



SUBMISSION

TO THE 144th SESSION OF THE HUMAN RIGHTS COMMITTEE

KAZAKHSTAN

Conscientious objection to military service and related issues

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INTRODUCTION

The present submission focuses mainly on the right to conscientious objection to military service, which the State party still fails to recognise, despite repeated relevant concluding observations by the Human Rights Committee (hereinafter the Committee).

This submission also explores relevant issues, such as concerns over a possible violation of the right to freedom of expression, and potentially other rights, related to anti-war views.

PREVIOUS CONSIDERATION OF THE ISSUE OF CONSCIENTIOUS OBJECTION IN THE CONTEXT OF ICCPR

First cycle

In the List of Issues for the initial report of Kazakhstan, the State party was asked to:

“23. Please provide information on (1) the arrangements in place for conscientious objectors to military service to perform alternative services; (2) the number of persons that have used these arrangements; and (3) the duration of alternative service, as compared with military service.”¹

In its Replies to the List of Issues, the State party replied:

“Reply to questions raised in paragraph 23 of the list of issues

75. The Military Duty and Military Service Act (art. 27) provides for citizens to be excused from service if they have taken holy orders or are permanently employed in a registered religious association for the period of religious activities, but the institution of alternative service is not enshrined in legislation. In this regard, the competent State body is planning to study the experiences of other countries that have alternative civilian service. For example, the Russian Federation adopted the Federal Alternative Civilian Service Act in 2002; it gives citizens the right to replace military service with alternative civilian service if the former goes against their convictions or beliefs.”²

In its Concluding Observations for the State party’s initial report, the Committee found:

“23. While noting that the Military Duty and Military Service Act provides for citizens to be excused from military service if they have taken a holy order or are permanently employed in a registered religious association, the Committee regrets that the Act does not expressly recognize a person’s right to exercise conscientious objection to military service and does not provide for alternative military service (art. 18).

The Committee encourages the State party to take necessary measures to review its legislation with a view to providing for alternative military service. The State party should also ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service, which they should be able to exercise before the commencement of military service and at any stage during military service.”³

Second cycle

In its second period report, the State party stated:

“The Committee encourages the State party to take necessary measures to review its legislation with a view to providing for alternative military service. The State party should also ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service, which they should be able to exercise before the commencement of military service and at any stage during military service. 131. Article 36 of the Constitution provides that the defence of the Republic of Kazakhstan is a sacred duty and responsibility of every person and that citizens of the Republic must do their military service,

¹ CCPR/C/KAZ/Q/1, 2 September 2010, para. 23. <https://docs.un.org/en/CCPR/C/KAZ/Q/1>

² CCPR/C/KAZ/Q/1/Add.1, 4 November 2010, para. 75. <https://docs.un.org/en/CCPR/C/KAZ/Q/1/Add.1>

³ CCPR/C/KAZ/CO/1, 19 August 2011, para. 23. <https://docs.un.org/en/CCPR/C/KAZ/CO/1>

in accordance with the procedure and in the forms established by law. The Act on Military Service and the Status of Military Personnel was adopted on 16 February 2012. Military status entails the general rights, freedoms and duties of military personnel as citizens of Kazakhstan, with all the exceptions and limitations established by law, as well as the specific rights, obligations and responsibilities derived from the nature of military service.

132. The Act has undergone a great number of changes. Since March 2013, citizens have been entitled to join the military for one month and to receive pay for military service. The purpose of this innovation was to give persons who hitherto had been unable for certain reasons to perform military service the opportunity to do so.

133. In accordance with article 12 of the Act on Military Service and the Status of Military Personnel, compensated or paid training is provided based on a set of rules for the preparation of citizens for military service, the organization and conduct of such preparation and the development of instructional materials for basic military training, approved by Government Decision No. 118 of 11 February 2013.”⁴

In the List of issues in relation to the second periodic report of Kazakhstan the Committee asked:

“Freedom of conscience and religious belief (arts. 2, 18, 19, 21 and 22)

23. Please provide updated information on the implementation of the Committee’s previous recommendations on the recognition of the right to conscientious objection to military service (see CCPR/C/KAZ/CO/1, para. 23). [...]”⁵

In its Replies to the list of issues, the State party replied:

“23. Please provide updated information on the implementation of the Committee’s previous recommendations on the recognition of the right to conscientious objection to military service (see CCPR/C/KAZ/CO/1, paragraph 23).

[...]

140. Under the Constitution, citizens may not voluntarily decline to perform military service with the exception of cases provided for by law. Students attending religious educational establishments are granted a deferment of compulsory military service and clergy in registered religious associations are granted an exemption from military service in peacetime. Citizens who have performed military or alternative service in another State are also exempted from compulsory recruitment for military service.”⁶

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In its Concluding observations on the second periodic report of Kazakhstan the Committee found:

“Freedom of conscience and religious belief

45. The Committee notes that the State party has failed to implement its previous recommendation (see CCPR/C/KAZ/CO/1, para. 23) and review its legislation to recognize a person’s right to conscientious objection to military service and to provide for alternative military service (art. 18).

46. The State party should ensure the legal recognition of conscientious objection to military service, and provide for alternative service of a civilian nature for conscientious objectors.”⁷

Third cycle

In the List of issues prior to the submission of the third periodic report of Kazakhstan, the Committee asked:

“Freedom of conscience and religious belief (arts. 2, 18 and 26)

22. In connection with the previous concluding observations (paras. 46 and 48), please provide information on all the steps that have been taken to uphold freedom of conscience and religious belief within the State party. In that regard, please report on the progress made to: (a) ensure the legal recognition of conscientious objection to military service and provide for alternative service of a civilian nature for conscientious objectors; [...]”⁸

In the Third periodic report submitted by Kazakhstan, the State party replied:

⁴ CCPR/C/KAZ/2, [Date received: 11 December 2014], Distr.: General 12 February 2015, paras. 131-133. <https://docs.un.org/en/CCPR/C/KAZ/2>

⁵ CCPR/C/KAZ/Q/2, 4 December 2015, para. 23. <https://docs.un.org/en/CCPR/C/KAZ/Q/2>

⁶ CCPR/C/KAZ/Q/2/Add.1, [Date received: 24 March 2016], Distr.: General 14 April 2016, para. 140. <https://docs.un.org/en/CCPR/C/KAZ/Q/2/Add.1>

⁷ CCPR/C/KAZ/CO/2, 9 August 2016, paras. 45-46. <https://docs.un.org/en/CCPR/C/KAZ/CO/2>

⁸ CCPR/C/KAZ/QPR/3, 5 April 2023, para. 22. <https://docs.un.org/en/CCPR/C/KAZ/QPR/3>

“376. The Act on Military Service and the Status of Military Personnel provides that members of the clergy of registered religious associations are exempt from conscription for military service in peacetime. Provision is made for citizens to defer conscription for military service in order to continue receiving full-time technical, vocational, post-secondary or higher education at relevant educational institutions, full-time education at spiritual or religious educational institutions or full-time education at institutions of higher and/or postgraduate education in other States, until the completion of studies at one institution of higher and/or postgraduate education, upon submission of supporting study-related documents. Military personnel may participate in religious ceremonies as private citizens when off duty.

377. Members of the clergy of registered religious associations are exempt from conscription for military service in peacetime. The right of a person to conscientious objection to military service is not expressly recognized by law. Military status is lost from the date that a person is removed from the roll of the relevant military unit following dismissal from military service or completion of military reserve duty.”⁹

As it is evident, the State party has failed to implement the relevant recommendations of the Committee.

CONTINUED PERSECUTION OF CONSCIENTIOUS OBJECTORS TO MILITARY SERVICE

In the mid-1990s, a number of Jehovah's Witnesses were reportedly imprisoned for refusing call-up.¹⁰

According to War Resisters' International:

“Several Jehovah's Witnesses have openly refused to perform military service. According to the Kazakhstan American Bureau of Human Rights in 1996, prosecution of members of certain religious faiths, in particular Jehovah's Witnesses, for refusing to serve in the army, is a continual problem.”¹¹

There are few known details about individual cases of prosecuted COs. In 1995, two Jehovah's Witnesses were sentenced to imprisonment for refusing to perform military service.

In 1994, Roman Grechko, also a Jehovah's Witness, was initially sentenced to a year's imprisonment under art. 66 of the Criminal Code, by the district court of Almaty. In October 1994 he was released by the city court.^{12,13}

Since 1992 the State party's authorities recognise those designated as ministers by registered religious communities as exempt from conscription.

In 1997, Jehovah's Witnesses designated all their baptised young men as religious ministers. This is in line with international human rights law and standards, as outlined in the OSCE / Council of Europe Venice Commission “Guidelines on the Legal Personality of Religious or Belief Communities” which notes: “In the regime that governs access to legal personality, states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership,¹⁴ its internal rules,¹⁵ [...] the structure of the community and methods of appointment of the clergy¹⁶ [...]”¹⁷

The State party authorities then agreed to exempt from conscription Jehovah's Witness young men

⁹ CCPR/C/KAZ/3, [Date received: 2 April 2024], Distr.: General 17 July 2024, paras. 376-377. <https://docs.un.org/en/CCPR/C/KAZ/3>

¹⁰ Conscience and Peace Tax International (CPTI), Submission to the 137th Session of the Human Rights Committee For the attention of the Country Report Task Force on Kazakhstan (Military service, conscientious objection and related issues) Prepared: December 2022, citing as source: Horeman, B. & Stolwijk, M., *Refusing to Bear Arms*, War Resisters International, London, 1998

¹¹ Kazakhstan-American Bureau on Human Rights and the Rule of Law 1996. The Human Rights Situation in Kazakhstan: January - October 1996.

¹² Amnesty International 1994. Concerns in Europe: May - December 1994. AI, London. <https://www.amnesty.org/en/documents/eur01/001/1995/en/>
See also: Amnesty International, “Kazakhstan: Roman Grechko”, 7 April 1994, Index Number: EUR 57/004/1994.

<https://www.amnesty.org/en/documents/eur57/004/1994/en/>

¹³ WRI, “Country report and updates: Kazakhstan”, 28 April 1998. https://wri-irg.org/en/programmes/world_survey/country_report/en/Kazakhstan

¹⁴ ECtHR 22 January 2009, *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, Application nos. 412/03 and 35677/04, para. 118–121; see ECtHR 14 March 2003, *Serif v. Greece*, Application no. 38178/97, paras. 49, 52 and 53; ECtHR 26 October 2000, *Hasan and Chaush v Bulgaria*, Application no. 30985/96, paras. 62 and 78; ECtHR 13 December 2001, *Metropolitan Church of Bessarabia v. Moldova*, Application no. 45701/99, paras. 118 and 123; and ECtHR 16 December 2004, *Supreme Holy Council of the Muslim Community, Application no. 39023/97*, para. 96.

¹⁵ *Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR*, CDL-AD(2012)022, para. 76.

¹⁶ UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief*, 22 December 2011, (A/HRC/19/60), para. 56.

¹⁷ OSCE-ODIHR / Council of Europe Venice Commission, *Guidelines on the Legal Personality of Religious or Belief Communities*, 2014, para. 31. <https://www.osce.org/files/f/documents/9/9/139046.pdf>

designated as religious ministers.

The Military Duty and Military Service Law of 8 July 2005 continued this exemption for religious ministers, as did its replacement, the Law on Military Service and the Status of Military Personnel of 16 February 2012. The 2012 Law exempts a range of individuals from conscription in peace time, including – in Article 36, Part 1, Point 6 – “clergy of registered religious associations.” Under Article 35, among those entitled to deferment from conscription are those undergoing “full time education in spiritual (religious) educational establishments.”¹⁸

However, in recent years there have been cases which did present difficulties in obtaining the exception, criminal cases or investigations against conscientious objectors, arbitrary detentions and forcible recruitment.

In 2017, criminal cases or investigations were launched in different regions of the country¹⁹ against six Jehovah's Witness young men under Criminal Code Article 387, Part 1 (“refusing military service”). Military conscription offices had refused to accept the certificates that each had from the Jehovah's Witness Centre in Almaty confirming that they were religious ministers. This should have ensured their exemption from military service.

From May 2017 onwards, police investigators closed the criminal cases against five of the six young men “for absence of a crime.”²⁰ The Military Conscription Office appears not to have sent the case against the sixth young man to the police.²¹

As reported by “The European Association of Jehovah’s Witnesses”, in its submission to the Human Rights Committee prior to the adoption of the List of Issues, in January 2023:

“In recent years, 44 of Jehovah’s Witness ministers who are conscientious objectors to military service faced difficulties in obtaining this statutory ministerial exemption. In six cases, enlistment offices detained religious ministers overnight.”²²

However, perhaps the most serious case, involving a **forcible recruitment and arbitrary detention for 6 months**, occurred virtually after the adoption of List of Issues in April 2023.

As reported by Forum 18:

“Jehovah's Witness Daniil Viktorovich Smal (born 18 March 2003) was called up in his hometown of Rudny, in Kostanai Region of northern Kazakhstan, in the autumn 2022 conscription round. He presented to the Defence Department of Altynsarin and Kostanai District a certificate issued by the Jehovah's Witness Centre in Almaty confirming his role as a "religious minister". This should have exempted him from conscription.

On 16 March 2023, officials issued a conscription order for Smal. On 17 May, they summoned him, and immediately detained him. They then forcibly sent him by train to a military unit in Almaty Region, some 1,500 kms (950 miles) away in the south of Kazakhstan.

The military unit was under the control of the Emergency Situations Ministry, which deals with fires, natural disasters, and civil defence.

‘Any type of military service, whether involving the use of weapons or not, is incompatible with my religious beliefs,’ Smal told Forum 18 on 24 May 2024. He notes that units of the Emergency Situations Ministry have the attributes of military structures, including military ranks and an oath. [...]

Despite ‘numerous complaints from his mother and his lawyer, and in violation of his fundamental rights’, Smal was forcibly detained in the military unit. ‘Daniil held firmly to his beliefs and refused to

¹⁸ Felix Corley, “KAZAKHSTAN: Conscientious objector's 6 months in military detention”, *Forum 18*, 24 May 2024.

https://www.forum18.org/archive.php?article_id=2909

¹⁹ Felix Corley, “KAZAKHSTAN: Criminal cases, and no alternative service”, *Forum 18*, 22 September 2017.

https://www.forum18.org/archive.php?article_id=2317

²⁰ Felix Corley, “KAZAKHSTAN: Six more arrests for sharing faith”, *Forum 18*, 17 November 2017.

https://www.forum18.org/archive.php?article_id=2333

²¹ Felix Corley, “KAZAKHSTAN: Conscientious objector's 6 months in military detention”, *Forum 18*, 24 May 2024.

https://www.forum18.org/archive.php?article_id=2909

²² The European Association of Jehovah’s Witnesses, “Submission to the United Nations Human Rights Committee Prior to the Adoption of the List of Issues, 137th session (27 February–24 March 2023), Kazakhstan”, 2 January 2023, para. 26.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FICS%2FKAZ%2F51015&Lang=en

take a military oath or wear a military uniform,' Jehovah's Witnesses noted. [...]

On 1 August 2023, Smal filed an administrative suit against the decision of the Regional Conscription Commission of the Defence Department of Altynsarin and Kostanai District to conscript him for compulsory military service. The suit was sent to Almaty Military Garrison Court.

Hearings began at Almaty Military Garrison Court on 13 September 2023 under Judge Dikhan Aliaskarov. At the final hearing on 9 November 2023, the court decided to accept Smal's claim in full,²³ declaring that the order to recruit him was illegal.

'The conscription of D.V. Smal for compulsory military service contrary to his clearly expressed religious beliefs, which do not allow him to perform military service, violated his right to freedom of conscience and religion,' the decision, seen by Forum 18, states.

The decision added that 'the right to conscientious objection to military service is guaranteed by the Constitution of the Republic of Kazakhstan and the International Covenant on Civil and Political Rights'. The court decision warned the military authorities that failure to abide by the decision would - under the Administrative Procedural Code - lead to fines of 50 Monthly Financial Indicators. Fines would increase if such failure continued. The decision came into effect immediately, and Smal was released in the courtroom. [...]

After the hearing, officials told Smal that he could go to the military unit to pick up his belongings. He went in a car with his mother and a friend. When he entered the unit, he was not allowed to leave. Smal's lawyer advised his mother to call the police and the military prosecutor. It appears that the military unit's deputy commanding officer was not willing to release Smal without an order from his superior, who was out of the office and not answering his phone. The deputy commanding officer also stated that Smal would be released if his mother withdrew her complaint to the police. However, the military unit allowed Smal to leave only that evening, Jehovah's Witnesses told Forum 18. [...]

Kostanai Region Defence Department was unhappy with the November 2023 court decision upholding Daniil Smal's suit, and lodged an appeal to the Military Court in the capital Astana. The 26 December 2023 appeal (seen by Forum 18) was prepared by Almat Sarsenov, head of Kostanai Region Defence Department. It claimed that Smal's conscientious objection 'may lead to mass negative consequences and wide public resonance'. It accused him of actions directly prohibited by the Religion Law, quoting the provision that registered religious organisations are banned from undertaking 'incitement of citizens to refuse to carry out obligations envisaged in the Constitution and laws'. Sarsenov of Kostanai Region Defence Department's appeal cited a reply from Kostanai Regional Religious Affairs Department questioning Smal's status as a "religious minister," as attested by the certificate issued by the Jehovah's Witness Centre in Almaty. Sarsenov claimed Smal was merely an attendee and was not listed as a founder of the local religious community.

'In the course of conscription campaigns,' Sarsenov's appeal added, 'a number of those called up presented certificates from local Jehovah's Witness religious communities, which creates conditions for refusing conscription and numbers of them are becoming greater and greater from one call-up to another.' [...]

On 16 April 2024, a panel of three judges at the Military Court in Astana – chaired by Judge Chingiz Maishibayev - ruled to uphold the first instance court decision which found in Daniil Smal's favour. 'During the trial, a judicial panel of the Military Court treated Smal with due respect,' Jehovah's Witnesses note.

The Military Court confirmed that citizens have the right to object to military service based on their strongly held personal religious beliefs. The ruling did not immediately enter into force, because the military authorities had one month to lodge any appeal.

The court decision relied on Kazakhstan's constitution, which states, 'Everyone shall have the right to freedom of conscience,' and also on the International Covenant on Civil and Political Rights (ICCPR), which Kazakhstan has been obligated to abide by since ratifying it in 2006.

'According to the practice of the UN Human Rights Committee, the right to refuse military service on the basis of strongly held religious beliefs is an integral part of the right to freedom of thought, conscience and religion and is protected by Article 18 of the [ICCPR],' the court stated in its decision.

²³ Felix Corley, "KAZAKHSTAN: "Harsh" Religion Law changes to reach parliament soon?", *Forum 18*, 24 January 2024. https://www.forum18.org/archive.php?article_id=2887

[...]

Sabit Aimukhanov, head of Altynsai and Kostanai District Defence Department, and Almat Sarsenov, head of Kostanai Region Defence Department, had both been present in court to support the appeal against Smal's conscription being illegal. Neither Aimukhanov and Sarsenov were in their offices on 23 or 24 May each time Forum 18 tried to reach them. [...]

Both sides had the opportunity to appeal against the 16 April Military Court decision to the Supreme Court in Astana. The military authorities did not appeal further by the deadline and the decision entered legal force on 23 May, the Military Court Chancellery told Forum 18 the same day.”²⁴

As it is evident from the above-mentioned cases, not only the right to conscientious objection to military service is not recognised in law, but also the actual persecution of conscientious objectors to military service continues effectively until today.

DEPORTATION-REFOULEMENT OF A FOREIGN CONSCIENTIOUS OBJECTOR

As reported by the U.S. Department of State:

“**Refolement:** In December 2022, the government deported to Russia former Russian presidential guard officer Mikhail Zhilin, who according to public reports, applied for and was denied asylum in Kazakhstan. Human rights experts assessed this to be a case of refolement, insofar as Zhilin was a conscientious objector to military service following Russia’s renewed invasion of Ukraine.”²⁵

According to news reports, Federal Protective Service Major Mikhail Zhilin, 36, fled to Kazakhstan when Russia announced a conscription campaign, because he objected to the invasion of Ukraine. He crossed the border through woods while his wife and children drove through a checkpoint.

Zhilin sought refugee status in Kazakhstan, but his request was denied and authorities there stopped him from leaving for Armenia. Kazakhstan handed him over to Russia.²⁶

Human rights groups reportedly have challenged Kazakhstan's decision, as Zhilin officially asked for political asylum within 24 hours after entering the country, which, according to Kazakh law, absolved him of responsibility for illegally crossing the border.²⁷

Zhilin’s deportation led to conviction for desertion.

According to Taiga.info, a court in the Russian city of Barnaul found Zhilin, who had worked on communications at a security facility in Siberia, guilty of deserting and illegal border crossing and, in addition to the prison term, stripped him of his officer rank.

According to Reuters, a Barnaul court clerk reached by telephone confirmed that Zhilin has been sentenced but declined to provide any further information.²⁸

According to media reports, in the case of Zhilin, Kazakhstan followed through on its statement that it would extradite Russians wanted for evading mobilization if they were put on the international wanted list at home.²⁹

According to Article 13 of the Covenant: “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law”.

²⁴ Felix Corley, “KAZAKHSTAN: Conscientious objector's 6 months in military detention”, *Forum 18*, 24 May 2024.
https://www.forum18.org/archive.php?article_id=2909

²⁵ U.S. Department of State, *2023 Country Reports on Human Rights Practices: Kazakhstan*.
<https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/kazakhstan/>

²⁶ “Russian officer sentenced to 6.5 years for deserting”, *Reuters*, 24 March 2023.

<https://www.reuters.com/world/europe/russian-officer-sentenced-65-years-deserting-amid-war-he-opposed-2023-03-24/>

²⁷ “FSB Officer Who Sought Asylum In Kazakhstan Jailed In Siberia”, *Radio Free Europe / Radio Liberty*, 24 March 2023.

<https://www.rferl.org/a/russia-fsb-kazakhstan-asylum-jailed/32332662.html>

²⁸ “Russian officer sentenced to 6.5 years for deserting”, *Reuters*, 24 March 2023.

<https://www.reuters.com/world/europe/russian-officer-sentenced-65-years-deserting-amid-war-he-opposed-2023-03-24/>

²⁹ “FSB Officer Who Sought Asylum In Kazakhstan Jailed In Siberia”, *Radio Free Europe / Radio Liberty*, 24 March 2023.

<https://www.rferl.org/a/russia-fsb-kazakhstan-asylum-jailed/32332662.html>

This should be understood as in accordance with international law.

Currently the right to conscientious objection to military service is not adequately protected in the Russian Federation, **in violation of international human rights law. In addition to the general standards** providing for asylum of conscientious objectors from states where the right to conscientious objection is not adequately protected (see further below), it should be noted that the UNHCR in its guidelines has extensively elaborated on the “Objection to Military Service in Conflict Contrary to the Basic Rules of Human Conduct”, including:

- **Objection to Participating in an Unlawful Armed Conflict**
- **Objection to the Means and Methods of Warfare [Conduct of the Parties]**³⁰

Both issues are relevant in the case of Russian conscientious objectors to military service (including selective conscientious objectors).

In this regard it should be taken into consideration:

- that there is a widespread opinion that the Russian invasion in Ukraine “is a manifest violation of the United Nations Charter and an act of aggression that is a crime under international law”³¹; that the International Court of Justice, in the context of provisional measures, has stated that “The Russian Federation shall immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine”;³²
- that as the United Nations High Commissioner for Human Rights has repeatedly stated even in the early stages of the conflict: “gross violations of international human rights law and serious violations of humanitarian law that have occurred - in particular regarding the principle of distinction and the prohibition of indiscriminate attacks - may amount to war crimes”³³ and that “[a]ccording to information, while such incidents could be attributed to both parties to the conflict, most of these casualties appeared attributable to the Russian armed forces and affiliated armed groups. The only way to bring a stop to further violations was to end the hostilities”;³⁴
- that the International Criminal Court judges have issued arrest warrants for alleged war crimes;³⁵
- that the UN Commission of Inquiry: “In its last report of October 2024, submitted to the General Assembly, [...] found that the Russian authorities have committed torture as a crime against humanity. In addition, in its various reports, the Commission has found a wide array of violations of human rights and international law, as well as related crimes, committed by Russian authorities. These include wilful killings, enforced disappearances, attacks on civilians, unlawful confinement, rape and sexual violence, forced transfer and deportation of children, indiscriminate and disproportionate attacks, attacks on energy infrastructure, as well as the destruction or transfer of cultural objects.”³⁶

Furthermore, it should be emphasised that **Russian conscientious objectors to military service face torture and other ill-treatment.** In addition to the broader issues of torture and ill-treatment in the Russian Federation, both in general and particularly in relation to the conflict in Ukraine, already highlighted by the Committee,³⁷ **Russian conscientious objectors is a specific group facing such**

³⁰ UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION NO. 10:

Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, (HCR/GIP/13/10/Corr. 1.), 12 November 2014, paras. 21-30. <https://www.refworld.org/docid/529ee33b4.html>

³¹ See for example: Amnesty International, “Russia/Ukraine: Invasion of Ukraine is an act of aggression and human rights catastrophe”, 1 March 2022. <https://www.amnesty.org/en/latest/news/2022/03/russia-ukraine-invasion-of-ukraine-is-an-act-of-aggression-and-human-rights-catastrophe/>

³² ICJ, Order on the Request for the indication of provisional measures submitted by Ukraine in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, para. 86. <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>

³³ OHCHR, “Ensuring accountability for atrocities committed in Ukraine”, 27 April 2022.

<https://www.ohchr.org/en/statements/2022/04/ensuring-accountability-atrocities-committed-ukraine>

³⁴ Human Rights Council, “High Commissioner to Special Session of the Human Rights Council on Ukraine: Many of the Allegations of Violations of International Human Rights and Humanitarian Law in Ukraine May Amount to War Crimes”, press release, 12 May 2022.

<https://www.ohchr.org/en/press-releases/2022/05/high-commissioner-special-session-human-rights-council-ukraine-many>

³⁵ <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

³⁶ UN Commission of Inquiry: Statement on the third-year mark of Russia’s full-scale invasion of Ukraine, 26 February 2025.

<https://www.ohchr.org/en/statements-and-speeches/2025/02/un-commission-inquiry-statement-third-year-mark-russias-full-scale>

³⁷ CCPR/C/RUS/CO/8, 1 December 2022, paras. 6, 8, 18, 20, 21, 38, 39. <https://docs.un.org/en/CCPR/C/RUS/CO/8>

unlawful treatment.

This is also cited in the press release for the first thematic report to the General Assembly of the UN Special Rapporteur on the situation of human rights in the Russian Federation, by Mariana Katzarova: “The report emphasised the impact of torture on political prisoners, human rights and **anti-war activists, conscientious objectors and mobilised men**, lawyers, journalists, LGBT persons, migrants and asylum seekers, Indigenous Peoples and national minorities, as well as women and girls.”³⁸ (emphasis added) Indeed the report highlights such incidents of torture and ill-treatment.³⁹

The Special Rapporteur has **explicitly recommended**:

“(e) Consider granting protection and asylum to conscientious objectors of military service who have fled the Russian Federation and exercise due diligence to prevent their expulsion or extradition back to the Russian Federation in violation of the principle of non-refoulement, since there is a well-founded fear of persecution and substantial grounds to believe that, upon their return, they would be prosecuted and face imprisonment and/or torture and ill-treatment in custody.”⁴⁰

The Committee has explicitly found that:

“9. In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end.”⁴¹

Therefore, expulsion or extradition of Russian conscientious objectors to the Russian Federation is contrary to international law and cannot be considered as in compliance with articles 13 and 7 of the Covenant.

MAIN INTERNATIONAL STANDARDS CONCERNING THE RIGHT TO CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

All states must respect, protect and fulfil the right to conscientious objection to military service.

According to the Committee, “The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual’s religion or beliefs. The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.”⁴²

In 2019, the OHCHR compiled the minimum standards and criteria in order for a State to comply with international human rights law and standards as far as it concerns conscientious objection to military service:

“60. There are different approaches and human rights challenges with regard to application procedures for obtaining the status of conscientious objector to military service. To be in line with international human rights norms and standards, such application procedures should comply, as a minimum, with the criteria given below.

(a) Availability of information

All persons affected by military service should have access to information about the right to conscientious objection and the means of acquiring objector status.

³⁸ “Special Rapporteur exposes torture in Russia as a tool for repression at home and aggression abroad”, 29 October 2024.

<https://www.ohchr.org/en/press-releases/2024/10/special-rapporteur-exposes-torture-russia-tool-repression-home-and>

³⁹ A/79/508, 11 October 2024, see particularly paras: 67-69, 107, 113(p). <https://docs.un.org/en/A/79/508>

⁴⁰ A/HRC/57/59, 13 September 2024, para. 151(e). <https://docs.un.org/en/A/HRC/57/59>

⁴¹ Human Rights Committee, General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), para. 9.

⁴² See, *Min-Kyu Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), para. 7.3. <https://undocs.org/CCPR/C/101/D/1642-1741/2007>

See also: *Jong-nam Kim et al. v. Republic of Korea*, para. 7.4; *Abdullayev v. Turkmenistan*, para. 7.7; *Mahmud Hudaybergenov v. Turkmenistan*, para. 7.5; *Ahmet Hudaybergenov v. Turkmenistan*, para. 7.5; *Sunnet Japparow v. Turkmenistan*, para. 7.6; *Akmurad Nurjanov v. Turkmenistan*, para. 9.3; *Shadurdy Uchetov v. Turkmenistan*, para. 7.6; *Dawletow v. Turkmenistan*, para. 6.3 and others.

(b) Cost-free access to application procedures

The process for applying for status as a conscientious objector should be free, and there should be no charge for any part of the whole procedure.

(c) Availability of the application procedure to all persons affected by military service

The right to conscientious objection should be recognized for conscripts, for professional members of the armed forces and for reservists.

(d) Recognition of selective conscientious objection

The right to object also applies to selective objectors who believe that the use of force is justified in some circumstances but not in others.

(e) Non-discrimination on the basis of the grounds for conscientious objection and between groups

Alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs; there should be no discrimination between groups of conscientious objectors.

(f) No time limit on applications

No time limit should be applicable for the submission of a request to be recognized as a conscientious objector. Conscripts and volunteers should be able to object before the commencement of military service, or at any stage during or after military service.

(g) Independence and impartiality of the decision-making process

Independent and impartial decision-making bodies should determine whether a conscientious objection to military service is genuinely held in a specific case. Such bodies should be placed under the full control of civilian authorities.

(h) Good faith determination process

Application procedures should be based on reasonable and relevant criteria, and should avoid the imposition of any conditions that would result in the automatic disqualification of applicants.

(i) Timeliness of decision-making and status pending determination

The process for consideration of any claim of conscientious objection should be timely so that applicants are not left waiting for an unreasonable length of time for a decision. As matter of good practice, all duties involving the bearing of arms should be suspended pending the decision.

(j) Right to appeal

After any decision on conscientious objector status, there should always be a right to appeal to an independent civilian judicial body.

(k) Compatibility of alternative service with the reasons for conscientious objection

Alternative service, whether of a non-combatant or civilian character, should be compatible with the reasons for conscientious objection.

(l) Non-punitive conditions and duration of alternative service

The conditions for alternative service should be neither punitive nor have a deterrent effect. Any duration longer than that of military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria. Equalizing the duration of alternative service with military service should be considered a good practice.

(m) Freedom of expression for conscientious objectors and those supporting them

The personal information of conscientious objectors should not be disclosed publicly by the State, and their criminal records should be expunged. States should neither discriminate against conscientious objectors in relation to their civil, cultural, economic, political or social rights nor stigmatize them as “traitors”. Those who support conscientious objectors or who support the right of conscientious objection to military service should fully enjoy their freedom of expression.”⁴³

In 2022, the OHCHR reiterated the above standards, adding, *inter alia*, that:

“No inquiry process is required by international law and consideration should be given to accepting claims of conscientious objection to military service as valid without such a process”.⁴⁴

⁴³ UN Human Rights Council, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/41/23), 24 May 2019, para. 60. <https://undocs.org/A/HRC/41/23>

⁴⁴ UN Human Rights Council, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/50/43), 11 May 2022, para. 57. See particularly sub-paragraph (h). <https://undocs.org/A/HRC/50/43>

In 2024, the OHCHR further elaborated:

“54. States should give recognition to the right to conscientious objection to military service in their domestic legal systems. In accordance with international human rights law, the domestic legal basis should be:

- (a) General, recognizing all forms of thought, conscience and religion protected under international human rights law;
- (b) Applicable to all forms of military service, including voluntary service and service in military reserve forces, as thought, conscience and religion may change over time;
- (c) Applicable in all contexts, including situations of armed conflict and during mobilization;
- (d) Unconditional on the further implementation laws;
- (e) Justiciable.

55. The procedure allowing for the recognition of conscientious objection should be aimed at facilitating the exercise of the right. To this end, States should implement the recommendations contained in previous reports.⁴⁵ In addition:

- (a) States should consider accepting claims of conscientious objection without inquiry; or, in the alternative;
- (b) States retaining a system of inquiry of claims for conscientious objection should review their procedures to ensure that they preserve respect for the dignity of individuals, are conducive to protecting the right to conscientious objection to military service, are limited to identifying relevant information without arbitrary interference in the privacy of those concerned and are under civilian control.

56. In order to facilitate respect for the right to conscientious objection, States should consider removing compulsory alternative service for individuals exempted from military service. Should States choose to maintain alternative compulsory service, such compulsory service should:

- (a) Be compatible with the reasons for conscientious objection;
- (b) Serve the public interest. In particular, States should consider specifying the public interest purpose to be promoted by alternatives to military service in law;
- (c) Encompass a variety of alternatives spanning various sectors, and States should consider including alternatives outside the public sector, as appropriate. States should also consider how to take into account the preferences of conscientious objectors for placement in alternative services;
- (d) Not be punitive or discriminatory.

57. States should also take other measures to respect and ensure the right to conscientious objection to military service. To this end, States should:

- (a) Refrain from unduly restricting the rights of those advocating for the rights of conscientious objection to military service or conscientious objectors;
- (b) Implement appropriate measures, including education and training, to foster a culture of respect for conscientious objection to military service within relevant parts of the public administration and in the broader society;
- (c) Implement a participatory approach in the development and review of laws and policies related to conscientious objection to military service with the involvement of affected stakeholders.”⁴⁶

International standards on international protection of conscientious objectors

A non-exhaustive compilation of international standards on the issue of international protection of conscientious objectors to military service follows:

- the UNHCR has included the issue of persecution of conscientious objectors in its guidelines for international protection. The UNHCR has also clarified that “Such an objection is not confined to absolute conscientious objectors [pacifists], that is, those who object to all use of armed force or participation in all wars. It also encompasses those who believe that ‘the use of force is justified in some circumstances but not in others, and that therefore it is necessary to object in those other cases’ [partial or selective objection to military service].⁴⁷ A conscientious objection

⁴⁵ A/HRC/41/23 and A/HRC/50/43.

⁴⁶ UN Human Rights Council, Conscientious objection to military service, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/56/30), 23 April 2024, paras. 54-57. <https://undocs.org/A/HRC/56/30>

⁴⁷ See, UN Conscientious Objection to Military Service, E/CN.4/Sub.2/1983/30/Rev.1, 1985 (the “Eide and Mubanga-Chipoya report”),

may develop over time, and thus volunteers may at some stage also raise claims based on conscientious objection, whether absolute or partial.”⁴⁸

- as it has been also highlighted by the OHCHR⁴⁹:
 - the Human Rights Council has encouraged States “to consider granting asylum to those conscientious objectors to military service who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service”⁵⁰;
 - UNHCR has noted that a well-founded fear of persecution may arise after an applicant has left her or his country of origin, owing to circumstances arising in the country of origin during the applicant’s absence and/or as a result of her or his own actions after she or he has left the country of origin, for example for having expressed objections or taken a stance against a situation of armed conflict and violence⁵¹;
 - in 2019, the Working Group on Arbitrary Detention reminded States to respect, protect and fulfil the right to personal liberty of conscientious objectors to military service by exercising due diligence to prevent their expulsion, return (refoulement) or extradition to another State where there are substantial grounds for believing that they would be in danger of being subjected to arbitrary deprivation of liberty⁵²;
 - in its general comment No. 4 (2017), the Committee against Torture noted that “violations of the right to freedom of thought, conscience and religion” (as well “desertion from the national armed forces or armed groups”) were indications of the complainant’s personal risk and that the Committee would assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in case of the complainant’s deportation.⁵³
- More recently, the OHCHR has stressed: “States should respect and protect the rights of conscientious objectors arriving from third States, including through adherence to the principle of non-refoulement and international human rights and refugee law and the implementation and dissemination of guidance on the interpretation of applicable international law, such as the UNHCR guidelines on international protection on claims to refugee status related to military service.”⁵⁴
- There is an evolving jurisprudence of the European Court of Human Rights, which takes into consideration the issue of conscientious objection to military service as for the expulsion of persons.⁵⁵

<http://www.refworld.org/pdfid/5107cd132.pdf>, para. 21. See also, paras. 128-135 regarding persecution in the context of conscientious objection to conflicts which violate basic rules of human conduct.

⁴⁸ UNHCR: Guidelines on International Protection No. 10, para. 3. <https://www.unhcr.org/sites/default/files/legacy-pdf/529efd2e9.pdf>

⁴⁹ United Nations, General Assembly, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/50/43), 11 May 2022, paras. 20-22. <http://undocs.org/A/HRC/50/43>

⁵⁰ UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 13. <http://undocs.org/A/HRC/RES/24/17>

⁵¹ UNHCR, Handbook on procedures and criteria for determining refugee status and guidelines on international protection, Reissued, Geneva, February 2019, p. 226. <https://www.refworld.org/pdfid/5cb474b27.pdf>.

⁵² UN Human Rights Council, "Arbitrary detention. Report of the Working Group on Arbitrary Detention", (A/HRC/42/39), 16 July 2019, para. 63. <http://undocs.org/A/HRC/42/39>

⁵³ Committee against Torture, “General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22”, (CAT/C/GC/4), 4 September 2018, para. 45. <http://undocs.org/CAT/C/GC/4>

⁵⁴ UN Human Rights Council, Conscientious objection to military service, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/56/30), 23 April 2024, para. 58. <https://undocs.org/A/HRC/56/30>

⁵⁵ See for example ECtHR, *M.D. and others v. Russia*, paras. 45 and 110. <https://hudoc.echr.coe.int/eng?i=001-211791>

FURTHER ISSUES OF CONCERN – FREEDOM OF EXPRESSION OF ANTI-WAR VIEWS

It is concerning an April 2025 report regarding a 15-month criminal investigation of an anti-war priest.

According to such report, Orthodox priest Yakov (Vorontsov) faced difficulties with his diocese, and subsequently was defrocked, after criticising Russia's war against Ukraine since March 2022. After an "emotional" August 2023 Facebook post saying that the Russian Orthodox Church "has long had nothing in common with Christianity", police summoned him following an anonymous denunciation and call for him to be prosecuted for inciting religious and ethnic hatred (with a maximum 7-year prison sentence if convicted).

Police opened an investigation in December 2023. An analysis by a Chief Expert of the Criminal Investigation Service of Almaty's Judicial Expertise Institute concluded that Fr Yakov's Facebook post did not contain incitement of hatred, propaganda of superiority or calls for hostile action against individuals. However, the police did not close the case. On 19 December 2024, Fr Yakov was informed that a second "expert analysis" was commissioned.⁵⁶

Taking into consideration broader concerns about limitation or violations of the right to freedom of expression, highlighted, *inter alia*, by the Committee in previous concluding observations,⁵⁷ especially as far as it concerns "*provisions on the broadly formulated offence of incitement to "social, national, clan, class or religious discord"*",⁵⁸ it is concerning that this case could indicate or result in violation of art. 19 of ICCPR, and potentially further articles concerning other rights.

Expressing anti-war views, including criticism of institutions allegedly supporting a war, should be protected under article 19, and "any restrictions on the exercise of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant".⁵⁹

13

SUGGESTED RECOMMENDATIONS

Connection e.V. kindly invites the Committee to include the following recommendations, concerning mainly articles 2, 7, 9, 13, 18, 19, 26 of the Covenant in its concluding observations:

- The State party should promptly adopt legislation recognizing the right to conscientious objection to military service, in line with international human rights standards (e.g. A/HRC/41/23, A/HRC/50/43, A/HRC/56/30), including the exemption of conscientious objectors from the compulsory military service and reserve duties. If a compulsory alternative service is established, it should be compatible with the reasons for conscientious objection, be of a non-combatant or civilian character, be in the public interest and not of a punitive character.
- The State party should immediately:
 - cease forcible recruitment and any punishment of conscientious objectors.
 - provide effective remedy, including adequate compensation, to conscientious objectors who have suffered violations of their human rights.
 - cease any expulsion of foreign conscientious objectors to States where the right to conscientious objection to military service is not adequately protected and/or there is a well-founded fear of torture or ill-treatment.
- In accordance with rule 75 of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations made by the Committee in the paragraph about "Conscientious objection to compulsory military service".

⁵⁶ Felix Corley, "KAZAKHSTAN: 15-month criminal investigation of anti-war priest", *Forum 18*, 9 April 2025. https://www.forum18.org/archive.php?article_id=2969

⁵⁷ CCPR/C/KAZ/CO/1, 19 August 2011, para. 25. <https://docs.un.org/en/CCPR/C/KAZ/CO/1>

⁵⁸ CCPR/C/KAZ/CO/2, 9 August 2016, paras. 49-50. <https://docs.un.org/en/CCPR/C/KAZ/CO/2>

⁵⁹ CCPR/C/KAZ/CO/1, 19 August 2011, para. 25. <https://docs.un.org/en/CCPR/C/KAZ/CO/1>

- The State party should ensure that the right to freedom of expression, including of anti-war views and criticism of institutions allegedly supporting a war, is respected. Any restrictions on the exercise of freedom of expression should comply with the strict requirements of article 19, paragraph 3, of the Covenant.