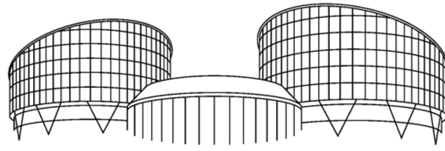

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF UKRAINE v. RUSSIA (*RE* CRIMEA)

(Applications nos. 20958/14 and 38334/18)

JUDGMENT

Art 33 • Inter-State application • Administrative practices by Russia predominantly in Crimea resulting in multiple Convention violations

Art 2 (substantive and procedural) • Life • Administrative practice of enforced disappearances and lack of effective investigation into credible allegations of such practice • Court's examination of complaint not limited to individuals unaccounted for • Applicability of Art 2 engaged regardless of the release of most of those abducted

Art 3 (substantive and procedural) • Torture • Inhuman and degrading treatment • Administrative practice of ill-treatment of Ukrainian soldiers, ethnic Ukrainians, Crimean Tatars and journalists • Administrative practice of ill-treatment of "Ukrainian political prisoners" both in Crimea and the Russian Federation and lack of effective investigation • Degrading conditions of detention of "Ukrainian political prisoners" in the Simferopol SIZO in Crimea • Systemic problem resulting from overall shortcoming in organisation and functioning of Crimean prison system

Art 5 • Lawful arrest or detention • Administrative practice of unacknowledged and incommunicado detention of Ukrainian soldiers, ethnic Ukrainians, Crimean Tatars and journalists

Art 5 • Art 7 • Ongoing administrative practice of unlawful deprivation of liberty, prosecution and/or conviction of "Ukrainian political prisoners" based on application of Russian law in Crimea • Retroactive application of criminal law and extension of criminal-law provision in an unforeseeable manner by the courts in Crimea

Art 6 • Tribunal established by law • Wholesale application of Russian law in Crimea after its admission to the Russian Federation, in breach of the Convention as interpreted in the light of International Humanitarian Law • General and wholesale replacement of Ukrainian law • Courts in Crimea not "established by law"

Art 8 • Private life • Administrative practice of preventing permanent citizens of Crimea from effectively being able to opt out of Russian citizenship

Art 8 • Private life • Family life • Home • Administrative practice of unlawful and arbitrary raids and searches of private houses

Art 8 • Family life • Administrative practice of unlawful transfers of Crimean prisoners to penal facilities located on Russian territory

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Art 9 • Freedom of religion • Administrative practice of unlawful harassment of religious leaders not conforming to the Russian Orthodox faith, arbitrary raids of places of worship and confiscation of religious property • No legitimate aim or justification provided

Art 10 • Freedom of expression • Administrative practice of unlawfully suppressing non-Russian media, including closure of Ukrainian and Tartar television stations • Administrative practice not "necessary in a democratic society"

Art 11 • Freedom of peaceful assembly • Freedom of association • Administrative practice of unlawfully prohibiting public gatherings and manifestations of support for Ukraine or the Crimean Tartar community as well as intimidation and arbitrary detention or organisers of demonstrations • Administrative practice not "necessary in a democratic society"

Art 10 • Art 11 • Administrative practice of unlawful deprivation of liberty, prosecution and/or conviction of "Ukrainian political prisoners" for exercising their freedom of expression, of peaceful assembly and association

Art 1 P1 • Deprivation of property • Administrative practice of unlawful large-scale expropriation (nationalisation) of property belonging to civilian and private enterprises in Crimea, entailing a conclusive transfer of ownership without compensation • Impugned deprivations disproportionate

Art 2 P1 • Right to education • Administrative practice of suppression of the Ukrainian language in schools and persecution of Ukrainian-speaking children at school • Denial of substance of the right to education

Art 2 P4 • Administrative practice of unlawfully restricting the freedom of movement between Crimea and mainland Ukraine resulting from the *de facto* transformation by the respondent State of the administrative border line into a State border between the Russian Federation and Ukraine

Art 14 (+ Art 8, 9, 10, 11 and Art 2 P4) • Discrimination • Lack of objective or reasonable justification for discriminating against Crimean Tartars

Art 18 (+ Art 5, 6, 7, 8, 10 and 11) • Restrictions for unauthorised purposes • Art 18 not applicable in conjunction with Art 7 in view of that provision's non-derogable nature (incompatible *ratione materiae*) • Art 18 applicable in conjunction with Art 5, 6, 8, 10 and 11 • Administrative practice of restricting the "Ukrainian political prisoners'" rights and freedoms with predominant ulterior purpose of punishing and silencing any political opposition • Continuous State policy, developed and publicly promoted by prominent representatives of important Russian authorities, of stifling any opposition to Russian policies • Pattern of retaliatory prosecution, misuse of criminal law and general crackdown on political opposition to Russian policies in Crimea

Art 38 • Non-compliance with State obligation to furnish all necessary facilities

Art 46 • Execution of judgment • Individual measures • Respondent State to take measures, as soon as possible, to secure the safe return of the prisoners concerned transferred from Crimea to penal facilities located on the Russian Federation's territory

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 June 2024

This judgment is final but it may be subject to editorial revision.

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LIST OF ABBREVIATIONS

ARC	Autonomous Republic of Crimea
CAORF	Code of Administrative Offences of the Russian Federation
CCrPRF	Code of Criminal Procedure of the Russian Federation
CES	Code of Execution of Sentences
CFD	“Crimean Federal District”
CM	Committee of Ministers of the Council of Europe
CrCRF	Criminal Code of the Russian Federation
CSDF	“Crimean Self-Defence Forces”
“DPR”	“Donetsk People’s Republic”
FMS	Federal Migration Service of the Russian Federation
FSB	Federal Security Service of the Russian Federation
FSIN	Russia’s Federal Prison Service
HCNM	the OSCE High Commissioner on National Minorities
HRAM	the OSCE Human Rights Assessment Mission
HRMMU	United Nations Human Rights Monitoring Mission in Ukraine
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IGO	Intergovernmental organisation
IHL	International humanitarian law
ITU	International Telecommunication Union

“LPR”	“Luhansk People’s Republic”
“MRT”	“Moldavian Republic of Transdniestria”
NGO	Non-governmental organisation
IPHR	International Partnership for Human Rights
UHHRU	Ukrainian Helsinki Human Rights Union
OHCHR	Office of the United Nations High Commissioner for Human Rights
OCU	Orthodox Church of Ukraine
OSCE	Organization for Security and Co-operation in Europe
ODIHR	the OSCE Office for Democratic Institutions and Human Rights
PACE	Parliamentary Assembly of the Council of Europe
RAMCS	Religious Administration of Muslims of Crimea and Sevastopol
RSFSR Criminal Code	Criminal Code of the Russian Soviet Federative Socialist Republic
SIZO	Pre-trial detention facility
SHIZO	Punishment cell
TRC	Television and radio company
TRNC	“Turkish Republic of Northern Cyprus”
UNA-UNSO	Ukrainian National Assembly – Ukrainian People’s Self-Defence
UN HRC	United Nations Human Rights Committee
UOC-KP	Ukrainian Orthodox Church of the Kyiv Patriarchate
UOC-MP	Ukrainian Orthodox Church of Moscow Patriarchate
UPA	Ukrainian Insurgent Army

In the case of Ukraine v. Russia (*re* Crimea),

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Síofra O'Leary,
Georges Ravarani,
Marko Bošnjak,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Arnfinn Bårdsen,
Krzysztof Wojtyczek,
Faris Vehabović,
Stéphanie Mourou-Vikström,
Tim Eicke,
Lətif Hüseynov,
Jovan Ilievski,
Gilberto Felici,
Erik Wennerström,
Ioannis Ktistakis,
Diana Sârcu,
Mykola Gnatovskyy, *judges*,
and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 13 December 2023 and 17 April 2024,

Delivers the following judgment, which was adopted on that last date:

PROCEDURE

I. INTRODUCTION

1. The case originated in two applications (nos. 20958/14 and 38334/18) against the Russian Federation lodged with the Court under Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ukraine on 13 March 2014 and 10 August 2018 respectively. Both applications concerned events in Crimea (for the purposes of the present judgment, "Crimea" refers to both the Autonomous Republic of Crimea (ARC) and the City of Sevastopol) and Eastern Ukraine.

2. The Ukrainian Government ("the applicant Government") were represented by their Agent, Ms Marharyta Sokorenko, Representative of the Ukrainian Government at the European Court of Human Rights and Head of the Office within the Ministry of Justice.

3. From April 2022 the Russian Government ("the respondent Government") were represented by the General Prosecutor's Office of the Russian Federation, Representative of the Russian Federation to the European Court of Human Rights.

4. The applicant Government alleged that the Russian Federation had been responsible for administrative practices entailing numerous violations of the Convention. In both applications the applicant Government relied on several Articles of the Convention, in particular Article 3 (prohibition of inhuman treatment and torture), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 10 (freedom of expression) and Article 11 (freedom of assembly and association). In application no. 20958/14 they also complained under Article 2 (right to life), Article 9 (freedom of religion), Article 14 (prohibition of discrimination), Article 1 of Protocol No. 1 (protection of property), Article 2 of Protocol No. 1 (right to education) and Article 2 of Protocol No. 4 (freedom of movement). In application no. 38334/18 they further invoked Article 7 (no punishment without law) and Article 18 (limitation on use of restriction on rights). They stated at the oral hearing of 13 December 2023 (see paragraph 27 below) that the alleged administrative practices under the Articles mentioned above were part of a large interconnected campaign of political repression implemented by the respondent State aimed at stifling any political opposition and entailed systematic violations of civil rights and freedoms.

5. Some of the complaints raised in both applications are, in fact, identical (regarding the system of opting out of Russian citizenship and the transfers of prisoners from Crimea to the territory of the Russian Federation) while other complaints raised in the two applications concern (to a varying extent) some of the same events or individuals. Indeed, in both applications reference is made, for example, to the events of 26 February 2014, those of 3 May 2014 or to the "persecution" of the Crimean Tatars.

6. On 13 March 2014 the President of the Third Section decided to indicate, regarding application no. 20958/14, an interim measure under Rule 39 of the Rules of Court calling upon both the High Contracting Parties concerned to refrain from taking any measures, in particular military action, which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk, and to comply with their engagements under the Convention, notably in respect of Articles 2 and 3 of the Convention.

II. ADMISSIBILITY PROCEDURE BEFORE THE GRAND CHAMBER REGARDING APPLICATION NO. 20958/14

7. On 7 May 2018 a Chamber of the First Section decided to relinquish jurisdiction in favour of the Grand Chamber as regards application no. 20958/14, having regard to the fact that neither party had objected to such relinquishment (Article 30 of the Convention and Rule 72 §§ 1 and 4).

8. On 27 July 2018 the Grand Chamber decided, under Rule 51 § 3, to obtain the parties' written and oral submissions on the admissibility of

application no. 20958/14. The parties were instructed that their memorial on the admissibility of that case "must constitute an exhaustive outline of the party's position on the complaints raised" and invited the parties to reply in writing to a list of questions before the date of the hearing on admissibility. The Court set the date of that hearing for 27 February 2019.

9. The applicant Government and the respondent Government each filed observations on the admissibility of the complaints before the Grand Chamber ("admissibility memorials").

10. After an adjournment of the hearing scheduled for 27 February 2019, the President of the Grand Chamber set the new date of the hearing for 11 September 2019.

11. The composition of the Grand Chamber was determined in accordance with the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

12. On 16 December 2020, following the hearing on admissibility held on 11 September 2019 (Rule 71 § 1 and, *mutatis mutandis*, Rule 51 § 5), the Grand Chamber composed of the following judges: Robert Spano, *President*, Linos-Alexandre Sicilianos, Jon Fridrik Kjølbro, Ksenija Turković, Angelika Nußberger, Síofra O'Leary, Vincent A. De Gaetano, Ganna Yudkivska, Aleš Pejchal, Krzysztof Wojtyczek, Stéphanie Mourou-Vikström, Pere Pastor Vilanova, Tim Eicke, Lətif Hüseynov, Jovan Ilievski, Gilberto Felici, and Bakhtiyar Tuzmukhamedov, *ad hoc* judge, and also of Søren Prebensen, Deputy Grand Chamber Registrar, lifted the interim measure indicated to the parties on 13 March 2014 in relation to Crimea under Rule 39 (see paragraph 6 above); held that the facts complained of by the applicant Government in the application no. 20958/14 fell within the extra-territorial "jurisdiction" of the Russian Federation within the meaning of Article 1 of the Convention, and dismissed the respondent Government's preliminary objection of incompatibility *ratione loci* with the provisions of the Convention and the Protocols thereto in that regard; dismissed the respondent Government's preliminary objection that the application "lack[ed] the requirements of a genuine application"; declared that the rule of exhaustion of domestic remedies was not applicable in the circumstances of that case and accordingly dismissed the respondent Government's preliminary objection of non-exhaustion of domestic remedies. The Grand Chamber further declared application no. 20958/14 partly admissible, as described in the operative provisions of the admissibility decision, holding that there was sufficient prima facie evidence of the alleged administrative practice under the complaints declared admissible.

13. It also decided, in accordance with Rule 51 § 1 read together with Rule 71 § 1 of the Rules of Court, to give notice to the respondent Government of the complaint raised in the application no. 20958/14 for the first time in the applicant Government's memorial before the Grand Chamber dated 28 December 2018 about the alleged transfers of "convicts" to the

territory of the Russian Federation, in violation of Article 8 of the Convention. Furthermore, it decided to join application no. 38334/18 to application no. 20958/14, in accordance with Rule 42 § 1 read together with Rule 71 § 1 and to examine, exceptionally, the admissibility and merits of the complaints raised therein together as well as those in relation to the above-mentioned transfer of "convicts" complaint at the same time as the merits stage of the proceedings in relation to the remainder of application no. 20958/14, in accordance with Article 29 § 2 of the Convention, and to invite the respondent Government to submit their observations on the admissibility and merits of this part of the case, pursuant to Rule 51 § 3 and Rule 58 § 1 read together with Rule 71 § 1 (see *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020).

III. PROCEDURE ON THE ADMISSIBILITY (IN RELATION TO APPLICATION No. 38334/18 AND THE COMPLAINT CONCERNING THE ALLEGED TRANSFERS OF "CONVICTS" TO THE TERRITORY OF THE RUSSIAN FEDERATION) AND MERITS BEFORE THE GRAND CHAMBER

14. On 2 July 2021 the President invited the parties to provide their memorials on the admissibility and merits of the case (for both applications nos. 20958/14 and 38334/18) by 28 February 2022 and to address certain specific questions. As regards application no. 38334/18, the respondent Government were invited, in addition, to provide copies of the relevant casefiles pertaining to the criminal proceedings referred to in the application form submitted by the applicant Government.

15. Following the Russian Federation's armed attack on Ukraine of 24 February 2022, on 25 February 2022 the Committee of Ministers of the Council of Europe ("the CM") suspended the Russian Federation from its rights of representation in the CM and in the Parliamentary Assembly of the Council of Europe ("PACE").

16. After unsuccessful requests by both parties for an extension of the time-limit for submission of the memorials, on 28 February 2022 both parties submitted their consolidated memorials in the case without any evidential material in support. Whereas the applicant Government, by way of explanation, referred to the armed attack on Ukraine, the respondent Government did not provide any explanation in this respect.

17. On 16 March 2022 the CM, in the context of a procedure launched under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, by which it decided that the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022[1].

[1] Resolution CM/Res(2022)2 of the Committee of Ministers can be found on https://rm.coe.int/0900001680a5da51.

18. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a Party to the Convention on 16 September 2022[2].

19. Following a fresh request by the President, on 31 August 2022 the applicant Government submitted in evidence the written material referred to "in the footnotes of their memorial". On 6 September 2022 the respondent Government were given additional time to submit any material that they might wish to provide, "failing which it will be presumed that (their) Government did not adduce any additional evidence". Reference was also made to Rule 44C of the Rules of Court.

20. By a resolution adopted on 5 September 2022[3] the plenary Court took formal notice of the fact that since the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022, the office of a judge in the Court with respect to the Russian Federation would also cease to exist. The Russian Federation ceasing to be a High Contracting Party to the Convention on 16 September 2022, also meant that there would, from that date, no longer be a valid list of *ad hoc* judges who would be eligible to take part in the consideration of the cases where the Russian Federation was the respondent State. Accordingly, the President of the Grand Chamber decided to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023).

21. After the exchange of the parties' memorials and the evidential material submitted, the parties were invited to submit any supplementary memorials in reply to each other's submissions. The respondent Government were also invited to submit "copies of the statutory laws and other legal acts of the Russian Federation and the local authorities to which [they had] referred in their memorial of 28 February 2022". The particular attention of both parties was drawn to Rule 44C of the Rules of Court.

22. As the Court has recently made clear, it has at all relevant times used and continues to use the electronic secured Government website as the means of communication with the authorities of the Russian Federation (see the Practice Direction on secured electronic filing by Governments, issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 22 September 2008 and amended on 29 September 2014 and 5 July 2018) and in order to respect the adversarial nature of the proceedings before it. The site

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[2] Resolution can be found on https://www.echr.coe.int/documents/d/echr/Resolution_ECHR_cessation_membership_Russia_CoE_ENG

[3] The relevant Resolution can be found at https://www.echr.coe.int/fr/d/resolution_echr_cessation_russia_convention_20220916_eng?p_l_back_url=%2Ffr%2Fsearch%3Fq%3DResolution.

remains secure and accessible to the authorities of the respondent State (see *Glukhin v. Russia*, no. 11519/20, § 43, 4 July 2023).

23. On 30 January 2023 the applicant Government submitted a supplementary consolidated memorial regarding both applications together with annexes which were communicated to the respondent Government. The respondent Government did not submit any further observations or any additional evidence.

24. After completion of the written procedure, on 21 March 2023 the President advised the parties that it would serve the interests of the proper administration of justice for the Court to hold a hearing on the admissibility and merits in the case.

25. On 9 June 2023 the parties were informed that the Grand Chamber had decided that, in the interests of the proper administration of justice, it was not necessary to hold a witness hearing (Rule A1 of the Rules of Court), but that it was necessary to hold an oral hearing on the admissibility and merits of the case (Rule 51(5) and Rule 58 § 2), as delimited by the admissibility decision of 16 December 2020. The hearing was scheduled for 8 November 2023.

26. At the request of the applicant Government, the President of the Grand Chamber adjourned the hearing and decided to set 13 December 2023 as the new date. At a later stage, Branko Lubarda, who was prevented from sitting in the present case, was replaced by Ioannis Ktistakis, substitute judge (Rule 24 § 3).

27. On the afore-mentioned date a hearing on the admissibility and merits of the case took place in public in the Human Rights Building, Strasbourg.

There appeared before the Court:

(a) *for the applicant Government*

Ms Iryna Mudra, Deputy Minister of Justice of Ukraine;
Ms Marharyta Sokorenko, *Agent*;
Mr Ben Emmerson, KC, *Counsel*;
Mr Andrii Luksha,
Mr Oleksii Yakubenko, *Advisers*;

(b) *for the respondent Government*

The respondent Government did not notify the Court of the names of their representatives in advance of the hearing and did not appear although it had been formally notified of the date of the hearing. In the absence of sufficient cause for the failure of the respondent Government to appear, the Grand Chamber decided to proceed with the hearing, being satisfied that such a course was consistent with the proper administration of justice (Rule 65).

The Court heard addresses by Ms Mudra, Mr Emmerson and Ms Sokorenko, and also their replies to questions put by its members.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

A. Application no. 20958/14

28. The facts as presented by the applicant Government are set out in Section 1 below (paragraphs 29-196) and those as presented by the respondent Government in Section 2 below (paragraphs 197-384).

1. The facts of the case as submitted by the applicant Government

29. The applicant Government's version of the facts is drawn from their memorials of 28 February 2022 and 30 January 2023, submitted after the admissibility decision of 20 December 2020. They are set out under separate headings with reference to each admissible complaint and the same order will be followed below. The legal arguments advanced will be summarised under the relevant headings below (see the "Law" part).

30. The applicant Government emphasised the practical difficulties associated with gathering evidence in Crimea related to the denial of access of its officials and of independent monitors to Crimea and the fact that the Government of the Russian Federation was in exclusive possession of substantial evidence relating to the administrative practices complained of. They also referred to the military attack by the respondent State that was unfolding at the time resulting in casualties, displacement of persons, material damage, loss/ interruption of internet connection and so on.

(a) Enforced disappearances and the lack of an effective investigation under Article 2 of the Convention

31. The applicant Government argued that since what they have consistently classified as the "occupation", there had been forty-three documented cases of "enforced disappearance" in Crimea.

32. In none of these cases, despite the availability of compelling evidence, including CCTV footage of the abductions, had the perpetrators been brought to justice. The Russian Federation had failed to take all (or indeed any) reasonable steps to ensure that an effective independent investigation was concluded and/or that the perpetrators were brought to justice.

33. The alleged "enforced disappearances" in Crimea were evidenced by the Office of the United Nations High Commissioner for Human Rights (OHCHR) which had meticulously catalogued documented cases of enforced disappearances in Crimea (paragraphs 101-03 of the 2017 OHCHR Report).

In 2018 the OHCHR reported on the continuing practice of enforced disappearances and the ongoing failure of the Russian authorities to carry out an adequate investigation (reference was made to paragraphs 32 and 35 of the 2018 OHCHR Report).

34. On 31 March 2021, the OHCHR's Human Rights Monitoring Mission in Ukraine ("HRMMU") published a detailed briefing paper on the issue, finding, *inter alia*, that since 2014 there had been forty-three documented cases of enforced disappearance in Crimea. Of these forty-three documented cases:

A. one victim, Reshat Ametov, who disappeared on 3 March 2014, had been tortured and summarily executed;

B. eleven of the victims, including Timur Shaimardanov (who had disappeared on 26 May 2014) and Seiran Zinedinov (who had disappeared on 30 May 2014), remained missing;

C. one victim, Valentyn Vyhivskyi, had disappeared for a month before being acknowledged by the Russian Federation and tried and sentenced to eleven years' imprisonment for espionage; as at 18 November 2020, he remained in detention; and

D. thirty victims, including Oleksandr Kostenko, Oleksandr Steshenko and Renat Paralamov, had been released subsequent to their enforced disappearance but had not been provided with redress.

35. Details of the cases of these named victims, described by the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) as "emblematic cases", were incorporated by reference.

36. In terms of the timing of these disappearances, the HRMMU reported the following:

> "The vast majority of the enforced disappearances documented by OHCHR took place in 2014 (28), with an additional two disappearances in 2015, four in 2016, seven in 2017, and two in 2018. The first documented disappearance took place on 3 March 2014 and the most recent on 23 May 2018."

37. The number of enforced disappearances recorded by the HRMMU for the spring of 2014 broadly corresponded to the figure given by the Russian Federation Ombudsperson, Ella Pamfilova. In her annual report for 2014, she recorded having received reports of thirteen cases in which Crimean Tatars had disappeared and twenty-four instances in which Ukrainians had disappeared.

38. During the spring of 2014, when the vast majority of disappearances occurred, the OHCHR observed that there was a discernible pattern of members of the "Crimean Self Defence Forces" (the CSDF, as defined in the 2017 OHCHR Report, was a people's militia registered on 29 July 2014 "composed of former policemen and army officers, Afghan war veterans and biker groups, tasked to 'maintain order and combat fascism' on the peninsula", A 102) and associated Russian paramilitary groups subjecting to

enforced disappearance persons who were perceived as “pro-Ukrainian”. It identified twenty such cases.

39. In terms of the steps taken by the authorities of the Russian Federation, OHCHR cited the following passages from the 2021 HRMMU Report:

> “Russian Federation authorities have not been transparent about investigations into enforced disappearances in Crimea. Official information from the Russian Federation authorities is often lacking on whether formal investigations have been initiated and of any eventual outcomes. As a general rule, the relatives of victims are denied access to the investigation’s case files and, as such, allege that these are only pro-forma investigations.
>
> OHCHR’s documenting of cases shows that not one individual has been prosecuted in relation to any of the disappearances described in this paper, including the missing persons, the victim of summary execution, and the cases where victims have been eventually released. Inquiries and investigations that were opened in relation to the documented cases have not reached the trial stage, even though 28 of the enforced disappearances occurred in 2014.
>
> The authorities did not make progress in investigating enforced disappearances in early cases where there was evidence that members of the Crimean self-defence were the perpetrators. In 2014, the Parliament of Crimea legalized the Crimean self-defence by turning it into a civil group with powers to assist the police. This recognition of the group as agents of the state took place despite the numerous testimonies implicating members of the self-defence in crimes and human rights violations with apparent impunity. In later years, when available evidence pointed to the FSB [Federal Security Service of the Russian Federation] as the main perpetrator, investigations again showed no results.
>
> Out of the 11 disappeared persons who remain missing, the Investigative Committee of the Russian Federation lists only seven as missing persons, with no mention of the remaining four.”

40. On this evidence alone, it was quite clear that the investigations, to the extent that they had actually taken place, were and continued to be grossly inadequate. The Russian Federation had failed in some cases to take any reasonable steps to ensure an effective, independent investigation and to bring the perpetrators to justice as required under the Convention.

41. This conclusion was further supported by the following, illustrative examples.

(a) Mr R. Ametov had disappeared on 3 March 2014 after staging a one-man picket in front of a government building in Simferopol. Publicly available television footage showed him being led away by three men in military-style jackets. His body had been discovered twelve days later, showing visible signs of torture. The members of the CSDF who were caught on camera abducting Mr Ametov had been interviewed as witnesses before being released. The investigation had been closed in 2015. Although reopened in 2016, there had been no further progress in bringing the perpetrators to justice (reference was made to paragraph 81 of the 2017 OHCHR Report and OHCHR HRMMU 2021).

Mr Ametov's brother had lodged an individual application with the Court regarding the investigation of Mr Ametov's death and its circumstances (*Ametov v. Russia and Ukraine*, no. 46393/15). He alleged that the existing footage clearly confirmed the fact that Mr Ametov had been captured by representatives of the CSDF. He also outlined that the Russian authorities had identified individuals who were responsible for the kidnapping of his brother, but that they had not been arrested. Subsequently, the investigation had been discontinued owing to the failure to identify suspects.

Furthermore, despite the fact that the Ukrainian authorities had no access to the territory of Crimea, they had been able to establish that Mr Ametov had been captured by two representatives of the CSDF under the guidance of the former representative of the Russian Armed Forces and taken to the headquarters of the CSDF (reference was made to a Letter from the General Prosecutor's Office of Ukraine of 10 January 2023, A 144). In addition, three individuals had been officially identified as suspects.

(b) Mr Shaimardanov and Mr Zinedinov had disappeared on 26 and 30 May 2014 respectively. In response to the submission of reports by family members to the *de facto* authorities, a formal inquiry had been initiated in July 2014. The following year it had been suspended. No information about the whereabouts of either man or the circumstances of their disappearance had ever come to light. In 2018, the "Supreme Court of Crimea" (in this section, the names of courts and other authorities established under Russian law in Crimea are indicated in inverted commas) had rejected an appeal by the families' lawyer claiming inaction on the part of the investigative committee (OHCHR HRMMU 2021).

(c) As regards Mr S. Karachevsky, it was noted that his wife had lodged an individual application with the Court, which is still pending, (*Karachevska v. Russia and Ukraine*, no. 23777/17) in which she alleged that during the investigation the Russian military authorities had threatened witnesses and fabricated evidence to ensure that the murder was classified as "excessive measures undertaken during the apprehension of a person who had committed a crime". As a result, his killer, Mr Ye. Zaitsev, had been sentenced to only two years' imprisonment. The conviction had been confirmed on appeal by the "North Caucasian District Military Court", but the sentence of imprisonment had been quashed and the lower court's order to pay compensation to Mrs Karachevska had been overturned.

(d) In relation to Mr M. Ivanyuk, it was noted that his mother had specifically referred to his friend who had been with him and who had stated that representatives of the Russian law-enforcement authorities had beaten Mr Ivanyuk to death (reference was made to an article in the *Daily Mail* of 25 April 2014). In any event, Russia had failed to provide any evidence relating to the investigation of the circumstances of Mr Ivanyuk's death. They had failed to discharge the burden of proving the actual circumstances of the death or the Convention compliance of the investigation. In particular, they

had provided no evidence of any investigation into the allegations of the key eyewitness to these events, or of any other efforts to address the published concerns raised by the Council of Europe Commissioner for Human Rights ("the Commissioner for Human Rights") regarding Mr Ivanyuk's death.

42. Among other missing persons were Mr I. Dzhepparov, Mr D. Islyamov, Mr I. Bondar, Mr V. Vashchyuk, Mr V. Chernysh, Mr M. Arislanov, and others named and unnamed (reference was again made to the letter from the General Prosecutor's Office of Ukraine, see paragraph 41 above, A 144).

(b) Ill-treatment and unlawful detention under Articles 3 and 5 of the Convention

43. The applicant Government submitted that the Russian military and security personnel, the CSDF and local collaborators had committed numerous, inter-related instances of kidnapping, unlawful detention, torture and inhuman or degrading treatment against Ukrainian military personnel, pro-Ukrainian and Tatar activists and journalists.

(i) Conditions of, and treatment, in detention, contrary to Article 3

44. The applicant Government submitted that the conditions in which the detainees were kept and their treatment by agents of the Russian State were contrary to Article 3. This was the case irrespective of whether detainees were members of the Ukrainian military or civilians. Under Article 3 and international humanitarian law, they were all entitled to protection against torture, cruel, inhuman or degrading treatment or punishment.

45. In this connection reference was made to the 2017 OHCHR Report (§§ 85-90). This general picture was corroborated by the witness testimonies of those who had been illegally detained by Russian agents during the spring of 2014. Several Ukrainian military officers gave accounts of their treatment in detention. For example:

(a) Between 22 and 25 March 2014, Admiral Igor Voronchenko had been detained and held in solitary confinement for three days at a Guardhouse of the Black Sea Fleet's military base in Sevastopol (the "Guardhouse"). During this time, he had been blindfolded and subjected to sleep deprivation and persistent loud noises. At around the same time, Colonel Yulii Mamchur and Colonel Dmytro Delyatytskyi also attested to having been subjected to similar treatment at the same Guardhouse.

(b) Between 25 March and 9 April 2014, Captain Oleksandr Kalachov had been detained and also held, first at a location in Simferopol and then at the Guardhouse. During his detention, he asserted that he had been interrogated by members of the Russian regular armed forces. The interrogations had been aimed at obtaining classified military information. In order to obtain that information, he had been threatened with drowning and his family had been threatened with "an accident" and malicious prosecution for trumped-up

drugs charges. He had also been subjected to a mock execution. Captain Kalachov recalled that the Guardhouse had been guarded by the 810th Special Brigade of the Russian Black Sea Fleet, further indicating official tolerance.

46. Furthermore, a number of journalists and pro-Ukrainian political activists recalled their treatment in detention. For example:

(a) Following Andrei Shchekun's detention, he had been handed over to people in civilian clothes and balaclavas. He described how they took him to a Commissariat in Simferopol (the "Commissariat"), where he had been blindfolded, bound and forced to sit naked on a chair in a freezing cold room. His detention had continued for eleven days, during which time he had been deprived of food and sleep, cut with a knife, electrocuted and shot multiple times with a pneumatic gun. Mr Shchekun recalled three interrogations: the first by an unidentified man with a Caucasian accent; the second by a man he identified as Igor "Strelkov" (or "Shooter") Girkin; and the third by a man he identified as Igor "Bess" (or "Demon") Bezler. In each interrogation, the perpetrators had sought information about western funding for "Euromaidan"[4] and his connections with other prominent figures thought to possess pro-Ukrainian views. Mr. Shchekun's testimony was corroborated by that of another witness, Anatolii Kovalskii who described similar treatment and conditions at the Commissariat.

(b) Olena Maksymenko recounted her treatment and that of her colleagues by the CSDF at Chongar. She described how Mr Krompylas had been beaten, burned with a cigarette, humiliated and subjected to a mock execution by paramilitaries. She also described how Mr Rakhno had been subjected to a mock execution. Ms Maksymenko had herself been beaten and strangled with her own shoelaces before a member of the CSDF had taken out a knife and cut off her hair. Following this, she had been bundled into a lorry by regular armed forces of the Russian Federation and taken to the Guardhouse. She described how, once there, she, her colleagues and various other detainees had been stripped naked, searched, accused of being drug addicts, arbitrarily subjected to drug tests, humiliated and interrogated with the purpose of obtaining a "confession of pro-Western activity". In that respect,

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[4] "Euromaidan" and/or "Maidan" are terms commonly used for the series of protests that took place between 21 November 2013 and 21 February 2014 in Ukraine, reportedly in response to the decision of the Cabinet of Ministers to suspend preparations for the signing of the Ukraine-European Union Association Agreement. The protests ultimately led to the 2014 Ukrainian revolution (also known as the Revolution of Dignity) and culminated in the ousting of Ukraine's fourth President, Mr V. Yanukovych, in late February 2014. This was followed by a series of changes in Ukraine's political system, including the formation of a new interim government, the restoration of the previous Constitution and impromptu presidential elections. Reportedly, during the Maidan protests there were over 100 protest-related deaths, including over seventy protesters shot dead and about 1,000 protesters injured. Additionally, at least thirteen police officers were killed and about 1,000 were injured during those events (for more details, see *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, §§ 9-17, 21 January 2021).

Ms Maksymenko's testimony was corroborated by that of another witness, Volodomir Polyshchuk, whom she recalled having seen at the Guardhouse.

(c) Yaroslav Pilunskii recounted how he and Yurii Gruzinov had been taken to the basement of the Commissariat where they were held for three days. Mr Pilunskii described blood on the tiles of the basement and a gunshot in his mattress. For three days, he had been blindfolded, deprived of food, beaten (resulting in two broken ribs) and forced to listen to the beating of Mr Gruzinov in an adjacent room.

(ii) Unlawful detention contrary to Article 5

47. The applicant Government submitted that there had been a widespread campaign of arbitrary deprivation of liberty in violation of Article 5 during the period under consideration. The targets of such detentions were perceived opponents of the Russian "occupation" in general and members of the Crimean Tatar community in particular.

48. In that connection they referred to the relevant information in the 2017 OHCHR Report (§§ 95 and 96) and witness testimony, collected from the civilian victims of such arbitrary deprivations of liberty during the spring of 2014.

(a) Andrei Shchekun was an activist associated with the Euromaidan movement. On 9 March 2014, he had been apprehended by the CSDF at Simferopol Railway Station before being handed over to people in civilian clothes and balaclavas. He had been blindfolded and taken to a building which he believed to be the Commissariat in Simferopol ("the Commissariat"). When Mr Shchekun enquired of his captors the reason for his detention, they had provided no answer. At no stage had he been informed of any grounds or legal basis for his detention. Mr Shchekun had been detained for eleven days and released following negotiations between high-level delegations from the Ukrainian and Russian military (represented by Lieutenant-General Andrey Serdyukov, now the commander of the Russian Federation's airborne forces).

(b) Anatolii Kovalskii, a 64-year-old pro-Ukrainian activist, had also been detained between 9 and 20 March 2014, in the same location and conditions as Mr Shchekun. At no stage had he been informed of any grounds or legal basis for his detention.

(c) Olena Maksymenko, a journalist, had been apprehended by the CSDF at Chongar on 9 March 2014 and taken to the Guardhouse of the Black Sea Fleet's military base in Sevastopol (the "Guardhouse"), where she had been detained for two days. At no stage had she been informed of any grounds or legal basis for her detention. At the same location, she had observed a number of other journalists and pro-Ukraine activists subjected to the same treatment, including Oles Kromplyas, Yevgen Rakhno, Oleksandra Ryazantseva and Yekateryna Butko.

(d) Vladislav Polishchuk, a pro-Ukrainian political activist, had been detained at the Guardhouse in Sevastopol for sixteen days in March 2014. At no stage had he been informed of any grounds or legal basis for his detention.

(e) Yaroslav Pilunskii, a journalist and pro-Ukrainian activist, along with his colleague, Yurii Gruzinov, had been apprehended and detained by the CSDF in Sevastopol on 16 March 2014 after trying to film the voting process during the so-called referendum. As set out further below, they had been detained in the Commissariat in Simferopol for four days.

49. The applicant Government also referred to several individual applications submitted to the Court (*see,* e.g. *Vaitov and Others v. Russia,* no. 20158/17 and *Zeytullayev v. Russia*, no. 7932/18) in which the alleged victims had complained under Article 5 of the Convention. Under Article 3 they had also complained of the conditions of their detention and transportation from places of pre-trial detention to the courts. The above-mentioned individuals were persecuted for being members of the Hizb ut-Tahrir organisation[5]. It is banned in Russia, Germany, and some Central Asian states, and, since January 2024, the United Kingdom[6], but not in Ukraine.

50. Those cases were illustrative of the disregard of the Russian occupying administration and its authorities for the Article 3 and Article 5 rights of the accused, and of the practice of persecution of Crimean Tatars and individuals perceived as having pro-Ukrainian political views.

51. Further examples of the practice of torture and unlawful detention in breach of Articles 3 and 5 of the Convention were outlined in the individual applications submitted by Mr O. Sentsov (*Sentsov v. Russia*, no. 48881/14, and *Sentsov and Kolchenko v. Russia*, no. 29627/16). He described the circumstances of his capture by representatives of the Russian law-enforcement authorities, acts of torture during his unrecorded detention, refusals to investigate those acts, the decision to detain him on remand and other violations of his rights protected by those and other Articles of the Convention.

52. Reference was further made to the application in *Dzhelyalova and Others v. Russia* (no. 44048/21), in which the applicants had raised concerns

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[5] "Hizb ut-Tahrir" - the Party of Islamic Liberation, is an international Islamic organisation with branches in many parts of the world, including the Middle East and Europe. It advocates the overthrow of governments and their replacement by an Islamic State in the form of a recreated Caliphate. Hizb ut-Tahrir first emerged among Palestinians in Jordan in the early 1950s. It has achieved a small, but highly committed following in a number of Middle Eastern states and has also gained in popularity among Muslims in western Europe and Indonesia. It began working in Central Asia in the mid-1990s and has developed a committed following inside Uzbekistan, and to a lesser extent in neighbouring Kyrgyzstan, Tajikistan and Kazakhstan (see *Kasymakhunov and Saybatalov v. Russia*, nos. 26261/05 and 26377/06, § 7, 14 March 2013).

[6] For more details, see https://www.gov.uk/government/news/home-secretary-declares-hizb-ut-tahrir-as-terrorists (last accessed on 17 April 2024).

regarding the abduction and detention of their relatives and other persons, as well as torture, especially in the light of the refusals of the authorities to initially confirm the fact of their detention and to grant them access to their lawyers.

(c) Extending the application of Russian law to Crimea with the result that the courts in Crimea could not be considered to have been "established by law" within the meaning of Article 6

53. Pursuant to section 6 of the Federation Constitutional Law on admitting the "Republic of Crimea" into the Russian Federation and establishing within the Russian Federation the new constituent entities – the "Republic of Crimea" and the "City of Federal Importance of Sevastopol" (21 March 2014), from the date of its enactment until 1 January 2015 ("the transitional period") courts of the Russian Federation were to be created in accordance with the judicial system and laws of the Russian Federation on the territories of the "Republic of Crimea" and the City of Sevastopol.

54. However, at no stage had the Russian Federation sought to demonstrate that the application of its laws (by way of modification, suspension or replacement of the laws in force in the occupied territory, predating the "occupation") was justified under international humanitarian law, for instance under the exceptions provided for in Article 64 of the Fourth Geneva Convention, namely maintaining order in the occupied territory and ensuring the security of the relevant authorities of the occupying forces or administration, or as strictly necessary to give effect to the Geneva Conventions.

55. As the Court had noted in its admissibility decision (see *Ukraine v. Russia (re Crimea),* cited above), given the regulatory nature of those measures, they applied throughout the entire territory of Crimea, were binding for all courts and applied to all judicial proceedings and to all people concerned. The practical effect of this was described in the witness statement of the Ukrainian judge, Alyona Kushnova.

56. As a consequence of the unlawful substitution of Ukrainian laws by the laws of the Russian Federation and the unlawful operation of the "Ukrainian courts", the applicant Government submitted that, in further violation of the right to a fair trial under the Convention and associated rules of international humanitarian law, people on the Crimean Peninsula:

(a) had been charged and convicted on the basis of the arbitrary and politically motivated application of Russian criminal law. This included provisions purportedly designed to fight terrorism, extremism and separatism, which had been applied in such a way as to restrict the right to liberty and security of person (the Federal List of Extremist Materials was introduced by Federal Law no. 114-FZ on combating extremist activities (25 July 2002). Those same laws had been applied to acts which had occurred before the *de facto* application of Russian Federation legislation in Crimea.

For example, the Deputy Chair of the Mejlis, Akhtem Chyigoz, had been sentenced to eight years' imprisonment on the basis of Russian criminal law after he had been found guilty of organising mass protests on 26 February 2014. Two further individuals had received prison sentences in 2015 and 2016 for allegedly injuring Berkut police officers, contrary to prohibitions under the Russian criminal law during the Maidan protests in Kyiv on 14 February 2014 (reference was made to paragraph 77 of the 2017 OHCHR Report). OHCHR had documented a total of ten cases in which people had been convicted pursuant to Russian law in relation to acts allegedly committed prior to the "occupation". Half of these cases had penalised social media posts allegedly containing symbols, slogans or statements of organisations banned in the Russian Federation or regarded as extremist, contrary to the Federal List of Extremist Materials under Russian Federal Law no. 114-FZ. The other half involved alleged participation in mass disorder in Crimea on 26 February 2014.

(b) had appeal proceedings under Ukrainian law arbitrarily terminated; and

(c) had their prison sentences arbitrarily reclassified in accordance with Russian Federation law, including to their detriment.

57. They further submitted that until the "annexation" of Crimea by Russia in March 2014, 520 judges had worked in Crimea and the City of Sevastopol. Approximately 50% of these judges had continued to work in the Russian "courts" in Crimea. In 2015, Russia had appointed a significant number of those judges to the Russian "court system" in Crimea, the existence of which was "authorised" under Russian federal law.

58. Thus, a number of previously appointed Ukrainian judges had switched sides and engaged in activities against the interests of Ukraine and Ukrainians, in breach of their oath of office and in favour of demands imposed by a foreign and hostile occupying power.

59. Criminal charges had been issued in relation to 276 former Ukrainian judges of Crimea and Sevastopol. As of 20 August 2020, there were 392 "judges" on the territory of the so-called "Republic of Crimea" and the City of Sevastopol, including 219 "judges" with Ukrainian citizenship and ninety-five with Russian citizenship (the citizenship of seventy-eight "judges" was not identified).

60. The applicant Government submitted that those "judges" could not be considered independent and impartial. Nor could any "court" or "tribunal" over which they presided be considered to be a competent judicial authority established by law. Their appointment was an inducement to former Ukrainian officials to cooperate (or collaborate) with the Russian Federation.

61. The Decree of President Putin on "Appointment of Judges of Federal Courts" from 19 December 2014 should not be accorded any legal recognition by the Court. "Judges" had been assigned by the occupying

authorities without reference to the relevant requirements of education and experience.

(d) Alleged violations of Article 8 of the Convention

(i) Impossibility of opting out of Russian Federation citizenship in violation of Article 8 of the Convention

62. The applicant Government reiterated that under the so-called “Accession Treaty” that had come into force on 18 March 2014, Russian citizenship had automatically been imposed on persons permanently residing on the territory of Crimea unless, within one month, they decided, in writing, to opt out and formally renounce Russian citizenship. The “Accession Treaty” provided that Russian citizenship was to be automatically imposed on those residents who had previously held Ukrainian citizenship, unless a particular resident objected and took active steps to “retain” their “previous” citizenship. Such automatic imposition of Russian citizenship necessarily entailed the practical invalidation of Ukrainian citizenship under the “occupation”. Similar provisions were provided for in Federal Constitutional Law no. 6-FKZ on admitting the “Republic of Crimea” to the Russian Federation and establishing within the Russian Federation the new constituent entities of the “Republic of Crimea” and the “City of Federal Importance of Sevastopol”, which had entered into force on 21 March 2014.

63. As documented and reported by OHCHR and Human Rights Watch, the Russian Federation had imposed various procedural obstacles to persons seeking to “opt-out” of Russian citizenship:

(a) Details of the opt-out procedure had only been published by the Federal Migration Service (FMS) on 1 April 2014 (some seventeen days before the deadline). Although applications for renunciation of Russian citizenship were supposed to be accepted from 18 March to 18 April 2014, in practice they had only been accepted from 1 to 17 April 2014. By contrast, applications for Russian passports had been accepted until November 2014.

(b) As of 9 April 2014, there had been only two functioning Federal Migration Service centres capable of processing opt-out requests and there had been a total of nine from 10 to 18 April. Residents had not been informed of the addresses of the Migration Service offices where they could submit such applications, or had been forced to stand in queues with those wishing to obtain Russian citizenship. The long queues had surpassed the daily capacity of the offices and left some people unable to reach the front of the queue before the deadline expired. According to the regional office of the Ombudsperson and the Crimean Field Mission for Human Rights, only four offices of the territorial subdivisions of the Federal Migration Service of the Russian Federation in the “Republic of Crimea” had been open for receiving applications for renunciation of Russian citizenship in Crimea, while 250offices (or 160 designated offices, as reported by the Open Society Justice

Initiative in its report of June 2018) had been open for receiving Russian passports. Offices had been difficult to access for Crimean residents living in the countryside.

(c) Some procedural requirements had been uncertain and had evolved over time, such as the requirement for both parents to make an application on behalf of their child (paragraph 58 of the 2017 OHCHR Report).

64. In addition, Russian citizenship was also forcibly granted to children who were held in orphanages and in boarding schools at the time, persons in psychiatric institutions and persons who were in custody or in places of detention, as well as children born after the "occupation" of Crimea by Russia.

65. The existence of practical and procedural obstacles to renouncing Russian citizenship were confirmed by witness statements (reference was made to the statements of Alyona Kushnova and the Metropolitan Kliment). The Metropolitan Kliment of Simferopol and Crimea of the Orthodox Church of Ukraine was afraid to object to the imposition of Russian citizenship. He had provided information regarding one of his parishioners who had refused to receive Russian citizenship and as a result, she had been unable to receive her pension or to register the title to her apartment for four years. As a result, she had been forced to apply for Russian citizenship in 2019 and to renounce her Ukrainian citizenship against her will. Other parishioners had had similar problems. He also provided an example of a priest who had resisted the imposition of Russian citizenship and had had serious problems as a result, when he had attempted to register his real estate property. Consequently, he had been forced to apply for Russian citizenship against his will.

66. Further, the case of Aleksandr Kolchenko illustrated that people deprived of their liberty by the Russian authorities had been deprived of the opportunity to "opt out" and had thereby automatically become citizens of the Russian Federation (reference was made to a publication of the Ukrainian Helsinki Human Rights Union and others, "Crimea Beyond Rules: No. 3 Right to nationality (citizenship)").

67. Furthermore, those who did "opt out" had been treated as second-class citizens and had not been treated equally before the law. They could apply for residence permits, which gave them access to some rights for which Russian citizenship was not required (for example, pensions and free health insurance). However, they were prevented from owning agricultural land (section 3 of the Russian Federation Law on farmland turnover" (24 July 2002)), voting and being elected, registering a religious community, applying to hold a public meeting, holding positions in the public administration and re-registering their private vehicle on the peninsula (paragraph 62 of the 2017 OHCHR Report; Ukrainian Helsinki Human Rights Union and others, "Crimea Beyond Rules: No. 3 Right to nationality (citizenship)").

68. The "choice" to renounce Russian citizenship had to be considered against the backdrop of the atmosphere of intense intimidation, persecution

and discrimination of those perceived to be hostile to the Russian "occupation" or to maintain pro-Ukrainian views. Many Ukrainian citizens of Crimea naturally feared reprisals if they pursued a renunciation application. Specifically, they were afraid that they could be forced to leave their homes and expelled from the territory of Crimea, or be subjected to other detriments and restrictions. In this context, the procedure purportedly imposed by law had effectively forced people living in Crimea to submit to a Russian government agency, in writing, their intention to renounce Russian citizenship, meanwhile providing the same hostile authorities with sensitive personal data. This did not provide people with any meaningful "choice" to opt out of Russian citizenship. It was no surprise that the number of people willing to do so was relatively small (according to Russian government statistics, after 18 April 2014 3,427 permanent residents of Crimea had applied to opt out of automatically obtaining Russian Federation citizenship).

69. There were numerous cases of discrimination against Crimean residents who objected to the imposition of Russian citizenship. For instance, OHCHR reported that a man from Simferopol had been subjected to regular psychological harassment by his employer for having renounced Russian Federation citizenship. In 2016, after two years of being pushed by his employer to take back his formal rejection of Russian Federation citizenship, he had been dismissed after being told that his "anti-Russian" position disqualified him from continued employment. Two of his colleagues had also been dismissed, including one who had rejected Russian Federation citizenship, and another who had taken up Russian Federation citizenship but had publicly expressed pro-Ukrainian views.

70. According to the statement of a Crimean priest, clerks who did not have Russian citizenship had been forbidden to carry out church services in Crimea since Russia had established control over the peninsula. As a result, some priests had been forced to obtain Russian citizenship, and those who refused to do so had been deported from Crimea.

71. Currently, the Ukrainian investigative authorities were conducting a criminal investigation into the persecution of Ukrainian citizens who refused to accept Russian citizenship, and their consequential forced deportation outside the Crimean Peninsula. The investigation had established that more than 300 Ukrainian citizens of Crimea had received deportation orders for violation of migration legislation. These orders had been made by illegally established "courts" in the temporarily occupied territory of Crimea. In the period from 27 February 2014 to 26 August 2015, there had been over 100 deportations of Ukrainian citizens.

72. In order to keep their posts, civil servants in Crimea (but also employees of municipal institutions (educational institutions, hospitals, and so on), and even employees in the private sector were required not just to accept Russian citizenship, but also to renounce their Ukrainian citizenship by 18 April 2014 (section 4 of the Federal Constitutional Law on admitting

the "Republic of Crimea" into the Russian Federation and establishing the new constituent entities – the "Republic of Crimea" and the "City of Federal Importance of Sevastopol"). A law passed by the Parliament of Crimea further required them to possess "a copy of the document confirming denial of existing citizenship of another State and the surrender of a passport of another State" (section 47 of the Law of the "Republic of Crimea" on State Civil Service of the "Republic of Crimea").

73. The regulatory nature and the content of these measures evidenced both elements of an administrative practice.

(ii) Arbitrary raids of private dwelling houses

74. The applicant Government submitted that, through a systematic practice of arbitrary raids of private dwellings by its authorities and their proxies in the local subordinate administration, the Russian Federation had presided over an administrative practice in violation of Article 8 during the period under consideration.

75. They referred to information reported in the 2017 OHCHR Report (§§ 105-107), as well as reports of non-governmental organisations (NGOs) (reference was made to the report of Human Rights Watch, "Rights in Retreat: Abuses in Crimea" and the report of Ukrainian Helsinki Human Rights Union and others, "Crimea Beyond Rules: Information Occupation") and statements of victims whose private dwelling houses and/or offices had been raided "on the pretext of an investigation into offenses under the Anti-Extremist Law".

(iii) Forcible transfer of convicts

76. According to the Ukrainian Helsinki Human Rights Union and Regional Centre for Human Rights, by December 2017, more than 4,700 Ukrainian prisoners had been transferred from occupied Crimea to 69 different correctional institutions, spread across the Russian Federation. They also referred to the 2017 OHCHR Report (§§ 116 and 119 thereof).

77. The relevant picture was corroborated by illustrative accounts of forcible transfer of convicts, set out in application no. 38334/18 (see paragraphs 566 -77 below).

78. Further, Mr O. Sentsov in his individual application stated that following his transfer to the detention facility in Moscow, the Ukrainian ambassador was unable to visit him, as Russian authorities claimed that he was a Russian citizen (see *Sentsov v. Russia,* no. 48881/14, Application Form).

79. Metropolitan Kliment stated that he had been unable to visit Mr O. Sentsov in a detention facility on the territory of Russia despite the fact that he had been accompanied by Mr Sentsov's lawyer. He had been specifically prevented from meeting Mr P. Hryb, who was also detained on the territory of the Russian Federation. The Russian authorities had prevented

Ukrainian citizens from delivering care packages to their close relatives detained by Russia. He described the situation of the mother of Mr Ye. Panov, who had received a refusal from the administration of the pre-trial detention facility in response to her request to deliver a care package to her son, as she was a Ukrainian citizen. As a result, only Metropolitan Kliment and parishioners with Russian passports were able to deliver such care packages.

80. While the latter specific situation had occurred on the territory of Crimea, it was illustrative of measures applied by the Russian authorities against convicted prisoners with Ukrainian citizenship, especially against political prisoners.

81. In his individual application, Mr R. Zeytullayev specifically stated that he had been transferred to the territory of the Russian Federation – 2,500 km from his home and family (*Zeytullayev v. Russia*, no. 7932/18, application form). Owing to the lack of finances and transport issues, his wife and three small children were unable to visit him. Those circumstances had prevented him from maintaining the normal functioning of his family.

82. The Government also noted similar hardships suffered by Mr Vaitov, Mr Saifullayev and Mr Primov according to their submissions.

83. Similarly, Mr A. Dzhepparov complained regarding his transfer to Russia 800 km from his home and his subsequent inability to maintain normal relations with his wife and mother (reference was made to the individual application in *Dzhepparov v. Russia*, no. 27630/20).

84. They also referred to the group of cases *Vaitov and Others v. Russia* (no. 20514/17) against the respondent Government regarding the transfer of detained persons to detention facilities on the territory of the Russian Federation and the negative consequences of such actions.

85. The transfer of convicted persons from Crimea to the territory of the Russian Federation might constitute an element of the policy of altering the demographic composition of Crimea.

86. Lastly, the applicant Government noted that the prosecuting authorities were also investigating complaints regarding the forceful transfer of convicted persons to the territory of the Russian Federation from Crimea.

(e) Harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith, arbitrary raids of places of worship and confiscation of religious property, in breach of Article 9 of the Convention

87. During the period under consideration as defined by the Grand Chamber in the admissibility decision, the Russian occupying administration either attempted to take control over religious groups, or to eradicate and force them out of Crimea.

88. The Russian co-option of the Ukrainian Orthodox Church of the Moscow Patriarchate (UOC-MP) and the Religious Administration of Muslims of Crimea and Sevastopol (RAMCS) provided clear evidence of successful attempts by the Russian authorities to establish control over

Ukrainian religious communities in Crimea and to use them to eradicate views (and exclude individuals holding or espousing views) contrary to the Russian policies in, and "occupation" of, Crimea.

89. "Republic of Crimea" stated that the communities of the UOC-MP were in a privileged position on the territory of Crimea. They were among the first which had managed to re-register in Crimea and were able freely to conduct their religious and other activities. The UOC-MP actively cooperated with the occupying administration, the Russian Armed Forces, and its Black Sea Fleet.

90. The applicant Government referred to the information noted in the 2017 OHCHR Report (§§ 137-45) and stated that although a small number of the incidents fell outside the period under consideration (for example, the 2016 Yarovava Package and the wholesale prohibition of Jehovah's Witnesses on the basis of anti-terrorism legislation in April 2017), details of these incidents had been retained and rehearsed for the purpose of impressing upon the Court the vital importance of requiring the Russian Government to take measures to put an end to this continuing pattern of violations and prevent their recurrence.

91. The same pattern (and a number of the same, specific incidents) of religious persecution (and official tolerance thereof) during the first year of the "occupation" was also documented by the US State Department in its Religious Freedom Report for 2014, as well as by detailed witness testimony (from, for example, Archbishop Kliment of the Ukrainian Orthodox Church of the Kyiv Patriarchate ("the UOC-KP"), the journalist Maria Tomak and the primate of the Orthodox Church of Ukraine, Metropolitan Epiphaniy), some of which was further reiterated in some NGO reports (e.g. Ukrainian Helsinki Human Rights Union and others, "Crimea Beyond Rules; religious "occupation": the Ukrainian Orthodox Church of the Kyiv Patriarchate").

92. The applicant Government also referred to (and submitted in evidence) their observations of 5 November 2021 as a third-party intervener in the case of *Upravlinnya Krymskoyi Yeparkhiyi Ukrayinskoyi Pravoslavnoyi Tserkvy v. Russia*, no. 33931/19 to the effect that the Orthodox Church of Ukraine (OCU) had not only been persecuted on the territory of Crimea, but that those actions had been directly instigated by Russian officials.

93. This persecution had been incited at the very highest levels of the Russian government. The President of the Russian Federation had called the OCU a "false project" which provoked intolerance and had nothing to do with freedom of religion. Also, he stated that the decision to grant autocephaly to the OCU was contrary to religious norms.

94. The Minister of Foreign Affairs of the Russian Federation had said on numerous occasions that the separation of the OCU from the Russian Orthodox Church was "illegal" and that it had been carried out on the instructions of the Government of the United States of America.

95. As to the persecution of the OCU and its representatives, the Government referred to individual applications and documents submitted to the Court by the Crimean Diocese of the OCU in the case of *Upravlinnya Krymskoyi Yeparkhiyi Ukrayinskoyi Pravoslavnoyi Tserkvy* (cited above) and in 5 applications within the group *Upravlinnya Krymskoyi Yeparkhiyi Ukrayinskoyi Pravoslavnoyi Tserkvy v. Russia* (no. 69421/17) and to the witness statements of Metropolitan Kliment and priest Yaroslav Hontar.

96. The applicant Government emphasised that priests of the UOC-MP were among the service members of the Russian Armed Forces and representatives of the so-called "Cossacks" who had blocked the church in Perevalne village. Furthermore, the UOC-MP had since continued its aggressive activities against the OCU.

97. Priests of the UOC-MP espousing pro-Ukrainian positions were routinely persecuted. The clergy of St Paisius Velichkovsky's stavropegial monastery of the UOC-MP in the village of Morozivka was under continuous pressure for that reason. On 13 October 2016, unidentified persons had set some of the buildings of the monastery on fire. The administration of the monastery received frequent threats from representatives of the occupying administration. The gates of the monastery had been vandalised with threatening inscriptions, including "Russian land for Russians".

98. The Russian occupying administration had also applied several methods of intimidation and pressure to compel the Crimean Muslim community in general, and the Mufti of the RAMCS in particular to cooperate with the Russian "occupation". Incidents included the setting on fire of mosques in Simferopol and the village of Sonyachna Dolyna in 2014; unreasonable and unlawful searches of mosques by law-enforcement authorities; and restrictions on the distribution of Muslim literature under the guise of combating extremism.

99. Following his personal decision to co-operate with the Russian repression, the Mufti of the RAMCS had been involved in the persecution of dissenting Muslims: he had provided statements against them for the purposes of court hearings and made speeches in support of Russian law enforcement.

100. The cooperation between the RAMCS and the occupying administration had resulted in increased persecution of non-conformist Muslim religious groups (that is, those not controlled by the RAMCS) such as Hizb ut-Tahrir.

101. The applicant Government made reference to individual applications submitted to the Court (*Mistseva religiyna organizatsiya Musulmanska obschyna Alushta v. Russia*, no. 17009/21, application forms of 21 April 2021 and 15 March 2022, and *Ashyrov v. Russia*, no. 11890/21, application forms of 25 February 2021 and 21 April 2022) stating that the applicants in those cases had specifically provided facts and materials describing the persecution of Muslim groups and individuals not controlled by the RAMCS.

(f) Suppression of non-Russian media, including the closure of Ukrainian and Tatar television stations, in breach of Article 10 of the Convention

102. The applicant Government noted that in its 2017 report OHCHR had reported the shutting down of non-Russian television stations, attacks on journalists, bans on newspapers and the denial of licences to media outlets deemed critical of the Russian "occupation" (paragraphs 155-161 of the OHCHR report).

103. The process of liquidation of Ukrainian television channels in Crimea had begun in early March 2014. All Ukrainian television channels had been blocked and their frequencies were illegally used by Russian television channels. The Russian occupying administration had seized the Ukrainian State television and radio company Krym and the enterprise Radioteleviziinyi peredavalnyi tsentr v AR Krym.

104. As a result of the Russian aggression, 161 transmitters and twenty radio lines had been lost in Crimea.

105. With respect to the practice of shutting down television channels, banning media outlets and suppressing of free expression by way of "official warnings", the applicant Government further noted the following evidence and illustrative examples.

(a) Chernomorskaya television and radio company (TRC) was one of the largest television companies in Crimea. On 29 June 2014 Chernomorskaya TRC was blocked from broadcasting on Crimean cable networks. Its property was subsequently seized and the "occupation" authorities began using its transmitters to broadcast the Russian Rossiya-24 television channel.

(b) ATR was the main Crimean Tatar TV channel, broadcasting to Crimea, Turkey and other European countries. On 24 September 2014 its general director received a letter from the Russian Centre for Combating Extremism with a request to hand over certain documents to the authorities. The request was justified on the basis that ATR allegedly "stubbornly lays down the idea of possible repression on national and religious grounds, contributes to the formation of anti-Russian opinion, deliberately foments Crimean Tatars distrust of power, which indirectly carries the threat of extremist activity". On 26 January 2015 ATR's offices were raided by representatives of the Investigative Committee of the Russian Federation and the Centre for Countering Extremism. ATR's server was seized, resulting in disruption to its broadcasting. In February 2015 Roskomnadzor (Federal Service for Supervision of Communications, Information Technology and Mass Media), the Russian media regulator, unilaterally reallocated ATR's broadcast frequency to a different, pro-Russian channel and on 1 April 2015 ATR stopped broadcasting. It had since relocated to mainland Ukraine where it continued to broadcast.

(c) Reporters Without Borders reported that, as at 11 August 2014, most Crimean Internet Service Providers had been blocked and access to Ukrainian news websites was being blocked (reference was made to Reporters Without

Borders[7] and Ukrainian Helsinki Human Rights Union and others, "Crimea Beyond Rules: Information Occupation").

(d) In his witness statement, Mr Refat Chubarov noted that from 1 March 2014 all Ukrainian TV stations with the exception of one (ATR) had been "banned" from Crimea and replaced with Russian TV channels.

106. With respect to the practice of suppressing non-Russian media by attacking and intimidating journalists, the applicant Government noted the following additional evidence.

107. According to the editor of the Centre for Investigative Journalism (Crimea), Tatiana Kurmanova, the peak of attacks on journalists in Crimea was in March 2014 when eighty-five cases were recorded. This was followed by a prolonged period of systematic intimidation during which searches and arbitrary detention were used as a tool to intimidate and silence independent journalism. This was often done on the pretext of the offence of inciting actions aimed at violating the territorial integrity of the Russian Federation under Article 280.1 of the Russian Criminal Code.

108. The case of Ganna Andriievska provided a good illustration of this practice. Ms Andriievska was a Crimean journalist. In May 2014 she fled Crimea for Kyiv, fearing persecution by the "authorities" in Crimea. A criminal investigation was opened on 2 February 2015 on the basis that a blogpost she had authored was alleged to amount to a crime under Article 280.1. As Ms. Andriievska was located in Kyiv, she was out of the reach of the FSB. Nevertheless, on 13 March 2015, FSB officers searched her parents' house in Crimea, seizing her father's computer. At the same time, the authorities ordered the post office to report any correspondence addressed to Ms. Andriievska. She was listed on the Federal Service for Financial Monitoring's List of Terrorists and Extremists.

109. The applicant Government further noted the following illustrative examples of harassment and intimidation of journalists belonging to media outlets perceived to be critical of the Russian "occupation".

(a) In early March 2014 a group of twenty or so men in camouflage seized the office of the "Information Press Centre", the office of the Centre for Investigative Journalism. Journalists were beaten, prevented from broadcasting and subsequently evicted from the premises. They temporarily moved to the building of the Chernomorskaya TV and radio company. However, in June 2014 that office was raided by Russian authorities as well. Equipment was seized, without a warrant, and the journalists were told to leave the building.

The Editor-in-Chief of the Centre for Investigative Journalism, Valentyna Samar, was summoned for "preventive" talks with the FSB in Simferopol. Facing the threat of continued persecution, Valentyna Samar and her colleagues fled Crimea and began to operate from mainland Ukraine.

[7] Accessible at https://rsf.org/en/news/summary-attacks-media.

However, the following year, the Russian media regulator blocked access to the Centre for Investigative Journalism.

(b) Yelizaveta Bogutskaya, a Crimean blogger who had expressed pro-Ukrainian views on her Facebook page, was detained and interrogated for six hours on 8 September 2014. Her house was raided and a computer, a camera and a flash drive were seized. The following day, she fled Crimea.

(c) On 9 April 2015 the security services conducted a ten-hour search of the house of Tatyana Guchakova, a journalist and former deputy editor-in-chief of the BlackSeaNews.net website. Her computer and other property were seized and she was subjected to an interrogation. She was released and subsequently interrogated again, during which time she was played recordings of her telephone conversations. Ms Guchakova subsequently decided to leave Crimea.

(d) On 13 August 2015, the house of the parents of Natalia Kokorina, editor of the Centre for Investigative Journalism in Crimea was searched by Russian FSB officers. Documents and laptops were seized and Ms. Kokorina was interrogated for six hours. Fearing further persecution, she fled Crimea.

110. Those accounts were corroborated by the witness testimony of Ms. Maria Tomak, Ms. Alona Kushnova and Ms. Olena Maksymenko.

111. In their subsequent memorial of 1 March 2023, the applicant Government stated that during the entire period of the "occupation", the occupying authorities have created conditions for the illegal persecution of independent media and journalists in Crimea.

112. Since March 2014, the information and communication space of Crimea had been built on the "Concept of Informatisation of the Republic of Crimea", which had been developed in line with the main directions of the State policy of the Russian Federation in that field. It was prepared as part of the "Strategy for the development of the field of information technologies in the Russian Federation for 2014-2020 and for the perspective of 2025". In this context, the suppression of independent media outlets and the suffocation of all forms of dissent and pluralism had been a key goal in Russia itself and – even more so – in the territory of occupied Crimea.

113. In March 2014, all editorial offices were given a deadline for re-registration under Russian law. Media outlets that remained in Crimea following the "occupation" and failed to act in accordance with Russian legislation were forced to cease their activities. Moreover, media outlets that were not controlled by the occupying authorities were denied licences. Thereafter, media websites were deprived of the right to broadcast in the occupied territory of the Autonomous Republic of Crimea.

114. Human Rights Watch reported in 2014 that the Russian authorities had issued official and informal warnings to Shevket Kaibullaev, the editor-in-chief of the Mejlis newspaper, *Avdet*, which was established in 1990 and published in Crimean Tatar and Russian. Mr Kaibullaev told Human Rights Watch that in early June the Simferopol prosecutor's office had issued

him with an official warning that some of the material published by the newspaper contained extremist content, for example the call to boycott the September elections in Crimea and the use of the terms "annexation," "occupation," and "temporary occupation" of Crimea. He further stated that the authorities had also called Mr Kaibullaev for two informal conversations during which FSB agents and officials from the prosecutor's office had warned him that *Avdet* would not be allowed to re-register under Russian law if it continued to publish such controversial content. Subsequently, in September 2014, the FSB searched the office of *Avdet*.

115. In an official response to the statement by the Organization for Security and Co-operation in Europe (OSCE) expressing concern about the fate of *Avdet*, Russia's Ministry of Foreign Affairs said that the search was connected with alleged extremist activities of the newspaper, which "refuses to work within the boundaries of the law".

116. A similar situation of pressure was also reported regarding the ATR company and its journalists, who reported extensively about the situation in Crimea.

117. All major Russian television and radio channels were operating in occupied Crimea. Since 2014, Ukrainian television channels had been available for viewing only via the internet on Divan TV.

118. Since the "occupation" of the Autonomous Republic of Crimea by the Russian Federation, Ukrainian periodical publications were also no longer available in the territory. The most important daily newspapers in Crimea were Russian publications.

119. In the spring of 2014, the editorial office of the Ukrainian-language newspaper *Krymska Svitlytsia* was seized. Ukrainian language periodicals such as *Dumka*, *Krymske slovo*, *Slovo Sevastopolia* and *Dzvin Sevastopolia* were discontinued. Ukrainian-language Crimean online publications such as *Media-Krym*, *Holos Tavrii* and *Ukrainskyi Kavkaz* had been subjected to hacker attacks. The migration of Ukrainian language publications to the mainland was almost complete by June 2014. In September 2014 the property of the Crimean Tatar newspaper *Avdet* was confiscated by occupation authorities.

120. After Russia's "occupation" of Crimea, Ukrainian institutions had stopped receiving statistical data regarding the published periodicals. Daily newspapers from Crimea had not been delivered inside Ukraine since March 2014.

121. Russia had pursued the policy of cutting off the access of the residents of Crimea to independent Ukrainian informational sources, a policy that continues today.

122. At the end of June 2019, the accessibility of different websites was tested in networks of ten internet service providers that operated in nine different locations in Crimea (including the biggest and the most populated towns). The results showed that all providers had blocked numerous websites,

including those of fourteen different Ukrainian media outlets, social networks, the Mejlis of the Crimean Tatar People[8], the Jehovah's Witnesses, and Hizb ut-Tahrir.

123. In addition, some of them had blocked a more extensive number of Ukrainian websites including those of media outlets, the NGO Crimean Solidarity, and others.

124. The NGOs ZMINA Human Rights Centre and Crimean Human Rights Protection Group had documented more than 350 acts involving harassment of journalists and bloggers in Crimea between 2014 and 2019. This administrative practice had intensified since that time.

125. The largest number of violations in this regard occurred in March 2014 – during the active phase of the "occupation". During this period, journalists from all over the world worked in Crimea. From 26 February to 22 March 2014, more than 100 cases involving the violation of the rights of journalists and bloggers were recorded.

126. Journalists and film crews were subjected to various methods of pressure: beatings, kidnappings, torture, unjustified politically motivated detentions, damage to property, prohibition of filming and non-admission to the peninsula, as well as threats and intimidation. Such actions were carried out by the paramilitary formations of the so-called "Cossacks" or "People's self-defence" under the control of the Russian Federation, as well as by the Russian military, which at that time controlled all the strategic facilities of Crimea.

127. Illegal, politically motivated criminal prosecutions of journalists by the occupying authorities were aimed at forcing those media and journalists who were not under the control of and were not loyal to the occupying regime to leave the territory of the Crimean Peninsula.

128. According to the National Union of Journalists of Ukraine, after the "occupation" of Crimea by Russia unofficial supervisors from the FSB had been appointed for each editorial office, who effectively took on the role of both editor and censor. The editorial policy of all media was changed with the aim of supporting and justifying the "occupation". On that account, the broadcasting company Krym, Chornomorska and the Crimean bureau of the information agency "Ukrinform" stopped their activities, and the Ukrainian-Turkish agency QHA and the editorial office of Radio Svoboda moved their offices to Kyiv.

129. According to the Ukrainian PEN Centre, the Russian authorities had imprisoned 162 Ukrainian journalists, activists and writers.

130. Many citizen journalists were imprisoned on false accusations, among them: Amet Suleimanov, Marlen (Suleiman) Asanov, Osman Arifmemetov, Remzi Bekirov, Ruslan Suleimanov, Rustem Sheikhaliiev,

[8] "Tatar Mejlis" is the high representative and executive body of the Crimean Tatar people founded in 1991 to represent the interests of the Crimean Tatars before the Ukrainian and Crimean authorities, as well as in international organisations.

Server Mustafaiev, Seiran Saliiev, Timur Ibrahimov, Asan Akhtemov, Vladyslav Yesypenko, Oleksiy Bessarabov, Iryna Danilovych and Vilen Temerianov.

131. The applicant Government further alleged that many Ukrainian journalists were banned from visiting Crimea for 10 to 35 years without, however, identifying the authorities responsible for these decisions.

132. The seriousness of the situation concerning the violation of the rights of journalists in Crimea was also reflected in the numerous criminal proceedings initiated by Ukrainian investigative authorities into these allegations. For example, the Ukrainian investigative authorities established as a fact the illegal detention on 13 March 2015 of the editor of the Centre for Journalistic Investigations Ms Nataliya Kokorina and notified the FSB officers Ms Marina Viktorivna Savchuk and Mr Dmytro Viktorovych Tkachenko that they were suspected of the commission of a crime under Part 2 of Article 162 of the Criminal Code of Ukraine.

133. In addition, the Ukrainian authorities were carrying out an investigation into the case of the obstruction of the legal professional activity of Mr Yuhosh, a founder of the internet-portal Podii Krymu, and Mr Kaibullaiev, the chief editor of the newspaper *Avdet*, allegedly committed by representatives of the Russian law-enforcement agencies during May-June 2014.

134. The prohibition, by the decision of the Russian "occupation" administration of 22 April 2014, of the broadcasting of speeches of Crimean Tatar leaders on the TV channel Krym had also been investigated by the Ukrainian authorities.

135. In total, the Ukrainian authorities had been carrying out investigations in twenty-six sets of criminal proceedings regarding forty-eight incidents of alleged violations of journalists' rights in Crimea (thirteen persons were notified that they were suspected to have committed related offences). It should also be noted that the available means of investigation were limited as the Government had no access to the territory of Crimea. The Government referred to the report of the General Prosecutor's Office of Ukraine on specific persecutions of journalists by the Russian authorities in Crimea.

136. According to the press service of the *Roskomnadzor*, as of 1 April 2015, 232 media outlets were registered in Crimea, of which 163 were print media and news agencies. At the same time, according to the UN, as of the beginning of 2014, about 3,000 mass media outlets were registered in Crimea.

137. Because of the armed aggression, licensees of the National Council of Television and Radio Broadcasting of Ukraine were deprived of the right to broadcast in Crimea as follows.

- Analogue television broadcasting – thirty-one television and radio companies were deprived of the right to use 292 frequency assignments for broadcasting in sixty-nine settlements;

- Digital terrestrial television broadcasting – twenty-eight television and radio companies were deprived of the right to use seventy-two frequency assignments for broadcasting in eighteen settlements;

- Radio broadcasting – thirty-nine television and radio companies were deprived of the right to use 139 frequency assignments for radio broadcasting in thirty-one settlements. In fact, these radio frequency assignments were illegally used to broadcast Russian programmes. This was contrary to the Statute of the International Telecommunication Union ("ITU"), the ITU Radio Regulations and the statement of the ITU Secretary General at the ITU Plenipotentiary Conference of 2014, and violated the requirements of Resolution 68/262 (2014) of the UN General Assembly.

138. Overall, approximately two million citizens of Ukraine residing in Crimea had lost access to the broadcast (analogue, digital) signal of Ukrainian television channels and the broadcast signal of radio stations. According to the information of the independent rating agency BIGDATA UA LLC, more than 230,000 subscribers had lost access to Ukrainian cable television in Crimea.

139. Television and radio companies broadcasting on the territory of Crimea and the City of Sevastopol were fully subordinate to the occupying authorities, which used measures of control as a means to suppress free speech, and to spread war propaganda against Ukraine, the EU, the United States of America, and NATO. News had been replaced by misinformation.

140. Public statements were limited, and journalists worked in accordance with the instructions received from the occupying authorities of Crimea, while others were persecuted together with their families and were subjected to direct threats to their lives.

141. According to the 2017 estimates of the international organisation Freedom House, since 2014 the level of freedom of speech in Crimea had fallen to one of the worst in the world. The organisation's report stated that on a 100-point scale, where 100 was the worst indicator, Crimea received ninety-four points and was included in the list of the "worst of the worst" territories in the world. At the same time, Russia itself received eighty-three points.

(g) Prohibition of public gatherings and demonstrations, as well as intimidation and arbitrary detention of organisers of demonstrations in violation of the right to freedom of peaceful assembly under Article 11 of the Convention

142. The applicant Government referred to the findings of the OHCHR in relation to the freedom of peaceful assembly, noting in particular the regulatory measures used to suppress freedom of assembly (reference was made to 2017 OHCHR Report, §§ 147-51 thereof).

143. The general description, focussing on the regulatory measures adopted by the authorities to suppress peaceful assembly, was supplemented by accounts of individuals who were arbitrarily detained for seeking to take

part in public demonstrations. For example, the applicant Government recalled the following cases.

(a) In his witness statement, Mr Vladyslav Polishchuk recalled how members of the CSDF had violently disrupted a peaceful demonstration on 9 March 2014 to commemorate the 200th anniversary of Taras Shevchenko (a famous Ukrainian poet and public figure). Mr Polishchuk escaped, only to be later arbitrarily detained and interrogated about his participation in the demonstration by the *de facto* authorities before being charged with a public-order offence (see witness statement, A 407-09).

(b) Mr. L. Kuzmin, Mr. O. Kravchenko and Mr. V. Shukurdzhyev, who were detained following the use of Ukrainian symbols at a meeting to commemorate the birth of Taras Shevchenko on 9 March 2015 (paragraph 123 (f) of the admissibility decision);

(c) Mr L. Terletskiy, Mr M. Kuzmin and Mr L. Kurmin were detained on 24 August 2015 after they had laid flowers at a monument for Taras Shevchenko (paragraph 123 (i) of the admissibility decision).

144. The applicant Government added that in late February-early March 2014, rallies had been held almost daily in support of the territorial integrity of Ukraine and the participants of these rallies were constantly attacked by the so-called CSDF.

145. With respect to the systematic suppression of demonstrations by organisations perceived to be hostile to the "occupation", the applicant Government further referred to the report of the Centre for Civil Liberties (Ukraine), "Freedom of Assembly in Crimea Occupied by the Russian Federation", which reported on a number of incidents, two of which they included for illustrative purposes, along with quotes from correspondence received from local authorities.

(a) On 16 May 2014, the self-proclaimed Crimean Prime Minister Sergei Aksionov issued a decree prohibiting public assemblies in Crimea until 6 June 2014. This period included the seventieth anniversary of the deportation of Crimean Tatars. Mr Aksionov justified the decision in the following terms:

> "Taking into account the continuing events in many cities of the south-eastern Ukraine, resulting in injured and killed civilians, in order to eliminate possible provocations performed by extremists, who are able to enter the territory of Republic of Crimea, to avoid disruption of the holiday season in the Republic of Crimea, we prohibit any mass events in the Republic of Crimea until June 6, 2014".

(b) On 11 June 2014, the Tatar Mejlis requested permission from the Simferopol City Council to hold a cultural event dedicated to the Crimean Tatar flag on 26 June, to be held in the city's central park. However, on 17 June, the Mejlis received a written response, refusing to permit the assembly. The refusal of the local authorities states the following:

> "In the park named after K.A. Trenov there are playgrounds and attractions currently functioning, especially popular during the school holidays; classes, competitions,

> exhibitions and other events involving hundreds of children are held here, the School of Music is enrolling students on the 2014-2015 academic year ... gathering of a large number of people in a limited area, not intended for extra number of participants, can create conditions that would disturb public order, the rights and legitimate interests of the others".

146. The occupying authorities used administrative resources to organise repression. The most instrumental entity in the harassment of civil society representatives was the CSDF, with the participation of the local police and the Russian Armed Forces. Several civil activists who openly protested against Russia's actions in Crimea had been kidnapped. All of them were unlawfully detained, and many of them were tortured.

147. The systematic nature of the repression was confirmed by the comprehensive organisation and coordination of various public bodies: the registration authorities, "the police", "the prosecutor's office", the "courts", the CSDF and the Russian military. This was confirmed by numerous criminal cases having been brought against Crimean Tatars and pro-Ukrainian activists. The most well-known case of prosecution was the so-called "Case of 26 February" in relation to the participation in a peaceful meeting of the Mejlis in support of Ukraine's sovereignty near the Verkhovna Rada of the Autonomous Republic of Crimea in Simferopol (ARC Supreme Council).

148. The Ukrainian authorities conducted investigations in relation to possible charges of murder due to carelessness, intentional bodily injuries, illegal obstruction of pro-Ukrainian rallies with the use of physical violence, and the beating of citizens on 26 February 2014 near the building of the ARC Supreme Council, as well as the illegal persecution of participants in a pro-Ukrainian rally.

149. The applicant Government also referred to case-law of the Russian courts in administrative cases concerning the prohibition of rallies or peaceful protests in the occupied Autonomous Republic of Crimea and the City of Sevastopol.

(h) Expropriation without compensation of property from civilians and private enterprises in violation of Article 1 of Protocol No. 1

150. The applicant Government submitted that the available evidence clearly demonstrated that, during the period under consideration, there was a pattern of expropriation of private property without compensation, in the absence of military or any other lawful justification. Where the policy was not effected through legislative and administrative means, it was officially tolerated by the authorities.

151. The 2017 OHCHR Report provided a clear overview of the pattern of property seizure during the period under consideration both through legal and administrative means and the official tolerance of unlawful actions (see §§ 171-74 thereof). This was further confirmed by documentary evidence

(Resolutions of the Sevastopol City Government "On some aspects of the nationalization of property" No. 118-1111, 123-1111, 662-1111 of 28 February 2015 and 8 July 2016 respectively), OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (HCNM), and the Report of the Human Rights Assessment Mission on Crimea of 2015, which detailed the deficiencies in the "nationalisation" process rendering it unlawful, and reported on the apparently discriminatory nature of those seizures (§§ 67 and 68 thereof) and called on Russia and the *de facto* authorities to:

> "Immediately halt expropriations ('nationalizations') and other seizures of properties and enterprises in Crimea, by *de facto* authorities and private actors;
>
> Review the legality of all past expropriations and seizures of properties and enterprises in Crimea, and adopt measures to grant full restitution and other forms of reparations to those who have suffered from damages resulting from any such wrongful actions."

152. The Commissioner's Report of 2014 provided evidence, in particular, that the practice of seizure of private property was not just officially tolerated but was even endorsed (reference was made to paragraph 35 of that report, A 85).

153. The practice of property seizures was a feature of the "occupation" from the outset. On 17 March 2014, for instance, the "Parliament" of Crimea purported to adopt a resolution to appropriate the assets of the Feodosia enterprise which, prior to the crisis, was one of Ukraine's primary transhipment terminals. No compensation was provided. Similar seizures of significant, as well as smaller, private enterprises without compensation continued throughout the year (reference was made to the Report "International Crimes in Crimea: An Assessment of Two and a Half Years of Russian Occupation" (September 2016)).

154. On 2 April 2014 the Russian Federation passed the Federal Law on the specifics of the functioning of the financial system of the "Republic of Crimea" and the City of Sevastopol during the transitional period, which enabled the Russian Central Bank to terminate licences of Ukrainian banks operating in Crimea, and to seize all property in the possession of a bank. The matter was eventually the subject of an arbitration award (reference was made to the Award of the Permanent Court of Arbitration of 26 November 2018 in the case of *Oschadbank v. Russian Federation, PCA CASE No. 2016-14*).

155. By December 2014 it was estimated that some 4,000 public and private properties had been seized by the occupying authorities. As regards the type of property seized, an investigation into the matter by Associated Press concluded that the seizures "vary in scale and type of assets involved" but had in common that they were "reliably profitable and would require little additional investment." One of the specific instances they report in an article entitled "Crimea's New Russian Overlords are Seizing Thousands of Businesses" of 2 December 2014 involved the non-payment of

USD 5.2 million to Trans-Bud, a construction and transport company, following its delivery of fifty-four vehicles to the Simferopol firm Krymsky Passazh. When Trans-Bud took the matter to the police, it was determined that no crime had been committed because the property was being "nationalised".

156. On 27 May 2015 Russia's Supreme Court upheld the constitutionality of the law on nationalisation of property in Crimea (ruling of the Supreme Court of the Russian Federation no.127-APG15-2 of 27 May 2015).

157. The NGO IPHR (International Partnership for Human Rights) also documented twenty-five representative cases of appropriation of private property including agro-industrial enterprises, a major bank, property belonging to associations, media and telecommunication companies, energy companies, construction and transport companies, and tourism-sector enterprises. IPHR also found that "[a]side from big commercial enterprises, appropriations ha[d] taken place against small businesses, mainly belonging to Crimean Tatars and persons in actual or perceived opposition to the occupation."

158. In their supplementary memorial of 30 January 2023, the applicant Government noted that on 20 March 2020 the President of the Russian Federation had issued Decree no. 201 of 20 March 2020 by which nineteen territories in Crimea and eight in Sevastopol were granted the status of "border areas" of the Russian Federation.

159. In relation to this decree, the applicant Government referred to the United Nations (UN) Secretary-General's Report of 2020, according to which:

> "[The decree] effectively restricts land ownership to Russian citizens and Russian companies. According to Russian authorities in Crimea, 11,572 land plots within the 'border areas' of Crimea belong to 'foreigners', including 9,747 (more than 82 per cent) that belong to Ukrainian citizens. Unless those people obtain Russian Federation citizenship or dispose of their land by March 2021, they risk losing their land in an enforced sale or nationalization."

160. The applicant Government also noted the practice of demolition of houses of Crimean Tatars on the territory of Crimea by the Russian occupying administration.

161. Further reference was made to the statement of Metropolitan Kliment according to which individuals who refused to receive Russian citizenship sustained interference with their property rights by the Russian occupying administration. He described the situation of one of his parishioners who had not been able to register her title to her flat because of her absence of Russian citizenship. The same problems had confronted the priest I. Katkalo Jr. and as a result of those issues, he had been forced to apply for Russian citizenship.

162. The applicant Government also referred to a group of 230 individual communicated cases regarding breaches of the applicants' property rights by the respondent Government in Sevastopol (*Andriyevskiy and Others v. Russia*, no. 53891/16). The applicants in those cases had submitted that on the territory of Sevastopol alone, more than 10,000 lawsuits had been brought by the occupying administration in the local "courts" in order to confiscate private plots of land and all of the decisions had been in the administration's favour. Judicial decisions provided by the applicants within that group of cases demonstrated that while deciding to seize property from them or persons to whom the applicants had sold the land plots, the "courts" had not provided evidence of "imperative military necessity"; they had only referred to provisions of Russian legislation to justify their decisions.

163. It was also noted that the Ukrainian authorities were also investigating decisions of local "courts" on the occupied territory of Crimea confiscating private property.

(i) Suppression of the Ukrainian language in schools and persecution of Ukrainian-speaking children at school in violation of Article 2 of Protocol No. 1

164. The applicant Government submitted that the respondent State was responsible for the suppression of the Ukrainian language in schools, notwithstanding the ostensible protection afforded to the Ukrainian (and Crimean Tatar) language under the 2014 Constitution.

165. Whilst the "Constitution" of 2014 of the *de facto* authorities following the February 2014 events provided that "everyone shall have the right to use his/her native language and to freely choose the language of communication, teaching, education and creation" (Article 19 § 2), such rights were not enforced in practice, nor were they protected by other legal instruments.

166. On 30 December 2014 the *de facto* authorities issued Decree no. 651 to approve a "State Programme for Development of Education and Science in the Republic of Crimea for 2015-2017". The programme did not envisage access to education in a native language and did not reference any statistical data regarding the current "language of instruction or other characteristics of the existing educational institutions of Crimea" (reference was made to Ukrainian Centre for Independent Political Research, Integration and Development Centre for Information and Research, "'Annexed' Education in Temporarily Occupied Crimea Monitoring Report," 2015).

167. Before 2014 seven schools of general education teaching in Ukrainian and fifteen schools teaching in the Crimean Tatar language functioned on the territory of the Autonomous Republic of Crimea. Three educational institutions with Ukrainian as the language of instruction had ceased their activities.

168. In November 2014 the OHCHR reported on the sharp decline in Ukrainian language education since the start of the "occupation" (see OHCHR 2014). The decline in Ukrainian (and Crimean Tatar) language education continued, as recounted in the OHCHR's subsequent reporting (reference was made to paragraphs 196 and 199 of the 2017 OHCHR Report).

169. Between 2014 and 2015 the number of children studying in Ukrainian decreased from 12,600 in the previous school year to 2,000. The number of pupils studying Ukrainian decreased from 162,700 to 39,100.

170. As argued by the applicant Government, local authorities were putting pressure on educational institutions which continued to teach in Ukrainian.

171. As a result of the actions of the Russian authorities, people were afraid to discuss the issue of teaching in the Ukrainian language in schools.

172. Parents reported that they had been put under pressure or they even had no opportunity to express their will regarding the language of education.

173. For example, Mr Yaroslav Hontar, a priest in Evpatoria who left Crimea in 2014, in his witness statements, stated that his son had problems in school with his peers as he only knew and was able to speak the Ukrainian language, which negatively affected him.

174. Furthermore, children bullied their peers who spoke Ukrainian and Crimean Tatar or whose nationality was Crimean Tatar or Ukrainian. Teachers did not address the situation.

175. The absence of meaningful legal protection had allowed an environment to flourish which was hostile to the Ukrainian language. According to a report of the Ukrainian Centre for Independent Political Research:

> "Since February 2014, Crimean authorities have created the atmosphere of Ukrainophobia and intolerance to Ukrainian identity, which has influenced the choice of language of instruction...The problem of opposition between parents and school teachers was solved only by means of administrative pressure on teachers and teaching staffs and intimidation of parents through parent committees or individual conversations often attended with threats of violence and physical attack. Parents were pressed to decrease the number of applications for teaching in the native language."

176. Archbishop Kliment similarly mentioned reports of the inculcation of Ukrainophobia in schools at this time (see witness Statement of Archbishop Kliment, paragraphs 20 and 94):

> "... priests complained that immediately after the 'referendum', psychological and even physical pressure began to be applied to children in Ukrainian classrooms. My parishioners told me that teachers in many schools were setting Russian-speaking children against Ukrainian-speaking children. Sometimes it came to physical abuse, and our children, Ukrainian children, who went to Ukrainian classes came home with ripped backpacks and torn pants or jackets. Parents tried to make remarks to the teachers. But the teachers took the position that this is a school, these are children, they are growing up, there are always conflicts in the school community. But this is sly. One thing is a conflict in the school community on the basis of everyday life or on the basis of learning, and quite another thing is a conflict based on national hate, and even heated

> up by teachers. On the background of such conflicts people started to take children out of Ukrainian classes and Ukrainian classes began to be closed. This moment is very memorable for me.”

In particular, he recalled the experience of another priest in Evpatoria:

> “Mr Yaroslav Hontar served as a priest in Evpatoria, who also left Crimea in 2014 because he had to evacuate his family. At that time problems began at school, because the children of Mr Hontar went to the Ukrainian-language class and the teachers at the school created such conditions that on ethnic grounds, Russian-speaking children simply started to beat the children who went to the Ukrainian-language class. In response to Father Yaroslav’s remarks regarding the fact that lawlessness is beginning against his children, the director of the school, in particular, stated that these are children, so anything can happen among children, they cannot control the relationship between children. But the conflict was on a national basis. Children of the Russian-speaking classes began to simply terrorise and beat the children of the Ukrainian-speaking classes.”

(j) Restriction of freedom of movement between Crimea and mainland Ukraine, resulting from the *de facto* transformation (by the Russian Federation) of the administrative delimitation line into a border (between the Russian Federation and Ukraine) in violation of Article 2 of Protocol No. 4

177. The applicant Government observed that on 11 March 2014 the ARC Supreme Council had purported to adopt decision no. 1731-6/14, according to which the State bodies of Ukraine, including the armed forces, law enforcement, prosecutors and the State border service located in the territory of Crimea, were to be subordinate to the Head of the Council of Ministers of Crimea.

178. On 18 March 2014 the Russian Federation, the “Republic of Crimea” and the City of Sevastopol signed the “Treaty of Unification”, which was “accepted” by the Russian Duma on 20 March that year.

179. By 24 April 2014 the Russian Federation authorities had established a border at the northern entrance to Crimea, thereby creating a *de facto* State border between mainland Ukraine and the Crimean Peninsula that applied to all inhabitants of Crimea wishing to leave, and all inhabitants of mainland Ukraine wishing to enter.

180. The applicant Government referred to relevant passages of Mitropolitan Kliment’s statement, as well as the 2017 OHCHR Report (paragraphs 123-27 thereof). They also referred to the statement of the journalist Mr B. Kutyepov that the so-called “Cossacks” had stopped him on the administrative border between mainland Ukraine and the Crimean peninsula, refused to let him into Crimea and claimed that Crimea was a territory of the Russian Federation.

181. In her witness testimonies Ms O. Maksymenko stated that she and three other journalists had been stopped and detained at the checkpoint controlled by the so-called “Crimean self-defence forces”. They claimed to have been tortured and kept in inhuman conditions. A few days later, they had been removed from Crimea.

182. Ms A. Kushnova recalled further instances of violence against foreign journalists who had attempted to cross and record the checkpoint on the administrative border.

183. In addition to the creation of a *de facto* border, the imposition of Russian immigration and other laws created additional restrictions on the freedom of movement which violated the rights of those living in Crimea. The Ukrainian NGO UHHRU (Ukrainian Helsinki Human Rights Union) identified the groups of Ukrainian citizens whose freedom of movement was particularly affected by the application of Russian immigration legislation following the "occupation" as including those: (a) whose place of residence was officially registered on the territory of the Autonomous Republic of Crimea or the City of Sevastopol, and who subsequently refused to accept the citizenship of the occupying power imposed by the Russian Federation; (b) who had lived in the above-mentioned territory before the "occupation" without official registration (which did not constitute a violation of Ukrainian law); and (c) who had arrived in the specified territory after the beginning of the "occupation" in pursuit of personal, family or other reasons.

