



# HUMAN RIGHTS IMPACT ASSESSMENT OF THE COVID-19 RESPONSE ON THE TERRITORY OF UKRAINE

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**IPHR** International  
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# I. Introduction

In December 2019, a new type of viral respiratory infection was recorded in Wuhan – a city in the eastern Hubei province of China. By the end of January 2020, the World Health Organisation (WHO) had confirmed that a new type of coronavirus – named 2019-nCoV or COVID-19 – had emerged and was capable of human-to-human transmission. At the start of February 2020, COVID-19 had already spread to 18 countries, infecting nearly 8000 people, leading the WHO to declare a ‘Public Health Emergency of International Concern’. By 11 March 2020, COVID-19 had infected 118 000 and killed 4 291 people across 114 countries, and was declared a global pandemic. On the same day, the WHO Director General instructed all countries to prepare hospitals and public health infrastructure, clearly explain the risks and mechanics of transmission to the public, protect and train health workers and reduce transmission by effectively testing, tracking, tracing and isolating.<sup>1</sup> At the time of writing, nearly 12 million people have tested positive for COVID-19 worldwide, leading to 550 000 deaths.<sup>2</sup>

Governments around the world have responded to the COVID-19 pandemic by imposing restrictions on movement, banning public gatherings, closing educational institutions and imposing varying forms of quarantine or self-isolation. From the human rights perspective, the biggest challenge facing all governments is balancing the duty to protect life and prevent avoidable suffering with safeguarding other fundamental human rights. Thus, national authorities are justified in curtailing some rights and freedoms – such as movement, assembly and expression – provided such restrictions have a legal basis, are strictly necessary and proportionate to the objective of protecting public health and saving lives (based on scientific advice), are subject to constant review and lifted when no longer necessary, and are applied indiscriminately. Moreover, given the devastating economic impact of lockdown measures, national authorities must protect the economic well-being of the population, as well as its access to food, education and healthcare – especially for minorities, the homeless and other vulnerable segments of the population. The greatest risk to human rights posed by COVID-19, is that governments may seek to use the upheaval of the pandemic to restrict fundamental rights and democratic principles for ulterior purposes, and retain these restrictions long after the dangers posed by COVID-19 have passed.

It is with this in mind that IPHR has launched a project to monitor and document the impact of government responses to COVID-19 on fundamental human rights in former-Soviet Union region. This report – focusing on Ukraine – is part of a series of country-reports, based on information received from researchers, lawyers and civil society organisations operating in each country.

The specificity of reporting on Ukraine’s response to COVID-19 is that since 2014, the Government of Ukraine no longer effectively controls approximately 7% of its territory. In March 2014, the Russian Federation invaded and occupied the Crimean Peninsula, imposing its own laws and institutions, and expelling Ukrainian authorities from its territory. Several months later, pro-Russian separatists backed by the Russian armed forces invaded and occupied large parts of Donetsk and Luhansk provinces in eastern Ukraine, establishing the so-called Donetsk and Luhansk Peoples’ Republics (DPR and LPR). At the time of writing, the Government of Ukraine is unable to exercise authority (and respond to COVID-19) over approximately 43 300 km<sup>2</sup> of its territory (home to approximately 4.7 million people).

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1 Information taken from the World Health Organisation, “Archived: WHO Timeline – COVID-19”, 27 April 2020, available at: <https://www.who.int/news-room/detail/27-04-2020-who-timeline---covid-19>; World Health Organisation, “WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March 2020”, 11 March 2020, available at: <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

2 Worldometer, “COVID-19 Coronavirus Pandemic”, available at: <https://www.worldometers.info/coronavirus/>.

Moreover, there is a marked lack of accurate and trustworthy information about the authorities' conduct and the human rights situation in Ukrainian territories occupied by the Russian Federation and DPR and LPR forces. International monitors have not been granted any or any meaningful access to occupied territories, and the occupying authorities regard transparency and accountability as an impediment to their power and control. As such, the bulk of this report is focused on the response of the Government of Ukraine over territory under its effective control. Limited information about the situation on the Crimean Peninsula and on territories controlled by DPR and LPR authorities has been obtained from occupying authorities and media sources, but has not been independently verified. The relatively scant assessment of the COVID-19 response and its human rights impact in occupied territories reflects the authors' limited access to reliable information, rather than the occupying authorities' observance of international human rights standards.

## II. Executive Summary

The International Partnership for Human Rights (IPHR), together with civil society organisations and researchers from across the Former Soviet Union (FSU), are conducting a region-wide assessment of national governments' responses to the COVID-19 pandemic, and the impact on human rights. The present report sets forth our assessment of the COVID-19 response in Ukraine, and is part of a series of country-reports from the FSU region. All country reports are based on information and data provided by national focal points – local researchers working with IPHR and local civil society organizations with which IPHR has been collaborating for many years. While collecting the data we paid particular attention to rights violations that occurred exclusively in the context of restrictive measures and policies that were introduced by the local authorities in relation to the COVID-19 response.

The IPHR team analyzed dozens of cases of alleged rights violations reported by local civil society actors and independent media. Statistical data on prevalence of the disease and information about restrictive measures introduced in response to COVID-19 crisis has been obtained from official government sources. Information collected has been analyzed against applicable regional (Council of Europe) and universal (United Nations) standards.

Since 2014, approximately 7% of Ukrainian territory is no longer under effective control and authority by the Government of Ukraine. The Crimean Peninsula is under occupation by the Russian Federation, which exercises *de facto* authority over the territory through administrative, judicial and law-enforcement structures subordinate to the Russian Government. Likewise, pro-Russian separatist forces have occupied large parts of Donetsk and Luhansk Provinces in Eastern Ukraine, proclaiming independence. These territories are *de facto* administered by separatist authorities – the so-called Donetsk and Luhansk Peoples' Republics (DPR and LPR) – with overall control by and dependence on the Russian Federation. Consequently, this report provides separate assessments for territories controlled by the four separate authorities: the Government of Ukraine, Russian occupying authorities on the Crimean Peninsula, the DPR and the LPR. However, given the scarcity of accurate and trustworthy information about the authorities' conduct and the human rights situation in territories occupied and controlled by Russian, DPR and LPR authorities, the report is primarily focused on assessing the response by the Government of Ukraine. The limited assessment of the situation in occupied territories reflects IPHR's limited access to reliable information, rather than the occupying authorities' observance of international human rights standards.

The first COVID-19 case in Ukraine was registered by Ukrainian authorities on 3 March 2020. In Crimea, the first case was reported on 21 March 2020. DPR authorities reported their first case of COVID-19 on 31 March 2020, whilst LPR authorities reported their first case on 30 March 2020. As of 10 July 2020, 52 043 people have tested positive for COVID-19 and 1345 have died from the virus on territory controlled by the Government of Ukraine. Russian authorities report that 1073 persons had tested positive for COVID-19 leading to 17 deaths on the Crimean Peninsula. DPR authorities have reported a total of 1336 COVID-19 cases and 79 deaths. LPR authorities have reported 555 COVID-19 cases and 13 deaths.

The Government of Ukraine responded to the COVID-19 pandemic by declaring an 'emergency situation', and introducing increasingly restrictive measures to limit movement, public gatherings, commerce and education. Educational institutions and spectator sports were shuttered on 12 March 2020. Ukraine's borders were effectively closed from 14 March 2020. On 17 March 2020, the Government banned gatherings of more than 10 people, placed restrictions on public transport, closed non-essential shops

and temporarily suspended non-emergency hospitalisations. Restrictions were tightened further on 26 March 2020, banning all public gatherings and making facemasks compulsory in public spaces. The Government introduced three levels of lockdown – mandatory self-isolation (for those with COVID-19 or its symptoms, persons arriving from occupied territories or from abroad, and those over 60), mandatory quarantine in designated locations (for those unable to self-isolate at home) and mandatory hospitalisation (for those refusing to comply with mandatory self-isolation requirements). The Government also launched the “Дій вдома” - “Act at home” mobile phone app for remote monitoring of compliance with self-isolation measures. From 29 April 2020, the Government began to slowly lift restrictions. From 20 May 2020, the Government adopted a regional approach to restrictions – introducing or lifting restrictions in accordance with the needs of each region.

Whilst restrictive measures were clearly necessary to slow down the rate of infection and protect vulnerable lives, IPHR has noted a number of problematic areas in the Government’s response from the human rights perspective, namely:

- The introduction of restrictions by government decree (rather than parliament) may have violated the Constitution of Ukraine;
- The Government has not done enough to address the disproportionate burden of restrictions on movement on the homeless, the Roma people and persons dependant on crossing in and out of temporarily occupied areas;
- The lack of standard operating procedures and videoconferencing equipment has resulted in vast disparities between courts’ abilities to support remote hearings in different regions of Ukraine.
- Deaths and suffering from COVID-19 among the prison population, the homeless and medical professionals – resulting from the Government’s failure to take necessary steps to protect these vulnerable groups – is likely to violate the right to life and/or prohibition on inhuman treatment.
- The “Дій вдома” (“Act at Home”) mobile app has failed to meet the safeguards and requirements of the right to privacy.
- Confusion over the legal effect of lockdown measures on the right to peaceful protest has led to arbitrary conduct by the police and in some instances, violence between the police and protesters.
- A spate of administrative and criminal proceedings against the alleged dissemination of ‘fake news’ about COVID-19 could stymie genuine debate and lead to self-censorship for those who do not agree with the Government’s position.
- Certain vulnerable groups – like the homeless, sex workers, the Roma and frontline workers – have not had their health needs met as a result of discrimination or lack of adequate resource allocation.
- With up to 19% of all Ukrainian pupils having no or little access to a computer at home, and less than 60% of rural pupils having access to the internet, the emphasis on online distance learning is likely to cause inequality in the standard of education delivered to pupils from economically deprived households and rural areas.
- The Government needs to allocate more resources to regional authorities, shelters and frontline workers (including adequate PPE), who bear the brunt of responsibility for protecting the vulnerable.

On the Crimean Peninsula, the occupying authorities began to introduce restrictive measures on 17 March 2020, with a prohibition on public events and mass gatherings, and the shuttering of educational institutions on 23 March 2020. From 25 March until mid-May, employees no longer had to go into work and had their wages guaranteed. Russian borders (including Crimea) were closed on 30 March

2020. From April 2020, the Russian Parliament empowered each region to manage its own COVID-19 response, and dramatically increased the penalty for violating lockdown measures. The Parliament also introduced a new 'fake news' law. A gradual lift on restrictions began on 8 May 2020. Whilst information about the real extent of the human rights impact of restrictive measures is not available, IPHR was able to document the following developments:

- Occupying authorities have relied on new powers to enforce lockdown measures and punish 'fake news' to penalise over 7000 residents of the Crimean Peninsula. Given the lack of judicial independence, impartiality and fairness, there is a serious threat that these decisions did not comply with international standards of justice.
- Occupying authorities failed to take measures to reduce overcrowding in prisons on the Peninsula. Overcrowded facilities and inadequate conditions of detention in the context of COVID-19, threaten the prisoners' lives and wellbeing, in violation of their right to life and prohibition on inhuman treatment.

On territory controlled by DPR forces, all educational institutions were ordered to switch to remote learning from 19 March 2020, and all DPR 'officials' were banned from leaving the separatist-held territory from that day. From 27 March 2020, all travel outside of DPR-held territories was banned, except for Russian citizens holding permanent residency in Russia. On territory held by LPR forces, all educational institutions were ordered to switch to remote learning from 27 March 2020. In April 2020, LPR authorities enacted 'laws' establishing criminal liability for evading lockdown rules and introduced severe penalties. Whilst information about the real extent of the human rights impact of restrictive measures is not available, IPHR was able to document the following developments:

- DPR/LPR authorities continue to pursue alleged 'spies' and 'saboteurs' through violence, arbitrary detention and enforced confessions.
- In the wake of COVID-19, the authorities have created a new 'Cossack' law enforcement force to enforce order more generally, as well as compliance with COVID-19 restrictions.
- Poor access to the Internet on DPR/LPR-controlled territory has effectively deprived pupils of education during the lockdown period.

IPHR calls on all governing authorities in Ukraine to ensure that restrictive measures have a legal basis, are strictly necessary and proportionate to the objective of protecting public health and saving lives (based on scientific advice), are subject to constant review and lifted when no longer necessary, and are applied indiscriminately. Authorities must take particular care to ensure that vulnerable and marginalised groups are not disproportionately disadvantaged by the response to COVID-19, and must take steps to address pre-existing inequalities. Authorities must not use the pandemic to restrict fundamental rights and democratic principles for ulterior purposes.



### III. Methodology

In order to respond to the unfolding human rights crisis across the former Soviet Union (FSU) region, IPHR devised a monitoring tool – an in-depth questionnaire covering civil political, social and economic rights which have potentially been affected by the restrictive measures introduced by the authorities to contain the spread of COVID-19. The monitoring tool provides a framework to assist local civil rights organisations in monitoring the ways in which the authorities respond to the crisis, so that core human rights, especially those of the most vulnerable are protected. The monitoring tool covers following areas on interest:

1. Emergency measures
2. Right to liberty and security and freedom of movement
3. Right to a fair trial
4. Prisons and other places of detention
5. Right to Privacy
6. Freedom of assembly and association
7. Freedom of expression/access to information
8. Health care
9. Housing
10. Right to water
11. Economic and financial response
12. Right to education
13. Equality and non-discrimination
14. People Living with disabilities
15. LGBTQI persons
16. Migrants, ethnic minority groups and xenophobia
17. Children, young and older people

Much of the information and data presented on this report has been provided by national focal points – local researchers working with IPHR and local civil society organizations with which IPHR has been collaborating for many years. While collecting the data we paid particular attention to rights violations that occurred exclusively in the context of restrictive measures and policies that were introduced by the local authorities in relation to the COVID-19 response.

The IPHR team analyzed dozens of cases of alleged rights violations reported by local civil society actors and independent media. Statistical data on prevalence of the disease and information about restrictive measures introduced in response to COVID-19 crisis has been obtained from official government sources. Information collected has been analyzed against applicable regional (Council of Europe) and universal (United Nations) standards.



## IV. Brief Country Information

Ukraine is a semi-presidential constitutional republic, bordering the Russian Federation to the East, Belarus to the North, Turkey to the South, and Moldova and the European Union to the West (Romania, Hungary, Slovakia, Poland).<sup>3</sup> Its territory covers over 600 000 km<sup>2</sup>, with an estimated population of 42 million inhabitants.<sup>4</sup> Ukraine is made up of two major ethno-linguistic groups: Ukrainian (77.8%) and Russian (17.3%), with the remaining 4.9% of the population made up of at least 13 ethnic minority groups (Romanians, Moldovans, Belarusians, Crimean Tatars, Bulgarians, Hungarians, Poles and others).<sup>5</sup> Ukrainian is the official language of Ukraine, with Russian also being widely spoken, particularly in Kyiv and in South-Eastern Ukraine.<sup>6</sup>

Ukraine gained its independence from the USSR in 1991. Since independence, Ukraine's politics have been dominated by its geo-political position between Russia and Western Europe. The tension between east and west came to a head in November 2004, after a presidential election was rigged in favour of the pro-Russia candidate – Viktor Yanukovich.<sup>7</sup> A re-run of the election took place after several weeks of peaceful protests – which came to be known as the 'Orange Revolution'.<sup>8</sup> The new election resulted in a victory of pro-European Viktor Yushchenko, but also revealed a deep political divide between the country's east and west.

In the wake of the 'Orange Revolution', Ukraine's pro-Western government began negotiating a free trade and association agreement with the EU in 2008.<sup>9</sup> Concurrently, discussions began over Ukraine's accession to NATO.<sup>10</sup> However, in 2010 Ukraine's politics took another U-turn when pro-Russian candidate Viktor Yanukovich won the Ukrainian presidency.<sup>11</sup> In June 2010, the Parliament of Ukrainian, dominated by Yanukovich's 'Party of the Regions', voted to abandon Ukraine's accession plan to NATO.<sup>12</sup> On 21 November 2013, President Yanukovich announced his decision not to sign the association

3 Google Maps, "Ukraine", 9 July 2020, available at: <https://www.google.com/maps/place/Ukraine/@47.9854715,22.2083201,5z/data=!3m1!4b1!4m5!3m4!1s0x40d1d9c154700e8f:0x1068488f64010!8m2!3d48.379433!4d31.1655799>.

4 Державна служба статистики України, "Чисельність населення (за оцінкою) на 1 травня 2020 року та середня чисельність у січні-квітні 2020 року", 23 June 2020, available at: [http://database.ukrcensus.gov.ua/PXWEB2007/ukr/news/op\\_popul.asp](http://database.ukrcensus.gov.ua/PXWEB2007/ukr/news/op_popul.asp)

5 Державний комітет статистики України, "Про кількість та склад населення України за підсумками Всеукраїнського перепису населення 2001 року", 2001, available at: <http://2001.ukrcensus.gov.ua/results/general/nationality/>

6 Закон України № 5029-VI "Про засади державної мовної політики", redaction 24 May 2015, available at: <http://zakon3.rada.gov.ua/laws/show/5029-17>.

7 Foreign Affairs, "Ukraine's Orange Revolution", Karatnycky A., March-April 2005, available at: <https://www.foreignaffairs.com/articles/russia-fsu/2005-03-01/ukraines-orange-revolution>.

8 Foreign Affairs, "Ukraine's Orange Revolution", Karatnycky A., March-April 2005, available at: <https://www.foreignaffairs.com/articles/russia-fsu/2005-03-01/ukraines-orange-revolution>.

9 EU-Ukraine Association Agreement "Guide to the Association Agreement", 2014, available at: [http://eeas.europa.eu/images/top\\_stories/140912\\_eu-ukraine-association-agreement-quick\\_guide.pdf](http://eeas.europa.eu/images/top_stories/140912_eu-ukraine-association-agreement-quick_guide.pdf).

10 Bucharest Summit Declaration, Paragraph 23, issued on April 3, 2008, available at: [http://www.nato.int/cps/en/natolive/official\\_texts\\_8443.htm](http://www.nato.int/cps/en/natolive/official_texts_8443.htm).

11 OSCE, "Ukraine: Presidential Election 17 January and 7 February 2010", 28 April 2010, available at: <http://www.osce.org/odihr/elections/ukraine/67844?download=true>.

12 Закон України 2411-VI "Про засади внутрішньої і зовнішньої політики", redaction 8 July 2018, available at: <http://zakon5.rada.gov.ua/laws/show/2411-17>; BBC Ukrainian, "Україна відмовилася від членства у НАТО", Zanuda A., 2 July 2010, available at: [http://www.bbc.com/ukrainian/ukraine/2010/07/100702\\_ukraine\\_nato\\_parliament\\_az.shtml](http://www.bbc.com/ukrainian/ukraine/2010/07/100702_ukraine_nato_parliament_az.shtml).

agreement with the EU.<sup>13</sup> The announcement spurred a spontaneous protest in central Kyiv, marking the beginning of the Euromaidan protest that would last until the end of February 2014.<sup>14</sup> The protests were marked by violent clashes between protesters and the riot police, resulting in more than 100 deaths (including 18 police officers) and thousands of injuries.<sup>15</sup> On 22 February 2014, Yanukovych fled the capital with the help of Russian Special Forces,<sup>16</sup> and was replaced by an interim government.<sup>17</sup> On 23 February 2014, the Parliament of Ukraine voted to remove Russian as the official second language of Ukraine.<sup>18</sup>

On 26 February 2014, thousands of pro and anti-Euromaidan protesters clashed in front of the Crimean Supreme Council building in Simferopol, resulting in two deaths.<sup>19</sup> On 27 February 2014, the Supreme Council building was stormed and captured by pro-Russian combatants.<sup>20</sup> Sergey Aksyonov – leader of a fringe pro-Russian movement – was installed as the new head of Crimea.<sup>21</sup> On 16 March 2014, a controversial independence referendum was held in Crimea, resulting in a disputed victory for independence.<sup>22</sup> On 18 March 2014, the ‘Agreement on the accession of the Republic of Crimea to the Russian Federation’ was signed in the Kremlin.<sup>23</sup> The referendum and subsequent annexation were widely condemned by the international community, notably by the European Union,<sup>24</sup> United Nations

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- 13 The Guardian, “Ukraine Suspends Talks on EU Trade Pact as Putin Wins Tug of War”, Traynor I. and Grytsenko O., 21 November 2013, available at: <http://www.theguardian.com/world/2013/nov/21/ukraine-suspends-preparations-eu-trade-pact>.
  - 14 Open Democracy, “Ukraine: a nonviolent victory”, Ackerman P., Bartkowski M., and Duvall J., 3 March 2014, available at: <https://www.opendemocracy.net/civilresistance/peter-ackerman-maciej-bartkowski-jack-duvall/ukraine-nonviolent-victory>.
  - 15 OHCHR, “Accountability for killings in Ukraine from January 2014 to May 2016”, 25 May 2016, available at: [https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/OHCHRThematicReportUkraineJan2014-May2016_EN.pdf),
  - 16 Россия 1, “Крым. Путь на Родину”, Кондрашов А., 15 March 2015, available at: [https://russia.tv/brand/show/brand\\_id/59195/](https://russia.tv/brand/show/brand_id/59195/); See also: BBC, “Putin: Russia Helped Yanukovych to Flee Ukraine”, 24 October 2014, available at: <http://www.bbc.com/news/world-europe-29761799>.
  - 17 Постанова Верховної Ради України № 757-VII “Про самоусунення Президента України від виконання конституційних повноважень та призначення позачергових виборів Президента України”, 22 February 2014, available at: <http://zakon3.rada.gov.ua/laws/show/757-18>.
  - 18 Закон України № 5029-VI “Про засади державної мовної політики”, redaction 24 May 2015, available at: <http://zakon3.rada.gov.ua/laws/show/5029-17>.
  - 19 KyivPost, “Two die in rallies outside Crimean parliament, says ex-head of Mejlis”, 26 February 2014, available at: <http://www.kyivpost.com/article/content/ukraine/two-die-in-rallies-outside-crimean-parliament-says-ex-head-of-mejlis-337708.html>.
  - 20 Reuters, “Ukraine leader warns Russia after armed men seize government HQ in Crimea”, Prentice A., 27 February 2014, available at: <http://www.reuters.com/article/us-ukraine-crisis-crimea-idUSBREA1P23U20140227>;
  - 21 At that point, Sergey Aksyonov was a member of the Russian Unity party which held just 4% of the seats in the Parliament of Crimea – Русское Единство, “История межрегиональной общественной организации “Русское Единство” available at: <http://russkoe-edinstvo.com/about/istoriya>; See also: Reuters, “RPT-INSIGHT-How the separatists delivered Crimea to Moscow”, de Carbonnel A., 13 March 2014, available at: <http://in.reuters.com/article/ukraine-crisis-russia-aksyonov-idINL6N0M93AH20140313>.
  - 22 Комиссия Автономной Республики Крым по проведению общекрымского референдума, “Обнародование результатов общекрымского референдума, состоявшегося в Автономной Республике Крым 16 марта 2014 года”, available at: <http://www.rada.crimea.ua/referendum/resultaty>.
  - 23 Договор между Российской Федерацией и Республикой Крым о принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов подписан в г. Москве 18 марта 2014, available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_160398/](http://www.consultant.ru/document/cons_doc_LAW_160398/); See also: Kremlin.ru, “Agreement on the accession of the Republic of Crimea to the Russian Federation signed”, 18 March 2014, available at: <http://en.kremlin.ru/events/president/news/20604>.
  - 24 European Union External Action, “The EU non-recognition policy for Crimea and Sevastopol”, March 2016, available at: [http://eeas.europa.eu/top\\_stories/pdf/the-eu-non-recognition-policy-for-crimea-and-sevastopol-fact-sheet.pdf](http://eeas.europa.eu/top_stories/pdf/the-eu-non-recognition-policy-for-crimea-and-sevastopol-fact-sheet.pdf).

