Stato, Chiese
e pluralismo confessionale

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The battle for freedom of conscience in wartime Ukraine *

*La battaglia per la libertà di coscienza in tempo di guerra in Ucraina **

ABSTRACT: This article examines the issue of conscientious objection in Ukraine amidst the country's ongoing war against Russian aggression. It argues that the suspension of alternative civilian service for conscientious objectors under martial law is inadvisable and indefensible, despite the concern for national defense. The analysis is presented in five sections: a historical overview of governmental responses to conscientious objectors, with particular focus on the illustrative case of the United States; a review of contemporary international and especially European human rights standards regarding conscientious objection and alternative service; an assessment of Ukraine's current practices regarding the issue in light of those standards, suggestions for policy improvements with reference to the recent model and caution of South Korea; and reflections on the foundational importance and value of upholding freedom of conscience even during emergencies. This article argues that Ukraine can learn from historical and recent examples in bringing its policies and practices regarding conscientious objection into greater alignment with international norms and European standards.

ABSTRACT: Questo articolo esamina la questione dell'obiezione di coscienza in Ucraina nel contesto della guerra in corso nel Paese contro l'aggressione russa.

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Sostiene che la sospensione del servizio civile alternativo per gli obiettori di coscienza in regime di legge marziale sia sconsigliabile e indifendibile, nonostante la preoccupazione per la difesa nazionale. L'analisi è presentata in cinque sezioni: una panoramica storica delle risposte governative agli obiettori di coscienza, con particolare attenzione al caso esemplificativo degli Stati Uniti; una revisione degli standard internazionali contemporanei, e in particolare europei, in materia di diritti umani in materia di obiezione di coscienza e servizio alternativo; una valutazione delle attuali pratiche ucraine in materia alla luce di tali standard, suggerimenti per miglioramenti politici con riferimento al recente modello e alla cautela della Corea del Sud; e riflessioni sull'importanza e il valore fondamentali del rispetto della libertà di coscienza anche in situazioni di emergenza. Questo articolo sostiene che l'Ucraina può imparare da esempi storici e recenti per allineare maggiormente le sue politiche e pratiche in materia di obiezione di coscienza alle norme internazionali e agli standard europei.

1 - Introduction

Since the declaration of martial law following the full-scale Russian invasion in February 2022, Ukraine has suspended the provision of alternative civilian service for conscientious objectors. The reasons for this policy are understandable, given that Ukraine is battling for national survival. And yet the policy is ultimately indefensible. Freedom of conscience is a fundamental right, even in wartime. Thus, it is unjust to force conscientious objectors into combatant roles and to punish them if they refuse. In this article, I explore this issue under six headings. First, in this introductory section I offer a series of caveats to explain my positionality related to the topic, the aims and limitations of this article, and the broader context in which it was written. Second, I provide a brief historical sketch of some governmental responses to conscientious objectors. Third, I review the development of contemporary international human rights standards regarding conscientious objection and alternative service. Fourth, I assess the practice regarding conscientious objection in Ukraine during martial law and the problems with it. Fifth,

I offer some thoughts on how Ukraine can address those problems. And sixth, I conclude with reflections on the foundational importance of protecting rights of conscience even in times of crisis.

At the outset, some caveats are in order. First, the research and analysis in this paper were current up to the time of writing—in January 2025. The Russo-Ukrainian war is a dynamic situation, as is the policy conversation and the legal battle over alternative service in Ukraine. The Constitutional Court of Ukraine is, at the time of writing, considering a case involving conscientious objection and has requested an opinion from the Venice Commission[1]. Regardless of the outcome of the case and of the war, Ukraine's experience following the full-scale Russian invasion provides a useful case study in grappling with the claims of freedom of conscience, religion, and belief during times of national emergency.

Second, I acknowledge that I offer my analysis and critique from the safety and comfort of the United States while Ukrainians are facing a brutal battle against unprovoked aggression by a much larger and more powerful adversary. Ukraine is seriously outmanned and outgunned and has struggled to mobilize sufficient combatants to defend Ukrainian territory. At the time of writing, over 43,000 Ukrainian soldiers have been killed and some 370,000 wounded[2]. Conscientious objectors are often especially unpopular in wartime, when significant numbers of men are being mobilized for combatant roles that may involve killing and dying in defense of their nation. Alternative service can seem like a luxury or even a betrayal.

