

Working session 8: Rule of law

The violations of the rule of law in Crimea

1. Violations of the rule of law in Crimea for the prosecution of citizens of Ukraine

In Crimea, the principle of "no crime without law, no punishment" is regularly violated. Russia in violation of Article 64 of the Geneva Convention applies its criminal law in occupied Crimea. In addition, the de-facto authorities apply the action of the Russian criminal law back in time. Russia uses its criminal law to the events in the period up to March 2014 - when Russia was not de facto controlling Crimea; the peninsula was under the jurisdiction of Ukraine. Such actions violate the principle of punishment under the law, because, till March 2014 de facto Russian law did not apply to Crimea.

An example of the use of retroactive legislation is the so-called case of "26 February". Six Crimean Tatars and Ahtem Chygoz, Deputy Chairman of the Mezhdlis of Crimean Tatar people, are accused in this case. Chygoz and two activists are held in inhumane conditions in Simferopol pre-trial detention centre since the beginning of 2015. Three other are in Simferopol under house arrest. They are accused of participation and organization of the meeting by the Crimean parliament on 26 February, 2014. Russia accuses them of violating Article 212 of the Criminal Code of the Russian Federation - the organization of "mass disorder". However, in February 2014 Russian law de facto did not apply to the peninsula.

In addition, on 26 February, 2014 another rally was held near the building of the Crimean parliament. It was organized by representatives of the party "Russian Unity" headed by Sergei Aksenov. Aksenov became a Russian-backed so-called "prime minister" of Crimea. However, participants in this meeting are not pursued. The prosecution of only pro-Ukrainian participants of the meetings shows the use of selective justice by the occupation authorities to deal with political opponents.

Russia also actively uses its rules of criminal law to prosecute citizens of Ukraine for the events that took place in the capital of Ukraine - Kiev.

So, on 5 February, 2015 Alexander Kostenko was detained and tortured in Crimea. He was accused in the fact that he supposedly threw a stone at the employee the Ministry of Internal Affairs of Ukraine on February 2014 in Kiev. The employee the Ministry of Internal Affairs of Ukraine was also a citizen of Ukraine. On 15 May 2015 Kostenko was sentenced to 4 years and 2 months in prison and taken to the penal colony in Kirov, Russian Federation. Later the sentence was replaced with 3 years and 11 months.

Andrei Kolomiets, a Ukrainian citizen and resident of Kiev region was detained in Kabardino-Balkar Republic of the Russian Federation on 15 May, 2015. Under torture, he testified that he participated in actions on the Maidan in Kiev. After that he was taken to Crimea. The Prosecutor's Office of the Russian Federation accused him of attempted murder of two employees of the Ukrainian Interior Ministry officers during the protests in Kiev. On 10 June, 2016 he was sentenced to ten years' imprisonment.

Moreover, the Main Investigation Department of the Prosecutor General of Ukraine carries out a criminal investigation regarding the killings and attempted killings of employees of MIA of Ukraine during actions on the Maidan.

Crimean Human Rights Group and other human rights organizations have called on Russia to stop the persecution of Ukrainian citizens for acts that were committed on the territory of Ukraine and not connected with citizens of the Russian Federation;

To release immediately citizens of Ukraine from the locations of non-freedom, which Russia has deprived in violation of the rule of law and human rights;

To stop the movement of Ukrainian citizens from the territory of Ukraine (Crimea) to the Russian colonies and to abide the norms of the Geneva Convention scrupulously.

2. Politically motivated criminal prosecution in Crimea by the example of the "Ukrainian saboteurs' case"

On 10 August 2016 the Federal Security Service of Russia has officially stated that "a series of terrorist acts" allegedly "prepared by the Head Office of the Ministry of Defence Intelligence of Ukraine" were prevented on the territory of the Autonomous Republic of Crimea by the Russian police authorities. Evgeny Panov, a Ukrainian citizen, a resident of Energodar - Zaporozhye region (Ukraine), was arrested; according to the Federal Security Service of Russia, he is a member of the Main Directorate of Defence Intelligence of Ukraine. Two other Ukrainian citizens were also arrested regarding this case: Andrey Zakhthey and Redvan Suleymanov.

Falsification of evidence

Relatives of Panov reported that he disappeared on 7 August 2016. It is stated in the statement of the Federal Security Service of Russia addressed to the Director of the Consular Department in the Russian Ministry of Foreign Affairs it is indicated that Panov was detained on 10 August 2016 at 21:35. However, the first publication about the detention of Panov in the Russian media, with reference to the official website of the Russian Federal Security Service, appeared at 15:35 on 10 August 2016. Thus, the information about the arrest of Panov appeared in the media 6 hours earlier than officially claimed retention time. This may indicate that the Federal Security Service of Russia secrets real detention time of Panov.

