



Resolution 2133 (2016)¹

Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities

Parliamentary Assembly

1. The Parliamentary Assembly is deeply worried about the human rights situation in Crimea and in the self-proclaimed “people’s republics” of Donetsk and Luhansk (“DPR” and “LPR”, respectively).
2. It reaffirms its position that the annexation of Crimea by the Russian Federation and the military intervention by Russian forces in eastern Ukraine violate international law and the principles upheld by the Council of Europe, as stated in Assembly [Resolution 2112 \(2016\)](#), [Resolution 2063 \(2015\)](#), [Resolution 1990 \(2014\)](#) and [Resolution 1988 \(2014\)](#).
3. The “DPR” and “LPR” – established, supported and effectively controlled by the Russian Federation – are not legitimate under Ukrainian or international law. This applies to all their “institutions”, including the “courts” established by the *de facto* authorities.
4. Under international law, the Russian Federation, which exercises *de facto* control over these territories, is responsible for the protection of their populations. Russia must therefore guarantee the human rights of all inhabitants of Crimea and of the “DPR” and “LPR”.
5. Regarding Crimea, the Russian military presence and effective control have been officially acknowledged by the Russian authorities. In the “DPR” and the “LPR”, effective control is based on the crucial and well-documented role of Russian military personnel in taking over and maintaining power in these regions, against the determined resistance of the legitimate Ukrainian authorities, and on the complete dependence of these regions on Russia in logistical, financial and administrative matters.
6. Both in Crimea and in the conflict zone in the Donbas region, serious human rights violations have occurred, and are still occurring, as documented by numerous reports from, *inter alia*, the Council of Europe’s Commissioner for Human Rights, the United Nations Human Rights Monitoring Mission in Ukraine, the Special Monitoring Mission to Ukraine of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR), and leading Ukrainian and international non-governmental human rights organisations. These violations include extrajudicial executions, enforced disappearances, torture and inhuman and degrading treatment, unlawful detentions and disproportionate restrictions on the freedom of expression and freedom of information.
7. Victims of human rights violations have no effective internal legal remedies at their disposal:
 - 7.1. as far as the residents of the “DPR” and “LPR” are concerned, local “courts” lack legitimacy, independence and professionalism; the Ukrainian courts in the neighbouring government-controlled areas, to which jurisdiction for the non-controlled areas was transferred by Ukraine, are difficult to reach, cannot access files left behind in the “DPR” or “LPR” and cannot ensure the execution of their judgments in these territories;
 - 7.2. as far as the residents of Crimea are concerned, fear of retribution affects the independence of the courts and, in particular, the willingness of the police and the prosecution service to hold to account perpetrators of crimes against perceived or actual Ukrainian loyalists.

1. *Assembly debate* on 12 October 2016 (33rd Sitting) (see [Doc. 14139](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Marieluise Beck). *Text adopted by the Assembly* on 12 October 2016 (33rd Sitting).



8. In Crimea, Ukrainians in general, and Crimean Tatars in particular, live in a climate of severe intimidation created by the above-mentioned human rights violations and the fact that they remain largely unpunished. Many were forced to leave Crimea. In parallel, all inhabitants of Crimea have been placed under immense pressure to obtain Russian passports and renounce their Ukrainian nationality in order to have access to health care, housing and other essential services. As a result of the recent decision of the Supreme Court of the Russian Federation on banning the Mejlis and its local branches, the Crimean Tatars have lost their traditional democratic representation. Tatar media and the Tatar's Muslim religious practices were also targeted. The cumulative effect of these repressive measures is a threat to the Tatar community's very existence as a distinct ethnic, cultural and religious group.

9. Moreover, in accordance with reports of authoritative international and non-governmental organisations (in particular Freedom House, Amnesty International, Human Rights Watch and many others), there are signs of violations of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination by the Russian Federation in occupied Crimea as regards the Crimean Tatars.

10. In the conflict zone in the Donbas region, the civilian population as well as a large number of combatants were subjected to violations of their rights to life and physical integrity and to the free enjoyment of property, as a result of war crimes and crimes against humanity including the indiscriminate or even intentional shelling of civilian areas, sometimes provoked by the stationing of weapons in close proximity.

11. Numerous inhabitants of the conflict zone in the Donbas, on both sides of the contact line, still suffer on a daily basis from numerous violations of the ceasefire that was agreed in Minsk. These violations are documented daily by the OSCE Special Monitoring Mission to Ukraine, despite the restrictions on access imposed mainly by the *de facto* authorities of the "DPR" and "LPR". The inhabitants also suffer from the prevailing climate of impunity and general lawlessness due to the absence of legitimate, functioning State institutions, and in particular access to justice in line with Article 6 of the European Convention on Human Rights (ETS No. 5). They also endure severe social hardship worsened by restrictive measures imposed by the Ukrainian authorities regarding pension and social assistance payments. The legal and humanitarian situation of ordinary detainees sentenced to prison terms before the conflict (about 5 000 persons in the "LPR" alone) is unacceptable: decisions by the Ukrainian judicial authorities on early release (probation, amnesty) are routinely ignored by the *de facto* authorities, who subject prison inmates to forced labour and various forms of inhuman and degrading treatment. Finally, persons displaced from the "DPR" and "LPR" face expropriation of the properties they left behind due to the unlawful re-registration requirements imposed by the *de facto* authorities.

12. The Ukrainian authorities have begun prosecuting alleged perpetrators of war crimes and other human rights violations on the side of pro-government forces. The Assembly takes note of the constructive co-operation of Ukraine with relevant international monitoring mechanisms, such as the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment and the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), in particular in the context of the SPT's recent visit to Ukraine, and calls on all parties involved to allow external monitors regular and unhindered access to all places of deprivation of liberty, in accordance with their mandates.

13. The Minsk Agreements include amnesty clauses for the participants in the armed conflict in the Donbas region. The Assembly recalls that, under international law, such clauses cannot justify impunity for the perpetrators of serious human rights violations.

14. Regarding the elections foreseen in the Minsk Agreements, the Assembly considers that as long as the present situation in the "DPR" and "LPR", characterised by a climate of insecurity, intimidation, impunity and a lack of freedom of expression and freedom of information, prevails, free and fair elections (as guaranteed by Article 3 of the Protocol to the European Convention on Human Rights (ETS No. 9)) are not possible in these regions.

15. The Assembly regrets that neither the Russian Federation nor Ukraine has ratified the Rome Statute establishing the International Criminal Court (ICC), while noting that Ukraine has accepted the ICC's jurisdiction in its declarations of 17 April 2014 and 8 September 2015 under Article 12.3 of the Rome Statute. The Assembly welcomes the changes to the Constitution of Ukraine, finally adopted by the Ukrainian Parliament, by which the ratification of the Rome Statute will be possible. At the same time, the Assembly is concerned that these changes will only come into effect in three years, and not as soon as possible, as was recommended by the Assembly.

16. The Assembly welcomes the activities of the Joint Investigation Team (JIT) and its preliminary report of 28 September 2016 on the criminal investigation into the downing of flight MH17 in Donbas. The Assembly takes note of the JIT's findings that flight MH17 was shot down from territory controlled by Russian-backed militants by a Buk missile system which had been brought in from the territory of the Russian Federation and which was returned to the Russian Federation after the launch. The Assembly calls on all parties involved to co-operate fully with the criminal investigation in order to bring those responsible to justice.

17. The Assembly therefore urges:

17.1. the competent authorities, both in Ukraine and in the Russian Federation, to:

17.1.1. effectively investigate all cases of serious human rights violations allegedly committed in all areas under their effective control;

17.1.2. prosecute their perpetrators, thereby also discouraging any such violations in future;

17.1.3. compensate their victims to the extent possible;

17.1.4. accede to the Rome Statute of the ICC;

17.1.5. fully implement the Minsk Agreements;

17.2. the Russian authorities to:

17.2.1. end their repressive actions against people loyal to the Ukrainian authorities in all areas under their effective control, including Crimea; in particular, to restore the historical rights of the Crimean Tatar people and to enable the re-establishment of the rule of law in the whole of eastern Ukraine;

17.2.2. meanwhile, ensure the protection of the fundamental rights of all inhabitants of the "DRP" and the "LPR" and the fulfilment of their basic needs, and exercise their influence with the *de facto* authorities to this end;

17.2.3. facilitate the independent monitoring of the human rights situation in all Ukrainian territories under their effective control, including Crimea;

17.2.4. use all available legal means to repeal the decision of the Supreme Court of the Russian Federation to outlaw the Mejlis, and to allow the Crimean Tatar people to choose their own self-governing institutions;

17.2.5. ensure unrestricted access by representatives of international organisations and consular officers of Ukraine to convicted persons displaced from territories temporarily not under Ukrainian control to penitentiary institutions in the territory of the Russian Federation;

17.2.6. transfer to Ukraine all convicted Ukrainian citizens who express such a wish, so that they may serve the remainder of their sentences in territories controlled by the Ukrainian authorities;

17.2.7. bring an end to the displacement from the territory of Crimea to the territory of the Russian Federation of people that do not have Russian citizenship – including those sentenced to imprisonment – who have, whatever the circumstances, found themselves under the control of the Russian Federation in Crimea;

17.3. the Ukrainian authorities to make easier, as far as is in their power, the daily life of the inhabitants of the territories outside of their control and of the displaced persons from these areas by reducing administrative burdens in access to pensions and social allowances and by facilitating the inhabitants' access to justice by adequately equipping and staffing the courts in government-controlled areas to which jurisdiction for the non-controlled areas has been transferred;

17.4. the Ukrainian authorities to review and reconsider Ukraine's derogation from the International Covenant on Civil and Political Rights and the European Convention on Human Rights on a regular basis with respect to necessity, proportionality and non-discrimination;

17.5. the international community to continue focusing on the human rights and humanitarian situation of the people living in the territories of Ukraine not under the control of the Ukrainian authorities and refrain from placing demands on Ukraine which would cement the unlawful status quo if fulfilled;

17.6. the ICC to exercise its jurisdiction to the extent that is legally possible following the declarations filed by Ukraine.

Resolution 2133 (2016)

18. The Assembly resolves to continue observing the human rights situation in the conflict zone in the Donbas region and in Crimea as a matter of priority.