



Ukraine's 8th Periodic report

Civil Society Submission to the UN Human Rights Committee's 130th Session

Introduction

This is a civil society submission to the Human Rights Committee ahead of Ukraine's 8th periodic report at the Committee's 129th session. It is a joint submission made by the following organisations:

Educational Human Rights House Chernihiv (EHRHC)

EHRHC was established in Ukraine in 2014. Today the House unites 13 human rights organisations under its roof. A centre for Ukrainian organisations, EHRHC is a modern and well-equipped educational conference and resource centre with accommodation facilities. It was founded by organisations from different regions of Ukraine, and welcomes civil activists and organisations engaged in civil and human rights education. EHRHC is made up of the following NGOs: Ahalar; Centre of Civil Education "Almenda"; Association UMDPL; Chernihiv public committee of human rights protection; East-SOS; Human Rights Vector NGO; MART; Moloda Prosvita Prykarpattia; No Borders Project; Postup; Transcarpathian Public Center; Ukrainian Helsinki Human Rights Union; ZMINA. Human Rights Center.

Human Rights House Crimea (HRHC)

Human Rights House Crimea unites four organisations that operate in exile in Kyiv. HRHC aims to develop, strengthen, and coordinate the capacity of organisations involved in human rights protection in Crimea, ensuring more effective and systematic human rights work. The house focuses on promoting and observing the human rights of all citizens on the occupied peninsula. HRHC is made up of the following NGOs: Almenda; Crimean Human Rights Group; ZMINA. Human Rights Centre; Regional Centre for Human Rights.

Human Rights House Foundation (HRHF)

Human Rights House Foundation is an international human rights organisation. We protect, empower and support human rights defenders and their organisations through Human Rights Houses, which are collaborative projects of non-governmental organisations working in partnership to promote and advance human rights at home and abroad. Within a Human Rights House, human rights defenders and their organisations remain independent and address the rights and issues that matter to them and the society they live in, while they benefit from cooperation, shared resources, solidarity, expertise, visibility, and strength in advocacy.

Due to the illegal occupation of Crimea in 2014, this submission recognises the need to differentiate analysis of the human rights situation in Crimea, and the subsequent significant challenges that Ukraine has faced in fulfilling its human rights obligations with respect to people living in Crimea. Therefore, the submission has separate sections focused on "Crimea" which are distinct from the sections focused on "government-controlled areas" in relation to areas of specific rights obligations, as distinguished by the articles of the International Covenant on Civil and Political Rights (ICCPR).

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Articles 4 & 5: Derogation during a public emergency

Crimea

Article 4, paragraph 1, of the Covenant provides the possibility of a State to derogate from individual obligations under the Covenant in time of public emergency which threatens the life of the nation. However, a derogation from obligations under Article 4 does not mean full *carte blanche* of the state in the field of human rights guaranteed by those articles of the Covenant from which such derogation has been committed. Thus, according to the general comments of the UN HRC No. 29, any measures to derogate from obligations under the Covenant should be taken only to the extent that this is required by the acuteness of the situation¹. Article 4 of the Covenant cannot be interpreted as the basis for a complete renunciation of obligations under the Covenant or as the basis for a derogation from obligations to a greater extent than is required by the severity of the situation, which also points paragraph 1 of Article 5 of the Covenant.

On 21 May 2015, the Verkhovna Rada² of Ukraine adopted a decree on the statement “On the derogation of Ukraine from certain obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms”³.

According to this decree, Ukraine announced a derogation from the obligations under paragraph 3 of Art. 2 of the Covenant (remedies), articles 9 (Freedom from arbitrary arrest and detention and relevant procedural rights), 12 (freedom of movement and freedom of choice of residence), 14 (right to a fair trial), 17 (right not to be intervene in personal and family life) of the Covenant. The reason for these deviations was the aggression of the Russian Federation against Ukraine, as well as the occupation of part of the territory of Ukraine by the Russian Federation.

The Committee is entrusted with monitoring the compliance of Ukraine with the principle of proportionality in the context of derogation from the provisions of the Covenant. It should be borne in mind that Art. 4 of the Covenant cannot be interpreted as a possibility of derogation from obligations under the Covenant to a greater extent than provided for, that is, in violation of the principle of proportionality

The following is a non-exhaustive list of problems associated with Ukraine's compliance with the guarantees provided for in the derogation from obligations under the Covenant in the context of the occupation of Crimea.

Derogation relating to Articles 12 & 17

Freedom of movement guaranteed by Art. 12 of the Covenant, includes the prohibition of forced displacement or expulsion of citizens from the territory of the country of their citizenship⁴. Since the beginning of the occupation of Crimea and the spread of its legislation on the territory of the occupied peninsula, the Russian Federation has moved at least 9,000 people from the territory of Crimea to its territory. This information was repeatedly brought to the attention of the

¹ Human Rights Committee General Comment 29

² The Verkhovna Rada is the “Supreme Council” or Parliament of Ukraine

³ Decree No. 462-VIII of May 21, 2015. <https://zakon.rada.gov.ua/laws/show/462-19#Text>

⁴ Human Rights Committee General Comment 27. Such movements also violate Articles 49, 76 of the Geneva Convention IV.

Committee by Ukrainian NGOs. Also, questions on the transfer of convicted citizens of Ukraine to the territory of the Russian Federation are raised in communications previously sent to the Human Rights Committee⁵. Thus, by transferring convicted citizens of Ukraine from *de jure* territory of Ukraine to its sovereign territory, the Russian Federation violates Art. 12 of the Covenant. Such movements continue to have a significant negative impact on the situation of Ukrainian prisoners, in particular, they cannot see their relatives and friends. As a result of this, there is also a violation of Art. 17 of the Covenant in relation to prisoners, and in relation to members of their families. Although Ukraine is not directly responsible for the movement of its citizens to the territory of the Russian Federation, attention should be paid to those positive obligations under Art. 12 of the Covenant, which Ukraine has in connection with such a movement.

Paragraph 4 of Article 12 of the Covenant provides that no one shall be arbitrarily deprived of the right to enter his own country. Today, most of the detained citizens of Ukraine, displaced by the Russian Federation on their territory, are *de facto* deprived of this right. Moreover, for more than six years of the existence of this problem, the Ukrainian authorities have not taken the necessary measures to solve it. In particular, there was no initiation of the development of a legal mechanism that would ensure the return to the territory of Ukraine of its citizens, who were displaced from the territory of Crimea to the territory of the Russian Federation to serve their sentences.

It should be noted that in March 2017, twelve Ukrainian prisoners previously transferred from occupied Crimea to the territory of the Russian Federation were transferred from the Russian Federation to Ukraine on the basis of agreements between the Ombudsmen of the Russian Federation and Ukraine. This fact does not solve the entirety of the problem, since the transfer was not carried out on the basis of a legal mechanism that could be applied in the future.

The state's inaction with regard to providing its citizens with the opportunity to return to Ukraine cannot in this case be justified by a derogation from obligations on the basis of Art. 4 of the Covenant, since such inaction is not caused by the severity of the situation and is not necessary. The Government of Ukraine may initiate the development of a legal mechanism for the return of Ukrainian citizens to its territory. However, since such attempts were not made, the principle of proportionality between the degree of deviation from obligations and the circumstances that caused such deviation was violated by inaction.

Recent developments relating to Covid-19

On 17 March 2020, an ordinance of the Cabinet of Ministers of Ukraine (CMU) was published⁶, declaring that Ukrainian checkpoints with Crimea would stop working temporarily, and with immediate effect, until 3 April 2020. Ukrainian nationals and their families with residence registration in Crimea would only be able to enter Crimea, with a ban on them returning. Ukrainian nationals with residence registration outside Crimea could only leave Crimea, with ban on entering Crimea within this period.

⁵ Including: Communication №3022/2017 Bratsylo, Golovko and Konyukhov v. Russia; Case №3326/2019 Larionov v. Russia and others

⁶ Ordinance of the Cabinet of Ministers of Ukraine, number 291-r, dated 14 March, 2020, https://www.kmu.gov.ua/npas/pro-timchasove-pripinennya-roboti-kontrolnih-punktiv-vyizdu-na-timchasovo-okupovanu-teritoriyu-avtonomnoyi-respubliki-krim-i-m-sevastopolya-291140320?fbclid=IwAR1MOJquJfyo_FFs6ImLkdErffQmEosrqvlnj3atsE3L0ffnmymPCdculZ4

This CMU ordinance was published on 17 March, when entry and exit restrictions had already entered into force, so people subject to entry and exit restrictions were not aware of new restrictions in order to manage to return to Crimea or leave the peninsula. These residence registration-based restrictions did not take into account many other circumstances that might encourage or compel people to cross the checkpoint, including for medical treatment, as a result of politically motivated persecution, or the death of close relatives, etc. Various human rights organisations urged the Ukrainian government in order to amend the resolution⁷.

On 18 March, the CMU ordinance was amended⁸ allowing Ukrainian nationals to leave or enter Crimea on humanitarian grounds, regardless of residence registration. The decision to allow passing of the checkpoint on such grounds shall be taken by the Head of the State Border Service of Ukraine. On 25 March Ukraine extended the validity of restrictions on crossing the check points with Crimea until 24 April⁹.

On 29 April, the government of the Russian Federation, amended the border crossing procedure that included also the checkpoints with Crimea, to counteract the COVID-19 spread¹⁰. So, an exhaustive list of close relatives was established, whose death could be the reason for leaving Crimea (only in case of death of the husband, wife, a parent, children, an adoptive parent, an adopted child, a foster parent and a trustee). In addition, the amendments allow Russian nationals (including those were forced to obtain a Russian Federation passport in Crimea) who have citizenship of another country or a document confirming permanent residence outside the Russian Federation, to leave the Russian Federation and Crimea¹¹.

With the rules of passage changed, freedom of movement issues have grown. At the Ukrainian checkpoints, Ukrainian nationals have had to confirm humanitarian reasons to enter into other parts of Ukraine. Some of these people were let through the Ukrainian checkpoints, but some were rejected, referring to the lack of humanitarian grounds verified. However, citizens move freely without confirmation of humanitarian grounds in other Ukrainian regions. The restrictions for residents of the occupied territories are not proportional and make it impossible for many citizens to leave the occupied territory.

In this situation, it is recommended that the Ukrainian government prevent unreasonable restrictions on freedom of movement for residents of the occupied territories and elaborate on a comprehensive mechanism for exiting the existing quarantine mode with regard to the occupied Crimea.

⁷ *Statement of NGOs due to introducing restrictions for crossing the administrative border with occupied territories of Ukraine for the purpose of counteracting the corona virus spreading*, <https://crimeahrg.org/uk/zayava-pravozahisnikiv-z-privodu-vvedennya-obmezhen-peretinu-admin-kordonu-z-okupovanimi-teritoriyami-ukra-per-centd1-per-cent97ni-z-metoyu-protidi-per-centd1-per-cent97-rozpovsyudzhennya-koronavirusa/>

⁸ <https://www.kmu.gov.ua/npas/pro-vnesennya-zmini-do-rozporyadzhennya-kabinetu-ministriv-ukrayini-vid-14-bereznya-2020-r-291-319180320>

⁹ CMU Resolution # 239 of 25 March 2020 <https://zakon.rada.gov.ua/laws/show/239-2020-per-centDo-per-centBF>

¹⁰ Russian Federation Ordinance # 1170-r

¹¹ <http://static.government.ru/media/files/rUNwXiSXZs1NmLZauzAsdAIM3ppeWRAB.pdf>

Derogation relating to Article 9

The authorities of the Russian Federation actively apply the provisions of their own legislation in the field of migration and the Code of the Russian Federation on administrative offenses in the territory of occupied Crimea, which establishes administrative responsibility in the form of expulsion for their violations.

The adoption of decisions by the occupation courts regarding citizens of Ukraine, foreigners and stateless persons on expulsion from the occupied territory with their further detention in centres purposed for the temporary detention of foreign citizens is an unlawful interference with freedom and personal integrity, since such decisions were made by the occupation courts without taking into account the fact that the Crimean peninsula *de jure* is the sovereign territory of Ukraine, and occupation is a temporary legal regime. Thus, the Russian Federation violates Art. 9 of the Covenant, since it has no legal basis either for the expulsion of these persons, or for the deprivation of their freedom in order to execute decisions on expulsion.

At least 163 persons (citizens of Ukraine, foreigners and stateless persons) were identified, for whom, from June 2014 to May 2018, the occupation courts in Crimea applied forcible expulsion related to deprivation of liberty for a term of one day to more than one-and-a-half years¹². The importance of the right to freedom requires that this right be ensured by serious legal guarantees of protection, including criminal law.

This thesis also relates to the content of paragraph 3 of Art. 2 of the Covenant, which provides for the establishment and application of effective remedies guaranteed by the Covenant. Thus, in accordance with its positive obligations, Ukraine is obliged to take measures to investigate crimes committed on its occupied territories, in particular, regarding illegal imprisonment, according to the Criminal Code of Ukraine.

Derogation relating to Article 2

The aspects of derogations from the obligations under art. 9 and Art. 12 of the Covenant also relates to derogations from paragraph 3 of Art. 2 of the Covenant, since both the legal mechanism for the return of forcibly displaced to the country of their citizenship and the criminal law protection of personal freedom are means of protecting rights within the meaning of clause 3 of Article 2 of the Covenant. P. 3 Art. 2 of the Covenant obliges States parties of the Covenant to provide remedies against any violation of the provisions of the Covenant. This clause is not mentioned in paragraph 2 of Art. 4 among non-derogable provisions, but constitutes a contractual obligation arising from the Covenant as a whole.

Although even during a state of emergency, within the meaning of the Covenant and to the extent that such measures are required in connection with the severity of the situation, the State party can adjust the practical functioning of its procedures governing the use of judicial and other remedies, it must comply with article 2 of the Covenant, a fundamental obligation to ensure that a remedy is effective¹³.

¹² Thematic review of the human rights situation under occupation, *Crimea beyond rules: Forcible Expulsion of the Civilian Population from the Occupied Territory by Russia*, https://precedent.crimea.ua/wp-content/uploads/2019/01/CBR_forcible-expulsion.pdf

¹³ Human Rights Committee General Comment No. 29

Therefore, Ukraine needs to take these obligations into account, adjusting its procedures regarding the protection of rights under the Covenant in a state of emergency within the meaning of the Covenant. The Committee, in turn, should pay particular attention to whether such an adjustment is consistent with the principle of proportionality.

Article 6: Right to life

Government-controlled areas

In ensuring the right to life, in particular in its procedural sense, the state must ensure the effective investigation of those deaths that occurred during the "Revolution of Dignity" in 2014. However, even six years after the events on the Maidan, no one is held liable for acts of murder and violent deaths, furthermore, investigations are ineffective and increasingly politicized.

The Committee should pay attention to the latest mortality statistics in places of detention as well, which remain high. Ukraine has a duty to protect those who are in custody and a strict obligation to conduct effective and independent investigations following any death that occurs while a person is detained or imprisoned.

Finally, symbolic cases of violent deaths in Ukraine in recent years serve as an illustration of the ineffectiveness and inadequacies of investigations, in particular the examples of the high-profile cases of Kateryna Handziuk¹⁴ and Iryna Nozdorovska among others. These inadequacies include partiality being shown during investigative processes, corrupt practices when cases are connected to influential or powerful people, lack of transparency in methods, and in many cases seemingly total impunity.

Article 9: Freedom from arbitrary arrest and detention

Crimea

The right to liberty provided for in article 9 of the Covenant includes the right of a person deprived of liberty due to arrest or detention to have their case considered in court so that a court can immediately order the lawfulness of the detention and order the release of such a person if detention is illegal. The Committee also notes that: "States parties should make every effort to take appropriate measures to protect people from imprisonment as a result of actions by other States in their territory"¹⁵.

In accordance with the data of the Ministry of Justice of Ukraine, as of 1 January 2014, 3,381 persons were held in places of detention or prison on Crimea (convicts and persons in respect of whom the court chose a preventive measure in the form of detention). At the time of the occupation of Crimea by the Russian Federation, detention centre No. 15 of Simferopol contained about 1,100 people awaiting consideration of their criminal case by an authorized Ukrainian court. In the context of the occupation, article 9 of the Covenant requires the Ukrainian authorities to take action either:

- a) To release these persons in order to avoid unlawful and arbitrary deprivation of their freedom by the authorities of the Russian Federation;
- b) Or to evacuate these persons in order to ensure the consideration of their case in court.

¹⁴ "Human Rights Organisations Pointed at Inefficiency of Investigation into Murder of Kateryna Handzyuk", 5 November, 2019, <https://imi.org.ua/en/news/human-rights-organizations-pointed-at-inefficiency-of-investigation-into-murder-of-kateryna-gandzyuk-i30315>

¹⁵ Human Rights Committee General Comment No. 35, paragraph 7

None of the measures listed were taken by the Ukrainian authorities. After the occupation and dissemination of the legislation of the Russian Federation in Crimea, the Russian authorities arbitrarily assumed the authority to investigate crimes in which the detained persons were accused by Ukrainian law enforcement agencies. Subsequently, the charges against these persons were retrained in accordance with Russian law and the occupation courts began to convict them, which cannot be considered legal deprivation of liberty in accordance with the requirements of the Covenant. Thus, without taking any measures to protect people from illegal and arbitrary deprivation of liberty by the authorities of the Russian Federation on the territory of Crimea, Ukraine violated its obligations under article 9 of the Covenant. Also, having allowed the unlawful deprivation of freedom of these persons by the authorities of the Russian Federation, the authorities of Ukraine should have taken measures to return these persons as soon as possible to the territory controlled by the government of Ukraine. Despite this, the Ukrainian authorities not only do not take any measures to return persons deprived of their liberty to controlled territory, but also refuse to accept some of them for formal-political reasons (see also the section on violation of article 12).

Separately, the issue of financial and psychological aid for persons that were unlawfully imprisoned in connection with the armed conflict has remained unresolved for a long time. As of May 2020, at least 92 Ukrainian citizens were or still are unlawfully deprived of their liberty in Crimea and in Russia for political reasons. In April 2018 Ukraine adopted a procedure on assistance in this area, amended in 2019¹⁶. As a result of the last governmental ordinance, a commission was created that determines the persons for such assistance. The commission met only once and decided on four Ukrainian citizens from the list of prisoners unlawfully deprived of their liberty for political reasons. However, subsequently, the Ministry of Veterans, Occupied Territories and IDPs was transformed and a new Ministry of Reintegration of Occupied Territories was created in March 2020. After that, the necessary documents for the work of the Commission were not adopted. As a result, victims of unlawful deprivation of liberty political reasons and their families cannot receive the financial and psychological support that the law supposedly provides for them.

Article 10: Rights of those detained or imprisoned

Government-controlled areas

Ukrainian law is based on a rule that no one can be detained without a court decision. This is stated in Article 29 of the Constitution of Ukraine, which enshrined at the level of national legislation the right to liberty and personal integrity. Detention without a court decision is initially a measure of ensuring criminal proceedings and consideration of cases on administrative offences, and is in turn regulated by the relevant legislation. There are also so-called quasi-detentions, the list of which is not exhaustive. Thus, Ukrainian law provides for such procedures for the lawful detention of a person:

- Detention without the order of the investigating judge, the court on suspicion of committing a crime in accordance with Art. 208 of the Criminal Procedure Code (classic detention immediately after committing a crime);
- Detention without the order of the investigating judge, the court on suspicion of committing a crime in accordance with Art. 207 of the Criminal Procedure Code (the so-called "civil detention", which is to physically restrict the freedom of movement of a person until the police arrive);

¹⁶ See: <https://zakon.rada.gov.ua/laws/show/328-2018-%D0%BF>. In 2019 the procedure was amended.

- Administrative detention in accordance with Art. 261 of the Code of Ukraine on Administrative Offenses;
- Quasi-detention (for example, police custody provided for in Article 41 of the Law of Ukraine “On the National Police” is a restriction of liberty and should therefore be subject to the relevant rights and freedoms guaranteed to detainees. Police custody may apply to minors under the age of 16 left unattended for the purpose of delivery to parents or adoptive parents, guardians, *prochain amies*, guardianship and wardship authorities, as well as to persons in a helpless condition, for the purpose of their delivery to appropriate institutions, places. This involves active actions related to temporary restriction of freedom of movement).

