

**CIVIC DUTY TO SERVE IN THE ARMY FROM A HUMAN RIGHTS
PERSPECTIVE: CASES OF AZERBAIJAN, LITHUANIA AND RUSSIA**

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DECLARATION

I, Olga Nikolaevna Startseva, hereby declare that this thesis is original and has never been presented to any other University or Institution. I also declare that any secondary information used in the course of doing this research has been duly acknowledged in this thesis.

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Executive summary

This research explores the duty to serve in the army, addressing three questions: Should Europe grant asylum to Russians and Ukrainians fleeing conscription or deserting the battlefield? Does the answer depend on the “justness” of the war? Are states entitled to require their citizens to perform military service?

I start with an exploration of the concept of citizenship from a historical perspective, building on the works of key scholars, such as Keith Faulks, Christian Joppke, Dmitry Kochenov, Thomas H. Marshall, Philip Pettit, and Gershon Shafir. Civic duties, particularly the duty to serve in the military, are under-explored in existing literature. This research aims to fill this gap by examining the duty to serve in the army as a civic duty.

The research employs desk research methods, including historical and comparative studies, and incorporates a critical perspective focusing on minority rights. It is grounded in legal theory, public international law, human rights law, and the national laws of Azerbaijan, Russia, and Lithuania.

Comparative case studies of Azerbaijan, Russia, and Lithuania explore the rationale behind their conscription policies. The research concludes that while the threat to nations persists, states are entitled to require their citizens to serve in the army. However, they must observe human rights, including the right to conscientious objection. Soldiers have the right under international law to refuse participation in wars that violate public international law (*jus ad bellum*) and international humanitarian law (*jus in bello*), entitling draft evaders and deserters to asylum in foreign states.

Introduction

Nationality or citizenship is frequently defined as a link between a citizen and a state, in the words of the International Court of Justice: “legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties”.¹ From the legal point of view, the most substantial part of this definition is rights and duties. They have been a part of citizenship discourse since Ancient Greece. Liberal thinkers focus on the individual rights of citizens,² republicans highlight their duties.³ The liberal approach give impetus to the rise of human rights rhetoric,⁴ which seems to be predominant now in democratic states and globally via the rhetorics of the UN.⁵

Human rights with their focus on an individual are claimed to put an end to civic duties. On the other hand, at least one new approach to citizenship, embedding civic duty, has been developing, namely ecological or environmental citizenship.⁶ This research aims to address whether civic duties are indeed obsolete. My interest in this question was initially sparked by the differing reactions of Russians and Ukrainians to their respective states’ calls to join the armed forces during the Russian-Ukrainian war.

In Russia, some individuals joined the armed forces voluntarily for various reasons.⁷ Other individuals did everything they could to avoid conscription because of their antiwar stance or

¹ Nottebohm Case (Liechtenstein v. Guatemala); Second Phase, International Court of Justice (ICJ), April 6, 1955.

² April Carter, “Liberalism and the Obligation to Military Service.” *Political Studies* 46, no. 1 (1998): 68–81. <https://doi.org/10.1111/1467-9248.00130>.

³ Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford Academic, 2003).

⁴ Michael Freeman, *Human Rights: An Interdisciplinary Approach*, 2nd ed. (Cambridge: Polity Press, 2011).

⁵ One of the purposes of the UN is to promote and encourage respect for human rights (United Nations, *Charter of the United Nations*, 1 UNTS XVI, 24 October 1945, Art. 1).

⁶ Andrew Dobson and Derek Bell, ed. *Environmental Citizenship* (Cambridge: The MIT Press, 2006).

⁷ See, Alesya Sokolova, “Those who leave and those who stay,” *Novaya Gazeta. Europa*, last modified November 3, 2023, <https://novayagazeta.eu/articles/2023/11/03/those-who-leave-and-those-who-stay-en>.

for fear of dying on the battlefield. The third part of the Russians was riding the current and waiting for the summon. In Ukraine initially, a great number of people volunteered to join the army.⁸ With time this number decreased, and some men tried to escape mobilisation, the state had to adopt new laws governing conscription and even debated the possibility of conscripting women.⁹ Majority of Russians fear mobilisation, and a minority clearly supports the war and mobilisation.¹⁰ In Ukraine, the general opinion is that the war is just,¹¹ and defence of the country is socially approved behaviour. There are deserters and draft evaders from both sides.

Research Questions

This study seeks to answer several questions:

- Should Europe grant asylum to Russians and Ukrainians fleeing conscription or deserting the battlefield?
- Does the answer depend on the “justness” of the war?
- Are states entitled to require their citizens to perform military service?

Methodology

I will start my research with an exploration of the notion of citizenship. I view citizenship as an “Institution delineating membership in the state”.¹² What are the requirements for the inclusion? Do your rights and duties depend on whether you are a male, woman, white or black? The literature on citizenship is vast. As a starting point, I refer to the writings of

⁸ See, Pablo Kazarin, “A year ago I volunteered as a soldier in the Ukrainian army,” NATO Review, last modified February 16, 2023, <https://www.nato.int/docu/review/articles/2023/02/16/a-year-ago-i-volunteered-as-a-soldier-in-the-ukrainian-army/index.html>.

⁹ Olena Goncharova, “MP: Ukraine's latest draft law doesn't include provisions for female conscription,” The Kyiv Independent, assessed June 10, 2024, <https://kyivindependent.com/mp-ukraines-latest-draft-law-doesnt-include-provisions-for-female-conscription/>.

¹⁰ Denis Volkov and Andrei Kolesnikov, Alternate Reality: How Russian Society Learned to Stop Worrying About the War,” Carnegie Endowment for International Peace, last modified November 28, 2023, <https://carnegieendowment.org/research/2023/11/alternate-reality-how-russian-society-learned-to-stop-worrying-about-the-war?lang=en>.

¹¹ On the concept of just war see Richard J. Regan, *Just War: Principles and Cases*. 2nd ed. (Washington, District of Columbia: The Catholic University of America Press, 2013).

¹² Eric Lohr, *Russian Citizenship: From Empire to Soviet Union* (Harvard University Press, 2012), 4.

Christian Joppke, Keith Faulks, Gershon Shafir, Philip Pettit, Thomas H. Marshall and the handbook Engin Isin and Bryan S. Turner, introducing main approaches to citizenship. Dmitry Kochenov provides a detailed overview of citizenship elements, emphasizing the different experiences of citizens based on their country of nationality.

Less number of authors look into civic duties. April Carter points to the preoccupation of liberal authors with individual rights and inconsistencies of the liberal approach, failing to incorporate the duty to serve in the army into the concept of liberal citizenship. Tony Ingesson reflects on the interaction between conscription, citizenship and democracy, highlighting that conscription might be a tool for minorities to assert their rights. Philip Pettit approaches duties from the republican point of view.¹³ Andrew Dobson construes the concept of ecological citizenship on the base of civic duties. The civic duty to serve in the army receives little attention. My research intends to contribute to the literature on civic duties with specific research on the pertinence of the duty to serve in the army.

Derek Heater underlines the importance of understanding the historical background when discussing citizenship.¹⁴ To this end, I will explore writings on the history of conscription and the tasks and design of the modern military. Charles Moskos writes about changes in the military from a historical perspective and explains, why new tasks and designs of the military warrant the name of the postmodern army.¹⁵ Nathan Toronto focuses on the history of conscription, debunking the myth that conscription is the natural choice of the nation facing an existential threat: in reality, conscription can take different forms, which are the matter of policy choice made on economic, domestic policy and security reasons.

¹³ See Philip Pettit, *Republicanism: A Theory of Freedom and Government*.

¹⁴ Derek Heater, *A Brief History of Citizenship* (Edinburgh: Edinburgh University Press, 2022).

¹⁵ Charles C. Moskos, "The Emergent Army." *The US Army War College Quarterly: Parameters* 4, no. 1 (4 July 1974): 17. <https://doi.org/10.55540/0031-1723.1067>.

Human Rights and feminist literature also play a part in my research. I will refer to Kimberlé Crenshaw and Angela Harris on intersectional discrimination and essentialism.

I will employ methods of desk research (historical research, comparative study) and add a critical perspective, focusing on minority rights. My research is based on legal theory and public international law, human rights law and national law of the three states in focus. However, as at the core of my research are such phenomena as citizenship, duty and the armed forces, which are the focus of other disciplines, I will also refer to sociological literature.

Structure

The present research consists of three chapters. The first chapter is devoted to the notion and development of the concept of citizenship, focusing on rights and duties, in particular the duty to defend one's state. The second chapter explores the concept of a postmodern army and its relationships with human rights. These two chapters set the background needed to answer the question of the role of the duty to defend one state which will be explored in the third chapter based on the comparative case studies of Azerbaijan, Russia and Lithuania.

My research explores how Azerbaijan, Lithuania, and Russia organise their specific armies and which tasks pose before them. Based on these findings, I will explore the reasons behind the choice by these states on this particular way to supply armed forces with soldiers. These findings will help me to reveal the rationale behind the choice of the states to choose conscription: do they uphold the idea that this is a civic duty or a political choice guided by political and economic or other reasons lying out of the frame of citizenship relations?

I have chosen these three Post-Soviet states: Azerbaijan, Lithuania, and Russia, due to their shared Soviet past and interest in maintaining effective military forces, albeit with differing motivations: Azerbaijan wanted to return Nagorno-Karabakh, Lithuania wanted to defend itself from an aggressive neighbour, Russia needs military to support the imperial quest. Shared historical background along with different, even opposite present provides a fruitful ground for

comparison. Through this comparison, I aim to identify differences in approaches to conscription and the underlying reasons for these distinctions.

Chapter 1. Concept of citizenship

In this chapter I will provide an overview of the concept of citizenship, tracing its origins from ancient civilizations to modern times, and highlighting the role of civic rights and duties. This exploration sets the background for discussion in the next chapters of the content of the civic duty to defend one's country, its evolution, and, finally, how this duty reflects what citizenship is today on examples of three former Soviet states.

The Chapter starts with a historical overview of the understanding of what citizenship is, then I will dwell on liberal and republican approaches to citizenship, the relationships between minority groups and citizenship, and end with a discussion on civic duties and the role of conscription.

