(Translated from Russian)

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The Permanent Mission of the Russian Federation to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to forward information from the Russian Federation concerning the application procedures for conscientious objection to military service in pursuance of Human Rights Council resolution 36/18 on conscientious objection to military service.

The Permanent Mission avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurance of its highest consideration.

Geneva, 19 December 2018

Office of the United Nations High Commissioner for Human Rights

Geneva

OHCR Registry, 20 December 2018

**Information from the Russian Federation for inclusion in the report on approaches and challenges with regard to the application procedures for conscientious objection to military service in pursuance of Human Rights Council resolution 38/18 on conscientious objection to military service**

At the highest level of the legal system, the Constitution of the Russian Federation embodies a measure prescribing a citizen’s due conduct in defence of the Fatherland (article 59). The contents of this article are exceptional in that they impose both a duty and an obligation to defend Russia.

Military service is a particular form of federal public service performed by citizens not holding the citizenship (nationality) of a foreign State in the Russian Armed Forces, in the internal troops of the Ministry of Internal Affairs, in the military engineering, technical and road-building units attached to federal authorities, in rescue units of federal civil defence authorities, in the Federal Security Service, in the Guard Service, in military prosecution bodies and military investigatory bodies of the Investigative Committee of the Russian Federation, in the federal agency responsible for ensuring public authorities’ mobilization training, in the military sections of the federal firefighting service and in special wartime units, as well as that performed by citizens holding the citizenship (nationality) of a foreign State and foreign citizens in the Russian Armed Forces and military units.

The performance of military service is governed by the Military Duty and Military Service Act No. 4455-1, of 11 February 1993.

Given that, in the long term, the Russian Federation has chosen to move towards a mainly professional army, military service is carried out by:

• Citizens who have been conscripted, or who have volunteered (who are under contract);

• Foreign citizens who are under contract for military duties as soldiers, sailors, non-commissioned officers and warrant/petty officers in the Russian Armed forces and in military units.

Article 59 (3) of the Constitution explicitly states that a citizen of the Russian Federation may replace military service with alternative civilian service, if his convictions or religious beliefs conflict with military service, or in such other cases as are provided for by federal law. The exercise of this right is likewise provided for in section 1(5) of the above-mentioned Act.

The aforementioned provision is consistent with the precepts of other articles of the Constitution that firmly underpin a citizen’s inalienable right to replace military conscription with alternative civilian service:

• “Ideological diversity shall be recognized in the Russian Federation. No ideology may be established as that of the State or as obligatory.” (art. 13 (1) and (2));

• “Everyone shall have the right to determine and state his/her nationality. No one may be forced to determine or state his/her nationality. Everyone shall have the right to use his/her mother tongue, freely to choose his/her language of communication, education, training and work.” (art. 26 (1) and (2));

• “Everyone shall be guaranteed freedom of conscience and freedom of religion, including the right to profess any religion individually or together with others, or to profess none, freely to choose, to hold or to disseminate religious or other convictions and to act in accordance therewith” (art. 28);

• “Everyone shall be guaranteed the right of freedom of thought and of speech. No one may be forced to express his/her opinions or convictions or to repudiate them” (art.29, (1) and (3).

The exercise by a citizen of the Russian Federation of his constitutional right to replace military conscription with alternative civilian service is regulated by the Alternative Civilian Service Act No. 113-FZ, of 25 July 2002 (hereinafter referred to as the “Alternative Civilian Service Act”). The legal foundations of alternative civilian service are also laid by the Federal Defence Act, the Federal Military Duty and Military Service Act, the Labour Code, the Administrative Offences Code, the Criminal Code, Federal Act No. 82-FZ, of 30 April 1999, guaranteeing the rights of indigenous minorities, Federal Act No. 125-FZ, of 26 September 1997, on freedom of conscience and of religious associations, the Federal Health Act No. 323-FZ, of 21 November 2011, Presidential Decree No. 793, of 21 July 2003, on the organization of alternative civilian service, Government Decision No. 256, of 28 May 2004, approving the Regulations on the procedure for performing alternative civilian service, Government Decision No. 255, of 24 March 2000, on the unified list of the indigenous minorities of the Russian Federation, Government Decision No. 565, of 4 July 2013, approving the Regulations on military medical examination, Order No. 110n, of 27 February 2014, of the Ministry of Labour and Social Protection, listing types of work, occupations and duties which citizens performing alternative civilian service may undertake and of organizations where provision is made for the performance of alternative civilian service and invalidating certain orders of the Ministry of Health and Social Protection, Constitutional Court Decision No. 447-O, of 17 October 2006 on the complaint filed by Mikhail Aleksandrovich Zhidkov and Oleg Sergeevich Pilnikov regarding the violation of their constitutional rights by article 11 of the Alternative Civilian Service Act and Decision No. 3 of 3 April 2008 of the Plenary Session of the Supreme Court of the Russian Federation on judicial practice in the consideration of criminal cases concerning evasion of call-up for military service and the performance of military or alternative civilian service.

Under section 22 (1) (a) of the Military Duty and Military Service Act, a male citizen between the ages of 18 and 27, who is obliged to be registered for military service and who is not in the reserve, may be called up for military service, regardless of whether or not he is registered. Since alternative civilian service is a substitute for conscription into military service, only a person who is liable to be called up for military service can lay claim to the exercise of the right guaranteed by article 59 of the Constitution.

Under the Alternative Civilian Service Act, three categories of citizens are entitled to replace military conscription with alternative civilian service:

• Persons whose convictions conflict with the performance of military service;

• Persons whose faith conflicts with the performance of military service;

• Persons belonging to indigenous minorities who lead a traditional way of life and who engage in traditional agriculture or a traditional craft.

As alternative civilian service is a special form of labour, its performance is regulated by article 349 of the Labour Code. Special conditions regarding wages, fringe benefits and bonuses are laid down for workers falling into this category.

However, a citizen’s negative perception of military service and corresponding unwillingness to undergo it do not per se entitle him to replace it with alternative civilian service (Constitutional Court Decision No. 2204-O, of 25 September 2014).

In order to exercise his right to replace military conscription with alternative civilian service, a citizen who is eligible for alternative civilian service on one of the above grounds must appear in person at the municipal training office of the military commissariat where he is registered in order to present the relevant reason. The independent submission of the above-mentioned application is an expression of a citizen’s autonomy and confirmation that it is lawfully possible to act in accordance with one’s inner wishes independently of other people.

The procedure for filing such an application is set forth in section 11 of the Alternative Civilian Service Act. The application must be filed before the beginning of the upcoming draft. In his application, a citizen who wishes to do alternative civilian service must explain why the performance of military service conflicts with his convictions or faith (sect. 11(1) of the Alternative Civilian Service Act). At the same time, the reasons and circumstances prompting the request for the replacement of military service with alternative civilian service must be given, along with the names of persons who agree to corroborate the applicant’s arguments (in which case, the citizen independently notifies these persons and secures their attendance of the meeting of the call-up commission at which the application is examined). The application is accompanied by a curriculum vitae and a reference from [the applicant’s] place or work and/or study. The citizen may enclose other documents, but is not obliged to do so.

The call-up commission alone decides whether to permit alternative civilian service. Moreover, the commission may grant the application even when it has been submitted after the time limit, especially if there are valid reasons for the delay.

The application for permission to perform alternative civilian service is examined within one month from the deadline for its submission. This time limit may be extended by a month if the commission requests additional documents. A judicial appeal may be entered against a refusal of the call-up commission to permit alternative civilian service. In this case, implementation of the decision is stayed until the court’s decision becomes final (sect. 15 of the Alternative Civilian Service Act).

The possibility of judicially defending the rights and lawful interests of parties to these legal relationships is provided for in particular by Federal Constitutional Act No. 1-FKZ, of 31 December 1996, concerning the judicial system of the Russian Federation, Federal Constitutional Act No. 1-FKZ, of 7 February 2011, concerning courts of general jurisdiction in the Russian Federation, Federal Constitutional Act No. 1-FKZ, of 21 July 1994, concerning the Constitutional Court of the Russian Federation.

It must be noted that binding favourable decisions by courts permitting a citizen to perform alternative civilian service, even when the application was submitted after the time limit, exist in contemporary Russian judicial precedent.

The statutory grounds for exempting citizens from the performance of their military duty and accordingly the performance of alternative civilian service may be divided into imperative ones (used for decisions adopted by the competent bodies, irrespective of the stated wishes of the person) and optional ones (existing as a citizen’s right and which may be implemented only in accordance with his wishes). A distinction may be drawn between categories of persons who are temporarily exempt by law from the performance of their military duty (persons not liable to the [current] draft and also persons whose conscription must or may be deferred) and persons who are permanently exempt from the performance of their military duty (persons exempt from conscription). Temporary exemption from the performance of military duties signifies that in circumstances of a verifiable duration, which are specified by law, citizens cannot be conscripted or perform alternative civilian service. As soon as these circumstances cease to exist, these persons will be called up for military service or ordered to perform alternative civilian service.