At the same time, there are practices of illegal detentions in Ukraine. The following are common practices and their prevalence:

1. The practice of "delivering" a person to a law enforcement body.

One of the statutory detention procedures, administrative detention in accordance with Art. 260, is a measure of ensuring the consideration of cases of administrative offenses and is allowed for the purpose of termination of administrative offenses when other measures of influence have been exhausted. The application of this measure involves a certain set of legal safeguards, in particular is stated in the protocol. But most crucially, the right to protection is guaranteed. According to Part 3 of Art. 261 of the Code of Administrative Offenses of Ukraine the authorities (officials) empowered to carry out administrative detention shall inform the Centers for the provision of secondary legal assistance in accordance with the procedure established by the Cabinet of Ministers of Ukraine, which is a significant safeguard against abuse by the police. Violations such as unlawful detention, failure to provide medical assistance, and torture often occur within the first hours after detention. At the same time, in practice, in order to avoid initiating a formal procedure, law enforcement officers “invite” to an interview or “deliver” the person to the police station. The content of such an invitation and delivery is nothing more than a compulsory measure that limits the freedom of action and movement of the individual. Individuals are simply compelled to go (on foot or by transport) to the police station, which means that the fact of compulsion is ensured not only by restriction of the individual's freedom and possible legal consequences in the future, but also by the possibility of applying physical influence to him/her. This is not only the compulsory escort of a person to a law enforcement body, but also the exercise of the right granted by law to invade the personal liberty of an individual to ensure law and order.

2. Detention of suspects by employees of operational units on the basis of investigator's order.

Currently, it is common practice for investigators to provide operational units with written orders to detain or deliver a person for participation in investigative activities. The investigators refer to Article 40 of the Criminal Procedure Code, which apparently entitles them to make such orders. This practice has signs of illegal actions through two components:

- a) Law enforcement officers may detain a person after a certain time after commission of a crime only on the basis of a court decision on a detention permit. The current Criminal Procedure Code does not provide for any other mechanism. This means that in cases where law enforcement officers did not detain a person at the time of committing the crime or immediately after it, they must apply to court and obtain a respective detention permit.
- b) Article 40 of the Criminal Procedure Code gives the investigator the right to instruct the relevant operational units to conduct solely investigative (search) actions and covert investigative (search) actions. While detention is neither an investigative nor a search action.

Thus, by their actions, the investigators commit a crime, the responsibility for which is provided for by Article 371 of the Criminal Code of Ukraine - Intentional unlawful detention, taking into custody, house arrest or detention on remand. However, it is quite clear that such a practice is convenient for law enforcement officers, since obtaining a court permit is much more difficult: it is necessary to

provide the court with substantiated arguments that the person is involved in a crime. In addition, it must be shown that the person really needs to be temporarily deprived of his/her liberty.

3. Use by patrol police of statutory provisions provided for civilians.

During detention patrol officers now use the procedure provided for in Article 207 of the Criminal Procedure Code in accordance to which anyone has the right to detain any person when committing or attempting to commit a criminal offense, or immediately after committing a criminal offense or during continuous chase of the person suspected in committing it. But Article 207 of the Criminal Procedure Code has nothing to do with law enforcement officials! It regulates so-called "civil" detention, giving civilians the right to detain offenders. Upon detention, such persons should deliver the detainee to the law enforcement officials or immediately notify the law enforcement officials about the offender's detention and location. However, if the detention is carried out by law enforcement officers (the Criminal Procedure Code calls them "authorized officials entitled by law to detain"), they must act in accordance with another procedure provided for in Article 208 of the Criminal Procedure Code. The main feature that distinguishes these procedures is that law enforcement officers, unlike "ordinary" citizens, are obliged to take a number of actions immediately after the detention of a person, namely:

- Immediately inform the detainee in a language he/she understands about the grounds for detention, and what crime he/she is suspected of committing;
- Explain the right to have a defender, receive medical care, give explanations, evidence or say nothing in respect of suspicion against him/her, etc.

In addition, the authorized officer must also draw up a protocol of detention, which must indicate the time and place of actual detention, the grounds, the full list of procedural rights of the detainee, as well as other information provided by law. In case of detention of a person by a law enforcement official, the time of detention shall start to be counted from the moment of actual detention. However, in case of the detention of a suspect by civilians, the time of detention begins to be counted from the moment the law enforcement officials arrive, or when he/she is delivered to the police station. However, the patrol police administration strongly disagrees that patrol police officers are authorized officers who are legally entitled to detain. In fact, this means that at the time of detention, according to the patrol police, the patrol officer acts not as a law enforcement official, but as a civilian. Even academicians of the Patrol Police Academy share a similar position. They believe that patrol officers do not have the proper knowledge and skills to draw up protocols properly, do not know how to classify crimes properly, and are not aware of the procedural rights granted to suspects under the Criminal Procedure Code. Even when training future patrol officers are instructed that their main task is to deliver the detained person to the nearest police station or call an operational investigative team that will make out the case itself. Maximum the patrol officer has to do is to make a report and briefly describe the circumstances of detention. Instead, police are forced to violate the law by requiring the drafting of detention reports that have no legal force at all, and also "pretend" civilians during detention, who use a police officer's uniform, carry special means and firearms and even drive police cars.

In accordance with the requirements of Part 4 of Art. 208 of the Criminal Procedure Code the protocol should state the reason for detention, not the article of the Criminal Code. Therefore, the patrol officer must record what the person did: hit with a knife, stole a purse, made a fight, etc. And further, the investigator should properly qualify these actions and enter relevant information in the Unified Register of Pre-Trial Investigations. This practice of detention leads to the following consequences:

- a) The time of detention of a person from the moment of his detention by a patrol police officer until the arrival of the investigation team or until the detainee is delivered to the police station is in no way accounted for and may last several hours. Accordingly, this leads to incorrect calculation of other procedural time limits, which should be considered in this case from the moment of actual detention of the person. For example, a detained person should be released

when, within 24 hours of his/her detention, he/she is not informed of the suspicion or brought to court within 60 hours;

- b) The right of the detained person to defence is violated. It is from the moment of his/her detention that the law enforcement official is obliged to immediately inform about detention the appropriate free legal aid centre, which, in turn, must ensure the arrival of the defender within two hours. The use of inappropriate legal procedures casts doubts on the legitimacy of any further detention and may also affect the assessment of the admissibility of evidence gathered to confirm the guilt of the detained person. Consequently, a real criminal can get a chance to escape criminal liability.

4. Concerning the lack of understanding by the police the difference between actual and procedural detention.

According to Art. 209 of the Criminal Procedure Code of Ukraine the person is detained from the moment when by force or by obedience to order he/she is compelled to remain near the authorized official or in the premises designated by the authorized official. Clear recording of this moment in the protocol of detention is important because within 24 hours of detention, the person must be served with a notice of suspicion (Part 2 of Article 278 of the Criminal Procedure Code), or he or she must be released immediately. In the future, the actual time of detention (restraint of liberty) is taken into account when calculating the terms of detention (service of sentence), pre-trial investigation in criminal proceedings, time of election of a measure of restraint, notification of suspicion and so on. However, in practice, the police often understand the term "actual detention" in their own way, identifying it with procedural detention. A study conducted by the Expert Centre for Human Rights analysed 512 police detention protocols drawn up in 2015-2016. According to the results of the analysis, it was found that in the protocols the premises of the law enforcement body were defined as a place of actual detention, mostly - the office of the investigator (67 per cent - premises of the law enforcement body, 23 per cent - another place; 10 per cent - no information in the protocol). Unfortunately, such actions of officials often result in exceeding the permitted period of detention and, as a consequence, the unlawful detention of persons.

Therefore, it can be concluded that at least 67 per cent of all detentions in accordance with Art. 208 of the Criminal Procedure Code are illegal, since the person is in an indefinite status for a long time until the protocol is drawn up, and the time of such detention is never recorded at all. As a consequence, the time of informal detention is not taken into account in calculation and the mentioned procedural periods (24/60/72 hours). There are also problems with the interpretation of the terms "just" and "directly" in the context of defining the time from which the law enforcement official loses the right to detain a suspected person without a court order. That is, Art. 208 of the Criminal Procedure Code of Ukraine provides for detention "red-handed", that is immediately after committing a crime or during chase. However, there is no clear definition in minutes or hours when such detention period expires. Common in practice is a situation where a person is detained in a week or even a month after committing a crime pursuant to Art. 208 of the Criminal Procedure Code, which is absolutely illegal. The authors of the study "The Role of the Prosecutor at the Pre-Trial Stage of Criminal Proceedings" conclude that despite the adoption of the new version of the Criminal Procedure Code, which clearly defined the concept of "actual detention", in practice there is a distinction between actual and procedural detention. As with the previous version of the Criminal Procedure Code, all periods begin to be counted from the moment the protocol is drawn up. In case the prosecutor does not approve such detention, the protocol on detention of the person is not drawn up at all, and the actual detention is in no way recorded. There is an informal practice of agreeing with the prosecutor on procedural detention (necessity of drawing up a protocol), despite the fact that the suspect is already actually detained. Often, such informal coordination occurs at the level of the investigator - prosecutor or prosecutor and investigating judge, who confirms the application of a precautionary measure in the form of detention. In doing so, prosecutors themselves consider the practice of approving detention to be correct, and even legal, despite the fact that current legislation does not provide for such an approval. It is precisely from the moment of actual detention that the suspect acquires a number of

procedural rights and guarantees, namely from that moment the procedural periods of notification of suspicion, the delivery of the detained person to court and the court's decision on his or her detention, period of detention, etc. begin. In case of detention of a person without a court order, the lawfulness of such detention must be checked by the court within seventy-two hours. And if within seventy-two hours from the moment of detention, the detained person has not been served a reasoned decision of the court on detention, then such person is immediately released (Article 29 of the Constitution of Ukraine). The absence or delay of fixation of a person's detention actually deprives the detained person of the relevant procedural status and, consequently, creates obstacles to proper protection of his/her constitutional rights and freedoms.

Prevalence of illegal detentions.

