Flygtningenævnets baggrundsmateriale

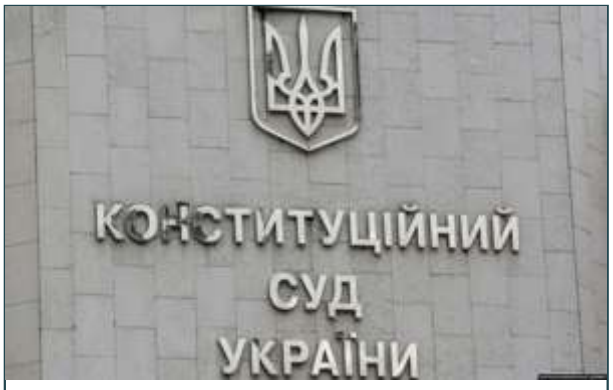
Bilagsnr.:	**549**
Land:	Ukraine
Kilde:	Forum 18
Titel:	Ukraine: How should government deal with conscientious objectors in wartime?
Udgivet:	24. april 2025
Optaget på baggrundsmaterialet:	21. juli 2025

UKRAINE: How should government deal with conscientious objectors in wartime?

24 April 2025
Dmytro Vovk,
@VovkDmytro

The declaration of martial law after Russia's full-scale invasion in 2022 cancelled the limited right to alternative service in peacetime. Hundreds of conscientious objectors to mobilisation – on religious and non-religious grounds - have been detained, forced into the army, held illegally (often for months) on military bases, or criminally prosecuted. Requested by Ukraine's Constitutional Court, a Venice Commission brief reaffirmed states' obligation to offer alternative service. If Ukraine is to meet international standards, the government should reinstate legal access to alternative civilian service and review criminal convictions.

Since the beginning of Russia's full-scale invasion of Ukraine in February 2022 and Ukraine's immediate declaration of martial law, alternative civilian service has not been available to conscientious objectors in Ukraine. Many conscientious objectors – both on religious and non-religious grounds - have been detained and forced to join the army, held illegally (often for months) on military bases, or criminally prosecuted.



Ukraine's Constitutional Court, Kyiv
© Serhii Nuzhnenko/RadioSvoboda.org (RFE/RL)

Jehovah's Witnesses report that about 661 of their believers faced criminal charges of evading mobilisation in 2024. Courts have handed several conscientious objectors - including four Jehovah Witnesses, a Protestant and a Seventh-day Adventist - three-year jail terms for refusing mobilisation. A number have been waiting (occasionally in pre-trial detention) for appeal proceedings. Courts have handed others

Latest Analyses

Ukraine
Occupied Ukraine
Kyrgyzstan
Russia
Tajikistan

Latest News

Russia
Occupied Ukraine

suspended sentences.

More recently, courts have begun jailing conscientious objectors on charges of "disobedience", with one taken to prison in January to begin his five-year jail term.

While several international human rights actors have encouraged Ukraine to protect conscientious objectors' rights, the Ukrainian government has done little to address this problem. Informally, officials explain this reluctance with the risk that men who do not wish to fight will misuse alternative service as a legislative hole.

International standards clearly recognise the right to conscientious objection to military service as an intrinsic part of freedom of religion or belief (see below).

Ukraine's Constitution specifically mentions the right to opt out of military service, at least on religious-based conscientious grounds. However, the government restricts this right in peacetime to members of only ten registered religious communities, while the law does not recognise the right to alternative civilian service at all in wartime (see below).

The government announced in December 2024 that some religious entities could be allowed to get exemption from mobilisation for up to half their clerics. While some clerics can be qualified as conscientious objectors, the European Court of Human Rights in Strasbourg does not consider alternative civilian service reserved for clerics but not ordinary believers as adequate protection under the European Convention on Human Rights (see below).

At the request of Ukraine's Constitutional Court, the Council of Europe's Venice Commission produced an amicus curiae brief on alternative (non-military) service in Ukraine in March 2025. This reaffirmed that "States have the positive obligation to set up a system of alternative service which must be separated from the military system, shall not be of a punitive nature and remain within reasonable time limits." It adds that "under no circumstances may a conscientious objector to military service be obliged to bear or use arms, even in self-defence of the country" (see below).

If Ukraine is to abide by the international standards, the government should reinstate legal access to alternative civilian service to all conscientious objectors and review the criminal convictions of those sentenced for their conscientious objection to mobilisation (see below).

International standards on conscientious objection

European Court of Human Rights, Strasbourg
© Voice of America

While neither the International Covenant on Civil and Political Rights (ICCPR) nor the European Convention on Human Rights (ECHR) mention the right to conscientious objection to military service explicitly, the United Nations Human Rights Committee, the UN Office of the High Commissioner for Human Rights (OHCHR) and the European Court of Human Rights (ECtHR) in Strasbourg have recognised this right as an intrinsic part of freedom of religion or belief.

In General Comment 22, the UN Human Rights Committee notes that "such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service."

In addition, as the ECtHR notes, "the alternative arrangements made by the State must be suited to the requirements of the individual's conscience and beliefs". For example, if a person conscientiously objects to serving in the army even in a non-military capacity, the state must respect this objection. It is not the business of the state to decide whether being a driver or a cook at a military base is enough to satisfy the individual's pacifist convictions.

The state enjoys some discretion in regulating the application of this right, in particular in determining whether the applicant holds genuine beliefs prohibiting the performance of the military duty. However, the full rejection of this right or practical impossibility to get access to alternative civilian service can hardly be reconciled with state obligations in the area of freedom of religion or belief.

As the right to conscientious objection is a part of freedom of religion or belief, the state cannot derogate from its obligations to guarantee this right even in time of public emergency which threatens the life of the nation, such as external aggression (Article 4 of the ICCPR).

The UN Human Rights Committee criticised states that limit the recognition of the right to conscientious objection to peacetime while not recognising it during wartime. Still, this derogation is permitted under the European Convention on Human Rights to the extent that it is strictly required by the situation and consistent with other

obligations under international law. In 2022, the Ukrainian government derogated from its obligations under Article 9 of the ECHR, but revoked this decision in 2024.

In its March 2025 amicus curiae brief on alternative (non-military) service in Ukraine (see below), the Council of Europe's Venice Commission underscores that "the very nature of conscientious objection implies that it cannot be fully excluded in time of war, albeit States have a limited margin of appreciation, especially in case of a general mobilisation. However, it appears to the Venice Commission that under no circumstances may a conscientious objector to military service be obliged to bear or use arms, even in self-defence of the country."

Therefore, from the perspective of freedom of religion or belief standards, at a time of war the state can intensify scrutiny of alternative service applications or limit alternative service options, but is not allowed to fully cancel access to alternative civilian service.

Ukraine's constitutional and legal framework

Uzhhorod District Recruitment Office
© CurrentTime TV

Ukraine's Constitution limits alternative service to those with religious conscientious objections to serving in the military. Article 35, Part 4 stipulates: "If the performance of military duty contradicts the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service." The Constitution allows for the limitation of the rights under Article 35, including the right to alternative civilian service, during martial law, but the government has never decided to implement this limitation.

The legislative framework is more restrictive. It guarantees the right to alternative service only in peacetime and only for those who not only hold pacifist beliefs but also belong to religious organisations whose teachings prohibit the bearing of arms (Article 2 of the Alternative Service Law) and are recognised as such by the government.

The government has listed ten religious groups that the state recognised as pacifist, whose members can apply for alternative civilian service in peacetime. While the list is quite broad, members of other religious communities or faith traditions or those who object on non-religious conscientious grounds are not allowed to apply to

exercise this right even in peacetime.

More importantly, alternative civilian service is not available for those mobilised under martial law. Ukraine's Mobilisation Law does not provide for those mobilised to opt for alternative service. This has completely prohibited the right to alternative service (whether inside or outside the military) since the beginning of Russia's full-scale invasion of Ukraine in February 2022.

Some clerical exemptions from mobilisation

In December 2024, the Ukrainian government announced that religious entities (such as associations, monasteries, educational institutions, and local communities) would be allowed to get exemption from mobilisation for up to half their clerics.

In February 2025, the State Service for Ethnic Policy and Freedom of Conscience (DESS) set out which religious entities could apply for this exemption and the list of clerics who could be exempted. The DESS documents granted broad access to this exemption for many registered religious organisations. However, it excluded from this entitlement unregistered religious groups and the Ukrainian Orthodox Church, which the government considers to be affiliated with Russia.

While some clerics can be qualified as conscientious objectors, the European Court of Human Rights does not consider alternative civilian service reserved for clerics but not ordinary believers as adequate protection under Article 9 of the Convention (see its 2019 decision Mushfig Mammadov and Others v. Azerbaijan – Application No. 14604/08).

In addition, the exempted clerics are not required to have convictions prohibiting them from bearing arms as a precondition of the exemption. They can be exempted merely based on their religious status. They are also not required to undertake any civilian service in place of performing the military duty.

How courts handle conscientious objector cases

Initially, prosecutors have brought charges against those objecting to mobilisation under Article 336 of the Criminal Code ("Refusing call-up for military service during mobilisation or in a special period, and for military service during call-up of reservists in a special period"). This carries a punishment of three to five years' imprisonment.

But recently investigation bodies changed the qualification for Criminal Code Article 402, Part 4 ("Disobedience committed under martial law or in a combat situation") and even Criminal Code Article

408 ("Desertion"), which carry punishment of five to ten years' imprisonment.

While the crime of disobedience or desertion can be committed by military personnel only, investigators argue that a mobilised person becomes a member of the military when he receives a draft document. Some first-instance courts have already agreed that those who evade mobilisation - whether on conscientious or other grounds - can be punished under Criminal Code Article 402.

Court verdicts regarding the right to alternative civilian service have varied. While most courts have supported the government's approach that there can be no alternative service during martial law, other courts have acquitted the objectors, referring to the constitutional protection of this right. Eventually some of these cases reached the Ukrainian Supreme Court in Kyiv.

In 2024, the Supreme Court ruled that refusing mobilisation constitutes draft dodging, even if committed by a member of a religious organisation whose teachings prohibit the bearing of arms. The Court emphasised that the constitutional duty to defend the Motherland does not presuppose the mobilised person's direct obligation to bear arms. It ruled that such service can be performed in other ways, including by maintaining military equipment, building fortifications, evacuating the wounded, and performing other functions not related to bearing arms.

Therefore, from the perspective of the Supreme Court, the right to conscientious objection for those mobilised can be realised by being appointed to non-military positions within a military unit. However, even though this does occur informally in practice, Ukrainian legislation imposes no such requirement on the military and does not provide the mobilised person the right to opt for unarmed military service.

Since the 2024 Supreme Court decision, courts have generally followed the Supreme Court's approach. However, in March 2025 a Kharkiv district court acquitted a Baptist, Oleksy Belikov, who had objected to mobilisation on conscientious grounds.

Constitutional proceeding and the Venice Commission's brief

In October 2024, the Constitutional Court started hearing the case of Dmytro Zelinsky – a Seventh-day Adventist sentenced to a three-year prison term for refusing mobilisation on grounds of conscience. He complained that his right to alternative civilian service cannot be limited under martial law and the state violated his rights by providing no legal access to alternative civilian service in wartime.

Dmytro Zelinsky

In December 2024, the Constitutional Court requested an amicus curiae brief from the Council of Europe's Venice Commission. As mentioned above, in March 2025 the Venice Commission brief made clear the impossibility of the total exclusion of alternative civilian service even in wartime. The Commission concludes that "under the ECHR as well as under the ICCPR, States have the positive obligation to set up a system of alternative service which must be separated from the military system, shall not be of a punitive nature and remain within reasonable time limits".

In addition, the Venice Commission notes that "to assess whether refusal of alternative service in situations of mobilisation and self-defence against foreign aggression is necessary and proportionate, it may be important to consider if the government has granted any other exemptions from military duty, as well as the scope of such exemptions".

Thus, one can conclude that the Ukrainian government's intent to exempt from mobilisation up to half the clerics of many registered religious organisations - even if these clerics are not prohibited by their faith to bear arms and without imposing any alternative service on them - could additionally prove that a blatant denial of alternative civilian service to all conscientious objectors is disproportionate.

The constitutional hearing of Zelinsky's case is in progress. Since January 2025, the Constitutional Court has lacked a quorum and therefore does not currently operate. The Court is due to resume its operation when at least one new judge is appointed.

What needs to be done to meet international standards?

If Ukraine is to abide by the international standards under Article 18 of the International Covenant on Civil and Political Rights ("Freedom of thought, conscience and religion") and Article 9 of the European Convention on Human Rights ("Freedom of thought, conscience and religion") and the recommendations provided by the Venice Commission, it should implement its positive obligation to reinstate legal access to alternative civilian service to conscientious objectors that has not been available since the beginning of Russia's full-scale invasion of Ukraine and Ukraine's declaration of martial law.

Alternative service should include both unarmed options within military institutions and also strictly civilian options, such as work in hospitals or humanitarian programmes for displaced persons and people affected by the war. The system of alternative service, including the commission deciding on conscientious objectors' applications, should be independent of the Army and the Defence Ministry.

The government should address corruption risks, potential misuse of this right and other concerns over alternative civilian service without imposing a complete ban on it.

International human rights actors and freedom of religion or belief advocates should encourage the Ukrainian government to protect conscientious objectors' rights. A special role could be played by European Union institutions, as Ukraine has been pursuing the goal of accession to the Union. This would require the European Commission to take a more careful and more public approach to freedom of religion or belief-related issues. According to its 2024 Ukraine report, the Commission has failed to detect any freedom of religion or belief challenges in Ukraine, although in private it has recommended that the Ukrainian government address this problem.

Finally, Ukraine should set up a legal procedure allowing for re-considerations of the guilty verdicts against individuals who conscientiously objected to mobilisation. In cases where courts found evidence that defendants held genuine and firm pacifist convictions, they should be acquitted.

- Dmytro Vovk is a visiting professor at the Benjamin N. Cardozo School of Law. He also runs the Center for the Rule of Law and Religion Studies at Yaroslav Mudryi National Law University in Ukraine.

(END)

More reports on freedom of thought, conscience and belief in all Ukraine

More reports on freedom of thought, conscience and belief in Russian-occupied Ukraine

15 April 2025

OCCUPIED UKRAINE: Russian FSB raids, court cases, fines, deportation threats

On 2 March, officers of the Russian FSB security service and Luhansk Regional Police's Anti-Extremism Centre raided the Sunday worship meeting of a Baptist congregation in Stakhanov in Russian-occupied Luhansk Region. On 10 April, a court acquitted the church's pastor. This was the latest raid on religious communities in Russian-occupied parts of Ukraine. Officers particularly target religious communities that do not have registration under Russian law. They seize religious literature, photograph those present and hand material to Prosecutor's Offices for religious leaders to be prosecuted.

10 March 2025

UKRAINE: Conscientious objectors prosecuted, jailed as "disobedient" soldiers

Officials took Baptist Serhy Semchuk to prison in Lviv in January for his 5-year jail sentence. The Recruitment Office had told him he could serve in the military without weapons. However, later a criminal case was launched when he refused to take up weapons. "We're in such shock," a church member says. "He doesn't want to kill." Conscientious objectors to mobilisation who were not in the military also increasingly face prosecution on "disobedience" charges, including 6 Jehovah's Witnesses on trial. Many Protestant and Jehovah's Witness conscientious objectors are on trial for refusing mobilisation.

4 March 2025

OCCUPIED UKRAINE: Religious freedom survey, March 2025

Freedom of religion or belief and interlinked human rights are seriously violated in Russian-occupied Ukraine. Forum 18's survey analysis documents among other violations: serious systemic freedom of religion or belief violations starting with the initial March 2014 invasion; pressuring, kidnapping, torturing, jailing, and murdering religious leaders; stopping meetings for worship, banning and closing religious communities; jailing prisoners of conscience for exercising freedom of religion or belief; banning religious texts and purging libraries; and "anti-missionary" prosecutions. Until Russia's occupation of Ukrainian territory is ended, the freedom of religion or belief and other human rights violations seem set to continue.