

RESOLUTION

Of the Verkhovna Rada of Ukraine

On Declaration «On Derogation from Certain Obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms»

Taking into account the Law of Ukraine «*On the special order of local self-government in separate regions of Donetsk and Luhansk Oblasts*», Resolution of the Verkhovna Rada of Ukraine N129-VIII of 27 January 2015 «*On the Statement of the Verkhovna Rada of Ukraine to the United Nations, European Parliament, Parliamentary Assembly of the Council of Europe, NATO Parliamentary Assembly, GUAM Parliamentary Assembly and international parliaments on recognizing the Russian Federation the aggressor state*», Resolution of the Verkhovna Rada of Ukraine N252-VIII of 17 March 2015 «*On recognizing certain districts, cities, towns and villages of Donetsk and Luhansk oblasts as being temporarily occupied*» and Resolution of the Verkhovna Rada of Ukraine N337-VIII of 21 April 2015 «*On Parliamentary Statement «On rebuffing armed aggression of Russian Federation and overcoming its consequences*», the Verkhovna Rada of Ukraine **decrees:**

1. To adopt the Declaration of the Verkhovna Rada of Ukraine «*On Derogation from Certain Obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms*» in order to derogate from certain obligations established in paragraph 3 of Article 2 and Articles 9, 12, 14 and 17 of the International Covenant on Civil and Political Rights and Articles 5, 6, 8 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms for the period until the complete cessation of the Russian Federation armed aggression, namely the moment of withdrawal of all illegal armed groups, guided, controlled and financed by the Russian Federation, the Russian occupying armed forces, their military equipment from the territory of Ukraine, the restoration of full control of Ukraine over the state borders of Ukraine, the restoration of constitutional order and orderliness on the occupied territory of Ukraine.

2. Instructs the Ministry of Foreign Affairs of Ukraine on the basis of information provided by the Ministry of Justice of Ukraine, the Security Service of Ukraine and other state bodies of Ukraine to inform the UN Secretary General in accordance with Article 4 of the International Covenant on Civil and Political Rights and the Secretary General of the Council of Europe in accordance with Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms about this Declaration, mentioned in paragraph 1 of this Resolution, and about the security situation in Donetsk and Luhansk oblasts, and the change of territory, whereto the derogation of Ukraine

from its obligations under the International Covenant on Civil and Political Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms applies.

3. This Resolution comes into force on the day of its adoption.

**Chairman of the Verkhovna
Rada of Ukraine**

V. Groysman

**Kyiv
21 May 2015
N462-VIII**

DECLARATION OF THE VERKHOVNA RADA OF UKRAINE

On Derogation from Certain Obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms

I

Derogation from Obligations

1. Due to the annexation and temporary occupation by the Russian Federation of the integral part of Ukraine – the Autonomous Republic of Crimea and the city of Sevastopol – as a result of armed aggression against Ukraine, the Russian Federation is fully responsible for respect for human rights and implementation of the relevant treaties in annexed and temporary occupied territory of Ukraine.

2. In view of armed aggression of the Russian Federation against Ukraine involving both regular Armed Forces of the Russian Federation and illegal armed groups guided, controlled and financed by the Russian Federation, an anti-terrorist operation is being conducted by the units of the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine and the Armed Forces of Ukraine since April 2014, on the territory of certain areas of the Donetsk and Luhansk oblasts of Ukraine. The anti-terrorist operation is a part of the inalienable right of Ukraine to individual self-defense against aggression according to Article 51 of the UN Charter. The Russian Federation, which actually occupies and exercises control over certain areas of the Donetsk and Luhansk oblasts, is fully responsible for respect for and

protection of human rights in these territories under international humanitarian law and international human rights law.

3. Ongoing armed aggression of the Russian Federation against Ukraine, together with war crimes and crimes against humanity committed both by regular Armed Forces of the Russian Federation and by the illegal armed groups guided, controlled and financed by the Russian Federation, constitutes a public emergency threatening the life of the nation in the sense of Article 4, paragraph 1, of the International Covenant on Civil and Political Rights, and Article 15, paragraph 1, of the Convention for the Protection of Human Rights and Fundamental Freedoms.

4. In order to ensure the vital interests of the society and the State in response to the armed aggression of the Russian Federation, the Verkhovna Rada of Ukraine, the Cabinet of Minister of Ukraine and other authorities have to adopt legal acts, which constitute the derogation from certain obligations of Ukraine under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms.

5. On 12 August 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine *«On Amendments to the Law of Ukraine «On Combating Terrorism» regarding the preventive detention of persons, involved in terrorist activities in the anti-terrorist operation area for a period exceeding 72 hours»*. According to the Law, in the area in which a long-term anti-terrorist operation is being conducted, persons involved in terrorist activities may be detained, as an exception, for a period exceeding 72 hours but not exceeding 30 days, with the consent of a prosecutor and without a decision of the court. The application of the provisions of this Law gives reasons for the necessity to derogate from certain obligations of Ukraine under paragraph 3 of Article 2 and Articles 9 and 14 of the International Covenant on Civil and Political Rights and Articles 5, 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time, the application of this Law exclusively while the anti-terrorist operation is being conducted in exceptional cases for the purpose of the prevention of grave crimes is the limit required by the acuteness of danger caused by the armed aggression of the Russian Federation and actions of the terrorist groups backed by the Russian Federation.

6. On 12 August 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine *«On Amendments to the Criminal Procedure Code of Ukraine regarding the special regime of pre-trial investigation under martial law, in state of emergency or in the anti-terrorist operation area»*. According to the Law, a special regime of pre-trial investigation is introduced for the time during which the anti-terrorist

operation is being conducted. In the framework of this regime, the powers of investigating judges, prescribed by the Criminal Procedure Code in force, are temporarily transferred to respective prosecutors, who obtain additional procedural rights. The special regime of pre-trial investigation is applied only in the area of the anti-terrorist operation, and under the condition of impossibility of the investigating judge to perform his duties prescribed by the Criminal Procedure Code in force. The application of the provisions of this law gives reasons for the necessity to derogate from certain obligations of Ukraine under paragraph 3 of Article 2 and Articles 9, 14 and 17 of the International Covenant on Civil and Political Rights and Articles 5, 6, 8 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms. However, the fact that courts do not actually function in certain areas of the Donetsk and Luhansk oblasts because of the armed aggression of the Russian Federation and actions of terrorist groups backed by the Russian Federation is the limit, which allows to transfer powers from investigating judges to prosecutors under condition of threat to the life of the nation.

7. On 12 August 2014, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «*On Administering Justice and Conducting Criminal Proceedings in Connection with the Anti-terrorist Operation*». According to the Law on the period of conduct of the anti-terrorist operation, the territorial jurisdiction of court cases amenable to the courts located in the anti-terrorist operation area and investigative jurisdiction on criminal offences, perpetrated in the anti-terrorist operation area, in case of impossibility to conduct pre-trial investigation, was changed. The application of the provisions of this law gives reasons for the necessity to derogate from certain obligations of Ukraine under Article 14 of the International Covenant on Civil and Political Rights, and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. However, the fact that courts and pre-trial investigation bodies do not actually function in certain areas of the Donetsk and Luhansk oblasts caused by the armed aggression of the Russian Federation and actions of terrorist groups backed by the Russian Federation is the limit which allows to change the territorial jurisdiction of court cases and investigative jurisdiction on criminal offences under condition of threat to the life of the nation.

8. On 3 February 2015, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «*On Military and Civil Administrations*». In accordance with this Law, the military and civil administrations were established as temporary state bodies functioning in the Donetsk and Luhansk oblasts, within the Anti-Terrorist Centre of the Security Service of Ukraine, and were intended to provide for the operation of the Constitution and law of Ukraine, ensuring the security and normalization of the life-sustaining activity of the population, provision of the rule of law, participation in

the prevention of sabotage and terrorist acts, and the prevention of the humanitarian disaster in the area of the anti-terrorist operation. The abovementioned Law grants powers to military and civil administrations, in particular, to set limits on remaining on the streets and in other public places within a period of 24 hours without specific documents; to temporarily restrict or prohibit the movement of vehicles and pedestrians on the streets, roads and terrain areas; to organize the checking of identification documents of individuals; and, if necessary, the searching of personal belongings, vehicles, baggage and cargo, office premises and private dwellings of citizens, except the restrictions established by the Constitution of Ukraine. The application of the provisions of this law gives reasons for the necessity to derogate from certain obligations of Ukraine under Articles 9, 12 and 17 of the International Covenant on Civil and Political Rights, Articles 5 and 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms. However, the anti-terrorist operation being conducted in order to prevent the threat of destruction of the nation because of the Russian Federation armed aggression is the limit, which allows to temporarily restrict freedom of movement and the right to private life.

9. Therefore, Ukraine exercises the right of derogation from its obligations established in Article 2, paragraph 3, and Articles 9, 12, 14 and 17 of the International Covenant on Civil and Political Rights, Articles 5, 6, 8 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in certain areas of the Donetsk and Luhansk oblasts of Ukraine, which is determined by the Anti-Terrorist Centre of the Security Service of Ukraine in connection with the anti-terrorist operation, for the period until the complete cessation of the Russian Federation armed aggression, the restoration of constitutional order and orderliness in the occupied territory of Ukraine and until further notification to the Secretary-General of the United Nations and the Secretary General of the Council of Europe of the resumption of the application in full of the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms.

10. At the same time, without any prejudice to the application of the remaining provisions of the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms, and bearing in mind the continued existence of the dangerous situation, henceforth while the anti-terrorist operation is being conducted in response to the armed aggression of the Russian Federation, Ukraine reserves the right to take measures that may constitute grounds for derogations from its obligations under other Articles of the

International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms, on the basis of, and in the manner determined by, the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms and this Regulation. In such case, Ukraine will inform thereof the Secretary-General of the United Nations and the Secretary General of the Council of Europe in due course.

II

Information on the state of security in the Donetsk and Luhansk oblasts and changes to the territory covered by the derogation

Ukraine shall inform the Secretary-General of the United Nations and the Secretary General of the Council of Europe about the state of security in the Donetsk and Luhansk oblasts in due course, and on the change of the territory covered by the derogation of Ukraine from the obligations under the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms.