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HUMAN RIGHTS ASPECTS OF INVOLUNTARY DISPLACEMENT FROM THE OCCUPIED CRIMEA

Master thesis

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Vilnius, 2019

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LIST OF ABBREVIATIONS

ARC	Autonomous Republic of Crimea
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
IDP	Internally Displaced Person
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Tribunal for the Former Yugoslavia
IHRL	International Human Rights Law
IHL	International Humanitarian Law
GC	Geneva Convention
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
RF	Russian Federation
UN	United Nations

INTRODUCTION

Worldwide today there are more than 40 million of people, who were compelled to leave their households because of the conflict or violence, but remain within the borders of their state as "internally displaced people".[1] Each year millions of people become IDPs as a result of natural and man-made disasters. Moreover, the figures of people displaced because of conflict and violence have almost doubled since 2016[2] and now the amount of internally displaced people is the highest it has ever been.[3] This turns internal displacement into the real global crisis, which covers all regions of the world.

The occupation of Crimea in March 2014 and the beginning of the armed conflict in the eastern regions of Ukraine, which followed the next month, caused mass displacement of population both inside the country and across its borders. Consequently, at the beginning of November 2019 there were more than 1,42 million of internally displaced persons in Ukraine. [4]

From the first days of the occupation of the part of the territory of Ukraine - the Autonomous Republic of Crimea and the city of Sevastopol - the Russian Federation has been pursuing a systematic and large-scale policy aimed at changing the demographic composition of the population of the occupied territory.

In the very first year of actual control of the RF over the territory of the ARC and the city of Sevastopol, the situation with the observance of human rights on the peninsula deteriorated to such an extent that Valery Lutkovskaya, Commissioner for Human Rights of the Verkhovna Rada of Ukraine, called Crimea a "peninsula of fear".[5] Murder, torture, kidnapping, persecution of journalists, repression against Ukrainian activists and Crimean Tatars, trumped-up criminal cases, illegal searches, restriction of religious freedoms, forcing Russian citizenship, the use of paramilitary formations, the fight against disagreement - all this has become a part of the everyday life of the Crimean people. [6]

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[1] Global report on internal displacement, The Internal Displacement Monitoring Centre, May 2018, accessed 29 November 2019, http://www.internal-displacement.org/global-report/grid2018/downloads/2018-GRID.pdf

[2] *Ibid*

[3] Global report on internal displacement, The Internal Displacement Monitoring Centre, February 2019, accessed 29 November 2019, http://www.internal-displacement.org/sites/default/files/publications/documents/2019-IDMC-GRID.pdf

[4] The official web-portal of the Ministry of Social Policy of Ukraine, November 25, 2019, accessed 29 November 2019, https://www.msp.gov.ua/news/17892.html

[5] The official website of Ukrainian Parliament Commissioner for Human Rights, March 16, 2015, accessed 29 November 2019, http://www.ombudsman.gov.ua/ua/all-news/pr/valeriya-lutkovska-za-rik-okupatsiii-krim-peretvorivsya-na-pivostriv-straxu/

[6] "Rights in Retreat – Abuses in Crimea", Human Rights Watch, 17 November 2014, accessed 29 November 2019, https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea;
"Annual report of the Commissioner on the state of observance and protection of human rights and freedoms for 2014", the official website of Ukrainian Parliament Commissioner for Human Rights, p.34, May 5, 2015, accessed 29 November 2019, http://www.ombudsman.gov.ua/ua/all-news/pr/5515-qv-schorichna-dopovid-upovnovazhenogo-pro-stan-doderzhannya-ta-zaxistu-pr/

Even though the presence of mass human rights abuse in Crimea has been widely recognized, the question of responsibility for this maltreatment remains open. It is widely accepted that the governments should protect and assist their uprooted citizens, whereas in an armed conflict both parties have the responsibility to ensure the welfare of IDPs. Unfortunately, nowadays the systematic violations of human right in the peninsula are becoming less obvious to the international society and to the victims itself, that's why it is more difficult to determine the real reasons for the displacement.

In the case of direct actions of the occupational authority, which lead to the transfer of population to mainland Ukraine (such as deportation or forcible expulsion), the responsibility of Russia for the violation of the international humanitarian law is proven. However, the breach of right for freedom of persons who have moved out from the peninsula due to the economic, social or political reasons remains unrecognized. Accordingly, people do not have access to justice and do not know they could demand decent compensation. Thus, it is necessary to detect human rights violations which occur in the occupied Crimea and lead to the population displacement; and to determine that Russia should be held accountable for such violations which take place as a result of its general occupation policy.

Researched problems

1. What is the nature and causing factors of involuntary displacement?
2. Do repressive policies and practices, which take place in occupied Crimea and lead to the people displacement, constitute violations of human rights?
3. How policies conducted by the authorities of the Russian Federation, which are not connected directly to the expulsion, deportation or other forms of movement of people, trigger mass displacement of Crimean population?
4. How the involuntary displacement of Crimean population itself interferes with human rights?

Aim and objectives of the thesis

The thesis aims to analyze the causing factors of the population displacement from the occupied Crimea in order to prove its involuntary nature, and to determine human rights violations which arise from such displacement.

To achieve the abovementioned, the following objectives are established:

1. To analyze the nature of involuntary displacement, its causing factors and the role of the State in it.

2. To define the actual situation with population displacement from Crimea following its occupation.

3. To determine human rights violations which cause involuntary displacement from Crimea.

4. To assess the involuntary displacement of Crimean residents as an interference with human rights, particularly in the context of the right to respect for private and family life, right to property and freedom of movement and choice of residence.

Relevance of the final thesis

It has been more than 5 years since the beginning of the occupation of the peninsula. However, up till now the international and Ukrainian legal systems are not ready to deal with the consequences of the Crimean illegal seizure. One of the problematic aspects is the responsibility of the occupying country for its unlawful policies. On one hand, the use of complaints to the European Court of Human Rights and other international institutions might help to establish justice for those who suffered because of the conflict. On the other hand, the need for systematic approach to the reasons of human rights violations is high. Considering demographic changes, restricted access of the international monitoring missions to the peninsula and difficulties in collecting the documentation needed for the justification of the human rights abuse, the research is required to be done and developed within the nearest time.

Originality and novelty of the thesis

The novelty of the presented research is predetermined by the occupation of Crimea by the Russian Federation in 2014, every day increasing level of human rights abuses on the peninsula and continuing mass displacement of population.

The originality of the thesis is determined by the lack of academic researches and judicial precedents on the issue of involuntary displacement of people from Crimea without direct coercion and on the issue of human rights violations to which such displacement itself lead. The issue of forced displacement and related human rights was studied, among others, by C. Rodríguez-Garavito and D. Rodríguez-Franco, A. Bayefsky and J. Fitzpatrick, M. Stavropoulou, C. Deborah, various researchers of Oxford and Cambridge Universities.

The question of causing factors of involuntary displacement from Crimea is poorly studied academically in Ukraine. For instance, O. Novikova and O. Pankova analyzed the specificity of the forced displacement of the population in Ukraine due to the temporary occupation of the ARC and certain regions of Donetsk and Luhansk regions, the armed conflict in the east of Ukraine.

While the issue of factors leading to involuntary displacement has been investigated by many scientists, the research showed that the issue of human rights violations resulting from such displacement is poorly investigated and requires further study.

By analyzing the involuntary displacement from Crimea from the international human rights law point of view in a complex manner the Master thesis is original in the context of other researches.

Significance of the final thesis

1. The results of the thesis may be used practically for preparation of claims to the European Court of Human Rights and the United Nations Human Rights Committee, for the further development of its jurisprudence and creation of legal precedent. Also the research may be applied in the communication with the International Criminal Court on the crime of forcible population expulsion.

2. On the basis of this study the criteria for determination of the causing factors of involuntary displacement in similar conflict situations could be formed.

3. The thesis should be applicable as study material in courses connected with the humanitarian law and human rights law.

4. The research should cause the concernment of the Ukrainian and foreign NGOs, institutions and citizens about the issue of human rights violations consequence of creating such atmosphere in Crimea by the occupying power which lead to the displacement of people.

Research methodology

The following methods were used in order to achieve the objectives of the Master thesis:

Linguistic method was used to interpret the meaning of the definitions and terms in the international documents (cases, Geneva conventions, United Nations Guiding Principles on Internal Displacement, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, European Convention on Human Rights, Rome Statute of International Criminal Court).

Description method was invoked for providing the general overview of the notions of forced removal, involuntary displacement and its causing factors; as well as to provide overview about human rights situation on the peninsula.

Systematic method was used to analyze the separate policies of the occupation power within the regulations of the international human rights law.

Comparative method was applied to define the similarities and differences in the existing precedents, where the human rights were restricted as the result of other policies of the countries. The method also was used while contrasting the different definitions of the IHRL and linking it to the involuntary displacement.

Critical method was used to determine whether the actions of Russian Federation within the occupation regime violate norms of the international human rights law.

Thesis structure

The thesis consists of introduction, three chapters divided into subchapters, conclusions, recommendations and list of bibliography.

The general part is represented in Chapter 1 providing general concepts and terms related to involuntary migration, notions of forced removal and involuntary displacement. This Chapter also covers the issue of factors leading to involuntary displacement and the role of the State in it; as well as the description of displaced persons types.

The special part contains Chapters 2 and 3. Chapter 2 provides a brief description of the initial stage of Crimean occupation in 2014 and following migration from peninsula. In general Chapter 2 is devoted to the legal analysis of the policies and practices of the occupying authorities from the international human rights law point of view, and determination of the causing factors of involuntary displacement from the occupied Crimea.

Chapter 3 is focused on the analysis of the violations resulting from the involuntary displacement itself, namely on the violations of the right to respect for private and family life, right to property and freedom of movement and choice of residence with regard to the international documents and legal precedents.

Defense statement

Without using direct coercion to flee, the Russian Federation applies such policies and practices at the occupied Crimea that result in violations of human rights and lead to the involuntary population displacement from the peninsula. The involuntary displacement itself results in the violations of the right to respect for private and family life, right to property and freedom of movement and choice of residence.

1. INVOLUNTARY DISPLACEMENT: GENERAL NOTIONS

The movement of individuals or groups of people, whether within or across the internationally recognized borders of a state, has been described in different terms, among which exodus and transfer, uprooting and relocation. Legal concepts related to and the terms used to describe involuntary movement and its various forms differ and overlap. The broadest term used to describe the phenomenon is 'migration', which has been defined as "[t]he movement of persons away from their place of usual residence, either across an international border or within a State".[7] Migration can be either internal[8] or international, depending on whether it involves crossing of a state border.[9] It can also be voluntary or forced, depending on whether it takes place by individual's choice.[10] Having said that, one has to bear in mind that in practice a combination of choices and constraints may be involved.[11]

The relevant notions were developed, first of all, with regard to the question of the permissibility of forced displacement. Within the context of the war crimes, the forced displacement issues were considered upon the World War II, and, in fact, even before its end. Thus, in the Inter-Allied Resolution on German War Crimes of 1942 mass expulsions were mentioned among the characteristics of the German 'regime of terror'.[12]

Involuntary or forced (forcible) displacement, which is the focus of this research, can take different forms. It ranges from transfer of persons by physical force or direct coercion to a situation where an individual is compelled by certain circumstances to make a choice to leave her habitual place of residence.

For the purpose of this master thesis, involuntary displacement is understood, as a situation where the person, in contrast to being removed by force or formally ordered to leave, is deprived of a genuine choice to remain in his or her home and is compelled, for instance due to persecution, massive human rights violations or large scale violence, to leave his or her place of residence. In this instance, the person's choice cannot be said to be genuine and would have likely been different under other circumstances. In contrast to forced removal, such cases can be difficult to define and detect. Neither is there a single universally accepted definition of this type of involuntary migration. This is not surprising, given that the displacement in question is not

7 Glossary on Migration, *International Migration Law*, No. 34 (2019), International Organisation for Migration (IOM), p. 135, accessed 29 November 2019, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf
8 *Ibid*, p. 106.
9 *Ibid*, p. 111.
10 Displacement in times of armed conflict: How international humanitarian law protects in war, and why it matters, 2018, ICRC, p. 9, accessed 29 November 2019, https://www.icrc.org/en/event/displacement-during-armed-conflict---how-IHL-protects-and-why-it-matters
11 *Ibid.*
12 Text of resolution on German war crimes signed by representatives of nine occupied countries, *Inter-Allied Review*, February 15, 1942, accessed 29 November 2019, http://www.ibiblio.org/pha/policy/1942/1942-01-12a.html

forced but at the same time is not genuinely voluntary. The notion covers varying degrees of 'involuntariness', and a number of factors, acting alone or in conjunction with other circumstances, can compel the individual to leave, sometimes making it impossible to determine the decisive driver.[13]

Chapter 1 addresses concepts and terms related to involuntary migration, focusing mainly on the notion of involuntary displacement but also addressing the concept of forced removal. First and foremost, the notion of 'forced removal' is addressed in order to distinguish it from 'involuntary displacement' which occurs when the circumstances do not leave the person a genuine choice to remain in his or her home or place of residence. According to international law and various international instruments, displacement can be considered involuntary even if it is not carried out by physical force or a formal order to remove the person from a territory as it is the case with forced removal.

1.1. Forced removal

The distinction between 'forced removal' and 'involuntary displacement' relevant for the purpose of this study lies in the manner in which the movement of the displaced person takes place. The former is understood as displacement by direct use of force or as a result of an official order. The latter occurs when the circumstances do not leave the person a genuine choice to remain in his/her home or place of residence.

In general terms, forced or forcible removal refers to the form of involuntary migration where the person or a group of persons is coerced to leave a territory either by direct use of physical force or by an official order to do so. It is usually accompanied by the express will of the state or *de facto* authority in control of the territory to displace a person or a group of persons.

No single definition of the concept exists[14] and the relevant international instruments use different terms to denote removal from a territory by wilful direct coercion. Among these are 'deportation', 'expulsion', 'collective expulsion', 'forcible transfer', 'enforced transfer', 'removal', 'forced displacement' etc. Furthermore, different categories of forced removal can be distinguished depending on whether the removal is conducted against a particular individual, meaning a decision or action targeting a specific person, or against a group of people; on whether

13 Glossary on Migration, *International Migration Law*, No. 34 (2019), International Organisation for Migration (IOM), accessed 29 November 2019, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf
14 "Enforced population transfer as a human rights violation", Parliamentary Assembly of the Council of Europe (PACE), Resolution 1863 (2012), 27 January 2012, accessed 29 November 2019, https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18069&lang=en, para 6: "[t]here is currently no single legal principle applicable to population transfers, which take many forms."

the person or persons affected are nationals of the displacing state; and on the context in which it takes place, for instance armed conflict or discriminatory practices directed at foreigners or nationals of a particular state.

To give an example, the terms 'deportation' and 'expulsion' are often used to refer to forced removal of non-nationals. In this context, 'deportation',[15] 'expulsion' and 'removal' are sometimes used interchangeably: "Removal – [a]lso referred to as deportation or, sometimes, expulsion, the act, following a deportation, expulsion or removal order by which a State physically removes a non-national from its territory to his or her country of origin or a third country after refusal of admission or termination of permission to remain".[16] Expulsion is defined as "[a] formal act or conduct attributable to a State by which a non-national is compelled to leave the territory of that State".[17]

Certain international legal instruments refer to 'collective' or 'mass expulsion' and define it as "an act or behaviour by which a State compels a group of aliens to leave its territory".[18] For example, Article 4 of Protocol No. 4 to the European Convention on Human Rights (ECHR) prohibits collective expulsion of aliens.[19] The European Court of Human Rights (ECtHR) has defined collective expulsion as "any measure of the competent authorities compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group".[20] More generally the term 'expulsion' in the ECHR, either in the context of collective expulsion barred by Article 4 of Protocol No 4 or expulsion of nationals of a state-party

15 Incidentally, the term "deportation" is often used in the historical context describing, for example, forcible movement of populations within the Soviet Union (Crimean Tatars, Germans, Koreans). However, it is equally applicable to the situation when a non-national is removed from or is ordered to leave a state.
16 Glossary on Migration, *International Migration Law*, No. 34 (2019), International Organisation for Migration (IOM), p. 178, accessed 29 November 2019, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf
17 *Ibid*, p. 66.
18 Maurice Kamto, "Expulsion of Aliens", Third Report on the expulsion of aliens, 59th session of the UN International Law Commission (ILC), 19 April 1007, UN Doc A/CN.4/581, para 132, accessed 29 November 2019, http://legal.un.org/ilc/documentation/english/a_cn4_581.pdf
19 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, Protocol 4, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
20 *Andric v. Sweden*, no. 45917/99, ECtHT, Decision, 23 February 1999, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-4520;
Čonka v. Belgium, no. 51564/99, ECtHR, Judgment, 5 February 2002, para. 59, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-60026;
Sultani v. France, no. 45223/05, ECtHR, Judgment [Extracts], 20 September 2007, para. 81, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-82338;
Becker v. Denmark, no. 7011/75, Commission, Decision, 3 October 1975, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-75008;
K.G. v. Germany, no. 7704/76, Commission, Decision, 11 March 1977, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-169516;
Alibaks and Others v. the Netherlands, no. 14209/88, Commission, Decision, 16 December 1988, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-351;
Tahiri v. Sweden, no. 25129/94, Commission, Decision, 11 January 1995, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-2030

prohibited under Article 3 of Protocol No. 4 to the ECHR, has been interpreted in its general sense to mean "to drive away from a place".[21]

Forcible removal of persons can also amount to a war crime or crime against humanity. For instance, "deportation or forcible transfer of population" as a crime against humanity is defined in the Rome Statute of the International Criminal Court as "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law".[22] The war crime of "unlawful deportation or transfer"[23] involves deportation or transfer of one or more persons to another state or to another location.[24] These definitions are not limited to forced removal *stricto sensu*. They also cover situations in which transfer does not necessarily result from the use of physical force and is brought about by other forms of coercion.

Notwithstanding the variation in terms and the typology, on overall forced removal can be defined as an action of coercing a person to leave the territory of the state or a territory under the state's or a *de facto* authority's control. This action can take the form of use of physical force and the actual physical transfer of displaced person. It can also be manifested in a formal decision (a court ruling, a decision of administrative authorities or order of military command) to remove a particular person or a group of persons, to order a person or a group of persons to leave a territory and to impose a ban on return to the territory.

1.2.Involuntary displacement

On overall, 'displacement' refers to involuntary migration of nationals or non-nationals of a state either within a state or across state borders caused by a variety of reasons. More concretely, 'displacement' is defined as "[t]he movement of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters".[25]

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21 *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, ECtHR, Judgment, 23 February 2012, para. 174, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-109231.
22 Rome Statute of the International Criminal Court (ICC), Rome, 17 July 1998, art. 7(1)(d) and 2(d), accessed 29 November 2019, https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf
23 *Ibid*, art. 8(2)(a)(vii).
24 Elements of Crimes, International Criminal Court (ICC), 2011, art. 8 (2) (a) (vii)-1, accessed 29 November 2019, https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf
25 Glossary on Migration, *International Migration Law*, No. 34 (2019), International Organisation for Migration (IOM), p. 53, accessed 29 November 2019, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf; Recommendation Rec(2006)6 the Committee of Ministers to member states on internally displaced persons, Council of Europe, Committee of Ministers, 5 April 2006, accessed 29 November 2019, https://rm.coe.int/16806b5aaf;

This definition and in particular the alternative use of the terms 'obliged' and 'forced' and the terms 'leave' and 'flee', suggests that involuntary displacement does not necessarily takes place by force, be it physical force or a formal order to remove the person from a territory. It covers the situation where the person is obliged to take the decision to leave the place of residence but the decision is not genuinely voluntary and is compelled by the targeted persecution of the person or more general circumstances. Moreover, use of the term 'compelled' to describe the link between the circumstances and the person's movement in another definition, albeit relevant to a specific context of an armed conflict, further supports this conclusion. In the context of IHL, displacement is defined as "a process in which people are compelled to flee or to leave their homes or places of habitual residence in order to avoid the effects of armed conflict, and find themselves in another part of the country or abroad".[26]

International criminal law and international human rights law confirm that the displacement does not need to be carried out by force to be considered involuntary. In the legal framework of the International Criminal Court, deportation or forcible transfer of the population as a crime against humanity is not restricted to transfer by physical force. It may also include transfer by "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment".[27]

Similar approach to the understanding of the term 'forced' in the context of crime of deportation is followed by the International Tribunal for the Former Yugoslavia (ICTY).[28] According to the ICTY, "forcible displacement means that people are moved against their will or without a genuine choice".[29] It occurs when the person finds itself in the environment of "fear of violence, duress, detention, psychological oppression, and other such circumstances" where there

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The ICRC, UNHCR and the World Bank have similarly defined forced displacement as "the movement of refugees and asylum seekers across international borders as well as the movement of internally displaced people within a country. It encompasses individuals who have been forcibly displaced as a result of persecution, armed conflict, generalized violence or human rights violations". (*See* Displacement in times of armed conflict: How international humanitarian law protects in war, and why it matters, 2018, ICRC, p. 9, accessed 29 November 2019, https://www.icrc.org/en/event/displacement-during-armed-conflict---how-IHL-protects-and-why-it-matters)

26 Displacement in times of armed conflict: How international humanitarian law protects in war, and why it matters, 2018, ICRC, p. 9, accessed 29 November 2019, https://www.icrc.org/en/event/displacement-during-armed-conflict---how-IHL-protects-and-why-it-matters

27 Elements of Crimes, International Criminal Court (ICC), 2011, art. 7 (1)(d), accessed 29 November 2019, https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf

28 *Stakić,* Trial Judgment, ICTY, 31 July 2003, accessed 29 November 2019, https://www.icty.org/x/cases/stakic/tjug/en/stak-tj030731e.pdf
Krajišnik ,Trial Judgement, ICTY, 27 September 2006, para. 724, accessed 29 November 2019, http://www.icty.org/x/cases/krajisnik/tjug/en/kra-jud060927e.pdf;
Simic et al. ,Trial Judgement, ICTY, 17 October 2003, accessed 29 November 2019, http://www.icty.org/x/cases/simic/tjug/en/sim-tj031017e.pdf

29 *Krajišnik,* Trial Judgement, ICTY, 27 September 2006, para. 724, accessed 29 November 2019, http://www.icty.org/x/cases/krajisnik/tjug/en/kra-jud060927e.pdf

is no choice but to leave.[30] In assessing whether the person's displacement was voluntary or not, the Tribunal noted that the genuine intention of the person needs to be ascertained and that, in certain oppressive circumstances, an expression of consent by the person does not necessarily reflect a genuine choice.[31] One indicator of the person's genuine intention was whether the person "would have wished to leave the area absent circumstances of discrimination or persecution".[32]

The IHRL appears to support the view that involuntary displacement may occur where the general circumstances characterised by massive human rights violations, rather than the direct use of physical force, compel the person to leave. The Inter-American Court of Human Rights has found that massacres, destruction of property, intimidation of the inhabitants coupled with fear of these events recurring have led to forced displacement of persons.[33] More recently, the Inter-American Commission on Human Rights in its Resolution on Forced migration of Venezuelans emphasised that multiple and massive violations of human rights impacting the Venezuelans' "right to life, personal integrity, personal liberty, freedom of expression, freedom of movement, judicial protection, health, food, and work" forced migration of large numbers of persons from Venezuela.[34]

1.3. Causing factors of involuntary displacement

As it was already noted, involuntary displacement can result from variety of causes, acting alone or in combination, related to the circumstances in the person's state of origin as well as to the person's individual situation.[35] The circumstances that have been recognized to cause involuntary displacement, in other words that have deprive the person of a genuine choice to remain and have compelled the person to leave her place of residence, include natural or human-made disasters, international or non-international armed conflict, foreign aggression and

30 *Ibid.*
31 *Simic et al*., Trial Judgement, ICTY, 17 October 2003, para. 125, accessed 29 November 2019, http://www.icty.org/x/cases/simic/tjug/en/sim-tj031017e.pdf
32 *Ibid.*
33 Case of the Mapiripán Massacre v. Colombia, Inter-American Court of Human Rights, September 15, 2005, para. 180, accessed 29 November 2019, http://www.corteidh.or.cr/docs/casos/articulos/seriec_134_ing.pdf
Case of the Ituango Massacres v. Colombia, Inter-American Court of Human Rights, July 1, 2006, paras.125, 216, accessed 29 November 2019, http://www.corteidh.or.cr/docs/casos/articulos/seriec_148_ing.pdf
Case of the Moiwana Community v. Suriname, Inter-American Court of Human Rights, June 15, 2005, accessed 29 November 2019, http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_ing.pdf
34 "Forced Migration of Venezuelans", Resolution 2/18, Inter-American Commission on Human Rights (IAHR), 2 March 2018, accessed 29 November 2019, http://www.oas.org/en/iachr/decisions/pdf/Resolution-2-18-en.pdf
35 Displacement in times of armed conflict: How international humanitarian law protects in war, and why it matters, 2018, ICRC, p. 44, accessed 29 November 2019, https://www.icrc.org/en/event/displacement-during-armed-conflict---how-IHL-protects-and-why-it-matters

occupation, situations of generalized violence, political and/or economic processes taking place in a state and, more relevantly to the topic of this research, violations of human rights.[36]

It is indeed well recognised that human rights violations, either when directed at a specific person or aimed at a group to which the person concerned belongs or carried out at a scale that creates a general environment of insecurity and oppression, may result in involuntary displacement of people.[37] One example is the UN Convention on the Status of Refugees which enumerates the causes which may turn a person into a 'refugee': "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion".[38] The UN Refugee Agency (UNHCR) explains further: "States are responsible for protecting the fundamental human rights of their citizens. When they are unable or unwilling to do so – often for political reasons or based on discrimination – individuals may suffer such serious violations of their human rights that they have to leave their homes, their families and their communities to find sanctuary in another country".[39] This covers a variety of reasons that may compel a person to flee – from belonging to a discriminated ethnic group or having joined the religion, which is punishable in the country of origin, to facing persecutions for voicing out certain political opinions.

