Crimea beyond rules

Issue N° 4

Information occupation

Thematic review of the human rights situation under occupation

UHHRU | RCHR | CHROT

РЕГІОНАЛЬНИЙ ЦЕНТР ПРАВ ЛЮДИНИ

RCHR

REGIONAL CENTRE FOR HUMAN RIGHTS

Regional Centre for Human Rights - NGO, the nucleus of which consists of professional lawyers from Crimea and Sevastopol, specializing in the field of international human rights law.

rchr.org.ua

Ukrainian Helsinki Human

Rights Union

Ukrainian Helsinki Human Rights Union - non-profit and non-political organization. The largest association of human rights organizations in Ukraine, which unites 29 NGOs, the purpose of which is to protect human rights.

helsinki.org.ua

CHROT - expert-analytical group, whose members wish to remain anonymous.

Some results of work of this group are presented at the link below :

precedent.crimea.ua

Dear readers,

Crimean events at the beginning of 2014 have challenged the post-war system of international security. They stirred up the whole range of human emotions - from the loss of directions in life to the euphoria, from joyful hope to fear and frustration. Like 160 years ago, Crimea attracted the attention of the whole Europe. In this publication we have tried to turn away from emotions and reconsider the situation rationally through human values and historical experience. We hope that the publication will be interesting to all, regardless of their political views and attitudes towards these events.

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Introduction

Occupation of the Crimean Peninsula by the Russian Federation has dramatically changed the «rules of the game» in different areas, particularly in freedom of speech and of the media. Mass media, that used to work in Crimea, were all of a sudden and without questions confined within strict limits of Russian legislation, which was furthermore changed taking into account "acquisition of the territory". In particular, the requirements for re-registration of all Crimean mass media, ban on the establishment of mass media by foreign citizens and many other "innovations" in Russian legislation have driven off a significant part of those not ready or unwilling to adapt to new conditions or openly disloyal to the occupation authorities.

The continuous tightening of Russian legislation on counteracting extremism and separatism, as well as show trials over journalists and activists disagreeing with the occupation, had a chilling or even "freezing" effect on other individuals, having completed the process of cleansing the Crimean information landscape.

It is worth mentioning, that according to human rights organizations, the general situation with freedom of speech in Russia has long ago been unsatisfactory. Yet, the Crimean Peninsula, declared a part of the Russian territory, was subjected to even more severe pressure. While in Russia the process of restriction on freedom of speech has been conducted for years, allowing gradual adapting to the changing situation, in Crimea all happened abruptly.

Straight after the illegal annexation, the Russian Parliament started to adopt laws and articles missing in the Criminal Code, basically restraining the possibility of any discussion on identity of the Crimean Peninsula and legality of its "accession". The frequency of amendments to the CC of the RF after 2014 has increased about twice. Many of them has affected in particular freedom of speech. Since that time, any open support to the position of the UN and the Council of Europe regarding occupation of the Crimean Peninsula and its affiliation to Ukraine is severely suppressed through criminal charges.

The issue of the "accession" of the Crimean Peninsula to the Russian Federation is of great political importance. Meanwhile, no one can be restricted in the right to openly express their views on this issue, including those differing from the «official» position of the Russian authorities and the occupation authorities of the peninsula. By severe restrictions of freedom of speech in the Crimean Peninsula and isolation of all dissenters, Russian authorities are trying to create for the international community an illusion of overall, strong endorsement and support of its actions by Crimeans. However, if actions of the occupying country are really supported by the majority of the population of the Crimean Peninsula, why, then, would it so violently suppress any disagreements with the Russian politics and any attempts to remind of the Ukrainian status of the peninsula?

At the present stage of social development, the occupation has obtained a new dimension – informational. The openness of the "ideas market", which can include both useful and harmful messages, is at the same time the strength and the weakness of the democratic organization of society. On the one hand, it develops critical thinking, immunity and ability to counter different challenges. On the other hand, such openness makes the society vulnerable for different kinds of manipulations and promotion of "toxic" information.

Lack of ability to discuss different opinions openly and fairly creates an illusion of power and omnipotence of a totalitarian state. At the same time, the society is unable to understand the moment, when it appears to be poisoned by the state-sponsored propaganda. The history knows tragic examples of how painful such poisoning of the society is, and how difficult the recovery can be. One has only to think about the Nazi Germany of 1930 - 1940 and Rwanda of 1990.

Today's Crimea under Russian occupation is likely to have become a new challenge to the system of international security and a terrific example of gross human rights violations in modern history.

International standards

In addition to universal standards, relating to freedom of expression, some specific standards are implied in the assessment of the circumstances in the context of occupation. For example, it relates to struggle against so called "hate speech" (Article 20 of the ***International Covenant on Civil and Political Rights*** and Article 17 together with Article 10 of the ***Convention for the Protection of Human Rights and Fundamental Freedoms***)[1]. The Human Rights Committee emphasized that restrictions of freedom of expression, admitted in accordance with Article 20 of the Covenant may also be applied in the context of Article 19, establishing the rules of legitimacy of limitations[2]. The European Court of Human Rights has repeatedly emphasized that Article 10 protects not only essence and contents of information and ideas, but also the means of their transmission. In accordance with the practice of the Court, the press enjoys the broadest protection which includes also confidentiality of the journalists' sources[3].

It's worth remembering the standards of protection of journalists during crisis or conflict. The practice of the European Court of Human Rights, relating to so-called "chilling effect" is essential, because the actions of Russian authorities on the occupied territories are largely aimed at intimidation of dissenters and cultivation of self-censorship[4].

Universal Declaration of Human Rights of 1948[5]

ARTICLE 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

International Covenant on Civil and Political Rights[6]

ARTICLE 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre publique), or of public health or morals.

ARTICLE 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

1 For more details see transcript of the public lecture of A. Yudkivska, Judge at ECtHR.
2 J.R.T. and the W.G. Party v. Canada: https://www.article19.org/pages/en/hate-speech-more.html
3 http://www.echr.coe.int/Documents/FS_Journalistic_sources_ENG.pdf
4 For more details see: Sergiy Zayets "The chilling effect" in the practice of the European Court of Human Rights", pp. 71-74 this review.
5 http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml
6 http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

Convention for the Protection of Human Rights and Fundamental Freedoms 1950[7]

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 (GC IV)[8]

ARTICLE 70

Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war. Nationals of the occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.

Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 8 June 1977[9]

ARTICLE 79

Measures of protection for journalists

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 A (4) of the Third Convention[10].

3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.

7 http://www.echr.coe.int/Documents/Convention_RUS.pdf
8 https://www.icrc.org/rus/resources/documents/misc/geneva-convention-4.htm
9 https://www.icrc.org/rus/assets/files/2013/ap_i_rus.pdf
10 Geneva Convention (III) relative to the treatment of prisoners of war.

Declaration[11] and Recommendation[12] on the protection of journalists in situation of conflict and tensions of 1996

The Declaration contains the confirmation, that all journalists, working in situation of conflict and tension, are entitled to overall protection under IHL and International human rights law. The Declaration condemns the increasing number of murder, disappearances and other assaults on journalists and considers such actions as attack against freedom of journalist activity.

In its recommendation the Council of Ministers of the Council of Europe offers the governments of the Member States to follow in their activities and policy the fundamental principles in the context of protection of journalists in the situation of conflict and tensions. The named fundamental principles must be applicable to both foreign and local journalists without any discrimination. The governments are also recommended to distribute the text of the recommendation, in particular among mass media, journalists, and professional organizations, state authorities and officials, both military and civilians.

Recommendation No. R (2000) 7 of the Committee of Ministers of the Council of Europe to member states on the right of journalists not to disclose their sources of information[13]

The recommendation contains the list of principles on the protection of the sources of information. The principles enshrined in the recommendation should not apply to cases that comply with the requirements of Article 10, paragraph 2, of the European Convention on Human Rights, and if the prevailing public interest requires this, and if the circumstances are extremely important for society.

Resolution 1438 (2005) of the Parliamentary Assembly of the Council of Europe on the Freedom of the press and the working conditions of journalists in conflict zones[14] and Recommendation 1702 (2005) of the Parliamentary Assembly of the Council of Europe on the Freedom of the press and the working conditions of journalists in conflict zones Parliamentary Assembly[15]

These two documents are a timely and necessary response to the current situation, when on the one hand, journalists frequently face the obstacles and constraints in the performance of their professional obligations, crucial for exercising the right to information and, on the other hand, face dangerous conditions which seriously undermine their personal lives, freedom and security.

Resolution 1738 (2006) Adopted by the Security Council at its 5613th meeting, on 23 December 2006[16]

The resolution stressed that journalists involved in dangerous missions in armed conflicts are equated with civilians and should be defended as such. The UN Security Council stressed that, in accordance with the provisions of international humanitarian law (IHL), attacks deliberately directed against civilians constitute war crimes, and all parties to the armed conflict called on the UN Security Council to respect professional independence and the rights of journalists, media workers (media) and associated personnel as civilians.

11 https://goo.gl/ELG6mQ
12 https://rm.coe.int/16804ff5a1
13 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2fd2
14 http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17326&lang=en
15 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d920c
16 http://www.un.org/ru/sc/documents/resolutions/2006.shtml

Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis[17]

This document once again stressed the fact that freedom of expression and freedom of mass media are crucial for the existence of a democratic society and its further development. The guidelines enshrined the provisions that should be used by the member states of the Council of Europe in times of crisis in the context of the protection of journalists' rights and freedoms.

These and other documents are available in the Council of Europe[18] and OSCE[19] collections on the security of journalistic activities and its international legal unification.

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Concluding observations on the seventh periodic report of the Russian Federation[20]

1. The Committee considered the seventh periodic report of the Russian Federation (CCPR/C/RUS/7) at its 3136th and 3137th meetings (CCPR/C/SR.3136 and 3137), held on 16 and 17 March 2015. At its 3157th meeting (CCPR/C/SR.3157), held on 31 March 2015, it adopted the following concluding observations.

Freedom of expression

19. The Committee is concerned about a number of developments that separately and jointly create a substantial chilling effect on freedom of speech and expression of dissenting political opinions, including:

(a) The re-criminalization of defamation in 2011;

(b) Federal law No. 190-FZ of November 2012 expanding the definition of treason to include the provision of any financial, material, technical, consultative or other assistance to a foreign State or an international or foreign organization against State security;

(c) Federal law No. 136-FZ ("blasphemy law") of June 2013 and the legal proceedings against members of the Pussy Riot punk band for hooliganism under article 213 of the Criminal Code;

(d) Federal law No. 398-FZ authorizing prosecutors to issue emergency orders, without a court decision, to block any website containing, inter alia, calls to participate in "public events held in violation of the established order" or "extremist" or "terrorist" activities, and also used in order to block news websites (grani.ru and kasparov.ru) and the blog of opposition leader Alexei Navalny;

(e) The law criminalizing, inter alia, distortion of the Soviet Union's role in the Second World War, signed by the President on 5 May 2014;

(f) The law regulating the activities of blogs, signed by the President on 5 May 2014, requiring bloggers with more than 3,000 visitors daily to conform to burdensome legal constraints and responsibilities.

17 https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805ae60e
18 https://rm.coe.int/16806b596f
19 https://www.osce.org/fom/85777?download=true
20 Adopted by the Committee at its 113th session (16 March – 2 April 2015); https://goo.gl/Xnb1sG

The Committee notes that the above laws appear to be incompatible with the Covenant, as the necessity of the imposed restrictions and the proportionality of the response appear not to meet the strict requirements of article 19 (3) of the Covenant.

The State party should consider decriminalizing defamation and, in any case, it should countenance the application of criminal law only in the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty for defamation. It should repeal or revise the other laws mentioned above with a view to bringing them into conformity with its obligations under the Covenant, taking into account the Committee's general comment No. 34 (2011) on freedoms of opinion and expression. In particular, it should clarify the vague, broad and open-ended definition of key terms in these laws and ensure that they are not used as tools to curtail freedom of expression beyond the narrow restrictions permitted in article 19 of the Covenant.

Nuremberg Tribunal (14 November 1945 – 1 October 1946)

One of the 24 accused at the Nuremberg Tribunal was a German propagandist, a radio presenter, a high ranking officer of the Joseph Goebbels' Ministry of Public Enlightenment and Propaganda of, also a journalist - Hans Fritzsche.

The verdict of the Tribunal reads that "The Nazi government tried to unite people to get support of its policy through the intensified propaganda. A number of official agencies were established in Germany, in order to control and influence the press, radio, cinema, publishing houses, etc., and oversee the entertainment, art and culture. All these official agencies were subordinated to the Ministry of Public Enlightenment and Propaganda headed by Goebbels, who, together with the relevant organization of the NSDAP and the Reich Chamber of Culture, was fully responsible for this supervision. The defendant Rosenberg played a leading role in spreading the National Socialist doctrines on behalf of the party, and the defendant Fritzsche together with Goebbels did the same on behalf of the state authorities"[21].

Hans Fritzsche [22]

Notwithstanding the fact, that the Tribunal found Alfred Rosenberg guilty of all sections of the indictment and sentenced him to death by hanging, Hans Fritzsche was acquitted. The judges found him not guilty of the crimes he was charged with (instigation and inducement to commit war crimes and crimes against humanity through deliberate falsification of information).

Despite the acquittal at the Nuremberg trial, Fritzsche was soon sentenced to 9 years in prison by the West German denazification court for inciting anti-Semitism. The judges of the court noted that throughout his career in the German broadcasting service, Fritzsche's speeches corresponded to Nazi ideology. In addition, after 1942, when Fritzsche was in charge of political leadership of the German broadcasting service and was appointed as head of the radio department of the Ministry of Propaganda, his influence on the formation of public opinion increased significantly.

Another journalist who was brought before the Nuremberg Tribunal was Julius Streicher, former Gauleiter of Franconia and chief editor of the anti-Semitic and anti-communist newspaper Der Stürmer. He was convicted of crimes against humanity, namely, incitement to murder and the destruction of the Jews. The Tribunal sentenced Streicher to death by hanging.

Julius Streicher[23]

21 https://www.loc.gov/rr/frd/Military_Law/pdf/NT_Vol-I.pdf p. 182 (192)
22 A link to photos: http://www.nndb.com/people/901/000087640/
23 A link to photos: https://www.britannica.com/biography/Julius-Streicher

In 1949, the U.S. Nuremberg Military Tribunal sentenced Otto Dietrich, another Nazi statesman occupied with propaganda to 7 years in prison in the so-called "Wilhelmstrasse Case". The Reich Press Service headed by Dietrich was one of the Head Departments in the system of the Reich leadership of the NSDAP, that carried out public relations of the NSDAP and managed the entire party press, including Nazi non-governmental organizations.

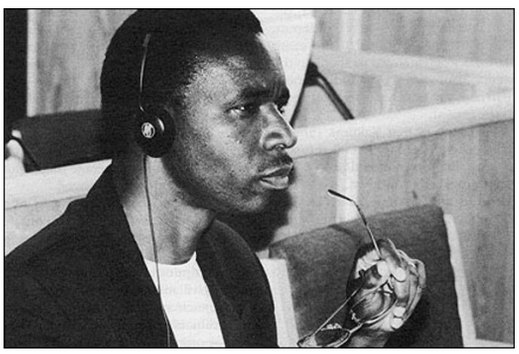
Otto Dietrich[25]

The Tribunal held Dietrich responsible for committing war crimes, crimes against humanity, as well as for participating in the criminal organization, and noted that the purpose of his propaganda was undoubtedly aimed to set the Germans against the Jews, justify measures taken against them, and also to subdue any doubts that could arise regarding the fairness of measures of racial persecution against the Jews[24].

Rwanda Genocide 1994

The mass media played a crucial role in incitement of the conflict in the 1990s in Rwanda. The genocide was organized by a small group of individuals who were trying to keep power over the country in their hands. In addition to the usual system of subordination of the country's administration through the army, police, administration and military formations, they also used radio programs to spread "hate speech": encouragement for Rwandans to kill their fellow citizens. "Hate speech" became an integral part of the genocide in Rwanda[26].

"Thousand Hills Free Radio and Television" was a Rwandan radio station that incited ethnic hatred and genocide in Rwanda in 1994. The staff of this radio station not only spread the propaganda against the Tutsi (the second largest group of people in Rwanda-author's note), but also explicitly encouraged their extermination, up to naming persons to be murdered withtheir addresses[27].



Ferdinand Nahimana[28], co-founder of "Thousand Hills Free Radio and Television".

On 3 December 2003, the International Criminal Tribunal for Rwanda passed a judgment in the well-known "mass media case". Two of the three convicts, namely Ferdinand Nahimana and Jean-Bosco Barayagwiza, were closely associated with "Thousand Hills Free Radio and Television".

According to the Tribunal, despite the fact that the weapons of the accused were not machetes but words, the defendants were guilty of committing genocide, conspiracy to commit genocide, public incitement to commit genocide and crimes against humanity[29].

24 http://www.worldcourts.com/imt/eng/decisions/1949.04.13_United_States_v_Weizsaecker.pdf#search=%22weizsaecker %22
25 A link to photos: http://spartacus-educational.com/Otto_Dietrich.htm
26 https://www.duo.uio.no/bitstream/handle/10852/13569/19095.pdf
27 http://www.rwandafile.com/rtlm/
28 A link to photos: https://goo.gl/LrWQSb
29 http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-99-52/trial-judgements/en/031203.pdf

Rome Statute of the International Criminal Court[30]

The ICC is the first permanent international body of criminal justice with the competence to prosecute individuals responsible for genocide, war crimes and crimes against humanity (as of 2017). The Court has jurisdiction over individuals, establishing individual criminal liability for the above mentioned crimes.

An individual may be charged with a criminal offence even if he is not directly a perpetrator of the crime. Thus, according to Article 25 (3) of the RS of the ICC, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions.

However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

In the case *Prosecutor v. Callixte Mbarushimana* the ICC has already dealt with the problem of abuse of freedom of speech. Thus, the ICC Prosecutor argued that the accused, as one of the leaders of the Democratic Forces for the Liberation of Rwanda (in the context of the armed conflict in the territory of the Democratic Republic of the Congo since January 2009), made a significant contribution to the crimes committed by the FDLR. The Office of the Prosecutor of the ICC charged him with *inter alia* the development and dissemination of an international media campaign aimed at concealing the responsibility of FDLR members for crimes committed by them, as well as blaming other armed groups operating in the territory of the DRC in the context of armed conflict.

On 16 December 2011, the ICC Pre-Trial Chamber noted that the evidence provided by the Prosecutor's Office was not sufficient to believe that a suspect could be prosecuted within the meaning of Article 25 (3) (d) RS of the ICC[31].

It is entirely possible, that the facts and analysis of the events related to the occupation of the Crimean Peninsula, which will be given in this analytical review, may also in the future become the subject of study by the Office of the Prosecutor of the ICC.

30 https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

31 https://www.icc-cpi.int/CourtRecords/CR2011_22538.PDF

Since April 2014, in violation of international law, the Russian Federation has extended its legislation to the territory of occupied Crimea. At first view, it is difficult to grasp the differences in the regulation of freedom of expression, media activity and the work of journalists in Ukraine and Russia. In fact, similar declarations in the Constitution, the Civil Code, similar provisions of relevant laws and other normative acts prescribe equal conditions for the realization of the right to hold opinions, receive and impart information and ideas without interference by the State. And only a closer look reveals differences in the laws of the two states. The impact of these differences is enormous.

Below is an analysis of the provisions of Ukrainian legislation, Russian legislation and the regulations of the so-called "Republic of Crimea", which restrict freedom of speech. It is important to understand that as a result of the occupation, there was a sharp change in the rules of the game in the field of freedom of speech. Even if the provisions of the legislation of the Russian Federation themselves do not violate the international standards of freedom of speech, this change of the rules of the game already constitutes an interference in this sphere which is difficult to justify. However, in addition, the legislation of the Russian Federation contains provisions that are incompatible with the standards of freedom of speech. These factors caused irreparable damage to freedom of speech on the peninsula.

UKRAINE

Constitution of Ukraine

According to Part 3 of Article 15 of the Constitution of Ukraine, censorship is prohibited. According to Article 34 of the Constitution, everyone is guaranteed the right to freedom of thought and speech, and to the free expression of views and beliefs. Everyone has the right to freely collect, store, use and impart information by oral, written, or other means of his or her choice. The exercise of these rights may be restricted by law in the interests of national security, territorial integrity or public order, for the purpose of preventing disturbances or crimes, protecting the health of the population, other persons' reputation or rights, preventing the publication of information received confidentially, or maintaining the authority and impartiality of the judiciary.

Civil Code of Ukraine

(1) The Code contains a number of provisions that guarantee everyone respect for his or her dignity and honour (Article 297), business reputation (Article 299), individuality (Article 300), and respect for the right to freely collect, store, use and impart information (Article 302). At the same time, the Civil Code contains provisions that allow the restriction of these rights. In particular, this is about the right to privacy of correspondence (Article 306), protection of individual's interests when being photographed, filmed, televised or videotaped (Article 307), protection of individual's interests when being portrayed on photographs and other products of fine art (Article 308).

(2) Article 309 stipulates that censorship and results of creative activities shall be inadmissible.

Law of Ukraine "On information" No. 2657-XII[32]

(1) Pursuant to Article 5 of Law No. 2657-XII, everyone has the right to information that

32 http://zakon5.rada.gov.ua/laws/show/2657-12

provides for the possibility to freely obtain, use, impart, store and protect information necessary to exercise his or her rights, freedoms and legitimate interests. However, the Law prescribes a list of cases when the right to information may be restricted (Part 2 of Article 6).

(2) The law contains general provisions on the prohibition of censorship and interference in professional activities of journalists and the media (Article 24), as well as guarantees for activities of the media and journalists (Article 25), and prescribes the accreditation procedure for journalists and media employees (Article 26).

(3) It is envisaged that the lack of accreditation can not be considered as a relevant ground forto non-admission of a journalist, a media employee to public events held by authorities, agencies or public officers. Authorities, agencies or public officers that accredit journalists, media professionals are obligated to facilitate their professional activities; notify them of the venue and time of the sessions, meetings, conferences, briefings and other public events in advance; provide them with information meant for the media; as well as facilitate the creation of conditions for recording and transmitting information, conducting interviews, receiving comments from officials. If an event is held in accordance with international or other special protocols, special conditions for admission of journalists may be established.

(4) The law also contains provisions on responsibility for abuse of the right to information (Article 28). In particular, information shall not be used to incite the overthrow of the constitutional order, violate the territorial integrity of Ukraine, or propagandise for war, violence, cruelty, incite racial, ethnic or religious hatred, or encroach on human rights and freedoms.

The law also prescribes the exemption from responsibility for expressing value judgments (Article 30).

Law of Ukraine "On television and radio broadcasting"[33]

The law is aimed at promotion of free speech, the rights of citizens to exhaustive, reliable and up-to-date information and public and free discussion of social issues. The State guarantees the right to information, free and public discussion of socially important problems with the use of television and radio broadcasting (Article 4). Article 5 of the Law reads that censorship of information activities of broadcasting organizations shall be prohibited. Article 6 of the Law establishes the general conditions for abuse of freedom of broadcasting activities.

Law of Ukraine "On print media (press) in Ukraine"[34]

(1) Article 2 of the Law provides for the right of everyone to freely and independently search for, receive, record, use and impart any information through the print media. According to the Law, it is prohibited to establish and finance state bodies, institutions, organizations or positions to censor mass information.

(2) The right to establish the print media belongs to citizens of Ukraine, citizens of other states not limited in legal capacity and legal capability by legal entities of Ukraine and other states, workers' associations of enterprises, institutions and organizations on the basis of the relevant decision of the general meeting (conference). A print media outlet can do publications after its state registration. Articles 11-13 of the Law provide for submission of state registration applications to the central executive authorities.

33 http://zakon3.rada.gov.ua/laws/show/3759-12/
34 http://zakon3.rada.gov.ua/laws/show/2782-12

State authorities, other state bodies and self-governing authorities can not act as a founder of print media.

The right to establish television- and radio-broadcasting companies as commercial entities in Ukraine belongs to legal entities and citizens of Ukraine, not limited in legal capacity.

(3) In Ukraine it is prohibited to establish and participate in broadcasting organizations or software service providers on behalf of: public authorities and self-governing authorities, legal entities that public authorities and self-governing authorities have established at all levels of the chain of ownership of corporate broadcasting rights, unless the decision to establish them or their statute authorizes to establish television and radio-broadcasting companies; legal entities and individuals - entrepreneurs registered in offshore zones, the list of which is approved by the Cabinet of Ministers of Ukraine, as well as stateless persons; individuals and legal entities that are residents of a state recognized by the Verkhovna Rada of Ukraine as an aggressor or occupying state, as well as legal entities which participants (shareholders) are legal entities or individuals at all levels of the chain of ownership of corporate broadcasting rights and the ultimate beneficiaries; political parties, trade unions, religious organizations and legal entities that they have established at all levels of the chain of ownership of corporate broadcasting rights or a software service provider; citizens who, upon the court's judgment, are serving their sentence in places of detention or held legally incapable by the court. The participation of foreign individuals and/or legal entities in the authorized capital of broadcasting organizations is governed by the Economic Code of Ukraine (Article 12 of the Law).

(4) The right to establish a news agency in Ukraine belongs to citizens and legal entities of Ukraine. Foreigners and foreign legal entities have the right to co-found news agencies of Ukraine. All news agencies and representative offices of news agencies, which are established or operate in Ukraine, are subject to state registration. State registration of representative offices of foreign news agencies as entities of information activities is carried out after the accreditation of their correspondents in the Ministry of Foreign Affairs.

State registration of entities of information activities

The Resolution of the Cabinet of Ministers of Ukraine No. 1287 of 17 November 1997 "On the state registration of print media, news agencies and registration fees"[35]

According to the Resolution, the state registration of print media as entities of information activities is carried out by the Ministry of Justice. The Order of the Ministry of Justice of Ukraine No. 12/5 of 21 February 2006 "On the approval of the Regulation on the state registration of print media in Ukraine and the Regulation on the state registration of news agencies as entities of information activities"[36] details these organizational issues of registration.

According to the provisions of **Article 38 of the Law of Ukraine "On television and radio broadcasting"**, business entities that obtain a broadcasting license and a software service provider's license are subject to state registration as entities of information activities. Persons who do not have broadcasting licenses can be registered as entities of information activities of their own free will.

35 http://zakon3.rada.gov.ua/laws/show/1287-97-%D0%BF
36 http://zakon3.rada.gov.ua/laws/show/z0173-06

Article 18 of the Law of Ukraine "On print media (press) in Ukraine" provides for the procedure for ceasing the print editions by decision of a founder (co-founders) or upon a court decision.

Article 18 of the Law of Ukraine "On news agencies"[37] prescribes that activities of news agencies shall be terminated in the event of their reorganization (merger, consolidation, split-up, spin-off, reconstruction) or liquidation: on the initiative of a founder (co-founders) and upon a court decision.

Activities of journalists

Journalist's status and guarantees of journalistic activities in Ukraine are regulated by a set of provisions that are prescribed in various laws and regulations.

