

Unofficial translation from Ukrainian

**President
European Bureau for Conscientious Objection
Alexia TSOUNI**

35 Van Elewyck street, 1050 Brussels, Belgium

Dear Ms. Tsouni!

A letter from the Bureau for Conscientious Objection aimed to provide information concerning the observance of the right of citizens to conscientious objection of military service by the Ukrainian state bodies has been processed by the Secretariat of the Ukrainian Parliament Commissioner for Human Rights.

The Commissioner in her activity is guided by the Constitution of Ukraine, laws of Ukraine and current international agreements approved by the Parliament of Ukraine according to the Ukrainian Law "On the Ukrainian Parliament Commissioner for Human Rights". At the same time the Commissioner's parliamentary control over the respect for human rights covers everyone without exceptions. Ukrainian citizens "are free and equal in their dignity and rights" according to Article 21 of the Constitution of Ukraine and "have equal constitutional rights and freedoms and are equal under the law" without privileges or limitations on the ground of race, color, political, religious and other beliefs, gender, ethnic and social origin, financial situation, place of residence, language or other grounds according to Article 24 of the Fundamental Law.

The constitutional duty of every citizen of Ukraine to defend his Homeland is especially important in the conditions of lasting for eight years in a row Russian aggression, Russian occupation of certain areas of Donetsk and Luhansk regions and Ukrainian Crimea, the concentration of military groups of the aggressor on the borders of our state. The protection of the Homeland, independence and territorial integrity of Ukraine and respect for the state symbols is a duty of each Ukrainian citizen according to Article 65 of the Constitution of Ukraine.

In view of the above, the issues raised in your letter concerning Ukrainian normative regulation of the right of citizens to conscientious objection of the military service (in the absence of relevant religious beliefs), can be carried out after cessation of the aggression and return of all territories, occupied by the Russian aggressor, under the state control. Other approaches to resolution of this issue in the current circumstances of Russian aggression threaten the principle of equality of human and civil rights and freedoms guaranteed by the Constitution of Ukraine, enshrined in Articles 21 and 24 of the Constitution, and the legally defined principle of unity of human rights and obligations, in particular, under current conditions, and the duty to protect the Homeland.

At the same time, taking into account the constitutional principles, according to which no one can be forced to do what is not provided by law, and the obligation of public authorities, local governments and their officials to act only on the basis, within their powers and in a manner provided by the Constitution and laws of Ukraine, the Commissioner took control of the observance by state bodies and their officials of the State's obligation established by Article 35 of the Constitution of Ukraine to replace military service with alternative (non-military) service to citizens who have religious beliefs incompatible with military service.

In order to comply with the abovementioned constitutional right of citizens in 2021, in particular:

in the Donetsk region:

- 17 special commissions for alternative (non-military) service were established;

- 30 citizens have applied to the abovementioned special commissions for alternative (non-military) service;

- 20 citizens were sent for alternative (non-military) service;

- materials on the commission of a crime under Article 335 of the Criminal Code of Ukraine were sent to the Law Enforcement Agencies in relation to 7 citizens;

in Luhansk region:

- 5 special commissions for alternative (non-military) service were established;

- 7 citizens have applied to the above-mentioned special commissions for alternative (non-military) service;

- 6 citizens were sent for alternative (non-military) service;

- materials concerning commission of the crime under Article 335 of the Criminal Code of Ukraine were sent to the Law Enforcement Agencies in relation to 7 citizens.

In addition, most of the violations detected during the 2021 inspections of compliance with the right of citizens to alternative (non-military) service were related to imperfection of the legislative regulation of these issues. Thus, a number of provisions of the Law of Ukraine "On Alternative (Non-Military) Service" of 12 December 1991 № 1975-XII are inconsistent with the requirements of the Constitution of Ukraine, international agreements and the case law of the European Court of Human Rights regarding the procedure for guaranteeing a person's right to undergo such service.

Thus, Article 9 of the Law № 1975-XII stipulates that to resolve the issue of referral to alternative service, citizens have to personally submit the motivation written statement to the relevant structural unit of the local state administration at the place of residence no later than two calendar months before the start of the statutory period of conscription for military service. However, the second part of Article 35 of the Constitution of Ukraine provides an exhaustive list of grounds on which the right to alternative (non-military) service may be limited. The violation of the deadline for

submitting an application or other procedures by a person whose religious beliefs do not allow to perform the military service are not included in this list.

In order to prevent these violations, the Commissioner repeatedly addressed the Regional State Administrations aiming to take into account the clarification on the inadmissibility of refusing conscripts to be sent for alternative service on these grounds. Most regional state administrations took into account the clarifications and informed the Commissioner about it.

The Commissioner has taken measures to restore the rights of citizens to perform alternative (non-military) service according to the appeals received from the conscripts. Their requests for alternative (non-military) service were usually decided positively as a result of the intervention of the Commissioner. At the same time, there were cases when, due to disregard for such a position, the Commissioner took an active part as a third party on the plaintiff's side in the consideration of this category of court cases on which decisions were made in favor of the plaintiffs.

Thus, the Commissioner decided to intervene on the side of the plaintiff S., who appealed to the Ivano-Frankivsk District Administrative Court with a claim to declare illegal the refusal of the Ivano-Frankivsk Regional State Administration to send him for alternative (non-military) service due to missing the application deadline. Following the trial on November 19, 2021, the Court ruled that the Ivano-Frankivsk Regional State Administration's refusal of sending the plaintiff for alternative (non-military) service was cancelled and the Administration was obliged to make a new decision concerning sending him to this type of service.

The Commissioner has also repeatedly raised the issue of drafting and amending the Law of Ukraine "On Alternative (Non-Military) Service" of December 12, 1991 № 1975-XII with the relevant state bodies. The work is continuing.

The Commissioner does not ignore the issue of observance of the rights of conscripts during the conscription of Ukrainian citizens for military service. The analysis of the monitoring visits to the Territorial Centers for Recruitment and Social Support, assembly points of conscripts, as well as citizens' appeals on this issue shows that the number of complaints of conscripts and their parents concerning illegal detention of persons with a purpose of sending them for military service has increased significantly over the past year.

It should be noted that the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol began on February 20, 2014. The temporarily occupied peninsula is an integral part of the territory of Ukraine, which is covered by the Constitution and laws of Ukraine and international agreements approved by the Parliament of Ukraine. According to Article 51 of the Convention relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention of 1949), the

occupying power has no right to coerce protected persons to serve in its armed or auxiliary forces.

At the same time, the Russian occupant continues to recruit residents of the temporarily occupied territory of the Autonomous Republic of Crimea to the Armed Forces of the Russian Federation in violation of the provisions of the IV Geneva Convention. Thus, the 14th conscription campaign, finished in 2021, called for more than 3 thousand Crimeans (a total of more than 35 thousand people since 2015). The Crimean Human Rights Group recorded 4 new criminal cases against Crimean residents under Article 328 of the Criminal Code of the Russian Federation (Refusal to perform military service in the Armed Forces of the Russian Federation) and 7 new sentences under Article 328 of the Criminal Code of the Russian Federation only in November. A total of 275 criminal cases for refusal to perform military service in the Armed Forces of the Russian Federation and their transference to the "courts" of Crimea have been recorded during the entire period of occupation. Convictions have already been handed down to 266 of them, 9 more are under consideration.

Thus, in addition to violation of the provisions of the Convention relative to the Protection of Civilian Persons in Time of War, there is a systematic violation of the human right to conscientious objection, enshrined in Article 18 of the International Covenant on Civil and Political Rights and Article 18 of the Universal Declaration of Human Rights, on the territory of the temporarily occupied peninsula.

I would like to note that the legislation of Ukraine prohibits the conscription of children for military service and the participation of children in hostilities and armed conflicts. Individuals under the age of 18 are not subjects to conscription according to Article 15 of the Law of Ukraine "On Military Duty and Military Service". Article 30 of the Law of Ukraine "On Child Protection" prohibits the participation of children in hostilities and armed conflicts, including recruitment, funding, material support, training of children for use in armed conflicts of other states or violent acts aimed at overthrowing state power or violating territorial integrity, as well as the use of children in hostilities or armed conflicts, or their involvement in militarized or armed groups not provided for by the laws of Ukraine, propaganda of war. Moreover, the state, in particular, takes all necessary measures to ensure the protection of children in war zones and armed conflicts, children affected by hostilities and armed conflicts in accordance with Article 30 of the Law of Ukraine "On Child Protection".

All actions of the state regarding the protection of such children must be carried out in accordance with the norms of the international humanitarian law. I would like to emphasize that the Ukrainian Parliament Commissioner for Human Rights advocates a ban on the involvement of children in any military or armed groups and their participation in armed conflicts.

Thus, an International Conference on "Ensuring the Rights of the Child in Armed Conflict" was held on the initiative of the Commissioner in Kyiv in

November 2019. The event was attended by the ombudsmen and the representatives of the ombudsmen's offices of the countries where the armed conflict took place (Bosnia and Herzegovina, Georgia, the Republic of Azerbaijan, the Republic of Albania, the Republic of Moldova, the Republic of Croatia), as well as representatives of international organizations, in particular, the UNICEF Regional Director for Europe and Central Asia, the Chairman of the Verkhovna Rada of Ukraine, People's Deputies of Ukraine, representatives of central executive bodies, representatives of the Ukrainian regions affected by the armed conflict.

The recommendations on measures and ways to address the most problematic issues that need urgent response in order to protect the rights of children affected by armed conflict have been developed as a result of the Conference. The recommendations were addressed to the Global Alliance of National Human Rights Institutions (GANHRI), the European Network of National Human Rights Institutions (ENNHRI), the European Network of Ombudspersons for Children (ENOC), the UN Committee on the Rights of the Child, the United Nations International Children's Emergency Fund (UNICEF), the Parliament and the Government of Ukraine, as well as the Governments of the participating in the Conference countries.

I have to note that the Ukrainian Parliament Commissioner for Human Rights will continue to control the observance of the rights of Ukrainian citizens in the areas, mentioned above.

Respectfully

Representative of the Commissioner

Viacheslav PETLOVANYI