

Draft

Letter to members of the European Parliament and the Parliamentary Assembly of the Council of Europe

Town and date

Subject: Motion to be submitted to the European Parliament/Parliamentary Assembly of the Council of Europe, Protection and asylum for conscientious objectors and deserters from the states involved in the war in Ukraine.

Dear Sir or Madam,

With this letter, we would like to send you a proposal for a motion to the European Parliament/Parliamentary Assembly of the Council of Europe, endorsed by ?? peace-, human rights-, and refugee organizations. We have therefore chosen an unusual approach to present our case to you. However, in light of the current situation in Ukraine, we feel the need to react swiftly. Our aim is to ensure that conscientious objectors and deserters from the states involved in the war in Ukraine receive immediate protection and asylum.

According to international law, the servicemen and women fighting for Russia and possibly Belarus in this war are conducting an illegal operation. They will most likely face serious prosecution if they evade or refuse service, or desert. This qualified protection under the EU Qualification Directive. In most of the Member States the overwhelming majority of those affected have not yet received any guarantee of this protection.

Even Ukrainian conscientious objectors do not want to fight in this war. The human right to conscientious objection, recognized by the Parliamentary Assembly of the Council of Europe already since 1967¹, by the European Parliament since at least 1983, by the UN Human Rights Committee since 1993² and by the European Court of Human Rights in 2011, must be guaranteed to everyone on all sides. Each Ukrainian citizen, registered in Ukraine by February 24, 2022, is currently granted humanitarian residence in the European Union. This is encouraging. However, we should seriously consider what will happen to the Ukrainian conscientious objectors, when this provision expires.

We request that you examine this proposal and introduce it to the European Parliament/Parliamentary Assembly of the Council of Europe, if possible, on a multi-fractional basis. Naturally, we are at your disposal for any questions or discussions.

Sincerely,

¹ PACE, Resolution 337 (1967), 26 January 1967. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15752&lang=en>

² Human Rights Committee, General Comment No 22, The right to freedom of thought, conscience and religion (Art. 18), (CCPR/C/21/Rev.1/Add.4), 27 September 1993, para. 11. Available at: www.undocs.org/CCPR/C/21/Rev.1/Add.4

In addition to the draft resolution, we are enclosing background information on the legalities regarding conscientious objection in the countries concerned as well as those regarding asylum and conscientious objection.

Appeal

Protection and asylum for conscientious objectors and deserters from the states involved in the war in Ukraine

The European Parliament/Parliamentary Assembly of Council of Europe shall resolve

In light of the war in Ukraine, the European Parliament/Parliamentary Assembly of Council of Europe observes:

- the fundamental importance of Articles 1 and 2 of the United Nations Charter, which prohibit war of aggression and acts of war in violation of international law;
- the applicability of the Rome Statute, Article 25 of which imposes individual criminal liability for violations of Articles 1 and 2 of the Charter of the United Nations;
- recognition of the "Code of Conduct on Politico-Military Aspects of Security" adopted by the OSCE in 1994, in which all members of the armed forces are personally responsible for complying with international humanitarian law, and that members of the armed forces authorized to issue orders may not do so in violation of international law;
- that "the right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion", as it has been recognized by the UN Human Rights Committee.³
- that equivalently opposition to military service may also attract the guarantees of Article 9 concerning freedom of thought, conscience and religion, of the European Convention on Human Rights, as established by the European Court of Human Rights in its judgment of July 7, 2011, in the case of Bayatyan vs. Armenia;
- the importance and validity of previous European Parliament Resolutions on conscientious objection to military service, including but not limited to Resolution on conscientious objection, 7 February 1983⁴; Resolution on conscientious objection and alternative service, 13 October 1989⁵; Resolution on respect for human rights in the European Community (annual report of the European Parliament), 11 March 1993⁶; Resolution on conscientious objection in the Member States of the Community, 19 January 1994⁷. And recalls the resolution on deserters from the armed forces of states in the former Yugoslavia adopted on 28 October 1993.⁸
- the importance and validity of previous Parliamentary Assembly of the Council of Europe resolutions and recommendations on the right to conscientious objection to military service,

³ UN Human Rights Committee, Communication No. 1642-1741/2007, Jeong et al. v. Republic of Korea (CCPR/C/101/D/1642-1741/2007), 27 April 2011, para. 7.3. Available at <http://undocs.org/CCPR/C/101/D/1642-1741/2007> . See also following jurisprudence on conscientious objection to military service.

⁴ [OJ C 68](#), 14.3.1983, p. 14.

⁵ [OJ C 291](#), 20.11.1989, p. 122.

⁶ [OJ C 115](#), 26.4.1993, p. 178, particularly paras. 46-53 (p. 183).

⁷ [OJ C 44](#), 14.2.1994, p. 103.

⁸ Official Journal of the European Communities, C 315, 22 November 1993 (OJ C, C/315, 22.11.1993, p. 234), <https://op.europa.eu/en/publication-detail/-/publication/eb79ca48-d818-40ff-bfbb-e2dc5ede424d/language-en>

- including but not limited to Resolution 337 (1967), Recommendation 816 (1977), Recommendation 1518 (2001), Recommendation 1742 (2006). And recalls the Resolution 1042 (1994) on Deserters and draft resisters from the republics of the former Yugoslavia.⁹
- that according to international human rights law and standards the right to conscientious objection applies both in wartime and in peacetime, as it has been acknowledged by the UN Human Rights Committee.¹⁰ And that Article 4, paragraph 2, of the International Covenant on Civil and Political Rights does not permit any derogation from the obligations of a state party concerning Article 18 on freedom of thought, conscience and religion, even in time of public emergency which threatens the life of the nation.
 - that according to international human rights standards there should be non-discrimination as to the nature of the religious or non-religious beliefs of conscientious objectors; there should be no discrimination between groups of conscientious objectors; and the right to object also applies to selective objectors who believe that the use of force is justified in some circumstances but not in others, as it has been acknowledged, *inter alia*, by the OHCHR¹¹ and the UNHCR¹².
 - that according to international and regional human rights standards the right to conscientious objection to military service should be recognized for conscripts, for professional members of the armed forces and for reservists, as it has been recognized *inter alia*, by the OHCHR¹³, the Parliamentary Assembly¹⁴ and the Committee of Ministers¹⁵ of the Council of Europe and the ODIHR of the OSCE¹⁶.
 - that the legal framework for conscientious objection in both Russia and Belarus, as well as Ukraine, does not meet international and regional human rights standards as established, *inter alia*, by the OHCHR, the UN Human Rights Committee, the UN Special Rapporteur on Freedom of Religion or Belief, the ODIHR of the OSCE, the European Parliament, the Parliamentary Assembly and the Committee of Ministers of the Council of Europe.
 - that the Human Rights Council has encouraged states “to consider granting asylum to those conscientious objectors to military service who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service”.¹⁷

⁹ PACE, Resolution 1042 (1994) on Deserters and draft resisters from the republics of the former Yugoslavia, adopted by the Assembly on 1 July 1994. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=16453&lang=en>

¹⁰ E.g. CCPR/CO/82/FIN, 2 December 2004, para. 14. Available at <http://undocs.org/CCPR/CO/82/FIN>

¹¹ OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, (A/HRC/41/23), 24 May 2019, para. 60 (d),(e). Available at: <https://undocs.org/A/HRC/41/23>

¹² UNHCR: Guidelines on International Protection No. 10.

¹³ OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, (A/HRC/41/23), 24 May 2019, para. 60 (c). Available at: <https://undocs.org/A/HRC/41/23>

¹⁴ Council of Europe, Parliamentary Assembly, [Recommendation 1518 \(2001\)](#), para. 5.2.

¹⁵ Council of Europe, Committee of Ministers, [Recommendation CM/Rec \(2010\) 4](#) “Human Rights of members of the armed forces”, paras. 42 - 46.

¹⁶ OSCE, ODIHR, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, 2008, Chapter 10 Conscientious Objection to Military Conscription and Service, 4. Best Practices and Recommendations, p. 85 [second point]. Available at: <https://www.osce.org/odihr/31393?download=true>

¹⁷ UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 13. Available at <http://undocs.org/A/HRC/RES/24/17>

- that Russian and possibly Belarusian military men and women are refusing to serve in a war of aggression that violates international law;
- the validity of the European Union Qualification Directive, Article 9 of which provides protection under refugee law to those who face prosecution or punishment for refusing military service in a conflict contrary to the purposes and principles of the United Nations as stated in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
- the statement of UNHCR that “where an armed conflict is considered to be unlawful as a matter of international law it is not necessary that the applicant” for international protection “be at risk of incurring individual criminal responsibility”¹⁸.

The European Parliament/Parliamentary Assembly of Council of Europe therefore asks the European Commission and the European Council/Council of Europe to:

- ensure that Russian and Belarusian military men and women who have evaded military service and thus possible war deployment in Ukraine, or who have deserted, are granted asylum in the member states in a manner in line with the Qualification Directive;
- ensure that Ukrainian conscientious objectors, who have been refused recognition in Ukraine, as well as to military men and women evading possible acts in violation of international law on the side of Ukraine are granted protection;
- calls on the Member States to develop programs and projects which seek to provide possibilities for training or further education for deserters and draft evaders.

Sources

Charter of the United Nations: <https://www.un.org/en/about-us/un-charter/full-text>

Rome Statute of the International Criminal Court: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

OSZE- Code of Conduct: <https://www.osce.org/fsc/41355>

EU-Qualification Directive: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0095>

UNHCR: Guidelines on International Protection No. 10, <https://www.refworld.org/publisher,UNHCR,THEMGUIDE,,529ee33b4,0.html>

EGMR, Bayatyan vs. Armenia a, Verdict from 7. Juli 2011: <https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22887947%22%2C%22itemid%22:%5B%22001-105611%22%5D%7D>

On the right to conscientious objection in Russia, Belarus and Ukraine https://ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2021-02-15-EBCO_Annual_Report_2020.pdf

Connection e.V.: Conscientious objection and desertion in Belarus, Russian Federation and Ukraine. March 24, 2022. <https://en.connection-ev.org/article-3522>

Connection e.V.: Protection and asylum for conscientious objection and desertion in times of war in Ukraine. March 24, 2022. <https://de.connection-ev.org/article-3531>

The request was initiated by

¹⁸ UNHCR: Guidelines on International Protection No. 10

International Fellowship of Reconciliation (IFOR), War Resisters' International (WRI), European Bureau for Conscientious Objection (EBCO) and Connection e.V.

And is supported by