1.1. History of citizenship

The discussion on citizenship typically begins with the origins of European or broader Western civilization in Ancient Greece. Here, citizenship was associated with belonging to a Greek polis, where participation in decision-making was linked to the ability to defend the polis. According to Aristotle's definition: "citizens must be defined as those who are endowed with a certain quality (excellence) which would allow them to participate in the political (public) life".¹⁶ Faulks highlights the close interconnections between war, citizenship, and masculinity in Greece.¹⁷ Women, slaves, and foreigners were not considered equal to citizens of the polis, reflecting a hierarchical, gender, and ethnic bias and expressing the military character of a notion of a citizen. Citizens there did not bear duties in the modern sense, they considered their obligations to participate in public life as civic virtues, they were privileges but not a burden.¹⁸

¹⁶ Aristotle, *Politics*. Quoted in Keechang Kim, *Aliens in Medieval Law: The Origins of Modern Citizenship* (Cambridge, UK: Cambridge University Press, 2000), 203.

¹⁷ Keith Faulks, *Citizenship*, 1st ed. (London: Routledge, 2003), 16.

¹⁸ Keith Faulks, 17-18.

Christian Joppke argues that the Greek model of citizenship was then superseded by the Roman model of rights-based and interest-focused citizenship.¹⁹ Roman citizenship was more inclusive (slaves could become citizens) and flexible, allowing for different levels of rights and privileges.²⁰ The striking contrast with the Greeks was that a Roman citizen was not supposed to participate in politics, but he had the proprietary right, which was to be protected by the state.²¹ The status of a citizen brought to its owners a legal guarantee against arbitrariness.²²

In the Middle Ages in Europe, the figure of a city or an empire as an element in the citizenship bond was changed to the figure of a king. Kim Keechang explains that a king would grant the protection of his subjects in exchange for allegiance.²³ Faulks links this change to the predominant role of religion and the Church as an institution demanding loyalty and offering salvation.²⁴ In a feudal society, social status was an embodiment of inequality and determined the rights and duties of a person.²⁵ Membership in society held little significance as societal divides were deeply entrenched.

Citizenship in antiquity and Middle Ages did not provide for equality, rights and duties were connected to the social status of a person.²⁶ As T.H. Marshall argues, it was the struggle for equality, which shaped the understanding of citizens as equals.²⁷ The French Revolution proclaimed equal citizenship for all.²⁸ This was the time when the population, living in France,

¹⁹ Christian Joppke, "The instrumental Turn of Citizenship," *Journal of Ethnic and Migration Studies* 45, no. 6 (26 April 2019): 858–78. <https://doi.org/10.1080/1369183X.2018.1440484>, 860.

²⁰ Derek Heater, *A Brief History of Citizenship* (Edinburgh: Edinburgh University Press, 2022), 30.

²¹ Christian Joppke.

²² Keith Faulks, 20–21.

²³ Keechang Kim, 23–60.

²⁴ Keith Faulks, 20.

²⁵ Thomas H. Marshall, "Citizenship and Social Class," in *The Citizenship Debates: A Reader*. Edited by Gershon Shafir (Minneapolis: University of Minnesota Press, 1998), 93–111.

²⁶ Keechang Kim.

²⁷ Thomas H. Marshall, 106.

²⁸ Rogers Brubaker, "Immigration, Citizenship, and the Nation-State in France and Germany," in *The Citizenship Debates: A Reader*. Edited by Gershon Shafir (Minneapolis: University of Minnesota Press, 1998), 131–164.

realised itself as a nation.²⁹ In the French Republic citizenship was originally intended to be devoid of any ethnicity/nationality context, “the only foreigners in France are the bad citizens” by the maxim of Tallien,³⁰ that meant that those who would not make an oath of allegiance to the revolution were forced to emigrate.³¹

1.2. Liberal and Republican citizenship

John Rawls formulated a liberal understanding of citizenship.³² Liberal citizenship can be summarised as “treating people as individuals with equal rights under the law”.³³ In this concept, citizenship is a recognition and guarantee of equal participation in the life of society and the exercise of individual rights. Citizens are free to act within the limits of the law. Fraser and Gordon agree that the status of citizens is connected with the ability to hold “civic” or “civil” rights: to own property, make contracts, apply to the court, to liberty, freedom of speech, and thought.³⁴

Thus, liberals perceive liberty as noninterference while Republicans - as non-domination.³⁵ In Republican tradition citizenship is equated with liberty, they are both based on ideal law, which is free from domination of arbitrary power.³⁶ In the liberal tradition, law is always an interference and, thus, limits liberty.³⁷

²⁹ See Tilly, Charles, and Gabriel Ardant, *The Formation of National States In Western Europe* (Princeton (N.J.): Princeton University Press, 1975); See also, Wimmer, Andreas, and Yuval Feinstein, “The Rise of the Nation-State Across the World, 1816 to 2001.” *American Sociological Review* 75, no. 5 (2010): 764–90. <https://doi.org/10.1177/0003122410382639>.

³⁰ Rogers Brubaker, 142.

³¹ See, Juliette Reboul, *French Emigration to Great Britain in Response to the French Revolution. War, Culture and Society, 1750-1850* (Cham: Springer International Publishing, 2017).

³² Kymlicka, Will, and Wayne Norman, “Return of the Citizen: A Survey of Recent Work on Citizenship Theory.” *Ethics* 104, no. 2 (1994): 352–81. <http://www.jstor.org/stable/2381582>.

³³ Kymlicka, Will, and Wayne Norman.

³⁴ Fraser, Nancy, and Linda Gordon. “Contract versus Charity: Why Is There No Social Citizenship in the United States?” *Socialist Review* 22 (1992): 45-67.

³⁵ Philip Pettit, 36.

³⁶ Philip Pettit, 36.

³⁷ Thomas Hobbes, *Leviathan*. Edited by J. C. A. Gaskin. (London, England: Oxford University Press, 2008).

In contrast with the Republican model, the liberal approach focuses on individual rights, thus overlooking civic duties.³⁸ The duty to conscientious objections falls neatly under liberal discourse, but conscription and the duty to serve in the army seem alien.

1.3. Minority groups

Liberal tradition tolerated inequalities: in the 19th US, slaves and women did not enjoy freedom from domination.³⁹ Citizenship *per se* does not guarantee equality for all,⁴⁰ as for a long time women,⁴¹ black people remained exceptions to the equality principle.⁴² The moment of American citizenship' building, culminating in the American Constitution is overshadowed by the entrenched discrimination: enslaved Africans were counted as three-fifths of a person to give political weight to slave-owning states.⁴³ The original text of the US Constitution left it to states to determine who is qualified to vote in elections. African Americans were granted limited right to vote in 1870⁴⁴ and full right - in 1964⁴⁵; women - in 1920.⁴⁶ Native Americans did not have American citizenship until 1924.⁴⁷ Their right to vote similarly to African Americans was governed by state law; and until the adoption of the Voting Rights Act in

³⁸ April Carter.

³⁹ For instance, in *Dred Scott v. Sandford*, the US Supreme Court affirmed that slavery enjoyed the same constitutional protections as every other form of property-holding (*Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857)).

⁴⁰ Fraser, Nancy, and Linda Gordon, 118.

⁴¹ Kathleen B. Jones, "Citizenship in a Woman-Friendly Polity." *Signs* 15, no. 4 (1990): 781–812. <http://www.jstor.org/stable/3174642>.

⁴² Denise N. Obinna, "'Warring' Ideals: Black Citizenship and the Struggle for Inclusion in the USA". *Journal of African American Studies* 26, no. 4 (December 2022): 472–84. <https://doi.org/10.1007/s12111-022-09600-7>.

⁴³ U.S. Const. art. I, § 2, cl. 3.

⁴⁴ U.S. Const. 15th Amendment.

⁴⁵ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*. Rev. ed. (New York: Basic Books, 2009).

⁴⁶ U.S. Const. 19th Amendment.

⁴⁷ Act of June 2, 1924, Public Law 68-175, 43 STAT 253, accessed April 25, 2024, <https://www.loc.gov/item/today-in-history/june-02/#:~:text=to%20this%20page-Indian%20Citizenship%20Act,barred%20Native%20Americans%20from%20voting.>

1965,⁴⁸ some states barred Native Americans from voting. Even today discriminatory practices in voting against minority groups are still persistent in the US.⁴⁹

The empowerment of minority groups was not straightforward and progressive. The practice of the US Supreme Court reflects this statement: in *Cumming v Richmond City Board of Education* (1899) the Court recognized the legality of racial segregation in schools,⁵⁰ in *Plessy v. Ferguson* (1896) the Court permitted racial segregation in public facilities.⁵¹ Discrimination was partially ended with *Brown v. Board of Education*,⁵² which overruled *Plessy v. Ferguson*, but only in the field of education, other types of segregation remained. Since then racial segregation is claimed to persist with even more segregated schools than used to be.⁵³

Women are another minority group facing exclusion from full citizenship throughout the history of mankind. In Greece neither slaves nor women could enjoy the liberating status of citizens; thus, this status was not a means of emancipation.⁵⁴ In the Middle Ages, women faced significant limitations in their rights in comparison with their fathers, husbands, and sons, for instance, in Medieval England they could not participate in court proceedings.⁵⁵ Nowadays, women of colour experience intersectional discrimination.⁵⁶

The status of a mother has been influencing the status of her children throughout history. The French “Black Code” prescribed that children of an enslaved woman and a free man

⁴⁸ Voting Rights Act of 1965. *Duke Law Journal* 1966, no. 2 (1966): 463-83. <https://doi.org/10.2307/1371538>.

⁴⁹ UN Human Rights Council, Report of the Special Rapporteur on minority issues “Visit to the United States of America”, Fernand de Varennes (A/HRC/49/46/Add.1), August 17, 2022.

⁵⁰ *Cumming v. Richmond Cty. Bd. of Educ.*, 175 U.S. 528 (1899).

⁵¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁵² *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

⁵³ Valerie Strauss, “Public Schools More Segregated Now Than 40 Years Ago,” WASH. POST, last modified August 29, 2013, <https://www.washingtonpost.com/news/answer-sheet/wp/2013/08/29/report-public-schools-more-segregated-now-than-40-years-ago>.

⁵⁴ Christian Joppke, 861.

⁵⁵ See, Gwen Seabourne, *Women in the Medieval Common Law c.1200–1500*, 1st ed (New York: Routledge, 2021).

⁵⁶ Kimberle W. Crenshaw, “Demarginalizing the Intersection of Race and Sex”, *University of Chicago Legal Forum* (1989), Vol. 1989, 139 – 160, https://scholarship.law.columbia.edu/faculty_scholarship/3007.

remained slaves, unlike children of an enslaved man and a free woman.⁵⁷ Dimitry Kochenov highlighted that children from mixed nationality couples could be denied citizenship until recently.⁵⁸

In public opinion and national policies, women are often limited to their giving birth function, they experience citizenship differently from men.⁵⁹ They work on low-paid jobs or are involved in unpaid care work.⁶⁰ Human rights bodies call on states to repeal the lists of prohibited for women jobs.⁶¹ The belief that there are male and female roles influences the debates in Ukraine about the conscription of women.⁶² In the US, the Virginia Military Institute has long accepted only males, refusing to educate women.⁶³

New approaches to acquiring real equality are offered, like an intersectional approach to discrimination. The term intersectionality was introduced in 1989 by a feminist scholar Kimberlé Crenshaw as a way of describing the dynamics affecting Black women, including in relation to domestic violence.⁶⁴ This notion is not limited to Black women; intersectionality highlights that every person has several identities and their individuality cannot be limited to just one identity⁶⁵ whether colour of skin, gender or disability.⁶⁶ International human rights law

⁵⁷ The Code Noir (The Black Code), Édit du Roi, Touchant la Police des Isles de l'Amérique Française (Paris, 1687), 28–58, accessed April 26, 2024, <https://revolution.chnm.org/d/335/>.

⁵⁸ Kochenov, Dimitry, *Citizenship* (Cambridge, Massachusetts ; London, England: The MIT Press, 2019), 88.

⁵⁹ Keith Faulks, 39.

⁶⁰ The World Survey on the Role of Women in Development 2014: Gender and Sustainable Development, UN WOMEN, October 14, 2014.

⁶¹ For instance, Views of the Committee on the Elimination of Discrimination against Women under Article 7 (3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-third session), Communication No. 60/2013, May 5, 2013.

⁶² Jessica Trisko Darden, "Ukrainian Wartime Policy and the Construction of Women's Combatant Status". *Women's Studies International Forum* 96 (January 2023): 102665. <https://doi.org/10.1016/j.wsif.2022.102665>.

⁶³ *United States v. Virginia*, 518 U.S. 515 (1996).

⁶⁴ Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum* 1, no. 8 (1989): 139.

⁶⁵ Harris, Angela P., "Race and Essentialism in Feminist Legal Theory," *Stanford Law Review* 42 (1989): 585-605.

⁶⁶ Catharine A. MacKinnon and Kimberlé W. Crenshaw, "Reconstituting the Future: The Equality Amendment," *The Yale Law Journal Forum*, December 26, 2019.

proposes to address intersectional discrimination with the adoption of special measures aimed at achieving de facto equality.⁶⁷

In the next chapter, I will look into how post soviet states perceive the place of foreigners and women in their military forces.

1.4. Civic duties and conscription

i) Duties v Rights

Liberals prefer to focus on individual rights,⁶⁸ republican advocate for civic virtues.⁶⁹ The liberal approach seems to prevail with the rise of human rights language prevailing in the official discourse of democratic states and international organisations. It leads to the redundancy of civic duties.⁷⁰ Nevertheless, the language of civic duties remains popular. It can be found in legal texts. The Comparative Constitutions Project allows us to search for four civic duties in the world's constitutions: the duty to join a political party, the duty to pay taxes, the duty to serve in the military, and the duty to work.⁷¹ For the query, the duty to defend one's country the Comparative Constitutions Project gives 124 results.⁷² This is 62% of the 198 states included in the Project. The constitutions do not always separate civic rights from duties. For instance, Spain frames it as both the right and duty: "Citizens have the right and the duty to defend Spain" (art. 30(1)). The Constitution of Congo also speaks about "sacred right and duty" in art. 63.

⁶⁷ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, United Nations, Treaty Series, vol. 1249, p. 13, December 18, 1979, Art. 4; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, United Nations, Treaty Series, vol. 660, p. 195, December 21, 1965, Art. 2(2); UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly, A/RES/61/106, January 24, 2007, Art. 5(4).

⁶⁸ Thomas H. Marshall.

⁶⁹ See Philip Pettit, 245.

⁷⁰ Dmitry Kochenov, 194.

⁷¹ "Topics", The Constitution Project, accessed April 30, 2024, <https://constituteproject.org/topics?lang=en>.

⁷² "Constitutions", the Constitution Project, accessed April 30, 2024, <https://www.constituteproject.org/constitutions?key=milserv>.

Dimitry Kochenov describes that historically citizenship duties were initially designed to rationalize the extraction of resources and services from individuals by the state.⁷³ They justified the power dynamics within societies, ensuring smooth administration, for instance, making it possible for rulers in China, India, and Egypt to organise a complex system of irrigation systems.⁷⁴ Thus, the notion of civic duties embodies a tool to mobilise citizens or ask them for individual sacrifices for the common good. A more recent example of the gold-collecting campaign aimed to raise money from citizens to overcome the 1998 economic crisis in South Korea⁷⁵ proves that the common good remains a pertinent ground to mobilise society. Common good language is also used in liberal democracies like in the UK under Thatcher.⁷⁶

Moreover, the focus on individual rights as shown above on the example of minorities does not (at least yet) help to solve the problem of real equality for all, and does not address the challenges of the modern globalised world like threatened democracy, migration, or climate change. For instance, a discussion about strong democracy highlights the importance of participatory civic duties such as voting and other forms of civic engagement.⁷⁷ This makes researchers again and again return to republicanism. Thus, neither liberalism nor republicanism seem to be enough to address challenges to citizenship,⁷⁸ which stimulates the formulation of new concepts of citizenship.

For instance, “denizenship” reflects the phenomenon of migrants getting certain citizenship rights because of working and/or living in a state. Yasemin Soysal proposes a model of postnational citizenship, where everyone has a right and duty to participate in society regardless

⁷³ Dimitry Kochenov, 166.

⁷⁴ Ireneusz Paweł Karolewski, *Citizenship and Collective Identity in Europe* (Routledge Advances in European Politics 59. London; New York: Routledge, 2010), 7.

⁷⁵ Shalendra Sharma, *The Asian Financial Crisis: Crisis, Reform and Recovery* (Manchester: Manchester University Press, 2003).

⁷⁶ Andrew Dobson, 58.

⁷⁷ Robert Putnam, “Bowling Alone: The Collapse and Revival of American Community,” in *Computer Supported Cooperative Work: Proceedings of the 2000 ACM Conference on Computer Supported Cooperative Work*, 357. ACM, 2000. <https://doi.org/10.1145/358916.361990>.

⁷⁸ Andrew Dobson, 33.

of their ethnic and cultural background and citizenship status.⁷⁹ Faulks elaborates on postmodern citizenship,⁸⁰ which solves the contradiction of the liberal approach denying group rights (ethnic minorities) by focusing on the individual rights of a “private citizen”, opposing the society. The postmodern model states that there is no division between the public and private spheres; a citizen exercises rights and duties and forms the community around her, which also defines the citizen. Thus, citizens and society are interrelated and interdependent.

The threat of climate change generated environmental or ecological citizenship. In contrast with liberal and republican citizenships, ecological citizenship is essentially not territorial due to the ubiquitous effects of environmental problems,⁸¹ involves non-reciprocal obligations, the extent of which depends on the ecological footprint.⁸² Based on these characteristics Dobson formulates a civic duty or responsibility “to ensure that...ecological footprint does not compromise or foreclose the ability of others in present and future generations to pursue options important to them”.⁸³

These new approaches to citizenship embracing the concepts of public good and civic duties prove that the use of civic duties language as a way to address the challenges of today’s world is still a popular argument. It reflects that the duties are not obsolete, at least, in academia.

ii) Conscription

Historically, conscription is a rather recent phenomenon. In Greece the duty to serve in the army was also considered to be a privilege: every citizen of Sparta or Athens had a duty to serve in the army, however, with time greek poleis started to recruit mercenaries and non-citizens.⁸⁴ Roman citizens were conscripted to enlist in a standing army, which was an efficient

⁷⁹ Yasemin Soysal, “Toward a Postnational Model of Membership”, in *The Citizenship Debates: A Reader*. Edited by. Gershon Shafir (Minneapolis: University of Minnesota Press, 1998), 189-217, 191.

⁸⁰ Keith Faulks.

⁸¹ Andrew Dobson, 84.

⁸² Andrew Dobson, 121.

⁸³ Andrew Dobsom, 132.

⁸⁴ Derek Heater, 21.

way to sustain endless military campaigns.⁸⁵ After the fall of the Roman Empire conscription was not used in Europe.⁸⁶ In the Middle Ages, military service became more exclusive: there were no standing armies, and noblemen were required to fight by their lord, also mercenaries were recruited.⁸⁷ In the end 18th-beginning of the 19th century, revolutionary France and Prussia adopted conscription.⁸⁸ In the 19th and 20th, universal conscription was a predominant system of military recruitment.⁸⁹ At the end of the 20th century, more and more states opted for professional armies.⁹⁰

History knows examples of when minority groups used conscription as a tool to assert their rights. Members of an ethnic group might be conscripted on the basis of special arrangements giving them certain rights and privileges and negotiated between their leaders and the state.⁹¹ For instance, after WWII the struggle of African conscripts for equal pensions was finally granted in 1951.⁹² In 1956 at the initiative of Druze leaders seeking to gain influence and support from the Israeli government these peoples were included in the compulsory conscription law.⁹³

⁸⁵ Derek Heater, 31.

⁸⁶ Toronto, Nathan W., and Lindsay P. Cohn. "Conscription and the Politics of Military Recruitment." *Oxford Research Encyclopedia of Politics*, October 27, 2020. <https://doi.org/10.1093/acrefore/9780190228637.013.1879>.

⁸⁷ Toronto, Nathan W., and Lindsay P. Cohn, "Conscription and the Politics of Military Recruitment." *Oxford Research Encyclopedia of Politics*, October 27, 2020. <https://doi.org/10.1093/acrefore/9780190228637.013.1879>.

