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UKRAINE: First known wartime conscientious objector jailing

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

46-year-old Christian Vitaly Alekseenko expects to be taken to begin his one-year jail term on 19 January. On 16 January, Ivano-Frankivsk Appeal Court rejected his appeal against his conviction for refusing call up to the military on conscientious grounds. His is the fifth known Ukrainian court conviction since Russia renewed its invasion – the other four men received suspended sentences. "I told the court I agree that I have broken the law of Ukraine," Alekseenko told Forum 18, "but I am not guilty under the law of God." [UPDATE: Written verdict now due 24 January.]

For the first known time since Russia renewed its invasion of Ukraine in February 2022, Ukraine has jailed an individual for refusing on grounds of conscience a military call-up. On 16 January, the Appeal Court in the south-western city of Ivano-Frankivsk rejected the appeal by 46-year-old Christian Vitaly Alekseenko against his one-year jail term. When he gets the written verdict, which he expects on 19 January, the sentence will go into force and he expects to be taken to prison immediately afterwards.

[UPDATE 20 January 2023: The Appeal Court told Alekseenko to collect the written verdict on 24 January. He has not yet been taken to prison and has not been told when this will happen.]

"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).

Alekseenko told Forum 18 he would lodge a further appeal to the Supreme Court in Kyiv. However, such an appeal would not prevent the sentence now going into force (see below).

Yurii Sheliashenko, secretary of the Ukrainian Pacifist Movement, described the appeal court decision as "bad news". "It is a dangerous precedent that the appeal court upheld a sentence of imprisonment for a conscientious objector," he told Forum 18 from the capital Kyiv (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. "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).

In four earlier criminal cases in 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.

Kucherov, a member of Source of Life Pentecostal Church, bases his objection to military service on his Christian faith. The court

decisions in the other three cases describe only the individuals' conscientious objection to killing people.

Under a 10 November 1999 Cabinet of Ministers Decree, only men who belonged to 10 specified religious communities that the state recognised as pacifist were allowed to opt for alternative civilian service. These communities are: Reformist Adventists; Seventh-day Adventists; Evangelical Christians; Evangelical Christians–Baptists; "The Penitents" or Slavic Church of the Holy Ghost; Jehovah's Witnesses; Charismatic Christian Churches (and associated churches under their registered statutes); Union of Christians of the Evangelical Faith – Pentecostals (and associated churches under their registered statutes); Christians of Evangelical Faith; Society for Krishna Consciousness.

Men who were not members of any of these 10 communities were not eligible to apply for alternative service.

One of the 10 communities, Jehovah's Witnesses, are conscientious objectors to military service in any country, but the majority are willing to undertake an alternative, totally civilian form of service.

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, Jehovah's Witnesses told Forum 18.

"Considering that thousands of Jehovah's Witnesses have been summoned to the conscription office, this is a very positive situation," Jehovah's Witnesses told Forum 18. "It is a positive sign that the government respects conscientious objectors even during a military conflict." They added that they are grateful that the government respects individuals' requests for civilian alternative service "despite difficult circumstances".

Sheliazhenko of the Ukrainian Pacifist Movement notes that the verdicts in all five conscientious objector convictions no longer appear on the public online register of court verdicts run by the State Court Administration in Kyiv. "The disappearance from the public register of [Alekseenko's lower court] verdict and other verdicts where objectors were sentenced to prison with replacement of incarceration with probation looks like an attempt to hide the human rights violations from the public," he insisted (see below).

The State Court Administration in Kyiv has not replied to Forum 18's written question as to why the verdicts in these five cases no longer appear on the public online register of court verdicts (see below).

Implementation of conscientious objection to military service

In Ukraine, everyone must register their home address with the authorities. In addition, all men (including conscientious objectors to military service) must also register with the local military Recruitment Office. All men are then given a military card which states whether they are doing military service, have done this, are exempt, are reservists, or have done alternative service.

In Ukraine, conscientious objectors to military service have long faced obstacles to doing alternative civilian service (<https://ebco-beoc.org/ukraine>). On 21 August 2022, the Ukrainian Defence Ministry told the Ukrainian Pacifist Movement that during martial law the right to do alternative civilian service has been suspended (see below).

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 was extended several times and is currently due to end on 19 February 2023.

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".

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 not given 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. "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, telling him they rejected his application for alternative service. When he refused to be mobilised, officials called in the police.

Alekseenko explained that he was not afraid and chose not to flee or hide from the authorities. "I'm not afraid, even of prison," he told Forum 18 in December.

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. "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." Told that Alekseenko is about to start his prison term after his appeal was rejected, the official repeated that he was unfamiliar with the circumstances of his case.

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 told Alekseenko a criminal case would be launched against him 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 under Criminal Code Article 336, according to the decision seen by Forum 18. It 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. After postponements because of the lack of electricity, the appeal hearing finally took place on 16 January 2023, according to court records. Volodymyr Povzlo was the Presiding Judge, accompanied by fellow Judges Oleksandr Vasilev and Bogdan Kukurudz. 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, "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?"

The appeal court rejected an amicus curiae (friend of the court) brief from Sheliashenko of the Ukrainian Pacifist Movement arguing that Alekseenko should be acquitted. The Judges said that they know the law better, Sheliashenko noted.

One Judge asked Alekseenko how he could prove that killing people was incompatible with his religious beliefs. He responded that if the court did not believe him he would be unable to convince it. He again set out his religious reasons for opposing military service. "Vitaliy's simpleness and sincerity seemingly didn't impress the court," Sheliashenko told Forum 18.

Presiding Judge Povzlo expressed displeasure that the court had received messages from around the world in support of Alekseenko, Sheliashenko told Forum 18.

Forum 18 was unable to reach Prosecutor Gazukina on 17 January.

Alekseenko told Forum 18 he would lodge a further appeal against his conviction and jailing to the Supreme Court in Kyiv. "I don't want anyone else to suffer this." However, he said he was "reconciled" to his fate. "Prison is prison."

Cases no longer visible on public register of verdicts

The verdicts in all five known conscientious objector convictions no longer appear on the public online register of court verdicts run by the State Court Administration in Kyiv. Attempts to access them reach a page which says "The page view is not available. Invalid or outdated link." Most, but not all, of the verdicts in other cases from those courts and dates were publicly available when Forum 18 looked on 17 January.

"The disappearance from the public register of [Alekseenko's lower court] verdict and other verdicts where objectors were sentenced to prison with replacement of incarceration with probation looks like an attempt to hide the human rights violations from the public," Sheliashenko of the Ukrainian Pacifist Movement told Forum 18 on 16 January.

In late morning of 17 January, Forum 18 asked the State Court Administration in Kyiv why the verdicts in these five conscientious objector cases are no longer visible on the public register. Forum 18 had received no response by the end of the working day in Kyiv.

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>)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (https://www.forum18.org/archive.php?article_id=1351)

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