

2. Постанова Верховного Суду від 20 березня 2024 року у справі № 466/674/18. URL: <https://reyestr.court.gov.ua/Review/117849248> (дата звернення – 20.10.2025).

3. Cudak v. Lithuania, Application no. 15869/02. European Court of Human Rights, Judgment of 23 March 2010. URL: <https://hudoc.echr.coe.int/eng?i=001-97879> (дата звернення – 20.10.2025).

4. Sabeh El Leil v. France, Application no. 34869/05. European Court of Human Rights, Judgment of 29 June 2011. URL: <https://hudoc.echr.coe.int/eng?i=001-105378> (дата звернення – 20.10.2025).

5. Oleynikov v. Russia, Application no. 36703/04. European Court of Human Rights, Judgment of 14 March 2013. URL: <https://hudoc.echr.coe.int/eng?i=001-117124> (дата звернення – 20.10.2025).

6. United Nations Convention on Jurisdictional Immunities of States and Their Property. Adopted by the General Assembly of the United Nations on 2 December 2004. URL: [https://legal.un.org/ilc/texts/instruments/english/conventions/4\\_1\\_2004.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf) (дата звернення – 20.10.2025).

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## **PROVISION OF THE RIGHT TO ALTERNATIVE (NON-MILITARY) SERVICE DURING MARTIAL LAW: NATIONAL LEGISLATION AND INTERNATIONAL HUMAN RIGHTS STANDARDS**

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The right to alternative non-military service is an important institution that guarantees the freedom of conscience and belief in democratic states. Both international legal standards and the legislation of many countries, including Ukraine, recognize this right. Ukrainian citizens have the right to alternative service if performing military duty conflicts with their religious beliefs that prohibit the use of weapons. At the same time, its implementation in wartime poses new challenges for legal systems, which require deep reflection and amendments to legislation [1, p. 351-352].

Article 35 of the Constitution of Ukraine guarantees citizens whose religious beliefs prevent them from performing military service the right to perform alternative (non-military) service. The 1991 Law of Ukraine “On Alternative

(Non-Military) Service” details this right, allowing military service to be replaced by civilian service for persons whose beliefs conflict with military duty, mainly for religious reasons. Alternative service may include work in social institutions, health care, or other civilian areas, and its duration is usually longer than military service.

Despite the constitutional enshrinement of the right to alternative (non-military) service, current Ukrainian legislation does not provide adequate legal regulation for its implementation in exceptional circumstances, particularly during mobilization or the declaration of martial law. The wording of part one of Article 1 of the Law of Ukraine “On Alternative (Non-Military) Service” limits its application only to cases of replacement of conscription military service, and not to service under conscription during mobilization. Part two of the same article provides for the possibility of terminating alternative service in wartime, without creating a mechanism for exercising the right to such service during this period. However, Article 1 of this Law raises specific considerations.

Yes, the legal regime of martial law, as defined by the Law of Ukraine “On the Legal Regime of Martial Law,” allows for the temporary restriction of constitutional rights (Article 64 of the Constitution of Ukraine). Decree of the President of Ukraine No. 64/2022 does indeed restrict the rights under Articles 30–34, 38, 39, 41–44, and 53 of the Constitution of Ukraine. Still, Article 35 (freedom of conscience) is not included in this list. In fact, the right to alternative service is preserved, since its restriction is possible only with an explicit indication in the Decree on Martial Law (as provided for in Article 1 of the Law of Ukraine “On Alternative (Non-Military) Service”).

However, in practice, the situation is more complicated. The Law of Ukraine “On Mobilization Preparation and Mobilization” does not provide for alternative service during mobilization or martial law. Court decisions also confirm this. The Criminal Cassation Court of the Supreme Court, after considering case 573/406/24, stated that the state's legal regime of martial law is a compelling reason to discuss the need for all citizens of Ukraine to perform military duty, regardless of their religion.

In 2024–2025, this issue attracted the attention of the Venice Commission. In March 2025, the Venice Commission issued an *Amicus Curiae* Opinion No. CDL-AD(2025)006, which provides a detailed analysis of the legal regulation of this institution through the prism of European and international standards. Paragraph 71 of this document, prepared at the request of the Constitutional Court of Ukraine, summarizes international standards on conscientious objection to military service as follows:

- Article 9 ECHR and Article 18 ICCPR, relating to freedom of thought, conscience, and religion, guarantee the right to conscientious objection.

- Conscientious objection is based on religious or other convictions comprising a firm, permanent, and sincere objection to any involvement in war or

the bearing of arms; States may require some level of substantiation of genuine belief.