⁸⁸ Forrest, Alan, "Citizens, Soldiers and National Armies: Military Service in France and Germany, 1789-1830." *American Historical Review*. Oxford: University of Chicago Press, 2008. <https://doi.org/10.1086/ahr.113.4.1226>.

⁸⁹ Lucassen, Jan, and Erik Jan Zürcher. "Conscription as Military Labour: The Historical Context." *International Review of Social History* 43, no. 3 (1998): 405–19. <https://doi.org/10.1017/S0020859098000224>.

⁹⁰ Toronto, Nathan W., and Lindsay P. Cohn.

⁹¹ Alon Peled, "Force, Ideology and Contract: The History of Ethnic Conscription." *Ethnic and Racial Studies* 17, no. 1 (1994): 61–78. <https://doi.org/10.1080/01419870.1994.9993813>.

⁹² Dupuis-Déri, Francis, "Blood for Equality: African Soldiers' Struggles for Rights after World War II." *Tocqueville Review/La Revue Tocqueville* 40, no. 1 (June 2019): 81-101. <https://doi.org/10.3138/ttr.40.1.81>.

⁹³ Eldar, Doron, and Gay Young, "The 'Nation-State Law' and non-Jews Belonging in Israel: Druze Loyalty, Citizenship and Positionality in the Jewish State." *Nations and Nationalism*, 2024. <https://doi.org/10.1111/nana.13006>.

1.5. Loss of citizenship

As the focus of my study is the duties of citizens, the exploration of what the sanction for non-compliance would help to understand the nature of civic duties. There are several examples when states exiled undesired citizens. Racial laws in Italy and Germany are examples of labelling a disloyal person as non-worthy of citizenship.⁹⁴ In the USSR the people named as collaborators of the Third Reich were relocated to work in the “labour army” or in special camps.⁹⁵ The USA relocated more than 120,000 people of Japanese ancestry, including American citizens, to detention camps.⁹⁶

Today the legality of such practices is out of the question. On an international level, the 1961 Convention on the Reduction of Statelessness bans arbitrary deprivation of citizenship, which leads to statelessness. Deportation or forcible transfer of population is a crime against humanity under the Rome statute.⁹⁷

Such a penalty as deprivation of citizenship is unlikely to be considered a proportionate penalty for draft evasion or desertion. However, some kind of sanctions for the violation of the law can be in place. In the third chapter, I will look into which sanctions for non-compliance with the duty to serve in the army are prescribed in the three case study states.

Conclusion

I believe that there are two types of citizenship studies. The first type focuses on the formulation of ideal citizenship. To this type, I include Republican, Liberal and new approaches like postnational, postmodern or ecological. They all contribute to the discussion on how an ideal society should be organised. On the other hand, researchers like Dmitry

⁹⁴ Cristina M., Bettin, *Italian Jews from Emancipation to the Racial Laws* (New York: Palgrave Macmillan, 2010).

⁹⁵ Arkadij Adol'fovič, Aleksandr N. Kuročkin, and Arkadij Adol'fovič, German. *Nemcy SSSR v 'Trudovoj armii': 1941 - 1945* (Moskva: Gotika, 1998).

⁹⁶ *Korematsu v. United States*: 323 U.S. 214 (1944).

⁹⁷ The United Nations, Rome Statute of the International Criminal Court. International Organizations, 2002. Web Archive. <https://www.loc.gov>, Art. 7(d).

Kochenov pragmatically highlight the lack of a uniform notion of citizenship in reality, the citizenship experience might vary quite drastically based on the country of citizenship.

In my research, I attempt to align the “ideologic” and pragmatic approaches to citizenship. I proceed from the premise that civic duties are required for the public good, thus, if there is no public good to be gained, it is unnecessary to require a citizen to perform a duty. In the next chapter, I will look into the phenomenon of conscription and its relevance to the effectiveness of the armed forces, which I consider to be a public good. By doing this, I will assess whether conscription is necessary for the effective army, and thus whether the duty to serve in the army is a relevant element of citizenship today.

In the last chapter, I will employ a pragmatic approach and look into the realities of three case studies to explore whether there is a public good to be gained from conscription.

Chapter II. Design of (effective) military and conscription

2.1. Postmodern military

War and the armed forces played a part in the formation of the state and society.⁹⁸ The opposite is also true, the army is influenced by changes in society.⁹⁹ Thus, any study of the military requires an understanding of the history of the state and the present political, social, and economic situation. I will look at this background in the next chapter when I will take a closer look at the armed forces of the three states in focus. In the present Chapter, I will enquire what today's armed forces look like in general.

Charles Moskos proposes and defines the concept of the postmodern army,¹⁰⁰ which is a type of army that aims to meet modern challenges such as technological progress and the state's obligations to respect, protect, and fulfil human rights. Moskos describes how the modern army, which appeared along with the nation-state, has changed with the weakening or transformation of the nation-state. The modern army is characterised by the use of a system of conscription.¹⁰¹ In comparison, the postmodern army tends to recruit more volunteers, minorities and women; has diverse purposes, and is subject to civic control.¹⁰² New challenges like peacekeeping and humanitarian missions set new and more ambiguous purposes before the armed forces.

Postmodern armed forces are characterised by respect and protection of the human rights of their soldiers.¹⁰³ Thus, individuals in the postmodern army do not automatically lose their rights

⁹⁸ Bruce D. Porter, *War and the Rise of the State: The Military Foundations of Modern Politics* (New York: Free Press, 1994).

⁹⁹ Charles Moskos, *The Postmodern Military: Armed Forces after the Cold War* (New York, NY [u.a.]: Oxford Univ. Press, 2000).

¹⁰⁰ Charles Moskos, *The Postmodern Military*.

¹⁰¹ Conscription is not a uniform phenomenon, for its types and specifics, see Toronto, Nathan W., and Lindsay P. Cohn, "Conscription and the Politics of Military Recruitment." *Oxford Research Encyclopedia of Politics*. October 27, 2020. <https://doi.org/10.1093/acrefore/9780190228637.013.1879>.

¹⁰² Moskos, *The Postmodern Military*.

¹⁰³ Bell, Sam R., K. Chad Clay, Ghashia Kiyani, and Amanda Murdie, "Civil-Military Relations and Human Rights". *Armed Forces & Society* 48, no. 3 (July 2022): 701–22. <https://doi.org/10.1177/0095327X211006835>.

after they become soldiers. To discover the content of the duty to serve in the army, I will, first, explore what human rights "postmodern" soldiers have.

2.2. Eligibility for conscription

The history of the military includes cases of discrimination and the opposite movement of inclusion of minority groups like ethnic minorities,¹⁰⁴ LGBTQ+,¹⁰⁵ and women. I will look at the example of discrimination against women a little closer, as their participation in the military still remains a controversial issue.

Charles Moskos observes that during World War II, “the only women in the armed services were nurses”.¹⁰⁶ The situation changed over time, and in 1988 President Ronald Reagan revised the Code of Conduct for POWs, changing the beginning phrase "I am an American fighting man" to the gender-neutral "I am an American."¹⁰⁷ Women in the army are a reality today. For instance, it is reported that as of November 2022, 60,000 women have served in the Ukrainian army, of which about 5,000 were directly involved in hostilities.¹⁰⁸ However, the question that Moskos asked was: “Should every woman soldier be made to confront exactly the same combat liabilities as every man?”¹⁰⁹ remains pertinent.

International law started to address the issue of equality of women and men quite early with the establishment of the Commission on the Status of Women in 1946.¹¹⁰ The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the UN

¹⁰⁴ Christopher J. Tozzi, *Nationalizing France's Army: Foreign, Black, and Jewish Troops in the French Military, 1715–1831* (Charlottesville: University of Virginia Press, 2016).

¹⁰⁵ Catherine Baker, “Can I Be Gay in the Army?": British Army Recruitment Advertising to LGBTQ Youth in 2017–18 and Belonging in the Queer Military Home'. *Critical Military Studies* 9, no. 3 (3 July 2023): 442–61. <https://doi.org/10.1080/23337486.2022.2113960>.

¹⁰⁶ Charles C. Moskos, *Army Women: a Look at the Life, the Sentiments, and the Aspirations*. *The Atlantic Monthly* (1993). Vol. 266. Atlantic Media, Ltd, 1990.

¹⁰⁷ Charles Moskos, “Army Women”.

¹⁰⁸ Karska, Elżbieta, Karol Karski, and Konrad Wnorowski, “The Status of Women in the Armed Forces: Polish Solutions in the Light of Human Rights Standards Defined by Selected International Organizations”. *International Community Law Review* 25, no. 6 (21 November 2023): 605–26. <https://doi.org/10.1163/18719732-bja10117>.

¹⁰⁹ Karska, Elżbieta, Karol Karski, and Konrad Wnorowski.

¹¹⁰ Karska, Elżbieta, Karol Karski, and Konrad Wnorowski, 610.

General Assembly on 18 December 1979, and the respective Committee aimed to supervise the implementation of its provisions was created. In 2000, the UN Security Council adopted Resolution 1325 intended to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.¹¹¹ In this resolution, the SC highlighted the need to expand the role and contribution of women in UN field-based operations and ensure that field operations include a gender component; however, the resolution does not urge states to include women in their military forces. In sum, there is no international legal norm on the inclusion of women in the army, particularly to grant them the ability to engage in combat.

2.3. Human rights of postmodern soldiers

Human rights of members of the armed forces are the same of other persons, the most important are:

- the right to life;
- the right not to be subjected to torture or to inhuman or degrading treatment or punishment;
- the right to liberty;
- the right to privacy;
- freedom of thought, conscience, and religion;
- freedom of assembly and association;
- freedom of expression;¹¹²
- the right to a fair trial.

Peter Rowe claims that these rights should be weighed against the interests of the State. Even the **right to life** remains in place. The soldiers are expected to be ready to take the risks

¹¹¹ UN Security Council, Security Council resolution 1325 (2000) [on women and peace and security], S/RES/1325 (2000), October 31, 2000.