According to the statement of the Federal Security Service of Russia in the Russian Foreign Ministry Panov was charged under Part 2 of Article 208 of the Criminal Code of the Russian Federation "participation in an illegal armed formation, in a manner contrary to the interests of the Russian Federation." However, the official website of the Federal Security Service of Russia states that Panov is accused of sabotage and preparation of acts of terrorism. Thus, the statements of the Federal Security Service of Russia contradict each other.

The FSB of Russia informed the Russian Foreign Ministry that Panov is accused of "participating in an armed formation not envisaged by federal law, as well as participation in an armed formation not envisaged by the legislation of that State in a foreign country, for purposes contrary to the interests

of the Russian Federation." However, the interrogation video recorded that Panov recognized that he served in the ATO zone in the Armed Forces of Ukraine (AFU) and was allegedly sent to Crimea by the Head Office of Intelligence Defence of Ukraine. However, Armed Forces of Ukraine and The Main Directorate of Intelligence of the Ministry of Defence of Ukraine are not illegal militias, these are armed groups that provided for by the legislation of Ukraine, and Russia recognizes these authorities as legitimate. So, there is no corpus delicti in which the FSB of Russia accuses Panov.

Another person involved in the case, Andrey Zahtey, was sentenced to 15 days of administrative arrest for petty hooliganism on 8 August 2016 by the court of Simferopol. However, after the arrest of Panov, the Federal Security Service of Russia accused him of completely other crimes. The Federal Security Service of Russia published the video of his "recognition" of preparing sabotage on 12 August. The third person involved in the case, Redvan Suleymanov as the place of his residence in Zaporozhe calls non-existent address during his "confessions", which were recorded on video. This may indicate that falsification of confessions.

Torture, physical and psychological pressure

The video of interrogation of Panov published by the Federal Security Service of Russia, shows traces of physical violence on the face and body of the Ukrainian.

Panov disappeared in Crimea on 7 August, on 10 August the Federal Security Service of Russia stated about his detention. However, the relatives reported that Panov was brutally tortured for three days to obtain confessions, probably in the period from 7 to 10 August. Relatives find out that an electric current, a plastic bag on his head, the threat of sexual violence were used for torture.

Wife of Andrew Zahteya said that her husband was also tortured in order to obtain the necessary evidence for the Federal Security Service of Russia.

Violation of the right to a fair trial

The designated by the authorities of the Russian Federation lawyer of Panov refuses to communicate with the relatives of the detained; he does not provide them with information about his health condition, location, charges. Intended attorney takes no action on the fixing of torture, forcing a defendant to plead guilty, despite the falsification of evidence. Thus, the lawyer for its intended purpose does not comply with the defence functions.

Panov relatives drew another lawyer under the contract to protect him. However, the investigators do not allow under a contract lawyer to his client for more than a month. Relatives also reported that Panov was forced to abandon the services of a lawyer hired by relatives under torture.

Videos of episodes of interrogation of detained citizens of Ukraine, in which they give the alleged confession, were widely broadcasted by Russian and Crimean media and accompanied by a statement of the Federal Security Service of Russia regarding the capture of "terrorists" and "saboteurs". In this way the presumption of innocence was violated, and the image of the "enemy" of detainees was attached in the information field.

According to international law, Crimea is part of Ukraine. Therefore, the activity in the territory of Crimea of the Russian judicial system deprives the today's courts of Crimea signs of "court

established by law." Moreover, the judges of Crimea, which currently administer justice, moved into the illegally formed judicial authorities, in violation of the oath and the legislation of Ukraine. In order to maintain their status and positions they express anti-Ukrainian views and show utmost loyalty to the Russian authorities. As a result, in the politically motivated prosecution the detainees are deprived of the right to trial by a competent, independent and impartial court established by law.

Political motives

"Ukrainian saboteurs' case" is used by the Russian Federation for strengthen of its power in Crimea, strengthening the presence of security forces, including the armed forces and the Federal Security Service of Russia, strengthening of anti-Ukrainian mood among the local population.

The Russian leadership has used this case for political purposes in the international arena. So, Russia under the pretext of "catching of Ukrainian saboteurs in Crimea" refused to participate in the meeting in the Normandy format in China during the G20 summit.

The above facts and violations of fundamental rights and freedoms indicate that the arrested citizens of Ukraine regarding the "Ukrainian saboteurs' case" were the victims of a politically motivated prosecution. To protect their rights Russia should immediately:

- To stop the torture, physical and psychological pressure; to bring to justice those responsible for torture and violence;
- To provide reliable information about the state of health; if necessary, to provide quality medical care;
- Cancel the decision taken in Crimea on the deprivation of liberty;
- To allow lawyers to the client, which were attracted by relatives of the detainees under the contract;
- To allow the Ombudsman of Ukraine or its representatives to the detained Ukrainian citizens.

The Crimean Human Rights Group