Moreover, the Code of Administrative Offences of the Russian Federation provided for twenty-three administrative offences, for which expulsion could be imposed.

184. For instance, Kadyrov Sinaver Arifovich, a human rights activist who was born in Uzbekistan but had lived in Crimea from 1990, was expelled from Crimea in January 2015 after a judge had found him guilty of the administrative offence of exceeding the established period of stay on the territory of Crimea. As a consequence, he was banned from the territory of the Russian Federation and Crimea for a period of five years, unable to see his wife, son, seriously ill father and other close relatives.

185. The Russian Federation had adopted a policy of shifting the demographic composition of Crimea. The functioning of the so-called "State border" on the administrative border between mainland Ukraine and Crimea and the practice of expulsion of Crimean residents who refused or failed to receive Russian citizenship were among the main components of this policy.

186. The policy also included direct transfers of groups of individuals from Crimea. A major example was the so-called "Train of hope" programme initiated by Russia in 2014. It was used to transfer orphans and children deprived of parental care from Crimea to the territory of Russia for their adoption by Russian citizens and their subsequent assimilation there.

187. The General Prosecutor's Office of Ukraine stated that it was "currently" investigating more than 300 cases of expulsion of Ukrainian citizens who had previously resided in Crimea from the territory of the peninsula for breaches of "the Russian legislation on migration". Among them, more than 100 cases related to expulsion orders issued during the period between 27 February 2014 and 26 August 2015.

188. In addition, the applicant Government emphasised that the so-called "State border" functioned not only to prevent persons from entering Crimea but also to prevent them from leaving. To demonstrate an example of such circumstances they referred to *Lavrenchuk v. Russia* (no. 24218/18), in which the applicant had complained under Article 2 of Protocol No. 4 to the Convention that she had been prohibited from leaving Crimea because of non-payment of compensation awarded in a judicial decision.

(k) Targeting Crimean Tatars in breach of Article 14, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention and Article 2 of Protocol No. 4

189. The applicant Government submitted that the Russian Federation was responsible for discriminatory legal and administrative measures aimed at Crimean Tatars, which were effected through, *inter alia,* the following: frequent summoning of Tatars by the police and the Public Prosecutor of Crimea; the initiation of criminal proceedings against Tatars; the prohibition of broadcasting of Tatar television channels; the prohibition of public meetings; and restrictions on freedom of movement through the imposition of a *de facto* State border which particularly affected Crimean Tatars.

190. The information available from numerous intergovernmental organisations (IGOs), NGOs, and other sources consistently pointed to the conclusion that the Crimean Tatars had been subjected to an administrative practice of discrimination in violation of Article 14 of the Convention.

191. The ICJ (International Court of Justice) had already ordered provisional measures and dismissed preliminary objections in relation to Ukraine's complaints of a policy of discrimination and campaign of cultural erasure against the Crimean Tatar population brought under International Convention on the Elimination of All Forms of Racial Discrimination (A 90 and 91).

192. As found in the admissibility decision of the Court, such a pattern of discriminatory acts was borne out by the reporting of multiple NGOs and IGOs, such as the 2017 OHCHR Report (see paragraphs 179-81 of the report) and the Commissioner's Report (regarding religious discrimination against the Crimean Tatar community, see paragraph 21 of the report). Furthermore, as noted in the analytical report on politically motivated persecutions and discrimination on the ground of pro-Ukrainian opinion, "Crimea: Ukrainian identity banned", in 2015 the "Ministry of Education" ordered an audit of "Extremist Literature" and seizure of material with Islamic or Tatar content.

193. PACE Resolution 2133 (paragraph 8 thereof) drew attention to forced nationality and political repression:

> "In Crimea, Ukrainians in general, and Crimean Tatars in particular, live in a climate of severe intimidation created by the above-mentioned human rights violations and the fact that they remain largely unpunished. Many were forced to leave Crimea. In parallel, all inhabitants of Crimea have been placed under immense pressure to obtain Russian passports and renounce their Ukrainian nationality in order to have access to health

> care, housing and other essential services. As a result of the recent decision of the Supreme Court of the Russian Federation on banning the Mejlis and its local branches, the Crimean Tatars have lost their traditional democratic representation. Tatar media and the Tatar's Muslim religious practices were also targeted. The cumulative effect of these repressive measures is a threat to the Tatar community's very existence as a distinct ethnic, cultural and religious group."

194. In its case studies on the seizure of private property, the NGO IPHR found that "[a]side from big commercial enterprises, appropriations had taken place against small businesses, mainly belonging to Crimean Tatars and persons in actual or perceived opposition to the occupation". IPHR also noted that "the occupying authorities had also targeted the property of cultural and religious organisations. As a result, a Tatar cultural centre ... had been seized with no compensation or right of appeal". It further documented the whole or partial destruction of four mosques and of memorials to Tatar deportation, and reported that Tatar shops had been attacked and defaced with paint and racist slogans.

195. Crimean Tatars had also suffered disproportionately from the Russian Federation's unlawful policy on freedom of movement. For instance:

(a) Mr Mustafa Dzhemilev (Chairman of the Mejlis of the Crimean Tatar People and a member of the Ukrainian Parliament) was banned from entering the territory of the Russian Federation for five years.

(b) Following a session of the Mejlis of the Crimean Tatar People in the town of Henichesk, the Mejlis leader, Mr Refat Chubarov was excluded from Crimea for five years.

(c) On 9 August 2014, at the check point on the administrative boundary line, FSB officials excluded the councillor of the Head of Mejlis Ismet Yüksel when he and his family were on their way home after a trip. He was told that he had been excluded for five years.

196. The discrimination experienced by Crimean Tatars was all the more egregious and the need for the Court to take measures to put an end to such practice was urgent because it had not abated since the "occupation". In this connection reference was made to "War in religious dimension: Attacks on religion in Crimea and Donbas region", Truth Hounds and IRFF, 2019.

2. *The facts of the case as submitted by the respondent Government*

197. The respondent Government's version of the facts is drawn from their memorial on the admissibility and merits submitted to the Grand Chamber on 28 February 2022, namely four days after the invasion of Ukraine of 24 February 2022 which led to the expulsion of the Russian Federation from membership of the Council of Europe, and will be set out below in line with the structure of their submissions. Their legal arguments will be summarised under the relevant headings below (see the "Law" part).

(a) Arguments about the absence of administrative practice in respect of the alleged violations of Articles 2, 3 and 5 of the Convention

198. The respondent Government submitted "that in the case under consideration there was no administrative practice of enforced disappearances, lack of effective investigation, ill-treatment or illegal detention on the territory of the Republic of Crimea".

199. The authorities of the Russian Federation were deeply convinced that an abstract description of actions as advanced by the applicant Government could not be regarded as an "administrative practice".

200. In particular, the Ukrainian authorities appeared to refer to episodes of alleged abductions or detention by unknown persons. Careful consideration of those "incidents" showed that they could not be used in any way to prove the existence of "repetitive actions" and, consequently, the existence of an "administrative practice".

201. Firstly, there were generally no grounds for holding the authorities of the Russian Federation responsible for those events, and the Ukrainian authorities had not provided any relevant evidence. Secondly, some allegations were so vague that the alleged victims could not be identified. Some of the alleged victims denied the words of the Ukrainian authorities during evidence given to the Russian authorities.

202. For example, V. Sadovnik denied that he had been abducted, and E. Pivovar claimed that he had not been forced to go anywhere; he had made decisions on his own initiative. In some cases, the alleged victims of abduction had subsequently been found alive and well (in particular, O. Filipov and A. Kalyan), and there were no signs of criminal acts. Other alleged victims of unlawful detention had simply been stopped for a short conversation (A. Moryakov, V. Radzivinovich). Most of the alleged victims (V. Chemysh, O. Ryazantseva, I. Kiryushenko, V. Necheporenko, D. Delyatytskyi, I. Voronchenko, Y. Mamchur, M. Demyanenko, B. Kostetsky and relatives of the allegedly disappeared person L. Korzh) had never reported the alleged violation of their rights to the domestic authorities. Other alleged victims, such as M. Seytasanova, had refused to provide explanations during the checks carried out by the authorities; others, for example, D. Jeffrion, M. Kvich, S. Dub, S. Mokrushin, O. Pashayev and Ch. Kizgin, had been detained or brought for questioning in connection with their participation or suspicion of participation in criminal activities.

203. The second mandatory criterion for the existence of an "administrative practice" was "official tolerance", which had also not been proven by the Ukrainian authorities.

204. In this connection it should be noted that in almost all cases cited by the Ukrainian authorities, there had been no real attempt on the part of the alleged victims to exhaust domestic remedies. Instead, in some cases the alleged victims had refused to cooperate with the Russian investigating authorities. In the majority of other cases, the initial recourse to domestic

remedies (if any) was brief and formal and was not accompanied by supporting evidence. These facts alone proved that the arguments of the Ukrainian authorities about "official tolerance" were mere speculations.

205. There were insufficient grounds to assert that the authorities of the Russian Federation had refused to take measures to investigate the complaints and punish the perpetrators. At the same time, the authorities of the Russian Federation provided examples of effective measures taken by public authorities in fulfilling their obligations under the Convention.

206. The Ukrainian authorities had claimed that there had been a violation of Article 2 of the Convention in respect of R. Ametov, S. Karachevsky and M. Ivanyuk.

207. Regarding the case of R. Ametov, the respondent Government submitted perpetrators were unknown and there were no reasons to attribute any responsibility to the authorities of the Russian Federation for the crimes committed against R. Ametov. Furthermore, the competent Russian authorities had conducted a thorough examination of the circumstances of the disappearance and death of R. Ametov. In the context of the criminal case, considerable efforts had been made to identify the perpetrators: about 500 witnesses had been questioned, and sixty inspections and four searches had been carried out. This criminal case had been investigated thoroughly. At the same time, R. Ametov's next of kin had not challenged the actions of the competent authorities of the Russian Federation as provided for under the relevant domestic law (Article 125 of the Code of Criminal Procedure of the Russian Federation ("CCrPRF")).

208. As regards the death of S. Karachevsky, following the investigation by the Russian investigating authorities, on 13 March 2015 a Russian serviceman had been convicted under Article 108 of the Criminal Code of the Russian Federation ("CrCRF") (murder committed in excess of the measures necessary to arrest a person who had committed a crime). The penalty had been upheld by the Court of Appeal. Domestic remedies had been used and had been effective.

209. The Ukrainian authorities had also referred to the case of M. Ivanyuk, unreasonably alleging that he had been killed. However, he had died as a result of a traffic accident. M. Ivanyuk's mother had not claimed that the representatives of the Russian Federation had any connection to that incident. Accordingly, there was no reason for this case to be regarded as evidence of an administrative practice.

210. As regards R.B. Zeytullayev, R. Vaitov and Yu.(N.)V. Primov, who had allegedly been kidnapped and unlawfully deprived of their liberty, it was noted that criminal cases no. 42015010000000019, no. 42015010000000021 and no. 42015010000000022 had been initiated by the Department of the National Police of the Kherson Region in the town of Genichesk in relation to a crime punishable under Article 146 § 1 of the Criminal Code of Ukraine (unlawful deprivation of liberty or kidnapping). The Ministry of Foreign

Affairs of the Russian Federation and its foreign missions did not have access to the information entered into the Unified Register of Pre-trial Investigations of Ukraine. This right was vested in prosecutors and heads of departments of the General Prosecutor's Office of Ukraine, the National Anti-Corruption Bureau of Ukraine, the State Bureau of Investigation, investigators of the prosecutor's office, the police, the security forces, and so on.

211. On the other hand, R.B. Zeytullayev, R. Vaitov and Y.(N.)V. Primov, who were regarded by the competent authorities of the Russian Federation as citizens of the Russian Federation, were subject to criminal prosecution in Russia and had been convicted by the North Caucasian District Military court on 7 September 2016 for participation in the activities of the Party of Islamic Liberation (Hizb ut-Tahrir al-Islami). The latter was considered a terrorist organisation on the basis of a judgment of the Supreme Court of the Russian Federation of 14 February 2003 no. GKPI 03-116 and prohibited on the territory of the Russian Federation. Since participation in the activities of Hizb ut-Tahrir al-Islami was prosecuted in accordance with Russian criminal law (Article 205.5 of the CrCRF, providing for the offence of organisation of the activities of a terrorist organisation or participation in it), the competent authorities of the Russian Federation had jurisdiction to prosecute R.B. Zeytullayev, R. Vaitov and Yu.(N.)V. Primov, regardless of whether those persons had legally obtained citizenship of the Russian Federation from the point of view of international law.

212. In particular, pursuant to Article 11 § 1 of the CrCRF, any person who committed a crime on the territory of the Russian Federation was subject to criminal liability. Pursuant to Article 12 § 1 of the Criminal Code, citizens of the Russian Federation who had committed a crime outside the Russian Federation against the interests protected by the Code were subject to criminal liability in the absence of a court decision against them in a foreign State in respect of the crime in question.

213. In any event, even from the point of view of Ukraine, which did not recognise Crimea as a part of the Russian Federation, and R.B. Zeytullayev, R. Vaitov and Yu.(N).V. Primov as Russian citizens, the jurisdiction of the Russian Federation to bring those individuals to criminal justice stemmed from Article 12 § 3 of the CrCRF, which provided that foreign citizens who did not reside permanently in the Russian Federation and who had committed a crime outside the Russian Federation were subject to criminal liability if the crime in question was directed against the interests of the Russian Federation, and the relevant persons had not been convicted in a foreign State and were subject to criminal liability in the territory of the Russian Federation.

(b) Arguments about the extension of the legislation of the Russian Federation to the territory of the "Republic of Crimea" and on the establishment of courts in Crimea "by law" within the meaning of Article 6 of the Convention

214. The Court's case-law had specified the contents of the right to a tribunal established by law, in particular the requirements that a court, as a public authority, should be established in accordance with the law, and that the composition of a court in a particular case should be determined on the basis of clear and specific procedures provided for by law. The first element implied that the national legislation should clearly indicate which authorities were competent to consider a specific dispute.

215. In that connection, the authorities of the Russian Federation noted that the courts and judicial authorities on the territory of the "Republic of Crimea" had been established on the basis of a law that met the criterion of legal certainty.

216. Pursuant to Article 118 of the Constitution of the Russian Federation, justice in the Russian Federation was administered only by courts. The judicial system of the Russian Federation, which included the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, federal courts of general jurisdiction, arbitration courts, and justices of the peace of the constituent entities of the Russian Federation, was established by the Constitution of the Russian Federation and federal constitutional law. The establishment of emergency courts was not allowed.

217. Prior to the admission of the "Republic of Crimea" to the Russian Federation, courts established in accordance with the legislation of Ukraine operated in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol".

218. Section 6 of the Federal Constitutional Law no. 6-FKZ provided for a transitional period between the date (21 March 2014) of the admission of the "Republic of Crimea" into the Russian Federation and the formation of new constituent entities within the Russian Federation and 1 January 2015.

219. Pursuant to section 9 of the Federal Constitutional Law, courts of the Russian Federation (federal courts) had been created in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol" during the transitional period in accordance with the legislation of the Russian Federation. Prior to the establishment of courts of the Russian Federation on the territories of the "Republic of Crimea" and the "Federal City of Sevastopol", justice on behalf of the Russian Federation in these territories was to be delivered by the courts operating on the day of the admission of the "Republic of Crimea" into the Russian Federation and the formation of new constituent entities of the Russian Federation. The supreme judicial authorities in respect of decisions and sentences of those courts were the courts of appeal operating in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol" on the day of the admission of the "Republic

of Crimea" and the formation of new constituent entities in the Russian Federation, and the Supreme Court of the Russian Federation.

220. In addition, the same section of the Federal Constitutional Law regulated the procedure for considering claims in civil and administrative cases, in economic disputes, in criminal cases that had been admitted for examination by the courts of first instance operating in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol" on the day of admission to the Russian Federation of the "Republic of Crimea" and the formation of new constituent entities of the Russian Federation, as well as the appeal procedure during the transitional period before the courts operating on that day in those territories.

221. Pursuant to section 9 of Federal Constitutional Law no. 6-FKZ and section 17 of Federal Constitutional Law no. 1-FKZ of 31 December 1996 on the judicial system of the Russian Federation, on 23 June 2014 Federal Law no. 154-FZ on establishment of courts of the Russian Federation in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol" and on amendments to certain legislative acts of the Russian Federation had entered into force, which established the "Supreme Court of the Republic of Crimea" and the "Arbitration Court of the Republic of Crimea", twenty-four district and city courts of the "Republic of Crimea", the "Arbitration Court of Sevastopol", "Sevastopol City Court", four district courts of Sevastopol, the "Crimean Garrison Military Court" and the "Sevastopol Garrison Military Court". It also determined the territorial jurisdiction of those courts and the procedural rules.

222. Federal Constitutional Law no. 10-FKZ of 23 June 2014 on the establishment of the "Twenty-first Arbitration Court of Appeal" and on amendments to the Federal Constitutional Law on arbitration courts in the Russian Federation established the "Twenty-first Arbitration Court of Appeal" with a permanent seat in the City of Sevastopol, which had jurisdiction to review the judicial decisions taken by the arbitration courts of the "Republic of Crimea" and the City of Sevastopol.

223. Pursuant to the above-mentioned federal constitutional laws and the federal law, on 23 December 2014 the Plenum of the Supreme Court of the Russian Federation adopted Ruling no. 21 on the date of commencement of the operation of federal courts in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol", according to which the "Supreme Court of the Republic of Crimea", the "Arbitration Court of the Republic of Crimea", the district and city courts of the "Republic of Crimea", the "Crimean Garrison Military Court", the "Sevastopol City Court", the "Arbitration Court of the City of Sevastopol", the district courts of the City of Sevastopol, the "Sevastopol Garrison Military Court", as well as the "Twenty-first Arbitration Court of Appeal", were established on 26 December 2014.

224. For the purposes of organisational support (personnel, financial, logistical, informational and other measures aimed at creating conditions for the full and independent administration of justice) for the activities of the courts operating in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol", the Judicial Department at the Supreme Court of the Russian Federation took urgent measures, such as the issuance of orders of the Judicial Department no. 71 and no. 72 of 28 March 2014, in accordance with which the Department of the Judicial Department in the "Republic of Crimea" and the Department of the Judicial Department in Sevastopol, respectively, were established.

225. In addition, section 23 of the Federal Constitutional Law provided that legislative and other regulatory legal instruments of the Russian Federation were valid on the territories of the "Republic of Crimea" and the "Federal City of Sevastopol" from the date of admission to the Russian Federation of the "Republic of Crimea" and the formation of new constituent entities within the Russian Federation, unless otherwise provided by federal constitutional law. Regulatory legal acts of the Autonomous Republic of Crimea and the City of Sevastopol, the "Republic of Crimea" and the City of Sevastopol with a special status were to be valid in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol", respectively, until the end of the transitional period or until the introduction of the relevant regulatory legal instrument(s) of the Russian Federation, the "Republic Crimea", or the "Federal City of Sevastopol". Regulatory legal instruments of the Autonomous Republic of Crimea and the City of Sevastopol, the "Republic of Crimea" and the City of Sevastopol with a special status that were contrary to the Constitution of the Russian Federation did not apply.

226. Thus, during the transitional period, justice on behalf of the Russian Federation in the territories of the "Republic of Crimea" and the City of Sevastopol was delivered by the previously operating courts established in accordance with the legislation of Ukraine, including the economic courts of the "Republic of Crimea" and the City of Sevastopol and the Sevastopol Economic Court of Appeal.

227. During the same period, a number of legislative instruments were passed aimed at forming the judicial system of the "Republic of Crimea" and the "Federal City of Sevastopol" in accordance with the legislation of the Russian Federation, including the system of arbitration courts.

228. Thus, the Russian Federation had taken the necessary legislative and other measures in a timely manner to ensure the continuity of justice in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol" during the transitional period and to ensure the exercise of the constitutional right of persons living in the territories of the new constituent entities of the Russian Federation to judicial protection and access to justice.

229. The aforementioned circumstances indicated that the courts operating in the territory of the "Republic of Crimea" and the "Federal City

of Sevastopol" had been and still were the courts established by law within the meaning of Article 6 of the Convention.

230. In addition, Federal Law no. 155-FZ on the bodies of the judicial community of the "Republic of Crimea" and the "Federal City of Sevastopol", as well as Federal Law no. 156-FZ on the procedure for selecting candidates for the initial composition of federal courts established in the territories of the "Republic of Crimea" and the "Federal City of Sevastopol" of 23 June 2014 determined the selection procedure for the post of judge and established that citizens holding such a post in courts operating in the territories of the "Republic of Crimea" and "Federal City of Sevastopol" on the day of the admission of the "Republic of Crimea" into the Russian Federation and the formation of new constituent entities within the Russian Federation had priority for appointment in the courts of the Russian Federation established in these territories if they held citizenship of the Russian Federation and complied with the other requirements for the post of a judge.

231. The issues of equipping the courts with personnel during the transition period had been resolved in accordance with the requirements of section 9 of Federal Constitutional Law no. 6-FKZ. Persons replacing judges in these courts continued to administer justice until the establishment and start of activities in the territory of the "Republic of Crimea" of the courts of the Russian Federation, subject to them holding the citizenship of the Russian Federation. The appointment of judges in those courts was carried out by the Higher Qualification Board of Judges of the Russian Federation.

232. Meanwhile, candidates for the post of judge were subjected to the general requirements provided for in section 4 of the Law of the Russian Federation no. 3132-1 of 26 June 1992 on the status of judges in the Russian Federation, by which a citizen of the Russian Federation could be a judge if he or she:

(1) had a higher legal education in "jurisprudence" or a higher education in the field of training "jurisprudence" with the qualification (degree) "Master" and with a bachelor's degree in the field of training "jurisprudence";

(2) had no criminal record;

(3) did not have citizenship (nationality) of a foreign State or a residence permit or other document confirming the right of permanent residence of a citizen of the Russian Federation in the territory of a foreign State;

(4) was not recognised by the court as legally incompetent or having limited legal capacity;

(5) was not registered in a narcotic or neuropsychiatric dispensary for treatment for alcoholism, drug addiction, substance abuse, chronic and protracted mental disorders; and

(6) had no other diseases that prevented him or her from exercising the powers of a judge.

233. It should be noted that the legislation of the Russian Federation did not provide for such criteria for the appointment of judges, which could be characterised as a requirement to be "loyal to the Russian Federation".

234. Owing to those legal requirements, immediate measures had been taken to grant citizenship of the Russian Federation to judges who did not have it as of 21 March 2014, in the manner prescribed by Federal Law no. 62-FZ of 31 May 2002 on citizenship of the Russian Federation.

235. According to available information, in the "Republic of Crimea" and the "Federal City of Sevastopol" during the transitional period, justice was delivered exclusively by judges who were citizens of the Russian Federation.

236. By decrees of the President of the Russian Federation, judges of federal courts located in the territories of the "Republic of Crimea" and "Federal City of Sevastopol" had been appointed since November 2014 (decrees of the President of the Russian Federation no. 719 of 13 November 2014, no. 786 of 19 December 2014, no. 4 of 2 January 2015, no. 135 of 16 March 2015 and no. 343 of 4 July 2015).

237. In connection with the above, the appointment of judges and the formation of the judicial system of the "Republic of Crimea" and "Federal City of Sevastopol" had been carried out in accordance with Russian legislation.

(c) On the absence of a violation of Article 8 of the Convention due to the lawfulness and reasonableness of the imposition of the Russian citizenship in the territory of the "Republic of Crimea", and the availability of an effective opportunity to withdraw from the citizenship of the Russian Federation

238. In accordance with section 17 of Federal Law no. 62-FZ of 31 May 2002 on citizenship of the Russian Federation (Federal Law no. 62-FZ), when the State border of the Russian Federation was changed in accordance with an international treaty of the Russian Federation, persons living in the territory of which the nationality had changed had the right to choose citizenship in the manner and within the time-limits established by that international treaty.

239. As stated by Article 5 of the Accession Treaty of 18 March 2014, from the date of admission of the "Republic of Crimea" into the Russian Federation and the formation of new constituent entities within the Russian Federation, citizens of Ukraine and stateless persons permanently residing on the territory of the "Republic of Crimea" or on the territory of the "Federal City of Sevastopol" on that day were recognised as citizens of the Russian Federation, except for persons who, within one month after the date in question, declared their wish to keep another citizenship that they held and/or that of one of their minor children, or to remain stateless. A similar provision was contained in section 4 of Federal Constitutional Law no. 6-FKZ.

240. People who had possessed the citizenship of Ukraine, were permanently residing in the territory of the "Republic of Crimea" or in the

territory of the "Federal City of Sevastopol" on the date of admission of the "Republic of Crimea" into the Russian Federation and the formation of new constituent entities within the Russian Federation and until the date of the admission of the "Republic of Crimea" into the Russian Federation and had acquired the citizenship of the Russian Federation or had applied for the citizenship of the Russian Federation were to be recognised as citizens of the Russian Federation.

241. Russian legislation provided for the possibility of voluntary withdrawal from citizenship of the Russian Federation, subject to the notification procedure.

242. In accordance with section 19(1) of Federal Law no. 62-FZ, residents of the Russian Federation could seek withdrawal from citizenship of the Russian Federation on the basis of a voluntary expression of their will, except for the cases provided for in section 20 of the Federal Law, under which withdrawal from the citizenship of the Russian Federation was not allowed if the citizen of the Russian Federation:

- had an unfulfilled obligation to the Russian Federation established by law;
- had been designated by the competent authorities of the Russian Federation as a defendant in a criminal case or there was a valid and enforceable court sentence against him or her; or
- had no other citizenship and no guarantees of its acquisition.

243. At the same time, citizens of Ukraine who were recognised as citizens of the Russian Federation and who did not hold a passport of a citizen of the Russian Federation could apply for withdrawal from Russian citizenship upon presentation of a Ukrainian passport.

(d) On the absence of violations of freedom of thought, conscience and religion on account of searches of religious communities, confiscation of religious property and persecution of religious leaders who do not profess the Russian Orthodox faith

244. Sections 11 and 12 of Federal Law no. 125-FZ of 26 September 1997 on freedom of conscience and religious associations established the grounds for registration of religious organisations. They were subject to State registration in accordance with Federal Law no. 129-FZ of 8 August 2001 on State registration of legal entities and individual entrepreneurs, which set forth the procedure for registration of religious organisations established by the Federal Law. The decision on registration of a religious organisation was to be made by the federal State registration body or its local body.

245. An application for registration of a religious organisation established by a centralised religious organisation or on the basis of a confirmation issued by a centralised religious organisation was to be considered within one month from the date of submission of all documents listed in section 11 of the

Federal Law. The competent body could extend the period for consideration of documents up to six months.

246. A religious organisation could be denied registration in the following cases:

- if the goals and activities of the religious organisation were contrary to the Constitution of the Russian Federation and the legislation of the Russian Federation;
- if the organisation was not recognised as a religious one;
- if the articles of association and other documents submitted did not comply with the requirements of the legislation of the Russian Federation or the information contained therein was not reliable;
- if an organisation with the same name had been previously registered in the Unified State Register of Legal Entities; or
- if the founder(s) was/were not duly authorised.

247. In the event of refusal to register a religious organisation, the decision was to be communicated to the applicant(s) in writing, indicating the grounds for refusal. Refusal to register a religious organisation could be appealed against to a court.

248. Furthermore, in the event of a refusal to register a religious organisation, the organisation could submit a fresh request for registration. Twenty-four religious organisations, following an initial refusal, had been registered by the judicial authorities of the constituent entities of the Russian Federation.

249. From 18 March 2014 to the present day, the Department of the Crimean Diocese of the Ukrainian Orthodox Church had not submitted any applications for re-registration to the territorial departments of the Ministry of Justice of the Russian Federation. The refusals to register the local religious organisation "Ukrainian Orthodox Parish of Saints Equal to the Apostles Prince Vladimir and Princess Olga in Simferopol" had not been contested in court by that organisation, despite the clear indication of this possibility in the relevant notices.

250. Pursuant to section 13 of Federal Law no. 125-FZ of 26 September 1997, a branch of a foreign religious organisation could not engage in acts of worship and other religious activities. Missionary activity could not be carried out on its behalf and the status of a religious association established by the Federal Law could not apply to it.

251. Section 24.2 of Federal Law no. 125-FZ of 26 September 1997 provided that foreign citizens who had entered the territory of the Russian Federation upon invitation of a religious organisation were entitled to carry out missionary activities only on behalf of that religious organisation for the territory of a constituent entity or territories of constituent entities of the Russian Federation in accordance with the territorial scope of its activities on the basis of a decision of the general meeting of the religious group on the granting of the relevant powers with an indication of the details of the written

confirmation of receipt and registration of the notice on the establishment and commencement of the activities of the religious group in question issued by the territorial body of the federal State registration body.

252. The allegations by the applicant State of a violation of the Article 9 rights of the Ukrainian Orthodox Church were ill-founded for the following reasons.

253. The Ministry of Property of the "Republic of Crimea" had lodged a claim with the Arbitration Court of the "Republic of Crimea" against the Department of the Crimean Diocese of the Ukrainian Orthodox Church claiming rent arrears and compensation for the early termination of the lease agreement. The authorities of the Russian Federation noted that the termination of the lease agreement was a logical consequence of the refusal by the religious organisation in question to comply with the legislation of the Russian Federation. It had nothing to do with the organisation's religious activities.

254. The decision of the Arbitration Court of the "Republic of Crimea" of 5 July 2019 granting the above claims had not been enforced as yet. The administrative building in the "Republic of Crimea", at 17 Sevastopolskaya Street, Simferopol, had not been returned to the Ministry of Property of the "Republic of Crimea". Representatives and parishioners of the religious organisation had free access to the aforementioned property. The Ministry of Property of the "Republic of Crimea" had systematically sent requests to the Inter-District Department of Bailiffs for Special Enforcement Proceedings of the Department of the Federal Bailiff Service of Russia for the "Republic of Crimea" seeking postponement of the enforcement of the relevant decision.

255. Furthermore, the local religious organisation "Ukrainian Orthodox Parish Church of Saints Equal to the Apostles Prince Vladimir and Princess Olga in Simferopol" carried out its religious activities on the territory of the Russian Federation, despite the fact that the organisation's documents had not yet been brought into line with the requirements of the legislation of the Russian Federation.

256. According to information provided by the Ministry of Justice of the Russian Federation, as of 31 December 2021, 806 religious organisations of over twenty denominations were registered in the territory of the "Republic of Crimea", including one centralised religious organisation and 805 local religious organisations (799 as of 2020, 786 as of 2019 and 763 as of 2018). As of 31 December 2021, 113 local religious organisations of seventeen denominations (108 as of 2020, 105 as of 2019 and 105 as of 2018) had been registered in the City of Sevastopol. In 2021 the Department of the Ministry of Justice of the Russian Federation for the "Republic of Crimea" had registered twenty-one new religious organisations (forty-one as of 2020, twenty-nine as of 2019 and thirty-three as of 2018). The Department of the Ministry of Justice of the Russian Federation for Sevastopol had registered five new religious organisations (five as of 2020, two as of 2019 and six as

of 2018). In addition, the central office of the Ministry of Justice of the Russian Federation had decided requests for the registration of sixteen religious organisations located in the “Republic of Crimea”, and three such organisations in the city of Sevastopol.

257. In March 2016 the Catholic communities of Crimea had been registered in the manner prescribed by the Russian legislation. All of them had been granted the status of local religious organisations within the Crimean Exarchate of the Catholic Church of the Byzantine Rite, specially established and directly subordinate to the State Secretariat (Holy See).

258. It should also be noted that pursuant to the instructions of the General Prosecutor’s Office of the Russian Federation to consider the request of the Minister of Foreign Affairs of the Russian Federation S.V. Lavrov concerning the alleged violations of human rights in the City of Sevastopol in the second half of 2015, the prosecutor’s office of the City of Sevastopol had investigated the possible violation of the rights of national minorities in the city. During the investigation, it was established that there were 137 religious organisations of twenty-nine denominations in the city, including three monasteries of the Ukrainian Orthodox Church, one monastery of the UOC-KP, one women’s skete, ninety-five religious communities and twenty-nine Sunday schools, where 1,200 children studied. There were no cases of forced closure of churches, temples of the UOC-KP or other religious denominations, or of harassment of Orthodox Ukrainians through the creation of obstacles for sidesmen and believers to enter church buildings. There had been no searches of churches, mosques and temples, and no pressure had been exerted on religious communities. This was confirmed by interviews with clerics of the UOC-KP and the rector of the parish of Holy Martyr Clement Pope of Rome. In particular, there had been no conflicts, harassment or pressure, and no searches had been carried out.

259. In addition, twelve former State-owned facilities in the City of Sevastopol had been returned to religious organisations free of charge.

260. In Sevastopol there was no religious building called the “Temple of Holy Martyr Clement Pope of Rome”. There was a monastery in honour of the Holy Martyr Clement of the Simferopol and Crimean Diocese of the Ukrainian Orthodox Church. The city also had a Roman Catholic parish of Holy Martyr Clement Pope of Rome, whose services were held in the former Druzhba cinema on Ushakova Square at 1 Schmidt Street, which had been transferred by the authorities of Sevastopol to the community for free use in 2018.

261. The law-enforcement agencies of the City of Sevastopol had received no complaints from the abbots of the monastery in honour of the Holy Martyr Clement Pope of Rome or the Roman Catholic parish of the Holy Martyr Clement Pope of Rome on account of violations of their rights, unlawful actions or harassment.

262. Pursuant to sections 5 and 9 of Federal Law no. 327-FZ of 30 November 2010 on the transfer of State or municipal property of religious purpose to religious organisations, Articles 83, 84 of the Constitution of the "Republic of Crimea", and the Law of the "Republic of Crimea" of 8 August 2014 no. 46-ZRK 2 on management and disposal of State property of the "Republic of Crimea", on 11 November 2014 the Council of Ministers of the "Republic of Crimea" issued Order no. 437 on the transfer of the property of religious purpose publicly owned by the "Republic of Crimea" to religious organisations. The order regulated the procedure for the formation and publication of the Plan for the transfer to religious organisations of property of religious purpose publicly owned by the "Republic of Crimea". The relevant powers were vested in the Ministry of Property and Land Relations of the "Republic of Crimea".

263. In order to prevent the "seizure" of property, improper allocation and so on, a Commission on the settlement of disputes arising from the consideration of applications of religious organisations on the transfer of ownership or free use of religious property owned by the "Republic of Crimea" had been established.

264. In this connection, the authorities of the Russian Federation noted that all buildings used by religious organisations of the Crimean Diocese of the UOC-KP in the "Republic of Crimea" for the purpose of worship had been leased. The religious building of the Cathedral of the Intercession of the Blessed Virgin Mary, located in the village of Perevalnoye in the Simferopol District, had been transferred to the UOC-KP community and was used by it in violation of the current legislation of Ukraine.

265. In the village of Perevalnoye in the Simferopol District, on the territory of military unit L-0279, in the premises of the cathedral, built by and at the expense of the Orthodox community of the Moscow Patriarchate, the community of the Intercession of the Blessed Virgin Mary of the UOC-KP was operating. That community did not have the status of a legal entity. In 1996 the commander of military unit L-0279 demanded that the priest of the Kyiv Patriarchate conduct the service in the cathedral, since soldiers conscripted from Western Ukraine were serving in the unit. Those requests of the commander of the military unit were a violation of the Law of Ukraine on freedom of conscience and religious organisations.

266. On 1 June 2014, at 8.30 a.m., the duty unit of the Ministry of Internal Affairs of Russia for the Simferopol District received a message from Ivan Ivanovich Katkalo (date of birth and address provided) that Cossacks had arrived in the village of Perevalnoye; that they were near the church; that they were engaging in hooligan actions; and that they would not allow a priest of the Ukrainian Orthodox Church to enter the premises of the church.

267. This communication was registered as no. 2563 on 1 June 2014. During the visit to the scene in the village of Perevalnoye it was established that the conflict had arisen as a result of the transfer of the church from the

jurisdiction of the Kyiv Patriarchate to the jurisdiction of the church of the Moscow Patriarchate and the division of property located in the church. After collecting the material, those concerned were advised to apply to a court to resolve the matter. Subsequently, people dispersed. That event was recorded on video by journalists of the ITV channel of the "Republic of Crimea".

268. In addition, on 1 June 2014 at 11.30 a.m., the duty unit of the Ministry of Internal Affairs of Russia for the Simferopol District received a message from Zhanna Leonidovna Alekseeva (date of birth and occupation provided), who claimed to have been beaten by unknown persons in the course of the above-mentioned conflict. The message was registered as no. 2571 on 1 June 2014.

269. These materials were considered jointly, but there was no criminal investigation (case file no. 2109 of 7 August 2014) by the prosecution.

270. The ambiguous impact of the activities of the UOC-KP on the socio-political situation in Crimea should be noted. In fact, adherents of this church was mainly composed of citizens of Ukraine who had moved to the Autonomous Republic of Crimea from mainland Ukraine, most of them being military personnel and members of their families, while the indigenous Christian population of Crimea were parishioners of the Moscow Patriarchate Church. To date, the UOC-KP had carried out almost no socially significant activities, and the activity of its parishioners had sharply decreased to a minimal level. According to available information, the Spiritual Directorate of the UOC-KP in Crimea had not yet applied for registration in accordance with the current legislation, and this would entail the delegitimisation of the activities of the church on the territory of the Russian Federation and might subsequently be unreasonably used to accuse Russia of discrimination against the Ukrainian population of Crimea in the exercise of religious freedoms.

271. In addition, the authorities of the Russian Federation noted that the Department of the Crimean Diocese was a structural unit of the unrecognised UOC-KP, which had ceased to exist on 15 December 2018 after it had dissolved itself and joined the established Orthodox Church of Ukraine. On 14 December 2018 the Ministry of Justice of Ukraine deleted the registration of the Kyiv Patriarchate as a legal entity, and in January 2019 it cancelled the order for registration of the Charter of the Department of the Crimean Diocese of the Ukrainian Orthodox Church. Its parishes were to be transferred to the Orthodox Church of Ukraine. Thus, the legal status of this religious organisation was unclear, since it had been liquidated in accordance with the legislation of Ukraine and had not been registered in accordance with Russian legislation.

(e) On the absence of any restrictions on the activities of non-Russian media in the territory of the "Republic of Crimea" (Article 10 of the Convention)

272. Section 6 of Federal Constitutional Law no. 6-FKZ established a transitional period until 1 January 2015, during which the issues relating to

the integration of the new constituent entities of the Russian Federation into the economic, financial, credit and legal systems of the Russian Federation were to be regulated.

273. Following the admission of the "Republic of Crimea" into the Russian Federation, Roskomnadzor had taken various measures since spring 2014 to clarify provisions of the current legislation of the Russian Federation in the field of mass communications.

274. Federal Law no. 402-FZ of 1 December 2014 on the peculiarities of legal regulation of relations in the field of mass media in connection with the admission of the "Republic of Crimea" to the Russian Federation and the formation of new constituent entities within the Russian Federation – the "Republic of Crimea" and "Federal City of Sevastopol", extended the transitional period for issuing relevant documents in the field of mass communications until 1 April 2015.

275. Chapter 25.3, "State Duties", of the Tax Code of the Russian Federation regarding the collection of State duties in the field of registration of mass media in the territory of the "Republic of Crimea" and the "Federal City of Sevastopol" had not applied until 1 January 2015. Accordingly, the provision of public services in the field of mass communications had been carried out at no cost in accordance with the legislation of the Russian Federation on the mass media.

276. At the same time, the legislation had not restricted the provision of public services in the field of mass communications in the territory of the "Republic of Crimea" and the City of Sevastopol after the transitional period. The provision of public services in the field of mass communications was carried out in accordance with the current legislation, with the application of the provisions of the Tax Code of the Russian Federation.

277. Under section 12.2 of Federal Constitutional Law no. 6-FKZ, until 1 June 2015 legal entities had the opportunity to carry out television and radio broadcasting in the territory of the "Republic of Crimea" and the City of Sevastopol without a licence issued in accordance with the established procedure by Roskomnadzor.

278. To obtain a broadcasting license, it was first necessary to register a media outlet and obtain a universal licence, and then to renew the broadcasting licence in connection with the allocation of radio frequencies and the provision of information about specific radio frequencies.

279. The procedure for obtaining and renewing broadcasting licenses was determined by the Law of the Russian Federation no. 2124-1 on mass media of 27 December 1991, Federal Law of 4 May 2011 no. 99-FZ on licensing of certain types of activities, and Resolution of the Government of the Russian Federation no. 25 of 26 January 2012 on the allocation of specific radio frequencies for broadcasting using a limited radio frequency resource (terrestrial broadcasting, satellite broadcasting), holding a tender, charging a one-time payment for the right to carry out terrestrial broadcasting, satellite

broadcasting using specific radio frequencies and invalidation of certain acts of the Government of the Russian Federation.

280. The allocation of specific radio frequencies for terrestrial analogue television broadcasting, terrestrial analogue broadcasting in administrative centres (capitals) of constituent entities of the Russian Federation and/or cities with a population of 100,000 or more people was carried out by Roskomnadzor on the basis of the results of a bidding procedure held in the form of a tender, in accordance with the Regulations on the tender for the right to carry out terrestrial broadcasting and satellite broadcasting using specific radio frequencies, approved by Resolution of the Government of the Russian Federation no. 25 of 26 January 2012.

281. Terrestrial broadcasting was carried out on the basis of an appropriate licence and permission to use radio frequencies, issued by the bodies of Roskomnadzor. To carry out terrestrial broadcasting on the territory of the Russian Federation and the constituent entities of the Russian Federation, which included the "Republic of Crimea", it was necessary, firstly, to have a broadcasting licence issued by the bodies of Roskomnadzor. Secondly, the broadcasting of television channels was carried out by transmitting a radio frequency signal from the source (television centre, mast transmitting antenna, and so on) to the receiving device (television receiver); in other words, for broadcasting in Crimea, television channels needed to obtain permission to use radio frequencies, which were also issued by the bodies of Roskomnadzor. Thus, for terrestrial broadcasting of Ukrainian and Crimean Tatar television channels on the territory of the "Republic of Crimea" it was necessary to register and obtain a licence, as well as to obtain permission to use radio frequencies in accordance with the legislation of the "Republic of Crimea" and the legislation of the Russian Federation, in particular Federal Law no. 99-FZ of 4 May 2011 on licensing of certain types of activities and Federal Law no. 2124-1 on mass media of 27 December 1991.

282. Meanwhile, the population of the Crimean peninsula also had free access to broadcasting of Ukrainian and Crimean Tatar television channels via satellite and cable television, IP television and the internet information and telecommunications network.

283. According to the information provided by the State Council of the "Republic of Crimea", the Chernomorskaya Television and Radio Company had not amended its constituent documents in accordance with the legislation of the Russian Federation; it had not applied to register in the Unified State Register of Legal Entities and had failed to acquire the status of a branch. Accordingly, on the basis of Federal Law no. 506-FZ of 31 December 2014 on amendments to section 19 of the Federal Law on the enactment of Part One of the Civil Code of the Russian Federation, from 1 March 2015 it had not been entitled to operate on the territory of the Russian Federation, including the territory of the "Republic of Crimea", and had been subject to

liquidation. Chernomorskaya Television and Radio Company had ceased the broadcasting of television programmes on 5 August 2014 following a decision of the Economic Court of the "Republic of Crimea" (at present the Arbitration Court of the "Republic of Crimea") (case no. A83-112/2014) on a claim by the Radio and Television Transmitting Centre of the Autonomous Republic of Crimea for a debt.

284. The newspaper *Avdet* (certificate KM no. 232 of 3 January 1996) had been established and had been published by the BO "Fund Crimea" since 15 July 1990. The editorial office of the newspaper was located at: 2/27 Schmidta/Naberezhnaya Street, Simferopol, in premises owned by BO "Fund Crimea", without any contract of lease or governing the use of property.

285. Pursuant to section 8(2) of the Law on Mass Media, an editorial office of a mass media outlet needed to register in order to operate. To register a media outlet, the founder needed to lodge with the registration authority an application that met the requirements of section 10(1) of the Law on Mass Media. The application should be accompanied by the documents listed in Decree no. 1107 of the Government of the Russian Federation of 16 October 2015 on approval of the list of documents indicating compliance by the founders (participants) of the media, media outlets, organisations (legal entities) performing broadcasting, with the requirements of section 19.1 of the Law on Mass Media, and Order no. 1752-r of the Government of the Russian Federation of 6 October 2011 on approval of the list of documents attached by an applicant to an application for registration (making amendments to the record of registration) of a mass media outlet.

286. By virtue of section 13(2) of the Law on Mass Media, if the application and the documents attached thereto did not meet the requirements of that Law and secondary legislation, they were to be returned to the applicant without consideration, with an indication of the grounds for their return. After any deficiencies were rectified, the application was accepted for consideration. Thus, it was sufficient for the claimant to eliminate the flaws in the application and the attached documents and to reapply to the registration authority. It should be noted that this procedure was quite standard and it was applied throughout the territory of the Russian Federation, without exception, and did not apply exclusively to Crimean or Crimean Tatar media outlets.

287. According to Roskomnadzor, applications for registration of the *Avdet* newspaper had been received on 2 December 2014 and 14 January 2015 by the Department of Roskomnadzor for the "Republic of Crimea" and Sevastopol. In accordance with the applicable provisions on public service, applications for registration of the mass media outlet were returned without consideration. In the period from 2 December 2014 to 1 July 2019, no other applications for registration (re-registration) of the *Avdet* newspaper had been submitted to Roskomnadzor. The *Avdet* newspaper was not subject to any enforcement nor had there been any court ruling for its suspension or

prohibition of its activities, use of property or any of its premises. The prosecutor's office of the Republic had not received any complaints about actions of the officials of the law-enforcement agencies Inter-district Department of Bailiffs for the Execution of Special Enforcement Proceedings of the Department of the Federal Bailiff Service for the "Republic of Crimea".

288. As regards the Crimean Tatar television channels ATR T and *Lale* and the radio station Meydan, according to the available information, the Department of Roskomnadzor for the "Republic of Crimea" and the City of Sevastopol had repeatedly considered applications for their registration in accordance with the legislation of the Russian Federation, after which the documents had been returned to them because of multiple errors. In the official replies from the territorial division of Roskomnadzor, the claimants were clearly informed of the grounds of the decisions and were provided with specific recommendations for rectification.

289. The mass media outlets previously operating in the territory of the "Republic of Crimea" operated on the basis of licences issued by the official bodies of Ukraine. Subsequently, the legislation of the Russian Federation required the acquisition of a Russian licence, in connection with which, in November 2014, the State Duma of the Federal Assembly of the Russian Federation had decided to extend the transitional period for Crimean media outlets until 1 April 2015.

290. Accordingly, there was every reason to believe that the ATR T television channel, the Meydan 102.7 RM radio station and the *Lale* television channel had had sufficient time before 1 April 2015 to bring their constituent documents into line with the requirements of the current legislation.

291. Furthermore, those media outlets were independent commercial projects of a private individual and were not owned by the municipal or republican authorities. The activities of the television channels and radio stations were financed from their own financial sources without the support of the State or municipal budget. Accordingly, the owner of those media outlets had independently decided to stop broadcasting. On 31 March 2015 E.R. Islyamova, Director General of LLC Atlant-SV Television Company, had sent a letter of her own volition to the Directorate of the RTPC RK with a request to tum off the transmitters of the ATR T and *Lale* television channels and the Meydan 102.7 RM radio station from midnight on 1 April 2015. Consequently, the broadcasting of these media outlets was discontinued.

292. In addition, according to Roskomnadzor, those outlets were not the only Crimean Tatar television channels and radio stations in the "Republic of Crimea". When they were closed, according to data from Roskomnadzor, there had been more than twenty registered mass media outlets in the "Republic of Crimea" in the Crimean Tatar language, including five television channels, eight radio channels and more than ten periodicals. Also,

other television channels were broadcasting on the territory of Crimea, having submitted the relevant documents provided for by the legislation of the Russian Federation for television and radio broadcasting. It should be noted that during the same period 207 media outlets, which had obtained licences in accordance with the Ukrainian legislation, managed to register. Among them were the following Crimean Tatar media outlets: the newspapers *Yany Dunya*, *Kyrym* and *Golos Kryma new*, and the magazines *Iyldyz* and *Armanchyk*.

293. As regards the creation of a television channel for Crimean Tatars, the authorities of the Russian Federation submitted the following.

294. After termination of the activities of the ATR T and *Lale* television channels and the Meydan 102.7 RM radio station on the initiative of the owner, the authorities of the "Republic of Crimea" had supported the initiative of the Crimean Tatar community to establish a public Crimean Tatar television and radio company in Crimea, for which the necessary instructions had been given to the relevant ministries and departments.

295. In accordance with Order no. 291-r of the Council of Ministers of the "Republic of Crimea" of 2 April 2015, the State Autonomous Institution of the "Republic of Crimea" "Media Centre named after Ismail Gasprinsky" was established.

296. According to Decree no. 114-U of the Head of the "Republic of Crimea" S. Aksionov of 22 April 2015 on the Crimean Tatar Public TV and Radio Company, the task of this television and radio company was to provide deep and comprehensive coverage of the socio-political, economic and cultural life of the "Republic of Crimea", events in the "Republic of Crimea" and beyond, mainly in the Crimean Tatar language, as well as the languages of national minorities of the "Republic of Crimea".

297. By Order no. 507-r of the Council of Ministers of the "Republic of Crimea" of 9 June 2015, the Autonomous Non-Profit Organisation "Public Crimean Tatar TV and Radio Company" was established.

298. Moreover, the Crimean Tatar editorial office had been established and was actively working at ANO "TV Radio Company Krym", as part of the department of national programmes, which created programmes about the history, culture and identity of the Crimean Tatars in their native Crimean Tatar language. The percentage of such programmes in the relative total broadcast volume of the Pervy Krymskiy Television and Radio Company was steadily growing.

299. The diversity of people living in the region required a balanced national policy, including in terms of meeting their spiritual and information needs. The State bodies of the Russian Federation and the "Republic of Crimea" paid great attention to the factor of inter-ethnic stability in the "Republic of Crimea".

300. In accordance with Decree no. 268 of the President of the Russian Federation of 21 April 2014 on measures for the rehabilitation of the

Armenian, Bulgarian, Greek, Crimean Tatar and German peoples and State support for their revival and development, measures aimed at the national, cultural and spiritual revival of the peoples of Crimea, including the creation of information centres, expert councils on inter-ethnic issues and programmes for the national and cultural development of Crimea and the City of Sevastopol were developed, which received significant financial support from the State.

301. According to the Department of Roskomnadzor for the "Republic of Crimea" and the City of Sevastopol, more than twenty mass media outlets in the Crimean Tatar language in the Republic had been registered during the transitional period, including five television channels, eight radio channels and more than ten periodicals.

302. In accordance with Law no. 2124-1 of the Russian Federation of 27 December 1991 on Mass Media, all mass media outlets had equal opportunities for registration and for obtaining an operating licence. Decisions of Roskomnadzor were amenable to judicial review.

303. In addition, the internet resources Information Agency QHA (Crimean News Agency) and Centre for Investigative Journalism, as well as the Crimean Tatar newspaper *Avdet* were available on the internet. There had been no decision banning their broadcasting.

304. Since 1 September 2015 the Crimean Tatar television channel Millet, and since 6 February 2017, the Crimean Tatar radio station Vetan sedasy ("Voice of the Motherland") had started broadcasting with the support of the authorities of the "Republic of Crimea".

305. In a number of cities of the "Republic of Crimea" there had actually been no so-called "local radio stations" before Crimea's admission into the Russian Federation. In most cases, Kyiv radio stations, as holders of broadcasting licences, were retransmitted.

306. The respondent Government also referred to the rules on public bidding for obtaining licences for broadcasting and to eighteen pools for tender consideration launched by Roskomnadzor.

(f) Arguments about the absence of an administrative practice of prohibition of public events and gatherings, as well as unreasonable detention of the organizers of public events (Article 11 of the Convention)

307. In the interests of public order and national security, section 7 (Notification of a public event) of the Federal Law on gatherings, meetings, demonstrations, marches and picketing (Law no. 54-FZ) required notification for holding public events. This required an agreement on the place and time of the event with an executive body of the Russian Federation or a local authority.

308. In judgment no. 4-P of 14 February 2013, the Constitutional Court of the Russian Federation held, *inter alia*:

> "... the exercise of the right to hold a public event depends not only on the execution of the statutory provisions ... by public and local authorities, but also on the initiative of the organiser of the public event to achieve a possible compromise based on the balance of interests of all parties concerned."

309. The organisers of the public events had failed to coordinate with the local authorities, which demonstrated their reluctance to resolve the disagreement regarding the place and/or time of the public events.

310. Section 5(5) of Law no. 54-FZ provided that a public event could not be held in the absence of a timely notification or if the place and (or) time of the event had not been agreed with the executive authority of the constituent entity of the Russian Federation or the local authority. The aim of such coordination was to ensure the uninterrupted functioning of vital facilities of communal or transport infrastructure, as well as to maintain public order and the safety of citizens, or for other similar reasons.

311. Section 16(3) of Federal Law no. 54-FZ provided that a public event would not be allowed in the event of non-compliance with section 5(4)(1) and section 7 of Law no. 54-FZ.

312. Furthermore, during a public event, its participants had to comply with all legal requirements (section 6(3) of Law no. 54-FZ). Under Russian law, holding a public event in contravention of those requirements constituted an administrative offence provided for by Article 20.2 of the Administrative Offence Code of the Russian Federation.

313. The rights and obligations of local government bodies in the "Republic of Crimea" were regulated by Federal Law no. 54-FZ of the Russian Federation of 19 June 2004. Regulatory legal instruments relating to public gatherings, meetings, demonstrations, marches and picketing were to be issued by the President of the Russian Federation or the government of the Russian Federation, and signed and issued by the State authorities of the constituent entities of the Russian Federation.

314. Section 8(1.1), (2.2), (3) and (3.1) of Federal Law no. 54-FZ provided that the executive bodies of the constituent entities of the Russian Federation were to determine uniform areas which were specially designated or adapted for collective discussion of socially significant issues and manifestations of the public opinion, as well as for mass attendance by citizens for the public demonstration of public opinion on topical issues of a socio-political nature (hereinafter referred to as "specially designated areas"). The procedure for the use of these specially designated areas, their maximum occupancy and the maximum number of persons participating in public events of which notification was not required were to be established by the law of the constituent entity of the Russian Federation, and the specified maximum number could not be below one hundred people.

315. The law of each constituent entity of the Russian Federation additionally had to determine the places where gatherings, meetings, marches or demonstrations were prohibited, including situations where the holding of

public events in such places could entail a malfunction of critical infrastructure, transport or social infrastructure or communications, interfere with the movement of pedestrians and/or means of transport or access of citizens to residential premises or means of transport or social infrastructure facilities.

316. The procedure for holding a public event in premises that constituted historical and cultural monuments was to be determined by an executive authority of the relevant constituent entity of the Russian Federation, taking into account the specific features of such monuments and the requirements of this Federal Law.

317. The procedure for holding a public event at transport infrastructure facilities used for public transport was to be determined by the law of the constituent entity of the Russian Federation, taking into account the requirements of this Federal Law, as well as the requirements for ensuring transport and road traffic safety provided for by federal laws and other regulatory legal instruments.

318. Pursuant to the above provisions of Federal Law no. 54-FZ, on 8 August 2014 the State Council of the "Republic of Crimea" passed Law no. 56-ZRK of the "Republic of Crimea" on ensuring the conditions for the realisation of the right of citizens of the Russian Federation to hold gatherings, meetings, marches and picketing in the "Republic of Crimea", signed by the Head of the "Republic of Crimea" on 21 August 2014.

319. This law was enacted on the basis of the Constitution of the Russian Federation, Federal Law no. 54-FZ and the Constitution of the "Republic of Crimea", and was aimed at ensuring the conditions for the exercise of the right of citizens of the Russian Federation within the jurisdiction of the "Republic of Crimea" to hold gatherings, meetings, demonstrations, marches and picketing.

320. It should be noted that the above law of the "Republic of Crimea" did not confer on local government bodies the right to restrict or prohibit peaceful gatherings. It established the procedure for submitting a notice to hold a public event; the special features of ensuring the rights of citizens, and transport and road traffic safety when organising and holding public events at transport infrastructure facilities; the procedure for using means of transport during public events; the requirements for the picketing procedure; the determination of specially designated areas and the procedure for their use; and the conditions for material, technical and organisational support for the public event.

321. Section 3(3) of this Law established that if a notice for a public event specified that it would be held on a carriageway of the transport infrastructure facility which was directly adjacent to another territory (pavement, park, any other territory), the local government body was entitled to propose that the organisers of the event hold it in the adjacent territory for the purposes of ensuring the movement of vehicles. If the public event was held in the

territory directly adjacent to a transport infrastructure facility with a carriageway, the local government body was to ensure that the public event was held in the specified territory only.

322. At the same time, in accordance with section 12(3) of Federal Law no. 54-FZ, the executive authority of the constituent entity of the Russian Federation or the local government body could refuse permission for the holding of a public event only if the notice of the event was submitted by a person who, in accordance with this Federal Law, could not be the organiser of the public event, or if the notice indicated a place for the public event where the event was prohibited in accordance with this Federal Law or the law of a constituent entity of the Russian Federation.

323. In addition, local government bodies were entitled to determine the maximum occupancy of territories where the public event would take place, with the exception of the specially designated areas, individually for each public event, taking into account the size of the plot of land, its occupancy with greenery, buildings, structures and other conditions, using as a basis the possibility of the unimpeded presence of two people per square metre, including officials of internal affairs bodies ensuring public order, and representatives of the mass media.

324. The permissible maximum occupancy for a transport infrastructure facility which had several roadways was to be calculated in such a way that at least half of the roadways could be used for traffic, and, if necessary, for the movement of people not participating in the public event.

325. In discharging the above powers, the local government bodies should ensure regular and uninterrupted operation of vital points of the municipal or transport infrastructure, public order and security (both of participants in the public event and of others), or other public interests. Such powers could not be regarded as powers to restrict or prohibit peaceful gatherings. The only ground for refusal of the executive authority of the constituent entity of the Russian Federation or the local government body to approve a public event was established by Federal Law no. 54-FZ (see paragraph 322 above).

(g) On compliance with the requirements of Article 1 of Protocol No. 1 to the Convention

326. On 17 March 2014 the National Council of the “Republic of Crimea” adopted Decree no. 1745-6/14 on the Independence of Crimea, by which all institutions, enterprises and other organisations, as well as property of Ukraine, were to be regarded, as of the day of adoption of the Decree, as property of the “Republic of Crimea” (Articles 5 and 6 of the Decree). The property of labour unions and other public organisations of Ukraine located on the territory of the “Republic of Crimea” on the date of the Decree were to be the property of subdivisions of the relevant organisations located in the “Republic of Crimea”, and if there were none - the state property of the “Republic of Crimea”.

327. Pursuant to section 12.1 of Federal Constitutional Law no. 6-FKZ, prior to 1 January 2017, in the "Republic of Crimea" and the "Federal City of Sevastopol", issues relating to the regulation of property, town-planning, land and forest relations, as well as relations in the sphere of cadastral registration of real estate and State registration of rights and transactions in respect of real estate could be established by the regulatory legal instruments of the "Republic of Crimea" and of the "Federal City of Sevastopol" in coordination with the federal executive body authorised to implement legal regulations in the relevant sphere.

328. Accordingly, the Russian Federation, using the right granted to it by Protocol No. 1 to the Convention, as well as the Constitution of the Russian Federation, had regulated property-related relations and property-related issues in the "Republic of Crimea" by means of regulatory legal instruments of the "Republic of Crimea" in coordination with the federal executive body authorised to implement legal regulations in this sphere.

329. As regards the "transfer of immovable property into State ownership of the Republic of Crimea", the respondent Government referred to an Agreement on Mutual Recognition of Rights and Regulation of Relations in Terms of Property signed on 15 January 1993 between the Russian Federation and Ukraine, which had provided (Article 1 of the Agreement) for mutual recognition of the transfer of title to all assets of enterprises on the party and in accordance with its national legislation where those assets had been located. This also concerned social facilities (such as healthcare resorts, preventive medicine and recreational centres, resort houses, recreational facilities, boarding guest houses, hotels and camping areas, tourist camps and children's recreational institutions (Article 4 of the Agreement)). Under Article 13 of the Agreement, the parties guaranteed that their property, legal entities and individuals would be legally protected. Such property could not be subject to compulsory expropriation, except in exceptional cases provided for by law and subject to the payment of compensation corresponding to the real value of the property. Under Article 11 of the Agreement, the legal status of assets of enterprises located in one party, but recognised as the property of the other party, was to be determined in accordance with the legislation of the former party and validated (by means of a protocol) by the competent bodies of both parties. Any property-related disputes were to be considered by a Russian-Ukrainian Commission. Accordingly, the relevant protocol on the ownership of assets located on the territory of Ukraine was to be drawn up and approved by the parties. No change of ownership could take place without both parties having approved such a protocol. When assets had become private, the protocols had not been executed. Accordingly, since 1991 State-owned assets had been transferred into private ownership without any discussion by the Russian-Ukrainian Commission and approval by the parties concerned.

330. On 30 April 2014 the National Council adopted Resolution no. 2085-6/14 on the issues of property administration of the "Republic of Crimea", according to which prior to the division of property between the Russian Federation, the "Republic of Crimea" and the municipalities, all State property and property without title located on the territory of the "Republic of Crimea", as well as the property specified in an annex to that Resolution, was regarded as the property of the "Republic of Crimea".

331. Section 2-1 of Law no. 38-ZRK of the "Republic of Crimea" of 31 July 2014 on the Peculiarities of Regulation of Property Relations in the Territory of the "Republic of Crimea" provided that the title of previous owners to land and other immovable property would be terminated and property transferred to the "Republic of Crimea" from the date of the inclusion of such property in the list of property regarded as property of the "Republic of Crimea", specified in Resolution no. 2085-6/14.

332. Pursuant to section 8(2) of Federal Law no. 161-FZ of 14 November 2002 on State and municipal unitary enterprises, Articles 83 and 84 of the Constitution of the "Republic of Crimea", section 28 and 41 of Law no. 5-ZRK of the "Republic of Crimea" of 29 May 2014 on the system of executive bodies of State power of the "Republic of Crimea", section 2 of Law no. 46-ZRK, Resolution no. 2085-6/14 and orders of the Council of Ministers of the "Republic of Crimea", State enterprises of the "Republic of Crimea" were established, to which the property described in the previous paragraph was assigned.

333. Pursuant to section 19(9) of Federal Law no. 52-FZ of 21 December 1994 on the enactment of Part One of the Civil Code of the Russian Federation, legal entities located in Crimea or in the "Federal City of Sevastopol" which did not bring their constituent acts into line with the legislation of the Russian Federation, did not seek registration in the Unified State Register of Legal Entities or did not acquire the status of a branch (representative office) of a foreign legal entity were not entitled to operate (except under certain circumstances) on the territory of the Russian Federation after the admission of Crimea and the City of Sevastopol into the Russian Federation and were to be liquidated.

334. By Resolution no. 1836-6/14 of 26 March 2014 on nationalisation of property of enterprises, institutions, and organisations of the agro-industrial complex located in the territory of the "Republic of Crimea", adopted by the National Council of the "Republic of Crimea", the property of the State enterprise "Educational and Research Poultry Breeding Plant named after Frunze of the National University of Biological Resources and Environmental Management of Ukraine" was nationalised. By Order no. 559-r of 24 June 2014 of the Council of Ministers of the "Republic of Crimea" on determining the subordination of enterprises, institutions, organisations of the agro-industrial complex and other property owned by the "Republic of Crimea", that enterprise was assigned to the Ministry of

Agrarian Policy and Food of the "Republic of Crimea". By Order no. 1479-r of 23 December 2014, the Council of Ministers of the "Republic of Crimea" established the State Unitary Enterprise of the "Republic of Crimea" "Educational and Experimental Poultry Breeding Plant named after Frunze", which was assigned to manage immovable property owned by the State Enterprise "Educational and Research Poultry Breeding Plant named after Frunze of the National University of Biological Resources and Environmental Management of Ukraine". On 9 February 2015 that enterprise was registered in the Unified State Register of Legal Entities and assigned to the Ministry of Agriculture of the "Republic of Crimea". Accordingly, the applicant State's allegations about the unlawful seizure of the poultry breeding plant named after Frunze had not been confirmed. The allegations about unlawful seizure of the "Radiant" children's health camp in the village of Zaozemoye had not been submitted to the public prosecutor of the Republic.

335. Therefore, the State property of Ukraine had indeed been transferred to the "Republic of Crimea" and the City of Sevastopol. As for the property of labour union organisations, as of today, their property belonged to the subdivisions of the relevant labour union organisations which were located and were registered in the territory of the "Republic of Crimea" at the time of the declaration of independence of Crimea, and re-registered in accordance with the legislation of the Russian Federation as independent labour union organisations.

336. According to the information provided by the authorities of Sevastopol, on 17 March 2014 Sevastopol City Council adopted Resolution no. 7156 on the status of the Heroic City of Sevastopol, which did not provide for the transfer of property of labour union organisations and other public institutions into the State property of Sevastopol.

337. Under Resolution no. 260 of 6 May 2014 of the National Bank of Ukraine on the revocation and cancellation of banking licences and general licences for foreign-exchange transactions of certain banks and the closure by the banks of separate subdivisions located in the territory of the Autonomous Republic of Crimea and the City of Sevastopol, Ukrainian banks terminated the operation of their structural units located in Crimea and the "Federal City of Sevastopol". After its adoption, a considerable number of Ukrainian banks ceased to fulfil their obligations to creditors and depositors and the National Bank of Ukraine failed to take any countermeasures.

338. Pursuant to section 7(2) of Federal Law no. 37-FZ of 2 April 2014 on the peculiarities of the functioning of the financial system of the "Republic of Crimea" and the "Federal City of Sevastopol" for the transitional period, and having regard to the banks' inability to honour their obligations towards creditors (depositors), the Bank of Russia terminated the operation of the corresponding structural units of forty-five Ukrainian banks.

339. Reference was made to decision no. RN-33/11 of 26 May 2014, by which the Bank of Russia had terminated the relevant structural units of the Public Joint Stock Company "State Savings Bank of Ukraine" (JSC Oschadbank). Following the default of the separate structural units of JSC Oschadbank and CB PJSC "PRIV ATBANK", the prosecutor's office of the "Republic of Crimea" lodged a claim against those banks. By rulings of the Kievskiy District Court of Simferopol of 29 May 2014 and the Central District Court of Simferopol of 4 June 2014, interim measures were taken in the form of a transfer of the property complex owned by JSC Oschadbank and PJSC CB "PRIVATBANK" into the trust management of the autonomous non-profit organisation "Depositors Protection Fund" established by the State Corporation "Deposit Insurance Agency" in order to meet the requirements of Federal Law no. 39-FZ of 2 April 2014 on protecting the interests of persons who have deposits in the banks and separate structural units of the banks registered and/or operating in the territory of the "Republic of Crimea" and the "Federal City of Sevastopol". In the event that the Bank of Russia terminated the structural units of a bank, the Fund was entitled to acquire the rights (claims) to the deposits and effect compensation payments to individuals. Compensation was to be paid by the Fund in the amount of 100% of the amount of the acquired rights (claims) to the credit institution, but not more than 700,000 Russian roubles (RUB) for all deposits (accounts) of a depositor opened before 2 April 2014 with a credit institution. Compensation not exceeding RUB 100,000 was to be made to the depositors of the following credit institutions: those having entered into bank account agreements or bank deposit agreements with a credit institution during the period from the date of entry into force of Federal Law no. 39-FZ until the date of the decision of the Bank of Russia to terminate the separate structural units of such credit institution; those who had failed to submit the documents specified in section 7(5)(3) of Federal Law no. 39-FZ; and citizens of the Russian Federation who did not reside on the territory of the "Republic of Crimea" or of the "Federal City of Sevastopol".

340. Moreover, Federal Law no. 39-FZ provided for a mechanism for making additional compensation payments to depositors who had the rights to credit institutions in an amount exceeding the compensation payment made (RUB 700,000).

341. Pursuant to section 4(11) of Federal Law no. 39-FZ (as amended by Federal Law no. 148-FZ) and in compliance with the statutory procedural rules provided for by the legislation of the "Republic of Crimea" and the "Federal City of Sevastopol", funds received as a result of the alienation of the State-owned property of the constituent entities of the Russian Federation were transferred to the Fund and used for the purpose of making compensation payments to the depositors. In order to satisfy the acquired rights over the deposits to the credit institutions previously operating in the "Crimean Federal District" ("CFD"), the Fund was entitled to apply methods

not prohibited by law to protect its rights and interests as a creditor, including the right to seek provisional measures and/or enforcement measures against the property of Ukrainian banks whose structural units operated in Crimea and the "Federal City of Sevastopol". The Fund had lodged claims with the arbitration courts of the CFD seeking to recover the rights (claims) assigned to the Fund. The latter had also sought a ban on the alienation by the banks of their property in the CFD.

342. According to the Fund, as of 11 June 2015, it had obtained power of attorney from 6,300 depositors to represent their interests in collecting outstanding debt from forty credit institutions; it had submitted before the courts of general jurisdiction 1,485 claims against credit institutions seeking to recover funds in favour of the depositors.

343. In accordance with section 3 of Federal Law no. 37-FZ, the Bank of Russia issued Order of the Bank of Russia no. OD-525 of 3 April 2014 on the submission of a request by the Bank of Russia to submit a register of obligations to creditors and depositors in accordance with the Federal Law on peculiarities of the functioning of the financial system of the "Republic of Crimea" and the "Federal City of Sevastopol" during the transitional period. However, banking activities had continued in Crimea and the "Federal City of Sevastopol" until 1 January 2015 notwithstanding the fact that the banks had not obtained the operating licence from the Central Bank of the Russian Federation. The failure of Ukrainian banks to comply with Order no. OD-525 was not a basis for the decision of the Bank of Russia to terminate the separate structural units of Ukrainian banks.

(h) On the absence of suppression of the Ukrainian language and persecution of students speaking the Ukrainian language in the schools of Crimea in violation of Article 2 of Protocol No. 1 to the Convention

344. Pursuant to section 14 of Federal Law no. 273-FZ of 26 December 2012 on Education in the Russian Federation, citizens of the Russian Federation had the right to receive primary, elementary and compulsory education in their native languages, as well as the right to study their native languages within the limits of the possibilities provided by the education system. Those rights were ensured by establishing the necessary number of relevant educational institutions, classes and groups, as well as by creating conditions for their operation.

345. In the 2014/15 academic year, fifty-four educational institutions of the "Republic of Crimea" had provided classes in the Ukrainian language, and sixty-two educational institutions had provided classes in the Crimean Tatar language.

346. At the same time, teaching and learning of the Ukrainian and Crimean Tatar languages could be carried out in these educational institutions on the basis of the parents' (or legal representatives') request.

347. No seizure of educational and methodological literature had been carried out in the educational institutions of the "Republic of Crimea" in 2014-2015. The educational institutions of the "Republic" used the textbooks from the register of the publications recommended by the Ministry of Enlightenment of the Russian Federation for use in the educational process.

348. There were 586 general educational institutions in the "Republic of Crimea" in the 2014/15 academic year, where 184,869 children studied. 1,990 students (1.1 %) studied in the Ukrainian language, 4,895 (2.7%) students studied in the Crimean Tatar language, and 177,984 (96.2%) students studied in the Russian language.

349. In the 2013/14 academic year, 12,694 (7.2%) students had studied in the Ukrainian language, 5,551 (3.1%) students studied in the Crimean Tatar language, and 158,174 (89.7%) students studied in the Russian language.

350. In the 2014/15 academic year, the Ukrainian language (39,150 students) and the Crimean Tatar language (21,420 students) had been studied within the framework of the implemented general educational programmes of the educational institution as a compulsory part of the curriculum, as an optional part of the curriculum, and within extracurricular activities.

351. There were currently fifteen general educational institutions providing teaching in the Crimean Tatar language in the "Republic of Crimea". Of the seven Ukrainian teaching schools operating in the "Republic of Crimea" teaching in Ukrainian in the 2013/14 academic year, six continued to operate. At those schools, in addition to the classes studying in the Ukrainian language, classes studying in Russian were open.

352. In sum, classes studying in the Crimean Tatar and Ukrainian languages were available at schools where the main language of instruction was Russian. Ukrainian language and literature and Crimean Tatar language and literature were studied using textbooks published in Ukraine as a teaching aid.

353. In 2015, at the request of the Ministry of Education, Science and Youth of the "Republic of Crimea", JSC Prosveshchenie Publishing House had received an order for the production of more than sixty textbooks in Crimean Tatar and Ukrainian for national schools.

354. Both employees of the publishing house and Crimean specialists had taken part in the preparation for publication and delivery of the textbooks for grades 1-9 on the main subjects for the 2015/16 academic year. In particular, the textbooks had been translated and edited by Crimean authorities, and the publishing house had been involved in the layout, printing and delivery of the books. In addition, the Tatar Book Publishing House (Kazan) had been involved in the development of the textbooks. The Prosveshchenie publishing house had already had a successful experience in publishing translated textbooks with the Tatar Book Publishing House.

355. In the 2014/15 academic year, there were eight classes (128 students) studying in Ukrainian and fourteen classes (227 students) studying in Russian in the municipal State educational institution “Yalta Educational Complex no. 15” in the urban district of Yalta of the “Republic of Crimea”. The Ukrainian language as a subject was studied by all students at the school.

356. Taking into account the community of students, in September 2014 three departments of the Ukrainian Philology Faculty (Ukrainian Linguistics, Culture of the Ukrainian Language and Theory and History of Ukrainian Literature) of the Tavria National University named after V.I. Vernadskyi had been united in the Ukrainian Philology Department as part of the Slavic Philology and Journalism Faculty.

357. Since January 2015 the Ukrainian Philology Department of the Slavic Philology and Journalism Faculty had been working as part of the Tavria Academy of the Federal State Autonomous Educational Institution of Higher Education “Crimea Federal University named after V.I. Vernadskyi”, and its teachers had trained the students in the major of “Ukrainian Language and Literature” and graduate students in the majors 10.02.03 “Slavic Languages (Ukrainian language)” and 10.01.03 “Literature of Foreign Countries and Peoples (Ukrainian literature)”.

358. Therefore, in the “Republic of Crimea”, at the Crimean Federal University, the conditions had been created for educational, methodological, scientific and research and cultural work majoring in the Ukrainian language and literature.

359. The textbooks of JSC Prosveshchenie Publishing House, delivered to the “Republic of Crimea” and the City of Sevastopol in 2014-2015, provided a sufficiently comprehensive presentation of the issues of geography, history and culture of Ukraine and Crimea.

360. Ukrainian language and literature was taught by 673 teachers in the general educational institutions of the “Republic of Crimea” during the 2014/15 academic year. Supplementary vocational education under the professional retraining programme “Philology. Russian Language and Literature” was being undertaken by 564 teachers of Ukrainian language and literature.

361. In order to form the educational plan of an institution for the 2014/15 academic year, in May and June 2014 the head teachers of all (seventy-three in total) general educational institutions in the City of Sevastopol conducted a written survey of the parents relating to the wish and need to learn Ukrainian in the next academic year (2014/15). According to the results of the parents’ survey, the Ukrainian language was studied in forty-seven general educational institutions of the city. In particular, the Ukrainian language was studied as a subject in nine educational institutions, as an additional course and as a subject in separate classes in nine educational institutions, as a club in three educational institutions and as an extracurricular course in twenty-six educational institutions. In general, 15.2% of all students (grades 1-11)

studied Ukrainian in the city: 2.5% being students in grades 1-4, 9.8% being students in grades 5-9, and 2.9% being students in grades 10-11.

362. In the 2014/15 academic year, the Crimean Tatar language was studied in four general educational institutions of the city. In particular, the Crimean Tatar language was studied as a subject and an additional course in one educational institution (State budget educational institution secondary school no. 46), and was studied as an extracurricular course in three educational institutions (State budget educational institutions secondary schools nos. 47, 52, 55). This subject was studied by 281 children.

363. The students were provided with textbooks from among those included in the federal list of textbooks recommended for use in the implementation of the State-accredited educational programmes of primary and elementary education, as well as in compulsory general education.

364. According to the information provided by the authorities of Sevastopol, in the 2013/14 academic year, 280 teachers taught Ukrainian language and literature in the general educational institutions of the City of Sevastopol.

365. Of the 280 Ukrainian language and literature teachers who had been working the previous year, in the 2014/15 academic year sixty-one left their job, 113 worked in schools in the city in other teaching positions, nineteen were on maternity leave, one died (from secondary school no. 43) and eighty-six taught Ukrainian. Of the language and literature teachers teaching Ukrainian, eight were listed as teachers of the Ukrainian language only, sixty-five combined the position of teacher of the Ukrainian language with another specialist position (teacher of Russian language and literature – twenty-six, deputy head – seven, after-school teacher - seven, primary school teacher – five, English teacher – four, social teacher – four, facilitator – three, teacher of Sevastopol studies – two, teacher of the basics of religious cultures and secular ethics – two, club leader – two, fine arts teacher – one, teacher of world art culture – one, school librarian – one), and thirteen teachers combined the position of teacher of the Ukrainian language with two other positions.

366. Teachers of the Ukrainian language had been working in secondary professional and higher educational institutions in the 2013/14 academic year. Since 1 September 2014 thirteen teachers had left their job, and twenty-two teachers were still employed. Of these, fifteen were working in other existing majors and seven people had completed advanced training courses.

(i) On compliance with Article 2 of Protocol No. 4 to the Convention as a result of establishing the state border line between the “Republic of Crimea” and Ukraine

367. Pursuant to section 27 of Law no. 4730-1 of the Russian Federation of 1 April 1993 on the State border line of the Russian Federation, State management in the field of protection and security of the State border line, as

well as the organisation of the border guard service, was carried out by the federal executive body authorised in the field of security (the border authorities that protected and secured the State border were part of the Federal Security Service).

368. In accordance with section 3 of Federal Constitutional Law no. 6-FKZ, the territory of the "Republic of Crimea" and the territory of the "Federal City of Sevastopol" was determined by the borders of the territory of the "Republic of Crimea" and the territory of the "Federal City of Sevastopol" which had existed on the date of the admission of the "Republic of Crimea" into the Russian Federation and the formation of new constituent entities.

369. The land border of the "Republic of Crimea" adjacent to the territory of Ukraine was the State border line of the Russian Federation.

370. Pursuant to section 1 of Law no. 4730-1 of the Russian Federation of 1 April 1993, the State border line of the Russian Federation was the line, and the vertical surface passing along that line, defining the limits of the State territory (land, water, subsoil and airspace) of the Russian Federation, that is, the geographical limit of the State sovereignty of the Russian Federation.

371. The protection of the State Border ensured the vital interests of the individual, society and the State on the State border within the border territory (the border zone, the Russian part of the waters of border rivers, lakes and other bodies of water, internal sea waters and the territorial seas of the Russian Federation, the checkpoints across the State border, as well as the territories of administrative districts and cities, healthcare resorts, specially protected natural areas, facilities and other territories adjacent to the State border, the border zone, the banks of the border rivers, lakes and other bodies water, sea coasts or checkpoints) and was carried out by all federal executive authorities in accordance with their powers as established by the legislation of the Russian Federation.

372. The protection of the State border was an integral part of the security of the State border and was carried out by the border authorities of the Federal Security Service within the border territory, by the Armed Forces of the Russian Federation in the airspace and underwater environment and other forces (bodies) to ensure the security of the Russian Federation in the cases and in the manner determined by the legislation of the Russian Federation. Protection of the State border was carried out in order to prevent unlawful changes in the route of the State border, and to ensure compliance by individuals and legal entities with the regime of the State border, the border regime and the regime at the checkpoints across the State border.

373. The delimitation of the maritime areas of the Black and Azov Seas was carried out on the basis of the international treaties of the Russian Federation, and the rules and principles of international law.

(j) On the absence of an administrative practice of persecution on the Crimean Tatars in violation of Article 14 of the Convention in conjunction with Articles 8, 9, 10 and 11 of the Convention and Article 2 of Protocol No. 4

374. The authorities of the Russian Federation stated that there were no signs of discrimination against the Crimean Tatars, Crimean activists, citizens of Ukraine, Ukrainian activists or journalists of the Ukrainian mass media in the investigation of criminal cases or in administrative proceedings.

375. According to available documents, in 2014 4,920 persons had been held criminally liable, of whom 3,694 (75%) were Russians, 527 (10.7%) were Ukrainians, 177 (3.6%) were Crimean Tatars and 250 (5.1 %) were Tatars.

376. In particular, 157 Russians (65.4%), 39 Ukrainians (16.3%), 8 Crimean Tatars (3.3%), and 17 Tatars (7.1%) had been held liable for particularly serious crimes. 818 Russians (75.1 %), 125 Ukrainians (11.9%), 37 Crimean Tatars (3.4%), and 55 Tatars (5.1%) had been held liable for serious crimes, 1,323 Russians (76.3%), 121 Ukrainians (10.4%), 52 Crimean Tatars (3%) and 91 Tatars (5.2%) had been held liable for moderately serious offences. 1,395 Russians (75%), 182 Ukrainians (9.8%), 80 Crimean Tatars (4.3%) and 87 Tatars (4.7%) had been held liable for minor offences.

377. Moreover, it had been established that in 2015 10,129 persons had been held criminally liable, of whom 7,954 (78.5%) were Russians, 764 (7.5%) were Ukrainians, 458 (4.5%) were Crimean Tatars and 478 (4.7%) were Tatars. 301 Russians (68.1%), 46 Ukrainians (10.4%), 43 Crimean Tatars (9.7%), and 16 Tatars (3.6%) were held liable for particularly serious crimes. 1,341 Russians (78%), 118 Ukrainians (6.9%), 71 Crimean Tatars (4.1 %) and 89 Tatars (5.1%) had been held liable for serious crimes; 2,849 Russians (81.1%), 241 Ukrainians (6.9%), 134 Crimean Tatars (3.8%) and 143 Tatars (4.1%) had been held liable for moderately serious offences. 3,467 Russians (77.7%), 359 Ukrainians (8.1%), 210 Crimean Tatars (4.7%) and 225 Tatars (5%) had been held liable for minor offences.

378. On 23 January 2015 the prosecutor's office of the Republic, pursuant to Article 37 § 2 (2) of the CCrPRF, had sent the case file to the Main Investigating Department of the Investigative Committee of the Russian Federation for the "Republic of Crimea" to resolve the issue of the criminal prosecution of E.E. Bariev, S.A. Kadyrov and A.M. Suleymanov, the coordinators of the organisation "Committee for the Protection of the Rights of the Crimean Tatar People" under Article 239 § 2 (establishment of a non-commercial organisation that infringes the personality and the rights of citizens) and Article 282 § 2 (incitement to hatred or enmity, as well as abasement of human dignity) of the CrCRF.

379. In the course of the investigation, it was established that on 17 January 2015, the 2nd All-Crimean Conference on the Protection of the Rights of the Crimean Tatar People had been held on the premises of the

Marakand hotel complex, located at: 17 Vorovskogo Street, City of Simferopol, “Republic of Crimea”. E.E. Bariev, S.A. Kadyrov and A.M. Suleymanov were the organisers of and direct participants in the conference.

380. During the conference, E.E. Bariev, S.A. Kadyrov and A.M. Suleymanov, calling for actions aimed at violating the territorial integrity of the Russian Federation, had appealed to the then President of Ukraine P.A. Poroshenko, the Secretary-General of the UN Ban Ki-moon and the President of Turkey R.T. Erdoğan with statements about the harassment of the Crimean Tatar population by the Russian Federation and the aggressive policy being pursued by the State authorities against non-Slavic nationalities, as well as seeking their assistance in preventing young Crimean Tatars from being called up for service in the Armed Forces of the Russian Federation.

381. During the investigation, Mustafa Maushev, Kurtseit Abdulaev, Gulnara Seitumerova, Rishat Armametov and Kamil Kadurov and others had been questioned.

382. On 24 February 2015 the investigator of the Main Investigating Department of the Investigative Committee of the Russian Federation in the “Republic of Crimea” made a decision to refuse to initiate a criminal case on the basis of Article 24 § 1 (2) of the CCrPRF.

383. The above-mentioned procedural decision had not been set aside.

384. As a result, criminal proceedings had not been initiated against E.E. Bariev, S.A. Kadyrov and A.M. Suleymanov for participating in the 2nd All-Crimean Conference on the Protection of the Rights of the Crimean Tatar People.

B. Application no. 38334/18

385. The facts as presented by the applicant Government are set out in section 1 below (paragraphs 386 et seq.) and those as presented by the respondent Government in section 2 below (paragraphs 774 et seq.).

1. *The facts of the case as submitted by the applicant Government*

386. The facts as presented by the applicant Government are mostly drawn from their application form submitted on 10 August 2018, their request for interim measures as submitted on 10 August 2018 and subsequently complemented**,** and partly from their memorials submitted on 28 February 2022 and 30 January 2023. The applicant Government’s version of the facts contains references to different events which occurred predominantly in Crimea but also in other parts of Ukraine or on the territory of the Russian Federation and concern Ukrainian nationals (with Mr Shur acquiring Ukrainian nationality after his arrest and conviction – see paragraph 752 below). They set out those events separately and in the opening parts of this judgment the Court has likewise set out the facts relating to the individuals

and the groups of individuals to which the applicant Government referred. The applicant Government made a distinction between acts which had occurred in Crimea (chapters (a) to (f) below) and acts which had occurred in the Russian Federation (chapters (g) to (m) below).

387. According to the applicant Government, since early 2014 various instances of unlawful deprivation of liberty, prosecution, ill-treatment and convictions of Ukrainians for their thoughts, expression of opinions, political stance and/or pro-Ukrainian activity had come to light. In Crimea, "after the occupation of the peninsula by the Russian Federation", the local authorities had used Russian legislation against extremism, separatism and terrorism to detain Crimean Tatar and Ukrainian activists. In addition, a number of persons had been captured by the Russian proxies of the "Luhansk People's Republic" ("LPR") and the "Donetsk People's Republic" ("DPR") and handed over to the Russian authorities for prosecution. Lastly, a number of Ukrainians had been lured by the Russian authorities to Russia or Russian-controlled territory, or had entered Russia for various lawful purposes, and had then been detained, tortured for confessions and sentenced by the Russian courts for committing fabricated offences. This category of persons known as "political prisoners" numbered at least seventy-one individuals in June 2018 (A 451) and 203 individuals in December 2022 (A 454).

(a) Persecution of Crimean Tatars

(i) "Case of 26 February 2014"

388. On 25 February 2014, 400 pro-Russian activists blocked the building of the ARC Supreme Council in Simferopol, asking for an extraordinary session and a vote on holding a referendum on the independence of Crimea (A 463). In response, the Chairman of the ARC Supreme Council, Mr Vladimir Konstantinov, announced that an extraordinary session would be held on 26 February 2014. The Russian Unity Party (*Русское единство*) initiated a rally outside the building of the ARC Supreme Council to take place on 26 February, in order to "resist destabilisation of the situation, [and] preserve and extend the authority of the Republic of Crimea" (A 456).

389. On the same day, the Mejlis of the Crimean Tatar People initiated a separate rally also to take place on 26 February in order to "prevent the ARC Supreme Council from adopting decisions aimed at destabilising the situation in [the Autonomous Republic of Crimea]", in light of earlier increased confrontations between active representatives of pro-Ukrainian and pro-Russian forces in Crimea and strong reasons to believe that Mr Konstantinov, a known Russia sympathiser, would try to force the ARC Supreme Council into adopting a document aimed at the secession of Crimea from Ukraine (A 455).

390. The Russian Unity Party and the Mejlis notified the local authorities about the rallies: the former on 25 February 2014 and the latter on the morning of 26 February 2014, at 9.15 a.m.

391. On 26 February 2014 the two rallies converged, leading to clashes in the vicinity of the ARC Supreme Council's premises. Several Crimean Tatars forced their way into the building but left after learning that the extraordinary session had been postponed.

392. Even though the events of 26 February 2014 had taken place "on Ukrainian territory before the annexation of Crimea by the Russian Federation", the Russian authorities opened an investigation into those events, which they described as "mass disorder", on account of the fact that at least two of the seventy-nine individuals allegedly injured during the clashes were Russian nationals. In the framework of those criminal proceedings, charges were brought against several Crimean Tatars who had participated in the rallies, among whom were Mr Akhtem Chiygoz, Mr Mustafa Dehermendzhi, Mr Taliat Yunusov and Mr Eskender Nebiyev.

393. They were arrested and incarcerated in the Simferopol pre-trial detention facility ("the Simferopol SIZO") and kept in "terrible conditions of detention" (A 464, 466-67, 486, 491).

(α) Akhtem Chiygoz

394. Mr Akhtem Chiygoz, Deputy Chairman of the Mejlis, was arrested on 29 January 2015 by an investigator and charged with organising mass disorder, under Article 212 § 1 of the CrCRF. On the same day, he was placed in pre-trial detention by the "Kyiv District Court of Simferopol", which subsequently extended the preventive measure on several occasions until his conviction. The "Supreme Court of the Republic of Crimea" initiated a trial on 24 December 2015, but on 15 February 2016 it remitted the case to the "prosecutor's office" for additional investigation. After the case had again been returned to the "Supreme Court", the latter severed the criminal case against Mr Chiygoz from the cases relating to other defendants. On 11 September 2017 it convicted Mr Chiygoz of organising mass disorder and sentenced him to eight years' imprisonment in a common-regime correctional colony (A 468 et seq.). On 25 October 2017 he was extradited to Türkiye (A 474).

(β) Mustafa Dehermendzhi

395. Mr Mustafa Dehermendzhi was arrested on 7 May 2015 in the village of Hrushivka by an armed unit of the Russian security forces. On 8 May 2015 he was charged with participating in mass disorder, under Article 212 § 2 of the CrCRF. On the same day, he was placed in pre-trial detention by the "Kyiv District Court of Simferopol", which extended the preventive measure on several occasions. On 6 April 2017 Mr Dehermendzhi

was placed under house arrest, which was subsequently extended until 7 May 2018. On 19 June 2018 Mr Dehermendzhi was convicted as charged and sentenced to four years and six months' imprisonment, suspended on probation (A 475 et seq.). The applicant Government alleged that during the court hearings that Mr Dehermendzhi had reported having been subjected to psychological pressure by the investigators in order to confess to the offence with which he had been charged.

(γ) Taliat Yunusov

396. Mr Taliat Yunusov was arrested on 11 March 2015 in his home, in the village of Yastrubivka, by armed and masked men who explained that Mr Yunusov had participated in the rally of 26 February 2014, during which he had caused bodily harm to another person (A 488). He was placed in pre-trial detention for two months, after which he was released on bail. On 19 November 2015 he sought the examination of the case in accelerated proceedings on the basis of a plea-bargaining agreement he had previously entered into. On 28 December 2015 the "Central District Court of Simferopol" convicted him of participating in mass disorder, on the basis of the plea-bargain, and sentenced him to three years and six months' imprisonment, suspended on probation (A 487).

(δ) Eskender Nebiyev

397. Mr Eskender Nebiyev was arrested on 22 April 2015 and charged with participating in mass disorder on 26 February 2014. The same day, he was placed in pre-trial detention until 18 June 2015, when he was released on bail. On 9 October 2015 Mr Nebiyev was arrested again. On 12 October 2015 the "Central District Court of Simferopol" examined the case against him in accelerated proceedings on the basis of a plea-bargaining agreement he had previously entered into. The court convicted him of participating in mass disorder, on the basis of the plea bargain, and sentenced him to two years and six months' imprisonment, suspended on probation (A 489 et seq).

(ii) "Case of 3 May 2014"

398. On 2 May 2014 Mr Mustafa Dzhemilev, a former political prisoner and Ukrainian deputy and one of the key leaders of the Crimean Tatar community and a former Chairman of the Mejlis, was banned from entering Crimea. On 3 May 2014 several thousand Crimean Tatars came to meet him at the Armyansk checkpoint on the administrative boundary line between the Kherson Region of Ukraine and Crimea. They were confronted by Russian riot police called OMON (and seemingly the Berkut special police unit) and Crimean police forces. There was a tense standoff, including a few scuffles; however, there were no major incidents. It was decided that Mr Dzhemilev would return to Kyiv in order to avert bloodshed. The only actual offences

reported at the time were that the roads to the Armyansk checkpoint were blocked (A 501).

399. On 4 May 2014 a criminal investigation was opened regarding unlawful public protests conducted by the Crimean Tatars in Armyansk and several participants were held criminally liable. In addition, around 200 people were fined between RUB 10,000 and 40,000 on administrative charges relating to an "unauthorised rally" and "not obeying the police" (A 501).

(α) Edem Mustafaevich Osmanov

400. On 19 January 2015 Mr Osmanov was arrested by the Crimean police forces in connection with the events of 3 May 2014 (A 494), while he was travelling with his family. On 20 January 2015 he was charged with using violence against a public official in connection with the performance of his duties, under Article 318 § 1 of the CrCRF (A 493). From 20 January to 25 February 2015 he was detained in the Simferopol SIZO (A 493) from where he was released under a personal guarantee. In his defence, Mr Osmanov claimed that, in one of the scuffles, he had fought back an attack from a member of the special police forces. On 7 December 2015 the "Armyansk City Court" convicted Mr Osmanov of using violence against a public official and sentenced him to a suspended term of one year's imprisonment with a one-year probationary period (A 495).