In Ukraine, illegal detention is a fairly widespread phenomenon that involves a number of components. According to the criminal statistics, managed by the Prosecutor General's Office of Ukraine, there is impunity for crimes related to the violation of the right to liberty and security of person. First, there are problems with qualifications (both criminal law and certain law enforcement practices), and secondly, illegal detention often entails a number of other offenses that make the body of such crimes as bringing a knowingly innocent person to criminal responsibility (Art. 372 of the Criminal Code of Ukraine), compulsion to testify (Article 373 of the Criminal Code of Ukraine), violation of the right to defence (Article 374 of the Criminal Code of Ukraine), torture (Article 127 of the Criminal Code of Ukraine), or abuse of power or office through the use of violence (Part 2, Article 365 of the Criminal Code of Ukraine). At the same time, regarding the latter, there is a tendency for the torture to be qualified according to another body of crime, which is not applied in the case of qualification involving signs of torture. Since 2008, when unintentionally upon introducing amendments to the legislation, a special subject - a law enforcement official - was excluded from the body of crime of torture, torture is hardly qualified under Article 127 of the Criminal Code of Ukraine. Half of the subjects in proceedings under this article are civilians, despite the definition of torture in the international law. The state of response of prosecuting authorities to the facts of illegal detention of suspected persons is clearly illustrated by official statistics of the General Prosecutor's Office of Ukraine, which does not include the relevant column. In other words, objective information about the number of illegal detentions cannot be obtained. Indirectly, we can estimate the magnitude of these offenses by the Legal Aid Coordination Center (acting since 2013), regional centres of which are to report to the police after each administrative detention and detention on suspicion of a crime. According to Part 4 of Art. 213 of the Criminal Procedure Code of Ukraine the authorized official who made a detention is obliged to immediately inform the body (institution) authorized by law to provide free legal aid. According to the Legal Aid Coordination Center, regional centres' employees each year detect thousands of similar cases of violations (3805 in 2016) by law enforcement bodies. On average, police did not inform attorneys of every tenth detention.

The problem of the "ticket quota" evaluation system.

Despite attempts to introduce assessment of the police performance, based on the trust of citizens, an outdated law enforcement system based on a variety of indicators (disclosure rate, number of protocols, etc.) remains relevant. The "rush" towards the indicators in the work encourages law enforcement officials to break laws, including those governing detention. This problem remains relevant and directly affects the number of illegal detentions and violence in the police.

Article 12: Freedom of movement

Crimea

The refusal to return persons forcibly displaced by the Russian Federation to Russian territory to serve prison sentences

Since March 2014, the occupation courts created by the Russian Federation in Crimea sentenced Ukrainian citizens to imprisonment (see also the section on violation of article 9). Subsequently, the

Russian authorities, on the pretext of serving a sentence, transfer convicted persons to their territory. According to human rights organizations data, more than 9 thousand Ukrainian citizens were transferred from places of deprivation of liberty in Crimea to the Russian Federation, including those who were detained at the time of the occupation, as well as those who were detained pending trial. The freedom of movement guaranteed by article 12 of the Covenant, namely the right of a person to enter his country, as specified in article 12 (4), includes the right to return to his country after leaving it.

Ukrainian citizens, sentenced by the occupation courts to imprisonment and serving sentences in the territory of the Russian Federation, did not leave their own country, they were forcibly displaced by the Russian authorities from the territory of Crimea (Ukraine) to the territory of the Russian Federation. However, in accordance with the objectives of the Covenant, they, as Ukrainian citizens, have the right to return to their country of citizenship. Moreover, the Committee clarifies that a person cannot under any circumstances be arbitrarily deprived of the right to enter his country. That is, interference on the basis of any measures taken by the state - legislative, administrative or judicial - must be consistent with the provisions, goals and objectives of the Covenant and should, in any case, be reasonable in the relevant specific circumstances. In the Committee's view, the circumstances in which the deprivation of the right to enter one's country could be reasonable are very few, if any¹⁷. The Constitution of Ukraine stipulates that a citizen of Ukraine cannot be expelled from Ukraine or extradited to another state, Ukraine guarantees care and protection to its citizens who are outside its borders. There can be no privileges or restrictions on the grounds of race, color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other grounds.

In accordance with the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" dated 15.04.2014 any bodies and their officials in the temporarily occupied territory and their activities are considered illegal if these bodies or officials are created, elected or appointed in a manner not prescribed by law, as well as any act (decision, document) issued by the aforementioned bodies and / or officials is invalid and does not create legal consequences. The same Law allows the establishment of relations and interaction of state authorities of Ukraine, their officials, local authorities and their officials with illegal bodies (officials) created in the temporarily occupied territory, solely for the purpose of ensuring the national interests of Ukraine, the rights and freedoms of Ukrainian citizens, the implementation of international treaties, the consent of which was provided by the Verkhovna Rada of Ukraine, assistance in the restoration of the temporarily occupied territory of the constitutional system of Ukraine.

Human rights organizations are aware of numerous cases of appeals of persons displaced from Crimea to the territory of the Russian Federation to serve their sentences to the Ukrainian authorities about transferring them to serve their sentences under the jurisdiction of Ukraine. The authorities of Ukraine systematically refuse to apply the procedure for transferring sentenced persons to serve their sentences on the territory of Ukraine regarding such persons, referring to the illegality and invalidity of the decision to convict them, as well as to the lack of political and diplomatic agreements between Ukraine and the Russian Federation.

The circumstances referred to by the state authorities of Ukraine, arguing the refusal to transfer persons deprived of their liberty in the territory of the Russian Federation to the territory of Ukraine, namely the illegality and invalidity of the decisions of the occupation courts in Crimea, the illegality of

¹⁷ Human Rights Committee General Comment No. 27

the transfer decisions to serve their sentences in the Russian Federation and the absence of political and diplomatic agreements between Ukraine and the Russian Federation, cannot be considered a sufficient and reasonable basis for depriving citizens of Ukraine of the right to return to country of their citizenship in accordance with the provisions, goals and objectives of the Covenant.

Political considerations cannot and should not prevail over humanitarian considerations and demands for respect for human rights. Also, the specifics of the situation in which people are illegally displaced to the Russian Federation to serve their sentences (being in the occupied territory, illegal imprisonment and conviction by the Russian authorities, deportation to the Russian Federation) deprive the Ukrainian authorities of the right to refuse to accept them and impose on Ukraine the obligation by all possible means to facilitate their return to the controlled territory. Thus, the refusal of the Ukrainian authorities to accept Ukrainian citizens to serve their sentences under their jurisdiction is a violation of article 12 (4) of the Covenant.

Procedure of entry to the occupied Crimea for foreign journalists, lawyers and human rights activists

Another problem in the field of freedom of movement is the procedure of entry to the occupied Crimea for foreign citizens, which was approved in 2015, in particular in the part concerning access to Crimea by foreign journalists, lawyers and human rights activists whose activities on the occupied peninsula are important in the context of fixation violations of human rights and protection of victims. After the Russian occupation of the Crimea the Verkhovna Rada in 2014 adopted a law "On Ensuring the Rights and Freedoms of Citizens and Legal Regime of the Temporarily Occupied Territory of Ukraine"¹⁸, Art. 10 of which provides that accessing the peninsula is possible through the entry and exit checkpoints (i.e. through mainland Ukraine). Additionally, the law stipulated that foreigners and stateless persons were allowed to the Crimea only with special permit, the procedure of obtaining such a permit was approved by the Cabinet of Ministers of Ukraine.

During the year since adoption of this law, till the summer of 2015 such procedure was not designed, therefore, journalists and human rights defenders who are not citizens of Ukraine could enter the Crimea without obstacles and not being in breach of Ukrainian laws provided that the entry was made through mainland Ukraine. However, on June 4, 2015 the Resolution of the Cabinet of Ministers of Ukraine No. 367¹⁹ was approved, regulating the procedure of entry to and exit from the temporarily occupied territory of the Autonomous Republic of Crimea. This regulation contained the procedure of issuing special permits on entry to the Crimea for the foreigners and the closed list of categories of foreigners eligible for obtaining such permits from the State Migration Service of Ukraine. This list did not include journalists, human rights defenders and advocates which became a serious barrier for their work in the Crimea. In fact, the Ukrainian government has deprived them of possibility to enter the occupied peninsula and carry out documenting, monitoring and defence of human rights without violating Ukrainian legislation.

The impossibility to enter the Crimea according to the laws of Ukraine was one of the reasons²⁰ to suspend the operations of the Crimean Field Mission on Human Rights on the peninsula²¹ (CFM), the only permanent human right mission which started operating on March 4, 2014. The CFM was an initiative group of Ukrainian and Russian human rights defenders who used to monthly visit the

¹⁸ The Law of Ukraine "On Ensuring Rights and Freedoms of Citizens and the Legal Regime on Temporarily Occupied Territory of Ukraine". URL: <http://zakon2.rada.gov.ua/laws/show/1207-18>

¹⁹ On approval of the procedure of entry into and exit from the temporarily occupied territory of Ukraine. URL: [http://zakon2.rada.gov.ua/laws/show/367-2015- per centDo per centBF/paran8#n8](http://zakon2.rada.gov.ua/laws/show/367-2015-%D0%BF%D0%BF%D0%BF/paran8#n8)

²⁰ The Crimean field mission changes its operations format // Radio Freedom. 09.09.2015. URL: <https://www.radiosvoboda.org/a/news/27235526.html>

²¹ About the Crimean Field Mission. URL: <http://cfmission.crimeahr.org/about>

peninsula during a year and a half to document human rights situation and prepare monthly monitoring reviews and topical reports. The last monitoring review of the CFM was published in June²² 2015 based on the materials which the group of Russian Federation monitors collected after having entered the Crimea in early June 2015. While leaving the Crimea to the mainland Ukraine the monitors faced problems during the passing of Ukrainian checkpoints, as since the 10 June Resolution No. 367 was enacted and the CFM representatives had no special permits to enter the Crimea. The monitors were forced to stay at the administrative border for several hours, while the CFM decided to suspend its activities in the Crimea being unable to continue its work in the peninsula according to the laws of Ukraine.

After criticism by Ukrainian human rights organizations the Cabinet of Ministers of Ukraine on 16 September 2015 made amendments to Resolution No. 367, by approving Resolution No. 722. One of the key innovations was the expansion of the closed list of reasons enabling a foreign national to obtain a special permit to enter the Crimea, in particular, the need to "carry out diplomatic and consular functions, in particular, within the framework of activities of international organizations of which Ukraine is a member, operations of other international governmental organizations, international non-governmental organizations, non-governmental organizations of other countries and independent human rights missions". It was established that in this case a special permit would be issued by the State Migration Service of Ukraine only upon request or consent of the Ministry of Foreign Affairs of Ukraine (in case of foreign human rights defenders) and Ministry of Informational Policy (in case of journalists).

