Russia forced them to fight. Ukraine tried them for treason

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Russia has forcibly mobilised tens of thousands in Ukraine's occupied territories to fight

Ukraine is prosecuting its own citizens who have been forcibly mobilised to fight for Russia – despite initial promises of an amnesty from the country's top officials.

Since February this year, thousands of men in the Russian-occupied parts of Donetsk and Luhansk regions in eastern Ukraine have been seized from the streets, public transport or their places of work and sent to fight on the frontlines against Ukrainian forces.

Ukraine considers forced mobilisation in territories occupied by Russia a [war crime](#).

Since the February 2022 invasion, the Ukrainian government has run a public campaign aimed at residents of occupied territories, promising mobilised men that they would be released from Ukrainian custody if they have not committed war crimes.

But lawyers involved in the cases of men who have been forcibly mobilised have told openDemocracy that Ukraine does not properly investigate the circumstances in which its citizens joined Russian military units.

As a result, say the lawyers, people who have been coerced into fighting are being wrongly prosecuted for treason.

Frontline deaths

Forced mobilisation is "part of the genocidal nature of Russia's war against Ukraine – another way that Russia is killing Ukrainians", says Olena Lunova, a lawyer and advocacy director at the Kyiv-based ZMINA human rights organisation.

If Ukrainians sent to the frontlines by Russia survive, they are often captured by Ukrainian forces.

Once in captivity, says Lunova, the men are treated by default as if they have voluntarily joined the Russian army – in effect, as traitors. Some have been prosecuted and sentenced to up to 15 years in prison.

This is a significant shift from the original policy of an amnesty. What's more, the legal status of these prisoners is ambiguous.

Under the Geneva Convention, prisoners of war (POWs) cannot be prosecuted while in enemy captivity. On the other hand, Ukraine has the right to prosecute its own citizens for joining illegal armed formations.

The prisoners are held in camps or detention centres, where their situation is uncertain: will they be

sent back to Russian-controlled territory, potentially against their wishes, in prisoner exchanges? Or will they eventually be released and allowed to make their own way home?

> "Ukraine's General Prosecutor's Office considers forced conscription and forced mobilisation in territories occupied by Russia a war crime"

ZMINA, Lunova's human rights organisation, believes that if a Ukrainian citizen living in Russian-occupied territory has not committed any war crimes, then Ukrainian state institutions must "presume" that they are fighting for Russian forces "involuntarily".

"It's up to the state to prove the contrary," Lunova said.

Ukraine's General Prosecutor's Office considers forced conscription and forced mobilisation in territories occupied by Russia a war crime, and has previously conducted [criminal investigations](#) into it. Prior to Russia's February 2022 invasion, Ukraine submitted [applications](#) to the International Criminal Court over forced conscription in Russian-controlled territory.

"It can't be like this, the [Ukrainian] state must decide on its position at some point," says Lunova.

The Ukrainian General Prosecutor's Office did not respond to openDemocracy's request for comment.

Cases heard in a single day

Pavel Lysyanskyi, also a lawyer and founder of the Eastern Human Rights Group, which monitors human rights in the Donetsk and Luhansk regions, recently represented a forcibly mobilised man prosecuted by Ukraine.

Lysyanskyi speaks of Serhiy*, a computer science schoolteacher in his thirties, who was taken by 'Donetsk People's Republic' soldiers while at work on 23 February, the day before Russia launched its full-scale invasion.

Escorted under armed guard, Serhiy was told he was being taken to a "military gathering", a preparatory event for checking the documents and numbers of military-age men.

In reality, the gathering was a pretext for sending Serhiy and others to Russia, and then to the frontline in Ukraine's Kharkiv region. There, with the Russian army behind them and the Ukrainians in front, they were ordered to dig trenches.

After Serhiy and his unit were captured by Ukraine, his sister, who lives in Kyiv, asked Lysyanskyi to represent her brother. Serhiy was charged with three offences: treason, participation in a terrorist organisation, and participation in an illegal armed formation.

"We chose a [defence] strategy of proving that initially [Serhiy] had no motive to join the military," Lysiankyi says.

"Many top officials have said on many occasions that 'if you have been forcibly mobilised, you are a victim'. I wanted to prove this in court," he says.

In court, Serhiy did not deny that he had been caught at the frontline, but he repeatedly stated that he had not joined the Russian military of his own will.

According to Lysyanskyi, Ukrainian prosecutors did not investigate how Serhiy ended up on the

frontline. Instead, one of the pieces of evidence presented against him in court was a screenshot from Myrotvorets, a website that collects information about alleged 'enemies' of Ukraine.

Myrotvorets is allegedly run by volunteers close to the Ukrainian security forces. After Serhiy was captured, a profile of him appeared on the site.

Despite Lysyanskyi's efforts, Serhiy was sentenced to 13 years in prison.

Serhiy's case took five hearings, but most cases involving POWs from Luhansk and Donetsk are processed in a single day, according to Lysyanskyi. Some media reports suggest a judge can [make decisions](#) on up to four cases in a single day.

Olena Lunova also told openDemocracy that Ukrainian courts do not investigate the circumstances that lead its citizens to join the ranks of Russian or Russian-backed forces, either at the investigation or the pre-trial stage.

> "They are tried for the fact that they were caught in uniform with insignias [of the 'people's republics']. These cases have no evidence base that they committed war crimes" - Olena Lunova

According to data from the national court register, says Lunova, Ukraine prosecutes residents of Luhansk and Donetsk for treason but – tellingly – does not prosecute them for war crimes.

"They are tried for the fact that they were caught in uniform with insignias [of the 'people's republics']. These cases have no evidence base that they committed war crimes. This puts these cases into question," she says.

Lunova believes that "a comprehensive study of the facts must be guaranteed" when it comes to the circumstances where a Ukrainian national has been forcibly mobilised by Russia.

"Treason is an act with intent. When it comes to the victim of a war crime, there can be no intent," she says.

Ukraine changes its mind

In the year to July 2022, Russia forcibly mobilised more than 100,000 men in Russian-occupied territories, says Lysyanskyi. It conducted eight mobilisation drives as part of its combat army reserve programme.

Signs that Ukraine was monitoring developments came after Russian-backed forces announced general mobilisation on 19 February this year – five days before the full-scale invasion. At the time, the Ukrainian General Prosecutor's Office [stated](#) that forcibly mobilised Ukrainian citizens were victims of a war crime, launching an investigation.

The Ukrainian [government](#) and officials [called](#) on men in the occupied territories to avoid being mobilised. Those who were mobilised were told to surrender to Ukrainian forces at the earliest opportunity. Officials promised that as long as a person didn't commit any war crimes, they would eventually be allowed to return home.

Since then, however, local courts in Ukraine have tried and issued sentences in more than 50 cases of treason, according to the national court register.

Since details of specific cases are closed to the public, openDemocracy can not verify which of these

cases involve people who were forcibly mobilised – as opposed to those who voluntarily joined the Russians.

But Lunova, who has reviewed cases in the register, says judges have heard cases where defendants explain they were coerced into joining up. In these cases, she says, the defendants have been sentenced to between 13 and 15 years in prison.

Under Ukraine's martial law, a person could potentially be sentenced [to life imprisonment](#) for treason.

Living in fear

Residents of the occupied territories who want to avoid being mobilised live in fear.

For the past nine months, Yuriy* has been hiding in Donetsk. He tries to make sure no one can see into his apartment from the street. He keeps his curtains shut and the lights switched off in the evening. His mother brings him food and water, he doesn't go to the shop by himself.

"To sit alone in four walls is horribly crushing," Yuriy told openDemocracy over a messaging app.

"I had my own issues before, but now it seems I've got more of them. I started drinking more, my sleep deteriorated, and I've gained weight. It's all unpleasant.

"I really want to go out, at least just for a walk, but I don't risk it yet," he wrote.

In February, Yuriy says a local university sent one of his friends to the conscription office under threat of expulsion. Since then, Yuriy's friend has been listed as missing. Another of his friends, a work colleague, died – most probably killed – after he was mobilised.

Prior to the Russian invasion this year, it was possible to bribe your way out of conscription in Donetsk or Luhansk and cross the border into Russia.

Now the only way is to lay low until the war ends. Avoiding mobilisation can carry up to a 10-year prison sentence from the occupation authorities.

A difficult matter

According to the International Committee of the Red Cross in Ukraine, Ukrainians in the Russian ranks are protected by the Geneva Convention if captured, and are considered POWs.

Lunova says that Ukraine nonetheless has the right to prosecute its citizens for siding with the enemy, under domestic law. The problem is that it is failing to distinguish between criminals and victims.

Some Ukrainians joined Russian-backed forces voluntarily. And some forcibly mobilised people may have committed war crimes.

For these reasons, Ukraine can't offer a blanket amnesty to all prisoners. But Ukraine's initially generous position has shifted as mobilisation has grown, says Lunova.

"Ukraine's political position has changed. At the beginning of the full-scale invasion, the scale of mobilisation was not clear, and it wasn't clear how [mobilisation] would look on the frontlines."

The change in official position may have also come directly from Ukraine's general prosecutor,

Lunova says.

The cases she examined show a 'unified practice' in prosecuting forcibly mobilised personnel, suggesting an order from the top.

"We tried to communicate to [GP] Andriy Kostin about the problem that Ukrainian citizens are facing horrible sentences under questionable investigation. But I have a feeling that the Prosecutor's Office is avoiding this subject because it is a difficult matter," says Lunova.

Another reason why Ukraine might have changed its policy on POWs is the need to increase the numbers of captured soldiers it can exchange with Russia, according to a conflict analyst with a Ukrainian NGO.

"The Russians have likely had more [POWs] because Ukrainian forces were in defence during the first part of the invasion," said the analyst, who spoke to openDemocracy on condition of anonymity.

Neither Ukraine nor Russia has published numbers of POWs in their captivity since February.

Since October, Ukraine has returned 104 Ukrainian citizens to the occupied parts of Luhansk and Donetsk regions in prisoner exchanges, according to Denis Pushilin, head of the 'Donetsk People's Republic'.

Last month, says Pavel Lysyanskyi, his client Serhiy was exchanged and returned to the occupied territories, without his knowledge. Public records show an exchange in September of another forcefully mobilised POW from Donetsk region who was convicted for the same offences as Serhiy.

Ukraine's Ministry for the Reintegration of Occupied Territories continues to call on Donetsk and Luhansk residents to inform Ukraine about instances of forced mobilisation and to surrender to Ukrainian forces if mobilised.

"To trial forcefully mobilised for treason is obviously wrong. Things must be changed. How exactly is up for debate," Lunova says.

*Names have been changed

Kateryna Semchuk

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