Another example is various regional instruments on refugee law, which broaden the term 'refugee' extending the list of recognized grounds for obtaining the refugee status. For instance, the Convention Governing the Specific Aspects of Refugee Problems in Africa adds external aggression, occupation, foreign domination or events seriously disturbing public order to the causes that may compel a person to leave the place of habitual residence and become a refugee.[40] The Central American Cartagena Declaration on Refugees covers the "persons who have fled their country because their lives, safety or freedom have been threatened by

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36 *Ibid*, p.9;
Glossary on Migration, *International Migration Law*, No. 34 (2019), International Organisation for Migration (IOM), p. 53, accessed 29 November 2019, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf
37 Prince Sadruddin Aga Khan "Study on Human Rights and Massive Exodus: Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories", Special Report to the Commission on Human Rights, 38th session, United Nations Economic and Social Council, GE.82-10252, 1981, paras. 34-61;
Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its 45th Session, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1993/17, 6 July 1993, accessed 29 November 2019, http://hrlibrary.umn.edu/demo/1993min.html
F.P. Feliciano 'International Humanitarian Law and Coerced Movements of Peoples Across State Boundaries', *Australian Year Book of International Law* 1985 9(1), pp. 114-116.
38 Convention Relating to the Status of Refugees (Refugee Convention), 28 July 1951, entered into force 22 April 1954, art. 1(A)(2), accessed 29 November 2019, https://www.unhcr.org/3b66c2aa10
39 *Ibid.*
40 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, entered into force 20 June 1974, art. 1, accessed 29 November 2019, https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html

generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".[41]

Finally, the UN Guiding Principles on Internal Displacement[42] recognise that violations of human rights may compel a person or a group of persons to leave their home and thus become internally displaced persons.[43]

1.4. State responsibility

Displacement of a person is clearly attributable to a state where it takes place by use of physical force by a state agent or where a person is ordered to leave the state's territory and barred from returning by a formal decision of a state organ. In this instance the state wilfully intends to cause displacement of the person.

Violations of human rights committed by a state and its repressive practices and policies may not necessarily be intended to achieve the removal of a person or people from its territory or territory under its control. The truth is, however, that these violations and policies are carried out by the state. Being directed at specific person or group, creating oppressive and violent environment in the society or a general situation of insecurity and fear for one's life, health or personal integrity, it is the state's actions that compel the person to leave his or her home and habitual place of residence. Admittedly, the person is not removed by force used by a state agent, neither is he or she ordered to leave the territory by a decision of a state organ. The person himself takes the decision to leave his or her home. Nonetheless, it is the actions of the state that have targeted the person or have created the oppressive and vulnerable conditions that leave the person not choice but to flee. Had state's actions and resultant conditions been different, the person's choice to leave or to remain would likely have been different too.

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41 Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, section III, para. 3, accessed 29 November 2019, https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf

42 The UN Guiding Principles on Displacement were developed in 1998 by an expert group led by the Representative of the Secretary-General of the United Nations on Internally Displaced Persons, Francis Deng, based on the applicable international human rights law and humanitarian law. While not legally binding, the Principles gained international support. The authority of the document was confirmed in 2005, when Heads of State and Government gathered in the UN Headquarters at the World Summit recognised it as "an important international framework for the protection of internally displaced persons" and resolved "to take effective measures to increase the protection of internally displaced persons";
See Resolution "2005 World Summit Outcome", UN General Assembly, 16 September 2005, para. 132, accessed 29 November 2019, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

43 Guiding Principles on Internal Displacement, Representative of the Secretary General of the United Nations, 1998, para. 2, accessed 29 November 2019, https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html

The available international instruments recognise that the involuntary displacement may be attributable to the state not only where it intends to remove the population, but also where its actions have the effect of displacing the population or create conditions that compel it. For instance, the PACE's definition of population transfer refers to "a practice or policy having the purpose or effect of moving persons",[44] thus defining broadly the state's conduct and also the causation between such conduct and displacement. The definition indicates that a practice or policy not specifically aimed at driving people out of certain territory can also qualified as enforced transfer.

In another regional human rights system, the state was found responsible for involuntary displacement caused by its failure to ensure its human rights obligations. The Inter-American Court of Human Rights has repeatedly found the state responsible for the breach of the freedom of movement and residence guarantee in the American Convention on Human Rights in cases where violent assaults by the state agents and/or paramilitary groups resulted in the forced displacement of inhabitants and the state failed to administer justice and ensure safe return of the victims. [45]

The UN Guiding Principles on Internal Displacement expressly recognize that the state's failure to comply with its human rights obligations can lead to displacement: "[a]ll authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons".[46]

Another document, which albeit non-binding is illustrative of the generally accepted approaches to the state's role in displacement, is the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the so-called 'Pinheiro Principles').[47] The instrument deals principally with the results of the displacement, it nonetheless speaks of "the right to be protected from displacement" and calls on the states to take measures to prevent

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44 "Enforced population transfer as a human rights violation", Parliamentary Assembly of the Council of Europe (PACE), Resolution 1863 (2012), 27 January 2012, para 1, accessed 29 November 2019, https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18069&lang=en

45 Case of the Mapiripán Massacre v. Colombia, Inter-American Court of Human Rights, September 15, 2005, paras. 169-170, 188-189, accessed 29 November 2019, http://www.corteidh.or.cr/docs/casos/articulos/seriec_134_ing.pdf
Case of the Ituango Massacres v. Colombia, Inter-American Court of Human Rights, July 1, 2006, paras. 216, 219, 222, 225, accessed 29 November 2019, http://www.corteidh.or.cr/docs/casos/articulos/seriec_148_ing.pdf
Case of the Moiwana Community v. Suriname, Inter-American Court of Human Rights, June 15, 2005, paras. 112-114, 118-120, accessed 29 November 2019, http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_ing.pdf

46 Guiding Principles on Internal Displacement, Representative of the Secretary General of the United Nations, 1998, Principle 5, accessed 29 November 2019, https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html

47 Principles on housing and property restitution for refugees and displaced persons, UN Commission on Human Rights, Sub-Commission on the Protection and Promotion of Human Rights, 56th session, 28 June 2005, E/CN.4/Sub.2/2005/17, accessed 29 November 2019, https://www.unhcr.org/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html

displacement and to ensure that no one subjected to displacement either by the state or non-state actors.[48] This Principle is asserted not only with regard to the 'traditional' categories of refugees and internally displaced persons but also extends to "other similarly situated displaced persons who fled across national borders but who may not meet the legal definition of refugee [...] who were arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence, regardless of the nature or circumstances by which displacement originally occurred".[49]

Finally, it should be noted that it is usually the acts of the state that exercises sovereignty over the territory in which or from which the displacement takes place that lead to displacement either within its own borders or across them. However, it may be, and indeed is the case in Crimea, that a foreign state occupies and exercises effective control over the sovereign territory of another state and is therefore under an obligation to guarantee human rights of the population of the territory under its control.[50] In this instance, the actions of the occupying state with regard to the population of the occupied territory lead to the displacement from the territory of the occupied state, either within the occupied state or across its borders. [51]

1.5.Displaced persons

Displaced persons are generally referred by the term 'migrant', which is "[a]n umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons".[52]

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48 Guiding Principles on Internal Displacement, Representative of the Secretary General of the United Nations, 1998, Principle 5, accessed 29 November 2019, https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html

49 *Ibid,* Principle 1.2.

50 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ, 9 July 2004, p. 136, paras. 109 -113, accessed 29 November 2019, https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf;
Al-Skeini and others v. the United Kingdom, no. 55721/07, ECtHR, Judgment, 7 July 2011, para. 142, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-105606;
General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, UN Human Rights Committee (HRC), 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 10, accessed 29 November 2019, https://www.refworld.org/docid/478b26ae2.html

51 Draft Recommendation Rec(2006)… of the Committee of Ministers to member states on internally displaced persons, Explanatory Memorandum, CM(2006)36-Add, 8 March 2006, accessed 29 November 2019, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d8728:
"[t]he term "state concerned" refers to the state affected by internal displacement on its national territory. However, in exceptional circumstances determined by the highest international organs, it may also refer to a third state if this state exercises effective control or de facto authority over a territory located outside its internationally recognised borders"

52 Glossary on Migration, *International Migration Law*, No. 34 (2019), International Organisation for Migration (IOM), p. 130, accessed 29 November 2019, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf

Migrants have also been described as "individuals who leave or flee their country of origin or habitual residence to seek safety or better prospects".[53] Various terms are used to describe particular types of migrants depending on the cause and manner of the movement. Among these are refugee, asylum seeker, internally displaced person, labour migrant, stateless migrant, migrant deemed irregular by public authorities,[54] smuggled migrant, international student[55] etc.

This master thesis uses the term 'displaced persons' to refer to those persons who have been forcible removed from Crimea but also those who have been compelled to leave their home or habitual place of residence because of human rights violations and repressive policies and practices of the state in control of the territory of Crimea. The term 'displaced person' covers those who left Crimea for mainland Ukraine as well as those who moved to another country. The term also serves to distinguish involuntary migration, which is the focus of this study and encompasses the forcibly removed and involuntarily displaced persons, from the voluntary migration. In total, the term could be said to refer to three categories of migrants: refugees, internally displaced persons and those who do not fall within either of the two categories but have nonetheless been expelled or forcibly removed from the territory of Crimea or compelled to leave their home or habitual place of residence by the general environment of human rights violations and oppression.

A refugee, as defined by the UN Convention on the Status of Refugees, is a person who

> "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".[56]

To qualify as a refugee within the meaning of the UN Convention, several cumulative criteria must be met. Firstly, the person must have crossed the border of the country of origin, that is the country of the nationality or the country of the habitual residence of a stateless person. Secondly, the person must have left because of fear of persecution for belonging to certain group or expressing certain views. For the person's fear of persecution to be considered "well-founded"

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53 Displacement in times of armed conflict: How international humanitarian law protects in war, and why it matters, 2018, ICRC, p. 9, accessed 29 November 2019, https://www.icrc.org/en/event/displacement-during-armed-conflict---how-IHL-protects-and-why-it-matters

54 *Ibid.*

55Glossary on Migration, *International Migration Law*, No. 34 (2019), International Organisation for Migration (IOM), p. 131, accessed 29 November 2019, https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf

56 Convention Relating to the Status of Refugees (Refugee Convention), 28 July 1951, entered into force 22 April 1954, art. 1, accessed 29 November 2019, https://www.unhcr.org/3b66c2aa10

it is sufficient to show that the person can be seen as belonging to a particular group and that this group suffers from persecution in the country of origin. For instance, for a believer of a religion outlawed in a country, it is sufficient to prove belonging to the religious minority, there is no need for the person herself to have experienced the persecutions. The so-called refugees *sur place* are those who might have left their country of origin for different reasons but they cannot return for fear of retaliation for their actions abroad, for example, political activity or conversion to another religion.

Unlike 'refugee', the term 'internally displaced person' is not defined in an international convention. However, a number of non-binding international instruments deal with the concept. For instance, UN Guiding Principles on Displacement state that:

> "the internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border".[57]

Internal displacement is a form of involuntary migration that takes place within the country of origin of the person concerned. Internally displaced persons are sometimes referred to as 'internal refugees',[58] since while the conventional definition of refugee is more restrictive with regard to the causes for the displacement, both categories concern involuntary migrants, the main distinction being in the destination of the displacement.

In conclusion, involuntary displacement occurs when the circumstances do not leave the person a genuine choice to remain in home or place of residence and compel the person to leave. In contrast to forced removal, instances of involuntary displacement can be difficult to define and detect. In determining whether displacement of the person who has decided to leave was indeed involuntary, person's individual circumstances, for instance ethnicity, belonging to a religious minority or political activity must be taken into account. The objective circumstances related to state's actions that may have affected the decision to leave, for instance persecution of specific ethnic group, ban on a religious minority or existence of state practice directed as suppression of specific political opinions or freedom of speech more generally. Taken together,

57 This definition is well recognised and accepted. For instance, glossaries quoted above, Glossary on Migration compiled by the IOM and the one making part of the study "Displacement in times of armed conflict: How international humanitarian law protects in war, and why it matters", developed under the ICRC refer to the definition of an internally displaced person found in the Guiding Principles (see pages 107 and 9 respectively).
58 "Internal Displacement in Europe", Report, Mrs Stoisits, Committee on Migration, Refugees and Population, Parliamentary Assembly of the Council of Europe, 31 October 2003, para. 7, accessed 29 November 2019, http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10351&lang=EN#P106_11618

these factors help to answer the question, whether the person had a genuine choice to remain, in other words whether the person would have decided to remain despite human rights violations and the oppressive environment created by the state.

2. FACTORS CAUSING INVOLUNTARY DISPLACEMENT FROM CRIMEA

Following the occupation of the Crimean peninsula, the folding of human rights and freedoms on its territory became the usual and daily practice of the Russian Federation as an occupying power.[59] A number of violations of international humanitarian law and international human rights law by the RF have had and continue to have a significant negative impact on the situation of Ukrainian citizens in the occupied territory. Consequently, a significant number of Crimean residents left the peninsula, either for mainland Ukraine, or abroad. This part of the thesis initially provides a brief description of the initial stage of occupation in 2014 and the actual situation with people displacement following it.

It has been consistently reported by international organizations that the situation in Crimea, since its occupation and annexation by the RF, has been marked by human rights violations, persecutions of persons and minority groups, and curtailment of liberties and freedoms. This Chapter also examines the human rights violations that arise from the repressive policies and practices of the RF in Crimea and that have led to displacement of people from Crimea.

2.1. Events surrounding the occupation of Crimea

Upon the dissolution of the Soviet Union in 1991, ARC became an entity within the independent state of Ukraine with the city of Sevastopol having a special administrative status.[60]

Following the Euromaidan protests and the change of power in Ukraine in early 2014, the RF occupied the Crimean peninsula. On 20 February 2014 the Black Sea Fleet of the RF which was situated in Crimea began to move from the deployment positions, in breach of the relevant agreements between Ukraine and the RF, signed in 1997 and 2010; additional Russian troops are also believed to have be sent to Crimea on this day.[61] In the following days, uniformed armed men without insignia seized control of Crimea's Parliament and Government building. Under these conditions, the Parliament voted to dissolve the Government, to replace the Crimean

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[59] "Rights in Retreat – Abuses in Crimea", Human Rights Watch, 17 November 2014, p.34, accessed 29 November 2019, https://www.hrw.org/report/2014/11/17/rights-retreat/abuses-crimea

60 Constitution of Ukraine, adopted 28 June 1996, art. 133, accessed 29 November 2019, http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

61 Statement on "Four years of illegal occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation", as delivered by Ambassador Ihor Prokopchuk, Permanent Representative of Ukraine to the International Organizations in Vienna, to the 1177th meeting of the Permanent Council, 1 March 2018, accessed 29 November 2019, https://mfa.gov.ua/en/press-center/news/63411-zajava-delegaciji-ukrajini-chotiri-roki-nezakonnoji-okupaciji-ar-krim-ta-msevastopoly-rosijsykoju-federacijeju-movoju-originalu

Prime Minister with Sergey Aksyonov of the pro-Russian Russian Unity party, and to hold a so-called referendum on Crimea's separation from Ukraine.[62]

On 1 March the Russian Federation's Parliament approved a request from President Vladimir Putin permitting the use of Russian armed forces to protect the Russian speaking population in Crimea. Reportedly, in the meantime, the RF started boosting its military presence in Crimea. Unidentified armed men, without military insignia, reportedly Russian armed forces militants and/or allied local paramilitary groups took control of the administrative border between Crimea and the rest of Ukraine and blocked several Ukrainian military bases.[63]

The referendum, initially scheduled for May, was brought forward, and took place on 16 March 2014. The choice given to the Crimean residents was whether to have Crimea join the RF as a constituent entity or to revert to the 1992 Crimean Constitution with the peninsula remaining a part of Ukraine. The environment in which the voting took place was marked by the presence of paramilitary and so called 'self-defence' groups as well as soldiers without insignia, widely believed to be from the RF.[64] The results of the referendum have never been officially published. Information on its results is based solely on the controversial public statements of the persons involved in its organisation, who claim that the majority voted for joining the RF.[65]

On 17 March 2014, the Parliament of Crimea declared independence from Ukraine and requested full accession to the Russian Federation.[66] On the same date, by a Presidential Decree the Kremlin recognized the results of the Crimean referendum.[67]

On 18 March 2014, the Treaty on Accession of the Republic of Crimea to the Russian Federation (the Treaty on Accession) was signed by the *de facto* authorities of Crimea and the RF. According to the Treaty on Accession, the RF recognized the ARC as self-declared independent 'Republic of Crimea' and formally incorporated it along with the 'federal city of Sevastopol' as two constituent entities of the Russian Federation.[68] Notably, the question of the status of the city of Sevastopol had not been suggested at the so-called referendum, despite the special administrative status of the city, distinct from the ARC, under the Ukrainian legislation, but the Treaty on Accession covered it too.[69]

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62 Report on the human rights situation in Ukraine, OHCHR, 15 April 2014, para. 19
63 *Ibid*, para. 20.
64 *Ibid*, para. 86.
65 *Ibid.*
66 "Crimean parliament formally applies to join Russia", BBC News, 17 March 2014, accessed 29 November 2019, https://www.bbc.com/news/world-europe-26609667
67 "On the Recognition of the Republic of Crimea", Decree of the President of the Russian Federation, no. 147, 17 March 2014, accessed 29 November 2019, http://kremlin.ru/acts/bank/38202
68 Treaty on the Accession of the Republic of Crimea to the Russian Federation, Official site of the president of Russia, 18 March 2014, accessed 29 November 2019, http://en.kremlin.ru/events/president/news/20604
69 *Ibid.*

From 20 February 2014, or at least from 18 March 2014, when the Treaty on Accession, Crimea has been under the effective control of the RF. On 21 March 2014, the RF enacted Federal Constitutional Law no. 6-FKZ On Admission to the Russian Federation of the Republic of Crimea and the Establishment within the Russian Federation of the New Constituent Entities – the Republic of Crimea and the City of Federal Importance Sevastopol, which entered into force on 1 April 2014.[70]

The reaction of the international community to the events of 2014 was to declare that the RF had occupied part of Ukraine's territory and to declare the referendum invalid. The territorial integrity of Ukraine, and Crimea being part of it, was repeatedly reaffirmed during the following years.[71]

2.2. People displacement from Crimea following its occupation

A significant number of Crimean residents left the peninsula following its occupation in 2014. The movement of Crimeans from the peninsula continues until today. According to the Report on the Results of Activities of the Representation of the President of Ukraine in the Autonomous Republic of Crimea for the II Quarter of 2019, the total number of former Crimean residents that have moved to mainland part of Ukraine since 2014 is increasing. As at 5 July 2019 this number reached 39,771 persons.[72]

Those who have left Crimea for mainland Ukraine have moved within the internationally recognised borders of Ukraine and therefore fall within the definition of internally displaced persons as discussed in Chapter 1. They have been recognised as internally displaced

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70 Federal constitutional law No. 6-FKZ "On the admission to the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new subjects - the Republic of Crimea and the city of federal importance Sevastopol", March 21, 2014, accessed 29 November 2019, http://www.consultant.ru/document/cons_doc_LAW_160618/

71 *See* "Territorial integrity of Ukraine", UN General Assembly Resolution, A/RES/68/262, 27 March 2014, accessed 29 November 2019, https://undocs.org/A/RES/68/262;
"Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation", Parliamentary Assembly of the Council of Europe (PACE), Resolution 1990 (2014), 10 April 2014, accessed 29 November 2019, http://assembly.coe.int/nw/xml/Xref/Xref-XML2HTML-en.asp?fileid=20882;
"Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", UN General Assembly, Resolution 71/205, 19 December 2016, accessed 29 November 2019, https://undocs.org/en/A/RES/71/205;
"Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", UN General Assembly, Resolution 71/190, 19 December 2017, accessed 29 November 2019, https://undocs.org/en/A/RES/72/190

72 Report on the Results of Activities of the Representation of the President of Ukraine in the Autonomous Republic of Crimea for the II Quarter of 2019, p.13, accessed 29 November 2019, http://www.ppu.gov.ua/zvity-pro-rezultaty-diyalnosti-predstavnytstva/zvit-pro-rezultaty-diyalnosti-predstavnytstva-prezydenta-ukrayiny-v-avtonomnij-respublitsi-krym-za-2-kvartal-2019-roku/
As the authorities list only officially registered persons, it is possible that the actual data is different and the number of migrants from Crimea is higher.

persons both domestically within the Ukrainian regulatory framework and in accordance with the international instruments. According to the official data, 3,057 migrants to mainland Ukraine from Crimea were registered as internally displaced persons in 2019.[73]

There is no available data concerning migration abroad from Crimea following its occupation. Some information exists regarding the migration of Crimean Tatars to Turkey.[74]

The migration from Crimea was noted by the Office of the United Nations High Commissioner for Human Rights. Its Report on the Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), covering the period from 22 February 2014 to 12 September 2017, underlines the constant change of the demographic structure of Crimea since the so-called referendum. The change is caused by Crimean residents migrating from Crimea to mainland Ukraine as well as the continuous influx of Russian citizens into Crimea.[75]

In summary, the occupation of Crimea has led to migration of its residence to the mainland part of Ukraine and abroad. Reasons for the migration vary and range from forced removal and entry bans to displacements on account of the drastic changes brought about by Crimea's occupation and annexation by the RF and its subsequent policies.

2.3. Imposition of the Russian legal system in Crimea

Imposition of the legislation of the Russian Federation on the territory of Crimea has caused numerous difficulties for the residents of Crimea and for certain categories of people especially. It is a cross-cutting issue as many factors described in this thesis as separate infringements of rights and freedoms were committed within the framework of the new legislation. A separate problem lies in the instances of the retrospective application of the imposed legislation. The legislation was the basis, for example, for bringing to criminal liability participants of pro-Ukrainian demonstrations which had taken place well before the imposition of the legislation.

The legislation of the RF became valid for the Crimean peninsula in accordance with the so-called Treaty on Accession and the implementing Law On Admission to the Russian Federation of the Republic of Crimea and the Establishment within the Russian Federation of the New Constituent Entities – the Republic of Crimea and the City of Federal Importance

73 *Ibid.*
74 Report on the human rights situation in Ukraine, OHCHR, 15 April 2014, para. 92
75 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, paras. 51-52

Sevastopol, which came into force on 1 April 2014.[76] The land border between the newly-established 'Republic of Crimea' and the territory of Ukraine was to be deemed the State Border of the Russian Federation.[77] Regulatory framework of the ARC and the City of Sevastopol under Ukrainian legislation was to remain partly in force till the end of the transition period (until January 1st 2015), except for those provisions of Ukrainian law that contradicted the Russian legislation.[78]

The Law further provided for the establishment of the state agencies[79] and local self-government bodies,[80] judiciary,[81] public prosecution service,[82] notaries,[83] bar,[84] insurance scheme[85] and so on within the Russian system. The courts in Crimea were to apply procedural laws of the Russian Federation.[86] Judges, prosecutors, lawyers, notaries and some other categories of professionals were required by the Law to possess Russian citizenship, to comply with a number of requirements set by Russian laws and to pass a qualification exam.[87]

In practice, imposition of the Russian legislation translated into a drastic change in the legal system in Crimea affecting many areas of life and professional activities from the organisation of public authorities to the medical treatment protocols, from establishment of associations and organisation of public gatherings to registration of private vehicles. People had to obtain new documents, including passports, driving licenses, medical insurance, to register anew their private entrepreneur status and so on.[88]

New rules became applicable to the political, cultural, religious aspects of life. Existing NGOs and religious associations had to apply for registration in accordance with Russian legislation to be able to continue their activity. In certain cases, the application of registration

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76 Federal constitutional law No. 6-FKZ "On the admission to the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new subjects - the Republic of Crimea and the city of federal importance Sevastopol", March 21, 2014, art. 23, para. 1, accessed 29 November 2019, http://www.consultant.ru/document/cons_doc_LAW_160618/;
Treaty on the Accession of the Republic of Crimea to the Russian Federation, Official site of the president of Russia, 18 March 2014, art. 5, accessed 29 November 2019, http://en.kremlin.ru/events/president/news/20604
77 Federal constitutional law No. 6-FKZ "On the admission to the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new subjects - the Republic of Crimea and the city of federal importance Sevastopol", March 21, 2014, art. 3, para. 2, accessed 29 November 2019, http://www.consultant.ru/document/cons_doc_LAW_160618/
78 *Ibid*, art. 23, paras. 2-3.
79 *Ibid*, Art. 7.
80 *Ibid*, Art. 19.
81 *Ibid*, Art. 9.
82 *Ibid*, Art. 8.
83 *Ibid*, Art. 20.
84 *Ibid*, Art. 21.
85 *Ibid*, Art. 11.
86 *Ibid*, Art. 9, paras. 7-8.
87 *Ibid*, Art. 7-9, 20-21.
88 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 73.
Report on the human rights situation in Ukraine, OHCHR, 15 May 2014, para. 124.
Report on the human rights situation in Ukraine, OHCHR, 15 June 2014, para. 285.

was denied on obscure grounds without a transparent procedure. Education in Ukrainian language became virtually non-existent.

An example of the impact of the new legislation on a particular group of people concerns the treatment of HIV/AIDS patients in Crimea, especially drug users. Under Ukrainian laws, they have access to opioid substitution therapy (OST), which is part of the programme for controlling HIV/AIDS and other infectious disease among injecting drug users. As of 1 March 2014, there were 806 people using OST in Crimea, who stopped receiving the therapy because of the occupation of Crimea.[89] Between March 2014 and May 2015, up to 30 people died due to complications related to drug overdose or chronic illness, while dozens fled to mainland Ukraine.[90] As of June 2018, at least 115 HIV-positive people have left the peninsula to mainland Ukraine.[91]

Imposition by Russia of its legislation in Crimea in breach of international law, and its consequences, were repeatedly criticised by the United Nations and its organs. In its 2016 Resolution 71/205 on the situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine) the General Assembly directly referred to the question of the Russian legal system on the Crimean territory and condemned "the imposition of the legal system of the Russian Federation and the negative impact on the human rights situation in Crimea"[92].

In its 2017 Resolution 72/190 of the same title, the General Assembly further condemned "the imposition and retroactive application of the legal system of the Russian Federation, and its negative impact on the human rights situation in Crimea".[93]

The OHCHR reports point out that the Russian legal framework is "restrictive" and causes "broad curtailment" of the rights of the Crimean residents;[94] that it is "restrictive of civil liberties"[95] and has together with the "resulting administration of justice", "affected human rights in Crimea, especially for ethnic Ukrainians, minority groups, and indigenous peoples, such as Crimean Tatars"[96] or "further undermined the exercise of fundamental freedoms".[97]

89 Report on the human rights situation in Ukraine, OHCHR, 15 May 2014, para. 124.
90 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2015, para. 171.
91 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 13 September 2017 to 30 June 2018, OHCHR, para. 63.
92 "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", UN General Assembly, Resolution 71/205, 19 December 2016, accessed 29 November 2019, https://undocs.org/en/A/RES/71/205
93 "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", UN General Assembly, Resolution 71/190, 19 December 2017, accessed 29 November 2019, https://undocs.org/en/A/RES/72/190
94 Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, OHCHR, para. 15.
95 Report on the human rights situation in Ukraine, 16 February to 15 May 2016, OHCHR, para. 178.
96 Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, OHCHR, para. 21.

Several aspects related to the imposition of the Russian legal system can be pointed out as having likely influenced the decision of Crimea's residents to leave the peninsula. Firstly, the very fact of the imposition of the legislation based on the illegal referendum and the Treaty on Accession, signified annexation of Crimea and its absorption into the legal and political environment of the occupying state. Secondly, the manner in which the imposition was carried out resulted in numerous practical difficulties and issues of legal uncertainty, such as, for example, the need to re-register NGOs or the situations where judicial proceedings initiated under the Ukrainian laws were to be completed in accordance with the Russian laws. Thirdly, in substance the legislation imposed led to numerous restrictions that did not exist in social, political, cultural and other areas of life in Crimea before. Furthermore, the *de facto* authorities in Crimea often imposed these restrictions in an unfair manner and by means that lacked clarity and transparency. Finally, the imposed Russian legislation was sometimes applied retrospectively, which led, for instance, to prosecutions and convictions of persons for the posts on social networks published before the occupation.

2.4. Human rights violations which are causing factors of displacement from Crimea

The outward migration from Crimea was caused by a number of interrelated factors, ranging from systematic human rights violations and drastic change of circumstances to direct persecution of certain groups of residents.

This subchapter demonstrates that many of the repressive practices and policies of the *de facto* authorities in Crimea that have led to involuntary displacement of persons from Crimea can be said to amount to violation of international human rights law. For this purpose, various universal and regional, general and specialised international instruments of binding, but also of non-binding, character are examined.

The research focuses largely on the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). These are two major international human rights instruments and the RF is a party of it. The section will also address treaties dedicated to specific human rights issues such as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. In the course of the analysis, the provisions of the Universal Declaration of Human Rights (UDHR) will be

97 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 8.

mentioned, which, while having no legally binding nature, is an important instrument that laid foundation for many aspects of the modern IHRL.

As the state in effective control of Crimea, the RF is under the obligation to ensure respect for human rights as mandated by these instruments on the territory of Crimea. It bears responsibility for any violation of the ICCPR and ECHR committed against the residents of Crimea under its jurisdiction. This view is shared by the UN organs,[98] and the jurisprudence of the European Court of Human Rights supports the approach. [99] To illustrate, the Human Rights Committee in one of its General comments explicitly underlined that the state parties "must respect and protect the lives of individuals located in places that are under their effective control, such as occupied territories".[100] The observations of the UN bodies related to the fulfilment by the RF of its obligations under the relevant treaties confirm that the Russian Federation exercises effective over Crimea and is therefore under an obligation to comply with the treaties in Crimea's territory.[101]

2.4.1. Right to life and prohibition of ill-treatment

The right to life and the prohibition of ill-treatment belong to the fundamental rights guaranteed in a number of universal and regional international instruments.

The UDHR provides that everyone has the right to life, liberty and security of person[102] and no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.[103] The ICCPR guarantees the right to life in Article 6[104] and prohibition of ill-treatment in Article 7.[105] The prohibition in Article 7 is complemented by the requirements of

98 General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, UN Human Rights Committee (HRC), 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 10, accessed 29 November 2019, https://www.refworld.org/docid/478b26ae2.html
99 *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, ECtHR, Judgment, 19 October 2012, para. 106, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-114082
100 General comment no. 36 [2018] on article 6 of the ICCPR, on the right to life, UN Human Rights Committee (HRC), 30 October 2018, CCPR/C/GC/36, accessed 29 November 2019, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf
101 Concluding observations on the sixth periodic report of the Russian Federation, UN Committee against Torture, 8 August 2018, para. 48, accessed 29 November 2019, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/CAT_C_RUS_CO_6_32062_E.pdf
102 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 3, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
103 *Ibid*, art. 5.
104 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 6, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
105 *Ibid*, art. 7.

Article 10 of the Covenant, which stipulates that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[106]

The UN Human Rights Committee underscored that the right to life should not be interpreted narrowly.[107] It includes the state's obligations to protect against other actors,[108] and to investigate properly allegations of violations of Article 6.[109] As to the prohibition of ill-treatment, it covers acts that cause physical pain and those causing mental suffering.[110] Ill-treatment can be inflicted by officials and private persons.[111] States are required to take legislative, administrative, judicial and other measures to prevent and punish the relevant acts.[112] As one of the examples of acts violating Article 7 the Committee names arbitrary deprivation of life of the person's relative.[113]

Turning to the situation of Crimea, the UN Human Rights Committee in its Concluding observations on the seventh periodic report of the Russian Federation mentions the reports "that torture and ill-treatment, including for the purpose of eliciting confessions, are still widely practised" with the reference to Article 7 of the Covenant.[114] The Committee specifically referred to the situation in Crimea mentioning the reports "of serious human rights violations, many of which involve the "Crimean self-defence" forces, including enforced disappearances, abductions, arbitrary detention, ill-treatment and attacks against journalists".[115]

The initial stage of the occupation was marked by large-scale violence. The OHCHR Report on the human rights situation in Ukraine of 15 April 2014 referred to a number of cases of "abduction, unlawful arrest and detention by unidentified armed groups, harassment, and violence against peaceful demonstrators", as well as arbitrary detentions and disappearances of activists and journalists.[116] Several members of the NGO Ukrainian House were reportedly

106 *Ibid*, art. 10 para. 1.
107 General comment no. 36 [2018] on article 6 of the ICCPR, on the right to life, UN Human Rights Committee (HRC), 30 October 2018, CCPR/C/GC/36, para. 3, accessed 29 November 2019, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf
108 *Ibid*, para. 7.
109 *Ibid*, paras. 27-28.
110 General comment No. 20: Article 7 Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, UN Human Rights Committee, CCPR/C/GC/20, 10 March 1992, para. 5, accessed 29 November 2019, https://www.refworld.org/docid/453883fb0.html
111 *Ibid*, para. 2.
112 *Ibid*, para. 8.
113 General comment no. 36 [2018] on article 6 of the ICCPR, on the right to life, UN Human Rights Committee (HRC), 30 October 2018, CCPR/C/GC/36, para. 56, accessed 29 November 2019, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf
114 Concluding observations on the seventh periodic report of the Russian Federation, UN Human Rights Committee, 28 April 2015, accessed 29 November 2019, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhstWB5OJfDOQhMEkiX20XNhIfwS44vVjDCG9yOfCaGgJ%2B4aMVruPFpyUaMYJvfEOEBQCPHWJdUArBGlBJo5DzI4ZqOZa12FMGUZJqFSjwcIYP
115 *Ibid.*
116 Report on the human rights situation in Ukraine, OHCHR, 15 July 2014, para. 85.

tortured and forcibly disappeared in connection with their pro-Ukrainian activities and opposition to the Russian presence.[117]

Dozens of persons resided in Crimea have gone missing since 2014. While the majority turned out to be in custody of the *de facto* authorities in Crimea and were subsequently released, the whereabouts of others are still unknown.[118] Numerous reports of forced disappearances concern the period surrounding the referendum of March 2014. Some of disappeared persons were released with signs of torture or other forms of ill-treatment. The dead body of Reshat Ametov, a Crimean Tatar man, was found, bearing signs of torture, hand-cuffed and with adhesive tape over his mouth, on 16 March 2014, several days after he had been reportedly abducted by uniformed men.[119] Reports of the disappearances, including alleged incommunicado detentions by the law enforcement officials of the *de facto* authorities have continued during the next years of the occupation.[120]

Two relevant specialised documents that must be mentioned are the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987.[121] While the latter contains no substantive provisions dealing merely with the establishment and operation of a monitoring body, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,[122] the former lists a whole range of the state's obligations. These include, among others, criminalizing the act of torture,[123] taking effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under the state's jurisdiction,[124] ensuring proper investigation of allegations of torture,[125] providing compensation to the victim,[126] ensuring that statements made under torture are not invoked as evidence in any proceeding.[127] It is also foreseen that the states are to prevent and investigate other acts of cruel, inhuman or degrading treatment or punishment,

117 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 163.
118 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR,25 September 2017, paras. 96, 98, 100;
Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, OHCHR, 13 September 2017 to 30 June 2018, paras. 22, 155.
119 Report on the human rights situation in Ukraine, OHCHR, 15 April 2014, para. 85.
120 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2018, paras. 91-93.
121 The Russian Federation is a party to both Conventions.
122 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe, 26 November 1987, entered into force 1 February 1989, accessed 29 November 2019, https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a67f
123 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly Res 39/46, 10 December 1984, entered into force 26 June 1987, art. 4, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/cat.aspx
124 *Ibid,* art. 2.
125 *Ibid,* art. 12-13.
126 *Ibid,* art. 14.
127 *Ibid,* art. 15.

which do not amount to torture as defined by this Convention, "when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".[128]

The UN Committee against Torture in its Concluding observations on the sixth periodic report of the Russian Federation (August 2018) mentioned several issues either similar to the situations reported in Crimea, or comprising explicit references to the events on the Crimean territory. One of the issues considered by the Committee in general but relevant for Crimea, is the problem of enforced disappearances and lack of investigation thereof.[129] Involuntary placement in psychiatric institution may not be used by law enforcement authorities as a form of harassment and punishment of political opponents and activists, particularly in Crimea.[130] The Committee further mentioned excessive use of force by law enforcement officials against participants of public assemblies[131] and consistent reports of violence against the LGBTI persons.[132] The issue of lack of opioid substitution therapy mentioned earlier was also pointed out by the Committee.[133]

As to Crimea more specifically, the Committee noted violations of the Convention with regard to "serious human rights violations, including abductions, arbitrary detentions, enforced disappearances, torture, ill-treatment and extrajudicial killings, particularly of Crimean Tatars, pro-Ukraine activists and affiliates of the Mejlis, by members of the Federal Security Service and the Crimean "self-defence forces", routine use of torture to obtain false confessions for politically motivated prosecutions, including the case Oleg Sentsov, poor conditions of detention, in particular lack of access to medical care which resulted in numerous deaths in custody, complete lack of investigation of allegations of torture by public officials. Regarding the case of Oleg Sentsov and Oleksandr Kolchenko, the main prosecution witness, Hennadii Afanasiev, revoked his earlier testimony in court stating that it was extracted from him under torture. He also informed the court about the threats from the FSB against himself and his mother. Mr Sentsov himself is believed to have been ill-treated during pre-trial detention.[134]

The Committee also noted as violations of the Convention against Torture the consistent reports "that the 'foreign agent law' and the 'undesirable foreign and international organizations law' are often used as a means of administrative harassment against human rights organizations,

128 *Ibid*, art. 16.
129 Concluding observations on the sixth periodic report of the Russian Federation, UN Committee against Torture, 8 August 2018, para. 46, accessed 29 November 2019, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/CAT_C_RUS_CO_6_32062_E.pdf
130 *Ibid*, para. 40.
131 *Ibid*, para. 18.
132 *Ibid*, para. 32.
133 *Ibid*, para. 20.
134 Report on the human rights situation in Ukraine, OHCHR, 16 May to 15 August 2015, para. 169.

forcing them to reduce and eventually cease their activities",[135] and that "provisions of the Criminal Code on combating terrorism are often used against civil activists, including anti-fascists; that members of the Federal Security Service routinely use torture to extract confessions from those accused of terrorist activities; and that no criminal prosecution has been brought with respect to allegations of torture".[136]

The ECHR guarantees right to life in Article 2 and the prohibition of torture and other forms of ill-treatment in Article 3.[137] The European Court of Human Rights has well-developed case law with regard to both guarantees, and there are certain examples relevant to the reports on events in Crimea. This concerns both the state agents' direct role in inflicting death or ill-treatment and the state's positive obligations to protect the person rights. Article 2 and Article 3 comprise substantial and procedural limbs. The procedural aspect refers to the obligations of the state to investigate allegations of death or ill-treatment. Procedural limb of these provisions can be violated even in the absence of a breach of the substantial aspect or in cases where the alleged actions are not attributed to state actors.

Unacknowledged detention of a person by security forces resulting in the person's disappearance can amount to violation of Article 2.[138] The state's obligation to guarantee right to life may be breached where the person was abducted by unknown individuals and has disappeared and where the state has subsequently failed to investigate the case. [139] Notably, in *Cyprus v. Turkey* the European Court found the occupying state in breach of Article 2 for failure to investigate the fate of persons that have disappeared in the life-threatening circumstances in the occupied territories.[140]

As to the ill-treatment of different levels of severity caused by state officials, poor conditions of detention including lack of medical treatment can also constitute a violation of Article 3 of the European Convention. In certain cases the placement in detention of a severely handicapped person alone can amount to ill-treatment.[141]

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135 Concluding observations on the sixth periodic report of the Russian Federation, UN Committee against Torture, 8 August 2018, para. 28, accessed 29 November 2019, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/CAT_C_RUS_CO_6_32062_E.pdf
136 *Ibid*, para. 34.
137 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 3, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
138 *Timurtaş v. Turkey*, no. 23531/94, ECtHR, Judgment, 13 June 2000, paras 86, 98, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-58901
139 *Osmanoğlu v. Turkey* no. 48804/99, ECtHR, Judgment, 24 January 2008, paras 57, 84, 92, 98, 99, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-84667
140 *Cyprus v. Turkey*, no. 25781/94, ECtHR, Judgment, 10 May 2001, para. 136, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59454
141 *Price v. United Kingdom*, no. 33394/96, ECtHR, Judgment, 10 July 2001, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59565

The case of *Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others* v. Georgia, where the authorities failed to protect the applicants from an assault by a group of private persons motivated by religious hatred was also considered by the European Court in the light of the state's positive obligations to protect from violence caused by non-state agents. The Court found a violation of Article 3 in respect of some of the applicants.[142]

The failure to provide healthcare, including deprivation of access to appropriate emergency care,[143] can in some cases enter the scope of Article 2,[144]

Also it should be noted that all 'new non-citizens' face discrimination is social protection and health care, as Russian citizenship is a precondition for access to free state health insurance.[145] Some residents of Crimea without Russian citizenship were denied medical assistance even when in grave condition. For instance, on 3 April 2016, a woman who had rejected Russian citizenship died in the reception room of a public hospital following an initial refusal to admit her on the grounds of absence of medical insurance.[146]

With the reference to Article 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7 of the ICCPR and Article 3 of the ECHR, the OHCHR spoke about violence surrounding the Crimean referendum,[147] treatment of the persons "holding dissenting views, in particular Crimean Tatars and ethnic Ukrainians" by the FSB and the Crimean police "prior to and during detention, in penitentiary institutions and in places where people were illegally kept incommunicado",[148] forced internment in a psychiatric institution[149] etc. In the same context, it noted that "[m]ultiple and grave violations of the right to physical and mental integrity have been committed by state agents of the Russian Federation in Crimea since 2014. The absence of investigations suggests that their perpetrators have benefited from and continue to enjoy impunity".[150]

Consequently, the reports of forced disappearances, assaults, ill-treatment in detention, lack of proper investigations of such cases and issues related to medical assistance can potentially raise issues of the right to life and prohibition of torture or other forms of ill-treatments, as enshrined in general and specialised international human rights instruments. By

142 *Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia,* no. 71156/01, ECtHR, Judgment, paras 124-125, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-80395
143 *Mehmet Şentürk and Bekir Şentürk v. Turkey*, no. 13423/09, ECtHR, Judgment, 9 April 2013, para. 97, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-118722
144 *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECtHR, Judgment, 17 January 2002, paras 48-49, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-60329
145 Report on the human rights situation in Ukraine, OHCHR, 16 November 2015 to 15 February 2016, para. 195.
146 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2016, para. 202.
147 Report "Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", OHCHR, 25 September 2017, para. 86.
148 *Ibid,* para. 90.
149 *Ibid,* para. 92.
150 *Ibid,* para. 85.

creating a general environment of grave human rights violations in Crimea these acts of the *de facto* authorities have contributed to the involuntary displacement from Crimea and precluding the migrants from the possibility to return. A parallel can be drawn with the ECtHR's case law concerning expulsion or extradition to the states with regard to which there are consistent reports of use of ill-treatment: "It is the settled case-law of the Court that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country".[151] The Court examines whether an applicant faces a real risk of ill-treatment in the country of potential removal taking into account both the general human rights situation in that country and the particular characteristics of the applicant.[152] Should there be real risk, an absolute prohibition of deportation is required by Article 3 of the ECHR.[153] Similarly, a well-grounded fear to fall victim of such treatment effectively deprives a person of a possibility to return to the place of habitual residence.

2.4.2. Right to liberty, fair trial and access to effective remedies

A number of international provisions concern protection against arbitrary arrest or detention. This right is mentioned in the UDHR.[154] The ICCPR and the ECHR both contain a number of safeguards related to the deprivation of liberty (prohibition of arbitrary arrest or detention, rights to be informed of the reasons for the arrest, to legal aid, to be brought promptly before a judge, to the review of the lawfulness of the detention etc).[155]

The fair trial principles and guarantees, including those particular to criminal proceedings against the persons are also enshrined in the UDHR[156] and further developed in the ICCPR[157] and the ECHR.[158] These include equality before the court, public hearing, independent

151 *Soldatenko v. Ukraine*, no. 2440/07, ECtHR, Judgment, 23 October 2008, para. 66, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-89161
152 *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, ECtHR, Judgment, 17 January 2012, para. 187, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-108629
153 *Saadi v. Italy* [GC], no. 37201/06, ECtHR, Judgment, 28 February 2008, paras 125, 138, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-85276
154 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 9, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
155 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 9, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx;
European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 5, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
156 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 10, 11, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
157 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 14, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

and impartial tribunal established by law, presumption of innocence, reasonable length of proceedings, legal aid and and facilities to prepare defence, possibility to examine witnesses, right not to confess etc. The concept of criminal charge in the Covenant and the European Convention has an autonomous meaning and is not restricted to the offences classified as criminal in the domestic legislation.[159] For example, the proceedings being considered administrative under the domestic legislation such as those concerning administrative offences related to the holding of public assemblies were considered by the European Court under the criminal limb of Article 6.[160]

Use of confessions, statements or other evidence obtained through ill-treatment, in criminal proceedings amounts to a violation of provisions related to fair trial in Article 14 of the ICCPR[161] and Article 6 of the ECHR.[162]

The international human rights instruments prohibit holding a person responsible of any criminal offence for any act or omission, which did not constitute a criminal offence at the time it was committed, or to face a penalty heavier than was foreseen at the time the person committed the offence in issue.[163]

Arbitrary interference with personal liberty in various forms remains a widespread issue in Crimea. For instance, members of the Crimean Tatar community are routinely apprehended during police raids, pro-Ukrainian political and civic activists, journalists or individuals posting messages critical of the Russian authorities or expressing dissent on social media, are detained by the police, FSB or 'self-defence' groups. In many cases, victims are detained for several hours or even days without procedural formalities and then released without charges. In other

158 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 5, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
159 General Comment No. 32, Article 14: Right to equality before courts and tribunals and to fair trial, UN Human Rights Committee, CCPR/C/GC/32, 23 August 2007, para. 15, accessed 29 November 2019, https://www.refworld.org/docid/478b2b2f2.html;
Guide on Article 6 of the European Convention on Human Rights. Right to a fair trial (criminal limb), European Court of Human Rights, updated 31 August 2019, paras. 16-17, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf
160 *Kasparov and Others v. Russia*, no. 21613/07, ECtHR, Judgment, 3 October 2013, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-126541
161 General Comment No. 32, Article 14: Right to equality before courts and tribunals and to fair trial, UN Human Rights Committee, CCPR/C/GC/32, 23 August 2007, para. 6, accessed 29 November 2019, https://www.refworld.org/docid/478b2b2f2.html
162 *Jalloh v. Germany* [GC], no. 54810/00, ECtHR, Judgment, 11 July 2006, para. 99, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-76307
163 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 11, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/;
International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 15, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx;
European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 7, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf

cases, people are charged with extremism, terrorism etc., placed in (often lengthy) pre-trial detention and tried.[164]

Article 2 of the ICCPR and Article 13 of the ECHR set forth the right to have an effective domestic remedy in case of a human rights violation.[165] The UDHR contains a similar clause.[166] Similar provisions are found in the international instruments of a specialised character. For instance, the International Convention on the Elimination of All Forms of Racial Discrimination contains a clause on effective protection and remedies against acts of racial discrimination.[167]

Finally, Article 18 of the European Convention establishes a limitation on use of restrictions on rights: "[t]he restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."[168] The European Court found a violation of Article 18 in conjunction with Articles 5 and 11 in a case where the sequence and pattern of the events viewed as a whole allowed concluding that the restrictions of the applicant's freedom pursued a purpose to suppress the political pluralism.[169]

Many cases taking place in Crimea can be considered from the viewpoint of the guarantees relating to detention and fair trial. For example, the UN Human Rights Committee in its Concluding observations refers to the violations of Article 14 of the ICCPR in the proceedings against Oleg Sentsov, and to the reports of wide practice of use of torture and ill-treatment to extort confessions also in breach of Article 14 of the ICCPR. Other instances of failure to guarantee fair trial have been reported in Crimea, namely with regard to the failure to guarantee presumption of innocence, the right to information without delay of the nature and cause of charge, the right to defend oneself or be assisted by a lawyer of one's own choice, the right to adequate time to prepare defence, the right to trial without undue delay, the right to

164 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, paras. 96, 98, 100;
Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, OHCHR, 13 September 2017 to 30 June 2018, paras. 22, 155.
165 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 2, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx;
European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 13, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
166 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 8, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
167 International Convention on the Elimination of All Forms of Racial Discrimination, UN General Assembly Res 2106 (XX), 21 December 1965, entered into force 4 January 1969, art. 6, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx
168 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 18, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
169 *Navalnyy* v. Russia [GC], nos. 29580/12 and 4 others, ECtHR, Judgment, 15 November 2018, paras. 175, 176, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-187605

appeal or review, the right to a hearing by an independent and impartial tribunal, and the right not to be compelled to testify against oneself or confess guilt:[170]

Russian Federation justice system applied in Crimea often failed to uphold fair trial rights and due process guarantees. Court decisions have confirmed actions, decisions and requests of investigating or prosecuting bodies, seemingly without proper judicial oversight. Courts frequently ignored credible claims of human rights violations occurring in detention. Judges have applied Russian criminal law provisions to a wide variety of peaceful assemblies, speech and activities, and in some cases retroactively to events that preceded the temporary occupation of Crimea or occurred outside of the peninsula in mainland Ukraine.[171]

For example, in 2017 several Crimean Tatar men were sentenced to administrative arrest for having posted on social networks materials featuring an organisation prohibited in the RF or uploading folk songs of a Chechen singer containing anti-Russian rhetoric. The accused were found guilty of promoting extremism despite the fact that all the said materials were posted in 2011-2013.[172]

Detentions without any legal basis, failure to bring a person before the judge, incommunicado detentions, lack of access to lawyer and other issues related to the deprivation of liberty are also reported with regard to Crimea. The retroactive application of criminal legislation prohibited by international instruments reportedly took place in Crimea. There are reports of charges and convictions under the Russian legislation for actions that happened before March 2014.

The OHCHR noted the violation of Article 15 of the ICCPR with regard to such prosecutions,[173] which provides that '[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.'

Moreover, it is also relevant to analyse the underlying purposes of restrictions of the rights of political opponents and other persons facing persecutions in Crimea, as, for example, constant reports of violations of liberty of pro-Ukrainian activists and Crimean Tatars suggest a pattern of use of detentions to silence the opponents of the occupational regime. Finally, it can also be said that lack of possibilities to obtain an effective remedy against the violations, due to the lack of fair trial guarantees and ineffectiveness of investigations contributed to the general environment of insecurity in Crimea.

170 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 75.
171 *Ibid*, para. 10.
172 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2017, para.143.
173 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 77.

It is worth to mention, that human rights defenders in Crimea, in addition to facing restrictions imposed on the activities of their organisations are subjected to persecution themselves. Lawyers, who take up defence in sensitive cases against individuals accused of extremism or terrorism in Crimea, risk facing similar charges themselves.[174] Other cases of intimidation and harassment against human rights activists were also reported.[175]

The case of a Crimean Tatar lawyer Emil Kurbedinov known for defending critics of Crimea's occupation and alleged members of the organizations banned in Russian is particularly illustrative. He faced repeated intimidation and hindrances to his professional activities. In 2017 he was prosecuted for social media posts. In November 2018, police raided his office in Simferopol to serve him with a 'formal warning' against 'engagement in extremism'. In December 2018 Mr Kurbedinov was retroactively convicted of disseminating 'extremist symbols' through a social network: he had posted the impugned content back in 2013, before the imposition of the Russian Federation legislation in Crimea.[176] The trial was conducted with numerous procedural breaches.[177] Emil Kurbedinov was sentenced to five days of administrative detention. What is more, the Ministry of Justice of Crimea subsequently requested his disbarment.[178]

Similarly to the prohibition of expulsion to a state where a person risks ill-treatment, the European Court has confirmed a possibility for Articles 5 and 6 to be applicable in cases of expulsion or extradition, where the applicant is at real risk of a flagrant breach of one of these Articles.[179] Thus, environment of constant violations of the right to liberty and fair trial guarantees can be considered both as a driver of displacement and as an impediment against return.

174 Report on the human rights situation in Ukraine, OHCHR, 16 November 2018 to 15 February 2019, para. 106.
175 Report of Nils Muižnieks following his Mission in Kyiv, Moscow and Crimea from 7 To 12 September 2014, Council of Europe, Commissioner for Human Rights, para. 42, accessed 29 November 2019, https://rm.coe.int/16806db75f
176 Report on the human rights situation in Ukraine, OHCHR, 16 November 2018 to 15 February 2019, para. 104.
177 *Ibid*, para. 104.
178 *Ibid*, paras. 104-105.
179 *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, ECtHR, Judgment, 17 January 2012, paras. 233, 258, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-108629

2.4.3. Right to private life

The right to privacy is a broad concept. It is enshrined in the ICCPR, Article 17 of which reads:

> 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
>
> 2. Everyone has the right to the protection of the law against such interference or attacks.

According to the UN Human Rights Committee, Article 17 covers interference caused directly by the state agents, and those emanating from private persons. In the latter case, the state is required to adopt legislative and other measures to ensure effective protection of the right.[180]

A similar provision is found in the ECHR. Article 8 of the Convention on the right to respect for private and family life provides:

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The European Court of Human Rights (ECtHR) in its case law has defined the scope of Article 8 to include, *inter alia*, the right to the individual's identity, self-determination, physical and moral integrity.[181] As regards obligations of state, the provision entails obligations of negative and positive character.[182] The protection of the rights guaranteed under Article 8 is not absolute. Interference with the rights under Article 8 will amount to a violation if it fails to comply with any of the following alternative conditions: interference was in accordance with the law (clear, foreseeable, and adequately accessible),[183] pursued one of the 'legitimate aims' listed in Article 8(2) and was 'necessary in a democratic society'.

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180 CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, UN Human Rights Committee (HRC), 8 April 1988, accessed 29 November 2019, https://www.refworld.org/docid/453883f922.html

181 Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence, European Court of Human Rights, last updated 31 August 2019, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_8_ENG.pdf

182 *Ibid*, paras. 3-4.

183 *Silver and Others v. the United Kingdom*, nos. 5947/72 and other, ECtHR, Judgment, 25 March 1983, para. 87, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57577

a) Personal autonomy and identity

The European Court of Human Rights has repeatedly noted that 'private life' as enshrined in Article 8 "is a broad term not susceptible to exhaustive definition".[184] It includes the rights to self-determination and personal autonomy and covers such concepts as ethnic identity,[185] names, gender identification, sexual orientation and sexual life etc.[186]

While the European Convention does not provide for a right to nationality or citizenship, several related issues have been considered by the European Court under Article 8. The case law in this respect has developed from rejection of the cases concerning loss of citizenship as incompatible *ratione materiae* with the Convention as no right to citizenship was explicitly guaranteed[187] to the consideration of the impact of the decisions related to citizenship on the person's private life. In its 2011 judgment, *Genovese v. Malta*, the Court analysed discrimination in the procedure of admission to nationality. Discussing the denial of citizenship, the Court considered its impact on private life and viewed the latter as a concept "wide enough to embrace aspects of a person's social identity" indicating that the impact of the denial on the applicant's social identity was such as to bring it within the general scope and ambit of Article 8.[188] Certain principles formulated in the judgment are relevant to the automatic imposition of Russian citizenship in Crimea.

The Treaty on Accession which entered into force on 18 March 2014 automatically declared all Ukrainian citizens and stateless persons permanently residing in Crimea citizens of the Russian Federation starting from the day of the so-called accession of Crimea to the RF. The only exception was made for those persons who declared, within one month from the accession day, their willingness to retain their and (or) their minor children's previous nationality or to remain stateless.[189] This issue was further regulated by the abovementioned Law On Admission to the Russian Federation of the Republic of Crimea.[190] On overall, about 2.3 million of people were automatically declared Russian citizens.

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184 *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, ECtHR, Judgment, 15 March 2012, para. 58, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-109577
185 *Ciubotaru v. Moldova*, no. 27138/04, ECtHR, Judgment, 27 April 2010, para. 49, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-98445
186 *E.B. v. France* [GC], no. 43546/02, ECtHR, Judgment, 22 January 2008, para. 43, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-84571
187 *X v. Austria*, no. 5212/71, Commission (Plenary), Decision, 5 October 1972, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-3156
188 *Genovese v. Malta*, no. 53124/09, ECtHR, Judgment, 11 October 2011, para. 33, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-106785
189 Treaty on the Accession of the Republic of Crimea to the Russian Federation, Official site of the president of Russia, 18 March 2014, art. 5, accessed 29 November 2019, http://en.kremlin.ru/events/president/news/20604
190 Federal constitutional law No. 6-FKZ "On the admission to the Russian Federation of the Republic of Crimea and the formation within the Russian Federation of new subjects - the Republic of Crimea and the city of federal importance Sevastopol", March 21, 2014, art. 4, accessed 29 November 2019, http://www.consultant.ru/document/cons_doc_LAW_160618/

The report of the Open Society Justice Initiative on Human Rights in the Context of Automatic Naturalization in Crimea concludes that the automatic imposition of Russian nationality in Crimea constitutes a violation of the right to nationality, being discriminatory, involuntary, failing to respect due process, lacking a legitimate aim and being disproportionate to the harm it causes.[191] The said report notes that the imposition of the Russian nationality in Crimea "causes the suppression of both Ukrainian nationality (in a legal sense) and the rights of people not to be discriminated against based on their actual, attributed, or perceived Ukrainian national identity",[192] and aims at reinstating "an ethnic-based allegiance to Russia, entailing the elimination of indigenous Crimean Tatars, the idea of a separate Ukrainian "people" and the idea of a civic Ukrainian national identity".[193]

Apart from being an expression of national identity, the citizenship as expression of the person's connection to its state of nationality, inevitably entails a number of obligations and duties for the national. For instance, those residents of Crimea who have become Russian nationals are subject to the compulsory conscription into the armed forces of the RF. At least 14,800 men were conscripted between 2015 and 2019.[194] Starting from 2017, the drafted men can be transferred to serve in Russia, which happens in about 25 per cent of cases.[195] Draft evasion is criminally punishable with a fine or up to two years imprisonment, and the punishment does not absolve those convicted from the obligation to undergo military service.[196] Some residents of Crimea have explicitly mentioned the conscription into the Russian army and the criminal responsibility entailed by any attempts to evade it as the reason for leaving the peninsula for mainland Ukraine. The OHCHR in its reports confirmed that men had left the peninsula to avoid serving in the Russian Federation army, and they could not return to Crimea as they would be prosecuted for avoiding the draft.[197]

Yet another example of the dramatic consequences that the automatic imposition of the Russian citizenship has for the residents of Crimea is potential criminal responsibility for persons retaining certain links with Ukraine. Two articles of the Criminal Code of the Russian Federation provide for responsibility for high treason (Article 275) and failure to notify the authorities of the

191 Report on Human Rights in the Context of Automatic Naturalization in Crimea, Open Society Justice Initiative (OSJI), June 2018, para. 162, accessed 29 November 2019, https://www.justiceinitiative.org/uploads/5ce04ddd-0fda-470c-9f94-eaa5bf928768/report-osji-crimea-20180601.pdf
192 *Ibid*, para. 172.
193 *Ibid*, para. 162.
194 Report on the human rights situation in Ukraine, OHCHR, 16 November 2018 to 15 February 2019, para. 114.
195 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, OHCHR, 13 September 2017 – 30 June 2018, para.73.
196 Report on the human rights situation in Ukraine, OHCHR, 16 November 2017 to 15 February 2018, para. 129.
197 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 121.

citizenship of another state (Article 330).[198] The former envisages criminal responsibility for any assistance (including consultative and financial) to a foreign state, foreign or international organisation in any activities "aimed against the security of the Russian Federation".[199] This article in its current version was criticized by the European Commission for Democracy through Law (Venice Commission) on the basis that its broad and vaguely worded provisions may allow for discriminatory interpretation and grant scope for arbitrary action by the state.[200]

The questions of revoking the citizenship are similarly examined in the context of private life and the impact on it of the changed status.[201] In *Riener v. Bulgaria* the Court stated that it "cannot exclude that an arbitrary refusal of a request to renounce citizenship might in certain very exceptional circumstances raise an issue under Article 8 of the Convention if such a refusal has an impact on the individual's private life".[202]

The question of persons who have not changed their place of residence but have found themselves in a complicated situation following political changes have been considered most prominently in cases *Kurić and Others v. Slovenia*[203] and *Hoti v Croatia*.[204] The failure of the authorities to regularise the status of the applicants was recognised by the European Court as a violation of Article 8. In both cases the applicants' rights to work, housing and others were severely limited because of their status[205].

Crimea's residents were nominally granted the possibility to refuse the citizenship of the Russian Federation by the Treaty on Accession and the Law on Admission to the Russian Federation of the Republic of Crimea. However, although existing *de jure*, the opt-out procedure was organised in a manner that made it particularly difficult to make use of it. First of all, the

198 "Crimea beyond rules Thematic review of the human rights situation under occupation: Right to citizenship", Regional Centre for Human Rights, 2017, p. 27, accessed 29 November 2019, https://precedent.crimea.ua/wp-content/uploads/2017/04/Crimea_beyond_rules_3_en.pdf
Report on the human rights situation in Ukraine, OHCHR, 16 August to 15 November 2015, paras. 147-148.
199 Criminal Code of the Russian Federation, Law no. 63-FZ, 13 June 1996, art. 275, accessed 29 November 2019, http://www.consultant.ru/document/cons_doc_LAW_10699/
200 Opinion on Federal Law on Foreign Agents and Law on Treason of the Russian Federation, Venice Commission, 27 June 2014, para. 113, accessed 29 November 2019, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2014)025-e
201 *Ramadan v. Malta*, no. 76136/12, ECtHR, Judgment, 21 June 2016, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-163820;
K2 v. the United Kingdom (dec), no. 42387/13, ECtHR, Decision, 7 February 2017, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-172143
202 *Riener v. Bulgaria*, no. 46343/99, ECtHR, Judgment, 23 May 2006, para. 154, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-75463
203 *Kurić and Others v. Slovenia* [GC], no. 26828/06, ECtHR, Judgment, 26 June 2012, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-111634
204 *Hoti v. Croatia*, no. 63311/14, ECtHR, Judgment, 26 April 2018, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-182448
205 *Kurić and Others v. Slovenia* [GC], no. 26828/06, ECtHR, Judgment, 26 June 2012, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-111634;
Hoti v. Croatia, no. 63311/14, ECtHR, Judgment, 26 April 2018, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-182448

formal one-month term to refuse the Russian nationality was established by the Treaty on Accession signed on 18 March 2014. This meant that the applications to opt out of the Russian nationality were accepted only until 18 April 2014. At the same time, the law governing the admission of the new constituent entities to the RF entered into force as late as 1 April 2014 and the actual mechanisms for opting out had not been established before this date. Moreover, the information about the Federal Migration Service centres (bodies charged with accepting the applications) was not made available until 4 April, and only two centres were functioning until 9 April.[206] What is more, certain procedural requirements were changed over time, such as that both parents were required to apply on behalf of their child.[207]

It must be pointed out that certain categories of persons were forced not to make use of the opt-out procedure or were denied access to it altogether. Notably, pressure was reportedly exerted on those detainees who wanted to refuse Russian citizenship.[208] Moreover, many persons deprived of their freedom had no possibility to lodge opt-out applications.[209] Although they did not receive Russian passports, they are deemed to be Russian citizens by the RF authorities. This was the case of the film director Oleg Sentsov, as well as many other detainees. Oleg Sentsov was tried in the RF as a Russian national and was brought to the Russian territory to serve his sentence. All this despite the fact that he did not take any action to receive Russian nationality and that Ukraine recognises him as its national. The UN Human Rights Committee qualifies such treatment of Mr Sentsov as deprivation, against his will of his Ukrainian nationality.[210] Ukraine's request to transfer him and another prisoner, Oleksandr Kolchenko, to Ukraine under the Convention on the Transfer of Sentenced Persons, was rejected with the reference to their Russian nationality; they were not allowed to see the Ukrainian consul either.[211] Hundreds of other Crimean detainees were transferred to serve their sentence in the Russian Federation.[212]

Another group of Crimea's residents who were turned into Russian citizens with no regard to their will are children in state care institutions. As of 1 August 2014, there were more

206 Report on Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 58.
207 *Ibid.*
208 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, OHCHR, 13 September 2017 to 30 June 2018, para. 115.
209 Report on the human rights situation in Ukraine, OHCHR, 15 July 2014, para 186.
210 Concluding observations on the seventh periodic report of the Russian Federation, UN Human Rights Committee, 28 April 2015, accessed 29 November 2019, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhstWB5OJfDOQhMEkiX20XNhIfwS44vVjDCG9yOfCaGgJ%2B4aMVruPFpyUaMYJvfEOEBQCPHWJdUArBGlBJo5DzI4ZqOZa12FMGUZJqFSjwcIYP
211"Crimea beyond rules Thematic review of the human rights situation under occupation: Right to citizenship", Regional Centre for Human Rights, 2017, pp. 45-46, accessed 29 November 2019, https://precedent.crimea.ua/wp-content/uploads/2017/04/Crimea_beyond_rules_3_en.pdf
Mr Sentsov and Mr Kolchenko were returned to Ukraine in September 2019 during the exchange of prisoners between Ukraine and the Russian Federation.
212 *Ibid*, p. 46.

than 4,000 of children in various state-owned child care institutions in Crimea. No application to opt out was lodged in respect of any of such children.[213]

The flawed and poorly implemented opt-out procedure was essentially amounted to a *de facto* deprivation of Ukrainian citizenship. While Crimean residents were not formally obliged to renounce Ukrainian nationality, civil servants were required to do it.[214] It has also been reported that public sector employees were compelled to do so in order to keep their positions or be able to continue doing their work.[215] Furthermore, those who retained their Ukrainian citizenship cannot avail themselves of the protection offered by Ukraine since Russia does not treat these persons as Ukrainian citizens.

The residents of Crimea who opted out from Russian citizenship found themselves in a painful situation. Without moving from their home or place of habitual residence, they became foreigners in their own land. They subject to a new legal order which significantly limited their rights and professional activities, retrained the opportunities to take part in the political life, or even to continue residing in Crimea. Those residents of Crimea who were not eligible for Russian citizenship ended up in the same situation. This group comprised principally those living in Crimea without official registration. In accordance with the Russian legislation they were not considered permanent residents for the purposes of acquiring the nationality.[216]

The residents of Crimea who succeeded to opt out or were not entitled to Russian citizenship faced drastically different and precarious life conditions manifested in significant restriction of their rights. They were excluded from free health insurance scheme. Their property rights were restricted because they could not own agricultural land. They were effectively deprived of the use of their own vehicles for the reason that the Russian passport was among the documents required to obtain registration of a private vehicle with the Russian authorities in control of Crimea. Possessing no Russian citizenship, they did not have access to certain professions, could not vote and or be elected; they could not register religious communities or organize public assemblies and so on.[217]

In 2018 courts in Crimea ordered deportation of at least 435 persons who were considered foreigners under the Russian legislation, including 231 Ukrainian citizens. Among those, at least 50 individuals including many Ukrainian nationals, were forcibly removed, a

213 *Ibid*, pp. 45-46.
214 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 71.
215 Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015), Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights & High Commissioner on National Minorities. 17 September 2015, para. 202, accessed 29 November 2019, https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea
216 Report on the human rights situation in Ukraine, OHCHR, 16 May to 15 August 2017, para. 153.
217 Report on the human rights situation in Ukraine, OHCHR, 16 May to 15 August 2017, para. 62; Report on the human rights situation in Ukraine, OHCHR, 15 April 2014, para. 92.

procedure which according to the Russian law prescribes placement in temporary detention before deportation.[218] For many, the fear of expulsion is compounded by the risk of having to undergo detention.

That the residents of Crimea possessing no Russian citizenship suffered limitations and restraints in exercise and enjoyment of their rights was recognized internationally. For instance, the UN Human Rights Committee in its Concluding Observations on the seventh periodic report of the Russian Federation criticised the limitations on the ability of Crimea's residents who have retained their Ukrainian citizenship "to enjoy their rights under the Covenant".[219]

The right to a nationality and prohibiting arbitrary deprivation of nationality or denial of the right to change it is enshrined in Article 15 of the UDHR.[220] As its text suggests, the provision not only provides for the right to a nationality but also expressly condemns its arbitrary deprivation by a state. The *de facto* deprivation of the nationality of Ukraine and compelling to renounce it by the *de facto* authorities in Crimea is inconsistent with the prohibition on arbitrary deprivation of nationality in the UDHR. Furthermore, the policy of automatic imposition of the nationality appears to be inconsistent with the concept of nationality in the UDHR, which is based on the will of a person (as demonstrated by the prohibition to deny the right to change the nationality).

The European Convention on Nationality of 1997 was signed by the Russian Federation but was not ratified. Certain aspects of this Convention are worth mentioning to demonstrate approaches towards the nationality issues. When providing guidance concerning the actions of the states with regard to the nationality issue in case of succession, the Convention mentions, *inter alia*, "the will of the person concerned" as one of the aspects the states are to take into account.[221] Moreover, the principles concerning non-nationals foreseen by this Convention, include the following obligations of the state parties in case of succession: to ensure the right of the nationals of the predecessor state habitually resident in the territory in issue, who have not acquired the successor state's nationality, to remain in the successor state, and to ensure that such persons enjoy equality of treatment with the state's nationals in relation to social and economic

218 Report on the human rights situation in Ukraine, OHCHR, 16 November 2018 to 15 February 2019, para. 111.
219 Concluding observations on the seventh periodic report of the Russian Federation, UN Human Rights Committee, 28 April 2015, accessed 29 November 2019, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhstWB5OJfDOQhMEkiX20XNhIfwS44vVjDCG9yOfCaGgJ%2B4aMVruPFpyUaMYJvfEOEBQCPHWJdUArBGlBJo5DzI4ZqOZa12FMGUZJqFSjwcIYP
220 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 15, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
221 European Convention on Nationality, Council of Europe, 6 November 1997, entered into force 1 March 2000, art. 18 para. 2, accessed 29 November 2019, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007f2c8

rights.[222] These principles can also be illustrative for the rights of the residents of Crimea and their infringements.

Notably, the Council of Europe Commissioner for Human Rights stated with regard to the events in Crimea that "the absence of active and clearly stated consent of the person acquiring Russian nationality could be qualified as an interference with the person's private and family life, since the acquisition of citizenship may also entail certain obligations, such as military service".[223]

Apart from the nationality, the ethnic and cultural aspects of the person's identity are relevant to the situations discussed. The concept of private life in Article 8 covers the person's ethnic identity. This aspect of Article 8 is engaged in cases where the representatives of the Crimean Tatar and Ukrainian community were targeted.

It must be noted that in the European Court's case law right to private life encompasses interference with professional life, even where the applicants worked in the public sector. In *Sodan v. Turkey* a civil servant was transferred from the capital to a province because of his and his spouse's religious beliefs (although he had never shown any bias in the exercise of his duties).[224] Dismissal affecting a wide range of the applicant's relationship with others, including those of a professional nature, as well as her ability to practice a profession which corresponded to her qualifications[225] or non-renewal of a contract (which had considerable impact on the applicant's professional activity) for reasons related to the applicant's private and family life[226] were considered under Article 8, as were the restrictions on registration as a member of certain professions (such as notary) or refusals to admit to the bar.[227] Two Ukrainian cases, *Oleksandr Volkov* and, more recently, *Denisov* allowed distinguishing between the employment-related disputes that fall within or outside the scope of Article 8. The Court spelled out criteria for applicability of Article 8 in employment-related context ((i) the applicant's 'inner circle', (ii) the applicant's opportunity to establish and develop relationships with others, and (iii) the applicant's social and professional reputation), and noted that they can be considered either in connection with the consequences for the person and with the underlying reason for the actions

222 *Ibid*, article 20.
223 Report of Nils Muižnieks following his Mission in Kyiv, Moscow and Crimea from 7 To 12 September 2014, Council of Europe, Commissioner for Human Rights, para. 47, accessed 29 November 2019, https://rm.coe.int/16806db75f
224 *Sodan v. Turkey*, no. 18650/05, ECtHR, Judgment, 2 February 2016, para. 54, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-160260
225 *Emel Boyraz v. Turkey*, no. 61960/08, ECtHR, Judgment, 2 December 2014, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-148271
226 *Fernández Martínez v. Spain* [GC], no. 56030/07, ECtHR, Judgment, 12 June 2014, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-145068
227 *Lekavičienė v. Lithuania*, no. 48427/09, ECtHR, Judgment, 27 June 2017, paras 36-38, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-174616

the person faced.[228] Both elements can be relevant for the cases of Crimean residents, firstly, as there are reports of dismissals and other employment-related measures used to punish for the political views. Secondly, the graveness of the consequences suffered can become a factor compelling the person to leave.

Crimean residents, treated as foreigners, are ineligible for certain types of employment, such as municipal service or organisations operating in the area related to state security.[229] Other employers had to receive permits to be able to employ 'foreigners'. These permits were limited by quotas.[230] What is more, even in the absence of formal restrictions, those persons who have rejected Russian citizenship face discrimination in relation to their employment rights and opportunities.[231]

Police searches, also reportedly used in Crimea, amount to an interference with the right to privacy within the meaning of Article 8, and, if the conditions of paragraph 2 are not fulfilled, amount to a violation of the right to private life.[232]

Transfer of prisoners to serve their term to the remote territories of the Russian Federation, which was reported with regard to the prisoners already serving their sentence in Crimea at the moment of the occupation, and those convicted by the court of the *de facto* authorities, constitutes another aspect covered by Article 8. The transfer of prisoners to remote colonies was found detrimental to their possibility to pursue family life or retain social ties. Moreover, it was indicated that the Russian system of distribution of convicts itself failed to provide a measure of legal protection against arbitrary interference by public authorities due to the absence of a clear and foreseeable methodology.[233]

b) Right to home

Article 8 guarantees right to home. Home in Article 8 is a broad concept with autonomous meaning and it includes various types of residences, including premises, to which

228 *Denisov v. Ukraine* [GC], no. 76639/11, ECtHR, Judgment, 25 September 2018, para.115, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-186216
229 Federal Law no. 115-FZ On Legal Status of Foreign Citizens in the Russian Federation, 25 July 2002, art. 14, accessed 29 November 2019, http://www.consultant.ru/document/cons_doc_LAW_37868/
230 Report on the human rights situation in Ukraine, OHCHR,16 November 2016 to 15 February 2017, para. 62; Report on the human rights situation in Ukraine, OHCHR, 15 April 2014, para. 92.
231 Report on the human rights situation in Ukraine, OHCHR, 16 November 2016 to 15 February 2017, paras. 139-140.
232 *Gillan and Quinton v. the United Kingdom*, no. 4158/05, ECtHR, Judgment, 12 January 2010, paras 63-87, accessed 29 November 2019, http://hudoc.echr.coe.int/rus?i=001-96585
233 *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, ECtHR, Judgment, 25 July 2013, paras 838-851, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-122697

the person has certain links.[234] There are also numerous types of actions that were classified by the Court as infringements of this right – from eviction orders (*Gladysheva v. Russia*) or deliberate destruction of a house by the authorities (*Selçuk and Asker v. Turkey*) to police entry (*Gutsanovi v. Bulgaria*) and/or search (*Murray v. the United Kingdom*). In deciding whether the authorities' intrusion into a home amounts to a violation, the European Court of Human Rights considers a number of aspects, namely necessity of the entry, its purpose and availability of other means, time, presence of the person concerned and of other persons, and any safeguards in place.

In 2016, there were reports of house searches and other forms of pressure against Crimean Tatar activists advocating for the boycott of the elections.[235] In 2018, house searches were combined with at least two convictions on 'extremism' charges with the sentences of 10 and 11 days of administrative arrests imposed on persons planning a protest against the elections.[236] In March 2019, the Russian law enforcement agencies launched a large-scale operation against alleged members of Hizb ut-Tahrir. Following twenty-six house searches, the Russian Federal Security Service (FSB) arrested 20 Muslim men on criminal charges of participating in a terrorist organisation and remanded them in custody. Four more persons were later arrested on the same charges. Most of these individuals are Crimean Tatars affiliated with the non-registered initiative 'Crimean Solidarity' organised by the relatives of Crimean Tatar detainees. [237] Other reports refer to the detentions, searches, interrogations, threats and physically attacks against the Crimean journalists and bloggers, and of confiscation or damaging of their equipment (including through deletion of stored content).[238]

Searches of homes were among the actions of the *de facto* authorities in Crimea that have contributed to the involuntary displacement from Crimea. The reported cases of searches raise many questions with regard to their necessity and the manner in which they were conducted.

234 Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence, European Court of Human Rights, last updated 31 August 2019, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_8_ENG.pdf
235 Report on the human rights situation in Ukraine, OHCHR, 16 August to 15 November 2016, para. 178.
236 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2018, para. 96.
237 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2019, para. 97.
238 Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015), Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights & High Commissioner on National Minorities. 17 September 2015, para. 117, accessed 29 November 2019, https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea

2.4.4. Freedom of religion, freedom of expression and freedom of peaceful assembly and association

a) Freedom of thought, conscience and religion

The UDHR provides in Article 18 that "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".[239] The ICCPR in Article 18[240] and the ECHR in Article 9 also provide for the right to freedom of thought, conscience and religion.[241]

The UN Human Rights Committee explicitly refers to the breaches of Article 18 of the ICCPR in its Concluding observations on the seventh periodic report of the Russian Federation. The Human Rights Committee deplores the vague definitions used in the anti-extremism legislation, as well as its abusive application to "curtail […] freedom of religion, targeting, *inter alia*, Jehovah's Witnesses".[242] Moreover, the Committee specifically refers to the reports of "intimidation and harassment of religious communities, including attacks on the Ukrainian Orthodox Church, the Greek Catholic Church and the Muslim community" in Crimea within the context of the violation of freedom of religion and belief.[243] The OHCHR in one of its reports concerning Crimea refers to Article 18 of the ICCPR and Article 9 of the ECHR when speaking of the re-registration of religious organisations as well as their ban and dissolution, application of anti-extremism legislation, seizure of property, as well as physical assaults against believers and places of worship.[244]

Religious communities in Crimea, as with other associations, were subject to the re-registration requirement imposed by Russian laws. The deadline was first set for 1 January 2015 and extended twice until 1 January 2016. In addition to the cumbersome re-registration procedure, Crimean religious organisations faced another limitation: only RF citizens are

239 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 18, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
240 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 18, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
241 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 9, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
242 Concluding observations on the seventh periodic report of the Russian Federation, UN Human Rights Committee, 28 April 2015, accessed 29 November 2019, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhstWB5OJfDOQhMEkiX20XNhIfwS44vVjDCG9yOfCaGgJ%2B4aMVruPFpyUaMYJvfEOEBQCPHWJdUArBGlBJo5DzI4ZqOZa12FMGUZJqFSjwcIYP
243 *Ibid.*
244 Report "Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", OHCHR, 25 September 2017, paras. 136-145.

allowed to register a religious community.[245] Consequently, in August 2015, there were only 53 local religious organisations registered in Crimea in contrast to over 1,400 such organisations formally registered as legal entities under Ukrainian law at the time of annexation.[246]

The Ukrainian Orthodox Church of the Kyiv Patriarchate (UOC-KP) chose not to re-register under the RF law and thus has no legal recognition. As a consequence, it can neither own nor lease property. Between 2014 and 2017, five UOC-KP churches were either seized by paramilitary groups or closed due to non-renewal of their property leases.[247] Their attempts to seek judicial remedies were unsuccessful.[248] As of 2018, only nine UOC-KP parishes allegedly continued to operate in Crimea compared to 20 parishes before the occupation.[249]

Various religious communities were significantly affected by the anti-extremism and anti-terrorism legislation.[250] The 2016 legislative amendments "practically ban missionary groups and house prayers by making proselytizing, preaching, praying, or disseminating religious materials outside of "specially designated places", like officially recognized religious institutions, a punishable crime".[251]

In April 2017 the Supreme Court of the Russian Federation declared illegal the religious denomination of the Jehovah's Witnesses for alleged violation of the anti-extremism law. This meant that the denomination's official registration was cancelled. In Crimea this affected about 8,000 believers of the de-registered communities.[252]

Many examples of events in Crimea can also be considered from the perspective of Article 9 of the ECHR, as interpreted by the European Court. The scope of Article 9 of the ECHR covers a wide variety of religious and non-religious opinions and convictions, considered from the point of view of individual conscience and identity[253] and as manifestation of beliefs,[254]

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245 Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015), Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights & High Commissioner on National Minorities. 17 September 2015, paras. 89-90, accessed 29 November 2019, https://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea
246 *Ibid*, para. 91.
247 Report "Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", OHCHR, 25 September 2017, para. 145.
248 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, OHCHR, 13 September 2017 to 30 June 2018, para. 41.
249 *Ibid.*
250 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, paras. 137 – 141.
251 *Ibid*, para. 137.
252 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 144.
253 Guide on Article 9 of the European Convention on Human Rights. Freedom of thought, conscience and religion, European Court of Human Rights, last updated 31 August 2019, para. 130, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_9_ENG.pdf
254 *Kokkinakis v. Greece*, no. 14307/88, ECtHR, Judgment, 25 May 1993, para. 31, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57827

in such forms as worship, teaching, practice or observance,[255] including in religious communities or other groups,[256] as well as preaching or proselytizing.[257]

The protection guaranteed by Article 9 is not absolute. However, as second paragraph of the provision indicates, it can be limited only under certain strict conditions. The limitations must be (1) prescribed by law, (2) necessary in a democratic society, and (3) aimed at one of the exhaustive list of objectives (public safety, protection of public order, health or morals, rights and freedoms of others). While performing the proportionality test, the Court has to determine that there were no other, less intrusive, means to achieve the same goal and it is for the state authorities to prove it.[258] The court explains the notion of the "necessity in a democratic society" referring to the existence of a "pressing social need", underscoring that the word "necessary" does not have the flexibility of the expressions "useful" or "desirable".[259]

The question of the state recognition of religious associations, *inter alia*, their registration or re-registration, was considered by the European Court under Article 9 several times.[260] As the Court noted, "[t]he believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention".[261] In the case of *Jehovah's Witnesses of Moscow and Others v. Russia*, similarly to the situation in Crimea, the requirement for re-registration of religious organisations followed the enactment of new legislation. The denial of registration and dissolution of the community resulted in the Court finding a violation under Article 9.[262] The Court was especially strict with regard to the dissolution of an already existing religious organisation, considering it a drastic measure requiring very serious reasons to be recognised as proportionate to the aims declared.[263]

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255 *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, ECtHR, Judgment, 13 December 2001, para. 114, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59985
256 *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, ECtHR, Judgment, 26 October 2000, para. 62, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-58921
257 *Kokkinakis v. Greece*, no. 14307/88, ECtHR, Judgment, 25 May 1993, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57827
258 *Biblical Centre of the Chuvash Republic v. Russia*, no. 33203/08, ECtHR, Judgment, 12 June 2014, para. 58, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-144677
259 *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, ECtHR, Judgment, 14 June 2007, para. 116, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-81067
260 *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, nos. 70945/11 et al., ECtHR, Judgment, 8 April 2014, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-142196;
Kimlya and Others v. Russia, nos. 76836/01 and 32782/03, ECtHR, Judgment, 1 October 2009, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-94565;
Jehovah's Witnesses of Moscow and Others v. Russia, no. 302/02, ECtHR, Judgment, 10 June 2010, para. 170, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-99221;
Metropolitan Church of Bessarabia and Others v. Moldova, no. 45701/99, ECtHR, Judgment, 13 December 2001, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59985
261 *Jehovah's Witnesses of Moscow and Others v. Russia,* no. 302/02, ECtHR, Judgment, 10 June 2010, para. 170, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-99221
262 *Ibid*
263 *Ibid; Biblical Centre of the Chuvash Republic v. Russia*, no. 33203/08, ECtHR, Judgment, 12 June 2014, para. 54, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-144677

In such cases, the Court considered both the religious communities and their members (not solely those having lodged the request for registration of the community, but any member belonging to it) to be affected by the interference.[264]

As a separate aspect, the Court acknowledged the importance of the places and buildings of worship, including the guarantees against the risk of interference with the practices.[265] The seizure of the UOC-KP churches in Crimea can be recalled in this context.

Direct hindrance of religious practice was considered by the European Court on many instances, in the context of the right to manifest one's religion peacefully. This included such actions as dispersal by the Russian police of service or other activities of Jehovah's Witnesses,[266] dispersal by the Moldovan police of a Muslim prayer meeting held in a private house and the imposition of administrative fine,[267] the Bulgarian police breaking in the private house where a gathering of the Reverend Moon's Unification Church was taking place, followed by a search of the premises and seizure of books and other items.[268]

It is to be noted, that the examples of the European Court finding a violation of Article 9 in connection with physical intrusion into a religious rites are not limited to the actions explicitly authorised by the state authorities. Assault by private persons against a religious community, combined with the state's failure to protect or to investigate was found to be in breach of Article 9 as a failure of the state to fulfill its positive obligations in a number of cases against Georgia.[269]

Other situations of interference similar to those reported in Crimea concern the actions of the authorities directed against individuals. Thus, in *Dimitrova v. Bulgaria*, the applicant who organised meetings of her religious community at home was summoned to a police station and questioned on her beliefs. Her house was searched, and religious books and recordings were

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264 *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, ECtHR, Judgment, 13 December 2001, para. 105, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59985;
Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria, no. 40825/98, ECtHR, Judgment, 31 July 2008, para. 61, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-88022;
*Metodiev and Others v. Bulgari*a, no. 58088/08, ECtHR, Judgment, 15 June 2017, para. 24, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-174412

265 *Association de solidarité avec les témoins de Jéhovah and Others v. Turkey*, nos. 36915/10 et 8606/13, ECtHR, Judgment, 24 May 2016, paras. 90, 107, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-163107

266 *Kuznetsov and Others v. Russia*, no. 184/02, ECtHR, Judgment, 11 January 2007, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-78982;
Krupko and Others v. Russia, no. 26587/07, ECtHR, Judgment, 26 June 2014, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-145013

267 *Masaev v. Moldova*, no. 6303/05, ECtHR, Judgment, 12 May 2009, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-92584

268 *Boychev and Others v. Bulgaria*, no. 77185/01, ECtHR, Judgment, 27 January 2011, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-103076

269 *Begheluri and others v. Georgia*, no. 28490/02, ECtHR, Judgment, 7 October 2014, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-146769;
Tsartsidze and Others v. Georgia, no. 18766/04, ECtHR, Judgment, 17 January 2017, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-170349;
Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia, no. 71156/01, ECtHR, Judgment, 3 May 2007, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-80395

seized. She was warned to stop conducting the meetings.[270] In *Kokkinakis v. Greece*, the applicant was sanctioned for proselytizing.[271] In *Ivanova v. Bulgaria* the applicant was dismissed from her position, while formally in accordance with the applicable labour legislation, in reality because of her affiliation with a religious community subject to the state's policy of intolerance. The European Court found a violation of Article 9.[272] In concluding so, the Court underlined the need to consider "the sequence of events in their entirety, rather than as separate and distinct incidents" and found evidence "of a causal link between the various events which resulted in the applicant's dismissal".[273] This case is of interest not only in the context of religious freedom, but also from the perspective of the Court's consideration of dismissal used in retaliation for the convictions not welcomed by the authorities, a situation reported with regard to Crimea.

In April 2014, unknown persons threw Molotov cocktails at a mosque in the village of Skalyste, setting it on fire. In July, a Muslim cemetery was damaged.[274] Later, in June 2014, camouflaged men referring to themselves as the officers of a 'centre for combating extremism' searched an Islamic religious school in the village of Kolchugino, breaking doors and windows. No official reason was provided for the search.[275]

To be recognised as a victim of violation of Article 9 by the European Court, it is not strictly necessary to have been subject to a penalty established by the national law. It suffices to be at risk of imposition of such penalty. Thus, it needs to be proved that manifesting the person's religion would entail breaching certain legal requirements (e. g. a prohibition to wear a full-face Muslim veil in public in *S. A. S. v. France*).[276] This is of particular relevance to the situation of the occupied Crimea where significant restrictions on manifesting one's religion were introduced through the laws of Russia imposed in Crimea after its annexation.

b) Freedom of opinion and expression

The right to freedom of opinion and expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and

270 *Dimitrova v. Bulgaria*, no. 15452/07, ECtHR, Judgment, 10 February 2015, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-151006
271 *Kokkinakis v. Greece*, no. 14307/88, ECtHR, Judgment, 25 May 1993, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57827
272 *Ivanova v. Bulgaria*, no. 52435/99, ECtHR, Judgment, 12 April 2007, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-80075
273 *Ibid*, para. 83.
274 *Ibid*, para. 162.
275 Report on the human rights situation in Ukraine, OHCHR, 15 July 2014, para. 188.
276 *S.A.S. v. France* [GC], no. 43835/11, ECtHR, Judgment, 1 July 2014, para. 57, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-145466

regardless of frontiers is enshrined in Article 19 of the UDHR,[277] Article 19 of the ICCPR[278] and Article 10 of the ECHR.[279]

The freedom of opinion and expression as interpreted by the UN Human Rights Committee covers actions of the state and the state's obligations to protect against non-state agents.[280] Coercion to an opinion as well as persecution for an opinion is prohibited, including opinions of a political, scientific, historic, moral or religious nature.[281] Notably, in relation to the practices used against Crimean residents because of their views, "[n]o person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions […] The harassment, intimidation or stigmatisation of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1".[282] The freedom of expression covers the content of the message, such as political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.[283] The Committee emphasises the role of media, and the importance of communication with regard to public and political issues.[284] The diversity of media is crucial, in particular with regard to the rights of members of ethnic and linguistic minorities.[285]

Media outlets, as with NGOs and religious associations, were subject to the re-registration requirement once the Russian legal system was imposed in Crimea. After the re-registration deadline of 1 April 2015, 232 media were authorized to continue their activities. This number contrasts sharply with 3,000 media registered under Ukrainian laws before the annexation of Crimea. Many Crimean Tatar media were denied registration or licenses on procedural grounds and had to cease operating in Crimea.[286] Moreover, already in June 2014 the only Ukrainian language newspaper, Krymska svitlytsia, was denied distribution at the

277 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 19, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
278 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 19, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
279 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 10, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
280 General Comment No.34, Article 19: Freedoms of opinion and expression, UN Human Rights Committee, CCPR/C/GC/34, 12 September 2011, para. 7, accessed 29 November 2019, https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf
281 *Ibid*, paras. 9-10.
282 *Ibid*, para. 9.
283 *Ibid*, para. 11.
284 *Ibid*, para. 13.
285 *Ibid*, para. 14.
286 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 157.

newsstands, it was excluded from the subscription catalogue and was ordered to vacate its rented premises.[287]

Certain examples of actions that violate Article 19 of the Covenant mirror the cases that take place in Crimea. Arbitrary arrests, torture, threats to life and killing, other forms of attacks, especially threats, intimidations and assaults against journalists, lawyers, human right activists, lack of investigation of the attacks, penalisation of media outlets, publishers or journalists for criticism of the government are among those examples.[288] The UN Human Rights Committee has also underlined, in relation to Article 19, that '[s]uch offences as "encouragement of terrorism" and "extremist activity" as well as offences of "praising", "glorifying", or "justifying" terrorism, should be clearly defined to ensure that they do not lead to an unnecessary or disproportionate interference with freedom of expression'.[289]

The 'anti-extremist' legislation was criticised by the Venice Commission with regard to the definitions of extremist activities, extremist organisations and others as being too broad, lacking precision and clarity, being inconsistent with applicable international instruments. The Commission also criticised the measures envisaged to counteract extremism in the legislation. Such measures, which included liquidation of an organisation or the temporary suspension of its activities, were considered to raise issues related to the freedom of association and the freedom of expression.[290]

The UN Human Rights Committee explicitly refers to the breaches of Article 19 in its Concluding observations on the seventh periodic report of the Russian Federation. The Human Rights Committee deplores the vague definitions used in the anti-extremism legislation, as well as its abusive application to "curtail freedom of expression, including political dissent".[291] It expresses concern regarding the criminal legislation sanctioning public calls for action aimed at violating the territorial integrity of the State. The UN Committee against Torture in its Concluding observations on the sixth periodic report of the Russian Federation of 28 August 2018 refers to consistent reports that "the "foreign agent law" and the "undesirable foreign and

287 Report on the human rights situation in Ukraine, OHCHR, 15 July 2014, para.192;
Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 155.
288 General Comment No.34, Article 19: Freedoms of opinion and expression, UN Human Rights Committee, CCPR/C/GC/34, 12 September 2011, paras 23, 43, accessed 29 November 2019, https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf
289 *Ibid*, para. 49.
290 Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation, Venice Commission, 20 June 2012, paras. 30-45, 52, 75, 76, accessed 29 November 2019, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)016-e
291 Concluding observations on the seventh periodic report of the Russian Federation, UN Human Rights Committee, 28 April 2015, accessed 29 November 2019, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhstWB5OJfDOQhMEkiX20XNhIfwS44vVjDCG9yOfCaGgJ%2B4aMVruPFpyUaMYJvfEOEBQCPHWJdUArBGlBJo5DzI4ZqOZa12FMGUZJqFSjwcIYP

international organizations law" are often used as a means of administrative harassment against human rights organizations, forcing them to reduce and eventually cease their activities"[292] as well as that provisions of the Russian Criminal Code on combating terrorism are often used against civil activists, and the members of the Federal Security Service "routinely use torture to extract confessions from those accused of terrorist activities".[293] The OHCHR, speaking about the violations of Article 19, refers to the regular use of the authorities in Crimea of the RF Criminal Code to criminalise free speech and dissenting opinions of journalists and non-journalists alike.[294]

Article 10 of the European Convention is interpreted by the European Court to cover a broad range of protected aspects. Various forms of actions or omissions of the authorities are considered as interference with the rights under Article 10. The freedom of expression in the sense of this Article concerns both the content of the messages expressed and the forms and means used to receive and impart information. While Article 10 allows the state some sort of control over the circulation of information (licensing is expressly mentioned in paragraph 1, while paragraph 2 establishes a three-prong test of lawfulness, legitimate aims and necessity in a democratic society for the "formalities, conditions, restrictions or penalties" that might be imposed with regard to the exercise of the freedoms enshrined in paragraph 1), the European Court underlined on numerous occasions that any exceptions allowed under Article 10 "must be narrowly interpreted and the necessity for any restrictions must be convincingly established".[295]

It is to be noted that the Court repeatedly emphasised the importance of the freedom of expression as "one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man".[296] The protection guaranteed by Article 10 extends also to the ideas or information "that offend, shock or disturb the State or any sector of the population".[297]

There are numerous reports on the restriction on political debate in Crimea. This topic was considered by the Court on many occasions, and the position with regard to the states' obligations is clear: "as regards the level of protection, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public

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292 Concluding observations on the sixth periodic report of the Russian Federation, UN Committee against Torture, 8 August 2018, para. 28, accessed 29 November 2019, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/CAT_C_RUS_CO_6_32062_E.pdf
293 *Ibid*, para. 34
294 *Ibid*, para. 159.
295 *Observer and Guardian v. the United Kingdom*, no. 13585/88, ECtHR, Judgment, 26 November 1991, para. 59, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57705
296 *Handyside v. the United Kingdom*, no. 5493/72, ECtHR, Judgment, 7 December 1976, para. 49, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57499
297 *Ibid; Lingens v. Austria*, no. 9815/82, ECtHR, Judgment, 8 July 1986, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57523

interest"[298] and "freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention".[299] The Court found that "the limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician".[300] The special role of the press as the "watchdogs" of democracy and rule of law was repeatedly underscored by the Court. It has also emphasised the particular relevance of the principles of freedom of expressions with regard to the press and the need for the state to demonstrate particularly serious reasons to prevent media from imparting the information or to punish journalists in connection with their professional activities.[301] Furthermore, the Court believes that non-governmental organisations perform a similar 'watchdog' role[302] in a society and that they have the function of "creating forums for public debate".[303] Accordingly, restrictions on the activities of media, persecution of journalists and civil society actors, reported in Crimea, are covered by the rights guaranteed in Article 10.

