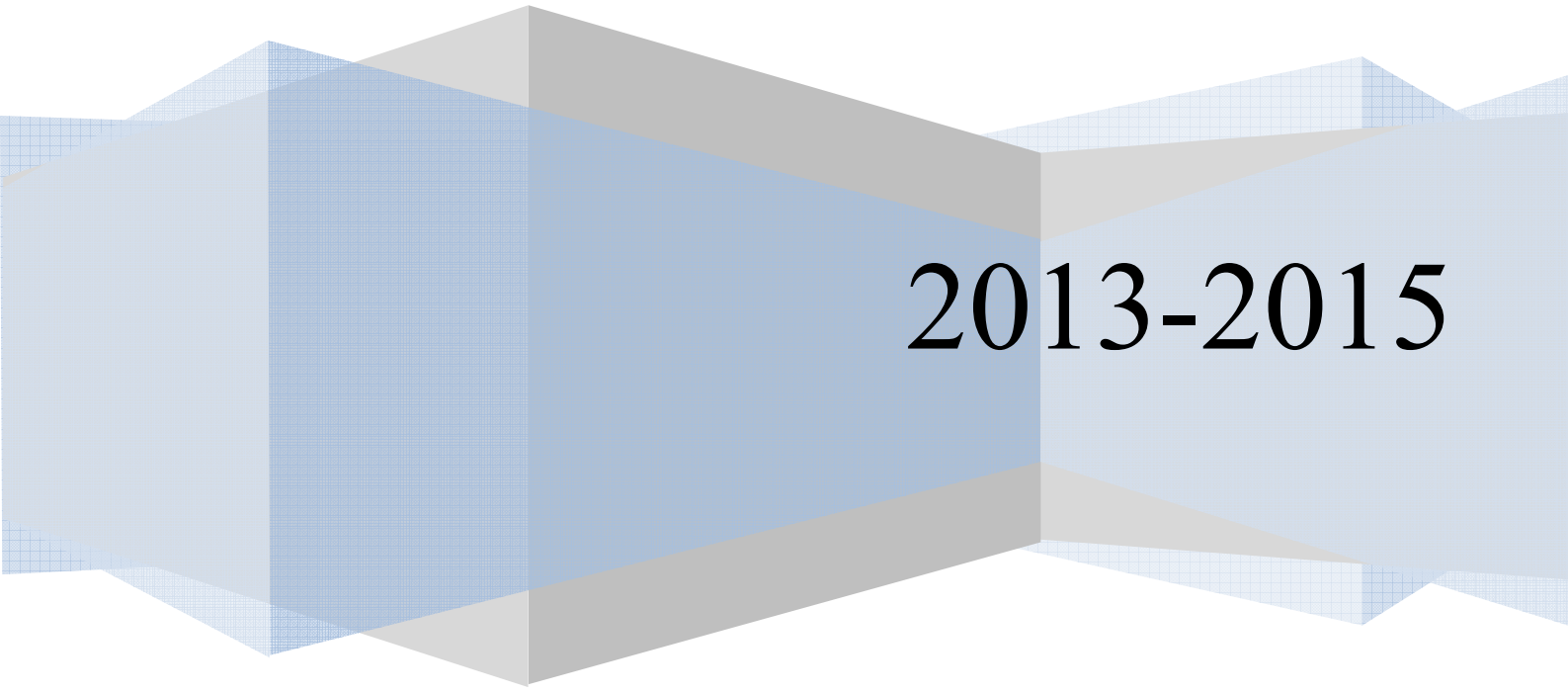
Human Rights Group "Citizen. Army. Law"

MONITORING REPORT ON HUMAN RIGHTS VIOLATIONS OF CONSCRIPTION, MILITARY SERVICEMEN AND ALTERNATIVE CIVILIAN SERVICEMEN



2013-2015

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INTRODUCTION

The problem related to human rights violations during conscription, military and alternative civilian service remains relevant for the modern Russian society.

The **Russian Constitution** proclaims protection of the Motherland "duty and obligation of each citizen of the Russian Federation" (part 1 of article 59). However, it is clearly stated that all citizens of the Russian Federation should perform their military duty "in accordance with the federal law" (part 2 of article 59).

This constitutional provision means that all procedures of military conscription, as well as the very performance of military or alternative civilian service should occur in strict accordance with existing federal and regional laws. Deviations from this order convert the army into a zone of arbitrariness and tyranny, and this is incompatible with the high status of a soldier who is a defender of the Motherland.

Respect for human rights of citizens during conscription and military service is an important element of the political-military aspects of security. In 1994, Russia, among other participating states of the Meeting on Cooperation and Security in Europe, undertook the obligations enshrined in the **Code of Conduct on Politico-Military Aspects of Security**, including the following:

«Each participating State will ensure that the recruitment or call-up of personnel for service in its military, paramilitary and security forces is consistent with its obligations and commitments in respect of human rights and fundamental freedoms».[1]

[1] See para 27 of the Code of Conduct on Politico-Military Aspects of Security

Thus, the state bodies responsible for organizing conscription are obliged to perform their duties in accordance with the procedures specified in the legislation of the Russian Federation. These procedures are designed to ensure a high standard of requirements in relation to citizens called up for military service.

«*Each participating State will ensure that military, paramilitary and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as reflected in CSCE documents and international law, in conformity with relevant constitutional and legal provisions and with the requirements of service*».[2]

Moreover, in 2010, the Council of Ministers adopted the **Recommendation CM / Rec (2010) 4 on human rights of members of the armed forces**, which is binding in Russia. This Recommendation defines how the members of the armed forces can enjoy human rights and fundamental freedoms in specific conditions of their work and life. Taking into account the peculiarities of life in the armed forces, the members of the armed forces, regardless of their status, should enjoy the rights guaranteed by the **European Convention on Human Rights**.[3]

According to article 15 of the Convention, in time of war or other public emergency threatening the life of the nation, Member States may take measures derogating from certain of its obligations under the Convention, but to the extent that is strictly due to the circumstances, provided that such measures are not contrary to other Member States' obligations under international law. Derogations from obligations under article 15 of the Convention are not applicable to the following rights: the right to live, excepting cases of deaths resulting from lawful acts of war; prohibition of torture and other cruel,

[2] *Ibid*, para 32.
[3] Recommendation CM / Rec (2010) 4 on human rights of members of the armed forces, para 2.

degrading or inhuman treatment or punishment; prohibition of slavery or servitude; prohibition of punishment which is not based on the law; the right not to be prosecuted or punished twice for the same crime.[4]

These provisions and standards are reflected in the Russian national legislation. However, there is a significant contradiction between the declarative statements of officials about adherence to these provisions and illegal actions of representatives of public authorities responsible for draft, military service and ACS.

It is well known that even in a constitutional state it is impossible to eliminate all cases of human rights violations. However, there should be well-known and commonly-used guarantees and mechanisms to correct any irregularities, and human rights should have priority. One of the mechanisms to avoid human rights violations is the institute of public control over the activities of officials. All spheres in the state, excepting those related to the State secret, should be transparent to the society. In particular, this applies to public institutions which by its activities directly affect human rights and freedoms of citizens. This category includes the authorities and officials in charge of draft and conditions of military and alternative civilian service.

The Human Rights Group "Citizen. Army. Law" assumes that one of the prerequisites for raising the prestige of military service in Russia is unconditional observance of national and international law by the officials responsible for draft, military service and ACS, their adherence to the human rights doctrine. In order to identify the most typical cases of human rights violations during conscription, military service and ACS, **an independent monitoring** was held by the Human Rights Group "Citizen. Army. Law" for the period **from January 1st, 2013 to June 1st, 2015**.

[4] *Ibid*, para 3 and 4.

Sources of information for this report are more than 5000 messages from conscripts, military servicemen, ACSers and their families members, as well as materials from public authorities and media reports containing evidence of human rights violations that have taken place in the aforementioned period.

In presenting this report the Human Rights Group proceeds from the need to attract attention of the federal and regional legislative and executive authorities, as well as the judiciary, local governments, Russian and international community and media to the problems of human rights violation in the army sector.

However, the main goal of this report is to attract attention to rather systematic problems, than individual cases of human rights violations identified in result of the monitoring. As it was mentioned before, protection of human rights of specific individuals takes place directly in the course of the monitoring. In order to improve the situation in general, systematic changes and comprehensive measures are needed.

This report is an overview of human rights violations reported to us. However, we are not able to estimate how common are these violations in general, because not all citizens seek the aid applying to human rights NGOs, and there are other civil society organizations that defend citizens in similar cases, but whose work are not presented in this report. The official statistics on human rights violations during conscription and military service is not accessible.

Since the report was based only on the complaints of citizens received by our organization, it does not analyze common questions related to the use of the armed forces of the Russian Federation in Ukraine in 2014-2015, as well as the legality of such use and crimes and offences related to it.

The report was prepared on the basis of internationally accepted practice of reporting, which supposes non-disclosure of direct sources of information.

CHAPTER 1. HUMAN RIGHTS VIOLATIONS DURING CONSCRIPTION

The monitoring results showed that in all regions surveyed the activities of military draft bodies entailed human rights violations, in some cases of a rough character. Violations of a whole range of citizens' constitutional rights (from the right to judicial protection to the right to education or health) were reported. The main cause of human rights violations in the sphere of conscription is a failure of representatives of public authorities to comply with existing laws.

The following types of violations during conscription were identified by lawyers conducting the monitoring:

- violations during initial military registration;
- violations during medical examination;
- violation of the established procedure of recruiting;
- violation of the terms established for holding draft procedures;
- drafting of citizens who have a deferment or are not conscripts.

1. Violations during initial military registration

According to article 9 of the Federal Law On Military Duty and Military Service from 28.03.1998 No 53-FZ (*hereafter – 53-FZ*), the initial military registration of male citizens is carried out by special commissions in the period from January 1st to March 31st of the year when they reach the age of 17 years. The commission is obliged to organize medical examination of citizens, to determine their category of fitness for military service, to arrange professional psychological selection of citizens and to register a citizen for further draft

procedures or to submit a proposal to military draft body to enroll in stock a citizen who was found partially fit or to exempt from military service a citizen who was found unfit.

The monitoring results show that the organization and conducting medical examination during the initial military registration in a number of cases is unsatisfactory. The procedure of military registration, which is usually carried out with participation of educational institutions, is often superficial and formal, and does not meet the objective stated in the article 9 of the 53-FZ. As a result, a real-life indicator of citizens' fitness to military service, as well as actual number of healthy recruits cannot be determined.

Moreover, in the majority of cases, representatives of the administration of high schools and other educational institutions bring their students for initial military registration without notifying their parents. The latter get to know that their son is registered post factum, when the category of fitness is determined. At the same time, medical documents describing the state of health of such youngsters often are not considered or taken into account. This practice of forcible bringing of youngsters to commissions on the initial military registration is illegal, because according to para. 2 of article 32 of the Russian Law from 10.06.92 № 3266-1 "On education", bringing of citizens to commissions on the initial military registration does not fall within the competences of educational institutions. At the same time, according to para. 1 of article 64 of the Family Code, parents (or guardians) are the legal representatives of minors, and they have the preferential right of upbringing.

2. Violations during medical examination of conscripts

Medical examination is an assessment of health conditions and physical development of conscripts, with the purpose to determine their category of fitness to military service.

Human rights violations during medical examination are widespread and common in all subjects of the Russian Federation where the monitoring took place. Such violations have serious negative consequences, because recruitment of citizens who are not fit for health reasons to perform military service violates their right to health (and in some cases the right to life) and seriously undermines the combat capability of the Russian army. In result of this kind of violations, the army is completed by citizens who objectively are not able to perform the duties of military service in full. Existing diseases often exacerbate, in some cases to the extent of claiming disability (or even to death). In case of early dismissal from military service for health reasons, a soldier should receive insurance benefits which are compensated from the budget.

The monitoring has demonstrated that citizens are poorly informed about the medical grounds for granting deferments or exemption from military service. Neither they know in which legal document these deferments and exemptions are fixed, where to find this document. In families there is often a lack of finances for carrying out full medical examination. A lack of medical facilities in rural areas has a significant role. However, the main point here is the absence of a culture of caring for children's health and the naïve belief of parents that all diseases will be identified correctly during medical examination held by military draft bodies.

Due to socio-economic reasons, in recent years, there has been a significant deterioration of citizens' state of health (including citizens of conscription age). However, the complaints from conscripts about poor health are often ignored, as well as medical documents provided by conscripts and approving their health

conditions. In such cases conscripts hear standard answers from the representatives of military-medical commissions: “Anyway, you have to serve” or “If not to draft with such disease, there will be nobody to serve”.

Medical examination of conscripts is often formal and superficial, conducted in violation of the Schedule of diseases approved by the Government Decree of 25.02. 2003 No 123 “On approval of military-medical examination”.

It is a widespread practice for the representatives of military-medical commissions to send conscripts who have medical documents that approve their unfitness to military service to additional examination. In result of such examination not only the previous diagnosis is significantly underestimated, but a serious harm to health can be caused (for example, in case of repeated X-ray examination).

At the same time, there are cases in Moscow and regions when conscripts are refused to undergo additional medical examination though it is needed for determination of their health conditions. Such practice violates the existing law because in accordance with para. 4 of art. 5.1 of 53-FZ if a medical certificate can not be given during military-medical examination, a conscript should be sent to inpatient or outpatient examination to a medical organization (clinic or hospital).

The category “fit” was awarded in many cases without in-depth medical examination, regardless of conscripts’ complaints, which is a violation of para. 4 of the Regulations on military-medical examination, where it is clearly stated that all complaints of a conscript should be taken into account and carefully examined.

As monitoring results show, in a number of cases proper medical examination has not been carried out at all, and young men of conscription age received

deferments because of their studies. There is also a violation of existing laws because in accordance with para. 5 of the Resolution of the Government of 11.11.2006 No 663 "On Approval of the conscription of citizens of the Russian Federation", all conscripts are subject to mandatory medical examination in accordance with the Regulations on military-medical examination. Para. 13 of these regulations states that the draft board makes a decision regarding a conscript (including a deferment from military service) only after determining his fitness to military service. If he is unfit, he should be exempted from military service, and a deferment is unnecessary in such a case.

On January 1, 2014 a new version of the Schedule of Diseases came into force due to the issue of the Government Resolution No 565. According to this new Schedule, the health requirements in relation to conscripts were significantly reduced. In particular, it was allowed to draft young men having such diseases as:

- persistent unilateral dry eardrum perforation, adhesive otitis (media), tympanosclerosis;
- recoverability of stroke with neurological deficit;
- valvular heart disease - atrial septal defects, aneurysms, patent foramen ovale without shunt;
- scoliosis of II degree if the recruit can not prove the presence of disorders of the spine;
- retinal tear (if there are no associated abnormalities in the eye);
- flat-footedness of II degree;
- with a single epileptic seizures in history (over 5 years);

- underweight in the absence of diseases.

In our opinion, such mitigation of requirements to the health of citizens sent for military service (which involves significant additional load on the body) may result in an increase in the number of cases of early dismissal from the army due to poor health conditions.

Nevertheless, it worth noting that the new Schedule of Diseases has some positive amendments: for example, from 2014 all recruits are tested for HIV, hepatitis B and C and, accordingly, are not sent to the army in case they have such diseases.

3. Violation of the established procedure of recruiting

In accordance with article 31 of the Federal Law On Military Duty and Military Service, citizens shall be called for the recruiting activities by the summons from the military commissariats. These summonses shall be of a standard form and delivered to conscripts by personal service, on their receipt. Despite of this unambiguous definition of the recruiting procedure in the law, it is often violated.

A significant part of conscripts receive their summons by mail, finding it in the letterboxes, or by other illegal ways. Moreover, a lot of conscripts are called by the phone to pass recruiting procedures. During such calls conscripts usually are not informed about real reasons of invitation to military commissariats and about their right not to go until they have not received a summons. On the contrary, the staff of military commissariats often threats of criminal prosecution for failure to appear in the military enlistment office after such a call.

In many regions the monitoring revealed the cases when the summonses were passed to conscripts through their parents, relatives or other third persons who were asked to sign the summons instead of a conscript and to ensure his appearance in the military enlistment office.

There are also cases when conscripts received a document which was not a summons, but contained the requirement to appear in the military enlistment office for recruiting activities.

In certain regions there were cases of non-compliance with the established form of the summonses which were incorrectly or illegibly filled, did not contain the purpose of the call, were signed by unauthorized persons, etc.

In some cases the decision on fitness to the military service was taken in absentia, without presence of a conscript at the meeting of the military draft committee, which is a flagrant violation of the existing laws.

Moreover, the monitoring revealed the cases of illegal detainer and delivery of conscripts to the police in order to give them summonses.

All these practices are illegal since the only reason for the appearance of a conscript in the military enlistment office is a summons duly signed and delivered to the conscript (he must sign it). According to para. 7 of the Resolution of the Russian Government of 11.11.2006 N 663 On Approval of the Conscription of Citizens of the Russian Federation, the summonses are delivered to conscripts by either the representatives of the military commissariats or other officials (employees) of the organizations where conscripts study or work. In both cases the summons should be delivered personally to a conscript, followed by his signature.

In accordance with para. 2 of article 31 of the Federal Law On Military Duty and Military Service, only in case of impossibility to deliver the summons by the persons listed above, the organizing of their appearance to the military enlistment offices is transmitted to the law-enforcement bodies, after a written application sent by the representative of the military commissariat. It is important to note that even in such a case the law-enforcement officers have no right to detain a conscript and forcibly bring him to the military enlistment office. After establishing the whereabouts of a recruit, they are only obliged to deliver the summons to him.

In general, the situation with the observance of the established procedure of recruiting is a kind of vicious circle: a lot of conscripts do not know their rights and are afraid of violent actions from the side of the law-enforcement bodies, thus, they do not pay attention to such "minor" violations as the break of the established procedure of recruiting. In turn, the representatives of military commissariats, which are confident of impunity and uncomplaining behavior of conscripts, flagrantly violate the procedures established by law.

This situation is exacerbated by the spread of false information in the media and military enlistment offices (for example, there are publications in the media about the alleged amendments of legislation requiring conscripts to visit military enlistment offices upon reaching conscription age and without receiving a summons).

4. Violation of the terms established for holding draft procedures

The Federal Law On Military Duty and Military Service (article 25 b 26) establishes the following terms for holding draft procedures: from April 1 till

July 15 and from October 1 till December 31 each year. In the period between these dates citizens can be asked to appear in military enlistment offices only for specification of the data related to their profiles. However, in practice conscripts are often called to visit military enlistment offices for recruiting procedures while the draft campaign has not been started according to law.

Representatives of military commissariats prove the legitimacy of holding recruiting activities outside the terms established by law by reference to para. 27 of the Instruction on the Preparation and Carrying out the Activities Related to Conscription of Citizens of the Russian Federation. However, such a reference is groundless.

According to para. 27 of the Instruction, such practice is allowed only in relation to pre-draft events and only with a purpose to give a referral to a medical examination (not to hold the examination itself). Moreover, in accordance with this legal act, military commissariats has the right to call only those young men who themselves (or through their parents) submitted a complaint on the state of their health, as well as those who during the initial military registration were recognized unfit, partially fit or temporarily unfit for military service for health reasons. In addition, these early calls for a medical examination can not (as it happens in practice) substitute any of stages of the established draft procedures, including medical examination itself. Therefore, an explanation of the representatives of military commissariats that such early calls are just a medical examination which is not included in recruiting procedures is false, because:

- early calls are allowed only for giving a referral to a medical examination (not for holding the examination itself);
- early calls are applicable only to a restricted group of (pre)-conscripts;

- any stage of the recruiting procedure can not be held outside the terms of the draft campaign.

Another kind of violations in this category is non-observance of the special terms of recruiting procedures. In accordance with sub-para. "в" of para. 1 of article 25 of the Federal Law On Military Duty and Military Service, teaching staff of educational institutions should be subject to conscription in the period between May 1 and July 15 each year. However, representatives of military commissariats often ignore these exceptions.

5. Drafting of citizens who have a deferment or are not conscripts

The monitoring results showed that often the recruiting activities are held by military commissariats and enlistment offices in relation to citizens who are not conscripts or have a deferment from military service in accordance with the existing law. In para. 1 of article 22 of the Federal Law On Military Duty and Military Service it is stated that only those citizens who have reached the age of 18 can be subject to conscription. Nevertheless, the practice holding recruiting activities in relation to citizens who are not conscripts according to their age was monitored. In these cases minors who reach the age of 18 by the end of the recruiting campaign are forced to pass medical examination and to appear before the draft board "in advance". Thus, the conclusion on fitness to military service is made unlawfully.

Virtually in all regions where the monitoring took place urgent problem remains holding recruiting activities in relation to students which have deferments from military service. In particular it applies to students that are called up before the end of the statutory period of studies.

Under the law, citizens having a deferment from military service can not be brought to the passage of recruiting procedures, including medical examination, since in para. 2 of article 22 of Federal Law on Military Duty and Military Service it is expressly stated that “the citizens who have granted a deferment from military service are not called up”. Moreover, article 59 of the aforementioned law establishes the right of citizens to use a deferment from military service till there are reasons for it or until it expires. Furthermore, according to para. 7 of the Government Decree of 11.11.2006 No 663 On Approval of the Regulations on Conscription of Citizens of the Russian Federation, medical examination may be carried out in relation to all conscripts except those having a deferment.

It is important to note that the statutory period of studies ends not in the day of passing the last exam or after defense of a thesis. In accordance with article 61 of the Federal Law On Education in the Russian Federation, the education period is terminated after passing an administrative act on the student’s dismissal from an educational organization. Before this, young men are considered students, i.e. have deferments from military service, and any recruiting activities in their relation are unlawful.

However, the representatives of military commissariats and military enlistment offices number among recruiting activities only sending to the army in itself, and this is false interpretation of the law. In some cases, in order to create the appearance of legality, military commissariats invite recruits for “clarification of the documents of the military account”, but upon the arrival at the military commissariat force them to undergo medical examination or appear before the draft board, threatening liability for evading military service. This problem is especially urgent for the spring draft campaigns, at the end of educational period in the majority of educational institutions.

In general, the right to education is in permanent conflict with the duty of citizens to serve in the army. As a rule, military commissariats refuse to recognize the right of undergraduates to continue their studies (either for receiving master degree or PhD). It seems that such a position of military commissariats is approved by the General Staff of the Armed Forces. Our lawyer has called to the hot line of the General Staff and asked a question on the legality of decision taken in relation to a bachelor of the last year who received a summons with a requirement to appear at the place of military service by June 12. It was done in spite of the fact that this student was recommended for admission to the magistracy and was going to pass admission exams on July 14. The colonel who asked the question pointed out that the decision on recruitment of this student is lawful. However, some students managed to prove in the courts illegality of similar decisions. However, unfortunately, every student is not able to go to the court because of the lack of legal literacy or awareness.

During the monitoring of 2013-2015 the information on many cases of violations (after obtaining consent from the applicant and when it was necessary for solving the problem) was sent in the form of statements, appeals or requests to draft boards, military commissariats, prosecutors or courts. A significant part of violated rights was restored or remedied.

CHAPTER 2. HUMAN RIGHTS VIOLATIONS DURING MILITARY SERVICE

Rights, freedoms, duties and responsibilities of military servicepersons, as well as the foundations of the state policy in the sphere of legal and social protection of military servicepersons are determined in the Federal Law On the Status of Military Servicepersons of 27.05.1998 No 76-FZ, as well as in general military regulations and other legal acts. According to these documents, military servicepersons have rights to:

- protection of their freedom, honor and dignity;
- health and medical care;
- freedom of movement;
- freedom of expression;
- freedom of peaceful assembly;
- freedom of conscience and religion;
- participation in the management of public affairs and public associations;
- work and leisure;
- allowance;
- provision of food and clothing;
- housing;
- insurance guarantees and compensation for damage;
- appeal against unlawful actions and legal assistance.

As well, military servicepersons have all the rights and freedoms enshrined in the Constitution of the Russian Federation and international treaties ratified by Russia, if the restriction of such freedoms is not established by federal law.

In result of the monitoring numerous violations of the aforementioned right were revealed. The most common violations of the Federal Law On Status of Military Servicepersons are related to infringements of the rights to:

- life, health and medical care (article 16 of the Federal Law);
- protection of freedom, honor and dignity (article 5);
- provision of food and clothing, trade and consumer services (article 14);
- insurance guarantees and compensation for damage (article 18);
- allowance (article 12).

1. Violation of the right to life, health and medical care

Article 20 of the Russian Constitution, as well as article 2 of the European Convention on Human Rights proclaim the right to life. These legal norms impose on the state authorities the obligation to take every possible measures to ensure that human life is out of danger. The definition of the right to life in relation to military servicemen can be found in international (European) legal documents ratified by the Russian Federation. According to these documents, the right to life in relation to military servicemen means at least the following:

a) military personnel should not be involved in situations where their lives are put at risk without a clear and legitimate military targets, or in circumstances where the threat of their life has been ignored;

b) independent and effective investigation should be carried out in case of any suspicious death or alleged violation of the right to life of any soldier;

c) state authorities shall take measures to encourage the reporting of violations that threaten the lives of military servicemen, and to provide protection against retaliation for those who report such violations;

d) members of the armed forces should never be executed or sentenced to death.

Russia fully complies with the obligations under paragraph d), because there is a moratorium on the death penalty, so that the members of the armed force also never sentenced to death.

A separate study should be made in regard to paragraph c), because the topic is vast and complicated.

It is hard to estimate the level of compliance with paragraph a), because since 2008 the official statistics on death of military servicemen is not publicized in the Russian Federation. Moreover, according to the Presidential Decree of 30.11.1995 No 1203 On Approval of the List of Information Classified as a State Secret, the data that reveals the loss of military personnel in wartime and in peacetime if special operations take place is a state secret.

As regards paragraph b), it should be noted that we received reports from citizens on failure to carry out an independent investigation in case of death in the armed forces.

The right to health and medical care is enshrined in article 16 of the Federal Law On Status of Military Servicepersons. According to this article, health care in relation to military servicepersons is ensured by creation of favorable conditions of military service and living, as well as by implementing the system of measures to limit the hazards of military service. Commanders in conjunction

with public authorities are responsible for the implementation of the aforementioned measures. Commanders in the military units are obliged to ensure safety requirements during conducting exercises and other combat training, as well as during the use of weapons and other military equipment, performance of other works and military duties.

According to para. 335 of the Regulations of the Internal Service in the Armed Forces of the Russian Federation (hereinafter – Regulations), health care and physical development of military servicepersons is an integral part of their preparation for fulfilling military duties. The commander (chief) to ensure the safety of military service is required to give priority to saving life and health of subordinated military servicemen (para. 81).

These provisions of the law are observed not in all cases. The commanders often do not pay enough attention to the creation of favorable conditions of military service and living, do not implement the system of measures to limit the hazards of military service, and do not prioritize life and health of military servicemen.

Numerous complaints received by us were associated with delayed detection of diseases and providing inadequate medical care in military units and hospitals. In some cases it had led to tragic consequences.

According to para. 347 of the Regulations, in case of detection of a contagious disease, the chief medical officer should immediately report to the regimental commander and senior medical officer, detect infected persons, isolate them and hospitalize, then disinfect location, permanently observe those being in contact with infected persons, and tighten medical supervision. In accordance with para. 357 of the Regulations military servicemen who suddenly became ill or injured have to be sent immediately, at any time, to a medical center (hospital) of the regiment or, if necessary, to other agencies of the federal or municipal health

care system. As applications from military servicemen show, these provisions of the law are not applicable in some military units. In some cases military servicemen have to wait a long time till they are sent to hospitals in case of suddenly becoming ill or injured. There are also cases of inadequate prevention of the spread of contagious diseases in the military units.

We also recorded numerous cases of refusal to provide or providing improper medical care, which is a violation of military servicemen's rights because article 41 of the Russian Constitution guarantees everyone the right to health and medical care, and article 4 of the Federal Law of 21.11.2011 No 323-FZ On the Basis of Health Care of Citizens establishes the principles of the priority of the patient's interests, accessibility and quality of medical aid and inadmissibility of refusal of medical care.

Another widespread violation of military servicemen's right to health is denial in early dismissal for health reasons. As a rule, this problem is faced by military servicemen who were drafted in violation of the established procedure and have some diseases preventing to perform their duties in the army. However, we also recorded the cases when military servicemen with acquired diseases were misinformed by military doctors on the seriousness of such disease and its compatibility with further serving in the army.

It should be noted that the period of the procedure of early dismissal for health reason is not prescribed in the law, thus this procedure is often inadequately long. According to para. 133 of the Regulation On the Order of Military-Medical Examination in the Armed Forces of the Russian Federation (approved by the Order of the Ministry of Defense of 20.08.2003 No 200) (hereinafter – the Regulation), examination of military servicemen by garrison or hospital military-medical commissions should be started not later than three weeks from the moment of hospitalization. As a rule, the conclusion of garrison or hospital

military-medical commission should be approved by the regular commission. At this stage the procedure of early dismissal for health reasons can be significantly delayed since the law does not specify in what period the regular commission should approve (or abolish) the decision of the garrison or hospital commission. Sometimes the procedure lasts for months, and all this time military servicemen that have diseases preventing them to serve in the army have to wait in a hospital or even in the military unit, where they are obliged to perform their daily duties and tasks, and in some cases it was followed by a serious deterioration of their health conditions.

2. Violation of the right to insurance guarantees and compensation for damage

In case of death or recognition of a soldier unfit for military service due to health reasons he must receive the insurance payment the amount of which is set by the Federal Law of 28.03.1998 No 52-FZ On Obligatory State Insurance of Life and Health for Military Servicemen (hereinafter FZ 52). As citizens' applications to us show, in some cases it is difficult to receive the insurance payment. Sometimes military servicemen were misinformed that in their case the insurance payment can not be provided in accordance with the law. In some cases military servicemen were refused to issue a certificate proving an insured event, despite the fact that according to the Order of the Minister of Defense of 26.04.2013 No 325, military servicemen (beneficiaries) are entitled to receive, at their requests, in military units all documents required for taking a decision on providing the insurance payment, and to send these documents to an insurance company directly by their own.

Fairly common is a wrong definition of causation of death or deterioration of health conditions. It is caused by the fact that the amount of compensation is significantly different in case of death or injury occurred “in the period of military service” or “in performance of military duties”. Thus, in case of death in the period of military service the relative of a soldier should receive the insurance payment in the amount of 2 million rubles (article 5 of FZ 52), while in case of death in performance of military duties – this sum plus 3 million rubles (article 3 of the Federal Law of 07.11.2011 On Allowance and Specific Benefits for Military Servicemen). Similarly, there is different amount of compensations in case of injury (trauma, wound) received in the period of military service and in performance of military duties. An exhaustive list of situations where a citizen can be recognized performing military duties can be found in article 37 of the Federal Law of 28.03.1998 No 53-FZ On Military Duty and Military Service. However, it does not prevent commanders in some military units to conceal the circumstances of a death or an injury, and in such situations military-medical commissions make wrong conclusions.

3. Violation of the right to freedom, honor and dignity

Violations of the right to freedom, honor and dignity in relation to military servicemen include non-compliance with statutory regulations on personal relations in the army (hazing), including extortion of money and property (such as mobile phones, sim-cards, personal belongings, etc.). This is not only violations of the rights and freedoms of military personnel, but also criminal offences.

According to article 335 of the Criminal Code of the Russian Federation, non-compliance with statutory regulations on personal relations in the army between non-subordinates that involves humiliation or violence is punishable by detention in a disciplinary military unit for a term not exceeding two years, or imprisonment for up to three years. The same act under aggravating circumstances (committed against two or more persons, by a group of persons, on preliminary arrangement, with the use of weapons, with the infliction of moderate bodily harm) is punishable by imprisonment for up to five years, in case of causing serious consequences – up to ten years. Usually such offences involve a threat to life and health of military servicemen, tortures.

The same offences committed in relation to a subordinate, according to the existing legislation, are not within the category of the crimes against military service (Section 33 of the Criminal Code), but are considered abuse of authority (article 286 of the Criminal Code). Under this article, such offences are punishable by a fine of up to 80 000 rubles or the salary or other income for a period of up to six months, or deprivation of the right to occupy certain positions or engage in certain activities for the term of up to five years, or community service for up to four years, or arrest for a term of four to six months, or imprisonment for up to four years. In case of aggravating circumstances (violence or threat of violence, use of weapons or special devices), as well as in case of causing serious consequences the offender may be punished with imprisonment of three to ten years, with disqualification for up to three years.

It should be noted that more likely the perpetrators will be brought to justice if it was the case of non-compliance with statutory regulations on personal relations in the army between non-subordinates (or in cases, when a subordinate does not belong to officers).

However, the majority of incoming applications related to humiliation in the army are the cases of non-compliance with statutory regulations by persons belonging to officers. In such cases it is not always possible to bring the perpetrators to justice, even when the humiliation caused the suicide of the military serviceman. In such cases the facts of hazing or humiliation are often ignored, and in the line "Cause of the death" it is indicated just an accident or a suicide committed because of personal troubles (breaking up with a girlfriend, financial obligations, etc.). However, in some cases, the nature of damage detected on the bodies of the dead military servicemen gives a reason to beliefs that there were other circumstances which caused the death.

Passing over in silence in cases of violation of the right to honor and dignity is related to improper protection of victims of such violations. From a legal point of view, after such incidents as hazing, slaughter or extortion, transfer to a new place of military service is required, but in practice it turns out of work. According to article 15 of the Regulations of 16.09.1999 No 1237 On the Order of Passing Military Service, a military servicemen can be transferred to a new place of service "in case of service need". Any special protection for victims of tortures, hazing or abuse in the army is absent. The decision to transfer a military servicemen to another place is made by the command of the unit where he serves, thus, it is not always easy to obtain such transfer, especially in cases where the perpetrators are the officers.

4. Violation of the right to provision of food and clothing, trade and consumer services

Violation of the right to provision of food and clothing, trade and consumer services is related to poor or inadequate nutrition, poor living conditions, refusal

to give a uniform of an appropriate quality, etc. In most cases of violations of this group communicated to us we identified non-compliance with the Regulations of the Internal Service in the Armed Forces of the Russian Federation (hereinafter – Regulations) and some other legal acts, including the Guide on Provision of Food to Military Servicemen in Peacetime and the Decree of the Russian Government of 21. 06.2011 No 888 On Clothing of Military Personnel in Peacetime.

The violations of this group were communicated to us from citizens serving both on contract and on conscription. In some military units corruption reached such a level that soldiers do not beliefs in a possibility to change something by their complaints. In some cases, military servicemen can not receive clothing or leave the regiment during the holiday if they do not pay money for this (notwithstanding the fact that the rights to clothing and leisure for military servicemen are prescribed by law).

According to para. 337 of the Regulations, the daily activities of military servicemen in any situation should be carried out in compliance with military regulations and other legal acts of the Russian Federation (in part of improvement of their life and service conditions). At the same time, para. 338 of the Regulations prescribes that the main activities of commanders (chiefs) on improvement of life and service conditions of military personnel lie, among other things, in strict observance of sanitary norms and rules, timely and complete bringing to each servicemen supplies necessary for military service, compliance with requirements on placement, food and water provision, consumer and trade services.

It should be noted that almost in all cases the violations of this type were eliminated after our reference to higher command. It can be explained by the

fact that in recent years the Minister of Defense embarked on a significant improvement of living conditions of military personnel.

5. Violation of the right to allowance

According to the Federal Law of 7.11.2011 No 306-FZ On Allowance and Specific Benefits for Military Servicemen, each serviceperson (both conscripted and serving on contract) has the right to allowance, which consists of salary and accidental benefits. Certain categories of military personnel has the right to increased allowance or bonuses (eg, for class qualification, special conditions of military service, performing the tasks in peacetime directly related to the risk to life and health, etc.).

Complaints received by us indicate that not all military servicemen receive the aforementioned increased allowance and bonuses, or even the ordinary allowance. In some cases allowance is paid untimely, in violation of the para. 4 of the Order of the Minister of Defense of 30.12.2011 No 2700 On Approval of the Payment Order of Allowances to Military Personnel.

6. Forcing to sign a contract

A separate kind of human right violation of military personnel is coercion to sign a contract. Such a practice is quite widespread. In trying to force conscripted military servicemen to sign a contract, commanders apply persuasion, promises of better conditions of service, threats. This is notwithstanding that in the legislation it is clearly stated that the main condition

for military contract signature is voluntariness, i.e. a wish of a citizen to sign such a contract (article 32 of the Federal Law On Military Duty and Military Service). Thus, any direct or indirect coercion to sign a military contract is illegal.

During the monitoring of 2013-2015 the information on many cases of violations (after obtaining consent from the applicant and when it was necessary for solving the problem) was sent in the form of statements, appeals or requests to draft boards, military commissariats, prosecutors or courts. A significant part of violated rights was restored or remedied.

CHAPTER 3. HUMAN RIGHTS VIOLATIONS ASSOCIATED WITH THE PASSAGE OF ALTERNATIVE CIVILIAN SERVICE (ACS)

The right to replacement of military service with ACS is enshrined in para. 3 of article 59 of the Russian Constitution. The rights and obligations associated with the passage of alternative civilian service are defined in the Federal law of 25.07.2002 No 113-FZ On Alternative Civilian Service (hereinafter – the law On ACS). According to this law, each Russian citizen of conscription age has the right to replace military service with ACS in case if he has beliefs that contradict serving in the army. It is important to note that these beliefs can be of any kind – religious, political, philosophical, etc., and the law does not require to prove them before the representatives of the draft board.

Violations of human rights related to alternative civilian service can be divided into the following categories:

- abandonment of the application for ACS without consideration on the merits;
- refusal to replace military service with ACS due to the omission of the term of application's submission or violation of the application procedure;
- refusal to replace military service with ACS due to the lack of proof of belief;
- sending citizens who wish to replace military service with ACS to a psychiatric examination in the absence of grounds;

- sending citizens for the passage of ACS in another region without providing them with housing or providing housing with inappropriate living conditions;
- refusal to dismiss from ACS due to bad health conditions;
- criminal prosecution of citizens wishing to replace military service with ACS.

1. Abandonment of the application for ACS without consideration on the merits

As a rule, this kind of violations is caused by failure to comply with a procedure for handling applications for alternative civilian service established by the legislation of the Russian Federation. It is more common that abandoned without consideration on the merits are the applications submitted in violation of the term defined by law. However, there were cases when this type of violations was related to the duly submitted applications. In a number of cases the refusal to examine the application was motivated by the fact that the application for the ACS can be considered only after the medical examination, which is unlawful because in accordance with the law On ACS the medical examination must be carried out after taking of the decision on replacement of military service with ACS.

In any of the aforementioned cases, the abandonment of the application for ACS without consideration on the merits violates the existing laws. Article 10 of the law On ACS indicates that the procedure of replacement of military service with ACS includes filling an application by a citizen, consideration of this application at a meeting of the draft board and making the decision to replace military

service with ACS (or to refuse). It means that any application for replacement of military service with ACS sent by a citizen to a military commissariat should be examined at the meeting of the draft board, in the presence of the citizen who submitted this application. The refusal to replace military service by ACS should be duly grounded by the draft board (para. 3 of article 12 of the law On ACS).

2. Refusal to replace military service with ACS due to the omission of the term of application's submission or violation of the application procedure

Another common violation of citizens' rights is the refusal to replace military service with ACS due to the omission of the term of application's submission. Article 11 of the law On ACS defines the procedure of applying for replacement of military service with ACS and sets the application term of 6 months prior to the conscription campaign during which a citizen should be drafted into the army.

