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COALITION

ANALYTICAL REPORT

Forced conscription of Ukrainian citizens in the occupied territory of Ukraine by the Russian Federation: facts and legal classification



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INTRODUCTION AND METHODOLOGY

One of the tasks of [Ukraine 5AM Coalition](#) is to document the consequences of the large-scale aggression of the Russian Federation (RF) after 24 February 2022. The problem of forced conscription of Ukrainian citizens in the temporarily occupied territory (TOT) is one of the widespread and massive war crimes committed during the Russian aggression against Ukraine.

The recruitment of Ukrainian citizens living in the occupied territory of Ukraine to serve in the armed forces of the occupying power¹ has been widely practiced since the beginning of the armed conflict in 2014 (in particular, a conscription campaign has been carried out in the TOT of the Autonomous Republic of Crimea and the city of Sevastopol). However, the scale of the problem has ramped up significantly in the context of full-scale aggression against Ukraine after the occupation forces seized new territories and launched forced conscription of the local population. Such a change in the situation requires a careful study of the problem and the development of a unified strategy for its solution which would ensure the efficient and rational use of state resources for the protection of Ukrainian citizens who are victims of the war crime of forced conscription, the correct and balanced investigation into the actions of such persons in the context of charges of high treason and other related crimes. A consistent strategy for such investigations and its proper communication may also facilitate a military advantage by reducing enemy forces, encouraging conscripts to surrender to the Armed Forces of Ukraine.

Although Ukrainian citizens living in the TOT were recruited to serve in the armed forces of RF and Russian-controlled military formations even before full-scale aggression, this report focuses on the problem of forced conscription of Ukrainian citizens in the TOT in the context of the full-scale aggression, in particular in Crimea, Donetsk, Luhansk, Zaporizhzhia, Kherson regions. Accordingly, the report covers events and facts in the period from 19 February 2022 to September 2022.

While examining the problem, reports of human rights organisations (in particular, the Crimean Human Rights Group²), reports and statements by Ukrainian government agencies and their representatives, international organisations were used. Sources with information from the occupation authorities and their representatives, as well as documented testimonies of TOT residents, were studied separately. To identify the main trends in the consideration of criminal proceedings regarding forcibly conscripted persons, individual court rulings under Art. 111 and

1 Regular formations and units subordinated to the Ministry of Defence of the Russian Federation, units and special formations subordinated to other security agencies of the Russian Federation, irregular illegal armed formations created, subordinated, managed and financed by the Russian Federation directly or through occupation administrations established by the Russian Federation in the temporary occupied territories of Ukraine

2 https://crimeahrg.org/wp-content/uploads/2022/08/krim-ta-150-dniv_ua.pdf

related Articles 111-1, 258-3 and 260 of the Criminal Code of Ukraine, available in the Unified State Register of Court Decisions, were also analysed.

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LIST OF ABBREVIATIONS

- The Hague Regulations of 1907** — Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land
- MDI** — Main Directorate of Intelligence
- “DPR”** — so-called Donetsk People’s Republic
- Geneva Convention** — Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949)
- AFU** — Armed Forces of Ukraine
- CC** — Criminal Code
- CHRG** — Crimean Human Rights Group
- “LRP/DPR”** — so-called Luhansk People’s Republic and Donetsk People’s Republic
- “LPR”** — so-called Luhansk People’s Republic
- MoD** — Ministry of Defence
- OSBB** — association of apartment building co-owners
- Rome Statute** — Rome Statute of the International Criminal Court
- Russian Guard** — National Guard of the Russian Federation
- RF** — Russian Federation
- TOT** — temporarily occupied territory

1. GENERAL DESCRIPTION OF SITUATION

Even before the beginning of the large-scale armed aggression against Ukraine on 24 February 2022, in the territories of Ukraine occupied by RF, Ukrainian citizens were actively called up for conscript service: a type of military service that persons fit for military service undergo to obtain a military specialty and who are not involved in active military operations under normal circumstances. Since 2015, the Russian-occupation authorities in Crimea have conducted 13 illegal conscription campaigns during which 31,000 Crimeans, most of whom are likely to be Ukrainian citizens, were conscripted into the army of the occupying power³.

In contrast to conscription, all citizens of a legally defined age who can perform military duty on health grounds are subject to call-up in the course of mobilisation. With the beginning of the full-scale aggression of RF, to maximise the staffing of the Russian military forces, respective mobilisation campaigns were launched in the occupied territories of Donetsk and Luhansk regions to call up men aged 18-55 with restrictions on their departure outside the occupied territory. Each of the occupied territories has its own peculiarities of the implementation of mobilisation measures: from handing out summonses in the street or at work, to breaking into private homes and detaining men in public transport and at checkpoints, followed by sending them to police stations or military enlistment offices.

On 21 September 2022, the Russian president announced «partial mobilisation» in Russia⁴, which in practice will mean new waves of mobilisation in all occupied territories of Ukraine⁵. In light of the «referendums» held in September 2022 and the subsequent annexation of these occupied territories, such mobilisation will be carried out «on general grounds» in accordance with Russian legislation, despite the statement on «transitional period», etc. It should be noted that Sergey Aksyonov, the head of the Russian-occupation administration in Crimea, already announced the implementation of the mobilisation plans⁶.

Forced conscription of protected persons in occupied territory is expressly prohibited by the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, the occupying power may not compel protected persons to serve in its armed or auxiliary forces or undertake any work which would involve them in the obligation of taking part in military operations. According to Art. 23 of the Hague Regulations of 1907, it is forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country.

3 <https://www.ukrinform.ua/rubric-presshall/3332149-nezakonnij-prizov-u-krimu.html>

4 <http://static.kremlin.ru/media/events/files/ru/QdJ0ybmN7Kocwc8eyTGosdyuyIM6qXpj.pdf>

5 <https://t.me/BalitskyVGA/278>

6 https://t.me/rian_ru/179231

Violation of both norms is a war crime under Articles 8(2)(a)(v) and 8(2)(b)(xv) of the Rome Statute in the form of compelling to serve in the forces of a hostile power and in the form of compelling to take part in the operations of war directed against own country or its armed formations. Such actions are also a violation of the laws and customs of war under Art. 438 of the Criminal Code of Ukraine.

1.1. MOBILISATION IN THE TEMPORARILY OCCUPIED TERRITORIES OF DONETSK AND LUHANSK REGIONS

A. FACTUAL INFORMATION ON MOBILISATION

Some settlements that are part of Donetsk and Luhansk regions have been occupied by RF since 7 April 2014⁷. The borders and list of districts, cities, towns and villages, parts of their territories, temporarily occupied in Donetsk and Luhansk regions from this date, are defined by the President of Ukraine based on the report of the Ministry of Defence of Ukraine, prepared on the basis of proposals of the General Staff of the Armed Forces of Ukraine⁸.

Ahead of the large-scale aggression of RF against Ukraine, which began on 24 February 2022, mobilisation was announced in the TOT of Donetsk and Luhansk regions – the corresponding «decrees» were issued by Russian-controlled occupation administrations of the so-called «Donetsk People's Republic»⁹ and «Luhansk People's Republic»¹⁰ on 19 February 2022. According to the «decree of the head of the LPR», men aged 18 to 55 were subject to general mobilisation in the occupied Luhansk region; at the same time, they were banned from traveling outside the borders of the so-called «LPR». It is obvious that the civilian population consisting of Ukrainian citizens was subject to mobilisation. Even if such persons received a passport of RF or the so-called «LPR/DPR», the forced imposition of the occupying power's citizenship does not create legal consequences (is null and void).

On 22 February 2022, the «decree of the head of the DPR» was issued on the draft of citizens born in 1995-2004 for military service within mobilisation. According to Paragraph 4 of the mentioned «decree», conscripts for military service within mobilisation are sent to the reserve of the «Command of the People's Militia of the DPR»¹¹. In March 2022, the upper age threshold for mobilisation in the occupied territories of Donetsk region was raised to 65 years¹².

