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UKRAINE: Army rejects conscientious objector alternative service transfer

By Felix Corley, Forum 18 (<https://www.forum18.org>)

Christian conscientious objector Andrii Vyshnevetsky has been refused transfer to alternative civilian service, despite from his mobilisation onwards asking for this. On 22 May the Supreme Court will hear his case that the President must lay down a procedure to allow individual conscientious objection to military service. Viktor Yelensky, head of the State Service for Ethnic Policy and Freedom of Conscience, told Forum 18 he has been pushing for all conscientious objectors to be allowed to do alternative civilian service, but "my efforts have been rejected".

The Ukrainian army has rejected requests by Christian conscientious objector Andrii Vyshnevetsky to be transferred to an alternative civilian service. The 34-year-old was mobilised in Odessa in September 2022, despite asking to perform an alternative civilian service on grounds of conscience, and is currently serving in a military kitchen. The Recruitment Office in Odessa refused to discuss his case.

"In the army, they laugh at me, they say that there is a choice, shoot or go to prison," Vyshnevetsky told Yuri Sheliazhenko of the Ukrainian Pacifist Movement in January. "I want to do alternative service, I don't want to be in the military. I am against war, against violence, against murder. I don't want to hold a weapon in my hands." He said he would be ready to do civilian alternative service, such as with the Red Cross, which is appealing for volunteers (see below).

Vyshnevetsky has lodged a suit against President Volodymyr Zelensky to the Supreme Court in Kyiv. Vyshnevetsky argues that the President's failure to determine a procedure for dismissal from military service on the basis of conscientious objection is illegal. Vyshnevetsky also asks the Supreme Court to order the President to determine such a procedure to allow individuals to exercise the right to conscientious objection to military service (see below).

Ukraine's Constitution states in part: "If the performance of military duty contradicts the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service" (see below).

The Supreme Court has set the hearing in the case for 22 May. Vyshnevetsky told Forum 18 he will be present for the hearing. Asked what he hopes to achieve through the court, he responded: "To be released from the army and transferred to an alternative, non-military service." He also hopes the case will help bring Ukraine's approach to conscientious objection to military service into line with international human rights law (see below).

Viktor Yelensky, head of the State Service for Ethnic Policy and Freedom of Conscience, says he has been pushing for all conscientious objectors to be allowed to do alternative civilian service. "All my efforts have been rejected," he told Forum 18 from Kyiv on 3 May. "It is really not easy to reach this goal when we have such heavy losses in battle." Yelensky also noted that he has been unable to have the right to alternative civilian service in peacetime to be extended to all conscientious objectors, rather than just to members of 10 specified religious communities. "But I can't convince law-makers and military people" (see below).

Since Russia's renewed invasion of Ukraine in February 2022, one conscientious objector Vitaly Alekseenko has been jailed, while another Mykhailo Yavorsky is appealing against his one-year jail term. Courts have given at least six other conscientious objectors suspended prison terms. A court acquitted a ninth, but the prosecutor is appealing against the acquittal. At least four criminal trials continue (see below).

In addition to Yavorsky's appeal, the prosecutor has also appealed, seeking to have his one-year jail term increased to three years (see below).

An official from the Defence Ministry Personnel Department – who would not give his name – told Forum 18 in February that alternative civilian service does not exist in wartime and that such individuals are dealt with through the courts. Asked why Alekseenko and other conscientious objectors cannot be sent to work in hospitals, for example, as they said they were ready for, the official repeated his answer (see below).

On 3 May, Forum 18 asked Hanna Barabash, the head of the department handling the right to freedom of religion or belief at the office of the Parliamentary Human Rights Commissioner (Ombudsperson), why the Defence Ministry does not respect the right for men to choose alternative civilian service at a time of war and why, even in peacetime, the right to choose alternative civilian service is not available to all men with a conscientious objection to bearing arms and is only available to men in 10 specified religious communities (see below).

Forum 18 also asked Barabash about the jailing of conscientious objector Alekseenko, the jail sentence handed down on Yavorsky, and the suspended prison terms handed down to other conscientious objectors. Forum 18 had received no reply by the end of the working day in Kyiv on 8 May (see below).

"Conscientious objection is a hot issue," a member of a religious community told Forum 18 on 2 May (https://www.forum18.org/archive.php?article_id=2829). "Unfortunately society is very sensitive and does not seem to accept permission for some people not to perform their state duty. The overwhelming majority will not accept this, even some judges."

The individual noted that conscientious objectors accept they have obligations. "It is not a case that they are not willing to perform their state duty, but to be able to perform it in accord with their conscience (https://www.forum18.org/archive.php?article_id=2829). Believers want to continue to be valuable members of society even during a war."

Two jail terms, six suspended sentences, one acquittal

On 23 February 2023, one day before the first anniversary of the invasion, police in the south-western city of Ivano-Frankivsk took 46-year-old Christian conscientious objector Vitaly Alekseenko into custody to begin serving his one-year jail term. His requests to perform an alternative civilian service were ignored. He is serving his sentence in a prison in Kolomyia (https://www.forum18.org/archive.php?article_id=2829) near Ivano-Frankivsk.

Alekseenko has already lodged a further cassation appeal to the Supreme Court in Kyiv. A hearing has been set for 25 May (https://www.forum18.org/archive.php?article_id=2829). The Supreme Court refused to suspend his sentence while it considered his cassation appeal.

Mykhailo Yavorsky, a 39-year-old Christian from Ivano-Frankivsk, was given a one-year jail term (https://www.forum18.org/archive.php?article_id=2829) on 6 April for refusing mobilisation on grounds of conscience.

Yavorsky lodged an appeal on 8 May against his jail term, he told Forum 18 on 9 May. The prosecutor has also appealed, seeking to have the one-year jail term increased to three years.

If his appeal fails, Yavorsky will be taken to prison to begin serving his sentence. He has vowed to take his case as far as the Supreme Court if necessary.

"I would not carry weapons and would not put on a uniform, as I can't kill a person," Yavorsky told Forum 18 (https://www.forum18.org/archive.php?article_id=2829). "But they offered me no alternative service. No one asked me what I believe."

Yavorsky is the second conscientious objector known to have been given a jail term for refusing mobilisation on grounds of conscience since Russia's renewed invasion of Ukraine in February 2022.

In criminal cases since February 2022, courts handed six conscientious objectors suspended prison sentences (https://www.forum18.org/archive.php?article_id=2813) and terms of probation:

- 18 May 2022, Andrii Kucher, Mukachevo, suspended 4-year jail term;
- 21 June 2022, Dmytro Kucherov, Oleksandriia (Kirovohrad Region), suspended 3-year jail term;
- 17 August 2022, Oleksandr Korobko, Mukachevo, suspended 3-year jail term;
- 22 August 2022, Maryan Kapats, Mukachevo, suspended 3-year jail term;
- 2 December 2022, Andrii Martiniuk, Snyatin (Ivano-Frankivsk Region), suspended 3-year jail term;
- 3 February 2023, Hennady Tomniuk, Ivano-Frankivsk, suspended 3-year jail term (which the prosecutor failed to overturn on appeal – see below).

All eight conscientious objectors were convicted under Criminal Code Article 336 ("Refusing call-up for military service during

mobilisation or in a special period, and for military service during call-up of reservists in a special period"). Punishment is a jail term of three to five years.

On 27 April, Ivano-Frankivsk Appeal Court rejected the prosecutor's attempt (https://www.forum18.org/archive.php?article_id=2829) to have Hennady Tomniuk's 3-year suspended sentence turned into a prison sentence. At the same time, the Court rejected Tomniuk's own appeal against his sentence. He said he is not going to appeal further to the Supreme Court. "I am tired of all this – the whole process has gone on for a year," he told Forum 18.

A court in Transcarpathia acquitted a Jehovah's Witness of refusing the call-up to mobilisation, but the prosecutor is appealing against the acquittal (https://www.forum18.org/archive.php?article_id=2829). No date has yet been set for the appeal to be heard.

Four other Jehovah's Witness young men are currently on trial for refusing mobilisation (https://www.forum18.org/archive.php?article_id=2829) and offering to perform an alternative civilian service, Jehovah's Witnesses told Forum 18.

Vyshnevetsky: Stopped on the street, mobilised despite alternative service request

Andrii Anatoliyovych Vyshnevetsky (born 22 May 1989) – a Christian conscientious objector – has been forcibly held in the army, despite expressing his opposition to serving in the military and requesting to perform alternative civilian service on grounds of conscience. He is currently serving in a kitchen in his military unit, he told Forum 18 on 8 May 2023.

Vyshnevetsky lived with his wife and daughter in Kherson before Russia's February 2022 invasion. Military officials stopped him on the street in Odessa and ordered him to attend the city's Suvorov Territorial Recruitment Office on 14 September 2022, according to the order seen by Forum 18. Military officials in Odessa are particularly well known in Ukraine for stopping on the street any man they think looks as if they should be in the army.

Officials in Odessa's Suvorov Territorial Recruitment Office rejected Vyshnevetsky's request to perform an alternative civilian service (https://www.forum18.org/archive.php?article_id=2813) on grounds of conscience, and mobilised him into the army.

The official who answered the phone at Suvorov Territorial Recruitment Office – who would not give his name – refused to discuss Vyshnevetsky's case. "We don't give any information by phone," he told Forum 18 in February 2023 (https://www.forum18.org/archive.php?article_id=2813).

After training Vyshnevetsky as a military driver, the army sent him in November 2022 to the frontline in the eastern Donetsk Region. He was later transferred to Mykolaiv Region and was assigned work in the kitchen. Commanders have so far ignored his request to be transferred to alternative civilian service.

Vyshnevetsky: Supreme Court challenge

Vyshnevetsky lodged a suit against President Volodymyr Zelensky to the Supreme Court in Kyiv. Vyshnevetsky argues that the President's failure to determine a procedure for dismissal from military service on the basis of conscientious objection is illegal.

Vyshnevetsky asks the Supreme Court to order the President to determine such a procedure to allow individuals to exercise the right to conscientious objection to military service in line with Article 35 ("Freedom of beliefs and religion") of the Constitution, Article 18 (<https://www.refworld.org/docid/453883fb22.html>) ("Freedom of Thought, Conscience or Religion") of the International Covenant on Civil and Political Rights, and Article 9 (https://www.echr.coe.int/documents/guide_art_9_eng.pdf) ("Freedom of thought, conscience and religion") of the European Convention on Human Rights.

The Constitution's Article 35 states in part: "If the performance of military duty contradicts the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service."

Judge Olena Gubska of the Administrative Division of the Supreme Court accepted the case on 24 April 2023, according to the resolution seen by Forum 18, and set the hearing in the case for 22 May.

Vyshnevetsky told Forum 18 he will be present for the hearing. Asked what he hopes to achieve through the court, he responded: "To be released from the army and transferred to an alternative, non-military service." He also hopes the case will help bring Ukraine's approach to conscientious objection to military service into line with international human rights law.

Vyshnevetsky's conscientious objection

Vyshnevetsky explained his conscientious objection to Sheliashenko of the Ukrainian Pacifist Movement. "I don't understand church

terminology, I just believe," he told him in January (https://www.forum18.org/archive.php?article_id=2813). "I am a Christian and a pacifist, I believe in God and I pray to God. I read the Bible, I downloaded it to my smartphone. Every day I pray for peace in the whole world."

Vyshnevetsky added: "I cannot kill people because of the irresistible command of conscience and the fear of God, because in the Holy Bible the commandment says 'Thou shalt not kill!' and it is also said that one must fear God and obey the commandments. How can you kill a person, how can you live with it? I can't do it."

"In the army, they laugh at me, they say that there is a choice, shoot or go to prison," Vyshnevetsky told Sheliashenko. "I want to do alternative service, I don't want to be in the military. I am against war, against violence, against murder. I don't want to hold a weapon in my hands." He said he would be ready to do civilian alternative service, such as with the Red Cross (<https://redcross.org.ua/>), which is appealing for volunteers.

Official attempts to widen alternative service to all conscientious objectors

Viktor Yelensky, head of the State Service for Ethnic Policy and Freedom of Conscience, says he has been pushing for all conscientious objectors to be allowed to do alternative civilian service. "All my efforts have been rejected," he told Forum 18 from Kyiv on 3 May. "It is really not easy to reach this goal when we have such heavy losses in battle."

Yelensky said he was going to talk to the Parliamentary Human Rights Commissioner (Ombudsperson) Dmytro Lubinets to press for the right to conscientious objection to be extended to the mobilisation period.

Yelensky also noted that he has been unable to have the right to alternative civilian service in peacetime to be extended to all conscientious objectors, rather than just to members of 10 specified religious communities (https://www.forum18.org/archive.php?article_id=2810). "But I can't convince law-makers and military people."

Yelensky - then a member of parliament - was among the co-sponsors of a draft law submitted in June 2017 which would have made alternative service easier to access during wartime mobilisation. Ukraine's Permanent Mission to the United Nations in Geneva told the UN High Commissioner for Human Rights on 7 December 2018 (<https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/Ukraine.pdf>) that the draft law "widens possibilities for exercising rights to freedom of thought, conscience and religion by determining the procedure for citizens' participation in alternative service during the mobilization and recruitment of Ukrainian citizens for regular military service in a special period".

However, parliament never considered the 2017 draft law (https://www.forum18.org/archive.php?article_id=2810) and it was automatically dropped when elections were called in 2019.

Limited peacetime access to conscientious objection

Under a 10 November 1999 Cabinet of Ministers Decree, only men who belonged to 10 specified religious communities that the state regards as pacifist (https://www.forum18.org/archive.php?article_id=2810) were allowed to opt for alternative civilian service. Men who were not members of any of these 10 communities were not eligible to apply for alternative service.

In practice, conscientious objectors to military service have long faced obstacles to doing alternative civilian service (<https://ebco-beoc.org/ukraine>). The United Nations (UN) Human Rights Committee in its 9 February 2022 Concluding Observations on Ukraine (CCPR/C/UKR/CO/8 (<https://undocs.org/CCPR/C/UKR/CO/8%20CCPR/C/UKR/CO/8>)) stressed that "alternatives to military service should be available to all conscientious objectors without discrimination as to the nature of their beliefs justifying the objection (be they religious beliefs or non-religious beliefs grounded in conscience)".

The UN Office of the High Commissioner for Human Rights (OHCHR) has noted that conscientious objection to military service comes under ICCPR Article 18 ("Freedom of thought, conscience and religion") and has recognised (<https://www.ohchr.org/en/conscientious-objection>) "the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion."

The OHCHR has also noted in its Conscientious Objection to Military Service (<https://www.ohchr.org/en/publications/special-issue-publications/conscientious-objection-military-service>) guide that Article 18 is "a non-derogable right .. even during times of a public emergency threatening the life of the nation."

In 2022 the UN Working Group on Arbitrary Detention stated (WGAD-HRC50 (<https://www.ohchr.org/sites/default/files/2022-05/WGAD-HRC50.pdf>)) that "the right to conscientious objection to military service is part of the absolutely protected right to hold a belief under article 18 (1) of the Covenant, which cannot be restricted by States." The Working Group also stated that "States should refrain from imprisoning individuals solely on the basis of their conscientious objection to military service, and should release those that have been so imprisoned."

Within Russia in its internationally-recognised boundaries, no legal or practical provision exists for alternative civilian service during mobilisation (https://www.forum18.org/archive.php?article_id=2797), despite the Constitution guaranteeing this right for every citizen.

Russia has within the Ukrainian territories it has illegally occupied since 2014 conscripted men into its armed forces (<https://ebco-beoc.org/ukraine>). This is a crime under Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (<https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war>), which covers the rights of civilians in territories occupied by another state (described as "protected persons"). Article 51 states: "The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted."

An 11 May 2022 analytical report (A/HRC/50/43 (<https://undocs.org/A/HRC/50/43>)) by the UN High Commissioner for Human Rights notes that OHCHR has documented that Russia has in the illegally-occupied Ukrainian territory of Crimea seriously violated international human rights law by conscripting over 3,000 men into the Russian armed forces.

Alternative civilian service "not applicable" under martial law

Following the renewed Russian invasion of Ukraine in February 2022, Ukrainian President Volodymyr Zelensky signed a decree imposing martial law for 90 days. All men between the ages of 18 and 60 were deemed eligible for call-up in a general mobilisation and were banned from leaving the country. The period of martial law has been extended several times.