- Under the ECHR, restrictions on the right to conscientious objection must be clearly provided for by law, pursue a legitimate aim, and be strictly limited to what is demonstrably necessary for the fulfilment of the legitimate aim pursued, and proportionate to this aim.

- Under the ECHR, derogations to the right to conscientious objection are possible, but only to the extent strictly required by the exigencies of the situation.

- Under the ECHR as well as under the ICCPR, States have a positive obligation to establish a system of alternative service that must be separate from the military system, shall not be punitive, and shall remain within reasonable time limits. Access to alternative services must be non-discriminatory and subject to fair and transparent mechanisms [2, p. 18].

In paragraph 72 of the aforementioned *amicus curiae* opinion No. CDL-AD(2025)006, the Venice Commission noted that the very nature of conscientious objection to military service implies that it cannot be completely excluded during wartime, although states have limited discretion, especially in the case of general mobilization [2, p. 18]. According to the experts of the Venice Commission, under no circumstances may a person who refuses military service on grounds of conscience be obliged to bear or use arms, even for the self-defense of the country [2, p. 18].

The Venice Commission has effectively established that restricting access to alternative service during mobilization is contrary to Article 9 of the ECHR and Article 18 of the ICCPR, and the Commission has emphasized the positive obligation of the state to ensure the civilian nature of alternative service and the inadmissibility of coercing conscientious objectors to perform military functions. In other words, international law, namely international human rights standards, recognizes the right to conscientious objection as a derivative of freedom of thought, conscience, and religion.

A comparison of Ukrainian national legislation with international standards reveals discrepancies: although the Constitution of Ukraine and specialized legislation provide for the right to alternative service, the legal regime of martial law effectively blocks its implementation, which contradicts Ukraine's international obligations. This also leads to potential human rights violations, as the lack of alternatives forces individuals to violate their beliefs or face criminal liability for evading mobilization.

On the same issue, Human Rights Commissioner Dmytro Lubinets recommended in February 2024 that the Ministry of Defense amend the law to regulate alternative service in wartime. The Commissioner emphasized that frequent cases of citizens being sent to military service despite their religious beliefs not allowing them to perform military duty contradict their right to freedom of conscience guaranteed by Article 35 of the Constitution of Ukraine [3]. Given

the constitutional nature of the right to freedom of conscience and the Venice Commission's conclusions on states' obligation to ensure its implementation regardless of the state of peace or war, it is necessary to align Ukrainian legislation with international standards. [4, p. 26].

Amendments to Ukrainian legislation should stipulate that alternative service can serve as a replacement for general military duty at any time, both during peacetime and in times of war, and accordingly act as a full-fledged alternative to any military service. In other words, limited alternative service in rear areas, such as medical assistance or logistics, should be introduced by law. This would be in line with international standards, as ensuring the right to alternative service during martial law is not only a legal but also an ethical imperative that promotes respect for human dignity in times of crisis.

### References

1. Пирога І. С., Белова М. В., Фрідманська В. І. Альтернативна (невійськова) служба в умовах воєнного стану. Науковий вісник Ужгородського Національного Університету Серія ПРАВО. 2025. Випуск 87: частина 4. С. 347-352. URL: <https://visnyk-juris-uzhnu.com/wp-content/uploads/2025/03/56-1.pdf>
2. CDL-AD(2025)006 Ukraine – Amicus curiae brief on alternative (non-military) service, adopted by the Venice Commission at its 142nd Plenary Session (Venice, 14-15 March 2025). URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2025\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2025)006-e)
3. Омбудсман: законопроект про мобілізацію має відповідати усім нормам Конституції. Правами людини не можна нехтувати. URL: [https://www.ombudsman.gov.ua/news\\_details/ombudsman-zakonoprojekt-pro-mobilizaciyu-maye-vidpovidati-usim-normam-konstituciyi-pravami-lyudini-ne-mozhna-nehtuvati](https://www.ombudsman.gov.ua/news_details/ombudsman-zakonoprojekt-pro-mobilizaciyu-maye-vidpovidati-usim-normam-konstituciyi-pravami-lyudini-ne-mozhna-nehtuvati)
4. Митровка Я. В. Альтернативна (невійськова) служба в Україні та Чеській Республіці: порівняльне дослідження. Науковий вісник Ужгородського Національного Університету Серія ПРАВО. 2025. Випуск 89: частина 3. С. 22-27. URL: <https://visnyk-juris-uzhnu.com/wp-content/uploads/2025/07/4-3.pdf>