CRIMEA SOS

HELSINKI FOUNDATION FOR HUMAN RIGHTS

ADVOCACY IN OCCUPIED CRIMEA AND WORKING CONDITIONS FOR HUMAN RIGHTS LAWYERS UNDER OCCUPATION

Foreword

Crimea is the Ukrainian peninsula with an area of about 26 100 km2, and a population of 1 967 000 people (2013). Since 2014, Ukraine and the international community considers it to be a territory temporarily occupied by Russia (international legal status "Ukraine's territory temporarily occupied by Russia"). Given the military operations in the east of Ukraine, together with Crimea, Russia occupied 7% of the territory of Ukraine. More than 1 500 000 internally displaced persons registered in Ukraine.

In the sixth year of the occupation of Crimea, we have 146 politically motivated cases, 97 of which concern the indigenous population of Crimea - the Crimean Tatars, who maintain a pro-Ukrainian political position. Also, since the beginning of the occupation, there have been recorded 45 cases of forced disappearances. The total number of days of absence of those who have not yet been found is already reaching the point of almost seventy years. The total number of human rights violations by the Russian Federation in Crimea cannot be calculated. But the volume of information on human rights violations that activists managed to collect only during the first years of occupation, would be enough for an encyclopedia. Soon a book* was published, which was called "Encyclopedia of repressions in Crimea since the Russian annexation", with extension by the second entry in 2019.

Human rights defenders who defend human rights through Bar (i.e working as lawyers) constitute a small but active part of the civil society. And to turn to such lawyers is almost the only way for people to defend their rights in the current conditions. The idea of the study emerged when such lawyers began to report a greater infringement of their rights by the Russian Federation.

The conducted study reveals that:

1. The structure of Bar institutions in Ukraine gives lawyers more rights to carry out their work
2. The system of Bar and Bar management of Russia is designed in a way that allows for control of lawyers advocacy activities
3. The procedural rights of lawyers are being violated at all stages
4. The more politically motivated cases the lawyer is involved in, the more pressure he or she experiences from the occupying authorities
5. Lawyers who defend Crimean Tatars are under greater pressure
6. To carry out advocacy in Crimea, a lawyer must "maneuver" between written and unwritten rules and new customs that appeared after the occupation

To draw such conclusions, we analyzed the differences between the Bar system before and after the occupation; interviewed 18 Crimean lawyers and about a dozen activists and members of their families; collected information from open sources.

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Sincerely, authors' team

* Encyclopedia of repressions in Crimea since the Russian annexation, CrimeaSOS, 2017. Source: http://krymsos.com/en/reports/analitichni-zviti-po-krimu/entsiklopediya-represii-v-krimu-z-momentu-aneksiyi-rosiyeyu-zvit/

List of contents

I. General background and methodology

The act of aggression[1] of the Russian Federation against Ukraine in the form of the armed forces incursion into the territory of Crimea and its military occupation in February 2014, as well as the official recognition of the occupying party and establishing control over the occupied territory[2] changed the international legal status of the Ukrainian peninsula. The Parliament of Ukraine, parliaments of other countries,[3] as well as key international institutions such as the UN General Assembly and the Council of Europe [4]officially recognised the Autonomous Republic of Crimea and the city of Sevastopol as the territory temporarily occupied by the Russian Federation.[5]

The Russian Federation is a party to international legal acts regulating the matter of occupation (The Hague Conventions of 1907, Geneva Convention of 12 August 1949 on the Protection of Civilian Persons in Time of War,[6] I Additional Protocol of 1977 to the Geneva Conventions of 1949). According to the Geneva Convention for the Protection of Civilian Persons in Time of War, the occupying state exercises the functions of the government and supports the legislation of the occupied country during the establishment of effective control[7] in the occupied territory without gaining sovereignty over it.

Since the establishment of such control, it is the responsibility of the occupying state to ensure public order and security in the controlled territory as well as inadmissibility of violations of the rights of the local civilian population. In the event of failure to fulfil international legal obligations by persons or entities acting on behalf of or under the control of the occupying state, international legal liability is provided.[8]

Monitoring of the current situation in Crimea, regularly conducted by international[9] and Ukrainian[10] human rights organisations, records systematic intentional violations of human rights by the Russian Federation.[11] The

1 See UN, Definition of aggression. Approved by General Assembly resolution 3314 (XXIX) of 14 December 1974. Source:https://www.un.org/ru/documents/decl_conv/conventions/aggression.shtml; ICC, Report on Preliminary Examination Activities 2016, para. 158. Source: https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf

2 http://www.kremlin.ru/events/president/news/20603

3 See Condemning the ongoing illegal occupation of Crimea by the Russian Federation. Source: https://www.foreign.senate.gov/download/crimea-resolution.

4 See Opinion on "Whether Draft Federal Constitutional Law No. 462741-6 on amending the Federal constitutional Law of the Russian Federation on the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation is compatible with international law" endorsed by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014). Source: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)004-e

5 General Assembly, Resolution "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", 19 December 2016, No. 71/205. https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/205

6 https://www.un.org/ru/documents/decl_conv/conventions/geneva_civilian_33.shtml

7 More on effective control: ECHR, Guide on Article 1 of the European Convention on Human Rights, 2019. Source: https://www.echr.coe.int/Documents/Guide_Art_1_ENG.pdf; ECHR, Case Cyprus v. Turkey , §§ 76-77. Source: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59454%22]}

8 See ECHR, CASE OF ILAŞCU AND OTHERS v. MOLDOVA AND RUSSIA, §§ 316. Source: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61886%22]}

9 OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), September 2017. Source: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22140

10 CrimeaSOS, Report "Fighting Extremism Or Exterminating Activism? – Purposeful Persecution of Civic Activists In Crimea", May 2019. Source: http://krymsos.com/reports/analitichni-zviti-po-krimu/-borotisya-z-ekstremizmom-chi-ekstremizuvati-aktivizm-----tsilespryamovane-peresliduvannya-gromadskogo-aktivizmu-v-krimu--zvit/

11 SOLIDARUS e.V., Report: "Crimea: The Chronology of Oppression", November 2018. Source: https://article20.org/ru/download/doklad-krym-hronologiya-ugneteniya/

Russian Federation has the international legal obligation to restore the violated rights and guarantee their protection, providing first of all access for victims to qualified legal assistance.

This study was created with the aim of presenting advocacy in the conditions of the occupied Crimea. It is based on in-depth interviews with lawyers and human rights defenders who work on the peninsula:

- 18 lawyers working on criminal political and non-political cases
- 14 activists participating in the movement of civil defence of detainees in Crimea
- Thanks to the information from the respondents, as well as information obtained from open sources, you can find here:
- analysis of guarantees of advocates' activity for Crimean lawyers and advocates' self-government bodies in Crimea from February 2014 to June 2019,
- analysis of the exercise of the procedural rights of advocates at the stage of pre-trial and trial proceedings, the provision of defence to suspects in criminal cases, as well as an overview of the advocate's situation in administrative proceedings,
- suggested ways of combating violations of the rights of advocates.

The object of the study are the procedural rights and guarantees of lawyers, enshrined in acts of international law and in the legislation of the Russian Federation.

The methods selected for the study include: a survey of lawyers and human rights activists of Crimea, analysis and synthesis of received information, as well as the comparative law method in the comparison of legislative guarantees of advocacy and the practice of their application in the occupied Crimea.

II. Analysis of the rights and guarantees of the work of advocates: legal regulations, international standards for the provision of defence, a brief description of the system of the Bar and of advocates' self-government

The Bar is one of the most important institutions of a legal democratic state. Its purpose is to protect and exercise the violated rights and freedoms of individuals and legal entities in their interests by providing qualified legal assistance. The right to a lawyer is at the core of the right to qualified legal assistance and defence. which is the basis for the exercise of other rights and freedoms, including the right to a fair trial.[12]

Advocacy should be conducted in accordance with the principles of independence, justice and the rule of law. It is one of the guarantees of effective protection of a human as the central subject of the legal order, protection of human dignity from violations by the state as a monopolist and by third parties, as well as the restoration of violated rights.

Considering the fundamental role of the Bar for individuals and the state, considerable attention is paid not only at the level of national legislation, but also in international law to issues of legal status, powers, guarantees of the rights of the lawyer, lawyers' associations and, in general, the right to qualified legal defence.

2.1. International legal guarantees of legal defence

The right to a qualified legal defence is expressly provided for in Art. 8 of the Universal Declaration of Human Rights of 1948[13], Art. 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950[14], Art. 2.3 of the UN International Covenant on Civil and Political Rights of 16 December 1966[15]. International acts oblige to provide access to effective remedies (judicial, lawyer, etc.). The guarantee of this right is important for further effective protection of one's rights and freedoms by all legal means, the exercise of the right to judicial protection, and the adversarial trial on the basis of equal rights of the parties.

12 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, New York, 2013, p. 5. Source: https://www.unodc.org/documents/justice-and-prison-reform/13-86672_e_book.pdf
13 UN General Assembly, Universal Declaration of Human Rights, adopted by resolution 217 A (III) of the UN General Assembly of 10 December 1948. Source: https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml
14 Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, concluded in Rome on 4 November 1950. Source: https://www.echr.coe.int/Documents/Convention_RUS.pdf
15 International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966. Source: https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

The right to a lawyer in the context of the right to a qualified legal defence of a person is specified in the UN Basic Principles regarding the role[16] of lawyers, which also enshrine the rights, freedoms, functions and duties of advocates, as well as their guarantees in criminal proceedings. Each person is guaranteed access to legal services provided by independent professional lawyers (advocates), as well as immediate information about the right to a lawyer at the stage of arrest, detention or accusation of a criminal offence,). Advocates themselves should act in a manner conducive to the protection of the rights recognised by national and international law, act independently and in good faith exclusively in the interests of the client in accordance with the law and professional and ethical standards. At the same time, the government of the participating states is committed to providing lawyers with the opportunity to fulfil their professional duties, as well as with unhindered access to clients, without threats, intimidation or unlawful persecution.

In addition, it is important to mention the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[17], adopted by UN General Assembly resolution 43/173.

In accordance with the Principles, the lawyer as a defender should be provided by the state with access to the client for consultations and visits in conditions of confidentiality. The right to confidentiality may be limited by the legislation of the country in exceptional cases, but such a case must be justified and proportionate to the interests of society.

2.2. Legal regulation of advocacy in the Russian Federation (the occupying power)

The Constitution of the Russian Federation of 12 December 1993, in its articles 46-48, guarantees equal right of everyone to judicial protection of rights and freedoms, to receive qualified legal assistance, and the right to use the assistance of an advocate (defender) from the moment of detention, arrest or accusation. Moreover, the right to defence and qualified legal assistance is also fundamental in Russian law, as it guarantees the exercise of other constitutional rights and freedoms in the context of the common right to a fair trial, it is closely interconnected with these rights[18] and is not subject to restrictions under any circumstances.[19]

16 Key Principles on the Role of Lawyers Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August - 7 September 1990. Source: https://www.un.org/ru/documents/decl_conv/conventions/role_lawyers.shtml

17 The Body of Principles for the Protection of all Persons Detained or Imprisoned in any Form was adopted by General Assembly resolution 43/173 of 9 December 1988. Source: https://www.un.org/ru/documents/decl_conv/conventions/detent.shtml

18 Decision of the Constitutional Court of the Russian Federation of 25.10.2001 N 14-P*(626). Source: http://doc.ksrf.ru/decision/KSRFDecision30326.pdf

19 Decision of the Constitutional Court of the Russian Federation of 27.03.1996 N 8-P*(627). Source: http://doc.ksrf.ru/decision/KSRFDecision30335.pdf

In addition to the Constitution, sources of law in the field of advocacy are also federal laws, acts of the President of the Russian Federation, a number of regulations of the Government of the Russian Federation, judicial acts and acts of advocates' self-government bodies. As the basic documents, it is worth noting the Criminal Procedure Code of the Russian Federation (hereinafter – the Criminal Procedure Code or CPC RF) adopted by the State Duma in 2001, and the special Federal Law "On Advocacy and the Bar in the Russian Federation" (hereinafter – the Law), adopted in 2002. At the legislative level, they regulate the status of the lawyer, lawyer's rights, guarantees, duties, powers. The law additionally determines the significance of the Bar as a whole, the status of lawyers' associations, their forms and functions.

The principles of corporate discipline and professional ethics of lawyers as an integral part of the law in the field of the Bar are briefly enshrined in the Law and in the Charter of the Fundamental Principles of Advocacy adopted at the Sixth St. Petersburg International Legal Forum in May 2016[20], as well as normatively regulated by the Code of Professional Ethics of the Lawyer adopted by the First All-Russian Congress of Lawyers in January 2003.[21]

2.3. System of the Bar and of advocates' self-government

2.3.1. Definition of "the Bar" and "Advocate". An overview of status, rights, powers

Part 1 of Art. 1 of the Law defines advocacy as qualified legal assistance provided on a professional basis by lawyers to individuals and legal entities in order to protect their rights, freedoms and interests, as well as to ensure access to justice

The Bar as a whole is a professional community of lawyers accredited in accordance with the legislation of the Russian Federation.

It has the status of a civil society institution and is also not included in the system of state authorities or local self-government bodies. Its activities are based on the principles of legality, independence, self-government, corporatism, the principle of equality of lawyers. The state undertakes to ensure compliance with these principles – to guarantee the independence of the Bar, not to interfere with advocacy, not to hinder it.

Advocate, in accordance with Part 1 of Art. 2 of the Law – a person who has received, in accordance with the legislation of the Russian Federation, the

20 Charter of Fundamental Principles of Advocacy, adopted at the Sixth St. Petersburg International Legal Forum of 19 May 2016. Source: https://fparf.ru/documents/international-acts/charter-fundamental-principles-of-advocacy/

21 The Code of Professional Ethics for Lawyers, adopted by the First All-Russian Congress of Lawyers on 31 January 2003. Source: https://fparf.ru/documents/fpa-rf/documents-of-the-congress/the-code-of-professional-ethics-of-lawyer/

status of an advocate and the right to practise law, within which the lawyer acts as an independent professional legal adviser. The lawyer represents on the basis of the concluded contract the interests of his or her client (principal) in court proceedings, state government and local government bodies, organisations and associations, draws up statements, complaints, petitions and other legal documents. The total scope of advocate's powers is enshrined in Part 2 of Art. 2 of the Law, as well as specified in Art. 53 of the CPC RF with the following powers in the framework of the criminal proceedings:

- consultations and meetings with the client
- collection of evidence
- involvement of a specialist
- presence upon indictment and other investigative actions
- participation in interrogation
- acquaintance with the records and other materials of the investigation
- statement of motions, challenges, etc.

The advocate, among other things, is obliged to observe professional independence, professional ethics (Art. 2 of the Law), keep lawyer's secret (Art. 6 of the Code of Professional Ethics of Lawyer) and act exclusively in the interests of the client (Art. 7 of the Law).