General Assembly,<sup>25</sup> 13 members of the United Nations Security Council<sup>26</sup> and NATO.<sup>27</sup> In its aftermath, sanctions were imposed on Russia and individuals who played a key role in the annexation.<sup>28</sup> At the time of writing, the Crimean Peninsula remains under occupation by Russian authorities.

Simultaneously, pro-Russian forces began to invade Ukraine's eastern 'Donbas' region in April 2014, with the occupation of administrative and security buildings in Donetsk, Luhansk, Sloviansk, Kramatorsk, Horlivka, Mariupol and other towns and cities.<sup>29</sup> Unrest turned to a full-scale war between Ukrainian and Russian armed forces and proxies, and has led to the formation of self-proclaimed breakaway republics – the so-called Donetsk and Luhansk Peoples' Republics (DPR/LPR).<sup>30</sup> From 2015, the conflict turned into a protracted standoff, marked by periodic flare-ups and skirmishes along the contact line. According to latest estimates, the conflict has led to 13 000 deaths (including over 3 000 civilians), and has displaced nearly 1.5 million persons.<sup>31</sup> At the time of writing, DPR/LPR-controlled territory in Eastern Ukraine remains beyond the authority and control of the Government of Ukraine.

The annexation of Crimea and outbreak of war in Donbas has led to economic recession and currency devaluation. The post-Euromaidan government undertook a series of reforms aimed at restoring investor confidence, including fiscal and currency reform, anti-corruption measures, de-regulation, re-structuring of the banking sector, as well as health, pension and welfare reforms.<sup>32</sup> Nevertheless, Ukraine's economy continues to be marked by sluggish growth (GDP grew by 3.2% in 2019), high unemployment (10% at the start of 2020) and low average monthly salary (\$418 USD).<sup>33</sup> Despite nominally having universal free healthcare at the point of use, in reality major gaps in health financing result in people paying for the majority of outpatient and inpatient services, as well as all medicines.<sup>34</sup>

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25 UNGA, "Resolution adopted by the General Assembly on 27 March 2014: 68/262 – Territorial integrity of Ukraine", A/RES/68/262, 1 April 2014, available at: <https://undocs.org/en/A/RES/68/262>.

26 UNSC, "Draft Resolution S/2014/189", 15 March 2014, available at: [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_189.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_189.pdf).

27 NATO, "North Atlantic Council statement on the situation in Ukraine", 2 March 2014, available at: [http://www.nato.int/cps/en/natolive/official\\_texts\\_107681.htm](http://www.nato.int/cps/en/natolive/official_texts_107681.htm).

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31 United Nations, "Conflict-related civilian casualties in Ukraine, March 2020", available at: <http://www.un.org.ua/en/information-centre/news/4871-conflict-related-civilian-casualties-in-ukraine-march-2020>; UNHCR, "Registration of Internal Displacement", 4 June 2020, available at:

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32 World Bank, "The World Bank in Ukraine", available at: <https://www.worldbank.org/en/country/ukraine/overview>.

33 World Bank, "Data: Ukraine", available at: [https://data.worldbank.org/country/ukraine?name\\_desc=false](https://data.worldbank.org/country/ukraine?name_desc=false).

34 World Health Organisation, "Can people afford to pay for health care?: Ukraine", 2018, available at: [https://www.euro.who.int/\\_data/assets/pdf\\_file/0008/381590/ukraine-fp-eng.pdf?ua=1](https://www.euro.who.int/_data/assets/pdf_file/0008/381590/ukraine-fp-eng.pdf?ua=1).

# V. Incidence of COVID-19 in Ukraine

## A. Incidence of COVID-19 on Territory Controlled by the Government of Ukraine

The first COVID-19 case in Ukraine was registered on 3 March 2020, in a patient who was hospitalised on 29 February 2020 with symptoms of a viral respiratory infection.<sup>35</sup>

As of 10 July 2020, Ukrainian public health authorities have conducted 773 831 PCR - ПЛР tests and 330 498 ELISA – ІФА (antibody) tests.<sup>36</sup> To date, 52 043 persons have tested positive for COVID-19.<sup>37</sup> So far, 1345 deaths have been attributed to the virus.<sup>38</sup>

Mirroring the global trend, men in Ukraine are more likely to die of Covid-19: the death rate for men is 3.29% while for women it is 2.08%.<sup>39</sup>

The highest number of recorded infections and incidents of deaths is in the 50-69 age category (19 531 infections and 647 deaths), whilst the highest death rate is in the 70+ age category, currently at 11,5% of those infected.<sup>40</sup>

There are currently no official statistics on the ethnic and socio-economic breakdown of Covid-19 fatalities.

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35 Кабінет Міністрів України, “В Україні зареєстрований випадок захворювання на COVID-19, – МОЗ”, 3 March 2020, available at: <https://www.kmu.gov.ua/news/v-ukrayini-zareystrovaniy-vipadok-zahvoryuvannya-na-covid-19-moz>.

36 Кабінет Міністрів України, “Оперативна інформація про поширення коронавірусної інфекції 2019-nCoV”, 10 June 2020, available at: <https://www.kmu.gov.ua/news/operativna-informaciya-pro-poshirennya-koronavirusnoyi-infekciyi-2019-ncov10072020>; Національна Академія Медичних Наук України, “Інформація щодо COVID-19 станом на 10.07.2020 р.”, 10 July 2020, available at: <http://amnu.gov.ua/informacziya-shhodo-covid-19-stanom-na-10-07-2020-r/>.

37 Кабінет Міністрів України, “Оперативна інформація про поширення коронавірусної інфекції 2019-nCoV”, 10 June 2020, available at: <https://www.kmu.gov.ua/news/operativna-informaciya-pro-poshirennya-koronavirusnoyi-infekciyi-2019-ncov10072020>.

38 Кабінет Міністрів України, “Оперативна інформація про поширення коронавірусної інфекції 2019-nCoV”, 10 June 2020, available at: <https://www.kmu.gov.ua/news/operativna-informaciya-pro-poshirennya-koronavirusnoyi-infekciyi-2019-ncov10072020>.

39 Центр Громадського Здоров'я МОЗ України, “Коронавірусна інфекція Covid-19, Зареєстровано за весь період”, available at: <https://phc.org.ua/kontrol-zakhvoryuvan/inshi-infekciyni-zakhvoryuvannya/koronavirusna-infekciya-covid-19> (last accessed on 10 July 2020).

40 Центр Громадського Здоров'я МОЗ України, “Коронавірусна інфекція Covid-19, Зареєстровано за весь період”, available at: <https://phc.org.ua/kontrol-zakhvoryuvan/inshi-infekciyni-zakhvoryuvannya/koronavirusna-infekciya-covid-19> (last accessed on 10 July 2020).

## B. Incidence of COVID-19 in Russian-Occupied Crimea and Sevastopol

The first COVID-19 case on the Crimean Peninsula was reported by the *de facto* head of occupied Crimea – Sergey Aksyonov – on 21 March 2020.<sup>41</sup>

As of 10 July 2020, Russian public health authorities have reported a total of 1073 cases of COVID-19 on the Crimean Peninsula (815 in Crimea and 258 in Sevastopol), with a total of 17 fatalities (seven in Crimea and three in Sevastopol).<sup>42</sup>

There is no demographic, ethnic or socio-economic breakdown available for COVID-19 fatalities in Russian-occupied Crimea.

## C. Incidence of COVID-19 on Territory Controlled by the So-Called ‘Peoples Republics’ of Donetsk and Luhansk

The first COVID-19 case in the so-called DPR was reported DPR authorities on 31 March 2020.<sup>43</sup> In the neighbouring so-called LPR, the first case was officially announced on 30 March 2020.<sup>44</sup>

As of 10 July 2020, DPR authorities have reported a total of 1336 cases of COVID-19, leading to 79 fatalities.<sup>45</sup> LPR authorities have reported 555 COVID-19 cases and 13 fatalities.<sup>46</sup>

There is no demographic, ethnic or socio-economic breakdown available for COVID-19 fatalities on DPR and LPR territories.

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41 Sergey Aksyonov, Post in Facebook, 21 March 2020, available at: [https://m.facebook.com/story.php?story\\_fbid=1494214854085302&id=267373093436157](https://m.facebook.com/story.php?story_fbid=1494214854085302&id=267373093436157).

42 Стоп Коронавирус РФ, “Оперативная информация”, available at: <https://смонкоронавирус.рф/information/> (last accessed on 10 July 2020).

43 “Министерство Здравоохранения ДНР”, “По состоянию на 31 марта в Донецкой Народной Республике зарегистрирован один лабораторно подтвержденный случай COVID-19”, 31 March 2020, available at: <http://mzdnr.ru/news/po-sostoyaniyu-na-31-marta-v-doneckoy-narodnoy-respublike-zaregistrirovan-odin-laboratorno>.

44 Интерфакс, “Первый случай заражения COVID-19 зафиксирован в ЛНР”, 30 March 2020, available at: <https://www.interfax.ru/world/701638>.

45 “Министерство Здравоохранения ДНР”, “По состоянию на 10:00 10 июля всего 1336 зарегистрированных и подтвержденных случаев инфекции COVID-19 на территории Донецкой Народной Республики”, 10 July 2020, available at: <http://mzdnr.ru/news/po-sostoyaniyu-na-1000-10-iyulya-vsego-1336-zaregistrirovannyh-i-podtverzhdennyh-sluchaev>.

46 “Правительство ЛНР”, “В Республике зарегистрированы новые случаи заражения Covid-19”, 10 July 2020, available at: <https://sovminlr.ru/novosti/21890-v-respublike-zaregistrirovany-novye-sluchai-zarazheniya-covid-19.html>.

# VI. The Ukrainian Authorities' Response to COVID-19 and Its Impact on Human Rights

## A. The Response

The Government of Ukraine responded to the COVID-19 pandemic by declaring an 'emergency situation' and introducing a series of lockdown measures. These measures have been regularly amended, and – at the time of writing – are being gradually lifted.

### I. DECLARATION OF AN 'EMERGENCY SITUATION'

On 25 March 2020, the Government of Ukraine declared an 'emergency situation' by Decree N. 338-p.<sup>47</sup> Unlike the state of emergency, which has to be introduced by Order of the President and approved by Parliament,<sup>48</sup> an 'emergency situation' may be introduced by decree of the Cabinet of Ministers of Ukraine.<sup>49</sup> Emergency situations are defined as a set of circumstances characterised by the disruption of normal conditions of life caused by, *inter alia*, natural disasters and epidemics.<sup>50</sup> The declaration of an 'emergency situation' allows the Government to mobilise and strengthen coordination between various state organs, in order to prevent or mitigate the emergency.<sup>51</sup> Unlike the 'state of emergency', an 'emergency situation' does not allow for the limitation of constitutional rights and freedoms.<sup>52</sup> Nevertheless, it does grant executive organs the power to ban or restrict the movement of vehicles and pedestrians within designated areas, and to restrict the freedom of movement or access to specific places.<sup>53</sup>

The Government of Ukraine has not declared a 'state of emergency' and has not issued a formal derogation under Article 15 of the ECHR.

47 Розпорядження Кабінету Міністрів України №338-р "Про переведення єдиної державної системи цивільного захисту у режим надзвичайної ситуації", redaction 25 March 2020, available at: <https://zakon.rada.gov.ua/laws/show/338-2020-%D1%80/ed20200325#Text>.

48 Закон України 1550-III "Про правовий режим надзвичайного стану", redaction 28 December 2015, Article 5, available at: <https://zakon.rada.gov.ua/laws/show/1550-14#Text>.

49 Кодекс Цивільного Захисту України, redaction 20 March 2020, Articles 14, 78 (Section 2), available at: <https://zakon.rada.gov.ua/laws/show/5403-17/ed20200320#Text>.

50 Кодекс Цивільного Захисту України, redaction 20 March 2020, Article 2 (Section 24), available at: <https://zakon.rada.gov.ua/laws/show/5403-17/ed20200320#Text>.

51 Кодекс Цивільного Захисту України, redaction 20 March 2020, Articles 2 (Section 37), 4, available at: <https://zakon.rada.gov.ua/laws/show/5403-17/ed20200320#Text>; Центр Прав Людини ZMINA, "Чим відрізняються надзвичайна ситуація та надзвичайний стан і як ввести останній без зловживань?", Padiryakova O., 25 March 2020, available at: <https://zmina.info/articles/yaka-riznyczya-mizh-nadzvyhajnoyu-sytuacziyeyu-ta-nadzvyhajnym-stanom-i-yak-vvesty-ostannij-bez-zlovzhyvan/>.

52 Кабінет Міністрів України, "Уряд запровадив режим надзвичайної ситуації по всій території України", 25 March 2020, available at: <https://www.kmu.gov.ua/news/uryad-zaprovalid-rezhim-nadzvichajnoyi-situaciyi-po-vsij-teritoriyi-ukrayini>.

53 Кодекс Цивільного Захисту України, redaction 20 March 2020, Article 24 (Section 5), para. 9, available at: <https://zakon.rada.gov.ua/laws/show/5403-17/ed20200320#Text>; Центр Прав Людини ZMINA, "Чим відрізняються надзвичайна ситуація та надзвичайний стан і як ввести останній без зловживань?", Padiryakova O., 25 March 2020, available at: <https://zmina.info/articles/yaka-riznyczya-mizh-nadzvyhajnoyu-sytuacziyeyu-ta-nadzvyhajnym-stanom-i-yak-vvesty-ostannij-bez-zlovzhyvan/>.



## II. RESTRICTIONS IMPOSED (AND LIFTED)

In order to mitigate the spread of COVID-19, the Government of Ukraine issued a series of Resolutions that imposed, widened or lifted restrictions on Ukrainian citizens' mobility and other rights.

On 12 March 2020, Resolution №211 introduced:

- A ban on attending educational institutions;
- A ban on mass gatherings of more than 200 people (except for those necessary for the functioning of state organs);
- A ban on spectators at all sport competitions.<sup>54</sup>

On 14 March 2020, the Government issued Resolution №287-p, banning all foreign citizens (with the exception of diplomats and persons who have the right to reside in Ukraine) from entering the territory of Ukraine (as of 16 March 2020), and restricting international border crossing to all but those acting in the national interest or pursuant to international obligations.<sup>55</sup> Government Decree № 291-p placed restrictions on crossing the administrative border with the Russian-occupied Crimean Peninsula.<sup>56</sup> On 16 March 2020, similar restrictions were imposed on crossing the demarcation line separating government-controlled territory from the so-called DPR/LPR territories in Eastern Ukraine.<sup>57</sup> Restrictions were tightened on 22 March 2020, all but closing the checkpoints.<sup>58</sup>

On 17 March 2020, the Cabinet of Ministers amended Resolution №211, imposing:

- A ban on all gatherings (except events necessary for the functioning of state/regional organs) of more than 10 people;
- The closure of all educational institutions;
- The closure of all non-essential shops and services (excluding grocery stores, pharmacies, banks, insurance companies, gas stations and other essential services);
- A ban on all regular and occasional travel by road transport (except in private passenger vehicles) between settlements;

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54 Постанова Кабінету Міністрів України №211, "Про запобігання поширенню на території України коронавірусу COVID-19", redaction 11 March 2020, para. 1, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200311#Text>.

55 Розпорядження Кабінету Міністрів України №287-р, "Про тимчасове обмеження перетинання державного кордону, спрямоване на запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2", redaction 14 March 2020, available at: <https://zakon.rada.gov.ua/laws/show/287-2020-%D1%80/ed20200314#Text>.

56 Розпорядження Кабінету Міністрів України №291-р, "Про тимчасове припинення роботи контрольних пунктів в'їзду на тимчасово окуповану територію Автономної Республіки Крим і м. Севастополя та виїзду з неї, спрямоване на запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2", redaction 14 March 2020, available at: <https://zakon.rada.gov.ua/laws/show/291-2020-%D1%80/ed20200314#Text>.

57 Міністерство з питань реінтеграції тимчасово окупованих територій України, "Перший тиждень карантину на лінії дотику з ОРДЛО: основні тенденції і особливості", 23 March 2020, available at: <https://mtot.gov.ua/ua/pershi-tijden-karantinu-na-linii-dotiku-z-ordlo-osnovni-tendencii-i-osoblivosti>; Операція об'єднаних сил, Official Facebook account, 15 March 2020, available at: <https://www.facebook.com/pressjfo.news/posts/811853865973898>.

58 Операція об'єднаних сил, Official Facebook account, 21 March 2020, available at: <https://www.facebook.com/pressjfo.news/posts/816364135522871>.



- A prohibition on transporting more than 10 persons on public transports in cities (including trams, trolley buses, buses and *marshrutkas*);
- A ban on all domestic and international train travel (some train travel was permitted with specific approval by relevant state organs);
- Closure of the metro/underground train services in Kyiv, Kharkiv and Dnipro;
- A temporary suspension of all planned hospitalisations and surgeries except for urgent cases.<sup>59</sup>

On 23 March 2020, the Cabinet of Ministers issued a ban on all passenger air travel through Resolution №228 (except for those specifically sanctioned by state organs).<sup>60</sup>

On 26 March 2020, 4 April 2020 and 10 April 2020, the Cabinet of Ministers further amended Resolution №211, imposing:

- Restrictions the freedom of movement: a ban on attendance of public areas without a mask; a ban on public congregations of more than two persons (except for exigencies of work and accompanying children); a prohibition on unaccompanied minors under the age of 14; a ban on visiting green spaces (except for pet walking), a ban on visiting sports grounds and playgrounds.
- A ban on all city transport (with the exception of private vehicles and vehicles belonging to essential services);
- An obligation to carry ID at all times;
- A prohibition of leaving quarantine without permission;
- Mandatory self-isolation for: (i) all persons infected (or are believed to be infected) with COVID-19; (ii) those who have come into contact with infected persons (except for medical staff); (iii) persons aged 60 or over (with some exceptions); (iv) persons self-isolating after crossing international and administrative borders (using the “Дій вдома” - “Act at home” app).<sup>61</sup> Self-isolation means not leaving one’s home or having contact with anyone outside the household (except for essential shopping if not actually infected). The supervising medical professional determines the duration of self-isolation.<sup>62</sup>
- Mandatory quarantine (i.e. in designated locations) for: (i) those who are unable to comply with mandatory self-isolation; (ii) those who have violated mandatory self-isolation on at least two occasions; (iii) those what have been in contact with infected persons and do not consent to medical examination; (iv) those who enter the territory of Ukraine from abroad and do not opt for

59 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 17 March 2020, paras. 2, 4, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200317#Text>

60 Постанова Кабінету Міністрів України №228, “Питання перевезень авіаційним транспортом”, redaction 23 March 2020, available at: <https://zakon.rada.gov.ua/laws/show/228-2020-%D0%BF/ed20200323#Text>.

61 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 26 March 2020, para. 2, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200326#Text>; Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 4 April 2020, paras. 2(1,2,3,5,6,8,9,16, 17), 4, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200404#Text>; Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 10 April 2020, paras. 2(8,9) 4, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200410#Text>.

62 Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 23 April 2020, Annex 3, para. 6, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200423#Text>.

the app-monitored self-isolation; (v) those how have entered Ukraine from Crimea or DPR/LPR and have not opted for app-monitored self-isolation.<sup>63</sup>

- Mandatory hospitalisations: persons with COVID-19 symptoms who refuse to undergo medical examinations may be subjected to compulsory hospitalisation for a period determined by medical professionals.<sup>64</sup>

The Cabinet of Ministers also expanded the list of essential services that were excluded from the restrictive measures (including agriculture, IT, financial services, medical services, transport, postal services and others).<sup>65</sup>

From the end of April 2020, the Government began to lift restrictive measures. On 30 April 2020, the Council of Ministers allowed food markets to reopen.<sup>66</sup> On 5 May 2020, the Cabinet of Ministers lifted the ban on visiting green areas, sports grounds and playgrounds,<sup>67</sup> and allowed non-essential shops, cafes, restaurants, beauty industry services, open-air museums and dental services to reopen (with conditions and restrictions).<sup>68</sup>

On 20 May 2020, the Cabinet of Ministers adopted Resolution №392 establishing the so-called “adaptive quarantine”.<sup>69</sup> Under this new regime, restrictive measures may be adopted or lifted at the regional

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63 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 4 April 2020, para. 5, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200404#Text>; Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 23 April 2020, para. 5, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200423#Text>.

64 Постанова Кабінету Міністрів України №245, “Деякі питання застосування обмежувальних протиепідемічних заходів, спрямованих на запобігання поширенню гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2”, redaction 25 March 2020, available at: <https://zakon.rada.gov.ua/laws/show/245-2020-%D0%BF#Text>.

65 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 26 March 2020, para. 2, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200326#Text>; Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 4 April 2020, Paras. 2(1,2,3,5,6,8,9,16, 17), 4, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200404#Text>; Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 10 April 2020, Paras. 2(8,9) 4, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200410#Text>.

66 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 30 April 2020, paras. 2 (Section 8), 2-1, 2-2, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200430#Text>.

67 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 5 May 2020, Para. 2, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200505#Text>.

68 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 5 May 2020, para. 2, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200505#Text>; Кабінет Міністрів України, “Опубліковано постанову Уряду про послаблення карантинних обмежень”, 7 May 2020, available at: <https://www.kmu.gov.ua/news/opublikovano-postanovu-uryadu-pro-poslablennya-karantinnih-obmezhn>.

