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KAZAKHSTAN: Regime ignores UN alternative service recommendations

By Felix Corley, Forum 18 (<https://www.forum18.org>)

"The law does not directly recognise the right of an individual to refuse to carry out military service on religious or other grounds," Kazakhstan told the UN Human Rights Committee on 2 April in response to questions about progress on an alternative to compulsory military service. The regime did not explain why it does not recognise this right. The regime's Human Rights Commissioner Artur Lastayev did not answer Forum 18's questions. Conscription Offices often pressure young men who refuse to serve in the armed forces on grounds of conscience.

The regime has for more than a decade ignored repeated recommendations by the United Nations Human Rights Committee that the country "review its legislation" to recognise individuals' right to conscientious objection and provide an alternative to compulsory military service. "The law does not directly recognise the right of an individual to refuse to carry out military service on religious or other grounds," Kazakhstan told the Committee on 2 April in response to questions about progress. The regime did not explain why it does not and will not recognise this right.

Military service of one year is compulsory for almost all young men between the ages of 18 and 27, although only a minority of young men are conscripted each year. Those who refuse military service face criminal prosecution (see below).

The International Cooperation Department of the regime's Human Rights Commissioner appears to be unaware of the calls by the UN Human Rights Committee. Zhanna Abdilmanova told Forum 18 she was unaware of the UN Human Rights Committee's repeated recommendations to Kazakhstan to provide an alternative civilian service for those unable to serve in the military on grounds of conscience. "I have not encountered this issue," she claimed (see below).

Forum 18 asked the Office of the regime's Human Rights Commissioner Artur Lastayev in writing:

- what Commissioner Lastayev is doing on this issue;
- what progress there has been;
- and when those who cannot serve in the military on grounds of conscience will have the possibility to perform alternative service.

Forum 18 has received no response (see below).

"We hope soon Kazakhstan will provide alternative civilian service so those who personally object to military service based on their conscience can have the opportunity to make a substantive contribution to society," Jehovah's Witnesses told Forum 18 (see below).

Artur Alkxastov of the Astana branch of the Kazakhstan International Bureau for Human Rights and the Rule of Law argues that the lack of an alternative civilian service stems not from defence needs but from officials' intent to keep "strict control" over religious communities (see below).

Alkxastov says the "political establishment" would resist the introduction of an alternative civilian service, but believes it is possible. "Of course, we will need comprehensive advocacy, which would include not only the legal aspect, but also focus on society, and political and other institutions" (see below).

"We support the introduction of alternative civilian service," Seventh-day Adventist Pastor Andrei Teteryuk noted. "Our young men would definitely choose it if it existed." A Council of Churches Baptist told Forum 18: "If an alternative civilian service were introduced, of course the majority of our young men would apply for it" (see below).

Jehovah's Witness young men are exempted from military service as the state recognises them as "religious ministers". However,

Daniil Smal was held in a military unit from May to November 2023 as the Conscription Office refused to recognise his certificate as a "religious minister". In November 2023 a court ruled his conscription illegal, a ruling upheld by the Military Court in Astana in April 2024 (see below).

"According to the practice of the United Nations (UN) Human Rights Committee, the right to refuse military service on the basis of strongly held religious beliefs is an integral part of the right to freedom of thought, conscience and religion and is protected by Article 18 of the International Covenant on Civil and Political Rights," the April 2024 court decision declared (see below).

Young men from the Seventh-day Adventist Church, which has state registration, and from the Council of Churches Baptists, who do not, are generally able to conduct their military service in non-combat roles within the army, without carrying weapons and without swearing the oath. Conscription Offices generally accept this, sometimes after initial difficulties (see below).

Conscription Offices often pressure young men who refuse to serve in the armed forces on grounds of conscience. Officials try to intimidate them into serving, threatening them with prison if they refuse to serve and on occasion beating them (see below).

"In seven cases, enlistment offices detained the Witnesses overnight," Jehovah's Witnesses noted in October 2023. "Officials in Almaty physically beat two Witnesses [in December 2022] and subjected them to psychological pressure because of their conscientious stand" (see below).

It appears no Conscription Office officials in Almaty have been arrested or prosecuted in relation to the 2022 torture of the two Jehovah's Witnesses, in violation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Officials at the Legal Department of Almaty City Military Department did not answer the phone when Forum 18 called. An official at the Defence Ministry's Military Police Main Directorate in Astana refused to discuss why Conscription Offices have threatened and on occasion tortured those who refuse to perform military service on grounds of conscience, or to say if anyone has been arrested and prosecuted (see below).

Religious communities not currently registered that take a principled stand against serving in the military might find it difficult to gain state registration. The Religion Law requires that a religious community applying for registration specifies its "attitude to the realisation of the constitutional rights and obligations of its participants (members) and officials". Registered religious organisations are banned from undertaking "incitement of citizens to refuse to carry out obligations envisaged in the Constitution and laws" (see below).

Kazakhstan's Constitution declares: "Defence of the Republic of Kazakhstan shall be a sacred duty and responsibility of every citizen" (see below).

Hopes for alternative civilian service

In autumn 2022, Jehovah's Witness Daniil Smal presented the Conscription Office a certificate from the Jehovah's Witness Centre that he is a "religious minister". This should have exempted him from conscription. He was summoned on 17 May 2023, and forcibly transferred to a military unit. He was freed only in November 2023 (https://www.forum18.org/archive.php?article_id=2909) when Almaty Military Garrison Court ruled that his conscription was illegal.

On 26 December 2023, Almat Sarsenov, head of Kostanai Region Defence Department, appealed against the verdict. He claimed that Smal's conscientious objection "may lead to mass negative consequences and wide public resonance". It accused him of actions directly prohibited by the Religion Law, quoting the provision that registered religious organisations are banned from undertaking "incitement of citizens to refuse to carry out obligations envisaged in the Constitution and laws".

On 16 April 2024, Astana Military Court rejected Sarsenov's appeal (https://www.forum18.org/archive.php?article_id=2909). The Court confirmed that citizens have the right to object to military service based on their strongly held personal religious beliefs. The court decision relied on Kazakhstan's Constitution, which states "Everyone shall have the right to freedom of conscience," and also on the International Covenant on Civil and Political Rights (ICCPR), which Kazakhstan has been obligated to abide by since ratifying it in 2006.

"According to the practice of the United Nations (UN) Human Rights Committee, the right to refuse military service on the basis of strongly held religious beliefs is an integral part of the right to freedom of thought, conscience and religion and is protected by Article 18 of the [ICCPR]," the court stated in its decision.

The UN Human Rights Committee has repeatedly recommended that Kazakhstan recognise individuals' right to conscientious objection, and provide an alternative to compulsory military service (see below).

The military authorities did not appeal against the decision and it entered into legal force on 23 May 2024 (https://www.forum18.org/archive.php?article_id=2909).

Despite the Military Court decision in Daniil Smal's case, no alternative to compulsory military service exists. "Conscientious objectors in Kazakhstan, like Daniil, are not yet given an opportunity to serve their communities outside of the military sphere, as is the case in countries with an alternative civilian service programme," Jehovah's Witnesses told Forum 18.

"We hope soon Kazakhstan will provide alternative civilian service so those who personally object to military service based on their conscience can have the opportunity to make a substantive contribution to society," Jehovah's Witnesses added.

No alternative civilian service

Military service of one year is compulsory for almost all young men between the ages of 18 and 27, although only a minority of young men are conscripted each year. Despite some discussion in the 1990s of introducing an alternative civilian service, none was ever introduced. Several Jehovah's Witnesses served prison terms in the 1990s for refusing to perform compulsory military service.

Criminal Code Article 387 punishes "refusing military service" with – for a first offence - a fine of up to 1,000 Monthly Financial Indicators, or corrective labour to the same value, or up to one year of restricted freedom or imprisonment.

Criminal cases or investigations were launched in 2017 in different Regions of the country against six Jehovah's Witness young men under Criminal Code Article 387, Part 1. However, none of the cases reached court (https://www.forum18.org/archive.php?article_id=2333).

"Only one" conscientious objection appeal to regime's Human Rights Commissioner

Maiya Kasymova, head of the Analysis and Information Department at the Office of the regime's Human Rights Commissioner in Astana, said that since the beginning of 2023, "only one" appeal had come in related to conscientious objection.

"The relative of a religious believer who had been conscripted sent in an appeal in mid-2023," Kasymova told Forum 18 on 23 May 2024. "We analysed international provisions and sent the analysis to the Defence Ministry. We contacted the individual in his military unit and he said he had no complaints."

Kasymova said she was not authorised to discuss the issue of whether and, if so, when Kazakhstan will introduce alternative civilian service.

The Global Alliance of National Human Rights Institutions (GANHRI) has found that the Human Rights Commissioner does not comply with the Paris Principles (<https://ganhri.org/accreditation/>) for national human rights institutions, as among other problems it is not independent of the regime (https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_MARCH_2012_FINAL_REPORT_ENG_WITH_ANNEXURES.pdf).

UN Human Rights Committee recommendations repeatedly ignored

The United Nations (UN) Human Rights Committee has repeatedly recommended that Kazakhstan "review its legislation" to recognise individuals' right to conscientious objection and provide an alternative to compulsory military service.

On 11 July 2016, the Human Rights Committee's Concluding Observations on Kazakhstan (CCPR/C/KAZ/CO/2) (<https://undocs.org/CCPR/C/KAZ/CO/2>) found: "the State party has failed to implement its [the Human Right Committee's] previous [2011] recommendation (see CCPR/C/KAZ/CO/1 (<https://undocs.org/ccpr/c/kaz/co/1>), para. 23) and review its legislation to recognize a person's right to conscientious objection to military service and to provide for alternative military service."

The Concluding Observations then recommended: "The State party should ensure the legal recognition of conscientious objection to military service, and provide for alternative service of a civilian nature for conscientious objectors."

On 5 April 2023, in preparation for the Human Rights Committee's next examination of Kazakhstan's human rights record, it asked (CCPR/C/KAZ/QPR/3 (https://digitallibrary.un.org/record/4009386/files/CCPR_C_KAZ_QPR_3-EN.pdf?ln=en)) the regime to report among other issues on "the progress made" to "ensure the legal recognition of conscientious objection to military service and provide for alternative service of a civilian nature for conscientious objectors".

"The law does not directly recognise the right of an individual to refuse to carry out military service on religious or other grounds," Kazakhstan responded to the UN Human Rights Committee on 2 April 2024, repeating earlier such comments. It did not explain why it does not and will not recognise this right.

Why no alternative civilian service?

The International Cooperation Department of the regime's Human Rights Commissioner appears to be unaware of the UN Human

Rights Committee and its Concluding Observations.

Zhanna Abdilmanova of the Department told Forum 18 from Astana on 23 May that she was unaware of the UN Human Rights Committee's repeated recommendations to Kazakhstan to provide an alternative civilian service for those unable to serve in the military on grounds of conscience. "I have not encountered this issue," she claimed, adding that Forum 18 should send questions in writing.

On the afternoon of 23 May, Forum 18 asked the Office of the regime's Human Rights Commissioner Artur Lastayev in writing:

- what Commissioner Lastayev is doing on this issue;
- what progress there has been;
- and when those who cannot serve in the military on grounds of conscience will have the possibility to perform alternative service.

Forum 18 had received no response from the Human Rights Commissioner's office by the end of the working day in Astana on 27 May.

"We will need comprehensive advocacy"

Artur Alkhasov of the Astana branch of the Kazakhstan International Bureau for Human Rights and the Rule of Law argues that the lack of an alternative civilian service stems not from defence needs but from officials' intent to keep "strict control" (https://www.forum18.org/archive.php?article_id=2753) over religious communities.

"In this case, the introduction of alternative civilian service will require not only changes in legislation, an essentially legal and organisational matter," Alkhasov told Forum 18 from Astana on 23 May. "They will also require a change in the approach to control over religious groups. The political establishment, which fears the strengthening of religious influence, is likely to resist this."

Alkhasov would like to see a relevant case of a conscientious objector going to the Constitutional Court. "I think through such a lawsuit we could push the authorities well enough to the necessity of introducing alternative civilian service. Of course, we will need comprehensive advocacy, which would include not only the legal aspect, but also focus on society, and political and other institutions."

Alkhasov thinks such advocacy would have a good chance of success. "Many people in society, not only representatives of religious groups, are unhappy with the existence of compulsory military service."

Some serve without the military oath and without weapons

Young men from the Seventh-day Adventist Church, which has state registration, ask to conduct their military service in non-combat roles without carrying weapons and without swearing the military oath, Pastor Andrei Teteryuk told Forum 18 from Almaty on 27 May. Conscription Offices generally accept this, sometimes after initial difficulties, he added.

"We support the introduction of alternative civilian service," Pastor Teteryuk noted. "Our young men would definitely choose it if it existed. They would even be ready to serve two years in a hospital rather than one year in the army."

Some young men from the Council of Churches Baptists object to swearing the military oath and serving with weapons. "This is a decision for each young man," a church member told Forum 18 on 22 May. "The majority of young church members conscripted refuse to swear the military oath or carry weapons."

Council of Churches Baptists refuse to apply for state registration for their communities (https://www.forum18.org/archive.php?article_id=2753). This means they are unable to seek to have their young men exempted from military service as religious ministers.

Many Council of Churches Baptist young men are eventually able to serve in the army in non-combat roles, such as drivers or maintenance workers, without swearing the military oath or carrying weapons.

The church member noted that conscription officers earlier had an unwritten order not to conscript Council of Churches Baptist young men. "The conscription office would not follow up on the call-up. The law did not change, but about four or five years ago they started to conscript our young men." The church member stressed that no criminal prosecutions of their young men for refusing military service had been brought.

"If an alternative civilian service were introduced, of course the majority of our young men would apply for it," the church member told Forum 18.

Forum 18 is aware of another Christian community whose congregations exercise their freedom of religion or belief without state registration. Their young men refuse on grounds of conscience to serve in the military.

Their young men have found ways to avoid serving in the military so far, an individual who knows the community told Forum 18.

"Almost always threatened"

Conscription Offices often pressure young men who refuse to serve in the armed forces on grounds of conscience. Officials try to intimidate them into serving, threatening them with prison if they refuse to serve and on occasion beating them.

In the year to September 2023, about 20 Jehovah's Witness young men faced difficulty in obtaining the ministerial exemption from conscription which the 2012 Law prescribes. "In seven cases, enlistment offices detained the Witnesses overnight," Jehovah's Witnesses noted in October 2023. "Officials in Almaty physically beat two Witnesses and subjected them to psychological pressure because of their conscientious stand."

On the afternoon of 27 December 2022, officials seized the two Jehovah's Witnesses on the streets of Almaty and took them to Turksib District Conscription Office. "Military officers subjected them to physical violence (beatings without traces) and psychological pressure," Jehovah's Witnesses told Forum 18. "The officers turned to verbal abuse, humiliated the young men (for example, officers forced them to jump, shouted at them and mocked them) in order to force the detained to join the army."

The young men refused and officials released them after three hours. An ambulance was called for one of the men which took him to hospital. Neither man filed a complaint against Conscription Office officials.

It appears no Conscription Office officials in Almaty have been arrested or prosecuted in relation to the 2022 torture of the two Jehovah's Witnesses, in violation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Officials at the Legal Department of Almaty City Military Department did not answer the phone each time Forum 18 called on 27 May 2024.

Conscription Offices similarly often pressure Council of Churches Baptists when they are called up. "They are almost always threatened and pressured," the church member told Forum 18. "Sometimes they might be hit, but I don't recall any occasions in recent years when they have been harshly beaten."

Seventh-day Adventists also often face pressure in Conscription Offices. "Officials threaten the young men with prison if they refuse to serve," Pastor Andrei Teteryuk told Forum 18. "If a pastor intervenes, the situation generally doesn't end up as a conflict." He said none of their young men had faced beatings at Conscription Offices.

An official at the Defence Ministry's Military Police Main Directorate in Astana refused to discuss why Conscription Offices have threatened and on occasion tortured those who refuse to perform military service on grounds of conscience. He also refused to say if any staff of Conscription Offices have been arrested and prosecuted for this. "We have no authorisation to give any explanations," the official – who did not give his name - told Forum 18 on 27 May.

Pacifism an obstruction to registration?

One obstacle to gaining state registration for religious communities (https://www.forum18.org/archive.php?article_id=2753) is that registration applications must include a wide range of information about a community's attitudes and practices. Article 16, Part 3 of the 2011 Religion Law requires that, among other information, a religious community applying for registration specifies its "attitude to the realisation of the constitutional rights and obligations of its participants (members) and officials".

This demand violates the regime's legally-binding international human rights obligations. The OSCE / Council of Europe Venice Commission Guidelines on the Legal Personality of Religious or Belief Communities (<https://www.osce.org/files/f/documents/9/9/139046.pdf>) note: "The state must respect the autonomy of religious or belief communities when fulfilling its obligation to provide them with access to legal personality. ... states should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on .. the substantive content of its beliefs .. In particular, the state should refrain from a substantive as opposed to a formal review of the statute and character of a religious organization."

The Constitution's Article 22 declares: "1. Everyone has the right to freedom of conscience. 2. The exercise of the right to freedom of conscience should not set conditions on or limit universal human and civic rights and obligations to the State."

The Human Rights Committee's 11 July 2016 Concluding Observations on Kazakhstan (CCPR/C/KAZ/CO/2

(<https://undocs.org/CCPR/C/KAZ/CO/2>) state: "The Committee is concerned that article 22 of the Constitution is more restrictive in scope than article 18 of the Covenant, as it only protects freedom of conscience." The Committee recommended: "bringing article 22 of its Constitution into line with the Covenant [the International Covenant on Civil and Political Rights] and revise all relevant laws and practices with a view to removing all restrictions that go beyond the narrowly construed restrictions permitted under article 18 of the Covenant."

Article 36 of the Constitution declares: "Defence of the Republic of Kazakhstan shall be a sacred duty and responsibility of every citizen. Citizens of the Republic shall perform military service in accordance with the procedure and in the form established by law."

Article 12 of the Religion Law (https://www.forum18.org/archive.php?article_id=2753) includes among actions registered religious organisations are banned from undertaking "incitement of citizens to refuse to carry out obligations envisaged in the Constitution and laws". (END)

More reports on freedom of thought, conscience and belief in Kazakhstan (<https://www.forum18.org/archive.php?country=29>)

For background information, see Forum 18's Kazakhstan freedom of religion or belief survey (https://www.forum18.org/archive.php?article_id=2753)

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