2.3.2. Forms and system of the Bar

In accordance with Part 1 of Art. 20 of the Law, lawyers' associations may be established in the following forms:

- law office – individual performance of advocacy,
- Bar association – a non-profit organisation of two or more lawyers, acting on the basis of the charter,
- law firm – a non-profit organisation of two or more lawyers, established on the basis of a partnership agreement,
- legal consultancy – a non-profit organisation in the form of an institution, which is established by the advocates' chamber in the case of the ratio of "one judge: fewer than two lawyers" in the territory of one judicial district.

The federal Bar system of the consists of:

1. The Federal Chamber of Lawyers is the highest body in the system of advocates' self-government at the federal level in the form of a non-governmental non-profit organisation based on the mandatory membership of lawyers' chambers of the subjects of the Russian Federation.[22]

22 Website of the Federal Chamber of Lawyers of the Russian Federation. Source: https://fparf.ru/fpa-rf/about/

The governing bodies of the Federal Chamber of Lawyers are:

- - All-Russian Congress of Lawyers
- The Council of the Federal Chamber of Lawyers, which includes the Commission of the Council of the Federal Chamber of Lawyers of the Russian Federation on the Protection of the Rights of Lawyers, as well as the Ethics and Standards Commission
- President of the Federal Chamber of Lawyers
- Revision Commission

2. The Chamber of Lawyers of a territorial subject is the highest body in the system of advocates' self-government at the level of the territorial subject in the form of a non-governmental non-profit organisation based on the mandatory membership of lawyers of one territorial subject of the Russian Federation. The main responsibilities of the Chamber are not only to ensure the provision of qualified legal assistance to the population, but also to represent and protect the interests of lawyers in certain cases, monitor the professional training of persons allowed to conduct advocacy and the adherence by lawyers to the lawyer's code of ethics.

   The governing bodies of the Chamber of Lawyers of a territorial subject are:

   - Council of the Chamber of Lawyers
   - Qualification Commission
   - Revision Commission
   - Commission for the Protection of the Professional Rights of Lawyers.

2.3.3. Status of lawyers and lawyers' associations in Crimea after the start of the occupation

In February 2014, the Russian Federation began an active process of occupation of Ukrainian territory. State and local government bodies were seized and on 16 March 2014 the so-called "referendum on the reunification of Crimea with Russia on the rights of a subject of the Russian Federation" was organised and held. As a result of the operation, already on 21 March 2014 the State Duma of the Russian Federation approved the Federal Constitutional Law "On the Admission of the Republic of Crimea to the Russian Federation and the Formation of New Subjects – the Republic of Crimea and the City of Federal Significance of Sevastopol – in the Russian Federation."[23]

With this law, the occupying state proclaims the Autonomous Republic of Crimea and the city of Sevastopol as the "new subject of the Russian

23 Federal Constitutional Law "On the Admission to the Russian Federation of the Republic of Crimea and the Formation in the Russian Federation of New Subjects – the Republic of Crimea and the City of Federal Importance of Sevastopol" of 21 March 2014 No. 6-FKZ (as amended on December 25, 2018). Source: https://rg.ru/2014/03/22/krym-dok.html

Federation", forcibly establishes the legal regime of the Russian Federation in the occupied territory and grants all citizens of the peninsula Russian citizenship, with which it continues to flagrantly violate international law and Ukrainian legislation.

Pursuant to Ar. 21 of the Federal Law No. 6-FKZ (as amended on 25 December 2018), in 2014 the "Chamber of Lawyers of the Republic of Crimea" and the "Chamber of Lawyers of the City of Sevastopol" are established in accordance with the Federal Law on Advocacy. International humanitarian law, as well as Ukrainian legislation, was completely ignored by the occupying state in this process.[24]

Ukrainian lawyers, practising at the time of the occupation of the territory of Crimea, had to make a choice: leave the peninsula or stay and continue to work in accordance with the legislation of the Russian Federation.

At first glance, Article 21 of the Federal Law allegedly provided the remaining lawyers with the opportunity to continue their activities on the basis of the lawyer's licence obtained in accordance with Ukrainian law. But already Part 4 of Art. 21 of the Federal Law on the so-called "accession" reads that:

"Lawyers of the Republic of Crimea and lawyers of the city of federal significance of Sevastopol conduct advocacy provided that they pass an examination on knowledge of the legislation of the Russian Federation, meet the requirements for lawyers set forth by the legislation of the Russian Federation on advocacy, and on condition of mandatory membership in the chamber of lawyers of the Republic of Crimea or the chamber of lawyers of the city of federal the values of Sevastopol."

Thus, to conduct advocacy in the occupied territory, Ukrainian lawyers were required to:

- ***study Russian law in a short time, confirm their qualifications in accordance with Russian legislation***
- ***obtain a passport of the Russian Federation to maintain the lawyer's status during the forced re-registration of lawyers at the end of 2014[25]***
- ***in the case of successful passing the exam and re-registration, join the Crimean Chamber of Lawyers or the Chamber of Lawyers of Sevastopol.***

24 See Vladimir Zhbankov "Two Hagues" of 23 March 2015. Source: https://newtimes.ru/articles/detail/96162/
25 Ukrainian Helsinki Human Rights Union, Lawyers in the Occupation, Kiev, 2018, p. 20. Source: https://precedent.crimea.ua/wp-content/uploads/2019/01/1_Advocates_occupation_2018.pdf

III. Restrictions on the professional activities and persecution of lawyers in the occupied Crimea

3.1. Forms of pressure on lawyers

Since the occupation, advocacy in Crimea has undergone systemic changes – and not at all for the better. The key criterion for continued work is not the lawyer's professionalism, but, first of all, political convictions.[26]

The regulatory requirements for obtaining Russian citizenship, passing an examination of knowledge of Russian law and obtaining a lawyer's licence in accordance with the legislation of the occupying power are only the basic methods of the so-called "filtering" of lawyers in Crimea at the legislative level. In fact, the legislation of the Russian Federation is actively used to restrict the rights of lawyers, especially in politically motivated cases.

As a result of interviews with lawyers, the following regulatory tools of exerting pressure on lawyers were identified:

Tool 1. Unauthorized inspections, detentions, administrative liability

The Code of Administrative Offences of the Russian Federation is one of the most common tools for the quick and effective obstruction of lawyer's activity. Crimean law enforcement and judicial authorities applied the Code of Administrative Offences of the Russian Federation several times against lawyers working on cases of forced disappearances and defending the rights of persons involved in politically motivated criminal proceedings in Crimea.

On 26 January 2017 and 6 December 2018, the famous Crimean Tatar lawyer and human rights activist Emil Kurbedinov was detained and arrested by officers of the Centre for Combating Extremism in Crimea. During the first detention, an unjustified search of Kurbedinov's office was carried out. The detention for the second time was preceded by an unjustified personal search. Additionally, in both cases technical equipment with confidential information about the clients of the lawyer and of his colleague was seized. [27]By these actions the law enforcement bodies of the Russian Federation directly violated the lawyer's secret despite the official motive – the need to collect evidence.

26 Ukrainian Helsinki Human Rights Union, Lawyers in the Occupation, Kiev, 2018, p. 20. Source: https://precedent.crimea.ua/wp-content/uploads/2019/01/1_Advocates_occupation_2018.pdf

27 Radio Svoboda, "Our People's Defender". Lawyer's arrest in Crimea, 2018. Source: www.svoboda.org/a/29647749.html

The reason for the detentions was a violation of the same part 1 of Art. 20.3 of the Administrative Offences Code of the Russian Federation (propaganda or public demonstration of attributes or symbols of extremist organisations), namely, Kurbedinov's publication in 2013 of information about the rally of the Hizb Ut-Tahrir organisation recognised as terrorist in the territory of the Russian Federation. As a result, the Crimean lawyer was placed under administrative arrest for 10 days (2017) and 5 days (2018), respectively.

In 2018, 13 lawyers[28] of Kurbedinov tried to appeal against the decision of the court of first instance in the "supreme court" of Crimea. The defence side argued that the terms for bringing to administrative liability had expired by the time the court made the decision and that Kurbedinov had published his text before the occupation in 2013, while the legislation of Ukraine did not provide for liability for these acts. As a result, the complaints of Kurbedinov's lawyers were not accepted and the decision of the first instance court remained in force.[29]

It is important to mention that both administrative cases against Kurbedinov were opened simultaneously with or several days after large-scale Russian operations against Ukrainian citizens in the territory of Crimea. We are talking about the detention of the Bakhchisaray activist Seyran Saliyev[30] on 26 January 2017 and the capture of Ukrainian sailors during the Russian armed aggression against Ukraine in the Strait of Kerch[31] in late November 2018. The arrest of Kurbedinov temporarily paralysed the possibility of providing legal defence to both specific detainees and clients previously arrested in Crimea.

In January 2017, the day before Kurbedinov, the Russian lawyer Nikolai Polozov was also detained. He is known for his participation in the criminal proceedings of activists (deputy chairpersons of the Mejlis) Akhtem Chiygoz and Ilmi Umerov. On the way to the hearing on the "26 February case"[32] in Simferopol, the lawyer was detained by six officers of the Crimean FSB department and taken for interrogation to the FSB building. They did not allow a personal defender to see him and did not draw up a record of the detention. Two and a half hours after the arrest Polozov was released.[33]

28 Radio Svoboda, "Our People's Defender". Lawyer's arrest in Crimea, 2018. Source: https://www.svoboda.org/a/29647749.html

29 Lawyer Newspaper, Crimean Ministry of Justice issued an order to expel Emil Kurbedinov from the Bar, 2019. Source: https://www.advgazeta.ru/novosti/krymskiy-minyust-vynes-predpisanie-ob-isklyuchenii-emilya-kurbedinova-iz-sostava-kollegii-advokatov/

30 Crimea. Realities, The History of the Politician: Seyran Saliev, 2018. Source: https://ru.krymr.com/a/29291518.html

31 Deutsche Welle, Kerch crisis and parallel legal reality, 2018. Source: https://bit.ly/2lu6MCB

32 International Memorial, "The 26 February case". Source: https://memohrc.org/ru/special-projects/delo-26-fevralya

33 See Human Rights Watch, Crimea: Lawyers Harassed, January 2017. Source: https://www.hrw.org/ru/news/2017/01/31/299532

Tool 2. Membership in the Bar Association and the Chamber of Lawyers of Crimea

The Bar association is a common form of advocates' self-government in Crimea. From the point of view of Russian law, the legal status of a Bar association is equivalent to the status of non-profit organisations. Thus, not only the norms of the Federal Law on Advocacy but also the norms of the Federal Law "On Non-Profit Organisations" of 12 January 1996 apply to legal relations in the field of its establishment, activity, liquidation.

In accordance with paragraph 1.2 of Art. 15 of the Law "On Non-Profit Organisations", the following persons or entities cannot be the founders (participants, members) of a non-profit organisation:

1. a foreign citizen or a stateless person in respect of whom, in the manner established by the legislation of the Russian Federation, a decision has been made on the undesirability of their stay (residence) in the Russian Federation,
2. a person included in the list in accordance with paragraph 2 of Art. 6 of the Federal Law of 7 August 2001 N 115-FZ "On Counteracting the Legalisation (Laundering) of Money Received by Crime, and the Financing of Terrorism",
3. a public association or religious organisation whose activities are suspended in accordance with Art. 10 of the Federal Law of 25 July 2002 N 114-FZ "On Countering Extremist Activities",
4. *a person in respect of whom a court decision which has entered into legal force establishes that the person's actions show the signs of extremist activity,*
5. a person who does not comply with the requirements of the federal laws applicable to founders (participants, members) of a non-profit organisations determining the legal status, procedure for the establishment, activity, reorganisation and liquidation of certain types of non-profit organisations.

The two administrative arrests of Kurbedinov under the article of the Code of Administrative Offences of the Russian Federation "Propaganda or public demonstration of attributes or symbols of extremist organisations" were considered by the Ministry of Justice of the Russian Federation sufficient to recognise the presence of "signs of extremist activity" in the actions of the lawyer. Although similar precedents in Russia concerned exclusively criminal convicts,[34] the Ministry initiated the procedure of expelling the Crimean lawyer from the founders and members of his Bar association, and also sent an order to the Crimean Chamber of Lawyers with a request to deprive Kurbedinov of the lawyer's status.[35]

34 Novaya Gazeta, "The Ministry of Justice ordered the expulsion of the Crimean lawyer Emil Kurbedinov from the Bar", 2019. Source:https://www.novayagazeta.ru/news/2019/01/10/148216-minyust- predpisal-isklyuchit-iz-kollegii-krymskogo-advokata-emilya-kurbedinova

35 Novaya Gazeta on Twitter, 2019. Source: https://twitter.com/novaya_gazeta/status/1083266919564824576/photo/1?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1083266919564824576&ref_url=https%3A%2F%2Fwww.novayagazeta.ru%2Fnews%2F2019%2F01%2F10%2F148216-minyust-predpisal-isklyuchit-iz-kollegii-krymskogo-advokata-emilya-kurbedinova

At this stage, it is also important to note the significant importance of the Chamber of Lawyers of Crimea. In accordance with the decision of the Council of the Federal Chamber of Lawyers of 2 April 2010, *"the work of a lawyer in the Bar association (branch of the Bar association) is not allowed on the territory of a subject of the Russian Federation, if the register of this subject of the Russian Federation does not contain information about the lawyer as a member of the Chamber of Lawyers of this subject of the Russian Federation or if the lawyer's Bar association (branch of the Bar association) is not listed in the register of Bar associations of the Chamber of Lawyers of the subject of the Russian Federation."*[36]

It follows from the above that due to the mandatory membership in the Chamber of Lawyers of the territorial subject, the lawyer who is excluded from or is not a member of the Chamber is deprived of the right to practise law.

Ultimately, Kurbedinov was not expelled from the Bar and from the Chamber of Lawyers, nor was he deprived of his legal status. But, unfortunately, not a single lawyer who conducts professional activities in the occupied Crimea nowadays is safe from the risk of a new wave of this kind of pressure.

The Russian Federation uses not only its legislation to indirectly influence the professional activities of lawyers in the occupied Crimea, but also administrative means to prevent lawyers from defending their clients – persons involved in political and non-political criminal cases.

Such obstruction is expressed in the following forms:

1. Attempt to distance the lawyer from the client by representatives of de facto judicial and law enforcement agencies

The survey of Crimean lawyers led to the conclusion that before or during criminal proceedings the FSB, prosecutors, and judges often try either to insistently dissuade the lawyer from defending the person involved in the political case or to isolate the lawyer with experience in protecting political prisoners from the case file.

