

Legal framework and practice regarding “partial” mobilization in the Russian Federation

December 2022

Internal legal note

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1. Prerequisites for mobilization

In Russian history, military mobilization was announced only three times: July 31, 1914 (World War I), June 23, 1941 (World War II) and September 21, 2022, on the 210th day of the Special Military Operation (hereinafter SPMO).

On 21 September 2022, by Presidential Decree No. 647 "On Declaring Partial Mobilization in the Russian Federation", dated 21.09.2022¹ (hereinafter referred to as the Mobilization Decree), President V.V. Putin declared: "partial" mobilization and ordered to call up citizens of the Russian Federation for military service by mobilization in the Armed Forces of the Russian Federation.

According to paragraph 2 of the decree on mobilization, citizens of the Russian Federation drafted for military service under mobilization have the status of servicemen performing military service in the Armed Forces under **a contract**.

The reasons for mobilization were primarily the losses of personnel during the so called 'military operations' in Ukraine. At the beginning of September 2022 it was impossible to hold the front for more than 1,300 km with the available forces, and the successful counterattack of the Ukrainian armed forces forced the Russian leadership to announce mobilization, while President V.V. Putin repeatedly assured that there would be no mobilization and avoided the subject in every possible way. However, earlier attempts to recruit new soldiers for contract service from economically depressed regions, the recruitment of volunteers and the creation of "volunteer battalions," the recruitment of prisoners in penitentiary institutions have not brought proper results in replenishing losses in manpower.

One should not overlook the mobilization that had already been conducted earlier in the DNR² and LNR³ (*regimes established by Russia in Ukraine in 2014*), which began on 19 February 2022, 5 days before the start of the war. Up to 80% of the entire male population was recognized in these quasi-formations, which caused almost complete paralysis of the economic, transport and other spheres on the territory of the so called DNR⁴.

2. Military service in the Russian Federation

▪ Legal framework for military service in the Russian Federation

The Russian Federation has a legal framework governing the military sphere in the state. It includes:

- Constitution of the Russian Federation⁵

Article 59 (1) of the Constitution of the Russian Federation provides that the defence of the 'Fatherland' is a duty and obligation of a citizen, but does not specify anything about the obligation of military service by draft or mobilization.

According to part 3 of article 59 of the Constitution of the Russian Federation, a citizen has the right to replace military service with alternative civilian service (ACS) if his convictions or religious beliefs conflict with military service;

¹ Presidential Decree No. 647 of 21.09.2022 "On Declaring Partial Mobilization in the Russian Federation" - <http://publication.pravo.gov.ru/Document/View/0001202209210001>

² Donetsk People's Republic

³ Lugansk People's Republic

⁴ Occupied Areas of Donetsk and Luhansk Regions

⁵ "Constitution of the Russian Federation" (adopted by popular vote on 12/12/1993 with amendments approved during the nationwide voting on 01/07/2020) - http://www.consultant.ru/document/cons_doc_LAW_28399/

- Federal Law "On Defence" of 31.05.1996 N 61-FZ⁶

This law defines the basics and organization of the defence of the Russian Federation, the powers of various levels of government, the rights and duties of Russian citizens in the field of defence, the forces and means involved in the defence, responsibility for violations of Russian legislation in the field of defence, and other provisions relating to defence;

- Federal Law "On Military Duty and Military Service" of 28.03.1998 N 53-FZ⁷

This law regulates military duty and military service so that citizens of the Russian Federation could exercise their constitutional duty and obligation to defend the Fatherland, as well as the legal framework for military service of foreign citizens in the Russian Federation;

- Federal Law "On the Status of Military Personnel" of 27.05.1998 N 76-FZ as amended on 05.12.2022⁸
- Federal Law "On mobilization training and mobilization in the Russian Federation" from 26.02.1997 N 31-FZ⁹

These legislative acts regulate mobilization and relevant training in the Russian Federation, and establish the rights, duties, and responsibilities of public administration bodies at various levels, as well as organizations regardless of their form of ownership and their officials, and citizens of the Russian Federation in this area;

- **Presidential Decree No. 647 of 21.09.2022 "On Declaring Partial Mobilization in the Russian Federation".¹⁰**

- "Criminal Code of the Russian Federation" from 13.06.1996 N 63-FZ¹¹

Crimes committed against military service are regulated by "Section XI", Chapter 33 of the Criminal Code (Articles 331-352.1 of the Criminal Code). These include desertion, unauthorized abandonment of a unit, voluntary surrender and other crimes;

Art. 328 is included in "Section X", "Crimes against State Power," Chapter 32, "Crimes against the Order of Government.

- "The Code of Administrative Offences of the Russian Federation" from 30.12.2001 N 195-FZ¹²;
- Resolution of the Government of the Russian Federation of 04.07.2013 N 565 (ed. from 29.06.2022) "On Approval of the Regulations on Military Medical Examination".¹³

⁶ Federal Law "On Defense" of 31.05.1996 N 61-FZ - http://www.consultant.ru/document/cons_doc_LAW_10591/

⁷ Federal Law "On Military Duty and Military Service" of 28.03.1998 N 53-FZ - http://www.consultant.ru/document/cons_doc_LAW_18260/

⁸ Federal Law "On the Status of Military Personnel" of 27.05.1998 N 76-FZ with amendments of 05.12.2022 - http://www.consultant.ru/document/cons_doc_LAW_18853/

⁹ Federal Law "On mobilization training and mobilization in the Russian Federation" from 26.02.1997 N 31-FZ - http://www.consultant.ru/document/cons_doc_LAW_13454/

¹⁰ Presidential Decree No. 647 of 21.09.2022 "On Declaring Partial Mobilization in the Russian Federation" - <http://publication.pravo.gov.ru/Document/View/0001202209210001>

¹¹ "Criminal Code of the Russian Federation" from 13.06.1996 N 63-FZ (ed. from 21.11.2022) - http://www.consultant.ru/document/cons_doc_LAW_10699/

¹² "Code of the Russian Federation on Administrative Offences" from 30.12.2001 N 195-FZ (ed. from 05.12.2022) - http://www.consultant.ru/document/cons_doc_LAW_34661/

¹³ Resolution of the Government of the Russian Federation of 04.07.2013 N 565 (ed. from 29.06.2022) "On Approval of the Provisions on Military Medical Expert Examination" - http://www.consultant.ru/document/cons_doc_LAW_149096/aea12d978cc37fc1241d4a9244445dc77a4f752d/

- Federal Law "On Alternative Civil Service" (hereinafter ACS) of 28.06.2002 (as amended on 31.07.2020) N 113-FZ¹⁴.
- Decree of the President of the Russian Federation of 10 November 2007, N 1495 (revised on July 31, 2022) "On Approval of the General Military Statutes of the Armed Forces of the Russian Federation".¹⁵

In the Russian Federation, according to Law No. 53-FZ, there is a division of categories of citizens' fitness for military service, and a chart of illnesses, which establishes the correspondence between the diagnosed illness and the category of fitness.

The Chart of Diseases establishes the following categories of suitability for persons called up and undergoing military service:

- Category "A" - fit for military service;
- Category "B" - fit for military service with minor limitations;
- Category "C" - restricted suitability for military service (not subject to conscription in peacetime for fixed-term service);
- Category "D" - temporarily unfit for military service (deferment due to health reasons);
- Category "E" - unfit for military service.

People given categories "A", "B", "C" could be called for military service at the time of the mobilization.

Categories "A" and "B" are drafted for regular military service.

Conscript military service

There is compulsory conscription for all male citizens **between the ages of 18 and 27** in Russia. Compulsory military service in the Russian Federation is 12 months.

Conscription is regulated by Federal Law "On Military Duty and Military Service" of 28 March 1998 N 53-FZ.

Call-up for compulsory military service is carried out twice a year - in the spring (April 1 - July 15) and in the autumn (October 1 - December 31).

Male citizens **between 18 and 27 years of age who are registered** with the military authorities or are required to be registered and are not in the reserve are subject to call-up for military service.

In the case of conscription for fixed-term military service, it is possible to receive a deferment from conscription under Article 24 of Law № 53-FZ. The conditions for deferment include health issue, education, caring for sick parents, child care. There are also grounds for exemption from military service under Article 23 (academic degree, close relatives of deceased servicemen).

¹⁴Federal Law "On Alternative Civilian Service" - http://www.consultant.ru/document/cons_doc_LAW_37866/

¹⁵ Presidential Decree No. 1495 dated November 10, 2007 (revised on July 31, 2022) "On Approval of General Military Regulations of the Armed Forces of the Russian Federation" (together with "Internal Service Regulations of the Armed Forces of the Russian Federation," "Disciplinary Regulations of the Armed Forces of the Russian Federation," "Garrison and Guard Services Regulations of the Armed Forces of the Russian Federation" - http://www.consultant.ru/document/cons_doc_LAW_72806/).

Persons who are serving a sentence for committing a crime, have a criminal record, in relation to whom a criminal case/investigation is being conducted, as well as persons deemed unfit for military service for medical reasons (categories "B" and "D" (category "D" gives a deferment for medical reasons for 6 months) are not subject to conscription for compulsory military service.

There was information in the media that conscripts were involved in combat operations in Ukraine. Persons fit for military service may only be sent to a combat zone after they have completed at least 4 months of training in military specialties, according to paragraph 3 of Article 2 of "Provisions on the order of military service" approved by Presidential Decree No. 1237 of September 16, 1999¹⁶.

The beginning of military service for those performing compulsory military service is the day on which the military rank of "private" ("sailor") is awarded.

3. Mobilization

On 21 September 2022, the president of the Russian Federation announced a "partial" mobilization in the Russian Federation.

The Decree of the President of the Russian Federation of 21.09.2022 No. 647 "On declaration of partial mobilization in the Russian Federation" (hereinafter Decree No. 647) states that mobilization is partial, however, the text of the Decree does not provide details of mobilization measures, does not specify categories of the Reserve of the Armed Forces of the Russian Federation to be mobilized and other criteria by which partial mobilization could be differentiated from general mobilization. It should be emphasized that the criteria of the concept of "partial mobilization" in relation to mobilization and (or) mobilization measures are absent in the Russian legislation.

It is necessary to emphasize that there are secret (not published) clauses in the text of Decree No. 647 of 21 September 2022, that are marked "for internal use".

Timeframe of mobilization

The timeframe of mobilization is determined by the President of the Russian Federation. The mobilization, announced on 21 September 2022, is in fact still underway, since there is no Presidential Decree on the termination of mobilization.

On 18 October 2022, presidential spokesman Dmitry Peskov, responding to a question about whether it was planned to announce the end of mobilization throughout Russia, said that no such decision had been made¹⁷.

On 28 October 2022, Defence Minister Sergei Shoigu reported at a meeting with the President that the mobilization measures were over and that the military registration and enlistment offices would continue to recruit only by enlisting volunteers¹⁸.

Russian Defence Minister Sergei Shoigu did not report the end of partial mobilization, but that a set number of 300,000 people had been recruited. "...*Only the President can announce the end of mobilization by signing a corresponding decree. So far there is no decree, so all work*

¹⁶ Presidential Decree of September 16, 1999 N 1237 "Issues of Military Service" (with amendments and additions) - <https://base.garant.ru/180912/>.

¹⁷ Peskov: there is no presidential decree on the end of "partial" mobilization

¹⁸ Shoigu reported on the completion of partial mobilization in Russia. There is still no decree from Putin - <https://www.bbc.com/russian/news-63431508>

continues as before, summonses are handed out, the mobilized are trained..." - reported the Russian Defence Ministry Hotline¹⁹ .

On October, 31 Vladimir Putin stated that he did not think about the Decree on the end of mobilization²⁰, although the military commissars on the hotline of the Ministry of Defence, the information service of Moscow and St. Petersburg city halls, press-service of the Western Military District and heads of regions directly refer to its absence and continue distributing summons, forcibly enrolling people as volunteers²¹ .

On 1 November 2022, the Kremlin said that the Decree on ending mobilization in Russia was "not needed at all"²² .

As noted by human rights defenders, unlike martial law, the introduction and cancellation of which by presidential decrees are directly stipulated by law, the end of mobilization is not stipulated in any way. The reluctance to issue such a document indicates that the authorities want to retain the ability to continue to initiate "additional recruitment" as part of the mobilization. Also, the end of mobilization may automatically give all contract servicemen the right to leave the military service, but paragraph 4 of the decree directly prohibits them to do that, that is why the contracts of servicemen continue to be valid until the end of the mobilization period, which is not determined. The report of the Minister of Defence to the RF President and the press releases of the Ministry of Defense have no normative power. Moreover, the grounds for mobilization have not disappeared, because the armed conflict continues. Russian law also does not know the term "demobilization."

Thus, since the current legislation on mobilization involves the announcement of its end, and the completion or termination by public normative acts is not regulated in any way, it should be concluded that the legal regime of the declared mobilization actually remains and mobilization continues in a hidden form.

Persons subject to mobilization

Citizens who are in the reserve and are not entitled to deferment of call-up for military service under mobilization are subject to call-up for military service under mobilization.

Persons in the reserve - only those who have completed compulsory service in the RF Armed Forces.

The Ministry of Defence of the Russian Federation determines the list of persons subject to mobilization, the number and categories of persons with certain military registration specialties. Decree No. 647 does not contain any information on the number of persons to be mobilized.

Indirect sources, such as statements by officials and "insider" information from investigative journalists, as well as from human rights defenders, can testify to the number of mobilized citizens.

¹⁹ Hotline of the Ministry of Defense: Until there is no decree of Putin, mobilization will not end - <https://www.sibreal.org/a/goryachaya-liniya-minoborony-poka-ukaza-putina-net-mobilizatsiya-ne-konchitsya/32109310.html>

²⁰ Putin announced the end of mobilization. The president does not know whether this requires a decree - <https://novayagazeta.eu/articles/2022/11/01/putin-zaiavil-o-zavershenii-mobilizatsii-prezident-ne-znaet-nuzhen-li-dlia-etogo-ukaz-news>

²¹ In the Rostov region, a man tried to be drafted under mobilization, but after his statements about its completion was forcibly enrolled as a volunteer - <https://theins.info/news/256565>

²² "The point is set." Kremlin says no presidential decree is needed to complete mobilization - <https://meduza.io/news/2022/11/01/tochka-postavlena-v-kremle-zayavili-chto-dlya-zaversheniya-mobilizatsii-ne-nuzhen-ukaz-prezidenta>

On September 21, the Minister of Defence announced that 300,000 people will be called up for mobilization²³, but this figure is not stipulated by law anywhere. According to unnamed sources of Novaya Gazeta. Europe²⁴, approximately 1,000,000 people are subject to mobilization. The Meduza online edition, citing an unnamed source²⁵, reported a mobilization plan of approximately 1,200,000 people.

The total number of people drafted in connection with the mobilization cannot be ascertained. According to Putin's statement of November 4, 318,000 people were drafted²⁶. On October 24, Mediazona published its own estimate of the number of mobilized - 492,000 people²⁷.

The exact number of those mobilized is unknown, since this information is a state secret. Roskomnadzor of the Russian Federation in its letter reiterated prohibition to publish data on mobilization except from official persons and sources: *"...to use information and data received exclusively from federal and regional executive authorities..."*²⁸.

Any information about the mobilization or use of mobilization forces that does not coincide with the official position of the Ministry of Defence and the authorities of the Russian Federation may entail administrative responsibility under Article 20.3.3 of the Code of Administrative Offences for public actions aimed at discrediting the use of the Armed Forces of the Russian Federation and entail a fine of up to 300,000 rubles (4500 Euro).

Such actions can also lead to severe criminal liability under Article 207.3 of the Criminal Code for publicly disseminating knowingly false information about the use of the Armed Forces of the Russian Federation, the execution of their powers by state bodies of the Russian Federation up to 10 years in prison²⁹.

At the same time, the distinction between administrative and criminal responsibility is not clear and predictable, and is left to the discretion of the authorities and law enforcement.

Conscription by mobilization is carried out in accordance with Federal Law No. 31-FZ. According to paragraph 2 of article 17, citizens who are in the reserve and do not have the right to defer the call-up for military service under mobilization are subject to call-up for military service under mobilization. In other words, these are persons who have passed compulsory military service under call-up and have a military ID. It should be noted that it is possible to obtain a military ID even without having completed compulsory military service. For example, a military passport is issued after a citizen turns 27 years old (even if the citizen did not perform compulsory military service), such a citizen is assigned to the reserve of the Armed Forces of the Russian Federation, such a citizen is also subject to mobilization.

²³ Shoigu: 300 thousand reservists will be mobilized - <https://www.svoboda.org/a/shoigu-obyavil-o-mobilizatsii-300-tysyach-rezervistov/32044077.html>

²⁴ Source: Classified paragraph of the decree on mobilization allows the Defense Ministry to call up one million people - <https://novayagazeta.eu/articles/2022/09/22/istochnik-zasekrechennyi-punkt-ukaza-o-mobilizatsii-pozvoliaet-minoborony-prizvat-odin-million-chelovek-news>

²⁵ Meduza's source: 1.2 million people are going to be drafted into the army In Moscow, the mobilization plan is up to 16,000 - <https://meduza.io/feature/2022/09/23/istochnik-meduzy-v-armiyu-sobirayutsya-prizvat-1-2-milliona-chelovek>

²⁶ Putin said that 318,000 people have been mobilized in Russia - "because volunteers are coming" - <https://meduza.io/news/2022/11/04/putin-zayavil-cto-v-rossii-mobilizovany-318-tysyach-chelovek-potomu-ctodobrovoltsy-idut>

²⁷ Let's get married. The rise in the number of weddings shows that by mid-October Russia had mobilized at least 492,000 people - <https://zona.media/article/2022/10/24/wedding-season>

²⁸ Attention media and other information resources - <https://rkn.gov.ru/news/rsoc/news74520.htm>

²⁹ Sentencing Ilya Yashin to 8.5 years of real imprisonment under Article 207.3 of the Criminal Code - <https://www.interfax.ru/russia/876151>

Mobilization grades

Persons in the reserve, subject to mobilization, according to Article 53 of the law № 53-FZ are divided in the following categories:

- Category I: soldiers and sergeants - up to 35 years old; junior officers - up to 50 years old; senior officers - up to 65 years old.
- Category II: soldiers and sergeants - up to 45 years old; junior officers - up to 55 years old; senior officers - up to 70 years old.
- Category III: soldiers and sergeants - up to 50 years, junior officers - up to 60 years, female privates and sergeants - up to 45 years, female officers - up to 50 years.

On 04.11.2022, Article 17 of the law No. 31-FZ was amended by the law No. 421-FZ³⁰ to abolish the ban on the mobilization of citizens with an expunged or unexpunged criminal record for committing serious crimes, including murder of two or more persons, robbery and drug trafficking. Conscription will be prohibited for those convicted of crimes against sexual inviolability of a minor, as well as for "terrorist" and "extremist" articles, while for the other especially grave articles conscription is possible.

Cases of mass recruitment of prisoners into private military companies (PMC "Wagner") continue. At the same time, these individuals are exempted from serving and executing sentences under especially grave articles, the legal framework codifying such "amnesty" is not clear and is absent in the legislation.

Mobilization is not subject to persons who have the category of fitness "D" - persons with health problems that do not allow them to perform military service even during mobilization and in wartime.

Citizens are entitled to deferment of mobilization in the following cases:

- They are reserved by a specific enterprise to perform specific functions (established by the President of the Russian Federation for specific occupations/labour areas, for example, IT sphere, employees of the military-industrial complex, students, and others);

There is information regarding unlawful mobilization of valuable professionals but they were returned home³¹ ;

- Recognition as temporarily unfit for medical reasons for up to 6 months (category "D");
- taking care of a close relative permanently for health reasons;
- sole guardian or custodian of a minor;
- four or more dependent children under the age of 16, or who has one or more dependent children under the age of 16 who are raising one or more children under the age of 16 without a mother;
 - having a wife who is at least 22 weeks pregnant and who has three dependent children under the age of 16;
 - members of other paramilitary formations (volunteer battalions).

³⁰ Federal Law of 04.11.2022 N 421-FZ "On Amendments to the Federal Law "On mobilization training and mobilization in the Russian Federation" - http://www.consultant.ru/document/cons_doc_LAW_430555/#dst100009

³¹ "In the Urals, some of the mobilized employees of the company returned home" - <https://www.rbc.ru/rbcfreenews/63849e859a79473bdf605ae5>

The decree also lists the grounds for dismissal from military service during mobilization. There are three of them: age, state of health, and court verdict of imprisonment. The decree on mobilization does not directly stipulate that only reserve servicemen are to be drafted, but under Law No. 31-FZ, only those in the reserve are subject to mobilization.

How does the mobilization call take place?

Issuance of a summons to appear at the military registration and enlistment office for medical examination/verification of documents:

- If a person has a military ID, he immediately receives a mobilization order with a mark in his personal file and in the military ID (without the medical commission);
- If a person does not have a military ID, then: passing the medical commission for assigning the category of fitness, obtaining a military ID, the presentation of a mobilization order.

Receipt of a mobilization order - an obligation to report at a specified time and place (collection point).

The time between the delivery of the mobilization order to the moment of the need to appear at the assembly point cannot be foreseen.

Passing the medical commission for mobilization

The Military Medical Commission in connection with mobilization is not envisaged at all³², according to the bylaw - the explanatory letter of the Main Military Medical Directorate of 30.09.2022. This means that persons called up for mobilization, in reality, cannot obtain/confirm/change the category of fitness for military service on health grounds. Consequently, persons who are not eligible for mobilization due to their health condition (unfit for military service), but who have not changed their category of fitness for military service (before receiving the mobilization summons) and do not have medical documents confirming this fact, may be subject to mobilization.

There are no real mechanisms for mobilization (with a military card and fitness category) to disprove the category of fitness previously assigned.

The mobilized may also be called upon to perform duties that are inappropriate for their medical condition.

The only exceptions are the categories "D" and "E," i.e. persons unfit for military service for medical reasons (for example, persons with disabilities of the first group).

According to Decree No. 647, persons called up for mobilization are contract servicemen, i.e., persons who have concluded a contract with the RF Ministry of Defence. A question arises about what should be regarded as the moment when military service begins, because, according to point "d" of Article 3 of the Regulation on the order of military service (approved by Presidential Decree No. 1237 of September 16, 1999), the beginning of military service under a contract is the day when the contract comes into effect, however, the mobilized persons do not actually sign any contract with the RF Ministry of Defence. Based on formal logic and Article 3 of this Decree, we can conclude that the actual beginning of military service for the mobilized is the enrollment of a person in the lists of personnel of the unit (and/or) subdivision, where the person will serve in connection with mobilization.

³² "There are two categories - the living and the dead. "Fontanka" found out why mobilized people are denied a medical examination - <https://www.fontanka.ru/2022/11/25/71845046/>

Losses among the mobilized

The exact number of casualties among mobilized Russian army personnel is unknown. As of 25 November 2022, the BBC along with MediaZone, used open data to identify 290 mobilized men who died at the frontline, and another 36 who died before being sent to the frontline. Figures collected from open data are at least 40-60% less than those actually buried in Russia. Real losses among the mobilized may be much higher, as many reports on soldiers who died in Ukraine since October do not specify their status - so it is sometimes impossible to understand whether they served as contract servicemen, went to the front as volunteers, or were mobilized³³.

"Novaya Gazeta. Europe" estimated from open data that at least 217 men who received summons died in the two months since September 21, 2022. On average, mobilized men die 23.5 days after leaving home³⁴.

As of 21 October 2022, 30 mobilized men had died at collection points and military units, according to open data. All of them died before getting to the front. The true causes are not always clear, but known cases include health problems, suicides, hazing, alcohol and drug poisoning.³⁵

Since late October and early November 2022 there has been a sharp increase in losses among army personnel in the units of mobilized and volunteer formations.³⁶ After the arrival of mobilized men to the frontline, the number of losses increased sharply by 2-5 times. This can be judged from the total estimated enemy losses published daily by the General Staff of the Armed Forces of Ukraine. While losses in the summer and early fall were approximately 200 men a day, after the mobilized men entered the front, the figure rose to 400-600 men a day. On November 4, the AFU General Staff reported 840 Russian soldiers killed. The mobilized were sent to the front line without training or proper equipment. Numerous testimonies have emerged of those who were mobilized³⁷ and who were captured or retreated with heavy losses. Survivors describe a similar situation of being sent to the front with the aim of "plugging holes in the front lines," insufficient supplies, lack of communication and command³⁸.

4. An obligation to appear on summons

Summons - a document, which obliges its addressee to come to the military commissariat at the specified date and time for certain activities related to the call-up for military service, registration in the military register, the transfer to the reserve or to establish additional information about the health of a citizen, verification of his documents, assignment or change of category of fitness by the results of the medical commission or an independent medical examination and for mobilization.

³³ Hundreds of mobilized, officers and airborne troops: what is known about Russian losses in Ukraine in nine months of war - <https://www.bbc.com/russian/features-63755790>

³⁴ Almost 160 children in Russia have lost their fathers to mobilization - <https://novayagazeta.eu/articles/2022/11/21/pochti-160-detei-v-rossii-poteriali-ottsov-po-rezultatam-mobilizatsii-news>

³⁵ Illnesses, fights, suicides. Mobilized in Russia die before reaching the front - <https://www.bbc.com/russian/news-63227622>

³⁶ Rapid increase in losses: what is known about Russians killed in Ukraine by November - <https://www.bbc.com/russian/features-63599537>

³⁷ <https://www.youtube.com/playlist?list=PLjPichGwDTa720osLWMQImtLuppzIB6V7>

³⁸ Reports of growing losses in the Russian army - what could be the reason? - <https://www.bbc.com/russian/news-63539708>

The lawful service of the summons is only the delivery in person, against signature. A summons sent by mail, dropped in the mailbox, or stuck in the doorjamb is not a document and does not bind you to anything. Neither are calls, text-messages, messages in messengers and other means of communication from the military registration and enlistment office with a demand to appear - they are not lawful and have no legal force, although they have been used all the time. Such calls are unlawful and do not oblige one to appear at the military enlistment office.

However, a summons may be served against signature anywhere - in public places, at the place of work and/or study, in transport. However, it is lawful for the employer to serve the summons at the place of work against signature.

Members of the military registration and enlistment offices do not have the right to check passports, so often the delivery of summons and "raids" take place jointly with police officers, who have the right to check the identity documents of a citizen.

The summons to the military registration and enlistment office is issued both to citizens between 18 and 27 years of age for military service or other activities related to it, and to persons subject to mobilization.

The responsibility of the person for repeated failure to appear is defined by Article 21.5 of the Code on Administrative Offences (administrative responsibility), with a warning or a fine of 500-3000 rubles (8-50 euro). The limitation period for administrative liability for failure to appear on summons is a long one (three years).

If a person fails to appear after personal and lawful service of two or more summonses, then criminal liability under Article 328 of the Criminal Code of the Russian Federation is incurred.

There is currently no separate criminal liability for failure to appear in response to a summons to mobilization; such failure to appear is covered by the article on evasion of military and alternative civilian service and is punishable by up to two years of imprisonment. At the same time, there were comments in the Russian media that failure to appear at the military registration and enlistment office on a single summons entails severe criminal liability, which does not correspond to the current legislation.

According to paragraph 2 of Article 7 of Law No. 53-FZ, good reasons for failure to appear at the military registration and enlistment office on summons include:

- illness or injury to a citizen associated with loss of ability to work;
- serious health condition of the father, mother, wife, husband, son, daughter, sibling, grandparent or adoptive parent of a citizen or attending the funeral of these persons;
- an obstacle resulting from force majeure, or another circumstance beyond the control of the citizen (for example, a natural disaster);
- other reasons recognized as valid by the draft board, the commission for initial enrollment in the military register, or the court. The aforementioned reasons will be recognized as valid only if they are documented (clause 2, art. 7 of Law No. 53-FZ).

5. Legal liability for crimes related to military service or conscription

At this point in time, two types of responsibility can be distinguished:

- Administrative - Article 21.5 of the CAO RF;
- Criminal - crimes committed against military service are regulated by Section XI, Chapter 33 of the Criminal Code (Articles 331-352.1), which includes such compositions as

"Desertion", "Unauthorized abandonment of unit", "Voluntary surrender" and other crimes. Article 328 of the Criminal Code of the Russian Federation is included in Section X "Crimes against State Power," Chapter 32 "Crimes against the Administrative Order."

Administrative responsibility, as mentioned above, occurs only for failure to appear on summons. If a person fails to appear after personal and lawful delivery of two or more summons, then criminal liability under article 328 of the Criminal Code of the RF is stipulated.

Article 328 of the Criminal Code separates evasion of military service without legal grounds and evasion of alternative civil service ("ACS"). The maximum punishment is imprisonment for up to two years.

Only persons between 18 and 27 years old who are subject to registration with the military authorities and are called up for military service under Law No. 53-FZ "On Military Duty and Military Service" can be criminally liable under Article 328 of the Criminal Code of the Russian Federation.³⁹ Paragraph 2 of Resolution of the Plenum of the Supreme Court of the RF of April 3, 2008, No. 3 expressly states this: *"The subjects of the crime provided for by paragraph 1 of Article 328 of the Criminal Code of the RF are male citizens of 18 years old and older, registered or obliged to be registered with the military authorities and not being in the reserve, subject to call-up for military service ... in accordance with the procedure established by law .*

According to the Resolution of the Plenum of the Supreme Court of the RF of 03.04.2008 № 3, persons, who are called up for mobilization, are not responsible under Article 328 of the Criminal Code of the RF, because they are not subjects of the crime of military service (conscripts for compulsory military service), mobilized persons have more severe criminal punishment according to amendments, introduced in the Criminal Code of the RF and other laws.

Liability under the Criminal Code in connection with mobilization

Article 337 of the Criminal Code "Unauthorized abandonment of a unit or duty station" is the abandonment of a place of military service, with the purpose of short-term departure.

On 24 September 2022, Federal Law No. 365-FZ introduced new parts 2.1, 3.1 and 5 to article 337 of the Criminal Code *"Abandonment of a Unit or Duty Station,"* which regulate liability for short-term abandonment of service during mobilization or martial law, during wartime or in conditions of armed conflict or combat operations. The maximum sanction under this article is 10 years in prison. For example, if a soldier left the place of service in a combat situation and left for more than a month, with the intention to return to the unit, this crime will be qualified by part 5 of article 337, and will provide for a sanction from 5 to 10 years of imprisonment.

Article 338 "Desertion" - unauthorized abandonment of a unit or place of service in order to evade military service, as well as failure to report for service for the same purposes.

On 24 September 2022 part. 3 of Article 338 of the Criminal Code "Desertion," which provides for committing this crime during mobilization or martial law, during wartime or in conditions of armed conflict or combat operations and provides for a sanction of up to 15 years of imprisonment.

Paragraph 15 of the Resolution of the Plenum of the Supreme Soviet of the RF of 03.04.2008 N 3 states: *"At desertion a person has a goal of avoiding the performance of military*

³⁹ Resolution of the Plenum of the Supreme Court of the RF of 03.04.2008 N 3 (revised on 23.12.2010) "On the practice of consideration by the courts of criminal cases about evasion of call-up to military service and military or alternative civilian service" - http://www.consultant.ru/document/cons_doc_LAW_76081/.

service duties at all. If such a goal appeared in a serviceman after he left his unit (place of service) without permission, the deed should be qualified only as desertion".

Paragraph 18 provides that courts should keep in mind that *according to the notes to Articles 337 and 338 of the Criminal Code, servicemen who for the first time have committed unauthorized abandonment of the unit (place of service) or desertion under paragraph 1 of Article 338 of the Criminal Code, due to concurrence of severe circumstances, may be exempt from criminal responsibility*⁴⁰.

It is very difficult to prove concurrence of grave circumstances, and there is currently no practice in mobilization for exemption from criminal responsibility for desertion.

Article 352.1 "Voluntary surrender" was introduced on 24.09.2022 by law № 365-FZ provides for penalties of up to 10 years imprisonment.

If there are signs of committing a crime under Article 275 of the Criminal Code of the Russian Federation "High Treason", then the sanction is up to 25 years of imprisonment. At the same time, high treason is defined as defecting to the enemy or providing financial, material and technical, consulting or other assistance to a foreign state, an international or foreign organization or their representatives in activities directed against the security of the Russian Federation.

6. Alternative civil service

Article 27 of the Constitution of the Russian Federation stipulates that the right to alternative civilian service must be realized not only by conscription, but also during mobilization.

The ACS is stipulated by the Federal law "About alternative civil service" from 28.06.2002 (in edition from 31.07.2020) N 113-FZ.

The question whether ACS is possible during mobilization when service in the Armed Forces in civilian positions (cook, electrician, plumber, etc.) remained open, because the Decree of 22.09.2022 did not directly provide for such a possibility.

The Constitutional Court of the Russian Federation has repeatedly established that a right is directly applicable, i.e. it does not matter whether a law is passed or not, even in the absence of a law the right must be exercised.

Article 17.1 of the ACS was introduced into the law № 31-FZ on 04 November 2022, before the possibility of alternative civil service on mobilization did not exist.

Judicial practice on the ACS was negative, in cases where a mobilized person had not previously undergone the ACS, but intended to exercise this right when mobilized, the courts refused to carry out the ACS⁴¹.

However, on 30 November 2022 the Gatchina City Court of Leningrad Oblast for the first time declared unlawful the draft for mobilization by a person who had previously passed the ACS and demanded to undergo the ACS after mobilization. The claim of the mobilized person was satisfied and his right to alternative civilian service was protected.

⁴⁰ Paragraph 18 of the Resolution of the Plenum of the Supreme Armed Forces of the Russian Federation defines as a set of severe circumstances unfavorable life situations of a personal, family or official nature, which objectively existed at the time of the AWOL departure from the unit (place of service). These may include the severe state of health of the father, mother, or other close relatives, or due to non-statutory actions against a serviceman, inability to receive medical care.

⁴¹ The case of Kirill Berezin, a mobilized man who sought ACS through the court <https://www.fontanka.ru/2022/11/29/71855987/>

7. Conclusions

1. The legislation on mobilization is not clear and foreseeable as there are unpublished clauses. The categories of persons subject to mobilization are also unclear;
2. It is impossible to pass a medical commission to confirm or change the category of fitness for military service for those who already have a military ID (served in the army as a conscript) and to change the category of suitability for military service if the state of health deteriorates during mobilization;
3. Lack of a clear legislative framework, timeframe and duration of actual special military and combat training for persons subject to mobilization;
4. Lack of clear legal framework regarding the timeframe of mobilization and the date of its end (there is no decree to date on the end of mobilization);
5. Lack of a published list of professions and positions of persons subject to harrowing, i.e. persons not subject to mobilization by reservation;
6. Mobilization of persons with a criminal record for serious crimes, lack of clear legislation on the grounds for amnesty and exemption from further serving of sentence for such persons;
7. Disproportionate and severe penalties for crimes against military service, including desertion, especially combined with high treason (in fact, high treason may include providing any information or assistance to a foreign state, foreign organization or their representatives directed against the security of the Russian Federation).
8. There are reports in the media and facts of deprivation of liberty (detention in basements and pits) without procedural registration of mobilized persons who refused to participate in combat operations, complaints of relatives do not lead to their release;
9. The opportunities provided for by the Constitution of the Russian Federation to take the ACS are not *de facto* available if a person has not previously (during compulsory service) taken the ACS during the period of compulsory service;
10. Lack of automatic suspensive effect for mobilization when challenging mobilization or fitness for military service categories before the court. As a rule, the court practice is negative;
11. Administrative and criminal liability (up to 10 years' imprisonment) for any information about the course of mobilization, numbers, challenges during mobilization, violation of the law on mobilization, violations of the rights of the mobilized, if this information does not correspond to the officially published position of the Ministry of Defence of the Russian Federation.