



Religious Organization “Religious Community of Quakers: Meeting of Friends of Ukraine”

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President of the Venice Commission
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Honorable Madam President,

I am writing this letter to you as a part of a spirit-led work of the Meeting of Friends of Ukraine and our Care Committee to ensure proper alternative nonmilitary service during the war in Ukraine according to international human rights standards.

On 15 March 2025, the European Commission for Democracy through Law (Venice Commission) is invited to examine, with a view to adoption, a Draft amicus curiae brief on alternative (non-military) service for the Constitutional Court of Ukraine. As the Draft annotated agenda of the 142nd Plenary Session of the Venice Commission says, the draft amicus curiae brief CDL(2025)009 was drawn up on the basis of comments by Mr Alivizatos, Ms Kiener, Mr Ojanen and Mr Paulus¹.

The brief was requested in relation to a case of Dmytro Zelinsky², a Seventh-Day Adventist imprisoned for 3 years for a legitimate exercise of human right to conscientious objection to military service³. The Meeting of Friends of Ukraine considers him a prisoner of conscience, along with former prisoner of conscience Vitalii Alexeienko⁴ and current prisoners of conscience Vitalii Kryushenko⁵ and Serhy Semchuk⁶; we are also praying for acquittal of Valentyn Adamchuk⁷ and for release of pastor Oleksandr Solonets⁸ from detention in army.

The topic of the brief has a vital importance today, when people are violently dragged from streets to military recruitment centers where some die in detention, and commanders boycott with impunity the parliamentary hearings regarding such scandalous facts, when even the former alternative service not complying with international standards is suspended⁹, when conscientious objectors are arbitrarily detained, imprisoned, inhumanely treated and tortured,

¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PL-OJ\(2025\)001ann-rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PL-OJ(2025)001ann-rev-e)

² <https://ccu.gov.ua/en/novina/religious-beliefs-and-military-duty-court-deliberating-case-upon-constitutional-complaint>

³ https://www.forum18.org/archive.php?article_id=2906

⁴ Supreme Court of Ukraine releases a prisoner of conscience: conscientious objector Vitaly Alekseenko, <https://ebco-beoc.org/node/572>

⁵ <https://www.jw.org/en/news/region/ukraine/Ukraine-Sentences-Vitalii-Kryushenko-to-Three-Years-in-Prison-for-Conscientious-Objection/>

⁶ https://www.forum18.org/archive.php?article_id=2964

⁷ <https://friends.org.ua/907>

⁸ <https://friends.org.ua/973>

⁹ <https://ebco-beoc.org/ukraine>

as reveals the recent United Nations report¹⁰ and journalistic investigations¹¹, and when, despite international outcry¹², mainstream civil society leaders in Ukraine are silent about the odious violations but attack "draft evaders" and critics of army as "the Russian propaganda."

It would not be an exaggeration to say that the amicus curiae brief for the Constitutional Court of Ukraine the Venice Commission is working on could contribute to preservation of Ukrainian democracy and rule of law from the grave and painful militarist threat.

As the EBCO report cited above explains, the army's persistence in holding all men in conscription serfdom has historical grounds. Conscription system in Ukraine was introduced by Russian Empire and cemented by Soviet Union after a short period of allowed exemptions in early years of communist regime, that ended in total repression rooting out all "peace sects." In Soviet Ukraine, like in all republics of Soviet Union, refusal to undergo military service motivated by religious reasons was officially considered as a crime of draft evasion, punishable by incarceration in peacetime and by death penalty during a wartime. Hundreds of patriotic conscientious objections to service in Soviet army were symbolic and brought closer dissolution of the communist empire. After declaration of independence in 1991, a law was adopted on alternative non-military service accessible for members of religious organisations, acting compliant to law, prohibiting use of weapons and military service. The law from the beginning had discriminatory nature, not recognizing conscientious objection as individual right, making alternative service an unpleasant non-qualified work during a term one and half times longer than conscription, shaping alternative service as collective right of very marginal denominations allowed to exist in legal field as long as local civil and military administration tolerates them, the discretion frequently used to make shady arrangements and extort bribes.

Even in a peacetime when institutional safeguards of democracy were stronger and leaders of civil society dared to criticize army without hesitation, all efforts to develop in Ukraine proper alternative service compliant with international human rights standards were blocked because of strong post-Soviet militarist tendencies.

