



COI QUERY

Country of Origin	Ukraine
Main subject	Military Service
Question(s)	<ol style="list-style-type: none">1. Information on the legal framework regulating convocation to military service in Ukraine.2. Information on the procedure for military service convocation.3. Potential consequences of a 'failed notification', including documented cases of criminal proceedings against persons who have avoided convocation.
Date of completion	7 December 2018
Query Code	Q130
Contributing EU+ COI units (if applicable)	

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The target audience is caseworkers, COI researchers, policy makers, and decision making authorities. The answer was finalised on the 7 December 2018. Any event taking place after this date is not included in this answer.



COI QUERY RESPONSE

1. Information on the legal framework regulating convocation to military service in Ukraine

Military service is embedded in the Ukrainian Constitution, article 65 stipulates that defence of the independence and territorial indivisibility of Ukraine are duties of its citizens. The same article states that the citizens' performance of military service shall be conducted in accordance with the law.¹

According to the law on Military Duty and Military Service - article 2 paragraph 4 - the procedure for conducting military service shall be determined by the law on Military Duty and Military Service itself and other laws, and relevant regulations, approved by the President of Ukraine, and other normative-legal acts.²

In line with historic security trends, presidential Decrees have been issued, and practical measures taken, which have changed the call for military service in Ukraine. As most military systems that have inherited their structure from the Soviet Union, conscription has been a fundamental part of Ukraine's military force. A few years after the dissolution of the Soviet Union, attention was put on the necessity of the armed forces to undergo a transition from conscription to a recruitment system on contractual and voluntary basis, with the aim to create a 'professional' armed force.³ Since the initial talks of such a transformation in the mid-1990's, the number of conscripts that have been called for military service has declined successively over the years⁴, but it was not until October 2013 that Viktor Yanukovich finally declared that the last round of conscripts had been enlisted by issuing Decree no. 562/2013.⁵

Due to the unrest in the eastern parts of the country in 2014, the abolishment of the conscription system was short-lived. Conscription was reinstated in May 2014 by a decree of the interim president Oleksandr Turchynov.⁶ Decree no. 447/2014 stated that in the light of the pro-Russian unrest in the eastern part of Ukraine men of a certain age should be called to military service in accordance with the Law 'on Military Duty and Military Service'.⁷

In sum, the military service in Ukraine is mainly regulated by the Constitution and the Law "on Military Duty and Military Service"⁸ and its amendments.⁹

¹ Ukraine, Constitution of Ukraine, unofficial translation, 28 June 1996, available at: [url](#), art. 65.

² Ukraine, Law on Military Duty and Military Service, 25 March 1992, [url](#).

³ Sweden. Lifos, Temarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 5; UPI, Ukraine to end military conscription after autumn call-ups, 3 October 2013, [url](#).

⁴ Sweden. Lifos, Temarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 5; UPI, Ukraine to end military conscription after autumn call-ups, 3 October 2013, [url](#).

⁵ Ukraine, Presidential Decree no. 562/2013, Про строки проведення чергових призовів, чергові призови громадян України на строкову військову службу та звільнення в запас військовослужбовців у 2014 році, 14 October 2013, [url](#).

⁶ DW, Ukraine reintroduces military conscription as separatists tighten their grip, 1 May 2014, [url](#).

⁷ Ukraine, Presidential Decree no. 447/2014, Про заходи щодо підвищення обороноздатності держави [on Measures to Increase State Defense Capacity], 1 May 2014, [url](#).

⁸ Ukraine. Ministry of Defense, White Book 2017. The Armed Forces of Ukraine, 2018, [url](#), p. 83.

⁹ Ukrinform, Poroshenko signs law simplifying conscription procedure, 2 September 2014, [url](#).



Who qualifies for obligatory military service?

Both the Constitution and the Law on Military Duty and Military Service stipulate that the obligatory military service is a duty of Ukrainian citizens.¹⁰ The military service is not obligatory for women in general, unless registered as having military experience with the enlistment offices¹¹, and the obligatory conscription does not encompass foreigners and stateless persons¹². However, women, foreigners and stateless persons legally residing in Ukraine, may sign up for voluntary military service.¹³

The Law on Military Duty and Military Service, article 15 paragraph 1, stipulates that men who, by the day of deportation to the military units, have reached 18 years of age, but not yet reached the age of 27, are eligible for military service. The decree that reinstated the conscription in 2014 decided that men between 18-25 years of age were to be called for military service.¹⁴ However, on 15 January 2015, the conscription age was raised, and calls for military service is now encompassing men from 20 up until reaching 27 years of age.¹⁵ In addition, an eventual conscript must be assessed as physically qualified for military service.¹⁶

There are some exceptions that may be invoked in order for a person to be released from, or postpone, the obligatory military service. The Constitution's article 35 stipulates that 'in the event that the performance of military duty is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) service'¹⁷, this right is also written in the Law on Alternative Military Service.¹⁸ The right to alternative service is only eligible for members of religious communities that forbid members to carry arms.

Furthermore, these communities must have registered their view on arms with the Ukrainian authorities in order for a person to invoke his right to alternative service on religious grounds. In light of the above, the right to alternative service depends on the belonging to a religious community and not personal views, for instance a secular pacifist's resistance to carry arms is not enough to avoid military service.¹⁹

¹⁰ Ukraine, Law on Military Duty and Military Service, [url](#), art. 17.

¹¹ See Ukraine, Law on Military Duty and Military Service, available at: [url](#), art. 1 paragraph 11-12, art. 14-15.

¹² Ukraine, Law on Military Duty and Military Service, [url](#), art. 1 paragraph 6.

¹³ Ukraine, Law on Military Duty and Military Service, [url](#), art. 1 paragraph 6, 11-12.

¹⁴ Ukraine, Presidential Decree no. 447/2014, Про заходи щодо підвищення обороноздатності держави [on Measures to Increase State Defense Capacity], 1 May 2014, [url](#).

¹⁵ Ukraine. Ministry of Defense, White Book 2017. The Armed Forces of Ukraine, 2018, [url](#), p. 83; Representative of the Ministry of Defense, interviewed by COI experts from OFPRA and BFA, see OFPRA and BFA, Fact Finding Mission Report Ukraine, May 2017, [url](#), p. 23.

¹⁶ Ukraine. Ministry of Defense, White Book 2017. The Armed Forces of Ukraine, 2018, [url](#), p. 83; Representative of the Ministry of Defense, interviewed by COI experts from OFPRA and BFA, see OFPRA and BFA, Fact Finding Mission Report Ukraine, May 2017, [url](#), p. 23.

¹⁷ Ukraine, Constitution of Ukraine, unofficial translation, 28 June 1996, available at: [url](#), art. 35.

¹⁸ Sweden. Lifos, Temarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 7.

¹⁹ Sweden. Lifos, Temarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 7; Druzenko, G., Religion and the Secular State in Ukraine, International Center for Law and Religion Studies, [2015], [url](#), p. 733.



Decree no. 2066, issued on 10 November 1999²⁰, lists the formal governmental denomination of religious communities that forbid their members to carry arms.²¹ The Decree lists the following religious organisations²²:

- Адвентисти-реформисти (Adventist-Reformists)
- Адвентисти сьомого дня (Seventh Day Adventists)
- Євангельські християни (Evangelist Christians)
- Євангельські християни-баптисти (Evangelist Christian Baptists)
- Покутники (Penitents: Slavonic Church of the Holy Spirit)²³
- Свідки Єгови (Jehovah's Witnesses)
- Харизматичні християнські церкви (та церкви, прирівнені до них згідно із зареєстрованими статутами) (Charyzmatyjni chrystanski tserkvy: Charismatic Christian Churches²⁴ (and churches equated to them in accordance with statutes))
- Християни віри євангельської (та церкви, прирівнені до них згідно із зареєстрованими статутами) (Christians of the Evangelical Faith (and churches equated to them in accordance with statutes))
- Християни євангельської віри (Christians of the Evangelical Faith)
- Товариство Свідомості Крішни (Krishna Consciousness Society)²⁵

