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UKRAINE: Second conscientious objector jail sentence

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

Mykhailo Yavorsky, a 39-year-old Christian, is appealing against a one-year jail term handed down on 6 April for refusing mobilisation on grounds of conscience. If he loses his planned appeal he will be sent to prison. "I would not carry weapons and would not put on a uniform, as I can't kill a person," Yavorsky told Forum 18. "They offered me no alternative service." He is the second known conscientious objector sentenced to jail in Ukraine since Russia's renewed invasion, despite asking to do alternative civilian service.

Mykhailo Yavorsky, a 39-year-old Christian from the south-western city of Ivano-Frankivsk, is preparing an appeal against a one-year jail term handed down on 6 April for refusing mobilisation on grounds of conscience. If his appeal fails, he 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. Ukraine's Defence Ministry insists that even the limited alternative service allowed in peacetime does not exist during wartime.

"I would not carry weapons and would not put on a uniform, as I can't kill a person," Yavorsky told Forum 18. "But they offered me no alternative service. No one asked me what I believe" (see below).

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.

Within Russian-occupied Ukraine there are severe violations of human rights such as the freedom of religion or belief, including (as of May 2022) the illegal conscription of over 3,000 Ukrainians into the Russian armed forces (see below).

On 23 February 2023, one day before the first anniversary of Russia's renewed invasion, Ukrainian police in 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 near Ivano-Frankivsk (see below).

Alekseenko has already lodged a further cassation appeal to the Supreme Court in Kyiv. A hearing has been set for 25 May. The Supreme Court refused to suspend his sentence while it considered his cassation appeal (see below).

On 3 February, Protestant Christian Hennady Tomniuk was handed a 3-year suspended sentence for refusing mobilisation on grounds of conscience. On 27 April, Ivano-Frankivsk Appeal Court rejected the prosecutor's attempt to have this 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 (see below).

A court in Transcarpathia acquitted a Jehovah's Witness of refusing the call-up to mobilisation, but the prosecutor is appealing against the acquittal. 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 and offering to perform an alternative civilian service, Jehovah's Witnesses told Forum 18 (see below).

All these men were prosecuted 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.

Since Russia's renewed invasion of Ukraine in February 2022, Ukrainian courts have handed six conscientious objectors suspended prison sentences (https://www.forum18.org/archive.php?article_id=2813) and terms of probation.

Meanwhile, the Ukrainian army has rejected requests by Christian conscientious objector Andrii Vyshnevetsky to be transferred to an alternative civilian service (https://www.forum18.org/archive.php?article_id=2830). The 34-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 with Forum 18, and a Supreme Court hearing is due on 22 May 2023.

"Conscientious objection is a hot issue"

An official from the Defence Ministry Personnel Department – who would not give his name – told Forum 18 in 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. When Forum 18 asked why Alekseenko and other conscientious objectors cannot as they have requested be sent to work in hospitals, for example, the official repeated his answer.

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," (https://www.forum18.org/archive.php?article_id=2830) 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 peace time to be extended to all conscientious objectors, rather than just to members of 10 approved religious communities (https://www.forum18.org/archive.php?article_id=2810). "But I can't convince law-makers and military people." (https://www.forum18.org/archive.php?article_id=2830)

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), 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. No reply had been received by the middle of the working day in Kyiv of 5 May (see below).

"Conscientious objection to military service is not a crime, it is a human right, and this human right should not be denied even in time of war," Yurii Sheliazhenko of the Ukrainian Pacifist Movement 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."

"Conscientious objection is a hot issue," a member of a religious community who wished to remain anonymous told Forum 18 on 2 May. "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. Believers want to continue to be valuable members of society even during a war."

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>)) 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 Human Rights Committee's General Comment 22 on Article 18 ("Freedom of thought, conscience and religion") of the International Covenant on Civil and Political Rights (ICCPR) notes that "this right is non-derogable even during times of national emergency (https://www.quino.org/sites/default/files/resources/QUNO%20Conscientious%20Objection%20-%20International%20Standards_Revised%202021_FINAL.pdf) threatening the life of the nation".

Yavorsky: Appeal against jail term

Mykhailo Yosypovych Yavorsky (born 3 June 1983), a Christian from the south-western city of Ivano-Frankivsk, is preparing an appeal to Ivano-Frankivsk Appeal Court against a one-year jail term handed down on 6 April for refusing mobilisation on grounds of conscience. If his appeal fails, he will be taken to prison to begin serving his sentence. He vowed to take his case to the Supreme Court if necessary.

"I adhere to the New Testament," Yavorsky told Forum 18 on 2 May. "Jesus said you must love God and love your neighbour – this is the most important thing."

Yavorsky became a Christian in 2003 as he was nearing the end of his compulsory military service. "I was bad when I was a soldier but my behaviour improved and I was baptised with full immersion soon after my military service ended," he said. "I have been a Christian for 20 years."

Yavorsky insists he is ready to perform an alternative civilian service. "I would not carry weapons and would not put on a uniform,

as I can't kill a person. But they offered me no alternative service. No one asked me what I believe."

Yavorsky pointed out that he had many opportunities to flee the country after the Russian invasion, but chose not to. "I stick firmly to my principles. I could have left but I didn't want to. I wanted to remain in my country and for my country to become more humane," he told Forum 18. "I don't hide, I don't bribe judges."

In March 2022, Ivano-Frankivsk Recruitment Office summoned Yavorsky, where he passed a medical commission. He told them he would not serve in the armed forces because of his religious beliefs and wrote this on the Recruitment Office forms. A medical exemption from call-up expired in June 2022.

On 21 July 2022, the Recruitment Office ordered Yavorsky to appear four days later for mobilisation. He told them again he could not join the army because of his religious beliefs. Recruitment Office staff explained to him "the consequences of evading conscription for military service during mobilisation", according to the court decision seen by Forum 18.

On 15 August 2022, the head of the Recruitment Office wrote to the Prosecutor's Office that Yavorsky had committed a crime 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").

The case was handed to Ivano-Frankivsk City Court on 26 September 2022. The case was finally heard on 6 April 2023, when Judge Olesya Zelenko sentenced Yavorsky to one year's imprisonment. The court decision notes that Yavorsky was not a member of any of the 10 religious organisations (https://www.forum18.org/archive.php?article_id=2810) "whose creed does not allow the use of weapons" (and who therefore are eligible for alternative civilian service in peacetime) and therefore "does not have the right to alternative service". The court decision notes that Yavorsky and the Prosecutor had one month to appeal.

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 about the court decision to jail Yavorsky. No reply had been received by the middle of the working day in Kyiv of 5 May.

Tomniuk: Prosecutor's jailing bid fails

On 27 April, a panel of three judges at Ivano-Frankivsk Appeal Court rejected the prosecutor's attempt to have the 3-year suspended sentence of Hennady Viktorovich Tomniuk (born 1984) turned into a prison sentence. The Court also rejected Tomniuk's own appeal for his sentence to be overturned, according to the decision seen by Forum 18. Both parties were given three months to lodge any further appeal to the Supreme Court in Kyiv.

Tomniuk, a Protestant Christian who lives in Ivano-Frankivsk, had previously conducted military service in Ukraine's armed forces between 2001 and 2003. However, since then he had expressed growing opposition to war and participating in the military. "War is millions of mutilated souls and dreams," he wrote on his Facebook page on 20 September 2018. "War is never a victory. War is only a mistake, only a terrible mistake!"

"I grew up in a believing Christian family and take the words of the Holy Scriptures very seriously," Tomniuk explained to Yurii Sheliashenko of the Ukrainian Pacifist Movement in a 3 March 2023 interview. He cited the commandment "Thou shalt not kill." (Exodus 20:13), Jesus' words "You have heard that it was said to the people long ago, 'You shall not murder, and anyone who murders will be subject to judgment'" (Matthew 5:21) and other Biblical passages to back his rejection of performing military service.

Tomniuk was co-author of a novel "Black Box", published in 2020, setting out opposition to war based on Christian principles.

On 6 April 2022, Ivano-Frankivsk Recruitment Office handed Tomniuk a summons to appear the following day. After queuing there for a long time on 7 April, he was assigned a medical check-up the following day, which he passed and was declared fit for service. "In conversation with the military, who were looking at my documents, I asked to be sent to the State Emergency Service, because according to my worldview, deeply held religious beliefs, I cannot shoot either an animal or a person," he told Sheliashenko. He also brought a written statement.

Officers told Tomniuk they could not recruit for the State Emergency Service and that he would have to speak to a psychologist about his request for alternative civilian service. No psychologist was present. He was then ordered to appear on 15 April 2022 to be mobilised.

On 14 April 2022, Tomniuk submitted a request online to join the State Emergency Service. The following day, he brought a written statement (seen by Forum 18) asking on grounds of his religious belief to perform alternative service instead of being mobilised. A lawyer there told him Tomniuk would be committing a crime by failing to be mobilised. Police then took him to the police station.

Prosecutors brought a case against Tomniuk 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").

On 3 February 2023, Judge Ivanna Kovalyuk of Ivano-Frankivsk City Court found Tomniuk guilty. The judge handed him a suspended 3-year jail term, despite the Prosecutor's demand for a 3-year actual jail term, according to the decision seen by Forum 18. During the 3 years, Tomniuk will have to report regularly and declare any change of address or place of work.

Both Tomniuk and the prosecutor appealed against the decision. On 27 April, Ivano-Frankivsk Appeal Court rejected the prosecutor's attempt to have 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. The judges were Volodymyr Povzlo, Bogdan Kukurudz and Oleksandr Vasilev, the same three who rejected Vitaly Alekseenko's appeal against his jailing in January (see below).

Tomniuk 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 on 3 May.

Tomniuk believes that he will have to report regularly to the police during his suspended sentence, but says he has not yet been told what provisions will apply.

Prosecutor challenges Jehovah's Witness acquittal

On 27 April, the prosecutor appealed to Transcarpathia Appeal Court in Uzhhorod challenging the acquittal by a lower court of a Jehovah's Witness conscientious objector. The case has been assigned to Judge Ivan Feyer. No date has yet been set for the appeal hearing, according to court records.

The Jehovah's Witness had performed alternative service from November 2016 to January 2019. In response to mobilisation on 3 March 2022, one week after Russia began its renewed invasion of Ukraine, he sought alternative civilian service. He explained that he was unable to join the military because of his religious beliefs.

Tyachiv District Recruitment Office refused to discuss anything with Forum 18 on 3 May 2023.

Prosecutors brought a case against the Jehovah's Witness 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").

On 20 March 2023, Tyachiv District Court acquitted the Jehovah's Witness. "He justified his behaviour regarding the impossibility of military service by his religious beliefs, while indicating that he informed the pre-trial investigation body about the existence of such circumstances and provided relevant supporting documents, showing at the same time his desire to undergo alternative non-military service," the decision seen by Forum 18 notes.

The judge pointed to European Court of Human Rights Decisions which upheld the right not to perform military service, including the landmark 2011 decision in the case of Armenian Jehovah's Witness former conscientious objector prisoner Vahan Bayatyan (https://www.forum18.org/archive.php?article_id=1597) (Application no. 23459/03).

The March 2023 verdict came at the end of the first completed trial of a Jehovah's Witness accused under Criminal Code Article 336 since Russia launched its renewed invasion of Ukraine in February 2022.

"Dozens of other individuals are under investigation, but four cases have reached court in Tyachiv, Ternopil and Poltava," Jehovah's Witnesses told Forum 18.

Alekseenko: Prison conditions

Vitaly Vasilovich Alekseenko (born 2 December 1976) is at present the only conscientious objector known to be in prison in Ukraine for refusing mobilisation since Russia's renewed invasion of the country in February 2022. He told Forum 18 he believes in Jesus Christ and his command to resist evil without violence and be peacemakers, as outlined in the Sermon on the Mount.

Ivano-Frankivsk City Recruitment Office summoned Alekseenko on 2 June 2022. 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 – where he had lived in the 1990s - on grounds of conscience.

Ivano-Frankivsk City Court found Alekseenko guilty (https://www.forum18.org/archive.php?article_id=2803) on 15 September 2022 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"). 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, the Judge ignored the Prosecutor's request and decided to jail Alekseenko for one year.

Alekseenko appealed to Ivano-Frankivsk Appeal Court. About 200 letters in support of Alekseenko reached the court from conscientious objectors around the world. These were added to the case file, Sheliashenko told Forum 18

The Appeal Court rejected Alekseenko's appeal on 16 January 2023. Police finally took him into custody (https://www.forum18.org/archive.php?article_id=2813) on 23 February after his sentence entered into legal force.

Officers first took Alekseenko to a clinic for a medical examination before taking him on to Ivano-Frankivsk's Investigation Prison. He was later transferred to Prison No. 41 in Kolomyia near Ivano-Frankivsk to serve his sentence.

Forum 18 asked Hanna Barabash, 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 Alekseenko. No reply had been received by the middle of the working day in Kyiv of 5 May

An inspection of Prison No. 41 by the National Preventive Mechanism attached to the Ombudsperson's Office noted the death of a prisoner, "excessive use of force on prisoners by staff of the institution, as well as forcing the convicts to stand during the entire time of the air raid warning signal". The 7 March report of the visit (https://www.ombudsman.gov.ua/news_details/vidviduvannya-du-kolomijska-vipravna-koloniya-41) also noted "violations of the right to privacy, violations of the temperature regime, unsanitary conditions, excessive humidity and wear and tear of bedding".

With Justice Ministry permission, the visiting European Bureau for Conscientious Objection President Alexia Tsouni visited Alekseenko in the prison on 14 April. She delivered to him postcards with messages of solidarity from individuals and organisations in Ukraine and other countries, as well as photos of a public hearing in the European Parliament in his support and protest actions at Ukrainian embassies.

"Alekseenko was grateful for the international solidarity and thanked everyone who supports him," Tsouni told Forum 18 on 4 May.

Tsouni talked to Alekseenko with the support of an interpreter in a room which was equipped with surveillance cameras and with the presence of a prison guard throughout their conversation, she told Forum 18. The prison administration did not allow her to take photographs of Alekseenko or of the inside or outside of the prison.

Prisoner of conscience Alekseenko's address in prison:

78250, Ivano-Frankivska obl.

Kolomiisky raion

Selo Tovmachik

Vul. Privokzalna bud. 30

Kolomiiska vipravna koloniya No. 41

Ukraine

Alekseenko: 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. The hearing has been set for 25 May.

"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 in February (https://www.forum18.org/archive.php?article_id=2813). "I hope there is a non-zero chance that the Supreme Court will grant this."

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.

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. (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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