According to the interviewed lawyer,[37] the client (non-political criminal case)

36 Decision of the Council of the Federal Chamber of Lawyers on the approval of the procedure for lawyers to change their membership in the chamber of lawyers of one subject of the Russian Federation to membership in the chamber of lawyers of another subject of the Russian Federation and to resolve some issues of the exercising by the lawyer of the right to practise law in the Russian Federation of 2 April 2010. Source: https://fparf.ru/documents/fpa-rf/the-documents-of-the-council/order/

37 For security reasons, the names of the majority of interviewed lawyers who continue to work in Crimea are not mentioned in the report.

during the investigation was pressured that "this lawyer does not need to know what materials are in this criminal case." According to him, the investigators knew that the case was based solely on the testimony of the client and thus they "hedged their position."

b) Psychological pressure

The analysis of the interviews also demonstrates the fact that Crimean lawyers are under permanent psychological pressure, which is exerted not only directly by the occupation authorities, but also through third parties. For instance, one lawyer in the case of "terrorists" was repeatedly asked the questions "Why are you defending political prisoners, saboteurs, people accused of terrorism?", "Do you really need it?", "Why are you visiting Crimean Solidarity?"[38] etc.

c) Threats

Attempts to force lawyers to abandon "disadvantageous cases" often take the form of threats. In the case of the aforementioned lawyer, it is worth noting comments of a warning nature: "watch out, as something might come up" made along with questions about the reasons for defending political prisoners.

In turn, another of the interviewed lawyers talks about the threats that began to come from the moment he took on the defence of the captured Ukrainian sailors: "When Emil [Kurbedinov] was arrested, an old acquaintance called me with a warning "be careful not to be dragged out yourself" (…) "after all you connected are to the bearded men." According to him, the "government of Crimea" had even held a meeting about those involved in the sailors case and what to do with them.

According to lawyers involved in the defence of the Ukrainian sailors, the Russian Federation gave an unspoken command to "deal with" the defenders who had taken on work on the case.

This is a violation of the basic principle of the independence of advocacy through direct intervention, obstruction of professional activity, as well as the persecution of a lawyer for providing qualified legal assistance.

38 Crimean Solidarity is a public association of Crimean Tatars whose main activity is information coverage of events in Crimea, legal support and humanitarian assistance to Crimean prisoners, their families, as well as families of victims of forced disappearances. Website: https://crimean-solidarity.org/ru/

d) Insults on the grounds of religion, nationality, etc. Discrediting in the eyes of clients

Lawyers in Crimea (primarily representatives of the Crimean Tatar people) often become victims of degrading public insults on the grounds of their nationality, religion, and even the category of cases.

Statements, including those discrediting business reputation, often come from Russian-controlled media, as well as from senior representatives of the Crimean Tatar people who support the occupation:

Advocate Kurbedinov's (Crimean Tatar) about a TV show about himself on the Russian television channel Krym 24: "I have not watched this programme. There was such a message there that they compared me to... That I am a terrorist myself, and therefore I defend terrorists. So I am called the devil's advocate. That I myself, like my clients, became liable and they put me in prison, etc. That was the message. [...] While I was sitting [in the pre-trial detention centre], they broadcast various programmes, including the whole dedicated programme, calling it "Devil's Advocate." [...]Krym 24 was broadcasting live from here, people are standing there, they are live on air and they are commenting that "here, such and such lawyer, unaware citizens came to support him [...]."

"For example, Balbek's speech[39] […] and others like him also on Krym 24 [...]. They said that I, [...] other lawyers who are involved in these cases [criminal cases on charges of terrorism], had not won a single case. That is, such discrediting that we profit from using people, that we drive business-class cars and fly in business class, that we are worthless lawyers, etc. That was the tone of the presentation and in general, discrediting of our professional activities. It lasted for a very long time – 5-6 days everywhere, everywhere. [...] Then there was a broadcast on Millet [the Crimean Tatar channel collaborating with Russia], where Teyfuk Gafarov[40] and Eyvaz Umerov[41] and several other people appeared. They generally insulted there, they called me and Polozov[42] monkeys."

Through the tactics of insulting by "their own" Crimean Tatars, who are collaborating with Russia, the occupation authorities deliberately try to discredit lawyers in the eyes of their clients and representatives of their people as a whole in order to provoke a wave of refusal to use advocates' services, general discontent and distrust of the lawyers.

39 Ruslan Balbek – Russian politician, member of the State Duma of the Russian Federation of the 7th convocation, Deputy Chairman of the State Duma Committee on Nationalities since 5 October 2016. Member of the Russian pro-Putin party, United Russia. Ukrainian collaborator with Russia

40 Teyfuk Gafarov – Crimean Tatar, former lawyer of the Mejlis of Crimean Tatars, after the start of the occupation – collaborator with Russia

41 Eyvaz Umerov – Crimean Tatar, collaborator with Russia

42 Nikolai Polozov is a Russian lawyer defending clients in political criminal trials, including in cases of terrorism

3.2. Reaction of the international community to the persecution of lawyers

Not only Ukrainian, but also international actors come forward in support of the lawyers persecuted by the Russian Federation.

The Ministry of Foreign Affairs of Ukraine in its statement reacted harshly to Russia's detention of advocate Kurbedinov in 2017[43] and 2018.[44] A similar message was launched in a joint statement by representatives of an international network of human rights organisations.[45]

The following international institutions also expressed their position regarding pressure on lawyers in the occupied Crimea: the UN General Assembly in a resolution of December 2017,[46] the European Parliament in a resolution of March 2017,[47] Human Rights Watch,[48] Freedom House,[49] Front line Defenders[50] etc. The aforementioned structures adhere to an unequivocal position: they condemn the use of repressive methods against local defenders, express support for victims and demand an end to the practice of persecution. In turn, the UN Human Rights Monitoring Mission in 2017 also recorded the facts of the persecution of lawyers in Crimea and published them in a report.[51]

43 Novoe Vremya, "A new kind of political intimidation. The Ministry of Foreign Affairs of Ukraine responded to the detention of lawyers in occupied Crimea". Source: https://nv.ua/ukr/world/geopolitics/novij-vid-politichnogo-zaljakuvannja-u-mzs-ukrajini-vidreaguvali-na-zatrimannja-advokativ-v-anneksirovannom-krimu-545942.html

44 Ukrainian Foreign Ministry, "Заява Міністерства закордонних справ України щодо незаконного арешту адвоката Еміля Курбедінова". Source: https://mfa.gov.ua/ua/press-center/news/69259-zajava-ministerstva-zakordonnih-sprav-ukrajini-shhodo-nezakonnogo-areshtu-advokata-jemilya-kurbedinova

45 Human Rights House, "Persecution of Lawyers and Human Rights Defenders in Occupied Crimea". Source: https://humanrightshouse.org/statements/persecution-of-lawyers-and-human-rights-defenders-in-occupied-crimea/

46 UN General Assembly, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, A/C.3/72/L.42, P. 4. Source: https://undocs.org/en/A/C.3/72/L.42

47 European Parliament resolution of 16 March 2017 on the Ukrainian prisoners in Russia and the situation in Crimea (2017/2596(RSP), P. E. Source: http://www.europarl.europa.eu/doceo/document/TA-8-2017-0087_EN.html?redirect

48 Human Rights Watch, "Russian Authorities Increase Pressure on Crimean Human Rights Lawyer", 2019. Source: https://www.hrw.org/news/2019/01/14/russian-authorities-increase-pressure-crimean-human-rights-lawyer

49 Freedom House, "Russian Forces in Crimea Pressure Human Rights Lawyers", 2017. Source: https://freedomhouse.org/article/russian-forces-crimea-pressure-human-rights-lawyers

50 Front Line Defenders, Case Emil Kurbedinov. Source: https://www.frontlinedefenders.org/en/profile/emil-kurbedinov

51 OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), September 2017, P. 11. Source: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22140

IV. Exercise of the rights of lawyers in criminal proceedings

An analysis of the guarantees of the rights of lawyers in criminal proceedings and the practice of their implementation in the occupied Crimea is one of the key components of this study.

Considering the occupation period, as of June 2019, at least 135 people are involved in politically motivated criminal cases in Crimea. Among them there are 89 Crimean Tatars (66% of the total number of prosecuted in Crimea).[52] The number of persons involved in non-political criminal trials continues to increase.

In Russia, the rights of advocates in a criminal case are guaranteed by the norms of the Criminal Procedure Code. Article 53 enshrines the list of basic rights and powers of defenders (advocates) from the moment they take on the criminal case, specified in detail and supplemented by the remaining sections of the CPC RF:

1. hold meetings and consultations with the client in confidence;
2. collect and submit evidence necessary for the provision of legal assistance;
3. involve a specialist;
4. be present upon indictment;
5. participate in interrogation, as well as in other investigative actions conducted with the participation of the suspect or the accused, at the request of either the client or defender;
6. get acquainted with the record of detention, the decision on the application of preventive measures, the records of investigative actions conducted with the participation of the suspect or the accused, other materials of the case;
7. get acquainted at the end of the preliminary investigation with all the materials of the criminal case, write out any information from the criminal case file in any quantity, make copies of the materials of the criminal case at one's own expense, including with the use of technical means;
8. file petitions and challenges;
9. participate in the trial of a criminal case in the courts of the first, second, cassation and supervisory instances, as well as in the consideration of issues related to the enforcement of the sentence;
10. bring complaints about actions (inaction) and decisions of the inquiry

52 CrimeaSOS, internal statistics on the number of political cases in Crimea, February 2014 - June 2019.

officer, the head of the inquiry unit, the head of the inquiry body, the inquiry body, investigator, prosecutor, court and participate in their consideration by the court;

11. give the client brief consultations in the presence of the investigator, interrogator, ask questions of the interrogated persons with the permission of the investigator, interrogator, make written comments about the correctness and completeness of the records of the given investigative action. At the same time, the investigator or the interrogating officer is obliged to enter the questions in the records.

In order to understand how the rights of lawyers are respected, we consider below the lawyer's participation at different stages of criminal proceedings.

4.1 Inquiry and investigation stage

4.1.1. Analysis of advocates' rights in the bodies of inquiry and investigation. Characteristics of the exercise of these rights

The peculiarity of the Russian criminal procedural legislation is manifested in a certain secondary role of the defender. The fundamental nature of the institution of advocacy as such is reflected in the Code of Criminal Procedure of the Russian Federation (CPC RF) and partly in the Code of Administrative Offences of the Russian Federation[53] in a rather limited and simplified form, which gives the impression of an attempt to actually subordinate lawyers to the hierarchical structure of Soviet-style investigative and judicial bodies.

As an example, we can cite the rule that allows the admission of a lawyer not at the time of detention, but after the actual imprisonment of a person.[54] According to Part 1 of Art. 92, the record of detention, which includes the mandatory clause on explaining the right to legal assistance, is drawn up no more than 3 hours after the suspect is brought to the body of inquiry / investigation. Thus, the CPC RF provides a legal opportunity for the investigation to postpone the moment the lawyer enters the case. This significantly affects the course of the proceedings, as it creates a suitable environment for applying pressure in relation to the detainee and falsification of evidence.

The case of the client's refusal to use the assistance of the appointed lawyer is also very indicative: the Criminal Procedure Code does not prohibit the conducting of investigative and other procedural actions (interrogation, etc.) without the participation of a lawyer (Part 4 of Art. 50). For comparison, at this stage it is important to pay attention to the criminal procedural legislation of Ukraine. The CPC of Ukraine[55] also provides for the possibility of conducting

53 See Section V of this study
54 See commentary to sec. 3 part 3 of art. 49 of the Code of Criminal Procedure of the Russian Federation: https://www.zakonrf.info/upk/49/
55 https://zakon.rada.gov.ua/laws/show/4651-17/stru#Stru

investigative actions without the presence of a lawyer, but, unlike in Russia, it guarantees the right for the suspect / accused to object to such actions. In the event of an objection, the procedural action must be either postponed or conducted subject to the mandatory participation of an advocate (sec. 2 part 2 of art. 46 of the Criminal Procedure Code of Ukraine).

In addition to the systemic problems of the legislation of the Russian Federation, the situation of advocates in Crimea is significantly aggravated by a whole range of violations in law enforcement practice. The authors of the study recorded violations by the occupying state of the following procedural rights and guarantees of lawyers in the occupied Crimea at the stage of inquiry and investigation:

a) Guarantee of lawyer's immediate access to the client during detention / arrest (arising from the right of everyone to a professional legal defence)

"Governments ensure that the competent authorities immediately inform all persons of their right to use the help of a lawyer of their choice when arresting or detaining that person or if the person is charged with a criminal offence. [...] Furthermore, governments ensure that all persons arrested or detained, whether charged with a criminal offence or not, receive immediate access to a lawyer and in any case no later than forty-eight hours after arrest or detention."[56]

"A suspect has the right to use the assistance of a defender from the moment provided for in sections 2–3.1 of part three of Art. 49 of this Code and have a meeting with the lawyer in private and confidentially prior to the first interrogation of the suspect" (paragraph 3 of part 4 of article 46 of the CPC RF).

"After the suspect has been delivered to the investigating authority or to the investigator, within no more than 3 hours, a detention record must be drawn up with the note that the rights provided for in art. 46 of this Code have been explained to the suspect." (Part 1 of Art. 92 of the CPC RF)

As can be seen, from the moment of the actual detention of the person – depriving the individual of the ability to move freely[57] – the defender enters the criminal case on invitation or by appointment. However, due to the above-described problem with the timing of the explanation of the right to a lawyer and the invitation / appointment of the lawyer, the lawyer can often intervene and gain access to the client only several hours after the moment of actual detention.

The lawyer also has the right to be informed about the location of the client by the investigator or by the client. The guaranteed right of immediate access to the detainee / arrestee should be exercised by presenting a lawyer's certificate

56 See UN Basic Principles on the Role of Lawyers. Source: https://www.un.org/ru/documents/decl_conv/conventions/role_lawyers.shtml
57 OVD-Info, Instructions for the ideal detainee. Source: https://legal.ovdinfo.org/police/#1

/ warrant. At the same time, refusals or other actions of the investigator with the aim of restricting such access upon presentation by the lawyer of the necessary documents are not permissible.

In practice, the lawyer's access to clients in the Russian Federation as well as occupied Crimea is significantly complicated by a number of factors:

aa) Refusals to explain the right to qualified legal assistance and the right to contact a lawyer

A widespread practice in Crimea is the prohibition of establishing any form of detainee's / arrestee's contact with a lawyer. For example, during mass detentions and arrests of Crimean Tatars in March 2019, FSB officers deliberately refused to inform detainees of their rights and did not allow them to call a lawyer.

The wife of one of the arrested Crimean Tatars: "He [husband] says:

"Let me make a phone call to a lawyer!" They [FSB officers] say: "You are not supposed to, you are not allowed to." "And read out my rights to me, show me what you came with, show me your certificates." They: "Later, later." At first they made such a psychological attack that a person could not think properly."

