



IAC-PE-SW-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/01897/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24<sup>th</sup> November 2015**

**Decision & Reasons Promulgated  
On 28<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR OLEG KRUK  
(NO ANONYMITY DIRECTION MADE)**

Claimant

**Representation:**

For the Appellant: Miss Willocks-Briscoe, Senior Home Office Presenting Officer

For the Claimant: Ms Murshed of Counsel instructed by Cale Solicitors

**DECISION AND REASONS**

1. The Appellant, hereinafter the Secretary of State for the Home Department (SSHD), is seeking to appeal against the decision of First-tier Tribunal Judge Eban promulgated on 11<sup>th</sup> August 2015. The Claimant, Mr Oleg Kruk, date of birth 21<sup>st</sup> March 1984, is a national of the Ukraine. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.

2. By Decision and Reasons of 11<sup>th</sup> August 2015 Judge Eban allowed the Claimant's appeal on humanitarian protection and Articles 2 and 3 of the ECHR grounds. The appeal on the basis of asylum was dismissed.
3. The Grounds of Appeal by the SSHD in brief assert:-
  - (a) The judge has failed to give reasons or any adequate reasons for findings of fact on material matters. It is submitted that the judge has failed to provide any or any adequate reasons for the finding in paragraph 26.3 of the decision. Paragraph 26.3 reads as follows:-

"The Respondent's [the SSHD] research has established that only members of certain religious denominations may claim the right to conscientious objection. The Greek Catholic Church is not one of them. In the circumstances I find that if the Appellant is returned there is a real likelihood that he will refuse to fight, and that he will not be entitled to claim the right to conscientious objection."
  - (b) Reliance is placed on MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) and on the case of Budhathoki (reasons for decisions) [2014] UKUT 00341.

### **Background Facts**

4. The Claimant's nationality and identity were accepted. It was accepted also that the Claimant had performed "national service" in the Ukrainian Army between 2007 and 2009, although the Claimant had been granted an exemption from "weapons or military training". The Claimant appears to have undertaken non-military duties. It was also accepted that the Claimant's religion is that of Greek Catholic Church.
5. The Claimant's case in essence was that he held deep religious views as a devout adherent of the Greek Catholic Church and as such he was not willing to bear arms. When re-called to national service as a reservist, this was specifically to undertake weapons training and because of his religious beliefs the Claimant had left the country and come to the United Kingdom.
6. The Claimant accepted that he had been called up for military service in 2007. According to his interview the Claimant was asked the following questions:-

"Page 65 Interview

Question 84 Just to confirm because of your religious beliefs you were exempt from using any weapons. Correct?

Answer Yes they allowed me that.

Question 85 How did you get the exemption?

Answer I made a request to the high ranking officer of that unit and they granted my request.

Question 86 Did you have to submit any evidence to show your religious belief.

Answer I remember my priest wrote me a similar character letter.”

7. Having completed his non-military national service the Claimant’s case is that he was then as a reservist recalled to the army specifically to undertake weapons training. He had attended a one day course but then received a renewed call up to take part allegedly in weapons training. Because of his religious beliefs the Claimant claims that he failed to attend the training course. He had obtained a visa for the Schengen area. He did not turn up to the training course but fled the country.
8. The SSHD’s case was that the Claimant would be able as in the past to obtain an exemption from the weapons training. The SSHD’s case being that the Claimant had, when originally undertaking his national service, applied for an exemption and been granted it by his senior officer. The SSHD was suggesting that this was “an official” recognition of the Claimant’s objection to bear arms and that he would be able again to obtain such an exemption if returned to Ukraine. The case on behalf of the Claimant was that that was a matter of the senior officer granting him permission not to participate in weapons training and that was not an official exemption. Given the change in circumstances in the Ukraine since he was allowed the exemption he would not again be allowed to forego weapons training and he was specifically called up to do weapons training.
9. In part the argument before me concerned a document at H1 obtained by the SSHD. A request had been made for information to the embassy in the Ukraine. It has to be noted that the question, which was being posed at the time and as set out in the document, was related to medical conditions which would exclude an individual from undertaking military conscription and not as to the religious grounds for refusing to do national service. However the document does contain comments about conscientious objectors. It seems strange that the document does not contain any reference to medical issues given that it was allegedly related to medical issues. The document provides as follows:-
  - “2. In Ukraine only members of religious denominations who forbid their members to bear arms may claim the right to conscientious objection. The right to conscientious objection is enshrined in Article 35.1 of the ... Constitution according to which: ‘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.’ ...
  3. After an extensive search CPIT cannot find any information regarding the time limit for exclusion to the army in Ukraine.
  4. The respective religious organisations are listed in the list of religious organisations whose doctrine prohibit using weapons (Resolution 2066/1999). ... The list includes Seventh-Day

Adventists, Baptists, Adventists-Reformists, Jehovah's Witnesses and the Charismatic Christian Church."

10. The comments within the document continue by referring to the fact that draft evasion is widespread in the Ukraine and is punishable under Article 72 of the Criminal Code. The document continues thereafter to indicate that the president has reinstated military conscription to deal with the deteriorating security situation in the country. The announcement also stated that partial mobilisation of people with military experience was to be undertaken. There were additional documents which considered the conscription as set out in paragraphs 16 to 19 of the decision.
11. In paragraph 16 there is reference to searches for persons evading military conscription and that the consequence of evading military conscription would be a term of imprisonment of five years. There was also in paragraph 17 a reference to the fact that the authorities had authorised military commanders to use physical force against army defectors. Paragraph 18 also refers to the recall of those reservists that had completed their military service.
12. As a final matter the Claimant's representative highlighted the fact that the new wave of mobilisation of reservists indicated that it was planned to call up about 50,000 reservists and conscripts. The people that were noted as not being mobilised were citizens who had three or more children, graduate students, students and people that were specifically reserved for business firms.
13. The consequence of evading military service appears to be a term if imprisonment. Consistent with the case of PS (prison conditions: military service) Ukraine CG [2006] UKAIT 00016 prison conditions in the Ukraine have been found to breach Article 3. It was not challenged that the country guidance case was still effective. Accordingly the issue was not what was the consequence of evading military service but rather whether or not the Appellant could obtain an exemption from military service, specifically weapons training. Additionally if the appellant were returned to Ukraine would he be given the opportunity of undertaking the non-military option to national service or would he be treated as a person that had evaded national service and therefore liable to imprisonment in any event. If the latter than clearly he would be at risk of being imprisoned.
14. The judge in assessing the issues had considered the background information provided and the information provided with regard to specific religions which banned the bearing of arms. The judge had clearly come to the conclusion that the Greek Catholic Church was not a church that banned its members as a principle of faith from bearing arms. In paragraph 26.3 the judge had suggested that it was the Respondent's research that established that certain religious denominations may claim the right to conscientious objection. It was suggested that that research specifically found that it did not cover the Greek Catholic Church.

15. It is clear that the judge has accepted that the appellant has deep held religious views and he accepts that the appellant does belong and attends regularly at the Greek Catholic church.
16. Consistent with the case of Sepet & Bulbul [2003] UKHL 322 and Andre Lawrence Shepherd v Bundesrepublik Deutschland Case C-472/13 CJEU a nation state is entitled to expect its citizenry to perform national service to protect the state. However the case of Sepet & Bulbul recognises individuals holding strong religious views may object to performance of military service. Where such is the case the issue was whether or not there is a non-military alternative or whether the punishment for failure to perform the military service itself constitutes inhumane or degrading treatment or punishment or persecutory treatment.
17. In respect of Ukraine consequence of the failure to perform military service or evading military service is a term of imprisonment and such would on the basis of PS constitute mistreatment certainly engaging Articles 2 and 3.
18. The Greek Catholic Church is a major religion within Ukraine. The judge was entitled to conclude that if as a principle of faith the church forbade its members from bearing arms than it would have been referred to in the document at H1 from the embassy. Whilst the judge has not explicitly stated that, it is clear that the judge was satisfied that the Claimant would be expected to perform weapons training and that because of his religious beliefs he would refuse to do so. The judge was entitled to conclude that the consequence in line with the background information was that the Claimant would be subjected to forcible mistreatment in an effort to make him perform such duty.
19. In any event the judge was entitled to conclude that as the Claimant held deeply religious views because of which he would not bear arms and because of that and because the Claimant had failed to report for military training he would be treated as an evader and would in that light be liable to imprisonment.
20. The judge clearly concluded that the Claimant was a credible witness and that is assertion that he was being called up to undertake specifically weapons training had resulted in him fleeing Ukraine. Whilst it is suggested that he could seek to obtain an exemption as he had in the past the judge was entitled to conclude that as it was not a principle of faith of the Greek Catholic Church and as the Claimant had been specifically called out to do weapons training there was a real risk that the appellant will be forced to undertake weapons training or alternatively face imprisonment. Accordingly the judge has justification for the conclusions reached in the case on a material issues. In the light of that there is no material arguable error of law of the decision stands.

### **Notice of Decision**

21. The appeal by the Secretary of State for the Home Department is dismissed
22. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge McClure