The order not to publish certain materials,[304] imposing criminal[305] or administrative responsibility[306] for disseminating certain information or expressing certain opinions were recognized by the Court to amount to interference with Article 10. The case of *Özgür Gündem v. Turkey* is an example of a media being subject to a series of persecutions. This included a search-and-arrest operation in the newspaper's premises, repeated convictions of the persons involved into the production and distribution, as well as harassment from the part of private persons, which in combination led to the closure of the media.[307] The European Court considered under Article 10 sanctions imposed for such actions as pouring paint over statues of Kemal Atatürk in

298 *Morice v. France* [GC], no. 29369/10, ECtHR, Judgment, 23 April 2015, para. 125, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-154265
299 *Lingens v. Austria*, no. 9815/82, ECtHR, Judgment, 8 July 1986, para. 41, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57523
300 *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, ECtHR, Judgment, 8 July 1999, para. 62, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-58279
301 *Lingens v. Austria*, no. 9815/82, ECtHR, Judgment, 8 July 1986, para. 41, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57523;
Prager and Oberschlick v. Austria, no. 15974/90, ECtHR, Judgment, 26 April 1995, para. 34, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57926
302 *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, ECtHR, Judgment, 14 April 2009, para. 27, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-92171
303 *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, no. 39534/07, ECtHR, Judgment, 28 November 2013, para. 34, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-139084
304 *Observer and Guardian v. the United Kingdom*, no. 13585/88, ECtHR, Judgment, 26 November 1991, para. 17, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57705
305 *Jersild v. Denmark*, no. 15890/89, ECtHR, Judgment, 23 September 1994, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57891
306 *Shvydka v. Ukraine*, no. 17888/12, ECtHR, Judgment, 30 October 2014, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-147445
307 *Özgür Gündem v. Turkey*, no. 23144/93, ECtHR, Judgment, 16 March 2000, paras 10, 71, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-58508

protest against Kemalist ideology (*Murat Vural v. Turkey*) [308] or detaching a ribbon from the wreath laid by the then President of Ukraine to the monument of a famous Ukrainian poet (*Shvydka v. Ukraine*).[309] In *Baka v. Hungary*, early termination of the applicant's mandate of the President of the Supreme Court was analysed within the broader context of sequence of events in their entirety. The European Court agreed that the termination had been tied to the applicant's criticism of the judicial reform.[310] In *Vogt v. Germany*, the Court considered under Article 10 a disciplinary dismissal of a schoolteacher for failure to comply with the "duty of political loyalty" of a civil servant, an active member of the German Communist Party, who was otherwise irreproachable in her work.[311]

Turning to the situation in Crimea, persecutions leading to suspension of activities of media or journalists fleeing the peninsula, persecutions for display of flags or other non-verbal actions, dismissals or other employment-related infringements related to the expression of views, that were reported in Crimea, in view of the ECtHR case law can be said to amount to interference with freedom of expression under Article 10 of the ECHR. Restrictions or persecutions related to manifestation of one's religion are covered by Articles 9 and 10, which the Court found relevant in the context of, for instance, the prohibition on publishing and disseminating religious books.[312]

The OHCHR Reports provide numerous accounts of charges, trials and convictions with regard to people expressing, in particular, on social networks, the views that Crimea remains Ukrainian territory, referring to the 'occupation' of Crimea and speaking out about the 'oppression' of the Crimean Tatars.[313] According to the OHCHR, arrests and convictions sometimes appeared to pursue the objectives of penalizing political dissent and to be designed to serve as warnings to others.[314]

The restrictions on freedom of speech and persecution by the *de facto* authorities in Crimea could not but lead to widespread self-censorship and filtering of content prior to its

308 *Murat Vural v. Turkey*, no. 9540/07, ECtHR, Judgment, 21 October 2014, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-147284
309 *Shvydka v. Ukraine*, no. 17888/12, ECtHR, Judgment, 30 October 2014, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-147445
310 *Baka v. Hungary* [GC], no. 20261/12, ECtHR, Judgment, 23 June 2016, paras 144, 175, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-163113
311 *Vogt v. Germany* [GC], no. 17851/91, ECtHR, Judgment, 26 September 1995, paras 60-61, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-58012
312 *Ibragim Ibragimov and Others v. Russia*, nos. 1413/08 and 28621/11, ECtHR, Judgment, 28 August 2018, para 78, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-185293
313 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, paras. 160-162;
Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, OHCHR, 13 September 2017 to 30 June 2018, para. 45;
Report on the human rights situation in Ukraine, OHCHR, 16 November 2018 to 15 February 2019, para 109.
314 Report on the human rights situation in Ukraine, OHCHR, 16 November 2018 to 15 February, para. 20.

publication.[315] The media that continue operating in a minority language either have no political content or support the official position of the Russian Federation on the status of Crimea.[316] Many journalists and bloggers, facing criminal persecutions for the opinions they voiced, were compelled to leave Crimea.[317]

Another issue related to the freedom of expression concerns the rights of LGBT initiatives that have ceased their operation in Crimea and the enactment by the Russian Federation of the legislation banning the 'propaganda of non-traditional sexual relations aimed at minors'. In *Bayev and Others v. Russia* the Court recognised that the right to freedom of expression under Article 10 of the Convention was violated in respect of the applicants brought to administrative responsibility in accordance with this legislation. While the Court did not assess potential impact of the mere existence of the legislation in issue, it condemned this legislation as reinforcing stigma and prejudice and encouraging homophobia, and concluded that the legal provisions in question "do not serve to advance the legitimate aim of the protection of morals, and that such measures are likely to be counterproductive in achieving the declared legitimate aims of the protection of health and the protection of rights of others", moreover, they are open to abuse in individual cases due to the "vagueness of the terminology used and the potentially unlimited scope of their application".[318]

Article 10 in its positive obligations aspect also requires the states to create a favorable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, including be establishing an effective system of protection of authors or journalists capable of shielding them against violence or threats from private persons.[319]

A further confirmation that restriction of freedom of expression has led to displacement from Crimea is the UN General Assembly Resolution related to the situation of human rights in

315 Report on the human rights situation in Ukraine, OHCHR, 16 November 2018 to 15 February 2019, para. 47.
316 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 158.
317 "Crimea: Ukrainian Identity Banned", Analytical report on politically motivated persecution and discrimination on the ground of pro-Ukrainian opinion, Crimean Human Rights Group, 2016, p. 14, accessed 29 November 2019, https://crimeahrg.org/wp-content/uploads/2016/03/Crimea-Ukrainian-identity-banned_EN_CHRG.pdf
318 *Bayev and Others v. Russia*, nos. 67667/09 and 2 others, ECtHR, Judgment, 20 June 2017, paras 62, 83, 84, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-174422
319 *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, ECtHR, Judgment, 14 September 2010, paras 28, 137, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-100383;
Özgür Gündem v. Turkey, no. 23144/93, ECtHR, Judgment, 16 March 2000, paras 42-43, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-58508

Crimea, which welcomed the support provided by Ukraine "to media outlets and civil society organizations that have fled Crimea".[320]

c) Freedom of peaceful assembly and association

The right to freedom of peaceful assembly and association is provided for in Article 20 of the UDHR[321], Articles 21 and 22 of the ICCPR, and Article 11 of the ECHR. The Covenant and the European Convention contain limitation clauses permitting to restrict these rights under certain conditions. Such restrictions are to be set forth by law and are only allowed if necessary to achieve one of the permitted objectives.[322]

Article 11 of the European Convention is closely linked to Article 10 and, in cases concerning religious associations or assemblies, to Article 9. Many traits of this Article resemble those described above with regard to Articles 9 and 10. Thus, the importance of the right to freedom of assembly as one of the foundations of a democratic society and, consequently, the importance to avoid restrictive interpretation, was underlined by the European Court on numerous occasions.[323] The first component of Article 11, right to freedom of peaceful assembly, involves a broad concept of actions included into the notion of "assembly". The Court gives this term an autonomous meaning, irrespective of the national legislation and includes various types of gatherings, both authorised or not, static demonstrations and sit-ins, processions and so on. Moreover, it considers from the perspective of the freedom of assembly such acts committed during a gathering as purposeful obstruction to the traffic[324], installation of banners[325] etc.

While the right to choose the time, place and manner of conduct of the assembly is not absolute, the Court has repeatedly emphasised the importance of these aspects, and noted that an order to change the location, which is crucial to the participants because of the aim of the

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320 "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", UN General Assembly, Resolution 71/190, 19 December 2017, accessed 29 November 2019, https://undocs.org/en/A/RES/72/190

321 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 20, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/

322 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 21, 22, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx; European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 11, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf

323 *Djavit An v. Turkey*, no. 20652/92, ECtHR, Judgment, 20 February 2003, para 56, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-60953; *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, ECtHR, Judgment, 15 October 2015, para 91, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-158200

324 *Barraco v. France*, no. 31684/05, ECtHR, Judgment, 5 March 2009, para 39, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-91570

325 *Akarsubaşı and Alçiçek v. Turkey*, no. 19620/12, ECtHR, Judgment, 23 January 2018, paras 31-33, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-180307

gathering, may constitute an interference with the right guaranteed under Article 11.[326] Prohibition of banners or slogans was also recognised as interference.[327]

The possibility to hold peaceful assemblies was significantly restricted by the new regulatory framework in Crimea and its implementation in practice. The general restrictions included introduction of the requirements of Russian citizenship for the organizers of public gatherings and to request and obtain in advance an official permission to hold a public event.[328] Furthermore, in 2014 the *de facto* authorities issued lists of locations where public events could be organised. In 2016 the number of such locations was reduced from 665 to 366 without any explanation.[329]

Restrictions on the freedom of assembly under Article 11 § 2, as interpreted by the Court, can occur before an assembly takes place (in the form of a ban or preconditions for its holding), during (dispersal) or after (punishment of organisers or participants) the gathering.[330] The ECtHR takes a strict approach with regard to the lawfulness and necessity of particular restrictions in a given situation. As an example, use of penalties, which had the purpose to punish a failure to comply with a police officer's order, or the acts of hooliganism in order to prevent participation in a gathering or to punish for the participation in it were found to breach the lawfulness requirement.[331]

Public gatherings advocating political causes enjoy especially strong protection under Article 11.[332] The state has no power to ban a peaceful assembly solely because of the message it seeks to convey, be it a criticism of current order, call for autonomy or even demands for succession of a territory.[333] Even the fact that the association organising a gathering had been

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326 *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98, ECtHR, Judgment, 20 October 2005, para. 103, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-70678

327 *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, ECtHR, Judgment, 2 October 2001, paras 79-80 and 108-109, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59689

328 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, paras. 147-148.

329 Report on the human rights situation in Ukraine, OHCHR, 16 May to 15 August 2016, para. 165.

330 *Ezelin v. France*, no. 11800/85, ECtHR, Judgment, 26 April 1991, para. 39, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57675

331 *Hakobyan and Others v. Armenia*, no. 34320/04, ECtHR, Judgment, 10 April 2012, para. 107, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-110263;
Huseynli and Others v. Azerbaijan, nos. 67360/11 and 2 others, ECtHR, Judgment, 11 February 2016, para. 98, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-160429

332 Guide on Article 11 of the European Convention on Human Rights. Freedom of assembly and association, European Court of Human Rights, 31 August 2019, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_11_ENG.pdf

333 *Primov and Others v. Russia*, no. 17391/06, ECtHR, Judgment, 12 June 2014, paras 134-135, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-144673;
Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, nos. 29221/95 and 29225/95, ECtHR, Judgment, 2 October 2001, para. 97, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59689;
Sergey Kuznetsov v. Russia, no. 10877/04, ECtHR, Judgment, 23 October 2008, para. 45, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-89066

recognised 'anti-consitutional' by national courts and had been denied registration was in itself not sufficient to justify "a practice of systematic bans on the holding of peaceful assemblies" under Article 11§2.[334]

The manifestation of political views opposing the *de facto* authorities of Crimea, and the events contradicting the official policies or organised by non-loyal groups were restricted either openly or using the available legal limitations as a pretext. For example, on 23 September 2014, the *de facto* Prosecutor of Crimea issued a statement announcing that "all actions aimed at the non-recognition of Crimea as a part of the Russian Federation will be prosecuted".[335]

Another example of assemblies banned because of the content, relevant for the events in Crimea, can be found in the judgment of *Alekseyev v. Russia*, where the Court found the respondent state in breach of Article 11 for repeated refusal to authorise gatherings aimed at drawing attention to LGBT rights combined with dispersal of the unauthorised events and bringing the participants to administrative responsibility.[336]

Many other situations reportedly taking place in Crimea after 2014 also fit into the pattern of violations of Article 11 noted by the European Court with regard to the Russian Federation. The Court's Grand Chamber in its judgment in the case *Navalnyy v. Russia* (15 November 2018) referred to the consistent case law in respect of Russia and indicated to the respondent state the necessity to take general measures "to secure in its domestic legal order a mechanism requiring the competent authorities to have due regard to the fundamental character of the freedom of peaceful assembly".[337] The Court reiterated that the Russian legislation lacked flexibility with regard to the procedure for prior authorisation of public gatherings, moreover, unauthorised assemblies were dispersed and their participants arrested and sanctioned for the sole reason of "the formal unlawfulness" of the event, in breach of Article 11.[338]

In 2015, both commemorative events to mark the anniversary of the deportation of Crimean Tatars and the Crimean Tatar Flag Day celebrations were limited to the official ceremonies or activities by the groups loyal to the *de facto* authorities. All events planned by the Mejlis of the Crimean Tatar People, the self-governing body of the Crimean Tatars, were banned. On one occasion about 60 Crimean Tatars taking part in an unauthorized motorcade

334 *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, ECtHR, Judgment, 2 October 2001, para. 92, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59689
335 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 149.
336 *Alekseyev v. Russia*, nos. 4916/07 and 2 others, ECtHR, Judgment, 21 October 2010, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-101257
337 *Navalnyy* v. Russia [GC], nos. 29580/12 and 4 others, ECtHR, Judgment, 15 November 2018, para. 186, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-187605
338 *Ibid*, paras 184-186.

were arrested.[339] Following the ban of the Mejlis as an organisation in September 2016, any activities involving it were prohibited.[340]

Restrictions were imposed on assembly of other minority groups. For instance, gatherings aimed at advocating for human rights of LGBTI persons were banned in thirteen Crimean cities based on the Russian laws prohibiting propaganda of 'non-traditional sexual relations'.[341]

As mentioned above, Article 11 has close links with Articles 10 and 9, although it plays its own role and applies to specific situations. The Court often considers potential violations of Article 11 in the light of the principles of Article 10, as "[t]he protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11".[342] Another aspect where Article 11 is closely linked to Article 10 is the situation when the authorities interfere with the right to freedom of assembly "in reaction to the views held or statements made by participants in a demonstration or members of an association".[343] Here Article 11 is considered in the light of Article 10. In contrast, solo pickets are considered by the Court as a form of expression rather than an 'assembly'. Still, interference with this type of manifestation is considered under Article 10, "taking into account, where appropriate, the general principles it has established in the context of Article 11 of the Convention".[344] Assemblies of religious nature can also be considered under Article 11, as was an attempt to hold a service in a park in *Barankevich v. Russia*, where the rules concerning public assemblies were applied on the domestic level, and the European Court also applied Article 11 (as the *lex specialis*), interpreting it "in the light of Article 9".[345]

The UN Human Rights Committee in its Concluding observations on the seventh periodic report of the Russian Federation indicates the breaches of Article 21 of the ICCPR, in particular, considering the legislation of "foreign agents" in the context of violation of the right to peaceful assembly.[346] The OHCHR in its Report concerning the situation in the occupied Crimea considered under Article 21 of the ICCPR and Article 11 of the ECHR such examples of interferences with the right to peaceful assembly as refusals to authorize public events based on

339 Report on the human rights situation in Ukraine, OHCHR, 16 May to 15 August 2015, para. 175.
340 Report on the human rights situation in Ukraine, OHCHR, 16 May to 15 August 2017, para. 141.
341 Report on the human rights situation in Ukraine, OHCHR, 16 August to 15 November 2017, para. 146.
342 *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, ECtHR, Judgment, 2 October 2001, para. 85, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59689
343 *Primov and Others v. Russia*, no. 17391/06, ECtHR, Judgment, 12 June 2014, para. 92, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-144673
344 *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, ECtHR, Judgment, 26 April 2016, para. 91, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-162200
345 *Barankevich v. Russia*, no. 10519/03, ECtHR, Judgment, 26 July 2007, para. 15, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-81950
346 *Ibid.*

unsubstantiated allegations that "extremist" or "separatist" messages would purportedly be disseminated during their conduct,[347] blanket ban on public events and other disproportionate restrictions.[348] The OHCHR underlines that "[f]or the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, it is necessary to ensure, *inter alia*, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign and to advertise political ideas".[349]

The second component of Article 11, the right to freedom of association with others, is also relevant to the events in Crimea. The case law of the European Court includes judgments underlining the importance for the proper functioning of democracy of, first of all, political parties, but also associations aimed at protecting cultural or spiritual heritage, those pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness.[350] Moreover, the Court underlined that freedom of association is "particularly important for persons belonging to minorities, including national and ethnic minorities", as "forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights".[351]

In many cases, interferences with the freedom to engage in an association led to the dissolution of the organizations existing in Crimea before its occupation and compelled their participants to leave the peninsula. The OHCHR Report confirmed that as of 4 September 2017, 1,852 NGOs were registered in Crimea and the city of Sevastopol compared to 4,090 in mid-March 2014.[352]

Restrictions contained in the Russian Federation legislation became *de facto* applicable to the associations in Crimea. For example, Association Gurzuf-97, the Centre for Animals and Crimean Association of Support to Animals suspended their activities because of the legislation obliging NGOs with funding from abroad to register as 'foreign agents'.[353] Under the Russian laws, this status entails enhanced monitoring by the authorities and subjects the organisation to special inspections and audits, and additional reporting obligations.[354] A failure to comply with

347 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 151.
348 *Ibid*, para. 153.
349 Report on the human rights situation in Ukraine, OHCHR, 15 April 2014, para. 84.
350 Guide on Article 11 of the European Convention on Human Rights. Freedom of assembly and association, European Court of Human Rights, 31 August 2019, para. 106, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_11_ENG.pdf
351 *Gorzelik and Others v. Poland* [GC], no. 44158/98, ECtHR, Judgment, 17 February 2004, para. 93, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-61637
352 Report on the human rights situation in Ukraine, OHCHR, 16 August to 15 November 2017, para. 167.
353 Report on the human rights situation in Ukraine, OHCHR, 16 May to 15 August 2015, para. 177.
354 Federal Law no. 7-FZ "On Non-commercial Organisations", 12 January 1996, art. 2, 24, 32, accessed 29 November 2019,

the requirements can lead to an administrative fine for the NGO and its officials.[355] The Venice Commission criticised the legislative provisions relating to 'foreign agent' status, concluding that they lacked in legal certainty and fell short of the international standards as regards the procedural matters.[356]

Moreover, organisations manifesting political views critical of the *de facto* authorities' policies were persecuted. The constant pressure against Mejlis, the self-governance body of the Crimean Tatar People, manifested, for instance, in eviction of its central office[357] and denial of re-registration of its weekly newspaper Avdet.[358] Finally, in April 2016 the Supreme Court of Crimea banned Mejlis as an extremist organisation. This put in danger around 2,500 members of the Mejlis bodies who can now be subject to criminal liability with a punishment of up to eight years' imprisonment for participation in an 'extremist' organisation.[359]

On 19 April 2017, the International Court of Justice delivered an Order on provisional measures in proceedings brought by Ukraine against the RF, finding that "the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination […] Refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis".[360]

As regards the manifestation of Ukrainian identity in Crimea, reports show "a continued narrowing of possibilities to manifest Ukrainian identity and enjoy Ukrainian culture in Crimea since the beginning of the occupation".[361] In addition to four national-cultural associations that were registered in Crimea under the Russian legislation the Simferopol-based Renaissance in Unity, Ukrainians of Simferopol, Ukrainians of Yevpatoriia and Ukrainians of Yalta,[362] the unregistered Ukrainian Cultural Centre also continued to function in Simferopol after March 2014 organising public events and commemorations. However, the latter was under constant

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http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=300845&fld=134&dst=100013,0&rnd=0.84488811353170218#09709415699968538

355 Code of Administrative Offences of the Russian Federation, 195-FZ, 30 December 2001, art. 19.34, accessed 29 November 2019, http://www.consultant.ru/document/cons_doc_LAW_34661/

356 Opinion on Federal Law on Foreign Agents and Law on Treason of the Russian Federation, Venice Commission, 27 June 2014, para. 53, accessed 29 November 2019, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2014)025-e

357 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 164.

358 *Ibid*, para. 157.

359 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2016, para. 186.

360 *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures*, ICJ, Order, 19 April 2017, p. 104, para. 102, accessed 29 November 2019, https://www.icj-cij.org/files/case-related/166/166-20170419-ORD-01-00-EN.pdf

361 Report on the human rights situation in Ukraine, OHCHR, 16 August to 15 November 2018, para. 103.

362 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 169.

surveillance and its public activities were often disrupted or prohibited.[363]A number of activists of the Centre dropped significantly during the following years due to the fear of persecution and periodic 'warnings' of the law enforcement authorities not to engage in 'ill-advised activities'.[364]

Interferences with the right enshrined in Article 11 consist in refusals to register an association or its dissolution as well as in actions or omissions hampering its activities.[365] Refusal by the authorities to register an organization as a legal entity is considered by the Court a radical measure, subject to special scrutiny.[366] The group as a whole as well as its leaders, founders and other members can be deemed affected by such refusal.[367] Notably, the Court found a violation of Article 11 where organizations representing ethnic minorities were denied registration on the grounds that they were aimed against the sovereignty or territorial integrity of a state without actual proves of the relevant activities or incitement to violence.[368] The Court has also noted, in respect of the registration of associations that, as with freedom of assembly, "the mere fact that a group of persons calls for autonomy or even requests secession of part of a country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify interferences with their rights under Article 11".[369] Dissolution of associations is also considered by the European Court as a measure to be taken only in very serious cases and with diligent justification.[370] As to religious organizations, the questions of their registration, re-registration or dissolution can, depending on the circumstances, be considered under Article 11 interpreted in the light of Article 9 or vice versa.[371]

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363 *Ibid.*
364 Report on the human rights situation in Ukraine, OHCHR, 16 August to 15 November 2018, para. 104.
365 Guide on Article 11 of the European Convention on Human Rights. Freedom of assembly and association, European Court of Human Rights, 31 August 2019, para. 139, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_11_ENG.pdf
366 *Zhechev v. Bulgaria*, no. 57045/00, ECtHR, Judgment, 21 June 2007, para. 58, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-81209
367 *Kimlya and Others v. Russia*, nos. 76836/01 and 32782/03, ECtHR, Judgment, 1 October 2009, para. 84, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-94565
368 *National Turkish Union Kungyun v. Bulgaria*, no. 4776/08, ECtHR, Judgment, 8 June 2017, para 44, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-174465;
The United Macedonian Organisation Ilinden and Others v. Bulgaria, no. 59491/00, ECtHR, Judgment, 19 January 2006, para. 75, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-72093
369 *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, ECtHR, Judgment, 19 January 2006, para. 76, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-72093
370 *Association Rhino and Others v. Switzerland*, no. 48848/07, ECtHR, Judgment, 11 October 2011, para. 62, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-106893
371 Guide on Article 9 of the European Convention on Human Rights. Freedom of thought, conscience and religion, European Court of Human Rights, last updated 31 August 2019, para. 51, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_9_ENG.pdf

It was also underline both UN Human Rights Committee and the Venice Commission that the right to freedom of association as enshrined in Article 22 of the ICCPR is not limited to the right to form an association but also to its right to carry out freely its statutory activities.[372]

As regards the situation in Crimea, the limitations and bans on public gatherings, refusal to register non-governmental organizations and religious associations, persecution for the membership in an organization and other restrictions on the residents of Crimea to organize gatherings and set up associations fall within the scope of the guarantees of freedom of assembly and association in human rights law and, depending on particular circumstances, amount to its violation.

Such violations of the right to public assembly, freedom of speech and freedom of religion suppresses political and social activity in Crimea. Attempts to silence, and intimidation and persecution of those voicing dissident opinions further contribute to an environment of fear and insecurity. For this reason, the Crimean residents, particularly those participating actively in political or social life, belonging to organisations that have been banned by Russia or merely holding views considered by the *de facto* authorities 'inconvenient', have been compelled to leave Crimea, fearing for the own safety and the safety of their families.

2.4.5. Prohibition of discrimination

International human rights instruments contain a prohibition of discrimination either in respect of substantive rights guaranteed in the same document or as a free-standing right. Specialized treaties focus on protection against discrimination of particular groups.

The UDHR provides that all the rights and freedoms enshrined in the document are to be enjoyed by everyone "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", and without distinction "on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs […]".[373] It further sets forth the principle of equality before the law and equal protection against any discrimination in violation of the Declaration.[374] The same general principle of equality before the law, equal protection and

372 Opinion on Federal Law on Foreign Agents and Law on Treason of the Russian Federation, Venice Commission, 27 June 2014, para. 24, accessed 29 November 2019, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2014)025-e
373 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 2, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
374 *Ibid*, art. 7.

prohibition of discrimination is found in the ICCPR.[375] The Covenant included several other non-discrimination clauses, both general[376] and specific, such as the provision on equal rights of men and women,[377] the provisions concerning equality in enjoyment of particular rights, for instance judicial guarantees[378] and participation of citizens in the public life.[379] Moreover, Article 27 focuses on persons belonging to ethnic, religious or linguistic minorities and their right to "enjoy their own culture, to profess and practise their own religion, or to use their own language", in community with other members of the relevant group.[380]

The International Convention on the Elimination of All Forms of Racial Discrimination of 1965, to which the RF is a party, and which is of relevance to the Crimean context, prohibits discrimination based on nationality and ethnicity. The Convention guarantees that certain rights are to be enjoyed on the equal basis. These rights include equality before the courts, right to security, political rights, civil rights including the right to freedom of movement, freedom of thought, conscience and religion, opinion and expression, peaceful assembly and association, economic, social and cultural rights including the right to education and training and participation in cultural activities.[381]

Some of the situations taking place in Crimea are referred to in the documents of international organisations or monitoring mechanisms concerning the RF. In these documents protection against discrimination is often considered in connection with the rights discussed above, including freedom of conscience, religion and belief, freedom of expression, and right to peaceful assembly and association.

The UN Human Rights Committee in its Concluding observations on the seventh periodic report of the Russian Federation of 2015 mentions, *inter alia*, the violation of the ICCPR Articles 2, 26 and 27 with regard to the "intimidation and harassment of religious communities, including attacks on the Ukrainian Orthodox Church, the Greek Catholic Church and the Muslim community".[382] "Allegations of discrimination and harassment of members of

375 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 26, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
376 *Ibid*, art. 2.
377 *Ibid*, art. 3.
378 *Ibid*, art. 14.
379 *Ibid*, art. 25.
380 *Ibid*, art. 27.
381 International Convention on the Elimination of All Forms of Racial Discrimination, UN General Assembly Res 2106 (XX), 21 December 1965, entered into force 4 January 1969, art. 5, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx
382 Concluding observations on the seventh periodic report of the Russian Federation, UN Human Rights Committee, 28 April 2015, accessed 29 November 2019, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhstWB5OJfDOQhMEkiX20XNhIfwS44vVjDCG9yOfCaGgJ%2B4aMVruPFpyUaMYJvfEOEBQCPHWJdUArBGlBJo5DzI4ZqOZa12FMGUZJqFSjwcIYP

minorities and indigenous peoples, in particular Crimean Tatars" are also noted, with examples of the five-year-long ban on entry for Mustafa Dzhemilev, Ismet Yuksel and Reshat Chubarov.

Reports consistently show that Crimean Tatars remain one the most vulnerable groups particularly targeted by the *de facto* authorities in Crimea. Infringements with regard to the freedom of association and public assembly, limitation on free speech limitations and religious freedoms as Muslims are grave as regards the Crimean Tatar community. Moreover, the Crimean Tatars are often subject to unfounded police raids or searches, face charges of terrorism or extremism-related offences in proceedings that fall short of human rights standards.[383] The disproportionate police attention (from 1 January 2017 to 30 June 2018, 86 per cent of the 95 property searches or raids documented by OHCHR affected Crimean Tatars)[384] suggests a pattern targeting them as a group.

The Committee on the Elimination of Racial Discrimination in its Concluding observations on the twenty third and twenty fourth periodic reports of the Russian Federation of 2017 deplores, with a reference to Articles 2 and 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (condemnation of the discrimination and propaganda thereof), the vagueness and excessive broadness of the definitions of extremist activity and the relevant provisions of the Criminal Code, which "can be used arbitrarily to silence individuals, in particular those belonging to groups vulnerable to discrimination such as ethnic minorities, indigenous peoples, or non-citizens".[385] The Committee also voices concerns about the continuous classification of some non-governmental organizations, including those aiming at promotion and protection of the rights of ethnic or religious minorities and indigenous peoples, as foreign agents, impacting their operational activities and in some instances leading to their closure. It also points out the power of the Prosecutor General and her deputies to declare foreign or international organizations "undesirable" if they decide that the organization is a threat to national security.[386] Referring to Articles 2 (condemnation of the discrimination), 5 (equality in the enjoyment of rights) and 6 (protection against discrimination), the Committee further speaks about the ban and strict limitations on the operation of Crimean Tatar representative institutions, such as the outlawing of the Mejlis and the closure of several media outlets, and about violations of Crimean Tatars' human rights, including allegations of disappearances,

383 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, OHCHR, 13 September 2017 – 30 June 2018, para. 4.
384 *Ibid.*
385 Concluding observations on the twenty-third and twenty-fourth periodic reports of the Russian Federation, UN Committee on the Elimination of Racial Discrimination, 25 August 2017, para. 11, accessed 29 November 2019, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/CERD_C_RUS_CO_23-24_28705_E.pdf
386 *Ibid*, para. 11.

criminal and administrative prosecutions, mass raids, and interrogations, restrictions on using and studying Ukrainian language. [387]

Searches by armed and masked persons in Muslim religious institutions, in businesses and private homes belonging to members of the Crimean Tatar community and aimed at finding prohibited items including 'extremist literature' as well as 'talks' on the persons' adherence to 'undesirable' or 'non-traditional' forms of Islam were carried out most likely to intimidate the Crimean Tatar community.[388]

In February 2017, the law enforcement authorities conducted mass arrest in Crimean Tatar neighbourhoods. The list of victims included 10 Crimean Tatars who were filming the police search of a home belonging to a Crimean Tatar man suspected of extremism. They were found guilty of breaching public order and impeding the movement of civilians, and sentenced to five days of administrative arrest.[389]

The ECHR includes Article 14, which guarantees non-discrimination with regard to other Convention rights,[390] and Article 1 of Protocol No. 12, which establishes general prohibition of discrimination.[391] The European Court has interpreted Article 14 of the European Convention and Article 1 of Protocol No. 12 to encompass two basic principles. Firstly, protection against direct discrimination means that persons in similar situations should be treated in a similar manner. Secondly, in certain cases treatment based on a general, seemingly neutral rule can amount to indirect discrimination, as it results in disadvantages towards an individual or a group because of their particular traits. The ECHR requires the state to refrain from unlawful discrimination as well as to protect persons within its jurisdiction from such discrimination.

The prohibited grounds of discrimination under the ECHR include person's political opinion, religious beliefs, ethnic origin, sexual orientation and gender identity. Discrimination based on the HIV-positive status[392] was also recognised by the Court as covered by the Convention. Instances of discrimination on these prohibited grounds by the authorities have been taking place in Crimea.

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387 *Ibid*, para. 19.
388 Report by Niels Muižnieks, Commissioner for Human Rights of the Council of Europe, following his mission in Kyiv, Moscow and Crimea from 7 to 12 September 2014, CommDH(2014)19, 27 October 2014, para. 21, accessed 29 November 2019, https://www.refworld.org/pdfid/54bf76d54.pdf
389 *Ibid*, para.144.
390 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 14, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
391 *Ibid*, art. 1 of Protocol No. 12.
392 *Kiyutin v. Russia*, no. 2700/10, ECtHR, Judgment, 10 March 2011, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-103904

The European Court takes particularly strict approach to discrimination based on ethnicity.[393] Discriminatory practices against an ethnic group include, for example, a ban for the representatives of such group to enter a particular territory.[394] In many cases, the Court found a violation of one of the rights discussed above, as well as the breach of Article 14, as the applicants' rights were infringed on the sole ground of them belonging to a certain ethnic group. For instance, in case of racially motivated ill-treatment by the police and the failure to investigate this motive of ill-treatment, the ECtHR found the responding state in breach of Article 3 of the ECHR, combined with Article 14.[395]

The state's failure to investigate discriminatory motives of ill-treatment or death, for example, political opinion[396] or ethnic origin[397] can amount to a violation of the procedural limb of Articles 2 or 3 with Article 14. It is especially relevant where there is a pattern of persistent prejudice, including on the part of the law enforcement officials. Such pattern can be confirmed, in particular, by the reports of international organisations.[398]

As religious beliefs and person's opinions are included among the prohibited grounds of discrimination, Article 9 is often examined by the ECtHR in conjunction with Article 14, in particular in the context of different treatment of religious communities,[399] impossibility to receive exemption from military service,[400] refusals to register religious associations[401] or significant delays in the registration,[402] and physical assaults on meetings of Jehovah's Witnesses.[403]

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393 *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, ECtHR, Judgment, 22 December 2009, para. 44, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-96491
394 *Timishev v. Russia*, nos. 55762/00 and 55974/00, ECtHR, Judgment, 13 December 2005, paras. 40-44, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-71627
395 *Makhashevy v. Russia*, no. 20546/07, ECtHR, Judgment, 31 July 2012, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-112535;
Grigoryan and Sergeyeva v. Ukraine, no. 63409/11, ECtHR, Judgment, 28 March 2017, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-172323
396 *Virabyan v. Armenia*, no. 40094/05, ECtHR, Judgment, 2 October 2012, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-113302
397 *Nachova v. Bulgaria* [GC], nos. 43577/98 and 43579/98, ECtHR, Judgment, 6 July 2005, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-69630
398 *Burlya and Others v. Ukraine*, no. 3289/10, ECtHR, Judgment, 6 November 2018, para. 145, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-187508
399 *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, ECtHR, Judgment, 26 April 2016, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-162697
400 *Gütl v. Austria*, no. 49686/99, ECtHR, Judgment, 12 March 2009, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-91724
401 *Metodiev and Others v. Bulgari*a, no. 58088/08, ECtHR, Judgment, 15 June 2017, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-174412
402 *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, ECtHR, Judgment, 31 July 2008, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-88022;
403 *Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia,* no. 71156/01, ECtHR, Judgment, para. 142, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-80395

Similarly, the refusal to register associations[404] or ban of peaceful assemblies[405] aiming at promoting the LGBTI persons' rights were found by the European Court to be in breach of Article 11 in conjunction with Article 14 of the Convention.

In *Kurić and Others* v. Slovenia [GC], the European Court found the treatment of 'the erased' who, as non-nationals, were deprived of numerous rights, to constitute a violation of their right to respect for private life and a discriminatory treatment. Similarly to the case of the assault based on the religious hatred, failure of the authorities to protect against a pre-planned anti-Roma attack was considered a violation of Article 8 in conjunction with Article 14.[406]

In the case *Bayev and Others v. Russia* concerning the legislation on the "propaganda of non-traditional sexual relations aimed at minors" concerned a violation of Article 10 and Article 14.

LGBTI persons in Crimea are a particularly vulnerable group that faces constant intimidation and persecution. This has compelled LGBTI persons to leave Crimea. For instance, the US Department of State notes in its Country Report on Human Rights Practice for 2018, most LGBTI individuals fled Crimea after the Russian occupation began, while those who stayed "live in fear of verbal and physical abuse due to their sexual orientation or gender identity".[407] As it was already mentioned, gatherings aimed at advocating for human rights of LGBTI persons were banned in thirteen Crimean cities based on the Russian laws prohibiting propaganda of 'non-traditional sexual relations'.[408]

Finally, a Council of Europe body, the Advisory Committee on the Framework Convention for the Protection of National Minorities in its Fourth Opinion on the Russian Federation adopted on 20 February 2018 considers "[g]eneral restrictions on freedoms of expression, assembly and association as well as freedom of the media", some of which were discussed above, in the context of their impact on the rights of persons belonging to national minorities: "Legislation on 'foreign agents' and on extremism was used in a number of cases to intimidate or silence persons belonging to minorities or defending minority rights. Persons belonging to minorities who are affected by problematic inter-state relations, such as with

404 *Zhdanov and Others v. Russia*, nos. 12200/08 and 2 others, ECtHR, Judgment, 16 July 2019, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-194448
405 *Alekseyev v. Russia*, nos. 4916/07 and 2 others, ECtHR, Judgment, 21 October 2010, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-101257
406 *Burlya and Others v. Ukraine*, no. 3289/10, ECtHR, Judgment, 6 November 2018, paras. 169, 170, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-187508
407 Ukraine 2018 Human Rights Report, U. S. Department of State, 13 March 2019, Section 6, accessed 29 November 2019, https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/ukraine/ukraine-crimea/
408 Report on the human rights situation in Ukraine, OHCHR, 16 August to 15 November 2017, para. 146.

Ukraine, are particularly vulnerable in this context".[409] With regard to the freedom of expression, the amendments to the Criminal Code criminalising "public, online calls aimed at violating the territorial integrity of the Russian Federation" within the prohibition of separatism were mentioned as a potential means to limit the persons belonging to national minorities in their right to expression, as confirmed by the use of this provision "to prosecute and intimidate critics of Russia's policy on Crimea".[410]

Similarly, the Commissioner for Human Rights of the Council of Europe noted in October 2014 that some of the ethnic Ukrainians residing in Crimea decided to leave the peninsula "because they no longer felt secure", while others "preferred to refrain from openly stating and/or manifesting their views".[411]

Recent OHCHR Reports confirm the continuing nature of persecutions of whose who opposed the 'referendum' and occupational authorities,[412] especially harassment and arrests of Mejlis members or supporters and of pro-Ukrainian civic activists.[413]

The cases reported in Crimea, ranging from job dismissals to police raids and searches, ban of public assemblies, refusal of registration of organizations, assaults by private persons, extremism-related charges and so on, which can be said to be based on ethnic origin, religious affiliation, political opinion or other grounds, are to be considered not only under the provisions directly prohibiting the treatment in issue but also under the anti-discrimination clauses.

2.4.6. Right to property

The right to own property alone or in association with others along with the prohibition of arbitrary deprivation of the property is enshrined in Article 17 of the UDHR.[414] Article 1 of Protocol No.1 of the ECHR guarantees the right to peaceful enjoyment of possessions and prohibition of deprivation of such possessions, "except in the public interest and subject to the conditions provided for by law and by the general principles of international law". Paragraph 2

409 Fourth Opinion on the Russian Federation, Advisory Committee on the Framework Convention for the Protection of National Minorities, 20 February 2018, ACFC/OP/IV(2018)001, summary, accessed 29 November 2019, https://rm.coe.int/4th-advisory-committee-opinion-on-the-russian-federation-english-langu/1680908982
410 *Ibid,* para. 84.
411 Report of Nils Muižnieks following his Mission in Kyiv, Moscow and Crimea from 7 To 12 September 2014, Council of Europe, Commissioner for Human Rights, para. 24, accessed 29 November 2019, https://rm.coe.int/16806db75f
412 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2015, para. 156.
413 *Ibid,* paras. 157-170.
414 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 19, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/

of this Article allows the state to "enforce such laws as it deems necessary to control the use of property in accordance with the general interest".[415]

The concept of 'possessions' in Article 1 of Protocol No. 1 has an autonomous meaning which does not necessarily depend on definitions found in the domestic law. It covers both 'existing possessions' and those assets, including claims, in respect of which the applicant can argue that she has at least a 'legitimate expectation'. 'Possessions' include immovable and movable property and other proprietary interests.

The notion of 'deprivation' of possessions is interpreted broadly by the Court. It is not limit to 'formal taking or expropriation of property'. Emphasising the "practical and effective" nature of the rights guaranteed by the Convention, the Court undertakes to "look behind the appearances and investigate the realities of the situation complained of", which, in some cases, leads to recognizing a situation "a *de facto* expropriation".[416]

Large scale infringements of property right during the occupation include nationalization of numerous economically valuable assets (from energy companies to mobile operators), of property belonging to the Ukrainian state but also that in private ownership.[417]

The 'nationalization' targeted first of all real estate assets. It affected thousands of them, including, for example, over 1,800 privately owned land plots, some with constructions erected on them.[418] As of 12 May 2017, 4,575 public and private real estate assets had been 'nationalized'.[419]

In July 2014, the Crimean Parliament adopted a law banning Ukrainian citizens, including those residents of Crimea who rejected the citizenship of the RF, from using their agricultural land. They were required to sell their land plots to Russian nationals or legal entities.[420]

In addition to seizure of property, interference with the property right as interpreted by the European Court may include measures resulting in the applicant losing her professional clientele[421] or revocation of a business licence.[422] A situation where a television company was

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415 Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights. Protection of property, European Court of Human Rights, updated 31 August 2019, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_1_Protocol_1_ENG.pdf

416 *Sporrong and Lönnroth v. Sweden*, nos. 7151/75, 7152/74, ECtHR, Judgment, 23 September 1982, paras 63-74, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-57580

417 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, paras. 171 – 173.

418 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, OHCHR, 13 September 2017 to 30 June 2018, para. 64.

419 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2017, para. 157.

420 *Ibid*, para. 237.

421 *Könyv-Tár Kft and Others v. Hungary*, no. 21623/13, ECtHR, Judgment, 16 October 2018, paras 31-32, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-186767

provided the licence but not the broadcasting frequencies, which made it impossible to make use of the licence was considered by the Court under Article 1 of Protocol No. 1.[423] Use of a rented land plot for commercial purposes, [424] and the payment of old-age pensions[425] also fall within the scope of the right to property. Refusal to issue official registration of a car was also considered under the clause on the control of the use of property.[426]

The concept of lawfulness of the measures adopted by the state with regard to person's property refers to the quality of the legislation and foreseeability of its application.[427] It should provide safeguards against arbitrariness, including procedural guarantees.[428] The Court analyses the interferences with the property right from the point of view of the balance with the general interests,[429] taking into account, among other aspects, whether the authorities examined a possibility of less intrusive solution.[430] Another aspect relevant to the situations reported in Crimea, compensation for the expropriated/nationalised property is analysed by the Court with regard to its reasonable relation to the property's value[431] and timeliness.[432]

In December 2016, a law was adopted in the RF providing for compensation to the owners of property 'nationalised' since March 2014. However, the scheme is only applicable to private property and is subject to other restrictions with regard to the calculation of the amount and possible terms of payment. It also excludes individuals accused of 'extremism'.[433]

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422 *Megadat.com SRL v. Moldova*, no. 21151/04, ECtHR, Judgment, 17 May 2011, paras 62-79, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-104790
423 *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], no. 38433/09, ECtHR, Judgment, 7 June 2012, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-111399
424 *Di Marco v. Italy*, no. 32521/05, ECtHR, Judgment, 26 April 2011, para. 53, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-104630
425 *Carson and Others v. the United Kingdom* [GC], no. 42184/05, ECtHR, Judgment, 16 March 2010, para. 64, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-97704
426 *Yaroslavtsev v. Russia*, no. 42138/02, ECtHR, Judgment, 2 December 2004, para. 32, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-67649
427 *Beyeler v. Italy* [GC], no. 33202/96, ECtHR, Judgment, 5 January 2000, para. 109, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-58832;
Lekić v. Slovenia [GC], no. 36480/07, ECtHR, Judgment, 11 December 2018, para. 95, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-188268
428 *Lekić v. Slovenia* [GC], no. 36480/07, ECtHR, Judgment, 11 December 2018, para. 95, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-188268
429 *Pincová and Pinc v. Czech Republic*, no. 36548/97, ECtHR, Judgment, 5 November 2002, para. 52, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-60726
430 *Vaskrsić v. Slovenia*, no. 31371/12, ECtHR, Judgment, 25 April 2017, para. 83, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-173102
431 *Pincová and Pinc v. Czech Republic*, no. 36548/97, ECtHR, Judgment, 5 November 2002, para. 53, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-60726
Werra Naturstein GmbH & Co Kg v. Germany, no. 32377/12, ECtHR, Judgment, 19 April 2018, para. 46, , accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-182176
432 *Czajkowska and Others v. Poland*, no. 16651/05, ECtHR, Judgment, 13 July 2010, para. 60, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-99929
433 Report on the human rights situation in Ukraine, OHCHR, 16 February to 15 May 2017, para. 158.

A separate aspect is the Crimean property of the individuals who were prohibited from the access to the peninsula. In all the cases mentioned, the situation of the property rights infringements remains continuous.

2.4.7. Freedom of movement

The right to freedom, or liberty, of movement covers several aspects relevant for the situation of Crimea.

The UDHR proclaims the right to movement and residence within the borders of the state, the right to leave a country (including one's own), and to return to one's own country.[553] The ICCPR contains similar clauses, and provides that the freedom of movement and residence "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant".[554]

The UN Human Rights Committee in its General Comment No. 27 (67) notes that the right to reside in a place of one's choice within the territory a territory of a state includes protection against all forms of forced internal displacement as well as precludes preventing the entry or stay of persons in a defined part of the territory.[555] Moreover, the Committee underscores the importance of equality and non-discrimination with regard to the relevant rights, including prohibition of distinctions based on race, religion, political or other opinion.[556]

Article 2 of Protocol No. 4 to the ECHR provides that "[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence", confirming the right to leave any country including one's own.[557] In its second paragraph it provides that "[n]o restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and

553 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 13, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
554 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 12, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
555 General Comment No. 27 (67) Article 12: Freedom of movement, UN Human Rights Committee, 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 7, accessed 29 November 2019, https://www.refworld.org/docid/45139c394.html
556 *Ibid*, para. 18.
557 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 2 of Protocol No. 4, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf

freedoms of others".[558] The test contained in the second paragraph of Article 2 refers to, *inter alia*, foreseeability of the law, which ensures a measure of protection against arbitrary interference by public authorities.[559]

Interference with the right to freedom of movement and residence, as interpreted by the European Court, can take such forms as a prohibition to leave a country[560] or a certain area[561], or to enter a territory.[562] A particular situation considered in *Tatishvili v. Russia* concerned the authorities' unlawful refusal to register the applicant's place of residence, which resulted in restrictions on many social rights such as access to social security, healthcare etc.[563]

The occupied Crimea was included into the legal and political order of the RF, in a situation which was far from being foreseeable. As mentioned above, the Law On Admission to the Russian Federation of the Republic of Crimea provided, among other, for the establishment of the 'State Border' between Crimea and mainland Ukraine. The rights of the Crimean residents to freely move and choose their place of residence within the internationally recognised territory of Ukraine where thus significantly restricted. The circumstances detrimental to the possibility to move and reside include the overall change of circumstances related to the *de facto* inclusion of the territory into another state, as well as particular aspects, such as the need to change the nationality or obtain a residence permit in order to continue staying in Crimea.

Supporters and members of the Mejlis also frequently face restrictions of their freedom of movement, including intrusive and lengthy interrogations whenever entering or leaving Crimea through the 'border' established by the Russian Federation authorities.[564] Ban on entry to Crimea was applied in some cases to the Crimean Tatar activists, including the former head of the Mejlis, Mustafa Dzhemiliev (in May 2014) and the head of the Mejlis, Refat Chubarov. The decisions were formally justified on the basis of alleged 'extremist' statements of both activists.[565] These particular actions of the *de facto* authorities in Crimea received attention and were criticised at the international level. On 31 March 2015, the UN Human Rights Committee,

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558 *Ibid*, art. 2 para. 2 of Protocol No.4
559 *De Tommaso v. Italy* [GC], no. 43395/09, ECtHR, Judgment, 23 February 2017, paras. 106-109, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-171804
560 *Cherepanov v. Russia*, no. 43614/14, ECtHR, Judgment, 6 December 2016, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-169206
561 *De Tommaso v. Italy* [GC], no. 43395/09, ECtHR, Judgment, 23 February 2017, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-171804
562 *Timishev v. Russia*, nos. 55762/00 and 55974/00, ECtHR, Judgment, 13 December 2005, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-71627
563 *Tatishvili v. Russia*, no. 1509/02, ECtHR, Judgment, 22 February 2007, para. 44, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-79564
564 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 125;
Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, OHCHR, 13 September 2017 to 30 June 2018, para. 38.
565 Report on the human rights situation in Ukraine, OHCHR, 15 July 2014, para. 191.

in its Concluding Observations on the seventh periodic report of the Russian Federation, expressed concern about "[a]llegations of discrimination and harassment of members of minorities and indigenous peoples, in particular Crimean Tatars, including a ban on entry into the territory of Crimea for five years of some of their leaders, Mustafa Dzhemiliev, Ismet Yuksel and Refat Chubarov".[566]

Other infringements, such as the persecutions of civic activists, discrimination related to the professional activities or lack of possibilities to continue education in Ukrainian, also resulted in complications with regard to continuing effectively enjoying the right to reside in the occupied part of the territory of Ukraine. Moreover, as the OHCHR reports, "Ukrainian activists, supporters and members of the Mejlis, in particular, have frequently faced infringements on their movement, including intrusive and lengthy interrogations" whenever entering or leaving Crimea through the 'border' set by the *de facto* authorities. [567]

566 Concluding observations on the seventh periodic report of the Russian Federation, UN Human Rights Committee, 28 April 2015, accessed 29 November 2019, http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhstWB5OJfDOQhMEkiX20XNhIfwS44vVjDCG9yOfCaGgJ%2B4aMVruPFpyUaMYJvfEOEBQCPHWJdUArBGlBJo5DzI4ZqOZa12FMGUZJqFSjwcIYP

567 Report on the Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 125.

3. INVOLUNTARY DISPLACEMENT FROM CRIMEA AS AN INTERFERENCE WITH HUMAN RIGHTS

As described in Chapter 2, the human rights violations which resulted from the repressive policies and practices of the RF in control of Crimea have forced many of its residents to leave the peninsula. The displacement itself has resulted in a number of human rights violations of the affected persons. The violations resulting from the displacement are of continuing nature, and their impact exists as long as the persons remain in the situation of involuntary displacement.

3.1. Right to respect for private and family life

As mentioned above, the right to respect for private and family life is guaranteed in the ICCPR, in Articles 17 and 23, as well as the ECHR, in Article 8. Involuntary displacement can interfere with this right in several aspects.

a) Right to home

As discussed in subchapter 2.4.3 above, the right to private life includes right to respect for one's home.[568] Home, in the ECtHR's understanding, is a broad concept with autonomous meaning, which includes various types of residences to which the person has sufficient and continuous links. [569] Person's habitual place of residence falls under the concept of home as understood, for instance, in the ECtHR's case law. The Court interpreted Article 8 as guaranteeing the protection of home not merely as understood according to the domestic legislation but taking into account the person's lasting ties with the place, such as having spent a significant part of her life there, establishing a family, working, building a house and living there etc.[570]

Forced displacement of persons from their habitual place of residence can result in an interference with their right to home and, consequently, their right to respect for private life. This is so where a displaced person is prevented from returning to her home. Thus, in two cases (*Chiragov and Others v. Armenia* [GC] and *Sargsyan v. Azerbaijan* [GC]) the ECtHR found that

568 Guide on Article 8 of the European Convention on Human Rights. Right to respect for private and family life, home and correspondence, European Court of Human Rights, last updated 31 August 2019, accessed 29 November 2019, https://echr.coe.int/Documents/Guide_Art_8_ENG.pdf
569 *Ibid.*
570 *Chiragov and Others v. Armenia* [GC], no. 13216/05, ECtHR, Judgment, 16 June 2015, para. 206, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-155353

denying the persons displaced in the context of an armed conflict access to their homes was an interference with their right under Article 8.[571] The Crimean residents who are unable to return to their place of habitual residence following their involuntary displacement are in the similar situation with regard to the interference with their right to home. This can be the result of an entry ban. As for example, in the situations described above, where persons who have not received Russian citizenship were treated as foreigners violating the migration regime and deported to mainland Ukraine without any regard to their ties to and home in Crimea. Moreover, those residents of Crimea who left the peninsula because of fear of persecution for their pro-Ukrainian position, their political views or on account of belonging to a persecuted minority cannot return as the risk of the persecution remains and are in fact denied access to their home.

b) Right to respect for family life

Removal of a person from the territory and ban on (re)entry to the territory that results in separating the person from his or her family falls within the scope of the right to respect for family life guaranteed in Article 23 of the ICCPR and Article 8 of the ECHR.[572]

For instance, the UN Human Rights Committee in *Husseini v Denmark* found a person's removal from the state with an entry ban resulting in his separation from his children to breach Article 23 of the ICCPR.[573] In *Al-Nashif v. Bulgaria*, the European Court found a violation of Article 8 in respect of an Islamic preacher whose permanent residence permit was cancelled and who was expulsed from Bulgaria on the grounds of his "unlawful religious activity", as the decision to deport interfered with the applicant's family life (he had a spouse and their children) in Bulgaria, and the interference was "unlawful" from the point of view of the absence of safeguards against arbitrariness.[574]

As with the right to home, the Crimean *de facto* authorities ordering a deportation and an entry ban do not take into account possible family ties. As demonstrated above, some of the persons deported as non-nationals had spouses and children left in Crimea. Speaking about the residents of Crimea who were deported and banned by the *de facto* authorities to enter the territory of Crimea where their families continue to live, the OHCHR notes violation of the right

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571 *Ibid*, paras. 206-208;
Sargsyan v. Azerbaijan [GC], no. 40167/06, ECtHR, Judgment, 16 June 2015, paras. 252-254, 256-261, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-155662
572 *Jeunesse v. the Netherlands* [GC], no. 12738/10, ECtHR, Judgment, 3 October 2014, para. 107, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-147117
573 *Muneer Ahmed Husseini v. Denmark,* UN Human Rights Committee, CCPR/C/112/D/2243/2013, 26 November 2014, para. 9.6, accessed 29 November 2019, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/112/D/2243/2013&Lang=en
574 *Al-Nashif v. Bulgaria* no. 50963/99, ECtHR, Judgment, 20 June 2002, paras. 111-128, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-60522

to family life according to Article 23 of the ICCPR, Article 8 of the ECHR, as well as Article 10[575] of the UN Convention on the Rights of the Child.[576] The same is true with regard to those residents of Crimea who left, for instance, because of the actual or the fear of persecution and cannot return to Crimea because the risk of persecution persists.

c) Right to respect for private life

Involuntary displacement from a person's habitual place of residence can amount to an interference with the person's right to private life. For instance, in *Slivenko v. Latvia*, the ECtHR found a violation of right to private life where the applicants were "removed from the country where they had developed, uninterruptedly since birth, the network of personal, social and economic relations that make up the private life of every human being".[577] The similarity with the situation of Crimea lies in the fact that many persons displaced from Crimea were forced – be it by direct use of force, because of targeted persecution or oppressive practices of the authorities – to leave the place which, for some, has been their home since their birth and the place where they grew up, and, for others, has become their permanent home, where they cultivated their social and professional ties and, more generally, the place in which their entire life was rooted.

The issue of the impossibility to attend burials of relatives or visit their graves is also of relevance to the right for private life.[578] The ECtHR views these issues in the context of private and family life, considering that while these notions concern, first of all, the relationships between living human beings, certain aspects may extend to situations after death. The concepts of private and family life, thus, cover presence during burials, opportunity to know the location of the gravesite and to visit it subsequently etc.[579]

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575 Article 10 para. 2 provides as follows: "A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country."

576 Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), OHCHR, 25 September 2017, para. 126.

577 *Slivenko v. Latvia* [GC], no. 48321/99, ECtHR, Judgment, 9 October 2003, para. 6, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-61334

578 *Sabanchiyeva and Others v. Russia*, no. 38450/05, ECtHR, Judgment, 6 June 2013, paras. 122-123, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-120070;
Sargsyan v. Azerbaijan [GC], no. 40167/06, ECtHR, Judgment, 16 June 2015, paras. 257, 260, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-155662

579 *Sargsyan v. Azerbaijan* [GC], no. 40167/06, ECtHR, Judgment, 16 June 2015, para. 255, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-155662

3.2. Right to property

With regard to the property left behind by those who cannot return, the Court has several times considered similar issues under Article 1 of Protocol 1, including in the above-mentioned *Chiragov and Others v. Armenia* [GC] and *Sargsyan v. Azerbaijan* [GC].[580]

In *Chiragov and Others v. Armenia* [GC], the applicants had to move from the disputed area of Nagorno-Karabakh during the armed conflict in 1992, leaving behind their property, including the real estate, and were unable to gain access to the property, which remained within the territory under the effective control of the respondent state. The Court concluded that this situation constitutes a continuous violation of Article 1 of Protocol No. 1.[581]

Some of the Crimean residents who were forced to move from the peninsula and cannot return have left behind their real estate and other possessions. They are in a similar situation where the state in control of the territory where their property is situated is effectively denying them access to their property.

3.3. Freedom of movement and choice of residence

Freedom of movement is one of the essential conditions for ensuring the free development of the individual. It is often a necessary precondition for the realization of other rights and freedoms, such as the right to work, the right to education, the right to protection of family life, and sometimes the right to life. In the 20th century, the right to freedom of movement was enshrined in almost all national constitutions, as well as in universal and regional international legal instruments on human rights. In particular, it is protected under the Universal Declaration of Human Rights (article 13),[582] International Covenant on Civil and Political Rights (article 12),[583] European Convention on Human Rights (Protocol No. 4, article 2). [584]

The freedom of movement as a protected human right appears in three manifestations:

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580 *Chiragov and Others v. Armenia* [GC], no. 13216/05, ECtHR, Judgment, 16 June 2015, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-155353;
Sargsyan v. Azerbaijan [GC], no. 40167/06, ECtHR, Judgment, 16 June 2015, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-155662;
Loizidou v. Turkey [GC], no. 15318/89, ECtHR, Judgment, 18 December 1996, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-58007
581 *Chiragov and Others v. Armenia* [GC], no. 13216/05, ECtHR, Judgment, 16 June 2015, paras. 186-187, 201, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-155353
582 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 13, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
583 International Covenant on Civil and Political Rights (ICCPR), UN General Assembly, 16 December 1966, art. 12, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
584 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 2 of Protocol No. 4, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf

1) The right to move freely within a country and choose a place of residence within it;
2) The right to cross the international border, namely to leave any country, including one's own;
3) The right to return to the own country.

In the context of displacement, the right to move freely within a country and choose a place of residence is closely linked with the prohibition of arbitrary displacement.

The right to return is explicit in the wording of the UDHR.[585] As to the ICCPR, the UN Human Rights Committee noted that Article 12 includes protection against all forms of forced internal displacement and precludes preventing the entry or stay of persons in a defined part of the territory.[586] As to the right to enter one's own country, the Committee emphasises, among others, such aspect thereof as the right to remain in one's own country,[587] and applicability of the clause in issue to the cases of a country of nationality being incorporated into or transferred to another national entity.[588]

Article 3 of the Protocol No. 4 to the ECHR prohibits expulsion of nationals, which includes a prohibition of depriving a national of the right to enter the territory of the state of his or her nationality.[589] Moreover, the UN Convention on the Rights of the Child when speaking about the right of a child to maintain regular contacts with both parents even if they reside in different states, provides that towards that end the states parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country.[590]

The OHCHR refers to the ICCPR and ECHR when discussing the situation of the Ukrainian citizens deported to mainland Ukraine by the *de facto* authorities in Crimea and/or banned from the entry to Crimea.[591] It refers to the violations of the Convention on the Rights of the Child in cases where such actions cause separation from a child.[592]

Furthermore, the analysis of relevant practice of the European Court of Human Rights confirms that the freedom of movement under the Convention also includes the protection from forced displacement.

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585 Universal Declaration of Human Rights (UDHR), UN General Assembly, 10 December 1948, art. 13 para. 2, accessed 29 November 2019, https://www.un.org/en/universal-declaration-human-rights/
586 General Comment No. 27 (67) Article 12: Freedom of movement, UN Human Rights Committee, 2 November 1999, CCPR/C/21/Rev.1/Add.9, accessed 29 November 2019, https://www.refworld.org/docid/45139c394.html
587 *Ibid*, para. 19.
588 *Ibid*, para. 20.
589 European Convention on Human Rights (ECHR), Council of Europe, 4 November 1950, art. 3 of Protocol No. 2, accessed 29 November 2019, https://www.echr.coe.int/Documents/Convention_ENG.pdf
590 Convention on the Rights of the Child, UN General Assembly Res 44/25, 20 November 1989, art. 10 para. 2, accessed 29 November 2019, https://www.ohchr.org/en/professionalinterest/pages/crc.aspx
591 Report "Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", OHCHR, 25 September 2017, paras. 124, 126-128.
592 *Ibid*, para. 126.

In the case *Denizci and others v. Cyprus* the applicants complained that their forced expulsion from the territories under the control of the Republic of Cyprus to the northern part of Cyprus constituted an unjustified violation of their liberty of movement within the territory of the Republic of Cyprus and their freedom to choose their residence. Moreover, they were under strict police surveillance, that their movements were monitored and that they had to obtain permission to leave their town of residence. The ECtHR found a violation of freedom of movement (Protocol No.4 article 2).[593]

Accordingly, the situation of involuntarily displaced Crimean residents can be considered through the lens of the right to freedom of movement and residence as interpreted both by the UN bodies and the ECtHR. Firstly, this is the case of those who were explicitly ordered to leave and banned from entry. Secondly, the involuntary displaced persons are effectively deprived of the possibility to return to the territory of their habitual residence, they cannot choose freely their place of residence within the internationally recognised territory of Ukraine. This can be caused by the fact that, should they decide to move back, as non-citizens they will find themselves in a completely changed and precarious situation, in comparison to the one they used to live in before the occupation. Moreover, those who left because of persecutions are effectively deprived of the right to return on account of persisting risk of persecution by the *de facto* authorities in Crimea.

[593] *Denizci and Others v. Cyprus*, nos. 25316-25321/94 and 27207/95, ECtHR, Judgment, 23 May 2001, accessed 29 November 2019, http://hudoc.echr.coe.int/eng?i=001-59474

CONCLUSIONS

1. From the international law perspective, the status of Crimea did not change with its occupation by the Russian Federation in March 2014. At the same time, for Crimean residents the situation has changed completely. Massive human rights violations, persecutions of persons and minority groups, interference with personal integrity, security and liberty and property rights became an everyday practice of the occupational authorities. Thus, the general environment of oppression, insecurity, fear for one's life and health force people to leave their households and to flee from the occupied peninsula.
2. The Russian Federation in Crimea applies such repressive policies and practices which amount to violations of international human rights law, in particular of International Covenant on Civil and Political Rights and the European Convention on Human Rights. For instance, the automatic assignment of citizenship is an interference with personal autonomy and identity and therefore constitutes a violation of right to private life, enshrined in articles 17 and 23 of the ICCPR and article 8 of the ECHR. In its turn, persecution of vulnerable groups, such as Crimean Tatars, pro-Ukrainian activists, representatives of various faiths, journalists, human rights defenders and LGBTI persons results in a huge number of human rights violations, such as violations of freedom of religion, freedom of expression, freedom of peaceful assembly and association, right to life and prohibition of ill-treatment, right to liberty, fair trial and access to effective remedies, prohibition of discrimination and freedom of movement.
3. By means of analysis it was proved that the human rights violations, which arise from policies and practices of the *de facto* authorities, serve as causing factors of people displacement from Crimea.
4. Despite the fact that the *de facto* authorities did not directly force the population to leave the peninsula (i.e. they did not issue orders for expulsion), 40 thousand people were forced to leave their homes because of policies that systematically violate human rights of Crimean residents. This proves the involuntary nature of such displacement, when the circumstances do not leave the person a genuine choice to remain at home or place of residence and compel the person to leave.
5. The analysis shows that the situation with human rights violations in the Crimea, which lead to involuntary displacement, requires constant monitoring, intervention and prevention from international organizations, monitoring missions and human rights organizations.
6. The involuntary displacement itself was assessed as an interference with human rights of the affected persons. Involuntarily displaced people are prevented from returning home,

as the risk of the persecution remains. They are losing social, family and professional ties, leaving behind their property. All this reflects violations of right to respect for private and family life, right to property and freedom of movement and choice of residence. The violations resulting from the displacement are of continuing nature, and their impact exists as long as the persons remain in the situation of involuntary displacement.

7. Hence, the attention of human rights defenders, as well as academic community, should be paid not only to violations of human rights that occur in Crimea and lead to involuntary displacement, but also to those violations that arise from such displacement. The development of the criteria and principles for determining such violations on the Crimean population example will allow their further use in similar conflict situations.

8. As the state in direct and effective control of Crimea, the Russian Federation is under the obligation to ensure respect for human rights on the territory of Crimea. It bears responsibility for any violation of the ICCPR and ECHR committed against the residents of Crimea under its jurisdiction. This means that any person who has left Crimea due to a violation of his rights or the threat of such a violation is a victim and deserves just satisfaction from the Russian Federation.

RECOMMENDATIONS

1. **To the Government of the Russian Federation:**
   - Respect obligations that apply to an occupying power in accordance with international law provisions, in particular Geneva Conventions, International Covenant on Civil and Political Rights, European Convention on Human Rights: end discriminatory practices and human rights violations;
   - Refrain from imposition Russian Federation legal system in Crimea, pursuant to UN General Assembly resolutions 68/262, 71/205 and 72/190;
   - Comply with the Order of the International Court of Justice of 19 April 2017: refrain from imposing limitations on the Crimean Tatar community in preserving its representative institutions, including the Mejlis and ensure the availability of education in the Ukrainian language;
   - Ensure access of international human rights monitoring missions and observers to Crimea, pursuant to UN General Assembly resolutions 71/205 and 72/190.

2. **To the Government of Ukraine:**
   - Investigate human rights violations committed in Crimea;
   - Use all legal means to ensure the respect for human rights of Ukrainian citizens residing in Crimea and displaced from it;
   - Submit interstate complaints to the ECtHR against the Russian Federation on the basis of human rights violations of Ukrainian citizens involuntarily displaced from Crimea (freedom of movement and choice of residence, right to respect for private and family life and right to property);
   - Submit communications to the International Criminal Court regarding forcible expulsion of the Crimean population by the *de facto* Crimean authorities representatives;
   - Ensure access of international human rights monitoring missions and observers to Crimea; simplify the procedure for obtaining permits for visiting Crimea.

3. **To the international community:**
   - Call upon the Russian Federation to comply with its obligations as an occupying state under international human rights and humanitarian law;
   - Pay particular attention to human rights violations, which precede the involuntary displacement from Crimea and arise from it;

- Establish clear criteria for the determination of forcible character of displacement in the context of international human rights law.

4. To the victims of involuntary displacement from Crimea:

- Submit complaints about violations of their rights by the RF: to the European Court of Human Rights – on the basis of the violation of article 8, article 1 Protocol 1, article 2 Protocol 4 of ECHR, or to the UN Human Rights Committee – on the basis of the violation of articles 12, 17 and 23 of ICCPR;
- Apply to the national and international human rights NGOs, missions, Ukrainian state authorities for the protection of their rights.

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ABSTRACT

The occupation of Crimea by the Russian Federation in 2014 and systematic and large-scale policy of the occupation authorities aimed at persecuting and discriminating the population, which does not show loyalty to the occupation authorities, caused mass displacement of population from Crimea and constitutes a number of human rights violations.

The thesis aims to analyze the causing factors of the population displacement from the occupied Crimea in order to prove its involuntary nature, and to determine human rights violations which arise from such displacement.

Consequently, it is proved that without using direct coercion to flee, the Russian Federation applies such policies and practices at the occupied Crimea that result in violations of human rights and lead to the involuntary population displacement from the peninsula. The involuntary displacement itself results in the violations of the right to respect for private and family life, right to property and freedom of movement and choice of residence.

Keywords: Occupation of Crimea; Involuntary Displacement; Human Rights Violations.

SUMMARY

HUMAN RIGHTS ASPECTS OF INVOLUNTARY DISPLACEMENT FROM THE OCCUPIED CRIMEA

The purpose of the Master thesis is to analyze the causing factors of the population displacement from the occupied Crimea in order to prove its involuntary nature, and to determine human rights violations which arise from such displacement.

The thesis consists of introduction, three chapters divided into subchapters, conclusions, recommendations and list of bibliography.

The general part is devoted to the overview of the concepts and terms related to involuntary migration, notions of forced removal and involuntary displacement. It is represented in Chapter 1 covering also the issue of factors leading to involuntary displacement and the role of the State in it; as well as the description of displaced persons types.

The special part contains Chapters 2 and 3. Chapter 2 provides a brief description of the initial stage of Crimean occupation in 2014 and following migration from peninsula. In general Chapter 2 is devoted to the legal analysis of the policies and practices of the occupying authorities from the international human rights law point of view, and determination of the causing factors of involuntary displacement from the occupied Crimea.

Chapter 3 is focused on the analysis of the violations resulting from the involuntary displacement itself, namely on the violations of the right to respect for private and family life, right to property and freedom of movement and choice of residence with regard to the international documents and legal precedents.

In conclusions it is stated that as the state in effective control of Crimea, the Russian Federation is under the obligation to ensure respect for human rights on the territory of Crimea. Without using direct coercion to flee, the Russian Federation applies such policies and practices at the occupied Crimea that result in violations of human rights and lead to the involuntary population displacement from the peninsula. The involuntary displacement itself results in the violations of the right to respect for private and family life, right to property and freedom of movement and choice of residence.

HONESTY DECLARATION

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I, _____Kateryna Petrova_____, student of

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Mykolas Romeris University (hereinafter referred to University),
Mykolas Romeris Law School, International and European Union Law Institute,
International Law Program

(Faculty /Institute, Programme title)

confirm that the Master thesis titled

"Human Rights Aspects of Involuntary Displacement from the Occupied Crimea":

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

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