Law of Ukraine "On state support for the mass media and social protection of journalists"[38]

As a component of the legislation of Ukraine on freedom of speech and information activities, this law strengthens the system of legal regulation in the information sphere. In accordance with article 4 of the Law, state support for the media is carried out through the protectionist policy of reducing the consumer value of information products, including tax, fee, customs, currency and economic regulation, damages, financial assistance. According to Article 1 of the Law, a journalist is a creative specialist who professionally collects receives, creates and is engaged in preparation of information for mass media, fulfills editorial and official service duties in mass media (in-house or out-of-house staff).

Article 25 of the Law of Ukraine "On print media (press) in Ukraine" defines the notion of a *journalist of print media* who is a creative professional and is professionally involved in collecting, receiving, creating and preparing information for print media and acts under employment or other contractual relationship with its editorial office or is engaged in such activities under his\her authorization, which shall be confirmed by an editorial identity paper or other document issued to the journalist by the editorial office of the print media.

Article 25 of the Law of Ukraine "On information" contains a number of guarantees for activities of the media and journalists. In accordance with para. 7 of the article, the rights and obligations of a journalist, a media employee, as defined in this Law, apply to foreign journalists, foreign media employees working in Ukraine.

Some restrictions on freedom of speech regarding the collection and use of information are prescribed in the **Law of Ukraine "On state support for the mass media and social protection of journalists"**. In accordance with Article 15 of the Law, a journalist, working in places of armed conflicts, terroristic attacks, for liquidation of dangerous criminal groups, must comply with the requirements for non-disclosure of special forces' plans ,pre-trial investigation data, avoiding propaganda of terrorist and other criminal groups' activities and statements specially designed for the media, never acting as an arbitrator or intruding into an incident, never creating artificial psychological tensions in the society.

Article 171 of the **Criminal Code of Ukraine** prescribes responsibility for deliberate obstruction of the journalist's lawful professional activities.

Article 17 of the **Law of Ukraine "On state support for mass media and social protection of journalists"** provides for responsibility for infringement on journalist's life and health, other actions against him and journalist's responsibility for moral (non-material) damage caused to him.

37 http://zakon0.rada.gov.ua/laws/show/74/95-%D0%B2%D1%80
38 http://zakon2.rada.gov.ua/laws/show/540/97-вр

RUSSIAN FEDERATION

Constitution of the Russian Federation[39]

According to Article 29 of the Constitution, everyone shall be guaranteed the freedom of ideas and speech. The propaganda or agitation instigating social, racial, national or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious or linguistic supremacy shall be banned. No one may be forced to express their views and convictions or to renounce them. Everyone shall have the right to freely look for, receive, transmit, produce and distribute information by any legal way. The list of data comprising state secrets shall be determined by a federal law. The freedom of mass communication shall be guaranteed. Censorship shall be banned.

Civil Code of the Russian Federation[40]

In accordance with Part 1 of Article 152 of the Code, a citizen shall have the right to claim before the court to deny the information discrediting his or her honour, dignity or business reputation, unless the person who has spread such information proves that they are true. If the information discrediting citizen's honour, dignity or business reputation is spread by the mass media, it shall be refuted by the same mass media.

The Federal Law No. 149-FZ of the Russian Federation "On information, informational technologies and protection of information"[41]

(1) According to Article 8 of the Federal Law, citizens (individuals) and organizations (legal entities) shall have the right to search for and receive any information in any form and from any sources subject to the requirements established by this Federal Law and other federal laws.

(2) Article 9 of the Federal Law prescribes the restriction of access to information for the purposes of protecting the basic fundamentals of the constitutional system, morality, health, rights and legitimate interests of other persons, ensuring the defense and security of the state.

(3) Article 10.1 of the Federal Law provides for the duties of an organizer of dissemination of information on the Internet, which is obliged to notify the relevant body of the commencement of its activities, to store all information about the receipt, transfer, delivery and (or) processing of voice information, written text, images, sounds or other electronic messages of users of the Internet and information about these users within six months from the end of the implementation of such actions, as well as providing this information to authorized state bodies in cases prescribed by law.

(4) Article 10.2 of the Federal Law enshrines the special status of a blogger, who is the owner of the site, and (or) pages of the website on the Internet, where public information is posted, as well as access to which exceeds more than three thousand users within three days. Such sites or pages of the site are included in the special register. The introduction of a separate status for bloggers, due to obligations under the legislation of the Russian Federation on information, is aimed at strengthening censorship on the Internet.

39 http://www.constitution.ru
40 http://www.consultant.ru/document/cons_doc_LAW_5142/
41 http://www.consultant.ru/document/cons_doc_LAW_61798/

Decree of the Government of the Russian Federation No. 1101 of 26 October 2012[42]

The Decree specifies the above-mentioned Federal Law No. 149-FZ, as well as creates a unified register of domain names, site page indexes and network addresses that allow identifying sites containing prohibited information. The Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications (hereinafter - Roskomnadzor) is engaged in the creation, formation and maintenance of this register. The grounds for inclusion in the unified register of domain names and/or indexes of pages of sites on the Internet, as well as network addresses that allow identifying sites on the Internet that contain prohibited information, are:

1) decisions of the Federal Drug Control Service, the Federal Service for Supervision of Consumer Rights Protection and Human Welfare, the Federal Service for Supervision in the Sphere of Communications, Roskomnadzor, the Federal Tax Service – concerning the distribution through the Internet network information within the competence of one of the specified state bodies of the Russian Federation;

2) effective court decisions on the recognition of information disseminated through the Internet as prohibited one.

Article 15.3 of the **Federal Law No. 149-FZ** also prescribes the procedure in accordance with which the Prosecutor General of the RF or his deputies forward a request to Roskomnadzor to take measures to restrict access to the information disseminated in breach of the law.

Law of the Russian Federation "On mass media" No. 2124-1[43]

(1) According to Article 2 of the Law, mass media shall be understood to mean a periodical printed publication, a radio, television or video program, a newsreel program, and any other form of periodical dissemination of mass information;

(2) The law established and concretized the fundamentals of freedom of speech in the territory of the Russian Federation. In accordance with Article 3 of the Law, no provision shall be made for the censorship of mass information, that is, the request made by the editor's office of the mass media to officials, state organs, organizations, institutions or public associations to agree in advance on messages and materials (except for the cases when the official is an auditor or interviewee) as well as the ban on dissemination of messages and materials and parts thereof.

At the same time, Article 4 of the Law contains provisions on the inadmissibility of abuse of freedom of the media. In particular, the Law prohibits the use of the media for the purpose of committing criminally indictable deeds, divulging information making up a state secret or any other law-protective secret, calling for the seizure of power, violently changing the constitutional system and the state integrity, inciting national, class, social and religious intolerance or strife, propagating war, and also for the spreading of broadcasts propagandizing pornography or the cult of violence and cruelty, and materials containing obscene language.

(3) According to Article 7 of the Law, a founder (co-founder) of the media can be a citizen, association of citizens, organization, or state body. A founder (co-founder) of the print media, in accordance with Federal Law No. 131-FZ of 6 October 2003, may be a self-governing authority. The following persons and bodies may not act as founders: a private

42 https://rg.ru/2012/10/29/reestr-dok.html
43 http://www.consultant.ru/document/cons_doc_LAW_1511/

citizen who has not reached the age of eighteen, or an individual who serves his sentence in places of detention according to the court's verdict or an insane person recognized as legally incapable by a court of law; an association of private citizens, enterprise, institution and organization which activity is banned by law; a citizen of another State or a stateless person who is not a permanent resident of the Russian Federation.

Federal Law No. 305-FZ "On amending the law of the Russian Federation "On mass media"[44]

(1) On 14 October 2014, the Law of the Russian Federation No. 2124-1 was supplemented with Article 19.1. "Restrictions related to the establishment of the mass media, the broadcasting organization (legal entity)". According to this rule, unless otherwise provided by an international treaty of the Russian Federation, a foreign state, an international organization, as well as an organization under their control, a foreign legal entity, a foreign invested Russian legal entity, a foreign citizen, a stateless person, a Russian citizen holding foreign citizenship, jointly or individually, are not entitled to act as a founder (participant) of the mass media, to be an editorial board of media, a broadcasting organization (legal entity).

(2) A prohibition is established for a foreign state, an international organization, as well as an organization under their control, a foreign legal entity, a Russian legal entity which share in the authorized capital of the foreign capital is more than 20 percent, a foreign citizen, a stateless person, a Russian citizen holding foreign citizenship, jointly or individually, to exercise possession, management or control directly or indirectly (including through controlled entities or through (shares) in more than 20 percent of the shares of any person) in respect of more than 20 percent of the shares in the authorized capital of the person who is a member (shareholder) of the founder of the mass media, the editorial office of the media, the organization (legal entity).

Thus, the right to be a founder (co-founder) of the mass media in Russia is more limited than in Ukraine, and therefore citizens of Ukraine can not be founders of mass media on the territory of the Russian Federation. The application of this rule in the occupied territory of Crimea has made it impossible for Ukrainian media to function in Crimea or forced their founders to acquire Russian citizenship.

Article 23 of the **RF Law "On mass media"** determines the status of the news agency: the status of the editorial office, publisher, distributor and the legal treatment of mass media shall also extend to the news agencies in the process of applying the present Law.

Prescribing the status of a news agency, the Media Law does not define this term. The current federal legislation does not contain an interpretation of the news agency. Until 2005, the definition of this concept could be found in the Federal Law of 1 December 1995 No. 191-FZ "On State Support for Mass Media and Book Publishing of the Russian Federation", which implies under the news agency "an organization that collects and disseminates information". However, according to Federal Law No. 122-FZ of 22 August 2004, aforementioned regulation was declared invalid from 1 January 2005.

The specific nature of news agencies is that they disseminate information not periodically, but as information appears. The main consumers of news agencies are the media. News agencies are established, registered, operated and liquidated according to the general rules provided for all media.

44 http://www.consultant.ru/document/cons_doc_LAW_169740/3d0cac60971a511280cbba229d9b6329c07731f7/#dst100017

State registration of mass media

Law of the Russian Federation "On mass media"

(1) According to Article 8, the media operates after its registration. The website on the Internet can be registered as a network publication in accordance with the Law. The website on the Internet, not registered as the media, is not a mass media outlet.

(2) Article 16 of the Law provides for the procedure for termination and suspension of activities of the media. In addition to general cases, it is envisaged that the mass media can terminate activities by decision of a court on repeatedly abuse of the freedom of mass information during the twelve months of violation by the editors of the requirements of Article 4. The activities of the media can also be suspended in connection with the violation of the rules established by Article 19.1 "Restrictions related to the establishment of a mass medium, broadcasting organization (legal entity).

Federal Law "On counteracting extremist activities"[45]

The activity of the media can be terminated if the mass media carry out extremist activities resulting in violation of the rights and freedoms of persons or citizens, causing damage to personality, health of citizens, environment, social order, national security, property, legal economic interests of physical and (or) legal entities, society and government, or creating a realistic threat of causing such damage, the activity of the respective provider of mass information may be discontinued by court ruling on the basis of the declaration of the authorized government body of executive power in the sphere of print, television or radio broadcasting and means of mass communication, or the General Prosecutor of the Russian Federation or a proper subordinate prosecutor (Articles 8, 11).

Federal Law "On the peculiarities of the legal regulation of relations in the field of the mass media in connection with the admission to the Russian Federation of the Republic of Crimea and the formation in the Russian Federation of new territorial entities - the Republic of Crimea and the Federal City of Sevastopol"[46] of 01.12.2014

(1) In accordance with the Law, registration of mass media which products are meant for distribution in the entities' territories of the Russian Federation – the Republic of Crimea and the federal city of Sevastopol, till 1 April 2015 is carried out free of charge.

(2) Distribution of media products, including the implementation of television and radio broadcasting, in the territories of the Republic of Crimea and the federal city of Sevastopol, is allowed before 1 April 2015 on the basis of documents issued by state bodies of Ukraine.

Activities of journalists

Law of the Russian Federation "On mass media"

(1) According to Article 2 of the Law, a journalist shall be understood to mean a person who edits, creates, collects or prepares messages and materials for the editor's office of a mass medium and is connected with it with labor and other contractual relations or engaged in such activity, being authorized by it. The rights and obligations of journalists are provided in Articles 47, 49 of the aforementioned Law. In general, the status of a journalist

45 https://rg.ru/2002/07/30/extremizm-dok.html
46 https://82.rkn.gov.ru/directions/p15378/reg_smi/

in Russia can be exercised by a much wider range of people, in comparison with Ukraine. However, an obligatory condition in this case is the state registration of such media.

(2) Article 51 of this Law provides for the inadmissibility of abusing the rights of journalists, namely: The journalist's rights stipulated by this Law shall not be used for the purpose of the concealment or falsification of publicly important information, the spread of rumors under the guise of authentic reports, the collection of information in favor of an outside person or organization, which is not a mass medium.

(3) It shall be forbidden to use the journalist's right to spread information for the purpose of discrediting private citizens or particular categories of private citizens exclusively on account of sex, age, race, nationality, language, religion, profession, place of residences and work, and also of political convictions.

(4) The status of foreign correspondents in the territory of the Russian Federation is regulated by the Article 55 of the Law. According to Article 55 of the Law, accreditation of foreign correspondents in Russia is carried out by the Ministry of Foreign Affairs of the Russian Federation in accordance with Article 48 of the Law. Foreign correspondents, who are not accredited in the Russian Federation in the established order, enjoy the rights and bear duties as representatives of a foreign legal entity.

Anti-extremist legislation and media activities

In accordance with Article 13 of **the Federal Law of 25 July 2002 No, 114-FZ "On counteracting extremist activity"**[47], paragraph 7 of **the Regulation on the Ministry of Justice of the Russian Federation**, approved by the Decree of the President of the Russian Federation of 13.10.2004 No. 1313[48], the Ministry of Justice of Russia is responsible for maintaining, publishing and placing on the Internet a federal list of extremist materials.

Information materials are recognized the extremist materials by the federal court at the place where they are found, distributed or regarding the location of organization that produced such materials, on the basis of the submission of the prosecutor or in the proceedings in the relevant case of an administrative offense, civil or criminal case.

The federal list of extremist materials is formed on the basis of the copies of decisions of the courts that have come into legal force on the recognition of information materials as extremist and have been received by the Ministry of Justice of Russia.

Recognition of organizations as extremist in the Russian Federation is carried out in the order of adjudication on the basis of a statement by the Prosecutor General of the Russian Federation or a relevant prosecutor subordinate to him. The mechanism of attracting individuals and organizations to extremist activities, for today, is one of the most applicable tools to combat dissent in the territory of the Russian Federation.

In accordance with the current legislation of the Russian Federation, citizens are responsible for posting extremist content on the Internet. Depending on the circumstances, those responsible bear administrative or criminal responsibility.

The Code on Administrative Offenses of the Russian Federation[49] provides for the responsibility for the production and dissemination of extremist materials (Article 20.29).

The Criminal Code of the Russian Federation[50] provides for responsibility for public appeals to carry out terrorist activities or publicly justifying terrorism (Article 205.2), public calls for the implementation of extremist activities (Article 280), incitement of hatred or enmity, as well as humiliation of human dignity (Article 282).

47 http://base.garant.ru/12127578/
48 http://www.consultant.ru/document/cons_doc_LAW_49892/
49 http://www.consultant.ru/document/cons_doc_LAW_34661/
50 http://www.consultant.ru/document/cons_doc_LAW_10699/

Criminal responsibility for separatism and rehabilitation of Nazism in the Russian Federation

Federal Law No. 433-FZ of 28 December 2013 "On amending the Criminal Code of the Russian Federation", entered into force on 9 May 2014[51]

(1) According to the Law, the Criminal Code of the Russian Federation was supplemented with Article 280.1 "Public calls for actions aimed at violating the territorial integrity of the Russian Federation". According to this provision, criminal responsibility is provided for public appeals to carry out actions aimed at violating the territorial integrity of the Russian Federation – aforementioned acts are punished with a fine in the amount of one hundred thousand to three hundred thousand rubles or in the amount of the wage or other income of the convicted person for a period of one to two years, or correctional labour for a period of up to three years, or by arrest for a term of four to six months, or by deprivation of liberty for a term of up to four years, with deprivation of the right to hold certain positions or occupy certain activities for the same period. Also, responsibility is provided for the same acts committed with the use of mass media or electronic or information-telecommunication networks (including the Internet).

(2) It should be noted that this law was adopted following the legislative initiative of the Head of the Communist Party of the Russian Federation Gennady Zyuganov in 2013. According to the explanatory note to the draft law, the rules introduced should have allowed to prevent possible separatist tendencies and calls for actions to cede parts of Russia to foreign states, as well as to prevent the dissemination of information justifying these actions.

Federal Law of 05.05.2014 No. 128-FZ "On amending certain legislative acts of the Russian Federation" of 5 May 2014[52]

The Criminal Code of the Russian Federation was supplemented by Article 354.1, which provides for responsibility for the rehabilitation of Nazism.

According to this provision, the denial of the facts established by the sentence of the International Military Tribunal for the trial and punishment of the main war criminals of European Axis countries, the approval of the crimes established by this verdict, as well as the dissemination of knowingly false information about the activities of the USSR during the Second World War, committed in public- are punished with a fine of up to three hundred thousand rubles or in the amount of the salary or other income of the convicted person for a period of up to two years, or by correctional labour for up to three years, or imprisonment for the same period. It also provides for the responsibility for distributing information about the days of military glory and the memorable dates of Russia expressing obvious disrespect to the society related to the defense of the Fatherland, as well as the desecration of the symbols of Russia's military glory, committed in public.

Other forms of responsibility and restrictions in the field of media activities

Criminal Code of the Russian Federation

(1) Article 128.1. of the Criminal Code of the Russian Federation provides for responsibility for defamation. Previously, this article was decriminalized, but in 2012 the Criminal Code was

51 http://www.consultant.ru/document/cons_doc_LAW_156577/
52 http://www.consultant.ru/document/cons_doc_LAW_162575/

amended again by the Federal Law of 28.07.2012 No. 141-FZ[53]. At the same time, defamation means the dissemination of knowingly false information discrediting the honor and dignity of another person or undermining his or her reputation. A qualifying characteristic providing for a more severe punishment is defamation contained in a public statement, a publicly displayed work or the media. Also, the article was supplemented by a new composition: defamation that a person suffers from a disease that poses a danger to others, as well as slander, combined with the accusation of a person committing a crime of a sexual nature.

(2) For the commitment of a criminal offense, stipulated by Article 128.1 of the Criminal Code of the Russian Federation, provides for a penalty in the form of a fine or correctional labour. At the same time, the maximum fine is set forth in the amount of 5 million rubles, and correctional labour can be assigned for a period of up to 480 hours.

(3) In addition, Article 319 of the Criminal Code of the Russian Federation provides for responsibility for a public insult to a representative of the government in the performance of his duties or in connection with their performance.

Federal Law of the Russian Federation "On counteracting terrorism"[54] No. 35-FZ (adopted on 6 March 2006, entered into force on 1 January 2007)

(1) According to the present law, terrorism is the ideology of violence and the practice of influencing the adoption of a decision by state power bodies, local self-government bodies or international organizations connected with frightening the population and (or) other forms of unlawful violent actions. Terrorist activity includes, among other elements, the popularization of terrorist ideas, dissemination of materials or information urging terrorist activities, substantiating or justifying the necessity of the exercise of such activity.

(2) In accordance with the Law, the organization is recognized as terrorist and shall be subject to liquidation (and its activities shall be subject to prohibition) by court decision on the basis of an application of the Prosecutor General of the Russian Federation or of the prosecutor subordinate to him, if on behalf or in the interests of this organization the crimes provided for by Articles 205-206, 208, 211, 277-280, 282.1, 282.2 and 360 of the Criminal Code of the Russian Federation. In the recognition of organizations as terrorist, the Prosecutor's Office of the Russian Federation also plays the main role. The court takes an appropriate decision on the basis of the appeal of the Prosecutor General's Office of the Russian Federation.

Federal Law "On non-profit organizations"[55] No. 7-FZ

(1) The law specifies the features of the civil-legal status of non-profit organizations. At the same time, the concept of a "foreign agent" was introduced by the present law.

A non-profit organization exercising the functions of a foreign agent means in this Federal Law a Russian non-profit organization which receives monetary assets and other property from foreign states, their state bodies, international and foreign organizations, foreign persons, stateless persons or from the persons authorized by them and/or from Russian legal entities receiving monetary assets and other property from the cited sources (except for public joint-stock companies with the state participation and their branch companies) (hereinafter referred to as foreign sources) and which participates, in particular in the interests of foreign sources, in political activities exercised in the territory of the Russian Federation.

(2) In accordance with Part 1 of Article 24 of the Law, the materials issued by a non-profit organization exercising the functions of a foreign agent and/or distributed by it, in particular

53 http://www.consultant.ru/document/cons_doc_LAW_133284/
54 http://www.consultant.ru/document/cons_doc_LAW_58840/
55 http://base.garant.ru/10105879/

through mass media and/or with the use of the Internet information-telecommunication system, must have an indication that these materials are issued and/or distributed by a non-profit organization exercising the functions of a foreign agent.

Federal Law "On measures to influence persons involved in violations of fundamental human rights and freedoms, rights and freedoms of citizens of the Russian Federation"[56] (adopted on 21 December 2012, entered into force on 1 January 2013)

(1) The law regulates the activities of foreign and international non-governmental organizations. In accordance with the Law, the activities of a foreign or international non-governmental organization that threaten the fundamentals of the constitutional system of the Russian Federation, the country's defense capability or the state's security can be considered undesirable on the territory of the Russian Federation.

(2) Recognition of activities of a foreign or international non-governmental organization that is undesirable on the territory of the Russian Federation entails a ban on the establishment (opening), termination of the procedure for the operation of previously established (open) in the Russian Federation such structural units, as well as the prohibition on the dissemination of information materials, published and/or disseminated by a foreign or international non-governmental organization, including through the media and (or) "Internet", and the production or storage of such materials in order to spread. It also prohibits the implementation of programs (projects) in the territory of the Russian Federation for a foreign or international non-governmental organization which activities are deemed undesirable on the territory of the Russian Federation.

(3) The decision on recognizing the activities of a foreign or international non-governmental organization undesirable on the territory of the Russian Federation is taken by the RF Prosecutor General or his deputies in agreement with the federal executive authority that exercises functions to develop and implement state policy and legal regulation within international relations of the Russian Federation.

(4) In accordance with the **Order for the Maintenance of the List of Foreign and International Non-Governmental Organizations which activities are deemed undesirable on the territory of the Russian Federation, the inclusion or exclusion of foreign and international non-governmental organizations from this list**[57], aforementioned inclusion or exclusion of organizations is carried out by the Ministry of Justice of the Russian Federation on the basis of the received information from the General Prosecutor's Office of the Russian Federation. Recognition of activities of a foreign or international non-governmental organization on the territory of the Russian Federation as undesirable can occur only on the basis of a decision of the General Prosecutor's Office of the Russian Federation.

CRIMEA

Constitution of the so-called "Republic of Crimea"[58]

According to the document, everyone is guaranteed the right to freedom of thought and speech. Propaganda or agitation that incites social, racial, national or religious hatred and enmity is prohibited. Propagation of social, racial, national, religious or linguistic superiority is prohibited. No one can be forced to express or reject their opinions and beliefs. Everyone has the right to seek, receive, transmit, produce and disseminate information freely in any

56 http://www.consultant.ru/document/cons_doc_LAW_139994/
57 http://www.consultant.ru/document/cons_doc_LAW_185658/
58 https://rg.ru/2014/05/06/krim-konstituciya-reg-dok.html

lawful way. Freedom of the media is guaranteed. Censorship is prohibited.

Decree of the so-called Head of the Republic of Crimea "On the approval of the comprehensive plan to counter the ideology of terrorism in the Republic of Crimea for 2015-2018"[59]

(1) The comprehensive plan developed measures to prevent the radicalization of various groups of the population of the Republic of Crimea, especially young people, and prevent their involvement in extremist and terrorist activities.

(2) According to the provisions of the Comprehensive Plan, the ideology of terrorism (terrorist ideology) is understood to mean a set of ideas, concepts, beliefs, dogmas, goals, slogans that justify the need for terrorist activity, as well as other destructive ideas that led or may lead to such an ideology.

(3) The list of persons, conducting destructive activities, includes "accomplices of participants in armed conflicts in Syria and Ukraine"; "distributors of terrorist, extremist ideology and information discrediting the Russian Federation"; "active members and ideologists of non-traditional religious organizations and sects carrying out their activities in the Republic of Crimea".

(4) Among the planned activities, it is proposed to introduce measures to protect the Internet space of the Republic of Crimea from the penetration of terrorist and extremist materials, destructive information, instructions for manufacturing explosive devices, calls for the commission of terrorist acts; work on the identification and blocking of Internet sites containing terrorist and extremist materials.

Rules for the accreditation of journalists, media employees, news agencies in the so-called "State Council of the Republic of Crimea"[60], approved on 25 November 2014 by the Decree of the so-called "Presidium of the State Council of the Republic of Crimea" No. 222-1/14

1) The rules have aggravated the procedure for accrediting journalists and have created a number of restrictions on the coverage of the work of the State Council of Crimea. The list of documents that must be attached to an application for accreditation is expanded. The non-compliance of an application for accreditation with the requirements presented is the basis for refusing accreditation. Accreditation is provided only to media employees who have state registration, quantitative restrictions on accreditation from the same media have been introduced. Various forms of accreditation and differences in rights between journalists of different forms of accreditation have been introduced, as well as the term accreditation "on accreditation lists" has been introduced. A permissive procedure for journalists to use audio and video equipment, film and photography is provided. An application for use of aforementioned equipment must be submitted to the press service not later than a day before the event.

(2) Sanctions in the form of deprivation for a year of the right to receive annual accreditation in case of loss, theft, damage, etc. certificates of accreditation have been introduced. The rules introduced a requirement for journalists to follow the business style of clothing. Failure to comply with the requirements of the Rules is one of the reasons for the termination of accreditation.

59 http://rk.gov.ru/rus/file/pub/pub_238807.pdf
60 http://www.crimea.gov.ru/app/4201

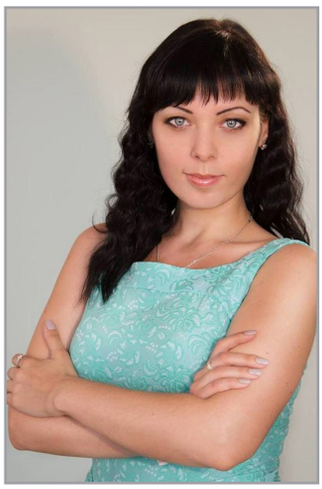
Crimean cases

With the beginning of occupation of Crimea in February 2014 and before the holding of the so-called «referendum», many independent journalists of Crimea and the city of Sevastopol were persecuted and forced to leave the peninsula.

According to Tatiana Kurmanova, the editor of the Center for Investigative Journalism (Crimea), the peak of attacks on journalists in Crimea was in March 2014 (85 cases were recorded). Since April 2014, access to public information has been limited. And by May 2014, the media unwelcome by new «authorities» had practically ceased their activities on the peninsula[61]. A detailed overview of the situation related to harassment of journalists in Crimea after the beginning of occupation was also conducted by an international non-governmental organization "Committee to Protect Journalists"[62].