The Ukrainian Pacifist Movement expressed concern that during martial law the Defence Ministry might not respect individuals' right to perform an alternative civilian service if they cannot serve in the armed forces on grounds of conscience. It wrote to the Defence Ministry on 26 July 2022.

In its 21 August 2022 response (https://en.connection-ev.org/pdfs/2022-08-21_MOD-Ukraine.pdf), seen by Forum 18, Colonel Oleg Khrystenko, Deputy Chief of the Main Personnel Department of the General Staff, pointed out that under the Alternative Service Law, men could opt for alternative service "if the performance of military duty conflicts with their religious beliefs and these citizens belong to religious organisations operating in accordance with the legislation of Ukraine, whose creed does not allow the use of weapons".

However, Colonel Khrystenko insisted that because of the Russian invasion and the declaration of martial law, regular conscription to military service had been suspended, to be replaced by mobilisation. "Therefore, based on the above, the implementation of the constitutional right of citizens to undergo alternative (non-military) service under the conditions of the legal regime of martial law and during mobilisation, due to the absence of conscription for term-limited military service, is not applicable."

Colonel Khrystenko added that the Mobilisation Training and Mobilisation Law "does not provide for alternative (non-military) service for conscripts who are called up for military service during mobilisation".

A Defence Ministry official from the Personnel Department said Viktor Savonik, who prepared the response on behalf of Colonel Khrystenko, had been transferred to other duties. The official – who would not give his name – insisted to Forum 18 in February (https://www.forum18.org/archive.php?article_id=2810) that the absence of a right to alternative civilian service in time of war is in line with the Constitution. He did not explain how it is in line with the Constitution.

Yurii Sheliashenko of the Ukrainian Pacifist Movement argues that alternative civilian service should be available in wartime also. "Conscientious objection to military service is not a crime, it is human right, and this human right should not be denied even in time of war," he told Forum 18 in February (https://www.forum18.org/archive.php?article_id=2810). "In fact, it is especially precious in times of war and historically emerged exactly because of that, because challenges of modern militarised economies became unbearable to the conscience of a growing number of people."

Forum 18 asked Hanna Barabash, head of the department handling the right to freedom of religion or belief at the office of the Parliamentary Human Rights Commissioner (Ombudsperson) in Kyiv, in writing on 3 May 2023 why the Defence Ministry does not respect the right for men to choose alternative civilian service at a time of war and why, even in peacetime, the right to choose alternative civilian service is not available to all men with a conscientious objection to bearing arms and is only available to men in the 10 specified religious communities. Forum 18 had received no response by the end of the working day of 8 May.

Forum 18 received no reply to similar questions sent on 27 February 2023 to Barabash's colleague, Mykhailo Spasov (https://www.forum18.org/archive.php?article_id=2813).

Severe human rights violations in Russian-occupied Ukraine

Serious violations of freedom of religion and belief and other human rights take place within all the Ukrainian territory Russia has illegally occupied (<https://www.forum18.org/archive.php?country=17>).

Within the Russian-occupied Ukrainian territory of Crimea (https://www.forum18.org/archive.php?article_id=2774) these include: forced imposition of Russian laws and restrictions on exercising human rights, including freedom of religion or belief; jailing Muslim and Jehovah's Witness Crimean prisoners of conscience; forcible closure of places of worship; and fining people for leading meetings for worship without Russian state permission.

Within the Russian-occupied Ukrainian region of Luhansk these have up to the renewed 2022 invasion of Ukraine (https://www.forum18.org/archive.php?article_id=2721) included: rendering illegal all Protestant and non-Moscow Patriarchate Orthodox communities; a climate of fear about discussing human rights violations; repeated denials of permission to a Roman Catholic priest to live in the region; and increasing numbers of banned allegedly "extremist" books, including an edition of the Gospel of John published in 1820. (END)

More reports on freedom of thought, conscience and belief in all Ukraine (<https://www.forum18.org/archive.php?country=88>)

More reports on freedom of thought, conscience and belief in Russian-occupied Ukraine (<https://www.forum18.org/archive.php?country=17>)

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