Violations of Freedom of Expression and Freedom of Religion by the Russian Federation as the Occupying Power in Crimea

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Abstract: *Considering modern weaponization of media and extensive experience of Russia in employing the propaganda machine, further attacks and trespasses against the freedom of expression and freedom of religion in order to suppress dissent in the occupied territory are to be expected. In accordance with the reports of international organizations and non-governmental organizations, the current situation in Crimea after the occupation with regard to human rights protections is concerning. This article will put together the reported events in Crimea and the city of Sevastopol concerning the freedom of expression and freedom of religion in order to demonstrate the gravity of the situation and responsibility of the occupying power.*

Keywords: *abuses of fundamental rights and freedoms, Crimea, freedom of expression, freedom of religion, human rights, IHL, occupation, Russia, Russian aggression, Ukraine*

1. Introduction

Russian control of the Crimean Peninsula has been addressed and defined multiple times by major international actors as a temporary occupation of the Ukrainian territory. One of the latest resolutions of the UN General Assembly on 'Situation of human rights in Autonomous Republic of Crimea and the city of Sevastopol, Ukraine' reaffirms the position of the UN with regard to condemning the occupation of Ukrainian territory by Russia and the non-recognition of the annexation (Resolution A/RES/72/190). This resolution also expresses further concerns about the respect of human rights in the occupied territory by Russian authorities, in particular mentioning such practices as the automatic imposition of Russian citizenship on the local population and the retroactive application of the Russian legal system, reports of involuntary placement in psychiatric institutions as a method of political persecution, reports of torture being used by Russian authorities to extract false confessions for politically motivated persecutions, arbitrary arrests and detentions in addition to other abuses of fundamental rights and freedoms (Resolution A/RES/72/190). Another UN General Assembly Resolution expresses concern over the ongoing progressive militarization of the Autonomous Republic of Crimea and the city of Sevastopol as well as parts of the Azov Sea and Black Sea and urges the Russian Federation to withdraw its forces from the Ukrainian territory and end the occupation without delay (Resolution A/RES/73/194).

Furthermore, in its report, the International Criminal Court (ICC) has identified the situation as an ongoing occupation of the territory of Crimea and Sevastopol in the context of an international armed conflict between Russia and Ukraine and thus the law of international armed conflict regulates the situation (ICC, 2018). Additionally, in this report the ICC has analyzed and evaluated if it has subject-matter jurisdiction with regard to the reported enforced disappearances, killings, torture, ill-treatment, forced conscription, deprivations of the right to fair trial, deprivations of liberty, seizures of property, displacement of the population, and alleged persecutions on the territory of the Autonomous Republic of Crimea and the city of Sevastopol in addition to breaches of international law committed on the territory of Eastern Ukraine (ICC, 2018).

The OSCE Parliamentary Assembly has also affirmed its position in regard to the condemnation of the temporary occupation of the territory of the Autonomous Republic of Crimea and the city of Sevastopol and expressed further concern about the restrictions of human rights and fundamental freedoms in the occupied territory by the Russian Federation (OSCE, 2017). The Parliamentary Assembly

of the Council of Europe in its resolutions has also recognized the international conflict between Russia and Ukraine and the temporary occupation of the territory of Crimea and the city of Sevastopol (PACE, 2016; 2018). PACE Resolution on 'Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities' has additionally reaffirmed that the Russian Federation carries the responsibility for guaranteeing the human rights protection for the population of the occupied territories under international law, as the party exercising de facto control (PACE, 2016). As an occupying power, exercising control over the territory without consent of Ukraine and with no recognized legal transfer of sovereignty, Russia is obliged to respect the international law of occupation and human rights law, including the freedom of expression, association, and peaceful assembly (*Human Rights Watch*, 2017a).

