



Український Рух Пацифістів

Ukrainian Pacifist Movement

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WAR IS A CRIME AGAINST HUMANITY TO IS A CRIME FOR
ANY KIND OF WAR AND TO STRIVE FOR THE

Violations of human right to conscientious objection to military service in Ukraine: from 2022 to October 2023

A report by Ukrainian Pacifist Movement¹

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¹ NGO Ukrainian Pacifist Movement was founded in 2019 to advocate, practice and protect human rights to peace and to conscientious objection to military service, to work, research, educate for peaceful conflict management, disarmament, peace culture, to strengthen nonviolent way of life and democratic civilian control over military affairs. We resist nonviolently to militarism and war, including criminal Russian aggression against Ukraine and human rights violations during military mobilization. Our official website is www.pacifism.org.ua and contacts of executive secretary, Dr. Yuriy Sheliashenko are yuriy.sheliashenko@gmail.com, +380973179326

Overview of general situation in Ukraine

From its introduction in 1991, alternative service in Ukraine by design was hardly accessible and limited to marginal number of religious objectors. National security and defense establishment, entrenched and intended to dominate in economy, education, politics and media, put enormous efforts into shaming people for draft evasion, making it costly informal corruption practice available only for the rich and privileged people, limiting and preventing introduction of any legal exemptions from military service, especially insisting on denial of any notion of human right to conscientious objection to military service. Absence of clear legal guarantees of the right to conscientious objection in time of national emergency, when this right is especially precious and must be strongly protected, become one of results of this uncompromising pressure for totality of military duty.

After beginning of Russian aggression against Ukraine in 2014 and subsequent partial mobilization some conscientious objectors were prosecuted for insisting on access to alternative service. Cases of acquittal by courts in that time are known. Furthermore, Ukrainian diplomats in 2018 submitted to OHCHR a promise of changes in legislation², based on a draft law which was never supported by the government, never included into parliamentary agenda, and in 2019 was automatically withdrawn.

Russian full-scale invasion of Ukraine in 2022 and strong unconditional Western support of Ukrainian defensive war effort, on the one hand, and lack of all sorts of resources, especially human resources, for achieving ambitious goal to defeat Russia, as well as growing draft evasion, on another hand, make the military desperate and ready to coerce people for military service by any means, including radical limitation or denial of human rights. Military recruiters actively initiate criminal prosecution of those few who resist to all sorts of pressure, from sophisticated psychological and procedural to brutal physical, who insist on unwilling to serve despite all promises, threats and appeals to patriotism. It resulted in trending penalization of conscientious objection: the army insists on opening criminal investigations and subsequent convictions of conscientious objectors, and officers in charge of legal affairs testify in courts that conscription in time of mobilization could not be replaced with alternative service, which expectantly lead to guilty sentences considering almost universal trust in army (setting aside doubts in reliability of public opinion polls) and recognition of its leading role in country under martial law.

Stigmatisation and criminalisation of conscientious objection in Ukrainian society is mentioned in a report of Felip Daza as a challenge to civilian protection and nonviolent resistance to Russian aggression³.

Practice of denial to recognize conscientious objection in military recruitment offices is explained by a letter of the Ministry of Defence of Ukraine of 21 August 2022 which says: "Due to martial law, since 24.02.2022 the temporary military service in Ukraine is no longer implemented. Therefore, the implementation of alternative service is not applicable."⁴

² <https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/Ukraine.pdf>

³ Daza, F. (2022). Ukrainian Nonviolent Civil Resistance in the face of war: Analysis of trends, impacts and challenges of nonviolent action in Ukraine between February and June 2022. ICIP & Novact. Barcelona, 2022.

⁴ Ukraine suspended right to conscientious objection to military service. Connection e.V. (05.09.2022). <https://en.connection-ev.org/article-3614>

However, even Ukrainian national human rights institution recognizes illegitimacy of such practices. According to the letter of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine Dmytro Lubinets to the Executive Secretary of the Civic Organization "Ukrainian Pacifist Movement" Yuriy Sheliashenko No. 241.8/ /160.7/23/23/55 dated 03.03.2023: “legal norms according to which the right of the State to oblige its citizens to undergo military service is not absolute and is limited to the right of every person to refuse to perform military service, in particular for reasons of religion, are established in international treaties, the consent to the binding legal force of which was given by the Verkhovna Rada of Ukraine, in particular in the article 9 of the Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention), as well as Article 18 of the International Covenant on Civil and Political Rights. At the same time, the right to refuse military service based on religious beliefs is absolute. Therefore, the state cannot impose restrictions on the freedom to practice one's religion through compulsory military service. Although the procedure for resolving the issue of referral to alternative (non-military) service is regulated by the provisions of the Law of Ukraine "On Alternative (non-military) Service", which does not contain legal norms regarding the conscription of citizens of Ukraine for military service during mobilization for a special period - the Constitution of Ukraine and international treaties have higher legal force (superiority over other domestic legislative acts), and therefore the right of a person to alternative service (i.e., exemption from military service upon conscription) is absolute and cannot be limited due to the absence (lack of regulation by the laws of Ukraine) of the procedure for replacing military service with alternative service during martial law”⁵.

Conscription in Ukraine during martial law and military mobilization engages all males in the age from 18 to 60 with mandatory military registration of males from the age of 16 and female professionals in medicine or pharmacy. Military registration includes medical examination of fitness for service, and in absence of reasons for deferral, especially when personnel is needed because of losses on frontline, anybody could be conscripted immediately when declared fit to serve. In a number of cases military medics scandalously failed to found unfit crippled and seriously ill people. For these reasons many people fear to undergo military registration even when served with an order (summons) and failure to appear could entail a significant fine. To coerce people for military registration, regulations regarding presenting proofs of it in many spheres of civilian life are introduced. For example, military ID is usually asked for mandatory registration of place of residence, to access education, employment, marriage, social security benefits and other state services.

All males in age from 18 to 60 are considered subjects to military service unless exempted, they can't change place of residence without permission of the local military commissar and prohibited from leaving Ukraine, with some exceptions; as was noted by UN human rights monitors, this policy is questionable both in its legality and reasonableness of breaching human rights⁶⁷.

⁵ Letter of Ukrainian Parliament Commissioner for Human Rights Dmytro Lubinets, 3 March 2023, <https://t.me/sheliashenko/137>

⁶ <https://www.ohchr.org/en/documents/country-reports/situation-human-rights-ukraine-context-armed-attack-russian-federation>

⁷ Amy Maguire, “Why banning men from leaving Ukraine violates their human rights,” <https://theconversation.com/why-banning-men-from-leaving-ukraine-violates-their-human-rights-178411> ; “Sasha and Nikita are two young pacifists who don't want to fight and are now stranded in Lviv as internally displaced persons. They are not allowed to leave the country - all Ukrainian males between the ages of 18 and 60 are forbidden from doing so,” (in German), <https://www.instagram.com/p/CaxMFGOKfW7/c/17920321619132077/>

Legal recognition of conscientious objection in Ukraine is regulated by the restrictive 1991 law of Ukraine on alternative non-military service⁸, usually applied by the military recruitment centers and by local administrations, responsible for organization of the alternative service, in varying interpretations (currently, usual interpretation is denial of access to alternative service because of martial law). Ukrainian government is not willing to comply with international human rights law in this regard and imposed restrictions on the right of freedom of expression for public critique of Armed Forces of Ukraine and advocacy of conscientious objection to military service in Ukraine⁹. After the international scandal around imprisonment of Vitaliy Alexeenko for conscientious objection, some officials claim that government could consider again legal recognition of conscientious objection, though it was rejected before¹⁰.

Privileged confessions, traditionally allowed to alternative service, established special relations with military authorities, that explains their unwilling to advocate right to refuse to kill publicly or describe themselves as pacifist churches. Their loyalty and public support of war effort is informally rewarded, they were spared from some burdens of mobilization and their male clergy was sometimes allowed to travel abroad, but pressure on them demanding to serve in army increases with penalization for conscientious objection, including a number of guilty sentences and the court decisions per requests of army's recruitment centers ordering police to investigate "draft evasion" of conscientious objectors belonging to privileged churches.

Number of persons, sentenced by courts for crimes related to evasion of military service in Ukraine¹¹

Art. of Criminal Code of Ukraine / Year	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012
335 (evasion of conscription)	112	152	182	313	215	136	86	38	7	22	19
336 (evasion of conscription during mobilization, special time, by reservists)	186	2	1	11	13	45	220	935	139	0	0
337 (evasion of military registration or military gatherings)	12	34	73	156	110	21	3	2	0	0	0
407 (unauthorized abandonment of military unit)	1036	1407	1506	2189	2267	2128	1937	1545	153	22	29
408 (desertion)	154	220	152	239	224	381	307	171	29	2	1
409 (evasion of military service by self-harm or alike)	19	8	8	3	3	6	25	92	23	11	11

⁸ Main problems of the said 1991 law are that the right to conscientious objection to military service is not recognized for (1) those who hold non-religious beliefs incompatible with military service, (2) those who do not belong to religious organizations of particular 10 confessions specified in governmental decree, and (3) those who developed conscientious objection while conducting military service. Also, it envisages disproportionate length of alternative service, 1.5 times longer than military service, in absence of plausible explanations of such disproportion. Procedure of application for alternative service too lacks of fairness.

⁹ <https://www.ohchr.org/sites/default/files/documents/issues/2022-07-12/ukrainian-pacifist-movement-HRC50.pdf>

¹⁰ Viktor Yelensky, head of the State Service for Ethnic Policy and Freedom of Conscience, told Forum 18 on 3 May 2023 that he has been pushing for all conscientious objectors to be allowed to do alternative civilian service. "All my efforts have been rejected. It is really not easy to reach this goal when we have such heavy losses in battle." On 2 June, Yelensky told Forum 18 that the government is considering amendments to the 1992 Alternative Service (Non-Military) Law possibly to allow individuals to apply to replace military service during mobilisation "with a special period of alternative (non-military) service". He said his State Service for Ethnic Policy and Freedom of Conscience as well as the Human Rights Ombudsperson have already sent their comments to parliament and the Cabinet of Ministers. No details of the proposed amendments have been made public.

https://www.forum18.org/archive.php?article_id=2836

¹¹ According to the court statistics published by the State Court Administration of Ukraine.

Annual survey of Ukrainian Pacifist Movement revealed 53% decrease at the end of 2022 in number of conscientious objectors at alternative service among regions where local military administrations provided relevant numbers (617 objectors conducted alternative service in Ukraine in 2022, comparing to 1659 in 2021)¹². In 2023, at the meeting of members of Ukrainian Council of Churches and Religious Organizations with a prime minister a concern was raised regarding the problems of implementing the constitutional guarantee for alternative (non-military) service for believers whose religious beliefs do not allow them to take up arms; it was suggested that “instead of criminal prosecution of such believers, it would be expedient to involve them in the work of strengthening the defense capability of the state outside the military formations”¹³.

Conscientious objectors, even when their statements about beliefs incompatible with military service are documented by investigation or the court, are usually treated as regular draft evaders subject to Art. 336 of the Criminal Code of Ukraine: evasion of conscription during mobilization, in special time, by reservists is punishable with three to five years of imprisonment. Procedural law allows the court to suspend the sentence, replace incarceration with probation or shorten it.

Number of investigations of crimes related to evasion of military service in Ukraine¹⁴, January-September 2023 comparing to 2022

Art. of Criminal Code of Ukraine / Comparative periods of time	January-September 2023	January-September 2022
336 (evasion of conscription during mobilization, special time, by reservists)	3117	838
337 (evasion of military registration or military gatherings)	78	18
407 (unauthorized abandonment of military unit)	10940	3015
408 (desertion)	4638	2245
409 (evasion of military service by self-harm or alike)	161	151

Oppressive treatment of objectors, pressure on human rights defenders and advocates who dares to criticize and oppose abuses of army including those related to conscription, lack of respect to human rights and peace culture in society which allows to exist shameful stigma around refusal to serve in army are factors that erode difference between conscientious objection and draft evasion. Without proper peace studies, legitimization of conscientious objection and development of legal popular peace movements, transparently financed, ethically consistent and, at least, tolerated (if not joined) by elite, this immoral erosion is inevitable.

In such circumstances, usual ways to avoid compulsory military service, apart of picking from tight circle of legal exemptions and deferrals (among which, perhaps only the enrolment to higher education institutions is accessible by choice; number of male students on paid courses increased

¹² Focus on the situation in Ukraine - independent report by the Ukrainian Pacifist Movement, <https://ebco-beoc.org/node/567>

¹³ The Prime Minister discussed joint measures to counter Russian aggression with the All-Ukrainian Council of Churches (in Ukrainian), 19.10.2023, <https://vrciro.org.ua/ua/events/the-prime-minister-met-with-the-uccro>

¹⁴ According to criminal investigations statistics published by the Office of General Prosecutor.

almost twice¹⁵; appointment of new minister of education and science with militarist public image raised concerns that exemptions for students could be abolished¹⁶, but even before that Ukrainian Parliament Human Rights Commissioner reported that “students obtaining pre-higher and higher education who study full-time are conscripted during mobilisation for the special period, without their consent”¹⁷), are evasion of military registration, any visits to recruitment offices or any encounters with officers serving summons (some people prefer to sit home for that purpose).

Also, there is a shadow market extorting bribes from evaders, selling corruption services such as fraudulent exemptions and cross border smuggling.

Number of people fined for attempts to cross the border illegally increased from 2159 in 2021 to 5707 in 2022; according to the State Border Guard of Ukraine, during a year of martial law, as on September 2023, number of people stopped when attempting to leave Ukraine from 24 February 2022 bypassing checkpoints was 14 600, and 6 200 of “evaders” additionally were stopped at border checkpoints when trying to leave Ukraine with forged documents. Usually, people purchase anonymous instructions how to cross the border, in that way traffickers protect themselves, but there were 120 sentenced for trafficking in 2022 comparing to 60 in 2021. Choice in favor of black market is understandable, because the war is breaking lives; one student prohibited from leaving Ukraine threatened to commit suicide, other students organized regular protests at Shehyni checkpoint and were beaten by the border guards.¹⁸¹⁹

In 2022 for several thousands of dollars it was possible to buy on the black market a permission to go abroad as driver of humanitarian aid truck, even if you don’t have driver’s license. Practices of unjust enrichment of military commissars, entitled to permit people to go abroad at their discretion, and other officers and officials by corruption related to conscription is well-known, and law enforcement agencies regularly report about arrests, but nobody dares to change rules of the cruel “game” making it fairer for those who refuse to kill.

Dismissal of scandalous Odesa military commissar owning real estate worth millions of dollars in Spain²⁰ and wider purge of military recruiters²¹, investigations into their unjust enrichment²², didn’t changed practices of violent conscription including abduction of conscripts on the streets practiced before²³. For example, in October 2023 a man was taken against his will to a recruitment

¹⁵ How Ukrainian universities make money from the war. Tens of thousands of fictitious students avoid mobilization. The existing system of higher education helps them in this (in Ukrainian).

