



LEGAL ALERT

October 2016

1. Parliamentary Assembly of the Council of Europe on 12th October 2016 has adopted a Resolution 2133 (2016) with regard to Ukrainian context.

The Resolution named "Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities" focuses on human rights violations and responsibility for them in Crimea, Donetsk and Luhansk regions. The highlights of the Resolutions are the following:

- The "DPR" and "LPR", established, supported and effectively controlled by the Russian Federation, do not enjoy any legitimacy under Ukrainian or international law. This applies to all their "institutions", including the "courts" established by the *de facto* authorities.
- Under international law, the Russian Federation, which exercises *de facto* control over these territories, is responsible for the protection of their population. Russia must therefore guarantee the human rights of all inhabitants of Crimea and of the "DPR" and "LPR"
- Regarding Crimea, Russian military presence and effective control have been officially acknowledged by the Russian authorities. Regarding the "DPR" and the "LPR", effective control is based on the well-documented crucial role of Russian military personnel in taking over and maintaining control of these regions, against the determined resistance of the legitimate Ukrainian authorities and on the complete dependence of the "DPR" and "LPR" on Russia in logistical, financial and administrative terms.
- Victims of human rights violations have no effective internal legal remedies:
 - "DPR" and "LPR" local "courts" lack legitimacy, independence and professionalism; the Ukrainian courts in the neighboring government-controlled areas are difficult to reach, cannot access files left behind in the "DPR" and "LPR" and cannot ensure the execution of their judgments in these territories;
 - regarding Crimean residents, the climate of intimidation also 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.
- In the conflict zone in the Donbas region, the civilian population as well as a large number of combatants suffered violations of their rights to life and physical integrity and to the free enjoyment of property, by 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.
- Numerous inhabitants on both sides of the contact line still suffer on a daily basis from numerous violations of the ceasefire agreed in Minsk. These violations are documented daily by the OSCE Special Monitoring Mission in 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 of 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.
- The Assembly therefore urges:
 - the competent authorities, both in Ukraine and in the Russian Federation, to:
 - effectively investigate all cases of serious human rights violations;
 - prosecute their perpetrators to discourage any such violations in future;
 - compensate their victims to the extent possible;
 - accede to the Rome Statute of the ICC;
 - fully implement the Minsk Agreements;
 - 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.

This document while being political in its nature is a roadmap for actions that may be taken into account by the humanitarian and human rights actors working in Ukraine. It also may be used in the arguments of human rights violations in NGCA and Crimea with regard to the country responsible for certain types of human rights violations before the international judicial bodies, including the European Court of Human Rights.

The full text of the PACE Resolution may be found here:

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23167&lang=en>

2. Cabinet of Ministers of Ukraine (CMU) has allocated funding for building a dam on Northern Crimean Channel till the end of 2016

The Crimean Peninsula depends on the water supply from the Dnipro river for both agricultural purposes and for drinking water for the population. Since March 2014 the supply was partially interrupted, and the political discussion now revolves around the decision of either totally blocking the water supply for Crimea (see our analysis of the Draft Law 3593-D

in the previous Legal Alert) or accounting the amount of water supplied to Crimea in order to bill such services.

On 11 October 2016 CMU has adopted Decree No. 738, which allocates over 15 mln. UAH for finishing the dam on the channel that supplies water to the Crimean Peninsula before the end of the year. Despite the fact the document does not specify type of the dam, it is reasonable to suggest that the construction will be used for either accounting or blocking the water supply.

We would consider monitoring this issue as it may trigger humanitarian issues related to water supply.

Text of the Resolution may be found here: <http://zakon5.rada.gov.ua/laws/show/738-2016-%D1%80>

3. Joint position on the Draft Law 3593-D was elaborated in collaboration with UNHCR, Right to Protection, Vostok-SOS and Crimea-SOS

In our previous Alert we have stressed on the points of concern of the Draft Law 3593 aimed at defining legal regime of the “temporarily occupied territories”. Please find attached the joint position bearing key advocacy points.

4. Check point “Zaytsevo” was transferred to check point “Mayorsk”, several kilometers further to the “grey zone”

On 21 October 2016 check point “Mayorsk” started operating which according to Donetsk oblast State Administration allowed 9 villages to be now part of GCA instead of the “grey zone”. The authorities plan the check point to allow daily crossing of 7-8 thousand pedestrians and up to 2 thousand cars. It is also promised that a bank, pharmacy and heating station will function at the check point.

As for the moment the humanitarian actors working in that area report that the conditions at the check point are not comfortable for people, lacking in heating and other facilities.

Information from official website of Donetsk CIMIC may be found here: <http://dn.gov.ua/u-majorsku-rozpochalo-svoyu-robotu-kpvv/>

This analysis is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of Danish Refugee Council and do not necessarily reflect the views of the USAID or the United States Government.