

**DISCRIMINATORY
INTERFERENCE WITH
THE PROPERTY RIGHTS
OF UKRAINIAN CITIZENS
IN CRIMEA BASED ON
THE DECREE OF THE
PRESIDENT OF THE
RUSSIAN FEDERATION
NO. 201 OF 20.03.2020**



Regional
Center For
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TRANSITION
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In March 2020, Decree No. 201 classified most of Crimea as the so-called "border areas of the Russian Federation". This status was given to 11 out of 14 districts of the Autonomous Republic of Crimea, 8 out of 11 territories subordinated to town councils of the Autonomous Republic of Crimea, 4 out of 4 districts of the city of Sevastopol

The Land Code of the Russian Federation prohibits foreigners from owning land plots in the «border areas of the Russian Federation». In addition, a similar prohibition for foreigners applies to agricultural plots, regardless of whether they are located in the «border area». If such property is owned by foreigners in Crimea, they are obliged to alienate it within a year following the adoption of Decree No. 201. Otherwise, the land plot may be sold at a public auction or transferred to state or municipal ownership of the Russian Federation in court. The value of such a plot must be compensated to the former owner, but it is estimated by the authorized bodies of the Russian Federation and may be less than the market value, and in the event of an unsuccessful auction, it may be further reduced by 25% or even 50%.

These legal consequences are also applicable to Ukrainian citizens on the territory of Crimea (Ukraine), since the Russian Federation, contrary to international law, considers Crimea its own territory and has extended its national legislation to it.

Thus, a new discriminatory mechanism for depriving Ukrainian citizens of their ownership of land plots with a deferred term of sale was effectively introduced. This mechanism is also applicable to immovable property on the plots, as owners are forced to «voluntarily» alienate both properties at once, otherwise the transaction will not be registered by a notary in accordance with Russian law. The very «voluntariness» of the alienation of property is elusive, as owners are forced to do so under the threat of deprivation of property rights without any market compensation.

The owners are given several options to sell their property or to avoid the application of Decree No. 201 in Crimea: sell, gift, give up their property free of charge in favor of the Russian Federation or obtain Russian citizenship. Sale or gifting involves the payment of taxes to the Russian budget, which further reduces the value of the property. Alienation of property is offered by the occupation administrations as a way to preserve real estate on the site, which implies the conclusion of a land lease agreement with the administration in the future. In turn,

the acquisition of Russian citizenship is presented as the «easiest» way to retain property, as Decree No. 201 does not apply to Russian citizens. Thus, Russia pursues its colonization policy towards Crimea, in particular, by expelling disloyal Ukrainian citizens from the peninsula or forcing them to recognize themselves as Russian citizens.

Meanwhile, the Russian Federation has created the most uncomfortable conditions for the «voluntary» alienation of land plots. In March 2020, under the pretext of fighting COVID-19, Russia imposed a ban on the entry of Ukrainian citizens into Crimea which was effective until 17 March 2022. Subsequently, the possibility of entering the territory of Crimea was obstructed by the full-scale invasion of the Russian Federation, and on 1 March 2022, the President of the Russian Federation established a special procedure for obtaining permits for transactions by «citizens of unfriendly states.» In addition, the current sanctions regime imposed on the Russian Federation makes it almost impossible to withdraw funds after the sale of property, and the Russian Federation further requires the use of special bank accounts for such transactions.

Nevertheless, forcing owners to alienate their property or acquire Russian citizenship resulted in a decrease in the number of plots owned by foreign citizens in the so-called «border areas» of Crimea by almost 50% (from 13,859 to 7,003) between April 2020 and April 2023. Moreover, 83% of the total number of plots belonged to Ukrainian citizens (11,622). That is, the effect of the policy of forcing the alienation or acquisition of citizenship under the threat of future deprivation of property rights is rather significant.

Not long before the full-scale invasion began, the first decisions of the occupation courts of the Russian Federation were made, imposing an obligation on Ukrainian citizens to alienate land plots in Crimea within a period determined by the court. Such decisions do not provide for the sale of property, but rather force the owners to «voluntarily» alienate it or obtain a Russian passport. In other words, subsequently, the occupation structures must re-apply to the court with a request to sell the land at an auction. At the same time, it is also possible that the Russian authorities will simply initiate a forced sale procedure after the expiration of the period for «voluntary» alienation granted to the owners.

It was already in July 2022 that the first decisions were made on the forced sale of land plots at an auction, which in the spring of 2023

became widespread almost throughout Crimea. As of 1 September 2023, a total of 218 decisions of the occupation courts were identified, including 138 decisions imposing an obligation to alienate the land and 80 decisions on forced sale. In 76% of cases, the decisions concerned Ukrainian owners (167 decisions).

The instigators of such proceedings are the administrations and prosecutors of the respective municipalities, as well as the 'Ministry of Property and Land Relations of the Republic of Crimea' and the 'Department of Property and Land Relations of Sevastopol'.

In general, the decision concerned plots with a total area of more than 1.900.000 sq m. However, the largest of them are agricultural plots, covering an area of more than 1.650.000 sq m, although they account for only 17% of all plots. In other words, Russia is simultaneously applying two «legal» grounds for interfering with the property rights of Ukrainian citizens, namely the prohibition for foreigners to own land in the «border areas of the Russian Federation» and agricultural land.

Legal assessment

Russia's discriminatory interference with the property rights of Ukrainian citizens has signs of a war crime and a crime against humanity. The adoption of Decree No. 201 and the pressure on Ukrainian citizens have been repeatedly condemned by UN institutions as a violation of international humanitarian law and international human rights law.

The Russian Federation does not recognize the fact of occupation and applies its own national legislation to the territory of Crimea as it would to any other Russian region, which is contrary to Article 43 of the Hague Regulations to the Hague Convention IV of 1907 (Hague Regulations). The imposition of Russian citizenship as a way to avoid interference with property rights forces Ukrainian citizens to obtain a Russian passport and swear allegiance to the Russian Federation, in violation of Article 45 of the Hague Regulations.

In addition, international humanitarian law prohibits unreasonable interference with private property rights of civilians. The uncompensated seizure of property (confiscation) is prohibited, but under certain conditions, the seizure of property with subsequent compensation for its value (requisition) is allowed in accordance with Articles 46, 52, 53 of the Hague Regulations.

Currently, Ukrainians are being deprived of their ownership of land plots through requisition, as the occupation legislation provides for future compensation. At the same time, the amount of compensation may be significantly less than the market value of the property, and may be further reduced by 25% or even 50% during the auction. Therefore, the compensation may not be proportional. Moreover, access to such funds is limited due to sanctions and banking restrictions imposed by the Russian Federation. In any case, the such appropriation of property in the occupied territory is carried out in the absence of military necessity, and therefore is considered a war crime in accordance with Article 147 of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Articles 8(2)(a)(iv), 8(2)(b)(xiii) of the Rome Statute of the International Criminal Court.

The implementation of Decree No. 201 constitutes indirect discrimination against Ukrainian citizens, as it puts them in an unfavorable position relative to other Ukrainian citizens on the territory within the internationally recognized borders of the Russian Federation. The access of Ukrainian citizens to the right of ownership of land plots in the territory of the Russian Federation may indeed be regulated by Russian law and be limited. However, in the occupied territory of Ukraine (Crimea), interference with property rights can only be justified by military necessity in accordance with international humanitarian law. The equal treatment by the Russian Federation of similar groups of persons in various situations is contrary to the provisions of international human rights law and international humanitarian law.

In this case, Ukrainian citizens are the primary target of Decree No. 201, as they make up more than 83% of all foreign owners in Crimea. This means that discrimination by the Russian Federation is intentional and purposeful. Such actions are an integral part of Russia's entire discriminatory policy in Crimea since 2014, which aims to colonize the peninsula and oust disloyal Ukrainian citizens.

Thus, the appropriation of property on the basis of Decree No. 201 is a war crime committed on a discriminatory basis throughout the peninsula (large-scale) and continuously during 2020-2023 (systematic), and therefore it also constitutes a crime against humanity - discriminatory persecution (Article 7(1)(h) of the Rome Statute of the International Criminal Court).

The full text
of the analytical report