<https://ngl.media/2023/04/24/yak-ukrayinski-universytety-zaroblyayut-na-vijni/>

¹⁶ Militarist and Plagiarist Oksen Lisovyi Should not Be Ukraine's Minister of Education and Science: Report of the Ukrainian Pacifist Movement, <https://ssrn.com/abstract=4408126>

¹⁷ Report on the Observance and Protection of Human and Civil Rights and Freedoms in Ukraine in 2022 by Parliament Commissioner for Human Rights, <https://ombudsman.gov.ua/report-2022/en/>

¹⁸ A student from Kharkiv was going to commit suicide because of the ban on traveling abroad. Kharkiv Today, September 5, 2022, <https://2day.kh.ua/ua/kharkow/kharkivskyy-student-zbyravsyia-skoyity-samohubstvo-cherez-zaboronu-na-vyyizd-za-kordon>

¹⁹ Ukrainian student was brutally beaten up, <https://www.youtube.com/shorts/3hgMThRaMbA>

²⁰ Zelenskyy instructed to dismiss Odesa military commissar and check all others, 23.06.2023, <https://www.pravda.com.ua/eng/news/2023/06/23/7408229/>

²¹ Ukraine fires military conscription officials for taking bribes, 11.08.2023, <https://www.bbc.com/news/world-europe-66478422>

²² In six months, the NACP has found unjustified assets worth more than UAH 255 million from military officers, 23.10.2023, <https://nazk.gov.ua/en/news/in-six-months-the-nacp-has-found-unjustified-assets-worth-more-than-uah-255-million-from-military-officers/>

²³ Inhumane and corrupt mobilization in Ukraine + videos, 14.07.2023, <https://magyarnemzet.hu/english/2023/07/inhumane-and-corrupt-mobilization-in-ukraine-videos>

center in Ternopil and beaten²⁴. Also, only in October 2023 investigation of beating of conscript in July 2022 was started²⁵. There are earlier cases of similar character; harsh stopping and arrests of conscripts at the streets, their abduction and arbitrary detention became usual and even partially legalized practice²⁶, despite some scandalous cases are formally investigated^{27,28} (there is no information regarding trials on perpetrators). In concluding observations on the 8th periodic report of Ukraine the Human Rights Committee expressed concern about reports that conscripts, including conscientious objectors, are hunted down and delivered to military assembly points against their will and about conscripts being subjected to arbitrary detention; it is also expressed concern about the lack of information on investigations into such cases and on the prosecution of those responsible. Ukraine failed to meet the recommendation that the State party should ensure that cases of abduction and arbitrary detention of conscripts are promptly, thoroughly and independently investigated, that perpetrators are prosecuted and punished and that victims are provided with effective remedies, including adequate compensation. In response to a request about such investigations and measures taken, Office of General Prosecutor of Ukraine which supervises all criminal investigations in Ukraine in a letter of 10 February 2023 wrote that it has no public information regarding this question.

Human right to conscientious objection to military service is not recognized on all stages of military service in Ukraine. Conscripts could be punished for “draft evasion,” acting servicemen for “desertion” or “unauthorized leave of military unit” if persisting on their conscientious objection.

Currently a trend could be observed of more harsh sentences in cases of conscientious objectors. For example, an Adventist objector was acquitted in June 2023, notably with quoting in a verdict of acquittal a testimony of a pastor of the church regarding nonviolent contribution of their community into defense of the state and people²⁹. However, the sentence of acquittal was quashed by appellate court, new sentence was passed in August 2023: three years of imprisonment³⁰.

Our selective research of the court decisions in public register mentioning both Article 336 of Criminal Code of Ukraine (draft evasion during mobilization) and Article 35 of the Constitution of Ukraine which enshrines right to alternative service revealed 8 recent sentences punishing conscientious objectors, denying the right of access to alternative service under martial law and 6 court orders to police to investigate alleged draft evasion of conscientious objectors issued at requests of military recruitment centers.

²⁴ Beating in Ternopil recruitment center: two officers suspected (in Ukrainian), 12.10.2023,

<https://suspilne.media/592675-pobitta-v-tck-u-ternopoli-dvom-vijskovim-povidomili-pro-pidozru/>

²⁵ The State Bureau of Investigations investigates the actions of the military and law enforcement officers in the premises of the Chernivtsi City Military Commissariat (in Ukrainian), 09.10.2023, <https://dbr.gov.ua/news/dbr-rozslidue-dii-vijskovih-ta-pravoohoronciv-u-primishhenni-cherniveckogo-oblasnogo-vijskkomatu>

²⁶ Robeyko Olga, “The lawyer commented on the video, when Ukrainians are taken by force to military commissariats,” UNIAN, 18.03.23 (in Ukrainian), <https://www.unian.ua/society/viyskovozobov-yazanih-ukrajinciv-pakuyut-v-avto-y-tyagnut-do-vijskkomatu-advokat-poyasniv-chi-zakonno-ce-12183474.html>

²⁷ Hard detention of a man during the delivery of conscription orders in Odesa: an official investigation is scheduled (video), TSN 23.01.23 (in Ukrainian), <https://tsn.ua/ukrayina/zhorstke-zatrimannya-viyskovozobov-yazanogo-v-odesi-priznachenno-sluzhbovu-perevirku-video-2249212.html>

²⁸ Tetyana Lozovenko, Valentina Romanenko. “A man from Odesa was harshly detained by the Military Commissariat in the middle of the street. The South Operative Commandment says: the guilty will be punished”. Ukrainska Pravda, 14 February 2023 (in Ukrainian), <https://www.pravda.com.ua/news/2023/02/14/7389339/>

²⁹ Verdict of Kremenetsky district court of Ternopil oblast, 5 June 2023, <https://reyestr.court.gov.ua/Review/111297484>

³⁰ Verdict of Ternopil appellate court of 28 August 2023, <https://reyestr.court.gov.ua/Review/113075121>

The trend of growing punitive approach to conscientious objection is probably related with public statement of a military official that hundreds of thousands conscripts evade the draft³¹.

Mainstream human rights organizations in Ukraine are hardly willing to report human rights violations of Ukrainian army, holding a position that survival of the state as primary defender of human rights is at stake and people must unite in support of Armed Forces of Ukraine. However, national human rights institution reported some violations related to conscription, avoiding the topic of conscientious objection.

Ukrainian Parliament Commissioner for Human Rights reluctantly admits “failure to observe citizens’ rights during the mobilization,” including “mistakes made during the mobilisation (inadequate medical examination of those liable for military service by military medical commissions, conscription of the persons who have a deferment pursuant to the effective legislation),” in 2022 annual report.³²

During interactive dialogues regarding UN High Commissioner’s for Human Rights reports on situation in Ukraine IFOR expressed concerns regarding violations of human right to conscientious objection to military service in Ukraine where general mobilization to the army is enforced without any exceptions for conscientious objectors and call-up orders are handed out in public places including churches. IFOR reported about the current suspension of the right to conscientious objection in Ukraine, the consequent detention sentences, the travel ban for all men aged 18-60 and repression of student protests against the prohibition to study abroad. Also, IFOR expressed concerns regarding forced mobilization of conscripts in Ukrainian occupied territories by the Russian Federation, which include imprisonment for those who refuse to enlist³³³⁴³⁵.

In concluding observations on the 8th periodic report of Ukraine³⁶ Human Rights Committee 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), and should be neither punitive nor discriminatory in nature or duration by comparison with military service. However, Ukraine took no measures to change legislation according to these recommendations. Answering to letters of Ukrainian Pacifist Movements to Verkhovna Rada (parliament) of Ukraine in September 2022 regarding progress in implementation of these recommendations, parliamentary committee on human rights redirected the letter to the Ministry of Justice which, in turn, responded the question is in jurisdiction of Ministry of Defense, and parliamentary committee on national security, defense and intelligence responded that proposals to change legislation to meet international human rights standards will be disseminated among MPs. However, in February 2023 parliamentary committee on human rights informed that questions of alternative nonmilitary service are in purview of the committee on national security, defense and intelligence, which wrote that alternative service could be allowed only instead of term-limited (peacetime) conscription, citing outdated statutory law without any references to human rights.

³¹ Mobilization will not be escaped: Ministry of Defence announced changes in the work of military medical commissions, 14.10.23, <https://tsn.ua/ato/mobilizaciyi-ne-uniknuti-v-minoboroni-ukrayini-anonsuvali-zmini-schodo-prizovu-ta-roboti-vlk-2429011.html>

³² Report on the Observance and Protection of Human and Civil Rights and Freedoms in Ukraine in 2022 by Parliament Commissioner for Human Rights, <https://ombudsman.gov.ua/report-2022/en/>

³³ <https://www.ifor.org/news/2022/7/5/ifor-addresses-the-un-human-rights-council-on-the-right-to-conscientious-objection-and-the-war-in-ukraine>

³⁴ <https://www.ifor.org/news/2022/10/7/ifor-speaks-at-the-un-on-conscientious-objection-violations-and-peacebuilding-efforts-in-ukraine>

³⁵ <https://www.ifor.org/news/2022/4/2/war-should-be-abolished-ifor-speaks-up-at-the-un-on-the-right-to-conscientious-objection-in-wartime>

³⁶ Concluding observations of the UN Human Rights Committee regarding the Eighth Periodic Report of Ukraine dated 9 February 2022, URL: <https://digitallibrary.un.org/record/3957960?ln=en>

Persecution of Vitaliy Alexeienko for conscientious objection to military service

Vitaliy Alekseenko, a Protestant Christian conscientious objector and internally displaced person, was sentenced to one year of imprisonment for his refusal to kill and jailed in February 2023 after the appellate court upheld the sentence³⁷³⁸³⁹. European Bureau for Conscientious Objection declared him a prisoner of conscience⁴⁰.

In May 2023, the Supreme Court overturned the conviction and ordered his immediate release from prison and his retrial in the court of first instance.⁴¹ This retrial is ongoing, next hearings are scheduled on 15 November.

Supreme Court didn't acquitted Alekseenko as defense asked and quoted outdated law on alternative service in a manner according with army's denial of right to conscientious objection. This creates a risk of new guilty verdict.

With a help of Ukrainian Pacifist Movement, Alekseenko prepared a constitutional complaint questioning constitutionality of norms of the law on alternative service making it accessible only in a peacetime and only to members of privileged confessions approved by the government. Unfortunately, materials related to work on constitutional complaint were seized on a computer by Security Service of Ukraine during the search in apartment of Yurii Sheliazhenko (see below) and this intrusion wasted a lot of time and efforts, forced to finalize the submission in hurry submitting it in the last moment. In result, the secretariat of Constitutional Court of Ukraine returned the complaint because of minor procedural problem⁴².

After a release from prison, Alexeienko experienced problems with employment because of demands of military registration, but with a time, after receiving a legal advise, he managed to find a job of postman.

³⁷ Felix Corley. UKRAINE: Conscientious objector now jailed. Forum 18 (27 February 2023), https://www.forum18.org/archive.php?article_id=2813

³⁸ Ukraine: EBCO visits imprisoned Christian conscientious objector Vitaliy Alekseenko and calls for his immediate and unconditional release <https://ebco-beoc.org/node/560>

³⁹ Belief or Betrayal? Ukraine's Conscientious Objectors Face Hostility, New York Times, <https://www.nytimes.com/2023/08/18/world/europe/ukraine-conscientious-objectors.html>

⁴⁰ Ukraine: Vitaliy Alekseenko is a prisoner of conscience and should be released immediately and unconditionally, <https://ebco-beoc.org/node/553>

⁴¹ Supreme Court of Ukraine releases a prisoner of conscience: conscientious objector Vitaliy Alekseenko, <https://ebco-beoc.org/node/572>

⁴² Reason for the return of Alexeienko's constitutional complaint was that only a copy of Supreme Court decision, not all court decisions in the case, was attached. In fact, this is not a requirement of law but registrar's own requirement. Decision of the registrar is not a subject to appeal. Generally, this situation is another indication of questionable effectiveness of a procedure of constitutional complaint as national human rights remedy.

Lack of procedure of discharge from military service on the grounds of conscience in case of Andrii Vyshnevetsky

Andrii Vyshnevetsky, a Christian pacifist, was sent to a frontline unit of the Armed Forces of Ukraine despite he declared conscientious objection and asked for discharge⁴³. After many declarations of conscientious objection, he was assigned to a kitchen duty. Commandment of Ground Forces denied him a right of discharge on the grounds of conscience, referring to current regulations of military service by the law and presidential decrees. He submitted a lawsuit asking the Supreme Court to order President Zelensky to establish the procedure of discharge from military service on the grounds of conscience.⁴⁴

On 25 September 2023, Supreme Court refused to satisfy a lawsuit of Andrii Vyshnevetsky. In that day, commander prevented him from appearing before the court as summoned, by reassignment to other military unit and unreasonably long delay in permission to leave under a pretext of filing the paperwork.

In the judgment, Supreme Court refers to national emergency because of Russian invasion of Ukraine which allows to limit human rights and derogate from international human rights obligations of the state. However, the court didn't checked whether constitutional right to alternative service and human right to conscientious objection was properly limited by the law (it was not limited by the law), nor the court checked whether Ukraine derogated from international human rights obligations related to freedom of conscience, religion or belief (there was no such derogation). Also, Supreme Court quoted first paragraph of Art. 4 of ICCPR regarding possibility of derogations but not a second paragraph which precludes any derogations from Art. 18 of ICCPR. Among other arguments, Supreme Court claimed that legal gap regarding the right to conscientious objection must be filled by the parliament, not by the president who have no powers to do that (however, the court ignored a reference in the Vyshnevetsky's lawsuit to Law of Ukraine "On Military Duty and Military Service" which gives to President a power to define procedures related to military service).

Since the Supreme Court considered the lawsuit as a court of first instance and appeal to Grand Chamber of Supreme Court is allowed, Ukrainian Pacifist Movement filed an appeal to Supreme Court judgment of 25 September 2023 in Vyshnevetsky's case.

⁴³ Belief or Betrayal? Ukraine's Conscientious Objectors Face Hostility, New York Times, <https://www.nytimes.com/2023/08/18/world/europe/ukraine-conscientious-objectors.html>

⁴⁴ Felix Corley, "UKRAINE: Army rejects conscientious objector alternative service transfer," Forum 18, 9 May 2023, https://www.forum18.org/archive.php?article_id=2830

Persecution of Yurii Sheliashenko for advocacy of right to conscientious objection and defense of rights of objectors

