



QUAKER COUNCIL FOR EUROPEAN AFFAIRS

The Right to Conscientious Objection in Europe: A Review of the Current Situation

Country Report: RUSSIAN FEDERATION

Conscription

Conscription is enshrined in Article 59 of the 1993 Constitution and is further regulated by the 1998 Law on Conscription Obligation and Military Service.

The length of military service is 24 months, and 12 months for graduate students of higher education institutes.

All men between the ages of 18 and 27 are liable for military service. Reservist obligations apply up to the age of 50.

All male citizens are entered into the military register at the age of 17, after which they receive a summons to appear at the local draft commission for medical examination at the age of 18. There are two call-up periods per year, during spring (April-June) and during autumn (October-December).¹

Students may postpone their military service, but the government is reportedly considering changing the regulations on postponement. Exemption from military service is possible on medical grounds and various social grounds. The Ministry of Defence is reportedly considering reducing the grounds for exemption as it considers that too many young men obtain legal exemption from service.²

The Russian armed forces have been involved in an armed struggle in Chechnya ever since the 1990s. According to Presidential Decree No. 660, serving conscripts can be sent to conflict areas upon completing six months' military service.³ However, the Ministry of Defence announced in March 2004 that from 2005 onwards, conscripts would no longer be sent to serve in Chechnya.⁴

The future of conscription is a much-debated issue in the Russian Federation, but the abolition of conscription is not foreseen in the near future. The military are in favour of maintaining conscription and it appears to be financially impossible to replace conscripts by professional soldiers in the short term. In fact, Minister of Defence Ivanov publicly stated in April 2004 that "conscription into military service will never be abolished in Russia". However, President Putin has announced that by the end of 2007 contract soldiers should make up almost half of the military, which should allow for a gradual reduction of the term of military service to one year by 2008.

Statistics

The armed forces comprise 1,130,000 troops, including 600,000 conscripts. Every year, approx. 1,250,000 young men reach conscription age.

¹ Guidelines on the conscription process are laid down in the 1998 Law on Military Service and a consequent government regulation No. 587 of 1 June 1999. There are many reported cases of the military authorities not adhering to legal conscription methods. (Human Rights Watch: Conscription through detention in Russia's armed forces, November 2002).

² Netherlands Ministry of Foreign Affairs: Algemeen Ambtsbericht Noordelijke Kaukasus (country report), January 2005. Oksana Yabolokova: Ivanov reverses on student call-up', www.themowcowtimes.com, 20 January 2005.

³ UNHCR: Basis of Claims and Background Information on Asylum-seekers and Refugees from the Russian Federation, June 2004.

⁴ 'New conscripts promised warmth and safety', www.russiajournal.com, 1 April 2004.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 59.3 of the 1993 Constitution, according to which citizens "whose convictions and faith are at odds with military service (...) shall have the right to the substitution of an alternative civil service for military service". In addition, Article 17.1 of the Constitution recognises and guarantees "the commonly recognised principles and norms of international law".

Although the right to conscientious objection was included in the Constitution in 1993, further legislation was only introduced in 2002 when the State Duma passed the Federal Bill on Alternative Civilian Service. The Law on Alternative Civilian Service entered into force on 1 January 2004.⁵

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 2 of the Law on Alternative Civilian Service "A citizen has the right to perform alternative civil service as a substitute for military service if the performance of military duties is in conflict with his convictions or religious beliefs".

Time limits

The Law on Alternative Civilian Service contains a strict time limit for submitting CO applications. Applications must be made at least six months before receipt of call-up papers (Article 11.1). As conscripts usually receive their call-up papers at the age of 18, they are only 17 years and six months old when they need to submit a CO application if they wish to do so. Consequently, conscripts are, in fact, still minors at the time when they are eligible to make a CO application.⁶

CO applications cannot be made by serving conscripts and reservists. According to Article 3.1: "Substitute service is only granted to those who are not in military service".

There are no legal provisions for conscientious objection for professional soldiers. The Law on Alternative Civilian service only applies to conscripts and the legal time limits further exclude professional soldiers from claiming the right to conscientious objection.