(β) Tair Izetovich Smedlyaiev

401. On 22 October 2014 Mr Smedlyaiev was arrested in connection with the events of 3 May 2014. Several policemen introduced themselves and told Mr Smedlyaiev that his car had been involved in a traffic accident. After having examined the documents presented by Mr Smedlyaiev, they forced him and his elder son into a minivan. The elder son was later released (A 500). Mr Smedlyaiev was charged with using violence against a public official in connection with the performance of his duties under Article 318 § 1 of the CrCRF. From 24 October to 11 December 2014 he was detained in the Simferopol SIZO (A 498). During the pre-trial investigation he was forced to confess to the offence he had been charged with, but during the trial he retracted his confession. On 10 December 2015 the "Armyansk City Court" convicted Mr Smedlyaiev of using violence against a public official and sentenced him to two years' imprisonment, suspended (A 499).

(iii) Ilmi Umerov

402. Mr Umerov was a former head of the Bakhchisaray district administration in Crimea and a former Deputy Chairman of the Mejlis. According to the applicant Government, "since the beginning of the Russian occupation of Crimea in February 2014, Mr Umerov was a vocal critic of the

occupation and the Russian administration's persecution of Crimean Tatars, an ethnic minority who openly oppose Russia's occupation of Crimea".

403. On 12 May 2016 Mr Umerov was arrested in Bakhchisaray on charges of public calls for actions aimed at violating the territorial integrity of the Russian Federation carried out using the media and information and telecommunication networks (including the internet), an offence under Article 280.1 § 2 of the CrCRF. The criminal proceedings were initiated two weeks after the Mejlis had been banned in April 2016 as being an "extremist organisation" (A 512). The charges referred to a live interview broadcast by the Crimean Tatar ATR television channel in March 2016, during which Mr Umerov had declared that Crimea should be returned to Ukraine (A 514). The investigative authorities contended more specifically that Mr Umerov had threatened Russia's territorial integrity by saying: "It's important to make Russia leave Crimea, Donbas and Luhansk, if it were possible to restore Ukraine's former borders". Mr Umerov was released on the same day and banned from leaving Crimea during the investigation and trial (A 505).

404. On 11 August 2016 the "Kyiv District Court of Simferopol" ordered a psychiatric examination of Mr Umerov's mental health. During the hearing, Mr Umerov became unwell, owing to a high blood pressure condition, and was admitted to a local hospital. On 18 August 2016, despite his ongoing treatment in the hospital for high blood pressure, Mr Umerov was forcibly transferred to a psychiatric hospital in Crimea for a psychiatric examination to be carried out. He was initially prohibited from seeing his relatives and lawyers as well as from receiving packages or using a telephone. On 24 August 2016 Mr Umerov's health deteriorated (A 513). On 7 September 2016 a committee of forensic doctors issued a forensic medical report attesting that Mr Umerov had not been of unsound mind at the time of committing the alleged crime. On 21 September 2016 a request by Mr Urmerov's lawyers to lift the preventive ban imposed on him in order for him to undergo emergency medical treatment in Ukraine was rejected by the investigator (A 506-07).

405. On 28 September 2016 Mr Umerov was found guilty of organising the activities of an association in respect of which a decision to suspend its activities was in force, under Article 20.28 § 1 of the Code of Administrative Offences of the Russian Federation ("the CAORF") in relation to his participation in a meeting of the Mejlis held on 22 May 2016 (A 511).

406. In January 2017 FSB officials in Crimea arrested N.P., one of Mr Umerov's lawyers. The FSB held N.P. and questioned him about Mr Umerov's case for over two hours. The lawyer refused to answer the investigators' questions, invoking lawyer-client privilege, but the FSB nonetheless informed him that he had become a witness in the case, and thus a judge barred him from representing Mr Umerov (A 509).

407. On 27 September 2017 the "Simferopol District Court" convicted Mr Umerov as charged and sentenced him to two years' imprisonment in a

colony-settlement and a two-year ban on carrying out public activities, including contact with the mass media (A 510).

408. On 25 October 2017 Mr Umerov was extradited to Türkiye, which transferred him to Ukraine as a part of a political agreement between Türkiye and Ukraine (A 474).

(b) Persecution of Euromaidan activists

409. Several active participants in the Euromaidan protests were arrested and eventually sentenced to terms of imprisonment.

(i) Oleksandr Kostenko

410. Mr Kostenko was a former employee of the local department of the Ministry of Internal Affairs in Simferopol. He participated in the Euromaidan protests in Kyiv.

411. On 5 February 2015 Mr Kostenko was arrested in Crimea and tortured for over twenty-four hours by FSB officials before his arrest was officially recorded. He sustained severe injuries, including a broken arm which was not properly treated and was thus at risk of becoming totally impaired. The injury to Mr Kostenko's arm had not healed by the time of his release in August 2018, medical treatment still being needed.

412. While being represented by a State-appointed lawyer, Mr Kostenko made a "confession" and a statement to the effect that he had been beaten on the street by unidentified individuals. Mr Kostenko retracted the self-incriminating statements as soon as he had access to a lawyer of his own choosing. Efforts made by Mr Kostenko's lawyer to have criminal investigations initiated in relation both to the initial acts of torture and his client's subsequent ill-treatment while in detention were unsuccessful (A 516).

413. Mr Kostenko was charged under Article 115 § 2 (b) of the CrCRF with causing bodily injuries of a minor degree to a special forces Berkut officer in Kyiv, during the Euromaidan protests, on 18 February 2014. At a later stage, Mr Kostenko was also charged with illegal possession and carrying of a firearm or its parts or ammunition, an offence under Article 222 § 1 of the CrCRF, after the investigators had allegedly found a rifle barrel during a search of his home.

414. On 15 May 2015 the "Kyiv District Court of Simferopol" found Mr Kostenko guilty on both charges and sentenced him to four years' imprisonment. The sentence was later reduced to a term of imprisonment of three years and six months. Except for Mr Kostenko's confession obtained through torture at the stage of the preliminary investigation and the statement of an anonymous witness (according to which Mr Kostenko had "told him that in the basement of the Kyiv city administration of the 'Gestapo' he [had] tortured and killed people, both civilians and police"), the only incriminating

evidence consisted in the testimonies of former Berkut employees who had switched to serving in the Russian police and had a clear interest in his conviction (A 515).

415. On 21 June 2015 Mr Kostenko was placed in a punishment cell (SHIZO) on “fabricated” grounds (A 516).

416. Mr Kostenko was incarcerated in penal colony no. 5 in the Kirov Region of the Russian Federation. Before his release on 3 August 2018, Mr Kostenko was placed in solitary confinement (A 517).

(ii) Andrii Kolomiyets

417. In 2015, Mr Kolomiyets was temporarily residing in the house of his partner, Ms Z., in the Kabardino-Balkarian Republic of the Russian Federation.

418. On 15 May 2015 his partner’s house was searched by the police, during which a package with cannabis was found in a strongbox which belonged to Ms Z.’s ex-husband. This event was not mentioned in the search report as Ms Z. had explained that Mr Kolomiyets had no knowledge of that strongbox (A 526).

419. After the search, Mr Kolomiyets was taken to the Nalchik police station for questioning, which purportedly concerned the purpose of his presence in the territory of the Russian Federation. Mr Kolomiyets and the prosecution authorities provided different accounts of the events for the period following the questioning. According to the prosecution authorities, Mr Kolomiyets was released after having been questioned, but was arrested again on the night of 16 May 2015 in Chehem when cannabis was found on him. According to Mr Kolomiyets and his partner, he was continuously kept in police custody thereafter (A 526).

420. On 15 August 2015 Mr Kolomiyets was transferred to the Simferopol SIZO in Crimea. He was able to hire a lawyer with the assistance of the Crimean Human Rights Group, an NGO aimed at promoting the observance and protection of human rights in Crimea (A 526).

421. Mr Kolomiyets, who was believed to be a member of the nationalist organisation Ukrainian Insurgent Army (Українська повстанська армія, УПА – “UPA”), was accused of throwing Molotov cocktails at two members of the Berkut special police unit on 20 January 2014 during the Euromaidan protests, setting their uniforms on fire. Mr Kolomiyets had purportedly acted with the intention of killing them. It was considered that Russian law was applicable to his actions on account of the Russian nationality of the police officers.

422. The applicant Government pointed out (i) that the UPA organisation had been disbanded in the mid-1950s and had never been reformed; (ii) that the police officers allegedly injured during the Euromaidan protests had been Ukrainian nationals at the material time and had acquired Russian nationality

only at a later stage; and (iii) that no evidence had been adduced as to the injuries allegedly inflicted on the two police officers (A 525).

423. At the court hearing of 15 March 2016, Mr Kolomiyets admitted to his participation in the Euromaidan protests but denied any intention to kill the police officers. He thus retracted his self-incriminating statement made during the preliminary investigation, maintaining that he had been coerced into signing it. He claimed that after having been arrested on 15 May 2015 he had been tortured by police officers with the aim of extracting a confession. Moreover, on the evening of 16 May 2015 he had been forced by police officers into a car in which they had planted drugs. He had continued to be tortured by electrocution by different police officers (A 525). He added that all the State-appointed lawyers had ignored his claims of ill-treatment at the pre-trial investigation stage and had advised him to plead guilty (A 527).

424. Mr Kolomiyets's partner stated at the court hearing that she had visited him a few days after his arrest and seen the marks on his body. She confirmed that Mr Kolomiyets had told her that he had been beaten. The police also threatened her with deprivation of parental rights regarding her children (A 526).

425. A request by Mr Kolomiyets for a forensic medical examination in order to verify the veracity of the alleged ill-treatment was dismissed by the court. In addition, letters sent by Mr Kolomiyets's lawyer to the Deputy Prosecutor General, the Head of the Office of Ministry of Internal Affairs in the Kabardino-Balkarian Republic, and the Chief of the Investigation Committee in the Kabardino-Balkarian Republic, in which he described the torture to which Mr Kolomiyets had been subjected, received no answer. The Presidents of the Bar Associations of Crimea and the Kabardino-Balkarian Republic provided brief and unsubstantiated answers to his complaints regarding the ineffectiveness of the State-appointed lawyers in the present proceedings (A 529).

426. On 10 June 2016 the "Kyiv District Court of Simferopol" convicted Mr Kolomiyets of the attempted murder of two or more persons in connection with their performance of a public duty on grounds of political and ideological hatred (under Article 30 § 3 (a), (b), (e) and (l) in conjunction with Article 105 § 2 of the CrCRF) and of unlawful acquisition, storage and transportation of large quantities of drugs, without any intention to sell (under Article 228 § 2 of the CrCRF), and sentenced him to ten years' imprisonment (A 519). On 27 October 2016 the "Supreme Court of the Republic of Crimea" upheld the sentence (A 524).

427. After his conviction, Mr Kolomiyets was transferred to a strict-regime penal facility in Krasnodar (Russian Federation), in order to serve his sentence. His state of health deteriorated significantly during the time he spent in prison (A 528 and 531).

428. Mr Kolomiyets was placed in a punishment cell on several occasions (in January 2017 and in February and March 2018, A 528 and 531). While

Mr Kolomiyets was held in the punishment cell, police officers interrogated prisoners who had previously worked with him, enquiring whether it was known among prisoners that Mr Kolomiyets was a political prisoner or whether he had talked to them about Ukraine and the Euromaidan protests (A 530).

429. During his imprisonment, Mr Kolomiyets worked almost without interruption and received cigarettes in exchange. He had been subject to "moral pressure" in prison and many of his cellmates had a hostile attitude towards him because of his nationality and his political opinions (A 528).

(iii) Mykola Shyptur

430. Mr Shyptur was an active participant in the Euromaidan protests.

431. On 7 March 2014 he arrived in Sevastopol together with Mr Serhiy Tkachuk and Mr Vladislav Polishchuk in order to support the campaign for the 200th anniversary of the birth of the Ukrainian poet Taras Shevchenko, scheduled for 9 March 2014. They spent the first two nights before the planned event trying to circulate leaflets explaining "the farcical nature of the so-called 'referendum' which Russia was using as a smokescreen for its forced annexation of Crimea".

432. On 9 March 2014, after the rally, Mr Shyptur was detained in Sevastopol by members of the "self-defence forces" of Crimea. According to Mr Tkachuk's and Mr Polishchuk's account of events, while they were peacefully discussing the rally, they had been attacked by Russian Cossacks with whips and by other aggressive self-defence paramilitaries. The two other men had been badly beaten by the paramilitaries, but together with Mr Shyptur and Ms C., had managed to get back to the apartment that local activists had rented for them. Their account was allegedly fully backed by a BBC correspondent present at the scene (A 541).

433. Ms C. had gone out of the apartment but, after twenty minutes, called Mr Shyptur asking for help. Mr Shyptur took a pistol (for self-defence) and left the apartment. He had found Ms C. surrounded by paramilitaries, and in an attempt to escape them, fired some warning shots. Mr Shyptur had been caught and severely beaten while Ms C. had eventually led the paramilitaries to the apartment.

434. A propaganda account of the events was shown on a Russian-controlled local television channel, with paramilitaries telling a police officer about how they had "detained" the young woman and how Mr Shyptur had started shooting. The report claimed that the Euromaidan activists were guilty of "provocation", and that Mr Shyptur had opened fire on the paramilitaries.

435. Mr Shyptur was arrested by a police officer and an investigation was opened in respect of him concerning the attempted murder of agents of the Crimean self-defence forces. Mr Shyptur was perceived as a radical participant in the Euromaidan protests. No defence counsel was provided for

him. He was tortured with an electric shock gun and his fingers were broken. His chosen lawyer reported that Mr Shyptur had still borne the marks of the electric shocks when they had first met in 2016.

436. On 28 April 2015 the “Gagarinskiy District Court of Sevastopol” convicted Mr Shyptur of illegal possession and carrying of firearms and ammunition (under Article 222 § 1 of the CrCRF) and attempted murder of a person in connection with his or her performance of a public duty committed in a dangerous manner (under Article 30 § 3 in conjunction with Article 105 § 2 (b), (e) of the CrCRF). He was sentenced to ten years’ imprisonment in a strict-regime penal facility.

437. On 16 June 2015 the “Sevastopol City Court”, sitting on appeal, dismissed the charge of arms trafficking, and, for procedural reasons, reduced the sentence relating to the offence of attempted murder to nine years. On 28 October 2015 the Supreme Court of the Russian Federation dismissed a cassation appeal as inadmissible.

438. On 10 May 2017 Mr Shyptur submitted an application to the Russian Ombudsperson seeking his transfer in order to serve his sentence in Ukraine on the basis of the 1983 Convention on the Transfer of Sentenced Persons (A 538).

439. On an unspecified date, Mr Shyptur was incarcerated in IK-1, a strict-regime penal facility in Simferopol. He was placed in a barrack together with around one hundred detainees in appalling sanitary conditions and with inadequate nutrition (A 540).

(c) “Case of an activist” - Volodymyr Balukh

(i) Administrative and criminal proceedings

440. Mr. Volodymyr Balukh is a well-known activist at regional level who had been continuously harassed by law-enforcement authorities for his political opinions.

(α) Administrative proceedings

441. In July 2014 Mr Balukh was detained in Crimea by the Russian law-enforcement authorities, allegedly for drinking in public, and taken into custody for seventy-two hours. The “Rozdolnensky District Court” imposed an administrative fine on Mr Balukh in the amount of RUB 500. The applicant Government alleged that there was no evidence of Mr Balukh having been drunk (A 563). Moreover, in 2015 his house was twice subjected to searches (A 542 and 548). His driving licence and Ukrainian passport were seized by Russian law-enforcement authorities on those occasions. He was also sentenced to administrative detention for abusing a police officer (A 543).

(β) Criminal proceedings concerning the unlawful acquisition and possession of ammunition and explosives

442. On 29 November 2016 Mr Balukh affixed a sign to his house honouring those killed in Kyiv during the Euromaidan protests. On the same day, the head of the village council demanded that Mr Balukh take down the sign, threatening to call the police and telling him that his "independence stance" would bring unpleasant consequences, including the "discovery" of weapons or drugs in his home (A 548).

443. On 8 December 2016 FSB officers conducted a search of Mr Balukh's partner's house in the village of Serebryanka (Rozdolnensky District). During the search eighty-nine professional cartridges, out of which nineteen were ready for firing, were found in the attic of the house. The investigative authority had no evidence that the ammunition discovered in the attic belonged to Mr Balukh (A 548 for Memorial Human Rights Centre's ("Memorial HRC") findings).

444. After the search, Mr Balukh was arrested and placed in the Rozdolnensky temporary detention facility. On 9 December 2016 the "Rozdolnensky District Court" extended the term of his detention until 12 December 2016. His pre-trial detention was subsequently extended on several occasions (A 544-45). On 1 December 2017 the "Rozdolnensky District Court" replaced the pre-trial detention with house arrest (A 550).

445. Mr Balukh was charged with unlawful acquisition and possession of ammunition (under Article 222 § 1 of the CrCRF) and unlawful acquisition and storage of explosives or explosive devices (under Article 222.1 § 1 of the CrCRF). Mr Balukh denied the charges, alleging that the case against him had been fabricated with the help of the local police forces and that the ammunition and explosives had been planted (A 546).

446. On 16 January 2018 the "Rozdolnensky District Court" convicted Mr Balukh as charged and sentenced him to three years and seven months' imprisonment and a fine in the amount of RUB 10,000. Mr Balukh appealed against the judgment (A 547), following which the sentence was reduced to three years and five months' imprisonment and a fine. During his pre-trial detention, Mr Balukh was incarcerated in the Simferopol SIZO. Following his final conviction, Mr Balukh was transferred to a penal facility in the Russian Federation.

(γ) Criminal proceedings concerning the disruption of a prison's activities

447. On 22 August 2017 a new criminal case was brought against Mr Balukh for using violence against a public official in connection with the performance of his duties, under Article 318 § 1 of the CrCRF. He was accused of having punched the director of the detention centre in the stomach during a cell inspection on 11 August 2017 and having later hit him on his right arm with a detergent bottle. On 7 December 2017 the charges against

Mr Balukh were reclassified as disruption of a prison's activities, under Article 321 § 2 of the CrCRF (A 550 and 561).

448. On 19 March 2018 the "Rozdolnenskyi District Court" ordered Mr Balukh's pre-trial detention.

449. On 5 July 2018 the "Rozdolnenskyi District Court" convicted him as charged and sentenced him to three years' imprisonment. Taking into account his previous criminal convictions, the court imposed on him a final sentence of five years' imprisonment in a common-regime colony and a fine in the amount of RUB 10,000.

450. In early August 2017 Mr Balukh's lawyer had filed a complaint about the use of force against Mr Balukh by the director of the detention centre. The director had struck the prisoner, insulted him using obscene language and humiliated him, referring to his nationality. Moreover, Mr Balukh later reported to his defence counsel that in April 2017 the director of the detention centre had discriminated against him on an ethnic basis.

(ii) Alleged lack of adequate medical assistance

451. Mr Balukh's state of health deteriorated while he was deprived of his liberty. His chronic illnesses worsened and he suffered from weakness and pain.

452. In late December 2016, while he was incarcerated in the Rozdolnensky temporary detention facility, Mr Balukh's state of health deteriorated, with increasing back pain and chronic bronchitis. He was given an emergency medical check-up, but no diagnosis was made. Nevertheless, a prescription was issued and handed to Mr Balukh's partner, who had to buy the prescribed medicine since it was not provided by the medical unit (A 560).

453. On 17 January 2017, after having been transferred to the Simferopol SIZO, he suffered from an aggravation of his kidney disease, but was not taken to hospital. He also complained of heart problems associated with the absence of fresh air in his cell, as well as a lack of medication and adequate food (A 466).

454. On 22 December 2017 the "Rozdolnensky District Court" rejected a lawyer's request seeking authorisation for Mr Balukh to undergo a medical examination (A 551).

455. On 27 December 2017, during a hearing held by the "Rozdolnenskyi District Court", Mr Balukh felt unwell because of a flare-up of his chronic condition, and on several occasions an ambulance was called to the court (A 550).

456. On 19 March 2018 Mr Balukh started a hunger strike as a form of protest against his prosecution in a new set of criminal proceedings which in his view were politically motivated and in the context of which he had been placed in pre-trial detention (see paragraph 448 above). In May 2018 Mr Balukh switched to another protest regime consisting of limited nutrition. By 6 June 2018 he had already lost 30 kg (A 557 and 562).

457. On 15 June 2018, during a court hearing regarding the extension of his pre-trial detention, Mr Balukh's state of health seriously deteriorated: he suffered from acute chest pain, breathlessness, faintness and nausea. An ambulance arrived at the court's premises, but the medical aid provided did not improve his condition (A 552).

(iii) Criminal investigation opened by the Ukrainian authorities

458. On an unspecified date in 2016, the Ukrainian investigative authorities opened criminal proceedings under Article 146 § 2 (unlawful deprivation of liberty or kidnapping), Article 162 § 2 (violation of the inviolability of one's home) and Article 357 § 3 (illegal misappropriation of a passport or other important personal document in any way) of the Criminal Code of Ukraine in respect of the alleged offences perpetrated against Mr Balukh (A 563).

(iv) Transfer to Ukraine

459. On 20 November 2019 the applicant Government informed the Court that Mr Balukh had been transferred to Ukraine on 7 September 2019, in the context of an exchange of prisoners with the Russian Federation (see also A 452-53).

(d) "Internet cases"

(i) Emil Minasov

460. Mr Emil Minasov is a Crimean Tatar who lived in Sevastopol.

461. On an unspecified date, six criminal investigations were opened against Mr Minasov for actions aimed at inciting hatred and enmity, as well as humiliation of the dignity of a person, under Article 282 § 1 of the CrCRF. According to the FSB, Mr Minasov had disseminated extremist materials via social networks on multiple occasions from March to October 2016.

462. Even though, at the initial stage of the investigation, there was no reference to specific publications in this respect (A 564-65), it became apparent that, from March to October 2016, several posts concerning protests against the "annexation of Crimea by Russia" had appeared on the "wall" of Mr Minasov's Facebook account. In particular, on 2 March 2016 Mr Minasov had signed a petition, prepared by the group "Let My People Go – Ukraine", for the attention of the Minister of Foreign Affairs of Germany seeking assistance for the release from pre-trial detention of the defendants in the "case of 26 February" – Akhtem Chiygoz, Ali Asanov and Mustafa Dehermendzhi (see paragraph 388 et seq. above). He had uploaded a hyperlink to that petition on his Facebook "wall" and added a comment expressing his opinion that the above-mentioned persons were being unlawfully detained. On 11 March 2016 Mr Minasov reposted on his Facebook "wall" quotations from an interview with the coordinator of a

commercial and energy blockade initiated in respect of Crimea in 2015, about steps needed for returning Crimea to Ukraine (A 566).

463. In July 2017 the "Pervomaiskyy District Court" convicted Mr Minasov for having committed an offence under Article 282 § 1 of the CrCRF and sentenced him to one year and three months' imprisonment in a colony-settlement. No preliminary hearing was held in the case and the proceedings on the merits were conducted at two court hearings (A 566).

(ii) Ihor Movenko

464. Mr Ihor Movenko is a Ukrainian national who was treated by the Russian Federation as being a Russian national.

(α) Assault and criminal complaint

465. On 7 September 2016 Mr Movenko was assaulted on the street by a man while he was walking to his bicycle, which was customised with two stickers: one representing the Ukrainian trident, and the other the "Azov" battalion (which had been included by the Russian Federation on its list of banned organisations) (A 586).

466. The man who brutally assaulted him identified himself as a police officer, without producing any warrant card. He was later identified by the Crimean Human Rights Group as a former officer of the Ukrainian Berkut special force unit who had been working at the time of the events for the police of the Russian Federation. Mr Movenko was hospitalised and diagnosed with an open craniocerebral injury, brain concussion, fractures in the base of the skull, a jaw fracture, closed nasal fractures, eyeball contusion and other injuries (A 576 and 582).

467. On 13 October 2016 Mr Movenko submitted a criminal complaint to the law-enforcement authorities of the Russian Federation regarding his assault. A first decision of 5 December 2016 not to open criminal proceedings for the lack of any *corpus delicti* was quashed on 8 December 2016 by the "prosecutor's office". No further information was available regarding the outcome of those criminal proceedings (A 576 et seq.).

(β) Administrative proceedings (public display of Nazi symbols)

468. On 22 September 2016 the "Gagarinskiy District Court of Sevastopol" sentenced Mr Movenko to a fine in the amount of RUB 2,000 for displaying the symbol of the "Azov" battalion on his bicycle and thus spreading "Nazi symbolism". The court based its findings about the Nazi character of the symbol on a letter of 9 September 2016 by which the State Museum of Heroic Defence and Liberation of Sevastopol had established that the symbol of the Ukrainian special operations battalion "Azov" was the same as the one used by 2nd Panzer Division *Das Reich*. On 7 November 2016 the "Sevastopol City Court" upheld the decision (A 567 et seq.).

(γ) Criminal proceedings against Mr Movenko

469. On 16 December 2016 Mr Movenko was arrested and taken to the FSB Department in Sevastopol in connection with a so-called "special operation". The FSB officers stopped him on his way to work, beat him and threatened to take him to a forest, strip him naked and leave him there. They then took him to his workplace, instructing him to not speak with anyone while they were seizing his computer. Several blows were inflicted on him when he tried to talk to someone.

470. The FSB officers subsequently went to his home for a search. According to Mr Movenko's wife, she was prevented from using a telephone to call a lawyer. She was also forbidden to talk to Mr Movenko, who managed nevertheless to tell her that he had been beaten and threatened with detention if he did not confess to extremist activities. Following the search, Mr Movenko's laptop, hard drives from the home computer, SIM cards and a starter pack mobile phone were seized. The FSB officers filmed the home search (A 584).

471. On 24 March 2017 the FSB department in Sevastopol opened criminal proceedings against Mr Movenko on suspicion of public calls for extremist activities, under Article 280 § 2 of the CrCRF, following a comment he had posted on the VKontakte social network.

472. On 30 March 2017 a preventive measure in the form of an undertaking not to abscond was applied to Mr Movenko.

473. At the court hearing of 31 January 2018, one of the attesting witnesses brought by the FSB officers to attend Mr Movenko's home search, confirmed that, during the search, Mr Movenko had been held in handcuffs, his hands behind his back, and had not been allowed to contact a lawyer. None of those claims were investigated (A 585).

474. On 4 May 2018 the "Gagarinskiy District Court of Sevastopol" found Mr Movenko guilty as charged for having posted in the VKontakte group entitled "Crimea is Ukraine", in the summer of 2016, about what should happen to "traitors" when Russia's occupation of Crimea ended. Even though the prosecutor had asked during the court proceedings for a suspended sentence, the court sentenced him to two years' imprisonment. During the proceedings, Mr Movenko had explained his comments as being an expression of black humour (A 581).

475. Mr Movenko was taken into custody immediately after the verdict.

(iii) Ismail Ramazanov

476. Mr Ismail Ramazanov is a Crimean Tatar who lived in the village of Novyy Svit (Simferopol district).

477. In the morning of 23 January 2018, FSB officers carried out a home search at Mr Ramazanov's house, where they allegedly found bullets for a Makarov pistol. Mr Ramazanov was arrested on that occasion. Whereas it

appears from the case material that he was arrested at 2.30 p.m., according to Mr Ramazanov he was in fact detained and under the full control of the FSB officers as of 5 a.m. on that day (A 607). During that period of unrecorded detention, nobody was allowed to see him.

478. On the same day, the "Investigative Committee of the Russian Federation in Crimea" released a statement reporting that a criminal case had been instituted against a 31-year-old inhabitant of the Simferopol district for inciting hatred or enmity and for humiliating the dignity of a person or a group of persons on the grounds of nationality and affiliation with a social group, committed via the internet, under Article 282 § 1 of the CrCRF (A 587). More specifically, Mr Ramazanov was charged with making several statements on the internet radio station Zello which, according to an FSB linguistic expert, amounted to incitement to hatred of a social group, namely "the Russians", and were thus of an extremist nature (A 587 and 597).

479. On 24 January 2018 the "Simferopol District Court" placed Mr Ramazanov in pre-trial detention for one month.

480. During the court hearing Mr Ramazanov stated that the FSB officers had hit him on the head and arms and in the kidneys, and that one of his fingers had been dislocated, causing him pain. The same officers had also intimidated and threatened him. He mentioned that such conduct had been aimed at forcing him to sign a confession. He identified one of the FSB guards who had beaten him (A 589, 593, 605 and 617).

481. At the court hearing Mr Ramazanov's state of health deteriorated. He could not stand because of the pain, so the domestic court allowed him to be seated. However, the court rejected a request from Mr Ramazanov's lawyer to call for an ambulance (A 589).

482. A medical report of 23 January 2018 noted that Mr Ramazanov had suffered bodily injuries. He stated that he had been beaten again after the visit to the hospital where the medical examination was conducted (A 595).

483. Mr Ramazanov was not provided with food or water for two days after being taken into detention. Furthermore, he did not receive the food his father had brought to the detention facility for him (A 590).

484. On 24 January 2018 Mr Ramazanov was transferred to the Simferopol SIZO. He was kept with another seventeen persons in a cell with three times fewer sleeping beds than detainees, who were thus forced to sleep standing on their feet (A 594).

485. Mr Ramazanov was later held in a cell measuring 12.5 sq. m without ventilation. Five detainees were incarcerated in that cell, which was equipped with only four beds. The ceiling was covered in mould (A 604).

486. On 19 June 2018 the charges against Mr Ramazanov were extended to include illegal possession of ammunition under Article 222 § 1 of the CrCRF (A 597).

487. On 20 June 2018 the "Supreme Court of the Republic of Crimea" extended his detention until 16 July 2018 (A 600).

488. On 12 July 2018 a request by the investigation authorities to extend Mr Ramazanov's detention was rejected by "a domestic court". The pre-trial detention eventually expired on 16 July 2018 (A 603).

489. During the proceedings, Mr Ramazanov denied the charges. He stated that he had never said the words attributed to him, that the FSB officers had planted the bullets in his house and that he could identify the person who had done this. According to his lawyer, the opinion of the FSB expert who had assessed the statements imputed to Mr Ramazanov appeared doubtful as he fell short of the requisite educational level and his previous opinions had contained numerous contradictions (A 599).

(iv) Yevhenii Karakashev

490. Mr Yevhenii Karakashev is a social activist who lived in Yevpatoriya (Crimea).

491. According to open-source information, Mr Karakashev occasionally took part in small-scale protests near the FSB building in the city of Simferopol. In 2016 he planned to organise a protest demonstration "against police lawlessness in Crimea" near the building of the "Ministry of Internal Affairs in Crimea", but the protest was prohibited by local authorities. He was subsequently called by the police on several occasions "with proposals for a conversation". Mr Karakashev had also been actively protesting against plans to construct buildings in the recreational area of Yevpatoriya (A 620).

492. On 31 January 2018 two sets of criminal proceedings were initiated against Mr Karakashev, which were ultimately joined to form a single case. The first set concerned a suspicion of incitement to hatred and enmity regarding a specific social group under Article 282 § 1 of the CrCRF. According to the prosecution, in 2017 Mr Karakashev had published video footage entitled "The last interview of Primorsk's partisans" which had been recognised as extremist in Russia (A 614).

493. The second set of proceedings concerned an accusation of public calls for terrorist activities, under Article 205.2 § 2 of the CrCRF. According to the investigation, in 2014 Mr Karakashev had left comments calling for terrorist activity in a chat group on a social network. No specification was provided as to the comment considered "extremist" except for the indication that experts had reviewed a text starting with "Use grenades against ..." and ending with "... into the windows of the authorities, good luck" (A 614).

494. On 1 February 2018 law-enforcement officers conducted a search of Mr Karakashev's house, following which he was transferred to a temporary detention facility. There are conflicting allegations regarding Mr Karakashev's handcuffing and arrest. Whereas Mr Karakashev stated that he had been handcuffed for seven hours, the investigator contended during a court hearing that he did not remember whether Mr Karakashev had been handcuffed for five minutes or three hours (A 608). While the case material indicated that Mr Karakashev had been formally detained at 6.25 p.m., the

latter contended that he had in fact been detained since 7 a.m. at his home (A 613). Moreover, according to the investigator, Mr Karakashev had not been arrested or in detention, but the officers had simply proposed that he accompany them to the police station.

495. On 2 February 2018 the "Yevpatoriya City Court" placed Mr Karakashev in pre-trial detention for two months on suspicion of incitement to hatred or enmity and public calls for terrorism. On 14 February 2018 the "Supreme Court of the Republic of Crimea" upheld the decision. The "Supreme Court" did not allow Mr Karakashev's relatives to be present at the court hearing (A 619). On 27 March, 19 April and 28 June 2018 the "Yevpatoriya City Court" extended Mr Karakashev's pre-trial detention, referring to his Ukrainian citizenship (A 622-23 and 629).

496. Mr Karakashev denied the accusations against him. He was kept in isolation and did not receive any of the letters sent to him by his friends, journalists or other persons while he was incarcerated in the Simferopol SIZO (A 625).

(e) Cases of "Ukrainian saboteurs"

497. According to the applicant Government, several Ukrainian individuals, whom Russian propaganda described as "ruthless and despicable Ukrainian saboteurs", were arrested in Crimea and charged with planning to undermine the economic security and defence capabilities of the Russian Federation, facing twelve to twenty years in prison. It is believed that the "saboteurs' case" was in fact designed to persuade Russians, Crimeans and Western countries that Ukraine had used its military to harm Russia and endanger civilians in Crimea. Similarly, Russian propaganda used the occasion to glorify the role of President Putin, who arrived at the scene to discuss "measures to protect the peninsula and its residents" from "Ukrainian terrorists". Mr Yevhen Panov, Mr Andriy Zakhtey, Mr Redvan Suleymanov and Mr Volodymyr Prysych were arrested in August 2016. Mr Dmytro Dolgopolov and Ms Ganna Sukhonosova were arrested in September 2016. Mr Dmytro Shtyblikov, Mr Oleksiy Bessarabov, Mr Volodymyr Dudka, Mr Hlib Shabliy, Mr Oleksiy Stohniy and Mr Leonid Parkhomenko were arrested in November 2016.

498. The Russian media have published videos – fragments of operational recordings of the FSB – in which some of the "Ukrainian saboteurs" "confessed" to their crimes. According to the applicant Government, they had not had access to a lawyer and the recorded confessions had been made under torture.

(i) Yevhen Panov

499. Mr Yevhen Panov was a driver at the Zaporizhzhia nuclear power plant in Enerhodar, who had also been very active as a volunteer, both in the civil defence of his home city and with the Ukrainian army.

500. As discovered by his family much later, on 6 August 2016 Mr Panov had received a phone call, seemingly from a fellow volunteer, asking him to help evacuate a family from Crimea who were in danger (A 639).

501. On 7 August 2016, upon his arrival in Crimea, Mr Panov was arrested by the Russian law-enforcement authorities. However, the information about Mr Panov's arrest was disputed: (i) according to the decision given by the FSB investigation authorities on 10 August 2016, Mr Panov had been arrested on 7 August 2016 by FSB officers (A 632); (ii) according to an arrest report and an offence report drawn up on 8 August 2016, Mr Panov had been taken to the "Zheleznodorozhnyy Police Department of Simferopol" after having committed an administrative offence of petty hooliganism, for which he was found guilty on the same day by the "Zheleznodorozhnyy District Court of Simferopol" (A 630-31); and (iii) according to a note sent by an investigator to a "judge of the Zheleznodorozhnyy District Court of Simferopol", Mr Panov had been arrested on 10 August 2016 by order of an FSB officer, who, on the same day, had opened a criminal investigation in respect of Mr Panov for participating in an illegal armed group, an offence punishable under Article 208 of the CrCRF.

502. On 10 August 2016 the FSB released an official statement about averted terrorist attacks in Crimea "prepared by the Main Intelligence Directorate of the Ministry of Defence of Ukraine in order to target critical life-supporting and infrastructure facilities inside the peninsula". The FSB asserted that the attacks had been aimed at destabilising the situation in the run-up to the forthcoming Russian elections in Crimea.

503. The FSB also published a video recording of Mr Panov's purported confession and, supposedly, his and Mr Zakhtey's stockpile of weapons (A 640). The video produced by the FSB was disseminated widely on State-controlled Russian media. It showed Mr Panov: (i) "confessing" to working for Ukrainian military intelligence; (ii) saying that he had been invited to Kyiv and told that a group was being formed to carry out acts of sabotage in Crimea; (iii) listing several names of persons with whom he had come to Crimea in order to decide on the targets for the acts of sabotage (but none of whom he had allegedly been caught with); (iv) indicating that they had chosen a ferry crossing, an oil terminal, a helicopter regiment and a chemical factory as targets; (v) mentioning that they had later stored ammunition in a hiding place; (vi) indicating that he had received remuneration for his actions; and (vii) contending that the acts of sabotage had been organised by Ukraine's military intelligence (A 641 and 645).

504. In the video, Mr Panov showed signs of injuries (abrasions, bruises, scratches) probably inflicted on him during the period between 7 and 10 August 2016 and acted as though he had been instructed as to exactly what statements to make (A 641).

505. On 11 August 2016 the "Kyiv District Court of Simferopol" ordered the placement of Mr Panov in pre-trial detention for two months. The detention was extended on several more occasions until 9 April 2018 (A 633).

506. Mr Panov was charged with preparing to commit acts of sabotage in Crimea as part of an organised group in order to undermine the economic security and defence capabilities of the Russian Federation (Article 30 § 1 in conjunction with Article 281 § 2 (a) of the CrCRF), attempted smuggling of ammunition across the borders of the customs union within the Eurasian Economic Union (Article 30 § 3 in conjunction with Article 226.1 § 3 of the CrCRF), and storage and transportation of ammunition (Article 222 § 3 of the CrCRF).

507. For almost two months Mr Panov was isolated without any communication with the outside world. Mr Panov's relatives only found out about his arrest in Crimea on 10 August 2016 from mass media reports. Mr Panov was also prevented from meeting with the lawyer appointed by his family, while the FSB designated a State-appointed defence counsel in the case (A 642).

508. Against this background, following a request for information by the Court within interim measures proceedings under Rule 39 of the Rules of Court, initiated on 12 August 2016 by Mr Panov's relatives (in the context of application no. 47017/16), information was received from the respondent Government with respect to Mr Panov. In the framework of the same proceedings, Mr Panov's relatives informed the Court that the FSB had prevented the lawyer they had hired for Mr Panov from seeing him and that the FSB had provided an unsigned typed statement from Mr Panov allegedly rejecting the lawyer's services (A 642).

509. According to information provided by the respondent Government to the Court on 7 September 2016, Mr Panov had been arrested on 10 August 2016 on grounds of being suspected of preparing acts of sabotage and had been incarcerated in the temporary detention facility in Simferopol. He had not applied for medical assistance and had had no visible injuries except for minor scratches on his face. No medical documents were submitted by the respondent Government on that occasion.

510. Subsequently, on 28 September 2016 the Russian Government submitted medical documentation to the Court regarding Mr Panov's state of health. According to a medical report drawn up on the day of Mr Panov's incarceration in the Simferopol SIZO, several bodily injuries had been identified on him, in particular various haematomas (on the shoulders and wrists and in the lumbar area) and bruises on the right knee. The medical report had been referred to the investigative authorities for further

investigation. No information about any inquiry that had been conducted was provided by the respondent Government.

511. When, following the above-mentioned interim proceedings, Mr Panov briefly met the lawyer of his choosing, he informed the lawyer that a confession had been extracted from him after he had been subjected to torture by the authorities. The torture included severe beating, being suspended in handcuffs, mock executions and electric shocks, including by clamps applied to his genitals (A 642).

512. In October 2016 Mr Panov and Mr Zakhtey (see paragraph 521 below) were taken to Moscow and placed in the Lefortovo pre-trial detention facility ("the Lefortovo SIZO"). No lawyers or Ukrainian consular officials were allowed to meet them. Mr Panov was forced to refuse the lawyers hired by his family. Mr Panov and Mr Zakhtey were subsequently transferred back to Crimea and placed in the Simferopol SIZO (A 643).

513. On 5 December 2016 "the Kyiv District Court of Simferopol" dismissed a complaint by Mr Panov's lawyer challenging the refusal to meet Mr Panov in prison, in breach of the latter's defence rights. Separate proceedings for judicial review of the lawfulness of the refusal to open criminal proceedings against the investigator who had refused to grant the lawyer access were initiated in the "Kyiv District Court of Simferopol" (A 644).

514. In December 2016 Mr Panov filed a complaint with the investigative authorities describing the details of savage violence used against him during the investigation. The investigator's refusal to open a criminal case regarding the allegations of violence and torture inflicted on Mr Panov by the FSB officers was challenged by Mr Panov's lawyer (A 637). Nevertheless, all the complaints regarding physical violence and torture inflicted on Mr Panov were dismissed by the law-enforcement authorities.

515. On 13 July 2018 the "Supreme Court of the Republic of Crimea" convicted Mr Panov of offences under Article 30 § 1 in conjunction with Article 281 § 2 (a) of the CrCRF (preparing to commit acts of sabotage), Article 30 § 3 in conjunction with Article 226.1 § 3 (attempted smuggling of ammunition) and Article 222 § 3 (storage and transportation of ammunition), and sentenced him to eight years' imprisonment in a strict-regime penal facility (A 636).

516. On 10 August 2016, the Ukrainian investigative authorities opened criminal proceedings into the unlawful deprivation of liberty of Mr Panov under Article 146 § 2 of the Criminal Code of Ukraine.

(ii) Andriy Zakhtey

517. On the night of 6 August 2016, Mr Zakhtey was arrested upon his arrival in the village of Suvorove (Crimea), where he had gone at the request of a friend from Kyiv, in order to pick up a group of persons.

518. Mr Zakhtey was arrested on suspicion of preparing acts of sabotage in Crimea as part of a "subversive group" (an offence under Article 30 § 1 in conjunction with Article 281 § 2 (a) of the CrCRF). During the arrest of several Ukrainians near the village of Suvorove, where weapons had supposedly been discovered in a hiding place, two Russian officers were killed.

519. On 12 August 2016 the Russia 24 television channel broadcast a video featuring Mr Zakhtey's "confessing" to having been "recruited" by the Ukrainian Defence Intelligence and being a member of a "subversive group".

520. On 5 September 2016 the "FSB Investigative Department for Crimea and Sevastopol" brought charges against Mr Zakhtey.

521. In October 2016 Mr Zakhtey, together with Mr Panov, was transported to the Lefortovo SIZO in Moscow. In that detention facility he could meet with his chosen lawyers, whom he informed about the torture he had been subjected to after the arrest, namely torture with electricity. In February 2017 Mr Zakhtey was transported back to Crimea and incarcerated in the Simferopol SIZO, where he was held in overcrowded cells and in inhuman conditions.

522. During the investigation the FSB prevented the lawyer appointed by Mr Zakhtey from meeting with his client. The FSB designated instead a State-appointed defence counsel (the same lawyer as for Mr Panov).

523. On 16 February 2018 the "Supreme Court of the Republic of Crimea" convicted Mr Zakhtey of preparing to commit acts of sabotage (Article 30 § 1 in conjunction with Article 281 § 2 of the CrCRF), unlawful storage and transportation of firearms, ammunition and explosives (Articles 222 § 3 and Article 221.1 § 3), unlawful acquisition of official documents granting rights (Article 324) and use of forged documents (Article 327) and sentenced him to six years and six months' imprisonment in a strict security prison and a fine of RUB 220,000. The court examined the case in special proceedings on the basis of a plea-bargaining agreement Mr Zakhtey had previously entered into with the investigative authorities (A 651).

(iii) Volodymyr Prysych

524. On the night of 12 to 13 August 2016, Mr Prysych was apprehended and beaten by FSB officers in the cabin of his truck during a vehicle inspection in a parking place in Sevastopol. Thereafter, according to Mr Prysych, he was tortured in an attempt to force him to confess to espionage. Because he initially refused, the investigating officers "found" cannabis in his truck. After further acts of torture, he "confessed" in front of a video camera to working for the intelligence service of the Ministry of Defence of Ukraine. He also read out a statement on camera in which he confessed to espionage. He was arrested on 13 August 2016.

525. In August 2016 Russian television channels broadcast a video in which Mr Prysych confessed to having collected information, on the instructions of the Ukrainian intelligence services, about military equipment and vehicles of military units that he had seen in Russia.

526. On 18 May 2017 the "Gagarinskiy District Court of Sevastopol" convicted Mr Prysych of illegal possession of drugs in large quantities (500 grams of marijuana) under Article 228 § 2 of the CrCRF and sentenced him to three years' imprisonment. The judgment in Mr Prysych's case showed no link between him and the defendants Mr Panov and Mr Zakhtey, who were charged with sabotage (A 657).

527. During the trial Mr Prysych had a minor heart attack and stated that he had been tortured. There was no information on any inquiry having been conducted into those allegations (A 656 and 658).

(iv) Dmytro Dolgopolov and Ganna Sukhonosova

528. On 29 September 2016 the FSB reported the arrest of two more individuals in Simferopol: Mr Dmytro Dolgopolov, a Ukrainian soldier who "after annexation stayed in the Russian army", and Ms Ganna Sukhonosova, a fitness instructor. Both individuals were accused of espionage.

529. The Russian State-controlled media portrayed Mr Dolgopolov and Ms Sukhonosova as having "collected and handed to the Ukrainian security service information constituting a State secret about the activities of the units and the formations of the Black Sea Front" (A 659).

(v) Oleksiy Bessarabov, Volodymyr Dudka and Dmytro Shtyblikov

530. Until the spring of 2014, Mr Dmytro Shtyblikov, a former Ukrainian serviceman, had been the director for international programmes at the Nomos Centre (Centre for research into geopolitical issues and Euro-Atlantic cooperation in the Black Sea Region), a Ukrainian non-governmental think-tank founded in Sevastopol in 2003. Mr Bessarabov, one of his colleagues, had been the deputy editor-in-chief of the *Black Sea Security Journal*, which published papers prepared by Ukrainian and foreign experts. For almost ten years Mr Shtyblikov and Mr Bessarabov had conducted research on issues of international and regional security and published a large number of papers in the field. Mr Dudka, a retired Ukrainian military officer, continued serving at the Sevastopol branch of the Ministry of Emergency Situations.

531. Mr Shtyblikov, Mr Bessarabov and Mr Dudka were arrested on 9 November 2016 in Sevastopol. They were accused by the FSB of being members of a sabotage group, with Mr Shtyblikov being the leader of the group (A 662).

532. Mr Dudka was arrested by an FSB officer at 9 a.m. He was taken to a car, where the FSB officer took saliva and skin samples from him. No lawyer or attesting witness was present. Thereafter, a search was carried

out at Mr Dudka's apartment, during which the FSB officers allegedly found two mobile phones. According to Mr Dudka, the mobile phones did not belong to him, and they had not been in his apartment before the search. He had been forced by the FSB officers to hold those mobile phones so that they could find his fingerprints on them. Mr Dudka was arrested after the search and an arrest report was drawn up to that effect at 5.45 p.m.

533. On 10 November 2016 the "Leninskiy District Court of Sevastopol" ordered the placement of Mr Dudka in pre-trial detention. On the way to the court hearing and on the way back to the detention facilities, Mr Dudka was handcuffed and blindfolded with a taped-over rag. He was incarcerated in a temporary detention facility in Bakhchisaray, where he was kept until 12 November 2016. Neither his lawyer nor his relatives were informed about Mr Dudka's whereabouts (A 661).

534. Mr Dudka was accused of having prepared subversive activities directed at the military infrastructure and life-support facilities in Crimea, particularly Simferopol Airport, bus stations in Simferopol, Sevastopol and Yalta, and the Kerch Strait ferry line (A 663).

535. On 11 November 2016 the FSB announced publicly, without giving any names, that "members of a sabotage-terrorist group of the Main Intelligence Department of the Ministry of Defence of Ukraine" had been arrested in Sevastopol. The FSB also made public video recordings containing alleged confessions made by Mr Bessarabov and Mr Shtyblikov, neither of whom had been afforded access to a lawyer.

536. Additional details, including the purported saboteurs' names and the fact that they had been placed in pre-trial detention for two months, were reported by the Russian media. An FSB operational video had been circulated to the Russian media, showing Mr Shtyblikov walking along the street and being very roughly pinned down and handcuffed by the FSB officers. They took him to his apartment while he was handcuffed. The video focused on, *inter alia*, the Ukrainian trident, a Ukrainian flag on the wall, and Dmytro Yarosh's "Right Sector" business card.

537. On 12 November 2016 Mr Dudka was put in an FSB car, which, during the journey, turned off the road. After blindfolding him with a taped-over rag, the FSB officers tortured him with electricity for an hour. As a result, he felt severe physical pain, anxiety and suffering, he screamed and gasped, and his hands were trembling and wrapped up with sticky tape. The officers also threatened to kill him. His mouth was covered with a rag to muffle his screams caused by the increased electricity charge during the torture. He was told that the torture would come to an end once he confessed to his crimes (A 661). Afterwards he was taken to the FSB department in Simferopol. There he was forced to learn by heart a statement prepared in advance by the FSB officers and to repeat it on camera in the presence of an FSB investigator and a lawyer appointed by the FSB.

538. Since 15 November 2016, Mr Dudka has been detained at the Simferopol SIZO. While he was being transferred there on the above-mentioned date, he was handcuffed and blindfolded with a taped-over rag (A 661).

539. When Mr Dudka was allowed to see a lawyer briefly, he informed him that his “confession” had been extracted following threats directed at his family.

540. Even though Mr Dudka was suffering from various chronic diseases, his relatives were not allowed to give him the necessary medication for some time. According to later information, they were eventually allowed to have the medication passed on to Mr Dudka. Mr Dudka’s family feared that he would not recover without specialist care (A 662-63).

541. On 27 January 2017 at a hearing in the “Sevastopol City Court”, Mr Dudka himself complained that he and other prisoners from the Simferopol SIZO were not being provided with the necessary medical assistance. He further complained that the cell he was being held in was cold and draughty and that the medication brought by his relatives were handed to him with a month’s delay (A 662).

542. On 11 November 2016 the Ukrainian investigative authorities opened criminal proceedings in relation to the unlawful deprivation of liberty of Mr Dudka, Mr Bessarabov and Mr Shtyblikov, under Article 146 § 2 of the Criminal Code of Ukraine (A 664).

(vi) Hlib Shabliy and Oleksiy Stohniy

543. Mr Oleksiy Stohniy and Mr Hlib Shabliy were arrested and remanded in custody on suspicion of preparing acts of sabotage. Mr Stohniy was known to be an officer of Ukraine’s military intelligence, while Mr Shabliy was known to be a captain in the Ukrainian Fleet (A 701). According to the applicant Government, the two individuals were placed in pre-trial detention, initially for two months, by a court in Sevastopol during a hearing held behind closed doors. No information about them had been available for some time, with the only source being the Russian media’s reporting at a later stage. It appears likely that they had not been granted access to a proper lawyer or contact with their families. Confessions were extracted from them while they were under the FSB’s full control.

544. In a video recorded by FSB officials, Mr Stohniy claimed that he had received remuneration in exchange for information from Mr Shtyblikov, and that he had been to Kyiv several times. Mr Shtyblikov had allegedly brought the money to him in his shop. Mr Stohniy was supposed to provide information about the infrastructure of the Black Sea Fleet and about those employed on it (A 701).

545. According to Mr Shabliy, at around 8 p.m. on 15 November 2016, he was abducted by unknown persons while he was on the street. Mr Shabliy was taken to a car, handcuffed and blindfolded with a hood put on his head

and driven to an unknown place. He was beaten while in the car and repeatedly asked about his military rank. After being transferred into another car, he was beaten again on the head and chest. Then he was forced to kneel in the car while blindfolded with a taped-over rag for the rest of the journey (around one hour). Subsequently, he was taken to an unknown building where he was interrogated about his affiliation to Ukraine's military intelligence, beaten and tortured with electricity, with wires connected to his fingers. He also received threats to his life and that of his family members (A 668). He was put on a chair with his arms and legs tied by sticky tape. He was forced to "confess" on camera. After he was once again blindfolded, he was told that he would be interrogated by an investigator. The investigator came with an FSB interrogation form already filled in and Mr Shabliy was forced to sign it. He was left on the chair, handcuffed and blindfolded, until the evening of 16 November 2016 (A 665).

546. He was subsequently taken to his workplace, where, after serving him with a court order, the FSB officers carried out a search. During the search two packages were found, which Mr Shabliy stated he had never seen before (A 666). Then he was taken to the FSB department in Sevastopol, where the FSB investigator forced him to sign a statement which had been prepared in advance.

547. The stress experienced during those two days caused Mr Shabliy to suffer cardiac disease and a worsening of his thyroid condition.

548. On 17 November 2016 the "Leninskiy District Court of Sevastopol" ordered Mr Shabliy's pre-trial detention for two months (A 680). The decision was not substantiated by reference to any specific evidence. Mr Shabliy's detention was repeatedly extended on the grounds given initially (A 682) until 30 December 2017. Mr Shabliy was incarcerated in the Simferopol SIZO.

549. On 20 November 2016 information about Mr Shabliy's arrest was disseminated through the State-owned Russia 24 television channel.

550. On 8 December 2016 Mr Shabliy filed a complaint with the "prosecutor's office of Sevastopol", alleging that the statements recorded from 15 to 17 November 2016 had been given under duress. On 21 December 2016 the "prosecutor's office of Sevastopol" dismissed Mr Shabliy's complaint about the statements given under duress (A 668). Mr Shabliy filed a large number of complaints with the Investigative Committee of the Russian Federation regarding the alleged torture, psychological pressure and threats to which he had been subjected. The Investigative Committee refused to open criminal proceedings in relation to those matters. Mr Shabliy also challenged the decisions by the "prosecutor's office" to dismiss his complaints (A 672 et seq.).

551. The adjudication of the criminal proceedings against Mr Shabliy and Mr Stohniy took place in camera.

552. In July 2017 the "Kyiv District Court of Simferopol" convicted Mr Stohniy of espionage for Ukraine and sentenced him to three years and six months' imprisonment.

553. On 23 October 2017 the "Gagarinskiy District Court of Sevastopol" convicted Mr Shabliy of espionage and sentenced him to five years and six months' imprisonment (A 691). On 20 March 2018 the "Sevastopol City Court" upheld the judgment (A 698).

554. In August 2017 the Ukrainian investigative authorities opened criminal proceedings in relation to the unlawful deprivation of liberty of Mr Shabliy, under Article 146 § 2 of the Criminal Code of Ukraine (A 700).

(f) Persecution of Muslims

555. According to the applicant Government, the Muslims living in Crimea found themselves in a difficult situation after March 2014. The new Crimean authorities started conducting extensive searches and seizures of banned literature from Crimean Tatars, and a number of Crimean residents were fined under Article 20 § 29 of the CAORF (production and mass distribution of extremist material), while others were criminally prosecuted for alleged extremist activities.

556. Among the main targets of the authorities in Crimea were those being seen as being affiliated with Hizb ut-Tahrir, an organisation described by the applicant Government as follows:

> "This is a pan-Islamist organisation which is described in the Chatham House study Transnational Islam in Russia and Crimea as tending 'to avoid violent means and instead may focus on social work, education and dialogue initiatives'. Hizb ut-Tahrir does not practise violence and does not consider it a method in their struggle to build the worldwide caliphate. The organisation is banned only in Russia, Uzbekistan and some Arab countries. It was declared a 'terrorist organisation' in Russia through a 2003 Supreme Court [decision]."

557. Any ties with the Hizb ut-Tahrir organisation can trigger criminal convictions and heavy sentences, despite the lack of any single example of its involvement in the actual organisation of a terrorist act. The applicant Government referred to several incidents in this connection.

(i) Bakhchisaray case of Crimean Muslims

558. On 12 May 2016 the FSB conducted a series of searches in Bakhchisarai in the homes of Muslims, as well as at a local café. As a result, four Bakhchisaray residents, Mr Zevri Abseitov, Mr Remzi Memetov, Mr Rustem Abiltarov and Mr Enver Mamutov, were detained and accused of terrorism and involvement in Hizb ut-Tahrir.

(ii) New Bakhchisaray case of Crimean Muslims

(α) Case of Mr Syleyman Asanov, Mr Tymur Ibragimov, Mr Server Zekeryaev, Mr Seyran Saliyev, Mr Memet Belyalov and Mr Ernest Ametov

559. On 9 October 2017 an investigation was opened in respect of Mr Marlen (Syleyman) Asanov under Article 205.5 § 1 of the CrCRF (organising the activities of a terrorist organisation) and against five individuals under Article 205.5 § 2 of the CrCRF (participating in the activities of a terrorist organisation) (A 702).

560. On 11 October 2017 the FSB carried out several searches in Bakhchisaray and arrested thirteen persons, including Mr Syleyman Asanov, Mr Tymur Ibragimov, Mr Server Zekeryaev, Mr Seyran Saliyev, Mr Memet Belyalov and Mr Ernest Ametov. They were taken to the premises of the local police and charged with participating in the activities of an organisation recognised as terrorist in accordance with the legislation of the Russian Federation, under Article 205.5 § 2 of the CrCRF (A 703).

561. On 12 October 2017 the "Kyiv District Court of Simferopol" ordered the pre-trial detention of Mr Saliyev for two months. His detention was extended on several occasions until 9 June 2018 (A 704-05).

562. On 21 January 2018 the Crimean Tatar Resource Centre reported that Mr Saliyev and Mr Zekeryaev had been placed in a hospital for twenty-eight days in order to undergo a compulsory psychiatric examination (A 706).

(β) Case of Mr Server Mustafayev and Mr Edem Smailov

563. On 21 May 2018 Mr Edem Smailov and Mr Server Mustafayev, two Crimean Tatar activists, were arrested after searches conducted in their houses. On 22 May 2018 the "Kyiv District Court of Simferopol" ordered their pre-trial detention for twenty days on suspicion of participating in a terrorist organisation, an offence under Article 205.5 § 2 of the CrCRF. Their pre-trial detention was subsequently extended.

(iii) Yalta case of Crimean Muslims

(α) Case of Mr Emir-Usein Kuku, Mr Muslim Aliev, Mr Enver Bekirov and Mr Vadym Siruk

564. On 11 February 2016 the human rights defender Mr Emir-Usein Kuku, as well as Mr Muslim Aliev, Mr Enver Bekirov and Mr Vadym Siruk, were arrested by armed and masked men who burst into their homes and those of others, using gratuitous force and terrifying children. All four men were Muslims, but it was not at all clear whether they were followers of the Hizb ut-Tahrir organisation.

(β) Case of Mr Arsen Dzheparov and Mr Refat Alimov

565. On 18 April 2016 Mr Refat Alimov and Mr Arsen Dzhepparov were also arrested as part of the so-called "Yalta case" and charged with participating in Hizb ut-Tahrir. They faced long prison sentences following fabricated accusations of terrorism based solely on claims that they were members of an organisation which was banned in Russia, but not in Ukraine. No information about the outcome of the proceedings initiated against them was submitted.

(iv) Sevastopol case of Crimean Muslims

566. Mr Ruslan Zeytullayev, Mr Refat Saifullayev, Mr Rustem Vaitov and Mr Nuri (Yurii) Primov are Ukrainian nationals who were living in Sevastopol. During the proceedings, they were treated by the Russian authorities as being Russian nationals.

(α) Arrest and criminal proceedings

567. On 23 January 2015 FSB officers conducted a search in Mr Zeytullayev's, Mr Vaitov's and Mr Primov's houses. They confiscated various kinds of data carriers (computers, CDs, and USB flash drives). Mr Zeytulayev himself was arrested and accused of organising the activities of the Hizb ut-Tahrir organisation in the villages of Orlyne, Tylove and Shturmove (in the Balaklava district of Sevastopol), whereas Mr Vaitov and Mr Primov were accused of participating in the organisation.

568. On the same day, the "Leninskiy District Court of Sevastopol" placed the three men in pre-trial detention for two months (A 709 and 713). The detention was extended several times (A 710-11, 714-15 and 719).

569. Human rights organisations reported numerous breaches of the rights of Mr Zeytullayev and Mr Primov: the court hearings regarding the extension of the preventive measure were held behind closed doors; the court did not allow the presence of a public defender at the court hearings along with the lawyer; the court denied the defence access to the case material that substantiated the extension of the pre-trial detention; the investigator did not provide the lawyer and the defendant with copies of the case material, thereby depriving them of the opportunity to lodge complaints and to enjoy other rights guaranteed by Russian and international law (A 727).

570. On 2 April 2015 Mr Saifullayev was arrested by FSB officers and accused of participating in the Hizb ut-Tahrir organisation. On the same day, the "Leninskiy District Court of Sevastopol" ordered his placement in pre-trial detention for two months. The preventive measure was extended several times and Mr Saifullayev's challenges against the measure were dismissed by the "Sevastopol City Court" on five occasions (A 717-18).

571. On 7 September 2016 the North Caucasus Circuit Military Court (Rostov-on-Don) sentenced Mr Zeytullayev to seven years' imprisonment in

a penal colony, and Mr Saifullayev, Mr Vaitov and Mr Primov to five years' imprisonment in a penal colony (A 724-26).

572. In July 2017, after a retrial, the Supreme Court of the Russian Federation found Mr Zeytullayev guilty of organising the activities of a terrorist organisation (under Article 205.5 § 1 of the CrCRF) and increased the prison term to fifteen years (A 724).

(β) The prisoners' transfer after conviction and refusal to transfer them to Ukraine

573. After their conviction, the four individuals were transferred to distant penal facilities in the Russian Federation: Mr Zeytulayev was transferred to IK-2, a strict-regime facility in the town of Salavat, in the Republic of Bashkortostan (some 2,500 km away); Mr Saifullayev to IK-17, a common-regime facility in the town of Omutninsk, in the Kirov Region (some 2,700 km away); Mr Vaitov to a penal facility in the Kurgan Region (some 1,500 km away); and Mr Primov to IK-5, a common-regime facility in Yasnyy, in the Republic of Mari El (some 2,200 km away) (A 721).

574. Mr Saifullayev was placed in a punishment cell (SHIZO) at the penal facility for six months, for a probably fabricated offence (a SIM card was found). This deprived him of any phone contact with his family. He was also banned from reading the Koran, a ban which, according to the applicant Government, confirmed that he had been persecuted for his religious beliefs (A 722).

575. During imprisonment Mr Vaitov had spent forty-five days in a punishment cell (SHIZO). According to his lawyer, who visited him at the end of March 2017, Mr Vaitov's sentences (of fifteen days each) had been prompted by his refusal to collaborate with the prison administration by spying and informing on other prisoners. This was later confirmed by the local monitoring group, which had met Mr Vaitov on 6 April 2017. Mr Vaitov's lawyer reported after his visit that the pretexts for putting him in the SHIZO were clearly fabricated (A 721). It was likely that the other two political prisoners – Mr Saifullayev and Mr Primov – who had been transferred to Russian prisons at the same time had received similar treatment.

576. The Kurgan civic monitoring group had confirmed that the conditions in the SHIZO amounted to ill-treatment. It was damp, dark and there was no ventilation. No personal items were allowed, and nor was any contact with, or parcels from, families. Mr Vaitov had not received medical care, despite repeated requests, and had not had access to Ukrainian consular officials. It was common practice after three such disciplinary terms for prisoners to be placed in solitary confinement cells, where the conditions of detention were even worse (A 721).

577. Requests by the prisoners for transfer to Ukraine in order to serve their sentences and endeavours by the Ukrainian authorities to the same end were rejected by the Russian authorities. On 9 June 2017 the Ministry of

Justice of Ukraine contacted the Ministry of Justice of the Russian Federation regarding the transfer of Mr Primov. In return, on 15 November 2017 the Ministry of Justice of the Russian Federation informed it that Mr Primov's transfer was impossible since he was considered to be a Russian national. A similar request submitted on 29 March 2018 concerning Mr Zeytullayev was rejected by the Ministry of Justice of the Russian Federation on the same grounds.

(γ) Criminal investigation opened by the Ukrainian authorities

578. On 3 March 2015 the Ukrainian investigative authorities opened separate criminal proceedings in relation to the unlawful deprivation of liberty of Mr Zeytullayev, Mr Vaitov and Mr Primov, under Article 146 § 1 of the Criminal Code of Ukraine. The criminal proceedings were eventually joined with other cases into a single case concerning the unlawful deprivation of liberty of Ukrainian nationals who were members of the Hizb ut-Tahrir organisation.

(v) New Sevastopol case - Enver Seytosmanov

579. On 10 May 2018 FSB and police officers detained Mr Ernes Seytosmanov and Mr Enver Seytosmanov, two Crimean Tatars who were cousins of Mr Primov (see paragraph 566 above), on suspicion of collaborating with Hizb ut-Tahrir. The law-enforcement officers searched their home and their mother's house in the village of Sadovoye. Mr Enver Seytosmanov was arrested on charges of participating in the activities of a terrorist organisation under Article 205.5 § 2 of the CrCRF. His brother, Ernes, and their mother were designated as witnesses in the case.

(vi) Simferopol case

580. On 12 October 2016 several armed searches were carried out in Simferopol. Five Crimean Muslims were arrested for presumed involvement in the activities of Hizb ut-Tahrir: Timur Abdullayev was charged under Article 205.5 § 1 of the CrCRF (organising the activities of a terrorist organisation), whereas Mr Uzeir Abdullayev, Mr Emil Dzhemadenov, Mr Aider Saledinov and Mr Rustem Ismailov were charged under Article 205.5 § 2 (participating in the activities of a terrorist organisation). They were subsequently remanded in custody.

(vii) Case of Vedzhie Kashka – Mr *Bekir Dehermendzhi,* Mr *Asan Chapukh,* Mr *Kazim Ametov,* Mr *Kurtseit Abdullaiev and* Mr *Ruslan Trubach*

581. On 23 November 2017 the FSB conducted a series of illegal searches in the homes of eight Crimean Tatar activists. Simultaneously, six activists, five of whom were Crimean Tatars, were arrested in the Medobory café and the Marakand café in Simferopol: Mr Bekir Dehermendzhi, father of one of

the defendants in the "case of 26 February" (see paragraph 395 above), Mr Kazim Ametov, Mr Asan Chapukh, Mr Ruslan Trubach, Mr Kurtseit Abdullaiev and Mr Yurii Baranov. They were arrested by Russian security forces without notification of the reasons for their detention and without access to lawyers.

582. At the site of the searches, an 83-year-old veteran of the national Crimean Tatar movement, Ms Vedzhie Kashka, was also present. She was forcibly apprehended and arrested. After she had been placed in a detention facility, her health rapidly deteriorated and later on the same day she died in an ambulance.

583. According to information from the Russian media, the arrests and searches were conducted within the framework of a criminal case regarding a suspicion of extortion from a foreign national, under Article 163 § 2 of the CrCRF. All the searches and arrests were conducted with disproportionate use of force and in breach of the procedural rights of detainees, including the right to a defence. Activists detained at the Medobory café were kept in handcuffs for a long time, lying on the floor. Most of the representatives of the Crimean Tatar community detained in Simferopol were interrogated by security forces and unlawfully deprived of their liberty.

584. On the same day, the FSB agents conducted a search in Mr Dehermendzhi's house. Subsequently, Mr Dehermendzhi was transferred to the local police station, where he was formally arrested (A 728).

585. On 24 November 2017 the "Kyiv District Court of Simferopol" ordered Mr Dehermendzhi's pre-trial detention despite his health problems (bronchial asthma, A 733). On 27 November 2017 Mr Dehermendzhi was charged by the investigator (A 729).

586. From his arrest on 23 November 2017 Mr Dehermendzhi was held in the Simferopol SIZO, where the conditions of detention were inhuman: high humidity, overcrowding and lack of sleeping places (A 732).

587. On 14 December 2017 Mr Dehermendzhi was taken to an emergency medical unit. He was put into an induced coma and was on a mechanical lung ventilator. According to information received from his relatives and his lawyer, the prisoner was held in the Simferopol Municipal Hospital, unconscious and in handcuffs. Mr Dehermendzhi's wife and his lawyer were not allowed to enter his ward, in front of which three police officers were standing guard; moreover, a large number of law-enforcement officers were near the hospital. He was subsequently transferred back to the Simferopol SIZO (A 731).

588. At the time of the submission of the application, Mr Dehermendzhi's state of health was very poor on account of pulmonary oedema and cardiac failure. For five days, Mr Dehermendzhi could not sleep because of acute asthma. His lawyer requested the detainee's hospitalisation and medical treatment, but a domestic court dismissed his request.

(viii) Tablighi Jamaat case

589. On 2 October 2017 the FSB carried out armed searches of four homes and, on that occasion, they arrested Mr Talyat Abdurakhmanov, Mr Renat Suleymanov, Mr Arsen Kubedinov and Mr Seiran Mustafayev. These four persons were accused of involvement in the Tablighi Jamaat movement, which had been banned as extremist in Russia since 2009, but which continued to be legal in Ukraine and, according to the applicant Government, in the vast majority of other countries in the world. They were charged with the organisation of an extremist community under Article 282.1 of the CrCRF, in the absence of any evidence that they were even members of the Tablighi Jamaat movement.

(g) "The Chechen case" – Mykola (Nikolay) Karpyuk and Stanislav Klykh

(i) Background to the criminal proceedings

590. In March 2000 Russian law-enforcement opened a criminal investigation into the participation of members of the "Ukrainian National Assembly – Ukrainian People's Self-Defence" ("UNA-UNSO") in the First Chechen War in 1994-96 on the side of Chechen separatists. In May 2000 the investigation in the case was suspended (A 735).

591. Ten years later, the Russian investigation was resumed, and in December 2013 it was referred to the North Caucasus Federal Circuit Main Investigative Department of the Investigative Committee of the Russian Federation ("the North Caucasus Investigative Department"). The investigation became more intensive after March 2014 and was subsequently directed against, *inter alia*, Mr Mykola Karpyuk, deputy head of the "Right Sector", a far-right political movement in Ukraine, and Mr Stanislav Klykh, a journalist and university professor. Mr Karpyuk was charged under Article 209 § 1 of the CrCRF (leadership of an armed group) and Mr Klykh under Article 209 § 2 (participation in an armed group). Both men were also charged with the murder of two or more persons in connection with the performance by the victims of their official or public duty (Article 102 (c), (h) and (m) of the Criminal Code of the Russian Soviet Federative Socialist Republic ("the RSFSR Criminal Code"), as in force in 1994-95), and the attempted murder of two or more persons in connection with the performance by the victims of their official or public duty (Article 15 § 2 in conjunction with Article 102 (c), (h) and (m) of the RSFSR Criminal Code) (A 819).

592. According to the Russian investigative authorities, UNA-UNSO had been set up in the early 1990s in Ukraine as a military and political far-right organisation with nationalistic ideology. Its perceived aims and tasks were fighting back against the Russian authorities and killing Russian people. Mr Karpyuk, Mr Klykh, Mr A.M. and other Ukrainian nationals had joined the organisation at that time. In December 1994, in Ukraine, Mr Karpyuk, together with other individuals, had played an active role in setting up stable

armed groups comprising the most radical members of UNA-UNSO with a view to taking part in the military conflict in Russia and fighting on the side of the self-declared Chechen Republic of Ichkeria. Mr Karpyuk, together with other members and leaders of UNA-UNSO, travelled to the Chechen Republic in order to take part in the attack and killing of Russian nationals, military personnel and law-enforcement officers. Mr Karpyuk, together with another individual, led a gang called "Viking", which included UNA-UNSO members such as Mr Klykh and Mr A.M. Between December 1994 and January 1995, Mr Karpyuk, Mr Klykh, Mr A.M. and other members of the armed group repeatedly took part in armed conflicts with Russian soldiers during which they killed at least thirty servicemen and wounded thirteen more (A 737 and 819).

593. According to the applicant Government, the principal witness in the criminal case against Mr Karpyuk and Mr Klykh was Mr A.M., a Ukrainian national, who after the end of the Second Chechen War (1999-2001) was convicted and sentenced to a lengthy term of imprisonment for a number of crimes (including murder and robbery) committed on Russian territory. At the time of making the self-incriminating statements, Mr A.M. was serving his sentence and receiving medical treatment in connection with his HIV-positive status, heroin addiction, tuberculosis and two types of hepatitis.

594. In the first statement given in June 2013, Mr A.M. confessed that he had fought against the Russian troops in the Second Chechen War and gave a list of the persons who had fought with him. On 4 October 2013 he confessed again in writing, admitting to his participation in the fighting between December 1999 and March 2000 together with several Ukrainian nationals whose names he did not disclose, including around thirty UNA-UNSO members (A 787).

595. Following his confession, Mr A.M. was transferred from the Sverdlovsk Region, where he was serving his sentence, to a prison in Stavropol, where the North Caucasus Investigative Department is based. On 4 March 2014 Mr A.M., in a further statement, for the first time gave the names of several Ukrainian nationals with whom he had purportedly fought in the Chechen Republic, and whom the Russian authorities believed to be leaders of the Euromaidan protests. On 18 March 2014 Mr A.M. indicated Mr Karpyuk as being one of the participants in the UNA-UNSO group that had allegedly fought in Chechnya in 1994-1995. After Mr Klykh's arrest in Oryol in August 2014 for an administrative offence (A 749), Mr A.M. stated for the first time that he had seen Mr Klykh among the UNA-UNSO militants in Grozny in January 1995 (A 814 and 818).

(ii) Mr *Karpyuk's pre-trial detention and ill-treatment*

596. On 17 March 2014 at 7.20 p.m., Mr Karpyuk and two other persons who were accompanying him were arrested by the Russian security services while they were crossing the Russian-Ukrainian border checkpoint in the

Bryansk Region. Mr Karpyuk and the two other persons were taken to the FSB Department for the Bryansk Region, where they were questioned and eventually charged with failure to obey a lawful order or demand of a serviceman in connection with his duties to protect the State border of the Russian Federation (under Article 18.7 of the CAORF). On 18 March 2014 Mr Karpyuk was found guilty under the above-mentioned provision and sentenced to fourteen days' administrative detention. He was taken at the temporary detention facility of the FSB Department for the Bryansk Region to serve the administrative-offence sentence (A 746).

597. On 18 March 2014 criminal proceedings were initiated against Mr Karpyuk under Article 209 § 1 of the CrCRF (establishment and leadership of a stable armed group (gang)) (A 737).

598. In the morning of 20 March 2014 FSB officers transferred Mr Karpyuk to a temporary detention facility in the town of Yessentuki, in the Stavropol Region (A 749).

599. On 21 March 2014, the Yessentuki City Court placed Mr Karpyuk in pre-trial detention, on charges of participating in the First Chechen War alongside Chechen separatists (A 734). Mr Karpyuk's pre-trial detention was extended on several occasions to a total length of two years and two months (A 737-43).

600. On the evening of 21 March 2014, he was transferred to the Vladikavkaz temporary detention facility. For the first four days there Mr Karpyuk was incarcerated in a cell in which a wire cage measuring 1 sq.m was installed. He was kept in the wire cage and was deprived of sleep by his guard (A 756).

601. During the time spent in that detention facility, the investigators subjected Mr Karpyuk to torture and intimidation aimed at extracting a confession. The initial threats with repercussions against his family having remained without effect, Mr Karpyuk was tortured daily by applying an electrical current to different parts of his body (fingers, genitals, heart) or by putting needles under his fingernails. Additional phychological pressure was put on him by the investigators, who declared on several occasions during the pre-trial investigation that "Russia does not respect human rights". On 25 March 2014 Mr Karpyuk was informed by one of the investigators that an order to apprehend his son and possibly his wife had been issued and that his son would be subjected to the same torture methods as himself. Those threats prompted Mr Karpyuk to confess to the crimes he was charged with, describing the events in the manner already indicated by the investigators during the interrogations (A 757-58 and 769).

602. From March 2014 to September 2015, Mr Karpyuk was completely isolated from the outside world. During the proceedings regarding the extension of his pre-trial detention, he was represented by State-appointed lawyers, who failed to provide a proper defence but simply signed prefabricated documents (A 760). The numerous attempts of both the lawyers

chosen by Mr Karpyuk's family, and of the Ukrainian consular officials, to meet him remained unsuccessful (for the unsuccessful steps taken by the Ukrainian officials to obtain consular access, A 791 et seq.). A lawyer of his choosing had the opportunity to join the case only before the first court hearing. Mr Karpyuk immediately informed him that he had made a confession and given statements against other persons under duress.

(iii) Mr *Klykh's pre-trial detention and ill-treatment*

603. On 8 August 2014 Mr Klykh was arrested in Oryol (Russian Federation). On 11 August 2014 Mr Klykh's father was allegedly called by an unknown person, who informed him that his son had been remanded in custody in a detention facility in Oryol.

604. According to the investigating authorities, Mr Klykh was arrested for failure to obey a lawful order of a police officer (Article 19.3 of the CAORF). During the verification process, the law-enforcement authorities received information that Mr Klykh had been suspected of the murder of Russian servicemen during the Chechen war (A 814).

605. On 20 August 2014 Mr Klykh was transferred to a temporary detention facility in Yessentuki, where he was incarcerated from 22 to 25 August 2014. According to Mr Klykh, for unspecified durations, he was also incarcerated in temporary detention facilities in Pyatigorsk, Zelenokumsk and Vladikavkaz (A 777).

606. From August 2014 to the end of May 2015, Mr Klykh was kept in complete isolation from the outside world. The Russian authorities did not submit any information about Mr Klykh's location to his relatives and to the Ukrainian Government for several months. He was not allowed to meet with a lawyer of his choosing or Ukrainian consular officials (A 816). During the proceedings regarding the extension of his pre-trial detention, he was represented by State-appointed lawyers, who failed to provide a proper defence but simply signed prefabricated documents.

607. In the course of the investigation Mr Klykh provided self-incriminating statements following physical and psychological pressure on him. He had been subjected to different unlawful methods of interrogation, including torture, while in pre-trial detention between 28 August and 22 September 2014: beatings, injuries by handcuffs and electricity, continuous kneeling, administration of alcohol and psychotropic medication, deprivation of food and water followed by administration of water with psychotropic drugs (see Mr Klykh's undated handwritten statement referred to in A 775 et seq.), which resulted in Mr Klykh having hallucinations about the death of his father which were so intense that he did not believe that his father was alive when both his mother and lawyer told him so (A 824).

608. Moreover, according to his lawyers, keeping Mr Klykh in solitary confinement for ten months had had adverse consequences on his mental health (A 824).

609. The infliction of torture on Mr Klykh was also confirmed by forensic medical examinations. Several injuries had been found on Mr Klykh's body according to an expert report conducted on 17 January 2015 by the Office of the Chief Medical Examiner in Grozny. The experts recorded multiple injuries in a wide range of locations on Mr Klykh's body but could not explain the causes of the scars, citing the lack of methodology for identifying sequelae of injuries caused by electrical current on living persons. However, two experts of the Grozny Republican Office of the Chief Medical Examiner testified during a court hearing of 4 April 2016 that a methodology for identifying sequelae of injuries caused by electrical current on living persons was available and that most probably the bodily injuries coincided with the circumstances described by Mr Klykh in his complaint (A 789). According to a further expert opinion issued on 5 August 2015 by the Office of the Chief Medical Examiner of the Kabardino-Balkarian Republic, scars had been found on Mr Klykh's right wrist, right forearm, right and left radiocarpal joints, left and right knees, left and right calves and left and right ankles.

610. In May 2015 Mr Klykh was able for the first time to meet a lawyer of his choosing. After their first meeting he retracted all the self-incriminating statements he had given during the preliminary investigation under duress and chose to remain silent in accordance with Article 51 of the Constitution of the Russian Federation (A 816). Nevertheless, the investigating authorities informed him that the retracted self-incriminating statements would be used as evidence in the court proceedings.

611. Mr Klykh's lawyers sought on two occasions to have the interrogation records containing his previous confessions and statements declared inadmissible as evidence in the criminal proceedings because they had been obtained through the use of prohibited methods of interrogation, including torture. They further objected to the reading of those records before the jury. All those claims were dismissed by the court adjudicating the case (A 789).

(iv) Efforts of the Ukrainian consular authorities to obtain information about the arrest and detention of Mr *Karpyuk and* Mr *Klykh and consular access*

612. On 13 May 2014 the Consulate General of Ukraine in Rostov-on-Don was informed about Mr Karpyuk's arrest. However, they were not officially informed about Mr Klykh's detention and the efforts of the Ukrainian Ministry of Foreign Affairs to locate him remained unsuccessful for a long period of time.

613. Starting in August 2014, the Ministry of the Foreign Affairs of Ukraine and several of its entities based in the Russian Federation sent enquiries to their Russian counterparts or to the investigative authorities seeking information about Mr Karpyuk's and Mr Klykh's arrest, the grounds for those arrests and the place and conditions of their detention, and seeking to ensure their legal protection. Invoking the provisions of Article 13 of the

Consular Convention between Ukraine and the Russian Federation, they also requested to be granted consular access to the two detainees. Most of the letters remained unanswered (A 791-92).

614. On 29 October and 11 November 2014 the Embassy of Ukraine in the Russian Federation received notes from the Ministry of Foreign Affairs of the Russian Federation containing information about Mr Karpyuk's detention and information that consular access to Mr Karpyuk and Mr Klykh would be granted by the North Caucasus Central Investigation Department, but without any indication of the place of detention.

615. On 26 December 2014 the Ukrainian Consul in Rostov-on-Don travelled to Yessentuki in order to meet with Mr Klykh and Mr Karpyuk. He was, however, informed by the investigative authorities that his request to visit the two prisoners had been left without consideration.

616. On 30 December 2014 the Ministry of Foreign Affairs of Ukraine issued a statement emphasising that the failure to ensure the access of the Ukrainian consular officials to the Ukrainian nationals detained on the territory of Russia, in particular Mr Klykh, was a gross violation of the rights of both the Ukrainian nationals and the consular officials to unrestrained access to them.

617. It was only in October 2015 that the Consul General of Ukraine was able to meet Mr Karpyuk and Mr Klykh for the first time. On that occasion he witnessed the scars on their bodies resulting from the torture they had been subjected to (A 821).

(v) Conviction of Mr *Karpyuk and* Mr *Klykh*

618. On 26 May 2016, the Supreme Court of the Chechen Republic, referring to their alleged membership of UNA-UNSO, found Mr Karpyuk guilty as charged and sentenced him to twenty-two years and six months' imprisonment, with the first ten years to be served in prison and the remainder of the sentence in a strict-regime penal facility. Mr Klykh was found guilty as charged and sentenced to twenty years' imprisonment, with the first nine years to be served in prison and the remainder of the sentence in a strict-regime penal facility (A 788). On 26 September 2016 the Supreme Court of the Russian Federation upheld the judgment, which took effect on the same date (A 790).

619. According to the applicant Government, several anomalies could be identified in the above-mentioned court judgments as enumerated below.

(i) The body of evidence on which the Russian courts had relied in order to convict Mr Klykh and Mr Karpyuk consisted principally of the statements of the defendants given at the pre-trial stage (which they had retracted once they had met the lawyers of their choosing) and those of the witness A.M.

(ii) None of the Russian servicemen who had participated in the Chechen war had identified Mr Klykh and Mr Karpyuk as participants in the warfare

in Grozny in 1994-1995 or mentioned that the two individuals in question had committed any crime against them.

(iii) The Ukrainian nationalists who had participated in the Chechen war denied that Mr Klykh and Mr Karpyuk belonged to their ranks (A 818).

(iv) The judgment given on 26 May 2016 contained numerous errors of fact and contradictory findings: (a) the type of the weapons reportedly used by Mr Klykh for homicide did not match the types of wound found on the victims; (b) the conclusions about the location where most of the deaths had occurred did not correspond to the place where, according to the case file, the crime had been committed; (c) the pieces of evidence submitted by the prosecution were not concordant (for example, it was first claimed that 140 Ukrainians had arrived in the Chechen Republic, and then that 500 Ukrainians had taken part in action) or were at variance with the data available in documentary sources in respect of the First and Second Chechen Wars (A 818).

(v) At the time of the alleged criminal activity in the Chechen Republic, Mr Klykh had been a 20-year-old full-time student at the Taras Shevchenko Kyiv National University (A 815).

(vi) "Inhuman treatment" and lack of medical assistance in prison after conviction

620. At the beginning of 2017, it became known that Mr Karpyuk had been detained for some time in Prison T-2 in the town of Vladimir (known as "Vladimirskiy Tsentral").

621. According to the *Verkhovna Rada* Commissioner for Human Rights ("Ukrainian Ombudsperson"), in early January 2017 Mr Klykh had been transferred from a detention facility in Grozny to Verkhneuralsk Prison, in the Chelyabinsk Region (A 805).

622. In a letter to the President of Ukraine of 17 October 2017 (A 770), Mr Klykh's mother reported that she had seen her son during a three-day visit from 9 to 11 October 2017 in the prison mentioned above. Before that visit, she had last seen her son in March 2016 in Grozny. She had noted a significant deterioration in her son's physical and psychological health. Mr Klykh had told her that during the summer of 2017, he had refused to eat for twelve days as a form of protest against his unlawful detention in a Russian prison. When Mr Klykh had requested to be transferred to a medical facility on account of low haemoglobin levels and blood pressure problems, he had been admitted for several weeks to a psychiatric hospital in Magnitogorsk. In the latter facility, he had received intravenous injections of unknown drugs, presumably psychotropic, as a result of which he had lost not only the ability to move but also almost any recollection of his time in the medical institution. During this treatment he had lost weight and become too weak to wash himself (A 771).

623. Mr Klykh was also not provided with adequate medical care in the prison, his wounds were not treated and unknown drugs continued to be

administered intravenously to him. On 15 April 2018 he requested his transfer to another prison facility and went on hunger strike (A 554).

624. On 4 July 2018 Mr Klykh was transferred to the Chelyabinsk Regional Psychiatric Hospital in Magnitogorsk against his will. A lawyer who visited him expressed the view that, taking into account the changes in Mr Klykh's behaviour, he was receiving tranquillisers. Mr Klykh also reported to the lawyer that he was being administered some injections in the hospital (A 822).

*(vii)*Mr *Klykh's and* Mr *Karpyuk's transfer to Ukraine to serve their sentences*

625. Starting in June 2016, the Ministry of Justice of Ukraine repeatedly made requests to the Ministry of Justice of the Russian Federation for consideration of the transfer of Mr Karpyuk and Mr Klykh to serve their sentence in Ukraine by virtue of Article 6 § 2 of the Convention on the Transfer of Sentenced Persons of 1983 (A 802-03). The Embassy of Ukraine in Russia requested further assistance in the acceleration of the transfer proceedings from the Minister for Foreign Affairs of the Russian Federation.

626. In November 2017 the Ministry of Justice of the Russian Federation informed its Ukrainian counterpart of the refusal to transfer Mr Karpyuk and Mr Klykh to Ukraine in accordance with Article 3 § 1 (f) of the Convention on the Transfer of Sentenced Persons (which required that the sentencing State and the executing State agree to the transfer) without specifying any reason. In reply, the Ministry of Justice of Ukraine sought information about the grounds for the refusal and a copy of the judicial decision examining and dismissing the request for the transfer pursuant to Articles 469 and 470 of the CCrPRF. On 19 January 2018 the Ministry of Justice of the Russian Federation reiterated its refusal to transfer Mr Klykh and Mr Karpyuk to Ukraine (A 806-11).

627. On 20 November 2019 the applicant Government informed the Court that Mr Klykh had been transferred to Ukraine on 7 September 2019, in the context of an exchange of prisoners with the Russian Federation (see also A 452-53).

(h) Cases of "the Crimean Four"

628. Mr Oleg Sentsov was known as a film director, writer and civic activist, and Mr Oleksandr Kolchenko, was known as an ecologist and civic activist.

629. According to the Russian investigative authorities they were members of a terrorist group together with Mr Oleksiy Cherniy, Mr Hennadii Afanasiev and four other individuals. Mr Sentsov, the "group leader", supposedly gave orders to organise arson and explosions in Simferopol. Those actions were purportedly aimed at "destabilising the situation on the Crimean Peninsula and influencing the authorities to make a decision about

Crimea's withdrawal from the Russian Federation". Mr Sentsov, Mr Kolchenko, Mr Cherniy and Mr Afanasiev were charged with night-time arson of the office of the Russian Community of Crimea on 14 April 2014 which had resulted in the burning of a door, the damage to which was estimated at RUB 30,000 (approximately EUR 640), and with night-time arson of the office of the regional branch of the United Russia party on 18 April 2014, which had resulted in the burning of a kitchen, the damage to which was estimated at RUB 200,000 (approximately EUR 4,250). The charges also included the preparations for blowing up the monument to Lenin located near the Simferopol railway station on the night of 8 to 9 May 2014 and the Eternal Flame memorial in Simferopol. During their alleged criminal activity, the members of the group were said to have tried to acquire explosives. More specifically, Mr Cherniy had tried to acquire two improvised explosive devices (IEDs) from Mr A.P., who provided him with two mock IEDs which he had received from the FSB in the context of an "operative experiment" ("*оперативный эксперимент*"). The above-mentioned witness had helped the law-enforcement bodies to conduct surveillance while he provided Mr Cherniy with the mock IEDs.

630. The four individuals were arrested in Crimea at different dates in May 2014 (A 830, 835 and 840). On 23 May 2014 they were transferred from Crimea to Moscow and placed in the Lefortovo SIZO (A 877).

631. The criminal cases against Mr Afanasiev and Mr Cherniy were severed from the case of Mr Sentsov and Mr Kolchenko and examined separately.

632. Both Mr Cherniy and Mr Afanasiev "confessed" to the offences in question during the pre-trial investigation and made statements incriminating Mr Sentsov and Mr Kolchenko (A 851 and 881). However, during a trial hearing in the case against Mr Sentsov and Mr Kolchenko, Mr Afanasiev retracted his statement, which he had given under duress (A 845 and 881). Mr Cherniy did not retract his statement but subsequently told the Ukrainian consul that he had been subjected to beatings and threats during his arrest (A 870).

633. All four Ukrainians were forcefully accorded Russian citizenship (which they had constantly refused), which led to the Ukrainian consuls repeatedly being denied visits to them. For example, on 25 May 2014 the Consulate of Ukraine requested leave to visit them in the Lefortovo SIZO, but to no effect (A 862). The Embassy of Ukraine to Russia sent numerous similar requests pursuant to Articles 13 and 14 of the Consular Convention between the Russian Federation and Ukraine of 1993 (A 61) to the Russian authorities between May and August 2014, but to no avail (A 863-64). The Russian authorities claimed that the four individuals had become Russian nationals by virtue of the legislation passed after March 2014 pertaining to the citizenship of persons living in Crimea (see paragraph 62 above and

A 865-67). During his trial in 2015, Mr Sentsov refused to recognise the Russian citizenship which had been imposed on him.

634. The Russian enforcement officers used unlawful methods of investigation, including "barbaric torture", in order to put pressure on the defendants. Following the defendants' conviction, physical and psychological humiliation continued in the facilities where they had been transferred to serve their sentences.

(i) Oleg Sentsov

635. On 10 May 2014 Mr Sentsov was apprehended by FSB officers near his block of flats in Simferopol. They threw him into a bus, handcuffed him, put a bag over his head and took him to the FSB's premises. Once arrived, he was punched, kicked, beaten with a baton, choked with a plastic bag and threatened by unknown persons that he would be raped with a baton and then buried in the forest. He was ordered to testify against the Ukrainian activists by stating that they had aimed to destroy the monument to Lenin near the Simferopol railway station. Mr Sentsov's interrogation lasted for about four hours (A 830-32).

636. On the same day, a senior FSB investigator ordered a search at Mr Sentsov's house (A 832).

637. On 11 May 2014 the "Kyiv District Court of Simferopol" ordered the placement of Mr Sentsov in pre-trial detention. He was charged with establishing a "Right Sector sabotage and terrorist group" that had allegedly committed two arson attacks and prepared to blow up a monument to Lenin and the Eternal Flame memorial, in Simferopol.

638. On 25 June 2014 the Lefortovo District Court of Moscow rejected an application by which Mr Sentsov had sought access to the material from the criminal case file with the aim of submitting an application to the Court.

639. In October 2014 the investigative authorities refused to open criminal proceedings regarding Mr Sentsov's injuries notwithstanding the fact that they were supported by evidence. The decision not to open criminal proceedings found that the prisoner had allegedly been "keen on sadomasochism, and the injuries on his back had been inflicted by some female partner shortly before the arrest" (A 876).

640. The trial of Mr Sentsov and Mr Kolchenko began in the North Caucasus Circuit Military Court on 21 July 2015.

641. On 25 August 2015 the North Caucasus Circuit Military Court found Mr Sentsov guilty of several offences under the CrCRF, namely creating a terrorist organisation (Article 205.4 § 1), committing a terrorist act through arson in an organised group (Article 205 § 2 (a)), preparing to commit a terrorist act by an organised group (Article 30 § 1 in conjunction with Article 205 § 2 (a)), attempting to purchase explosive materials (Article 30 § 3 in conjunction with Article 222 § 3), and storing firearms and ammunition in an organised group (Article 222 § 3). Mr Sentsov was

sentenced to twenty years' imprisonment in a strict-regime facility (A 846). On 24 November 2015 the Supreme Court of the Russian Federation upheld the judgment (A 850).

642. According to the applicant Government, a number of breaches could be identified in the course of the trial:

(i) The sole evidence against Mr Sentsov consisted of Mr Cherniy's and Mr Afanasiev's pre-trial statements given under torture. The latter retracted his statement during the trial.

(ii) There was no consistent evidence supporting the existence of a "Crimean terrorist group" or about its structure, bearing in mind that the defendants did not even know each other.

(iii) The seriousness of the charges against Mr Sentsov related to his purported membership of the organisation "Right Sector", which had been banned in Russia six months after his arrest.

(iv) The prosecution used "secret witnesses".

(v) Mr Sentsov's allegations raised during the hearing of 6 August 2015 about the torture inflicted upon him, consisting of beatings, choking and threats (A 876), were ignored by the domestic courts (A 852).

643. On 24 December 2015 the Meshchansky District Court of Moscow dismissed Mr Sentsov's claims against the FSB and the Russian media outlets aimed at the protection of his honour and dignity. The proceedings were directed against several television channels which, on the sole basis of an FSB press release, had called Mr Sentsov a "terrorist" before his conviction.

644. Mr Sentsov initially served his sentence in a prison in the Sakha Republic. In September 2017 he was reportedly transferred to the Yamalo-Nenets Autonomous Region.

645. On 1 March 2016, upon an application by Mr Sentsov, the Ministry of Justice of Ukraine contacted the Ministry of Justice of the Russian Federation requesting Mr Sentsov's transfer to Ukraine to serve his sentence. On 7 October 2016 the Russian Ministry informed its Ukrainian counterpart that the transfer was not possible since Mr Sentsov was a Russian national (A 866).

646. On 14 May 2018 Mr Sentsov went on hunger strike protesting against the incarceration of sixty-five Ukrainian political prisoners in Russia and demanding their release. On 4 June 2018 Mr Sentsov's lawyer reported that Mr Sentsov had lost 8 kilograms since he had gone on hunger strike and that prison doctors had warned him that he would be at grave risk of kidney failure and consequently of forced feeding if he continued the hunger strike.

647. On 9 June 2018 the President of Ukraine and the President of the Russian Federation discussed during a telephone conversation the release of political prisoners. They agreed that the Ombudspersons of Ukraine and Russia would visit the two countries' prisoners "in the near future". The President of Ukraine drew attention to the hunger strike initiated by a number

of Ukrainian prisoners held in Russia and expressed concern over the deterioration of their state of health.

648. On 8 and 11 June 2018 the Ukrainian Ombudsperson wrote letters to her Russian counterpart, putting forward a procedure for reciprocal visits to the prisoners held in their respective countries and the schedule of such visits. She set forth, *inter alia*, her intention to visit Mr Sentsov on 15 June 2018. In a letter of 13 June 2018, the Russian Ombudsperson replied that she could not accompany her Ukrainian counterpart on her visits to the Russian penal facilities during the period 14-16 June 2018. On 14 June 2018, during a meeting in Moscow, the Russian Ombudsperson proposed that her Ukrainian counterpart visit Mr Sentsov after 22 June 2018. However, given the apparently serious and rapid deterioration of the latter's state of health, that proposal was retracted by the Russian authorities.

649. On 15 June 2018, in accordance with the schedule already notified to the Russian authorities, the Ukrainian Ombudsperson went to the prison in Labytnangi, where Mr Sentsov was being held. However, she was denied access to him by the governor of the prison, who also refused to provide any information about the prisoner's condition, without giving any reasons.

650. During a meeting held on 18 June 2018 in Moscow, the Russian and Ukrainian Ombudspersons discussed a memorandum on reciprocal visits to the prisoners held in the respective countries' custodial facilities. It was also agreed that the Ukrainian Ombudsperson would be granted access to Mr Sentsov on 19 June 2018 at 11 a.m. However, the visit did not take place as the above-mentioned agreement had not been approved by the "higher authorities".

651. According to the applicant Government, the Russian Ombudsperson claimed during the above-mentioned meeting that Mr Sentsov had stopped his hunger strike. On 20 June 2018, in an interview published in the Russian media, she further stated that: (i) Mr Sentsov was being provided with the necessary medical assistance and was undergoing "hunger therapy"; (ii) he was receiving "maintenance treatment of vitamins, glucose and proteins"; and (iii) instead of losing weight he had in fact put on two kilograms. At the same time, according to the Russian mass media, Mr Sentsov continued his hunger strike.

652. In a letter of 21 June 2018, the Ukrainian Ombudsperson informed the Ministry of Justice of Ukraine that she had been refused access to Mr Sentsov in order to check his state of health and that no medical documents had been provided, the only available information on the subject coming from the Russian Ombudsperson's general statements to the Russian mass media.

653. On 7 September 2019 Mr Sentsov was transferred to Ukraine as part of a prisoner exchange between Ukraine and the Russian Federation (A 452-53).

(ii) Oleksandr (Aleksandr) Kolchenko

654. Mr Kolchenko is a Ukrainian left-wing and trade union activist, anti-fascist, anarchist, ecologist and archaeologist.

655. On 15 May 2014 the "Kyiv District Court of Simferopol" ordered a search at Mr Kolchenko's house.

656. On 16 May 2014 Mr Kolchenko was kidnapped by unknown persons near the former building of the Crimean SBU in Simferopol. After being kidnapped, he was beaten on his face and body (A 835).

657. On 17 May 2014 the "Kyiv District Court of Simferopol" placed Mr Kolchenko in pre-trial detention for two months.

658. On 30 May 2014 the FSB made an official statement about Mr Kolchenko's detention in which he was accused of participation in the "Right Sector" organisation.

659. On 25 August 2015, one month after the start of the trial, the North Caucasus Circuit Military Court found Mr Kolchenko guilty of participating in the arson of the office of the United Russia party (Article 205 § 2 (a) of the CrCRF) and participating in a terrorist organisation (Article 205.4 § 2 of the same Code) and sentenced him to ten years in a strict-regime facility (A 846). Mr Kolchenko did not deny that he had participated in the arson attacks, but specified that he had simply kept watch on the street while Mr Cherniy and another person were setting fire to the building (A 872). On 24 November 2015 the Supreme Court of the Russian Federation upheld the judgment (A 850).

660. At the beginning of March 2016, it became known that Mr Kolchenko had been transferred to IK-6, a strict-regime penal facility in Kopeysk, in the Chelyabinsk Region ("the Kopeysk facility"), infamous for frequently reported instances of torture. In the Kopeysk facility, Mr Kolchenko was subjected to systematic pressure. Immediately after his arrival in this facility, he was disciplined for using slang and not wearing a prison uniform and was therefore placed in a punishment cell for fifteen days (A 877).

661. On 1 March 2016, upon an application by Mr Kolchenko, the Ministry of Justice of Ukraine contacted the Ministry of Justice of the Russian Federation requesting Mr Kolchenko's transfer to Ukraine to serve his sentence. On 9 January 2017 the Russian Ministry informed its Ukrainian counterpart that the transfer was not possible since Mr Kolchenko was a Russian national (A 867).

662. Mr Kolchenko was subsequently transferred to IK-15, a strict-regime penal facility in Bataysk, in the Rostov Region.

(iii) Hennadii Afanasiev

663. On 9 May 2014 Mr Afanasiev was arrested by FSB officers while he was taking part in the Victory Day commemoration in Simferopol. The FSB

officers pushed him into a car, where they threw him onto the floor and put a bag on his head (A 880). While they were driving to Mr Afanasiev's appartement, they punched him in the stomach and enquired about the names of participants in a pro-Ukrainian protest. All his personal belongings were seized. They threatened that he would be taken to the forest, where he would dig his own grave. When they arrived at Mr Afanasiev's apartment, he was guided around with a bag on his head and was then pushed on the floor. The FSB carried out a home search but did not seize anything (A 879).

664. On the same day, the "Kyiv District Court of Simferopol" ordered Mr Afanasiev's pre-trial detention for two months.

665. He was then taken to the FSB office and incarcerated in a very cold cell in the basement of the building for ten days. He was not allowed to sleep, eat, or drink water. He was subjected to beatings (while he was chained to an iron chair), threats and other torture techniques with the aim of making him confess that on 9 May 2014 he had tried to blow up a war memorial. On one occasion, he was taken for the night to a place of temporary detention. The FSB officers also brought Mr Cherniy into Mr Afanasiev's prison cell, and forced him to testify against Mr Afanasiev and the others (A 859).

666. As a result of the torture, Mr Afanasiev agreed to give statements against two other activists who had been detained and charged in Crimea. Using the same threats, he was forced to speak on television and make the declarations the Russian authorities wanted.

667. Starting on 23 May 2014, the Consulate of Ukraine requested consular access to Mr Afanasiev, who by then had been transferred to the Lefortovo SIZO, but to no avail (A 863-64).

668. On 17 December 2014 the Moscow City Court convicted Mr Afanasiev of participating in a terrorist organisation (Article 205.4 § 2 of the CrCRF), arson of the office of the Russian Community of Crimea and the regional branch of the United Russia party (Article 205 § 2 (a)), and making preparations to blow up the Lenin monument in Simferopol (Article 30 § 1 in conjunction with Article 205 § 2 (a), and Article 30 § 3 in conjunction with Article 222 § 3). The sentence imposed on him is unknown.

669. In July 2015 Mr Afanasiev was transferred to a remand prison in Rostov-on-Don so that he could take part in the trial of Mr Sentsov and Mr Kolchenko. During his stay in that facility, an FSB officer instructed him to give a statement against Mr Sentsov and Mr Kolchenko and threatened him that, if he refused to do so, his mother might "get into a car crash".

670. On 31 July 2015, at a court hearing during the trial of Mr Sentsov and Mr Kolchenko, Mr Afanasiev retracted his previous statements and informed the court that the authorities had forced him to testify under torture (A 845). After that hearing, Mr Afanasiev was beaten by the FSB officers in the detention facility.

671. On an unspecified date, Mr Afanasiev was transferred to a penal facility near the town of Vorkuta (Republic of Komi, in the Russian

Federation). The transfer was very difficult as the wagons were not equipped with water or sanitary facilities and the temperature inside them was very high (A 881).

672. During his detention in this prison, Mr Afanasiev was placed in a punishment cell, and then in strict-regime barracks, because the prison staff prison had allegedly found a blade among his belongings. According to Mr Afanasiev, the blade had been planted there by the prison staff. He was disciplined a second time when the prison staff allegedly found a SIM card in his belongings which had been kept in a separate room, locked at night. Even though Mr Afanasiev insisted that the SIM card should be checked and the call list for the associated telephone number extracted (which would have shown that he had not made any calls), the prison staff destroyed the SIM card a few days later (A 881).

673. Mr Afanasiev was kept in a cell measuring 150 sq. m with 100 other persons. He also contracted a serious skin disease.

674. Subsequently, Mr Afanasiev was transferred to the IK-31 penal facility in Mikun, in the Komi Republic, where he was incarcerated in small premises together with dangerous criminals. He was kept in solitary confinement for two months and fifteen days (A 881).

675. On 1 March 2016 the Ministry of Justice of Ukraine contacted the Ministry of Justice of the Russian Federation regarding Mr Afanasiev's transfer to serve his sentence in Ukraine. On 21 November 2017 the Russian Ministry informed its Ukrainian counterpart that it was impossible to proceed with the transfer, without indicating any reason. Subsequently, in reply to a request of 25 October 2017 from the Ukrainian Ombudsperson, the Russian authorities explained that the request for the transfer had been dismissed on the basis that Mr Afanasiev was a Russian national.

676. On 14 June 2016 Mr Afanasiev and Mr Soloshenko were transferred to Ukraine following the pardon granted by the President of the Russian Federation (see paragraph 750 below).

(iv) Oleksiy (Aleksey) Cherniy

677. On 9 May 2014 Mr Cherniy was arrested by FSB officers (A 858) and interrogated by an FSB investigator (A 860). On the investigator's orders, a home search was carried out at Mr Cherniy's house, during which some of his personal belongings were seized (A 859). On the same day the "Kyiv District Court of Simferopol" placed Mr Cherniy in pre-trial detention for two months (A 857).

678. Mr Cherniy was charged with participating in a terrorist group and with carrying out terrorist activity related to the arson of the premises of the United Russia party, and with making preparations to blow up the Lenin monument and the Eternal Flame memorial in Simferopol (A 858).

Mr Cherniy was subsequently interrogated on several occasions as a suspect and as an accused.

679. During the pre-trial proceedings and the trial Mr Cherniy was held in several detention facilities, including the V. Serbsky Centre for Social and Forensic Psychiatry (Moscow), the Lefortovo SIZO and the Butyrka SIZO. He spent nine months in complete isolation. On the occasion of his first meeting with the Ukrainian Consul, Mr Cherniy stated that he had been subjected to torture after his arrest in May 2014. He mentioned that he had been beaten on the head and other parts of his body to make him confess to his involvement in criminal activity (A 878).

680. On 21 April 2015 the North Caucasus Circuit Military Court in Rostov-on-Don found Mr Cherniy guilty of planning several terrorist acts in Simferopol and sentenced him to ten years' imprisonment.

681. On 21 October 2016 the Ministry of Justice of Ukraine contacted the Ministry of Justice of the Russian Federation requesting the transfer of Mr Cherniy to Ukraine to continue serving his sentence. On 21 November 2017 the Russian Ministry informed its Ukrainian counterpart that it was impossible to proceed with the transfer, without indicating any reason. Subsequently, in reply to a request of 25 October 2017 from the Ukrainian Ombudsperson, the Russian authorities explained that the request for the transfer had been dismissed on the basis that Mr Cherniy was a Russian national.

682. After his conviction, Mr Cherniy was incarcerated in IK-15, a strict-regime penal facility in Bataysk, in the Rostov Region.

(i) "Right Sector" cases

683. According to the applicant Government, the "Right Sector" organisation was created in Ukraine during the Euromaidan protests as an informal civic organisation of activists from different Ukrainian radical organisations. On 22 March 2014 the political party "Right Sector" was created. On July 2014 the "Right Sector" created a paramilitary unit of volunteers – the "Voluntary Ukrainian Corps 'Right Sector'" – for the defence of the territorial integrity and independence of Ukraine. The unit took part in combat in eastern Ukraine against the Russian army and members of the "LPR" and "DPR". By a ruling of 17 November 2014, the Supreme Court of the Russian Federation declared the "Right Sector" organisation an extremist organisation and banned its activities in the territory of the Russian Federation (A 14 and 16).

684. On 30 September 2016 the Investigative Committee of the Russian Federation instituted criminal case no. 11602007703000092 against leading members of the "Right Sector" organisation and other unidentified leaders of its subdivisions on charges of organising the activities of an extremist organisation, an offence under Article 282.2 § 1 of the CrCRF.

685. Other individuals were charged with participating in the organisation "Right Sector" or with aiding and abetting its activities.

(i) Mykola Dadeu

686. Mr Mykola Dadeu, a businessman, engaged in volunteer activities during the period 2014-15 with a view to helping "Ukrainian volunteer battalions and the Ukrainian armed forces". At the time of his arrest, Mr Dadeu was living in Novorossiysk (Krasnodar Region), together with his wife, who is a Russian national. Mr Dadeu had a temporary residence permit.

687. It appears that Mr Dadeu was arrested by the FSB in July 2017. In this connection, the Memorial HRC reported that Mr Dadeu had been placed in pre-trial detention on 10 July 2017, but had in fact been deprived of his liberty since 13 June 2017 (A 888).

688. In the course of the criminal proceedings opened against him, Mr Dadeu reported to the Oktyabrskiy District Court of Novorossiysk that he had been beaten by the FSB officers. Although an investigation into his statements was conducted with respect to the FSB officers, it did not lead to any results. During the trial he retracted his pre-trial statement, by which he had partially admitted his guilt, alleging that he had made it under duress (A 886).

689. Mr Dadeu was charged with aiding and abetting the activities of an organisation in respect of which a court had issued a binding decision banning its activities, together with extremist activities by way of supplying the means of committing a crime (Article 33 § 5 in conjunction with Article 282.2 § 2 of the CrCRF). It was alleged that in 2015 Mr Dadeu, while living in Mykolaiv, Ukraine, had assisted the "Right Sector" participants in the blockade of Crimea from the Kherson Region, which had been carried out by Ukrainian organisations banned as extremist by the Russian authorities, including "Right Sector". The blockade consisted in setting up checkpoints, organising patrols, and carrying out motor vehicle inspections, and was aimed at stopping food supplies to the population of the peninsula. More specifically, Mr Dadeu, by posting on a Facebook page he had created, had purportedly helped an unidentified Ukrainian national to receive four car tyres and two handheld transceivers as donations for "Right Sector" (A 884).

690. On 21 May 2018 the Oktyabrskiy District Court of Novorossiysk found Mr Dadeu guilty as charged and sentenced him to one year and six months' imprisonment in a colony-settlement (A 883).

691. The applicant Government highlighted that the Russian authorities had failed to prove Mr Dadeu's membership of the "Right Sector" organisation, with Mr Dadeu denying that he was involved in the organisation or shared its values and/or objectives (A 887). Nor, in their view, was there any evidence to support the assertion that Mr Dadeu had caused significant damage to the interests of the Russian Federation. The applicant Government submitted that, contrary to other cases, Mr Dadeu had not been charged with

membership of "Right Sector", but with promoting participation in the organisation of individuals whose identity had not been established (A 888).

(ii) Oleksandr Shumkov

692. At the material time, Mr Oleksandr Shumkov lived in Kherson and was serving in the Ukrainian armed forces.

693. On 6 September 2017 Mr Shumkov was formally arrested (A 889). However, it appears that he had been deprived of his liberty since his illegal abduction on the evening of 17 August 2017 when, according to Mr Shumkov, several men had grabbed him and pushed him into a car. When he regained consciousness, he found himself in Russia in solitary confinement. The Ukrainian police authorities, in the course of their investigation into the disappearance of Mr Shumkov, established that he had crossed the border with Russia at the Bachevsky checkpoint on 23 August 2017 in a car together with three other persons (A 890).

694. Mr Shumkov was charged with participating in the activities of "Right Sector" under Article 282.2 § 2 of the CrCRF (A 891). Even though Mr Shumkov had participated in the organisation "Right Sector" only on the territory of Ukraine, the country of which he was a national, it was considered that he had acted against the interests of Russia and that his actions had brought about a "violent change in the foundation of the constitutional order and a violation of the integrity of the Russian Federation, undermining of the security of the State".

695. On 6 June 2018 the investigation in respect of Mr Shumkov was completed by the investigating authorities of the Bryansk Region and the case was referred to a court (A 891).

696. On an unspecified date, Mr Shumkov began a hunger strike, joining Mr Sentsov, Mr Klykh and Mr Balukh (A 892).

697. The Ukrainian authorities are conducting an investigation under Article 146 § 1 of the Criminal Code of Ukraine (unlawful deprivation of liberty or kidnapping) in order to establish the identity of the individuals involved in the abduction of Mr Shumkov (A 890).

(iii) Roman Ternovskyy

698. Mr Roman Ternovskyy, a Ukrainian national, lived with his partner in Rostov-on-Don.

699. On 11 October 2017 criminal proceedings were instituted against him with regard to his membership of the "Right Sector" organisation. On the same day, those proceedings were joined to earlier proceedings initiated in 2016 against the leaders of the organisation (A 894).

700. On 12 October 2017 Mr Ternovskyy was arrested in Rostov-on-Don under Article 282.2 § 2 of the CrCRF on suspicion of participating in the activities of an extremist organisation (A 893). During a home search in

Mr Ternovskyy's house, various items bearing a "Right Sector" logo were found (A 903).

701. On the same day, two witnesses, V.V.V. and A.V.V., father and son, were interviewed. Both of them were Ukrainian nationals and active supporters of the "LPR" and had lived for some time in Russia. A.V.V. stated that he had seen Mr Ternovskyy in the Luhansk Region together with leaders of one of the battalions of the "LPR" in 2015 (A 898). V.V.V. confirmed his son's statement with regard to the man's name, but specified that he did not remember exactly where and when he had seen him (A 899).

702. On 12 October 2017 Mr Ternovskyy confessed during an interrogation to the crime he had been charged with. He mentioned that from 2014 to 2016 he had lived in the territory of Ukraine. In September 2015 he had joined the "Right Sector" organisation in Kharkiv. He had first been appointed deputy head of the information department of the "Ararat" battalion, described as the combat wing of the organisation. In that capacity, he had been entrusted with fundraising, dissemination of information about "Right Sector" on Facebook, and the provision of items bearing the organisation's logo to its members. He had later been appointed head of the inventory and logistics management department of the organisation in Kharkiv. He had taken part in the organisation of demonstrations, protests and other public events on behalf of the organisation (A 896).

703. On the same day, Mr Ternovskyy was transferred to a temporary detention facility in Moscow.

704. On 13 October 2017 the Basmannyy District Court of Moscow placed Mr Ternovskyy in pre-trial detention for two months (A 894). On 8 December 2017 the District Court extended the pre-trial detention by three months and eighteen days (A 895).

705. On 18 October 2017 the Investigative Committee of the Russian Federation published a statement on its website about Mr Ternovskyy's detention (A 901). On the same day, the Consulate General of Ukraine in Rostov-on-Don – which had not been previously informed about the arrest – sent a request to the Russian authorities seeking information about the grounds for Mr Ternovskyy's detention and his current location, as well as leave for the Ukrainian Consul to visit him (A 902).

706. On 18 October 2017 the "Right Sector" organisation released a statement to the effect that Mr Ternovskyy was not one of its members. He had sympathised with the activities of the organisation, attended several events and provided some help, but had never joined the organisation or the political party "Right Sector". Approximately one year before his arrest, the Kharkiv branch of the organisation had lost all communication with him (A 903).

707. On 19 October 2017 Mr Ternovskyy was charged with participating in the activities of an extremist organisation under Article 282.2 § 2 of the CrCRF. According to the investigation, Mr Ternovskyy, a sympathiser of

actions directed against Russia, had joined the “Right Sector” organisation and from September 2015 to June 2016 had taken part in political demonstrations, protests and other public meetings of the organisation in the territory of Ukraine. In addition, Mr Ternovskyy, while being in the territory of Ukraine, had used his Facebook page for propaganda purposes in order to promote the activities of the “Right Sector” organisation among internet users, including persons who permanently lived in the territory of the Russian Federation. All those actions were believed to have been directed against the interests of the Russian Federation. In particular, on 15 February 2016 Mr Ternovskyy had taken part in a protest action on the territory of Ukraine at the “Hoptivka” (“Goptovka”) checkpoint on the Ukrainian-Russian border, aimed at preventing the entry of a Russian commercial vehicle into the territory of Ukraine. Moreover, on 12 June 2016 Mr Ternovskyy had taken part in an attempt to disrupt the celebration of Russia Day in the Consulate General of the Russian Federation in Kharkiv (A 904).

708. On 19 October 2017 Mr Ternovskyy, questioned as an accused, confirmed all his previous statements.

709. On 31 January 2018 Mr Ternovskyy’s partner was questioned as a witness. She confirmed that from 2014 to 2016 Mr Ternovskyy had lived in Ukraine and that he had told her in a phone conversation during that period that he was a member of “Right Sector”. He had returned to Rostov-on-Don in December 2016. She had also seen his personal belongings carrying the “Right Sector” symbol before his detention (A 900).

710. On 14 February 2018 Mr Ternovskyy was questioned again. He stated that he had visited the territory controlled by the “DPR” and “LPR” in 2014 as he had needed to renew his residence documents. He had communicated with the members of “LPR” at that time, but he was not a member of the “LPR” militia (A 897).

711. On 15 June 2018 the criminal investigation was completed, and the case was referred to the court (A 904).

(j) Case of a so-called “war criminal” - Serhiy Lytvynov

712. Mr Lytvynov was working as a farmer in the border village of Komyshne in the frontline area of the Luhansk Region. He had completed only seven years of education and, according to his fellow villagers, had very poor reading and writing skills. His lawyer confirmed that his client had mental development issues. Mr Lytvynov was not liable for military conscription.

(i) First set of criminal proceedings (war crimes)

713. On 12 August 2014 Mr Lytvynov left for the Rostov Region in the Russian Federation as he needed urgent dental surgery. Mr Lytvynov was admitted to a hospital for several days, where he stayed together with

members of the “LPR” and “DPR” who had fought against Ukrainian soldiers in Donbas. Mr Lytvynov allegedly told them about his “membership” of a Ukrainian volunteer battalion. On 21 August 2014 he was transferred from the hospital by unknown masked persons to the investigation authorities in the Rostov Region.

714. On 29 August 2014 he was charged with war crimes. In the course of the investigation, Mr Lytvynov was subjected to torture and acknowledged that he was guilty of killing civilians in eastern Ukraine, namely the murder of thirty men, and the rape and murder of eight women and a 12-year-old girl. Mr Lytvynov provided the names of the persons alleged to have been killed and confirmed that he had received orders from the commanders of the Ukrainian battalion “Dnipro-1”, aimed “exclusively at the deterioration of the demographic situation among the Russian-speaking population” (A 911).

715. After a meeting with the Ukrainian Consul on 10 November 2014, Mr Lytvynov retracted his earlier statement and stated that he had been subjected to torture. He also denied his service in the “Dnipro-1” battalion (A 911). According to Memorial HRC, there were good reasons to believe that Mr Lytvynov had been subjected to torture and psychological pressure. In particular, according to data on psychological and physiological examination, 73% of Mr Lytvynov’s reactions suggested that he had been tortured (A 910).

716. According to the applicant Government, the investigators admitted that the persons named by Mr Lytvynov during the investigation as possible victims of crimes in the Luhansk Region had never been registered or lived there, and the bodies had never been found. They also acknowledged that he had never been called up for military service in Ukraine armed forces or any other military divisions. Several witnesses who were residents of the villages Mr Lytvynov had named as crime scenes and who had been questioned by investigators also stated that none of the local residents had ever gone missing and no murders had been committed there by representatives of the security agencies of Ukraine.

717. During the investigation, Mr Lytvynov underwent a polygraph test. Mr Lytvynov’s reactions suggested that he had not taken part in any actions in the “Dnipro-1” battalion or purges in Ukraine and had not killed any civilians (A 911).

718. On 30 November 2015 the charges of war crimes were dropped.

719. In the summer of 2016, Mr Lytvynov instituted civil proceedings seeking compensation in the amount of RUB 3,300,000 (approximately EUR 46,500) in respect of the non-pecuniary damage sustained as a result of his unlawful prosecution and torture. In November 2016 a court awarded him compensation in the amount of RUB 1,000 (approximately EUR 13) (A 911).

(ii) Second set of criminal proceedings (aggravated robbery)

720. On 10 September 2015 the Russian authorities initiated a new investigation in respect of Mr Lytvynov. He was eventually charged with aggravated robbery, under Article 162 § 3 of the CrCRF. According to the investigation, in the summer of 2014 Mr Lytvynov had conspired with two representatives of the Ukrainian security agencies who were carrying out a so-called anti-terrorist operation in the south-east of Ukraine and had stolen two cars from a Russian national whom they had threatened with Kalashnikov guns and beaten with rifle butts in the village of Konstantinovka in the Stanichno-Luhanskiy District, which was under the control of "LPR" (A 907). The information about the elements of the offence was purportedly revealed during the polygraph test conducted within the previous criminal proceedings. In particular, according to the findings of the test, Mr Lytvynov's reactions showed that he had had contact with representatives of the Ukrainian security agencies, had received uniforms from them and had passed information to them concerning nationals of the Russian Federation who possessed houses and cars in the Stanichno-Luhanskiy District of the Luhansk Region.

721. On 20 April 2016 the Tarasovskiy District Court of Rostov found Mr Lytvynov guilty of robbery by means of illegal entry into a dwelling, premises or storehouse with the aim of misappropriating another's property of substantial value (under Article 162 § 3 of the CrCRF) and sentenced him to eight years and six months' imprisonment in a strict-regime facility (A 906).

722. The defence argued before the first-instance court that, at the time of the alleged criminal activity, the victim had not been in the territory of Ukraine. In addition, one of the cars alleged to have been stolen had been deregistered in 1997 without the right of recovery, while the other did not belong to the aggrieved party (A 905). Furthermore, according to the material adduced by the purported aggrieved party and examined by Mr Lytvynov's lawyer, the vehicle had been hijacked years before 2014. The data provided by the Ukrainian Border Guard Service showed that the car owner had legally crossed the Ukraine-Russia border for the last time long before the reported offence. The arguments of the defence were dismissed (A 908).

723. In January 2017 Mr Lytvynov was transferred from Rostov-on-Don to a strict-regime facility in the town of Uptar, in the Magadan Region.

724. In July 2018 a Ukrainian consular official was allowed to see Mr Lytvynov for the first time after his conviction (A 912). Mr Lytvynov informed the consular official that: (i) during the last six months he had lost seventeen kilograms because of poor nutrition and the conditions of his detention; (ii) he had been repeatedly placed in a punishment cell for not wearing the prison uniform, even though he had not been provided with one; and (iii) in the course of the investigation he had been administered "truth sodium" in order to make him testify.

725. On 6 March 2019, on the basis of an agreement between the Ministry of Justice of Ukraine and the Ministry of Justice of the Russian Federation, Mr Lytvynov was transferred to Ukraine to serve his sentence (A 909).

726. On 11 July 2019 he was pardoned by order of the President of Ukraine, and he was released on 13 July 2019 (A 909).

(k) Case of a journalist - Roman Sushchenko

727. Mr Roman Sushchenko had been working for Ukraine's State news agency Ukrinform since 2002.

728. On 30 September 2016 he was arrested in Moscow on charges of espionage (an offence under Article 276 of the CrCRF) and placed in the Lefortovo SIZO. The FSB claimed that Mr Sushchenko was a member of the Main Intelligence Directorate of the Ministry of Defence of Ukraine. Mr Sushchenko denied the charges, stating that he had been visiting Moscow for personal reasons unrelated to his work at the time of his arrest (A 913-14). He also said that he had been subjected to psychological torture and had been denied the right to call his wife.

729. The Russian authorities did not inform Mr Sushchenko's family, his employer or the Ukrainian Government of his arrest. His wife only learned about his arrest three days after his initial disappearance. Mr Sushchenko was not allowed to see a lawyer of his choosing until 4 October 2016 (A 914).

730. The criminal case against Mr Sushchenko was classified and only scarce information was available on the subject. During the entire proceedings Mr Sushchenko's contact with his family was restricted by the Russian authorities. In addition, on 24 April 2018 Mr Sushchenko's lawyer was deprived of his lawyer status.

731. On 4 June 2018 the Moscow City Court found Mr Sushchenko guilty of espionage and sentenced him to twelve years' imprisonment in a strict-regime facility.

(l) "Spy cases"

(i) Valentyn Vyhivskyi (Valentin Vygovsky)

732. Mr Vyhivskyi is a graduate of the Department of Electronics of the Kyiv Polytechnic Institute. He participated in the Euromaidan protests.

733. On 18 September 2014, in the context of a private visit to Crimea, he was arrested by FSB officers at Simferopol airport. He was incarcerated in the former building of the Crimean SBU in Simferopol. Several days later he was transferred to the Lefortovo SIZO.

734. The Russian authorities instituted criminal proceedings against Mr Vyhivskyi for illicitly collecting information containing commercial secrets, under Article 183 of the CrCRF. Subsequently, the offence under investigation was reclassified as an offence of espionage under Article 276 of the CrCRF (A 920). Mr Vyhivskyi's case file was classified.

735. Mr Vyhivskyi's parents were not informed of their son's arrest. A few days after his disappearance, his father managed to find out that Mr Vyhivskyi had been arrested. The Embassy of Ukraine in Russia was not notified of Mr Vyhivskyi's arrest until several weeks later and the Ukrainian Consul was not allowed to visit him until eight and a half months later. Once such visits were authorised, prison staff were present at the meetings, exerting psychological pressure on Mr Vyhivskyi.

736. Independent lawyers were denied involvement in the case. Ms Z.S., a human rights defender and a member of the Moscow Public Monitoring Commission, who had met Mr Vyhivskyi in prison, relayed the latter's allegations that the hiring of a lawyer to represent him before the Russian authorities was pointless. Until the adjudication of the case by the first-instance court, only the Russian law-enforcement bodies were aware of the contents of the bill of indictment against Mr Vyhivskyi.

737. On 14 December 2015 the Moscow Regional Court convicted Mr Vyhivskyi under Article 276 of the CrCRF and sentenced him to eleven years' imprisonment in a strict-regime facility (A 915). He was found guilty of collecting confidential documents concerning a military aircraft engine (A 916). The judgment was upheld by the Supreme Court of the Russian Federation on 31 March 2016 (A 919).

738. Mr Vyhivskyi told the relatives who managed to visit him that in the course of the investigation the FSB officers had tried to force him to cooperate with them and had subjected him to torture, including a mock execution.

739. Following Mr Vyhivskyi's and his father's requests seeking the former's transfer to Ukraine in order to serve his sentence and the conversion of Mr Vyhivskyi's sentence by a Ukrainian court, on 1 March 2017 the Ministry of Justice of Ukraine informed the Russian authorities that it agreed to Mr Vyhivskyi's transfer to Ukraine (A 921).

740. On 3 April 2017 the Embassy of Ukraine in the Russian Federation asked the Ministry of Foreign Affairs of the Russian Federation to inform it of Russia's position regarding Mr Vyhivskyi's transfer to Ukraine (A 922). By a letter of 10 November 2017, the Ministry of Justice of the Russian Federation informed its Ukrainian counterpart of its refusal to transfer Mr Vyhivskyi to Ukraine, without giving further details (A 923). Following an enquiry by the Ukrainian authorities about the grounds for refusal (A 924), by a letter of 23 January 2018 the Russian Ministry of Justice reiterated its refusal to transfer Mr Vyhivskyi to Ukraine in order to serve his sentence.

741. After his conviction, Mr Vyhivskyi was transferred to IK-11, a strict-regime facility in Kirovo-Chepetsk, in the Kirov Region.

(ii) Yurii Soloshenko

742. Mr Soloshenko worked for approximately twenty years in the military industry and headed the arms manufacturing factory in Poltava, Ukraine, which, following the collapse of the USSR, continued supplying

parts for the Russian defence industry (A 928). In 2010 he retired; the factory was later closed. However, Mr Soloshenko, who maintained contact with his former business partners, was lured into the territory of the Russian Federation on a false pretext by a long-time business partner who remained in contact with a general of the Ministry of Defence of the Russian Federation (A 930).

743. On 5 August 2014 Mr Soloshenko arrived in Moscow by train at the invitation of this business partner and was arrested by Russian law-enforcement authorities at a railway station, on suspicion of espionage. During the investigation opened by the FSB, Mr Soloshenko was placed in the Lefortovo SIZO.

744. Mr Soloshenko was subjected to psychological pressure. He was offered a change in his status to that of a witness if he took Russian citizenship. This change would have allowed him to benefit from a witness protection programme (A 930).

745. The steps taken by Mr Soloshenko's family to hire an independent lawyer produced no response as the FSB did not allow the chosen lawyers access to Mr Soloshenko (A 928). Simultaneously, the investigators put pressure on Mr Soloshenko to accept the lawyer they had appointed. The appointed lawyer encouraged him to confess, while promising that he would be returned to Ukraine (A 930).

746. For ten months, Ukrainian consular officials were systematically denied leave to visit Mr Soloshenko (A 928). On an unspecified date, following appeals by his relatives to the Ukrainian authorities, the Ministry of Foreign Affairs of Ukraine sent a note to its Russian counterpart requesting that Mr Soloshenko, who was suffering from tachycardia and coronary heart disease, be provided with proper medical care.

747. In October 2015 the Moscow City Court convicted Mr Soloshenko of espionage, under Article 276 of the CrCRF, and sentenced him to six years' imprisonment in a strict-regime facility.

748. On 10 December 2015 Mr Soloshenko was transferred to the Nizhny Novgorod Region to serve his sentence.

749. In April 2016 the Ministry of Justice of Ukraine asked its Russian counterparts to transfer Mr Soloshenko to Ukraine to continue serving his sentence (A 926).

750. On 14 June 2016 Mr Soloshenko and Mr Afanasiev (see paragraph 676 above) were transferred to Ukraine following a pardon by the Russian President.

751. On 4 April 2018 Mr Soloshenko died, aged 75.

(iii) Viktor Shur

752. Mr Shur, a permanent resident of Chernihiv in north-east Ukraine, who had chosen Russian nationality after the collapse of the USSR, apparently for business reasons, was granted Ukrainian citizenship on

9 September 2016, while he was detained, following steps taken by his family in this regard (A 936-37). Mr Shur supported the Euromaidan protests, and later "helped Chernihiv volunteers in their efforts to support the resistance of the Ukrainian troops against the Russian aggression in Donbas".

753. Mr Shur was allegedly detained on 9 December 2014 while crossing the Russian-Ukrainian border. He was unable to telephone his partner until one week later, when he told her that he had been arrested for fighting with a police officer and that he would return in a week (A 934). Mr Shur's relatives did not find out where he was being kept in custody until a month after his arrest, after he had signed all the documents the investigative authorities wanted. Information about the case was published in the media on 22 July 2015, when a court in Moscow extended Mr Shur's pre-trial detention (A 933).

754. Mr Shur was taken into custody for offending a police officer and was sentenced to fifteen days' administrative arrest. He was subsequently accused of disclosing a classified facility, an activity which was categorised as treason and collaboration with the secret services of a foreign State, under Article 275 of the CrCRF. According to the criminal case material, Mr Shur was arrested while allegedly attempting to photograph a "secret facility" in the Bryansk Region of Russia. The "facility" in question was a derelict airport that had been abandoned in the 1980s and had later been used for grazing cattle (A 933-34). The case file concerning Mr Shur was classified as "top secret" and his trial took place behind closed doors.

755. Mr Shur was initially placed in the pre-trial detention facility of Bryansk ("the Bryansk SIZO") and was later transferred to the Lefortovo SIZO (A 934).

756. The Russian authorities prevented Mr Shur from having contact with the Ukrainian consul or with lawyers. All the attempts made by Mr Shur's family to hire independent lawyers proved unsuccessful. The lawyers were either denied access to the case file or did not take part in the proceedings because of pressure by the authorities (A 933-34). Deprived of adequate legal assistance, Mr Shur acknowledged his guilt. It was reported that Mr Shur had been administered psychotropic substances while in pre-trial detention (A 934).

757. On 7 October 2015 the Bryansk Regional Court convicted Mr Shur of State treason by espionage under Article 275 of the CrCRF and sentenced him to twelve years' imprisonment in a strict-regime facility. According to a press release of 8 October 2015, the first-instance court found that on 9 December 2014 Mr Shur had "carried out intelligence activities in the Bryansk Region" by collecting "information constituting State secrets about a high-security facility of the Ministry of Defence of the Russian Federation [acting] on the assignment [received from] the State Border Service of Ukraine. The information collected, if released to the [State] security services

of Ukraine, could have been used against the security [interests] of the Russian Federation" (A 931).

758. Mr Shur was sent to serve his sentence in a strict-regime penal facility in Bryansk. There, he was kept in an unheated cell without light, water, food or sanitary equipment. The conditions of Mr Shur's detention were exacerbated by chronic bronchitis and other medical conditions, for which he did not receive proper treatment (A 932 and 934).

(m) "Cases of so-called terrorists"

(i) Oleksii Syzonovych

759. Mr Syzonovych is a resident of the Luhansk Region and a retired coal miner.

760. Mr Syzonovych was arrested in September 2016 while trying to re-enter the territory of the Russian Federation (A 941). He was charged with setting up, together with an unknown individual, an organised criminal group in Kyiv in April 2014 aimed at committing terrorist attacks in Russia and in Ukraine.

761. According to the Russian investigating authorities, the unknown individual was leading the group, while Mr Syzonovych was in charge of collecting information about transport infrastructure facilities and preparing various explosive devices (using his special skills in explosion engineering). In late May 2016 Mr Syzonovych had received an order to go to Kamensk-Shakhtinsky, a town in the Rostov Region, to inspect and take pictures of the local railway station, and to determine the place where the explosive devices could be planted. A terrorist attack at the railway station had been planned for September 2016 (A 943).

762. During the pre-trial investigation, Mr Syzonovych was held in the Rostov SIZO. After being subjected to ill-treatment (through the application of an electric current) and regular beatings there (A 944), he pleaded guilty to the charges of collecting information about transport infrastructure in the Rostov Region in May 2016 and of making explosive devices with the intent to commit terrorist attacks in Russia and Ukraine (A 943).

763. On 31 July 2017 the North Caucasus Circuit Military Court convicted Mr Syzonovych of preparation of a terrorist act (under Article 30 in conjunction with Article 205 § 2 (a) of the CrCRF), unlawful acquisition, transfer, sale, storage, transport and possession of explosive substances and explosive devices (under Article 222.1 § 3), and illegal crossing of the Russian State border (under Article 322 § 1) (A 939), and sentenced him to twelve years' imprisonment and to fines of RUB 250,000 in total (approximately EUR 3,600). The court's findings were based on Mr Syzonovych's confession and witness statements (A 942).

764. Mr Syzonovych was transferred to serve his sentence in IK-19, a strict-regime facility in Markovo, in the Irkutsk Region.

765. A Ukrainian consular official was granted leave to visit Mr Syzonovych for the first time in March 2018. During the visit, Mr Syzonovych reported that he had been subjected to ill-treatment during the pre-trial investigation (A 944).

(ii) Pavlo Hryb

766. At the material time, Mr Hryb was a first-year student in the Faculty of Philosophy of the National University of Kyiv-Mohyla Academy (A 959) and a Ukrainian blogger.

767. According to the applicant Government, on 24 August 2017 Mr Hryb was abducted by FSB officers while he was in the territory of Belarus (A 949, 957 and 959). Following his abduction, he was transported to Russia and charged under Article 205.1 § 1 of the CrCRF with inciting a person to commit a terror attack (A 953), a crime punishable at the material time by five to ten years' imprisonment and a fine.

768. According to the FSB investigators, between 27 March and 13 April 2017 Mr Hryb had encouraged, via Skype, his then 17-year-old girlfriend who lived in the Krasnodar Region to plant an improvised explosive device in a school in Russia to set up an explosion on 30 June 2017 (A 946).

769. The investigators did not have the records of the Skype conversations between Mr Hryb and the girlfriend supporting their allegation, but only later correspondence between the two. At a later stage, Mr Hryb's girlfriend told Ukrainian journalists that after it had become clear that Mr Hryb had been abducted, she had been threatened with prosecution herself by the FSB if she refused to cooperate by tricking Mr Hryb, and that her home had been searched (A 959). According to Mr Hryb's father, the Russian authorities made Mr Hryb's girlfriend participate in a special cross-border operation aimed at luring Mr Hryb into Belarus at the end of August 2017.

770. The term of Mr Hryb's pre-trial detention was extended a number of times (A 945 and 950).

771. While in pre-trial detention, Mr Hryb was kept in almost total isolation from the outside world. At the FSB investigators' request, court hearings concerning the extension of the term of his pre-trial detention were held behind closed doors. He was not allowed consular visits or visits from his mother (A 959). According to the Ukrainian Government, that approach seemed to have been part of a deliberate policy aimed at putting maximum pressure on Mr Hryb, a standard procedure in cases involving Ukrainian nationals held illegally in Russia.

772. Mr Hryb had had a disability since childhood on account of portal hypertension, an illness which put his life at risk, adversely affecting the cardiovascular system and requiring constant medical supervision and specific treatment (A 951, 954 and 959).

773. While in detention, Mr Hryb was not allowed to take the requisite medication and two Ukrainian physicians appointed by the Ministry of Health

of Ukraine were not allowed to visit him in the detention facility (A 958). When the physicians came to Krasnodar in October 2015, they were denied access to Mr Hryb (A 954-56). The area in which he was detained had no expert physicians able to provide adequate treatment to Mr Hryb (A 959). Mr Hryb's Ukrainian physician considered that the medical treatment available to his long-term patient while in detention in Russia was inadequate given his state of health (A 952).

2. *Facts of the case as submitted by the respondent Government*

774. The facts as presented by the respondent Government are set out in this section and are drawn from their memorial submitted on 28 February 2022. The respondent Government's version of the facts contains references to different episodes of events which are set out separately. Following those submissions, the respondent Government have ceased to correspond or cooperate with the Court in any way.

(a) Transfer of prisoners

775. The Ministry of Justice of the Russian Federation had considered applications for the transfer of the following convicted persons to Ukraine to continue serving their sentences of imprisonment:
- Mr Valentin Vygovsky (see paragraph 740 above);
- Mr Ruslan Zeytullayev (see paragraph 577 above);
- Mr Nikolay Karpyuk (see paragraph 626 above);
- Mr Aleksandr Kolchenko (see paragraph 661 above);
- Mr Stanislav Klykh (see paragraph 626 above);
- Mr Yurii Primov (see paragraph 577 above);
- Mr Oleg Sentsov (see paragraph 645 above); and
- Mr Aleksey Cherniy (see paragraph 681 above).

776. On the basis of the provisions of Article 3 § 1 of the Convention on the Transfer of Sentenced Persons of 1983, which was applicable in relations between the Russian Federation and Ukraine, a convicted person could be transferred only if a number of conditions were met, including: if he or she was a citizen of the State in which the sentence was to be served (sub-paragraph (a)); if the actions or omissions in connection with which the sentence was passed constituted a criminal offence under the legislation of the State in which the sentence was to be served or would be a criminal offence if they took place on its territory (sub-paragraph (e)); and if both the sentencing State and the administering State agree to such a transfer (sub-paragraph (f)). Pursuant to section 6(1) of Federal Law no. 62-FZ of 31 May 2002 on citizenship of the Russian Federation, a Russian citizen who also holds another citizenship was considered by the Russian Federation to be exclusively a citizen of the Russian Federation (except for the cases provided for by an international treaty of the Russian Federation or federal

law). There was no international treaty between Russia and Ukraine regulating the issue of dual citizenship.

777. As far as Mr Zeytullayev, Mr Kolchenko, Mr Primov and Mr Sentsov were concerned, the respondent Government referred to letters issued on different dates in 2016 and 2017 by the Main Department for Migration of the Ministry of Internal Affairs of the Russian Federation, attesting that the four individuals were Russian citizens in accordance with section 4(1) of Federal Constitutional Law no. 6-FKZ, since, on 18 March 2014, they had had a registered place of residence in Crimea (Simferopol or Sevastopol). Mr Zeytullayev, Mr Kolchenko and Mr Primov had also been issued with Russian passports in 2014 (on 16 December, 26 March and 14 May respectively). In these circumstances, their transfer to Ukraine on the basis of the 1983 Convention had not been possible, and the Ukrainian Ministry of Justice had been informed of that decision by the Ministry of Justice of the Russian Federation.

778. With respect to the remaining four individuals (Mr Vygovsky, Mr Karpyuk, Mr Klykh and Mr Cherniy), the Ministry of Justice of the Russian Federation refused to transfer them by virtue of Article 3 § 1 (f) of the 1983 Convention. Beside the provisions of Russian legislation, they took account of material received from the Federal Service for the Execution of Punishments relating to the transfer, the crimes committed by the convicted persons, and the positions taken by the Russian departments concerned. The refusals were notified to the Ministry of Justice of Ukraine.

779. Mr V.P. Vygovsky, a Ukrainian citizen, acting against the security of the Russian Federation, committed espionage by collecting and storing information constituting a State secret for the purpose of transferring it to a representative of a foreign State. He was convicted by a judgment of the Moscow Regional Court of 15 December 2015, under Article 276 of the CrCRF, and sentenced to eleven years' imprisonment. The Ministry of Justice of Ukraine submitted a copy of the decision of the Damytskiy District Court of Kyiv of 10 February 2017 which had brought the sentence of the Russian court into line with the legislation of Ukraine. According to that decision, if he had committed the acts in question in the territory of Ukraine, Mr Vygovsky would have served a sentence of eleven years' imprisonment for an offence under Article 114 § 1 of the Criminal Code of Ukraine (collection for the purpose of transferring statements constituting a State secret to a representative of a foreign State, committed by a foreign citizen). Nevertheless, pursuant to the above-mentioned provisions, the perpetrator of that offence was "a foreign citizen or a stateless person" and in accordance with Article 114 § 2, "a person shall be released from liability if [he or she] ceases the activities provided for in paragraph one of this Article and voluntarily informs the public authorities about what he or she has committed, if, as a result of this and the measures taken, harm to the interests of Ukraine has been prevented". Considering that Mr Vygovsky was a Ukrainian citizen

and that his actions "did not harm the interests of Ukraine", it was likely that he would be released from criminal liability in the event of his transfer to Ukraine and following a possible appeal against the above-mentioned decision of the Damytskiy District Court of Kyiv. Consequently, the Russian authorities found that the principle of justice would not be observed and the purpose of punishment (restoration of social justice, correction of the convicted person and prevention of new crimes, pursuant to Article 6 § 1 and Article 43 § 2 of the CrCRF) would not be achieved.

780. Mr N.A. Karpyuk was convicted by a judgment of the Supreme Court of the Chechen Republic of 26 May 2016, under Article 209 § 1 of the CrCRF (creation of a stable armed group (gang) for the purpose of attacking citizens or organisations, as well as leadership of such a group and participation in offences committed by it), Article 102 (c), (i) and (o) of the RSFSR Criminal Code and Article 15 § 2 in conjunction with Article 102 (c), (i) and (o) of the RSFSR Criminal Code (premeditated murder with aggravating circumstances) and sentenced to twenty-two years and six months' imprisonment, with the first ten years to be served in a prison regime.

781. Mr S.R. Klykh was convicted by a judgment of the Supreme Court of the Chechen Republic of 26 May 2016 under Article 209 § 2 of the CrCRF (participation in a stable armed group (gang) and attacks committed by it) and Article 102 (c), (i), (o) of the RSFSR Criminal Code (premeditated murder under aggravating circumstances) and by a judgment of the Zavodskoy District Court of Grozny of 21 November 2016 under Article 297 § 1 of the CrCRF (contempt of court) and sentenced to a total term of twenty years and one month's imprisonment, with the first nine years to be served in a prison regime.

782. On 7 September 2019 Mr Karpyuk and Mr Klykh were transferred to the competent authorities of Ukraine, as part of the exchange of prisoners between Russia and Ukraine.

783. Mr A.V. Cherniy was convicted by a judgment of the North Caucasus Circuit Military Court of 21 April 2015 of multiple offences provided for by Article 205.4 § 2, Article 205 § 5 (a), Article 30 § 1 in conjunction with Article 205 § 2 (a), and Article 30 § 3 in conjunction with Article 222 § 3 of the CrCRF (creation of a terrorist organisation and participation in it, performing terrorist activities, illegal circulation of firearms, their main components and ammunition) and sentenced to seven years' imprisonment. According to a letter of 26 October 2017 received by the Ministry of Justice from the Main Department for Migration of the Ministry of Internal Affairs of the Russian Federation, there was no information available about the acquisition of citizenship of the Russian Federation by Mr Cherniy.

(b) “The case of 26 February”

(i) Initiation of proceedings

784. On 27 June 2014 the “Crimean Investigative Department” initiated two criminal cases (nos. 2014467091 and 2014467092) for infliction of death by negligence to two persons (under Article 109 § 1 of the CrCRF) during a public rally on 26 February 2014. On 19 January 2015 the cases were joined into a single case under no. 2014467091, which was referred to the “Department for Investigation of Major Crimes” for further investigation.

785. On 28 January 2015 the “Department for Investigation of Major Crimes” initiated a new criminal case no. 2015417003 for riots, an offence under Article 212 §§ 1 and 2 of the CrCRF. On 28 January 2015 this criminal case was joined to case no. 2014467091 (see previous paragraph) under the latter number.

(ii) “Arrest of Nariman Dzhelyal[ov], the First Deputy Chairman of the Mejlis of the Crimean Tatar People”

786. Within the framework of these criminal proceedings, Mr N. Dzhelyalov was questioned as a witness on 27 March, 24 April and 28 July 2015. No pre-trial restrictive measure was ordered within the proceedings against Mr Dzhelyalov, given that he was neither a suspect nor an accused. No application for the postponement of the questioning was made. Nor was any complaint challenging the investigator’s acts submitted either.

(iii) Arrest of Mustafa Dehermendzhi

787. On 7 May 2015, within the framework of the same criminal investigation, the “Crimean Investigative Department” ordered Mr Dehermendzhi’s arrest under Articles 91 and 92 of the CCrPRF on suspicion of committing a crime under Article 212 § 2 of the CrCRF (participation in mass disorder).

788. On 8 May 2015 Mr Dehermendzhi was accused of committing the above-mentioned crime. When questioned, he confessed to certain aspects of the crime he had been accused of and also gave information about the circumstances of the crime.

789. On 8 May 2015 the “Kyiv District Court of Simferopol” placed Mr Dehermendzhi in pre-trial detention, which was subsequently extended until the case was sent to the “Supreme Court of the Republic of Crimea” on 8 December 2015 for consideration on the merits.

790. Neither the procedural findings nor any actions of the investigating authority were challenged.

(iv) Arrest of E.E. Emirvaliev, a Crimean Tatar activist

791. On 18 February 2015, Mr E.E. Emirvaliev was arrested under Articles 91 and 92 of the CCrPRF on the grounds that the purported victim of his actions had indicated him as the person who had committed the crime (a ground provided for in Article 91 § 1 (2) of the CCrPRF).

792. On 20 February 2015 the "Kyiv District Court of Simferopol" placed Mr Emirvaliev in pre-trial detention for two months, until 18 April 2015. The "District Court" found that there were sufficient reasons to assume that, while on bail, he could escape from the preliminary investigation and the trial and continue to engage in criminal activities.

793. On 17 April 2015 the investigator ordered the release of Mr Emirvaliev under a personal guarantee pursuant to Article 110 of the CCrPRF. The investigator took into account the fact that Mr Emirvaliev had actively cooperated with the investigation by making a statement by which he confessed to his crime and provided information concerning other participants in the riots, as well as the fact that he was officially married and had under-age children. The procedural decisions of the investigating authority in respect of Mr Emirvaliev were not appealed against.

(v) Arrest of Ali Asanov

794. On 15 April 2015 Mr Ali Asanov was arrested pursuant to Articles 91 and 92 of the CCrP, on the grounds that his involvement in the offence was confirmed by the entirety of the evidence collected in the criminal case: statements of the victims and of the witnesses, and other physical evidence.

795. On 17 April 2015 the "Kyiv District Court of Simferopol" placed Mr Asanov in pre-trial detention, which was extended for the duration of the investigation. The procedural decisions of the investigating authority were not challenged.

(vi) The trial

796. On 9 December 2015 criminal case no. 2015417109 on charges of organisation and participation in mass disorder (under Article 212 §§ 1 and 2 of the CrCRF) concerning Mr Chiygoz, Mr E.E. Kantemirov, Mr E.E. Emirvaliev, Mr Dehermendzhi, Mr A.A. Asanov and Mr A.N. Yunusov was referred to the "Supreme Court of the Republic of Crimea" for consideration on the merits.

797. In the course of the proceedings, the case was disjoined in respect of Mr Chiygoz, who on 11 September 2017 was found guilty by the "Supreme Court of the Republic of Crimea" of having committed an offence under Article 212 § 1 of the CrCRF (organisation of mass disorder) and sentenced.

798. On 19 June 2018 the "Central District Court of Simferopol" found Mr Dehermendzhi, Mr E.E. Kantemirov, Mr E.E. Emirvaliev,

Mr A.A. Asanov and Mr A.N. Yunusov guilty of participation in mass disorder, an offence under Article 212 § 2 of the CrCRF. Mr Kantemirov and Mr Yunusov were sentenced to a four-year prison term, suspended on probation; Mr Asanov and Mr Dehermendzhi were sentenced to a term of four years and six months' imprisonment, suspended on probation, and Mr Emirvaliev was sentenced to a term of three years and six months' imprisonment, suspended on probation. The judgment became final on 14 February 2019.

(c) Searches in the house of Mr M. Asaba, a Mejlis member, and the premises of the Mejlis of the Crimean Tatar People and its newspaper *Avdet* as part of the investigation of the "3 May case"

799. On 3 May 2014, in the vicinity of the Armyansk border crossing point for individuals and vehicles ("Turetsky Val"), located at the 115th kilometre on the Kherson-Dzhankoy-Feodosiya-Kerch highway, at a distance of about 4 km to the north of the administrative boundary of Armyansk, (Krasnoperekopsky District of the "Republic of Crimea" of the Russian Federation), during a protest action relating to the prohibition on Mr Dzhemilev's entering the territory of the Russian Federation, an unidentified person used violence against an officer of the "Berkut" special police battalion.

800. On 4 May 2014 the "Investigative Department of Armyansk" initiated criminal case no. 2014687003 under Article 318 § 1 of the CrCRF (use of violence against a public official) in relation to the above-mentioned facts. On 1 July 2014 the Crimean investigative authorities initiated criminal cases no. 2014417030 and no. 2014417031 under Article 318 § 1 (use of violence against a public official) and Article 319 (public insult of a public official) of the CrCRF, for acts committed against officials of the Ministry of Internal Affairs performing their official duties – namely, protecting the territory of the Russian Federation – on 3 May 2014 at the Armyansk checkpoint. The three criminal cases were joined into a single set of proceedings under no. 2014687003.

801. During the investigation, other instances of the use of violence against six officials of the "Berkut" special police battalion were identified, including five individuals being run over by a car driven by Mr R.A. Abdurakhmanov, Mr M.R. Abkerimov, Mr T.P. Smedlyaev, Mr E.Kh. Ebulisov and Mr E.M. Osmanov.

802. With a view to checking whether the actions of the five individuals had been coordinated and organised, home searches were envisaged at the places of residence of Mr E.E. Bariev and Mr M. Asaba. This investigative measure was triggered by a notification from the "Centre for Countering Extremism of the Ministry of Internal Affairs of the Republic of Crimea" on the possible involvement of Mr E.E. Bariev and Mr M. Asaba in the organisation of protest actions of 3 May 2014, as well as information that

firearms and ammunition, items withdrawn from civilian circulation and items or literature of extremist nature might be stored in their homes.

803. On 3 September 2014 the "Kyiv District Court of Simferopol" authorised the home searches, which were eventually carried out on 16 September 2014.

804. During the investigation it was also established that representatives of the Mejlis of the Crimean Tatar People had been involved in the organisation of the protest actions on 3 May 2014. Moreover, information was received from the "Crimean FSB Department" that weapons and ammunition, items withdrawn from civilian circulation, and items or literature of an extremist nature might be stored in the premises of the central office of the Mejlis. On the basis of those data and in order to assess whether the actions of the five individuals concerned had been coordinated and organised, the investigating authorities ordered a search at the premises of the Mejlis.

805. The search of the premises was carried on 16 September 2014. During the search, electronic media devices, photographic materials and documentation belonging to the Mejlis were seized.

806. On 6 February 2015 and 3 March 2015 the seized property was returned following its examination, except for the minutes of the meeting of the Mejlis held on 2 May 2014, which were important for the investigation. The holding of a peaceful gathering on 3 May 2014 in support of Mr Dzhemilev, the spiritual leader of the Crimean Tatar people, was mentioned in those minutes, which showed that the Crimean Tatars were aware of the action in support of Mr Dzhemilev at the "Turetsky Val" checkpoint in Armyansk.

807. Neither the lawfulness nor the measures taken to enforce the search order were challenged.

(d) Criminal case against Aleksandr (Oleksandr) Kostenko

808. On 6 February 2015, the investigative authorities initiated criminal case no. 2015417005 against Mr A.F. Kostenko, on charges of intentional harm to health causing a short-term health disorder and based on ideological hatred and enmity (under Article 115 § 2 (b) of the CrCRF) and unlawful acquisition, transfer, sale, storage, transport or carrying of firearms, their main components and ammunition (under Article 222 § 1 of the CrCRF).

809. On 15 May 2015 the "Kyiv District Court of Simferopol" sentenced Mr Kostenko to four years and two months' imprisonment in a common-regime penal facility.

810. By a judgment of 26 August 2015, the "Supreme Court of the Republic of Crimea" reduced the sentence to three years and eleven months' imprisonment.

811. On 24 February 2016 the Presidium of the "Supreme Court of the Republic of Crimea", hearing a cassation appeal, held that the criminal and

criminal procedure laws had been breached and terminated the criminal proceedings in the part concerning the charges of unlawful acquisition and carrying of a component of a firearm, for lack of *corpus delicti.* It found Mr Kostenko guilty of storage of the main component of firearms, an offence under Article 222 § 1 of the CrCRF, and sentenced him to three year and six months' imprisonment. It upheld the conviction under Article 115 § 2 (b) of the CrCRF.

812. During the preliminary investigation, Mr Kostenko's lawyer lodged a complaint with the Investigative Committee of the Russian Federation, which was received on 28 April 2015. He argued that Mr Kostenko had been subjected to torture and physical violence by State officials (the governor of the Simferopol SIZO and an officer of the Crimean FSB) conducting the preliminary investigation while he had been placed in pre-trial detention and incarcerated in the Simferopol SIZO.

813. The complaint was considered on 22 May 2015. On 25 May 2015 the investigative authorities refused to institute criminal proceedings against the SIZO governor for lack of the *corpus delicti* provided for in Article 286 § 3 (a) of the CrCRF (actions undertaken by a public official which clearly exceeded his or her authority and entailed a substantial violation of an individual's rights and lawful interests, committed with violence or the threat of violence). The prosecutor's office confirmed the lawfulness of the decision.

814. The materials collected concerning the Crimean FSB officer were transmitted for investigation to the Black Fleet military investigative authorities on 6 May 2015.

815. On 19 June 2015 Mr Kostenko's lawyer lodged a complaint with the Investigative Committee of the Russian Federation against Ms Natalia Poklonskaya, the Prosecutor General of the "Republic of Crimea", for incitement to hatred or enmity, as well as humiliation of human dignity by a person acting in an official position (an offence under Article 282 § 2 (b) of the CrCRF).

816. On 29 July 2015 the investigator found that there were no elements indicating the commission of a crime by the Prosecutor General of the "Republic of Crimea", and therefore there were no grounds for conducting a pre-investigation inquiry and initiating a criminal case. By a judgment of 24 September 2015, the "Kyiv District Court of Simferopol" upheld the investigator's decision.

(e) Criminal case against Ukrainian activists in Crimea ("Cherkasy case")

817. On 15 June 2015 the Russian investigative authorities initiated criminal case no. 2015417083 on grounds of attempted murder with aggravating circumstances (an offence under Article 30 § 3 in conjunction with Article 105 § 2 (a), (b), (f), (g) and (1) of the CrCRF).

818. During the preliminary investigation it was established that on 19 February 2014 at about 8 p.m., a group of unidentified persons had stopped a passenger bus transporting several tax police officers, on the Kyiv-Odesa highway in the vicinity of the village of Podobnoye in the Mankovsky district (Cherkasy Region, Ukraine). The unidentified persons were sharing the ideology of the Ukrainian radical nationalist organisations “Svoboda”, “Tryzub”, and “Right Sector”, were aiming to bring about the violent overthrow of the constitutional system of Ukraine and the executive authorities, and were displaying a feeling of political and ideological hatred and enmity towards the law-enforcement officers of Ukraine perceived as being the representatives of the legal authority. After finding out that the thirty-nine law-enforcement officials present in the bus had been sent to Kyiv, Ukraine, to carry out official activities for the protection of public order, the attackers had broken the windows of the bus and begun throwing Molotov cocktails inside the bus with the aim of killing the officials, actions which had caused them bodily injuries of various degrees of severity. When the officials managed to get out of the bus, the assailants had inflicted upon them numerous bodily injuries of various degrees of severity and shouted insults at them. After the assailants learnt that the victims were residents of Crimea and law-enforcement officers, their criminal activity had intensified, subjecting the victims to overt discrimination through violent torture, bullying, threats and humiliation with the infliction of bodily harm. The factual circumstances were confirmed by the statements of two witnesses.

819. On account of the fact that the victims of the offence were Russian citizens, and considering that a criminal case had not been opened in the territory of Ukraine, the initiation of the criminal proceedings by the Russian authorities was based on the provisions of Article 12 § 3 of the CrCRF, pursuant to which persons who have committed a crime outside the Russian Federation are subject to criminal liability where the offence committed by them is directed against citizens of the Russian Federation.

820. On 30 June 2016 a separate criminal case (no. 2016417071) was initiated on the grounds of intentional destruction of or damage to property (a crime under Article 167 § 2 of the CrCRF) regarding the bus which had been destroyed by fire during the events of 19 February 2014, causing significant damage to its owner. The case was joined to case no. 2015417083.

821. On 19 February 2018 the preliminary investigation was suspended under Article 208 § 1 (1) of the CCrPRF, that is, owing to the fact that the identity of a person to be charged with the crime had not been established.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

822. Relevant material and practice, as well as the evidential material relied on, is summarised in an Annex to this judgment, which is to be regarded as an integral part thereof. References in this judgment in the form “A XXX”

refer to paragraph XXX of the Annex. The wording of certain legal provisions (mainly regarding international humanitarian law – "IHL") commentaries and *travaux préparatoires* or a reference thereto will, where relevant, be set out below in the body of the judgment in respect of the relevant aspect of the case which the Court is considering.

THE LAW

I. COMMON PRELIMINARY OBSERVATIONS FOR BOTH APPLICATIONS

823. The Court considers it important at the outset to reiterate certain aspects of the case and to address certain issues relevant to its examination at the present phase.

824. It is to be noted that the purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to realise the aims and ideals of the Council of Europe, as expressed in its Statute, and "to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law". It follows that when a High Contracting Party or Parties refer an alleged breach of the Convention to the Court under Article 33 of the Convention, they are not to be regarded as exercising a right of action for the purpose of enforcing their own rights, but rather as bringing before the Court "an alleged violation of the public order of Europe" (see *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 385, 25 January 2023, with further references). There are two basic categories of inter-State complaints under Article 33 of the Convention: those where the applicant State complains of violations by another Contracting Party of the basic human rights of one or more clearly identified or identifiable persons, and those pertaining to general issues with a view to protecting the public order of Europe (see *Slovenia v. Croatia* (dec.) [GC], no. 54155/16, ECHR, § 67, 18 November 2020).

825. The Court will outline the scope of the case (separately for each application); the general context and its approach to the evidence at this stage of the procedure. Furthermore, it will decide the issue of the respondent State's jurisdiction in relation to the complaints raised in application no. 38334/18, and explain the Court's jurisdiction to decide the case in view of the fact that the respondent State is no longer a member State of the Council of Europe or, as from 16 September 2022, a Contracting Party to the Convention. It will then address the issue of whether the respondent State complied with its procedural obligations under Article 38 of the Convention to furnish all necessary facilities to assist the Court in performing its general duties as regards the examination of the case. Lastly, it considers it necessary

to identify the appropriate approach that it will apply, on the one hand, to the relationship between the provisions of the Convention and the rules of international humanitarian law and, on the other hand, to the issue of "lawfulness" under the Convention. In relation to the latter the question considered is whether the relevant "law" by reference to which the administrative practice complained of is to be assessed is that of Ukraine or that of the Russian Federation. These two latter issues are of particular importance and have a direct bearing on the scope of the Court's examination of the merits of the complaints.

A. Scope of the case

1. *Scope of the case in so far as it relates to application no. 20958/14*

(a) Substantive and temporal scope of the case determined at the admissibility stage

826. In its admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 238) the Court confined its examination to the applicant Government's specific allegations, as formulated in their memorial before the Grand Chamber, of an administrative practice adopted by the respondent State in or in respect of Crimea in violation of the Convention between 27 February 2014 and 26 August 2015 ("the period under consideration"). By asking the Court not to give a decision on any individual case in support of the alleged "pattern of violations", the applicant Government had limited the scope of their complaint before the Court to the alleged administrative practice of human rights violations as such (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 260-63). The Court concluded that the allegations of an administrative practice were sufficiently clear and precise to merit a judicial examination. The only exception was the complaint about the "transfer of convicts to the territory of the Russian Federation"; in respect of which the Court decided to examine both the admissibility and the merits of that complaint and application no. 38334/18 at the same time as the merits stage in the present proceedings (ibid., § 446). Having regard to the substantive scope of the complaints, as delimited above, the Court held that any other allegations which the applicant Government had raised earlier, but had not maintained, either explicitly or by way of reference, in their memorial on admissibility, were to be regarded as not pursued by the applicant Government (ibid., §§ 246-48).

(b) Scope of the case at the merits stage

827. The Court reiterates that, according to its established case-law, the "case" now before the Grand Chamber is the application as it has been declared admissible. Furthermore, for the purposes of Article 32 of the Convention, the scope of a case "referred to" the Court in the exercise of the

right of any High Contracting Party to refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party is determined by the applicant's complaint or "claim". An applicant is not prevented from clarifying or elaborating upon his or her initial submissions during the Convention proceedings. The Court has to take account not only of the original application, but also of the additional documents intended to supplement the latter by eliminating any initial omissions or obscurities (see, *mutatis mutandis, Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, §§ 122-25, 20 March 2018*).

828. Consequently, in so far as application no. 20958/14 is concerned, the Grand Chamber will confine its examination at the merits stage to "the case" as relinquished to it under Article 30 of the Convention and as delimited in the admissibility decision and described above (see, *mutatis mutandis*, *Carême v. France* (dec.), no. 7189/21, § 87, 9 April 2024).

829. In their written pleadings on the merits the applicant Government put forward a number of supplementary considerations under various Articles of the Convention, including:

- Article 3 (that "detainees were ... also subject to conditions of detention which fell substantially below the standard required under Article 3" or that "the conditions in which detainees were kept by agents of the Russian State were contrary to Article 3"),
- Article 8 (forced revocation of an existing citizenship),
- Article 9 (regarding the re-registration of religious communities and failure of the Russian Federation to comply with its positive obligation to protect the freedom of religion);
- Article 10 (regarding "intimidation and harassments of journalists perceived as critical of the Russian occupation" and that "the Government of Russia entirely failed to discharge its positive obligation to create an enabling environment for the freedom of expression and to protect journalists from physical violence and threats thereof");
- Article 11 (that "there has been an unjustifiable interference with ... freedom of association");
- Article 2 of Protocol No. 2 ("that the Russian Federation has wholly failed in its positive duty to protect the right to education"); and
- Article 2 of Protocol No. 4 (deportation (expulsion) of inhabitants of Crimea for non-compliance with the "Russian legislation on migration" and failure to receive Russian citizenship, as well as "direct transfers of groups of individuals from Crimea", such as "the so-called 'Train of hope' programme" initiated by Russia in 2014 concerning "transfer of orphans and children deprived of parental care from Crimea to the territory of Russia for their adoption by Russian citizens and subsequently their assimilation there").

They also made reference to reports of NGOs and IGOs and witness evidence and allegations raised in some individual applications lodged with the Court.

830. The Court considers that the above additional submissions, which the applicant Government raised either in some of their pre-admissibility submissions, although they did not maintain them in their memorial before the Grand Chamber (see paragraphs 246-48 of the admissibility decision), or for the first time in their memorial on the merits of application no. 20958/14, are neither identical to the complaints that have been declared admissible nor could they be considered to concern particular aspects of those complaints. Inasmuch as they can be regarded as complaints within the meaning of the Court's established case-law (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 88, 1 June 2023, and *Radomilja and Others*, § 110, cited above), they relate to distinct requirements arising from the provisions relied on. Those submissions must accordingly be regarded as new complaints which do not fall within the scope of the case to be examined at the merits stage of the proceedings. It follows that the Grand Chamber cannot take cognisance of these additional submissions in its examination of the merits of the present case. It will therefore limit its examination to those aspects of the complaints which were declared admissible (see, *mutatis mutandis*, *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, §§ 110 and 111, 1 June 2021).

831. On the other hand, the Grand Chamber considers that the submissions regarding the "intimidation and harassments of journalists perceived as critical of the Russian occupation" are to be regarded an aspect of the complaint under Article 10 of the Convention that was declared admissible in the decision of 16 December 2020. This aspect will therefore be examined under the relevant heading below (see §§ 1078-1104 below).

2. *Scope of the case in so far as it relates to application no. 38334/18*

(a) Subject-matter of the application

832. The applicant Government complained that the respondent State was responsible for administrative practices amounting to violations of a continuous nature of numerous rights and freedoms protected by the Convention. In their application form submitted on 10 August 2018, the applicant Government outlined their case as follows:

> "This inter-State case concerns cases of prosecution and convictions of Ukrainians for their thoughts, expression, political stance and pro-Ukrainian activity. This category of persons became political prisoners of Kremlin ....
>
> The cases described below clearly fall within Article 1 jurisdiction of the Court. The Government of Ukraine state that prosecution and conviction of political prisoners is a part of a state-sanctioned policy and amount to a systematic administrative practice, violating Articles 3, 5, 6, 7, 8, 10, 11, 13 and 18 of the Convention in its substantive aspect through the implementation of a policy that is incompatible with the Convention.
>
> ...

In Crimea, after the occupation of the peninsula by the Russian Federation, the local authorities used Russian legislation against extremism, separatism and terrorism to detain Crimean Tatar and Ukrainian activists. In addition, fabricated criminal proceedings were launched, prosecuting the Ukrainian nationals for alleged crimes which, even on the Russia's case, took place before the Russian occupation and/or outside the territory of Crimea.

Also a number of persons were captured by the Russian proxies of 'Luhansk people's republic' ('LPR') and 'Donetsk people's republic' ('DPR') and handed over to the Russian authorities for prosecution. Finally, a number of Ukrainians were lured by the Russian authorities to the Russian or Russia controlled territory, or entered Russia for various lawful purposes, then captured, tortured for confession and sentenced by the Russian courts for committing imagined offences.

...

The number of Ukrainian political prisoners in the Crimea and Russia is constantly growing and as of March this year totals at least 68 people. According to Helsinki Human Rights Union as of June 2018 there are at least 71 political prisoners in Russia and temporarily occupied territory of Crimea. Of these, 39 people are in the Crimea (almost all – in the Simferopol pre-trial detention facility ('the Simferopol SIZO')) and 32 people are in Russia."

833. In their memorial of 30 January 2023, the applicant Government emphasised that the respondent Government had continued to perpetrate the administrative practices of unlawful arrests and systematic violations of the rights of Ukrainian civil and political activists. They referred in support of their allegation to a list drawn up by the Ukrainian Ministry for Reintegration of the Temporarily Occupied Territories listing 203 individuals detained "on the temporarily occupied territories of Ukraine and on the territory of the Russian Federation" recognised as being "political prisoners" (A 454).

(b) Pursuance of the claims

834. The Court observes that, after it gave its admissibility decision on 16 December 2020 in application no. 20958/14, the parties were invited to answer questions pertaining to the jurisdiction of the Russian Federation regarding the events referred to in the application form, the admissibility of the complaints and whether there had been a violation of the various provisions of the Convention relied on by the Ukrainian Government (see paragraph 14 above).

835. In so far as application no. 38334/18 was concerned, the Court notes that, in their memorial of 28 February 2022, the Ukrainian Government stated the following:

"With respect to Application No. 38334/18, the Government of Ukraine incorporates its application dated 10 August 2018 and the evidence submitted in support thereof (which has yet to be addressed by the Russian Government). With respect to the specific issue of the admissibility of the complaint of an administrative practice of transferring convicts to the Russian Federation, in violation of Article 8, it addresses the admissibility of this practice along with the merits at paragraphs 105 to 114 of these

> memorials, incorporating evidence submitted in support of Application No. 38334/18 as illustrative examples of such practices."

836. In addition, both in the above-mentioned memorial and in the memorial submitted on 30 January 2023 in the second round of observations, the applicant Government explicitly referred to some precise underlying facts and evidential materials set out in application no. 38334/18 in setting out their arguments relating to the complaints overlapping (in part) with those raised in the original application no. 20958/14. The Court will take these facts and materials into account for both applications inasmuch as they support the existence of the administrative practices alleged by the applicant Government.

837. In view of the above, the Court takes note of the applicant Government's wish to pursue their claims as set out in the application form submitted on 10 August 2018 within the framework of application no. 38334/18 and developed in their subsequent memorials.

(c) Object of the application

838. As to the object of the application, the Court underlines that the applicant Government maintained that their application before the Court concerned "the administrative practice of State-sanctioned policy of persecution of Ukrainians", referred to by the applicant Government as "political prisoners", and "Russia's tolerance of and indeed instigation of their human rights violations". The specific allegations made by the applicant Government against the Russian Federation thus focus on the existence of administrative practices of violations of the Convention. These allegations refer to events unfolding after March 2014.

839. The Court notes that, in support of their claims, the applicant Government provided information and/or submitted evidential material in respect of about eighty Ukrainian nationals. However, they explained that the information and material referred to in the application form was provided as evidence of "an administrative practice of persecution of Ukrainians in the occupied territory of Ukraine (Crimea and Donbas) and in Russia which enjoys official tolerance in Russia", and expressly stated that they were not asking the Court to give a decision in each individual instance. The applicant Government added that the case had been brought before the Court "in order to prevent a continuation or recurrence of administrative practices and/or of such violations".

840. As explained above (see paragraph 824), under Article 33 of the Convention, the Court has identified two basic categories of inter-State application : whereas one of the categories covers cases where the applicant State complains of violations by another Contracting Party of the basic human rights of one or more clearly identified or identifiable persons, the other category concerns cases raising general issues brought with a view to protecting the public order of Europe. In light of the position adopted by the

applicant Government, the claims in application no. 38334/18 clearly fall into the second category of inter-State cases, regarding allegations of administrative practices in breach of the Convention. The concept of "administrative practice" assumes a particular relevance in such a case, as will be explained in more detail below, given both its close interrelationship with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention (procedural admissibility), as applied to inter-State cases under Article 33 of the Convention, and its implications for the substantive admissibility of the "alleged breach of the provisions of the Convention" under the latter Article (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 260 and 263).

841. The Court also notes that individual applications pending before it have been lodged by several individuals referred to by the applicant Government in support of their application. Notice of most of these applications has been given to the Russian Government. In this connection, the Court emphasises that the applicant Government did not ask for a determination of the individual cases but only for them to be treated as evidence of an administrative practice (see paragraph 839 above). In these circumstances, the conclusions reached by the Court in the present judgment are not to be taken as prejudging the admissibility or merits of the individual applications in question.

(d) Extent of the complaints raised

842. The Court notes at the outset some incongruences in the presentation of the applicant Government's claims in the application form. Whereas in the "Introduction" section of the form the applicant Government alleged administrative practices "violating Articles 3, 5, 6, 7, 8, 10, 11, 13 and 18 of the Convention", under the heading "Violation of the Convention" they in fact referred to "Articles 3, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 18 of the Convention", thus mentioning for the first time Articles 9 and 14. Lastly, when they then set out their detailed allegations and arguments under the provisions of the Convention, the applicant Government only referred to complaints under Articles 3, 5, 6, 7, 8 10, 11 and Article 18 in conjunction with Articles 5, 6, 7, 8, 10 and 11 of the Convention. Next, the Court observes that, in their memorial of 28 February 2022, the applicant Government expressed no detailed and comprehensive position on the admissibility and the merits of the complaints in application no. 38334/18, but simply stated that they incorporated the application form and the evidence set out in the memorial (see paragraph 835 above). Nor have they presented any such position on that issue in their memorial of 30 January 2023.

843. Against this background, the Court reiterates that the complaints must contain all the parameters necessary for it to define the issue it will be called upon to examine, all the more so when the scope of application of an Article of the Convention is very broad, the Court's examination being

necessarily delimited by the specific complaints submitted to it (see, for an example concerning Article 6 of the Convention, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 104, 6 November 2018). Likewise, the Court can base its decision only on the facts complained about. Therefore, it is not sufficient that a violation of the Convention is said to be "evident" from the facts of the case or the applicant's submissions. Rather, the applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention or the Protocols thereto, in a manner which should not leave the Court to second-guess whether a certain complaint was raised or not. This means that the Court has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced (*Grosam*, cited above, §§ 90-91).

844. As a result, concerning application no. 38334/18, the Court observes the lack of any legal argumentation in the application form with respect to the complaints later raised under Articles 9, 13 and 14 of the Convention. It also bears in mind that the temporal scope of the violations alleged within the framework of the present application was defined in broad terms by the applicant Government who referred to their "continued nature" (see paragraph 832 above).

845. In view of the above, the Court will not examine the applicant Government's factual contentions which may theoretically come within the ambit of Articles 9, 13 and 14 of the Convention, as separate complaints in the framework of application no. 38334/18. In the Court's view, to proceed otherwise would be unduly extending its jurisdiction.

B. Approach to evidence

1. General principles

846. In the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 249-66 and 378-91), the Court referred to the established case-law of the Commission and Court, going back to the Commission's second admissibility decision in "the Greek case" (*Denmark, Norway*, *Sweden and the Netherlands v. Greece*, nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission decision of 31 May 1968, unreported) and the Court's judgment in *Ireland v. the United Kingdom* (18 January 1978, § 161, Series A no. 25), and set out in detail its approach to the evidence. Some additional observations made by the Grand Chamber in its judgment in *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 312-13, 28 November 2017) are also of relevance. The general principles which may be drawn from those cases, and which are relevant to the assessment of the evidence in the present case, were outlined in *Ukraine and the Netherlands v. Russia* (cited above, §§ 434-48) as follows:

"(a) The burden of proof and drawing of inferences

435. As a general principle of law, the initial burden of proof in relation to an allegation is borne by the party which makes the allegation in question (*affirmanti incumbit probatio*) (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 255).

436. The Court has, however, recognised that a strict application of this principle is not always appropriate. Where the respondent State alone has access to information capable of corroborating or refuting the applicant's allegations but fails to provide a satisfactory and convincing explanation in respect of events that lie wholly, or in large part, within the exclusive knowledge of the State's authorities, the Court can draw inferences that may be unfavourable for that Government. Before it can do so, however, there must be concordant elements supporting the applicant's allegations (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 256).

437. Article 38 of the Convention requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. The conduct of the parties when evidence is being obtained may therefore also be taken into account and inferences may be drawn from such conduct (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 256 and 380; *Georgia v. Russia (II)* [GC], no. 38263/08, § 341, 21 January 2021; and *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 252-54, ECHR 2004-III). The Court has, in the past, drawn inferences from a failure by the respondent State to provide documents requested (see, for example, *Timurtaş v. Turkey*, no. 23531/94, §§ 66-72, ECHR 2000-VI; *Akkum and Others v. Turkey*, no. 21894/93, §§ 185-190 and 225, ECHR 2005 II (extracts); *Çelikbilek v. Turkey*, no. 27693/95, §§ 56-63, 31 May 2005; and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 152-67, ECHR 2012). In *El-Masri* the Court shifted the burden of proof to the respondent Government once it was satisfied that there was prima facie evidence in favour of the applicant's version of events. As a result of the Government's failure to provide relevant explanations or supporting documents, the Court drew inferences from the available material and the authorities' conduct and found the applicant's allegations sufficiently convincing and established beyond reasonable doubt (see §§ 165-67 of the judgment).

438. The Court further refers in this respect to Rule 44A of the Rules of Court, which provides that the parties have a duty to cooperate fully in the conduct of the proceedings and to take such action within their power as the Court considers necessary for the proper administration of justice. Moreover, pursuant to Rule 44C § 1, where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate. Rule 44C § 2 plainly states that the failure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason to discontinue the examination of the application. It is clear from the well-established case-law of the Court and from Rules 44A and 44C that if a respondent Government fail to comply with a request by the Court for material which could corroborate or refute the allegations made before it and do not duly account for their failure or refusal, the Court can draw inferences and combine such inferences with contextual factors (see *Merabishvili*, cited above, § 312).

439. The level of persuasion necessary for reaching a particular conclusion and the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegations made and the Convention right at stake (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 257).

(b) Assessment of the evidence

440. There are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment: the Court has complete freedom in assessing not only the admissibility and relevance but also the probative value of each item of evidence before it. The Court adopts those conclusions of fact which are, in its view, supported by the free evaluation of all material before it irrespective of its origin, including such inferences as may flow from the facts and the parties' submissions and conduct (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 379-80).

441. Proof may follow from the 'coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact' (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 257).

442. The Court takes into account reports and statements by international observers, NGOs and the media as well as decisions of other international and national courts to shed light on the facts or to corroborate findings made by the Court (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 257). Its assessment of the evidence, and in particular the weight to be given to it, varies in view of the different nature of the material, the source of the material and the degree of rigour applied to its collection and verification.

443. It has thus often attached importance to material from reliable and objective sources, such as the UN, reputable NGOs and governmental sources. However, in assessing its probative value a degree of caution is needed since widespread reports of a fact may prove, on closer examination, to derive from a single source. In relation to such material, consideration should be given to the source of the material and in particular its independence, reliability and objectivity. The Court also considers the presence and reporting capacities of the author in the country in question: it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and in such cases information provided by sources with first-hand knowledge of the situation may have to be relied upon. Consideration is given to the authority and reputation of the author, the seriousness of the investigations forming the basis for the report, and the consistency of the conclusions and their corroboration by other sources (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 386-88).

444. Media reports, on the other hand, are to be treated with caution. They are not themselves evidence for judicial purposes, but public knowledge of a fact may be established by means of these sources of information and the Court may attach a certain amount of weight to such public knowledge (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 383).

445. The direct evidence of witnesses is also taken into account by the Court (see the *Georgia v. Russia (II)* judgment, cited above, and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII). Even where the domestic authorities have not been given the opportunity to test the evidence and the Court itself has not had the opportunity to probe the details of the statement in the course of the proceedings before it, this does not necessarily diminish its probative value (see *El-Masri*, cited above §§ 161-62). It is for the Court to determine whether it considers a statement to be credible and reliable, and what weight to attach to it.

446. The Court may also rely on witness statements from Government officials. Statements by Government ministers or other high officials should, however, be treated with caution since they would tend to be in favour of the Government that they represent. That said, statements from high-ranking officials, even former ministers and officials, who have played a central role in the dispute in question are of particular evidentiary value when they acknowledge facts or conduct that place the authorities in an unfavourable light. They may then be construed as a form of admission (see *Ukraine*

> *v. Russia (*re *Crimea)*, cited above, §§ 334 and 381). Similar considerations apply to official documents and intelligence material provided by State ministries and agencies.
>
> 447. There is no need for direct evidence from alleged victims in order for a complaint about an administrative practice to be regarded as admissible (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 384).
>
> 448. A delay in collecting evidence, or its collection specifically for the purposes of proceedings before this Court, does not render such evidence *per se* inadmissible (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 381)."

847. The Court further refers to the following considerations recently identified by the Grand Chamber in *Georgia v. Russia (II)* ((just satisfaction), (no. 38263/08, §§ 26 and 27, 28 April 2023; see also in *Svetova and Others v. Russia* (no. 54714/17, §§ 30 and 31, 24 January 2023)) regarding the consequences of the respondent Government's failure to participate in proceedings before the Court:

> "26. Pursuant to Rule 44C § 2 of the Rules of Court, "[f]ailure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason for the Chamber to discontinue the examination of an application". This provision acts as an enabling clause for the Court, making it impossible for a party unilaterally to delay or obstruct the conduct of proceedings. A situation where a State did not participate in at least some stages of the proceedings has not prevented the Court from conducting the examination of an application in the past. The Court considered ... that the respondent Government's failure to submit their memorials or participate in a hearing in the absence of sufficient cause could be considered a waiver of their right to participate. It was satisfied that proceeding with the examination of the case in the face of such a waiver was consistent with the proper administration of justice (see *Cyprus v. Turkey* [GC], no. 25781/94, §§ 10-12, ECHR 2001-IV; see also *Denmark, Norway and Sweden v. Greece*, no. 4448/70, Commission (Plenary) decision of 16 July 1970). The Court may draw such inferences as it deems appropriate from a party's failure or refusal to participate effectively in the proceedings (see Rule 44C § 1). At the same time, the failure of the respondent State to participate effectively in the proceedings should not automatically lead to acceptance of the applicants' claims. The Court must be satisfied on the basis of the available evidence that the claim is well founded in fact and in law (see *Svetova and Others v. Russia*, no. 54714/17, § 30, 24 January 2023).
>
> 27. The cessation of a Contracting Party's membership of the Council of Europe does not release it from its duty to cooperate with the Convention bodies (see paragraph 21 above). This duty continues for as long as the Court remains competent to deal with applications arising out of acts or omissions capable of constituting a violation of the Convention, provided that they took place prior to the date on which the respondent State ceased to be a Contracting Party to the Convention."

848. In relation to the applicable standard of proof the Court reiterates its established practice as follows:

849. As the Court stated in the admissibility decision, in relation to the question of jurisdiction, the Court applies the "beyond reasonable doubt" standard of proof, it being understood that, in this matter as well, such proof may also follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see

*Ukraine v. Russia (*re *Crimea*), cited above, § 265 and *Ukraine and the Netherlands v. Russia* (dec.) ([GC], cited above, §§ 452-53)).

850. In the same decision the Grand Chamber further clarified that the applicable standard of proof for the purposes of admissibility in respect of allegations of administrative practices was that of "sufficiently substantiated prima facie evidence" (see *Ukraine v. Russia (*re *Crimea*), cited above, §§ 261-63).

851. When it comes to the assessment of evidence in the context of the examination of the merits of allegations of administrative practice, the Court has adopted the "beyond reasonable doubt" standard of proof, laid down in previous inter-State cases (see *Ireland v. the United Kingdom*, cited above, § 161; *Cyprus v. Turkey* (merits) [GC], no. 25781/94, § 113, ECHR 2001-IV; and *Georgia v. Russia (II)*, cited above, § 59). However, it has never been its purpose to borrow the approach of the national legal systems that use that standard in criminal cases. The Court's role is to rule not on guilt under criminal law or on civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the High Contracting Parties of their engagements to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof *(*see *Georgia v. Russia (II)*, cited above, § 59).

2. Approaching the evidence in this case

852. The Court emphasises at the outset that it is particularly difficult to establish the facts in the context of an inter-State case such as the present one, which concerns the aftermath of what the applicant Government refers to as an "invasion" and the purported use of a judicial and law-enforcement machinery in the territories controlled by the respondent State for "ulterior purposes" other than those for which they had been established. It also concerns a great number of persons and, in so far as application no. 38334/18 is concerned, events spanning both a significant period of time (the applicant Government complaining of ongoing human rights violations) and a vast geographical area (Russia and Crimea). This remains valid notwithstanding the large volume of evidential material submitted by the applicant Government, which, as will be discussed in more detail below, contains at times only fragmented information on the relevant events they invoked.

853. With a view to clarifying, *inter alia*, the factual background of application no. 38334/18, a letter was sent by the Court on 2 July 2021 inviting the respondent Government to provide, in the context of their memorials (see paragraph 14 above), copies of the relevant case files pertaining to the persons mentioned in the application form submitted by the applicant Government. However, the respondent Government submitted no material whatsoever in response to the Court's express request. The Court observes that the evidential material sought was undoubtedly within the

possession of the respondent State, which, moreover, in the specific circumstances of this application, was most likely the only entity in a position to provide it in a comprehensive manner.

854. The Court further notes that since the submission of the written memorial of 28 February 2022, the respondent Government has remained silent. They neither responded to the Court's letters or specific requests for documents (such as copies of the statutory laws and other legal acts referred to in their memorial), nor did they submit any evidential material or additional observations, notwithstanding the fact that their attention was drawn, on two occasions, to Rule 44C of the Rules of Court cited above (see paragraphs 846 and 847 above, for the principles, and also paragraphs 19 and 21 for the steps taken by the Court). Furthermore, despite having been notified in good time, they did not participate in the hearing held on 13 December 2023 that provided a further opportunity to argue the case. They provided no reason for their failure to do so. This does not represent a constructive engagement with the proceedings for the examination of the case as required under Article 38 of the Convention (see paragraphs 906 et seq.) and the Court will draw all the inferences that it deems relevant and combine such inferences with contextual factors (see, *mutatis mutandis*, *Ukraine and the Netherlands v. Russia* (dec.) [GC], cited above, §§ 438 and 459, in which case the respondent did participate at the admissibility stage, but did so inadequately).

855. Furthermore, the Court is aware that the military attacks by the respondent State on Ukraine have been on-going throughout. On a number of occasions the applicant Government submitted that the attacks considerably affected their ability to participate effectively in the proceedings before the Court, regarding both their written and oral pleadings, as well as in relation to their ability to gather the relevant evidence. The Court will make allowance for this, but needs to be satisfied on the basis of the available evidence that the claims are well-founded in fact and in law.

856. Another element to be taken into account is the continuing denial of access to Crimea by the respondent State (at least since it assumed effective control) to officials of the applicant Government and/or to independent monitors, a matter already referred to in the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 389-90). The respondent Government did not engage with the applicant Government's arguments in their memorial that such a denial of access had caused and continued to cause considerable practical difficulties associated with the gathering of relevant evidence.

857. In addition to the above, the applicant Government raised two closely related issues concerning the approach to the evidence which call for decision by the Court. Despite having been made aware of these issues, the respondent Government did not provide any submission in response.