Yurii Sheliashenko, executive secretary of NGO Ukrainian Pacifist Movement, was put under criminal investigation, subjected to search of his apartment on 3 August 2023, seizure of computer and smartphone, night house arrest (started on 15 August, prolonged till 30 November) because of advocacy of pacifist worldview and, especially, human right to conscientious objection to military service⁴⁵. He was served with a formal suspicion in justifying Russian aggression, a crime punishable by up to 5 years in prison with the possibility of confiscation of property under Art. 436-2 part 2 of the Criminal Code of Ukraine. This politically motivated criminal prosecution is carried out under an absurd pretext: according to the suspicion, the criminal act was that Sheliashenko sent to President Zelensky a statement "Peace Agenda for Ukraine and the World"⁴⁶ adopted by Ukrainian Pacifist Movement on 21 September 2022, which allegedly justifies Russian aggression (in fact, the statement literally supports condemnation of Russian aggression by the UN General Assembly). The absurd suspicion is substantiated by forensic linguistic (semantical-textual) expert conclusion conducted in Security Service of Ukraine⁴⁷ which ignores both legal definition of aggression and the fact that the statement of pacifists contains explicit condemnation of Russian aggression; the forensic linguistic expert conclusion is based on biased conjectures from general principles of pacifist beliefs, declared in the statement, like the doubts in realism of any images of enemy, critical analysis of contribution into conflict escalation on all sides, emphasis on nonviolent and unarmed approaches to self-defense and protection of civilians.

A number of decisions of investigative judges, including permissions to search Sheliashenko's apartment⁴⁸, to access his correspondence⁴⁹ and mobile phone calls logs⁵⁰, quote information that the investigation was started before the adoption of said statement, when Sheliashenko published a legal aid document entitled "Human Right to Conscientious Objection to Military Service," and at the time investigation was focused on alleged violation of Article 114-1 (1) of the Criminal Code of Ukraine (interference with legal activities of Armed Forces of Ukraine or other military formations in special period), a crime punishable from five to eight years of imprisonment. Press release of Security Service of Ukraine regarding the investigation says that Sheliashenko called for draft evasion and sent to foreign diplomats allegedly false information about the war; since the only letter to foreign diplomats disclosed by investigation was a letter addressed to Matilda Bogner, Head of the UN Human Rights Monitoring Mission in Ukraine⁵¹, containing accurate descriptions of violations of right to conscientious objection in several individual cases, based on publicly accessible information, interviews and documents, – it is clear that repressions started because of human rights defending work.

⁴⁵ Why Is Ukraine Prosecuting Pacifist Yurii Sheliashenko for "Justifying Russian Aggression"? Democracy Now, 10 August 2023, https://www.democracynow.org/2023/8/10/yurii_sheliashenko_charges

⁴⁶ <https://www.ipb.org/peace-agenda-for-ukraine-and-the-world/>

⁴⁷ Conclusion of the expert of the Ukrainian Research Institute of Special Equipment and Forensic Examinations of the Security Service of Ukraine No. 135/1 dated 24 May 2023.

⁴⁸ Decision of Solomianskyi district court of Kyiv of 5 July 2023.

⁴⁹ Decision of Solomianskyi district court of Kyiv of 25 October 2023.

⁵⁰ Decision of Solomianskyi district court of Kyiv of 25 October 2023.

⁵¹ A letter of Ukrainian Pacifist Movement to Matilda Bogner, Head of the UN Human Rights Monitoring Mission in Ukraine, No 151 dated 9 November 2022

The pretext of “justification of Russian aggression” was probably invented later when investigators realized controversial character of persecution for legitimate human rights concerns and legal aid. However, the investigation didn’t abandoned intention to prosecute for human rights advocacy, that could be seen from investigator’s request to the court to prolong a term of investigation dated 25 October 2023: it says that investigation considers a “change of qualification of crime,” attached a letter of 21 July 2023 by an investigator of Security Service of Ukraine Oleksandr Novak to the Main Directorate of Personnel of Armed Forces of Ukraine which says that a citizen Yuriy Sheliashenko under the criminal investigation is “acting to advocate in Ukrainian information space a message regarding the human right to conscientious objection to military service,” “in the Internet information materials are found criticizing war and militarism,” and asks whether these activities interfere with legal affairs of Armed Forces of Ukraine; he also attached a response signed by Deputy Chief of Main Directorate of Personnel of Armed Forces of Ukraine Mark Andrusiak, dated 17 August 2023, saying that “activities of executive secretary of Ukrainian Pacifist Movement citizen Sheliashenko influence negatively on ability of the state to ensure enforcement of measures of general mobilization and conduction of conscription of persons liable to military duty by territorial centers of recruitment and social support.” It is notable that earlier Mark Andrusiak signed a letter denying legal obligations of Ukraine to protect human right to conscientious objection.

Political persecution in this case is strongly pursued: a group of 9 investigators of Security Service of Ukraine are assigned to the case, and a group of 5 prosecutors of Kyiv City Prosecutorial Office are assigned to supervise the investigation.

The disclosed investigation case file documents contain correspondence of Security Service of Ukraine with Oleksiy Dniprov, deputy head of the Office of the President of Ukraine, and Oleksandr Kononenko, representative of the Verkhovna Rada of Ukraine Commissioner for Human Rights in the system of security and defense sector bodies, regarding the allegedly “criminal” letters of Ukrainian Pacifist Movement, considering advocacy of right to conscientious objection as a crime. It is notable that a representative of national human rights ombudsman wrote a letter to security service asking for investigation of allegedly “criminal” human rights advocacy, denying the right to conscientious objection, while his boss later reluctantly recognized in a new letter relevant Ukrainian commitments according to Constitution and international treaties.