Third, those of us who are academics need to be humble and self-critical on the issue of dealing with dissenters. Our record is far from perfect. For instance, the American Association of University Professors, an organization founded to defend academic freedom, called for limitations on the rights of pacifist professors during WWI. Arthur Lovejoy, the co-founder of the AAUP and the chair of its Committee on Academic Freedom in Wartime, denigrated conscientious objectors as "an unpleasantly parasitic part of the history of human progress" and called for universities to fire pacifist professors[3]. And today, universities

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[1] **COUNCIL OF EUROPE**, "*Ukraine: Request for an amicus curiae*," 19 December 2024. (*https://www.venice.coe.int/webforms/events/?id=3768*)

[2] **V. MELKOZEROVA**, *Kyiv reveals total Ukraine casualties in Putin's war for first time*, in *Politico*, 8 December 2024.

[3] **J. WILSON**, *The Heroic Hypocrite of Academic Freedom*, in *Inquisitive*. 20 November 2024. (*https://inquisitivemag.org/articles/back-in-the-day/the-heroic-hypocrite-of-academic-*

around the world continue to struggle with issues of academic freedom, dissenting opinions, and viewpoint diversity.

Fourth, I am not a pacifist. I do have Anabaptist relatives who are pacifists, but after the attack on Pearl Harbor my grandfather broke with his family's pacifist tradition to enlist to fight in World War II. Despite not being a pacifist, I'm grateful for religious communities that dissent from mainstream opinion because they push the boundaries of religious freedom for all. And regardless of what one believes and practices personally, conscientious objection is an essential dimension of the human right to freedom of religion, conscience, or belief.

Fifth, although I try to make use of historical and legal material in this article on Ukraine, I am not a professional historian, legal scholar, or Ukraine specialist. That much will be clear to those who are. I approach the topic at hand as a religious studies professor with a broad interest in freedom of religion or belief. I defer to colleagues who are historians, legal scholars, or Ukraine specialists to provide far more precise, extensive, and nuanced analyses than I am able to provide in this article. My aim here is to add a modest contribution to the normative debate over the rights of conscientious objectors in wartime Ukraine by drawing on insights from multiple disciplines and case studies.

Sixth, this article focuses on the specific issue of conscientious objection rather than on human rights in general, but it's worth bearing in mind the larger human rights context in Ukrainian-controlled territory. In an October 2024 report the European Commission provided a positive assessment of Ukraine's record on human rights, saying "The government [of Ukraine] has maintained its overall respect for fundamental rights and has shown its commitment to protecting them and further aligning with the EU acquis, despite the restraints due to the ongoing war and martial law"[4]. In the Commission's assessment, restrictions on rights associated with martial law "have remained largely in proportion to the security situation and have generally been applied with caution"[5]. But the Commission also encouraged the Ukrainian government to "continuously assess the nature and scope of martial law-related restrictions" and "in consultation with the affected groups,

freedom)

[4] **EUROPEAN COMMISSION**, *Ukraine 2024 Report*, p. 36. 30 October 2024. (*https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2024_en*)

[5] **EUROPEAN COMMISSION**, *Ukraine*, cit.

consider lifting restrictions that are not necessary or proportionate to the objectives sought"[6].

2 - Historical Sketch of Governmental Responses to Conscientious Objectors

The right to abstain from combatant roles has emerged in recent centuries from the tension between military conscription and the pacifist conscience. Although various forms of pacifism and nonviolence have long existed in a number of religious and philosophical systems around the world, it was in Europe, and then also in European colonies, that the interconnected developments of the Protestant Reformation and the rise of the modern state with standing armies created the conditions that led to conscientious objection as we know it today. As historian Peter Brock, a leading scholar of conscientious objection, notes in his book *Against the Draft:*

> "Before 1525 the phenomenon of conscientious objection to military service was, we may say, a submerged one. There were almost always a number of ways to evade being drafted. Besides, compulsion was not very often used to raise armies or militias: this was particularly true of India, where a long tradition of nonviolence stretched back more than two millennia without producing any conscientious objectors. True, there appear to have been cases of conscientious objection to military service among the early Christians before Emperor Constantine's reign. But no continuity in this respect exists thereafter through more than a thousand years. It seemed, therefore, most sensible to start this volume with the Radical Reformation of the sixteenth century and the unbroken line that begins at that time"[7].

Marked by an emphasis on biblical literalism, separation from worldly impurity, and religious liberty, Anabaptist groups such as the Mennonites, Quakers, and Brethren understood the life and teachings of Jesus to mandate complete renunciation of violence, including bearing arms in military service. Given their distinguishing emphasis on nonviolence, many of these denominations came to be collectively

[6] **EUROPEAN COMMISSION**, *Ukraine*, cit.

[7] **P. BROCK**, *Against the Draft: Essays on Conscientious Objection from the Radical Reformation to the Second World War*, 2006, University of Toronto Press, p. 3.

known as Peace Churches. Members of these groups have been frequently persecuted, and sometimes executed, for their refusal to kill.

There have been some notable instances of accommodation for their conscientious stand. In 1575, for instance, during the Dutch war of independence, the province of North Holland officially exempted Mennonites from armed service[8]. According to Brock, "this appears to be the first piece of legislation providing for conscientious objection to military service"[9]. Rather than force the Mennonites to carry weapons, authorities ordered them to carry shovels to dig ditches and ramparts—though it is unknown whether that service was ever enforced[10]. During the Anglo-Dutch War of the 1660s, the town council in Kampen respected the consciences of Mennonites and had them serve as auxiliary firemen—to fight fires rather than enemy soldiers[11]. During the First and Second World Wars, Britain created the Non-Combatant Corps (NCC), a form of service acceptable to some conscientious objectors, though not to those who refused all forms of service within the military[12]. Significantly, participation in the NCC was open to men with any sincere religious or secular conscientious objection to combatant roles. In many other contexts, only certain religious groups, often just the Mennonites, managed to secure the provision of alternative service[13].

The United States is illustrative of the many countries that have gone from prosecuting to protecting conscientious objectors. Despite the fact that many religious dissenters, including a range of Peace Churches, sought sanctuary in America, the country has long wrestled with how to treat objectors during wartime. And it has debated the acceptable bounds and grounds of conscientious objection - that is, who can be exempted from military service and for what reasons. At one point or another during the colonial period, all 13 American colonies had penalties for conscientious objection[14]. Even Pennsylvania, founded by pacifist Quakers in the 1680s, imposed substantial fines on those who refused to fight in the state militia during the Revolutionary War of the 1770s. In

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[8] **P. BROCK**, *Against the Draft*, p. 46, cit.
[9] **P. BROCK**, *Against the Draft,* p. 46, cit.
[10] **P. BROCK**, *Against the Draft,* p. 46, cit.
[11] **P. BROCK**, *Against the Draft,* p. 47, cit.
[12] **P. BROCK**, *Against the Draft,* p. 47, cit.
[13] **P. BROCK**, *Against the Draft,* p. 243, cit.
[14] **K.S. HASSON**, *The Right to be Wrong: Ending the Culture War over Religion in America*, 2012, p. 50.

1775, the First Continental Congress unanimously passed a resolution recognizing those who for religious reasons could not participate in war, though state-level implementation varied considerably[15].

The first federal draft came in 1863 during the Civil War. Pacifists were again subject to fines if drafted. However, after successful lobbying by Quakers, Congress, with the support of President Abraham Lincoln, amended the Enrollment Act in 1864 to provide religious conscientious objectors with two options other than combat: either serve in the military in a non-combatant role or pay a $300 fine that would be used for the humanitarian purpose of helping sick and wounded soldiers[16]. It was a positive step, but the exemption only applied to members of religious denominations that prohibited the bearing of arms[17]. During World War I, the Selective Service Act of 1917 similarly exempted members of "any well-recognized religious sect or organization…whose existing creed or principles forbid its members to participate in war in any form"[18]. In other words, exemption was not an individual right open to all but rather based on membership in a "well-recognized" pacifist religious group - in other words, a Protestant Peace Church.

During WWII, Congress included slightly broader language, exempting from combatant roles a man "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form"[19]. Membership in a Peace Church was not specified, though Bill Raley argues that congressional intent was unclear and the reference to "religious training" suggested the exemption was "limited to members of churches with pacifistic doctrines"[20]. Even so, some 43,000 men successfully registered as conscientious objectors during World War II[21]. Most then served in non-combatant roles within the military.

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[15] Cited in **P. DESLER**, *Conscientious Objectors - A Test of Sincerity. Welsh v. United States*, 90 S. Ct. 1972 (1970), in *William & Mary Law Review*, Volume 12, Issue 2, December 1972.

[16] Enrollment Act, ch. 13, sec. 17. (1864).

[17] Enrollment Act, ch. 13, sec. 17. (1864).

[18] Selective Draft Act. 1917. SIXTY-FIFTH CONGRESS. Sess. I. Ch. 15. Section 4. (*https://uscode.house.gov/statviewer.htm?volume=40&page=78*)

[19] Selective Training and Service Act of 1940, ch. 720, 5(g), 54 Stat. 889.

[20] **B. RALEY**, *How Conscientious Objectors Killed the Draft: The Collapse of the Selective Service during the Vietnam War*, in *Cleveland State Law Review*, Volume 68, Issue 2, 13 March 2020, p. 159.

[21] **K. MARTIN**, *Alternative Service: Conscientious Objectors and Civilian Public Service in World War II*, in *The National WWII Museum*, 16 October 2020. (*https://www.*

Roughly 12,000 opted to serve in the newly created Civilian Public Service - a partnership between the government and the Brethren, Quakers, and Mennonites[22]. Those who refused all cooperation with the Selective Service, including over 4,400 Jehovah's Witnesses, were imprisoned[23]. Over the first nearly two centuries of the United States, the country made some important progress in its treatment of conscientious objectors. But as Raley observes, exemptions during this time were "clearly a concession carved out for the benefit of religious groups, as the historic peace churches had to lobby for an exemption during every draft in U.S. history"[24].

During the Vietnam War the U.S. Supreme Court dramatically expanded the grounds and bounds of conscientious objection. In 1970, the Court ruled in Welsh v. United States that any sincerely held belief that imposes duties on the conscience of an individual could be legitimate grounds for exemption[25]. Accordingly, today the U.S. Selective Service System defines a conscientious objector as "one who is opposed to serving in the armed forces and/or bearing arms on the grounds of moral or religious principles"[26]. The right to apply for exemption in the case of a draft is no longer restricted to the religious or based on membership in a pacifist group. The website of the Selective Service System makes this clear: "Beliefs which qualify a registrant for CO [conscientious objector] status may be religious in nature, but don't have to be. Beliefs may be moral or ethical"[27]. After over 200 years of public debate, religious lobbying, congressional bargaining, and litigation, the United States protects conscientious objectors regardless of creed or affiliation.

3 - International Rights Standards Regarding Conscientious Objection

nationalww2museum.org/war/articles/conscientious-objectors-civilian-public-service).

[22] **K. MARTIN**, *Alternative Service*, cit.

[23] **K. MARTIN**, *Alternative Service*, cit.

[24] **B. RALEY**, *How Conscientious Objectors Killed the Draft*, cit.

[25] **P.M. DESLER,** *Conscientious Objectors*, cit. (*https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2734&context=wmlr*).

[26] *Conscientious Objectors*, in *Selective Service System* (*https://www.sss.gov/register/alterna tive-service/conscientious-objectors/*).

[27] *Conscientious Objectors*, cit.

Current international standards regarding conscientious objection to mandatory military service reflect the realization by many states that it makes little sense, practically or morally, to force pacifists to fight. Non-combatant military roles and civilian alternative service make far more sense. The Universal Declaration of Human Rights (UDHR) of 1948 and the International Covenant on Civil and Political Rights (ICCPR) of 1966 enshrine the "right to freedom of thought, conscience, and religion" in their 18th articles. Both are silent on the issue of conscientious objection. But in a series of resolutions and statements starting in 1987, United Nations human rights bodies have argued that it is a *derivative right*. For instance, in 1993 the Human Rights Committee, the panel of experts tasked with monitoring implementation of the ICCPR, argued that a right to conscientious objection "can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief"[28]. In a 2012 report on conscientious objection, the Office of the UN High Commissioner for Human Rights (OHCHR) argued that the numerous UN Human Rights Commission resolutions on conscientious objection from 1987 to 2004 cumulatively "indicate the development of a norm in international law"[29].

That's not to suggest this international norm enjoys universal support or implementation. The 2012 OHCHR report offers two qualifications on the universality of this derivative right. First, some states have objected, conscientiously or not, to the conscientious objection resolutions of the Commission on Human Rights and its successor Human Rights Council. Second, these resolutions are not legally binding on states. However, due to broad support, these resolutions "have an undeniable moral force and provide guidance to States in their conduct"[30].

A major milestone for rights of conscience was achieved in 2000 when the Charter of Fundamental Rights of the European Union became the first regional human rights instrument to explicitly affirm the right to conscientious objection to military service. Article 10.2 of the Charter states, "The right to conscientious objection is recognised, in accordance

[28] Quoted in United Nations, *Conscientious Objection to Military Service*, 2012, p. 10. (*https://www.ohchr.org/sites/default/files/Documents/Publications/ConscientiousObjection_en.pdf*).

[29] United Nations, *Conscientious Objection to Military Service*, p. 20, cit.

[30] United Nations, *Conscientious Objection to Military Service*, p. 18, cit.

with the national laws governing the exercise of this right"[31]. Ukraine is not a member of the EU, but applied for membership in 2022 and accession negotiations officially commenced in 2024[32]. To join the EU, Ukraine will need to continue making progress to bring its laws, policies, and practices into greater alignment with EU standards.