For example, in 2005 the Monitoring Committee of the Parliamentary Assembly of the Council of Europe pointed out in a para. 271 of the report "Honouring of obligations and commitments by Ukraine"¹³ that Law on Alternative Non-Military Service requires revision since it explicitly restricts the right to conscientious objection to religious grounds; non-religious conscientious objectors (COs) have no chance of obtaining CO status; in 2001, the United Nations Human Rights Committee called upon the Ukrainian government to "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"¹⁴; the Ukrainian government is, however, not known to be considering widening the grounds for recognition;

¹⁰ <https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2024-12-31-pr41-ukraine-en.pdf>

¹¹ https://www.forum18.org/archive.php?article_id=2937

¹² <http://undocs.org/en/A/HRC/57/NGO/308>

¹³ <https://pace.coe.int/en/files/11019>

¹⁴ United Nations Human Rights Committee, Concluding observations of the Human Rights Committee: Ukraine (CCPR/CO/73/UKR), October 2001. This document, cited in the PACE report, is one of many similar calls on Ukrainian government from UN human rights bodies to ensure compliance with international standards of protection and promotion of human right to conscientious objection to military service. The most recent concluding observations to periodic reports raising this issue were CCPR/C/UKR/CO/8, CCPR/C/UKR/CO/7, and CCPR/C/UKR/CO/6. The recent OHCHR report A/HRC/56/30 gives an overview of these standards and shortly describes current problems in Ukraine.

consequently, non-religious COs can only avoid military service by bribing draft officials or by not responding to call-up orders. Reacting to the PACE report, President of Ukraine in 2006 issued a decree¹⁵ ordering the Ministry of Justice of Ukraine and Ministry of Defense of Ukraine to prepare a draft law making alternative service more accessible, but this decree was not implemented.

With Russian annexation of Crimea and proxy war in eastern Ukraine, in 2014 special period was proclaimed and conscription by mobilization was started, when conscientious objectors faced non-recognition, some of them managed to uphold their rights in courts, others were punished. Since term-limited conscription continued at that time, some young believers were allowed to replace it with alternative service. According to 2021 EBCO Annual Report, on the eve of Russian full-scale invasion there were 1659 legally recognized conscientious objectors, but that number quickly dropped because alternative service was suspended along with a term-limited conscription and the military recruiters pushed for mobilization of believers. Ukrainian diplomats in 2018 submitted to OHCHR a promise of changes in legislation aimed at providing alternative service to conscientious objectors in a period of mobilization¹⁶, based on a draft law which was never supported by the government, never included into parliamentary agenda, and in 2019 was automatically withdrawn. In 2023, Ukrainian Parliamentary Commissioner for Human Rights (the Ombudsman) asked the Ukrainian Parliament (Verkhovna Rada of Ukraine) to change law and allow alternative service during the war, this initiative ended in creation of interdepartmental working group where development of the draft amendments was blocked by the Ministry of Defense. In 2024, the Ombudsman raised the issue again warning about increased complaints of faith communities in Ukraine and abroad, but this time the Ombudsman's proposal went in line with the army's idea of "alternative" service within the army, that is clearly not plausible.

It is understandable that during the criminal Russian full-scale invasion of Ukraine and cruel treatment of Ukrainians on a temporarily occupied territories a vast majority of Ukrainian people, influenced by the United News telethon etc., put their absolute and non-critical trust into the Armed Forces of Ukraine as defenders and liberators of our country. Though our faith community of Ukrainian Quakers, being advocates of nonviolent action, find regrettable that nonviolent resistance to Russian aggression, marked by such impressive and heroic deeds as unarmed repulsion of Russian tanks by a crowd of civilian protesters in Koriukivka¹⁷, remain a matter of spontaneity and limited efforts of enthusiasts, while the Government of Ukraine does not see nonviolent action among priorities in any short-term or long-term planning, does not provide any significant support to it and attempts to subordinate it to the army, that undermines the ethical integrity and safety of nonviolent resistance. Systemic denial in proper alternative service and oppression of individuals and communities, asking for it, contributed into underdevelopment of the soft powers of Ukraine and institutional weakness of civil society that has very limited opportunities, without the Governmental support and under the pressure of army, to resist Russian aggression with effective full-scale nonviolent action.

