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RUSSIA: "Faith forbids him to take up arms, kill, or take oaths"

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

Military officials rejected the alternative civilian service applications of four young Baptists in Siberia and the Far East. The four men had all set out their pacifist religious convictions. Brothers Daniil and German Strelkov are preparing to appeal after a court ruled the refusals lawful. Courts twice declined to uphold Zakhar Asmalovsky's lawsuit against the military authorities. Timofey Reznichenko successfully challenged his refusal in court, gaining the right to have his application re-examined. A higher-level Conscription Commission granted a fifth, Sergey Myalik, the right to undertake alternative service.

Military officials have denied four young Baptist men in Siberia and the Far East the opportunity to carry out alternative civilian service, rather than military service, despite their efforts to demonstrate their pacifist religious convictions to the military authorities. All had applied for alternative civilian service.

As of mid-December, only one – Timofey Reznichenko from Primorye Region – has successfully challenged this refusal in court, thus gaining the right to have his application re-examined (see below).

Brothers Daniil and German Strelkov, from Khanty-Mansi Autonomous Region, failed in their attempts to have their refusals ruled unlawful in court and are now preparing to appeal. "Faith forbids him to take up arms, kill, or take oaths," a witness in Daniil's case told the court. In German's case, his father testified that he "is a deeply religious person and will not take up arms or take an oath, as this is prohibited by [his] religion" (see below).

Krasnoyarsk Region courts twice declined to uphold Zakhar Asmalovsky's lawsuit against the military authorities, meaning he will now be subject to conscription in the future (see below).

A higher-level Conscription Commission in Kemerovo Region granted a fifth Baptist, Sergey Myalik, the right to undertake alternative service after his initial application was rejected at the district level (see below).

Khanty-Mansiysk Military Commissariat and Khanty-Mansiysk District Court did not answer Forum 18's questions as to why exactly Daniil and German had been denied the opportunity to do alternative civilian service, and what else they should have included in their applications. The Court said only that anyone disagreeing with a court decision can appeal. Forum 18 received no response from the Military Commissariat (see below).

The Conscription Commissions in Asmalovsky's and Myalik's cases similarly failed to respond to Forum 18's questions as to why they had refused the applications for alternative service (see below).

According to the Council of Churches Baptists, all five young men are members of the church, which has a strong pacifist tradition. While the church does not formally oppose the undertaking of military service, when Baptist conscripts apply for alternative civilian service, church communities tend to support them in collating documents for the Conscription Commission and going to court if refused (see below).

All Russian men must carry out military service for 12 months between the ages of 18 and 27, after which they are enrolled in the reserves (and thereby become subject to mobilisation – as occurred in the autumn of 2022). It is possible to gain exemption on medical grounds, or deferrals for medical or educational reasons and in certain family situations. Conscripts also have the right, enshrined in the Russian Constitution, "to replace [military service] with alternative civilian service", and instead work in a state or municipal institution, or in a civilian role in the armed forces, for a longer period (see below).

As yet, the explicit right to alternative civilian service exists only for conscripts, with no equivalent provided for in law for mobilised men (although some have been able to avoid mobilisation to fight in Ukraine by applying for ACS anyway).

Despite the Constitution setting out the right to ACS, this is not unconditional. Conscripts must demonstrate to Conscription Commissions that they have well-founded and strongly held beliefs which preclude their performing military service (see below). If a Conscription Commission does not accept that a conscript genuinely holds such beliefs, then it can refuse his application.

Russian and international human rights bodies have argued that such procedures are often not carried out fairly or independently, with military officials putting undue pressure on ACS applicants, and decisions being largely taken by military commissars, despite Conscription Commissions being ostensibly independent organs chaired by local civilian officials.

Alternative civilian service: The law

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, but the right to alternative service is not absolute, despite the absence of any conditions in Article 59.

The 2002 Law on Alternative Civilian Service sets out the procedures of applying for, granting, and carrying out ACS. According to Article 2, a man has the right to replace military service by conscription with alternative civilian service if: "performing military service is contrary to his beliefs or religion"; or "he belongs to the indigenous people of the Russian Federation, leads a traditional way of life, carries out traditional economic activities and is engaged in traditional crafts of the indigenous peoples of the Russian Federation".

To exercise this right, however, an individual must submit an application to be considered by the Conscription Commission (a nominally independent body comprising representatives of the local civilian authorities and Military Commissariat), which decides to accept or refuse it. If successful, the applicant undergoes a medical examination and is then assigned to work at a state or municipal institution (for 21 months) or in a civilian role in the armed forces (for 18 months), usually (though not always) outside his home region.

Possible ACS deployments in 2023 included both skilled and unskilled jobs in - among others – Culture Ministry and Agriculture Ministry organisations, hospitals and polyclinics, nursing homes, and educational institutions. Members of indigenous groups may be assigned to organisations employed in traditional economic activities.

Only small numbers of those called up each year undertake ACS. Lawyer Sergey Chugunov noted on his Telegram channel on 3 May 2023 that as of 1 February 2022, 1,138 people were in the process of doing ACS, while the total number of young men called up in the autumn conscription in 2021 was 127,500.

Both conscripts who do military service and those who do ACS are enrolled in the reserves upon completion, rendering them liable to call-up in the event of mobilisation. Several individuals who served in the army as conscripts, but who did not want to fight in Ukraine on grounds of their religious beliefs, have found themselves assigned to military units anyway, given the lack of provision for ACS for reservists (https://www.forum18.org/archive.php?article_id=2865), and have had to challenge their mobilisation in court, with little success.

Only one person who refused call-up on religious grounds, Protestant Pavel Mushumansky, is known to have had his mobilisation ruled unlawful (https://www.forum18.org/archive.php?article_id=2819).

On 1 January 2024, an amendment to the Law on Military Service will come into force which raises the upper age limit for conscription from 27 to 30, thus creating a much larger pool of potential draftees. The lower limit will remain at 18, despite earlier proposals to raise it to 21. Men who turn 27 before the end of 2023 (and have not yet done military – or alternative – service) will not be liable to be called up, the State Duma noted on its website on 25 July.

Alternative civilian service: The procedure

Article 11 of the Law on ACS states that an individual must submit an application to the Military Commissariat at which he is registered, before 1 April for that year's autumn call-up (October to December) or before 1 October for the following year's spring call-up (April to June).

The process of granting the replacement of military service with ACS takes place in one call-up period (when a Conscription Commission considers an application), while actually going to do ACS takes place in the next (when the Military Commissariat issues orders for an individual to work at a particular organisation).

ACS is not granted simply upon request. According to the law, "Citizens who have expressed a desire to replace conscripted military service with alternative civilian service must substantiate [their claim] that military service is contrary to their beliefs or religion", and set out "the reasons and circumstances [prichiny i obstoyatelstva] that prompted [them] to apply for this".

In his application, an individual must include an autobiography and a reference from his place of work or study. He also has the right to include other documents which back up his request, and to give details of "persons who agree to confirm the veracity of his

arguments that military service contradicts his beliefs or religion".

A Constitutional Court decree of 23 November 1999 states that the right to ACS "is a directly valid, and specifically individual, right, i.e. associated with freedom of religion in its individual rather than collective aspect, and therefore must be ensured regardless of whether or not a citizen is a member of any religious organisation".

A Conscription Commission – which consists of a mix of civilian officials from the local administration and military staff from the Military Commissariat – considers each application at a meeting to which the young man himself is summoned to make his case for being allowed to do alternative service. According to Article 12 of the Law on ACS, the commission bases its decision on testimony given at the meeting by the applicant himself and the people who have agreed to make supporting statements, as well as the materials he has submitted.

A decision must be issued within one month of the application deadline and a copy sent to the applicant within three days of its being taken.

Alternative civilian service: Refusals

The Conscription Commission may refuse an application on certain grounds: a) if the deadline is missed or the procedure incorrectly followed; b) if the submitted documents and other information "are not in accordance with the citizen's arguments that military service is contrary to his beliefs or religion"; c) if the submitted information is false; d) if the individual has twice failed to appear at meetings of the Conscription Commission; e) if an individual has previously been granted ACS and has failed to do it.

The Constitutional Court ruled on 17 October 2006, however, that a missed deadline should not be grounds for outright refusal to consider a request for ACS on its merits (see below).

A Conscription Commission's conclusion that an individual's submitted information does not back up his professed beliefs is the second most common reason for applications to be refused, according to the Movement of Conscientious Objectors (<https://stoparmy.org/>) (after missed deadlines).

"The [Conscription Commission's] position is usually not that the citizen has no beliefs at all that preclude the undertaking of military service .. rather, [it] considers that everything stated by the conscript is not beliefs, but delusions and so on", the Movement observes on its website.

"The lack of an independent civil decision-making body [is] a significant concern", the European Bureau for Conscientious Objection (<https://ebco-beoc.org/>) notes on its website. It points out that while Conscription Commissions are chaired by the head or deputy head of a municipality, the deputy chair is a military commissar, and "in practice", the commission's work is largely done by the Military Commissariat and is not under the control of the civilian chair.

Civilian officials on Conscription Commissions "are poorly oriented in the legislation in the field of conscription and conscientious objection and fully rely on the opinion of the military commissar and other employees of the Military Commissariat", the Bureau observes. "In practice, the [Conscription Commission] is dependent on the Military Commissariat and cannot take impartial decisions. Military officials also "put pressure on recruits, telling them that asking for civilian service is unlawful".

There is no clear official indication of what constitutes "reasons and circumstances", or how to "give a basis for" [obosnovat] their beliefs, Forum 18 notes. This leaves a grey area in which Conscription Commissions may dismiss applications under pressure from military officials, or applicants may not amass "enough" material to convince commission members of their convictions.

The right to ACS is "becoming increasingly difficult to exercise", lawyer Sergey Chugunov commented on his Telegram channel on 3 May (<https://t.me/chugunovsv/172>).

"Alarming news is coming from different regions of the country that citizens are being denied ACS for a variety of reasons," Chugunov noted. "Some for missing the deadline for filing an application, which is not an absolute basis for restricting the right. Others because of a lack of evidence for beliefs, which does not correspond to either the law or common sense. And I get the impression that these are far from 'excesses on the ground'."

"Refusals, in my opinion, in most cases are not justified," Chugunov added to Forum 18 on 19 December. "[Conscription commissions] require proof of belief, but this is the wrong approach. However, the courts are in no hurry to correct the situation. The conscript must give a basis for [obosnovat] the contradiction of military service with his beliefs, but not prove [dokazyvat] their existence. This is impossible."

It is unclear from the court decisions in the five Baptist cases examined by Forum 18 whether the Conscription Commissions expected the applicants to "prove" their beliefs – the emphasis instead appears to be on the alleged insufficiency of documentation – but this tendency among Conscription Commissions has been causing concern among conscripts' rights organisations and lawyers.

The Call to Conscience Telegram channel noted on 22 September 2023 that "Candidates for ACS should give a basis for [obosnovat] [their claim] that doing military service goes against their beliefs or religion, but are not obliged to prove [dokazyvat] it or convince the commission [ubezhdat komissiyu]".

When Conscription Commissions refuse applications on these grounds, "all the citizen's statements are considered not as a statement of his beliefs that are contrary to military service, but something else (fear of the army, declaration of a political position, distorted idea of the army, etc., etc.)", the Movement of Conscientious Objectors observes.

Alternative civilian service: Going to court

If an applicant is unsuccessful, he can either appeal to a higher-level Conscription Commission or file an administrative lawsuit at a district-level court, requesting that the Conscription Commission's decision be ruled unlawful.

Going to court means that the implementation of the Conscription Commission's decision is suspended until the court's decision enters into legal force. If a lawsuit is initially unsuccessful, the plaintiff has one month to appeal, and the decision does not enter legal force before the appeal ruling. It is therefore likely that the call-up period will end before the lawsuit is resolved, meaning that the individual is not liable to be conscripted immediately even if his legal challenge fails. He can then make a new application for alternative service in the next call-up period.

Strelkov brothers: Applications for ACS refused

In separate hearings on 27 November 2023, Judge Rinat Akhmetov of Khanty-Mansiysk District Court refused to uphold the administrative lawsuits which Daniil Aleksandrovich Strelkov and his brother German Aleksandrovich Strelkov had brought against the Conscription Commission and Military Commissariat which had denied their applications for alternative service.

According to the written decisions in both suits, the brothers grew up in a religious family and are members of a Council of Churches Baptist congregation. Both had requested ACS on the grounds that their beliefs – held "since childhood", according to their father – mean that they "will not take up arms or take an oath".

Khanty-Mansiysk City Conscription Commission, however, decided that the documents and other information each of them had submitted "do not correspond to [his] arguments that military service is contrary to his beliefs".

Judge Akhmetov agreed with this position, noting – with reference to a Constitutional Court ruling of 24 June 2014 - that the right to ACS "does not mean that a citizen is given an unconditional right to choose between military service and alternative civilian service, or that a citizen's negative idea of military service and his reluctance to perform [it] gives him the right to replace it with alternative civilian service".

The court did not, however, include in its consideration of the lawsuits all the petitions and information the Strelkovs had submitted, the Intercession Department of the Council of Churches Baptists' Siberian Union noted on its Telegram channel on 4 December. "We plan to appeal against the court decision to the Supreme Court," the Department stated, "pointing out the legal actions and rights of our young brothers."

In his application, Daniil Strelkov stated that he is a Baptist Christian, which "precludes doing military service". He said he has held these views for a long time, that he attends a Baptist church, and that he "refuses to bear arms or study military matters". He included an autobiography as required, as well as an appeal [obrashchenie] from parishioners of his church, a testimonial [svidetelstvo] from four fellow believers, and petitions [khodataystva] from his mother and father.

In court, a witness (whose name is redacted in the published decision but appears to be one of the brothers' parents) testified that Daniil "was raised as a Christian", and that "Faith forbids him to take up arms, kill, or take oaths".

German Strelkov made similar arguments in his ACS application and his lawsuit. At his hearing, his father testified that German had been baptised, has been a believer "since childhood", is a member of the church, and "is a deeply religious person and will not take up arms or take an oath, as this is prohibited by [his] religion".

In examining both suits, Judge Akhmetov decided that "it does not objectively follow [from the information presented] and cannot be seen that Strelkov in fact has strong beliefs, confirmed in his lifestyle and the nature of his social behaviour over a significant period of time, which preclude military service. The attached documents do not contain information substantiating the formation of sincere and deep convictions in the applicant which make it impossible for the [him] to perform military service".

"A citizen who refuses to undergo conscripted military service, justifying the need to exercise [the right to ACS] by the existence of a certain kind of belief, must submit to the Conscription Commission for consideration information confirming that his beliefs are indeed serious, persistent and well-founded, established over a long period in the conscript's life", the judge continued, concluding

that neither Daniil nor German Strelkov had done this.

Judge Akhmetov also noted in each decision that "before submitting to the Military Commissariat his application to replace conscripted military service with alternative civilian service", neither Daniil nor German declared "that he had any beliefs that prevented him from performing military service". It is unclear what exactly this means or how, when, and to whom they were supposed to make such a declaration.

Forum 18 wrote to Khanty-Mansiysk Military Commissariat and Khanty-Mansiysk District Court to ask why exactly Daniil and German had been denied the opportunity to do alternative civilian service, and what else they should have included in their applications.

Court chair Vladislav Gavrish responded on 18 December, stating that in case of disagreement with the content or process of the judges' decisions, interested parties can appeal to the Court of Khanty-Mansiysk Autonomous Region. He did not answer Forum 18's questions.

Forum 18 had received no response from the Military Commissariat by the end of the working day of 19 December.

Asmalovsky: "Mere fact he is a believer no basis for ACS"

Conscription Commissions are known to have recently refused the ACS applications of two more members of the Council of Churches Baptists.

Zakhar Igoryevich Asmalovsky failed to have this decision ruled unlawful either in his initial lawsuit at Berezovka District Court on 7 September or his appeal to Krasnoyarsk Regional Court on 23 November. The judge concluded that neither Asmalovsky's autobiography nor the reference from his place of study "indicates that [his] beliefs and religion preclude conscripted military service" and "the mere fact that he is a believer and attends church cannot serve as an unconditional basis for replacing his military service with alternative civilian service".

Asmalovsky, who did not appear in court (it is unclear why not), will now be liable for conscription again in the spring call-up of 2024, but has the right to submit another application for ACS if necessary.

"Brother Zakhar continues to defend his convictions both at the Conscription Commission and in the courts in order to gain the right to undergo ACS. However, he has not yet been successful," the Intercession Department of the Council of Churches Baptists' Siberian Union commented on its Telegram channel on 4 December. "We plan to appeal the decision of the Conscription Commission and the court decisions to the Supreme Court."

Forum 18 wrote to Berezovka District Conscription Commission to ask why it had (initially) refused Asmalovsky's application. Forum 18 had received no response by the end of the working day of 19 December. Berezovka District Court has also not responded to Forum 18's questions.

Myalik: ACS granted on second attempt

Council of Churches Baptist Sergey Myalik, meanwhile, first appeared before a Conscription Commission in Novokuznetsk (Kemerovo Region) on 27 November, when his application for alternative service was also refused. The church supported him in preparing "a new package of documents" and he successfully applied to a higher-level commission on 4 December.

Forum 18 wrote to Novokuznetsk Conscription Commission to ask why it had (initially) refused Myalik's application. Forum 18 had received no responses by the end of the working day of 19 December.

Reznichenko: Application for ACS rejected without consideration

A Conscription Commission may also decline to grant an individual the right to alternative civilian service if he misses the deadline (1 April for the autumn call-up, 1 October for the spring call-up). Despite the fact that, according to a Constitutional Court ruling of 17 October 2006, a missed deadline should not be grounds for refusal to consider a request for ACS on its merits, this remains the most common reason for unsuccessful applications, the Movement of Conscientious Objectors has found.

On 28 November 2023, Khasan District Court ruled that Khasan Municipal District Conscription Commission and Primorye Region Military Commissariat's rejection of Timofey Reznichenko's apparently late ACS application was unlawful, and obliged them to convene a meeting of the Conscription Commission to consider his request. It is unknown when this will take place.

Timofey Yuryevich Reznichenko was brought up in a large Baptist family in the Primorye Region village of Zarubino. His older

brother, Vyacheslav, refused on grounds of his religious beliefs to be deployed to fight in Ukraine when he was mobilised as a reservist in September 2022. Vyacheslav is now serving a sentence of two years and six months (https://www.forum18.org/archive.php?article_id=2865) in a prison colony-settlement, having been convicted of refusing to participate in military operations (Criminal Code Article 332, Part 2.1).

Vyacheslav Reznichenko is one of four men known to be jailed (https://www.forum18.org/archive.php?article_id=2865) because they refused on religious grounds to go to fight in Ukraine.

According to the written decision, seen by Forum 18, Timofey Reznichenko explained in court that he is a believer, and had initially applied for alternative civilian service on 29 September 2022 on grounds of his religious beliefs.

In response, Khasan District Military Commissariat informed Reznichenko in a letter of 5 October 2022 that he was registered as "partially fit for military service", and was therefore subject to Article 3, Paragraph 2 of the Law on Alternative Civilian Service. This states that citizens not subject to conscription [for medical reasons] are not sent to do ACS either.

During the spring call-up of 2023, the letter continued, Reznichenko would be given a medical examination and "a decision would be made on assignment to alternative civilian service or exemption from conscription for military service in accordance with the current legislation of the Russian Federation".

Reznichenko received no summons to a Conscription Commission meeting or medical examination during the spring call-up, and so submitted another application on 4 October 2023, noting his previous attempt and reiterating his request for ACS. The Conscription Commission turned this down on 9 November.

The Conscription Commission stated to the court that Reznichenko's first application had not been considered in spring 2023 "due to his failure to provide the [apparently non-existent] conclusion of the medical board". After the spring call-up ended, they considered this application invalid. His second application was not considered because he had missed the autumn deadline by three days.

The judge, however, concluded that, by law, the Conscription Commission in fact should have considered Reznichenko's September 2022 request in the spring 2023 call-up, and having failed to do this, should have considered it in the autumn. The 2006 Constitutional Court ruling also indicated that missing the autumn deadline was no grounds for outright refusal.

The actions of the Conscription Commission and Military Commissariat were therefore "unfounded in law, violating the rights, freedoms, and legitimate interests of the administrative plaintiff". (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 then 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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