A month after the search in Sheliashenko’s apartment, on 7th September, the Security Service of Ukraine⁵², the Kyiv City Prosecutor's Office and the Prosecutor General's Office⁵³ discredited Yuriy Sheliashenko in press releases with dubious accusations of crimes. The long delay in publication of press releases is probably related to unsuccessful attempts to find any incriminating documents or communications in computer and smartphone of Yuriy Sheliashenko. After a year of surveillance, the search and the seizure mentioned above Security Service of Ukraine found no evidence of anything else than advocacy of pacifist beliefs, peace calls compliant with international law, and especially of human right to conscientious objection to military service; however, Security Service of Ukraine still treat Yuriy Sheliashenko as an “enemy” and persecute him, probably because of politically motivated orders from military

⁵² <https://ssu.gov.ua/novyny/sbu-vykryla-shche-trokh-vorozhykh-ahitatoriv-odyn-iz-nykh-zaklykav-pidniaty-rosiiskyi-prapor-nad-khortytseiu>

⁵³ <https://www.gp.gov.ua/ua/posts/vipravdovuvav-zbroinu-agresiyu-rf-povidomleno-pro-pidozru-tak-zvanomu-vikonavcomu-sekretaryu-ruxu-pacifistiv>

and/or political leadership⁵⁴. International civil society called to stop the politically motivated persecutions for pacifism⁵⁵.

Politically motivated persecution of Yurii Sheliazhenko for legitimate human rights and peace activism, advocacy of human right to conscientious objection to military service violates human rights to freedom of conscience, religion or belief, personal freedom, inviolability of private life, home and property, freedom of speech, freedom of association, presumption of innocence, protection of reputation from defamation.

Decisions of Solomianskyi district court of Kyiv of 19 September and 5 October 2023 recognized that investigator of Security Service of Ukraine violated rights of Yurii Sheliazhenko when don't considered in order prescribed by the Criminal Procedural Code of Ukraine Sheliazhenko's requests to return temporarily seized property, to close the case due to absence of a fact of crime, to appoint fair forensic linguistic research, to access non-secret materials of investigation. Also, on 23 October Solomianskyi district court of Kyiv returned to investigator materials of his request to prolong investigation till 2024 as not meeting requirements of criminal procedure by the request of defense, though the investigator filed a new similar request on 25 October; prolongation of the investigation will at least lead to prolongation of house arrest imposed on Yurii Sheliazhenko.

⁵⁴ Pacifists are not enemies, and all images of enemy are fictional, <https://worldbeyondwar.org/yurii-sheliazhenko-speaks-on-being-prosecuted-for-pacifism/>

⁵⁵ Ukraine: Pacifism is not a crime in democratic states! Drop the charge against Yurii Sheliazhenko, War Resisters' International, <https://wri-irg.org/en/story/2023/ukraine-pacifism-not-crime-democratic-states-drop-charge-against-yurii-sheliazhenko> ; Justice for Yurii Sheliazhenko, International Peace Bureau, <https://www.ipb.org/justice-for-yurii-sheliazhenko/>

Recommendations

Ukraine must recognize human right to conscientious objection to military service and amend law on alternative service in a way consistent with Constitution and international human rights treaties of Ukraine, including the ICCPR.

Legal recognition of the right to conscientious objection should be available at any stage before and during military service. Information regarding relevant procedures and legal aid should be available to all conscientious objectors.

Since armed conflicts are rampant in the world and people committed to culture of peace and nonviolence in all its forms, not only religious but also secular pacifist, based on philosophies and scientific knowledge, refuse to take arms following imperative of their conscience, consistently choosing peaceful ways to resist aggressions, tyrannies, and human rights violations, – conscientious objection in time of war deserves special legal protection, being the most precious guarantee of human dignity, democratic peace and hope for better future free from scourge of war, which is also a goal of Universal Declaration of Human Rights according to its preamble.

In time of war, respect to the right to conscientious objection become a red line distinguishing those who fight for peace and justice from those who believe that life is war and might is right.

Sanctity of human life and special respect to refusal to take other's life explains unique role of human right to conscientious objection to military service and its absolute character, even (and especially) in times of national emergencies.

Even historically speaking, this right was developed in times of emergence of modern mass armies, which resulted in two horrible world wars, and it was recognized in civilized countries exactly during the world wars despite governments were interested in full mobilization of population to resist foreign aggression; these governments understood they have no power to overrule imperative of individual conscience, and so must all sane governments in the world.

Therefore, strong legal protection of the right to conscientious objection to military service must become a priority in today's international human rights agenda, as the most direct way to restrain militarism and rampant military conflicts, to preserve hope that in the world where everybody refuse to kill there will be no wars.

Human rights defenders must remember the promise that full protection of human rights will free the world from barbarity of organized mass killings after despicable failures of diplomacy.