



Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz

NGO in Special Consultative Status with the Economic and Social Council of the UN

International non-profit organization (Belgium 15.075/96)

www.cpti.ws

Bruineveld 11 • B-3010 Leuven • Belgium • Ph.: +32.16.254011 • e-✉: cpti@cpti.ws

Belgian account: 000-1709814-92 • IBAN: BE12 0001 7098 1492 • BIC: BPOTBEB1

Representative to the UN in Geneva:

Derek Brett

Avenue Adrien-Jeandin 18

1226 Thônex.

Tel./fax: 022 860 24 63

Email: dubrett@talk21.com

Submission to the 87th Session of the Human Rights Committee: July 2006:

Conscientious Objection to Military Service: Issues for the Task Forces on State Reports

UKRAINE

(This briefing has been compiled without reference to the Sixth Periodic Report of the State Party, which is not publicly available at the time of writing.)

Summary

There is no evidence that Ukraine has taken any action to implement the recommendations in Paragraph 20 of the Committee's concluding observations on its Fifth Periodic Report. By all accounts only members of a very restricted list of religious denominations remain eligible for recognition as conscientious objectors. The duration of military service has been reduced from 18 months to 12 months, but no reports have been traced of any corresponding reduction in the duration of alternative service for conscientious objectors. At one-and-a-half times that of military service, the duration of alternative service and some of the conditions of employment in alternative service were already discriminatory; there is some evidence that this may have included a deliberate punitive element.

At the moment there are no provisions to allow for conscientious objections developed by serving members of the armed forces, or by reservists. This lack certainly ought to be remedied before the complete phasing out of conscription, currently projected for 2010, but the restrictions on the recognition of conscientious objection must be tackled first.

The principle of conscientious objection was recognised, albeit in a limited fashion, in Article 35.3 of the 1996 Constitution, which reads “If performance of military service is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) duty.”

According to the Fifth Periodic Report of Ukraine (CCPR/C/UKR/99/5), an “Act on Alternative (Civilian) Service” apparently dated 1992 (although adopted on 12th December 1991) was already in place before the constitutional stipulation. This Act, however “was in fact contrary to the new Constitution of 1996 and the requirements of the Universal Declaration of Human Rights of 1948, which enshrined the principle of equality” (para 456), and was replaced by a new Act adopted on 18th February 1999.

The 1999 Act reduced the length of alternative service required of conscientious objectors from 36 to 27 months,¹ and to 18 months for those who had completed higher education, these being one-and-a-half times the equivalent duration of obligatory military service. The text of the Act not having been traced, however, it is not possible to say whether these ratios are explicit. The change evidently represented a recognition that a duration double that of military service was unquestionably discriminatory; the legislation however predated by some months the publication of the Human Rights Committee’s View on *Foin v France*,² which established the principle that any difference in duration between military and alternative service must be justifiable on reasonable and objective criteria valid in the individual case.

According to para 456 of CCPR/C/UKR/99/5, the Act also defined the offence of “avoidance of alternative service” and drew up “exhaustive lists” of “acts for which a decision to call a person up for alternative service (ie. presumably the decision to excuse from military service) can be revoked” and of “circumstances in which a call-up for alternative service can be renewed” (the practical implications of this are not made clear). It also regulated “issues relating to the labour relations of citizens performing alternative service”, again without giving details which would illustrate the practical implications. Further information on these various provisions would be most welcome. Experience in other States suggests that they could mask reasons for withholding or withdrawing recognition of conscientious objector status for reasons unconnected with the beliefs concerned. And it is important to know whether the provisions on labour relations have the effect of safeguarding or of limiting the rights in this area of those who are performing alternative service.

Unchanged from the 1992 Act was the stipulation that those who were “accorded the right to alternative service” must be “Citizens of Ukraine who have genuine religious beliefs, who are members of religious organisations which conform to the legislation, and whose confessional beliefs do not allow them to use arms and serve in the military force.” (Article 2 of the 1999 Act).

¹ Para 456 of CCPR/C/UKR/99/5 says “from three to two years”.

² Communication 666/1995, reported in ICCPR, A/55/40 vol II (3rd November 1999) 30 at para. 10.3.

Paragraph 20 of the Committee's concluding observations on the Fifth Report (CCPR/CO/73/UKR), considered in October 2001, reads:

The Committee notes with concern the information given by the State party that conscientious objection to military service is accepted only in regard to objections for religious reasons and only with regard to certain religions, which appear in an official list. The Committee is concerned that this limitation is incompatible with articles 18 and 26 of the Covenant.

The State party should widen the grounds for conscientious objection in law so that they apply, without discrimination, to all religious beliefs and other convictions, and that any alternative service required for conscientious objectors be performed in a non-discriminatory manner.

Regrettably, there is no indication that the State party has taken any action to implement this recommendation. As far as is known, recognition as conscientious objectors is still accorded only to members of the "List of religious organisations, whose doctrine prohibits using weapons" stipulated in Resolution 2066/1999.

On the positive side, it appears that the 1999 Act did make important advances towards good practice in ensuring civilian control of the processing of applications for recognition of conscientious objector status and the administration of alternative service. Both are now under the oversight of the Ministry of Labour and Social Policy. There are however allegations that working conditions are unduly harsh, and the Secretary of the Alternative Service Committee, which is responsible for considering applications, has been quoted as saying "Since it is impossible to have a board of experts verify one's true beliefs, the law provides conditions in which these beliefs can be put to the test." - a disturbing implication that there is an intentionally punitive element.³

There have also been reports of corruption within the system. Those who do not qualify to apply for recognition as conscientious objectors sometimes allegedly avoid military service on payment of bribes. One allegation we have heard implies that bribes may be demanded even after application for conscientious objector status, and on threat of prosecution for evading military service, but the details are unhelpfully imprecise.

The current policy of the Government of Ukraine is to move towards armed forces which will be entirely manned by contract personnel. The original target date of 2015 was brought forward by the new Government to 2010. This target is to be achieved by an overall reduction in manning levels, by a reduction in the rate at which existing contract service personnel are released, improvements in pay and working conditions, and by a reductions in the length of service for conscripts, prior to the complete phasing out of conscription.⁴ In 2005 the Law On Introducing Amendments to the Law of Ukraine on Universal Military Service reduced the normal term of military service from 18 months to 12 months, that for University graduates from 12 months to

³ Stolwijk, M., The Right to Conscientious Objection in Europe Quaker Council for European Affairs, Brussels, 2005, p. 74.

⁴ Ministry of Defence of Ukraine, The White Book 2005: Defence Policy of Ukraine, Zapovit, Kyiv, 2006 (available on www.mil.gov.ua) pps .14 - 24.

9 months, and that on board naval vessels from 24 months to 18 months. We can however trace no reports of corresponding reductions to the length of alternative service. Without such reductions, this will again last for at the very least twice as long as the military service which would have been asked of the individual concerned.

Specific information which we suggest should be obtained from the Government of Ukraine is:

- *what measures it has taken or plans to take to implement the recommendations of the Committee in para 20 of CCPR/CO/73/UKR, particularly regarding the limited list of denominations covered by the existing law.*
- *whether the reductions in the length of military service for conscripts promulgated in the 2005 “Law On Introducing Amendments to the Law of Ukraine on Universal Military Service” have been matched by changes in the duration of the alternative service required of conscientious objectors, and if so what that duration now is.*
- *on what bases a “call-up to perform alternative service” can be “revoked” or “renewed” according to the Law on Civilian Alternative Service.*
- *how the remuneration and terms of employment of conscientious objectors performing alternative service compare with those of military conscripts; also whether there are any restrictions on their labour rights or social entitlements by comparison with other persons performing similar jobs.*

22nd June 2006