

Ukraine : service militaire et sanctions en cas d'insoumission ou de désertion

Renseignement de l'analyse-pays de l'OSAR

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Ce rapport repose sur des renseignements d'expert-e-s et sur les propres recherches de l'Organisation suisse d'aide aux réfugiés (OSAR). Conformément aux standards COI, l'OSAR fonde ses recherches sur des sources accessibles publiquement. Lorsque les informations obtenues dans le temps imparti sont insuffisantes, elle fait appel à des expert-e-s. L'OSAR documente ses sources de manière transparente et traçable, mais peut toutefois décider de les anonymiser, afin de garantir la protection de ses contacts.

1 Introduction

Les questions suivantes sont tirées d'une demande adressée à l'analyse-pays de l'OSAR :

1. Quel est le processus de recrutement dans l'armée ukrainienne ?
2. Quelle est la peine prévue en cas de désertion ou de refus de servir? Ces peines sont-elles appliquées?
3. Est-ce que la mobilisation générale peut correspondre à une convocation individuelle ?
4. Est-ce que les autorités ukrainiennes interprètent le refus de servir ou la désertion comme étant l'expression d'un soutien russe ?
5. Est-ce que la mobilisation générale concerne aussi les citoyens ukrainiens se trouvant hors du territoire quand la guerre a éclaté ?

L'analyse-pays de l'OSAR observe les développements en Ukraine depuis plusieurs années.¹ Sur la base de ses propres recherches ainsi que de renseignements transmis par des expertes externes, elle apporte les réponses suivantes aux questions ci-dessus.

2 Service militaire en Ukraine

2.1 Procédures d'enrôlement

Un service militaire subdivisé en plusieurs catégories. Selon un rapport conjoint de l'*Office français de protection des réfugiés et apatrides* (OFPRA) et de l'*Austrian Federal Office for Immigration and Asylum* (BFA), le service militaire est subdivisé en plusieurs catégories :

- Les pré-conscrits - les personnes soumises à l'enregistrement auprès des bureaux d'enrôlement ;
- Les conscrits - les personnes inscrites dans les bureaux d'enrôlement ;
- Les militaires - les personnes effectuant le service militaire ;
- Les personnes astreintes au service militaire - les personnes dans la réserve des forces armées et d'autres formations militaires pendant une période spéciale ainsi que pour accomplir d'autres tâches liées à la défense de l'État ;
- Réservistes - personnes astreintes au service militaire qui, sur une base volontaire, effectuent leur service militaire dans la réserve des forces armées et d'autres formations militaires.

Enregistrement des pré-conscrits. Selon le rapport conjoint de l'OFPRA et du BFA, en vertu de la loi sur le devoir et le service militaire, les entités commerciales, les organisations et les

¹ www.osar.ch/publications/rapports-sur-les-pays-dorigine

établissements éducatifs doivent soumettre chaque année aux commissariats militaires régionaux ou municipaux concernés une liste des citoyens devant être inscrits dans les bureaux d'enrôlement. Chaque année, de janvier à mars, les hommes qui ont atteint l'âge de 17 ans sont enregistrés auprès des bureaux d'enrôlement comme pré-conscrits. Pour s'inscrire, les hommes doivent se rendre dans un commissariat militaire régional à la date indiquée dans les documents de convocation, muni des documents nécessaires (OFPR & BFA, mai 2017).

Exemptions. Selon le rapport conjoint de l'OFPR et du BFA, sont exemptées de l'enregistrement, les personnes pour qui l'accomplissement du devoir militaire est contraire à leurs convictions religieuses (en vertu de l'article 35 de la Constitution ukrainienne). Celles-ci devront à la place effectuer un autre devoir non-militaire. Sont également exemptées, les personnes qui purgent des peines dans des établissements pénitentiaires, ainsi que celles qui reçoivent un traitement médical obligatoire (en vertu de l'article 14 de la partie III de la loi ukrainienne sur le devoir et service militaire du 25 mars 1992) (OFPR & BFA, mai 2017).

2.2 Conscription

Rétablissement du service militaire obligatoire en 2014 après une brève suspension en 2013. Décret signé en février 2022 par le président Zelensky visant à accélérer la transition vers une armée professionnelle. Selon la BBC, en mai 2014, le président par intérim Olexander Turchynov a rétabli par décret la conscription militaire pour faire face à la détérioration de la sécurité dans l'est du pays où des forces pro-russes ont pénétré et occupé des bâtiments de l'administration publique. Selon des analystes, cités par la BBC, les forces ukrainiennes comptent 130 000 personnes qui pourraient être portées à environ un million grâce aux réservistes. Fin 2013, le président Viktor Yanukovych avait fait voter une loi qui avait supprimé le service militaire obligatoire (BBC, 2 mai 2014). Selon le rapport conjoint de l'OFPR et du BFA, la suspension de la conscription obligatoire en 2013 avait pour but de passer à un service militaire volontaire basé sur des contrats. Cette suspension a finalement été levée et le 2 septembre 2014, une nouvelle loi a été signée, « réglementant la procédure de recrutement militaire du personnel sous contrat et simplifiant la procédure de conscription » (OFPR & BFA, mai 2017). Selon l'agence de presse gouvernementale *Ukrinform*, début février 2022, le président Zelensky a signé un décret visant à accélérer la transition vers une armée professionnelle avec une augmentation de 100 000 militaires au cours des trois prochaines années. Pour attirer plus de militaires, le décret prévoit une augmentation des salaires atteignant au moins trois fois le revenu minimum pour tout le personnel militaire (*Ukrinform*, 1^{er} février 2022).

Une procédure de convocation formelle, valable également pour les citoyens résidant à l'étranger, qui n'est souvent pas suivie dans la pratique. Dans sa réponse de décembre 2018 à des questions liées au service militaire en Ukraine, l'*Agence de l'Union européenne pour l'asile* (EUAA) indique, en se référant à un rapport de Lifos (office suédois des migrations), que la convocation au service militaire est remise personnellement à la personne concernée par un messenger des autorités militaires. Les citoyens qui résident à l'étranger sont contactés par le consulat. Si la personne reçoit et accepte la convocation, elle signe alors un reçu qui sera soumis aux autorités militaires. Si elle refuse la convocation, alors un procès-verbal doit être établi par le messenger. Pour que celui-ci ait une valeur légale, il doit être attesté par trois personnes. Dans la pratique, les autorités ukrainiennes n'ont pas les ressources pour se conformer à ces exigences formelles et il arrive que les appels à la convo-

cation soient simplement envoyés par la poste ou placés dans la boîte aux lettres de la personne concernée. Les citoyens ukrainiens vivant à l'étranger ne sont souvent pas enregistrés auprès de leur consulat et il n'est donc pas possible de les joindre (EUAA, 7 décembre 2018).

Report de la convocation à la conscription pour des motifs familiaux, éducatifs et professionnels. Selon le rapport conjoint de l'OFPRA et du BFA, en vertu de l'article 17, partie I, de la loi sur le devoir et le service militaire, des motifs familiaux, éducatifs et professionnels peuvent être invoqués pour faire reporter la convocation à la conscription.

Les motifs familiaux comprennent :

- Le fait d'être le seul soutien familial d'un parent, d'un frère ou d'une sœur invalide ou mineur ;
- Le fait d'être un père célibataire avec à charge deux enfants ou plus qui sont encore mineurs ;
- Le fait d'être le père d'un enfant de moins de trois ans ou d'un enfant de plus de trois ans mais qui est élevé sans mère, soit en raison de son décès, soit en raison d'une décision de justice ;
- Le fait d'être le père de deux enfants ou plus ;
- Le fait d'avoir un enfant invalide, une femme invalide ou enceinte, ou d'être orphelin ;
- Le fait d'avoir un frère qui effectue déjà son service militaire.

Les motifs éducatifs comprennent :

- Le fait de poursuivre des études à temps plein dans des établissements d'enseignement supérieurs, des établissements d'enseignement religieux secondaires et supérieurs ;
- Le fait de poursuivre des études de troisième cycle ou un doctorat ;
- Le fait d'étudier dans des établissements éducatifs à l'étranger.

Le rapport conjoint de l'OFPRA et du BFA relève que dans le cas de motifs éducatifs, le report de la conscription n'est accordé qu'une fois pendant toute la période d'études. Les étudiants qui en bénéficient doivent présenter, avant le 1^{er} octobre de chaque année, aux commissariats militaires régionaux des documents confirmant qu'ils y ont toujours droit. Ce droit est perdu si les études sont interrompues ou si le programme d'études n'est pas achevé.

Le report de la conscription est également possible pour des **motifs professionnels**, par exemple pour :

- Les travailleurs pédagogiques qui travaillent à plein temps dans un établissement d'enseignement secondaire ;
- Le personnel médical qui travaille à plein temps à la campagne ;
- Les diplômés des établissements d'enseignement et les diplômés de troisième cycle affectés aux institutions de l'Académie nationale des sciences de l'Ukraine ;
- Les diplômés des écoles professionnelles à condition qu'ils exercent une profession acquise dans des entreprises, institutions ou organisations publiques - pendant un an à compter de l'obtention de leur diplôme ;
- Les ecclésiastiques diplômés d'établissements d'enseignement religieux supérieurs ou secondaires et occupant des postes dans l'un des ordres religieux ;
- Les candidats à un poste de député du peuple d'Ukraine, jusqu'à publication des résultats ;

- Les chefs des administrations des villages et/ou des villes et les députés des conseils locaux ;
- Les personnes qui exercent une activité agricole, de manière indépendante ou avec leurs parents (pour un an maximum)

Exemptions à la conscription en temps de paix. Selon l'article 18, partie I, de la loi sur le devoir et le service militaire, sont exemptées de la conscription en temps de paix :

- Les personnes reconnues comme inaptes au service pour des raisons de santé ;
- Les personnes qui atteignent l'âge de 25 ans le jour de la conscription au service militaire régulier ;
- Les personnes dont le père, la mère ou les frères et sœurs ont péri, sont décédés ou devenus invalides pendant l'exécution du service militaire ;
- Les personnes qui avant de devenir citoyens ukrainiens ont effectué leur service militaire dans un autre pays ;
- Les personnes qui ont été condamnées pour avoir commis un crime ;

Age du service militaire obligatoire relevé de 20 à 27 ans. Durée du service entre 12 et 18 mois. La loi interdit d'envoyer les conscrits dans des zones de combats. Selon le rapport conjoint de l'OFPR et du BFA, en janvier 2015, le parlement a relevé l'âge du service militaire obligatoire de 20 à 27 ans. La durée de la conscription a été portée à 18 mois pour les conscrits réguliers et à douze mois pour les spécialistes ou les titulaires d'une maîtrise. Les personnes déplacées sont également soumises à la conscription. Si elles ne sont pas inscrites, alors leur mobilisation n'est pas considérée comme une priorité absolue. Les hommes inscrits auprès des bureaux d'enregistrement doivent se présenter au commissariat pour obtenir leurs documents d'enregistrement. Ils subissent alors un examen médical, puis suivent une formation militaire et professionnelle. En juin 2016, le conseiller militaire de la délégation de l'Union européenne en Ukraine a affirmé que l'envoi de conscrits dans des zones de combat est contraire à la loi et que ceux-ci servent principalement dans des rôles de soutien dans des positions en retrait (OFPR/BFA, mai 2017).

2.3 Mobilisation générale

2.3.1 Cadre juridique

En cas de mobilisation générale, les citoyens enregistrés pour le service militaire ont l'interdiction de changer de domicile sans permission d'un commissaire militaire. Ils reçoivent un avis de mobilisation qui leur indique où se rendre et dans quel délai. Selon le rapport conjoint d'OFPR et du BFA, en vertu de l'article 4, partie II, de la loi sur la préparation et la mobilisation de 1993, la mobilisation s'applique « à l'économie nationale, aux organes de l'exécutif, aux collectivités locales, aux forces armées et autres formations militaires, aux forces de protection civile, aux entreprises, aux institutions et aux organisations ». A partir du moment où la mobilisation est annoncée, les citoyens enregistrés pour le service militaire ont l'interdiction de changer de lieu de résidence sans la permission d'un commissaire militaire. Ils reçoivent un avis de mobilisation et doivent se présenter au bureau d'enrôlement militaire dans les délais spécifiés. Les réservistes doivent se présenter aux unités militaires dans les délais fixés par les commandants des unités militaires. Si une personne mobilisée est reconnue comme inapte au service militaire pour des raisons de santé, alors elle bénéficiera d'une dérogation de six mois, après laquelle un nouvel examen médical devra être passé (OFPR/BFA, mai 2017).

Exemptions à la mobilisation. Selon le rapport conjoint d'OFPRA et du BFA, les individus suivants ne sont pas soumis à un appel pendant la mobilisation :

- Les hommes réservés pour l'exécutif, l'autonomie locale, les entreprises, les institutions et les organisations ;
- Les pères ayant cinq enfants ou plus âgés de moins de 16 ans ;
- Les hommes qui s'occupent de personnes nécessitant des soins constants ;
- Les députés de la Verkhovna Rada d'Ukraine ;
- Les étudiants à plein temps et ceux qui poursuivent des études de troisième cycle
- Le personnel d'enseignement et de recherche des universités scientifiques qui ont des diplômes de troisième cycle ;
- Le personnel enseignant d'autres établissements d'enseignement tels que les professeurs de lycée (OFPRA/BFA, mai 2017).

Autres exemptions pour motifs familiaux. Selon *The Guardian*, la législation ukrainienne prévoit des exceptions à la mobilisation. Celles-ci concernent notamment les hommes qui ont au moins trois enfants de moins de 18 ans à charge, qui sont pères célibataires d'un enfant de moins de 18 ans ou qui ont des enfants handicapés ou qui sont tuteurs d'enfants handicapés (*The Guardian*, 9 mars 2022).

Les personnes handicapées exemptées. Selon l'OHCHR, le 15 mars 2022, le parlement a approuvé un projet de loi qui exempte certaines catégories d'hommes, comme par exemple les proches aidant ou les personnes handicapées, de l'obligation de rester au pays (OHCHR, 28 mars 2022).

Objecteurs de conscience pas exemptés en cas de mobilisation. Selon le rapport conjoint de l'OFPRA et du BFA, alors que l'objection de conscience et le service alternatif sont prévus par le cadre juridique ukrainien pour les personnes enrôlées dans le cadre de la conscription régulière, ce n'est pas le cas lors d'une mobilisation d'urgence (OFPRA/BFA, mai 2017).

2.3.2 Mobilisation générale du 24 février 2022

Mobilisation générale pour les conscrits et les réservistes suite à l'invasion russe de février 2022. État d'urgence déclaré et loi martiale imposée. Interdiction pour tous les hommes de 18 à 60 ans de quitter le pays. Selon *Business Insider*, le 24 février 2022, le jour de l'invasion militaire russe en Ukraine, le président Volodymyr Zelensky a ordonné par décret une mobilisation militaire générale dans tout le pays. Cette mobilisation, qui doit être effectuée dans un délai de 90 jours, concerne les conscrits et les réservistes qui doivent se rendre disponibles aux unités et institutions militaires ukrainiennes et ceci afin d'« assurer la défense de l'État ». En parallèle, le gouvernement a imposé la loi martiale d'une durée illimitée et temporairement interdit à tous les citoyens masculins âgés de 18 à 60 ans de quitter le pays (*Business Insider*, 24 février 2022). Selon *Radio Free Europe*, le parlement ukrainien a approuvé la déclaration de l'état d'urgence qui concerne toutes les régions du pays, à l'exception de Donetsk et Louhansk contrôlés par les séparatistes pro-russes et où l'état d'urgence est en vigueur depuis 2014. L'état d'urgence permet notamment l'imposition de restrictions sur les déplacements « dans l'intérêt de la sécurité nationale et de l'ordre public » (RFERL, 23 février 2022). Selon le *Haut-Commissariat des Nations unies aux droits de l'homme* (OHCHR), le 23 février 2022, le gouvernement ukrainien a déclaré l'état d'urgence

pour une période de 30 jours. Le jour suivant, il a imposé la loi martiale, puis l'a prolongée jusqu'au 25 avril (OHCHR, 28 mars 2022).

Étudiants ukrainiens à l'étranger pas concernés par la mobilisation. Selon DUB, un site d'information et d'opinions de la communauté universitaire d'Utrecht, les étudiants ukrainiens qui vivent et étudient aux Pays-Bas pourraient être appelés à rentrer au pays pour s'engager dans l'armée. Toutefois, un porte-parole de l'ambassade d'Ukraine à la Haye, cité par DUB, a indiqué qu'à court terme cette mobilisation ne concernait pas ces étudiants et que ceux-ci pouvaient continuer à étudier (DUB, 28 février 2022).

Manque de clarté concernant l'enrôlement forcé. Selon l'*International Crisis Group* (ICG), il n'est pas encore très clair si et dans quelles circonstances des hommes ukrainiens peuvent être enrôlés contre leur gré. Pour beaucoup d'hommes, il existe la crainte d'être arrêté à un poste de contrôle et de se retrouver sur une liste de conscription (ICG, 16 mars 2022). Le *Guardian* lui constate que jusqu'à maintenant le gouvernement ukrainien ne force personne à se battre mais interdit aux hommes de 18 à 60 ans de quitter le pays. Le journal estime qu'une conscription forcée pourrait prendre place si la guerre se poursuit (*The Guardian*, 9 mars 2022).

Filtrage aux postes-frontières. Les hommes en âge de se battre attrapés en train de quitter illégalement le pays risquent des amendes et d'être envoyés au service militaire. Il reste possible de sortir du pays moyennant le versement d'un pot-de-vin. Selon le *Washington Post*, des moyens existent pour contourner l'interdiction de sortie du territoire, comme par exemple en versant des pots-de-vin aux garde-frontières ou en trouvant un passage non surveillé pour traverser la frontière. Selon un garde-frontière ukrainien, interrogé par le *Washington Post*, les personnes en âge de combattre qui se présentent aux postes-frontières officiels sont simplement refoulées. Les personnes surprises en train de traverser la frontière illégalement s'exposent à des amendes et sont « recommandées au poste de recrutement local » (*Washington Post*, 9 mars 2022). Selon un homme ukrainien, interrogé par le *Guardian*, bien que certains hommes aient réussi à quitter le pays, souvent en payant des passeurs, un nombre important d'hommes auraient été arrêtés à la frontière et il n'y aurait pas d'information claire sur ce qui leur est arrivé. Les temps d'attente pour sortir du pays seraient notamment allongés en raison du filtrage mis en place par les gardes-frontières ukrainiens qui veulent s'assurer qu'aucun homme en âge de se battre ne quitte le pays (*The Guardian*, 9 mars 2022). ICG rapporte que des hommes ont été pris alors qu'ils tentaient d'acheter leur sortie du pays avec des pots-de-vin atteignant 2 100 dollars, ou près de cinq fois le salaire mensuel moyen en Ukraine. ICG estime que ceux qui ont réussi à sortir ont probablement dû payer un prix encore plus élevé et qu'ainsi ce sont les plus pauvres qui ont le moins de chances d'échapper à la conscription (ICG, 16 mars 2022). Selon le *New York Times*, qui se base sur de informations fournies par des responsables moldaves, de nombreux Ukrainiens ont quitté illégalement le pays en faisant appel à des réseaux de contrebande moldaves, certains payant jusqu'à 15 000 dollars pour être aidés à passer la frontière. Plus de 20 de ces réseaux auraient été démantelés par les autorités moldaves et 1 091 Ukrainiens appréhendés pour avoir franchi la frontière illégalement. La grande majorité, ou environ 1 000 personnes, ont choisi de déposer une demande d'asile. Elles sont ainsi protégées d'un renvoi forcé en Ukraine. Un peu moins de 100 personnes ont toutefois été refoulées en Ukraine. Les autorités ukrainiennes auraient fait pression pour que toutes ces personnes soient renvoyées en Ukraine (NYT, 10 avril 2022).

Le HCR demande une « approche humaine et compatissante ». La Pologne accueille toute personne fuyant l'Ukraine sans distinction de sexe ou d'âge. Un représentant du HCR, cité par *The Guardian*, a reconnu le droit du gouvernement ukrainien à exiger que ses citoyens effectuent leur service militaire, mais il a demandé à celui-ci d'opter pour une approche « compatissante et humaine » à l'égard de ceux qui quittent le pays et qui ont besoin de sécurité et de protection. Les gardes-frontières polonais ont affirmé que l'interdiction de quitter le territoire ukrainien ne s'appliquait pas à la Pologne et que toute personne, quel que soit son sexe ou son âge, serait accueillie en Pologne (*The Guardian*, 9 mars 2022).

L'ICG estime que l'interdiction faite aux hommes de 18 à 60 de quitter l'Ukraine est inutile car le pays dispose de suffisamment de volontaires, y compris ceux qui reviennent de l'étranger. L'*International Crisis Group* (ICG) juge peu probable que le pays se retrouve à court de volontaires à court terme. Il estime que les restrictions de mouvement imposées aux hommes de 18 à 60 sont inutiles, puisqu'il n'y a aucun signe que les soldats ukrainiens quittent leurs postes. Au contraire, plus de 60 000 citoyens sont revenus au pays pour combattre, selon le ministre ukrainien de la défense. Des milliers d'autres volontaires ont choisi de se battre. Selon le représentant d'une ONG, cité par ICG, les hommes déplacés qui ne peuvent pas quitter le pays et qui ne sont pas soumis à la mobilisation sont souvent confrontés à l'hostilité des habitant-e-s qui les perçoivent comme des insoumis (ICG, 16 mars 2022).

3 Sanctions en cas d'insoumission

3.1 Cadre juridique

Défendre la patrie est une obligation constitutionnelle. Selon le rapport d'OFPRA et du BFA, en vertu de l'article 65 de la Constitution de l'Ukraine, la défense de la patrie est une obligation constitutionnelle dont le non-respect constitue une infraction pénale. Une personne qui se soustrait à la conscription, à la mobilisation, à l'enregistrement militaire ou aux rassemblements spéciaux, est puni par la loi, en particulier les articles 335, 336 et 337 du code pénal (OFPRA/BFA, mai 2017).

Des sanctions qui vont d'une simple amende à cinq ans de prison. Les peines de prison sont purgées avec d'autres prisonniers de droit commun. Conformément à l'article 335 du code pénal ukrainien, le fait de se soustraire à la conscription pour le service militaire actif est puni d'une peine de prison d'une durée maximale de trois ans. En vertu de l'article 336 du code pénal, le fait d'éviter la mobilisation est passible d'une peine d'emprisonnement de trois à cinq ans, ou de deux à cinq ans en cas de mobilisation ciblée. En outre, selon l'article 337, une personne astreinte au service militaire, mais qui se soustrait à l'inscription au registre militaire peut être punie d'une amende pouvant atteindre de 300 à 500 fois le revenu minimum, ou d'une peine de travail correctionnel pouvant aller jusqu'à un an. Si le conscrit ou le réserviste se soustrait à une session de formation, il encourt une amende de 500 à 700 fois le revenu minimum, ou d'une peine de travail correctionnel pouvant aller jusqu'à deux ans (*République d'Ukraine*, 4 juin 2021). Selon le *Danish immigration service* (DIS), en vertu des articles 335-337 du code pénal ukrainien, l'insoumission peut entraîner une peine de prison. En cas de condamnation, les insoumis purgent en principe leur peine avec la population carcérale générale. Comme ils ne servent pas dans l'armée, ils ne peuvent pas être condamnés par le droit militaire (DIS, novembre 2021).

Amendes relativement modestes pour ceux qui ignorent la convocation au service militaire ou la mobilisation. Enquête criminelle ouverte contre ceux qui ignorent par deux fois la convocation. Selon l'EUAA, qui se base sur des informations obtenues par Lifos auprès d'avocats liés à l'ambassade de Suède à Kiev, une personne qui a été notifiée personnellement et qui a ignoré la convocation au service militaire peut être sanctionnée en vertu de l'article 2010 du code pénal administratif. Pour avoir ignoré la première convocation la personne reçoit une amende qui varie de 85 et 170 UAH, ou entre 2.70 et 5.40 francs suisses². Si la deuxième convocation est également ignorée, alors l'amende augmente à 170 ou 255 UAH, ou entre 5.40 et 8.10 francs suisses. Si la personne concernée ne répond toujours pas à l'appel, les autorités militaires transmettent la responsabilité de l'affaire à la police qui enquête pour déterminer s'il s'agit d'un cas d'insoumission. Les sanctions à l'égard d'une personne qui ne répond pas à la mobilisation suivent les mêmes procédures (EUAA, 7 décembre 2018).

3.2 Mise en œuvre

Les conscrits et les objecteurs de conscience sont pourchassés et forcés de rejoindre des points de rassemblement militaires. Détention arbitraire de conscrits. Les hommes soumis à la mobilisation doivent obtenir une autorisation pour quitter le pays. Dans son dernier rapport de février 2022 sur l'Ukraine, le *Comité des droits de l'homme* indique être préoccupé par des informations selon lesquelles les conscrits et les objecteurs de conscience sont pourchassés et livrés contre leur gré à des points de rassemblement militaire. Les conscrits sont soumis à une détention arbitraire. Pour le Comité, les objecteurs de conscience, sans discrimination par rapport à la nature de leur objection, devraient se voir proposer une alternative au service militaire. L'Etat devrait également s'assurer que les cas d'enlèvement et de détention arbitraire de conscrits fassent l'objet d'enquêtes rapides, approfondies et indépendantes, mais également que les auteurs de ces actes soient poursuivis et punis. Les victimes devraient également disposer de recours effectifs, notamment d'une indemnisation adéquate (UNHRC, 9 février 2022). Selon le rapport conjoint d'OFPRA et du BFA, depuis 2015, les citoyens ukrainiens soumis à la mobilisation doivent présenter un document délivré par un commissariat militaire s'ils veulent quitter le pays. Citant l'organisation War Resisters International, le rapport conjoint d'OFPRA et du BFA indique qu'une base de données créée par l'armée garde la trace des personnes insoumises (OFPRA/BFA, mai 2017).

Possible pour ceux qui n'ont pas été notifiés personnellement lors de l'appel à la convocation d'éviter les conséquences légales. Selon l'EUAA, pour avoir une valeur légale, une convocation au service militaire doit être notifiée personnellement. Comme dans la pratique, cette convocation est souvent simplement envoyée par la poste, elle n'est souvent pas légale. Se basant sur des informations obtenues par Lifos auprès d'avocats liés à l'ambassade de Suède à Kiev, l'EUAA indique qu'une personne qui a choisi d'ignorer la convocation au service militaire peut éviter des conséquences légales en invoquant le fait que la procédure formelle n'a pas été suivie et qu'elle n'a pas été notifiée personnellement (EUAA, 7 décembre 2018).

Aucun cas de poursuites pour insoumission encore enregistré depuis le début de l'invasion russe. Selon le courriel envoyé à l'OSAR le 7 avril 2022 par une *personne de contact*

² Selon le taux de change du 11 avril 2022.

qui travaille pour une ONG ukrainienne de défense des droits humains, trop peu de temps s'est écoulé depuis le début de l'invasion russe et cette personne n'a pas connaissance de cas de personnes poursuivies pour insoumission ou désertion. Elle indique qu'avant l'invasion russe, les tribunaux imposaient souvent des peines avec sursis en cas d'insoumission.

Pas d'emprisonnement en 2021 de personnes condamnées pour insoumission. Peine avec sursis et amendes. Un homme insoumis condamné à une peine de prison en 2016.

Se basant sur des statistiques judiciaires de 2021, DIS indique qu'aucune des 295 personnes condamnées pour insoumission n'a été emprisonnée. 175 personnes ont été condamnées à une peine avec sursis et 73 à une amende. Seules huit personnes ont été placées dans des prisons semi-ouvertes (DIS, novembre 2021). Selon l'EUAA, qui se base sur des informations du HCR, en décembre 2014, un total de 32 personnes avaient été condamnées pour insoumission à la conscription ou à la mobilisation au cours de l'année. Dans les 16 cas examinés par le HCR, tous avaient donné lieu à des amendes administratives, à un service communautaire ou à des peines avec sursis (EUAA, 7 décembre 2018). Se basant sur des informations contenues dans le Livre blanc 2014 du ministère ukrainien de la défense, le rapport conjoint d'OFPRA et du BFA indique que cette année-là, 8 490 soldats ont fait l'objet de poursuites pour s'être soustraits au service militaire. En 2016, plusieurs enquêtes pénales ont été lancées contre des réfractaires au service militaire. Un homme a été condamné à une peine de prison pour avoir refusé le service militaire sous mobilisation. Le cabinet d'avocats ukrainien Ilyashev & Partners, cité dans le rapport d'OFPRA et du BFA, estime que si la personne poursuivie coopère avec les autorités chargées de l'enquête, alors le tribunal sera enclin à appliquer une peine plus légère qui ne privera pas la personne de sa liberté (OFPRA/BFA, mai 2017). Selon Lifos, cité par l'EUAA, la pratique judiciaire de 2016 à l'encontre de personnes condamnées pour insoumission à la mobilisation était de prononcer des peines de prison de deux ans (EUAA, 7 décembre 2018).

Peu probable que l'insoumission seule soit interprétée comme un acte de soutien à la Russie. Selon l'évaluation de la *personne de contact de l'OSAR* (7 avril 2022), en l'absence d'une déclaration publique sur le gouvernement de l'Ukraine ou d'une expression de soutien explicite envers la Russie, il est très peu probable que l'insoumission ou la désertion d'une personne soit interprétée comme un acte de soutien à l'ennemi.

Il semble exclu que les citoyens ukrainiens qui ont refusé de rentrer au pays pour combattre soient poursuivis. La *personne de contact de l'OSAR* (7 avril 2022) exclut totalement la possibilité que des citoyens ukrainiens en âge de combattre se trouvant à l'étranger au moment du début de l'invasion russe et qui ne sont pas rentrés puissent faire l'objet de poursuites pour insoumission.

4 Sanctions en cas de désertion

4.1 Cadre juridique

Les sanctions en cas d'absence sans permission d'une unité militaire ou d'un lieu d'affectation peuvent aller d'une simple amende à dix ans de prison. Conformément au paragraphe 1 de l'article 407 du code pénal ukrainien, une personne qui s'absente d'une unité militaire ou d'un lieu d'affectation sans permission (congé), ou qui ne se présente pas à temps

au service sans excuse valable après un congé, une nomination ou une réaffectation, des vacances ou un traitement dans un établissement médical d'une durée de plus de trois jours, mais de moins d'un mois, peut être puni de la détention dans un bataillon pénal pour une durée maximale de deux ans, ou d'un emprisonnement de trois ans au maximum. Conformément au paragraphe 2 de l'article 407 du code pénal ukrainien, un militaire (autre qu'en service actif) qui s'absente d'une unité militaire ou d'un lieu d'affectation sans permission (congé) ou qui ne se présente pas à temps au service avec une excuse valable pendant plus de dix jours, mais moins d'un mois, ou pendant moins de dix jours mais plus de trois jours si cela se répète au cours d'une année, peut être punie d'une amende de 1 000 à 4 000 fois le revenu minimum, ou d'une restriction de service pour une durée maximale de deux ans, ou d'une peine d'emprisonnement maximale de trois ans. Conformément au paragraphe 3 de l'article 407 du code pénal, une personne visée par le paragraphe 1 et 2 du présent article et qui ne se présente pas à l'armée pendant plus d'un mois peut être punie d'une peine de prison allant de deux à cinq ans. Conformément au paragraphe 4 de l'article 407 du code pénal, si une personne s'absente de son unité militaire ou de son lieu d'affectation sans congé et ne se présente pas à temps au service pendant une période spéciale, elle encourt une peine de prison allant de trois à sept dix ans. Si cette personne ne se présente pas à temps au service pendant la loi martiale, alors la peine de prison sera entre cinq et dix ans (*République d'Ukraine*, 4 juin 2021).

Les sanctions en cas de désertion varient entre deux et dix ans de prison. Conformément au paragraphe 1 de l'article 408 du code pénal ukrainien, la désertion, c'est-à-dire l'absence sans permission (congé) d'une unité militaire ou d'un lieu de service dans le but de se soustraire au service militaire, mais également le fait de ne pas se présenter au service lors d'une nomination, d'une réaffectation, après un service détaché ou après des vacances ou un traitement dans un établissement médical, également dans le but de se soustraire au service militaire, est punie d'une peine de prison allant de deux à cinq ans. Le paragraphe 2 de l'article 408 du code pénal stipule que si un déserteur emporte avec lui une arme ou s'il fait partie d'un groupe qui a conspiré pour désertir, alors il sera puni d'une peine d'emprisonnement de cinq à dix ans. Selon le paragraphe 3 de l'article 408, si un acte, tel que décrit sous les paragraphes 1 et 2, est commis pendant une période spéciale, autre que la loi martiale, alors la peine de prison variera entre cinq et dix ans. Si cet acte est commis pendant la loi martiale ou dans une situation de combat, alors la peine de prison variera entre cinq et douze ans. Conformément au paragraphe 1 de l'article 409 du code pénal, un militaire qui se soustrait à son service militaire par le biais de l'automutilation, de la falsification de documents ou toute autre tromperie s'expose à une détention dans un bataillon pénal pour une durée de deux ans ou une peine de prison de la même durée. Le paragraphe 2 du même article stipule que le refus de se conformer aux obligations militaires sera puni d'une peine de prison de deux à cinq ans. Le paragraphe 3 stipule que si les actes décrits aux paragraphes 1 et 2 sont commis pendant une période spéciale, autre que la loi martiale, ils seront punis d'une peine de prison de trois à sept ans. Si ces actes sont commis en état de loi martiale ou en situation de combat, ils seront alors punis d'une peine de prison de cinq à dix ans (*République d'Ukraine*, 4 juin 2021).

Autorisation du recours à la force physique par les commandants militaires contre les déserteurs. Selon le rapport conjoint d'OFPRO et du BFA, en février 2015, le parlement

ukrainien a adopté une loi qui autorise le recours à la force physique par les commandants militaires contre les déserteurs. L'article 22(1) de la charte réglementant le service dans les forces armées ukrainiennes précise que les commandants « ont le droit d'utiliser personnellement la force physique, les moyens spéciaux et les armes lors des combats » contre les soldats qui commettent des « actes criminels ». Les actes suivants sont considérés comme criminels : « la désobéissance, la résistance ou la menace d'utiliser la force contre le commandant, l'abandon volontaire des positions militaires et de certains emplacements des unités militaires dans les zones de missions de combat » (OFPRA/BFA, mai 2017).

4.2 Mise en œuvre

Aucun cas de poursuites pour désertion encore enregistré depuis le début de l'invasion russe. Selon la *personne de contact de l'OSAR* (7 avril 2022), trop peu de temps s'est écoulé depuis le début de l'invasion russe et cette personne n'a pas connaissance de cas de personnes poursuivies pour désertion. Cette personne indique qu'avant l'invasion russe, les tribunaux imposaient souvent des peines avec sursis en cas de désertion.

En 2020, 165 personnes ont été emprisonnées pour infraction des articles 407 à 409 du code pénal. La majorité des personnes condamnées ont été mises en liberté surveillée. Près de 5 000 personnes poursuivies pour désertion en 2014. Se basant sur les statistiques de 2020, DIS indique que cette année-là un total de 1 744 personnes ont été jugées pour infraction des articles 407 à 409 du code pénal ukrainien. Sur ce total, 165 personnes ont été emprisonnées, huit personnes ont été condamnées au bataillon disciplinaire et 67 personnes ont été arrêtées. De plus, 1 202 personnes ont bénéficié d'une mise en liberté surveillée tandis que 148 personnes ont écopé d'une amende. Selon DIS, les déserteurs et autres personnes condamnées sous les articles 407 à 409 du code pénal ukrainien purgent leur peine avec la population carcérale générale, à moins qu'ils n'aient le grade de lieutenant junior ou un grade supérieur (DIS, novembre 2021). Se basant sur des informations contenues dans le Livre blanc 2014 du ministère ukrainien de la défense, le rapport conjoint d'OFPRA et du BFA indique que cette année-là, 2 287 enquêtes ont été lancées au titre de l'article 407 du code pénal pour « abandon non autorisé d'une unité militaire ». 8 490 soldats ont fait l'objet de poursuites pour s'être soustraits au service militaire. Des poursuites ont été engagées contre 4 880 soldats pour « désertion », au titre de l'article 408 du code pénal, et 1 323 autres soldats ont fait l'objet d'une enquête au titre de l'article 409 du code pénal qui sanctionne l'« évasion du service militaire par automutilation ou autres moyens ». En avril 2015, le procureur militaire en chef de l'Ukraine a indiqué que depuis le début de l'année 2015, 1 964 procédures pénales avaient été lancées pour « absence sans congé d'une unité militaire ou d'un lieu de service » (article 407), 948 pour « désertion » (article 408) et 107 pour « évasion du service militaire » (article 409) (OFPRA/BFA, mai 2017).

5 Sources:

BBC, 2 mai 2014:

« Ukraine's acting President Olexander Turchynov has reinstated military conscription to deal with deteriorating security in the east of the country.

The move, announced in a decree, came as pro-Russia militants seized the regional prosecutor's office in the eastern city of Donetsk.

Ukraine blames Russia for organising the seizures of a number of offices in the east, a claim Moscow denies.

Some 40,000 Russian troops are stationed near the Ukrainian border.

Mr Turchynov admitted on Wednesday that his forces were "helpless" to quell the unrest in some parts of the east, saying the goal was now to prevent it from spreading.

He also said Ukraine was on "full combat alert", amid fears that Russian troops could invade.

On Thursday, his office said in a statement that conscription was being introduced "given the deteriorating situation in the east and the south... the rising force of armed pro-Russian units and the taking of public administration buildings... which threaten territorial integrity".

BBC diplomatic correspondent Jonathan Marcus says Kiev's decision is, in the short-term at least, a symbolic step as the Ukrainian military has been starved of cash for years and is no match for what Russia has on its borders.

The real battle for control of Ukrainian territory is already under way and Kiev is losing ground, he adds.

Analysts say Ukraine has 130,000 personnel in its armed forces that could be boosted to about one million with reservists.

Kiev scrapped compulsory military service for young men in late 2013 under a law introduced by then President Viktor Yanukovych.

At the time, Mr Yanukovych said Ukraine would introduce military reforms to create "a professional army". » Source: BBC, Ukraine reinstates conscription as crisis deepens, 2 mai 2014: www.bbc.com/news/world-europe-27247428.

Business Insider, 24 février 2022:

« Ukrainian President Volodymyr Zelensky on Thursday ordered a general military mobilization throughout the country as Russia continues its large-scale military assault in Ukraine.

The declaration ordered the conscription of conscripts and reservists for military service, as well as their delivery to military units and institutions of the Armed Forces of Ukraine in order to "ensure the defense of the state."

The mobilization, which included all of Ukraine's major cities, will be carried out within 90 days, the decree said. It will provide personnel, vehicles, infrastructure, and land use

for the Ukrainian government and military amid Russia's ongoing invasion, according to the decree.

The General Staff of the Armed Forces of Ukraine will determine the necessary number of conscripts, reservists, and vehicles within the 90-day mobilization term, the order said.

Ukraine has also banned all male citizens ages 18-60 from leaving the country, according to CNN, which cited the State Border Guard Service.

The temporary restriction was imposed after Ukraine declared martial law, the statement said, according to the outlet, and it will stay in effect as long as the country remains under martial law. » Source: Business Insider, Ukrainian president announces general mobilization of all conscripts and reservists to last 90 days, 24 février 2022: www.businessinsider.com/ukrainian-president-announces-general-mobilization-2022-2?r=US&IR=T.

DIS, novembre 2021:

« Pursuant to articles 335-337 of the Criminal Code of Ukraine, draft evaders can be sentenced and imprisoned according to the law. Convicted draft evaders serve their sentence together with the general prison population; as such, these persons are not serving in the military and hence cannot be sentenced by military law. However, according to judicial statistics for 2021, none out of the 295 of such offenders was imprisoned. Only eight persons were placed in semi-open prisons, 175 persons got a suspended sentence, and 73 were fined.

According to the Ombudsman, military personnel currently employed can be punished by detention in a disciplinary battalion, which is under the supervision of the Ministry of Defence. (See 2.5. Disciplinary battalions).

Within the disciplinary battalion, the imprisoned military personnel are subject to socially useful work, social educational work, general education, vocational training and social influence. The ombudsman noted that imprisoned personnel could not be granted leave.

Pursuant to articles 407-409 of the Criminal Code of Ukraine, deserters and the like also serve their sentence together with the general prison population, unless they have the rank of junior lieutenant or any rank above that. The officers are normally held separately, but there are no formal rules on this matter. Prisoners who served in the National Guard of Ukraine and the Military Service of Order are held in a special prison for sentenced law enforcement personnel, according to existing law. According to statistics on persons punished after articles 407—409 from 2020, out of 1,744 cases in 2020:

- *165 persons were imprisoned,*
- *8 persons received the sentence of disciplinary battalion,*
- *67 were arrested,*
- *148 were fined,*
- *1,202 were put on probation.*

Sentenced, former military personnel do not in general have problems with the general prison population; they are usually treated properly. The only reservation is that they cannot be promoted to higher levels of the internal prison hierarchy. Otherwise, they live under all the same common rules within the correctional colonies as other prisoners. » Source: Danish Immigration Service (DIS), Ukraine: Prison conditions, novembre 2021, p.49: www.ecoi.net/en/file/local/2064634/ukraine-prison-conditions-2021.pdf.

DUB, 28 février 2022:

*« [...] For Ukrainian students and staff members, there is a chance they might have to go back to fight for their homeland. **Compulsory attendance was reinstated in Ukraine in 2014, when Crimea was occupied by Russia, with men between ages 20 to 27 having to attend training for a year.** This means that some of the Ukrainian students in the Netherlands have already received military training.*

The Ukrainian government is currently calling on everyone "who can carry a weapon" to join the armed forces. However, a spokesperson for the Ukrainian embassy in The Hague does not think this will have any short-term consequences for Ukrainian students in the Netherlands. "Our students must continue studying."

Currently, there are twelve Ukrainians studying at UU. The university sent them an e-mail to show its support, informing them who they can turn to for psychological support or practical help. » Source: DUB (Utrecht UNiversity), Students eligible for conscription not going to be recruited for war in Ukraine, 28 février 2022: <https://dub.uu.nl/en/news/students-eligible-conscription-not-going-be-recruited-war-ukraine>

EUAA, 7 décembre 2018:

*« According to the Swedish Migration Board's country of origin information unit Lifos, the **formal convocation procedure looks as following:***

A call for military service shall be delivered personally to the person of interest by a messenger from the military authorities. In addition, the military authorities send calls for conscription to the person's school, work place, landlord and other institutions with a connection to the person. These institutions, in turn, have a system in order to announce calls. In this way the military authorities hope that the calls for enrolment will reach the person of interest (note that there is a lack of a cohesive and reliable national registration in Ukraine). Citizens that are residing abroad are to be called by their consulate.

If the conscript is notified he shall sign a receipt to confirm that he has been informed about his call for enrolment, and this receipt shall be submitted to the military authorities. If the person refuses to sign the document, a special record is established by the messenger. For this protocol to have legal effect, the messenger's establishment needs to be witnessed by three persons.

There is no standard template regulating how written calls are formulated. Thus, there are variations in the regions and among the issuing authorities. However, the call must contain the following information: the full name and registration address of the person,

the issuing date, the address to the local military office where the person is expected to sign in, and which documents he is expected to bring to the military office. All calls for military service must have an official stamp and been signed by the head of the local military office.

In practice, the Ukrainian military authorities do not have sufficient resources to comply with the formal requirements for the notification of calls for enrolment. It is not unusual that calls are sent by the mail service or placed directly in the person's mailbox instead of a personal notification. In addition, many Ukrainian citizens that reside abroad are not registered with their foreign consulate and cannot be reached.

3. Potential consequences of a 'failed notification', including documented cases of criminal proceedings against persons who have avoided convocation.

The available information on the formal administrative and criminal procedures against draft evaders concern persons that have been notified. As mentioned above, a call for military service must be notified personally according to the formal notification process regulated by law, otherwise it is invalid. However, as mentioned, it is often the case that the authorities do not follow the formal requirements and send calls by e.g. mail, by law such calls for conscription are invalid.

According to Lifos, referring to lawyers with connections to the Swedish Embassy in Kiev, a person that has avoided military service can avoid legal consequences by 'simply' claim that he has not taken part to the call of conscription if the formal process of notification has not been followed. Lifos stated that if a person is not found for notification, he is wanted nationally.

If a person has been notified and does not adhere the call for conscription, he can be punished in line with paragraph 210 of the administrative penal code. The punishment is a fine of 85 to 170 UAH (about 2,6 EUR to 5,27 EUR). In addition, the person gets a second call for conscription. If a person does not adhere the second call for conscription he might be punished according to 210 of the administrative penal code again, but with a higher fine this time: between 170 and 255 UAH (about 5,27 to 7,9 EUR).

If the person still does not adhere to the call for conscription after the second time, the military authorities hand over the responsibility of the case to the police who investigate whether it is a case of draft evasion.

The Criminal Code's articles 335 and 337 address penalties for draft evasion. Article 335 state that 'avoidance of conscription for active military service, - shall be punishable by restraint of liberty for a term up to three years.' Article 337 state that 'avoidance of military registration by a person bound to military service after notification by an appropriate commissariat, - shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labour for a term up to two years, or arrest for a term up to six months...'

In an analysis by the Ukraine specialist Andrey Kondratyev, draft evasion is stated to be a 'chronic' problem in Ukraine. For instance, in September 2017 the Cabinet issued an instruction that 10 470 men should be conscripted by the end of the autumn, but only three percent reported for service. Furthermore, Kondratyev stated that there are voices

that underline the need of a stricter penal legislation since most draft evaders are fined around 10 dollars. Lifos claimed that court practice seemed to be issuing punishment of two years imprisonment for draft evaders in criminal procedures.

In 2015, the UNHCR referred to the judicial registry which showed that, as of 8 December 2014, a total number of 32 persons had been sentenced for evasion of conscription or mobilisation during the year. Analyses of a sample of 16 of these cases showed that all persons found guilty were sentenced to administrative fines, community service or suspended sentences.

Mobilisation

In addition to the reinforcement of the obligatory conscription, Ukraine uses mobilisation of, primarily, persons with previous military experience. However, a call for mobilisation can be much wider and may entail conscripts that have not gone through their mandatory military service, as well as police officers and medical personnel.

The Law on Mobilisation Preparation and Mobilisation regulates the mobilisation process. The calls for mobilisation are similar to the notification process of conscription, however the military service is a statutory obligation, and mobilisation is decided on by presidential decrees. Article 4 paragraph 5 states that the type, size, procedure and terms of mobilisation are determined by a Presidential decision, and paragraph 6 states that the decision of mobilisation should be immediately announced in media. In a joint report by the French Office for the Protection of Refugees and Stateless persons (OFPRA) and Austria's Federal Office for Immigration and Asylum (BFA), an English translations of article 22 is provided:

In case of mobilisation, citizens predisposed for military service (excluding those, who serve in military reserve) are obliged to report to assembly points within specified deadlines by order of mobilisation documents (mobilisation mandates, drafting orders or directives by military commissars (servicemen of Security Service of Ukraine – by the heads of units where they are registered) or by military commissars. Reservists must report to military units in time, established by commanders of military units, where they serve in military reserve.

Sanctions for evading mobilisation follow the same procedure as the one of draft evaders. The first two omissions to adhere may be punished with administrative fines according to the administrative penal code, and thereafter the case becomes a criminal case to be handled by the police. Article 336 of the Ukrainian penal code stipulates that a person who does not adhere to a decision on mobilization is to be punished with imprisonment of two to five years. According to Lifos the court practice of 2016 was to issue prison sentences of two years.

Since March 2014 there have been several rounds of obligatory mobilisation, partial mobilization was 'carried out in three waves in 2014, and three more by August 2015'⁵¹. According to the Immigration and Refugee Board of Canada, Ukrainians up to the age of 60 may be called during mobilisation.

An article from BBC monitoring stated in 2015 that the actual mobilisation campaign targeted men aged 20 to 65 that are physically suitable for military service. According to sources con-

sulted by the French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides (OFPRA) and Austria's Federal Office for Immigration and Asylum (Bundesamt Für Fremdenwesen und Asyl, BFA), 70 percent of the reservists in Kyiv ignored the call to install at the recruitment office, 80 percent ignored the second round, 90 percent did not show up at the third round and 95 percent did not show up at the fourth round. In 2014, 85 792 persons of those that were summoned during partial mobilisation did not report to their local draft office and 9 969 were found to be illegally avoiding service. » Source: European Union Agency for Asylum (EUAA) (anciennement: European Asylum Support Office, EASO): 1. Information on the legal framework regulating convocation to military service in Ukraine. 2. Information on the procedure for military service convocation 3. Potential consequences of a 'failed notification', including documented cases of criminal proceedings against persons who have avoided convocation [Q 130], 7 December 2018, p.5-8: www.ecoi.net/en/file/local/1456648/5351_1548020282_ukr-130.pdf.

ICG, 16 mars 2022:

*« More than three million refugees have left Ukraine since Russia launched its full-scale invasion in the early hours of 24 February. **The people fleeing are mostly women, children and the elderly, because Kyiv has forbidden men between the ages of eighteen and 60 to leave. This policy is understandable in the face of the existential threat the invasion poses to the country. But it may make the refugees' journey into the unknown more dangerous and the task of rebuilding their lives much harder. Nor does it appear yet to have contributed much to Ukraine's actual fighting capacity, since so many women and men have voluntarily stayed behind, eager to take up arms in their country's defence. In the long run, Ukraine's defence will depend as much on the morale of its troops and their willingness to fight as on sheer numbers – though, for now, Ukraine appears unlikely to be short of volunteers any time soon.** The Ukrainian government should reconsider its approach and work with partner nations to make sure that its citizens continue to be welcomed regardless of age or gender.*

Generally, the Ukrainians now arriving in European Union (EU) countries are finding better conditions than refugees in earlier crises. Amid an outpouring of solidarity with Ukraine throughout Europe, the European Commission on 2 March adopted a right to stay approach for the first time since the measure was developed in 2001. This legal instrument allows Ukrainian refugees to travel freely within the EU's borders, to stay where they choose, to work legally and to get access to social services. The right to stay, although limited to one year, will spare Ukrainian refugees the experience of being trapped for months in the asylum systems of the country in which they first arrive. State railway companies in many EU countries and some airlines have made Ukrainian refugees' travel easier by letting them ride for free.

In practice, however, only women, children and the elderly can profit from Europe's open doors. The Ukrainian government declared martial law right away on 24 February, and the border guard announced, without further explanation, that it would not allow men of military age out of the country as long as martial law remains in force.

These restrictions, meant to reinforce Ukraine's fighting capability, instead have deepened the unfolding humanitarian crisis. In principle, it might make sense to subordinate humanitarian considerations to the military logic that able-bodied men must be on standby should they be needed at the front. But so far, there is little indication that this

logic is right. Outside Russian state media, whose reporting on the war is obviously suspect, there is no sign that Ukrainian soldiers are abandoning their positions. To the contrary, the Ukrainian ministry of defence reports that more than 60,000 citizens have returned from the diaspora to enlist. Many thousands of other Ukrainian volunteers have chosen to fight.

The emphasis on men also seems outdated. Nearly a quarter of the army's work force are women, and the ratio of female soldiers in combat roles almost doubled from around 6 per cent in 2014, when war began with Russian-backed separatists in eastern Ukraine, to over 10 per cent in 2019. The Territorial Defence Units, civilian reserves that signed up tens of thousands of new recruits during the first week of the present Russian attack, assign women and men the same sets of duties. From the invasion's early days, women have played a significant role in civilian resistance as well, in some cases by literally standing in the way of Russian troops. Facilitating the evacuation of women and children while making men stay behind against their will seems unnecessary.

The EU's guidance on border checks suggests waiving restrictions on taking pets across the border so that refugees do not have to choose between seeking safety and leaving beloved cats or dogs behind. In contrast, due to Kyiv's travel ban for men, many Ukrainian families have faced the agonising choice between finding refuge and splitting up. Some affected families postpone this decision and remain in harm's way.

For people who have to make such quick, consequential decisions, the ins and outs of travel bans and mobilisation require more transparent communication by the army. Whether and under what circumstances men can be involuntarily enlisted remains the subject of rumour. For instance, in the western border town of Uzhgorod, stories circulate that recruiters are seeking out single men staying at hotels. At a press conference on 15 March, the army's chief recruiter had to deny accusations that internally displaced men were targeted more often than locals. Even if one has sorted out the rules, the soldiers operating some fifteen military checkpoints now dotting the road from Kyiv to the western border may not agree with one's interpretation. A Kyiv man who drove his family to safety reported that every checkpoint not only creates its own traffic jam, but also comes with the fear of ending up on a conscription list.

These dynamics create new vulnerabilities. In the few cases where men have been caught trying to buy their way out of Ukraine, the bribes reached \$2,100, about five times the average monthly pay in the country. Those who did not get caught likely paid a higher price, meaning that the poorest men may be the most vulnerable to dubious smuggling schemes. Those who left the most dangerous cities for the relative safety of western Ukraine may lie low, hoping to avoid conscription. Amid the swelling numbers of internally displaced people, these men will struggle to find work and housing. One NGO worker who helps those displaced to small towns and villages in the western Ivano-Frankivsk region observed that internally displaced men who cannot leave the country but are not subject to mobilisation often face hostility from locals who perceive them as draft dodgers.

For the women, children and elderly people allowed to leave, family separation will make it harder to start from scratch in the receiving country (although it will also help ensure they have a strong incentive to return). The separated families will need to cover living

expenses in two locations, while refugee mothers will have to shoulder child care responsibilities and earn an income by themselves. On the journey to refuge, separated families are in greater peril of being targeted by thieves and other predators, in part because they are perceived as “unprotected” by men. Women and children arriving in a foreign country with few assets and no social network may face dangers from human trafficking, exploitation and sexual violence. As the perils of travel through a war zone are so unpredictable, many people may opt for the known risk of staying in their homes in increasingly beleaguered cities. » Source: International Crisis Group (ICG), Mitigating the Gendered Effects of Ukraine’s Refugee Crisis, 16 mars 2022: www.ecoi.net/en/document/2070172.html.

The Guardian, 9 mars 2022:

« The UN has urged Ukraine to take a “compassionate and humane” approach to the enforcement of martial law after reports of Ukrainian men defying orders to stay and attempting to cross into neighbouring countries to claim asylum.

Men of conscription age, aged 18 to 60, were banned from leaving Ukraine after the Russian invasion on 24 February but there have been multiple reports of men with Ukrainian citizenship trying to cross into Hungary, Poland and Romania. It is unclear how many have been allowed to pass.

The Ukrainian government is not forcing men to fight, only remain in the country, but there are fears of enforced conscription if the violence continues.

According to reports from aid workers, many of those trying to leave were not born in Ukraine and were in the country for work or family reasons when the war began.

The Guardian spoke with one man who was born in Belarus and lived in Germany before taking Ukrainian citizenship to work in the country.

“I am not from Ukraine originally and this is not my war,” said Alexander, who did not want his real name to be used. “I lived in Germany and Poland and I’m a holder of a Polish residence card, which means I can live in Poland for up to 10 years. But because I’m a Ukrainian citizen, I can’t leave. I’m desperate. I am not a coward but I have no blood connection with Ukraine. I managed to talk to the Polish authorities who said they cannot do anything because it is up to the Ukrainian authorities. I have a wife and son but she doesn’t want to leave without me.”

He said he didn’t want to try to cross the border into Poland for fear of being arrested by Ukrainian authorities.

“I know many [men] are attempting to cross. Many of them are paying smugglers to cross. I heard some people made it to Poland but the majority failed. They have been stopped or arrested. And I don’t know about the destiny of those who have been arrested.”

More than 1 million Ukrainians have fled to Poland since the start of the Russian invasion, including 142,300 on Sunday alone, the Polish border force has said.

The village of Medyka, in south-east Poland, is the main border crossing with Ukraine. Thousands of refugees are crossing every day by bus, car and on foot, mostly women and children. The mass exodus is causing severe queues at the border, with lines of people and cars stretching to 14km and waiting times of up to 40 hours.

According to refugees on the Ukrainian side of the border, waiting times are being exacerbated by the Ukrainian authorities, which are checking everyone trying to cross to ensure no men with Ukrainian nationality are passing through.

“We recognise that states have a right to self-defence under both the UN charter and customary international law and that states may also require their citizens to perform military service under certain criteria and conditions, in line with international law,” said Matthew Saltmarsh, head of news and media at UNHCR, the UN refugee agency.

“At the same time ... we appreciate these are very challenging circumstances and we would urge a compassionate and humane approach to those who are seeking to flee and are in need of safety and protection.”

After martial law was introduced, the Ukrainian interior minister posted on the Telegram messaging app: “Today is the moment when every Ukrainian who can protect his home must take up arms. Not just to help our soldiers, but to cleanse Ukraine of the enemy, once and for all.”

Hundreds of thousands of Ukrainian men have volunteered to fight since the Russian invasion began.

The Polish border force, under enormous pressure in what has become Europe’s fastest-moving refugee crisis since the end of the second world war, have said the Ukrainian ban doesn’t apply to Poland and the country is happy to welcome any person leaving Ukraine, regardless of gender. Authorities in Poland also suggested that Ukrainian men who have crossed the border did not need to apply for asylum.

“For us, everybody is equal at the border,” said Piotr Zakielarz, spokesperson for the force’s southern department.

Zakielarz said that, so far, Polish border authorities had no idea how many men had crossed. “We don’t go through the statistics. At this moment, I don’t care about the statistics.”

Under Ukrainian law there are exceptions to the ban on men leaving the country. Male Ukrainian nationals can cross the border if they are financially supporting three or more children under the age of 18, are single fathers of children under 18, or have children or are guardians of children with disabilities. » Source: The Guardian, Ukraine urged to take ‘humane’ approach as men try to flee war, 9 mars 2022: www.theguardian.com/global-development/2022/mar/09/ukraine-urged-to-take-humane-approach-as-men-try-to-flee-war.

NYT, 10 avril 2022:

« The notion of people — especially men — leaving war-torn Ukraine for safe and comfortable lives abroad has provoked a moral dilemma among Ukrainians that turns on one of the most elemental decisions humans can make: fight or flee.

Thousands of Ukrainian men of military age have left the country to avoid participating in the war, according to records from regional law enforcement officials and interviews with people inside and outside Ukraine. Smuggling rings in Moldova, and possibly other European countries, have been doing a brisk business. Some people have paid up to \$15,000 for a secret night-time ride out of Ukraine, Moldovan officials said.

The draft dodgers are the vast exception. That makes it all the more complicated for them — morally, socially and practically. Ukrainian society has been mobilized for war against a much bigger enemy, and countless Ukrainians without military experience have volunteered for the fight. To maximize its forces, the Ukrainian government has taken the extreme step of prohibiting men 18 to 60 from leaving, with few exceptions.

All this has forced many Ukrainian men who don't want to serve into taking illegal routes into Hungary, Moldova and Poland and other neighboring countries. Even among those convinced they fled for the right reasons, some said they felt guilty and ashamed. [...]

Ukrainian politicians have threatened to put draft dodgers in prison and confiscate their homes. But within Ukrainian society, even as cities continue to be pummeled by Russian bombs, the sentiments are more divided.

A meme recently popped up with the refrain, "Do what you can, where you are." It's clearly meant to counter negative feelings toward those who left and assure them they can still contribute to the war effort. And Ukrainian women and children, the vast majority of the refugees, face little backlash.

But that's not the case for young men, and this is what blew up on the young photographer. [...]

*Mr. Klever gave conflicting accounts of how exactly he exited the country and declined to provide details. **But for many other Ukrainian men, Moldova has become the favorite trap door.***

Moldova shares a nearly 800-mile border with western Ukraine. And unlike Hungary, Poland, Romania and Slovakia, Moldova is not part of the European Union, which means it has significantly fewer resources to control its frontiers. It is one of Europe's poorest countries and has been a hub of human trafficking and organized crime.

Within days of the war erupting, Moldovan officials said, Moldovan gangs posted advertisements on Telegram, a popular messaging service in Eastern Europe, offering to arrange cars, even minibuses, to spirit out draft dodgers.

Law enforcement officials said the typical method was for the smugglers and the Ukrainians to select a rendezvous point along Moldova's "green border," the term used for the unfenced border areas, and meet late at night. [...]

Moldovan officials said that since late February they had broken up more than 20 smuggling rings, including a few well-known criminal enterprises. In turn, they have apprehended 1,091 people crossing the border illegally. Officials said all were Ukrainian men.

Once caught, these men have a choice. If they don't want to be sent back, they can apply for asylum in Moldova, and cannot be deported.

But if they do not apply for asylum, they can be turned over to the Ukrainian authorities, who, Moldovan officials said, have been pressuring them to send the men back. The vast majority of those who entered illegally, around 1,000, have sought asylum, and fewer than 100 have been returned, Moldovan officials said. Two thousand other Ukrainian men who have entered Moldova legally have also applied for asylum. [...]

What happens when the war ends? How much resentment will surface toward those who left? These are questions Ukrainians, men and women, are beginning to ask.» Source: New York Times (NYT), Ukraine's Draft Dodgers Face Guilt, Shame and Reproach, 10 avril 2022: www.nytimes.com/2022/04/10/world/asia/ukraine-draft-dodgers.html?referringSource=articleShare.

OFPRA & BFA, mai 2017:

« 1. *Military service*

According to article 1.3 of the Law of Ukraine on Military Duty and Military Service, military duty includes:

- *The preparation of citizens for military service;*
- *The registration of citizens at enlistment offices;*
- *The enlistment on a voluntary (contract) basis and conscription to the military service;*
- *The performance of military service;*
- *The performance of the military duty in the reserves;*
- *Observation of the rules of military registration.*

According to article 1, “Military duty does not apply to foreigners or stateless persons who reside in Ukraine”. It is carried out by citizens of Ukraine and subdivided into the following categories”:

- **Pre-conscripts – persons subject to registration with enlistment offices;**
- **Conscripts – persons registered with enlistment offices;**
- **Servicemen – persons carrying out military service;**
- **Persons liable for military service – persons in the reserve manning the armed forces and other military formations during a special period as well as in order to perform other tasks relating to the defense of the state;**
- **Reservists – persons liable for military service who, on a voluntary basis, carry out military service in the reserve of the armed forces and other military formations.**

1.1. *Conscripts*

Ukraine has for a long time been looking to move from conscription to a full professional army. In 2013, mandatory conscription was suspended by the Defense ministry in order to switch to a volunteer contract-based service. Yet, **in 2014, as the Defense forces of Ukraine appeared unable to face the deteriorating security in the east and the “further aggravation of the socio-political situation” in its eastern and southern parts, military conscription was made compulsory again.**

On September 2nd 2014, a new law was signed, “regulating the procedure for military recruitment of personnel on contracts and simplifying the conscription procedure”.

1.1.1. Enlistment

According to Part III, Article 14, of the Law on Military Duty and Military Service, **“Registration of male citizens of Ukraine with enlistment offices is carried out with the purpose of listing citizens in the military register, determining available conscription resources, assessing educational backgrounds, acquired specialties or professions, as well as levels of physical fitness and personal qualities”.**

Within deadlines established by the Cabinet of Ministers of Ukraine, heads of business institutions, organizations and educational establishments have to submit, on an annual basis, a list of citizens subject to registration with enlistment offices to the relevant regional or city military commissariats.

The Law on Military Duty and Military Service, Part III, Article 14, provides that: “Pre-conscripts, who have turned 17 at the time of registration, are registered with enlistment offices from January to March each year”. It lays down that “Registration is carried out by regional (city) commissariats close to conscripts’ places of residence”. “In 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 Defense of Ukraine”.

In June 2016, the Military advisor of the European Union Delegation asserted that call-up papers were sent by mail or could be delivered personally to the future conscripts who were picked from all the different regions of Ukraine on a percentage basis. According to Article 18, Part IV, of the Law of Ukraine on Military Duty and Military Service, “conscripts and citizens liable for military service are prohibited “to change their place of residence without prior notification to the appropriate military registration and enlistment office”.

1.1.2. Postponement of Call-up

According to Part I, article 2, of the Law of Ukraine on Military Duty and Military Service, “Military service is carried out with the observance of the Constitutional requirement of the separation of church, religious organizations and the state”. **Article 35 of the 1996 Constitution of Ukraine stipulates that “If performance of military service is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) duty”** (cf. part 4). Moreover, according to Part III, Article 14, of the Law of Ukraine on Military Duty and Military Service, **“citizens of Ukraine, who serve sentences in penitentiaries or receive compulsory medical treatment, are not subject to registration”.**

*The Law of Ukraine on Military Duty and Military Service, Part I, article 17, also lists **different reasons, based on family, educational and professional grounds, which can lead to the postponement of call-up for conscription.***

*At his request, a conscript can be granted the postponement of his call-up for family reasons if : **He is the only family support for invalid or underage kin or siblings, for invalid parents, or a single father or mother ; If he is a single parent responsible for providing for two or more minors until the eldest of them reaches adulthood; If he is the father of a child less than three years old or of a child of more than three years who is raised without a mother, be she deceased or be it in case of a court decision ; If he is the father of two or more children. Postponement of a callup can also be granted to a conscript if he has an invalid child, an invalid wife or a pregnant wife, or if he is orphaned.***

According to Part I, Article 17 of The Law of Ukraine on Military Duty and Military Service, in the case of a family having two or more sons, out of whom one is carrying out regular military service, the postponement of a call-up for family reasons can also be granted to one of the sons until his brother has carried out his military service. "In cases where several sons from the same family are simultaneously called up for military service, postponement can be granted to one son on request and taking into account his parent's considerations".

Postponement of a call-up for regular military service is also granted to conscripts who wish to further their education on a full-time basis in higher education establishments, secondary and higher religious education establishments, and to those pursuing post-graduate or doctorate degrees. It also applies to citizens of Ukraine who "in the framework of international agreements are studying in education establishments in other states".

***Part I, Article 17, of the Law of Ukraine on Military Duty and Military Service provides that postponement of a call-up for regular military service "is granted once during the whole period of study". By October 1st of each year, conscripts who benefit from postponements are obliged to present documents to the regional (city) military commissariats confirming that they are still entitled to it. In case they "discontinue their studies on their own initiative", or "fail to complete a study program" outside of "health or family reasons", they lose their right.** According to part I, Article 17, of the Law of Ukraine on Military Duty and Military Service, postponement of a call-up for regular military service is also granted for professional reasons to: "Pedagogical workers who have completed higher education, whose main place of employment is in a secondary education establishment – for the duration of their full-time work"; "Medical personnel – for the duration of their full-time work in the countryside"; "Graduates of education establishments and postgraduates assigned to work in the institutions of the National Academy of Sciences of Ukraine – for the whole period of work"; "Graduates of vocational schools under the condition that their employment is in an acquired profession in state-owned enterprises, institutions or organizations – for one year from the time of graduation".*

*It also applies to **"Clergymen who graduated from higher or secondary religious education establishments and hold posts in one of the religious orders that act according to the statutes (regulations) registered in accordance with established procedures – for the***

duration of work”; “Candidates running for office as a People’s Deputy of Ukraine registered in accordance with the established procedure – at their request – until the publication of election results”; “The heads of village and or city administrations and deputies of local councils – for the duration of their time in office”; “Persons who are involved in farming, both independently or with their parents, – for a period of no more than one year from the moment a land plot for this activity is received”.

1.1.3. Conscription

In June 2016, representatives of the Defense Ministry of Ukraine recalled that in a move to increase the amount of military personnel, on 15th January 2015, the Ukrainian parliament had extended “the compulsory draft age for male citizens from 18 to 20 years”, and upgraded its upper limit from 20 to 27 years.

According to the Law on Military Duty and Military Service, **“Ukrainian male citizens who are physically qualified for military service, over 18 years old and older, but who have not reached the age of 27, and who have no right for exemption from military service’ will be conscripted”.** At the same time, **the duration of conscription has been extended to 18 months for regular conscripts and 12 months for specialists or holders of master degrees.**

In June 2016, representatives of the Defense ministry of Ukraine specified that Internally Displaced Persons (IDPs) who are eligible for conscription are also conscripted. However, if they are not registered, the Ministry would not consider mobilizing them a top priority: **“we cannot force the people to fight their own relatives or neighbors, but counterintelligence is needed”.**

According to Part I, Article 1, of the Law of Ukraine on Military Duty and Military Service, **when they are summoned by the regional (city) military commissariat, citizens of Ukraine, who are registered with enlistment offices, are obliged to report to the commissariat to obtain their registration documents. They are required to pass a medical examination and a military and professional training.** Passing of medical examination and treatment in medical establishments is done in accordance with the decision of the registration commission, conscription commission or military medical commission of the regional (city) military commissariat. In June 2016, representatives of the Defense ministry of Ukraine added that **“medical examination procedure has been simplified”.**

According to Part I, Article 15, of the Law of Ukraine on Military Duty and Military Service, **“the number of citizens of Ukraine liable for call-up for regular military service and the total expenditure required for the subsequent conscription are determined by the Cabinet of Ministers of Ukraine”.** In June 2016, the Military advisor of the European Union Delegation held that **“the conscription system was quite equal and really working”, but only a small number of conscripts were called up at once (from 16,000 to 20,000).** According to the Globalsecurity.org website, **conscription plans are de facto “not always easy to fulfill, as many draftees face health problems, administrative or criminal prosecution, but also lack of basic secondary education, etc.”**

Part 1, Article 18, of the Law on Military Duty and Military Service specifies **those who are exempted from conscription during peace time: “Those recognized 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”.

Are also exempted: “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)”. Out of the 15,429 young men summoned to undergo medical checks during the 2013 spring conscription campaign, only 750 conscripts carried their constitutional duty. Moreover, in August 2015, according to Ukrainian Deputy Defense Minister Peter Mehed, “Ukraine’s Ministry of Defense only managed to recruit about half of the 25,000 conscripts it was hoping for”.

In June 2016, the Military advisor of the European Union Delegation in Ukraine asserted that conscripts mainly serve in supporting roles in backward positions and that sending conscripts to combat zones is against the law. Many conscripts are actually drafted into the Navy and the Air Force, but only few into the Army and the National Guard (the latter is mostly guarding public buildings). Representatives of the Ministry of Defense of Ukraine specified that, in anti-terrorist operation (ATO) zones, conscripts could however still work in arsenals. Indeed, the law provides that in the ATO zone, conscripts would not be involved in military tasks.

1.3. Mobilization

1.3.1. Legal framework

According to Part II, Article 4, of the Law on Mobilization Preparation and Mobilization of 1993, **“General mobilization is conducted simultaneously on the entire territory of Ukraine and applies to the national economy, the organs of the Executive, Local Self-Government, the Armed Forces, and other military formations, the civil protection forces, enterprises, institutions and organizations”.** The law lays down that **“Partial mobilization can be conducted in particular areas of the State, as well as applied to a particular part of the national economy, the Armed Forces, and other military formations, the Civil protection forces, enterprises, institutions and organizations”.** **From the moment of an announcement of mobilization, citizens registered for military duty are prohibited to change their place of residence without the consent of a military commissar.**

“The type, size, procedure and terms of mobilization are determined by a Presidential decision” and “The decision on conducting open mobilization is to be immediately promulgated through the mass media”. **Those who are drafted receive a draft notice and must come to the military enlistment office. According to Part IV, Article 22, of the Law of Ukraine on Mobilisation Preparation and Mobilisation, “In case of mobilization, citizens predisposed for military service (excluding those, who serve in military reserve) are obliged to report to assembly points within specified deadlines by order of mobilization documents (mobilization mandates, drafting orders or directives by military commissars (servicemen of Security Service of Ukraine – by the heads of units where they are registered) or by military commissars. Reservists must report to military units in time, established by commanders of military units, where they serve in military reserve”.**

*In an article translated into English and published by Euromaidan Press, an online newspaper founded in 2014 and registered as an NGO in Ukraine, Roman Chernyshev, the correspondent of Legal Information and communication platform LIGA Business Inform, identifies four different levels of partial mobilization, depending of the level of escalation of a conflict. At the lowest and first stage, are summoned to the army: “volunteers; reserve officers and sergeants that served in the army or other force structures and who have military specialties that are currently in demand; as well as reserve regular soldiers with wartime experience”. Are summoned during the second stage: “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”; during third stage: “18-year-old soldiers, women who may serve (field doctors, nurses, technical specialists); as well as those who have not served but have no “white ticket” are mobilized. **The fourth and last stage, which can only be implemented if fierce war has been underway for a long time, amounts to full mobilization, with all those capable of holding weapons joining the army”.***

*An article posted on the website lexicology.com by Ilyashev & Partners, one of the most prominent and authoritative law firms of Ukraine, states that: “in execution of the Presidential Decrees, the chief enlistment officer at the District Enlistment Office (DEO) announces partial mobilization in the particular district and distributes draft notices to the persons subject to mobilization calling them to appear for Military Physical Commission (MPC)”. Depending on the results of the health examination, a person may be declared fit, unfit, or partially fit for military service or mobilization. **According to Article 23 of the Law of Ukraine Concerning Mobilization Preparation and Mobilization, a person can be recognized unfit for military service on grounds of health, for a period of maximum six months after which he shall be checked up again. When a person is declared fit, he is informed of his obligation “to appear at a certain time at the collection center” in order to be sent to the military base concerned.** Decisions taken by the MPC may be appealed through the court.*

Article 23 of the Law also provides that the following categories will not be subject to a call up during mobilization: those among the persons predisposed for military service who are “reserved for a period of mobilization and wartime for the Executive, Local Self-Government, as well as for companies, institutions and organizations in accordance with the procedure established by the Cabinet”; “Men with five or more children younger than 16 years old (these men can volunteer for call up and shall serve near their household)” ; “Women with children younger than 16 years old (these women can volunteer for call up and shall serve near their household)” ; “Citizens who take care of persons requiring constant care according to the legislation of Ukraine – in case there is no substitution for them”; “Citizens who are Deputies of the Verkhovna Rada of Ukraine and the Verkhovna Rada of the Autonomous Republic of Crimea”; “Other persons predisposed”.

On 24 July 2015, the relevant legislation was amended to include “full-time students and students pursuing postgraduate degrees, teaching and research staff at universities and scientific institutions who have post-graduate degrees and teaching staff at other educational institutions such as high school teachers”. Failing to appear without valid reasons is considered as draft evasion and punishable as a crime, in application of Article 336 of the Criminal Code of Ukraine (cf. Part 4). Contrary to regular conscription, conscientious objection and alternative service is not foreseen by the Ukrainian legal framework for individuals drafted through emergency mobilization. [...]

3. Draft evasion and desertion

3.1. Practices

Different sources assert evasion and desertion from military service have been practices since the beginning of the conflict. Their scope has however been regularly challenged by Russian and Ukrainian politicians, the latter accusing the former of inflating figures to incite people to resist the mobilization draft. At the beginning of the conflict, in 2014, the Ukrainian government however confessed it was “a problem”.

According to an anonymous source from the Kyiv Municipal Recruitment Office registration and mobilization department, “in March-April 2014, 70 percent of reservists in Kyiv ignored the call to show up at their recruitment office”. The same source asserts that “80 percent ignored the second round, whereas 90 percent did not show up at the third round and 95 percent at the fourth one”. The website *Global security.org* asserts: “potential recruits dodged conscription officials” and “hundreds of Ukrainian men fled the country in order to escape enrollment”. **According to the Ukrainian military in 2014, 85,792 people summoned during partial mobilizations didn’t report to their draft offices whereas 9,969 were proven to be illegally avoiding service.**

Some evaders have purposely been hiding to avoid military service, but there might also be other reasons for them not to show up, like living at a different address, being on a trip, etc. In June 2016, the military advisor of the European Union Delegation in Ukraine asserted that there were de facto many ways to avoid military service, among which “corruption”: “you can pay to avoid going to the front”. According to *Global Security.org*, “military commissioners, appointed by the General Staff, were “massively infected with corruption and incompetence”. [...]

In 2012, according to an article of the Ukrainian newspaper “*Segodnya*” (Today), the “going rate” for to be exempted from the spring 2012 call-up draft amounted to between 4,000 and 6,000 hryvnia (UAH), draftees having notably “perfected the art of having call-up postponed for health reasons”. **In 2014, moreover, according to the White Book of the Ministry of Defense of Ukraine, in the anti-terrorist operation (ATO) zone, up to 30 percent of soldiers abandoned their post due to unpreparedness, poor training and insufficient mental stability.**

According to the Ministry of Defense, these points were however eventually tackled and the number of people who refused to take part in ATO later dropped to less than 1 percent. Still, **in June 2016, the military advisor of the European Union Delegation in Ukraine asserted that in August 2015: “mobilization was not very much liked”, “people trying to avoid it”. According to him, those who had to sign that they received a mobilization order mostly “pretended they had left”. De facto, many categories are dispensed and even if you haven’t got the proper document to do so “it is very easy to avoid mobilization even inside Ukraine”.**

The same conclusion was drawn in June 2016, by a representative of the International Organization for Migrations (IOM). According to him, “everyone is doing everything to escape mobilization and going to the East”; “increased number of marriages with Europeans attests to it”. For IOM it is a real issue; there are some cases of Ukrainians stranded in Sri Lanka to avoid mobilization.

Among the evaders, some are disturbed by the prospect of fighting their own countrymen, others are against the war in principle, but some of them are just afraid. In September 2015, the Organization for Security and Co-operation in Europe (OSCE) reported that many men of military age avoided registering as internally displaced persons “for fear of being mobilized”; they also “refrained from applying for the government’s special entry/exit permit needed to move across the contact line, due to the belief that these permits are issued together with military draft notices”.

In Western Ukraine, this move has potentially angered mothers and wives of soldiers who argued that IDP men residing in their regions should “be in combat in the East” instead of their husbands and sons. Iryna Vereshchuk, the mayor of Rava-Ruska, a town of the Lviv oblast, said attitudes have hardened after “locals who went to fight returned in coffins”. According to her, in February 2015, only six mobilization call-up papers out of the about 100 to be distributed had been effectively given out. In the other cases, men had been hiding or could not be found. In June 2016, the military advisor of the European Union Delegation in Ukraine asserted that “probably the will of people from the west of Ukraine was less to join the army”. According to the mayor of a small town in western Ukraine, “People don’t understand what they are fighting against”, a type of assertion which has been widely exploited in the Russian state media, in support of Ukrainian draft evasion.

In places like Zaporizhia, near the Donetsk region and close to the rebel-controlled areas, small had taken place. Moreover, in 2015, Russia’s Federal Migration Service alleged that 20,000 Ukrainian men eligible for conscription in Ukraine had entered Russia in just one week, and 1,193,000 remain in Russia (which has been de facto a traditional country of migration for Ukrainians in search of jobs). In February 2015, Russian president Vladimir Putin even ordered a change in the legislation so that Ukrainian citizens can stay in the country longer than the allowed period of 30 days and escape being “sent under the bullets again”.

According to an article in the Ukrainian Week of April 2015, too many Ukrainians still perceived “the Army as a penal system, meting out punishment, not to distant Russian militants, but to those being called up to serve”. In June 2016, a representative of the NGO Ilko Kucheriv Democratic Initiatives Foundation (DIF) however argued that the attitude towards the Army had improved, the Army being better governed and more disciplined.

In 2015, the effectiveness of mobilization deteriorated so significantly that recruitment offices had to issue nearly 40,000 calls to mobilize 1,000 men, a number they had, according to them, “no means of vetting, realistically”. As a result, according to an article in the Ukrainian Week, “recruitment offices had to take “whoever wasn’t hiding” and had normal physical results.

Moreover, according to Global Security.org, “by early 2015, in most regions of Ukraine, 50 percent of the heads of district and regional administrations in charge of mobilization had not been appointed. There was also no system of accounting recruits or of accounting reserve military service, all the records in the military enlistment offices being on paper.

3.2. Legal Framework

According to Article 65 of the Constitution of Ukraine, Defense of Homeland, its independence and territorial integrity, it is a constitutional obligation for the citizens of Ukraine. Nonfulfillment of this obligation constitutes a criminal offense.

Avoidance of conscription, mobilization, military registration or special assemblies, is punishable by law. According to article 335 of the Criminal Code of Ukraine, "Avoidance of conscription for active military service, - shall be punishable by restraint of liberty for a term up to three years". Article 336 provides that "avoidance of mobilization - shall be punishable by imprisonment for a term two to five years", whereas Article 337 lays down that: "(§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" and "(§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".

Article 408 of the Criminal Code of Ukraine provides that "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, shall be punishable by imprisonment for a term of two to five years"; "(§2) Desertion with weapons or of a group of persons upon their prior conspiracy, shall be punishable by imprisonment for a term of five to ten years"; "(§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, shall be punishable by imprisonment for a term of five to twelve years".

According to Article 409 of the Criminal Code of Ukraine "(§1) 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"; "(§2) Refusal to comply with the duties of military service, shall be punishable by imprisonment for a term of two to five years"; "(§3) 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".

Since January 30th 2015, a new government decree on Additional Measures to Ensure the Holding of Partial Mobilization in 2015 (#40/2015), regulates foreign travel for those subject to mobilization. In order to travel abroad, citizens of Ukraine, at the age for being conscripted, must show a document issued by a military commissariat. According to War Resisters' International (WRI), a global pacifist and anti-militarist network with over 80 affiliated groups in 40 countries, those guilty of draft-dodging could be arrested and face up to five years in prison. WRI asserts that a database has been set up by the military to keep track of offenders. Moreover, According to article 210 of the Code of Ukraine on Administrative Offenses, dodging of reservists from mobilization for service in the Anti-Terrorist Operation zone constitutes an offense.

On February 5th 2015, Ukraine's parliament passed new a law authorizing the use of physical force against defectors by military commanders. According to the new article 22(1), which was added to the charter regulating service in the armed forces of Ukraine,

commanders “have the right to personally use physical force, special means, and weapons when in combat” against soldiers who commit “criminal acts”, the latter being described as “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”. In an explanatory note attached to the document “mass violations of military discipline, in particular, desertion from units and drinking alcohol, as well failure to execute commanders’ orders” are said to have been observed.

3.3. Law Enforcement

According to the White Book 2014 of the Ministry of Defense of Ukraine, 8,490 soldiers were prosecuted for evasion of military service. 2,287 criminal investigations were launched in appliance of article 407 of the Criminal Code of Ukraine for “unauthorized abandonment of a military unit”; 4,880 soldiers were prosecuted for “desertion”, according to article 408 of the same code, and another 1,323, came under investigations in appliance of article 409, for “evasion of military Service by selfmutilation or other means”.

In February 2015, a reporter for the French radio “Radio France Internationale (RFI)” observed that unlike previous waves of mobilization, recalcitrant research was rigorous: on the road, at border crossings and even the workplace. At one of the entry routes in the great city of Lviv, a police patrol, accompanied by an officer of the National Guard, systematically stopped the cars driven by young drivers in order to seek citizens fleeing to the mobilization. Vasyl Mazyar, member of the National Guard asserted he compared the driver’s documents with a list of wanted persons.

On 17 April 2015, according to the Chief Military Prosecutor of Ukraine 7,560 criminal investigations were launched into crimes committed by the Ukrainian soldiers since the beginning of the year. Among these figures, 1,964 criminal proceedings were conducted under article 407 (absence without leave from a military unit or place of service), 948 under article 408 (desertion) and 107 under article 409 (evasion from military service) of the Criminal Code of Ukraine.

In 2015, the Starobilsk district Court, in Luhansk region, also sentenced a 40-years old resident of Starobilsk who evaded a mobilization draft after having been noticed twice, to 3 years of imprisonment in appliance of article 336 of the Criminal code; the sentence came into effect. This decision was taken after the arrest, in February the same year, of the Ukrainian journalist and blogger Ruslan Kotsaba, after he had addressed video on Youtube, to the Ukrainian president , in which he appealed to “all reasonable adequate people to denounce [this] mobilization, because this hell, this horror, must be stopped”.

Accused of having obstructed the lawful activities of the Armed Forces, Ruslan Kotsaba was charged with State treason under articles 111 §1 and 114.1 §1 of the Ukrainian Criminal Code. On May 12th 2016, he was sentenced to three and a half years of imprisonment, by the Ivano Frankivsk City Court, for obstructing the legitimate activities of the Ukrainian Armed Forces of Ukraine. In June 2016, a representative of the NGO Ukrainian Helsinki Human Rights Union (UHHRU) asserted that he was sentenced in appliance of an article of the Criminal Code added as an amendment of the Code of 2014, which was often used, especially in Donetsk and Luhansk against people who took to the streets to block the progress of the armed forces. But in the case of Ruslan Kostaba, the NGO observed that there was no physical blockage.

Ruslan Kotsaba, who was acquitted of the charge of 'state treason', was declared a prisoner of conscience by Amnesty International. He was finally released by a decision of the Ivano Frankivsk Court of Appeal of July 14th 2016, which revoked the original conviction, considering the charges were unwarranted.

In 2016, several other criminal investigations were also launched concerning supposed draft evaders. Among them, a man, declared liable and fit for the military service, was sentenced to a deprivation of liberty for declining military draft under mobilization in a written statement in his application to the military commissar of Gorodishchenskyi district military commissariat (DMC). However, according to the Ukrainian Law Firm Ilyashev & Partners, "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". » Source: Office français de protection des réfugiés et apatrides (OFPRA) & Austrian Federal Office for Immigration and Asylum (BFA), Fact-finding mission report - Ukraine, mai 2017, p.20-28, 35-40: www.ofpra.gouv.fr/sites/default/files/atoms/files/rapport_mission_ukr_mai_2017_v2.pdf.

OHCHR, 28 mars 2022:

« On 23 February, a State of Emergency was declared in Ukraine for a period of 30 days. The Government of Ukraine imposed martial law for 30 days on 24 February, and subsequently extended it to 25 April. On 1 and 4 March, the Government notified the United Nations Secretary General of derogation of certain rights enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) for the duration of martial law. [...]

29. Persons with disabilities supported by male caregivers reportedly struggle to cross the border to neighbouring countries, due to the Government's mobilisation and prohibition for serviceable men to leave the country. OHCHR notes that the Parliament approved a draft law on 15 March that, once in force, will exempt certain categories of men including caregivers and those with disabilities. » Source: UN Office of the High Commissioner for Human Rights (OHCHR), Update on the human rights situation in Ukraine (24 February – 26 March 2022), 28 mars 2022, p.2,6: https://reliefweb.int/sites/reliefweb.int/files/resources/HRMMU_Update_2022-03-26_EN.pdf.

République d'Ukraine, 4 juin 2021:

« Article 335. Evasion from conscription for military service, military service for conscription of officers

Evasion from conscription for military service, military service for conscription of officers

shall be punishable by restriction of liberty for up to three years.

Article 336. Evasion from conscription during mobilisation, for a special period, for military service for conscripts from among reservists in a special period

Evasion from conscription during mobilisation, for a special period, for military service for conscription from reservists in a special period

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

Article 336-1. Evasion of civil defence service during a special period or in the event of targeted mobilisation

Evasion from the civil defence service in a special period (except for the reconstruction period) or in the event of targeted mobilisation

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

Article 337. Evasion from military registration or special (training) session

1. Evasion of a conscript, reservist from military registration after a warning made by the respective head of the territorial centre of recruitment and social support, heads of respective bodies of the Security Service of Ukraine, respective units of the Foreign Intelligence Service of Ukraine

shall be punishable by a fine of three hundred to five hundred tax-free minimum incomes or correctional labour for a term of up to one year.

2. Evasion of a conscript, reservist from training (special) session

shall be punishable by a fine of five hundred to seven hundred tax-free minimum incomes or correctional labour for a term of up to two years.

[...]

Article 407. Absence without leave from a military unit or place of service

1. Absence of an active military serviceman from a military unit or place of service without leave, or failure to timely report for duty without a reasonable excuse after a leave, or upon appointment or reassignment, or failure to report for duty after a detached service, vacation or treatment in a medical facility for more than three days but less than one month

shall be punishable by detention in a penal battalion for a term of up to two years or imprisonment for a term of up to three years.

2. Absence of a military serviceman (other than in active service) from a military unit or place of service without leave, or failure to timely report for duty without a reasonable excuse for more than ten days but less than one month, or for less than ten days but more than three days if repeated during one year

shall be punishable by a fine of one thousand to four thousand tax-free minimum incomes, or service restriction for a term of up to two years, or imprisonment for a term of up to three years.

3. Absence of persons specified in parts 1 and 2 of this Article from a military unit or place of service without leave, or failure to timely report for duty without a reasonable excuse for more than one month

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

4. Absence from a military unit or place of service without leave, as well as failure to appear on time for service without valid reasons, committed in the conditions of a special period, other than martial law, committed by persons specified in parts 1 or 2 of this Article

shall be punishable by imprisonment for a term of three to seven years.

4. Absence from a military unit or place of service without leave of persons specified in parts 1 or 2 of this Article, as well as failure to appear on time for service without valid reasons, committed in the conditions of a special period, or under martial law

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

Article 408. Desertion

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

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

2. Desertion with weapons or of a group of persons upon their prior conspiracy

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

3. Action provided for by parts 1 or 2 of this Article, where committed during a special period, other than martial law

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

3. An action provided for by part 1 or 2 of this Article, committed under martial law or in a combat situation

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

Article 409. Evasion of military service by means of self-mutilation or otherwise

1. Evasion of military service by a military serviceman by means of self-mutilation or malingering, or forgery of documents, or any other deceit

shall be punishable by detention in a penal battalion for up to two years or imprisonment for the same term.

2. Refusal to comply with the duties of military service

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

3. Actions provided for by parts 1 or 2 of this Article, if they were committed during a special period, other than martial law

shall be punishable by imprisonment for a term of three to seven years.

3. Actions provided for by part 1 or 2 of this Article, committed under martial law or in a combat situation

shall be punishable by imprisonment for a term of five to ten years.. » Source: République d'Ukraine, Criminal Code of the Republic of Ukraine, 4 juin 2021: <https://zakon.rada.gov.ua/laws/show/en/2341-14#Text>.

RFERL, 23 février 2022:

« Ukraine has begun calling up military reservists aged 18-60 for service of up to one year following a decree issued by President Volodymyr Zelenskiy as the country faces the threat of a full-scale invasion by Russia.

Separately, the Ukrainian parliament approved a declaration of a state of emergency.

The state of emergency pertains to all areas except separatist-controlled areas of Donetsk and Luhansk, where one has been in place since 2014. It allows authorities to impose restrictions on movement, rallies, and political parties and organizations “in the interests of national security and public order.”

The document also bans “information materials that could destabilize the situation in the country” and gives government the right to impose curfews and conduct checks. [...]

In a televised address on February 22, Zelenskiy said he would implement a conscription of reservists but that he was not ordering a general mobilization of troops at this time.

“As the Supreme Commander in Chief of the Armed Forces of Ukraine, I issued a decree on the conscription of reservists during a special period,” he said during the broadcast.

“We must increase the readiness of the Ukrainian Army for all possible changes in the operational situation,” he added.[...] » Source: Radio Free Europe / Radio Liberty (RFERL), Ukraine Broadens State Of Emergency, Calls Up Military Reservists, 23 février 2022: www.rferl.org/a/ukraine-conscripting-18-60-year-olds/31718145.html.

Ukrinform, 1 février 2022:

« **President Volodymyr Zelensky has signed off a decree on Ukraine's transition toward a professional Army, increasing the number of servicemen by 100,000 over the next three years.** The document was signed as the head of state addressed the Verkhovna Rada, Ukraine's Parliament, at the opening of the seventh session, an Ukrinform correspondent reports.

"The Decree of the President of Ukraine on strengthening the nation's defense capabilities and the attractiveness of military service has been developed. The decree provides for an increase in the financial security for all military personnel to the level of no less than three minimum wages. It's about Ukraine's transition to the basics of a professional Army. A system of officers' career development has been established, while the number of military servicemen with the Armed Forces will be raised by 100,000," the president said in his address. [...] » Source: Ukrinform, Number of Ukrainian military servicemen to increase by 100,000, 1 février 2022: www.ukrinform.net/rubric-politics/3395399-zelensky-signs-decree-to-increase-number-of-ukrainian-military-servicemen-by-100000.html.

UNHRC, 9 février 2022:

« 29. **The Committee is concerned about reports that conscripts, including conscientious objectors, are hunted down and delivered to military assembly points against their will and about conscripts being subjected to arbitrary detention. It is also concerned about the lack of information on investigations into such cases and on the prosecution of those responsible** (arts. 9–10 and 18).

30. **The Committee reiterates its previous recommendation 6 and stresses that alternatives to military service should be available to all conscientious objectors without discrimination as to the nature of their beliefs justifying the objection (be they religious beliefs or non-religious beliefs grounded in conscience), and should be neither punitive nor discriminatory in nature or duration by comparison with military service. The State party should ensure that cases of abduction and arbitrary detention of conscripts are promptly, thoroughly and independently investigated, that perpetrators are prosecuted and punished and that victims are provided with effective remedies, including adequate compensation.** » Source: UN Human Rights Committee (UNHRC), Concluding observations on the eighth periodic report of Ukraine, 9 février 2022, p. 7. www.ecoi.net/en/file/local/2064082/G2225369.pdf.

Washington Post, 9 mars 2022:

« **The historic stream of refugees from Ukraine — 2 million people in two weeks — is overwhelmingly composed of women and children, who have been forced to separate from husbands and fathers, in one of the most excruciating aspects of this war. Most Ukrainian men ages 18 to 60 have been banned from leaving the country, in anticipation that they may be called to fight. Their president has modeled that to stay is heroic.**

But the martial law aimed at bolstering the resistance is not absolute. There are exemptions — fathers with three or more children can leave, as can people with medical issues.

There are also ways to sneak out: bribes to border guards, furtive dashes through unattended parts of the border. What's clear, among the men who escaped, is that their decisions have had the capacity both to save them and shatter them. [...]

Andriy Demchenko, a spokesman for Ukraine's state border guard service, said that people between the ages of 18 and 60 who don't have permission to leave — and who come to official border crossings — are simply turned back. He said those who cross illegally face fines if caught and are "recommended to the local recruiting station."

In Chisinau, at the army barracks, a 32-year-old IT employee from Kyiv said he and his father, 57, had managed to cross without any problems. They presented non-Ukrainian passports. The catch is that in Ukraine, dual citizenship is illegal. The 32-year-old said he had talked with his dad at length about whether they were doing the right thing, and they agreed that war had forced them into a terrible, cold decision: picking their own interests above those of their country. » Source: Washington Post, In a war of terrible choices, these are the fighting-age men who left Ukraine, 9 mars 2022: www.washingtonpost.com/world/2022/03/09/ukraine-men-leave/.

L'Organisation suisse d'aide aux réfugiés OSAR est l'association faîtière nationale des organisations suisses d'aide aux réfugiés. Neutre sur le plan politique et confessionnel, elle s'engage pour que la Suisse respecte ses engagements en matière de protection contre les persécutions conformément à la Convention de Genève relative au statut des réfugiés. Les activités de l'OSAR sont financées par des mandats de la Confédération et par des dons de particuliers, de fondations, de communes et de cantons.

Vous trouverez les publications de l'OSAR sur l'Ukraine ainsi que sur d'autres pays d'origine de requérant-e-s d'asile sous www.osar.ch/publications/rapports-sur-les-pays-dorigine.

La newsletter de l'OSAR vous informe des nouvelles publications. Inscription sous www.osar.ch/sabonner-a-la-newsletter.