Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
75
1949 - 2024
CONSEIL DE L'EUROPE

Resolution 2573 (2024)[1]

Missing persons, prisoners of war and civilians in captivity as a result of the war of aggression of the Russian Federation against Ukraine

Parliamentary Assembly

1. Underlining its unwavering support to Ukraine in ensuring a decisive victory over the Russian Federation following the full-scale military aggression against Ukraine unleashed by the Russian Federation on 24 February 2022, the Parliamentary Assembly reiterates its condemnation of the situation related to the fate of Ukrainian prisoners of war, including foreign nationals fighting for Ukraine, as well as civilians held in Russian captivity, and will remain involved until the last captive is released, in line with President Zelensky's 10-point peace plan aimed at victory and a just peace, of which Point 4 relates to the release of all prisoners and deportees.

2. The figures speak for themselves. The Assembly is appalled that, as of 18 September 2024, a total of 65 956 military personnel and civilians were registered as missing or captured, among whom 50 916 were registered as missing based on verified data. In reality, the number of victims is much higher. The suffering and fear are endured not only by the captives themselves, be they military personnel or civilians, but also by their relatives. While 3 672 persons were released from Russian captivity between 24 February 2022 and 17 September 2024, including 168 Ukrainian civilians, the Assembly notes with concern that, among those released, a third had been hitherto considered as missing, since the Russian Federation had failed to provide timely information about their fate, contrary to its international obligations.

3. With this Resolution, the Assembly wishes to be the voice of the prisoners of war and civilian captives held in the Russian Federation or in the temporarily occupied territories of Ukraine, and of their families, so that their suffering remains high on the international political agenda of all Council of Europe member States, as well as observer States and States whose parliaments enjoy observer or partner for democracy status with the Assembly. The issue of missing persons is a humanitarian problem with human rights and international humanitarian law implications. The Assembly emphasises that the parties to an armed conflict bear primary responsibility for preventing enforced disappearances, clarifying the fate of missing persons and ensuring timely and effective investigation. Therefore, the Assembly calls for the adequate treatment of these persons in line with international humanitarian law and human rights standards, their prompt release and socio-medical rehabilitation, and the accountability of the Russian Federation and the perpetrators of war crimes committed against these persons.

4. The Ukrainian people have faced immeasurable tragedies since the full-scale military aggression by the Russian Federation. One example is particularly resonant for this Resolution, namely the mass murder and maiming of Ukrainian prisoners in the former Penal Colony No. 120 in Olenivka, in the Donetsk region, on 28 and 29 July 2022. To date, this atrocity remains unpunished and the wounded soldiers are still held in captivity. No independent investigation has been carried out since the United Nations fact-finding mission was disbanded on 5 January 2023 due to the lack of conditions necessary for the deployment of the mission on the ground. However, the Assembly welcomes the publication, on 29 July 2024 by the Office of the Prosecutor

1. *Assembly debate* on 2 October 2024 (29th sitting) (see Doc. 16050, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Mariia Mezentseva-Fedorenko). *Text adopted by the Assembly* on 2 October 2024 (29th sitting).
See also Recommendation 2285 (2024).

General of Ukraine, of the results of the criminal investigation into the Olenivka prisoners of war massacre. According to this investigation, 49 dead military personnel have so far been identified out of 193 present in the barracks at the time of the attack. At least 41 people were killed on the spot, another 9 died of their injuries due to the lack of medical assistance, and nearly 150 were injured. Charges have been brought against the head of the "Volnovakha" penal colony and his first deputy for their deliberate failure to provide timely medical care, in contradiction with the laws and customs of warfare. Although the Russian Federation has attempted to destroy and hide the traces of the crime, the United Nations High Commissioner for Human Rights has refuted its claim that the Olenivka colony was shelled by the Ukrainian military and has called on the Russian Federation to investigate and bring to justice those responsible for the deaths and injuries among these prisoners of war. So far, no response has been given to this call, but here and elsewhere the Assembly continuously stresses that justice must and will prevail.

5. The Assembly notes with great concern that, in too many instances, prisoners of war and civilian captives in the hands of the Russian Federation are effectively missing persons, as their relatives have no way of obtaining information about their fate or whereabouts except in those cases where such persons have been notified by the International Committee of the Red Cross (ICRC) or are subject to criminal proceedings in the Russian Federation or in the temporarily occupied territories of Ukraine. In this respect, it underlines the vital necessity for the ICRC to be given the possibility to carry out the role foreseen in its mandate, including regular visits to prisoners of war or civilians (whether detained for criminal proceedings or on security grounds), in accordance with the requirements of international humanitarian law.

6. The international community has not given enough attention to the topic of Ukrainian prisoners of war and civilian captives, despite the massive violations of international humanitarian law and international human rights law involved. The Assembly underlines that international humanitarian law prohibits the seizure and captivity of civilians as hostages, which is what is, in reality, being practised against Ukrainian civilians by the Russian Federation. The Assembly wishes to draw greater attention to this topic, calling on Council of Europe member States as well as observer States and States whose parliaments enjoy observer or partner for democracy status with the Assembly to spare no efforts to ensure the release of all Ukrainian prisoners of war and civilians from Russian captivity and accountability for those responsible for any crimes and violations of international humanitarian law and international human rights law committed against these persons. The Assembly stands ready to help ensure that justice prevails.

7. Recalling that the multiple human rights violations against prisoners of war and civilians held in Russian captivity have been flagged by the Assembly before, notably in Resolution 2562 (2024) "An urgent call to Europe and its partners: envisioning immediate and long-term policy solutions in support of the displaced people of Ukraine", the work carried out since April 2022 on the legal and human rights aspects of the Russian Federation's aggression against Ukraine, as well as the ongoing work regarding the need to step up efforts to liberate Ukrainian journalists held in captivity by the Russian Federation (Doc. 16020), the motion for a resolution entitled "Protecting civilians: urgent action to save civilians in Russian captivity" (Doc. 16029) and the motion for a resolution entitled "Support for political negotiations to enforce exchange and release of prisoners of war" (Doc. 16021), the Assembly calls for a new momentum to put more pressure on the Russian Federation in order to ensure the release of these prisoners and civilian captives.

8. While welcoming the return from captivity of more than 3 520 military personnel of the armed forces of Ukraine, the Assembly notes with great concern that the Department for Combating Crimes Committed in Armed Conflict of the Office of the Prosecutor General of Ukraine has identified 49 permanent detention sites for Ukrainian prisoners of war on the territory of the Russian Federation and 16 sites in the temporarily occupied territories of Ukraine, as well as 6 detention sites for Ukrainian civilians, and that more than 6 000 soldiers are still being held captive.

9. The Assembly is appalled by the findings of international mechanisms, which provide evidence on the systematic use of torture against Ukrainian prisoners of war and civilian captives. In addition to insufficient and substandard food and the denial of adequate medical support, reported ill-treatment includes systematic beatings, the use of electric shocks and rape. Unhygienic conditions of detention, overcrowding, humiliation, an unnecessary strict regime and verbal abuse were also reported.

10. The Assembly takes note of the conclusion of the United Nations Independent International Commission of Inquiry on Ukraine that acts of torture are being perpetrated by the Russian armed forces in the temporarily occupied territories of Ukraine, and by members of special units and regular personnel of the Federal Penitentiary Service of the Russian Federation, in the Russian Federation. These allegations of torture, ill-treatment and enforced disappearances have also been depicted by the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In addition, interrogations are being led by members of the Federal Security Service of the Russian Federation. The

Assembly is appalled that there seems to be no trace of the Russian Federation's membership of the Council of Europe for over two decades, during which the Organisation's standards and values should have been used and widely disseminated as a stable and enduring foundation ensuring that the authorities and their staff at all levels, including the penitentiary services, carry out their duties on every occasion in the full respect of human rights and human dignity. The Assembly urges the Russian authorities and their personnel to be mindful of and guided by international standards of human rights and human dignity in their treatment of prisoners of war and civilians in Russian captivity. The Assembly underlines the necessity to hold to account all perpetrators, in particular commanders and other superiors, and those ordering, soliciting or inducing the commission of international crimes and other violations of international human rights law and international humanitarian law.