Procedure

CO applications must be made to the military draft commission (Ministry of Defence). Applications must include a curriculum vitae and a written explanation of the reasons for conscientious objection. The military draft commission conducts a personal interview with the applicant, after which it makes a decision.

If the application is rejected, the decision can be appealed in court through procedures set out in Russian law (Article 15).

Substitute service

The length of substitute service is 42 months, and 21 months for graduates of higher education institutes. This is 1.75 times the length of military service, as laid down in Article 5.1 of the Law on Alternative Civilian Service. The Law also provides for an unarmed service within the armed forces, which lasts 36 months, and 18 months for graduates.

Substitute service is administered by the Ministry of Defence. According to Article 4, substitute service consists of "civilian work outside the armed forces".

The Law on Alternative Civilian Service does not specify the workplaces where substitute service may be performed. The workplaces and positions for performing substitute service are

⁵ English translation of the Law on Alternative Civilian Service, www.zivi-ru.org

⁶ Article 11 of the Law on Alternative Civilian Service thus seems to be in contradiction with Article 60 of the Constitution, according to which citizens are considered to be of legal age and may independently exercise their rights and duties in full upon reaching the age of 18. (A.E. Barannikov: Prospects For An Alternative Service in Russia, in: European Bureau for Conscientious Objection, The Right to Refuse to Kill, October 2003).

listed in a regulation that was issued by the Ministry of Labour in March 2004.⁷ According to the Regulation, there are 23,500 vacancies for substitute service in over 700 organisations at federal and regional level. The list includes organisations in federal military departments, such as the Ministry of Defence, the Federal Service of Specialised Construction, the Russian Agency for Conventional Weapons and the Russian Organisation for Ammunitions.

Substitute service may also be performed with organisations that are connected to federal civilian ministries, such as the Ministry of Natural Resources, the Ministry of Labour, the Ministry of Justice Department of the Penitentiary and the Russian Weather Forecasting Service. The Ministries of Health, Education and Culture have so far not offered any workplaces for substitute service. There are also workplaces available with regional authorities, in health care and social institutions.⁸

COs cannot choose themselves where they perform substitute service, but are assigned to a workplace by the Ministry of Defence. According to Article 14 of the Law on Alternative Civilian Service, the military authorities may assign COs to either civilian work outside the armed forces or to non-combatant duties within the armed forces.

According to Article 4.2 of the Law on Alternative Civilian Service, COs perform substitute service "as a rule" outside their home area.⁹ Concerns have been raised as to whether the Ministry of Defence is able to provide COs with accommodation. Of the 23,000 available vacancies for substitute service, only 3,400 reportedly have housing assigned to them.¹⁰ As the army is actually the government body that is most able to provide accommodation, it is in fact most convenient for the Ministry of Defence to assign most COs to serve in military units or workplaces connected to the military authorities.¹¹ So far, most COs perform substitute service within federal military organisations.

While performing substitute service, COs are not allowed to take part in strikes or to leave the city where they perform substitute service. In such cases, CO status may be withdrawn (Law on Alternative Civilian Service, Article 21.2).

After completing substitute service, COs are transferred to the reserves. According to Article 24 of the Law on Alternative Civilian Service, COs shall not be subject to periodic military training. The Law does not specify the position of COs during wartime.

Practice

The Law on Alternative Civilian Service entered into force on 1 January 2004.

Of the conscripts who were called up during the spring draft of 2004, approx. 100 made a CO application. Because of the six months' time limit, conscripts who expected to be called up during the spring draft of 2004 had to have already made their application by October 2003. Most of the applications during the spring draft of 2004 were in fact made by COs who had already applied for substitute service in previous years, and who had been granted deferment.¹²

Of the conscripts who were called up during the autumn draft of 2004, 1,445 CO applications were made. Out of these, 953 applications were granted, approx. 200 were rejected and approx. 200 applicants were granted a deferment.¹³

Of the conscripts who were called up during the spring draft of 2005, 616 CO applications were made.¹⁴

⁷ Ministry of Labour, Regulation No. 27, 3 March 2004.

⁸ Coalition "For democratic alternative civilian service": The situation of alternative civilian service in Russia in 2004, 18 October 2004.