Citizens not liable to military conscription are not ordered to perform alternative civilian service (sect. 23 (3) of the Federal Military Duty and Military Service Act).

If, at the time of call-up, the following restrictions apply to a citizen, he cannot be conscripted or ordered to perform alternative civilian service:

• Persons serving a sentence in the form of compulsory labour, correctional labour, restricted liberty, arrest or deprivation of liberty;

• Persons with an unquashed or outstanding criminal conviction;

• Persons under investigation, or with regard to whom a preliminary inquiry is being conducted, or criminal proceedings have been brought in court.

The legal consequences of a criminal conviction become null and void when it is cancelled or quashed. A person whose criminal conviction has been cancelled or quashed is liable to be called up for military or alternative civilian service in accordance with the usual procedure.

Section 4 of the Federal Military Duty and Military Service Act requires bodies conducting inquiries and preliminary investigations to inform the military commissariat within two weeks of the initiation or discontinuation of criminal proceedings against citizens who are obliged to be registered for military service, regardless of whether or not they are registered, or of the referral of their case to a court. Federal courts are obliged to notify military commissariats within two weeks that they have initiated or discontinued criminal proceedings, or that sentences have become final with regard to citizens who are obliged to be registered for military service, regardless of whether or not they are registered and they must forward to the military commissariat the military service registration documents of citizens who have been sentenced to compulsory labour, correctional labour, restricted liberty, arrest or deprivation of liberty. If this requirement is found not to have been met, the guilty officials may be prosecuted in accordance with the law of the Russian Federation.

For example, in July 2010, the Procurator’s Office of the Tymovsky district in the Sakhalin region carried out an investigation into compliance with the law on military duty and military service in the catchment area of the Timovsky municipal training office. In the course of this investigation, a body conducting an inquiry was found have infringed the requirements of the Federal Military Duty and Military Service Act, as a result of which K., who was being tried for poaching, escaped a criminal sentence. K. was called up to serve in the Russian Armed Forces during the year in which the inquiry was being conducted and the Procurator referred his case to the court just before he was drafted. The investigation established that there was no evidence in K.’s personal file that the military commissariat had been notified that criminal proceedings had been initiated and that his case had been referred to the court.

Persons who have grounds for exemption from military conscription do not have to do alternative civilian service. The following people belong to this category (sect.23(1) of the Federal Military Duty and Military Service Act:

• Persons who are recognized to be of limited fitness for military service owing to their state of health;

• Persons who are doing or who have done military service in the Russian Federation;

• Persons who are doing or who have done alternative civilian service;

• Persons who have done military service in another State in the cases provided for by international agreements of the Russian Federation.

A citizen’s right to health care and medical assistance is guaranteed in the Russian Federation. For this reason, only a person who is in a suitable physical and mental condition may carry out the duty and exercise the right provided for in article 59 of the Constitution. When they are initially registered and called up for military service on reaching the age of 17, citizens of the Russian Federation undergo a medical examination by specialist doctors and they take part in psychological screening measures conducted by the call-up commission, or they are sent for outpatient or inpatient medical screening in a medical organization, as a result of which a conclusion is reached with regard to a conscript’s fitness for military service. It is important to note that the requirements regarding the state of health of citizens ordered to do alternative civilian service are identical to those applicable to citizens conscripted into military service. Moreover, a citizen is entitled to produce an independent medical opinion concerning him. The procedure in question is set forth in detail in the Regulations on military medical examination approved by Government Decision No. 565, of 4 July 2013 and also in the regulations on independent military medical examination approved by Government Decision No. 574, of 28 July 2008.

The same grounds apply to the deferral of alternative civilian service as to the deferral of military conscription. These grounds are set forth in detail in section 24(1) of the Federal Military Duty and Military Service Act.

A citizen acquires the status of a person performing alternative civilian service from the beginning of this service and loses it when this service ends. The status of someone performing civilian service is documented by a certificate issued by the military commissariat. The day on which alternative civilian service is deemed to begin is that on which a citizen departs for the place of performance specified in the military commissariat’s travel order and ends on the day the employer discontinues the fixed-term employment contract with the citizen on his release from alternative civilian service.

Alternative civilian service is performed solely in the territory of the Russian Federation. The law gives the options of serving as civilian personnel in organizations responding to federal authorities, authorities of the constituent entities of the Russian Federation, organizations of the Russian Armed Forces, other troops or military units. Reservations apply in particular to the possibility of performing alternative civilian service in local government authorities. This is conditional upon observance of the principle of close cooperation between military administrative bodies and federal and local government authorities in implementing defence law. The list of organizations in which citizens who have been allowed to replace military service with alternative civilian service may perform it either individually or in groups is contained in section 4 of the Federal Alternative Civilian Service Act.

In the majority of cases, alternative civilian service is performed outside the territory of the constituent entities of the Russian Federation where citizens who have been allowed to replace military conscription with alternative civilian service permanently reside. If it is impossible to send citizens to perform alternative civilian service outside the territory of the constituent entities of the Russian Federation where they permanently reside, they may be instructed to serve in the latter. Such cases may arise owing to a lack of vacancies in organizations located in the territory of other constituent entities, or because it is impossible to perform such service in the appointed location on health grounds.

In addition, the legislator secures the possibility for members of indigenous minorities to do their alternative civilian service in organizations in branches of traditional agriculture and traditional crafts (Sect. 37 of the Regulations on the procedure for performing alternative civilian service approved by Government Decision No. 256, of 28 March 2004). This position of the legislator is closely bound up with the State’s endeavours to preserve these peoples’ distinctive socioeconomic and cultural development and to protect their traditional way of life and agriculture. This is clear from section 2 of the above-mentioned Federal Alternative Civilian Service Act which gives members of indigenous minorities the right to replace military conscription with alternative civilian service when they lead a traditional life and engage in traditional agriculture or crafts. Such activity may be carried out only in territory with special natural, climatic and other conditions.

The list of types of work, occupations and duties which may be engaged in by citizens performing alternative civilian service and also of organizations where provision is made for them to do so is determined in the procedure laid down by the Government.

Rule 4 of the Rules on the presentation by federal authorities and authorities of the constituent entities of the Russian Federation of proposals concerning the organization of alternative civilian service and the adoption by the specially designated federal authority of decisions on the participation of these authorities in the organization of alternative civilian service (approved by Government Decision No. 750, of 11 December 2003, on the organization of alternative civilian service) provides that every year, before 1 March, the Ministry of Labour and Social Protection shall draw up and approve lists of types of work, occupations and duties which may be undertaken by citizens performing alternative civilian service and organizations where it may be performed.

The criteria and priorities incorporated in these lists are jointly determined by the Ministry of Labour and Social Protection and the Ministry of Defence in light of the interests of society and the State.

The legislator underscores the fact that it is vital to take account of the following factors when determining the types of work, occupations and duties which may be engaged in by persons instructed to perform alternative civilian service and the places where it is to be performed:

• Education, skills, qualifications and previous work experience;

• State of health, family circumstances;

• Organizations’ labour resources requirements.

It must be noted that 45 per cent of applicants for alternative civilian service are unskilled and 25 per cent have skills not in demand at their duty station.

The conditions of alternative civilian service must to the greatest possible extent be identical to the conditions of conscripted military service, since in both cases a citizen is fulfilling his duty to defend the Fatherland.

The usual duration of alternative civilian service is laid down in section 5 of the Federal Alternative Civilian Service Act. It is generally 1.75 to 1.5 times longer than the length of military conscription established by the Federal Military Duty and Military Service Act.

The start of alternative civilian service is a legal fact. A citizen thereafter becomes the subject of the corresponding legal relationship. This calendar date must be specified in the military commissariat’s travel order. As from this date, the citizen acquires the rights and duties and bears the responsibility of a person performing alternative civilian service.

The end of a citizen’s alternative civilian service is deemed to be the date on which the employer discontinues the fixed-term employment contract on the citizen’s release from alternative civilian service. A fixed-term employment contract with a citizen performing alternative civilian service must be discontinued by the employer on the date on which the duration of the alternative civilian service expires.

The Act specifies times which do not count towards the duration of alternative civilian service:

1. Absence (absence from place of work without a good reason for more than four consecutive hours in a working day);

2. Time spent on additional leave (provided by the employer) for study in educational organizations;

3. Time spent on serving a custodial criminal or administrative sentence;

4. Reporting for work drunk, drugged or otherwise intoxicated.

The Act also provides for the vocational training (or further training) as necessary of citizens performing alternative civilian service.