



Home Office

# **Country Policy and Information Note**

## **Ukraine: Military service**

**Version 4.0**

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# Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

## Country Information

COI in this note has been researched in accordance with principles set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#) and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

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Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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# Policy guidance

Updated: 11 April 2017

## 1. Introduction

### 1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the state because of:

- (a) the treatment and/or conditions likely to be faced by the person during compulsory military service duties; and/or
- (b) the penalties likely to be faced by the person's refusal to undertake, or their desertion from, military service duties.

### 1.2 Points to note

1.2.1 Unless otherwise stated, this note refers to the position in the government-controlled areas of Ukraine. For other areas of Ukraine, decision makers should see the country policy and information note on [Ukraine: Crimea, Donetsk and Luhansk](#) and, if necessary, seek further country information and guidance on a case-by-case basis in the normal way.

1.2.2 Where a claim is refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as Ukraine is listed as a designated state.

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## 2. Consideration of issues

### 2.1 Credibility

2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Convention reason

2.2.1 Where a person is considered to be at risk of persecution or serious harm, decision makers must consider whether this is for a Refugee Convention (or other) reason.

2.2.2 The [Asylum Instruction on Military Service and Conscientious Objection](#) and paragraph 22 of the House of Lords judgment in the case of [Sepet & Another v. SSHD \[2003\] UKHL 15](#) explains that it is necessary to carefully examine the real reason for the persecution, looking at the real reason in the mind of the persecutor rather than the reason which the victim believes to be the reason for the persecution.

- 2.2.3 There is no evidence to suggest that the Ukrainian government views a person's refusal to participate in military service as an act of political opposition. If persons are punished on return, it is likely to be simply for the criminal offence of evading or deserting national service.
- 2.2.4 Persons who have evaded or absconded from national service do not form a particular social group (PSG) within the meaning of the 1951 UN Refugee Convention. This is because they do not share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.
- 2.2.5 For further guidance on particular social groups, see [the Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.3 Assessment of risk

### a. Requirement to undertake national service

- 2.3.1 Conscription was reintroduced in May 2014 (see [Conscription](#)). Military service is compulsory for those aged between 20 and 27 years; and the age for reservists up to 65 years depending on rank. The period of national service is 18 months (see [Eligibility](#)). There are numerous exemptions, which include conscientious objection on religious grounds for members of religious organizations registered in Ukraine (see [Exemptions](#)).
- 2.3.2 Compulsory national service is a prerogative of sovereign states. It is therefore reasonable that draft evasion and desertion are criminal offences and punishable by law – points provided for in the [UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status](#) (paras 167-174) and confirmed by the House of Lords in the case of [Sepet & Another v. SSHD \[2003\] UKHL 15](#).
- 2.3.3 Therefore, a requirement to undergo compulsory military service – or punishment for failing to complete this duty – does not, in itself, constitute persecution. It will only do so where:
- (a) military service would involve acts, with which the person may be associated, which are contrary to the basic rules of human conduct;
  - (b) the conditions of military service would be so harsh as to amount to persecution; or
  - (c) the punishment for draft evasion or desertion is disproportionately harsh or severe.
- 2.3.4 For further information, see the [Asylum Instruction on Military Service and Conscientious Objection](#).

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### b. Acts contrary to the basic rules of human conduct

2.3.5 'Acts ... which are contrary to the basic rules of human conduct' is taken to mean being required to act in a way that would bring that person within the scope of Article 1F of the Refugee Convention and/or Article 12 of Council Directive 2004/83/EC ('the Qualification Directive').

2.3.6 There is no evidence that persons in the military are at real risk of being required to perform acts contrary to international law. The onus will be on the person to show otherwise.

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#### c. Conditions of military service

2.3.7 In 2016 the salaries paid to those serving in combat roles were raised to approximately five times the level of the minimum wage in Ukraine (see [Conditions for those eligible for conscription](#)).

2.3.8 There are reports of military 'hazing' (ill-treatment of young conscripts at the hands of senior soldiers). In 2016 Ukraine's human rights ombudsman expressed concern about hazing to the Prosecutor General's Office and the Ministry of Defence (see [Conditions for those eligible for conscription](#)).

2.3.9 Whilst not condoned, such treatment does not generally give rise to a real risk of treatment contrary to Article 3 ECHR.

2.3.10 In general, the conditions and/or treatment likely to be faced by a person required to undertake compulsory military service would not be so harsh as to amount to persecution or serious harm. However, each case must be determined on the individual facts.

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#### d. Punishment for draft evasion or desertion

2.3.11 Evasion of military service is punishable in law by up to three years' imprisonment. However, in practice, the courts issue fines or suspended sentences in most cases (see [Penalties for draft evasion](#)). Such penalties are neither disproportionate nor excessive.

2.3.12 In the country guidance case of [VB & Another \(draft evaders and prison conditions: Ukraine\) \(CG\) \[2017\] UKUT 79 \(IAC\) \(6 March 2017\)](#) (heard on 31 October and 1 November 2016), the Upper Tribunal noted "[t]he evidence in the public domain is that very few draft evaders have, to date, been subject to any criminal proceedings let alone convicted of any criminal offence or sent to prison" (para 57).

2.3.13 The Upper Tribunal in [VB and Another](#) then went on to find that:

'At the current time it is not reasonably likely that a draft-evader avoiding conscription or mobilisation in Ukraine would face criminal or administrative proceedings for that act, although if a draft-evader did face prosecution proceedings the Criminal Code of Ukraine does provide, in Articles 335, 336 and 409, for a prison sentence for such an offence. It would be a matter for any Tribunal to consider, in the light of developing evidence, whether there were aggravating matters which might lead to imposition of an immediate custodial sentence, rather than a suspended sentence or the matter proceeding as an administrative offence and a fine being sought by a prosecutor.' (para 87)

- 2.3.14 With regard those who may have been convicted in absentia, the Upper Tribunal in [VB and Another](#) found that such persons would probably be entitled to a retrial in accordance with Article 412 of the Criminal Procedure Code of Ukraine (para 88); and that there is no evidence that a draft-evader avoiding conscription or mobilisation would ultimately, on a retrial, be sentenced to serve a period of imprisonment which is a very rare occurrence (para 106). The Upper Tribunal did however find that a draft evader avoiding conscription or mobilisation who had been convicted in absentia and sentenced to a term of imprisonment was at risk of being held in detention pending a decision on any retrial (para 88).
- 2.3.15 Paragraph 168 of the [UNHCR handbook](#) states that ‘a person is clearly not a refugee if his only reason for desertion or draft-evasion is his dislike of military service or fear of combat.’
- 2.3.16 Desertion from military service is, like evasion of conscription or mobilisation, punishable by imprisonment. In the case of desertion, imprisonment can be up to 2 years and up to 12 years in some particular circumstances (see [Penalties for desertion](#)). Such penalties are neither disproportionate nor excessive.
- 2.3.17 It is unlikely that in the majority of cases, the consequence of a person’s general unwillingness to serve in the armed forces or objection to enter a ‘combat zone’ will be such that they can make a well-founded claim for protection. However, each case must be determined on the individual facts.
- 2.3.18 See also country policy and information note on [Ukraine: Prison conditions](#).
- 2.3.19 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#), the [Asylum Instruction on Military Service and Conscientious Objection](#), and the [Asylum Instruction on Humanitarian Protection](#).

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## 2.4 Protection

- 2.4.1 As the person’s fear is of persecution or serious harm at the hands of the state, they would not be able to avail themselves of the protection of the authorities.
- 2.4.2 For further guidance on assessing the availability or not of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.5 Internal relocation

- 2.5.1 As the person’s fear is of persecution or serious harm at the hands of the state they would not be able to relocate to escape that risk.
- 2.5.2 For further guidance on considering internal relocation, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.6 Certification

- 2.6.1 Where a claim made by a draft-evader avoiding conscription or mobilisation is refused, it is likely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002. This is because the

penalties likely to be faced by the person's refusal to undertake military service duties does not in general, even when taken at its highest, amount to persecution or serious harm. However, where there are aggravating matters which might lead to imposition of an immediate custodial sentence, the claim is unlikely to be certifiable as 'clearly unfounded'.

2.6.2 Where the claim is made by a person who has deserted from military service, or has been convicted and sentenced in absentia to a term of imprisonment for evading conscription or mobilisation, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.6.3 For further information on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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### 3. Policy summary

3.1.1 Compulsory military service of 18 months was reintroduced in Ukraine in May 2014. There are, however, numerous exemptions, which include conscientious objection on religious grounds for members of religious organisations registered in Ukraine.

3.1.2 Compulsory national/military service is a prerogative of sovereign states. A requirement to undertake – or punishment for failing to complete – national/military service will only constitute persecution where:

- military service would involve acts, with which the person may be associated, which are contrary to the basic rules of human conduct;
- the conditions of military service would be so harsh as to amount to persecution; or
- the punishment for draft evasion or desertion is disproportionately harsh or severe.

None of those conditions are generally met in respect of service in Ukraine.

3.1.3 Evasion of military service is punishable in law by up to three years' imprisonment. However, in practice, the courts issue fines or suspended sentences in most cases

3.1.4 Caselaw has established that it is not reasonably likely that a draft-evader avoiding conscription or mobilisation in Ukraine would face criminal or administrative proceedings for that act, although if a draft-evader did face prosecution it is likely to result in the imposition of a fine or a suspended sentence unless there were aggravating issues which might lead to a custodial sentence.

3.1.5 Where a person is at real risk of serious harm on return to Ukraine, this is likely to be a direct result of the risk of ill-treatment during any term of imprisonment and they should be granted Humanitarian Protection rather than asylum unless they can demonstrate they would be singled out for a Convention reason.



3.1.6 Where a claim made by a draft-evader avoiding conscription or mobilisation is refused, it is likely to be certifiable as clearly unfounded (absent any evidence to suggest imprisonment is likely). Where the claim is based on desertion from military service or the person has been convicted and sentenced in absentia to a term of imprisonment for evading conscription or mobilisation, it is unlikely to be certifiable.

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# Country information

Updated: 6 March 2017

## 4. Sources

- 4.1.1 The Upper Tribunal in the case of [VB & Another \(draft evaders and prison conditions: Ukraine\) \(CG\) \[2017\] UKUT 79 \(IAC\) \(6 March 2017\)](#) looked at a range of sources, which are listed in Appendix A of the determination.

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## 5. Military Service

### 5.1 Conscription

- 5.1.1 In a June 2015 ‘response to information request’, the Immigration and Refugee Board of Canada (citing various sources) noted that ‘Article 1 of the Law of Ukraine "On Military Duty and Military Service" indicates that the "[d]efence of the Motherland, the independence and territorial integrity of Ukraine is the Constitutional duty of citizens of Ukraine".’<sup>1</sup>
- 5.1.2 The BBC reported on 2 May 2014: ‘Ukraine's acting President Olexander Turchynov has reinstated military conscription to deal with deteriorating security in the east of the country...Kiev scrapped compulsory military service for young men in late 2013 under a law introduced by then President Viktor Yanukovich.’<sup>2</sup>

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### 5.2 Mobilisation

- 5.2.1 UNHCR’s January 2015 position paper stated that:

‘As the conflict in the East intensified the Government in Kyiv instituted military mobilization in order to bring additional qualified personnel into the army. Persons targeted for mobilization included persons with past experience as paratroopers, grenade launchers, in artillery, logistical support, and other personnel (including physicians, electricians, mechanics and drivers). The President issued three decrees on “partial mobilization” in 2014 dated 17 March, 6 May and 22 July respectively. In each instance, the partial mobilization was conducted over a period of 45 days. Regular military conscription of 18–25 year-old men was being carried out between May-July and October-November 2014. Under Ukrainian law, conscripts serve for twelve months. Three waves of mobilization are planned in 2015, according

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<sup>1</sup> Immigration and Refugee Board of Canada. Ukraine: Military service, including information on military service notices, who issues them, their contents, and physical characteristics; whether notices have a warning regarding refusal or evasion of military service; information on penalties for refusing or evading military service (2014- May 2015) [UKR105186.E], dated 1 June 2015. <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455919&pls=1> Date accessed: 3 March 2017.

<sup>2</sup> BBC. ‘Ukraine reinstates conscription as crisis deepens,’ 2 May 2014. <http://www.bbc.co.uk/news/world-europe-27247428> Date accessed: 3 March 2017.

to a statement by the Secretary of the Ukrainian National Security and Defence Council.’<sup>3</sup>

5.2.2 EuroMaidan Press, which is based in Germany and focuses on news and events relating to Ukraine, reported on 21 October 2014:

‘Today [21/10/2014] the Verkhovna Rada [Parliament] passed the law “regarding partial mobilization,” which affirms the according order of the President. The country awaits the new stage of military mobilization. The first and second stages took place in spring of 2014... The majority of the soldiers of the Armed Forces and National Guard have been in the ATO [anti-terrorist operation] zone for several months, therefore rotation is necessary. Besides, it is important to increase security of the border, import fresh forces to territorial defense troops, reinforce military units and wartime provision units in the east of the country.

‘Third stage of the first wave: those who have not served will not be summoned.

‘The current stage of mobilization is carried out within the framework of the so-called “first wave,” which presumes that the following are summoned to the army: volunteers; reserve officers and sergeants that served in the army or other force structures, who have military specialties that are currently in demand; as well as reserve regular soldiers with wartime experience.

‘We remind you that there may be four mobilization waves overall. In case of escalation after the first (current) wave of mobilization, further stages may be announced.

‘The second wave of partial mobilization: reserve officers and sergeants of all military specialties are summoned; the regular reserve army of all military specializations with military experiences; the higher officers of all military specialties. As to reserve officers who have not served in the army that graduated from military departments of civilian universities, according to the speaker of the NSDC [National Security and Defence Council] information center Andriy Lysenko, “they should not be summoned, as Ukraine has about 20 thousand reserve officers with real military and peacekeeping experience.”

‘The third wave: 18-year-old soldiers are mobilized, women who may serve (field doctors, nurses, technical specialists); as well as those who have not served but have no “white ticket.”

‘The fourth (very unlikely – only possible if ardent war has been underway for a long time): full mobilization, all those capable of holding weapons in their hands join the army...

“I emphasize that during partial mobilization those who have already undergone military service are summoned to serve – reserve officers and people with military experience. And only those that have specialties that individual units need. We do not summon 18-year-old boys [to the combat

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<sup>3</sup> UN High Commissioner for Refugees (UNHCR). International Protection Considerations Related to the Developments in Ukraine – Update II, 15 January 2015. Para 19-21. Available at: <http://www.refworld.org/docid/54c639474.html>. Date accessed: 21 August 2015

area]. Also we will not summon breadwinners from low-income families,” added the NSDC secretary.’<sup>4</sup>

### 5.2.3 Sputnik International published the following on 15 January 2015:

‘The Ukrainian parliament on Thursday approved a presidential decree to hold three partial military mobilizations in 2015.

“To declare and to conduct in 2015 three stages of partial mobilization within 210 days from the date of entry into force of this decree,” the document said. According to the decree the mobilization will be conducted in Kiev and all the regions of Ukraine in proportion to their population.

‘Kiev earlier announced plans to begin the first wave of mobilization on January 20, the second in April, and the third in June. During the first wave, some 50,000 people will be called to military service. The three waves planned in 2015 could bring an additional 104,000 soldiers into the military's ranks, bringing the number of army personnel to 250,000 soldiers...

‘The decree also stipulates a demobilization from March 18 to May 1 of those who were called up for military service in 2014's first wave of partial mobilization on March 17.

‘In 2014, Kiev held three waves of military mobilization for its special operation in the Donbas. The exact number of people called up for military service was never officially disclosed, but it was reported that in 2014, the number of troops in Ukraine's armed forces increased to 232,000 from 130,000 the year before.’<sup>5</sup>

### 5.2.4 IB Times reported the following in June 2015:

‘The Ukrainian government began mobilizing its sixth and final wave of troops for active duty in the East Ukraine conflict on Thursday [18 June 2015]. While the exact total of how many people will be called upon is not known yet, the chief military prosecutor of Ukraine, Anatoliy Matios, said in January he expected the figure to be around 50,000. Kiev's armed forces are looking for scouts, tankers, gunners, signalmen, engineers, mechanics and drivers.’<sup>6</sup>

### 5.2.5 UNHCR's September 2015 position paper stated that:

‘The large-scale mobilization of men aged 18 to 26 years old, which began in 2014 continued throughout 2015. Resistance to conscription has reportedly been growing due to a number of factors, including objections to participation in a civil conflict where war crimes against prisoners held by both sides have been reported, and where killings of fellow countrymen are likely to occur. Others report fears of being sent to fight with inadequate training and

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<sup>4</sup> EuroMaidan Press. ‘Partial mobilisation: why is it necessary and who should await summons,’ 23 July 2014. <http://euromaidanpress.com/2014/07/23/partial-mobilization-why-is-it-necessary-and-who-should-await-summons/> Date accessed: 3 March 2017

<sup>5</sup> Sputnik International. ‘Ukrainian Parliament approves three waves of military mobilisation for 2015,’ 15 January 2015 (updated 16 January 2015). <http://sputniknews.com/europe/20150115/1016921774.html> Date accessed: 3 March 2017.

<sup>6</sup> IB Times. ‘Ukrainian Government Begins Sixth Wave of Military Mobilization for Service in East Ukraine War,’ 18 June 2015. <http://www.ibtimes.com/ukrainian-government-begins-sixth-wave-military-mobilization-service-east-ukraine-war-1973269> Date accessed: 3 March 2017

equipment. IDPs have also voiced concerns about the possibility of being called for military service in their regions of origin, where they are likely to encounter their former neighbours, and the fear that fighting for the Ukrainian army will effectively prevent them from returning to their homes one day, as they would be subjected to social exclusion.<sup>7</sup>

5.2.6 RT.com reported on the following in February 2016:

‘The president of Ukraine suggested an amendment that would allow him to start military mobilization without announcing it beforehand. The measure was proposed after only 60 percent of draftees were enlisted in the previous run.

‘Over the two years that have passed since the armed coup in Kiev dramatically changed Ukraine, the new government declared six waves of mobilization. It’s a special kind of military draft separate from regular conscription that is used to respond to an emergency.

‘The draft was needed to boost military units sent to fight the rebellious eastern regions of Donetsk and Lugansk. Ukraine nearly doubled the strength of its army from the initial 130,000 to 232,000 in 2014 and wants to have 250,000 standing troops. 210,000 people were drafted overall, some of them already demobilized.

‘The war effort, however, became increasingly difficult to maintain. The initial surge of volunteers dwindled while the number of people who would rather risk prosecution for dodging the draft than put their necks on the line increased.

‘During the latest sixth wave in July-August 2015, the Ukrainian military managed to get just over 60 percent of the intended draftees, the Defense Ministry reported. There were 8.5 percent of volunteers among them.

‘The military complained that its officers often had problems with getting the summons to potential draftees, who moved to another address or simply refused to open their doors. Of those who did get their summons, over half chose to ignore it and run. The ministry said 26,800 men are now subject to prosecution for avoiding military service.

‘The legislative amendment proposed by President Petro Poroshenko on Thursday would make the seventh mobilization wave a bit easier for the military. It would allow him [to] order mobilization without announcing it at least one month beforehand, as the law requires now. Actually, no publication would be required at all.

‘The measure is one of several similar bills currently floating in the Ukrainian parliament. Another one would require the border guard service, the election commission, the tax authorities and other government agencies to report any data on potential draftees – including minors who would become eligible years later – to the military.

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<sup>7</sup> UN High Commissioner for Refugees (UNHCR), International Protection Considerations Related to the Developments in Ukraine – Update III, 24 September 2015, available at: <http://www.refworld.org/56017e034.html> Date accessed 3 March 2017

'The ministry so far has not detailed when the seventh wave of mobilization will start or how many would be drafted, but the Ukrainian media reported that before April [2016] some 40,000 troops would have to be replaced through mobilization.'<sup>8</sup>

5.2.7 In September 2016 a seventh wave of mobilisation began. Reporting in October 2016, Ukraine Interfax News Agency stated:

'According to the decree of the Cabinet of Ministers of Ukraine No. 684 dated September 22 [2016], which is released on the official website of the government, 7,908 people will be sent to the Armed Forces of Ukraine, 5,000 people to the National Guard and 1,000 people to the State special transport service out of the total number of conscripts.

'...As the General Staff of the Armed Forces of Ukraine reported later on the official Facebook page, the conscript will finish on November 30, 2016.

'At the same time, army discharge of those who have served fixed term of time military service has started. A total number of those who must be released in October-December of 2016 is 8,315 people.'<sup>9</sup>

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### 5.3 Military service notice/call-up paper

5.3.1 In June 2015, the Immigration and Refugee Board of Canada citing various sources stated:

'The law refers to a military service notice as a "call-up paper"... Call-up papers are issued by the city (regional) military commissariats... Article 14(6) of the same law states that "[i]n order to register with an enlistment office, citizens of Ukraine are obliged to report in person to a military regional (city) commissariat by a date specified in call-up papers and present necessary documents, a list of which is established by the Ministry of Defence of Ukraine"...

'In correspondence with the Research Directorate, a senior program officer for Europe and Eurasia at the National Endowment for Democracy (NED), a US-based private non-profit foundation "dedicated to the growth and strengthening of democratic institutions" globally, said that notices for compulsory military service in Ukraine take the form of a piece of paper, instructing citizens to go to the commissariat for further instructions and to undergo a medical check-up. The same source further indicated that the notices are hand-delivered and require the signature of the recipient (ibid.). She noted that, as is the case with all official Ukrainian documents, the military service notice "almost certainly has a seal/stamp".'<sup>10</sup>

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<sup>8</sup> RT.com. 'Ukraine plans stealth military draft as recruitment plummets,' 6 February 2016. <https://www.rt.com/news/331557-ukraine-stealth-military-draft/> Date accessed: 3 March 2017.

<sup>9</sup> Ukraine Interfax News Agency. Autumn conscription starts in Ukraine. 4 October 2016. <http://en.interfax.com.ua/news/general/374440.html> Date accessed 3 March 2017

<sup>10</sup> Immigration and Refugee Board of Canada. Ukraine: Military service, including information on military service notices, who issues them, their contents, and physical characteristics; whether notices have a warning regarding refusal or evasion of military service; information on penalties for refusing or evading military service (2014- May 2015) [UKR105186.E], dated 1 June 2015. <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455919&pls=1> Date accessed: 3 March 2017.

5.3.2 The same source further noted that military service notices contain a warning regarding refusal or evasion of military service.<sup>11</sup>

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## 5.4 Eligibility

5.4.1 On 1 May 2014 the acting President of Ukraine signed a decree reinstating military conscription for males between the ages of 18 and 25 (who did not qualify for exemption).<sup>12</sup> However, in January 2015, the upper limit of compulsory military draft age for male citizens was raised from 25 to 27 years.<sup>13</sup> In April 2015, Ukraine Today noted that ‘Previously, the ministry recruited men from 18 to 25 years, but now their age is to be from 20 to 27 years.’<sup>14</sup>

5.4.2 President Poroshenko’s official website reported on reservists in August 2016:

‘President Petro Poroshenko signed the Law to raise the age limit for military service in reserve for those who have the experience of military service and may be used to resupply the Armed Forces of Ukraine and other military formations.

‘In accordance with Law № 1604-VII “On amending Article 28 of the Law of Ukraine “On military duty and military service”, the age limit of staying in reserve is increased for the second class from 50 to 60 – for privates and sergeants, from 55 to 60 – for junior and senior officers, to 65 – for high rank officers.’<sup>15</sup>

5.4.3 According to Global Security recruits serve in the military for 1.5 years.<sup>16</sup>

5.4.4 Ukraine Today reported in April 2015 that the Ministry of Defence had changed the list of persons who are subject to deferments due to health and family reasons. The deputies of town, city, district and regional councils, and teachers who work in secondary schools in non-rural areas have lost their

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<sup>11</sup> Immigration and Refugee Board of Canada. Ukraine: Military service, including information on military service notices, who issues them, their contents, and physical characteristics; whether notices have a warning regarding refusal or evasion of military service; information on penalties for refusing or evading military service (2014- May 2015) [UKR105186.E], dated 1 June 2015. <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455919&pls=1> Date accessed: 3 March 2017.

<sup>12</sup> VOA News. ‘Ukraine Reinstates Conscription as Security Deteriorates in Eastern Region’, dated 1 May 2014 <http://www.voanews.com/content/russian-fm-calls-for-dialogue-in-ukraine/1905082.html> Date accessed: 3 March 2017

<sup>13</sup> Sputnik News. ‘Ukraine expands military draft age to 27,’ 1 January 2015. <https://sputniknews.com/europe/20150115/1016938343.html> Date accessed: 3 March 2017

<sup>14</sup> Ukraine Today. ‘Conscription to Ukrainian army begins from April 1,’ 1 April 2015. <http://uatoday.tv/news/conscription-to-ukrainian-army-begins-from-april-1-419034.html> Date accessed: 3 March 2017.

<sup>15</sup> President of Ukraine; Petro Poroshenko; official website. ‘President signed the law to raising the age limit for military service in the reserve,’ dated 8 August 2014. <http://www.president.gov.ua/en/news/prezident-pidpisav-zakon-pro-pidvishennya-granichnogo-viku-v-33414> Date accessed: 3 March 2017.

<sup>16</sup> GlobalSecurity.Org. Ukraine. ‘Military Personnel’ (page last modified 26 June 2015). <http://www.globalsecurity.org/military/world/ukraine/personnel.htm> Date accessed: 3 March 2017.

right to defer service. In addition, a guardian has the right to defer service only when he is the sole person who can care for disabled people.<sup>17</sup>

#### 5.4.5 In June 2016, Ukraine Today reported on foreign nationals undertaking military service in Ukraine:

‘Ukrainian President Petro Poroshenko has signed a decree "On the Regulation about the Military Service in the Armed Forces of Ukraine by Foreigners and Stateless Persons," according to the president's press service. The decree is aimed to optimize the recruiting of foreigners and stateless persons as privates, sergeants, and officers who will serve in the Armed Forces of Ukraine under a contract.

‘The decree allows foreigners and stateless persons who have not served in the Armed Forces of Ukraine earlier to voluntarily and duly fulfill their duty of protecting the independence and territorial integrity of Ukraine.

‘However only those foreigners, who are staying in Ukraine legally can be taken for the military service in Ukrainian army, if they have such inclination. In addition, foreigners who join the Ukrainian military service will have a probatory term of two months.

‘As earlier reported, Ukraine's parliament allowed foreign nationals and people without citizenship to serve in the Ukrainian army back in October 2015. On November 3, 2015, Poroshenko signed the relevant law.’<sup>18</sup>

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## 5.5 Women

### 5.5.1 A Ukrainian Women's Fund report entitled "Invisible Battalion: Women's participation in ATO military operations" published in 2016 stated that:

‘As of early October 2015, about 14,500 female soldiers and 30,500 employees of the Armed Forces of Ukraine are in the service. Almost 2,000 are officers with 35 women holding management positions in the Ministry of Defense, General Staff and various corps of the Armed Forces of Ukraine. Responding to the request for statistical information concerning the involvement of women in combat operations in the ATO [anti-terrorist operation] zone, the Ministry of Internal Affairs of Ukraine indicates that the total number of the National Guard of Ukraine is about 14,000 people, including 21 women (positions: doctor, nurse), for the ATO duration. In other words, women make up only 0.0015%.’<sup>19</sup>

### 5.5.2 In a June 2016 article, Euromaidan Press reported:

‘According to data released by the Ministry of Defense in March 2016, there are 17,000 women soldiers in the Armed Forces of Ukraine, including 2,200

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<sup>17</sup> Ukraine Today. ‘Conscription to Ukrainian army begins from April 1,’ 1 April 2015.

<https://www.unian.info/society/1062505-conscription-to-ukrainian-army-begins-from-april-1.html>

Date accessed: 3 March 2017.

<sup>18</sup> Ukraine Today. ‘Foreigners allowed to serve in Ukraine's army,’ 10 June 2016.

<https://www.unian.info/society/1372194-foreigners-allowed-to-serve-in-ukraines-army-if-they-sign-contract.html> Date accessed: 3 March 2017.

<sup>19</sup> Ukrainian Women's Fund. “Invisible Battalion”: Women's participation in ATO Military Operations,’ 2016. [www.uwf.kiev.ua/files/invisible\\_batallion\\_eng\\_short.pdf](http://www.uwf.kiev.ua/files/invisible_batallion_eng_short.pdf) Date accessed: 24 September 2016



officers. Another 33,000 are working at positions of civil servants and employees of the Armed Forces of Ukraine. More than 1,500 were performing tasks in the Anti-Terrorist Operation (ATO) Zone.

'The activists from the initiative\_Invisible Battalion conducted a study on the role of Ukrainian women in the ATO and were looking of ways to integrate them as soldiers. Activists also have repeatedly pointed at the violation of women's rights in the army defined by Ukrainian old legislation.'<sup>20</sup>

#### 5.5.3 The same article continued:

'The struggles of Ukrainian women who fight at the front lines in Donbas have been heard. Revolutionary amendments on the Decree of the Ministry of Defense #337 are going to be published on June 29 2016],\_said representative of the Armed Forces of Ukraine Vitaliy Golota.

'According to him, women will be able to hold positions of snipers, intelligence officers, and commanders of military hardware. This is way more compared to the current list of positions for women in the army. So far officially they can only work as nurses, secretaries, accountants, seamstresses, and cooks.

'However, women's tasks in the Ukrainian Army were never limited by this list. Quite often they performed the same duties as men but did not receive the same rights and state support, including when they come back from war. Also, Ukrainian women face a number of obstacles to entering the army as volunteers. Which means that those who succeed are highly motivated to serve for Ukraine. Sometimes their motivation is much higher than men's.'<sup>21</sup>

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## 6. Exemptions

### 6.1.1 Article 18 of the Law of Ukraine on Military Duty and Military Service (1992) addressed exemptions from conscription:

'Article 18: An Exemption from Conscription to Regular Military Service

'1. The following citizens of Ukraine are exempt from conscription to regular military service in peacetime:

- Those recognised as unfit for military service in peacetime for health reasons;
- Those who turn 25 years old on the day of conscription to regular military service;
- Those whose father, mother or (kin or not kin) siblings have perished, died or became invalid during the performance of military service or during training for persons liable to military service. Conscripts, who

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<sup>20</sup> Euromaidan Press. Ukrainian women receive right to serve in combat positions. 26 June 2016. <http://euromaidanpress.com/2016/06/26/ukrainian-women-receive-right-to-serve-in-combat-positions/> Date accessed: 6 March 2017.

<sup>21</sup> Euromaidan Press. Ukrainian women receive right to serve in combat positions. 26 June 2016. <http://euromaidanpress.com/2016/06/26/ukrainian-women-receive-right-to-serve-in-combat-positions/> Date accessed: 6 March 2017.

have the right to an exemption from conscription on these grounds, may renounce this right;

- Those who before becoming citizens of Ukraine carried out military service in other states;
- Those who were previously sentenced for committing a crime to a deprivation of liberty, a restriction of liberty, an arrest or correctional labour, including liberation from serving the sentence;
- Those who after graduation from higher education establishments have been conferred the military (special) rank of an officer (commanders).<sup>22</sup>

6.1.2 The Law of Ukraine on Military Duty and Military Service was amended since the publication of the above version. In July 2015 Ukraine's parliament passed a law that exempted the following from conscription: 'students, postgraduates and doctoral students who are studying in full-time education; scientists, scientific and academic staff of higher education institutions, research institutions and organizations with academic rank and/or academic degree; teaching staff of secondary schools.' An earlier amendment in April 2014 had reportedly exempted students, postgraduates and doctoral candidates from having to serve in the military.<sup>23</sup>

6.1.3 The EuroMaidan Press published the following on 23 July 2014:

'During mobilization, those who are not subject to mobilization are those who have been booked by the state government bodies during the mobilization period; those who have been deemed unacceptable for military service due to health reasons on a period of up to 6 months; men who have five and more children under the age of 16; women who have children of up to 16 years of age; those who are engaged in providing for someone who has nobody else to turn to. Members of the Ukrainian Parliament cannot be mobilized either.'<sup>24</sup> Censor.net noted that the clergy are also exempt from being drafted.<sup>25</sup>

6.1.4 In the eighth National Report on the implementation of the European Social Charter, submitted by the government of Ukraine for the period 2011 to 2014, it was noted that the length of alternative service still remains '1.5 times longer than the period of military service established for persons

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<sup>22</sup> Geneva Centre for the Democratic Control of Armed Forces (DCAF). Fluri, P, Kozeil, M and Yermolaiev, A (eds.) 2013, 'The Security Sector Legislation of Ukraine,' Center for Army, Conversion and Disarmament Studies, p.173 <http://www.dcaf.ch/Publications/The-Security-Sector-Legislation-of-Ukraine2> Date accessed: 6 March 2017.

<sup>23</sup> UNIAN Information Agency. 'Rada exempts professors, researchers from conscription during mobilization,' 2 July 2015. <http://www.unian.info/politics/1095919-rada-exempts-professors-researchers-from-conscription-during-mobilization.html> Date accessed: 3 March 2017.

<sup>24</sup> EuroMaidan Press. 'Partial mobilisation: why is it necessary and who should await summons,' 23 July 2014. <http://euromaidanpress.com/2014/07/23/partial-mobilization-why-is-it-necessary-and-who-should-await-summons/> Date accessed: 3 March 2017

<sup>25</sup> Censor.net. 'Mobilisation in Ukraine: sixth wave of military draft starts today,' 18 June 2015. [http://en.censor.net.ua/news/340536/sixth\\_wave\\_of\\_military\\_draft\\_starts\\_today](http://en.censor.net.ua/news/340536/sixth_wave_of_military_draft_starts_today) Date accessed: 3 March 2017

serving active military service in the Armed Forces of Ukraine and other military formations established under the laws of Ukraine.

'The difference in duration is caused by the fact that the conditions of the active military service are much heavier than for alternative (non-military) service.

'Advantages of the alternative service are as follows:

- 'alternative service is served primarily within the human settlement where the servant resides or in the area where it is possible day to return to place of residence everyday;
- 'labor relations are based on a written contract for temporary employment and are governed by labor legislation;
- 'the service is paid in accordance with the staff list and level of wages at the enterprise;
- 'period of being on the alternative service is included into the pension insurance record;
- 'possibility to have an annual paid leave for twelve days;
- 'possibility to have (optional) leave without pay and to have this period included in the period of alternative service in cases specified by law;
- 'possibility to combine the alternative service with studying in secondary and higher educational institutions (evening or extramural form of training).'<sup>26</sup>

6.1.5 The report further noted the number of citizens sent to alternative (non-military) service in 2011-2014:

'2011: 499

'2012: 436

'2013: 215

'2014: 475

'TOTAL: 1625'<sup>27</sup>

6.1.6 Ilyashev and Partners, a Ukrainian law firm, described the situation with regard to medical examinations in April 2016:

'The medical examination includes analysis of the state of health and physical development of citizens as of the moment of examination with the aim of defining the level of fitness for military service, training under military

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<sup>26</sup> European Social Charter (revised). 8th National Report on the implementation of the European Social Charter (revised) submitted by the government of Ukraine (Articles 1, 9, 10, 15, 18, 20, 24 for the period 2011–2014); Additional information (Article 2 §7; Article 5; Article 26 §§ 1-2; Article 28) (Conclusions 2014) <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069ad4c> Date accessed: 3 March 2017.

<sup>27</sup> European Social Charter (revised). 8th National Report on the implementation of the European Social Charter (revised) submitted by the government of Ukraine (Articles 1, 9, 10, 15, 18, 20, 24 for the period 2011–2014); Additional information (Article 2 §7; Article 5; Article 26 §§ 1-2; Article 28) (Conclusions 2014) <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069ad4c> Date accessed: 3 March 2017.

qualifications, settlement of other matters stipulated by the Regulations with provision of a written conclusion (declaration). Fitness for medical service under the Regulations means such state of health and physical development of citizens allowing them to perform obligations (stipulated by army regulations and instructions) on certain military occupation in the Military Forces of Ukraine and other military formations in peace and war time.

‘Medical examination is carried out by MPC [military physical commission] with the aim of assuring the fitness, in particular, for military service of the youth of pre- and conscription age, persons liable to military service, reservists (candidates to the reserve).

‘The MPCs take their decisions on the basis of the list of illnesses, conditions and physical disabilities defining the level of fitness to the military service (Annex 1 of the Regulations) (hereinafter – the List of illnesses), explanations on application of provisions of the List of illnesses (Annex 2 to the Regulations) and tables of additional requirements to the state of health (Annex 3 of the Regulations).

‘According to the legislative and regulatory compliance practices medical opinion on fitness for military service may be appealed through the court.

‘According to the court decisions upheld as a result of consideration of an administrative claim filed against the head of the MPC at Kherson united city commissariat (hereinafter KUCC) on:

- ‘acknowledgment of actions of the MPC at KUCC on issuing a decision on fitness for military service to be unlawful and illegitimate;
- ‘annulment of the resolution of the decree of the MPC at KUCC on issuing a decision on fitness for military service;
- ‘obligation to uphold a new decree in accordance with the current legislation of Ukraine under the results of undergoing of the medical examination by the claimant
- ‘in case of taking a competent approach and proper substantiation the decision of the MPC may be appealed.

‘While substantiating his claims the claimant stated that the MPC made a wrong conclusion on his fitness to the military service in the Military Forces of Ukraine as soon the commission wrongfully interpreted Article 39(b) of the Regulation on military medical examination in the Military Forces of Ukraine approved by the Order of the Minister of Defense of Ukraine No. 402 as of August 14, 2008, namely: the MPC wrongfully applied provision of Article 39(c) of the section II of the Regulation.

‘By the Decision issued by Kherson district administrative court as of May 27, 2015 the claim was sustained and the decree of the Head of the extraordinary permanent MPC at KUCC as of February 17, 2015 (on upholding a decision of fitness of a person for military service) was canceled and MPC at KUCC was obliged to uphold new decree in accordance with current Ukrainian laws under the results of undergoing a medical examination.

'The court established that the claimant was acknowledged to be fit for military service with reference to Articles 39(b) and 41(c) of the List of illnesses.

'In particular, graph I of Article 39(b) of the List of illnesses defines that according to this article persons – during their assignment to the draft offices, enlistment for the military service and their entry to military educational establishments, soldiers and officers undergoing regular military service are declared unfit for military service in time of peace or limitedly fit for service in time of war.

'Graph I of Article 41(c) of the list of illnesses defines the similar conclusion of the military medical examination.

'Thus, the decree on fitness of the claimant for military service does not comply with requirements of the Order of the Ministry of Defense of Ukraine No. 402.'<sup>28</sup>

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## 7. Conscientious objection

### 7.1 Provision for conscientious objection

7.1.1 The UN High Commissioner for Refugees noted the following on 15 January 2015: 'The law in Ukraine provides for conscientious objection and alternative service on religious grounds for members of religious organizations registered in Ukraine. Conscientious objection is not available on any other grounds.'<sup>29</sup>

7.1.2 UNHCR published the following in September 2015:

'Ukraine's legal framework on regular conscription provides for conscientious objection and alternative service on religious grounds for members of religious organizations registered in Ukraine, subject to possible limitations in times of civil or military emergency. However, there is no clear provision on alternative service arrangements for individuals drafted through emergency mobilization, creating risks of enlistment contrary to a person's religious beliefs. The religious beliefs of conscientious objectors summoned in the course of the waves of emergency mobilization in the context of the current conflict are reportedly often ignored by conscription offices.'<sup>30</sup>

7.1.3 The US Department of State noted in the 2015 Report on International Religious Freedom that 'The council [Council of Evangelical Protestant Churches of Ukraine] ... complained about continuing attempts by the armed forces to call up conscientious objectors for military duty. Members of the

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<sup>28</sup> Ilyashev and Partners (Lexology). 'Mobilisation: medical contraindications and legal reservations,' 7 April 2016. <http://www.lexology.com/library/detail.aspx?q=e1ccfc9d-c841-49ea-9742-9e151dd5e04a> Date accessed: 3 March 2017.

<sup>29</sup> UN High Commissioner for Refugees 2015, 'International Protection Considerations Related to the Developments in Ukraine - Update II,' 15 January 2015, p.9, section 21 <http://www.refworld.org/docid/54c639474.html> Date accessed: 3 March 2017

<sup>30</sup> UN High Commissioner for Refugees (UNHCR). 'International Protection Considerations Related to the Developments in Ukraine – Update III,' d 24 September 2015. Available at: <http://www.refworld.org/docid/56017e034.html> Date accessed: 3 March 2017.

council and legal experts attributed such attempts primarily to legislative gaps, including the lack of alternative civilian service during mobilization for the current conflict, and urged the government to rectify the issue.<sup>31</sup>

- 7.1.4 In an information request response, the Canadian Immigration and Refugee Board reported the following, citing a number of different sources, in December 2015:

‘Sources state that the Ukrainian military allows for alternative service for conscientious objectors ... based on religious grounds... According to information posted on the website of the Ukrainian Ministry of Foreign Affairs, Article 35 of The Constitution of Ukraine states that

‘[n]o one shall be relieved of his or her duties before the State or refuse to perform the laws for reasons of religious beliefs. In the case that the performance of military duty is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service.

‘The 2004 summary version of the 1992 Law of Ukraine "On Alternative (Non-Military) Service'," as found on the website of the Institute for Religious Freedom (IRF), a Kyiv-based human rights NGO that assists "in the realization of freedom of conscience, religion, beliefs and other related human rights...and dissemination of information on the status of the law and religious life" in Ukraine, states that

‘[c]itizens shall do alternative service on the enterprises which are in state or communal ownership or dominant part in the state fund of which is in the state or communal ownership. Activity of such enterprises shall be related to social protection of population, health protection, environmental protection, building, housing and communal services, and agriculture. Besides, alternative service may be conducted in medical attendance service in Red Cross organizations of Ukraine. Labour relations between the citizen who does military service and enterprise shall be maintained on the basis of written fixed-date labour agreement.’<sup>32</sup>

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## 7.2 Conscientious objection for recognised religious groups

- 7.2.1 In the December 2015 information request response, the Canadian Immigration and Refugee Board also provided information on which religious groups may claim the status of conscientious objector:

‘...According to a report by Equal Rights Trust, which was written in partnership with the LGBT Human Right Centre Nash Mir, the religious groups that are able to claim conscientious objector status, on the basis that

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<sup>31</sup> US Department of State. ‘2015 Report on International Religious Freedom;’ Ukraine, 10 August 2016. Available at ecoinet: [http://www.ecoi.net/local\\_link/328420/455696\\_en.html](http://www.ecoi.net/local_link/328420/455696_en.html) Date accessed: 3 March 2017.

<sup>32</sup> Canada: Immigration and Refugee Board of Canada, Ukraine. ‘Information on military conscription and exemption from service, including alternative military service for conscientious objectors; whether members of the Orthodox Church can perform alternative military service (2014-November 2015), 1 December 2015, UKR105366.E. <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=456252&pls=1> Date accessed: 3 March 2017.

their religious organisations do not allow their members to bear arms, are: Adventist Reform Church, Seventh Day Adventists, Evangelical Christians, Evangelical Christian-Baptists, the Slavic Church of the Holy Spirit (Pokutnyky), Jehovah's Witnesses, the Charismatic Christian Churches and the International Society for Krishna Consciousness. An excerpt from the forthcoming (2016) book *Free Radicals: War Resisters in Prison*, by CJ Hinke, as found on the website of World Beyond War, a "global nonviolent movement to end war and establish a just and sustainable peace, similarly indicates that in Ukraine, those who are able to claim religious conscientious objector status are: Seventh Day Adventists, Baptists, Adventists-Reformists, Jehovah's Witnesses and Charismatic Christians.

'According to the European Bureau for Conscientious Objection (EBCO), an umbrella organisation for national associations of conscientious objectors..., objectors "from Jewish or majority faiths," or those who object for non-religious reasons, have "no alternative to compulsory military service" in Ukraine... Equal Rights Trust similarly states that conscientious objector status is not available for "other religions, or non-religious beliefs grounded in conscience"...

'The EBCO further states that there is "no right to conscientious objection for serving conscripts, reservists and professional soldiers"... Equal Rights Trust similarly states that Ukrainian law "does not contain provisions which allow for conscientious objectors to refuse to undertake military service when mobilised"...'<sup>33</sup>

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### 7.3 Conscientious objection: court cases

7.3.1 The same Canadian Immigration and Refugee Board information request response also reported on Court Cases Related to Conscientious Objection: "JW [a website] states that the requests of Ukraine's Jehovah's Witnesses for alternative service are "generally respected, and few Witnesses have faced prosecution".<sup>34</sup>

7.3.2 The US Department of State's 2015 Report on International Religious Freedom, dated August 2016, noted that 'The High Specialized Court of Ukraine for Civil and Criminal Cases overturned several convictions of conscientious objectors who sought alternative military service...

'In April [2015] the Council of Evangelical Protestant Churches of Ukraine appealed to the president and prime minister to grant members of the clergy

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<sup>33</sup> Canada: Immigration and Refugee Board of Canada, Ukraine. 'Information on military conscription and exemption from service, including alternative military service for conscientious objectors; whether members of the Orthodox Church can perform alternative military service (2014-November 2015), 1 December 2015, UKR105366.E. <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=456252&pls=1> Date accessed: 3 March 2017.

<sup>34</sup> Canada: Immigration and Refugee Board of Canada, Ukraine. 'Information on military conscription and exemption from service, including alternative military service for conscientious objectors; whether members of the Orthodox Church can perform alternative military service (2014-November 2015), 1 December 2015, UKR105366.E. <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=456252&pls=1> Date accessed: 3 March 2017.

exemption from the military mobilization resulting from Russia's military intervention in the east of the country.<sup>35</sup>

### 7.3.3 The US Department of State also reported on Court rulings in the 2015 Report on International Religious Freedom:

'On June 23 [2015], the High Specialized Court of Ukraine for Civil and Criminal Cases upheld a February 26 [2015] ruling by the Dnipropetrovsk Oblast Appellate Court confirming a November 2014 verdict by the Novomoskovsk District Court that the application of Jehovah's Witness member Vitaliy Shalaiko for alternative civilian service had been improperly denied. The court ruled that, in addition to regular military conscription, conscientious objectors had the right to alternative service during mobilization. There were no subsequent prosecutions involving alternative service.

'On September 29 [2015], the High Specialized Court of Ukraine for Civil and Criminal Cases made a similar ruling in overturning a May 28 [2015] Rivne Oblast Appellate Court ruling. The appellate court had upheld the March 13 [2015] verdict by the Volodymyretsky District Court sentencing an evangelical church member and conscientious objector to two years imprisonment for "dodging" mobilization.

'On June 11 [2015], the Kharkiv District Administrative Court supported an appeal by Pavlo Bakum, a member of the New Generation Evangelical Christian Church and a conscientious objector, of the May decision by Kharkiv's Frunzensky District military office to call up Bakum for military service.'<sup>36</sup>

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## 8. Conditions for those eligible for conscription

### 8.1.1 EuroMaidan Press published the following in July 2014:

'According to the law "regarding mobilization preparation and mobilization" those who are obliged to serve and who received the summons from the military commissariat, have to arrive at the point at the time noted in the summons...

'All those who are accounted for in military registries, starting the moment of declaration of full mobilization (we remind you that now partial mobilization is underway), are prohibited from changing their place of residence without the approval of a military commissariat official... Informing servicemen listed for training is done exclusively through summons that ha[s] an established template, personally, and not by phone.'<sup>37</sup>

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<sup>35</sup> US Department of State. '2015 Report on International Religious Freedom,' Ukraine, 10 August 2016. <https://www.state.gov/j/drl/rls/irf/2015/eur/256253.htm> Date accessed: 3 March 2017.

<sup>36</sup> US Department of State. '2015 Report on International Religious Freedom,' Ukraine, 10 August 2016. <https://www.state.gov/j/drl/rls/irf/2015/eur/256253.htm> Date accessed: 3 March 2017.

<sup>37</sup> EuroMaidan Press. 'Partial mobilisation: why is it necessary and who should await summons,' 23



8.1.2 Global Security published the following information, which was last updated February 2017:

'Citizens of Ukraine military of conscription age traveling abroad must show a document issued by a military commissariat. Defense Minister Stepan Poltorak made the statement on 31 January 2015. "All the recruits that were called into the army during mobilization, based on the provisions, should provide the document (issued by a military commissariat -ed.) for traveling abroad. It's like an auxiliary measure to determine the reason for traveling abroad and so on," he said. According to the official, the concept was developed jointly by Ministry of Defense of Ukraine and the General Staff.'<sup>38</sup>

8.1.3 In February 2016, Reuters reported:

'The authorities say they have raised the salaries of those serving at the front to at least 7,000 hryvnia (\$275) [£211] per month from 2,341 hryvnia [£70] to encourage soldiers to sign up or re-enlist. That could be a big incentive - some recruits would as civilians earn the minimum wage of around 1,400 hryvnia [£42].'<sup>39</sup>

8.1.4 However, the same Reuters report also noted that 'Another problem is the fate of returning veterans who struggle to find jobs in a country deep in recession.

'It takes a mountain of paperwork for ex-servicemen to register with the state employment centre and almost all the jobs on offer are low-paying positions, said Anton Kolumbet, who helps run Kiev's veterans association.

"How can a person who quit their job as a deputy director (of a company) to go to war, how can they suggest he earn 1,500-2,000 hryvnia [£45 - £60] as a supermarket guard? It's insulting," he said.'<sup>40</sup>

8.1.5 The US Department of State country report on human rights practice covering events in 2016, stated that:

'There were reports of hazing in the military. On August 4 [2016], the country's human rights ombudsman sent a letter to the Prosecutor General's Office and the Ministry of Defense expressing concern about military hazing following the suicide of Vlad Khaisuk, a young soldier serving in a unit stationed in Stanytsia Luhanska. After Khaisuk's suicide, his parents found videos on Khaisuk's smartphone of him being hazed and humiliated by other soldiers. The Luhansk Department of the Military Prosecutor's Office investigated and found no signs of military hazing. At year's end, however,

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July 2014. <http://euromaidanpress.com/2014/07/23/partial-mobilization-why-is-it-necessary-and-who-should-await-summons/> Date accessed: 3 March 2017

<sup>38</sup> GlobalSecurity.Org. Ukraine. 'Military Personnel' (page last modified 9 February 2017).

<http://www.globalsecurity.org/military/world/ukraine/personnel.htm> Date accessed: 3 March 2017.

<sup>39</sup> Reuters. 'Ukraine struggles to recruit soldiers for war in east,' 4 February 2016. <http://uk.reuters.com/article/uk-ukraine-crisis-military-idUKKCN0VD21Q> Date accessed: 3 March 2017.

<sup>40</sup> Reuters. 'Ukraine struggles to recruit soldiers for war in east,' 4 February 2016. <http://uk.reuters.com/article/uk-ukraine-crisis-military-idUKKCN0VD21Q> Date accessed: 3 March 2017.

police in Stanytsia Luhanska were investigating the accident as a homicide.<sup>41</sup>

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## 9. Draft evasion and desertion

### 9.1 Numbers

#### 9.1.1 The UNHCR published the following in September 2015:

'Resistance to conscription has reportedly been growing due to a number of factors, including objections to participation in a civil conflict where war crimes against prisoners held by both sides have been reported, and where killings of fellow countrymen are likely to occur. Others report fears of being sent to fight with inadequate training and equipment. IDPs have also voiced concerns about the possibility of being called for military service in their regions of origin, where they are likely to encounter their former neighbours, and the fear that fighting for the Ukrainian army will effectively prevent them from returning to their homes one day, as they would be subjected to social exclusion. Fighting in areas of origin may also expose remaining family members to security risks...

'There are ... reports of men leaving NGCAs [non-Government controlled areas] through the Russian Federation or by trying to avoid official border checkpoints, for fear of being mobilized.'<sup>42</sup>

#### 9.1.2 RT.com reported as follows in February 2016:

'The lack of enthusiasm among Ukrainians is understandable. Despite government officials' claims to the contrary, the Ukrainian Army continues to be in poor shape, suffering from a shortage of even basic supplies, disastrous discipline, low competence of soldiers and officers and a general lack of leadership. Non-combat casualties sustained in episodes of drunken brawls, road crashes, mishandling of firearms and similar causes are reported in the Ukrainian Army on weekly basis.'<sup>43</sup>

#### 9.1.3 In November 2015, Global Research reported that:

'During the conflict in the Donbass, Ukraine lost about 24,000 soldiers in combat operations, almost 54,000 were wounded, and over 9,000 have gone missing. Deaths from non-combat-related fatalities totaled 1,309, including 873 suicides.

'Over 3,000 pieces of basic military equipment were utterly destroyed, and another 2,000 items were seized by the armed forces of Novorossia as spoils of war....

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<sup>41</sup> United States Department of State, 2016 Country Reports on Human Rights Practices - Ukraine, 6 March 2017. Section 1c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265484> Date accessed 6 March 2017

<sup>42</sup> UN High Commissioner for Refugees (UNHCR). 'International Protection Considerations Related to the Developments in Ukraine – Update III,' 24 September 2015. Available at: <http://www.refworld.org/docid/56017e034.html> Date accessed: 3 March 2017.

<sup>43</sup> RT.com. 'Ukraine plans stealth military draft as recruitment plummets,' 6 February 2016. <https://www.rt.com/news/331557-ukraine-stealth-military-draft/> Date accessed: 3 March 2017

'A total of 2,500 soldiers were taken prisoner during the fighting, most of whom were later turned over to relatives or exchanged....

'Corruption, theft, and a lack of supplies are just the cherry on the sundae of the Ukrainian army's self-destruction. Four million hryvnia (\$160,000) [£120,000] was embezzled by just a single head of financial services within the Ukrainian armed forces, Major Andrey Kvirel, which he took from the soldiers' military pay. This amount was enough to have supported an entire regiment in the "Anti-Terror Zone" for four months' <sup>44</sup>

9.1.4 In April 2015, Ukrainian Week reported:

'Before the fourth mobilization began, General Headquarters gave the DROs a clearly defined objective: to provide a far better quality of call in 2015 than the previous year. One of the key criteria was ensuring the proper level of professional skills and training among reservists being mobilized into the Ukrainian Armed Forces. The plan was that only experienced individuals with those military occupational specialty (MOS) needed by the given army unit would be put "under the gun."

'It turned out that to mobilize 1,000 men into the army, they would need to issue nearly 40,000 calls, numbers that recruitment offices said they had no means of vetting, realistically. Instead, they had to be satisfied with simply taking whoever wasn't hiding from their local recruitment office and had normal results from their physical.'<sup>45</sup>

9.1.5 The Kyiv Post reported the following in February 2015: '...the number of volunteers to fight in the war has been steadily diminishing, while the number of people who have tried to evade draft is on the rise, according to the government's data...

'However, the threat of jail sentences has not stopped people from hiding. Oleksandr Halkin, head of the mobilization department Pinvinch in Rivne Oblast told a local newspaper on Feb. 7 [2015] that his office was only able to meet the draft plan by 75 percent. "There are more than 4,000 people who are currently being searched. More than 3,000 reservists do not reside at their registration address, and finding them is impossible. More than 1,000 people who were served notices, simply did not show up at the draft offices," Halkin said...

'On Jan. 28 [2015] the Cabinet of Ministers adopted a resolution allocating double pay for soldiers fighting in the east, to Hr 4,600 per month [£139], according to Seleznev. Also, additional Hr 1,000 [£30] will be paid for every day of participation in fights. It also introduced a set of bonuses paid to military units and individual soldiers for "successful fulfillment of military tasks," such as destroying the enemy war machines. Soldiers can get Hr 121,000 [£3,650] for downing an enemy plane, or Hr 48,000 [£1,450] for a tank. The money is to come from a special fund of the defense ministry.

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<sup>44</sup> Global Research. 'Ultimate fiasco of the Ukrainian army, 7 November 2015. <http://www.globalresearch.ca/ultimate-fiasco-of-the-ukrainian-army/5487227> Date accessed: 3 March 2017

<sup>45</sup> Ukrainian Week. 'Fear of Mobilization: Myths and Reality; An inside look at how the army is being formed,' 17 April 2015 <http://ukrainianweek.com/Society/134926> Date accessed: 6 March 2017

'But it's not clear how much money the fund has and how the money will be allocated. Volunteer David Arakhamia, who was invited to conduct reforms at the defense ministry, said that if the system of benefits had been applied in January [2015], that month alone the ministry would have to pay Hr 14 million [£422,000] for destroyed war machines.

'Seleznev from General Staff told the Kyiv Post the system of financial benefits would be introduced "in the nearest days." Seleznev also said that about 60 percent of people who are supposed to be drafted in the current wave of mobilization, have already been sent to training bases. "They are now in training centers where they will undergo 26 days of preparations. Then two weeks of combat teamwork trainings. And then if they pass combat test they will go to ATO [anti-terrorist operation] zone," Seleznev said.'<sup>46</sup>

9.1.6 In an article dated April 2015, The Ukrainian Week noted the call-up issues of March and April 2014:

'In March-April 2014, 70% of Kyiv reservists ignored the call to show up at their recruitment office, by the second round, 80% ignored it, and by the third round 90% were no-shows. Today, starting January 20<sup>th</sup> with the fourth round, 95% of reservists in the capital are not showing up—at least, that's what our sources at the Kyiv Municipal Recruitment Office registration and mobilization department tell us.

'These individuals are not draft dodgers as such. These are reservists to whom notice to appear before the DRO [district recruitment office] has not even been delivered for any number of reasons: they may have gone abroad or be hiding on their balcony during mobilization, or they may simply live at a different address, be on a business trip, and so on. Poor efforts and even sabotage on the part of business owners, local officials, residential services and so on, who are also authorized to deliver DRO notices to individuals, are all part of the problem. And it's virtually impossible to hold any of these 95% "evaders" responsible in any way.'<sup>47</sup>

9.1.7 In October 2015, Sputnik News reported that:

'Only a month ago, the Prosecutor's Office had declared that there were only 6,500 cases of desertion, emphasizing that the numbers have actually been declining through the course of the past year... Last month, Colonel Alexander Pravdivets, the Deputy Chief of the Ukrainian Armed Forces' Mobilization Department, noted that nearly 27,000 men had managed to evade conscription during the country's sixth wave of mobilization, which ended in August. This amounts to over 50 percent of the total men who were called up.'<sup>48</sup>

9.1.8 RT Network published the following in January 2015:

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<sup>46</sup> Kyiv Post. 'Not everyone answering Ukraine's call to mobilise for war,' 9 February 2015 <http://test.kyivpost.com/article/content/kyiv-post-plus/not-everyone-answering-ukraines-call-to-mobilize-for-war-380055.html> Date accessed: 6 March 2017

<sup>47</sup> The Ukrainian Week. 'Fear of mobilization: myths and reality,' 17 April 2015. <http://ukrainianweek.com/Society/134926> Date accessed: 6 March 2017.

<sup>48</sup> Sputnik News. 'Kiev may now have as many as 16,000 army deserters', 5 October 2015 <https://sputniknews.com/military/20151005/1028034616/ukraine-army-deserters.html> Date accessed: 6 March 2017

'... [The Ukrainian president's adviser, Yury Biryukov] did cite preliminary draft statistics, showing evasion was primarily a problem in western Ukraine, traditionally a major source of anti-Russian sentiment. According to Biryukov's figures, 57 percent of Ivano-Frankovsk potential conscripts would not show up at enlistment offices, while 37 percent fled Ukraine. He mentioned that local authorities in the Ternopol region were sabotaging the draft, refusing to help distribute notices. Nineteen percent of Volynskaya region men, bound to military service, cited religious motives for not joining the army. Previously not more than 0.7 percent would use this pretext... This one is the fourth wave of mobilization since Kiev launched a military operation against anti-government forces in eastern Ukraine.'<sup>49</sup>

9.1.9 Kyiv Post published the following in February 2015: 'Many residents of Ivano-Frankivsk, Ternopil, Poltava and Zakarpattia oblasts ignored the calls to mobilization centers or even left for seasonal works in Hungary, Romania or Russia. In Zakarpattia Oblast, only 410 out of 1,110 people who received draft notices came to mobilization centers, Oleg Lysenko, a representative of General Staff said recently.'<sup>50</sup>

9.1.10 The Washington Post stated the following in April 2015: '...[the] region of Kharkiv... has the most abysmal turnout, with only about 17 percent of those receiving draft orders responding. Meanwhile Lviv, in the far west, reportedly boasts the highest response rate, with near full turnout.'<sup>51</sup>

9.1.11 Radio Free Europe/Radio Liberty reported in May 2016 that a blogger who had urged conscientious objectors not to fight against Russia-backed separatists in the country's east had been sentenced to prison:

'The Ivano-Frankivsk City Court in western Ukraine found Ruslan Kotsaba, 49, guilty of obstructing the country's armed forces on May 12 [2016] and sentenced him to 3 1/2 years in jail...

'Kotsaba was arrested after he posted a 12-minute video urging people to dodge the military draft. The clip was viewed more than 300,000 times.'<sup>52</sup>

9.1.12 The US Department of State country report on human rights practice covering events in 2016, stated that:

'On May 12 [2016], an Ivano-Frankivsk court sentenced blogger Ruslan Kotsaba to three-and-a-half years in prison, on charges that he had impeded the work of the armed forces with his calls to ignore the military draft. Authorities arrested Kotsaba in 2015, and human rights groups deemed him

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<sup>49</sup> RT Network. 'Potential conscripts evade draft, flee country amid escalation in E. Ukraine,' 31 January 2015. <http://www.rt.com/news/228131-draft-evasion-ukraine-military/> Date accessed: 6 March 2017.

<sup>50</sup> Kyiv Post. 'Not everyone answering Ukraine's call to mobilise for war,' 9 February 2015 <http://test.kyivpost.com/article/content/kyiv-post-plus/not-everyone-answering-ukraines-call-to-mobilize-for-war-380055.html> Date accessed: 6 March 2017

<sup>51</sup> Washington Post. 'Ukraine's military mobilization undermined by draft dodgers,' 25 April 2015. [https://www.washingtonpost.com/world/europe/ukraines-military-mobilization-undermined-by-draft-dodgers/2015/04/25/fc3a5818-d236-11e4-8b1e-274d670aa9c9\\_story.html](https://www.washingtonpost.com/world/europe/ukraines-military-mobilization-undermined-by-draft-dodgers/2015/04/25/fc3a5818-d236-11e4-8b1e-274d670aa9c9_story.html) Date accessed: 6 March 2017.

<sup>52</sup> Radio Free Europe/Radio Liberty. 'Ukrainian blogger jailed after campaigning against army draft,' 12 May 2016. Available at: <http://www.refworld.org/docid/576900f74.html> Date accessed: 6 March 2017.

a political prisoner. The court dropped a more serious charge of treason. On July 24 [2016], an appeals court overturned the conviction, freeing Kotsaba after 18 months in detention.<sup>53</sup>

#### 9.1.13 Reuters reported as follows in February 2016:

'War-weary Ukraine is struggling to recruit soldiers to fight pro-Russian separatists in the east, with enthusiasm sapped by reports of ill-equipped troops and poor treatment of families of missing soldiers.

'When fighting began in mainly Russian-speaking east Ukraine almost two years ago, patriotism soared and recruitment offices in Ukraine's capital, Kiev, were inundated with volunteers. Now, with a year-old ceasefire barely holding and the death toll still rising, Ukraine's military faces a battle to find replacements for about 40,000 servicemen expected to be demobilised in March [2016]...

'Kiev's last recruitment drive in August 2015 attracted little over half the 25,000 soldiers the military wanted. While it is illegal to dodge the draft, potential recruits can do so by bribing officials or simply leaving the country.

'The low numbers are no surprise to one veteran, who served in an infantry brigade between Feb. 5 and Dec. 4 of last year [2015] and said those risking their lives were expected to buy a lot of their own equipment...

'Anti-Russian feelings still run high in much of the country, but war fatigue has set in and 79 percent of respondents in a December [2015] poll by the Democratic Initiative Foundation think tank said the government's priority should be ending the conflict.

"Now it's a big problem - the evasion of mobilisation and conscription," said Dmytro Tymchuk, a lawmaker and defence expert. "There's been negative publicity from the conflict zone ... There were problems with nutrition, medicines and the winter uniform. Patriotism is falling."...

'At the start of the conflict in April 2014, when the separatists rose up against Kiev's rule following the seizure of Crimea by Russian forces, one in eight servicemen was a volunteer, but that number has since fallen to one in 10...

'Families like that of sniper Dmytro Kulish, one of hundreds of soldiers who went missing at the front line, seethe at what they see as the incompetence of military officials...

'Poroshenko's government has also taken steps to improve conditions for those sent to the front. Last year [2015] it spent 5 percent of Ukraine's gross domestic product on the military, enabling the army to revamp its creaking Soviet-era hardware.

'Scandals over corruption and incompetence in the military are now less frequently splashed across the media, but have not disappeared. The Defence Ministry has highlighted cases of soldiers receiving socks and tents

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<sup>53</sup> United States Department of State, 2016 Country Reports on Human Rights Practices - Ukraine, 6 March 2017. Political Prisoners and Detainees. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265484> Date accessed 6 March 2017

not fit to withstand the winter and said boots intended for the army had been found for sale on market stalls.<sup>54</sup>

- 9.1.14 In February 2016, RT.com noted that ‘There is ... a sense of unfairness of the draft as corruption in the military allows people with influence or money to simply bribe their way out of it. Rural residents make up a large portion of people mobilized and they have no means of dodging the service.’<sup>55</sup>
- 9.1.15 In February 2016, RT.com noted that ‘The military complained that its officers often had problems with getting the summons to potential draftees, who moved to another address or simply refused to open their doors. Of those who did get their summons, over half chose to ignore it and run. The ministry said 26,800 men are now subject to prosecution for avoiding military service.’<sup>56</sup>

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## 9.2 Penalties for draft evasion

- 9.2.1 Penalties for draft evasion, or a reservist’s failure to report for duty following a call-up instruction, are contained in Articles 335, 336 and 337 of the Criminal Code.<sup>57</sup> These Articles state:

‘Article 335. Avoidance of conscription for active military service shall be punishable by restraint of liberty for a term up to three years.

‘Article 336. Avoidance of mobilization shall be punishable by imprisonment for a term two to five years.

‘Article 337. Avoidance of military registration or special assemblies

1. ‘Avoidance of military registration by a person bound to military service after notification by an appropriate military commissariat, shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or arrest for a term up to six months.
2. ‘Avoidance of military training or special assemblies by a person bound to military service, shall be punishable by a fine up to 70 tax-free minimum incomes, or arrest for a term up to six months.’<sup>58</sup>

- 9.2.2 In June 2015, the Immigration and Refugee Board of Canada noted that Chapter XIX of Ukraine's Criminal Code, entitled ‘Criminal Offenses Against the Established Procedure of Military Service (Military Offenses),’ provides the following information regarding penalties for draft evasion:

‘Article 409. Evasion of military service by way of self-maiming or otherwise

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<sup>54</sup> Reuters. ‘Ukraine struggles to recruit soldiers for war in east,’ 4 February 2016.

<http://uk.reuters.com/article/uk-ukraine-crisis-military-idUKKCN0VD21Q> Date accessed: 6 March 2017.

<sup>55</sup> RT.com. ‘Ukraine plans stealth military draft as recruitment plummets,’ 6 February 2016.

<https://www.rt.com/news/331557-ukraine-stealth-military-draft/> Date accessed: 6 March 2017

<sup>56</sup> RT.com. ‘Ukraine plans stealth military draft as recruitment plummets,’ 6 February 2016.

<https://www.rt.com/news/331557-ukraine-stealth-military-draft/> Date accessed: 20 September 2016

<sup>57</sup> Ukraine: Criminal Code [Ukraine], 1 September 2001, available at: <http://www.refworld.org/docid/4c4573142.html> Date accessed: 6 March 2017.

<sup>58</sup> Ukraine: Criminal Code [Ukraine], 1 September 2001, available at: <http://www.refworld.org/docid/4c4573142.html> Date accessed: 6 March 2017.

Evasion of military service by a military serviceman by way of self-maiming or malingering, or forgery of documents, or any other deceit, - shall be punishable by custody in a penal battalion for a term up to two years, or imprisonment for the same term.

Refusal to comply with the duties of military service, -

shall be punishable by imprisonment for a term of two to five years.

Any such acts as provided for by paragraph 1 or 2, if committed in state of martial law or in a battle, -

shall be punishable by imprisonment for a term of five to ten years.’<sup>59</sup>

9.2.3 In a letter of 20 September 2016, the Foreign and Commonwealth Office stated that: ‘There are no separate military prisons in Ukraine. Sentenced draft evaders will be placed in general or civic prisons. All the prisons and correctional facilities in Ukraine have different levels of security and living conditions. Such living conditions usually depend upon the crime for which the individual was sentenced.’<sup>60</sup>

9.2.4 EuroMaidan Press noted in July 2014 that:

‘No-shows during full or partial mobilization are to face administrative responsibility in the form of a fine between 85 [£2.50] and 119 UAH [£3.50], for violating legislation regarding mobilization a fine of 17-51 UAH [50p - £1.50] is presumed, for the intentional destruction of the military certificate – a fine of 17-51 UAH [50p - £1.50]. For avoiding military service during mobilization, article 336 of the Ukrainian Criminal Code prescribes a jail sentence of between two and five years.’<sup>61</sup>

9.2.5 UNHCR stated in January 2015:

‘Draft evaders may be subject to a penalty ranging from administrative fine to a prison term of 2 to 5 years. According to the judicial registry, as of 8 December, 32 persons have reportedly been sentenced for evasion of conscription or mobilization in 2014 (compared to 0 in 2013). An analysis of some of these cases (16 cases) conducted in August [2014] was reported to have shown that all persons found guilty received administrative fines, community service or suspended sentences.’<sup>62</sup>

9.2.6 In September 2015, the UNHCR stated, ‘Whilst conscription practices vary from region to region, the government is reported to have stepped up

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<sup>59</sup> Immigration and Refugee Board of Canada. Ukraine: Military service, including information on military service notices, who issues them, their contents, and physical characteristics; whether notices have a warning regarding refusal or evasion of military service; information on penalties for refusing or evading military service (2014- May 2015) [UKR105186.E], dated 1 June 2015. <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455919&pls=1> Date accessed: 3 March 2017.

<sup>60</sup> British Embassy, Kyiv. Letter to the Home Office, dated 20 September 2016. Available at [Annex A](#).

<sup>61</sup> EuroMaidan Press. ‘Partial mobilisation: why is it necessary and who should await summons,’ 23 July 2014. <http://euromaidanpress.com/2014/07/23/partial-mobilization-why-is-it-necessary-and-who-should-await-summons/> Date accessed: 6 March 2017

<sup>62</sup> UN High Commissioner for Refugees (UNHCR). ‘International Protection Considerations Related to the Developments in Ukraine – Update II,’ January 2015. Available at: <http://unhcr.org/ua/attachments/article/1231/UKR%20Int%20Prot%20Cons%20UPDATE%20II.pdf> Date accessed: 6 March 2017.



prosecution of those suspected of evading conscription and mobilization, with reports of coercive measures being used in certain areas.’<sup>63</sup>

9.2.7 A UNHCR report of September 2015 report noted that according to statistics from the Ukrainian courts, ‘from 1 July 2014 to 1 July 2015, there were 661 criminal cases recorded against draft and mobilization evaders’. The same report drew on an OHCHR report and stated that ‘As of 17 April 2015, over 3,000 criminal cases had been opened against already recruited military personnel charged with desertion, unauthorized absence from service and evasion.’<sup>64</sup> In November 2015, Global Research reported that ‘about 7,000 criminal cases were opened against men who were eligible for the draft but evaded their mobilization orders.’<sup>65</sup>

9.2.8 Ilyashev and Partners, a Ukrainian law firm, provided the following information in April 2016:

‘...intentional evasion from the military service in the Military Forces of Ukraine without substantiated reasons causes the criminal responsibility.

‘In the Unified register of court decisions one can really find recent examples of punishment of draftees in the form of deprivation of freedom for dodging the military service.

‘In particular, on January 14, 2016 Gorodischenskyi district court in Cherkasy region, having reviewed in the open session of the court in town of Gorodishche the criminal proceedings on accusing a person liable for military service of committing a crime stipulated by Article 336 of the Criminal Code of Ukraine, established the following.

‘A man, being registered with Gorodishchenskyi district military commissariat and being liable for the military service (in connection with announcement of partial mobilization and enlistment for the military service in the Military Forces of Ukraine under mobilization procedures), passed a medical examination under the results of which was declared fit for the military service.

‘However, the accused “acting intentionally, with the aim of evading from the mobilization without substantiated grounds (under personal considerations), being aware of the socially dangerous nature of his actions, suspecting their implications and wishing their consequences, being fit for the military service and having no grounds for exemption from the draft under the mobilization procedures stipulated by Article 23 of the Law of Ukraine “On mobilization training and mobilization”, declined further military draft under mobilization about which he made a written statement in his application to the military

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<sup>63</sup> UN High Commissioner for Refugees (UNHCR). ‘International Protection Considerations Related to the Developments in Ukraine – Update III,’ 24 September 2015. Available at: <http://www.refworld.org/docid/56017e034.html> Date accessed: 6 March 2017.

<sup>64</sup> UN High Commissioner for Refugees (UNHCR). ‘International Protection Considerations Related to the Developments in Ukraine – Update III,’ 24 September 2015. Available at: <http://www.refworld.org/docid/56017e034.html> Footnote 129. Date accessed: 6 March 2017

<sup>65</sup> Global Research. ‘Ultimate fiasco of the Ukrainian army, 7 November 2015. <http://www.globalresearch.ca/ultimate-fiasco-of-the-ukrainian-army/5487227> Date accessed: 6 March 2017.

commissar of Gorodishchenskyi district military commissariat (DMC) and left the premises of Gorodishchenskyi DMC”.

‘Awarding a punishment to the suspect the court noted that he “violated his constitutional obligation of protecting the Homeland, its independence and territorial integrity. Being aware of the socially dangerous nature of his actions and wishing their consequences, he intentionally and purposefully performed actions directed at under-recruitment of the Military Forces of Ukraine and weakening of the defense system of the country”.

‘The court came to conclusion that in order to punish the person to correct him and make him aware of illegal nature of his actions s punishment in the form of deprivation of freedom must be applied.

‘However, in each concrete case the court defines the degree of the person’s guilt under the actual circumstances and, if the person cooperates with the investigation authorities, the court applies more subtle type of punishment without isolation of a person from society.

‘Thus, each person liable for military service does not have legal grounds to evade from the draft and may now decide whether it will be worthwhile to violate the law by intentionally failing to perform his constitutional duty and start his active social life with criminal conviction, even with a suspended one.’<sup>66</sup>

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### 9.3 Penalties for desertion

#### 9.3.1 The Immigration and Refugee Board of Canada noted the following in June 2015:

‘Chapter XIX of Ukraine's Criminal Code entitled "Criminal Offenses Against the Established Procedure of Military Service (Military Offenses)," provides the following information regarding penalties for desertion and military evasion:

‘Article 408. Desertion

shall be punishable by imprisonment for a term of two to five years.

shall be punishable by imprisonment for a term of five to ten years.

shall be punishable by imprisonment for a term of five to twelve years.

1. ‘Desertion, that is the absence from a military unit or place of duty without leave for the purpose of avoiding the military service, or failure to report for duty upon appointment or reassignment, after a detached service, vacation or treatment in a medical facility for the same purpose, -
2. ‘Desertion with weapons or of a group of persons upon their prior conspiracy, -

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<sup>66</sup> Ilyashev and Partners (article available at Lexology). ‘Mobilisation: medical contraindications and legal reservations,’ 7 April 2016. <http://www.lexology.com/library/detail.aspx?g=e1cfc9d-c841-49ea-9742-9e151dd5e04a> Date accessed: 6 March 2017.

3. 'Any such act as provided for by paragraph 1 or 2 of this Article, if committed in state of martial law or in a battle.'<sup>67</sup>
- 9.3.2 The UN Office of the High Commissioner for Human Rights reported the following on 1 June 2015: 'On 17 April [2015], the Chief Military Prosecutor of Ukraine, who is responsible for investigating crimes committed by the Ukrainian armed forces, has reported opening 7,560 criminal investigations into crimes committed by the Ukrainian soldiers since the beginning of the year. These include...948 criminal proceedings under Article 408 (desertion)...'<sup>68</sup>
- 9.3.3 In November 2015 Global Research reported, 'The military prosecutor's office of Ukraine has launched an official investigation into 16,000 cases of desertion from the "zone of the ATO [anti-terrorist operation]," as well as 6,000 cases of failure to follow orders (the majority are against officers who refused to carry out suicidal orders and tried to pull their troops out of these "cauldrons" – or areas where they were encircled by enemy forces – in order to minimize casualties).'<sup>69</sup>
- 9.3.4 The PN news website reported in November 2014 that the Kiev regional court of Poltava sentenced two soldiers to imprisonment for two years for desertion. This was in accordance with Article 408 of the Criminal Code (desertion). The soldiers were accused of having left a military unit and avoided military service for about a month.<sup>70</sup>
- 9.3.5 Global Security published the following information, which was last modified in February 2017:
- 'Ukraine's parliament passed a law 05 February 2015 which authorizes commanding officers to use physical force against army defectors. It comes as the latest military draft has seen a lack of enthusiasm on the part of potential soldiers. Ukraine's parliament voted with 260 MPs in favor - only 226 votes were needed to pass the law. The new article 22(1) added to the charter regulating service in the armed forces of Ukraine states that commanders "have the right to personally use physical force, special means, and weapons when in combat" against soldiers who commit "criminal acts."
- 'Under criminal acts the law listed "disobedience, resistance or threat to use force against the commander, voluntary abandonment of military positions and certain locations of military units in areas of combat missions." An explanatory note to the document said that currently there are mass

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<sup>67</sup> Immigration and Refugee Board of Canada. Ukraine: Military service, including information on military service notices, who issues them, their contents, and physical characteristics; whether notices have a warning regarding refusal or evasion of military service; information on penalties for refusing or evading military service (2014- May 2015) [UKR105186.E], dated 1 June 2015. <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=455919&pls=1> Date accessed: 3 March 2017.

<sup>68</sup> OHCHR - UN Office of the High Commissioner for Human Rights: Report on the human rights situation in Ukraine 16 February to 15 May 2015, 1 June 2015 (available at [ecoi.net](http://www.ecoi.net)) [http://www.ecoi.net/file\\_upload/1226\\_1433322481\\_10thohchrreportukraine.pdf](http://www.ecoi.net/file_upload/1226_1433322481_10thohchrreportukraine.pdf) Date accessed: 6 March 2017.

<sup>69</sup> Global Research. 'Ultimate fiasco of the Ukrainian army, 7 November 2015. <http://www.globalresearch.ca/ultimate-fiasco-of-the-ukrainian-army/5487227> Date accessed: 6 March 2017.

<sup>70</sup> News. PN. 'In Poltavshchina the court gave to two soldiers for two years of prison for desertion,' 4 November 2014. <https://news.pn/en/criminal/117652> Date accessed: 6 March 2017.

violations of military discipline, in particular, desertion from units and drinking alcohol, as well failure to execute commanders' orders.

'More than 10,000 cases of desertion had been registered in the Ukrainian Army since the outbreak of the Donbass war in April 2014, Ukrainian Vesti reported. In 2014 the army suffered heavy desertion and nearly 30 percent of the servicemen called up in the first wave of mobilization (March 17) abandoned their positions, Ukrainian President Petro Poroshenko said.'<sup>71</sup>

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<sup>71</sup> GlobalSecurity.Org. Ukraine. Military Personnel (page last modified 9 February 2017). <http://www.globalsecurity.org/military/world/ukraine/personnel.htm> Date accessed: 6 March 2017.

# Annex A



## Foreign & Commonwealth Office

20 September 2016

RE: Ukraine – Draft Evasion

Information has been gathered from the Ukrainian Ombudsman's Office, Amnesty International and the Ministry of Justice and Ministry of Defence regarding prison conditions in Ukraine and punishment for draft evaders.

The Legal Department of the Ukrainian Ministry of Defence (MoD) have informed us that the punishment for avoidance of conscription for active military service shall be punishable by 'restraint of liberty for a term of up to three years'. Avoidance of mobilisation shall be punishable by 'imprisonment for a term of two to five years'. Avoidance of military training, verification of skills, or special assemblies by a person eligible for military service shall be punishable by a fine of 'up to 70 tax-free minimum incomes, or arrest for a term of up to six months'. The Ukrainian MoD have no information about persons previously convicted under Article 336 of the Criminal Code of Ukraine (Avoidance of Mobilisation) being mobilised during any of the mobilisation campaigns of 2014-16.<sup>72</sup>

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<sup>72</sup> Information was obtained from the Ukrainian Ministry of Defence. Further details can be found at [www.mil.gov.ua](http://www.mil.gov.ua).

According to various media sources ( including [www.segodnya.ua](http://www.segodnya.ua) and [www.lb.ua](http://www.lb.ua)), there are currently hundreds of cases opened in Ukraine for draft evasion. In practice (according to the Registry of Court Decisions), 77 guilty verdicts were issued by courts as of February 2016. The majority of these were immediately released on probation. At the end of 2015 there was a case of one person in Zakarpattia region who was given 2 years in prison for draft evasion. However, this verdict was postponed and has not come into force yet due to the health conditions of this man.<sup>73</sup>

With regards to current prison conditions in Ukraine, I can confirm that information found in the Country Information Guidance on [www.gov.uk](http://www.gov.uk) is up to date and corresponds to the current state of affairs concerning prison conditions in Ukraine. However, the following points should be noted.

There are no separate military prisons in Ukraine. Sentenced draft evaders will be placed in general or civic prisons. All the prisons and correctional facilities in Ukraine have different levels of security and living conditions. Such living conditions usually depend upon the crime for which the individual was sentenced. Many of the prison and pre-trial detention centres are based in old buildings which sometimes do not have adequate sanitary facilities or ventilation. Overcrowding is a problem in Ukrainian prisons.

The most common complaints received from those detained or imprisoned are:

- Lack of proper access to medical care
- Being held in a cell with someone who has TB
- Lack of light, showers and adequate food
- Lack of open air activities
- Lack of access to drinking water
- Lack of tables, chairs, and other basic furniture in cells
- Cells not being equipped with emergency buttons, which poses a threat of untimely or inadequate reaction to possible incidents among those held in the cells.<sup>74</sup>

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<sup>73</sup> Further information on the information sourced from the Registry of Court Decisions can be found at [www.reyestr.court.gov.ua](http://www.reyestr.court.gov.ua) or from the website of the Zakarpattia Regional State Administration.

<sup>74</sup> Information from the above two paragraphs can be found on the websites of the State Penitentiary Service of Ukraine, the Ministry of Justice of Ukraine and the Office of the Ukrainian Ombudsman.

Each pre-trial detention centre and prison has special medical departments that can provide medical assistance. Any healthcare that is not available in prisons (e.g. complicated surgery) will be provided by regular hospitals under the jurisdiction of the Ukrainian Ministry of Health. Each prison has a library where books and newspapers are available. Relatives can also bring or send books and newspapers to prisoners. Most of the cells have radio units, some have small televisions. If the cell does not have a television, it can also be brought in by relatives. Three hot meals are provided per day. Additional food can also be bought from a prison shop. Prisoners cannot possess and use mobile phones, but are allowed to make phone calls from telephones within the prison.<sup>75</sup>

Overall, conditions in Ukrainian prisons do not meet European standards. Conditions in certain prisons can be considered to violate human rights. At the same time, they do not pose a direct threat to life. Following reforms of the penitentiary system in Ukraine in 2014, conditions in some prisons and correctional facilities have already been improved and Ukraine plans to implement further reforms to bring conditions more in line with European standards.<sup>76</sup>

There have been several changes and improvements in prison conditions in Ukraine since 2006. For example, in 2009, social and psychological services were established in prisons in order to assist with prisoners' adaptation to prison life and subsequent re-integration. Religious services and visits by priests to prisons have become very popular.<sup>77</sup>

Fewer cases of torture and mistreatment have been recorded by human rights organisations since 2012.<sup>78</sup> In addition, the Supreme Rada of Ukraine transferred the functions of the key monitor of the 'National Prevention Mechanism' to the office

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<sup>75</sup> This information can be found on the British Embassy's website, which contains an information pack for British Prisoners in Ukraine (<https://www.gov.uk/government/publications/ukraine-prisoner-pack>).

<sup>76</sup> The source of this information was the reports produced by the office of the Ombudsman. Details of the website can be found in the main body of the letter.

<sup>77</sup> This information can be found on the British Embassy's website which contains generic information for British nationals in detention/prison about the legal and prison system in Ukraine.

<sup>78</sup> This information was received from Amnesty and the Information Centre for Human Rights

of the Ukrainian Ombudsman. Since 2012, within the framework of this mechanism, Valeriya Lutskova, Ukrainian Ombudswoman, and her representatives have conducted inspections of more than 300 prisons and correctional facilities across Ukraine. Information can be found on the official website of the Ombudsman:

<http://www.ombudsman.gov.ua/en/page/npm/>.

In 2014, Ukraine launched further reforms of the penitentiary service in Ukraine. The EU and the Council of Europe provided more than €10,000 to Ukraine to assist with these reforms, in particular to bring procedures and practices in prisons in line with European standards and to support the improvement of prison inspection and handling of prison complaints.

With support from the Ukrainian government, and with recommendations from the Council of Europe, the Ministry of Justice of Ukraine along with the State Penitentiary Service have improved the conditions in some prisons and have succeeded in reducing the number of prisoners who serve their sentence within state institutions. Many individuals are now placed under house arrest rather than in pre-trial detention centres. A new mechanism for probation was also introduced in 2015. In addition to this, the Ministry of Justice of Ukraine plans to reduce the number of prisons and detention centres in Ukraine by half and to update and improve aging remand buildings.<sup>79</sup>

This letter has been compiled by staff of the British Embassy in Kyiv entirely from information obtained from the sources indicated. The letter does not reflect the opinions of the author(s) nor any policy of the Foreign and Commonwealth. The author(s) have compiled this letter in response to a request from the Home Office and any further enquiries regarding its contents should be directed to the Home Office.

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<sup>79</sup> This information was sourced from the websites of the Council of Europe and the Ministry of Justice of Ukraine.



# Version control and contacts

## Contacts

If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then [email the Country Policy and Information Team](#).

If you notice any formatting errors in this note (broken links, spelling mistakes and so on) or have any comments about the layout or navigability, you can [email the Guidance, Rules and Forms Team](#).

## Clearance

Below is information on when this note was cleared:

- version **4.0**
- valid from **11 April 2017**

## Changes from last version of this note

- Guidance section updated to reflect findings of the county guidance case of [VB & Anor \(draft evaders and prison conditions : Ukraine\) \(CG\) \[2017\] UKUT 79 \(IAC\) \(6 March 2017\)](#)
- Minor updates to country information.

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