In April, the occupation authorities increased the pace of mobilisation in the TOT of Donetsk and Luhansk regions.

7 <https://zakon.rada.gov.ua/laws/show/1207-18#Text>
<https://zakon.rada.gov.ua/laws/show/32/2019#n9>

8 <https://zakon.rada.gov.ua/laws/show/32/2019#n9>

9 <http://npa.dnronline.su/2022-02-19/ukaz-glavy-donetskoj-narodnoj-respubliki-29-ot-19-02-2022-goda-o-provedenii-vseobshhej-mobilisatsii.html>

10 <https://newizv.ru/news/world/19-02-2022/glava-lnr-ob-yavil-vseobschuyu-mobilisatsiyu>

11 <http://npa.dnronline.su/2022-02-22/ukaz-glavy-donetskoj-narodnoj-respubliki-31-ot-22-02-2022-goda-o-prizyve-grazhdan-1995-2004-godov-rozhdeniya-na-voennuyu-sluzhbu-po-mobilisatsii.html>

12 https://denis-pushilin.ru/doc/ukazy/Ukaz_N94_19032022.pdf

On 10 April, the MDI of the MoD of Ukraine published information that the mobilisation of persons not subject to conscription had begun. This primarily concerned the employees of the so-called «strategic enterprises». For example, the Alchevsk Iron and Steel Works, located in the TOT of Luhansk region, received the mobilisation order for 1,700 people. This is the fourth and largest wave of mobilisation at the plant. Previously, orders for 1,000, 500, 400 people came. Officers of the «traffic police» of the so-called «LPR» were given the right to issue summonses at their posts. On the Alchevsk-Bile highway, several mobile brigades stopped vehicles on the road and issued summonses to the men in cars. The visits to apartments in search of men of draft age (18–65) became more frequent¹³.

Since 20 April, medical examinations of mobilised personnel have been suspended in TOT in Donetsk and Luhansk regions. Those who had obvious health problems (mutilation, disability, severe acute diseases) or managed to obtain the necessary documents were still mobilised but were assigned to logistics units¹⁴.

On 3 August 2022, head of the occupation administration of the so-called «DPR» Denis Pushilin amended the decree on the creation of a commission on deferment from military service. It clarifies that earlier a deferment could be obtained for 6 months from the date of mobilisation announcement (19 February 2022), and now for 9 months, that is, mobilisation will last at least until mid-November 2022¹⁵. At the same time, a request of an enterprise for the deferment of its employee does not always work. In particular, 430 workers of the Dovzhanska-Kapitalna coal mine, located in the town of Dovzhansk (formerly Sverdlovsk), were mobilised to the front¹⁶.

Since the beginning of August 2022, patrols reappeared in the occupied territories of Donetsk and Luhansk regions, checking the documents of men and taking them away in an unknown direction. It is also reported that patrols asked pensioners for information on men to mobilise in exchange for products or monetary reward¹⁷. Although the mobilisation process was quite corrupt at first, and military service exemption certificate¹⁸ could be bought, now it is almost impossible to buy them¹⁹. Currently, there is no data on the exact number of forcibly conscripted persons, but there are thousands, possibly tens of thousands of them. According to the MDI of the MoD of Defence of Ukraine, the plan was to mobilise 26,000²⁰ people from the occupied territories. Deputy Prime Minister – Minister for Reintegration of the Temporarily Occupied Territories of Ukraine Iryna Vereshchuk said that 55% of men in Luhansk region²¹ were forcibly conscripted.

13 <https://www.facebook.com/DefenceIntelligenceofUkraine/posts/288916973419730>

14 <https://www.facebook.com/DefenceIntelligenceofUkraine/posts/301832585461502>

15 https://denis-pushilin.ru/doc/ukazy/Ukaz_433_03082022.pdf

16 <https://t.me/luhanskaVTSA/5176>

17 <https://t.me/TLRes/281>

18 Medical reasons that exempt from mobilisation

19 <https://novosti.dn.ua/article/8100-prymusova-mobilisatsiya-u-l-dnr-chogo-chekaty-vid-novoyi-hvyli>

20 <https://www.facebook.com/DefenceIntelligenceofUkraine/posts/292241169753977>

21 <https://novosti.dn.ua/news/330098-55-cholovikiv-zahoplenoyi-armiyeyu-rf-luganshhyny-mobilisovano-vereshhuk>

Various Telegram channels, citing sources in the military circles of the occupation administration of the RF in Luhansk region, speak of 6,000 mobilised men at least and 10,000 at most. However, it is not clear whether the numbers concern Luhansk region or occupied Donetsk region as well²².

As a result of combat clashes between the Armed Forces of Ukraine and the opposing side, in whose ranks they are fighting, including forcibly conscripted residents of the TOT of Donetsk and Luhansk regions, the latter could surrender or be captured by the Armed Forces of Ukraine. Currently, the number of such persons is unknown. However, local Telegram channels mention specific figures regarding the capture of various military units of the so-called «DPR» and «LPR». For example, at least 700 such people were captured by the 15th regiment of the Military Unit 08826 in Kharkiv region in March 2022²³.

There is also information that connection with the men from occupied Horlivka in Donetsk region, who had been previously mobilised into the 9th separate marine regiment of the 1st army corps of the occupation forces, was lost on 11 September 2022. It is known that earlier they stayed in the occupied areas of Kherson region and refused to participate in hostilities. The last information that came from them: the Russian commanders threatened to send all those who refuse to take part in military operations to the front without weapons²⁴.

B. CIRCUMSTANCES OF FORCED CONSCRIPTION

The occupying power has been taking all possible measures for conscription in the occupied territories with coercion as the main tool.

It is known from open sources about the following cases of forced military service through mobilisation, and this list is not exhaustive:

1. Men are «caught» in the street²⁵, their documents are checked; if there is no stamp of a military enlistment office, the men are detained and taken to such an office. Detainees are not informed of their location and direction of movement, their phones are confiscated to limit the possibility of contacting their relatives;
2. Any documents on deferment from the draft or enterprise's request not to call up its employee are ignored and destroyed on the spot²⁶;
3. Men are forced to sign statements about voluntary joining the armed forces under psychological and physical pressure²⁷;

22 <https://novosti.dn.ua/article/8100-prymusova-mobilisatsiya-u-l-dnr-chogo-chekaty-vid-novoyi-hvyli>

23 https://t.me/Batman_DNR/459

24 <https://t.me/DIUkraine/1342>

25 <https://novayagazeta.ru/articles/2022/03/12/nas-vziali-v-rabstvo-v-xxi-veke-i-delaiut-s-nami-cto-khotiat?u>

26 <https://t.me/luhanskaVTSA/5202?single>

27 <https://t.me/TLRes/304>

4. Municipal institutions and private residential premises in the occupied territories are inspected to identify men of conscription age with subsequent detention and forced transfer to military enlistment offices²⁸;
5. Students of educational institutions in the occupied territories are summoned to the place of study under various pretexts, detained on the spot and sent to the war zone. To “compel” them, students are threatened with criminal liability and imprisonment, and their relatives are also threatened if they hide information about them from the occupation bodies²⁹.

Confrontations between relatives and representatives of the occupation administration during forced conscription also testify to the fact that the mobilisation is forced³⁰.

The use of coercion against persons who were mobilised in the occupied territories is also evidenced by the above-mentioned facts of «catching» men of conscription age in the street, at workplace obliging them to appear at the military enlistment office, and at the same time blocking departure from TOT and transportation of such persons in closed train cars to prevent attempts to evade registration or mobilisation. According to the testimony of those mobilised, they were threatened with seven years in prison for evading «mobilisation», and their relatives, who sheltered them, were threatened with several years in prison³¹.

It is also reported that those mobilised from the occupied territories, in particular Luhansk region, are immediately thrown to the front line, without training and equipment, and during the «mobilisation» people in the occupied territories were offered a financial reward for reporting the location of men to send them to the front³².

