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RUSSIA: Jailed for refusing mobilisation on grounds of conscience

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

Called up in September 2022, Pentecostal Andrey Kapatsyna refused to fight in Ukraine, telling commanders that "in accordance with his religious beliefs, he could not take up arms and use them against other people". A Vladivostok court sentenced him to 2 years, 10 months' imprisonment under new legislation punishing non-fulfilment of orders in a period of combat operations. A Murmansk Region military court jailed Dmitry Vasilets for 2 years, 2 months for refusing on grounds of his new Buddhist faith to return to Ukraine after five months on the frontlines.

Russian soldiers who seek to avoid fighting in Ukraine on grounds of conscience encounter difficulties at all levels. Since President Vladimir Putin announced the "partial mobilisation" in September 2022, regular contract troops have been unable to resign. A legal loophole means that mobilised men who request alternative civilian service are typically refused. Individuals who refuse outright to go to Ukraine can be criminally prosecuted and imprisoned for failing to obey orders.

In Russia's Far East, Pentecostal Christian Andrey Kapatsyna, who was called up in Magadan in September 2022 on the first day of mobilisation, twice refused to fight in Ukraine. On 29 June 2023, a Vladivostok court sentenced him to 2 years and 10 months' imprisonment under new legislation aimed at punishing the non-fulfilment of orders in a period of combat operations (see below).

Kapatsyna was convicted under Criminal Code Article 332, Part 2.1 ("Non-fulfilment by a subordinate of an order of a superior given in accordance with the established procedure, during a period of martial law, in wartime or in conditions of armed conflict or combat operations, as well as refusal to participate in military or combat operations"). This was introduced in September 2022 (see below).

Kapatsyna had twice told his commanders that "in accordance with his religious beliefs, he could not take up arms and use them against other people", according to the written verdict seen by Forum 18. He has lodged an appeal, but no date has yet been set. In the meantime, he remains at his unit's base in Vladivostok (see below).

Forum 18 asked Magadan Region Military Commissariat and the Military Prosecutor's Office of the Pacific Fleet and Vladivostok Garrison why Kapatsyna had not been permitted either to do alternative civilian service or take up an unarmed role in the army, given that military service was contrary to his beliefs (see below).

Assistant military prosecutor Andrey Voronkin directed Forum 18 to the website of the Vladivostok Garrison Military Court and noted that the law makes no provision for the exchange of mobilised military service for alternative civilian service. The Military Commissariat did not respond (see below).

A military court in the northern Murmansk Region sentenced Dmitry Vasilets, a regular army officer who adopted Buddhism, to 2 years and 2 months' imprisonment under the same law (Criminal Code Article 332, Part 2.1). He had refused on grounds of his new faith to return to Ukraine after five months on the frontlines (see below).

"We are putting a person on trial who consciously took on military service and who is now forced either to go to prison or to break himself – our legislative system does not allow people in such a situation to stand up for their beliefs, to stand up for the possibility of being a human being", Vasilets' lawyer Elvira Tarasova told the appeal hearing (see below).

Zaozersk Garrison Military Prosecutor's Office did not respond to Forum 18's questions as to why, as he had submitted his request to leave the army before mobilisation was announced, Vasilets was not permitted to resign, and why he had not been allowed to take on an unarmed role, given that military service went against his religious beliefs (see below).

Vitaly Veselov, a reservist from Vladimir Region, east of Moscow, sought a transfer to alternative civilian service on grounds of his Christian beliefs, but his unit commander rejected his request. Veselov has challenged this in court, but has so far been unsuccessful (see below).

Forum 18 asked Vladimir Garrison Military Court why it had not upheld Veselov's constitutional right to alternative civilian service.

Judge Aleksandr Kondratyev – who had rejected his suit - simply directed Forum 18 to the text of his decision (see below).

Vladimir Region Military Commissariat did not respond to Forum 18's questions as to why Veselov was not permitted to undertake alternative civilian service, and whether he would now be allowed to serve in a non-combat role (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, the mobilisation order of 21 September 2022 and associated legislative changes make no mention of provision for reservists who are conscientious objectors (see below).

