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Spoorstraat 38  
1815 BK Alkmaar  
The Netherlands / Pays-Bas

Phone: +31-72 512 30 14  
Fax: +31-72 515 11 02  
Postbank: 2704182

Email: [office@ifor.org](mailto:office@ifor.org)  
Website: <http://www.ifor-mir.org>  
KvK Alkmaar: 41177187



## 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)

**Bruineveld 11 · B-3010 Leuven · Belgium · Ph.: +32.16.254011 ·**

**[www.cpti.ws](http://www.cpti.ws)**

**e-\*: [cpti@cpti.ws](mailto:cpti@cpti.ws)**

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

### **Joint UPR Submission: UKRAINE Fourteenth Session: October 2012**

All correspondence regarding this submission should be sent to

Derek BRETTE

International Fellowship of Reconciliation

Main Representative to the United Nations, Geneva

[derekubrett@gmail.com](mailto:derekubrett@gmail.com)

Tel : (41) 77 462 9825

## Executive Summary

**This submission deals with the situation in Ukraine with regard to conscientious objection to military service and related issues. It was prepared in April 2012 on the basis of the latest information available at that time.**

**The concerns to which it draws attention are:**

- **the discriminatory and punitive duration of the alternative service available to conscientious objectors to military service.**
- **unwarranted restrictions on who may be eligible for recognition as a conscientious objector.**

## Background

1. Military service is obligatory for all male citizens of the Ukraine.

2. Article 35.3 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 12<sup>th</sup> December 1991 and came into effect at the beginning of 1992. A revised edition was promulgated on 18<sup>th</sup> February 1999, and was itself amended on numerous occasions until 22<sup>nd</sup> May 2008, since when, it seems, the provisions have not changed.

3. The 1999 Act reduced the length of alternative service required of conscientious objectors from 36 to 27 months,<sup>1</sup> 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*,<sup>2</sup> 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.

4. 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.”

5. 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 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

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

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

put to the test.” - a disturbing implication that there is an intentionally punitive element.<sup>3</sup> 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 report of 18<sup>th</sup> 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.)

6. A further amendment of 18<sup>th</sup> May 2004 replaced the specific stipulations regarding the duration of alternative 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 First Cycle of the UPR**

7. Ukraine was examined in the Second Session of the UPR Working Group, in May 2008. Issues regarding military service and conscientious objection did not feature in that discussion.

8. Nevertheless, there are ongoing concerns regarding the existing legislation in this area, which were addressed by the Human Rights Committee when it considered the most recent report of Ukraine under the International Covenant on Civil and Political Rights (ICCPR).

### **Ongoing concerns**

9. In 2001, when the Human Rights Committee examined the Fifth Periodic Report of Ukraine under the ICCPR it had 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.”<sup>4</sup>

10. 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

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

<sup>4</sup> CCPR/CO/73/UKR, Para 20

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.”<sup>5</sup>

11. 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.

12. Ukraine further reported:

“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 service.”<sup>6</sup>

13. 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.”<sup>7</sup>

14. The reply was:

“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.”<sup>8</sup>

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

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<sup>5</sup> CCPR/C/UKR/6, Paras 258 – 261.

<sup>6</sup> Ibid, Para 264.

<sup>7</sup> CCPR/C/SR.2408, Para 48.

<sup>8</sup> Ibid, Para 53.

“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.”<sup>9</sup>

16. Other aspects of the Law on Civilian Service and its practical implementation, although not raised by the Human Rights Committee, would not appear to be in accordance with the best international practice with regard to arrangements for conscientious objectors. The precise composition of the alternative service commissions who decide on individual applications does not seem to be specified in the Law. It is believed that in practice many of them 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). 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.

### **Developments during the period under review**

17- Ukraine's Seventh Periodic Report under the ICCPR was due in November 2011, but had not been published by April 2012. News reports however have indicated a series of changes to the timetable for the “professionalisation” of the armed forces. After the change of government this was postponed to 2015 at the earliest.<sup>10</sup> The most recent report on a Russian website<sup>11</sup> now indicates 2017 as the likely date for the end of conscription.

18. The Law on Alternative Service was amended on 11<sup>th</sup> May, 2007, 28<sup>th</sup> December 2007 and 22<sup>nd</sup>. 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.

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<sup>9</sup> CCPR/C/UKR/CO/6, 28<sup>th</sup> November 2006, Para 12.

<sup>10</sup> Davis, J. “Promised end to military conscription now years away”, [Ukraine Business online](#), 14 February 2011

<sup>11</sup> <http://warsonline.info/inostrannie-armii/ukrainskaya-armiya-budet-sokraschena-v-dva-raza-k-2017-godu.html>