In the use of the media machine for the purpose of distorting reality and presenting "alternative facts", there are no equals to Russia, most likely due to the extended experience (Tsybulenko & Francis, 2018, p. 136). It has demonstrated such ability in no small part during the media campaign that attempted to justify the international armed conflict in Ukraine (Lankina & Watanabe, 2017, pp. 1526–1527), globally as well as internally (Ambrosio, 2016, p. 486) through the extending notion of genocide to linguistic groups, misplacing legal notions and concepts and putting on alleged labels (Sayapin, 2018, p. 320). In this context, it is expected that the occupying power will attempt to seize control of the narrative in Crimea in order to disrupt protest movements and activism through the hindering of the freedom of expression and suppression of dissent (Mejias & Vokuev, 2017, p. 1028). It is particularly important to evaluate the human rights situation in occupied Crimea, as the human rights deprivation of the Russian-speaking population was invoked by Russia as justification for the occupation of the peninsula (Grant, 2015, p. 73).

This article attempts to analyze the situation with regard to the protection of the freedom of expression and freedom of religion on the occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol and proposes the following hypothesis to be evaluated: the Russian Federation is in breach of international humanitarian law and human rights law as an occupying power in the Autonomous Republic of Crimea and the city of Sevastopol and should bear responsibility for those breaches. In order to evaluate the hypothesis, reported events will be compared with the existing framework of international law, international humanitarian law, and human rights law in particular. This is manifested through a description of the events and subsequent analysis of such events on the basis of international framework of international law.

2. Violations of the international humanitarian law and the human rights law

First, the indigenous people in Crimea, such as Crimean Tatars, who are officially recognized as indigenous people in Ukraine due to compliance with international standards (Babin, 2014, p. 88; Bowring, 2018, p. 25), have experienced acute persecution during the occupation of Crimea and the city of Sevastopol by Russia. The Crimean Tatar community and its supporters have been subjected to harassment, intimidation, unlawful house searches, threats, physical attacks, and enforced disappearances (*Human Rights Watch*, 2017b). Some of the examples are separatism charges brought against Suleiman Kadyrov for a social media comment criticizing the occupation, the two-year prison sentence of Ilmi Umerov for criticizing the actions of Russian authorities in Crimea (*Human Rights Watch*, 2017b), and the eight-year prison sentence given to Akhtem Chiygoz on charges of organizing “mass riots” (*Human Rights Watch*, 2017a).

Another branch of persecution of the Crimean Tatars is carried out under the cover of anti-extremist and anti-terrorist activity. The 2016 ban on all activities of Mejlis, an elective representative body of Crimean Tatars and effectively the voice of the community, due to it being recognized as an extremist organization, is an example of that (Cooper, 2016). Furthermore, 26 people were charged with alleged involvement with Hizb ut-Tahrir, recognized as a terrorist organization in Russia despite its denouncing of violence as a means to achieve its goals (*Human Rights Watch*, 2017b). The ban on all public activities by and on behalf of Mejlis, together with the closing of several Crimean Tatar media outlets such as *Avdet*, constitutes a trespass against freedom of expression due to effectively preventing the Crimean Tatar community from spreading and receiving information (OHCHR, 2018).

The UN International Court of Justice (ICJ) has issued the following provisional measures to address the situation in Crimea: the ICJ obliged the Russian Federation to comply with its obligations under the International Convention for Elimination of All Forms of Racial Discrimination, to refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis, ensure the availability of education in Ukrainian language, and the ICJ has additionally obligated both parties to refrain from aggravating or extending the dispute (UN ICJ, 2017). Until now Russia manifestly ignores the decision of ICJ.

