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Ukrainian citizens detained as political prisoners by the Russian Federation

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Emanuelis ZINGERIS, Lithuania, Group of the European People's Party

Summary

The Committee on Legal Affairs and Human Rights is deeply concerned by reports that as many as 70 or more Ukrainian citizens – widely considered to be political prisoners – are still detained in Crimea or the Russian Federation on politically motivated or otherwise fabricated charges. It considers that the cases of Mr Oleh Sentsov, Mr Volodymyr Balukh and Mr Pavlo Hryb in particular, which it has specifically considered, meet the Assembly's definition of political prisoners.

As regards the cases of Mr Sentsov, Mr Balukh and Mr Hryb, the committee is alarmed by reports concerning their conditions of detention, including allegations of torture and inhuman treatment and denial of access to essential health care for potentially serious medical conditions, and the fact that Mr Balukh and Mr Hryb are on hunger strike. It is also gravely concerned by the detailed reports of ill-treatment and denial of access to health care in other cases of alleged political prisoners

The committee therefore proposes that the Assembly call on Russia to release all Ukrainians whom it detains on politically motivated or otherwise fabricated charges; until their release, ensure full respect for their rights; allow the monitoring of their situation by independent international monitors, including the CPT and the ICRC, and allow the Ukrainian Parliament Commissioner for Human Rights to visit them; and abandon the policy of forcible imposition of Russian citizenship on Ukrainian citizens living in Crimea.

1. Reference to committee: Reference 4392 of 25 June 2018 (debate under urgent procedure).

Contents **Page**

A. Draft resolution 3
B. Explanatory memorandum by Mr Emanuelis Zingeris, rapporteur 5
1. Introduction 5
2. Ukrainian citizens detained in Crimea or the Russian Federation 5
3. Conclusions and recommendations 8
Appendix – List of alleged political prisoners identified by the #LetMyPeopleGo campaign 9

A. Draft resolution[2]

1. The Parliamentary Assembly recalls previous resolutions relating to the situation in Ukraine, in particular Resolution 1990 (2014) on the reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation, Resolution 2034 (2015) on the challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation, Resolution 2063 (2015) on consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation (follow-up to paragraph 16 of Resolution 2063 (2015)), Resolution 2112 (2016) on the humanitarian concerns with regard to people captured during the war in Ukraine, Resolution 2132 (2016) on the political consequences of the Russian aggression in Ukraine, Resolution 2133 (2016) on legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities and Resolution 2198 (2018) on humanitarian consequences of the war in Ukraine.

2. The Assembly recalls in particular the position it took in the aforementioned resolutions on the following issues of relevance in the present context:

2.1. Crimea has been illegally annexed following a military occupation by the Russian Federation, which is as a result obliged to secure the human rights of everyone in Crimea through its extraterritorial jurisdiction based on effective control over the region;

2.2. the human rights situation in Crimea has deteriorated, with deaths and disappearances of political activists who were critical of the Russian occupation and annexation, threats and actions against critical non-governmental organisations (NGOs) and media outlets, and harassment and repression of the indigenous Crimean Tatar community;

2.3. the inhabitants of Crimea have been placed under immense pressure to obtain Russian passports and renounce their Ukrainian nationality, following the imposition of Russian citizenship on them by the *de facto* authorities;

2.4. numerous Ukrainian citizens have been detained in Crimea or the Russian Federation on politically motivated or otherwise fabricated charges.

3. The Assembly is therefore deeply concerned by reports that as many as 70 or more Ukrainian citizens – widely considered, including by the European Parliament in its resolution of 14 June 2018, to be political prisoners – are still detained in Crimea or the Russian Federation on politically motivated or otherwise fabricated charges. As examples, it considers that the cases of Mr Oleh Sentsov, Mr Volodymyr Balukh and Mr Pavlo Hryb in particular meet the Assembly's definition of political prisoners, as set out in its Resolution 1900 (2012) on the definition of political prisoner.

4. As regards the cases of Mr Sentsov, Mr Balukh and Mr Hryb, the Assembly is alarmed by reports concerning their conditions of detention. There have been allegations of torture and inhuman treatment in the cases of Mr Sentsov and Mr Balukh and denial of access to essential health care for potentially serious medical conditions in the cases of Mr Balukh, who has been on hunger strike since March 2018, and Mr Hryb. Mr Sentsov has also been on hunger strike since May 2018, as a result of which he reportedly now suffers from heart and kidney problems; it has been suggested that he has been force-fed by the Russian authorities, in possible violation of Article 3 of the European Convention on Human Rights (ETS No. 5).

