

Ukraine

## The Ruslan Kotsaba story

**Criminal proceedings against Ukrainian conscientious objector and journalist might be resumed**



**Information provided by**



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# Ukraine: the Ruslan Kotsaba story

## A chronology of events

**23 January 2015:** Ruslan Kotsaba, originally a supporter of the Maidan protests, uploads a video on *YouTube* to voice his opposition to Ukraine's warfare in the eastern part of the country. In a statement addressed to president Petro Poroshenko, the freelance journalist announces that he will refuse to be conscripted, calling on his compatriots to do likewise and make a stand against conscription. In his address, he stresses his view that the ongoing conscription at that time in Ukraine is unlawful since the Ukrainian government has not declared war.<sup>1</sup> He goes on to stress that as a Christian he feels committed to upholding the divine commandment "Thou shalt not kill".<sup>2</sup>

**7 February 2015:** Ruslan Kotsaba is arrested on charges of "high treason" and "obstructing the lawful activities of the Ukraine military".

**From February 2015:** Ukraine's public prosecutor names around 60 witnesses who, over time, are summoned to appear at the monthly court sessions. However, many of them simply don't show up, pointlessly stretching the court case out over many months. Prison conditions during Ruslan Kotsaba's detention are degrading.

**5 February 2016:** A full year on from his arrest, Ruslan Kotsaba gets his first opportunity to speak out before court on the charges brought against him. He uses his two-hour testimony to affirm his antimilitaristic stance and his refusal to take up arms. He also speaks at length about the case brought against him, emphasising that he upholds and practises the democratic rules of journalism.

**12 May 2016:** The court in Ivano-Frankivsk announces that Ruslan Kotsaba's will face 3½ years (42 months) in prison. It dismisses the charge of "high treason", stating that the evidence presented by the prosecution, including the wiretapping records, gave no indication that Mr Kotsaba, in his public appearances, wilfully and directly aided a foreign country by engaging in subversive practices against Ukraine. Ukraine's constitution, the court continues, upholds his freedom of opinion, rendering Ruslan Kotsaba's remarks constitutional.

The court does, however, find him guilty of "obstructing the lawful activities of the Ukraine military", stating that his remarks were not based on precise facts but had instead encouraged the general public to avoid conscription and the duty to defend the country. The court makes no reference to Ruslan Kotsaba's defence that conscription is unlawful since Ukraine has not actually formally declared war.

The court also decrees that in light of the tough prison conditions during detention, his time spent in custody would be counted twice towards his overall prison term pursuant to Article 72.5.

**16 May 2016:** Ruslan Kotsaba lodges an appeal against the verdict passed down by the court.

**14 July 2016:** The court of appeals quashes the verdict and orders the release of Ruslan Kotsaba after more than 16 months in prison.

**1 June 2017:** The High Specialised Court of Ukraine for Civil and Criminal Cases annuls the verdict passed by the court of appeals because, it said, that court had not followed the code of criminal procedure. The supreme court particularly found fault with the failure of the court of appeals to conduct a second full inspection of the evidence presented by the public prosecutor. The case is likely to be reopened by the court in Ivano-Frankivsk very shortly. Ruslan Kotsaba expects to be taken back into detention if the case is resumed.

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<sup>1</sup> <http://www.youtube.com/watch?v=6NICtID6PEo>

<sup>2</sup> Ruslan Kotsaba to the Ivano-Frankivsk eparchy of the Ukrainian Greek Catholic Church.

## Political persecution of antimilitarists

### Summary

*Connection e.V.* and the *German Peace Society - United Antimilitarists (DFG-VK)* see the criminal prosecution of Ruslan Kotsaba as a case of political persecution. Ruslan Kotsaba is still, it would appear, being held in reproach for taking a public stance against Ukrainian government policy and of calling for an end to the “fratricidal war” and for negotiations to be begun with the separatists in the east of the country. That’s the only possible explanation why the Ukrainian authorities are cracking down on him so harshly.

Note, in particular, the attempt by the Ivano-Frankivsk public prosecutor, in the first court case, to have the journalist found guilty of “high treason” on the basis of the flimsiest of evidence. This should also be seen as a threat to gag any further criticism of the conflict, since anyone speaking out can expect to be prosecuted in a similar fashion, and the court, it seems, would be prepared to hear such cases.

Note also that, by summoning more than 60 witnesses, the public prosecutor managed to stretch the first court case out over many months, forcing Ruslan Kotsaba to languish in degrading conditions in custody. The court confirmed as much (indirectly) in its verdict by counting his period in detention twice towards his overall sentence. This should be condemned as punishment without trial and should not, under any circumstances, be legitimised. For Ruslan Kotsaba, the period in custody became a form of punishment in itself.

If the case is indeed reopened by the court of appeals, and Ruslan Kotsaba is once again taken into custody, he would endure this form of persecution all over again.

*Connection e.V.* and *DFG-VK* also consider Ruslan Kotsaba’s call on his compatriots to refuse to be conscripted to be legitimate. The right to refuse conscription is very limited at best in Ukraine and falls short of the standards stated by the European Court of Human Rights, amongst others. Only members of roughly a dozen religious organisations are permitted to avoid military service. Furthermore, army reservists are prohibited from refusing the draft. Moreover, as Ruslan Kotsaba himself notes, calling up conscripts without actually declaring war is a questionable thing to do. Sentencing Ruslan Kotsaba to 42 months in prison for calling on his compatriots to refuse to be drafted and now subjecting him to the prospect of being dragged back to court, even though the court of appeals had quashed his initial sentence, should be condemned in the strongest-possible manner and regarded as political persecution.

## Some background information

### Amnesty International: political prisoner of conscience

*Amnesty International* adopted Ruslan Kotsaba as its first political prisoner of conscience from Ukraine, writing: "Members of the media are suffering harassment at the hands of the authorities. Among them is the journalist and prominent blogger Ruslan Kotsaba – recently named as Amnesty International’s first Ukrainian prisoner of conscience in five years. He could face more than a decade in prison on the charge of 'high treason' and for his views on the armed conflict in eastern Ukraine.

Ruslan Kotsaba was arrested on 7 February (2015) in Ivano-Frankivsk, 130 km south-east of Lviv, after he posted a video describing the conflict as "the Donbas fratricidal civil war". He also expressed opposition to the conscription of Ukrainians to take part in the conflict.

After being formally charged on 31 March with 'high treason', he faces up to 15 years in prison, as well as up to an eight-year sentence on a further charge of 'hindering the legitimate activities of the armed forces'. Amnesty International has called for his immediate and unconditional release, and we see his treatment as a brazen restriction on the right to freedom of expression."<sup>3</sup>

### **The right to conscientious objection under Ukrainian law**

Article 35.3 of Ukraine's 1996 constitution confers the right to refuse military service: "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".<sup>4</sup> This right is fleshed out in greater detail in Article 2 of the Ukrainian Act on Alternative Civilian Service, which states that this right may only be asserted by individuals 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 forces.<sup>5</sup> This list of religious organisations includes Adventists, Baptists, Jehovah's Witnesses and the Pentecostal movement. Applications must be submitted together with an official letter from the religious organisation in question.

Confining the rights of conscientious objectors further still, there is a rule stating that applications must be submitted within six months of receipt of call-up papers. Serving conscripts and reservists are not permitted to apply for exemption from conscription.<sup>6</sup>

In July 2013 the UN Human Rights Committee reviewed the Seventh Periodic Report of Ukraine on the *International Pact on Civil and Political Rights*. In its concluding observations, the committee expressed its concern that no measures appeared to have been taken 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. The committee then reiterated its previous recommendation and stressed that alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of the beliefs.<sup>7</sup>

As a member state of the Council of Europe, Ukraine is also obliged to implement rulings of the European Court of Human Rights. On 7 July 2011, the Grand Chamber of the Court noted that "opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness,

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<sup>3</sup> Amnesty International: Ukraine's spate of suspicious deaths must be followed by credible investigations. 17 April 2015. [www.amnesty.org/en/latest/news/2015/04/ukraine-suspicious-deaths-need-credible-investigations](http://www.amnesty.org/en/latest/news/2015/04/ukraine-suspicious-deaths-need-credible-investigations)

<sup>4</sup> Quaker Council for European Affairs: The Right to Conscientious Objection in Europe - Ukraine. 15 May 2005.

<sup>5</sup> European Bureau for Conscientious Objection: Report on conscientious objection to military service in Europe 2013, p 42.

<sup>6</sup> Quaker 2005, *ibid*.

<sup>7</sup> United Nations Human Rights Committee: Concluding observations on the seventh periodic report of Ukraine, adopted by the Committee at its 108th session, 8-26 July 2013, point 19.

cohesion and importance to attract the guarantees of Article 9".<sup>8</sup> That article of the European Convention on Human Rights guarantees the freedom of conscience and religion.

As far back as 1987, the Committee of Ministers of the Council of Europe stated that a law "may also provide for the possibility of applying for and obtaining conscientious objector status in cases where the requisite conditions for conscientious objection appear during military service or periods of military training after initial service".<sup>9</sup>

The human right of conscientious objection is therefore not guaranteed in Ukraine since it is confined to members of a handful of religious organisations, not to mention the narrow time limit for applications.

### **Draft evasion and desertion, and the consequences under criminal law**

It is estimated that hundreds of thousands have refused to be called up, are still living in Ukraine or have fled to neighbouring countries.<sup>10</sup>

Desertion and draft evasion can attract prison sentences of up to three years according to Articles 335 and 336 of the Criminal Code.<sup>11</sup> In February 2016 the Ukrainian defence ministry reported that 26,800 cases had been brought against draft dodgers.<sup>12</sup> The Ukrainian public prosecutor, meanwhile, has announced that the cases brought against deserters numbered 16,000.<sup>13</sup>

On 5 February 2015 the Ukrainian parliament passed a law that defines new ways in which the army can respond to disobedience, defiance or challenge to the commander, use of violence and the abandonment of battle position. The law states: "In a combat situation, the commander may use weapons or give orders to subordinates on their application if no other way to stop the offence exists".<sup>14</sup> Thus, in the words of the publication *Newsweek*, "commanders are allowed to fire at army deserters or those being insubordinate."<sup>15</sup>

### **Conscripts being hunted down in 2017**

It is still the case that many conscripts in Ukraine are not responding to calls for them to report to the military. In the country's cities, young men rarely live at the addresses at which they are registered for fear that doing so might make it easier for them to be mobilised. That is because conscripts can only be legally mobilised if they sign the conscription papers.

One major reason why young men are continuing to evade military service in their droves is the war raging in the eastern part of the country. It is not standard procedure for regular conscripts to be deployed to the war zone, but the young men know that this does not give them much of a guarantee.

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<sup>8</sup> European Court for Human Rights, 7 July 2011. *Bayatyan vs Armenia*, 23459/03, [www.connection-ev.org/article-1411](http://www.connection-ev.org/article-1411)

<sup>9</sup> Committee of Ministers to Member States: Recommendation No. R (87) 8 Regarding Conscientious Objection to Compulsory Military Service. 9 April 1987.

<sup>10</sup> Roger Annis: Ukrainians are Voting With Their Feet Against War and Economic Disaster. 12 August 2015. [www.connection-ev.org/article-2176](http://www.connection-ev.org/article-2176)

<sup>11</sup> Australian Government, Refugee Review Tribunal: Country Advice Ukraine. 11 December 2009.

<sup>12</sup> RT.com: Ukraine plans stealth military draft as recruitment plummets. 6 February 2016.

<sup>13</sup> Global Research: Ultimate fiasco of the Ukrainian army. 7 November 2015.

<sup>14</sup> Based on *Newsweek*, 6 February 2015, op cit. Legislation can be downloaded at <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=53587&pf35401=324789>

<sup>15</sup> *Newsweek*, 6 February 2015, op cit, see also Global Security.org: Ukraine – Military Personnel; page last updated on 9 February 2017.

On 6 November 2017, the Ukrainian daily newspaper *Segodnya* reported on two police raids on nightclubs in Kiev and Lviv in which recruitment office personnel checked the papers of young men and handed out quite a number of conscription notices. The police reported that in Kiev, 32 young men were sent straight to the recruitment office.<sup>16</sup>

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<sup>16</sup> Bernhard Clasen, email dated 8 November 2017 and n-ost dated 10 November 2017