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 military recruitment offices or on the courts (see below).

Although recruitment offices now appear to be drafting far fewer men than in the early months of mobilisation, President Putin has still not signed a decree formally ending the process, which means that the call-up could be accelerated again at any time.

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: No alternative service for reservists during mobilisation

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

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 (https://www.forum18.org/archive.php?article_id=2798), though in the absence of any regulations, this depends on military recruitment offices themselves.

In March 2023, Leningrad Regional Court upheld Pavel Mushumansky's request to have his mobilisation order cancelled (https://www.forum18.org/archive.php?article_id=2819). 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".

Contract soldiers have never had an option to transfer to any kind of alternative service. Before 21 September 2022, they could leave the army at the end of their contract periods, and had the right to seek early discharge for family reasons, and for other personal reasons if a military commission deemed them valid. Upon the announcement of mobilisation, however, all contracts were made indefinite, and a soldier may now leave the army only for health reasons or if he reaches the upper age limit.

Criminal punishments increased

In late September 2022, after President Putin issued his decree on "partial mobilisation", legislators made a number of amendments to the Criminal Code's Chapter 33 on "Crimes against military service", adding new and harsher punishments for existing offences if committed "during a period of mobilisation or martial law, in wartime or in conditions of armed conflict or combat operations". These offences included desertion, opposing a superior, and going absent without leave. A new crime of "voluntary surrender" was also added.

A study by independent Russian media outlet Mediazona found (<https://en.zona.media/article/2023/04/11/500>) that, in the first six months of mobilisation, most soldiers who did not wish to fight in Ukraine (629 out of 708 cases found) simply abandoned their units (Criminal Code Article 337, "Unauthorised abandonment of unit or place of service").

There are also, however, soldiers who directly refuse to be deployed to Ukraine, including on grounds of conscience, and who do not abscond. They are prosecuted under Criminal Code Article 332's new Part 2.1, adopted on 24 September 2022. This punishes "Non-fulfilment by a subordinate of an order of a superior given in accordance with the established procedure, during a period of martial law, in wartime or in conditions of armed conflict or combat operations, as well as refusal to participate in military or combat operations" with 2 to 3 years' imprisonment.

Vladivostok: Criminal prosecution for refusing to go to fight on grounds of conscience

On 29 June 2023, Vladivostok Garrison Military Court found Andrey Andreyevich Kapatsyna (born 17 January 1995) guilty of refusing to carry out orders to go and fight in Ukraine, and sentenced him to 2 years and 10 months in a prison colony-settlement (koloniya-poseleniye) under Criminal Code Article 332, Part 2.1 ("Non-fulfilment by a subordinate of an order of a superior given in accordance with the established procedure, during a period of martial law, in wartime or in conditions of armed conflict or combat operations, as well as refusal to participate in military or combat operations").

Kapatsyna, a Pentecostal Christian who had been called up in his home city of Magadan in Russia's Far East in September 2022 on the day after mobilisation was announced, had twice told his commanders that "in accordance with his religious beliefs, he could not take up arms and use them against other people", according to the written verdict seen by Forum 18.

Kapatsyna lodged an appeal on 11 July 2023 in an attempt to have his sentence reduced in length, an individual close to the case told Forum 18 on 12 July. This will be heard at the Pacific Fleet Military Court, which has not yet listed any hearings.

In the meantime, Kapatsyna remains at his unit's base in Vladivostok (he has not been kept in custody either before or after the trial, but according to the court verdict, has been under an obligation to appear when summoned by investigators or prosecutors).

Forum 18 wrote to Magadan Region Military Commissariat and the Military Prosecutor's Office of the Pacific Fleet and Vladivostok Garrison before the start of the working day of 18 July, asking why Kapatsyna had not been permitted either to do alternative civilian service or take up an unarmed role in the army, given that military service was contrary to his beliefs.

Assistant military prosecutor Andrey Voronkin replied on 21 July, directing Forum 18 to the website of the Vladivostok Garrison Military Court and noting that the law makes no provision for the exchange of mobilised military service for alternative civilian service (ACS).

Forum 18 had received no response from the Military Commissariat by the end of the Magadan working day of 21 July.

Kapatsyna worked in air traffic control in Magadan. According to the individual close to the case, he had completed military service as a conscript before meeting his wife and joining a Pentecostal church. As airport staff, he expected to be exempt from mobilisation, but received call-up papers at his workplace on 22 September 2022 before any such exemption was issued, Sibir Realii noted on 29 June (<https://www.sibreal.org/a/kapatsyna/32482070.html>). On 23 September, he was sent to join Military Unit 30926 in Vladivostok (2,250 kms (1,400 miles) away) with the rank of junior sergeant.

According to the court verdict, seen by Forum 18, political officer Captain A.V. Sviridenko issued Kapatsyna with orders to deploy to Ukraine on the parade ground on 20 October – Kapatsyna "openly refused to fulfil [them]" and "explained his refusal by [reference to] his religious beliefs". On 1 November 2022 in the unit's office, Captain Sviridenko again gave him the commander's deployment order, offering him "the opportunity to read it for himself": "However, Kapatsyna again refused to go to the zone of the special military operation for reasons of faith."

Military prosecutors charged Kapatsyna under Article 332, Part 2.1 ("Non-fulfilment by a subordinate of an order of a superior given in accordance with the established procedure, during a period of martial law, in wartime or in conditions of armed conflict or combat operations, as well as refusal to participate in military or combat operations"), specifically – as they later clarified in court – with a refusal to participate in combat operations.

In court, Kapatsyna pleaded guilty, stating again that "in accordance with his religious beliefs, he could not take up arms and use them against other people". Judge Gennady Yemelyanov deemed this argument to be "without validity", as the replacement of military service with alternative civilian service on grounds of conscience is possible only for conscripts, not reservists who have been mobilised.

As mitigating circumstances, the judge noted the fact that it was Kapatsyna's first offence, his guilty plea, his positive character references, and the existence of his young child (as well as a voluntary donation he made to a charitable fund "for the needs of the special military operation"). The fact that he "committed the offence during a period of mobilisation" was taken as an exacerbating factor.

When Kapatsyna's conviction enters legal force, he will be expected to make his own way to the colony-settlement – his sentence will be calculated from the date of his arrival, minus days spent travelling.

(Colony-settlements house first-time offenders convicted of minor and some medium-severity crimes and crimes of negligence, as well as inmates transferred with good references from general-regime and strict-regime prison camps. They have the lightest regime of all Federal Penitentiary Service (FSIN) institutions – prisoners are allowed to wear civilian clothes, use money, go home for weekends (subject to official approval), and find jobs outside the settlement, and communication with and visits from relatives are unlimited. Living conditions nevertheless vary widely between settlements.)

Murmansk Region: Criminal prosecution after attempt to leave army on grounds of conscience refused

The first person in Russia to be charged under Criminal Code Article 332, Part 2.1 ("Non-fulfilment by a subordinate of an order of a superior given in accordance with the established procedure, during a period of martial law, in wartime or in conditions of armed conflict or combat operations, as well as refusal to participate in military or combat operations") was Dmitry Vitalyevich Vasilets (born 2 July 1995), a contract soldier with the rank of senior lieutenant based in the northern Murmansk Region.

After five months' service as a political officer in Ukraine, Vasilets attempted to resign from the army, but the announcement of mobilisation shortly afterwards meant that his request went unfulfilled. When ordered to return to the frontlines, he refused, citing the Buddhist beliefs he had developed when visiting a dead comrade's family in Buryatiya.

"I realised that it makes no sense to kill people. It will not help, but only increase suffering [and] destruction, only aggravate the situation", Vasilets said in comments to independent Russian media outlet Novaya.media on 26 December 2022. "We must fight not with the enemy, but with the anger within ourselves .. I realised that there is light in every person, and I cannot afford to take the life of another person – this is a line, a red line that I cannot cross."

