

2015-11-13

Fråga-svar

Ryssland/Ukraina. Rysk volontär i ukrainska militären

Fråga

Bakgrund:

En rysk medborgare har anslutit sig till den reguljära ukrainska militären för att strida för den ukrainska regeringen emot de ukrainska separatisterna. Han har ingått i en trupp som leddes av någon vid namn Doberman.

Frågor:

Har det förekommit att ryska medborgare utan ukrainakoppling rekryterats av ukrainska militären för att strida mot proryska separatister?

Om så är fallet, hur dessa personer behandlas vid ett återvändande till Ryssland?

Svar

Ukrainsk lagstiftning gällande icke-medborgare i militären

Personer utan ukrainskt medborgarskap har tidigare inte kunnat ingå i den reguljära ukrainska armén. En ny lag antogs i början av november 2015 som gjorde detta möjligt. Utredaren för lagförslaget konstaterar dock att det i olika volontärbataljoner även innan detta ändå ingått utländska soldater.

Radio Free Europe/Radio Liberty (RFE/RL, 2015-11-03):

Ukrainian President Petro Poroshenko has signed into law a bill that allows foreign citizens to serve in Ukraine's armed forces.

Ukraine Television and Radio (2015-05-12):

According to [the bills' author Dmytro Tymchuk], foreigners with military experience have been volunteering to the Ukrainian battalions since the beginning of the anti terrorist operation. Some of them have been participating in the combat action although they have had no legal grounds for that. According to the current legislation, such actions could be considered as illegal weapon handling, Tymchuk said.

Flera av volontärbataljonerna började som fristående men har sedan dess införlivats under inrikesministeriet.

Associated Press via NY Times (2015-05-12):

Foreigners have also fought in pro-government volunteer battalions which have recently been required to merge with the armed forces or police.

The Telegraph (2014-08-11):

Recently formed battalions such as Donbas, Dnipro and Azov, with several thousand men under their command, are officially under the control of the interior ministry but their financing is murky, their training inadequate and their ideology often alarming.

Flertalet källor rapporterar att det i Donbasbataljonen finns en georgisk man som går under pseudonymen Doberman.

Institute for War and Peace Reporting (2014-06-26):

In an interview with the Ukrainian Channel 24 television network, a Donbas member who identified himself only as "Doberman" explained his motivation.

RFE/RL (2014-08-07):

Donbas Battalion's Georgian-born "Doberman" is fighting for his "second motherland."

Enligt källor hör även Donbasbataljonen till Nationalgardet, som 3:e reservbataljonen.

Meduza (2015-06-22):

Aside from Ukraine's Armed Forces, volunteer battalions from the Ministry of Internal Affairs, the National Guard and Ministry of Defense are also taking part in the fighting. The Donbas Battalion, – founded, but not longer directly led by current Rada deputy Semyon

Semenchenko – belongs to the National Guard, which is itself a branch of the Ministry of Internal Affairs.

Le Monde (2014-07-21):

Ce terme désigne des bataillons de volontaires intégrés à l'armée régulière mais qui évoluent de façon partiellement autonome, comme le bataillon « Donbass », formé d'hommes originaires de l'est ukrainien et dont le chef a indiqué que certains de ses hommes étaient entrés dans Donetsk.

112 Ukraine (2014-06-03):

На базе батальона "Донбасс" сформируют 3-й резервный батальон Нацгвардии. Об этом сообщает пресс-служба Нацгвардии. [Donbasbataljonen kommer att bilda den 3:e reservbataljonen inom Nationalgardet. Detta rapporteras av Nationalgardets presstjänst.]

Ryska medborgare i volontärbataljoner

Det framkommer i flera artiklar att ett okänt antal ryska medborgare ingår i olika frivilligbataljoner.

Kyiv Post (2015-04-24):

An estimated 100 Russian soldiers are fighting on the Ukrainian side to defend the nation against the combined Russian-separatist invasion of the eastern Donbas.

Sofrep (2015-08-12):

Azov, like Donbass and most other battalions, has always accepted foreigners, but some battalions have been more selective than others.

There are many foreign nationals already in Ukraine and serving in the volunteer battalions, the bulk of whom are from the Russian Federation.

The Guardian (2014-09-10):

The [Azov] battalion even has a Russian volunteer, a 30-year-old from St Petersburg who refused to give his name.

Charter 97 (2014-06-12):

[Semion Semionchenko, Commander of the Donbas battalion] proposed to form the squadron “Kievan Rus”, which will consist of citizens of the post-Soviet countries ready to fight for Ukraine's freedom. He says there are about 60 volunteers from Russia and

Belarus, but the National Guard cannot recruit them so far: they have to obtain Ukrainian citizenship or a residence permit.

Prestupnosti.not (2014-06-17):

Now foreigners make no more than 10% of the general structure [of the Donbas battalion] and while any more won't accept from - for problems with documents. The authorities don't support idea of involvement of citizens of other states to participation in operations let and as a part of lawful armed groups.

Rysk lagstiftning gällande medborgare som stridigt i icke-ryska styrkor

Information Analysis Center har belyst de paragrafer i brottsbalken som kan användas vid åtal. Artikeln handlar om de potentiella åtal som skulle kunna väckas mot de ryska soldater som inofficiellt stridit för den pro-ryska sidan i östra Ukraina, men principen blir densamma för de som stridit för den andra sidan i konflikten. Information Analysis Center (2014-09-09):

There are no legal grounds for the Russian army presence, but anyway there are soldiers in Ukraine. What is the status of the soldiers who «got lost in the territory of Ukraine»?

There are two options:

- a person fights for money and this it is mercenarism;
- alternatively, a person fights on order or for the idea, then it is affiliation with illegal armed groups.

Criminal Code of the Russian Federation (1996, amended 2012) (English version) (2012):

Article 359. Mercenarism

- 1.** Recruitment, training, financing, or any other material provision of a mercenary, and also the use of him in an armed conflict or hostilities, Shall be punishable by deprivation of liberty for a term of four to eight years with restriction of liberty for a term of up to two years or without such.
- 2.** The same acts, committed by a person through his official position, or with relation to a minor, shall be punishable by deprivation of liberty for a term of seven to fifteen years, with or without a fine in an amount of up to 500 thousand roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of up to three years and with restriction of liberty for a term of one year to two years or without such.
- 3.** Participation by a mercenary in an armed conflict or hostilities, shall be punishable by **deprivation of liberty** for a term of three to seven years with restriction of liberty for a term of up to one year or without such.

Note: A mercenary shall be deemed to mean a person who acts for the purpose of getting a material reward, and who is not a citizen of the state in whose armed conflict or hostilities he participates, who does not reside on a permanent basis on its territory, and also who is not a person fulfilling official duties. (s. 170)

Article 208. Organisation of an Illegal Armed Formation, or Participation in It

1. Creation of an armed formation (unit, squad, or any other group) that is not envisaged by a federal law, and likewise operating of such a formation, or the financing thereof -

shall be punishable by **deprivation of liberty** for a term of two to seven years with restriction of liberty for a term of up to two years.

2. Participation in an armed formation that is not provided for by a federal law

shall be punishable by restriction of liberty for a term of up to three years, or by arrest for a term of up to six months, or by deprivation of liberty for a term of up to five years with restriction of liberty for a term of up to one year.

Note: A person who has ceased to take part in an illegal armed formation of his own free will, and has handed in his weapons, shall be released from criminal liability unless his actions contain a different corpus delicti. (s. 99)

Situationen för ryska medborgare som stridigt i pro-ukrainska styrkor

Hösten 2014 rapporterades om att det första åtalet väckts mot en rysk medborgare som stridigt i en frivilligbataljon på ukrainsk sida.

The Moscow Times (2014-10-07):

Russia's Investigative Committee has opened its first criminal case against a Russian citizen accused of fighting as a mercenary in eastern Ukraine — alongside Kiev's government forces.

Roman Zheleznov faces up to seven years in prison for fighting in the pro-Ukrainian Azov battalion ...

Although dozens of Russian citizens have taken up arms and joined the fight in eastern Ukraine — many of them for pro-Russian forces — Zheleznov is the first to be charged as a mercenary since the start of the conflict.

In comments to the online news site MediaZona, Zheleznov tied the criminal case against him to his recent appearance on Ukrainian

television, in which he featured in a program on Russian volunteers fighting alongside pro-Kiev forces.

Kyiv Post (2015-06-25):

Russia has a law on mercenaries on the books – but so far it has only used the statute against citizens who fought for Kyiv, like Roman Zheleznov, a Russian citizen who late last year was charged for fighting in the pro-Kyiv Azov Battalion.

The Investigative Committee used the statute on “mercenaries” against Zheleznov, but no such cases have been opened against any Russian men who fought alongside the separatists.

Intervjuer med andra frivilligt stridande som inte ännu återvänt till Ryssland visar på ytterligare aspekter av problematiken, både i Ryssland och i Ukraina.

RFE/RL (2015-05-03):

Russian citizens who are fighting, or have fought, for Ukraine face a serious legal quandary.

Most have long overstayed the 90 days they are legally allowed to spend in Ukraine without a residency permit. Additional restrictions introduced last year bar Russian citizens from staying more than 90 days in the country within a six-month period.

Jereghi estimates there are currently "a couple hundred" Russian nationals fighting on the Ukrainian side.

As foreigners, they cannot enroll in the Ukrainian Army and are forced to unofficially fight in volunteer battalions, meaning they and their families are ineligible for any material assistance from the Ukrainian authorities.

"They are in a terribly difficult legal situation," Jereghi says. "They can't leave Ukraine, they can't legally extend their stay because the law is not on their side, and they can't go back to Russia, either, otherwise they will immediately be arrested. They are in limbo."

In December, Ukrainian President Petro Poroshenko pledged to grant Ukrainian citizenship to all foreigners helping the country battle insurgents in the east.

In practice, however, things are not as simple. Ukrainian law prevents foreigners from applying for Ukrainian citizenship if they are found to have breached the 90-day residency rules.

Due to their unofficial status, most foreign combatants are also unable to provide formal evidence they fought for Ukraine.

Kyiv Post (2015-04-24):

If they go back to their homeland, Ukraine's Russian fighters face criminal cases for being mercenaries and for extremism.

Yet the fighters are also having problems legalizing their presence in Ukraine. Bogdanov got Ukrainian citizenship earlier this year, but most of his fellow Russians have received neither citizenship nor refugee status.

Ukrainian law bans combatants from being officially registered as refugees.

AFP via Yahoo News (2015-03-22):

Krasilnikov, 48, is one of several Russians fighting as a volunteer against the pro-Moscow insurgency in the Donetsk and Lugansk regions.

"I cannot go outside Ukraine to Russia because I am more than sure that I will get arrested there," he said in an interview in Odessa a few hours before heading to the front.

The sense of limbo was echoed by other Russians interviewed by AFP.

Despite opposing Putin, they said that they are often likely to be stonewalled by authorities in Ukraine, especially low-level officials who are often pro-Moscow.

Pyotr Lyubchenkov, an opposition activist from Russia's Krasnodar, had his request for political asylum last year denied in Odessa.

... even Russians who support Ukraine's cause -- in battle or not -- are sidelined by its rank and file bureaucracy.

Unian (2015-06-02):

One of several foreign fighters in the [Right Sector battalion], "Luke" stresses that in his particular case he can hardly communicate with his family, fearing for their safety as the Russian FSB security service puts pressure on his relatives.

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

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