The Law on Military Duty and Military service, art. 17, lists other reasons which can lead to the postponement of the call for conscription. Accepted reasons are based on certain family circumstances, health issues, and educational and professional grounds.²⁶

2. Information on the procedure for military service convocation

The law on Military Duty and Military Service, article 1, divides Ukrainian citizens into five categories for military duty:

- Pre-conscripts – persons subject to registration with enlistment offices;
- Conscripts – persons registered with enlistment offices;
- Servicemen – persons carrying out military service;

²⁰ Swedish Migration Agency, Inofficiell översättning av utdrag ur Ukrainas förordning angående tillämpningen av lagen om alternativ tjänstgöring [Unofficial translation of sections of Ukraine's decree on the application of the Law on Alternative Military Service], available at: [url](#).

²¹ Sweden. Lifos, Temarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 7; OFPRA and BFA, Fact Finding Mission Report Ukraine, May 2017, [url](#), p. 33.

²² The translation of the organisations' names to Swedish are provided for in an unofficial translation ordered by the Swedish Migration Office which was translated into English by the author of this query. Two names were assessed as not possible to translate by the company; these organisational names have been translated by a former military attaché at the Netherlands Embassy in Moscow.

²³ Unofficial translation by a former military attaché at the Netherlands Embassy in Moscow.

²⁴ Unofficial translation by a former military attaché at the Netherlands Embassy in Moscow.

²⁵ Swedish Migration Agency, Inofficiell översättning av utdrag ur Ukrainas förordning angående tillämpningen av lagen om alternativ tjänstgöring [Unofficial translation of sections of Ukraine's decree on the application of the Law on Alternative Military Service], available at: [url](#).

²⁶ Ukraine, Law on Military Duty and Military Service, available at: [url](#), art. 17; OFPRA and BFA, Fact Finding Mission Report Ukraine, May 2017, [url](#), p. 21.



- Persons liable for military service – persons in the reserve manning the armed forces and other military formations during a special period as well as in order to perform other tasks relating to the defense of the state;
- Reservists – persons liable for military service who, on a voluntary basis, carry out military service in the reserve of the armed forces and other military formations.²⁷

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

A call for military service shall be delivered personally to the person of interest by a messenger from the military authorities. In addition, the military authorities send calls for conscription to the person's school, work place, landlord and other institutions with a connection to the person. These institutions, in turn, have a system in order to announce calls. In this way the military authorities hope that the calls for enrolment will reach the person of interest (note that there is a lack of a cohesive and reliable national registration in Ukraine). Citizens that are residing abroad are to be called by their consulate.²⁸

If the conscript is notified he shall sign a receipt to confirm that he has been informed about his call for enrolment, and this receipt shall be submitted to the military authorities. If the person refuses to sign the document, a special record is established by the messenger. For this protocol to have legal effect, the messenger's establishment needs to be witnessed by three persons.²⁹

There is no standard template regulating how written calls are formulated. Thus, there are variations in the regions and among the issuing authorities. However, the call must contain the following information: the full name and registration address of the person, the issuing date, the address to the local military office where the person is expected to sign in, and which documents he is expected to bring to the military office. All calls for military service must have an official stamp and been signed by the head of the local military office.³⁰

In practice, the Ukrainian military authorities do not have sufficient resources to comply with the formal requirements for the notification of calls for enrolment. It is not unusual that calls are sent by the mail service or placed directly in the person's mailbox instead of a personal notification. In addition, many Ukrainian citizens that reside abroad are not registered with their foreign consulate and cannot be reached.³¹

²⁷ OFPRA and BFA, Fact Finding Mission Report Ukraine, May 2017, [url](#), p. 20.

²⁸ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 5.

²⁹ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), pp. 5-6.

³⁰ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), pp. 5-6.

³¹ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 6.



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

The available information on the formal administrative and criminal procedures against draft evaders concern persons that have been notified. As mentioned above, a call for military service must be notified personally according to the formal notification process regulated by law, otherwise it is invalid.³² However, as mentioned, it is often the case that the authorities do not follow the formal requirements and send calls by e.g. mail, by law such calls for conscription are invalid.³³

According to Lifos, referring to lawyers with connections to the Swedish Embassy in Kiev, a person that has avoided military service can avoid legal consequences by 'simply' claim that he has not taken part to the call of conscription if the formal process of notification has not been followed.³⁴ Lifos stated that if a person is not found for notification, he is wanted nationally.³⁵

If a person has been notified and does not adhere the call for conscription, he can be punished in line with paragraph 210 of the administrative penal code. The punishment is a fine of 85 to 170 UAH (about 2,6 EUR to 5,27 EUR). In addition, the person gets a second call for conscription.³⁶

If a person does not adhere the second call for conscription he might be punished according to 210 of the administrative penal code again, but with a higher fine this time: between 170 and 255 UAH (about 5,27 to 7,9 EUR).³⁷

If the person still does not adhere to the call for conscription after the second time, the military authorities hand over the responsibility of the case to the police who investigate whether it is a case of draft evasion.³⁸

The Criminal Code's articles 335 and 337 address penalties for draft evasion. Article 335 state that 'avoidance of conscription for active military service, - shall be punishable by restraint of liberty for a term up to three years.' Article 337 state that 'avoidance of military registration by a person bound to military service after notification by an appropriate commissariat, - shall be punishable by a fine up to 50 tax-free minimum incomes, or correctional labour for a term up to two years, or arrest for a term up to six months...'.³⁹

³² Norway. Landinfo, Respons. Ukraine: Obligatorisk militærtjeneste [Response. Ukraine: obligatory military service], 24 April 2015, [url](#), p. 7.

³³ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 6.

³⁴ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 6.

³⁵ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 5.

³⁶ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 7.

³⁷ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 7.

³⁸ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 7.

³⁹ Ukraine, Criminal Code, 1 September 2001, Translated by OSCE, available at: [url](#), art. 335-337, [special note: the law was amended in 2016, this is not an English translation of the new version]; Ukraine, Criminal Code, 1 September 2001 (amended version of 2016), available at: [url](#), art. 335-337.



In an analysis by the Ukraine specialist Andrey Kondratyev, draft evasion is stated to be a ‘chronic’ problem in Ukraine. For instance, in September 2017 the Cabinet issued an instruction that 10 470 men should be conscripted by the end of the autumn, but only three percent reported for service. Furthermore, Kondratyev stated that there are voices that underline the need of a stricter penal legislation since most draft evaders are fined around 10 dollars.⁴⁰ Lifos claimed that court practice seemed to be issuing punishment of two years imprisonment for draft evaders in criminal procedures.⁴¹ In 2015, the UNHCR referred to the judicial registry which showed that, as of 8 December 2014, a total number of 32 persons had been sentenced for evasion of conscription or mobilisation during the year. Analyses of a sample of 16 of these cases showed that all persons found guilty were sentenced to administrative fines, community service or suspended sentences.⁴²

Mobilisation

In addition to the reinforcement of the obligatory conscription, Ukraine uses mobilisation of, primarily, persons with previous military experience. However, a call for mobilisation can be much wider and may entail conscripts that have not gone through their mandatory military service, as well as police officers and medical personnel.⁴³

The Law on Mobilisation Preparation and Mobilisation regulates the mobilisation process. The calls for mobilisation are similar to the notification process of conscription, however the military service is a statutory obligation, and mobilisation is decided on by presidential decrees.⁴⁴ Article 4 paragraph 5 states that the type, size, procedure and terms of mobilisation are determined by a Presidential decision, and paragraph 6 states that the decision of mobilisation should be immediately announced in media.⁴⁵ In a joint report by the French Office for the Protection of Refugees and Stateless persons (OFPRA) and Austria’s Federal Office for Immigration and Asylum (BFA), an English translations of article 22 is provided:

In case of mobilisation, citizens predisposed for military service (excluding those, who serve in military reserve) are obliged to report to assembly points within specified deadlines by order of mobilisation documents (mobilisation mandates, drafting orders or directives by military commissars (servicemen of Security Service of Ukraine – by the heads of units where they are registered) or by military commissars. Reservists must report to military units in time, established by commanders of military units, where they serve in military reserve.⁴⁶

Sanctions for evading mobilisation follow the same procedure as the one of draft evaders. The first two omissions to adhere may be punished with administrative fines according to the administrative

⁴⁰ Kondratyev, A., Explainer: Why is Ukraine struggling to enlist enough conscripts?, BBC Monitoring, 9 November 2017, available by subscription at: [url](#).

⁴¹ Sweden. Lifos, Temarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 7.

⁴² UNHCR, International Protection Considerations Related to the developments in Ukraine – update II, 15 January 2015, [url](#), p. 9.

⁴³ OFPRA and BFA, Fact Finding Mission Report Ukraine, May 2017, [url](#), pp. 26ff; Sweden. Lifos, Temarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 8.

⁴⁴ Sweden. Lifos, Temarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 9.

⁴⁵ Ukraine, Law on mobilisation preparation and mobilisation, 21 October 1993, [url](#).

⁴⁶ OFPRA and BFA, Fact Finding Mission Report Ukraine, May 2017, [url](#), p. 26.



penal code, and thereafter the case becomes a criminal case to be handled by the police.⁴⁷ Article 336 of the Ukrainian penal code stipulates that a person who does not adhere to a decision on mobilisation is to be punished with imprisonment of two to five years.⁴⁸ According to Lifos the court practice of 2016 was to issue prison sentences of two years.⁴⁹

Since March 2014 there have been several rounds of obligatory mobilisation⁵⁰, partial mobilisation was 'carried out in three waves in 2014, and three more by August 2015'⁵¹. According to the Immigration and Refugee Board of Canada, Ukrainians up to the age of 60 may be called during mobilisation.⁵² An article from BBC monitoring stated in 2015 that the actual mobilisation campaign targeted men aged 20 to 65 that are physically suitable for military service.⁵³

According to sources consulted by the French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides (OFPRA) and Austria's Federal Office for Immigration and Asylum (Bundesamt Für Fremdenwesen und Asyl, BFA), 70 percent of the reservists in Kyiv ignored the call to install at the recruitment office, 80 percent ignored the second round, 90 percent did not show up at the third round and 95 percent did not show up at the fourth round. In 2014, 85 792 persons of those that were summoned during partial mobilisation did not report to their local draft office and 9 969 were found to be illegally avoiding service.⁵⁴

⁴⁷ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 10.

⁴⁸ Ukraine, Criminal Code, 1 September 2001, Translated by OSCE, available at: [url](#), art. 336, [special note: the law was amended in 2016, this is not an English translation of the new version]; Ukraine, Criminal Code, 1 September 2001 (amended version of 2016), available at: [url](#), art. 336.

⁴⁹ Sweden. Lifos, Tamarapport: Ukraina. Militärtjänstgöring, mobilisering och desertering [Thematic report: Ukraine, Military service, mobilisation and desertion], 15 July 2016, [url](#), p. 10.

⁵⁰ Norway. Landinfo, Respons. Ukraine: Obligatorisk militærtjeneste [Response. Ukraine: obligatory military service], 24 April 2015, [url](#), p. 2.

⁵¹ Akimenki, V., Ukraine's Toughest Fight: The Challenge of Military Reform, Carnegie Endowment for International Peace, 22 February 2018, [url](#).

⁵² Canada. IRB, Responses to Information Requests. UKR106088.E, 26 March 2018, [url](#).

⁵³ BBC Monitoring, Ukraine suspects Russia of seeking to disrupt conscription campaign, 5 February 2015, available by subscription at: [url](#).

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