Other changes were introduced, for example, the requirement was abolished to provide a document confirming the availability of sufficient funds for the period of intended stay in the Crimea or appropriate warranties from a hosting party to obtain a special permit. However, even with these changes the current procedure of access for the foreign journalists and human rights defenders in the Crimea remained bureaucratic and unnecessarily thwarting the access to the Crimea for human rights defenders who are not citizens of Ukraine.

First, a foreign human rights defender must obtain an approval letter from the Government of Ukraine to submit the documents for a special permit issue. In practice²³ obtaining such a letter takes not less than a month. Then a foreigner should submit the letter and other documents that are mentioned in the Resolution of the Cabinet of Ministers no. 367²⁴ to the State Migration Service of Ukraine which has to consider them in five days and issue a special permit for the entry in the Crimea.

A foreign citizen has to submit all documents in Ukrainian. No opportunity to apply through the consular missions of Ukraine abroad is available, thus, a foreigner will have to arrive personally, often

²² Monitoring reviews of the Crimean Field Mission. URL:

<http://cfmission.crimeahr.org/category/monitoring>

²³ A. Romantsova. How I tried to get a permit for entry in the Crimea // Human Rights Information Centre, 08.12.2015. URL:

https://humanrights.org.ua/ru/material/jak_ja_otrimuvala_dozvil_na_vjizd_do_krimu?cl=ru

²⁴ The documents are as follows: 1) an application according to the established form; 2) identity document (returned after presentation); 3) document confirming the legality of stay on the territory of Ukraine; 4) copy of the page of a passport or an identity document of a stateless person, with personal data of the person with duly certified translation in Ukrainian; 5) document confirming the goal of entering the temporarily occupied territory of Ukraine (MFA motion or approval), 6) three photos 3.5 x 4.5 cm.

more than once. There is no option to apply online. This unnecessarily lengthy and complicated procedure is a significant barrier for access of foreign human rights defenders and international human rights organizations in the Crimea, especially given the fact that human rights defenders sometimes need to urgently arrive to the Crimea (for example, to monitor trials or searches, detentions and other types of persecution), and that traveling to the Crimea via mainland Ukraine is in itself time-consuming and logistically complicated.

To simplify the access of foreign human rights activists and international human rights missions to the Crimea, Ukrainian human rights organizations continue insisting on modification of the existing procedures²⁵. In particular, they propose a number of actions:

- a) Envisage notification rather than authorization principle of entry of foreign human rights defenders and lawyers in the Crimea. In other words, if a foreign citizen who is a lawyer or human rights defender is not banned from entering Ukraine, they may travel to the Crimea after submitting an additional notice to the government of Ukraine as per the established form. This may be an online system (online form) or system of notices about the purpose of the trip that can be sent online or submitted on a day of crossing the checkpoint (the administrative border with the occupied Crimea).
- b) If the notification principle is impossible, it is necessary to develop and work out a system of simplified approvals/recommendations for international human rights missions and human rights defenders/attorneys traveling to the occupied territories with the purpose of monitoring and protecting human rights.
- c) It is necessary to simplify the procedure for submitting notification/obtaining permit for entry to the Crimea, in particular, providing an option to apply not only Ukrainian but in a foreign language (e.g. English) and also allowing to apply through the diplomatic/consular missions of Ukraine abroad and online as well as receive multi-entry permits.

Article 13: Right in relation to territorial expulsion

Government-controlled areas

The asylum system in Ukraine underwent a number of changes since 2013, however not systemic ones. In an important development, a number of asylum seekers from FSU countries²⁶ who were granted asylum (refugee status or complimentary protection) increased significantly – before 2013 it had been negligent. However, overall recognition rate remains rather low, even concerning those who had to flee those leading countries of refugees' origin. On top of that, most of the asylum seekers whose applications are approved, are granted complementary protection status, while reportedly being refugees according to the definition of Ukrainian legislation (The Law of Ukraine “On refugees and persons in need of complementary or temporary protection”), – and this significantly limits their integration prospects. The Law of Ukraine “On citizenship of Ukraine” defines that persons holding refugee status can later apply for Ukrainian citizenship, while for persons who are granted complementary protection there is no such option.) Both low recognition rate and wrong qualification of the asylum applications can be seen at very least as a sign of poor quality of the refugee status determination procedure. However, it is rather difficult to verify due to poor transparency of the procedure and the fact that reasons for negative decisions are mostly not explained to applicants.

²⁵ HRDs require to change the procedure of entry to the Crimea // UHHRU. 01.03.2015. URL: <http://helsinki.org.ua/articles/pravozahysnyky-vymahayut-zminyty-poryadok-v-jizdu-do-krymu>

²⁶ Post-Soviet states

Access to the asylum procedure is still contingent upon the payment of a fine for irregular stay. This, as well as low recognition rate when it comes to asylum seekers who managed to apply, put asylum seekers at risk of potential *refoulement*, when they can be forcibly returned to countries where there is a possibility of them being subjected to inhuman or degrading treatment, without access to justice. This situation has become aggravated in early 2020, when the authorities of Ukraine introduced a lockdown due to the COVID-19 pandemic. According to numerous reports, this effectively suspended new asylum applications and new asylum procedures: The State Migration Service performed bare minimum of functions related to any personal applications during lockdown (the list of functions performed has been published on its website), and asylum matters were markedly absent from the list. In April 2020 Security Service of Ukraine reported arrest in Ukraine of Azerbaijani national Maqsud Makhmudov by the request of the authorities of Azerbaijan. According to his lawyer, Mr. Makhmudov intended to apply for asylum in Ukraine – but has been told to pay a fine for irregular stay first. By the time he could come back with his application, lockdown has been introduced, so he wasn't able to get documents which would prove his asylum application.

The threat of *refoulement* remains real, and cases defined by human rights organizations of Ukraine as such took place repeatedly since 2014. To name just best known cases: In September 2016 Ukrainian authorities forcibly deported Russian national Aminat Babaieva to Russian Federation, upon fast track rejection of her asylum application and depriving her of means to appeal the rejection. In September 2018 another Russian national Timur Tumboiev has been extradited to Russia despite fears that he might be subjected to torture there (within few months reports regarding his mistreatment in Russian prison were received). He had also applied previously for asylum in Ukraine, but unsuccessfully. In October 2017 several nationals of Georgia (David Makishvili and few others) were apprehended and forcibly sent to Georgia by Ukrainian authorities – Ukrainian human rights defenders pointed that persons in question were deprived of legal defence. In July 2018 two nationals of Turkey (one of them – journalist Yusuf Inan, another one – a businessman), known for being political opponents of Turkish government, were extradited from Ukraine (where they had legal residence) to Turkey being, reportedly, deprived of a right to appeal the decision or claim asylum in Ukraine. In December 2019 Elvin Isaiev, national of Azerbaijan and political opposition blogger, has been forcibly sent from Ukraine to Azerbaijan by the request of the authorities in Baku, being deprived of the means to defend himself against expulsion decision. According to Ukrainian human rights organizations, in all of the cases mentioned above Ukrainian authorities failed to ensure that deportation or extradition of a person to the specific country does not violate Art.7 of the Pact (as well as Art.3 of the Convention against torture and Art.3 of the Convention for the Protection of Human Rights and Fundamental Freedoms) seemingly ignoring the threat of torture or inhuman treatment in destination country in the course of the deportation and extradition procedures. In most of the cases mentioned the deportation or extradition has been conducted in violation of the procedures established by the law, and in most cases persons in question have been deprived from legal means of defence, such as a right to appeal the decision, in violation of the Art.13 of the Pact.

Article 19: Freedom of opinion and expression

Government-controlled areas

During recent years, especially after 2014, Ukraine has made many positive steps to the realisation of freedom of speech. Reform of public broadcasting has taken place, a system of transparency of media owners has been developed, and progressive legislation on access to public information has been implemented. The situation has generally improved considerably, but since 2019, old familiar problems to do with freedom of expression have started to appear again.

One of the biggest systemic problems remains the impunity around attacks on journalists or activists because of their statements. According to reports of public and international organizations, violators are not punished, and it creates a sense of impunity in the society and leads to worsening of the

situation, and more violent attacks. Since 2015, nine journalists and civic activists have been killed in Ukraine, hundreds of attacks were carried out, but almost all cases have not been properly investigated. And in those cases where the investigations were held, there are serious procedural irregularities, including seemingly in order to lose or not to obtain important evidence. Therefore, such cases were specially brought to court without proper evidence. This is exactly what happened in the in the case of murder of the activist Kateryna Handziuk, who opposed corruption in the Kherson region. Although the authorities report on the completion of the investigation of this case, the extremely important pieces of evidence, which contain the information about those who contracted the murder, have not yet been received, and the case was quickly brought to the court, in order to prevent the “paymasters” from being punished.

Attacks against journalists have been identified by the OHCHR as an issue of particular concern, and a recent report said “OHCHR is concerned that civil society activists and journalists continue to be targeted across Ukraine. Failure to hold to account perpetrators responsible for such attacks, including a lack of effective criminal proceedings, emboldens perpetrators, leading to more violence”²⁷.

In 2020, the funding of the public broadcasting organisation, the accounts of which had been frozen due to its debts, was significantly decreased. These debts were created even before 2014, but the government obliges the company to pay these debts from its current budget. This situation threatens the financial independence of the public broadcaster and could be a form of pressure on its editorial policy.

In 2019 the government presented its ideas for new laws concerning the “resisting the disinformation”, and these ideas drew considerable criticism domestically and internationally. As a result, they have not been implemented, but the government did not abandon the implementation and this poses a future significant threat to freedom of expression. Among the desired outcomes of such legislation would be the state regulation of online mass media, a ban on dissemination of certain types of information without a court decision required by the authorities to introduce such a ban, and the obligatory registration of the work of all the journalists, among other issues.

Article 21: Freedom of Peaceful Assembly

Government-controlled areas

Peaceful assemblies remain a relevant and necessary tool for civil society that allows to defend their rights and interests. In 2017, the process of judicial restraint on freedom of assembly was substantially liberalized. The consequent effect was reduction in the number of claims for restraint on freedom of assembly to several cases a year, whereby the courts were not inclined to satisfy them. Safeguarding the freedom of assembly has several minor points in the legislative and judicial spheres, as well as significant problems in the actions of representatives of the executive branch of government.

Legislative process

There is no specific law in Ukraine governing peaceful assemblies. This right is enshrined only at the level of the Constitution. The legislative activity in the field of freedom of assembly has almost come to

²⁷ OHCHR, "Report on the human rights situation in Ukraine: 16 August to 15 November 2019", available online at https://www.ohchr.org/Documents/Countries/UA/28thReportUkraine_EN.pdf

naught in comparison with previous years. Parliament has never considered any draft of special law on protests. In society as a whole, there is a consensus that there is no need for such law.

Powers of the National Guard of Ukraine in the field of public order enforcement

Although the National Guard does not belong to law enforcement bodies, it is often involved in police functions. However, even at the level of the law, it is given the same powers at this time. Therefore, consideration should also be given to involving National Guard troops in public order enforcement. Functions and constitutional restrictions on the activities of the Armed Forces of Ukraine, military formations and law enforcement bodies are defined in Article 17 of the Constitution of Ukraine, from the provisions of Part Three it follows that military formations and law enforcement bodies are endowed with the same functions. At the same time, Part Four of Article 17 of the Constitution of Ukraine contains restrictive provisions that apply exclusively to the Armed Forces of Ukraine and military formations, but not to law enforcement bodies. Therefore, the Constitution of Ukraine contains provisions that demarcate at a conceptual level military formation and law enforcement bodies and prohibit the use of military formations to restrict the rights and freedoms of citizens. The National Guard of Ukraine is not only defined at the level of the primary legislative act under which it was created as a military formation, but also meets the criteria of the state body in the current legislation of the classification of a military formation. The National Guard of Ukraine is a military formation, and the legislative intent to determine the form of its activity as a military formation is clear and definitive.

The Constitution of Ukraine provides for the use of military formations in the event of armed aggression, which creates the basis for the existence of legislation to involve military formations in the performance of law enforcement functions in the event of martial law introduction. However, the Constitution of Ukraine does not contain any grounds for providing military formations with law enforcement functions. Even more, the Constitution of Ukraine clearly distinguishes between military formations and law enforcement bodies. Although Article 17 (3) gives them the same tasks, Article 17 (4) prohibits the use of military formations to restrict the rights and freedoms of citizens, but does not contain such a prohibition for law enforcement bodies. Therefore, the use of the Armed Forces of Ukraine or military formations to restrict the rights and freedoms of citizens aimed at achieving purposes other than those specified in Parts Two and Three of Article 17 of the Constitution of Ukraine, respectively, will not comply with the provisions of Part Four of Article 17 of the Constitution of Ukraine.

Based on a systematic analysis of the provisions of the Constitution of Ukraine, the Armed Forces of Ukraine and military formations established under the law may restrict the rights and freedoms of citizens solely to achieve the goals of defence of Ukraine, protection of its sovereignty, territorial integrity and inviolability, subject to the provisions of Articles 8, 19 of the Constitution Of Ukraine. It is important to note the difference in responsibility for the apparent refusal to obey the order of the Chief between the servicemen of the National Guard of Ukraine and the police. Thus, for the aforementioned offense Part One of Article 402 of the Criminal Code of Ukraine provides for liability for a serviceman of the National Guard of Ukraine (punishable by a service restriction of up to two years or imprisonment in a disciplinary battalion for a term of up to two years, or imprisonment for a term of up to three years), while for a police officer in the absence of the consequences of such refusal, it provides only disciplinary action. From this it follows that there is a significant difference in the legislative enforcement of orders of the chief in law enforcement bodies and military formations. And this is one of the significant threats to freedom of assembly, to assuring of which National Guard troops are often involved.

In spite of all these cautions, the draft №3105, which extends the powers of the National Guard during involvement in public order and gives the right to detain persons, use special means, draw up protocols, use technical devices and technical means having photo- and filming functions, etc. is considered in Parliament. The National Guard of Ukraine should be removed from public order

enforcement and protection of freedom of assembly and transformed into a specifically military formation. In any case, any extension of the National Guard's powers in the field of public order enforcement is unacceptable.

Subordinate legislation

At the regulatory level, there are two blocks - documents defining the state strategy in this area and particularly documents that regulate specific legal relations. With the first block, the situation seems acceptable - there are several state strategies that include the issue of ensuring freedom of assembly. At the same time, these strategies are not being put into practice. Thus, the National Strategy on Human Rights, approved by the Decree of the President of Ukraine, defines the freedom of peaceful assembly and association as one of the strategic directions, and one of the 26 systemic problems identifies the lack of quality legislation on peaceful assembly.

The National Strategy Action Plan foresees a number of measures, almost all of which have not been implemented. Unless delivered trainings or working groups formed, the impact on the performance of the authorities or human rights observance cannot be measured. In addition to the presidential strategy, there is a governmental one - the Cabinet of Ministers of Ukraine approved the Strategy for the Development of Bodies of the Ministry of Internal Affairs. The strategy addresses a number of challenges, including the imperfection of public order and security legislation during mass events. Overcoming this challenge is planned by improving the regulatory framework and enhancing the ability of the bodies of MIA system to ensure public order and security during mass events. If the situation is clear with the strategic documents, then the regulatory framework has been in a state of uncertainty for over 10 years.

There is no order of the Ministry of Internal Affairs of Ukraine or the National Police, which regulates police actions during the organization and holding of assemblies. At the same time, the events of recent years, related to the numerous violations by police officers during peaceful assemblies, indicate the relevance of such algorithms. There is a Procedure of organization of interaction between the National Guard of Ukraine and the National Police of Ukraine while ensuring (protection) of public (civil) security and order, approved by the Order of the Ministry of Internal Affairs of Ukraine of August 10, 2016 No. 773 (registered at the Ministry of Justice on September 07, 2016 under No. 1223/29353) , which defines only the operational and administrative aspects of the interaction between the National Police and the National Guard.

Acts of local self-government bodies, which establish the procedure of organization and holding of assemblies, determine the term of notification, introduce additional restrictions, etc., contrary to Article 39 of the Constitution of Ukraine and decisions of judiciary bodies continue to exist. The new version of the Code of Administrative Judiciary Procedure of Ukraine has opened the way to judicial review of the above-mentioned acts, as it has set an indefinite period for appeal of existing regulatory acts. Until recently, this was a problem, since almost all existing local restrictive acts on freedom of assembly were adopted not a year ago, so administrative courts refused to deal with claims formally if the act was not directly applied to the plaintiff.

Administrative responsibility of participants and organizers of assemblies

For many years, it has been a problem for law enforcement officers and courts to bring organisers and participants of assemblies to administrative responsibility for violating the procedure of organizing and holding assemblies, rallies, street campaigns and demonstrations (Article 185-1 of the Code of Administrative Offenses of Ukraine). The European Court of Human Rights (ECtHR), and subsequently the Supreme Court of Ukraine, have found that the prosecution of violations of the procedure for organization and holding of assemblies, rallies, street campaigns and demonstrations in cases where there is no legislative procedure is in violation of Articles 7 and 11 of European Convention for the Protection of Human Rights and Fundamental Freedoms. ECtHR decisions on Verentsov v. Ukraine and Shmushkovich v. Ukraine concerning the application of Article 185-1 of the

Code of Administrative Offenses of Ukraine are currently in the process of execution. Prior to the adoption of these decisions by the Strasbourg Court, statistics showed hundreds of cases of application of Article 185-1 of the Code of Administrative Offenses of Ukraine. The relevant practice had some chilling effect on potential organizers and participants of assemblies. Despite the decision of the ECtHR and the Supreme Court of Ukraine, police still draw up protocols under Article 185-1 of the Code of Administrative Offenses of Ukraine. These cases are isolated, and courts are not inclined to bring to responsibility under this article liable. The highlighted problem can be solved either by amending the Code of Administrative Offenses of Ukraine (deleting Article 185-1 of the Code of Administrative Offenses of Ukraine as one of the elements of the 1988 Decree) or by declaring this Article unconstitutional.

Administrative practice

Without denying the existing problems in the system of law-enforcement bodies, it can still be noted that the police generally do not prevent holding of peaceful assemblies and provide them with protection. At the same time, sometimes there is an old disease of law enforcement bodies – “tentophobia”. The police try to prevent the use and setting up of tents during assemblies and often severely suppresses any attempt, despite the unlawfulness of their actions. After the “Revolution of Dignity”, another chronic disease arose - the fear of burning tires. The phobia of tents and burning tires is similar to the cargo cult - the authorities do not allow tents and tires because they fear that these symbols will provoke rebellion. As with any phobia, fear in this case is irrational. However, the police do not always interfere with setting up tents during peaceful assemblies. At the same time, law enforcers in general do not prevent shutting off and blocking the routes by participants of peaceful assemblies.

Conclusions

The major systemic problems and negative trends that occurred in the area of freedom of peaceful assembly in the years following the Revolution of Dignity remained unchanged. The post-revolutionary trend of shifting the focus of problems from the judicial dimension to a purely law enforcement practice remains. For the first time in decisions of higher courts there are no references as an effective document to the Decree of the Presidium of the Supreme Soviet of the USSR of July 28, 1988 No. 9306-XI “On the Procedure of Organization and Conducting of Assemblies, Rallies, Street Campaigns and Demonstrations in the USSR”. At the same time, there are still references to this Decree by law enforcement and local self-government bodies. Attempts have been made to expand the authority of the National Guard of Ukraine in the field of public order, which is of considerable concern. In general, the involvement of National Guard servicemen in the execution of police functions may be in violation of the Constitution of Ukraine and needs to be eliminated as soon as possible in one way or another. There is no regulation under the law of the actions of law enforcement agencies to ensure freedom of assembly. While declaring the need for such regulation, public authorities are not taking any real steps in this area. Presidential and governmental strategies that contain freedom of assembly clauses are not implemented in practice in this respect. Acts of local self-government bodies, which limit the ability to exercise the right of peaceful assembly, continue to exist. At the same time, there is a prospect of repealing such acts through the courts. The number of cases of administrative liability under Article 185-1 of the Code of Administrative Offenses of Ukraine has increased, despite the fact that it is inadmissible in accordance with the decisions of the European Court of Human Rights in the cases of Verentsov v. Ukraine and Shmushkovich v. Ukraine, as well as the decision of the Supreme Court of Ukraine. Police continue to be irrationally fearful of tents and firing tires, but generally do not prevent blocking traffic routes during assemblies. Freedom of assembly is almost expelled from the circle of interests of lawmakers. Dominant in the public space is the position that there is no need in special law on freedom of assembly. Not the law, but the absence of arbitrary actions will protect peaceful assemblies.