11. There is no doubt that the treatment inflicted upon Ukrainian prisoners of war and civilians amounts to torture, prohibited by the International Covenant on Civil and Political Rights (ICCPR), as defined in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and as established by the case law of the European Court of Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), both instruments to which the Russian Federation is still a party. These practices could also amount to war crimes of torture and inhuman treatment, as well as wilfully cause great suffering or serious injury to body or health under the Geneva Conventions.

12. The Assembly notes with concern that neither Ukraine, nor the United Nations, nor any other international organisation such as the ICRC, has full and precise information on how many Ukrainian citizens have died in Russian captivity. Not only is access to prisoners of war and civilian captives frequently denied by the Russian authorities, contrary to international humanitarian law, but the Russian Federation has so far failed to confirm the identity and location of prisoners of war and civilians detained or imprisoned in connection with the ongoing armed conflict. As a consequence, these unaccounted persons cannot but be considered as "missing persons".

13. Moreover, the Assembly is appalled that a number of criminal proceedings have been launched in the Russian Federation against prisoners of war and civilians, often grouped together. The charges brought against them are various – murder, membership of a terrorist organisation, threats to national security, etc. – and are sometimes cumulative. For example, a single person has been charged under 21 articles of the Criminal Code of the Russian Federation. The Assembly recalls that, in accordance with international humanitarian law, combatants may not be prosecuted for merely belonging to armed forces and taking part in hostilities, while the criminal prosecution of prisoners of war must take place in line with the relevant provision of Geneva Convention III relative to the Treatment of Prisoners of War and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts ("Protocol I"), as well as the ICCPR. Thus, while calling for such charges to be dropped, the Assembly also insists on the urgent need to ensure full access to court rooms for legal defence and international monitors, securing procedural safeguards and judicial guarantees, as well as the right to a fair and regular trial. The Ukrainian civilians detained for the purposes of criminal prosecution or imprisoned in connection with the ongoing war of aggression of the Russian Federation against Ukraine shall benefit from the relevant rights and safeguards in line with Geneva Convention IV relative to the Protection of Civilian Persons in Time of War and Protocol I, as well as the ICCPR.

14. Moreover, the Assembly underlines that international humanitarian law and international human rights law contain rules and standards applicable in situations where persons have gone missing, including in terms of clarifying their fate and whereabouts, and requiring States to comply with certain obligations relating to the rights of the relatives of missing persons and of the deceased, namely the obligation to secure the right to life and the right to human dignity; to prohibit torture, cruel, inhuman or degrading treatment or punishment and enforced disappearances; and to ensure the right to private and family life and the right to an effective remedy.

15. The right to liberty and security under Article 9 of the ICCPR entails an obligation to account for the whereabouts of all persons when there is an arguable claim that they have been taken into custody and have not been seen since. As a result, regardless of the fact that it is not party to the International Convention for the Protection of All Persons from Enforced Disappearance, the Assembly urges the Russian Federation to provide the ICRC and relevant United Nations mechanisms, including special procedures, with access to the places where Ukrainian prisoners of war and civilians are being held, in line with international humanitarian law and international human rights law, and to be guided by the principles contained in that convention. The Assembly underlines that the enforced disappearance of persons violates not only numerous rights protected

by the ICCPR, to which the Russian Federation is a party, but also a wide range of customary rules of international humanitarian law. This practice may also constitute a crime against humanity, when committed as part of a widespread or systematic attack against the civilian population.

16. The Assembly has learned with great concern that there are cases of forced labour in the temporarily occupied territories of Ukraine, although only a few direct witnesses are still alive to give testimony, since many have died as a result of being forced into demining operations. Recalling its recent Resolution 2564 (2024) "Post-conflict time: defusing ticking time bombs for a safe return of displaced populations", the Assembly strongly condemns the use of forced labour of prisoners of war or civilian captives, in particular in dangerous zones, where they all too often fall victim to landmines and ordnance explosions.

17. Given the overall situation of a clear lack of respect for the basic rights under international humanitarian law of Ukrainian prisoners of war and civilians held in captivity in the Russian Federation or in the temporarily occupied territories of Ukraine, the Assembly highlights the need to strengthen the existing international mechanisms to both scrutinise and report on the various manifestations of breaches of such law by the Russian Federation. The Assembly calls upon the Russian Federation to fully respect the rules and customs of war which it has committed to under international humanitarian law, breaches of which constitute crimes for which the perpetrators will be held accountable.

18. The Assembly strongly deplores that the Russian Federation is not providing full access to Ukrainian prisoners of war and civilians, contrary to the requirements of the Geneva Conventions III and IV and Protocol I. Regarding prisoners of war, the Assembly considers it crucial that the ICRC gains immediate and unimpeded access to all places of detention, in accordance with the terms and powers of its mandate. It calls upon the Russian Federation to fully respect this right to access for the ICRC and asks the international community to support and encourage the fulfilment of this mandate.

19. Recalling the very essence of the ICRC's mission, that is to ensure respect for international humanitarian law and other fundamental rules, and underlining the repeated violations of international humanitarian law and international human rights law by the Russian Federation, the Assembly calls upon the ICRC to consider making an exception to its confidentiality approach by publicly providing information on the issues it is facing in gaining full access to Ukrainian prisoners of war, if this does not go against the interests of the prisoners of war themselves.

20. The Assembly recognises the scope of the mandate of the ICRC and the possible constraints this may impose. In this respect, the Assembly welcomes the dialogue it has engaged with the ICRC on the topic of forcibly displaced Ukrainians (particularly children), prisoners of war and civilian captives, and hopes to further develop such dialogue in order to support and work with the ICRC in fulfilling its mandate and ensuring the safe return of these people to Ukraine.

21. The Assembly considers that the publication of disaggregated data in ICRC reports would provide more transparent information on the places where prisoners of war are held, since it is currently impossible to distinguish between different types of visits in these reports and to know whether these visits concern Russian or Ukrainian prisoners of war. Thus, while it is clear that the ICRC has been granted access to Ukrainian places of detention for Russian prisoners of war, it is less obvious to determine the extent to which access has in reality been granted in the Russian Federation or the temporarily occupied territories of Ukraine where prisoners of war are held.

22. The Assembly notes the role played by the intervention of third parties in exchanges of prisoners of war (including captive Ukrainian civilians in some cases). While welcoming all such exchanges, the Assembly encourages the establishment of a more permanent mechanism for the exchange or release of Ukrainian prisoners of war and civilian captives in the Russian Federation or in the temporarily occupied territories of Ukraine, with the active involvement of the ICRC and other relevant stakeholders which could positively influence the outcome. In this respect, the Assembly supports the idea of an "all for all" exchange, that is, a comprehensive swap that would involve both parties exchanging all captured individuals, without leaving anyone behind. Indeed, such an approach could be a means to build up mutual confidence in this matter, as it would address humanitarian concerns and bring relief to families affected by the conflict.

23. Recalling Resolution 2482 (2023) "Legal and human rights aspects of the Russian Federation's aggression against Ukraine", the Assembly welcomes the fact that a number of countries have already exercised universal jurisdiction in cases related to the war of aggression against Ukraine, regardless of where the alleged crime was committed and irrespective of the accused's nationality, country of residence or any other connection to the prosecuting entity. It urges Council of Europe member States and other States to make use of the principle of universal jurisdiction, in accordance with their national legislation, to investigate and prosecute the perpetrators of alleged crimes committed in relation to the deprivation of liberty, treatment

and prosecution of Ukrainian prisoners of war and civilian captives. The Assembly also calls for increased support for and participation in the activities of the joint investigation team into alleged core international crimes committed in Ukraine based at Eurojust and the investigation conducted by the Office of the Prosecutor of the International Criminal Court.

24. The Assembly is convinced that the International Criminal Police Organization (INTERPOL) could play an effective role in the search for war criminals who have committed crimes against Ukraine and Ukrainians. It calls on other international organisations and all States to facilitate the search for and prosecution of war criminals, using not only criminal law but also administrative measures, such as expulsion from third countries.

25. The United Nations and the Moscow Mechanism of the Organization for Security and Co-operation in Europe (OSCE) have found that the use of torture by the Russian authorities in the Russian Federation and in the temporarily occupied territories of Ukraine has been widespread and systematic, in particular as regards the horrific treatment of Ukrainian prisoners of war and civilians held in detention facilities in the Russian Federation. As prisoners of war and civilian captives are released and returned, it is crucial that appropriate rehabilitation programmes are made available, in collaboration with the authorities and civil society organisations already working in this field, and with adequate financial and expert resources to provide the long-term comprehensive support needed. The Assembly believes that a dedicated programme will be necessary, with sufficient funding allocated, which can cater to the complex medical, psychological and social rehabilitation needs of released persons. The Council of Europe and its member States could play an important role in providing both expertise and financial support to such an initiative, to which frozen assets of the Russian Federation might also be dedicated.

26. The Assembly welcomes the establishment of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine (“the Register”). It is a significant international effort and the first step towards a mechanism that will ensure justice and compensation for Ukraine and its people, and which aims to create a factual and evidentiary basis for reparations for the Russian Federation’s violations of international law. Acknowledging that war crimes often go unpunished without adequate documentation, the Assembly believes that each claim submitted to the Register will demonstrate the human cost of the war and constitute a step towards personal justice, acknowledgement and recognition of the harm done, even before any reparative measures are in place. The Assembly strongly encourages the submission of claims so that the Register acts as an archive for future generations, ensuring that the experiences of prisoners of war and their families are preserved in history. Moreover, it strongly believes that submitting claims to the Register is essential for ensuring justice, compensation and accountability. Furthermore, the Assembly considers the Register as an important tool to empower victims and their families to have a voice in shaping the post-war legal and humanitarian landscape, to hold the aggressors accountable and to seek rightful reparations. The Assembly thus calls on all Council of Europe member States as well as observer States and States whose parliaments enjoy observer or partner for democracy status with the Assembly which have not yet done so to join the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine.

27. While deploring that 30 Ukrainian civilian journalists and media workers remain unlawfully detained in appalling conditions by the Russian Federation, the Assembly welcomes the release of Crimean Tatars together with prisoners of war and civilians from Russian captivity on 28 June 2024. The Assembly recalls that, although the illegal Russian detentions started back in 2014, many of those abducted have been captured since the beginning of the full-scale war in 2022. The Assembly underlines that the situation in temporarily occupied Crimea remains particularly difficult, and it urges its members to engage their governments, civil society and media networks to raise awareness of the plight of Ukrainian journalists. The Assembly also calls for sustained international pressure on the Russian Federation to release the detained journalists and to provide immediate access for independent international bodies to inspect the conditions in which these journalists are being held. Here too, the international community must insist on transparency and accountability to protect the human dignity and rights of those unlawfully imprisoned.

28. The Assembly wishes to express its appreciation for the work carried out by the Ukrainian authorities, including the President’s Office, the Co-ordination Headquarters for the Treatment of Prisoners of War, the Office of the Prosecutor General of Ukraine, the Security Service of Ukraine, the Ministry of Internal Affairs, in particular the Office for Missing Persons in Special Circumstances (Secretariat of the Commissioner for Missing Persons in Special Circumstances), the State Boarder Guard Service of Ukraine and the Ombudsman of Ukraine, which work together and spare no efforts in ensuring the release of prisoners of war and civilians in Russian captivity and in clarifying the fate of missing persons.

29. Acknowledging the role civil society organisations play in supporting the families of prisoners of war and civilian captives, the Assembly recommends that co-operation be increased with them. Such co-operation would entail providing them with financial support, sharing best practices and promoting advocacy efforts aimed at maintaining international attention on this issue.

30. Commending the Office of the Prosecutor General of Ukraine for the criminal proceedings it has undertaken concerning the deprivation of liberty of 14 938 civilians, the Assembly looks forward to the completion of these proceedings in line with the requirements of the European Convention on Human Rights (ETS No. 5) and of Ukrainian legislation.

31. Acknowledging that not all released civilians have returned to Ukraine, the Assembly encourages the Council of Europe member States to support their relocation to third countries for those who so wish.

32. Conscious that the issue will not be solved in a short period of time and that co-ordinated efforts will have to be strengthened, the Assembly will remain seized of the topic of Ukrainian prisoners of war and civilians held in captivity by the Russian Federation until the last person is released.