Videos of interviews of POWs from the TOT of Donetsk and Luhansk regions are regularly published on various YouTube channels³³, where POWs often talk about the forced nature of their mobilisation, threats of criminal prosecution in case of refusal to serve, etc. The conclusions about the predominantly forced nature of the mobilisation are confirmed by the data of the Main Directorate of Intelligence of the Ministry of Defence of Ukraine on their treatment by Russia during the conscription process and fighting, as well as indifference to the further fate of the mobilised, which is especially evident from the «protests» of relatives of the mobilised about the lack of information on about their whereabouts³⁴.

28 https://t.me/zoda_gov_ua/6398
<http://surl.li/ejfd>

29 <https://novayagazeta.ru/articles/2022/03/12/nas-vziali-v-rabstvo-v-xxi-veke-i-delaiut-s-nami-chto-khotiat?u>
<https://www.youtube.com/watch?v=oj0hnOueHzs>

30 <https://t.me/operativnoZSU/35859>

31 <https://www.youtube.com/watch?v=oj0hnOueHzs>

32 <https://nv.ua/ukraine/events/mobilisaciya-v-lnr-ukrainskaya-razvedka-rasskazala-o-planah-boevikov-50264939.html>

33 <https://www.youtube.com/c/VolodymyrZolkin>
<https://www.youtube.com/c/AntonGerashchenko>
<https://t.me/operativnoZSU/35859>
<https://www.youtube.com/watch?v=m9iHoL3qIEk>
<https://t.me/TLRes/102>

34 <https://t.me/DIUkraine/1120>
<https://telegra.ph/ZHaloba-Pushilinu-rodstvennikov-mobilisovannyh-dnr-08-09>

It is also known that RF has little interest in the exchange of some groups of prisoners of war who fought against Ukraine, in particular mobilised and military personnel from the territories of the occupied areas of Donetsk and Luhansk regions. The overall aggressor's indifference to these persons is also evidenced by the fact that «they are the worst trained, worst dressed, have the worst weapons and are forcibly conscripted in the literal sense.»³⁵

Moreover, it is worth noting that a quasi-legal system of prosecution of persons who refuse military service was created in the occupied areas of Donetsk and Luhansk regions before 24 February 2022. A legal regime, identical to the martial law declared on 22 and 26 May 2014, was imposed in the occupied territories, making it possible to draft the civilian population within the framework of mobilisation and involvement in any defence works³⁶. An additional feature that highlights the forcible nature of mobilisation is the circumstance of the impossibility of leaving TOT. Civilian men who are in a military register of the occupation administration have been banned from leaving their place of residence/place of stay without the permission of the military enlistment office upon a written application since the mobilisation was announced³⁷.

The liability for evading military registration and conscription is provided for by the regulations of the occupation authorities in the so-called «LPR/DPR». In particular, administrative liability of the civilian population for violation of obligations in the field of military registration in the form of a warning or a fine³⁸ is provided, and criminal liability for evasion of conscription for military service entails various types of punishment: from a fine to imprisonment for a term of up to two years³⁹.⁴⁰ In addition, criminal liability is provided for a number of «crimes against military service», in particular, for failure to comply with an order and resistance to a superior during the performance of military service duties, arbitrarily leaving a unit or a place of service, including for the purpose of evading military service, and in

35 <https://t.me/DIUkraine/1120>

36 Resolution of the "Council of Ministers of the DPR" "On martial law in the territory of the DPR" No. 6-5 of 25 May 2014 <https://archive.vn/uenRp>

Video "Martial law declared" of 25 May 2014. URL: <https://archive.vn/ZRT4l>
(<https://www.youtube.com/watch?v=GZapRmmbn3Y&t=8s>)

Video "V. Nikitin on martial law" URL: <https://archive.vn/pNXx3>
(<https://www.youtube.com/watch?v=oKFvw-5agYQ&t=46s>)

Order of the "Head of the LPR" "On prohibition of sale of corporate rights, production facilities, enterprises during martial law" No. 10-26/05 of 22 May 2014. URL: <https://archive.vn/XtQYB>

37 Art. 20 of the "Law of the DPR" "On mobilisation training and mobilisation in the DPR" No. 10-INS of 17 February 2015. URL: <https://archive.vn/NqL6l> (<https://dnrsovet.su/zakon-dnr-o-mob-podgotovke-i-mobilisatsii/>)

Art. 20 of the "Law of the LPR" "On mobilisation training and mobilisation in the LPR" No. 8-II of 13 February 2015. URL: <https://archive.vn/LMEWW>

38 Articles 21.5-21.6 of the "Code of the LPR on Administrative Offences" No. 109-II of 15 July 2016. URL: <https://archive.vn/5q7Av>

39 Art. 388 of the "Criminal Code of the DPR" of 19 August 2014. URL: <https://archive.vn/VKrpU> (<https://dnrsovet.su/zakonodatelnaya-deyatelnost/dokumenty-verhovnogo-soveta-dnr/ugolovnyj-kodeks-donetskoj-narodnoj-respubliki/>)

40 Art. 406 of the "Criminal Code of the LPR" No. 58-II of 14 August 2015. URL: <https://archive.vn/ycq1W>

a combat situation for refusing to perform military service duties and refusing to use weapons during military operation, etc.^{41 42}

«Military Field Courts of the DPR» were established to hold the civilian population liable for non-compliance with orders of the military authorities, evasion of military service, and desertion under wartime laws⁴³.

1.2.

MOBILISATION IN THE TERRITORIES OF UKRAINE OCCUPIED AFTER 24 FEBRUARY 2022

Since the beginning of the full-scale aggression of RF, certain territories controlled by the Government of Ukraine were captured by Russian troops with the subsequent establishment of occupation authorities and administrations in these territories. These are territorial communities of Donetsk, Kharkiv, Luhansk, Zaporizhzhia, and Kherson regions⁴⁴.

Apart from mobilisation measures being carried out in the territories of Donetsk and Luhansk regions, which were occupied until 24 February 2022, information appeared in April 2022 about the mobilisation, including of healthcare staff, in the captured territories of Kherson, Zaporizhzhia, and Kharkiv regions⁴⁵.

On 20 May 2022, all Ukrainian service members defending Mariupol were evacuated from Azovstal steel works, and from that moment the city can be considered fully occupied⁴⁶. In August, local residents started receiving a lot of text messages from the «Ministry of Emergency Situations» with an offer to work in the so-called «state militarised mining rescue service» as drivers and engine drivers in Donetsk, Horlivka, and Makiivka⁴⁷. In the same month, civilians began to receive text messages with an open call to join the so-called «armed forces of the DPR» under a contract⁴⁸. After illegal referendums were held in the TOT, Mariupol residents

41 Articles 393-395, 400, 401-403, 412, 415, 418 of the "Criminal Code of the DPR" of 19 August 2014. URL: <https://archive.vn/VKRpU> (<https://dnrsovet.su/zakonodatelnaya-deyatelnost/dokumenty-verhovnogo-soveta-dnr/ugolovnyj-kodeks-donetskoj-narodnoj-respubliki/>)

42 Articles 412-413, 417-420 of the "Criminal Code of the LPR" No. 58-II of 14 August 2015. URL: <https://archive.vn/ycq1W>

43 Resolution of the "Council of Ministers of the DPR" "On declaration of martial law in the territory of the DPR" No. 6-5 of 25 May 2014 <https://archive.vn/uenRp>

44 According to the procedure stipulated by the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine", the mentioned territories are currently not recognised as occupied. However, the seizure of these territories by the occupation forces and the establishment of occupying power in them allows us to assert their actual occupation. The Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine regularly updates the list of communities under temporary occupation, and this list also includes territories occupied at different times after 24 February 2022 <https://minre.gov.ua/news/onovleno-aktualnyy-perelik-gromad-u-rayonah-boyovyh-diy-na-tot-i-tyh-shcho-v-otochenni>

45 <https://gur.gov.ua/content/okupanty-rozpochaly-prymusovu-mobilisatsiiu-v-tomu-chysli-medykiv-na-zakhoplenykh-terytoriiakh-khersonskoi-zaporizkoi-ta-kharkivskoi-oblastei.html>

46 <https://www.pravda.com.ua/news/2022/05/20/7347537/>

47 <https://web.telegram.org/z/#-1193450264>

48 <https://www.ukrinform.ua/rubric-ato/3554498-rosiani-pocali-vidkritu-mobilisaciu-u-mariupoli-vze-rozsilaut-sms.html>

already began to receive messages urging them to appear at the «military enlistment office» in connection with the mobilisation⁴⁹. In addition, people with their place of residence registered in Donetsk region had their documents checked in the street, and they were reported to be sent to the front immediately⁵⁰.

