

ANALYSIS OF NEW APPROACHES TO CRIMINAL LIABILITY FOR EVADING MILITARY CONSCRIPTION IN UKRAINE IN THE CONTEXT OF GLOBAL SECURITY CHALLENGES

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Abstract

Since the start of the full-scale invasion, Ukraine has been actively transforming its social system, renewing its political leadership in various areas, and improving its legislation to reflect the current situation. However, due to active mobilisation processes carried out by the authorities and the internal convictions of many persons liable for military service, the problem of avoiding military service arises. This includes crossing the state border both legally and illegally. Additionally, it is important to analyse how these changes are reflected in the international arena, including the migration of conscripts and their attempts to evade service abroad, as well as the reaction of EU countries. Given these aspects, it is crucial to assess how changes in Ukrainian legislation and mobilisation practices affect global security challenges, including the allocation of military resources, defence strategies, and international defence cooperation. The study employs systematic analysis and synthesis, formal legal and dialectical methods, and legal document analysis as scientific knowledge tools. Furthermore, this research explores Ukraine's approach to mobilization within the framework of international human rights standards, particularly the European Convention on Human Rights (ECHR), international extradition treaties, and relevant case law from the European Court of Human Rights (ECtHR).

Keywords

Military conscription; mobilization; criminal liability; electronic summonses; evasion of military conscription.

Resumo

Desde o início da invasão em grande escala, a Ucrânia tem vindo a transformar ativamente o seu sistema social, a renovar a sua liderança política em várias áreas e a melhorar a sua legislação de modo a refletir a situação atual. No entanto, devido aos processos de mobilização ativa levados a cabo pelas autoridades e às convicções internas de muitas pessoas sujeitas ao serviço militar surge o desafio de o evitar. Isto inclui a travessia da fronteira do Estado, tanto legal como ilegalmente. Além disso, é importante analisar a forma como estas mudanças



se refletem na cena internacional, incluindo a migração de recrutas e as suas tentativas de evasão do serviço militar no estrangeiro, bem como a reação dos países da UE. Tendo em conta estes aspetos, é crucial avaliar a forma como as mudanças na legislação ucraniana e as práticas de mobilização afetam os desafios da segurança global, incluindo a atribuição de recursos militares, as estratégias de defesa e a cooperação internacional neste domínio. O estudo utiliza a análise e a síntese sistemáticas, os métodos jurídicos formais e dialéticos e a análise de documentos jurídicos como ferramentas de conhecimento científico. Além disso, esta investigação explora a abordagem da Ucrânia à mobilização no âmbito das normas internacionais de direitos humanos, em particular a Convenção Europeia dos Direitos do Homem (CEDH), os tratados internacionais de extradição e a jurisprudência relevante do Tribunal Europeu dos Direitos do Homem (TEDH).

Palavras-chave

Alistamento militar; mobilização; responsabilidade penal; citações electrónicas; evasão ao alistamento militar.

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1. Introduction

The full-scale invasion brought a number of changes to Ukraine's rule-making, ranging from the introduction of martial law to changes in mobilisation processes. The more these mobilisation processes expanded and multiplied, and the more stringent the requirements became for all those subject to mobilisation, the more frequent were cases of evasion of mobilisation by various means. Accordingly, criminal liability for evading mobilisation was strengthened, and a huge number of amendments relating directly to mobilisation processes are still under consideration, with a particular focus on punishment for evading mobilisation.

Undoubtedly, the analysis of new approaches to criminal liability for evading conscription in Ukraine requires consideration of both the domestic legal framework and broader global security challenges (Nedozhogina, 2019). Ukraine is facing unprecedented external and internal security issues due to the circumstances on the battlefield. The constant need to maintain a strong defence of the country and the fight against a powerful state that has been accumulating resources, including human resources, for war for years requires strong decisions and adaptation of legislation to the current reality.

Given the topic of the study, it is important to understand the current legal framework that is designed to regulate military conscription in Ukraine. It's about the Laws "On Mobilisation Preparation and Mobilisation", "On Military Duty and Military Service", etc., as well as about the legal acts directly regulating the issue of liability for evasion of mobilisation, in particular the Criminal Code of Ukraine. The recent legislative changes that are directly aimed at combating mobilisation evasion also require significant attention (Verkhovna Rada of Ukraine, 1993; Verkhovna Rada of Ukraine; 1992; Verkhovna Rada of Ukraine, 2001).



It is also important to note that the challenges facing Ukraine in terms of the security of its territorial integrity go far beyond its borders and are gaining momentum globally. The situation on the frontline clearly demonstrates the ability to deter the aggressor, but this requires weapons, equipment and human resources. In general, the war between two countries that are initially on unequal terms leads to geopolitical tensions and creates new threats to global security in general. Cyber warfare and terrorism are becoming more widespread, manifesting themselves both globally and directly in Ukraine (Ilbiz & Kaunert, 2021). Taken together, this has a direct bearing on conscription and compliance with the relevant legislation.

Given the topic of the research, human rights are also an important aspect to be covered. That is, the analysis of new approaches to criminal liability for evading military conscription in Ukraine in the context of global security challenges is based on the consideration of certain human rights implications. This includes issues related to refusal and evasion of mobilisation, as well as the potential introduction of electronic summonses, which create additional obligations and problematic aspects. The balance between national security interests and individual rights and freedoms is a complex aspect of policy-making in this area (Midhio et al., 2024).

Given the interconnected nature of security threats, international cooperation and partnerships play a vital role. This is manifested not only in the provision of armed and financial assistance, but also in advice on how to improve existing legislation. An assessment of Ukraine's cooperation with other countries and international organisations on issues related to mobilisation and security can shed light on broader trends and best practices.

By considering these various factors, stakeholders can gain a comprehensive understanding of the complexities involved in addressing conscription evasion in Ukraine in the context of global security challenges. Such an understanding is necessary to develop effective policies that balance national security imperatives with respect for individual rights and international norms (Rakha Pratama, 2023).

With this in mind, the purpose of the study is to analyse and explore current approaches to criminal liability for military conscription evasion in Ukraine in the context of global security challenges. Particular emphasis should be placed on innovations such as electronic draft notices and changes in age criteria, which are important in the context of modern technologies and their impact on law. It is also important to analyse how these changes are reflected in the international arena, including the migration of conscripts and their attempts to evade service abroad, as well as the reaction of EU countries. A detailed analysis of the ethical challenges and legal dilemmas faced by both individuals and the state in the area of criminal liability for draft evasion in an armed conflict remains appropriate. Certainly, taking into account these aspects, it is quite rational to provide conclusions on how changes in Ukrainian legislation and mobilisation practices affect global security challenges, including the allocation of military resources, defence strategies and international defence cooperation.



2. Methodological Framework

Taking into account the purpose set, in order to achieve it, the following methods of scientific knowledge were used: the method of systematic analysis and synthesis, formal legal and dialectical methods, and the method of analysis of legal documents. The method of systematic analysis was used to analyse and study modern approaches to criminal liability for evading conscription for regular military service in Ukraine in the context of global security challenges. The author also analysed in detail the innovations that are being considered in detail by members of the Verkhovna Rada of Ukraine as a necessary component for strengthening mobilisation. Particularly important are such innovations as electronic summonses and changes in age criteria, which are quite relevant in the context of modern technologies and their impact on law. A detailed analysis of the ethical challenges and legal dilemmas faced by both individuals and the state in the area of criminal liability for draft evasion in the context of armed conflict was required.

The synthesis method, together with the analysis method, was used to examine the data on how such changes are reflected in the international arena, including the migration of conscripts and their attempts to evade service abroad, as well as the reactions of EU countries. The formal legal method was used to provide an explanation of the concept of "conscription evasion" and its manifestations. The dialectical method was used to explain how changes in Ukrainian legislation and mobilisation practices affect global security challenges, including the allocation of military resources, defence strategies and international defence cooperation. The method of legal document analysis was useful in understanding the basis of criminal liability for evading military conscription. Taken together, these methods actively contributed to the quality of the research.

3. Results and discussion

3.1 Military Conscription: Current Status and Evasion of Military Conscription

Since 2014, when the annexation of the Autonomous Republic of Crimea took place, Ukraine has been on the path of countering Russia's hybrid tactics, which, accordingly, requires well-thought-out and coordinated actions, as well as a comprehensive approach to improving the current legislation.

It should be noted that all the actions taken by the Ukrainian authorities in response to Russia's armed aggression have a comprehensive impact on global security challenges. After all, changes in legislation and approaches to military conscription during mobilisation directly affect the allocation of military resources, which include both human and material resources. This may include the mobilisation of reserves, redeployment of military units and equipment to strengthen the country's defence capabilities. Moreover, changes in legislation, which will be discussed in more detail below, can affect the overall defence strategies and direct them towards a more adaptive and effective defence of the country against threats from an external aggressor. This may include the development of new strategies for combating armed conflict, increasing combat readiness and responding to new security challenges. It is also important to note that updated mobilisation practices also affect international cooperation in defence matters, first and



foremost. Practice shows that Ukraine actively cooperates with foreign partners to improve defence strategies, which affects the increase of combat defence capability (Veebel, 2020).

In turn, the current full mobilisation strategy contains several dimensions: first of all, the military dimension, technological, economic and social dimensions. Taken together, this serves as the basis for Ukraine to overcome the challenges that arise in the course of a large-scale war with a very strong aggressor. The Full Mobilisation Strategy adopted by Ukraine is a comprehensive approach that recognises the need to use all aspects of national power to effectively counter Russian invasion and protect its sovereignty (Sanders, 2023).

In general, the strategy of total mobilisation, by its very nature, is the use of a certain kind of all available technological capabilities to ensure the preservation of the territorial integrity of the state and its defence. Such technological capabilities include the development and improvement of means and mechanisms for protecting against cyber attacks, the development and improvement of various types of weapons, including mastering the latest types of enemy destruction, as well as the use of modern technologies to monitor and understand the directions of Russian activities (Sorongan, 2022). It is also important to note that the strategy of full mobilisation also implies strong political and state leadership, significant diplomatic efforts in various directions, the creation of international political alliances, advocacy for sanctions against Russia and raising awareness of the war (Midhio et al., 2024). It is important to emphasise the fact of war, not an operation, as the aggressor state's leadership has said. For general understanding, the implemented full mobilisation strategy was a rapid response and comprehensive approach to the Russian full-scale invasion. It was a basic necessity to implement a multidimensional and coordinated response to the current realities.

It is no secret that Russia is waging an active hybrid war against Ukraine. This hybrid warfare involves the use of various military and non-military means (Veebel, 2020). Most of these means have never been used in combination in the world, making Russia's war against Ukraine a completely new kind of war with much more harmful consequences. However, on the other hand, the fact that the Ukrainian military is repelling dangerous attacks with the help of its allies speaks volumes. Of course, the most important thing at the moment is Ukraine's victory in the war with Russia, but this requires all sorts of technological, technical, military and human resources. And let's not forget the economic situation of the state against the backdrop of constant defence spending and maintaining internal stability in society. Moreover, Ukraine has suffered significant economic losses on various fronts, including the loss of industrial centres in the East and Crimea, direct losses from the war, the cessation of trade in some areas, and punitive measures by Russia, ranging from import bans to economic sanctions against individuals. All these problems also led to the decline of the Ukrainian economy: GDP fell from \$183 billion in 2013 to \$91 billion in 2015 and to \$153 billion in 2019. In the first year after the massive invasion on 24 February 2022, the Ukrainian economy lost 30-35% of GDP (Midhio et al., 2024).

That is why, given the difficult conditions in which Ukraine is currently living, the need for active mobilisation orders is quite logical and appropriate. However, there are far from being isolated cases, or even frequent cases, of mobilisation evasion. In general,



for the purposes of the study, it is important to note that evasion from military service is considered to be the improper fulfilment of the obligations stipulated by the Law of Ukraine "On Mobilisation Preparation and Mobilisation" (Verkhovna Rada of Ukraine, 1993). However, in order to fully understand whether liability arises in a particular case, it is worth focusing on understanding the process of evasion as such.

The ways of evading military conscription are as follows:

- Refusal to be called up for military service in accordance with the mobilisation process;
- Failure to appear at the Territorial Centre for Recruitment and Social Support to undergo a medical examination upon a call;
- Directly escaping from the place of conscription or military unit;
- Refusal to participate in training or evading it in any way (Evasion from mobilisation, 2024).

Article 18, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights guarantees everyone the right to freedom of thought, conscience and religion. No one shall be subjected to any coercion which would impair his or her freedom to have or to adopt a religion or belief of his or her choice. At the same time, Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides for the right of everyone to freedom of thought, conscience and religion. The European Court of Human Rights (ECtHR) has repeatedly emphasized that the state has the right to check whether a man is fit for military service. However, Ukrainian courts profess the position that exemption from military service on the basis of religious beliefs is not possible. For example, on July 26, 2024, the Okhtyrka City District Court of Sumy Region issued a verdict in case No. 583/3259/24. A member of the Religious Center of Jehovah's Witnesses in Ukraine, who had undergone military training and received a military specialty while studying at the university, refused to receive a military call-up. He explained this by his religious beliefs. The court noted that no religious beliefs can be a basis for evading mobilization of a citizen of Ukraine, recognized as fit for military service, in order to fulfill his constitutional duty to protect the territorial integrity and sovereignty of the state from military aggression by a foreign country. Given his religious beliefs and constitutional duty to protect the Fatherland during his service, he could be involved in repairing equipment, building fortifications, transporting the wounded, transporting cargo and performing other functions not related to the use of weapons (Polishchuk, 2024; Council of Europe, 2018).

It is important to note that persons who are not subject to conscription during mobilisation are not liable for evasion from conscription. An example is a situation where a citizen who is 20 years old and has not performed military service or studied at a military department cannot be held liable for evading mobilisation, as he or she is not subject to mobilisation by law. In general, in the context of the study, liability for evading military conscription can be of two types: administrative and criminal. According to Article 211-1 of the Code of Ukraine on Administrative Offences, there is liability for failure to report to the Territorial Centre for Recruitment and Social Support when called upon (Verkhovna Rada of Ukraine, 1984).



Speaking in more detail about criminal liability, it is important to point out the following points. According to the special laws "On Mobilisation Training and Mobilisation" and "On Military Duty and Military Service", persons who evade conscription for mobilisation, call-up for regular military service, registration for military service or special (check-up) training are criminally liable in accordance with the law (Criminal liability for evasion from conscription..., 2024). Criminal liability is incurred in accordance with Articles 335, 336, 336-1, 337 of the Criminal Code of Ukraine, for more (Verkhovna Rada of Ukraine, 2001):

- evasion of conscription for regular military service or military service for officers is punishable by restraint of liberty for up to three years;
- evasion of conscription for military service during mobilisation, for a special period, or for military service by conscription of persons from among reservists during a special period - is punishable by imprisonment for a term of three to five years;
- evasion from performing civil defence service during a special period (except for the reconstruction period) or in case of targeted mobilisation - shall be punishable by imprisonment for a term of two to five years;
- evasion of a conscript, person liable for military service, or reservist from military registration after being warned by the relevant head of the territorial centre for recruitment and social support is punishable by a fine of three hundred to five hundred tax-free minimum incomes or correctional labour for up to one year;
- evasion of a person liable for military service or a reservist from training (special) training - is 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.

Another critical aspect often overlooked is why Ukraine has not opted for a general mobilization despite encouragement from some international partners. The reluctance to declare full-scale mobilization stems from multiple factors, including economic constraints, political considerations, and societal resistance. Economic Factors: A general mobilization would disrupt key industries and workforce stability, further weakening Ukraine's wartime economy. Political Considerations: A broader mobilization could lead to increased domestic discontent, particularly among citizens who are unwilling or unprepared to serve. Military Strategy: Ukrainian officials may view targeted, phased mobilization as more effective than a sudden, large-scale conscription, ensuring that forces are properly trained and equipped before being deployed.

Understanding Ukraine's mobilization policies requires analyzing them alongside international examples of wartime mobilization strategies (Chmykh, 2020).

3.2 Electronic summonses and changes in age criteria, which are important in the context of modern technologies and their impact on law

On 30 January, the Cabinet of Ministers of Ukraine submitted an updated draft law on mobilisation to the Verkhovna Rada of Ukraine. It was registered under the number 10449. This is the second attempt by the Verkhovna Rada to pass the draft law. In general, the draft law contains the following main changes:



- Reduction of the conscription age from 27 years to 25 years;
- Providing a 90-day leave of absence for persons released from captivity;
- Involvement of local self-government bodies, local state administrations, civil-military and military administrations, enterprises, institutions and organisations in the mobilisation process;
- Involvement of the national police in the mobilisation process;
- Exclusion of regular military service as a type of military service and dismissal of all regular military service personnel from the reserve.

The possibility of discharging from military service those servicemen who have served continuously during martial law for 36 months;

- Introduction of basic military training and mobilisation for Ukrainians under the age of 25;
- Providing persons convicted of crimes with the right to be released from serving a sentence with probation in exchange for military service during mobilisation (Changes to the conscription..., 2024).

As for the reduction of the conscription age from 27 to 25 years, according to the comments of parliamentarians, this decision is due to several reasons. Firstly, it is a quantitative increase in the number of potential conscripts. And this does not raise any questions. From a different perspective, the difference of 2 years is insignificant at first glance, but in terms of modern technology and societal development, it is significant. The improvement of weapons and various military equipment encourages many servicemen to quickly master these innovations and apply them on the battlefield. Changing the age criteria may open the door to more young people who, having grown up in the digital age, may have a deeper understanding and faster learning curve in these areas. However, the first reason is the most obvious.

An important topic for discussion and a relatively resonant moment for the population was the issue of electronic summonses to the Territorial Recruitment and Social Support Centre, which will potentially be sent to the electronic office of a conscript, reservist or person liable for military service. However, the introduction of electronic summonses prompts considerable reflection in terms of human rights and responsibilities (Draft law on mobilisation..., 2024).

In general, the provision on the introduction of electronic summonses is quite logically linked to the emergence of new obligations, which are detailed in the draft law and are required to be fulfilled by all persons liable for military service, conscripts and reservists. These obligations include the following (How they want to change..., 2024):

- To be registered in the electronic cabinet;
- Update their data through the relevant administrative service centre, or through an electronic cabinet, or it can be done in person at the TRC within 60 days from the date of mobilisation or within 20 days from the date of its extension;



- It is necessary to report changes in health status, address of residence or stay, changes in marital status, email address and telephone number, place of work, position and education - such notification of changes must be made within seven days to the authorities where such persons are registered for military service.

In other words, if the above-mentioned points on the introduction of electronic summonses are adopted, citizens will have 20 days to clarify all the necessary data. This is an important point. It is worth noting the problematic aspect that the draft law does not specify a time limit within which citizens must register an electronic cabinet. At the same time, however, it is proposed to give the Cabinet of Ministers of Ukraine certain powers to determine such a procedure. What does this mean? If this is adopted, citizens' fulfilment of their obligation to register e-offices will directly depend on the Government's adoption of the relevant bylaw Summonses online and at checkpoints (How they want to change..., 2024).

There is also a parallel story with the introduction of electronic summonses in Diia. To be more precise, this story has been going on since the Cabinet of Ministers approved the updated rules of military registration by Resolution No. 1487 of 30 December 2022 (Cabinet of Ministers of Ukraine, 2022). This resolution regulates the creation of an electronic register of persons liable for military service and remote military registration. These statements became the basis for further discussions and concerns among the population. However, the resolution does not mention sending summonses through the state application "Diia" or online registration. The issue has already become a hot topic (Efremov, 2023).

As part of this study, it is worthwhile to investigate in more detail the topic of electronic summonses and whether it is possible to introduce them in a comprehensive manner from the legislative point of view and taking into account the access of all citizens to electronic resources.

In general, one important point is that it is technically possible to send electronic summonses through Diia. After all, Diia is a state reference and information system that provides services remotely. It is a kind of tool for simplifying many aspects of life and effective communication with the state. However, it is not an application that transmits any form of coercion. As of today, Diia already sends notifications of fines, proceedings and court decisions. Drawing an analogy with notifications of the opening of enforcement proceedings, Diia does not replace the procedure for serving court decisions, fines and other procedural documents required by law.

As far as the legislative aspect is concerned, Ukraine is not currently ready to introduce electronic summonses. The form of the summons, as well as the procedure and conditions for its delivery, are clearly defined at the legislative level. Currently, the so-called "regular" summonses can only be served to persons liable for military service in person, and they must also sign for the service. It is clear that the existing alternatives to the delivery of such notices, such as telephone calls, e-mails, oral notices, etc. are illegal and violate the rights of persons liable for military service (Efremov, 2023).

This was confirmed in the case law of the Supreme Court even before the outbreak of a full-scale war, namely the Supreme Court's ruling of 28 January 2020 in case No.



759/5435/16-к, which states the following: if there is no evidence of service of a call-up notice to a person liable for military service in the manner prescribed by law or if there is no record of refusal to receive it, then the person is not guilty of evading military service or mobilisation (Supreme Court, 2020).

It is also important to note the Supreme Court's ruling of 14 December 2021 in case No. 761/8429/16-к, which stated that a person liable for military service must receive a call-up notice and mobilisation order in person. The court considers an improper notification of the need to report to the military registration and enlistment office when the summons does not contain information about a specific time, place and year (Supreme Court, 2021).

The Supreme Court's position after the start of the full-scale invasion is currently unavailable, as similar cases are currently being considered by the courts of first instance. This can be used to judge the speed of justice in wartime. In other words, from the point of view of the current legislation and the spirit of law, a citizen must fulfil his or her military duty to the state in person, and these relations do not allow for mediation or representation, including by sending electronic subpoenas.

In other words, electronic summonses can theoretically be launched in Diia, but this process will violate the constitutional rights of citizens. The Verkhovna Rada of Ukraine may introduce a number of amendments to the existing regulations, but MPs will face a number of problematic issues, including:

- How can a phone number be confirmed to belong to a particular citizen? After all, starter packs can be bought literally in every store, and many citizens have several mobile numbers.

- "Proper service of a summons" - what can be considered as such? According to the new draft law, it is stated that the calls will be sent through an electronic cabinet, and the day of its delivery will be the day when the military commissariat receives a notification of its delivery. However, it does not specify what to do when a citizen has not seen the call. Analysing the text of the document, this is not a reason for failure to appear at the military registration and enlistment office. That is why this point is problematic. In general, the options are as follows: either the fact that the document was sent by the military commissar (which is already prescribed and is completely illegal), or authorisation in the Diia app, or opening the call-up by the person liable for military service in the app (Mobilisation in Ukraine..., 2024; Yaroshenko et al., 2022).

- What will be the reason for persons liable for military service to use their phones and install the Diia app directly?

Let's assume that these issues are resolved, but one very important aspect remains: the violation of the constitutional rights of persons liable for military service. After all, not all citizens actively use mobile phones, and this can be either a conscious choice or the result of certain religious beliefs. If electronic summonses are introduced, the state must commit itself to providing every person liable for military service with a smartphone and access to the Internet. And given the current economic situation, this point remains quite problematic. And failure to comply with it with the parallel introduction of electronic summonses is illegal. Therefore, the issue of evading military conscription will be quite problematic.



3.3 Migration of persons liable for military service and their attempts to evade service abroad, as well as the reaction of EU countries to the extradition of persons liable for military service to Ukraine

The issue of criminal prosecution of persons who crossed the state border after 24 February 2022 remains quite controversial and problematic. In general, the Verkhovna Rada of Ukraine proposes the following step: those citizens who, although they went abroad to evade military conscription, repented and returned to Ukraine within six months, and voluntarily reported the fact of committing a crime to the State Border Guard Service, will not be held criminally liable. This is an original way to take a 6-month "holiday" abroad.

The relevant draft law number 10453 was registered in the Verkhovna Rada of Ukraine (Draft Law on Amendments to the Criminal Code of Ukraine..., 2024). In general, this draft law, in addition to the above, also proposes to strengthen criminal liability measures specifically for illegal crossing of the state border and to introduce criminal liability for illegal border crossing during mobilisation. The proposed sanction in this case is imprisonment for a term of 3 to 5 years. If the offence is committed repeatedly or by a group of persons, the penalty is imprisonment for a term of 5 to 8 years. Imprisonment for up to 12 years may be imposed on persons who attempt to illegally cross the border using weapons and violence (The Verkhovna Rada proposes..., 2024).

Against the backdrop of the active intensification of mobilisation, the issue of returning men liable for military service to the country is also being discussed. The authorities have repeatedly mentioned such plans, but now this issue is gaining momentum. Earlier, Defence Minister Rustem Umerov "invited" Ukrainian men who had travelled abroad to come to recruitment offices on a voluntary basis. Also, President of Ukraine Volodymyr Zelenskyy stated that all men of conscription age should stay on the territory of Ukraine - they should either pay taxes or fight. Those who went abroad should return (Zelenskyy said that all men should either work or fight, 2024).

However, it's important to note that, as of today, there is no mechanism for the return of men of military age to Ukraine, regardless of whether they left legally or illegally. And the "extradition of evaders", which has been repeatedly mentioned in the Verkhovna Rada, is an impossible process against the background of the position of many European countries, which are not yet ready to extradite Ukrainian citizens. It's better to analyse in more detail the positions of some European states on the above-mentioned issue of "extradition of fugitives". For example, in Austria, a statement was made at the state level that extradition of men of military age is impossible. This statement also applies to men who arrived in the country after the start of the full-scale invasion. The local Ministry of Foreign Affairs called this situation a direct attack on their statehood. According to the latest data, there are 14,000 Ukrainians fit for military service in Austria (Forced return of men from abroad?..., 2024).

As for Germany, the figures are much more impressive, as there are almost 200,000 Ukrainian men of mobilisation age living in the country, but, like Austria, they will not extradite them. They believe that extradition of conscripts against their will is a direct violation of human rights. And given the provisions of the German Constitution, a person must join the armed forces only of their own free will. It was also noted that such actions



would reduce the number of workers in the country, which would affect the economic situation in the country. This was the basis for the refusal to extradite persons liable for military service (The German government..., 2024).

In turn, Hungary is also against the extradition of men from the country. This position is categorical, as all refugees in the country are considered to be under reliable protection and their lives are not in danger. Deputy Prime Minister Zsolt Szemien said that every refugee is a free person, and a free person can decide for himself whether to return to Ukraine or stay in the European Union (Forced return of men from abroad?..., 2024).

In the Czech Republic, in early autumn, it was clearly stated that the issue of forced return of men was not on the agenda. Minister of Justice Vladimír Rzepka referred to the European Convention, which excludes extradition for evading military service, desertion or disobedience to command orders. However, it was also noted that only a Ukrainian court can request the extradition of a particular person liable for military service. An example is if it is established that a citizen has deliberately forged documents in order to be exempted from service or has purchased a so-called "white ticket" of medical unfitness for a bribe. In this case, extradition is possible (Forced return of men from abroad?..., 2024).

Estonia initially confirmed its intention to help Ukraine with the mobilisation of citizens, provided that the two countries conclude an agreement. However, after a while, it was noted that Estonia was not going to send people to the frontline by force. Moreover, it was noted that it was a matter for the Ukrainian authorities to appeal to those liable for military service abroad to express their desire to return (Will Estonia extradite Ukrainians for mobilisation, 2024).

Poland has also stated that there will be no forced deportation of men. Whether or not to return is a matter for each citizen, and therefore no one will force anyone to do so (Will conscripts be returned to Ukraine..., 2023).

3.4. Analysis of the ethical challenges and legal dilemmas faced by both individuals and the state in the area of criminal liability for conscription evasion in the context of armed conflict

The issue of criminal liability for conscription evasion in armed conflict presents a complex set of ethical problems and legal dilemmas for both individuals and the state. With regard to ethical challenges for individuals, it is important to point out the issue of conscientious objection. It is not uncommon for individuals to oppose mobilisation and conscription on religious or moral grounds. For them, conscription raises questions of personal integrity and moral responsibility. They may refer to their ethical beliefs, which primarily prohibit them from injuring or even killing someone in war, which is quite common during hostilities (Evasion from mobilisation, 2024).

This also includes the issue of personal security, which prevails over the duty to protect the territorial integrity of the state. This raises ethical questions about the balance between self-preservation and societal obligations, especially in situations where people may perceive the conflict as unjust or morally questionable (Total war..., 2022).



For many people, evading military service is a logical phenomenon, as they fear harming others. This kind of ethical dilemma involves a process of weighing the potential consequences of participating in war, including the possibility of harming either civilians or experiencing traumatic experiences personally. As for the ethical challenges for the state, first of all, there is the issue of respect for human rights, as each new bill affects human rights in one way or another. That is why the state needs to strike a balance between the interests of state protection and respect for the rights of persons liable for military service.

The issue of equality and fairness in the distribution of the burden of military service among citizens is also often raised. It is only logical to ask how some people can be fairly forced to risk their health and life when others have the possibility of exemption from service or can evade it in various ways (Sanders, 2023). The state also bears the burden of understanding that inducement and coercion to mobilise can backfire on society. Therefore, conscription evasion is often a form of dissent against policies or actions that are perceived as unjust or immoral, prompting the state to reconsider its military commitment.

One of the major concerns regarding the criminalization of military conscription evasion in Ukraine is its compatibility with fundamental human rights protections, particularly in the context of international law (Council of Europe, 2018). Ukraine's requests for the extradition of conscription evaders have raised significant legal and ethical concerns in EU countries, many of which refuse such extraditions due to potential human rights violations outlined in the European Convention on Human Rights (ECHR).

Key Human Rights Concerns:

- Right to a Fair Trial (Article 6, ECHR): Extradited individuals must be guaranteed a fair trial, including adequate legal representation and impartial court proceedings.
- Prohibition of Inhuman or Degrading Treatment (Article 3, ECHR): The extradition of conscription evaders to Ukraine could expose them to inhumane conditions, including arbitrary detention and potential mistreatment.
- Non-Refoulement Principle (under international law): States are prohibited from extraditing individuals if there is a risk that they will face persecution, ill-treatment, or a denial of their fundamental rights.

Several ECtHR rulings have set important legal precedents in this area. Cases concerning conscientious objectors and military service evasion have determined that states must ensure protection for individuals who refuse conscription based on legitimate moral or religious grounds.

Additionally, while the article references Ukrainian domestic laws, it does not sufficiently discuss international legal instruments governing extradition and military service-related human rights issues, such as:

- The European Convention on Extradition
- UN Human Rights Council opinions on conscientious objection



- International Covenant on Civil and Political Rights (ICCPR), which guarantees freedom of thought and conscience (Article 18) (Fulei, 2015; Council of Europe, 2018; Council of Europe, 2022).

In terms of legal dilemmas, in general, the legal framework on conscription evasion requires states to establish penalties for non-compliance, which is currently being actively pursued. However, adopting a law and making many amendments is one thing, and implementing its provisions is quite another, requiring significant resources. This is especially important to consider when individuals evade conscription in various ways, such as fleeing the country or falsifying documents (Total war..., 2022).

The process of draft evasion is closely intertwined with international human rights principles and standards, including the right to conscientious objection and the prohibition of arbitrary detention. As part of its obligations, the state must ensure that its conscription policy complies with international standards and respects fundamental human rights. Legal dilemmas can arise with regard to the selective prosecution of conscription evaders, especially when enforcement measures disproportionately target certain groups based on factors such as socio-economic status, ethnicity, or political affiliation. This calls into question the fairness and impartiality of the legal system (Evasion from mobilisation, 2024).

4. Conclusion

The discussion surrounding criminal liability for conscription evasion in Ukraine is deeply intertwined with international human rights principles, legal precedents, and geopolitical considerations. Although Ukraine confronts valid security issues, all actions must adhere to international law, especially concerning human rights safeguards for persons subject to extradition or compulsory conscription.

Evasion from military conscription is considered to be the improper fulfilment of the obligations stipulated by the Law of Ukraine "On Mobilisation Training and Mobilisation". However, in order to fully understand whether liability arises in a particular case, it is worth focusing on understanding the process of evasion as such. The ways to evade military conscription are as follows: refusal to be called up for military service in accordance with the mobilisation process; failure to appear at the Territorial Recruitment and Social Support Centre for a medical examination upon a call; direct escape from the place of conscription or military unit; refusal to participate in training or evasion in any way.

In general, in the context of this study, there are two types of liability for evading military conscription: administrative and criminal. Speaking in more detail about criminal liability, it is important to point out the following points. In accordance with the special laws "On mobilisation training and mobilisation" and "On military duty and military service", persons who evade conscription, call-up for regular military service, registration for military service or special (check-up) training are criminally liable under the law. Criminal liability arises in accordance with Articles 335, 336, 336-1, 337 of the Criminal Code of Ukraine.



Important potential innovations could include reducing the conscription age from 27 years to 25 years. In terms of numbers, this is a direct increase in the number of potential conscripts. And this does not raise any questions. From a different perspective, the difference of 2 years may seem insignificant at first glance, but given modern technology and the development of society, it is significant. The improvement of weapons and various military equipment encourages many servicemen to quickly master these innovations and apply them on the battlefield. Changing the age criteria may open the door to more young people who, having grown up in the digital age, may have a deeper understanding and faster learning curve in these areas.

An important topic for discussion and a relatively resonant moment for the population was the issue of electronic summonses to the Territorial Recruitment and Social Support Centre, which will potentially be sent to the electronic account of a conscript, reservist or person liable for military service. In theory, electronic summonses can be launched, but this process will violate the constitutional rights of citizens. The Verkhovna Rada of Ukraine can make a number of changes to existing regulations, but parliamentarians will face a number of problematic issues, the most important of which is the interpretation and regulation of the proper delivery of the summons. Assuming this and other issues are resolved, there is still one very important aspect that remains: the violation of the constitutional rights of persons liable for military service. After all, not all citizens actively use mobile phones, and this can be either a conscious choice or the result of certain religious beliefs. If electronic summonses are introduced, the state must commit itself to providing every person liable for military service with a smartphone and access to the Internet. And given the current economic situation, this point remains quite problematic. And failure to comply with it with the parallel introduction of electronic summonses is illegal.

The issue of criminal prosecution of persons who crossed the state border after 24 February 2022 remains quite controversial and problematic. In general, the Verkhovna Rada of Ukraine proposes the following step, when those citizens who, although they went abroad to evade military conscription, repented and returned to Ukraine within six months, and voluntarily reported the fact of committing a crime to the State Border Guard Service, will not be held criminally liable. This is an original way to take a 6-month "holiday" abroad.

The relevant draft law, No. 10453, has been registered in the Verkhovna Rada. In addition to the above, this draft law also proposes to strengthen criminal liability for illegal crossing of the state border and to introduce criminal liability for illegal border crossing during mobilisation. Against the backdrop of the active intensification of mobilisation, the issue of the return of men liable for military service to the country is also being discussed. However, as of today, there is no mechanism for the return of men of military age to Ukraine, regardless of whether they left legally or illegally. And the "extradition of evaders", which has been repeatedly mentioned in the Verkhovna Rada, is an impossible process in view of the position of many European countries, such as the Czech Republic, Germany, Austria, Estonia, Poland, Hungary, etc., which are not currently ready to extradite Ukrainian citizens.

Expanding the study to include a deeper analysis of human rights violations, relevant ECtHR case law, and international treaties on extradition will enhance its legal credibility.



Additionally, addressing the strategic rationale behind Ukraine's reluctance to enact full-scale mobilization will provide a more balanced and nuanced perspective on the country's military policies.

It is important to summarise that the process of draft evasion is closely intertwined with international human rights principles and standards, including the right to conscientious objection and the prohibition of arbitrary detention. As part of its obligations, the state must ensure that its conscription policy complies with international standards and respects fundamental human rights. Legal dilemmas may arise with regard to the selective prosecution of conscription evaders, especially when enforcement measures disproportionately target certain groups based on factors such as socio-economic status, ethnicity, or political affiliation. This calls into question the fairness and impartiality of the legal system.

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