Military Service and International Protection in Europe

Jurisprudence on applicants invoking compulsory military service, draft evasion and desertion as protection ground

November 2025

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List of abbreviations

Term	Definition
AN	Audiencia Nacional | Spanish National High Court
BAMF	Bundesamt für Migration und Flüchtlinge | Federal Office for Migration and Refugees (BAMF) (Germany)
BFA	Federal Office for Immigration and Asylum | Bundesamt für Fremdenwesen und Asyl (Austria)
BVwG	Bundesverwaltungsgericht | Federal Administrative Court (Austria)
CJEU	Court of Justice of the European Union
CNDA	Cour nationale du droit d'asile | National Court of Asylum (France)
COI	country of origin information
DIS	Danish Immigration Service
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUAA	European Union Agency for Asylum
EU+ countries	Member States of the European Union and associated countries (Iceland, Norway and Switzerland)
ICCPR	International Convenant on Civil and Political Rights

Term	Definition
IFA	Internal Flight Alternative
IHRL	International Human Rights Law
IHL	International Humanitarian Law
IRL	International Refugee Law
OFPRA	Office français de protection des réfugiés et apatrides | French Office for the Protection of Refugees and Stateless Persons (OFPRA)
QD	Qualification Directive. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
SAR	State Agency for Refugees (Bulgaria)
SEM	State Secretariat for Migration | Staatssekretariat für Migration (Switzerland)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHR	United Nations High Commissioner for Refugees
UNHCR's Handbook	UN High Commissioner for Refugees (2019). Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees (HCR/1P/4/Eng/REV. 4). https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967-protocol.
UNHCR's Guidelines	UN High Commissioner for Refugees. (2013). 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; corrigendum issued on 12 November 2014). UNHCR. https://www.unhcr.org/media/guidelines-international-protection-no-10-claims-refugee-status-related-military-service

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EUAA Grants

The EUAA Regulation No 2021/2303 introduced the possibility for the EUAA to award grants to help carry out its mandate, which is to support Member States in implementing the Common European Asylum System (CEAS).

The call for proposals for "Research and analysis of jurisprudence on international protection and registration in the EUAA Case Law Database" (EUBA-EUAA-2025-ASYLUMCASELAW) was launched on 31 October 2024 to enrich the collection of jurisprudence stored in the EUAA Case Law Database, improve access to relevant asylum case law and to strengthen the effective implementation of the CEAS.

IMPACt Project and the University Institute of Studies on Migration (Comillas Pontifical University)

The IMPACt Project is the first grant awarded by the EUAA. The University Institute of Studies on Migration (Instituto Universitario de estudios sobre Migraciones) (IUEM) implements this grant from 6 May 2025 to 5 January 2026.

The project entails collecting relevant publicly available jurisprudence on asylum and registering them in the EUAA Case Law Database, and also drafting two analytical reports on topics related to CEAS or the implementation of the Pact on Migration and Asylum.

The **University Institute of Studies on Migration (IUEM)** at the Comillas Pontifical University is a specialized academic center dedicated to research, teaching, and social engagement in the fields of migration, refuge, international protection and cooperation. Since its foundation in 1994, IUEM has developed interdisciplinary research lines and collaborative projects involving faculties and units across the university.

IUEM manages a wide range of academic and outreach initiatives, including:

- The **Doctoral Programme on Migration and International Cooperation**, which provides advanced training and fosters original research on the dynamics of migration, forced displacement, asylum, and global cooperation.
- The official **Master's Degree in International Migration** and the **Master's Degree in International Development Cooperation**, which combine academic training with professional internships in national and international organisations.
- The **Cátedra de Refugiados y Migrantes Forzosos** (Chair of Refugees and Forced Migrants, sponsored by INDITEX), which carries out interdisciplinary research, training, and policy engagement in the field of forced displacement.

- The **Cátedra de Catástrofes** (Chair on Catastrophes), focused on analysing humanitarian crises and disaster response, particularly in relation to displaced populations and vulnerable communities.
- The **Observatory Iberoamericano on Mobility, Migration and Development (OBIMID)**, a regional research and cooperation network linking institutions in Latin America, Portugal, and Spain.
- The peer-reviewed journal **Migraciones**, a bilingual (Spanish/English), open-access publication ranked Q1 in SCImago Journal Rank.
- The annual **Seminar "Migraciones y Refugio"**, which gathers academics, NGOs, public agencies and practitioners to debate emerging issues on migration and protection.

In addition, IUEM has successfully implemented **numerous national and European projects** funded under competitive calls, in areas such as refugee protection, human trafficking, integration policies, humanitarian assistance, and the development of the EU's Common European Asylum System.

Note on the EUAA Case Law Database

The cases presented in this report are based on the EUAA Case Law Database, which contains summaries of decisions and judgments related to international protection pronounced by national courts of EU+ countries, the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR).

The database serves as a centralised platform on jurisprudential developments related to asylum, and cases are available in the Latest updates (last ten cases by date of registration), Digest of cases (all registered cases presented chronologically by the date of pronouncement) and the Search page.

See here an updated list of jurisprudence on compulsory military service, draft evasion and desertion.

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Methodology

This report presents judgments, decisions, preliminary rulings and national jurisprudence from courts across EU+ countries, together with key case law from the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) relating to asylum claims based on a refusal to perform military service, draft evasion or desertion. The selected jurisprudence addresses the evolving understanding of when such claims amount to persecution under Article 9(2)(a)-(e) and related provisions of the recast Qualification Directive (QD), the requirement of nexus to a Convention ground, as well as their interaction with international refugee and human rights laws.

Covering the period from 2011 to 2025, the report provides a comprehensive overview of how European and national courts have assessed claims involving conscientious objection, alternative service, disproportionate or discriminatory sanctions, and the nexus to protection grounds such as political opinion or religion.

The cases have been drawn from EUAA sources and national and international databases. While not exhaustive, this selection illustrates the main trends and challenges in adjudicating military service-related asylum claims, highlighting convergences, divergences and evolving jurisprudential developments across Europe. The selection of cases presented in this report is indicative rather than exhaustive, intended to highlight trends and common approaches at national and European levels, as well as various jurisprudential developments.

It must be underlined that the analysis is based solely on the judgments examined within the scope of this report. They do not exhaust the entirety of national jurisprudence in any given Member State. As a result, while certain tendencies can be identified, they should not be interpreted as definitive assessments of an entire national practice, but rather as indicative trends derived from representative samples of case law.

KEY TERMS

Military service	Service or acts performed in the service of the armed forces of a state. It may be performed during peacetime or during an armed conflict. It can follow a voluntary entry into the military, or be based on a compulsory conscription. Non-state actors cannot impose military conscription.
Alternative Service	Service performed by conscientious objectors as a substitute for conscription into the armed forces of the state. Alternative service may take the form of civilian service outside the armed forces (e.g. in a public health facility, voluntary work for a charitable institution) or a non-combatant role within the army (e.g. a position as a cook or an office worker).
Draft evasion	Failure by a civilian to register for or comply with a call for recruitment for compulsory military service.
Desertion	A situation where a soldier serving within the armed forces leaves their military post or function without leave, or resists being called to fulfil military obligations.

*See EUAA jointly with Member States, *Practical Guide on Political Opinion*, December 2022, p. 54

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Main highlights

- Over the past decade, European courts have been confronted with cases from countries such as Eritrea, Russia, Syria, Türkiye, and Ukraine, where compulsory military service has raised urgent questions of international protection. These cases show that conscription may expose individuals to three main risks: being forced to participate in international crimes (as in Syria's civil war or Russia's invasion of Ukraine), facing disproportionate or discriminatory penalties for refusal (as seen in Russia and Türkiye), or enduring inhuman and degrading service conditions (notably Eritrea's system of indefinite national service).

- This is how European courts have increasingly recognised that compulsory military service can intersect with international protection needs in three main ways: when service would likely involve participation in crimes under Article 12(2) of the recast QD, when penalties for refusal are disproportionate or discriminatory, and when conditions of service are inhuman or degrading, such as in cases of indefinite or abusive conscription. This trend has been reinforced by the landmark *Shepherd* and *EZ* rulings of the CJEU, which clarified both the threshold of the likelihood of involvement in international crimes and the presumption that refusal may be politically or religiously motivated. As noted in the EUAA Practical Guide on Political Opinion, such claims may equally be linked to religious beliefs, to membership of a particular social group, or to race and ethnicity (e.g. where conscripts from a targeted group face harsher treatment or forced recruitment), while children from certain ethnic groups may face conscription because of their identity.

Key holdings of the CJEU in landmark cases

***Shepherd* v *Germany* (C-472/13, 2015):**

- Refusal of military service can justify international protection if the applicant plausibly shows a **real risk of being compelled to commit war crimes**.
- The provision covers not only combatants but also support roles, such as logistics and technical staff, where their contribution would provide **indispensable support** to unlawful acts.

***EZ* v *Germany* (C-238/19, 2020):**

- In the context of a **civil war marked by systematic war crimes**, refusal to serve is **presumed to be perceived as political opposition** by the authorities.
- Applicants cannot be required to formally declare conscientious objection where no such legal avenue exists in their country of origin, as this would itself expose them to persecution.

- National courts have applied these standards with varying intensity. Many judgments overturned negative asylum decisions when a refusal or evasion from military service was met with severe penalties, or when genuine alternatives such as conscientious objector status or civilian service were practically inaccessible. Courts have consistently stressed that alternatives must be effective in practice and not merely theoretical or punitive. Importantly, several national courts have also examined the actual enforcement of penalties for draft evasion and desertion, noting that where criminal sanctions exist in law but are rarely applied in practice, the risk of persecution may be reduced. This approach has sometimes diverged from the jurisprudence of the European Court of Human Rights under Article 9 of the ECHR, where even the imposition of a relatively short prison sentence on a genuine conscientious objector — as in *Bayatyan* v *Armenia* (Grand Chamber judgment, 2011) — was found to violate freedom of thought, conscience and religion.

- Courts have also underlined that so-called exemption-fee schemes — where applicants may avoid military service by paying a substantial sum — require close scrutiny. In some cases, these mechanisms were considered credible and accessible, thereby excluding protection. However, national jurisprudence has increasingly recognised that exemption fees may be unsuitable for genuine conscientious objectors: either because they impose an excessive financial burden, or because paying such a fee amounts to financial support for the very military system they oppose, defeating the purpose of conscience-based objection. Across national contexts, courts have also highlighted the importance of proportionality in assessing penalties. Withdrawal or deprivation of from basic rights, has been consistently found disproportionate.

- Particular attention has been given to vulnerable applicants, especially minors, for whom any risk of recruitment or re-recruitment is considered to amount to persecution. Nonetheless, not all minor draft evader claims succeed, as shown in jurisprudence that emphasises the need to consider both the general risks of child recruitment and the applicant's personal profile and social context.

- Additional issues also emerge from case law. Courts have examined whether family members of draft evaders or deserters may also qualify for protection when political opposition is imputed to them, though with varying limitations. They have considered whether conscientious objectors may be recognised as members of a particular social group, with differing approaches across Member States. Cases of forced recruitment by non-state armed groups raise the question of whether states are able or willing to provide effective protection.

- National jurisprudence has further analysed the availability of internal protection alternatives, often rejecting them where the persecutor is the state or a non-state group exercising territorial control.

- Finally, courts have underlined the central role of evidence — personal statements, country of origin information, and official documentation — in substantiating claims.

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The cases collected illustrate that while courts have converged on recognising core scenarios of protection—such as indefinite service in Eritrea, forced participation in atrocities in Syria or severe penalties in Russia—they remain divided in more marginal cases, especially when states provide formal but questionable alternatives. The overall trend, however, is a progressive alignment towards ensuring that no applicant is forced to choose between violating their conscience and facing persecution, in line with fundamental rights and EU standards.