69 Постанова Кабінету Міністрів України №392, “Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів”, redaction 20 May 2020, available at: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF/ed20200520#Text>; Кабінет Міністрів України, “Уряд ухвалив рішення про послаблення карантину з 22 травня”, 20 May 2020, available at: <https://www.kmu.gov.ua/news/uryad-uhvaliv-rishennya-pro-poslablennya-karantinu-z-22-travnya>.

level, based on the epidemiological indicators in a particular region.<sup>70</sup> This would allow – provided the Health Ministry's criteria are met – to hold and attend sport events and religious ceremonies, reopen hotels, and operate city transport (except for underground trains) and intraregional transport.<sup>71</sup>

As of 25 May 2020, the Cabinet of Ministers sanctioned the use of underground trains and kindergartens in qualifying regions.<sup>72</sup> From 1 June 2020, the Cabinet of Ministers sanctioned the reopening of swimming pools and gyms, the work of educational institutions with no more than 10 persons in classes (for example, driving schools) the operation of trains and some types of intraregional transport in the qualifying regions.<sup>73</sup> From 10 June 2020, the reopening of cultural institutions and the organisation of cultural events (with conditions) was allowed in the above-mentioned regions.<sup>74</sup> Gradually, the Cabinet of Ministers started opening Ukrainian borders.<sup>75</sup> Starting from 10 June 2020, the crossing of the demarcation line between the government-controlled territory and the so-called DPR/LPR was partially restored.<sup>76</sup> From 15 June 2020 the passage on the check-points at the administrative border with the Russian-occupied Crimea was renewed.<sup>77</sup> From 2 July 2020, the work of cinemas (with conditions) was allowed.<sup>78</sup>

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- 70 Кабінет Міністрів України, “Уряд ухвалив рішення про послаблення карантину з 22 травня”, 20 May 2020, available at: <https://www.kmu.gov.ua/news/uryad-uhvaliv-rishennya-pro-poslablennya-karantinu-z-22-travnnya>.
- 71 Постанова Кабінету Міністрів України №392, “Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів”, redaction 20 May 2020, para. 4, available at: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF/ed20200520#Text>.
- 72 Постанова Кабінету Міністрів України №392, “Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів”, redaction 20 May 2020, para. 4, available at: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF/ed20200520#Text>; Кабінет Міністрів України, “Прем’єр-міністр: з 22 травня запрацює громадський транспорт, а з 25-го – дитячі садки”, 19 May 2020, available at: <https://www.kmu.gov.ua/news/premyer-ministr-z-22-travnnya-zapracuyue-gromadskij-transport-z-25-go-dityachi-sadki>.
- 73 Кабінет Міністрів України, “З 1 червня в Україні настає новий етап пом’якшення карантину, - МОЗ”, 31 May 2020, available at: <https://www.kmu.gov.ua/news/maksim-stepanov-z-1-cheravnnya-v-ukrayini-nastaye-novij-etap-pomyakshennya-karantinu>.
- 74 Кабінет Міністрів України, “Сьогодні черговий етап пом’якшення карантину, – Віктор Ляшко”, 10 June 2020, available at: <https://www.kmu.gov.ua/news/sogodni-chergovij-etap-pomyakshennya-karantinu-viktor-lyashko>.
- 75 Новое Время, “Кабмін відкрив 66 пунктів пропуску на кордоні з ЄС і Молдовою”, 20 May 2020, available at: <https://nv.ua/ukr/ukraine/politics/karantin-v-ukrajini-kabmin-vidkriv-zahidny-kordon-ostanni-novini-50089275.html>; Кабінет Міністрів України, “Україна відкрила усі пункти пропуску на кордоні з країнами ЄС та Молдовою”, 19 June 2020, available at: <https://www.kmu.gov.ua/news/ukrayina-vidkrila-usi-punkti-propusku-na-kordoni-z-krayinami-yes-ta-moldovoyu>; Міністерство Інфраструктури України, “Уряд відкрив пункти пропуску в аеропортах України і дозволив в’їзд іноземним громадянам, - Владислав Криклій”, 12 June 2020, available at: <https://mtu.gov.ua/news/31929.html>.
- 76 Восток-СОС, “В районі ООС частково відновлюється робота КПВВ”, 9 June 2020, available at: <https://vostok-sos.org/news-0001-0906-vidrritya-kpvv/>.
- 77 Крым Реалии, “Кабмін України вирішив з 15 юня возобновить роботу КПВВ на адмінгранице Крима с Херсонщиной”, 12 June 2020, available at: <https://ru.krymr.com/a/news-krym-admingranica-rabota-s-15-iuna/30667057.html>.
- 78 Кабінет Міністрів України, “Уряд вніс зміни до адаптивного карантину - роботу кінотеатрів дозволять з 2 липня”, 25 June 2020, available at: <https://www.kmu.gov.ua/news/uryad-vnis-zmini-do-adaptivnogo-karantinu-robotu-kinoteatriv-dozvoljat-z-2-lipnya>.

At the same time, the Cabinet of Ministers extended the quarantine regime until 31 July 2020 prolonging the application of some of the quarantine restrictions (including the mandatory wearing of a mask in public transport and public buildings).<sup>79</sup>

In addition to these generally applicable measures outlined above, Ukraine has introduced a number of targeted measures and recommendations pertaining to specific activities or sectors. These will be discussed under each relevant 'impact' sub-section below.

### III. PENALTIES FOR VIOLATING RESTRICTIONS

The restrictive measures put in place in response to COVID-19 work within the pre-existing criminal and administrative enforcement frameworks. Thus, violations of restrictive measures may incur administrative penalties. However, where such violations lead to the spread of COVID-19, the alleged violator may be prosecuted in the criminal courts and would incur more serious penalties.<sup>80</sup> The alleged violator's knowledge as to whether he/she is carrying COVID-19 is immaterial for the purposes of this distinction.

In response to COVID-19, the Parliament of Ukraine amended the relevant provisions in the administrative and criminal codes to increase applicable penalties for violations of the lockdown measures. Thus, the new fines for administrative violations range from 17 000 to 34 000 UAH for citizens and from 34 000 to 170 000 UAH for government officials.<sup>81</sup> Penalties under the criminal code range from a fine (between 17 000 and 51 000 UAH) to imprisonment (for no more than 3 years in regular cases and 5-8 years in cases resulting in 'grave consequences').<sup>82</sup>

According to the State Judicial Administration, as of 30 June 2020, the police had sent 14 598 reports of quarantine violations to the Administrative Courts, including cases of trade in non-food products, violation of self-isolation for people arriving from abroad, and the transportation of more than ten passengers in minibuses.<sup>83</sup>

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79 Постанова Кабінету Міністрів України №392, "Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів", redaction 22 June 2020, Para. 1, available at: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF/ed20200622#Text>; Кабінет Міністрів України, "Основні карантинні обмеження, що діють в Україні з 22 червня 2020 року", 22 June 2020, available at: <https://www.kmu.gov.ua/news/osnovni-karantinni-obmezheniya-shcho-diyut-v-ukrayini-z-22-cherwnya-2020-roku>.

80 Кримінальний Кодекс України, redaction 1 July 2020, Article 325, available at: <https://zakon.rada.gov.ua/laws/show/2341-14#n2273>.

81 Закон України 530-IX "Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19)", redaction 18 April 2020, Part I, Article 2 (Section 1), available at: <https://zakon.rada.gov.ua/laws/show/530-20#Text>.

82 Закон України 530-IX "Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19)", redaction 18 April 2020, Part I, Article 3 (Sections 1, 2), available at: <https://zakon.rada.gov.ua/laws/show/530-20#Text>.

83 Державна судова адміністрація України, "Оперативна інформація щодо розгляду справ за статтею 44-3 "Порушення правил щодо карантину людей" станом на 30.06.2020 року", 1 July 2020, available at: <https://dsa.court.gov.ua/dsa/pres-centr/news/962387/>.

## B. Legality, Accessibility and Judicial Oversight of Measures

All permissible restrictions on fundamental rights enshrined in the European Convention on Human Rights (ECHR) must be legal, accessible and subject to independent oversight. Legality requires all restrictions to be grounded in domestic law; accessibility mandates that all citizens should be informed of the measures and their consequences; and oversight demands that domestic courts and democratic institutions be given the power to supervise, and where necessary strike down, restrictions that violate domestic law and universal human rights.<sup>84</sup>

The Government's declaration of an 'emergency situation' was made pursuant to Articles 14 and 78 (Section 2) of the Code of Civil Protection of Ukraine.<sup>85</sup> The Cabinet of Ministers resolutions imposing restrictive measures over the territory of Ukraine were introduced pursuant to Article 29 of the Law "On Protection of Population against Infectious Diseases"<sup>86</sup> and Article 30 of the Law "On Ensuring Sanitary and Epidemic Well-Being of the Population".<sup>87</sup> These laws grant the executive authority to impose lockdown or quarantine measures for the purpose of tackling the spread of an infectious disease. Moreover, the Parliament of Ukraine introduced amendments, which increased the administrative and criminal penalties for violating restrictive measures.<sup>88</sup>

On the face of it, restrictive measures have been introduced through the applicable legal and constitutional frameworks. Nevertheless, the resolutions have come under criticism for violating the Constitution of Ukraine (namely the imposition of restrictions by executive decree),<sup>89</sup> or for violating the principles of democratic necessity and proportionality.<sup>90</sup> Moreover, the courts have not applied the

84 European Court of Human Rights, "Kruslin v. France Judgment", 24 April 1990, A 176-B, paras. 27-36.

85 Кодекс Цивільного Захисту України, redaction 20 March 2020, Articles 14, 78 (Section 2), available at: <https://zakon.rada.gov.ua/laws/show/5403-17/ed20200320#Text>.

86 Закон України 1645-III "Про захист населення від інфекційних хвороб", redaction 4 October 2018, Article 29, available at: <https://zakon.rada.gov.ua/laws/show/1645-14/ed20181004#Text>.

87 Закон України 4004-XII "Про забезпечення санітарного та епідемічного благополуччя населення", redaction 4 October 2018, Article 30, <https://zakon.rada.gov.ua/laws/show/4004-12#Text>.

88 Закон України 530-IX "Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19)", redaction 18 April 2020, Part I, Articles 2 (Section 1) 3 (Section 1, 2), available at: <https://zakon.rada.gov.ua/laws/show/530-20#Text>.

89 Харківська Правозахисна Група, "Висновок Харківської правозахисної групи щодо доцільності та законності запровадження карантинних заходів відповідно до Постанови Кабінету міністрів України №255 від 2 квітня 2020 року", 7 April 2020, available at: <http://khp.org/index.php?id=1586221405&fbclid=IwAR1esK2vOj6RWuRKSosWV4WANQqJLHMOZ-z96nKGV12LZP5tad4WotTmj44>; Центр політико-правових реформ, "Без введення надзвичайного стану заходи щодо обмеження прав і свобод людини і громадянина задля запобігання поширення на території України коронавірусу COVID-19 є неконституційними", 17 March 2020, available at: [https://pravo.org.ua/ua/news/20874288-bez-vvedennya-nadzvichaynogo-stanu-zahodi-schodo-obmegeennya-prav-i-svobod-lyudini-i-gromadyanina-zadlya-zapobigannya-poshirennya-na-teritoriyi-ukrayini-koronaviru-covid-19-e-nekonstitutsiynimi?fbclid=IwAR0Ch\\_5el6kkONhT05Vh\\_UUFZuDhAcZ72K-Kwq6s56KRq2WNN7vS5tM1XLM](https://pravo.org.ua/ua/news/20874288-bez-vvedennya-nadzvichaynogo-stanu-zahodi-schodo-obmegeennya-prav-i-svobod-lyudini-i-gromadyanina-zadlya-zapobigannya-poshirennya-na-teritoriyi-ukrayini-koronaviru-covid-19-e-nekonstitutsiynimi?fbclid=IwAR0Ch_5el6kkONhT05Vh_UUFZuDhAcZ72K-Kwq6s56KRq2WNN7vS5tM1XLM); Центр політико-правових реформ, "Суттєві обмеження прав і свобод людини і громадянина є неконституційними без введення надзвичайного стану", 3 April 2020, available at: <https://pravo.org.ua/ua/news/20874326-suttevi-obmegeennya-prav-i-svobod-lyudini-i-gromadyanina-e-nekonstitutsiynimi-bez-vvedennya-nadzvichaynogo-stanu>; BBC Ukraine, "Карантин в Україні: чи суперечать нові заборони Конституції?", 6 April 2020, available at: <https://www.bbc.com/ukrainian/features-52186556>; Реанімаційний Пакет Реформ, "Чи дійсно потрібен надзвичайний стан для боротьби з COVID-2019?", 6 April 2020, available at: <https://rpr.org.ua/news/chy-diysno-potriben-nadzvichaynyy-stand-dlia-borot-by-z-covid-2019/>.

90 BBC Ukraine, "Карантин в Україні: чи суперечать нові заборони Конституції?", 6 April 2020, available at: <https://www.bbc.com/ukrainian/features-52186556>.



penalties consistently.<sup>91</sup> Furthermore, some argue that the fines themselves are disproportionate to other comparable violations and fail to take into account the large disparity in Ukrainian incomes.<sup>92</sup>

Restrictions and other measures introduced by the Government of Ukraine are subject to judicial oversight by Administrative and Constitutional courts. On 27 April 2020 the Kyiv District Administrative Court notified the public that it had received 22 complaints filed against the Government of Ukraine, challenging the restrictions imposed in response to COVID-19, and that ten administrative proceedings have been initiated.<sup>93</sup> Moreover, on 29 May 2020, the Plenum of the Supreme Court filed a petition to the Constitutional Court of Ukraine, challenging to the constitutionality of COVID-19 restrictions.<sup>94</sup>

The Government's measures are also subject to parliamentary oversight. The Parliamentary Commissioner for Human Rights (Ombudsman) has a duty to ensure parliamentary control over measures affecting human rights.<sup>95</sup> On 1 April 2020, the Ombudsman announced that she had observations regarding the draft resolution and would work with other Ministers to avoid human rights violations.<sup>96</sup> She also confirmed that her Office would monitor all legal acts relating to COVID-19 for their compliance with constitutional rights and freedoms.<sup>97</sup>

The Government of Ukraine has published all decrees and resolutions pertaining to COVID-19 restrictive measures on its official website (in Ukrainian only),<sup>98</sup> including explanatory notes on specific measures and time frames. Furthermore, the Prime Minister or other state officials introduced each new resolution in a press briefing, where measures and their consequences were discussed.<sup>99</sup>

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91 Юридичний інтернет-ресурс "Протокол", "Порушення правил щодо карантину людей. Аналіз судової практики", 23 April 2020, available at: [https://protocol.ua/ru/porushennya\\_pravil\\_shchodo\\_karantinu\\_lyudey\\_analiz\\_sudovoi\\_praktiki/](https://protocol.ua/ru/porushennya_pravil_shchodo_karantinu_lyudey_analiz_sudovoi_praktiki/); Центр прав людини ZMINA, "Стей, де маска!? Як вийти "сухим" із "підмочених" карантинних обмежень", 17 April 2020, available at: <https://zmina.info/articles/stij-de-maski-yak-vyjty-suhym-iz-pidmochenih-karantynnih-obmezhen/>.

92 112 Україна, "Чому нові обмеження Кабміну є незаконними: Роз'яснення юриста", Khavronчук М., 6 April 2020, available at: <https://ua.112.ua/mnenie/chomu-novi-obmezhenia-kabminu-nezakonni-roziasnennia-iurysta-531968.html>; Василь Кісіль і Партнери, "Карантин в Україні: чи суперечать нові заборони Конституції", Berezhna Т., 7 April 2020, available at: <https://vkr.ua/publication/karantin-v-ukrayini-chi-superechat-novi-zaboroni-konstitutsiji>.

93 Окружний адміністративний суд міста Києва, "Оскарження постанови Уряду про обмеження під час карантину – до суду вже надійшло 22 позови", 27 April 2020, available at: <http://oask.gov.ua/node/4430>.

94 Судова влада України, "Пленум Верховного Суду просить КСУ перевірити конституційність встановлених на час карантину обмежень прав і свобод громадян", 29 May 2020, available at: <https://court.gov.ua/press/news/946701/>.

95 Закон України 776/97-ВР "Про Уповноваженого Верховної Ради України з прав людини", redaction 20 March 2020, Article 1, available at: <https://zakon.rada.gov.ua/laws/show/776/97-%D0%B2%D1%80#Text>.

96 Кабінет Міністрів України, Official Youtube page, 1 April 2020, 18:05-20:20, available at: <https://www.youtube.com/watch?v=LoWSlaBlcE>.

97 Interfax Ukraine, "Офіс омбудсмена моніторитиме затверджені в рамках карантину обмеження для запобігання порушенню прав і свобод громадян України", 1 April 2020, available at: <https://ua.interfax.com.ua/news/general/651551.html>.

98 As example: Постанова Кабінету Міністрів України №211, "Про запобігання поширенню на території України коронавірусу COVID-19", redaction 12 March 2020, available at: <https://www.kmu.gov.ua/npas/pro-zapobigannya-poshim110320rennyu-na-teritoriyi-ukrayini-koronavirusu-covid-19>.

99 As example: Кабінет Міністрів України, Official Youtube page, 11 March 2020, available at: <https://www.youtube.com/watch?v=8iYo6V-jUOY>.

## C. Impact on the Freedom of Movement

The freedom of movement is logically the first fundamental freedom to be curtailed in response to a viral pandemic like COVID-19. The freedom of movement allows lawful residents to leave and enter their country of residence, and to move freely within its territory.<sup>100</sup> Nevertheless, the right may be lawfully restricted where such restrictions are lawful and are necessary in a democratic society in the interests of national security, public safety, public health and the rights and freedoms of others. There is no question that in the context of COVID-19, curtailing the freedom of internal and external movement is crucial to saving lives. The key questions are therefore whether the restrictions are put in place for the purpose of protecting the public, whether they are proportionate to that purpose, and whether their necessity is under continuous review in light of the constantly evolving situation.

Restrictions on the freedom of movement introduced by the Government of Ukraine in response to COVID-19 largely echo restrictions imposed by governments across the globe. The measures are clearly aimed at halting the spread of COVID-19, by reducing the frequency of contact between individuals, and preventing concentrations of large groups of people in confined areas. In light of the serious danger that COVID-19 poses to the lives and wellbeing of a large proportion of the population, these restrictions are in line with the legitimate goal of safeguarding the right to life and preventing human suffering. More complex issues are raised by the closure of checkpoints separating government-controlled territories from territories occupied by Russia and the so-called DPR/LPR. Thousands of people depend on the ability to move and trade across the contact line for income and food security.<sup>101</sup> Further monitoring is required to determine the effect that checkpoint closure has had on the lives and well-being of persons in occupied territories.

The key question – which remains to be assessed in the longer term – is whether Ukrainian authorities are using these restrictions for stated aims, and whether the restrictions will outlast the need to protect the population through social distancing. At the time of writing, there is no indication that the Government of Ukraine is or plans to use the restrictions in any way other than to address the COVID-19 pandemic, and it is too early to assess the timeliness of lifting restrictions on movement. However, it is important to understand that restrictions on free movement have a disproportionate effect on particular groups and individuals – namely the homeless, the Roma and other persons who depend on movement for the realisation of basic needs and rights (e.g. persons residing in temporarily occupied territories). It is incumbent on the Government to ensure that the particular needs of such groups and individuals are met through special measures taken throughout the lockdown.

## D. Impact on Fair Trial Rights

All court hearings, including pre-trial detention hearings, must be public, fair and presided over by independent and impartial judges.<sup>102</sup> A violation at the outset of proceedings is capable of tainting the fairness of the entire case, rendering a fair trial impossible.<sup>103</sup> Suspects must be afforded the right to

100 European Convention on Human Rights, Protocol 4, 1963, Articles 2 and 3, available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

101 Centre for Humanitarian Dialogue, “Economic connectivity across the line of contact in Donbas, Ukraine”, September 2017, available at: <https://www.hdcentre.org/wp-content/uploads/2018/07/2017-study-ENG-web-version.pdf>.

102 European Convention on Human Rights, 1950, Article 6(1), available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

103 European Court of Human Rights, “Imbrioscia v Switzerland Judgment”, 24 November 1993, A 275, para. 36, available at: <https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/echrsource/Imbrioscia%20v.%20Switzerland%20%5B24%20Nov%201993%5D%20%5BEN%5D.pdf>.



defend themselves effectively through counsel of their choice, which includes having adequate time and facilities to confer with counsel and mount a defence.<sup>104</sup> The defence and prosecution must enjoy an equality of arms throughout the proceedings – including equal access to case documents.<sup>105</sup> Any limitations on fair trial rights must be lawful, necessary and proportionate.

On 13 April 2020, the Parliament of Ukraine introduced amendments to the Code of Criminal Procedure of Ukraine for the duration of the COVID-19 emergency situation. Pursuant to these amendments, pre-trial and trial hearings may be held by videoconference if the investigating judge or the court so decides *proprio motu* or on a party's request. Pre-trial detention hearings may only be held by videoconference with consent from the defendant.<sup>106</sup> Nevertheless, it is up to each individual court to establish the rules, criteria, and procedure, and procure the necessary technology for these purposes (provided it complies with applicable principle of publicity, ensures quality and cyber-security<sup>107</sup>).<sup>108</sup> Requests to extend pre-trial detention must be filed 10 days in advance of the applicable period's expiration.<sup>109</sup> Amendments also make it easier for investigative judges and courts to transfer case files and hearings from one court to another, as required by the exigencies of the situation.<sup>110</sup> The Supreme Council of Justice of Ukraine has advised all courts, for the period of quarantine, to ensure that proceedings in urgent cases continue, to hold hearings via videoconferencing where possible, and to establish a roster of judges

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104 European Convention on Human Rights, 1950, Article 6(3)(c)(d) and (e); European Court of Human Rights, “Murtazaliyeva v Russia Judgment”, 18 December 2018, 36658/05, para. 91, available at: <https://jurisprudencia.mpd.gov.ar/Jurisprudencia/Murtazaliyeva%20v.%20Rusia.pdf>

105 European Court of Human Rights, “Öcalan v Turkey Judgment”, 12 May 2005, 46221/99, para. 140, available at: <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%5B%5D%2C%22itemid%22%3A%5B%5D%2C%22001-69022%22%7D>; European Court of Human Rights, “Foucher v. France Judgment”, 17 February 1997, 10/1996/629/812, para. 34; European Court of Human Rights, “Moiseyev v Russia Judgment”, 9 October 2008, 62936/00, para. 217.

106 Закон України 558-ІХ “Про внесення зміни до пункту 20-5 розділу XI “Перехідні положення” Кримінального процесуального кодексу України щодо особливостей судового контролю за дотриманням прав, свобод та інтересів осіб у кримінальному провадженні та розгляду окремих питань під час судового провадження на період дії карантину, встановленого Кабінетом Міністрів України з метою запобігання поширенню коронавірусної хвороби (COVID-19)“COVID-19”, redaction 23 April 2020, Article 1, available at: <https://zakon.rada.gov.ua/laws/show/558-20#Text>.

107 Кримінальний процесуальний кодекс України, redaction 1 July 2020, Article 336 (Section 3); available at: <https://zakon.rada.gov.ua/laws/show/4651-17#n2880>.

108 Ліга Закон, “Судова система України в умовах карантину” 6 April 2020, available at: [https://jurliga.ligazakon.net/ua/news/194334\\_sudova-sistema-ukrani-v-umovakh-karantinu](https://jurliga.ligazakon.net/ua/news/194334_sudova-sistema-ukrani-v-umovakh-karantinu); Центр політико-правових реформ, “Судові комунікації vs поширення коронавірусу: як судам якісно інформувати про роботу?”, 6 May 2020, available at: [https://www.pravo.org.ua/ua/news/20874409-sudovi-komunikatsiyi-vs-poshirennya-koronavirusu-yak-sudam-yakisno-informuvati-pro-robotu?\\_\\_cf\\_chl\\_jschl\\_tk\\_\\_=495f49475635217c29aee83fe265bb6bb004b463-1589564852-0-AVuqkNrrGRJnbXHoi835vfXLYzSMRHWMLGzIPi8TxnE\\_TcmHZ](https://www.pravo.org.ua/ua/news/20874409-sudovi-komunikatsiyi-vs-poshirennya-koronavirusu-yak-sudam-yakisno-informuvati-pro-robotu?__cf_chl_jschl_tk__=495f49475635217c29aee83fe265bb6bb004b463-1589564852-0-AVuqkNrrGRJnbXHoi835vfXLYzSMRHWMLGzIPi8TxnE_TcmHZ).

109 Закон України 558-ІХ “Про внесення зміни до пункту 20-5 розділу XI “Перехідні положення” Кримінального процесуального кодексу України щодо особливостей судового контролю за дотриманням прав, свобод та інтересів осіб у кримінальному провадженні та розгляду окремих питань під час судового провадження на період дії карантину, встановленого Кабінетом Міністрів України з метою запобігання поширенню коронавірусної хвороби (COVID-19)“COVID-19”, redaction 23 April 2020, Article 1, available at: <https://zakon.rada.gov.ua/laws/show/558-20#Text>.

110 Закон України 558-ІХ “Про внесення зміни до пункту 20-5 розділу XI “Перехідні положення” Кримінального процесуального кодексу України щодо особливостей судового контролю за дотриманням прав, свобод та інтересів осіб у кримінальному провадженні та розгляду окремих питань під час судового провадження на період дії карантину, встановленого Кабінетом Міністрів України з метою запобігання поширенню коронавірусної хвороби (COVID-19)“COVID-19”, redaction 23 April 2020, Article 1, available at: <https://zakon.rada.gov.ua/laws/show/558-20#Text>.

to resolve backlogs and urgent procedural issues.<sup>111</sup> The State Judicial Administration of Ukraine and the Council of Judges has advised courts to switch to e-filing systems and emails for submissions and procedural documents.<sup>112</sup>

Measures and recommendations introduced by the Parliament of Ukraine and the Supreme Council of Justice are on the face of it broadly compliant with fair trial rights, and are clearly aimed at mitigating undue delay and case backlog caused by COVID-19 and the associated lockdown measures. Nevertheless, the success of these measures and the fairness of their application depend on the resources and technical capacity of courts and detention facilities across Ukraine. Monitoring by the Human Rights Ombudsman's office has revealed stark disparities in the availability of videoconferencing facilities from one region to another.<sup>113</sup> For instance, in Kyiv only 6.5% of all pre-trial detention hearings were held via videoconferencing – due to the lack of equipment or lack of coordination between courts and detention facilities.<sup>114</sup> In Odessa, over 17% of hearings were held online – although in at least one case a hearing had to be postponed because of connectivity issues.<sup>115</sup> Detainees should not have to choose between their health and their fair trial rights, and that choice should not be influenced by the court or region where they are being tried.

A further concern is the lack of standardised videoconferencing equipment and State-funded internet security measures for hearings and e-filing.<sup>116</sup> Courts use a plethora of third-party videoconferencing platforms, with only one of these – Webex Meetings – deemed sufficiently secure.<sup>117</sup>

There is no publicly available information as to whether Ukrainian authorities are actively monitoring the impact of COVID-19 and the associated lockdown measures on fair trial rights across Ukraine.

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111 Вища рада правосуддя, "ВРП надала судам рекомендації щодо забезпечення стабільної роботи в умовах карантину", 27 March 2020, available at: <https://hcj.gov.ua/news/vrp-nadala-sudam-rekomendaciyi-shchodo-zabezpechennya-stabilnoyi-roboty-v-umovah-karantynu>.

112 Державна судова адміністрація України, "ДСА України відпрацювала комплексні рекомендації щодо недопущення розповсюдження інфекційних захворювань у судових установах" 19 March 2020, available at: <https://dsa.court.gov.ua/dsa/pres-centr/news/912997/>; Рада суддів України, "Лист з рекомендаціями", 16 March 2020, available at: <http://rsu.gov.ua/uploads/news/no9rs-18620-vid-16032020-verhovn-92b86c6546.pdf>.

113 Офіс Омбудсмана України, "Миколаївське СІЗО", 17 April 2020, available at: <https://www.facebook.com/watch/?v=239918270584442>; Офіс Омбудсмана України, "Чортківська установа виконання покарань № 26 (СІЗО)", 15 May 2020, available at: <https://www.facebook.com/watch/?v=238007237623213>; Харків Times, "У Харківському СІЗО виявили порушення проти епідемічних заходів", 19 April 2020, available at: <https://times.kharkiv.ua/uk/2020/04/19/u-harkivskomu-sizo-viyavili-porushennya-protiepidemichnih-zahodiv/>; Українське Право, "У київському СІЗО виявили масові порушення заходів проти коронавірусу", 10 April 2020, available at: <https://ukrainepravo.com/news/ukraine/u-kyivskomu-sizo-vyavyly-masovi-porushennya-zakhodiv-proty-koronavirusu/>.

114 Українське Право, "У київському СІЗО виявили масові порушення заходів проти коронавірусу", 10 April 2020, available at: <https://ukrainepravo.com/news/ukraine/u-kyivskomu-sizo-vyavyly-masovi-porushennya-zakhodiv-proty-koronavirusu/>.

115 Офіс Омбудсмана України, "Одеський слідчий ізолятор", 17 April 2020, available at: <https://www.facebook.com/office.ombudsman.ua/posts/589450458333799>; Укрінформ, "Справа Гандзюк: суд щодо Павловського відклала через відсутність інтернету у СІЗО", 4 May 2020, available at: <https://www.ukrinform.ua/rubric-regions/3018612-sprava-gandzjuk-sud-sodo-pavlovskogo-vidklali-cerez-vidsutnist-internetu-u-sizo.html>.

116 EU-funded Project PRAVO-Justice, "Comparative analysis of video conferencing systems (revised version)", May 2020, available at: <https://www.pravojustice.eu/storage/app/uploads/public/5ee/391/4f2/5ee3914f2ad5c134686849.pdf>.

117 EU-funded Project PRAVO-Justice, "Comparative analysis of video conferencing systems (revised version)", May 2020, p. 9, available at: <https://www.pravojustice.eu/storage/app/uploads/public/5ee/391/4f2/5ee3914f2ad5c134686849.pdf>.

## E. Impact on the Right to Life and Prohibition Against Inhuman Treatment

States have a duty to protect life and prevent unnecessary suffering by maintaining adequate healthcare systems, and taking necessary measures to combat the spread of infectious disease.<sup>118</sup> States have a particular duty of care to safeguard the lives and wellbeing of persons in State custody.<sup>119</sup> During pandemic events, certain populations – such as prisoners and homeless persons – are particularly vulnerable on account of their exposure to the disease through close confinement with others, poor hygiene and immune systems weakened by the lack of outdoor exercise and healthy food. Doctors and other frontline workers are also in need of greater protection by the State, as they expose themselves in order to protect the lives and wellbeing of others. As a minimum, doctors and frontline workers must be provided with adequate personal protection equipment (PPE). A failure to take necessary steps to protect persons in custody, the vulnerable and frontline workers from unnecessary deaths and suffering, may violate the right to life<sup>120</sup> and/or the prohibition on inhuman treatment.<sup>121</sup>

### I. PRISONERS

In May 2020, the Ukrainian Ministry of Justice proposed two pieces of legislation aimed at reducing Ukraine's prison population for the duration of the COVID-19 pandemic. Draft Bill 3397 proposes an amnesty for juveniles, elderly and other vulnerable convicts (except those who have been convicted of grave or 'especially grave' offences).<sup>122</sup> It is estimated that this amnesty would affect two to three thousand prisoners.<sup>123</sup> In parallel, Draft Bill 3396 proposes a conditional release of certain groups of prisoners, temporarily restricts pre-trial detention for most cases<sup>124</sup> (but does not affect the extension of pre-existing pre-trial detention) and gives the courts a possibility to delay the commencement of post-conviction imprisonment (with exceptions).<sup>125</sup> As of 11 July 2020, neither Bill has been enacted by

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118 Council of Europe, "Guide to Article 2 of the European Convention on Human Rights: Right to Life", 30 April 2020, paras. 40-49, available at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_2\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf).

119 Council of Europe, "Guide to Article 2 of the European Convention on Human Rights: Right to Life", 30 April 2020, paras. 50-54, available at: [https://www.echr.coe.int/Documents/Guide\\_Art\\_2\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf).

120 European Convention on Human Rights, 1950, Article 2, available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

121 European Convention on Human Rights, 1950, Article 3, available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

122 Проект Закону 3397 "Про амністію засуджених (щодо запобігання поширенню гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2)", 27 April 2020, available at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68676](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68676). The amnesty would include juveniles, pregnant women, persons with disabilities, persons suffering from HIV, tuberculosis, cancer and other grave illnesses, pensioners, war veterans, Chernobyl veterans, sole carers of old and vulnerable persons, parents of small children or children with disabilities.

123 Юридическая практика, "Кабмин предлагает амнистию для 2-3 тыс. осужденных в связи с COVID-19", 27 April 2020, available at: <https://pravo.ua/kabmin-predlagaet-amnistiju-dlja-2-3-tys-osuzhdennyh-v-svjazi-s-covid-19/>.

124 Except for those accused of committing violent crime, intentional crimes resulting in deaths, corruption-related crimes and national security crimes.

125 Проект Закону 3396 "Про внесення змін до деяких законодавчих актів України щодо запобігання виникненню і поширенню гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, в установах виконання покарань та місцях попереднього ув'язнення", 27 April 2020, available at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68675](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68675).

Parliament: Bill 3397 has been sent back for revision and Bill 3396 has been rejected by the Parliamentary Committee on Law Enforcement.<sup>126</sup>

The Government of Ukraine has placed restrictions on outsiders entering places of detention, and has mandated the distribution of PPE to all prison staff.<sup>127</sup> The Government has also put in place procedures for maintaining prisoners' family contact through online platforms (but not for persons in pre-trial detention),<sup>128</sup> and created new rules for the transmission of parcels and packages to prisoners.<sup>129</sup> Representatives of the Ombudsman on Human Rights conduct regular visits to various detention facilities to check on conditions of detention and compliance with quarantine measures.<sup>130</sup>

Nevertheless, the Government's efforts are not sufficient to meet the substantial challenge posed by COVID-19 for the Ukrainian prison population (55 000 prisoners in 2019<sup>131</sup>). PPE has not been made available to prisoners,<sup>132</sup> and supply shortfalls<sup>133</sup> mean that prison staff often lack PPE.<sup>134</sup> There is also a general lack of hygiene equipment in Ukrainian places of detention.<sup>135</sup> Furthermore, there is a pervasive

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- 126 Проект Закону 3397 "Про амністію засуджених (щодо запобігання поширенню гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2)", 27 April 2020, available at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68676](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68676); Проект Закону 3396 "Про внесення змін до деяких законодавчих актів України щодо запобігання виникненню і поширенню гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, в установах виконання покарань та місцях попереднього ув'язнення", 27 April 2020, available at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68675](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68675).
- 127 Міністерство Юстиції України, "План протиепідемічних заходів щодо запобігання занесенню і поширенню в установах виконання покарань та слідчих ізоляторах ДКВС України гострої респіраторної хвороби, спричиненої новим коронавірусом, на 2020 рік", 12 March 2020, available at: <http://pk.khpg.org/files/docs/1585295647.pdf>.
- 128 Міністерство Юстиції України, "План протиепідемічних заходів щодо запобігання занесенню і поширенню в установах виконання покарань та слідчих ізоляторах ДКВС України гострої респіраторної хвороби, спричиненої новим коронавірусом, на 2020 рік", 12 March 2020, available at: <http://pk.khpg.org/files/docs/1585295647.pdf>.
- 129 Центр охорони здоров'я Державної кримінально-виконавчої служби України, "Інструкція щодо прийому передач та посилок від родичів та близьких до установ Державної кримінально-виконавчої служби України та закладів охорони здоров'я ЦОЗ ДКВС України", 30 March 2020, available at: <https://www.facebook.com/cozdkvs.official/posts/1509030505916599>.
- 130 As examples: Офіс Омбудсмана України, "Миколаївське СІЗО", 17 April 2020, available at: <https://www.facebook.com/watch/?v=239918270584442>; Офіс Омбудсмана України, "Чортківська установа виконання покарань № 26 (СІЗО)", 15 May 2020, available at: <https://www.facebook.com/watch/?v=238007237623213>; Офіс Омбудсмана України, "Одеський слідчий ізолятор", 17 April 2020, available at: <https://www.facebook.com/office.ombudsman.ua/posts/589450458333799>; Українське Право, "У київському СІЗО виявили масові порушення заходів проти коронавірусу", 10 April 2020, available at: <https://ukrainepravo.com/news/ukraine/u-kyiyvskomu-sizo-vyavyly-masovi-porushennya-zakhodiv-proty-koronavirusu/>.
- 131 Institute for Crime and Justice Policy Research, "World Prison Brief: Ukraine", available at: <https://www.prisonstudies.org/country/ukraine>.
- 132 Харківська Правозахисна Група, "Запобігання поширенню COVID-19 в пенітенціарних установах очима ув'язнених", 5 May 2020, available at: <http://khpg.org/index.php?id=1588690050>; Голос України, "Як стримати коронавірус у місцях позбавлення волі", Shevchuk Y., 8 May 2020, available at: <http://www.golos.com.ua/article/330691>.
- 133 Громадське, "Мін'юст ініціює розгляд двох законопроектів для розвантаження тюрем у період пандемії", Roshchyna V., 14 May 2020, available at: <https://hromadske.ua/posts/minyust-iniciyuye-rozglyad-dvoh-zakonoprojektiv-dlya-rozvantazhennya-tyurem-u-period-pandemiyi>.
- 134 Громадське, "Мін'юст ініціює розгляд двох законопроектів для розвантаження тюрем у період пандемії", Roshchyna V., 14 May 2020, available at: <https://hromadske.ua/posts/minyust-iniciyuye-rozglyad-dvoh-zakonoprojektiv-dlya-rozvantazhennya-tyurem-u-period-pandemiyi>.
- 135 Харківська Правозахисна Група, "Запобігання поширенню COVID-19 в пенітенціарних установах очима ув'язнених", 5 May 2020, available at: <http://khpg.org/index.php?id=1588690050>.

lack of medical assistance for prisoners in places of detention across Ukraine.<sup>136</sup> Some prisons – most notably Kyiv's main pre-trial detention centre – have failed to implement mandated measures for containing COVID-19.<sup>137</sup> All these issues highlight the dire need to take swift action to reduce the prison population in Ukraine – so it is regrettable that legislative initiatives to this end have stalled in Parliament. In the context of COVID-19, the lack of basic safeguards for prisoners may lead to unnecessary suffering and preventable loss of life.

## II. THE HOMELESS

The Government has not taken any specific steps with respect to homeless people during the pandemic.<sup>138</sup> Care for the homeless has been left to local authorities and NGOs.<sup>139</sup> Human rights organisations note the dire situation of homeless people during the COVID-19 pandemic: they are subjected to violence from law enforcement, their access to medical care is restricted,<sup>140</sup> they have no or reduced access to food and inadequate shelter.<sup>141</sup> Additionally, due to the closure of the Kyiv railway station the homeless have lost a safe place to sleep.<sup>142</sup> The head of the Kyiv Department of Social Policy notoriously argued that support for the homeless is unnecessary: “They should feel the need. They should not get used to comfort”.<sup>143</sup> In the context of COVID-19, the failure to provide shelter, food and medical care to homeless people may lead to unnecessary suffering and preventable loss of life.

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136 Харківська Правозахисна Група, “Запобігання поширенню COVID-19 в пенітенціарних установах очима ув'язнених”, 5 May 2020, available at: <http://khp.org/index.php?id=1588690050>.

137 Центр прав людини ZMINA, “У київському СІЗО в'язні не мають мила, а маски адміністрація видала лише медпрацівникам”, 8 April 2020, available at: <https://zmina.info/news/u-kyivskomu-sizo-vyazni-ne-mayut-myla-a-masky-administracziya-vydala-lyshe-medpracivnykam/>; Офіс Генерального Прокурора, “Офіс Генпрокурора розпочав кримінальне провадження за зверненням омбудсмена щодо недотримання правил карантину у Київському СІЗО”, 29 April 2020, available at: [https://www.gp.gov.ua/ua/news?\\_m=publications&\\_t=rec&id=271883](https://www.gp.gov.ua/ua/news?_m=publications&_t=rec&id=271883).

138 Центр прав людини ZMINA, “Безхатченки, секс-працівниці, наркозалежні: як карантин вплинув на вразливі групи населення”, Sokurenko E., 6 April 2020, available at: <https://zmina.info/articles/yak-karantyn-vplynuv-na-vrazlyvi-grupy-naselennya/>.

139 УНН, “Кличко розповів про допомогу столичним безхаткам під час карантину”, Ryabtseva N., 6 April 2020, available at: <https://www.unn.com.ua/uk/news/1862130-klichko-rozpoviv-pro-dopomogu-stolichnim-bezkhatkam-pid-chas-karantynu>; Заборона, “Самоізоляція на вулиці. Через карантин київські бездомні ледь виживають, але влада каже, що проблеми немає”, Vishnitska A., 4 May 2020, available at: <https://zaborona.com/samoizolyacziya-na-vulyczy-cherez-karantyn/>.

140 According to human rights monitors, the homeless cannot call an ambulance as they have no mobile phones, and those who have – have no facilities to charge the battery: Центр прав людини ZMINA, “Безхатченки, секс-працівниці, наркозалежні: як карантин вплинув на вразливі групи населення”, Sokurenko E., 6 April 2020, available at: <https://zmina.info/articles/yak-karantyn-vplynuv-na-vrazlyvi-grupy-naselennya/>.

141 Центр прав людини ZMINA, “Безхатченки, секс-працівниці, наркозалежні: як карантин вплинув на вразливі групи населення”, Sokurenko E., 6 April 2020, available at: <https://zmina.info/articles/yak-karantyn-vplynuv-na-vrazlyvi-grupy-naselennya/>; Українська Правда, “Бомжарики вимрут – государству хорошо” – як живеться столичним безхаткам в умовах карантину”, 24 March 2020, available at: <https://www.pravda.com.ua/articles/2020/03/24/7244954/>.

142 Центр прав людини ZMINA, “Безхатченки, секс-працівниці, наркозалежні: як карантин вплинув на вразливі групи населення”, Sokurenko E., 6 April 2020, available at: <https://zmina.info/articles/yak-karantyn-vplynuv-na-vrazlyvi-grupy-naselennya/>.

143 Заборона, “Самоізоляція на вулиці. Через карантин київські бездомні ледь виживають, але влада каже, що проблеми немає”, Vishnitska A., 4 May 2020, available at: <https://zaborona.com/samoizolyacziya-na-vulyczy-cherez-karantyn/>.



### III. MEDICAL PROFESSIONALS

As of 11 July 2020, 7,261 medical professionals have been infected with Covid-19, making up almost 14% of all persons tested positive for COVID-19 in Ukraine.<sup>144</sup> According to monitoring organisations, the high rate of infections amongst hospital staff is a direct result of the Government's failure to provide medical professionals with adequate PPE.<sup>145</sup> Most hospitals across 15 regions have complained about the lack of PPE – with only 1-7% of necessary equipment available to hospitals at the start of the pandemic.<sup>146</sup> According to the official statistics, hospitals are still experiencing major shortages of key equipment, including respirators, scrubs and face masks.<sup>147</sup> Regular testing of medical professionals was mandated by Parliament on 7 May 2020.<sup>148</sup> In the context of COVID-19, the lack of basic safeguards for medical professionals and other frontline workers may lead to unnecessary suffering and preventable loss of life.

## F. Impact on the Right to Privacy

It is understood that fighting a pandemic requires the collection and analysis of large amounts of personal data. Nevertheless, the protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life.<sup>149</sup> Thus, it is crucial that the State only collects such personal data as is absolutely necessary, protects that data whilst it continues to store it, and deletes it as soon as practicable.<sup>150</sup> The State must ensure that the data is protected at all times from misuse and abuse.<sup>151</sup> Whether a State's data collection practices violate the right to privacy depends on specific context in which the information in question has been recorded and retained, the nature of the records, the way in which these records are used and processed and the results that may be obtained.<sup>152</sup>

144 Центр Громадського Здоров'я, "COVID-19, 11.07.2020", available at: <https://www.facebook.com/phc.org.ua/photos/a.354220654702669/2069297496528301/>.

145 Українська Правда, "Беззащитные защитники: на сколько хватит масок и костюмов врачам в регионах?", Shcherban O., 30 April 2020, available at: <https://www.pravda.com.ua/rus/columns/2020/04/30/7249909/>; Корреспондент.net, "На передовій. Чому хворіє так багато медиків", 13 April 2020, available at: <https://ua.korrespondent.net/world/4216900-na-peredovii-chomu-khvoriie-tak-bahato-medykiv/>; Громадське, "Дві тисячі медиків інфіковані коронавірусом. Чому медична система не може захистити своїх?", Tokhmakhchi A., 30 April 2020, available at: <https://hromadske.ua/posts/dvi-tisyachi-medikiv-infikovani-koronavirusom-chomu-medichna-sistema-ne-mozhe-zahistiti-svoyih/>.

146 State Watch, "Результати моніторингу про готовність лікарень України до шпиталізації хворих на COVID-19", 31 March 2020, available at: <https://statewatch.org.ua/publications/rezul-taty-monitorynhu-pro-hotovnist-likaren-ukrainy-do-shpytalizatsii-khvorykh-na-covid-19/>; Центр прав людини ZMINA, "Чи приховують правду про коронавірус: шість тез щодо права на інформацію під час пандемії", Virna N., 21 April 2020, available at: <https://zmina.info/articles/chy-pryhovuyut-pravdu-pro-koronavirus-6-tez-pro-pravo-na-informacziyu-pid-chas-pandemiyi/>.

147 Кабінет Міністрів України, "Covid19 official web-site", available at: <https://covid19.gov.ua/analitichni-paneli-dashbordy> (last accessed on 11 July 2020).

148 Закон України 587-IX "Про внесення змін до деяких законодавчих актів України з метою підвищення спроможності системи охорони здоров'я України протидіяти поширенню коронавірусної хвороби (COVID-19)", redaction 19 May 2020, Part I, Articles 2; 3, available at: <https://zakon.rada.gov.ua/laws/show/587-20#Text>.

149 European Court of Human Rights, "Satakunnan Markkinaporssi Oy and Satamedia Oy v. Finland Judgment", 27 June 2017, 931/13, para. 133, available at: <https://lovdata.no/static/EMDN/emd-2013-000931-2.pdf>.

150 European Court of Human Rights, "M.K. v France Judgment", 18 April 2013, 19522/09, para. 26, available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-119075%22%7D>.

151 European Court of Human Rights, "Gardel v France Judgment", 17 March 2010, 16428/05, para. 62, available at: <https://www.legal-tools.org/doc/315a62/pdf/>.

152 European Court of Human Rights, "S. and Marper v. the UK Judgment", 4 December 2008, 30562/04 - 30566/04, para. 67, available at: <https://rm.coe.int/168067d216>.