858. These issues arise out of the fact that, in their submissions, the applicant Government referred to (and submitted evidence relating to)

> "facts and practices conducted by the Respondent Government on the territory of Crimea ... occurring outside the 'relevant period' [of application no. 20958/14] in order to throw light on a pattern alleged to constitute an administrative practice within the period (under consideration) ...Ukraine does not ... request the Court specifically to rule [on] individual alleged violations that were not considered by it during the admissibility stage. On the contrary, it seeks only that the Court should admit all evidence relevant to the existence, at the relevant time, of the administrative practices alleged."

They also referred to some individual applications (in many of which notice had been given to the respondent Government) which have been lodged with the Court under Article 34 of the Convention and the alleged violations raised therein.

859. In so far as application no. 20958/14 is concerned, the Court confirms that it will only have regard to evidence adduced by the applicant Government concerning events that took place outside the temporal scope of that application, the latter running from 27 February 2014 until 26 August 2015, in so far as it is relevant and only to the extent necessary to determine the existence of the alleged administrative practice during the period under consideration and the respondent State's responsibility for such practice. By contrast, the Court cannot rule on the compliance with the Convention of any alleged administrative practice that goes beyond or lies outside the temporal scope of the case as delimited at the admissibility stage. This is without prejudice to the examination of any complaint giving rise to a continuing situation, such as for example a failure to investigate disappearances in violation of the procedural limb of Article 2.

860. As to the individual applications referred to by the applicant Government, the Court reiterates that, as stated in the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 235 and 364, and paragraph 826 above), individual instances of alleged violations of the Convention are outside the scope of the case. Accordingly, the evidential material submitted in those cases will not be taken into account unless the applicant Government have produced that evidence in the context of the present case, which concerns specific allegations of an administrative practice adopted by the respondent State in or in respect of Crimea.

C. Jurisdiction

1. General

861. The Court reiterates that the English term "jurisdiction", in the context of the Convention, refers to two separate, but related, matters (see *Ukraine and the Netherlands v. Russia,* cited above, § 503).

862. The first is the Court's own jurisdiction (or "*compétence*" in French) pursuant in particular to Articles 19 and 32 of the Convention to receive an application and to determine it. This requires, for example, examination of its *ratione personae* jurisdiction (such as whether, in the context of an

individual application, an applicant may be considered a "victim" for the purpose of Article 34) and its *ratione materiae* jurisdiction (such as whether the right relied upon is protected by the Convention and the Protocols thereto and the matters complained of fall within their scope) (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Ukraine and the Netherlands v. Russia,* cited above, § 504). This type of jurisdiction also requires the examination of the Court's *ratione temporis* jurisdiction (see *Blečić,* cited above, § 67) and more specifically whether the events complained of occurred during a period when the respondent State was subject to the obligations under this Convention. The Court has consistently emphasised that it must satisfy itself that it has jurisdiction in any case brought before it and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings.

863. The second concerns the jurisdiction of the High Contracting Parties, since their Article 1 obligation requires them to secure Convention rights and freedoms to "everyone within their jurisdiction". In order for an alleged violation to fall within the Court's Article 19 jurisdiction to "ensure the observance of the engagements undertaken by the High Contracting Parties", it must first be shown to fall under the Article 1 jurisdiction of the respondent State. It is for this reason that the Court has described Article 1 jurisdiction as a threshold criterion (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 311, ECHR 2004-VII; *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 130, ECHR 2011; and, most recently, *Georgia v. Russia (II)*, cited above, § 129, and *Ukraine and the Netherlands v. Russia*, cited above, §§ 505-06).

864. In the admissibility decision, in so far as application no. 20958/14 is concerned, the Court established "beyond reasonable doubt" (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 265) that during the entire period under consideration, namely between 27 February 2014 and 26 August 2015 (ibid., § 238), the respondent State had exercised extraterritorial jurisdiction over Crimea on account of "effective control". In relation to the first period (between 27 February and 18 March 2014, the date of signature of the "Accession Treaty"), the Court established that the respondent State's "effective control", and therefore jurisdiction, was based on the military presence, strength and conduct of the Russian military forces in Crimea (ibid., §§ 315-35). In relation to the second period (from 18 March 2014 onwards) it was, in fact, common ground between the parties that the respondent State had exercised jurisdiction over Crimea after 18 March 2014 (ibid., § 338). Their positions differed solely as to the legal, rather than factual, basis of that jurisdiction. As a consequence, throughout both periods, the respondent State exercised "effective control" over Crimea owing to the technical, tactical, military and qualitative superiority and conduct of the Russian military forces, who had "boots on the ground" without the consent of Ukraine (see paragraph 916 above and §§ 320 and 322 of the admissibility decision).

It remains thus for the Court to examine (i) the question whether the administrative practices complained of in application no. 38334/18 took place within the jurisdiction of the Russian Federation, (ii) whether the Court has jurisdiction *ratione temporis* in view of the fact that the respondent State is no longer a member State of the Council of Europe and, as from 16 September 2022, a Contracting Party to the Convention and (iii) whether it has jurisdiction *ratione materiae*.

2. *Article 1 jurisdiction in relation to application no. 38334/18*

865. Article 1 of the Convention provides:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

(a) The parties' submissions

(i) The position of the Russian Government

866. In their memorial of 2022, the Russian Government stated that, as a matter of principle, the jurisdiction of a State within the meaning of Article 1 of the Convention was based on the principle of territoriality and that it did not extend beyond the national territory of a Contracting State. Nevertheless, in their view, consideration ought to be given to the provisions of Article 56 of the Convention and Article 4 of Protocol No. 1 to the Convention allowing the Contracting States to voluntarily extend their jurisdiction under certain conditions.

867. The respondent Government emphasised that "the Republic of Crimea was admitted to the Russian Federation from the date of signing on 18 March 2014 of the Treaty between the Russian Federation and the Republic of Crimea on Admission of the Republic of Crimea into the Russian Federation and the formation of new constituent entities within the Russian Federation".

868. Noting that the Court had jurisdiction only in the sense of individual and voluntary commitments of States under Articles 1 and 56 of the Convention or Article 4 of Protocol No. 1 to the Convention, they stressed that the Russian Federation had not assumed the relevant obligations within the Convention system before "the integration of the Republic of Crimea and the city of Sevastopol into Russia". Consequently, in their view, in the period before 18 March 2014, the local population had been under the jurisdiction of Ukraine, and it was Ukraine that had been obliged to ensure compliance with Convention rights and freedoms on the territory of these regions. Only as from 18 March 2014 had the Russian Federation exercised territorial jurisdiction over Crimea, within the meaning of Article 1 of the Convention.

(ii) The position of the Ukrainian Government

869. The applicant Government argued that the persecution of the Ukrainian prisoners listed in their application form had occurred in the territory of the Russian Federation and "in the territory of Ukraine, occupied by the Russian Federation", thus falling within Russia's jurisdiction for the purposes of Article 1 of the Convention. Concerning the alleged persecution which had occurred on Russian territory, the applicant Government submitted that there could be no dispute regarding the jurisdiction of the respondent Government. As to the purported persecution of Ukrainians in Crimea, the applicant Government maintained that all human rights violations fell under the jurisdiction of the Russian Federation as "an occupying power" and that, for the reasons given in the Court's admissibility decision, such jurisdiction had been exercised since February 2014 in the form of extraterritorial jurisdiction on the basis of effective control over territory and continued uninterrupted today. In the alternative, whether a prisoner was held in Crimea or in the Russian Federation, the latter's jurisdiction was exercised through physical control over the person in question. Finally, the applicant Government stated that all persecutions and human rights breaches in the "occupied territory of Crimea" pertaining to application no. 38334/18 had occurred after March 2014.

(b) The Court's assessment

(i) General principles

870. The Court highlights that application no. 38334/18 concerns only the alleged responsibility of the Russian Federation in respect of alleged Convention violations in its own territory and "in the territory of Ukraine, occupied by the Russian Federation". The Article 1 jurisdiction of Ukraine over the latter area, which falls within its own sovereign territory, is not under examination. As regards extraterritorial jurisdiction, the Court refers to the principles outlined in its admissibility decision in *Ukraine and the Netherlands v. Russia* (cited above, §§ 553-72).

(ii) Application of the general principles to the facts of the case

871. The Court notes that the applicant Government submitted in application no. 38334/18 that the actions complained of which allegedly had occurred outside the respondent Government's territorial jurisdiction occurred: (i) in Crimea; (ii) possibly, in territories controlled by the "DPR" and the "LPR" authorities, and (iii) in Belarus. As regards these three scenarios the question of Russia's jurisdiction will be examined in turn.

(α) Events which allegedly occurred in Crimea

872. The Court notes that the respondent Government's arguments concerning jurisdiction are essentially the same as those which they had advanced initially at the hearing held on the admissibility of application no. 20958/14, namely (i) that the Russian Federation had been exercising jurisdiction over Crimea only as from 18 March 2014, a jurisdiction which, in the context of that application, they now asserted to have been "territorial" (see paragraph 868 above and *Ukraine v. Russia* (re *Crimea*) cited above, § 286) and (ii) that any facts complained of which occurred in Crimea before 18 March 2014 did not fall within their jurisdiction. These arguments, set out under the heading "General information on the jurisdiction" of their memorial of 28 February 2022, can be considered as an objection *ratione loci.*

873. The Court observes that in its admissibility decision it held that there was sufficient evidence for it to conclude that during the period taken into consideration in that application (27 February 2014 to 26 August 2015), the respondent State had exercised extraterritorial jurisdiction over Crimea in the form of "effective control over an area" (see also paragraph 864 above). Given the absence, in the meantime, of any relevant information to the contrary, this conclusion continues to be valid after 26 August 2015. Indeed, the respondent Government not only failed to put forward any detailed and convincing arguments to refute the alleged exercise of jurisdiction over Crimea; they in fact asserted its continuing exercise of territorial jurisdiction.

Consequently, it dismisses the respondent Government's objection *ratione loci* and their arguments relating to the nature of their jurisdiction with respect to events which occurred in the period from 27 February 2014.

(β) Events which possibly occurred in "DPR" and "LPR"

874. The Court observes that, when setting out the scope of the application, the applicant Government contended, by way of a general statement, that it concerned "an administrative practice of persecution of Ukrainians in the occupied territory of Ukraine (Crimea and Donbas) and in Russia which enjoys official tolerance in Russia" (see paragraph 839 above). Moreover, under Article 5 of the Convention, the applicant Government maintained that there were serious grounds to believe that, in several cases, detentions on Russian territory were preceded by the capture of the persons concerned by the Russian proxies of the "DPR" and "LPR", which had handed them over to the Russian authorities. In this connection, even though they referred to the existence of several cases, the applicant Government mentioned only two specific instances, that is, the cases of Mr Serhiy Lytvynov and Mr Oleksii Syzonovych (see paragraph 1247 below).

875. The Court reiterates that in its admissibility decision in *Ukraine and the Netherlands v. Russia* (cited above, §§ 695-96) it found, on the basis of the evidence before it, that, as a result of Russia's military presence in eastern

Ukraine and the decisive degree of influence and control it enjoyed over the areas under separatist control in eastern Ukraine as a result of its military, political and economic support to the separatist entities, those areas had been, from 11 May 2014 and subsequently, under the effective control of the Russian Federation. The Court concluded that, as the complaints of the applicant Ukrainian Government related to events that had taken place in the territory under separatist control on or after 11 May 2014, they accordingly fell within the Russian Federation's jurisdiction *ratione loci* within the meaning of Article 1 of the Convention.

876. In application no. 38334/18 now under consideration, the Court notes that, notwithstanding the fact that the apprehension of the two persons mentioned above in the Donbas region cannot be excluded at the outset, these allegations were not accompanied by any more details as to the place where the "capture" had occurred. Moreover, when setting out the facts regarding Mr Lytvynov, the applicant Government mentioned the following:

> "On 12 August 2014 Mr Lytvynov left for Russia's Rostov region for medical treatment because he needed an urgent dental surgery. All the medical facilities in Luhansk region close to his village were inaccessible due to the hostilities. Mr Lytvynov stayed in a Russian hospital for several days together with the members of the Russian occupied administration so-called 'LPR'/'DPR', who had fought against Ukrainian soldiers in Donbas. Mr Lytvynov allegedly told them about his 'membership' of a Ukrainian volunteer battalion. On 21 August 2014, he was taken away from the hospital by unknown masked persons and delivered to the Russian Rostov region Department of Control over Organised Crime."

877. When setting out the facts with regard to Mr Syzonovych, the applicant Government mentioned that "he was detained in September 2016 while trying to re-enter Russia", without going into much detail.

878. For the Court, the latter allegations of the applicant Government (see paragraphs 876 and 877 above) support the conclusion that the complaint is ultimately based on the premise that the two individuals had been arrested on the territory of the Russian Federation (in Rostov-on-Don in the case of Mr Lytvynov, and while entering Russia, in the case of Mr Syzonovych) in relation to which no issue in terms of jurisdiction arises.

879. Considering all the above, the Court finds that there is no need to examine further the question of the respondent State's jurisdiction under Article 1 of the Convention with regard to the possible illustrative instances of arrest of the group of persons described as "Ukrainian political prisoners" by the Russian proxies of the "DPR" and "LPR" before their purported hand-over to the Russian authorities.

(γ) Events which allegedly occurred in Belarus

880. Under Article 5 of the Convention, the applicant Government maintained the following (see paragraph 1247 below):

> "Also there are several cases of detention of Ukrainians in the territory of third countries with subsequent transferring them to Russia by FSB officers. Thus, Mr Pavlo Hr**[y]**b was illegally abducted from the territory of Belarus and transferred to the Russian Federation. After that [the] Russian authorities stated that Mr Hryb was detained in the course of an 'operation'. The above case has clear signs of kidnapping a person with the purpose of his subsequent persecution in Russia."

881. The Court notes that the applicant Government appear to support their claim that Mr Hryb was abducted by FSB agents in Belarus and subsequently transferred to Russia, by reference to (i) an Article published on the Kharkiv Human Rights Protection Group's website which cited Mr Hryb's father's statements to the effect that his son had been seized in Belarus by unidentified individuals who had pushed him into a car; (ii) a press release issued by the Ukrainian Ministry of Health which contained an assertion that Mr Hryb had been kidnapped from Belarus and taken to Russia at the end of August 2017, and (iii) a copy of an appeal lodged against a decision of the Oktyabrsky District Court of Krasnodar of 2 March 2018 extending Mr Hryb's pre-trial detention, an appeal in which his lawyer had maintained, with a view to refuting the District Court's argument that Mr Hryb had breached the administrative requirements of registration at the place of his stay when arriving in Russia, that Mr Hryb had been detained in the city of Gomel (Belarus), and subsequently transferred to Russia (A 949, 957 and 959). At the hearing held on 13 December 2023, the applicant Government submitted that the Russian Federation had exercised extraterritorial jurisdiction on account of "State agent authority and control" over Mr Hryb.

882. The respondent Government remained silent on the matter.

883. The Court reiterates that a State may also be held accountable for violations of the Convention rights and freedoms of persons who are in the territory of another State but who are found to be under the former State's authority and control through its agents operating – whether lawfully or unlawfully – in the latter State. This principle has been applied where an individual is taken into the custody of State agents abroad (see *Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005-IV; *Issa and Others v. Turkey*, no. 31821/96, § 71, 16 November 2004; and *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, § 161, 19 November 2019).

884. The Court notes that the applicant Government's allegations concerning the abduction of Mr Hryb and his cross-border transfer to Russia concern the negative obligations of Russia under Article 5 of the Convention. It further reiterates that, in terms of the respondent State's "jurisdiction" under Article 1 of the Convention at the admissibility stage of the proceedings, the "beyond reasonable doubt" standard of proof applies (see paragraph 849 above). Thus its examination of the question of jurisdiction in the present instance calls for prior establishment of whether the alleged events actually occurred. In this connection, the reasonableness of the applicant

Government's allegations must be tested in the light of the documentary and other evidence the parties submitted to the Court.

885. The Court takes note of the scarcity of the information available on the occurrence of the alleged abduction itself (see paragraph 881 above). Moreover, it does not appear from the evidential material submitted by the applicant Government that, once on Russian territory, Mr Hryb had made a prima facie case of abduction to the Russian authorities under whose control he claimed he was, inviting them to investigate the matter (compare and contrast with *Razvozzhayev and Udaltsov,* cited above, §§ 178-79).

886. On the basis of all the material in its possession and for the purposes of the present application, the Court therefore considers that there is no evidence of "effective control" or "State agent authority and control" – the two main criteria governing the exercise of extraterritorial jurisdiction – over the relevant part of Belarus and/or the individual concerned to the required standard of proof. In these circumstances, the Court is not satisfied that Mr Hryb was within the "jurisdiction" of the respondent State for the purposes of Article 1 of the Convention with regard to the specific circumstances complained of. Thus, the allegations regarding the abduction of Mr Hryb from Belarus will not be taken into account when examining the substantive complaints of the applicant Government under Article 5 of the Convention.

887. Nevertheless, it is accepted that Mr Hryb must have crossed the Russian State borders in one manner or another and that the claims relating to events unfolding after that point in time fall within the respondent Government's jurisdiction and can be taken into account by the Court for illustrative purposes in relation to the administrative practice alleged inasmuch as those claims comply with the admissibility requirements.

3. *Jurisdiction* ratione temporis *of the Court*

888. The Court observes that the respondent State ceased to be a member of the Council of Europe on 16 March 2022 (see paragraph 17 above) and that it also ceased to be a Party to the Convention on 16 September 2022 (see paragraph 18 above).

889. The Court has since confirmed on several occasions that it retains jurisdiction to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention that occurred until 16 September 2022 (see, *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 72, 17 January 2023; *Ukraine and the Netherlands v. Russia* (dec.) [GC], cited above, §§ 36 and 389, and *Georgia v. Russia (II)* (just satisfaction) cited above §§ 19-24).

890. Since the facts giving rise to application no. 20958/14 occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention, the Court retains jurisdiction to deal with the

admissibility and merits of the complaints raised therein (see *Fedotova and Others*, cited above §§ 68-73).

891. As regards application no. 38334/18, since the applicant Government's allegations are that the administrative practices alleged are ongoing, the Court needs to examine further the consequential effect of the Russian Federation ceasing to be subject to the obligations under the Convention as from 16 September 2022 ("the termination date").

892. Having the power to determine the scope of its jurisdiction, as well as its own procedure and its own rules (see *Ukraine and the Netherlands v. Russia*, cited above, § 383, with further references), the Court has recently set out in the case of *Pivkina and Others v. Russia* ((dec.), nos. 2134/23 and 6 others, 6 June 2023), the principles on the basis of which it exercises its jurisdiction in individual cases against the Russian Federation concerning acts or omissions occurring (i) up until the termination date, (ii) after the termination date, and (iii) spanning the termination date, namely 16 September 2022. Whereas for the first category (i), the Court has jurisdiction to deal with the respective complaints (ibid., § 46), any application concerning acts and omissions from the second category (ii) is incompatible *ratione personae* with the provisions of the Convention (ibid., § 49). With respect to the third category (iii), the Court has found that, in order to establish its temporal jurisdiction, it is essential to identify, in each specific case, the exact time of the alleged interference. In doing so, the Court must consider both the facts of which the applicant complains and the scope of the Convention right alleged to have been violated (ibid., § 54). In cases where the interference occurs before the termination date but the failure to remedy it occurs after that date, it is the date of the interference that must be retained for determining the Court's temporal jurisdiction (ibid., § 53). In the above-mentioned case, the Court examined several instances of facts and omissions spanning the termination date and determined its *ratione temporis* jurisdiction in this respect.

893. More specifically, regarding the procedural aspect of Article 3 and the Court's jurisdiction over an investigation that spans the termination date, the Court has considered that the "significant proportion" test developed for situations spanning a ratification date (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009) is applicable. Thus, what is important for determining the Court's temporal jurisdiction is that a significant proportion of the required procedural steps – encompassing acts carried out in the framework of criminal, civil, administrative or disciplinary proceedings capable of leading to the identification and punishment of those responsible or an award of compensation to the injured party – were or ought to have been carried out during the period when the Convention was in effect in respect of the respondent State. This approach remains valid when the final judicial decision concluding the chain of appeals was given after the termination date (see *Pivkina and Others*, cited above, §§ 57-58).

894. The Court has also considered that a “continuing situation” that spanned the termination date falls within its temporal jurisdiction only for the part occurring before that date. The reason for that approach lies in the understanding that from the day following the termination date, the respondent State is no longer bound by the Convention, for example, to ensure Convention-compliant conditions or to conduct judicial proceedings within a reasonable time. The result has been found to be different, however, where it can be demonstrated that the situation in question was a “continuous” effect of an act that preceded the termination date. Thus, a period of detention approved before the termination date but extending beyond it will fall within the Court’s temporal jurisdiction in its entirety on account of the “continuous” effect of the detention order. In contrast, a factual situation such as alleged inhuman conditions of confinement, even if continuous, has no “overflowing” effects and stops at the termination date (ibid., § 61).

895. As regards complaints under Article 6 § 1 of the Convention of a breach of fair trial guarantees in proceedings characterised as “criminal”, the Court has reiterated that its primary concern under Article 6 § 1 is to evaluate the overall fairness of the proceedings and that, as a general rule, a defendant cannot claim to be a victim of a violation of Article 6 before he or she is finally convicted. In these circumstances, the Court found that only proceedings determined with final effect before the termination date fell under its jurisdiction. This also applies to complaints under Articles 7 or 18 which arise from the same proceedings (ibid., §§ 64-70).

896. Turning to the facts of application no. 38334/18, the Court observes that while part of the factual circumstances underlying the applicant Government’s complaints occurred before 16 September 2022, the date on which the Russian Federation ceased to be bound by the Convention, others, owing to their continuous nature, appear to span that date.

897. In the light of the above, when determining whether an administrative practice contrary to the Convention can be said to exist in the circumstances of the case, the Court will take into consideration the period during which the breaches took place in the individual cases referred to for illustrative purposes, and will do so in line with its findings in *Pivkina and Others* (cited above). Any conclusion about the existence of an ongoing administrative practice is to be understood as extending, for the purposes of the Convention, until 16 September 2022 at the latest, but also beyond for situations of detention which started before that date on account of the “continuous” effect of the detention order (see paragraph 894 above).

4. *Jurisdiction* ratione materiae *of the Court*

898. In their application form lodged within the framework of application no. 38334/18, the applicant Government submitted that the inability to obtain the transfer to Ukraine of the Ukrainian political prisoners held in penal facilities in the Russian Federation (both those arrested and sentenced in the

Russian Federation and those transferred from Crimea) constituted an administrative practice in breach of Article 8 of the Convention. In this connection, the applicant Government contended that their transfer requests had been systematically ignored or unreasonably dismissed by the Russian authorities. This position was contrary to the principles and objectives of the Council of Europe's 1983 Convention on the Transfer of Sentenced Persons (ETS No. 112), whose purpose it was to facilitate the transfer of foreign prisoners to their home countries. It also violated Article 8 of the Convention by either being unlawful (contrary to the above-mentioned Convention) or upsetting the reasonable balance to be struck between the interests of the State and those of the persons concerned.

899. The applicant Government further maintained that whilst the 1983 Convention on the Transfer of Sentenced Persons conferred discretionary powers upon the requested State, it nonetheless obliged the latter to "promptly inform the requesting State of its decision whether or not to agree to the requested transfer" (Article 5 § 4 of the Convention, A 63). However, the Russian Ministry of Justice replied to any such requests submitted by the Ukrainian Ministry of Justice after a substantial delay, if at all, in clear breach of that obligation. The decisions of refusal were succinct and did not include any grounds. Where, however, reasons were given, they were related to the alleged Russian citizenship of the persons concerned, citizenship which had been imposed on them against their will. The applicant Government submitted no further arguments concerning this complaint in their memorial before the Grand Chamber.

900. The respondent Government provided information about the refusals to transfer eight convicted prisoners to Ukraine in order to continue serving their sentences on the territory of the latter State (see paragraphs 775 et seq. above). Those refusals had been based on various grounds.

901. With regard to the first group of "Ukrainian political prisoners" (those arrested and sentenced in the Russian Federation), the Court considers that the essential issue raised is whether a refusal by Russia to transfer them to Ukraine falls within the scope of Article 8 of the Convention. In this connection, the Court notes that there is no evidence that Russian law confers on the prisoners a right to be transferred to Ukraine. The applicant Government did not refer to any relevant legal provisions indicating the existence of such a right; nor has any domestic court decision ordering such a transfer been submitted to the Court. Accordingly, it cannot be maintained that the prisoners have any substantive right under Russian law to be transferred to their country of origin (see, similarly, *Plepi v. Albania and Greece* (dec.), nos. 11546/05, 33285/05 and 33288/05, 4 May 2010; *Serce v. Romania*, no. 35049/08, § 53, 30 June 2015; and *Palfreeman v. Bulgaria* (dec.), no. 59779/14, § 33, 16 May 2017).

902. The Court has consistently held, moreover, that it is not for Article 8, however broad its scope, to fill an alleged gap in fundamental rights

protection which results from the decision of the respondent State to exercise the possibility, in accordance with international law, of not providing a particular substantive right (see *Palfreeman*, cited above, § 34).

903. In addition, the Court has already found that the provisions of the 1983 Transfer Convention, referred to by the applicant Government (and applicable to both Ukraine and the Russian Federation), are confined to providing an inter-State procedural framework for the transfer of sentenced persons. The Transfer Convention does not generate any individual substantive right *per se*. Nor does it contain an obligation on the States Parties to comply with a request for transfer (see *Plepi*, cited above, and *Palfreeman*, cited above, § 54). In addition, the applicant Government did not point to any bilateral agreement regarding the transfer of detainees containing an obligation on the signatory State to comply with a request for a transfer.

904. The Court accordingly declares this complaint regarding the inability to obtain the transfer to Ukraine of the "Ukrainian political prisoners" arrested and sentenced in the Russian Federation and then held in penal facilities in the Russian Federation, by reference to the 1983 Convention on the Transfer of Sentenced Persons, inadmissible on the grounds that it falls outside the *ratione materiae* jurisdiction of the Court.

905. As for the remainder of the above complaint, concerning the transfer of prisoners from Crimea to the Russian Federation, the Court will examine this below (see paragraphs 1023, 1053, 1279 et seq. and 1387 below).

D. Compliance with Article 38 of the Convention

906. In the light of its previous findings in relation to the approach to the evidence in the present case, the Court needs to address the issue of the respondent Government's compliance with their procedural obligation under Article 38 of the Convention to "furnish all necessary facilities" whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of these applications, including the provision of the evidence that the Court has requested from them. In view of the Court's continuing jurisdiction under Article 58 of the Convention, Article 38 and the corresponding provisions of the Rules of Court, continue to be applicable to those applications after 16 September 2022 (*Georgia v. Russia (II)* (just satisfaction), cited above, §§ 24, 27 and 38). Article 38 reads as follows:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

907. The Court reiterates that a failure on the part of a Government to submit information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the

Convention (see, as a recent authority, *Matkava and Others v. Russia*, no. 3963/18, § 48, 19 December 2023). The obligation to furnish the evidence requested by the Court is binding on the respondent Government from the moment such a request has been formulated, whether at the initial stage when the Government are given notice of an application or at a subsequent stage in the proceedings (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 203, ECHR 2013, and *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 296, 26 April 2011). The Court also observes that in its recent Declaration on the effective processing and resolution of cases relating to inter-State disputes, adopted on 5 April 2023, the Committee of Ministers called on member States which were parties in inter-State proceedings and related individual applications to fully comply with their obligations under Article 38 as interpreted by the Court at all stages of the proceedings (A 71).

908. In the present case, in the light of its observations above (see paragraphs 853 and 854 above) the Court considers that the respondent Government have failed to furnish all necessary facilities to the Court in its task of establishing the facts of the case, as required under Article 38 of the Convention and Rule 44A of the Rules of Court.

909. Therefore, having regard to the respondent Government's unexplained failure to submit the requested material, the Court considers that there has been a lack of cooperation on their part which has unnecessarily hampered the Court's ability to clarify important issues in the present case. Whilst the procedural obligations under Article 38 of the Convention must be enforced irrespective of the eventual outcome of the proceedings in question (see *Matkava*, cited above, § 50), the Court observes that the respondent Government's non-participation has had prejudicial effects on its examination of the case. Accordingly, the Court considers that the respondent State has failed to comply with its obligations under Article 38 of the Convention.

E. Relationships between the provisions of the Convention and the rules of international humanitarian law

1. *The parties' submissions*

910. Referring to the Court's finding in the admissibility decision that during the period under consideration the respondent State exercised extraterritorial jurisdiction over Ukrainian territory (Crimea) on the basis of effective control, the applicant Government argued that the Russian Federation had the status of an "occupying power" under IHL. Accordingly, they submitted that the relevant Convention requirements should be interpreted and construed in harmony with the applicable rules of (customary) IHL, arguing that in most cases there was no conflict between the requirements of the two branches of law (international humanitarian law and human rights law). In this connection they extensively referred to, and

submitted detailed arguments in respect of, the obligations of the respondent State under IHL regarding many alleged violations. In their written submissions they made a reference to specific provisions of IHL, which they argued were to be taken into account by the Court in its assessment of whether the respondent State had complied with its obligations under the Convention. They also urged the Court to find against the background of the provisions of IHL that the applicable "law" by reference to which some of the complaints were to be assessed was that of Ukraine and not that of the Russian Federation. In their oral pleadings of 13 December 2023, they argued that the respondent State had mounted "a belligerent military occupation" carried out in violation of international law and called on the Court to decide that violations had occurred since the first day when the Russian military forces had entered Crimea.

911. The respondent Government did not provide any counter-arguments regarding this issue.

2. *The Court's assessment*

912. The Court reiterates that the provisions of the Convention cannot be interpreted and applied in a vacuum. Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law and, in particular, in the light of the Vienna Convention on the Law of Treaties. As a matter of fact, the Court has never considered the provisions of the Convention to be the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties (see *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, § 23, ECHR 2014, and the references cited therein).

913. The relevant principles regarding the relationship between the Convention law and IHL were summarised, in the context of Article 5 of the Convention, in *Hassan v. the United Kingdom* ([GC], no. 29750/09, §§ 100-07, ECHR 2014; see also *Georgia v. Russia (II)*, cited above, § 93). The relevant passages, which likewise apply to the present case, read as follows (see *Hassan*, cited above, §§ 100-04 and 107):

> "100. The starting-point for the Court's examination must be its constant practice of interpreting the Convention in the light of the rules set out in the Vienna Convention on the Law of Treaties of 23 May 1969 (see *Golder v. the United Kingdom*, 21 February 1975, Series A no. 18, § 29, and many subsequent cases). Article 31 of the Vienna Convention, which contains the 'general rule of interpretation' ..., provides in paragraph 3 that there shall be taken into account, together with the context, (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; and (c) any relevant rules of international law applicable in the relations between the parties.

101. There has been no subsequent agreement between the High Contracting Parties as to the interpretation of Article 5 in situations of international armed conflict. However, in respect of the criterion set out in Article 31 § 3 (b) of the Vienna Convention ..., the Court has previously stated that a consistent practice on the part of the High Contracting Parties, subsequent to their ratification of the Convention, could be taken as establishing their agreement not only as regards interpretation but even to modify the text of the Convention (see, *mutatis mutandis*, *Soering*, cited above, §§ 102-03, and *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 120, ECHR 2010). The practice of the High Contracting Parties is not to derogate from their obligations under Article 5 in order to detain persons on the basis of the Third and Fourth Geneva Conventions during international armed conflicts. As the Court noted in *Banković and Others* (cited above, § 62), although there have been a number of military missions involving Contracting States acting extraterritorially since their ratification of the Convention, no State has ever made a derogation pursuant to Article 15 of the Convention in respect of these activities. The derogations that have been lodged in respect of Article 5 have concerned additional powers of detention claimed by States to have been rendered necessary as a result of internal conflicts or terrorist threats to the Contracting State (see, for example, *Brannigan and McBride v. the United Kingdom*, 26 May 1993, Series A no. 258-B; *Aksoy v. Turkey*, 18 December 1996, *Reports of Judgments and Decisions* 1996-VI; and *A. and Others v. the United Kingdom* [GC], no. 3455/05, ECHR 2009). Moreover, it would appear that the practice of not lodging derogations under Article 15 of the Convention in respect of detention under the Third and Fourth Geneva Conventions during international armed conflicts is mirrored by State practice in relation to the International Covenant for the Protection of Civil and Political Rights. Similarly, although many States have interned persons pursuant to powers under the Third and Fourth Geneva Conventions in the context of international armed conflicts subsequent to ratifying the Covenant, no State has explicitly derogated under Article 4 of the Covenant in respect of such detention ..., even subsequent to the advisory opinions and judgment referred to above, where the International Court of Justice made it clear that States' obligations under the international human rights instruments to which they were parties continued to apply in situations of international armed conflict ...

102. Turning to the criterion contained in Article 31 § 3 (c) of the Vienna Convention ..., the Court has made it clear on many occasions that the Convention must be interpreted in harmony with other rules of international law of which it forms part ... This applies no less to international humanitarian law. The four Geneva Conventions of 1949, intended to mitigate the horrors of war, were drafted in parallel to the European Convention on Human Rights and enjoy universal ratification. The provisions in the Third and Fourth Geneva Conventions relating to internment, at issue in the present application, were designed to protect captured combatants and civilians who pose a security threat. The Court has already held that Article 2 of the Convention should 'be interpreted in so far as possible in light of the general principles of international law, including the rules of international humanitarian law which play an indispensable and universally accepted role in mitigating the savagery and inhumanity of armed conflict' (see *Varnava and Others*, [[GC], nos. 16064/90 and 8 others, § 185, ECHR 2009] cited above, § 185), and it considers that these observations apply equally in relation to Article 5. Moreover, the International Court of Justice has held that the protection offered by human rights conventions and that offered by international humanitarian law co-exist in situations of armed conflict ... In its judgment *Armed Activities on the Territory of the Congo*, the International Court of Justice observed, with reference to its advisory opinion concerning *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, that '[a]s regards the relationship between

international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law' ... The Court must endeavour to interpret and apply the Convention in a manner which is consistent with the framework under international law delineated by the International Court of Justice.

103. In the light of the above considerations, the Court accepts the Government's argument that the lack of a formal derogation under Article 15 does not prevent the Court from taking account of the context and the provisions of international humanitarian law when interpreting and applying Article 5 in this case.

104. Nonetheless, and consistently with the case-law of the International Court of Justice, the Court considers that, even in situations of international armed conflict, the safeguards under the Convention continue to apply, albeit interpreted against the background of the provisions of international humanitarian law. ...

...

107. Finally, although, for the reasons explained above, the Court does not consider it necessary for a formal derogation to be lodged, the provisions of Article 5 will be interpreted and applied in the light of the relevant provisions of international humanitarian law only where this is specifically pleaded by the respondent State. It is not for the Court to assume that a State intends to modify the commitments which it has undertaken by ratifying the Convention in the absence of a clear indication to that effect."

914. In this connection, the Court also considers noteworthy the following passages from the judgment of the International Court of Justice in the case *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Judgment, ICJ Reports 2005, p. 168),* which the Court referred to in *Hassan* (cited above, § 37):

"178. The Court thus concludes that Uganda was the occupying Power in Ituri at the relevant time. As such it was under an obligation, according to Article 43 of the Hague Regulations of 1907, to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party.

179. The Court, having concluded that Uganda was an occupying Power in Ituri at the relevant time, finds that Uganda's responsibility is engaged both for any acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account."

915. In *Georgia v. Russia (II)* (cited above, § 196) the Court stated that "generally speaking, international humanitarian law applies in a situation of 'occupation'." It further clarified the relationship between "occupation" and "effective control", as a concept of jurisdiction under Article 1 of the Convention. The relevant passage from that paragraph of the judgment reads as follows.

> “196. ... In the Court’s view, the concept of ‘occupation’ for the purposes of international humanitarian law includes a requirement of ‘effective control’. If there is ‘occupation’ for the purposes of international humanitarian law there will also be ‘effective control’ within the meaning of the Court’s case-law, although the term ‘effective control’ is broader and covers situations that do not necessarily amount to a situation of ‘occupation’ for the purposes of international humanitarian law.”

916. In *Chiragov and Others v. Armenia* ([GC], no. 13216/05, § 96, ECHR 2015) the Court defined the concept of “occupation” under IHL as follows:

> “96. ... Accordingly, occupation within the meaning of the 1907 Hague Regulations exists when a State exercises actual authority over the territory, or part of the territory, of an enemy State. The requirement of actual authority is widely considered to be synonymous to that of effective control.
>
> Military occupation is considered to exist in a territory, or part of a territory, if the following elements can be demonstrated: the presence of foreign troops, which are in a position to exercise effective control without the consent of the sovereign. According to widespread expert opinion, physical presence of foreign troops is a *sine qua non* requirement of occupation, that is, occupation is not conceivable without ‘boots on the ground’, therefore forces exercising naval or air control through a naval or air blockade do not suffice.”

917. In the present case, the relationship between these two branches of international law is to be viewed through the principles outlined above and in the context of the Court’s findings regarding the respondent State’s jurisdiction over Crimea (as to the latter issue, see paragraph 864 above).

918. In these circumstances, the Court considers that the factual basis on which the respondent State obtained extraterritorial jurisdiction and continued to exercise it throughout the relevant period(s) on the basis of “effective control” over Crimea, militate in favour of taking account of the relevant provisions of IHL when interpreting the Convention rights in issue in this case, as provided for by Article 31 § 3 (c) of the Vienna Convention. The Court notes that the OHCHR and a number of NGOs (Human Rights Watch and Amnesty International), as well as the Office of the Prosecutor at the International Criminal Court, on whose reports the Court placed some reliance in its admissibility decision, expressed the view that certain practices of the respondent State amounted to violations of IHL and, as the Office of the Prosecutor at the ICC stated (quoted at paragraph 224 of the admissibility decision), “that the situation within the territory of Crimea and Sevastopol factually amounts to an ongoing state of occupation”. The Court will therefore consider the rules of IHL, in so far as relied on by the applicant Government, when considering the compatibility of an alleged administrative practice with the Convention right(s) in question. In so doing it will follow the methodology applied in *Georgia v. Russia (II)* (cited above, § 95) and in *Ukraine and the Netherlands v. Russia* (cited above, §§ 718-21), according to which:

> "95. In the present case the Court will thus examine the interrelation between the two legal regimes with regard to each aspect of the case and each Convention Article alleged to have been breached. In doing so, it will ascertain each time whether there is a conflict between the provisions of the Convention and the rules of international humanitarian law."

919. The above approach is limited to the interpretation and application of the Convention in so far as necessary in the circumstances of the present case. It underlines the necessary interplay between IHL and the Convention, as two international legal regimes relevant to the case. It has no bearing on the issues pertaining to Crimea's status under international law, which, as stated in paragraph 244 of the admissibility decision "are outside the scope of the case".

F. The general issue of "lawfulness" as required by the Convention

920. When considering whether it was, in fact, necessary to determine the nature or legal basis of the respondent State's jurisdiction over Crimea (that is, whether it was exercising territorial or extraterritorial jurisdiction), the Grand Chamber, in the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 342), referred, *inter alia*, to the close interplay between the general issue of "lawfulness" under the Convention and the legality of the "court system" operating in Crimea after 18 March 2014 (date of signature of the "Accession Treaty"). The relevant extract from that decision reads as follows:

> "342. ... The complaint under Article 6 § 1 is formulated as a violation of the requirement for a 'tribunal established by law' arising out of the '[u]nlawful requalification of Ukrainian judgments under Russian legislation in breach of Article 6 of the Convention'. In any assessment of this complaint at the merits stage of the proceedings, the Court would, in accordance with its consistent case-law, have to consider the provisions of 'domestic' law; it would, therefore, be necessary to determine what the applicable 'domestic' law was. It would be impossible for the Court to examine this complaint without first determining whether the relevant 'domestic law' by reference to which this complaint is to be assessed is that of Ukraine or that of the Russian Federation."

921. In addition, in their submissions before the Court the applicant Government, as indicated below, challenged both the general issue of lawfulness and the legality of the court system in Crimea. Furthermore, both parties maintained that, as a matter of fact, the "court system" functioning in Crimea from 18 March 2014 onwards, was based on the "Accession Treaty" and the relevant legislation of the Russian Federation. For these reasons the Court considers it appropriate to address those issues together.

1. The parties' submissions

922. The applicant Government consistently argued that the administrative practices complained of did not meet the requirement of

lawfulness under the Convention. This was the case because the notion of "law" under Articles 5-11 of the Convention, Article 1 of Protocol No.1 and Article 2 of Protocol No. 4 to the Convention was to be understood as referring to the law of Ukraine and not Russian law. Since the practices complained of under the above Articles had been administered pursuant to laws of the Russian Federation, they were unlawful and, accordingly, in violation of the Convention. In the same vein the applicant Government challenged the "court system" in Crimea as established under the "Accession Treaty" and the relevant Federal Constitutional Law which provided that "courts of the Russian Federation" were to be established in Crimea in accordance with the judicial system and laws of the Russian Federation. According to the applicant Government, "any courts presiding over criminal cases on the territory of Crimea must be established in accordance with the law of Ukraine and must continue to apply the substantive laws of Ukraine". Such an approach had support in IHL in so far as relevant to the administration of justice, IHL being applicable to the circumstances of the case given the Russian Federation's status as an "occupying power" under IHL. In their written submissions, the applicant Government concluded that "at all material times, the local 'court system' set up by the Russian Federation in occupied Crimea lacked essential guarantees of independence and impartiality in the appointment of 'judges' and in the 'administration of justice', and were established in breach of applicable domestic and international law, such that these 'courts' cannot be considered as established in accordance with the law". At the oral hearing, and in reply to questions put by judges, the applicant Government relied on a witness statement by a judge operating in Crimea at that time (seemingly Judge A. Kushnova (see paragraph 55 above and A 419-21)) to reiterate that judges at the time had been under pressure to forgo democratic standards. As regards Hizb ut-Tahrir, they maintained that the specific circumstances of the case did not justify the application of Russian law (as the law of the "occupier") – in fact, the respondent State had deliberately relied on Russian criminal law in order to fabricate false prosecutions and promote a policy of persecution as a means to stifle political opposition.

923. The respondent Government did not comment on this particular argument. However, in the last submissions received by the Court in February 2022 they nevertheless submitted that the measures complained of under various Articles of the Convention had a legal basis in different laws and other legal instruments (whether adopted before and after the events in February-March 2014) of the Russian Federation and the local institutions of Crimea (the latter's regulations had been adopted after 18 March 2014 in accordance with the legislation of the Russian Federation). According to the respondent Government, the applicability of the legal instruments in question stemmed from the "Accession Treaty" and Federal Constitutional Law no. 6-FKZ (both of which were regarded as an integral part of the legal system

of the Russian Federation). This also concerned the complaint under Article 6 of the Convention ("tribunal established by law"), in respect of which reference was made to several federal constitutional laws of the Russian Federation that had served as a legal basis for establishing the courts in Crimea (and the appointment of judges), their territorial jurisdiction and rules of procedure. Whereas the respondent Government indicated the legal provisions relevant to each complaint, they did not provide copies of the "statutory laws and other legal acts of the Russian Federation and the local authorities to which [the] Government referred in their memorial of 28 February 2022, whether in their original language or translated into English or French", despite repeated requests by the Court (see paragraph 21 above).

2. *The Court's assessment*

(a) Existing case-law

924. In *Loizidou v. Turkey* (cited above) the Court dealt with an argument by the respondent Government that the applicant's ownership of some land had been lost as a result of the operation of "Article 159 of the Constitution of the 'Turkish Republic of Northern Cyprus'" ("TRNC"), which purported to vest in the "TRNC" authorities, irreversibly and without payment of any compensation, the applicant's rights to her land in northern Cyprus. The relevant passages of that judgment read as follows.

> "43. It is recalled that the Convention must be interpreted in the light of the rules of interpretation set out in the Vienna Convention of 23 May 1969 on the Law of Treaties and that Article 31 para. 3 (c) of that treaty indicates that account is to be taken of 'any relevant rules of international law applicable in the relations between the parties' (see, *inter alia*, the *Golder v. the United Kingdom* judgment of 21 February 1975, Series A no. 18, p. 14, para. 29, the *Johnston and Others v. Ireland* judgment of 18 December 1986, Series A no. 112, p. 24, para. 51, and the above-mentioned *Loizidou* judgment (preliminary objections), p. 27, para. 73).
>
> In the Court's view, the principles underlying the Convention cannot be interpreted and applied in a vacuum. Mindful of the Convention's special character as a human rights treaty, it must also take into account any relevant rules of international law when deciding on disputes concerning its jurisdiction pursuant to Article 49 of the Convention (art. 49).
>
> 44. In this respect it is evident from international practice and the various, strongly worded resolutions referred to above (see paragraph 42) that the international community does not regard the 'TRNC' as a State under international law and that the Republic of Cyprus has remained the sole legitimate Government of Cyprus - itself, bound to respect international standards in the field of the protection of human and minority rights. Against this background the Court cannot attribute legal validity for purposes of the Convention to such provisions as Article 159 of the fundamental law on which the Turkish Government rely.
>
> 45. The Court confines itself to the above conclusion and does not consider it desirable, let alone necessary, in the present context to elaborate a general theory concerning the lawfulness of legislative and administrative acts of the 'TRNC'. It notes,

however, that international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, for instance as regards the registration of births, deaths and marriages, 'the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory' (see, in this context, *Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, [1971] International Court of Justice Reports 16, p. 56, para. 125).

46. Accordingly, the applicant cannot be deemed to have lost title to her property as a result of Article 159 of the 1985 Constitution of the 'TRNC'..."

925. In *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 136-41, 23 February 2016), which concerned the events in the "Moldavian Republic of Transdniestria" ("MRT"), the Court summarised the general principles concerning the "lawfulness of acts adopted by unrecognised entities". The relevant parts of the judgment read as follows:

"136. The Court considers that this issue is to be viewed in the context of its general approach to the exercise of extraterritorial jurisdiction in unrecognised entities. In that context the Court has had regard to the special character of the Convention as an instrument of European public order for the protection of individual human beings and its mission, as set out in Article 19 of the Convention, to 'ensure the observance of the engagements undertaken by the High Contracting Parties'. It has emphasised the need to avoid a vacuum in the system of human rights protection and has thus pursued the aim of ensuring that Convention rights are protected throughout the territory of all Contracting Parties, even on territories effectively controlled by another Contracting Party, for instance through a subordinate local administration (see *Cyprus v. Turkey*, cited above, § 78).

137. In *Cyprus v. Turkey* (cited above, §§ 91-94) the Court examined the question whether applicants could be required to exhaust remedies available in the 'TRNC', that is, in an unrecognised entity. It drew inspiration, *inter alia*, from the stance of the ICJ in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion, *ICJ Reports* 1971, § 125). In that Advisory Opinion, the ICJ had found that, while official acts performed by the government of South Africa on behalf of or concerning Namibia after the termination of the mandate were illegal and invalid, this invalidity could not be extended to those acts such as, for instance, the registration of births, deaths or marriages, the effects of which could be ignored only to the detriment of the inhabitants of that territory. The Court found that use should be made of remedies available in the 'TRNC' provided that it could be shown that they existed to the advantage of individuals and offered them reasonable prospects of success. On a more general level it noted that the absence of courts in the 'TRNC' would work to the detriment of the members of the Greek-Cypriot community. The Court then concluded as follow'.

'96. ... the obligation to disregard acts of *de facto* entities is far from absolute. Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the *de facto* authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions, especially courts, including this one. To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they are discussed in an international context, which would

amount to depriving them even of the minimum standard of rights to which they are entitled.'

138. The Court confirmed this approach in *Demopoulos and Others v. Turkey* ((dec.) [GC], nos. 46113/99 and 7 others, § 95, ECHR 2010). Again in the context of exhaustion of domestic remedies, the Court noted that those affected by the policies and actions of the 'TRNC' came within the jurisdiction of Turkey, with the consequence that Turkey could be held responsible for violations of Convention rights taking place within that territory. It went on to say that it would not be consistent with such responsibility under the Convention if the adoption by the authorities of the 'TRNC' of civil, administrative or criminal-law measures, or their application or enforcement within their territory, were to be denied any validity or regarded as having no "lawful" basis in terms of the Convention. Furthermore it noted (ibid., § 96) as follows:

'... The right of individual petition under the Convention is no substitute for a functioning judicial system and framework for the enforcement of criminal and civil law. ...'

139. In *Cyprus v. Turkey* (cited above) the Court also had to deal with another issue of relevance in the present context. The applicant Government complained under Article 6 that Greek Cypriots in northern Cyprus were denied the right to have their civil rights and obligations determined by independent and impartial courts established by law. The Court held as follows.

'231. As to the applicant Government's claim that 'TRNC' courts failed to satisfy the criteria laid down in Article 6, the Commission noted, firstly, that there was nothing in the institutional framework of the 'TRNC' legal system which was likely to cast doubt either on the independence and impartiality of the civil courts or the subjective and objective impartiality of judges, and, secondly, those courts functioned on the basis of the domestic law of the 'TRNC' notwithstanding the unlawfulness under international law of the 'TRNC''s claim to statehood. The Commission found support for this view in the Advisory Opinion of the International Court of Justice in the Namibia case ... Moreover, in the Commission's opinion due weight had to be given to the fact that the civil courts operating in the 'TRNC' were in substance based on the Anglo-Saxon tradition and were not essentially different from the courts operating before the events of 1974 and from those which existed in the southern part of Cyprus.

...

236. As to the applicant Government's challenge to the very legality of the 'TRNC' court system, the Court observes that they advanced similar arguments in the context of the preliminary issue concerning the requirement to exhaust domestic remedies in respect of the complaints covered by the instant application ... The Court concluded that, notwithstanding the illegality of the 'TRNC' under international law, it cannot be excluded that applicants may be required to take their grievances before, *inter alia*, the local courts with a view to seeking redress. It further pointed out in that connection that its primary concern in this respect was to ensure, from the standpoint of the Convention system, that dispute-resolution mechanisms which offer individuals the opportunity of access to justice for the purpose of remedying wrongs or asserting claims should be used.

237. The Court observes from the evidence submitted to the Commission (see paragraph 39 above) that there is a functioning court system in the 'TRNC' for the settlement of disputes relating to civil rights and obligations defined in 'domestic law' and which is available to the Greek-Cypriot population. As the Commission observed, the court system in its functioning and procedures reflects the judicial and

common-law tradition of Cyprus (see paragraph 231 above). In its opinion, having regard to the fact that it is the 'TRNC domestic law' which defines the substance of those rights and obligations for the benefit of the population as a whole it must follow that the domestic courts, set up by the 'law' of the 'TRNC', are the fora for their enforcement. For the Court, and for the purposes of adjudicating on 'civil rights and obligations' the local courts can be considered to be 'established by law' with reference to the 'constitutional and legal basis' on which they operate.

In the Court's opinion, any other conclusion would be to the detriment of the Greek-Cypriot community and would result in a denial of opportunity to individuals from that community to have an adjudication on a cause of action against a private or public body ... It is to be noted in this connection that the evidence confirms that Greek Cypriots have taken successful court actions in defence of their civil rights.'

140. In several judgments concerning Turkey, the Court has applied the principles established in *Cyprus v. Turkey* to criminal matters (see *Foka*, cited above, § 83, where the arrest of the Greek-Cypriot applicant by a 'TRNC' police officer was found to be lawful for the purpose of Article 5; *Protopapa*, cited above, § 60, where both the pre-trial detention and the detention after conviction imposed by the 'TRNC' authorities were considered to be lawful for the purpose of Article 5 and a criminal trial before a 'TRNC' court was found to be in accordance with Article 6; and also *Asproftas* v. Turkey, no. 16079/90, § 72, 27 May 2010; *Petrakidou v. Turkey*, no. 16081/90, § 71, 27 May 2010; and *Union européenne des droits de l'homme and Josephides v. Turkey* (dec.), no. 7116/10, § 9, 2 April 2013).

141. In *Ilaşcu and Others* (cited above, § 460), when examining whether the applicants' detention following their conviction by the "MRT Supreme Court' could be regarded as 'lawful' under Article 5 § 1 (a) of the Convention, the Court formulated the general principle as follows.

'In certain circumstances, a court belonging to the judicial system of an entity not recognised under international law may be regarded as a tribunal 'established by law' provided that it forms part of a judicial system operating on a 'constitutional and legal basis' reflecting a judicial tradition compatible with the Convention, in order to enable individuals to enjoy the Convention guarantees (see, *mutatis mutandis*, *Cyprus v. Turkey*, cited above, §§ 231 and 236-37).'"

926. Relying on the above principles, in *Mozer* (cited above, §§ 142-44) the Court reiterated that the primary concern must always be for Convention rights to be effectively protected throughout the territory of all Contracting Parties, even if a part of that territory was under the effective control of another Contracting Party. Accordingly, the decisions taken by the courts of an unrecognised entity could not automatically be regarded as unlawful purely because of the entity's unlawful nature and the fact that it was not internationally recognised. It further held that "when assessing whether the courts of an unrecognised entity satisfy the test established in *Ilaşcu and Others*, namely whether they form 'part of a judicial system operating on a "constitutional legal basis" ... compatible with the Convention', the Court will attach weight to the question whether they can be regarded as independent and impartial and are operating on the basis of the rule of law". The Court further stated in *Mozer*:

"147. In the Court's view, it is in the first place for the Contracting Party which has effective control over the unrecognised entity in issue to show that its courts form 'part of a judicial system operating on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention' (see paragraph 144 above). As the Court has already established (see paragraph 111 above), in the case of the 'MRT' it is Russia which has such effective control. To date, the Russian Government have not submitted to the Court any information on the organisation of the 'MRT courts' which would enable it to assess whether they fulfil the above requirement. Nor have they submitted any details of the 'MRT' law which served as a basis for the applicant's detention. Furthermore, the Court notes the scarcity of official sources of information concerning the legal and court system in the 'MRT', a fact which makes it difficult to obtain a clear picture of the applicable laws. Consequently, the Court is not in a position to verify whether the 'MRT courts' and their practice fulfil the requirements mentioned above.

148. There is also no basis for assuming that there is a system reflecting a judicial tradition compatible with the Convention in the region, similar to the one in the remainder of the Republic of Moldova (compare and contrast with the situation in Northern Cyprus, referred to in *Cyprus v. Turkey*, cited above, §§ 231 and 237). The division of the Moldovan and 'MRT' judicial systems took place in 1990, well before Moldova joined the Council of Europe in 1995. Moreover, Moldovan law was subjected to a thorough analysis when it requested membership of the Council of Europe (see Opinion No. 188 (1995) of the Parliamentary Assembly of the Council of Europe on the application by Moldova for membership of the Council of Europe), with amendments proposed to ensure compatibility with the Convention, which Moldova finally ratified in 1997. No such analysis was made of the 'MRT legal system', which was thus never part of a system reflecting a judicial tradition considered compatible with Convention principles before the split into separate judicial systems occurred in 1990 (see paragraph 12 above, and *Ilașcu and Others*, cited above, §§ 29-30).

149. The Court also considers that the conclusions reached above are reinforced by the circumstances in which the applicant in the present case was arrested and his detention was ordered and extended (see paragraphs 13-15 and 17 above, in particular the order for his detention for an undefined period of time and the examination in his absence of the appeal against the decision to extend that detention), as well as by the case-law referred to by the applicant (see paragraph 75 above) and the various media reports which raise concerns about the independence and quality of the 'MRT courts' (see paragraph 77 above).

150. In sum, the Court concludes that its findings in *Ilașcu and Others* (cited above, §§ 436 and 460-62) are still valid with respect to the period of time covered by the present case. It therefore finds that the 'MRT courts' and, by implication, any other 'MRT authority', could not order the applicant's 'lawful arrest or detention' within the meaning of Article 5 § 1 (c) of the Convention. Accordingly, the applicant's detention based on the orders of the 'MRT courts' was unlawful for the purposes of that provision."

927. The relevant findings in *Ilaşcu and Others* (cited above), referred to in *Mozer,* were as follows:

"436. ...The 'Supreme Court of the MRT' which passed sentence on Mr Ilașcu was set up by an entity which is illegal under international law and has not been recognised by the international community. That 'court' belongs to a system which can hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention. That is evidenced by the patently arbitrary nature of the circumstances in which the applicants were tried and convicted ...

...

460. ... In certain circumstances, a court belonging to the judicial system of an entity not recognised under international law may be regarded as a tribunal 'established by law' provided that it forms part of a judicial system operating on a 'constitutional and legal basis' reflecting a judicial tradition compatible with the Convention, in order to enable individuals to enjoy the Convention guarantees (see, *mutatis mutandis, Cyprus v. Turkey*, cited above, §§ 231 and 236-37).

461. The requirement of lawfulness laid down by Article 5 § 1 (a) ('lawful detention' ordered 'in accordance with a procedure prescribed by law') is not satisfied merely by compliance with the relevant domestic law; domestic law must itself be in conformity with the Convention, including the general principles expressed or implied in it, particularly the principle of the rule of law, which is expressly mentioned in the Preamble to the Convention. The notion underlying the expression 'in accordance with a procedure prescribed by law' is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see, among other authorities, *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, pp. 19-20, § 45)."

928. In the recent case of *Mamasakhlisi and Others v. Georgia and Russia* (nos. 29999/04 and 41424/04, §§ 425-26, 440, 7 March 2023) the Court was unable to assess the conformity of the Abkhaz courts with the "constitutional and legal basis" requirement on account of the parties' failure to provide it with sufficient information on that matter and the absence of such information in the public domain. Nevertheless, the Court concluded that there had been no system in Abkhazia reflecting a judicial tradition compatible with the Convention. The relevant parts of the judgment read as follows.

"425. Turning to the present applications, the Court observes that none of the parties has provided information to it about the specific provisions of domestic law that served as the legal basis for the arrest and detention by the *de facto* Abkhaz authorities of the first and third applicants. Nonetheless, assuming that the acts of the *de facto* Abkhaz authorities and courts were in compliance with the local laws in force within Abkhaz territory at the time of the facts complained of, those acts had in principle to be regarded as having a legal basis in domestic law for the purposes of the Convention. That said, no information has been submitted to the Court to enable it to determine whether the legal provisions applied to the applicants were compatible with the requirements under Article 5 of the Convention. The Court furthermore notes the scarcity of official sources of information concerning the legal and court system in Abkhazia – a fact that makes it difficult to obtain a clear picture of the applicable laws. Consequently, the Court is not in a position to verify whether the *de facto* Abkhaz authorities and courts, and the practices that they follow, fulfil the requirements mentioned above.

426. There is also no basis for assuming that there is a system reflecting a judicial tradition compatible with the Convention in the region, similar to the one in the rest of the Georgia (compare and contrast the situation in Northern Cyprus, referred to in *Cyprus v. Turkey*, cited above, §§ 231 and 237). The division between the Georgian and *de facto* Abkhaz judicial systems took place in the early 1990s – well before Georgia joined the Council of Europe in 1999. Moreover, Georgia became a Council of Europe member State after the Parliamentary Assembly found that Georgia had made significant progress in creating a pluralist society based on respect for human rights and the rule of law and which was able and willing, in the sense of Article 4 of the Council

of Europe's Statute, to continue the democratic reforms in progress in order to bring all the country's legislation and practice into line with the principles and standards of the Council of Europe (see Opinion No. 209 (1999) of the Parliamentary Assembly of the Council of Europe on the application by Georgia for membership in the Council of Europe). In that context, Georgia undertook a number of concrete commitments the implementation of which has been subject of continued monitoring by the Assembly's committee on the honouring of the obligations and commitments by member states. No such analysis or monitoring was made of the *de facto* Abkhaz legal system, which was thus never part of a system reflecting a judicial tradition considered compatible with Convention principles before the split into separate judicial systems occurred in the early 1990s (see *Mozer*, cited above, § 148).

...

440. With reference to the analysis in paragraphs 425 to 427 above, the Court considers that the *de facto* Abkhaz courts could not qualify as a 'tribunal established by law' for the purposes of Article 6 § 1 of the Convention (compare, among many cases, *Vardanean v. the Republic of Moldova and Russia*, no. 22200/10, § 39, 30 May 2017, and *Apcov v. the Republic of Moldova and Russia*, no. 13463/07, § 57, 30 May 2017; also contrast *Protopapa v. Turkey*, no. 16084/90, § 84, 24 February 2009). The Court therefore finds that there has been a breach of Article 6 § 1 of the Convention taken together with Article 6 § 3 (c) of the Convention. Specifically, it finds that the first and third applicants did not benefit from a fair hearing by an independent and impartial tribunal established by law. In addition, with reference to the information before it (see paragraphs 40, 45, 49, 57, 87, 99, 224, 233, 234 and 348 above), the Court finds that it cannot be said that the applicants were given a real opportunity to organise their defence and effectively benefit from the assistance of a lawyer throughout the whole proceedings, as required under Article 6 § 3 (c) of the Convention (see, on this last point *Ibrahim and Others v. the United Kingdom* [GC], nos. *50541/08* and 3 others, § 255, 13 September 2016)."[9]

929. The examples of the Court's case-law set out above can be divided into two categories. On the one hand, in *Loizidou v. Turkey* (merits) the Court held that the acts (the Constitution) of the internationally unrecognised entity (the "TRNC") had no legal validity. On the other hand, the remaining cases concerned the issue of lawfulness of the acts of such entities and whether they "reflect(ed) a judicial tradition compatible with the Convention".

930. Whereas the Court held that "TRNC domestic law" was based on the Anglo-Saxon legal tradition and was therefore accepted as "law" for the purposes of the Convention, in cases concerning Transdniestria (the "MRT"), the Court found "no basis for assuming that [in the 'MRT'] there is a system reflecting a judicial tradition compatible with the Convention similar to the one in the remainder of the Republic of Moldova". The Court has reached

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[9] Further to these cases, in *Dobrovitskaya and Others v. the Republic of Moldova and Russia* ([Committee], nos. 41660/10 8064/11, 25197/11, 6151/12, 28972/13 and 29182/14, 3 September 2019) and *Golub v. the Republic of Moldova and Russia* ([Committee], no. 48020/12, § 57, 30 November 2021)) concerning allegations under Article 2 of Protocol No. 4 to the Convention, the Court held that the orders by the "MRT" authorities prohibiting the applicants from leavingthe "MRT" territory had not been carried out in accordance with Moldovan law and, accordingly, had been unlawful.

similar conclusions regarding the "law" of Abkhazia and the "lawfulness" of Abkhaz courts.

(b) Considerations in favour of distinguishing the present case

931. The Court considers that the present case is to be distinguished from the above-mentioned cases for the following reasons: firstly, in none of those cases was the Court called upon to interpret the Convention in the light of the rules of IHL, as it is in the present case (see discussion above). Secondly, the above-mentioned cases did not directly deal with the issue of whether the law applied by the local or federal authorities (courts) giving rise to the complaints in question could be regarded as "law" within the meaning of the Convention. Thirdly, the "law" applied in the second category of cases was substantively different from the "law" applied in the present case.

932. Furthermore, whereas the above-mentioned cases concerned the "law" of internationally unrecognised entities, the present case concerns the application of Russian law and acts of the "Russian courts" operating in Crimea following the establishment of "effective control" over that territory. Moreover, while the "MRT" and Abkhaz-related cases concerned the "law" of unrecognised entities that did not reflect "a judicial tradition ... similar to the one in the remainder of the Republic of Moldova" or "to the rest of Georgia" respectively, in *Cyprus v. Turkey* (merits) the Court held that "the civil courts operating in the 'TRNC' were in substance based on the Anglo-Saxon tradition and were not essentially different from the courts operating before the events of 1974 and from those which existed in the southern part of Cyprus". This particular aspect makes the latter case similar, yet different from the present case. The *Cyprus v. Turkey* case concerned the continued application of pre-existing Cypriot law valid in the territory of the "TRNC" before Turkey had obtained actual control of that territory, whereas the present case concerns the application in Crimea of the law of the Russian Federation (or the "law" of the local authorities, as its derivative) replacing the previously applicable and valid Ukrainian law.

933. Accordingly, this is the first case in which the Court has been called upon to determine whether the law of the Russian Federation, which served as a legal basis for the measures complained of, taken while the Russian Federation exercised extra-territorial jurisdiction over Crimea on account of effective control, can be regarded as "law" within the meaning of the relevant provisions of the Convention.

934. The Court has confirmed above that IHL is to be taken into account in the present case. In this connection it considers it important to take note of the following relevant provisions of IHL.

935. The relevant provisions of the Regulations concerning the Laws and Customs of War on Land, annexed to the Convention (IV) respecting the Laws and Customs of War on Land (The Hague, 18 October 1907; "the Hague Regulations") are contained in Section II ("Hostilities") and Section

III (“Military authority over the territory of the hostile State”) and read as follows (the text below is a translation of the authentic French text of the 1907 Regulations). It is to be noted that the Russian Federation ratified the Hague Convention (IV) respecting the Laws and Customs of War on Land and its Annex on 27 November 1909 and Ukraine acceded to it on 29 May 2015.

Article 23

> “In addition to the prohibitions provided by special Conventions, it is especially forbidden
>
> ...
>
> (h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party. ...”

Article 42

> “Territory is considered occupied when it is actually placed under the authority of the hostile army.
>
> The occupation extends only to the territory where such authority has been established and can be exercised.”

Article 43

> “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

936. The relevant provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 read as follows:

Article 47

> “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

Article 54

> “The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.
>
> This prohibition does not prejudice the application of the second paragraph of Article 51. It does not affect the right of the Occupying Power to remove public officials from their posts.”

Article 64

"The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them."

Article 66

"In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64, the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country."

Article 154

"In the relations between the Powers who are bound by the Hague Conventions respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and who are parties to the present Convention, this last Convention shall be supplementary to Sections II and III of the Regulations annexed to the above-mentioned Conventions of The Hague."

937. The relevant extracts from the International Committee of the Red Cross (ICRC) *Commentary, IV Geneva Convention p. 276 (ICRC, O.M. Uhler and H. Coursier eds., 1958,* p. 276– read as follows:

Article 47 - Inviolability of rights

"... An Occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory..."

Article 54 - Judges and public officials

"The purpose of the stipulation that public officials and judges must be allowed to retain their pre-occupation status is to enable them to continue carrying out the duties of their office as in the past, without being the object of intimidation or unwarranted interference. They must be in a position of sufficient independence to act according to their consciences and not to run the risk of being called to account for disloyalty when the national authorities resume their rights after the occupation ceases. An important point to be noted is that occupation does not involve a transfer of sovereignty and does not sever the ties of allegiance; public officials and judges therefore continue to be responsible before national opinion for their actions."

938. Accordingly, Article 43 of the Hague Regulations (A 53) imposes on the Occupying Power the obligation to respect the laws in force in the

occupied territory "unless absolutely prevented" ("*sauf empêchement absolu*"). That means that the Occupying Power has to maintain the laws in force in the occupied territory (predating the occupation) and not modify or suspend or replace them with its own legislation. The pre-existing legal system can be modified only if "necessary" (wording used in Article 3 of the Project of an International Declaration concerning the Laws and Customs of War, Brussels, 27 August 1874, on which Article 43 of the Hague Regulations was based).

939. Article 64 of the 1949 Fourth Geneva Convention (A 43) expresses in a more precise and detailed form the terms of Article 43 of the Hague Regulations and authoritatively explains the concept of "necessity". It specifies that "penal laws of the occupied territory shall remain in force" and in this regard that "the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws". However, it allows for the suspension or repeal of existing laws and the enactment of new legislation in the following exceptional situations: (i) the need of the Occupying Power to remove any direct threat to its security (and that of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them), (ii) the duty of the Occupying Power to discharge its duties under the Geneva Convention, and (iii) the necessity to ensure the "orderly government" of the occupied territory. The "orderly government" exception seems to be a more open-ended concept which becomes more prominent under conditions of prolonged occupation.

940. Relevant in this respect are the following extracts from the ICRC commentary on Article 64 of the Fourth Geneva Convention (see ICRC, *Commentary, IV Geneva Convention*, cited above, pp. 335-36).

> "... The idea of the continuity of the legal system applies to the whole of the law (civil law and penal law) in the occupied territory ... There is no reason to infer *a contrario* that the occupation authorities are not also bound to respect the civil law of the country, or even its constitution.
>
> The words 'penal laws' mean all legal provisions in connection with the repression of offences: the penal code and rules of procedure proper, subsidiary penal laws, laws in the strict sense of the term, decrees, orders, the penal clauses of administrative regulations, penal clauses of financial laws, etc.
>
> ...
>
> These two exceptions are of a strictly limitative nature. The occupation authorities cannot abrogate or suspend the penal laws for any other reason—and not, in particular, merely to make it accord with their own legal conceptions.
>
> 2. *Second sentence– — Courts of law*
>
> A. *The rule.* - Owing to the fact that the country's courts of law continue to function, protected persons will be tried by their normal judges, and will not have to face a lack of understanding or prejudice on the part of people of foreign mentality, traditions or doctrines.

> The continued functioning of the courts of law also means that the judges must be able to arrive at their decisions with complete independence. The occupation authorities cannot therefore, subject to what is stated below, interfere with the administration of penal justice or take any action against judges who are conscientiously applying the law of their country.
>
> B. *Reservations*. - There are nevertheless two cases—but only two—in which the Occupying Power may depart from this rule and intervene in the administration of justice.
>
> 1. As has just been said, the occupation authorities have the right to suspend or abrogate any penal provisions contrary to the Convention, and in the same way they can abolish courts or tribunals which have been instructed to apply inhumane or discriminatory laws.
>
> 2. The second reservation is a consequence of 'the necessity for ensuring the effective administration of justice', especially to meet the case of the judges resigning, as Article 54 gives them the right to do for reasons of conscience. The Occupying Power, being the temporary holder of legal power, would then itself assume responsibility for penal jurisdiction.
>
> For this purpose it may call upon inhabitants of the occupied territory, or on former judges, or it may set up courts composed of judges of its own nationality; but in any case the laws which must be applied are the penal laws in force in the territory."

941. Of further importance is Article 47 of the Fourth Geneva Convention, which specifies that any institutional changes introduced by the Occupying Power must not deprive the protected persons in the occupied territory of any benefits conferred by that Convention.

942. It is in the light of these provisions of IHL that the Court should interpret the notion of lawfulness ("law") under the Convention in the present case. The principal premise deriving from the rules of IHL is that, unless it can be justified by reference to one of the narrow exceptions recognised by IHL, the "repetition of acts" element of the administrative practice (defined as "an accumulation of identical or analogous breaches which are sufficiently numerous and interconnected not to amount to merely isolated incidents or exceptions but to a pattern or system"; see paragraph 261 of the admissibility decision) referred to under various of the Articles relied on can only be considered "lawful" or "in accordance with the law" in so far as it has its origin in Ukrainian law and not if it is based on Russian law, the law of the "occupier".

943. The Court notes that the respondent Government neither adduced any evidence nor submitted any arguments regarding the applicability of IHL in general or its relevance to or impact on the application and validity of Russian law within Crimea. In fact, they made no reference at all to IHL nor did they directly invoke any of the exceptions set forth therein.

944. Even assuming that their reliance on "public order", "national security" and the "safety of citizens" in the context of the complaints under Article 11 of the Convention (see paragraphs 307 and 310 above) is to be interpreted by reference to the requirements under Article 43 of the Hague

Regulations, the respondent Government provided no evidence or explanation capable of demonstrating that the Russian authorities had been "absolutely prevented" from achieving those aims on the basis of "the laws in force in the country".

Similarly, the respondent Government submitted no argument (or evidence) that the replacement of Ukrainian legislation with that of the Russian Federation was necessary on the ground that the former represented "a threat to [the] security [of Crimea] or an obstacle to the application of the [Fourth Geneva] Convention", as provided for in Article 64 of the Fourth Geneva Convention. Whereas they confirmed that the measures complained of had a legal basis in Russian law, they did not explain why it had been necessary to replace the pre-existing Ukrainian law, as applied in Crimea, with the provisions of Russian law. Finally, no argument was made which could justify reliance on the power conferred on the Russian authorities by Article 64 § 2 of the Fourth Geneva Convention to subject the population of Crimea to provisions of Russian law which were essential to enable them to fulfil their obligations under that Convention, to maintain the orderly government of the territory, and to ensure the security of the Russian Federation, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

A further element to be taken into consideration relates to the fact that what occurred in Crimea, certainly after 18 March 2014, was a general and wholesale replacement of Ukrainian law irrespective of the individual circumstances and potential needs of the existing population in Crimea, or the property, security forces or administration of the Russian Federation, or of the need to maintain the orderly government of the territory. Equally important are the fact that the respondent State applied Russian law immediately after signing the "Accession Treaty", and also Crimea's admission, as a matter of Russian law, as a constituent part of the Russian Federation.

945. Accordingly, there is nothing to indicate that such a wholesale application of Russian law was consonant with the changing (social or other) needs of the local population. As stated in the ICRC's *Commentary IV, Geneva Convention* (cited above, p. 336), "the occupation authorities cannot abrogate or suspend the penal laws for any other reason – and not, in particular, merely to make it accord with their own legal conceptions".

946. In such circumstances, the Court considers that, when the respondent State extended the application of its law to Crimea, it did so in contravention of the Convention, as interpreted in the light of IHL. Accordingly, Russian law cannot be regarded as "law" within the meaning of the Convention and any administrative practice based on that law cannot be regarded as "lawful" or "in accordance with the law". The consequential effects of this conclusion will be outlined in more detail below and to the extent necessary in relation

to each alleged violation, including the Article 6 complaint that the "court system" operating in Crimea during the period under consideration could not be regarded as "established by law".

G. The concept of administrative practice

947. As stated above (see paragraph 4 above) the applicant Government complained that the Russian Federation had been responsible for administrative practices entailing numerous violations of the Convention. In this connection the Court considers important to reiterate the meaning of the concept of an administrative practice as developed in the Court's case law.

948. The meaning of the concept of "administrative practice" was established and explained in the early inter-State cases (see the second admissibility decision in "the *Greek* case" (*Denmark, Norway, Sweden and the Netherlands v. Greece*, cited above); *Ireland v. the United Kingdom*, no. 5310/71, Commission decision of 1 October 1972, unreported; and "the *Turkish* case" (*France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos. 9940/82, 9942/82, 9944/82, 9941/82 and 9943/82, Commission decision of 6 December 1983, Decisions and Reports (DR) 35, p. 143)) and was reiterated most recently by the Court in *Ukraine and the Netherlands v. Russia* (dec.) ([GC], cited above, §§ 450 and 825-26) (see also § 261 of the admissibility decision in the present case) as follows:

> "450. An administrative practice requires that two elements be demonstrated, namely the repetition of acts constituting the alleged violation and official tolerance of those acts (see *France, Norway, Denmark, Sweden and the Netherlands v. Turkey*, nos. 9940/82, 9942/82, 9944/82, 9941/82 and 9943/82, cited above, at p. 163; and *Cyprus v. Turkey* [GC], no. 25781/94, § 99, ECHR 2001-IV) ...
>
> 825. As to what is required by way of repetition, the Court has previously endorsed the Commission's view that there has to be "an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected not to amount to merely isolated incidents or exceptions but to a pattern or system" (see the *Georgia v. Russia (I)* judgment, cited above, § 123). There is no place for excessive formalism in interpreting this phrase and it is unnecessary, in determining whether the test is met, to insist upon the repetition of specific acts of an identical nature. What matters in the present case is whether there has been a repetition of acts in flagrant disrespect, and thus in breach, of a particular Convention right.
>
> 826. By official tolerance, what is meant is that illegal acts are tolerated in that the superiors of those immediately responsible, though cognisant of such acts, take no action to punish them or to prevent their repetition; that a higher authority, in the face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity; or that in judicial proceedings a fair hearing of such complaints is denied. It is inconceivable that the higher authorities of a State should be, or at least should be entitled to be, unaware of the existence of such a practice. Any action taken by the higher authority must be on a scale which is sufficient to put an end to the repetition of acts or to interrupt the pattern or system. Furthermore, higher authorities of the Contracting States are under a duty to impose their will on subordinates and

> cannot shelter behind their inability to ensure that it is respected (see the *Georgia v. Russia (I)* judgment, cited above, § 124).”

949. As stressed in the case of *Georgia v. Russia (II)* (cited above, § 103) while the above-mentioned criteria do define a general framework, they do not indicate the number of incidents required in order to be able to conclude that an administrative practice existed, which is a question left to the Court to assess having regard to the particular circumstances of each case (see the further explanations given by the Commission in the case of *Ireland v. the United Kingdom* (no. 5310/71, Commission’s report of 25 January 1976, Series B no. 23-I, pp. 395-96).

II. APPLICATION NO. 20958/14

A. Alleged violation of Article 2 of the Convention

950. The applicant Government complained under this head (as delimited in paragraph 392 of the admissibility decision) of a pattern of enforced disappearance of perceived opponents of the Russian “occupation” (in particular Ukrainian soldiers, ethnic Ukrainians and Tatars), as well as of the lack of an appropriate investigation into such allegations. They alleged that this had amounted to a violation of the substantive and procedural limbs of Article 2 of the Convention, which reads as follows:

> “1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

1. *The parties’ submissions*

(a) The applicant Government

951. The applicant Government submitted that the respondent State had presided over an administrative practice in violation of both the substantive and procedural limbs of Article 2 of the Convention, construed in harmony with the applicable rules of IHL, namely the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

952. The victims of the alleged disappearances were overwhelmingly ethnic Ukrainian or Tatar and/or were opponents or perceived opponents of the Russian “occupation”. They were sufficiently numerous and

interconnected to amount to a pattern or system carried out predominantly by members of the "Crimean Self-Defence Forces". At the oral hearing of 13 December 2023, in reply to questions put by judges, the applicant Government maintained that there were forty-three cases of enforced disappearances (thirty-nine men and four women) of whom eleven persons were still missing. According to them, any unacknowledged detention was a life-threatening circumstance that entailed a risk of death sufficient to engage the applicability of Article 2 of the Convention. In their view, all the circumstances of the case, and not just strictly the number of individual instances, were to be taken into account in the assessment of whether there were sufficiently numerous examples to disclose a pattern. In this connection they referred to the time, place and motives behind the alleged pattern. They urged the Court to acknowledge that the respondent State had put in place a pattern aimed at occupying part of the sovereign territory of another State with a view to suppressing the civil rights of its opponents.

With respect to the "official tolerance" element of an administrative practice, the applicant Government referred to paragraph 402 of the admissibility decision, in which the Court had referred to the public statement by President Putin that "the Russian servicemen did back the Crimean self-defence forces"; the fact that in April 2014 the members of the CSDF had been awarded medals "For the return of Crimea" by the Ministry of Defence of the Russian Federation, and that in June and July 2014 the Crimean Parliament had "endorsed a proposal to 'legalise' those forces through an act ...". These factors had led the OHCHR to conclude that the members of the CSDF "have been recognized as agents of the State" (paragraph 89 of the 2017 OHCHR Report). Subsequently, such disappearances had been perpetrated by agents of the Russian Federal Security Service (FSB) and other Russian law-enforcement agencies, including the Police and the Investigative Committee of the Russian Federation.

953. In any event, irrespective of whether the perpetrators were members of the CSDF, the FSB or any other organ of the Russian State, they had acted as an agent of the Russian Federation. At the oral hearing of 13 December 2023, the applicant Government added that the respondent State was responsible before the Court for the acts of its agents as well as those of their local subordinates. However, to date, no such perpetrator had been held accountable for any enforced disappearance in Crimea. That demonstrated a systemic and continuing failure by the Russian Federation to adequately address the allegations of enforced disappearances, in breach of its procedural obligation to investigate under Article 2. The result had been a state of impunity and bore the mark of a tacit or a secret State policy.

(b) The respondent Government

954. The respondent Government maintained in their submissions of February 2022 that the applicant Government's "abstract description of actions" could not be regarded as an "administrative practice". Certain "episodes of alleged abductions or detention by unknown persons" referred to by the applicant Government could not prove the existence of the "repetition of acts" element of the administrative practice. Furthermore, there was no evidence that the authorities of the Russian Federation had been responsible for the alleged events. In addition, some allegations were vague and the alleged victims could not be identified. In some cases, the alleged victims of abduction had subsequently been found alive and well (reference was made to O. Filipov and A. Kalyan). As regards the alleged "official tolerance", the respondent Government noted that in almost all reported cases there had been no real attempt on the part of the alleged victims to exhaust domestic remedies. Instead, in some cases they had refused to cooperate with the Russian investigating authorities. In the majority of other cases, the initial recourse to domestic remedies (if any) had been brief and formal and had not been accompanied by supporting evidence. These facts alone proved that the arguments of the Ukrainian authorities about "official tolerance" were mere speculation.

955. Similarly, there were insufficient elements to show that the authorities of the Russian Federation had refused to investigate the allegations and punish the perpetrators. The applicant Government had not referred to any examples where domestic remedies had been used unsuccessfully. In that connection the respondent Government referred to several instances of "effective measures taken by public authorities [in fulfilling] their obligations [under the Convention]" that concerned incidents in which individuals had been killed or had otherwise died (reference was made to R. Ametov, S. Karachevsky, and M. Ivanyuk).

2. *The Court's assessment*

(a) Relevant provisions of international law

956. The relevant provisions of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977 read as follows.

Article 32 - General principle

> "In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives."

Article 33 - Missing persons

"1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.

2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each Party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:

(a) record the information specified in Article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;

(b) to the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.

3. Information concerning persons reported missing pursuant to paragraph 1 and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each Party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.

4. The Parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties."

957. Under Rule 98 of the *Customary International Humanitarian Law* study by the ICRC, enforced disappearance is prohibited.

958. Having regard to the complaints raised in the present case, there is no conflict between Article 2 of the Convention and the rules of international humanitarian law (see *Georgia v. Russia* (II), cited above, § 199).

(b) General principles in the Court's case-law

959. The Court has addressed the issue of "enforced disappearance" under Article 2 in a number of judgments. In *Varnava and Others v. Turkey* ([GC], nos. 16064/90 and 8 others, § 148, ECHR 2009), in the context of the procedural obligation under Article 2 to carry out an effective investigation, the Court gave a definition of the notion of "disappearance":

"148. A disappearance is a distinct phenomenon, characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has occurred (see also the definitions of disappearance set out above in part II B. 'International law documents on enforced disappearances'). This situation is very often drawn out over time, prolonging the torment of the victim's relatives. It cannot therefore be said that a disappearance is,

> simply, an 'instantaneous' act or event; the additional distinctive element of subsequent failure to account for the whereabouts and fate of the missing person gives rise to a continuing situation. Thus, the procedural obligation will, potentially, persist as long as the fate of the person is unaccounted for; the ongoing failure to provide the requisite investigation will be regarded as a continuing violation (see *Cyprus v. Turkey*, cited above, § 136). This is so, even where death may, eventually, be presumed."

960. This "presumption of death" has been held to be the crucial element that distinguishes the "disappearance" phenomenon from a mere irregular detention in violation of Article 5. In *Timurtaş v. Turkey* (no. 23531/94, §§ 82 and 83, ECHR 2000-VI) the Court held:

> "82. ...Whether the failure on the part of the authorities to provide a plausible explanation as to a detainee's fate, in the absence of a body, might also raise issues under Article 2 of the Convention will depend on all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements, from which it may be concluded to the requisite standard of proof that the detainee must be presumed to have died in custody (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV, and *Ertak v. Turkey*, no. 20764/92, § 131, ECHR 2000-V).
>
> 83. In this respect the period of time which has elapsed since the person was placed in detention, although not decisive in itself, is a relevant factor to be taken into account. It must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that he or she has died. The passage of time may therefore to some extent affect the weight to be attached to other elements of circumstantial evidence before it can be concluded that the person concerned is to be presumed dead."

961. Furthermore, in *Medova v. Russia* (no. 25385/04, § 90, 15 January 2009), the Court held:

> "90. ... the Court is of the opinion that a finding of State involvement in the disappearance of a person is not a condition *sine qua non* for the purposes of establishing whether that person can be presumed dead; in certain circumstances the disappearance of a person may in itself be considered as life-threatening..."

962. Similarly, in the context of cases decided in relation to the conflict in Chechnya, the Court has concluded that when a person is detained by unidentified servicemen without any subsequent acknowledgement of detention, this can be regarded as life-threatening (see *Baysayeva v. Russia*, no. 74237/01, § 119, 5 April 2007, and *Beksultanova v. Russia*, no. 31564/07, § 83, 27 September 2011).

963. The Court further refers to the general principles regarding the procedural obligation to carry out an effective investigation under Article 2 as recently summarised in *Georgia v. Russia* (II) (cited above, § 326).

(c) Application of the above principles to the facts of the present case

964. In paragraph 404 of the admissibility decision, the Court concluded, on the basis of the available evidence at the time, that, on the whole, there was sufficient prima facie evidence of the alleged administrative practice of enforced disappearances during the period under consideration. In their

memorial on the merits, the applicant Government mainly referred to the information contained in the 2017 and 2018 OHCHR reports and its 2021 Briefing Paper. A further source of relevant information for the allegations under this head is the letter from the Ukrainian Prosecutor's Office of 10 January 2023 sent to the Government Agent of the applicant State for the purposes of the present case. No witness evidence was provided which contained any relevant information for consideration of the allegations under this head.

965. The 2017 OHCHR Report, relying on Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, indicated (in paragraph 99; A 102):

> " ... 'enforced disappearance' is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. The duty to prevent enforced disappearances is further supported by the requirement to record the details of persons deprived of their liberty."

It further noted the following:

> "101. ... in March 2014, when at least 21 persons were abducted in Crimea. The victims included pro-Ukrainian and Maidan activists, journalists, Crimean Tatars and former and active Ukrainian servicemen. They were held incommunicado and often subjected to physical and psychological abuse by armed individuals allegedly belonging to the Crimean self-defence and one Cossack group. Most victims were released after being illegally held from a few hours to several days, with no contact with their relatives or lawyers.
>
> 102. OHCHR documented 10 cases of persons who disappeared and are still missing: six Crimean Tatars, three ethnic Ukrainians and one Russian-Tatar - all men. Seven went missing in 2014, two in 2015 and one in 2016.
>
> 103. ... Of the 10 disappearances mentioned, criminal investigations were still ongoing in only one case as at 12 September 2017. They were suspended in six cases due to the inability to identify suspects, and in three cases no investigative actions have been taken as the disappearances were allegedly not reported."

966. The 2018 OHCHR Report stated the following:

> "32. OHCHR conducted a review of cases of individuals who went missing in Crimea from 3 March 2014 to 30 June 2018, and found that at least 42 persons were victims of enforced disappearances, including four during the reporting period (13 September 2017 to 30 June 2018). The victims (38 men and 4 women) include 27 ethnic Ukrainians; 9 Crimean Tatars; 4 Tajiks; 1 person of mixed Tatar-Russian origins; and 1 Uzbek. Twenty-seven were released after being illegally detained for periods lasting from a few hours to two weeks; twelve are missing and feared dead by their relatives; two are held in custody; and one was found dead.
>
> 33. The majority of disappearances occurred in 2014, when 28 persons went missing with allegations of involvement of the 'Crimean self-defence' in most cases. Two enforced disappearances occurred in 2015, three in 2016, seven in 2017, and two in 2018. Victims of enforced disappearance were predominantly pro-Ukrainian activists

united in their opposition to the March 2014 referendum and their support of the Ukrainian armed forces stationed on the peninsula (22 cases). Other victims include five individuals with links to Crimean Tatar groups or institutions, including the Mejlis; four journalists; one Ukrainian serviceman; one Muslim Ukrainian; one Greek-Catholic priest; five migrants from Central Asia; and three individuals with no known affiliations.

34. The disappearances were often attributed to more than one perpetrator. Thus, in relation to the 42 documented cases, 76 perpetrators were identified, including representatives of pro-Russian formations and Russian Federation military and security structures. Specifically, disappearances were attributed to members of the 'Crimean self-defence' (23 attributions), the FSB (23), the Armed Forces of the Russian Federation (10), Cossack groups (8), the Russian Federation police (6), the 'Russian Unity' political party (4) and the 'Crimea Liberation Army' (2). In cases documented during the reporting period, the FSB was cited as the most common perpetrator, unlike at the beginning of the occupation when the 'Crimean self-defence' was most frequently identified as the perpetrator. Victims often described physical violence and psychological pressure inflicted during incommunicado detentions.

35. In none of the cases documented have perpetrators been brought to justice. Seven persons identified by OHCHR as victims of enforced disappearances are listed by Russian Federation authorities as 'missing'. In relation to at least ten victims, the authorities have either refused to register a case or suspended previously initiated investigations. The lack of progress in the investigations raises questions about their effectiveness."

967. The OHCHR HRMMU Briefing Paper of 2021 noted that since 2014 OHCHR had documented forty-three cases of disappearances in Crimea, of whom eleven persons (all men) remained missing and one man remained in detention. The vast majority of the disappearances documented by OHCHR took place in 2014 (twenty-eight), with an additional two disappearances in 2015, four in 2016, seven in 2017, and two in 2018. The first documented disappearance took place on 3 March 2014 and the most recent on 23 May 2018. Thirty victims were released but have not been provided with redress. Out of the eleven disappeared persons who remain missing, the Investigative Committee of the Russian Federation lists only seven as missing persons, with no mention of the remaining four. The Court has not been provided with any information to explain what prompted the Investigative Committee to assemble this list of missing person in Crimea. Alleged perpetrators comprised militia groups, such as the Crimean self-defence and Cossack groups; agents of the Russian Federal Security Service; and other law-enforcement authorities, including the Crimean police. No individual has been prosecuted in relation to any of the enforced disappearances.

968. On the basis of the above material, it can be concluded that during the period under consideration (between 27 February 2014 and 26 August 2015, thus falling within the temporal scope of the case), there were approximately thirty instances of disappearances. Furthermore, the Court is aware that, in the subsequent period, but not after 2018, there were further such instances. The total number of documented cases of disappearances between 2014 and 2018 was forty-three.

969. As reported by relevant international and national authorities (the reports of the Commissioner for Human Rights of the Council of Europe of September 2014 and April 2023, the Public Prosecutor's Office and the Representative of the Commissioner for Human Rights of the *Verkhovna Rada*), the whereabouts and fate of some eight individuals abducted in the period under consideration referred to above still remain unknown (I.A. Dzhepparov, Dz.S. Isliamov, I.A. Bondarets, V.V. Vashchuk, V.V. Chernysh, T.D. Shaimardanov, S.S. Zinedinov and M.R. Arslan). Given the lapse of time since their abduction, these individuals can be presumed dead in the absence of any reliable news regarding their fate.

970. However, the Court does not consider that the overall examination of the complaint about the existence of an administrative practice of enforced disappearances in the present case is to be confined only to these individuals who remain unaccounted for. In the Court's view, the following factors are of particular importance even though the presumption of death applies only to those individuals: the overall context of a large number of instances of irregular deprivation of liberty and the relatively short period during which the abductions took place; based on the available evidence, the abductions were perpetrated either by the CSDF, the Cossacks, Russian Federation armed forces or by agents of the Russian Federal Security Service (FSB) – acts by any of these perpetrators entailed the responsibility of the respondent State irrespective of whether it exercised detailed control over their policies and actions (see *Georgia v. Russia* [GC] (II), cited above, § 200); the fact that the victims were predominantly pro-Ukrainian activists, journalists and Crimean Tatars who were perceived, as their common feature, as opponents to the events that had unfolded in Crimea at the time; the fact that the abductions followed a particular pattern and were used as a means to intimidate and persecute such individuals in the enforcement of a global strategy of the respondent State to suppress the existing opposition in Crimea to the Russian "occupation". Some of these factors were referred to by the applicant Government in their oral pleadings (see paragraph 952 above). Due to their deliberate absence from the oral hearing, the respondent Government did not reply to those arguments (see paragraph 27 above). In the light of the above elements, the Court considers that during the period under consideration there were "sufficiently numerous" instances of abduction to amount to a pattern or system ("repetition of acts"). The phenomenon is to be considered in itself life-threatening so as to engage the applicability of Article 2 of the Convention as regards that administrative practice. This is the case regardless of the fact that most of those abducted were released soon after they had gone missing.

971. The evidential material further shows consistently that the prosecuting authorities of the respondent State did not carry out an effective investigation, if any investigation at all, into the incidents underlying the credible allegations made by relevant international organisations (and the

Russian Ombudsperson) of an administrative practice of enforced disappearances. Furthermore, the respondent Government did not provide the Court with any information in this respect or with copies of any relevant case files which are in their exclusive possession.

972. The above-mentioned reluctance of the authorities of the respondent State to investigate the allegations under this head and to cooperate with the Court in the present proceedings further militate in favour of the existence of the "official tolerance" component of the administrative practice. Furthermore, the Court notes that the impugned "pattern or system" of enforced disappearances continued for several years after the period under consideration.

973. In such circumstances, the existence of an administrative practice under this head, relating to both the substantive and procedural limbs of Article 2, is established beyond reasonable doubt. Furthermore, there is sufficient evidential material to prove beyond reasonable doubt that the responsibility of the responsible State under the Convention is engaged.