Pressure of the defense and security forces on justice system is so huge that copies of all pacifist complaints regarding human rights violations, apart of formal and ineffective reactions to the complaints, are usually submitted to Security Service of Ukraine, even by officials that supposed to defend human rights, for "investigation" of perceived threat to

¹⁵ <https://www.president.gov.ua/documents/392006-3720>

¹⁶ <https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/ConscientiousObjection/2019/Ukraine.pdf>

¹⁷ <https://war.ukraine.ua/heroes/bezoruzhnye-chernygovchane-vyshly-na-uly-2/>

national security from any peace activism, including human rights defense; and courts, starting from Supreme Court, write in judgments punishing conscientious objectors the obviously false army-lobbied fiction that "alternative" service "without weapons and elimination of enemy's forces" is "possible" within the army, contrary to military statutes requiring of all members of the Armed Forces of Ukraine to bear arms, and simultaneously the same courts sentence for longer prison terms for the crime of disobedience those objectors like Semchuk (see footnote 6) who believed this knowingly false "strategic communication" and, of course, were ordered to bear arms and do all other soldier's duties incompatible with their faith. A very few leaders of Protestant Churches, allowed to travel abroad while the majority of males in Ukraine are banned from that, "motivated" with deferrals from conscription for their loyalty, usually avoid discussions of suppression of religious freedom in Ukraine at international fora or claim in vague words that some freedom still exists, while thousands of believers of their Churches compose lists for everyday prayers with hundreds of names of those who suffered from human rights violations during forced conscription. Under the pressure of army, even the Parliamentary Commissioner for Human Rights started to lobby "alternative service within army", contrary to Article 35 (4) of the Constitution of Ukraine that requires accessibility of alternative "non-military" service, and contrary to international standards requiring compatibility of alternative service with religion or belief of conscientious objectors, as well as civilian character and management of alternative service.

In light of all the said, make no mistake: if the amicus brief of Venice Commission will not recommend the best human rights practices and instead provide even vague hint on possibility of deviations, any such hint will be enthusiastically misinterpreted in favor of the most cruel militarist policies. It will be received as a license to continue current pattern on human rights violations and resort to more grave violations in dangerous delusion that prison and torture could force people to change pacifist religion or beliefs and become soldiers.

If the Venice Commission will not state clearly and unequivocally that even in time of war no one shall be subject to coercion which would impair his or her freedom to have or to adopt a religion or belief of his or her choice, including conscientious objection to military service, according to Articles 18 (2) and 4 (2) of the International Covenant on Civil and Political Rights, this will cost many suffering and even lives lost because of quasi-legalization of current cruel and anti-democratic persecutions for conscientious objection in Ukraine. Do not allow such a waste of lives, health, and years in prison of the faithful people that could serve nonviolently for the benefit of resilience of Ukraine and resistance in face of Russian aggression in their own peaceful ways, like a former prisoner of conscience Vitalii Alexeienko found his Christian way to serve Ukraine as a postman, ensuring that people are connected while Russia attacks the unity of Ukrainian people¹⁸.

Therefore, we urge you to indicate in the amicus curiae brief adopted by the Venice Commission that Ukraine, – for full compliance with her international human rights obligations to protect and promote human right to conscientious objection to military service according to Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the European Convention on Human Rights (ECHR), given that these obligations are not derogable in time of war according to Article 4 of ICCPR and therefore also according to Article 15 of ECHR, – is recommended to implement the next human rights standards enshrined in relevant case law of the European Court of Human Rights, jurisprudence and reports of the UN human rights bodies.

¹⁸ <https://qceablog.wordpress.com/2024/04/23/story-from-a-ukrainian-conscientious-objector/>

Relevant case law of the European Court of Human Rights

Paragraphs 70-89 of the Guide on Article 9 of the European Convention on Human Rights (updated on 31 August 2024)¹⁹ prepared by the Registry of the European Court of Human Rights provides a coherent and citable overview of the relevant case law of the European Court of Human Rights (ECtHR).

In Ukrainian realities, we consider of special importance the next dictums.

The right “to try to convince one’s neighbour” is an essential element of religious freedom, and guarantees of Article 9 of the European Convention on Human Rights (ECHR) protect attempts to convince others of the virtue of pacifist beliefs and seek legal alternatives for mandatory military service (ECtHR judgment in case of *Taganrog LRO and Others v. Russia*, 2022, paragraphs 168-170)²⁰.

Absence of alternative service in the domestic legal system and absence of effective and accessible procedure which would have enabled the applicants to establish whether or not they were entitled to conscientious objector status violates Article 9 of ECHR (ECtHR judgment in case of *Kanatli v. Turkey*, 2024, paragraph 62)²¹.

The State's failure to fulfill obligation to ensure effective procedure of application for a conscientious objector status for a conscientious objector who didn't belong to any church or pacifist organization violates Article 9 of ECHR (ECtHR judgment in case of *Papavasilakis v. Greece*, 2016, paragraphs 9, 34-38, 50-52).²²

A mere reference to the “necessity of defending the territorial integrity of the State” does not in itself constitute grounds capable of justifying the absence of an appropriate alternative service (ECtHR judgment in case of *Mushfig Mammadov and Others v. Azerbaijan*, 2019, paragraph 97).²³

The right to conscientious objection guaranteed by Article 9 of the Convention would be illusory if a State were allowed to organise and implement its system of alternative service in a way that would fail to offer – whether in law or in practice – an alternative to military service of a genuinely civilian nature and one which was not deterrent or punitive in character (ECtHR judgment in case of *Teliatnikov v. Lithuania*, 2022, paragraph 105).²⁴

An alternative to military service offered to conscientious objector must be appropriate for the exigencies of an individual’s conscience and beliefs; the nature of the work performed is only one of the factors to be taken into account when deciding whether alternative service is of a genuinely civilian nature; such factors as authority, control, applicable rules and appearances may also be important for the determination of that question; the system of alternative service must be separated hierarchically and institutionally from the military system, not be subordinated, controlled or influenced by the military authorities (ECtHR judgment in case of *Adyan and Others v. Armenia*, 2017 paragraphs 67-69).²⁵

¹⁹ https://ks.echr.coe.int/documents/d/echr-ks/guide_art_9_eng

²⁰ <https://hudoc.echr.coe.int/eng?i=001-217535>

²¹ <https://hudoc.echr.coe.int/eng?i=001-231540>

²² <https://hudoc.echr.coe.int/eng?i=001-166693>

²³ <https://hudoc.echr.coe.int/eng?i=001-197066>

²⁴ <https://hudoc.echr.coe.int/eng?i=001-217607>

²⁵ <https://hudoc.echr.coe.int/eng?i=001-177429>

Relevant jurisprudence and reports of the United Nations human rights bodies

Human Rights Committee in every concluding observations on periodic reports of Ukraine during decades raises concerns regarding lack of compliance with international standards in current legislation of Ukraine and recommends to change it. As mentioned above, in Concluding observations of the Human Rights Committee regarding the fifth periodic report of Ukraine under Article 40 of ICCPR 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 Committee concluded that 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 (paragraph 20)²⁶. As noted above in the footnote 14, these concerns were reiterated in concluding observations to the sixth²⁷ (paragraph 12), seventh²⁸ (paragraph 19), and eight²⁹ (in paragraphs 29, 30, stressing to stop arbitrary detention of conscripts) periodic reports of Ukraine.

It is notable that Ukraine during the full-scale Russian invasion, on 6 October 2022, co-sponsored³⁰ the resolution of the UN Human Rights Council “Conscientious objection to military service”³¹ that recognizes the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights (ICCPR) and Human Rights Committee general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, and encourages States to implement recommendations of reports A/HRC/41/23 and A/HRC/50/43 of the Office of the United Nations High Commissioner for Human Rights.

According to the OHCHR report A/HRC/50/43 (“Conscientious objection to military service. Analytical report of the Office of the United Nations High Commissioner for Human Rights”)³²: in 2019, OHCHR stressed that application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards should comply, as a minimum, with the following criteria: (a) availability of information; (b) costfree access to application procedures; (c) availability of the application procedure to all persons affected by military service; (d) recognition of selective conscientious objection; (e) non-discrimination on the basis of the grounds for conscientious objection and between groups; (f) no time limit on applications; (g) independence and impartiality of the decisionmaking process; (h) good faith determination process; (i) timeliness of decision-making and status pending determination; (j) right to appeal; (k) compatibility of alternative service with the reasons for conscientious objection; (l) non-punitive conditions and duration of alternative service; and (m) freedom of expression for conscientious objectors and those supporting them

²⁶ <https://docs.un.org/en/CCPR/CO/73/UKR>

²⁷ <https://docs.un.org/en/CCPR/C/UKR/CO/6>

²⁸ <https://docs.un.org/en/CCPR/C/UKR/CO/7>

²⁹ <https://docs.un.org/en/CCPR/C/UKR/CO/8>

³⁰ See the list of co-sponsors in a draft resolution <https://docs.un.org/en/A/HRC/51/L.8>

³¹ <https://undocs.org/en/A/HRC/RES/51/6>

³² <https://docs.un.org/en/A/HRC/50/43>

(paragraph 17, with a footnote reference to the report A/HRC/41/23, para. 60)³³; To bring them into line with international human rights norms and standards, national laws, policies and practices relating to conscientious objection to military service should be guided by the following points: (a) The right to conscientious objection to military service derives from the right to freedom of thought, conscience, religion or belief pursuant to article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; (b) All persons affected by military service should have access to information about the right to conscientious objection and the means of acquiring objector status; (c) The process of applying for status as a conscientious objector should be free and there should be no charge for any part of the whole procedure; (d) The application procedure should be available to all persons affected by military service, including conscripts, professional members of the armed forces and reservists; (e) The right to object applies both to pacifists and to selective objectors who believe that the use of force is justified in some circumstances but not in others; (f) Alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs; (g) Conscripts and volunteers should be able to object before the commencement of military service, or at any stage during or after military service; (h) 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; (i) States that do not accept claims of conscientious objection as valid without an inquiry should establish independent and impartial bodies under the full control of the civilian authorities; (j) Application procedures should be based on reasonable and relevant criteria and should avoid imposing any conditions that would result in automatically disqualifying applicants; (k) The process for consideration of any claim of conscientious objection should be timely and all duties involving the bearing of arms should be suspended pending the decision; (l) After any decision on conscientious objector status, there should always be a right to appeal to an independent civilian judicial body; (m) Conscientious objectors should not be repeatedly punished for not having obeyed a renewed order to serve in the military; (n) States should release individuals who are imprisoned or detained solely based on their conscientious objection to military service; (o) Alternative service must 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; (p) Any longer duration of alternative service in comparison to military service is permissible only if additional time for alternative service is based on reasonable and objective criteria; (q) The personal information of conscientious objectors should not be disclosed publicly by the State and their criminal records should be expunged; (r) Those who support conscientious objectors or who promote the right to conscientious objection to military service should fully enjoy their freedom of expression (paragraph 57).

In the paragraph 9.3 of the Views adopted by the Human Rights Committee under the Optional Protocol, concerning communication No. 3065/2017 (*Petromelidis v Greece*)³⁴ the Committee recalls its general comment No. 22 (1993), in which it considered that the fundamental character of the freedoms enshrined in article 18 (1) was reflected in the fact that that provision could not be derogated from, even in times of public emergency, as stated in article 4 (2) of the Covenant. The Committee recalls its prior jurisprudence that, although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from article 18, inasmuch as the obligation to be involved in the use of lethal force may

³³ <https://undocs.org/en/A/HRC/41/23>

³⁴ <https://undocs.org/en/CCPR/C/132/D/3065/2017>

seriously conflict with freedom of conscience. The right to conscientious objection to military service is inherent in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs. That right must not be impaired by coercion. In subsequent paragraph 9.4 the Committee recalls that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibits the use of arms, is incompatible with article 18 (1) of the Covenant.

The 2024 Report of the Office of the United Nations High Commissioner for Human Rights "Conscientious objection to military service"³⁵ notes that explicit reference to the right to conscientious objection to military service can be found in the Article 35 of the Constitution of Ukraine (paragraph 11); in Ukraine, the right to conscientious objection to military service is guaranteed by article 35 of the Constitution, while alternative service is regulated by a formal law from 1991; however, Ukrainian authorities have reportedly stated that, since the general mobilization does not concern time limited military service for which alternative service is an option, the constitutional right is inapplicable; in submissions, contributors highlighted that a similar reasoning had been adopted by the judiciary (paragraph 19); the lack of a legal basis of the recognition of conscientious objection to military service in domestic law deprives individuals of domestic legal protection of their exercise of the right and can therefore contribute to its violation. In many jurisdictions, exercising the right to conscientious objection by refusing military service qualifies as a criminal offence (paragraph 23); there is a need for a renewed political commitment to the universal implementation of the right to conscientious objection to military service. In this regard, the High Commissioner makes the following recommendations (paragraph 53); 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 (paragraph 54); 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.¹³³ 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 (paragraph 55); 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

³⁵ <https://docs.un.org/en/A/HRC/56/30>

consider how to take into account the preferences of conscientious objectors for placement in alternative services; (d) Not be punitive or discriminatory (paragraph 56); 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 (paragraph 57); 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 (paragraph 58).

In the Decision of the Grand Chamber of the Constitutional Court of Ukraine of December 27, 2022 No. 4-r/2022 the Constitutional Court proceeds from the fact that the right to freedom of conscience and religion, guaranteed by the provisions of Article 35 of the Constitution, is an individual right that differs from the institutional rights of religious organisations (associations). The Constitution and international standards on freedom of religion protect the right to have, adopt and leave a religion (forum internum), as well as the right to practice a religion both individually and collectively (forum externum). The internal aspect of the right to freedom of conscience and religion (forum internum) is an absolute right that cannot be restricted in any way³⁶.

According to Article 35(1), 35(4) of the Constitution of Ukraine³⁷ everyone shall have the right to freedom of personal philosophy and religion. If the performance of military duty contradicts the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service.

According to Article 24 of the Constitution of Ukraine³⁸ citizens shall have equal constitutional rights and freedoms and shall be equal before the law. There shall be no privileges or restrictions based on, inter alia, political, religious, and other beliefs. This right to equality of citizens before the law and non-discrimination could not be limited in any circumstances, even in time of war, according to Article 64 (2) of the Constitution of Ukraine.

Since the provision of Article 35(4) of the Constitution of Ukraine entitling conscientious objectors to alternative nonmilitary service is aimed at achieving equality before the law between those who have and those who don't have religious pacifist beliefs, it shall be interpreted as a prescription of a way of implementing of more wider commitment to equality before the law and non-discrimination according to Article 24 of the Constitution of Ukraine.

Therefore, Article 24 of the Constitution of Ukraine itself in connection with Articles 35 (1), 35(4) of the Constitution of Ukraine requires to provide even in time of war proper alternative nonmilitary service to conscientious objectors with deeply held, sincere and serious religious or non-religious pacifist beliefs (personal "philosophy" or "religion").

³⁶ <https://ccu.gov.ua/sites/default/files/docs/4-r-2022.docx>

³⁷ <https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text>

³⁸ Ibid.

Also, since according to Article 1 (4) of the Law of Ukraine "On Military Duty and Military Service" military duty includes registering citizens for purposes of compulsory military service, the fulfillment of such duty for conscientious objectors should also be replaced by an alternative duty to register for the purposes of alternative non-military service.

In Recommendation 1742 (2006) "Human rights of members of the armed forces", the Parliamentary Assembly of the Council of Europe asks member states to ensure genuine and effective protection of the human rights of members of the armed forces, and in particular, according to paragraph 9.7 of the Recommendation, to introduce into their legislation the right to be registered as a conscientious objector at any time, namely before, during or after military service, as well as the right of career servicemen to be granted the status of conscientious objector³⁹.

Articles 4, 18 of the International Covenant on Civil and Political Rights and Articles 9, 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms are part of the legislation of Ukraine and have superior legal force (precedence over domestic acts of the legislation of Ukraine) in accordance with Article 19 (2) of the Law of Ukraine "On International Treaties of Ukraine" and Articles 8, 9 of the Constitution of Ukraine, bearing also in mind that protection of human rights is a necessary prerequisite for observance of the principle of the rule of law, which, according to Article 8 of Constitution of Ukraine, is recognized and operates in Ukraine (Venice Commission's "Rule of Law Checklist", paragraph I.A.31)⁴⁰.

As Jesus Christ teaches us, the most important matters of the law, such as justice, mercy, and faithfulness, should not be left aside (Matthew 23:23).

In light of the said, please make sure that the amicus curiae brief on alternative (non-military) service for the Constitutional Court of Ukraine, adopted by the Venice Commission, will leave no doubts that absence of alternative service of truly non-military nature and punishment, discrimination, arbitrary deprivation of liberty and torture, or any other persecutions for serious and deeply held religion or belief incompatible with military service, training or registration for the purposes of military service, is categorically not acceptable in any circumstances, and especially in wartime.

Since the mission of Venice Commission is to care about the values enshrined in the Universal Declaration of Human Rights and European Convention on Human Rights, your amicus curiae brief must recommend the Constitutional Court of Ukraine to satisfy constitutional complaint of prisoner of conscience Dmytro Zelinsky and suggest necessity of further quick extraordinary review of his case by the Supreme Court and his release from the prison.

We humbly ask to circulate this letter among the members of the Venice Commission.

Thankful for your consideration of our epistle,



Yurii Sheliashenko, PhD
Clerk, Meeting of Friends of Ukraine

³⁹ <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17424&lang=en>

⁴⁰ https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf