

**Office of the United Nations High Commissioner  
for Human Rights**

**Report on the human rights situation in Ukraine  
16 November 2018 to 15 February 2019**



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100. OHCHR notes that by virtue of the continued occupation of Crimea by the Russian Federation, an international armed conflict continues to exist between the two States in Crimea and international humanitarian law continues to apply there. As such, a single hostile encounter between the armed forces or assimilated armed units of two sovereign states, as the 25 November 2018 incident, suffices to trigger the application of international humanitarian law, irrespective of the pre-existence of an armed conflict. Consequently, the rules of international humanitarian law that are applicable to international armed conflict continue to apply.

101. All 24 crew members, including those who had reportedly sustained injuries during the incident, have been charged with illegal crossing of the Russian border, a criminal offence punishable by up to six years of imprisonment, and remanded in custody.<sup>118</sup> Between 29 and 30 November 2018, the Russian Federation authorities reportedly transferred all 24 crew members from Simferopol to Moscow, where they placed them in SIZOs.

102. The Ukrainian Government considers the apprehended crew members to be *prisoners of war*. Similar statements were made by the crew members and their lawyers, including during court hearings on the measure of restraint. Nevertheless, as of 15 February 2019, the Russian Federation authorities refuse to apply international humanitarian law provisions to the incident and deny the detained crew members the status of *prisoners of war*.

103. OHCHR notes that based on the provisions of international humanitarian law,<sup>119</sup> the 24 detained crew members could be considered as *prisoners of war* and protected by the Third Geneva Convention. In any case, they shall enjoy the status of a *prisoner of war* until a competent tribunal determines otherwise.<sup>120</sup> OHCHR recalls that *prisoners of war* must *inter alia* be humanely treated, protected against violence or intimidation, and provided with the medical assistance if needed.

## **B. Administration of justice, intimidation and harassment of human rights defenders**

104. On 7 December 2018, a district court in Simferopol sentenced Crimean Tatar lawyer Emil Kurbedinov, known for defending critics of Crimea's occupation and alleged members of organizations, banned in the Russian Federation, to five days of administrative detention for disseminating extremist symbols through a social network.<sup>121</sup> During a court hearing, the judge ignored the fact that the impugned content was posted five years ago – prior to the *de facto* implementation of the Russian legislation in Crimea<sup>122</sup> – and denied over 40 motions of his defense team, including the motion to ensure the presence of a prosecutor, to question an expert witness and recuse a presiding judge.<sup>123</sup> Kurbedinov was released on 11 December after serving his sentence in full.

105. OHCHR notes that Kurbedinov's conviction follows a series of earlier incidents that indicate a pattern of deliberate intimidation, hindrance, harassment or interference by the Russian authorities in Crimea with his professional activities. In 2017, he was also prosecuted for social media posts.<sup>124</sup> On 6 November 2018, police raided his office in Simferopol to serve him with a “formal warning” against engagement in extremism. OHCHR is concerned that this time, the extremism charges may be used to formally deprive Kurbedinov of his right to practice law in Crimea. On 18 December, the Ministry of

<sup>118</sup> OHCHR interviews, 27 – 29 November 2018.

<sup>119</sup> Article 4 (A) (1) and 4 (A) (4) of the Third Geneva Convention and Articles 43 and 44 of Additional Protocol I.

<sup>120</sup> Article 5 of the Third Geneva Convention.

<sup>121</sup> Judgment of the Kyivskiyi district court of Simferopol, 7 December 2018, Case No. 5-1148/2018.

<sup>122</sup> This may be viewed as a violation of Article 70, Geneva Convention IV.

<sup>123</sup> OHCHR interview, 7 December 2018.

<sup>124</sup> Earlier, on 26 January 2017, Emil Kurbedinov was sentenced to ten days of administrative detention on similar charges, *see* OHCHR report on the human rights situation in Ukraine, 16 November 2016 - 15 February 2017, para. 128.