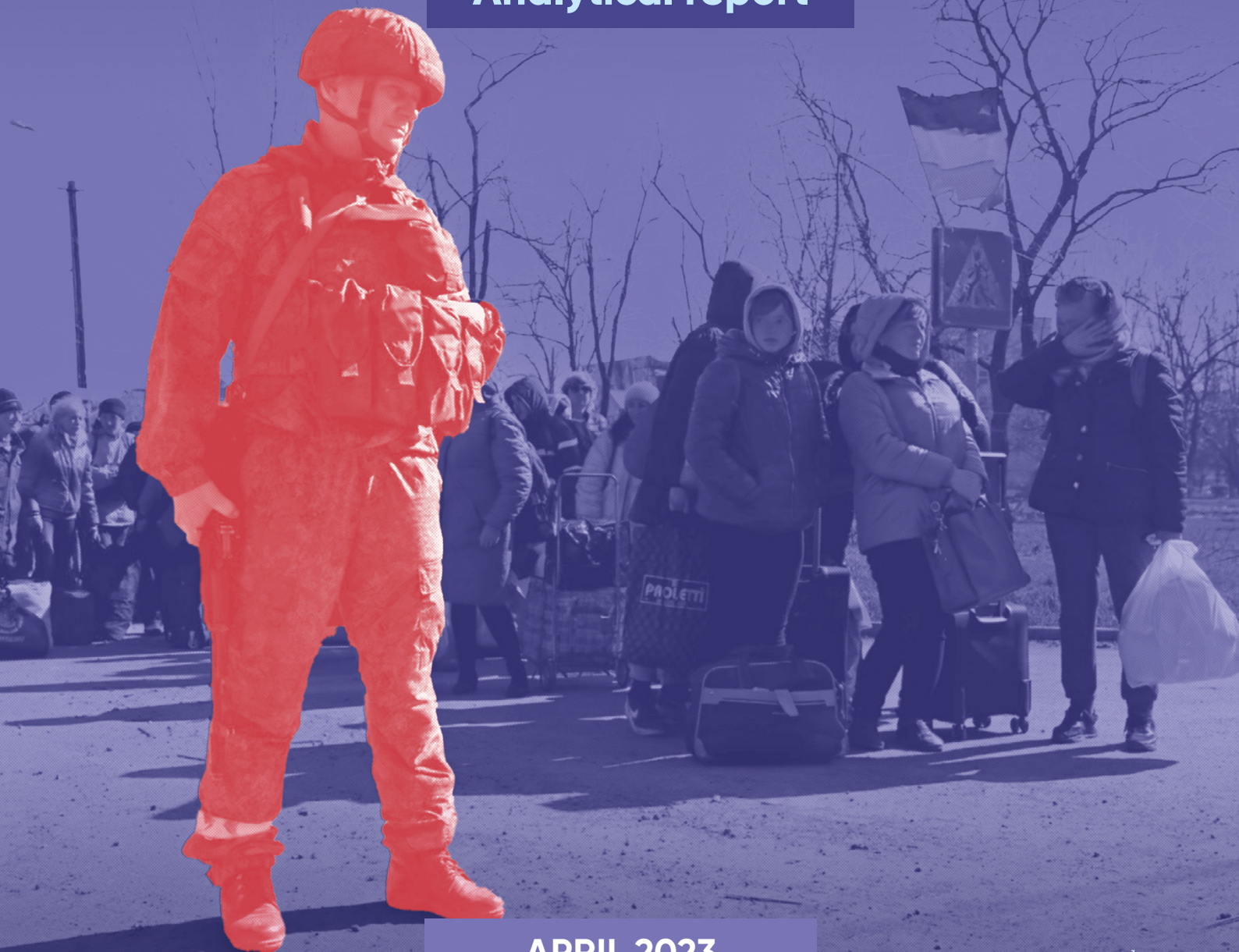




DEPORTATION OF UKRAINIAN CITIZENS TO THE TERRITORY OF THE RUSSIAN FEDERATION: SIGNS AND CONTEXT

Analytical report



APRIL 2023

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INTRODUCTION

Since the beginning of the large-scale armed aggression against Ukraine, the process of transfer of Ukrainian citizens to the temporarily occupied territory of Ukraine, as well as their deportation to the territory of the Russian Federation (hereinafter referred to as RF), has become large-scale. The Russian side often calls this process the «evacuation of civilian population», but these deliberate actions by the Russian side can be classified as the forcible transfer and deportation of Ukrainian citizens which amount to a war crime. According to the official position of the Russian side, Ukrainian citizens are displaced as part of the «evacuation» of the civilian population from dangerous areas. To implement this process, the Russian side took the Ukrainian citizens out in an organised manner, created a system of temporary accommodation centres (hereinafter referred to as TACs) in the territory of RF, as well as developed the procedure of filtration which is carried out at all checkpoints and separately created filtration centres in the temporarily occupied territory of Ukraine. The displacement is also ensured by legislative acts embodying the state policy of RF on this issue.

At the same time, the Russian side facilitates (and encourages) the independent departure of Ukrainian citizens from their places of stay through other temporarily occupied territories and the territory of RF.

This report aims to examine all the circumstances of the displacement of protected persons from the occupied territories of Ukraine to other occupied territories and to the territory of RF. In particular, the report considers the conditions in which people stayed before such displacement and in which they decided to leave their place of residence; whether the choice to leave the territory of stay was free; under what conditions the independent departure of persons can be considered forcible transfer and deportation; whether existing measures of RF regarding the displacement of protected persons can fall under the concept of «evacuation» and whether they can be classified as forcible transfer and deportation.

The analytical report covers the period between 24 February 2022 and 4 March 2023.

The present analytical report is based on the information collected by the Human Rights Centre ZMINA both from open sources and while documenting the testimonies of persons who suffered or witnessed the crime of forcible transfer and deportation, as well as on the analysis of the legal framework and statements by the state authorities of RF on the accommodation and exercise of rights of Ukrainian citizens displaced to other occupied territories and the territory of RF.

SUMMARY

1. To recognise the displacement of the population of the occupied territory as legitimate, it is necessary to have legal grounds for such displacement so that it can be classified as evacuation. No such reasons were determined regarding the displacement of the population of the occupied territories of Ukraine to RF. Moreover, the fact that the humanitarian disaster, which can be classified as a basis for evacuation for ensuring the safety of the population, was created by the Russian side, which carried out the displacement, deprives RF of the right to refer to this reason.
2. The manner in which the evacuation was carried out can also be an additional indicator of whether such a displacement can be considered an evacuation. The occupying power of RF created an «atmosphere of fear» in which the displacement is carried out. Furthermore, there is evidence that displacement was pre-planned. RF also does not fulfill the requirement to return the people to the territories from which they were displaced and to ensure proper conditions for such displacement.
3. Taking into account the planned and organised manner of the displacement process, the creation of humanitarian conditions in the occupied territories in which it was impossible to stay in those territories, as well as intimidation, the practice of enforced disappearances and threats, we can conclude that it was not a free choice of people to leave, they reflexively reacted to the belief that only escape from the Ukrainian territory occupied by the Russian army would allow them to survive. The presence of these circumstances of coercion is indicative of the crime of forcible transfer and deportation.
4. «Forced displacement» also includes the independent departure of persons from the occupied territories if it is possible to establish a connection between the actions of the violators¹ and such departure. The fact that civilians left on their own because they had such an opportunity does not change the fact that the decision to leave was not voluntary but became a forced step and may also indicate the presence of coercion as the refusal of the «evacuation» provided by the Russian side was also based on distrust of this procedure.

1 A wide range of persons can fall under the definition: from the leaders of RF who developed and implemented the state policy of deportation or forcible transfer of the Ukrainian population to the direct executors who carried out orders regarding the displacement of people, the implementation of coercion, etc.

1.

ASSESSMENT OF THE ACTIONS OF THE RUSSIAN SIDE IN ACCORDANCE WITH THE INTERNATIONAL LAW REQUIREMENTS FOR THE EVACUATION OF THE CIVILIAN POPULATION

According to international humanitarian law, evacuation is the only legitimate way to displace the population. In particular, Article 49 of the Fourth Geneva Convention says that the occupying power may undertake total or partial evacuation of a given area.