Judge Vladimir Boldyrev of Zaozersk Garrison Military Court sentenced Vasilets to 2 years and 5 months' imprisonment in a colony-settlement on 7 April 2023. The Northern Fleet Military Court upheld his conviction on 1 June 2023, but appeal Judge Boris Yuvchenko reduced his sentence to 2 years and 2 months to take into account psychological trauma and the fact that Vasilets had been orphaned at a young age.

On 13 June 2023, the Russian human rights organisation Memorial recognised Vasilets as a political prisoner (<https://memopzk.org/news/my-schitaem-politzaklyuchyonnym-dmitriya-vasilcza/>). It noted that he had refused to return to Ukraine because his beliefs had changed, and that his prosecution "violates his rights to freedom of conscience and a fair trial".

Forum 18 wrote to the Zaozersk Garrison Military Prosecutor's Office before the start of the working day of 19 July, asking why, as he had submitted his request to leave the army before mobilisation was announced, Vasilets had not been permitted to resign, and why he had not been allowed to take on an unarmed role, given that military service went against his religious beliefs. Forum 18 had received no reply by the middle of the working day in Zaozersk of 21 July.

From February 2022 – when his superiors said he would be participating in "training manoeuvres" – to July of that year, Vasilets served at a Russian army headquarters in the Kharkiv Region of Ukraine. While the base was often shelled, he did not fire a shot, as he insisted in comments to Novaya.media (<https://novaya.media/articles/2022/12/26/znaiu-chno-posadiat-u-menia-by-l-vybor-i-ia-ego-sdelal>).) on 26 December 2022.

"I couldn't drop everything and leave – my comrades remained there," Vasilets told Novaya.media. "But of course, I understand: that on our side, on the other side, people are dying .. For about three months, there is fear, you are worried. And then the darkness builds up inside."

"After three months, I hoped that I would be replaced. But the fourth month went by, then the fifth .. Life in such moments loses its value. I just stopped wearing body armour." (Defence Ministry rules state that a soldier must be rotated out of the combat zone after 30 days.)

After eventually getting two weeks' leave, Vasilets went to the Republic of Buryatiya to visit the families of fellow soldiers who had died in Ukraine.

"The parents of a deceased friend gave me some Buddhist prayer beads. [In Buryatiya] I looked at Buddhism in a new way. I was interested in it before .. I was baptised, but Orthodoxy did not take with me. I began to read books and immerse myself in the philosophy of Buddhism. It teaches us to be calm, that we should not hate other people and should live in the here and now."

Vasilets lodged a request to terminate his contract in August 2022. This is a lengthy and complicated process and must be approved by a military commission. After President Putin signed the "partial mobilisation" decree in September 2022, all such processes were suspended and fixed-term army contracts became indefinite.

Ordered to return to the front again in September 2022, Vasilets submitted another written refusal on 28 September. "In his very first report in August 2022, Dmitry wrote 'personal reasons', without disclosing them", an individual close to the case told Forum 18 on 17 July.

"Subsequently, in September, October, and January 2023 [when deployment orders were repeatedly issued], he pointed in his reports to the right to freedom of conscience and religion, giving detailed accounts in his explanations and testimony of his adoption of the philosophy of Buddhism, under the influence of which he came to pacifism" the individual added.

"I made a conscious decision based on my principles and the philosophy of Buddhism. I said to myself: 'You alone are responsible for your soul'," Vasilets told Novaya.media on 26 December 2022. "I sat down and wrote an explanation that I am not only a soldier, but also a human being. Because, first of all, we are people. And there are my rights as a person, and the state must protect them."

On 19 October 2022, military investigators opened a criminal case against him. "I knew they would," Vasilets commented. "I had a choice and I made it." He lodged a lawsuit against his commander, arguing that the order to send him back to the combat zone without a medical examination was unlawful – this was unsuccessful.

"After the deployment, Vasilets became completely different. The deployment greatly affected him and his worldview, his moral and mental state", Novaya.media reported a witness in the criminal case as saying.

"It is better to go to prison than to betray yourself and your own humanity," Vasilets himself concluded. "I wouldn't be able to say to myself later: 'I was ordered to do this' – that wouldn't be an excuse. My soul is in my hands."

"We are putting a person on trial who consciously took on military service and who is now forced either to go to prison or to break himself – our legislative system does not allow people in such a situation to stand up for their beliefs, to stand up for the possibility of being a human being", lawyer Elvira Tarasova said during the appeal hearing, according to a 2 June report by independent newspaper Novaya Gazeta (<https://novyagazeta.ru/articles/2023/06/02/v-pervuiu-ochered-ia-dolzhen-byt-chelovekom-a-potom-uzhe-grazhdaninom>). "It turns out that this is a sentence for beliefs."

At his appeal, Vasilets added: "As a human being, I want to be heard. My decision is not a sign of weakness. This is an indicator of strength. I'm in the right. I do not break the law. I do not humiliate the freedom of other people. I do not do illegal things. I have followed these principles and will continue to do so. I don't plead guilty."

Vladimir Region: Alternative civilian service denied

On 12 May 2023, Judge Aleksandr Kondratyev of Vladimir Garrison Military Court declined to uphold Vitaly Veselov's lawsuit against the Acting Deputy Commander of his military unit, ruling that his refusal of Veselov's request to do alternative civilian service was lawful. Veselov had asked to do alternative civilian service (ACS) because of his Christian beliefs.

Forum 18 asked Vladimir Garrison Military Court why it had not upheld Veselov's constitutional right to alternative civilian service. Judge Kondratyev responded on 20 July in his capacity as acting chair of the court, directing Forum 18 to the text of the decision on the court website.

Vitaly Sergeevich Veselov had been called up in the city of Vladimir on 22 September 2022, the day after President Putin signed his decree on "partial mobilisation". Between 13 October 2022 and 1 February 2023, his unit served in Ukraine, before returning to a military base in Kovrov (Vladimir Region).

According to the court decision, seen by Forum 18, "Wishing to exercise the right to replace military service with alternative civilian service, on 16 February 2023, Veselov made a request for transfer to alternative service to the military prosecutor of the Vladimir garrison". The military prosecutor passed his request to the commanders of Military Unit 30616, and on 13 April, the Acting Deputy Commander for Military-Political Work issued a refusal, stating that Veselov did not have the right to ACS.

Forum 18 wrote to the Vladimir Region Military Commissariat before the start of the working day of 18 July, asking why Veselov was not permitted to undertake alternative civilian service, and whether he would now be allowed to serve in a non-combat role. Forum 18 had received no reply by the middle of the working day in Vladimir of 21 July.

Veselov lodged an administrative suit against the Acting Deputy Commander on 21 April 2023 (having withdrawn an earlier suit against the unit itself). He asked the court to recognise the refusal of alternative civilian service as unlawful, to oblige his unit to release him from mobilised military service, and to change his military service to ACS.

Neither Veselov nor his commanders attended the administrative hearing. According to his lawsuit, outlined in the written court decision, Veselov "has beliefs that contradict military service. He cannot serve with weapons, he cannot kill people or be trained in this. Even training sessions are contrary to his conscience. Veselov believes that his participation in the special military operation may lead to violation of the Christian commandments, which is unacceptable to him. In addition, for reasons of conscience, he cannot fulfil everything that is listed in the [military] oath."

Judge Kondratyev did not uphold Veselov's suit on the grounds that, firstly, Veselov did not provide substantive evidence of his beliefs upon initial registration for military service (ie. as a teenager, before being called up for conscript service), when he was mobilised, in his request of 16 February 2023, or in the lawsuit; and secondly, that mobilised men are considered to be contract soldiers and there is no provision in law for them to be allowed to do ACS.

The judge acknowledged that citizens have the right under the Constitution to replace military service with alternative civilian service (ACS), but also refused Veselov's petition to file a request to the Constitutional Court to examine the constitutional compliance of the legislation governing mobilisation.

The 2nd Western District Military Court registered Veselov's appeal against Judge Kondratyev's decision on 12 July, and has listed a hearing on 24 August. (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