UKRAINE: Military service, conscientious objection and related issues

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Paragraph 24 of the List of Issues reads:
“Please indicate whether the State party has taken any steps to amend its legislation (CCPR/C/UKR/7, para. 187) in order to extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions (CCPR/C/UKR/CO/6, para. 12). Please provide information on the justifications for the differentiation in the length of civilian service compared with that of military service, in particular indicating whether such differentiation is based on reasonable and objective criteria. Please also supply information on the number of applications for alternative service based on conscientious objection and the number of those resolved positively.”

A new year message from the Minister of Defence indicated that during 2013 conscription would be suspended and the army would switch to an all-contract force. However such a change has been proposed several times in the past and repeatedly postponed. Even if the reform is indeed implemented this year, the Committee’s questions will remain relevant if conscription is merely suspended and might be reintroduced in future in a situation of war or national emergency.

We recommend:
- that legislation be brought in to repeal all provisions allowing for conscription whether into the armed forces or troops attached to the Ministry of Internal Affairs or the Ministry of Infrastructure.
- that pending this the Law on Alternative (Non-Military) service should be amended to bring it into line with international standards: in particular that it apply to all grounds for objection, that a wider range of institutions should be permitted to offer placements, and that

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the duration should cease to be discriminatory.

UKRAINE: Basic information

Population (November 2012, estimated)\(^2\) 44,854,000

Conscription applies to all males between the ages of 18 and 25 (reduced from 27 in 2005)

Normal duration of service is 12 months, but 18 months in the navy.

University graduates serve for 9 months.

Alternative service is one-and-a-half times the length of military service and is open only to

of specified religious denominations (see text for more details)

Minimum recruitment age:\(^3\) 18 (19 for contract service)

Manpower reaching “militarily significant age” in 2010:\(^4\):

Armed forces active strength, November 2012 (approximately 50% conscripts)\(^5\) 129,950

as percentage of those reaching “militarily significant age” :

(Respective conscripts c.26.5%)

However, while the annual number of conscripts in the armed forces is steadily being

reduced, a constant number are being allocated to the Division of Internal Troops of

the Ministry of Internal Affairs and troops attached to the Ministry of Infrastructure.

This therefore represents an increasing proportion; it is possible that in 2013 the

number of conscripts in these units will exceed that in the armed forces proper.
The proportion of young men who perform military service is thus higher than implied by

the above figures.

Military expenditure US $ equivalent, 2012\(^6\) $4879m

Per capita $109

As % of GDP 2.7%

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\(^2\) Source: The Military Balance 2013 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.

\(^3\) Source: Child Soldiers International (formerly Coalition to Stop the Use of Child Soldiers), Louder than words: an agenda for action to end state use of child soldiers, London, September 2012

\(^4\) Source: CIA World Factbook. https://www.cia.gov/library/publications/the-world-factbook/index.html. The male population reaching “militarily significant age” - defined by the source as 16 - is more meaningful than total population in assessing the comparative impact of military recruitment in different countries.


\(^6\) Stockholm International Peace Research Institute (SIPRI), April 2012
Legislative Background

As indicated in Ukraine's Seventh Periodic Report, Article 35.4 of the 1996 Constitution stipulates that “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.” In fact the necessary legislative arrangements had already been made in the “Act on Alternative (non-Military) Service” which was adopted on 12th December 1991 and came into effect at the beginning of 1992. A revised edition was promulgated on 18th February 1999, and was itself amended on numerous occasions until 22nd May 2008, since when, it seems, the provisions have not changed.

The 1999 Act reduced the length of alternative service required of conscientious objectors from 36 to 27 months, 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 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, 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.

Article 2 of the 1992 Act was retained unchanged. It states:

“Citizens of Ukraine shall be eligible for the alternative service, if the exercise of the military duty contradicts their religious convictions, and the said citizens are affiliated with religious organisations operating in accordance with the legislation of Ukraine, whose creed prohibits the use of weapons.”