974. Accordingly, there has been a violation of Article 2 on account of an administrative practice of enforced disappearances and the lack of an effective investigation into the alleged existence of such an administrative practice.

B. Alleged violation of Articles 3 and 5 of the Convention

975. The applicant Government complained under this head of a pattern of inhuman and degrading treatment and torture, and unlawful detention of perceived opponents of the Russian "occupation", in particular Ukrainian soldiers, ethnic Ukrainians and Tatars, as well as journalists. Articles 3 and 5 of the Convention, in so far as relevant, read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5 § 1

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ..."

1. *The parties' submissions*

(a) The applicant Government

976. The applicant Government submitted that there was sufficient evidence of an administrative practice of inhuman and degrading treatment, torture and arbitrary deprivation of liberty contrary to Articles 3 and 5 of the Convention, as interpreted in the context of the relevant IHL. Reference was made to several provisions of the Fourth Geneva Convention, Additional

Protocol I, and rules of customary IHL. The applicant Government recognised the conflict between Article 5 § 1 of the Convention and the relevant provisions of IHL in so far as Ukrainian military personnel detained "during the active phase of the occupation in the spring of March 2014" were concerned, in that the lawful grounds for detention under Article 5 § 1 of the Convention, as read in light of the relevant provisions of IHL, did not preclude the detention of a member of the armed forces of a territory subject to belligerent "occupation" by another State (reference was made to *Hassan*, cited above, §§ 103-06).

977. According to the applicant Government, the evidence suggesting that victims were targeted on the basis of their perceived political affiliation, support for Ukrainian territorial integrity and/or ethnicity was indicative of a pattern or system of violations. As to "official tolerance", they reiterated their arguments above (see paragraph 952 above) and also drew attention to the involvement of senior members of the Russian military in the negotiated release of persons from unlawful detention, where they had been subjected to treatment contrary to Article 3 of the Convention.

(b) The respondent Government

978. In their memorial the respondent Government denied that there existed an administrative practice of ill-treatment and unlawful detention in Crimea. They stated that the applicant Government's allegations were vague and abstract and concerned "episodes of alleged abductions or detention by unknown persons", which did not prove the existence of the element of "repetition of acts". Furthermore, some alleged victims could not be identified, while others had denied the allegations during subsequent interrogation by the Investigative Committee of the Russian Federation. Nothing in the material submitted by the applicant Government indicated a violation of Article 5 of the Convention and there was nothing to indicate that the authorities of the Russian Federation could have been responsible for the alleged events. The mere fact of detention did not mean that the restriction of liberty had been carried out in violation of the provisions of the Convention.

979. As regards the "official tolerance" element, they reiterated their arguments about the failure of the alleged victims to exhaust properly the available domestic remedies.

980. Furthermore, they argued that the actions of the Russian Federation in relation to R.B. Zeytullayev, R. Vaitov and Yu.(N).V. Primov could not be regarded as unlawful deprivation of liberty or as abduction. Their prosecution and conviction, as members of the Hizb ut-Tahrir organisation which was banned in Russia, had been aimed at protecting public order. That organisation was recognised as a terrorist organisation, since it aimed to eliminate non-Islamic governments and establish Islamic rule on a worldwide scale by re-establishing the "World Islamic Caliphate". Besides the Russian Federation, it was prohibited in Germany, Kazakhstan, Turkey, Pakistan,

Tajikistan, Kyrgyzstan, Uzbekistan, as well as in all Arab countries, except for the United Arab Emirates, Lebanon and Yemen, and in most Muslim States.

2. *The Court's assessment*

(a) Relevant international humanitarian law

981. The relevant IHL for the allegations under this head is contained in Articles 27, 32, 33 § 1, 34, 42 § 1, 43 and 78 §§ 1 and 2 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, Article 75 of Additional Protocol I relating to the Protection of Victims of International Armed Conflicts, and in rules of customary international law reflected in Rules 87 and 99 of the *Customary International Humanitarian Law* study by the ICRC (A 57 and 58).

982. Having regard to the complaints raised in the present case, there is no conflict between Article 3 of the Convention and the above-mentioned IHL, which provide in a general way that detainees are to be treated humanely.

983. There may, however, be a conflict between Article 5 of the Convention and the relevant IHL, as the Court stated in *Hassan* (cited above):

> "97. ... the Court considers that there are important differences of context and purpose between arrests carried out during peacetime and the arrest of a combatant in the course of an armed conflict. It does not take the view that detention under the powers provided for in the Third and Fourth Geneva Conventions is congruent with any of the categories set out in sub-paragraphs (a) to (f). Although Article 5 § 1 (c) might at first glance seem the most relevant provision, there does not need to be any correlation between security internment and suspicion of having committed an offence or risk of the commission of a criminal offence. As regards combatants detained as prisoners of war, since this category of person enjoys combatant privilege, allowing them to participate in hostilities without incurring criminal sanctions, it would not be appropriate for the Court to hold that this form of detention falls within the scope of Article 5 § 1(c).
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> 98. In addition, Article 5 § 2 requires that every detainee should be informed promptly of the reasons for his arrest and Article 5 § 4 requires that every detainee should be entitled to take proceedings to have the lawfulness of his detention decided speedily by a court."

984. However, in the present case the situation is different from that in *Hassan*, given the fact that the respondent Government in the present case did not invoke the applicability of IHL. As stated in the extract from *Hassan* (cited above, § 107) reproduced in paragraph 913 above, "the provisions of Article 5 will be interpreted and applied in the light of the relevant IHL only where this is specifically pleaded by the respondent State".

(b) General principles regarding Articles 3 and 5 of the Convention

985. The relevant passages from *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, ECHR 2012), in relation to

Articles 3 and 5 of the Convention, recently reiterated in *Georgia v. Russia (II)*, cited above, §§ 240 and 241, read as follows:

> "240. ... Article 3 enshrines one of the most fundamental values of democratic societies. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).
>
> Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011).
>
> In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).
>
> When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, § 50, 8 November 2005).
>
> 241. The Court notes at the outset the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It is for that reason that the Court has repeatedly stressed in its case-law that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness (see *Chahal* [*v. the United Kingdom*, 15 November 1996], § 118[, *Reports* 1996-V], cited above). This insistence on the protection of the individual against any abuse of power is illustrated by the fact that Article 5 § 1 circumscribes the circumstances in which individuals may be lawfully deprived of their liberty, it being stressed that these circumstances must be given a narrow interpretation having regard to the fact that they constitute exceptions to a most basic guarantee of individual freedom (see *Quinn v. France*, 22 March 1995, § 42, Series A no. 311)."

(c) Application of the above principles to the facts of the present case

986. The Court notes that the 2017 OHCHR Report noted "multiple and grave [human rights] violations" "such as arbitrary arrests and detentions ... ill-treatment and torture" which sometimes involved "elements of sexual violence. The victims were kept incommunicado, tied, blindfolded, beaten up, subjected to forced nudity, electrocuted through electric wires placed on their genitals, and threatened with rape with a soldering iron and wooden stick." Such acts were committed by "members of the Crimean self-defence and various Cossack groups" "for a three-week period following the overthrow of Ukrainian authorities in Crimea" and by "representatives of the Crimean Federal Security Service of the Russian Federation (FSB) and police" "following Crimea's temporary occupation, on 18 March 2014". The report further noted that "most of [the documented multiple allegations of violations of the right to liberty] occurred in 2014", and remained unaccounted for by the respondent State. In addition, the OHCHR noted that "in March 2014 ... at least 21 persons" had been held incommunicado and that "documented multiple allegations of violations of the right to liberty ... attributed to agents of the Russian Federation authorities ... would usually last from several hours to several days, exceeding the legal limits for temporary detention and ignoring procedural requirements, such as the establishment of a protocol of arrest. Many of the victims were journalists ... members of the Crimean Tatar community ... The victims included pro-Ukrainian and Maidan activists, journalists, Crimean Tatars and former and active Ukrainian servicemen" (see paragraphs 11 and 85-101 of the 2017 OHCHR Report). The multiplicity of instances of abductions is a further element in this respect.

987. Similar findings have been made by other IGOs, such as the relevant UN Committees (see paragraphs A 62), the Commissioner's report 2014 (see paragraphs 30 and 34 of the report), the 2014 report of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (HCNM) (see paragraphs 120 and 132 of the report, which refer to a "disturbing pattern of [human rights] violations"; A 73 and 107), as well as by NGOs (IPHR's report of 2016, §§ 114-19), the 2017 report by the Ukrainian Helsinki Human Rights Union and other; A 117 and 124).

988. The Court sees no reason for arriving at any different conclusion at the merits stage from those reached in its admissibility decision regarding the probative value of the information contained in the 2017 OHCHR Report and the Human Rights Watch Report (see paragraphs 381 and 385-90 of the admissibility decision). It cannot discern any elements casting doubt on the objective factual reporting contained in the IGO's reports, which carry significant weight. Moreover, widespread reports of allegations of violations of the Convention are in themselves an element which should be taken into account in the overall assessment of evidence. However, the Court reiterates that it will reach its own conclusions, applying the relevant Convention

standard of proof, by reference to the objective facts reported by these organisations rather than adopting the conclusions they reached (see *Ukraine and the Netherlands v. Russia*, cited above, § 462).

989. The Court notes that the testimonies of witnesses and victims (journalists, pro-Ukrainian activists, Ukrainian military personnel) concerning alleged abduction, detention and ill-treatment, which on the face of it appear to be truthful and credible, are consistent with the information contained in the above reports. The concordance of the details of the allegations under this head given by the witnesses and the IGOs is significant. Many alleged victims provided first-hand information about their abduction by the "Crimean self-defence forces" (or "Berkut" forces and agents of Russian FSB) and the ill-treatment to which they had been subjected. Some of them confirmed having been guarded by Russian soldiers and "green men" with Russian flags on their uniforms. Their release was effected by "armed military men", Russian soldiers and FSB agents. A similar account was provided by witnesses whose statements concerned alleged abduction and ill-treatment of other persons (A 331, 355, 356, 367, 374, 377, 384, 387-91, 393-97, 400-03, 408-10, 413, 416, 417, 423-27, 429 and 430, 433, 437 and 438, 440-42, 444). Of further evidential value is the documentary material provided by the Ukrainian prosecuting authorities (letter from the Prosecutor of Ukraine of 10 January 2023) regarding ongoing investigations (or trials) of alleged perpetrators (including some identified individuals who were members of the CSDF or of an illegally created law-enforcement agency) on account of numerous instances of abduction, unlawful detention and ill-treatment of named individuals. This material further attests to the fact that "a large number of people" (around eighty), of whom many were Crimean Tatars, had been detained (A 154-70 and 182).

990. For their part, the respondent Government did not engage with the merits of the complaints under Article 3 besides reiterating their general observation from the admissibility stage (see paragraph 369 of the admissibility decision) that the applicant Government's allegations of an administrative practice under this head were vague and unclear. As regards the Article 5 allegations, they admitted to some abductions and instances when persons had been "stopped for a short conversation" (see paragraph 202 above), which indicates that the respondent State authorities were aware of those events, irrespective of who had been involved. Furthermore, they submitted no record of any of those instances although such material is in their exclusive possession, including records of detention of the three named individuals convicted of terrorism, for being members of Hizb ut-Tahrir, an organisation prohibited under the Russian but not under the Ukrainian law. As regards the evidence relied upon by the applicant Government, the respondent Government neither raised any new arguments nor did they otherwise contest its credibility.

991. This prevents the Court from assessing the lawfulness of specific instances of deprivation of liberty within the meaning of Article 5 § 1 of the Convention. Neither did the respondent Government rely on the exceptions provided for under the relevant provisions of the Hague Regulations and the Fourth Geneva Convention (see paragraphs 938 and 939 above) allowing for the limited application of the "criminal law of the occupying power" under IHL. In the absence of any relevant records, the Court cannot speculate whether and to what extent the reliance on that part of Russian legislation in the given circumstances was justified under the relevant provisions of IHL. It considers it appropriate to draw the necessary inferences from the respondent Government's failure to engage with the arguments or the evidence.

992. In such circumstances, the Court is satisfied that it has sufficient evidence in its possession to enable it to conclude beyond reasonable doubt that there existed an accumulation of identical or analogous breaches of Articles 5 and/or 3 during the period under consideration which are sufficiently numerous and interconnected to amount to a pattern or system of ill-treatment and unlawful detention.

993. Furthermore, it appears from the available evidence that such acts were perpetrated directly by or with the cognisance of, either members of the Crimean self-defence forces, Cossack groups, the Crimean Federal Security Service of the Russian Federation (FSB), the police or Russian servicemen.

994. As regards the "official tolerance" element of the alleged administrative practice, as defined in paragraph 948 above, the Court refers to the following findings in the admissibility decision, albeit in the context of Article 2, which are also relevant to the allegations under this head (see paragraphs 402, 403, 417 and 418 of the admissibility decision):

> "402. As to the 'official tolerance' element of an administrative practice, the Court reiterates that it may be found to exist on two alternative levels: that of the direct superiors of those immediately responsible for the acts involved or that of a higher authority who knew or ought to have known of the acts in question (see paragraph 261 above). In both scenarios, cognisance of such a practice at the level of the direct superiors of those immediately responsible or of the higher authorities of the State is required.
>
> ... In particular, where the acts complained of under this head, as alleged by the applicant Government and noted in the IGO reports, had allegedly been committed by members of the CSDF (and a Cossack group) as potential perpetrators, the Court takes note of the public statement by President Putin that 'the Russian servicemen did back the Crimean self-defence forces' (see paragraph 332 above). Further evidence is provided by the uncontested allegation that in April 2014 the members of the CSDF were awarded medals 'For the return of Crimea' by the Ministry of Defence of the Russian Federation, and that in June and July 2014 the Crimean Parliament 'endorsed a proposal to "legalise" those forces through an act ...' (paragraph 36 of the Commissioner's Report; see paragraph 228 above). These factors appear to have led the OHCHR to conclude that the members of the CSDF 'have been recognized as agents of the State' (paragraph 89 of the 2017 OHCHR Report; see paragraph 227 above).

403. Inferences as to the 'official tolerance' by the respondent State to the required prima facie threshold may also be drawn from the conclusions in the 2017 OHCHR Report revealing a failure by the Russian judicial system to address the allegations under this head.

...

417. As regards the 'official tolerance' element of the administrative practice, the Court points to its considerations in paragraph 402 above, which apply to the allegations under this head in so far as they concern the members of the CSDF and alleged perpetrators other than the regular Russian military forces themselves, as well as the arguments relating to official tolerance at the level of higher authorities (see paragraph 403 above). A further indication in this connection is provided by the uncontested allegation that the Ministry of Defence of the Russian Federation negotiated with the Ukrainian authorities concerning the release of hostages held by the CSDF.

418. In respect of the acts allegedly committed by Russian servicemen themselves, at this stage of the proceedings the available evidence is sufficient to satisfy the Court that the 'official tolerance' element at the level of direct supervisors is established to the appropriate standard."

995. The Court finds no grounds to deviate from the above approach at the present stage of the proceedings, which, of course, requires a higher standard of proof than the prima facie threshold applicable at the admissibility stage (see paragraph 12 above). Following this approach, the Court considers that the available evidence is sufficient to enable it to establish beyond reasonable doubt that the "official tolerance" element of the administrative practice under this head is satisfied. This conclusion also follows from the failure of the respondent Government to provide convincing arguments, as well as their failure, as noted above, to adequately engage with the complaints under this head. The Court considers it appropriate to draw the necessary inferences from that failure (see paragraph 846 above).

996. Given the Court's findings as to the respondent State's jurisdiction in Crimea under Article 1 of the Convention, that State was also responsible for the actions of any of the perpetrators other than the Russian military personnel, without it being necessary to provide proof of "detailed control" in respect of each of their actions (see *Georgia v. Russia (II)*, cited above, § 248).

997. Having regard to all those factors, the Court concludes that there was an administrative practice contrary to Article 3 of the Convention as regards the treatment to which Ukrainian soldiers, ethnic Ukrainians and Tatars, as well as journalists, were subjected and which caused them undeniable mental and physical suffering.

998. Furthermore, the Court concludes that there was an administrative practice contrary to Article 5 of the Convention on account of detention of those categories of persons during the period under consideration. In addition, and having regard to the above considerations regarding the "lawfulness" of the measures (see paragraphs 944 and 946 above), the practice complained of

under this head was applied pursuant to the Russian law and cannot therefore in any event be regarded as "lawful" within the meaning of the Convention.

999. There has therefore been a violation of Articles 3 and 5 of the Convention.

C. Alleged violation of Article 6 of the Convention

1000. The applicant Government's complaint under Article 6 of the Convention, as delimited in the admissibility decision (see, *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 420 and 424 thereof), concerned the allegation that, as from 27 February 2014 onwards, the court system in Crimea could not be considered to have been "established by law" within the meaning of Article 6 of the Convention. This Article, in so far as relevant, reads as follows:

Article 6 § 1

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

1. The parties' submissions

(a) The applicant Government

1001. The applicant Government referred to section III of the Fourth Geneva Convention (Articles 64, 67 and 70) as relevant to the administration of justice in an occupied territory and maintained that it was against that background that the Court had to determine the question of the applicable "domestic law" for the purposes of Article 6 § 1 of the Convention. Under IHL, any courts presiding over criminal cases on the territory of Crimea had to be established in accordance with the law of Ukraine and had to continue to apply the laws of Ukraine. The respondent Government had not demonstrated that the application of Russian law was justified under IHL.

1002. Consequently, they submitted that "since 24 March 2014 the courts in Crimea have not been 'established by law'". In their supplementary submissions, they argued that "at all material times, the local 'court system' set up by the Russian Federation in occupied Crimea lacked essential guarantees of independence and impartiality in the appointment of 'judges' and in the 'administration of justice', and were established in breach of applicable domestic and international law, such that these 'courts' cannot be considered as established in accordance with the law". By operating such an illegitimate system, the Russian Federation had presided over a continuing pattern of violations of its obligation to secure the rights of the people of Crimea to a fair trial by an independent tribunal established by law under Article 6 § 1, interpreted in harmony with the relevant provisions of IHL. The

regulatory nature of that practice was indicative of the requisite official tolerance.

(b) The respondent Government

1003. In their memorial the respondent Government submitted that the judicial system in Crimea had been set up and operated in accordance with the "Accession Treaty" and Federal Constitutional Law no. 6-FKZ, the Constitution and the relevant legislation of the Russian Federation. They contended that prior to the admission of Crimea to the Russian Federation, courts established in accordance with the legislation of Ukraine had operated in Crimea and the "Federal City of Sevastopol".

1004. The following reference was made to section 23 of the Federal Constitutional Law:

> "legislative and other regulatory legal acts of the Russian Federation are valid in [Crimea] from the date of [its] admission into the Russian Federation, unless otherwise provided by federal constitutional law. Regulatory legal acts of the Autonomous Republic of Crimea and the city of Sevastopol, the Republic of Crimea and the city of Sevastopol with a special status shall be valid in the territories of the Republic of Crimea and the Federal City of Sevastopol, respectively, until the end of the transitional period or until the adoption of the relevant regulatory legal act(s) of the Russian Federation, the Republic Crimea, or the Federal City of Sevastopol. Regulatory legal acts of the Autonomous Republic of Crimea and the city of Sevastopol, the Republic of Crimea and the city of Sevastopol with a special status contrary to the Constitution of the Russian Federation, shall not apply. Thus, during the transitional period [specified in the 'Accession Treaty' and the Federal Constitutional Law no. 6-FKZ, namely from the date of Crimea's admission into the Russian Federation until 1 January 2015], justice on behalf of the Russian Federation in the territories of the Republic of Crimea and the city of Sevastopol was delivered by the previously operating courts established in accordance with the legislation of Ukraine, including the economic courts of the Republic of Crimea and the city of Sevastopol and the Sevastopol Economic Court of Appeal ... The supreme judicial authorities in respect of decisions and sentences of these courts are the courts of appeal operating in the territories of the Republic of Crimea and the Federal city of Sevastopol on the day of the admission of the Republic of Crimea and the formation of new constituent entities in the Russian Federation, and the Supreme Court of the Russian Federation."

1005. During the transitional period, a number of legislative instruments had been adopted "in a timely manner" to enable "the formation of the judicial system of the Republic of Crimea and the Federal City of Sevastopol in accordance with the legislation of the Russian Federation" and "to ensure the continuity of justice in the[se] territories". In particular, reference was made to several Federal Constitutional Laws of 23 June 2014 of the Russian Federation that had served as a legal basis for establishing different federal courts in Crimea, their territorial jurisdiction and their rules of procedure. The respondent Government also referred to other federal laws of the Russian Federation that specified the procedure and requirements for appointment of judges (as to the latter, the general requirements provided for under the 1992 Act on the status of judges in the Russian Federation applied). The incumbent

judges on the day of Crimea's admission into the Russian Federation enjoyed priority for being appointed in the courts of the Russian Federation established in those territories, if they had Russian nationality and complied with the other requirements for the post of judge. The Government maintained that during the transitional period and before the courts of the Russian Federation had been established, justice had been administered exclusively by judges or "persons replacing judges in these courts" who had Russian nationality. For that purpose, "immediate measures were taken to grant citizenship of the Russian Federation to judges who did not have it as of 21 March 2014". The appointment of judges in those courts was carried out by the Higher Qualification Board of Judges of the Russian Federation.

1006. As of November 2014, judges of the federal courts had been appointed by the President of the Russian Federation, as provided for by Russian legislation. The respondent Government argued that the appointment of judges and the formation of the judicial system of the "Republic of Crimea" and "Federal City of Sevastopol" had been carried out in strict accordance with the Russian legislation. The Plenary of the Supreme Court of the Russian Federation had set 26 December 2014 as the starting date of the operation of the newly established federal courts of the Russian Federation in Crimea.

1007. In view of the foregoing, the extension of the legislation of the Russian Federation to the territory of "the Republic of Crimea" and the establishment of courts in Crimea "on the basis of [that] law" was in full compliance with Article 6 of the Convention.

2. *The Court's assessment*

(a) Relevant IHL

1008. The relevant provisions of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (in addition to Article 64, cited in paragraph 936 above), read as follows (A 45 and 46):

"IV. Applicable provisions

Article 67

"The courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power."

Article 70

"Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted

> or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.”

1009. Having regard to the complaints raised in the present case, there is no conflict between Article 6 of the Convention and either the above rules of IHL or Article 23(h) of the Hague Regulations (cited at paragraph 935 above).

(b) As to the merits of the complaint under Article 6 of the Convention

1010. The Court reiterates that, according to its settled case-law concerning Article 6 of the Convention, the phrase “established by law” covers not only the legal basis for the very existence of a “tribunal” but also the compliance by the court or tribunal with the particular rules that govern it and the composition of the bench in each case (see *Guðmundur Andri Ástráðsson* ([GC], no. 26374/18, §§ 223 and 229, 1 December 2020). Accordingly, if a tribunal does not have jurisdiction to try a defendant in accordance with the provisions applicable under domestic law, it is not “established by law” within the meaning of Article 6 § 1. Furthermore, a violation of the domestic legal provisions on the establishment and competence of judicial organs by a tribunal gives rise to a violation of Article 6 § 1 (see *Jorgic v. Germany*, no. 74613/01, §§ 64 and 65, ECHR 2007-III).

1011. In the present case, the Court is confronted with the question whether the courts operating in Crimea during the period under consideration can be regarded as tribunals “established by law” and in this respect, as argued above, the decisive issue is whether the domestic law by reference to which this question is to be answered was that of Ukraine or of the Russian Federation.

1012. As argued by the respondent Government, and not contested by the applicant Government, prior to the “admission of Crimea to the Russian Federation”, pre-existing courts established in accordance with the legislation of Ukraine continued to function in Crimea (see paragraph 1003 above). Neither party clarified whether during that time (27 February to 21 March 2014), the courts continued to apply both the substantive and procedural law of Ukraine. On the other hand, it is common ground between the parties that after “Crimea’s admission” as a constituent part of the Russian Federation as a matter of Russian law, the judicial system in Crimea began to align with and integrate into that of the Russian Federation. From that date onwards, as asserted by the respondent Government and indicated in Article 9 § 1 of the “Accession Treaty”, the courts in Crimea applied Russian law (and local law that was not contrary to the Constitution and laws of the Russian Federation) (see paragraph 423 of the admissibility decision and paragraph 1004 above). The applicant Government also asserted that “since 24 March 2014 the courts

in Crimea have not been 'established by law'" (see paragraph 1008 above). The witness statement of A. Kushnova, judge of the District Administrative Court in Simferopol, which the respondent Government did not contest, is a further element attesting to that fact (A 419-21).

1013. Accordingly, in relation to the court system operating in Crimea prior to the enforcement of the "Accession Treaty", signed on 18 March 2014 and ratified by the Russian State Duma on 21 March 2014, the Court cannot establish beyond reasonable doubt that this was not based on Ukrainian law, and accordingly, that it was not "established by law".

1014. Regarding the "legality" of the judicial system functioning in Crimea after the "Accession Treaty", the Court notes that the integration of the judicial system of Crimea into that of the Russian Federation was gradual and passed through an initial transitional period (between Crimea's admission, as a matter of Russian law, into the Russian Federation, and 1 January 2015) during which pre-existing courts established under the law of Ukraine continued to operate in Crimea and delivered justice "on behalf of the Russian Federation". During that time, the Supreme Court of the Russian Federation was the court of final jurisdiction to decide cases heard by the courts operating in Crimea. A further aspect of the judiciary in Crimea during that transitional period was that only incumbent judges or "persons replacing judges in these courts" who had Russian nationality (see paragraph 1005 above) could sit in the cases assigned to them.

1015. During the transitional period, the Russian Federation adopted a number of legislative instruments which enabled "the formation of the judicial system of the Republic of Crimea and the Federal City of Sevastopol in accordance with the legislation of the Russian Federation". Those legal instruments regulated the courts' territorial jurisdiction and rules of procedure and specified the procedure and requirements for the appointment of judges. The appointment of judges was carried out by the Higher Qualification Board of Judges of the Russian Federation. In November (as submitted by the respondent Government) or 19 December 2014 (as submitted by the applicant Government), the President of the Russian Federation issued Decrees appointing judges of the federal courts in Crimea. The Plenary of the Supreme Court of the Russian Federation set 26 December 2014 as the starting date of the operation of the newly established federal courts of the Russian Federation in Crimea.

1016. In these circumstances, it can be concluded that from the time of Crimea's admission, as a matter of Russian law, into the Russian Federation, the judicial system functioning in Crimea operated on the basis of Russian law, both substantively and procedurally. The fact that certain incumbent judges with Russian nationality remained in post during the transitional period is of no relevance given that they applied Russian law and delivered justice "on behalf of the Russian Federation". Furthermore, during that period the Supreme Court of the Russian Federation acted as a court of final

jurisdiction in cases adjudicated by those courts. The subsequent establishment of the "federal courts" in Crimea and the appointment of judges in those courts was carried out in accordance with Russian law.

1017. As explained above, the relevant rules of IHL clearly provide that the law pre-dating the occupation should continue to apply in the territory on which another State exercises "effective control", unless there are grounds for any of the exceptions listed in those rules. In the present case, that means that the courts in Crimea were required to continue to apply "the whole of the law (civil law and penal law)" (as explained in the Commentary to the Fourth Geneva Convention; see paragraph 940 above) of Ukraine and not to replace it with Russian legislation unless "necessary". Nevertheless, it is clear on the evidence that "judges have applied Russian Federation 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" (see paragraph 10 and other relevant passages of the 2017 OHCHR Report). Both parties pointed to the full-scale application of Russian law.

1018. The Court emphasises that the general arguments regarding the issue of "lawfulness" under the Convention stated in paragraphs 943-45 above apply likewise to the issues under this head. In particular, the respondent Government neither made a reference to IHL nor did they directly invoke any of the exceptions set out therein. Whereas they identified the laws and other legal instruments on the basis of which the judicial system of Crimea had been incorporated into that of the Russian Federation after Crimea's admission, as a matter of Russian law, as a constituent part of the Russian Federation, into that of the Russian Federation, they did not explain why it had been necessary to replace the overall pre-existing Ukrainian legal and judicial system with that of the Russian Federation.

1019. In such circumstances, the Court considers that the judicial system functioning in Crimea after the "Accession Treaty" cannot be regarded as "established by law" within the meaning of Article 6 of the Convention. The OHCHR also noted that the substitution of Ukrainian laws with Russian Federation laws was "in violation of the IHL" (see paragraphs 7 and 220 of the 2017 OHCHR report, quoted in A 102). Having regard to the wide scope of the requirement of a "tribunal established by law" – namely the legal basis for the very existence of a "tribunal", the compliance by the court or tribunal with the particular rules that govern it and the composition of the bench in each case (see paragraph 1010 above) – the failure to comply with that requirement (given the general reliance on Russian law) is of such gravity that the existence of "tribunals" of this kind taints the entire administration of justice by such "tribunals".

1020. For these reasons, there is no need for the Court to examine separately the independence and impartiality of individual judges operating in Crimea at the relevant time as an aspect of the right to a fair trial before an

independent and impartial "tribunal" established by law (see *Guðmundur Andri Ástráðsson*, cited above, § 295). Similarly, it is not necessary for the Court to examine separately the consequences of the above deficiency for the proper administration of justice and the fair-trial guarantees apparently referred to by the applicant Government (see paragraph 1002 above) and noted in some reports (for example, see 2016 and 2017 OHCHR Reports, the 2015 joint report of the ODIHR and the HCNM, Report of the Human Rights Assessment Mission (HRAM) on Crimea; A 100, 102 and 108).

1021. The Court notes that the above situation came about as a result of the "Accession Treaty" and Crimea's admission, as a matter of Russian law, as a constituent entity of the Russian Federation. It stemmed from regulatory measures of a general nature which applied throughout the entire territory of Crimea. They were binding for all courts and applied to all judicial proceedings and to all persons concerned. These factors are sufficient evidence of the administrative practice alleged under this head.

1022. Accordingly, there has been a violation of Article 6 of the Convention on account of an administrative practice with the result that, at least after the enforcement of the "Accession Treaty" (see paragraph 1013 above), the courts in Crimea could not be considered to have been "established by law" within the meaning of that Article.

D. Alleged violation of Article 8 of the Convention

1023. The applicant Government's complaints under Article 8 of the Convention, as delimited in the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 429 and 435), concerned the alleged existence of an administrative practice regarding:

(1) the (im)possibility of opting out of Russian citizenship, as a specific citizenship-related issue connected with, but separate from the issue of the automatic imposition of Russian citizenship on all residents of Crimea (a similar complaint raised in application no. 38334/18 will also be examined under the present sub-heading);

(2) arbitrary raids of private dwellings of perceived opponents of the Russian "occupation" (in particular the homes of Ukrainian soldiers, ethnic Ukrainians and Tatars); and

(3) the transfer of "convicts" to the territory of the Russian Federation, which was raised for the first time in the applicant Government's memorial before the Grand Chamber dated 28 December 2018.

In the admissibility decision, the Grand Chamber emphasised "the significant overlap between the 'transfer of convicts' complaint" raised in this case and application no. 38334/18, and held that it was appropriate to examine both the admissibility and the merits of the two claims of an administrative practice of "transfer of convicts" at the same time as the merits stage of these proceedings. For these reasons, both the admissibility and

merits of this particular complaint are analysed in the part concerning application no. 38334/18 (see paragraphs 1279 et seq. below).

1024. Article 8 of the Convention reads:

> "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."

1. *Alleged impossibility of opting out of Russian citizenship*

1025. The Court considers it necessary to clarify the scope of the admissible complaint under this head. Having regard to the scope of the case at the present stage (see paragraph 828 above), the Court will confine its examination to the complaint under this head as delimited in the admissibility decision; that is to say, only the issue of opting out of Russian citizenship will be examined. The more general issue concerning the automatic imposition of Russian citizenship on all residents of Crimea will be taken into account only to the extent necessary for the assessment of the merits of the "opting-out" complaint.

(a) The parties' submissions

(i) The applicant Government

1026. The applicant Government maintained that the automatic imposition of citizenship by an occupying power (the respondent State) on the population of an occupied territory amounted to a violation of Article 8 of the Convention. Such imposition was also contrary to IHL, in particular Article 45 of the 1907 Hague Regulations, which forbade compelling inhabitants of an occupied territory to swear allegiance to the hostile power. The regulatory nature and the content of the measures showed that both elements of the administrative practice had been present. The respondent State had deliberately pursued a policy aimed at making it impossible for those wishing to retain Ukrainian citizenship to continue to live and work and exercise their legal rights in occupied Crimea, and at coercing them into accepting Russian citizenship.

1027. They argued that the opt-out procedure was "redundant" given the procedural obstacles imposed by the respondent State that rendered it theoretical and illusory, rather than practical and effective. A further element to be taken into account was the prevailing context of intimidation and persecution (as reported by international organisations) in which the "'choice' to renounce Russian citizenship" was to be made, as well as the perceived (and real) adverse consequences of the exercise of such a "right".

The culture of repression and intimidation was a strong disincentive to opt out.

1028. The applicant Government submitted that the interference with Article 8 rights could not be regarded as having been "in accordance with the law". According to them, in the light of the applicable IHL, the applicable "law" should have been Ukrainian law and not Russian law. Given the practical obstacles for "opting out", in particular the shifting and uncertain requirements for exercising such a "right", such law also did not comply with the "quality of law" requirements under the Convention.

1029. Finally, they argued that the automatic imposition of foreign citizenship had not pursued a legitimate aim for the purposes of Article 8 § 2 and that even assuming that it had, it had been disproportionate, given the gravity of the infringement and the general application of the measure.

(ii) The respondent Government

1030. In their memorial the respondent Government contested the applicant Government's allegations concerning the system of opting out of Russian citizenship that was provided for under the Accession Treaty (Article 5) and Federal Constitutional Law no. 6-FKZ (section 4) in relation to Ukrainian citizens and stateless persons permanently residing in Crimea and in the city of Sevastopol. Federal Law no. 62-FZ of 31 May 2002 on citizenship of the Russian Federation provided for the possibility of voluntary withdrawal (written notification under section 19) from citizenship of the Russian Federation, unless the person in question fell within one of the categories listed in section 20 of that Law, namely where the person concerned (1) had an unfulfilled statutory obligation; (2) was subject to criminal charges or had a final court sentence against him or her; and (3) had no other citizenship or guarantees of obtaining one (see paragraphs 246 and 247 above). Ukrainian citizens could seek to opt out of Russian citizenship upon presentation of a Ukrainian passport. The above clear and reasonable procedure for renouncing Russian citizenship provided for under the relevant Russian legislation was not in violation of Article 8 of the Convention.

(b) The Court's assessment

1031. The Court reiterates that a "right to nationality" similar to that in Article 15 of the Universal Declaration of Human Rights is not guaranteed by the Convention or its Protocols (see *Slivenko and Others v. Latvia* (dec.), [GC] no. 48321/99, § 77, ECHR 2002-II). Nevertheless, it has previously stated that it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (see *Karassev v. Finland* (dec.), no. 31414/96, ECHR 1999-II, and *Genovese v. Malta*, no. 53124/09, § 30, 11 October 2011). Furthermore, it has accepted

that the same principles must apply to the revocation of citizenship already obtained, since this might in certain circumstances lead to a similar – if not greater – interference with the individual's right to respect for private and family life (see *Ramadan v. Malta*, no. 76136/12, § 85, 21 June 2016; *K2 v. the United Kingdom* (dec.), no. 42387/13, 7 February 2017; and *Alpeyeva and Dzhalagoniya v. Russia*, nos. 7549/09 and 33330/11, § 108, 12 June 2018). While no right to renounce citizenship is guaranteed by the Convention or its Protocols, the Court cannot rule out the possibility that an arbitrary refusal of a request to renounce citizenship might in certain circumstances also raise an issue under Article 8 if such a refusal has an impact on the individual's private life (see *Riener v. Bulgaria*, no. 46343/99, §§ 153-54, 23 May 2006).

1032. As noted above, the Court will confine its examination to the complaint as delimited in the admissibility decision, namely the operation in practice of the possibility of opting out of the Russian citizenship that was automatically imposed on all residents of Crimea following the events in February-March 2014. It will not examine, as requested by the applicant Government (see paragraph 1026 above), whether such automatic imposition amounted, in itself, to a violation of the Convention, interpreted in the light of IHL. However, it notes that in its 2017 Report the OHCHR indicated that such an imposition "can be equated to compelling them to swear allegiance to a power they may consider as hostile, which is forbidden under the Fourth Geneva Convention" (A 102). Another contextual factor to be taken into account, as argued by the applicant Government (see paragraph 1027 above), acknowledged by international organisations, and not contested by the respondent Government, is the "climate of severe intimidation" and the statement that "all inhabitants of Crimea have been placed under immense pressure to obtain Russian passports and renounce their Ukrainian nationality" (see PACE Resolution 2133 (2016) on legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities, quoted in A 65). Denial of family visits to prisoners who refused Russian citizenship or their placement in smaller cells or in solitary confinement have been noted as examples of such pressure (see 2017 OHCHR Report, A 102). The main consequence was that those who opted out became foreigners in their own land. Whereas they retained certain rights enjoyed by Russian Federation citizens (right to pension, free health insurance, social allowances, and the right to practice professions for which Russian Federation citizenship was not a mandatory requirement), "they cannot own agricultural land, vote and be elected, register a religious community, apply to hold a public meeting, hold positions in the public administration and reregister their private vehicle on the peninsula" (A 73, 102, 123 and 110).

1033. Having regard to all the circumstances, including the stark and impossible choice for those concerned between continuously having to live

with the imposition of Russian citizenship and its consequences, on the one hand, and opting out on the other hand, the Court considers that Article 8 of the Convention is engaged. Furthermore, it agrees with the applicant Government that the alleged lack of an effective system of opting out of Russian citizenship that was automatically imposed by law constituted an interference with the right to respect for private life. It remains to be examined whether that interference was "in accordance with the law", whether it pursued a legitimate aim and whether it was proportionate.

1034. The Court notes that it is common ground between the parties that the system providing for the opting out of Russian citizenship was derived from the "Accession Treaty" and the Federal Constitutional Law no. 6-FKZ of the Russian Federation, under which Crimea was admitted, as a matter of Russian law, as a constituent entity of the Russian Federation (see paragraphs 238 and 240 above). These instruments provided that all permanent residents of Crimea were to be automatically recognised as Russian citizens unless they opted out within one month "from the date of admission of the Republic of Crimea into the Russian Federation" and declared that they would retain their existing citizenship or remain stateless. As further explained by the respondent Government, the procedure for renouncing Russian citizenship was regulated by Federal Law no. 62-FZ of 31 May 2002 on citizenship of the Russian Federation, which provided for the possibility of voluntary withdrawal by means of a written notification (see paragraph 1030 above). Certain related issues were further regulated by local Crimean laws post-dating the events in February-March 2014 (A 25).

1035. Furthermore, as alleged by the applicant Government and noted in the 2017 OHCHR Report, which in turn relied on information obtained from the Russian Federal Migration Service (FMS) (A 102), over 3,400 permanent residents of Crimea had applied to opt out of Russian citizenship. The respondent Government did not contest that figure.

1036. The Court reiterates the close interplay between the automatic imposition of the Russian citizenship and the related system of opting out, both introduced pursuant to the Russian law. The former (automatic imposition of Russian citizenship), without which the system of opting out would not have existed, is outside the scope of the case, as delimited in the admissibility decision (see paragraphs 828 and 830 above), and cannot be examined by the Court (see paragraph 1032 above). Accordingly, the Court will not pronounce itself on the issue of lawfulness of the consequential system of opting out of Russian citizenship. However, it considers that, in any event, it imposed a disproportionate burden on those concerned for the following reasons.

1037. The applicant Government alleged that the opt-out system was ineffective given the procedural obstacles imposed by the Russian authorities. The Court notes that the relevant reports by IGOs and NGOs (the 2014 Commissioner's Report, the 2017 OHCHR Report, the 2014 Human Rights

Watch, and reports of the Open Society Justice Initiative, and the Ukrainian Helsinki Human Rights Union) referred to multiple obstacles/constraints in the practical exercise of the opt-out process, including "the extraordinarily short grace period" during which the option applied, the limited information available about the procedure and the limited number of locations where individuals could declare their intention to opt out. In particular, the procedure was effectively only available for eighteen days (owing to the failure of the FMS to provide instructions on the refusal procedure until 1 April 2014); initially only two, and ultimately nine FMS offices were made available to receive and process such applications. Offices were difficult to access for residents living in the countryside. The offices also had insufficient capacity to process such applications. Furthermore, there were no clear instructions whether persons outside Crimea at the relevant time could apply to opt out in the embassies and consulates of the Russian Federation. This was to be contrasted with the system of receiving Russian passports, which could be requested by mail or in person at many designated offices around Crimea or any Russian consulate or embassy. The reports referred to above were consistent in reporting that the procedural requirements for refusing Russian citizenship "evolved" over a short period of time, including the requirement to make the application in person and the requirement that both parents make the application and/or be present to apply on behalf of their children. The documentary material provided by the Ukrainian authorities and the witness evidence corroborated the above reports in these respects (A 266-71; 362 and 420). The respondent Government did not contest the above observations and limited themselves to stating that Federal Law no. 62-FZ of 31 May 2002 provided for a clear and reasonable procedure for opting out of Russian citizenship (see paragraph 1030 above).

1038. The Court notes that the above deficiencies did not directly derive from that Law, but were the result of the implementation in practice of the system providing for the opt out (see paragraph 1034 above). They were of such a scale and intensity as to prevent the permanent residents of Crimea concerned to effectively enjoy the possibility to opt out of Russian citizenship.

1039. Therefore, there has been a violation of Article 8 of the Convention on account of an administrative practice of a lack of an effective system to opt out of Russian citizenship.

2. *Arbitrary raids and searches of private dwelling houses*

(a) The parties' submissions

(i) The applicant Government

1040. The applicant Government reiterated that the interference under this heading could not be regarded as having been "in accordance with the law", which was to be understood as referring to the law of Ukraine. Furthermore,

the anti-extremism legislation, as well as Article 280.1 of the Russian Criminal Code (concerning the offence of incitement aimed at violating the territorial integrity of the Russian Federation), relied on by the respondent Government to justify the interference in question, were vague and did not contain the necessary safeguards to meet the quality standards under Article 8 § 2 (reference was made to Opinion no. 660/2011 of the European Commission for Democracy through Law (Venice Commission) on the Federal Law on Combating Extremist Activity of the Russian Federation, 1 June 2012).

1041. In any event, the applicant Government submitted that the respondent Government had made no attempt to demonstrate that such infringements had been in pursuit of a legitimate aim, were necessary or proportionate. Given the "nakedly political objective and discriminatory nature of such raids" which, as noted by the OHCHR, had disproportionately targeted Crimean Tatars, the applicant Government submitted that there could have been no such legitimate aim.

1042. They further alleged that individual incidents under this head had been sufficiently numerous and interconnected to amount to a pattern or system of violations, targeting perceived opponents of the "occupation" in general, thus satisfying the requisite "repetition of acts" element. As to the "official tolerance" element, the applicant Government noted the regulatory nature of such violations and reiterated their arguments set out in paragraph 952 above, which likewise applied to their allegations under this head.

(ii) The respondent Government

1043. The respondent Government did not offer any specific comments as regards the merits of this complaint.

(b) The Court's assessment

1044. In the admissibility decision, the Court concluded that the information contained in the Commissioner's report of 2014, the 2017 OHCHR Report and the Human Rights Watch Report of 2014 constituted prima facie evidence in support of the alleged "repetition of acts" under this head during the period under consideration. Furthermore, it referred to the public recognition and endorsement by the highest authorities of the Russian Federation of the members of the CSDF as proof of the "official tolerance" element of an administrative practice under this head (see paragraph 449 of the admissibility decision).

1045. At the present stage of the proceedings, the applicant Government supplemented the above evidential material with concordant NGOs reports and witness statements corroborating the alleged existence of large scale raids and searches of private houses during the period under consideration, in

particular in relation to Crimean Tatars. This evidence also provides some indication of the identity of the alleged perpetrators who were members of the CSDF, police officers and FSB officials (as reported by the Ukrainian Helsinki Human Rights Union and others, the Crimean Human Rights Field Mission, and the Crimean Human Rights Group). Similar incidents which were said to have occurred during the period under consideration were identified (and subsequently investigated) by Ukrainian national authorities (General Prosecutor's Office and Ukrainian Ombudsperson; A 174-76 and 274). It was further submitted that the arbitrary searches had been conducted on the basis of the anti-extremist legislation of the Russian Federation. The above reports of IGOs and NGOs also noted that the searches, which at times had taken place without search warrants or attesting witnesses, had been conducted for "weapons, drugs or literature with extremist content" with regard to suspected activities in relation to Hizb ut-Tahir, an organisation classified as a terrorist organisation in the Russian Federation, but not in Ukraine. These reports also contain credible allegations of seizure of literature and various other items.

1046. The respondent Government neither rebutted the alleged facts nor did they submit any evidence in reply or counter arguments.

1047. Having regard to the foregoing, the Court considers that there is sufficient evidence proving to the appropriate beyond reasonable doubt standard of proof that during the period under consideration there were sufficiently numerous and inter-connected searches of private dwelling houses, which were "officially tolerated" by the respondent State, constituting interference with Article 8 rights (see *Funke v. France*, 25 February 1993, § 48, Series A no. 256-A; *Gutsanovi v. Bulgaria*, no. 34529/10, § 217, ECHR 2013 (extracts); *Saint-Paul Luxembourg S.A. v. Luxembourg*, no. 26419/10, §§ 38 and 39, 18 April 2013; *Vinks and Ribicka v. Latvia*, no. 28926/10, § 92, 30 January 2020; and *Sabani v. Belgium*, no. 53069/15, § 41, 8 March 2022).

1048. The Court has to determine whether such interference was justified under paragraph 2 of Article 8 – in other words whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" for the achievement of the aim or aims in question.

1049. The applicant Government submitted that the impugned actions by officials of the respondent State had their basis in Russian anti-extremist legislation, including Article 280.1 of the CrCRF. The respondent Government remained silent on this point.

1050. Assuming that the impugned measures were based on the above legislative instruments of the Russian Federation, the Court refers to its reasoning above to the effect that Russian law could not be regarded as "law" within the meaning of the Convention. Furthermore, the Court's findings outlined in paragraphs 944 and 991 above, to the extent relevant, apply

equally under this head. Therefore, it considers that the administrative practice under this head, for which the respondent State is responsible, cannot be regarded as “lawful” (see paragraphs 942 and 946 above).

1051. In any event, the Court takes note of the applicant Government’s arguments and the concerns voiced by some of the IGOs and NGOs mentioned above that the legal provisions relied on by the respondent Government were too broad and vague and therefore failed to meet the qualitative requirement of foreseeability (see paragraph 1040 above). In this connection the Court has regard to Opinion no. 660/2011 of the Venice Commission, which expressed the view that, *inter alia*, the Federal Law on Combating Extremist Activity of the Russian Federation “lacks clarity”, “should be made more specific as to the procedures available” and “has the capacity [to] impos[e] disproportionate restrictions of fundamental rights and freedoms as enshrined in the European Convention on Human Rights (in particular Articles 6, 9, 10 and 11) and infringe the principles of legality, necessity and proportionality”. Those deficiencies have been relied on by the Court in finding that the Federal Law on Combating Extremist Activity was not foreseeable as to its effects and did not provide adequate protection against arbitrary recourse to the warning, caution and order procedures (see, albeit in the context of Article 10 of the Convention, *Karastelev and Others v. Russia*, no. 16435/10, §§ 78-97, 6 October 2020). Thus, even if the Russian legislation referred to could be relied on as “law” within the meaning of the relevant provision of the Convention, the Court could not regard it as sufficiently foreseeable as to its effects in so far as it concerns the allegations of arbitrary searches of private houses.

1052. Against this background, the Court finds it proven beyond reasonable doubt that during the period under consideration there existed an administrative practice of arbitrary raids and searches of private dwelling houses, which was not in “accordance with the law”. There has therefore been a violation of Article 8 of the Convention.

3. Forcible transfer of convicts

1053. For the reasons stated in paragraph 1023 above, both the admissibility and merits of this complaint are analysed in the part concerning application no. 38334/18 (see paragraphs 1279 – 1305 below).

E. Alleged violation of Article 9 of the Convention

1054. The applicant Government’s complaints under Article 9 of the Convention, as delimited in the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 451), concerned the alleged existence of an administrative practice of harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith (directed in particular at Ukrainian Orthodox priests and imams), arbitrary raids of places of worship

and confiscation of religious property. Article 9 of the Convention reads as follows:

> "1. Everyone 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 worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

1. The parties' submissions

(a) The applicant Government

1055. The applicant Government submitted that the Russian Federation had presided over an administrative practice alleged under this head. According to them, there was "no inconsistency" between Convention principles and the applicable provisions of IHL (Rule 104 of the *Customary International Humanitarian Law* study by the ICRC, Article 58 of the Fourth Geneva Convention and Article 15 of Additional Protocol I, A 42, 50 and 59). In fact, "they operate in harmony".

1056. The alleged practice involved acts that were sufficiently numerous and interconnected to satisfy the "repetition of acts" element of an administrative practice targeting non-Russian Orthodox religious groups. With regard to "official tolerance", the applicant Government noted the regulatory nature of certain measures infringing religious freedom, the context of impunity in which attacks on religious minorities had occurred, and the submissions on "official tolerance" set out at paragraph 952 above. The actions leading to those violations had been carried out by agents of the Russian State and its proxies in an environment of complete impunity.

1057. The applicant Government submitted that the respondent Government had not demonstrated that such infringements were justified as being in accordance with the law, had pursued a legitimate purpose and had been necessary or proportionate. In any event, for the reasons set out above (see paragraphs 910 and 922 above), no limitations imposed by Russian law could be regarded as "prescribed by law".

1058. The various measures taken had resulted in a drastic decrease in the number of religious communities functioning on the territory of Crimea: from 2,083 religious organisations at the beginning of 2014, the respondent Government had admitted that by 2018 there had been fewer than 800 religious organisations operating in Crimea.

(b) The respondent Government

1059. The respondent Government submitted that there were no regulatory instruments or court decisions supporting the applicant Government's allegations of alleged persecution on religious grounds. An internal investigation had revealed that there had been no forced closures or searches of churches, mosques, temples of the Ukrainian Orthodox Church of the Kiev Patriarchy or of other religious denominations, nor had Orthodox Ukrainians been harassed. The authorities had not executed an arbitral award of 2019 ordering the Department of the Crimean Diocese of the Ukrainian Orthodox Church to pay rent arrears (to the respondent State). Furthermore, clerics of the Ukrainian Orthodox Church had continued to have uninterrupted access to its premises in Simferopol. Similar considerations applied to the church of the Holy Martyr Clement Pope of Rome and the Roman Catholic parish of the Holy Martyr Clement Pope of Rome. The latter parish had carried out its services on its premises, which had been transferred to it for free by the authorities of Sevastopol in 2018. Twelve former State-owned facilities in the city of Sevastopol had been returned to religious organisations free of charge. The local religious organisation "Ukrainian Orthodox Parish Church of Saints Equal to the Apostles Prince Vladimir and Princess Olga in Simferopol" had continued to carry out its religious activities "on the territory of the Russian Federation", notwithstanding the fact that its constituent instruments had not yet been brought into compliance with the relevant legislation. The respondent Government further referred to statistical data from the Ministry of Justice of the Russian Federation concerning the number of registered religious organisations between 2018 and 2021 in the "Republic of Crimea" and the city of Sevastopol. Those figures indicated a gradual increase in the number of such organisations, which demonstrated the unimpeded exercise by individuals and legal entities of the right to freedom of religion and association.

1060. The respondent Government further referred to Federal Law no. 125-FZ of 26 September 1997 and Federal Law no. 129-FZ of 8 August 2001, which regulated the conditions and procedure for the registration of a religious organisation. An organisation could either seek judicial review of a refusal of registration or resubmit documents in order to seek registration anew (reference was made to the registration of twenty-four religious organisations after they had rectified deficiencies previously established by the competent authorities).

1061. Since 18 March 2014 the Crimean Diocese of the Ukrainian Orthodox Church had not sought re-registration before the Ministry of Justice of the Russian Federation (a failure which the respondent Government asserted "may subsequently be unreasonably used" against the respondent State as an indication of a violation of religious freedoms of the Ukrainian population of Crimea). In any event, the respondent Government noted that the diocese in question had been a structural unit of the unrecognised

Ukrainian Orthodox Church of the Kiev Patriarchy and that it had ceased to exist as a legal entity on 15 December 2018, when it had been joined to the established Orthodox Church of Ukraine. In any event, it had carried out almost no socially significant activities and the activity of parishioners had sharply decreased to a minimum. Similarly, the "Ukrainian Orthodox Parish of Saints Equal to the Apostles Prince Vladimir and Princess Olga in Simferopol" had not contested the decision refusing its registration before the competent courts, despite the clear indications in the relevant notices of the possibility of doing so.

1062. Lastly, the respondent Government made a reference to several federal laws and regulatory instruments of the local Crimean authorities regarding the transfer of State-owned property of a religious nature to religious organisations.

2. *The Court's assessment*

(a) Relationship between the provisions of the Convention and the rules of international humanitarian law

1063. The Court considers that the provisions of IHL relied on by the applicant Government (see paragraph 1055 above, A 42, 50 and 59), insofar as relevant, are not in conflict with the Convention.

(b) General principles in the Court's case-law concerning Article 9 of the Convention

1064. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A; *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I; *S.A.S. v. France* [GC], no. 43835/11, § 124, ECHR 2014 (extracts); and *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 103, 26 April 2016).

1065. Under the terms of Article 9 § 2 of the Convention, any interference with the right to freedom of religion must be "necessary in a democratic society". An instance of interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, among many other authorities, *Bayatyan v. Armenia* [GC],

no. 23459/03, § 123, ECHR 2011; *Fernández Martínez v. Spain* [GC], no. 56030/07, § 124, ECHR 2014 (extracts); and İzzettin Doğan and Others [GC], cited above, § 105).

1066. The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society (see *S.A.S. v. France* [GC], cited above, § 127). What is at stake here is the preservation of pluralism and the proper functioning of democracy, one of the principle characteristics of which is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome (see *The United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 57, Reports of Judgments and Decisions 1998-I).

(c) Application of the above principles to the facts of the present case

1067. The Court notes, as was the case at the admissibility stage (see paragraph 455 of the admissibility decision), that the applicant Government's allegations under this head are consistent with the conclusions in the reports of multiple IGOs. The latter referred to a "series of incidents targeting representatives of minority confessions and religious facilities belonging to them". Furthermore, they reported a "number of searches" and "informative talks" with "scores of persons" "by armed and masked members of the security forces" perceived by "various representatives of the Crimean Tatar community" as "intrusive" and intimidating, as well as threats and persecution of priests. "The gravest and most frequent incidents ... were reported in 2014". The alleged victims of those incidents were "representatives of minority confessions", namely priests of Christian confessions not affiliated with the Russian Orthodox Church, imams and other adherents to Islam. The reported acts included, *inter alia*, the seizure, closure or storming of churches of the Ukrainian Orthodox Church of the Kyiv Patriarchate (particular reference was made to the incident of 1 June 2014 in a church in the village of Perevalne); the banning of priests from entering the churches; the non-renewal of residence permits for foreign religious leaders (twenty-three Turkish imams and a Roman Catholic priest); raids and searches of eight out of the ten Muslim religious schools (madrassas); the setting on fire of a mosque and a house belonging to a church; damage to a Muslim cemetery and a car belonging to a priest; and the confiscation of religious literature deemed "extremist". The alleged effect of those incidents was that a considerable number of ministers and imams had left Crimea and that the UOC-KP had lost control over a significant number of churches belonging to it. Furthermore, there was a significant decline in the number of religious organisations operating in Crimea, namely from 2,083 in Crimea and 137 in Sevastopol ("before the occupation") to 722 religious communities registered in Crimea and 96 in Sevastopol ("as of

4 September 2017") (see the 2017 OHCHR Report, the Commissioner's Report, quoted in A 73 and 102). Reports of intimidation and harassment of religious communities, including attacks on the Ukrainian Orthodox Church, the Greek Catholic Church and the Muslim community, were also noted in the UN HRC Concluding Observations of 2015 on the seventh periodic report of the Russian Federation (A 62). The above-mentioned incidents were also reported by other relevant bodies (US Department of State; A 109), NGOs (Human Rights Watch, the Ukrainian Helsinki Human Rights Union and Others, Truth Hounds et al.; A 110, 121 and 123), as well as the Ukrainian national authorities (the General Prosecutor's Office, the Mission of the President of Ukraine in Crimea, the Ukrainian Ombudsperson; A 179-81; 206-12; 221-22; 274-80) and witnesses (Metropolitan Kliment, the priest Yaroslav Hontar, Maria Tomak (a journalist) and Anatolii Kovalskii (an activist); A 331, 333, 339-41, 358, 374 and 399). Some of these materials referred to incidents that allegedly took place after 26 August 2015, that is, beyond the temporal scope of the present case.

1068. The respondent Government denied the allegations under this head, referring to the "internal investigation" carried out by the Sevastopol prosecutor's office in respect of possible violations of the rights of national minorities "in the second half of 2015" (see paragraph 258 above). Furthermore, whereas they accepted that an incident had occurred on 1 June 2014 in the church of the UOC-KP in the village of Perevalne, they confirmed that there had been no criminal investigation into the allegations that "Cossacks ... engaged in hooligan actions; that they did not allow a priest of the Ukrainian Orthodox Church to enter the premises of the church"; and that a woman had been beaten (see paragraphs 266-71 above). They further referred to statistics from the Ministry of Justice of the Russian Federation purportedly showing an increase in the number of registered religious organisations between 2018 and 2021 in Crimea. In addition, they made general observations about the registration requirement under Russian law and other related instruments and explained what had led to the closure of the UOC-KP in Crimea.

1069. The Court notes at the outset that the respondent Government did not make any submissions in response to the alleged incidents referred to in the above-mentioned reports, except for the incident of 1 June 2014 in Perevalne. They did not submit any evidence to cast doubt on the credibility of the evidential material relied on by the applicant Government in support of the allegations relating to those incidents. They also did not produce any documentary material regarding the internal investigation carried out by the Sevastopol prosecutor's office. The Court is therefore prevented from assessing the facts and the evidence produced in that investigation, as well as the validity of the conclusions of the prosecuting authorities. Furthermore, it has not been explained whether that investigation concerned the alleged incidents that had taken place in 2014, the year when "the gravest and most

frequent incidents" reportedly occurred in the peninsula (see 2017 OHCHR Report, A 102). Similar considerations apply to the oral evidence allegedly produced by the clerics of the UOC-KP and the rector of the parish of Holy Martyr Clement Pope of Rome militating against the finding of any wrongdoing (see § 258 above).

Furthermore, the absence of any investigation in respect of the incident in the village of Perevalne, to which the authorities of the respondent Government had been alerted, demonstrates the "entrenched culture of impunity" reported by many IGOs (see the 2023 Commissioner's Report, A 74; the 2017 OHCHR Report, A 102; the 2018 OHCHR Report, A 103; and the 2021 HRMMU Report, A 104). Lastly, the Court notes that the statistics referred to by the respondent Government (see paragraph 256 above) confirm the considerable decline in the number of religious organisations operating in Crimea (see also the 2017 OHCHR Report, A 102, and the report of the Mission of the President of Ukraine in Crimea, A 220) and the fact that freedom of religion in Crimea was "drastically (severely) curtailed" after the Russian Federation took effective control of Crimea (see the European Parliament resolution of 16 March 2017, A 76, and Human Rights Watch, A 110). The respondent Government's arguments pertaining to the "ambiguous impact of the activities of the UOC-KP on the socio-political situation in Crimea" and the structural changes to the Department of the Crimean Diocese of 2018, namely that it ceased to exist in December 2018, when it joined the Orthodox Church of Ukraine (see paragraphs 270 and 271 above), if not irrelevant, have no bearing on the merits of the complaints under this head.

1070. In these circumstances, on the available evidence, the reliability of which it accepts, the Court finds that during the period under consideration there were sufficiently numerous and interconnected incidents amounting to an "administrative practice" of interference with Article 9 rights under the Convention, such as the denial of access of priests to places of worship (see, *mutatis mutandis*, *Cyprus v. Turkey* (merits), cited above, §§ 243-246); questioning by police, searches of homes and seizures of books, recordings and other items (see *Boychev and Others v. Bulgaria*, no. 77185/01, § 46, 27 January 2011, and *Dimitrova v. Bulgaria*, no. 15452/07, § 28, 10 February 2015); the non-extension or cancellation of residence permits for foreign ministers (see *Perry v. Latvia*, no. 30273/03, § 53, 8 November 2007; *Nolan and K. v. Russia*, no. 2512/04, § 62, 12 February 2009; and *Lotter v. Bulgaria* (dec.), no. 39015/97, 6 February 2003); and the confiscation of religious publications (see *Taganrog LRO and Others v. Russia*, nos. 32401/10 and 19 others, §§ 197-98, 7 June 2022; and *Moroz v. Ukraine*, no. 5187/07, § 104, 2 March 2017).

1071. The Court therefore has to determine whether the above-mentioned interference was justified under paragraph 2 of Article 9 – in other words, whether it was "prescribed by law", pursued one or more of the legitimate

aims set out in that paragraph and was “necessary in a democratic society” for the achievement of the aim or aims in question (see paragraph 1065 above).

1072. The Court observes that the respondent Government referred to several federal laws of the Russian Federation and regulatory instruments of the local Crimean authorities pertaining to the registration of religious organisations and the transfer of State-owned property of a religious nature to religious organisations. However, these references were general in nature and it was not argued that – and if so, to what extent – any of the specific above-mentioned incidents took place on the basis of the statutory provisions relied on by the respondent Government.

1073. The Court is therefore satisfied that there existed an accumulation of identical or analogous breaches which were sufficiently numerous and interconnected to amount to a pattern or system (repetition of acts) that cannot be regarded as “lawful” within the meaning of the Convention.

1074. As regards the “official tolerance” element of the administrative practice, the Court observes that the available material points to several alleged perpetrators of the acts complained of, namely “armed and masked members of the security forces”, FSB officers, Cossacks and members of the CSDF or “local pro-Russian militia”. In this connection the Court refers to its considerations in paragraphs 994 and 996 above regarding the respondent State’s responsibility for the acts committed by local militia and Russian servicemen, which likewise apply to the allegations under this head, and which are undisputed by the respondent Government. In any event, the evidence before the Court also shows that the competent local authorities had been specifically alerted to the acts complained of at the time (see the 2014 Commissioner’s report, A 73). As noted in the admissibility decision, this is an additional element militating in favour of finding cognisance on the part of the higher authorities (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 457). Further support for finding that there was official tolerance by the respondent State to the required standard of proof can also be drawn from the IGOs’ reports and the concrete example noted in paragraph 1069 above, demonstrating the failure of the relevant authorities to address the allegations made under this head.

1075. To the extent that that the impugned interference was based on any of the above legislative acts of the Russian Federation, the Court refers to the reasons given above that the Russian law cannot be regarded as “law” within the meaning of the Convention and that any individual acts constituting the practice complained of are to be examined by reference to the requirements of Ukrainian, not Russian law (see paragraphs 942 and 946 above). Assuming that the anti-extremist legislation of the Russian Federation served as a legal basis for the interference with Article 9 rights in Crimea, the Court refers to its earlier findings regarding the Federal Law on Combating Extremist Activity, based, *inter alia*, on the observations by the Venice Commission in

its Opinion no. 660/2011 (A 75), according to which "impermissibly broad definition of 'extremism activities', coupled with a lack of judicial safeguards, is sufficient for a finding of a violation on the basis that the interference ... was not "prescribed by law" (see *Taganrog LRO and Others*, cited above, § 159). Furthermore, it refers to its findings outlined in paragraphs 944 and 991 above regarding the general issue of lawfulness and IHL, which apply equally to the consideration of the complaint under this head.

1076. The Court further notes that the respondent Government did not seek to identify any legitimate aim nor did they submit any argument concerning the proportionality of the impugned interference.

1077. Against this background, the Court finds it established beyond reasonable doubt that during the period under consideration the respondent State was responsible for an unlawful administrative practice of harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith (in particular Ukrainian Orthodox priests and imams), arbitrary raids of places of worship and confiscation of religious property. There has therefore been a violation of Article 9 of the Convention.

F. Alleged violation of Article 10 of the Convention

1078. The applicant Government's complaints under Article 10 of the Convention, as delimited in the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 460-72), concern the alleged existence of an administrative practice of "suppression" of non-Russian media, including the closure of Ukrainian and Tatar television stations. Article 10 of the Convention reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

1. *The parties' submissions*

(a) The applicant Government

1079. The applicant Government submitted that since March 2014 and the annexation of Crimea by the respondent State, legal issues regarding freedom of speech, information policy and the provision of information and

communication on the territory of "temporarily occupied regions" had been unlawfully regulated by legal instruments of the Russian Federation. For the reasons set out in paragraphs 910 and 922 above, the interference complained of could not have been "prescribed by law". Furthermore, the vaguely worded and overly broad anti-extremism legislation of the respondent State had been used to pressure Crimean Tatar media outlets into ceasing criticism of the "occupation" of Crimea by the Russian Federation. The "laws" commonly used by the authorities to justify such infringements, for example Article 280.1 of the Russian Criminal Code, did not meet the quality requirements under the Court's case-law and failed to offer the necessary, or indeed any, safeguards against arbitrariness. Whereas the respondent Government had invoked the legal requirements for re-registration of media outlets under the Russian legislation, they had not engaged with the issue of the compatibility of those measures with the Convention.

1080. Furthermore, the aim of the campaign of suppression and intimidation had been to silence independent journalism in Crimea, which could not be a legitimate aim in a democratic society. The respondent Government had provided no real justification for the closure of the *Avdet* newspaper, the ATR company, the radio station *Lale* and others and had failed to provide supporting documents or even to specify the reasons for rejecting licence applications.

1081. The acts of suppression had been carried out by officials of government agencies of the Russian Federation or, as regards certain physical attacks on journalists, members of its proxy militias. They had been carried out in a climate of impunity such that the large majority of independent media outlets and journalists had been forced to flee to mainland Ukraine. For that reason, as well as those set out in paragraph 952 above, the applicant Government submitted that there was clear and compelling evidence of "official tolerance".

1082. They further submitted that although IHL did not provide the same level of protection of freedom of expression, there was no conflict between Article 10 and the applicable principles of IHL. Indeed, Article 70 of the Fourth Geneva Convention prohibited the arrest, prosecution or conviction of a person by the occupying power for opinions expressed prior to the "occupation", and Article 79 of Additional Protocol I extended protection to journalists in areas of armed conflict.

(b) The respondent Government

1083. The respondent Government referred to the applicable rules on television and radio broadcasting (registration and licence procedures) and the facts as presented by them (see paragraphs 274-306 above), maintaining that the allegations under this head were unsubstantiated. They stated that the Crimean authorities had taken an active role in supporting the development of public broadcasting, allowing all citizens, irrespective of their national

background, to actively participate in the decision-making process and receive information in their native language without any restrictions. Allegations of the closure of television channels were equally unsubstantiated and were aimed at destabilising the socio-political situation. Accordingly, there had been no violation of freedom of thought and speech on account of the alleged ban of Ukrainian and Crimean Tatar TV channels and mass media operating in the "Republic of Crimea".

2. *The Court's assessment*

(a) Relationship between the provisions of the Convention and the rules of international humanitarian law

1084. The Court considers that the provisions of IHL relied on by the applicant Government (see paragraph 1082 above), to the extent relevant, are not in conflict with the Convention.

(b) General principles under Article 10 of the Convention

1085. The Court considers it appropriate at the outset to recapitulate below the general principles established in its case-law concerning pluralism in the audiovisual media (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 129-33, ECHR 2012 and, more recently, *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, §§ 182, 185, 186, 5 April 2022).

> "129. As it has often noted, there can be no democracy without pluralism. Democracy thrives on freedom of expression. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself (see *Manole and Others v. Moldova*, no. 13936/02, § 95, ECHR 2009, and *Socialist Party and Others v. Turkey*, 25 May 1998, §§ 41, 45 and 47, Reports 1998-III).
>
> 130. In this connection, the Court observes that to ensure true pluralism in the audio-visual sector in a democratic society, it is not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audio-visual market. It is necessary in addition to allow effective access to the market so as to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed.
>
> 131. Freedom of expression, as secured in Article 10 § 1, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress (see *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103). Freedom of the press and other news media affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. It is incumbent on the press to impart information and ideas on political issues and on other subjects of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them (see, for example, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24, and *Lingens*, cited above, §§ 41-42).

> 132. The audio-visual media, such as radio and television, have a particularly important role in this respect. Because of their power to convey messages through sound and images, such media have a more immediate and powerful effect than print (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 79, ECHR 2004-XI). The function of television and radio as familiar sources of entertainment in the intimacy of the listener's or viewer's home further reinforces their impact (see *Murphy v. Ireland*, no. 44179/98, § 74, ECHR 2003-IX).
>
> 133. A situation whereby a powerful economic or political group in society is permitted to obtain a position of dominance over the audio-visual media and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom undermines the fundamental role of freedom of expression in a democratic society as enshrined in Article 10 of the Convention, in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive (see *VgT Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, §§ 73 and 75, ECHR 2001-VI; see also *De Geillustreerde Pers N.V. v. the Netherlands*, no. 5178/71, Commission's report of 6 July 1976, Decisions and Reports 8, p. 13, § 86). This is true also where the position of dominance is held by a State or public broadcaster. Thus, the Court has held that, because of its restrictive nature, a licensing regime which allows the public broadcaster a monopoly over the available frequencies cannot be justified unless it can be demonstrated that there is a pressing need for it (see *Informationsverein Lentia and Others*, cited above, § 39)."

1086. Any interference with freedom of expression will be in breach of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims referred to in the second paragraph of Article 10 and was "necessary in a democratic society".

1087. The general principles as to whether an interference under this Article was "prescribed by law" were summarised in *NIT S.R.L.* (cited above, §§ 157-61) and *Centro Europa 7 S.r.l. and Di Stefano* (cited above, §§ 139-43).

1088. The general principles concerning the question of whether an interference is "necessary in a democratic society" are well established in the Court's case-law and have been summarised as follows (see, among many authorities, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 100, ECHR 2013 (extracts); *Delfi AS v. Estonia* [GC], no. 64569/09, § 131, ECHR 2015; and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 132, 17 May 2016):

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of

appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

(c) Application of the above principles to the present case

1089. In its admissibility decision the Court found that the incidents and conclusions noted by several IGOs and NGOs (the 2017 OHCHR Report, the UN HRC Concluding Observations of 2015 and the 2014 Human Rights Watch Report) provided sufficient prima facie evidence of the alleged administrative practice under this head. Those materials, to which the applicant Government also referred at the present stage of the proceedings, demonstrate that, *inter alia*, in March 2014 all Ukrainian television channels were shut down and that the only Ukrainian-language newspaper (*Krymska*) was banned from distribution. In addition, some Tatar-language media outlets (the *Avdet* newspaper, the ATR and *Lale* television channels, the Meydan and Lider radio stations, the QHA news agency and the 15minut internet site) were denied either re-registration or licences to operate in accordance with Russian Federation legislation and had to cease operations on the peninsula. Official "warnings" (from FSB officers and the Crimea prosecutor's office) often preceded the closing down of a media outlet on the basis that its views, articles or programmes were deemed "extremist" (for example, for use of the terms "annexation", and "temporary occupation"). For that purpose, the authorities used Russia's vaguely worded and overly broad anti-extremism legislation to pressure Crimean Tatar media outlets into ceasing criticism of Russia's "occupation" of Crimea (see paragraph 1079 above). As reported by Roskomnadzor, the official media regulatory body of the Russian Federation, on 1 April 2015 – over a year after Crimea had been admitted, under Russian law, as a constituent entity of the Russian Federation – only 232 media outlets were authorised to operate, as compared to the 3,000 media outlets previously registered under Ukrainian regulations. The IGOs and NGOs also reported harassment and intimidation of journalists.

1090. The Court observes that the above information is concordant with the additional evidential material submitted to the Court, according to which

161 transmitters and twenty radio lines were lost in Crimea (A 309); in February 2015, almost all private Crimean radio companies had their frequencies seized (A 300); Chernomorskaya TRC, one of the largest television companies in Crimea, was blocked from broadcasting on Crimean cable networks; ATR's offices were raided by representatives of the Investigative Committee of the Russian Federation and the Centre for Countering Extremism; systematic intimidation (illustrated through some concrete examples of journalists and bloggers), during which searches and arbitrary detention were used as a tool to intimidate and silence independent journalism. The latter was often done on the pretext of an investigation into the offence of inciting actions aimed at violating the territorial integrity of the Russian Federation under Article 280.1 of the Russian Criminal Code.

1091. The applicant Government also relied on documentary material prepared by their national authorities attesting, *inter alia*, to the seizure of the office of the Ukrainian-language newspaper *Krymska Svitlytsia*, as well as the State television and radio company Krym and the enterprise Radioteleviziinyi peredavalnyi tsentr v AR Krym; the confiscation of property belonging to the Crimean Tatar newspaper *Avdet*; the discontinuance of Ukrainian-language periodicals such as *Dumka*, *Krymske slovo*, *Slovo Sevastopolya*, and *Dzvin Sevastopolya*; and hacker attacks on Ukrainian-language Crimean online publications such as *Media-Krym*, *Holos Tavrii* and *Ukrainskyi Kavkaz* (A 308 and 309). In the first days of the "occupation", all editorial offices in Crimea had received an unofficial curator from the FSB, who took on the role of both an editor and a censor (A 315).

1092. The evidence submitted by the applicant Government further shows that during 2014-2019, more than 350 journalists and bloggers were harassed in Crimea. Between 26 February and 22 March 2014 alone, "there were over 100 cases of violations of the rights of journalists and bloggers in Crimea, as reported by 48 different media outlets and 39 journalists" (A 237). In addition, over 500 violations of journalists' rights and the principle of freedom of speech in Crimea had been recorded by Ukrainian human rights activists. The majority of those violations had occurred in 2014 and 2015 (A 318). The Ukrainian authorities noted that since 2014, Ukrainian television channels had been available for viewing only on the internet through the "Divan.TV" service (A 230). The Ukrainian Ombudsperson also confirmed that Ukrainian-language websites in Crimea had been blocked (A 281). The occurrence of some of the above incidents had been established by the Ukrainian General Prosecutor's Office, which had started an investigation regarding a series of incidents of alleged violations of journalists' rights in Crimea (A 183). The applicant Government submitted that since March 2014, the information and communication space of Crimea had been built on the "Concept of Informatisation of the Republic of Crimea", which had been developed in concurrence with the Russian State information

policy. The resulting effect was that "Russia illegally integrated Crimea into the Russian unified space of information" (A 226-28).

1093. The respondent Government confirmed that, following the admission of Crimea, under Russian law, as a constituent entity of the Russian Federation (18 March 2014), the provision of public services in the field of mass communications had been carried out in accordance with the legislation of the Russian Federation. That legislation required all television and radio broadcasting companies in Crimea to (re)obtain a licence from Roskomnadzor in accordance with the procedure provided for by the federal laws of the Russian Federation. Similar rules applied to the use of radio frequencies.

1094. In that connection they acknowledged that several media outlets, including some Crimea Tatar outlets (the Chernomorskaya television channel, the Crimean Tatar television channels ATR T and *Lale*, the radio station Meydan, and the *Avdet* newspaper), had not received licences and had ceased to operate in Crimea after the transitional period (set at 1 April 2015) had expired. This was because they had either failed to comply with the registration requirements or had stopped operating at their own request (see paragraphs 288-91 above).

1095. Furthermore, the respondent Government submitted that slightly more than 200 media outlets, including media operating in the Crimean Tatar language, had continued to operate in Crimea after 1 April 2015, the cut-off date that marked the end of the transitional period specified in the "Accession Treaty" (as further prolonged by means of a federal law of the Russian Federation of November 2014) for the integration of the new constituent entities into the economic, financial, credit and legal system of the Russian Federation (see paragraphs 294 and 301 above). Whereas this figure corresponds to the number of media outlets operating in Crimea indicated in the 2017 OHCHR Report, the respondent Government neither contested nor explained the significant decline (from 3,000 to slightly over 200) of the number of such outlets from those previously authorised to operate in Crimea under Ukrainian law.

1096. The Court further observes that the respondent Government did not engage with the credible allegations of systematic intimidation and harassment of journalists, a particular aspect of the alleged practice of suppressing non-Russian media. They did not make any submissions or produce any evidence to rebut the already available evidence pointing consistently to the existence of a practice, employed by officials of the respondent State, of sending "warnings" to journalists and of their prosecution and detention for actions allegedly aimed at violating the territorial integrity of the Russian Federation, punishable under Article 280.1 of the CrCRF.

1097. Having regard to the foregoing, the Court considers that there is sufficient evidence to prove to the requisite standard that, during the period

under consideration, there were numerous and interconnected instances sufficient, under the Court's case-law, to constitute an administrative practice of interference with the freedom of expression, such as:

(i) refusal to grant broadcasting licences (see, among other authorities, *Informationsverein Lentia and Others*, 24 November 1993, § 27, Series A no. 276; *Radio ABC v. Austria*, 20 October 1997, § 27, *Reports* 1997-VI; *Leveque v. France* (dec.), no. 35591/97, 23 November 1999; *United Christian Broadcasters Ltd v. the United Kingdom* (dec.), no. 44802/98, 7 November 2000; *Demuth v. Switzerland*, no. 38743/97, § 30, ECHR 2002-IX; and *Glas Nadezhda EOOD and Anatoliy Elenkov*, no. 14134/02, § 42, 11 October 2007); it is of little consequence whether the licence was refused following an individual application or participation in a call for tenders (see *Meltex Ltd and Movsesyan v. Armenia*, no. 32283/04, § 74, 17 June 2008);

(ii) revocation of a broadcasting licence (see *NIT S.R.L.*, cited above, § 150);

(iii) failure to allocate broadcasting frequencies (see *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 137);

(iv) issuance of a warning to a private broadcasting company for disseminating content in breach of an applicable statute, on account, *inter alia*, of its effect of putting pressure on the broadcaster so that it abstained from broadcasting content which might be perceived as contrary to the interests of the State (see *Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. v. Turkey (no. 1)*, nos. 64178/00 and 4 others, § 73, 30 March 2006, and *Karastelev and Others*, cited above, § 74, concerning warnings, cautions and orders under "anti-extremism" legislation); and

(v) criminal investigations (see *Altuğ Taner Akçam v. Turkey*, no. 27520/07, § 75, 25 October 2011, concerning the mere potential of being subjected to investigation); pre-trial detention (see *Ragıp Zarakolu v. Turkey*, no. 15064/12, § 79, 15 September 2020, and *Sabuncu and Others v. Turkey*, no. 23199/17, § 230, 10 November 2020); and conviction (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 40, ECHR 2007-IV, and *Kasabova v. Bulgaria*, no. 22385/03, § 50, 19 April 2011).

1098. The Court observes that it is common ground between the parties that the above-mentioned interference had a legal basis in the federal laws and other regulations of the respondent State, further operationalised through acts of the local Crimean authorities, as derivatives of Russian law (see paragraph 931 above). In the Court's view, the regulatory nature of the alleged practice, its scale and its general application confirm the existence of both the "repetition of acts" and "official tolerance" elements of the administrative practice under this head.

1099. Having regard to the reasons given above for the Court's finding that Russian law could not be regarded as "law" within the meaning of the

Convention and that any individual acts constituting the practice complained of are to be examined by reference to the requirements of Ukrainian, not Russian law, the Court considers that the administrative practice under this head, for which the respondent State is responsible, cannot be regarded as "lawful" within the meaning of Article 10 § 2 of the Convention (see paragraphs 942 and 946 above).

1100. In any event, the Court also considers it important to note the following.

1101. The applicant Government argued that the legal provisions relied on by the respondent Government in any event did not meet the qualitative requirement of foreseeability on account of the "vaguely worded and overly broad anti-extremism legislation of the respondent State" and the reliance on Article 280.1 of the Russian Criminal Code (authorising punishment of "public calls for actions aimed at violation of the territorial integrity of the Russian Federation"; see paragraph 1079 above). As noted above (see paragraph 1089 above), some IGOs and NGOs voiced similar concerns about the "anti-extremist warnings" issued "to pressure Crimean Tatar media outlets into ceasing criticism of Russia's occupation of Crimea". Similarly, in the context of freedom of expression, the reliance on the "anti-extremism" legislation and Article 280.1 of the CrCRF was criticised in the Commissioner's report of 2023 (A 74), the HRAM report of 2015 (A 107), the Parliamentary Assembly (A 69), the 2018 report of the Open Society Justice Initiative (A 115) and reports of local NGOs, such as the Ukrainian Helsinki Human Rights Union (A 124), the Crimean Human Rights Field Mission (A 133), the Crimean Human Rights Group (A 135) and the IPHR 2016 Report (A 116). Of particular relevance is opinion no. 660/2011 of 20 June 2012, in which the Venice Commission noted a number of deficiencies that were relied on by the Court in finding that the Federal Law on Combating Extremist Activity was not foreseeable as to its effects and did not provide adequate protection against arbitrary recourse to the warning, caution and order procedures (see *Karastelev and Others*, cited above, §§ 78-97).

1102. The respondent Government did not make any submissions and did not provide any evidence to address, still less rebut the above criticisms concerning the alleged lack of foreseeability of their anti-extremism legislation that had been used to suppress the freedom of expression in Crimea during the period under consideration. The Court refers to its findings outlined in paragraphs 944 and 991 above regarding the general issue of lawfulness and IHL, which apply likewise, to the extent relevant, as regards both their anti-extremism legislation and Article 280.1 of the CrCRF.

1103. Furthermore, it notes that the respondent Government did not provide any documentary evidence in respect of any of the relevant procedures, such as the procedures concerning the licensing of media outlets and the allocation of frequencies, with reference to which the respondent

Government claimed that the media outlets concerned had failed to comply with the relevant requirements. Similarly, the respondent Government failed to substantiate their claim that some media outlets had themselves asked to be closed (see paragraph 1094 above). The Court notes that such documentary evidence is likely to be in the exclusive possession of the respondent State and that, on account of the respondent Government's failure, despite repeated requests by the Court, to provide any evidence, it can draw inferences from that failure that may be unfavourable to the respondent Government (see paragraph 846 above). Furthermore, owing to this failure, the respondent Government have failed to establish that the interference complained of was necessary within the meaning of Article 10 of the Convention. In particular and in so far as sending "warnings" to journalists, their prosecution and detention for actions allegedly aimed at violating the territorial integrity of the Russian Federation are concerned (see paragraph 1096 above), the respondent Government failed to prove that the publication of views aimed to preserve the Ukrainian territorial integrity included any incitement to violence or advocated recourse to violent actions so as to justify restrictions on the right of the public to be informed of them by bringing the weight of the criminal law to bear on the media (see, *mutatis mutandis*, *Sürek v. Turkey (no. 4)* [GC], no. 24762/94, § 60, 8 July 1999, and *Dilipak v. Turkey*, no. 29680/05, § 62, 15 September 2015). The creation of a public Crimean Tatar television channel, a radio company and a Crimean Tatar editorial office (see paragraphs 294-98 above) cannot offset the general decline in the number of independent television stations serving the Crimean Tatar population of Crimea noted above. Similarly, assuming that certain media outlets remained available online, that cannot be regarded as a sufficient substitute for the availability of print media and standard television channels (see paragraphs 282 and 303 above).

1104. Against this background, the Court finds that during the period under consideration there existed an administrative practice of "suppression" of non-Russian media, including the closure of Ukrainian and Tatar television stations, which was not only unlawful, but also, in any event, not necessary in a democratic society. There has therefore been a violation of Article 10 of the Convention.

G. Alleged violation of Article 11 of the Convention

1105. The applicant Government's complaints under Article 11 of the Convention, as delimited in the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 460-72), concerned the alleged existence of an administrative practice of prohibiting public gatherings and manifestations of support for Ukraine or the Crimean Tatar community, as well as intimidation and arbitrary detention of organisers of demonstrations. Article 11 of the Convention reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

1. The parties' submissions

(a) The applicant Government

1106. The applicant Government maintained that there was no conflict between Article 11 and the applicable IHL. Furthermore, the term "law" under this Article was to be understood as referring to Ukrainian and not Russian law (see paragraphs 910 and 922 above). In any event, the "laws" commonly used by the authorities to justify the infringements did not meet the quality requirement under the Convention and failed to offer the necessary (or, in effect, any) safeguards against arbitrariness.

1107. Having regard, in particular, to the regulatory nature of certain measures used to suppress the freedom of assembly, the applicant Government submitted that the requisite elements of repetition and official tolerance were made out and that there was evidence of an administrative practice in violation of Article 11 of the Convention.

(b) The respondent Government

1108. The respondent Government referred to the relevant statutory provisions of the Russian Federation (Federal Law no. 54-FZ on gatherings, meetings, demonstrations, marches and picketing) and regulatory instruments of the local Crimean authorities regarding notification and holding of public assemblies. They maintained that the Russian authorities had fully ensured the right to freedom of peaceful assembly of people in the "Republic of Crimea" in compliance with Article 11 of the Convention.

2. The Court's assessment

1109. The relevant general principles regarding the freedom of peaceful assembly can be summarized as follows.

1110. The right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 91, ECHR 2015, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 98, 15 November 2018).

1111. To avert the risk of a restrictive interpretation, the Court has refrained from formulating the notion of an assembly, which it regards as an autonomous concept, or exhaustively listing the criteria which would define it. It has specified in relevant cases that the right to freedom of assembly covers both private meetings and meetings in public places, whether static or in the form of a procession; in addition, it can be exercised by individual participants and by the persons organising the gathering. It has also emphasised that Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover gatherings where the organisers and participants have violent intentions. The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see *ibid.*, § 98).

1112. States must not only refrain from applying unreasonable indirect restrictions upon the right to assemble peacefully but also safeguard that right. Although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of those rights (see *Kudrevičius and Others v. Lithuania* [GC], cited above, § 158, and *Chernega and Others v. Ukraine*, no. 74768/10, § 222, 18 June 2019).

1113. An interference with the right to freedom of assembly does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during a gathering and those, such as punitive measures, taken afterwards. For instance, a prior ban can have a chilling effect on those who may intend to participate in a rally and thus amount to an interference, even if the rally subsequently proceeds without hindrance on the part of the authorities. A refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference. So too do measures taken by the authorities during a rally, such as dispersal of the rally or the arrest of participants, and penalties imposed for having taken part in a rally (see *Kudrevičius and Others*, cited above, § 100).

1114. An interference with the right to freedom of peaceful assembly will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of the aim or aims in question (see *ibid.*, § 102, and see also *Laguna Guzman v. Spain*, no. 41462/17, § 44, 6 October 2020).

1115. In the present case, the Court takes note of the evidential material relied on by the applicant Government. In particular, the 2017 OHCHR Report noted that "the possibility to peacefully gather or hold a rally in Crimea has been significantly reduced since March 2014". Furthermore, "public events initiated by groups or individuals not affiliated with the

Russian Federation authorities in Crimea or which consider that Crimea remains a constituent part of Ukraine have systematically been prohibited and prevented". It pointed to "restrictive legal measures" such as an Act adopted by the Parliament of Crimea in August 2014, according to which the "organisers of public assemblies must be Russian Federation citizens and must officially request permission to hold an assembly...". Furthermore, "on 23 September 2014, the Prosecutor of Crimea issued a statement that '*all actions aimed at the non-recognition of Crimea as a part of the Russian Federation will be prosecuted*'. Consequently, any assembly demanding the return of Crimea to Ukraine or expressing loyalty to Ukraine has been effectively outlawed." The OHCHR report also referred to "lengthy blanket prohibitions on holding public assemblies" and rejections based on "procedural technicalities, which appeared to be neither necessary to justify a ban nor proportionate and responding to a general public interest" or "on unsubstantiated allegations that 'extremist' or 'separatist' messages would purportedly be disseminated". The report further noted that participants in "spontaneous gatherings have been met with sanctions" and "were regularly arrested, interrogated for hours and fined". The resulting effect was that "the space for public manifestation of Ukrainian culture and identity has shrunk significantly" (A 102).

1116. The above is consistent with the reporting of some NGOs, such as Human Rights Watch and Amnesty International, as well as local organisations that have reported on the matter. In particular, such reports have noted the reliance on "administrative technicalities to curb any public protest or other assemblies that could be seen as opposing the new regime", as well as the "vaguely worded laws on extremism to issue several 'anti-extremist warnings' to the Mejlis, the Crimean Tatar representative body, and to ban mass public gatherings by the Crimean Tatar community". Reference was made to the "temporary ban on all public events in Crimea", which "clearly targeted the Crimean Tatar community. On 16 May, the *de facto* Prime Minister of Crimea Sergei Aksionov [Aksenov] announced that all public assembles in Crimea were to be disallowed until 6 June, in order to 'eliminate possible provocations by extremists, who have managed to penetrate the territory of the Republic of Crimea' and to prevent 'disruption of the summer holiday season'." (see Human Rights Watch, Amnesty International, Crimean Human Rights Group, Center for Civil Liberties, IPHR, Truth Hounds, A 110, 111, 117, 121, 135 and 138).

1117. In addition, the above-mentioned reports identified specific public assemblies or rallies which the local authorities had not allowed to be held at a particular place or along a particular route as proposed by the organisers. In relation to other similar gatherings, some of which had not taken place during the period under consideration, many activists and protesters had been interrogated, detained, tried and punished for administrative offences of disturbance of public order under Russian law.

1118. The applicant Government supplemented the above account with individual testimonies from direct protagonists who confirmed having being interrogated and detained for participating in public demonstrations that had taken place during the period under consideration (see paragraph 143 above and A 406-10). Ukrainian authorities, such as the Prosecutor General and the Ukrainian Ombudsperson, had also recorded those incidents (A 185, 187, 188 and A 265). The applicant Government also referred to several judgments of the Russian courts in which participants had been fined for participation in public rallies or protests in Crimea (see paragraph 149 above and A 328 and 329). The CSDF, representatives of the "occupational law-enforcement agencies", local police and the Russian Armed Forces had been identified as having been involved in the alleged incidents described above.

1119. For their part, the respondent Government presented an outline of the relevant federal laws of the Russian Federation, as well as the legislative instruments of the Crimean authorities adopted after the "Accession Treaty" of 18 March 2014 and pursuant to the Constitution of the Russian Federation and its federal laws. Those laws regulated the procedure for holding a public gathering or rally, as well as the powers of the federal and local authorities in this respect (paragraphs 310-325 above). Without providing any further arguments or explanation, the respondent Government concluded that the respondent State had fully ensured the right to freedom of peaceful assembly of people in the "Republic of Crimea" in compliance with Article 11 of the Convention (see paragraph 1108 above).

1120. The Court notes that the respondent Government's arguments were confined to the notification-and-endorsement procedure provided for under Russian law, further operationalised through legal instruments adopted by the local *de facto* authorities in Crimea after its admission, as a matter of Russian law, into the Russian Federation.

1121. However, the Court considers that the available evidential material contains consistent information in support of the applicant Government's allegations that public gatherings have systematically been prohibited and prevented (see paragraph 147 above). There is sufficient evidence that during the period under consideration there were numerous and interconnected instances amounting to interference with the freedom of peaceful assembly, as defined in the Court's case-law, such as "lengthy blanket prohibitions on holding public assemblies" and rejections based on "procedural (or administrative) technicalities"; general measures (decisions) imposing temporary bans on public gatherings regardless of the individual facts of a case (see *Christians Against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, DR 21, p. 138); prohibitions on holding assemblies at a particular place or route (see *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 405, 7 February 2017); counter-demonstrations and attacks by third parties (see *Berkman v. Russia*, no. 46712/15, § 47, 1 December 2020); and

warnings, interrogations, detentions, trials and fines for administrative offences (see *Rai and Evans v. the United Kingdom*, nos. 26258/07 and 26255/07, 17 November 2009; *Galstyan v. Armenia*, no. 26986/03, § 117, 15 November 2007; and *Navalnyy*, cited above, §§ 106 and 113).

1122. As argued by the applicant Government and not contested by the respondent Government, those measures stemmed from the law of the Russian Federation, or the law of the local authorities in Crimea post-dating the "Accession Treaty", as derivatives of Russian law (see paragraph 931 above). The regulatory nature of the alleged practice and its scale and intensity as described above confirm the existence of both the "repetition of acts" and "official tolerance" elements of an administrative practice under this head.

1123. Having regard to the conclusion reached above that Russian law cannot be regarded as "law" within the meaning of the Convention and that any individual acts constituting the practice complained of are to be examined by reference to the requirements of Ukrainian, not Russian law, the Court considers that the administrative practice under this head, for which the respondent State did not deny responsibility, cannot be regarded as "lawful" (see paragraphs 942 and 946 above).