Through Resolution №211, the Cabinet of Minister of Ukraine legislated for the development and application of the “Дій вдома” (“Act at Home”) mobile app. The app acts as an electronic monitor of compliance with self-isolation – the user is sent random requests to send geo-tagged selfies within 15 minutes of receiving the request.<sup>153</sup> If the user fails to perform the task, the app automatically sends a notification to the National Police.<sup>154</sup> Downloading and using the app is not obligatory for the general population. It is given as an ‘alternative’ to random checks by the National Police, or as an alternative to mandatory quarantine in a designated institution.<sup>155</sup>

Nevertheless, aside from tracking, the app collects personal information about its users, including full names, gender, date of birth, place of self-isolation, place of residence, telephone number, work place/ educational institutions, health information, duration of isolation and contacted persons).<sup>156</sup> Whilst consent is sought for using the app, consent is not specifically obtained for the State’s collection, storage and processing of this personal information.<sup>157</sup> There is no provision requiring medical staff to notify the individual as to how the collected information will be used.<sup>158</sup>

There is also some confusion as to what happens to the data after the user’s self-isolation ends. The law obliges the State to destroy or depersonalise the data within 30 days of the end of the user’s self-isolation, but equally allows the State to store and process personal information for up to 30 days.<sup>159</sup> The Council of Europe has noted that the fate of collected personal data remains unclear.<sup>160</sup>

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- 153 AIN, “Приложение “Дій вдома”: кто должен его ставить, как оно работает и что с ним не так”, Карпенко О., 30 April 2020, available at: <https://ain.ua/2020/04/30/kak-rabotayet-prilozhenie-diy-vdoma/>; Кабінет Міністрів України, “Інструкція з використання електронного сервісу “Дій вдома”, 27 April 2020, available at: <https://www.kmu.gov.ua/storage/app/sites/1/18%20-%20Department/18%20-%20PDF/04.2020/instrukciya-diy-vdoma.pdf>.
- 154 Кабінет Міністрів України, “Інструкція з використання електронного сервісу “Дій вдома”, 27 April 2020, available at: <https://www.kmu.gov.ua/storage/app/sites/1/18%20-%20Department/18%20-%20PDF/04.2020/instrukciya-diy-vdoma.pdf>.
- 155 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 23 April 2020, Annex III, Para. 12, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200311#Text>; Укрінформ, “Додаток “Дій Вдома” буде за вами стежити. Звісно, якщо ви погодитесь”, 8 April 2020, available at: <https://www.ukrinform.ua/rubric-society/3001538-dodatok-diy-vdoma-bude-za-vami-steziti-ale-zvisno-akso-vi-pogodites.html>.
- 156 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 23 April 2020, Annex III, Para. 8, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200311#Text>; Постанова Кабінету Міністрів України №392, “Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів”, redaction 20 May 2020, Annex I, paras.3,7, available at: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF/ed20200520#Text>.
- 157 Закон України 555-ІХ “Про внесення змін до Закону України “Про захист населення від інфекційних хвороб” щодо запобігання поширенню коронавірусної хвороби (COVID-19)”, redaction 13 April 2020, Part II, Article 2 (Section 1), available at: <https://zakon.rada.gov.ua/laws/show/555-20#Text>.
- 158 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 23 April 2020, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200311#Text>.
- 159 Закон України 555-ІХ “Про внесення змін до Закону України “Про захист населення від інфекційних хвороб” щодо запобігання поширенню коронавірусної хвороби (COVID-19)”, redaction 13 April 2020, Part II, Article 2 (Section 1), available at: <https://zakon.rada.gov.ua/laws/show/555-20#Text>.
- 160 Офіс Ради Європи в Україні, “Чи відповідає додаток “Дій вдома” стандартам захисту персональних даних - коментар експерта Ради Європи”, 15 May 2020, available at: <https://www.coe.int/uk/web/kyiv/-does-the-act-at-home-ukrainian-mobile-app-meet-data-protection-standards-comment-of-the-council-of-europe-expert>.



The Government has also lacked clarity in its public messaging about the app. Some government information about the app seemed to suggest that it was mandatory for all persons with COVID-19 symptoms (backed by fines) – in direct contradiction to the letter of the law.<sup>161</sup>

Most worrying is the fact that sensitive personal data appears to have been leaked from the app into the public domain. On 3 April 2020, it became known that an anonymous Telegram-channel had published personal information about Kyiv citizens suffering from the Covid-19.<sup>162</sup> On 8 April, Ukrainian media *Vesti* published addresses of Covid-19 patients from Kyiv (having claimed that they received such information from medical services).<sup>163</sup> Also in April, the Zhytomyr Oblast State Administration published a map with the Covid-19 patients' address, age, gender, medical condition and information about their isolation regime.<sup>164</sup> There have also been complaints about the functionality of the app.<sup>165</sup>

Thus, whilst the Government of Ukraine may legitimately collect and store personal data for the purpose of combatting the COVID-19 pandemic, it may only do so with informed consent from the targeted population, and with robust systems that prevent leaks and other forms of misuse of the sensitive information. The collection and storage of data through the “Дій вдома” (“Act at Home”) mobile app has clearly failed to meet these safeguards and constitutes a violation of the right to privacy.

## G. Impact on the Freedom of Assembly

Groups and individuals, who feel unheard on an important issue, should be able to express their opinions ‘on the streets’ – as long as this is done without violence or unnecessary disruption to the rights of others. Authorities may seek to restrict the freedom of assembly by imposing conditions and restrictions prior or during the protest, or by using crowd-control, dispersals, arrests and prosecutions.<sup>166</sup> To be regarded ‘lawful’, such restrictions must be prescribed by law, taken in pursuit of legitimate aims (e.g.: prevention of crime, restoring public order, protecting public health and security), and must be necessary and proportionate to those aims. These factors must be assessed in accordance with the circumstances of the particular case. As a general rule, peaceful protesters should not be subjected to violence, humiliation or criminal prosecutions.<sup>167</sup>

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161 BBC Ukraine, “Дій вдома: додаток, який стежитиме за українцями на самоізоляції”, 8 April 2020, available at: <https://www.bbc.com/ukrainian/features-52217877>.

162 СтранаUA, “Данные о зараженных коронавирусом киевлянах оказались в открытом доступе”, 3 April 2020, available at: <https://strana.ua/news/259126-koronavirus-v-kieve-dannye-o-zarazhennykh-utekli-v-set.html>.

163 VestiUA, “Где в Киеве зафиксирован Covid-19. Вести публикуют улицы и номера домов”, Kozub T., 8 April 2020, available at: <https://vesti.ua/people/gde-v-kieve-zafiksirovano-covid-19-vesti-publikuyut-ulitsy-i-nomera-domov>.

164 Media Sapiens, “Чумні квартали: Житомирська ОДА оприлюднила карту з позначками вулиць, де мешкають хворі на COVID-19”, 16 April 2020, available at: <https://ms.detector.media/zakonodavstvo/post/24517/2020-04-16-chumni-kvartali-zhitomirska-oda-oprilyudnila-kartu-z-poznachkami-vulits-de-meshkayut-khvori-na-covid-19/>.

165 GooglePlay, “Дій вдома app”, available at: <https://play.google.com/store/apps/details?id=ua.gov.dii.a.quarantine&hl=ru>.

166 European Court of Human Rights, “Ezelin v. France Judgment”, 26 April 1991, 11800/85, para. 39, available at: <https://hudoc.echr.coe.int/rus#%7B%22itemid%22:%5B%22001-57675%22%5D%7D>.

167 European Court of Human Rights, “Taranenko v Russia Judgment”, 13 October 2014, 19554/05, para. 87, available at: <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2219554/05%22%5D%2C%22itemid%22:%5B%22001-142969%22%5D%7D>.

Resolution №211 restricted all public gatherings to a maximum of 200 people (12 March 2020) and 10 people (17 March 2020).<sup>168</sup> Human rights groups have challenged the legality of such a blanket ban, as the right to peaceful protest is protected by the Constitution and may only be restricted by a lawful court order.<sup>169</sup> In a separate development, a new draft Bill (3291) proposes to prohibit all forms of protest and mass gatherings within 50 meters of a court building.<sup>170</sup> Critics worry that this legislation will set a precedent for similar restrictions on protesting in front of other government buildings.<sup>171</sup>

Confusion as to the effect of restrictive measures on the right to peaceful assembly has led to arbitrary arrests and violence. Numerous protests have taken place across Ukraine during the lockdown period – including protests against new arrangements under the Minsk agreements,<sup>172</sup> protests against the prosecution of an activist,<sup>173</sup> assembly of relatives of political prisoners,<sup>174</sup> protests against some quarantine measures,<sup>175</sup> protest by entrepreneurs,<sup>176</sup> and protest by medical staff.<sup>177</sup> The police responded in a haphazard manner – ranging from allowing protests to take place unimpeded, issuing spot-fines and administrative protocols for violating restrictive measures to detaining protesters at the

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- 168 Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 11 March 2020, Para. 1, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200311#Text>; Постанова Кабінету Міністрів України №211, “Про запобігання поширенню на території України коронавірусу COVID-19”, redaction 17 March 2020, , Para. 2 (Section 2) , available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200317#Text>.
- 169 Конституція України, redaction 1 January 2020, Article 36, available at: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#n4288>; Центр політико-правових реформ, “Урядова постанова про обмеження масових заходів через коронавірус не означає заборону мирних зібрань”, 12 March 2020, available at: <https://www.pravo.org.ua/ua/news/20874267-uryadova-postanova-pro-obmegeennya-masovih-zahodiv-cherez-koronavirus-ne-oznachae-zaboronu-mirnih-zibran>; Реанімаційний Пакет Реформ, “Роз’яснення правозахисників щодо “карантинних” постанов Кабміну”, 10 April 2020, available at: <https://rpr.org.ua/news/roz-iasnennia-pravozakhysnykiv-shchodo-karantynnih-postanov-kabminu/>.
- 170 Проект Закону 3291 “Про внесення змін до статті 6 Закону України “Про судоустрій і статус суддів” щодо заборони проведення мітингів біля будівель судів”, 30 March 2020, available at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68500](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68500); Радіо свобода, “Раді пропонують заборонити акції біля судів на відстані ближче ніж 50 м”, 31 March 2020, available at: <https://www.radiosvoboda.org/a/news-rada-zaborona-aktsiy-bilya-sudu/30520075.html>.
- 171 Центр прав людини ZMINA, “В Україні хочуть заборонити мітингувати під судами”, 1 April 2020, available at: <https://zmina.info/news/v-ukrayini-hochtu-zaboronyty-mitynguvaty-pid-sudamy/>.
- 172 Центр громадських свобод, “Застосування вибіркового тиску на учасників мирних зібрань під час карантину”, 5 May 2020, available at: <https://ccl.org.ua/wp-content/cache/all/statements/vybirkovoho-tysku-na-uchasnykiv-myrynykh-zibran/index.html>.
- 173 Радіо Свобода, “Стерненко об’єднав ультраправих и либералов – Лихачев”, 21 May 2020, available at: <https://www.radiosvoboda.org/a/30622507.html>.
- 174 Радіо Свобода, “Фоторепортаж: родичі політв’язнів провели акцію під Офісом президента України” 22 May 2020, available at: <https://www.radiosvoboda.org/a/photo-rodychi-politvyazniv-aktsiya/30625885.html>.
- 175 Судебно-юридическая газета, “В Киеве проходит митинг против карантина: требуют возобновить работу перевозчиков, фото”, 13 May 2020, available at: <https://sud.ua/ru/news/ukraine/168605-v-kieve-prokhodit-miting-protiv-karantina-trebuyut-vozobnovit-rabotu-perevozhchikov-foto>.
- 176 Радіо Свобода, “Під Кабмін вийшли підприємці, вимагають рівних прав для всіх за умов карантину” 29 April 2020, available at: <https://www.radiosvoboda.org/a/news-uryad-protest-pidpryjemsiv/30582748.html>.
- 177 Радіо Свобода, “У Києві протестують лікарі клініки швидкої медичної допомоги – відео”, 22 May 2020, available at: <https://www.radiosvoboda.org/a/video-u-kyievi-protestuut-likari-kliniky-shvydkoi-dopomohy/30597387.html>.

police station and launching criminal prosecutions for breaching social distancing rules.<sup>178</sup> At least nine protesters in Kyiv were fined by the police, despite adhering to the two-meter distancing rule.<sup>179</sup> In some cases, confusion over rules led to violence between protesters and the police.<sup>180</sup> On at least two occasions, the police used disproportionate force against people filming the policing of protests.<sup>181</sup> Overall, the number of protests appears to have increased since the introduction of lockdown measures in March 2020.<sup>182</sup>

Thus, whilst it is unclear whether COVID-19 lockdown measures have legally restricted the right to peaceful assembly, the measures have not limited protests in practice. Nevertheless, the legal position must be resolved forthwith, so as to avoid future arrests and unnecessary violence.

## H. Impact on the Freedom of Expression

The freedom of expression is a pillar of diversity and plurality in a democratic society. Nevertheless, the freedom of expression is not absolute. All restrictions to expression must be prescribed by law, taken in pursuit of legitimate aims (e.g.: prevention of crime, restoring public order, protecting public health and security), and must be necessary and proportionate to those aims.<sup>183</sup> In assessing the lawfulness of restrictions, it is important to consider the ‘chilling effect’ of measures like violent dispersals, arrests and prosecutions, on the future exercise of the freedom of expression. Freedom of expression also entails free access to key information and transparency of government conduct. In the context of COVID-19, it is crucial for public authorities to inform all members of the public of the risks of the disease, and measures taken to mitigate such risks.

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- 178 Радіо Свобода, “Поліція провела службове розслідування щодо затримання киянки за “порушення карантину та непокору поліції”, 18 May 2020, available at: <https://www.radiosvoboda.org/a/news-politsia-sluzhbove-rozsliduvannya-zatrymannia-kyianky/30619109.html>; Радіо Свобода, “Як пройшло 9 травня в українських містах – огляд”, Solonyna E., 9 May 2020, available at: <https://www.radiosvoboda.org/a/30603188.html>; Інформаційне агентство ASPI, “Під офісом Гордона влаштували акцію через інтерв’ю з Гіркіним (Наживо)”, 18 May 2020, available at: <https://aspi.com.ua/news/podii/pid-ofisom-gordona-vlashtuvali-akciyu-cherez-intervyu-z-girkinim-nazhivo#gsc.tab=0>; Центр громадських свобод, “Застосування вибіркового тиску на учасників мирних зібрань під час карантину”, 5 May 2020, available at: <https://ccl.org.ua/wp-content/cache/all/statements/vybirkovoho-tysku-na-uchasnykiv-myrykh-zibranj/index.html>.
- 179 Громадське Радіо, “Поліція склала 9 адмінпротоколів на учасників акції під ОП”, 6 April 2020, available at: <https://hromadske.radio/news/2020/04/06/politsiia-sklala-9-adminprotokoliv-na-uchasnykiv-aktsii-pid-op>.
- 180 Укрінформ, “Під Кабміном підприємці протестують проти карантину”, 29 April 2020, available at: <https://www.ukrinform.ua/rubric-society/3015392-pid-kabminom-pidpriemci-protestuut-proti-karantynu.html>; Радіо Свобода, “Як пройшло 9 травня в українських містах – огляд”, Solonyna E., 9 May 2020, available at: <https://www.radiosvoboda.org/a/30603188.html>; Укрінформ, “У Херсоні під час акції Нацкорпусу виникла штовханина”, 20 May 2020, available at: <https://www.ukrinform.ua/rubric-regions/3029562-u-hersoni-pid-cas-akcii-nackorpusu-vinikla-stovhanina.html>.
- 181 Aleksandra Navrotskaya, Facebook account, 10 April 2020, available at: <https://www.facebook.com/aleks.navrotskaya/posts/1636570806497875>; Державне бюро розслідувань, “ДБР розслідує законність дій правоохоронців по відношенню до журналіста”, 29 April 2020, available at: <https://dbr.gov.ua/news/dbr-rozslidue-zakonnist-diy-pravookhoronciv-po-vidnoshennyu-do-zhurnalista>; Уніан, “В ОБСЄ закликали розслідувати напад на журналіста Кутєпова”, 30 April 2020, available at: <https://www.unian.ua/incidents/napad-na-kutyepova-v-obsye-zaklikali-rozsliduvati-incident-novini-ukrajina-10978649.html>.
- 182 Центр прав людини ZMINA, “Без права на протест: яким зрадам розв’яже руки карантин і що з цим робити”, Pietsukh M., 29 April 2020, available at: <https://zmina.info/articles/pravo-na-protest-yak-organizovuvaty-akcziyi-v-umovah-karantynu/>.
- 183 European Convention on Human Rights, 1950, Article 10, available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

The Government's early attempt to restrict access to public information for the period of the COVID-19 pandemic was widely criticised, leading to the quick withdrawal of draft legislation.<sup>184</sup> The only other measure specifically introduced in response to COVID-19 was a decision by the Speaker of Parliament to restrict media access to the debating chamber (maintaining full access to the press room).<sup>185</sup>

Instead, the Government has relied on existing legislation to curb what it regards as fake news and disinformation about COVID-19. In the vast majority of cases, the Government has relied on Article 173-1 of the Code of Administrative Procedure (Spreading of false rumours which may cause panic among the population or disorder in society), to take down social media posts and pursue alleged violators. The Ministry of Internal Affairs announced that cyber-police have blocked almost 10,000 web-links, used by fraudsters, or spreading disinformation about the Covid-19, launching 58 cases.<sup>186</sup> Nevertheless, court practice shows that judges are usually not satisfied with the evidence presented in support of such allegations.<sup>187</sup> In addition, the Security Service of Ukraine (SBU) has blocked more than 2,500 web-communities and found 370 web-agitators who spread disinformation about Covid-19. The SBU alleges that 17 agitators were operating on instructions from the Russian Government.<sup>188</sup> Criminal cases have been launched against the 17 alleged operatives under Articles 109 (*Actions aimed at forceful change or overthrow of the constitutional order or take-over of government*) or/and Article 110 (*Trespass against territorial integrity and inviolability of Ukraine*) of the Criminal Code of Ukraine.<sup>189</sup> These proceedings must be monitored to ensure that censorship and criminal prosecutions on serious charges do not stymie expression and genuine debate on a novel and constantly evolving issue.

On the face of it, the Government has provided adequate public information on COVID-19 and measures taken, through a dedicated website,<sup>190</sup> daily press briefings<sup>191</sup> and mobile loudspeakers.<sup>192</sup> Critics point out that this information was not available during the first (crucial) weeks of the pandemic.<sup>193</sup>

184 Проект Закону 3294 "Про внесення зміни до пункту 2 розділу II "Прикінцеві положення" Закону України "Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19)", 30 March 2020, available at: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68503](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68503).

185 Верховна Рада України, "Голова Верховної Ради України Дмитро Разумков підписав розпорядження "Про додаткові заходи із попередження виникнення гострої респіраторної хвороби", 12 March 2020, available at: <https://www.rada.gov.ua/news/Novyny/190937.html>.

186 Міністерство Внутрішніх Справ України, "Кіберполіція заблокувала майже 10 000 Інтернет-посилань, які шахраї використовували під час пандемії", 4 May 2020, available at: [https://mvs.gov.ua/ua/news/30440\\_Kiberpoliciya\\_zablokuvala\\_mayzhe\\_10\\_000\\_Internet\\_posilan\\_yaki\\_shahraj\\_vikoristovuvali\\_pid\\_chas\\_pandemii.htm](https://mvs.gov.ua/ua/news/30440_Kiberpoliciya_zablokuvala_mayzhe_10_000_Internet_posilan_yaki_shahraj_vikoristovuvali_pid_chas_pandemii.htm).

187 Центр прав людини ZMINA, "Пандемія (для) цифрових прав: як Україна та світ відповідають на нові виклики", Dvoroviy M., 24 April 2020, available at: <https://zmina.info/articles/pandemiya-dlya-cyfrovih-prav-yak-ukrayina-ta-svit-vidpovidayut-na-novi-vyklyky/>.

188 Служба безпеки України, "СБУ продовжує блокувати спроби проросійських інтернет-агітаторів використати період карантину для нагнітання панічних настроїв", 18 May 2020, available at: <https://ssu.gov.ua/novyny/7598>.

189 Служба безпеки України, "СБУ продовжує блокувати спроби проросійських інтернет-агітаторів використати період карантину для нагнітання панічних настроїв", 18 May 2020, available at: <https://ssu.gov.ua/novyny/7598>.

190 Кабінет Міністрів України, Covid19 official web-site, available at: <https://covid19.gov.ua/analitichni-paneli-dashbord/>.

191 Кабінет Міністрів України, "Брифінги щодо ситуації з протидією поширенню коронавірусної інфекції", available at: <https://www.youtube.com/channel/UCYITFedAEZiqE6r9eY0PZ1A/videos>.

192 Радіо Свобода, "У ДСНС повідомили, як будуть інформувати про коронавірус", 24 May 2020, available at: <https://www.radiosvoboda.org/a/news-dsns-koronavirus-informuvannia/30499764.html>.

193 Центр прав людини ZMINA, "Чи приховують правду про коронавірус: шість тез щодо права на інформацію під час пандемії", Virna N., 21 April 2020, available at: <https://zmina.info/articles/chy-pryhovuyut-pravdu-pro-koronavirus-6-tez-pro-pravo-na-informacziyu-pid-chas-pandemiyi/>.

Furthermore, the Government's website and daily press briefings are only available in the Ukrainian language – and information for speakers of at least 13 minority languages has been limited to a single pamphlet released on 30 April 2020.<sup>194</sup> Also notable is the fact that at least 5800 Ukrainian settlements have no access to the Internet.<sup>195</sup> Additionally, individuals and organisations have the right to make urgent information requests from the Government. If the requests concern the protection of life and liberty, they must be responded to within 48 hours.<sup>196</sup> Ukrainian human rights organisation and the human rights Ombudsman has noted a widespread violation of this duty by regional authorities in April 2020.<sup>197</sup>

## I. Impact on the Right to an Adequate Standard of Living, Health and Social Security

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and requires States to take appropriate steps to ensure the realisation of this right. Article 9 of the ICESCR guarantees the right of everyone to social security, including social insurance. Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health implies a duty on the State to take steps to prevent, treat and control epidemic and endemic diseases. These rights must be guaranteed without discrimination of any kind (ICESCR, Article 2).

The Government of Ukraine has taken multiple steps to provide basic financial support to persons who are likely to have lost income as a result of COVID-19 and the associated lockdown. Amongst the measures taken, the Government has provided one-off payments to pensioners and people

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194 Міністерство культури та інформаційної політики України, "МКІП спільно з МОЗ та РЄ випустило рекомендації з протидії коронавірусу 13-ма мовами", 30 April 2020, available at: <https://www.facebook.com/MKIPUkraine/posts/1926496377475537>.

195 Президент України, "Життя дедалі більше переходить в онлайн, країну треба з'єднати Інтернетом – Президент України", 7 May 2020, available at: <https://www.president.gov.ua/news/zhittya-dedali-bilshe-perehodit-v-onlajn-krayinu-treba-zyedn-61061>; UNICEF, "COVID-19 поглиблює нерівність в Україні: доступ до інтернету, наявність комп'ютера та житлові умови", Borodchuk N., Cherenko L., 24 April 2020, available at: <https://www.unicef.org/ukraine/media/5821/file/COVID%20inequality%20UKR.pdf>.

196 Закон України 2939-VI "Про доступ до публічної інформації", redaction 1 December 2019, Article 20(2), available at: <https://zakon.rada.gov.ua/laws/show/2939-17#Text>.

