

27 February 2023

UKRAINE: Conscientious objector now jailed

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

Ivano-Frankivsk Police took 46-year-old Christian conscientious objector Vitaly Alekseenko into custody on 23 February to begin serving his one-year jail term for refusing the call-up to the military at a time of war. His requests to perform an alternative civilian service were ignored and he has appealed to the Supreme Court. The Defence Ministry insists that alternative service does not exist during wartime. He is the first conscientious objector jailed since Russia's renewed 2022 invasion of Ukraine. Courts have given at least six others suspended prison terms.

On 23 February, one day before the first anniversary of Russia's renewed invasion of Ukraine, Ukrainian 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 for refusing the call-up to the military at a time of war. His requests to perform an alternative civilian service were ignored. Ukraine's Defence Ministry insists that alternative service does not exist during wartime.

Alekseenko is the first conscientious objector the Ukrainian authorities are known to have jailed. Since Russia's renewed invasion of Ukraine in February 2022, courts have given at least six other conscientious objectors suspended prison terms (see below).

On the morning of 23 February, police took Alekseenko to a clinic for a medical examination. Officers then took him to Ivano-Frankivsk's Investigation Prison, Yuriy Sheliashenko, secretary of the Ukrainian Pacifist Movement, told Forum 18 from the capital Kyiv. "Vitaly told me that he will read the Gospels and New Testament in prison and will pray for peace and justice and changes in Ukraine for the better," Sheliashenko added (see below).

Alekseenko is likely to be transferred to a prison to serve his sentence, though Forum 18 has been unable to find out when that will be and where he will be transferred. Telephones at Ivano-Frankivsk's Investigation Prison went unanswered on 27 February (see below).

Alekseenko has already lodged a further cassation appeal to the Supreme Court in Kyiv. The case has been assigned to a panel of judges, but no dates for any hearings have been set (see below).

An official from the Defence Ministry Personnel Department – who did not give his name – said 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).

Forum 18 asked Mykhailo Spasov, the official handling the right to freedom of religion or belief at the office of the Parliamentary Human Rights Commissioner (Ombudsperson), about the jailing of conscientious objector Alekseenko and the suspended prison terms handed down to other conscientious objectors.

Forum 18 also asked Spasov 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. Forum 18 received no immediate response (see below).

On 16 January, Ivano-Frankivsk Appeal Court rejected Alekseenko's appeal against his one-year jail term. The sentence went into force when he collected the written verdict from the court on 24 January (see below).

"I told the court I agree that I have broken the law of Ukraine," Alekseenko told Forum 18 from Ivano-Frankivsk after the appeal hearing, "but I am not guilty under the law of God. I want to be honest to myself." He added that had he repented of his "crime", both the lower and the appeal court would have given him a suspended sentence (see below).

"Conscientious objection to military service is not a crime, it is human right [see below], and this human right should not be denied even in time of war," Sheliashenko added. "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" (see below).

"Unfortunately, the right to alternative service does not extend to martial law," Viktor Yelensky, head of the State Service for Ethnic Policy and Freedom of Conscience, told Forum 18. He said he is working to extend the right for exemption from mobilisation, but "this requires the goodwill of Parliament" (see below).

Alekseenko, an internally-displaced person from Donetsk Region, was summoned to the recruitment office in Ivano-Frankivsk in June 2022. He explained that because of his religious belief he cannot take up arms. He was refused alternative civilian service and his case was handed to prosecutors. On 15 September 2022, Ivano-Frankivsk City Court handed down the one-year jail term (see below).

An official of the Ivano-Frankivsk City Recruitment Office, who refused to give his name, said he was not familiar with Alekseenko's case. "We're not competent to answer your questions," the official told Forum 18 in January 2023. "We generally offer alternative service to members of religious communities." The official refused to say how many men had been able to opt for alternative civilian service since the February 2022 renewed Russian invasion of Ukraine (see below).

When Forum 18 asked the official why Alekseenko could not have been assigned an alternative civilian service in a needed occupation at a time of war, say at a hospital, the official did not explain why (see below).

Meanwhile, the army has rejected requests by conscientious objector Andrii Vyshnevetsky to be transferred to an alternative civilian service. The 33-year-old was mobilised in Odessa in September 2022 and is currently serving in a military kitchen. The Recruitment Office in Odessa refused to discuss his case (see below).

Prosecutions of other conscientious objectors

In six other criminal cases since February 2022, courts handed conscientious objectors suspended prison sentences 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.

All were convicted under Criminal Code Article 336. This punishes "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".

The verdicts in three of the cases (Kucherov, Martiniuk and Tomniuk) state that they base their objection to military service on their Christian faith. The court decisions in the other three cases describe only the individuals' conscientious objection to killing people.

Since Russia's renewed invasion of Ukraine in February 2022 and the declaration of martial law in Ukraine, Recruitment Offices have summoned thousands of Jehovah's Witness men. Prosecutors opened criminal cases against 67 individuals, of which 44 have already been closed (https://www.forum18.org/archive.php?article_id=2803).

Three Jehovah's Witness young men are currently on trial under Criminal Code Article 336. However, the long-running trials do not appear to be close to a conclusion (https://www.forum18.org/archive.php?article_id=2810), Jehovah's Witnesses told Forum 18.

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 recognised 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 did not give his name – insisted to Forum 18 on 15 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.

"Unfortunately, the right to alternative service does not extend to martial law," Viktor Yelensky, head of the State Service for Ethnic Policy and Freedom of Conscience, told Forum 18 on 14 February (https://www.forum18.org/archive.php?article_id=2810). "We are working to exempt priests who cannot kill according to Canon Law and we are looking for a way to deal with Christians applying for the alternative (civilian) service. However, this requires the goodwill of Parliament."

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.

Forum 18 asked Mykhailo Spasov, the official handling the right to freedom of religion or belief at the office of the Parliamentary Human Rights Commissioner (Ombudsperson) in Kyiv, in writing on the morning of 27 February 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 received no immediate response by the end of the working day of 27 February.

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 on 15 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."

Recruitment Office rejects alternative service request

Vitaly Vasilovich Alekseenko (born 2 December 1976) was living in Slovyansk in Ukraine's eastern Donetsk Region when Russia began its renewed invasion of Ukraine in February 2022. In 2017 he was registered with the Ukrainian Conscription Office in Slovyansk, but was given not a military card. However, he was given a certificate valid until 2022 confirming that he had not served in the military in the 1990s in Uzbekistan, where he then lived, on grounds of conscience.

Alekseenko fled to Ivano-Frankivsk in May 2022. The City Recruitment Office summoned him on 2 June. He told them that he could not take up arms because of his religious beliefs as a Christian. "I told them I was ready to do an alternative service and wrote such a declaration," he told Forum 18. He also explained that he had refused military service in Uzbekistan on grounds of conscience.

"They told me that there is no certainty that I'm a believer," Alekseenko told Forum 18 on 15 December 2022 (https://www.forum18.org/archive.php?article_id=2803). "They said that only members of registered faiths have the right to do alternative service." He said he believes in Jesus Christ and his command to resist evil without violence and be peacemakers as outlined in the Sermon on the Mount. "But I don't go to any church as they don't observe what Christ said."

The Recruitment Office summoned Alekseenko again on 6 June 2022, telling him they rejected his application for alternative service. When he refused to be mobilised, officials called in the police.

An official of the Ivano-Frankivsk City Recruitment Office, who refused to give his name, said he was not familiar with Alekseenko's case. "We're not competent to answer your questions," the official told Forum 18 on 17 January 2023 (https://www.forum18.org/archive.php?article_id=2803). "We generally offer alternative service to members of religious communities." The official refused to say how many men had been able to opt for alternative civilian service since the February 2022 renewed Russian invasion of Ukraine.

When Forum 18 told the official that Alekseenko's objections to serving in the military are based on his religious beliefs, the official replied: "Let him come in to us a second time."

When Forum 18 asked the official why Alekseenko could not have been assigned an alternative civilian service in a needed occupation at a time of war, say at a hospital, the official did not explain why.

Criminal case, trial, conviction, jail sentence

The investigator launched a criminal case against Alekseenko (https://www.forum18.org/archive.php?article_id=2803) under Article 336 of the Criminal Code. This punishes "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 the investigator's advice, Alekseenko pleaded guilty, but refused to repent of his actions "because he is convinced that he behaved decently as a Christian, followed the imperative of his conscience and did nothing wrong", the Ukrainian Pacifist Movement said in a 9 November 2022 letter to the United Nations Human Rights Monitoring Mission in Ukraine.

At his criminal trial at Ivano-Frankivsk City Court on 15 September 2022, Judge Roman Khorostil found Alekseenko guilty (https://www.forum18.org/archive.php?article_id=2803) under Criminal Code Article 336. The decision - seen by Forum 18 - notes that Prosecutor Olga Gazukina, who led the prosecution case in court, called for a three-year suspended jail term.

However, Judge Khorostil ignored the Prosecutor's request and decided to jail Alekseenko. He noted the pre-trial report that said that Alekseenko did not represent a danger to society and reduced his sentence to a one-year jail term. The verdict says that the term begins when Alekseenko is actually detained.