The 1999 Act made an important advance towards good practice by placing the processing of applications for recognition of conscientious objector status and the administration of alternative service under the oversight of the Ministry of Labour and Social Policy. The precise composition of the district alternative service commissions who decide on individual applications does not seem to be specified in the Law. On investigation, some at least prove to contain a majority of military personnel, which is not compatible with the processes being under civilian control. Those who apply to perform alternative service have no choice as to which placement they are assigned to (Article 13), and the list of eligible institutions is unduly limited. Article 8 provides a list of disciplinary offences in the performance of alternative service (including participation in strikes) for which the recognition of conscientious objector status may be completely inappropriately withdrawn, and the military service requirement reinstated. And while Article 9 allows for the possibility of releasing a conscript who converts to one of the recognised denominations after recruitment, in all other cases it stipulates a very tight time window for lodging the application.

“The Cabinet of Ministers decision No. 2066 of 10 November 1999 adopting legal and regulatory instruments for the implementation of the Alternative (Civilian) Service Act established, in particular, the following list of religious organizations whose doctrine prohibits the use of weapons:

(a) Adventists-Reformists;
(b) Seventh Day Adventists;
(c) Evangelical Christians;
(d) Evangelical Christians – Baptists;
(e) “The Penitents” or Slavic Church of the Holy Ghost;
(f) Jehovah’s Witnesses;
(g) Charismatic Christian Churches (and churches assimilated to them according to registered statutes);

Para 456 of CCPR/C/UKR/99/5 says “from three to two years”.
E.g. the official order dated 13th April 2012 to set up the Commission in the city of Lugank includes a representative from the Health Department and the Labour Department but all the other members are military personnel. (e-mail of 20th April 2012 from Volha Damarad).
(h) Union of Christians of the Evangelical Faith – Pentecostals (and churches assimilated to them according to registered statutes);
(i) Christians of Evangelical Faith;
(j) Society for Krishna Consciousness.”

An amendment of 18th May 2004 replaced the specific stipulations regarding the duration of alternative service with a general provision that it would be one-and-a-half times that of the military service which would be otherwise required from the person concerned. Thus when 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, and that for University graduates from 12 months to 9 months, the duration of alternative service was correspondingly reduced.

The Law on Alternative Service was further amended on 11th May, 2007, 28th December 2007 and 22nd May 2008. None of these amendments however affected Article 2, which governs who is eligible on the basis of religious adherence to apply to perform alternative service, nor Article 6, which thus retains the duration of alternative service at a discriminatory and punitive level of one-and-a-half times that of military service.

Implementation

There are allegations that working conditions are unduly harsh, and a past Secretary of the Alternative Service Committee, which is responsible for considering applications, was 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.11 There have also been unverifiable reports of corruption within the system – that those who do not qualify to apply for recognition as conscientious objectors sometimes avoid military service on payment of bribes, and even that bribes may be demanded even after application for conscientious objector status, and on threat of prosecution for evading military service. A report12 of 18th April 2012 in the Ukrainian newspaper “Segodnya” (Today) indicates that the “going rate” for exemption from call-up in the Spring 2012 draft is between 4,000 and 6,000 UAH (upwards of $500 US), and that other draftees have perfected the art of having call-up postponed while their health is checked, because the military's manpower needs are a fraction of the number of potential recruits, so that only the fittest are automatically passed for military service. This also means that to make recognition as conscientious objectors more widely available would have an imperceptible effect on recruitment into the armed forces.

“Professionalisation” of the armed forces

In its Sixth Periodic Report under the ICCPR, Ukraine stated:

“Ukraine is currently undergoing a phased transition to a contract-based system for the recruitment of military personnel. The programme of measures adopted by the Ukrainian Cabinet of Ministers, entitled “Meeting people half-way”, ratified by Cabinet decision 115 of 4 February 2005, makes provision for the establishment of a professional army in Ukraine from 2010. Once military recruitment in Ukraine is conducted exclusively on a contract basis there will be no further need for alternative service, which, under the legislation currently in force, replaces compulsory military

10 CCPR/C/UKR/7, 16th September 2011, Para 187.
12 http://www.segodnya.ua/news/14363499.html (e-mail from Volha Damarad, 19th April 2012)
On being elected Prime Minister in Autumn 2007, Yulia Tymoshenko proposed instead to abolish conscription “almost immediately”. This was however resisted by then President Yushchenko, who in “the interests of the military and the security of the nation” insisted on adhering to the original timetable, under which the last conscripts would be recruited in Autumn 2009 and fully professional armed forces be in place by the end of 2010.\(^{14}\) It is not clear whether this programme was still running on time, but with the change of government in February 2010 the target date was postponed to 2015 at the earliest.\(^{15}\) A 2012 report on a Russian website\(^ {16}\) suggested the end of conscription might be postponed to 2017. With the end of conscription, the report states, the total manpower of the armed forces would be halved, but a substantial re-armament programme means that this will be accompanied by an increase in military expenditure.

According to the new year message from the Minister of Defence mentioned above (see footnote 1), the planned professionalisation of the armed forces has again been moved forward, and the Autumn 2013 call-up should be the last. However statements by the Ministry of Internal Affairs indicate that they consider the suspension of conscription applies only to the army and they anticipate continuing to conscript into the forces under their control, including the police. A particular concern is the growing use of conscripts for policing and maintaining public order at mass events. There is a growing number of protests, the majority of them peaceful, but Ministry of Internal Affairs police are increasingly being used to place unreasonable restrictions on the freedom of assembly.

The entire reform process is complicated by its lack of transparency and legal basis. According to the current legislation there are two recruitment rounds each year. The numbers to be recruited, and the proposed changes in the nature of military service are based solely on Presidential Decree so these are purely arbitrary decisions at the whim of senior figures in the state establishment. This means that unfolding circumstances may again lead to further postponement of the end to conscription. A particular concern is the desire of the internal troops and police to retain conscription in order to maintain and enhance their ability to react to political protest.

If conscription is suspended, not only will the existing legislation on conscientious objection and alternative service remain relevant if the suspension ceases, but the question also arises of what would happen if a member of the armed forces serving on a contract basis should develop conscientious objections. Ukraine is a member of the Council of Europe, whose Committee of Ministers recommended in 2010:

\begin{itemize}
\item “[42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.
\item Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.
\item Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.
\item Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.
\item Members of the armed forces should be informed of the rights mentioned in paragraphs 41
\end{itemize}\end{itemize}

\footnote{13} CCPR/C/UKR/6, 11th April 2006, Para 264.

\footnote{14} See War Resisters International, “Controversy about conscription in Ukraine”, in CO Update No. 34 (November / December 2007), and “Ukraine to abolish conscription in 2009” in CO Update No. 35 (January 2008).

\footnote{15} Davis, J., “Promised end to military conscription now years away”, Ukraine Business online, 14 February 2011

to 45 above and the procedures available to exercise them.”17

The Issue in the Human Rights Committee

In 2001, when the Committee examined Ukraine's Fifth Periodic Report, it noted “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.” and recommended:
“...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.”18

In its Sixth Periodic Report, Ukraine responded to this observation in the following words:
Under article 35 of the Constitution, every citizen is guaranteed the freedom of personal philosophy and religion. Alongside equal rights, the State also stipulates the equal obligations of citizens before the law. No persons may be relieved of their obligations to the State or refuse to apply the laws for reasons of religious belief. In the event that the performance of military duty is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative service. The right of citizens to perform such alternative service is also guaranteed under article 2 of the Alternative (Civilian) Service Act of 12 December 1991. All Ukrainian citizens have the right to perform alternative service if the performance of their military duties runs counter to their religious beliefs and if they belong to religious organizations whose doctrine proscribes the use of weapons. Since military service is compulsory in Ukraine, the question of replacing such service by alternative (civilian) service is regulated by the State. To that end, a list has been drawn up and ratified by the Cabinet of Ministers of religious organizations whose doctrines do not permit the use of weapons and, by extension, the performance of military service. In addition to the religious organizations included in the list, the members of religious organizations with comparable religious beliefs are also assigned to perform alternative service. The decision to assign citizens from religious organizations with equivalent beliefs to the performance of such service is taken jointly by the alternative (civilian) service commissions and the Ukrainian State Committee on Religious Affairs or by their local bodies. Thus, Ukrainian law guarantees the right of all citizens of Ukraine to perform alternative service on the grounds of religious belief.”19

This was a simple re-statement of the situation which the Committee had questioned, and the conclusion did not fit the facts stated. Far from “all citizens of Ukraine” having the right to perform alternative service on the basis of religious belief, the right remained restricted to members of a specific list of registered religious organisations.

In the course of the Committee's examination of the report, one member noted the failure to address the previous concluding observations, and raised also the question of the duration of alternative service:
“Although the Committee had recommended that the list should be extended to other religions and to non-religious convictions, the State party had not taken any measures to that end. He asked why periods of alternative service remained longer than those of military service, and whether the Government planned to rectify that situation.”20

The reply was:

17 CM/Rec(2010)4, 24th February 2010
18 CCPR/CO/73/UKR, Para 20
19 CCPR/C/UKR/6, Paras 258 – 261.
20 CCPR/C/SR.2408, Para 48.
“A presidential decree had been issued on the need for new legislation on conscientious objection to military service. That new legislation was currently under discussion. The issue of the period of alternative service would be addressed in the new law. The law on alternative service would remain in force until the professional army was established.”

As no response had been received regarding the list of eligible religions, the Committee reiterated its concerns in its concluding observations:

“While the State party has announced plans to convert its armed forces to an all-volunteer basis, the right to conscientious objection against mandatory military service should be fully respected. Conscientious objection has been accepted only for religious reasons, and only for certain religions. “The State party should extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions.”

In the Seventh Periodic Report, Ukraine explicitly addresses this concluding observation. Unfortunately the reply simply restates, almost word for word, what was said in the Sixth Periodic report, adding only the precise list (quoted earlier in this submission) of religious denominations whose members qualify for civilian service, and without the earlier description of the procedure for assigning to civilian service persons belonging to unlisted religious denominations which are deemed to have equivalent beliefs.

Military involvement in education

In its concluding observations on the initial report of Ukraine under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Committee on the Rights of the Child noted “the long tradition of military secondary education in the State party and its social protection function for children of vulnerable groups” and “that according to the Military (General Conscription and Service) Act (art. 20) the minimum age for enrolling in higher military academies or higher education institutes with military studies departments is 17 years of age,” and noted also “with satisfaction information that currently there are no children below this age studying in such schools.” It nevertheless expressed its concern “about the report that at least one secondary school offered two years’ intensive military preparation for children from the age of 15, more specifically orphans and children of military personnel,” and recommended (in part) that “the State party: “Strictly ensure that no children under the age of 17 are enrolled in military secondary schools, and offer integration into general secondary schools to orphans and children under this age who may be attending military secondary schools.”

Given the wording of the Optional Protocol, the Committee on the Rights of the Child was not able to challenge the inclusion within the Ukrainian armed forces of “Cadets or students of higher military academies or higher education institutes with military studies departments enlisted for military service or training on condition that they turn 17 in the year that they enrol in training (Military (General Conscription and Service) Act, art. 20)”

21 Ibid, Para 53.
22 CCPR/C/UKR/CO/6, 28th November 2006, Para 12.
24 CCPR/C/UKR/6, Para 260.
25 CRC /C/OPAC/UKR/CO/1, 11th April 2011, Paras 15 & 16.
26 CRC/C/OPAC/UKR.1, Para 13.