprived of the opportunity to interview the witnesses testifying against him, and of the right to have them interviewed.</p> <p>Refusal of the court to allow the defense to use expert opinions, while similar requests made by the prosecution were usually granted.</p> <p>The defense received no written explanations from the prosecution.</p> <p>The defense was in a more vulnerable position in terms of equality of arms.</p> <p>The judge’s behavior during the interviewing of witnesses suggested bias toward the prosecution.</p>	<p>Placement of V. Balukh in a cell during court hearings and distribution of his photographs through the media, which made him look guilty.</p>	<p>No information was published about the details of the court hearings.</p> <p>No audio recordings, poor acoustics.</p> <p>Requests of the defense to make photographs and video recordings of the trial were rejected.</p> <p>Full texts of the first instance verdicts are not open to the public.</p>

## CASE OF SULEYMAN KADYROV



Suleyman Kadyrov, Member of the Feodosia Regional Mejlis of the Crimean Tatar People.  
*Photo by Anton Naumlyuk*

The Suleyman Kadyrov case meets at least two criteria of politically motivated persecution formulated for the purposes of this report: prosecution is done in violation of freedom of expression, in response to the support of Ukraine's territorial integrity; prosecution is done on the basis of Russia's criminal law for acts that are not punishable in Ukraine.

**Brief information about the defendant:** born in 1962, citizen of Ukraine, Crimean Tatar. Before 2010 he worked at the Feodosia City Department of the Ministry of Internal Affairs of Ukraine, more recently he was head of criminal police. Member of the Feodosia Regional Mejlis of the Crimean Tatar People. S. Kadyrov has great authority and influence among the Crimean Tatars of the Eastern Crimea. Married, with a minor daughter. Lives in Crimea.

### Background

In October 2016, a criminal case was initiated against Suleyman Kadyrov, a well-known figure in the Feodosia Crimean Tatar community, on charges of public incitement to violating the territorial integrity of the Russian Federation (Article 280.1 of Russia's CC "Public incitement to actions aimed at violation of the territorial integrity of the Russian Federation"). Suleyman Kadyrov repost on his Facebook page of a video on the creation of the volunteer battalion "Crimea" served as grounds for the prosecution. A few months later, a comment by Kadyrov appeared under the video, with the words "I support it, Crimea was, is and will be Ukrainian".

### Court proceedings

Person involved:	Suleyman Kadyrov
Case No.:	1-18/2018 (1-427/2017); <sup>35</sup>
Court:	Feodosia City Court <sup>36</sup> (Feodosia, 3a Gretska Street)
Judge:	Anastasiia Shapoval
Prosecution:	Aleksey Likholat, prosecutor's assistant, Feodosia Prosecutor's Office
Lawyers:	A. Ladin, E. Kurbedinov
Injured party:	None

<sup>35</sup> Website of the Feodosia City Court, case 1-18/2018 (1-427/2017); [https://feodosiya-krm.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=case&id=1366446066&delold=1540006&\\_caseType=0&\\_new=0&srv\\_num=1](https://feodosiya-krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&id=1366446066&delold=1540006&_caseType=0&_new=0&srv_num=1)

<sup>36</sup> Website of the Feodosia City Court <https://feodosiya-krm.sudrf.ru>



Suleyman Kadyrov during trial.  
*Photo by Anton Naumlyuk*

Appellate court:	Supreme Court of the Republic of Crimea <sup>37</sup> (Simferopol, 2 Pavlenko Street)
Case No.:	No. 22-980/2018
Judge:	Yelena Mikhalkova
Prosecution:	Sergey Prostokishin, prosecutor, Feodosia Prosecutor's Office
Lawyers:	A. Ladin, E. Kurbedinov

Beginning of trial at the initial court:	11 Dec 2017
End of trial at the initial court:	01 March 2018
Appellate proceedings:	03 May 2018
Total number of court hearings:	7
Total number of hearings attended by monitors:	6

### Results of court proceedings

1 March 2018 – verdict announced.

3 May 2018 – appellate court's verdict announced.

Requested by prosecution	Sentence	Requested by prosecution, appellate instance	Sentence, appellate instance
2 years suspended sentence, 2 years ban on public activities	3 years suspended sentence, 3 years ban on public activities	2 years suspended sentence, 2 years ban on public activities	2 years suspended sentence, 2 years ban on public activities

<sup>37</sup> Website of the Supreme Court of the Republic of Crimea <https://vs-krm.sudrf.ru>

## Main violations of fair trial standards

Independent and impartial court	Equality of arms	Public hearings
<p>The case concerned the establishment of Russian control over the territory of Crimea, which also affected the life of the accused.</p> <p>The case was considered by a former Ukrainian judge who swore allegiance to Russia.</p> <p>The court's own assessment of the charges was replaced with a conclusion based on forensic linguistics.</p>	<p>The right of the accused to the last word was violated.</p> <p>The defense was repeatedly denied the right to interview opposing witnesses and challenge their statements.</p>	<p>No information was published on the details of the court hearings.</p> <p>Poor acoustics in the courtroom.</p> <p>The full text of the appellate court's verdict is not open to the public.</p>

## CASE OF IGOR MOVENKO



Igor Movenko, Ukrainian activist from Sevastopol.

Photo by Aleksandra Surgan / krymr.org

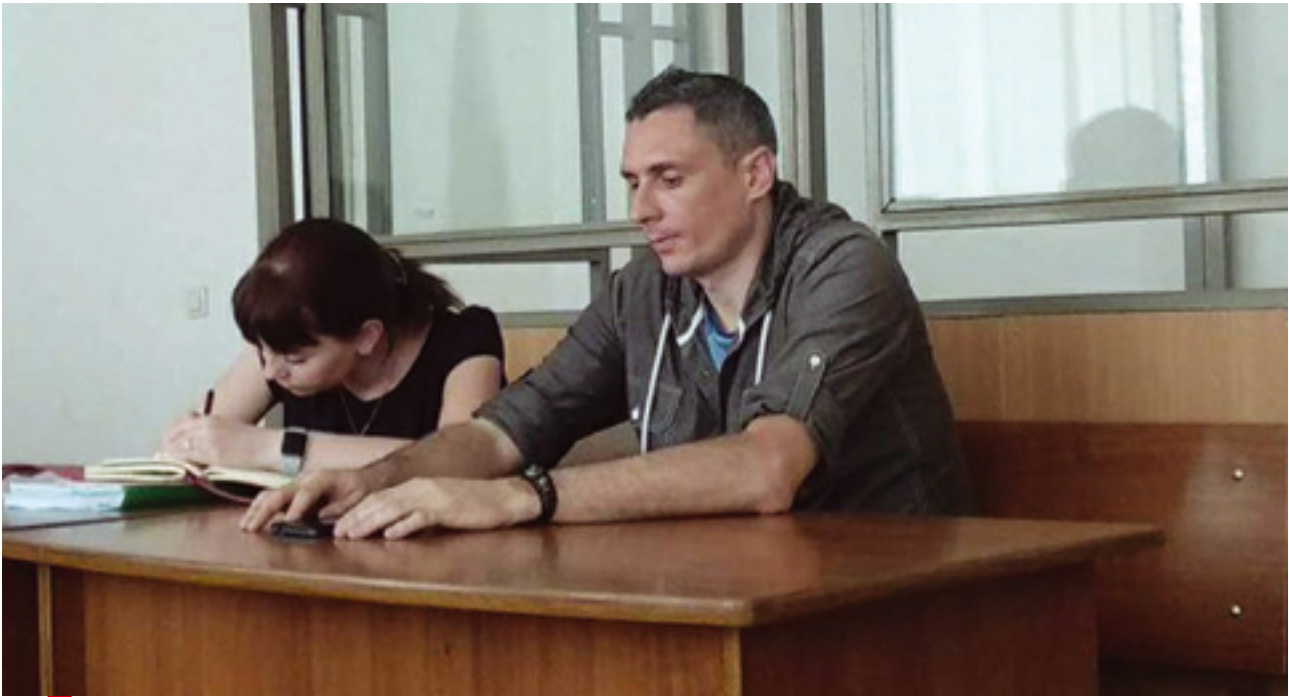
The case of Igor Movenko meets at least two criteria of politically motivated persecution formulated for the purposes of this report: prosecution is conducted in violation of the freedom of speech and expression; the duration of detention at a certain period of consideration of the case as well as the punishment are disproportionate compared to the gravity of the offense.

**Brief information about the defendant:** born in 1977, citizen of Ukraine. Married, with a minor daughter. Lives in Sevastopol. Worked as a manager in a private company.

### Background

In September 2016, resident of Sevastopol Igor Movenko was stopped on the street and beaten by unknown individuals, motivated by ethnic hatred, namely due to the presence of Ukraine's symbols on his bicycle. It was later revealed that the attacker was an officer of the special police unit Berkut<sup>38</sup>. For half a year, Movenko had been trying unsuccessfully to have a criminal case initiated and to bring his attacker to justice. Moreover, in April 2017, Movenko himself was charged with a criminal offense under Article 280 of the Russian Criminal Code "Public incitement to extremist activities" for comments on social networks. In the period between the verdict of the first instance court and that of the appellate court, he was held at the Simferopol pre-trial detention facility.

<sup>38</sup> Berkut is a special police unit attached to regional departments of the Ministry of Internal Affairs of Ukraine that existed from 1992 to 2014. The Berkut was responsible for maintaining public order and fighting against organized crime. It was used for violent suppression of protests during the events of the Euromaidan in Kyiv in the winter of 2013-2014. Abolished for abuse of authority.



Igor Movenko during trial.  
Credit: krymr.org (RFE/RL)

## Court proceedings

Person involved:	Igor Movenko
Case No.:	No. 1-20/2018 (1-390/2017); <sup>39</sup>
Court:	Gagarin District Court <sup>40</sup> of Sevastopol (Sevastopol, 3 Vakulenchuka Street)
Court:	Pavel Kryllo
Prosecution:	Denis Tokarev
Lawyer:	O. Zhelezniak
Injured party:	None

Appellate court:	Sevastopol City Court <sup>41</sup> (Sevastopol, 20 Suvorova Street)
Case No.:	No. 22-395/2018 <sup>42</sup>
Judge:	Vasiliy Avkhimov
Prosecution:	Sergey Polivanov, senior prosecutor, Criminal and Judicial Department, Prosecutor's Office of Sevastopol
Lawyer:	O. Zhelezniak

<sup>39</sup> Website of the Gagarin District Court of Sevastopol, case No. 1-20/2018 (1-390/2017;) [https://gagarinskiy—sev.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=case&\\_id=1346400384&\\_deloid=1540006&\\_caseType=0&\\_new=0&srv\\_num=1](https://gagarinskiy—sev.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=1346400384&_deloid=1540006&_caseType=0&_new=0&srv_num=1)

<sup>40</sup> Website of the Gagarin District Court of Sevastopol <https://gagarinskiy—sev.sudrf.ru>

<sup>41</sup> Website of the Sevastopol City Court <https://gs—sev.sudrf.ru>

<sup>42</sup> Website of the Sevastopol City Court, case No. 22-395/2018 [https://gs—sev.sudrf.ru/modules.php?name=sud\\_delo&srv\\_num=1&name\\_op=case&case\\_id=1962406939&result=1&delo\\_id=4&new=4](https://gs—sev.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=1962406939&result=1&delo_id=4&new=4)



Beginning of trial at the initial court:	19 Dec 2017
End of trial at the initial court:	04 May 2018
Appellate proceedings:	26 Jun 2018
Total number of hearings:	12
Total number of hearings attended by monitors:	8

### Results of court proceedings

4 May 2018 – verdict announced.

26 June 2018 – appellate court’s verdict announced.

Requested by prosecution	Sentence	Requested by prosecution, appellate instance	Sentence, appellate instance
2 years suspended sentence	2 years in general regime colony	2 years in penal colony	1 years suspended sentence

### Main violations of fair trial standards

Independent and impartial court	Equality of arms	Presumption of innocence	Public hearings
<p>The sentence is more severe than what was requested by prosecution.</p> <p>The court’s own assessment was replaced with a conclusion based on forensic linguistics.</p>	<p>The accused was deprived of the opportunity to interview opposing witnesses or to have them interviewed.</p> <p>Refusal of the court to allow the defense to use expert opinions, while similar requests made by the prosecution were usually granted.</p>	<p>Violation of secrecy of the deliberation room.</p>	<p>No information was published about the details of the court hearings.</p> <p>Requests by the defense to make photographs and videos of the trial were rejected.</p> <p>Full text of the decision of the initial court is not open to the public.</p>

## CASE OF YEVHEN PANOV

The Panov case meets the criterion of politically motivated persecution formulated for the purposes of this report on the prosecution for support (real or imaginary) of Ukraine as a side of the conflict, which was done in violation of the fundamental guarantees of international humanitarian law.

**Brief information about the defendant:** born in 1977, citizen of Ukraine, lived in Enerhodar,

Zaporizhia Oblast, Ukraine. Married. Worked as a driver at the Zaporizhia Nuclear Power Plant. Participated in the Anti-Terrorist Operation in the east of Ukraine.

### Background

On 10 August 2016, FSB’s press service announced that on the night of August 6-7, a sabotage group of Ukraine’s Main Intel-

ligence Directorate<sup>43</sup> was prevented from entering Crimea. On 11 August 2016, a video appeared in which Yevhen Panov admitted organizing sabotage operations in Crimea and working with the Main Intelligence Directorate of Ukraine. Subsequently, Yevhen Panov recanted his earlier statement through his lawyers, stating that it had been given as a result of prolonged physical torture.

A criminal case was initiated against him on charges of sabotage (Article 281 of Russia's CC "Sabotage"). Subsequently, charges under Art. 222<sup>44</sup> and Art. 226.1<sup>45</sup> of Russia's CC were added to that. Yevhen Panov denied his guilt; the investigation was conducted behind closed doors. For the entire period of the trial, the defendant was held at the Simferopol pre-trial detention facility. At the time of preparing the report, the defense appealed against the verdict of the first instance court. Also, an application had been submitted to the ECtHR to request urgent



Yevhen Panov during trial.  
Photo by Artem Go / Mediazone



Esvet Furmambetov, Prosecutor

measures in connection with the abduction of Y. Panov<sup>46</sup>.

<sup>46</sup> Application No. 47017/16 Kotelyanets v. Ukraine and Russia.

<sup>43</sup> Russia's FSB prevented terrorist acts in the Republic of Crimea planned by the Main Intelligence Directorate of Ukraine's Ministry of Defense / Federal Security Service of the Russian Federation, 10 August 2016 <http://www.fsb.ru/fsb/press/message/single.htm%21id%3D10437869%40fsbMessage.html>

<sup>44</sup> Article 222 of Russia's CC "Illegal acquisition, transfer, sale, storage, transportation or carrying of weapons, its main parts, and ammunition"

<sup>45</sup> Article 226.1 of Russia's CC "Smuggling of potent, poisonous, toxic, explosive, radioactive substances, radiation sources, nuclear materials, firearms or its main parts, explosive devices, ammunition, weapons of mass destruction, means of their delivery, other weapons, other military equipment, as well as materials and equipment that can be used for creating weapons of mass destruction, means of their delivery, other weapons, other military equipment, as well as strategic goods and resources, or cultural values, or particularly valuable wild animals and aquatic biological resources".

## Court proceedings

Person involved:	Yevhen Panov
Case No.	No. 1-9/2018 <sup>47</sup>
Court:	Supreme Court of the Republic of Crimea (Simferopol, 2 Pavlenko Street <sup>48</sup> )
Judge:	Andrey Paliy
Prosecution:	Esvet Furmambetov, prosecutor, Public Prosecution Division, Department of Criminal Justice Execution, Republic of Crimea
Lawyers:	S. Legostov, O. Dinze, D. Dinze
Injured party:	None

<sup>47</sup> Website of the Supreme Court of the Republic of Crimea, case No. 1-9/2018 [https://vs-krm.sudrf.ru/modules.php?name=sud\\_delo&srv\\_num=1&name\\_op=-case&case\\_id=1843297630&result=1&delo\\_id=1540006](https://vs-krm.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=-case&case_id=1843297630&result=1&delo_id=1540006)

<sup>48</sup> Website of the Supreme Court of the Republic of Crimea <https://vs-krm.sudrf.ru/>

Beginning of trial at the initial court:	04 Apr 2018
End of trial at the initial court:	13 July 2017
Total number of court hearings:	27
Total number of hearings attended by monitors:	18

### Results of court proceedings

13 July 2018 – verdict announced.

Requested by prosecution	Sentence
10 years and 6 months in maximum security colony	8 years in maximum security colony

### Main violations of fair trial standards

Equality of arms	Presumption of innocence	Public hearings
The case was considered behind closed doors, which made it impossible to objectively analyze the observance of the equality of arms principle.	Making the defendant look guilty through the media; condemning statements made by high-ranking officials. Keeping the defendant in a glass cage during the public announcement of the sentence.	Unjustified consideration of the case in closed session. No information was published about the details of the court hearings. Full text of the decision of the first instance court is not open to the public.

*See also other trials with similar circumstances:* the case of Andriy Zakhtey<sup>49</sup>.

<sup>49</sup> Case of Crimean saboteurs. Yevhen Panov, Andriy Zakhtey / Human Rights Center "Memorial" <https://memohrc.org/ru/special-projects/delo-krymskih-diversantov>; Andriy Zakhtey, Human Rights Center "Memorial" <https://memohrc.org/ru/defendants/zakhtey-andrey-romanovich>

## CASE OF MYKOLA SEMENA



Mykola Semena, Radio Liberty journalist.  
Photo by Alina Smutko / krymr.org

The Mykola Semena case meets at least three criteria of politically motivated persecution formulated for the purposes of this report: prosecution is conducted in violation of freedom of speech and expression, for supporting Ukraine's territorial integrity; criminal prosecution is conducted on a discriminatory basis in comparison with other persons; prosecution in Crimea is carried out on the basis of Russian criminal law, for activities that are not prohibited in Ukraine.

**Brief information about the defendant:** born in 1950, citizen of Ukraine. Journalist of a number of Ukrainian and international media outlets (Day, Radio Liberty). Honored Journalist of Ukraine, Pavel Sheremet International Prize nominee. Worked in journalism since 1976 and in Crimean journalism since 1982. Lives in



Mykola Semena during trial.  
Photo by Anton Naumlyuk / krymr.org

Crimea. After the conviction he was effectively banned from leaving Crimea and pursuing his occupation.

### Background

In April 2016, a criminal case was initiated against Radio Liberty journalist Mykola Semena on charges of public incitement to violating the territorial integrity of the Russian Federation (Article 280.1 of Russia's CC "Public incitement to actions aimed at violating the territorial integrity of the Russian Federation"). The reason for the prosecution was the article *Blockade – the First Step to Crimea's Liberation* published on the website of Radio Liberty's special project *Crimea. Realities*<sup>50</sup>. The journalist was known for publications criticizing the Russian authorities and the occupation of Crimea. Earlier, representatives of Russia-controlled Crimean authorities had made statements regarding the existence of "enemy media" in Crimea, which included the company M. Semena worked with<sup>51</sup>. An application was submitted to the ECtHR regarding the violation of freedom of expression, interference with private life, and violation of the right to a fair trial in M. Semena's case.

<sup>50</sup> The Crimean project of Radio Liberty's Ukrainian service <https://ru.krymr.com/> was launched in March 2014 immediately after the beginning of Crimea's occupation by Russia.

<sup>51</sup> Media that do not recognize that Crimea is a Russian region should not be allowed to operate on the peninsula – Aksionov / Crimea-Info, 23 December 2014 <http://www.c-inform.info/news/id/16740>



Oleg Sarginov, Prosecutor



Svetlana Udinskaya, Prosecutor

## Court proceedings

Person involved:	Mykola Semena
Case No.	No. 1-64/2017 <sup>52</sup>
Court:	Zheleznodorozhnyi District Court of Simferopol <sup>53</sup> (Simferopol, 6a Khromchenko)
Judge:	Nadezhda Shkolnaya
Prosecution:	Adgur Bigvava, prosecutor's assistant, Zheleznodorozhnyi District, Simferopol; Oleg Sarginov, currently deputy prosecutor, Krasnoperekopskiy Inter-district Prosecutor's Office; Svetlana Udinskaya, first deputy prosecutor, Prosecutor's Office of the Republic of Crimea
Lawyer:	A. Popkov, A. Sabinin, E. Kurbedinov
Injured party:	None

Appellate court	Supreme Court of the Republic of Crimea <sup>54</sup> (Simferopol, 2 Pavlenko Street)
Case No.	22-3396/2017 <sup>55</sup>
Judge:	Igor Kriuchkov
Prosecution:	P. Maksimova
Lawyer:	A. Popkov, E. Kurbedinov

Beginning of trial at the initial court:	17 Feb 2017
End of trial at the initial court:	22 Sep 2017
Appellate proceedings:	18 Dec 2017
Total number of court hearings:	19
Total number of hearings attended by monitors:	12

## Results of court proceedings

22 September 2017 – verdict announced.

18 December 2017 – appellate court's verdict announced.

Requested by prosecution	Sentence	Requested by prosecution, appellate instance	Sentence, appellate instance
2 years and 6 months suspended sentence and 3 years ban on public activities	3 years suspended sentence with 3 years probationary period and 3 years ban on public activities	3 years suspended sentence with 3 years probationary period and 3 years ban on public activities	2 years and 6 months suspended sentence and 2 years ban on public activities

<sup>52</sup> Website of the Zheleznodorozhnyi District Court of Simferopol, case No. 1-64/2017 [https://zheleznodorozhnyi-krm.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=case&\\_id=278228516&\\_deloid=1540006&\\_caseType=0&\\_new=0&srv\\_num=1](https://zheleznodorozhnyi-krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=278228516&_deloid=1540006&_caseType=0&_new=0&srv_num=1)

<sup>53</sup> Website of the Zheleznodorozhnyi District Court of Simferopol <https://zheleznodorozhnyi-krm.sudrf.ru>

<sup>54</sup> Website of the Supreme Court of the Republic of Crimea <https://vs-krm.sudrf.ru>

<sup>55</sup> Website of the Supreme Court of the Republic of Crimea, case No. 22-3396/2017 [https://vs-krm.sudrf.ru/modules.php?name=sud\\_delo&srv\\_num=1&name\\_op=case&case\\_id=951232617&result=1&delo\\_id=4&new=4](https://vs-krm.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=951232617&result=1&delo_id=4&new=4)



## Main violations of fair trial standards

Independent and impartial court	Equality of arms	Presumption of innocence	Public hearings
<p>The case was considered by a former Ukrainian judge who swore allegiance to Russia.</p> <p>The court's own assessment of the charges was replaced with a conclusion based on forensic linguistics.</p> <p>The case concerned the establishment of control over Crimea by the Russian Federation, which, among other things, affected the life of the accused.</p>	<p>Refusal of the court to allow the defense to use expert opinions while similar requests made by the prosecution were usually granted.</p> <p>The defense was in a more vulnerable position in terms of the equality of arms principle.</p>	<p>Making the defendant look guilty through the media.</p>	<p>No information was published on the details of the court hearings.</p> <p>Requests of the defense to make photographs and videos of the trial were rejected.</p> <p>Full text of the decision of the initial court is not open to the public.</p>

## CASE OF ILMI UMEROV

The Ilmi Umerov case meets at least three criteria of politically motivated persecution formulated for the purposes of this report: prosecution is conducted in violation of freedom of expression, for supporting Ukraine's territorial integrity; for political reasons, the duration and conditions of detention as well as the severity of the punishment are disproportionate compared to the gravity of the offense; prosecution is carried out on the basis of Russia's criminal law for acts that are not punishable in Ukraine.

**Brief information about the defendant:** born in 1957, citizen of Ukraine, Crimean Tatar, Muslim. Deputy Head of the Mejlis of the Crimean Tatar People. From 1994 to 1997 – Deputy Prime Minister in the Government of Crimea. From 2002 to 2005 – Vice Speaker of the Crimean Parliament. From 2005 to 2014 – Head of Bakhchysarai District Administration. Married, with two children. He lived in Crimea until the autumn of 2017, having great authority and influence among the Crimean Tatars. After the conviction, he was secretly taken to Ankara and released by agreement between the presi-



Ilmi Umerov during trial.  
Photo by Anton Naumlyuk / krymr.org.

dents of Turkey and Russia<sup>56</sup>. After Umerov's expulsion, his case was not examined in an appellate court.

<sup>56</sup> *Exchanged for Spies: Release of Umerov and Chiygoz* / Crimea. Realities, 30 November 2017 <https://ru.krymr.com/a/28889027.html>



Ilmi Umerov during trial.

*Photo by Anton Naumlyuk / krymr.org*

## Background

In May 2016, a criminal case was initiated against Deputy Head of the Mejlis of the Crimean Tatar People Ilmi Umerov on charges of public incitement to violating the territorial integrity of the Russian Federation (Article 280.1 of Russia's CC "Public incitement to actions aimed at the violation of the territorial integrity of the Russian Federation"). The ground for the prosecution was his speech delivered in Crimean Tatar language on ATR channel, in which, according to the prosecution, he called for more sanctions, to make Russia withdraw to the borders of early 2014. Earlier, Umerov had left the post of the head of Bakhchysarai District Administration in protest of the occupation and repeatedly condemned the oppression of Crimean Tatars by Russia-controlled Crimean authorities.



Yelena Artemenko, Prosecutor

## Court proceedings

Person involved:	Ilmi Umerov
Case No.:	1-171/2017 <sup>57</sup>
Court:	Simferopol District Court <sup>58</sup> (Simferopol, 17 K. Marx Street)
Judge:	Andrey Kulishov
Prosecution:	Oleg Sardinov, currently deputy prosecutor, Krasnoperekopskiy Inter-district Prosecutor's Office, Yelena Artemenko, Denis Semenchuk, prosecutor, Public Prosecution Division, Criminal Justice Department, Prosecutor's Office
Lawyers:	M. Feygin, E. Semedliayev, N. Polozov (given the status of witness by the investigator), A. Podrobinek (public defender)
Injured party:	None

Beginning of trial at the initial court:	31 May 2017
End of trial at the initial court:	27 Sep 2017
Total number of court hearings:	19
Total number of hearings attended by monitors:	6

## Results of court proceedings

27 September 2017 – verdict announced.

Requested by prosecution	Sentence
3 years and 6 months suspended sentence with 3 years probationary period and 3 years ban on public activities	2 years in penal colony and 2 years ban on public activities

## Main violations of fair trial standards

Independent and impartial court	Equality of arms	Public hearings
<p>The case concerned the establishment of control over Crimea by the Russian Federation, which, among other things, affected the life of the accused.</p> <p>The case was considered by a former Ukrainian judge who swore allegiance to Russia.</p> <p>The court's own assessment was replaced with a conclusion based on forensic linguistics.</p> <p>The sentence was more severe than was requested by the prosecution.</p>	<p>Refusal of the court to allow the defense to use expert opinions while similar requests made by the prosecution were usually granted.</p> <p>The defense was in a more vulnerable position in terms of the equality of arms principle.</p>	<p>No information was published on the details of the court hearings.</p> <p>Attendance of the public at the hearings was limited.</p> <p>Requests of the defense to make photographs and videos of the trial were rejected.</p>

<sup>57</sup> Website of the Simferopol District Court, case No. 1-171/2017 [https://simpheropolskiy-krm.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=case&id=458778499&deloid=1540006&\\_caseType=0&\\_new=0&srv\\_num=1](https://simpheropolskiy-krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&id=458778499&deloid=1540006&_caseType=0&_new=0&srv_num=1)

<sup>58</sup> Website of the Simferopol District Court <http://simpheropolskiy.krm.sudrf.ru/>

## CASE OF AKHTEM CHIYGOZ



Akhtem Chiygoz, Deputy Head of the Mejlis of the Crimean Tatar People.

Photo by Stanislav Yurchenko / krymr.org

The Akhtem Chiygoz case meets at least three criteria of politically motivated persecution formulated for the purposes of this report: prosecution in violation of freedom of assembly; absence of facts or evidence that would justify criminal prosecution; there is no evidence of incitement to or commitment of violence; prosecution is carried out on a discriminatory basis in comparison with other persons (the actions of the participants and organizers of the “pro-Russian” rally were not considered, and only the Crimean Tatar participants of the “pro-Ukrainian” rally were prosecuted); the prosecution of A. Chiygoz is carried out with retroactive application of Russia’s criminal law.

**Brief information about the defendant:** born in 1964, citizen of Ukraine, Crimean Tatar, Muslim. Deputy Head of the Mejlis of the Crimean Tatar People. Married, with two children. Lived in Crimea until the autumn of 2017 when he was released and deported by Russia-controlled Crimean authorities as per the agreement between Turkish President R. Erdogan and Russian President V. Putin<sup>59</sup>. After the expulsion of A. Chiygoz, his case was not considered in an appellate court.

<sup>59</sup> *Exchanged for Spies: Release of Umerov and Chiygoz / Crimea. Realities*, 30 November 2017 <https://ru.krymr.com/a/28889027.html>

### Background

On 26 February 2014, two rallies were held at the building of the Verkhovna Rada of the Autonomous Republic of Crimea in Simferopol, one by the Russian Unity party and another by the Mejlis of the Crimean Tatar People. The goals of the rallies essentially reflected different views on the status of Crimea (the “pro-Ukrainian” rally supported Ukraine’s territorial integrity, and the “pro-Russian” one was for the independence of Crimea). The organizers had warned law enforcement about the rallies in advance. Over 500 Crimean law enforcement officers were charged with keeping public order during the rallies. However, with two opposing rallies that brought together about 14,000 people, no proper security measures were taken to ensure the safety of the participants. During the rallies, police officers left the line that separated the rallies and failed to contain individual clashes, which led to a crush between representatives of the opposing sides. Two people died as a result and other protesters received injuries<sup>60</sup>.

In January 2015, Russia-controlled Crimean law enforcement authorities initiated a criminal case on organizing of mass riots on 26 February 2014 at the building of the Crimean Parliament. The charges were brought against Deputy Head of the Mejlis of the Crimean Tatar People Akhtem Chiygoz (Article 212 of Russia’s CC “Mass riots”). The trial caused a public outcry, bringing 50-100 to support A. Chiygoz. During the announcement of the sentence, no fewer than 500 people gathered near the court. During the trial, special security measures were taken: extra thorough search of attendees, police patrols in the corridor, metal cordons around the court, etc.

<sup>60</sup> See in more detail part 1 of the report *Reconstruction and Legal Analysis of the Events of February 26, 2014 near the Building of the Verkhovna Rada of the Autonomous Republic of Crimea in Simferopol* [https://helsinki.org.ua/wp-content/uploads/2017/03/Web\\_26\\_02\\_Crimea\\_Analit\\_Zvit.pdf](https://helsinki.org.ua/wp-content/uploads/2017/03/Web_26_02_Crimea_Analit_Zvit.pdf)  
Short version: [https://helsinki.org.ua/wp-content/uploads/2017/02/sprava\\_ukr\\_260220141.pdf](https://helsinki.org.ua/wp-content/uploads/2017/02/sprava_ukr_260220141.pdf)





Akhtem Chiygoz led out of prisoner transport, 15 May 2015.  
*Credit: krymr.org (RFE/RL)*

Two applications were submitted to the ECtHR<sup>61</sup> regarding the unlawful detention

of A. Chiygoz, the violation of the right to a fair trial and a number of other human rights violations.

<sup>61</sup> Applications No. 34556/16 Chiygoz v. Ukraine and Russia and No. 18363/18 Chiygoz v. Russia

### Court proceedings

Person involved:	Akhtem Chiygoz
Case No.:	No. 1-1/2017 (1-14/2016;) <sup>62</sup>
Court:	Supreme Court of the Republic of Crimea <sup>63</sup> (Simferopol, 2 Pavlenko Street)
Judges:	Viktor Zinkov (head judge), Igor Kriuchkov, Aleksey Kozyrev
Prosecution:	Anastasiya Supriaga, deputy prosecutor, Saksiiy Inter-district Prosecutor's Office
Lawyers:	N. Polozov, A. Lesovoy, E. Ablialimova (public defender)
Injured parties:	83 people, most of them participants of the pro-Russian rally, members of the paramilitary group People's Militia, and law enforcement officers.

<sup>62</sup> Website of the Supreme Court of the Republic of Crimea, case No. 1-1/2017 (1-14/2016;): [https://vs-krm.sudrf.ru/modules.php?name=sud\\_delo&srv\\_num=1&name\\_op=case&case\\_id=585573072&result=1&delo\\_id=1540006](https://vs-krm.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=585573072&result=1&delo_id=1540006)

<sup>63</sup> Website of the Supreme Court of the Republic of Crimea <https://vs-krm.sudrf.ru>



Beginning of trial at the initial court:	20 Jul 2016
End of trial at the initial court:	11 Sep 2017
Total number of court hearings:	158
Total number of hearings attended by monitors:	70

## Results of court proceedings

11 September 2017 – verdict announced.

Requested by prosecution	Sentence
8 years in general regime colony	8 years in general regime colony

## Main violations of fair trial standards

Court established by law	Independent and impartial court	Equality of arms	Presumption of arms	Public hearings
The charges concerned events that took place before the establishment of Russia's control over Crimea.	<p>The court demonstrated a biased attitude toward the officials when interviewing them.</p> <p>The judge participated in the consideration of the appeal on the preventive measure and of the sentence.</p> <p>The case was considered with the participation of former Ukrainian judges who swore allegiance to Russia.</p>	<p>Violation of the standard on participation of the accused in the process (the accused was not present at any of the 70 monitored court hearings).</p> <p>Refusal of the court to allow the defense to use expert opinions while similar requests made by the prosecution were usually granted.</p> <p>The defense was repeatedly denied the opportunity to interview opposing witnesses or challenge their testimonies.</p> <p>The defense did not receive written explanations from the other side.</p> <p>The use of anonymous witnesses by the prosecution during the presentation of evidence was never justified by the court.</p> <p>The judge's behavior during the interviewing of witnesses showed bias toward the prosecution.</p>	<p>Making the defendant look guilty through the media; condemning statements by high-ranking officials regarding A. Chygoz.</p> <p>Violated secrecy of the deliberation room.</p> <p>Inappropriate comments of the judge to the defense, interruption of the defendant, as well as open support of the prosecution.</p>	<p>Attendance of the public at court sessions was limited.</p> <p>Poor acoustics and conditions for the audience to view video evidence.</p> <p>Requests of the defense to make photographs and videos of the trial were repeatedly rejected.</p> <p>Full text of the decision of the initial court is not open to the public.</p>

*Other trials with similar circumstances:* February 26 case (participation in riots on 26 February 2014), cases against Taliat Yunusov<sup>64</sup> and Eskender Nebiyev<sup>65</sup> (for participation in riots on 26 February 2014).

<sup>64</sup> *Case File of a Political Prisoner. Taliat Yunusov* / OVD-Info <https://ovdinfo.org/persons/talyat-yunusov>

<sup>65</sup> *Case File of a Political Prisoner. Eskender Nebiyev* / OVD-Info <https://ovdinfo.org/persons/eskender-nebiev>

## FEBRUARY 26 CASE

The February 26 case meets at least three criteria of politically motivated persecution formulated for the purposes of this report: prosecution in violation of the freedom of assembly; there are no grounds for criminal prosecution; prosecution is carried out on a discriminatory basis in comparison with other persons (the actions of the participants and organizers of the counter-rally were not considered, and only the Crimean Tatar participants of the “pro-Ukrainian” rally were prosecuted); prosecution of a group of persons with retroactive use of Russia’s criminal law.

### Brief information about the defendants:

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<b>Ali Asanov</b>	Born in 1982, citizen of Ukraine, lives in the village of Urozhayne, Radyanskiy Rayon, Autonomous Republic of Crimea. Married, with four children. Crimean Tatar.
<b>Mustafa Degermenji</b>	Born in 1989, citizen of Ukraine, lives in Grushevka village, Sudak, Autonomous Republic of Crimea. Not married. Crimean Tatar. Worked as a merchandiser.
<b>Eskender Kantemirov</b>	Born in 1988, citizen of Ukraine, lives in the village of Pionerske, Simferopol Rayon, Autonomous Republic of Crimea. Married, with two children. Crimean Tatar.
<b>Eskender Emirvaliyev</b>	Born in 1985, citizen of Ukraine, lives in Grushevka village, Sudak, Autonomous Republic of Crimea. Married, with two children. Crimean Tatar.
<b>Arsen Yunusov</b>	Born in 1984, citizen of Ukraine, lives in Simferopol, Autonomous Republic of Crimea. Married. Crimean Tatar.

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Ali Asanov.  
*Photo by Alina Smutko / krymr.org*



Mustafa Degermenji.  
*Photo by Anton Naumlyuk*



Eskender Kantemirov.  
*Credit: krymr.org*



Eskender Emirvaliyev.  
Credit: krymr.org



Arsen Yunusov.  
Credit: krymr.org (RFE/RL)

## Background

On 26 February 2014, two rallies were held at the building of the Verkhovna Rada of the Autonomous Republic of Crimea in Simferopol, one by the Russian Unity party and another by the Mejlis of the Crimean Tatar People. The goals of the rallies essentially reflected different views on the status of Crimea (the “pro-Ukrainian” rally supported Ukraine’s territorial integrity, and the “pro-Russian” one was for the independence of Crimea). The organizers had warned law enforcement about the rallies in advance. Over 500 Crimean law enforcement officers were charged with keeping public order during the rallies. However, with two opposing rallies that brought together about 14,000 people, no proper security measures were taken to ensure the safety of the participants. During the rallies, police officers left the line that separated the rallies and failed to contain individual clashes, which led to a crush between representatives of the opposing sides. Two people died as a result and other protesters received injuries<sup>66</sup>.

In January 2015, Russia-controlled Crimean law enforcement authorities initiated a criminal case on organizing of mass riots on 26 February 2014 at the building of the Crimean Parliament (Article 212 of Russia’s CC “Mass riots”). Subsequently, criminal charges were brought against 8 Crimean Tatars in connection with the events of 26 February. All of them took part in the rally that supported the territorial integrity of Ukraine.

Two of the defendants in this case, Ali Asanov and Mustafa Degermenji, had been held at the Simferopol pre-trial detention facility between spring 2015 and 6 April 2017. Later they were kept under house arrest.

The trial caused a great public outcry among the Crimean Tatars, with 20 to 200 people gathering near the court building before each hearing.

<sup>66</sup> See in more detail part 1 of the report *Reconstruction and Legal Analysis of the Events of February 26, 2014 near the Building of the Verkhovna Rada of the Autonomous Republic of Crimea in Simferopol* [https://helsinki.org.ua/wp-content/uploads/2017/03/Web\\_26\\_02\\_Crimea\\_Analit\\_Zvit.pdf](https://helsinki.org.ua/wp-content/uploads/2017/03/Web_26_02_Crimea_Analit_Zvit.pdf)

## Court proceedings

Persons involved:	Ali Asanov, Mustafa Degermenji, Eskender Kantemirov, Eskender Emirvaliyev, Arsen Yunusov
Case No.:	1-7/2018 (1-48/2017; 1-490/2016;) <sup>67</sup>
Court:	Central District Court of Simferopol
Judge:	Sergey Demenok
Prosecution:	Yegor Ivantsov, prosecutor's assistant, Simferopol Prosecutor's Office; Dmitriy Taran, senior prosecutor's assistant, Simferopol Prosecutor's Office
Lawyers:	E. Semedliayev, A. Solodkov, O. Zhelezniak, A. Azamatov, D. Temishev (relieved by the court), T. Omelchenko, S. Oleynik, V. Klimashevskiy (appointed lawyer), A. Psel (appointed lawyer)
Injured parties:	S. Berbenets, A. Ivkin, A. Shliagin, (participants of the pro-Russian rally, members of the People's Militia).

Beginning of trial at the initial court:	03 Oct 2016
End of trial at the initial court:	19 Jun 2018
Total number of court hearings:	103
Total number of hearings attended by monitors:	29

## Results of court proceedings

19 June 2018 – verdict announced.

At the time of preparing the report, appeals were filed against the verdict.

Defendant	Requested by prosecution	Sentence
<i>Ali Asanov</i>	5 years suspended sentence with 3 years probationary period	4 years and 6 months suspended sentence with 3 years probationary period
<i>Mustafa Degermenji</i>	5 years suspended sentence with 3 years probationary period	4 years and 6 months suspended sentence with 3 years probationary period
<i>Arsen Yunusov</i>	3 years and 6 months suspended sentence with 3 years probationary period	4 years suspended sentence with 3 years probationary period
<i>Eskender Emirvaliyev</i>	3 years and 6 months suspended sentence with 3 years probationary period	3 years and 6 months suspended sentence with 3 years probationary period
<i>Eskender Kantemirov</i>	3 years and 6 months suspended sentence with 3 years probationary period	4 years suspended sentence with 3 years probationary period

<sup>67</sup> Website of the Simferopol District Court, case No. 1-7/2018 (1-48/2017; 1-490/2016;) [https://centr-simph—krm.sudrf.ru/modules.php?name=sud\\_delo&name\\_op=case&\\_id=1349440695&\\_deloid=1540006&\\_caseType=0&\\_new=0&srv\\_num=1](https://centr-simph—krm.sudrf.ru/modules.php?name=sud_delo&name_op=case&_id=1349440695&_deloid=1540006&_caseType=0&_new=0&srv_num=1)

## Main violations of fair trial standards

Court established by law	Independent and impartial court	Equality of arms	Presumption of arms	Public hearings
The charges concerned events that took place before the establishment of Russia's control over Crimea.	<p>The duration of preventive measures was longer than was requested by the prosecution.</p> <p>The sentence was more severe than was requested by the prosecution.</p> <p>The case was considered by a former Ukrainian judge who swore allegiance to Russia.</p>	<p>Refusal of the court to allow the defense to use expert opinions while similar requests made by the prosecution were usually granted.</p> <p>Refusal of the court to satisfy requests to clarify the indictment.</p>	<p>Making the defendants look guilty through the media; condemning statements by high-ranking officials.</p> <p>Keeping some defendants in a glass cage during certain stages of the trial.</p> <p>Violated secrecy of the deliberation room.</p>	<p>Attendance of the public at the court sessions was limited.</p> <p>Requests of the defense to make photographs and videos of the trial were repeatedly rejected.</p> <p>Full text of the decision of the initial court is not open to the public.</p>

*Other trials with similar circumstances:* the case against Akhtem Chiygoz (for organizing mass riots on 26 February 2014), case against Taliat Yunusov<sup>68</sup> and Eskender Nebiyev<sup>69</sup> (for participating in mass riots on 26 February 2014).

<sup>68</sup> *Case File of a Political Prisoner. Taliat Yunusov* / OVD-Info <https://ovdinfo.org/persons/talyat-yunusov>

<sup>69</sup> *Case File of a Political Prisoner. Eskender Nebiyev* / OVD-Info <https://ovdinfo.org/persons/eskender-nebiev>





## OBSERVANCE OF SPECIFIC FAIR TRIAL STANDARDS

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The right to a fair trial is enshrined in numerous international documents, such as the European Convention on Human Rights (Article 6)<sup>70</sup> and International Covenant on Civil and Political Rights (Article 14)<sup>71</sup>.

Thus, Article 6 (1) of the EC:

***In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.***

Article 6 (1) of the ECHR does not guarantee a result in favor of a party. It guarantees “procedural” justice (procedural guarantees for the parties), which is understood in practice as adversarial proceedings, when the arguments of all parties are heard on an equal footing.

In addition, the provisions of Article 6 of the ECHR provide that:

***Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial ...***

***in the interests of morals, public order or national security ... to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.***

Public decision-making provides that a court decision should be proclaimed publicly, even when the public is denied access to the trial itself, the requirement of a public announcement applies not only to the resolution, but also to the reasoning part. The requirements of publicity include the ability of the public to obtain information about the date and place of the court, ensuring sufficient capacity of courtrooms. When holding public hearings for the public and the media, free access to the courtroom should be provided.

Article 6 (2) of the ECHR states the presumption of innocence principle:

***Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.***

Any premature statements regarding the guilt of a person made by government officials, including information of this nature in state and pro-governmental media, are unaccept-

<sup>70</sup> European Convention on Human Rights [https://www.echr.coe.int/Documents/Convention\\_RUS.pdf](https://www.echr.coe.int/Documents/Convention_RUS.pdf)

<sup>71</sup> International Covenant on Civil and Political Rights [http://www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml)

able. This includes appearance of the accused in a metal cage during public hearings, being dressed in prison uniform, being escorted in handcuffs, etc.

Article 6 (3) of the ECHR states the equality of arms principle:

*Everyone charged with a criminal offence has the following minimum rights::*

*... b) to have adequate time and facilities for the preparation of his defence;*

*... d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...*

Each party in a trial must be given reasonable opportunity to plead its case under conditions when neither party has a significant advantage. Important elements of equality of arms include: exchange of written explanations by the parties; personal attendance if the opposing party is present in the court and testifies; the opportunity to submit evidence and participate in the study of evidence.

An important element of fair trial, according to international standards, is the guarantee of consideration by an independent and impartial court established by law. Thus, independence presupposes the existence of mechanisms for protection against interference with a trial by other branches of government, with the appointment of judges and determining their term of office. Creating a court established by law requires that the establishment of a judicial body and its

composition must be regulated by law and not depend on the discretion of the executive branch. A court that has abused the authority granted by law may not be considered a court established by law.

These standards are particularly vulnerable during an armed conflict or occupation. At the same time, occupation involves special regulations for the protection of the rights of civilians, including the right to a fair trial.

Thus, under conditions of an armed conflict or occupation, regardless of the nature of charges, all protected persons<sup>72</sup> enjoy the guarantee of a fair trial. The observance of certain fundamental guarantees is analyzed in this section.

According to Articles 8 and 47 of the GCIV<sup>73</sup>, protected persons may not be fully or partially deprived of the rights guaranteed by the Convention, not by their own renunciation nor by any change in regulations in effect in the territory or in its administration due to occupation, nor by an agreement between the authorities of the occupied territory and the occupying power, nor by annexation by the occupying power of all or part of the occupied territory.

According to Art. 5 of the GCIV, even in exceptional cases when a person has been deprived of the right of communication provided by the Convention, such as in the case of suspicion of espionage, organization of sabotage or activities that threaten the security of the occupying power, that person is still entitled to humane treatment and a normal and fair trial. They are also entitled to all rights and benefits granted to protected persons under the Convention.

<sup>72</sup> Protection of persons and objects / International Committee of the Red Cross <https://www.icrc.org/ru/war-and-law/protected-persons>

<sup>73</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 <https://www.icrc.org/rus/resources/documents/misc/geneva-convention-4.htm>

# 1. EXAMINATION OF CASES BY AN INDEPENDENT AND IMPARTIAL COURT ESTABLISHED IN ACCORDANCE WITH THE LAW

## STANDARDS AND LEGISLATION

Clause 1, Article 6 of the ECHR grants everyone the right to have an independent and impartial court established by law determine the validity of charges against them.

The issues of independence and impartiality of a court are interconnected, and it is not always possible to consider these two aspects separately<sup>74</sup>.

According to the practice of the European Court of Human Rights, a domestic court is considered independent if it does not depend on the executive or legislative authorities, or the parties to a case. The appointment of judges, their term of office, availability of protection against pressure and other things are taken into account.

In determining impartiality, the ECtHR takes into account the existence of prejudice or bias. It uses both objective and subjective tests<sup>75</sup>.

The objective test involves facts related to the intervention of state bodies in the administration of justice, the appointment of judges, the participation of a judge in a case at earlier stages of consideration or performing several functions at once, etc. The subjective test concerns the behavior of the judge himself, who must demonstrate impartiality and lack of interest in the outcome, which includes any statements made by the judge regarding the case outside the text of the sentence. In addition, when determining whether a court is independent and impartial, even an external impression can be important: justice must not only be served, it should also be seen to be served<sup>76</sup>.

<sup>74</sup> *Cooper v. the United Kingdom* [GC], app. no. 48843/99

<sup>75</sup> *Werner v. Poland*, app. no. 26760/95, § 39

<sup>76</sup> *De Cubber v. Belgium*, no. 9186/80, § 26

The term “court established by law” is one of the elements of legal certainty and rule of law. This aspect concerns both the establishment of courts and appointment of judges as well as the procedural basis of decision-making (i.e. the authority to examine certain categories of cases or make decisions of a certain kind<sup>77</sup>).

Analyzing the general issues of compliance of Russia’s judicial system with the requirements of independence and impartiality goes beyond the tasks of this report. Instead, emphasis is made on specific aspects characteristic of courts established and operating on the Crimean peninsula.

## ANALYSIS OF COLLECTED DATA

After analyzing the collected data we discovered systematic violations, specifically: the extension of Russian legislation over Crimea, changes in the composition of the judiciary, the procedure for appointing judges, and the practice used in trials in terms of impartiality and independence of the court.

### General systematic problems with respect to the standard of an impartial and independent court established by law

The interference of Russian authorities with the work of courts on the Crimean peninsula and the procedure for appointing judges suggest that the judicial system created on the peninsula does not meet the “courts established by law” criterion and does not ensure independence and impartiality of said bodies in politically motivated cases.

In particular, Russian authorities did not comply with the requirements of the GCIV to preserve the existing courts. In addition, a

<sup>77</sup> *Sokurenko and Strygun v. Ukraine*, no(s). 29458/04 29465/04

selective mechanism was used when choosing candidates for new courts. This approach raised significant doubts as to the independence and impartiality of these courts. The behavior of judges in certain cases confirms this conclusion<sup>78</sup>.

### Extension of Russian legislation over Crimea

#### ***Adoption of a law that extended Russia's legislation over the territory of Crimea contradicts international humanitarian law***

Article 64 of the GCIV imposes an obligation on the occupying power to ensure efficient justice in the occupied territory. At the same time, the “preservation” principle is in effect, which requires the occupying power to limit as much as possible interference with the order that was in effect prior to the occupation: not to change the status of judges, not to introduce new criminal legislation, except for ensuring the security of the occupying power, not to make laws retroactive, consideration of criminal cases in the first and second instances in the occupied territory, etc. In particular, prosecution for actions or opinions performed or expressed before the occupation is prohibited.<sup>79</sup>

In violation of Article 64 of the GCIV, the Federal Constitutional Law of the Russian Federation No. 6-FCL of 21 March 2014 *On the Admission of the Republic of Crimea to the Russian Federation and the Formation of New Units in the Russian Federation – the Republic of Crimea and the City of Federal Significance Sevastopol* was adopted, extending Russia's law over the Crimean peninsula, including criminal law, as well as determining the status of judges and the procedure for establishing new courts there. In particular, the judges that had been authorized to exercise their powers in Crimea by the Ukrainian government were declared “citizens temporarily performing the functions of judges”. Russian citizenship was made a prerequisite for continuing to be a judge. Special procedure was established for appealing against court decisions, etc. (Article 9 of FCL No. 6).

<sup>78</sup> Specific examples of problems and violations are listed below.

<sup>79</sup> Articles 54, 65-67, 70 of the GCIV.

### Replacing judges in Crimea

#### ***The significant changes made to the judge corps four years after establishment of Russia's control over Crimea contradicts the norms of international humanitarian law.***

400 judges worked in Crimea as of 1 March 2014. At least 50 Ukrainian judges expressed a wish to work in courts located in Ukraine-controlled territory in March 2014<sup>80</sup>. After 2014, at least 20% of appointed judges were Russian judges<sup>81</sup>.

The Ukrainian government charged the 276 judges that continued working in Crimea in accordance with the rules imposed by Russia with high treason under part 1, Art. 111 of Ukraine's Criminal Code<sup>82</sup>.

In violation of Article 64 of the GCIV, during the second half of 2014, Russian authorities selected new judges and established new courts for administering justice in Crimea in accordance with Russian legislation. The procedure for selecting candidates and establishing courts was regulated by Federal Laws No. 154-FL of 23 June 2014 *On the Establishment of Courts of the Russian Federation in the Territory of the Republic of Crimea and the City of Federal Significance Sevastopol and on Amendments to Certain Legislative Acts of the Russian Federation*<sup>83</sup> and No. 156-FL of 23 June 2014 *On the Procedure for Selecting Candidates for Primary Compositions of Federal Courts Established in the Territory of the Republic*

<sup>80</sup> According to the reply of the High Qualifications Commission of Judges of Ukraine of 31 March 2017, No. B-1901/17 to the inquiry of the Ukrainian Helsinki Human Rights Union. Many of these judges moved to mainland Ukraine, with most of them continuing their work in Ukraine's judicial system.

<sup>81</sup> Based on preliminary data obtained during the preparation by experts of the Regional Center for Human Rights and the Ukrainian Helsinki Human Rights Union of the thematic review *Crimea Beyond Rules* on the state of justice in Crimea.

<sup>82</sup> 276 judges of the Autonomous Republic of Crimea were notified of treason charges / Personal website of A. Matios, 23 May 2015 <http://matios.info/uk/novini/276-suddyam-ar-krym-vyneseno-povidomlennya-pro-pidozru-u-derzhavnij-zradi/>

<sup>83</sup> Russia's FL *On the Establishment of Courts of the Russian Federation in the Territory of the Republic of Crimea and the City of Federal Significance Sevastopol and on Amending Certain Legislative Acts of the Russian Federation* <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102353831>





Building of the Supreme Court of Crimea.  
Photo by Anton Naumlyuk

of Crimea and the City of Federal Significance Sevastopol<sup>84</sup>.

According to Art. 4 of FCL No. 6, all “citizens of Ukraine ... permanently residing today in the territory of the Republic of Crimea or in the territory of the City of Federal Significance Sevastopol are declared citizens of the Russian Federation, except for persons who within one month after this day express their wish to retain their current ... other citizenship”<sup>85</sup>.

In accordance with this provision, the majority of judges were declared Russian citizens by default. However, to be allowed to administer justice, it was also necessary for them to perform an official act, confirming their renunciation of Ukrainian citizenship by giving up their Ukrainian passport along with a statement regarding their renunciation of

Ukrainian citizenship to the Judicial Department of Russia’s Supreme Court (part 9, Article 3 of FL No. 156).

### Procedure for appointing judges

**A system has been created for selecting judges in occupied Crimea based on their loyalty to the Russian Federation, namely by requiring the candidates to formally reject Ukrainian citizenship, checking whether they had relatives in mainland Ukraine, and demanding other manifestations disloyalty toward Ukraine.**

In the selection of candidates for the posts of judges in federal courts, considerable attention was given to the presence of relatives outside Russia-controlled territory. Thus, the Regional Center for Human Rights<sup>86</sup> conducted a monitoring based on information obtained

<sup>84</sup> Russia’s FL *On the Procedure for Selecting Candidates for Primary Compositions of Federal Courts Established in the Territory of the Republic of Crimea and the City of Federal Significance Sevastopol* <http://pravo.gov.ru/proxy/ips/?docbody=@firstDoc=1&lastDoc=1&nd=102354123>

<sup>85</sup> For details see: *Crimea Beyond Rules. The Right to Citizenship: a thematic review of the human rights situation under occupation* / Ukrainian Helsinki Human Rights Union, Regional Center for Human Rights [https://helsinki.org.ua/wp-content/uploads/2016/04/Vyp3fin\\_rus.pdf](https://helsinki.org.ua/wp-content/uploads/2016/04/Vyp3fin_rus.pdf)

<sup>86</sup> Based on preliminary data obtained during the preparation by the Regional Center for Human Rights of the thematic review *Crimea Beyond Rules* on the state of justice in Crimea (at the time of publishing this report, the thematic review has not yet been published; this information is published for the first time).



from public sources<sup>87</sup>, having studied 77 cases of refusal to recommend a person for the position of judge (based on this information, about 530 people applied for the position of judge in total). 77 rejections were discovered (the actual number is higher but this information is unavailable); of this number, 54 refusals involve Crimeans (former Ukrainian judges as well as those who applied for the position of judge for the first time). Analysis of this information showed that about 22% of rejections were due to the existence relatives outside Russia-controlled (9 cases) or due to obviously political motives (3 cases). In the same number of cases, the reasons for the refusal were not explicitly stated. Second place belongs to expensive property owned by the candidates (6 cases, 11%). Slightly less than 8% (7 cases) are due to insufficient work experience. The same number (7 cases) is because of a potential conflict of interest due to having relatives that work in jurisprudence (lawyers, notaries, prosecutors, etc.). About 7.5% of rejections (5 cases) were due to poor work performance. In some cases, two or more reasons were taken into account, which may have had an impact on the calculations.

<sup>87</sup> See publications in the media: *No go without Commission's recommendations* / Pravo.Ru, 5 September 2014 [https://pravo.ru/court\\_report/view/109334/](https://pravo.ru/court_report/view/109334/); *The High Qualifications Commission of Judges will spend over a week on hundreds of candidates for the positions of judges in the Supreme Court, arbitration courts of Crimea and the 21th Arbitration Appellate Court* / Pravo.Ru, 15 September 2014 <https://pravo.ru/news/view/109667/>; *Six months I've been minding the Russian state and in its name I served justice, but not anymore* / Pravo.Ru, 24 September 2014 [https://pravo.ru/court\\_report/view/110050/](https://pravo.ru/court_report/view/110050/); *Judge who followed her businessman son to Crimea did not receive a recommendation* / Pravo.Ru, 25 September 2014 [https://pravo.ru/court\\_report/view/110117/](https://pravo.ru/court_report/view/110117/); *Oh please! I neither can nor want to go back to Ukraine!* / Pravo.Ru, 26 September 2014 [https://pravo.ru/court\\_report/view/110163/](https://pravo.ru/court_report/view/110163/); *The High Qualifications Commission of Judges did not allow sisters to keep working in the same court* / Pravo.Ru, 29 September 2014 [https://pravo.ru/court\\_report/view/110246/](https://pravo.ru/court_report/view/110246/); *Photos prevented a judge from getting into Crimean arbitration* / Pravo.Ru, 29 September 2014 [https://pravo.ru/court\\_report/view/110244/](https://pravo.ru/court_report/view/110244/); *Being involved in a criminal case is not necessarily an end for the career of a judge* / Pravo.Ru, 1 October 2014 [https://pravo.ru/court\\_report/view/110312/](https://pravo.ru/court_report/view/110312/); *Russian "B" is better than Crimean "A"* / Pravo.Ru, 2 October 2014 [https://pravo.ru/court\\_report/view/110427/](https://pravo.ru/court_report/view/110427/); *I don't understand why I'm being punished so* / Pravo.Ru, 5 November 2014 [https://pravo.ru/court\\_report/view/111803/](https://pravo.ru/court_report/view/111803/); *Confidential information let a judge down* / Pravo.Ru, 6 November 2014 [https://pravo.ru/court\\_report/view/111831/](https://pravo.ru/court_report/view/111831/); *Crimean judge brought her family to Russia for nothing* / Pravo.Ru, 7 November 2014 [https://pravo.ru/court\\_report/view/111880/](https://pravo.ru/court_report/view/111880/); *Judge was skeptical about a decision of the High Qualifications Commission of Judges but did not dismiss it* / Pravo.Ru, 11 November 2014 [https://pravo.ru/court\\_report/view/112100/](https://pravo.ru/court_report/view/112100/); *My case is a weird one* / Pravo.Ru, 26 November 2014 [https://pravo.ru/court\\_report/view/112814/](https://pravo.ru/court_report/view/112814/); *The Supreme Court explained to Crimean judges the limits of their preferential rights* / Pravo.Ru, 26 November 2014 <https://pravo.ru/story/view/114977/>

It is also important to emphasize that the issue of relatives living in Ukraine-controlled territory was also raised in cases when the candidates received a positive recommendation. It would not normally become a problem if by the time it came up, the relatives had already moved to Crimea.

It is not so much the motives of these decisions that are telling here, but the aspects considered during the selection. The share of the issue of relatives living outside Russia-controlled territory (particularly in mainland Ukraine) served as a powerful message to all judges. All who took part in the contest would come to the realization that loyalty toward Russia and disloyalty toward Ukraine are almost decisive factors for being allowed to administer justice.

27 rejected candidates filed an appeal with Russia's Supreme Court, but without success<sup>88</sup>.

Only those who renounced Ukrainian citizenship and swore allegiance to the Russian Federation<sup>89</sup> were allowed to administer justice, which requires Russian citizenship. In contrast to ordinary citizens, for whom the acquisition of Russian citizenship was a result of the unilateral will of the Russian authorities, the judges were required to actively confirm this fact and give up their Ukrainian passport (this, among other things, makes it impossible for them to enter Ukraine-controlled territory); even having relatives in Ukraine-controlled territory often became an obstacle to working as judge.

The threat of criminal prosecution by the Ukrainian authorities, despite being a consequence of the actions of the Ukrainian government, nevertheless influences the opinions of judges that continue working in Crimea after Russia established its control over the peninsula.

<sup>88</sup> *The Supreme Court explained to Crimean judges the limits of their preferential rights* / Pravo.Ru, 26 January 2015 <https://pravo.ru/story/view/114977/>

<sup>89</sup> The term "renunciation" is used instead of the term "relinquishing" since the procedure has more of a symbolic, declarative meaning and entails no consequences from the standpoint of Ukrainian legislation as the country of citizenship.

Russian citizens appointed to the position of judges in Crimea are also potentially loyal to the Russian government, since they were appointed and arrived in Crimea in violation of the procedure prescribed by Ukrainian law.

There are reasons to believe that newly appointed judges from among the Ukrainian citizens that chose to remain in Crimea have undergone a similar process, violating Ukrainian law as a result, and they are also facing the same risks and threats of criminal prosecution at the hands of Ukrainian authorities.

Thus, the majority of newly appointed judges had to make an unequivocal and irrevocable choice between Ukraine and Russia, in favor of the latter. This makes it impossible to ensure tolerance toward perspectives that differ from the official position of the Russian government in cases with signs of politically motivated persecution. These judges, being bound by an earlier made choice, are forced to stay loyal to Russian authorities when administering justice.

Sufficiently evident, these circumstances deprive justice of external legitimacy and give reason to distrust the courts, even in the absence of other reliable facts. Thus, the very procedure for establishing courts in Crimea is already causing a crisis of confidence as to their ability to ensure impartial consideration of cases where the interests of the Russian authorities are affected.

### **Practice used in trials in the context of impartiality and independence of the court**

***All nine analyzed cases have examples of violations of the right to a fair trial in Crimea in terms of impartial and independent court established by the law.***

At the time of preparing this report, only verdicts in four cases out of nine were appealed.

15 judges in total were involved in the consideration of these cases (11 of them in the courts of first instance, including 3 on the panel of judges that tried A. Chygoz). Of

those, nine judges are citizens of Ukraine, with criminal charges brought against them by Ukrainian law enforcement. One of the judges<sup>90</sup> took part in two trials: as part of a panel in the case of A. Chygoz and alone in the appellate instance of M. Semena's case. Due to the size of the sample studied, it is not possible to draw a conclusion as to the objectivity in the distribution of cases among judges.

***In the cases of February 26 and Akhtem Chygoz***, the violation of the right to consideration by a court "established by law" is particularly noteworthy. As previously noted, this guarantee concerns not just the legal basis for the establishment of courts and appointment of judges, but also the limits of the court's jurisdiction. Extension of authority to examine events that took place in late February 2014 contradicts Art. 70 of GCIV as well as the provisions of Art. 12 of Russia's Criminal Code. Thus, in these cases, the courts considered issues over which they had no jurisdiction, both in accordance with the norms of international law and the law of the Russian Federation.

Although this report does not consider the substance of the cases, it is impossible not to note that in the ***cases of Mykola Semena, Suleyman Kadyrov and Ilmi Umerov***, which concerned their attitude toward Russia's presence in Crimea, the courts showed a clear inability to demonstrate tolerance toward the perspective of the defendants as to the legitimacy of Russia's presence in Crimea. If Russia had complied with the provisions of GCIV regarding the immutability of the status of judges, the assessment of the actions of these individuals with a high degree of probability could have been more balanced. This confirms the general conclusion regarding the violation of the right to consideration by an independent and impartial court in Crimea.

The above violations are specific and characteristic for courts operating on the Crimean peninsula. Although Russian courts would have a similar position in other cases, the likelihood of a similar case considered in the

<sup>90</sup> Judge of the Supreme Court of the Republic of Crimea I. Kriuchkov

territory of the Russian Federation is insignificant. The cases selected for analysis are specifically due to the actions of the Russian authorities in Crimea.

There are also some other, more general, violations that indicate a lack of independence and impartiality in these courts. It is hard to determine whether these violations are related to the above circumstances, whether they are a manifestation of the general shortcomings of Russia's judiciary, or whether they are a result of the personal psychological characteristics of individual judges. Nevertheless, the frequency, nature and severity of these violations does not allow us to exclude the possibility that they have been caused by the specifics of the establishment of courts in Crimea.

First of all, it should be noted that in the case of *Akhtem Chiygoz*, during the examination of witnesses who were high-ranking representatives of the executive or legislative power, the court showed them extreme favor, which was not the case during the interviewing of other witnesses. Thus, when interviewing Senator O. Kovitidi, the court reacted indifferently to evasion on the part of the witness when answering questions from the defense, as well as to the fact that the witness allowed herself certain comments regarding the defense and the defendant. In another court session, V. Konstantinov, Head of the State Council of the Republic of Crimea, was interviewed. Despite the fact that the witness was using general phrases when being interviewed by the defense, the court denied the clarifying questions of the defense and in some cases personally explained "what the witness meant"<sup>91</sup>.

In the cases of Mykola Semena, Igor Movenko, Suleyman Kadyrov and Ilmi Umerov, the verdicts were based on forensic linguistics analysis of a statement, even though the statements in question did not require any special knowledge. In these cases, the courts essentially shifted part of their responsibility to the experts. Considering the fact that the experts involved had been selected at the initiative of the prosecution at the stage

of pre-trial investigation, this significantly upset the balance between parties.

In the case of Igor Movenko, the judge granted the prosecutor's request to summon an expert who gave his opinion on the case. Similar requests made earlier by the defense had been repeatedly rejected.

During one of the hearing in the *February 26 case*, the court asked the prosecutor before the pleadings how much time was necessary to prepare for it. The court did not ask the defense the same question.

In three cases<sup>92</sup>, the court clearly showed partiality and violated the adversarial principle.

Thus, during the *February 26 case* trial, the prosecutor requested to increase the sentences for the defendants M. Degermenji and A. Asanov by one month. In spite of this, the court decided to extend preventive measures for them by two months.

In the *case of Igor Movenko*, where the first instance court imposed a harsher punishment than that requested by the prosecution (2 years of actual imprisonment instead of 2 years of suspended sentence). Although the appellate court changed the sentence to a lighter one (1 year suspended sentence), the activist spent about two months in detention awaiting appeal.

The court acted similarly regarding two defendants in the *February 26 case* (T. Yunusov and E. Kantemirov), who were also given a more severe punishment than the one requested by the prosecution (4 years imprisonment with 3 year probation instead of 3 years and 6 months of imprisonment with a probation period of 3 years).

In *Ilmi Umerov's case*, the court also imposed an actual punishment, contrary to the prosecutor's request for a suspended sentence.

It should be noted that keeping a defendant in custody before conviction also often predetermines a guilty sentence (the punishment

<sup>91</sup> Based on the monitoring of the Akhtem Chiygoz case

<sup>92</sup> Based on the monitoring of February 26, Ilmi Umerov and Igor Movenko cases

does not matter and may be a suspended sentence, it is the finding of a person guilty that is the crux here). An acquittal means that an innocent person had been deprived of liberty, and someone must be held accountable. Collective responsibility on the one hand and the interests of the accused on the other require resolving the problem with minimal damage. An acquittal does not address such a problem, but exposes it. Thus, this outcome is all but impossible in cases where the defendant had been detained. This circumstance particularly affects the impartiality of judges in cases where the judge had already dealt with issues related to substantial restriction of defendants' rights earlier.

In total, five of the defendants in five cases were arrested (including house arrest) – two

in the February 26 case as well as A. Chygoz, V. Balukh and Y. Panov). Judge T. Slezko, in separately from the verdict, considered the appeal regarding the preventive measure in the case of V. Balukh. Judge A. Kozyrev considered a complaint regarding the extension of arrest for A. Chygoz and also the case itself. Thus, in these cases, the requirement of impartiality of the court was obviously violated.

Based on the conclusions drawn from this section, it is impossible to suggest urgent measures that could remedy the situation under current conditions of the occupation of Crimea by the Russian Federation. Addressing the situation is only possible if observance of international humanitarian law is ensured.

## 2. PUBLIC HEARINGS

### STANDARDS AND LEGISLATION

The right to a public hearing is extremely important and provides an important guarantee for the protection of human rights. Openness of court proceedings not only guarantees fair treatment of the accused, it is also necessary for building confidence in the administration of justice. It is important to give the general public access not only to court hearings, but also to court orders, indictments and other court-related information.

Article 6 of the ECHR requires that a trial be held in public.

*“Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”*

The principles governing the publicity of court proceedings are also important for public announcement of verdicts and have the same goal – a fair legal process, which is one of the fundamental principles of a democratic society.

In terms of access to the courtroom, a public hearing is open all potential viewers. The court must provide reasons if a case is considered in closed session<sup>93</sup>.

In regards to audio and video recordings, the European Court of Human Rights in its decision<sup>94</sup> found a violation of Art. 10 of the ECHR in the imposing of a fine on the applicant, a journalist, for broadcasting parts of a court session without the court's permission.

<sup>93</sup> *Lambin v. Russia*, Application no.12668/08

<sup>94</sup> *Coelho v. Portugal*, Application no.48718/11

### ANALYSIS OF COLLECTED DATA

After analyzing available information, we discovered systematic violations of the publicity principle, specifically: closed hearings, restricted information about the date, time and venue of the hearings, significant restrictions on the presence of the public at the hearings, restricted audio recordings, prohibited publication of many verdicts, indirect pressure on those present at the hearings and in the court buildings.

#### Closed hearings.

***The reasons given by the court fail to justify examination of a case behind closed doors.***

The right to a public hearing is guaranteed by the Constitution of the Russian Federation in Article 123<sup>95</sup>, which states: ***“Examination of cases is public in all courts. Closed hearings are allowed in cases provided for by federal law.”*** Article 241 of Russia's Criminal Procedure Code<sup>96</sup> states that criminal proceedings in all courts are public, with the exception of instances specified by this article. For example, it allows closed hearings when the trial may result in disclosure of state or other secrets protected by law, in relation to the entire trial or its relevant part. At the same time, the definitions provided by the legislation, including for a “protected secret” are too broad to sufficiently guarantee the right to attend court sessions. In accordance with international standards, a hearing may be held behind closed doors only in a number of clearly defined circumstances.

Analysis of monitoring results in nine trials shows that 18 court hearings, which constitutes 10% of all hearings, were closed to the public.

Thus, the case of *Y. Panov* was almost completely considered behind closed doors (with

<sup>95</sup> Constitution of the Russian Federation <http://www.constitution.ru/>

<sup>96</sup> Article 241 of Russia's CPC. Publicity [http://www.consultant.ru/document/Cons\\_doc\\_LAW\\_34481/1c70c320a6fcfa2fbadef95fc3294b632f469c0/](http://www.consultant.ru/document/Cons_doc_LAW_34481/1c70c320a6fcfa2fbadef95fc3294b632f469c0/)





People waiting for the end of a hearing in the February 26 case, since the courtroom did not have enough seats. While waiting, they are listening to the broadcast of Akhtem Chiygoz's speech in Kyiv. October 2017.

*Photo by Anton Naumlyuk*

the exception of the court hearing where the sentence was pronounced). Analysis of applicable law and the court's decision to hold closed hearings brings us to the conclusion that the trial failed to meet international justice standards. Firstly, as mentioned above, Russia's criminal legislation, extended over the territory of Crimea, provides overly broad restrictions and reference rules. The legal definition of "protected secrets" is too broad and the right to be present at court sessions is not sufficiently guaranteed. Secondly, in the decision itself, the court justifies the decision to hold the trial behind closed doors with a reason that is not provided for by law – "*interests of security of those present in court*". At the same time, the court failed to give reasons or arguments provided for by law<sup>97</sup>.

In cases where a judge decides to hold a closed trial, officers of the Federal Bailiffs

Service, who maintain order in the building of the Supreme Court (hereinafter referred to as bailiffs), prevent attendees from entering the court building. It is an additional restriction. This practice is applied selectively: always – in cases involving terrorism and only sometimes in cases on sabotage<sup>98</sup>.

### Information about court hearings.

***The courts often fail to publish information about court hearings. In at least 34% of the hearings, information that promotes attendance by the public and the media was never published.***

<sup>98</sup> The bailiffs cite the institution's internal document *Regulations on Access to the Building of the Supreme Court of the Republic of Crimea (amended by Joint Order No. 247 and 203/03-03 of 14 September 2016)*, which is available at [http://vs.krm.sudrf.ru/modules.php?name=docum\\_sud&id=2](http://vs.krm.sudrf.ru/modules.php?name=docum_sud&id=2) and is also displayed on the court stand. According to clause 2.4.6 of these Regulations, "*The visitor must leave the court building after realizing the purpose of his visit*". Thus, the bailiffs interpret the judge's decision to hold hearings behind closed doors as a completed action, which prevents visitors from realizing the purpose of their visit. In this way, they deny visitors entrance to the courthouse.

<sup>97</sup> Court decision of 4 April 2018 in case No. 1-9/2018, judge A. Paliy.



Akhtem Chiygoz trial, 15 May 2015. Riot policemen enter the courthouse. They often filled the courtrooms to accommodate fewer listeners, or blocked the entrance to the courthouse, which made access to the courtrooms more difficult.

*Credit: krymr.org*

Based on the observations, in at least 34% of the hearings<sup>99</sup>, the courts did not publish up-to-date information about the hearings on their websites to inform the public in advance.

Delayed posting of information about the date and place of upcoming court sessions is characteristic of the court information system in Crimea in general. Information usually appears on the general schedule three days before a hearing. For example, in cases on terrorism, information about a session appears the night before or on the day of the hearing. This information must also be indicated in the column Case Progress on a court's website for each trial being examined by the court. As practice shows, the dates of upcoming hearings in this section are given not in advance, but often after the hearing. When the announcement of a sentence has been moved to another date, it is not

reflected in the Case Progress section. The defendants, lawyers and attendees (including journalists) find out about the new date only when they come to court. This proves the existence of restrictions on access to information about court hearings for the public.

#### February 26 case

*During the trial, the court stated that the verdict would be announced on June 4 but later moved to June 13, then June 18, and then again to June 19, and all 3 times this information was not published on the court's website, so the parties and attendees had to find it out by visiting the court in person.*

Excerpts from monitoring questionnaires:

*"... Information about the defendants was withheld ..."* (S. Kadyrov case)

*"... The date of the hearing is not indicated on the website ..."* (Y. Panov case)

*"... The date of the hearing is not indicated on the website ..."* (February 26 case)

In almost half of the hearings attended by monitors, the time of a hearing significantly differed from the one officially announced. In half of the hearings, this difference was from 40 minutes to 2 hours or more.

The difference between stated and actual time of a hearing seriously complicates the work of the media as well as creating problems for the public and the monitors.

### **Access for and presence of the public and journalists.**

***The presence of the public at court sessions was often limited due to insufficient space in the courtroom or the choice of a smaller courtroom despite cases of particularly high public interest. In 13% of all court hearings in 4 different cases, attendees were unable to enter the courtroom due to insufficient space.***

<sup>99</sup> Based on the monitoring of February 26, I. Movenko, Y. Panov and S. Kadyrov cases.



Installation of the cordons at the court entrance. First day of the examination of Akhtem Chiygoz's case on its merits.  
*Photo by Crimean Process initiative team*

The monitors noted instances when the public, and therefore the monitors themselves, were not admitted into the courtroom due to a lack of seats. In some cases, the courtrooms were not large enough and could not accommodate all attendees<sup>100</sup>. In spite of this, no measures were taken to accommodate a larger number of attendees. No video screens were installed in the corridors, the sessions were not moved to more spacious rooms, as is the norm in international practice in high-profile trials.

Excerpts from monitoring questionnaires:

**“... The approach to the courtroom was blocked by a bench brought from the courtroom. Near the bench stood 4 bailiffs in bulletproof vests and journalists from the Russian media. Others were not allowed to get close. Then the court secretary announced that the hearing had been moved to another date ...”**  
 (February 26 case”)

**“... Not everyone who wanted was able to enter the courtroom, since it had fewer seats than those who wanted to attend the trial ...”** (I. Umerov case)

A practice was observed in the Supreme Court of Crimea when, if a visitor said that he or she was going to the court administration office or the information stands, then, in accordance with the Regulations on Access to the Court Building, that person was not allowed to go to other parts of the building. The bailiffs made sure (by using video cameras and in person) that visitors remained in the building only as part of their stated purpose and did not allow access to other corridors and rooms. This is a form of restricted access to information and a way to put pressure on the public and monitors.

The public was also prevented from attending the trials due to administrative or logistical obstacles. Attendance of several hearings was restricted due to a number of obstacles. In 20% of all hearings<sup>101</sup> in trials

<sup>100</sup> At least 23 such cases, based on the monitoring of February 26, M. Semena, A. Chiygoz and I. Umerov cases.

<sup>101</sup> Based on the monitoring of February 26, S. Kadyrov and Y. Panov cases, all behind closed doors.





Police officers arresting journalist Zair Akadyrov near the court building where Akhtem Chygoz's trial was taking place. 15 January 2016.  
Photo by Crimean Process initiative team

open to the public, visitors could not get in because of insufficient space. In many cases, the size of the courtroom was not designed for a large audience. In the case of *S. Kadyrov*, the courtroom could only accommodate about 50 attendees; in *I. Umerov's case*, the courtroom could barely accommodate 40 people<sup>102</sup>. In other cases, the courtrooms provided seats for up to 20-25 people. Moreover, for example, in the *M. Semena* case, only 4 seats were for attendees, and 5 seats – in the February 26 case. Given the high public interest for all these trials, this was obviously not enough for all the visitors, which limited access to hearings and publicity of the trials.

Here are some examples of restricted publicity in monitored trials.

#### *Akhtem Chygoz case*

*On 15 January 2016, officers of the Anti-Extremism Center led by one Shimbazov detained freelance journalist Zair Akadyrov in the lobby of the Supreme Court of Crimea*

*during the trial of Akhtem Chygoz and, with the help of the officers of the special forces unit Berkut, forced him into their car. After that, according to Akadyrov, Shimbazov ordered the driver to take him “straight to the basement”. When the arrest attracted public attention, Shimbazov ordered the driver to deliver the journalist to the police station in front of the court, where he interrogated Akadyrov without informing him of any charges or justifying the arrest. The journalist was released an hour later. His complaints regarding the unlawful actions of the officers were ignored.*

#### *Mykola Semena case*

*On 3 April 2017, a judge of the Zheleznodorozhnyi District Court of Simferopol Shkolnaya denied the request of journalist Taras Ibragimov to take photographs and record a video of Mykola Semena's trial. She justified this with the fact that she had not received permission from the chairman of the court. On 10 May 2017, a judge of the Zheleznodorozhnyi District Court of Simferopol Shkolnaya denied a similar request made by journalist Anton Naumlyuk. As the basis for this she cited the rejection of a similar request earlier. On 18 December 2017, during the session of the Supreme Court of Crimea in the case of Mykola Semena, another request to conduct photographic and video recordings of the trial was rejected by Judge Kriuchkov.*

#### *Ilmi Umerov's case*

*On 14 June 2017, during a hearing in the case of Ilmi Umerov at the Simferopol District Court, Judge Andrey Kuleshev rejected a request to make photographic and video recordings of the trial. On 14 June 2017, during Ilmi Umerov's trial at the Simferopol District Court, before the start of the session, one of the attendees was shooting the process using her cellphone, and a bailiff had the elderly woman leave the courtroom. Another bailiff took the cellphone from her by force and deleted the video. The phone was later returned to the owner. On 21 June 2017, during Ilmi Umerov's trial at the Simferopol District Court, before the beginning of the hearing, the bailiffs forbade the audience to film the courtroom and other premises of the court, threatening them with administrative penalties for disobeying bailiffs' demands.*

<sup>102</sup> It should be noted that Ilmi Umerov's courtroom initially had 18-20 seats. The lawyers and activists over the course of several hearings demanded from the court administration to bring additional chairs to accommodate all interested in the trial.

#### *Yevhen Panov case*

*On 6, 9, 20, 24, 25 and 26 October 2017, at the Supreme Court of Crimea, it was announced that Yevhen Panov's trial would be held behind closed doors. In most cases, bailiffs did not allow the public in, including journalists. Thus, on October 6, the bailiff did not allow journalist Taras Ibragimov or Yevhen Panov's relatives to enter the court building. On October 9, entrance to the building itself was allowed, but the bailiff would not allow people on the floor where the hearing were held. Said bailiff refused to give his name and badge number or justify the restriction.*

#### *February 26 case*

*On 23 November 2016, at the Central District Court of Simferopol, before a hearing in the February 26 case, the bailiffs tried to prevent journalist Anton Naumlyuk from entering the court building with a camera. Then the same bailiffs tried to keep him out of the courtroom, ignoring the requests of relatives and the availability of free space. After the hearing, Naumlyuk interviewed lawyer Edem Semedliayev and filmed a prisoner transport vehicle driving away, after which one of the bailiffs relayed a threat through the lawyer that if the journalist posted the video on the Internet, he would never be allowed into the court again.*

### **Conducting audio, video and photographic recordings in court.**

***Practically in all cases, no video or audio recordings were made, even though the law requires it if the technical means allow it (which they did). Also, the monitors constantly observed poor acoustics and inadequate conditions for viewing video materials in the courtroom. Requests of the defense regarding video and audio recordings were usually rejected; in 3 cases, representatives of the public were also forbidden to carry them out. Moreover, the law contradicts international standards as it gives no clear conditions for such restrictions nor provides an effective procedure for appealing against them.***

Russian legislation that is in effect in Crimea provides<sup>103</sup> that persons present at a public court hearing have the right to make audio and written recordings. Photographing, video recording and/or filming as well as broadcasting a hearing on radio, television or the Internet is allowed should the presiding judge permit it. When a trial involves personal correspondence, recordings of phone conversations and/or audio or video recordings of personal nature, the law requires that such evidence be presented at a public hearing only with the consent of the parties of such communication. In the absence of such consent, the hearing should be held behind closed doors. It should be noted that the law does not comply with international standards since it does not give clear conditions on these restrictions or an effective procedure for challenging them.

#### *February 26 case*

*On 28 November 2017, at the Central District Court of Simferopol, the secretary, asked to arrange a broadcast of the hearing, replied: "And who are you to ask me to make a broadcast?"*

In total, based on the monitoring, the courts arranged audio recordings in 75 sessions, with 99 sessions left without<sup>104</sup>. At the same time, according to the authors, Crimean courts had been provided with the necessary technical means and recording equipment at the beginning of 2014. Requests of the defense regarding photographs, video and audio recordings were rejected (in six cases according to the monitors)<sup>105</sup>. Representatives of the public were also denied this in three cases<sup>106</sup>. Only in two cases<sup>107</sup> videotaping and photographing by journalists was allowed during a court hearing rather than only prior to it.

<sup>103</sup> Article 241 of Russia's CPC.

<sup>104</sup> According to the monitors, audio recordings were conducted in the cases of V. Balukh (except for the appeal), February 26, S. Kadyrov (except for the appeal), M. Semena (except for the appeal) and I. Umerov. No audio recordings were conducted in the cases of I. Movenko, A. Chygoz and Y. Panov.

<sup>105</sup> According to the monitors, requests to conduct audio recordings using the court's technical means were rejected in the case of A. Chygoz (repeatedly), in appeals in the cases of V. Balukh and I. Movenko; requests to take photos and make video recordings were rejected in the cases of February 26, V. Balukh, I. Movenko, I. Umerov, M. Semena.

<sup>106</sup> Based on the monitoring of V. Balukh, I. Movenko and M. Semena cases.

<sup>107</sup> Based on the monitoring of V. Balukh and S. Kadyrov cases.



#### *Mykola Semena case*

*The case was examined in a small courtroom; the lawyers' requests for photographs and videos were denied. The bailiffs tried to ban the use of a voice recorder.*

In at least seven instances in two different cases<sup>108</sup>, the monitors noted that the public was unable to follow the course of court hearings due to poor acoustics, with the parties and witnesses being barely audible. In addition, court officials were difficult to understand when reading documents aloud.

Excerpts from monitoring questionnaires:

*“ ... The judge and the prosecutor spoke very quietly ...” (I. Umerov case)*

*“ ... The judge spoke quietly and was barely audible when announcing decisions ...” (V. Balukh case)*

According to the monitors, it was impossible to hear anything in the courtroom. In spite of this, the courts took no steps to improve the situation or use sound-amplifying equipment.

During trials in some cases, the screens for viewing videos and photographs were placed in a manner that prevented the audience public from seeing them, while the evidence shown had great significance.

#### *Akhtem Chiygoz case*

*During video demonstration in Room 1 of the Supreme Court of Crimea, the screen was placed in the middle of the room facing the judges and perpendicular to the defense, prosecution and the defendant, who participated in the hearing via video conference. The audience only saw the back of the screen and could see nothing on it.*

*During a demonstration of video evidence in Room 2 of the Supreme Court of Crimea, the screen was placed in the middle of the room, on a table, facing the judges, perpendicular to the prosecution and defense, with its back to the audience.*

*During the demonstration, representatives of the defense would get up and go around the table to better see the video since the angle and distance of the screen were not convenient for them. The defendant, who participated in the session by videoconferencing, was likely watching the video on another device at his location.*

#### *Suleyman Kadyrov case*

*During video demonstration, the courtroom's large screen facing the audience did not work, so the video was shown using the court secretary's screen, the size of which was about 32 inches. The screen was placed almost completely facing the defendant, lawyers and the audience. At the same time, the screen was with its back to the judge. The distance from the screen to the first row, where the defendant and the lawyers were seated, was about 4 meters, and more than that to the attendees. Considering the screen size, the video was not detailed enough.*

Since October 2017, monitors have seen a significant increase in the number of cases where bailiffs have forbidden the use of cellphones during public court sessions in any capacity other than an audio recording device, which became a systemic problem later on. The bailiffs would cite the Regulations on Access to the Building of the Supreme Court of the Republic of Crimea. Clause 5.1 of the Regulations states: *“In order to prevent terrorist acts and other crimes as well as administrative offenses, to ensure the personal safety of judges, court staff and visitors in court buildings and offices, visitors are prohibited from: ...activating cellphones, pagers and others communication devices and using them in the courtroom for purposes other than audio recording.”*

Analysis of legislation brings us to the conclusion that this ban is against the law. This prohibition violates the legal right of the attendees to record court hearings, including by using the Internet, textual records using a computer or other technical means, and making sketches of the judicial process.

Part 1, Art. 12 of Russia's Federal Law No. 262 of 22 December 2008<sup>109</sup> states: *“Citizens*

<sup>108</sup> Based on the monitoring of V. Balukh and I. Umerov cases.

<sup>109</sup> Russia's FL No. 262 of 22 December 2008 *On Ensuring Access to Information on the Activities of the Courts of the Russian Federation* [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_82839/](http://www.consultant.ru/document/cons_doc_LAW_82839/)

(individuals), including representatives of organizations (legal entities), public associations, state authorities and local governments, have the right to be present in open court as well as to record the proceedings in the manner and forms provided for by the law of the Russian Federation". The textual form of recording, among other things, includes writing on the Internet using a computer or other technical means, as well as sketching the judicial process. Photographing, video recordings, filming and broadcasting on the radio and/or television can only be done with the permission of the court<sup>110</sup>. The same procedure applies to video broadcasting of a trial on the Internet.

### Influencing the audience in the courtroom

**Monitors noted attempts to indirectly influence them by intrusive spying and keeping the monitors' records under guard.**

The presence of security officers at the trials also had an effect on the openness of court hearings. Thus, the presence of security officers, the ID inspections at the entrance, the eavesdropping on conversations in the courtroom and spying on the records of the monitors and representatives of the public served as a form of intimidation<sup>111</sup> for some people. Systematic supervision and spying by bailiffs in the Supreme Court on people recording the trials using their phones has been observed<sup>112</sup>. From a security standpoint, these intrusive actions by representatives of the court are senseless and should be revised. Such actions serve to inhibit the monitors, making them unable to observe the process under these conditions.

### Access to information about court decisions.

**The courts do not publish decisions on preventive measures; full texts of some deci-**

<sup>110</sup> Part 7, Article 10 of Russia's Civil Procedure Code, part 3, Article 24.3 of Russia's Administrative Offenses Code, part 5, Article 241 of Russia's CPC

<sup>111</sup> Based on the monitoring of the cases of A. Chiygoz, February 26 and S. Kadyrov. ID inspections at the entrance to the courthouse – in all cases observed.

<sup>112</sup> Study shows that the Regulations on Access to the Supreme Court prohibit the use of a cellphone for any purpose other than audio recording.



Police officers checking the documents of the Inter channel crew who are waiting for the end of a hearing in the Akhtem Chiygoz case, 28 December 2015.

*Photo by Crimean Process initiative team*

**sions (sentences) in monitored cases are not available to the public as well.**

Russian legislation that is in effect in Crimea guarantees public access to information on the work of courts, including any court rulings, as well as providing for the removal of information containing state secrets and other protected information<sup>113</sup>. Full texts of the verdicts should always be announced at a public hearing and must be published on the court's official website<sup>114</sup>. In a number of cases stipulated by Russian legislation (for example, a criminal trial behind closed doors), only the introductory and final parts of the sentence may be announced.

Based on observations, the first instance court verdicts have been announced in nine cases, and appellate instance ones in four. In 6 out of 9 cases, the verdict of the initial court was not published (*cases of V. Balukh (under Art. 222 and Art. 311 of Russia's CC),*

<sup>113</sup> Russia's FL No. 262 of 22 December 2008 *On Ensuring Access to Information on the Activities of the Courts of the Russian Federation*, Articles 4 and 15.

<sup>114</sup> Russia's FL No. 262 of 22 December 2008 *On Ensuring Access to Information on the Activities of the Courts of the Russian Federation* (last amended on 12 March 2014)

*I. Movenko, M. Semena, February 26, and A. Chiygoz*). Of the four cases considered in the court of appeal, there was one instance in which the verdict was not published. (*S. Kadyrov case*).

Based on the conclusions made on the basis of an analysis of the facts concerning the observance of the right to a public hearing, Russia-controlled occupying authorities in Crimea should take the following measures at the very least:

- to ensure access to the courtroom for the public, monitors and journalists, and to

stop the practice of supervising and intimidating monitors in court;

- to ensure full, unimpeded and timely access to court decisions, and information about the time and venue of court sessions;
- to stop the unlawful practice of closed sessions;
- to ensure accessible viewing of photographic and video evidence by all those present in the courtroom; to conduct official recording of all court hearings and to allow the parties and the public to do the same.

### 3. EQUALITY OF ARMS

#### STANDARDS AND LEGISLATION

*“One of the requirements of a fair trial is equality of arms, which affords each side a reasonable opportunity to present their case under conditions that do not place one side at a substantial disadvantage compared to their adversary.”<sup>115</sup>*

Equality of arms is one of the fundamental standards of a fair trial. Under conditions of special threats for the observance of fair trial standards in the establishment and work of courts in Crimea, ensuring equality of arms could reduce the risk of the judicial system being used as a tool of politically motivated persecution.

Equality of arms is an element of a fair trial that is enshrined, in particular, in such international documents as the European Convention on Human Rights<sup>116</sup> (Article 6) and the International Covenant on Civil and Political Rights<sup>117</sup> (Article 14). These documents obligate the states that have ratified them to guarantee equal treatment for both sides for the whole duration of a trial as well as the same legal and procedural instruments, both by law and in practice.

Equality of rights also implies the adversarial system. Each party must be afforded the same “opportunity to present their case”<sup>118</sup>. It is important to give each party a chance for “personal presence” if the opposite side is also present and testifies<sup>119</sup>. During the proceedings, it is necessary to guarantee the “opportunity to participate in the examination of evi-



The location of the defense in the court hearing, Mykola Semena’s case.  
Credit: krymr.org (RFE/RL)

dence and to give explanations regarding the evidence”<sup>120</sup>.

#### ANALYSIS OF COLLECTED DATA

Analysis of available information revealed systematic violations of the equality of arms principle and the adversarial system, namely: participation of the accused in the proceedings (attendance, opportunity to speak, the right to examine witnesses); use of experts, evidence presented by the parties (access for the defense to textual evidence, the practice of using testimonies of anonymous witnesses as evidence); equal conditions.

#### Participation of the accused in the proceedings.

*“... the right of an accused to participate effectively in a criminal trial... includes, inter alia, not only his right to be present, but also to hear and follow the proceedings. Such rights are implicit in the very notion of an adversarial procedure and can*

<sup>115</sup> CASE OF STEEL AND MORRIS v. THE UNITED KINGDOM (Application no. 68416/01)

<sup>116</sup> Convention for the Protection of Human Rights and Fundamental Freedoms. Rome, 4.XI.1950

<sup>117</sup> International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49

<sup>118</sup> CASE OF HENTRICH v. FRANCE (Application no. 13616/88)

<sup>119</sup> CASE OF KOVALEV v. RUSSIA (Application no. 78145/01)

<sup>120</sup> CASE OF MANTOVANELLI v. FRANCE (Application no. 21497/93)





Lawyer Nikolai Polozov on the results of a hearing in the Akhtem Chiygoz case.  
Photo by Alina Smutko / krymr.org

*also be derived from the guarantees contained in sub-paragraphs (c), (d) and (e) of paragraph 3 of Article 6”to defend himself in person”, “to examine or have examined witnesses”, and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”<sup>121</sup>*

***It is important to note instances of non-compliance with the standard that guarantees participation of the accused in the proceedings by holding court sessions in the absence of the accused.***

In the *case of Akhtem Chiygoz*, the defendant was not present at any of the 70 monitored court sessions<sup>122</sup>. It should be noted that the total number of sessions in this case was 159 – the monitors covered 44% of them. The defense made numerous requests to have the accused brought to the courtroom. Such requests were recorded by observers in 80% (56 out of 70) of the monitored hearings in the *Akhtem Chiygoz case*. All these requests were denied.

<sup>121</sup> CASE OF STANFORD v. THE UNITED KINGDOM (Application no. 16757/90)

<sup>122</sup> Based on the monitoring of the Akhtem Chiygoz case.

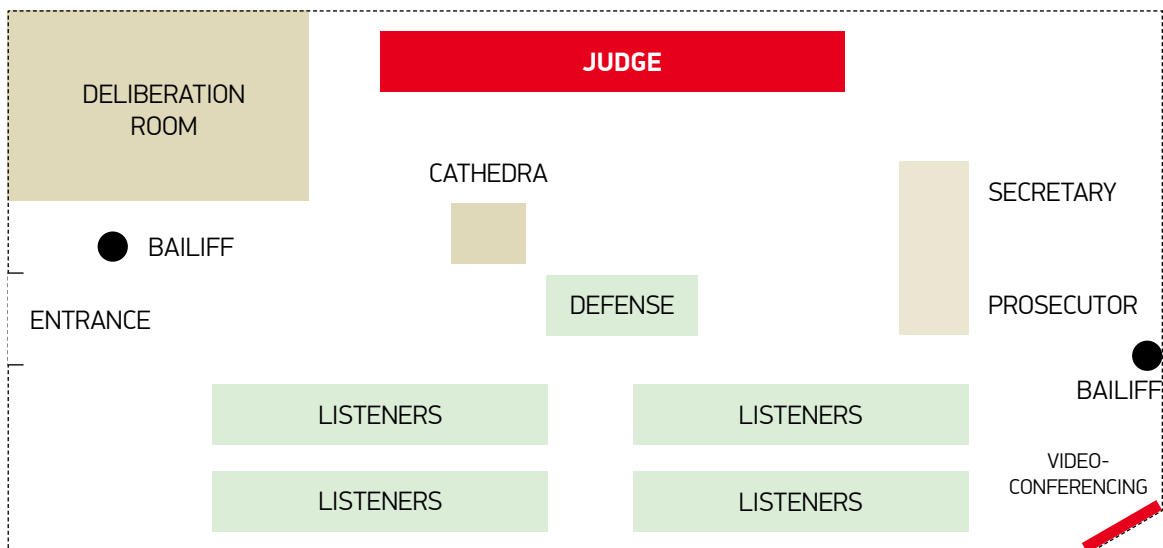
The reasons for these rejections are unclear in the context of the judicial process. It is worth noting that during these hearings, Akhtem Chiygoz was kept at the Simferopol pre-trial detention facility, which is a 10 minutes’ walk from the court where his case was being examined. At the same time, in the *case of Volodymyr Balukh*, who was held at the same detention facility, the accused was transported to court, which was located about 140 km away from Simferopol, in Rozdolnenskiy Rayon, for up to 10 days every month.

In other cases, the defendants were usually present at the court hearings.

During a court hearing of 3 April 2018 in the *February 26 case*, the court adjourned due to the fact that one of the accused could not attend due to health problems.

***“The judge read a medical certificate, according to which defendant Kantemirov would be unable to take part in the hearings for at least 14 days (as of March 27). The judge***





Chygoz case, courtroom number 2, Supreme Court of Crimea.

*asked the parties' opinions as to whether they should proceed without Kantemirov. After this, the judge rescheduled the session to April 12".*<sup>123</sup>

The right of the accused to attend his trial was compromised when, during a hearing in *Volodymyr Balukh's case* on 2 July 2018, “the judge scheduled the hearing where the verdict would be announced on the same date when his parole hearing was to take place at the *Zheleznodorozhnyi District Court*. Despite the lawyer’s request, the judge refused to change the date. According to the lawyer, this could cost the defendant his parole.”<sup>124</sup>

There were instances when the court refused requests to “end a hearing due to the deterioration of the defendant’s health”<sup>125</sup>. For example, on 27 December 2017, in the case of *Volodymyr Balukh*, the judge not only rejected almost all requests of the defense but also ignored the defendant’s requests to adjourn the hearing due to his health problems (an ambulance had to be called three times). In spite of this, the judge still refused to grant his requests. There is no doubt that due to his health issues, it was difficult for the accused to participate in the proceedings properly, especially since the deterioration of his health was confirmed by doctors.

***Problems were also detected with the right of the accused to the last word in at least 2 out of 9 monitored cases.***

During one of the hearings in the *Volodymyr Balukh case*, the accused only had 10 minutes to prepare the closing statement. “The accused asked for time to prepare his closing statement, because he did not expect it to be needed at that hearing. As a result, a break of 10 minutes was announced.”<sup>126</sup>

During a hearing in the *Suleyman Kadyrov case*, “the judge interrupted the defendant twice, demanding to talk only about the circumstances relevant to the criminal case”.<sup>127</sup>

It is worth bringing up as an example of a positive practice the fact that, based on monitoring results, the defendants were allowed to speak in the *February 26 case* when “the accused delivered their closing statements, and the court did not limit them in time”.<sup>128</sup>

***The observance of the principle of participation of the accused in the proceedings is in doubt in at least 2 out of 9 monitored cases, where the accused were not given***

<sup>123</sup> Based on the monitoring of the February 26 case.

<sup>124</sup> Based on the monitoring of the *Volodymyr Balukh case*.

<sup>125</sup> Based on the monitoring of the *Volodymyr Balukh case*.

<sup>126</sup> Based on the monitoring of the *Volodymyr Balukh case*.

<sup>127</sup> Based on the monitoring of the *Suleyman Kadyrov case*.

<sup>128</sup> Based on the monitoring of the February 26 case.



Mykola Semena giving an interview to the press before the first court session in his case.  
 Photo by Alina Smutko / krymr.org

***a chance to “interview opposing witnesses or have them interviewed”<sup>129</sup>***

During a hearing in the *case of Igor Movenko*, the court granted the prosecution’s request to “*relay the testimony of an absent witness*”.<sup>130</sup>

During a hearing in the *Volodymyr Balukh case*, “*the lawyers objected against the announcement of witness Polishchuk’s testimony as he had not been examined by the court, but the judge ignored the objection and told the prosecutor to continue reading the testimony*”.<sup>131</sup> At the same hearing, the court granted the prosecution’s request “*to read the testimony of a witness that he had shared with the investigation in the past before interviewing him, since he could have forgotten something after a year*”. During another court hearing, the court granted

the prosecution’s request “*to read out the testimony of a witness given during the preliminary investigation, as he no longer remembered what he had seen*”. These facts cast doubt on the testimonies of prosecution witnesses.

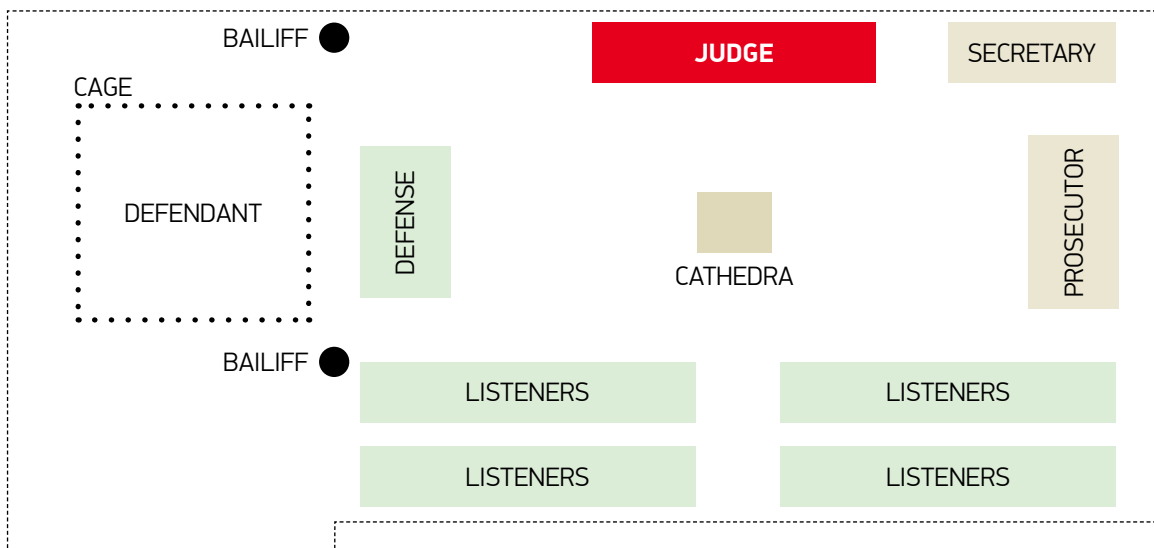
During *Volodymyr Balukh’s trial*, requests to summon witnesses were rejected multiple times and the court would often fail to justify this. On one occasion, the court made a decision on interviewing witness Palagin (head of Russia’s FSB in the Republic of Crimea and Sevastopol) but then decided against it at the next hearing, giving no explanation. During another session, the court gave reasons for denying examination of witnesses Leonov and Zabara but still said nothing regarding Palagin.

Witness testimonies in the *case of Volodymyr Balukh* were often announced in the absence of the witnesses themselves and only partially, while requests of the defense to read all available testimonies were often rejected. Thus, during one of the hearings,

<sup>129</sup> CASE OF STANFORD v. THE UNITED KINGDOM (Application no. 16757/90); CASE OF BARBERA, MESSEGUÉ AND JABARDO v. SPAIN (Application no. 10590/83)

<sup>130</sup> Based on the monitoring of the Igor Movenko case.

<sup>131</sup> Based on the monitoring of the Volodymyr Balukh case.



Balukh case, courtroom number 4, Rozdolnenskiy District Court of Crimea.

the request of the defense “to listen to the audio recording of Golubnichiy’s interview, who had described Balukh’s personality, was rejected; the audio was recorded when another judge was in charge of the case. The reason: in the absence of the witness and since it was impossible to arrange his presence at the hearing, his testimony had been read aloud and should therefore be presented in full”<sup>132</sup>. The request “to listen to the audio recording of Dmitriy Popov’s interview (retired Ministry of Internal Affairs officer who was present at all searches in Balukh’s home), which had been made when another judge was in charge of the case – the reason: in the absence of the witness and since it was impossible to arrange his presence at the hearing, his testimony had been read aloud and should therefore be presented in full”<sup>133</sup> – was satisfied partially with the following explanation: “no technical means to listen to the audio recording; the testimony was also reflected in the minutes of the hearing, which the judge read out”<sup>134</sup>.

### Using experts

***Equality of arms and the adversarial system were compromised in the trials due to the fact that the courts refused to sat-***

***isfy the majority of requests made by the defense to use experts while such requests on the part of the prosecution were normally granted.***

It is important to note that the prosecution can bring in experts on its own initiative under Russia’s CPC, while the defense has to make requests. Thus, the defense is in a more disadvantaged position, and nothing was done to compensate for this inequality in the monitored cases.

During a court hearing in the *February 26 case*, the court rejected the request by lawyer Ali Asanov to “perform forensic portrait examination of a video footage”<sup>135</sup>. The court justified this with the phrase that “in accordance with Art. 196 of Russia’s CPC, such examination was not mandatory”<sup>136</sup>.

During a court hearing in the *Volodymyr Balukh case*, the defense mentioned, among other things, “an inquiry on ammunition at the Moscow and Sevastopol forensic centers and delivery of physical evidence to the courtroom”. The court satisfied only part of the request – on the delivery of evidence to the courtroom for examination<sup>137</sup>. According to the monitors, “often the judge would not bother justifying her decisions but was sim-

<sup>132</sup> Based on the monitoring of the Volodymyr Balukh case.

<sup>133</sup> Based on the monitoring of the Volodymyr Balukh case.

<sup>134</sup> Based on the monitoring of the Volodymyr Balukh case.

<sup>135</sup> Based on the monitoring of the February 26 case.

<sup>136</sup> Based on the monitoring of the February 26 case.

<sup>137</sup> Based on the monitoring of the Volodymyr Balukh case.





Police officers near the Simferopol District Court during the announcement of Ilmi Umerov's sentence.

Photo by Anton Naumlyuk / krymr.org

ply rejecting the requests<sup>138</sup>. At the same hearing, the court granted the prosecution's request "on inclusion in the case file of evidence not indicated in the indictment"<sup>139</sup>.

During another court hearing in the case of Volodymyr Balukh, the judge rejected the defense's request "to send an inquiry to the factory where the cartridges allegedly found in the defendant's attic were manufactured"<sup>140</sup> with the words: "The court does not deem this necessary"<sup>141</sup>.

The petition with the "request for 1) order No. 140 DSP (for official use only); 2) the original of the book of registration of reports and duty shifts of the detention facility; and their examination"<sup>142</sup> was rejected during one of the hearings in the Volodymyr Balukh case.

In Igor Movenko's case, the judge denied the request of the defense to "call as an

expert the FSB linguist who had performed a forensic linguistics examination of the defendant's comments"<sup>143</sup>. On 21 March 2018, in the same case, the court did not allow the defense to "add to the case file the results of the forensic linguistics analysis conducted by the defense"<sup>144</sup>. The prosecutor later also asked to interview the FSB linguist, and the court allowed this.

During one of the hearings in Mykola Semena's case, the court rejected the defense's request "to conduct video recording and to interview witnesses via conference call since they were in Ukraine"<sup>145</sup>. At the 31 August 2017 hearing, the court rejected the defense's request "1) On exclusion of inadmissible evidence – reports on the results of police work (information obtained through Mykola Semena's communication channels) and screenshots made in the course of these activities; 2) On exclusion of inadmissible evidence – translations from Ukrainian and

<sup>138</sup> Based on the monitoring of the Volodymyr Balukh case.

<sup>139</sup> Based on the monitoring of the Volodymyr Balukh case.

<sup>140</sup> Based on the monitoring of the Volodymyr Balukh case.

<sup>141</sup> Based on the monitoring of the Volodymyr Balukh case.

<sup>142</sup> Based on the monitoring of the Volodymyr Balukh case.

<sup>143</sup> Based on the monitoring of the Igor Movenko case.

<sup>144</sup> Based on the monitoring of the Igor Movenko case.

<sup>145</sup> Based on the monitoring of the M. Semena case.

*English signed by persons that were not professional translators; 3) On exclusion of inadmissible evidence – the results of text examination conducted by FSB expert Ivanova due to a large number of grammatical, semantic and logical errors (72 errors on 3 pages)*<sup>146</sup>.

During a hearing in the *case of Akhtem Chiygoz*, the court rejected the defense's request *"to conduct a video recording of a technical examination"*<sup>147</sup>.

Similar rejections were also observed during *Ilmi Umerov's trial*. On 8 September 2017 the court denied the request of the defense *"for an additional forensic linguistics examination from the language of the original (Crimean Tatar language)"*<sup>148</sup>.

### Evidence provided by the parties

***The adversarial system was compromised due to the court's refusal to grant the request for explanations regarding the indictment.***

During a court hearing in the *February 26 case*, the court denied the request of the defense to *"have the prosecutor clarify the new indictment"*<sup>149</sup>. At the same time, the request of the prosecution *"to extend house arrest for defendants Asanov and Degermenji until 7 December 2017"*<sup>150</sup> at the same hearing was granted.

***The defense was repeatedly denied the chance to examine witnesses as well as a reasonable opportunity to interview and challenge the allegations of prosecution witnesses.***

During 3 hearings in the *Akhtem Chiygoz case*, the defense made requests, all denied, to interview prosecution witness Emirali Ablayev. It was necessary for a *"re-watch of several videos together with witness Ablayev, since the videos contradicted his state-*

*ment"*<sup>151</sup>. According to ECtHR case law, *"As a rule, these rights require that an accused should be given an adequate and proper opportunity to challenge and question a witness against him, either at the time the witness was making his statement or at some later stage of the proceedings."*<sup>152</sup>

Monitors noted instances when the testimonies of prosecution witnesses were almost identical, repeating each other *word for word*. Requests of the defense to exclude such statements were repeatedly denied. Thus, during a court hearing in the *case of Suleyman Kadyrov*, the court rejected the requests *"to exclude the testimonies of witnesses O. Fedorov and E. Kuzko from the case file due to their being identical and thus being inadmissible evidence; to exclude from the case file the testimonies of A. Voytseshchuk and A. Avotin"*<sup>153</sup>. The prosecution's request *"on the reading of testimonies of witnesses A. Voytseshchuk, O. Fedorov, V. Petukhov, D. Barantsev"*<sup>154</sup> were satisfied. According to the monitors, at the same hearing, *"Denis Barantsev, deputy head of an insurance company's local branch, gave a testimony that was identical to that of Aleksandr Voytseshchuk; Yuriy Cherkesov, Dmitriy Romaniuk and Anton Bogatyrev were also interviewed during this session and gave the same testimony"*<sup>155</sup>. Interviewed at the same hearing was also *"Vladimir Dolgachev, officer of FSB department in Crimea since 2015, who had performed a search in Suleyman Kadyrov's home on 5 October 2016; he refused to answer the questions of the defense citing state secrets"*<sup>156</sup>. In principle, *"... In any criminal proceedings there may be competing interests, such as national security ... In some cases it may be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which are strictly necessary*

<sup>146</sup> Based on the monitoring of the M. Semena case.

<sup>147</sup> Based on the monitoring of the A. Chiygoz case.

<sup>148</sup> Based on the monitoring of the I. Umerov case.

<sup>149</sup> Based on the monitoring of the February 26 case.

<sup>150</sup> Based on the monitoring of the February 26 case.

<sup>151</sup> Based on the monitoring of the A. Chiygoz case.

<sup>152</sup> Case of Kostovski v. The Netherlands (Application no. 11454/85)

<sup>153</sup> Based on the monitoring of the S. Kadyrov case.

<sup>154</sup> Based on the monitoring of the S. Kadyrov case.

<sup>155</sup> Based on the monitoring of the S. Kadyrov case.

<sup>156</sup> Based on the monitoring of the S. Kadyrov case.





Emil Kurbedinov, lawyer of Ilmi Umerov, Mykola Semena, Akhtem Chiygoz, Suleiman Kadyrov.  
Photo by Ilya Tarasov / krymr.org

are permissible under Article 6 § 1. Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities<sup>157</sup>. In this case, the court made no attempt to explain why certain testimonies were withheld from the defense and to provide a counterbalance for the difficulties experienced by the defense during the proceedings. It should be noted that some witnesses are used by the prosecution on a regular basis to formalize procedural rules. Thus, the mentioned Barantsev and Voytse-shchuk had testified earlier as prosecution witnesses in the cases of Semena and Kadyrov, acknowledging that they had taken part in a number of FSB procedural activities in the past.

***The defense did not receive written explanations from the opposing side, even though “failure to disclose relevant evidence undermines the right to a fair trial”<sup>158</sup>.***

<sup>157</sup> Case of Rowe and Davis v. The United Kingdom (Application no. 28901/95)

<sup>158</sup> Case of Milatova and Others v. The Czech Republic (Application no. 61811/00)

In the trial of Volodymyr Balukh, there were multiple situations where the defense was not given enough time to get acquainted with textual evidence or to get the necessary replies to written inquiries. Such requests were often rejected by the court. During one of the court sessions, “lawyer Omelchenko said that he had not yet received replies to the inquiries he had sent, which were important for the proceedings”<sup>159</sup>. In spite of this, the judge announced that the judicial investigation was over, after which it was no longer possible to add new evidence, for which reason the lawyer had been waiting for the replies.

The petition of the defense “to request documents necessary for the examination of written evidence”<sup>160</sup> during the trial of Akhtem Chiygoz was rejected.

In the *Akhtem Chiygoz case*, the monitors observed repeated attempts to “obstruct the disclosure of written evidence, as well as the use by the court of poor excuses for refusing to admit such evidence (such as a

<sup>159</sup> Based on the monitoring of the V. Balukh case.

<sup>160</sup> Based on the monitoring of the A. Chiygoz case.



Crimean Tatar activists that came to see a hearing in the February 26 case but could not get into the courtroom. While waiting for the end of the hearing, they are signing an address to the UNESCO on preservation of the Khan's Palace in Bakhchisaray.

*Credit: krymr.org*

*statement that the documents contained in the case file were not evidence)*.<sup>161</sup>

***The use of anonymous witness statements during the presentation of evidence by the prosecution was not justified by the court, and the identities of these witnesses were not revealed to the defense.***

During a hearing in the case of Akhtem Chiygoz, the defense made a request to “to reveal to the lawyer the identity of a witness”, which the court rejected without giving any reasons<sup>162</sup>. The ECtHR often refers in its practice to this issue in the context of evidence presentation: “If the defence is unaware of the identity of the person it seeks to question, it may be deprived of the very particulars enabling it to demonstrate that he or she is prejudiced, hostile or unreliable. Testimony or other declarations inculcating an accused may well be designedly untruthful or simply erroneous and the defence will scarcely be able to bring this to light if it lacks the information permitting it to test the author’s reliability or cast doubt

*on his credibility. The dangers inherent in such a situation are obvious.*”<sup>163</sup>

Other such requests of the defense were also rejected in other hearings in the trial of Akhtem Chiygoz. For example, the petition “on disclosure of personal data of a witness under criminal liability”<sup>164</sup>. The ECtHR clarifies the role of the judicial procedure in such cases: “The maintenance of the anonymity presented the defence with difficulties which criminal proceedings should not normally involve. Nevertheless, no violation of Article 6 para. 1 taken together with Article 6 para. 3 (d) of the Convention can be found if it is established that the handicaps under which the defence laboured were sufficiently counterbalanced by the procedures followed by the judicial authorities”.<sup>165</sup> However, in this case, the court took no measures to counterbalance the defense’s difficulties.

In addition, according to the monitors, during the interviewing of anonymous witnesses through digital means, there were rather long pauses between the questions from

<sup>161</sup> Based on the monitoring of the A. Chiygoz case.

<sup>162</sup> Based on the monitoring of the A. Chiygoz case.

<sup>163</sup> Case of Kostovski v. The Netherlands (Application no. 11454/85)

<sup>164</sup> Based on the monitoring of the A. Chiygoz case.

<sup>165</sup> Case of Doorson v. The Netherlands (Application no. 20524/92)

the courtroom and the answers, which casts doubt on the independence of these answers.

### Equal conditions

***Even simple statistics of the monitoring allows us to conclude the more vulnerable position of the defense and significant problems with equality of arms in monitored cases.***

***“Equality of arms is an element of the broader concept of fair trial and affords each side a reasonable opportunity to present their case under conditions that do not place one side at a substantial disadvantage compared to their adversary.”***<sup>166</sup>

Requests of the prosecution were supported by judges more often than those by the defense. The defense made 239 requests, with 81 (34% of all requests) satisfied, three (1%) partially satisfied, and 155 (65%) rejected. The prosecution made 20 requests, with 16 (80%) satisfied and four (20%) rejected.

The placement of the parties in the courtrooms had no particular effect on the equality. In 150 court sessions where the layout of the parties was recorded, the parties were more often placed at the same distance from the judge (59% of sessions), in 10% of sessions the prosecution was closer to the judge, and the defense in 31% of sessions. In some instances, such as the hearing in the *Mykola Semena case* held on 18 December 2017, *“the court secretary and the prosecutor were sitting at the same desk and were exchanging notes”*<sup>167</sup>.

Observations show problems with the placement of screens that were used for presenting video evidence, as well as the quality of the picture and sound. These issues are described in more detail in the section on publicity, but they indicate not only the difficulties with comprehending information among all participants, but also problems

with ensuring equal access to video evidence for the parties.

Situations were observed when the procedural rule on familiarizing the participants with their rights was ignored. For example, during a hearing in the *case of Volodymyr Balukh*, the judge would *“warn each witness that their rights were written down in the document they were signing”*<sup>168</sup>. At the same session, *“the judge read out the rights and asked “Do you understand?”, didn’t wait for a reply, saying “He’s not listening”, and continued the trial”*<sup>169</sup>. In some cases, the court failed to explain to witnesses and defendants their rights. Also, according to the monitors, the explaining was at times *“too fast and incomprehensible”*.<sup>170</sup>

***The absence of the accused at the hearings (for reasons unknown, as mentioned above) in the case of Akhtem Chygoz was counterbalanced by the court with the help of videoconferencing, which significantly hampered equality of arms.***

The monitors noted problems for the defendant with talking to his lawyer – the confidentiality of such communication could not be fully guaranteed, since even when everyone present would leave the courtroom to allow the lawyer to speak to his charge, their conversation could be heard in the corridor. There were also technical problems with the videoconferencing – the defendant was often unable to hear the speech in the courtroom, and those at the courtroom in their turn could not properly hear the defendant. Sometimes the sessions had to be adjourned due to the problems with communications.

***In a number of cases, the behavior of judges during the interviewing of witnesses was questionable, showing bias toward the prosecution. This bias was especially evident when representatives of the local government were testifying.***

Thus, during a hearing in the *Akhtem Chygoz case*, the monitors observed that *“the*

<sup>166</sup> Case of Morel v. France (Application no. 34130/96)

<sup>167</sup> Based on the monitoring of the M. Semena case.

<sup>168</sup> Based on the monitoring of the V. Balukh case.

<sup>169</sup> Based on the monitoring of the V. Balukh case.

<sup>170</sup> Based on the monitoring of the I. Umerov case.





Bailiffs watching the people gathering near the building of the Simferopol District Court to support Ilmi Umerov before the announcement of his sentence.

Photo by Anton Naumlyuk / krymr.org

witness answered some of the questions of the defense using general phrases. The court did not object to this, instead clarifying the replies of the witness (explaining to the defense what the witness meant to say), and rejecting the questions of the defense. Sometimes the judge would help a witness with their answers. The court did not react to the inappropriate remarks of a witness regarding the defense<sup>171</sup>. It should be noted that this witness was Vladimir Konstantinov – head of the State Council of the Republic of Crimea. Earlier at the same session, “Judge Kozyrev was asking leading questions favorable to the prosecution, gesturing at the witness regarding the withdrawal of questions and reminding him that he had the right to refuse to answer a question<sup>172</sup>. Almost every session was held in the absence of the accused, despite the constant requests of the defense to have him brought to the court, which were rejected.

During the trial of Volodymyr Balukh, “the lawyer wanted to file a request for court assistance in obtaining certain documents, but the judge replied that his ability to obtain

evidence had not yet been exhausted, and she would grant such assistance should it be necessary. After that, the lawyer decided against filing the petition<sup>173</sup>. The defense did not receive a written reply and petitioned the court for assistance. Like many other petitions of the defense, it was denied.

According to the monitors, during one of the hearings in the *Akhtem Chygoz* case, “there were signs of the judge’s favoritism, specifically: Judge Kozyrev rephrased the prosecutor’s questions dismissed by the defense. He often interrupted the lawyers and the defendant. He accused lawyer Polozov of attempts to manipulate the court.”<sup>174</sup>

During a later court session in the case of *Akhtem Chygoz*, “the court ignored instances when a witness would evade a question or would say that the question had no bearing on the case; the judges did not respond to the comments made by a witness regarding the lawyer and the defendant<sup>175</sup>. This witness was Olga Kovitidi – member of the Council of the Federal Assembly of

<sup>171</sup> Based on the monitoring of the A. Chygoz case.

<sup>172</sup> Based on the monitoring of the A. Chygoz case.

<sup>173</sup> Based on the monitoring of the V. Balukh case.

<sup>174</sup> Based on the monitoring of the A. Chygoz case.

<sup>175</sup> Based on the monitoring of the A. Chygoz case.

the Russian Federation from the executive branch of the Republic of Crimea.

Observation also shows that during the *trial of Akhtem Chiygoz*, the judge put forward “*unreasonable demands for the lawyers to provide information that they could not possess, such as the location of the documents, the copies of which had been added to the case file (the original of the statement of the Russian Unity party on the holding of the rally on 26 February 2014)*”<sup>176</sup>.

Based on the conclusions made after analyzing the facts on the observance of the equality of arms principle, Russia-controlled

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<sup>176</sup> Based on the monitoring of the A. Chiygoz case.

occupying authorities in Crimea should at the very least:

- stop the unlawful practice of holding court hearings without the presence of the accused in the courtroom;
- allow the defense to question witnesses, use independent experts and employ other evidence, as well as give the defense a reasonable opportunity to challenge the position of the prosecution, including by granting full access to all evidence in a case;
- stop the practice of unjustified rejection of requests made by the defense and refrain from assisting the prosecution.



## 4. PRESUMPTION OF INNOCENCE

### STANDARDS AND LEGISLATION

As Art. 11 of the Universal Declaration of Human Rights states,

*“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”<sup>177</sup>*

The UN Human Rights Committee<sup>178</sup> in its General Comments on the right to equality before courts and tribunals and to a fair trial<sup>179</sup> explains:

*“According to article 14, paragraph 2 everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of*

*innocence. Furthermore, the length of pre-trial detention should never be taken as an indication of guilt and its degree. The denial of bail or findings of liability in civil proceedings do not affect the presumption of innocence.”*

A similar standard is enshrined in part 2, Article 6 of the ECHR:

*“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”*

Art. 49 of the Constitution of the Russian Federation states:

*“Any person accused of committing a crime shall be considered innocent until his (her) guilt is proven in accordance with the procedure stipulated by federal law and is confirmed by a court sentence which has entered into legal force. The accused shall not be obliged to prove his (her) innocence. Irremovable doubts about the guilt of a person shall be interpreted in favour of the accused.”*

These standards are also reflected in Art. 14 of Russia’s CPC, which states:

*“The accused is considered innocent until his (her) guilt in committing a crime is proven in accordance with the procedure established by this Code and established by a court sentence that has entered into legal force. The accused is not obliged to prove his (her) innocence. The burden of proving the charges and refuting the arguments presented in defense of the suspect or accused lies on the prosecution. All doubts about the guilt of the accused, which cannot be eliminated in the manner established by this Code, shall be interpreted in favor of the accused. A conviction may not be based on assumptions.”*

<sup>177</sup> [http://www.un.org/ru/documents/decl\\_conv/declarations/declhr.shtml](http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml)

<sup>178</sup> The UN Human Rights Committee is a body of independent experts elected for a term of 4 years that monitor the implementation by member states of the International Covenant on Civil and Political Rights. <https://www.ohchr.org/ru/hrbodies/ccpr/pages/ccprindex.aspx>

<sup>179</sup> Clause 30, Section IV, General Comment No. 32, CCPR/C/GC/32 of 23 August 2007 <http://hrlibrary.umn.edu/russian/gencomm/Rhrcom32.html>



Volodymyr Balukh during trial, Rozdolne, Crimea.  
Photo by Anton Naumlyuk / krymr.org

## ANALYSIS OF COLLECTED DATA

Analysis of available information showed systematic violations of a public nature, such as making defendants look guilty through the media, keeping defendants in security cages, violations of the secrecy of the deliberation room, and violations of the obligation to provide the defense with all facts regarding the investigation.

### Making defendants look guilty through the media and statements of officials.

***The local media actively contributed to making the defendants in monitored trials look guilty in the eyes of the public. They used statements of high-ranking officials regarding at least four defendants, which constituted pressure on the court and a breach of the presumption of innocence; the events were covered in an unprofessional and one-side manner, with negative information knowingly published.***

It is worth noting a number of articles published after the beginning of *Mykola Semena's case*. At the end of June 2017, a series of publications appeared in the Crimean media accusing Radio Liberty and the journalists working with it of committing treason and “conducting subversive activities in the territory of Russia”<sup>180</sup>.

<sup>180</sup> *Unfree Reality. How Much for the Homeland* / Crimea-Inform, 21 June 2017 <http://www.c-inform.info/comments/id/251>; *The work of some Crimeans with Radio Liberty could be considered high treason* / Crimea-Inform [www.c-inform.info/news/id/53936](http://www.c-inform.info/news/id/53936)

Additional arguments on this position were voiced by Igor Korotchenko, head of the Public Council at Russia's Ministry of Defense, and Yevgeniy Revenko, Russian MP and ex-director of the VGTRK (All-Russia State Television and Radio Broadcasting Company) office in Ukraine. Considering the fact that Mykola Semena was a journalist for Radio Liberty and has been charged with separatism, such statements in the media support the prosecution and form opinions that paint him a criminal.

This is not a one-time occurrence. On 14 January 2016, RIA Novosti Crimea published an article containing the thoughts of Russia-controlled Crimean prosecutor Natalya Poklonskaya on the *February 26 and Akhtem Chiygoz cases*. The article is clearly intended to make the defendants look guilty; the assessment of events is given only by the prosecutor and is of condemning nature, leaving no room for doubt as to the culpability of the defendants<sup>181</sup>. Other accusatory statements by N. Poklonskaya were made in an interview to an NTV journalist, where the prosecutor speaks of A. Chiygoz as of a murderer guilty of committing a particularly heinous crime<sup>182</sup>.

Observation shows that the flow of condemning statements in influential state-owned and state-controlled media usually occurred before the trials. These statements were characterized by the use of hate speech, apparently to make the defendants look like the enemy. The following example shows how high-ranking officials speak about the trials, which confirms their political nature. Sergey Aksionov, head of the Republic of Crimea, made some harsh statements on the Russia-24 channel when commenting on the events in which Yevhen Panov is accused of having been involved:

***“As for saboteurs, I think we should treat them the same as farmers treat the crows that steal their crops. They are killed and strung up on the border, to discourage the others and***

<sup>181</sup> *Poklonskaya: the February 26 case is being dragged out by lawyers* / RIA Novosti, 14 January 2016 <https://crimea.ria.ru/society/20160114/1102648625.html?inj=1>

<sup>182</sup> Exclusive interview with Natalya Poklonskaya on NTV channel (30 November 2015) [https://www.youtube.com/watch?time\\_continue=432&v=Vlz7wF\\_RFhc](https://www.youtube.com/watch?time_continue=432&v=Vlz7wF_RFhc)

*let them know that no one is allowed to threaten the lives of civilians and soldiers in Crimea and Russia, there will be a proper response.”<sup>183</sup>*

In addition to an obvious breach of the presumption of innocence, this statement can be viewed as an attempt to influence the court as well as a call for violence and unlawful actions.

### **Keeping the defendants in security cages.**

***The monitors observed a systematic practice of keeping a defendant in a cage in one case at least, despite repeated objections and petitions of the defense, which violates presumption of innocence. Moreover, in two cases, the defendants were kept in glass cages, which also served to make them look like criminals.***

The ECtHR considers<sup>184</sup> keeping defendants in a cage during trial a factor contributing to the perception of guilt, which violates Article 6 of the ECHR and the right to a fair trial. The Court believes that persons accused of grave and particularly grave crimes against the life, health and sexual inviolability of people must be kept, on court order, under conditions that preclude the commission of new crimes in the courtroom, and be properly protected from the victims, their relatives and friends. In the opinion of the Court, the persons accused of less serious crimes as well as those who committed non-violent crimes and who are not likely to attempt an escape can be kept under guard but without special measures.

In general, Russia’s law does not prohibit unrestricted presence of defendants in the courtroom. Russia’s CPC and the Federal Law No. 103 of 15 July 1995 On Detention of Persons Suspected or Accused of Committing Crimes<sup>185</sup> do not provide for the presence



Yevhen Panov during trial.  
Photo by Artem Go / Mediazone

of any metal barriers in courtrooms. Cages are only mentioned in the Code on Design and Construction of the Buildings of General Jurisdiction Courts<sup>186</sup>, which is not a law.

Nevertheless, the practice of placing the defendants in security cages was still observed during the trials. Of all the defendants, it was Volodymyr Balukh who was kept in a cage. At least 9 times this was also recorded by the journalists present at the hearings, which also indirectly contributed to the perception of guilt due to the dissemination of photographs of Volodymyr Balukh in a cage. In addition, for part of the trial, he was under house arrest and during that period he could be present at the hearings without restrictions.

It should be noted that the charges brought against Volodymyr Balukh did not involve threats to life, health and/or sexual inviolability. After being brought from the pre-trial detention facility or house arrest, he was unable to commit any crimes in the courtroom and obviously did not need to be protected from any victims, as he was accused not of using violence, but of interfering in the activities of detention facilities. That is, V. Balukh had no need for special measures to be present in the courtroom.

<sup>183</sup> Aksionov Offered To Deal With Saboteurs As Farmers With Ravens / Gazeta.Ru, 08/11/2016 [https://www.gazeta.ru/social/news/2016/08/11/n\\_8983319.shtml?updated](https://www.gazeta.ru/social/news/2016/08/11/n_8983319.shtml?updated)

<sup>184</sup> Khodorovskiy v. Russia (Application no. 5829/04), Svinarenko and Slyadnev v. Russia, nos. 32541/08 and 43441/08, 11 December 2012

<sup>185</sup> Russia’s FL No. 103 of 15 July 1995 *On Detention of Persons Suspected or Accused of Committing Crimes* (amended and supplemented) <http://base.garant.ru/1305540/>

<sup>186</sup> Buildings of General Jurisdiction Courts. SP 31-104-2000 <http://megnorm.ru/Data2/1/4294849/4294849609.pdf>

It is known that two defendants in the *February 26* case who were kept under house arrest at the time of the monitoring had been earlier kept at a pre-trial detention facility, and during that period they were kept in a glass cage during court hearings, after being escorted to the court secured in handcuffs by their guards. According to the information collected during the monitoring, Yevhen Panov was also kept in a glass cage during the entire proceeding despite repeated complaints by the defense. In addition, the courtroom where Panov's trial was taking place was equipped with a glass cage, and he was kept there<sup>187</sup> during the public stages of the announcement of the sentence.

It should be noted that because of the state and pro-government media have been actively disseminating photographs in which the defendants are kept in a security cage, when using search engines the top search results show these images, which makes the defendants appear guilty.

### **Violation of the secrecy of the deliberation room**

***There is reason to believe that in three cases, the authorities knew about the guilty sentence in advance, since during its announcement, more police officers than usual would be present in court, and other measures were observed that served to restrict the freedom of the defendants and impede the public's movement within the court building.***

***“After entering the court building, in the corridor where the courtroom was located I saw a cordon of bailiffs who weren't letting anyone in, and there was another cordon behind it, and the corridor itself was blocked by a bench from the courtroom. When the defendants were passing the cordons, they were searched with metal detectors; attendees were allowed in one at a time until 13 people came through, the rest were not even allowed into the corridor. In the courtroom itself, during the***

***announcement of the verdict, there were three bailiffs and an unknown person in civilian clothes who looked like an FSB officer. Asked by the attendees who he was, he replied he was an “interested party”. An hour after the judge started reading the verdict, he called for a 10 minute break. After this, the hearing continued in another courtroom, where only 10 attendees could fit. The man in civilian clothes was gone. In front of the court building, where about 100 people had gathered, there was a police car, with an officer using a camera. There were at least 2 people in civilian clothes around the perimeter that looked like operatives of security services (one of them would exchange phrases with the police officers now and again)”***<sup>188</sup>

***“Extra security measures were taken before the hearing, the roads to the court were blocked by traffic police, and the square in front of the court building was surrounded with metal fences, with entrances through metal detectors along the perimeter – a cordon of police officers. Two checkpoints – one at the entrance to the square in front of the court and another near the entrance to the court building. Within the building itself, the bailiffs blocked all corridors and stairs. No everyone who wanted to attend the hearing was able to get in”***<sup>189</sup>

The most telling preparation was prior to the sentencing of *Igor Movenko*. The defendant would usually show up for the hearings on his own, there were no bailiffs or guards in the courtroom, and the prosecutor was asking for a suspended sentence. However, on the day of the sentencing, a prisoner transport vehicle arrived and was seen by the people near the court. According to lawyer Oksana Zhelezniak<sup>190</sup>, guards had entered the courtroom before the judge announced the sentence of two years in a maximum security colony for I. Movenko.

<sup>188</sup> Based on the monitoring of the February 26 case.

<sup>189</sup> Based on the monitoring of the A. Chygoz case.

<sup>190</sup> <https://ru.krymr.com/a/29321851.html>

<sup>187</sup> Based on the monitoring of the Y. Panov case.



These actions likely indicate that verdicts had been known prior to their announcement in court, and the authorities took additional measures to prevent displays of outrage and protest by the defendants and the public. In addition, these actions strongly contributed to the impression that the defendants were indeed guilty.

### Other visual means of making the defendants look guilty.

In the *Akhtem Chiygoz case*, monitors observed a number of incidents that can be viewed as evidence of the court's lack of impartiality, such as inappropriate comments by Judge Kozyrev regarding the defense, interrupting of the defendant, and frank bias toward the prosecution. These actions were aimed at making the defendant look guilty.

Another example: when escorted, Yevhen Panov would be handcuffed to one of the guards, as is the practice in Russia when escorting detainees. Other security measures were also taken, such as the presence of 2-3 bailiffs who would cover the defendant and would not allow people to photograph him<sup>191</sup>.

In addition, according to international standards, the prosecution must provide the court and the defense with all relevant facts gathered during the investigation that casts doubts on the person's guilt. In a number of monitored cases there is reason to suspect that the prosecution deliberately or unintentionally concealed evidence that favored the defendants. Another observed practice involved the reading of certain personal characteristics of the defendants or other



Aleksey Kozyrev, judge who showed a biased attitude and made incorrect remarks to the defense during the consideration of the case of Akhtem Chiygoz

inappropriate information about them that was also supposed to make them appear guilty<sup>192</sup>.

Based on the conclusions made after analyzing the facts about the observance of presumption of innocence, Russia-controlled occupying authorities should at the very least:

- stop the practice of manipulative speeches and hate speech aimed against defendants in politically motivated cases that form negative public opinion and serve to pressure the courts;
- ensure access to all case files (held by the prosecution) for the defense, including those that could serve as evidence of the defendant's innocence;
- stop the practice of keeping defendants in security cages during trials.

<sup>191</sup> Information about the escort was obtained from the observations of the initiative team.

<sup>192</sup> Based on the monitoring of the cases of V. Balukh and M. Semena.



## Annex

JUDGES AND COURTS, TAKING PART IN THE CONSIDERATION OF POLITICALLY MOTIVATED CASES, SELECTED FOR MONITORING AND ANALYSIS WITHIN THE FRAMEWORK OF THE REPORT

Case name	Court of the first instance	Judge	Citizenship	Appointment
Balukh case (Article 222 of the Criminal Code of the Russian Federation)	RAZDOLNENSKY DISTRICT COURT	Olena Tedeyeva	Ukraine	Decree of the President of Ukraine on the appointment of judges No. 1016/2009 of 07.12.2009 <a href="http://zakon0.rada.gov.ua/laws/show/1016/2009">http://zakon0.rada.gov.ua/laws/show/1016/2009</a> \ Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
Balukh case (321 CC RF)	RAZDOLNENSKY DISTRICT COURT	Tetiana Pyrkalo	Ukraine	Resolution of the Verkhovna Rada of Ukraine on the election of judges No. 2738-III of 20.09.2001 <a href="http://zakon0.rada.gov.ua/laws/show/2738-14">http://zakon0.rada.gov.ua/laws/show/2738-14</a> \ Decree of the President of the Russian Federation of 13.11.2014 No. 719 <a href="http://www.kremlin.ru/acts/bank/39038">http://www.kremlin.ru/acts/bank/39038</a>
Case of February 26th	CENTRAL DISTRICT COURT OF SIMFEROPOL CITY	Serhiy Demenok	Ukraine	Decree of the President of Ukraine on the appointment of judges No.950/2010 <a href="https://www.president.gov.ua/documents/9502010-11963">https://www.president.gov.ua/documents/9502010-11963</a> \ Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
Chiigoz case	SUPREME COURT OF THE REPUBLIC OF CRIMEA	Viktor Zinkov	Ukraine	Decree of the President of Ukraine on the appointment of judges No. 1135/2000 of 17.10.2000 <a href="http://zakon3.rada.gov.ua/laws/show/1135/2000">http://zakon3.rada.gov.ua/laws/show/1135/2000</a> \ Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
	SUPREME COURT OF THE REPUBLIC OF CRIMEA	Alexey Kozryev	Russian Federation	Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
	SUPREME COURT OF THE REPUBLIC OF CRIMEA	Ihor Kriuchkov	Ukraine	Resolution of the Verkhovna Rada of Ukraine on the election of judges No. 306-VII of 23.05.2013 <a href="http://zakon2.rada.gov.ua/laws/show/306-18">http://zakon2.rada.gov.ua/laws/show/306-18</a> \ Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
Movenko case	GAGARINSKY DISTRICT COURT	Pavel Kryllo	Russian Federation	Decree of the President of the Russian Federation of 17.10.2016 No. 552 <a href="http://kremlin.ru/acts/bank/41323/page/2">http://kremlin.ru/acts/bank/41323/page/2</a>
Semena case	ZHELEZNODOROZHNY DISTRICT COURT OF SIMFEROPOL CITY	Nadezhda Shkolnaya	unknown	Decree of the President of the Russian Federation of 23.05.2016 No. 241 on the appointment of judges of the federal courts <a href="http://kremlin.ru/acts/bank/40800">http://kremlin.ru/acts/bank/40800</a>
Umerov case	SIMFEROPOL DISTRICT COURT	Andriy Kulishov	Ukraine	Decree of the President of Ukraine on the appointment of judges No. 193/2012 of 12.02.2012 <a href="http://zakon5.rada.gov.ua/laws/show/193/2012">http://zakon5.rada.gov.ua/laws/show/193/2012</a> \ Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
Panov case	SUPREME COURT OF THE REPUBLIC OF CRIMEA	Andrey Paliy	Russian Federation	Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
Kadyrov case	FEODOSIYA CITY COURT	Anastasiya Shapoval	Ukraine	Decree of the President of Ukraine on the appointment of judges No. 246/2011 of 24.02.2011 <a href="http://zakon5.rada.gov.ua/laws/show/246/2011">http://zakon5.rada.gov.ua/laws/show/246/2011</a> \ Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>

Court of the second instance	Judge	Citizenship	Appointment
SUPREME COURT OF THE REPUBLIC OF CRIMEA	Tymur Slezko	Ukraine	Decree of the President of the Russian Federation of 22.06.2016 No. 294 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/40883">http://www.kremlin.ru/acts/bank/40883</a>
SUPREME COURT OF THE REPUBLIC OF CRIMEA, pending appeal consideration	Olena Spasenova	Ukraine	Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
pending appeal consideration			
were not considered			
SEVASTOPOL CITY COURT	Vasily Avkhimov	Russian Federation	Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
SUPREME COURT OF THE REPUBLIC OF CRIMEA	Ihor Kriuchkov	Ukraine	Resolution of the Verkhovna Rada of Ukraine on the election of judges No. 306-VII of 23.05.2013, <a href="http://zakon3.rada.gov.ua/laws/show/306-18">http://zakon3.rada.gov.ua/laws/show/306-18</a> \ Decree of the President of the Russian Federation of 19.12.2014 No. 786 on the appointment of judges of the federal courts, <a href="http://www.kremlin.ru/acts/bank/39165">http://www.kremlin.ru/acts/bank/39165</a>
was not considered			
pending appeal consideration			
SUPREME COURT OF THE REPUBLIC OF CRIMEA	Elena Mikhalkova	Russian Federation	

Total number of judges: 16    Ukrainian citizens: 10    Russian citizens: 5    Unknown: 1    Criminally prosecuted in Ukraine: 10

## **CRIMEAN PROCESS:**

**OBSERVANCE OF FAIR TRIAL STANDARDS  
IN POLITICALLY MOTIVATED CASES**