

The Protest by Reservists: Not Refusal, But Rather a Demand that the State Fulfill its Role in the Contract

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No one can ignore the tremendous impact of the protest by IDF reservists on the public debate on military resilience, and, finally, on the (to date, temporary) suspension of the legislative processes spearheaded by the government. One of the prominent moments in the protests by reservists was the announcement by dozens of pilots that although they would report for operational duty, they would stop reporting for training exercises. Similar letters by officers from other units followed. Frequent reports named yet another unit joining this protest, which peaked following the announcement (later canceled) that the Defense Minister was dismissed. The protest by IDF reservists sparked a fierce debate among three points of view. The first supports the protesters and their claims. The second sees protest by reservists as illegitimate and a dangerous refusal to serve, which drags the IDF into political debates and necessarily violates the military's boundaries. The final and most extreme view sees the protesters as anarchists and even traitors. However, the protest by reservists is not refusal to serve, certainly not in the classic sense, but a protest against a threat to violate the contract between those who serve and the state.

Although reserve duty in Israel is mandatory by law, in practice such service is on a volunteer basis. There are no precise statistics regarding the size of the reserve system, but commonly accepted estimates are that no more than 1.5 percent of Israel's citizens perform reserve duty, and only 6 percent of those who complete mandatory IDF service perform active reserve duty. In any event, it is clear that in reality, anyone who does not want to report for reserve duty does not, and no one forces him or her to

do so. This sense of reserve duty as voluntary, alongside the fact that only few in Israel bear the security burden, reinforces the understanding that reserve duty is performed in the framework of an unwritten agreement between the state and the reservist. Under that agreement, the reservist performs a duty to the state beyond what is required of him/her, and in exchange s/he may do so only if certain conditions obtain. If those conditions are not met, the reservist has no obligation to continue to serve.

In the past, the court in Israel distinguished between two types of refusal to serve: "full refusal" and "selective refusal." "Full refusal" typically expresses principled objection to the military, primarily derived from a pacifist worldview that opposes the use of violence as a means to achieve any aim. Such refusal is the only form recognized as justifying an exemption from military service for reasons of conscientious objection. "Selective refusers," on the other hand, do not object in principle to the military or the use of violence, but their conscience prevents them from executing a particular order, such as evacuating settlements in the West Bank or destroying the homes of terrorists, in which case they refuse to carry out these specific orders.

Alongside these two forms of refusal, Israel has sometimes seen expressions of refusal as a means of protest and criticism. Those refusing sought to convey a message of criticism and disagreement with some specific policy and used their refusal as an act of transmission. In the past such refusal essentially resembled selective refusal, because it usually focused on a particular action by the government. However, it is different from selective refusal in that the orders that protesters refused to carry out were not directly connected to the action against which they were protesting and in the purpose of the refusal. While selective opposition is opposition to a particular policy on a moral basis that relates to that policy, such as evacuating settlements, protest refusal uses refusal in order to apply pressure to decision makers to change their policy. In other words, such refusal aims to achieve a change of that policy and is frequently not limited to refusing to carry out that policy. An example of such refusal is the call by Bezalel Smotrich from 2017 to national religious youth not to enlist

in the IDF, in order to apply pressure on the army to change its policy regarding the integration of women in the ranks.

In contrast to these modes of refusal, the statements and petitions against the judicial overhaul promoted by the government embody a different type of protest, a protest that casts into doubt the basic legitimacy of the regime and its right to demand from individuals to obey its orders. There are, without a doubt, a variety of protesters with a variety of motivations, and some seek to protest the government's policy or to oppose the specific actions it may demand that they carry out. Statements by some members of the current coalition and government condemning protests against the judicial overhaul were sometimes quoted as motivation for their actions. However, the main justifications presented by protesters demonstrate that their actions stem from the change of regime that they believe the judicial changes would entail, meaning a loss of the democratic character of the state; this in turn undermines the legitimacy of the regime and its demand that reservists serve it in the military. The protesters themselves do not see this action as refusal and take pains to emphasize this. For example, a protester was quoted saying, "We are not refusing an order; we are signaling that we will not serve a dictatorial regime. Someone is trying to change the basic contract under which we enlisted and were willing to risk our lives." In another article, one stated: "The judicial overhaul means violating the contract with the state, and I as a reservist – that's the exact point where my contract as a citizen who volunteers to serve the government, not the head of government, will end."

Consequently, the protesters do not see their opposition as political and do not view themselves as refusers, in contrast to how some have sought to portray them. They are people who reported for duty over the years, even when the directive from the government did not reflect their worldview. The fact that their protest began when the legislative process began, and not when this government was established, further strengthens this claim. The reservists do not seek to question the hierarchy enshrined in the Basic Law: The Army, which subjects the military echelon to the political echelon. They claim, rather, that at a time when the basic principles of the

democratic structure are collapsing, the contract between the state and its reservists collapses with it. Under this contract, for a soldier in a democracy to obey commands wholeheartedly, he or she must have faith in the system of checks and balances that characterizes democratic states.

There are two fundamental principles to a legal command: an authorized commander must give it, and it must not be flagrantly illegal. The fulfilment of these principles relies on the system of checks and balances that exists in democracy and allows soldiers to know that their orders come from a trustworthy chain of command that takes into account operational, professional, and moral considerations, and does not aim to promote a particular political purpose. In the absence of such checks and balances, soldiers will struggle to believe that their orders are trustworthy and that, even if an order contradicts their political stance, it has met the tests of professional legal counsel and upholds Israeli and international law. In a democratic regime, soldiers can rely on the knowledge that the Supreme Court has upheld policy, so that even if an order opposes their worldview, it does not contradict the core values of the state. A soldier can also know that Israel's independent judiciary offers him or her protection from suits in international courts. However, the judicial overhaul advanced by the present government pulls the rug out from under these core principles, and therefore undermines the security and confidence of IDF soldiers.

If so, the current protest differs from both full refusal, as it does not derive from a fundamental objection to the use of military force or violence, and from selective refusal, as it does not include refusal to obey particular commands because they contradict the refusers' worldview. It may appear that the current protest has a certain proximity to the idea of protest refusal, but there is nevertheless an essential difference. In contrast to protest refusal, under which individuals use their refusal to report for duty as a means to pressure the government to change policy that contradicts their worldview, the phenomenon of non-reporting for duty as expressed in the current protest does not seek to change a particular policy. Rather it applies pressure with the aim of preventing a process that aims to make a fundamental change of regime in Israel – a change that will undermine the

state's democratic nature and therefore constitute a violation of the agreement between reservists and the state.

One cannot deny the impact of the reservists' protest on the public agenda and on the internal cohesion of the military. The use of the military to promote political aims is a tool for extreme circumstances only. It appears that the distinction protest leaders seek to make, between promoting political aims and warning of a violation of the contract between the state and its reservists, is a complex distinction with at times amorphous boundaries. The fact that the reservists' protest was led primarily by those from segments of the IDF perceived as strong and dominated by socio-economically privileged groups in Israeli society reawakened a divisive discourse. Terms like "more equal" and "less equal" recurred, and tensions arose across and within units. At the same time, the sense that a red line was crossed and the "judgment day weapon" has been drawn presents a challenge for the military's commanders and for society as a whole. The IDF cannot permit itself to be subject to such a threat, especially when realization of the threat does not depend on its actions, but on the political echelon that is the object of the protest.

The challenge facing IDF commanders and primarily its Chief of Staff is significant. Until now commanders have sought to demonstrate restraint and accommodation of the reservists' protest, while still emphasizing the importance of internal cohesion. This conduct has been commendable, as were their repeated warnings of the severe implications of continuing the judicial legislation for the functioning of the IDF. Above all, this is a protest by civilians. It will have major implications for the military, but most of the keys for managing it are not held by military commanders, but by the political echelon.

Editors of the series: Anat Kurtz, Eldad Shavit and Judith Rosen