In Berdiansk (Zaporizhzhia region), which has been occupied since 27 February 2022⁵¹, OSBB heads were ordered in July 2022 to submit lists of residents of draft age which may indicate preparations for mobilisation⁵².

Evidence of the involvement of minors living in the occupied territories both in the forced mobilisation campaign and in the participation in paramilitary formations such as «Yunarmiya» [All-Russia «Young Army» National Military Patriotic Social Movement Association] is of particular concern. In particular, in captured Melekine near Mariupol, a Yunarmiya paramilitary movement camp⁵³ was organised, in which children from the age of 8 were involved. As part of the camp, military and sports meetings are held, where children are taught to assemble and disassemble weapons, and shooting, demining, physical training and parachute handling classes are held. Minors that are members of this movement are also involved in mobilisation raids. In particular, it was reported that minors interrogated peers⁵⁴ about the whereabouts of their parents. Minors are also used as leverage on their male relatives⁵⁵ who are hiding from mobilisation.

In September 2022, in the occupied part of Chuhuiv district, Kharkiv region, the occupiers began active measures for the forced conscription of the local population⁵⁶. Men of conscription age were detained and sent to Vovchansk⁵⁷, to the so-called «recruitment centre».

After a successful counteroffensive in the Kharkiv region, Russia suffered significant manpower losses and the occupation forces claim plans to carry out forced conscription of the male population in the TOT. Now men are banned from leaving settlements⁵⁸.

49 <https://t.me/mariupolrada/11166>

50 <https://t.me/mariupolrada/11216>

51 <https://www.bbc.com/ukrainian/features-60540255>

52 <https://sprotyv.mod.gov.ua/2022/07/05/okupanty-gotuyut-mobilisacziyu-na-pivdni/>

53 <https://novosti.dn.ua/ru/news/330334-okkupanty-v-lagere-yunarmii-pod-mariupolem-uchat-detej-strelyat>

54 <https://t.me/TLRes/128>

55 <https://t.me/TLRes/123>

56 <https://www.facebook.com/MinistryofDefence.UA/posts/pfbid02UJZJ4mQHmG1ffFjZUFBqMyf79ro9zCwuoSEew2paAb13vjBkiHS3z5b3ZjGTvAbFI>

57 Vovchansk was liberated on 13 September 2022, according to the announcement on the official page of the State Border Guard Service of Ukraine - <https://www.facebook.com/watch/?v=741090680384490>

58 <https://www.facebook.com/GeneralStaff.ua/posts/pfbid02RWGk659PtLoivhTpvs9jqxZ8r1xsn3pzcYqBTTXbY5GQQ9TRfPN3rAYzWuMGyHNhl>

1.3.

MOBILISATION MEASURES IN THE TEMPORARILY OCCUPIED TERRITORY OF CRIMEA

A. FACTUAL INFORMATION ON MOBILISATION

Even before the announcement of partial mobilisation in RF, there were reports that RF is using Ukrainian citizens living in Crimea in its full-scale armed aggression against Ukraine as they have been recruited within the framework of contractual relations with the military or within conscription for military service which should not involve participation in combat operations. Only in the autumn of 2021, RF called up 3,000 Crimeans for military service, some of whom were sent to participate in military operations against Ukraine⁵⁹. On 1 April, a new mandatory conscription campaign⁶⁰ began, however indicators of illegal conscription in Crimea are hidden under the threat of at least criminal prosecution for draft evasion. For example, «military commissar of Crimea» Yuriy Lymar refused to announce plans for this year's conscription campaign⁶¹. Sergey Aksyonov, head of Russia's occupation administration in Crimea, said that at least one «Crimean battalion» of 1,200 people, who had allegedly volunteered to be included in the Russian armed forces (they are called «volunteers»), joined the armed aggression of RF against Ukraine to «protect the national interests of Russia»⁶².

Even before the announcement of partial mobilisation in RF, the authorities of the occupation authorities of RF in Crimea were conducting mobilisation preparation activities. According to the decree of the head of the occupation administration of RF in Crimea No. 151-U of 30 June 2022 «On conscription commissions for mobilisation of citizens in the Republic of Crimea and the recognition of some decrees of the head of the Republic of Crimea as invalid»⁶³, the creation of conscription commissions for mobilisation was foreseen in Crimea. These measures do not include conscription campaigns which are held in Crimea twice a year. In particular, since 2015, the occupation authorities in Crimea have conducted 13 illegal conscription campaigns into the armed forces of RF, during which 31,000 Crimeans⁶⁴ were conscripted into the army of the occupying power, most of whom are probably Ukrainian citizens.

Accumulated information about captured and killed soldiers from Crimea proves the involvement of Crimeans in military operations. As of 24 July 2022, the CHRG documented at least 56 killed and 19 captured Crimeans⁶⁵, and the Office of the Representative of the President of Ukraine in the Autonomous Republic of Crimea reports the burial of at least 156 soldiers of the Russian army, 78 of whom were probably Ukrainian citizens, as of 20 September 2022⁶⁶.

59 https://crimeahrg.org/wp-content/uploads/2022/08/krim-ta-150-dniv_ua.pdf

60 https://crimeahrg.org/wp-content/uploads/2022/08/krim-ta-150-dniv_ua.pdf

61 <https://feo.rk.gov.ru/ru/article/show/10084>

62 <https://crimeahrg.org/uk/na-vijnu-vidpravili-krimskij-bataljon-z-1200-osib-aksonov/>

63 <https://crimeahrg.org/wp-content/uploads/2022/07/rasporyazhenie-30-iyunya-2022.pdf>

64 <https://www.ukrinform.ua/rubric-presshall/3332149-nezakonnij-prizov-u-krimu.html>

65 <https://crimeahrg.org/uk/zagibli-vijskovi-iz-krimu/>

66 https://www.facebook.com/story.php?story_fbid=pfbid0Jiuf8vqmUskg8p7Nebb5S1yvNqYVToSxUQ2UHDA3Ys6X8dPpPf1R4MeHeYUHDgsol&id=100064921021431

B. CIRCUMSTANCES OF FORCED CONSCRIPTION

In this situation, persecution continues in Crimea for evading service in the armed forces of RF. According to human rights organisations, as of 20 July, 336 criminal cases under Art. 328 of the Criminal Code of RF («Evasion of service in the Armed Forces of the Russian Federation») were registered and submitted to «courts» in the occupied peninsula. In particular, 37 such criminal cases were submitted already after 24 February 2022. Sentences were passed in 315 cases, 21 are under consideration⁶⁷.

In Crimea, there is also a system of «incentives» to go to war – promises to provide land plots, payments of RUB 200,000, gifts in the form of thermal underwear, etc⁶⁸. In this way, the occupation administration tries to create a picture of the «voluntariness» of the involvement of forcibly conscripted people into the armed forces of RF.

On 22 September 2022, in connection with the announcement of the so-called «partial mobilisation» in Russia⁶⁹, raids began in all settlements where Crimean Tatars live compactly (the town of Zuya, the villages of Azovske and Mayske, Dobre and throughout the «valley» where many Crimean Tatars live, the villages of Urozhayne, Strohanivka, some districts of Bakhchisarai). Summonses are issued in schools, markets, in places where people gather, some people are thrown into cars and taken to military enlistment offices⁷⁰. The raids are carried out with the involvement of police officers, and checkpoints are set at the entrances to populated areas with border guards on duty and reinforced by the Russian Guard members⁷¹. According to the General Staff of the Armed Forces of Ukraine, the «heads of military enlistment offices» in TOT of Crimea received an order to call up Crimean Tatars into the ranks of the Russian occupation forces on a top-priority basis and send them to combat units performing tasks in the areas of the most intense military operations⁷².

In addition, men in the temporarily occupied Crimea began to receive summonses to the Russian army through the state services website. If a person does not visit a personal account on the state services website for several days, the summons is automatically considered received⁷³. The website also offers the service of en-

67 <https://crimeahrg.org/uk/pislya-24-lyutogo-v-krimu-peredali-do-sudiv-37-sprav-za-uhilennya-vid-prizovu-do-armii-rf/>

68 <http://www.yalta-24.ru/vsya-yalta/sobytiya/32720-pervaya-gruppa-mobilisovannykh-iz-yalty-otpravilas-na-sluzhbu>

69 <https://www.bbc.com/russian/news-62977634>

70 <https://www.facebook.com/709781867/posts/pfbid026FpkdxizbcxAi8rf1GQFfegtmLnu6eSruitKraBnXEg35UDivM4KeeaXMsxGu2Ckl/?sfnsn=mo>

71 https://www.facebook.com/permalink.php?story_fbid=pfbid0mgaKDCNyKaashk8YJGK6X5DGcCgvQcfsJwdPpqaSyS4BchkSi4FskGHDcTNRUND2l&id=101419302493397

72 https://www.facebook.com/story.php?story_fbid=pfbid033cVhC5J4TBkL8cmpHxPM1Hv8ozEJNS9B9enjQdLePZZeNjhkY3Kz2YFXVoAhuXKul&id=100069092624537&sfnsn=mo

73 <https://krymsos.com/krymsos-u-krymu-okupanty-nadsylayut-povistky-cherez-sajt-derzhavnyh-poslug/>

listing as a volunteer to the armed forces of RF⁷⁴. Orders for the mobilisation of workers are also sent to «state» and municipal enterprises in occupied Crimea.

On 22 September, about 5,000 people, including women, received summonses to join the ranks of the Russian army. Sergey Aksyonov, head of the occupation administration of RF in Crimea, said that the mobilisation of 10,000 peninsula residents is planned⁷⁵ and announced the completion of mobilisation measures on 26 September⁷⁶. On 27 September, 2,000 people mobilised in Crimea were sent from Sevastopol to Kherson region⁷⁷.

74 <https://www.rbc.ru/politics/04/10/2022/633b5ff9a79476d76129673>

75 <https://krymsos.com/krymsos-shhonajmenshe-5000-lyudej-u-krymu-otrymaly-povistky-do-vijskkomativ/>

76 <https://t.me/s/Aksenov82>

77 https://www.facebook.com/story.php?story_fbid=pfbid033cVhC5J4TBkL8cmpHxPM1Hv8ozEJNS9B9enjQdLePZZeNjhkY3Kz2YFXVoAhuXKul&id=100069092624537&sfnsn=mo

2. LEGAL CLASSIFICATION AND POLITICAL STANCE OF UKRAINE AND INTERNATIONAL PARTNERS

2.1. INTERNATIONAL LEGAL CLASSIFICATION

Forced conscription of persons, protected under the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, in the occupied territory is expressly prohibited by the Convention. According to Art. 51, *the Occupying Power may not compel protected persons to serve in its armed or auxiliary forces or to undertake any work which would involve them in the obligation of taking part in military operations*. That is, **the very fact of the draft is already a violation of international humanitarian law**.

For its part, Art. 23 of the Hague Regulations of 1907 offers a slightly different prohibition, namely the prohibition of compelling the nationals of the hostile party to take part in the operations of war directed against their own country, not necessarily through conscription.

Violation of both norms is a war crime, namely under Art. 8(2)(a)(v) of the Rome Statute in the form of compelling to serve in the forces of a hostile power and under Art. 8(2)(b)(xv) of the Rome Statute in the form of compelling to take part in the operations of war directed against one's own country or its armed formations. The elements of the crime assume that a person who committed it forced a person or a group of persons by action or threat to participate in military operations against their own state or the armed forces or to somehow serve in the armed forces of a hostile power. In the context of forced conscription as a war crime, the method of enlisting a person to serve in the armed forces of the occupying power – whether through draft for military service or declaration of mobilisation – does not affect the classification. Establishing criminal liability for evasion of conscription/mobilisation and measures to restrict the departure of persons from the occupied territories are sufficient to prove such coercion.

Such actions are also considered a violation of the laws and customs of war and, in accordance with the national legislation of Ukraine, are classified under Art. 438 of the Criminal Code of Ukraine.

At the same time, the national justice system may have questions regarding the classification of potential illegal actions of Ukrainian citizens who were forcibly conscripted into the armed forces of the occupying power, in particular, within the framework of the elements of the crime of high treason and war crimes, which cannot be considered separately from the fact of forced conscription.

First, it is worth noting that such persons are considered combatants and, accordingly, have the status of prisoners of war in case of capture or surrender. The com-

batant status implies that such persons have the right to participate in military operations and cannot be convicted for the mere fact of participating in an armed conflict, but may be convicted for committing:

international crimes, including the commission of war crimes as a result of serious violations of the Geneva Conventions

or

other crimes against the foundations of the national security of Ukraine, including high treason, collaborationism if voluntary enlistment in the armed forces of the hostile power or provision of voluntary assistance to the enemy is proved.

The definition of combatant status enshrined in Part 2 of Art. 43 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), provides that such persons have the right to participate directly in hostilities. From this norm follows the «combatant's immunity» – a combatant cannot be convicted for the mere fact of participating in hostilities.

However, the situation becomes more complicated when a combatant from the opposite side of the conflict is a citizen of the country in question. In this case, the combatant's immunity is not lost, but it does not affect the possibility of bringing such a person to justice for crimes against national security under national law. In particular, in the updated 2020 commentary on the Geneva Conventions on the treatment of prisoners of war, the prisoner of war status granted to captured or surrendered combatants is interpreted as allowing to prosecute a prisoner of war, who is a citizen of the country in which he/she is held captive as a combatant of the opposite party, for high treason or related crimes⁷⁸.

2.2. NATIONAL CRIMINAL INVESTIGATIONS AGAINST FORCIBLY CONSCRIPTED PERSONS

According to the official position of the Prosecutor General's Office⁷⁹, the regional prosecutors' offices were urged to take into account all peculiarities when considering the possibility of criminal prosecution of Ukrainian citizens who participate or participated in hostilities on the side of RF under Art. 111 of the Criminal Code of Ukraine, namely with regard to taking into account the presence of proper and admissible evidence when serving persons, who lived in TOT of Ukraine and were called up for military service after 19 February 2022, with notice of charges of high treason. In particular, if it is established that a person was called up under duress, there is no corpus delicti of crimes under Art. 111 of the Criminal Code of Ukraine and other related crimes provided for by Part 7 of Art. 111-1, Articles 258-3, 260 of the Criminal Code of Ukraine.

⁷⁸ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=1796813618ABDA06C12585850057AB95>

⁷⁹ Response from the Prosecutor General's Office to the inquiry filed by the Coalition of human rights organisations "Ukraine 5AM" No. 50/07 of 14 July 2022, No. 50/07/08 of 01 August 2022 (Annex 1)

In addition, the law enforcement agencies of Donetsk and Luhansk regions carry out pre-trial investigations into the facts of forced conscription of men in the TOT of Donetsk and Luhansk regions⁸⁰. More than 30 people, who were forcibly conscripted by the occupation authorities to participate in the armed aggression against Ukraine and captured, were recognised as victims in the specified criminal investigations. The Prosecutor's Office of the Autonomous Republic of Crimea and Sevastopol also opened a criminal investigation into the forced conscription of Ukrainian citizens living in the territory of the Autonomous Republic of Crimea and Sevastopol, and ten criminal investigations into the fact that the occupation authorities conducted 16 conscription campaigns in the territory of the Autonomous Republic of Crimea and Sevastopol⁸¹.

However, in May, information appeared in the mass media about the first trials and sentences for captured Ukrainian citizens who were mobilised in the TOT of Donetsk and Luhansk regions. It became known that the actions of the mentioned persons are classified under Art. 111 of the Criminal Code of Ukraine, while the circumstances of the use of coercion to involve a person in hostilities are not taken into account or are not taken into account to the full extent.

In particular, on 11 and 18 May, the Vinnytsia City Court of Vinnytsia region found Oleksiy Trusov, Mykyta Bayenko, and Andrii Khlebnikov guilty⁸² of high treason, sentencing them to 15 years in prison each, although they testified that they had been mobilised forcibly, had not taken part in active hostilities, and had not committed other crimes.

Similarly, when hearing the case of Ruslan Mikhaliov, who said he had been forcibly conscripted⁸³, had not taken part in hostilities, and voluntarily escaped and surrendered to the Armed Forces of Ukraine, in the Shevchenkivsky District Court of Kyiv, the prosecution requested 12 years of imprisonment⁸⁴. Having a congenital visual impairment and a certificate of unfitness for military service, Mikhaliov was forcibly recruited into the army of the so-called «DPR» as a gunner.

To define the established practice of considering cases against forcibly conscripted persons, 63 sentences were analysed, mainly given to persons mobilised in the TOT of Donetsk and Luhansk regions. When analysing court decisions, the following trends were revealed:

1. Circumstances of forced conscription are not taken into account or are insufficiently taken into account, including: detention at a checkpoint and transfer to a military enlistment office⁸⁵; detention in a university and

80 <https://www.gp.gov.ua/ua/posts/nezakonna-deportaciya-ta-primusova-mobilisaciya-meskanciv-timcasovo-okupovanix-teritorii-sxodu-ukrayini-rozpocato-kriminalni-provadzennya>

81 Response of the Prosecutor's Office of the Autonomous Republic of Crimea and the city of Sevastopol to the inquiry filed by the Coalition of human rights organisations "Ukraine SAM" No. 27-681-22 of 12 October 2022 (Annex 2)

82 <https://sudreporter.org/ne-hotily-nazvaty-armiyu-v-yakij-sluzhyly-yak-u-vinnyczi-sudyat-polonenyh-na-vijni-dnrivcziv/>

83 <https://www.youtube.com/watch?v=zPMR4uEzOZ4>

84 <https://sudreporter.org/konveyerne-pravosuddya-dlya-polonenyh-iz-lnr-dnr/>

85 <https://reyestr.court.gov.ua/Review/105801150>

- transfer to a military enlistment office⁸⁶; testimony of a defendant and witnesses about forced conscription, threats of criminal liability⁸⁷; threats of criminal liability for avoiding mobilisation⁸⁸;
2. Fact of voluntary surrender is not taken into account or is insufficiently taken into account (case No.761/10987/22⁸⁹, case No.127/7722/22⁹⁰, case No. 761/10739/22⁹¹) and attempts to avoid mobilisation⁹²;
 3. Facts of non-participation in hostilities and non-commission of other crimes are not taken into account or are insufficiently taken into account (case No.761/11901/22⁹³, case No.761/10982/22⁹⁴);
 4. the fact of obtaining a weapon during the mobilisation is considered as sufficient proof of the voluntariness of such mobilisation without any assessment of the circumstances of coercion⁹⁵.

As a result of disregarding the specified circumstances, persons are found guilty of committing a crime under Art. 111 of the Criminal Code of Ukraine and related crimes provided for in Part 7 of Art. 111-1, Articles 258-3, 260 of the Criminal Code of Ukraine. These persons are sentenced to 12 years in prison at least or 15 years in prison with full confiscation of property at most.

At the same time, similar punishments are imposed on persons in cases in which the intention to commit treason is proven, taking into account all the circumstances of the case and beyond a reasonable doubt, and who committed other crimes⁹⁶, in particular:

1. A person who, after completing his conscription service, signed a three-year service contract, took an active part in hostilities against Ukraine (as a senior gunner of a mortar battery) and did not show sincere remorse, was sentenced to 13 years in prison with confiscation of property⁹⁷;
2. A person who, after completing his conscription service, signed a contract for military service in 2015 and again in 2018 in illegal armed formations and participated in hostilities (as a platoon commander with the assignment of an officer's military rank), was sentenced to 12 years in prison with confiscation of property⁹⁸.

86 <https://reyestr.court.gov.ua/Review/105633290>

87 <https://reyestr.court.gov.ua/Review/105841407>

88 <https://reyestr.court.gov.ua/Review/104187522>

89 <https://reyestr.court.gov.ua/Review/105801150>

90 <https://reyestr.court.gov.ua/Review/104187522>

91 <https://reyestr.court.gov.ua/Review/105633290>

92 <https://reyestr.court.gov.ua/Review/105841407>

93 <https://reyestr.court.gov.ua/Review/105227706>

94 <https://reyestr.court.gov.ua/Review/105040197>

95 <https://reyestr.court.gov.ua/Review/104602114>

96 <https://reyestr.court.gov.ua/Review/104731235>

97 <https://reyestr.court.gov.ua/Review/106116849>

98 <https://reyestr.court.gov.ua/Review/104906562>

2.3.

POLITICAL STANCE OF UKRAINIAN AUTHORITIES AND INTERNATIONAL PARTNERS ON THE PRACTICE OF FORCED CONSCRIPTION IN THE OCCUPIED TERRITORIES OF UKRAINE

Since the beginning of the full-scale aggression, the President of Ukraine⁹⁹ has repeatedly urged citizens to avoid criminal mobilisation and to surrender at the first opportunity, stressing that the main thing is to save the lives of citizens in the TOT and liberate Ukraine.

On 22 March, the Minister of Defence of Ukraine¹⁰⁰ called on citizens staying in the TOT to avoid mobilisation, and if this is not possible, to try to lay down their arms as soon as possible. According to the minister's statement, such persons remain Ukrainian citizens in relations with the state and, if they have not committed a crime, nothing threatens them. If a crime was committed, «sincere remorse» will be taken into account and an independent consideration of the case will be conducted, not a «show trial».

The call to avoid the draft and surrender has been also repeatedly made by the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine¹⁰¹ and the Office of the Representative of the President of Ukraine in the Autonomous Republic of Crimea¹⁰², with an algorithm of actions in such cases. The surrender instructions say that persons who surrender or are captured will not be sentenced for the mere fact of serving in the occupation army. In addition, the statement by both the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine and the Office of the Representative of the President of Ukraine in the Autonomous Republic of Crimea¹⁰³ underscores that forcibly conscripted Ukrainian citizens will be considered victims of a war crime if captured, and only the execution of illegal orders, which may result in civilian casualties, destruction of civilian infrastructure, will be classified as a war crime without a statute of limitations, even in the case of a forced draft. These statements clearly reflect the fact that only voluntary joining the hostile armed forces is a crime. This approach of the illegality of the criminal prosecution of forcibly conscripted persons corresponds to the norms of criminal legislation regarding the illegality of investigation in the absence of a crime, since there is no direct intent, and practical expediency as such measures encourage surrender and, accordingly, preserve the lives of forcibly conscripted Ukrainian citizens and Ukrainian military by reducing enemy forces, as well as undermine enemy's ability to hold the front line in the combat zone, which is being built by Russia.

99 https://www.facebook.com/watch/?v=1548630498929346&extid=NS-UNK-UNK-UNK-IO5_GKOT-GK1C&ref=sharing

100 <https://www.facebook.com/MinistryofDefence.UA/posts/280715940907532>

101 <https://minre.gov.ua/news/pryzov-pid-dulom-avtomatu-shcho-robyty-koly-vas-mobilisuyut-do-okupacinyoi-armiyi>

102 <https://www.facebook.com/ppu.gov.ua/posts/354448143395884>

103 https://www.facebook.com/story.php?story_fbid=pfbid0a2tvpbG44Sbo2mTzBPM4uP3fkN3TML8QogA4Fwm2cQjZ7kPtPqN2HV1QkJ9mfpl&id=100064921021431

However, the communication of the authorities of Ukraine currently does not correspond to the investigative and judicial practice of considering cases against forcibly conscripted persons.

The Office of the United Nations High Commissioner for Human Rights confirmed in its report the fact of forced conscription of Ukrainian citizens in the territories occupied by RF. In the same report, the Office also expressed concern about the prosecution of forcibly conscripted persons without due regard for combatant immunity¹⁰⁴. It is important to emphasise that although IHL does not exclude the possibility of criminal prosecution for high treason of one's own citizens participating in an armed conflict on the side of the enemy, this does not mean the presumption of such treason. In other words, to be prosecuted for treason, there must be a crime under national law, and in its absence, prosecution is administered only for the very fact of participation in an armed conflict, which is expressly prohibited by IHL.

2.4. LEGAL OPINION OF THE COALITION

Given the norms of IHL, Ukraine's practice of prosecuting persons who were mobilised, including forcibly, in the TOT of Ukraine, we consider it appropriate to pay attention to the following issues.

1. **Establishing the fact of voluntary siding with the enemy.** An important circumstance to be established by the law enforcement agencies of Ukraine when investigating alleged high treason of Ukrainian citizens, who fought on the side of the enemy and were captured or surrendered to the Armed Forces of Ukraine, is the issue of voluntary siding with the enemy. In our opinion, if it is not established that such a person voluntarily joined the armed forces of the occupying power, there are no sufficient reasons to classify forced conscription under Art. 111 of the CC of Ukraine because an essential element of the crime is missing – the subjective side of high treason, which is characterised by guilt in the form of direct intent. A forcibly conscripted person acts under duress, which excludes direct intent and, accordingly, criminal liability under Art. 111 of the CC of Ukraine (high treason). When committing high treason, a suspect must be aware that he/she sides with the enemy in conditions of martial law or during an armed conflict and wishes to do so. The fact of forced conscription excludes direct intent, and such a person must be primarily recognised as a victim of a war crime under Art. 438 of the CC of Ukraine, and the voluntariness of joining the armed forces of the occupying power if there are signs of such an act must be proven. Since there are widely known cases of the use of coercion to call up Ukrainian citizens living in the TOT, pre-trial investigation bodies should be guided by the presumption of forced conscription of a person, until the contrary is proven beyond a reasonable doubt. That is, it must be assumed that *under the occupation, a person is considered to be forcibly conscripted, unless the voluntariness of mobilisation and/or voluntary participation in hostilities against Ukraine or other voluntary reinforcement of the enemy is proven.*

104 <https://www.ohchr.org/en/documents/country-reports/situation-human-rights-ukraine-context-armed-attack-russian-federation>

The criminal liability of persons who were forcibly conscripted should be established based on an assessment of the actions of such persons after their forced enlistment in the armed forces of the occupying power. When evaluating such actions, it is necessary to take into account all the circumstances of the case and the facts of coercion regarding the commission of specific actions.

At the time when a Ukrainian citizen, who lived in the TOT of Ukraine and was involved as a combatant of the enemy side, is captured by the Armed Forces of Ukraine, the presumption of the status of forcibly conscripted person should be applied. Accordingly, inquiry should be opened for such a person as a victim under Art. 438 of the Criminal Code of Ukraine. While conducting investigation, the circumstances of coercion must be established to confirm the status of a forcibly conscripted person and exclude prosecution for high treason. At the same time, if the investigation establishes the facts of voluntary siding with the enemy beyond a reasonable doubt, inquiry may be opened against such a person under Art. 111 of the CC of Ukraine or related articles.

2. Assessing coercion and extreme necessity. If law enforcement agencies take into account even the circumstances of indirect intent to prosecute a person under Art. 111 of the CC of Ukraine, they are obliged by law to assess the circumstances of physical and mental coercion and the state of extreme necessity under Art. 39, 40 of the CC of Ukraine. A proper assessment must be carried out to establish the type of coercion, its nature (resistible or irresistible), the interests that are being defended by a forcibly conscripted person and the real harm from his/her actions to the protected interests – national security. Since forcibly conscripted persons will be considered combatants, and their prosecution for the very fact of participation in an armed conflict is prohibited by international humanitarian law, only the circumstances of siding with the enemy and their general impact can be assessed as part of high treason, which significantly narrows the investigators' assessment of potential harm to national security. In our opinion, establishing the circumstances of any coercion should entail the «mode of the most favoured treatment» to a person, where the circumstances should be interpreted in his/her favour as much as possible.

3. Detaining Ukrainian citizens forcibly conscripted into the enemy ranks, captured by the Armed Forces of Ukraine. Persons, whose forced conscription was confirmed in the course of investigation, may be detained in prisoner of war camps as their status of combatant and prisoner of war is preserved regardless of the conditions for acquiring these statuses. However, given the absence of the elements of crime in the actions of such persons, they can also be released at the discretion of the state. In both cases, the unique circumstances of each case should be taken into account and an individual approach should be applied.

If a decision is made to release such a person – a Ukrainian citizen forcibly conscripted into the enemy ranks – it is necessary to take into account

the possibility of his/her return to the occupied territory and the danger of repeated forced conscription and prosecution under the wartime laws established by the occupying power. This endangers a person and also contradicts the considerations of gaining military advantage by reducing the enemy's military strength.

At the same time, the detention of a person, whose forced conscription and absence of elements of crime in his/her actions were confirmed, also carries risks. In the relationship between international human rights law (in this case, the right to freedom under Art. 5 of the Convention on Human Rights and Fundamental Freedoms) and IHL norms, preference can be given to Art. 5 of the Convention, since the detention of such a person may constitute a violation of the right to freedom without legal grounds. Such grounds include, for example, the legal imprisonment of a person after conviction by a competent court, which is not the case here as the absence of elements of crime was confirmed during the investigation. The Convention on Human Rights and Fundamental Freedoms also specifies another reason: the arrest or detention of a person to secure the fulfillment of any obligation prescribed by law. Therefore, to minimise the specified risk, the state may enshrine in the law the grounds and procedure that would regulate the detention of this category of persons in custody. To ensure the principle of predictability, forcibly conscripted Ukrainian citizens who are captured or surrender should be aware of the relevant rules.

CONCLUSIONS

- 1. The Russian Federation uses Ukrainian citizens from the entire temporarily occupied territory of Ukraine in the full-scale war against Ukraine.** This is done through the measures of forced conscription in the territories of Ukraine occupied by RF until 24 February 2022 (for example, in the occupied areas of Donetsk and Luhansk regions, mobilisation was announced as early as 19 February 2022; in Crimea, the wave of mobilisation began after the announcement of partial mobilisation in RF on 21 September 2022), as well as in the territories of Zaporizhzhia, Kherson, Donetsk, and Luhansk regions which were actually occupied after 24 February 2022.
- 2. Forcible involvement of Ukrainian citizens living in the temporarily occupied territory of Ukraine in hostilities by the authorities of RF is a war crime,** it is expressly prohibited by the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War. According to Art. 51, the occupying power may not compel protected persons to serve in its armed or auxiliary forces or undertake any work which would involve them in the obligation of taking part in military operations. Such actions are a violation of the laws and customs of war pursuant to Art. 438 of the Criminal Code of Ukraine.
- 3. Mobilisation in the occupied territories of Ukraine is forced.** The use of coercion against persons who were mobilised in the occupied territories is evidenced by numerous facts of «catching» men of conscription age in the street, at a workplace with the obligation to appear in a military enlistment office, while blocking of exit from the TOT and the transportation of such persons to closed train cars to prevent attempts to evade registration or mobilisation. According to the testimony of those mobilised, for evading «mobilisation» they were threatened with dismissal from work, expulsion from educational institutions, imprisonment, and their relatives, who sheltered them, were threatened with several years in prison.