At the same time, for such displacement to be classified as evacuation, it must be carried out on one of two grounds:

- a such displacement is necessary to ensure the security of the population
- b such displacement is caused by imperative military reasons

It is important to note that these grounds are exclusive — **displacement of the population for any other reason will not be considered evacuation** and may amount to forcible transfer or deportation.

The fact that the party calls displacement «evacuation» does not indicate the legality of such displacement² if other requirements are not met.

In addition, within the limits of evacuation, the priority is always the displacement of persons within their country. Displacement outside the bounds of the occupied territory is allowed only when it cannot be avoided for material reasons³ — if the threat that causes such displacement extends to the entire occupied territory, i.e., displacement within its bounds will not eliminate the threat.

The displacement of people from a territory after active military operations in that territory have ceased cannot be considered to be carried out to ensure the security of the population and, accordingly, is not evacuation⁴.

The first thing to establish in such situations is whether there was a military threat to the people in the territory from which they were displaced.

For example, the Russian side began to evacuate the local population from Kharkiv region back in the spring of 2022. In particular, reports of the «evacuation» from Ruska Lozova appeared⁵ on 20 March 2022. According to the testimonies of local residents, the Russian military claimed that the «evacuation» was being carried out «for three days»⁶, but the return of the population to the territory was not organised and was practically impossible due to a ban imposed by the Russian side. Ruska Lozova was liberated on 29 April 2022⁷.

2 Prosecutor v Blagojević & Jokić (Trial Chamber Judgment), para. 618.

3 Article 49, Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949: https://zakon.rada.gov.ua/laws/show/995_154#Text

4 Prosecutor v. Krstić, “Judgement”, 2 August 2001, para. 525.

5 We also have information that the occupiers evacuate the residents of Ruska Lozova to the territory of Belgorod region / Facebook post by Vyacheslav Zadorenko, head of the Derhachi Town Military Administration, 20 March 2022: <https://www.facebook.com/Zadorenko/posts/478479843979654>

6 Deportation under guise of evacuation / ZN.UA, 03 March 2023: <https://zn.ua/ukr/war/deportatsija-pid-vihljadom-evakuatsiji.html>

7 Special forces of the Main Directorate of Intelligence of the Ministry of Defence of Ukraine regain control of Ruska Lozova settlement in Kharkiv region / Official Facebook account of the Main Directorate of Intelligence of the Ministry of Defence of Ukraine, 29 April 2022: <https://www.facebook.com/DefenceIntelligenceofUkraine/posts/301406695504091>

On 5 May 2022, when the offensive of Ukrainian troops began in some areas of Kharkiv region, in Vesele village of Lyptsy community, the Russian military and local residents who collaborated with them went from house to house, calling on everyone to leave urgently because Ukraine was advancing and «the village will be wiped off.» The Ukrainian armed forces did not open fire and, according to the head of the community, the Russians left the settlement in the direction of Neskuchne village and redeployed 16 tanks and self-propelled equipment to a plantation. As a result of intimidation on 5 May, many local residents left for Russia. Then the Russians began to periodically fire on the village, forcing those who remained to go to RF also⁸.

Since August 2022, long before the counteroffensive of the Ukrainian side began, the Russian side had started to evacuate the local population from Kozacha Lopan, Kharkiv region⁹. The Russian troops did not plan to hold the defense in or around Kozacha Lopan, they retreated from the village¹⁰ at night, on the eve of the Ukrainian offensive, while carrying out «evacuation». There was no mobile communication in the village, the local residents did not hear the shots, but at approximately 00:30 on 11 September 2022, the Russian military began visiting the houses of local residents, knocking on the doors, telling them to get dressed quickly, «evacuate because the Ukrainians are coming and will wipe everything off the face of the earth.»¹¹ Many people left just when they were woken up in the middle of the night, threatened with an offensive and «evacuated» completely disoriented.

In Kherson region, «evacuations» began before the offensive of the Ukrainian forces and were accompanied by the spread of false information. In particular, one of the main arguments for the «evacuation» was the planned «explosion of the Kakhovka HPP» by the Ukrainian side¹². The Ukrainian authorities officially denied this information and reported that the Kakhovka HPP was mined back in April 2022 by the Russian side¹³, and it is likely that Russia will try to blow up the HPP and blame the Ukrainian side for that¹⁴.

8 Testimonies documented by Human Rights Centre ZMINA in Kharkiv region, in particular, the interview of Oleksiy Slabchenko, the head of Lyptsy Village Council.

9 The occupiers forcibly deporting civilians from Kozacha Lopan to Russian Federation / Telegram channel of the Kharkiv Regional Prosecutor's Office, 3 August 2022: https://t.me/prokuratura_kharkiv/5297

10 Russian occupiers fleeing from Kozacha Lopan in Kharkiv region – head of community / Suspilne News, 11 September 2022: <https://suspilne.media/280548-rosijski-okupanti-tikaut-z-kozacoj-lopani-na-harkivsini-golova-gromadi/>

11 Testimonies documented by Human Rights Centre ZMINA in Kharkiv region, in particular, the interview of Liudmyla Vakulenko, the head of Kozacha Lopan village.

12 General Surovikin warns about preparation of Ukraine army strike on Kakhovka HPP / Kommersant, 18 October 2022: <https://www.kommersant.ru/doc/5620635>

13 Occupiers mined Kakhovka HPP back in April and currently mining locks and pillars / Telegram channel of the Main Directorate of Intelligence of the Ministry of Defence of Ukraine, 21 October 2022: <https://t.me/DIUkraine/1540>

14 Russian offensive campaign assessment, October 21 / Institute for the Study of War, 21.10.2022: <https://www.understandingwar.org/backgrounder/russian-offensive-campaign-assessment-october-21>

Moreover, the Russian troops withdrew from the right bank of Kherson region and Kherson city without a fight because it was a planned and officially announced withdrawal¹⁵, and there were no military operations that would require the evacuation of the population.

The displacement of the Ukrainian population to the territory of RF from the territories, from which the retreat was planned and from those that are controlled by RF and could not be a zone of active military operations due to the Ukrainian offensive, cannot be justified by the demand for the security of the population or imperative military reasons.

In the context of displacement by the Russian side, there is also an important criterion which provides that the reason for displacement, even if legitimate, cannot be the result of the actions of the party carrying out such displacement¹⁶. Accordingly, if the party carrying out the displacement is responsible for creating conditions in which it is no longer possible to live in the territory, such displacement is illegitimate and cannot be considered evacuation.

This is important for Mariupol because the city experienced an extremely difficult humanitarian situation almost immediately after the start of the full-scale invasion: electricity, heating, communication, and later gas supply disappeared. People were killed in shelling when they came out of shelters in search of food and drinking water, died without access to medicines and qualified medical care. Considering that the Russian side purposefully destroyed civilian infrastructure and shelled civilian objects in Mariupol, the existence of a grave humanitarian situation was created by the actions of the Russian military and cannot be a legitimate reason for the displacement of the population from the city.

«Imperative military reasons» are also interpreted as «overriding»¹⁷, i.e., not just any reason, even an important one. The norm, in fact, obliges to refer to one of the fundamental principles of international humanitarian law – the principle of proportionality. Only after assessing the importance of the reason and concluding that there is no other way to achieve the desired result, that these military reasons are extremely important to the success of the entire military operation, can the option of the displacement of the population be considered. When determining the importance of the reason, it should also be taken into account that the displacement of protected persons is presumptively prohibited under international humanitarian law. Only the presence of a sufficient, especially valid reason will allow classifying such a displacement as an exception, and therefore, an evacuation.

15 Shoigu orders withdrawal of troops from occupied Kherson / BBC News Russian, 09 November 2022: <https://www.bbc.com/russian/news-63574128>

16 Prosecutor v. Milomir Stakić (Appeal Judgement), para. 287.

17 Prosecutor v Blagojević & Jokić (Trial Chamber Judgment), para. 598.

When assessing «imperative military reasons», it is necessary to establish whether these reasons preceded the decision to carry out displacement or were used only as a justification for such actions. If the purpose of evacuation was the actual displacement of the population from the territory, then the reference to any of the reasons will not make such actions legitimate¹⁸. Therefore, the concept of «imperative military reasons» implies that there is no alternative to evacuation.

Moreover, the manner in which the evacuation was carried out can also be an additional indicator of whether such displacement can actually be considered evacuation. The «atmosphere of fear» in which displacement took place, as well as the evidence that displacement was planned in advance, indicate that the displacement did not take place for «imperative military reasons»¹⁹. Therefore, for displacement to be considered evacuation, it must be carried out taking into account the obligation of the subsequent return of the protected persons to that territory and such displacement should not have been planned in advance. A direct connection between the reason and the evacuation is necessary. The displacement could not be a response to «imperative military reasons» given that the «evacuations» began long before the occurrence of any events that could have given rise to such evacuations.

An important aspect is also the presence of a planned policy and prepared infrastructure for the displacement of the population which indicate displacement as the goal of this campaign. The facts regarding the planned nature of displacement, which prove the intention to carry it out, will be considered later.

Article 49 of the Fourth Geneva Convention also requires that even if persons have been displaced for reasons that allow classifying such displacement as evacuation, such persons must be transferred back to their homes as soon as hostilities in the area in question have ceased.

The obligation to return the displaced population to the territories from which they were displaced is not only passive (not to prevent such return) but also active (to take specific actions for the return). The fact that the buildings abandoned by the displaced population were destroyed²⁰ and the Russian military settled in them²¹, or the Russian military occupied houses and forced local residents to «evacuate» to va-

18 Prosecutor v. Krstić, Judgement, 2 August 2001, para. 527.

19 See also the analytical report by the Human Rights Centre ZMINA "Deportation of residents of Kherson region: organized and independent departure under conditions of coercion".

20 Testimonies documented by Human Rights Centre ZMINA regarding the events in Mariupol, Donetsk region, 16 February 2023, Riga, Latvia, in particular, the fact that a tank with letter "Z" painted on it drove up to the private sector, where civilians were hiding from shelling, and began firing on already half ruined private houses.

21 'Residents taken out, Russian soldiers brought in.' What is happening in left-bank Kherson region? / Radio Liberty, 02 November 2022: <https://www.radiosvoboda.org/a/novyny-pryazovya-evakuatsiya-livyy-bereh-khersonshchyna/32111629.html>

'Russian military settles in captured houses in Kherson people.' How to protect property under occupation? / Radio Liberty, 18 June 2022: <https://www.radiosvoboda.org/a/novyny-pryazovya-kherson-okupatsiya-mayno/31904162.html>

cate²² them, is additional confirmation of the fact that the return of the population to these territories was not planned. Moreover, these actions are aimed at preventing the population from returning.

As for other facts that may indicate obstruction of the return of deported persons, Human Rights Centre ZMINA managed to document such cases.

The family, which was forced to leave Mariupol, was taken from a filtration centre to the Russian city of Taganrog where they were told that they could spend only three days in a temporary accommodation centre (TAC). The next day, the Russians ordered everyone who was in the TAC to prepare to leave for the city of Perm. They were convinced that a new factory had opened there and the Ukrainians would have jobs and quickly get housing and Russian citizenship²³.

Ukrainians were often sent to remote regions of RF. Moreover, their choice was limited, or they were pressured, taking advantage of their vulnerable situation. In particular, according to the testimony of a resident of Mariupol, when they were brought to a railway station, people were released from buses one by one: one bus opened the door, people went out and got on the train, then the next bus opened the door. According to the victim, this was done to prevent people from communicating with each other. A volunteer at the station told people with a commanding voice to get on the train going to the Russian city of Vladimir and gave them five minutes to think – if anyone was against it, they «could go wherever they wanted.» At the same time, the people were exhausted because they were travelling from Mariupol to Taganrog for two days, almost without sleep, they had no Russian rubles, and the information about where they were being taken was constantly changing²⁴.

In another case, at the TAC in the city of Taganrog, in the middle of the day after arrival, the administration warned that if the Ukrainians did not leave the TAC themselves, they would be taken out in an organised manner somewhere deep into Russia. They were forced to get on a special train and go to an unknown destination. Around 16-17 April 2022, people were put on a train, it stood at the station until night, departed at night, and only later did they learn that the train was going to the city of Vladimir²⁵.

Many Ukrainians who ended up in Russia reported difficulties in purchasing tickets when trying to leave RF. In particular, in one case documented by Human Rights Centre ZMINA, a train ticket to Europe could not be purchased because a child

22 Testimonies documented by Human Rights Centre ZMINA, in particular, the interview of Serhiy Kryvetchenko from Lyptsi village, Kharkiv region, about eyewitnesses: Russian military occupied a house in the village, and the people who lived there were forced to leave it and evacuate.

23 Testimonies documented by Human Rights Centre ZMINA (Kateryna Mykhaylenko, Mariupol city, Donetsk region).

24 Testimonies documented by Human Rights Centre ZMINA regarding the events in Mariupol, Donetsk region, 16 February 2023, Riga, Latvia.

25 Testimonies documented by Human Rights Centre ZMINA (Ivan Naboka, Mariupol city, Donetsk region).

had only a birth certificate and no passport for travelling abroad. At the same time, when the second attempt to buy a ticket was made, the reason for refusal was «COVID epidemic in Europe». There were several such attempts²⁶. In another case, people were also denied the sale of bus tickets because «a driver will not let get on a bus without passports for travelling abroad²⁷.»

Evidence of the Russian side organising the return of people displaced from the occupied territories to their homes could not be found.

The occupying power undertaking evacuation is also obliged to ensure that proper accommodation is provided to receive the protected persons. In addition, the occupying power undertaking evacuation must ensure that the displacement is effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

Article 49 of the Fourth Geneva Convention, where this obligation is set out, uses the wording «shall ensure» and «to the greatest practicable extent» as for the provision of conditions. This, however, cannot be taken as restrictive or relaxing wording. It applies only to those cases when the evacuation is carried out in a short period of time, as an immediate response to the reason that causes it²⁸.

In view of these criteria, the question arises: can the evacuation be considered legitimate if the party undertaking displacement does not comply with the requirements for the provision of civilians.

In the cases documented by Human Rights Centre ZMINA, there are numerous violations by the Russian side of the requirements for the provision of civilians during the evacuation, in particular:

- people were transported from a filtration centre in the occupied territory to the border with RF for three days, they were not told where they would be transferred, they were not given water or food, and only elderly people were allowed to leave at bus stops²⁹;
- people were accommodated in school premises, the living conditions were terrible: «...they gave only enough food so we did not starve to death...»³⁰, hundreds of people spent the night wherever they could find a place, even in the corridors³¹;

26 Testimonies documented by Human Rights Centre ZMINA regarding the events in Mariupol, Donetsk region, 16 February 2023, Riga, Latvia.

27 Testimonies documented by Human Rights Centre ZMINA (Yevhen Pozdniakov, Mariupol city, Donetsk region).

28 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Commentary of 1987, p. 1473.

29 Testimonies documented by Human Rights Centre ZMINA (Yevhen Pozdniakov, Mariupol city, Donetsk region).

30 Testimonies documented by Human Rights Centre ZMINA regarding the events in the city of Mariupol, Donetsk region

31 Testimonies documented by Human Rights Centre ZMINA (Roman Zayets, Mariupol city, Donetsk region).

- no more than 200 people were allowed to pass through a filtration centre in Nikolske village per day with more than 3,000 people in line³²;
- people were constantly transferred from bus to bus, while those who initially traveled together were separated; after arriving at a TAC, a victim did not see anyone she knew³³;
- in «refugee reception centres», a victim noticed CCTV cameras, the people arriving were asked about their attitude to the events, to the «special military operation»³⁴;
- the entire family (man, woman, two children) had poisoning in a TAC due to unsanitary conditions;
- when trying to receive assistance from a TAC's medical worker due to the child's high temperature, the worker said that «she cannot prescribe antibiotics because she is not a doctor.»³⁵

A separate factor that violates the obligation to move persons in conditions of safety and care for their health is the filtration procedure as it was carried out by the Russian side.

