

DUTY TO PROTECT MOTHERLAND V. MEN'S LIFE, IN TIMES OF WAR: INTERNATIONAL STANDARDS AND UKRAINIAN MISTAKES, AS CAUTION FOR EUROPEAN COUNTRIES

SERGIY PANASYUK*

Abstract: From the start of the full-scale aggression of Russian troops into Ukrainian territory, European countries faced a real risk of invasion and should be prepared for war. After almost three years of resistance, the Ukrainian nation sacrificed hundreds of thousands of lives of its bravest sons, but not all of them were ready to die. Ukrainian governmental actions do not leave most Ukrainian men a chance to leave the country or refuse to go and die on the battlefield. Violating international principles and Ukrainian legislation provisions, the Ukrainian authority chose state security instead of men's right to life and continues to do so. Such examples should be analysed and discussed to prevent similar human rights violations if war breaks out in European countries in the near future. Having similar constitutional provisions, some European countries are at real risk of repeating Ukrainian mistakes, so they should analyse their national legislation, using the Ukrainian example, to avoid human rights violations in the case of a future war in Europe.

Keywords: duty to protect the motherland; right to life; human rights; right to conscientious objection; alternative service; conscription

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INTRODUCTION

The full-scale invasion of Russian troops into Ukrainian territory in 2022 changed the European security reality and pushed governments to consider the risk of all-out war in Europe. Western officials and politicians claim that European countries must brace for a decade of Ukrainian war,¹ and possible military conflict with Russia,²

* Ph.D. in constitutional law, a professor at Ukrainian-American Concordia University, a Visiting Fellow at Cologne/Bonn Academy in Exile (CBA) (Cologne/Bonn, Germany), a former professor at European University (Kyiv, Ukraine), a former lecturer at the Department of Constitutional Law of Charles University (Prague, Czech Republic) and a former academic consultant to a Judge of the Constitutional Court of Ukraine (2017–2022).

¹ MASON, C. – FRANCIS, S. Europe must brace for decade of Ukraine war – Nato chief. In: *BBC* [online]. 18. 7. 2024 [cit. 2025-04-24]. Available at: <https://www.bbc.com/news/articles/c0319eky1p9o>.

² West Must Be Prepared for War with Russia, NATO Official Warns Ahead of Major Military Drills. In: *RFE/RL* [online]. 19. 1. 2024 [cit. 2025-04-24]. Available at: <https://www.rferl.org/a/ukraine-west-war-russia-nato-admiral-bauer-drills/32783552.html>.

but there is a question of whether Europe is ready for war,³ additionally facing the question of how to mobilise millions of people for a potential war, which Russia is trying to put them in.⁴ While the head of the German Bundestag committee calls for 900,000 German reservists to be mobilised,⁵ Sweden embarks on a sober search for more cemetery space in case of war.⁶

Even if Russia and Ukraine start peace negotiations and reach an agreement, we should clearly understand that long-term peace on the continent cannot be guaranteed because of Putin's ambitions. Russia will try to spread military expansion, in the near future, to European countries or use the territory of its satellite Belarus, which is why all European countries should be ready to resist and fight. Some countries⁷ are at higher risk of invasion due to the Kremlin leader's historical interpretation and political ambitions.

Although war preparation should first include military and economic actions, it is also very important for European countries to make a revision of domestic legislation to avoid risks of possible human rights violations during a war emergency. Even the most democratic governments, willing to protect a country, may make mistakes in critical situations like war, setting up extra limitations on fundamental human rights, or even directly violating them.

It might not be obvious, but the fundamental right to life, which is one of the most internationally guaranteed, recognised, and protected, is under real risk in wartime, which comes not from the aggressor's troops' guns or bombs but from the national government of a defending country.

While Europe is only preparing for a possible future war, Ukraine is losing its soldiers every day on the battlefield. But not all Ukrainians were and are ready to be soldiers and die. Many Ukrainian men were pushed to the battlefield by the Ukrainian government without being given a chance to leave the country or use the internationally recognised right to conscientious objection, which definitely caused a direct violation of their right to life.

Proclaiming the martial law regime, the Ukrainian government, almost immediately after the invasion, closed the national border for nearly all draft-age men and started conscription measures. After a while, the list of men considered for mobilisation grew more expansive, and almost all Ukrainian men aged 25 to 60⁸ became hostages in their own country without any chance to refuse participation in the war.

³ RAINSFORD, S. – KIRBY, P. War a real threat and Europe not ready, warns Poland's Tusk. In: *BBC* [online]. 29. 3. 2024 [cit. 2025-04-24]. Available at: <https://www.bbc.com/news/world-europe-68692195>.

⁴ GIGOVA, R. Europe turns to conscription as threat of wider war with Russia grows. In: *CNN* [online]. 21. 7. 2024 [cit. 2025-04-24]. Available at: <https://edition.cnn.com/2024/07/21/europe/europe-conscription-war-russia-intl/index.html>.

⁵ Strack-Zimmermann calls for activation of 900,000 reservists in Germany. In: *Spiegel Politik* [online]. 1. 6. 2024 [cit. 2025-04-24]. Available at: <https://www.spiegel.de/politik/deutschland/marie-agnes-strack-zimmermann-fdp-fordert-aktivierung-von-900-000-reservisten-in-deutschland-a-25b6ce37-8953-4af2-980d-3c6b5b9bdafa>.

⁶ MONTGOMERY, M. Sweden embarks on a sober search for more cemetery space in case of war. In: *APNEWS* [online]. 28. 12. 2024 [cit. 2025-04-24]. Available at: <https://apnews.com/article/sweden-cemetery-space-russia-ukraine-war-c360d18b81adba2e2b8bb2c8aae66409>.

⁷ Such as Poland, Lithuania, Latvia, Estonia, etc.

⁸ The mobilisation age in Ukraine is from 25 to 60.

Having a lack of soldiers, the Ukrainian government used harsh conscription measures, ignoring the internationally recognised right to conscientious objection, which in wartime becomes not only the right to avoid mobilisation and dealing with weapons but literally the right to life guarantor. In war times, conscription turns from basic training on how to deal with weapons into a one-way ticket to meet with death because soldiers are legal targets⁹ and are not protected by international law. In wartime, there are two options for soldiers: either to kill the enemy or to die protecting the country.

After almost four years of active war, the Ukrainian nation and government are now facing a tough moral dilemma to choose between “to do everything to protect the Motherland” and “the right of a person to conscientious objection”. The nation is divided, and it has discussed such questions as: “If all refuse conscription, who will protect the country?”, “Why should I go to die if I don’t want to?”, “Only professional soldiers should fight because they took the oath,” etc.

This dilemma is very sensitive, but without its analysis and broad scientific discussion, many European men may face a real risk of having their right to life violated if war knocks on their doors, as it has in Ukraine.

This work aims to draw more attention to the human right to conscientious objection violation during the wars, and the right to life, specifically, which is more important than the duty to protect a country, even if a country is at risk of not existing. International agreements guarantee such rights, whose implementation and protection should be analysed more carefully in real war situations, not only theoretically. Whether conscious or not, the Ukrainian government made many mistakes during wartime and violated fundamental international principles and domestic constitutional provisions relating to human rights guarantees. Such examples should be analysed to predict and avoid human rights violations in European countries that have similar constitutional and legislative provisions, and to avoid the violation of the right to life if Europe actively participates in future wars.

I. CONSTITUTIONAL DUTY TO PROTECT THE MOTHERLAND

Being in legal relations with their countries, citizens of many European countries have a set of constitutional rights and duties, one of which is to protect their countries.

Military conscription, which existed at least from the beginning of the Egyptian Old Kingdom, is defined as the compulsory enrolment for service in a country’s armed forces.¹⁰ But is compulsion the right approach if we are talking about protecting the motherland? Can anyone protect anyone under pressure, and can such protection be effective?

When a war happens, any person’s primary and natural instinct is to protect their own life and the lives of relatives, possibly property, but definitely not the entire country.

⁹ See RUDOLPHY, M. *The Morality of the Laws of War*. Oxford: Oxford University Press, 2023, pp. 25–27.

¹⁰ Conscription. In: *Britannica* [online]. [cit. 2025-01-23]. Available at: <https://www.britannica.com/topic/conscription>.

Some people are more ready to be soldiers to die for the motherland, unlike others who are not. They have their own and different motivation. Following the nature of humans as living beings, it is difficult to imagine that in wartime, when there is the highest risk of being killed, your own life and safety, as well as the lives and safety of your relatives, are less important than the country's safety and the lives of your fellow citizens. That is why, in our opinion, the compulsory duty to protect the motherland but not your own life seems unnatural to human nature.

Professor Vetter lists¹¹ three basic motives for participating in war, mentioning that people's perceptions of reality in wartime differ from perceptions in peacetime: "*First, there is a particular enemy that embodies evil; if it were defeated, then the world would become a paradise. Second, taking action against that enemy is a path of glory and leads to legendary heights of existence. Third, anyone who does not agree with this publicly accepted opinion (wisdom) is considered a traitor.*"

After years of constant war, the division in the Ukrainian nation reached its peak, and some men are ready to be betrayers, but be alive, others are ready to fight till the last Ukrainian.

We may also hear from opponents that if not for the sacrifice of soldiers from different nations, Hitler could have won. It is also true that the whole world is in unpayable debt to all WWII soldiers. We can remember that when Germany declared war on Britain in 1939, the British Parliament immediately passed the National Service Act, which imposed conscription on almost all men from 18 to 41.¹² Facing the risk of occupation or even total destruction, the British nation was ready to fight and follow the fiery Churchill's speech "[...] *go on to the end [...] Whatever the cost may be [...]*".

However, some important nuances should be taken into account. After WWII, a number of fundamental international agreements¹³ proclaimed a person's life as the most important thing in the world and guaranteed the right to reject military conscription based on internal reasons and beliefs. The world was changed, and we should live according to modern international standards and principles. People should be free to choose their way of action even during wartime and make free decisions about priorities, whether their lives or national security. And suppose the majority of men say "no" to conscription and refuse to fight for a country with weapons in their hands. In that case, it is their free choice, but not a tragedy, and we know many historical examples from WWII when nations decided not to resist and save people's lives and their cities from destruction.

Seeing the current Russian expansion plans, the debate over compulsory military service, which was cancelled in many European countries decades ago, has resurfaced not

¹¹ VETTER, S. Understanding Human Behavior in Times of War. *Military Medicine* [online]. 2007, Vol. 172, Issue suppl. 2, pp. 7–10 [cit. 2025-01-23]. Available at: https://academic.oup.com/milmed/article/172/suppl_2/7/4578224.

¹² Conscription: the Second World War. In: *UK Parliament* [online]. [cit. 2025-01-23]. Available at: <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/yourcountry/overview/conscriptionww2/>.

¹³ Such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights.

only across Europe,¹⁴ but also in the USA.¹⁵ Having similar provisions to the Ukrainian Constitution, the Constitutions of many European countries adjacent to Russia or near Ukraine prescribe direct obligations for citizens to come and protect their countries. It is the duty of every Polish citizen to defend the Homeland,¹⁶ as well as the right and duty of each citizen of Romania¹⁷ and the Republic of Lithuania,¹⁸ and the sacred right and duty of each citizen of the Republic of Moldova¹⁹ to defend the state against a foreign armed attack. Every Finnish²⁰ and Hungarian²¹ citizen is obligated to participate in national defence, and it is the duty of each citizen of Estonia²² to defend the country's independence.

Some European countries, like the Czech Republic, have military obligation provisions in constitutional acts and regular legislation. The Constitutional Act on the Security of the Czech Republic²³ prescribes that in case of country protection needs, the armed forces shall be supplemented on the basis of the military service obligation. Despite the abolishment of compulsory military service in the Czech Republic, conscription is in force for all citizens aged 18 to 60.²⁴

On the one hand, there is a constitutional duty of a person to fight for the country's independence, sovereignty, and existence. On the other hand, all countries have an international duty to protect the lives of their citizens, which contradicts the first one, especially in times of war. As the government's action of forcing people to join the country's armed forces, conscription should be considered in two radically different situations, which have fundamental differences. In peacetime, conscription is an obligation to participate in military duty without the high risk of death. In fact, it is a form of training aimed at preparing people in case the country faces external aggression. Conscription in times of war is the mobilisation of a nation to protect the motherland with weapons in hand. The main difference is that the second type presumes a real risk of dying on the battlefield, so the right to conscientious objection, in fact, becomes the right to life guarantor and protector. All modern and democratic countries have international obligations and should follow international human rights standards, one of which

¹⁴ SAMAR, K. With war on its doorstep, could Europe embrace compulsory military service once again? In: *euronews* [online]. 16. 7. 2024 [cit. 2025-01-23]. Available at: <https://www.euronews.com/my-europe/2024/07/16/with-war-on-its-doorstep-could-europe-embrace-compulsory-military-service-once-again>.

¹⁵ TOWNLEY, D. US kicks off debate on conscription as other Nato members introduce drafts. In: *The Conversation* [online]. 20. 6. 2024 [cit. 2025-01-23]. Available at: <https://theconversation.com/us-kicks-off-debate-on-conscription-as-other-nato-members-introduce-drafts-232458>.

¹⁶ Konstytucja Rzeczypospolitej Polskiej [Constitution of the Republic of Poland], Apr. 2, 1997, art. 85 (1).

¹⁷ Constituția României [Constitution of Romania], Oct. 31, 2003, art. 55 (1).

¹⁸ Lietuvos Valstybės Konstitucija [Constitution of the Republic of Lithuania], Oct. 25, 1992, art. 139 (1).

¹⁹ Constituția Republicii Moldova [Constitution of the Republic of Moldova], Jul. 29, 1994, art. 57 (1).

²⁰ Suomen perustuslaki [Constitution of Finland], Jun. 11, 1999, § 127 (1).

²¹ Magyarország Alaptörvénye [Constitution of Hungary], Apr. 18, 2011, art. XXXI (1).

²² Eesti Vabariigi põhiseadus [Constitution of the Republic of Estonia], Jun. 28, 1992, § 54 (1).

²³ Ústavní zákon o bezpečnosti České republiky č. 110/1998 Sb. [Constitutional Act on the Security of the Czech Republic (Act No. 110/1998 Coll.)], art. 4 (1).

²⁴ ROVENSKÝ, J. *The Return of Compulsory Military Service After 20 Years: Pros and Cons* [online]. Institute for Politics and Society, 2024 [cit. 2025-01-23]. Available at: https://www.politikaspolecnost.cz/wp-content/uploads/2024/10/10_2024_The-Return-of-Compulsory-Military-Service_IPPS_Jan-Rovensky.docx.pdf.

is the right to refuse to join the national army for internal moral reasons and beliefs, and, in our opinion, unwillingness to die.

II. INTERNATIONAL STANDARDS OF THE RIGHT TO CONSCIENTIOUS OBJECTION

As a milestone of the fundamental international human rights principles, the Universal Declaration of Human Rights²⁵ (hereinafter the Declaration) prescribes in Article 18 the right to freedom of thought, conscience, and religion. Such right is also repeated in Article 18 of the not less important international document in the field of human rights protection – the International Covenant on Civil and Political Rights²⁶ (hereinafter the Covenant).

Referring to the mentioned international documents, the United Nations Commission on Human Rights (hereinafter the Commission) clearly recognised²⁷ everyone's right to conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience, and religion. Such a statement was made, recalling many of its previous documents, including the Commission's resolution 1987/46,²⁸ which recognises the right of all persons to refuse military service, reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms.

The Commission also followed such logic in its further Resolutions 1995/83²⁹ and 1998/77,³⁰ in which it was recognised that conscientious objection reasons include profound convictions arising not only from religious but also moral, ethical, humanitarian, or similar motives.

Despite the Human Rights Committee (hereinafter the Committee) noticed in its General Comment No. 22³¹ that "*The Covenant does not explicitly refer to a right to conscientious objection [...]*", it also mentioned that such a right could be understood as such that it can be covered by the Covenant's Article 18 and invited the States parties to report about possibilities of exemption from military service and kinds of alternative service in such UN member states. Such logic was reasoned by the Committee "[...] *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*". The General Comment No. 22 also pointed out that limitations of paragraph 3, Article 18 of the Covenant may be used only in a way directly prescribed in the text and should be "[...] *strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security*".³²

²⁵ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

²⁶ G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966).

²⁷ Commission on Human Rights Res. 1989/59 (Mar. 8, 1989).

²⁸ Commission on Human Rights Res. 1987/46 (Mar. 10, 1987).

²⁹ Commission on Human Rights Res. 1995/83 (Mar. 8, 1995).

³⁰ Commission on Human Rights Res. 1998/77 (Apr. 22, 1998).

³¹ Human Rights Committee Gen. Comm. 22 (Jul. 30, 1993).

³² Ibid.

In other words, conscientious objection applies in wartime, even if the country's existence is at risk. The Committee directly mentioned that the right to conscientious objection should be guaranteed both in wartime and in peacetime.³³

In 1967, the Parliamentary Assembly of the Council of Europe also pointed out³⁴ that the personal right to conscientious objection derives logically from the fundamental rights of the individual in democratic rule-of-law states, which are guaranteed in Article 9 of the European Convention on Human Rights³⁵ (hereinafter the European Convention). Despite the mentioned document, the European Court of Human Rights (hereinafter the European Court) admitted such a right following Article 9 of the European Convention only in 2011. After reviewing the *Bayatyan v. Armenia* case,³⁶ the European Court examined the issue of whether Article 9 of the European Convention applies to conscientious objectors for the first time. Also, in the mentioned case, the European Court admitted that it had never ruled on the question of the applicability of Article 9 of the European Convention to conscientious objectors before, and that it was a limitation of the interpretation of Article 9 of the European Convention. The European Court considered that opposition to military service motivated by a profound and insurmountable conflict between the obligation to serve in the army and an individual's conscience or profoundly and genuinely held religious or other beliefs is important enough to attract the guarantees of the European Convention.

In the Author's opinion, in future cases, the European Court should also consider Article 2 of the European Convention in connection with Article 9, because the right to conscientious objection in the wartimes tightly connected with the right to life and rejection of a person to die on a battlefield, which should be a legitimate reason to reject the conscription, which seems can logically fits and complements reasons and motives listed by the Commission in mentioned Resolutions 1995/83³⁷ and 1998/77.³⁸

III. THE RIGHT TO LIFE VIOLATION

As a fundamental and most important human right, the right to life is guaranteed in Article 3 of the Declaration, Article 6 of the Covenant, and Article 2 of the European Convention and recognised by European constitutions, which oblige national governments to protect a person's right to life and avoid any illegal violation of such a right.

³³ Human Rights Council Rep. A/HRC/23/22 (Jun. 3, 2013), referring to the Concluding observations CCPR/CO/82/FIN (Dec. 2, 2004).

³⁴ Council of Eur. Parl. Ass. Res. 337 (Jan. 27, 1967).

³⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ.T.S. No. 5; 213 U.N.T.S. 221.

³⁶ *Bayatyan v. Armenia* App. No. 23459/03, 99 (July 7, 2011). In: *European Court of Human Rights* [online]. [cit. 2025-01-23]. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-105611%22%5D%7D>.

³⁷ Commission on Human Rights Res. 1995/83.

³⁸ Commission on Human Rights Res. 1998/77.

Article 2 of the European Convention guarantees that everyone's right to life shall be protected by law, and any use of lethal force must be absolutely necessary. In the author's opinion, governmental action of pushing people to be soldiers and die in war is similar to using lethal force, because the result is the same – the death of a person.

Someone can say that war is a situation of "absolute necessity", and the European Convention prescribes that the government can use force against a person to protect another person, so the government can push people to die, sacrificing such a person for the nation's protection. But following the idea of the European Convention, the government can use lethal force against a person only "*in defence of any person from unlawful violence; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; in action lawfully taken for the purpose of quelling a riot or insurrection*". So, the logic is to protect other people from a particular person against whom lethal force can be used, which is not applicable in a situation when a person only refuses to be a soldier and to die, and is not a direct threat to anyone by such a decision. The right to life is recognised as one of the most important parts of the European Convention because it is impossible to enjoy other rights without the right to life, which national governments should guarantee and protect. Such protection should be guaranteed both in peacetime and during the war, which was clearly noticed by the Committee clarifying the Covenant provisions: "*The right to life is the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation.*"³⁹

The paradox is that in times of war, on the one hand, the national government has the primary duty to protect people from being killed by aggressor troops, but on the other hand, the government conscripts its citizens to fight and die. Compulsory military conscription is a direct way to die and a right-to-life violation because international law does not protect soldiers, who are lawful targets, the killing of which is not an international crime. That is why if the country does not have legislative provisions that clearly enshrine and guarantee conscientious objection during war (or martial law), such a country violates not only the right to conscientious objection but also the right to life.

We want to underline once again that the logic that international recognition of the right to conscientious objection should also include "don't wish to die" as a legitimate reason for compulsory conscription denial, because military service in wartime is literally the way to become an internationally recognised legal military target, which directly violates the right to life of a person. The conscription in wartime should be only voluntary, and any governmental measures, such as border closing or limiting the right to conscientious objection, should be recognised as direct attempts to violate the fundamental human right to life.

³⁹ Human Rights Council Gen. Comm. 36 (Sep. 3, 2019).

IV. THE UKRAINIAN LEGISLATION AND GOVERNMENTAL MISTAKES

Given the real risk of the first modern full-scale war since WWII, European countries should more profoundly and thoroughly analyse all Ukrainian governmental steps and legislative provisions concerning the martial law regime and domestic legislation provisions in case of war.

From the beginning of the full-scale invasion of Russian troops, the Ukrainian government made a number of decisions and legislative mistakes, causing violations of men's right to life, which can be made in many European countries because of many similarities in domestic legislation. Modern democratic countries should follow internationally recognised standards and principles even in critical situations like war.

Starting with the border shutdown, ignoring the international right to reject conscription, and continuing hard mobilisation measures, Ukraine shows an example of what a country should not do, which should be analysed by international colleagues and governments step by step.

1. THE FIRST MISTAKE: THE BORDER CROSSING BAN

Following the provisions of Article 33 (1) of the Ukrainian Constitution,⁴⁰ every person who legally stays in the territory of Ukraine should be guaranteed the right to freely leave the territory of Ukraine, except for restrictions stipulated by law. The logic of such constitutional provisions is very simple. The right to cross the national border can be limited only by law as an act of parliament, the only legislative body representing all Ukrainians and the more powerful body in the parliamentary-presidential republic. Such a right limitation is also allowed by Article 64 (2), which enshrines a list of rights that can't be limited during the martial law regime, but does not include Article 33.

Very similar provisions also exist in some European constitutions. Following the Constitution of the Republic of Poland,⁴¹ everyone may freely leave the territory, which may be subject to limitations specified by statute, which is also exclusively the parliament's act, following the logic of the Constitution of the Republic of Poland. The same provisions of the Constitution of the Republic of Lithuania⁴² and the Constitution of Finland⁴³ prescribe both the freedom to leave the country and its restriction by law in cases of the country's protection needs.

The mentioned constitutional provisions literally allow national parliaments to turn the territory under military aggression into a locked battlefield without any chances for a particular category of people to escape and survive.

Following the logic of the Ukrainian Constitution, a special law should enshrine all nuances and procedures about border crossing limitations during martial law. The Ukrainian Law "On the procedure for leaving Ukraine and entering Ukraine for citizens

⁴⁰ Konstytucja Ukrainy [Constitution of Ukraine], Jun. 28, 1996.

⁴¹ Konstytucja Rzeczypospolitej Polskiej [Constitution of the Republic of Poland], art. 52.

⁴² Lietuvos Valstybės Konstitucija [Constitution of the Republic of Lithuania], art. 32.

⁴³ Suomen perustuslaki [Constitution of Finland], § 9 (2).

of Ukraine”⁴⁴ appears to be a suitable act for such measures, but it does not prescribe any ban on border crossings in such situations. Article 6 of the mentioned Law lists the reasons for the temporary restriction of the right of citizens to leave Ukraine, but is silent about any limitations during martial law or war. However, using the link to the mentioned Law⁴⁵ in the Cabinet of Ministers Resolution “On approval of the Rules for crossing the state border by citizens of Ukraine”,⁴⁶ the Ukrainian government avoided direct constitutional instructions and banned border crossing for almost all men aged 23⁴⁷ to 60, by amendments to the Resolution but not the Law (Parliament’s act). Thus, the Cabinet of Ministers of Ukraine bypassed the parliament and unconstitutionally altered the rules of border crossing for a specific category of men due to martial law.

Only in April 2024 did the Ukrainian parliament make changes in Ukrainian legislation, adding the border crossing limitation, but not amending the mentioned Law “On the procedure for leaving Ukraine and entering Ukraine for citizens of Ukraine”, but the Law “On the legal regime of martial law”,⁴⁸ which obliges all men aged 18 to 60 who want to cross a border to have a document proving their military registration, which a person can get only after being checked on his ability to serve in military forces. Also, even if a person has immunity from mobilisation (as university professors or students, for example), such people can’t freely cross the national border following the mentioned resolution.⁴⁹ Thus, the Cabinet of Ministers of Ukraine provides restrictions to ban crossing the border even if men can’t be mobilised, which is not justified by any army needs, and has one aim to keep men inside the country and limit their right to move freely, just because the government wants so.

However, the real problem lies not in the mentioned constitutional violation, as changing the law and adhering to constitutional prescriptions is straightforward and has been ignored by the government simply because it can do so. The problem is in constitutional provisions allowing the turn of people into “war hostages” during martial law without the right of free movement, even more so if such people are not subject to mobilisation but under real risk of dying not on the battlefield but in their beds during night bombing.

Ukraine is not alone in having similar constitutional provisions, so the people from the mentioned European countries are also at risk of being trapped in case of war or a martial law regime. The legislation of the mentioned European countries should at least be screened to avoid possible illegal governmental extra measures and actions.

⁴⁴ Zakon pro porjadok viyizdu z Ukrayini ta vyizdu v Ukrayinu gromadjan Ukrayini (Zakon № 3857-XII) [Law on the procedure for leaving Ukraine and entering Ukraine for citizens of Ukraine (Act No. 3857-XII)].

⁴⁵ Ibid.

⁴⁶ Postanova Kabinetu Ministriv Ukrayiny vid 27 sichnya 1995 r. № 57 [Resolution of the Cabinet of Ministers of Ukraine No. 57 dated January 27, 1995] [Gov. Res. No. 57 of Jan. 27, 1995] [online]. [cit. 2025-01-23]. Available at: <https://zakon.rada.gov.ua/laws/show/57-95-n#Text>.

⁴⁷ Before the amendments made in 2025, the Resolution limited border crossing to all men from 18 to 60.

⁴⁸ Zakon pro pravovij režim voennogo stanu (Zakon № 389-VIII) [Law on Martial Law Legal Regime (Act No. 389-VIII)], art. 20 (4).

⁴⁹ Postanova Kabinetu Ministriv Ukrayiny № 57 [Resolution of the Cabinet of Ministers of Ukraine No. 57].

According to the Ukrainian Constitution,⁵⁰ protecting Ukraine's sovereignty and territorial integrity is the state's most important function and a matter of concern for all Ukrainians (Article 17), who should fulfil their duty by performing military service (Article 65).

Despite the Ukrainian Constitution proclaiming the equality of all citizens in their rights and obligations, there is no factual equality in Ukraine. Article 1 of the Law "On military duty and military service"⁵¹ prescribes that women may be mobilised only if they wish. This means that men are the primary source of troops in times of war, and the main category whose rights are at real risk of violation.

We do not insist on women's obligatory mobilisation during wartime, nor do we insist on men's. We also understand that reasons such as the nation's reproduction after the war may be reasonable for such legislative provisions, but constitutional equality means a different logic. If the Constitution mentions all, it should apply to everyone without any gender differentiations. The author only tries to show that constitutionally proclaimed equality and obligations do not work in the case of conscription during the martial law regime, and men are less protected against being killed on the battlefield.

As we mentioned previously, citizens of some European countries also have similar duties to protect the motherland, as well as a constitutional proclamation about equality between men and women. That is why it is critically important for our foreign colleagues to pay more attention to possible inequality in military conscription in case of war and analyse the constitutional provisions and logic of national legislation to avoid violations of human rights and inequality.

2. THE FACTUAL BAN OF ALTERNATIVE (NON-MILITARY) SERVICE DURING THE MARTIAL LAW REGIME

The Ukrainian Constitution⁵² prescribes that if military duty contradicts a citizen's religious beliefs, it shall be replaced by alternative (non-military) service (Article 35). Unfortunately, the Constitution of Ukraine allows the only possible chance to avoid conscription to be a believer, which is maximally narrowed compared with the internationally recognized list of reasons for the right to conscientious objection. However, even such a "cut" constitutional principle is not fully protected from its limitation, and Article 35 is not in the list of exceptions during martial law regimes, following Article 64 (2).

Unfortunately, Ukraine is not alone in taking such an approach. The Polish Constitution also enshrines⁵³ citizens' right to perform substitute service, but also does not list such a right among the constitutional rights that can't be limited during martial law.⁵⁴

⁵⁰ Konstytucja Ukrainy [Constitution of Ukraine].

⁵¹ Закон про виjskovij obov'язok i vijskovu sluzbu (Zakon № 2232-XII) [Law on military duty and military service (Act No. 2232-XII)].

⁵² Konstytucja Ukrainy [Constitution of Ukraine].

⁵³ Konstytucja Rzeczypospolitej Polskiej [Constitution of the Republic of Poland], art. 85 (3).

⁵⁴ Ibid. art. 233 (1).

Unlike the constitutional provisions of the Republic of Lithuania,⁵⁵ which do not allow the limitation of the right to alternative national defence service even after the imposition of martial law, the Estonian Constitution⁵⁶ enables the limitation of the right to perform alternative service in a state of war. Following the logic of Article XXXI of the Hungarian Constitution,⁵⁷ the alternative service is guaranteed even in a national crisis or during preventive defence measures, unlike the constitutional provisions in Romania,⁵⁸ which oblige a duty to protect the motherland and allow any rights or freedoms limitations by law in cases of the defence of national security needs. The Czech Republic's Charter of Fundamental Rights and Freedoms also guarantees the right to resist military service if it is contrary to one's conscience or religious conviction.⁵⁹

In its recent *Amicus Curiae*,⁶⁰ responding to the Ukrainian Constitutional Court's request,⁶¹ the Venice Commission clearly pointed out that both international and European human rights law require the introduction of an alternative service instead of regular military service.

It is also very important that the Venice Commission pointed out that it was made in the context of the full-scale war of aggression that caused the martial law regime to be enacted on the whole Ukrainian territory, underlining the consciousness of the dramatic situation resulting from the occupation of an essential part of the Ukrainian territory and recognising the right of Ukraine to self-defence. Additionally, it was noted that the European Court has not addressed conscientious objection in the event of martial law, war, or mobilisation. Therefore, such an *Amicus* is the first to attempt to resolve the issue of conscientious objection and alternative service in the event of war.

The Venice Commission noted that, in line with the European Court's stance, countries have a certain margin of appreciation in determining the circumstances under which they recognise the right to conscientious objection. The question that the Venice Commission raises is whether there is such a pressing social need that an exception to the admission of conscientious objection is necessary in cases of mobilisation and self-defence against foreign aggression. And the key fact that was pointed out is that the objection to the use of lethal force is effective in wartime, not in peacetime.

The conscientious objection first emerged as a reaction to war, rather than military training in peacetime. That is why it was noticed in the mentioned *Amicus Curiae* 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, as it follows from provisions of Article 18 of the Covenant.

⁵⁵ Lietuvos Valstybės Konstitucija [Constitution of the Republic of Lithuania], art. 145.

⁵⁶ Eesti Vabariigi põhiseadus [Constitution of the Republic of Estonia], § 130.

⁵⁷ Magyarország Alaptörvénye [Constitution of Hungary].

⁵⁸ Constituția României [Constitution of Romania], art. 53 (1).

⁵⁹ Listina základních práv a svobod [Charter of Fundamental Rights and Freedoms], art. 15 (3).

⁶⁰ Venice Commission *Amicus Curiae*, CDL-AD(2025)006 (May 15, 2025).

⁶¹ The letter in which the Acting Chairman of the Constitutional Court of Ukraine (4 December 2024) requested an *amicus curiae* brief of the Venice Commission on the matter of alternative (non-military) service. Such a request was reasoned by a constitutional complaint considering by the Constitutional Court of Ukraine concerning the constitutionality of Article 1.1 of the Law of Ukraine "On Alternative (Non-Military) Service" provides: "*alternative service is a service that is introduced instead of regular military service and is aimed at fulfilling a duty to society*".

Despite the mentioned position and argumentation, just a month later, the Ukrainian Supreme Court decided⁶² to disregard the Venice Commission's Amicus, as well as international standards and law. In mentioned judgment, the Ukrainian Supreme Court consciously stated that it did not take into account the practice of the European Court of Human Rights in the context of refusal to serve in the military on grounds of religious beliefs, since none of the decisions of this Court concerned the assessment of the actions of the state and the citizen in the context of such a large-scale war waged against Ukraine. It also pointed out that at a time when Ukraine is engaged in self-defence, when the very existence of the state is under threat, every citizen of Ukraine must be aware of the need to find a balance between the needs of the state and the interests of the citizens themselves.

Ignoring the Venice Commission's Amicus and international standards, the Ukrainian Supreme Court decided that a person who is a Jehovah's Witness believer who asked for alternative service was guilty of dodging service. The Ukrainian Supreme Court pointed out that during the mobilisation of those liable for military service, the possibility of performing alternative service is excluded, since the purpose of mobilisation itself is not simply to perform military service, but to defend the Motherland from military invasion by another state.

Unfortunately, the Ukrainian Law "On Alternative (Non-Military) Service"⁶³ also prescribes that, under martial law, separate restrictions on citizens' right to undergo alternative service may be established, and in fact, ignores international standards and principles.

Following the provisions of the Law "On Martial Law Legal Regime",⁶⁴ the alternative service is mentioned as an option for recruiting citizens, but only as a possibility, without any details of such rights' implementation. Additionally, Ukrainian legislation has criminal liability for avoiding conscription for military service during mobilisation, following the Criminal Code of Ukraine.⁶⁵

In 2024, after reviewing the criminal case⁶⁶ following such liability, the Ukrainian Supreme Court decided on a person's guilt and pointed out that neither Article 18 of the Covenant nor Article 9 of the European Convention directly provides for a person's right to refuse military service for reasons of conscience, including religious beliefs, and does not regulate the procedure for its implementation. The criminal case was initiated against a person who was released into the reserve and recognised as having limited legal capacity, but refused mobilisation due to the Russian full-scale invasion. The person declined to receive a summons, citing that military service contradicts his religious beliefs, but was found guilty in all instances.

⁶² Supreme Court of Ukraine, Case No. 573/406/24.

⁶³ *Zakon pro alternativnu (nevijskovu) sluzbu* (Zakon № 1975-XII) [Law on Alternative (Non-Military) Service (Act No. 1975-XII)].

⁶⁴ *Zakon pro pravovij rezim voennogo stanu* (Zakon № 389-VIII) [Law on Martial Law Legal Regime (Act No. 389-VIII)].

⁶⁵ *Kryminalnyy Kodeks Ukrainy* (Zakon № 2341-III) [KKU] [Criminal Code of Ukraine (Act No. 2341-III)], art. 336.

⁶⁶ Supreme Court of Ukraine, Case No. 344/12021/22.

Due to the lack of soldiers, the Ukrainian medical workers of the recruitment office even recognise people with health issues as fit for military service. Following the court case materials,⁶⁷ the person was recognised as healthy and fit for military service and was convicted of evading military service. During the court trial, it was found that when a person passed medical checking, he had a fracture of the right clavicle, lumbar osteochondrosis in remission, and hyperopic astigmatism in both eyes. However, even with information about a person's health problems, the court decided on his guilt.

It is unacceptable when the national constitution or legislation has gaps in human rights protection during a martial law regime, and it is also terrible when the executive branch uses all such "gaps" in its interests, additionally violating other provisions, including international standards. However, in such cases, in modern democratic countries, a person may rely on the judicial branch. As we can see, Ukrainian citizens are deprived of such an option when all three branches stick to one similar way of thinking and actions in favour of mobilisation, but not human rights.

3. ACCESS TO JUSTICE ISSUES

Another inequality in Ukraine during martial law is the high risk of violating the constitutional principle of access to justice.

From the start of the full-scale invasion, the Ukrainian parliament made many amendments to the list of exemptions for conscription during mobilisation. The government officials of the National Police of Ukraine, the National Anti-Corruption Bureau of Ukraine, as well as prosecutors, have immunity from mobilisation, but attorneys don't. They can be mobilised, which can influence not only the lack of defenders on the side of the accused but also can be a way of illegal influence on independent defenders.

Article 131-2 of the Ukrainian Constitution⁶⁸ prescribes that only attorneys have the right to represent people in courts. In fact, if mobilisation measures are increased, attorneys may be mobilised, which can cause the risk of Ukrainians being left without defenders and official court representatives. By leaving male attorneys (the majority – 62%) without protection from conscription, parliament created a risk of a gap in human rights and court protection guaranteed by the Ukrainian Constitution⁶⁹ (Article 55, part 1).

After the mobilisation started, Ukrainian attorneys faced the risk of disciplinary liability if they were mobilised and failed to represent their clients, which caused the Higher Qualification Commission to clarify⁷⁰ waiving liability during mobilisation. Many attorneys requested help regulating named issues and legislative changes regarding the possibility of exemption from the draft by the professional authorities, but the

⁶⁷ Chernihiv Court of Appeal, Case No. 750/14407/23.

⁶⁸ Konstytucja Ukrainy [Constitution of Ukraine].

⁶⁹ Ibid.

⁷⁰ Rozjasnennja Viscoyi kvalifikacijnoyi ta disciplinarnoyi komisiyi advokaturi [Clarification by the Higher Qualification and Disciplinary Commission of the Bar] [online]. [cit. 2025-04-24]. Available at: <https://vkdko.org/do-uvagi-mobilizovanih-advokativ/>.

Ukrainian National Bar Association rejected⁷¹ their requests. The current situation may also violate not only Ukrainian constitutional provisions but also Article 6 of the European Convention, which prescribes the right to representation in criminal proceedings.

Additionally, there is a real risk of illegal influence on attorneys, who may be easily blackmailed to favour the interests of some government officials with threats of army mobilisation.

CONCLUSIONS

Human life is the world's most important value, and war is humanity's most terrible creation, which can easily push governments to take extraordinary measures for the nation's protection, sacrificing the lives of soldiers.

However, even the risk of losing the country's sovereignty is not a solid reason to violate international standards and principles and downplay the value of every single person's life.

The dilemma between "winning the war" and "following the international standards of the right to conscientious objection" should not exist. Every person should be free to decide about their participation in war and have a guaranteed and not limited legal right to conscientious objection to save their life, but not to die protecting a nation. Discussing conscientious objection during the war is not only about faith and beliefs but also about the choice between life and death, which should be made by a particular person, but not by the national government.

Having a real risk of long-term war and spreading it to Europe, as well as similar to Ukrainian constitutional provisions, European countries will have similar risks of human rights violations and should be ready to protect not only a nation but also internationally recognised principles and rights. Some European countries are considering a return to compulsory military service conscription, recognising the significant risk posed by Russia's aggressive potential. Consequently, the issue of protecting and guaranteeing the right to conscientious objection has become increasingly relevant for Europe.

The Ukrainian government made many mistakes in its attempts to save the country's independence and protect territories, forgetting that the real aim of a fight is not territory but people, and each has its own internationally recognised rights. A country can exist without a part of its land or with limited sovereignty, but it can't exist without people, the lives of some of whom are not so valuable nowadays in Ukraine.

By highlighting Ukrainian governmental mistakes, this work seeks to initiate an expert discussion and prevent similar human rights violations in other countries. It aims to remind them that the most important thing in the world is not national territory or the legal sovereignty of the whole country, but the life of each individual.

⁷¹ Rishennya Rady Advokativ Ukrainy Natsional'noyi Asotsiatsiyi Advokativ Ukrainy, № 67 [The decision of the Bar Council of Ukraine of the National Bar Association of Ukraine, no. 67] [online]. Aug. 2, 2022 [cit. 2025-04-24]. Available at: <https://zakon.rada.gov.ua/rada/show/v0067871-22#Text>.

As we showed in this work, International legal standards clearly protect the right to conscientious objection, which such international bodies as the European Court of Human Rights, the UN Human Rights Commission, and the Venice Commission have repeatedly proved. Named bodies clearly pointed out that the person has the right to conscientious objection even if it involves war and the risk of the country's existence. Despite this, the Ukrainian government made many mistakes and violated international law and international obligations. Unfortunately, because of continuing Russian aggression, the entire European continent is under real risk of Russian invasion. That is why we believe that the mentioned Ukrainian examples of international standards violations should be analysed to avoid similar human rights violations in European countries.

Prof. Sergiy Panasyuk, Ph.D.

Ukrainian-American Concordia University, Department of General Studies

s.a.panasyuk@gmail.com

ORCID: 0000-0002-9593-3211