Alekseenko appealed to Ivano-Frankivsk Appeal Court, which finally rejected his appeal on 16 January 2023. Volodymyr Povzlo was the Presiding Judge, accompanied by Bogdan Kukurudz and Oleksandr Vasilev. The hearing was open, Alekseenko told Forum 18, and friends attended the hearing in his support.

"I told the court I agree that I have broken the law of Ukraine," Alekseenko told Forum 18 in January (https://www.forum18.org/archive.php?article_id=2803), "but I am not guilty under the law of God. I want to be honest to myself." He added that had he repented of his "crime", both the lower and the appeal court would have given him a suspended sentence. "How could I do that when I am not guilty?"

Jailed

Alekseenko collected the written appeal verdict – seen by Forum 18 - from Ivano-Frankivsk Appeal Court on 24 January. The verdict then entered legal force.

A police officer finally phoned Alekseenko on 13 February. She told him "to be ready to be taken to prison" at 9am on 20 February to begin his one-year jail term. "It was not my decision," the police officer tasked with taking him to prison told Forum 18 from Ivano-Frankivsk on 14 February (https://www.forum18.org/archive.php?article_id=2810). "The court gave me the decision to take him to prison. It's my job to carry this out."

The police officer refused to say why Alekseenko is being jailed for refusing on grounds of conscience a military call-up when he has said he is ready to perform an alternative civilian service. "It's not for me to comment on that," she told Forum 18. Police did not come as expected on 20 February.

An official from the Defence Ministry Personnel Department – who did not give his name – told Forum 18 on 15 February (https://www.forum18.org/archive.php?article_id=2810) 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. He then put the phone down.

Police finally took Alekseenko into custody on 23 February. That morning, officers took him to a clinic for a medical examination before taking him on to Ivano-Frankivsk's Investigation Prison, Yurii Sheliashenko of the Ukrainian Pacifist Movement told Forum 18 from Kyiv.

"Vitaly told me that he will read the Gospels and New Testament in prison and will pray for peace and justice and changes in Ukraine for the better," Sheliashenko added.

Alekseenko is likely to be transferred to a prison to serve his sentence, though Forum 18 has been unable to find out when that will be and where he will be transferred. Telephones at Ivano-Frankivsk's Investigation Prison went unanswered each time Forum 18 called on 27 February.

Forum 18 asked Mykhailo Spasov, the official handling the right to freedom of religion or belief at the office of the Parliamentary Human Rights Commissioner (Ombudsperson) in Kyiv, in writing on the morning of 27 February about the jailing of conscientious objector Alekseenko. Forum 18 received no immediate response by the end of the working day of 27 February.

Those already convicted and whose sentences have come into force are likely to be held in an Investigation Prison only for a short time before being transferred to a prison to serve their sentences, usually in a location near their home, says Andriy Didenko of the Kharkiv Human Rights Protection Group.

Didenko was among human rights defenders and officials to inspect Ivano-Frankivsk's Investigation Prison, most recently on 12 February. "Conditions of detention could be better," he told Forum 18 from Kyiv on 27 February. "It is crowded and with a lack of space and air for each prisoner. But compared with other prisons it is more or less OK and the management is reasonable."

Alekseenko's current address in Investigation Prison:

76018, m. Ivano-Frankivsk

vul. E. Konovaltsia 70

Slidchy izolyator

Alekseenko, Vitaly Vasilovich

Ukraine

Cassation appeal to the Supreme Court

Alekseenko lodged a further cassation appeal to the Supreme Court in Kyiv, which registered the case on 21 February. The Supreme Court's Criminal Division assigned the case to a panel of three judges: Vyacheslav Nastavny, Serhy Slynko and Svitlana Yakovleva, according to court records. No dates for any hearings have been set.

"In his appeal, Vitaly asked the Supreme Court to suspend the execution of the sentence while the cassation appeal is being considered," Sheliashenko told Forum 18. "I hope there is a non-zero chance that the Supreme Court will grant this."

Conscientious objector mobilised, denied transfer to alternative civilian service

Andrii Vyshnevetsky – who is now 33 years old - lived with his wife and daughter in Kherson before Russia's February 2022 invasion. Military officials located 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. Officials there rejected his request to perform an alternative civilian service on grounds of conscience and mobilised him into the army.

The official who answered the phone at Suvorov Territorial Recruitment Office – who did not give his name – refused to discuss Vyshnevetsky's case. "We don't give any information by phone," he told Forum 18 on 15 February 2023.

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 explained his conscientious objection to Sheliashenko of the Ukrainian Pacifist Movement. "I don't understand church terminology, I just believe," he told him on 2 January. "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 an alternative service, such as with the Red Cross.

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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f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY