

N 151-17  
13.10.2017

**TO:**  
**President of Ukraine**  
**Poroshenko P.O.**

**Commissioner of the President for the Peaceful  
Settlement of the Situation in Donetsk and Luhansk  
Regions, people's deputy**  
**Gerashchenko I.V.**

**Minister of Justice of Ukraine**  
**Petrenko P.D.**

**Ukrainian Parliament Commissioner for Human  
Rights**  
**Lutkovska V.V.**

**United Nations Monitoring Mission on Human Rights  
in Ukraine**

**The International Committee of the Red Cross**

On behalf of the non-governmental organizations that are signatories below, we are addressing you with problematic questions regarding individuals who, from the beginning of the military conflict in eastern Ukraine, have been serving sentences in detention centers in the temporarily uncontrolled territories in the Donetsk and Luhansk oblasts and in the temporarily occupied territory of Crimea.

The problems of these individuals were and still remain unresolved, in particular, the issue of the application of national legislation on the enrollment of duration of serving the sentences, the restoration of documents and resocialization is still being unresolved; the pressure exerted on Russia and the so-called "representatives of the ORDLO" in the matters of admission of the international organizations representatives to detention centers in order to improve conditions of detention has gain no results.

More detailed information on the situation of convicts who are currently being held in detention centers in the temporarily uncontrolled territory of Donetsk and Luhansk regions and in the temporarily occupied territory of Crimea is given in the appendix.

In this regard, we appeal to you to take measures to address the following issues:

1. Ensuring access of international organizations representatives currently working in temporarily uncontrolled territories to detention centers and to convicts as well;
2. Intensify the negotiations, including the ones in context of the Minsk Agreements, regarding transfer of convicts to the territory under the Ukrainian government control for the further serving of a sentence;
3. To regulate at the legislative level the status of convicts who are forced to serve their sentences in a temporarily uncontrolled territory of Donetsk and Lugansk regions or have already been transferred to a controlled territory.

- 4.To intensify activity regarding the persons who were and still stay in penal institutions and in prisons on the temporarily occupied territory of Ukraine, given the complete absence of this issue legislative regulation.
- 5.To initiate the implementation of the international mechanisms for the Ukrainian citizens returning (the 1993 Minsk Convention, the 1978 UN Convention and the European Convention of 1983).
6. To determine the exact number of the persons who are serving their sentences in Crimea, via visits of the consular offices of Ukraine representatives with the assistance of the Ministry of Foreign Affairs of Ukraine to penal institutions and prisons.

Annex on 4 pages.

Regards,

Vadim Valko, Chief Coordinator of the Donbass SOS

Yevhen Zakharov, Director of the "Kharkiv Human Rights Protection Group"

Valeriy Novikov, Chairman of the Board of the LORIS "Alternative"

Arkady Bushchenko, Executive Director of the UHHRU

Tetyana Durneva, executive director of the public company "Civic Holding" GROUP OF INFLUENCE "

Volodymyr Berezin, Head of the "Bahmat" NGO

Alexander Romantsov, deputy chairman of the "Center for Civil Liberties"

Mykola Kozyrev, chairman of the board of the "Public Committee for the Protection of Human Rights"

Maria Tomak, NGO "Media Initiative for Human Rights" Coordinator

Shcherbak Gennadiy, Head of the "Mirny Bereg" NGO

Tamila Tasheva, the Head of the Board "Crimea SOS" NGO



***The situation of convicts being held in detention places in the temporarily uncontrolled territory of Donetsk and Luhansk regions.***

From the beginning of the conflict in eastern Ukraine, the problems of individuals being held in detention centers in a temporarily uncontrolled territory were and still remain unsolved.

According to information released on the State Penitentiary Service of Ukraine website (<http://www.kvs.gov.ua/peniten/control/main/uk/publish/article/757958>) as a result of military aggression against Ukraine in its eastern regions a number of detention centers remained in a territory temporarily uncontrolled to the state authorities, namely:

- 14 centers in the Donetsk region containing 9,700 people;
- 14 centers in the Luhansk region containing 6,500 people.

Together, this amounts to 16,200 people.

On November 14, 2014, the Decree of the President of Ukraine adopted the decision of the Council of National Security and Defense on urgent measures to stabilize the socioeconomic situation in the Donetsk and Luhansk regions.

The National Security and Defense Council's decision mandated the Ministry of Justice of Ukraine to take measures in order to ensure the transfer of the State Penitentiary Service of Ukraine institutions, convicts and detainees from ATO area into other regions of the country, as well as making proposals for the amnesty of individuals serving sentences in these institutions and convicted of crimes of small and medium severity.

It was possible to transfer only 178 convicted individuals and those detained from Donetsk region to the territory under the control of the government, except for the convicts of the Chervonopritsa women's colony No. 68 in the Luhansk region (transferred to Kachanivska colony in Kharkiv in 2014) and no convicted person was transferred from Lugansk region.

***Problematic issues arising in connection with the stay of individuals sentenced by the state of Ukraine in temporarily uncontrolled territories are as follows:***

**1. The status of individuals who "serve the sentence" in a temporarily uncontrolled territory.**

The lack of legal grounds for the detention of individuals in detention centers in temporarily uncontrolled territories entails a number of unresolved issues related to substantiation of detention, grounds and terms of dismissal, including conditional release, in accordance with the decisions of the courts of the so-called "DNR" and "LNR".

**2. Changing the detention conditions**

After the summer of 2014 a big amount of convicts have had the articles under which the punishment is carried out and the detention regime is determined changed, which adversely affected such individuals. (Donetsk region)

**3. Physical safety issues**

Some of detention centers have happened to be located at the epicenter of hostilities, having the people serving the sentence at such facilities endangered including some being wounded and killed. There is also evidence of the use of convicts as a "living shield". There is no information on the investigation and punishment of the ones guilty of convicts being wounded and killed as a result of hostilities.

**4. Detention conditions in detention centers**

Ensuring safety and satisfactory conditions of detention: water supply, heating, food, medical care, etc.

**5. Observance of the right to family and private life**

Ability to be in touch with relatives during the time of serving a sentence.

## **6. Application of national legislation**

An inability of application to individuals who are incarcerated at temporary occupied territories, criminal proceedings in national law field, including parole, probation, release on health ground, "Savchenko's act" till the moment of actual transfer of individual to the controlled territory.

A lot of individuals located at temporary occupied territories that have justificatory court decisions. Under the Ukrainian legislation, they are not convicted anymore, but they are still kept under guard. So they are captives, but no one talks about it.

## **7. Transfer of individuals**

The procedure and mechanism of bringing the individuals convicted by Ukraine back under the legislation of Ukraine.

## **8. Provision of documents**

Provision of individuals being released from the detention places in a temporarily uncontrolled territory with appropriate documents (passport, identification code and other documents).

## **9. Status after transfer**

Enrollment of the serving the sentence after moving from the detention centers and determining the further status of people convicted.

## **10. Re-socialization**

Issues of re-socialization and control over it proceeded by the state authorities. Convicted individuals, who were released on parole in accordance with the laws of the so-called LP / DNR, are often afraid to come to the territory legislated by Ukrainian laws.

## **11. Cases review concerning individuals placed in detention centers on uncontrolled territories.**

It is necessary to regulate the conduct of pre-trial and judicial consideration of cases concerning individuals who were detained and sentenced by illegal institutions of the so-called "DNR" and "LNR".

In the detention centers in the temporarily uncontrolled territory of Donetsk and Luhansk regions, following the evidence of individuals serving sentences, and relatives who continue to serve there, the following facts of violations of the rights of convicted individuals are occurred:

1. Use of forced labor, gratis labor (as opposed to the situation in detention centers in the controlled area), forced labor (record of work from 7.00 to 00.00);
2. Inadequate and unsatisfactory nutrition of convicts, the most difficult situation was during the period of active hostilities;
3. lack of medical service for the convicts, the most difficult situation occurred during the period of active hostilities (the death of two wounded was recorded due to lack of timely medical assistance). Difficult situation considering convicts having chronic diseases. (cases are documented when the patients do not get proper medical care and relatives are not able to transfer medicines to uncontrolled territory, which has led to a significant deterioration in the health status of convicts);
4. persecution for "pro-Ukrainian" position (there is evidence of a case when the convict had his jaw broken for performing national anthem of Ukraine; the case when the convicted person was kept in a isolation for more than three months which this greatly influenced his mental health);
5. lack of mechanism and factual possibility of the majority of people in detention centres for applying for transfer to a controlled territory of Ukraine for further servicing of a sentence (not

acceptance of the application, absence of registration, absence of movement to subsequent instances);

6. Threatening individuals willing to apply for transfer to a controlled territory to serve a sentence there.

7. Deprivation of the possibility to contact with relatives;

8. refusal to transfer individuals whose place of registration is in Donetsk and Luhansk regions and citizens of the Russian Federation (Donetsk region);

9. refusal to actually release individuals who were released by the decision of the national court of Ukraine. There were recorded cases of refusal to release a convicted person in accordance with court decisions on dismissal in the order of amnesty, cases of denial of release of a convicted person as a result of the cancellation of a sentence by the Ukrainian court, rulings of Ukrainian courts regarding the enrollment of the term of imprisonment in the term of punishment at the rate of one day in two.

10. There are documented cases of regular beating of convicts held in the temporarily uncontrolled territory in the Luhansk region by unknown individuals in military uniforms in masks (there is evidence that the convicted individuals receive serious injuries right after the arrival of these individuals to the detention center)

11. Not far from the colonies there are hostilities happen often thus exposing the convicted prisoners to the strike in response. (such facts have been recorded in Donetsk and Luhansk regions)

### **Features of the situation of convicts in the temporarily occupied territory of Ukraine**

The problematic of the situation of persons in penal institutions and places of non-freedom in the temporarily occupied territory of Ukraine is similar to the situation in the NGCA of Donetsk and Luhansk regions:

- absence of sufficient medical care or provision of unskilled medical care that leads to death,
- bad nutrition,
- coercion into physical labor.

However, in the context of this issue, it is necessary to note the "special" aspects of the situation of such persons in the territory of occupied Crimea.

**1. Enforced acquisition of the citizenship of the Russian Federation.** There are cases where the destruction of documents certifying the identity of a citizen of Ukraine and issuance of "Russian" passports. In turn, this complicates the procedure for returning to GCA of Ukraine and subsequent restoration of documents, taking into account the need for identification of a person in the departments of the State Migration Service of Ukraine.

**2. The convicts are transferred to the territory of the Russian Federation.** From open sources, it is known that there are approximately 2,200 people transferred. The cases of mass transfer of convicts from Crimea to other prisons were revealed. This situation is conditioned by the difference in the classification of institutions, the lack of institutions for coercive treatment in the system of penitentiaries in the Russian Federation, etc. Such a transfer is used as a "punishment" for refusing from Russian citizenship.

**3. There is no mechanism for returning the convicted to a controlled part of Ukraine and any regulation of their status.** Activities were initiated at the legislative level concerning prisoners and non-freedom institutions on the NGCA of Donetsk and Luhansk oblasts (for example, the Decree of

the President of Ukraine dated November 14, 2014, No. 875 on the transfer of institutions, draft law "On the status of prisoners"), and the temporarily occupied territory remained out of sight .

**4. Illegal detention and bringing to justice the decision of illegally created courts in Crimea.**

Currently, there is information about 45 convicts (including, Crimean Tatars) in:

- The "Hizb ut Tahrir" (the organization that is banned in Russia and recognized as "terroristic"),
- "The case of Umerov, Semena's case,
- Kadyrov's case - on charges for calls to violate the territorial integrity of the Russian Federation and separatism,
- "Case of the saboteurs" - accusations of committing acts of terrorism,
- "Case of February 26",
- "Case of Sentsov and Kolchenko" and others.

**5. The use of torture for persons serving sentences and those detained for obtaining confessions.** According to the results of the UN study "Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", there were, among other things, cases of illegal detention, the use of physical and psychological violence, threats and intimidation of relatives of detained persons, lack of protection of defenders.