The initial stage of physical ousting of journalists from Crimea was replaced by a period of systematic intimidation, which concerns also those who found themselves outside the occupied territory. The searches and prosecutions conducted by the occupation authorities aimed not only and not so much to punish those who are directly concerned but rather to force others to be silent. This policy has affected not only professional journalists. Bloggers, human rights lawyers and activists are also exposed to pressure for expressing their opinions. Below are some stories that illustrate the situation with the persecution of journalists and the media on the peninsula.

Ganna ANDRIIEVSKA



Journalist, investigator of the information agency «Center for Investigative Journalism» (Crimea)

Simferopol, AR of Crimea

In May 2014, Crimean journalist Ganna Andriievska, fearing persecution by the occupation authorities, left for Kyiv. Nevertheless, she continues to cooperate with the Center for Investigative Journalism.

On 2 February 2015, the investigative department of the Federal Security Service of the Russian Federation in Crimea launched a criminal proceeding under p. 2 of Article 280.1 of the Criminal Code. The basis for the institution of this proceeding was the publication of Ganna Andriievska called "Volunteers of the battalion "Crimea" on the website of the Center for Investigative Journalism. In this publication, the occupation authorities saw incitements for actions aimed at violating the territorial integrity of the Russian Federation.

The article mainly dealt with volunteers who were helping Crimean people fighting in the area of the antiterrorist operation and protecting the territorial integrity of Ukraine in Donbas. The text of the article is available following the link: https://investigator.org.ua/ua/articles/144257/

On 13 March 2015, officers of the Federal Security Service of the Russian Federation in Crimea conducted a search in the house of Ganna's parents in Crimea. During the search a computer of the journalist's father was confiscated[63].

The FSS of RF ordered employees of the post office to report about any correspondence addressed to G. Andriievska. The journalist claims that all correspondence sent to her registration address in Crimea, including the address of her family members, is censored.

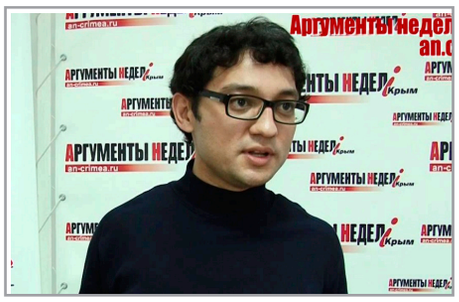
According to the data from the website of the Federal Service for Financial Monitoring

61 More details in Monitoring Review of the Crimean Field Mission: https://goo.gl/bpTpVh
62 https://cpj.org/ru/2015/07/post-94.php
63 https://lb.ua/news/2015/03/13/298405_fsb_nachala_noviy_vitok_presledovaniya.html

(Rosfinmonitoring), the journalist is put in the List of Terrorists and Extremists[64].

Today Ganna Andriievska continues to work as a journalist in mainland Ukraine.

Zair AKADYROV



Editor-in-chief of the online media "Arguments of the Week - Crimea", freelance journalist since March 2014

Simferopol, AR of Crimea

On 6 March 2014, Crimean journalist Zair Akadyrov resigned from the post of editor-in-chief of the online media "Arguments of the Week - Crimea" referring to the fact that pro-Russian censorship was actually introduced in the aforementioned online media.

On 18 May 2015, as a freelance journalist he covered the motor rally with Crimean Tatar flags, publishing materials in his blog.

On 15 January 2016, the journalist was detained by the police in the hall of the Supreme Court of the Republic of Crimea[65]. The court held a hearing on a resonant politically motivated criminal case. Akadyrov was present in a court room as a blogger and freelancer. The journalist was subjected to physical violence and threats, was taken to the police office, searched and interrogated, including about his professional activities. The intervention of the public stopped further plans of the security services. During the interrogation in the police, the journalist found out that he is on the "FSS lists" as a participant of the "motor rally" of 18 May 2015 as well as the fact that he was subjected to surveillance.

On 27 January 2016, the journalist was summoned to the Prosecutor's Office of Zheleznodorozhny district of Simferopol for a "conversation".

On 20 April 2016, the house of Zair Akadyrov was searched. After the search, the journalist was summoned to the FSS of the Russian Federation in Crimea for interrogation.

On 30 May 2016, Russian security services detained Akadyrov during his crossing of the administrative border between occupied Crimea and mainland Ukraine. The journalist was released after the "conversation" with the FSS officers.

According to the journalist's statement, fear and closeness reign in Crimea nowadays. Many people refuse to meet with journalists from foreign media because they are afraid of the consequences and pressure from law enforcement bodies[66].

Yelizaveta BOGUTSKAYA

Crimean blogger, public activist

Simferopol, AR of Crimea

With the beginning of occupation of Crimea in 2014 she expressed pro-Ukrainian position on her Facebook page. In her blogs Yelizaveta repeatedly expressed disagreement with occupation of Crimea, imposition of citizenship of the Russian Federation in Crimea, seizure of Ukrainian territories in the Eastern Ukraine, etc.

On 24 August 2014, she participated in a meeting dedicated to the Independence Day of Ukraine near the monument to Taras Shevchenko in Simferopol.

64 http://www.fedsfm.ru/documents/terrorists-catalog-portal-act
65 https://ru.krymr.com/a/news/27489628.html
66 https://ru.krymr.com/a/27528188.html

On 8 September 2014, the police officers made a search in Bogutskaya's house. A computer, a camera, a USB flash drive and other property were seized by the police during the search. After the search, Bogutskaya was transferred to the Center for Countering Extremism for interrogation. The interrogation lasted more than 6 hours. The police explained their actions by the fact that her messages in the social network Facebook incite interethnic hostility and provoke interethnic conflicts.

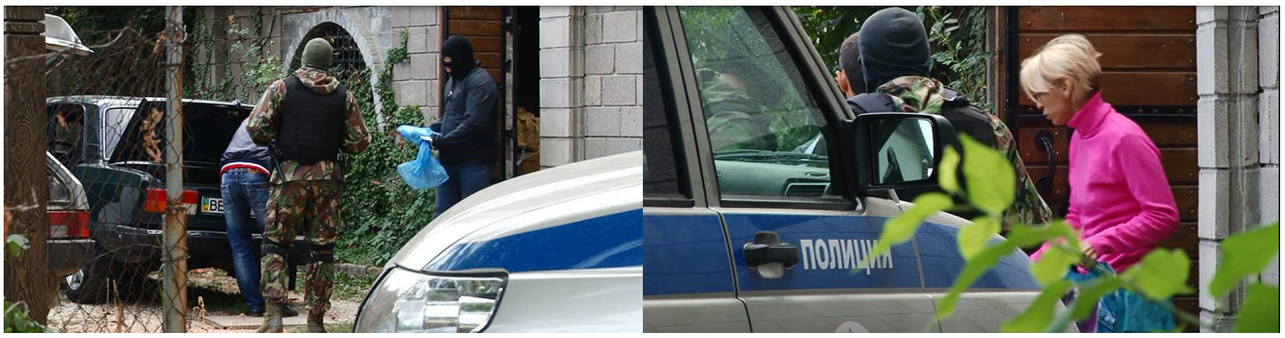


Photo source - Facebook https://www.facebook.com/namatullaev/posts/712097372204028

The next day, fearing for her life, Bogutskaya left the territory of the peninsula[67].

«I left at night... I decided that writing articles out of prison is better than not writing them behind the bars» (from interview)[68]. At the moment, Yelizaveta Bogutskaya lives in mainland Ukraine.

Lilia BUDZHUROVA

Deputy Director General of the ATR television channel until March 2015. Deputy Director General of QaraDeniz Production

Simferopol, AR of Crimea

In 2014, the occupation authorities announced a warning to journalist Lilia Budzhurova about the inadmissibility of carrying out extremist activities. The reason was the activity of the television channel ATR, the only Crimean Tatar TV channel on the peninsula, in which the journalist held the position of deputy director general.

On 2 November 2015, the officers of the Russian FSS carried out a search in the house of the journalist in Simferopol. Budzhurova was not allowed to have access to a lawyer. All data storage devices, a laptop, a tablet, mobile phones, USB flash drives, CDs, old video cassettes, personal archive of the journalist were confiscated[69]. The actions of the FSS during the search were appealed by the legal representatives of the journalist.

On 18 November 2015, Kyiv District Court of the city of Simferopol, which is currently under the control of the Russian authorities, dismissed a complaint of Lilia Budzhurova on the actions of FSS officers during the search.

On 30 May 2016, the Russian occupation authorities one more time announced a warning to Lilia Budzhurova about the inadmissibility of violating legislation on countering extremist activities. This time, the reason was the publication on the page in the social network Facebook, where the journalist encouraged to help the children of Crimean Tatars

67 http://investigator.org.ua/news/136402/
68 https://www.youtube.com/watch?v=jCtPTR7Dsmw&list=UU2oGvjlJwxn1KeZR3JtE-uQ
69 https://ru.krymr.com/a/27342918.html

who had been arrested by the occupation authorities.

After the closure of the ATR channel in Crimea in March 2015, the journalist actually lost the opportunity to engage in professional activities. Today Budzhurova continues to live on the territory of the occupied peninsula.

Igor BURDYGA

Journalist at hromadske.ua, freelance journalist at Deutsche Welle (DW). In the past, a reporter at RBC-Ukraine

Kyiv

On 11 May 2016, Igor Burdyga arrived in occupied Crimea to attend as a listener a court hearing on the criminal case in the Supreme Court of the Republic of Crimea, as well as to give coverage to the preparations for the anniversary of the deportation of Crimean Tatars and more frequent arrests and detentions on the peninsula.

According to him, during the break in the court hearing, Burdyga was detained by two plain-clothes men. Then Burdyga was taken to the building of the Zheleznodorozhny district Police Department of the city of Simferopol, where he was interrogated by the FSS officers. The interrogation concerned his journalistic activities. In particular, the questions concerned his reporting on the activities of the Right Sector organization in Kyiv's EuroMaidan in February 2014. In addition, he was interrogated about the case of energy towers destruction in November 2015[70]. Moreover, the officers of the FSS illegally took his fingerprints, saliva samples and foot prints of shoes. The interrogation also concerned all recent trips and reports by Igor, his acquaintances with Crimean activists, journalist colleagues who left Crimea after the beginning of occupation. About 8 p.m. on the same day the journalist was released, after which he was forced to leave the peninsula hastily. The journalist wrote about the illegal detention and pressure from the occupation authorities in one of his materials[71].

Tatyana GUCHAKOVA

Journalist, former Deputy Editor-in-chief of the website BlackSeaNews.net

Yalta, AR of Crimea

On 9 April 2015, the officers of the FSS in Crimea conducted a search in the house of Guchakova. The search lasted 10 hours and was conducted in connection with the institution of a criminal proceeding against another journalist of the BlackSeaNews website - Andrey Klimenko. Computer equipment, a telephone, a fax machine, documents, business cards were confiscated during the search. After the search, the FSS officers took the journalist to the interrogation[72].

The summons to interrogations were repeated after a while. During the interrogations, Guchakova was able to listen to the records of the personal telephone conversations that

70 As a result of energy towers destruction in the Kherson region on the night of 20 November 2015, two of the four backbone transmission lines were disrupted. Aforementioned backbone transmission lines supplied the power to the territory of Crimea.

71 https://daily.rbc.ua/rus/show/poldnya-fsb-eshche-odna-istoriya-akkreditatsiyu-1463131347.html

72 https://ru.krymr.com/a/26947411.html, https://ru.krymr.com/a/news/26948258.html

were recorded by the Russian security services. Consequently, they asked questions about the content of the conversations[73].

After the third interrogation in the so-called FSS of Crimea Tatyana Guchakova decided to leave the occupied peninsula.

Andrey KLIMENKO

Editor-in-chief of the newspaper "Big Yalta News", co-founder and editor-in-chief of the website BlackSeaNews.net, Head of the Supervisory Board of the "Maidan of Foreign Affairs" Foundation

Yalta, AR of Crimea

Right after the beginning of occupation, the journalist and editor-in-chief of the website "Blackseanews.net" left the territory of Crimea and continues to report about events in Crimea.

On 10 March 2015, the FSS in Crimea launched the criminal proceeding against Klimenko under Article 2801 of the Criminal Code. According to the data from the website of Rosfinmonitoring, the journalist is included in the list of terrorists and extremists under number 3414. Klimenko associates initiation of the aforementioned criminal prosecution with his professional activities.

According to the journalist, at least 20 journalists were interrogated in connection with this criminal proceeding, searches were carried out, property was confiscated (for example, see the case of a journalist Tatyana Guchakova above).

Andrey Klimenko and all the journalists of the website "Blackseanews.net" left Crimea and continue to work in mainland Ukraine[74].

Natalia KOKORINA

Editor of the Information Agency "Center for Investigative Journalism" (Crimea)

Simferopol, AR of Crimea

On 13 August 2015, the house of Natalia's parents was searched by the Russian FSS officers. A lawyer was not allowed to enter the house during the search. Documents, three laptops, including laptops of the journalist's parents, were confiscated[75].

After the search Natalia was taken to the interrogation to the FSS of the Russian Federation in Crimea. The interrogation lasted six hours.

The search and interrogation of Kokorina was carried out in connection with the criminal proceeding launched on the fact of publication "Volunteers of the battalion "Crimea" on the resource of the Center for Investigative Journalism. Later, criminal charges in connection with the preparation of this material were filed against a journalist Ganna Andriievska.

Fearing further persecution, Natalia Kokorina left the occupied territory and moved to

73 http://qha.com.ua/ru/obschestvo/est-li-svoboda-slova-v-krimu/152932/

74 http://glavred.info/politika/andrey-klimenko-krym-obhoditsya-rossiyskoy-ekonomiki-tak-zhe-dorogo-kak-chechnya-i-ingushetiya-433407.html

75 https://www.svoboda.org/a/26900078.html

mainland Ukraine.

Emil KURBEDINOV

Lawyer and human rights activist, provides legal assistance within many politically motivated cases in Crimea

Simferopol, AR of Crimea

Emil Kurbedinov provides professional legal assistance in many criminal cases that are being conducted by the Russian authorities against Crimeans. Often it concerns cases that have features of political persecution. In particular, he defends a journalist Mykola Semena (see the case of M. Semena), members of the Mejlis of the Crimean Tatar people Ilmi Umerov and Akhtem Chiygoz, Muslims on charges of involvement in Hizb ut-Tahrir and many others Crimeans. The facts of pressure on him on behalf of the de-facto authorities were fixed, in particular, by the international human rights organization Amnesty International[76].

On 26 January 2017, Kurbedinov was detained by the officers of the Center for Countering Extremism of the Ministry of Internal Affairs of the Russian Federation in the Republic of Crimea near the house of the Crimean Tatar Seyran Saliev, where he was heading to participate in the search. Following that, Kurbedinov was taken to Simferopol for interrogation. Meanwhile, his house was also searched.

In respect of the lawyer a protocol was drawn up on an administrative offense under Article 20.3 of the Administrative Code of the Russian Federation. According to the protocol, the violation consisted of a public video demonstration, which contained the symbols of the Muslim organization Hizb ut-Tahrir. This organization is recognized as extremist in the territory of the Russian Federation.

On the same day, by order of the Zheleznodorozhny District Court of Simferopol, which is currently under the control of the Russian authorities, Kurbedinov was sentenced to 10 days of administrative arrest.

It is noteworthy that the video, whose public demonstration was regarded by the occupation authorities as a violation of Russian law, was published by him in one of the social networks on 5 June 2013, long before the beginning of occupation of Crimea.

Subsequently, in May 2017, the lawyer got an award of an international organization Front Line Defenders for human rights defenders at risk, due to the pressure exerted on him by the Russian authorities[77].

Base on that, an application was submitted to the European Court of Human Rights in relation to the violation by the Russian authorities of the right to disseminate information without interference of the public authorities (Article 10 of the ECHR).

76 https://www.amnesty.org/en/documents/document/?indexNumber=eur50%2f5595%2f2017&language=en
77 https://www.frontlinedefenders.org/en/2017-front-line-defenders-award-human-rights-defenders-risk

Sergey MOKRUSHIN

Correspondent of the Information Agency "Center for Investigative Journalism" (Crimea), journalist at "Gromadske.Krym", TV host of the project Radio Svoboda "Krym. Realii"

Simferopol, AR of Crimea

Being a correspondent of the Information Agency "Center for Investigative Journalism" Sergey Mokrushin was engaged in investigative journalism, including illegal actions of representatives of the authorities of Crimea.

On 2 June 2014, Mokrushin, along with the film director Vladlen Melnikov, were illegally detained and severely beaten by representatives of the so-called "Crimean self-defense" in Simferopol. According to "self-defenders", journalists allegedly insulted the honor and dignity of the highest officials of the Russian Federation[78].

On 13 August 2015, Sergey Mokrushin, along with his colleagues, came to the FSS office in Crimea to support journalist Natalia Kokorina (see N. Kokorina's case above). During this action, the police copied the passport data from all its participants. The police officers justified aforementioned actions by the order of their supervisors.

Also, the journalist conducted his own investigation on the circumstances related to the institution of the criminal proceeding against Maidan activist Alexander Kostenko by the authorities of Crimea. Kostenko was accused of inflicting bodily harm to a staff member of the Berkut on Maidan in Kyiv. Alexander Kostenko was subsequently illegally sentenced by the occupation authorities, and Ukrainian human rights organizations recognize him as a political prisoner. According to Sergey Mokrushin, by his investigation he interfered with the plans of the officers of the FSS of the Crimea to falsify the case against activist A. Kostenko[79].

According to the journalist, immediately after the annexation of Crimea, journalists having the pro-Ukrainian position worked almost like guerrillas (they did not discuss important matters over the phone, did not act under their own names), it practically became impossible to work. Fearing persecution, the journalist decided to leave Crimea, and now continues his professional activities in mainland Ukraine.

Valentyna SAMAR and the NGO "Information Press Center"

Editor-in-chief of the Information Agency "Center for Investigative Journalism" (Crimea)

Simferopol, AR of Crimea

Valentyna Samar is a Crimean journalist, editor-in-chief of the Center for Investigative Journalism, the author of many journalistic investigations, including illegal actions of the Crimean authorities.

At the beginning of March 2014, 20 people in camouflage uniforms without identification signs seized the House of the Federation of

78 https://investigator.org.ua/ua/news/128751/
79 http://www.pravda.com.ua/rus/articles/2015/03/27/7062767/view_print/

Independent Trade Unions of Crimea, where the Public organization “Information Press Center” leased premises for the media center, editorial office and studio for the production of TV programs by the Center for Investigative Journalism. Video which captures the seizure of the building was posted on the YouTube channel[80]. Journalists of the Center for Investigative Journalism, who were preparing to go live on the Chernomorskaya TV and Radio Company, were blocked for three hours in the premises of the editorial office and the television studio. The cameraman of the ATR television channel M. Murtazaev, who was streaming the seizure of the House of Trade Unions, was beaten by unknown persons. Later, in the seized media center, activists of the Eurasian Youth Union (was banned by a court decision at the time of the occupation of Crimea) held their press conference.

After these events, the editorial staff of the Center was forced to look for a new premises and temporarily settled in the building of the Chernomorskaya TV and Radio Company.

In June 2014, the film director Vladlen Melnikov and the journalist of the Center Sergey Mokrushin were illegally detained by representatives of the so-called “Crimean self-defense” (see the case of S. Mokrushin above).

On 1 August 2014, bailiffs of the Russian Federation and representatives of the Federal Security Service of Crimea, using force, broke into premises of the Chernomorskaya TV and Radio Company, where the editorial office of the Center had to move. Representatives of the occupation authorities confiscated and arrested all television and office property not only of the Chernomorskaya TRC, but also of the Information Press Center, although the court decision was only extended to the property of the Chernomorskaya TRC. The representatives of the occupation authorities asked journalists and employees of the company to leave the building. The information press center lost equipment and premises, a significant amount of information was destroyed (photos and video materials), in fact, the work and broadcasting of TV programs were stopped. It made impossible for journalists to continue their professional activities. Despite the fact that in December 2014 the property was returned, most of the equipment was not subject to recovery and repair.

In September 2014, the editorial mail of the “Center for Investigative Journalism” was hacked, the web-site of the editorial office was subjected to powerful DDos attacks, the website’s functioning was temporarily stopped.

Valentyna Samar and other employees of the Center were summoned for “preventive talks” to the prosecutor’s office of Crimea and the FSS in Simferopol, which is currently under the control of the Russian authorities. In connection with the real threat of further persecution by the occupation authorities and the inability to work in Crimea, a decision was made to evacuate the agency. Valentyna Samar and other employees of the Center were forced to leave the peninsula. In October 2015, Roskomnadzor of the Russian Federation blocked access to the “Center for Investigative Journalism”[81].

At the moment, Samar and other journalists of the NGO “Information Press Center” continue to work with the Crimean topic in mainland Ukraine.

80 www.youtube.com/watch?v=zG2b5fd6AWU
81 https://ru.krymr.com/a/27288620.html

Irina SEDOVA

Editor of "Breeze" TRC in Kerch, one of the creators of the website kerch.fm, journalist at "Gromadske radio", at the moment she is a journalist of the Crimean human rights group

Kerch, AR of Crimea

At the time when occupation of Crimea began, Irina Sedova worked as the editor of the "Breeze" TRC in Kerch, was one of the creators of the website kerch.fm. The edition covered acute social and political issues, and journalists were conducting investigations, including against the authorities of the city. During the Revolution of Dignity in 2013-2014 the journalist published materials about the events in Kyiv, prepared articles in which she discredited the pro-Russian propaganda about the events on Maidan.

On 22 February 2014, during a meeting in support of the territorial integrity of Ukraine in Kerch, pro-Russian activists attacked the journalist[82]. A week later, at a similar meeting, she was attacked again.

After the beginning of the occupation of Crimea, the journalist and her family began to receive threats. Representatives of the so-called "Crimean self-defense" physically interfered in the implementation of journalistic activities (they did not allow to take pictures, footages). Law enforcement bodies of Crimea did not react to these incidents of harassment and did not conduct effective investigations of attacks on the journalist and her colleagues.

In summer 2015, the journalists of the project "Krym. Realii" had at their disposal documents with information on at least 50 individuals, being prosecuted by the Crimean prosecutor's office controlled by the Russian Federation in connection with the organization and participation in the EuroMaidan on the peninsula[83]. The name of the journalist Irina Sedova also appeared on the above lists. Occupation authorities didn't give either official refutation or confirmation of published documents.

Fearing for her life, Irina Sedova and her family left the occupied Crimea in March 2014. At the moment she continues to be engaged in journalistic activities in mainland Ukraine.

Mykola SEMENA

Journalist of the Radio Svoboda "Krym. Realii" project

Simferopol, AR of Crimea

Crimean journalist Mykola Semena started his cooperation with Radio Svoboda in 2014. After a while, the journalist began to notice signs of surveillance, and later a spy program was detected on his computer.

On 19 April 2016, FSS officers searched the journalist's house, and after several hours of

82 https://www.youtube.com/watch?v=_h_bRyNxYCM
83 https://ru.krymr.com/a/27052049.html

interrogation at the FSS office in the Republic of Crimea the journalist was released on a written undertaking not to leave a place of residence[84]. During the search, computer equipment, data storage media, as well as other documents were confiscated in the journalist's house. On the same day, several Crimean journalists were questioned and searched in Simferopol, Sevastopol and Yalta, suspected of collaborating with Radio Svoboda. Later, the prosecutor's office of Crimea, which is currently under the control of the Russian authorities, reported that the searches were conducted within the investigation of the case of separatism, in which the journalist Mykola Semena was accused.

In December 2016, the final charge under part 2 of Article 280.1 of the Criminal Code for calls for violating the territorial integrity of the Russian Federation using the Internet was brought against the journalist[85]. The maximum term of punishment provided by this article is 5 years of imprisonment. Accusations against the journalist were brought in connection with the preparation of the publication "The blockade is the first necessary step towards the liberation of Crimea"[86].

Being under a written undertaking not to leave a place of residence, Semena can not leave the territory of the peninsula for a long time and can not actually be engaged in professional activities. According to the website of the Federal Service for Financial Monitoring of the Russian Federation, the journalist is included in the List of Terrorists and Extremists. Based on this, the Central Bank of Russia blocked his bank accounts[87].

Several dozens of human rights organizations spoke in defense of the journalist. The OSCE Representative on Freedom of the Media, Dunja Mijatovic, called for the removal of all charges against him. At the Civil Society Forum of the Eastern Partnership in Brussels, Semena was awarded the Paul Sheremet Prize (the journalist was not allowed to go to Brussels to receive the prize).

On 22 September 2017, the Zheleznodorozhny District Court of the city of Simferopol, which is currently under the control of the Russian authorities, found Semena guilty of separatism, i.e. calls for violation of the territorial integrity of the Russian Federation. The court sentenced him to 2 years and 6 months' of suspended imprisonment and also prohibited him from engaging in any public activity for a period of 3 years. Violation of this prohibition threatens the journalist by sending him to custodial settings for a period determined by the court.

Anastasia RINGIS

Journalist of the online media «Ukrayinska Pravda»

Kyiv

Anastasia Ringis is a Ukrainian journalist. She has been working at the online media "Ukrayinska Pravda" since 2014. She grew up in the town Gurzuf in Crimea where her parents live.

On 25 February 2016, while she was entering occupied territory of Crimea through the "Chongar" check point, the FSS officers in Crimea handed over to the journalist a notice banning her entry to Crimea for four years, namely, until 1 September 2020.

The notice states that the entry into the territory of the Russian Federation is prohibited for Ringis on the basis of subpar. 1 part 1 Article 27 of the Federal Law of 15 August 1996

84 https://ru.krymr.com/a/28368407.html
85 https://memohrc.org/special-projects/semena-nikolay-mihaylovich
86 https://ru.krymr.com/a/27240750.html
87 https://investigator.org.ua/rss_yandex/183216/

No. 114-FZ “On the procedure for leaving the Russian Federation and entry into the Russian Federation”[88]. According to the document, the prohibition of entry is necessary in order to ensure the defense capability or security of the state, or public order, or protection of public health.

According to the journalist, this ban is related to her professional activities. “It could happen because I’m a Ukrainian journalist. Just in order to stop talking in the Ukrainian press about the situation in Crimea. I have a feeling that they just “close” Crimea. The people of Crimea are now like on a submarine, they have access only to Russian media,” the journalist told to one of the media[89].

Tatyana RIKHTUN

The Media Center “IPC Sevastopol”, the website of investigative journalism “Civil Defense” (911sevastopol.org)

The city of Sevastopol

On 3 March 2014, Rikhtun was attacked by unknown persons during the filming of the siege of the headquarters of the Ukrainian Navy in Sevastopol.

On 9 March 2014, she was present as a journalist at a meeting at the monument to Taras Shevchenko in Sevastopol. This meeting was stopped because of clashes between its participants and pro-Russian activists. Later on that day, unknown people were watching her near her own house and showered her with eggs.

On 13 March 2014, the representatives of the so-called “Crimean self-defense” in camouflage burst to the room that was rented by the media center “IPC Sevastopol”. Together with the Sevastopol police they blocked journalists in a small room, held them there for several hours, during which they conducted an illegal examination of personal belongings and copying of documents. The video of this incident is available on YouTube channel[90].

Fearing for her life and health, Tatyana Rikhtun was forced to leave the occupied territory of Crimea and at the moment she continues to work in mainland Ukraine. Law enforcement bodies have not carried out an effective investigation of the facts of repeated attacks on Rikhtun and interference in her journalistic activities.

Gayana and Ismet YÜKSEL

Director of the Information Agency, member of the Mejlis of the Crimean Tatar people

Coordinator of the Information Agency, advisor to the head of the Mejlis of the Crimean Tatar people

88 http://www.pravda.com.ua/news/2016/02/25/7100290/
89 https://ru.krymr.com/a/27583611.html
90 https://www.youtube.com/watch?v=Ts_kgt-PeKw

Since the beginning of the Russian occupation of the peninsula in February 2014, almost all employees of the Information Agency "QHA Crimean News Agency" have been subjected to persecution and pressure for their pro-Ukrainian position by the special services of the Russian Federation.

On 9 August 2014, representatives of the occupation authorities banned Ismet Yuksel from entering Crimea for 5 years with reference to Part 1 of Article 27 of the Federal Law FZ-114. Yet, Ismet Yuksel has never received the text of the decision itself, which could justify the entry ban.

On 21 April 2015, the head of the QHA Information Agency, Gayane Yüksel, was summoned to the Center for Countering Extremism, created in Crimea after the occupation. The reason for the summoning was the publication of information on the agency's website about the organization, which in November 2014 was recognized extremist in the territory of the Russian Federation. As a result, Gayana Yuksel was brought to administrative responsibility for the publication of 2006-2009.

As a result of systematic persecution, the agency could not continue to work as a mass media in the territory of Crimea and was forced to leave the peninsula. Currently, it continues its activities in Kyiv.

Information Agency "QHA Crimean News Agency" was established in Crimea and registered in accordance with Ukrainian legislation in 2005. The agency aims to provide objective and complete information about Crimea and Crimean Tatars. QHA materials are provided in Russian, Ukrainian, English and Turkish. The agency's information activities promoted Crimea as a peculiar region of Ukraine, which had its political, economic and ethnic specifics.

Alexander YANKOVSKY

Journalist, TV host and producer of Chernomorskaya TRC, the head of the Radio Svoboda "Krym. Realii" television project

Simferopol, AR of Crimea

Alexander Yankovsky, a journalist and a TV host of the largest television and radio company of Crimea, Chernomorskaya TRC, in early March 2014 joined the national media campaign "Edyna kraina. Edinaya strana". The purpose of the campaign was to demonstrate the unity of Ukraine and prevent the destabilization of the situation in the country. Yankovsky became the author and host of the eponymous telethon, held at the Chernomorskaya TRC jointly with the "Center for Investigative Journalism" (Crimea).

After the telethon was released in early March 2014, the "Center for Investigative Journalism" in Simferopol was attacked. A few days later, Alexander Yankovsky received calls from unknown persons who threatened him with reprisal.

Fearing for his life and health, Alexander decided to move with his family to Kyiv, where he continues journalistic activities and works with the Crimean topic.

"I understand clearly one thing. Now it is impossible to work in Crimea as a journalist. Large Ukrainian international TV channels are simply turning off their correspondent posts. It's scary to stay in Crimea for people of our profession …", the journalist told to one of the Ukrainian media after he left the peninsula in March 2014[91].

91 httpfakty.ua/179097-aleksandr-yankovskij-posle-togo-kak-proizoshlo-napadenie-na-centr-zhurnalistskih-rassledovanij-v-simferopole-neizvestnyj-pozvonil-mne-i-skazal-gotovsya-ty-budesh-sleduyucshim

Chernomorskaya TV and Radio Company

Founded in 1993, "Chernomorskaya" TRC was one of the largest television companies of the Crimean Peninsula. The television company created over 140 television projects and TV cycles.

Chernomorskaya TRC broadcasts via satellite and cable networks in other regions of Ukraine since 2011. The broadcaster actively covered the events on Maidan from positions that differed from the coverage of the Ukrainian Revolution of Dignity in the Russian media. From the very beginning of the occupation, the TV company was persecuted by the occupation authorities.

For instance, on 11 April 2014, during the attack on the staff of the television channel, a flash card with video material was destroyed by representatives of the "Crimean self-defense". On 29 June 2014, Chernomorskaya TRC was disconnected from broadcasting in cable networks[92].

On 1 August 2014, all property of the Chernomorskaya TRC, located in its building in Simferopol, was arrested and confiscated by the occupation authorities of Crimea. For some time on the territory of the company there were located the representatives of the "Crimean self-defense", who did not let journalists of the agency "Center for Investigative Journalism" to enter the premises (See the case of V. Samar). Subsequently, the broadcasting of the TV channel was suspended. With the help of 14 transmitters belonging to the Chernomorskaya TRC, the occupation authorities started to illegally provide broadcasting of the Rossiya-24 television channel[93].

Chernomorskaya TRC was forced to move to Kyiv. One of the company's tasks today is to inform citizens of Ukraine about the events in occupied Crimea.

ATR TV Channel

ATR channel was founded in 2005. It was the first Crimean Tatar TV channel to broadcast in Crimea, Turkey and European countries.

ATR is one of the largest television channels in Crimea. Starting from the beginning of the occupation the channel was persecuted by the occupation authorities.

On 11 August 2014, the ATR journalist Sh. Nemattulaev has lost his accreditation in the so-called Crimean State Council. On 24 September, the general director of the ATR channel E. Islyamova received a letter from the Center for Combating Extremism with a request to provide certain documents. The aforementioned document contained a reference to a letter of the Roskomnadzor Office, established on the territory of Crimea, where it was stated that the ATR channel had changed the direction of information content and "stubbornly lays down the idea of possible repressions on the national and religious grounds, contributes to the formation of anti-Russian opinion, deliberately foments Crimean Tatars distrust of power

92 https://helsinki.org.ua/wp-content/uploads/2016/05/PeninsulaFear_Book.pdf
93 http://blacksea.tv/we/

and its actions, which indirectly carries the threat of extremist activity”[94].

On 26 January 2015, representatives of the Investigative Committee of the Russian Federation and the Center for Countering Extremism, accompanied by OMON officers armed with automatic weapons, searched the editorial office of the ATR channel and confiscated the server, as a result of which the broadcasting process was disrupted.

In February 2015, Roskomnadzor provided broadcast frequencies, used by the ATR channel, to another TV and radio company. The executives of ATR repeatedly appealed to the occupation authorities to preserve the right to broadcast, but has not received permission to continue broadcasting in Crimea[95].

On the night of 1 April 2015, the ATR channel stopped its broadcasting. In May 2015, the television channel tried to resume work on the Internet, but journalists were prevented from working, systematically denied admission to events, interviews, and filming. In November 2015, searches were conducted in the homes of ex-general director of the ATR E. Islyamova and ex-deputy director L. Budzhurova. In December 2015, a search was conducted in the house of R. Spiridonov, the ex-editor of the news agency “15 Minutes”, which was part of the ATR holding.

In June 2015, due to systematic persecution the TV channel moved to mainland Ukraine where it continues to work, including constantly covering events in Crimea and for Crimeans via satellite television.

In 2015, a copy of the order signed by the director of the health department of Sevastopol leaked to the Internet, by which the territory of medical institutions was in fact closed for the media.

ПРАВИТЕЛЬСТВО СЕВАСТОПОЛЯ

ДЕПАРТАМЕНТ ЗДРАВООХРАНЕНИЯ ГОРОДА СЕВАСТОПОЛЯ

ПРИКАЗ

«13» 08 2015 г. № 682

О мерах по обеспечению безопасности медицинских организаций

В связи с участившимися случаями проникновения групп неизвестных лиц с видеокамерами в медицинские организации и осуществления ими угроз сотрудникам медицинских организаций, с целью не допущения угрозы жизнедеятельности медицинских организаций

ПРИКАЗЫВАЮ:

1. Руководителям медицинских организаций, подведомственных Департаменту здравоохранения города Севастополя (далее - МО) при появлении подозрительных лиц, пытающихся проникнуть на территорию МО (включая ведение съемки, без согласования с главным врачом МО или с Департаментом здравоохранения города Севастополя)

1.1. Незамедлительно сообщать в УМВД России по городу Севастополю и директору Департамента здравоохранения города Севастополя

1.2. принять все необходимые меры для недопущения нарушения законодательства и безопасности МО.

2. Контроль за исполнением приказа оставляю за собой.

Директор Ю.Э. Восканян

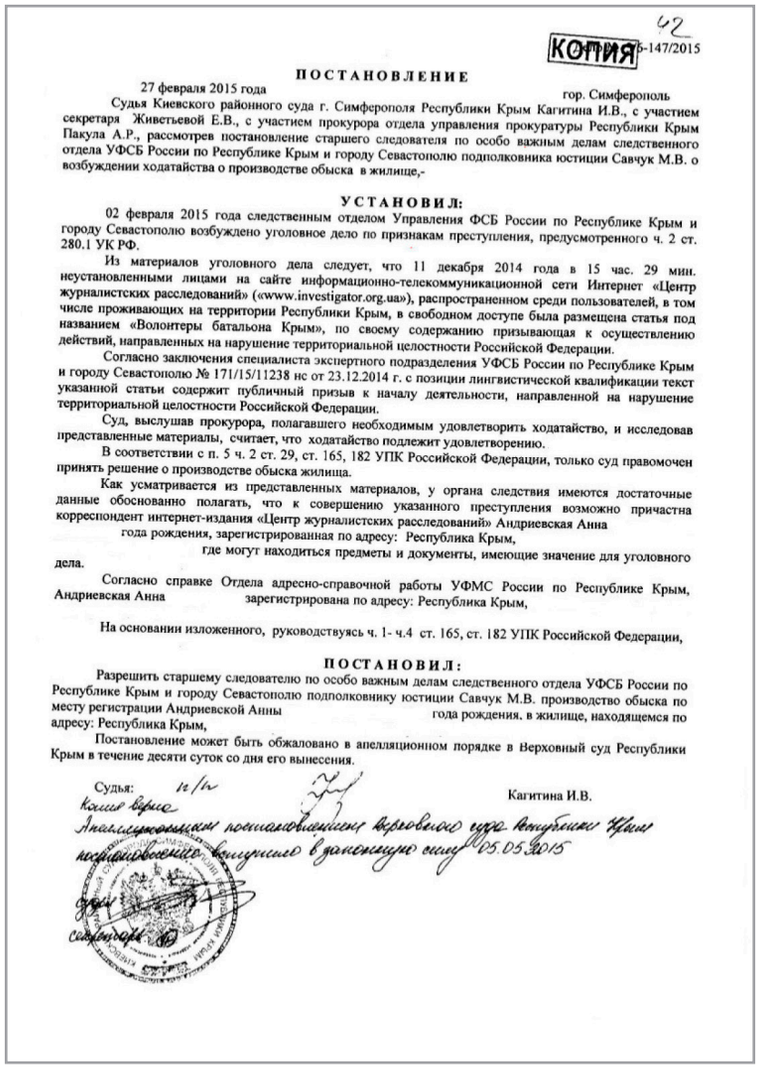
94 https://helsinki.org.ua/wp-content/uploads/2016/05/PeninsulaFear_Book.pdf

95 http://news.allcrimea.net/allspets/atr/

According to the ruling of the Kiev district court of the city of Simferopol, which is currently under the control of the Russian authorities, of 27 February 2015, Ganna Andriievska might have been involved in the dissemination of the article «Volunteers of the battalion «Crimea». In the opinion of the investigative body supported by the court, the content of this article incites for the implementation of actions aimed at violating the territorial integrity of the Russian Federation.

The court allowed a search in the premises where the journalist was registered with the purpose of finding objects and documents relevant to the criminal case.

At the time this ruling was adopted, Ganna Andriievska had already lived in Kyiv for about a year. Her parents continued to reside at the address indicated.



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КОПИЯ 6-147/2015

ПОСТАНОВЛЕНИЕ

27 февраля 2015 года гор. Симферополь

Судья Киевского районного суда г. Симферополя Республики Крым Кагитина И.В., с участием секретаря Живетьевой Е.В., с участием прокурора отдела управления прокуратуры Республики Крым Пакула А.Р., рассмотрев постановление старшего следователя по особо важным делам следственного отдела УФСБ России по Республике Крым и городу Севастополю подполковника юстиции Савчук М.В. о возбуждении ходатайства о производстве обыска в жилище,-

УСТАНОВИЛ:

02 февраля 2015 года следственным отделом Управления ФСБ России по Республике Крым и городу Севастополю возбуждено уголовное дело по признакам преступления, предусмотренного ч. 2 ст. 280.1 УК РФ.

Из материалов уголовного дела следует, что 11 декабря 2014 года в 15 час. 29 мин. неустановленными лицами на сайте информационно-телекоммуникационной сети Интернет «Центр журналистских расследований» («www.investigator.org.ua»), распространенном среди пользователей, в том числе проживающих на территории Республики Крым, в свободном доступе была размещена статья под названием «Волонтеры батальона Крым», по своему содержанию призывающая к осуществлению действий, направленных на нарушение территориальной целостности Российской Федерации.

Согласно заключения специалиста экспертного подразделения УФСБ России по Республике Крым и городу Севастополю № 171/15/11238 нс от 23.12.2014 г. с позиции лингвистической квалификации текст указанной статьи содержит публичный призыв к началу деятельности, направленной на нарушение территориальной целостности Российской Федерации.

Суд, выслушав прокурора, полагавшего необходимым удовлетворить ходатайство, и исследовав представленные материалы, считает, что ходатайство подлежит удовлетворению.

В соответствии с п. 5 ч. 2 ст. 29, ст. 165, 182 УПК Российской Федерации, только суд правомочен принять решение о производстве обыска жилища.

Как усматривается из представленных материалов, у органа следствия имеются достаточные данные обоснованно полагать, что к совершению указанного преступления возможно причастна корреспондент интернет-издания «Центр журналистских расследований» Андриевская Анна

года рождения, зарегистрированная по адресу: Республика Крым,

где могут находиться предметы и документы, имеющие значение для уголовного дела.

Согласно справке Отдела адресно-справочной работы УФМС России по Республике Крым, Андриевская Анна зарегистрирована по адресу: Республика Крым,

На основании изложенного, руководствуясь ч. 1- ч.4 ст. 165, ст. 182 УПК Российской Федерации,

ПОСТАНОВИЛ:

Разрешить старшему следователю по особо важным делам следственного отдела УФСБ России по Республике Крым и городу Севастополю подполковнику юстиции Савчук М.В. производство обыска по месту регистрации Андриевской Анны года рождения, в жилище, находящемся по адресу: Республика Крым,

Постановление может быть обжаловано в апелляционном порядке в Верховный суд Республики Крым в течение десяти суток со дня его вынесения.

Судья: Кагитина И.В.

Копия верна

Апелляционным постановлением Верховного суда Республики Крым постановление вступило в законную силу 05.05.2015

INFORMATION OCCUPATION – A NEW CONCEPT IN INTERNATIONAL LAW?

Professor Katrin Nyman Metcalf[96]

Introduction

This article discusses the concept "information occupation", assumed to mean actions to limit or distort media and access to information, undertaken by a hostile power that exercises *de facto* or *de jure* occupation over the information sphere of another state. The discussion is linked to the occupation of Crimea by the Russian Federation as well as the situation in Eastern Ukraine although the article treats the topic in a general manner. The term "*information occupation*" does not have a recognised meaning in legal instruments or among legal authors, but has been used, e.g. in Ukraine in discussions around the draft Information Security Concept first presented in 2015 and finally approved in February 2017[97] (although not in the concept itself).

The article discusses what the notion "information occupation" could contain, if interpreting it in light of rules on occupation in international law together with provisions on freedom of information. The aim of the analysis is to determine whether the concept would be useful. Would the term help to identify aggressive action in order to better counter it or would it in any other manner add clarity to the new way in which conflicts can be carried out, given the importance of the information space for modern society?

To clarify whether such a notion can add anything to the debate about media in crisis, in a situation like the one in Crimea, the article examines what occupation means in international law and whether rules and cases on this could be used also for the information sphere. As occupation is a violation of sovereignty, we look at the concept "information sovereignty" and what that can mean. Propaganda is a means to interfere in other countries. A short section highlights the situation in Ukraine. Finally, the author makes some concluding remarks which are her personal reflections, based on work with freedom of expression in complicated situations over many years in a multitude of countries.

Occupation under International Law

The term "occupation" has a legally defined meaning in international law since more than 100 years[98], but nevertheless it is often utilised differently than in accordance with the defined meaning. Article 42 of the 1907 Hague Regulations says "*Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised*". The common Article 2 of the four Geneva Conventions of 1949 applies to any territory occupied during international hostilities, also in situations where there was no armed resistance[99]. It is relevant to recall that humanitarian law – the law of war, *jus in bello* – does not deal with the legality of a state taking territory from another but with what applies when a situation of occupation has arisen. Legality of taking territory is regulated

96 Katrin Nyman Metcalf (katrin.nyman-metcalf@ttu.ee), Professor of Law in the School of Business and Governance, Tallinn University of Technology and active as an international consultant primarily on communications law. She has written on related topics in The Uppsala Yearbook of Eurasian Studies (2017) and in The Situation in Ukraine since 2014: jus ad bellum, jus in bello, jus post bellum (Asser, 2017), both forthcoming.

97 http://www.president.gov.ua/en/news/glava-derzhavi-zatverdiv-doktrinu-informacijnoyi-bezpeki-ukr-40190

98 The 1907 Hague Regulations (arts 42-56), the Fourth Geneva Convention (GC IV, art. 27-34 and 47-78) and provisions of Additional Protocol I and customary international humanitarian law include duties of occupying powers. Hague Regulations: https://treatydatabase.overheid.nl/en/Verdrag/Details/003319. Geneva Conventions: https://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp. Occupation was the legal term for getting sovereignty over territory that did not belong to any state, *terra (or res) nullius*. Such areas do not exist anymore so this is of historical interest. Rebecca M. M. Wallace (1986) International Law (Sweet & Maxwell 1986), pp. 81-85.

99 For an overview of humanitarian law provisions on occupation: The International Committee of the Red Cross; https://www.icrc.org/eng/resources/documents/misc/634kfc.htm

by the UN Charter and customary law, and in this context is sometimes referred to as *jus ad bellum*, the law about the right to use force (conduct war). Normally, taking territory of another state is illegal, unless it is based on an agreement between states. Use of force is illegal under international law apart from very special circumstances (mainly self-defence) but this issue will not be discussed in this article as it is a very large topic in itself.

If we stick to the question of occupation and what this term means, to see if we can use it also for information space, the fist remark is that it is difficult to determine exactly when occupation has arisen – when has control been established? In common speech, people tend to talk about occupation for any situation of foreign-imposed control regardless of how this came about and regardless of whether it is a temporary or a long-term situation. Often the same action is called different things by different people: just like one man´s terrorist is another man´s freedom fighter, one person´s invasion is someone else´s liberation. From the legal viewpoint, the level of approval of the occupation does not matter for the application of humanitarian law. If territory comes under the effective control of hostile foreign armed forces, even if there was no armed resistance, an occupation has come into being and relevant humanitarian law provisions apply. The most complex question in this context is often what amounts to "control", for example while an invasion is ongoing. The ICRC's 1958 Commentary to the Fourth Geneva Convention (GC IV)[100] suggests that humanitarian law should apply while other commentators believe that it is only meaningful to talk about occupation when the relevant party can actually exercise sufficient authority over enemy territory to carry out the duties imposed on an occupier by humanitarian law[101].

It is almost a norm in practice that occupying states refer to the support of the local population – they come to "liberate" them. Ukraine shows examples of this. From a legal viewpoint, regarding the existing rules on occupation, it is worth to recall that agreements between the occupying power and the local authorities cannot deprive the population of occupied territory of the protection of international humanitarian law (GC IV, Article 47) and protected persons themselves can in no circumstances renounce their rights (GC IV, Article 8). The occupying power is under the obligation to respect the laws in force in the occupied territory with some exceptions (if laws constitute a threat to its security or an obstacle to the application of the international law of occupation). It is the responsibility of the occupying power to ensure public order and safety as well as the well-being of the population in the occupied territory. There are several provisions restricting the occupying power from exercising violence, reprisals or other negative acts.

For the legal conditions of occupation one ingredient is that the occupant does not acquire sovereignty over the territory but occupation is a temporary situation[102]. Territorial changes at the end of a war have to be done through some form of agreement or process, to gain legal status. Permanent taking of territory is also called annexation. Such territorial changes are almost always extremely controversial and often masked as popular initiatives, righting of historical wrongs and so on (which sometimes they may be). International law does not easily recognise changes of territory. The so-called annexation of Crimea in 2014 demonstrates how the power annexing a country finds any excuses that suits it to justify the action, rather than explain it in legal terms.

If we consider occupation of the information and communication space, we should think about what such an action could look like in this different context. Media and information are not explicitly mentioned in the list of duties and obligations of occupying powers and has no special protection like cultural property. Some other humanitarian law provisions may affect media matters, like the requirement to protect prisoners of war against insults

100 Oscar Uhler & Henri Coursier (1958) Commentary on the Geneva Conventions of 12 August 1949. Volume IV; https://www.icrc.org/eng/resources/documents/publication/p0206.htm

101 https://www.icrc.org/eng/resources/documents/misc/634kfc.htm

102 Which has not prevented a number of drawn-out occupations, the Israeli occupation of Palestine is the longest but there is also Namibia, East Timor and several others.

and public curiosity (Article 13 of the Third Geneva Convention of 1949, repeated in GC IV Article 27 for the protection of civilians, particularly those who are in the hands of the opposing side or of an occupying power). Thus, a requirement of respect can be deduced - the obligation not to abuse the possibilities that control gives.

Russian actions in Ukraine show how states do not act in accordance with norms of international law or explain their behaviour in these terms. Russian actions have been condemned by the European Union (EU) and many countries. The clearest example was the annexation of Crimea that led to international sanctions. As for the situation in Eastern Ukraine, Russia has had somewhat more success in claiming that it is not involved or at least that there is no evidence that it is (officially) involved. Most independent observers would claim that there is plenty of evidence of Russian involvement, but in international politics states sometimes seize upon any ambiguities that will allow them to avoid having to take a clear stance. This would fit with the EU policy toward Russia, which has moved away from the value-driven one to a policy dictated by realism, as Jonsson wrote already in 2011[103]. Russia has for some time gone toward being quite explicit about how it regards any actions in the former Soviet area that it objects to and perceives as norm-setting, which it has not been consulted on, as hostile acts against Russia[104].

Information Occupation and Information Sovereignty

As opposed to the well-known - but in practice complex - notion of occupation, the term "information occupation" does not have an accepted meaning. If searching on this term, one tends to fall upon messages about professions dealing with information. This author was faced with the notion in discussions about the draft Information Security Concept of Ukraine in the second half of 2015, which she was asked to analyse by the OSCE Representative on Freedom of the Media[105]. The stated aim of the Concept was to create preconditions for developing Ukraine's information potential to ensure growth and avoid negative external influences. It appeared unsurprisingly that the main reason for drafting the concept was the war and the external aggression Ukraine was facing. A main aim was to prevent propaganda targeted at the country from abroad, in practice from Russia. Even if this was an understandable and legitimate aim, the report was nevertheless critical of the draft Concept. What was brought up was the difficulty in defining propaganda and the risk with setting out limitations on media content in law or regulation, rather than assessing it *ad hoc* based on general rules (like prohibition of incitement to hatred and violance). New rules could lead to undue limitations on freedom of expression, especially as the legal nature of the draft Concept was unclear[106]. When the Concept in its amended form was finally adopted as an Information Security Doctrine in February 2017 the statement on the website of the President of Ukraine mentions that the necessity of adoption of the Doctrine was caused by the emergence of topical threats to national security in the information sphere, as well as by the need to determine innovative approaches to formation of the protection system and development of the information space in conditions of globalisation and free flow of information. The destructive information impact of Russia in conditions of the hybrid war unleashed by it are explicitly mentioned. The defence related aspects of the Doctrine are shown by the National Security and Defence Council holding a key role for implementing the Doctrine[107].

Doubtless the information space is becoming all the more important in any warfare just as for any other purpose. However, modern information and communication technologies

103 Anna Jonsson (2011) "Russia and Europe", pp. 444-453 in G. Gill & J. Young (eds.) Routledge Handbook of Russian Politics and Society (Routledge, London), p. 444.

104 *Ibid.,* p. 448.

105 Katrin Nyman Metcalf (2015) Legal Analysis of the draft Information Security Concept of Ukraine. OSCE Representative on Freedom of the Media, 21 July 2015; http://www.osce.org/fom/173776

106 *Ibid.*

107 http://www.president.gov.ua/en/news/glava-derzhavi-zatverdiv-doktrinu-informacijnoyi-bezpeki-ukr-40190

(ICT) means that it is difficult to keep apart what is an "information" action and what is something else, using the same technologies. Cyber warfare is indeed a combination of all sorts of acts that only have in common that they use the cyberspace – internet – in some way[108]. As words are so important for lawyers, before a new term is taken into use, we need to see what if anything this term adds and if we can define it in an acceptable manner. To see if a notion such as information occupation can add anything to the international legal debate, we have to see if the known aspects of occupation under international law can fit in information space or if there are other, new ways to determine what such occupation could look like. The term is closely linked to the notion of "information sovereignty" that is also a new (or newly revived)[109] and not widely accepted term. This term can be defined as the supreme authority (for a state) to make decisions about and to maintain order in relation to information communication within the state and to have equal and independent right to produce, transmit and use information free from any external interference or control also externally[110].

Russia and China have been promoting an understanding of protection of the information space, including internet, that focuses on content. They have stressed concepts such as information security[111] and information sovereignty, while countries, most notably European and other Western countries, with strong protection of freedom of expression do not use such terms in relation to content of media. It is hard to imagine any real meaning of sovereignty in information in today´s interconnected world, other than an excuse to restrict free movement of information. The extent of sovereignty in any form in the modern, interconnected world is a matter of discussion among academics as well as practitioners. Sovereignty retains an important role in international law as it is the foundation on which ideas such as a ban on interference in the internal affairs of other states rests, but what it means in practice is more challenging as no country can act independently of others in the modern global society. To try to link such a concept to the very interconnected information space is even more complex. Without denying that every country has the right to define its own policies, including on media, in societies with freedom of expression this should not mean limiting possibilities for people to access content from other countries (or distribute it to other countries)[112].

Russia has stressed sovereignty in different ways, for example by making it a goal of its foreign policy to be a "sovereign democracy"[113]. The stress in that term should definitely be on "sovereign" rather than on "democracy", as what it appears to mean is that Russia refuses to abide even by commitments it has accepted by joining international organisations and treaties. It shows the ambivalence of reforms in Ukraine that there are proposals in Ukraine to use the information sovereignty concept, even if this is promoted mainly by Russia and rejected by European states and others who favour freedom of expression. International organisations have advised Ukraine against using this concept as it is hard to define what it means and it is likely to be abused to control internet and other modern media content.

The actual Russian attitude to freedom of expression is best shown by its actions, for

108 On cyberattacks against Ukrainian media and electricity systems, allegedly with the same malware. http://securityaffairs.co/wordpress/43321/hacking/ukraine-attack-caused- power-outage.html

109 The term has been used for decades but with the spread of electronic information, countries like China have started using it more, applying it to information technologies. Wenxiang Gong (2005) "Information Sovereignty Reviewed" in Intercultural Communication Studies, Volume XIV:1; 2005, pp. 119-135 especially, p. 119 and p. 121.

110 *Ibid.,* p. 129.

111 Henry Rõigas (2015) "The Ukraine Crisis as a Test for Proposed Cyber Norms", pp. 135-144 in Kenneth Geers (ed.) Cyber War in Perspective: Russian Aggression against Ukraine (NATO Cooperative Cyber Defence Centre of Excellence, Tallinn), p. 36.

112 Katrin Nyman Metcalf (2015), Legal Analysis of the draft Information Security Concept of Ukraine. OSCE Representative on Freedom of the Media, 21 July 2015; http://www.osce.org/fom/173776

113 Anna Jonsson (2011), "Russia and Europe" pp. 444-453 in G. Gill & J. Young (eds.) Routledge Handbook of Russian Politics and Society (Routledge, London) p. 450.

example in Crimea. Immediately after the annexation, media freedom was severely curtailed either through direct measures such as banning certain media outlets or by other actions like imposing various requirements and limitations, that in practice had the same effect – depriving media outlets of any possibility to operate properly. The situation in Eastern Ukraine is a bit different as the territory, formally, is not under control of Russian authorities, but the intention of Russia and its supporting elements to limit freedom of the media is the same.

International Case Law on Information under Occupation

When looking for ways to interpret what *information occupation* might look like in the legal sense, the tools to use are analysis of case law on information under occupation as well as looking for situations in the world where such information occupation is practiced. In assessing case law, the first issue one is faced with is the problem of what is occupation. It is rare that there is agreement that a certain situation amounts to occupation – at least beyond a limited time during or just after hostilities. If the situation of control by a hostile power remains, this power will most likely seek to justify the situation through different means, like a "voluntary" adherence to the occupying state, maybe after a referendum.

This means that in order to find interesting cases one needs to assume that some situations amount to or resemble occupation at least to the extent relevant for our study – time limited control by a hostile power over territory of another state. In the European Court on Human Rights (ECtHR) there are a few cases on the obligations to protect freedom of expression in all contexts, including disputed territories like Northern Cyprus and Transnistria. The Crimean media and information situation has not yet been examined by the ECtHR in any final ruling.

For situations of occupation, a first question is whether a state that has had its territory occupied by someone else can be responsible for upholding rights if it has no control or at least not full control over the territory. ECtHR has stressed that even in exceptional circumstances, when a State is prevented from exercising authority over part of its territory due to military occupation by the armed forces of another State, acts of war or rebellion or the installation of a separatist regime within its territory, it does not cease to have jurisdiction within the meaning of Article 1 of the European Convention on Human Rights (ECHR). However, the responsibility is limited to discharging positive obligations, related to measures needed to re-establish control over the territory in question, as an expression of its jurisdiction, and to measures to ensure respect for the applicant's individual rights[114]. The occupying power will also have obligations and who can actually be in charge of what is an important question. The situation in Ukraine was examined in the case *Khlebik v. Ukraine*[115] about a complaint by a man convicted in 2013 of several offences by a court in the Luhansk Region that the domestic courts were unable to examine his appeal, because his case file was blocked in an area that was no longer under the Ukrainian Government's control. ECtHR did not find that the complainant had suffered negative consequences like extended detention. The Court found that the Ukrainian authorities had done all in their power, under the circumstances of the hostilities in Eastern Ukraine, to address the situation. We can thus see a responsibility for all sides to uphold rights to the extent it is possible for them, or at least do what they may have in their power.

Cases from occupation situations tend to be about property or procedural issues. In the Case of *Cyprus v. Turkey*[116] legality of restrictions on media in a disputed territory were discussed. The alleged restrictions were not fully proven, so the pronouncements of the court were limited. Some concrete restrictions on specific information sources (specifically school books) were identified and these were condemned. The occupying power should

114 *Chiragov and others v. Armenia*, Application 13216/05, Judgement on 16 June 2105; *Sargsyan v. Azerbaijan*, Application 40167/06, Judgement on 16 June 2015.

115 Application 2945/16, Judgement 25 July 2017.

116 Application no. 25781/94, Judgment on 10 May 2001, especially paragraphs 248 onwards.

not use its control to undertake such restrictions. As for rules posing restrictions on newspapers, other books or electronic media, there was not enough evidence about what the actual limitations were. In the part that was regarded as proven, on the school books, it can be seen that the court does not allow the authorities in control of a disputed territory to limit freedom of expression because content may be against the views of this power.

In the Case (Grand Chamber) *Catan and others v. Moldovia and Russia*[117] the occupation of Transnistria was at issue including from a perspective of culture, primarily education. The verdict is interesting in its statement of why Russia denies jurisdiction[118]. The responsibility for allowing media to operate freely in occupied territories, including minority media, can be deduced from the case even if it is not expressly stated. Another Transnistria case, Case of *Ilascu and others v. Moldova and Russia*[119], discusses jurisdiction and responsibility of states for violations of the ECHR in situations of occupation[120]. The need for functioning of media is mentioned[121]. The dissenting opinions are also interesting on the treatment of what occupation is and what the responsibility in such cases is. In situations like the ones mentioned, a problem for case law is that de facto occupying powers will often deny that they have such role and thus also deny any responsibility to apply laws and protect rights.

The International Court of Justice (ICJ) has not dealt with the question of information under occupation. There are many cases on right to territory and few cases on what can be done in certain disputed territories but nothing that is close to the issue at hand or that could easily fit if we "move" the occupation to cyberspace. In the case *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*[122] there is a discussion on what actions may be taken in disputed territories. However, it is not easy to make an analogy to the effect on media or other communications from this case as the actions are very practical (dredging, digging etc.) and the main question is about their lasting impact on nature. The findings rely a lot on whether any effects are irreparable or not. The distinctions between movable and immovable property and lasting or repairable effects cannot easily be transferred to the ICT sphere[123].

Propaganda

One main issue related to occupation of the information space is the prevalence of propaganda. Propaganda is not only used in occupation (or annexation) situations, but such situations give the occupying hostile power, a possibility to exercise propaganda without there being many effective tools against it. It occupies the media scene with its message. This is seen in Crimea. At the time of the Russian annexation, restrictions on media or other information channels are among the reasons why the so-called referendum did not meet international standards on a democratic process, even should it otherwise have been legitimate (which it was not). Here we can say that Russia knew it had to occupy information space as an early step in the occupation and annexation of the territory. The modern communications landscape is diverse with a multitude of media sources, social media, access to global media and so on, but official media – primarily broadcasting - still remains important as a source of news in many countries. If there is a sufficiently hostile climate in general in the county, self-censorship and fear will limit the impact of alternative voices even it is technically complex to do so.

Propaganda is nothing new – it has existed for centuries. Richter mentions the important role that the desire to stop nationalistic propaganda had in the ultimatum to Serbia, which

117 Applications nos. 43370/04, 8252/05 and 18454/06, Judgement of 19 October 2012.
118 *Ibid.,* paragraph 96.
119 Application no. 48787/99, Judgement 8 July 2004.
120 *Ibid.,* especially paragraphs 312 and 333.
121 *Ibid.,* paragraph 234.
122 Request for the Indication of Provisional Measures, Order of 8 March 2011, ICJ.
123 On this distinction, Jamal L. El-Hindi (1989-90) "The West Bank Aquifer and Conventions regarding Law on Belligerent Occupation", pp. 405-428 in Victor Kattan (ed.), (2008). The Palestinian Question in International Law (British Institute of International and Comparative Law; reprinted from 11 Michigan Journal of International Law, pp. 1400-1423) pp. 416-417.

to a large extent was behind the start of the hostilities that led to the First World War[124]. It was only during this war and in an *ad hoc* manner that politicians became aware of how important it is to deal with issues of information and public opinion[125].

Propaganda is a value-laden term that we are all guilty of using much more readily about messages we disagree with than about political speech that we agree with. The term is notoriously hard to define. From definitions suggested by authors, we can use the one by Lasswell, who defines propaganda as the technique of influencing human action by the manipulation of representations, in the form of spoken or written words, pictures, films or any other form[126]. In international instruments, the rules on propaganda are specific for certain situations and types of messages. Article 20 of the International Covenant on Civil and Political Rights (ICCPR) prohibits war propaganda and incitement to hatred. The issue is not easy to deal with legally, as there is rarely consensus on the fact that propaganda is being used. Such difficulty in defining propaganda and the risk with setting out limitations on content in law or regulation are the explanation why this author does not recommend making specific bans on propaganda but rather to assess it *ad hoc* based on general rules (like prohibition of incitement to hatred and violence)[127].

To meet propaganda with propaganda is rarely a good idea. It leads to an escalation, where both sides have to provide more and more propaganda and people in any case end up believing only what comes from "their" side. In addition to it being difficult to maintain a neutral stance and avid falling into the trap of making own propaganda, such battles nowadays risk being ineffective. As mentioned, there are so many possible sources of information that the people who look out for facts and different opinions can find this, while certain population groups tend to believe certain media. With battles of propaganda versus propaganda, everyone just sticks to their preferred source in any case and only truth and a balanced debate suffers. The fact that people often chose to use only certain media and believe the message they like[128] should not deflect from the importance of plurality as this at least provides the possibility to check things and makes it that much more difficult for authorities to provide only one truth. Before engaging in propaganda, those behind it should also consider that educated and active people with an interest in a matter will seek alternative information and if they see media outlets engaged in propaganda they will just not believe these outlets any more.

In a situation of occupation, it is in the interest of the occupying power to limit access to alternative sources of information in order to exacerbate the effect of its propaganda. Modern media means that such limitations are more complex than in the pre-internet world, when jamming of broadcasts and restriction on sales of newspapers could be employed. It is more effective to be vigilant against any attempts to limit availability and access to media than to counter propaganda with more propaganda

Censorship is a form of negative propaganda[129]. People do not get access to information so a false impression of reality is built up. Traditionally this has been glorifying war, exaggerating victories and hiding defeat as well as vilifying the enemy, so as not to lose public support. Modern social media with so many people being able to send eyewitness reports, film and pictures has changed this reality where the state can control the image, but states have not yet fully embraced this change. Official media still promotes its sole

124 Andrei Richter (2015) "The Relationship between Freedom of Expression and the Ban on Propaganda for War" in Wolfgang Benedek, Florence Benoît-Rohmer, Matthias C. Kettemann, Benjamin Kneihs & Manfred Nowak (eds.) European Yearbook on Human Rights (Intersentia, Antwerp), pp. 489-505 at p. 489.

125 Cate Haste (1977) "The Machinery of Propaganda", pp. 105-136 in Robert Jackall (ed.), (1995), Propaganda (New York University Press; reprinted from Cate Haste Keep the Home Fires Burning, Allen Lane 1977), p. 105.

126 Harold D. Laswell (1934) "Propaganda", pp. 13-25 in Robert Jackall (ed.), (1995); reprinted from Edwin R. A. Seligman, ed., Encyclopaedia of the Social Sciences, Macmillan 1934), p. 13.

127 Also in the context of the proposed Ukrainian Information Security Concept. Nyman Metcalf (2015) *op. cit.*

128 Discussed already by C. Wright Mills (1956) "The Mass Society", pp. 74-101 in Robert Jackall (ed.), (1995), p. 89.

129 Haste (1977), p. 114. She mentions how even weather reports were banned as they could be useful for the enemy and chess problems (unless sent by perfectly reliable British nationals) as they could be hidden code, *ibid.*, p. 116.

truth in many countries. Russian media has been strongly advocating the official narrative on heroic warfare as well as Russian victimhood in relation to the war in Ukraine[130]. Activities to shape the message in social media started before conflicts on the ground, with creation of extensive trolling networks[131] and other significant on-line presence, to make sure the Russian version of the story would be the dominant one[132]. Preparations to use the term Novorossiya were made before the term was started to be used more widely[133].

The more complex and untransparent a war or crisis is, the easier it is to exploit it for propaganda. Observers do not have access to any facts that can refute propagandistic statements. There is a need to fabricate a discourse, to create the criteria by which success is measured[134]. When the popular opinion is ambiguous, as is often especially the case when a conflict has aspects of civil war, it becomes extra important to manipulate the civilian response to war to ensure that there is support for all the different costs of war. The propaganda battle is not just against an external enemy but also against "the enemy in our midst" as Haste explains from the First World War and the hatred against pacifists or other opponents of the official message[135].

Information Occupation in Ukraine

The impression of the communications landscape in Ukraine is somewhat complex and even contradictory, with moves towards proper respect for freedom of expression and information but occasional backward steps as well. The situation is not as in Russia, where free media is very restricted, but at the same time there are restrictions on freedom of expression also in Ukraine. To some extent this is due to the country going through a period of reform while at the same time dealing with an armed conflict. However, some of the restrictions are due to Ukraine coming from a system without strong guarantees for a free media. In a 2015 survey of Eastern Partnership countries, Ukraine was in the middle of the list, after Georgia and Moldova but ahead of Armenia, Azerbaijan and Belarus, which is not bad for a country at war. The situation in Crimea but also Eastern Ukraine is considerably worse than in the rest of the country, as these areas are outside of the control of Ukrainian authorities.

Many international organisations have stressed the difficult situation for media in Crimea and Eastern Ukraine. There are manipulations as well as direct threats to journalists, closure of media outlets, obstacles to investigative journalism, lack of proper investigation of attacks on media and so on[136]. Ukrainian authorities have tried to take measures to ensure the availability of Ukrainian media in the conflict areas but there have been numerous actions to prevent this over the course of the conflict[137]. From 2014 onwards, Ukrainian channels have been taken off air and made unavailable in cable packages, but also Crimean channels have been denied frequencies or otherwise hindered in their work.

130 Keir Giles (2015) "Russia and its Neighbours: Old Attitudes, New Capabilities", pp. 19-28 in Kenneth Geers (ed.), p. 21.

131 On "Troll farming" see Elina Lange-Ionatamishvili & Sanda Svetoka (2015) "Strategic Communications and Social Media in the Russia Ukraine Conflict", pp. 103-111 in Kenneth Geers (ed.), p. 110.

132 James J. Wirtz (2015) "Cyber War and Strategic Culture: the Russian Integration of Cyber Power into Grand Strategy", pp. 29-37 in Kenneth Geers (ed.), p. 36. Also Lange-Ionatamishvili & Svetoka (2015), p. 106.

133 Margarita Levin Jaitner (2015) "Russian Information Warfare: Lessons from Ukraine", pp. 87-94 in Kenneth Geers (ed.), p. 92.

134 In literature, the Vietnam war is often mentioned as the first war when it was necessary to pay attention to creating the narrative of success. See David L. Altheide & John M. Johnson (1980) "Bureaucratic Propaganda: The Case of Battle Efficiency Reports", pp. 299-328 in Robert Jackall (ed.), (1995), p. 300.

135 Haste (1977). She quotes returning British First World War soldiers as shocked at the attitudes in the country, saying that humanity existed more in the trenches than among civilians.

136 For example, the OSCE Representative on Freedom of the Media in many statements and interviews (http://www.osce.org/fom/297526; http://www.osce.org/fom/295336, http://www.osce.org/fom/234691).

137 For example: 5 January 2016 Ministry of Information Policy of Ukraine - MIP: broadcasting of the First channel of Ukrainian radio in Donetsk and Luhansk regions was renewed (http://mip.gov.ua/en/news/874.html); 29 December 2015 - MIP: In Starobilsk Luhansk region broadcasting of one more Ukrainian TV channel was renewed (http://mip.gov.ua/en/news/872.html); 1 December 2015 - MIP: Latvia will provide three powerful transmitters to restore broadcasting in the east of Ukraine (http://mip.gov.ua/en/news/821.html).

Crimean Tartar media is among the media that is being severely restricted[138]. Thus, it has become near enough impossible to provide not just Ukrainian media but any free and pluralistic media in the Crimea. Ukrainian authorities do not exercise control in the conflict area of Eastern Ukraine, while Russia does not admit to being an occupying power and denies any responsibility and the separatists lack legitimacy as well as actual control so in practice there is no rule of law for media[139].

In the communications landscape there are some anomalies, like dependence on Russia. Giles points out than as far as cyberwar against Ukraine is concerned, Russia is helped as it already controls important assets like telecommunications companies and infrastructure. Until recently even many Ukrainian government officials used Russian e-mail services[140].

For Russia, information has been seen as an important element of power also before the current information dependent era. Instead of seeing cyber security and information security as separate things, as is done by NATO and generally in the West, with one being the technical and the other the content related aspect, Russian discourse sees them as different aspects of the same thing. There is still a great fear of content (just as for the Soviet Union, witnessed e.g. in discussions around direct broadcasting satellites in the 1970s and 1980s) and thus defending information space becomes a major issue[141] – and as a corollary also attacking information space. The situation for Russian media was restricted already before the war in Ukraine but state control of media content has increased lately. One aspect of this is to ensure that at least the vast majority of Russian people do not get anything but the official Kremlin version of the Ukraine crisis. The Russian media in Eastern Ukraine uses a method of incitement that has been called accusation in a mirror – meaning that media warns of attacks and asks the audience to prepare themselves for probable imminent attacks, thus permitting them to be ready to commit violent acts as they feel this is justified as self-defence. This was seen in the *Tadic* case by the International Criminal Tribunal for the former Yugoslavia (ICTY)[142].

The impression of the media situation in Crimea is such that it can easily be said that it has been occupied by a hostile power. Communications networks are also controlled and limited by this power. The actions Ukrainian authorities can take are likely to remain ineffective[143]. However, even if we can see something that it may be attractive in the political discourse to call "information occupation", in order to underline the importance of the restrictions imposed, as a legal term this remains complex and it is questionable if it adds anything to the debate.

Concluding remarks

There is no question that with the importance of information in the modern society, occupation of the information space may be as important or even more important than physical occupation of territory. The term *"information occupation"* appears attractive to draw attention to this. Nevertheless, it is not a good idea to launch this term into the legal debate. Occupation has a determined legal meaning and even if it is often difficult due to the politically charged atmosphere in the individual case to determine if there is occupation

138 http://www.osce.org/odihr/272816

139 Putin during his annual press conference at the end of 2015 admitted for the first time that there are Russian advisors in Eastern Ukraine, although still denying official military presence. Unsurprisingly, official Russian media claims that Western journalists who are ignorant about Ukraine twisted his words https://www.rt.com/op-edge/326334-putin-media-troops-ukraine/ This story is a good example of the Russia propaganda narrative about the issue, filled with images of "trustworthy" Western journalists for example.

140 Keir Giles (2015), "Russia and its Neighbours: Old Attitudes, New Capabilities", pp. 19-28 in Kenneth Geers (ed.), p. 24.

141 Margarita Levin Jaitner (2015) "Russian Information Warfare: Lessons from Ukraine" p. 88.

142 Prosecutor v Tadic, ICTY 7 May 1997.

143 Even if it is possible to identify individuals who are behind curbing freedom of expression in the Crimea and an Adviser to the Minister of Information Policy, Yuliya Kazdobina, states that the Ministry in partnership with representatives of rights-defence organisations plan to launch criminal proceedings in mainland Ukraine, and work for personalised sanctions like travel bans, freezing of assets, and so on, the impact of such measures may not be great, given the powerful regime that supports such individuals; http://www.civicsolidarity.org/article/1440/list-people-curbing-freedom-speech-crimea

in the legal sense, annexation or something else, there are still set criteria. These criteria do not easily transfer to the information space. Instead, introducing a novel concept that is vague from its initiation could entail the risk that it is interpreted as allowing limitations to freedom of information.

There has been an interest in influencing and controlling people´s minds and thoughts, ever since humans started interacting. Especially in times of war, hostilities and other crises, the possibility of impacting information flows becomes a priority. What is new in our modern information society is how important ICT is for society – we do so much more through ICT than just exchange messages. Consequently, control over information space in a time of war becomes extremely important. At the same time, modern information systems make such control more difficult. There are so many different ways to communicate, the information market can be global and it is to a large extent privately handled.

Let us not forget the importance of freedom of expression – pushed by international organisations and accepted by more and more states especially since the Second World War. This freedom includes the right to communicate as well as access information. It is not an absolute freedom and it is sadly still violated rather frequently, but for a democratic society to retain credibility as a democracy with respect for human rights, even in times of crisis, any restrictions of freedom of information need to be limited, proportional and carefully considered. It is difficult to convince states to abode by this, especially if one side of a conflict is a state that does not respect such rules (as is the case in the Ukrainian war, as Russia has severely limited freedom of expression). In such a case, the battle of the information space will be fought without equality of arms. However, the option of sacrificing freedom of expression in what should be a fight for freedom and democracy would be a Pyrrhic victory indeed. The only way to maintain real freedom of expression is to stay on the moral high-ground of not doing the same as those one wants to oppose.

Thus, even if “information occupation” does go on and even if the term may be useful to illustrate this, it should not be used as a (quasi) legal term. It is likely to add confusion rather than clarity and give a tool that can be abused – an excuse for restricting free information flows. Ukraine is faced with an enemy that makes information warfare a central part of its activities, underlining concepts like information sovereignty. Ukraine should not fall into the trap of fighting with these same weapons but instead continue its ongoing work to do whatever is possible to ensure plurality of media, prevent forced shut-down of media outlets or domination of cyber space and social media by pro-Kremlin trolls.

THE HATE SPEECH[144]

Ganna Yudkivska

Judge of the European Court of Human Rights in respect of Ukraine

The topic of hate speech is extremely relevant for Ukraine — there is so much tense in society today that any careless word can lead to an explosion. My lecture will highlight the opinion of the European Court of Human Rights on this issue.

Let us start with Article 10 of the Convention, which is well known by all practicing lawyers and advocates, working in the field of human rights protection. This article is the only provision of the Convention which envisages that a person has certain duties and responsibilities while exercising his or her guaranteed right.

Unlike this article, for example, the first amendment to the United States Constitution says quite harshly: "Congress shall make no law, abridging the freedom of speech". Thus, we have to deal with various approaches to the issue of freedom of speech applied in Europe and in the USA.

Despite the fact that in this chapter the main focus will basically lie on the practice of the European Court on this issue, I will also pay attention to the American approach, which still, to some extent, had some influence on European practice, regardless of its differences.

When and how can one restrict the freedom of speech?

The findings of the European Court on this issue were initially expressed in one of its first cases *Handyside v. The United Kingdom*. In this case, the Court determined that "freedom of expression protected by Article 10 of the Convention constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man". In the other case, *Lingens v. Austria*, the Court stated that "freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment". Subject to paragraph 2 (Article 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".

At the same time, in the conclusions of the Supreme Court of the USA in the case of *Bose Corporation v. Consumers Union* it was determined that "The First Amendment presupposes that the freedom to speak one's mind is not only an aspect of individual liberty - and thus a good unto itself - but also is essential to the common quest for truth and the vitality of society as a whole".

Thus, it is possible to trace, besides the distinctions, the existence of certain common features in these approaches.

Let's turn to the American approach. According to Ronald Dworkin, people should be treated by society as conscious individuals, morally capable of assessing the situation, except for those who are incompetent. Mr. Dworkin notes that "(...) neither any official nor majority has the right to conceal from us the opinion on the grounds that we are not able to hear and think about it". He believes that the Government insult their citizens by deciding that they cannot be trusted to hear certain thoughts, deemed by the Government

144 The text of the public lecture, which was held on 14 July 2015 at the Academy of Advocacy of Ukraine (Kyiv) supported by the Ukrainian Helsinki Human Rights Union.

as harmful. The concept of moral responsibility of every person who hears an unfavorable opinion is constantly highlighted in the dissenting opinions of various members of the Supreme Court of the United States. For example, Justice William Orville Douglas, in his dissenting opinion on the case of *Dennis v. United States*, expressed the conviction that "the American people can be trusted to hear dangerous Communist propaganda. Our faith should be that our people will never give support to these advocates of revolution, so long as we remain loyal to the purposes for which our Nation was founded".

A similar approach is proposed by some judges of the European Court, including former ones. Thus, it is worth noting the quotation from the dissenting opinion of the Judge Torkel Opsahl in the *Arrowsmith v. United Kingdom* case: "The goal of influencing others who are themselves responsible for their actions is the key and legitimate aspect of freedom of speech in political and other matters". In another dissenting opinion on this case, other judge pointed out that "persons who are persuaded to take an expressed opinion should bear their own personal burden of responsibility. In addition, suppression of freedom of speech is ultimately considered more dangerous for national security than tolerance for it, because suppression of unwanted thoughts does not exclude them, it simply drives them underground.»

Returning to the development of the American approach to freedom of speech, it should be mentioned that the first case which inspired this development was *Schenck v. United States* case[145]. The applicant, Charles Schenk, a member of the Socialist Party, was arrested for organizing protests against conscription during the World War I. After spreading about 20,000 pamphlets, in which he compared mobilization to slavery, he called on US citizens to protest against mobilization, since, as he claimed, this was their moral duty. As a result of such actions he was detained. The Supreme Court of the United States ruled that the applicant did actually have the freedom of speech, but under conditions of war this freedom could be limited.

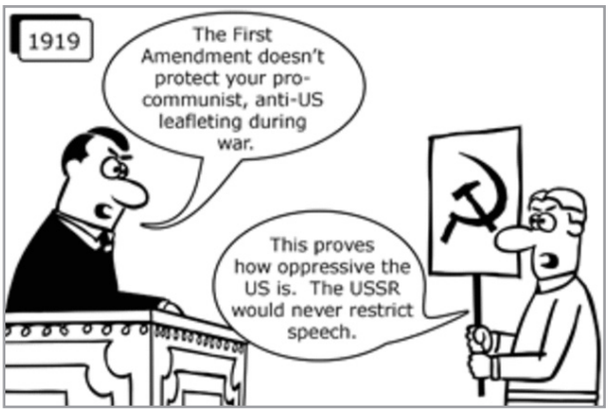
Judge Oliver Wendell Holmes in this decision noted: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right. It seems to be admitted that, if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced". He also used his famous metaphor: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic".

145 Schenck v. United States, 249 U.S. 47 (1919).

In this way, the Supreme Court distinguished dangerous statements from dangerous acts by declaring the statements, contained in Shenk's leaflets, as those that could be considered an immediate threat to the security of the country and the welfare of its people. Later, the Supreme Court passed similar sentences against persons who resorted to their freedom of speech during the war.

Subsequently, the approach of the Court has changed in certain way, namely, in the case of *Abrams v. United States*[146]. In the above mentioned case, the defendants - Russian immigrants - protested against attempts of the US government to thwart the revolution in Russia by spreading leaflets from a multistoried building in which one of the activists lived.

