
Legal and Moral Aspects of Dealing with the Bodies of Fallen Soldiers in the Russian Aggression War Against Ukraine

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Abstract:

Purpose: This work is devoted to the moral and legal aspects of dealing with the bodies of fallen enemy soldiers on the Ukrainian side. During the so-called a special military operation against alleged Ukrainian neo-Nazis, the Russian army suffered very high casualties. After nine months of fighting, this number increased to about 90,000 victims. Such a high number of dead bodies is a challenge for the Ukrainian authorities. As a party that respects international conventions, Ukraine has committed itself to collecting, storing and identifying the bodies of a fallen enemy.

Design/Methodology/Approach: The first objective of this study was to describe and evaluate the detailed legal basis on which the Ukrainian authorities carry out the given procedures. For it raises the question of how the enormous injustices suffered by the Ukrainian people will affect their moral condition? Will their anger and contempt towards the occupier allow them to retain their own humanity? Will the enemy not infect them with their own bestiality and hatred? The following research procedures were used: 1. Literature review; 2. Collection of qualitative and quantitative data; 3. Qualitative analysis; 4. Formulation of conclusions.

Findings: Philosophical ideas were also raised, which were the basis for this and no other w the migratory and economic crisis triggered by Russia's military onslaught against Ukraine has proved a test for a number of international human rights and peace-keeping organisations. But the biggest challenge has been thrown at Ukraine. It is not just about the hardships of war or the humanitarian disaster facing Ukrainian society. The problem is much deeper. Here, the undoubted test for the Ukrainian side is the treatment of prisoners of war and the remains of the enemy. So far, Ukraine seems to be winning in this moral field as well.

Practical implication: This paper is devoted to analysing the legal and ethical aspects of the treatment of the bodies of fallen soldiers fighting on the side of the Russian Federation of understanding the concept of dignified treatment of human corpses.

Originality/value: The article presents original scientific research an alternative view of the personnel losses on the Russian side which proved incomparably higher. Indeed, Putin's regime was not prepared to wage a war on this scale. The Russian Federation was expected to lose around 90,000 soldiers. Additionally, if one considers soldiers who were wounded, were taken prisoner or went missing, Russian war losses would rise to around 200,000. At the same time, such many dead poses an undoubted organisational challenge, as they cannot be abandoned on the battlefield. This brings us to the main thread of our deliberations.

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1. Introduction

On 24 February 2022, at 4 a.m. Polish time, Russia's invasion of Ukraine began, considered to be the largest armed conflict on European soil since World War II (PAP, 2022a). The official reason for the Russian aggression was supposed to be the protection of the population from the Kiev regime, as well as the denazification and demilitarisation of Ukraine (Michalik, 2022).

In fact, however, at the heart of the decision were the imperial ambitions of Vladimir Putin and his henchmen, who dreamt of reconstructing the Soviet Union. These hopes were not fulfilled. Kiev did not fall after three days, as some Russian and US observers had predicted. The war dragged on for months and turned from a local crisis into a global one.

According to the World Bank's "War in the Region" analysis for the Europe and Central Asia region, the war in Ukraine has caused a massive economic shock, hampering the recovery from the Covid 19 pandemic. The OECD estimates that global GDP, compared to pre-war projections, will decline by about 1 per cent with a significant increase in extreme poverty levels. The war will also negatively affect consumer and investor confidence, as well as the functioning of financial markets.

For the entire region of Europe and Central Asia, the authors of the report estimate that the economy will contract by 4.1 per cent in 2022. Neighbouring countries of Russia and Ukraine will be particularly affected, due to their trade, financial and migration links with these countries. Russia is a major exporter of energy and metals, including iron, aluminium, and palladium, and together with Ukraine accounts for more than 15 per cent of global wheat exports. Supply constraints and consequently rising energy and food prices are having a significant impact on increasing inflation in the region (Wojciechowicz, 2022).

