

CITIZENS' WATCH

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TRIAL MONITORING IN CRIMEA IN 2017-2018

SUMMARY

This report is prepared by the NGO "Citizens' Watch" (Saint-Petersburg, Russia) and based on the data collected in the framework of the Initiative Group on Human Rights in Crimea, the free coalition of organizations of Ukraine, Russia and other countries, as well as individual experts ready to work together to protect the human rights in the Crimean peninsula.

Our methodology is based on the trial monitoring guidelines of the OSCE adopted to the specifics of Russia and Crimea. A team of trained monitors from Russia and Crimea conducted trial monitoring in Crimea in 2017-2018. Taking into account that international organizations and human rights protection mechanisms have been granted limited access in Crimea, we consider the way the trial monitoring was conducted a success.

Our purpose was to assess how court proceedings in Crimean courts met the international standards of the right to a fair trial. We chose those cases for monitoring, which we considered publicly significant. Our methodology allows for objective and thorough recording of everything that is happening in the courtroom.

The report covers data on 12 criminal cases and 12 accused. The guilty verdicts in all the cases have come into force.

Cases chosen for monitoring:

- Ahtem Chiygoz was accused of organizing public unrest on 26 February 2014. The charges against Ahtem Chiugoz contradict the principle of retroactivity in the criminal law, because offences which he allegedly committed had taken place before Crimea became a part of Russia: the Treaty of accession of Crimea to Russia was signed on 18 March 2018;
- To this case, we added the cases of Suleiman Kadyrov, Nicolai Semena, Ilmi Umerov, Igor Movenko, Larisa Kitayaskaya and Lilia Tatarisova, as they were all accused of violating territorial integrity of the Russian Federation by posting their opinions on the Internet arguing the legality of the accession of Crimea to Russia;
- Vladimir Balukh was accused of illegal possession of weapons;
- Yakob Trosh and Andrej Shulga were accused of evading military service;
- Redvan Suleimanov was suspected in terrorism;
- Gennadiy Lemeshko was accused of plotting sabotage.

Trial monitoring showed a number of violations of human rights. We would like to draw your attention to the most serious violations of the right to a fair trial.

Violation of the presumption of innocence

In November 2015 when the case of Ahtem Chiugoz was tried in the court of the first instance, the then Prosecutor of Crimea Natalia Poklonskaya named Ahtem Chiugoz a criminal and a killer in an interview and emphasized that she did not have any doubts about his guilty verdict.

Publicity

The principle of public hearings was not always upheld:

- Some judges showed hostility towards the public in the courtroom, causing “a chilling effect” on people interested to observe hearings and in the end limiting access to courts;
- Moreover, the hearing at the Supreme Court of Crimea of the appeal of the Ahtem Chiugoz stands out due to unprecedented safety measures, which did not have any other effect than to frighten the visitors;
- Access of the public to the hearings of Ilmi Umerov and Ahtem Chiugoz was limited as the courtrooms were too small to accommodate all visitors.

The right to effectively participate and measure of restraint

The monitoring showed that judges preferred less severe measures of restraint: 5 of the accused were taken into custody, while others (7) were placed under house arrest or signed undertaking not to leave the place of residence. However, we would like to draw your attention to the case of Vladimir Balukh. He was one of those taken into custody. He had serious health problems and could not effectively participate in the court hearing. At one point he was even hospitalised during the court hearing. He persistently asked the court to review his custody order. Finally he was placed under house arrest. However, due to new charges against him he is now again taken into custody. At present he is on hunger strike.

We made a conclusion that the judge in Vladimir Balukh case **was biased** on the basis of four points:

1. Her unmotivated unwillingness to review custody in view of bad state of health of Vladimir Balukh;
2. In one case she followed non-verbal instructions of the Prosecutor when she assessed requests of the accused and his defence lawyer;
3. During one of the court hearings Vladimir Balukh said that God’s punishment awaits everybody. The judge considered his words to be a personal threat;
4. She did not take into account the need of Vladimir Balukh’s defense lawyer to be present at another court hearing when she scheduled the date of the next hearing.

Metal cages

Inhuman and degrading treatment: in all cases, when the accused were taken into custody, in the courtroom they were placed in the metal cages, which violates their dignity and constitutes treatment breaching article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It is outrageous that even the Supreme Court of the Republic of Crimea is equipped with metal cages.

Judges

Sometimes judges do not take seriously procedural guarantees: in the cases of Yakub Trosh and Vladimir Balukh the judges did not inform the accused of their rights, in other cases they informed the participants of the proceedings of the rights superficially. Moreover, they often ignored the need to formally announce the beginning and closure of the hearings. This confused the audience.

The judges did not always maintain the adversarial nature of proceedings:

- Sometimes they failed to explain the reasoning of their decisions on request of the defense;
- In the case of Ilmi Umerov the judge refused to admit an expert opinion and refused to call a new expert in linguistics despite the fact that a linguistic expert opinion was the main evidence in this case and the defense persuasively argued that there were serious drawbacks in the expert opinion presented by the Prosecution;
- In the case of Igor Movenko the judge refused to grant the request of the defense to call a witness, but granted the request of the prosecution to call the same witness.

Right to legal defense

In the case of Gennadii Limeshko it was obvious that the state lawyer appointed for the appeal process was not prepared to the court hearing, however the judges did not address the issue.

Quality of the pre-trial investigation

The sentence in the case of Suleiman Kadyrov, who expressed his views about the accession of Crimea to Russia on the Internet, was based on identical statements of witnesses, which raises the question about the quality of pretrial investigation. However, the judge ignored it.

The same criticism applies to the criminal case against Igor Movenko.

Disproportionate punishment

In three cases the punishment involved not only suspended sentence or imprisonment but also deprivation of the right to publish posts on the Internet for Suleiman Kadyrov, Ilmi Umerov and Nicolai Semena. We believe that this type of punishment is a violation of the right to freedom of speech. This is especially important for Nikolai Semena, whose profession is journalism. We consider such heavy punishment disproportionate to the allegedly committed offences.

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To conclude, in the majority of cases our monitoring showed violations of the right to a fair trial and other human rights (the right to not to be subjected to inhuman or degrading treatment and the freedom of speech).

We will continue to perform trial monitoring in Crimea.