In particular, it is about the unjustified length of the procedure, which could last for hours or provide for the detention of persons for several days³⁶, psychological pressure in the form of provocative questions («What is your attitude towards Russia?», «What is your attitude towards the special military operation?», «What is your attitude towards Putin?», «Are you ready to give your life for the Motherland?»), excessive waiting («...They didn't so much interview as made you wait a long time. You sit and wait, but they don't come at all...»³⁷), collection of personal data (taking photos, fingerprints, copying the contents of the phone and contacts)³⁸.

32 Testimonies documented by Human Rights Centre ZMINA (Roman Zayets, Mariupol city, Donetsk region).

33 Testimonies documented by Human Rights Centre ZMINA regarding the events in Mariupol, Donetsk region, 16 February 2023, Riga, Latvia.

34 Testimonies documented by Human Rights Centre ZMINA regarding the events in Mariupol, Donetsk region, 16 February 2023, Riga, Latvia.

35 Testimonies documented by Human Rights Centre ZMINA (Nadia Biletska, Mariupol city, Donetsk region).

36 Testimonies documented by Human Rights Centre ZMINA (Yevhen Pozdniakov, Mariupol city, Donetsk region): when leaving filtration centre in Nikolske for the Russian border, when people were put on buses, some people from those who arrived at the centre earlier were left and not allowed going further.

37 Testimonies documented by Human Rights Centre (Yulia Kovtun, Kherson region).

38 "We Had No Choice": "Filtration" and the Crime of Forcibly Transferring Ukrainian Civilians to Russia / Human Rights Watch, September 1, 2022:

<https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians>

ELEMENTS OF THE CRIME OF FORCIBLE TRANSFER AND DEPORTATION

Taking as a basis the elaborations of various cases within the framework of the International Criminal Tribunal for the former Yugoslavia (hereinafter referred to as ICTY), in one of the cases, the following common elements of deportation and forcible transfer which characterise these crimes were singled out:

1. Forcible transfer of persons;
2. Displacement of persons who are legally present in the territory from which they were displaced;
3. Absence of grounds under international humanitarian law (IHL) that allow such displacement;
4. Displacement was effected on purpose³⁹.

We presume that the persons were in the territory legally because Ukrainian citizens stay in the territory of Ukraine legally unless otherwise determined by the circumstances of the specific case.

The absence of grounds for legitimate displacement under international humanitarian law was discussed above in the context of the absence of grounds for evacuation.

In the context of forced displacement, it is also important to consider that the prohibition of forced displacement aims to protect the right to live in one's community and one's home and not to be deprived of property. Accordingly, the following criteria should be used to determine when a displacement may amount to the crime of forced displacement in the context of the territory to which persons are transferred

39 Vlastimir Đorđević Appeal Judgement, 27 January 2014.

within the bounds of the same state: the persons are transferred to a place so remote that the displaced persons can no longer exercise their rights protected by the ban on displacement⁴⁰.

We will consider in more detail all aspects indicating the intention to displace the population and the forced nature of such displacement.

Already as of 20 February 2022, even before the start of the full-scale invasion, the government of Rostov region of RF announced the preparation of 188 TACs for «residents of Donbas»⁴¹. As of October 2022, 807 TACs were deployed in the territory of RF⁴².

On 12 March 2022, Resolution No. 349 of the Government of RF on the distribution of Ukrainian citizens who «were forced to leave the territory of Ukraine» and «arrived in the territory of RF» in an «emergency mass order» among the subjects of RF was issued⁴³.

Displacement was organised. Testimonies of victims from various occupied regions of Ukraine indicate that the Russian military persistently urged Ukrainians to leave at least and woke them up in the middle of the night and put them on «evacuation» buses at most.

In one of the cases documented by Human Rights Centre ZMINA, armed Russian soldiers came to a private house in the middle of the night and ordered to «take documents and go to the village council – the evacuation of the entire population.» The day before, nothing was reported about the evacuation, everyone present in the village council was confused. The Russian military did not explain anything, they said that it was necessary to gather, «evacuation is carried out and that's all», and then people began to be taken away by buses⁴⁴. Ukrainians were woken up in the middle of the night, people were scared, many did not understand what was happening⁴⁵.

40 Prosecutor v. Blagoje Simić, Judgement, 29 May 2013, paras. 130.

41 40,000 residents evacuated from DPR, LPR in two days / Krasnaya Liniya, 20 February 2022: <https://www.rline.tv/news/2022-02-20-iz-dnr-i-lnr-za-dva-dnya-evakuirovalis-40-tysyach-zhiteley/>

42 Deportation of Ukrainian citizens from the territory of active military operations or from the temporarily occupied territory of Ukraine to the territory of the Russian Federation and the Republic of Belarus. Analytical report by Ukraine 5AM Coalition <https://zmina.ua/publication/deportacziya-gromadyan-ukrayiny-z-terytoriyi-vedennya-aktyvnyh-bojovyh-dij-chy-z-tymchasovo-okupovanoi-terytoriyi-ukrayiny-na-terytoriyu-rosijskoyi-federacziyi-ta-respubliky-bilorus/>

43 Resolution of the Government of the Russian Federation of 12 March 2022 No. 349 “On the distribution of citizens of the Russian Federation, Ukraine, Donetsk People’s Republic, Luhansk People’s Republic and stateless persons permanently residing in the territories of Ukraine, Donetsk People’s Republic, Luhansk People’s Republic, who were forced to leave the territory of Ukraine, Donetsk People’s Republic, Luhansk People’s Republic and arrived in the territory of the Russian Federation in an emergency mass order, among the subjects of the Russian Federation”/ 12 March 2022: <http://publication.pravo.gov.ru/Document/View/0001202203120005?index=4&rangeSize=1>

44 Testimonies documented by Human Rights Centre ZMINA in Kozacha Lopan village, Kharkiv region.

45 Testimonies documented by Human Rights Centre ZMINA in Kharkiv region, in particular, the interview of Kozacha Lopan village head Liudmyla Vakulenko.

In another case, the Russian military came to a bomb shelter and said that it was dangerous there and that everyone would be taken out the next day. There were 57 people in the shelter at that time. A few days later, the Russian military arrived, took everyone who was in the shelter out, and put them on a bus. Then people were taken to Sartana village, 7 km from Mariupol, and then to the village of Bezimenne, Donetsk region, on the coast of the Sea of Azov, where a filtration centre was located⁴⁶.

In a similar case in Mariupol, «DPR» military came to a shelter and said that «Chechen units with a mopping-up operation» would soon come to the shelter and they did not recommend anyone to stay, so people had half an hour to evacuate⁴⁷.

In another case, Russian military came to places where civilians were hiding from shelling and directly told the local residents: «Why are you sitting here? Get out of here, you're a hindrance to us.»⁴⁸

The Russian side also announced the «evacuation» of local residents at the level of state leadership and occupation administrations. In particular, on 4 November 2022, Russian President Vladimir Putin announced the need to «take the residents of Kherson out of the combat zone»⁴⁹. Subsequently, the occupying authorities of Kherson region announced a «forced evacuation»⁵⁰. The occupying authorities of Kupyansk town, Kharkiv region, also stated that they were «forced to ensure evacuation»⁵¹.

A resident of Mariupol also noted that the buses sent for evacuation to Nikolske village had been provided by private carriers from the Russian cities of Rostov and Taganrog, the local administration of those regions had paid the fare, so people had been transferred for free⁵².

The Russian side also **disrupted and restricted the evacuation to the Ukraine-controlled territory.**

46 Testimonies documented by Human Rights Centre ZMINA regarding the events in Mariupol, Donetsk region.

47 'Dad, you have five days at most to pick us up.' Meduza tells a story of a man from Mariupol who went through captivity and infamous colony in Olenivka and did not let the Russians take his children away / Meduza, 03 November 2022: <https://meduza.io/feature/2022/11/03/pap-u-tebya-est-maksimum-pyat-dney-chtoby-nas-zabrat>

48 Testimonies documented by Human Rights Centre ZMINA (Natalia Momot, Tsyrkuny village, Kharkiv region).

49 Putin urges to evacuate Kherson residents / News.ru, 04 November 2022: <https://news.ru/vlast/putin-prizval-evakuirovat-zhitelej-hersona-iz-zony-boevyh-dejstvij/>

50 Kherson authorities announce forced evacuation in Kakhovka district from 6 November / Kommersant, 1 November 2022: <https://www.kommersant.ru/doc/5646214>

51 It becomes known about evacuation of women and children from Kupyansk due to shelling / Lenta.ru, 8 September 2022: https://lenta.ru/news/2022/09/08/evac_kup/

52 Testimonies documented by Human Rights Centre ZMINA (Roman Zayets, Mariupol city, Donetsk region).

In particular, the evacuation of local residents from Mariupol to Zaporizhzhia was scheduled for 23 April 2022. Instead of evacuation buses, the Russian military arrived at the designated place of gathering (Port City shopping mall) and ordered people to go away because «there will be shelling.» People were expelled from the place of gathering, and buses were never provided. 200 m from the specified evacuation point, the Russian military drove up buses and began to let people in, and after filling a bus, they announced that they would be «evacuated» not to Zaporizhzhia but to Dokuchayevsk (the territory of Ukraine occupied before 24 February 2022). The people were not given the opportunity to get off the bus⁵³.

Human Rights Centre ZMINA managed to document a similar case. In particular, a resident of Mariupol said that at a certain point, there was information that evacuation to the Ukraine-controlled territories would be carried out. Arriving at the designated place of gathering, the Port City shopping mall, people came up to a checkpoint, where they were checked by the Russian military. After the inspection, the Russians put local residents on minibuses, informing them that they would be taken to Zaporizhzhia. People, however, were brought to Nikolske village (territory of Ukraine, occupied before 24 February 2022)⁵⁴.

The Russian military attacked the humanitarian corridors⁵⁵, in particular, they shelled the corridors that had been previously agreed upon during the negotiations between the Ukrainian and Russian sides⁵⁶.

The victims themselves report that they did not consider the possibility of leaving for the Ukraine-controlled territory or they reconsidered going in that direction because such a route was dangerous because of Russian strikes.

A family from Kherson city considered the possibility of leaving through Vasylivka (Zaporizhzhia region) but changed their decision because of the danger: «...We were afraid because people were shot there, it was scary there, the area was bombed...» In addition, acquaintances told the family that they were standing in line at a checkpoint in Vasylivka for several days and came under fire⁵⁷.

Another family from Kherson region also wanted to leave for the Ukraine-controlled territory but the only way was through Vasylivka (Zaporizhzhia region): «Peo-

53 Evacuation that was disrupted / Telegram channel of Petro Andriushchenko, adviser to Mariupol mayor, 23 April 2022: <https://t.me/andriyshTime/444>

54 Testimonies documented by Human Rights Centre ZMINA (Yevhen Pozdniakov, Mariupol city, Donetsk region).

55 Enemy launched an attack targeting humanitarian corridor / Facebook page of the Ministry of Defence of Ukraine, 3 August 2022: <https://www.facebook.com/MinistryofDefence.UA/posts/271445775167882>

56 Russian occupiers fired at 'humanitarian corridor' agreed upon earlier at the negotiations – Deputy Prime Minister, Minister of Reintegration of the Temporarily Occupied Territories Iryna Vereshchuk / Ukraine Crisis Media Center, 3 May 2022: <https://uacrisis.org/uk/obstrilyaly-gumanitarnyj-korydor>

57 Testimonies documented by Human Rights Centre ZMINA (Lilia Boychenko, Kherson).

ple stood there in line for two weeks. There were cases when people died in line there. It was also possible to come under fire. That's why we went through Crimea and Russia.»⁵⁸

A resident of Lyptsi village (Kharkiv region) said that people could not leave for the Ukraine-controlled territory, only «evacuation» by buses to RF was provided.⁵⁹

The head of Kozacha Lopan village (Kharkiv region) reported that for the entire period, the Russians let people go only to Russia. It was possible to leave for the Ukraine-controlled territory through Zolochiv district only at the beginning of the occupation, but later the road was mined and there was a danger of being blown up. Three cars from Kozacha Lopan village drove over a mine when trying to leave.⁶⁰

A resident of Mariupol said that while looking for an opportunity to leave, at the first table in the Russian information centre in the city where «registration data» were collected, they were told: «Go wherever you want, either Russia or Zaporizhzhia.» At the second table, where the desired direction of departure was registered, it was already reported that no departure towards Zaporizhzhia was provided, it was possible to go only to Russia. In addition, the people were sheltering near the road towards Zaporizhzhia and witnessed that the road was being shelled every day. The road was filled with burned civilian cars, so it was not clear whether the passengers managed to escape.⁶¹

A resident of Mariupol said that the first opportunity to leave appeared around 12-13 March 2022. Men arrived and said that people had escaped from the city. But then it turned out that three cars drove towards Melekine⁶² on 14 March, and two of them, with children inside, were shot. One car returned. «...If a convoy was driving, it was let through. If individual cars – they were shot...» The man and his acquaintances tried to leave for Zaporizhzhia several times but came under fire, returned, and gave up their intention to leave for the Ukraine-controlled territory: «...First, the combat situation does not allow it, and, second, people didn't want to go even if paid a lot of money... we didn't have a lot of money. If someone did go, they were very desperate and paid a lot of money...»⁶³

58 Testimonies documented by Human Rights Centre ZMINA (Lilia Boychenko, Kherson).

59 Testimonies documented by Human Rights Centre ZMINA (Serhiy Kryvetchenko, Lyptsi village, Kharkiv region).

60 Testimonies documented by Human Rights Centre ZMINA in Kharkiv region, in particular, the interview of Liudmyla Vakulenko, head of Kozacha Lopan village.

61 Testimonies documented by Human Rights Centre ZMINA regarding the events in Mariupol, Donetsk region, 16 February 2023, Riga, Latvia.

62 A village in Manhush settlement community, Mariupol district, Donetsk region.

63 Testimonies documented by Human Rights Centre ZMINA (Roman Zayets, Mariupol city, Donetsk region).

2.1. «COERCION» IN FORCIBLE TRANSFER AND DEPORTATION

To classify a case as deportation or forcible transfer, it must be established that forced displacement was effected by means of expulsion or other forms of coercion. The term «coercive» may include physical influence, as well as the threat of the use of force or coercion which may be caused by fear of violence, pressure, detention, psychological pressure, abuse of power against a person or persons, or against a third person⁶⁴, or other action that uses an atmosphere of coercion. Accordingly, even the threat of force, physical or psychological violence may be sufficient for classification if the persons targeted by the threat or atmosphere of coercion have no choice but to leave the area⁶⁵. **The coercive nature is determined by the lack of real choice of victims regarding displacement.** Accordingly, even if a person agrees to or even requests such displacement, any consent or request for displacement must be given voluntarily, as a result of the individual's free will which is assessed in the light of all the circumstances of a particular case⁶⁶.

It is the lack of free choice that makes displacement illegitimate. At the same time, it is impossible to determine whether a free choice was effected only by the fact of expressing consent because circumstances can devalue such consent. Accordingly, the overall context, as well as the situation and atmosphere in the territory, must be taken into account when assessing such consent or choice. Factors that may indicate that it was impossible to make a free choice are unlawful detention, threats, use of force or other forms of coercion, fear of violence⁶⁷, destruction of buildings in residential areas⁶⁸.

2.2. CREATION OF CONDITIONS IN WHICH IT IS IMPOSSIBLE TO STAY AND A THREAT TO LIFE

Russian strikes in Ukraine targeted civilian objects and aimed to destroy civilian infrastructure⁶⁹. In particular, according to information documented by Human Rights Centre ZMINA, electricity and heating, and later gas and drinking water disappeared in Mariupol in the early days of the full-scale invasion as a result of these strikes. Food was taken from broken shops, humanitarian aid from the Russian side

64 Prosecutor v. Krnojelac, Judgement, 15 March 2002, para. 475.

65 Krajišnik Appeals Judgement, para. 319.

66 The Prosecutor v. Radovan Karadžić, Public Redacted Version of Judgement, 24 March 2016, para. 489.

67 Prosecutor v. Krnojelac, Appeals Judgement, 17 September 2003, para. 229.

68 ICC, Prosecutor v. Muthaura, Kenyatta and Ali, "Decision on confirmation of charges", 23 January 2012, para. 244.

69 Report of the OSCE Moscow Mechanism's mission of experts entitled "Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April – 25 June 2022)": <https://www.osce.org/odihr/522616>

was provided only in some districts of the city, which were impossible to reach due to constant shelling. There was almost no access to medical care. Healthcare facilities were also fired on⁷⁰, as well as shelters where civilians were hiding⁷¹.

Although there were no military facilities or military positions nearby, the Russian side shelled the private sector where civilians were hiding. People hid in the basement at a temperature of -15°C outside, everyone was sick, especially children. They tried to fall asleep at 21:00 because they knew that the bombardment from aircraft and artillery, and later also from a ship, would begin in the middle of the night, around 01:00 or 02:00. One day, a tank with the letter «Z» painted on it drove into the private sector and began shelling the already half ruined private houses. In mid-March 2022, there were almost two days without shelling, but then everything started with a new force, the sector was struck with Grad MLRS, houses caught fire⁷².

A family from Mariupol changed shelters several times. First, a shell fell next to their house, breaking all the windows, and they moved to the House of Culture nearby. The word «Children» was painted on it, and about 1000 people sheltered there. The House of Culture was constantly damaged by shelling, and people had to move to the building of the Livoberezhny District Administration. It caught fire from the shelling, and the family fled to a basement of a nearby house. People were forced to risk their lives by going out under shelling to find food and water, many people died as a result. A woman says: «A pregnant girl used to come, then one day she came in already without a belly. She lost her child and said that her husband went to get warm things and she had not been able to find him for three days”. One day, a big fire broke out in the house where the family was hiding. Some people left the house, but the family stayed. They were so exhausted by their attempts to survive that they hoped to die from carbon monoxide poisoning while sleeping peacefully⁷³.

A resident of Mariupol said: «It wasn't just stress. It was a constant feeling of fear from morning till night. I woke up afraid that my child would die of hunger. She asked me for bread and an apple, but I didn't have any of that. In addition, we were deprived of normal human conditions: we could not wash, change into clean clothes, go to the toilet. And death was always around – an insulin-dependent woman died in the House of Culture (without access to medicines), one old lady went insane and also died a few days later”⁷⁴.

70 Three people killed, 17 injured in shelling of hospital in Mariupol / Suspilne News, 10 March 2022: <https://suspilne.media/215826-u-rezultati-obstrilu-likarni-u-mariupoli-zag-inuli-troe-ludej-17-otrimali-poranenna/>

71 Russians dropped bombs on Mariupol drama theater: hundreds of people were hiding there/UN- IAN, 16 March 2022: <https://www.unian.ua/war/rosiyani-cilespryamovano-skinuli-bombu-na-dramte-atr-u-mariupoli-tam-hovalisya-sotni-lyudey-novini-vtorgnennya-rosiji-v-ukrajinu-11746714.html>

72 Testimonies documented by Human Rights Centre ZMINA regarding the events in Mariupol, Donetsk region, 16 February 2023, Riga, Latvia.

73 Testimonies documented by Human Rights Centre ZMINA (Kateryna Mykhaylenko, Mariupol city, Donetsk region).

74 Testimonies documented by Human Rights Centre ZMINA (Kateryna Mykhaylenko, Mariupol city, Donetsk region).

A resident of Mariupol and his mother moved to another shelter after a nine-story apartment block across the street burned to the ground – many people were killed in the building. He was surprised that although the area was occupied by the Russian military, it continued to be shelled by Russian planes and artillery, it seemed that they were firing even on their own people.⁷⁵

When the victims decided to go to a shelter after the shelling, dead bodies were lying on the streets.⁷⁶

One day, a Russian tank drove into the yard where a man lived and fired several times directly into a house from a distance of 50 meters, a fire broke out. As a result, the man's apartment burned down⁷⁷.

In the first month after the invasion, Kherson city was cut off from the supply of food and medicines⁷⁸, the Russian occupation authorities did not agree to provide humanitarian corridors to transport essentials for the city residents⁷⁹. In March, problems with products began, stores were empty, new goods were not delivered and neither was humanitarian aid. Then people began to go to Crimea for goods, to stand in line at the border there: «...People were let in, with interrogations at the border: why are you going there, where are you from, who are you? They asked about everything.» People spent the whole day standing in line for the opportunity to buy products there and go back.

A resident of Kherson region noted that there were cases when people were driving along the road, and a convoy of Russian military equipment was moving towards them and then crushed cars and people⁸⁰.

2.3. THREATS, HARASSMENT, PSYCHOLOGICAL PRESSURE

An atmosphere of fear and intimidation prevailed in the occupied territories for any manifestation of a pro-Ukrainian position or even unfounded suspicions on the part of the occupying authorities or the Russian military.

75 Testimonies documented by Human Rights Centre ZMINA (Yevhen Pozdniakov, Mariupol city, Donetsk region).

76 Testimonies documented by Human Rights Centre ZMINA regarding the events in the city of Mariupol, Donetsk region.

77 Testimonies documented by Human Rights Centre ZMINA (Ivan Naboka, Mariupol city, Donetsk region).

78 Kherson diary: "We have more deaths from lack of medication than from bullets" / The Guardian, 26.03.2022: <https://www.theguardian.com/world/2022/mar/26/kherson-diary-we-have-deaths-from-lack-of-medication-more-than-from-bullets>

79 'Strange life under occupation' Life in Kherson occupied by Russian military / BBC News Russian Service, 22 March 2022: <https://www.bbc.com/russian/features-60825476>

80 Testimonies documented by Human Rights Centre ZMINA (Yulia Kovtun, Oleksandrivka village, Kherson region).

In April 2022, protests against the occupying authorities began to subside in Kherson due to numerous disappearances of activists⁸¹, interrogations⁸², searches and detentions⁸³. Detentions, torture and interrogations, according to the testimonies of local residents, continued throughout the occupation⁸⁴ and were of a systematic nature. In particular, more than 30 local residents⁸⁵ were abducted and taken away in an unknown direction in the Ivanivka community alone. In Kherson city, about 400 people went missing during the occupation⁸⁶.

Already on 15 December 2022, after gaining access to the territory, the Office of the Ukrainian Parliament Commissioner for Human Rights announced that 10 torture chambers were found in the de-occupied territories of Kherson region, four – in Kherson city, and one of them had a special cell where children were held in terrible conditions and tortured⁸⁷. As of 2 March 2023, 20 detention places were discovered in which local residents were tortured, and Volodymyr Saldo, the head of the local occupation administration, took part in managing their system⁸⁸.

The atmosphere of fear for life is also evidenced by the number of killed civilians discovered after the de-occupation: seven people were shot in a house⁸⁹, the bodies were found with their hands tied and blindfolded, and all were shot from close

81 Pro-Ukrainian rallies subsiding in Kherson due to FSB and Russian Guard activities – Mayor Kolykhaev / Radio Liberty, 06 April 2022: <https://www.radiosvoboda.org/a/news-herson-fsb-roshvardia-mitynyh/31789009.html>

82 Russians may torture about 500 people in basements in occupied Kherson region – President's representative in Crimea / Hromadske, 06 May 2022: <https://hromadske.ua/posts/u-pidvalah-na-okupovanij-hersonshini-rosiyani-mozhut-katuvati-blizko-500-lyudej-predstavnicya-prezidenta-v-krimu>

83 Russian military held former council member and farmer from Kherson region captive for two weeks / ZMINA 25 May 2022: <https://zmina.info/news/rosijski-vijskovi-dva-tyzhni-trymaly-u-poloni-kolyshnogo-deputata-ta-fermera-z-hersonshhyny/>

84 Witnesses recount detentions, torture, disappearances in occupied Kherson / The Washington Post, 14 November 2022: <https://www.washingtonpost.com/world/2022/11/14/kherson-disappearances-detentions-torture-occupation/>

85 'Terror, chaos, and much grief.' Residents of Ivanivka community in Kherson region tell about life under Russian occupation / Center for Journalistic Investigations, 23 August 2022: <https://investigator.org.ua/ua/topnews/245970/>

86 About 20 prisons where Russians tortured people found in Kherson. Head of occupation administration Volodymyr Saldo participated in their management / Vazhnyie Istorii, 02 March 2023: <https://istories.media/news/2023/03/02/v-khersone-nashli-okolo-20-tyurem-gde-rossiyane-pitali-lyudei-v-ikh-upravlenii-uchastvoval-glava-okkupatsionnoi-administratsii-vladimir-saldo/>

87 Presentation of the report by the Ombudsman of Ukraine on the observance of the rights of victims of Russian aggression against Ukraine / Ukraine Crisis Media Center, 14 December 2022: <https://www.youtube.com/watch?v=SBvpg7Mt9V8>

88 About 20 prisons where Russians tortured people found in Kherson. Head of occupation administration Volodymyr Saldo participated in their management / Vazhnyie Istorii, 02 March 2023: <https://istories.media/news/2023/03/02/v-khersone-nashli-okolo-20-tyurem-gde-rossiyane-pitali-lyudei-v-ikh-upravlenii-uchastvoval-glava-okkupatsionnoi-administratsii-vladimir-saldo/>

89 Shooting of seven civilians, including a minor girl – Kherson region prosecutors record another Russian war crime / Telegram channel of the Prosecutor General's Office, 18 November 2022: https://t.me/pgov_ua/7393

range in the back of the head⁹⁰; in the urban-type village of Arkhanhelske⁹¹, a couple of farmers killed by the Russian military were found in the cellar of their house⁹².

A resident of Kherson region reported that only six months after the occupation started, in the summer of 2022, Russian soldiers brought humanitarian aid to the village for the first time with a message for all residents: «Russia is here forever, keep in mind that we will be here, your children will study in a Russian school». They warned that there must be no pro-Ukrainian views in the village. «They came with threats. People were scared,» a local resident says⁹³.

People who had links with Ukrainian government agencies, activists, volunteers, journalists, teachers were imprisoned – ZMINA recorded 503 cases of enforced disappearance of active Ukrainian citizens as of 11 March 2023. They were also detained for a «pro-Ukrainian position», the «pro-Ukrainian» content of a phone was enough for that.

In Mariupol, the Russian military began going around apartments and arresting activists. A resident of Mariupol is sure that they had lists because the military came to specific apartments. One day he was informed that they were coming to his apartment, but he was in a shelter at that time. He had an outright pro-Ukrainian position, participated in pro-Ukrainian rallies, in particular, in the rally commemorating the anniversary of the liberation of Mariupol. The Russians took two men from his house away, their further fate is unknown to him⁹⁴.

When a resident of Mariupol and her friends were walking to a centre where they could make an appointment to leave the city, they were told to go through a checkpoint. The Russian soldiers at the checkpoint told the civilians that if they appeared there again, they would «stay there forever.» When the people returned and asked the man who had directed them why he had shown them that way, he replied, «no big deal.» At that moment, they realised that «for that government, there really would be nothing terrible if they were shot in the middle of the street.»

The next day, Russian soldiers came to the street, where civilians were hiding from shelling, and collected their killed and wounded. The women said that they had children in the basement and that they would leave the next day and asked how they could survive until tomorrow, to which the Russian military replied: «...You may write 'children' or any other words you want but if there is a fight tomorrow, no one will

90 Russian Retreat Reveals Signs of an Atrocity in a Ukrainian Village / The New York Times, 29.11.2022: <https://www.nytimes.com/2022/11/29/world/europe/ukraine-russia-pravdyne-grave.html>

91 Vysokopillia village community of Beryslav district, Kherson region.

92 Prosecutors continue documenting crimes of the Armed Forces of Russian Federation in Kherson region – bodies of couple of farmers killed during the occupation discovered / Telegram channel of the Prosecutor General's Office, 14 November 2022 https://t.me/pgov_ua/7305

93 Testimonies documented by Human Rights Centre ZMINA (Yulia Kovtun, Oleksandrivka village, Kherson region).

94 Testimonies documented by Human Rights Centre ZMINA (Yevhen Pozdniakov, Mariupol city, Donetsk region).

pay attention to this. The only thing you can do if you hear that someone is near you is to make your little children scream so that it is clear that there are children. If you remain silent, first they will throw a grenade at you, and then they will come in...»⁹⁵

When the Russian military came to the district where the family from Mariupol lived, they said that everything would be fine, that they had «liberated» them, and that the house that had burned down would be rebuilt. They were very surprised that the woman spoke to them aggressively and said: «...If you talk like that, someone will shoot you.» After seeing how the Russian soldiers were harassing underage girls on the street, the woman finally decided that she could not stay with her children in such an environment⁹⁶.

In Kharkiv region, the Russian military carried out filtration, in particular in the villages – they went from house to house, checked documents in every house, searched them. Initially, the check was completed without any problems, but the registration of place of residence of one of the men raised concern as he was registered in the city of Kharkiv, while at that time he stayed in one of the villages of Kharkiv region near Lyptsi. After a while, the military returned to the house, aimed machine guns at the victim, the house was also surrounded by about 30 soldiers, an armored personnel carrier and several vehicles were stationed on the street. The Russians put a bag over the local resident's head, tied his hands, and drove him for about 20 minutes in a car accompanied by five soldiers – their shoulder straps were taped over. At first, the victim was interrogated, while being hit with a butt of a rifle. Then he was transported to a border post on the border between Kharkiv region and the Russian Federation, where he was interrogated for five days and tortured until he lost consciousness (beatings, electric shocks, later his feet were put in water), mock executions. He was held in a small cell together with more than ten other people. Then they were sent for another six days for «community service» – digging trenches and building fortifications for the Russian military. Eleven days after the arrest, the victim and some other prisoners were gathered in a room where the first interrogation took place. The Russians declared that «it is a necessity» and «no one died, so everything is fine», «...you even got some electrophoresis treatment for your heart...» They also warned that they must tell nobody where they were and what was done to them, otherwise, they will be taken away again and will not be let go.⁹⁷

One of the means of psychological pressure that Russia consciously and widely uses, and the impact of which on the psychological state of people and their decision to leave cannot be underestimated, is informational isolation and the filling of the informational space with a single source: Russian news.

95 Testimonies documented by Human Rights Centre ZMINA regarding the events in Mariupol, Donetsk region, 16 February 2023, Riga, Latvia.

96 Testimonies documented by Human Rights Centre ZMINA (Nadia Biletska, Mariupol city, Donetsk region).

97 Testimonies documented by Human Rights Centre ZMINA regarding the events in Lyptsi village, Kharkiv region, 15 February 2023, Tallinn, Estonia.

In particular, since the beginning of the occupation of Kherson region, the Russian military seized the Kherson TV tower, blocked the broadcast of Ukrainian channels and turned on the broadcast of Russian channels, limiting the local population's access to alternative sources of information. Later, in May 2022, they turned off mobile communication and the Internet⁹⁸, switching on Russian operators⁹⁹. After fiber optic cables from occupied Crimea were laid, local Internet providers were forced to reroute to the Russian infrastructure¹⁰⁰, and the local population began to install VPN services, leave their phones at home and limit communication in case of checks (self-censorship)¹⁰¹. Residents of the city and region lost access to Ukrainian information resources and, accordingly, to information from Ukraine.

Communication in Mariupol disappeared in the first days, but the exact date varies depending on the district. Residents of Mariupol report that at the end of March and April 2022, the Russians spread false information that Donetsk region was captured by them, Ukraine no longer exists, Odesa no longer exists, and Mariupol is now in the «DPR»¹⁰².

In Kharkiv and Kherson regions, cases were also documented when the Russian military informed local residents that after Ukraine regains the territory, they will automatically be recognised as collaborators because they stayed in the occupied territory.

Taking into account all of the above, people decided to leave not based on their free choice but reflexively reacted to the belief that only escape from the territory would allow them to survive¹⁰³.

98 Occupiers cut off communications and Internet in Kherson and part of Zaporizhzhia regions / Telegram channel of State Special Communications Service of Ukraine, 01 May 2022: https://t.me/dsszzi_official/3305

99 Russia Is Taking Over Ukraine's Internet / WIred, 15 June 2022: <https://www.wired.com/story/ukraine-russia-internet-takeover/>

100 Occupiers use blackmail and threats to force Ukrainian providers to reroute to Russian networks / Telegram channel of State Special Communications Service of Ukraine, 13 May 2022: https://t.me/dsszzi_official/3461

101 'I got out of hell'. A woman from Kherson, who lived in occupied city for seven months, tells how she got out of the occupation / Suspilne News, 22 October 2022: <https://suspilne.media/300590-a-vibralas-z-pekla-hersonka-aka-prozila-sim-misaciv-v-okupovanomu-misti-rozpovila-ak-vibralas-z-okupacii/>

102 Testimonies documented by Human Rights Centre ZMINA (Kateryna Mykhaylenko, Mariupol city, Donetsk region).

103 Prosecutor v. Krstić, "Judgement", 2 August 2001, para. 530.

3.

INDEPENDENT DEPARTURE OF PROTECTED PERSONS AS FORCIBLE TRANSFER AND DEPORTATION

For the correct classification of the crime of forcible transfer or deportation, it is important to return to the fundamental understanding of which right of persons is violated when this crime is committed.



The interest protected by the prohibition of deportations is the right of individuals and their expectation that they will be able to remain in their own homes and communities without interference from the aggressor. Accordingly, the element of the crime, for which a perpetrator is held to account, is the forced removing, uprooting of persons from the territory and environment in which they stayed lawfully and in most cases – for decades and generations. A specific direction in which the displacement took place and which was the result of the crime, accordingly, is not an element of this crime. Establishing such a requirement would complicate the classification and determination of the moment of the commission of crime, given that the victims may be displaced in several stages, across many territories and borders which may change daily¹⁰⁴. Therefore, a violator is prosecuted for the forced nature of displacement and forcible expulsion of the residents of the territory, not for the direction in which such residents are displaced¹⁰⁵.

Accordingly, the right that is protected is the right of individuals to remain in a certain territory, in a certain community. The direction of displacement is important only for distinguishing between forcible transfer and deportation, i.e. whether such displacement took place within the bounds of one state or across the border to another.

A conclusion can be made that the consent or request of persons to be moved to Russia because it is impossible to remain in their place of stay only to get to other countries through Russia may amount to deportation. Even agreeing to go to Russia because it is impossible to stay in the territory of residence may also amount to deportation. Free choice refers to leaving one's place of residence, not the direction of such leaving.

Moreover, in many cases, leaving for Russia cannot be called a free choice either, considering that there was no opportunity to leave for the Ukraine-controlled territory, representatives of the occupying forces repeatedly declared the danger of leaving for the regions controlled by the Government of Ukraine and spread false information regarding the capture of the territory of Ukraine.

In addition, in some cases, civilians started their journey to third countries or even Ukraine-controlled territory through Russia, realising that there was no other way. Even those who ended up staying in Russia can be considered deported if the decision to leave was not a free choice. In some cases, there is evidence of conditions deliberately created by Russian representatives to take advantage of the vulnerable situation of deportees to leave them on Russian territory (transportation that lasts for several days, often without the possibility of proper nutrition, lengthy «filtration» procedures which also included inhumane treatment, interrogations, pressure and intimidation, leaflets with information about «forbidden words» in Russia (for exam-

104 Prosecutor v. Stakić, Judgement, 31 July 2003, para. 677.

105 Prosecutor v. Krnojelac, Appeals Judgement, 17 September 2003, para. 218.

ple, you can't call special operation a war, you can't say that «all the problems are because of the Russians», etc.¹⁰⁶), misleading about the direction of displacement (constant changes in final destination), limited time to make a decision («Five minutes to think at the railway station in Taganrog»), not being given the opportunity to return to the abandoned place).

It is also important in this context to establish what actions may fall under the term of «displacement». For its interpretation, the terms «removal», «uprooting» and «displacement» are also used in the cases considered within the ICTY. When considering the deportations from the municipality of Prijedor, the Trial Chamber noted that the atmosphere of coercion prevailed in the municipality, that the persons who left the municipality could not be considered as having made a free choice to leave their homes¹⁰⁷. In this case, it was about people who left the municipality not on «evacuation buses», but on their own. Actions that «instill fear in the population, causing it to flee» were also recognised as deportation¹⁰⁸.

This is important in the context of forcible transfer and deportation of civilians by the Russian side because in many cases when people decided to leave on their own – either by their own transport, or together with acquaintances, or using the services of private carriers – they mistakenly believe that their independent departure cannot be classified as forcible transfer or deportation although they admit that the decision to leave was not their free choice.

The main thing that needs to be established in such cases is the connection between the actions or inaction of the violator and the departure (movement) of the victims from a certain territory¹⁰⁹.

The fact that civilians had the opportunity to leave on their own (by car or with the help of private transportation not provided by the occupying authorities) does not change the fact that the decision to leave was not voluntary, but a forced step.

It is sufficient that people leave their homes under the influence of threats and an atmosphere of fear. The crime of deportation or forcible transfer does not require the provision of means of displacement. The main thing is to establish a connection between the displacement and the conditions created in the territory that had to be left. If the people had their own means of leaving the territory and they preferred them, it does not change the fact that they were forced to leave their homes.

106 Testimonies documented by Human Rights Centre ZMINA (Nadia Biletska, Mariupol city, Donetsk region).

107 Prosecutor v. Stakić, Judgement, 31 July 2003, para. 707.

108 Prosecutor v. Radovan Karadžić, Judgement 24 March 2016, Dorđević Appeals Judgement “instilling fear in the population, causing it to flee”, para. 716.

109 Prosecutor v. Jadranko Prlić, Judgement, 29 May 2013, para. 48.

Moreover, in many cases, individuals deliberately preferred to leave on their own, rather than by «evacuation transport» because they were afraid of the direction they would be taken in this way.

In particular, one of the victims reported that the occupying authorities offered evacuation buses, but the locals did not trust them: «...They offered to leave on their buses, but we understood that they would take us somewhere to Crimea, or we don't know where, and we decided to go on our own...» The woman gave the example of acquaintances who went on an evacuation bus provided by the occupying authorities. As a result, they were taken to the occupied Crimea, their documents confirming the ownership of their house were taken away, and then they stopped sending messages¹¹⁰.

Another victim said that he and his family decided to travel by their own transport because, according to fellow villagers, those who left by evacuation buses were held in a TAC for two weeks after crossing the border, then their Ukrainian passports were taken away and «they were given refugee status»¹¹¹ and after that they were sent somewhere to a depressed province of RF, where there are no normal jobs and with a ban to leave Russia for three years¹¹².

While in the context of evacuation we consider actions aimed at preventing civilians from returning to the territory from which they were displaced as an additional factor, this sign is not significant in the context of forcible transfer and deportation. In particular, the intent in this crime refers to the forced displacement of the population either within the bounds of a country (forcible transfer) or across the border to another country (deportation). In order to prove any of these crimes, it is not necessary to prove the intention to displace the victims permanently, only the intention to carry out the displacement is required¹¹³.

110 Testimonies documented by Human Rights Centre ZMINA (Lilia Boychenko, Kherson).

111 It's probably about asylum seeker status.

112 Testimonies documented by Human Rights Centre ZMINA regarding the events in Lyptsi village, Kharkiv region, 15 February 2023, Tallinn, Estonia.

113 Prosecutor v. Radovan Karadžić, Public Redacted Version of Judgment, 24 March 2016, para. 493.