1. Introduction and legal framework

While asylum claims related to military service have arisen for decades, recent conflicts and authoritarian practices — particularly in Eritrea, Russia, Syria, and Ukraine — have brought renewed urgency to the issue. Individuals continue to flee their home countries to avoid forced conscription or punishment for draft evasion, and European asylum authorities and courts are confronted with cases where performing military service would violate conscience or involve participation in internationally condemned acts. To harmonise practices, it becomes crucial to clarify when refusing military service qualifies someone for refugee status or other protection.

A person's fear of persecution for resisting compulsory military service can engage multiple bodies of law: international human rights law (IHRL), international refugee law (IRL) and European asylum law. Under IHRL, the right to freedom of thought, conscience and religion (e.g. Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights) has been interpreted to encompass conscientious objection to military service.[1]

In Europe, the European Convention on Human Rights (ECHR) does not explicitly mention conscientious objection. Historically, the European Commission on Human Rights took the view that Article 9 (freedom of thought, conscience and religion) does not guarantee a right to refuse military service. However, the landmark *Bayatyan* v *Armenia* judgment (ECtHR 2011, Grand Chamber)[2] reversed course and the ECtHR recognised for the first time that punishing a genuine conscientious objector (in that case a Jehovah's Witness refusing Armenia's draft) violated Article 9 of the ECHR. The court acknowledged that the convention is a 'living instrument' and noted the near-universal recognition of conscientious objection in European states, thus holding that prosecuting someone for refusing military service due to sincere religious or moral convictions can breach the ECHR's freedom of conscience clause. This evolving human rights consensus establishes that, while states may require military service, they must accommodate conscientious objectors or they risk violating fundamental rights.

Under IRL, the 1951 Geneva Refugee Convention and its 1967 Protocol do not explicitly refer to military service or conscientious objection. Nevertheless, their definition of a refugee (a well-founded fear of persecution for reasons of religion, political opinion and other grounds) can encompass certain instances of draft evasion or desertion. UNHCR's *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees* (§167–174) (UNHCR Handbook)[3] and *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* (2013) (UNHCR Guidelines)[4] provide authoritative interpretations. The UNHCR Handbook clarifies that refugee status may arise where refusal of military service is based on political, religious, or moral convictions, and where penalties for such refusal are disproportionately severe or discriminatory. The UNHCR Guidelines go further, stressing that protection may apply where military service would likely involve participation in crimes under international law, where no

genuine alternative service is available, or where the individual's refusal is linked to a protected ground such as religion or political opinion. They also emphasise that conscientious objectors may qualify as a particular social group, and that even indirect forms of complicity (for example, in logistics or support roles) can bring an applicant within the scope of refugee protection.

Within European asylum law, these concepts are codified in the recast QD (EU Regulation (2011/95/EU)) [5] which binds EU Member States. Article 9(2)(e) of the recast QD explicitly lists as an example of an act of persecution: "prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses of Article 12(2)" (such as war crimes). Additionally, asylum claims related to conscription can fall under the general refugee grounds of political opinion or religion, per Article 10 of the recast QD, depending on the motives imputed to the applicant.

The Court of Justice of the EU (CJEU) has given important rulings interpreting these provisions. In *Bundesrepublik Deutschland v Y (Andre Shepherd)* (CJEU 2015, C-472/13), the court addressed an asylum request by a U.S. soldier who deserted to avoid serving in Iraq. The CJEU confirmed that Article 9(2)(e) of the recast QD protects draft evaders or deserters if they can show that the conflict they would be forced to participate in entails the commission of war crimes and their refusal is likely to result in persecution (e.g. heavy punishment). However, the court in *Shepherd* set a high bar of proof: the applicant must demonstrate a reasonable likelihood that they would be involved in such crimes – a test which Mr Shepherd failed given he was a mechanic in a regular army which did not systematically commit atrocities. More recently, in *EZ v Bundesrepublik Deutschland* (CJEU 2020, C-238/19) concerning a Syrian who fled conscription, the CJEU took a different position on the issue of political opinion. The court held that when someone refuses to perform military service in a civil war, it should be presumed that the regime will attribute a political opinion to the person's refusal.

RECAST QUALIFICATION DIRECTIVE 2011/95/EU of 13 December 2011

Article 9 – Acts of persecution

1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

2. Acts of persecution as qualified in paragraph 1 can, inter alia, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;
(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
(c) prosecution or punishment which is disproportionate or discriminatory;
(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2);
(f) acts of a gender-specific or child-specific nature.

3. In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.

CJEU, 2015, *Andre Lawrence Shepherd v Bundesrepublik Deutschland* (C-472/13)

In the framework of a preliminary ruling, the CJEU addressed a request by a U.S. soldier who deserted to avoid serving in Iraq and applied for asylum in Germany. He had previously been deployed in Iraq, where he worked in helicopter maintenance, without participating in military action or combat operations. He argued that he no longer wished to participate in a war he considered illegal where war crimes were being committed, and he submitted that his refusal to serve in Iraq put him at risk of social ostracism and criminal persecution for desertion in the United States.

This summary of the ruling is drafted in the form of principles drawn from the ruling.

- For an applicant to be granted international protection on the grounds of draft evasion, he or she must prove that conscientious objection is not available in their country of origin. In other words, **it must be established that draft evasion or desertion are the only means to avoid military service.**
- Article 9(2)(e) of the recast QD applies **exclusively in situations of armed conflict**, and **covers all military personnel**, including logistical and technical support personnel who are **not directly involved in combat operations.**
    - It must be established that the deserter or draft evader's role would provide **indispensable support to the commission of war crimes**, whether in direct combat or in logistical and technical support.
    - It must be plausibly established that the draft evader's unit **has carried out, or is likely to carry out, operations in which war crimes are likely to occur**. There is no need for the unit to already have been found guilty of such crimes.
- If an applicant cannot demonstrate that military service would involve war crimes, the potential penalties faced for draft evasion must be examined. Under Articles 9(2)(b) and (c), **punishment may amount to persecution if it is disproportionate or discriminatory** when compared to penalties imposed on similarly situated citizens.

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CJEU, 2020, *EZ v Bundesrepublik Deutschland* (C-238/19)

The CJEU addressed an asylum request of a Syrian citizen who fled his country of origin in 2014 due to his refusal to perform his military service, fearing that he would be forced to take part in the civil war. His application was rejected, since no connection was found between the persecution he feared and the grounds of persecution which may give rise to international protection. The applicant appealed before the Administrative Court in Hannover, which requested a preliminary ruling to the CJEU concerning the interpretation of certain aspects of Article 9(2)(e) and 9(3) of the recast QD.

This summary of the ruling is drafted in the form of principles drawn from the ruling.

- When in the applicant's country of origin there is no formalised procedure for obtaining conscientious objector status or to apply for alternative service, **an applicant cannot be required to formalise the refusal through a specific procedure to be eligible** for international protection.
    - The applicant cannot be expected to declare his or her refusal to perform military service to the authorities where such a refusal is unlawful and would expose them to persecution.
- Regarding the application of Article 9(2)(e), in the context of **a civil war marked by systematic commission of war crimes, crimes against humanity and other crimes under Article 12(2) of the recast QD by the army, using conscripts, it should be assumed that military service will inevitably involve direct or indirect participation in such crimes**, regardless of the applicant's field of operation.
- Even where persecution under Article 9(2)(e) has been established, **it must be linked to one of the reasons of persecution cited in Article 10 of the recast QD** (race, religion, nationality, membership of a particular social group and political opinion).
    - This nexus between the act of persecution and the reasons for persecution **cannot be automatically presumed in all cases of refusal to perform military service** – while refusal often stems from political opinion, religious belief or membership of a social group, it may also arise from other factors such as fear of injury or death.
    - It is not for the applicant to prove this connection, but for the **competent authorities to assess the plausibility** of the link to grounds of persecution.
    - However, there is a **strong presumption that a refusal to perform military service under Article 9(2)(e) of the recast QD relates to one of the Article 10 grounds** – a refusal in the context of an armed conflict, where there is no legal possibility of avoiding military obligations, is likely to be perceived by national authorities as political opposition.

2. Key legal concepts

The assessment of asylum claims related to compulsory military service, draft evasion or desertion requires careful consideration of several interrelated legal concepts under international and European refugee laws. Central to this analysis are the reasons of persecution most often invoked in such cases — political opinion and religion — as well as the recognition of conscientious objection and the availability of alternative service.

2.1. Reasons for persecution based on political opinion or religion

According to the definition of refugee in Article 1A(2) of the 1951 Geneva Convention and Article 2(d) of the recast QD, a well-founded fear of persecution must be related to one or more grounds set out in the Convention or EU Directive, including political opinion and religion. Refusal to perform compulsory military service[1] can intersect with two common refugee grounds – political opinion and religion.

Persecution based on the ground of political opinion

The ground of political opinion extends well beyond formal affiliation with a political movement or ideology. It encompasses not only the applicant's active political expression, but also opinions imputed to them by the authorities. Refusal to perform military service or objection to participation in a specific conflict may be interpreted by state actors as opposition to governmental policies or as a broader stance of dissent.[6] This approach is consistent with Article 10(1)(e) of the recast QD, which clarifies that political opinion includes opinions attributed to the applicant by the actor of persecution:

> Article 10.1.(e) of the recast QD: *The concept of political opinion shall, in particular, include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.*

Attempts to evade military service may therefore be perceived as evidence of political opposition, even in the absence of explicit dissent.[7]

[1] Military service means "service or acts performed in the service of the armed forces of a state. It may be performed during peacetime or during an armed conflict. It can follow a voluntary entry into the military, or be based on a compulsory conscription. Non-state actors cannot impose military conscription". See the EUAA *Practical Guide on Political Opinion*, December 2022, p. 54.

According to the EUAA, this reasoning can also extend to family members of draft evaders[2] or deserters[3] where state or non-state actors attribute political dissidence to them by association.

In practice, persecution for draft evasion frequently falls under the Convention ground of political opinion, since the act of refusal itself is often politicised by the authorities. For example, in *Police and Border Guard Board v Applicant* (Estonia, 13 December 2024), the court, citing the CJEU, observed that an authoritarian state such as Belarus would likely regard draft evasion as politically motivated dissent.

Persecution based on the ground of religion

The concept of religion in asylum law is interpreted broadly. As underlined by the EUAA,[8] it encompasses not only theistic faiths but also non-theistic and atheistic beliefs, as well as moral, ethical, humanitarian and similar convictions.

Religion may therefore extend beyond formal worship to cover identity, way of life or deeply held conscience-based views. This interpretation is reflected in Article 10(1)(b) of the recast QD, which confirms the wide scope of the ground:

> Article 10.1.(b) of the recast QD: *The concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief.*

Refusal to perform compulsory military service on religious or conscience grounds may constitute persecution if the applicant can demonstrate that their convictions are sincerely held and the authorities have failed to take them into account when imposing service.[9]

The EUAA has further noted that laws of general application, such as universal conscription, may have a disproportionate impact on particular religious groups, raising protection concerns.[10]

National jurisprudence has applied these principles. In *T.C. v Ministry of the Interior* (10 December 2021), the Supreme Administrative Court in Czechia remitted a case for a reassessment after a Turkish adherent of the Hare Krishna movement claimed conscientious objection to military service based on religious grounds. The court emphasised the importance of assessing both the credibility of the applicant's convictions and the nexus between those beliefs and his refusal of military service, recognising that genuine religious objections may fall within the scope of persecution under Article 9(2)(e) of the recast QD.

[2] Draft evasion means "when a civilian fails to register for or comply with a call for recruitment for compulsory military service". See the EUAA *Practical Guide on Political Opinion*, December 2022, p. 54.
[3] Desertion means "when a soldier serving within the armed forces leaves their military post or function without leave, or resists being called to fulfil military obligations". See the EUAA *Practical Guide on Political Opinion*, December 2022, p. 54.

2.2. Conscientious objection, alternative service and its limits

A central issue in asylum claims related to military service is the treatment of individuals who refuse to serve on grounds of conscience. International and European laws recognise that deeply held moral, ethical, religious or humanitarian convictions may justify conscientious objection, and such objections must be accommodated by states through genuine alternatives to military service. The way in which countries regulate, restrict or deny this right is often decisive in determining whether refusal amounts to persecution under Article 9(2)(e) of the recast QD.

Conscientious objection[4] is the principled refusal to perform armed service due to moral, ethical, religious or political beliefs.[11] The right to conscientious objection has been recognised as such by the European Court of Human Rights. In *Bayatyan* v *Armenia*, the Grand Chamber held that punishing an individual for refusing military service on religious grounds violated Article 9 of the ECHR (freedom of thought, conscience and religion). The applicant, a Jehovah's Witness, was sentenced to prison for his conscientious objection. The court recognised, for the first time, that conscientious objection is protected under Article 9 of the ECHR, emphasising that the right to freedom of religion includes the right to refuse military service when such refusal is motivated by genuinely held religious beliefs. It concluded that the absence of an alternative civilian service and the imposition of a prison sentence constituted an interference that was neither necessary in a democratic society nor proportionate to the legitimate aim pursued.

Many countries (including most in Europe) provide some legal accommodation, typically in the form of alternative civilian service. Alternative service allows an individual to fulfil a service obligation in a non-military capacity (for example, in healthcare, education or administrative roles) or to serve in a non-combatant military role.[12] The availability of a reasonable alternative service is highly relevant to asylum claims: if a person *could* avoid combat duty in their country by opting for civilian service, then a claim of persecution may be weakened.[13] A state that offers a genuine alternative to those who cannot in conscience bear arms is less likely to be persecuting them – it is accommodating their belief. By contrast, a state that *refuses to recognise* conscientious objection and forces everyone into combat duty (or punishes refusal harshly) may be engaging in persecution.[14]

There are also limits to conscientious objection in law. The right is typically recognised for personal, sincere convictions – one cannot evade service simply out of convenience or fear without a principled basis. Moreover, international norms do not protect violent evasion, such as using force against authorities, sabotaging military infrastructure, or engaging in armed resistance to avoid conscription. Nor do they protect deeply-held, not a mere pretext to avoid combat. Evidence such as membership in pacifist or religious organisations, prior behaviour (e.g. refusal to bear arms while in the army) or clear statements of belief can support their case. Even a volunteer soldier can develop a conscientious objection over time – for example,

[4] The right to conscientious objection is derived from the right to freedom of thought, conscience and religion and is covered under Article 18 of the Universal Declaration of Human Rights (UDHR), Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10(2) of the Charter of Fundamental Rights of the European Union (EU Charter).

a person may willingly enlist but later become morally opposed to a specific war or all wars; such evolution is recognised in UNHCR guidance.[15]

The recast QD, Article 9(2)(e) and jurisprudence (e.g. *Shepherd*) focus on whether the applicant's situation meets the criteria (no access to alternative service, risk of punishment, conflict involves illegal acts), rather than whether the home country thinks the refusal is legitimate. In summary, if a country provides a reasonable alternative service and proportionate penalties, a claimant may not succeed in arguing persecution. But if no alternative service exists (or it is punitive in length or nature), and especially if objectors are severely punished, then the threshold of persecution can be met. Each case is fact-specific, requiring an assessment of the legal framework of the home country and the claimant's personal stance.

2.3. Exceptions to legitimate military service obligations

Military service must meet certain criteria to be lawful and justified: it must be prescribed by law, applied in a non-arbitrary or discriminatory manner, respond to genuine military needs and be subject to judicial review. States may also impose penalties that respect human rights standards on individuals who desert or evade drafting when not based on a valid conscientious objection. This exception for legitimate military service obligations applies only to states, meaning that non-state armed groups cannot impose compulsory military service.[16]

States have a sovereign right to enforce compulsory military service, and not every enforcement action amounts to persecution. For instance, if a state conscripts its citizens through a fair system and imposes ordinary penalties for evasion (e.g. fines), this alone is usually not considered persecution. The UNHCR Handbook notes that "Fear of prosecution and punishment for desertion or draft evasion does not in itself constitute a well-founded fear of persecution under the definition".[17] The exception arises where the particular service or the sanction amounts to persecution. For instance, service in internationally condemned conflicts may compel the person to participate in acts such as war crimes or crimes against humanity - then prosecution for refusing can itself be persecution.

Regarding the specific punishment, if the person may be subject to a disproportionate or discriminatory punishment attaining a high level of severity, it may be considered as persecution. For example, a law that imprisons draft evaders for many years or repeatedly re-calls and re-punishes them (never letting them reintegrate into civilian life) can cross the threshold.

Even when a person does not object to serving *per se*, if the conditions of the service are so extreme that they violate basic human rights, then forcing someone into those conditions can be persecution.

A prominent example is Eritrea's indefinite national service programme. In Eritrea, men and women are nominally conscripted for 18 months, but in practice they often serve for decades under harsh conditions (forced labour, abuse and without the freedom to leave). Returnees to Eritrea who deserted or evaded service have faced imprisonment, torture or even extrajudicial

punishment. European courts have come to recognise that such open-ended, abusive conscription is not a legitimate obligation but a form of persecution or inhuman treatment. For instance, in the Netherlands in *Applicant* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* (28 September 2023), the Court of the Hague seated in Groningen found it plausible that a return to Eritrea would lead to a risk of forced military or civil service for a female Eritrean applicant with a minor child and would constitute a violation of Articles 3 and 4(2) of the ECHR.

In summary, regular compulsory service is legal, but circumstances can create exceptions. Asylum law looks at those exceptions: conscientious or political objections that are brutally suppressed, service that entails criminal acts or conscription systems that themselves are cruel or discriminatory. In those cases, individuals may have a right to protection.

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3. Substantive grounds for international protection

The interpretation of Article 9 of the recast QD, and in particular Article 9(2)(e) concerning the refusal of military service, has been significantly shaped by the jurisprudence of the CJEU. Two preliminary rulings, *Shepherd* and *EZ,* provide authoritative guidance on the scope of protection which is available to draft evaders and deserters. These judgments addressed fundamental questions of when a refusal to perform military service amounts to persecution, how the risk of involvement in international crimes should be assessed, and under what circumstances a refusal is presumed to be linked to a Convention ground. Together, they established the legal framework that national authorities and courts must apply when evaluating asylum claims involving conscription, desertion or conscientious objection.

The dispute in the main proceedings in *Shepherd* v *Germany* concerned a United States national whose international protection application was rejected in Germany in 2011. The applicant had enlisted for service in the United States army in 2003, where he was trained as a helicopter maintenance mechanic. He was transferred to a base in Germany in 2004 as part of an air support battalion and subsequently deployed in Iraq from September 2004 to February 2005 where he worked in helicopter maintenance, without participating in military action or combat operations. After his return to Germany, he extended the term of his contract, and in 2007, after receiving an order to return to Iraq, he left the army and applied for asylum in Germany. He argued that he no longer wished to participate in a war he considered illegal where war crimes were being committed, and he submitted that his refusal to serve in Iraq put him at risk of social ostracism and criminal persecution for desertion in the United States. After his asylum application was rejected, he filed an appeal before the Bavarian Administrative Court in Munich. The court referred a number of questions to the CJEU on the interpretation of Article 9(2)(b), (c) and (e) of the recast QD.

In *EZ* v *Germany*, the case involved a Syrian national who applied for asylum in Germany in 2016. He had fled his country of origin due to his refusal to perform his military service, fearing that he would be forced to take part in the civil war. He had been granted a deferment of his military service until February 2015 to complete his university studies. His application was rejected, since no connection was found between the persecution he feared and the grounds of persecution which may give rise to international protection. The applicant filed an appeal before the Administrative Court in Hannover, which made a request to the CJEU for a preliminary ruling on the interpretation of certain aspects of Article 9(2)(e) of the recast QD.

The interpretations provided by the CJEU in these two rulings clarified key elements and conditions in the assessment of substantive grounds of asylum claims in cases of draft evasion or forced conscription. This section provides an analysis of the key elements established by the CJEU, and an overview of the determinations made by courts and tribunals in EU national jurisdictions on the matter.

3.1. Well-founded fear of persecution

An applicant must have a well-founded fear of persecution upon a return, generally consisting of a fear of punishment for draft evasion/desertion or forced conscription into a persecutory situation. Establishing this fear involves both the objective situation in the country and the subjective credibility of the individual. Regarding the objective situation, it is necessary to consider the consequences for someone who has refused or avoided military service. For example, is there credible evidence that draft evaders are imprisoned, tortured or executed? How severe are the penalties in law and practice? Are amnesties available? The scenario can change over time. For instance, during the Syrian civil war, a young man from Syria could reasonably fear that if returned, he would be conscripted (since exit records and lists of reservists were monitored) and then punished severely for having left or sent to the frontline. This was an objectively well-founded fear when the war was ongoing and the regime was known to detain returnees.[5]

3.1.1. Conscientious objection: Availability of alternatives to military service

Regarding EU asylum law, one key precondition of a well-founded fear of persecution which was identified by the CJEU in both its preliminary rulings regarding Article 9(2)(e) of the recast QD was the lack of availability, in an applicant's country of origin, of the possibility of being exempted from military service or providing appropriate alternative service in its place. The key finding in this sense was that, when the country of origin legally provides the possibility of objecting to state military service for reasons of conscience or allows for appropriate alternative service, the applicant's failure to make use of these possibilities excludes any protection under Article 9(2)(e) of the recast QD.

In *Shepherd* v *Germany*, the CJEU was specifically asked whether an applicant's failure to make use of procedures for obtaining conscientious objector status, if this possibility was available in the country of origin, would exclude protection under the recast QD. The CJEU held that for an applicant to be granted international protection, he must prove that conscientious objection is not available, in other words, that draft evasion or desertion would be the only means to avoid performing compulsory military service.

In *EZ* v *Germany,* the CJEU held that when a procedure does not exist for obtaining conscientious objector status or alternative service, an applicant cannot be required to formalise the refusal through a specific procedure. The court stated that due to the fact that such a refusal is unlawful in the country of origin and would expose the applicant to prosecution, the applicant cannot be expected to declare the refusal to the military authorities.

Therefore, the availability of legal alternatives to conscription (or lack thereof) is crucial in assessing persecution claims under Article 9(2)(e) of the recast QD.

The possibility to legally obtain conscientious objector status and the availability of alternatives to military service have also been assessed by courts and tribunals in different

[5] See EUAA Country Guidance Syria of February 2023, Section 4.2 "Persons who evaded or deserted military service", pp. 68-78.

EU Member States. In France, the National Court of Asylum (CNDA) analysed the possibility of legally evading military service in countries such as Türkiye (*C. v French Office for the Protection of Refugees and Stateless Persons* (7 June 2022), Kazakhstan (*M.A. v French Office for the Protection of Refugees and Stateless Persons* (13 May 2024) and Russia (*M.A. v Office for the Protection of Refugees and Stateless Persons* (20 July 2023). In these cases, the CNDA analysed not only the absence of legally prescribed alternatives to conscription but also, if they are provided, whether such alternatives were accessible to the applicant.

For Türkiye, the CNDA concluded that, although domestic legislation allows an exemption through the payment of a fee, this option cannot be considered a viable alternative for conscientious objectors, as it still requires the individual to undergo 1 month of military training.

In the Russian context, the CNDA acknowledged that, while alternative civilian service was provided by law, it was not available to the applicant in question who was a reservist, and in any case, it noted that requests for alternative service were systematically denied since the announcement of partial mobilisation in 2022. The Regional Administrative Court of Magdeburg in Germany took a similar approach in *Applicant v Federal Office for Migration and Refugees* (1 October 2024) by recognising not only the absence of alternatives to military service in Russia, but also the lack of effective remedies or appeals against conscription orders.

Likewise, in a judgment of 2024, the Spanish National High Court *(Audiencia Nacional)* verified not only the formal recognition of conscientious objection in Ukraine - limited to members of officially registered communities, but also the actual enforcement of penalties for draft evasion or desertion. The Spanish court found that very few prison sentences were imposed for such offenses and most cases were suspended or not enforced — a fact that, in the court's view, potentially diminishes the well-founded fear of harsh punishment for draft evasion.[18] However, this reasoning may be contrasted with the approach of the ECtHR in *Bayatyan*, where the Grand Chamber held that imprisonment of a genuine conscientious objector — even for a relatively short period — amounted to a violation of Article 9 of the ECHR.