Article 22: Freedom of Association

Government-controlled areas

Protecting human rights requires the realization of a variety of rights, including the right to the freedoms of expression, peaceful assembly, and association. In Ukraine, developments in these areas were mixed. The Constitutional Court striking down the e-declarations requirement for anticorruption activists in June 2019 was perhaps the most significant development in terms of freedom of association last year. The decision means that anticorruption activists are no longer required to submit public income and asset declarations in order to avoid risking serious financial and legal consequences.

However, the persecution of human rights defenders and civic activists, especially through violence and threats, continued to be a serious problem in 2019, according to monitoring and documentation conducted by – Ukrainian Helsinki Human Rights Union (UHHRU), ZMINA Human Rights Center, Truth Hounds, and Freedom House. This ongoing persecution is especially concerning given the important role human rights defenders and civic activists play in democratic societies; contributing to improvements in respect for human rights, oversight of state bodies and local authorities, and effective campaigns against corruption, among other things. In 2019 83 incidents were documented where human rights defenders and civic activists have continuously been targeted with violence and other types of persecution because they challenge the interests of powerful people in the government and business community. In the vast majority of cases perpetrators were not held accountable under the applicable criminal and administrative offenses, just like in previous years.

The 83 documented incidents included 37 violent attacks on people and property, 20 threats, and 11 assaults on participants in peaceful assemblies. One third of documented incidents involved those advocating for the human rights of LGBT+ people or for gender equality. Other incidents commonly involved those protesting illegal construction and corruption. Radical right-wing actors committed nearly a quarter of all incidents documented.

The public's awareness of the danger of civic activism in Ukraine significantly increased after the death of human rights defender Kateryna Handziuk. She was attacked with acid in 2018 and died from her injuries in November of that year. Following Handziuk's tragic death, campaigners seeking accountability for the attack organized protests and events across the country, pushing for the prosecution of those responsible for carrying out and ordering the attack. A November 2019 poll revealed that 84 per cent of Ukrainians view attacks on civic activists as a serious problem, while 77 per cent considered civic activism to be a dangerous activity²⁸.

The Ukrainian authorities have a responsibility to protect human rights defenders. According to UN, Council of Europe, and OSCE guidelines, in addition to refraining from actions that violate the rights of human rights defenders, the authorities should establish safe and favourable conditions so that human rights defenders can act without impediments or threats to their security. These "safe and favourable conditions" include access to justice and accountability for violations against human rights defenders, such as assaults and threats. The authorities must also protect human rights defenders from abuses from third parties. This includes implementing effective policies to prevent and investigate abuses and penalise those responsible. Unfortunately, the Ukrainian authorities have

²⁸ According to a poll conducted jointly by the Ilko Kucheriv Democratic Initiatives Foundation and the Kyiv International Institute of Sociology, November 4-19, 2019: <https://dif.org.ua/article/gromadska-dumka-listopad-2019>

implemented few policies in response to the ongoing threats to human rights defenders. There are no targeted efforts to prevent and respond to attacks at the local or national levels.

Article 24: The rights of children

Government-controlled areas

Under COVID-19 pandemic conditions, orphans, children deprived of parental care, children with disabilities and the children, whose parents may be deprived of parental rights, are in a risk category where rights may be violated at any time, especially the rights to health protection, due to the lack of attention and control by public authorities and local self-government bodies. Particularly vulnerable in this situation are the children in closed institutions due to the changes in the way of work of these institutions under the conditions of the quarantine. Thus, according to the current information from local executive bodies, 42 thousand pupils from 435 boarding educational institutions (80 per cent of them - the children with special educational needs), who were on 24-hour detention due to the quarantine in Ukraine, were returned to their families, neglecting the determining of ability of each family to meet children's needs, first and foremost – their safety. Especially alarming is the situation of the orphans remaining in institutional care, because, according to our information, in these institutions the facilities for staying safe in the conditions of quarantine are absent. However, according to our information, the quarantine measures, the medical institutions and the transport, all of which work in response to the COVID-19 pandemic, do not meet children's needs (their representatives' needs), including their accessibility. The authorities and the representatives of services don't have enough information about the recommendations of international institutions on the actions on observing the children's rights in emergency situations. The reason of this situation is the inconsistency in the actions of local services and structures, which work to meet children's interests and rights. The issue is not actualized to the local community and does not contribute to public control of children's rights observance.

Crimea

Ensuring equal access to higher education for Crimean youth

In the spring of 2014, Crimea was occupied by the Russian Federation, which resulted in Ukrainian citizens being denied access to Ukrainian education. According to the Ministry of Education of Crimea (for 2019), about 200,000 schoolchildren and about 60,000 students study on the peninsula. Approximately 10-12,000 secondary school students and as many high school students graduate in Crimea every year. The educational documents (Certificates, Diplomas) that they will receive are not recognized by most countries in the world, so currently more than 80,000 school graduates have not received educational certification from the Ministry of Education and Science of Ukraine.

At the same time, the existing system of education in the Ukrainian state also cannot provide Crimeans with equal access to education on the mainland of Ukraine at almost all levels. Despite certain steps by the state, namely, amendments to the Law of Ukraine "On Higher Education" (Article 44), the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" (Article 7, p12), "Regulations on individual education" and other legal documents, the situation is still unresolved. The above documents currently contradict each other, due to which there is a misunderstanding in the Crimea of the algorithm of admission and the algorithm of obtaining a Certificate of secondary school and high school education.

Due to objective reasons arising from occupation, Crimean youth have no full-fledged access to all learning instruments available to their peers in the mainland Ukraine (which, in particular, complicates successful passing of the External Independent Testing needed to enter Ukrainian higher educational institutions (HEIs) on a state-funded basis). It should also be pointed out that the Crimean youth do not enjoy equal education rights in regards to obtaining free general secondary

education: it is still being provided using inefficient means – distance education or self-study (external study program), where the state only performs regulatory functions (in the form of state examination¹), with no curricula developed for online courses. Support schools for the remote provision of educational services to young people from the temporarily occupied territories have not been established.

In order to eliminate discrimination and create equal access to higher education, the Education Ministry developed a tailored procedure for knowledge testing through “Crimea-Ukraine” educational centers (so-called “Quota-2 Admission Procedure” enforced by Education Ministry’s order No 560) and accomplished a number of other tasks to simplify the admission process for the Crimean youth. But the number of applicants from the Crimea who took advantage of the updated admission system has not increased significantly. In 2016, 153 people used this system, and in 2017 - 204 people, in 2018 - 262, in 2019 - 265.

At the same time, more than 700 Crimean entrants used the general admission system in 2017 which is more understandable for Crimean entrants, although much more complex (18 exams and 4 external examinations to obtain a certificate). These entrants do not have equal conditions for general secondary education, namely, distance education only, lack of opportunities to study in Ukrainian language in Crimea²⁹, "atmosphere of intimidation" in Crimean schools of children and parents who have chosen distance learning in Ukrainian schools. Unfortunately, this group does not provide or does not executed guarantee additional protection of the right to education and equal access to higher education.

It cannot be considered equal conditions for the preparation of the External Independent Testing (EIT certification), as preparation for certification requires the availability of manuals, teacher consultations, a certain system in preparation for testing, and it is impossible to get it in the Crimea. Therefore, the average scores of EIT for applicants from the Crimea are much lower, and do not allow on a competitive basis to get a place in the university by state order. Yet a number of problems remain unsolved, including:

- A simplified admission procedure allows Crimeans entering only the limited number of HEIs³⁰ (which is segregated to a certain degree and discriminative in its nature);
- Despite the positive decision to increase quotas for entrants from the occupied territory³¹, the government has failed to address problems of those Crimean students wishing to transfer from the educational institutions governed by the occupying authorities to the Ukrainian ones: they are not considered as “just-from-school” entrants and thus are not eligible for quotas to a free of charge study;

²⁹ See a further breakdown of this issue here: <http://crimeahrg.org/v-kryimu-kolichestvo-ukrainskih-klassov-sokratilos-v-31-raz-za-dva-goda-infografika/>

³⁰ Crimea residents currently can be enrolled by only 35 HEIs, but after merging “Crimea-Ukraine” and “Crimea-Donbas” educational centers this number will be equal to 54 HEIs, on the basis of which these centers are located. At the same time, Ukrainian graduates from other oblasts can choose among over 600 HEIs.

³¹ Procedure for conducting attestation for the recognition of qualifications, training results and study periods in the higher education system, acquired in the temporarily occupied territory of Ukraine after February 20, 2014 (Education Ministry’s order No 537, dd. 19 May 2016, <http://zakon2.rada.gov.ua/laws/show/z0793-16>).

- The adopted Cabinet of Ministers' Resolution No 1045 failed to fully address the issue of payment of social scholarships to all IDP students (both studying on a free of charge and on a fee-paying basis), which is contrary to the Law of Ukraine No. 1207-VII and the Law of Ukraine No 1556-VII³²;
- By adopting the Law No 1207-18, Ukraine confirmed the right of persons from the occupied territories to get an education at the expense of the state budget; however, the relevant implementation mechanism has not yet been developed, and possibility to use the state budget-funded study places guaranteed by the Quota-2 Admission Procedure³³ is not foreseen³⁴;
- IDP children can't fully enjoy targeted state support guaranteed by the Law of Ukraine No 425-VIII because of the Cabinet of Ministers' Resolution No 975 (which conflicts with the law's main purpose) and complicates its enforcement.

These problems can be easily solved through adoption of the "Concepts of reintegration of children and youth from the temporarily occupied territories of Ukraine", which has already been drafted by The Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, together with public organizations. This Concept will serve as a roadmap for the central executive authorities to ensure the rights to education and re-integrate youth living in the temporarily occupied territory. Besides, the number of children with non-recognized graduation certificates residing in occupied and non-government-controlled territories is high, it is important to start as soon as possible the process of certification by Ukraine of their educational documents³⁵.

It should be stressed that a new Government of Ukraine has proclaimed education for residents of the temporarily occupied territories as one of its priorities. Notwithstanding that, in November 2019, the Verkhovna Rada passed in the 1st reading a bill No 2299 "On amendments to certain laws of Ukraine concerning improvement of educational activities in the sphere of higher education"³⁶, thereby leaving unchanged an existing imperfect admission procedure for Crimeans into mainland HEIs. However, certain proposed amendments provide for a number of opportunities³⁷ to change the situation through adoption of the corresponding by-laws and regulatory acts³⁸. Moreover, in October 2019 the Cabinet of Ministers created an Inter-Agency Working Group to deal with the issues related to the

³² Article 7 of the Law of Ukraine No. 1207-VII "On ensuring the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine" and Article 44 of the Law of Ukraine No 1556-VII "On higher education".

³³ Around 2,700 study places in 2019.

³⁴ The situation in 2019 became even worse than in 2018, when it was allowed to redistribute unused state budget-funded study places among entrants from Crimea enrolled on a paid basis – no such redistribution occurred in 2019.

³⁵ According to the "Education Ministry of Crimea", over 10,000 of young people graduate secondary schools each year. The point is that their graduation documents are not recognized by the majority of countries until Ukraine does so. Since 2014, there are about 90,000 school students in Crimea and only 5,000 of them are certified by Ukraine's Ministry of Education.

³⁶ As of 22 October 2019, available in Ukrainian at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67164.

³⁷ Among the positive ones is merging of "Crimea-Ukraine" educational centers with "Donbas-Ukraine" educational centers that is called to partially eliminate existing discrimination as the Crimean youth will be allowed to apply for knowledge testing to 54 united centers (in comparison with 35 currently existing "Crimea-Ukraine" educational centers).

³⁸ For instance, admission regulation that are being adopted annually.

temporarily occupied territories in Donbas and Crimea, which has chosen the education as one of its two priority directions for the year 2020.

Obligations relating to child protection and the absence or deprivation of parental care

Article 24 recognises every child, without any discrimination, the right to such measures of protection as are required in his position as an underage by his family, society and the state³⁹. Children, especially orphans and children deprived of parental care, are the most vulnerable category of victims of the occupation of the Crimean peninsula, as they are not able to defend their rights on their own.

According to the Ministry of Social Policy, as of August 1, 2014, 4228 children deprived of parental care were in special institutions of the Crimea and the city of Sevastopol (orphanages, specialized orphanages, foster homes, family-type orphanages, boarding schools, centers of social and psychological rehabilitation, social dormitories), that is, under the care of the state. All these children are citizens of Ukraine in accordance with the Law of Ukraine “On Citizenship”. According to the Law of Ukraine “On Child Protection”, children who are left without parental care are entitled to special protection and assistance from the state.

Having occupied Crimea, the Russian Federation unilaterally recognized all children who lived in Crimea as citizens of the Russian Federation. Subsequently, some children were moved to the territory of the Russian Federation, and also transferred for adoption to Russian citizens and foreigners. Guardianship authorities in the Autonomous Republic of Crimea and the city of Sevastopol, in turn, refused to protect the interests of Ukraine and Ukrainian children in Crimea. From the beginning of the occupation of Crimea to the present, the Ukrainian authorities have not taken any measures to evacuate Ukrainian children from the occupied territory and/or provide them with adequate protection, including to preserve their identity from interference in it by the occupying state. There are no effective mechanisms to ensure Ukraine the rights of such children in the temporarily occupied territory. Moreover, at the national level, a body has not yet been identified that should ensure the protection of the rights of these children and their protection. According to the law, this obligation is assigned to the guardianship and trusteeship bodies operating as part of the district state administrations at the location of the child, but they ceased their activities in the Crimea and the city of Sevastopol, and it was not renewed in mainland Ukraine. The inaction of the Ukrainian authorities and the failure to provide protection to Ukrainian orphans and children deprived of parental care remaining in Crimea is regarded as failure to fulfil Ukraine’s obligations under article 24 of the Covenant.

Article 25: Civic/democratic rights

Government-controlled areas

The Electoral Code of Ukraine, which regulated the problem of IDPs' ability to vote and set quotas for gender representation at 40 per cent was adopted. But it did not change the situation with voting methods and creating accessibility conditions. This is confirmed by the activities of the Working Group established at the CEC, which is intended to work on amendments to the Code. At the same time, in February-July 2019, public “ombudsmen” of the Public Network OPORA identified at least 4,887 voting stations with accessibility problems, which is just over 16 per cent of all voting stations in the country; of these, 1 518 voting stations are located above the ground floor and another 3 369

³⁹ Human Rights Committee General Comment No. 17

voting stations are not equipped with wheelchair ramps and are inaccessible to persons with disabilities.

Another important issue related to elections is working out a new draft law on electronic voting, which is currently being prepared by a working group in the Ministry of Digital Transformation. It is planned that during the local elections in autumn of 2020, pilot regions will be selected for electronic voting. Introducing online voting in Ukraine will greatly facilitate the exercise of the voting rights by persons with disabilities, but it does not solve all the issues in this area. When settling the issue of the referendum, it should be noted that only in 2018 the Law of Ukraine “On the All-Ukrainian Referendum” was declared unconstitutional, and the new draft law is currently in the final stage of reviewing. The issue of the local referendum remains open. Ukraine should therefore seek to:

1. Settle the issue of all-Ukrainian and local referendums.
2. Adopt the law on public consultations, which will establish the practice and procedures for conducting public consultations by all: government, parliament, local self-government bodies.
3. Ensure electoral rights of persons with disabilities.

Article 26: Right to non-discrimination before the law

Government-controlled areas

The COVID-19 pandemic and severe restrictions have increased the population's fear of the virus and discriminatory treatment of patients or people suspected of having the disease. Moreover, state actions provoke aggression of the society by informing openly about such people with disclosure of medical information, personal data.

The Draft Law on Amendments to the Criminal Code of Ukraine on the Liability for Intolerance and 3 alternative draft laws have been registered in Parliament. While three of these draft laws enlarge the list of protected grounds and criminalises hate crimes based on it (including sexual orientation and gender identity), one of the alternative draft laws provides for criminal liability for ‘public call for and / or messaging refusal of childbearing, destroying institution of the family, extramarital and unnatural sexual relations and sexual abuse’.

The statistics kept jointly by the National Police of Ukraine and the Prosecutor General’s Office of Ukraine does not reflect the number of cases investigated in the reporting period, the number of cases that were transferred to the next period, and the number of cases closed. It also does not correlate with public monitoring data. The statistics do not correspond to that reported by the state to the OSCE / ODIHR. NGOs continue to report that the cases have not been filed with the Unified Register of Pre-Trial Investigations (URPTI) and on mass closing of cases without proper investigation, as in the following table⁴⁰:

⁴⁰ Information available at: <https://court.gov.ua/>

	2016	2017	2018
Number of cases registered with URPTI and number of judgments related to discrimination / crimes committed on the grounds of racial, ethnic origin, religious beliefs, disability and other grounds	URPTI data: Reported - 41 Closed - 19 Charging document - 4 Convicted - 2 Data reported by the state to the OSCE/ODIHR: Reported - 144 Investigated - 76 Convicted - 2	URPTI data: Reported - 52 Closed - 24 Charging document - 2 Convicted - 1 Data reported by the state to the OSCE/ODIHR: Reported - 163 Investigated - 94 Convicted - 3	URPTI data: Reported - 99 Closed - 46 Charging document - 4 Convicted - 2 Data reported by the state to the OSCE/ODIHR: Reported - 178 Investigated - 149 Convicted - 6

Ukraine should seek to:

1. Amend Article 161 of the Criminal Code on liability for intolerance, in particular criminalise hate crimes based on sexual orientation and gender identity;
2. Record all reports of discrimination / crimes on grounds of animosity and to conduct effective criminal investigation with accountability for the crimes committed;
3. Develop guidelines, conduct trainings and information campaigns for law enforcement officers as to investigation of crimes on grounds of intolerance according to all indicators and for judges as to hearing of such cases.

Crimea

Common provisions

The Constitution of Ukraine stipulates that all people should be free and equal in their dignity and rights. There can be no privileges or restrictions on the basis of race, colour, political, religious and other beliefs, gender, ethnic and social background, property status, place of residence, linguistic or other characteristics. According to the Constitution of Ukraine, citizens have equal constitutional rights and freedoms and are equal before the law.

Banking services

After the occupation of Crimea began in 2014, the Russian Federation ended operations of Ukrainian banks on the peninsula. The Law of Ukraine on Currency and Currency Operations establishes restrictions for non-residents in the exercise of freedom to conduct currency transactions. In particular, such restrictions apply to the right to open accounts with Ukrainian financial institutions and to conduct currency transactions through such accounts. Amendments to the above-mentioned Decree from March 2020, which come into force on 27 April 2020, abolish the special rules on the application of currency legislation to citizens of Ukraine who have a Crimean registration, and restore their status as residents. However, although the situation with the exercise of the freedom to conduct currency transactions for Crimean residents has improved, it does not eliminate the fact of discrimination that has existed before for six years. Ukrainian citizens residing in Crimea were significantly restricted in their rights compared to the Ukrainian citizens who have registration in the mainland, and the sole reason for such restriction is their belonging to the occupied territory of Crimea.

Payment of pensions and financial aid

After the occupation of Crimea in 2014, the Russian Federation ceased operations of Ukrainian banks on the peninsula. According to the data of the Pension Fund of Ukraine, in June 2019, 601.2 thousand persons from IDPs were paid pensions. According to CMU Resolution No. 1596 of August 20, 1999, recipients of pensions and financial aid independently choose an authorized bank to open a current account. However, this rule does not apply to IDPs. For IDPs who are registered, only authorized bank is JSC "Oschadbank". This rule creates significant difficulties for IDPs of retirement age: first, retirees

need to leave temporary occupied territories in order to obtain IDPs' certificate. That is, no pensioner who left the occupied territories will receive a pension unless it is registered as IDPs. At the same time, the only bank to exercise the right to receive a pension or financial aid is JSC Oschadbank. Thus, the IDPs of retirement age need to come to the JSC “Oschadbank” branch and perform any card transaction, otherwise the current account's payment transactions will be blocked. This leads to the suspension of payment of pension or financial aid⁴¹. It was only at the end of 2019 that a bill was submitted to the VRU regarding the resumption of payment to those pensioners who had effectively lost their ability to draw up: the possibility of paying back the pension debt over the last three years was legally prescribed. The bill has not been adopted yet. Thus, the restriction on the right to choose an authorized bank for the payment of pensions and financial aid to IDPs is discriminatory, as is the long-standing lack of a mechanism to reimburse pensions to IDPs who have lost them.

⁴¹ “Become an IDP, go to Oschadbank ...”, Alona Lunyova, ZMINA, 20.10.2018, available at: https://zmina.info/articles/stan_vpo_jdi_v_oshadbank