1124. However, even assuming that the interference outlined above could be regarded as "prescribed by law", as argued by the respondent Government, and that that "law" met the qualitative requirement of foreseeability, the Court finds no indication that the interference in question was necessary in a democratic society. The above-mentioned reports voiced strong concerns that the measures in question "appeared to be neither necessary to justify a ban nor proportionate and responding to a general public interest" and that they were based "on unsubstantiated allegations that 'extremist' or 'separatist' messages would purportedly be disseminated". In this connection the Court emphasises that the freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote. Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it (see *Kudrevičius and Others*, cited above, § 145, and *Annenkov and Others v. Russia*, no. 31475/10, § 131, 25 July 2017). The fact that a group of persons in the present case called for the preservation of Ukrainian territorial integrity cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security (see, conversely, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 97, ECHR 2001-IX, in which certain leaders of the applicant association – or

small groups which had developed from it – called for autonomy or even secession of part of the country's territory).

1125. Furthermore, participants in public events expressing loyalty to Ukraine and/or its culture or that of the Crimean Tatars were tried and punished for disturbance of public order, as an administrative offence. In this connection the Court wishes to highlight that although interferences with the right to freedom of assembly are in principle capable of being justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others where demonstrators engage in acts of violence (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 251, ECHR 2011 (extracts)), the burden of proving the violent intentions of the organisers of a demonstration lies with the authorities (see *Christian Democratic People's Party v. Moldova (no. 2)*, no. 25196/04, § 23, 2 February 2010).

1126. In addition, the respondent Government had to show that the public authorities displayed a certain degree of tolerance regarding public events prone to disrupt the ordinary life (see *Kudrevičius and Others*, cited above, §§ 97 and 155).

1127. As noted above however, the respondent Government confined their submissions to the general legal framework without providing any arguments relating to the facts or legal grounds for the measure complained of. They neither contested the above allegations nor did they refer to any legitimate aim pursued or explain the proportionality of the impugned measures. Furthermore, they did not submit copies of any court decisions enabling the Court to assess whether the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, whether they based their decisions on an acceptable assessment of the relevant facts (see *Kudrevičius and Others*, cited above, § 143, and *Körtvélyessy v. Hungary*, no. 7871/10, § 26, 5 April 2016).

1128. Against this background, and having regard to the approach to evidence specified in paragraphs 846-854 above, the Court finds it established that during the period under consideration there existed an administrative practice of prohibition of public gatherings and manifestations of support for Ukraine or the Tatar community, as well as intimidation and arbitrary detention of organisers of demonstrations, which has in any event not been proved to have been necessary in a democratic society. There has therefore been a violation of Article 11 of the Convention.

H. Alleged violation of Article 1 of Protocol No. 1 to the Convention

1129. The applicant Government's complaints under Article 1 of Protocol No. 1 to the Convention, as delimited in the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 480-87), concerned the alleged existence of an administrative practice of expropriation without

compensation of the property of civilians and private enterprises. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

1. The parties' submissions

(a) The applicant Government

1130. The applicant Government submitted that there was no conflict between the requirements of Article 1 of Protocol No. 1 to the Convention and the applicable IHL (reference was made to Rule 51 of the *Customary International Humanitarian Law* study by the ICRC and the Hague Regulations (Article 52)).

1131. The applicant Government reiterated their arguments that the expropriation complained of was to be assessed against Ukrainian, and not Russian law. Accordingly, it could not be regarded as having been carried out under conditions "provided for by law". In any event, even if expropriations had, on many occasions, been carried out under Russian law, the provisions applied did not meet the quality requirements within the meaning of Article 1 of Protocol No. 1 in that they had not offered the requisite procedural safeguards and had been unrelated to any legitimate aim. There was no indication that such a policy of nationalisation had been undertaken as a matter of "military necessity." In the applicant Government's submission, the evidence demonstrated that during the period under consideration, the Russian Federation had orchestrated, through legal and administrative measures, a systematic seizure of private property, depriving the peninsula of any economic power. Furthermore, it had tolerated the seizure of private property by the CSDF and other actors. The alleged administrative practice under this head had also served as a means to persecute Crimean Tatars and those opposed to the Russian "occupation".

(b) The respondent Government

1132. According to the respondent Government, when adopting the regulatory instruments regarding the transfer of title to immovable property to the "Republic of Crimea", the National Council of the "Republic of Crimea" had acted within the powers conferred on it by law, in the public interest and in accordance with the Convention and Federal Constitutional Law no. 6-FKZ of 21 March 2014. Such measures had been adopted in accordance with the "Accession Treaty", which was to be regarded, under

Article 15 of the Constitution of the Russian Federation, as an integral part of the legal system of the Russian Federation. Federal Constitutional Law no. 6-FKZ had conferred on the "Republic of Crimea" and the "Federal city of Sevastopol" the right to regulate (by means of regulatory legal instruments), prior to 1 January 2017 and in coordination with the federal executive body, property-related issues, such as town planning, land and forest relations, cadastral registration of immovable property and registration of property rights and transactions. The above and other regulatory measures demonstrated that the respondent State had regulated all property-related issues.

1133. The respondent Government acknowledged that State-owned assets of Ukraine had been transferred to the "Republic of Crimea" and the city of Sevastopol. On the other hand, the property of labour union organisations had been transferred to the subdivisions of the relevant labour union organisations, which had been located and registered in the "Republic of Crimea" at the time of the declaration of the independence of Crimea, and re-registered in accordance with the legislation of the Russian Federation, as independent labour union organisations. The allegations of the applicant Government about the nationalisation of labour unions and banking organisations, State-owned enterprises falling under the category of "non-governmental organisations" and other entities in favour of the city of Sevastopol were unsubstantiated.

2. *The Court's assessment*

(a) Relevant international humanitarian law

1134. The relevant IHL under this head, as argued by the applicant Government and not contested by the respondent Government, are Rule 51 of the *Customary IHL* study by the ICRC and Article 52 of the Hague Regulations. Rule 51 provides, in so far as relevant, that "private property must be respected and may not be confiscated except where destruction or seizure of such property is required by imperative military necessity".

According to Article 52 of the Hague Regulations, "requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation ... Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible."

1135. Having regard to the complaints raised in the present case, as well as the failure of the respondent Government to refer to any of the exceptions provided for under IHL, there is no conflict between Article 1 of Protocol No. 1 to the Convention and the above-mentioned provisions of IHL, which provide, in a general way, for the right to peaceful enjoyment of possessions

of which one can be deprived only in the event of “imperative military necessity” or “for the needs of the army of occupation”. They further provide for compensation in case of such requisition (see, *mutatis mutandis*, *Georgia v. Russia (II),* cited above, § 199).

(b) Relevant principles in the Court’s case-law concerning Article 1 of Protocol No. 1

1136. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, which is set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers the deprivation of possessions and subjects it to certain conditions. The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, the rules are not “distinct” in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 217, ECHR 2015).

(c) Application of the above-mentioned principles to the present case

1137. In the present case, the Court emphasises the consistency of information in the various reports by international organisations and NGOs about “‘nationalisation’ of private enterprises” and “large-scale expropriation (nationalisation) of public and private property ... without compensation or regard for IHL protecting property from seizures or destruction”. The reports note that the Crimean *de facto* authorities drew up a “List of property considered as the property of the Republic of Crimea, which included hotels, private apartments, non-residential premises, markets, gas stations, land plots and movable property...”. They also mention that “additional to the list ... designated in March 2014 for nationalisation, countless ... private properties have also reportedly been seized ...” during the period under consideration. “As of 12 September 2017, the Annex with the list of nationalised property ... contains 4,618 ’nationalised’ public and private real estate assets” (see paragraph 35 of the Commissioner’s Report; paragraphs 16 and 170-75 of the 2017 OHCHR Report; paragraphs 67-70 of the ODIHR and HCNM Report of 2015; paragraph 37 of the Report of the Secretary-General of 2020; the Report of the Ukrainian Human Rights Union (2017) and the IPHR (2016) (A 123, 124, 73, 94, 102, 108 and 116-18).

1138. The above-mentioned reports are further corroborated by a number of arbitration awards made under the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the

Encouragement and Mutual Protection of Investments of 27 November 1998 (see, in particular, *Everest Estate LLC and others v. the Russian Federation* (PCA Case No. 2015-36, 2 May 2018) and *Public Joint Stock Company "State Savings Bank of Ukraine"(JSC Oschadbank) v. the Russian Federation* (PCA Case No. 2016-14, 26 November 2018); A 92).

1139. In March 2014 and May 2015 the Ukrainian prosecuting authorities initiated criminal proceedings against the members of "illegally established bodies" in Crimea suspected of having administered the "large-scale destruction and misappropriation of property not justified by military necessity and carried out illegally and aimlessly" (see Letter from the General Prosecutor's Office, A 167). In addition, the direct applicability of some of the federal laws of the Russian Federation entailed the loss of title to farmland and land located in the "border areas" of all non-Russian natural and legal persons in Crimea (A 11 and 12).

1140. The respondent Government acknowledged that there had been a "transfer of immovable property into State ownership of the Republic of Crimea" (see paragraphs 326, 329 and 1132 above). They confirmed the existence of the "List of property" mentioned in the reports cited above, adding that the list included private property transferred to the "Republic of Crimea". As they explained, the title of previous owners to land and other immovable property had been terminated from the date of the inclusion of such property in the List. Furthermore, that property had been assigned to State enterprises of the "Republic of Crimea" established for that purpose (see paragraphs 321 and 322 above).

1141. The Court therefore finds that during the period under consideration there existed a systemic campaign of large-scale expropriation/nationalisation of property of civilians and private enterprises in Crimea, which entailed a conclusive transfer of ownership. Such interference amounted to a deprivation of possessions within the meaning of the first paragraph of Article 1 of Protocol No. 1.

1142. The Court reiterates that the first condition for any interference to be deemed compatible with Article 1 of Protocol No. 1 is that it should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law". The rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see, among other authorities, *Lekić v. Slovenia* [GC], no. 36480/07, § 94, 11 December 2018; *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 292, 28 June 2018; and *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

1143. In the case under examination, the available material contains consistent information to the effect that the large-scale interference with the ownership rights of civilians and private enterprises was based on a package of resolutions/laws of the local *de facto* authorities in Crimea and on the federal laws of the Russian Federation and was administered by members of

the CSDF and the "Russian authorities in Crimea" (see the above-mentioned reports by international organisations). The respondent Government confirmed that the impugned measures had been based on regulatory instruments of the National Council of the "Republic of Crimea", adopted in accordance with the "Accession Treaty", which was to be regarded, under Article 15 of the Constitution of the Russian Federation, as an integral part of the legal system of the Russian Federation. Those instruments derived from Federal Constitutional Law no. 6-FKZ and were adopted in coordination with the federal executive bodies and in accordance with certain federal laws of the Russian Federation. The respondent Government acknowledged the disputed measures as their own (see paragraph 1132 above and paragraphs 326-336 above).

1144. Accordingly, it is common ground between the parties that the interference complained of had a legal basis in the law of the Russian Federation, directly or through regulatory instruments of the *de facto* local Crimean authorities, as derivatives of Russian law (see paragraph 931 above). The regulatory nature of the alleged practice and its general application confirm the existence of both the "repetition of acts" and "official tolerance" elements of the administrative practice under this head. The respondent Government endorsed such measures, which had been applied in coordination with federal bodies, and moreover did not contest their large-scale implementation.

1145. Having regard to the conclusion reached above that Russian law cannot be regarded as "law" within the meaning of the Convention and that any individual acts constituting the practice complained of are to be examined by reference to the requirements of Ukrainian law, and not Russian law, the Court considers that the administrative practice under this head, for which the respondent State is responsible, cannot be regarded as "lawful" (see paragraphs 942 and 946 above).

1146. However, having regard to the specific circumstances of the case, the Court considers it important to continue its examination of whether the (Russian) "law", even if it could be relied on, met the qualitative requirement of foreseeability and whether the interference in question was proportionate to any public interest pursued.

1147. In this connection the Court reiterates that a norm cannot be regarded as "law" within the meaning of the Convention unless it is formulated with sufficient precision to enable the citizen to regulate his or her conduct; an individual must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Such consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover

and the number and status of those to whom it is addressed. In particular, a rule is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities (see, for example, *Sun v. Russia*, no. 31004/02, § 27, 5 February 2009, and *Osmanyan and Amiraghyan v. Armenia*, no. 71306/11, § 53, 11 October 2018). The Court has held that any interference by a public authority with rights protected under Article 1 of Protocol No. 1 must also pursue a legitimate aim in the general interest, while recognising that States nevertheless retain a wide margin of appreciation in respect of measures of political, economic or social strategy. In addition, Article 1 of Protocol No. 1 requires that any interference should be reasonably proportionate to the aim sought to be realised. The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see, among other authorities, *G.I.E.M. S.r.l. and Others*, cited above, § 293, and *Lekić*, cited above, §§ 105 and 110).

1148. The Court observes that the above-mentioned international organisations have noted numerous deficiencies in the model of nationalisation implemented during the period under consideration. In particular, their reports contain information that the relevant regulatory instruments underwent "frequent amendments, which ... undermined legal certainty and guarantees against arbitrariness" (see the 2017 OHCHR Report, A 102). In this connection reference was made to Resolution no. 505-1/15 of the Parliament of Crimea of 27 February 2015, which "had been amended 56 times" (see 2017 OHCHR Report, A 102). Furthermore, it was noted that Resolution no. 2085-6/14 (also referred to by the respondent Government; see paragraph 320 and 331 above), which included (as an annex) the above-mentioned "List of property considered as the property of the Republic of Crimea", "contained no criteria for the nationalization and, in most cases, no information on the owners of nationalized property". Similarly, the reports voiced strong concerns that the relevant law "does not specify a procedure for property purchase, and provides neither a requirement of actual notification of the owner of the property being nationalized, nor an appeal procedure" (A 108). The arbitration tribunal in *Public Joint Stock Company "State Savings Bank of Ukraine" (JSC Oschadbank) v. the Russian Federation* (PCA Case No. 2016-14, 26 November 2018) also noted that the legal framework governing the termination of activities of Ukrainian banks "did not even attempt to provide any meaningful assessment process nor any practical means for the Ukrainian banks to defend themselves" (A 92). The reports all consistently pointed out that private property had been nationalised without any compensation being provided.

1149. At this juncture, the Court wishes to emphasise that the existence of judicial procedures that offer the necessary procedural guarantees and enable the domestic courts and tribunals to adjudicate effectively and fairly any cases concerning property matters is a factor to be taken into account in the proportionality test under Article 1 of Protocol No. 1

(see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-I, and *Bistrović v. Croatia*, no. 25774/05, § 33, 31 May 2007). Similarly, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1 of Protocol No. 1 (see *The Holy Monasteries v. Greece*, 9 December 1994, §§ 70 and 71, Series A no. 301-A; *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II; and *Bistrović*, cited above, § 34).

1150. Such deficiencies, which were also referred to by the applicant Government (see paragraphs 150 and 153 above), were not addressed let alone rebutted by the respondent Government. Indeed, they failed to present any evidence that could cast doubt on the veracity of the above allegations pertaining to the lack of foreseeability of the legislative measures referred to and the disproportionate nature of the deprivation of possessions complained of. Furthermore, they did not present any submissions or evidence suggesting that the impugned administrative practice under this head was justified by "imperative military necessity" or "for the needs of the army of occupation", as required by the above-mentioned provisions of IHL (see paragraphs 1134 and 1135 above).

1151. Against this background, the Court finds that the administrative practice of expropriation without compensation of the property of civilians and private enterprises during the period under consideration was in violation of Article 1 of Protocol No. 1 to the Convention.

I. Alleged violation of Article 2 of Protocol No. 1 to the Convention

1152. The applicant Government complained under this head of "the suppression of the Ukrainian language in schools and persecution of Ukrainian-speaking children at school".

1153. Article 2 of Protocol No. 1 to the Convention reads as follows:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

1. The parties' submissions

(a) The applicant Government

1154. The applicant Government maintained that there was an administrative practice under this head which was incompatible with the Convention. They submitted that there was no conflict between Article 2 of Protocol No. 1 to the Convention and the applicable rules of IHL (Article 50 of the Fourth Geneva Convention).

1155. They submitted that the available evidence demonstrated that during the period under consideration the Russian Federation had presided

over an environment that had been increasingly hostile to the Ukrainian language and had pursued an educational policy that had not protected the right to education in the Ukrainian language, in violation of Article 2 of Protocol No. 1 to the Convention. In that connection they referred to Decree No. 651 regarding a "State Programme for Development of Education and Science in Republic of Crimea for 2015-2017", which had not envisaged access to education in a native language. The factual non-existence of schools providing teaching in Ukrainian or the Crimean Tatar languages and requiring pupils to study exclusively in Russian had deprived individuals who did not speak Russian of opportunities to obtain an education as such. The actions leading to these violations had been carried out by agents of the Russian State and its proxies within the education system who had been hostile to the Ukrainian language and had disregarded educational rights without pursuing any legitimate aim.

(b) The respondent Government

1156. The respondent Government reiterated the arguments they had made at the admissibility stage that education in both the Crimean Tatar and Ukrainian languages had been offered alongside education in Russian. In that connection they submitted figures regarding the number of educational institutions and students in Crimea having classes in the Ukrainian and Crimean Tatar languages (paragraphs 344, 348-53 above). The "small changes" that had occurred in the proportions of the school population studying in different languages reflected changes in demand against the background of the time.

2. The Court's assessment

(a) Relevant international humanitarian law

1157. Article 50 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War provides that, *inter alia*, the occupying power must facilitate the proper working of all institutions devoted to the education of children in the occupied territory.

1158. Having regard to the complaints raised in the present case, as well as the failure of the respondent Government to refer to any of the exceptions provided for under IHL, the Court considers that there is no conflict between Article 2 of Protocol No. 1 and the relevant provisions of IHL (see *Georgia v. Russia (II)*, cited above, § 311).

(b) General principles under Article 2 of Protocol No. 1

1159. In *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04 and 2 others, §§ 136-40, ECHR 2012 (extracts)), the Court summarised the general principles as follows:

"136. ... In interpreting and applying (Article 2 of Protocol No. 1), account must also be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties and the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI; *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 67, ECHR 2008; *Saadi v. the United Kingdom* [GC], no. 13229/03, § 62, ECHR 2008-...; *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 273-274, ECHR 2010 (extracts)). The provisions relating to the right to education set out in the Universal Declaration of Human Rights, the Convention against Discrimination in Education, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child are therefore of relevance (see paragraphs 77-81 above, and see also *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 64, ECHR 2005-XI). Finally, the Court emphasises that the object and purpose of the Convention, as an instrument for the protection of individual human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, *inter alia*, *Soering v. the United Kingdom*, 7 July 1989, § 87, Series A no. 161; and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37).

137. By binding themselves, in the first sentence of Article 2 of Protocol No. 1, not to 'deny the right to education', the Contracting States guarantee to anyone within their jurisdiction a right of access to educational institutions existing at a given time (see *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"*, judgment of 23 July 1968, Series A no. 6, §§ 3-4). This right of access constitutes only a part of the right to education set out in the first sentence. For the right to be effective, it is further necessary that, *inter alia*, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed (*Case 'relating to certain aspects of the laws on the use of languages in education in Belgium'*, cited above, § 4). Moreover, although the text of Article 2 of Protocol No. 1 does not specify the language in which education must be conducted, the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be (*Case 'relating to certain aspects of the laws on the use of languages in education in Belgium'*, cited above, § 3).

138. The right set out in the second sentence of the Article is an adjunct of the fundamental right to education set out in the first sentence. Parents are primarily responsible for the education and teaching of their children and they may therefore require the State to respect their religious and philosophical convictions (see *Case 'relating to certain aspects of the laws on the use of languages in education in Belgium'*, cited above, §§ 3-5 and *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, § 52). The second sentence aims at safeguarding the possibility of pluralism in education which possibility is essential for the preservation of the 'democratic society' as conceived by the Convention. It implies that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions (*Kjeldsen, Busk Madsen and Pedersen*, cited above, §§ 50 and 53; *Folgerø*, cited above, § 84; *Lautsi*, cited above, § 62).

139. The rights set out in Article 2 of Protocol No. 1 apply with respect to both State and private institutions (*Kjeldsen, Busk Madsen and Pedersen*, cited above, § 50). In addition, the Court has held that the provision applies to primary, secondary and higher levels of education (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 134 and 136, ECHR 2005-XI).

140. The Court however recognises that, in spite of its importance, the right to education is not absolute, but may be subject to limitations. Provided that there is no injury to the substance of the right, these limitations are permitted by implication since the right of access 'by its very nature calls for regulation by the State' (see *Case 'relating to certain aspects of the laws on the use of languages in education in Belgium'*, cited above, § 3). In order to ensure that the restrictions that are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim. However, unlike the position with respect to Articles 8 to 11 of the Convention, it is not bound by an exhaustive list of 'legitimate aims' under Article 2 of Protocol No. 1 (see, *mutatis mutandis*, *Podkolzina v. Latvia*, no. 46726/99, § 36, ECHR 2002-II). Furthermore, a limitation will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*Leyla Şahin,* cited above, § 154). Although the final decision as to the observance of the Convention's requirements rests with the Court, the Contracting States enjoy a certain margin of appreciation in this sphere. This margin of appreciation increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large (see *Ponomaryovi v. Bulgaria*, no. 5335/05, § 56, ECHR 2011)."

(c) Application of the above-mentioned principles

1160. The Court notes that the ICJ in its recent judgment in *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)*, 31 January 2024, considered *inter alia* "the way in which it has implemented its educational system in Crimea after 2014 with regard to school education in the Ukrainian language" and concluded that, in this respect, the Russian Federation had been in violation of its obligation not to engage in an act or practice of racial discrimination under Article 2(1)(a) and 5(e)(v) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (para. 370). In coming to this conclusion the ICJ noted, *inter alia*, that:

- "the Parties agree, that there was a steep decline in the number of students receiving their school education in the Ukrainian language between 2014 and 2016" (paragraph 358 thereof),

- "There was thus an 80 per cent decline in the number of students receiving an education in the Ukrainian language during the first year after 2014 and a further decline of 50 per cent by the following year. It is undisputed that no such decline has taken place with respect to school education in other languages, including the Crimean Tatar language." (paragraph 359 thereof);

> - “The Russian Federation exercises full control over the public school system in Crimea, in particular over the language of instruction and the conditions for its use by parents and children. However, it has not provided a convincing explanation for the sudden and radical changes in the use of Ukrainian as a language of instruction, which produces a disparate adverse effect on the rights of ethnic Ukrainians.” (paragraph 360 thereof); and
>
> - “The legislative and other practices of the Russian Federation with regard to school education in the Ukrainian language in Crimea applied to all children of Ukrainian ethnic origin whose parents wished them to be instructed in the Ukrainian language and thus did not merely concern individual cases. As such, it appears that this practice was intended to lead to a structural change in the educational system.” (paragraph 369 thereof)

1161. These conclusions are also corroborated by numerous IGO reports which recorded the considerable decline in the number of educational institutions providing education in the Ukrainian language, and in the number of students obtaining such education. In this connection, the 2014 OHCHR report stated that between April and October 2014 “the number of high schools teaching Ukrainian has dropped from 96 to 12.” In its 2017 report, also referred to by the ICJ in its judgment (cited above, paragraph 358), the OHCHR noted the decrease in the number of Ukrainian schools (from seven to one) and the number of classes (from 875 to twenty-eight) “between 2013 and 2017”. The same report noted that the number of students educated in Ukrainian had “dropped dramatically” during the period under consideration, from 12,694 students in the 2013/14 academic year to 2,154 in the 2014/15 academic year. Furthermore, by the end of 2014, “Ukrainian as a language of instruction had been removed from university-level education in Crimea”. A similar decline in the use of the Ukrainian language in schools in Crimea was reported by the Commissioner for Human Rights (see Commissioner’s 2014 Report, A 73) and some NGOs (such as the Crimean Human Rights Group and the IPHR, 2016, A 116 and 136). Those figures were confirmed by the Ukrainian national authorities, which also initiated an investigation related to discontinuation of education in “the Ukrainian-language boarding school no. 7” (see the letter from the Representative of the Commissioner for Human Rights of the *Verkhovna Rada* and the letter from the General Prosecutor’s Office of Ukraine, A 168).

1162. Furthermore, the applicant Government’s allegations of threats and harassment relating to the use of the Ukrainian language in the context of education were also noted in the 2017 OHCHR Report, as well as in some witness statements (see witness testimonies of Metropolitan Kliment of Simferopol and Crimea and Yaroslav Hontar) and the National Union of Journalists of Ukraine (A 102, 347 and 361). A local NGO (Ukrainian Centre for Independent Political Research, A 139) noted the following:

> “Since February 2014, Crimean authorities have created the atmosphere of Ukrainophobia and intolerance to Ukrainian identity, which has influenced the choice of language of instruction...The problem of opposition between parents and school

teachers was solved only by means of administrative pressure on teachers and teaching staffs and intimidation of parents through parent committees or individual conversations often attended with threats of violence and physical attack. Parents were pressed to decrease the number of applications for teaching in the native language."

1163. For their part, the respondent Government submitted certain statistics which also confirmed the decline in the number of students educated in Ukrainian during the school year 2014/15 noted above. As the Court has already found at the admissibility stage, such a decline cannot be regarded as "small", an argument expressly relied on by the respondent Government at the present stage of the proceedings. As to the remaining figures regarding the number of educational institutions and classes with instruction in Ukrainian, the respondent Government provided the Court with no information about the source of and methodology applied in the collection of those figures. Nor did they refer to any evidence or material which would allow the Court to assess their veracity and reliability. Similarly, they failed to submit in evidence the written survey (and the results thereof) allegedly carried out by the head teachers of all educational institutions in the city of Sevastopol regarding parents' wishes for their children to study in the Ukrainian language (see paragraph 361 above).

1164. Furthermore, the respondent Government did not provide any counter-arguments regarding the substance of the allegations made under this heading, which, in the Court's view, are supported by multiple concordant pieces of evidence consistently pointing to a significant decline in the number of educational facilities and classes teaching in Ukrainian, as compared with the number previously available in Crimea (prior to the March 2014 events). The failure of the *de facto* authorities in Crimea to make continuing provision for such teaching must be considered in effect to be a denial of the substance of the right at issue (see, *mutatis mutandis*, *Cyprus v. Turkey* (merits), cited above, § 278). This denial is a direct consequence of "the introduction of the Russian Federation's education standards in Crimea" as the respondent State's policy (see paragraph 196 of the 2017 OHCHR Report). The result is that "education in the Ukrainian language had almost disappeared from Crimea" (see paragraph 17 of the 2017 OHCHR Report). In this connection, the Court considers it appropriate to reproduce the following passage from *Catan and Others* (cited above), the essence of which applies to the present case:

"144. There is no evidence before the Court to suggest that the measures taken by the 'MRT' authorities in respect of these schools pursued a legitimate aim. Indeed, it appears that the 'MRT''s language policy, as applied to these schools, was intended to enforce the Russification of the language and culture of the Moldovan community living in Transdniestria, in accordance with the 'MRT''s overall political objectives of uniting with Russia and separating from Moldova. Given the fundamental importance of primary and secondary education for each child's personal development and future success, it was impermissible to interrupt these children's schooling and force them and

their parents to make such difficult choices with the sole purpose of entrenching the separatist ideology.”

1165. In view of the foregoing, the Court finds to the requisite standard that during the period under consideration there existed an administrative under this head practice (both the “repetition of acts” and the “official tolerance” elements, the latter stemming from, *inter alia*, the regulatory nature of the measures complained of), which amounted to a denial of the substance of the right to education and a violation of Article 2 of Protocol No. 1.

J. Alleged violation of Article 2 of Protocol No. 4 to the Convention

1166. The applicant Government’s complaint under this head, as delimited by the admissibility decision (see *Ukraine v. Russia (*re *Crimea)*, cited above, §§ 496 and 500), concerns alleged restrictions on the freedom of movement between Crimea and mainland Ukraine resulting from the *de facto* transformation by the respondent State of the administrative border line into a State border (between the Russian Federation and Ukraine). As established in the admissibility decision, it falls to be examined under paragraph 1 of Article 2 of Protocol No. 4 to the Convention, the relevant parts of which read as follows:

Article 2 of Protocol No. 4

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

...

3. No 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 freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

1. The parties’ submissions

(a) The applicant Government

1167. The applicant Government maintained that as a result of Crimea’s annexation and the unlawful creation of an international border line along the administrative line between Crimea and mainland Ukraine, the respondent State was responsible for an administrative practice of unlawfully restricting the freedom of movement of the inhabitants of Crimea, in violation of Article 2 of Protocol No. 4. This was because the creation of any kind of border within the territory of Ukraine and between its regions (in the present

case, between the Kherson Region and the Autonomous Republic of Crimea), and the imposition of any restrictions on freedom of movement, could be regulated only by Ukrainian legislation.

1168. Given its regulatory nature, the alleged administrative practice under this head affected all inhabitants of Crimea. However, in practice, it was particularly obstructive in relation to certain parts of the population, especially those considered disloyal to Russia or opposing the "occupation" of Crimea. The categories of persons who were particularly repressed included journalists and Crimean Tatars, in particular representatives of the Mejlis of the Crimean Tatar People.

(b) The respondent Government

1169. The respondent Government referred to section 3 of Federal Constitutional Law no. 6-FKZ, by which the territory of the "Republic of Crimea" and the city of Sevastopol had been delimited by existing borders on the date of their admission to the Russian Federation and their formation as new constituent entities. The delimitation line between the "Republic of Crimea" and Ukraine was a State border of the respondent State within the meaning of Federal Law no. 4730-1 of 1 April 1993 on the State border line of the Russian Federation. Pursuant to that Law, the protection and security of that border was ensured by the State border authorities, the Armed Forces of the Russian Federation and other competent bodies.

2. *The Court's assessment*

1170. The Court reiterates that Article 2 of Protocol No. 4 guarantees to any person a right to liberty of movement within the territory "of a State". According to the Court's case-law, any measure restricting the right to liberty of movement must be in accordance with law, pursue one of the legitimate aims referred to in the third paragraph of Article 2 of Protocol No. 4 and strike a fair balance between the public interest and the individual's rights (see *Baumann v. France*, no. 33592/96, § 61, ECHR 2001-V; *De Tommaso v. Italy* [GC], no. 43395/09, § 104, 23 February 2017; and *Stamose v. Bulgaria*, no. 29713/05, § 30, ECHR 2012).

1171. The Court notes that the allegations made under this head were not disputed by the respondent Government and were corroborated by the available evidential material (in particular the 2017 OHCHR Report; A 102). Furthermore, it observes that it is common ground between the parties that the *de facto* transformation by the respondent State of the administrative border line into a State border was a direct consequence of the "Accession Treaty" of 18 March 2014, pursuant to which Crimea and the city of Sevastopol were, as a matter of Russian law, admitted as constituent entities of the Russian Federation. It was established under the "State Border Line of the Russian Federation" to which the whole set of rules contained in Law

no. 4730-1 of the Russian Federation of 1 April 1993 on the State border line of the Russian Federation applied with effect from 25 April 2014 (see paragraph 125 of the 2017 OHCHR Report), or from 24 April 2014 (as argued by the applicant Government (see paragraph 179 above).

1172. The regulatory background of the practice complained of and its general application to all persons concerned represent sufficient evidence of the existence of both the "repetition of acts" and the "official tolerance" elements of the administrative practice under this head.

1173. As regards the issue whether such a pattern or system was "in accordance with law", the Court notes that the Russian law cannot be regarded as "law" within the meaning of the Convention, with the resulting effect that any individual acts constituting the practice complained of are to be examined by reference to the requirements of Ukrainian and not Russian law (see paragraphs 942 and 946 above).

1174. Accordingly, all restrictions imposed by the Russian authorities during the period under consideration in relation to the crossing of the administrative line between Crimea and mainland Ukraine were not "in accordance with law". This finding makes it unnecessary to determine whether the restrictions on the right to liberty of movement pursued a legitimate aim and were necessary in a democratic society (see *Gartukayev v. Russia*, no. 71933/01, § 21, 13 December 2005; *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 49, ECHR 2005-XII; and *Golub v. the Republic of Moldova and Russia* ([Committee], no. 48020/12, §§ 60 and 62, 30 November 2021; and, in the context of the right to leave the country, *Sissanis v. Romania*, no. 23468/02, § 78, 25 January 2007, and *Shioshvili and Others v. Russia*, no. 19356/07, § 61, 20 December 2016). The applicant Government's allegations that the practice under this head particularly affected Crimean Tatars will be examined below in relation to the allegations of discrimination.

1175. There has therefore been a violation of Article 2 of Protocol No. 4. to the Convention on account of the administrative practice of restricting the freedom of movement between Crimea and mainland Ukraine, resulting from the *de facto* transformation (by the respondent State) of the administrative border line into a State border (between the Russian Federation and Ukraine).

K. Alleged violation of Article 14, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention and with Article 2 of Protocol No. 4 to the Convention

1176. The applicant Government complained of discriminatory treatment of the Crimean Tatar population. In this connection, as noted in the admissibility decision (see *Ukraine v. Russia (re Crimea)*, cited above, § 234), they referred to the alleged summoning of Crimean Tatars by police and the Public Prosecutor of Crimea; the initiation of criminal proceedings

against Crimean Tatars; the prohibition of broadcasting of Crimean Tatar television channels; the ban on public meetings; and the interference with their freedom of movement. They also alleged that the administrative practice in violation of the freedom of movement resulting from the *de facto* transformation by the respondent State of the administrative border line into a State border (between the Russian Federation and Ukraine) had been particularly obstructive for Crimean Tatars, in particular representatives of the Mejlis of the Crimean Tatar People (see paragraphs 1166 and 1168 above).

1177. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. *The parties' submissions*

(a) The applicant Government

1178. The applicant Government submitted that there was clear and convincing evidence that the Crimean Tatars had been subjected to discriminatory treatment for which the Russian Federation bore responsibility. In that connection they relied on, *inter alia*, PACE Resolution 2133 (2016) (A 65), and information contained in reports by IGOs and some local NGOs. Reference was also made to several individual instances in which Crimean Tatars had been barred from entering the territory of Crimea for several years (see paragraph 21 of the Commissioner's Report). Across all aspects of their lives, Crimean Tatars had invariably suffered more as a consequence of the numerous administrative practices that the Russian Federation had applied in violation of the Convention.

(b) The respondent Government

1179. The respondent Government contested the allegations under this head. The statements made in the media, on social networks and at court hearings about criminal prosecution based on the ethnic origin and religion of the accused were not substantiated. Furthermore, those allegations could be a means to avoid criminal prosecution and the duty to testify under Article 51 of the Constitution of the Russian Federation. They also referred to statistics regarding prosecution of Russians, Ukrainians, Crimean Tatars and others in 2014 and 2015 for serious and minor offences (for figures classified according to the gravity of offences, see paragraphs 375-77 above).

1180. The respondent Government further referred to the decision of the Russian prosecuting authorities not to initiate a criminal investigation in respect of E.E. Bariev, S.A. Kadyrov and A.M. Suleymanov, the coordinators of the non-registered organisation "Committee for the Protection of the

Rights of the Crimean Tatar People", who were suspected of having committed several crimes under the CrCRF in relation to the 2nd All-Crimean Conference on the Protection of the Rights of the Crimean Tatar People held on 17 January 2015 in the city of Simferopol.

2. *The Court's assessment*

1181. In *Beeler v. Switzerland* ([GC], no. 78630/12, §§ 93 and 94, 11 October 2022) the Court summarised the general principles concerning Article 14 as follows:

> "93. The Court reiterates that Article 14 of the Convention affords protection against discrimination in the enjoyment of the rights and freedoms safeguarded by the other substantive provisions of the Convention and the Protocols thereto. According to the Court's settled case-law, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, among many other authorities, *Biao v. Denmark* [GC], no. 38590/10, § 90, 24 May 2016, and *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 64, 24 January 2017). In other words, the notion of discrimination generally includes cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 82, Series A no. 94, and *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 76, ECHR 2013 (extracts)).
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> 94. As to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has demonstrated a difference in treatment, it is for the Government to show that the difference was justified (see *Biao*, § 92, and *Khamtokhu and Aksenchik*, § 65, both cited above)."

1182. The following passages from *Savickis and Others v. Latvia* ([GC], no. 49270/11, §§ 183 and 186, 9 June 2022) are of further relevance:

> "183. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and the background (see *Stummer*, cited above, § 88). First and foremost, the nature of the status upon which differential treatment is based weighs heavily in determining the scope of that margin (see *Bah v. the United Kingdom*, no. 56328/07, § 47, ECHR 2011). The margin is very narrow if the distinction is based on an inherent or immutable personal characteristic such as race or sex (see, for example, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00 § 196, ECHR 2007-IV, *and J.D. and A. v. the United Kingdom*, cited above, § 89). The Court has applied the same standard to the criterion of nationality, holding that very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the grounds of nationality as compatible with the Convention (see *Gaygusuz*, § 42; *Andrejeva*, § 87; and *Ribać*, § 53, all cited above). Conversely, the margin of appreciation will be considerably wider, and the justification required will not be as weighty, if the status in question is subject to an element of

personal choice, such as immigration status (see *Bah*, cited above, ibid., and, *mutatis mutandis, Makarčeva v. Lithuania* (dec.), no. 31838/19, § 68, 28 September 2021).

...

186. Irrespective of the scope of the State's margin of appreciation, the final decision as to the observance of the Convention's requirements rests with the Court (see, among many other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 126, ECHR 2012)."

1183. The Court reiterates its finding in the admissibility decision about the concordance between the conclusions of the IGOs and NGOs as to the core allegations under this head (see paragraph 508 of the admissibility decision). In this connection it notes that the relevant reports of the IGOs and NGOs cited below contain consistent information that Tatars in Crimea were "particularly targeted, especially those with links to the Mejlis". The rights of "supporters of the Mejlis ... to freedom of opinion and expression, association, peaceful assembly, movement, thought, conscience and religion, were obstructed through acts of intimidation, pressure, physical attacks, warnings as well as harassment through judicial measures, including prohibitions, house searches, detentions and sanctions". In this connection the IGOs and NGOs referred to "intrusive" (or "invasive") searches of private properties, mosques and Islamic schools which had "disproportionately" affected the Crimean Tatar community and were said to have been carried out by "armed and masked members of the security forces", namely "local police and Russia's FSB, but also [by] dozens of unidentified armed, masked men". The relevant reports concluded that harassment (by Crimea's prosecutor's office and the FSB) and the shutting down of media outlets had "disproportionately" affected Crimean Tatars with regard to "their right to information and to maintain their culture and identity". Similarly, they reported bans on mass public gatherings by Crimean Tatars and sanctions imposed on Crimean Tatars on that account (arrests, interrogations, fines; see paragraphs 9, 127, 152, 182, 184 and 221 of the 2017 OHCHR Report, paragraph 21 of the Commissioner's Report, paragraph 23 (e) of the UN HRC Concluding Observations, paragraphs 225-44 of the Joint Report of the ODIHR and HCNM of 2015 and the Human Rights Watch Report). The UN HRC recommended in its Concluding Observations of 2015 that the respondent State ensure that "Crimean Tatars [were] not subject to discrimination and harassment" (A 62). Furthermore, the PACE stated that "Crimean Tatars in particular, live in a climate of severe intimidation ... the cumulative effect of [the] repressive measures [was] a threat to the Tatar community's very existence as a distinct ethnic, cultural and religious group" (see paragraph 8 of Resolution 2133 (2016), quoted in A 65).

1184. In addition to the above evidence adduced at the admissibility stage, the Court notes that local NGOs reported that Crimean Tatars had lost their fundamental freedoms of association, assembly and expression, and those NGOs also referred to the closure of independent Crimean Tatar media and

attacks on cultural, religious and private property, the resulting effect being that "between 15,000 and 30,000 Crimean Tatars are believed to have fled the territory of the Crimean Peninsula" (A 120, IPHR 2016 Report).

1185. Of further relevance is the documentary material submitted by the applicant Government. In particular, the Prosecutor's Office of Ukraine had noted numerous incidents (subject to criminal investigation by that office) during the period under consideration of searches of the homes of Crimean Tatars; illegal deprivation of liberty and persecution of large numbers of persons on different grounds, including their alleged ties (concerning around eighty persons, many of whom were Crimean Tatars) with Hizb ut-Tahrir al-Islami (see paragraph 989 above); arson of a mosque; obstruction of the operation of the Crimean Tatar channel ATR and prohibition of the broadcasting of speeches of the leader of the Crimean Tatar people on the State television and radio company Krym; and prohibition on the Mejlis holding cultural events and mass gatherings. Those actions had been carried out by law-enforcement agencies created in Crimea after its admission, as a matter of Russian law, into the Russian Federation. Allegations regarding the disconnection of the Crimean Tatar's television channel ATR and physical abuse of its journalists by armed "Cossacks", as well as the harassment of Crimean Tatars (marking houses with crosses), were confirmed by some witnesses in their statements (A 366, 372 and 415).

1186. As regards incidents that occurred beyond the period under consideration, in the 2017 OHCHR Report it was noted that "the ban [on] the Mejlis, imposed in April 2016 by the Supreme Court of Crimea, has infringed ... the civil, political and cultural rights of Crimean Tatars" (see paragraphs 2 and 188 thereof, A 102). Furthermore, there were reports that a high number of unlawful searches of homes (seventy-three), detentions (sixty-nine), arrests (200) and interrogations (ninety-seven), the vast majority of which concerned Crimean Tatars, had continued after the relevant period (A 219, Letter from the Mission of the President of Ukraine in Crimea, part 5 (Informational and analytical report on the religious situation in the temporarily occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol)).

1187. The Court has already established that the evidential material available at the admissibility stage provided a sufficient prima facie basis for the alleged administrative practice under this head. In the light of the additional evidence adduced at the present stage of the proceedings, which further strengthens the applicant Government's allegations, the burden of proof to rebut the presumption of discrimination has shifted to the respondent Government (see paragraphs 846 and 1181 above).

1188. For their part, the respondent Government submitted certain figures regarding prosecutions in 2014 and 2015 of different ethnic groups in Crimea for serious and minor offences. In addition, they referred to the discontinuation of the criminal investigation of three Crimean Tatars in

relation to a single event of January 2015 (see paragraphs 1179 and 1180 above).

1189. The Court takes note of that material, but observes that the respondent Government have provided no information about the source of those statistics and the methodology applied in the process of collecting them, nor have they presented any evidence which would allow the Court to assess their veracity and reliability (see paragraph 1163 above). In any event, the Court notes that this information concerned only one aspect of the applicant Government's allegations of discrimination, namely the disproportionate prosecution of Crimean Tatars. The respondent Government did not engage with any of the other aspects of the case under this head. Nor did they submit any evidence to disprove the applicant Government's allegations of discrimination which the latter had supported with credible evidence (see paragraphs 988 and 989 above). They have not provided the Court with any reason why the above evidence cannot serve to corroborate the allegations made by the applicant Government. In addition, they have not provided any, let alone a satisfactory or convincing, explanation to establish that the difference in treatment complained of had been objectively and reasonably justified by reference to a legitimate aim. Similarly, no credible or substantiated explanation has been given by the respondent Government to rebut the presumption of responsibility on the part of their authorities (or of those under their control) to account for the acts complained of.

1190. In view of the above, the Court concludes that there was an administrative practice targeting Crimean Tatars, in violation of Article 14 of the Convention, taken in conjunction with Articles 8, 9, 10, 11 of the Convention and Article 2 of Protocol No. 4.

III. APPLICATION NO. 38334/18

A. Exhaustion of domestic remedies and six-month rule

1. *The parties' submissions*

(a) The respondent Government

1191. In their memorial of 28 February 2022, under the heading "Effective domestic remedies to be exhausted for alleged violations in Crimea after 18 March 2014", the respondent Government maintained that application no. 38334/18 was inadmissible for failure to exhaust the effective remedies available and advanced the following arguments:

> "Throughout the period under review, the Republic of Crimea and the city of Sevastopol had an effective system of courts and criminal prosecution bodies. After the Republic of Crimea and the city of Sevastopol became part of Russia on 18 March 2014, measures were taken to overcome the transitional period for courts and other law enforcement agencies in order to ensure their effective functioning. As in any case of a change of jurisdiction for a particular territory, Russia and the local administration

managed to find a balance between, on the one hand, ensuring the previously existing procedure for protecting the right[*sic*] and, on the other hand, providing access to the guarantees of the Russian judicial and executive systems for individuals and legal entities in Crimea. Nothing indicates that the courts and other officials faced any difficulties in the application of the Ukrainian and Russian law during the transitional period."

1192. The respondent Government did not submit any specific arguments regarding the six-month rule.

(b) The applicant Government

1193. Under the heading "Non-exhaustion of domestic remedies and six month rule" of their application form, the applicant Government alleged that all cases described therein clearly demonstrated the existence of a Russian policy of persecution of those who were considered to be an "enemy", which had resulted in "human rights violations of [a] continued nature". In their view, such a policy amounted to an administrative practice for the purposes of the Convention case-law. They concluded the following:

> "Having regard to the facts described and the general context of the instant case the Government of Ukraine state that Russia developed and effectively [brought] into life a coordinated policy of arresting, detaining and conviction [of] Ukrainian nationals which amounted to an administrative practice for the purposes of Convention case-law. Domestic remedies existing in Russia are unavailable in practice to the Ukrainian nationals persecuted on political grounds or their ineffectiveness is described below ... Furthermore, there are facts corroborating that Russian officials effectively prevented them from exercising the remedies in question. Given the above the Government of Ukraine submit that [the] Rule of exhaustion of domestic remedies and [the] six months' rule, laid down in Article 35 of the Convention, are not applicable in the instant case."

2. *The Court's assessment*

1194. At the time of lodging the application, Article 35 § 1 provided:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

1195. Article 35 § 1 has since been amended to reduce the six-month period to four months.

(a) Exhaustion of domestic remedies

1196. The rule of exhaustion of domestic remedies as embodied in Article 35 § 1 of the Convention applies to State applications (Article 33) in the same way as it does to "individual" applications (Article 34), when the applicant State does no more than denounce a violation or violations allegedly suffered by "individuals" whose place, as it were, is taken by the State. On the other hand and in principle, the rule does not apply where the applicant State complains of a practice as such, with the aim of preventing its

continuation or recurrence, but does not ask the Court to give a decision on each of the cases put forward as proof or illustrations of that administrative practice. The concept of administrative practice is thus of particular importance for the operation of the rule of exhaustion of domestic remedies (see *Ireland v. the United Kingdom*, cited above, § 159; *Denmark v. Turkey* (dec.), no. 34382/97, 8 June 1999, and *Ukraine v. Russia* (re *Crimea*), cited above, § 363). The rationale behind this exception is that where there is both repetition of acts and official tolerance, any remedies would clearly be ineffective at putting an end to the impugned administrative practice (see *Georgia v. Russia (I)* [GC], cited above, §§ 124-25, and *Ukraine and the Netherlands v. Russia*, cited above, §775).

1197. The Court highlights that the applicant Government expressly limited the scope of application no. 38334/18 to the alleged existence of administrative practices of violations of the Convention (see paragraph 838 above). Accordingly, the present application falls within the category of inter-State cases relating to a practice for which, by virtue of the Court's settled case-law, the exhaustion rule does not apply. Therefore, the respondent Government's objection of non-exhaustion of domestic remedies should be dismissed. In these circumstances, the Court sees no need to determine what would have been the applicable law in Crimea for the purposes of an examination of the question of exhaustion of domestic remedies.

1198. Finally, the Court considers it useful to reiterate its findings set out in the admissibility decision, in relation to the consequences of the absence of sufficiently substantiated prima facie evidence of an administrative practice (see *Ukraine v. Russia* (re *Crimea*), cited above, § 366, references omitted):

> "... it has been consistently held that the prima facie evidentiary threshold, as the appropriate standard of proof required at the admissibility stage regarding allegations of an administrative practice, needs to be satisfied so as to render the exhaustion requirement inapplicable to this category of cases. ... In the absence of such evidence, it will not be necessary for the Court to go on to consider whether there are other grounds, such as the ineffectiveness of domestic remedies, which exempt the applicant Government from the exhaustion requirement. In that event ... the complaint of an administrative practice cannot on substantive grounds be viewed as admissible and warranting the Court's examination on the merits ..."

(b) The six-month rule

1199. The Court stresses that in principle the six-month time-limit also applies to inter-State cases and to allegations of administrative practices and the Court must therefore determine whether it has been complied with (see as a recent authority, *Ukraine and the Netherlands v. Russia* (dec.), cited above § 785).

1200. As the applicant Government complained of "human rights violations of [a] continued nature", the Court considers it useful to restate its

case-law regarding the application of the time-limit rule to instances of continuous violations, as summarised recently in the admissibility decision in *Ukraine and the Netherlands v. Russia* (cited above, §§ 779-81):

> "779. In some continuing situations, the Article 35 § 1 time-limit starts afresh each day and it is only once the situation ceases that the final period of six months will run to its end (see *Sabri Güneş*, cited above, § 54; and *Mocanu and Others*, cited above, § 261). In this respect, a distinction is to be drawn between cases where an applicant is subject to an ongoing violation (as in *Dudgeon v. the United Kingdom*, judgment of 22 October 1981, Series A no. 45, which concerned a legislative provision which intruded, continuously, on the applicant's private life) and cases where the continuing situation flows from a factual situation arising at a particular point in time (as in *Varnava and Others*, cited above, concerning disappearances). Only ongoing violations will automatically result in the time-limit being started afresh each day for an indefinite period of time (see the Chamber's explanation in *Varnava and Others v. Turkey*, nos. 16064/90 and 8 others, § 117, 10 January 2008, subsequently endorsed by the Grand Chamber at § 161 of its judgment).
>
> 780. In continuing situations flowing from a factual situation arising at a particular point in time, the Court has formulated an obligation of diligence which arises where time is of the essence in resolving the issues raised (see *Varnava and Others*, cited above, § 160; and *Mocanu and Others*, cited above, § 262). In such cases, there is a burden on the applicant to ensure that his or her claims are raised before the Court with the necessary expedition to ensure that they may be properly, and fairly, resolved. This is particularly true with respect to complaints relating to any obligation under the Convention to investigate certain events. As the passage of time leads to the deterioration of evidence, time has an effect not only on the fulfilment of the State's obligation to investigate but also on the meaningfulness and effectiveness of the Court's own examination of the case. An applicant has to become active once it is clear that no effective investigation will be provided, in other words once it becomes apparent that the respondent State will not fulfil its obligation under the Convention. It follows that the obligation of diligence and expedition incumbent on applicants contains two distinct but closely linked aspects. First, the applicants must contact the domestic authorities promptly and diligently concerning progress in the investigation, since any delay risks compromising the effectiveness of the investigation. Second, they must lodge their application promptly with the Court as soon as they become aware or should have become aware that the investigation is not effective (*Varnava and Others*, §§ 158 and 160-61; and *Mocanu and Others*, cited above, §§ 262-64).
>
> 781. In assessing diligence and expedition, the Court has regard to the complexity and the serious nature of the allegations as well as to any obstruction by the respondent State and its authorities in the provision of relevant information concerning the allegations. These factors may lead to the conclusion that it was reasonable for the applicant to wait for developments that could have resolved crucial factual or legal issues pertaining to his or her complaints (see *El-Masri*, cited above, § 142). Moreover, as long as there is some meaningful contact between relatives and the respondent State's authorities concerning complaints and requests for information, or some indication or realistic possibility of progress in investigative measures, considerations of undue delay by the applicants will not generally arise (see *Varnava and Others*, cited above, § 165; and *Mocanu and Others*, cited above, § 269). The Court has also recognised that in an exceptional situation of international conflict where no normal investigative procedures are available, applicants may reasonably await the outcome of the initiatives taken by their government and the United Nations where these procedures could have resulted

in further investigative steps or provided the basis for further measures (see *Varnava and Others*, cited above, § 170).”

1201. The Court emphasises at the outset the nature of the complaints raised by the applicant Government in application no. 38334/18 which concern, *inter alia*, arrest procedures, detentions or proceedings that resulted in criminal convictions some of which were terminated at different points in time between 2014 and 2017, thus more than six months before the date when the application was lodged. Having regard however to the scope of the complaints, the Court is satisfied that they may concern allegations of continuing situations (see paragraph 832 above) akin to the first category of ongoing violations set out above in respect of which the six-month time-limit will only begin to run once the alleged violations have ceased (see paragraph 1200 above). The Court will therefore consider in its examination of the evidence together with the merits whether the various administrative practices alleged (if shown to have occurred) came to an end more than six months before the complaint was originally made to the Court in substance. Complaints about administrative practices which ended six months before the date on which the complaint was lodged must be declared inadmissible (see *Cyprus v. Turkey* (merits), cited above, § 104).

1202. Consequently, in view of the available material and the standard of proof applicable thereto, the Court considers that the question of the compliance with the six-month rule is closely linked to the merits of the complaints, and therefore joins it to the merits.

B. Evidential threshold

1203. The Court reiterates that when it comes, firstly, to the admissibility of a complaint in an inter-State case, besides the issues of the exhaustion of domestic remedies and of compliance with the six-month rule (see section above), another issue which needs to be examined is that of the evidential threshold. In this connection, in the admissibility decision, the Court has clarified that the applicable standard of proof for the purposes of admissibility in respect of allegations of administrative practices was that of “sufficiently substantiated prima facie evidence” (see paragraph 850 above). The Court also stresses that the application of the evidential admissibility threshold in inter-State cases imposes a special degree of rigour in viewing the evidence provided. While the Court may gather evidence of its own motion, it is not an investigative body and it is not its role actively to locate evidence supporting specific assertions made in the proceedings before it. It is therefore for the applicant Ukrainian Government to provide the prima facie evidence necessary to support their allegation of an administrative practice (see *Ukraine and the Netherlands v. Russia* [GC], cited above, § 864). It is with reference to these considerations that the Court will examine the materials submitted in respect of each administrative practice alleged and will indicate

separately the instances which have not been sufficiently substantiated prima facie and which will therefore be declared inadmissible.

1204. When it comes, secondly, to the assessment of evidence in the context of the examination of the merits of allegations of an administrative practice, the Court reiterates that it has adopted the "beyond reasonable doubt" standard of proof, which was laid down in previous inter-State cases (see paragraph 851 above).

C. Alleged violation of Article 3 of the Convention

1205. The applicant Government submitted that the respondent Government were responsible for administrative practices that amounted to a violation of Article 3 of the Convention, which provides:

Article 3

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

1. Admissibility

1206. The Court observes that the applicant Government's version of the facts contains references to different episodes of events which allegedly occurred predominantly in Crimea but also in other parts of Ukraine or in the Russian Federation. Nevertheless, it transpires from the applicant Government's submissions that they take a holistic approach to the presentation of the claims concerning "Ukrainian political prisoners" and consider that the different accounts of events cannot be viewed in isolation. The Court accepts this approach, subject to the need to ascertain that there is sufficiently substantiated prima facie evidence that the events relied on actually occurred and that they represent "an accumulation of identical or analogous breaches which are sufficiently numerous and interconnected not to amount to merely isolated incidents or exceptions but to a pattern or system" ("repetition of acts") and that there is "official tolerance" of those breaches. The Court will decide, having regard to the particular circumstances of the case, on the extent of events required in order to be able to conclude that an administrative practice in breach of the Convention existed.

1207. It follows from the applicant Government's submissions that they complain of an administrative practice consisting of: (i) acts of ill-treatment, including torture, inflicted on political prisoners and a lack of proper investigation into these allegations by the Russian authorities; (ii) inhuman conditions of detention, in particular in the Simferopol SIZO and Lefortovo SIZO (Moscow); (iii) a lack of medical assistance in prison, and (iv) "cruel and unreasonable punishment" inflicted on "political prisoners" in the form of placement in solitary confinement and punishment cells with extremely harsh conditions.

1208. In relation to the applicant Government's allegations regarding allegedly inadequate conditions of detention in penal facilities on the territory of the Russian Federation (item (ii) above), the Court notes that the material submitted does not enable it to conclude that there exists sufficiently substantiated prima facie evidence of an administrative practice in this regard. The few instances referred to cover a few separate episodes in different establishments and there is no evidence provided either with regard to the material conditions of detention in Lefortovo SIZO, which was singled out by the applicant Government in their submissions and in which at least ten Ukrainian prisoners had been incarcerated after March 2014, or to support a finding that the detention conditions imposed in the instances concerned were sufficiently "interconnected". Therefore, the evidence adduced, taken as a whole, does not enable the Court to reach the conclusion that there has been "an accumulation of identical or analogous breaches" "which are sufficiently numerous and interconnected" to amount to "a pattern or system" in this respect. It is therefore not necessary for the Court to examine whether there is sufficient evidence of "official tolerance" as regards these particular allegations. This part of the complaint must therefore be declared inadmissible in accordance with Article 35 § 4 of the Convention.

1209. With respect to their complaint of lack of proper medical assistance (item (iii) above), the applicant Government submitted that this had resulted in the prisoners' state of health deteriorating badly during their detention, including some with chronic illnesses. In some instances, the Russian authorities had restricted the administration of required medication or refused to provide information about the prisoners' state of health. The Court observes that the applicant Government referred in the application form to the situation of eight individuals (see also paragraph 1213 below), but did not subsequently provide any further evidence in this respect, after the admissibility decision (16 December 2020).

1210. The Court accepts that, on the limited evidence before it, it cannot be excluded that individual prisoners may have been denied the required medical assistance. Indeed, the reports prepared by some IGOs addressed some of those cases. However, they did not make any suggestion of systemic occurrences or reach any conclusions in that regard. Against this background, it cannot be said that there was "an accumulation of identical or analogous breaches which are sufficiently numerous and inter-connected not to amount to merely isolated incidents or exceptions but to a pattern or system" ("repetition of acts"). Accordingly, the required standard of proof (prima facie evidence) has not been met in relation to the complaint under this head. It is therefore not necessary for the Court to examine whether there was sufficient evidence of "official tolerance" as regards these particular allegations. This part of the complaint is therefore also inadmissible and must be rejected in accordance with Article 35 § 4 of the Convention.

1211. The applicant Government also maintained that “Ukrainian political prisoners” had been placed in solitary confinement and in punishment cells in conditions they described as “extremely harsh” (item (iv) above). The Court notes that while the formulation of the complaint under this head may be said to be in general terms, in their presentation of the facts the applicant Government identified eight individuals who had allegedly been placed in punishment cells and five who had been placed in solitary confinement. Besides the low number of individuals concerned by those measures, the Court notes that some of the allegations are not substantiated by evidence at all and that the evidence adduced with regard to the remaining allegations contains little or no detailed information about the conditions prevailing in the respective facilities. Accordingly, the required standard of proof (prima facie evidence) has not been met in relation to the complaint under this head. It is therefore not necessary for the Court to examine whether there was sufficient evidence of “official tolerance” as regards these particular allegations. Accordingly, this part of the complaint is also inadmissible and must be rejected in accordance with Article 35 § 4 of the Convention.

1212. Turning, lastly, to items (i) and (partly) (ii) above, the Court considers that the applicant Government’s claims regarding, firstly, the alleged acts of ill-treatment inflicted on the “Ukrainian political prisoners” and the lack of a proper investigation into these allegations by the Russian authorities, and secondly, the inhuman conditions of detention in the Simferopol SIZO, do not fall short of the prima facie evidential threshold, and that they comply with the six-month time-limit for reasons which will be explained below. This part of the complaint must therefore be declared admissible.

2. *Merits*

(a) The parties’ submissions

1213. The applicant Government’s complaints under this head read as follows:

> “The Government of Ukraine states that the cases listed above clearly demonstrate the existence of [an] administrative practice of [torture] and ill-treatment of Ukrainian political prisoners and there is no effective remedy for such complaints of [the] persons concerned.
>
> Almost all detainees were subjected to physical and psychological pressure. They were beaten and tortured in [the] most cruel manner by the Russian law enforcement officers to force them to ‘confess’ to their guilt. Russian authorities did not inform the relatives of arrested persons on their detentions ... and Ukrainian diplomatic missions ... and did not allow independent defence [counsel] to meet with the detained at the initial stage of investigation and, sometimes, ever.
>
> In sum at least 18 persons, as they and their lawyers and relatives stated, were subjected to cruel torture. They tell about [the] application to them [of] such methods

> as beatings, electric current, and mock executions, [and the] administering of unknown drugs.
>
> Complaints of ill-treatment have not been investigated by Russian authorities properly, if [they] were investigated at all. The courts which considered the Ukrainian political prisoners' cases, disregarded their complaints about the [torture].
>
> In addition detainees also face inhuman treatment and humiliation in places of deprivation of liberty (pre-trial detention centres and penal colonies) given the inhuman conditions of detention. A number of detainees were held in Simferopol SIZO, [and] Lefortovo pre-trial detention centre, where conditions of detention are inhuman and degrading, including overcrowding, sleep deprivation etc.
>
> Undue medical assistance administered to them [given] their state of health was also improper. The state of health of prisoner[s] deteriorated badly, including chronic illnesses, in conditions of detention facilities (for example, Mr Balukh, Mr Dehermendzhi, Mr Umerov, Mr Hryb, Mr Klykh, Mr Kuku); in some cases Russian authorities restrict[ed the] receiving of medicine for detainees (case of Mr Pavlo Hryb). There [are] also cases with no information about [the prisoners'] state of health (Mr Sentsov, Mr Balukh, Mr Klykh, Mr Lytvynov).
>
> Also there appears to exist [a] practice of exercising pressure on the Ukrainian prisoners via overly cruel and unreasonable punishment in the form of placement in solitary confinement and punishment cells with extremely harsh conditions, which constitute an inhuman treatment bordering on torture (see above).
>
> All the above violations are tolerated by the Russian authorities. Complaints of ill-treatment were not investigated by Russian authorities properly, if [they] were investigated at all.
>
> Therefore the Government of Ukraine submits that there are systematic violations of Article 3 by Russia with respect to the Ukrainian political prisoners."

1214. The respondent Government submitted no observations on these specific allegations.

(b) The Court's assessment

(i) General principles

1215. The general principles, as set out in numerous judgments, were summarised, in so far as relevant, in *Georgia v. Russia (II)* (cited above, § 240 – see paragraph 985 above).

1216. The relevant passage from the *El-Masri* (cited above, § 197), recently reiterated in *Georgia v. Russia (II)* (cited above, § 271), reads as follows:

> "197. In order to determine whether any particular form of ill-treatment should be classified as torture, the Court must have regard to the distinction drawn in Article 3 between this notion and that of inhuman or degrading treatment. This distinction would appear to have been embodied in the Convention to allow the special stigma of 'torture' to attach only to deliberate inhuman treatment causing very serious and cruel suffering (see *Aksoy*, cited above, § 62). In addition to the severity of the treatment, there is a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, which defines torture in terms of the intentional infliction of severe

pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (Article 1 of the United Nations Convention) (see *İlhan v. Turkey* [GC], no. 22277/93, § 85, ECHR 2000-VII).”

(ii) Application of the principles referred to above in the present case

(α) Allegations of ill-treatment and lack of an effective investigation in this respect

1217. The Court reiterates that there is consistent information before it that, after the Russian Federation gained effective control over Crimea, “multiple and grave violations of the right to physical and mental integrity have been committed by State agents of the Russian Federation in Crimea” and that such acts had been committed by members of the “Crimean self-defence forces” and various Cossack groups and later by representatives of the Crimean FSB and the police (see paragraphs 85 and 90 of the 2017 OHCHR Report, A 102 and paragraph 986 above).

1218. Against this backdrop, the Court notes that the applicant Government have described for illustrative purposes numerous instances of ill-treatment inflicted on “Ukrainian political prisoners” during the period 2014-2018 (see in this connection the accounts concerning Mr Oleksandr Kostenko, Mr Andrii Kolomiyets, Mr Mykola Shyptur, Mr Ihor Movenko, Mr Ismail Ramazanov, Mr Yevhen Panov, Mr Andriy Zakhtey, Mr Volodymyr Prysych, Mr Volodymyr Dudka, Mr Hlib Shabliy, Mr Stanislav Klykh, Mr Mykola Karpyuk, Mr Oleg Sentsov, Mr Oleksandr Kolchenko, Mr Hennadii Afanasiev, Mr Oleksiy Cherniy, Mr Mykola Dadeu, Mr Serhiy Lytvynov, Mr Valentyn Vyhivskyi, Mr Viktor Shur and Mr Oleksii Syzonovych). Many of those acts of ill-treatment consisted of beatings, the use of electric current, mock executions and the administration of unknown drugs and were aimed at inflicting severe pain or suffering in order to obtain information, extract confessions about the commission of crimes or testimony about acts carried out by others, or inflict punishment or intimidation. The severity of the treatment taken together with its purposive element warrants its classification as acts of torture (see paragraph 1216 above). Other types of conduct, such as, for example, threats of ill-treatment or psychological pressure exerted on the same individuals mentioned above or on others amounted at least to inhuman or degrading treatment (see *Gäfgen v. Germany* [GC], no. 22978/05, § 108, ECHR 2010). With respect to Mr Mykola Karpyuk, the Court reiterates that it has already found that his complaints concerning the torture he had been subjected to and the failure to investigate his allegations of ill-treatment disclosed a breach of both the substantive and procedural limbs of Article 3 of the Convention (*Maslova and Others v. Russia* [Committee], nos.62807/09 and 10 others, §§ 15-18, 11 January 2024).

1219. Some of the applicant Government’s allegations are supported by direct testimony of the victims and/or their lawyers (through complaints

raised on the subject with the Russian authorities). Other allegations are supported by accounts reported by the media and based on interviews with victims or on information provided by prisoners' lawyers, family members or Ukrainian consular officials. Further allegations are supported by both types of material mentioned above. These numerous accounts equate to first-hand information which appears to be truthful and credible, carrying significant probative value.

1220. These allegations are corroborated firstly and most specifically by the information provided by OHCHR (see paragraph 158 of the Report on the Human Rights Situation in Ukraine Report covering the period from 16 February to 15 May 2015, A 99; paragraphs 86-91 of the 2017 OHCHR Report, A 102; and paragraphs 22-25 of the 2018 OHCHR Report, A 103) and the UN Human Rights Committee (A 62), and, secondly, by numerous NGOs (see paragraph 846 above), given the first-hand information collected (obtained through monitoring of the situation and developments in Crimea and/or interviews with representatives of key target groups), the media monitoring, and the event and legislative framework analysis therein (see the reports published by the Human Rights Watch, the Open Society Justice Initiative, IPHR, and Crimean Human Rights Group, A 110, 115, 117 and 135).

1221. Further evidence in the form of documentary material is provided by the Ukrainian prosecuting authorities (see the letter from the Prosecutor General of Ukraine regarding the ongoing investigation in respect of alleged perpetrators concerning instances of ill-treatment of named individuals, A 159 and 162; and the letter from the Ukrainian Ombudsperson, A 258-59).

1222. Importantly, according to the reports of the UN Secretary-General and the Commissioner for Human Rights, practices of ill-treatment and torture have continued in Crimea and the alleged perpetrators of torture and ill-treatment have not been brought to account (see paragraph 20 of the Secretary-General's 2019 Report, paragraphs 17-18 of the 2020 Report, and paragraph 13 of the 2022 Report (A 93-95); and paragraph 12 of the 2023 Commissioner's Report, A 74).

1223. The Court reiterates that, while it is for the applicant to make a prima facie case and adduce appropriate evidence, if the respondent Government in their response to the allegations of ill-treatment fail to disclose crucial documents in order to enable the Court to establish the facts or to provide a satisfactory and convincing explanation of how the events in question occurred, strong inferences may be drawn (see *Varnava and Others*, cited above, § 184). In the present case, the respondent Government did not engage at all with the merits of the complaints under Article 3 besides making a general statement that no administrative practice of a violation of the Convention could be found to exist. They also failed to submit any material in this connection (such as medical files, arrest reports, possible judicial decisions concerning allegations of ill-treatment or other relevant material in

their exclusive possession). The Court is accordingly prepared to draw the necessary inferences, in particular from the total failure to present material of any kind to the Court in connection with the allegations of ill-treatment of "the Ukrainian political prisoners".

1224. Given the above-mentioned circumstances, the Court is satisfied that it has sufficient evidence in its possession to enable it to conclude beyond reasonable doubt that there existed an accumulation of identical or analogous breaches which are sufficiently numerous and interconnected to amount to a pattern or system. Indeed, the evidence reveals numerous instances of ill-treatment which are part of the sustained campaign of political repression of actual or perceived opponents of the Russian policies.

1225. Furthermore, it appears from the available evidence that such acts were perpetrated by representatives of the FSB and the police forces, and in certain instances directly by (or with the cognisance of) agents of penal facilities in Crimea or Russia. In these circumstances, the responsibility of the Russian Federation cannot be questioned.

1226. As regards the "official tolerance" element of the administrative practice, the Court refers to its previous findings under Article 3 insofar as the situation in Crimea is concerned (see paragraphs 994 et seq. above). The same considerations are applicable with respect to the acts perpetrated by Russian agents on the territory of the Russian Federation.

1227. Furthermore, the Court notes that the Russian Federation authorities have not been transparent about any investigations into allegations of ill-treatment concerning "Ukrainian political prisoners". As explained above, the respondent Government failed to provide any substantive submissions about whether any formal investigations had been initiated or, if so, their outcomes. It appears, however, from the material submitted by the applicant Government that when the available evidence pointed to the existence of complaints lodged by victims of ill-treatment, such complaints either resulted in decisions not to open criminal proceedings, or the investigations eventually carried out produced no results. The Court concludes that the lack of proper investigations into the allegations of ill-treatment constitutes a separate pattern of violations of the Convention. In addition, reiterating that the question of the effectiveness and accessibility of domestic remedies may be regarded as additional evidence of whether or not an administrative practice exists (see, in particular, *Cyprus v. Turkey* (merits), cited above, § 87, and *Georgia v. Russia (I)*, cited above, § 126), the Court finds that given its scale and duration, this pattern reinforces the Court's conclusion as to the existence of "official tolerance" on the part of the Russian Federation authorities of the practice of ill-treatment.

1228. Having regard to all those factors, the Court concludes that there has been an administrative practice contrary to Article 3 of the Convention as regards the ill-treatment of "Ukrainian political prisoners" which caused them undeniable mental and physical suffering, and the lack of an effective

investigation in this connection. The Court is also satisfied that this administrative practice has continued after the allegations on the matter were brought before the Court on 10 August 2018 and that therefore no issue arises under the six-month rule.

1229. The Court concludes that there has been a violation both of the substantive and the procedural limbs of Articles 3 of the Convention under this head.

(β) Conditions of detention in the Simferopol SIZO

1230. As indicated above (see paragraph 1213 above), the applicant Government maintained that the "Ukrainian political prisoners" were kept in poor conditions of detention. Pointing to the Simferopol SIZO located in Crimea, they emphasised in particular the serious overcrowding in the cells and the inadequacy of the sleeping facilities.

1231. The Court notes that most of the "Ukrainian political prisoners" referred to by the applicant Government had been detained for various periods of time in the Simferopol SIZO, the only pre-trial detention facility in Crimea until the Autumn of 2022 (see paragraph 29 of the 2023 report of the Secretary General of the Council of Europe, A 72). It observes that the description of the conditions of detention therein by the applicant Government is substantiated by consistent accounts provided by the detainees themselves, by their lawyers or by representatives of local NGOs (for example, the Kharkiv Human Rights Protection Group or the Crimean Human Rights Group), as relayed by the media or published on the websites of the NGOs in question. The information reported by the local NGOs is particularly revealing with regard to the overcrowding in the detention facility, the insufficiency of sleeping space, the poor quality of food, the lack of furniture, infestation, the inadequate temperatures, the lack of ventilation and the lack of privacy in relation to toilet facilities (A 466-67, 527, 643, 662).

1232. Of further evidential value is the 2015 report of the Russian Ombudsperson who, after having conducted a field visit, described the inadequate conditions of detention in the Simferopol SIZO (A 879).

1233. Those accounts are further corroborated by IGO reports. In this connection, the Court notes that in the report published following his visit of September 2014, the Commissioner for Human Rights recorded that several of his interlocutors in Kyiv, Moscow and Simferopol had drawn his attention to the poor detention conditions in the penal institutions in Crimea and that the local Ombudsperson had expressed particular concerns over the lack of food and medical supplies and overcrowding in places of detention (see paragraph 52 of the 2014 Commissioner's report, A 73). The situation had failed to improve over the years according to the OHCHR, which documented the severe state of overcrowding in the Simferopol SIZO (see paragraph 113 of the 2017 OHCHR Report, A 102; paragraph 26 of the 2019

report of the UN Secretary-General, A 93; and paragraph 21 of the 2020 report of the UN Secretary-General, A 94). According to the 2020 report of the UN Secretary-General, former detainees had complained of a lack of personal space, insufficient natural light and air, cold temperatures, a failure to meet basic sanitary and hygiene requirements, the extremely poor quality of food, as well as a lack of privacy as a result of the constant video surveillance of toilets.

1234. The respondent Government neither rebutted the alleged facts nor did they submit any evidence or counter arguments.

1235. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, 20 October 2016). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 and may disclose a violation, either alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122 -141, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-159, 10 January 2012).

1236. Bearing in mind all the considerations above, the Court cannot but find that the evidence submitted to it shows that, since 2014, "Ukrainian political prisoners" have been kept in inadequate conditions of detention amounting to degrading treatment, in particular on account of the lack of sufficient personal space during their detention in the Simferopol SIZO, but also on account of the other deficiencies described above, such as the insufficiency of sleeping space, inadequate temperatures, lack of ventilation, infestation, lack of privacy of toilets and poor food.

1237. Therefore, the Court is satisfied that it has sufficient evidence in its possession to enable it to conclude beyond reasonable doubt that there existed "an accumulation of identical or analogous breaches" "which are sufficiently numerous and interconnected" to amount to "a pattern or system" with respect to the inadequate conditions of detention in the Simferopol SIZO (Crimea), for which the respondent State did not deny responsibility. Furthermore, it appears from the available evidence that such breaches are the result of shortcomings in the organisation and functioning of the Crimean prison system. The scale and the systemic nature of this practice confirms in addition the existence of the "official tolerance" element of the administrative practice.

1238. Accordingly, there has been a violation of Articles 3 of the Convention on account of the administrative practice consisting in the incarceration of prisoners in inadequate conditions of detention in the Simferopol SIZO. The Court is also satisfied that the administrative practice has continued after the allegations in this respect were raised before the Court on 10 August 2018 and that therefore no issue arises under the six-month rule.

D. Alleged violation of Articles 5, 6, and 7 of the Convention

1239. The applicant Government submitted that the Russian Federation was responsible for an administrative practice of unlawful deprivation of liberty, prosecution and conviction of "Ukrainian political prisoners" in breach of the rights guaranteed by the Convention under its Article 5, Article 6 §§ 1-3 (c) and (d), and Article 7 which provide:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 6

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society,

where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

Article 7

“1. No 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. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

1. Admissibility

1240. The Court notes at the outset that the allegation under the present head refers to the compatibility with the Convention of the detention and imprisonment of Ukrainians, whom the applicant Government labelled “Ukrainian political prisoners”, within judicial proceedings opened both in Crimea and in Russia. In this connection, the applicant Government raised a large array of claims which amounted in their view to an administrative practice in violation of Articles 5, 6 and 7 of the Convention.

1241. As explained above, in answering the question whether an administrative practice in breach of the rights guaranteed by the Convention can be said to exist, the Court may be able to take into account events within a wide geographical scope provided that there is sufficiently substantiated prima facie evidence that those events actually occurred and insofar as they fulfil the component elements of the concept of administrative practice, namely the “repetition of acts” and the necessary “official tolerance” (see paragraph 1206 above).

(a) Events which allegedly occurred in Russia

1242. As regards the events which allegedly occurred in the Russian Federation under this head, the Court notes the scarcity of the material submitted in support of the applicant Government's allegations and notably the insufficient number of decisions given by the competent judicial authorities within criminal proceedings: a few judgments by which some of the sixteen individuals listed by the applicant Government in this group were convicted of criminal offences, only two of which judgments are final, and even fewer decisions remanding such individuals in custody. Moreover, despite concerns recently expressed by IGOs with regard to the situation of the "Ukrainian political prisoners" and their calls for either their release or the re-examination of their cases, no pattern of systemic persecution has been advanced in connection with this specific category (see PACE Resolutions 2231(2018) and 2446(2022) of 28 June 2018 and 21 June 2022 respectively, and the European Parliament resolution of 16 March 2017 – A 67, 69 and 76).

1243. The Court is particularly mindful of the difficulties faced by the applicant Government in gathering evidence to support their allegations. It also bears in mind the lack of constructive engagement from the respondent Government with the proceedings for the examination of the case and its failure to provide any of the relevant casefiles pertaining to the individuals referred to by the applicant Government and that despite the fact that these casefiles were undoubtedly within their (exclusive) possession (see paragraph 853 above). Nevertheless, the Court considers that the evidence before it in this connection cannot be said to establish that there is sufficiently substantiated prima facie evidence of an administrative practice (in either its "repetition of acts" or "official tolerance" components) in breach of Articles 5, 6 and 7 of the Convention in relation to the unlawful detention and imprisonment of Ukrainian prisoners which took place in the Russian Federation (that is, with respect to proceedings concerning Mr Stanislav Klykh, Mr Mykola Karpyuk, Mr Mykola Dadeu, Mr Oleksandr Shumkov, Mr Roman Ternovskyy, Mr Serhiy Lytvynov, Mr Roman Sushenko, Mr Yurii Soloshenko, Mr Viktor Shur, Mr Oleksii Syzonovych, and Mr Pavlo Hryb and the convictions imposed by the Russian military courts on the Crimean Muslims charged with involvement with Hizb ut-Tahrir). The Court recognises the contribution which the respondent Government's lack of cooperation may have made in this regard and refers to its findings concerning their failure to comply with the obligations under Article 38 of the Convention set out in paragraphs 908-909 above. Accordingly, this part of the complaint must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

1244. The Court finds it useful to emphasise that the evidence adduced is insufficient only in relation to the need to demonstrate the existence of an administrative practice; its conclusions concern this legal issue only and the Court does not rule out that the alleged incidents did in fact occur and that the

individuals concerned might therefore provide sufficient proof of a violation of the Convention in any individual application lodged with the Court. In addition, its findings under this heading do not prevent the Court from taking into account the evidence submitted in support of the allegations made in this regard, in so far as relevant to other complaints raised in the present application (see the Court's considerations under Articles 3 and 8 of the Convention).

(b) Events which possibly occurred in the "DPR" and "LPR" or Belarus

1245. Next, the Court refers to its conclusion (see paragraphs 876-878 and 885 above) that the claims put forward under Article 5 of the Convention pertaining to isolated instances of abduction by "the 'DPR' and 'LPR' collaboration authorities" or which occurred on the territory of a third country were not substantiated by sufficient prima facie evidence. Accordingly, this part of the complaint must also be declared inadmissible in accordance with Article 35 § 4 of the Convention.

(c) Events which allegedly occurred in Crimea

1246. The Court considers that this part of the complaint does not fall short of the prima facie evidential threshold, and that it complies with the six-month time-limit for reasons which will be explained below. It must therefore be declared admissible.

2. *Merits*

(a) The parties' submissions

(i) The applicant Government

1247. The applicant Government's complaints under Article 5 of the Convention read as follows:

> "The Government of Ukraine states that the cases listed above clearly demonstrate that the Russian authorities unlawfully arrest Ukrainians in the territory of the Russian Federation or occupied territory of Crimea.
>
> The Government of Ukraine consider ... all arrests listed above to be illegal, they state that there is an administrative practice of the Russian State of arrest and depriv[ation] of liberty of political prisoners in breach of Article 5 of the Convention.
>
> For detention of Ukrainians within criminal cases Russian authorities often apply administrative detention first to detain a person concerned for a short period of time, and then [detain] them formally on suspicion of a serious crime (cases of Mr Panov, Mr Zakhtey, Mr Kolomiyets, Mr Karpyuk, Mr Klykh). At the same time the use of administrative detention to ensure an individual's availability for further criminal proceedings amounts to an arbitrary deprivation of liberty under Article 5 of the Convention (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008, and *Doronin v. Ukraine*, no. 16505/02, § 55-56, 19 February 2009).

Also there are several cases of detention of Ukrainians in the territory of third countries with subsequent transferring them to Russia by FSB officers. Thus, Mr Pavlo Hr[y]b was illegally abducted from the territory of Belarus and transferred to the Russian Federation. After that [the] Russian authorities stated that Mr Hryb was detained in the course of an 'operation'. The above case has clear signs of kidnapping a person with the purpose of his subsequent persecution in Russia.

In addition there [are] several cases where there are serious grounds to believe that detentions in the territory of the R[ussian] F[ederation] were preceded by the capture of these persons by the 'DPR' and 'LPR' collaboration authorities [which] handed them over to the Russians (cases of Mr Lytvynov, Mr Syzonovych).

The Russian authorities failed to inform relatives and Ukrainian authorities [of] detentions and in numerous cases they found information later from mass media reports.

Therefore the Government of Ukraine submits that there are systematic violations of Article 5 by Russia with respect to the Ukrainian political prisoners."

1248. The applicant Government outlined their complaint under Article 6 of the Convention as follows (some references omitted):

"The Russian Government violates in various respects Article 6 of the Convention, in particular:

- falsification of evidence, ... conviction in [the] absence of direct evidence, using of ... staged interrogation videos in ... court;

- using of self-incriminating statements for conviction, even where a person retracted them, stating during the trial that they had been obtained under [torture]; convicting without due investigations of the complaints [of torture] and ill-treatment; using evidence forced from witnesses and co-accused to sentence a person, even where the evidence is retracted at the trial;

- obstruction of the access of ... lawyers to ... political prisoners: keeping the prisoners incommunicado for lengthy periods of time, which prevents them from engaging ... lawyers of their choosing; illegal refusals to allow visits to clients, forcing detainees to refuse [those] from ... lawyers; involvement of State-appointed lawyers, who are not acting in the best interest of the clients even if there is an available lawyer of the client's choosing; creation of barriers in access of lawyers to the defendant (detainees are kept in those pre-[trial] detention centres or prisons which are contrary to the decisions of the court [on] arrest);

- extensive media campaigns in the State-owned media, describing the detainees as perpetrators and political enemies, which violates the presumption of innocence;

- refusal to inform Ukrainian diplomatic authorities, as well as their relatives, [of the] prosecution of Ukrainians and failure to provide the relevant information in time; refusal to grant visit[s] of Ukrainian diplomats to detainees;

- use of torture, [and] physical and psychological pressure.

The Government of Ukraine states that all the above breaches a[re] related to the fact that the cases at issue are falsified to a significant extent or are based on clearly inadmissible evidence, and Russian authorities try to limit public access to them, including for lawyers engaged by relatives of prisoners and Ukrainian diplomats. The case of Mr Prysych is a good example, since his detention was linked with cases of so-called saboteurs Mr Panov and Mr Zakhtey, but eventually he was sentenced only for alleged drugs possession ...

The same approach is applied to the cases of so-called ‘spies’ and ‘terrorists’ which are classified by Russian Federation, which undertook all possible steps to hide information and details of the cases. Persons are convicted on very strange, suspicious and sometimes outright absurd charges ...

All above amount to violation[s] of [the] right to [a] fair trial under Article 6 of the Convention, including §§ 1, 2, 3 (c), 3 (d) of Article 6. Cumulatively these violations created in the proceedings against the Ukrainian political prisoners [an] atmosphere not dissimilar [to] the infamous Moscow Trials of 1930s, when persons were convicted publicly on the basis of absurd charges, on the ground of the evidence either forged or obtained by torture from the convict or his ‘accomplices’.”

1249. The applicant Government further complained of an administrative practice in breach of Article 7 of the Convention on account of the retrospective and extensive application of Russian criminal law to events which occurred in Ukraine. They outlined their complaint under this head as follows:

“A number of political prisoners [have] been prosecuted and convicted for actions that took place in Ukraine, including ... actions committed in Crimea prior [to the] 2014 annexation or for actions that are not crimes under ... Ukrainian law.

In spite of the prohibition [on] the occupying power [applying] its own criminal law in occupied territories, established by international humanitarian law, [this] is exactly what the Russian Federation resorts to in Crimea. Now members of the Ukrainian organisations banned in Russia in November 2014, [and] followers of Muslim organisations and movements which have never been illegal in Ukraine are criminally responsible under Russian legislation only due to the fact of their membership ...

Crimean ‘courts’ resort to retrospective application of the law and they investigate and sentence in connection with events that [had] taken place before the Crimea was occupied (case of 26 February) ...

In addition they also resort to retrospective application of the law in cases in connection with events that [had] taken place on the mainland of Ukraine before the Crimea was occupied (cases of Maidan activists) ...

There is also another category of cases in Crimea, when ‘courts’ convict persons for their membership or following of some Muslim organisations and movements that are legal in Ukraine, and banned in Russia ...

The R[ussian] F[ederation], being an occupation power for Crimea, is prohibited from applying the R[ussian] F[ederation] criminal legislation in the temporarily occupied territory of the Crimea as this violates Article 43 of [the Convention on] Laws and Customs of War on Land (Hague IV) of 18 October 1907 ... and Article 64 of [the Fourth] Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 ... Article 64 expresses a fundamental notion: that the penal legislation in force must be respected by the Occupying Power, which is an application of a basic principle of the law of occupation ...Both Ukraine and Russia are parties to the above international instruments.

The Russian Federation also extended its legislation to the events in Ukraine which are not punishable under the Ukrainian law. Thus, the members of Ukrainian organisations such as ‘Right Sector’, UNA-UNSO, UPA, Stepan Bandera All-Ukrainian organisation ‘Tryzub’ and organisation ‘Bratstvo’, not prohibited in

> Ukraine, are treated in Russia as extremists or terrorists ... and are convicted for their actions in Ukraine which Ukrainian law regards as perfectly lawful. ...
>
> There is another category of cases related [to] prosecution of Ukrainian[s] for ... crimes allegedly committed in the occupied territory of |the] Donetsk and Luhansk Regions. Thus, in the context of the war against Ukraine on the East the Russian Federation on the basis of the principle of the so-called 'universal jurisdiction' extended its criminal law to the territory which the Russian domestic law does not regard as a part of the Russian territory.
>
> In the Russian Federation, the possibility of using this principle is set forth in Article 12(3) of the RF Criminal Code on the application of the rules of the Code with respect to foreign citizens and stateless persons not residing permanently in the Russian Federation, in the cases provided for in international treaties: the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977.
>
> With this propose in June 2014 ... Russia's Investigative Committee set up a special department for investigation of international crimes committed against [the] civil[ian] population in Ukraine. The newly formed department is working for persecution [of] all Ukrainian militants and individuals for allegedly committed crimes against civilians living in the occupied territory of Eastern Ukraine.
>
> Being guided by the provisions of Article 12 of the [Russian Federation] Criminal Code the Investigative Committee initiate[s] criminal cases on using prohibited means and methods of warfare (Article 356 of the Russian Criminal Code) ..."

(ii) The respondent Government

1250. The respondent Government did not provide any comments as regard the substance of these specific complaints in their memorial submitted on 28 February 2022 apart from providing some factual information with regard to certain individuals (albeit not supported by evidential material).

(b) The Court's assessment

(i) Relevant international humanitarian law

1251. In relation to the arguments put forward explicitly or implicitly under Article 7 of the Convention, the applicant Government referred to the provisions of Article 43 of the Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention (see paragraphs 935 and 936 above) in order to highlight the basic principle under IHL according to which the penal legislation in force in an occupied territory must be respected by the Occupying Power. Having regard to the extent of the applicant Government's arguments, the Court considers that the provisions of Articles 65, 67 and 70 of the 1949 Fourth Geneva Convention are equally relevant in the present case. The provisions of Article 65 (see, for the provisions of Articles 67 and 70, paragraph 1008 above) read, in so far as relevant, as follows:

Article 65 - Penal legislation. II. Publication

> "The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive."

1252. The Court takes account of the explanations provided in the 1958 Commentary to the Fourth Geneva Convention (ICRC, *Commentary, IV Geneva Convention*, cited above, pp. 338, 341-42 and 349-50) with respect to the three above-mentioned articles.

1253. As regards Article 65, the Commentary states the following:

> "The clause stipulating that penal provisions cannot be made retroactive in their effect expresses a fundamental principle of law ...The non-retroactivity of penal law is absolute: in exercising penal jurisdiction, the Occupying Power will not be able to depart from established practice; that rule provides the population of the occupied territory with an important safeguard against persecution."

1254. With regard to Article 67, the Commentary states, in particular:

> "Article 67 relates to the military courts before which the Occupying Power may bring accused persons under the terms of the preceding Article.
>
> The object of the provision is to limit the possibility of arbitrary action by the Occupying Power by ensuring that penal jurisdiction is exercised on a sound basis of universally recognized legal principles. The rule that penal laws cannot be retroactive, which is stated here in general terms, had already been mentioned at the end of Article 65. Nullum crimen, nulla poena sine lege is a traditional principle of penal law. There can be no offence, and consequently no penalty, if the act in question is not referred to in a law in force at the time it was committed and subject to punishment under that law."

1255. As regards Article 70, the Commentary states, in particular:

> "'The principle'
>
> The government experts who met in 1947 under the auspices of the International Committee of the Red Cross had already condemned certain punitive measures taken by an Occupying Power in respect of events which had occurred before the occupation or acts committed during a temporary interruption of the occupation. The inhabitants of the occupied country had been punished for having helped their own country's troops or those of its allies, for having belonged to a political party banned by the occupying authorities and for having expressed in the Press or in broadcasts political opinions which conflicted with the occupant's views. The clause under discussion was adopted in order to avoid such measures being taken in the future. It covers not only the action of private individuals, but also legal action taken by a magistrate or official of the occupied territory in carrying out his public duties. The rule limiting the jurisdiction of the Occupying Power to the period during which it is in actual occupation of the territory is based on the fact that occupation is in principle of a temporary nature.
>
> The Occupying Power is therefore legally entitled to exercise penal jurisdiction in the occupied country in respect of acts which occur during occupation, and in respect of such acts only.
>
> 'Exception'

> There is one very important exception to this rule: when a protected person is guilty of breaches of the laws and customs of war, the occupying authorities are entitled (and it is even, as will be seen, their duty) to arrest and prosecute him, irrespective of the date of the offence. This is the only case in which the Convention authorizes the Occupying Power to prosecute and punish a protected person for acts committed before the territory was occupied, or during a temporary interruption of the occupation.
>
> The expression 'laws and customs of war' covers the whole of the rules relating to the conduct of hostilities and to the treatment of war victims, particularly under the Geneva Conventions, the Hague Regulations, and unwritten international law.
>
> ...
>
> Repression in such cases is based on the principle that penal legislation relating to war crimes is of universal application. Whereas an ordinary criminal breaks only the law of the country, a war criminal breaks an international law or custom. The punishment of such crimes is therefore as much the duty of a State which becomes the Occupying Power as of the offender's own home country. The universal character of the law implies universal jurisdiction.
>
> ..."

1256. In the light of their content and the explanatory comments thereto, the Court considers that not only are the above-mentioned provisions not in conflict with the provisions of the Convention and in particular with the terms of Article 7 thereof, but they also appear to be complimentary.

(ii) General principles under Articles 5, 6 and 7 of the Convention, notably concerning the lawfulness of acts

1257. The Court notes that the applicant Government contended that there existed a policy of persecution of "Ukrainian political prisoners" through their arrest, pre-trial detention, prosecution and conviction on fabricated charges and without fair trial. They submitted that the unlawful detention and imprisonment of "political prisoners" had been based on the (often retrospective and extensive) application of Russian criminal law by both Crimean "courts" and Russian courts, as of March 2014.

1258. As regards most specifically the applicant Government's arguments under Article 6 of the Convention in their application form, the Court observes that they mainly concern issues related to the fair-trial requirement (see paragraph 1248 above). Nevertheless, these arguments have to be interpreted in the light of the overall submissions taken as a whole in that the applicant Government ultimately complained under Article 6 of the Convention about the extension of the laws of the Russian Federation to Crimea and the resulting effect that courts in Crimea had been set up under, and (were required to and) did apply, the substantive and procedural laws of the Russian Federation, in violation of Ukrainian law (see considerations above under section I.F).

1259. Given that the measures complained of were taken by the authorities established by the Russian Federation in Crimea (namely, the

prosecution and judicial authorities) pursuant to Russian law, the Court considers that the main question to be examined pertains to the lawfulness of those measures, in the light of the overarching principle of the rule of law inherent in the Convention system. Therefore, in addition to the principles set out in paragraph 1010 above in relation to Article 6, the Court's principles concerning the lawfulness of acts complained of under Articles 5 and 7 of the Convention will be set out below.

1260. The general principles concerning Article 5 of the Convention, set out in numerous judgments, were summarised, in so far as relevant, in *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, §§ 311-313, 22 December 2020) as follows:

> "311. The Court reiterates firstly that Article 5 of the Convention guarantees a right of primary importance in a 'democratic society' within the meaning of the Convention, namely the fundamental right to liberty and security (see *Assanidze v. Georgia* [GC], no. 71503/01, § 169, ECHR 2004-II). Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of the individual, and as such its importance is paramount (see *Buzadji*, cited above, § 84). Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 461, ECHR 2004-VII).
>
> 312. All persons are entitled to the protection of that right, that is to say, not to be deprived, or to continue to be deprived, of their liberty (see *Weeks v. the United Kingdom*, 2 March 1987, § 40, Series A no. 114), save in accordance with the conditions specified in paragraph 1 of Article 5 of the Convention. Three strands of reasoning in particular may be identified as running through the Court's case-law: the exhaustive nature of the exceptions, which must be interpreted strictly, and which do not allow for the broad range of justifications under other provisions (Articles 8 to 11 of the Convention in particular); the repeated emphasis on the lawfulness of the detention, both procedural and substantive, requiring scrupulous adherence to the rule of law; and the importance of the promptness or speediness of the requisite judicial controls (see *Buzadji*, cited above, § 84, and *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 73, 22 October 2018).
>
> 313. Where the 'lawfulness' of detention is in issue, including the question whether 'a procedure prescribed by law' has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. This primarily requires any arrest or detention to have a legal basis in domestic law (see *Mooren v. Germany* [GC], no. 11364/03, § 72, 9 July 2009, with further references)."

1261. Moreover, in order to meet the requirement of lawfulness, the Convention refers not only to national law but also, where appropriate, to other applicable legal standards, including those which have their source in international law (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 79, ECHR 2010 and *Toniolo v. San Marino and Italy*, no. 44853/10, § 46, 26 June 2012) or European law (see *Pirozzi v. Belgium*, no. 21055/11, §§ 45-46, 17 April 2018, concerning detention on the basis of a European Arrest Warrant).

1262. The general principles as regards Article 7 of the Convention, were set out as follows in *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 237-38 and 241, 26 September 2023), in so far as relevant:

> "237. The guarantee enshrined in Article 7 of the Convention, which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 of the Convention in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 92, 17 September 2009, and *Del Río Prada*, cited above, § 77, each with further references).
>
> 238. Article 7 of the Convention is not confined to prohibiting the retroactive application of criminal law to the disadvantage of an accused. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that criminal law must not be extensively construed to the detriment of an accused, for instance by analogy. From these principles it follows that an offence must be clearly defined in law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable. When speaking of 'law', Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises written as well as unwritten law and implies qualitative requirements, notably those of accessibility and foreseeability (see, among other authorities, *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97, 44801/98, § 50, ECHR 2001-II, and *Del Río Prada*, cited above, § 91).
>
> ...
>
> 241. The Court has stressed, however, that its powers of review must be greater when the Convention right itself, Article 7 in the present case, requires that there was a legal basis for a conviction and sentence (see, amongst others, *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, § 71, 26 April 2022). Article 7 § 1 requires the Court to examine whether there was a contemporaneous legal basis for the applicant's conviction and, in particular, it must satisfy itself that the result reached by the relevant domestic courts was compatible with the object and purpose of that provision. To accord a lesser power of review to this Court would render Article 7 devoid of purpose (see *Kononov*, cited above, § 198, and *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 52, ECHR 2015)."

(iii) Application of the above principles to the facts of the present case

1263. As explained above, the gist of the applicant Government's allegations under Articles 5, 6, and 7 of the Convention refer to multiple instances of alleged arrest, pre-trial detention, prosecution and conviction of "political prisoners" within the framework of criminal proceedings attributed to agents of the Russian authorities (see paragraph 1257 above).

1264. In this connection, the Court notes that the applicant Government submitted a body of information and evidence from many different sources in relation to the alleged infringements of the rights of "Ukrainian political

prisoners" which occurred in Crimea after March 2014: resolutions of the Council of Europe and other international bodies; reports by IGOs, including the OHCHR, the Commissioner for Human Rights, and the ODIHR-HCNM; reports of NGOs; documents issued by government bodies; witness evidence; media articles; news items; and, importantly, case material from the criminal proceedings conducted against the prisoners in question. All those sources described measures consisting in the arrest, placement in pre-trial detention and conviction by the courts established by the Russian Federation in Crimea of members of different groups of Ukrainians for having exercised, *inter alia*, their freedom of expression, freedom of association or freedom of peaceful assembly, reasons which will be examined in more detail below (for an outline of the different types of deprivation of liberty, see paragraphs 132-35 of the IPHR 2016 Report, A 116).

1265. As argued by the applicant Government and not contested by the respondent Government, those measures were based on the application of the law of the Russian Federation, or the laws of the local authorities in Crimea passed following the "Accession Treaty", as derivatives of Russian law. At this point, the Court refers to its previous conclusions to the effect that the respondent State extended the application of its law to Crimea in contravention of the Convention, as interpreted in the light of IHL, and that, accordingly, Russian law cannot be regarded as "law" within the meaning of the Convention (see paragraph 946 above). In addition, it has found that the courts in Crimea could not be considered to have been "established by law" within the meaning of Article 6 of the Convention (ibid.). Therefore, the Court considers that the administrative practice under this head, for which the respondent State did not deny responsibility (since it had been carried out by the prosecution and judicial authorities established in Crimea), cannot be regarded as "lawful". The regulatory nature of the alleged practice and its scale and intensity, supported by the above-mentioned evidence, confirm the existence of both the "repetition of acts" and the "official tolerance" elements of an administrative practice under this head.

1266. Having regard to the specific arguments of the applicant Government, the Court considers that certain aspects of the administrative practice deserve further consideration.

1267. On the basis of the evidence adduced, the Court observes that the courts established by the Russian authorities in Crimea adjudicated criminal cases in connection with events that had taken place before Russia had established effective control over Crimea (on 27 February 2014) and, in any event, before the application of Russian criminal law in the territory of Crimea (on 18 March 2014). In the so-called "Case of 26 February", nine Crimean Tatars who had participated in a rally in support of the territorial integrity of Ukraine, which had taken place on 26 February 2014 in front of the building of the ARC Supreme Council, were detained and/or convicted

for organising and participating in mass disorder (see paragraphs 388 et seq. and the materials referred to therein and A 187).

1268. In the same vein, proceedings were opened with regard to the participation in January and February 2014 in the Euromaidan protests which took place in Kyiv, following which proceedings Mr Oleksandr Kostenko and Mr Andrii Kolomiyets were convicted of carrying out attacks on agents of a special forces unit (see paragraphs 410 et seq. and the evidence referred to therein). The respondent Government acknowledged the existence and the scope of those criminal proceedings as well as the imprisonment of the persons concerned (see paragraphs 784 et seq. and 808 et seq.).

1269. The proceedings have been widely criticised as running counter to both international human rights and humanitarian law treaties (see the OHCHR Reports on the human rights situation in Ukraine covering the periods 16 February-15 May 2016 and 16 May-15 August 2016; the 2017 and 2018 OHCHR Reports; the 2015 ODIHR-HCNM Report; and the 2017 Report of the International Expert Group; A 100-03, 108 and A 461-62). It was further reported that sentences retroactively implementing Russian Federation law had been imposed on five other individuals in connection with social media posts allegedly containing symbols, slogans or statements of organisations banned in the Russian Federation or materials considered to be extremist (see paragraph 19 of the 2018 OHCHR Report, A 103).

1270. In this connection, it appears from the legislation enacted in Crimea, namely Federal Law no. 91-FZ of 5 May 2014, that the issue of whether an act committed on the territory of Crimea prior to 18 March 2014 constituted a criminal offence and was punishable by criminal law was to be decided on the basis of the criminal law of the Russian Federation (A 9). With reference to the information before it, the Court observes that the Crimean “courts” held several persons who had participated in the 26 February 2014 rally in Simferopol criminally liable for their actions, referring to the above-mentioned provisions and/or those of Article 12 § 3 of the CrCRF enshrining the concept of extraterritorial application of Russian criminal law (A 4). The jurisdiction of the same Crimean “courts” to adjudicate cases regarding the criminal liability of persons who had participated in the Euromaidan protests in Kyiv was also justified by reference to the provisions of Article 12 § 3 of the CrCRF (A 521 and 524).

1271. At this point, the Court observes firstly that IHL is to be taken into account in the interpretation of the provisions of the Convention in the present case. It refers to the provisions of the Fourth Geneva Convention which prescribe: (i) that penal laws of the displaced sovereign State’s legal system should remain in force; (ii) that the occupying power is entitled to exercise penal jurisdiction in the occupied territory in respect of acts which occur during occupation, and in respect of such acts only; (iii) that the courts in the occupied territory should only enforce laws that were applicable prior to any alleged offence; (iv) that an occupying power should not arrest, prosecute or

convict protected persons for acts committed or for opinions expressed before the occupation, with the exception of breaches of the laws and customs of war (see paragraphs 1251-56 above); and (v) that the courts of law established before the occupation should continue to function (see paragraph 940 above). As can be seen from the explanatory comments, these provisions are aimed at avoiding the punishment of inhabitants of an occupied territory for having helped their own country's troops or those of its allies, for having belonged to a political party banned by the occupying authorities or for having expressed political opinions which conflict with the occupant's views (see paragraph 1255 above).

1272. Against this background, the Court observes not only that the acts which were the subject of the above-mentioned proceedings took place before the Russian Federation had established effective control over Crimea (on 27 February 2014), but also that, as a matter of international law (including the Convention), the courts in Crimea, comprising judges assigned by Ukrainian authorities, were required to assess individual acts by reference to the requirements of Ukrainian and not Russian law. It is the Court's view, therefore, that the proceedings before and decisions of the Crimean "courts" ran counter to the principle of the non-retroactivity of the criminal law enshrined in Article 7 of the Convention, as interpreted in the light of IHL. The Court observes in addition that several IGO and NGO reports criticised the retroactive application of criminal law by the Crimean "courts" (see paragraph 77 of the 2017 OHCHR Report; paragraph 19 of the 2018 OHCHR Report; paragraphs 146 and 236 of the 2015 ODIHR-HCNM Report; and paragraph 134 of the 2016 IPHR Report, A 102-03, 108 and 116).

1273. Secondly, even assuming that the Crimean "courts" correctly applied Russian law, the Court notes further shortcomings. Indeed, by referring to the general provisions of the CrCRF regarding the extraterritorial application of Russian criminal law (A 4), the Crimean "courts" intended to protect the interests of Russian nationals (the "passive personality principle"), given that the victims in both groups of cases allegedly held Russian nationality. However, the Court takes note of the international reports which, with reference to the case material, contested the factual basis of the convictions in question. It refers to the 2017 Report of the International Expert Group which stated that among the numerous alleged victims of the mass disorder of 26 February 2014, only two alleged victims were Russian nationals, in respect of whom there was no evidence of any injuries sustained or of any medical care needed (A 460). It also has regard to the press release published by the Memorial Human Rights Centre reporting information about Mr Oleksandr Kostenko, according to which the offence he was charged with had been perpetrated on 18 February 2014, in Kyiv, when both the accused and the victim were Ukrainian nationals (A 515). In this connection, the Court cannot but note the vaguely defined conditions for the application of the

protective jurisdiction under Article 12 § 3 of the CrCRF which confer broad discretion and powers on the law-enforcement authorities.

1274. Having regard to the above considerations, the Court finds that, even assuming that the arrest, prosecution and conviction of the persons concerned (as illustrative examples of a wider administrative practice) had a legal basis, the application of the criminal-law provisions by the Crimean "courts" in the "case of 26 February" and with reference to the "Euromaidan protesters" was extended in an unforeseeable manner, contrary to the object and purpose of Article 7 of the Convention.

1275. The Court notes that another set of events which was highlighted by the applicant Government in their submissions with a view to emphasising the effects of the application of Russian laws in Crimea relates to the arrest by Crimean "courts" of Ukrainian nationals on suspicion of affiliation with Muslim organisations and movements that were lawful in Ukraine, but banned in Russia.

1276. In this connection, the Court notes that the Russian authorities established in Crimea conducted a large number of extensive searches and seizures of banned literature from Crimean Tatars and many Crimean residents received administrative fines for production and mass distribution of extremist materials, while others were criminally prosecuted for alleged extremist activities (see paragraph 555 above).

1277. As submitted by the applicant Government and confirmed by authoritative international reporting, one of the main targets of the authorities in Crimea were Crimean Muslims who were deemed by the Russian authorities to be followers of Hizb ut-Tahrir. That organisation had been declared a terrorist organisation and banned in Russia by a judgment of the Supreme Court of the Russian Federation of 14 February 2003, thus before the imposition of Russian laws in Crimea criminalising such conduct. It follows from the evidence submitted by the applicant Government that the mere suspicion of affiliation with Hizb ut-Tahrir had in practice triggered the detention of numerous Crimean Muslims without any evidence that they posed an actual threat to society by planning or undertaking concrete actions, let alone a terrorist act (see the section on "Persecution of Muslims" above, and paragraph 30 of the 2018 OHCHR Report, A 103). In this connection, the 2022 report of the UN Secretary-General stated that "since the beginning of the occupation, the Russian authorities have arrested no fewer than 91 men for their alleged affiliation with [Hizb ut-Tahrir]" (see paragraph 14 of the Report, A 95), while the Commissioner for Human Rights noted that "as of February 2023 there were at least 98 Crimean Tatars prosecuted and detained for their alleged membership or affiliation with Hizb ut-Tahrir" (see paragraph 17 of the 2023 Commissioner's Report, A 74).

1278. Having regard to all these factors, the Court concludes that there has been a violation of Articles 5, 6, 7 of the Convention on account of an ongoing administrative practice of unlawful deprivation of liberty,

prosecution and conviction of "Ukrainian political prisoners" based on the application of Russian law in Crimea and the finding that the courts in the territory of Crimea could not be considered to have been "established by law" within the meaning of Article 6 of the Convention. The Court is also satisfied that the ongoing administrative practice has continued after the allegations in this respect were lodged with the Court on 10 August 2018 and that therefore no issue arises under the six-month rule.

E. Alleged violation of Article 8 of the Convention (transfer of prisoners)

1279. In application no. 38334/18, the applicant Government submitted that the relocation of "Ukrainian political prisoners" to penal facilities on the territory of the Russian Federation constituted an administrative practice in breach of Article 8 of the Convention. In their memorial of 28 December 2018, within the framework of application no. 20958/14, the applicant Government submitted more generally, under the same Article of the Convention, that "a sizeable number of convicts have been transferred to the Russian Federation ... transfers of pre-trial detainees have also taken place." Having regard to the significant overlap between the two claims of an administrative practice (see also § 446 of the admissibility decision), the Court will examine them together.

1280. Article 8 of the Convention reads:

> "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."

1. *Admissibility*

1281. The Court finds that the present complaint does not fall short of the prima facie evidential threshold, and that it complies with the six-month time-limit for reasons which will be explained below. It must therefore be declared admissible.

2. *Merits*

(a) The parties' submissions

(i) The applicant Government

1282. The applicant Government submitted that the practice of transfers of prisoners from Crimea to penal facilities in the Russian Federation was in breach of their rights to respect for their private and family life. They argued

that this practice of transfers also reflected a policy of altering the demographic composition of Crimea.

1283. The practice of forcibly transferring prisoners from Crimea to facilities on the territory of the "occupying power", often several thousand kilometres from their homes, had resulted in an unjustified infringement of the Article 8 rights of the prisoners, in particular in relation to their family lives. Regard had to be had as well to other infringements relating to the lack of consular and spiritual assistance or the impossibility of receiving parcels from relatives.

1284. The applicant Government submitted that in addition to the general principles under Article 8 of the Convention, IHL (reference was made to Articles 49 and 76 of the Fourth Geneva Convention; see paragraph 1288 below) strictly prohibited the forcible transfers of protected persons, including detainees, from an occupied territory to the territory of the occupying power, regardless of the motives for such transfers.

1285. The applicant Government contended that, in light of the applicable IHL, by virtue of which the law applicable in Crimea should have been Ukrainian and not Russian law, the interference with the private and family life of the prisoners could not be regarded as having been "in accordance with the law". Furthermore, the respondent Government had not demonstrated that such transfers had been in pursuit of a legitimate aim, necessary and proportionate. They were sufficiently numerous and interconnected to amount to a pattern or system of violations, thus satisfying the requisite "repetition of acts" element. As to "official tolerance", the applicant Government noted that this practice had been carried out, on a regular basis, by regular agencies of the respondent State. There had been no recognition that the practice was unlawful, still less any sign that the respondent State planned to change course.

1286. The applicant Government made similar contentions within the framework of application no. 38334/18 in relation to the specific group of "Ukrainian political prisoners". For illustrative purposes they referred to nine specific accounts regarding relocation of prisoners arrested in Crimea (and some convicted in Russia) to penal facilities situated several thousand kilometres from their place of residence. The applicant Government concluded that the placement of the "Ukrainian political prisoners" in remote prisons not only unreasonably complicated their relatives' access to them, but it also forcefully placed them in a foreign local culture with alien customs.

(ii) The respondent Government

1287. The respondent Government did not submit any information or evidence concerning the alleged relocation of prisoners from Crimea to penal facilities in the Russian Federation.

(b) The Court's assessment

(i) Relevant international humanitarian law

1288. The applicant Government referred to Articles 49 and 76 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which read as follows:

Article 49 – Deportations, transfers, evacuations

"Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."

Article 76 – Treatment of detainees

"Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health.

They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly".

1289. Having regard to the scope of the complaints raised in the present case, there is no conflict between Article 8 of the Convention and the above-mentioned IHL, which provide, in so far as relevant to the present case, that protected persons (that is, those who, at a given moment and in any manner whatsoever, find themselves, in the event of a conflict or occupation, in the hands of a party to the conflict or an occupying power of which they are not nationals) should not be transferred or deported from the occupied territory to the territory of the occupying power and that protected persons accused of offences should be detained in the occupied country, and if convicted, should serve their sentences in that country. These provisions appear to be complementary as will be seen from the analysis below.

(ii) General principles under Article 8 of the Convention

1290. The general principles under Article 8 were summarised as follows, in so far as relevant to the situation of prisoners, in *Polyakova and Others v. Russia* (nos. 35090/09 and 3 others, §§ 81, 84-85 and 87-89, 7 March 2017; some references omitted):

> "81. The Court has already established that it is an essential part of a prisoner's right to respect for family life that the authorities enable him or her, or if need be assist him or her, to maintain contact with his or her close family (see, with further references, *Khoroshenko*, cited above, § 106), and that, on the issue of family visits, Article 8 of the Convention requires States to take into account the interests of the convict and his or her relatives and family members (ibid., § 142). The Court has also found that placing a convict in a particular penal facility may raise an issue under Article 8 of the Convention if its effects on his or her private and family life go beyond the 'normal' hardships and restrictions inherent in the very concept of imprisonment (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 837, 25 July 2013), and that, in that case, given the geographical situation of remote penal facilities and the realities of the Russian transport system, both prisoners sent to serve a sentence far from their home and members of their families suffered from the remoteness of the facilities (ibid., § 838).
>
> ...
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> 84. The essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by public authorities. This provision protects, in particular, a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). It is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 74, ECHR 2002-VI).
>
> 85. Any interference with a right protected by the first paragraph of Article 8 of the Convention must be justified in terms of the second paragraph, namely as being 'in accordance with the law' and 'necessary in a democratic society' for one or more of the legitimate aims listed therein. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate aims pursued by the authorities (see, with further references, *V.C. v. Slovakia*, no. 18968/07, § 139, ECHR 2011 (extracts)).

...

87. The Court reiterates that the very essence of the Convention is respect for human dignity (see *Pretty*, cited above, § 65). Prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention. There is no question that a prisoner forfeits his Convention rights because of his status as a person detained following conviction (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, §§ 69-70, ECHR 2005-IX). Any restriction on the Convention rights of a prisoner must be justified in each individual case. This justification can flow, *inter alia*, from the necessary and inevitable consequences of imprisonment or from an adequate link between the restriction and the circumstances of the prisoner in question (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 68, ECHR 2007-V).

88. The Court further reiterates that rehabilitation, that is, the reintegration into society of a convicted person, is required in any community that established human dignity as its centrepiece (see *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 113, ECHR 2013 (extracts)). Article 8 of the Convention requires the State to assist prisoners as far as possible to create and sustain ties with people outside prison in order to promote prisoners' social rehabilitation. In this context the location of the place where a prisoner is detained is relevant (see *Khodorkovskiy and Lebedev*, cited above, § 837). While punishment remains one of the aims of imprisonment, the emphasis in European penal policy is now on the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence (see *Vinter and Others,* cited above, § 115). The principle of rehabilitation has not only been recognised, but has over time also gained increasing importance in the Court's case-law under various provisions of the Convention (see, with further references, *Murray v. the Netherlands* [GC], no. 10511/10, § 102, ECHR 2016). Notwithstanding the fact that the Convention does not guarantee, as such, a right to rehabilitation, the Court's case-law thus presupposes that convicted persons, including life prisoners, should be allowed to rehabilitate themselves (ibid., § 103).

89. Regarding visiting rights, the State does not have a free hand in introducing restrictions in a general manner without affording any degree of flexibility for determining whether limitations in specific cases are appropriate or indeed necessary, especially regarding post-conviction prisoners (see, with further references, *Khoroshenko*, cited above, § 126). According to the European Prison Rules (...), national authorities are under an obligation to prevent the breakdown of family ties and provide prisoners with a reasonably good level of contact with their families, with visits organised as often as possible and in as normal manner as possible (ibid., § 134). The margin of appreciation left to the respondent State in the assessment of the permissible limits of the interference with private and family life in the sphere of regulation of visiting rights of prisoners has been narrowing (ibid., § 136)."

1291. The Court underlines that the general principles on Article 8 regarding the prisoners' right to respect for their family life set out above have been developed in intra-State situations, namely where individuals are tried, convicted and imprisoned in a respondent State and then placed in prison far away, within the jurisdiction of that State, from their families. It considers however that those principles are also applicable *mutatis mutandis* to the present context concerning the transfers of prisoners from Crimea to the Russian Federation.

(iii) Application of these principles in the present case

1292. The Court observes at the outset that the 2017 OHCHR Report noted that "a sizeable number of Crimea's prison population was transferred to the Russian Federation" and that "transfers of pre-trial detainees have also taken place". It explained that a key reason for this situation was "the lack of specialised penitentiary facilities in Crimea, which ... led to the transfer of juveniles in conflict with the law, people sentenced to life imprisonment, and prisoners suffering from serious physical and mental illnesses. In addition, Crimea having no prisons for women, 240 female detainees convicted by Crimean courts were sent to the Russian Federation between 18 March 2014 and 15 June 2016 to serve their sentences" (see paragraphs 116-17 of the report – A 102). While the Russian Federation authorities did not publicly report on the number of such transfers (see paragraph 30 *in fine* of the 2019 report of the UN Secretary-General, A 93), relevant information in this respect was obtained by the Ukrainian authorities or several NGOs. In this connection, the 2018 OHCHR Report noted that the Government of Ukraine had identified 255 Ukrainian detainees who were transferred from Crimea to various penal institutions in the Russian Federation since March 2014 and that the NGOs Ukrainian Helsinki Human Rights Union and Regional Centre for Human Rights had claimed that such transfers had involved at least 4,700 detainees (see paragraph 77 of the report, A 103). In addition, according to the 2016 IPHR Report, up to 2,200 Ukrainian detainees located in Crimean prisons had been involuntarily transferred to other facilities in the Russian Federation (see paragraphs 144 and 162 of the report, A 116). More recently, the Regional Center for Human Rights had claimed that "as of 2022 the Russian Federation had transferred more than 12,500 convicts from the occupied Crimean Peninsula to its territory" (A 140). Importantly, according to the 2020 report of the UN Secretary-General, "the Russian authorities in Crimea continued to transfer prisoners from Crimea to the Russian Federation, where they faced trial or served prison sentences" (see paragraph 22 of the report, A 94). Although the above-mentioned accounts do not enable it to determine the exact number of detainees transferred from Crimean custodial facilities to those of the Russian Federation, the Court is satisfied that they disclose the existence of a practice of such transfers carried out by Russian law-enforcement authorities. This is all the more so given the absence of any information to the contrary provided in this respect by the respondent Government either before the Court or in the public domain.

1293. Moreover, the Court considers that the situation of the "political prisoners" indicated by the applicant Government illustrates the long distances separating them from their place of residence (see accounts concerning Mr Kostenko, Mr Zeytullayev, Mr Saifullayev, Mr Vaitov, Mr Primov, Mr Sentsov, Mr Afanasiev, Mr Kolchenko and Mr Cherniy). For the Court, it stands to reason that the prisoners concerned by those transfers had some family members who remained in Crimea, for whom the separation

entailed hardship. The Court has found in cases against Russia that transfers to a remote penal facility of prisoners tried and convicted in Russia by the Russian courts constituted an interference with the right to respect for the family life of prisoners under Article 8 of the Convention. It had regard in particular to the long distances involved, the geographical situation of the colonies concerned and the realities of the Russian transport system, which rendered a trip from the applicants' home city to their colonies a long and exhausting endeavour, especially for their young children. As a result, the applicants received fewer visits from their families (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 838, 25 July 2013). Regard must also be had to the limited prospects of any such visits carried out during a time of war. In sum, with reference to the information before it, the Court finds that the measures complained of amounted to an interference with the prisoners' right to respect for their family life under Article 8 of the Convention.

1294. The Court thus considers that there is sufficient evidence proving to the appropriate standard of proof that there have been numerous and interconnected instances of transfers of prisoners constituting interference with their right to respect for their family life protected by Article 8 of the Convention. The Court has to determine whether the interference was justified under paragraph 2 of this Article – in other words, whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve that aim or those aims.

1295. In the present case, it is not apparent from the case materials which specific legal basis was relied on for the transfer of Ukrainian prisoners from Crimea to penal facilities in the Russian Federation. Nevertheless, it follows from the above-mentioned international reports that they had been transferred either to serve a sentence already imposed on them in Crimea or to first stand trial in Russia and then serve any ensuing sentence imposed on them. In this context, the Court does not find it unreasonable to assume that the transfers had been authorised pursuant to the relevant Russian laws and by-laws generally applied in Crimea (see also paragraph 111 of the 2017 OHCHR Report, according to which "all four [penal] institutions have been integrated into the penitentiary system of the Russian Federation, which led to the transfer of hundreds of detainees held in Crimea to penitentiary institutions in the Russian Federation", A 102; and paragraph 23 of the 2019 report of the UN Secretary-General, A 93). This was also the position argued by the applicant Government and not contested by the respondent Government.

1296. At this point, the Court refers to its previous conclusions to the effect that the respondent State extended the application of its law to Crimea in contravention of the Convention, as interpreted in the light of IHL, and that, accordingly, Russian law cannot be regarded as "law" within the meaning of the Convention. The Court considers that the administrative

practice under this head, for which the respondent State did not deny responsibility (since it had been carried out by officials of penal establishments in Crimea), cannot be regarded as "lawful" (see paragraph 946 above).

1297. In the circumstances mentioned above, the Court is satisfied that it has sufficient evidence in its possession to enable it to conclude beyond reasonable doubt that there was "an accumulation of identical or analogous breaches" of the right to respect of family life "which are sufficiently numerous and interconnected" to amount to "a pattern or system" on a large scale and of considerable intensity. In any event, the regulatory nature of the alleged practice confirms the existence of both the "repetition of acts" and "official tolerance" elements of the administrative practice under this head.

1298. The Court considers it necessary to set out the following additional considerations.

1299. In *Polyakova and Others* (cited above) the Court analysed the Russian domestic legal system in the context of the geographical distribution of prisoners (ibid., §§ 90-115) and found a violation of Article 8 of the Convention. It found that at the material time the applicable Russian law (namely the Code of Execution of Sentences – "the CES") contained "no requirement obliging the FSIN [Russia's Federal Prison Service] to consider, before departing from the general distribution rule, the possible implications that the penal facility's geographical location may have on the family life of prisoners and their relatives", did not "provide for a realistic opportunity to transfer a prisoner to another penal facility on grounds pertaining to the right to respect for family life", and did not "enable an individual to obtain a judicial review of the proportionality of the FSIN's decision to his or her vested interest in maintaining family and social ties". It concluded that the system did not afford adequate legal protection against possible abuses, and that, as the provisions of the CES did not satisfy the "quality of law" requirement, the interference with the applicants' right to respect for family life was not "in accordance with the law" (ibid., §§ 116-18).

1300. However, in *Dadusenko and Others v. Russia* ((dec.), no. 36027/19 and 3 others, 7 September 2021), the Court noted that the amended provisions of the CES (effective as of 29 September 2020) expressly listed the convicted persons' family situation as one of the factors to be taken into account at the time of their initial allocation to a penal facility (compare and contrast with *Polyakova and Others*, cited above, § 101). Furthermore, the amended provisions opened up a possibility for convicted persons to request a transfer to another penal institution located closer to the place of residence of their family members (compare and contrast with *Polyakova and Others*, cited above, § 105). The legislative amendments had been corroborated by the practice of the Russian Supreme Court, which had held that the inability of convicted persons to maintain family ties while serving their sentence was one of the reasons for prisoners to be relocated closer to their relatives' place

of residence, even when the request belonged to one of the specific categories excluded from the general distribution rule (see *Dadusenko and Others,* cited above §§ 26-28). The Court was consequently satisfied that all prisoners, and notably those excluded from the general distribution rule, could vindicate their right to respect for family life at the domestic level in accordance with the amended provisions of the CES (ibid., § 28).

1301. In the present case, having regard to its findings in the *Polyakova and Others* judgment (see paragraph 1290 above), the execution of which continues to be supervised by the Committee of Ministers, the Court considers that, even assuming that the applicable law in the light of Convention could be Russian law, the relocation of the Ukrainian prisoners from Crimea to the Russian Federation as of March 2014 did not comply with the "in accordance with the law" requirement. Moreover, notwithstanding the amendments passed in 2020 (see paragraph 1300 above referring to *Dadusenko and Others*, cited above), the Court observes that there are no real opportunities for the prisoners to be transferred back to Crimea.

1302. The Court further notes that a number of international organisations as well as civil society representatives have expressed the view that the practice of transfers of Crimean detainees to distant regions of Russia was contrary to the relevant IHL provisions (see paragraph 118 of the 2017 OHCHR Report, A 102; paragraph 20 of the 2023 Commissioner's Report, A 74; and paragraph 144 of the 2016 IPHR Report, A 116). Indeed, the relevant IHL provisions not only prohibit the transfer of protected persons to the territory of the occupying power, regardless of the reason, but classify such a transfer as a "grave breach" of the Fourth Geneva Convention (A 49).

1303. Furthermore, in line with its practice in individual applications (see *Polyakova and Others*, cited above, § 65), the Court observes that the alleged administrative practice of transferring prisoners to penal facilities on the territory of the Russian Federation concerns the long-term repercussions on their family life which they have continuously experienced over the years as a result of the transfer. It follows that such a complaint under Article 8 of the Convention must be submitted within six months of the end of the detention in the facility concerned (see also paragraph 1201 above). In this connection, there is information available to the effect that the Russian authorities in Crimea have continued to transfer prisoners from Crimea to the Russian Federation, where they faced trial or served prison sentences (see paragraph 22 of the 2020 report of the UN Secretary General, A 94, and paragraphs 20 and 50 of the 2023 Commissioner's Report, A 74).

1304. In such circumstances, and having regard to the fact that the respondent Government failed to put forward any elements which could have justified the interference with the right to respect for family life protected under Article 8 of the Convention, the Court considers it unnecessary to continue the examination of the complaint in respect of the "legitimate aim" and "necessary in a democratic society" requirements. Similarly, the Court

considers that no separate examination is required with regard to the applicant Government's allegations concerning the breach of the right to respect for private life arising from the same facts.

1305. Having regard to the foregoing, the Court concludes that there has been an administrative practice contrary to Article 8 of the Convention as regards the breach of the right to respect for the family life of Crimean prisoners stemming from their transfer from Crimea to penal facilities located on the territory of the Russian Federation. The Court is also satisfied that the administrative practice has continued after the allegations on this subject were raised with it on 10 August 2018 and that therefore no issue arises under the six-month rule.

F. Alleged violation of Articles 10 and 11 of the Convention

1306. The applicant Government submitted that the Russian Federation was responsible for an administrative practice of unlawful deprivation of liberty, prosecution and conviction of "Ukrainian political prisoners" in breach of the rights guaranteed by Articles 10 and 11 of the Convention which provide:

Article 10

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

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

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

1. *Admissibility*

(a) Events which allegedly occurred in Russia

1307. As regards the events which took place in Russia and which are considered by the applicant Government to form part of an overall administrative practice against "Ukrainian political prisoners", the Court notes that the applicant Government's allegations refer to the same criminal proceedings as those considered under Articles 5, 6 and 7 of the Convention. In this connection, the Court refers to its conclusions reached above (see paragraph 1243 above) regarding the scarcity of the material submitted in support of the applicant Government's allegations and in particular the lack of decisions of the judicial authorities taken within the framework of the criminal proceedings in question. In these circumstances, the Court considers that the evidence before it cannot be said to amount to sufficiently substantiated prima facie evidence of an administrative practice (either in its "repetition of acts" component or in its "official tolerance" components) in breach of Articles 10 and 11 of the Convention with regard to the unlawful detention and imprisonment of Ukrainian prisoners in the Russian Federation. Accordingly, this part of the complaint must be declared inadmissible in accordance with Article 35 § 4 of the Convention.

(b) Events which allegedly occurred in Crimea

1308. The Court observes at the outset that the applicant Government argued, *inter alia*, that the criminal proceedings initiated under Russian law against Crimean Muslims on account of their involvement with the Hizb ut-Tahrir organisation was part of an administrative practice in breach of the guarantees enshrined in Articles 10 and 11 of the Convention. At the hearing held on 13 December 2023, the applicant Government emphasised that affiliation with Hizb ut-Tahrir was an incidental part of this case. They submitted that the Russian repression conducted by means of application of the Russian criminal law was not directed at the Hizb ut-Tahrir organisation as such; persons affiliated with this organisation had merely been caught up in the suppression of all forms of expression of Muslim beliefs on the part of the entire Crimean Tatar population, which included the legitimate decision-making authorities and those responsible for all religious administration of the Crimean Tatar community.

1309. The Court observes that it has already assessed complaints under these Articles with regard to the membership of Hizb ut-Tahrir and found that, by reason of Article 17 of the Convention, that organisation cannot benefit from their protection because of its anti-Semitic and pro-violence statements, in particular statements calling for the violent destruction of Israel and for the banishment and killing of its inhabitants and repeated statements justifying suicide attacks in which civilians have been killed. Having regard to written statements published in magazine articles, flyers and transcripts of

public statements by the organisation's representatives or on Articles published by the organisation itself in Germany, the Court has held that Hizb ut-Tahrir's aims were clearly contrary to the values of the Convention, notably the commitment to the peaceful settlement of international conflicts and to the sanctity of human life (see *Hizb ut-Tahrir and Others v. Germany* (dec.), no. 31098/08, §§ 73-75 and 78, 12 June 2012). In *Kasymakhunov and Saybatalov v. Russia* (nos. 26261/05 and 26377/06, 14 March 2013), the applicants complained that their convictions for membership of Hizb ut-Tahrir had violated their rights under Articles 7, 9, 10 and 11 of the Convention. While the Court found that there had been a violation of Article 7 in respect of one of the applicants, who could not reasonably have foreseen that his membership of Hizb ut-Tahrir would make him criminally liable under Article 282.2 of the CrCRF in the absence of an official publication of the Supreme Court's decision of 14 February 2003 banning that organisation, it nevertheless held that the complaints under Articles 9, 10 and 11 were incompatible *ratione materiae* with the provisions of the Convention. In doing so, the Court found, on the basis of the organisation's documents and literature, including a draft Constitution, the applicants' statements and the expert reports produced in the domestic proceedings, that the dissemination of the political ideas of Hizb ut-Tahrir by the applicants clearly constituted an activity falling within the scope of Article 17 of the Convention.

1310. The Court notes that its previous findings pertaining to Hizb ut-Tahrir concerned proceedings conducted in Germany and Russia, two countries in which the organisation had been banned by decisions of their national authorities. While acknowledging that the limitations to the freedom of association accepted under the Convention are formulated broadly without constraining States to take measures only for the protection of the rights and freedoms of individuals within their jurisdiction (see *Internationale Humanitäre Hilfsorganisation e.V. v. Germany*, no. 11214/19, § 76, 10 October 2023), the Court needs to take into account the specific situation in which the applicant Government themselves emphasised that the provisions of Articles 10 and 11 of the Convention apply to the members of the Hizb ut-Tahrir organisation concerned by the present case and that those provisions had been breached. They referred to the nature of Hizb ut-Tahrir (see paragraph 556 above) and insisted that the Hizb ut-Tahrir organisation is not banned in the territory of Ukraine (see paragraph 1314 below).

1311. The Court finds it reasonable to examine the issue identified in the paragraph above together with the issue of the necessity of the measures complained of under the second paragraphs of the Articles invoked, and this in the light of Article 17 of the Convention.

(c) Conclusion

1312. The Court considers that the present complaint, inasmuch as it concerns events which occurred in Crimea, does not fall short of the prima facie evidential threshold, and that it complies with the six-month time-limit for reasons which will be explained below. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicant Government

1313. Referring to Articles 10 and 11 of the Convention, the applicant Government complained of:

> "[a] violation by the Russia Federation of the right to freedom of expression ... A number of persecutions ... constitute prosecution of Ukrainians for their thought and expressions, pro-Ukrainian thoughts and activity and disagreements with ... Russia's occupation of Crimea or membership in organisations banned in Russia, being considered dangerous to [the] Russian State."

1314. As regards the situation in Crimea, the applicant Government referred in particular to the prosecution of the following groups of individuals:

(i) Euromaidan activists who had participated in the Revolution of Dignity in Kyiv in January and February 2014 (Mr Kostenko and Mr Kolomiyets);

(ii) a well-known regional activist who had been convicted for his pro-Ukrainian position (Mr Balukh);

(iii) a number of Crimean Tatars and pro-Ukrainian activists convicted for allegedly extremist publications on the Facebook and VKontakte social networks (their alleged "extremist" publications relating to the dissemination of information about the cases of political prisoners (Mr Minasov), comments on internet radio (Mr Ramazanov), the uploading of a video on the internet (Mr Karakashev), or comments in pro-Ukrainian groups (Mr Movenko)); in addition, Mr Movenko was convicted of "spreading Nazi symbolism", which, according to the applicant Government, in fact concerned a symbol of the Ukrainian volunteer battalion "Azov" not related to "Nazi symbolism"; and

(iv) followers of the Hizb ut-Tahrir and Tablighi Jamaat organisations, who had been found criminally liable for participating in those organisations, which were banned in Russia, but legal in Ukraine.

1315. Lastly, the applicant Government maintained (referring to their submissions under Article 7 of the Convention) that the Russian Federation employed in a general manner its anti-extremism and anti-terrorist legislation, which lacked the precision and foreseeability required by the principle of lawfulness of an interference provided for in Articles 10 and 11 of the Convention. They added that, in any event, "[an] interference of this

magnitude under such negligible or unreasonable pretexts” upset the fair balance to be struck under both Articles.

(ii) The respondent Government

1316. The respondent Government did not provide any comments as regards the substance of these specific complaints besides providing some factual information with regard to a certain individual (see paragraph 808 et seq. above).

(b) The Court’s assessment

1317. The Court notes that, relying on the provisions of Articles 10 and 11 of the Convention, the applicant Government complained of an administrative practice in breach of the freedom of expression, the freedom of peaceful assembly and the freedom of association. The Court reiterates that, notwithstanding the particular sphere of application of Article 11, in the sphere of political debate the guarantees of Articles 10 and 11 are often complementary; so Article 11, where appropriate, must be considered in the light of the Court’s case-law on the freedom of expression. Indeed, it has held that the link between Article 10 and Article 11 is particularly relevant where the authorities have interfered with the right to freedom of peaceful assembly in reaction to the views held or statements made by participants in a demonstration or members of an association (see, for example, *Stankov and the United Macedonian Organisation Ilinden*, cited above, § 85; *Primov and Others v. Russia*, no. 17391/06, § 92, 12 June 2014; and *Navalnyy*, cited above, § 102). Furthermore, given that the implementation of the principle of pluralism is impossible without an association being able to express freely its ideas and opinions, the Court has also recognised that the protection of opinions and the freedom of expression within the meaning of Article 10 of the Convention is one of the objectives of the freedom of association (see, for instance, *Refah Partisi (the Welfare Party) and Others*, cited above, § 88, and *Gorzelik and Others*, cited above, § 91).

1318. The Court notes at the outset that the applicant Government submitted a wealth of evidence concerning the overall situation in Crimea with regard to the freedom of expression, association and peaceful assembly: resolutions of international organisations, including the Council of Europe; reports by international organisations, such as the OHCHR, the Commissioner for Human Rights, and the OSCE HCNM; reports of NGOs; documents issued by government bodies; media articles; news items; and, importantly, material from the case file in the criminal proceedings conducted against the individuals concerned. According to the above-mentioned evidence, since 2014, the Russian authorities had been enforcing the Russian legal framework governing public assemblies and freedom of expression and association in the territory of Crimea, showing little tolerance for any form of

criticism, dissent, or opposition in relation to Russia's policies. The evidence contains information about the arrest and prosecution of political opponents who were charged with offences of extremism or terrorism, of Ukrainians who had participated in the Euromaidan protests, of Crimean activists, of Crimean Tatars linked to the Mejlis, of practising Muslims accused of belonging to banned Islamic groups, and of journalists or individuals posting messages critical of the authorities of the Russian Federation or expressing dissent on social media.

1319. Recent international reporting attests in addition that this practice has continued unabated (see paragraph 24 of the 2020 report of the UN Secretary-General; paragraph 14 of the 2022 report of the UN Secretary-General; and paragraphs 16 and 29 of the 2023 Commissioner's Report, A 74 and 94-95).

1320. Next, the Court notes that the alleged administrative practice covers instances of both pre-trial detention and criminal convictions. As regards the first aspect, the Court reiterates that State actions which have been found to amount to an interference with the right to freedom of expression may encompass a wide variety of measures in the form of a "formality, condition, restriction or penalty". Criminal-law measures capable of having a chilling effect on freedom of expression may confer on the affected individuals the status of a "victim" of an alleged violation even where criminal proceedings against them did not end in a conviction (see, among other authorities, *Sabuncu and Others*, cited above, §§ 223-26 – concerning the pre-trial detention of the applicants in criminal proceedings brought on charges of assisting terrorist organisations) or were discontinued for procedural or substantive reasons (see *Bowman v. the United Kingdom*, 19 February 1998, § 29, *Reports* 1998-I; *Altuğ Taner Akçam*, cited above, §§ 69-83; *Döner and Others v. Turkey*, no. 29994/02, §§ 85-89, 7 March 2017; and *Fatih Taş v. Turkey (no. 3)*, no. 45281/08, § 28, 24 April 2018). The same is valid for instances of interferences with the right to freedom of association of Crimean Muslims who have had their homes searched and have been arrested, remanded in custody and charged with involvement in Hizb ut-Tahrir.

1321. On the basis of the evidence before it, the Court considers that there is sufficient evidence proving to the appropriate standard that there have been numerous and interconnected instances of arrest and prosecution, as well as convictions, constituting interference with the rights protected by Articles 10 and 11 of the Convention. The Court has to determine whether the interference was justified under paragraph 2 of those Articles – in other words whether it was "prescribed by law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" for the achievement of the aim or aims in question.

1322. Similarly to their submissions under Articles 5, 6 and 7 of the Convention, the applicant Government's submissions under Articles 10 and 11 concern measures taken by the authorities established by the Russian

Federation in Crimea (prosecution and judicial authorities) pursuant to Russian law. The main question to be examined therefore pertains to the lawfulness of those measures.

1323. In this respect, the Court refers to its previous conclusions to the effect that the respondent State extended the application of its law to Crimea in contravention of the Convention, as interpreted in the light of IHL, and that, accordingly, Russian law cannot be regarded as "law" within the meaning of the Convention. The Court considers thus that the administrative practice under this head, for which the respondent State did not deny responsibility (since it has been carried out by the prosecution and judicial authorities established in Crimea), cannot be regarded as "lawful" (see paragraph 946 above).

1324. Assuming that the anti-extremism legislation of the Russian Federation served as a legal basis for the interference with the rights under Articles 10 and 11 in Crimea, as contended by the applicant Government, the Court refers to its earlier findings regarding the Federal Law on Combating Extremist Activity which was not foreseeable as to its effects and did not provide adequate protection, findings based, *inter alia*, on the observations by the Venice Commission in its Opinion no. 660/2011 (see paragraph 1101 above).

1325. Moreover, the Court considers that the regulatory nature of the alleged practice and its scale and intensity, supported by the above-mentioned evidence, confirm the existence of both the "repetition of acts" and the "official tolerance" elements of the administrative practice under this head.

1326. In such circumstances and having regard to the fact that the respondent Government failed to put forward any elements which could have warranted the interference with the rights protected under Articles 10 and 11, the Court considers it unnecessary to continue the examination of the complaint in respect of the "legitimate aim" and "necessary in a democratic society" requirements.

1327. Given the above, the Court concludes that there has been a violation of Articles 10 and 11 of the Convention on account of an administrative practice of unlawful deprivation of liberty, prosecution and conviction of "Ukrainian political prisoners" for exercising their freedom of expression, and of peaceful assembly and association. In the light of the above consideration, the Court is also satisfied that the administrative practice continued after the allegations in this respect were raised with the Court on 10 August 2018 and that no issue arises under the six-month rule.

G. Alleged violation of Article 18 in conjunction with Articles 5, 6, 7, 8, 10 and 11 of the Convention

1328. Relying on Article 18 in conjunction with Articles 5, 6, 7, 8, 10 and 11 of the Convention, the applicant Government maintained that the violations complained of in relation to the "Ukrainian political prisoners" had ultimately been aimed at the intimidation of Ukrainians and the suppression of any political opposition to Russian policies. Article 18 of the Convention reads as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

1. Admissibility

1329. The Court notes at the outset that in the applicant Government's description of the complaint of an administrative practice, Article 18 is relied on in conjunction with Articles 5, 6, 7, 8, 10 and 11 of the Convention.

1330. In so far as the applicability of Article 18 is concerned, in the light of the Court's case-law, this provision cannot have an independent existence and can only be applied in conjunction with an Article of the Convention or the Protocols thereto which sets out or qualifies the rights and freedoms that the High Contracting Parties have undertaken to secure to those under their jurisdiction. While there can be a breach of Article 18 even if there is no breach of the Article in conjunction with which it applies, a breach of the former provision can only arise if the right or freedom at issue is subject to restrictions permitted under the Convention (*Merabishvili v. Georgia,* cited above, §§ 287-88 and 290).

1331. In the light of these principles, no question arises when assessing the applicability of Article 18 taken in conjunction with Articles 5 and 8 to 11 of the Convention (ibid., § 287 *in fine*), of which Articles 5, 8, 10 and 11 have been relied on by the applicant Government. The Court has already found a breach of Article 18 of the Convention in conjunction with these Articles (see *Navalnyy*, cited above, § 164), but also in conjunction with Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention (see *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 111, 14 October 2021).

1332. By contrast, a question arises when assessing the applicability of Article 18 in conjunction with Articles 6 and 7 of the Convention as to whether the rights and freedoms protected by the two last-mentioned provisions are subject to permissible restrictions (see *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, § 61, 1 March 2022). In this connection, the Court's case-law shows different approaches: whereas in *Navalnyy and Ofitserov v. Russia* (nos. 46632/13 and 28671/14, § 129, 23 February 2016)

and *Navalnyye v. Russia* (no. 101/15, §§ 88-89, 17 October 2017), in the circumstances relevant to those cases, the Court rejected complaints under Article 18 raised in conjunction with Articles 6 and 7 as incompatible *ratione materiae* with the provisions of the Convention, in *Năstase v. Romania* ((dec.), no. 80563/12, §§ 105-09, 18 November 2014), it rejected as manifestly ill-founded a complaint under Article 18 raised in conjunction with Article 6. By contrast, in *Khodorkovskiy v. Russia (no. 2)* (no. 11082/06, § 16, 8 November 2011) and *Lebedev v. Russia (no. 2)* (no. 13772/05, §§ 310-14, 27 May 2010), the Court declared admissible the applicants' complaints under Article 18 raised in conjunction with Articles 5, 6, 7 and 8 and subsequently, having examined the merits of those complaints in its judgment in *Khodorkovskiy and Lebedev v. Russia* (cited above, §§ 897-909), found no violation of Article 18 of the Convention. In recent cases, the Court has concluded that the question of whether Article 6 contains any express or implied restrictions which may form the subject of the Court's examination under Article 18 remained open (see *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, § 261, 16 November 2017, and *Nevzlin v. Russia*, no. 26679/08, § 123, 18 January 2022, with further references).

1333. Against this background, the question arises before the Grand Chamber whether Articles 6 and 7 contain any express or implied restrictions which may form the subject of the Court's examination under Article 18.

1334. The Court reiterates that it has consistently relied on the text of the *travaux préparatoires* of the Convention when it comes to the interpretation of the object and purpose of its provisions. The relevant parts of the *travaux préparatoires* on Article 18 of the Convention (see *Collected Edition of the "Travaux Préparatoires" of the European Convention on Human Rights*, Martinus Nijhoff, vol. I, 1975, pp. 130 and 179-81; vol. III, 1976, pp. 650-51; and vol. IV, 1977, p. 854) read as follows:

> "... the international collective guarantee will have, as its purpose, to ensure that no State shall in fact aim at suppressing the guaranteed freedom, by means of minor measures which, while made with the pretext of organizing the exercise of these freedoms on its territory, or of safeguarding the letter of the law, have the opposite effect. ... It is legitimate and necessary to limit, sometimes even to restrain, individual freedoms, to allow everyone the peaceful exercise of their freedom and to ensure the maintenance of morality, of the general well-being, of the common good and of public need. When the State defines, organises, regulates and limits freedoms for such reasons, in the interest of, and for the better insurance of, the general well-being, it is only fulfilling its duty. That is permissible; that is legitimate.
>
> But when it intervenes to suppress, to restrain and to limit these freedoms for, this time, reasons of state; to protect itself according to the political tendency it represents, against an opposition which it considers dangerous; to destroy fundamental freedoms which it ought to make itself responsible for coordinating and guaranteeing, then it is against public interest if it intervenes. Then the laws which it passes are contrary to the principle of international guarantee.
>
> ...

What we must fear today is not the seizure of power by totalitarianism by means of violence, but rather that totalitarianism will attempt to put itself in power by pseudo-legitimate means. Experience has shown that it is sufficient to establish an atmosphere of intimidation and terror in a totalitarian regime to acquire a character, an appearance, of legality.

...

V. Conference of Senior Officials on Human Rights (Strasbourg, 8-17 June 1950)

...

The general principles which were thus introduced into the text ... were the following:

...

2. The principle under which the restrictions on fundamental rights may not be made for any other purpose than those for which they were prescribed (the application of the theory of the misapplication of power).

...

[e] very State which violates human rights and above all the rights of freedom, will always have an excuse; morality, order, public security and above all democratic rights

...

It is therefore quite clearly from democracy that the freedoms we wish to guarantee derive their practical content.

The same is true of the restrictions which the State may legitimately impose by domestic legislation upon a given freedom. In all the countries of the world the exercise of freedom has to be organized. Consequently, in all the countries of the world freedoms have to be defined and limited. Suppose we take the case of a democracy. The limitation imposed will be valid only if it has as its aim the public interest and the common good. The State, in a democracy, may limit an individual freedom in the interests of the freedom of all, in order to allow the collective exercise of all the freedoms, in the general interest of a superior freedom of right, in the public interest of the nation. The restriction which it imposes is a legitimate one precisely by reason of the fact that this is the goal which is aimed at: it sets a limit upon freedom in the general interest, in the interest of the freedom of all.

In a totalitarian regime, reasons of State are supposed to justify any State intervention. The State arrogates to itself the right to limit individual freedom, not in the sole name of a higher freedom, not in order to permit the exercise of the freedom of all, but simply to defend its own dictatorship, its justification for its interference."

1335. As already noted in the Court's case-law (see *Merabishvili*, cited above, § 283), it follows from the *travaux préparatoires* of the Convention that Article 18 was conceived as a general principle on the misuse of power (*détournement de pouvoir*, as stated in the Convention's *travaux préparatoires*). It was designed with a broad scope aimed at preserving democracy and protecting the rights and freedoms enshrined in it from the dangers posed by totalitarianism. Article 18 was thus intended to prevent abusive and illegitimate limitations of Convention rights and freedoms through State actions, such as politically motivated prosecutions, which run counter to the very spirit of the Convention. The Court therefore concludes

that the object and purpose of Article 18, as described by the *travaux préparatoires*, do not support a narrow application of Article 18, for example only in relation to Articles which expressly provide for restrictions. It can therefore be applied in conjunction with other Articles of the Convention which contain inherent restrictions. By contrast, it will not be applicable in conjunction with absolute rights which do not allow such limitations.

1336. At the same time, the Court emphasises that it is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. A failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement (*Hurbain v. Belgium* [GC], no. 57292/16, § 181, 4 July 2023). The Court reiterates in this connection that the Convention is a living instrument which must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic States today (see, among other authorities, *Fedotova and Others*, cited above, § 167). In these circumstances, it is important to examine the applicability of Article 18 of the Convention in the light of any substantive developments in the Court's case-law in relation to Articles 6 and 7 of the Convention, and in particular to verify whether inherent restrictions to the rights under those Articles have been acknowledged by the Court in this respect. In any event, the Court cannot but note the increase in the number of cases in which Article 18 has been relied on in conjunction with Articles 6 and 7 of the Convention.

(a) Regarding Article 18 in conjunction with Article 6 of the Convention

1337. As regards Article 6 of the Convention, the Court notes that its provisions allow for both explicit and implicit restrictions. An express limitation applies to the public pronouncement of judgments. Furthermore, the Court has recognised in its case-law several implied limitations, such as for example:

(i) in *Golder v. the United Kingdom* (21 February 1975, § 38, Series A no. 18), it acknowledged that the right of access to a court was not absolute and could be subject to implied limitations;

(ii) in a series of cases, it confirmed that there could be restrictions to the right to legal assistance which had to be considered in the light of the overall fairness of the trial (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008; *Dvorski v. Croatia* [GC], no. 25703/11, § 79, ECHR 2015; *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, §§ 256-57, 13 September 2016; and *Simeonovi v. Bulgaria*, no. 21980/04, § 116, 12 May 2017); and

(iii) in *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-19, ECHR 2011), the Court confirmed that the non-attendance of a witness, even if it involved limitations of the right to a defence, could be counterbalanced with appropriate safeguards.

The Court has developed extensive case-law assessing the proportionality of restrictions concerning the above-mentioned Article 6 rights.

1338. Having regard to the above, the Court finds that the rights protected under Article 6 are guarantees with reference to which fundamental abuses by a State may be likely to manifest themselves. Therefore, trials before a court must never be used for "ulterior purposes" and thereby undermined. The Court therefore concludes that Article 18 is capable of applying in conjunction with Article 6 of the Convention.

(b) Regarding Article 18 in conjunction with Article 7 of the Convention

1339. As regards Article 7 of the Convention, the Court has consistently held that "the guarantee enshrined [in this Article], which is an essential element of the rule of law, occupies a prominent place in the Convention system of protection, as is underlined by the fact that no derogation from it is permissible under Article 15 of the Convention in time of war or other public emergency (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 92, 17 September 2009). This means, for example, that the fundamental safeguards enshrined in Article 7 may not be applied less stringently when it comes to the prosecution and punishment of terrorist offences, even when allegedly committed in circumstances threatening the life of the nation. The Convention requires the observance of the Article 7 guarantees, including in the most difficult of circumstances (see *Yüksel Yalçınkaya,* cited above, § 270).

1340. Given the non-derogable nature of the Article 7 guarantee, the Court considers that Article 18 of the Convention cannot apply in conjunction with it. Therefore, the complaint under Article 18 in conjunction with Article 7 of the Convention must be rejected as incompatible *ratione materiae* with the provisions of the Convention.

(c) Conclusion as to admissibility

1341. In view of the above considerations, the Court concludes that Article 18 is capable of applying in conjunction with Article 6 of the Convention, but not in conjunction with Article 7 of the Convention. In addition, the Court considers that the complaint under Article 18 in conjunction with Articles 5, 6, 8, 10 and 11 of the Convention does not fall short of the prima facie evidential threshold, and that it complies with the six-month time-limit for reasons which will be explained below. It must therefore be declared admissible.

2. *Merits*

(a) The parties' submissions

(i) The applicant Government

1342. The applicant Government submitted the following:

> "... the above violations, namely the ruthless stomping down of any attempt of the Ukrainian citizens to voice ... support [for] Ukrainian independence, [for] its pro-Western political choice or the non-acceptance of the unlawful annexation of Crimea with all the might of the repressive criminal-law machine, has an ulterior purpose of creating [an] atmosphere of terror and repression. This is being done in order to suppress any political opposition to the policy of [the] Kremlin in Russia and to intimidate the Ukrainians inside Ukraine to force them to abandon their pro-European, anti-tyrant and anti-corruption choice they made [in the] Revolution of Dignity."

1343. The applicant Government maintained that the Russian Federation had developed a system of persecution of Ukrainian nationals on politically motivated grounds following a State-sanctioned policy ultimately aimed at the intimidation and oppression of the Ukrainian Government installed since the Euromaidan protests. Against this background, the "Ukrainian political prisoners" had been unlawfully detained, tortured and convicted on political grounds.

1344. The applicant Government emphasised that the Russian legislation aimed at combating terrorism and extremism had been passed in several waves before 2014 and had been widely applied by the Russian authorities with a view to suppressing anti-regime political movements and activities. They maintained that, after the Euromaidan protests and the ensuing changes in the Ukrainian political regime, the above-mentioned legislation had been used by the Russian authorities as a primary tool for the persecution of persons considered dangerous to Russian national security and interests. This legislation had been "superficially tuned to stifle Ukraine- and Maidan-related freedom of expression".

1345. As of February 2014, certain provisions of the CrCRF regarding punishment for extremist or terrorist activities had been amended with penalties being increased and the offences being classified in the upper category of more serious offences. The scope of certain offences under the CrCRF had been extended (for example, mass disorder; public calls for extremist activities; public calls for actions aimed at violating the territorial integrity of the Russian Federation; incitement to hatred or enmity, and humiliation of human dignity; creation of an extremist organisation; organisation of the activities of an extremist organisation, and public incitement to terrorist activity and justification of terrorism) and new provisions had been introduced (Article 282.3 - financing of extremist activity). In the same vein, several provisions of the CrCRF and of the laws on information and communication had been amended with the aim of

making actions committed on the internet punishable under the same conditions as those committed through the media.

1346. Further developments followed in the field of "neo-Nazi activities and symbolism". In May 2014 the "Law against Rehabilitation of Nazism" had been passed, inserting Article 354.1 into the CrCRF, which had made it a criminal offence to deny facts recognised by the international military tribunal that had judged and punished the major war criminals of the European Axis countries, to approve of crimes judged by that tribunal, and to intentionally spread false information about the Soviet Union's activities during the Second World War. In November 2014 the scope of the provisions of the administrative law pertaining to banned symbols (that is, Nazi symbols) had been extended with a view to including organisations that used "symbols and attributes of the Banderite organisation in Ukraine". Furthermore, by its judgments, the Russian Constitutional Court had prohibited any display of Nazi or similar symbols (even when they had no relation to Nazi symbols) and banned Ukrainian patriotic organisations.

1347. Moreover, on 11 March 2014 the Crimean Council, at the time led by Mr S. Aksenov, had passed Resolution no. 1740-6/14 "On prevention of the spread of extremism in Autonomous Republic of Crimea", banning from Crimea all political and non-governmental organisations perceived as having a "pro-fascist and neo-Nazi nature", including "Right Sector", the UNA-UNSO, the "Stepan Bandera All-Ukrainian Organisation 'Tryzub'", the "All-Ukrainian Organisation Svoboda" and other organisations which were considered to be dangerous to the "life and security of Crimean residents" (A 34).

1348. Lastly, the applicant Government referred to the judgment of the Supreme Court of the Russian Federation of 17 November 2014 characterising the following organisations as extremist: "Right Sector", the UNA-UNSO, the UPA, the "Stepan Bandera All-Ukrainian Organisation 'Tryzub'" and "Bratstvo" (A 14 et seq.). On 13 February 2015 the Russian Ministry of Justice had included the above-mentioned organisations in the list of extremist organisations in Russia.

1349. In view of the foregoing, the applicant Government concluded that the amendments to Russian legislation and the judgments of the Russian highest courts had created a legal basis for the persecution of Ukrainians for their thoughts, their participation in peaceful demonstrations in support of Ukrainian integrity, their dissemination of information not wanted by the Russian authorities about the war in Ukraine, and their participation in NGOs. Every Ukrainian expressing support for the country's integrity, expressing a pro-Western position or openly blaming Russia for its aggression against Ukraine and occupation of Crimea and Donbas, even in Ukraine, risked being prosecuted by the Russian authorities for terrorism or extremism. At the hearing held on 13 December 2023, the applicant Government stated that the violations attributed to the respondent State in relation to Crimea shared a

common political purpose, that is, the suppression of political opposition to the unlawful occupation.

(ii) The respondent Government

1350. The respondent Government did not provide any comments as regard the substance of this specific complaint.

(b) The Court's assessment

(i) General principles under Article 18 of the Convention

1351. The general principles concerning the interpretation and application of Article 18 of the Convention were established in *Merabishvili* (cited above, §§ 287-317) and were subsequently confirmed in *Navalnyy* (cited above, §§ 164-65). The Court considers the following passages from *Merabishvili*, referring *inter alia* to the plurality of purposes of a restriction, to be of particular relevance to its examination of the complaint raised in the present case (references omitted):

> "291. The mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case ...
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> ...
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> 292. A right or freedom is sometimes restricted solely for a purpose which is not prescribed by the Convention. But it is equally possible that a restriction is applied both for an ulterior purpose and a purpose prescribed by the Convention; in other words, that it pursues a plurality of purposes. The question in such situations is whether the prescribed purpose invariably expunges the ulterior one, whether the mere presence of an ulterior purpose contravenes Article 18, or whether there is some intermediary answer.
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> ...
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> 302. ...[A]lthough the legitimate aims and grounds set out in the restriction clauses in the Convention are exhaustive, they are also broadly defined and have been interpreted with a degree of flexibility. The real focus of the Court's scrutiny has rather been on the ensuing and closely connected issue: whether the restriction is necessary or justified, that is, based on relevant and sufficient reasons and proportionate to the pursuit of the aims or grounds for which it is authorised. Those aims and grounds are the benchmarks against which necessity or justification is measured (see The Sunday Times (no. 1), cited above, § 59).
>
> 303. ... Some of those purposes may be capable of being brought within the respective restriction clause [of the Convention], while others are not. In such situations, the mere presence of a purpose which does not fall within the respective restriction clause cannot of itself give rise to a breach of Article 18. There is a considerable difference between cases in which the prescribed purpose was the one that truly actuated the authorities, though they also wanted to gain some other advantage, and cases in which the prescribed purpose, while present, was in reality simply a cover enabling the authorities

to attain an extraneous purpose, which was the overriding focus of their efforts. Holding that the presence of any other purpose by itself contravenes Article 18 would not do justice to that fundamental difference, and would be inconsistent with the object and purpose of Article 18, which is to prohibit the misuse of power. Indeed, it could mean that each time the Court excludes an aim or a ground pleaded by the Government under a substantive provision of the Convention, it must find a breach of Article 18, because the Government's pleadings would be proof that the authorities pursued not only the purpose that the Court accepted as legitimate, but also another one.

304. For the same reason, a finding that the restriction pursues a purpose prescribed by the Convention does not necessarily rule out a breach of Article 18 either. Indeed, holding otherwise would strip that provision of its autonomous character.

305. The Court is therefore of the view that a restriction can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because it was chiefly meant for another purpose that is not prescribed by the Convention; in other words, if that other purpose was predominant. Conversely, if the prescribed purpose was the main one, the restriction does not run counter to Article 18 even if it also pursues another purpose.

...

307. Which purpose is predominant in a given case depends on all the circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law.

308. In continuing situations, it cannot be excluded that the assessment of which purpose was predominant may vary over time."

1352. The Court also emphasised that, when dealing with complaints under Article 18 of the Convention, the questions in relation to proof became simply how it could be established whether there was an ulterior purpose and whether it was the predominant one (see *Merabishvili*, cited above, § 309). In this respect, the Court applies its usual approach to proof, and refers to its general principles set out above (see paragraphs 846 and 851 above). Nevertheless, the Court considers the following passages from *Merabishvili* to be of particular relevance to its examination of this complaint (references omitted):

"316. There is therefore no reason for the Court to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or to apply a special standard of proof to such allegations.

317. It must however be emphasised that circumstantial evidence in this context means information about the primary facts, or contextual facts or sequences of events which can form the basis for inferences about the primary facts ... Reports or statements by international observers, non-governmental organisations or the media, or the decisions of other national or international courts are often taken into account to, in particular, shed light on the facts, or to corroborate findings made by the Court ..."

(ii) Application of the above principles in the present case

(α) Fundamental aspect of the case

1353. The Court notes at the outset that the applicant Government's allegations concern an alleged administrative practice of prosecution and conviction of Ukrainians for their thoughts, expression of views, political stance and pro-Ukrainian activity, on politically motivated grounds. The applicant Government referred to a "system of persecution" of "Ukrainian political prisoners" enforced by a "repressive criminal-law machine" with "an ulterior purpose of creating [an] atmosphere of terror and repression". Against this background, the Court considers that in the present application the complaint under Article 18 of the Convention constitutes a fundamental aspect of the case that has not been addressed above and merits separate examination.

(β) Plurality of purposes

1354. The Court considers it necessary to reiterate that it has already found that there were administrative practices in breach of Articles 5, 6, 8, 10 and 11 of the Convention with respect to the sequence of events which occurred in Crimea. It found under each of those Articles that the "lawfulness" requirement was not complied with given that the respondent State had extended the application of its law to Crimea in contravention of the Convention, interpreted in the light of IHL. It concluded that Russian law could not be regarded as "law" within the meaning of the Convention for measures taken in Crimea. With regard to some complaints, it carried out a supplementary review and concluded that the provisions applied, in any event, did not satisfy the "quality of law" requirement (see the considerations set out under Article 8 in paragraph 1301 above).

1355. Nevertheless, whilst the extension of the application of Russian law in Crimea has led the Court to find a violation of Articles 5, 6, 8, 10 and 11 of the Convention, this would not by itself be sufficient to conclude that Article 18 had also been violated (see *Navalnyy*, cited above, § 166). Indeed, as the Court pointed out in *Merabishvili* (cited above, § 291), the mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18.

1356. Given the above, the Court will proceed with its examination of the case from the standpoint of a potential plurality of purposes (see also *Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13, § 70, 18 February 2021, in which the Court was unable to assess the merits of the applicants' claims under Article 5 § 3 of the Convention and thus the existence of a prescribed purpose because the applicants had failed to exhaust domestic remedies). The Court will therefore examine whether the impugned measures pursued an ulterior purpose (a purpose not prescribed by nor permissible

under the Convention, involving misuse of power - see *Merabishvhili* [GC], cited above, §§ 302-03), and, if that is the case, whether that ulterior purpose was the predominant purpose of the restriction applied.

(γ) The pursuance of an ulterior purpose

1357. As regards the question whether the impugned measures pursued an ulterior purpose under Article 18 of the Convention, the Court notes that the gist of the applicant Government's allegations concerns the politically motivated prosecution and conviction of Ukrainian nationals whom they consequently labelled as "Ukrainian political prisoners". According to the applicant Government, this category of persons numbered at least seventy-one individuals in June 2018, just before the lodging of application no. 38334/18, and 203 individuals in December 2022 (see paragraph 387 above, with the references therein).

1358. The Court observes, on the evidence before it, that the purported acts of persecution were not directed at random individuals, but at particular groups consisting either of Ukrainian activists and journalists, or of Crimean Tatars who had exercised their fundamental rights to freedom of expression or freedom of peaceful assembly or association, and who had been perceived as being supporters of the State sovereignty and integrity of Ukraine. Those acts were performed on the basis of Russian criminal law, and in particular, anti-terrorist and anti-extremism legislation.

1359. The Court considers that the context of those acts is relevant and will be outlined below.

1360. It notes that, on 11 March 2014, very soon after the Russian Federation gained effective control over Crimea, the Crimean Council, at the time led by Mr S. Aksenov, banned all political and non-governmental organisations from Crimea perceived as having extremist views, including "Right Sector", the UNA-UNSO, the "Stepan Bandera All-Ukrainian Organisation 'Tryzub'" and the "All-Ukrainian Organisation Svoboda" (A 18).

1361. In a press release of 4 June 2014, the Investigative Committee of the Russian Federation announced that it had set up a special unit to investigate the so-called "international crimes" committed against the civilian population in Ukraine. It noted that the Committee had already been investigating a number of cases regarding crimes against Russian and Ukrainian nationals in Ukraine, notably cases against the members of UNA-UNSO, the Ukrainian National Guard and "Right Sector" organisations concerning, *inter alia*, purported illegal methods of warfare in the "DPR" and "LPR". The press release contained a call for the public, including "conscientious citizens of Ukraine", to help identify immediate perpetrators of the killings of civilians in south-eastern Ukraine (A 448).

1362. After Crimea's admission, as a matter of Russian law, as a constituent part of the Russian Federation, international reporting noted that

the situation in Crimea "was marked by the continued implementation of the policy aimed at integrating the peninsula into the legal and political system of the Russian Federation and by persistent acts of intimidation targeting the Crimean Tatars, as well as those who opposed the March 'referendum' or were critical of the *de facto* 'authorities'". It was also emphasised that "on 23 September [2014], the 'Crimean prosecutor general' posted a statement mentioning that all actions aimed at the non-recognition of Crimea as part of the Russian Federation will be prosecuted" (see OHCHR Report on the human rights situation in Ukraine of 15 November 2014, A 98).

1363. The Russian Federation authorities pursued their measures against the Ukrainian organisations which they perceived as dangerous to Russian interests. By a judgment of the Supreme Court of the Russian Federation of 17 November 2014, the following organisations were identified as extremist and were banned: the "Right Sector", the UNA-UNSO, the UPA, the "Stepan Bandera All-Ukrainian Organisation 'Tryzub'" and "Bratstvo" (A 14 et seq.).

1364. Moreover, after the adoption on 30 January 2015 of the "Comprehensive Plan to counter the ideology of terrorism in the Republic of Crimea for 2015 – 2018" (A 124), as part of the "counteraction of terrorist ideology", the Crimean Prosecutor's Office started urging local residents to apply to the prosecution bodies whenever they discovered internet resources containing material with extremist content and put in place special digital tools aimed at facilitating that initiative. The above-mentioned plan assumed the need to respond to "ideas, concepts, beliefs, dogmas, goals, slogans substantiating the need for terrorist activity, as well as other destructive ideas having led or able to lead to such ideology". However, it appears that no clear criteria against which an idea or slogan could be identified as terrorist or destructive were set (see the 2015 report of the Crimean Human Rights Field Mission, April 2015, A 133).

1365. Furthermore, it has been routinely reported that in 2016 the Supreme Court of the Russian Federation declared the Mejlis as an "extremist organisation" and banned its activities in Crimea "in retaliation for opposing Russia's occupation and illegal annexation of the peninsula" (see, as a recent example, paragraph 11 of the 2023 Commissioner's Report, A 74). The ban remains in place to date, notwithstanding the binding interim Order issued in 2017 by the ICJ, which enjoined the Russian Federation to refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis (A 79). In fact, in its judgment of 31 January 2024 (cited above, A 91), the ICJ expressly held that "the Russian Federation, by maintaining the ban on the Mejlis, has violated the Order indicating provisional measures" (see paragraph 1160 above).

1366. This course of action as outlined above attests to the pro-active and sustained endeavours of the Russian Federation not only to counteract anyone

who opposed its interests and policies, but also to encourage the population at large to identify and report those persons and their actions.

1367. Furthermore, the Court is mindful of the authoritative international reporting on the human rights situation in Crimea which describes a widespread climate of intimidation, harassment and pressure targeting those who express dissent and criticism against the Russian authorities.

1368. The terms of the 2017 OHCHR Report (A 102) are particularly telling in this respect:

> "8. Laws and judicial decisions deriving from the implementation of the legal framework of the Russian Federation in Crimea have further undermined the exercise of fundamental freedoms. Mandatory re-registration requirements were imposed on NGOs, media outlets and religious communities in Crimea. Russian Federation authorities have denied a number of them the right to re-register, generally on procedural grounds, raising concerns about the use of legal norms and procedures to silence dissent or criticism.
>
> 9. Most affected by these restrictions were individuals opposed to the March 2014 referendum or criticizing Russian Federation control of Crimea, such as journalists, bloggers, supporters of the Mejlis, pro-Ukrainian and Maidan activists, as well as persons with no declared political affiliation but advocating strict compliance with the tenets of Islam, who are often accused of belonging to extremist groups banned in the Russian Federation, such as Hizb ut-Tahrir. The rights of these people to freedom of opinion and expression, association, peaceful assembly, movement, thought, conscience and religion, were obstructed through acts of intimidation, pressure, physical attacks, warnings as well as harassment through judicial measures, including prohibitions, house searches, detentions and sanctions.
>
> 10. 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 Federation 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.
>
> 11. Grave human rights violations, such as arbitrary arrests and detentions, enforced disappearances, ill-treatment and torture, and at least one extra-judicial execution were documented. For a three-week period following the overthrow of Ukrainian authorities in Crimea, human rights abuses occurring on the peninsula were attributed to members of the Crimean self-defence and various Cossack groups. Following Crimea's temporary occupation, on 18 March 2014, representatives of the Crimean Federal Security Service of the Russian Federation (FSB) and police were more frequently mentioned as perpetrators.
>
> 12. While those human rights violations and abuses have affected Crimean residents of diverse ethnic backgrounds, Crimean Tatars were particularly targeted especially those with links to the Mejlis, which boycotted the March 2014 referendum and initiated public protests in favour of Crimea remaining a part of Ukraine. Intrusive law enforcement raids of private properties have also disproportionately affected the Crimean Tatars and interfered with their right to privacy under the justification of fighting extremism. Furthermore, the ban of the Mejlis, imposed in April 2016 by the

Supreme Court of Crimea, has infringed on the civil, political and cultural rights of Crimean Tatars.”

1369. In the same vein, the 2015 ODIHR-HCNM report (A 108) stated the following with respect to civil and political rights in Crimea:

“96. Following the annexation of Crimea by the Russian Federation, some residents seeking to assemble and express dissenting political opinions or non-Russian cultural identities have had their civil and political rights heavily restricted by multiple new regulations, including their freedoms of peaceful assembly, expression, and movement in particular. Media freedoms have also deteriorated radically as a result of new regulations and criminal punishments restricting freedom of expression, leading to both self-censorship and prosecutions in relation to the content of journalistic work.

97. Those restrictions have appeared to constitute discriminatory measures targeting individuals and groups at least on the prohibited grounds of their ethnicity and political or other opinions.

...

102. Despite these commitments and obligations*, de facto* authorities in Crimea have applied expansive interpretations of Russian criminal law since annexation. The Criminal Code of the Russian Federation includes newly added provisions banning so-called “extremist” or “separatist” statements, which have been used to prevent and punish the expression of views allegedly opposed to the Russian government or its annexation of Crimea. Those new criminal provisions, which entered into force in May 2014, are punishable by large fines and up to three years in prison; additionally, they provide enhanced punishments for media professionals, including up to five years in prison and/or a ban on conducting journalistic work for up to three years. Criminal charges of ‘extremism’ and ‘separatism’ have frequently been threatened and applied to restrict the rights of activists, journalists, minority communities and other members of the public seeking to present dissenting views on the Russian occupation of Crimea – whether at public assemblies, in private gatherings, through online social media, or in journalistic activities.”

1370. In the same report, the Russian authorities’ endeavours to dissuade and punish any views expressed in Crimea against Russian policies were further presented in detail:

“103. While Crimean Tatar and pro-Ukrainian activists and media have been especially targeted, restrictions on freedom of expression have likewise been applied to speech at the marketplace, in the streets, in education institutions, and frequently in online social media forums. Crimean residents and IDPs informed the HRAM of the chilling of dissent by public authorities and a widespread climate of discrimination resulting from pro-Russian propaganda in Crimea, which has led to self-censorship as well as intimidation, harassment and threats to those expressing independent voices.

104. As an example of common restrictions on freedom of expression, a member of the Crimean Tatar Mejlis in Kherson cited public posters allegedly disseminated by *de facto* authorities in Crimea, which call on residents to inform a hotline of the Russian security services (FSB) about anyone speaking critically against the occupation and annexation. A Ukrainian media channel published an image of one such announcement, allegedly distributed in Simferopol:

‘Although peace has been established in our land, there still are scums who want chaos, disorder, and war. They live among us, go to the same shops as we do, ride with

> us in public transport. You may know the people who were against the return of Crimea to the Russian Federation or took part in the regional 'Maidan'. Such personalities should be reported immediately to the FSB at: 13, Franko Boulevard, Simferopol, or by phone: 37-42-76 (anonymity guaranteed).'"

1371. The Court also attaches importance to the materials prepared by Russian and Ukrainian NGOs, such as Memorial HRC, as well as by a collective of organisations supporting the programme "Let my people go" which have long maintained lists of "Ukrainian political prisoners". The Court will take into account the consistency of their conclusions regarding the alleged political motives of the prosecution and conviction of those prisoners, conclusions which are corroborated by other materials in the case file.

1372. Against this backdrop, the Court notes that in many of the criminal proceedings referred to by the applicant Government, the Crimean law-enforcement authorities tried to link the charges brought against those individuals to their political views or their (actual or perceived) affiliation to different banned organisations regarded as holding anti-Russian views, such as the Mejlis or Ukrainian organisations banned in Russia (see the cases of "26 February" and "3 May" concerning Crimean Tatars who were deemed by the authorities established in Crimea to be affiliated with the Mejlis or at least to share the latter's radical political views; the case of Mr Oleksandr Kostenko, who was believed to be a member of the "Ukrainian radical nationalist political party – Svoboda"; the case of Mr Andrii Kolomiyets, who was believed to be a member of the nationalist organisation UPA; the case of Mr Mykola Shyptur, who was perceived to have been a radical participant in the Euromaidan protests and who had come to Crimea driven by his intention to prevent the proper conduct of the envisaged referendum in Crimea; the cases of the "Ukrainian Saboteurs" who were linked to "Right Sector"; and the case of the "Crimean Four" relating to Crimeans accused of having created and participated in the "Right Sector" terrorist group). Furthermore, it appears that the so-called "internet cases" concern criminal proceedings related to the clear pro-Ukrainian stance voiced through different channels by various inhabitants of Crimea.

1373. The Court notes in addition that the materials submitted by the applicant Government supported the conclusion that several Crimean individuals had been convicted pursuant to Russian Federation laws applied to acts committed before the Russian Federation had exercised effective control over Crimea, in violation of the principle of legality, as interpreted in the light of IHL and which, moreover, had been applied in an unforeseeable manner (see paragraph 1274 above). While the protective principle/passive protective principle of criminal jurisdiction (enshrined in Article 12 § 3 of the CrCRF, A 4) allows States to prohibit and prosecute certain crimes committed wholly outside their territories by persons who are not their nationals, the Court finds, on the basis of the evidence adduced and in the light of the

foregoing considerations, that the instances of deprivation of liberty discussed above were rather aimed at criminalising free speech and associational activities protesting against Russian State policy.

1374. Lastly, the Court takes note of the applicant Government's argument to the effect that Russian law was amended with a view to using it as a tool against any pro-Ukrainian stance in Crimea (see paragraph 1344 *in fine* above). Although it is not in possession of sufficient evidence enabling it to draw such a sweeping conclusion as to the justification of those amendments, the Court cannot but note the significant changes in Russian legislation as of February 2014, increasing and expanding criminal liability for conduct which pertained to the exercise of freedom of expression, peaceful assembly and association (see paragraphs 1344 et seq. above). The Court reiterates that the same type of contextual evidence was taken into account in *Navalnyy* (cited above, § 172) in order to corroborate the view that the authorities were becoming especially severe in their response to the conduct of political activists in the sphere of freedom of assembly.

1375. The Court considers that all the above-mentioned factors are sufficient to enable it to conclude that the prosecution and conviction of individuals referred to by the respondent Government was triggered by an ulterior political purpose which was ultimately meant to punish and silence any political opposition.

(δ) The predominance of the ulterior purpose

1376. The Court must now determine whether the ulterior purpose in question was the predominant purpose of the restrictions complained of. It reiterates that precisely which purpose is predominant in a given case depends on all the relevant circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and will bear in mind the fact that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law (see *Merabishvili*, cited above, § 307).

1377. In this connection, the Court considers that the issue under discussion should be viewed against the general background of the case. The reprehensibility of the ulterior purpose is corroborated by the fact that a number of resolutions have been adopted within the Council of Europe or the European Union urging the Russian Federation to release political prisoners held either in Crimea or in Russia (see the PACE and European Parliament resolutions, A 67-69 and 76-77), with the European Parliament finding that "the judicial system is being instrumentalised as a political tool to repress those opposed to the Russian annexation of the Crimean peninsula" (A 77). The Court thus finds that the cases of the "Ukrainian political prisoners" are emblematic of a pattern of retaliatory prosecution and misuse of criminal law and illustrative of a general crackdown on political opposition to Russian policies in Crimea.

1378. As explained by the applicant Government, the individuals mentioned in their application form have been persecuted not (or, at least, not only) as private persons having allegedly committed reprehensible deeds, but as persons having expressed political criticism and dissent. Moreover, the Court notes that the findings set out above regarding administrative practices might be seen as corresponding to the "grave breaches" envisaged under the Fourth Geneva Convention (see the provisions of Article 147 of that convention – A 49). As the Court has pointed out, the consciousness of belonging to a minority and the preservation and development of a minority's culture cannot be said to constitute a threat to "democratic society", even though it may provoke tensions. The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing political groups tolerate each other (see, *mutatis mutandis*, *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 40, ECHR 2005-X (extracts)).

1379. In this context, the Court considers that the Russian authorities ultimately sought to suppress that political pluralism which forms part of "effective political democracy" governed by "the rule of law", both being concepts to which the Preamble to the Convention refers (see, *mutatis mutandis*, *Ždanoka v. Latvia* [GC], no. 58278/00, § 98, ECHR 2006-IV; *Karácsony and Others*, cited above, § 147; and *Navalnyy*, cited above, § 175). For that reason, the Court attaches the utmost importance to the chilling effects of the impugned restrictions.

1380. Given the above, the Court is satisfied that the ulterior purpose of restricting the rights of "Ukrainian political prisoners" constituted the predominant purpose.

(ε) Conclusion

1381. Bearing in mind the circumstances described above, the Court is satisfied that the elements of the case demonstrate not only a regular pattern of perpetration but also the existence of a continuous State policy of stifling any opposition to the Russian policies, a course of action which has been developed and publicly promoted by prominent representatives of important Russian authorities, and which thus constitutes evidence of "official tolerance".

1382. Accordingly, the Court concludes that there has been a violation of Article 18 in conjunction with Articles 5, 6, 8, 10 and 11 of the Convention on account of an ongoing administrative practice of restricting "Ukrainian political prisoners'" rights and freedoms as enshrined in the Convention in Crimea for an ulterior purpose not prescribed by the Convention. Given that the ulterior purpose of the restrictions remained unchanged, the Court is also satisfied that no issue arises under the six-month rule.

IV. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 46 of the Convention

1383. The relevant parts of Article 46 of the Convention read as follows:

> “1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ...”

1384. Concerning the measures to be adopted by the respondent State, subject to supervision by the Committee of Ministers, to put an end to the violations found, the Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order to discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions and the spirit of its judgment. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the respondent States under the Convention to secure the rights and freedoms guaranteed (see, *inter alia*, *Kurić and Others v. Slovenia (just satisfaction)* [GC], no. 26828/06, § 80, ECHR 2014).

1385. Nevertheless, where the nature of the violation found is such as to leave no real choice as to the measures required to remedy it, the Court may decide to indicate individual measures, as it did in the cases of *Ilaşcu and Others* (cited above, § 490), *Aleksanyan v. Russia* (no. 46468/06, §§ 239-240, 22 December 2008), *Fatullayev v. Azerbaijan* (no. 40984/07, §§ 176-177, 22 April 2010), *Del Río Prada v. Spain* ([GC], no. 42750/09, §§ 138-139, ECHR 2013), *Kavala v. Turkey* (no. 28749/18, § 240, 10 December 2019) and *Selahattin Demirtaş (no. 2)* (cited above, § 442). The Court finds that the above-mentioned general principles should also be applied to inter-State applications.

1386. In the present case, the Court reiterates its findings with regard to the violation of the right to respect for the family life of Crimean prisoners stemming from their transfer from Crimea to penal facilities located on the territory of the Russian Federation in breach of Article 8 taken alone and in conjunction with Article 18 of the Convention. In addition to this factual backdrop, the Court bears in mind as well that the Russian authorities rejected many transfer requests of those prisoners made by the Ukrainian State.

1387. In the light of its case-law set out above and having regard to the particular circumstances of the case, in particular its finding of a violation of Article 18 in conjunction with Article 8, the Court considers that the respondent State must take every measure to secure, as soon as possible, the

safe return of the relevant prisoners transferred from Crimea to penal facilities located on the territory of the Russian Federation.

B. Article 41 of the Convention

1388. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1389. In their memorial on admissibility the applicant Government stated that "the purpose of their application was not to seek individual findings of violations and just satisfaction" (see § 235 of the admissibility decision). However, in their memorial of 28 February 2022 (see paragraph 16 above) they sought "just satisfaction for the violations set out in these memorials, including compensation to the victims".

1390. The Court considers that the question of the application of Article 41 of the Convention is not ready for decision.

1391. In this connection, it reiterates that "Article 41 of the Convention does, as such, apply to inter-State cases" (see *Cyprus v. Turkey* (just satisfaction), cited above, § 43), and it refers to the three criteria it has set out for establishing whether an award by way of just satisfaction was justified in an inter-State case: "(i) the type of complaint made by the applicant Government, which had to concern the violation of basic human rights of its nationals (or other victims); (ii) whether the victims could be identified; and (iii) the main purpose of bringing the proceedings" (see *Georgia v. Russia (I)* (just satisfaction) [GC], no. 13255/07, § 22, 29 January 2019, and *Georgia v. Russia (II)*, cited above, § 350).

1392. In the *Georgia v. Russia (II)* (cited above, § 351) and *Georgia v. Russia (I)* (just satisfaction) (cited above, § 60), the Court also reiterated the Contracting States' duty to cooperate, which it outlined as follows:

> "60. This duty to cooperate, which also applies in inter-State cases (see *Georgia v. Russia (I)*, cited above, §§ 99-110), is particularly important for the proper administration of justice where the Court awards just satisfaction under Article 41 of the Convention in this type of case. It applies to both Contracting Parties: the applicant Government, who, in accordance with Rule 60 of the Rules of Court, must substantiate their claims, and also the respondent Government, in respect of whom the existence of an administrative practice in breach of the Convention has been found in the principal judgment."

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

A. In so far as both applications are concerned

1. *Holds* that the respondent State has failed to comply with its obligations under Article 38 of the Convention;

2. *Holds* that there has been a violation of Article 6 of the Convention on account of an administrative practice excluding that the courts in Crimea could be considered to have been "established by law" within the meaning of Article 6 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention on account of an administrative practice of a lack of an effective system of opting out of Russian citizenship;

4. *Declares* admissible, the applicant Government's complaint concerning the alleged existence of an administrative practice of breach of the right to respect for the family life of the Crimean prisoners stemming from their transfer from Crimea to penal facilities located on the territory of the Russian Federation and *holds* that there has been a violation of Article 8 of the Convention on that account;

B. In so far as application no. 20958/14 is concerned:

1. *Holds* that it has jurisdiction to deal with the applicant Government's complaints as they relate to facts that took place before 16 September 2022;

2. *Holds* that there has been a violation of Article 2 of the Convention on account of an administrative practice of enforced disappearances and of a lack of an effective investigation into the allegations of enforced disappearances;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of an administrative practice of ill-treatment of Ukrainian soldiers, ethnic Ukrainians and Crimean Tatars, as well as journalists;

4. *Holds* that there has been a violation of Article 5 of the Convention on account of an administrative practice of unacknowledged and incommunicado detention of Ukrainian soldiers, ethnic Ukrainians and Crimean Tatars, as well as journalists;

5. *Holds* that there has been a violation of Article 8 of the Convention on account of an administrative practice of arbitrary raids and searches of private dwellings;

6. *Holds* that there has been a violation of Article 9 of the Convention on account of an administrative practice of harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith (in particular Ukrainian Orthodox priests and imams), arbitrary raids of places of worship and confiscation of religious property;

7. *Holds* that there has been a violation of Article 10 of the Convention on account of an administrative practice of suppression of non-Russian media, including the closure of Ukrainian and Crimean Tatar television stations;

8. *Holds* that there has been a violation of Article 11 of the Convention on account of an administrative practice of prohibition of public gatherings and manifestations of support for Ukraine or the Crimean Tatar community, as well as intimidation and arbitrary detention of organisers of demonstrations;

9. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of an administrative practice of expropriation without compensation of property from civilians and private enterprises;

10. *Holds* that there has been a violation of Article 2 of Protocol No. 1 to the Convention on account of an administrative practice of suppression of the Ukrainian language in schools and persecution of Ukrainian-speaking children at school;

11. *Holds* that there has been a violation of Article 2 of Protocol No. 4 to the Convention on account of an administrative practice of restricting the freedom of movement between Crimea and mainland Ukraine, resulting from the *de facto* transformation (by the respondent State) of the administrative border line into a State border (between the Russian Federation and Ukraine);

12. *Holds* that there has been a violation of Article 14 of the Convention, taken in conjunction with Articles 8, 9, 10, 11 of the Convention and Article 2 of Protocol No. 4 to the Convention on account of an administrative practice of targeting Crimean Tatars;

C. In so far as application no. 38334/18 is concerned:

1. *Holds* that it has jurisdiction to deal with the applicant Government's complaints in so far as they relate to facts that took place before 16 September 2022, and also beyond this date but solely for situations of detention which started before this date;

2. *Holds* that the facts complained of by the applicant Government with regard to events which occurred in Crimea fall within the "jurisdiction" of the Russian Federation within the meaning of Article 1 of the Convention, and dismisses the respondent Government's preliminary objection of incompatibility *ratione loci* with the provisions of the Convention and the Protocols thereto in that regard;

3. *Holds* that there is no need to examine further the question of the respondent State's jurisdiction under Article 1 of the Convention with regard to facts complained of by the applicant Government which allegedly occurred on the territories controlled by the "DPR" and the "LPR";

4. *Holds* that the facts complained of by the applicant Government with regard to events which allegedly occurred in Belarus do not fall within the "jurisdiction" of the respondent State for the purposes of Article 1 of the Convention;

5. *Declares* inadmissible the complaint of the applicant Government under Article 8 of the Convention regarding the inability to obtain the transfer to Ukraine of the "Ukrainian political prisoners" arrested and sentenced in the Russian Federation and then held in penal facilities in the Russian Federation as outside the *ratione materiae* jurisdiction of the Court;

6. *Declares* that the rule of exhaustion of domestic remedies is not applicable in the circumstances of the case and accordingly dismisses the respondent Government's preliminary objection of non-exhaustion of domestic remedies;

7. *Joins* to the merits the issue relating to the compliance with the six-month time-limit and dismisses it after examining the merits;

8. *Declares* admissible, the applicant Government's complaints as enumerated at points 9-14 below raised in application no. 38334/18, and declares the remainder inadmissible;

9. *Holds* that there has been a violation of Article 3 of the Convention on account of an administrative practice of ill-treatment of the “Ukrainian political prisoners”, both in Crimea and in the Russian Federation;

10. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the ill-treatment of the “Ukrainian political prisoners” both in Crimea and in the Russian Federation;

11. *Holds* that there has been a violation of Article 3 of the Convention on account of an administrative practice of inadequate conditions of detention in the Simferopol SIZO (Crimea);

12. *Holds* that there has been a violation of Articles 5 and 7 of the Convention on account of an ongoing administrative practice of unlawful deprivation of liberty, prosecution and conviction of “Ukrainian political prisoners” based on the application of the Russian law in Crimea;

13. *Holds* that there has been a violation of Articles 10 and 11 of the Convention on account of an administrative practice of unlawful deprivation of liberty, prosecution and conviction of the “Ukrainian political prisoners” in Crimea for exercising their freedom of expression, of peaceful assembly and association;

14. *Holds* that there has been a violation of Article 18 in conjunction with Articles 5, 6, 8, 10 and 11 of the Convention on account of an ongoing administrative practice of restricting the “Ukrainian political prisoners’” rights and freedoms enshrined in the Convention in Crimea for an ulterior purpose not prescribed by the Convention.

D. Application of Articles 41 and 46 of the Convention

1. *Holds* that the respondent State must take every measure to secure, as soon as possible, the safe return of the relevant prisoners transferred from Crimea to penal facilities located on the territory of the Russian Federation;

2. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision;

   accordingly,

   (a) *reserves* the said question in whole;
   (b) *invites* the applicant Government and the respondent Government to submit in writing, within twelve months from the date of notification

of this judgment, their observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

3. *Reserves* the further procedure and delegates to the President of the Court the power to fix the same if need be.

Done in English and in French and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen
Deputy to the Registrar

Síofra O'Leary
President

ANNEX