A key issue in evaluating alternatives to military service is the option in some countries to avoid conscription by paying an exemption fee. In certain cases, this has been viewed as a legitimate alternative to conscription (thus excluding any protection under Article 9(2)(e) of the recast QD). In other instances, however, it has been deemed unsuitable for conscientious objectors — either because the fee imposes an excessive financial burden or because paying it constitutes an act of financial support to the state that defeats the purpose of conscientious objection (which is inherently a form of political opposition).

In this respect, in the case *Applicant v Federal Office for Immigration and Asylum* (2 October 2024), the Austrian Constitutional Court dismissed an international protection application from a Syrian national, reasoning that Syrian military legislation provided a reliable exemption mechanism for men residing abroad, contingent on payment of a fee which the applicant could demonstrably afford. However, in *Applicant v Federal Office for Immigration and Asylum* (13 June 2023), the same court upheld the appeal of another Syrian applicant, stating that the

lower court had not sufficiently assessed whether he could afford the exemption fee and whether it applied at all given his prolonged absence from Syria since the outbreak of the civil war. In neither case did the Constitutional Court exclude the possibility of paying an exemption fee as a valid means to avoid persecution under Article 9(2)(e) of the recast QD.

The Austrian Federal Administrative Court has followed a similar line of reasoning, referencing the availability of exemption payments in cases involving both Syrian and Turkish nationals, excluding protection under Article 9(2)(e) of the recast QD. In most cases, as in *Applicant* v *Federal Office for Immigration and Asylum* (25 August 2023) and *Applicant* v *Federal Office for Immigration and Asylum* (9 April 2024), the court evaluated the applicant's financial capacity to afford the payment of the fee and the credibility of the exemption mechanism (e.g. whether payment would in fact result in the applicant being relieved of service obligations). In some other cases, as in *Applicant* v *Federal Office for Immigration and Asylum* (4 January 2025), the Federal Administrative Court questioned the reliability of this mechanism as a means of avoiding conscription for specific Syrian applicants and concluded that it was not a valid alternative for applicants who evade conscription for reasons of political opposition.

In sum, these decisions highlight that the assessment of alternatives to compulsory military service—whether through legal recognition of conscientious objection, the availability of civilian service or the payment of exemption fees—plays a decisive role in determining whether a well-founded fear of persecution exists under Article 9(2)(e) of the recast QD. While some national courts have regarded exemption mechanisms as reliable and thus capable of excluding protection, others have stressed the need to examine their practical accessibility, affordability and consistency with the very nature of conscientious objection. The divergence among Member States and the pending preliminary ruling before the CJEU underline the complexity of the issue.

3.1.2. Forms of persecution in cases of draft evasion and military service

a) Forced involvement in international crimes during military service

Article 9(2)(e) of the recast QD provides that protection is warranted when a refusal to perform military service that occurs "in a conflict, would include crimes or acts falling within the scope of the grounds for exclusion as set out in Article 12(2)". Thus, the mere obligation to perform military service, in the absence of alternatives or legal conscientious objection, is not sufficient to justify protection unless the service takes place in an armed conflict where crimes under Article 12(2) of the recast QD are being committed. In practice, the most relevant crimes are those listed in Article 12(2)(a) and (c) of the recast QD: war crimes, crimes against humanity, crimes against peace, and acts contrary to the purposes and principles of the United Nations Charter.

The CJEU in *Shepherd* v *Germany* clarified the scope of Article 9(2)(e) of the recast QD. The Court clarified that the provision applies exclusively in situations of armed conflict. Outside such a context, a refusal to serve does not fall under this provision. Furthermore, the court held that the provision covers all military personnel, including logistical and technical support personnel who are not directly involved in combat operations. A deserter or draft evader can

be granted protection if it is established that their role would provide indispensable support to the commission of war crimes.

The court also rejected an overly narrow interpretation: protection is not limited to cases when the applicant's unit has already been found guilty of such crimes. Rather, the applicant must establish with sufficient plausibility that the unit has carried out, or is likely to carry out, operations in which such crimes are highly likely to occur. In *EZ v. Germany*, the CJEU took this reasoning further in the Syrian context. It held that, in a civil war marked by the systematic commission of crimes under Article 12(2) by an army dependent on conscripts, it should be assumed that military service will inevitably involve committing such crimes—directly or indirectly—regardless of the applicant's field of operation.

National courts have applied these principles with varying approaches. The Supreme Administrative Court of Slovakia, in *Applicant* v *Migration Office of the Ministry of Interior of the Slovak Republic* (30 October 2024) a case concerning a Kurdish draft evader from Türkiye, dismissed the Ministry of the Interior's claim that no armed conflict existed, holding instead that conflict conditions were present in certain border regions with Syria. It also rejected the argument that conscripts were not deployed in such areas where war crimes were likely to be committed. In *Applicant* v *Ministry of the Interior* (10 June 2020), the Administrative Court of Slovenia, when assessing the case of an Eritrean applicant, adopted a more general approach and dismissed the claim without analysing deployment patterns or the specific tasks assigned to conscripts. In *Applicant* v *Federal Office for Immigration and Asylum* (4 March 2024) concerning a Russian applicant who was trained as a military doctor, the Austrian Constitutional Court acknowledged a high likelihood of war crimes being committed by conscripts in the Russian army. Following the CJEU's reasoning in *Shepherd* v *Germany,* it ordered the lower court to re-assess the application and establish whether the applicant, as a military doctor, may directly or indirectly participate in such crimes if conscripted.

b) Disproportionate or discriminatory penalties for draft evasion and desertion

A second relevant category of persecution arises from the punishment imposed on individuals who refuse military service. Articles 9(2)(b) and (c) of the recast QD identify disproportionate or discriminatory prosecution and punishment as potential acts of persecution. Unlike Article 9(2)(e), these provisions are not confined to the context of armed conflict. In *Shepherd*, the CJEU held that, if the applicant cannot establish that military service would involve war crimes, the potential penalties must still be examined. Punishment may amount to persecution if it is disproportionate—that is, if it goes beyond what is strictly necessary for a state to enforce compulsory service—or if it is discriminatory when compared with penalties imposed on similarly situated citizens.

EU national courts have varied in their application of this principle. The Supreme Administrative Court of Slovakia, in *Applicant* v *Migration Office of the Ministry of Interior of the Slovak Republic* (30 October 2024), a case concerning a Turkish applicant, held that proportionality of punishment was irrelevant when it was established that performance of military service in the applicant's case would involve the commission of war crimes or crimes against humanity.

In *A v State Secretariat for Migration* (30 June 2020), the Federal Administrative Court of Switzerland emphasised that punishment for refusing legitimate military duties cannot in itself constitute persecution. Where penalties are excessively severe and clearly aimed at repressing dissenting or oppositional attitudes, they may qualify as persecution.

The Austrian Federal Administrative Court rejected the existence of disproportionate punishment in some instances, basing its assessment on the abolition of the death penalty in the country of origin in *BF v Federal Office for Immigration and Asylum* (22 May 2025) or on the lack of severity of punishments imposed on draft evaders in *Applicant v Federal Office for Immigration and Asylum* (9 April 2024).

The Danish Refugee Appeals Board, in *Applicant v Danish Immigration Service* (June 2025) and *Applicant v Danish Immigration Service* (September 2025), has even compared sanctions in countries of origin with penalties under Danish law, ascertaining that cases concerning respectively Ukraine and Armenia were not disproportionate, thus not reaching the threshold of persecution.

c) Actual conditions in which military service takes place

A third category concerns the actual conditions of military service. While none of the landmark CJEU rulings cover the conditions of military service as an act of persecution, it is worthwhile to examine what national courts have established in this regard.

National jurisprudence, particularly regarding Eritrea, has consistently recognised the persecutory nature of military service conditions. In *Federal Office for Migration and Refugees v Applicant (18 July 2023)*, the Higher Administrative Court of Lower Saxony granted subsidiary protection to an Eritrean draft evader after ascertaining the widespread and systematic character of inhuman and degrading treatment in military training camps and the frequent use of torture as a method of discipline. In *Applicants 1 v State Secretary for Justice and Security* (20 July 2022), the Dutch Council of State similarly concluded that harsh working conditions, frequent severe corporal punishment and indefinite service duration in Eritrea constitute violations of Article 3 of the ECHR, amounting to inhuman and degrading treatment or even torture. Likewise, in *Applicant v State Secretary for Justice and Security* (30 November 2021), the Hague District Court in Middelburg held that an Eritrean applicant was at risk of inhuman or degrading treatment under Article 3 of the ECHR due to the possible indefinite duration of military service.

To sum up, refusal to perform military service may justify international protection when conscription exposes individuals to committing war crimes, disproportionate punishments or to a risk of inhuman or degrading treatment or even torture. EU and national case law give weight to different aspects of military service conditions when assessing the need for international protection, but the guiding principle is clear: when military service violates fundamental human rights or international humanitarian law, refusal to serve may justify obtaining international protection.

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3.2. Nexus to a reason of persecution

A well-founded fear of persecution arising from draft evasion or desertion is a necessary precondition for international protection. However, as already mentioned, it is not sufficient on its own since such fear must be linked to one or more of the five grounds specified in Article 1A(2) of the 1951 Geneva Convention or the reasons of persecution in Article 10 of the recast QD (race, religion, nationality, membership of a particular social group and political opinion). The CJEU clarified this requirement in *EZ* v *Germany*. The court confirmed that even when persecution under Article 9(2)(e) is established, a connection with one of the Article 10 grounds must still be demonstrated. It further held that this link cannot be presumed automatically in all cases of refusing to perform military service. While a refusal is often motivated by political opinion, religious belief or membership of a social group, it may also stem from other factors such as a fear of death or injury in conflict. Automatically equating a refusal with one of the protected grounds would improperly extend the scope of the recast QD in relation with the Geneva Convention.

The CJEU emphasised that the burden of proving this connection does not rest solely with the applicant. National authorities must assess its plausibility, adding that there is a strong presumption that a refusal under Article 9(2)(e) of the recast QD relates to one of the Article 10 grounds. Echoing the Advocate General, the court noted that a refusal in the face of severe sanctions generally reflects a political or religious conflict with the state, and is usually perceived by authorities as political opposition.

In national case law, political opinion is the ground most often considered. Courts examine whether authorities in the country of origin typically interpret draft evasion as political opposition. In Germany, the Administrative Court of Baden-Wurttemberg, by following the CJEU's ruling in *EZ* v *Germany*, stressed in *Applicant* v *Federal Office for Migration and Refugees* (22 December 2020) the need for an individualised assessment: not all Syrian draft evaders are automatically considered political opponents. Similarly, the Federal Administrative Court of Germany overturned several decisions granting refugee status to Syrian draft evaders in *Applicants* v *Federal Office for Migration and Refugees* (19 January 2023). It highlighted the relevance of an individualised assessment, stating that the strong presumption established in *EZ* v *Germany* of a connection between the act of persecution and protected grounds in cases when draft evaders were likely to be involved in the commission of war crimes was not sufficient for granting protection if the factual basis is too vague or diffuse.

Likewise, the Austrian Federal Administrative Court held on several instances that the Syrian state cannot be assumed to regard simple draft evaders as political opponents, particularly after amnesty measures reduced the intensity of recruitment. This was the case in *Applicant* v *Federal Office for Immigration and Asylum* (25 August 2023) and *Applicant* v *Federal Office for Immigration and Asylum* (9 April 2024).

Given the above, the existence of additional risk factors is required for an individual to be deemed at risk of persecution on political grounds due to a refusal to perform military service. For example in *A* v *State Secretariat for Migration* (30 June 2020), the Federal Administrative Court of Switzerland granted international protection to a Syrian applicant on the basis that he had demonstrated that the Syrian authorities perceived him as a political opponent. A key

factor in this determination was the fact that his actions and expressed opinions in support of the Kurdish cause had come to the attention of the national authorities. Thus, an individual assessment of the applicant's visibility to the regime as a political opponent (real or imputed) was the decisive element in the granting of protection.