The only TV channel that broadcasted in Russian, Ukrainian and Crimean Tatar, the *ATR*, had been closed down because it was not able to re-register under Russian law by 1 April 2015 (Gorbunova, 2015). Political motivations are denied in this decision, despite the waves of harassment that *ATR* and other media outlets had experienced in the 12 months preceding the decision (Gorbunova, 2015). Analogue broadcasts of Ukrainian channels were shut down and the only Ukrainian-language newspaper *Krymska svitlytsia* was banned from distribution in 2014 (OHCHR, 2018). After the occupation by the Russian Federation, only 232 media outlets were allowed to re-register compared to the approximately 3,000 that were registered under Ukrainian law (European Parliament, 2016). Additionally, *Ukrtelecom*, which is a Ukrainian provider of telecommunication services such as telephone connection, television connection and the internet, was blocked in Crimea, forcing local residents to buy services from Russian companies and severing their connection with mainland Ukraine (Tsybulenko & Kelichavyyi, 2018, p. 283).

There are two other well-known indigenous peoples in Crimea, the Karaites and Krymchaks, but their numbers do not exceed a few hundred, whereas the number of Crimean Tatars was estimated to be over 250,000 at the end of 2014, which is why they might be seen as more of a threat by the Russian authorities' standards (Babin, 2014, p. 103).

Political persecutions have touched not only ethnic minorities after the occupation of Crimea and the city of Sevastopol. Systemic persecution and intimidation of persons who hold dissenting and opposing opinions to the official rhetoric is characteristic of the Crimean occupation (Tsybulenko & Kelichavyyi, 2018, pp. 284–285). Cancellations and restrictions of journalistic guarantees and the regulation of media activity, the threat of punishment for “undesired” publications all constitute harmful effects on the freedom of expression in Crimea and Sevastopol (OHCHR, 2018). House searches, interrogations, and detentions are often used against journalists by the Russian authorities, as seen in the cases of Natalia Kokorina, Hanna Andriievskia, Lilia Budzhurova, and many others (UHHRU, 2016).

Absence of the registration, just as in the case of *ATR* TV channel, was used against the *Admiral* newspaper to stop its circulation (UHHRU, 2016). As journalist status and related protections are only given to cooperating persons and entities, many journalists and other media persons have been stripped of their status, some of them have had to leave the territory of the peninsula following the occupation, for example Hanna Andriievskia (UHHRU, 2016). Additionally, Ukrainian and international media websites are being banned

in Crimea by internet service providers, the list of which includes LinkedIn, Telegram, Censor, 15 Minut, DEPO, RBK and many, many others (*Censor.Net*, 2019c). Cyber-attacks against opposition servers and against the mobile devices of Verkhovna Rada members carried the same silencing tone as the banning of the websites in Crimea among all other cyber-attacks and incidents during the international armed conflict in Ukraine (Valich, 2018, p. 227).

There have been cases of forced disappearances of Crimean Tatars and pro-Ukrainian activists reported by Mejlis of Crimean Tatars and human rights activists, such as the case of Mukhtar Arislanov (UHHRU, 2016). When discussing the political persecutions and trespasses against freedom of speech in the occupied territory of Crimea, it is also impossible not to mention the case of Oleg Sentsov, a Ukrainian filmmaker, who was sentenced to 20 years of prison for “preparing terrorist activity” (Kharkiv Human Rights Protection Group, 2019a). Oleg Sentsov and Oleksandr Kolchenko along with two other opponents of the occupation of Crimea were seized in May 2014 and convicted just over a year later on fabricated charges (Kharkiv Human Rights Protection Group, 2019a). In the cases of Mykola Karpyuk and Stanislav Klykh, evidence that events did not happen as it was claimed and the alibies of both men were ignored by the ‘court’, as was the evidence that Karpyuk and Klykh were abducted and tortured when they were convicted to 22.5 and 20 years in prison, respectively (Kharkiv Human Rights Protection Group, 2019a).

It is also internationally recognized that Volodimir Balukh was imprisoned for his pro-Ukrainian views and refusal to remove a Ukrainian flag from the roof of his home on the charges of illegal storage of ammunition and that his case contains gross levels of falsification (Kharkiv Human Rights Protection Group, 2019b)—e.g., the officer who supposedly found the ammunition was not on duty that day, the absence of fingerprints or other traces indicating connection to Balukh or his family members on the ammunition. All these facts are rather unusual and question of the origin of this “evidence” (Kharkiv Human Rights Protection Group, 2019b). Moreover, no reason was indicated in the search of Balukh and his common-law wife (Kharkiv Human Rights Protection Group, 2019b). As a continuation of this trend, a Crimean Tatar man was convicted for “publicly inciting hatred or enmity” in Facebook posts where he had referred to Crimea as “occupied” and “annexed”, mentioned the oppression of Crimean Tatars, and quoted a Crimean Tatar leader who organized food and trade blockade of Crimea in 2015 (OHCHR, 2018).

Only in the last year, six people have been found dead in remand prisons in Crimea, four of whom were Crimean Tatars, and one had disappeared (*Censor*:

Net, 2019a). In accordance with the data of the UN Human Rights Monitoring mission in Ukraine, 42 people have disappeared in the period from 2014 to June 2018, including 27 ethnic Ukrainians and 9 Crimean Tatars (Bureau of Democracy, Human Rights and Labour, 2018). Twenty-three Ukrainians in total have been imprisoned for political reasons in the territory of Russian Federation according to Ambassador-at-large for the Ministry of Foreign Affairs of Ukraine Dmytro Kuleba (Tsybulenko & Kelichavyi, 2018, p. 285).

Following long-standing tensions, the Ukrainian Orthodox Church recently split from the Russian Orthodox Church and became independent following a declaration Tomos, signed in Istanbul by Archbishop of Constantinople and Ecumenical Patriarch Bartholomew I (*Financial Times*, 2018). Kremlin was strongly opposed to the split. This was followed by the religious persecution of the Archbishop Klyment of Crimea and Simferopol of the Ukrainian Orthodox Church, who is the confessor of Volodimir Balukh (*Krym.Realii*, 2019). Klyment was detained at a bus station about to leave for Rostov-on-Don in order to visit another political detainee, Peter Grib, and was accused of stealing from the church and using profanity in a marketplace (*Censor.Net*, 2019b). The case has not been closed yet and there are concerns about the further actions of the Russian authorities (*Censor.Net*, 2019b).

There are also Muslims, Evangelical Christians and Greek Catholics who have left Crimea following the occupation due to fear of religious persecution (Bureau of Democracy, Human Rights and Labour, 2018). The church leaders of Christian Evangelicals, who have refused to accept Russian citizenship, were barred from leading their churches (Bureau of Democracy, Human Rights and Labour, 2014). After the split of the church, the newly established Ukrainian Orthodox Church became one of the main targets of persecution (UNIAN, 2019). Prior to that, restrictions had been placed on the Spiritual Administration of Crimean Muslims and prayers were regularly monitored by the authorities (Bureau of Democracy, Human Rights and Labour, 2018).

3. Freedom of expression

The main international instruments that regulate freedom of expression are the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Universal Declaration of Human Rights (1948), in its Article 19, states that everyone has the right to freedom of opinion

and expression, including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The International Covenant on Civil and Political Rights (1966) and the European Convention of Human Rights (1988) expand the freedom of expression to include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice.

Although freedom of expression is not absolute and can be restricted for reasons of the respect of rights and reputation of others, public order, public morality, public health, and national security, the instances described above clearly demonstrate gross trespasses against freedom of expression, in which individuals experienced persecution due to the opinions that they hold as well as prevention of receiving and imparting information through the media, which is demonstrated by blocking various websites in the territory of the Crimean Peninsula by service providers, severing contacts with mainland Ukraine, closing down of the *ATR* TV channel, stopping the circulation of newspapers, drastic reduction of the registered media, and persecution of journalists and other public persons.

With regard to the International Humanitarian Law, the 'Law on occupation' is contained in The Hague Regulations of 1907, the Fourth Geneva Convention of 1949, and Additional Protocol I of 1977. Under the law on occupation, the occupying party does not have sovereignty over the occupied territory and is required to respect and uphold existing laws and institutions on the occupied territory, which in this case is established by Ukraine. Russia as the occupying power on the Crimean Peninsula is a signatory to The Hague Regulations of 1907, the Fourth Geneva Convention of 1949, and the Additional Protocol I of 1977, as well as the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and has to adhere to the principles of international law and provisions laid out in these documents.

4. Response from Ukraine

Ukraine has not given up efforts to bring light to the situation and make the responsible party assume responsibility for its deeds. This case has been brought to the International Criminal Court in two submissions, the UN International Court of Justice, the European Court of Justice, the European Court of Human

Rights (ECtHR), and different arbitrations. First and foremost it is important to mention the Law of Ukraine no. 1207-VII of 15 April 2014, ‘On securing the rights and freedoms of citizens and the legal regime on the temporarily occupied territory of Ukraine’, which has established that Ukraine recognizes that the land territory of Crimea and the city of Sevastopol and internal waters, adjacent territorial waters, continental shelf of Ukraine adjacent to the coast and airspace above all previously mentioned territories are the temporarily occupied territory of Ukraine (Law of Ukraine, no. 1207-VII). This law also states that Ukraine will take all necessary measures to guarantee the human rights and freedoms of all citizens of Ukraine residing in the occupied territory, states that Ukraine exclusively is able to establish a legal regime of the temporarily occupied territory, effectively establishes such a special legal regime, and once again reiterates that under international law, the responsibility for human rights violations on the occupied territory is on the Russian Federation as an occupying power (Law of Ukraine, no. 1207-VII).

Additionally, Verkhovna Rada adopted the Statement of the Verkhovna Rada of Ukraine on the Guarantees of the Rights of the Crimean Tatar People as a Part of the Ukrainian State, which makes references to the Ukrainian Constitution, the UN Charter, the UN International Covenant on Economic, Social and Cultural Rights, and the Vienna Declaration, where it guarantees the preservation of the ethnic, cultural, linguistic, and religious identity of Crimean Tatars as an indigenous people, extends similar guarantees to other ethnic minorities, and recognizes Mejlis as the executive body of the Kurultay of Crimean Tatar people (Babin, 2014, pp. 97–98).

The Ukrainian Prosecutor’s Office of the Autonomous Republic of Crimea has also continued its activity in investigating crimes committed in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, such as enforced disappearances, arbitrary detentions and isolation for the period of the referendum, and participating in bringing the case before the International Criminal Court (Human Rights Information Center, 2017; UHHRU, 2017; *QHA Media*, 2019).

5. Conclusion

This article has briefly looked at the numerous reports of trespasses against freedom of expression and freedom of religion in the occupied territory of Crimea and the city of Sevastopol by the Russian authorities. The events described in the article, most of which have been reported on by human rights groups, undeniably constitute such trespasses within the international framework on human rights. Therefore, the hypothesis proposed in the article proved to be true. The context of the manipulation of the media machine have also allowed for the violations of freedom of expression and religion to be viewed as tools for impacting the said machine. Suppression of dissenting opinions allows to portray the events in the light that is more favourable to the manipulating entity. This article, by providing examples of such suppression, aims to bring attention to the blatant disregard of the international legal framework.

The responsibility of the occupying power with regard to these and other trespasses of human rights and fundamental freedoms on the occupied territory is an undeniable principle of the international humanitarian law. As numerous examples of violations of freedom of expression have been established and the responsibility of an occupying power over the protection of fundamental rights and freedoms of the civilian population in the occupied territory is an essential principle of the international humanitarian law, the Russian Federation must bear responsibility for the trespasses against freedom of expression in front of competent courts such as the ECtHR and the International Court of Justice and the international community. There are many components and details to Russia's responsibility for breaches of fundamental freedoms in the occupied territory, such as specifically the subjects of international legal responsibility (Merezhko, 2018, p. 120), but the wrongs that have been done during the ongoing occupation have to be made right and utmost effort must be put in to stop the ongoing occupation of the Autonomous Republic of Crimea and the city of Sevastopol.

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