In that regard, there is a caricature in which the judge tells the defendant: "The First Amendment doesn't protect your pro-communist, anti-US leafleting during war". The defendant, in his turn, replies: "This proves how oppressive the US is. The USSR would never restrict speech".



Judge John Hessin Clarke developed the majority opinion, according to which the case materials contained convincing evidence that the accused were setting up a provocation against the government and an attempt to reduce military-material production. The court used the so-called "bad tendency" test and indicated that if the speech has even the intent of causing a particular harm, it is enough to limit its independence, regardless of how theoretically possible this harm can be. It was contended: "while the immediate occasion for this particular outbreak of lawlessness on the part of the defendant alien anarchists may have been resentment caused by our Government's sending troops into Russia... yet the plain purpose of their propaganda was to excite, at the supreme crisis of the war, disaffection, sedition, riots, and, as they hoped, revolution, in this country for the purpose of embarrassing, and, if possible, defeating the military plans of the Government in Europe". The language of these circulars was obviously intended to provoke and to encourage resistance to the United States in the war.

Judge Holmes, the author of the "clear and present danger" doctrine, dissented from the majority opinion in this case and noted that the "clear and present danger" test should be applied very limitedly: "I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country". In his opinion, the production of some sort of leaflets by absolutely random people and their distribution in a certain area of New York did not create this clear and present danger, which justified restrictions on freedom of speech.

146 Abrams v. United States, 250 U.S. 616 (1919).

This was the approach of the Americans regarding the events during the World War I and the revolution in Russia. Further the era of the Red Terror began in the United States. In the decision on the case *Whitney v. California*[147] the US Supreme Court confirmed the conviction of the applicant for financing the Communist Party, which supposedly had an intention to forcibly overthrow the government. The applicant, in her turn, argued that neither she nor her Party had such intentions. This case is interesting for the dissenting opinion of Luis Dembitz Brandeis, one of the most remarkable former judges of the US Supreme Court. This opinion is considered to be the most powerful speech focused on protecting freedom of speech. He clarified the test of "clear and present" danger. "Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced (...). But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind (...)". Further, the judge stated that "those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty..." According to Brandeis, the test for justifying the suppression of freedom of speech is quite tough. There must be quite reasonable grounds for the impendence of the danger as well as grounds to believe that the evil is of a serious extent. With this in mind, he replaced the words the "present danger", used by Judge Holmes, to the words "imminent danger", as the intention to impose harder conditions regarding both the possibility of harm and its immediacy in time. The last and very important step in the history of the "clear and imminent danger" test is the case of *Brandenburg v. Ohio*[148]. The Court overturned the conviction of the leader of the Ku Klux Klan organization for the praise of the crime and sabotage. The evidence, which was used by the courts, was a record of the meeting of the Ku Klux Klan, in one of the episodes of which the applicant told: "We are the Klan, we're not a revengent organization, but if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance taken". This speech was a clear direct threat. Only the participants and journalists attended the meeting. Without any obvious reference to the "clear and imminent danger" test, the Supreme Court applied the following standard: "Constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action". That is, the test, which was brought by this case into the future jurisprudence of the United States, established the following distinct criteria: first, the speaker should have a subjective intention to incite, and secondly, the words used in the context are likely to lead to immediate illegal actions. Also in this regard, it is worth recalling the recent case *Snyder v. Phelps*[149], which concerned the burial of an American soldier who died in Iraq. In the cemetery during the burial ceremony, where the family of the deceased was gathered, certain persons appeared, holding posters "Thank God for dead soldiers! Sin and shame, not pride, and you are going to hell!" These posters meant that the death of soldiers in Iraq is a punishment for tolerance of the USA to homosexual relations. The delicacy of the situation was caused by the fact that the father of this deceased soldier was a person of unconventional sexual orientation. The lawsuit was filed against those activists with posters. However, it was not upheld by the US Supreme Court, and the Chief Justice expressed his

147 Whitney v. California, 274 U.S. 357 (1927).
148 Brandenburg v. Ohio, 395 U.S. 444 (1969).
149 Snyder v. Phelps, 580 F. 3d 206 (2011).

vision of freedom of speech as following: “Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here— inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate”.

This is the general US approach to this issue. However, as I have written in one of my special opinions, “looking at numerous known historical and political causes, Europe today cannot afford the luxury of such a vision of the paramount importance of freedom of speech”.

Before turning back to the European Court’s practice on the question of hate speech, we should dwell on two issues: the Nuremberg Trials and the Universal Declaration of Human Rights.

It is known, that the main verdict of the Nuremberg Trials, where all the commanders of the Nazi army were condemned, was delivered on September 30 - October 1, 1946 (overall, 12 trials were conducted). There were two people among the convicts, who did not directly give orders to shoot, and who did not conduct military operations. The first of them was Julius Streicher, the well-known editor-in-chief of the German anti-Semitic newspaper “Der Sturmer” (The Stormtrooper). According to the findings of the Nuremberg Trials, «for his twenty-five years of speaking, writing, and preaching hatred of the Jews, Streicher was widely known as “Jew-Baiter Number One”. In his speeches and articles, week after week, month after month, he infected the German mind with the virus of anti-Semitism and incited the German people to active persecution. Each issue of Der Stürmer, which reached a circulation of 600,000 in 1935, was filled with such articles, often lewd and disgusting... Such was the poison Streicher injected into the minds of thousands of Germans which caused them to follow the National Socialist policy of Jewish persecution and extermination”.

The judgement of the Tribunal stated that the responsibility of Julius Streicher was based, at least in part, on the hate speech, which infused a negative staining to the attitude of the German people towards the Jews, and urged them not only to physical annihilation, but also to the Jew-baiting. That means, the hate speech, which prompts not only to destruction, but also to prosecution, should be punished in a similar way.

Another person, convicted by the abovementioned judgement, is Hans Fritzsche, who was the head of the broadcasting department of the Ministry of Public Enlightment and Propaganda. Radio, as you know, was the main media in Nazi Germany. Subsequently, he was promoted to the post of the head of newsroom in the relevant ministry. In the Nuremberg Trial judgement, he was charged with conspiracy to commit crimes against peace, war crimes and crimes against humanity. It was noted in the verdict that “the accusation is based on deliberate falsification of news which was aimed at inciting the German people to acts of violence”. Despite the acquittal at the Nuremberg trials due to the lack of proof, Fritzsche was soon sentenced to 9 years in prison by the West German denazification court for inciting anti-Semitism.

Similarly, one can recall the well-known cases of the International Criminal Tribunal for Rwanda, which stated that the reports in the magazine and the related broadcasts of the television channel created a climate of harm and caused the persecution of the Tutsi people. Consequently, it turns out that not only direct appeals to violence are harmful, but also the speeches, generating fear, hatred and, finally, creating conditions for genocide.

As for the Universal Declaration of Human Rights, it should be noted that, according to the researchers, the most fierce argument during the discussion of its text were concentrated around Article 19 and freedom of speech. The question arose: how tolerant

should society be for freedom of speech? In the light of the recent history of fascist propaganda that led to World War II, and while Western states standed for absolute freedom of speech, the states of the communist bloc insisted on limiting particularly the hate speech. In this regard, it is expedient to quote the Soviet diplomat Alexander Bogomolov: «...It cannot be said, that the prohibition of propaganda of racial, national or religious hatred is a violation of the right to freedom of the press or freedom of speech. There is a thin line between Hitler's racial propaganda or any other kind of advocacy that incites racial, national or religious hatred and the one, inciting war. Freedom of the press and freedom of speech cannot serve as an excuse for spreading views that poison public opinion. Propaganda in favor of racial or national exclusiveness or superiority serves only as an ideological mask for imperialistic aggression".

While the Soviet Union and other socialist states did not succeed during discussion of the Universal Declaration of Human Rights, they won in the discussion of the International Covenant on Civil and Political Rights. The minutes of the meetings show that once again the enormous debate took place between the representatives of Western democracy and representatives of the Communist bloc. However, this time the victory was on the side of the Communist bloc. Thus, Article 20 (2) of the International Covenant stipulates that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

It is interesting to mention that the United States ratified the International Covenant on Civil and Political Rights with a reservation to Article 20 (2) as contradicting the First Amendment to the US Constitution.

Finally, we are moving on to the European Convention on Human Rights.

The European Court, in order to provide an assessment of the issue of hate speech, unfavorable speech or speech, constituting any conflict with the right, guaranteed by the Convention, use the following two approaches. Firstly, the Court may entirely exclude the consideration of such a speech from the scope of protection of Article 10 of the Convention, applying Article 17 of the Convention. Besides that, the Court may consider the case under Article 10 (2) of the Convention, establishing whether the restriction of freedom of speech was necessary in a democratic society, or whether it was committed in accordance with the law and whether it pursued a legitimate aim.

Exceptions under Article 17 of the Convention

First of all, we will examine the application of Article 17 of the Convention, which is often called the "guillotine position". According to it, "nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention". The purpose of Article 17 is not to restrict the rights under the Convention, but rather to ensure the system of democratic values laid down in the Convention.

As one of the leaders of the French Revolution, Louis Antoine de Saint-Just, said: "There is no freedom for the enemies of freedom". Just as the author of "Theory of Justice" John Rawls noted: "Justice does not require that men must stand idly by while others destroy the basis of their existence".

In this way, Article 17 of the Convention expresses the idea of a militant democracy, i.e. a democracy that is capable of defending itself. The Convention, born from the dark pages of the history of mankind, cannot logically provide opportunities and means for returning back to the past.

On this occasion, there is a brilliant quotation of Nazi ideologist Joseph Goebbels: “one of the most ridiculous aspects of democracy has always been that it supplies its deadly enemies with weapons, through which it can be destroyed».

The European Court of Human Rights in its judgement on *Lawless v. Ireland* case noted that «the purpose of Article 17, insofar as it refers to groups or to individuals, is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention; whereas, therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms”. The fight against racism, anti-Semitism, hatred, or the struggle for freedom of speech – each of those is a struggle for a higher level of the culture of society. No one defends the restrictions on expression of views or opinions that should take place in a pluralistic, democratic society. However, democracy should also have the right to protect itself, before it’s too late. Here it is expedient to quote the philosopher Karl Popper: “We should therefore claim, in the name of tolerance, the right not to tolerate the intolerant”.

In the practice of the European Court, Article 17 of the Convention is applied extremely rare. Realizing that this article itself can be the context of numerous abuses, the Court is very cautious with it. For the first time the Court applied it in the context of the Cold War in the case of the *Communist Party (KPD) v. the Federal Republic of Germany*, noting that the establishment of “the communist social order through the proletarian revolution and the dictatorship of the proletariat” is contrary to the Convention.

Although the political activities of this party were not declared unconstitutional at the time, the Commission concluded that it had not renounced its revolutionary goals (Decision of 20 July 1957, Yearbook 1, p. 222).

In addition, considering the scope of Article 17 of the Convention, we are talking about nihilism (denial). It is clear that the denial of the Holocaust calls for the application of Article 17 of the Convention.

For the first time, such conclusions were contained in the case *Lehideux and Isorni v. France*. It concerned a brochure, released in one of the daily French publications, which goal was to rehabilitate the image of Marshal Petain, the head of the Nazi-controlled Vichy regime. The authors of this brochure noted that Petain was playing a double game, pretending to collaborate with the Nazi but, in fact, he acted in favor of France. The French government, in turn, argued that the sanctions against the publication were justified, since the story of Marshal Petain’s double game was refuted by historians and the publication was intended solely to “whitewash” his image. In these circumstances, the Government insisted on the application of Article 17 of the Convention. The European Court noted that its competence does not include the settlement of issues, that are part of the ongoing debate among historians about these events and their interpretation. This issue does not fall into the category of well-established historical facts, such as the Holocaust, so its denial or revision is deprived of the protection of Article 10 by virtue of Article 17 of the Convention. Consequently, the extension of Article 17 to the denial of the Holocaust was indicated in this case *obiter dictum*.

The next case of the European Court on this matter is *Garaudy v. France* case, related to the condemnation of pseudo-historian Roger Garaudy for a series of excerpts in the book that were interpreted by the French courts as a denial of the Holocaust, racial slander and incitement to racial hatred. In this case, the European Court gave further consideration to the issue covered in the previous case and noted that denying the reality of well-established historical facts such as the Holocaust undermines the values on which the fight against racism and anti-Semitism is based and poses a serious threat to public order. Such

acts are incompatible with democracy and human rights, since they violate the rights of others, respectively, they can be seen as an attempt to renew the Nazi regime. This case demonstrates that in order to apply article 17 of the Convention, in addition to the usual denial of facts, in particular, the denial of the Holocaust as such, it is necessary that the supporters of that denial have intentions for the resumption of Nazism or incitement to racial hatred.

This approach has been changed by the Court in the case of *Witzsch v. Germany* in 2005. It was about a letter containing statements that impugned the responsibility of Hitler and his party for the extermination of Jews. It means that it was not a classic case of a denial of the Holocaust, because the author doubted neither the Holocaust nor the existence of gas chambers. This was the main distinction between this case and the above-mentioned case of *Garaudy v. France.* During the hearing, in order to dismiss the complaint on the basis of Article 17 of the Convention, the Court had to expand the previously established principle, considering that not only the denial of the Holocaust itself, but also a denial of another equally significant and established circumstances connected with it, fall within the scope of Article 17 of the Convention.

Denial of the Holocaust, tolerant attitude towards it, and denial of another historical facts connected with it shouldn't be permitted in a democratic society. I would point out that a base for the Holocaust denial was developed by the Nazis before the fall of the Reich and the destruction of the concentration camps.

The historians point to the stories of the victims-prisoners of concentration camps, according to which German torturers made fun saying the following: "Even if some of you stay alive, and also in the presence of certain evidence, everything you say will be so horrible that nobody will believe you, instead, they will believe us, because we will deny everything". The fascists believed that even at worst, in case of their loss, everything they had done would not be confirmed and would be forgotten.

I want to share a story with you, which I have heard from Cherif Bassiouni, the father of the international criminal law, who had been investigating the acts of genocide in Bosnia for a long period of time, was one of the initiators of the International Criminal Court, the author of the Roman statute, and the leading expert of the United Nations. The international criminal law, as you know, was born at the end of the First World War, when humanity was shocked by meaningless human losses, when it sought to establish the justice and, among other things, punish the perpetrators. As it is known, the First World War ended with the conclusion of a number of peace agreement, which, among other things, concerned the prosecution of those responsible of numerous human losses. From the beginning, the list of guilty persons contained 22 thousands of names. However, afterwards, considering unreality of this number, the list was shortened to a couple of thousands, and later, to several hundreds. As a result, only 22 persons were charged and only 19 of them were sentenced to imprisonment for a term of 3 years maximum. In the first lists of the accused persons there were the key Ottoman empire officials - for the Armenian Genocide in 1915. But it is about 1919, when Turkey occupied an extremely important geopolitical position controlling the Bosporus, on the other side of which Communist Russia was growing. Thus, nobody wanted to annoy the Turks. The justice was replaced by the considerations of "real politics". The secret protocol, according to which all Turkish generals were amnestied, was concluded in Lausanne in 1923. Bassiouni narrates that in 1939, right before the invasion of Czechoslovakia and Poland, the key Wehrmacht officials were not thrilled with such an idea, because they perfectly remembered all the attempts of prosecution after the First World War. The night before the invasion, Hitler had a conversation with Commander-in-Chief of the Wehrmacht, who explained his considerations in this regard. Hitler's answer was simple: "Listen, who remembers about Armenians now?" Thus, only 20 years passed, and the world

had already forgotten about the tragedy that took lives of 1 million people. The next day, the invasion of German troops happened.

People say that history does not know subjunctive mood. However, there is every reason to believe that if at that moment the Armenian Genocide had been admitted and all those involved had been punished, probably there would be no Holocaust. It is assumed that in case of the absence of recognition of such facts, the presence of doubts on this matter, and the absence of justice, such actions can be repeated again.

That is exactly why such a strict demand to instantly react to the denial of the Holocaust has been worked out. But what about another crimes against humanity, besides the Holocaust?

It is known that there are huge debates about the Armenian Genocide, in which there is more politics than history or law. For example, on the eve of the elections in France, Nicolas Sarkozy forced his political party to vote for the law on criminalization of the denial of the Armenian Genocide. However, this law did not enter into force since the Constitutional Council declared it unconstitutional.

In Ukraine, we also have debates concerning the Holodomor 1932-1933. In 2006, the Law "On the Holodomor in Ukraine in 1932-1933" was passed. The Supreme Council of Ukraine admitted it as the act of genocide and established the punishment for the public denial of it. But this Law has not been applied. As an example, we can remember the claim against Victor Yanukovich, who in April 2010 made a statement that the admitting the Holodomor as the act of Genocide is not right and unfair, because it was the result of the Soviet policy and it was not supposed to destroy the Ukrainians solely. This claim was dismissed by the national courts.

The European Parliament and the Parliamentary Assembly of the Council of Europe avoid any recognition of the Holodomor as genocide. However, they declared it the crime against humanity in their Resolutions. Regarding the Armenian Genocide, it is worth remembering one of the most sensational cases examined by the Court on this matter - *Perinçek v. Switzerland*. Criminal Code of Switzerland punishes the justification and the denial of the acts of genocide or any other crime against humanity. Swiss court was the first in history that found a person guilty of denial of the Armenian Genocide. The accused, Mister Perinçek, did not deny the existence of massacres, deportation, and atrocity, but he reckoned that this atrocity was reciprocal, so he came to conclusion that recognizing these actions as genocide is "international lie".

During the consideration of this case by the Court, the Government of Switzerland insisted on applying of the Article of 17 of the Convention, which the European Court refused to do. It accepted that some remarks made by the applicant were provocative. Speaking of these events, the applicant referred to the definition of "international lie". Nevertheless, ideas that offend, shock, or excite are also protected by Article 10 of the Convention. The applicant by no means questioned the existence of the massacres and deportation, he only denied the legal characteristic of these events as the "genocide". The Court considers that the denial of the legal qualification of the events that took place in 1915 as the genocide does not, as such, incite hatred towards the Armenian people. The applicant has never been accused or convicted of the justification of the genocide or incitement to hatred. He also did not express negative attitude towards the victims of those events. That is why the Court ruled that there are no reason to apply Article 17 of the Convention.

In the Chamber's judgment, the Court recognized that Switzerland violated Article 10 of the Convention, since the applicant expressed his views on the issue of relations between Turkey and Armenia as a politician. He expressed his vision of the legal qualification of the

events as genocide, that is, his speech had historical, legal, and political character.

In addition, the Court emphasized the lack of the European consensus on this issue. Thus, among the hundred and ninety countries of the world, only twenty officially recognized the Armenian events as genocide. The final judgment in this case was taken after its reconsideration by the Grand Chamber on 15 October 2015.

Nevertheless, this judgment does not mean that the denial of the crimes against humanity cannot trigger the application of Article 17 of the Convention. Although the Court has never applied this Article to this category of cases, the possibility of its application was indicated *obiter dictum*. For example, the case of *Orban and Others v. France* dealt with a book titled "Special Services of Algeria", published by the applicants, which concerned massacres and tortures committed by the French during the war in Algeria. The applicants were accused of public defence of war crimes. The Court noted that statements unequivocally seeking to justify war crimes, such as torture or mass executions, are an attempt to divert Article 10 of the Convention from its direct purpose. However, in this case the Court did not consider that the book pursued such a goal. This was rather a historical discussion, and that is why the Court refused to apply Article 17 of the Convention, noting however that theoretically it is possible.

Similar conclusions of the Court were stated in the case of *Janowiec and Others v. Russia*, which concerned the execution in Katyn. The Court confirmed its permanent position that denying crimes against humanity such as the Holocaust contradicts the fundamental values of the Convention and democracy, namely, justice and peace. The Chamber of the Court noted that the position of the Russian authorities, which denied the real executions that took place in the Katyn forest, is contrary to the fundamental values of the Convention.

The language of racial and ethnic hatred does not enjoy the protection of the Convention under Article 17. In the case of *Grimmerveveen and Hagenbeek v. The Netherlands*, which was examined by the European Commission back in 1979, the applicants were convicted of distributing leaflets to "white" Dutchmen demanding to remove all "non-white" persons from the territory of the Netherlands. In the inadmissibility decision, the European Commission decided that the applicants' position clearly contained elements of racial discrimination prohibited by the Convention and other international instruments, respectively, they could not enjoy the protection of the Convention.

Similarly, in the case of *Pavel Ivanov v. Russia*, which was declared inadmissible by the Court, the applicant, the owner of the newspaper, was found guilty of inciting ethnic hatred through the media. The Court noted that the applicant accused the entire ethnic group of plotting a conspiracy against the Russian people and ascribed Fascist ideology to the Jewish leadership. "He consistently denied the Jews the right to national dignity, claiming that they did not form a nation. The Court … has no doubt as to the markedly anti-Semitic tenor of the applicant's views and it agrees with the assessment made by the domestic courts that he sought through his publications to incite hatred towards the Jewish people. Such a general and vehement attack on one ethnic group is in contradiction with the Convention's underlying values, notably tolerance, social peace and non-discrimination. Consequently, the Court finds that, by reason of Article 17 of the Convention, the applicant may not benefit from the protection afforded by Article 10 of the Convention".

In comparison, it is worth remembering the case of a refugee from Rwanda named Leon Mugesera, which was examined by the Supreme Court of Canada in 2005. The Court had to decide whether the prosecution for the crime of hate speech was severe enough to preclude the possibility of granting asylum under Canadian law. Mr. Mugesera, an extremist politician, made a disgraceful speech at a political meeting in 1992, in which

he made an attempt to blacken the *Tutsi* people, calling them "cockroaches". His speech was so powerful that it have risen the fierce hatred towards the *Tutsi*, which later led to the Rwandan tragedy. Indeed, he found an exact symbol, because in fact nobody likes cockroaches. Therefore, it happened that people who had been neighbors for all their lives instantly imagined that *Tutsi* are cockroaches that must be destroyed.

My colleague, the Judge of the European Court of Human Rights from Norway, Erik Møse, who once served as the chairman of the International Tribunal for Rwanda, told many horrifying stories in this regard. For example, during the interrogation of a *Hutu* woman of a very old age, who could not even kill a fly in her lifetime, or cut plants without regret (they also felt pain!), she explained that she killed *Tutsi* absolutely easy and without any doubts. She said: "Well, yes, of course, but they're cockroaches". The image of cockroaches invented by Mugesera was really powerful. In this case, the Supreme Court of Canada noted that "the harm in hate speech lies not only in the injury to the self-dignity of target group members but also in the credence that may be given to the speech, which may promote discrimination and even violence", which actually happened.

On the question of religious hate speech, it is worth recalling the European Court's decision on inadmissibility of the application in the case of *Norwood v. The United Kingdom*. The applicant, who was the regional organizer of the British National Party, hung a poster in the window of his apartment with the words: "Islam out of Britain – Protect the British People!" He was accused of displaying, with hostility towards a racial or religious group, any writing, sign or other visible representation which is threatening, abusive or insulting. The Court notes and agrees with the assessment made by the domestic courts, namely that "the words and images on the poster amounted to a public expression of attack on all Muslims in the United Kingdom. Such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, is incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination. The applicant's display of the poster in his window constituted an act within the meaning of Article 17, which did not, therefore, enjoy the protection of Articles 10 or 14".

Article 10 § 2 of the Convention

Having examined the position of the European Court on application of Article 17 of the Convention with regard to the topic of hate speech, we turn to situations where it is inapplicable. Therefore, the Court considers the necessity for interference with freedom of speech under Article 10 § 2 of the Convention. How then is it possible to determine the boundaries of freedom of speech, given that freedom of expression, as is known, is applicable not only to the "information" or "ideas" that are favorably received, but also to those which offend, shock, or disturb the state or any part of the population, considering that these are the requirements of pluralism, tolerance, and breadth of views?

Let us try to delineate the boundaries of hate speech. In this regard, the Committee of Ministers of the Council of Europe adopted recommendations which note that "the term 'incitement to hatred' is interpreted as a concept covering all forms of expression that include the dissemination, provocation, promotion or justification of racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance in the form of aggressive nationalism or ethnocentrism, discrimination and hostility towards minorities, migrants and persons with emigrant roots".

In the Court's practice, there is no clear definition of hate speech, but there are certain parameters by which the Court evaluates such speech. Context and intent are two basic elements that are pragmatically evaluated in terms of their ability to convince, direct an audience, and incite it to the implementation or non-implementation of a particular deed.

The speaker's status, form, and influence of speech are additional elements that should also be kept in mind.

Glorification of violence

In accordance with the Court's practice, glorification of violence includes incitement to violence and hostility, taking into account the intention of the speaker. The test, which is used in such cases, is very similar to the American *clear and present danger* test. In the case of *Arrowsmith v. The United Kingdom*, the applicant was convicted of distributing leaflets in a military camp aimed at keeping the British military from performing their duties in Northern Ireland. Seeing the extreme complexity of the situation in Northern Ireland at that time, the significant number of victims as a result of constant clashes with terrorists, the European Commission first decided to examine the contents of these leaflets. It was found out that they have not just expressed political thought, but they could be interpreted as encouraging soldiers to desertion. Since the desertion of soldiers poses a threat to national security even in times of peace, the Commission concluded that the applicant's conviction by the national courts was in accordance with the legitimate aim. It remained to find out whether it was necessary in a democratic society. In this regard, the applicant insisted that the European Commission applied the above-mentioned *clear and present danger* US Supreme Court doctrine. The Commission, in turn, did not reject it, but on the contrary acknowledged that the notion "necessary in a democratic society", from the point of view of Article 10 of the Convention, implies a "pressing social need", which may include a *present and imminent danger* test, and should be evaluated in the light of the circumstances of a particular case. In this regard, it is worth recalling the aforementioned case of *Schenck v. United States,* which is very similar. The Commission recognized the criminal prosecution a pressing social need. "Given the special characteristics of life in the army, the restrictions on the freedom of expression of the applicant were within the discretion left to the British authorities to determine such restrictions necessary to prevent indiscipline, as well as for the reasons indicated above, and are contained in Article 10".

Two dissentin opinions were added to this case, in particular, Judge Torkel Opsahl believed that "applicant's action remotely threatened public policy, this is not in my opinion a sufficient justification for interference under the system of the European Convention whose claim to credibility it is very important to preserve in the world-wide debate on human rights". That is, he used the element of the test of urgency, and believing that there was no immediate threat, immediate harmful influence from her leaflets, he voted for violation of Article 10 of the Convention. Another judge, Nik Klecker, noted, "at a time in our history, when so many are prepared to either advocate the use of violence to achieve political ends or adopt violent means themselves, a large measure of protection should be afforded to who seek to express their voice of disapproval in moderate non-violent terms. It must be clear that there are alternatives to violence in a society that claims to be democratic".

Subsequently, the Court developed its approach to the issue of glorifying violence in a number of cases against Turkey concerning the situation with Kurdistan.

It is interesting to note that if you replace the words "the Turkish army" with "the Ukrainian army" and "Kurdistan" with "DPR, LPR" in the texts that the European Court assessed at that time, then looking through some of today's news in the media and social networks it can be seen that some sayings and speeches are absolutely identical. Everything, unfortunately, can repeat itself.

The crucial decision in which the Court established the necessary principles was the judgment in the case of *Zana v. Turkey*. The applicant was the former mayor of the Turkish city, and during his stay in prison he gave an interview, noting that he "supports the PKK

(the Kurdistan Worker's Party) national liberation movement; on the other hand, he was not in favour of massacres. Anyone can make mistakes, and the PKK kill women and children by mistake ..." He was convicted for glorification or defence of a serious crime. The Court did not find a violation of Article 10 of the Convention in the applicant's conviction.

Interference with Mr. Zana's freedom of speech had a legitimate aim, namely, protection of national security and public order. The Court took into account the sensitivity of the security situation in South-Eastern Turkey, where there were constant clashes between the PKK forces and the Turkish army, which led to the death of civilians.

Applying the criteria developed in its own case-practice, the Court concluded that the applicant's allegations were contradictory and ambiguous, as he supported the PKK, which is a terrorist organization and resorts to violence to achieve its goals. At the same time, he declared himself an opponent of violence, and the death of women and children he described as "mistakes". However, these allegations cannot be assessed outside the context, and the Court attached special importance to the general Turkish context in which these statements were made. Besides, this interview coincided with the PKK's deadly attacks on civilians in the southeast of Turkey, where there was extreme tension at that time. The Court noted that in this context the words are likely to exacerbate an already explosive situation in the region: "In those circumstances the support given to the PKK – described as a "national liberation movement" – by the former mayor of Diyarbakır, the most important city in south-east Turkey, in an interview published in a major national daily newspaper, had to be regarded as likely to exacerbate an already explosive situation in that region". This judgment was passed by a small majority - 12 votes in favour, 8 - against.

Some judges disagreed with the majority's decision, noting that the former mayor was in prison during the interview. Accordingly, the influence of his words was not so significant. Other judges believed that the fact that this interview was printed in Istanbul - far from the site of events - also reduced the impact of this interview on society. In this case, we can see how the Court defined the aforementioned limits of hate speech, in particular, the circumstances of the speech - the security situation in southeast Turkey, the authority of the speaker, and the place of distribution of this text. While examining these aspects, the Court tried to assess the likelihood of damage from Mr. Zana's statements, and this position – "act and effect" - quite clearly resembles the American *clear and present danger* doctrine, without additional requirements for urgency, which were later introduced into the American jurisprudence.

In another case, *Sürek v. Turkey* (no. 1), the applicant was convicted of disseminating propaganda against the territorial integrity of the state after the publication of the letters of two readers in the newspaper he owned. The letters contained excerpts with the words: "Prior to the intensification of the national liberation war in Kurdistan, the fascist Turkish army continues to carry out bombings". The Court in this case noted that there was a clear intention to stigmatise the other side to the conflict by the use of labels such as "the fascist Turkish army", "the Turkish murder gang" and "the hired killers of imperialism" alongside references to "massacres", "brutalities" and "slaughter". In the view of the Court the impugned letters amount to an appeal to bloody revenge by stirring up base emotions and hardening already embedded prejudices which have manifested themselves in deadly violence: "Furthermore, it is to be noted that the letters were published in the context of the security situation in south-east Turkey... In such a context the content of the letters must be seen as capable of inciting to further violence..."

"...The Court reiterates that the mere fact that "information" or "ideas" offend, shock or disturb does not suffice to justify that interference. What is in issue in the instant case, however, is hate speech and the glorification of violence".

By eleven votes to six, the Court found no violation in this case. Judges who disagreed with the majority opinion believed that the applicant's statements were abstract, remote in time and space from the actual place or prepared violence, and in this situation freedom of speech must prevail. Other judges believed that freedom of expression protected by the Convention could only be limited when there was direct incitement to commit serious crimes. Thus, Judge Giovanni Bonello noted: "I believe that punishment by the national authorities of those encouraging violence would be justifiable in a democratic society only if the incitement were such as to create a clear and present danger. When the invitation to the use of force is ***intellectualised, abstract, and removed in time and space*** from the foci of actual or impending violence, then the fundamental right to freedom of expression should generally prevail".

In another case, *Şener v. Turkey*, the applicant was convicted of publishing an article containing, in the Government's opinion, separatist propaganda. The article was about the situation of the Kurdish people in the southern part of Turkey, and it began with the words: "We are watching the wholesale extermination of a nation. We are watching a genocide on such a scale that it is not a mistake to call it unprecedented". The article contained sharp criticism of the policy of the Turkish government and the armed security forces against the people of Kurdish origin. The author criticized the general approach of experts to the Kurdish problem, noting that Kurdish reality should be recognized, and urged "to hear the Kurds instead of resorting to military action". He expressed regret that blood was pouring between the brotherly nations and his discontent with all kinds of chauvinism. The Government, in turn, insisted that the applicant's statements that "we forget the axiom that the only way to oppose a war is to wage a just war" was a clear incitement and encouragement to violence. The Government also argued that, in the context of the fierce campaign of terrorism, the applicant had to be punished. The European Court disagreed with it, although it stressed that "duties and responsibilities" which accompany the exercise of the right to freedom of expression by media professionals assume special significance in situations of conflict and tension. Particular caution is called for when consideration is being given to the publication of views which contain incitement to violence against the State, lest the media become a vehicle for the dissemination of hate speech and the promotion of violence.

At the same time, where such views cannot be so categorised, Contracting States "cannot, with reference to the protection of territorial integrity or national security or the prevention of crime or disorder, restrict the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media".

The Court noted that although some of the phrases among the applicant's statements had an aggressive purpose, they did not glorify the violence. The Court, by six votes to one, found a violation of Article 10 of the Convention. The only judge who disagreed with the majority and considered that there was no violation was the national judge. He noted that support of the creation of an independent Kurdish state in that special situation was a frank support of terrorists that may be equated with a call for violent actions.

The last case worth mentioning in this context is the case of *Düzgören v. Turkey*, in which the applicant, a journalist, distributed a leaflet about the person who refused to serve in the army on the basis of his religious belief. As a result of this, the applicant was convicted. The leaflet contained the following phrases: "The army, unable to deal with us through judicial methods, think that they can draw the opponents of war away from the public view... I am not a soldier and I never will be. Of course, I am aware that I will be summoned for military service, but until I am summoned, whenever that may be there will be no changes to my lifestyle. They can find me here and take me by force. But I will resist to the end in the barracks, and I am underlining that I will refuse to do military service in any shape or

fashion". The respondent Government stated that compulsory military service in Turkey was necessary in order to protect national and public security. They argued that the applicant committed an offense of incitement to deviation from military service.

The Court distinguished this case from the case of *Arrowsmith v. The United Kingdom*, mentioned above, by pointing out that although the words used in the article endue a negative connotation to military service, they do not promote violence, armed resistance, or insurrection, and cannot be called a hate speech. In addition, while in the case of Arrowsmith the applicant handed out leaflets directly to the soldiers who were already supposed to go to war in Northern Ireland, in this case the leaflets were distributed not in the place of congestion of the soldiers who were supposed to go to the south of Turkey for military operations, but in the centre of the state. In the opinion of the European Court, unfavourable leaflets, both in their form and in content, were not intended to cause immediate desertion from the army. That is why in the present case the Court found a violation of the Convention.

It can be seen from the above analysis that when applying Article 10 of the Convention, the Court never uses the test of "clear and present danger", as in American judicial practice. However, the Court uses certain elements of this test. In comparison with American jurisprudence, the European Court does not provide sufficiently clear instructions to the states regarding how they should act. The Court uses a fairly broad standard – "incitement to violence" - in a meaning which ultimately always depends on the discretion of the judges, the nature of the words, and the context in which they were pronounced. That is why the opinions of the judges, as we see, differ significantly in these cases, and it is rather difficult to predict whether any particular statement would be qualified by the Court as *incitement to violence*. Article 10 of the Convention is the absolute sphere of subjective opinions, where personal views of each individual judge matter significantly.

Glorification of terrorism

As an example of the glorification of terrorism, I can recall the case of *Leroy v. France*, which concerned the cartoons drawn by the applicant and published in a local newspaper. One of the caricatures depicted planes that hit the American twin towers and contained the inscription "we all dreamed of it, and Hamas did it".

The Court acknowledged that by publishing such a drawing, the applicant expressed moral support and solidarity with the perpetrators of terrorist attacks in America, demonstrating the approval of violence and humiliating the dignity of the victims. In this case the Court took into account the harmful influence of such an image, and noted that «in order to constitute an offense, provocation does not necessarily have to trigger a reaction. Although in the applicant's case it took the form of satire, ... a person enjoying the freedom

of expression must assume certain duties and responsibilities". Thus, the Court found no violation of Article 10 of the Convention.

Glorification of totalitarianism

As of today, the question of the glorification of totalitarianism is on the front burner. In this regard, it is worth recalling the case of *Vajnai v. Hungary*, the so-called "red star case". The Hungarian Criminal Code penalizes the distribution, public use, and display of symbols of a totalitarian regime, including the red star. It is interesting that the constitutionality of this provision of the Criminal Code was confirmed by the decision of the Hungarian Constitutional Court, which stated that "... allowing an unrestricted, open, and public use of the symbols concerned would, in the present historical situation, seriously offend all persons committed to democracy who respect the human dignity of persons and thus condemn the ideologies of hatred and aggression, and would offend in particular those who were persecuted by Nazism and communism. Accordingly, the historical experience of Hungary and the danger to the constitutional values threatening Hungarian society reflected in the potential publicly to demonstrate activities based on the ideologies of former regimes, convincingly, objectively and reasonably justify the prohibition of such activities and the use of the criminal law to combat them ..."

In this case, the applicant, who was the vice-president of the left-wing workers' party, was convicted of appearing with a red star on his jacket at a public demonstration in which he took part as a speaker. The Court pointed out that it is mindful of the fact that the well-known mass violations of human rights committed under communism discredited the symbolic value of the red star. However, in the Court's view, this symbol cannot be understood as representing exclusively communist totalitarian rule. The Court therefore considers that the ban in question is too broad in the light of the multiple meanings of the red star.

The Court referred to the fact that the red star is also used by various labor movements and certain legitimate parties in European countries. As regards the goal of preventing offenses, the Court noted that the Government have not referred to any instance where an actual or even remote danger of disorder triggered by the public display of the red star had arisen in Hungary. The containment of a mere speculative danger, as a preventive measure for the protection of democracy, cannot be seen as a "pressing social need". The court also stressed that "... the potential propagation of that ideology, obnoxious as it may be, cannot be the sole reason to limit [the red star usage] by way of a criminal sanction. A symbol which may have several meanings in the context of the present case, where it was displayed by a leader of a registered political party with no known totalitarian ambitions, cannot be equated with dangerous propaganda...

The Court is of course aware that the systematic terror applied to consolidate communist rule in several countries, including Hungary, remains a serious scar in the mind and heart of Europe. It accepts that the display of a symbol which was ubiquitous during the reign of those regimes may create uneasiness among past victims and their relatives, who may rightly find such displays disrespectful. It nevertheless considers that such sentiments, however understandable, cannot alone set the limits of freedom of expression".

Given this, the Court used the altogether untypical phrase: "In the Court's view, a legal system which applies restrictions on human rights in order to satisfy the dictates of public feeling – real or imaginary – cannot be regarded as meeting the pressing social needs recognised in a democratic society, since that society must remain reasonable in its judgement".

As a result, the European Court found a violation of Article 10 in this case.

Language of racial hatred

The European Court has repeatedly considered the issue of racial hatred, in particular, anti-migration and anti-Islamic discourse in the media. In the case of *Féret v. Belgium*, the applicant, a member of Parliament, a member of the ultra-right party, was convicted of public incitement to racial discrimination and hatred. A leaflet was distributed with the slogan of his political party - the hand holding the tricolor - with the words: «Let's protect our colors.» On the basis of such slogan, «our colors» could have been be understood as, for example, the colors of the flags of Belgium or France. However, in fact, it was about the colors of skin. That is, in reality there was a dirty wordplay. Moreover, in this leaflet, the applicant described non-European, emigrant communities as having a purely criminal mentality and wishing to use social benefits for their own purposes by living in Belgium. That is, he sought to ridicule them and cause a certain negative attitude towards them. The Belgian courts demonstrated a certain sense of humor too: at the national level, the applicant was sentenced to 250 hours of work with migrants. He was also forbidden to be elected to the representative authorities for ten years.

The European Court in this case concluded that there was no violation of Article 10 of the Convention. It is interesting that the Court noted that the influence of such racist and xenophobic statements during the election campaign is stronger than at any other time. The Court recognized the existence of a pressing public need to prevent disorders and protect the rights of others.

The Court emphasized that «incitement to hatred is not limited to calling for specific acts of violence or other crimes. Insults, ridicule, or defamation directed against specific groups of population, or incitement to discrimination, as in this case, are sufficient enough to prioritize combatting hate propaganda, when authorities face irresponsible use of freedom of expression that degrades human dignity and undermines security. Political speech that raises hatred based on religious, ethnic, or cultural prejudices constitutes a threat to social peace and political stability in democratic states ..."

The judgment in this case, which was obvious at first glance, was taken by four votes to three. In his dissenting opinion, Judge András Sajó noted that "content regulation and restriction imposed on speech depending on its content are based on the assumption that some statements are contrary to the "spirit" of the Convention. However, the term "spirit" does not provide clear standards and is open to abuse. People, including judges, are inclined to label statements they disagree with as frankly unacceptable and consequently exclude them from the ambit of protected freedom of speech. However, it is precisely when we are confronted with ideas that provoke our hatred or disgust, that we must be the most cautious in our judgments, insofar as our personal beliefs risk influencing our conclusions about what is truly dangerous".

Religious Hatred

The matter of religious hatred is the most difficult subject. The Court's judgment in the case of the *Otto-Preminger-Institut v. Austria* may be used as an example. The applicant was a private association that complained about the confiscation of a film called *Council in Heaven*, which they planned to release for public display. The film was based on the play written back in the late 19th century during the spread of the first wave of syphilis. This play was quite satirical, as its author believed that such a disease as syphilis is, to a certain extent, a revenge for blindly following dogmas, while the real meaning of faith remains unapprehended. These statements of the author were condemned even back then, at the end of the XIX century. The mentioned film combines the episodes from this play and from the trial of its author. In the film, the Virgin Mary and Jesus Christ are depicted in an absolutely unattractive manner. The film was confiscated for contempt of religious precepts.

The applicant company, accordingly, complained to the Court of violation of Article 10 of the Convention.

It is worth mentioning that the recent scandal in Russia on the matter of production of the opera Tannhauser by Richard Wagner concerned the same issue. The prosecutor's office stated that the author has publicly desecrated the object of religious worship of the Christian faith.

In the above mentioned case against Austria, the Court found no violation of the Convention by pointing out that «whoever exercises the rights and freedoms enshrined in the first paragraph of that Article (Article 10-1) undertakes "duties and responsibilities". Amongst them - in the context of religious opinions and beliefs - may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights... In seizing the film, the Austrian authorities acted to ensure religious peace in that region and to prevent that some people should feel the object of attacks on their religious beliefs in an unwarranted and offensive manner». In other words**,** the Court concluded that when the matter of protection of religious beliefs is at stake, considerations of public order may also be relevant, which include prevention of an open conflict between different religious groups. The minority of judges disagreed, believing that in this case, the film did not imply offending the feelings of others, since the annotation to the film clearly described its plot. In fact, it did so sufficiently clearly to enable the religiously sensitive public to make an informed decision to stay away. A number of judges also noted that "the Convention does not, in terms, guarantee a right to protection of religious feelings. More particularly, such a right cannot be derived from the right to freedom of religion, which in effect includes a right to express views critical of the religious opinions of others».

Subsequently, the Court, in its judgment in the case of *I.A. v. Turkey* assessed not only insulting or shocking comments or "provocative" thoughts, but also "an insulting attack on the Prophet of Islam": "Notwithstanding the fact that there is a certain tolerance of criticism of religious doctrine within Turkish society, which is deeply attached to the principle of secularity, believers may legitimately feel themselves to be the object of unwarranted and offensive attacks... The Court therefore considers that the measure taken in respect of the statements in issue was intended to provide protection against offensive attacks on matters regarded as sacred by Muslims". The judgment in this case was taken by four votes to three. The minority of judges indicated that "the time has perhaps come to "revisit" this case-law, which in our view seems to place too much emphasis on conformism or uniformity of thought and to reflect an overcautious and timid conception of freedom of the press".

Actually, in my opinion, the problem is not that conformism receives too much attention; the problem is much more significant. It is that the Court equates blasphemy, that is, assaults on God, to assaults on believers. It is a rather dangerous trend. I wonder what decision the Court would have taken on this matter today, after the attack on Charlie Hebdo[150]. After all, it is one thing when the personal dignity of a person or a religious or ethnical group is offended, and quite another thing is when it comes to, as in the above case, "an insulting attack on the Prophet of Islam".

On this occasion, I would like to quote a remarkable Russian poet Andrei Orlov (Orlusha), who wrote a poem the next day after the attack on the editorial board of Charlie Hebdo was committed (in the original language):

150 French satirical weekly.

Клоуны в лужах крови уснули,
Дойдя последней линии до.
Хулили Бога, а Богу – хули?
Бог не читает «Шарли Эбдо».

В мозги, как в масло, входили пули
Текло что-то липкое цвета бордо.
Во имя Бога? А Богу – хули?
Бог не читает «Шарли Эбдо».

Смерть для Бога – дело житейское.
- Журнал бы смешнее делать могли, -
Ворчал Создатель, по Елисейским
Шагая с плакатом Je Suis Charlie.

Его в толпе узнавали люди –
В ночнушке, с нимбом и бородой,
А он гордился, что завтра будет
На новой обложке «Шарли Эбдо»[151].

Criminalization of "insulting of religious feelings" is an extremely dangerous approach. It is not about insulting a particular group, a person, or personal dignity, but an image of what a person considers sacred for him/herself.

In this regard, it is worth to mention the Russian feminist punk rock band Pussy Riot and their unauthorized performance in the Russian temple, for which the participants of the band were accused of hooliganism based on religious hatred. Now this case is pending before the Court.

The French law of 1881, which is still in force as of today, clearly demarcates blasphemy that does not constitute a criminal offence from attacking personal dignity of believers. It is possible to imagine how many lawsuits were filed against Charlie Hebdo during the decade of their existence. However, despite of the strictness of the French laws on the protection of the rights of believers, 80% of lawsuits were decided by French courts in favor of the editorial board. According to the conclusion of the national courts, the caricature of the prophet is not a caricature of the believers.

And the last case to be recalled on the issue of religious hatred is the case of *Gündüz v. Turkey*, which deals with the relationship between democracy and sharia. The Court reiterated that "it was difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on sharia. It considered that sharia, which faithfully reflected the dogmas and divine rules laid down by religion, was stable and invariable and clearly diverged from Convention values...[T]here is no doubt that, like any other remark directed against the Convention's underlying values, expressions that seek to spread, incite or justify hatred based on intolerance, including religious intolerance, do not enjoy the protection afforded by Article 10 of the Convention. However, the Court considers that the mere fact of defending sharia, without calling for violence to establish it, cannot be regarded as "hate speech".

Homophobic language

For the first time, the Court was faced with questions of homophobic speech in the case of *Vejdeland and Others v. Sweden*. In this case, four children were convicted of distributing leaflets at school with the following text: «In the course of a few decades society

151 The "clowns" commit murders in the name of God, who actually does not take into account what the media write about him – "The God does not read 'Charlie Hebdo'". Instead, the God laughs at the media satire on him and mourns the victims of the terror attacks.

has swung from rejection of homosexuality and other sexual deviances to embracing this deviant sexual proclivity. Your anti-Swedish teachers know very well that homosexuality has a morally destructive effect on the substance of society and will willingly try to put it forward as something normal and good. Tell them that HIV and AIDS appeared early with the homosexuals and that their promiscuous lifestyle was one of the main reasons for this modern-day plague gaining a foothold. Tell them that homosexual lobby organisations are also trying to play down paedophilia, and ask if this sexual deviation should be legalised».

The Court unanimously found no violation of the provisions of the Convention in this case, but noted that "attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating racist speech in the face of freedom of expression exercised in an irresponsible manner". The Court also took into consideration that the leaflets were left in the lockers of young people who were at an impressionable and sensitive age and who had no possibility to decline to accept them; and the Court agreed that the statements contained in the leaflets were offensive. This case is unique in that although the decision was taken unanimously, 5 out of 7 judges expressed dissenting opinions.

As noted by Judges Dean Spielmann and Angelika Nußberger in their dissenting opinion, "a real problem of homophobic and transphobic bullying and discrimination in educational settings may justify a restriction of freedom of expression [...]. Indeed, according to studies carried out across member States and supported by some government research, LGBT students suffer from bullying from both peers and teachers".

Judge Boštjan M. Zupančič compared this case to the above-mentioned case of the US Supreme Court *Snyder v. Phelps*[152], which concerned the burial of a soldier killed in Iraq. He believed that in this case also it might have been possible to establish a violation of the provisions of the Convention: «American Supreme Court takes a very liberal position concerning the contents of the controversial messages. That the statement is arguably of inappropriate or controversial character "... is irrelevant to the question of whether it deals with a matter of public concern"[153]. In other words, freedom of speech in Snyder [...] was not to be impeded by considerations of proportionality as long as the statement in question could be "fairly considered as relating to any matter of political, social, or other concern to the community". "Speech on public issues occupies the highest rank of the hierarchy of First Amendment values, and is entitled to special protection"[154].

My dissenting opinion, joined by Judge Mark Villiger, was somewhat different. In the dissenting opinion, the need for legislation on hate speech and the possible application of Article 17 of the Convention on the existence of a fine line between verbal harassment and incitement to violence was pointed out, since accusing LGBT people of spreading HIV and AIDS may provoke aggression against them. "Statistics on hate crimes show that hate propaganda always inflicts harm, be it immediate or potential..." In the words of the prominent US constitutionalist Alexander Bickel: "... This sort of speech ... may create a climate, an environment in which conduct and actions that were not possible before become possible ... Where nothing is unspeakable, nothing is undoable".

Another case concerning homophobic speech that should be recalled is the case of *Identoba and Others v. Georgia*, the applicants in which were the victims of a clash that took place during the gay parade in Georgia between the parade participants and the representatives of the Georgian Orthodox Church. The latter "brought down" all the power of "Christian forgiveness, love, and understanding" to this march. There was both physical violence and language of hatred aimed at the parade participants. "That violence", the

152 Snyder v. *Phelps,* 580 F. 3d 206 (2011)
153 Citing Rankin v. McPherson, 483 U.S. 378, 387, pp. 5-7.
154 Citing Connick v. Myers, 461 U.S. 138, 145 and 146.

Court pointed out, “which consisted mostly of hate speech and serious threats [...] rendered the fear, anxiety and insecurity [...] severe enough to reach the relevant threshold under Article 3 read in conjunction with Article 14 of the Convention”. That is, hate speech may in certain cases reach the threshold under Article 3.

In a rather similar fashion the Court has examined the issues of hate speech aimed against persons with disabilities (physically handicapped persons) in the case of *Đorđević v. Croatia*. The applicant - teenager with physical and mental disabilities – constantly experienced mockery from other children and adolescents. The Court pointed out that this case concerns State’s positive obligations outside the sphere of the criminal law: where the competent State authorities were aware of a situation of serious harassment and even violence directed against a person with physical and mental disabilities but failed to respond adequately to such a situation in order to properly address acts of violence and harassment that had already occurred and to prevent any such further acts, the Court found a violation of Article 3 of the Convention.

Persecution of a person on the basis of his/her mental and physical disabilities cannot go unpunished. It is worth remembering that the Holocaust arose from that. By the way, the idea of using gas chambers belongs to the Irish writer, Nobel laureate Bernard Shaw. He once expressed an opinion about reasonability of finding a gas with which it would be possible to “humanly” kill persons “unwanted” for the society (people with disabilities, elderly people who are of no use). Adolf Hitler’s team gladly seized on this idea, and the black spot forever fell on the reputation of the writer who tried to “clear himself” stating that he in no way meant any total destruction of certain groups.

Words are weapon. As Lev Tolstoy said, “one can unite people by a word, one can disconnect them by a word, a word can serve love, a word you can serve the enmity and hate”. Hate speech is a delayed-action explosive, but in conditions of extreme public tension it can become a weapon of mass destruction.

"THE CHILLING EFFECT" IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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One of the admissibility criteria of the European Court of Human Rights is violation of individual interests of an applicant (Article 34 of the European Convention on Human Rights). The application "for the protection of personal interests" *(actio popularis)*, raising the issue of abstract incompatibility of the legal order of the state with the standards of the Convention is held inadmissible by the Court.

While filing an application, related to violation of freedom of expression, an applicant must meet the required conditions. Nevertheless in the course of the proceeding the general context may be more significant for the Court, than individual circumstances of the applicant.

The specific role of the mass media in the democratic society is that they constitute the arena for discussion of significant issues. Mass media collect information not for conservation in archives or libraries, but for its immediate retransmission. Due to such functions of the mass media, in the cases before the ECtHR on interference in the activity of the mass media regarding the collection and dissemination of information, the consumers of this information are invisible applicants together with journalists and editors. The same as in human body: while the blood circulation between the heart and the lungs and its oxygen enrichment is a significant part of work of the cardiovascular system, no less important is oxygen delivery to the peripheral parts. Failure in any part of the cycle has a bad effect on the entire body, therefore, when treating the heart a doctor should always remember about other organs that depend on blood supply.

In some cases before the ECtHR, such a systematic approach comes into sharp focus. In particular, this relates to cases in which the Court refers to the concept of the so-called "chilling effect". By "chilling effect" the ECtHR means the negative consequences of state actions that go beyond the scope of the individual case and can influence the freedom of speech in the country as a whole.

Below we will discuss the above mentioned through examples of several decisions of the ECtHR. In these cases, the classical three-step test is the basis for assessing the legitimacy of interference with freedom of expression. This review does not purport to fully cover the topic and is intended to demonstrate some examples of interference with freedom of expression that may be relevant in the context of the topic of this issue.

The first two cases, which we will discuss, relate to protection of journalistic sources.

In the case ***Goodwin v. the United Kingdom*** (Application No. 17488/90; Judgment of 27 March 1996)[155] the ECtHR Grand Chamber found the violation of the Article 10 of the European Convention on Human Rights by 11 votes against 8 in the situation when the British courts imposed a large penalty on the journalist for his denial to disclose the sources of leak of confidential information on the financial status of the company Tetra Ltd.

Specific nature of this case is that the company was able to prevent the dissemination of information by obtaining an injunction to publish it. This ban made it impossible to disseminate information through the majority of the media. Nevertheless, during the proceeding, the national court ordered the applicant to disclose the identity of the person who provided the leak.

The ECtHR noted that the dissemination of information had already been prevented by the order of the national court, so the requirement to disclose the source added nothing to the protection of the interests of the company in this sense. However, the need for

155 http://hudoc.echr.coe.int/eng?i=001-57974

measures taken at the national level was also justified by the fact that Tetra Ltd continued to be under constant threat of disclosure of the commercial information directly to consumers or competitors of the company by the same person, bypassing media. The ECtHR noted that in this case there was an obvious conflict between the company's interest and public concern in the existence of a free press.

The Court stressed that the protection of journalistic sources is one of the main conditions for freedom of the press. The lack of such protection can keep individuals who own information important for society from interacting with the press. Thus, the key role of the press as a "watchdog of democracy" and its ability to provide accurate and reliable information can be undermined. The potential chilling effect of the requirement to disclose the source of information makes such a requirement incompatible with the provisions of Article 10 of the Convention.

In other words, the threat that this or that "source", fearing for one's safety, may be afraid to cooperate with the press makes such interference unacceptable. The existence of a channel through which the civil society can receive information is more important than protecting a company from the potential threat of this channel to its economic security.

The next case ***Financial Times Ltd and others v. the United Kingdom*** (Application No. 821/03; Judgment of 15 December 2009)[156] generally repeats the conclusions on the case *Goodwin.* The difference between this case and the previous one is that though the information was published, its accuracy and reliability were questioned.

The editorial offices of several media (Financial Times, The Guardian, The Times, Reuters, etc.) received by mail copies of confidential documents relating to the upcoming purchase by the corporation Interbrew of shares of its competitor - South African Breweries plc.). The identity of the person who sent those copies was unknown even to journalists. The material was published by a number of outlets. Presumably, the documents contained some distort information. All this led to a significant change in the stock prices of these companies and caused significant economic damage.

Interbrew filed a lawsuit against several of these media outlets, in which, referring to the interests of investigating into the leakage of information, required a copy of the report and the envelopes in which it was sent to the editorial offices. The national courts satisfied this requirement.

The European Court highlighted that, even though this case is not about the disclosure of the identity of the person who provided confidential information to the media, but only relates to documents that could help establish his/her identity, the coercion of journalists to cooperate in the matter of revealing the source by itself can negatively affect the ability of the media to fulfill its function in society. Notwithstanding that in case of unauthorized information leakage there is a risk of recurrence of such a situation in the future, the interest in suppressing this channel does not exceed the public interest in protecting journalistic sources. Thus, the possible disclosure of the source in this case could also have a chilling effect.

The next case where the Court outlined the possibility of "chilling effect" is ***Mosley v. the United Kingdom*** (Application No. 48009/08; Judgment of 10 May 2011)[157].

In this case, the applicant raised the issue of a violation by the state of its positive obligations under Article 8 of the Convention in connection with the fact that the "News of the World" published information about his personal life. Moreover, a video of the applicant participating in scenes of sexual nature was posted on the web-site of the same newspaper. The court stated that the video was of much greater interest, and had much more influence than the text of the publication itself.

The applicant received compensation at the national level, but argued that such compensation did not fully restore his rights. He insisted on the positive obligations

156 http://hudoc.echr.coe.int/eng?i=001-96157
157 http://hudoc.echr.coe.int/eng?i=001-104712

of the state to protect personal lives of its citizens. In his opinion, the state should have established the obligation for journalists to inform the person in advance before publishing information relating to their private life.

In spite of the fact that the ECtHR criticized the newspaper's actions, it noted that a possible requirement for prior notification of a person about a planned publication should be considered in the broader context of the role of the press in discussions relating to the general public interest. In this case the ECtHR did not find a violation of Article 8 of the Convention, since the requirement of prior notification could have a chilling effect.

The ECtHR noted, that even though the applicant's arguments in the particular circumstances of a case may be meritorious, the Court must bear in mind the general nature of the pre-notification requirement. In particular, the Court pointed out that its implications for freedom of expression are not limited to the sensationalist reporting at issue in this case but extend to political reporting and serious investigative journalism.

In the case ***Altug Taner Akcam v Turkey*** (Application No. 27520/07; Judgment of 25 October 2011)[158] the applicant was a professor who lived in Ankara. He was engaged in historical studies of the events of 1915, relating to the policy of the Ottoman Empire concerning the Armenian population and had a large number of publications on this topic.

In 2006, he published a research paper in which he expressed support to colleagues being prosecuted for defamation of the Turkish people. Their fault was to publicly accuse the Turkish people of the Armenian Genocide.

In connection with this publication, the applicant was summoned to the prosecutor's office for interrogation on charges of provoking a crime and inciting ethnic hatred. Subsequently, the criminal proceedings against the applicant were repeatedly stopped and resumed again. In the end, it was terminated due to the expiry of the statute of limitations.

In this case, the Court examined whether there had been interference in the rights guaranteed by Article 10 of the Convention and whether the interference had been prescribed by law.

As for the first paragraph, the Government claimed that the applicant in the case had lost the status of the victim, as the criminal proceedings against him had been terminated. The court did not agree with the Government, as the applicant provided convincing evidence that his scientific work was devoted to the study of Armenian Genocide in the Ottoman Empire, and thus demonstrated that he was directly affected by the threat of criminal liability for such activities.

The Court noted that the provisions of Turkish law had a chilling effect in the aspect of freedom of expression, since they generated the applicant's fear of being punished. Even in the event of the actual termination of the criminal prosecution in connection with specific circumstances, the applicant had reasons to refrain from such statements in the future. Thus, the threat of criminal liability had a chilling effect and was a form of interference with the applicant's freedom of expression.

However, the Court also noted the vagueness of the provisions of the Criminal Code and on that basis found a violation of Article 10 of the Convention by Turkey.

In the case ***Kaperzyński v. Poland*** (Application No. 43206/07; Judgment of 3 April 2012)[159] the applicant was an editor in a small local newspaper in Poland. He published an article, relating to the situation concerning the sewage system in the municipality and containing the criticism against the authorities. He received an ironic response from the mayor of the municipality, accusing applicant of acting in personal interests when publishing the material. The applicant ignored this letter and as a result was prosecuted for refusing to publish a refutation or reply. He was sentenced to four months of restriction of freedom, public works and deprivation of the right to be engaged in journalistic activities. The execution of the sentence was delayed for two years.

158 http://hudoc.echr.coe.int/eng?i=001-107206
159 http://hudoc.echr.coe.int/eng?i=001-110171

With reference to the previous case law, the ECtHR once again stressed that the threat of criminal liability has an unconditional chilling effect on the freedom of journalistic activity. Taking into account a severe nature of the punishment, the ECtHR found that the interference in the activities of the journalist in this case had not been "necessary in a democratic society".

It should be noted, that the chilling effect can take place not only in the situation with the journalists. In the case ***Elçi and Others v. Turkey*** (Application No(s). 23145/93 and 25091/94; Judgment of 13 November 2003)[160] the applicants were lawyers, who carried out legal protection at the national level and handled cases before the ECtHR. In connection with their professional activities, the lawyers were detained by the police, interrogated and subjected to inhuman treatment. The Court agreed that such treatment caused damage to their professional activities, even temporary one. However, in the more general context, the Court expressed concern that this also had a chilling effect on all individuals involved in criminal defense or protection of human rights in Turkey.

The application of these principles to the assessment of the situation in Crimea gives one more argument to applicants when they apply to the European Court. The searches at journalists' places and the seizure of their property pose a threat to the disclosure of the circle of communication and sources of information. This on its own can keep people from frank conversations with media representatives, even in the case of a promise of confidentiality. Obviously, in such conditions, the fulfillment of such a promise does not always depend on the will of a journalist. In addition, the provisions of the Criminal Code of the Russian Federation also deter journalists from discussing thorny issues related to the occupation of the peninsula. The real nature of the threat of being accused of extremism, of inciting ethnic hatred or appeals to violate the territorial integrity of the Russian Federation leads to the freezing of hot topics and turns Crimea into an information hole.

160 http://hudoc.echr.coe.int/eng?i=001-61442

SPECIAL ASPECTS OF THE WORK OF MEDIA IN OCCUPIED CRIMEA

Elena Sokolan

Freedom of forced speech...

Three years of the Russian occupation has fundamentally changed the information environment of Crimea. The journalists had either to adapt to new realities, which are significantly different from Ukrainian ones, or to leave the peninsula. As a last resort, they could abandon their names and observance of many standards in favor of anonymity for their own safety. Both work approaches and methods of collecting information as well as the legal field as a whole have undergone substantial changes. Russian media legislation and law enforcement practices are tougher than Ukrainian ones and to some extent are aimed at restricting the freedom of speech and the rights of journalists. According to human rights defenders, public officials and security agencies of the occupied Crimean Peninsula are disloyal to the members of the press and do not show interest in conducting investigations of the crimes committed against them.

The Crimean Peninsula is essentially in information isolation. Russian and local media demonstrating loyalty to the authorities do not fully reflect the specificities of the life in this gray area. Violations of the rights of media workers are often ignored and sometimes are openly manipulated in order to please officials and security services. Ukrainian and international human rights defenders and journalists have quite limited access to information in Crimea. Thus, the purpose of this article is to reveal the practical difference between the application of Ukrainian and Russian media legislation and to collect as many unique testimonies of Crimean journalists about their work in the occupation as possible.

The article uses interviews, including anonymous of the Crimean media representatives, analyzes the results of human rights monitoring carried out by human rights organizations and compares the application of Russian and Ukrainian legislation with regard to journalists and the mass media.

In February 2014, Vladimir Putin signed the Law on amendments to the Criminal Code of the Russian Federation (hereinafter the CC of RF). From then onwards, for public calls for extremist activities (Article 282.1 of the CC) Russians will face at least 100 000-300 000 RUB penalty (about 1,5 - 4,4 thousand EUR) or as maximum – deprivation of liberty for up to 5 years. The mentioned amendments has also increased responsibility for “incitement to hatred or enmity” (Article 282 of the CC of RF) with penalty raging upwards from 300 000 RUB (about 4,4 thousand EUR) and deprivation of liberty being maximum six years.

The organization of extremist group (Article 282.1 of the CC of RF) provides for the minimal penalty of 400 000 RUB (about 5,8 thousand EUR), the maximum punishment being 10 years of imprisonment.

It is noteworthy that Russian so-called “anti-extremist legislation” is so vague that any organization or group of people openly criticizing the actions of the officials can be optionally brought under the definition of such a community. Moreover, an on-line media that disseminates materials, forbidden in the opinion of law enforcement and judicial authorities, can be considered an extremist community. Currently, in occupied Crimea the following persons have been found guilty for “extremist articles”: Ilmi Umerov, the deputy chairman of the Mejilis of the Crimean Tatar People, who was sentenced to two years in settlement colony by Simferopol Regional Court, and Mykola Semena, a journalist of Radio Svoboda, who was sentences by Zheleznodorozhny District Court of Simferopol to 2 years and 6 months of suspended sentence, with a 3 year probation and the ban to conduct any public activity throughout the probation period. These proceedings, unlike the all-Russian practice, are directly related to the peculiarities of the Crimean situation in the media sphere. Both defendants were prosecuted for denying in the media the fact that Crimea

inhere to the Russian Federation, which indeed is a reproduction of the official position of the institutions of the Council of Europe and the United Nations, consistently recognizing the AR of Crimea and the city of Sevastopol as the territory of Ukraine. Moreover, Ilmi Umerov was even forcibly sent to a psychiatric examination in the Simferopol psychiatric hospital. Mr. Umerov himself, his family and lawyers regarded this as a way of psychological pressure on him. Thanks to a wide public resonance all over the world, Mr. Umerov was successfully released from the hospital.

Russian legislation provides for a special punishment for the media, considered by the court as distributors of extremist materials. Thus, Article 11 of the Federal Law "On Counteracting Extremist Activities" permits the seizure of materials, or of the whole circulation, audio and video recordings of programs, and even the termination of the activities of the mass media on the basis of a court decision. Article 11 of the Federal Law "On Counteracting Extremist Activities" allows seizing materials or the whole circulation, audio and video of programs and even terminating the work of the media pursuant to the decision of the court.

The human rights defender of the Crimean Field Mission, Dmitry Makarov, explains that particularly the vagueness of the "anti-extremist" amendments make it possible to pressure any media and journalists, since any criticism of the authorities can be tied to this concept (CFM is the joint initiative of Ukrainian and Russian human rights organizations launched on 5 March 2014).

Article 1 of the Federal Law "On Counteracting Extremist Activities" gives the following definition of extremist activities:

- forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation;
- public justification of terrorism and other terrorist activities;
- stirring up of social, racial, ethnic or religious discord;
- propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their social, racial, ethnic, religious or linguistic affiliation or attitude to religion;
- violation of rights and freedoms and lawful interests in connection with a person's social, racial, ethnic, religious or linguistic affiliation or attitude to religion;
- obstruction of the exercise by citizens of their electoral rights and rights to participate in a referendum or violation of voting secrecy, combined with violence or threat of the use thereof;
- obstruction of the lawful activities of state authorities, local authorities, electoral commissions, public and religious associations or other organizations, combined with violence or threat of the use thereof;
- committing of crimes with the motives set out in indent "e" of paragraph 1 of article 63 of the Criminal Code of the Russian Federation;
- propaganda and public show of nazi emblems or symbols or of emblems or symbols similar to nazi emblems or symbols to the point of confusion between the two;
- public calls inciting the carrying out of the aforementioned actions or mass dissemination of knowingly extremist material, and likewise the production or storage thereof with the aim of mass dissemination;
- public, knowingly false accusation of an individual holding state office of the Russian Federation or state office of a Russian Federation constituent entity of having committed actions mentioned in the present Article and that constitute offences while discharging their official duties; organization and preparation of the aforementioned actions and also incitement of others to commit them;
- funding of the aforementioned actions or any assistance for their organization, preparation and carrying out, including by providing training, printing and material/technical support, telephony or other types of communications links or information services.

Part 2 of Article 280 of the CC of RF is a special norm, establishing responsibility for public appeals for the performance of extremist activity "with the use of the mass media". It provides for more severe punishment specifically for mass media and informational-communicational (including Internet) workers. "In fact, for any statement that Crimea is a part of Ukrainian territory, one is at risk of being imprisoned for up to 4 years; for the same with the use of mass media – for up to 5 years. And we know, that there are already criminal proceedings under these articles against journalists in Crimea," explains Dmitriy Makarov. He also shows headline figures: as of July 2015, the advocates recorded 25 facts of pressure on journalists by the security officers; 13 times the "unwanted" representatives of the media were forbidden to visit and report on official events. Four documents abridging freedom of speech were adopted on the federal and local levels including the mentioned amendments to the CC. Moreover, in May 2014, criminal responsibility for "public calls for actions, directed on the violation of territorial integrity of the Russian Federation" (separatism), and in July 2014 criminal responsibility for separatism was increased.

Less than in a year – between September 2016 and July 2017 - the Russian register of banned materials was expanded with more than 1500 positions. Currently, the "black list" includes more than 4000 articles, social media posts and entire communities (http://minjust.ru/ru/extremist-materials?field_extremist_content_value=&page=20).

About 60 entities are recognized as extremist organization in the Russian Federation, including those, not banned in Ukraine: Mejlis of the Crimean Tatar People, Hizb ut-Tahrir, Administrative Center of Jehovah's Witnesses and its 35 regional divisions (http://minjust.ru/nko/perechen_zapret).

Certain individuals, most actively speaking on Crimea-related topics in mass media, are even included in the list of terrorists and extremists (http://fedsfm.ru/documents/terrorists-catalog-portal-act). Among them are: deputy chairman of the Mejilis Ilmi Umerov and Ukrainian journalists, Crimeans, Ganna Andriievska, Andriy Klimenko and Oleh Sentsov. As a whole, as for July 2017 this list included more than 75000 individuals.

Ukrainian legislation does not provide for specific liability for mass media and for consequences like closure, liquidation or suspension of a license. The same is for slander, printing or demonstration of prohibited symbols. Only National Council on Television and Radio Broadcasting is authorized to impose sanctions and exclude from the register of permitted foreign mass media. For instance, in 2017, TV channel "Dozhd" was excluded from the list of channels permitted for broadcasting in cable networks. The main reason was demonstration of the Russian map that included Crimea. It was considered by the National Council as a gross violation of Ukrainian legislation. The National Council banned some more channels, including "Nostalgiya", stylized with Soviet symbols, and children's channel "Karusel" also broadcasting programs, where Crimea was called the Russian territory.

In May 2017, subject to the Order of the National Security and Defense Council of Ukraine, Russian social networks "Vkontakte" and "Odnoklassniki" were banned for reasons of informational security and counteracting extremism.

At the same time, no proceedings against journalists and mass media were opened by Ukrainian law enforcement authorities under articles 109 and 110 of the Criminal Code of Ukraine "Actions aimed at forceful change or overthrow of the constitutional order or take-over of government" and "Trespass against territorial integrity and inviolability of Ukraine".

In Crimea, social networks are sources of active search for extremists. Thus, the Crimea Field Mission in its September 2015 report informers about several violations of the rights of media workers in Crimea. In particular, on 7 September, the head of the apparatus of the Crimean Antiterrorist Commission, Alexander Bulychev, informed that since the beginning of the year seven bloggers, who were allegedly maintaining two extremist communities in the social network Vkontakte, promoting radical Islam and the ideas of fascism, had been detained on suspicion of extremism. However, human rights lawyers and activists noted that

the official did not cite any particular example of the prohibited statement.

In addition, on 22 September 2015, several leading Crimean mass media received letters from the Ministry of Internal Affairs of the Republic of Cimea, strongly recommending not to use the word “Mejilis” for the reason that according to the Prosecutor’s Office of Crimea, controlled by the RF, such organization is not registered neither in Crimea, nor in the city of Sevastopol. Later these attempts to silence Crimean Tatars led to the complete ban of Mejilis in 2016. According to Kirill Koroteyev, the legal director of the Human Rights Center “Memorial”, that decision has put hundreds, if not thousands of Crimeans, in danger. “As the party that lodged an appeal, we were the first (in the Supreme Court of the Russian Federation), to prove that Mejilis is not a public organization but a body of democratic representation, that an action for recognition as extremist authority cannot be brought against it, and that its activity cannot be considered extremist, etc. However, the decision remained in force. As for the consequences: membership in extremist organization is a crime under Russian law. 33 Mejilis members are in danger and the prosecution may be expanded on the members of regional Mejilis organizations and concern hundreds of people”.

In addition, local occupation authorities are trying to ban media from presenting objective information on the military operations of the RF. According to the CFM, on 29 September 2015, the representatives of Roskomnadzor phoned to the editors of several information editions and forbade to disseminate any information on the presence of Russian troops in Syria.

You can find out more monitoring data on the human rights and freedom of speech in Crimea on the official website of the CFM (http://crimeahr.org/).

The editorial office of the Sevastopol edition “Informer” notified the author of this article that they suspected their editor Irina Ostaschenko had been poisoned for her political publications. Five month before her death the woman was assaulted near her flat. The journalist and her colleagues associated the incident with the publication of the article “Does Sevastopol Che Guevara fly forever?”. The article criticized businessman Aleksey Chaly, the so called “peoples mayor’’ of Sevastopol and owner of the enterprise “Tavrida Electric”.

The personnel of “Informer” on condition of anonymity confessed that after suspicious death of Irina Ostaschenko, the editorial office started to apply self-censorship. Human rights defenders note that such a method, as a rule, becomes the norm in conditions of pressure on freedom of speech, taking into account the lack of activity of the authorities in the investigation of crimes against journalists.

Gradual curtailment of the rights and freedoms of the media professionals affected both the topics and methods of work, chosen by journalists. Sevastopol freelance journalist Vladimir said that such kind of activity as journalist investigation had almost disappeared from Crimean media. The reason is that this type of activity requires constant, including “acute”, contacts not only with public or security officials but also with the representatives of business and criminal structures. Under circumstances, when the journalists feel themselves not merely unprotected but rather vulnerable, such contacts should be avoided.

Special correspondent of Ukrainian TV channel “Inter” Yulia Kryuchkova notes that now it is almost impossible to produce topical TV spots, find characters, receive official and statistic data. Since officials almost do not communicate with Ukrainian journalists, often exclude them from mailings about planned events, and, in general, scarcely invite to or inform about press-conferences and events with the participation of officials. Moreover, Yulia’s film crew has already been detained by law enforcement officers several times despite the fact that “Inter” is the only Ukrainian TV channel permitted in Crimea by the Russian MFA. Yulia Kryuchkova shared the details: “First time the motive was quite strange. The law enforcement officials have allegedly received anonymous message, that

we may possess forbidden items. We were detained and brought to the police office for verification of our identities, where we spent about 5 hours and our car was searched. And this happened despite the fact that we had all documents, including editorial ID cards and permission of the MFA".

One of the Crimean journalists, the editor of the internet news portal, said in a personal conversation that she was afraid for her life and freedom living in such an environment. Therefore, she flatly refused to publish her name and explained her decision in the following words: "None of the prisoners of the concentration camp will ever tell the truth about their life, they either lie or do not say anything".

In the spring of 2015, Crimea witnessed a wave of searches and voluntarily-compulsory "conversations" with the most active pro-Ukrainian journalists. Some people were blacklisted by the Federal Security Service as witness and others as participants in the criminal proceeding. According to Human Rights Information Center, by September 2016, 5 criminal proceedings had been instituted against Crimean journalists on extremism in social networks under articles, providing criminal liability for "calls for separatism" (https://humanrights.org.ua/ru/material/aktualna_infografika_pro_stan_svobodi_slova_v_okupovanomu_krimu). These events practically forced the majority of Ukrainian media specialists from the Crimean market. As for April 2016, the experts of the CFM documented decrease of 88% in the number of mass-media in Crimea. Human rights activists associate this inter alia with the fear of press workers to be arrested for political reasons, and with the pressure of government structures on the media, up to and including forceful suspension of a broadcast license for certain opposition mass media.

Thus, since 1 April 2015 the only Crimean Tatar TV channel "ATR" ceased to broadcast. The local web-site Kerch FM cited the Director General of the company Elsar Ilyasov: "The company has submitted documents for reregistration to Roscomnadzor, however, each time they got a refusal". As a result, ATR together with the whole editorial office had to move to the mainland Ukraine and to continue broadcasting from Kyiv. Only a Facebook community "Crimean reporter", still preparing videos from the peninsula used by the disgraced TV channel, remained in Crimea.

In November 2015, the Crimean prosecutor's office controlled by the Russian authorities instituted a criminal proceeding against the owner of the ATR TV channel Lenur Islyamov. The businessman has become one of the initiators of the "trade blockade", and later of the "energy blockade" of the peninsula. While investigating this case, the security officials visited Lilia Budzhurova, the editor of the Crimean branch of the TV channel, to search her place.

Earlier, the editorial office and some of the equipment of the Ukrainian-language television and radio company of the Ministry of Defense of Ukraine "Breeze" had to be evacuated. As the chief editor of the channel "Breeze" captain Ivan Chmil reported, both military and civil journalists were repeatedly threatened with reprisals and criminal proceedings. The Russian military seized a part of the editorial property and a valuable video archive. Unique shots, made in spring 2014 during the seizure of Crimea by the Russian military officers, were seized and partially destroyed. According to the testimony of the journalists, a part of editorial materials were found on the shelves of the Russian special services, some information was illegally sold to foreign TV channels.

Currently the access of Ukrainian and foreign media to Crimea is drastically restricted. In order to work officially in the occupied peninsula, journalists have to operate on the fringes of Ukrainian law. The position of the official Kyiv is that journalists have no right to request Russia the permission for work in Crimea, because it can be interpreted as an indirect recognition of the Russian authority in the peninsula. Thus, in 2017, the network of Ukrainian media professionals is mainly represented by freelancers working anonymously, having very limited access to information. They do not have any opportunity to attend official

events and make information requests openly.

However, accreditation also does not solve all problems. In February 2017 in Simferopol, there was detained the STB film crew, which, as an experiment, received permission from the Russian MFA to work in Ukrainian Crimea (https://www.facebook.com/lunkovaalyona/posts/10207079799107821). Journalists Alyona Lunkova and Irina Romaliyskaya spent several hours being verified by the police, with their documents being confiscated. They believe that the wide publicity of the incident in social networks and in the media prevented the situation from becoming more serious. Journalists were released, but during the visit they felt the special attention of the law enforcement officers.

However, a large number of local Crimean media staff is not worried by such facts of suppression of freedom of speech. My interlocutors from pro-Russian and pro-governmental on-line media in Sevastopol are openly proud of their materials despite the fact that often emotionality prevails over common sense, and the presentation of facts and assessment verge upon poorly concealed manipulation. They explain it by saying they are doing something useful for Russia, i.e. they do not inform but correct public opinion for the needs of the state. Here are just a few examples of the headlines of the Crimean media: “Barack Obama’s plan to establish control over the government of Sevastopol failed miserably!”, “The United States demand that Ukraine hands reins over to gays”, “ISIS militants shave their beards and flee Syria under the guise of women”.

Russian journalists, who had filled vacancies following the outflow of Ukrainian staff, added more ideological “gravy” to local media. So far media researchers have not given exact figures, because the methodology of such calculation is difficult to develop. Since 88% of media were closed and people are still quitting from the functioning TV channels, on-line media and newspapers, both new generation of Crimean journalists and “guests” from the territory of Russia replace them. As my interviewees journalists assume, the media staff was renewed for 50-90% and about a half of them are video operators and editors from Russian regions.

In general, the opposition journalists and entire media organizations in Crimea are under constant pressure from the power structures and the Federal Security Service. According to lawyers, the reason is Russian legislation which allows to interprete of critical statements and disagreement with the position of the Crimean and Russian authorities as extremism and separatism. In addition, the whole situation is exacerbated by the reluctance of officials and investigators to investigate objectively the facts of pressure on the press in Crimea. Such cases are either not investigated at all, or are slowly investigated. Therefore, according to human rights lawyers and activists, media staff feels unprotected on the peninsula and is forced to hide its position under pseudonyms or exercise self-censorship. This idea is proved also by the testimony of my interviewees who continue working in the media under occupation. Moreover, “Inter” channel is the only Ukrainian TV channel that has received the official permission of the MFA of the RF to work in Crimea. The rest of Ukrainian and foreign media on the peninsula are outside the law from the Russian view point. Major informational channels like Reuters, BBC, Radio Svoboda receive information either from their Russian bureaus or from local freelancers. Sometimes Ukrainian and foreign journalists go to Crimea with small cameras or even mobile phones unofficially, under the guise of tourists or guests. They are hiding from security agencies and gather exclusive materials about the life of the peninsula. However, they are not then protected by information legislation and can even be equated with foreign spies.

Basically, access to the media space of Crimea and the city of Sevastopol is limited due to undefined status of this territory. According to the position of Ukraine and the most countries of the world, the Crimean Peninsula is a temporarily occupied part of the territory of Ukraine. According to the position of Russia, the Crimean Peninsula is a part of the Federation, governed by rules and laws of the Russian Federation.

Establishment of independent international monitoring mission, acting under generally recognized standards of journalism and human rights, would improve the situation with freedom of speech in Crimea. Such a mission could work under the patronage of the prominent European or American organizations (such as Reporters without Borders), and could obtain permission from both Ukraine and Russia to work and publish research materials abroad. That would at least partially allow to raise the media sphere of Crimea out of the complete isolation. However, even for such a mission it would be difficult to work in conditions when journalists, bloggers and public figures do not trust the official structures and are afraid for their lives and freedom.

NOTES

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Issue 3. Right to nationality (citizenship).
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