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UKRAINE: Conscientious objector freed, new trial ordered

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

Ukraine's Supreme Court overturned the conviction of Christian conscientious objector Vitaly Alekseenko – the first jailed conscientious objector since Russia's renewed invasion - and ordered his release from prison. However, the Supreme Court ordered a retrial in the original court, and his requests to perform an alternative civilian service have been ignored. A Supreme Court case lodged by Christian conscientious objector Andrii Vyshnevetsky – still forcibly held in the army – continues. He argues that failure to determine a procedure for dismissal from military service on the basis of conscientious objection is illegal.

On 25 May, Ukraine's Supreme Court overturned the conviction of Christian conscientious objector Vitaly Alekseenko and ordered his release from prison. He was freed the same day and returned to his home in the south-western city of Ivano-Frankivsk. However, the Supreme Court ordered a retrial in the original court over his refusal to be mobilised. His requests to perform an alternative civilian service have been ignored.

Alekseenko told Forum 18 on 2 June that he has not yet been told when Ivano-Frankivsk City Court will hear the new case against him 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") (see below).

Alekseenko was the first person known to have been jailed for refusing mobilisation on grounds of conscience since Russia began its renewed invasion of Ukraine in February 2022. Ukraine's Defence Ministry insists that even the limited alternative service allowed in peacetime does not exist during wartime (see below).

The 46-year-old Alekseenko was taken into custody on 23 February and had been serving his one-year sentence in a prison in Kolomyia near Ivano-Frankivsk (see below).

The second person known to have been sentenced to a jail term for refusing mobilisation on grounds of conscience since Russia began its renewed invasion of Ukraine, Mykhailo Yavorsky, is awaiting an appeal at Ivano-Frankivsk Appeal Court on the morning of 12 June. If his appeal fails, he will be taken to prison to begin serving his one-year sentence. He has vowed to take his case as far as the Supreme Court if necessary (see below).

Three Jehovah's Witness men are on trial after recruitment offices refused their requests to perform an alternative civilian service. The trials are underway in Ternopil, in Chortkiv in Ternopil Region, and in Poltava. Questioning of witnesses in each of the trials has begun (see below).

On 24 May, Tyachiv District Court in Transcarpathia Region acquitted a second Jehovah's Witness for refusing mobilisation on grounds of conscience. The same court acquitted another Jehovah's Witness in March, though the prosecutor is appealing against the acquittal (see below).

Six other conscientious objectors are known to be serving suspended sentences of three or four years (see below).

Of the 13 known conscientious objector cases to reach court, 5 have been in Transcarpathia Region and 4 in Ivano-Frankivsk Region, both in Ukraine's south-west and some distance from the frontline. It is unclear why most prosecutions of conscientious objectors have taken place in Transcarpathia Region and Ivano-Frankivsk Region, and the regional Prosecutor's Offices have not yet replied to Forum 18's questions about this (see below).

Meanwhile, the first hearing took place at the Supreme Court in Kyiv on 22 May in a case lodged by Christian conscientious objector Andrii Vyshnevetsky. He has been forcibly held in the army, despite expressing his opposition to serving in the military and requesting to perform alternative civilian service on grounds of conscience. He is currently serving in a kitchen in his military unit (see below).

Vyshnevetsky is asking the president to enact a procedure for those already in the army who have conscientious objections to military service to be released from service. President Volodymyr Zelensky's representative Sergiy Savvin sent a 5-page written

submission to the court calling for the suit to be dismissed. Vyshnevetsky told Forum 18 that one of his goals is to help bring Ukraine's approach to conscientious objection to military service into line with international human rights law (see below).

A colleague of Savvin – who did not give his name – refused to put Forum 18 through to him. Asked why the government will not introduce a procedure for those in the army to be transferred to alternative civilian service if they have conscientious objections to military service, he refused to comment. "I'm sorry, you have your position and we have ours" (see below).

Two jail terms (one overturned), six suspended sentences, two acquittals, three trials

After Russia's renewed invasion of Ukraine began in February 2022, Ukraine declared a state of martial law. 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. Ukraine's Defence Ministry insists that even the limited alternative service allowed in peacetime does not exist during wartime (https://www.forum18.org/archive.php?article_id=2830).

Those who refuse mobilisation on grounds of conscience face prosecution 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 punishment is a jail term of three to five years.

In criminal cases since February 2022, courts are known to have handed down two jail terms:

- 15 September 2022, Vitaly Alekseenko, Ivano-Frankivsk, one-year jail term (overturned by Supreme Court and sent for new trial – see below);

- 6 April 2023, Mykhailo Yavorsky, Ivano-Frankivsk, one-year jail term (appeal due on 12 June – see below).

Courts are known to have handed six conscientious objectors suspended prison sentences (https://www.forum18.org/archive.php?article_id=2813) and terms of probation:

- 18 May 2022, Andrii Kucher, Mukachevo, suspended 4-year jail term;

- 21 June 2022, Dmytro Kucherov, Oleksandriia (Kirovohrad Region), suspended 3-year jail term;

- 17 August 2022, Oleksandr Korobko, Mukachevo, suspended 3-year jail term;

- 22 August 2022, Maryan Kapats, Mukachevo, suspended 3-year jail term;

- 2 December 2022, Andrii Martiniuk, Snyatin (Ivano-Frankivsk Region), suspended 3-year jail term;

- 3 February 2023, Hennady Tomniuk, Ivano-Frankivsk, suspended 3-year jail term (which the prosecutor failed to turn into a prison sentence on appeal).

Courts are known to have handed down two acquittals:

- 20 March 2023, Jehovah's Witness, Tyachiv (which the prosecutor is appealing against);

- 24 May 2023, Jehovah's Witness, Tyachiv (see below).

Courts are known to be hearing three cases:

- Ternopil, Jehovah's Witness;

- Chortkiv (Ternopil Region), Jehovah's Witness;

- Poltava, Jehovah's Witness.

Investigators are considering criminal cases against other Jehovah's Witness men.

Why are most cases in two south-western Regions?

Of the 13 known conscientious objector cases to reach court, 5 have been in Transcarpathia Region and 4 in Ivano-Frankivsk Region, both in Ukraine's south-west and some distance from the frontline.

Yurii Sheliashenko of the Ukrainian Pacifist Movement says it is unclear why most prosecutions of conscientious objectors have

taken place in Transcarpathia Region and Ivano-Frankivsk Region. "It is possible it is because these regions have many displaced people from other parts of Ukraine, or because there were more people who declared religious reasons for asking for alternative service and were refused," he told Forum 18 on 1 June. "But we don't know."

Sheliazhenko explained that Recruitment Offices hand cases of those refusing mobilisation on any grounds to the police. If the police choose not to bring a criminal case, Recruitment Offices can challenge this in court, as happened in the case of a Jehovah's Witness. Police then investigate a case under supervision of the Prosecutor's Office, but "with a high level of autonomy." Prosecutors then take a case to court.

"The Prosecutor's Office chooses whether to prosecute an individual and decides what kind of punishment to seek in court," Sheliazhenko added.

The press officer at Transcarpathia Region Prosecutor's Office told Forum 18 on 2 June she could not answer immediately why:

- local prosecutors had launched these cases to punish conscientious objectors who had offered to perform an alternative civilian service;

- and why the Region had more known cases than in any other Region.

Forum 18 also sent the questions in writing, but has not yet received a reply.

Ivano-Frankivsk Region Prosecutor's Office's press office did not answer its phones on 2 June, so Forum 18 also sent them similar written questions. Forum 18 has received no reply.

Alekseenko: Supreme Court orders release, sends case for new trial

On 25 May, Ukraine's Supreme Court in Kyiv heard the cassational appeal of Christian conscientious objector Vitaly Vasilovich Alekseenko (born 2 December 1976) against his one-year jail term for refusing mobilisation on grounds of conscience. His requests to perform an alternative civilian service have been ignored.

Just before the hearing, the prison authorities transferred Alekseenko from the prison in Kolomyia to a prison in Ivano-Frankivsk, from where he joined the hearing online. "On the eve of my release, I was escorted to Ivano-Frankivsk, but they did not have time to take me to court in Kyiv," he noted on 26 May. Several local and international observers attended the Supreme Court hearing.

Alekseenko had lodged the case to the Supreme Court on 18 February (https://www.forum18.org/archive.php?article_id=2813), five days before he was taken to prison. However, the Supreme Court refused to suspend his sentence while it considered his cassation appeal.

Alekseenko was the first person known to have been jailed for refusing mobilisation on grounds of conscience (https://www.forum18.org/archive.php?article_id=2810) since Russia began its renewed invasion of Ukraine in February 2022. The 46-year-old Alekseenko was taken into custody on 23 February (https://www.forum18.org/archive.php?article_id=2813) and had been serving his one-year sentence in a prison in Kolomyia near Ivano-Frankivsk

At the 25 May hearing, the panel of three judges at the Supreme Court – headed by Judge Vyacheslav Nastavny - overturned Alekseenko's conviction and ordered his release from prison. He was freed and returned to his home in the south-western city of Ivano-Frankivsk the same day. However, the Supreme Court ordered a retrial in the original court, Ivano-Frankivsk City Court, over his refusal to be mobilised, according to the decision seen by Forum 18.

At the hearing, Prosecutor Andri Neskorodnyany of the Department for Managing Public Prosecutions of the General Prosecutor's Office urged the court to leave the earlier court decisions unchanged. The General Prosecutor's Office in Kyiv refused to put Forum 18 through to Prosecutor Neskorodnyany on 1 June, saying that prosecutors cannot discuss individual cases.

Alekseenko: "We are concerned that retrial was ordered instead of acquittal"

"We are concerned that retrial was ordered instead of acquittal," Yuri Sheliazhenko of the Ukrainian Pacifist Movement – who was present at the Supreme Court - noted after the hearing.

Sheliazhenko welcomed some parts of the Supreme Court decision that individuals can have different motives for seeking conscientious objection to mobilisation or military service in general. "The Supreme Court held that the first instance court should establish all the factors of the case, taking into account the Constitutional guarantees under Article 35, as well as Ukraine's international treaties."

However, Sheliazhenko observed that the Supreme Court had ignored arguments from the defence that provisions of Article 2 of the

Alternative Service (Non-Military) Law restricting applications for alternative service to men who are members of recognised religious communities are unconstitutional.

Article 2 of the 1992 Alternative Service (Non-Military) Law states: "Citizens of Ukraine have the right to alternative service if the performance of military duty is contrary to their religious beliefs and these citizens belong to religious organizations operating in accordance with the legislation of Ukraine, whose creed does not allow the use of weapons." A 1999 Cabinet of Ministers Decree limited such applications to members of 10 religious communities (https://www.forum18.org/archive.php?article_id=2810).

"There is a lot of work ahead to uphold the right to refuse to kill for all those whose the right to conscientious objection was violated; but today freedom for Vitaly Alekseenko, at last, is secured following a series of calls of international civil society and peace movements. This is an achievement of all thousands of people, some of them very far from Ukraine, who cared, prayed, took action and expressed their support and solidarity in different ways."

Alekseenko told Forum 18 on 2 June that he has not yet been told when Ivano-Frankivsk City Court will hear the new case against him 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").

Alekseenko says that at any new trial he will again ask to be acquitted.

Alekseenko: Released

On 25 May, after the end of the Supreme Court hearing, the prison in Ivano-Frankivsk released Vitaly Alekseenko. "When I was released from prison, I wanted to shout 'Hallelujah!' - after all, the Lord God is there and does not abandon his children," he noted the following day. "When releasing, they returned my stuff. I didn't have any money, so I had to walk to my hostel."

Alekseenko added that on the way home he met a pensioner he knew, also a displaced person from eastern Ukraine, who helped him. "I am grateful to her for her care, parcels and visits in prison."

Alekseenko said that he would consider how he could promote an end to war. "People should live in peace, not conflicting and not shedding blood," he said. "I would like to do something so that the war will end sooner and there will be a just peace for all, so that no one dies, suffers, sits in jail or spends sleepless nights during air raids because of this cruel and senseless war against all God's commandments. But I don't know how to do it yet."

Alekseenko said that he would like to attend court hearings in cases of other conscientious objectors and support them, in particular the appeal hearing in the case of Mykhailo Yavorsky (see below). "And in general, I would like to help the objectors, and if someone is imprisoned, to visit them, to take gifts."

Yavorsky: Will appeal court send him to prison?

Mykhailo Yosypovych Yavorsky (born 3 June 1983), a Christian from Ivano-Frankivsk, is at home awaiting his appeal against his one-year jail term (https://www.forum18.org/archive.php?article_id=2829) for refusing mobilisation on grounds of conscience. On 6 April Ivano-Frankivsk City Court handed down the sentence 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").

Yavorsky lodged an appeal on 8 May (https://www.forum18.org/archive.php?article_id=2830) against his jail term. The prosecutor has also appealed, seeking to have the one-year jail term increased to three years. Ivano-Frankivsk Appeal Court is due to hold the appeal hearing on the morning of 12 June, Yavorsky told Forum 18 on 2 June.

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

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

Vitaly Alekseenko told Forum 18 he is in contact with Yavorsky and is planning to attend his 12 June appeal hearing to give him his support.

Second Jehovah's Witness acquittal

On 24 May, Tyachiv District Court in Transcarpathia acquitted another 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") of refusing the call-up to mobilisation, Jehovah's Witnesses told Forum 18 on 31 May.

In March, Tyachiv District Court acquitted a Jehovah's Witness of refusing the call-up to mobilisation, but the prosecutor is appealing against the acquittal. Transcarpathia Appeal Court is due to hear the appeal on 5 September.

Three Jehovah's Witnesses on trial

Three Jehovah's Witness men are on trial 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"). Recruitment offices had refused their requests to perform an alternative civilian service.

The trials are underway in Ternopil, in Chortkiv in Ternopil Region, and in Poltava. Questioning of witnesses in each of the trials has begun, Jehovah's Witnesses told Forum 18 on 31 May.

Supreme Court hearings on failure to release conscientious objectors from army

The Supreme Court in Kyiv is hearing a case lodged by Christian conscientious objector Andrii Anatoliyovych Vyshnevetsky (born 22 May 1989).

Military officials located him on the street in Odessa (https://www.forum18.org/archive.php?article_id=2813) and ordered him to attend the city's Suvorov Territorial Recruitment Office on 14 September 2022. Officials there rejected his request to perform an alternative civilian service on grounds of conscience and mobilised him into the army. He has since been forcibly held in the army (https://www.forum18.org/archive.php?article_id=2830), and is currently serving in a kitchen in his military unit.

Vyshnevetsky lodged a suit against President Volodymyr Zelensky to the Supreme Court, arguing that the President's failure to determine a procedure for dismissal from military service (https://www.forum18.org/archive.php?article_id=2830) on the basis of conscientious objection is illegal.

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

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

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 Russian-occupied Ukraine there are severe violations of human rights (https://www.forum18.org/archive.php?article_id=2829) 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.

Vyshnevetsky told Forum 18 (https://www.forum18.org/archive.php?article_id=2830) that one of his goals is to help bring Ukraine's approach to conscientious objection to military service into line with international human rights law.

Viktor Yelensky, head of the State Service for Ethnic Policy and Freedom of Conscience, told Forum 18 on 3 May 2023 (https://www.forum18.org/archive.php?article_id=2829) 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.

President Zelensky's representative Sergiy Savvin sent a 5-page written submission (seen by Forum 18) to the Supreme Court before the hearing, calling for Vyshnevetsky's suit to be dismissed. In the first hearing on 22 May another presidential representative, Oleksandr Movile, similarly called for the suit to be dismissed.

Savvin works in the presidential office's Legal Policy Directorate, and is described as "Chief Consultant of the Main Directorate of the Representation of the Interests of the President in Courts".

A colleague of Savvin – who did not give his name – refused to put Forum 18 through to him on 2 June. He also refused to explain to Forum 18 why the government will not introduce a procedure for those in the army to be transferred to alternative civilian service if they conscientiously object to military service. "I'm sorry, you have your position and we have ours," he told Forum 18.

The Supreme Court allowed the Ukrainian Pacifist Movement to join Vyshnevetsky's case as a third party on the side of the plaintiff. The first hearing under a panel of five judges chaired by Olena Gubska took place on 22 May. The next hearing is due on the morning of 26 June. (END)

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

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