Often, the lawyer gets to the place of detention / arrest solely thanks to prompt information from the activists of the Crimean Tatar civil platform Crimean Solidarity. But the physical presence of a lawyer in this context does not guarantee that the lawyer will be admitted to the client. Basically, law enforcement agencies in Crimea keep lawyers at a distance, preventing any communication with the client.

Mother of one of the arrested Crimean Tatars:

"The son left freely, they did not touch his hands. They spoke in a whisper, I did not hear the names. A neighbour said that Tatar guys were standing on the street. There were four on the street, behind the gate. Farther outside there were two more, there were 6-7 people here and the same number outside. The lawyer stood behind the gate from the very beginning. They did not let him in."

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bb) Concealment of the whereabouts of the client

Also, lawyers complain about the lack of information about the whereabouts of the defendant after detention / arrest.

"I am admitted to the case as a defender. I saw the client on the day of detention, on the same day he was charged, as usual, part 2 of art. 205/3/5 [of the CPC RF], and they took the preventive measure for over a month, now I don't remember exactly. We looked for him half the night, wanted to record his transfer and give him food, but we did not find him. For me, this is an understandable practice, as a rule, everyone is transported to different temporary detention facility (temporary detention centre)."

In general, the concealment by the investigating authorities of detained / arrested persons from defenders is a common practice in political cases in the occupied Crimea.

The story of one of the interviewed activists about Dilyaver Gafarov, a Crimean Tatar detained on suspicion of participating in an armed group:

"... for about a day the lawyer did not know where his client was. The client's location was hidden from the lawyer. Only after the relatives wrote a statement that they did not know where Gafarov was, a day later the lawyer found out that his client had been transferred to Rostov. Prior to that, he did not receive admission."

The maximum isolation of the client, as a rule, for the first few hours or for the first day after detention / arrest allows the interrogation without the presence of an "inconvenient" lawyer and by intimidation, threats, torture the detainees / arrested are forced to testify against themselves. Half of the interviewed lawyers encountered this practice.

One of the interviewed lawyers about his clients, a group of detained Crimean Tatars:

"... when they were detained, physical force was used, and after the arrest they were taken somewhere to the forest and there, as they say, they were "exercised" a little. Well, they were beaten up on the legs."

Cases have been recorded when the information given under torture formed the basis of the records of explanations, subsequently used as the only evidence of guilt. This is a well-established practice in Russia,[58] widespread in Crimea after the occupation. Residents of Crimea suffer not only from the

58 OVD-Info, "The ECHR communicated the first complaint on the events of 12 June". Source: https://ovdinfo.org/express-news/2018/03/13/espch-kommuniciroval-pervuyu-zhalobu-po-sobytiyam-12-iyunya

economic, social and other consequences of the occupation, but also from vicious law enforcement practices that are inherent in the Russian Federation as a state without the rule of law.

One of the lawyers working with political criminal cases in Crimea:

"After the arrest, in some cases they do not tell who is detaining and where the detained is being sent. They call an appointed lawyer, put the appointed lawyer in the case and say that all investigative actions have been completed."

cc) Violation of the principle of territorial jurisdiction

In accordance with Part 1 of Art. 152 of the CPC RF, a preliminary investigation should be conducted at the "place of commission of the act that has signs of a crime." Transferring a case to another region is possible only in the following situations: ending the ongoing crime in another place, committing crimes in different places, another location of the person involved in the criminal case or the majority of witnesses, etc. In such cases, the criminal case should be referred to a higher investigative body for a preliminary investigation on the basis of a justified decision of the head of a higher investigative body with a written notification of the prosecutor about the decision.

Most political criminal cases in Crimea (first of all, cases under "terrorist" articles[59] were initiated by law enforcement agencies against citizens of Ukraine who are permanently live and are suspected of actions allegedly committed in the occupied territory. Thus, from the point of view of Russian law, the norms – exceptions to Art. 152 of the CPC RF are absolutely irrelevant for this category of cases.

One of the interviewed lawyers:

"Today, in the Second Bakhchisarai case,[60] where the same investigation team worked, I asked the investigators which territorial department would conduct this case. According to the Code of Criminal Procedure of the Russian Federation, since the crime was committed here, it must be considered in Crimea. At the same time, all those under investigation are in Rostov."

In practice, as we can see, the preliminary investigation in the framework of the political criminal case initiated in Crimea, as well as the trial itself, are very often conducted on the territory of the Russian Federation. Despite the contradiction to the law, the detained or imprisoned citizens of Ukraine – the persons involved in the case – are also taken to the territory of the Russian Federation without procedural formalities being observed. The unjustified

59 OVD-Info, "Hizb ut-Tahrir cases in Crimea". Source: https://ovdinfo.org/story/dela-hizb-ut-tahrir-v-krymu
60 OVD-Info, The Second Bakhchisarai Hizb ut-Tahrir Case. Source: https://ovdinfo.org/story/vtoroe-bahchisarayskoe-delo-hizb-ut-tahrir

transfer of the case to another region significantly complicates the lawyers' access to the defendants, which is supposedly the primary task of the de facto authorities. At the same time, this is an effective way to hide the fabricated nature of the case and a number of violations of the rights of the detainee.

One of the interviewed civil defenders:

"On the very first day, when there were searches, I thought the guys would be arrested and brought to the Simferopol pre-trial detention centre. But what do the siloviki do? Why are they taking them hundreds of kilometres away? In order to create another problem for us. Firstly, so that people do not gather at the courts, so that this topic is not given publicity in society. Secondly, to create an extra financial cost, because today people may attend courts at will."

b) Admission of the lawyer to the client during a search, interrogation and other investigative actions

"The defender and advocate of the person whose premises are being searched are entitled to be present during the search" (Part 11 of Art. 182 of the CPC RF)."

"The defender may not be denied participation in investigative actions conducted at the defender's request or at the request of the suspect or accused, with the exception of the case provided for in part three of Art. 11 of this Code. The failure to appear of the defender who had been duly notified of the place and time of the investigative action shall not constitute an obstacle to the action."(Sec. 2.1 of Part 2 of Art. 159 of the CPC RF)."

"Before the interrogation begins, the suspect, on the person's request, is provided with a meeting with the defender in private and confidentially" (Part 4 of Art. 92 of the CPC RF).

According to the norms of Russian law, the participation of a defender in the proceedings is not strictly mandatory. For example, the defender's failure to appear is not an obstacle to an investigative action. But the CPC RF obliges the investigating authorities to admit the advocate present at the place of the investigative action as a participant. Thus, the defender has the right to be present before and during interrogation, during a personal search / search of the client's housing, identification, has the right to gather evidence, involve experts, etc.

In Crimea, human rights defenders regularly record facts of barriers to lawyers' access during a search of the client's housing, which is a significant violation of both the client's right to qualified legal assistance and the lawyer's right to access the client and participate in investigative actions.

Information from the mother of one of the detained Crimean Tatars:

"Decision on the search. In my opinion, they read something here, and it was necessary to sign something. He [son] says: here I will sign it, but I will not sign this without a lawyer. And that guy says: yes, you will not write anything even with the lawyer. ... The son left freely, they did not touch his hands. They spoke in a whisper, I did not hear the names. A neighbour said that Tatar guys were standing on the street. [...] The lawyer stood outside the gate, from the very beginning. They did not let him in."

Emil Kurbedinov on not being admitted during a search of a defendant's house:

"I said [to the camera] that a search was underway there, the lawyer had not been not allowed in, that is, I recorded it this way. I stood there, saw that Tofig was being taken away, he was to the address where Marshal Zhukov had been taken, there he was searched again and then he was taken to the FSB from there, I saw him at the FSB."

Information from one of the activists in Crimea about the failure to give access to the lawyer during the mass searches and detentions of Crimean Tatars in March 2019:

"All our comments were put on the record, right there we filed a complaint with the prosecutor's office about the actions of the investigative group, which had not allowed lawyers in during the search and had not let the clients to contact them."

In total, at least 50% of lawyers could not get to the clients during the search. Approximately 20% of the surveyed lawyers were expressly denied such admission. The remaining 30% of the respondents did not manage to get into the search because of the lack of timely information. It is worth recalling here that the lack of information about the search arises precisely due to the de facto refusal by law enforcement authorities of the client's right to contact a lawyer during the search and subsequent detention.

As regards the interrogation phase, out of 18 surveyed attorneys, 6 confirmed a violation of their right to participate in interrogation of clients who had been interrogated without their presence. Some clients may also be interrogated in the presence of a completely unauthorised advocate appointed against their will. The danger of the participation of such a lawyer lies in this person's cooperation with the investigation and in the accusatory nature of the client's defence strategy, however paradoxical it may sound. Any request by the detainee to bring in an independent lawyer often ends with the following comment from the investigator: "There will be either this [appointed] lawyer or none." Records of interrogation may consist of completely false evidence obtained under torture.

One of the interviewed lawyers about the "saboteurs" case:[61]

"... They [the persons involved in the case – [Yevgeny Panov and Andrei Zakhtey] were tortured with electric shocks, they testified. There are techniques that make it possible to determine within a year of the event whether current has been applied to a person. They later admitted that they had been tortured. But checks on the cases of those FSB officers who had used torture were just a formality."

If it is possible to refuse the services of the lawyer appointed by the investigation, the detainee has the right to apply for the admission of his or her defender to participate in the criminal proceedings. Although the admission of the defender does not entail a repetition of the procedural actions already taken, the interviewed lawyers, as a rule, apply for a re-interrogation of the client for the above reasons.

One of the interviewed lawyers working with political cases in the Crimea:

"It happens that if I get called in as a lawyer by appointment, ... in this case we just ask for a conducting an interrogation again. On a couple of occasions I came and the interrogation records had already been prepared. And even if he [the client] says that yes, I agree, everything that is written here is correct, we still interrogate. [...] Well, you never know, the client may forget something, but I can at least clarify things. And with the records drawn up, it is harder for me to figure out what is going on."

c) Becoming acquainted with the case file

"From the moment of entering the criminal case, the defender has the right to:

... get acquainted with the record of detention, the decision on the application of preventive measures, the records of investigative actions conducted with the participation of the suspect or the accused, other documents that were presented or should have been presented to the suspect or the accused "(Sec.6 of Part 1 of Art.53 of the CPC RF)

"1. The investigator presents to the accused and the defender the filed and numbered materials of the criminal case [...]. Material evidence is also presented for perusal, and, at the request of the accused or the defender, so are photographs, audio and (or) video recordings, films and other items attached to the records of investigative actions. [...].

2. In the process of becoming acquainted with the materials of a criminal case consisting of several volumes, the accused and the defender have the right to consult repeatedly any of the volumes of the criminal file, as well as write out any information and in any quantity, make copies of documents, including with the

61 International Memorial, The Crimean "saboteurs" case. Source: https://memohrc.org/ru/special-projects/delo-krymskih-diversantov

use of technical means.

3. The accused and the defender cannot be limited in the time necessary for them to acquaint themselves with the materials of the criminal case." (Art. 217 of the CPC RF).

In accordance with the CPC RF, advocates have the right to access the materials of the case of their clients both during and after the pre-trial investigation. First of all, we are talking about unhindered access to documents, some of which are signed by the client: a record of detention and interrogation. In this context, we are also talking about expert opinions, evidence, etc. The very concept of access implies the possibility of the physical presence at the place of the direct storage of such documents on the premises of the pre-trial investigation bodies, and use of the documents in order to defend the client within the framework of procedural powers. Thus, the advocate is entitled to:

- write out any information and in any quantity
- make copies of documents, including with the use of technical means

The only reason for restricting such a right at the pre-trial investigation stage may be the need to guarantee the safety of the victim and victim's party (part 9 of art. 166 of the CPC RF), or the protection of information constituting state secrets (part 2 of art. 217 of the CPC RF).

In Crimea, lawyers' access to case files at the stage of pre-trial investigation is sometimes subject to restrictions without objective reasons. Unjustified refusals are received by lawyers in both criminal political and non-political cases.

One of the interviewed lawyers about the criminal (non-political) case: "Just today, for the first time, I came across the fact that the de facto investigator of the main investigative department of the Ministry of Internal Affairs of Crimea did not allow me to get acquainted with expert opinions. That is, the investigation is not yet completed, I have the right to get acquainted with the expert opinions that were prepared in the case, but the investigation does not allow me to do that, saying that I will only get acquainted with them at the end of the pre-trial investigation. Which, frankly, is stupid and is not provided for by law. All those procedural documents relate directly to my client – well, the records of interrogation, the search, maybe detention, decision, including expert opinion. I have the right to get acquainted with them at the stage of pre-trial investigation, before it ends. The investigator says no. Well, I'll wait, I have just received a refusal orally... I'll wait and complain about it, because I need these expert opinions."

The facts of the violation of the lawyer's right to become acquainted with the case file were also repeatedly recorded in the category of criminal cases of abductions in Crimea. The above exception to Part 9 of Art. 166 of the CPC RF should not apply to lawyers who are on the side of the missing person, since in this case the interests of the victim and not those of the accused are

represented. But investigative authorities often ignore this rule. This is shown in the testimony of one of the interviewed lawyers working on the cases of the abducted / missing Crimean Tatars (some of them were later found dead):

"A huge number of refusals. In four cases it was only through the courts that I managed to get the materials to be provided. At first they did not answer at all. I went to court – they "retroactively" responded that I had been refused. We appealed. Then retroactively they did something to allow me to get the materials. It all lasted a year and a half. Then we started to get acquainted with the documents."

It is important to note that becoming acquainted with the criminal case file in the occupied Crimea takes place exclusively in the presence of the investigator – supposedly to avoid the possible loss or damage of documents.

d) Filing applications, petitions and challenges

"The investigator, the interrogating officer shall be obliged to consider each petition filed in a criminal case in the manner established by Chapter 15 of this Code" (Part 1 of Art. 159 of the CPC RF)

"At the same time, the suspect or the accused, the defender, as well as the victim, civil plaintiff, civil defendant or their representatives cannot be denied the interrogation of witnesses, conducting of a forensic examination and other investigative actions, if the circumstances for the identification of which they petition are relevant of this criminal case "(part 2 of Art. 159 of the CPC RF)

During the pre-trial investigation, the lawyer has the right to file statements with the investigating authority, file motions and challenges in order to ensure the exercise of the rights and freedoms of the client, as well as guarantee the objectivity and independence of the criminal proceedings.[62] Applications, petitions and challenges are accepted from the lawyer by an authorised investigator in person or through postal service and must be considered within the time limits established by the CPC RF – 3 and 10 days. The lawyer must be notified in writing of the results of the review. The right of the defender to submit applications, motions and challenges is multilevel and consists not only of the right to file the applications as such, but also the right to have the submitted applications, motions and challenges duly considered and receive a written response in a timely manner.

Of the 18 respondents, two lawyers directly reported the receipt of applications, petitions, and challenges not by the investigator, but exclusively by mail or through the office of the pre-trial investigation body. This practice significantly increases the risk of missing the deadlines for providing a

62 See Resolution of the Plenum of the Supreme Court of the Russian Federation of 29 June 2010 N 17 Moscow. On the practice of application by the courts of the rules governing the participation of the victim in criminal proceedings, paragraph 11. Source: https://rg.ru/2010/07/07/postanovlenie-vs-dok.html

response. In addition, it is not the norms of the Criminal Procedure Code that are taken into account to calculate the term for a response in a given case, as should be done, but the general norms of the legislation on the treatment of citizens' applications.

One of the lawyers working on cases of "terrorism": "I sent a motion concerning the case so that all investigative actions with my client be carried out with my personal participation, I still have not received an answer. This is the investigation department, the FSB department in the Crimea."
One of the interviewed lawyers: "At present [statements, petitions, objections] are not accepted [by investigators], they say they must be submitted to the office, the terms of considering the documents are constantly being missed. They cite the law on the lawyer's request (where the term is 1 month) and the law on the consideration of citizens' applications. The Criminal Procedure Code is ignored."

But, as the result of the survey shows, even the personal acceptance by the investigator of such documents from a lawyer does not guarantee a timely response or even consideration of applications. This is confirmed by information received from 6 lawyers.

One of the interviewed lawyers: "A special obstacle to the defence is the complete disregard for the lawyer's motions and statements, especially in Yalta, by the Yalta Investigative Committee. For example, many requests regarding the client were sent but were not considered properly. Thus, the human rights defence activities cannot be carried out."

The untimely and improper consideration of the submitted applications, obviously, negatively affects the course of the pre-trial investigation. But the situation is aggravated even more in the case of deliberate inaction of investigators. Lawyers indicate that this is a direct impediment to their activities, as well as a violation of Art. 6 of the European Convention on Human Rights (right to a fair trial).

Another lawyer working in Crimea on the acceptance and consideration by the investigator of applications and petitions from the lawyer:

"Yes, the terms of the review were missed. [...] They bring it to the court retroactively and say "Yes, we sent it, we do not know why it was not received." And the court refuses, arguing that there are no grounds for appeal. I said that there was no evidence that they had sent the response. They simply printed the response, added it to the case file and claimed it had been sent. They never presented any evidence of sending. But the court refused. Then they began to send their responses by mail. This is done to waste time. I assess this as an obstacle to lawyers' activity."

Lawyer requests in 90% of cases simply remain unanswered. Lawyers

consider the option of complaining about such inaction to be a waste of time due to the workload of the courts and the number of ongoing proceedings.

e) Refusal to sign the non-disclosure of confidentiality of preliminary investigation

"*The defender is not entitled to disclose the data of the preliminary investigation that became known to the defender in connection with the defence if the defender was warned about this in advance in the manner prescribed by Article 161 of this Code. The defender is liable for the disclosure of the data of the preliminary investigation in accordance with Art. 310 of the Criminal Code of the Russian Federation." (Part 3 of Art. 53 of the CPC RF)*

"The data of preliminary investigation can be made public only with the permission of the investigator or interrogating officer and only to the extent that they find it admissible if the disclosure does not contradict the interests of the preliminary investigation and is not associated with a violation of the rights, freedoms and legitimate interests of participants in criminal proceedings.

The investigator or the inquirer warns the participants in criminal proceedings about the inadmissibility of disclosure of the data of the preliminary investigation without appropriate permission, which they acknowledge in writing with a warning of liability in accordance with Article 310 of the Criminal Code of the Russian Federation."(Part 2, 3 of Art. 161 of the CPC RF)

As can be seen, the legislation of the occupying state prohibits lawyers in Crimea from disclosing the data of the preliminary investigation obtained during the defence and provides for criminal liability for violation of the blanket disposition of the substantive law of the Criminal Code. Based on the grammatical interpretation of Part 3 of Art. 161 of the CPC RF, the investigator or interrogating officer is obliged to first orally warn the lawyer about the inadmissibility of the disclosure of such information. Only then does the stage of documenting the lawyer's consent to the non-disclosure of the confidentiality of the preliminary investigation follow. The consent should not only state the obligation of the lawyer not to disclose information, but also clearly state its scope, nature, terms of non-disclosure, etc. But already at this stage, significant violations occur.

One of the interviewed lawyers:

"When I refused, I said that I was ready to sign such a consent, but I needed to understand what kind of information I must not disclose. And in what exactly this information was secret. The investigator did not explain this to me, that is they did not tell me exactly what information I should not disclose and why."

6 attorneys said they had signed such a consent. Only 3 lawyers reported that the confidentiality of the investigation in some trials is limited only to certain procedural documents or information that does not apply to all materials of the case.

An attorney nevertheless has the right, free from threats and other methods of unauthorised persecution, to refuse to sign the obligation of non-disclosure of the confidentiality of the preliminary investigation, which is recorded by two witnesses. Although the refusal does not preclude criminal liability for the dissemination of such information, the interviewed lawyers have never encountered accusations of violation of Art. 310 of the Criminal Code of the Russian Federation.

One of the interviewed lawyers:

"In such case, the investigator invites two witnesses and, in their presence, explains to me the obligation not to disclose information received in the course of this work. That is all a non-signing leads to."

Lawyers in Crimea also inform about the impact of the refusal to sign the consent to the non-disclosure of confidentiality of the preliminary investigation on the possibility of exercising their rights. Two of the interviewed lawyers involved in politically motivated cases explicitly stated that there had been insistent demands of their signing of the non-disclosure obligation from the de facto investigating authorities.

Investigators of the investigative groups ignored the right of lawyers both to receive explanations and to refuse to sign a non-disclosure obligation. "We are not supposed to give you any justifications, we just have to collect the signed non-disclosure obligation from you," is the main argument of the investigation.

Also, one of the Crimean lawyers reports on the restriction on access to the case file in the event of refusal to sign the obligation of non-disclosure of preliminary investigation: "If a signed acknowledgement of the non-disclosure of information of pre-trial investigation was not provided, then investigators did not give you the opportunity to take pictures. So you just sit down and write. If I gave a signed acknowledgement of non-disclosure, then the investigator could decide, for example, to make available the record of forensic examination so I did not have to rewrite the details of the topic or questions asked – I can then photograph the record. If I refuse to sign, they say: "You refused to sign, so you just sit and write."

On the territory of the occupied peninsula, the signing of the non-disclosure obligation by the advocate is, as a rule, in the interests of the investigation and the prosecution. The reason for this is the already habitual desire to

muffle the informational noise around political criminal cases and prevent the passing of information about the case to international, including judicial, bodies (such as the European Court of Human Rights).[63] As a result, the non-disclosure acknowledgement significantly limits the freedom of action of the defence in the criminal proceedings, primarily for advocates.

4.1.2. Exercise of the rights of lawyers when a preventive measure is applied. Characteristics of the lawyer's work with the client when a preventive measure in the form of detention is chosen

The next analysed group of rights and guarantees of lawyers in the occupied Crimea relates to the stage of applying the preventive measure to the client and the client's stay in places of detention. Admission to places of detention and unhindered contact with the client is one of the advocate's basic rights and powers. This is also an important component of the effective protection of the client's violated rights, including prevention as much as possible of any violations of the client's rights in places of detention (the right to life, health, the prohibition of discrimination, the right to qualified legal assistance in the framework of the right to a fair trial, etc.) .

In accordance with Art. 108 of the CPC RF, detention as a measure of procedural restraint is applied by judicial decision in respect of a person suspected or accused of committing crimes for which the criminal law provides for punishment in the form of imprisonment for a term of more than three years if it is impossible to apply another, milder, preventive measure. A special normative legal act enshrining the general provisions for access by lawyers of the occupied Crimea to the client in places of detention is the special federal law of 15 July 1995 N 103-FZ "On the Detention of the Suspected and Accused of Crimes"

Part 1 of art. 7 of this law defines three main types of places of detention:

- pre-trial investigation detention facilities of the penitentiary system (pre-trial detention centres (SIZO);
- facilities for temporary detention of the suspected and accused of the internal affairs bodies (IVS);
- facilities for temporary detention of the suspected and accused of the border guards of the federal security service.

Obviously, the issue of the exercise of the rights of Crimean lawyers in the course of work with clients who are in places of detention is more than relevant and requires careful monitoring by human rights defenders and lawyers themselves.

63 See: https://www.vedomosti.ru/politics/articles/2015/11/13/616767-podpiska-sud / Ruling of the Constitutional Court of the Russian Federation of 6 October 2015 No. 2444-O "On the complaint of a citizen of Vladimir Dvoryak on the violation of his constitutional rights by the provisions of paragraph 3 of part two of article 38, part three of article 53, article 161 of the Code of Criminal Procedure of the Russian Federation and article 310 Criminal Code of the Russian Federation." Source: http://pravo.gov.ru/proxy/ips/?docbody=&prevDoc=102031436&backlink=1&nd=102381887

a) Access of the lawyer to the client in places of detention

"All persons arrested, detained or imprisoned shall be provided with appropriate opportunities, time and conditions for a lawyer to visit, communicate with and consult them without delay, interference or censorship and in full confidentiality. Such consultations can be held in the presence of law enforcement officials, but without being heard by them." (UN Basic Principles on the Role of Lawyers)

"Suspects and the accused are allowed to have meetings with defenders from the moment of actual detention. Meetings are provided in private and confidentially without limiting their number and duration, with the exception of cases provided for by the CPC RF. Meetings are provided to the defender upon presentation of the lawyer's certificate and warrant. Requiring other documents from the lawyer is prohibited. "(Part 1 of Art. 18 of the Law on the Detention of Suspects and Accused)

The lawyer has the right to visit and hold consultations with the client on a confidential basis on the premises of the pre-trial detention centre. Visits are subject to the provisions of the rules on the regime of visits by relatives and other persons. The Ministry of Justice of the Russian Federation[64] provides for the possibility of including visits, incl. with a lawyer, in the daily routine of the pre-trial detention centre. Meetings should[65] be held without restrictions in duration and number, but the legislation provides for some exceptions. Visits over 2 hours, in accordance with Art. 49 of the CPC RF, may be limited in time by the investigating authorities due to urgent circumstances (for example, the need to physically transfer the client to another place), but only subject to prior notification of not only the suspect, but also the lawyer.

To access the client, the lawyer must present the lawyer's certificate and attach to the case file a warrant to provide legal assistance to the particular client. It is illegal for the administration of the place of detention to require the permission of the investigator or any other documents for a meeting with the client.

According to the survey of 18 lawyers, none of them was given a written refusal of a meeting with the client in a pre-trial detention centre in Crimea or on the territory of the Russian Federation.

If such a written refusal were received, it would be subject to appeal – this could affect the current practice of not admitting lawyers to clients. As already mentioned in the previous sections, establishing contact with the client could be complicated by the hiding information about the location of the person,

64 Order of the Ministry of Justice of the Russian Federation of 14 October 2005 N 189 "On the approval of the internal rules of the investigative detention centres of the penitentiary system". Source: http://ivo.garant.ru/#/document/12142931/paragraph/4276:0

65 Order of the Ministry of Justice of the Russian Federation of 14 October 2005 N 189 "On the approval of the internal rules of the investigative detention centres of the penitentiary system", paragraph 145. Source: http://ivo.garant.ru/#/document/12142931/paragraph/4276:0

or by changing the territorial jurisdiction of the case and moving the client from Crimea to the pre-trial detention centre on the territory of the Russian Federation.

The practice of direct written refusals to a lawyer by the administration of a pre-trial detention centre is not widespread as that would be a too obvious violation of the norms of the CPC RF. But this does not exclude the hindering of access that violates the norms of the CPC RF. There is either an oral refusal of a meeting with the client or the lawyer is forced to refuse to hold such a meeting (for example, because of long queues or inconvenient time set for visits).

aa) The requirement to provide the detention centre administration with additional documents other than a warrant and a lawyer's certificate

5 lawyers reported that they had been required to provide additional documents to be admitted to the clients. This practice is not common in the Crimean pre-trial detention facilities, but exists in the Lefortovo pre-trial detention centre in Moscow, where the Ukrainian sailors and many Crimeans currently involved in political cases (for example, on charges of "terrorism") are kept. In violation of the laws of the Russian Federation, the administration of the aforementioned pre-trial detention centre does not allow the lawyer to see the client without a written notification of the investigator about such a visit.

One of the interviewed lawyers: "Only at the Lefortovo pre-trial detention centre no. 2 of the Federal Penitentiary Service of Russia, Moscow. Without a written notice (permission) of the investigator to the management of pre-trial detention centre (SIZO) No. 2 stating that the lawyer is involved in the criminal case as a defender, the lawyer will not be able to go to a meeting with the client, which is a direct violation of Art. 49 and 53 of the CPC RF. For example, in the criminal case against citizens of Ukraine, Ukrainian sailors captured by the Russian Federation on 11/25/18."

Lefortovo also uses other ways to prevent lawyers from accessing clients. In November 2016, the lawyers of Yevgeny Panov, a defendant in the "saboteurs" case, were denied participation in investigative actions in the investigation rooms of the pre-trial detention centre (SIZO). The reason for the not admitting the lawyers is the order to bring to Panov only a specific lawyer from Simferopol.[66] In addition to Lefortovo, it is also worth noting the pre-trial detention centre of the city of Shakhty (RF). One of the lawyers said that in order to access his client he had had to submit to the head of the pre-trial detention centre a permission to visit.

66 Crimean Human Rights Group, "Russian lawyers were not allowed to visit Ukrainian Panov in Lefortovo." Source: https://crimeahrg.org/k-ukraintsu-panovu-v-lefortovo-ne-pustili-rossiyskih-advokatov/

It can be concluded that the existing practice in some pre-trial detention centres of the Russian Federation contradicts the legal positions of the Constitutional Court of the Russian Federation on the issue of the lawyer's entering a criminal case as a defender,[67] depriving the suspect and the accused of the opportunity to receive qualified legal assistance in a timely manner, and the advocate (defender) of the opportunity to fulfil his or her professional and procedural duties.

bb) Delaying the lawyer's admission to the pre-trial detention centre

In the pre-trial detention centres, both in Crimea and in the Russian Federation, there is a general tendency to delay the admission of lawyers to meetings with their clients. According to 13 of the 18 interviewed lawyers, a visit to a pre-trial detention centre is regularly accompanied by long queues, a specific work schedule and a strict restriction on the number of lawyers who have the right to be simultaneously present in the building of the pre-trial detention centre.

One of the interviewed lawyers about the experience of visiting a pre-trial detention centre in Crimea and the Russian Federation (a pre-trial detention centre in Moscow and Rostov-on-Don): "Every 2nd or 3rd visit to the pre-trial detention centre is unsuccessful, because they allow us to go there only from 9:00 to 12:00 and from 14:00 to 17:00. Huge queues. That is investigators, lawyers and public defenders all come in one queue. This is a huge number of people. It is necessary to go to the queue at 5 or 6 in the morning and it is not evident that you will actually get in. There are about 7 rooms there, where clients meet with lawyers. And getting in is very difficult because of this regime set there. [...] Another problem is that the priority in entering the centre is always given to investigators, and because of this only two advocates can go there every day."

On average, the waiting period for visiting the client in a pre-trial detention centre can vary from several hours to a day. In Lefortovo, for example, 8-10 or even fewer lawyers are allowed per day (with the number of people arrested standing at 80-90). Given that many Crimeans are kept in pre-trial detention centres in the Russian Federation, as well as the simultaneous large flow of detentions, arrests, investigative actions, court hearings in Crimea, for lawyers, waiting for a meeting longer than two hours is a critical obstacle.

One of the interviewed lawyers: "The pre-trial detention centre is a problem. This is really a problem, because getting there is almost impossible. We can queue all day and not get in."

67 See Ruling of the Constitutional Court of the Russian Federation of 25 October 2016 No. 2358-O "On the refusal to accept for consideration the complaints of citizens Aliyev Gadzhi Alievich, Badamshin Sergey Viktorovich and Ivanova Alexandra Pavlovna about violation of their constitutional rights by Article 18 of the Federal Law on Detention of the suspected and accused of crimes." Source: http://www.garant.ru/products/ipo/prime/doc/71446254/

In such circumstances, the lawyer sometimes may be unable to contact the client in person on the appointed day.

Because of the queues, in the Lefortovo pre-trial detention centre, as the most problematic pre-trial detention centre due to the large number of the detainees, the so-called selective or compromise draw system is used: 2-3 times a month, with the help of lotto barrels, the order of lawyers' visits to clients is determined. The results are reported in a specially created electronic chat. Each lawyer must arrive on the designated day, but if it is impossible to attend, a meeting with the client is postponed for at least 10 days. At the same time, lawyers having a first meeting with the client are allowed in out of turn.

One of the interviewed lawyers: "And now I have experience working in the Moscow pre-trial detention centre, the situation there is in general critical: lawyers, to get to their clients, draw lots three times a month, they get together and draw lots every 10 days go to their clients. And if you cannot come this day, at this time, and have not changed with someone, then you will not get to the client for 10 days, another 10 days. And there are days when only two of the 10 lawyers selected by drawing lots get in, the rest are then transferred to other days."

On the one hand, such a draw system prevents conflict situations among lawyers, but on the other hand, it does not provide for the possibility of free and unhindered access of the lawyer to the client. In general, problems with access to the client in the pre-trial detention centre arise due to the imperfection of the penitentiary system of the Russian Federation and the outdated criminal / criminal procedure legislation of the Russian Federation. But, in the context of the practice of demanding written permits from investigators, the existing restrictions demonstrate a certain bias against defenders on the part of the pre-trial detention centres (SIZO) administration and the investigating authorities.

At the same time, a study of the situation with the access of lawyers to temporary detention facilities allows us to conclude that there are no significant violations in this area.

cc) Unlawful reduction of meeting duration in pre-trial detention centres

Although meetings with lawyers are stipulated by the daily routine of the pre-trial detention centre and the visit duration should not be shortened without significant reasons, the lawyers reported some violations in the pre-trial detention centres in Crimea and the Russian Federation.

For example, the time allotted by law for a meeting with the client is reduced by the time for walking or eating.

One of the interviewed lawyers: "The transfer of the client to the cell for lunch occurs in the time allowed for the meeting and takes a long while."
"You have 3 hours before lunch. After lunch, you have literally 2 and a half hours, because well before 5, even half past four or a quarter or 20 minutes to five they begin to tell everyone to go away and say, "All go, we need to put them to their cells before 5." And this is only on Mondays to Fridays. This greatly complicates the work with clients."

Also, one of the lawyers encountered a refusal to see the client during the lunch break. Such a request can be accepted if it is agreed with the client and the client requested the head of the pre-trial detention centre (SIZO) for the provision of time for a meeting with the lawyer.

"In the pre-trial detention centre no. 1 of Rostov, it takes a long time for the detainee to be brought to meetings with lawyers – I waited there for almost an hour. The client was on a walk, they waited until he returned from the walk and only then brought him to me. And I asked to stay during the lunch break, write a statement there, as is done in the Lefortovo pre-trial detention centre. But the pre-trial detention centre refused, claiming that this is a violation of human rights and they have such a routine."

b) Guarantee of time and conditions for holding confidential meetings with the client, consultations in the pre-trial detention centre

As already mentioned above, meetings with the client should be carried out without limiting their number and duration.

In accordance with paragraph 93 of the UN Standard Minimum Rules for the Treatment of Prisoners of 1955,[68] persons in custody or awaiting trial *"in order to protect themselves, should have the right to apply for free legal advice, where possible, to receive in custody a legal adviser, who undertook their defence, prepare and transmit confidential instructions to the lawyer. To this end, writing materials should be provided at their request. Meetings of a prisoner with the legal adviser should take place before the eyes, but outside the earshot of police or prison officials."* This clause also implies the right of the lawyer to receive documents from the client and hand to the client documents related to the person's case. In accordance with Art. 8 of the Federal Law on Advocacy, any information related to the provision of legal assistance by the lawyer to the client is classified as a lawyer's secret. This means that upon entering and / or leaving the pre-trial detention centre, written information, as well as other documents signed by the client, cannot be seized / made available to the administration of the pre-trial detention centre.

68 The Standard Minimum Rules for the Treatment of Prisoners, adopted on 30 August 1955, in Geneva at the UN Congress on the Prevention of Crime and the Treatment of Offenders, approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May, 1977. Source: https://www.un.org/ru/documents/decl_conv/conventions/prison.shtml

In accordance with the Order of the Ministry of Justice of the Russian Federation "On the approval of the internal rules of the detention centres of the penitentiary system",[69] the lawyer has the right to communicate with the client in private, in a specially designated office without a dividing wall. Meetings should be held in confidentiality, which may be limited by the pre-trial detention centres (SIZO) employee solely for visual observation. Listening, audio recording of the meeting or the presence of a pre-trial detention centre employee within the earshot is prohibited.

The interviewed lawyers working with Crimeans reported constant violations by the administration and staff of pre-trial detention centres in Crimea and the Russian Federation. They impede the full conduct of the person's defence and create problems for both lawyers and their clients.

aa) Insufficient number of rooms for meetings with the client

A common problem in pre-trial detention centres is the lack of a sufficient number of premises for lawyers to visit their clients. This leads either to the impossibility of a meeting, or to a meeting without any confidentiality.

One of the interviewed advocates: "The pre-trial detention centre no. 1 in Simferopol does not have the ability to arrange normal conditions for lawyers to meet with their clients due to the very small number of investigation rooms. Offices no. 1, 2 are intended for public defenders, under certain conditions (with the permission of the head of the centre or the officer on duty) they can also be provided to advocates. Room no. 5 with a metal cage – for life-sentenced prisoners. In fact, there are six offices for investigators and lawyers – no. 3, 4, 6, 7, 8, 9, sometimes no. 2,3. This is for the whole Crimea, the city of Simferopol, Sevastopol, and regions. For all investigators of the Ministry of Internal Affairs, Investigative Committee, FSB and of course lawyers. Offices no. 10 and no. 11 were re-planned into one office for notary's work, etc., that is, minus two other offices."

The problem with the meeting rooms often arises due to limited resources in the centre itself and the overcrowding of the detention centres with suspects / accused. But the lack of premises can also be artificially created by deliberately reducing the number of available rooms and be used as a reason for refusing meetings with the client.

One of the interviewed lawyers: "The number of rooms in the pre-trial detention centre was reduced, some of the rooms are reserved by the investigation. In winter, when it was cold, it came to verbal clashes. The lawyer wants to use the room from 8:00 in the morning. In fact, they prevent this. From 7:00 in the morning you queue, at 9:00 you go [to the pre-trial detention centre], by 10:00 they bring [the client], at 11:00 they tell you to finish. The first 4 people in the queue can get in, then it is not guaranteed. It is necessary to go to the queue by 6-7 o'clock in the morning. There were cases when I queued and did not get in."

69 Order of the Ministry of Justice of the Russian Federation of 14 October 2005 N 189 "On the approval of the internal rules of the investigative detention centres of the penitentiary system". Source: http://ivo.garant.ru/#/document/12142931/paragraph/4276:0

bb) Prohibition to bring in and take out written information from the client or other documents signed by the client. Violation of privacy

4 interviewed lawyers who defend clients in cases of "terrorism" complain of the ban in the Lefortovo pre-trial detention centre and pre-trial detention centre no. 5 in Rostov on bringing in and taking out any written information from the client, petitions, and other documents of the criminal case. It is also forbidden to transfer to the client any documents for signature.

One of the interviewed lawyers: "Regarding the pre-trial detention centres. There are two specific pre-trial detention centres – this is Lefortovo and pre-trial detention centre no. 5 [in Rostov], in my opinion. The one in Rostov is of the FSB, it is located directly on the premises of the [U]FSB in Rostov, where some of the guys are also sitting. Muslim Aliyev and Emir-Usein Kuku were detained there. Here in Lefortovo, this is also considered a pre-trial detention centre of the FSB, because it is at the FSB, so it is officially under the FSIN. Here in Lefortovo and in this FSB pre-trial detention centre in Rostov you will not be able to take away anything signed by your client or receive papers from the client, etc. You must conduct everything through the FSB. They must look [at the documents], and this is a violation of the lawyer's secret, violation of the right to defence."

If the client was subjected to torture, another form of degrading treatment by the investigator or the temporary detention center (SIZO) administration, or other violations were recorded, the client can use all non-prohibited ways to protect his or her rights (part 2 of art. 16 of the CPC RF). The client has the right to confidentially transmit information about such facts to the lawyer for further distribution to the media, in order to challenge the actions of officials in a judicial proceeding, prepare a claim to the ECHR, etc.

According to lawyers, the transfer of documents is possible only through the administration of the aforementioned detention centres, which in itself violates the right to confidentiality. In addition, attempts are made to use censorship and prevent the lawyer from receiving information from the client about violated rights.

In other pre-trial detention centres in the Russian Federation and in Crimea, the practice of transferring documents to the client and their signing by the client is significantly different for the better and at the moment there are no signs of gross violations as those recorded in the Lefortovo centre and centre no. 5 in Rostov.

cc) Violation of the right to confidential meetings

Lawyers also record violations of the RF principle of confidentiality during meetings with the client in the pre-trial detention centre. For example, one of the Crimean lawyers reports a violation during a meeting with the client, namely, the detention centre employee's presence within earshot[70] of a confidential conversation between the lawyer and the client:

"Despite the fact that there were 2 empty investigation rooms nearby, they took me to another wing of the building and put me in a room for meetings with relatives. There was a long table, Ruslan was on one side, I was sitting on the other and behind the glass an employee of the pre-trial detention centre, the audibility was perfect, there was no privacy."

In this case, conditions were deliberately created in the pre-trial detention centre for listening to the conversation between the client and the lawyer. This not only violates the right to confidentiality, but also qualifies as disclosure of lawyer's secret.

During the interviews, half of the interviewed attorneys reported that it was highly probable that the detention centre staff would listen to what was going on in the meeting rooms and audio record the conversations. At the moment, obtaining direct evidence of listening to meetings with the lawyer or relatives is not an easy process, but some lawyers are aware of cases of interruptions in visits because the conversation was about the client's procedural documents.

One of the interviewed lawyers: "Also, everything is listened to in Lefortovo, and in other pre-trial detention centres too. Prisoners can only communicate with relatives about "transfers" and not about the case file. They know the case when such a conversation was interrupted."

Interruption of the meeting is possible in the event of an attempt by the defender to transfer to the suspect or accused any prohibited items, substances and food whose storage and use are prohibited.[71] The case of interruption must be documented and must be checked for legality. Groundless interruptions and the lack of investigation of such cases in the Russian pre-trial detention centres constitute another set of gross violations.

In general, lawyers try to control their speech during meetings and are forced to self-censor in order not to harm their client.

One of the interviewed lawyers: "Most likely, there is audio recording in meeting rooms, so I try not to say anything that can be used, constantly in tension."

70 Order of the Ministry of Justice of the Russian Federation of 14 October 2005 N 189 "On the approval of the internal rules of the investigative detention centres of the penitentiary system", paragraph 145. Source: http://ivo.garant.ru/#/document/12142931/paragraph/4276:0

71 Ruling of the Supreme Court of the Russian Federation of 23.04.2019 N AKPI19-117. Source: https://legalacts.ru/sud/reshenie-verkhovnogo-suda-rf-ot-23042019-n-akpi19-117/

dd) Inspection of the attorney's personal belongings and prohibition of bringing audio and video equipment to the pre-trial detention centre

In accordance with Art. 18 of the Federal Law "On the detention of suspects and accused of committing crimes", the defender is prohibited from bringing technical means of communication to the territory of the pre-trial detention centre, including those that allow filming, audio and video recording.[72] In view of this prohibition, the pre-trial detention centre conducts an inspection of the lawyer's personal belongings at the entrance. This was reported by all interviewed lawyers.

As a rule, at the entrance, a pre-trial detention centre employee asks the lawyer about the presence of prohibited items, asks to show the contents of the bag. In addition, the lawyer has to pass through a metal detector.

"At the entrance, a pre-trial detention centre employee asks the lawyer about the presence of prohibited items, asks to show the contents of the bag, passes the bag through the metal detector frame or checks it with a special metal rod."

It is important to note the exclusion from the general prohibition of bringing equipment, also enshrined in the above-mentioned Art. 18. Permission is granted for copying and duplicating equipment, photo equipment intended solely for making copies of criminal case materials, as well as computers. The use of such equipment is possible on a permit basis. In practice, the administration of a pre-trial detention centre forbids to bring equipment, including not intended for video and audio recording.

One of the interviewed lawyers: "It is forbidden to bring and use telephones, cameras, photocopiers, laptops, voice recorders, pen drives in to all detention centres. A prohibition by the administration of these institutions."

The lawyer is also not allowed to bring any foodstuff or water for the client to some pre-trial detention facilities (for example, Lefortovo):

"It is not allowed to bring water, food, etc. anywhere. The refusal is due to the fact that there is a separate procedure for the transfer of any items to prisoners."

This prohibition applies also to food or water for personal use by the lawyer during a meeting with the client.

72 See Ruling of the Supreme Court of the Russian Federation of 24.09.2012 N AKPI12-1168 "On the dismissal of an application for declaring partly ineffective paragraph 146 of the internal rules of the detention centres of the penitentiary system, approved by the order of the Ministry of Justice of Russia of 10.10.2005 N 189". Source: https://base.garant.ru/70249474/

4.1.3. Comparative characteristics of the exercise of the advocates' rights in politically motivated and ordinary criminal cases during the occupation

The situation with the exercise of the advocates' rights in Crimea is obvious. Since the moment of the occupation of Crimea, the characteristics of all criminal cases that directly affect the possibility to exercise procedural rights and powers by the lawyer have been:

1. ***The problem of discontinuation of criminal cases: the impossibility to recognise a person's right to rehabilitation and to discontinue a criminal case in the event of the person's non-involvement or absence of crime***
2. ***Conducting investigative actions without the participation of a lawyer***
3. ***Non-observance by the investigating authorities of territorial jurisdiction,***
4. ***Non-compliance by the investigating authorities with the procedure for considering applications, petitions, complaints and responding to them,***
5. ***Complicated access to case files,***
6. ***Complicated procedure for admitting the lawyer to the pre-trial detention centre and violation of the right to confidentiality of meetings with the client.***

This issue is mainly typical of Russia – it is encountered by criminal lawyers involved in the defence of Ukrainian political prisoners in the Russian Federation. This clearly demonstrates the process of forced imposition by the occupying state of its own legislation, its own methods of law enforcement in Crimea, which violates the principle of continuity in the occupied territory of the legal system in force before the beginning of the occupation.

The occupied Crimea has become a place of concentration of overt repression in relation to all those inconvenient to the occupation regime. As a result, more and more criminal cases are being brought up against such persons, forming a separate category of politically motivated trials. Lawyers defending clients in political criminal cases are also singled out by the Russian Federation as a separate group.

Such a targeted approach has led to practical problems in criminal proceedings and the emergence of new, specific forms of violation of the rights of lawyers, namely:

1. ***Criminal and administrative prosecutions of lawyers.***
2. ***Use of other forms of pressure on lawyers (threats, deliberate isolation of the lawyer).***
3. ***Concealment of the location of the client.***
4. ***Falsification of the client's testimony and other evidence and the impossibility to verify their accuracy.***
5. ***Non-admission of the lawyer to the place of investigation activities.***
6. ***Non-admission of the lawyer to the client without special permission of the investigator.***

7. Prohibition for the client to exercise the right to communicate with the lawyer.

8. Prohibition to bring to some pre-trial detention centres and take out from them written information from client or other case materials.

9. Violation of lawyer's secret by the investigation.

10. Pressure on the client to refuse the services of the lawyer invited by the client, etc.

Lawyers working with political criminal cases in their practice face not only the "basic" violations inherent in non-political criminal trials. We are already talking about violations of a specific nature with more serious consequences for both lawyers and defendants – they affect not only the right to defence and a fair trial, but are directly aimed at humiliating human dignity by violating basic human rights and freedoms (primarily, the right to life, health, freedom of movement, freedom from torture and inhuman treatment).

4.2 Trial stage

4.2.1. Analysis of the rights of lawyers at the trial stage

"1. The defender participates in the examination of evidence, submits motions, presents to the court his or her opinion on the merits of the charge and its evidence, on circumstances mitigating the punishment of the defendant or acquitting the defendant, on the measure of punishment, as well as on other issues arising during the trial.

2. If the defender does not appear and cannot be replaced, the trial shall be adjourned. Replacement of the defender shall be made in accordance with the third part of Article 50 of this Code.

3. In the event of a replacement of the defender, the court shall provide time for the defender who has recently entered the criminal case to become acquainted with the criminal case file and prepare for participation in the trial. Replacement of the defender does not entail a repetition of actions that by that time had been conducted in court. At the request of the defender, the court may repeat interrogations of witnesses, victims, experts or other judicial actions." (Art. 248 of the CPC RF)

At the trial stage, the lawyer must be empowered to fully defend the defendant and ensure the adversarial principle. In accordance with Art. 248 of the CPC RF, the defender is actively involved in the preparation and conduct of the trial in order to defend the rights of the client. Thus, the lawyer, on an equal footing with other participants in the trial, should be given the opportunity to study the case file in advance.[73]

73 UN Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Role of Lawyers, Havana, Cuba, 27 August - 7 September 1990, Principle 21. Source: https://www.un.org/ru/documents/decl_conv/conventions/role_lawyers.shtml

During the judicial debate, the lawyer has:

- the right guaranteed by the ECHR to communicate with the client in confidence,[74]
- the right to submit applications and petitions,
- the right to express a position before the court on the merits of the case from the side of the accused,
- the right to appeal against the decision of the court of first instance (Art. 389.1 of the CPC RF), etc.

This obliges the court not only to allow the lawyer to take the floor, observing the principle of equality of the parties, but also to objectively consider the lawyer's arguments, justifications, and the documents submitted. This fact must be recorded in the minutes of the hearing, and documents in writing must be attached to the case file.

In Crimea, the exercise of the right to defence during a court session is often complicated by the direct disregard / restriction of a number of powers of lawyers on the part of the court.

a) Restrictions in access to the case file to prepare for the trial

The international legal obligation[75] of the competent authorities to ensure the lawyer's early access to the case file is an important requirement for providing effective legal assistance to clients, where the conditions for such access play a key role. Consequently, the court should provide a specially designated room in which lawyers can access documents and be physically with them for a certain period of time.

According to all the interviewed lawyers, such rooms do not exist in any of the courts of Crimea, although rooms are at the same time provided for the training of prosecutors.

One of the interviewed attorneys: "No, nowhere, in no of the courts is this provided for attorneys. Now there is "know-how": in the "Supreme Court of the Crimea" there is, as we call it, a "prosecutor's nook" and is available only to the prosecutor. It is like a special office. And we [the advocates] are in the lobby, on the street or in the canteen."

74 See CASE OF YAROSLAV BELOUSOV v. RUSSIA no. 2653/13 and 60980/14. Source: https://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=003-5506484-6921777&filename=Judgment%20Yaroslav%20Belousov%20v.%20Russia%20-%20Bolotnaya%20protestor%u2019s%20claims%20on%20freedom%20of%20assembly%20and%20glass%20cabins%20in%20court.pdf This right also stems from clause 8, 9, part 4, art. 47 of the Criminal Procedure Code of the Russian Federation, as well as from the application of analogy to paragraph 16 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 30 June 2015 N 29 Moscow "On the practice of application by the courts of legislation ensuring the right to a defence in criminal proceedings". Source: http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=181898#01130231365619081

75 UN Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Role of Lawyers, Havana, Cuba, 27 August - 7 September 1990, Principle 21. Source: https://www.un.org/ru/documents/decl_conv/conventions/role_lawyers.shtml

With regard to the time allotted for becoming acquainted with the case file, one lawyer, working also with non-political cases, reports non-compliance with the terms of notice:

"In the Kiev [district] court [in Simferopol], for example, there was a case ... of contract murder. There, the lawyer enters the case at some point and says: "Your Honour, I just entered, there are 17 volumes of the case file, please give me time to become acquainted with the materials." The judge says: "You will get acquainted in between sessions" and continues the court session. The lawyer says: "I am not ready, I do not know the materials of the case." "So, do not argue with the court, or I will remove you," the case continues, and the lawyer then... when a break is announced, gets acquainted with the case file."

This practice also violates Part 3 of Art. 248 of the CPC RF, which stipulates the obligation of the court to provide time to the defender who has newly entered the criminal case to become acquainted with the materials of the criminal case and prepare to participate in the trial. The lawyer must be admitted to the case to have the time sufficient to become acquainted with the case file in advance. Due to the complexity of this process, admission to the materials two hours before the start of the hearing cannot be recognised as occurring in advance.

In addition, there is a practice of notification of the lawyer at a short notice about a court hearing, which does not allow the lawyer access the materials, communicate with the client and prepare well for the debate:

"The court is considering a criminal case. The defence attorney, in this case myself, is notified 4 hours before the hearing that there will be a hearing. I say: "I cannot arrive, I have a different plan, I have a different commitment, and additionally I have 5 days prescribed by law, I will not come." The court hires a local [new additional] lawyer, introduces the person into the proceedings: "You will work for free."

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b) Time for consultations with the client

Personal contact and the right to short consultations with the client with the permission of the judge during the trial are not difficult issues in Crimea. During the interview, attorneys paid little attention to this issue – most did not report anything regarding written refusals. But several respondents nevertheless pointed to a number of violations that they had encountered in the course of protecting clients in political cases.

One lawyer informed that in some courts of Crimea and the Russian Federation, time for consultations with the client is allocated exclusively before the trial.

The possibility of consultation during the hearing depends on the will of the judge.

"Was, at the request of the client, time for consultations with the lawyer granted during the hearing?

A: Not during the hearing. Only before it.

- There was a request and a refusal?

A: It varies. Sometimes the judges agree to announce a break and things can be discussed, sometimes they refuse. There is no such thing in writing. Different practices. Basically, they give you 5-10 minutes to talk before the hearing."

Only one lawyer directly encountered a complete prohibition of consultations, which also violates the European Convention and the legislation of the Russian Federation, during court hearings in St. Petersburg:

"The St. Petersburg City Court, the Dzerzhinsky District Court, the Nevsky District Court [refused] with reference to the fact that the lawyer visits the pre-trial detention centre and discusses the position, but not during breaks in the court hearing."

It is important that such refusals are not made in writing.

A court session with the participation of the accused in the form of a video conference[76] (part 2 of article 401.13 of the Criminal Procedure Code) is peculiar. In this case, the Criminal Procedure Code of the Russian Federation[77] provides guarantees for the proper exercise of the right of the accused to use the assistance of a defender and obliges the court to explain to the client the right to communicate with the defender in the absence of other participants in the court session, and also take measures to ensure the possibility of such communication

In fact, physical absence practically does not provide the lawyer with the opportunity to communicate with the client during the trial. Also, this is a way of weakening the position of the defence of the accused by the prosecution and the court. For such purposes, a video conference, contrary to the will of the defendants in the case and of the defence, was actively used in "The 26 February Case".[78]

One of the interviewed lawyers: "In some cases, the courts use video conferencing. And here, two years ago, the "February 26 Case" was heard, there was a video conference. Naturally, I saw my client only on the screen and that, as it were, limits the normal proceedings."

76 See part 2 of article 401.13 of the Criminal Procedure Code. A person in custody or a convict serving a sentence of imprisonment has the right to participate in a court session directly or through the use of video conferencing systems, provided that he or she requests this

77 See Ruling of the Plenum of the Supreme Court of the Russian Federation of 30 June 2015 N 29 Moscow "On the Practice of the Application by the Courts of Legislation Providing the Right to a Defence in Criminal Proceedings", paragraph 16. Source: http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=181898#011302313656190 81

78 Human Rights Information Centre, "The 26 February case": the court considers the appeal without the presence of the key persons involved, 29 March 2016. Source: https://humanrights.org.ua/ru/material/sprava_26_ljutogo_sud_rozgljadaje_apeljaciju_bez_prisutnosti_kljuchovih_figurantiv; Memo "The 26 February case". Source: https://memohrc.org/ru/special-projects/delo-26-fevralya

c) Violation of the principle of confidentiality during consultations / transfer of documents to the client during the trial

Sometimes it is possible to talk with the client without strangers – mainly in ordinary criminal cases. But in political trials, there is almost always a guard accompanying the defendant.

One of the interviewed lawyers: "I asked for a break to prepare a position with the client, but one of the guards did not come out, there was no confidentiality."

Documents protected by lawyer's secrecy can be transferred to the client during a court session, but without a guarantee of confidentiality. All documents addressed by the lawyer to the client pass through the mandatory control of the guards.

One of the interviewed lawyers: "Any documents can be transmitted only through court staff and they read them."

But guards do not always read the text – sometimes the task is to check the documents for the presence of prohibited attachments:

"I can also transfer the papers, but here the papers are always with the permission of the guard. He does not look at these papers. But he checks, for example, if this is a bundle of papers so that nothing is laid between them. He does not read them, nothing, it can be seen."

d) Complication of the defence through the appointment of a new lawyer to participate in the trial

It is difficult for lawyers to secure the postponement of the hearing in the de facto courts of Crimea. In accordance with Part 2.1 of Art. 248 of the CPC RF, if the defender does not appear, the hearing may be adjourned. Pro-Russian judges often use the specified article of the Criminal Procedure Code to appoint a new lawyer for the duration of the trial: basically either inactive or acting contrary to the interests of the client.

One of the interviewed lawyers: "I worked alone for a long period of time and I had overlapping commitments associated with the work of the Supreme Court of Crimea, which has priority over the district court. And there were days when I wrote: "I cannot appear at the meeting, because I am busy in the session of the Supreme Court." This, after all, is a serious reason to postpone the hearing of the

district court. And the district court goes for such a trick allowed by the CPC – it appoints a lawyer, in addition to me. I am under the contract, and the court decides – on the grounds that the lawyer cannot appear at the hearing due to his employment – appoint a defence lawyer on behalf of the state in order to ensure the person's right to defence. And the appointed lawyer comes. The accused writes a statement: "I refuse this lawyer, he does not know the case, he has not met with me once, he has not agreed with me on the position, he is silent at the hearing, he is not making any statements, he is not acting in my interests, he simply formally ensures the presence of a lawyer so that the court can formally write that the defender was present." Understanding that this could continue under the Criminal Procedure Code, I had to make considerable efforts to appear in court and not to let them be carried out formally with a wordless, deaf, appointed defence attorney."

Courts formally justify the appointment of a new defence attorney with the need to protect human rights. In fact, the motive of the occupation authorities is the need to legitimise the entire trial and the elimination to the greatest possible extent of defence-focused advocates. This practice takes place especially in political criminal trials.

4.2.2. Characteristics of the exercise of the rights of lawyers in the first instance and appeals courts

All the interviewed lawyers defending persons involved in both political and non-political criminal cases note a clearly prejudiced attitude towards them during the judicial debate. The court restricts lawyers in the freedom of expression of the position on merits of the case, interrupting them, ignoring or unreasonably refusing to consider filed motions and applications, refusing to attach the submitted documents to the case file, but at the same time grants extended powers to the prosecution.

One of the interviewed lawyers: "Sometimes they interrupt a defence attorney. They say that his questions are not relevant. When you file a petition requesting documents or interrogation of witnesses, you are denied this, while similar petitions by the prosecutor are granted, you naturally feel that the defence and the prosecution have an unequal scope of rights and obligations. Of course, this puts moral pressure on the defender."

One of the interviewed lawyers: "The courts refuse to attach documents to the case file, for example, refused to attach a copy of the IV Convention, although they are required to attach and write that it is not relevant to the case. But it should be in the case materials."

One of the interviewed lawyers: "During the consideration of the merits of cases, in fact, the courts turn a blind eye to procedural violations, consciously make illegal decisions, take into account non-existent or incorrectly prepared documents. This trend is evident in the first instance and appeals courts. At the same time, the courts create the illusion of adversarial trial and fairness."

The case of the Ukrainian and political prisoner Volodymyr Balukh is very revealing. In July 2018, the Zheleznodorozhny District Court of Simferopol rejected the petition of attorney Olga Dinze on early conditional parole of the Ukrainian activist Volodymyr Balukh, but granted the petition of the prosecutor to discontinue the consideration of the attorney's petition for the parole.[79]

Also, in April 2017, the Supreme Court of the Russian Federation refused to consider the cassation appeal of the attorney of the Ukrainian Alexander Kostenko,[80] filed as a result of the refusal of the Kirov-Chepetsk court of the Kirov region to consider the request to replace Kostenko's unserved part of the sentence with a milder form of punishment.[81] The defence made attempts to appeal against the decision in the appeals court, but unsuccessfully. The reasons for the refusal to consider the petitions and complaints of lawyers were Kostenko's supposedly extremist activities and his tendency to escape. This reason in itself is a complete disregard by the court of the status of the defence attorney and a powerful demonstration of the support for the prosecution.

During the hearings (mainly on political cases), the courts out the defence attorneys under serious psychological pressure not only through interruptions and unfounded accusations of a dispute with the court, but also by the use of armed guards in huge numbers:

One of the interviewed lawyers: "Pressure on defenders in the trial occasionally takes place. It is expressed in the presence of a large number of armed and masked guards when a preventive measure is being selected, the presence of the same large number of court staff or paralegals nearby... This occurred in the Kiev District Court of Simferopol, in the Central District Court of Simferopol and in the Supreme Court of Crimea."

The trial in de facto courts in Crimea boils down to one point – the admission of guilt of the accused by any means available and not always consistent with the law.

One of the lawyers on working with political cases: "I understand that the sentence should say that there was a defender, but in fact, I have the feeling that our work there is nominal. Well, yes, they listened, nodded... The only thing is whether you are in a good relationship. The most important thing is to admit guilt. Pleading guilty and smiling at the prosecutor means that your client will receive the lowest possible punishment. And if you say that I your client is not guilty, the judge, of course, takes

79 Krym Realii, "The court in Crimea rejected the lawyer's complaint about the denial of parole of Balukh". Source:https://ru.krymr.com/a/news-sud-v-krymu-otklonil-zhalobu-na-otkaz-v-uslovno-dosrochnom-osvobozhdenii-balukha/29481344.html

80 Krym Realii, "Crimean Euromaidan's Alexander Kostenko - on the FSB torture". Source:https://ru.krymr.com/a/aleksandr-kostenko-o-pytkah-fsb/29648309.html

81 Crimean Human Rights Group, "The Supreme Court of the Russian Federation refused to consider complaints of Ukrainian Kostenko's defence for political reasons". Source: https://crimeahrg.org/verhovnyiy-sud-rf-otkazalsya-rassmatrivat-zhalobyi-zashhityi-ukraintsa-kostenko-po-politicheskim-motivam/

the position of the prosecution."

One of the lawyers about non-political cases: "Therefore, it is often better to admit guilt in this category of cases because..., you see, you explain to the client what options are available. And the client concludes that yes, it is better to get the minimum punishment here, even if he considers himself innocent. Again, I depend on the client's will. That is, I explain to him all the risks and possible consequences, and he already makes a decision for himself. If he says "no, we fight to the end", then we fight to the end. You understand that in this case the courts are very strict if someone fights to the end. Nobody likes to work."

Considering the position of the courts towards defence attorneys and the much more advantageous position of the prosecutor in the criminal trial, we can state the obviously inquisitional bias of the process and the unequal conditions for the defence party to exercise its procedural rights.

This violates the adversarial principle of competition and equality of the parties in the trial. The principle is based on the obligation of the court "to create all necessary conditions for the parties to fulfil their procedural obligations and exercise the rights granted to them, including the presentation of evidence, on the basis of which the court decides the judgement or other final decision on the case."[82]

4.2.3. Comparative characteristics of the exercise of the rights of lawyers in politically motivated and ordinary criminal cases during the occupation

At the trial stage, political and non-political criminal cases in Crimea have more common characteristics than differences. In the courts, in general, a lot depends on:

- the mood of the judge,
- the judge's subjective attitude to the prosecutor,
- the judge's subjective attitude to the defence attorney,
- the defence attorney's will to defend the interests of the client.

As for political criminal cases, the following characteristics are worth highlighting here:

- there is no guarantee of confidentiality during conversations with the defence attorney: there is almost always a guard with the defendant,
- video conferencing is deliberately used by the court as a limitation of the client's physical participation in a hearing and the client's direct contact with the defence attorney ("The case of 26 February").

82 See paragraph 1 of the Ruling of the Plenum of the Supreme Court of the Russian Federation of r 19 December 2017 N 51 "On the practice of applying the law in criminal cases in the court of first instance (general procedure for legal proceedings)". Source: http://www.consultant.ru/document/cons_doc_LAW_285530/

One of the interviewed lawyers: "... in Ukraine, even if the person was guilty, it was possible to talk about innocence, and it was interesting to fight. Now it is even uninteresting. Everyone stands up, every second defendant pleads guilty, because in reality everyone understands that it is better to admit guilt."

Obviously, now in most criminal cases the main principle of the Crimean courts is "the accused is always to blame." And here is the main principle of Crimean lawyers – "Do no harm to your client."

V. Overview of the situation of lawyers in administrative proceedings

Despite the fact that the survey covered lawyers involved in criminal cases, to understand the general situation and the extent of the problem, we briefly describe the situation with administrative cases.

5.1. Administrative proceedings in Crimea

To begin with, it is worth pointing out that from the moment of occupation, the Administrative Offences Code of the Russian Federation very quickly began to be used as one of the effective ways to stifle any forms of civil activity and express disagreement on the occupied peninsula. It is actively used against the "extremist", according to de facto authorities, category of Crimeans: Crimean Tatars and other groups of pro-Ukrainian citizens.

From March 2014 to June 2019, human rights defenders recorded at least 353 cases of politically motivated administrative persecution in Crimea.

The figure is twice the number of political criminal cases. Disproportionately high administrative fines and administrative arrests of illegal nature are the main forms of such prosecution. Arrests are preceded by personal search and administrative detention. In Crimean realities, administrative sanctions are applied to participants of peaceful assemblies and to users of social networks.

The accusation is structured, as a rule, on the basis of the publication of information criticizing the Russian authorities, the occupation of Crimea and other content that does not correspond to the agenda of the regime in the Russian Federation. Administratively punishable act may be based on participation in mass gatherings, peaceful protests, pickets, publication on social networks of information about Ukraine, indigenous peoples, national minorities of Ukraine, religious topics, etc.

For example, on 14 October 2017, a series of peaceful pickets of Crimean Tatars took place in Crimea against the persecution of Crimean Tatars by the occupation authorities. As a result, about 50 people were detained, including women and the elderly.[83] Several detainees were eventually found guilty under Part 5 of Art. 20.2 of the Administrative Code "Violation of the procedure for holding a public event" and fined 10,000 roubles[84] each.[85]

As an example of the persecution for publications on social networks, it is worth mentioning the case of Crimean Tatar human rights activists: Lutfie Zudieva

83 OVD-Info, "Picket participants detained in Crimea". Source: https://ovdinfo.org/express-news/2017/10/14/v-krymu-za-derzhali-uchastnikov-odinochnyh-piketov

84 Approx. USD 155

85 OVD-Info, "Crimean Supreme Court upheld in force the fines for participants of pickets in support of Crimean Tatars". Source: https://ovdinfo.org/express-news/2018/02/12/verhovnyy-sud-kryma-ostavil-v-sile-shtrafy-uchastnikam-piketov-v-pod-derzhku

and Mumina Salieva. On 30 May 2019, Zudieva and Salieva were detained by the occupation authorities.[86] The de facto Kiev District Court of Simferopol accused the activists of violating Art. 20.3 of the Code of Administrative Offences of the Russian Federation "Public demonstration of the symbols of a prohibited organisation and the mass distribution of extremist materials", and also imposed on them fines of 1,000[87] and 2,000[88] roubles.

Administrative proceedings against Zudieva were initiated for a comment about an Arabic post on the Facebook social network in April 2014. Salieva is prosecuted for a post on the Facebook social network dating back to 2013.[89] Thus, Crimeans are prosecuted, among other things, for information published by a third party, as well as for personal publications prior to the period of the Russian occupation.

5.2. Analysis of the rights of lawyers in administrative proceedings

In administrative cases, the Code of Administrative Offences of the Russian Federation gives lawyers the tools to conduct the defence, which are largely consistent with their powers enshrined in the CPC RF. The basic difference between the criminal and administrative proceedings in the context of the legal status of the attorney is the mandatory participation. In accordance with Part 2 of Art. 25.5 of the Code of Administrative Offences of the Russian Federation, an attorney or another person (third party) is allowed to participate in the proceedings on an administrative offence as a defender or representative. Given the ever-increasing number of political administrative proceedings, the representation of the interests of those accused of administrative offences in Crimea is carried out by defence attorneys and civil defenders.

The lawyer (as well as another person representing the interests of the defendant) must be allowed to participate in the proceedings on an administrative offence from the moment of its initiation and has the right to:

- have access to the client,
- get acquainted with all materials of the case,
- provide evidence,
- submit petitions and challenges,
- participate in the consideration of the case,
- appeal against the application of preventive measures in the case or against the resolution of the case (Article 25.5 of the Administrative Code), etc.

86 CrimeaSOS, "The so-called 'court' fined Zudieva with 2,000 roubles". Source: http://krymsos.com/ru/news/5cf2de7e-55da1/
87 Approx. USD 15
88 Approx. USD 30
89 Crimea Realities, "Court in Crimea fined a Crimean Tatar activist for Salieva for a post on Facebook". Source:https://ua.krymr.com/a/novyny-krymu-sud-u-krymu-oshtrafuvav-saliievu-za-repost-u-facebook/29974614.html

Speaking about violations of the rights and powers of defence in the framework of the administrative proceedings, Crimean lawyers focus on the following points:

a) Non-admission to clients

Lawyers are often not admitted to the detained client and are forced to wait for the possibility of a meeting for several hours. On 30 May 2019, representatives of the Russian Centre for Combating Extremism for several hours did not allow lawyers Emil Kurbedinov and Lila Gemeji to their clients Lutfiya Zudieva and Mumina Salieva to provide legal assistance.[90]

b) Violation of the rules of drawing up the record of an administrative offence

Article 28.2 of the Administrative Code of the Russian Federation establishes a list of essential information points, which must be necessarily recorded. One of these important points is a written statement of the essence of the administrative offence. According to lawyers, almost all the records in political administrative cases are drawn up with the indication of the name and disposition of the allegedly violated article of the Code of Administrative Offences of the Russian Federation, but do not include a description of the essence of such a violation. This practice directly affects the quality of the evidence and the ability of the defence attorney to provide effective legal protection for the client.

c) Fabricated evidence through the involvement in the capacity of an expert of a person who is not one

Part 1, Art. 25.9 of the Code of Administrative Offenses defines an expert as an adult who is not interested in the outcome of the case, who has special knowledge in science, technology, art or craft, sufficient to conduct an examination and give an expert opinion.

Contrary to the legal requirements, expert opinions in cases of "extremist publications" of Crimean Tatars are prepared by persons who do not have special knowledge on the subject. One of these "experts" is the Crimean historian and political scientist Andrei Nikiforov. Nikiforov does not speak Arabic, cannot know the content of texts of "extremist nature" and, accordingly, provide a reliable expert opinion.

d) Refusals to accept applications / petitions

In the administrative proceedings, de facto courts sometimes do not accept applications / petitions of lawyers filed during a court session. The accepted applications / petitions (for example, a petition for permission to take photos

90 Post of the Criman Solidarity group. Source: https://www.facebook.com/crimeansolidarity/posts/852243091809815

and record videos of a court session) are considered by the court on the spot, are even attached to the case file, but are almost never accepted.

e) Absence of the prosecutor during the trial

The principle of the adversarial trial and the right to a fair hearing in Crimea are seriously violated due to the systematic absence of the prosecutor during court hearings.

It is important to note here that Russian administrative law does not provide for the participation of a prosecutor in court. Nevertheless, the ECHR adopted a number of decisions against the Russian Federation regarding the role of prosecutors in the examination of cases not related to the field of criminal law. In the case of Karelin v. Russia,[91] the European Court found that the examination of the case by the national court on the merits and the conviction of the applicant in the absence of the prosecutor leads to a confusion of the role of prosecutor and judge. Thus, this gives rise to legitimate doubts about the judge's impartiality and does not guarantee adversarial proceedings.

91 ECHR (Third Section), CASE OF KARELIN v. RUSSIA, N 926/08, 20.09.2016. Source: https://hudoc.echr.coe.int/eng?i=001-166737

VI. Conclusions and recommendations

Over the 5 years of occupation, the Russian Federation has created in Crimea an absolutely specific climate of lawlessness, oppression and insecurity, which is highly conducive to the flourishing of the police state and destroys the principles of a legal, democratic state. In the context of overt ignoring / violating by the Russian Federation of the norms of its own criminal procedure legislation in the occupied territory of Ukraine, lawyers become vulnerable, are rapidly losing their role, authority in the proceedings.

The difficult situation of Crimean lawyers is exacerbated by the political context. The study showed that the persecution of groups inconvenient to the regime had led to the creation of a separate category of criminal and administrative cases – cases based on political motives. This categorization instantly affected the legal status of lawyers working with persons involved in political cases, and provoked a number of specific violations of their procedural rights.

The courts, in turn, allow lawyers to join the proceedings, thereby trying to legalize and legitimize these trials. As a result, advocacy with its main mission – the defence and restoration of the rights of a particular person in the person's interests – in the Crimean realities is completely subordinate to the will of the bodies of inquiry, the prosecutor's office and the court of the occupying state.

Considering all of the above,

1. We demand the Russian Federation to:

- *immediately stop any form of persecution of advocates and civil defenders in the territory of Crimea and guarantee the inadmissibility of such persecution in the future,*
- *ensure the immediate access of lawyers to defendants and cease other obstacles for lawyers to exercise legal defence of persons detained / arrested / convicted in the territory of the occupied Crimea,*
- *respect, observe and not violate the rights of lawyers,*
- *comply with international legal regulations, including in the field of guarantees of the right to qualified legal defence.*

2. We recommend that the international community and the governments of all democratic countries:

- *promptly respond (including the reaction of international lawyers' associations) to the facts of persecution of lawyers and violations of their procedural rights in the framework of the exercise of the right to legal defence,*

- *systematically exert public pressure on the Russian Federation demanding the termination and inadmissibility of any form of harassment of lawyers / civil defenders, as well as condemning the obstruction of the independent professional activities of the bar in occupied Crimea,*
- *require, by all available legal methods, the compliance by the Russian Federation with its international legal obligations in the field of humanitarian law and human rights law,*
- *strengthen sectoral sanctions against the Russian Federation for systemic and gross violations of human rights, war crimes in occupied Crimea.*

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