According to the monitoring data, the omission of the term of application's submission is the most frequent cause for refusal to replace military service with ACS. However, in practice, the beliefs impeding the passage of the military service can develop at any time, because the formation of beliefs is affected by a variety of factors, including current events, a sudden reassessment of values and other life situation. Moreover, according to the Decision of the Constitutional Court of the Russian Federation of 17.10.2006 No 447-O, article 11 of the law On ACS establishes the obligation of a citizen to inform governmental bodies about the presence of beliefs impeding the passage of the military service, but by its constitutional and legal meaning can not be regarded as establishing such strict terms for applying which – in case of the omission – could not be restored by the court or other law enforcement authority. Formation of beliefs within a

lesser period than the established in the law is a valid reason for restoring the terms.

Failure to comply with the procedure of applying for ACS in some cases is the reason for denial of the right to replace military service with ACS, despite the fact that such a violation of procedure could be formal and disposable. Moreover, in para. 4 of article 12 of the law On ACS, among the reasons for denial of the right to ACS, there are no such reasons as inappropriately filled application or lack of attachments to the application (autobiography, recommendation letters).

3. Refusal to replace military service with ACS due to the lack of proof of belief

The refusal to replace military service with ACS due to the lack of proof of belief is a gross violation of the existing laws. However, the monitoring shows that such cases took place. According to the law, a citizen is obliged to indicate in the application the reasons for replacement of military service with ACS (para. 2 of article 11 of the law On ACS). Proof of existence of such reasons and circumstances should not be provided by the citizen in the application, and there are no such a reason for denial as the "lack of proof of belief" (para. 4 of article 12 of the law On ACS). The citizen has the right to list in his application the persons who are willing to confirm the reliability of his reasons impeding to pass military service (para. 2 of article 11 of the law On ACS). However, it is not an obligation of the citizen, as it often is mistakenly interpreted by the representatives of the draft boards.

4. Sending citizens who wish to replace military service with ACS to a psychiatric examination in the absence of grounds

The monitoring results show that sending citizens who wish to replace military service with ACS to a psychiatric examination in the absence of grounds is quite common practice. It is should be noted that the involuntary psychiatric examination is illegal in relation both to conscripts and to conscientious objectors.

In accordance with article 23 of the Federal Law of 02.07.1992 No 3185-1 On Psychiatric Care and Guarantees for Citizens, a psychiatric examination should be conducted only after receiving an informed consent of the subject of the examination. In some cases the psychiatric examination may be conducted without receiving the consent, but the reasons for such involuntary examination is strictly defined in the law. It is possible if the examined person performs the actions that give the reasons to suspect that he/she has a severe mental disorder that causes:

- a direct danger to him/herself or other people, or
- his helplessness, i.e. the inability to meet baseline needs, or
- significant damage to his health as a result of mental deterioration, if the person will be left without psychiatric care.

Thus, the law contains an exhaustive list of grounds under which the psychiatric examination can be compulsory. If a citizen does not fall under any of these grounds, there must be his/her consent for carrying out a psychiatric examination.

Psychiatric examination of conscientious objectors is conducted in the framework of the military-medical examination in accordance with article of the Federal Law of 21.11.2011 No 323-FZ On the Basis of Health Care of Russian Citizens. In article 15 of the Federal Law On the Psychiatric Care it is stated that the grounds and the procedure of psychiatric examination for taking the decision on fitness to military service are set in the current law and other legislative acts of the Russian Federation.

The legislation of the Russian Federation on military and alternative civilian service, including the Federal Law of 28.03.1998 No 53-FZ On Military Duty and Military Service and the Federal Law of 25.07.2002 No 113-FZ On Alternative Civilian Service, do not provide for additional grounds for involuntary psychiatric examination. Thus, in case of attempts to carry out psychiatric examination without receiving consent it is recommended to file a complaint to the military commissariat and to refuse to be compulsory examined due to the lack of reasons for involuntary psychiatric examination in accordance with the Federal Law of 02.07.1992 No 3185-1 On Psychiatric Care and Guarantees for Citizens.

5. Sending citizens for the passage of ACS in another region without providing them with housing or providing housing with inappropriate living conditions

Sending citizens for the passage of ACS in another region without providing them with housing or providing housing with inappropriate living conditions is a quite widespread violation registered during the monitoring.

Sanitary Norms No 2.2.4 / 2.1.8.562-96 approved by the Resolution of 31. 10.1996 No 36ю of the State Committee on Sanitary and Epidemiological Supervision set requirements for living lodgments.

In accordance with para. 3 of article 1 of the Federal Law On Alternative Civilian Service, the passing of the alternative civilian service by citizens is regulated by the labor legislation, taking into account the requirements of the law on ACS. One of such requirements under para. 3 of article 20 of the law On ACS is providing citizens passing ACS in another region with appropriate housing. The employer has the duty to ensure safe working and living conditions of persons passing ACS. Failure to provide housing as well as providing a lodgment with inadequate living conditions allow citizens passing ACS to use the means provided by the law in order to protect their labor rights.

According to article 352 of the Labor Code of the Russian Federation, each employee, including those citizens who pass ACS, has the right to defend their rights by any possible means that are not prohibited by law, including self-defense of labor rights. In article 379 of the Labor Code it is stated that one of the forms of self-defense is refusal to perform job duties in case of threat to life and health of employees. If a citizen passing ACS chooses such form of self-defense he should inform the employer on writing on the termination of performing his job duties. According section 1 of article 379 of the Labor Code, time of self-defense should be included into the term of ACS.

6. Refusal to dismiss from ACS due to bad health conditions

Before 2014, it was almost impossible to dismiss from ACS due to bad health conditions, because the Russian legislation did not contain the procedure for

such dismissal. On January 1, 2014 a new Regulation on Military-Medical Examination came into force (approved by the Government Decision of 4.07.2013 No 565).

This Resolution establishes that:

"79. Organizing medical examination of citizens passing ACS is assigned to the military commissioner.

<…>

80. Medical examination of citizens passing alternative civilian service is carried out at their request, if there were found changes in their health status after medical survey at civilian hospitals.

81. Medical examination of citizens passing alternative civilian service is carried out by medical specialists included in military-medical commissions under the military commissariats".

After the aforementioned Regulation came into force, the procedure of dismissal from ACS due to bad health conditions became more simple and clear, and the number of refusals decreased.

7. Criminal prosecution of citizens wishing to replace military service with ACS

We have information about three cases of criminal prosecution of citizens wishing to replace military service with ACS taken place during the monitoring period. In all these cases citizens were accused of evading military service in accordance with para. 1 of article 328 of the Criminal Code of the Russian Federation. One of these citizens upheld his right to replacement of the military

service with ACS, though he had to pay an administrative penalty in the amount of 130 000 rubles for the alleged evading military service. Two other citizens prosecuted for their wish to replace military service with ACS are provided with legal aid and assistance by the lawyers of the Human Rights Group and partner organizations, including representation in courts.

In general, it can be said in relation to the right to conscientious objection that in Russia there is a working mechanism of sending citizens for passing ACS. Every citizen that has beliefs impeding the passage of the military service has a possibility to apply for ACS and to replace military service with the alternative civilian.

However, it must be noted that alternative civilian service is still a complicated procedure, and the mechanism of sending citizens to such service is not perfect, while the activities of multiply agencies responsible for sending citizens to ACS is not coordinated. It provokes the majority of violations of the rights associated with conscientious objection.

FINDINGS

According to international standards, namely to the Recommendation CM / Rec (2010) 4 on human rights of members of the armed forces and the Code of Conduct on Politico-Military Aspects of Security, certain requirements should be met by the Member States in relation to the observance of human rights of conscripts, military servicemen and ACSers. The monitoring allowed us to define the level to which the aforementioned international standards are implemented in practice in the Russian Federation.

1. *All servicemen should have the right to inform of violations of the law or crimes in military units. Their information should not be ignored; investigations of all allegations should be carried out by organizations that are independent of the involved military commands*.

Formally, this right is guaranteed, but in practice not all allegations of crimes in military units are duly investigated, especially if the officers are perpetrators.

2. *Special circumstance (including guarantees of anonymity and access to channels of communication) should be created for information from servicemen about violations that threaten their life or health or involve torture or other cruel and inhuman treatment*.

Not in all military units there is an access to channels of communication for communicating information about violations that threaten the life or health or involve torture or other cruel and inhuman treatment in relation to military servicemen.

3. *Measures should be put in place to protect servicemen and women who provide information about violations from revenge*.

There are no special measures of protection for victims and witnesses of torture or other cruel or inhuman and degrading treatment. There are problems with transfer to another military unit of victims and witnesses.

4. *Servicemen should not be used to carry out tasks unrelated to their role in providing national defense except in emergency situations and in providing assistance to the civilian population in accordance with local laws*.

During the monitoring period we did not receive any reports sustaining the use of military servicemen for carrying out the tasks unrelated to their role in providing national defense.

5. *Every state has the right to organize its own system of military discipline. However, only behavior that presents a threat to military discipline, order, safety or security can be considered as a disciplinary offense. The severity of any punishment should be in line with the severity of the offense. The type and duration of punishments foreseen for disciplinary offenses, the organizations empowered to impose such punishments, and the procedures for appeals should be set out in legislation. Collective punishments should be forbidden*.

The type and duration of punishment foreseen for disciplinary offenses, the organizations empower to impose such punishments, and the procedures for appeals are set out in legislation. However, some cases of imposing unlawful collective punishment were reported to us.

6. *No serviceman should be deprived of liberty except in circumstances and in accordance with procedures laid out in national law. Soldiers who are deprived of liberty should have the right to a hearing before competent, independent and objective authorities*.

In general, military authorities comply with this principle and with the procedure of detention defined by the law. However, we received some complaints about unlawful deprivation of liberty of military servicemen on conscription (for example, with the purpose of investigating a crime which was witnessed by a detained serviceman).

7. *Soldiers' rights to private and family lives, their residences and correspondence should be respected. Any limitations of these rights should only be allowed in case of real threats to national security*.

We have no reports related to the violation of this principle.

8. *To the maximum extent possible, draftees should carry out their service near their homes and families*.

The law establishes the principle of extraterritoriality (i.e. young men should be sent for military service in regions situated outside the place of their residence), thus, the aforementioned standard is unrealizable.

9. *Servicemen and women should have the right to freedom of thought, conscience and religion, including the right to change their religion or believes at any time. There should be no discrimination among servicemen on the grounds of their religion or beliefs*.

The right to freedom of thought, conscience and religion is guaranteed by the law, and generally in practice is respected. However, there is no possibility to dismiss from the military service because of conscience reasons.

10. *In countries that maintain a draft, every draftee should have the right to decline military service in accordance with his beliefs and to undertake alternative service of a civilian character. Professional soldiers should have the right to leave the armed forces in accordance with their conscience*.

The right to decline military service and to replace it with ACS is guaranteed, but neither professional soldiers, nor draftees conscripted to the army can leave the armed forces in accordance with their conscience, because this possibility is not provided by law.

11. *Servicemen should be guaranteed full and detailed information about all aspects of the military draft or the contract system and their obligations regarding military service*.

This principle is not always respected, and young men often receive deceiving information about the military draft or military service conditions.

12. *Current and former servicemen, including draftees, should have full access to their personal information, including medical information*.

Not all draftees, as well as current and former military servicemen are able to access their personal information, especially if it concerns medical information related to their fitness to the military service or the circumstances of getting an injury or trauma during military service.

13. *Servicemen should have the right to join independent organizations that protect their rights, and should have the right to organize and carry out collective bargaining. Unjustified and disproportionate limitations on their freedom of assembly and association should be revoked*.

Freedom of assembly and association is not guaranteed for military servicemen. The law does not provide for the possibility to create trade unions of military servicemen.

14. *Servicemen should have the right to receive medical treatment*.

The right to receive medical treatment is guaranteed, but in practice not all military servicemen are able to have it timely.

15. *Housing for servicemen, including barracks, should meet standards required to protect their health*.

Despite the fact that in recent years the living standards of military servicemen were increased, during the monitoring we received some reports about inappropriate living conditions in barracks.

16. *Professional soldiers should receive pay sufficient to guarantee them an adequate standard of living*.

This principle is observed.

17. *Servicemen should have the right to periods of rest. To the extent possible, these should be included in periods of basic training. Professional soldiers should receive paid leave*.

The military servicemen drafted to the army have periods of rest, but in some military units this right is undermined by the existing practices of hazing or extortion (for example, only those servicemen who are able to pay a certain sum of money can have a rest on Sunday, etc.). Professional soldiers receive paid leave.

18. *Professional soldiers retiring from service should be guaranteed a package of benefits and programs to assist their re-adaptation into civilian life*.

Professional soldiers retiring from service are guaranteed the package of benefits in case if they were injured during the military service. However, there are no programs to assist their re-adaptation into civilian life.

19. *Servicemen and women should receive human rights training, including on their own rights*.

Formally, human rights trainings are carried out in each military unit. However, the effectiveness of such trainings must be questioned, since the monitoring revealed a quite high level of legal illiteracy, including human rights matters.

20. *In order to ensure civilian oversight and respect for the principles of leadership in the military sector, every country should create an independent organ (ombudsman) on servicemen's rights*.

There is no ombudsman on military servicemen's rights in the Russian Federation.

21. *All servicemen should be informed that they are not required to carry out illegal orders that could lead to genocide, war crimes, crimes against humanity or torture*.

There is no information if the aforementioned standard is applicable in the Russian Federation.

Thus, after analyzing the results of the monitoring, it is possible to conclude that the aforementioned international standards and principles for the most part are not applicable or applicable with some reservations.