

# LEGISLATION ON CONSCRIPTION: COMPARATIVE ANALYSIS

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**Annotation.** *The objective of the research is to develop the theoretical and methodological foundations of the study of the system of legal enforcement of military service as a method of forming the armed forces and influencing democratic processes in society, as well as to formulate well-founded proposals and methods for solving the identified problems.*

*Research methodology* The research was conducted using the method of content analysis, which is used in the study of sources that are invariant to the structure and content of the object of scientific research. Content analysis combines nomothetic research methods with idiographic methods.

*The method of conceptual analysis should be developed within the framework of the above-mentioned analytical study, as it is used to identify existing comparative and theoretical concepts of ensuring the order of conscription.*

*The analysis of the legal mechanism of ensuring the fulfilment of military service in the countries of the world, as well as the institutional mechanisms of ensuring the fulfilment of military service in Ukraine is carried out using the formal-logical method. The provisions of the legislation of Ukraine and other countries were analysed using the comparative legal method.*

*The subject is the legislation of Ukraine and the legislation of foreign countries in the field of military conscription.*

*Conclusions.* The author of the mentioned study comes to the conclusion that an important element of the model of the legal enforcement of military duty - the subject, whose function is the duty to protect the state, to ensure its security, is the entire Ukrainian people; military service is not a function, but a constitutional duty of such a circle of subjects as citizens of Ukraine; this constitutional duty consists in 1) ensuring the defence of Ukraine; 2) protecting the sovereignty of Ukraine; 3) protecting the territorial integrity of Ukraine; 4) protecting the integrity of Ukraine; the fulfilment of this duty involves voluntary or conscript military service; military service is a form of fulfilment of the duty of a citizen of Ukraine; the special status of military personnel should be established in the legislation of Ukraine, as well as the procedure for completion of military service by citizens of Ukraine should be regulated.

**Keywords:** *conscription (military service), professional army, defend the Motherland, comparative legal analysis.*

There is an old debate about the pros and cons of conscription versus a professional army. Conscription is a compulsory legal obligation to serve in a country's armed forces. After military service, a person becomes a reservist who can be called up in case of war or emergency. Among the popular arguments in favour of a professional army is the much better training of soldiers. The advantages of conscription are often cited as the ability to create a much larger army, lower costs, and increased patriotism. However, conscription forces people to work for minimum wages and to serve in the army, sometimes against their will. As a result, the prospect of military service may not be very attractive to young people, leading to draft evasion. Ukraine is one of the countries that currently has a conscript army. Given the recent Russian invasion, the ability to create a large army would be extremely useful for Ukraine. Since the beginning of the war, many Ukrainians have volunteered for either the army or the Territorial Defence (a special unit created in each region to patrol the streets, detect saboteurs and defend against the Russian army

if necessary). As Ukraine has a conscript army, most people should have received the necessary military training. However, as Ukrainian legislation provides numerous mechanisms for avoiding conscription, this could result in a much smaller number of trained soldiers. The most common mechanisms for avoiding conscription are medical, religious and educational examinations. Assessing the combat readiness of the Ukrainian army is not the subject of this study.

Instead, the study analyses the problems of building an optimal model for ensuring the performance of conscription. This will help to identify potential lessons for Ukraine and other states in future military conflicts.

An analysis of recent studies and publications on the creation of a professional army in its various aspects shows that it is the subject of constant scientific debate among scientists. These are mainly American scientists: R. Gabriel, P. Kamach, D. Segal, P. Savage, J. Wills, C. Moskas [1], [2], [3].

Studies of military service in Ukraine are reflected in the articles of Biloskurska O.V., in particular «The degree of scientific development of the constitutional duties of a person and a citizen in Ukraine», «The problem of the typology of the of constitutional duties of a person and a citizen», «Interrelation of constitutional duties with certain categories of constitutional law», «Interrelation of constitutional duties and of constitutional duties and constitutional responsibility» [4].

S. Hretsa in article «The duty to defend the Motherland: a comparative legal analysis», analyses, among other things, the conscription in Ukraine and in some EU countries [5].

A comparative analysis of the military duty to defend the Matherland is also provided in and the work of Y. Kyrychenko «Constitutional Practice of the Duty to Defend the Fatherland in Ukraine and Continental Europe: A Comparative Analysis» [6].

The study of military duty is included in the monograph by E. Hryhorenko «Constitutional Principles of Military Service by Citizens of Ukraine» [7].

The constitutional and legal status of of military personnel is analysed in the dissertation of L. Medvid «Rights, freedoms and duties of servicemen in Ukraine: Constitutional and Legal Aspects» [8].

In military service there are such aspects as:

- Sociological, i.e. military service as a social category – performance of socially useful activities by servicemen;
- political – execution of state orders in the interests of the state and on behalf of the state;
- legal – the legal establishment of service relations in the sphere of security and defence, in the course of which the practical fulfilment of duties, the powers of servicemen and the competence of the bodies in which they perform military service are achieved;
- moral and ethical – observance of military discipline based on each serviceman's legal awareness of his military duty and personal responsibility for the protection of Batkivshchyna.

Political analysis of this problem was carried out in the works of Schexnider, A.J., & Smith, M.M. (Binkin, M., Eitelberg, M.J., Schexnider, A.J., & Smith, M.M. [9] , sociological analysis - in the works of Card, D., (Card, D., & Cardoso A.R. [10]. Analysis of the interaction between society and its army was conducted. The works note that in the course of time transformation processes lead to radical changes in society and the army, changing views on the construction of the army of the XXI century. The tragic events at the beginning of the new millennium show that the army is changing its functions in order to effectively protect society from new threats to the existence of civilisation.

In order to reveal the legal aspect, i.e. the essence of the concept of «military service» or «conscription», we should pay attention to the legislator's approach to its understanding. Thus, in the work of Templin T. (Bollyky, T.J., Templin, T., Cohen, M., Schoder, D., Dieleman, J.L., & Wigley, S.) military service is defined as a special public service, which consists in professional activity of citizens, foreigners and stateless persons, who are suitable for it by health and age, related to defence, its independence and territorial integrity [11] .

Should agree with Vanessa A., that military service, due to its specific purpose, principles of functioning, nature of the requirements for candidates for admission to military service, legal regulation of military service relations, powers and duties established for military personnel, responsibility, definition of restrictions and prohibitions, has certain differences in comparison with other types of public service. The difference also lies in the subject of the leadership relationship. It is a social relationship that develops, changes and ends during military service and is aimed at ensuring national security [12].

According to Smith JP (Kesternich I, Siflinger B, Smith JP, Winter JK.), military service is a public activity, which is accompanied by the issuance of acts of military-administrative application and is the result of complex interaction in the system of public administration mechanisms. The scientist emphasizes that military service includes a certain algorithm of the functional system of material procedures and legal mechanisms under the purposeful directing influence of the military service administration, beginning with enlistment, taking the military oath and ending with dismissal, termination of military service [13].

In the research of Frederick, B., (Shurkin, M., Gordon IV, J., Frederick, B., & Pernin, C.G.) the following types of military service are distinguished: 1) regular military service; 2) military service by conscription during mobilisation, for a special period; 3) military service under the contract of privates; 4) military service under the contract of sergeants and sergeants; 5) military service (training) of cadets of higher military educational institutions, as well as higher educational institutions having military institutes, faculties of military training, departments of military training, departments of military training (hereinafter - higher military educational institutions and military educational institutions) [14].

But this list is supplemented by some scholars, for example, Kamel Moniri, with the military service of officers and other military formations before the introduction of military service under the contract [15].

The position of Hall, J.C. (Tarabar, D., Hall, J.C. (2016)) who points out that the armed forces are manned on a mixed principle: on the basis of general military service by conscription of citizens for military service for up to 12 months or up to 18 months and the acceptance of citizens for military service on a voluntary basis by concluding a contract with them for a period of 3 to 5 years is reasonable. Such a system allows the troops to be staffed with privates, sergeants and officers within the limits that ensure the maintenance of their combat readiness and the preparation of mobilisation resources. However, there are certain problems regarding the quality of both the conscript resources and the contingents from which it is possible to select candidates for their further acceptance for military service under the contract [16].

Instead, according to Griffith, J. (2021), «military service is a special form of civilian service, an honorary duty of every citizen associated with the performance of general military duty and service on a competitive contract basis in the Armed Forces and other troops formed in accordance with current legislation [17].

These concepts contain different general features: in one case it is an «honourable duty of every citizen», in the other it is a «professional activity». Thus, different aspects of this type of civic activity are mixed.

We can therefore conclude that conscription (military service) is a complex social phenomenon, the content of which requires a comprehensive approach. It is directly related to national security and its component - defence, and indirectly related to politics, economy, international relations and other spheres of state activity.

Today, most countries have abandoned or abolished conscription and where conscription is still in place, it normally includes alternatives to military service. According to the Oxford Encyclopedia of American Military and Diplomatic History, Iceland, Haiti, Greenland and Costa Rica have no army at all. Saudi Arabia has never had conscription because it has a contractual army. India, South Africa and Japan do not have conscription. Australia and Canada have abandoned conscription in peacetime. Conscription was introduced in Britain during the world wars, and the last conscripts were discharged in the 1960s. In the United States, conscription was abolished after the Vietnam War, but all men between the ages of 18 and 26 must register for the draft. Those who evade registration face five years in prison and a \$250,000 fine, although this usually ends in five months in jail [18].

Conscription has been suspended in Germany since 2011. Conscription in Germany was introduced in 1956 with the passing of the Conscription Act. In 2011, the German parliament decided to abolish conscription and transform the German armed forces into a professional and voluntary army. The law now provides for voluntary military service of up to 23 months for both men and women instead of compulsory military service (Wehrpflichtgesetz, §§5, 6b). Conscription is limited to cases in which the Bundestag declares that Germany is under attack or that the use of armed force is imminent («state of defence or state of tension»).

Conscription is permitted by Article 12a of the Basic Law, which states that «males who have reached the age of eighteen may be required to serve in the armed forces...». Women, however, were exempted from military service but were allowed to serve voluntarily. As conscription was only suspended, not abolished, there was no need to amend the Basic Law, which also meant that it could be resumed at any time. Prior to the suspension of conscription, any man who refused military service for reasons of conscience had to perform alternative civilian service instead (Article 12a (2) of the Basic Law). The alternative service was usually performed in medical institutions, nursing homes, kindergartens or institutions for the disabled.

As a result, Germany abolished compulsory military service just over 10 years ago, but the conflict in Ukraine has reignited the debate about whether young people should be required to perform some form of military service.

Proponents of conscription argue that reintroducing it would «strengthen the public spirit and the resilience of society to crises». Reintroduction would require a two-thirds majority in the lower house of parliament, the Bundestag, but not all members of parliament currently support the decision.

Instead, opponents of conscription argue that modern Germany needs «technologies and weapons systems», not just an increase in the number of soldiers [19, 115].

France was the first country to introduce universal military service as a condition of citizenship. This was done to provide soldiers for the country's army during the French Revolution in the 18th century. Conscription in France has continued in various forms since then and was abolished in 2001. In 1998, the Day of Defence and Citizenship (JDC) was created. It was compulsory for all French citizens, men and women. In 2019, the National University Service (SNU) was introduced for a period of 4 weeks. Conscripts receive training and do two weeks of community service. The introduction of the SNU has four objectives: to establish a republican system; to strengthen national unity; to develop a culture of commitment; to promote social and professional integration.

Like France, many European countries have suspended military service: The United Kingdom in 1960, Belgium in 1992, Spain in 2001, Italy in 2006 and Poland in 2008.

Today, only seven of the 27 member states of the European Union (EU) retain compulsory military service: Greece, Finland, Sweden, Denmark, Estonia, Lithuania and Austria. In Lithuania, it was temporarily reintroduced in 2015 in response to the Russian threat. In Sweden, it was reinstated in 2017 due to difficulties in recruiting soldiers (7,000 short of the government's target).

Switzerland reaffirmed conscription by a very large majority in a referendum. Norway is the first European country to make military service compulsory for women, while in other countries it is voluntary.

Outside the EU, particularly in countries with totalitarian political regimes, conscription still exists. In China, people between the ages of 18 and 22 are conscripted into the army for two years. Those who have already served remain until the age of 45. Dodgers face heavy fines or re-education through labour.

Military service in South Korea lasts 24 months between the ages of 18 and 31. Students are given parole, and the only way to avoid conscription altogether is to have a medical contraindication. These include homosexuality, which is considered a disease in the country. Tax evasion is punishable by 2 to 10 years in prison, and up to 10 years in time of war.

Almost all Latin American countries have conscripted armies. Soldiers in Peru and Chile are recruited voluntarily, while conscription is widespread in Argentina, Venezuela, Mexico, Bolivia and Brazil.



In Mexico, the age of conscription varies from 18 to 40. Conscripts can only serve in the army, while the air force and navy are recruited on a voluntary basis. Exemptions for students, prisoners and dependent persons.

In Brazil, all males over the age of 18 must register and can be drafted into the army from the age of 19. Without a military registration certificate, it is impossible to obtain a legal work permit.

In Turkey, men between the ages of 19 and 40 are subject to compulsory military service. Citizens without higher education are required to perform 12 months of military service. Those who have 'served' at university can choose between 12 months of officer service or 6 months of private service. Students under the age of 28, students under the age of 35 and expatriates under the age of 38 may not serve in the military. Conscientious objection can result in a prison sentence of between 1 month and 10 years [1].

Articles 17 and 65 of the Constitution of Ukraine stipulate that the defence of the state and ensuring its security is the primary duty of the entire Ukrainian people. Military service is a constitutional duty of Ukrainian citizens to ensure the defence of Ukraine, protect its sovereignty, territorial integrity and inviolability. Military servicemen are persons undergoing such training or serving in the Armed Forces of Ukraine. Military service is preceded by the necessity to perform constitutional military service, which implies military service of a citizen of Ukraine (voluntary or compulsory). Taking into account the peculiarities of military service, which consist, in particular, in the performance of special tasks by servicemen, the presence of risks to their life and health, etc., any form of military service is the duty of a citizen of Ukraine to defend the state [20].

Thus, the entity whose function is to protect the state and ensure its security is the responsibility of the entire Ukrainian people. Military service is not a function in itself, but a constitutional duty of a number of subjects, such as citizens of Ukraine. This constitutional duty consists of

- 1) ensuring the defence of Ukraine
- 2) protecting the sovereignty of Ukraine
- 3) to protect the territorial integrity of Ukraine
- 4) to protect the integrity of Ukraine.

Fulfilment of this duty includes voluntary or compulsory military service. Military service is a form of fulfilment of duty by a citizen of Ukraine.

In the course of fulfilling their constitutional duty, citizens are prepared for military service and (if necessary) for fulfilling the constitutional duty to defend the Motherland, independence and territorial integrity of Ukraine [21].

At the same time, there is a clear reverse effect of the constitutional duty to defend the Motherland and to perform military service in accordance with the law. The former is possible in the event of an armed attack or threat of attack on the Ukrainian state or an event threatening its independence or territorial integrity. In this context, martial law can be defined as a state of war, as well as partial or general mobilisation, for which citizens of the corresponding category are called up for military service and perform military service in accordance with the law of Ukraine.

Therefore, they are implemented together with the obligation to defend the homeland and perform military service. It should be noted that the call-up for military service during mobilisation is carried out in accordance with the law to which most conscripts in Ukraine are subject, i.e. the fulfilment of the first constitutional duty leads to the fulfilment of the second.

However, these duties can be performed separately, without any connection between them, which is one of the reasons for their separation and enshrinement in different parts of Ukrainian law.

Therefore, citizens of Ukraine, in fulfilment of their constitutional duty, must perform military service in peacetime, i.e. in everyday life, when the activities of both the state in general and the military organisation in particular take place. In this case, military service is mostly considered as a direct constitutional duty and not as a defence of the Motherland.

## Conclusions.

Thus, a comparative analysis has shown that in the last decade, especially in the EU member states, the need for conscription has become anachronistic and outdated. However, following Russia's armed aggression in Ukraine, a debate has begun on the reintroduction of conscription. The main argument is that in the event of war, without proper training of citizens, large-scale mobilisation, as is happening in Ukraine today, will be extremely difficult.

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