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RUSSIA: No legal provision for alternative civilian service during mobilisation

By Victoria Arnold, Forum 18 (<https://www.forum18.org>)

No legal or practical provision exists for alternative civilian service (ACS) during mobilisation, despite the Constitution guaranteeing this right for every citizen. This has led to military recruitment offices refusing applications for ACS and sending conscientious objectors to military units. Moreover, a November legal amendment allows those already undertaking ACS after being called up for regular military service to be transferred to a non-combat role within the Armed Forces. The amendment effectively "abolishes ACS as a peaceful alternative to military service" during mobilisation, says lawyer Valeriya Vetoshkina.

For reservists whose religious (or other) beliefs prevent them bearing weapons or otherwise serving in the armed forces, the Russian government has made no legal or practical provision for alternative civilian service (ACS) during mobilisation, despite the country's Constitution guaranteeing the right to this for every citizen.

On 21 September, President Vladimir Putin announced the "partial mobilisation" of Russia's military reserve. Within a few weeks, according to the Defence Ministry, more than 300,000 men had been called up. Hundreds of thousands more fled the country to avoid being sent to fight in Russia's war in Ukraine.

The resulting legal limbo has led to military recruitment offices refusing applications for alternative civilian service and sending conscientious objectors to military units. Several such men have challenged their mobilisation in court (https://www.forum18.org/archive.php?article_id=2798). So far, only one – Protestant Pavel Mushumansky – is known to have succeeded in having his mobilisation order overturned. Another – Russian Orthodox Christian Kirill Berezin – was unsuccessful in court, but has been permitted to serve in an unarmed role.

Russian men aged 18 to 27 are subject to conscription into the armed forces (though many manage to obtain exemptions and deferrals). If a conscript's religious views or pacifist beliefs mean that he refuses to participate in military activities, he may apply for alternative civilian service. Both ACS and military service, however, subsequently place a man in the reserve, rendering him liable to call-up in the future.

Moreover, an amendment to the 1997 Law on Mobilisation, which came into force on 15 November, allows those already undertaking ACS in a civilian-run institution after being called up for regular military service to be transferred from the civilian-run institution to a non-combat role within the Armed Forces. Lawyer Valeriya Vetoshkina believes the amendment effectively "abolishes ACS as a peaceful alternative to military service" during mobilisation (see below).

The lack of a mechanism to enable ACS for reservists "does not mean that the right of citizens can be crossed out by the inaction of the state", lawyer Sergey Chugunov of the Moscow-based Slavic Centre for Law and Justice commented on his Telegram channel on 25 September. "[Alternative service] is not provided for, but the right is guaranteed. Protect your rights."

Chugunov and other lawyers have encouraged conscientious objectors who have received a summons for mobilisation to lodge applications for ACS anyway. "In the application, you must inform [the mobilisation commission] about your anti-war beliefs or religion and provide a link to Article 59 of the Constitution," Chugunov advised draftees on his Telegram channel on 22 September. "The application will be followed by a refusal, possibly threats of criminal prosecution, so you need to be ready to continue to fight for your constitutional right. The refusal can be appealed in court."

There has been little progress in filling the obvious legal gap. The amendment to the 1997 Law on Mobilisation, which came into force on 15 November, applies only to people already doing alternative service as conscripts at the time mobilisation is announced, and states that they may have to move to civilian roles in the armed forces, if they are not in these already (see below).

In early October, two State Duma deputies from the New People party attempted to introduce a bill which would make alternative service available to reservists under conditions of mobilisation. This appears to have stalled at the committee stage (see below).

Prosecutions for anti-war protestors

Despite the support for Russia's renewed invasion of Ukraine expressed by the leaderships of the Russian Orthodox Church (Moscow Patriarchate), the largest Pentecostal Union, the Central Spiritual Administration of Muslims of Russia and some other religious organisations, small numbers of laypeople and clergy continue to voice their opposition on the basis of their faith.

Among the more than 100 individuals who have faced criminal prosecution for opposing Russia's war against Ukraine, three have faced prosecution (https://www.forum18.org/archive.php?article_id=2788) for opposing the war on religious grounds. One of the three, Fr Ioann Kurmoyarov, is still in pre-trial detention in St Petersburg, and the next hearing in the criminal case is due in January 2023.

Numerous individuals have faced administrative prosecution for opposing the war, in particular for displaying anti-war posters. Among these are some who have been punished for protesting with posters quoting the Bible, the Dalai Lama, or other religious sources (https://www.forum18.org/archive.php?article_id=2788).

International human rights law

The United Nations (UN) Human Rights Committee, in General Comment 22 (<https://www.refworld.org/docid/453883fb22.html>) on Article 18 ("Freedom of Thought, Conscience or Religion") of the International Covenant on Civil and Political Rights (ICCPR) (<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>), states that "the right to refuse to perform military service (conscientious objection)" derives from Article 18.

Similarly, the UN Office of the High Commissioner for Human Rights (OHCHR) also states that conscientious objection to military service comes under ICCPR Article 18 and has recognised (<https://www.ohchr.org/en/conscientious-objection>) "the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion."

The OHCHR also notes in its Conscientious Objection to Military Service (<https://www.ohchr.org/en/publications/special-issue-publications/conscientious-objection-military-service>) guide that Article 18 is "a non-derogable right .. even during times of a public emergency threatening the life of the nation."

In 2022 the UN Working Group on Arbitrary Detention stated (WGAD-HRC50 (<https://www.ohchr.org/sites/default/files/2022-05/WGAD-HRC50.pdf>)) that "the right to conscientious objection to military service is part of the absolutely protected right to hold a belief under article 18 (1) of the Covenant [the ICCPR], which cannot be restricted by States." The Working Group also stated that "States should refrain from imprisoning individuals solely on the basis of their conscientious objection to military service, and should release those that have been so imprisoned."

Russia (as the Soviet Union) ratified the ICCPR in 1973.

What Russian law says

The various provisions of Russia's Constitution, its federal laws, and the amendments introduced after the announcement of mobilisation have left those seeking alternative civilian service in limbo. While the Constitution guarantees the right to alternative service, there is no legal mechanism for it under conditions of mobilisation. As a result, the military authorities generally refuse requests for alternative civilian service (ACS) from those whose religious or other beliefs prevent them either bearing arms or serving in the military at all.

President Putin's partial mobilisation decree of 21 September and its subsequent amendments set out exemptions and deferrals on the basis of age, health, some family circumstances, student status, and employment in particular sectors, including the defence industry – but made no mention of alternative civilian service.

On 25 September, the government information portal "We explain" (https://xn--90aivcdt6dxbc.xn--p1ai/articles/questions/mobilizatsiya/usloviya_prokhozheniya_sluzhby/est_li_alternativnaya_grazhdanskaya_sluzhba_ago_pri_prizyve_po_mobilizatsii/) stated that alternative civilian service is not possible during mobilisation.

– The Constitution

Article 59, Part 3 of the Constitution states: "A citizen of the Russian Federation, if the performance of military service contradicts his beliefs or religion, as well as in other cases established by federal law, has the right to replace it with alternative civilian service."

Under Russian law, the Constitution takes priority over all other legislation (or lack thereof). Some Russian lawyers and human rights defenders have therefore asserted that mobilised men have the right to ACS, regardless of the circumstances.

– 2002 Federal Law on Alternative Civilian Service

This sets out the right to and organisation of alternative civilian service (ACS) solely in terms of conscription (the compulsory twice-yearly call-up of Russian men aged 18-27 who have not served before and are therefore not in the reserve). Under this Law, instead of 12 months of military service, those for whom this goes against their religious or other beliefs can apply to serve for 18 months in a civilian role in the armed forces, or 21 months in a state-run institution such as a hospital or nursing home.

Article 24 of this Law states that people who do ACS are subsequently enlisted in the reserve, but are not called upon to do military training (conscientious objectors' membership in the reserve is also enshrined in Article 52 of the 1998 "Law on military duty and military service").

Article 9 states: "The organisation and conduct of alternative civilian service during a period of mobilisation, during martial law and in wartime are determined by federal constitutional laws, other federal laws and other regulatory legal acts of the Russian Federation adopted in accordance with them." Existing federal laws do not, however, set out the process of administering alternative service for reservists who either have always been conscientious objectors (and therefore did ACS as conscripts), or whose beliefs may have changed since they performed conscripted military service.

– 2007 "Regulations on the call-up of citizens of the Russian Federation for mobilisation"

These Regulations make no mention of any option of alternative service and do not list the assignment of mobilised men to alternative service among the functions of a mobilisation commission.

– 1997 Law on Mobilisation Preparation and Mobilisation

This Law also made no mention of alternative civilian service until nearly eight weeks into the "partial mobilisation". A set of amendments which entered legal force on 15 November introduced a new Article 17.1, which stated that conscripts undertaking alternative civilian service (ACS) upon the announcement of mobilisation would be allowed to carry on doing it, but that those who were serving in state institutions may be moved into civilian roles in the armed forces.

Lawyer Sergey Chugunov described this amendment on his Telegram channel on 27 October as "more bad news than good", as it means that the law still does not address the possibility of ACS for reservists as opposed to conscripts.

Lawyer Valeriya Vetoshkina of Perviy Otdel – a group of lawyers and human rights defenders - believes the amendment effectively "abolishes ACS as a peaceful alternative to military service" during mobilisation. She notes that because mobilisation technically has not ended, any conscript who henceforth applies for ACS may be given a civilian position in Armed Forces, rather than a state institution.

"It does not save [anyone] from the army, but, on the contrary, allows you to send those who are doing alternative service 'in civilian life' to positions as 'civilian personnel', but in the Armed Forces," Vetoshkina commented to the Kholod.Media news outlet on 9 November. "That is, the law not only does not save you from participating in the war, but can involve you in the activities of the Armed Forces of the Russian Federation."

Vetoshkina added: "If your beliefs are not to take up arms and not to shoot at people, no one will force you to do this, but if you are against war in principle, be prepared to get as close to it as possible."

Forum 18 is aware of only one example of this amendment helping a draftee avoid mobilisation. A military commissariat in the Chuvash Republic agreed (after twice refusing his application) not to mobilise a man who had requested alternative civilian service (ACS) because he believed military service was "contrary to my beliefs about the value of each person's life, beliefs about non-violence and the unacceptability of complicity in this violence".

In its final letter, which the Call to Conscience Telegram channel reposted on 1 December, the military commissariat cited the new Article 17.1 of the Law on Mobilisation Preparation and Mobilisation. It said that the applicant would not be called up for military service, but "upon the announcement of mobilisation", he would be considered as wishing to undergo ACS as civilian personnel in the military.

"It doesn't say 'conscripts only'"

Lawyers and human rights defenders agree that federal legislation does not provide for alternative civilian service (ACS) for reservists during mobilisation. They insist, however, that the Constitution guarantees the right to ACS in any case, and that men who object to fighting on religious or other conscientious grounds should therefore lodge applications for ACS and go to court when they are refused.

Call to Conscience (Prizyv k sovesti) is a "coalition of lawyers and experts from Russian human rights organisations for

conscientious objection to military service". It argued on its Telegram channel on 15 October that "The obligation to provide the opportunity to perform ACS lies with the state. While such an opportunity does not exist, the state should not mobilise for military service citizens who have stated their beliefs."

"The Constitution has the highest legal force [and] direct effect.. Laws and other legal acts adopted in the Russian Federation must not contradict the Constitution (Article 15, Part 1 of the Constitution of the Russian Federation)," the law firm Antonov and Partners pointed out on its website on 18 October (<https://pravo163.ru/advokat-po-mobilizacii-alternativnaya-grazhdanskaya-sluzhba-v-period-chastichnoj-mobilizacii/>).

"There are no exceptions that would allow us to say that the replacement of military service with alternative civilian service is impossible during the period of mobilisation," Antonov and Partners added. "This means that citizens have the right to refuse conscription for military service and demand its replacement with alternative civilian service."

"The absence of legal regulation," the firm added, "should not prevent citizens from exercising their constitutional rights."

Sergey Chugunov of the Slavic Centre for Law and Justice also emphasises the overriding force of the Constitution. Between the adoption of the Constitution in 1993 and the passing of the Law on Alternative Civilian Service in 2002, no mechanism for alternative civilian service (ACS) existed, and every young man who conscientiously objected to military service had to go to court, he noted on his Telegram channel on 22 September. During this time, courts, including the Constitutional Court, repeatedly recognised the right of conscripts to perform alternative service.

Chugunov cites a number of Constitutional Court determinations which uphold this right, including one of 22 May 1996, which stated that "the right of citizens whose beliefs or religion are contrary to the performance of military service, which is literally enshrined in the named constitutional norm and does not need to be specified, to replace it with alternative civilian service, like all other rights and freedoms of person and citizen, is directly applicable (Article 18 of the Constitution of the Russian Federation) and must be ensured regardless of whether the relevant federal law has been adopted or not".

"Both the Constitution and the Law on Freedom of Conscience guarantee the right to ACS to all citizens whose beliefs are contrary to military service. It doesn't say 'conscripts only'," Daavr Dorzhin, a lawyer for the Memorial human rights group commented to the Call to Conscience Telegram channel on 25 October.

Dorzhin noted that it is not yet possible to actually do alternative service because there is no procedure, but citizens have the right to request it. "Usually, the military authorities answer that ACS is not provided for during a period of mobilisation. It is best to continue the correspondence: indicate that you do not agree with such an answer and ask them not to call you up until the adoption of [relevant] legislation."

"A believer .. has the right to have his own religious beliefs"

Pavel Chikov, of the Agora human rights group, noted on his Telegram channel on 16 October the risk that believers may also be refused alternative civilian service (ACS) because many Russian religious organisations do not explicitly forbid participation in military hostilities.

Chikov added that it is therefore important to be aware that the Constitutional Court determined on 23 November 1999 that a citizen's right to alternative service under Article 59 of the Constitution must be upheld on the basis of the individual's own beliefs, regardless of membership of any religious organisation.

In early October, the Spiritual Administration of Muslims of the Republic of Tatarstan (DUM-RT) declared that it is "permissible for Muslims to participate in hostilities in the ranks of the Russian army".

Call to Conscience pointed out that this does not mean Muslims cannot request ACS. "Every citizen has the right to their own religious beliefs," it noted on Telegram on 8 October. "Every religion has a tradition of peacemaking – the ideas of peace, justice and non-violence. A religious organisation can support war, and military actions, bless weapons for war – as, unfortunately, the Russian Orthodox Church does – or allow participation in war like the DUM-RT. But a believer, even as a member of this organisation, has the right to have his own religious beliefs, different from the official position."

Call to Conscience lawyers advise that draftees should state in their applications for ACS that their requests are connected to personal religious beliefs, and ask friends, relatives, and fellow believers to confirm their views.

Further possible legal changes?

On 7 October, State Duma deputies Sardana Avksentyeva and Maksim Gulin of the New People Party proposed a set of amendments (? 207803-8 in the Duma's online record) to the 1997 Law on Mobilisation Preparation and Mobilisation and the 2002 Law on Alternative Civilian Service, which would make the option of alternative civilian service available to reservists during

mobilisation and expand the number of categories of citizens eligible to undertake it (by adding various personal circumstances, such as being the son or brother of a soldier who has died while serving).

In their attached explanatory note, Avksentyeva and Gulin note that "the question of the forms and methods of using citizens undergoing alternative civilian service during the period of mobilisation, during martial law and in wartime, as yet remains unresolved", and that "This legal gap may hinder the implementation of the constitutional right to replace military service with alternative civilian service during call-up for mobilisation."

The amendments would introduce a new Paragraph 3.1 to Article 17 of the Law on Mobilisation, stating: "Citizens in the reserve have the right to replace military service with alternative civilian service during the period of partial mobilisation and can be sent to work as provided for in Article 4 of Federal Law No. 113 'On Alternative Civilian Service', including to ensure the safety of educational organisations."

Article 2 of the latter ("The right of a citizen to replace military service by conscription with alternative civilian service") would also be amended to expand this right explicitly to periods of full and partial mobilisation.

The draft law's progress appears to have stalled at the committee stage, however, with the Duma's Defence Committee concluding that various aspects of it conflict with existing federal law, most notably that "The draft provisions do not take into account the fact that, in accordance with Article 3, Paragraph 1 of [the 2002 Law on Alternative Civilian Service], alternative civilian service is undertaken by male citizens aged 18 to 27 years who are not in the reserve".

This appears to be because the deputies failed to suggest an amendment including reservists in this law's Article 3 ("Citizens assigned to alternative civilian service").

The registration of the draft law "confirms the rightness [pravota] of human rights defenders' statements that the constitutional right of citizens to alternative civilian service (ACS) must be upheld", Aleksey Tabalov, head of the human rights organisation Shkola pryzivnika, commented on 7 October. "And this is not a citizen's problem, but a legislator's problem, if there is still no such law. We continue to recommend that everyone who wants to avoid being called up for mobilisation apply to military recruitment offices for the replacement of military service with alternative civilian service."

It is unlikely, however, that the Duma will pass these amendments, lawyer Sergey Chugunov told Forum 18 on 7 December, "even if they want to settle [the issue] of ACS during mobilisation". He noted that such a draft law "should regulate the procedure for assigning [people] to ACS – how, where, and when to apply, how a decision is made, etc., but there is nothing like that in it".

Duma deputies have proposed two more draft laws which may have an effect on alternative civilian service during mobilisation. One of these (? 220951-8), registered on 25 October, would add a new Paragraph 2.1 to Article 17 of the Law on Mobilisation, exempting citizens who have not undertaken military service from call-up in the partial mobilisation.

The explanatory note acknowledges that "citizens have been mobilised who did not completed military service and did not have relevant experience". It does not, however, explicitly mention reservists who did ACS as conscripts. This could be considered by the Duma in its spring session in 2023.

The other draft law (? 214382-8), registered on 17 October, also appears to have stalled at the committee stage. It would add to the Law of Mobilisation more categories of citizen eligible for a deferment of service, including "those undergoing alternative civilian service". It does not specify how long a deferment and does not mention people who have already completed ACS.

The Defence Committee argued in its conclusion of 7 November that this contradicts the 2002 Law on Alternative Civilian Service, according to which those who have done ACS are placed in the reserve and are therefore liable to call-up.

Forum 18 sent enquiries to Sardana Avksentyeva and Maksim Gulin through the Duma's online enquiry system. It asked what changes they had made to the draft law in response to the Defence Committee's conclusions, when they thought the bill would be considered by the Duma, and whether they thought the possibility of alternative service for reservists would be provided for in federal law. Forum 18 had received no response by the end of the working day in Moscow of 19 December. (END)

More reports on freedom of thought, conscience and belief in Russia (<https://www.forum18.org/archive.php?country=10>)

For background information, see Forum 18's survey of the general state of freedom of religion and belief in Russia (https://www.forum18.org/archive.php?article_id=2246), as well as Forum 18's survey of the dramatic decline in this freedom related to Russia's Extremism Law (https://www.forum18.org/archive.php?article_id=2215)

A personal commentary by the Director of the SOVA Center for Information and Analysis (<https://www.sova-center.ru>), Alexander Verkhovsky, about the systemic problems of Russian "anti-extremism" laws (https://www.forum18.org/archive.php?article_id=1468)

Forum 18's compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments (https://www.forum18.org/archive.php?article_id=1351)

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If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY