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RUSSIA: Refusing to "carry out orders aimed at destruction and utter defeat of living people"

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

A Leningrad Region court upheld Pavel Mushumansky's request to have his mobilisation order cancelled. He had stated in his application for alternative service that based on his Christian beliefs he could not "carry out orders aimed at the destruction and utter defeat of living people". Once the decision enters legal force, he should be able to return home from his military base. Dmitry Zlakazov, a Protestant whose application for alternative civilian service was rejected, lost his lawsuit against the military authorities. His whereabouts are unclear.

A Russian Protestant who sought to do alternative civilian service has succeeded in having his military mobilisation order declared illegal in court. While his lawyers have welcomed this decision as a "real act of justice", the situation for conscientious objectors – religious and otherwise – remains murky during Russia's "partial mobilisation", which President Vladimir Putin has still not formally ended by decree.

In the absence of any clear legal mechanism for requesting alternative civilian service (ACS) under conditions of mobilisation, the fate of men who object to using weapons or serving in the armed forces depends on individual recruitment offices or on the courts (see below).

On 30 November, a Leningrad Region court upheld Pavel Mushumansky's request to have his mobilisation order cancelled. Once the decision enters legal force, he should be able to return home from his military base (see below).

Mushumansky, who stated in his application for alternative service that on the basis of his Christian beliefs he could not "carry out orders aimed at the destruction and utter defeat of living people", had already completed ACS as a conscript. Some other mobilised men who have requested (and been denied) ACS carried out military service as conscripts; both forms of service place a person in the reserve upon completion, rendering them liable to call-up in the future.

The fact that Mushumansky undertook alternative civilian service as a conscript was "important, even if not key" to his case, his lawyer Aleksandr Peredruk told Forum 18. "However, the freedom of conscience and religion, as well as the related right to ACS, cannot be limited only to those who have previously completed ACS – the question of exemption from military service of citizens whose beliefs oppose such service should be resolved in each specific case" (see below).

Among other ACS cases known to Forum 18 are those of Kirill Berezin, an Orthodox Christian who was ultimately allowed a non-combat role in a Russia-based unit, and Dmitry Zlakazov, another Protestant who also lost his lawsuit against the military authorities and whose whereabouts are now unclear (see below).

Forum 18 sent enquiries to the Defence Ministry's Information Department and the Western Military District, asking why military recruitment offices were denying requests for alternative civilian service when the Constitution guaranteed this right to all citizens. Forum 18 also asked whether mobilised conscientious objectors would be allowed to serve in unarmed roles. Forum 18 received no reply by the end of the working day of 20 December (see below).

Despite the constitutional right of all Russians to carry out alternative civilian service instead of military service if the latter goes against their beliefs, President Putin's 21 September mobilisation order and associated legislative changes make no mention of provision for reservists who are conscientious objectors (see below).

"Protect your rights"

The lack of an explicit provision for a civilian alternative for those mobilised "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."

Fleeing mobilisation

After Putin announced the "partial mobilisation" of reservists on 21 September, hundreds of thousands of men are believed to have left the country to avoid being called up (<https://www.reuters.com/world/europe/where-have-russians-been-fleeing-since-mobilisation-began-2022-10-06/>), although exact figures have been difficult to ascertain.

Mobilised men have complained of a lack of basic equipment and supplies, and of being sent into combat with virtually no training. Both mobilised and contract soldiers who have refused to fight once in Ukraine have reportedly been beaten, threatened, and detained without due process (<https://en.zona.media/article/2022/11/16/objectors>) in poor conditions.

The Defence Ministry announced on 29 October that mobilisation had been completed and the target figure of 300,000 recruits met. Although Putin said on 9 December that there was "no need" for a second wave of mobilisation, he has not issued a decree cancelling the original announcement.

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.

Gap in Russian law

Lawyers and human rights defenders agree that Russian federal legislation does not provide for alternative civilian service for reservists during mobilisation (https://www.forum18.org/archive.php?article_id=2797). 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.

The gap in the law has led to military recruitment offices turning down conscientious objectors' requests for alternative civilian service on the grounds that there is no provision for ACS during mobilisation and/or that ACS is only for conscripts, despite this being contrary to the Constitution.

Call to Conscience (Prizyv k sovesti) – which supports conscientious objectors - has recorded cases of such refusals in Samara, Perm, Kostroma, and Nizhny Novgorod Regions and the Khakasiya Republic. It is not known whether the men involved objected to military service for religious or other conscientious reasons. Lawyer Pavel Chikov of the human rights group Agora noted on his Telegram channel on 18 October that courts had applied preliminary protective measures while their cases were considered to at least two men in the Penza Region who had requested ACS.

It appears, however, that applying for alternative service, even though there is no mechanism for it to be carried out, can sometimes

be an effective way for conscientious objectors to avoid mobilisation, though in the absence of any regulations, this depends on military recruitment offices themselves.

Call to Conscience noted on its Telegram channel on 26 October that when a person applies for ACS, "more often than not, military recruitment offices lose interest and mobilisation activities are stopped", while sometimes they respond that "If there is a requirement for specialists who need to replace military service with alternative civilian service, we will definitely turn to you" or "You are not subject to mobilisation".

The channel also noted the case of a man whose repeated requests for ACS and refusal to participate in training at his military unit eventually led to his being sent home.

Leningrad Region: Mobilisation overturned

On 30 November, after a closed hearing lasting more than three hours, Judge Marina Girenko of Gatchina City Court upheld 23-year-old Pavel Mushumansky's lawsuit against the military authorities, ruling that his mobilisation had been unlawful. Mushumansky, a Protestant who had requested and been refused alternative civilian service, should be able to return home from his military unit once the decision comes into force on 10 January 2023.

In the continued absence of a mechanism for ACS during mobilisation, it remains unclear whether or how Mushumansky will serve.

"I am very glad that during this process nobody has created the illusion that it is normal for a person with such views to be called up," Mushumansky's lawyer Aleksandr Peredruk commented to the Advokatskaya Ulitsa legal news website on 30 November. "This is not normal, he should not be in the army – and the court agreed with this."

Mushumansky – whom his lawyer describes as a "deeply believing person" – received his call-up papers on 24 September. He went to the military recruitment office with his application for ACS on 25 September, but officials ignored this. Instead, they sent him to a military unit in Luga, despite the fact that he had previously done ACS as a conscript (and therefore had no military experience), working from 2019 to 2021 in the laundry of a psycho-neurological residential institution in Kingisepp.

Mushumansky lodged an administrative suit against the military authorities on 7 October, asking the court to overturn and declare unlawful the decision to mobilise him and oblige the district mobilisation commission to release him from military service. On 12 October, the court ordered that his mobilisation should be suspended and "preliminary protective measures" put in place for the duration of the proceedings, ordering that he should be sent home in the meantime.

Despite this, Mushumansky was not released from his military unit. While at the base, he refused to carry out orders, wear a uniform, or accept army pay.

"I cannot carry out orders aimed at the destruction and utter defeat of living people," Mushumansky said in his statement to the court. His lawyers – Aleksandr Peredruk and Arseny Levinson – argued that the judge should proceed on the basis of the Constitution, even in the absence of a federal law, and that the 2002 Law on Alternative Civilian Service does allow for the possibility of ACS during mobilisation, but there is simply no appropriate mechanism for it.

Judge Girenko ruled Mushumansky's mobilisation unlawful, but it remains unclear exactly why. Gatchina City Court refused on 8 December to explain the judge's reasoning on the grounds that Forum 18 was not a party to the case. Mushumansky's lawyer Peredruk told Forum 18 on 7 December that he did not yet have a copy of the decision and would be unable to share it because the hearing had taken place under closed conditions.

In an attempt to clarify the situation for others seeking to do ACS, Peredruk and Levinson requested that Judge Girenko ask the Constitutional Court to rule on the question of alternative service during mobilisation. They noted that certain provisions of the Law on Mobilisation are inconsistent with the Constitution and argued that the failure to uphold the constitutional right to ACS is a violation of the freedom of religion and belief, even in a state of emergency. The judge refused.

The Gatchina City Court decision is important for other men who have previously completed ACS, Peredruk observed to Advokatskaya Ulitsa on 30 November. He noted, however, that "this does not mean that you can ignore any new views that people have formed after serving in the army".

The fact that Mushumansky undertook alternative civilian service as a conscript was "important, even if not key" to his case, Peredruk told Forum 18 on 8 December. "However, the freedom of conscience and religion, as well as the related right to ACS, cannot be limited only to those who have previously completed ACS – the question of exemption from military service of citizens whose beliefs oppose such service should be resolved in each specific case."

Forum 18 sent enquiries to the Defence Ministry's Information Department and the Western Military District, asking why military recruitment offices were denying requests for alternative civilian service when the Constitution guarantees this right to all citizens.

Forum 18 also asked whether mobilised conscientious objectors would be allowed to serve in unarmed roles. Forum 18 had received no reply by the end of the working day of 20 December.

St Petersburg: Mobilisation goes ahead

On 18 October, Nevsky District Court in St Petersburg refused to uphold 27-year-old Kirill Berezin's request to have his mobilisation ruled illegal. After the hearing, he had a panic attack and had to be taken to hospital, before he was discharged to a military base in the city's Vasileostrovsky District.

Berezin, a Russian Orthodox Christian who had applied for and been refused alternative civilian service, appealed unsuccessfully against the lower court's decision at St Petersburg City Court on 29 November. He is now serving in an unarmed role at a support unit in Luga (Leningrad Region).

"Kirill and I have not yet discussed a cassational appeal," his lawyer Nikifor Ivanov told Forum 18 on 9 December. "I'm concentrating on the fact that he's not been sent to the zone of the special military operation, because for him this would be certain death, since he will not take up arms under any circumstances."

Berezin – who, unlike Mushumansky, did military service as a conscript in 2013-14 – was summoned to appear for mobilisation on 24 September. He submitted an application for ACS the same day, but the recruitment office refused this and sent him to an army unit in Kamenka, near the Finnish border.

Berezin was then sent to a camp at Khokhlovo in Belgorod Region, close to the border with Ukraine. There, his commanding officer threatened him with violence and taunted him that he would have to kill people in Ukraine, Berezin's friend Marina Tsyganova said in a video on the Conscientious Objectors' Movement YouTube channel on 10 October.

Judge Oksana Yakovchuk of Nevsky District Court heard Berezin's administrative suit against the St Petersburg Military Recruitment Office, the St Petersburg Mobilisation Commission, and the Nevsky District Mobilisation Commission in his absence on 18 October.

According to the court decision, seen by Forum 18, Berezin asked the court to overturn and declare unlawful the decision to mobilise him, and oblige the district mobilisation commission to release him from military service "in connection with its replacement with alternative civilian service". His lawyer, Nikifor Ivanov, noted in court that Berezin had reported to his commander that his "health had deteriorated, [and he was] in a depressed moral state, on the verge of despair".

A lawyer for the military authorities stated that federal legislation does not provide for the replacement of military service with alternative civilian service during mobilisation. The lawyer added that Berezin had completed military service as a conscript and was therefore enrolled in the reserve (with the specialism of driver) and recognised as fit.

Referring to the 2002 Law on Alternative Civilian Service and 1998 Law "On military duty and military service", the judge concluded that "alternative civilian service is currently provided for only for a certain category of citizens, specified in Article 22, Part 1 of [the 1998 Law "On military duty and military service" – that is 18-27-year-olds who are not in the reserve]. She added that "for citizens subject to mobilisation, the replacement of military service with alternative civilian service is not provided for".

Forum 18 wrote to Nevsky District Court to ask why Berezin's constitutional right to alternative civilian service had not been upheld. In her reply of 15 December, court chair Irina Khabik only directed Forum 18 to the written decision on the court website.

On 25 October, Berezin left his Belgorod Region camp and took a taxi back to St Petersburg (<https://novayagazeta.eu/articles/2022/12/04/im-not-capable-of-shooting-a-person-en>), where he handed himself in to the Investigative Committee (he was not charged with going absent without leave, as this only applies if a soldier has been away from base for more than 48 hours). He was sent to a local unit to await his appeal to St Petersburg City Court on 29 November.

Berezin argued that he is a churchgoing Christian and military service goes against his way of life, and that he had realised during conscript service that "I'm not capable of shooting a person". Despite this, the appeal judge upheld the district court's decision in a hearing which took place in closed conditions at the request of the Defence Ministry (on the grounds that "defence secrets" may be disclosed, as the Christians Against War Telegram channel reported on 30 November).

"Let me remind you that Kirill does not refuse to serve," lawyer Nikifor Ivanov told Forum 18 on 9 December. "He is ready to serve, but not with weapons in his hands."

Despite fears that he would have to return to the camp in Belgorod Region (and possibly go to Ukraine), on 12 December, Berezin was transferred to serve as a driver and mechanic at a unit in Luga whose task is the repair of military vehicles. This is the same unit in which he carried out his conscript service eight years ago, Berezin told the BBC Russian Service on 10 December (<https://www.bbc.com/russian/news-63910972>). After hearing of his experience, his former commander offered to give him a role

"without weapons".

"This is not ACS, but nevertheless, I will not have to shoot at people, and that's good," Berezin commented to the BBC.

Forum 18 sent enquiries to the Defence Ministry's Information Department and the Western Military District, asking why military recruitment offices were denying requests for alternative civilian service when the Constitution guaranteed this right to all citizens. Forum 18 also asked whether mobilised conscientious objectors would be allowed to serve in unarmed roles. Forum 18 received no reply by the end of the working day of 20 December.

Sverdlovsk Region: Mobilisation goes ahead

Dmitry Yuryevich Zlakazov unsuccessfully challenged his mobilisation at Krasnoturinsk City Court on 14 October. He had lodged an application for alternative civilian service on 24 September, the day after he had received his call-up papers. He requested that he be allowed to serve somewhere "not under the jurisdiction of the Defence Ministry, since any participation in the Armed Forces, in any capacity, is contrary to my beliefs". He appealed unsuccessfully at Sverdlovsk District Court on 8 December.

It is currently unknown where Zlakazov is now serving or whether military authorities have allowed him an unarmed role.

When the 41-year-old Zlakazov went to the recruitment office as ordered on 26 September, however, he received only a verbal refusal and was sent straight to his military unit.

On 10 October, Zlakazov – who also did military service as a conscript from 2000 to 2002, according to court documents – lodged a lawsuit against Krasnoturinsk and Karpinsk Military Recruitment Office, Sverdlovsk Region Military Recruitment Office, and the Krasnoturinsk Mobilisation Commission. He asked the court to overturn and declare unlawful the decision to mobilise him and oblige the district mobilisation commission to release him from military service "in connection with its replacement with alternative civilian service".

According to the court decision, seen by Forum 18, he cited Articles 28 and 59 of the Constitution, and argued that the right to ACS "can be exercised regardless of whether the relevant federal law has been adopted" and that "A citizen should not be held responsible for the fact that the state has not yet created a mechanism for the practical implementation of [this] right".

In court, Zlakazov – who does not appear to have had a lawyer – explained that his religious views do not permit him to be mobilised for military service, "so he is trying to restore his right to alternative civilian service".

According to Vecherniy Krasnoturinsk news website's 14 October report (<https://krasnoturinsk.info/novosti/krasnoturinets-poluchil-otkaz-v-zamene-voennoy-sluzhby-grazhdanskimi-obyazannostyami/>) of the hearing, Zlakazov quoted the Gospel of John (15:12) in court: "This is my commandment: love one another as I have loved you". He observed that "These verses show that when Jesus Christ was on earth, instead of hatred he taught people to love each other unselfishly ... Jesus Christ does not want me to use weapons and participate in hostilities."

Zlakazov added that he studied the Bible every day, and "my character has changed for the better. I am experiencing a serious insurmountable conflict between the requirement to do military service and my beliefs."

Zlakazov also stated that he respects the law, maintains political neutrality, and does not "divide people by nationality".

The military authorities stated that "the defence of the Fatherland" is the constitutional duty of every Russian citizen, that Zlakazov is registered as a reservist, and that according to the Law on Alternative Civilian Service, only non-reservist conscripts can do ACS.

Judge Tatyana Syomkina of Krasnoturinsk City Court agreed with these arguments. She also concluded that a citizen may exercise their human and civil rights only to the extent that they do not "contradict the fundamental principles of the existence of society and the state:

"The very concept of mobilisation .. and the procedure for its organisation speaks of the exceptional circumstances under which the provisions of [the 1997 Law on Mobilisation] are applied. Accordingly, in the event of these exceptional circumstances, the rights of a citizen that protect their beliefs (religion), and at the same time, lead to the impossibility of fulfilling the duty to protect the Fatherland in conditions of partial mobilisation, cannot be exercised."

Forum 18 wrote to Krasnoturinsk City Court to ask why Zlakazov's constitutional right to alternative civilian service had not been upheld and whether he now had the opportunity to serve in an unarmed role. In her response of 12 December, court chair Yelena Korobach reiterated the arguments set out in the written decision, emphasising that "Defence of the Fatherland is the duty and obligation of a citizen of the Russian Federation", according to the Constitution, and the "exceptional circumstances" of mobilisation.

Forum 18 sent an enquiry to the Defence Ministry's Information Department, asking why military recruitment offices were denying requests for alternative civilian service when the Constitution guaranteed this right to all citizens, and whether mobilised conscientious objectors would be allowed to serve in unarmed roles. Forum 18 received no reply by the end of the working day of 20 December. The telephone at the Krasnoturinsk and Karpinsk Military Recruitment Office went unanswered when Forum 18 called on 8 and 15 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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