

German Federal Court of Justice rules: Ukrainian conscientious objectors may be extradited

Yevgeny Tkachenko
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On January 16, the German Federal Court of Justice ruled in a landmark decision that the extradition of a conscientious objector to the war in Ukraine is permissible.

The question was whether the extradition of a Ukrainian refugee, requested by the Ukrainian government, who invokes the fundamental right to conscientious objection, is compatible with Germany's constitution. The court answered this question in the affirmative, thereby revising its own ruling from 1977. The universal right to conscientious objection (Article 4, Paragraph 3 of Germany's Basic Law), according to which "no one may be forced to do military service with a weapon against his conscience", is thus overridden.

The judges justified their decision (4 ARs 11/24) as follows:

If the person being sought refuses military service with weapons for reasons of conscience in extradition proceedings under the European Convention on Extradition of December 13, 1957, and there is no guarantee that he will not be called up for military service in the requesting state after his extradition and that he will not face punishment in the event of his refusal, this does not constitute an obstacle to extradition if his home country, which is requesting extradition, is attacked with armed force in violation of international law and therefore does not guarantee a right to conscientious objection.

To put it more simply: Conscientious objectors may be extradited to countries that are at war and used as cannon fodder there as long as the German government considers the war a "defensive war"—in this specific case, the war in Ukraine.

According to the Federal Court of Justice, the personal protection provided by Article 4, Paragraph 3 of the Basic Law is limited only to persons who are subject to military service under German law, although the judges added that this right can also be suspended within Germany. According to them, the constitution allows "the protection of the right to conscientious objection to military service to be subordinated to other high-ranking constitutional values in exceptional circumstances."

The right to conscientious objection might as well be removed

entirely from the constitution. The "exceptional circumstances" mentioned refer to a wartime situation, and if the right to conscientious objection can be suspended even in times of war, then this right simply does not exist. The Federal Court of Justice has provided the ruling class with a legal justification for completely abolishing the right to conscientious objection in the future.

The ruling class is clearly trying to first divide workers and then deprive them of their democratic and social rights. First, the Federal Court of Justice divides those liable for military service into two groups—those who are not subject to military service under German law and those who are subject to military service under German law—and deprives first one group and then the other of their right to conscientious objection.

The same divide-and-conquer principle is also behind the omnipresent anti-refugee rhetoric. The established parties and media stir up xenophobia and nationalist ideology, then the democratic and social rights of the refugees are taken away first, after which the rest of the working class is deprived of them as well.

This is not the first attack by the German government on the rights of Ukrainian refugees. As the WSWs reported in August 2024, the state of Hesse plans to deport male Ukrainian refugees into the war after their papers expire.

What awaits the deported and extradited Ukrainians is not only a likely premature death in an imperialist war but also violence and torture.

In addition to the well-documented cases of employees of the Ukrainian conscription authority (TCR) violently conscripting young men in the public, there is a more hidden form of TCR violence that is becoming increasingly brutal. In the basements and windowless rooms where new recruits are held, the TCR forces them—through verbal threats and, increasingly, physical violence—to "voluntarily" sign forms waiving their rights and committing to all sorts of military service.

The TCR increasingly uses overt torture as a means of instilling fear in mobilized men and forcing them into submission. There was one case where they gathered a group of recruits in a basement and demonstratively broke the arm of one of them in order to intimidate the rest into signing forms that waive their rights.

This is also intended to ensure that recruits continue to be deeply afraid in the future of what might happen to them if they disobey. The more desperate the situation of the Ukrainian army becomes, the more brutal these measures become.

With its decision, the Federal Court of Justice overturned its own 1977 ruling, which recognized the right to conscientious objection as a universal fundamental right. In it, it had deemed the extradition of a Yugoslav conscientious objector inadmissible.

At that time, Yugoslavia was supporting the MPLA in the Angolan civil war but did not send its own troops there. Nevertheless, the Federal Court of Justice ruled that even mere military service with weapons, without actual deployment in a war, was protected by the right to conscientious objection.

This fundamental right applies “not only to persons subject to military service in the Federal Republic under the Military Service Act, and not only to the refusal of armed service in the German armed forces,” the Federal Court of Justice argued at the time. It stated:

Rather, it is a general fundamental right enshrined in the Basic Law of the Federal Republic, based on the fundamental right to freedom of belief and conscience, which applies without restriction to everyone who can be called up for military service with weapons.

The Federal Court of Justice explained this in detail and concluded that

a restriction of the right to conscientious objection to the group of persons subject to German military service [...] would also run counter to the essential purpose of Article 4, Paragraph 3 of the Basic Law, which is to protect the conscientious objection to military service with weapons and to protect the conscientious objector from the compulsion to kill [...], a compulsion that is necessarily associated with any military service with weapons, regardless of the country in which it is to be performed.

In summary, the Federal Court of Justice stated at the time:

A decision which results in someone being forced to perform military service with a weapon against their conscience therefore always violates Article 4, Paragraph 3 of the Basic Law, regardless of whether this service is to be performed at home or abroad and whether the person concerned is liable for military service under German law or not.

Now, the Federal Court of Justice justifies its revision of the 1977 ruling by arguing that the decision at that time “did not

concern extradition under the European Convention on Extradition, but rather an extradition under the Germany-Yugoslavia Extradition Treaty.” It’s a different extradition agreement, so everything’s fine!

A more bureaucratic justification could hardly be developed. None of the arguments regarding the universal validity of the right to conscientious objection put forward by the Federal Court of Justice in its 1977 decision are mentioned here, let alone refuted.

This revision of the Basic Law must be understood as part of the renewal of German imperialism. The attack on the right to conscientious objection fits perfectly within the framework of the pervasive political propaganda that Europe must give everything to “defend” itself against external enemies, and to this end, even fundamental democratic and social rights must be abolished.

The growing calls for the reintroduction of conscription, the astronomical increases in the defense budget, and the associated social cuts all follow the same logic. In order to wage war abroad, a war must be waged at home, a war against all social and democratic achievements of the working class.

After the monstrous crimes of World War II, Germany’s ruling class had to make some social and democratic concessions to calm the anger of the masses. The universal right to conscientious objection, enshrined in the constitution, was one such concession.

But the contradictions of capitalism are escalating and leading to war once again. This applies not only to the ongoing war against Russia in Ukraine, but also to the tensions between the US and the rest of NATO, which could escalate into violent clashes. On the eve of an impending Third World War, in the death crisis of capitalism, even the constitution is not worth the paper it is written on.

The working class is the only force in society that can put an end to this war madness. To do so, it must build a mass movement against war, dictatorship, anti-refugee propaganda, and the entire capitalist system. The SGP and its youth organization, the IYSSE, are fighting for this perspective. We call on all readers: Take up the fight against war! Join the SGP and the IYSSE!



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