The Luhansk and Donetsk regional prosecutor's offices and the prosecutor's office of the Autonomous Republic of Crimea and the city of Sevastopol registered inquiries into the fact that TOT residents were forced to register for military service and take a loyalty oath to the occupation administration.
- 4. The official position of the Ukrainian government agencies corresponds to the considerations of obtaining a military advantage by weakening the enemy through the removal of forcibly conscripted Ukrainian citizens from its armed formations and protecting the lives of such citizens, but it needs consistent implementation in**

investigative and judicial practice. Representatives of the Ukrainian government agencies have repeatedly appealed to the residents of the occupied territories to avoid forced conscription, and if this is not possible, to try to lay down their arms as soon as possible. Such calls were made by the Minister of Defence of Ukraine, the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, and the Office of the Representative of the President of Ukraine in the Autonomous Republic of Crimea. The surrender instructions state that persons who surrender or are captured will not be sentenced for the mere fact of serving in the occupation army.

- 5. After surrender (capture), Ukrainian citizens who lived in the temporarily occupied territory of Ukraine and participated in military operations on the side of the Russian army are subject to criminal prosecution for high treason.** According to the official stance of the Prosecutor General's Office, regional prosecutor's offices are informed on the peculiarities of criminal prosecution of Ukrainian citizens, who participate or participated in hostilities on the side of RF, under Art. 111 of the Criminal Code of Ukraine, namely, regarding the consideration of the presence of proper and admissible evidence when bringing charges of high treason against persons called up for military service after 19 February 2022. In particular, if it is established that a person was drafted under duress, there is no corpus delicti of the crimes under Art. 111 of the CC of Ukraine and other related crimes provided for in Part 7 of Art. 111-1, Articles 258-3 and 260 of the CC of Ukraine. The practice of automatically initiating investigation against such persons under Art. 111 of the CC or related articles before establishing the voluntariness of a person's participation in the armed forces of the occupying power violates the principle of the presumption of innocence. Instead, if a Ukrainian citizen is captured, investigation must be opened under Art. 438 of the CC of Ukraine on the forced conscription of such a person, and the circumstances of coercion may be established or refuted in the course of the investigation. If voluntary siding with the enemy is established, an inquiry for treason or other related crimes may be opened against such a person.
- 6. Judicial practice follows the path of convicting Ukrainian citizens, who were probably forcibly conscripted in the occupied territories of Ukraine, for committing high treason.** According to the analysis of the practice based on the results of the consideration of criminal cases, it can be stated that the courts do not pay enough attention to the assessment of the circumstances under which a defendant joined the ranks of the enemy armed forces, they do not assess the subjective side of the commission of the offence; the fact of voluntary surrender and attempts to avoid mobilisation is not taken into account or is insufficiently taken into account; facts of non-participation in active hostilities and non-commission of other crimes are not taken into account or are insufficiently taken into account.

- 7.** **The investigative and judicial practice of investigation into and consideration of criminal cases on suspicion of high treason committed by a person who was probably forcibly conscripted in the occupied territories of Ukraine contradicts the principle of presumption of innocence, official communication of authorities, and the state interests of Ukraine.** The classification of the actions of residents of the occupied territories who were forcibly conscripted into the armed formations of the occupying power cannot be considered separately from the fact of forced conscription, unless it is established that such a person voluntarily joined the armed formations of the occupying power. Long-term imprisonment of persons who were forcibly conscripted, did not commit other crimes, voluntarily surrendered, will hinder the surrender of other persons due to fear of receiving such a punishment, which, on the contrary, will contribute to the strengthening of the enemy.

RECOMMENDATIONS

- 1. For political leadership of Ukraine.** Taking into account the announcement of mobilisation in RF, the number of forcibly conscripted Ukrainian citizens in the occupied territories will increase significantly. Solving the problem requires a unified strategy that takes into account all its aspects:
 - 1.1.** To gain military superiority and save Ukrainian citizens, it is necessary to encourage those forcibly conscripted to surrender because it is almost impossible to avoid mobilisation in conditions of restrictions on leaving the occupied territories.
 - 1.2.** Communication of a clear message by all authorities that forcibly conscripted persons who surrendered or were captured are victims of a war crime and will not be tried for the fact of forced service in the occupation army, and only the execution of illegal orders in violation of the laws and customs of war, which resulted to or may result in civilian casualties, the destruction of civilian infrastructure will be classified as a crime with no statute of limitations, even under forced draft.
- 2. For legislative and executive authorities.**
 - 2.1.** To improve investigations regarding forcibly conscripted persons and to promote the development of a unified practice, it is worth considering the adoption of changes to the criminal legislation in section I regarding crimes against the foundations of the national security of Ukraine.
 - 2.2.** To enhance the provision of legal assistance to Ukrainian citizens who were forcibly conscripted into the ranks of the armed forces of the aggressor state in the TOT and subsequently detained by representatives of the Ukrainian authorities, it is worth improving the quality standards for the provision of free secondary legal assistance in criminal proceedings regarding the notification filed by a lawyer at pre-trial investigation or procedural guidance bodies on mental or physical coercion.
 - 2.3.** To take into account the category of Ukrainian citizens, who were forcibly conscripted into Russian-controlled illegal armed formations, or the ranks of the armed forces of the aggressor state in the TOT to participate in hostilities in the territory of Ukraine on the side of RF and did not commit international crimes, when developing legislation on the exemption from punishment based on the law of Ukraine on the amnesty of such persons.
- 3. For prosecutor's offices and law enforcement agencies.** Supporting the position according to which there is no corpus delicti if the crimes under Art. 111 of the CC of Ukraine and other related crimes provided for by Part 7 of Art. 111, Articles 258-3, 260 of the CC of Ukraine if the forced draft of a person is established, it is worth noting that the existing

practice runs counter to this position. For the full implementation of this position in practice, it is advisable to:

3.1. Proceed from the presumption that Ukrainian citizens who live in the TOT of Ukraine are forcibly conscripted and victims of a crime under Art. 438 of the Criminal Code of Ukraine, and the voluntariness of joining the armed forces of RF or Russian-controlled armed formations must be proven beyond a reasonable doubt during a pre-trial investigation.

3.2. To take into account the evidence that actually proves coercion or voluntariness and does not testify to the very fact of mobilisation and its formal registration.

3.3. It is necessary to record the testimony of coercion given by a defendant and witnesses, as well as take into account the general situation of coercion – restrictions on leaving the TOT, etc.

3.4. Open inquiries into the forced conscription of Ukrainian citizens who are captured or surrendered, with further ensuring an efficient investigation into this war crime (taking into account the positive practice of the prosecutor's office of the Autonomous Republic of Crimea and the city of Sevastopol) and, if necessary, submit information to the investigators of the Office of the Prosecutor of the International Criminal Court.

4. For judicial authorities. When analysing court rulings, it was defined that the circumstances of forced conscription, the fact of voluntary surrender and attempts to avoid mobilisation, as well as the fact of non-participation in active hostilities and non-commission of other crimes are often not taken into account or insufficiently taken into account when considering cases against forcibly conscripted persons. For the formation of a uniform and consistent judicial practice, when considering cases of high treason and related crimes of forcibly conscripted persons, it is necessary to:

4.1. Comprehensively take into account all the circumstances of the enforced draft of a Ukrainian citizen, who lives in the TOT of Ukraine, into the ranks of the armed forces of the occupying power or armed formations controlled by it.

4.2. Properly assess the facts of attempts to evade mobilisation, voluntary surrender, as well as non-participation in active hostilities and non-commission of international and other crimes.

4.3. Use the standard of proof beyond a reasonable doubt, in particular with regard to proving direct intent to commit high treason or related crimes when evaluating evidence of such intent.

4.4. Take into account evidence that proves coercion or voluntariness, and not testify to the very fact of mobilisation and its formal registration.

4.5. Apply the standards of international humanitarian and criminal law when considering cases against forcibly conscripted persons, which make it impossible to prosecute a person for the mere fact of participating in an armed conflict without proving other crimes.