197 Центр прав людини ZMINA, "Чи приховують правду про коронавірус: шість тез щодо права на інформацію під час пандемії", Virna N., 21 April 2020, available at: <https://zmina.info/articles/chy-pryhovuyut-pravdu-pro-koronavirus-6-tez-pro-pravo-na-informacziyu-pid-chas-pandemiyi/>; Уповноважений Верховної Ради з прав людини, "Результати моніторингу стану надання та оприлюднення публічної інформації щодо протидії поширенню коронавірусної хвороби COVID-19", 13 April 2020, available at: <http://www.ombudsman.gov.ua/ua/all-news/pr/rezultati-monitoringu>.



with disabilities,<sup>198</sup> subsidised payments for utility services,<sup>199</sup> a freeze on evictions and fines for non-payment,<sup>200</sup> payment holidays on commercial loans and mortgages (with a freeze on interest rates) (recommendation by the National Bank of Ukraine),<sup>201</sup> tax relief for national insurance, land and commercial property,<sup>202</sup> increased unemployment benefits,<sup>203</sup> partial wage subsidy (furlough),<sup>204</sup> child benefit and other assistance to low-income families,<sup>205</sup> additional payments and social insurance

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- 198 Постанова Кабінету Міністрів України №251, “Деякі питання підвищення пенсійних виплат і надання соціальної підтримки окремим категоріям населення у 2020 році”, 1 April 2020, para. 5, available at: <https://zakon.rada.gov.ua/laws/show/251-2020-%D0%BF/ed20200424#Text>; Кабінет Міністрів України, “Мінсоцполітики: Хто отримає одноразову грошову допомогу у сумі 1000 гривень”, 14 April 2020, available at: <https://www.kmu.gov.ua/news/minsocpolitiki-hto-otrimaye-odnorazovu-groshovu-dopomogu-u-sumi-1000-griven>; Центр громадського моніторингу та контролю, “Додаткові виплати й оформлення онлайн. Що слід знати про соцдопомогу на карантині?”, 27 April 2020, available at: <https://naglyad.org/uk/2020/04/27/dodatkovyi-viplati-j-oformlennya-onlajni-shho-slid-znati-pro-sotsdopomogu-na-karantini/>.
- 199 Закон України 530-IX “Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19)”, redaction 18 April 2020, Part II, Article 3, available at: <https://zakon.rada.gov.ua/laws/show/530-20/ed20200418#Text>; Постанова Кабінету Міністрів України № 247, “Про особливості надання житлових субсидій”, redaction 21 May 2020, paras. 2-4, available at: <https://zakon.rada.gov.ua/laws/show/247-2020-%D0%BF#Text>.
- 200 Закон України 530-IX “Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19)”, redaction 18 April 2020, Part II, Article 3, available at: <https://zakon.rada.gov.ua/laws/show/530-20/ed20200418#Text>;
- 201 Василь Кісіль і Партнери, “Кредити під час карантину: хто і за що може не платити?”, Kolos Y., Derkach D., 7 April 2020, available at: <https://vkr.ua/publication/krediti-pid-chas-karantinu-khto-i-za-shcho-mozhe-ne-platiti>.
- 202 Закон України 2464-VI “Про внесення змін до Податкового кодексу України та інших законів України щодо підтримки платників податків на період здійснення заходів, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19)”, redaction 29 May 2020, Part I, Article 2 (Section 9\*10), available at: <https://zakon.rada.gov.ua/laws/show/533-IX#Text>; Державна податкова служба України, “Дію податкових преференцій продовжено до закінчення карантину”, 19 May 2020, available at: <https://tax.gov.ua/nove-pro-podatki--novini-/419011.html>; Податковий кодекс України, redaction 23 May 2020, Part 10 (Other transitional provisions), Articles 52-4, 52-5, available at: <https://zakon.rada.gov.ua/laws/show/2755-17/ed20200523#Text>.
- 203 Фонд загальнообов’язкового державного соціального страхування України на випадок безробіття, Постанова № 217 “Про мінімальний розмір допомоги по безробіттю на період карантину”, 8 April 2020, available at: [https://www.dcz.gov.ua/sites/default/files/postanova\\_no\\_217.pdf](https://www.dcz.gov.ua/sites/default/files/postanova_no_217.pdf); Кабінет Міністрів України, “Мінімальну допомогу по безробіттю підвищено з 650 грн до 1000 грн, - Мінекономіки”, 21 April 2020, available at: <https://www.kmu.gov.ua/news/minimalnu-dopomogu-po-bezrobittyu-pidvishcheno-z-650-grn-do-1000-grn-minekonomiki>.
- 204 Закон України 5067-VI “Про зайнятість населення”, redaction 18 April 2020, Articles 47, 47-1, available at: <https://zakon.rada.gov.ua/laws/show/5067-17/ed20200418#Text>; Постанова Кабінету Міністрів України № 306, “Про затвердження Порядку надання та повернення коштів, спрямованих на фінансування допомоги по частковому безробіттю на період карантину, встановленого Кабінетом Міністрів України з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2”, redaction 22 April 2020, available at: <https://zakon.rada.gov.ua/laws/show/306-2020-%D0%BF/ed20200422#Text>.
- 205 Постанова Кабінету Міністрів України № 329, “Деякі питання соціальної підтримки сімей з дітьми”, redaction 22 April 2020, available at: <https://zakon.rada.gov.ua/laws/show/329-2020-%D0%BF/ed20200422#Text>; Кабінет Міністрів України, “Уряд продовжує ініціювати антикризові заходи для соціального захисту громадян”, 22 April 2020, available at: <https://www.kmu.gov.ua/news/uryad-zaprovalidiv-dodatkovyi-socialni-garantiyi-dlya-fopiv-ta-malozabezpechenih-simej-na-period-karantinu>.

for medical professionals (including pay-outs to families in case of deaths from COVID-19<sup>206</sup>).<sup>207</sup> The Government has also allocated funds towards supporting the agricultural sector<sup>208</sup> and extended its subsidised entrepreneurial loans programme.<sup>209</sup> To combat inflation on food and other essential items, Parliament adopted a law requiring the Government to 1) establish a list of goods necessary to mitigate COVID-19 (PPE, medications, disinfectant); 2) establish a list of goods of significant social importance (bread, milk, buckwheat, sugar, pasta, eggs, butter, water, meat (chicken); and 3) regulate the prices of these items and controls increases above 5%.<sup>210</sup>

Despite these efforts, there remain significant issues affecting standards of living, health and wellbeing for a number of people. The plight of homeless people has been largely ignored, and as discussed above, has been left to the care of cash-strapped local authorities and civil society. A shortage of PPE for prison staff, medical professionals and other frontline workers undermines the Government's efforts to safeguard the population in other areas. Monitoring organisations have also noted discrimination in the provision of medical services to Roma people,<sup>211</sup> the homeless<sup>212</sup> and sex workers.<sup>213</sup> People living in proximity to the conflict contact line in Eastern Ukraine have reported chronic shortages of water.<sup>214</sup> It is also unclear how people who have lost their incomes as a result of COVID-19 will be able to meet their loan and mortgage repayments, once the payment holidays and eviction freezes are lifted at the end of the lockdown. One in five small businesses are projected to shut as a result of the restrictions.<sup>215</sup>

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- 206 Закон України 553-IX “Про внесення змін до Закону України “Про Державний бюджет України на 2020 рік”, redaction 29 May 2020, Article 10, available at: <https://zakon.rada.gov.ua/laws/show/553-20#Text>.
- 207 Закон України 530-IX “Про внесення змін до деяких законодавчих актів України, спрямованих на запобігання виникненню і поширенню коронавірусної хвороби (COVID-19)”, redaction 17 March 2020, Part II, Article 5 (Section 2), available at: <https://zakon.rada.gov.ua/laws/show/530-20/ed20200317#Text>; Закон України 540-IX “Про внесення змін до деяких законодавчих актів України, спрямованих на забезпечення додаткових соціальних та економічних гарантій у зв’язку з поширенням коронавірусної хвороби (COVID-19)”, redaction 30 March 2020, Part IX, Article 34 (Section 5), available at: <https://zakon.rada.gov.ua/laws/show/540-20/ed20200330#Text>.
- 208 Кабінет Міністрів України, Covid19 official web-site, available at: <https://covid19.gov.ua/prohramy-pidtrymky-biznesu>.
- 209 Центр громадського моніторингу та контролю, “Жити і працювати в Україні. Як уряд планує втримати заробітчани вдома?”, 4 May 2020, available at: <https://naglyad.org/uk/2020/05/04/zhiti-i-pratsyuvati-v-ukrayini-yak-uryad-planuye-vtrimati-zarobitchan-vdoma/>.
- 210 Закон України 540-IX “Про внесення змін до деяких законодавчих актів України, спрямованих на забезпечення додаткових соціальних та економічних гарантій у зв’язку з поширенням коронавірусної хвороби (COVID-19)”, redaction 24 June 2020, Part XIII, Final and Transitional Provisions, Article 8 (Sections 5,6, 7), available at: <https://zakon.rada.gov.ua/laws/show/540-20#Text>.
- 211 Офіс Ради Європи в Україні, “Захист національних меншин, в тому числі Ромів, та мов меншин в Україні”, 7 May 2020, available at: [https://www.coe.int/uk/web/kyiv/national-minorities/-/asset\\_publisher/i6ydYw6ljGNC/content/the-covid-19-pandemic-has-significantly-affected-the-situation-of-vulnerable-groups-in-society-in-ukraine?](https://www.coe.int/uk/web/kyiv/national-minorities/-/asset_publisher/i6ydYw6ljGNC/content/the-covid-19-pandemic-has-significantly-affected-the-situation-of-vulnerable-groups-in-society-in-ukraine?)
- 212 Центр прав людини ZMINA, “Безхатченки, секс-працівниці, наркозалежні: як карантин вплинув на вразливі групи населення”, Sokurenko E., 6 April 2020, available at: <https://zmina.info/articles/yak-karantyn-vplynuv-na-vrazlyvi-grupy-naselennya/>.
- 213 Українська Гельсінська Спілка з Прав Людини, “Екстремальний виклик, або як захистити права секс-працівників під час пандемії COVID-19. Інтерв’ю з Наталією Ісаєвою (БО “Легалайф-Україна”)”, 23 April 2020, available at: <https://helsinki.org.ua/articles/ekstremal-nyy-vyklyk-abo-ia-k-zakhystyty-prava-seks-pratsivnykiv-pid-chas-pandemii-covid-19-interv-iu-z-nataliieiu-isaievoiu-bo-lehalayf-ukraina/>.
- 214 UNHCR, “Міжнародний День Води: Відсутність питної води є однією із серйозних проблем на Донбасі”, 21 March 2020, available at: <https://www.unhcr.org/ua/20475-%D0%BC%D1%96%D0%B6%D0%BD%D0%B0%D1%80%D0%BE%D0%B4%D0%BD%D0%B8%D0%B9-%D0%B4%D0%B5%D0%BD%D1%8C-%D0%B2%D0%BE%D0%B4%D0%B8.html>.
- 215 European Business Association, “Кожен п’ятий малий бізнес може закритися через карантин – опитування ЕБА”, 7 April 2020, available at: <https://eba.com.ua/kozhen-p-yatyj-malyj-biznes-mozhe-zakrytysya-cherez-karantyn-opytuvannya-eva/>.



Measures have disproportionately affected the Roma people with up to 70% losing their sources of income.<sup>216</sup> The seriousness of economic hardships arising from the COVID-19 lockdown is highlighted by a man's attempted self-immolation in front of Vinnytsia City Council, in protest against his lockdown-induced destitution.<sup>217</sup>

## J. Impact on the Right to Education

Article 13 of the ICESCR guarantees the right to education aimed at the full development of the human personality, the sense of its dignity, and the respect for human rights and fundamental freedoms. The duty to provide free compulsory primary education is also established in the Convention on the Rights of the Child (Article 28), as is the duty to make educational and vocational information and guidance available and accessible to all children.<sup>218</sup> Guaranteeing equal access to education in the context of COVID-19 and associated lockdown is a big challenge for all states, and even more so for states with limited resources. It is important to ensure that measures put in place for the lockdown period do not deprive children from economically deprived families from equal access to education. Special attention must be paid to rural areas with poor access to the Internet and information technology.

From 12 March 2020, all educational institutions in Ukraine were shut to students.<sup>219</sup> Educational institutions were directed to meet the requirements of the curricula through remote learning and 'flexible mode of operations'.<sup>220</sup> Pre-school education institutions were encouraged to establish close contact with parents, and an online platform was created with links to educational materials and tasks for preschool pupils.<sup>221</sup> Secondary schools were told to move to online distance learning – with the structure and content of remote lessons left up to the pedagogical council of each school.<sup>222</sup> The Ministry of Education recommends distance learning to be conducted through online digital platforms.<sup>223</sup> On 6 April 2020, the Ministry of Education launched "All-Ukrainian School Online" – the broadcasting of lessons on 11 core subjects through Ukrainian TV-channels and YouTube.<sup>224</sup> Universities and colleges have academic autonomy; therefore, it is up to each institution to decide how to organise distant education and what technologies to use.<sup>225</sup>

216 Міжнародний Фонд Відродження, "Потреби і наслідки у ромських громадах від поширення коронавірусної хвороби в Україні", May 2020, available at: [https://www.irf.ua/wp-content/uploads/2020/05/roma\\_brief.pdf](https://www.irf.ua/wp-content/uploads/2020/05/roma_brief.pdf).

217 Національна гвардія України, "Самопідпал через брак коштів: нацгвардієць врятував чоловіка, який облив себе бензином", 19 April 2020, available at: <http://ngu.gov.ua/ua/news/samopidpal-cherez-brak-koshtiv-nacgvardiyec-vryatuvav-cholovika-yakyy-oblyv-sebe-benzynom>.

218 Convention on the Rights of the Child, 20 November 1989, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

219 Постанова Кабінету Міністрів України №211, "Про запобігання поширенню на території України коронавірусу COVID-19", redaction 11 March 2020, Para. 1, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200311#Text>.

220 Міністерство освіти і науки України, Наказ №406 "Про організаційні заходи для запобігання поширенню коронавірусу Covid-19", 16 March 2020, available at: <https://mon.gov.ua/ua/npa/pro-organizacijni-zahodi-dlya-zapobigannya-poshirennyu-koronavirusu-s-ovid-19>.

221 Міністерство освіти і науки України, "Лист щодо організації роботи закладів дошкільної освіти під час карантину", 23 April 2020, available at: <https://mon.gov.ua/ua/npa/shodo-organizaciyi-roboti-zakladiv-doshkilnoyi-osviti-pid-chas-karantinu>; Міністерство освіти і науки України, "Дитячі садки", available at: <https://mon-covid19.info/dytiachi-sadky>.

222 Міністерство освіти і науки України, "Школи", available at: <https://mon-covid19.info/schools>.

223 Міністерство освіти і науки України, "Школи", available at: <https://mon-covid19.info/schools>.

224 Міністерство освіти і науки України, "Всеукраїнська школа онлайн", available at: <https://mon.gov.ua/ua/tag/vseukrayinska-shkola-onlajn>; BBC Ukraine, "Всеукраїнська школа онлайн: як це відбувається", Kuryshko D., 7 April 2020, available at: <https://www.bbc.com/ukrainian/features-52192068>.

225 Міністерство освіти і науки України, "Університети та коледжі", available at: <https://mon-covid19.info/uni>.

The Government has allowed the re-opening of preschool educational institutions from 25 May 2020,<sup>226</sup> but has left the final decision to regional authorities.<sup>227</sup> All secondary schools will continue to function remotely until the next academic year in September 2020.<sup>228</sup> Higher education institutions have the autonomy to decide whether to amend or extend their teaching schedule into the summer.<sup>229</sup>

The main concern in relation to the realisation of the right to education for all children across Ukraine in the context of COVID-19, is access to the Internet and digital technology. According to latest surveys, up to 19% of all Ukrainian pupils have no or very limited access to a computer at home.<sup>230</sup> Whilst 85% of pupils living in urban areas have a stable Internet connection, less than 60% of students have access to the Internet in rural areas.<sup>231</sup> Other challenges include a lack of computer literacy amongst poorer and rural-dwelling pupils, the lack of standard and peer reviewed online lessons and materials, lack of preparation for teaching staff, discipline required for a sudden shift to self-study, and domestic issues.<sup>232</sup> Relying on online remote learning and general recommendations is likely to exacerbate the disparity in the quality of education between students from cities and rural areas (and the rich vs. poor divide within cities).

## K. Impact on the Right to Equality and Prohibition on Discrimination

Article 14 of the ECHR prohibits all forms of discrimination in the enjoyment of fundamental rights. Protocol 12 to the ECHR reaffirms the prohibition on discrimination extending it to 'any right set forth by law'. States are not only prohibited from committing discriminatory acts (through legislation, policy or conduct), but also have an obligation to protect minorities and vulnerable groups. In the context of COVID-19, states have a duty to ensure that measures of general application are not disproportionately affecting such groups, and need to provide extra support to vulnerable groups in order to prevent inequality in the enjoyment of fundamental rights.

There is no evidence to suggest that the Government of Ukraine is deliberately discriminating against minority or vulnerable groups during the COVID-19 pandemic. Moreover, the Government has put in place certain measures that recognise and attempt to address existing disadvantages, including:

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226 Постанова Кабінету Міністрів України №392, "Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів", redaction 20 May 2020, para. 4, available at: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF/ed20200520#Text>.

227 Постанова Кабінету Міністрів України №392, "Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів", redaction 20 May 2020, para. 4, available at: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF/ed20200520#Text>.

228 Міністерство освіти і науки України, "Школи", available at: <https://mon-covid19.info/schools>.

229 Міністерство освіти і науки України, "Лист щодо завершення 2019/20 навчального року" 27 March 2020, available at: <https://mon.gov.ua/ua/npa/shodo-zavershennya-201920-navchalnogo-roku>.

230 Media Sapiens, "Доступ до інтернету й робота через смартфони: як українські школи працюють в онлайн-режимі", 16 April 2020, available at: <https://ms.detector.media/media-i-diti/post/24513/2020-04-16-dostup-do-internetu-i-robota-cherez-smartfoni-yak-ukrainski-shkoli-pratsyuyut-v-onlain-rezhimi/>.

231 Media Sapiens, "Доступ до інтернету й робота через смартфони: як українські школи працюють в онлайн-режимі", 16 April 2020, available at: <https://ms.detector.media/media-i-diti/post/24513/2020-04-16-dostup-do-internetu-i-robota-cherez-smartfoni-yak-ukrainski-shkoli-pratsyuyut-v-onlain-rezhimi/>.

232 Media Sapiens, "Доступ до інтернету й робота через смартфони: як українські школи працюють в онлайн-режимі", 16 April 2020, available at: <https://ms.detector.media/media-i-diti/post/24513/2020-04-16-dostup-do-internetu-i-robota-cherez-smartfoni-yak-ukrainski-shkoli-pratsyuyut-v-onlain-rezhimi/>.

- The creation of a Telegram chat-bot (and parallel information campaign) to allow victims of domestic abuse to alert the police and obtain legal advice;<sup>233</sup> and the sustaining of 334 mobile teams providing psycho-social assistance to victims of domestic abuse.<sup>234</sup>
- The maintenance of health services for pregnant women and support for mothers with new-borns (notwithstanding the closure of all other non-emergency health services).<sup>235</sup>
- The deployment of 30 000 social workers to provide assistance to elderly, vulnerable and people with disabilities throughout the lockdown.<sup>236</sup>
- Creation of an information portal – Help Nearby - aimed at providing assistance to vulnerable individuals by connecting them to regional authorities to request assistance (e.g. food, hygiene products, household chemicals, transport services). The project coordinates efforts of state organs, business sector, civil society and charitable foundations to assist vulnerable individuals during the COVID-19 crisis.<sup>237</sup>
- An increase in pension and disability payments, including a one-off payment to vulnerable persons<sup>238</sup>
- The publication of COVID-19 information in 13 minority languages.<sup>239</sup>
- Social services conducting 25 144 visits (April 2020) to families in difficult circumstances to ensure that children are protected.<sup>240</sup>

Conversely, there are also examples of ways in which Ukrainian authorities have failed to meet their obligations to protect minorities and vulnerable groups and individuals:

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- 233 Міністерство Внутрішніх Справ України, “МВС запустило чат-бот щодо протидії домашньому насильству в умовах карантину, – Катерина Павліченко”, 9 April 2020, available at: [https://mvs.gov.ua/ua/news/29702\\_MVS\\_zapustilo\\_chat\\_bot\\_shchodo\\_protidii\\_domashnomu\\_nasilstvu\\_v\\_umovah\\_karantinu\\_\\_Katerina\\_Pavlichenko.htm](https://mvs.gov.ua/ua/news/29702_MVS_zapustilo_chat_bot_shchodo_protidii_domashnomu_nasilstvu_v_umovah_karantinu__Katerina_Pavlichenko.htm).
- 234 Міністерство соціальної політики України, “Мобільні бригади соціально-психологічної допомоги особам, які постраждали від домашнього насильства та насильства за ознакою статі, працюють в дистанційному режимі”, 3 April 2020, available at: <https://www.msp.gov.ua/news/18476.html>.
- 235 Кабінет Міністрів України, “Надання медичної допомоги пацієнтам, які потребують її за життєвими показами, під час карантину продовжиться” 18 March 2020, available at: <https://www.kmu.gov.ua/news/nadannya-medichnoyi-dopomogi-paciyentam-yaki-potrebuyut-yiyi-za-zhittiyevimi-pokazami-pid-chas-karantinu-prodovzhitsya>.
- 236 Кабінет Міністрів України, “В умовах карантину соціальні працівники працюють у посиленому режимі” 7 April 2020, available at: <https://www.kmu.gov.ua/news/v-umovah-karantinu-socialni-pracivniki-pracyuyut-u-posilenomu-rezhimi>.
- 237 Міністерство соціальної політики України, “Мінсоцполітики запускає інформаційну платформу „Допомога поруч””, 16 April 2020, available at: <https://www.msp.gov.ua/news/18526.html>.
- 238 Кабінет Міністрів України, “Мінсоцполітики: Хто отримає одноразову грошову допомогу у сумі 1000 гривень”, 14 April 2020, available at: <https://www.kmu.gov.ua/news/minsocpolitiki-hto-otrimaye-odnorazovu-groshovu-dopomogu-u-sumi-1000-griven>; Центр громадського моніторингу та контролю, “Додаткові виплати й оформлення онлайн. Що слід знати про соцдопомогу на карантині?”, 27 April 2020, available at: <https://naglyad.org/uk/2020/04/27/dodatkovyi-viplati-j-oformlennya-onlajn-shho-slid-znati-pro-sotsdopomogu-na-karantini/>.
- 239 Міністерство культури та інформаційної політики України, “МКІП спільно з МОЗ та РЕ випустило рекомендації з протидії коронавірусу 13-ма мовами”, 30 April 2020, available at: <https://www.facebook.com/MKIPUkraine/posts/1926496377475537>.
- 240 ZN UA, “Захист дітей з інтернатів під час пандемії: що показав моніторинг Мінсоцполітики”, Chekys O., 6 May 2020, available at: [https://zn.ua/ukr/UKRAINE/zahist-ditey-z-internativ-pid-chas-pandemiyi-scho-pokazav-monitoring-minsocpolitiki-346891\\_.html](https://zn.ua/ukr/UKRAINE/zahist-ditey-z-internativ-pid-chas-pandemiyi-scho-pokazav-monitoring-minsocpolitiki-346891_.html).

- A monitoring group has recorded an almost two-fold increase in reported incidents of domestic violence.<sup>241</sup>
- Shelters for victims of domestic abuse are often at capacity<sup>242</sup> and in one instance, closed due to COVID-19.<sup>243</sup> Moreover, the temporary ban (lifted on 20 May 2020) on visiting social assistance providers, excluded vulnerable women from domestic violence shelters.<sup>244</sup>
- The Government passed the responsibility for caring for vulnerable persons during the COVID-19 crisis to regional authorities.<sup>245</sup> Regional authorities report a dire lack of resources in order to meet the central Government's instructions.<sup>246</sup>
- Social workers report an acute shortage of PPE and no centralised body responsible for issuing PPE to frontline workers.<sup>247</sup>
- Incidents of hate speech directed at members of the LGBTQI community by public figures – e.g.: Patriarch Filaret (blaming COVID-19 on gay marriage),<sup>248</sup> the Commissioner of the President of Ukraine for Children's Rights (equating homosexuals to rapists)<sup>249</sup>, and a right wing Member of Parliament.<sup>250</sup>

241 Громадська Організація "Ла Страда - Україна", "Кількість звернень щодо домашнього насильства під час карантину стрімко зростає!", 14 April 2020, available at: <https://www.facebook.com/photo?fbid=2944699428940455&set=a.275909539152804>.

242 Громадське Волинь, "Пандемія всередині пандемії". Як карантин в Україні впливає на домашнє насильство", Rasulova O., 15 May 2020, available at: <https://hromadske.volyn.ua/pandemiia-vsereidni-pandemii-yak-karantyn-v-ukraini-vplyvaie-na-domashnie-nasytstvo/>.

243 Розірви коло, "Допомога у період карантину", 2 April 2020, available at: <https://rozirvykolo.org/news/dopomoga/>.

244 Постанова Кабінету Міністрів України №392, "Про встановлення карантину з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2, та етапів послаблення протиепідемічних заходів", redaction 20 May 2020, available at: <https://zakon.rada.gov.ua/laws/show/392-2020-%D0%BF/ed20200520#Text>.

245 Постанова Кабінету Міністрів України №211, "Про запобігання поширенню на території України коронавірусу COVID-19", redaction 4 April 2020, Para. 11, available at: <https://zakon.rada.gov.ua/laws/show/211-2020-%D0%BF/ed20200404#Text>;

246 ZN UA, "Карантин в Україні: уряд ставить соціальні служби в безвихідне становище", Sutnykova I., 2 April 2020, available at: [https://zn.ua/ukr/UKRAINE/feldsheram-ta-vodiyam-shvidkih-vtrichi-zbilshat-okladi-moz-343428\\_.html](https://zn.ua/ukr/UKRAINE/feldsheram-ta-vodiyam-shvidkih-vtrichi-zbilshat-okladi-moz-343428_.html).

247 ZN UA, "Карантин в Україні: уряд ставить соціальні служби в безвихідне становище", Sutnykova I., 2 April 2020, available at: [https://zn.ua/ukr/UKRAINE/feldsheram-ta-vodiyam-shvidkih-vtrichi-zbilshat-okladi-moz-343428\\_.html](https://zn.ua/ukr/UKRAINE/feldsheram-ta-vodiyam-shvidkih-vtrichi-zbilshat-okladi-moz-343428_.html); Профспілка працівників державних установ м. Києва, "З турботою про людей в умовах пандемії", 7 April 2020, available at: <http://profspilka.com.ua/news/z-turbotoyu-pro-lyudej-v-umovah-pandemiyi/>; Центр Спільних Дій, "Найбільш вразливі: як держава дбає про пенсіонерів на карантині", Kvitsinska M., 16 April 2020, available at: [https://centreua.org/article/najbilsh-vrazlivi-yak-derzhava-dbaye-pro-pensioneriv-na-karantini?fbclid=IwAR1\\_BbyleZn1ctei0gnKWHVwaecc\\_I3hvPqA-GA8USHGpu9UQbD1Pv32k](https://centreua.org/article/najbilsh-vrazlivi-yak-derzhava-dbaye-pro-pensioneriv-na-karantini?fbclid=IwAR1_BbyleZn1ctei0gnKWHVwaecc_I3hvPqA-GA8USHGpu9UQbD1Pv32k).

248 Центр прав людини ZMINA, "ЛГБТ-організація "Інсайт" позивається до Філарета, який назвав одностатеві шлюби причиною коронавірусу", 24 March 2020, available at: <https://zmina.info/news/lgbt-organizacziya-insajt-podaye-do-sudu-cherez-vyslovlyuvan-filareta-pro-odnostatevi-shlyuby-yak-prychynu-koronavirusu/>.

249 Громадське, "Дитячий омбудсмен проти сурогатного материнства: це — "рабство", а "подружжям" можуть виявитися і геї, і гвалтівники", Tkachuk B., 28 May 2020, available at: [https://hromadske.ua/posts/podruzhzhjam-mozhut-viyavitisya-i-gomoseksualni-pari-i-gvaltivniki-dityachij-ombudsmen-pro-surogatne-materinstvo](https://hromadske.ua/posts/podruzhzhjam-mozhut-viyavitisya-i-gei-i-gvaltivniki); Правозахисний ЛГБТ Центр "Наш світ", "Лист Президенту України", 28 May 2020, available at: <https://www.facebook.com/nashmircenter/photos/a.315278752010876/1293234490881959/>.

250 Правозахисний ЛГБТ Центр "Наш світ", "Post in Facebook" 2 May 2020, available at: <https://www.facebook.com/nashmircenter/posts/1272267199645355>.

- Reports of restrictions on access to medical services for members of the LGBTQI community<sup>251</sup> and the Roma people.<sup>252</sup>
- Incidents of hate speech and attacks against the Roma people.<sup>253</sup>

The Government of Ukraine has a duty to investigate and address these instances of inequality and discrimination.

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251 Українська Гельсінська Спілка з Прав Людини, “Як захистити права вразливих груп населення підчас пандемії COVID-19? Візія Freedom House Україна”, Petrov M., 30 April 2020, available at: <https://helsinki.org.ua/articles/yak-zakhystyty-prava-vrazlyvykh-hrup-naselennia-pidchas-pandemii-covid-19-viziia-freedom-house-ukraina/>.

252 Офіс Ради Європи в Україні, “Захист національних меншин, в тому числі Ромів, та мов меншин в Україні”, 7 May 2020, available at: [https://www.coe.int/uk/web/kyiv/national-minorities/-/asset\\_publisher/i6ydYw6ljGNc/content/the-covid-19-pandemic-has-significantly-affected-the-situation-of-vulnerable-groups-in-society-in-ukraine?](https://www.coe.int/uk/web/kyiv/national-minorities/-/asset_publisher/i6ydYw6ljGNc/content/the-covid-19-pandemic-has-significantly-affected-the-situation-of-vulnerable-groups-in-society-in-ukraine?)

253 ZaxidNet, “Поліція відкрила справу через рішення мера Івано-Франківська вивезти ромів”, Stets A., 22 April 2020, available at: [https://zaxid.net/politsiya\\_vidkrila\\_spravu\\_proti\\_ruslana\\_martsinkiva\\_za\\_diskriminatsiyu\\_romiv\\_n1501241](https://zaxid.net/politsiya_vidkrila_spravu_proti_ruslana_martsinkiva_za_diskriminatsiyu_romiv_n1501241); Украинская Правда, “Полиция расследует нападение на ромов в Киеве, ищет пострадавших”, 3 May 2020, available at: <https://www.pravda.com.ua/rus/news/2020/05/3/7250300/>.

# VII. The Occupying Authorities' Response to COVID-19 in Russian-Occupied Crimea and Sevastopol and Its Impact on Human Rights

The Russian Government recognises Crimea and Sevastopol as an integral part of the Russian Federation – a position disputed by Ukraine and the vast majority of U.N. Member States. Whilst it retains some measure of autonomy, much of the occupying authorities' response to COVID-19 has been directed from Moscow. A detailed assessment of the Russian Government's response to COVID-19 is presented in a parallel country report on the Russian Federation. Below is a brief digest of measures that specifically relate to the Crimean Peninsula, and their impact on the human rights situation in the region.

## A. The Response

On 2 March 2020, Russia's Chief Public Health Officer – Anna Popova - issued a Resolution ordering regional public health offices to prepare for the potential epidemic. Heads of regions were called upon to "introduce limitations in a timely manner depending on the epidemiological situation in the region and its expected developments".<sup>254</sup>

On 17 March 2020, Sergey Aksyonov – the head of occupying authorities in Crimea – issued a decree placing Crimea on "high alert" in response to COVID-19.<sup>255</sup> The decree prohibited all public events and mass gatherings, and instructed authorities to track and trace all arrivals "from dysfunctional territories".<sup>256</sup> On 23 March 2020, all educational institutions were ordered to switch to remote learning.<sup>257</sup> On 27 March 2020, the restrictions were expanded to include mandatory self-isolation for all arrivals from a list of countries (including Ukraine).<sup>258</sup> The authorities banned all unaccompanied minors in public spaces, and prohibited school trips outside of Crimea.<sup>259</sup> Worship in Crimea's mosques and churches were

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254 Постановление №5 Главного государственного санитарного врача Российской Федерации "О дополнительных мерах по снижению рисков завоза и распространения новой коронавирусной инфекции (2019-nCoV)", 2 March 2020, available at: [https://www.rospotrebnadzor.ru/upload/iblock/494/postanovlenie\\_5-ot-02.03.2020-o-dopolniitelnykh-merakh-po-snizheniyu-riskov-zavoza-koronavirusnoy-infektsii-1\\_-1\\_.pdf](https://www.rospotrebnadzor.ru/upload/iblock/494/postanovlenie_5-ot-02.03.2020-o-dopolniitelnykh-merakh-po-snizheniyu-riskov-zavoza-koronavirusnoy-infektsii-1_-1_.pdf). The measures were "additional" to the ones previously taken to address potential "importation" of COVID from China, which I will not cover in this account.

255 Указ "главы Республики Крым" № 63-У "О введении режима повышенной готовности на территории Республики Крым", 17 March 2020, available at: <https://rg.ru/2020/03/17/krym-ukaz67-reg-dok.html>.

256 Указ "главы Республики Крым" № 63-У "О введении режима повышенной готовности на территории Республики Крым", 17 March 2020, available at: <https://rg.ru/2020/03/17/krym-ukaz67-reg-dok.html>.

257 Указ "главы Республики Крым" № 68-У "О внесении изменений в Указ Главы Республики Крым от 17 марта 2020 года № 63-У", 23 March 2020, available at: <https://rg.ru/2020/03/23/krym-ukaz68-reg-dok.html>.

258 Указ "главы Республики Крым" № 77-У "О внесении изменений в Указ Главы Республики Крым от 17 марта 2020 года № 63-У", 27 March 2020, available at: <https://rg.ru/2020/03/27/krym-ukaz77-reg-dok.html>.

259 Указ "главы Республики Крым" № 77-У "О внесении изменений в Указ Главы Республики Крым от 17 марта 2020 года № 63-У", 27 March 2020, available at: <https://rg.ru/2020/03/27/krym-ukaz77-reg-dok.html>.



suspended or heavily restricted.<sup>260</sup> The *de facto* Ministry of Internal Affairs on Russian-occupied territory was given the authority to enforce restrictive measures.<sup>261</sup>

On 25 March 2020, President Putin issued a decree that allowed employees to stay away from work until 3 April (later extended until mid-May) and obliged employers to continue to pay salaries.<sup>262</sup>

On 30 March 2020, the Russian Federation closed its borders and ordered countrywide restrictions on leaving or entering the territory of the Russian Federation (including Crimea and Sevastopol).<sup>263</sup>

On 1 April 2020, the Russian Parliament amended the Law on the Protection of the Population and Territories against Natural and Technogenic Emergencies,<sup>264</sup> to empower federal and regional authorities to introduce ‘emergency situation’ regimes and restrictive measures in response to the pandemic. The resulting divergence of regional lockdown measures is unprecedented for Russia where power has been consistently centralized and regulation made uniform over the past 20 years.

The Russian Parliament also amended the Russian Code of Administrative Offenses to enforce lockdown measures through fines ranging from \$12 USD to \$3 750 USD. A new ‘fake news’ offence was also created, punishing the spread of “inaccurate information of public importance concerning circumstances presenting danger for citizens’ lives and safety or regarding measures taken to protect the safety of the population and territories”.<sup>265</sup> Parliament also amended Article 236 of the Russian Criminal Code – criminalizing the violation of sanitary and epidemiological rules where such violations threaten or cause mass infections.<sup>266</sup>

On 8 May 2020, Chief Public Health Officer Popova recommended the gradual lifting of restrictions in the regions based on the situation in each region.<sup>267</sup>

Starting from 15 June 2020 almost all quarantine restrictions in Crimea were lifted. The regimes of self-isolation and observation (for the Russian citizens from other regions) were abolished; restaurants, swimming pools, museums and other similar locations were reopened; hotels and sanatoriums opened

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260 Крымская Правозащитная Группа, “Результаты мониторинга ситуации по реагированию на пандемию COVID-19 в Крыму (13-19 апреля 2020 года)”, 20 April 2020, available at: <https://crimeahrg.org/ru/rezultaty-monitoringa-situaczii-po-reagirovaniyu-na-pandemiyu-covid-19-v-krymu-13-19-aprelya-2020-goda/>.

261 Указ “главы Республики Крым” № 77-У “О внесении изменений в Указ Главы Республики Крым от 17 марта 2020 года № 63-У”, 27 March 2020, available at: <https://rg.ru/2020/03/27/krym-ukaz77-reg-dok.html>.

262 Указ Президента Российской Федерации № 206 “Об объявлении в Российской Федерации нерабочих дней”, 25 March 2020, available at: <http://publication.pravo.gov.ru/Document/View/0001202003250021>.

263 Распоряжение Правительства Российской Федерации №763-р, redaction 27 March 2020, available at: <http://government.ru/docs/39307/>.

264 Федеральный Закон №68-ФЗ “О защите населения и территорий от чрезвычайных ситуаций природного и техногенного характера”, redaction 23 June 2020, Articles 10 (a.1; a.2), 11 (1.y; 1.ф), available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_5295/ac23a7446bff096f26bc1d467890a7af4e557ac5/](http://www.consultant.ru/document/cons_doc_LAW_5295/ac23a7446bff096f26bc1d467890a7af4e557ac5/).

265 Кодекс Российской Федерации об административных правонарушениях, redaction 23 June 2020, Article 13.15, available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34661/82c0a663173b440cc9b027bc8e687dc9e36e71ad/](http://www.consultant.ru/document/cons_doc_LAW_34661/82c0a663173b440cc9b027bc8e687dc9e36e71ad/).

266 Уголовный кодекс Российской Федерации, redaction 8 June 2020, Article 236, available at: [http://www.consultant.ru/document/Cons\\_doc\\_LAW\\_10699/5c403b6bfc15c73864f56d40c8a28cd51e72f86c/](http://www.consultant.ru/document/Cons_doc_LAW_10699/5c403b6bfc15c73864f56d40c8a28cd51e72f86c/).

267 Федеральная служба по надзору в сфере защиты прав потребителей и благополучия человека, “Государственное санитарно-эпидемиологическое нормирование Российской Федерации”, 8 May 2020, available at: <https://www.rosпотребнадзор.ru/upload/>

their doors for the local population.<sup>268</sup> From 1 July 2020, hotels and sanatoriums were opened for tourists.<sup>269</sup>

At the same time, public events (except events relating to the World War II) are still banned.<sup>270</sup>

## B. The Human Rights Impact of the Response

UN monitors and civil society has documented widespread human rights violations in Russian-occupied Crimea since 2014.<sup>271</sup> Whilst access to reliable information from the Crimean Peninsula is limited, the authors have been able to glean the following human rights violations arising from the occupying authorities' response to COVID-19:

- Occupying authorities have relied on new powers to pursue over 7000 cases of alleged violations of lockdown measures through the administrative courts.<sup>272</sup> The authors have no information on whether these allegations are substantiated by facts or brought for legitimate purposes. The occupying authorities' record on dispensing justice has shown a lack of independence, impartiality and fairness in judicial processes on the Crimean Peninsula, raising a reasonable doubt as to the fairness and true motivations behind these prosecutions.
- Occupying authorities have not taken measures to reduce the prison population on the Crimean Peninsula. Crimean pre-trial detention centres are notoriously overcrowded.<sup>273</sup>

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268 РИА Новости, "В Крыму сняли почти все ограничения по коронавирусу", 15 June 2020, available at: <https://ria.ru/20200615/1572957647.html>.

269 Первый канал, "Ограничений по туризму в Крыму больше нет: курортный сезон открыт для всех", 1 July 2020, available at: [https://www.1tv.ru/news/2020-07-01/388647-ogranicheniy\\_po\\_turizmu\\_v\\_krymu\\_bolshe\\_net\\_kurortnyy\\_sezon\\_otkryt\\_dlya\\_vseh](https://www.1tv.ru/news/2020-07-01/388647-ogranicheniy_po_turizmu_v_krymu_bolshe_net_kurortnyy_sezon_otkryt_dlya_vseh).

270 Указ "главы Республики Крым" 203-У, "О внесении изменений в Указ Главы Республики Крым от 17 марта 2020 года № 63-У", 22 June 2020, available at: <https://rg.ru/2020/06/22/krym-ukaz203-reg-dok.html>.

271 OHCHR, "Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", 25 September 2017, available at: [https://www.ohchr.org/Documents/Countries/UA/Crimea2014\\_2017\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf); OHCHR, "Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine 13 September 2017 to 30 June 2018", 10 September 2018, available at: [https://www.ohchr.org/Documents/Countries/UA/CrimeaThematicReport10Sept2018\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/CrimeaThematicReport10Sept2018_EN.pdf); Crimean Human Rights Group, Regional Center for Human Rights, Human Rights Center ZMINA, Ukrainian Helsinki Human Rights Union, "The Peninsula of Fear: Five years of unfreedom in Crimea", May 2019, available at: [https://crimeahrg.org/wp-content/uploads/2019/06/poluostrov-straha-angl-book\\_en.pdf](https://crimeahrg.org/wp-content/uploads/2019/06/poluostrov-straha-angl-book_en.pdf).

272 Крымская Правозащитная Группа, "За нарушение "режима самоизоляции" в Крыму наказали более шести тысяч человек", 1 June 2020, available at: <https://crimeahrg.org/ru/za-narushenie-rezhima-samoizolyaczii-v-krymu-nakazali-bolee-shesti-tysyach-krymchan/#.XtT11xjbu5o.twitter>.

273 Крымская Правозащитная Группа, "В условиях пандемии COVID-19 российские власти не заботятся об эпидемиологической безопасности в тюрьмах и СИЗО", 3 May 2020, available at: <https://crimeahrg.org/ru/v-usloviyah-pandemii-covid-19-rossijskie-vlasti-ne-zabotyatsya-ob-epidemiologicheskoy-bezopasnosti-v-tyurmah-i-sizo/>; Крым Реалии, "Один заболевает – будет трагедия для всех": готовы ли крымские тюрьмы и СИЗО к пандемии коронавируса?", Ibragimov T., 26 March 2020, available at: <https://ru.krymr.com/a/gotovy-li-krymskie-turmy-i-sizo-k-epidemii-koronavirusa/30507125.html>.

- Prolonged pre-trial detention continues to be extended – particularly in political cases against Crimean Tatars<sup>274</sup> – with no consideration given to the potential impact of COVID-19 on the prison population.
- The federal ‘fake news’ law is prone to be relied on by the occupying authorities to further curb the freedom of expression on the Peninsula, and to punish critics and opponents of the occupation.<sup>275</sup>

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274 Крым Реалии, “Девять фигурантов второго симферопольского “дела Хизб ут-Тахрир” оставили в СИЗО”, 9 June 2020, available at: <https://ru.krymr.com/a/news-krym-simferopolskoje-delo-khizb-ut-takhrir/30661940.html>; Крым Реалии, “В Симферополе суд арестовал еще двух фигурантов нового “дела Хизб ут-Тахрир”, 9 July 2020, available at: <https://ru.krymr.com/a/news-sud-sizo-delo-hizb-ut-tahrir/30715871.html>.

275 Крымская Правозащитная Группа, “Законопроекты РФ о запрете критики власти и “недостовой информации грозят новыми преследованиями крымчан”, 7 March 2019, available at: <https://crimeahrg.org/ru/zakonoproekty-rf-o-zaprete-kritiki-vlasti-i-nedostovnoy-informatsii-grozyat-novymi-presledovaniyami-krymchan/>; Крымская Правозащитная Группа, “После принятия новой статьи закона УК РФ в Крыму могут преследовать за освещение ситуации с COVID-19”, 2 April 2020, available at: <https://crimeahrg.org/ru/posle-prinyatiya-novoj-stati-zakona-uk-rf-v-krymu-mogut-presledovat-za-osveshhenie-situaczii-s-covid-19/>.

# VIII. The so-called DPR/LPR Authorities' Response to COVID-19 and its Impact on Human Rights

Available information on measures taken by the so-called DPR/LPR authorities in response to the COVID-19 pandemic, and its human rights impact, is limited. The *de facto* authorities lack transparency and independent oversight, while impartial external monitoring on temporarily occupied territories is effectively non-existent. The following information on measures taken by the *de facto* authorities comes from official press releases, communications and reporting by (mostly) Russian media outlets. The authors have not independently verified the veracity of this information.

## A. The Response

### I. ON TERRITORY HELD BY THE SO-CALLED DPR

On 11 March 2020, DPR authorities announced that they have established an agency to prevent the spread of COVID-19.<sup>276</sup> They did not provide any further information on this agency's activities or the scope of its authority. On 16 March 2020, DPR authorities announced that they had received COVID-19 tests (from the Russian Federation, as it was later confirmed<sup>277</sup>).<sup>278</sup>

On 17 March 2020, DPR authorities declared that there were no recorded cases of COVID-19 on its *de facto* held territory.<sup>279</sup> Curiously, the authorities also announced an outbreak of the H1N1 virus (also known as 'Swine Flu'), which reportedly claimed over 40 lives on DPR-held territory in the first quarter of 2020.<sup>280</sup> There is no independently verifiable information to confirm that the 'pneumonia-like' symptoms were indeed linked to the H1N1 virus, rather than COVID-19.

On 19 March 2020, all educational institutions operating on DPR-held territory were ordered to switch to remote learning.<sup>281</sup> On the same day, the *de facto* "head" of DPR, Denis Pushilin, issued an order prohibiting all DPR 'officials' from leaving the rebel-held territory, using COVID-19 as a pretext.<sup>282</sup> On 21

276 "DNR LIVE", "В ДНР создан штаб по предупреждению распространения коронавируса", 11 March 2020, available at: <https://dnr-live.ru/v-dnr-sozdan-shtab-po-preduprezhdeniyu-rasprostraneniya-koronavirusa/>.

277 Телеканал Оплот ТВ, "ДНР обеспечена тест-системами для диагностики коронавирусной инфекции", 20 March 2020, available at: [https://www.youtube.com/watch?time\\_continue=16&v=euw6DAOoTdY&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=16&v=euw6DAOoTdY&feature=emb_logo).

278 Донецкое Агентство Новостей, "ДНР получила тесты для диагностики заболеваний, вызванных новым типом коронавируса – Минздрав", 16 March 2020, available at: <https://dan-news.info/obschestvo/dnr-poluchila-testy-dlya-diagnostiki-zabolevanij-vyzvannykh-novym-tipom-koronavirusa-minzdrav.html>.

279 Комсомольская правда Донецк, "С начала года в ДНР 43 человека умерли от свиного гриппа", Makarenko N., Trubetskoj A., 16 March 2020, available at: <https://www.donetsk.kp.ru/online/news/3798255/>.

280 Комсомольская правда Донецк, "С начала года в ДНР 43 человека умерли от свиного гриппа", Makarenko N., Trubetskoj A., 16 March 2020, available at: <https://www.donetsk.kp.ru/online/news/3798255/>.

281 "Министерство образования и науки ДНР", "Приказ об организации работы учреждений сферы образования и науки Донецкой Народной Республики", 18 March 2020, available at: <http://mondnr.ru/dokumenty/prikazy-mon/send/4-prikazy/3931-prikaz-502-ot-18-03-2020-g>

282 Донецкое Агентство Новостей, "Глава ДНР временно запретил покидать Республику руководителям органов власти", 19 March 2020, available at: <https://dan-news.info/politics/glava-dnr-vremenno-zapretil-pokidat-respubliku-rukovodstvu-organov-vlasti.html>

March 2020, Pushilin ordered the closure of all checkpoints across the demarcation line with territory controlled by the Government of Ukraine.<sup>283</sup>

On 27 March 2020, DPR authorities ordered a temporary ban on the crossing of administrative and international borders by anyone other than citizens of the Russian Federation with permanent registration in Russia. All other residents of DPR-held territory are unable to travel to Ukraine, Russia or the neighbouring LPR.<sup>284</sup>

## II. ON TERRITORY HELD BY THE SO-CALLED LPR

On 11 March 2020, LPR authorities announced that compulsory temperature checks would be conducted on anyone crossing from territory controlled by the Government of Ukraine via the Stanytsia Luhanska checkpoint (the only operational checkpoint between the two territories).<sup>285</sup>

On 18 March 2020, LPR authorities announced that they had received enough COVID-19 tests to cover the entire population on territory under their control.<sup>286</sup> The authorities also decided not to close down educational institutions or cancel public events or mass gatherings.<sup>287</sup> The decision not to lockdown was quickly reversed, with all educational institutions switching to remote learning from 27 March 2020.<sup>288</sup>

On 10 April 2020, LPR authorities announced that they have substantially increased the criminal penalty for violating the “sanitary and epidemiological rules” (Part 1 of Article 291 of the Criminal Code of the LPR).<sup>289</sup>

LPR authorities have enacted ‘laws’ that establish criminal liability for the evasion of compulsory hospitalization/temporary isolation measures, the unauthorized leaving of a place of temporary isolation, and the refusal to provide or provision of inaccurate information in relation to COVID-19. Lockdown violations may also be pursued through administrative procedures and are punishable by fines and administrative arrest.<sup>290</sup>

283 “Глава Донецкой Народной Республики”, “Заявление Главы ДНР Дениса Пушилина о полном прекращении движения граждан через ППТК ДНР на границе с Украиной с 21 марта”, 18 March 2020, available at: <https://glavadnr.ru/news/zayavlenie-glavy-dnr-denisa-pushilina-o-polnom-prekrashhenii-dvizheniya-grazhdan-cherez-pptk-dnr-na-granitse-s-ukrainoj-s-21-marta/>.

284 Dontel/Донецкий Телеграм, “Выезд из ДНР в РФ ограничен”, 27 March 2020, available at: <https://t.me/dontel/9309>.

285 Луганский информационный центр, “ЛНР введет обязательный термометрический контроль на пункте пропуска у Станицы Луганской”, 11 March 2020, available at: <http://lug-info.com/news/one/lnr-vvedet-obyazatelnyi-termometricheskii-kontrol-na-punkte-propuska-u-stanitsy-luganskoi-54233>.

286 Луганский информационный центр, “ЛНР располагает достаточным количеством тестов для определения COVID-19 – Минздрав”, 18 March 2020, available at: <http://lug-info.com/news/one/lnr-raspolagaet-dostatochnym-kolichestvom-testov-dlya-opredeleniya-covid-19-minzdrav-54413>.

287 Луганский информационный центр, “Предпосылки для введения карантина в школах ЛНР из-за COVID-19 отсутствуют – Минздрав”, 18 March 2020, available at: <http://lug-info.com/news/one/predposylki-dlya-vvedeniya-karantina-v-shkolakh-lnr-iz-za-covid-19-otsutstvuyut-minzdrav-54417>.

288 Луганский информационный центр, “Учреждения образования ЛНР с 30 марта перейдут на дистанционное обучение – Минобразования”, 26 March 2020, available at: <http://lug-info.com/news/one/uchrezhdeniya-obrazovaniya-lnr-s-30-marta-pereidut-na-distantsionnoe-obuchenie-minobrazovaniya-54672>.

289 Луганский информационный центр, “Парламент ЛНР ужесточил ответственность за нарушение санитарно-эпидемиологических правил”, 10 April 2020, available at: <http://lug-info.com/news/one/parlament-uzhestochil-otvetstvennost-za-nesoblyudenie-sanitarno-epidemiologicheskikh-pravil-55173>.

290 Луганский информационный центр, “Казачи ЛНР учредили оперативный штаб по противодействию распространению COVID-19 (ФОТО)”, 26 April 2020, available at: <http://lug-info.com/news/one/kazaki-lnr-uchredili-operativnyi-shtab-po-protivodeistviyu-rasprostraneniyu-covid-19-foto-55655>.

## B. The Human Rights Impact of the Response

DPR and LPR authorities have restricted access to independent external monitors. As such, information on the human rights impact of the *de facto* authorities' response to COVID-19 is very limited. Nevertheless, the authors were able to glean the following information, raising human rights concerns:

- DPR/LPR authorities continue to pursue civilian residents on suspicion of spying for Ukrainian authorities. At least five people were arrested by DPR authorities and three by LPR authorities during the reporting period.<sup>291</sup> Suspects are systematically denied fair and independent judicial processes and are usually forced to 'confess'. The confessions are typically publicly broadcast over the Internet.<sup>292</sup>
- DPR/LPR authorities have created a new 'Cossack' law enforcement force to enforce order more generally, as well as compliance with COVID-19 restrictions.<sup>293</sup> Cossack militias have been linked to war crimes and gross human rights abuses during the conflict in Eastern Ukraine.<sup>294</sup>
- Poor access to the Internet on DPR/LPR-controlled territory has effectively deprived pupils of education during the lockdown period.

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291 "Донецкая Народная Республика", "Сотрудниками госбезопасности задержан шпион (видео)", 5 February 2020, available at: <https://dnronline.su/2020/02/05/sotrudnikami-gosbezopasnosti-zaderzhan-shpion-video/>; Regnum, "В ЛНР задержали очередного украинского шпиона — МГБ", 17 February 2020, available at: <https://regnum.ru/news/accidents/2860349.html>; Восток-СОС, "Огляд порушень прав людини на тимчасово окупованих частинах Луганської та Донецької областей: лютий 2020 року", 16 March 2020, available at: <https://vostok-sos.org/news-0020-1603/>; Восток-СОС, "Огляд порушень прав людини на тимчасово окупованих частинах Луганської та Донецької областей: березень 2020 року", 6 April 2020, available at: <https://vostok-sos.org/zvit-march-ordlo/>; Восток-СОС, "Огляд порушень прав людини на тимчасово окупованих частинах Луганської та Донецької областей: квітень 2020 року", 13 May 2020, available at: <https://vostok-sos.org/zvit-ordlo-kviten-2020/>; Восток-СОС, "Огляд порушень прав людини на тимчасово окупованих частинах Луганської та Донецької областей: травень 2020 року", 10 June 2020, available at: <https://vostok-sos.org/zvit-ordlo-traven-2020/>; Восток-СОС, "Огляд порушень прав людини на тимчасово окупованих частинах Луганської та Донецької областей: червень 2020 року", 10 July 2020, available at: <https://vostok-sos.org/zvit-ordlo-cherven-2020/>.

292 Главком, "Оккупированные люди". За что в Донецке забирают в концлагерь, кого считают шпионом и как за это судят", Durnev D., 25 April 2020, available at: <https://glavcom.ua/ru/articles/okkupirovannye-lyudi-za-cto-v-donecke-zabirayut-v-konclager-kogo-schitayut-shpionom-i-kak-za-eto-sudyat-675812.html>.

293 Луганский информационный центр, "Казачи ЛНР учредили оперативный штаб по противодействию распространению COVID-19 (ФОТО)", 26 April 2020, available at: <http://lug-info.com/news/one/kazaki-lnr-uchredili-operativnyi-shtab-po-protivodeistviyu-rasprostranenyu-covid-19-foto-55655>.

294 Group of volunteers, Russian War Crimes in Eastern Ukraine in 2014, December 2015, available at: [http://wmii.uwm.edu.pl/~panas/Russian\\_War\\_Crimes.pdf](http://wmii.uwm.edu.pl/~panas/Russian_War_Crimes.pdf).



# IX. Summary of Key Findings

## A. On territory controlled by the Government of Ukraine

### I. LEGALITY OF RESTRICTIVE MEASURES:

Lawyers and human rights organisations have raised important questions about the constitutionality and legality of restrictive measures introduced by the Government of Ukraine.<sup>295</sup> Moreover, monitoring organisations have noted major inconsistencies in the way the new measures have been enforced in the courts,<sup>296</sup> and have highlighted the disproportionality of new penalties.<sup>297</sup> All legality issues must be resolved by the Administrative and Constitutional courts as soon as practicable.

### II. FREEDOM OF MOVEMENT

In light of the serious danger that COVID-19 poses to the lives and wellbeing of a large proportion of the population, restrictions on movement introduced by the Government of Ukraine are in line with the legitimate aim of safeguarding the right to life and preventing human suffering. At the time of writing, there are no indications that the Government of Ukraine is or plans to use the restrictions in any way other than to address the COVID-19 pandemic, and it is too early to assess the timeliness of lifting restrictions on movement. The Government must continue to assess the status of the COVID-19 pandemic in Ukraine and elsewhere, and to re-evaluate the necessity and proportionality of restrictions accordingly. The Government must make special provisions for groups and individuals that are

295 Харківська Правозахисна Група, "Висновок Харківської правозахисної групи щодо доцільності та законності запровадження карантинних заходів відповідно до Постанови Кабінету міністрів України №255 від 2 квітня 2020 року", 7 April 2020, available at: <http://khpg.org/index.php?id=1586221405&fbclid=IwAR1esK2v0J6RWuRKSosWV4WANQqJLHMOZ-z96nKGV12LZP5tad4WotTmj44>; Центр політико-правових реформ, "Без введення надзвичайного стану заходи щодо обмеження прав і свобод людини і громадянина задля запобігання поширення на території України коронавірусу COVID-19 є неконституційними", 17 March 2020, available at: [https://pravo.org.ua/ua/news/20874288-bez-vvedennya-nadzvichaynogo-stanu-zahodi-schodo-obmegeennya-prav-i-svobod-lyudini-i-gromadyanina-zadlya-zapobigannya-poshirennya-na-teritoriyi-ukrayini-koronaviru-covid-19-e-nekonstitutsiynimi?fbclid=IwAR0Ch\\_5e16kkONhT05Vh\\_UUFZuDhAcZ72K-Kwq6s56KRq2WNN7v55tM1XLM](https://pravo.org.ua/ua/news/20874288-bez-vvedennya-nadzvichaynogo-stanu-zahodi-schodo-obmegeennya-prav-i-svobod-lyudini-i-gromadyanina-zadlya-zapobigannya-poshirennya-na-teritoriyi-ukrayini-koronaviru-covid-19-e-nekonstitutsiynimi?fbclid=IwAR0Ch_5e16kkONhT05Vh_UUFZuDhAcZ72K-Kwq6s56KRq2WNN7v55tM1XLM); Центр політико-правових реформ, "Суттєві обмеження прав і свобод людини і громадянина є неконституційними без введення надзвичайного стану", 3 April 2020, available at: <https://pravo.org.ua/ua/news/20874326-suttevi-obmegeennya-prav-i-svobod-lyudini-i-gromadyanina-e-nekonstitutsiynimi-bez-vvedennya-nadzvichaynogo-stanu>; BBC Ukraine, "Карантин в Україні: чи суперечать нові заборони Конституції?", 6 April 2020, available at: <https://www.bbc.com/ukrainian/features-52186556>; Реанімаційний Пакет Реформ, "Чи дійсно потрібен надзвичайний стан для боротьби з COVID-2019?", 6 April 2020, available at: <https://rpr.org.ua/news/chy-diysno-potriben-nadzvichaynyy-stand-dlia-borot-by-z-covid-2019/>.

296 Юридичний інтернет-ресурс "Протокол", "Порушення правил щодо карантину людей. Аналіз судової практики", 23 April 2020, available at: [https://protocol.ua/ru/porushennya\\_pravil\\_shchodo\\_karantynu\\_lyudey\\_analiz\\_sudovoi\\_praktiki/](https://protocol.ua/ru/porushennya_pravil_shchodo_karantynu_lyudey_analiz_sudovoi_praktiki/); Центр прав людини ZMINA, "Стій, де маска!? Як вийти "сухим" із "підмочених" карантинних обмежень", 17 April 2020, available at: <https://zmina.info/articles/stij-de-maski-yak-vyjty-suhym-iz-pidmochenyh-karantynnyh-obmezen/>: in three similar cases (failure to wear a mask in a public space) the courts applied three different penalties: a fine of 17 000 UAH, the termination of the administrative case, and an acquittal.

297 112Україна, "Чому нові обмеження Кабміну є незаконними: Роз'яснення юриста", Khavronyuk M., 6 April 2020, available at: <https://ua.112.ua/mnenie/chomu-novi-obmezhennia-kabminu-nezakonni-roziasnennia-iurysta-531968.html>; Василь Кісіль і Партнери, "Карантин в Україні: чи суперечать нові заборони Конституції", Berezhna T., 7 April 2020, available at: <https://vkp.ua/publication/karantin-v-ukrayini-chi-superechat-novi-zaboroni-konstitutsiyi>.

disproportionately affected by the lockdown – particularly the homeless, the Roma people and people residing in temporarily occupied territories.

### **III. FAIR TRIAL RIGHTS**

On the face of it, Ukraine has introduced fair trial compliant measures to mitigate undue delay and case backlog caused by COVID-19 and the associated lockdown measures. However, scarcity of resources and the lack of coordination between courts and detention facilities has resulted in poor uptake of hearings by videoconferencing. Moreover, the lack of standard operating procedures and videoconferencing equipment has resulted in vast disparities between courts in different regions of Ukraine. Detainees should not have to choose between their health and their fair trial rights, and that choice should not be influenced by the court or region where they are being tried.

### **IV. RIGHT TO LIFE/PROHIBITION ON INHUMAN TREATMENT**

Whilst the Government has locked down prisons and introduced measures to reduce the risk of COVID-19 infections in prisons, these measures are insufficient to protect vulnerable prisoners' lives and wellbeing. Prisoners have not been provided with PPE, while prison staff is also reporting chronic shortages. Medical assistance is not sufficient to meet the potential challenges posed by the pandemic. Crucial legislative measures aimed at reducing the prisoner population for the period of the COVID-19 pandemic have stalled in Parliament, rendering the measures increasingly ineffective as COVID-19 spreads through Ukraine.

The Government has not taken any specific measures to protect the homeless population. It has been left up to local authorities and civil society to provide shelter, food and medical care to the most vulnerable members of society.

Medical professionals have not been provided with adequate PPE, and were not regularly tested for the first two months of the pandemic, resulting in high infection and death rates.

Deaths and suffering from COVID-19 among the prison population, the homeless and medical professionals – resulting from the Government's failure to take necessary steps to protect these vulnerable groups – violate the right to life and/or prohibition on inhuman treatment.

### **V. RIGHT TO PRIVACY**

The “Дій вдома” (“Act at Home”) mobile app has failed to meet the requirements of the right to privacy. Informed consent was not sought for the collection, storage and processing of personal information. Legislation is not sufficiently clear as to what happens to personal data following the end of self-isolation. Crucially, the State has failed to safeguard personal information and has allowed its disclosure to the public. Such failings constitute serious violations of the right to privacy.

### **VI. RIGHT TO PEACEFUL ASSEMBLY**

The main issue in relation to the right to peaceful assembly is whether restrictive measures introduced to combat COVID-19 have any legal effect on the constitutional right to protest. Confusion over the legal position has led to arbitrary conduct by the police and in some instances, violence between the police and protesters.

## **VII. FREEDOM OF EXPRESSION**

After a slow start, the Government is making genuine efforts to disseminate public information about COVID-19 and measures to combat it. Nevertheless, the information is only available in Ukrainian and the most up-to-date information is posted onto a website – leaving non-Ukrainian speakers and those with no access to the Internet in the dark. Efforts to censor fake news and disinformation on COVID-19 have led to a spate of unsuccessful administrative proceedings and at least 17 criminal prosecutions for violating territorial integrity and attempting to overthrow the constitutional order. It is important to ensure that administrative and criminal proceedings do not stymie genuine debate on COVID-19 or lead to self-censorship for those who do not agree with the Government's position.

## **VIII. RIGHT TO ADEQUATE STANDARD OF LIVING, HEALTH AND SOCIAL SECURITY**

The Government of Ukraine has taken important steps to support people who have lost incomes and businesses as a result of COVID-19 and the associated lockdown. Nevertheless, certain people – like the homeless, sex workers, the Roma and frontline workers – have not had their needs met as a result of discrimination or lack of adequate resource allocation. The Government must continue to monitor the economic situation and support low-income households, to safeguard against a spate of evictions and bankruptcies once eviction freezes and loan repayment holidays are lifted.

## **IX. RIGHT TO EDUCATION**

The Government of Ukraine has shut all educational facilities from 12 March, and has only allowed pre-school institutions to reopen on 25 May. General recommendations and online resources have been made available by the Ministry of Education, but the main burden for organising and delivering remote learning has been left to each institution. With up to 19% of all Ukrainian pupils having no or little access to a computer at home, and less than 60% of rural pupils having access to the Internet, the emphasis on online distance learning is likely to cause inequality in the standard of education delivered to pupils from economically deprived households and rural areas. The Government should take special measures to equalise the disparity in the access to education resulting from COVID-19 and the associated lockdown.

## **X. RIGHT TO EQUALITY AND THE PROHIBITION AGAINST DISCRIMINATION**

Whilst some efforts have been made by the Government of Ukraine to address inequalities and safeguard vulnerable persons and minority groups during the COVID-19 crisis, research has identified numerous areas where the Government has fallen short. In particular, the Government needs to allocate more resources to regional authorities, shelters and frontline workers (including adequate PPE), who bear the brunt of responsibility for protecting the vulnerable. All instances of hate speech and discrimination must be investigated and where appropriate, prosecuted - in particular, reports of denial of medical services to members of the LGBTIQ community and ethnic minorities.

## **B. On the Russian-occupied Crimean Peninsula**

Occupying authorities have relied on new powers to enforce lockdown measures and punish 'fake news' to penalise over 7000 residents of the Crimean Peninsula. Given the lack of judicial independence, impartiality and fairness, there is a serious threat that these decisions did not comply with international standards of justice.

Moreover, the occupying authorities failed to take measures to reduce overcrowding in prisons on the Peninsula. Scores of political prisoners continue to languish in prolonged pre-trial detention. Overcrowded facilities and inadequate conditions of detention in the context of COVID-19, threaten the prisoners' lives and wellbeing, in violation of their right to life and prohibition on inhuman treatment.

## C. In areas controlled by DPR/LPR authorities

DPR/LPR authorities continue to pursue alleged 'spies' and 'saboteurs' through violence, arbitrary detention and enforced confessions. In the wake of COVID-19, the authorities have created a new 'Cossack' law enforcement force to enforce order more generally, as well as compliance with COVID-19 restrictions.<sup>298</sup> Cossack militias have been linked to war crimes and gross human rights abuses during the conflict in Eastern Ukraine.<sup>299</sup>

Poor access to the Internet on DPR/LPR-controlled territory has effectively deprived pupils of education during the lockdown period.<sup>300</sup>

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298 Луганский информационный центр, "Казачи ЛНР учредили оперативный штаб по противодействию распространению COVID-19 (ФОТО)", 26 April 2020, available at: <http://lug-info.com/news/one/kazaki-lnr-uchredili-operativnyi-shtab-po-protivodeistviyu-rasprostranenyu-covid-19-foto-55655>.

299 Group of volunteers, "Russian War Crimes in Eastern Ukraine in 2014", December 2015, available at: [http://wmii.uwm.edu.pl/~panas/Russian\\_War\\_Crimes.pdf](http://wmii.uwm.edu.pl/~panas/Russian_War_Crimes.pdf)

300 Комсомольская правда Донецк, "Дистанционное обучение в ДНР – еще неделя и родители изобретут вакцину от коронавируса", Gordo O., 7 April 2020, available at: <https://www.donetsk.kp.ru/daily/27114/4192875/>.

# X. Recommendations

## A. To the Government of Ukraine

- All legal and constitutional challenges to the restrictive measures must be resolved by the Administrative and Constitutional courts at the earliest opportunity.
- Continue to assess the status of the COVID-19 pandemic in Ukraine and elsewhere, and re-evaluate the necessity and proportionality of restrictions on the freedom of movement in accordance with the spread of infections and evolution in scientific understanding of COVID-19. Make special provisions for groups and individuals that are disproportionately affected by the lockdown – particularly the homeless, the Roma people and persons residing on temporarily occupied territories.
- Ensure that videoconferencing equipment is available to all detainees who opt for remote hearings. Create standard operating procedures and procure videoconferencing equipment for all courts that complies with expert recommendations on Internet security. Conduct thorough monitoring activities to ensure that COVID-19 and associated lockdown measures are not having a negative impact on other aspects of fair trial rights.
- Streamline legislation aimed at reducing the prison population (including people in pre-trial detention). Provide PPE to all prisoners and prison staff, and improve hygienic practices in places of detention. Ensure that medical assistance is available at all prisoners.
- Provide shelter, food and medical care to the homeless at least for the time of the pandemic.
- Provide all medical professionals and other frontline workers with all necessary PPE and regular testing for COVID-19.
- Address privacy issues arising from the “Дій вдома” (“Act at Home”) mobile app, namely: obtain informed consent from its users, legislate for the destruction/depersonalisation of personal information at the earliest opportunity, and put in place strict measures to ensure no further disclosures of personal data to the public.
- The legal effect of COVID-19 lockdown measures on the constitutional right to protest must be clarified forthwith. Protesters and the police must have a clear understanding of the applicable law, to avoid arbitrary policing and violence.
- Provide ample public information about COVID-19 and measures to combat it in all national minority languages. Ensure that settlements with no Internet connection are not deprived of key information. Monitor administrative and criminal proceedings in relation to fake news and disinformation, and ensure that the law is not being used to stymie genuine debate and does not lead to self-censorship.
- Continue to monitor the economic situation and support low-income households, to safeguard against a spate of evictions and bankruptcies once eviction freezes and loan repayment holidays are lifted.
- Ensure that the homeless, sex workers, LGBTQI and Roma people are not discriminated against in the provision of health services.
- Take special measures to level the disparity in the access to education between city-dwelling and rural-dwelling pupils. Rural communities require greater access to the Internet and information technology if schooling is to be provided through remote online learning.

- Provide sufficient resources and PPE to regional authorities, shelters and social workers for supporting vulnerable members of society.
- Investigate and hold to account all incidents of hate speech and discrimination against minorities and vulnerable groups.

## **B. To the Russian authorities occupying the Crimean Peninsula**

- Take measures to reduce the prison population, particularly in pre-trial detention prisons on the Peninsula.
- Ensure that all punitive measures in relation to the alleged violation of lockdown measures are handed down by an independent and impartial judiciary, in proceedings that respect fundamental fair trial rights.
- Monitor the enforcement of lockdown measures to ensure that punitive measures are not being taken to suppress opposition and criticism to Russia's occupation of the Crimean Peninsula.