Ukraine *is* a member of the Council of Europe and thus party to the European Convention on Human Rights (ECHR) of 1950 and the European Court of Human Rights. In 1967 the Parliamentary Assembly of the Council of Europe adopted Resolution 337 which articulates a capacious understanding of the grounds of conscientious objection. The resolution affirmed that,

> "Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service"[33].

The Assembly further argued that "This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights"[34]. Similarly, in a 2011 case, the European Court of Human Rights' Grand Chamber ruled that genuine conscientious objection "constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of article 9"[35].

In 2012, Council of Europe Commissioner for Human Rights Thomas Hammarberg wrote,

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[31] Charter of Fundamental Rights of the European Union, (*https://www.europarl.europa.eu/charter/pdf/text_en.pdf*)

[32] European Council, "EU opens accession negotiations with Ukraine," 25 June 2024. (https://www.consilium.europa.eu/en/press/press-releases/2024/06/25/eu-opens-accession-negotiations-with-ukraine/)

[33] Council of Europe, Resolution 337. 1967. (*https://pace.coe.int/pdf/a7c48bc6bd92decba646bbbe62f4539b87f52d8ef5cee8417f4802e0e252a4ca?title=Res.%20337.pdf*)

[34] Council of Europe, Resolution 337, cit.

[35] Quoted in United Nations, *Conscientious Objection to Military Service*, 2012, p. 16 (*https://www.ohchr.org/sites/default/files/Documents/Publications/ConscientiousObjection_en.pdf*).

> "People should not be imprisoned when their religious or other convictions prevent them from doing military service. Instead, they should be offered a genuinely civilian alternative. This is now the established European standard, respected in most countries - but there are some unfortunate exceptions"[36].

Since declaring martial law in response to the full-scale invasion in 2022, Ukraine has been an unfortunate exception.

4 - Ukrainian Policy and Practice on Conscientious Objection

There are elements of Ukrainian law and policy on conscientious objection that are partially in line with European standards and broader international norms. Article 35 of the 1996 Ukrainian Constitution explicitly recognizes the right of conscientious objection. It states, "In the event that the performance of military duty is contrary to the religious beliefs of a citizen, the performance of the duty shall be replaced by alternative (non-military) service"[37]. And Ukraine's Alternative Service Act of 1991 details the provision of service opportunities in healthcare, environmental protection, construction, housing, or agriculture[38]. This service is to be 1.5 times longer than conscripted military service[39]. That duration, which makes alternative service unattractive but not punitive, is in keeping with European standards. The Council of Europe's Committee of Social Rights has argued that alternative service "must be reasonable, proportionate to the period of military service and not excessive"[40]. The Committee indicated that alternative service that is "not more than 1.5 times the length of military service is in principle in

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[36] **T. HAMMARBERG**, Council of Europe, 2 February 2012. (*https://www.coe.int/en/web/ commissioner/-/the-right-to-conscientious-objection-to-military-service-should-be-guaranteed-in-all-parts-of-euro-1*)

[37] Constitution of Ukraine, Article 35. (*https://rm.coe.int/constitution-of-ukraine/168071f58b*)

[38] Law on Alternative Service. Article 5. (*https://zakon.rada.gov.ua/laws/show/en/1975-12#Text*)

[39] Law on Alternative Service. Article 6, cit.

[40] **M. SMUSZ-KULESZA, A. MANASYAN, A. FEDOROVA**, *Training Programme for Judges: European Social Charter and Case Law of the European Committee of Social Rights*, Council of Europe, February 2021, p. 20. (*https://rm.coe.int/15-judges-training-eng-soft/1680a39c11*)

conformity" with the European Social Charter - a Council of Europe treaty[41].

There are three main problems with the current Ukrainian approach to conscientious objection. The first two problems existed prior to the full-scale Russian invasion. The third is a product of martial law since February 2022.

The first problem involves restricting permissible conscientious objection to only religious grounds. Both the Constitution and the 1991 Law refer to "religious beliefs" rather than simply "beliefs" or "conscience." In a resolution from 1998, the UN Commission on Human Rights called on States "not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs"[42]. That's because any sort of person, religious or irreligious, can conscientiously object to war and to serving in a combatant role.

Second, and compounding the first problem, Ukraine limits alternative service to only *some* religions. Article 2 of the 1991 Law on Alternative Service states,

> "Citizens of Ukraine have the right to alternative service if the performance of military duty contradicts their religious beliefs and these citizens belong to religious organizations operating in accordance with the legislation of Ukraine, whose beliefs do not allow the use of weapons"[43].

The "and" in the article appears to mean that one has a right to alternative service only if one has religious reasons for conscientious objection *and* is a member of an officially pacifist Ukrainian religious organization. Moreover, a 1999 Cabinet of Ministers resolution stipulates that only men affiliated with 10 pacifist religious groups are eligible for the alternative service[44]. Those groups include the Hare Krishnas and nine small Christian denominations. In 2001 the UN Human Rights Committee said Ukraine's approach was incompatible with articles 18

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[41] **M. SMUSZ-KULESZA, A. MANASYAN, A. FEDOROVA**, *Training Programme for Judges*, p. 21, cit.

[42] Office of the High Commissioner for Human Right, "Conscientious objection to military service," Resolution 1998/77 (*https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-1998-77.doc).*

[43] Law on Alternative Service. Article 2, cit.

[44] U.S. State Department, *2023 Report on International Religious Freedom: Ukraine*, (https://www.state.gov/reports/2023-report-on-international-religious-freedom/ukraine).

and 26 of the ICCPR - the articles dealing with freedom of religion or belief and with non-discrimination[45]. The Committee urged Ukraine to "widen the grounds for conscientious objection in law so that they apply, without discrimination, to all religious beliefs and other convictions"[46]. Having not widened those grounds, Ukraine's policy on conscientious objection discriminates against the overwhelming majority of the male population.

Conscientious objection is an individual right. It is not a right only to be guaranteed by membership in a pacifist group. And a member of a pacifist group may not himself be a conscientious objector. In fairness to the Ukrainian state, membership in a pacifist religious group is of course one straightforward, objective way to determine the sincerity of someone's conscientious objection to military service. However, other states have created effective mechanisms for assessing the authenticity of conscientious objection claims. For instance, in the United States, in the event of a draft, a conscientious objector would present his claims to a local board[47]. The claimant could provide a written statement of his convictions and present friends and relations who can attest to his conscientious objection to military service. The Selective Service stipulates that, "a man's reasons for not wanting to participate in a war must not be based on politics, expediency, or self-interest. In general, the man's lifestyle prior to making his claim must reflect his current claims"[48]. Importantly, the local board will be entirely civilian, with no members who are current or retired members of the military[49].

The third and currently most serious problem is the Ukrainian Defense Ministry's decision to rescind alternative service for conscientious objectors during martial law. Article 64 of the Ukrainian Constitution lists several rights and freedoms that can be restricted during martial law or a state of emergency, but conscientious objection (Article 35) is not among them. However, Article 1 of the 1991 Law on Alternative Service says, "Under martial law or a state of emergency,

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[45] United Nations Human Rights Committee, CCPR/CO/73/UKR, 12 November 2001 (*https://documents.un.org/doc/undoc/gen/g01/459/36/pdf/g0145936.pdf).*

[46] United Nations Human Rights Committee, P. 5. cit.

[47] Selective Service System, *Conscientious Objectors* (*https://www.sss.gov/ conscientious-objectors*)

[48] Selective Service System, *Conscientious Objectors*, cit.

[49] Selective Service System, *Volunteering with Selective Service* (*https://www.sss.gov/ volunteers*)

separate restrictions on the right of citizens to serve in alternative service may be established"[50]. During this present period of martial law, conscientious objectors can be prosecuted under Article 336 of the Ukraine Criminal Code, which states that "Evasion from conscription during mobilization … shall be punishable by imprisonment for a term of three to five years"[51].

In this ambiguous legal environment, hundreds of pacifists are facing criminal investigation simply for following the dictates of conscience. In October 2024 the human rights organization Forum 18 reported that roughly 300 conscientious objectors are under investigation and at least 89 cases have reached trial[52]. Of those, 11 have resulted in suspended sentences and 9 in prison sentences. The remainder of the cases are ongoing. As of October 2024, only one conscientious objector was in a Ukrainian prison. Most cases involve Jehovah's Witnesses. In addition to the investigations and trials, Forum 18 reports that several conscientious objectors allege that they have been detained at military installations where officers have used verbal and physical abuse to pressure them into taking up arms[53].

5 - Bringing Ukraine in Line with International Norms

The ways to bring Ukraine's treatment of conscientious objectors in line with international and European standards are obvious: re-introduce alternative service, even during the current martial law, and make clear that all religious and non-religious conscientious objections to military service are legitimate grounds for requesting alternative service. The path to these reforms is less straightforward. It will involve a complex interplay between the courts, the military, the legislature, the government's Department of Religious Affairs, pacifist religious groups and other civil society organizations, and the institutions that could host the alternative service of conscientious objectors.

The recent experience of South Korea may be instructive and cautionary. While not engaged in active military conflict, South Korea

[50] Law on Alternative Service. Article 1, cit.

[51] Ukraine Criminal Code, Article 336.

[52] **F. CORLEY**, *Ukraine: About 300 criminal cases against conscientious objectors*, in *Forum 18*, 30 October 2024 (*https://www.forum18.org/archive.php?article_id=2939).*

[53] **F. CORLEY**, *Ukraine: Recruitment Offices*, cit.

faces an existential threat from a bellicose nuclear neighbor with whom it is still technically at war. Since the 1950s South Korea has maintained a policy of a universal male conscription. Nearly all able-bodied South Korean men between ages 18 and 35 spend 18 to 21 months in military service and then several years as reservists. Koreans widely regard this military service as an important rite of passage[54].

For decades South Korea imprisoned hundreds of conscientious objectors, mostly Jehovah's Witnesses, every year. In total, over 19,000 Korean objectors were sent to prison - more than in any other country[55]. Their lives and livelihoods were forever damaged by 18-month prison sentences and permanent criminal records. Finally, in 2018 the Constitutional Court of Korea ruled that the military's failure to provide alternative service for conscientious objectors was unconstitutional because it violated Article 9 of the South Korean constitution which enshrines freedom of conscience for all citizens[56]. Later in the same year, the country's Supreme Court ruled that "conscience or religious beliefs" are legitimate grounds for objecting to military service. Then in 2019 the South Korean government finally introduced alternative service.

There are, it should be noted, ongoing concerns about the duration and location of this alternative service. Rather than allow conscientious objectors to serve in a variety of valuable civilian capacities, they are still sent to prison - not as prisoners, thankfully, but as employees serving as cooks, cleaners, and administrators. Additionally, in an effort to make alternative service especially unattractive, it is three years - twice as long as the time many Koreans spend in conscripted military service and the longest alternative service in the world. Andrew Fang of Amnesty International said,

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[54] **J. YOON**, *South Korea Reconsiders a Rite of Manhood: The Draft*, in *New York Times*, 17 October 2021 (*https://www.nytimes.com/2021/10/17/world/asia/south-korea-conscription.html*).

[55] **CHOE SANG-HUN**, *South Korea Frees 58 Conscientious Objectors in Wake of Landmark Ruling*, in *New York Times*, 29 November 2018 (*https://www.nytimes.com/2018/11/29/ world/asia/south-korea-frees-conscientious-objectors.html*).

[56] **CHOE SANG-HUN**, *South Korea Must Offer Alternatives to Military Draft, Court Rules*, in *New York Times*, 28 June 2018 (*https://www.nytimes.com/2018/06/28/world/asia/south-korea-military-service-conscientious-objectors.html*).

> "South Korea's recognition of conscientious objection was a positive step, but this law falls way short of expectations. The service should be wholly under the control of a civilian body, separate from the military authorities"[57].

Fang labeled South Korea's policy "alternative punishment"[58].

The South Korean experience highlights that introducing a system of alternative service can be a complex, controversial, and iterative process. And that process is made even more complicated when a nation is technically or actively at war. A Korean Defense Ministry official told TIME magazine that further improvements to the alternative service system could be made "after the system is settled stably"[59]. In Ukraine's case, the country has the advantage of the laws and policies mentioned above: a pre-existing constitutional guarantee and a law that specifies a reasonable duration of alternative service that can be carried out in a variety of sectors. The key step now for Ukraine is to clarify that alternative service is available even during martial law and open to all religious and secular claims.

6 - The Importance of Respecting Conscience

Although the number of conscientious objectors in Ukraine is minuscule compared to the total number conscripted to fight in the current war, the implications of their treatment are enormous. Of the over one million Ukrainian men called up for military service, only one is currently in jail (though, as mentioned above, hundreds are being investigated, dozens are on trial, and an unknown number have been detained and mistreated at military installations). Given all that has been invested in this war and all that's at stake in its outcome, what relevance is a relative handful of men who refuse to fight?

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[57] *South Korea: Alternative to military service is new punishment for conscientious objectors*, Amnesty International, 27 December 2019 (*https://www.amnesty.org/en/latest/news/2019/12/ south-korea-alternative-to-military-service-is-new-punishment-for-conscientious-objectors-2*).

[58] *South Korea*, Amnesty International, cit.

[59] **C. DE GUZMAN**, *Inside South Korea's Harsh Alternative to Military Service*, in *TIME*, 1 September 2022 (*https://time.com/6208211/south-korea-military-service-draft-conscription-conscientious-objector*)

What is at stake in this war is not only whether Ukraine will survive as an independent country, but also what kind of country Ukraine will become during and after the war. Will it be a country that runs roughshod over the claims of conscience when crises arise? Or will it be a country that always respects and protects freedom of conscience as a bedrock of a just society?

In his slim yet insightful book, *The Right to be Wrong*, Seamus Hasson lays out a compelling case for grounding human rights, and specifically freedom of religion or belief, in the claims of conscience. For human rights to be truly universal, Hasson maintains, they must be grounded in something all humans share. He argues that "Conscience is the interior, quintessentially human voice that speaks to us of goodness and duty, the voice that we must obey if we are to keep our integrity"[60]. To disobey conscience is to experience a form of disintegration. When conscientious objectors refuse to take up arms, Hasson reminds us, it's not simply because they don't want to. They can't. It's a matter of conscience rather than mere preference. To force them to violate their consciences is thus to risk seriously violating their dignity.

That is not to say that a conscience is always right or that the freedom to manifest conscientious decisions is an absolute right. The right to thought, conscience, and religion is subject to limitations that are, in the words of ICCPR Article 18.3, "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others"[61]. However, there is a growing consensus that the right to alternative service on the grounds of conscience should not ever be subject to limitation. In 2019 the UN Working Group on Arbitrary Detention argued that conscientious objection is "part of the absolutely protected right to hold a belief under article 18(1) of the Covenant, which cannot be restricted by States" under article 18.3[62]. Again, that's not because the consciences of conscientious objectors are necessarily right. They may be wrong. But all humans have consciences that are fallible - and yet still authoritative. That's why we all deserve *the right to be wrong*.

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[60] **K.S. HASSON**, *The Right to be Wrong*, p. 14, cit.

[61] United Nations, *International Covenant on Civil and Political Rights*, 1966 (*https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights*)

[62] United Nations Human Rights Council, *Report of the Working Group on Arbitrary Detention*, (A/HRC/42/39), para. 60(b), 16 July 2019, p. 27 (*https://documents.un.org/doc/undoc/gen/g19/216/94/pdf/g1921694.pdf?OpenElement*)

Hasson acknowledges that respecting conscience can be inconvenient and costly. Even so, that doesn't make it any less of a human right. Moreover, Hasson says, "all other alternatives are worse"[63]. We see this in Ukraine today. Re-establishing a system of alternative service would involve some inconvenience and expense. But it's much worse to detain, threaten, mistreat, try, and jail conscientious objectors who could be actively serving their country in honorable ways in a variety of sectors. Making the effort to set up alternative service in wartime would be worth the effort. "A society filled with people obeying their consciences," Hasson claims, "however untidy that may make things in the short run, is ultimately a good thing in the long run"[64]. One main reason is that conscientious people benefit their societies. As George Washington said in a 1789 letter to pacifist Quakers, "there is no Denomination among us who are more exemplary and useful Citizens"[65].

Beyond the positive contribution of conscience-driven citizens, commitment to the principle of freedom of conscience shapes entire societies in positive ways. In the 2001 case of Bayatyan v. Armenia, the European Court of Human Rights ruled in favor of a Jehovah's Witness who was imprisoned for his conscientious objection to mandatory military service. In its judgment the Court reiterated that:

> «pluralism, tolerance and broadmindedness are hallmarks of a "democratic society." Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position… Thus, respect on the part of the State towards the beliefs of a minority religious group like the applicant's by providing them with the opportunity to serve society as dictated by their conscience might, far from creating unjust inequalities or discrimination as claimed by the Government, rather ensure cohesive and stable pluralism and promote religious harmony and tolerance in society»[66].

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[63] **K.S. HASSON**, *The Right to be Wrong*, p. 148, cit.

[64] **K.S. HASSON**, *The Right to be Wrong*, p. 148, cit.

[65] *From George Washington to the Society of Quakers*, 13 October 1789, in *National Archives* (*https://founders.archives.gov/documents/Washington/05-04-02-0188*)

[66] *Bayatyan v. Armenia* [GC], no. 23459/03, European Court of Human Rights, 2011, Section 126 (*https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22Bayatyan%20v.%20Armenia*

7 - Conclusion

The right to alternative service emerged over many centuries and now faces an urgent battle for protection in war-torn Ukraine. In this article, I have tried to show that Ukraine's case is not entirely unique. Many nations have wrestled with the tension between conscription and conscience, including during wars for national survival. And out of that wrestling has emerged an international norm: failure to provide alternative service for conscientious objectors is a violation of human rights. Upholding the right of conscientious objectors to productively and honorably serve in non-combatant and civilian capacities not only aligns with international human rights norms but also enriches entire societies. What's at stake in the Russo-Ukrainian War is not only Ukraine's territorial integrity. What's also at stake is the moral integrity of conscientious objectors and indeed of a democratic Ukrainian society as a whole.

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