



INSIGHT

THE RUSSIAN WAR AGAINST UKRAINE AND THE LAW OF THE EUROPEAN UNION

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THE EFFECTS OF THE CONFLICT IN UKRAINE ON THE HUMAN RIGHTS SITUATION WITHIN THE EUROPEAN UNION

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ABSTRACT: The conflict in Ukraine, triggered by the Russia's act of aggression in March 2014 and, in full scale, in February 2022, has had a profound impact on the human rights situation not only in Ukraine itself but also in the Member States of the European Union. This impact manifests itself in three main areas. The first area concerns the protection of war refugees from Ukraine. The second area pertains to the sanctions imposed on the citizens of the Russian Federation and of Belarus. The third area relates to the effects of the conflict on human rights of the general population of the EU Member States, stemming either from the economic or social hardship brought about by the conflict, or from restrictive measures adopted by the EU Member States in response to the conflict. In addition to introducing each of these areas in more detail, the *Insight* recalls that not paying adequate attention to all of them simultaneously might result in violations of human rights and in the radicalisation of certain segments of society that might feel (rightly or not) ignored and left behind.

KEYWORDS: armed conflict – European Union – human rights – refugees – Ukraine – vulnerable groups.

I. INTRODUCTION

The discussion about the effects of the armed conflict in Ukraine¹ on human rights is usually focused on the situation in Ukraine itself. This is fully warranted as there can be no doubt that the conflict, triggered by the Russia's act of aggression in March 2014 and then, in full scale, in February 2022, has had a profound impact on the enjoyment of virtually all human rights by people living or staying in the territory of Ukraine in its

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¹ The term (armed) conflict in Ukraine is used here in a merely descriptive way. Its use does not in any way suggest that the conflict is internal in nature.



internationally recognized borders, including the territory of the temporarily occupied regions (such as Crimea or Donetsk and Luhansk). A comprehensive overview of this impact has been provided in the two expert reports issued under the so-called Moscow Mechanism of the Organization for Security and Cooperation in Europe (OSCE),² the report of the UN Independent International Commission of Inquiry on Ukraine,³ and in various other reports produced by non-governmental organizations or by experts.⁴

The conflict in Ukraine has however had a profound impact on the human rights situation outside Ukraine as well, especially, albeit not exclusively, in the countries of the European Union (hereafter EU). This is so due both to the geographical proximity of some of these countries to Ukraine and to the active policy of the support for Ukraine embraced by a vast majority of these countries and by the EU itself.⁵ This impact manifests itself in three main areas. The first area concerns the protection of Ukrainian citizens who have fled Ukraine in connection with the conflict and who are now residing in the territory of one of the EU Member States. The second area pertains to the sanctions imposed on the citizens of the Russian Federation and, to a lesser extent, of Belarus. The third area, the broadest one, relates to the effects of the conflict on human rights of the general population of the EU Member States, stemming either from the economic or social hardship brought about by the conflict, or from restrictive measures adopted by the EU States in response to the conflict.

The three areas determine the three-part structure of this *Insight*. In addition to introducing each of these areas in more detail, the *Insight* seeks to recall that not paying adequate attention to all of them simultaneously might result in violations of human rights and in the radicalisation of certain segments of society that might feel (rightly or not) ignored and left behind.

II. PROTECTION OF WAR REFUGEES FROM UKRAINE

The conflict in Ukraine has produced “the fastest growing refugee crisis since 2WW”.⁶ By 4 July 2023, the Office of the UN High Commission for Refugees (UNHCR) recorded globally

² W Benedek, V Bílková and M Sassoli, ‘Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine Since 24 February 2022’ (OSCE, 13 April 2022); V Bílková, L Guercio and V Sancin, ‘Report on Violations of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine (1 April – 25 June 2022)’ (OSCE, 11 July 2022).

³ Report of the Independent International Commission of Inquiry on Ukraine, 15 March 2023, UN Doc. HRC/52/62.

⁴ See Human Rights Watch, *Ukraine: Executions, Torture During Russian Occupation* 18 May 2022 www.hrw.org; ‘Ukraine: “Like A Prison Convoy”: Russia’s Unlawful Transfer And Abuse of Civilians In Ukraine During ‘Filtration’, *Amnesty International*, 10 November 2022 www.amnesty.org.

⁵ For an overview of the various initiatives, see EU support for Ukraine at european-union.europa.eu.

⁶ ‘Ukraine exodus is fastest growing refugee crisis in Europe since WW2 - UNHCR chief’ (6 March 2022) Reuters www.reuters.com.

over 6.300.000 war refugees⁷ from Ukraine. About two thirds of them were registered in one of the EU Member States (with Germany, Poland, and the Czech hosting the highest number of persons⁸). They joined some 1.600.000 Ukrainians who had moved to one of the EU Member States (mostly Poland and the Czech Republic) already prior to the Russia's full-scale attack. The vast majority of those having come to the EU in 2014-2022 had received a residence permit for a duration of at least 12 months, usually for work-related purposes. Some 82.000 persons had however lodged an asylum application in one of the EU Member States (predominantly Italy, Spain, Germany and France). By the end of 2021, around 16.000 positive decisions (85 per cent in first instance, 15 per cent in final instances) were issued, over half of them in Italy (followed by France, Spain and Germany).⁹

Ukrainian citizens who have fled from Ukraine after the outbreak of the full-scale armed conflict, *i.e.*, after 24 February 2022, have been subject to a different legal regime than those who had moved to the EU territory prior to this date. For the first time in history, the EU triggered the mechanism of temporary protection, foreseen in the Council Directive 2001/55/EC of 20 July 2001.¹⁰ Temporary protection means "a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection".¹¹ By its decision of 4 March 2022, the EU Council established "the existence of a mass influx into the Union of displaced persons who have had to leave Ukraine as a consequence of an armed conflict"¹² and decided that temporary protection, initially for a period of one year, would be granted to war refugees from Ukraine (both Ukrainian citizens and stateless persons or nationals of third countries having resided, under certain conditions, in Ukraine by 24 February 2022).¹³

⁷ The term war refugees is not a legal term of art. It is used to describe persons who flee from a country torn by an international or non-international armed conflict. War refugees do not necessarily meet the definition of a refugee enshrined in the 1951 Convention on the Status of Refugees (which requires well-founded fear of individualised persecution on certain grounds).

⁸ See Infographic - Refugees from Ukraine in the EU www.consilium.europa.eu.

⁹ Ukrainian citizens in the EU, Eurostat, November 2022 ec.europa.eu.

¹⁰ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

¹¹ *Ibid.* art. 2(a).

¹² Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of art. 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, art. 1.

¹³ *Ibid.* art. 2(1).

By 30 June 2023, over 4 million persons obtained temporary protection status in one of the EU Member States.¹⁴ The status entitles its beneficiaries to reside and to move within the EU, as well as to have access to employment, suitable accommodation, social welfare, medical care or education for children. The implementation of the EU Council Decision is left to individual Member States, though guidelines seeking to unify national approaches as much as possible were issued by the European Commission in March 2022.¹⁵ This unity of approaches however has not been fully reached.

As shown in the two Bulletins and other publications issued by the EU Fundamental Rights Agency¹⁶ and in scholarly papers,¹⁷ there are differences in how EU Member States treat Ukrainian war refugees. Whereas some countries have opted for an integrationist approach (particularly countries of Central Europe), other have been careful, expecting most of the war refugees to return to Ukraine in due course (e.g., Nordic countries). There are also differences in the way in which war refugees from Ukraine get access to labour market or to social benefits. Moreover, data reveal that different groups of Ukrainian war refugees have been occasionally treated differently and that some of these groups, typically the Roma, have encountered difficulties in getting access to benefits stemming from the temporary protection status. Furthermore, as time goes on, the public support for an open-door policy for Ukrainian war refugees declines in most countries, bringing about a pressure to reduce benefits for them. While not all these differences amount to discrimination or violations of other human rights, some – e.g., harsh working conditions for war refugees or the treatment of Roma refugees – highly likely qualify as such, as shown in the sources indicated above.

Furthermore, relatively soon, the question about the future status of Ukrainian war refugees will need to be addressed, as the temporary protection can be extended maximally till March 2025. Since, according to the survey, some 70 per cent of those having left Ukraine are unlikely to return,¹⁸ even when the war is over, the EU Member States will have to decide on the legal status of these persons. Some of the EU Member States, moreover, will suddenly become home or, in fact, have already become home, to a large

¹⁴ Eurostat, '30 June 2023: 4.07 million with temporary protection', 9 August 2023, ec.europa.eu.

¹⁵ Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of art. 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126 I/01.

¹⁶ EU Agency for Fundamental Rights (FRA), 'The war in Ukraine - Fundamental rights implications within the EU - Bulletin 1', 19 May 2022, fra.europa.eu; and FRA, 'The Russian war of aggression against Ukraine - The broad fundamental rights impact in the EU - Bulletin 2', 21 October 2022, fra.europa.eu. See also FRA, 'Fundamental rights implications for the EU of the war in Ukraine', 8 June 2023, fra.europa.eu; and FRA, 'Barriers to employment of displaced Ukrainians', 14 June 2023, fra.europa.eu.

¹⁷ See, for instance, A Berlina, *Implementation of temporary protection for refugees from Ukraine – A systematic review of the Nordic countries* (Nordic Council of Ministers 2022) www.norden.org.

¹⁸ See FRA, 'Fleeing Ukraine: Displaced people's experiences in the EU', 28 February 2023, fra.europa.eu, 23.

minority and they will have to consider whether their national legal regulation applicable to minorities is fully appropriate in this new context.

As we can see from this overview, war refugees from Ukraine have in principle been well received in the EU Member States and a legal framework has been put in place to ensure that their human rights are fully respected. Despite that, certain shortcomings have manifested themselves in the implementation of this framework. They have however received attention and, at least in the first 18 months since the outbreak of the full-scale war, the EU Member States have dealt with the most massive influx of war refugees in the post-WWII period rather successfully. The situation in the other two areas discussed in the subsequent sections is quite different.

III. TARGETED SANCTIONS AGAINST CITIZENS OF THE RUSSIAN FEDERATION AND OF BELARUS

The second area in which the conflict in Ukraine has affected human rights within the EU pertains to the targeted sanctions imposed on the citizens of the Russian Federation and, to a lesser extent, of Belarus. The EU has a robust tradition of imposing sanctions on third countries as well as on individuals and non-state actors with residence and/or property in these third countries or in one of the EU Member States. In some cases, the EU merely implements sanctions decided upon by the UN Security Council. In other instances, it either goes beyond such sanctions, introducing stricter or additional measures, or imposes its own autonomous sanctions.¹⁹ The legal basis for those sanctions in the EU law is provided by arts 75 and 215 of the Treaty on the Functioning of the EU (TFEU). The former provision deals with sanctions related to the fight against terrorism, the latter with all other types of sanctions. By July 2023, the EU put in place over 40 sanction regimes, though some of them have been suspended in the meantime. Most of them have their origin in the behaviour of specific countries, four are horizontal targeting serious human rights violations and abuses, terrorism, cyber-attacks and proliferation, and the use of chemical weapons.

The sanctions that the EU has imposed in connection with the conflict in Ukraine belong among the most robust ones. The first restrictive measures were introduced in 2014, as a response to the illegal annexation of Crimea and the destabilisation of Eastern Ukraine. A radical expansion of these measures has taken place since 24 February 2022, with eleven packages being progressively adopted so far.²⁰ The restrictive measures making up part of these packages target both the Russian Federation and concrete individuals

¹⁹ See Council of the European Union, Basic Principles on the Use of Restrictive Measures (Sanctions), 7 June 2004, 10198/1/04 REV 1. The principles confirm that the EU is ready to implement UN sanctions as well as to impose autonomous sanctions.

²⁰ For an overview, see the webpage 'EU restrictive measures against Russia over Ukrain' (since 2014) at www.consilium.europa.eu.

and organizations. By 31 July 2023, over 1.800 individuals featured on the sanction list related to the conflict in Ukraine.²¹ Those include official representatives of the Russian Federation (its president, ministers, members of the State Duma, local politicians, etc.), high ranking officers and military personal, prominent businesspeople and oligarchs as well as propagandists. In parallel, sanctions have been applied, both for human rights violations and for its support to the Russia's aggressive war against Ukraine, to Belarus and to individuals and organizations from that country.²² Moreover, several EU Member States (e.g., Poland or the Czech Republic) have also introduced, usually after 24 February 2022, autonomous sanctions going beyond the EU measures.

The sanctions against individuals most commonly take the form of travel bans and asset freeze. The sanctions adopted in response to the conflict in Ukraine are no exception to this rule. Some EU Member States, furthermore, have introduced measures preventing Russian and Belorussian citizens from studying in certain fields (critical study programs), taking part in cultural or sport event, or using their cars within the EU territory.²³ In the recent months, there have been discussions about the possibility of turning temporary asset freeze into permanent confiscation of property owned by Russian or Belorussian citizens, as part of the compensation mechanism for Ukraine being progressively set up.²⁴ While some of these measures, for instance the denial of visas, do not usually entail interferences with human rights, other measures, typically asset freeze and (potentially) asset confiscation, do so. To be lawful and compatible with the relevant human rights (the right to property, the right to private and family life, etc.), such interferences have to meet the three-part test of legality (restrictions have a clear legal basis), legitimacy (they pursue a legitimate aim) and necessity (they are necessary to achieve the aim and proportionate to it).

The legality of individual sanctions has been discussed for years, primarily in the context of counter-terrorist sanctions.²⁵ It has also been addressed, under various legal frameworks, by national and international courts – primarily the courts of the European Union²⁶ and the European Court of Human Rights.²⁷ The case-law has consistently

²¹ The Consolidated List is available online at data.europa.eu.

²² See the webpage 'EU restrictive measures against Belarus' at www.consilium.europa.eu.

²³ See 'Baltic states ban vehicles with Russian license plates in line with EU sanctions interpretation' (13 September 2023) Euronews www.euronews.com.

²⁴ See Commission, Press release of 30 November 2022 'Ukraine: Commission presents options to make sure that Russia pays for its crimes' ec.europa.eu.

²⁵ See, for instance, SS Kumar Thavarajah, *EU Counter-Terrorism Sanctions and International Human Rights Law A Comparative Analysis of Due Process Rights* (Akademiker Verlag 2014); or N Lavranos, 'UN Sanctions and Judicial Review' (2007) *NordicJIL* 1.

²⁶ See, for instance, case T-306/01 *Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council of the EU and Commission of the EC* ECLI:EU:T:2005:331; case T-315/01 *Yassin Abdullah Kadi v. Council of the EU and Commission of the EC* ECLI:EU:T:2005:332; joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the EU and Commission of the EC* ECLI:EU:C:2008:461. See also M Avbelj, F Fontanelli and G Martinico (eds), *Kadi on Trial: A Multifaceted Analysis of the Kadi Judgment* (Routledge 2013).

²⁷ See, for instance, ECtHR *Nada v. Swizerland* App n.10593/08 [12 September 2012].

confirmed that individual sanctions may be lawful but only if, and to the extent that, the three-part test of lawful restrictions is met. There have been instances in which courts have declared that some of the sanction measures have failed in this test. The sanctions targeting Russian and Belorussian citizens need to be assessed in that light. The assessment also has to take account of certain new, specific features of these sanctions. One of those features is the extensive personal scope – sometimes, the mere citizenship (combined or not with a certain social status or ownership) is enough to trigger the sanctions, which seems to bring comprehensive sanctions back by the back door. Another such feature is the currently contemplated plan of turning temporary restrictive measures into permanent “penalties” in the form of the confiscation of property. These new features make the sanctions targeting Russian and Belorussian citizens quite unique and, hence, their compatibility with human rights, including the principle of non-discrimination, shall be considered both by judicial bodies and by scholars.

IV. HUMAN RIGHTS OF THE GENERAL POPULATION OF THE EU MEMBER STATES

War refugees from Ukraine and citizens of the Russian Federation and of Belarus residing in the EU are not the only groups within the EU space whose human rights have been affected by the conflict in Ukraine. This conflict, in fact, has had an impact on the general population of the EU Member States and primarily those countries in the geographical proximity to the conflict. This impact has had two main forms. First, by bringing about the rise in prices, e.g., in the energy sector, and slowing down economic growth, the conflict has produced economic and social hardship not only in the two countries involved in it but also in other countries, including the EU Member States. Such hardship has had a negative effect on the enjoyment of human rights (e.g., the right to health, the right to social security or the right to an adequate standard of living) of the general population and, particularly, of vulnerable groups within this population. Second, following the outbreak of the conflict in 2014 and, especially, in 2022, EU Member States have introduced various restrictive measures aimed at limiting the influence of the Russian Federation on their territory and at sanctioning those who would support or endorse the Russia's war of aggression against Ukraine. Such measures have interfered with, albeit not necessarily violated, several human rights (e.g., the right to freedom of expression or the right to freedom of association).

Concerning the first aspect, the conflict in Ukraine has brought about “a massive and historic energy shock”²⁸ and has heavily affected food market within the EU and outside it. The economic growth has been slowed down and the inflation pushed up. Although the impact has manifested itself differently across the EU, no Member State has been completely spared. In 2022, the EU annual inflation reached the highest level that has

²⁸ OECD, *Russia's war of aggression against Ukraine continues to create serious headwinds for global economy*, OECD says, www.oecd.org.

even been measured, 9,2 per cent, and it more than tripled when compared to the previous year (2,9 per cent in 2021). In 2022 only, consumer prices for housing, water, electricity, gas, and other fuels increased, on average, by 18 per cent, the transport costs by 12,1 per cent and the prices of food and non-alcoholic beverages by 11,9 per cent.²⁹ Over the same period, the salaries and social benefits, including old age pensions, either stagnated or rose only in a very limited way. These developments resulted in an increase in the number of EU citizens at risk of poverty (from 75,3 million people in 2020 to 95,3 million people in 2022 – around 21,6 per cent of the EU population) and in a general decline in the social and economic status of many segments of the EU societies, particularly vulnerable groups. This trend has continued in 2023.

The second aspect pertains to the restrictive measures introduced in many, if not all EU countries to target pro-Russian groups and sentiments. The relevant provisions of national criminal codes have been applied, in their pre-conflict or amended version, to serve as a legal basis for criminal prosecutions of individuals, mostly EU nationals, who have joined the Russian armed forces or their Ukrainian proxies as foreign fighters or have verbally approved of the Russia's act of aggression against Ukraine or of some of the serious crimes committed by the Russian armed forces. Russian media, such as Russia Today and Sputnik, have been banned from the EU information and media space and thousands of websites have been blocked on account of their pro-Russian content and their engaging in disinformation campaigns. When challenged in courts, these measures have so far been largely upheld as lawful and compatible with human rights standards. Such has, for instance, been the outcome of the RT France case, brought to the EU General Court by the French branch of the suspended Russia Today.³⁰ Many of the measures have not however been considered by judicial bodies yet and their legality remains uncertain. Concerns have also been voiced that by resorting, often in a speedy manner, to measures interfering with human rights, the EU Member States and the EU itself may discredit their international reputation and undermine public trust.³¹

And indeed, public polls show that in some of the EU Member States, trust in the political representation is on decline.³² They also show that the way in which these States deal with the human rights effects of the conflict in Ukraine plays an important role in this respect. One of the most commonly indicated grounds for rising mistrust and dissatisfaction consists in the perception, well-founded or not, that the three areas identified in this *Insight* are not all treated by the national or EU authorities as similarly important.

²⁹ Eurostat, Annual inflation more than tripled in the EU in 2022, 9 March 2023, ec.europa.eu.

³⁰ Case T-125/22 *RT France v Council* ECLI:EU:T:2022:483

³¹ See, for instance, D Voorhoof, 'EU silences Russian state media: a step in the wrong direction' (8 May 2022) InformRM's Blog inform.org; and I Popović, 'The EU Ban of RT and Sputnik: Concerns Regarding Freedom of Expression' (30 March 2022) EJIL: Talk www.ejiltalk.org.

³² See, for instance, M Koten, 'Trust Issues in Czechia' (11 October 2023) 3 Seas Europe 3seaseurope.com; or K Janíček, 'As Slovakia's trust in democracy fades, its election frontrunner campaigns against aid to Ukraine' (18 September 2023) AP apnews.com.

This perception can easily be used, and manipulated, to pit some groups of individuals whose human rights have been affected by the conflict in Ukraine against other such groups. It can result in the radicalisation of those who feel, rightly or not, that they have been ignored and left behind, with their human rights unprotected. Even when unsubstantiated, such perception can hardly be countered through mere labeling, accusations of disloyalty, or further interferences with human rights. What is needed, rather, are clear acts proving, and clear words recalling, that all the three areas merit, and are paid, adequate attention.

V. CONCLUDING REMARKS

This *Insight* has shown that the conflict in Ukraine, triggered by the Russia's act of aggression in March 2014 and, in full scale, in February 2022, has had a profound effect on the human rights situation in the EU Member States. Three areas in which this effect has manifested itself can be distinguished: the protection of Ukrainian war refugees within the EU; sanctions imposed on the citizens of the Russian Federation and of Belarus; and the situation of the general population facing economic or social hardship brought about by the conflict and subject to restrictive measures adopted by the EU Member States in connection to the conflict. The *Insight* argues that an unbalanced attention, or the perception thereof, paid to the three areas may lead to radicalisation and undermine public trust in the EU Member States. As such, it must be avoided at all costs. The EU and individual EU Member States shall treat all the human rights effects of the conflict in Ukraine with equal urgency and shall make sure that such equal treatment is both applied and also seen to be applied.

