

# DISCRIMINATION AGAINST CONVICTED AND IMPRISONED CITIZENS OF UKRAINE BY THE RUSSIAN FEDERATION



Regional  
Center For  
Human Rights

**TRANSITION**  
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In February 2014, in violation of international law, the Russian Federation occupied and subsequently extended its legislation to the territory of the Crimean peninsula. At the same time, the Russian Federation launched a policy aimed at forcibly changing the demographic composition of the population, one of the components of which is the transfer of Ukrainian citizens out of the peninsula to «serve sentences» of deprivation of freedom or restriction of freedom.

As of 2022, the Russian Federation has transferred more than 12,500 convicts from the occupied Crimean peninsula to its territory to at least 102 correctional institutions in 42 regions, including Omsk, Orenburg, Penza, Nizhny Novgorod regions, Komi, Mordovia and Yakutia (Sakha) Republics, Krasnoyarsk, Magadan, etc. In addition, a convicted person may be transferred across the territory of the Russian Federation several times during one sentence at the discretion of the Federal Penitentiary Service (FSIN).

**The discriminatory nature of the policy of the Russian Federation regarding the transfer of prisoners and citizens of Ukraine to its territory is manifested in the following:**

**I. Convicts**

In June 2014, the first group of Ukrainian citizens who were convicted on the territory of the Autonomous Republic of Crimea (most of them convicted by Ukrainian courts) were transferred to the territory of the Russian Federation «to serve their criminal punishment». The Russian Federation explained such actions by the need to comply with the provisions of Article 73 of its own Criminal Executive Code (KIK), which authorizes penitentiary bodies to determine the place of serving the sentence for convicted persons.

At the same time, the provisions of the first paragraph of Article 76 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War were completely ignored. This provision stipulates that protected persons, if accused of offenses in the occupied territory, must serve their sentences therein.

Since June 2014, such deportations have become an administrative practice of the Russian Federation, which systematically transfers Ukrainian citizens sentenced to deprivation of liberty to its own territory.

Such transfers have signs of discriminatory treatment, as compared to a similar group of Russian citizens convicted in the occupied territory and transferred to serve their sentences in the territory of the Occupying Power, Ukrainian citizens find themselves in a much worse situation: on the territory of a hostile Power to which all connections have been lost, from postal to transport, which effectively implies that the convicts cannot see their relatives, receive assistance from them or communicate. In addition, citizens of Ukraine are deprived of the opportunity to openly demonstrate their affiliation with the Ukrainian national group, in particular, to communicate in Ukrainian, to celebrate holidays and memorable occasions, as this may be qualified as a criminal offense under the Russian legislation. An additional obstacle to the manifestation of their own identity is that, in violation of Article 76(1) of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, the Occupying Power keeps them in detention with its own citizens, rather than separately, as required by the provision. This poses additional threats to Ukrainians deprived of their freedom, who are exposed to aggression from convicted Russian citizens.

The reason for the discrimination in the situation described is that the Russian Federation applies the apparently neutral provision of Article 73 of its own Criminal Executive Code (KIK) and treats Ukrainian citizens in the same way as its own citizens. Such treatment results in Ukrainians being in a much worse position, thus indirect discrimination takes place.

Since the only ground for discrimination is the citizenship of the convicts, according to Article 1 of the UN Convention on the Elimination of All Forms of Racial Discrimination, this situation must be qualified as racial discrimination.

## **II. Persons in the status of defendants**

Since late 2015, the Russian Federation has been systematically transferring Ukrainian citizens in custody from the occupied territory to its own territory pending trial of their criminal cases, usually in cases of so-called «terrorism», most of the defendants in which are Crimean Tatars.

The Russian Federation justifies such actions as necessary to comply with the provisions of Article 31, paragraph 6.1 of its own Criminal-Procedural Code, which defines the jurisdiction over the Crimean «terrorism» cases to the Southern District Military Court of the Russian Federation, located in Rostov-on-Don (formerly the North Caucasus District Military Court).

The provisions of the first paragraph of Article 66 of Geneva Convention (IV) were completely disregarded. This provision stipulates that the consideration of cases against the accused in the occupied territory persons shall take place in the occupied country.

In 2015–2016, such deportations became an administrative practice of the Russian Federation, which persists to this day.

The arguments supporting the fact that such treatment is discriminatory are similar to those described above.

### **III. Female convicts, minors and persons suffering from somatic diseases and mental illnesses**

The nature of the discriminatory treatment of this category of Ukrainian citizens lies in the fact that the Russian Federation has not provided for the possibility of serving their criminal sentences on the territory of the Crimean peninsula – all of them are mandatorily deported to the Russian Federation with reference to the lack of appropriate penitentiary institutions in Crimea. Such actions are also a violation of Article 76(1) of the Convention (IV) relative to the Protection of Civilian Persons in Time of War.

This differential treatment is based on the grounds of gender, age and state of health, respectively. Since it lacks a reasonable and objective justification, such treatment should be qualified as direct discrimination.

### **Legal qualification of the discriminatory practice of the Russian Federation against Ukrainian citizens convicted in Crimea**

Russia's discriminatory policy on the transfer of Ukrainian prisoners violates Customary Rules 129 and 130 of international humanitarian law, as well as Articles 49, 66 and 76 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War.

Deportations in violation of Article 49 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War constitute a serious violation of the laws and customs of war under Article 85 of the Additional Protocol (I) to the Geneva Conventions and may be qualified as a war crime under Article 8(2)(b)(viii) or a crime against humanity under Article 7(1)(d), and, under certain conditions, under Article 7(1)(h) of the Rome Statute of the International Criminal Court.

## Responsible persons

At the federal level, responsibility for the illegal deportations of Ukrainian citizens from among the convicts lies with the persons who directly make decisions on the formulation of this discriminatory policy, in particular, with the following:

- **President of the Russian Federation Vladimir Putin;**
- **Prime Ministers Dmitry Medvedev (2012–2020) and Mikhail Mishustin (since 2020);**
- **Chairperson of the Federation Council of the Federal Assembly of the Russian Federation Valentina Matvienko;**
- **Sergey Naryshkin (2011–2016) and Vyacheslav Volodin (2016–present), Chairpersons of the State Duma of the Federal Assembly of the Russian Federation.**

As far as the level of the 'Republic of Crimea', the responsible persons are Sergey Aksyonov, the Head of the 'Republic of Crimea', and Vladimir Konstantinov, the Chairman of the State Council of the 'Republic of Crimea', who facilitated the implementation of Russian federal policy in Crimea and made decisions that affected the exercise and protection of fundamental human rights and freedoms.

The lowest executive level of the policy of transfer of Ukrainian prisoners are the persons who executed the sentences of the occupation courts and were involved in the process of transferring prisoners from the occupied territory, in particular, the Head of the Federal Penitentiary Service for the 'Republic of Crimea' Vadim Bulgakov and the Head of the 'Penitentiary Service of Russia for the Republic of Crimea and Sevastopol' Ivan Kuz.

The full text  
of the analytical report



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