

Ukraine

## The Ruslan Kotsaba story

Conscientious objector and journalist sentenced to 3½ years in jail



### Information provided by



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## Ukraine: the Ruslan Kotsaba story

### Chronology

**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 called up, calling on his fellow countrymen 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 God's 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. The food is unpalatable, and his family has no option but bring him food in prison. Temperatures in his cell fall to freezing point during winter. Visits are only permitted every few weeks, and to make matters worse, his family are also made to take turns in visiting him. His children are not allowed to come, so he hasn't seen them for more than a year and a half. Ruslan Kotsaba, who is recovering from a stroke and has chronic inflammation of the pancreas and gall bladder, doesn't receive the medical attention he needs.

**5 February 2016:** A full year on from his arrest, Ruslan Kotsaba is given 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 Ruslan Kotsaba's sentence of 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, fails to prove 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 will lodge an appeal against the verdict. A decision on his appeal is expected in the next three months.

As of today, Ruslan Kotsaba has been held in detention for more than 15 months and looks set to remain there until a final court judgement has been pronounced.

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<sup>1</sup><https://www.youtube.com/watch?v=zv-FpSztm5g>

<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 appears to have been accused of 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 and why he has been sentenced to a number of years in prison.

It is particularly worth noting the public prosecutor’s attempt, on the basis of extremely flimsy evidence, to have the journalist found guilty of “high treason”. At the same time, this should be seen as a threat aimed at silencing any further criticism of the conflict, since anyone doing so can expect to be prosecuted in a similar fashion and the court, it seems, would be prepared to hear such cases.

What is more, by summoning more than 60 witnesses, the public prosecutor managed to stretch the court case out over many months, forcing Ruslan Kotsaba to languish in degrading conditions in custody. The court confirms 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.

*Connection e.V.* and *DFG-VK* also consider Ruslan Kotsaba’s call on fellow Ukrainians 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 fellow Ukrainians to refuse to be drafted should be condemned in the strongest-possible manner and regarded as political persecution.

## Some background information

### Amnesty International: political prisoner of conscience

*Amnesty International* has adopted Ruslan Kotsaba as its first prisoner of conscience in Ukraine in five years, 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 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 military 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 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. The right does not apply to serving conscripts and reservists.<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

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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*.

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, 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 early 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 and the time limit for applications is restricted.

### **Desertion and the consequences under criminal law**

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

Desertion and avoiding conscription can attract prison sentences of up to three years according to Articles 335 and 336 of the Criminal Code.<sup>11</sup> Military prosecutors have stated that as of 31 January 2015, as many as 1,300 investigations had been launched, with 160 leading to convictions, mostly fines or suspended prison sentences.<sup>12</sup> Vice Minister of Defence Ivan Rusnak provided a different set of figures: 1,336 criminal cases, he said, had been brought against a total of 7,472 individuals who attempted to avoid conscription.<sup>13</sup> Ukrainian media reported that at the end of January 2015, one conscientious objector had been sentenced to two years in prison in Kirovograd.<sup>14</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>15</sup> Thus, in the words of the publication *Newsweek*, "commanders are allowed to fire at army

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<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.

<sup>8</sup>European Court for Human Rights, 7 July 2011. Bayatyan vs Armenien, 23459/03, [www.connection-ev.org/article-1412](http://www.connection-ev.org/article-1412).

<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.counterpunch.org/2015/08/12/ukrainians-are-voting-with-their-feet-against-war-and-economic-disaster/](http://www.counterpunch.org/2015/08/12/ukrainians-are-voting-with-their-feet-against-war-and-economic-disaster/).

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

<sup>12</sup>ibid.

<sup>13</sup>Bernhard Clasen: Lieber ins Ausland als an die Front. tageszeitung, 6 February 2015.

<sup>14</sup>ibid.

<sup>15</sup>From *Newsweek*, 6 February 2015, op cit. The wording of the legislation can be downloaded from <http://w1.c1.rada.gov.ua/pls/zweb2/webproc34?id=&pf3511=53587&pf35401=324789>.

deserters or those being insubordinate."<sup>16</sup> As a relative of a soldier who fell near Debaltseve told Germany's *tageszeitung* newspaper, "the law merely legalises what has been standard practice on the front for weeks."<sup>17</sup>

Further criminal prosecution options appear to be in the pipeline. As the *tageszeitung* reports, Anton Gerashchenko, advisor of the Ukrainian interior minister, has called for anyone who incites others to avoid military service to be punished under criminal law. According to Viktoria Kushnir, press officer of the country's Ministry of Defence, the Ukrainian authorities were in the process of compiling a database of draft resisters. Anyone who dodges the draft, she said, can expect to be punished.<sup>18</sup>

The *tageszeitung* goes on to report that the general staff of the Ukrainian armed forces are working on draft legislation that will force citizens of conscription age travelling to other parts of the country or even abroad to first get approval from the competent military authority.<sup>19</sup> That would practically close the borders for men of conscription age.

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<sup>16</sup>Newsweek, 6 February 2015, op cit.

<sup>17</sup>Bernhard Clasen: Wer die Heimat nicht liebt. *tageszeitung*, 9 February 2015.

<sup>18</sup>Bernhard Clasen, 6 February 2015, op cit.

<sup>19</sup>*ibid.*