⁹ Conscripts in the armed forces also perform their military service outside their home area.

¹⁰ '...As NGO says, military is unprepared for new alternative civilian service program', Radio Free Europe / Radio Liberty Newslines, 24 March 2004.

¹¹ 'New law on alternative service is no alternative, say activists', www.chechentimes.org, 5 February 2004. Igor Fedyukin: No alternatives. Experts say law on alternative service will not be popular, Vedomosti, 23 July 2003 (WPS Monitoring Agency).

¹² Coalition for democratic alternative service (2004).

¹³ '1,500 conscripts to undergo alternative civil service this year', RIA Novosti, 30 September 2004.

¹⁴ 'Russia's Defence authorities optimistic about future of alternative service programs', RIA Novosti, 15 December 2004.

The figures for the autumn draft of 2004 indicate that approx. 15 per cent of CO applications have been rejected. According to the military draft commissions, applications have been rejected because they did not meet the formal criteria or because the applicants did not manage to prove their convictions to the military draft commission.¹⁵

According to various reports, it is not clear if the members of the military draft commissions have received instructions and criteria for assessing CO applications. Some draft commissions have reportedly refused to accept CO applications. Some draft commissions have reportedly required applicants to prove membership of a religious organisation that forbids its members to bear arms.¹⁶ These draft commissions are thus restricting the right to conscientious objection to religious grounds, which is in contradiction with provisions of the Law on Alternative Civilian Service.

The authorities have been criticized for not informing conscripts about the possibility of applying for substitute service. Some draft commissions deliberately misinform conscripts about the application procedure for substitute service. In many draft commissions there is no information available about the workplaces where substitute service can be performed. In fact, regional authorities and draft commissions themselves, particularly outside the big cities, do not seem well informed about the possibilities of performing substitute service.¹⁷

So far, most COs appear to come from big cities like Moscow and St Petersburg where there are NGOs offering legal support to COs. In the provinces, conscripts seem far less aware of their right to conscientious objection.

The first 80 COs started performing substitute service during the spring of 2004. As outlined above, Article 4.2 and Article 14 of the Law on Alternative Civilian Service do not ensure that substitute service has a civilian character. (See: **Substitute service**). Until now, most COs have in fact been assigned to perform substitute service with organisations in federal military departments, in particular with the Federal Service for Special Construction and other defence related institutions. So far, only a small number of COs serve in civilian institutions.¹⁸

Several COs who were assigned to substitute service have in fact refused this, and required a civilian substitute service. In 2004, there were at least 12 of such cases, all of them Jehovah's Witnesses. An administrative court case results when a conscientious objector files a request to reverse the decision of the draft commission to induct him into the military. Criminal cases result from a conscientious objector being charged with "draft evasion" after he does not report for military service.¹⁹ Their cases are believed to be still pending.

Background

The Law on Alternative Civilian Service does not comply with several international standards on conscientious objection. In 2003, the United Nations Human Rights Committee in fact expressed its concern about the duration and conditions of substitute service, including its possible military character, stating that "the law does not appear to guarantee that the tasks to be performed by conscientious objectors are compatible with their convictions". The Committee called upon the Russian government to "reduce the length of civilian service to that of military service and ensure that its terms are compatible with Articles 18 and 26 of the Covenant".²⁰

In January 2004, a conscientious objector from Perm submitted a complaint to the Constitutional Court in which he submitted that the duration of substitute service is a violation of the Constitution. His complaint was rejected for formal reasons, but the Federal

¹⁵ Coalition for democratic alternative civilian service (2004).

¹⁶ Galina Stolyarova: Families seek advice on dodging draft, www.themoscowtimes.com, 14 April 2004.

¹⁷ Coalition for democratic alternative service (2004). Stolyarova (2004). Oksana Yablokova: Few lining up for alternative service, www.themoscowtimes.com, 12 April 2004.

¹⁸ Coalition for Democratic Alternative Service (2004).

¹⁹ 'Jehovah's Witnesses in Russia January 1, 2004 to December 31, 2004', www.jw-media.org

²⁰ Concluding observations of the United Nations Human Rights Committee: Russian Federation (CCPR/CO/79/RUS), 6 November 2003.

Ombudsman has agreed to appeal to the Constitutional Court in support of the CO's petition.²¹ By February 2005, the case is believed to be still pending. So far, the Russian government has not shown any intention of amending the law and improving the conditions of substitute service to ensure that it is genuinely civilian.

Practice before 2004

Although the right to conscientious objection was included in the Russian Constitution in 1993, the Law on Alternative Civilian Service was only passed in 2002 and entered into force in 2004. Consequently, between 1993 and 2004 the legal position of COs was unclear. During this period, thousands of young men claimed their constitutional right to conscientious objection and applied for a substitute service outside the armed forces. Per year, between 1,000 and 1,500 COs appealed to court to defend their constitutional right to conscientious objection. There was no consistent approach in the treatment of COs, which very much depended on the presiding military draft commission, judge and region. Some COs were fined, some were charged for draft evasion to between one and two years' imprisonment and some were not charged at all.

The Nizhny Novgorod region has been of particular interest. In 2001 the local government allowed nine COs to perform substitute service in local hospitals. However, in 2003 a new mayor was elected in Nizhny Novgorod and the project was eventually cancelled.

Draft evasion

Draft evasion and desertion are widespread, which is prompted by the fear of being sent to serve in Chechnya and poor conditions and human rights violations within the armed forces. For example, in 2001 the military prosecutor's office admitted to dealing with some 2,000 conscript deaths (including suicides) per year. Independent human rights organisations put the annual toll at nearer 3,000.²²

There are several means of draft evasion. Many young men obtain false medical documents through bribery and are consequently exempt from service for health reasons. Others simply do not respond to call-up papers. According to the General Staff of the Armed Forces in 2001, approx. 30,000 young men ignore the draft summons annually.²³ According to the Ministry of Defence, there were 21,000 draft evaders in 2004 and 25,000 in 2003.²⁴ According to estimates, there are approx. 40,000 deserters at any given time in the Russian Federation.²⁵

Draft evasion and desertion are punishable under the Criminal Code. Draft evasion is punishable by a fine, arrest for three to six months or up to two years' imprisonment (Article 328). Desertion is punishable by up to seven years' imprisonment, up to ten years in case of an armed conflict or collective desertion (Article 336). Leaving a military unit is punishable by up to six years' imprisonment or up to two years' sentence in disciplinary battalions (Article 337). Criminal prosecution may be waived if the non-authorized absence or desertion is committed for the first time or if the desertion was caused by a combination of grave circumstances (Article 338).²⁶

There are no detailed figures available on the criminal prosecution of draft evaders. Because of its scale, it is evidently impossible for the Russian authorities to prosecute all draft evaders. Obviously, some draft evaders may avoid criminal prosecution through bribery.

The Russian authorities maintain several means of monitoring draft evasion. The military and police authorities regularly conduct search operations for draft evaders and deserters. When recruitment officials fail to hand over the draft summons to draft age men they inform the police. The police then stop and detain them at home or in the streets, and hand them over to

²¹ Netherlands Ministry of Foreign Affairs (2005). Coalition for Democratic Alternative Service (2004).

²² UNHCR (2004).

²³ Human Rights Watch: Conscription through detention in Russia's Armed Forces, November 2002.

²⁴ RIA Novosti (15 December 2004).

²⁵ UNHCR (2004).

²⁶ UNHCR (2004).

the military authorities. The majority of these conscripts are sent to military units on the same day as their detention.²⁷

In recent years the Russian authorities have announced several amnesties for draft evaders and deserters. The latest amnesty was announced in 2003 following the adoption of the Constitution of the Chechen Republic when the State Duma passed a series of resolutions on the amnesty of persons who "committed socially dangerous acts". This amnesty regulation also applied to draft evaders and deserters who reported themselves to the authorities by 1 September 2003. The deadline for the amnesty has not been extended. Despite the declared amnesty, NGOs have reported that many Russian soldiers released in Chechnya are still being held in Russia and are under criminal investigation for desertion.²⁸

²⁷ UNHCR (2004).

²⁸ Human Rights Watch (2002).