Furthermore, case law concerning draft evasion has accorded particular weight to an assessment of the applicant's political positioning in relation to the specific duties implicated by military service. For instance in *Applicant v Federal Office for Immigration and Asylum* (4 March 2024), the Austrian Constitutional Court rejected the reasoning of a lower court which had denied protection to a Russian applicant on the grounds of his prior service in the Russian armed forces. The court emphasised instead that his particular political stance about the war in Ukraine, for which he could potentially be conscripted, prevailed over his prior association with the Russian military.

Some courts have also extended protection to family members of draft evaders, when the authorities impute oppositional views to them. For instance, in *Applicant v Danish Immigration Service* (January 2024), the Danish Refugee Appeals Board granted asylum to the spouse of an Eritrean deserter, finding that her failure to cooperate with the authorities in locating her spouse put her at risk of being considered a political opponent which exposed. However, in *Applicants v Danish Immigration Service* (September 2025), the same board rejected claims by Syrian parents of draft evaders, holding that not all relatives are at risk unless the evasion is politically high-profile.

Membership of a particular social group has been another basis for claims. The consideration of "men affected by forced recruitment" or "men of military age" as a particular social group in Syria was rejected by the Austrian Federal Administrative Court in *Applicant v Federal Office for Immigration and Asylum* (9 April 2024) and by the Administrative Court of Saxony in Germany, which has established in *Applicant v Federal Office for Migration and Refugees* (21 January 2022) that "conscientious objectors" do not meet the requirements to be considered members of a particular social group.

In contrast, the Swiss Federal Administrative Court granted protection to applicants threatened with forced recruitment on the basis of membership of a particular social group. In a case concerning an Afghan applicant who had fled his home village due to the threat of forced recruitment of all young men of a certain age, the court stated that forced recruitment was based "on the connecting factors of age, gender and membership of the village population", and thus the applicant was threatened with persecution on the basis of immutable characteristics.[19] Similarly in a case involving a Somali minor applicant, his vulnerable situation as a member of a marginalised clan and social vulnerability were considered intrinsic characteristics which made him a target for recruiters.[20]

Finally, courts have clarified that the absence of reasons for persecution under Article 10 of the recast QD does not bar all forms of protection. The German Higher Administrative Court of Saxony recognised in *Applicant v Federal Office for Migration and Refugees* (21 January 2022) that arbitrary acts of persecution unconnected to Article 10 may still justify subsidiary protection under national law, even if they do not justify the claim to refugee status.

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To sum up, refusal to perform military service may justify refugee protection only when linked to one of the Convention and recast QD grounds, most commonly political opinion. While the CJEU recognises a presumption of such a link, national courts stress the need for individual circumstances and risk factors.

3.3. Actors of persecution

In military service cases, the persecutor is often the state itself, since conscription and punishment for evasion are typically state actions. The military, police or judiciary of the home country may be the ones who would arrest or punish the individual. In some instances, non-state actors can be the agents of persecution in forced recruitment cases. If a person deserts or evades forced recruitment by such a group, they may fear violent retribution from the group (such as execution as a traitor). Article 6 of the recast QD recognises that both state and non-state actors may qualify as agents of persecution, and that non-state persecution can qualify for refugee status if the state is "unable or unwilling" to protect the person. This may include the contexts of military service, forced recruitment, desertion and draft evasion.

States have the right to require citizens to perform military service and the mere obligation to perform military service for a state does not in itself constitute persecution or a violation of rights.[21] On the contrary, non-state actors are not entitled under international law to require military conscription, and forced recruitment from non-state armed groups can result in international protection, if it is established.[22]

In recent years, national courts and tribunals in EU Member States have ruled on forced recruitment by non-state armed groups in relation to asylum claims. In Germany in *Applicant v Federal Office for Migration and Refugees* (24 April 2023), the Administrative Court of Berlin granted subsidiary protection to a Somali applicant fearing forced recruitment by Al-Shabaab, highlighting the Somali state's inability to provide effective protection due to its weak institutions and limited territorial control. In Switzerland, the Federal Administrative Court recognised the right to refugee status for a Somali applicant who had been recruited by Al-Shabaab as a minor and feared being recruited again upon a return to Somalia. The court stressed the Somali state's lack of capacity to protect him.[23]

Changes in regime in the country of origin where a non-state actor takes over the government and thus becomes a state actor may also affect the assessment of asylum claims for forced recruitment reasons. For example, following the Taliban takeover of Afghanistan in August 2021, non-state actors effectively became state authorities. In *A. v State Secretariat for Migration* (2 April 2025), the Federal Administrative Court in Switzerland ruled on the case of an Afghan applicant who had been recruited by the Taliban as a minor before fleeing the country. While the court found his account to be credible, it concluded that circumstances had fundamentally changed: the Taliban had since assumed state power and the applicant had reached the age of majority. Recruitment by the Taliban could therefore no longer be regarded as illegitimate conscription by a non-state actor but rather as the lawful exercise of state authority over adult citizens.

To sum up, the concept of agents of persecution under Article 6 of the recast QD draws a crucial distinction: while states may legitimately impose compulsory service within the limits of international law, recruitment by non-state actors—particularly in situations of conflict and weak state protection—amounts to persecution. National case law shows that the decisive factor is whether effective state protection is available; where it is absent, forced recruitment, even if widespread, is treated as a persecutory act that justifies international protection.

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4. Internal protection alternative

As in all asylum claims, the availability of an internal protection alternative (IPA) must be assessed in claims involving draft evasion or desertion. Generally, when the agent of persecution is a state actor — or where persecution by non-state actors is tolerated by the state — an internal protection alternative will not be available, since the state authority is presumed to extend throughout the territory. In contrast, when persecution emanates from non-state actors, relocation within the country may be possible in regions outside of their control, as long as effective state protection exists there. In such cases, it is important to ascertain if non-state armed groups are opposed to the national authorities, in which case relocation to government-held territory may expose them to reprisals.[24]

Under European refugee law, internal protection alternatives as a factor that may preclude the granting of international protection are regulated in Article 8 of the recast QD, which establishes that when determining whether an applicant has access to protection against persecution or serious harm in a part of the country of origin, Member States must consider both the general circumstances prevailing in that part of the country and the personal circumstances of the applicant. European law requires that an internal protection alternative must be both safe and reasonable. In conscription cases, even if theoretically one could hide within the country, it may not be reasonable to expect someone to live in permanent illegality or hiding to avoid an abusive draft.

In Ukraine, where most claims concern state actors, national jurisprudence has been divided on the availability of internal protection alternatives for draft evaders. In February 2024, the Spanish National High Court granted subsidiary protection to a Ukrainian applicant, ruling that the scale of armed conflict following the Russian invasion precluded any possibility of safe relocation within the country.[25] However, the Danish Refugee Appeals Board reached the opposite conclusion in two 2025 decisions (*Applicant v Danish Immigration Service (Udlændingestyrelsen* (2 April 2025) and *Applicant v Danish Immigration Service* (June 2025), finding that applicants could reasonably relocate to western or central Ukraine.

Courts have also rejected the internal protection alternative in cases involving non-state actors, specifically Al-Shabaab in Somalia. In *Applicant v Federal Office for Migration and Refugees* (24 April 2023), the Administrative Court of Berlin found that an applicant threatened with forced recruitment by Al-Shabaab had no internal protection alternatives in Somalia, given the group's territorial control and the government's authority being limited largely to Mogadishu. Similarly, the Swiss Federal Administrative Court rejected the existence of an internal protection alternative for a Somali applicant who was threatened with forced recruitment by Al-Shabaab, citing both the lack of effective state protection and the applicant's vulnerability as a member of a marginalised clan.[26]

In conclusion, case law shows that internal protection alternatives are rarely available when the persecutor is the state, and they are equally ruled out where non-state actors exercise effective territorial control and state protection is absent. In draft evasion and forced

recruitment cases, the decisive factor is whether relocation within the country would offer genuine and durable safety under effective state authority.

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5. Procedural and evidentiary issues

Procedural and evidentiary requirements are central in asylum claims based on a refusal to perform military service. Applicants must demonstrate not only the sincerity of their conscientious, religious or political convictions, but also the credibility of their fear of persecution. National authorities and courts assess such claims through a combination of personal statements, corroborating documents and country of origin information (COI), while evaluating the authenticity and reliability of the evidence provided.

Applicants requesting international protection based on a refusal to perform military service are required to substantiate their applications with evidence demonstrating the authenticity or genuineness of their moral, religious or political convictions. Jurisprudence indicates that such objection must be deeply rooted and plausibly linked to a risk of persecution or forced participation in war crimes or acts contrary to international law. In line with Articles 4(3) and 4(5) of the recast QD, such convictions must be assessed individually, taking into account the applicant's personal circumstances and the overall credibility of their statements.

Authorities examine the evidence, such as the military background of the applicant, recruitment records, documented summonses and the existence of alternatives to military service. When these elements are missing or unsubstantiated, international protection is usually denied as illustrated in decisions from the Netherlands *Applicant* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* (8 May 2024) and Latvia (*Applicant* v *Office of Citizenship and Migration Affairs of the Republic of Latvia (Pilsonības un migrācijas lietu pārvalde)* (4 March 2024).

In Bulgaria in *Applicant* v *State Agency for Refugees (Държавна агенция за бежанците при Министерския съвет, SAR)* (17 October 2024), the Administrative Court of Varna found that while conscientious objection alone does not automatically justify refugee status, a well-founded fear of persecution may arise when supported by evidence such as a summons for military service. In Austria in *Applicant* v *Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)* (4 March 2024), the Constitutional Court recognised that doctors with military training may indirectly participate in war crimes or acts in violation of international law, thereby substantiating the applicant's claim under Article 9(2)(e) of the recast QD.

Applications based solely on pacifism or general ideological opposition to war have been rejected when applicants have been unable to demonstrate personal and active resistance to perform military service. In the Netherlands and Germany, courts dismissed the requests for international protection on this ground: lack of demonstrable moral opposition (*Applicant* v *State Secretary for Justice and Security* (8 May 2024) and *Applicant* v *Federal Office for Migration and Refugees* (12 January 2024)).

In Poland in *I.S.* v *Head of the Office for Foreigners* (13 March 2024), the Supreme Administrative Court held that a lack of proof of prior military service weakened the applicant's

claim. In contrast, in Germany in *Applicant v Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)* (1 January 2024), the Administrative Court of Magdeburg held that the submission of a verified call-up to perform military service substantiated a personal risk of persecution.

5.1. Use of personal statements, COI, official documentation and risk of falsification

Personal statements remain a key evidentiary component, but they must be consistent, detailed and credible. In Latvia in *A. v Office of Citizenship and Migration Affairs of the Republic of Latvia (Pilsonības un migrācijas lietu pārvalde)* (22 July 2024), the Administrative Court found that claims based only on social media activity and general opposition to war were deemed insufficient to qualify for international protection.

COI plays a decisive role, as courts have relied heavily on COI to evaluate the probability of conscription and the severity of sanctions for draft evasion or desertion. For example, in the case of Turkish applicants of Kurdish ethnicity, courts found no risk of persecution based on COI, concluding that military service in Türkiye was implemented in an equitable manner, with ethnicity not playing a decisive role and without disproportionate penalties for draft evasion or desertion.

Authentic official documentation, such as summonses or reserve lists in the case of reservists, can strengthen the possibility of qualifying for international protection. In contrast, fabricated or unverified documents undermine the credibility of the application. In Estonia, in *Police and Border Guard Board (Politsei- ja Piirivalveamet, PBGB) v X* (28 March 2024), the Tallinn Circuit Court dismissed a claim due to doubts about the authenticity of a summons.

To sum up, evidentiary assessment in military service-related asylum claims requires a careful balance between the applicant's duty to provide credible proof and the authorities' responsibility to evaluate all available material in context. Jurisprudence demonstrates that protection is not granted on the basis of abstract claims or pacifist declarations alone, but rather where documentary evidence, COI and consistent personal accounts together establish a genuine and individualised risk of persecution.

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6. Overview of country-specific jurisprudence

The following country-specific sections examine national jurisprudence concerning asylum claims linked to military service, desertion or draft evasion in key countries of origin – Eritrea, Russia, Syria, Türkiye and Ukraine. Each section not only outlines the factual and legal background, but also highlights how national courts have applied or diverged from the standards developed by the CJEU in *Shepherd* and *EZ*.

The analysis of Eritrea, Russia, Syria, Türkiye and Ukraine is of particular significance, as each national context embodies a distinct model of how conscription may generate protection needs. Eritrea constitutes the paradigm of an open-ended national service amounting to forced labour. Russia illustrates the challenges faced by national courts of EU+ countries who must assess claims for international protection from Russian applicants who may be subject to partial mobilisation in an international conflict and the recent tightening of criminal sanctions for failure to appear for reserve training, desertion and refusal to participate in mobilisation. Syria exemplifies the risk of persecution in situations of internal conflict marked by systematic human rights violations. Türkiye presents a more regulated model, where the central issue lies in religious or minority-based objections. Ukraine, by contrast, reflects the tension between legitimate military obligations and the risk of being compelled to commit war crimes.

6.1. Eritrea

In 1994, shortly after independence, national service in Eritrea included both military and civilian service, with all conscripts undergoing an initial military training and then being assigned to either the military component under the Ministry of Defence or the civilian component under another ministry. Following the border war against Ethiopia, the national reconstruction and development programme in 2002 intensified military service obligations, with many conscripts serving for an indefinite period.[27] Conscription is conducted either through the education system, where high school students are selected for either university, civilian service or military service depending on their qualifications, or through *giffas* or raids, where conscripts are visited at their houses by security forces and obliged to join the national service. The implementation and conditions of the national service have raised serious human rights concerns. Military service conditions are particularly harsh, marked by arbitrary punishments, forced labour and widespread reports of torture and sexual violence, especially against women. Civilian service, while comparatively less severe, still entails forced assignments, low or withheld remuneration, and restrictions on movement and personal freedom. Exemptions are rare and inconsistently applied, and desertion or draft evasion is met with imprisonment, torture and further conscription.[28]

The 2018 peace agreement with Ethiopia did not bring about reforms or significant demobilisation, as Eritrean authorities justified the continuation of unlimited national service with reference to the tense situation in Tigray, or the economic and employment situation in Eritrea. Mass mobilization efforts returned during the war in Tigray between 2020 and 2022. The number and intensity of *giffas* increased, and various categories of conscripts who were

previously exempt were enlisted, such as women with young children, retired soldiers and children as young as 14. Reports also pointed to an increased pressure on families of draft evaders.[29] Following the ceasefire and peace agreement in 2022, the mobilization declined in scale, but numerous reports from early 2025 point to a renewed mobilization campaign. Authorities issued a general directive for nationwide military mobilisation, which includes demobilised conscripts and reservists.[30]

The characteristics of the national service in Eritrea has contributed to a continued outflow of Eritrean nationals seeking international protection. Asylum claims by Eritrean nationals on the grounds of draft evasion or desertion have been the subject of considerable scrutiny before courts and tribunals in EU Member States. Jurisprudence has focused primarily on the conditions of military and civilian service in Eritrea, the indefinite nature of conscription, and the treatment of deserters, resulting in divergent outcomes across jurisdictions.

In the Netherlands, the Hague District Court seated in Groningen, the Hague District Court seated in Middelburg and the Council of State upheld appeals against negative international protection decisions by Eritrean nationals and requested the competent authorities to reassess their claims. The decisive factors were the conditions of military and civilian service, which were considered to constitute inhuman or degrading treatment under Article 3 of the ECHR. In cases *Applicant* v *State Secretary for Justice and Security* (28 September 2023), *Applicant* v *State Secretary for Justice and Security* (30 November 2021) and *Applicants 1* v *State Secretary for Justice and Security* (20 July 2022), the courts highlighted the indefinite duration of service, harsh working conditions and the use of severe corporal punishment, regardless of the absence of an armed conflict. Notably, in *Applicant* v *State Secretary for Justice and Security* (28 September 2023), the Hague District Court seated in Groningen stated that female applicants were not excluded from protection: despite being exempt from military service, they faced risks of forced civilian service, which also entailed indefinite terms, lack of choice regarding functions and location, and heightened risks of sexual violence and abuse.

German jurisprudence has reached similar conclusions. In *Federal Office for Migration and Refugees* v *Applicant* (18 July 2023) the Lower Saxony Higher Administrative Court recognised that Eritrean draft evaders were likely to face inhuman or degrading treatment or torture and a risk of being forced to perform military service under extremely harsh conditions was high. The court emphasised that the severe conditions of service and disproportionate punishments were applied broadly, even in the absence of specific risk-increasing characteristics, and upheld subsidiary protection for the applicant. Similarly, the decisive factors in recognising protection in Dutch courts were related to the high risk of inhumane treatment and disproportionate punishment upon a return to Eritrea. In these cases, national courts drew on the CJEU's approach in *Shepherd* v *Germany,* emphasising that disproportionate punishments for draft evasion can constitute persecution. Even in the absence of a conflict context, which excluded the application of Article 9(2)(e) of the recast QD, protection was still granted, since the risk of inhumane treatment and disproportionate punishment for draft evaders and deserters in Eritrea was considered persecutory. In contrast, the Administrative Court of Slovenia adopted a more restrictive approach in two cases from 2020. In *Applicant* v *Ministry of the Interior (No 2)* (13 May 2020) and *Applicant* v *Ministry of the Interior* (10 June 2020), the court denied protection in two similar cases involving Eritrean

nationals who had already endured imprisonment before fleeing. It reasoned that compulsory military service was applied to the whole population, and harsh prison conditions and military obligations were of a general character rather than tied to protection grounds. The court stated in both cases that the applicants would not face disproportionate punishment upon a return since recent reports suggested that there were reduced sentences for desertion, lasting from 6 months to 2 years, and emphasised that Eritrea was not engaged in an armed conflict. It denied the applicants refugee protection based on the risk of committing war crimes in the context of military service under Article 26(2)(5) of the International Protection Act (implementing Article 9(2)(e) of the recast QD). The Slovenian Administrative Court did follow the CJEU´s position on the applicability of Article 9(2)(e), which is limited to armed conflict contexts. However, the Slovenian Administrative Court discarded the disproportionality of punishments for draft evasion on the basis of the general character of military obligations and recent reductions in sentencing in Eritrea. This appears to depart from the criterion laid out by the CJEU in *Shepherd* v *Germany,* which considered that punishments for draft evasion were to be compared with penalties faced by similarly situated citizens in order to determine whether they were disproportionate.

To sum up, EU national jurisprudence related to Eritrean applicants remains divided. Courts in the Netherlands and Germany have consistently recognised that the indefinite nature of Eritrean service, combined with harsh treatment and sexual violence, give rise to protection. Slovenian courts, however, have taken a narrower view, requiring individualised risk factors and relying on reduced penalties and the absence of armed conflict to deny protection.

6.2. Russia

Military service in Russia is compulsory for all male citizens between the ages of 18 and 30, with service lasting 12 months. Upon completion, conscripts are transferred to the reserve. Evasion of conscription constitutes a criminal offence under Article 328 of the Criminal Code, punishable with arrest for up to 6 months or imprisonment for up to 2 years[31]. In addition to this ordinary conscription system, since the partial mobilisation of 2022, enforcement measures have intensified with broader administrative consequences - travel bans and employment restrictions - for draft evaders.[32]

Asylum claims by Russian nationals based on draft evasion or desertion have been widely examined across EU Member States, particularly in the context of the war in Ukraine and Russia's partial mobilisation decrees. Jurisprudence has focused on several key issues: the relevance of an applicant's personal circumstances such as reservist status, age or military training; the severity and proportionality of penalties imposed under recent amendments to the Russian Criminal Code; the availability in practice of alternative civilian service; and the likelihood that conscripts or reservists would be compelled to participate in internationally unlawful acts. Courts have also considered ethnic factors, notably the particular risks faced by applicants of Chechen origin.

Generally, courts did not find a real risk of persecution, and thus they denied international protection when applicants:

- were not reservists (Germany, *Applicant* v *Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)*, 12 January 2024);
- lacked military training (Poland, *I.S.* v *Head of the Office for Foreigners (Szef Urzędu do Spraw Cudzoziemców)*, 4 March 2025);
- were beyond the age of conscription (France, *M.* v *French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA)*, 9 February 2024);
- were classified in the country of origin as unfit for military service (Latvia, *A.* v *Office of Citizenship and Migration Affairs of the Republic of Latvia (Pilsonības un migrācijas lietu pārvalde)*, 22 July 2024); or
- were exempt due to health conditions such as HIV (Estonia, *X* v *Police and Border Guard Board (Politsei- ja Piirivalveamet, PBGB)*, 17 October 2023).

These decisions reflect the threshold articulated by the CJEU in *Shepherd*, which requires applicants to show a real risk that refusal to serve is the only means of avoiding participation in war crimes; where applicants are unlikely to be conscripted, there is no such risk. In contrast, documented reservist status or specialised military training strengthened the claims of applicants, making it easier to demonstrate the fear of forced conscription and increasing the likelihood of proving a well-founded risk of persecution (for example in Austria in *Applicant* v *Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)* (4 March 2024) and Bulgaria, *State Agency for Refugees (Държавна агенция за бежанците при Министерския съвет, SAR)* v *Applicant* (3 April 2024)). These judgments are aligned with *Shepherd*, which emphasized that applicants must plausibly demonstrate a risk of being compelled to support military operations where war crimes may occur.

Regarding penalties for evading compulsory military service, in Bulgaria in *State Agency for Refugees (Държавна агенция за бежанците при Министерския съвет, SAR)* v *Applicant* (3 April 2024), the Supreme Administrative Court granted international protection to a Russian applicant after noting recent amendments to the Russian Criminal Code that expanded criminal liability for failure to appear for reserve training, desertion and refusal to participate in mobilisation. The court referred to the adoption of legislative changes that strengthened criminal responsibility for a range of offences against military service, including failure to comply with an order of a commander, violation of combat duty rules, refusal to participate in military or combat operations, and unauthorised departure from a unit during mobilisation or wartime. Similarly in France in *M.A.* v *Office for the Protection of Refugees and Stateless Persons (OFPRA)* (20 July 2023), the CNDA acknowledged these changes in the Russian Criminal Code but denied international protection because the applicant did not show that he was personally mobilised. In contrast, in the Netherlands in *Applicant* v *State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid)* (8 May 2024), the Council of State did not find evidence of severe penalties, noting that fines were minimal and there were no known convictions for avoiding mobilisation, therefore denying international protection to the applicant. These judgments engage with CJEU *Shepherd*, particularly its guidance under Articles 9(2)(b) and (c) of the recast QD, which require penalties for draft evasion to be disproportionate or discriminatory to qualify as persecution. The Bulgarian court found that recent Russian legislative changes significantly increased criminal liability, meeting this threshold. In contrast, the French and Dutch courts denied protection due to lack of personal

mobilisation or absence of severe penalties—consistent with *Shepherd*'s requirement for individualized risk and disproportionality.

About the existence of alternative service, Latvian courts diverged. In *Applicant* v *Office of Citizenship and Migration Affairs of the Republic of Latvia (Pilsonības un migrācijas lietu pārvalde)* (13 March 2025), the District Administrative Court cited the EUAA's COI Report – The Russian Federation: Military Service (December 2022) and found that Russian law allowed to substitute military service with alternative civilian service. Yet in *A* v *Office of Citizenship and Migration Affairs of the Republic of Latvia* (6 April 2023), the District Administrative Court found that such alternatives were practically unattainable. Taking a similar position, in France in *M.A.* v *Office for the Protection of Refugees and Stateless Persons (OFPRA)* (20 July 2023), the CNDA relied on the EUAA's COI Report – Russian Federation: Political Dissent and Opposition (December 2022) and confirmed that alternative civilian service was unavailable during partial mobilisation. These judgments are aligned with CJEU's judgment in *EZ*, which held that applicants could not be required to formalise refusal through a procedure when no viable legal alternative to military service existed. Courts recognizing the practical unavailability of alternative service reflect *EZ*'s principle that such absence strengthens claims for international protection.

Courts across the EU have applied the CJEU's reasoning in *Shepherd* v *Germany* and *EZ* v *Germany* on the issue of participation in international crimes, to cases lodged by Russian applicants. In Austria in *Applicant* v *Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)* (4 March 2024), the court specified that in the context of the war in Ukraine there was a high likelihood of Russian conscripts being implicated in war crimes or crimes against humanity. In Germany in *Applicant* v *Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)* (1 October 2024), the Administrative Court of Magdeburg likewise found a real risk of forced participation in internationally unlawful acts. In Czechia in *XXX* v *Ministry of Interior (Ministerstvo vnitra)* (16 November 2022), the Regional Court in Brno overturned a refusal of international protection, finding that the applicant would likely be complicit, even indirectly, in systematic crimes under Article 12(2)(a)-(c) of the recast QD and would face prosecution for refusing service. Finally, German courts granted subsidiary protection to Russian applicants of Chechen ethnicity in several recent cases given the specific risks faced by this group (*Applicant* v *Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF)* (1 October 2024), *Applicants* v *Federal Office for Migration and Refugees (BAMF)* (20 November 2023), *Applicant* v *Federal Office for Migration and Refugees (BAMF)* (20 March 2023)).

In sum, Russian draft evasion cases in EU Member States show a clear pattern: protection is generally denied to applicants who are outside of the conscription age, unfit for service or lack a military background, but granted or reconsidered when applicants demonstrate reservist status, specialised training, Chechen ethnicity or a credible risk of being compelled to participate in war crimes under Article 9(2)(e) of the recast QD.

6.3. Syria

Under the rule of Bashar al-Assad, military service in Syria was compulsory for all male citizens. The Syrian Arab Army (SAA) operated under a system of conscription that typically began at age 18, with service lasting 18 to 24 months, but often extending due to emergency laws and wartime conditions. Conscripts were frequently deployed in active combat zones (especially those originating from former opposition-held areas), subjected to harsh conditions. The regime offered a legal exemption for Syrians residing abroad, allowing them to pay an exemption fee to avoid conscription.[33] Following the fall of the Assad regime conscription has been abolished, recruitment is no longer compulsory, and the current Syrian armed forces are composed entirely of volunteers.[34]

Asylum judgments concerning Syrian draft evaders and deserters have concentrated on several, common factors before national courts in the EU. One central issue has been whether the exemption fee for Syrians abroad constitutes a legitimate and reliable alternative to military service, excluding the existence of persecution. In Austria, numerous decisions involving Syrian draft evaders addressed this fact, with most rulings leaning towards denying protection when draft evaders were found to have the financial means to pay the fee and the payment was deemed a reliable means of avoiding military service (*Applicant* v *Federal Office for Immigration and Asylum* (2 October 2024), *Applicant* v *Federal Office for Immigration and Asylum* (25 August 2023), *Applicant* v *Federal Office for Immigration and Asylum* (4 January 2025)). As stated by the Austrian Constitutional Court in *Applicant* v *Federal Office for Immigration and Asylum* (13 June 2023), asylum claims cannot be dismissed solely on the basis of the existence of the exemption fee without a proper assessment of the applicant's individual circumstances. This contention aligns with the CJEU's approach in *Shepherd* v *Germany,* in that it holds that the existence of legal alternatives to military service can only exclude protection if the applicant could reasonably have used them. The extent to which the exemption fee represents a reliable and available means of excluding the performance of military service is analysed in each particular case, which also concurs with the CJEU's emphasis on individualised assessments.

Another point of contention has been the determination of whether the Syrian regime automatically regards draft evasion as political opposition. In Austria, the Federal Administrative Court (BVwG) in *Applicant* v *Federal Office for Immigration and Asylum* (25 August 2023) and several courts across Germany (*Applicant* v *Federal Office for Migration and Refugees* (22 December 2020), *Applicant* v *Federal Office for Migration and Refugees* (22 March 2021), *Applicant* v *Federal Office for Migration and Refugees* (21 January 2022), *Federal Office for Migration and Refugees* v *Applicant* (3 June 2024)) have rejected the notion that the Syrian regime regards all draft evaders as political opponents, relying on country reports indicating reduced recruitment needs. In *Applicant* v *Federal Office for Immigration and Asylum* (25 August 2023), the Austrian Federal Administrative Court ruled that there was no significant likelihood of a conscientious objector being imputed with oppositional political views. Citing the EUAA Country Guidance on Syria of February 2023, the court held that "a mere illegal departure and filing of an asylum application and residence abroad does not *per se* lead to the attribution of oppositional sentiments to Syrian citizens by the Syrian regime". The court gave special importance to the fact that the applicant had not undertaken any

externally expressed political position in a manner that the regime could perceive or that could credibly bring him to the attention of the Syrian authorities. Thus, for an applicant to be imputed oppositional views by the Syrian government, mere draft evasion did not suffice: additional elements and visibility were needed. Compared to the strong presumption of a link between the act of persecution and protected grounds established by the CJEU in *EZ* v *Germany* where an act of persecution under Article 9(2)(e) is established, national courts' approach relies more on individual proof of political opposition and visibility for national authorities.

When refugee status was granted, individualised risk factors were decisive, as exemplified in the case of draft evaders claiming that they did not want to perform military service due to political opposition to the regime and proving that the Syrian authorities were looking for them. For instance, in *A v State Secretariat for Migration* (30 June 2020), the Swiss Federal Administrative Court found persecution established as the applicant had previously been identified by authorities as a critic of the regime and a supporter of the Kurdish movement. The Danish Refugee Appeals Board granted refugee status to an applicant who had repeatedly evaded recruitment and been individually profiled by the Syrian army; his Kurdish background and the targeting of his family members reinforced the finding of risk.[35] Similarly in *Applicant v Federal Office for Immigration and Asylum* (4 January 2025), the Austrian Federal Administrative Court granted protection to a Kurdish applicant from an opposition-held region, highlighting his strong aversion to serving in the Syrian army. By emphasizing each applicant´s particular situation in relation to the changing circumstances in Syria at the time of each decision, national courts mirror the CJEU's determinations in *Shepherd* v *Germany* regarding the factual assessment of cases concerning draft evasion. In the judgments above, national authorities base their decisions on a body of evidence capable of establishing the credibility and likelihood of war crimes being committed by the Syrian Army, drawing on detailed and updated country-of-origin information and paying particular attention to applicants' individual profiles.

Finally, political changes in Syria after December 2024 have affected recent assessments. Following the overthrow of the al-Assad regime, the transitional government announced sweeping reforms,[36] including the abolition of compulsory military service, which is now limited to exceptional circumstances such as national emergencies.[37] The new administration emphasised voluntary enlistment and professionalisation of the armed forces. All military personnel conscripted under compulsory service were granted amnesty, and in the weeks following the fall of the Assad government between 50,000 and 70,000 SAA soldiers and conscripts participated in the government-provided "reconciliation process", which allowed them to surrender their weapons and demobilise, in exchange for protection from prosecution.[38]

With the abolition of compulsory service and the discharge of large numbers of conscripts, courts increasingly found that Syrian draft evaders no longer face the same protection needs. This was the finding of the Austrian Federal Administrative Court finding in *X v Federal Office for Immigration and Asylum* (22 January 2025), *Applicant v Federal Office for Immigration and Asylum* (15 July 2025) and *Applicant v Federal Office for Immigration and Asylum (ii)* (15 July 2025).

To sum up, EU jurisprudence on Syrian draft evaders illustrates the importance of an individualised assessment. While exemption fees and general draft avoidance are not generally sufficient to establish persecution, applicants with clear political profiles, ethnic vulnerabilities or prior exposure to regime scrutiny have been recognised as at risk. Recent political changes in Syria, particularly the abolition of military service under the new government, suggest that protection needs for draft evaders are diminishing.

6.4. Türkiye

Asylum claims by Turkish nationals on the basis of draft evasion or desertion have frequently been examined by national courts across the EU. While applicants of Kurdish ethnicity often allege discrimination in recruitment or punishment, jurisprudence consistently required concrete evidence that military service in Türkiye is implemented in a discriminatory or persecutory manner. Courts have therefore focused on two main questions: whether compulsory service or the conditions of deployment expose conscripts to violations of international law, and whether penalties for evasion or desertion are disproportionate or applied on a discriminatory basis.

EU case law concerning Turkish draft evaders—particularly those of Kurdish ethnicity—has generally acknowledged social discrimination against Kurds but has found that this does not in itself amount to persecution. Instead, courts have examined the nature of Turkish military service and the penalties imposed for evasion.

In Austria in *BF* v *Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)* (22 May 2025), the Federal Administrative Court held that the Turkish military service was a legitimate obligation with legal avenues available for deferral or exemption. Similarly in Switzerland in *A.* v *State Secretariat for Migration (Staatssekretariat für Migration, SEM)* (24 April 2023), the Federal Administrative Court held that military recruitment in Türkiye was based on age and nationality, not ethnicity.[6] In France in *C.* v *French Office for the Protection of Refugees and Stateless Persons (OFPRA)* (7 June 2002), the National Court of Asylum (CNDA) found that Turkish conscripts were not systematically engaged in military actions constituting serious violations of humanitarian law, criminal law or human rights law. These judgments are aligned with CJEU judgment *Shepherd* v *Germany*, particularly in its emphasis on the nature of military service and the availability of legal avenues for exemption or deferral.

With regard to penalties for draft evasion, courts have consistently held that sanctions are proportionate and non-discriminatory. In Switzerland in *A.* v *State Secretariat for Migration (Staatssekretariat für Migration, SEM)* (24 April 2023), the Federal Administrative Court held that the penalties for evading or deserting Turkish military service - such as potential imprisonment, police custody, or disciplinary sanctions - did not amount to persecution.[7] In Switzerland, in *A.* v *State Secretariat for Migration (Staatssekretariat für Migration, SEM)* (19 July 2019), the Federal Administrative Court ruled that there was no indication that Kurds

[6] See also *A, B,C* v *State Secretariat for Migration (Staatssekretariat für Migration, SEM)* (4 December 2019).
[7] See also *A, B,C* v *State Secretariat for Migration (Staatssekretariat für Migration, SEM)* (4 December 2019).

received differential treatment to other ethnicities regarding the penalties imposed for failing to fulfil their military obligations. The court noted that the sanctions for draft evasion or desertion in Türkiye -such as short-term detention, fines, or disciplinary measures- were applied uniformly, and did not amount to persecution unless accompanied by additional discriminatory or political motives. In France in *C. v French Office for the Protection of Refugees and Stateless Persons (OFPRA)* (7 June 2022), the CNDA held that sanctions for evasion were proportionate and non-discriminatory, consisting of administrative fines rather than prison sentences.

In Luxembourg in *Applicant v Ministry of Immigration and Asylum* (8 February 2021), the Administrative Court found no disproportionate prison sentence for draft evasion linked to Kurd ethnicity. In Denmark in *Applicant v Danish Immigration Service (Udlændingestyrelsen, DIS)* (February 2021), the Refugee Appeals Board held that failure to perform military service did not result in a disproportionate penalty in Türkiye, finding no evidence of differential treatment on ethnic grounds, especially for Kurds.

Such findings regarding penalties for draft evasion align with *Shepherd*, which requires evidence that conscripts would be forced to commit war crimes or be subjected to inhuman or degrading punishment before Article 9(2)(e) can apply.

In all of the above-mentioned judgments, international protection was denied to Turkish applicants of Kurdish ethnicity. Only in *T.C. v Ministry of the Interior (Ministerstvo vnitra)* (10 December 2021), the Supreme Administrative Court in Czechia remitted a case for reassessment. In this case, the Turkish applicant was a member of the Hare Krishna movement (which is not accepted in Türkiye) and claimed conscientious objection on religious grounds.

In conclusion, it was generally considered that military service in Türkiye was implemented equitably and ethnicity does not play a decisive role, and thus Turkish military actions did not violate humanitarian law. Moreover, it was generally held that penalties for evasion or desertion consisting of administrative fines or short-term detention were not disproportionate and therefore did not constitute persecution.

6.5. Ukraine

Asylum applications lodged by Ukrainian nationals on the basis of draft evasion or desertion have been examined extensively by courts in EU Member States, particularly in the context of the ongoing Russian war of aggression. Jurisprudence has focused on whether compulsory service or penalties for evasion in Ukraine reach the threshold of persecution and whether applicants face a real risk of involvement in war crimes under Article 9(2)(e) of the recast QD.

In Denmark in *Applicant v Danish Immigration Service (Udlændingestyrelsen, DIS)* (2 April 2025), the Refugee Appeals Board held that the obligation to perform military service during an armed conflict could not, by itself, establish refugee status or meet the threshold of Article 3 of the ECHR in the Kyiv Oblast. The board held that penalties for refusing to perform military service or desertion (fines or short custodial terms) were not disproportionate. In

particular, they were not disproportionate if Danish legislation was taken as a reference point for comparison. In addition, the availability of internal relocation in Ukraine precluded subsidiary protection. The applicant was denied international protection in this case. This judgment is aligned with *Shepherd* v *Germany*, as it confirmed that military service alone did not justify international protection unless accompanied by disproportionate or discriminatory penalties.

Similarly, in Germany, in *Applicant* v *Federal Office for Migration and Refugees (BAMF)* (20 November 2023), the Higher Administrative Court of Mecklenburg-Western Pomerania held that prosecution for draft evasion did not amount to persecution unless the applicant could show a real risk of being compelled to commit war crimes or other acts contrary to international law. The court acknowledged poor prison conditions in Ukraine but considered that healthy adults were not at risk of treatment contrary to Article 3 of the ECHR solely for desertion or draft evasion. The applicant was similarly denied international protection. This judgment is aligned with CJEU judgment *Shepherd* v *Germany*, which required a plausible risk of being forced to support or commit war crimes for draft evasion to qualify as persecution.

In Italy, in *X v Ministry of the Interior (Ministero dell'Interno), Territorial Commission of Florence* (29 October 2022), the Tribunal of Perugia denied refugee status to a reservist objector, finding his motivations more closely related to his desire to reach his mother in Italy rather than escaping forced conscription. However, the court still granted subsidiary protection to the applicant, as the court found that a return to Ukraine would expose him to serious harm arising from armed conflict. In *Applicant* v *Ministry of the Interior* (22 February 2023), the Tribunal of Naples granted refugee status to a Ukrainian conscientious objector, applying the CJEU's reasoning in *Shepherd* and finding that he risked being forced to commit war crimes. In *Applicant* v *Ministry of the Interior (Ministero dell'Interno)* (18 May 2022), the Court of Cassation confirmed this approach. These judgments reflect varying applications of the CJEU's ruling *Shepherd* v *Germany*. The Naples and Cassation courts applied it directly, recognising the risk of forced involvement in war crimes. The Perugia court, while denying refugee status, still granted subsidiary protection based on general conflict risk, outside *Shepherd*'s Article 9(2)(e) recast QD scope but consistent with broader protection principles.

Taken together, these decisions show that EU national courts generally deny refugee status when Ukrainian applicants base their claims solely on draft evasion or fear of penalties, as these sanctions are seen as proportionate. However, protection has been granted when applicants could demonstrate a plausible risk of being drawn into the commission of war crimes.

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7. Special considerations: Recruitment of minors

Children are particularly vulnerable to forced recruitment in armed conflicts,[39] and asylum systems must provide them with heightened protection. International and European standards explicitly prohibit child conscription and classify it as persecution under asylum law.

Instruments such as the Optional Protocol to the Convention on the Rights of the Child and the Rome Statute prohibit the recruitment of people under 18 and recognise the use of children under 15 in conflict as a war crime. In its *Guidelines on Child Asylum Claims,*[40] UNHCR affirms that the forced recruitment of minors by state actors or non-state actors constitutes persecution. Likewise, situations when the minor is at risk of forced re-recruitment, being subjected to punishment for draft evasion or desertion, when a child 'volunteers' under pressure or is sent to fight by parents or communities can also give rise to protection.[41]

Case law illustrates this principle: the Swiss Federal Administrative Court in *A.* v *State Secretariat for Migration* (19 January 2021)[42] and Swiss Federal Administrative Court, *A.* v *State Secretariat for Migration* (13 July 2020)[43] recognised respectively persecution of Afghan and Somali minors recruited by armed groups (to fight the Taliban in Afghanistan and by non-state armed groups such as Al Shabaab in Somalia), emphasising age, gender and a lack of relocation options as key factors. Similarly, the Austrian Constitutional Court in *Applicant* v *Federal Office for Asylum and Migration* (17 September 2024) found that a 17-year-old Syrian applicant faced a real risk of persecution due to compulsory pre-conscription measures, even before reaching the official draft age.

However, not all minor draft evader claims succeed. The Austrian Supreme Administrative Court in *Applicant* v *Federal Office for Immigration and Asylum (Bundesamt für Fremdenwesen und Asyl, BFA)* (14 May 2025) rejected a Syrian applicant's case due to the presence of a supportive family network and absence of an individualised risk. Overall, each case requires an individualised assessment, considering both the general risks of child recruitment and the applicant's personal profile and social context.

8. Conclusions

This report has shown that asylum claims arising from draft evasion, desertion or refusal to perform compulsory military service sit at the intersection of international human rights law, refugee law and European asylum law, requiring a nuanced and context-sensitive approach to the assessment of claims.

Although states retain the sovereign right to enforce compulsory service, international and European legal standards establish that such enforcement can amount to persecution where it compels individuals to participate in internationally condemned acts, subjects them to inhuman or degrading conditions, or punishes them in a disproportionate or discriminatory manner. Jurisprudence from the CJEU, notably in *Shepherd* and *EZ*, has clarified that protection is warranted when a refusal to serve is plausibly linked to participation in crimes under Article 12(2) of the recast QD, and when in conflict situations marked by systemic violations, a refusal may be presumed to entail an imputed political opinion.

At the same time, both judgments underlined the need for individualised assessments, particularly regarding the availability and practical accessibility of alternatives to service, such as conscientious objector procedures, civilian alternatives or exemption mechanisms like fee payments. In the judgments analysed, national courts across the EU have applied these principles with varying emphases: some have found that fee-based exemptions exclude protection if reliable and affordable, while others have recognised their incompatibility with genuine conscientious objection. Protection has been most consistently granted in cases involving indefinite or abusive conscription regimes such as Eritrea's, in contexts when conscripts are inevitably drawn into serious crimes such as in Syria and Russia, or when sanctions for refusal are manifestly disproportionate.

Equally important is the role of *nexus*: the refusal to perform military service must be linked to a Convention ground, most often political opinion or religion, though courts stress that not all draft evaders are automatically perceived as political opponents. The presumption established in *EZ* is therefore strong but rebuttable, requiring consideration of the applicant's profile, visibility and specific risk factors. Evidence remains central: credible testimony, authentic summonses and updated COI on penalties, recruitment practices and exemption mechanisms can decisively tip the balance, while abstract pacifism or uncorroborated claims usually fall short.

Minors require heightened safeguards, with international standards treating any recruitment or risk of re-recruitment as persecution and lowering evidentiary thresholds in recognition of their vulnerability (see UNHCR, *Guidelines on Child Asylum Claims*).

When the state itself is the persecutor, internal relocation is generally unavailable. Conversely, in cases involving non-state armed groups, protection depends on the state's ability or willingness to provide effective protection, which in practice is often absent.

There is evidence of a progressive convergence of national jurisprudence with the standards developed by the CJEU in *Shepherd* and *EZ*. While the national judgements analysed have

applied these rulings with different intensity, the general trend is towards alignment in recognizing that (i) conscription in conflicts marked by systematic violations may give rise to protection, and (ii) refusal of service may be presumed to be politically motivated. However, divergences persist in the evaluation of exemption-fee mechanisms and alternative service, with courts across Member States applying different thresholds of credibility and accessibility.

A review of judicial practices concerning the main countries examined in this report — Eritrea, Russia, Syria, Türkiye and Ukraine — confirms both commonalities and divergences across the EU+. The jurisprudence concerning Eritrean applicants for international protection, reviewed in this report, has shown the clearest recognition of protection needs, with many courts considering indefinite and abusive national service to amount to persecution, though a minority of decisions have taken a narrower view. In the cases considered on Russian applicants, practices diverged: while some courts have denied protection where applicants were outside conscription age or exempted, others have granted protection to reservists, persons with specialised training, or applicants of Chechen origin, given the risk of forced participation in internationally unlawful acts. In the cases analysed which concerned Syrian applicants, protection has frequently been granted where applicants faced a credible risk of being compelled to commit war crimes or where draft evasion was clearly linked to political opposition, although the recent abolition of conscription by the transitional authorities has led to a reassessment of protection needs. In the Turkish cases examined, courts have generally considered military service a legitimate obligation, with sanctions for draft evasion deemed proportionate, except in cases involving genuine conscientious objection on religious grounds. Finally, with regard to Ukrainian applicants, most of the judgments reviewed show that protection has largely been denied when claims rested solely on draft evasion, but courts have recognised subsidiary protection where applicants risked serious harm from the ongoing conflict or potential involvement in war crimes. Taken together, these country-specific practices suggest a trend towards convergence in EU+ countries guided by *Shepherd* and *EZ*, yet still differing in their evaluation of alternatives to service and the proportionality of sanctions.

A comparison of the national jurisprudence analysed with the landmark rulings of the CJEU in *Shepherd* and *EZ* highlights both convergence and divergence. The judgments reviewed show that Member States have largely aligned with *EZ* in recognising that refusal of military service in contexts marked by systematic violations, such as in Syria, can give rise to protection and is often perceived as political opposition. At the same time, other courts, such as courts in Austria and Spain, have required more individualised proof, limiting the automatic presumption. Similarly, while *Shepherd* set a high evidentiary threshold regarding participation in war crimes, national judgments on Russian applicants have shown greater willingness to assume such a risk, especially in the aftermath of partial mobilisation. These comparisons suggest a trend towards progressive harmonisation, though uneven and dependent on context.

Taken together, the analysis highlights the importance of a practice-oriented, case-by-case approach: protection must be extended whenever military service compels individuals to act against their conscience in ways that violate fundamental rights, exposes them to inhuman conditions or punishes them in ways that amount to persecution. Alternatives to service can exclude protection only if they are genuine, accessible and non-punitive.

Courts and administrations should therefore codify tests to assess practical alternatives, develop clear guidance on how to apply the presumption of a nexus while ensuring appropriate safeguards, assess persecution not only under Article 9(2)(e) but also under 9(2)(a)–(c), and adopt child-sensitive procedures. Above all, decision-makers must ensure that evolving conflict dynamics, amnesties and reforms are consistently incorporated into updated COI, while preserving a consistent rights-based standard that prevents individuals from being forced to choose between their conscience and their fundamental rights.

Finally, among the volume of decisions analysed, some judgments stand out as particularly memorable: *Shepherd* for defining the evidentiary standard for war crimes involvement; *EZ* for introducing the presumption of political opinion; and national rulings on Eritrean applicants that crystallised the principle that indefinite conscription and inhuman service conditions amount to persecution. These landmark cases serve as reference points for national authorities and illustrate how individual rulings can shape broader jurisprudential developments.

Looking ahead, recent geopolitical developments — including the rearmament and reintroduction of compulsory military service schemes in several European and neighbouring countries — may result in an increased number of international protection claims linked to draft evasion, desertion and conscientious objection. While speculative, this prospect underlines the importance of continued monitoring of jurisprudential trends, as national and European courts will likely face new challenges in balancing state security concerns with fundamental rights protections.

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