The migratory and economic crisis triggered by Russia's military onslaught against Ukraine has proved a test for a number of international human rights and peace-keeping organisations. But the biggest challenge has been thrown at Ukraine. It is not just about the hardships of war or the humanitarian disaster facing Ukrainian society.

The problem is much deeper. For it raises the question of how the enormous injustices suffered by the Ukrainian people will affect their moral condition? Will their anger and contempt towards the occupier allow them to retain their own

humanity? Will the enemy not infect them with their own bestiality and hatred? Here, the undoubted test for the Ukrainian side is the treatment of prisoners of war and the remains of the enemy.

So far, Ukraine seems to be winning in this moral field as well. This paper is devoted to analysing the legal and ethical aspects of the treatment of the bodies of fallen soldiers fighting on the side of the Russian Federation.

2. Literature Review

The details related to the collection, preservation, and storage of the bodies of fallen soldiers fighting on the side of the Russian Federation were established by a decree of the Cabinet of Ministers of Ukraine dated 5 March 2022. Prevention of "deterioration of the sanitary-epidemiological situation and the appearance on the territory of Ukraine of dangerous infectious diseases caused by the presence of unburied bodies (remains) of the deceased in the areas of warfare" was considered the primary objective of the activities in this regard (Тищенко, 2022).

The duty to organise the collection of remains was entrusted to military administrations acting in conjunction with local self-government bodies. The military administrations were to ensure the formation of appropriate special groups, consisting of representatives of such formations as the Territorial Defence Forces, the National Guard, the Police, the Bureau of Forensic Medicine, investigative law enforcement agencies, employees of the State Medical Rescue Service, activists of public and religious associations, social organisations, as well as volunteers (Тищенко, 2022).

According to the arrangements adopted in this regulation, the groups must be equipped with special bags for the collection and transport of corpses, hygiene measures, uniforms, photographic equipment, and vehicles suitable for transporting human bodies. In the absence of specialised transport, available transport bearing the conditional external signs "red cross on white background" shall be used to ensure the safety of the special groups' personnel.

The evacuation of the bodies of the fallen should be accompanied by journalists where possible. Teams of reporters shall engage in filming and photographing the implementation of these measures to further report on the real consequences of the military invasion of the territory of Ukraine by the Russian Federation (Тищенко, 2022).

The corpses of the deceased occupants are transported to the nearest morgues, and in the absence of such morgues, they are placed in special refrigerators on the railway base and/or in refrigerated trailers. The transportation of corpses to the territory of the Russian Federation and to the temporarily occupied territories of Ukraine is carried out with the participation and assistance of representatives of international

organisations only after the final identification of the dead, carried out for no more than 15 days. Unidentified or unidentifiable bodies (remains) of the deceased will be stored in refrigerators at collection points until the identity of the deceased is identified (Чирик, 2022).

3. Research Results and Discussion

Russian armed forces entered their neighbour's sovereign territories from the annexed Crimean Peninsula, the Republic of Belarus, and the Russian Federation. Armed formations belonging to the Donetsk People's Republic and the Lugansk People's Republic - unrecognised states established on Ukrainian territory with Kremlin support by pro-Russian separatists in 2014 (Czermiński, 2022a) - also took an active part in the hostilities.

Alexander Lukashenko's regime also sided with the Russians, but its subordinate military did not enter Ukrainian territory. The Belarusian dictator's assistance consisted of providing logistical support, giving the Russians access to their own territories, thus facilitating missile and air attacks (Dyner, 2022a).

In addition to this, Belarus provided the invaders with fuel, overhauled damaged military equipment, and made supporting armaments available. "In fact, the entire Russian army relies on Belarusian laser and optical equipment. Such quality optical equipment has no Russian counterparts, the Russians are unable to produce them," commented Ilya Dobrovtor, chief editor of Belarusian Pravda (Дім, 2022). Thus, the Republic of Belarus has become one of the parties to the conflict.

During the first five days, the main objective of the Russian invaders was to seize the capital of the invaded country and to cut off its access to the Black Sea and the Sea of Azov. The seizure of territories along the latter body of water allowed the invaders to gain a land route to annexed Crimea. Another important task was to take control of the Kharkiv region. In the first days after the attack, the Russians managed to capture cities such as Melitopol, Berdyansk and Stanitsa Luganskaya.

The most intense fighting was then carried out in the north-eastern and south-eastern areas of Ukraine. Russian diversionary units were active in the Kiev area (Dyner, 2022b).

Russian invaders and some Western analysts assumed that Ukraine would fall after a few days. Officially, the Kremlin was silent on the blitzkrieg, but evidence of its belief in the blitzkrieg of the so-called special military operation (Russian специальная военная операция) (Czermiński, 2022b) is provided by, among others, the article 'The Russian offensive and the new world', published on 26 February 2022 by the Russian news agency RIA Novosti (Chojnowski, 2022).

Andrzej Chojnowski writes: "Many analysts, watching the start of Russia's invasion

of Ukraine, speculated that the Russians wanted to carry out a blitzkrieg and take Ukraine in a flash. There were many indications of this - strikes on military units and ammunition depots, attacks on airbases and attempts to disable anti-aircraft defences to gain complete domination of the skies, which would allow troops to be landed in virtually every city" (Chojnowski, 2022).

It soon became apparent that the Russian army was unable to achieve either the objectives set at the start of the aggression or those set later. By 4 June 2022, the occupying forces had managed to occupy only 20 per cent of Ukrainian territories (including Crimea, annexed eight years earlier, and areas of Donbass). It failed to overthrow the government in Kiev, and after the defeat in the Kharkiv region it became clear that Russia would not create a land corridor connecting the occupied territories with Transnistria (Menkiszak, 2022).

In some respects, the criminal actions of the Russian Federation were counter productive. The military threat has not fractured Ukrainian society - instead, the people have united on a previously unprecedented scale. The fierce resistance from the Ukrainian Armed Forces, politicians, officials, and ordinary citizens alike, triggered a wave of sympathy from many countries around the world. This solidarity has translated into concrete decisions by world leaders, aimed at helping refugees, providing financial support or supplying modern armaments.

The biggest allies of the Ukrainians turned out to be countries such as the USA, Canada, the UK, Japan, Switzerland, France and other EU countries, including Poland. Putin's Russia, which has suffered the fate of a political outcast, has suffered a very different fate. By 20 October 2022, some 12,665 sanctions had been imposed on the Russian Federation (of which 2,695 penalties were still in force before 24 February 2022) (Iwaniak, 2022).

Already in September, the growing Ukrainian army launched a counter-offensive in the north-east of the country in the Kharkiv region. On 8 September the effects of these actions were already visible on the map (Gryczka, 2022). By 13 September 2022, Ukraine had regained full control of 4 000 sq km¹¹ of seized territory and was 'stabilising the situation on another 4 000 sq km', as reported by President Volodymyr Zelenski (PAP, 2022b). An extremely important stage of the phase of the war in question was the liberation of Kherson, which officially took place on Friday 11 November (PAP, 2022c).

From the very beginning of the conflict, the successes of the Ukrainian army were met with retaliatory actions by the occupying forces. The Russians bombed Ukrainian villages and towns, destroyed civilian infrastructure, residential areas, schools, hospitals, and public administration buildings. Thousands of people lost their possessions and were often left homeless. As a result of massive artillery shelling, towns such as Mariupol, Volnovakha, Rubezhnoye, Popasna, Liman and Severodonetsk (Григорская, 2022) were destroyed.

The troops of the Russian Federation also committed other war crimes, such as the genocide in Bucha. According to data from the Office of the United Nations High Commissioner for Human Rights on 28 November 2022, at least 6,655 civilians have been killed and 10,368 wounded since the beginning of the armed onslaught in Ukraine (OCHR, 2022). It is likely that the losses among Ukrainian civilians may be much higher.

However, personnel losses on the Russian side proved incomparably higher. Indeed, Putin's regime was not prepared to wage a war on this scale. According to the Ukrainian Armed Forces General Staff and military intelligence (as of 2 December 2022), the Russian Federation was expected to lose around 90,000 soldiers. On the other hand, if one takes into account the so-called sanitary losses, i.e., servicemen who were wounded, lost limbs, contracted serious illnesses, were taken prisoner or went missing, Russian war losses would rise to around 200,000" (Кучерявец, 2022).

A severe loss on the enemy side is undoubtedly beneficial for the Ukrainian side. At the same time, such many dead poses an undoubted organisational and financial challenge, as they cannot be abandoned on the battlefield. This brings us to the main thread of our deliberations.

The legal aspects of dealing with dead enemy soldiers cannot be fully separated from the moral-ethical aspects. Indeed, the two levels of the problem under analysis are closely linked. For the culture of a given nation, the moral norms adhered to by it, included in ethical considerations, constitute one of the foundations of state law, understood as a system of legal norms introduced by the legislative institutions established for this purpose.

The laws enacted in a given community and the motivation to obey (or violate) them are highly dependent on the mentality of the individuals who make up that community. It is rare to find culturally homogeneous societies whose members share identical values. Hence, the enactment of a legal provision that satisfies one social group may provoke opposition from other groups. The mass protests that erupted in Poland after the tightening of abortion laws in October 2020 serve as a good illustration of this phenomenon.

By analysing the ethical aspects of dealing with the bodies of fallen soldiers of the Russian army, we are, in fact, examining issues of respect for the dead. In doing so, we touch upon the problem of human subjectivity. Based on general philosophical considerations, subjectivity can be defined as a particular form of distinctiveness belonging to a human being. It consists of inner integrity, as well as the ability to autonomously and consciously direct one's own decisions and actions.

Within philosophical discourse, it is possible to identify different ways of approaching human subjectivity. This issue has been addressed within the Cartesian movement, in numerous philosophical and legal doctrines, in modern liberalism, and

within specific debates within the philosophy of medicine. In all these considerations, the emphasis is on the awareness of one's own self, without which the subject is unable to exist (Breczko, 2011). Endowed with self-consciousness, the human being is characterised by reason, free will and possesses an individual, unique identity, acquired through systematic, purposeful reflection on his or her own life experience, as well as inner experiences.

Based on libertarian, democratic, or emancipatory ideas, subjectivity understood in this way implies the attribution of certain rights to the human person. In the first place, this will be the right to determine oneself, to be a decision-maker in matters of one's own destiny, to choose how to arrange one's life. It extends to supra-individual subjects such as nations, states, regions, ethnic groups, social categories, etc. The ideological use of this concept appeals to the value of subjectivity, the freedom and possibility to act according to one's choice and to feel in control of one's own destiny (Górniak, 2014).

Experiencing one's own subjectivity manifests itself through the awareness of who and what one is and the recognition that one has a say in one's own destiny and, to a greater or lesser extent, in what happens in one's surroundings (Górniak, 2014).

The capacity for self-reflection, the awareness of one's own identity, the awareness of one's own possibilities of influencing the surrounding environment (including such parameters as, for example, the ability to assess the limits of one's possibilities, the effectiveness of actions taken, the ability to foresee the consequences of decisions taken) is a manifestation of subjectivity at the subjective level.

Subjectivity is also manifested at the objective level through factors such as: the spectrum of written and unwritten laws allowing or prohibiting individuals to take certain actions, the consequences of which would be of a social nature (indicated here, e.g., the extent of legal capacity and effectiveness in enforcing them); the material potential possessed, enabling the satisfaction of needs arising in different areas of social life; the ability to control the modes of functioning of institutions of strategic importance for collective life; the characteristics of mobility and the distribution of accessibility to positions in the social structure associated with control over key resources and the power to issue dispositions of authority (Górniak, 2014).

