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LEGAL REGULATION OF MILITARY SERVICE IN RUSSIA IN THE CONDITIONS OF MOBILIZATION

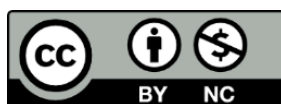
Expert opinion

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1. THE CONCEPT OF MILITARY SERVICE IN THE RUSSIAN FEDERATION

Military service in the Russian Federation is one of the forms of military duty, which, in turn, is derived from the constitutional duty of Russian citizens to protect the Fatherland. According to the law, all citizens of the Russian Federation are carriers of the constitutional duty to protect the Fatherland. Still, not all are obliged to perform military service, i.e., military duty is not universal.

The current Russian legislation establishes cases when specific categories of citizens can be exempted from military duty, such as citizens who are unfit for health reasons or serving a sentence of imprisonment, women who do not have a military specialization, etc.

Military service is **associated with the restriction of citizens in some constitutional rights and freedoms**, and its form, such as conscription military service, is mandatory.

Citizens of the Russian Federation and citizens of other states can perform military service.

Citizens of the Russian Federation may perform military service **by conscription or voluntarily** (under contract) in the Armed Forces and the troops of the National Guard of the Russian Federation, in military rescue formations, the foreign intelligence service, federal security service bodies, state security bodies, military prosecutor's offices, military investigative bodies of the Investigative Committee of the Russian Federation and the federal body on the provision of mobilization training of state authorities of the Russian Federation, military units of the federal fire service and special formations created for wartime.

Foreign citizens can perform military service **under a contract** in military positions to be replaced by soldiers, sailors, sergeants, and sergeant majors in the Armed Forces of the Russian Federation and military formations.¹

The Armed Forces of the Russian Federation is a state military organization that forms the basis of the state's defense. It is designed to repel aggression directed against the Russian Federation for the armed protection of the integrity and inviolability of its territory, as well as to perform other tasks by laws and international treaties.²

¹ About military duty and military service: Federal. Law No. 53-FZ of March 28, 1998. // The official website of the company is "ConsultantPlus." URL: http://www.consultant.ru/document/cons_doc_LAW_18260 / (accessed 01.03.2020).

² On Defense: Federal Law No. 61-FZ of May 31, 1996. // The official website of the company is "ConsultantPlus." URL: http://www.consultant.ru/document/cons_doc_LAW_10591 / (accessed 01.03.2020).

The National Guard of the Russian Federation troops is a state military organization designed to ensure state and public security and protect human and civil rights and freedoms.³

Persons undergoing military service acquire the status of military personnel, have rights, bear duties and enjoy guarantees corresponding to this status.

By the current legislation, not only military personnel can perform military service duties, but also citizens undergoing military training or pertaining to the mobilization human reserve. At the same time, citizens participating in voluntary armed formations (volunteers) can also have the status of a serviceman.

2. LEGAL REGULATION OF MILITARY SERVICE

Detailed and thorough legal regulation of social relations in connection with the performance of military service by citizens of the Russian Federation is reflected in the following legal acts:

- Article 59 of the Constitution of the Russian Federation,
- Federal Law No. 61-FZ of 31.05.1996 "On Defense,"
- Federal Law No. 53-FZ of 28.03.1998 "On Military duty and military service,"
- Federal Law No. 226-FZ of 03.07.2016 "On the Troops of the National Guard of the Russian Federation,"
- Federal Law No. 31-FZ of 26.02.1997 "On Mobilization Training and Mobilization in the Russian Federation,"
- Federal Law No. 76-FZ of 27.05.1998 "On the status of military servicemen,"
- Decree of the President of the Russian Federation of 21.09.2022 No. 647 "On the announcement of partial mobilization in the Russian Federation,"
- Decree of the President of the Russian Federation of 10.11.2007 N 1495 "On approval of the combined arms charters of the Armed Forces of the Russian Federation,"

³ About the troops of the National Guard of the Russian Federation: Federal Law No. 226-FZ of July 03, 2016. // The official website of the company is "ConsultantPlus." URL: http://www.consultant.ru/document/cons_doc_LAW_200506/ (accessed 01.03.2020).

— Regulations on conscription of citizens of the Russian Federation (approved by the Decree of the Government of the Russian Federation of 11.11.2006 N 663),

— Regulations on military medical examination (approved by the Decree of the Government of the Russian Federation dated 04.07.2013 N 565),

— Regulations on the conscription of citizens of the Russian Federation on mobilization assigned to military units (assigned to special formations) for military service in military positions provided for by the workforce regulation of wartime or sending them to work as civilian personnel of the Armed Forces of the Russian Federation, other troops, military formations, bodies, and special formations (approved by the decree of the Government of the Russian Federation of 30.12.2006 N 852),

— other regulatory acts.

3. MILITARY SERVICE

Military service on conscription, military service during mobilization, military service during martial law, and military service during wartime are performed by citizens of the Russian Federation within the framework of their military duty stated in Article 59 of the Constitution of the Russian Federation.

3.1. Military service on conscription

Conscription military service is **mandatory**, except for cases expressly listed in the Federal Law "On Military Duty and Military Service."

According to paragraph 1 of Article 22 of the Federal Law "On Military Duty and Military Service," all male citizens aged 18 to 27 years old who are on military registration or not but are obliged to be on military registration and are not in reserve are subject to conscription.

Per paragraph 2 of Article 22 of the Federal Law "On Military Duty and Military Service," citizens are **not called** up for military service if they are:

- exempt from military duty,
- exempt from conscription for military service,
- having a deferral from conscription for military service,
- not subject to conscription for military service.

Citizens who, under the Constitution of the Russian Federation, by the decision of the enlistment commission, military service was replaced by alternative civil service are also not subject to conscription. There is a special procedure for performing a military duty for such citizens.

One of the main criteria for the conscription of citizens for military service is their fitness for health reasons. The law establishes that citizens who are found unfit for military service for health reasons are exempt from military duty and are not called up for military service.

Fitness for military service for health reasons is determined during a medical examination, which is an integral part of conscription measures and carried out under the procedure established by the Regulations on Military medical examination.

Every year in Russia, about 270-300 thousand citizens of military age are called up for military service. To call up such a number of servicemen, 2-4 times more citizens of military age are driven through the system of military commissariats.

On December 21, 2022, at the expanded military board of the Ministry of Defense of the Russian Federation, Russian Defense Minister Sergei Shoigu announced his intention to gradually increase the age of conscription of citizens from 18 to 21 years and raise the limit to 30 years when recruiting the Armed Forces, to provide an opportunity, at the request of citizens, to enroll in military service under a contract from the first day of joining the service⁴.

The ability of conscripted military personnel to participate in combat operations on the territory of Ukraine in other armed conflicts.

The order of military service is regulated:

— Federal Law No. 53-FZ of 28.03.1998 "On Military Duty and military service,"

— Regulations on the procedure for military service (approved by the Decree of the President of the Russian Federation of 16.09.1999 N 1237)

— general military regulations of the Armed Forces of the Russian Federation.

Although senior officials of the Russian Federation have repeatedly stated that conscripted servicemen did not participate in the so-called "special military operation" in Ukraine, there is documented evidence to the contrary.

So during a meeting of the Federation Council of the Russian Federation on March 4, 2022, Senator Lyudmila Narusova said that conscripts had been withdrawn from the combat zone the day before. As a result, four out of a company of one

⁴ <http://kremlin.ru/events/president/news/70159>

hundred people remained alive⁵. On March 9, 2022, the fact of conscript soldiers' participation in hostilities in Ukraine was also recognized by the Ministry of Defense of the Russian Federation⁶. Later, the fact of the participation of about 600 conscripts in the fighting in Ukraine was recognized by the military Prosecutor's Office of the Russian Federation. This was stated on June 7, 2022, during a speech at the Federation Council by the military prosecutor of the Western Military District Artur Egiev⁷.

Another well-known fact of the participation of conscripted servicemen in combat operations in Ukraine was the story of the destruction of the missile cruiser "Moskva" from the Russian Black Sea Fleet⁸. According to various sources, the crew of the cruiser on 2/3 could consist of conscripts⁹.

Meanwhile, Russian legislation not only permits but also directly provides for the participation of conscripted military personnel in combat operations. Paragraph 3 of article 2 of the Regulations on the Procedure for Military Service establishes that recruited military personnel may be sent to perform tasks in armed conflicts (to participate in hostilities) after they have completed military service for at least four months and after training in military occupational specialties.

Thus, citizens of the Russian Federation undergoing military service on conscription **can be involved at any time to participate in hostilities** on the territory of Ukraine. Additional special legal regulation in this matter is not required.

In addition, the participation of conscripted military personnel in military operations in Ukraine is also possible through their voluntary-compulsory transfer to contractual relations. Such facts have been repeatedly noted in their reports by Russian human rights organizations ("Conscript School," "Soldiers' Mothers of St. Petersburg," and the Movement of Conscientious Objectors from Military Service). In many cases, when conscripted servicemen refused to sign contracts voluntarily, they were forced to do so by threats and physical violence. In some cases, contracts were signed by third parties on behalf of conscripted servicemen who did not know anything about it.

Russian legislation does provide for the possibility of signing a contract by military personnel undergoing military service on conscription, but only after three months of service¹⁰.

⁵ <https://www.svoboda.org/a/narusova-o-poteryah-rf-iz-roty-v-sto-chelovek-v-zhivyyh-ostalosj-chetvero/31736488.html>

⁶ <https://www.kommersant.ru/doc/5250443>

⁷ <https://www.interfax.ru/russia/845047>

⁸ <https://www.currenttime.tv/a/srochniki-kreyser-moskva-voyna/31907678.html>

⁹ <https://www.dw.com/ru/agentstvo-na-krejsere-moskva-bylo-okolo-300-srochnikov/a-61682700>

¹⁰ http://www.consultant.ru/document/cons_doc_LAW_18260/2976e6b52fdae8cf180047026d1b613c724006a2/

The transfer of conscripted military personnel to contract relations allows the command and the authorities to dispose of military personnel more freely and eliminates reputational costs associated with the political statements of the Russian leadership that conscripts do not participate in hostilities.

Indirectly, the practice of transferring conscripts to a contract is confirmed by the local authorities. "Conscripts already have the opportunity to sign a contract," Dmitry Peskov, the press secretary of the President of the Russian Federation, stressed in response to a question whether the option of allowing conscripts to go to the Special Military Operations' zone voluntarily was being discussed. "Any conscript, if desired, can sign a contract," a Kremlin spokesman told TASS¹¹.

3.2. Military service under contract

The number of contract soldiers in the Russian army by March 2019 amounted to 394 thousand people. During the expanded board of the Ministry of Defense of the Russian Federation on December 21, 2022, Russian Defense Minister Sergei Shoigu announced plans to increase the number of contractors in the ranks of the Armed Forces of the Russian Federation to 695 thousand people, including up to 521 thousand people by the end of 2022.¹²

A contract on military service may be concluded between a citizen of Russia or a citizen of a foreign state with the Ministry of Defense of the Russian Federation, another federal executive authority, or a federal state body that provides for military service.

A contract for military service is concluded with a citizen in written form. The principle of voluntary admission of a citizen to military service under a contract is legally established, but in practice, this is not always observed. The contract specifies the period during which a citizen intends to undergo military service, as well as other conditions that include the rights and obligations of a citizen.

In 2021-2022, there was a sharp change in legislation to expand the circle of persons with whom a contract for military service can be concluded. Also, the conditions for its conclusion were made more accessible.

During the expanded military board of the Ministry of Defense of the Russian Federation on December 21, 2022, Defense Minister Sergei Shoigu announced new concessions and offered to provide an opportunity to conclude a contract for military service to conscripts from the first day of their arrival at the service¹³.