5. The Assembly is also gravely concerned by the detailed reports of ill-treatment and denial of access to health care in other cases of alleged political prisoners.

6. The Assembly regrets that the Council of Europe's human rights monitoring mechanisms, in particular the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), have been unable to access Crimea in order to assess the human rights situation of people detained there and calls on the Russian Federation to facilitate such access. It also regrets that the Ukrainian Parliament Commissioner for Human Rights, Liudmyla Denysova, was recently denied access to visit Mr Sentsov in the penal colony where he is being held.

7. The Assembly therefore calls on the Russian Federation to:

7.1. release without further delay all Ukrainians detained in the Russian Federation and in Crimea on politically motivated or otherwise fabricated charges;

2. Draft resolution adopted unanimously by the committee on 26 June 2018.

7.2. until their release, ensure full respect of their rights, including by respecting the prohibition on torture and inhuman or degrading treatment or punishment and ensuring the right of access to requisite medical assistance in order that health and well-being are adequately secured;

7.3. refrain from force-feeding Mr Sentsov, or any other of the detainees, unless medically necessary in order to save his or their life;

7.4. allow the monitoring of these detainees' state of health and conditions of detention by independent international monitors, including the CPT and the International Committee of the Red Cross, and allow Ukrainian officials, including the Ukrainian Parliament Commissioner for Human Rights, to visit them;

7.5. abandon the policy of imposition of Russian citizenship on Ukrainian citizens living in Crimea who do not wish to acquire it and refrain from forcibly transferring such persons from Crimea to the Russian Federation, including those subject to criminal law measures.

B. Explanatory memorandum by Mr Emanuelis Zingeris, rapporteur[3]

1. Introduction

1. Since 2014, shortly after the illegal annexation of Crimea by the Russian Federation, the Parliamentary Assembly has followed the situation in Ukraine very closely, adopting a series of resolutions and recommendations on different aspects. These include Resolution 1990 (2014) on the reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation, Resolution 2034 (2015) on the challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation, Resolution 2063 (2015) on consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation (follow-up to paragraph 16 of Resolution 2063 (2015)), Resolution 2112 (2016) and Recommendation 2090 (2016) on the humanitarian concerns with regard to people captured during the war in Ukraine, Resolution 2132 (2016) on the political consequences of the Russian aggression in Ukraine, Resolution 2133 (2016) on legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities and Resolution 2198 (2018) and Recommendation 2119 (2018) on humanitarian consequences of the war in Ukraine.

2. The resolutions establish a settled position of the Assembly on a number of issues of immediate relevance to the present report, notably the following:

– Crimea has been illegally annexed following a military occupation by the Russian Federation, which is as a result obliged to secure the human rights of everyone in Crimea through its extraterritorial jurisdiction based on effective control over the region;

– the human rights situation in Crimea has deteriorated, with deaths and disappearances of political activists who were critical of the Russian annexation, threats and actions against critical non-governmental organisations (NGOs) and media outlets, and harassment and repression of the Crimean Tatar community, including members of the Mejlis (parliament) of the Crimean Tatar People;

– the inhabitants of Crimea have been placed under immense pressure to obtain Russian passports and renounce their Ukrainian nationality, following the imposition of Russian citizenship on them by the *de facto* authorities;

– numerous Ukrainian citizens have been detained in Crimea or the Russian Federation on politically motivated or otherwise fabricated charges.

3. Despite the passage of time and intense diplomatic activity, there has been little material progress in resolving these or other issues. As regards the latter, although some detainees have been released – one could mention in particular Nadiia Savchenko, a member of the Ukrainian Parliament and of its delegation to the Parliamentary Assembly at the time – very many others have been newly detained and/or are still in detention.

2. Ukrainian citizens detained in Crimea or the Russian Federation

4. According to the campaign #LetMyPeopleGo, there are currently 70 Ukrainian citizens detained in Crimea or the Russian Federation on politically motivated or otherwise fabricated charges; this list appears in the appendix to the present memorandum. The European Parliament included a slightly different list of over 70 names in its resolution on "Russia, notably the case of Ukrainian political prisoner Oleg Sentsov", adopted on 14 June 2018.[4] I intend to take three of those who appear on both lists as examples: Mr Oleh Sentsov, Mr Volodymyr Balukh and Mr Pavlo Hryb.

5. Mr Sentsov is a 41-year-old native of Crimea, a film-maker and AutoMaidan political activist. On 11 May 2014, he was arrested along with three other Ukrainian citizens in Crimea by the *de facto* Russian authorities. Three weeks later, he and the others were charged with "being part of a terrorist community" and plotting to blow up or set fire to a series of targets in Simferopol. Commentators have observed that similar facts are usually qualified as mere "hooliganism". The four were also charged with being members of the Ukrainian nationalist paramilitary group, Right Sector, which both Right Sector and Mr Sentsov denied. The main witness against him renounced his statement during Mr Sentsov's trial, stating that it had been given under torture. Mr Sentsov, who has always denied the charges, informed the trial court that he too had been tortured

3. The original title of the report, "Threats to the health and life of Ukrainian prisoners in the Russian Federation and occupied Crimea", was modified by the committee on 26 June 2018.
4. P8_TA-PROV(2018)0259.

in detention. Mr Sentsov was nevertheless convicted by the North Caucasian District Military Court and on 25 August 2015 sentenced to 20 years in prison, which he is currently serving in Russia's northernmost secure penal colony, at Labytnangi on the Arctic Circle. On 14 May 2018, Mr Sentsov went on hunger strike, which he intends to continue until "the release of all Ukrainian political prisoners held in the Russian Federation". On 21 June 2018, it was reported that he had developed heart and kidney problems and had been transferred to hospital;[5] the Ukrainian Human Rights Commissioner, Lyudmyla Denisova, is reported to believe that he has been subjected to force-feeding.[6] Mr Sentsov's lawyers have announced that the European Court of Human Rights has asked the Russian Federation to provide information on Mr Sentsov's situation, including his medical condition.[7] The United Nations Human Rights Committee found that Mr Sentsov was "subject to legal proceedings that fail to meet the requirements of articles 9 and 14 of the [International Covenant on Civil and Political Rights]" (equivalent to Articles 5 and 6 of the European Convention on Human Rights (ETS No. 5)).[8] I recall that on 23 May 2018, Mr Egidijus Vareikis (Lithuania, EPP/CD), former rapporteur on humanitarian consequences of the war in Ukraine, called for Mr Sentsov's "immediate release on humanitarian grounds".

6. Mr Balukh is a 47-year-old farmer from the northern part of Crimea. Following the illegal annexation of Crimea, Mr Balukh protested by displaying the Ukrainian flag and other symbols of defiance of the Russian authorities and loyalty to Ukraine on his property. The *de facto* authorities took objection to his actions, entering and searching his property, tearing down the offending symbols and on one occasion beating him up. These acts culminated in his being charged with illegal possession of ammunition and explosives, which he denied, asserting that the local police had planted the evidence. His first conviction by the local *de facto* district court was overturned by the *de facto* Supreme Court of Crimea, but subsequently reaffirmed by the *de facto* district court. In August 2017, he was sentenced to three years and seven months in prison and a fine. Later that month, he was also charged with assaulting the head of the detention centre where he was being held; he has also denied this charge, stating that in fact he himself was assaulted and insulted by the official in question. He has complained of poor detention conditions, inadequate provision of food, back pain and heart problems, for which he has not been given proper medication. Mr Balukh went on partial hunger strike in mid-March 2018. On 15 June 2018, an ambulance was called to the *de facto* court after he fell ill during trial on the assault charges.[9]

7. Mr Hryb is a 19-year-old Ukrainian, the son of a former Ukrainian public official, who blogged about Russian aggression in Ukraine. He was reportedly abducted by Russian security forces in August 2017 whilst visiting a friend in Belarus. He was taken to Russia, where he has remained in detention ever since, charged with plotting a terrorist attack on a school in Sochi. According to his father, Mr Hryb has been denied contact with the outside world, including visits from his mother.[10] Mr Hryb suffers from a serious medical condition, portal hypertension; his health has reportedly deteriorated since he was detained in Russia, with vomiting and severe stomach pain. His father asserts that without proper nutrition and medical treatment, Mr Hryb is at risk of internal bleeding.[11] The Russian prison authorities have reportedly refused to transmit most of the food parcels sent to Mr Hryb by his mother.[12] The Russian authorities are said also to have refused to allow funds to be transferred to Mr Hryb so that he can buy the medicines and bottled water that he needs himself.[13] As with Mr Sentsov, it has been reported that the European Court of Human Rights requested that the Russian Federation provide information on Mr Hryb's medical condition in detention.[14]

8. As a Party to the European Convention on Human Rights, Russia is obliged to respect the rights of Mr Sentsov, Mr Balukh and Mr Hryb, and of all other persons detained in Crimea or the Russian Federation. Of particular relevance to these cases is Article 3, which prohibits torture and inhuman or degrading treatment or punishment. This requires, amongst other things, that "[t]he State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution

5. "Envoy: Filmmaker on hunger strike has heart, kidney problems", *Washington Post*, 21 June 2018.
6. "Ukraine thinks Russian prison guards are force-feeding Oleg Sentsov", *Meduza*, 21 June 2018.
7. "European Court of Human Rights asks Russia to provide information about Sentsov's health", *UA Wire*, 21 June 2018.
8. "Concluding Observations on the Seventh Periodic Report of the Russian Federation", UN Human Rights Committee, 28 April 2015.
9. "Ambulance Called To Crimean Court For Hunger-Striking Ukrainian Defendant", RFE/RL, 15 June 2018.
10. "Court in Russia leaves Ukrainian Pavlo Hryb in custody until May 4", *Kyiv Pos*t, 21 March 2018.
11. "Health of Ukrainian Pavlo Hryb deteriorating – father", *Interfax-Ukraine*, 9 April 2018.
12. "Russia falsifies medical records endangering the life of abducted Ukrainian teenager Pavlo Hryb – NGO", *Unian*, 12 April 2018.
13. "Russia blocks transfer of funds to account of Pavlo Hryb detained in remand centre", *112UA*, 4 June 2018.
14. "Strasbourg demands answers from Russia about treatment of abducted Ukrainian Pavlo Hryb", Kharkiv Human Rights Protection Group, 11 October 2017.

of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured". This includes "an obligation on the part of the State to provide detainees with the requisite medical assistance".[15]

9. As regards detainees on hunger strike and force-feeding, "a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The same can be said about force-feeding that is aimed at saving the life of a particular detainee who consciously refuses to take food". In the case of an application to the European Court of Human Rights, the latter would have to "satisfy [itself] that the medical necessity has been convincingly shown to exist" and "that the procedural guarantees for the decision to force-feed are complied with. Moreover, the manner in which the applicant is subjected to force-feeding during the hunger-strike must not [exceed] the threshold of the minimum level of severity envisaged by the Court's case law under Article 3".[16]

10. From the perspective of allegations of conditions of detention and ill-treatment of detainees in Crimea, It is highly regrettable that the Council of Europe's human rights monitoring mechanisms, in particular the European Commission for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), are unable to access the region in order to assess the situation. The Assembly should call on the Russian authorities to facilitate such access. It is also regrettable that the Russian Federation has authorised the publication of only four of the 24 visit reports that the CPT has adopted over the past 20 years, and none in the past six years. There is thus a shortage of public information on the findings of independent monitoring of detention conditions in Russia. I also note that the Ukrainian Parliament Commissioner for Human Rights was recently denied access to the penal colony in which Mr Sentsov is being held, following which she asked the International Committee of the Red Cross to visit him and certain other Ukrainians detained in the Russian Federation.[17]

11. I would also recall certain legal issues concerning the arrest and detention of persons in Crimea and their transfer to the Russian Federation. In Resolution 2133 (2016, the Assembly noted that "all inhabitants of Crimea have been placed under immense pressure to obtain Russian passports and renounce their Ukrainian nationality"; in Resolution 2198 (2018), it called on the Russian Federation to "stop forcing Ukrainian citizens living in annexed Crimea to accept Russian passports". The fact that the Russian Federation considers all residents of Crimea to be Russian citizens and on that basis, susceptible to being transferred to Russian territory and subjected to criminal proceedings there amounts to a breach of international law.[18]

12. As regards the issue of whether Mr Sentsov, Mr Balukh and Mr Hryb should be considered political prisoners, I would recall Assembly Resolution 1900 (2012) on the definition of political prisoner:

> *"A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':*
>
> *a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;*
>
> *b. if the detention has been imposed for purely political reasons without connection to any offence;*
>
> *c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;*
>
> *d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,*
>
> *e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."*

15. *Nogin v. Russia*, Application No. 58530/08, judgment of 15 January 2015, paragraph 83.
16. *Ciorap v. Moldova*, Application No. 12066/02, judgment of 19 June 2007, paragraph 77.
17. "Ms Liudmyla Denisova asked ICRC to visit Mr Oleh Sentsov and other Ukrainian political prisoners who went on a hunger strike", Ukrainian Parliament Commissioner for Human Rights, 20 June 2018.
18. See further "Report by Nils Muižnieks following his mission in Kyiv, Moscow and Crimea", Council of Europe Commissioner for Human Rights, 27 October 2014; "Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", Office of the United Nations High Commissioner for Human Rights, September 2017; "Human Rights in the Context of Automatic Naturalisation in Crimea", Open Society Justice Initiative, June 2018.

13. In my opinion, in the cases of Mr Sentsov, Mr Balukh and Mr Hryb, the circumstances of their detention satisfy the above criteria. They should therefore properly be recognised by the Assembly as political prisoners. I would also recall that the European Parliament considers all of those mentioned in its resolution of 14 June 2018 to be political prisoners. In the time available to me, however, I have not been able to examine whether all of these cases, or those listed by #LetMyPeopleGo, satisfy the Assembly's definition.

3. Conclusions and recommendations

14. The issue of Ukrainian citizens detained in Crimea and the Russian Federation is well known and has already been addressed on several occasions by the Assembly. Despite the release of some detainees, however, the overall situation continues to deteriorate. Some 70 or more Ukrainian citizens, having had Russian citizenship forced upon them, are currently detained; what is worse, many of them are suffering from health conditions that are worsening in detention, sometimes as a result of lack of access to necessary medical care.

15. In view of the lack of progress in resolving these cases, and in particular given its grave concerns about the deteriorating health of many of those in detention, the Assembly should reaffirm its position on these issues and reiterate its calls on the Russian Federation, above all for these detainees' release. The Assembly should also take this opportunity to state its view that Mr Sentsov, Mr Balukh and Mr Hryb should be considered political prisoners, in accordance with the Assembly's established definition of the term.

Appendix – List of alleged political prisoners identified by the #LetMyPeopleGo campaign

1. Teymur Abdullaev
2. Uzair Abdullaev
3. Talyat Abdurakhmanov
4. Rustem Abiltarov
5. Zevri Abseitov
6. Muslim Aliev
7. Refat Alimov
8. Kazim Ametov
9. Ernest Ametov
10. Ali Asanov
11. Suleyman (Marlen) Asanov
12. Volodymyr Balukh
13. Enver Bekirov
14. Memet Belyalov
15. Oleksiy Bessarabov
16. Asan Chapukh
17. Oleksiy Chyrniy
18. Mykola Dadeu
19. Bekir Dehermendzhy
20. Mustafa Dehermendzhy
21. Volodymyr Dudka
22. Emil Dzhemadenov
23. Arsen Dzhepparov
24. Pavlo Hryb
25. Tymur Ibrahimov
26. Rustem Ismailov
27. Yevhen Karakashev
28. Mykola Karpyuk
29. Stanislav Klykh
30. Oleksandr Kolchenko
31. Andriy Kolomiyets
32. Oleksandr Kostenko
33. Arsen Kubedinov
34. Emir-Usein Kuku
35. Serhiy Lytvynov

36. Enver Mamutov
37. Nariman Memedinov
38. Remzi Memetov
39. Emil Minasov
40. Ihor Movenko
41. Seyran Mustafaev
42. Server Mustafaev
43. Yevhen Panov
44. Yuriy (Nuri) Primov
45. Volodymyr Prysych
46. Ismail Ramazanov
47. Ayder Saledinov
48. Seyran Saliev
49. Ferat Sayfullaev
50. Oleg Sentsov
51. Enver Seytosmanov
52. Hlib Shabliy
53. Dmytro Shtyblikov
54. Oleksandr Shumkov
55. Viktor Shur
56. Mykola Shyptur
57. Vadym Siruk
58. Edem Smailov
59. Oleksiy Stohniy
60. Renat Suleymanov
61. Roman Sushchenko
62. Oleksandr Steshenko
63. Oleksiy Syzonovych
64. Roman Ternovsky
65. Ruslan Trubach
66. Rustem Vaitov
67. Valentyn Vyhivskyi
68. Andriy Zakhtey
69. Server Zekiryaev
70. Ruslan Zeytullaev