As we can see, the attribution of subjectivity to a human being involves the granting of several rights and attributes. One such attribute would be the attribute of dignity. Dignity not only imposes the requirement to treat a person with due respect according to the moral norms accepted in each culture, but also prohibits the instrumental exploitation of a human being. The attribute of dignity is considered an innate value and independent of gender, race, origin, age, material status, appearance, or character traits (Tworkowska, 2013).

The axiological essence of human subjectivity and dignity was expressed by Immanuel Kant in the third categorical imperative proclaiming that every human being is an end in itself (Tyburski Włodzimierz, Wachowiak Andrzej, and Wiśniewski Ryszard 2002).

Dignity, like subjectivity, is a concept that, based on philosophical discourse, we can define in various ways. However, regardless of how one understands the concept of dignity (in a Kantian way, in a personalist way or based on other ethical teachings), most contemporary philosophers remain united on one point: human dignity is one of the most important values of humanistic civilisation (Tyburski Włodzimierz *et al.*, 2002). This is of fundamental importance for our deliberations.

For the dignified treatment of the human person extends to the legal and moral status of his or her body after death. As Anna Tworkowska explains: "The basis justifying the fulfilment of the obligations towards the deceased, his body and his memory is the dignity belonging to every human being, which lies at the foundation of the idea of human rights.

There is no doubt that respect is due to the human body as participating in the dignity of the person. As a logical consequence, this respect also extends to some extent to the deceased and his corpse. The deceased seems to remain in a kind of constitutive connection with the person he was, otherwise after death he would be no different from other biological matter and could be reduced to an object. After death, the deceased no longer possesses subjectivity *sensu stricto*.

However, I consider the view that at death the human person's existence is reduced and nothing remains of him or her to be wrong" (Tyburski Włodzimierz *et al.*, 2002). The thesis according to which: "It is beyond doubt that respect is due to the human body as participating in the dignity of the person" must of course be considered in the context of contemporary legal, civilisational and moral requirements. While in today's Western culture certain attributes and rights are attributed to all people without exception, in the past, not so distant historically, the issues were not a matter of course.

Dignity and subjectivity were taken away not only from the dead, but also from the living. The bitter experience of totalitarian systems such as the Third Reich and the Stalinist regime showed what tragic consequences ideological dehumanisation of human beings can lead to. The crimes of the Nazis and Communists were shocking not only in their cruelty, but also in their scale.

The international conventions for the protection of human rights that were adopted after the Second World War were, in a way, a response to the trauma of the European totalitarian regimes and the multifaceted crisis that grew up around them. The new international law was guided by a basic objective: to prevent tragedies from happening again (UNESCO, 1948).

The notion of innate dignity enjoyed by all human beings without exception (including soldiers of the enemy army) translates into the special status of human corpses. Depending on the ethical doctrine, the body of a deceased person is treated as a 'depersonalised remnant of an individual with a special status' or as a 'carrier of intangible values'.

In the opinion of some experts, the loss of personhood that occurs as a result of death does not constitute grounds for considering a human corpse as a thing that could become someone's property or an object of disposal (Sieradzka, 2019).

The peculiar status of the human corpse is also due to the particular experience of the phenomenon of physical death. It is an experience of a universal and inescapable nature that humanity must constantly confront. The dying of a particular human being is an individual experience that has a profound impact on the functioning of his or her environment, especially family and friends.

As a result, since the dawn of time man has tried to manage death in a way, to surround it with ritual, myth, art, religious, philosophical or scientific reflections. Specific rituals have helped, among other things, in the psychological confrontation with the fact of death, which often evokes a sense of overwhelming fear, sadness and loss.

Experiencing the phenomenon of death is present in virtually all cultures. For this reason, the way in which the bodies of the dead are dealt with has varied enormously depending on the ethnic group, the region of the world or the historical period. Humanity has developed a very broad system of burial customs. In some cultural circles, bodies were mummified and buried in lavish tombs. In others, they were burnt and dumped in rivers, or left to scavengers. There were even cases of corpses being traded and consumed (necrophagia) (Krajewska-Kulak Elżbieta *et al.*, 2016).

It was no different with the bodies of fallen enemies. Anthropology provides many examples of macabre (from our point of view) rituals. The Jivaro Indians, who lived in the border areas of Peru and Ecuador, would cut off the heads of their dead enemies and then remove their skin.

The material obtained in this way was subjected to a series of treatments (cooking, drying, modelling) - thus obtaining an artefact called tsansa (reduced head). It was intended to maintain and control the vital forces of the defeated opponent (Krajewska-Kulak Elżbieta *et al.*, 2016).

Similar ideas underpinned the cannibalistic practices of some primitive peoples. The Maori, the indigenous people of New Zealand, ate their prisoners of war. This is because they believed that in doing so they would take on the spiritual strength of their opponent and increase their own power (Sakowski, 2022).

4. Conclusions, Proposals, Recommendations

Because of our considerations, the following conclusion can be drawn: an analysis of the procedures for dealing with the bodies of fallen soldiers in the Russian aggression war against Ukraine solely in legal terms would be an incomplete analysis. The issue addressed should also be considered in a cultural and ethical context. Formal legal rules, as well as the motivation to comply with them, are highly dependent on the mentality of the society in question - as we have already pointed out.

The given thesis is quite well illustrated by the current situation in Ukraine. The country has been striving for many years to free itself from Moscow's influence and to establish deeper ties with the West. This aspiration was one of the main reasons for the armed conflict with the Russian Federation, which began immediately after the removal of pro-Russian President Viktor Yanukovich from power in 2014.

Ukraine has shown interest in integrating with the European Union not only on an economic, political, or military level, but also on a cultural level. Many Ukrainians believe that in the current war Ukraine is not only taking back territories seized by the occupying forces but is also defending the values on which Western civilisation is based. This thought has been repeatedly articulated by Ukrainian politicians, including Volodymyr Ogrzyzko, Ukraine's foreign minister from 2007 to 2009 (Огрызко, 2022).

Could the above statements be empty declarations aimed at speeding up arms supplies from the West? Certainly not in every case. The Ukrainian side adheres to the values it defends, as it has demonstrated, for example, in the humanitarian treatment of prisoners of war (provision of medical care, adequate living conditions and contact with family). The fallen occupants could also count on dignified treatment, based on the provisions of international law (Kazimierczuk, 2022).

Interestingly, the Russian Federation does not meet these standards even for its own soldiers. Their bodies are usually abandoned on the battlefield or burned in mobile crematoria. In this way, the Kremlin is trying to hide the losses the Russian army is suffering in the war against Ukraine. "Disposal" of corpses also avoids the obligation to pay benefits to the families of the fallen (Чепиль, 2022). This is because a cremated soldier acquires the status of a missing person without news.

At this point, it is worth asking the following question: is Ukraine so scrupulous in meeting international standards for dealing with the bodies of fallen enemy soldiers? Are media reports describing the impeccable morality of Ukrainian heroes one hundred per cent reliable? Certainly not. It would be naïve to think that there are no abuses at all on the Ukrainian side.

However, it seems that the scale of these abuses will be rather small. Indeed, by

complying with the norms of international law, Ukraine is fulfilling its own pragmatic objectives. One of these objectives is particularly important in political terms.

Any affair involving human rights violations or violations of the dignity of fallen enemy soldiers would be a huge blow to Ukraine's image on the international stage. It would show that a civilised country, invaded by a barbaric empire, is not so civilised if it resorts to similar practices.

Massive lapses in the procedures for dealing with the dead soldiers of the Russian Federation would feed Kremlin propaganda and all political forces in the West that are opposed to providing financial and military support to the fighting Ukraine.

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