¹¹ <https://tass.ru/politika/16762179>

¹² <http://kremlin.ru/events/president/news/70159>

¹³ <http://kremlin.ru/events/president/news/70159>

The main problems of citizens who have signed contracts with the Ministry of Defense of the Russian Federation for military service:

- 1) Voluntary-compulsory (and sometimes only compulsory) nature of the conclusion of contracts. This practice is common in military units when conscripts are forced to sign contracts with the help of violence and threats. There were cases when, even if servicemen refused to sign, contracts were still signed by commanders on behalf of servicemen without their knowledge;
- 2) in connection with the announcement of mobilization in Russia, all previously concluded contracts, including short-term and newly concluded contracts, automatically continue their validity after the expiration of their validity until the end of the period of partial mobilization. In other words, military personnel are "enslaved" in the Russian army and are not able to voluntarily not only terminate these contracts ahead of schedule but also leave military service after the expiration of these contracts;
- 3) military personnel under contract have only three legitimate opportunities to terminate contracts: 1) to reach the age limit for military service (50 years), 2) for health reasons (to receive, as a result of the military medical commission, the category of fitness D, which is equivalent to disability), 3) by committing a crime and receiving a sentence of imprisonment.

3.3. Military service on mobilization

Citizens of the Russian Federation who are in reserve, who do not have the right to a deferral from conscription for military service on mobilization are subjects to conscription for military service on mobilization¹⁴.

The term of military service for mobilization is not established by law. It is entirely determined by the Ministry of Defense of the Russian Federation and the President of the Russian Federation.

During mobilization, citizens are granted the right to conclude a contract for military service.

3.4. Military service during the period of mobilization and combat operations

Under paragraph 2 of Article 1 of the Federal Law "On the Status of a Serviceman," military personnel are charged with the duties of preparing for armed

¹⁴ https://www.consultant.ru/document/cons_doc_LAW_13454/

protection and armed protection of the Russian Federation, which are associated with the need to **unquestioningly** perform assigned tasks in any conditions, including at risk to life.

Paragraph 16 of the Statute of the Internal Service of the Armed Forces of the Russian Federation obliges servicemen to follow commanders' orders (chiefs) unquestioningly.

On September 24, 2022, these amendments entered into force. Before September 21, 2022, the day of the announcement of partial mobilization, servicemen had the opportunity to refuse to participate in hostilities on the territory of Ukraine for one reason or another, including conscientious objection, without risking repressive criminal measures related to possible imprisonment applied against them. However, from September 21, 2022, such opportunities are no longer in place.

Although part 3 of Article 59 of the Constitution of the Russian Federation provides for the right of citizens to replace military service with alternative civil service due to the presence of conscientious convictions, in **fact, this right is unrealizable** since there are no regulatory legal acts that would regulate the procedure for the exercise of this right for citizens already undergoing military service.

The Russian legislator, when adopting the law "On Alternative Civil Service," did not assume that anti-war and other beliefs may arise in a citizen directly during military service. Therefore, the law "On Alternative Civil Service" provides for such a right only for conscripts, i.e., citizens only subject to conscription for military service.

It was using this legal gap that on October 18, 2022, the Nevsky District Court of St. Petersburg refused to conscript Kirill Berezin to replace military service with alternative civilian service¹⁵.

According to Berezin, who was mobilized on September 24, 2022, participation in hostilities contradicts his beliefs — he is a believer. On the same day, he applied for Alternative Civil Service. Representatives of the Nevsky district military enlistment office said he did not have such a right. Berezin was in a military unit in Belgorod, where he was trained and prepared to be sent to the "special military operation zone." "The commander made threats against Kirill. He was told that he would regret the trial," Marina Tsyganova, a representative of Mr. Berezin, told reporters with reference to a colleague of the complainant.

¹⁵ https://nvs--spb.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=627170724&case_uid=ba9ded0f-6203-4ab1-973e-8f4802ec5a6c&delo_id=41

The representative of the defendants (the St. Petersburg City Military Commissariat and the district and city mobilization commissions), Irina Aristarkhova, stated in court that Kirill Berezin did not have the right to replace military service with alternative civilian service since it was available only to young people under 27 who are not in the reserve of the Armed Forces of the Russian Federation. In addition, she believed that there could be no question of a contradiction to beliefs since the plaintiff had already served in military service from 2013 to 2014¹⁶.

The court, rejecting Berezin, emphasized in its decision that alternative civil service was currently provided only for a specific category of citizens specified in Part 1 of Article 22 of Federal Law No. 53-FZ of 28.03.1998 "On Military Duty and Military Service" instead of conscription military service. For citizens subject to mobilization, replacement of military service, alternative civil service is not provided.

Currently, in Russian judicial practice, there is only one court decision that protects the right of a citizen to replace military service with alternative civilian service during the mobilization period.

On November 30, the Gatchina Court of the Leningrad Region granted the administrative claim of the mobilized Pavel Mushumansky and recognized his conscription for military service as illegal¹⁷. A person who has once completed alternative civil service can no longer be sent to the active army during mobilization.

In his lawsuit, Mushumansky explained the refusal of conscription in the army: "I cannot carry out orders aimed at destroying, defeating living people." Mushumansky is an evangelist. Previously, because of his religious beliefs, he did alternative military service at the psychoneurological boarding school of Kingisepp. After announcing a "partial" mobilization, he was mobilized and sent for military service in an army unit.

In early October, 23-year-old Pavel Mushumansky filed an administrative lawsuit with the Gatchina City Court. He demanded that the decision on mobilization be declared illegal. The preliminary court session took place on November 15; at it, the court suspended the decision of the draft commission and the validity of the summons on sending to the "place of service." However, this did not give Mushumansky the right to leave the unit¹⁸.

¹⁶ <https://www.kommersant.ru/doc/5620694>

¹⁷ https://gatchinsky--lo.sudrf.ru/modules.php?name=sud_delo&name_op=r_juid&vnkod=47RS0006&srv_num=1&delo_id=41&case_type=0&judicial_uid=47RS0006-01-2022-006539-37

¹⁸ <https://www.kommersant.ru/doc/5695071>

Conclusions:

1. The current Russian legislation directly provides for the participation of conscripted military personnel in combat operations and armed conflicts.
2. Citizens of the Russian Federation undergoing military service on conscription have no legitimate opportunity to avoid participation in hostilities, including on the territory of Ukraine, if this is decided by the Ministry of Defense of Russia and the Presidents of Russia, which is the Supreme Commander-in-Chief.
3. Participation in possible war crimes of conscripted servicemen is a consequence, on the one hand, of the obligation imposed on them by law to unconditionally, without questioning and criticizing, execute orders of higher commanders and superiors, and on the other hand, the possibility of criminal prosecution for refusing to execute an order (even if unlawful), refusal to participate in combat operations, and for voluntary surrender.

4. CRIMES AGAINST MILITARY SERVICE

Crimes against military service form a separate special composition of criminal offenses. They are regulated by Chapter 33 of the Criminal Code of the Russian Federation, which contains 22 types of crimes¹⁹.

The current composition of criminal offenses against military service and the punishment for them is shown in table 1.

It should be noted that one day before the announcement by V. Putin of partial mobilization in Russia, the State Duma of the Russian Federation amended the Criminal Code of the Russian Federation. It significantly toughened penalties for certain types of crimes committed by military personnel during mobilization, martial law, wartime, and military operations.

Also, these changes have added new criminally punishable offenses – 1) refusal of a serviceman to participate in military or combat operations, 2) voluntary surrender.

Table 1

¹⁹ http://www.consultant.ru/document/cons_doc_LAW_10699/6acef6ea0e4d510cf9f2d8d0ae8902963b82356c/

Criminal offenses against military service

Article of the Criminal Code of the Russian Federation	Offense (act)	Punishment (during mobilization or martial law, during wartime, or in conditions of armed conflict or warfare)
332	<p>Non-fulfillment by a subordinate of a superior's order. Refusal to participate in military or combat operations</p> <p>The same, which entailed grave consequences</p>	<p>Imprisonment for a term of 2 to 3 years</p> <p>Imprisonment for a term of 3 to 10 years</p>
333	Resisting a superior or forcing him to violate the duties of military service	Imprisonment for a term of 5 to 15 years
334	Beatings or the use of other violence against the chief, committed during the performance of his duties of military service or in connection with the performance of these duties	Imprisonment for a term of 5 to 15 years
337	<p>Unauthorized abandonment of a unit or place of service:</p> <p>1) lasting more than two days but not more than ten days;</p> <p>2) more than ten days, but not more than one month;</p> <p>3) lasting more than one month</p>	<p>Imprisonment for up to 5 years</p> <p>Imprisonment for up to 7 years</p> <p>Imprisonment for a term of 5 to 10 years</p>
338	Desertion (unauthorized abandonment of a unit or place of service to evade military service)	Imprisonment for a term of 5 to 15 years
339	Evasion of a serviceman from performing the duties of military service by simulating illness, causing any damage to himself (self-	Imprisonment for a term of 5 to 10 years

	<p>mutilation), forgery of documents, or other deception</p>	
340	<p>Violation of the rules of combat duty (combat service)</p>	<p>Imprisonment for a term of 5 to 10 years</p>
341	<p>Violation of the rules of the border service</p>	<p>Imprisonment for a period of 5 to 10 years</p>
342	<p>Violation of the statutory rules of the guard (watch) service</p>	<p>Imprisonment for a term of 5 to 10 years</p>
344	<p>Violation of the statutory rules of internal service and patrolling in the garrison</p>	<p>Imprisonment for up to 7 years</p>
346	<p>Intentional destruction or damage of weapons, ammunition, or items of military equipment</p>	<p>Imprisonment for a term of 5 to 10 years</p>
347	<p>Destruction or damage by the negligence of weapons, ammunition, or items of military equipment</p>	<p>Imprisonment for up to 5 years</p>
348	<p>Loss of military property</p>	<p>Imprisonment for up to 7 years</p>
352.1	<p>Voluntary surrender</p>	<p>Imprisonment for a term of 3 to 10 years</p>

5. LAW ENFORCEMENT PRACTICE

Judicial and law enforcement practice on new and toughened criminal offenses against military service during mobilization and military operations has just begun to take shape. It still seems too early to make a serious and in-depth legal analysis since the first sentences began to be handed down quite recently - in December 2022. However, the first conclusions indicate that in all cases, the accusatory nature of sentences prevails with the imposition of real terms of imprisonment as punishment.

On December 6, 2022, the garrison military court in Veliky Novgorod sentenced the serviceman Danil Ivanov, who was accused of leaving the place of military service for more than a month (part 5 of Article 337 of the Criminal Code of the Russian Federation). He was sentenced to 5 years of probation²⁰.

According to the lawyer, Ivanov was accused of leaving his unit in the Belgorod region at the end of April. He returned in September after the mobilization was announced. The defender refused to specify whether Ivanov participated in the battles in Ukraine before the escape²¹.

On December 7, the garrison military court in Solnechnogorsk, Moscow region, sentenced a serviceman Alexei Sozonov, who was accused of leaving the place of military service (Article 337 Part 4; Article 337 Part 3.1 of the Criminal Code of the Russian Federation). He was sentenced to 4 years of probation²².

On December 7, the Grozny Garrison Military Court convicted Kurash Gereev, a contract serviceman. As follows from the case file, he was absent from service for more than three months, for which he was convicted under part 4 of Article 337 of the Criminal Code of the Russian Federation (Unauthorized abandonment of a unit or place of service, as well as failure to appear on time without valid reasons for service lasting more than one month, committed by a serviceman undergoing military service on conscription or under contract). The court sentenced him to six months of probation with a probation period of six months.

²⁰ https://gvs--nvg.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=61635641&case_uid=ac5eeddf-8b53-4e1a-bd54-ec2bd2a21d0f&delo_id=1540006

²¹ <https://meduza.io/news/2022/12/16/v-rossii-vynesli-pervye-prigovory-po-statyam-o-dezertirstve-i-samovolnom-ostavlenii-chasti-vo-vremya-mobilizatsii>

²² https://sgvs--mo.sudrf.ru/modules.php?name=sud_delo&name_op=r_juid&vnkod=77GV0006&srv_num=1&delo_id=1540006&case_type=0&judicial_uid=77GV0006-01-2022-000266-18

On December 14, the Murmansk Garrison Court handed down a verdict against Maxim Malyshev, a serviceman accused of desertion during mobilization and attempted illegal border crossing. It is unknown what punishment he received: the text of the verdict has not been published on the court's website, which, according to media reports, is due to the "closeness and secrecy of the meeting."

On December 15, the Krasnoyarsk Garrison Military Court convicted Anton Chernyshov²³, an ordinary contract soldier who did not show up for service without valid reasons and left for the Krasnoyarsk Region. He was absent from service from July to September, for which he was convicted under part 4 of Article 337 of the Criminal Code of the Russian Federation. The court reclassified the charge to a milder one, even though the preliminary investigation bodies accused the private of committing a crime under Part 5 of Article 337 of the Criminal Code of the Russian Federation and assuming a penalty of 5 to 10 years in prison, since, according to the military investigation, it was committed during the mobilization and military operations. The private did not appear at the unit when there was no mobilization yet but arrived at the military police immediately after he became aware of the beginning of mobilization²⁴. Chernyshov was sentenced to imprisonment for one year with serving in a colony settlement.

On December 16, 2022, the Chelyabinsk Garrison Military Court considered a criminal case against a contract serviceman, Private Alexei Kirgienkov²⁵, accused by the preliminary investigation authorities of committing a crime under Part 5 of Article 337 of the Criminal Code of the Russian Federation, namely: unauthorized abandonment of a unit or place of service, committed by a serviceman undergoing military service under a contract during mobilization, committed under the following circumstances.

On August 22, 2022, Private Kirgienkov committed an unauthorized abandonment of his duty station in Chelyabinsk. On September 26, 2022, he was discovered by military police officers in Chelyabinsk and taken to the military commandant's office, in connection with which his illegal presence outside the military unit was terminated.

The court found the contract soldier guilty of unauthorized abandonment of the unit during the mobilization period and sentenced him to imprisonment for five years and one month in a general regime colony with a fine of 15 thousand rubles²⁶.

²³ https://kgvs--krk.sudrf.ru/modules.php?name=sud_delo&name_op=r_juid&vnkod=54GV0007&srv_num=1&delo_id=1540006&case_type=0&judicial_uid=54GV0007-01-2022-000146-27

²⁴ http://kgvs.krk.sudrf.ru/modules.php?name=press_dep&op=1&did=637

²⁵ https://chgvs--chel.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=425800527&case_uid=d4fca2e3-dcc8-4a48-80ec-093aee1edc29&delo_id=1540006&new=

²⁶ http://chgvs.chel.sudrf.ru/modules.php?name=press_dep&op=1&did=397

On December 23, the Grozny garrison Military Court issued a guilty verdict to serviceman Alexander Khmelev²⁷, who was accused under Part 3.1 of Article 337 of the Criminal Code of the Russian Federation (Unauthorized abandonment of a unit or place of service, as well as failure to appear on time without valid reasons for service lasting more than ten days, but not more than one month, committed by a serviceman undergoing military service on conscription or under contract during the mobilization period). On September 22, 2022, that is, during the mobilization period announced in the Russian Federation by Presidential Decree No. 647 of September 21, 2022, Khmelev did not come back from leave for service and continued to spend time at his discretion in Rostov-on-Don until October 12, 2022. For this, he was sentenced to imprisonment for two years with serving in a correctional colony of the general regime²⁸.

On December 27, the Grozny garrison Military Court handed down a guilty verdict to the serviceman Denis Gainullin²⁹, accused of committing a crime under part 3.1 of Article 337 of the Criminal Code of the Russian Federation. It is not known what punishment the court imposed.

The Perm Garrison Military Court convicted a conscripted serviceman under part 5 of Article 337 of the Criminal Code of the Russian Federation (Unauthorized abandonment of a unit or place of service, as well as failure to appear on time without valid reasons for service lasting more than one month, committed by a serviceman undergoing military service under conscription or contract, during mobilization or martial law, in wartime or conditions of armed conflict or warfare). It has been reported that the serviceman voluntarily left the military unit and went home, temporarily evading military service. In total, he was absent from service from August 14 to October 2, which exceeded one month. The court imposed a sentence of imprisonment for five years with serving a sentence in a correctional colony of the general regime³⁰.

On December 22, 2022, a serviceman Konstantin Sannikov was convicted by the Yuzhno-Sakhalinsk garrison Military Court for committing a crime under Part 4 of Article 337 of the Criminal Code of the Russian Federation³¹.

²⁷ https://gvs--chn.sudrf.ru/modules.php?name=sud_delo&name_op=r_juid&vnkod=61GV0012&srv_num=1&delo_id=1540006&case_type=0&judicial_uid=61GV0012-01-2022-000565-76

²⁸ http://gvs.chn.sudrf.ru/modules.php?name=press_dep&op=1&did=758

²⁹ https://gvs--chn.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=case&case_id=22821097&case_uid=c5055c66-4634-4c39-85d5-92071a4cf271&delo_id=1540006&new=

³⁰ <https://perm.rbc.ru/perm/freenews/63ad4bdf9a7947025f46b454>

³¹ https://yusgvs--sah.sudrf.ru/modules.php?name=sud_delo&name_op=r_juid&vnkod=27GV0012&srv_num=1&delo_id=1540006&case_type=0&judicial_uid=27GV0012-01-2022-000202-75

The court session found that on July 24, 2022, Sannikov, to temporarily evade the duties of military service, wishing to avoid being sent to the zone of a special military operation, voluntarily left the place of temporary deployment of a military unit in the Belgorod region, after which, living in Lysva, Perm Krai and other settlements, spent time at his discretion. For committing a crime under Part 4 of Article 337 of the Criminal Code of the Russian Federation, Sannikov was sentenced to imprisonment for three years with serving his sentence in a penal colony settlement³².

CONCLUSIONS

Citizens of the Russian Federation undergo military service by conscription and contract, as well as as a result of mobilization announced on September 21 by decree of the President of the Russian Federation.

The current regulatory framework on social relations linked to the performance of military duty during mobilization and wartime is a set of prohibitive, protective, and repressive measures aimed at retaining (enslaving) any serviceman in a combat zone, even against his will:

- 1) provides for the possibility of sending any serviceman at any time to the combat zone;
- 2) military personnel do not have the right to choose a place of service or refuse to serve;
- 3) Military personnel under the contract have no opportunity to terminate contracts for military service. Their validity period is automatically extended until the end of the mobilization period;
- 4) military personnel under the contract have only three opportunities to terminate contracts ahead of schedule: 1) to reach the age limit for military service (50 years), 2) for health reasons (to receive as a result of the military medical commission the category of fitness D. which is equivalent to receiving disability), 3) having committed a crime and received a sentence of imprisonment;
- 5) military personnel has no legal rights to challenge the commander's order or refuse to perform it. Otherwise, they are brought to criminal responsibility with a penalty of imprisonment for up to 10 years;

³² http://yusgvs.sah.sudrf.ru/modules.php?name=press_dep&op=1&did=925

- 6) military personnel does not have the right to refuse to participate in hostilities. Otherwise, they are brought to criminal responsibility with a penalty of imprisonment for up to 10 years;
- 7) military personnel are deprived of the opportunity to exercise the right to replace military service with alternative civilian service;
- 8) military personnel who voluntarily left their place of service (area of combat operations) are recognized as having committed a criminal offense with a penalty of imprisonment of up to 15 years;
- 9) a serviceman who, for reasons of survival or conscience, would like to refuse to participate in hostilities and voluntarily surrender is deprived of such a legal opportunity. Committing such an act is regarded as a criminal offense with a penalty of up to 15 years in prison.

The new law enforcement practice emerging in the conditions of mobilization and warfare testifies to the total accusatory nature of court sentences and the use of punishment, mainly imprisonment.

In the conditions of the modern Russian repressive legal system, in the absence of legal ways to evade military duty, the refusal of any Russian citizen to undergo military service and participate in hostilities in Ukraine should be considered not so much as an act of self-survival, but as an act of political and moral opposition to the ruling regime.

Citizens of the Russian Federation undergoing military service (conscription, contract, mobilization) do not have any legal opportunities not to take part in hostilities or refuse to participate in them, even if they have conscientious convictions. For their anti-war actions, including unauthorized refusal to participate in hostilities, refusal to execute orders of commanders, and leaving places of military service, such citizens are subjected to severe repressive persecution by the state.

A serviceman who wants to refuse to participate in hostilities has only one way to do this – to commit a crime and go to prison or a colony for it. As difficult-to-implement, but possible alternatives:

- 1) Escape with departure from the Russian Federation. In this case, the question arises of prosecution and the provision of protection in third countries.
- 2) Voluntary surrender of the Armed Forces of Ukraine with the simultaneous initiation of a criminal case in Russia. In this case, there are questions of the status and guarantees of the preservation of the lives of such citizens in Ukraine and the question of their subsequent transit to safe countries and legalization.