



The Movement of conscientious objectors

OHCHR-United Nations Office at Geneva,
CH-1211 Geneva 10, Switzerland
e-mail registry@ohchr.org

From the Movement of conscientious objectors

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SUBMISSIONS BY THE MOVEMENT OF CONSCIENTIOUS OBJECTORS

I. Introduction.

1. These written comments are submitted to the Office of the United Nations High Commissioner for Human Rights by the Movement of conscientious objectors (hereinafter - MCO) under the paragraph 2 of the resolution 36/18 of the Human Rights Council on "Conscientious objection to military service". MCO is a Russian independent non-governmental organization with experience in individual consulting and accompanying cases in trials in the area of conscientious objection and conscription.

2. MCO addresses the following issues in these written comments:
- a. Dependence of the Draft commissions from the Military commissariats,
 - b. The procedure for considering applications for ACS,
 - c. Non-transparency of Draft commissions and Military commissariats,
 - d. Statistical information on Draft commissions,
 - e. Statistical information on court's decisions.

II. Dependence of the Draft commissions from the Military commissariats.

3. By the law, the decision to replace compulsory military service by an alternative civil service (hereinafter - ACS) or a decision to refuse such a replacement is made by the Draft commission. This government authority can also adopt other decisions in relation to draftees: on recognizing him as fit or unfit for service, on drafting him into the armed forces, on granting a deferment of conscription, etc. Draft commission also organizes a medical examination, but for these purposes, formally, a separate Commission for medical examination is created.

4. The Draft commissions are formed on the basis of municipalities. The composition of these commissions is approved by the order of the head of the region of the Russian Federation before the beginning of each draft period. The chairman of the Draft commission is the head or deputy head of the municipality. In addition, the composition of the Draft commission includes

representatives of the Administration of the municipality, of the Police, of the Military commissariat, and in the case of a decision on the ACS, a representative of the local Employment Center.

5. The Military commissariat act on the territory of the municipality. It is the territorial body of the Ministry of Defense of the Russian Federation and it is headed by the military commissar. The military commissar is also the deputy chairman of the Draft commission.

6. The Draft commission has no funding. All its members carry out their duties in this body during their working hours as employees of the Administration, Police or Military commissariat. The sessions of the Draft commission are held at the premises of the Military commissariat.

7. In fact, the chairman and other members of the Draft commission, who do not work permanently in the Military commissariat, are relevant to the issues of conscription only at the time of the session of the commission. As practice shows, they, often, are poorly oriented in the legislation in the field of conscription and conscientious objection, do not seek to understand the specific situations of draftees, fully rely on the opinion of the military commissar and other employees of the Military commissariat.

8. Formally, the work of the Draft commission is organized by the chairman (head or deputy head of the municipality) together with the deputy chairman (the military commissar). In practice, all the actions to organize the work of the Draft commission are carried out by the Military commissariat. Draftees file applications to replace compulsory military service with an ACS to the Military commissariat, Military commissariat conduct personal files of draftees, carry out a calling to the draftee who submitted the application for ACS. The chairman of the Draft commission does not control this process in any way.

9. The violation of the draft procedure by the Military commissariat is large-scale. In violation of the requirements of Art. 10 of Federal Law No. 113-ФЗ of July 25, 2002 "On Alternative Civil Service", the Military commissariat calls draftees who sent applications to replace compulsory military service with an ACS for a medical examination prior to the session of the Draft commission (Appendix No. 1 as an example). That simplifies the procedure of adopting a decision on conscription of draftee into the armed forces after refusal to the ACS.

10. Often during such medical examination there are attempts to present the desire of a draftee to undergo an ACS as a consequence of his problems in the field of psychiatry. We know cases when a draftees who have not previously filed any complaints to a psychiatrist were tried to be sent to a psychiatric hospital after applying for an ACS (Appendix No. 2).

11. Military commissariats conduct personal files of draftees with systematic violations. In particular, documents are not properly attached to the personal file, the application to the ACS is usually simple enclosed in a folder, and not entered in the inventory of documents, as provided in the Order No. 400 from February 10, 2007 of the Minister of Defense of the Russian Federation. This leaves the Military commissariat an ability to remove the application to ACS from the personal file.

12. It is not uncommon for an application to the ACS not to be submitted to the Draft commission at all. The military commissar claims that the application was submitted with a missed deadline and therefore his application is not a subject to review (Appendix No. 2).

13. As a rule, when such application is submitted to the Military commissariat, the military commissar does not forward it to the Draft commission at once, but calls draftees who applied to the ACS for informal talks. These conversations are conducted without a protocol and the meaning of these conversations is to convince a draftee to abandon his application. At the same time, often the military commissars resort to measures of psychological pressure and disinformation, they try to impose a negative attitude towards the ACS: "You will be changing diapers for lying patients". Often, military commissariats at the same time show sexism: "Normal guys serve in the army. You're normal. Why do you need this?". In informal conversations with draftee who are perceived by heterosexual people, the members of the Military commissariat often use discriminatory and homophobic statements: "You are a normal guy, not a gay man. Why do you need that?". Often, threats of criminal prosecution are expressed in the address of a draftee.

14. Accordingly, in fact, the decision on the question of replacing military service on conscription with the ACS is made by representatives of the Military commissariat. The Draft commission is dependent from the Military commissariat and can not take impartial decisions.

III. The procedure for considering applications for ACS.

15. Draftee submits an application for the replacement of compulsory military service to the ACS to the Military commissariat in free form, then the military commissar passes the application to the Draft commission for consideration. These applications are registered together with all other applications in the Military commissariat under the incoming number. To date, there is no form of recording applications for ACS separately from other appeals coming to the military commissariat. On this basis, we, like many experts, conclude that, in fact, the state bodies of the Russian Federation do not keep statistical records of applications submitted to the ACS.

16. The Draft commission conducts sessions during the draft period, usually twice a week. The Draft commission can make a decision with respect to a draftee only in his presence.

17. Formally, the session of the Draft commission is conducted by the chairman, but in most cases session is chaired by the deputy chairman (the military commissar). In accordance with Federal Law No. 113-Φ3 of July 25, 2002 "On Alternative Civil Service", at least $\frac{2}{3}$ from the composition of the Draft commission should present at the session. However, it is not uncommon for sessions to be held in the absence of the chairman and many members of the commission, only with those members of the Draft commission who are employees of the Military commissariat. In these cases the protocols state that all members of the Draft commission were present.

18. But in those cases when the chairman of the Draft commission is present and there is the quorum, the military commissar plays the leading role on the session. In fact, he is holding the session, and the Draft commission does not object.

19. During the session, the Draft commission often tries to talk out a draftee of the intention to pass the ACS. Negative assessments of the draftee's views are expressed, and his choice is assessed as cowardice, lack of masculinity and so on.

20. The law provides for the draftee the right to present his arguments against military service at the session of the Draft commission. In practice, people are often not allowed to convey their views, Draft commission interrupt people, ask various questions in the middle of the speech, preventing the coherent presentation of arguments. The nature of the issues often indicates not so much the wish of the members of the commission to understand the essence of a person's

convictions against military service, but rather the desire to cause him a sense of shame and confusion, and often contain negative assessments of the views of a person.

21. Most of young people who talked about the passing of the Draft commission said that they were under strong psychological pressure from members of the Draft commission, especially from the military commissar, and that they were stressed out and often could not say to the Draft commission what they wanted.

22. In some Military commissariat, employees make demands on draftees that are not prescribed in law, but pursue the sole purpose of psychological pressure. For example, it is required, when entering the premises of the Draft commission, to address a specific form of the report reminiscent of an army speech. While some sessions of Draft commissions, draftees are required to stand at a certain place in the room, indicated by a carpet or a square. In some Draft commissions draftees are required to attend a session without shoes and even without a shirt. Non-fulfillment by draftees of these illegal claims often causes conflict with the employees of the Military commissariat.

23. Despite the fact that the law says that Draft commission should make a decision on the basis of available documents, a draftee's speech and statements by persons who agree to confirm the authenticity of the draftee's arguments, in practice, persons who are for this purpose at the meeting of the Draft commission are often not allowed to attend the session. This not only violates the procedure provided by law, but also enhances the stressful situation in which a draftee applying for ACS turns out to be.

24. Article 12 of the Federal Law of 25.07.2002 N 113-FZ "On Alternative Civil Service" requires the Draft commission to adopt an Opinion on the replacement or Decision to refuse to replace, copies of these acts must be issued to the draftee. To date, there is no approved form of these acts, as well as there is no regulation of the issue, how they should be stored and accounted for. In practice, the Military commissariat do not adhere to any uniformity in the formation of decisions (Appendix No. 4).

IV. Non-transparency of Draft commissions and Military commissariats.

25. For a long time we said that employees of the Military commissariat in most cases prohibit draftees from video or audio recording of the session of the Draft commission, referring to the fact that the Military commissariat is a "regime object". But there were no any official document which prohibit video or audio recording in Military commissariats.

26. Since the beginning of 2018, in every Military commissariat around Russia there were signs which were prohibit bringing of smartphones to the Military commissariat (Appendix No. 8).

27. But Military commissariats says that bringing of smartphones is dangerous for the information which keeps Military commissariat and has a state secret status because draftees can film it (Appendix No. 9).

28. Without the possibility of photographing and video filming, draftees cannot prove a violation of their rights in the military commissariats. In all spheres, starting with violations in the conduct of a personal case and ending with the humiliation of human dignity, they need indisputable evidences to appeal illegal actions. One of the easiest to obtain is photographing and video filming.

V. Statistical information on Draft commissions.

29. As it was said paragraph 15 of this submission, state bodies of the Russian Federation do not keep statistical records of applications submitted for the replacement of compulsory military service to the ACS and the number of negative decisions on such statements. But MCO can provides it's own statistic information. On average, about 600 recruits per year apply to the MCO. In 2016, 504 people applied to us, in the first draft period of 2018 — 514 people.

30. During the period 2015-2018, the MCO collected statistics on 353 sessions of Draft commissions (Appendix No. 5), which considered applications for the replacement of compulsory military service by ACS. According to the collected statistics, 169 (48%) draftees have achieved replacement of military service with ACS, 184 (52%) were denied.

31. In accordance with paragraph 3 of Art. 12 of the Federal Law "On Alternative Civil Service", as a result of consideration of an application to replace compulsory military service with ACS, the Draft commission makes a decision to replace compulsory military service with AGS or a motivated decision to refuse such a replacement. Of 353 Draft commissions, only one issued a motivated decision containing a list of documents contradicting the arguments of the conscript (Appendix No. 6). All others received only a formal unmotivated refusal, which is a violation of the law (as example Appendix No. 4).

VI. Statistical information on court's decisions.

32. The MCO also analyzed 56 court decisions in 2016 rom 31 regions of the Russian Federation on the appeal to decisions of the Draft commissions to refuse to replace compulsory military service with ACS (Appendix No. 7).

33. Claims of administrative plaintiffs are satisfied in 4 cases, which is 7% of the total number of cases. Decisions on the refusal to satisfy the claims, respectively, were taken in 40 cases (71%). The final acts of courts were published on the court's sites in 34 cases (60%).

1) Reasons for satisfaction of claims (7%)

34. In case No. 2a-2835/2016, the Belebeev Town Court of the Republic of Bashkortostan considered the issue of the draftee's religious beliefs and came to the conclusion about their existence. But it should be noted that draftee in this case was a follower of the teachings of Jehovah's Witnesses, and one of the fundamental principles of this religion, as the Court notes, is the inadmissibility of causing harm to others, health, murder, war, other actions related to the use of weapons, non-teaching military actions, service in the armed forces. And this decision was made before prohibition of Jehovah's Witnesses in Russia as extremists.

35. In cases No. 2a-1651/2016 and 2a-14209/2016, the Seversky Town Court of the Tomsk Region and the Avtozavodsky District Court of Togliatti satisfied the claim, because they recognized the reason for missing the deadline for the application replacing the compulsory military service with ACS. In the first case, the draftee missed the deadline for objective reasons, as he was outside the territory of the Russian Federation. In the second, the court found a valid reason the later formation of the pacifist convictions of the recruit (he had not previously thought about his attitude to the army), although in other cases, references to such reasons led to refusals to satisfy claims.

2) *Reasons for refusal to satisfy claims (71%)*

36. *Lack of beliefs.* Only in 5 out of 29 published decisions on the refusal to satisfy the claims, the courts did not consider the issue of having beliefs. Courts pay attention to the lack of history of forming beliefs and the lack of their written confirmation. Also, the judgments of courts contain an assessment of the arguments of the administrative plaintiffs as "contrived", "reduced to the expression of disagreement", "misinterpretation of military duty, as a school of disciplined assassins".

37. *Absence of valid reasons for missing the deadline.* The courts are in fact unanimous in that "legal ignorance" or "ignorance of the deadline for submitting an application", or "lack of access to the information and telecommunications network Internet" are not valid reasons for missing the deadline for submitting an application for ACS. As well as the existence of beliefs formed after the deadline for submitting an application to the ACS.

38. *Motivation of the decision of the Draft commissions.* As it was said in paragraph 30 of this submission, decision to refuse application for ASC should be motivated. The issue of lack of motivation in the decisions of the Draft commissions was raised in all cases included in the monitoring, but only in 10 cases (34% out of 29 published refusal court acts) the issue of motivation of the decision of the Draft commission was considered. In 9 cases (2a-1180/2016, 2a-1691/2016, 2a-3247/2016, 2a-1731/2016, 2a-1120/2016, 2a-14209/2016, 2a-1699/2016, 2a-1437/2016, 2a-4597/2016), the courts spoke of a sufficient motivation for the decision, without giving any justification — "the decision, in the opinion of the court is sufficiently motivated". In 1 case (2a-4993/2016) the court considered that the provided extract from the protocol of the meetings of the Draft commission was not a "decision".

VI. Statistical information on court's decisions.

39. Conscientious objectors in Russia faces a high pressure. The government authority which should make decisions on their applications dependent from the military administration. While the procedure of making and considering there applications draftees face a high level of discrimination. Refusals which draftees receive are not motivated. Government authorities which are connected with conscientious objection are not transparent to draftees. As a result only 48% of draftees which successfully overcome all these barriers receive a replacement of military service by ASC. And the courts decides in favor of other 52% only in 7% cases.

Alexander Belik

Lawyer and coordinator of The

Movement of conscientious objectors