¹¹² See, Peter Rowe, *The Impact of Human Rights Law on Armed Forces*. 1st ed. (Cambridge University Press, 2005).

associated with their position during an armed conflict. During peacetime, the loss of the life of a soldier is unlikely to be attributable to an enemy and, therefore, should be effectively investigated, and compensation should be paid.¹¹³ States might adopt compensation schemes, for instance, Australia adopted the Military Rehabilitation and Compensation Act, establishing a Permanent Impairment Payments scheme applying to warlike and peacetime service.¹¹⁴

During peacetime, soldiers might be killed due to negligence of their superiors or fellow soldiers, or because of their deliberate actions, including bullying, initiation ceremonies, *dedovshchina*, or other unlawful activities amounting to a breach of the military discipline code.¹¹⁵ Besides the individual responsibility of the perpetrator, the state might be brought to responsibility if it is shown that it failed to prevent the killing in cases where the authorities knew or could have known that there was a real and immediate risk to life¹¹⁶ or failed to adopt required legislation like rules on the use of firearms by the military police or conduct an effective investigation of the death of a soldier.¹¹⁷

Soldiers can be victims of **torture, and degrading and inhumane treatment** because of the above-mentioned unlawful practices.¹¹⁸ The states might be held responsible for these actions similar to incidents involving the right to life. Moreover, a disproportionately harsh penalty for draft evasion can be considered a violation of the right to humane treatment. The ECtHR found that the deportation of foreign citizens to a state where there is a harsh penalty for draft evasion might constitute a violation of the right not to be subjected to torture or an inhuman or degrading treatment prohibited under Article 3 of the Convention.¹¹⁹ In another

¹¹³ Peter Rowe, 30.

¹¹⁴ Military Rehabilitation and Compensation Act 2004, C2024C00042 (C70), version in force from January 1, 2024.

¹¹⁵ Peter Rowe, 31.

¹¹⁶ Yavuz v. Turkey (29870/96), ECtHR Decision, May 25, 2002.

¹¹⁷ Nachova and Others v. Bulgaria (43577/98, 43579/98), ECtHR (Grand Chamber) Judgment, July 6, 2005.

¹¹⁸ Peter Rowe, 36-39.

¹¹⁹ M.O. v. Switzerland (41282/16), ECtHR (Chamber) Judgment, June 20, 2017, paras. 69-81.

case, the Court found that the deportation of a foreign citizen who evaded the army to a state where there is no legal right to conscientious objection is a violation of Article 3.¹²⁰ Thus, a real and imminent risk of a harsh penalty for draft evasion in a country of origin might constitute a valid ground for claiming and granting asylum. A similar situation with deportation to a country that does not recognize the right to conscientious objection.

Military service as such is not considered to be an unlawful **deprivation of liberty**; however, under certain circumstances, it might be. The ECtHR clarified that if a soldier is free to carry on his normal military duties and, for instance, is not allowed to leave the barracks but is not locked in a room, he is not deprived of his liberty.¹²¹

Moving further, soldiers are under significant limitations of their **right to privacy**: they sleep together in barracks, do not see their family, and are often denied or have limited access to means of communication with family and the outer world in general. Another aspect of the right to privacy is the right to informed consent to medical treatment, which might go against the interests of an army to ensure the resistance of soldiers to diseases and infections, especially in the case of deployment abroad.¹²² In Africa, an issue of concern is the lawfulness of the obligatory HIV testing of soldiers and the consequent automatic dismissal of them in case of a positive test. It is argued that the automatic dismissal of HIV-positive soldiers is contrary to human rights.¹²³ Only those who, after an individual check of their ability to perform military duties, would be found unfit, should be dismissed.¹²⁴

¹²⁰ M.D. and others v. Russia (71321/17, 25735/18, 58858/18 et al), ECtHR (Chamber) Judgment, September 14, 2021.

¹²¹ Engel v. the Netherlands (5100/71, 5101/71, 5102/71), ECtHR (Chamber) Judgment, June 8, 1976.

¹²² Peter Rowe, 47.

¹²³ Heinecken, Lindy, and Michelle Nel. "Human Rights and HIV-Testing in the South African Armed Forces: Whose Rights Are Paramount?" *Journal of Human Rights* 8, no. 4 (17 November 2009): 340–59. <https://doi.org/10.1080/14754830903324787>.

¹²⁴ Heinecken, Lindy, and Michelle Nel.

Religion has historically been significant for soldiers, who can call upon their deity to help and guard them in battle. Soldiers might be required to be part of a civic ceremony with a religious element. A soldier without any beliefs or practising another religion might find such participation objectionable.¹²⁵ The right to conscientious objection requires separate discussion (see below).

Freedom of assembly and association seems to be another alien human right to military service because it is associated with a risk of disobedience and mutiny among soldiers. Thus, this right seems to pose a threat to an efficient army. On the other hand, restrictions on the freedom of assembly might be caused by the will to conceal bad living conditions or poor treatment of soldiers.¹²⁶

Similar concerns relate to the **freedom of expression**. Moreover, the state might object to the will of current and former members of the military to share their views, opinions, and knowledge about military operations and the state of the military.¹²⁷ The ECtHR has considered several cases where the applicants, being soldiers, were denied the right to publish a newspaper and distribute it in the barracks. In the judgement against Austria, the ECtHR was not convinced that the actions of the applicants posed a serious threat to military discipline and found a violation of Article 10 of the ECHR.¹²⁸ In another case against Lithuania, the Court did not find a violation of Article 10 taken together with Article 14 (prohibition of discrimination) because the Court did not see any causation between the opinions expressed by applicants and their dismissal.¹²⁹

¹²⁵ Peter Rowe, 51.

¹²⁶ Peter Rowe, 54.

¹²⁷ For instance, "R" v Attorney General for England and Wales Privy Council Appeal No. 61 of 2002; Norton-Taylor, Richard, "Mackenzie memoirs banned by Scottish laird republished", The Guardian, last modified, November 18 2011, <https://www.theguardian.com/books/2011/nov/18/mackenzie-memoirs-banned-republished>.

¹²⁸ Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria (15153/89), ECtHR Judgment, December 19, 1994.

¹²⁹ Jokšas v. Lithuania (25330/07), ECtHR (Chamber) Judgment, November 12, 2013.

Postmodern soldiers have the right to a **fair trial**. As a rule, soldiers are subjected to military courts,¹³⁰ which were scrutinised by the ECHR.¹³¹ For instance, the military tribunals should be independent, and the defendants should have the right to appeal.¹³² Today's military tribunals in circumstances of an armed conflict might disregard certain fair trial guarantees, however, they cannot completely ignore the right to a fair trial.¹³³

2.4. Right conscientious objection and draft evaders

2.4.1 the Right conscientious objection

Conscientious objection allows individuals not to join the military if it contravenes their beliefs, in such cases they are allowed to perform alternative service.¹³⁴ Exploration of this right is especially important for my research, as it reveals how persons who deny the duty to join army forces or desert the army are treated by other states.

The right to conscientious objection is internationally recognized. The UN Human Rights Committee states in General Comment No. 22 that “The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, since the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors based on the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service.”¹³⁵

¹³⁰ *Mustafa v Bulgaria* (1230/17), ECtHR (Chamber) Judgment, November 28, 2019.

¹³¹ *Findlay v UK* (22107/93), ECtHR (Chamber) Judgment, February 25, 1997.

¹³² To execute the judgement in *Findlay v UK*, the UK adopted the Armed Forces Act 1996, which reformed court-martial procedures, abolishing the convening officer's role and redistributing its functions among separate bodies, establishing a judge-advocate with binding legal advice and voting rights on sentencing, removing the need for confirmation by a confirming officer, introducing a reviewing authority for case reviews, and adding a right of appeal against sentences to the Courts-Martial Appeal Court, which the UK government believes will prevent future violations.

¹³³ *Hassan v. United Kingdom* (29750/09), ECHR (Grand Chamber) Judgement, September 16, 2014.

¹³⁴ UN Commission on Human Rights (54th sess.: 1998: Geneva), *Conscientious objection to military service*, E/CN.4/RES/1998/77, UN Commission on Human Rights, 22 April 1998.

¹³⁵ UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), CCPR/C/21/Rev.1/Add.4, 30 July 1993, para. 11.

On the regional level, initially, the European Commission of Human Rights denied the right to conscientious objection, relying on Article 4, para. 3(b) of the Convention, which exempts from the prohibition of forced or compulsory labour “any service of a military character or, in cases of conscientious objectors, in countries where they are recognized, service exacted instead of compulsory military service”.¹³⁶ The ECHR does not name this right, and the Commission concluded that it is up to the state to decide whether to provide a possibility to serve an alternative to military service or not.¹³⁷

Later, the ECtHR changed its case law, recognizing this right within the freedom of religion (Article 9) of the Convention. In the Grand Chamber judgement *Bayatyan v. Armenia* the applicant, a Jehovah’s Witness, informed the authorities that he refused to serve in the military because of his religion and asked for alternative civil service.¹³⁸ Despite his request, he was summoned to serve in the army. He failed to report for duty and went into hiding. He was charged with draft evasion and sentenced to two and a half years imprisonment. The Court made a comparative study of Council of Europe member States and found that almost every state introduced alternatives to military service. The Court stated that States have only a limited margin of appreciation concerning freedom of religion and have to demonstrate that any interference corresponded to a “pressing social need”. The Court concluded that the absence of a legal possibility to exercise a right to conscientious objection and perform alternative civil service constitutes a failure to strike a fair balance between the interests of society as a whole and those of the individual. The Court, thus, found a violation of the Article 9 of the Convention.

Judge Gyulumyan wrote a dissenting opinion, highlighting that the Convention does not guarantee the right to conscientious objection and this right cannot be read out of Article 9.

¹³⁶ G.Z. v. Austria (5591/72), ECHR, decision of the Commission, April 2, 1973.

¹³⁷ Grandrath v Germany (2299/64), ECHR, report of the Commission (Plenary), December 12, 1996.

¹³⁸ Bayatyan v. Armenia (23459/03), ECtHR (Grand Chamber) Judgment, July 7, 2011, para. 110.

This is an unpopular position, which is evidenced by the later practice of the Court in relation to the absence of legislation on conscientious objection in Turkey, which prompted the Court to apply Article 46 of the Convention (binding force and execution of judgments) to oblige Turkey to establish a possibility to apply for an alternative service.¹³⁹

Not everyone is entitled to this right; only a person with religious or other beliefs “that includes a firm, fixed and sincere objection to participation in war in any form or to the bearing of arms”.¹⁴⁰ In the judgment *Enver Aydemir v. Turkey*, the Court examined the allegation of a violation of this right of a person, who evaded the military service referring to his sharia beliefs.¹⁴¹ The Court disagreed that his views fell into the protection of Article 9 and found his application inadmissible.¹⁴²

Moreover, the ECtHR elaborated on the procedure for access to alternative service: a body, which decides on whether to grant the request for the alternative service or not should be independent and impartial.¹⁴³

The ECJ adopted a similar stance, recognising the right to asylum of contentious objectors.¹⁴⁴

Thus, international law provides a right to a conscientious objection and a corresponding duty of a state to set up a system for applying for an alternative civil service for conscripts. Practise of the ECtHR and the ECJ shows that the lack of a possibility to opt for alternative services in the country of origin might be a valid reason to ask for asylum abroad.

¹³⁹ Ercep v. Turkey (43965/04), ECtHR (Chamber) Judgement, November 22, 2011.

¹⁴⁰ Enver.

¹⁴¹ Enver.

¹⁴² Enver.

¹⁴³ Papavasiliakis v. Greece (66899/14), ECtHR (Chamber) Judgement, September 15, 2016.

¹⁴⁴ Judgment of the Court (Sixth Chamber), ECJ, EZ v Bundesrepublik Deutschland, November 19, 2020.

2.4.2 Draft deserters

What happens with deserters? Do they have the right to claim asylum? Draft evasion “occurs when a person does not register for, or does not respond to, a call-up or recruitment for compulsory military service.”¹⁴⁵ UNHCR explains that draft evasion may be “pre-emptive in the sense that action may be taken in anticipation of the actual demand to register or report for duty.”¹⁴⁶

1951 Convention on Refugees with the Additional Protocol defines a refugee as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”¹⁴⁷

Fear of prosecution or punishment for draft evasion does not in itself constitute a well-founded fear of persecution under the definition.¹⁴⁸ A deserter needs to prove a well-founded fear of risk of persecution. UNHRC’s Guidelines on International Protection No. 10 clarifies that persecution exists in situations of “disproportionate or arbitrary punishment for refusing to undertake State military service or engage in acts contrary to international law - such as excessive prison terms or corporal punishment —”¹⁴⁹ or alternative sufficiently serious or

¹⁴⁵ UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/13/10/Corr. 1, 12 November 2014.

¹⁴⁶ Guidelines on International Protection No. 10, para. 3.

¹⁴⁷ UN General Assembly, *Convention Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951; UN General Assembly, *Protocol Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 606, p. 267, 31 January 1967, Art. 1.

¹⁴⁸ “Questions and answers for refugees from Ukraine,” “Russian nationals/Partial mobilisation,” Switzerland State Secretariat for Migration, accessed June 10, 2024, <https://www.sem.admin.ch/sem/en/home/sem/aktuell/ukraine-krieg.html>.

¹⁴⁹ Guidelines on International Protection No. 10: para. 14.

cumulatively resulting in serious restriction of human rights and indirect consequences like physical violence or denial of access to social services.¹⁵⁰ Moreover, a deserter is entitled to the right to object to a particular armed conflict (*jus ad bellum*) and an obligation not to violate rules on means and methods of warfare (*jus in bello*).¹⁵¹ ECJ in *EZ v Bundesrepublik Deutschland* recognised that a deserter fearing that he would be forced to commit war crimes or crimes against humanity because the armed conflict is notorious for such violations, has the right to asylum.¹⁵²

Thus, there is no principle difference between conscientious objectors and draft deserters in relation to the right to asylum, and international law provides clear rules for granting them asylum.

In practice, draft evaders might experience denial of the right to asylum. The problem might lie in the essence of military service as “a prerogative of sovereign states,”¹⁵³ who are entitled to require their citizens to join the military, necessary to exercise the right to self-defence.¹⁵⁴ The states might treat requests for asylum cautiously for fear of being blamed for interference in the inner affairs of a foreign state.

I will look into the treatment of Russian and Ukrainian draft evaders and deserters. Their situation is specific because some of them have been already conscripted and deserted the army, while the other are fleeing because of the fear of mobilisation to the army. In relation to Russians, the Netherlands differentiate between these two categories: Russian conscripts, who are given temporary protection, and Russian reservists who attempt to evade the mobilisation,

¹⁵⁰ Guidelines on International Protection No. 10, para. 15.

¹⁵¹ Guidelines on International Protection No. 10, para. 21.

¹⁵² *EZ v Bundesrepublik Deutschland*.

¹⁵³ “Country policy and information note: military service, Ukraine”, UK Government, accessed June 9, 2024, <https://www.gov.uk/government/publications/ukraine-country-policy-and-information-notes/country-policy-and-information-note-military-service-ukraine-june-2022-accessible>.

¹⁵⁴ Guidelines on International Protection No. 10, para. 5.

which claims will be decided on an individual basis.¹⁵⁵ France requires a conscription evader to provide evidence that has received a summon.¹⁵⁶

There are examples of granting asylum to Russian deserters in Germany,¹⁵⁷ Latvia,¹⁵⁸ The USA.¹⁵⁹ However, there examples when the asylum was denied in Germany,¹⁶⁰ other European countries¹⁶¹ and USA.¹⁶²

The situation with Ukrainian draft evaders and deserters is more nuanced. To begin with, Ukrainians in general are given temporary protection in all states of the EU.¹⁶³ This means that any Ukrainian, including a deserter and a draft dodger, receives temporary protection in Europe. Moreover, Europe supports the Ukrainian war effort politically and economically; in the eyes of Europeans, it is a just war. Thus, it is costly for Europeans to criticise Ukrainians for some decisions. For instance, some Ukrainian officials made statements calling European

¹⁵⁵ Maarten den Heijer, "Why EU Countries Should Open Their Borders to Russian Draft-Evaders." In: Verfassungsblog: On Matters Constitutional, last modified September 26, 2022, <https://nbn-resolving.org/urn:nbn:de:0301-20220926-230355-0-5>.

¹⁵⁶ Julia Pascual, "Russians who refused to fight in Ukraine are eligible for political asylum in France," Le Monde, last modified July 23, 2023, https://www.lemonde.fr/en/france/article/2023/07/23/russians-who-refused-to-fight-in-ukraine-are-eligible-for-political-asylum-in-france_6063599_7.html.

¹⁵⁷ "How To Get Asylum In The USA As A Russian Draft Dodger," Law Offices of Spector, Spector and German, accessed June 13, 2024, <https://spectorlawgroup.com/blog/how-to-get-asylum-for-russians-fleeing-russia/>.

¹⁵⁸ "Sud obyazal Latviyu predostavit' ubezhishche grazhdaninu Rossii, voyevavshemu na storone Ukrainy" [The court ordered Latvia to provide asylum to a Russian citizen who fought on the side of Ukraine], Delfi, last modified January 2, 2024, <https://rus.delfi.lv/57860/latvia/56232000/sud-obyazal-latviyu-predostavit-ubezhishche-grazhdaninu-rossii-voevavshemu-na-storone-ukrainy>.

¹⁵⁹ "Political Asylum is Granted to the member of Russian Opposition as well fear of being mobilized into the Army," MyAttorneyUSA.com, accessed June 13, 2024, <https://myattorneyusa.com/success-stories/political-asylum-is-granted-to-the-member-of-russian-opposition-as-well-fear-of>.

¹⁶⁰ Natalia Smolentceva, "Germany: No asylum for Russian draft dodgers?" DeutscheWelle, last modified April 24, 2024, <https://www.dw.com/en/germany-no-asylum-for-russian-draft-dodgers/a-68863537>.

¹⁶¹ "Russian deserters in limbo: Facing criminal charges and unanswered asylum claims," EuroNews, last modified April 12, 2024, <https://www.euronews.com/2024/04/12/russian-deserters-in-limbo-facing-criminal-charges-and-unanswered-asylum-claims>

¹⁶² Hamed Aleaziz and Tracy Wilkinson, "The White House told Russians to flee here instead of fighting Ukraine. Then the U.S. tried to deport them," Los Angeles Times, last modified August 17, 2023, <https://www.latimes.com/world-nation/story/2023-08-17/russian-conscripts-asylum-biden-putin>.

¹⁶³ "Fleeing Ukraine: Your rights in the EU," European Commission, accessed June 10, 2024, https://eu-solidarity-ukraine.ec.europa.eu/information-people-fleeing-war-ukraine/fleeing-ukraine-your-rights-eu_en.

states to return back Ukrainian men.¹⁶⁴ Poland¹⁶⁵ and Lithuania¹⁶⁶ announced that they would send Ukrainians back, but other European countries did not express willingness to do so.¹⁶⁷

Conclusion

The army of today is the postmodern army, which tends to be a professional army contracting female and ethnic minorities and offering an alternative civil service if the conscription is retained. Such composition permits participation in peacekeeping and similar operations abroad, as the threat of military invasion is not as prevalent as it was in the times of modern armies.

The postmodern army observes the fundamental rights of soldiers, including the right to life, freedom from torture, privacy, freedom of religion, speech, and assembly. International law recognises the right to conscientious objection with the corresponding duty of states to provide alternative civilian service options for conscientious objectors, ensuring a balance between individual beliefs and societal interests. The lack of possibility to apply for alternative service, as well as the exposure of a soldier to participate in an unjust war and/or violate international humanitarian law, is a ground to apply for asylum.

In the next Chapter, I will look at how the Armies of three post soviet states reflect the postmodern army.

¹⁶⁴ “Can military-eligible men be returned to Ukraine, how will the EU react?” The New Voice of Ukraine, last modified December 21, 2023, <https://english.nv.ua/nation/legal-quandary-ukraine-struggles-with-return-of-draft-evaders-50378345.html>.

¹⁶⁵ Maciej Martewicz, “Poland Ready to Help Ukraine Return Conscription-Age Men Home,” Bloomberg, last modified April 24, 2024, <https://www.bloomberg.com/news/articles/2024-04-25/poland-ready-to-help-ukraine-return-conscription-age-men-home>.

¹⁶⁶ Shaun Walker, “Poland and Lithuania pledge to help Kyiv repatriate Ukrainians subject to a military draft,” The Guardian, last modified April 24, 2024, <https://www.theguardian.com/world/2024/apr/25/poland-and-lithuania-pledge-to-help-kyiv-repatriate-ukrainians-subject-to-military-draft>.

¹⁶⁷ “Germany Says It Will Not Force Ukrainian Refugees To Return And Fight,” RadioFreeLiberty, last modified December 22, 2023, <https://www.rferl.org/a/germany-ukraine-refugees-mobilization-war/32742896.html>.

Chapter III. The duty to serve in the army in Azerbaijan, Russia and Lithuania

The present Chapter explores the design of the military in Azerbaijan, Russia and Lithuania in a comparative perspective. I will give some historical background on the state of armed forces in each country, then I will look into a portrait of a soldier (a conscript and/or a contractor, a dual citizen, a member of a minority group); and does this soldier enjoys her human rights. Answers to these questions show the content of the duty to defend the "fatherland" in these countries.

3.1. Historical background

After the collapse of the Soviet Union, all three states faced the need to reorganise their once closely intertwined armed forces. The armed Forces of Azerbaijan have undergone a series of reforms,¹⁶⁸ heavily affected by such factors as the Armenian-Azerbaijani conflict, the use of the military in internal politics and the relationship with Russia.¹⁶⁹ Reforms of the Lithuanian army were influenced by Lithuania's inability to defend against Soviet aggression, following occupation and loss of independence, and condition politics towards the military.¹⁷⁰ For instance, Lithuania abolished conscription in 2008,¹⁷¹ but the perception of Russia as a threat¹⁷²

¹⁶⁸ Elkhan Mehdiyev, "Security Sector Reform in Azerbaijan: Key Milestones and Lessons Learned," Geneva Centre for Security Sector Governance, last modified September 15, 2019, https://www.dcaf.ch/sites/default/files/publications/documents/SSR_in_Azerbaijani_feb2021.pdf.

¹⁶⁹ Elkhan Mehdiyev.

¹⁷⁰ Kestutis Paulauskas, "The Driving Logic Behind the Defence Reform in Lithuania: Building the Future Military." *Baltic Defence Review*, no. 9, volume 1/2003.

¹⁷¹ Country report and updates: Lithuania, War Resisters' International, accessed April 27, 2023, https://wri-irg.org/en/programmes/world_survey/country_report/en/lithuania.

¹⁷² Jurate Novagrokiene, "Transformation of the Military in the 21st Century: The Lithuanian Case." *Lithuanian Annual Strategic Review*, no volume specified (December 1, 2005): 189-207. doi:10.47459/lasr.2005.3.9.

encouraged Lithuania to join the NATO in 2004,¹⁷³ double its military budget since 2015 and, finally, reintroduce conscription in 2015.¹⁷⁴

Russia kept its imperial ambitions and invested in a strong military, however, reform of Russian armed forces is claimed to be unsuccessful.¹⁷⁵ There are several reasons behind this failure. To begin with, historically the army's needs were prioritised in comparison with the needs of society, as the army was perceived as a basis of the state.¹⁷⁶ Nostalgic military elites and conservatives favoured preserving elements of the Soviet military model, including the retention of large ground forces.¹⁷⁷ This attitude results in creating a reluctance to deviate from traditional force structures and strategies.¹⁷⁸ Another reason is the absence of an agreed plan of reform.¹⁷⁹ The armed conflict in Chechnya demonstrated a lack of democratic oversight in military activities, and the moral conduct of Russian soldiers, resulted in indiscriminate use of force, torture of civilians and prisoners, and other atrocities.¹⁸⁰ Modern Russian armed forces are characterised by infrastructure decay, recruitment crisis, and inadequateness to address modern threats.¹⁸¹ The validity of this criticism is demonstrated by the failures of the Russian army in the war with Ukraine.¹⁸²

¹⁷³ "Lithuania's membership in the North Atlantic Treaty Organization (NATO)," the Republic of Lithuania, Ministry of Foreign Affairs, accessed April 27, 2023, <https://www.urm.lt/default/en/foreign-policy/lithuania-in-the-region-and-the-world/lithuanias-security-policy/lithuanian-membership-in-nato>.

¹⁷⁴ Dovydas Rogulis, "The Development of the Lithuanian Armed Forces and Its Response to the Russian Conventional Threats in 2015–2020". *Jaunųjų Mokslininkų Darbai* 51, no. 1 (August 31, 2021): 48–58. <https://doi.org/10.15388/JMD.2021.4>.

¹⁷⁵ Golts, Aleksandr, and Tonya L Putnam, "State Militarism and Its Legacies: Why Military Reform Has Failed in Russia." *International Security* 29, no. 2 (2004): 121-158. [Muse.jhu.edu/article/174656](https://www.muse.jhu.edu/article/174656).

¹⁷⁶ Golts, Aleksandr, and Tonya L Putnam.

¹⁷⁷ Golts, Aleksandr, and Tonya L Putnam.

¹⁷⁸ Golts, Aleksandr, and Tonya L Putnam.

¹⁷⁹ Golts, Aleksandr, and Tonya L Putnam.

¹⁸⁰ Christopher C. Locksley, "A Russian Citizen in Uniform? Assessing the Applicability of the German Model of Civil-Military Relations to the Armed Forces of a Democratising Russian State." *Citizenship Studies* 4, no. 2 (2000): 167–87. doi:10.1080/13621020050078078.

¹⁸¹ Golts, Aleksandr, and Tonya L Putnam.

¹⁸² Stojar, Richard. The Russian invasion and its failure in the first days, *Defense & Security Analysis*, 39:3 (2023): 296-311. DOI: 10.1080/14751798.2023.2232188.

The new Azerbaijan army is built on examples and with the involvement of NATO and the Turkish military.¹⁸³ Lithuania constructed its armed forces in accordance with NATO standards and transformed them from a conscript army focused on national defence to professional units engaged in global peacekeeping missions and crisis-prevention operations.¹⁸⁴

3.2. Portrait of a Soldier

In all three states, the duty to defend the country is a constitutional duty: art. 76 of the Constitution of Azerbaijan, Art. 59 (1) of the Constitution of the Russian Federation and Art. 139 of the Constitution of the Republic of Lithuania. In all three states, this duty is obligatory only for men.¹⁸⁵ Women can, having a military speciality, join the armed forces of Azerbaijan¹⁸⁶ and Russia.¹⁸⁷ Lithuania does not set any requirements such as specific professions for women-volunteers.¹⁸⁸

On the question of recruitment of foreign citizens, the states differ. Azerbaijan accepts foreign contracts, except for Armenians.¹⁸⁹ Russia contracts any foreign citizens.¹⁹⁰ In contrast, foreigners cannot join the Lithuanian army.¹⁹¹

¹⁸³ Elkhan Mehdiyev.

¹⁸⁴ Miniotaite, Grazina, "The Socializing Practices of the Normative Model of Soldier in Lithuania: Lithuanian Case." PRIF-Research Paper No. II/14-2008.

¹⁸⁵ Law No. 274-IVQ (of December 23, 2011) on Military Duty and Military Service, Azerbaijan newspaper, February 11, 2012, No. 33, Art. 2 (2.0.8); Federal Law (of 28.03.1998) No. 53-FZ 'On Military Duty and Military Service', Art. 2(2); Republic of Lithuania. Law on National Conscription. Vilnius, October 22, 1996. No. I-1593, accessed April 27, 2023, <https://e-seimas.lrs.lt/rs/legalact/TAD/TAIS.188680/#:~:text=The%20following%20citizens%20of%20the,of%20completion%20of%20the%20service>.

¹⁸⁶ Law No. 274-IVQ of 23 December 2011 on Military Duty and Military Service, Azerbaijan newspaper, February 11, 2012, No. 33, Art. 3 (3.4).

¹⁸⁷ Resolution of the Government of the Russian Federation of November 27, 2006, No. 719 "On Approval of the regulation on Military Registration."

¹⁸⁸ Republic of Lithuania, Law on National Conscription, October 22, 1996, No. I-1593. Vilnius (as amended by 20 June 2002 No. IX-971). Art. 4(5,6).

¹⁸⁹ Jasutis, Grazvydas, Mikova Rebecca, and Toivanen Reetta, "Approaches to minorities in conscription systems in Eastern Europe, the South Caucasus, and Central Asia" Geneva Centre for Security Sector Governance, 2023, accessed April 27, 2024, <https://www.dcaf.ch/sites/default/files/publications/documents/MinorityConscripts.pdf>, 28.

¹⁹⁰ Jasutis, Grazvydas, Mikova Rebecca, and Toivanen Reetta.

¹⁹¹ "F.A.Q." Republic of Lithuania, Lithuanian Armed Forces, accessed 27 April 2023 <https://www.karys.lt/en/communicate/f.a.q/397>.

All three states regard dual citizenship with various degrees of dislike. The highest level of dislike is shown by Azerbaijan. Azerbaijan prohibits dual citizenship;¹⁹² voluntary acquisition of citizenship of another country is a ground for deprivation of Azerbaijani citizenship.¹⁹³ Another ground for deprivation of citizenship is voluntary service in the armed forces of another state.¹⁹⁴

As a general rule, Lithuania does not allow its citizens to acquire second citizenship.¹⁹⁵ This issue is a subject of public debate and a question for a referendum in May 2024.¹⁹⁶ Russia is the most lenient to dual citizens, they are not conscripted,¹⁹⁷ but can join the armed forces voluntarily.¹⁹⁸ Dual citizens, who served in the armed forces of another state, are exempted from conscription in Russia.¹⁹⁹ Until the change in the law in 2013 they were forced to serve in the Russian army.²⁰⁰

Russia and Lithuania struggle with recruitment. Ministry of Defence of the Republic of Lithuania advocates for the adoption of universal compulsory conscription for men and women.²⁰¹ Russia adopted more drastic measures, as the recruitment crisis is more acute because of the high death toll in the war with Ukraine,²⁰² including an unproportionally high

¹⁹² Law 527-IQ on Citizenship of the Republic of Azerbaijan of September 30, 1998, Art. 10.

¹⁹³ Law on Citizenship of the Republic of Azerbaijan, Art. 18(1).

¹⁹⁴ Law on Citizenship of the Republic of Azerbaijan, Art. 18(2).

¹⁹⁵ The decision of the Constitutional Court of the Republic of Lithuania “On the interpretation of the provisions of the Constitutional Court’s rulings of 30 December 2003 and 13 November 2006 related to citizenship issues,” 13 March 2013, <https://lrkt.lt/en/court-acts/search/170/ta911/summary>.

¹⁹⁶ “Lithuania’s dual citizenship referendum – meaning and myths,” LRT.lt, last modified October 17, 2023, <https://www.lrt.lt/en/news-in-english/19/2101487/lithuania-s-dual-citizenship-referendum-meaning-and-myths>.

¹⁹⁷ Federal Law of the Russian Federation “On Military Duty and Military Service.” Art. 2(2).

¹⁹⁸ Federal Law “On Military Duty and Military Service.”

¹⁹⁹ Federal Law No. 111-FZ “On Amending Article 23 of the Federal Law “On Military Duty and Military Service” of June 7, 2013.

²⁰⁰ Decision of the Judicial Collegium for Administrative Cases of the Supreme Court of the Russian Federation of June 1, 2017, No 81-KG17-4.

²⁰¹ “Human resource policy,” the Republic of Lithuania, Ministry of National Defence, accessed April 27, 2023 <https://kam.lt/en/human-resource-policy/>.

²⁰² Olga Ivshina, Becky Dale, and Kirstie Brewer, “Russia’s Meat Grinder Soldiers - 50,000 Confirmed Dead,” BBC Russian, last modified April 17, 2024. <https://bbc.com/news/world-68819853>.

number of ethnic minorities.²⁰³ One of the measures adopted to meet the demand for new soldiers was to recruit prisoners, originally it was done illegally,²⁰⁴ in 2023 this practice became a law.²⁰⁵ Migrants are reported to be recruited into the army even without their will.²⁰⁶

To sum up, a portrait of a typical soldier in the states in question is a male. In Azerbaijan and Russia, he can be a foreigner. If it is a Russian soldier in the Russian army he can have second citizenship. Russian soldiers can also be recruited “innovatively” - directly from prison and even without their will.

3.3. Human rights in the armed forces in question

Constitutions of all three states include the right to alternative service: art. 76 (2) of the Constitution of Azerbaijan, Art. 59(2) of the Constitution of the Russian Federation, and Art. 139 (para. 2) of the Constitution of the Republic of Lithuania. However, in Azerbaijan, the law on alternative service has not been adopted, thus, in practice, there is no alternative service.²⁰⁷

One of the most infamous problems of the Soviet army was systematic violent abuse (*dedovshchina*). It is reported that now there is less *dedovshchina* in the Azerbaijan army in comparison with Soviet times.²⁰⁸ Although there are allegations of torture in degrading treatment of soldiers of Armenian origin in the Azerbaijan army.²⁰⁹ At present, the Lithuanian military does not bear much resemblance to the Soviet army, infamous for *dedovshchina*,

²⁰³ Karolina Hird, George Barros, Layne Philipson, and Frederick W. Kagan, "Russian Offensive Campaign Assessment, July 18," Institute for the Study of War Press, last modified July 18, 2022. <https://www.understandingwar.org/backgrounder/russian-offensive-campaign-assessment-july-18>.

²⁰⁴ “Statement of the of the Working Group on the use of mercenaries,” OHCHR, last modified March 10, 2023, <https://www.ohchr.org/en/press-releases/2023/03/russian-federation-un-experts-alarmed-recruitment-prisoners-wagner-group>.

²⁰⁵ Federal Law No. 64-FZ “On Amending the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation” of March 23, 2024, accessed April 27, 2023, <http://publication.pravo.gov.ru/document/0001202403230018?index=2>.

²⁰⁶ Aliide Naylor, "Migrants Coerced into Fighting Putin's War," Center for European Policy Analysis (CEPA), last modified December 20, 2023, <https://cepa.org/article/migrants-coerced-into-fighting-putins-war/>.

²⁰⁷ *Mushfig Mammadov and Others v. Azerbaijan* (14604/08), ECtHR (Chamber) Judgment, October 17, 2017.

²⁰⁸ Elkhan Mehdiyev, "Security Sector Reform in Azerbaijan".

²⁰⁹ Communication No. 308/2006, Committee against Torture (CAT/C/39/D/308/2006), November 21, 2007.

disorder and corruption.²¹⁰ in contrast, Russian soldiers, risk enduring various human rights violations, caused by *dedovshchina*,²¹¹

Soldiers have limited freedom of expression and association. In Russia, they do not have trade unions.²¹² Lithuanian soldier complained to the ECtHR, claiming that he was fired for his opinion, and the Court admitted that the freedom of expression of a soldier might be legitimately limited to prevent public disorder.²¹³

3.4. Military justice

As for military justice, in all states, it has changed from Soviet times. In Azerbaijan, the system of military justice has evolved from military tribunals within the military to the military being a part of the civil courts system, with its military prosecutors and judges.²¹⁴ In Russia's system of military courts functions, which have a specific jurisdiction extending beyond military personnel to civil persons, charged with terrorism, extremism, etc.,²¹⁵ which poses human rights concerns.²¹⁶

In Lithuania, there are no specialised military courts. There is a military police, established as a law enforcement institution operating within the National Defence of the Republic of Lithuania and is part of the Lithuanian Armed Forces.²¹⁷ Its tasks include preventing crimes and other breaches of legal acts and investigating offences in the Armed Forces.²¹⁸ The law,

²¹⁰ Jurate Novagrokiene.

²¹¹ *Perevedentsev v Russia* (39583/05), ECtHR (Chamber) Judgement, April 24, 2014.

²¹² Christopher C. Locksle.

²¹³ *Jokšas v. Lithuania*.

²¹⁴ Elkhan Mehdiyev, 31.

²¹⁵ Criminal Procedure Code of the Russian Federation of December 18, 2001, No. 174-FZ, "Parlamentskaya gazeta", N 241-242, December 22, 2001. Art. 31(6).

²¹⁶ Criminal Trial Monitoring Report on Viktor Filippov and Yuliy Boyarshinov, Citizens Watch, 2020, accessed April 27, 2023, <https://courtmonitoring.org/ru/projects/otchety-o-monitoringe/delo-seti-sankt-peterburg-pervaya-instantsiya/>.

²¹⁷ Republic of Lithuania, Lithuania Armed Forces, accessed April 27, 2023, <https://kariuomene.lt/en/structure/other-units/military-police/23590>.

²¹⁸ "About the Lithuanian Armed Forces," Republic of Lithuania, accessed June 13, 2024, <https://www.kariuomene.lt/en/who-we-are/about-the-lithuanian-armed-forces/23642>.

prohibiting members of the Lithuanian armed forces from resolving labour and disciplinary disputes within the army, was recognised as unconstitutional.²¹⁹

²¹⁹ Constitutional Court of the Republic of Lithuania. "On Disputes Regarding Military Service: Case No. 44/2010." Ruling on the Compliance of Paragraph 1 (Wording of 7 July 1999) of Article 48 of the Republic of Lithuania Law on the Organisation of the National Defence System and Military Service with the Constitution of the Republic of Lithuania, December 10, 2012.

Conclusion

Returning to my research questions: should Europe grant asylum to Russians and Ukrainians fleeing conscription or deserting the battlefield? Does the answer depend on the “justness” of the war? Are states entitled to require their citizens to perform military service?

As demonstrated in Chapter 1, even considering the tendency to focus on individual rights, the language of civic duties is not obsolete. For instance, ecological citizenship mobilises individuals to address modern challenges like climate change.

Chapter 2 showed that the duty to serve in the army was crucial only during specific periods, such as in Ancient Greece. In the Roman Republic and Empire, this duty evolved, and it stopped being a necessary part of becoming a citizen. In the Middle Ages and later specific groups like nobles and mercenaries participated in wars, and the focus of being citizens shifted from duties to privileges attached to social class. Moreover, certain groups like women and ethnic minorities were denied civic rights because they were considered unable or not good enough to fight. The 18th and 19th centuries saw a resurgence in conscription with the rise of nation-states and the need for large armies. Horrific wars of the 20th century convinced the states that war should not be the means to settle disputes, and big standing armies were replaced with efficient professional armies ready to be deployed abroad for peacekeeping and humanitarian purposes, what underlines the concept of a postmodern army. Thus, the public good no longer requires a citizen to serve in the army.

In Chapter 3, I examined the militaries of Azerbaijan, Russia, and Lithuania to understand the reasons behind their decisions to retain the conscription. These states partially reformed their armies to meet postmodern needs but retained goals characteristic of modern armies, such as territorial defence or expansion. Azerbaijan and Lithuania offer more protection to their soldiers from human rights abuses, while Russia faces significant human rights concerns.

Azerbaijan and Lithuania demand high loyalty from their soldiers, while Russia, facing a recruitment crisis, indiscriminately recruits citizens, dual citizens, and foreigners, including prisoners. This approach devalues the patriotic duty element of citizenship in Russia. In contrast, Azerbaijan and Lithuania cultivate a republican tradition of citizenship, emphasizing loyalty and duty to defend the nation. However, the lack of alternative services in Azerbaijan justifies claims for asylum by its citizens. Lithuania's NATO membership, which assures military support, weakens its justification for conscription.

States are still afraid of the threat of aggression and, thus, the chance of the need to exercise the right to self-defence is not excluded. Therefore, the states are entitled to require their citizens to join the armed forces to repel a possible attack. They are also bound by human rights obligations. This includes *inter alia* respecting the right to life, freedom from torture, and conscientious objection. If states engage in unjust wars or violate international humanitarian law, their citizens have the right to evade conscription and seek asylum abroad. International law obliges states to grant asylum to such draft evaders and deserters. This conclusion is proved with examples of foreign states giving asylum to draft evaders and deserters from Russian army, for example.

In conclusion, although conscription can be justified by the need to defend the public good, states must design their military systems in a human rights-based approach and abide by international public law and international humanitarian law. If they fail to do so, citizens are entitled to abandon military service and seek refuge abroad.

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