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**International Legal Regulation of
Alternative Civil Service**

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Introduction

The most important issue of the theory and practice of construction of a rule-of-law state is the protection of human rights and freedoms, which serve as an indicator of development of the state. The right to conscientious objection on the grounds of religious belief is a fundamental element of the right to freedom of thought, conscience and religion.

Part 2 of article 57 of the Constitution of the Republic of Belarus stipulates that “procedure governing military service, the grounds and conditions for exemption from military service, and the substitution thereof by alternative service shall be determined by law”¹. On the basis of this article in the Republic of Belarus there is a constitutionally enshrined the possibility of alternative service, which should be regulated on the legislative level. At the moment the law that should govern the issue, despite the fact that some legislative acts in their rules contain the phrase “alternative civilian service”, for example, the law “On State Fingerprinting Registration”², the law “On military duty and military service”³, a decree of the President “On some measures for regulation housing relations”⁴ and other regulatory acts.

Moreover, the adoption of such a law was called by the Constitutional Court of the Republic of Belarus in its annual message “On the status of the constitutional legality in the Republic of Belarus in 1998”⁵ and “On the status of the constitutional legality in the Republic of Belarus in 1999”⁶ as well as in its decision “On certain issues relating to the implementation of article 57 of the Constitution of the Republic of Belarus”⁷.

Therefore in our country there are all preconditions for the realization of this right, but there is no mechanism for its realization because of the lack a legal document. In other words, we can say that for this moment there is the legislative gap in the implementation of the right to alternative service.

This means that disclosure and further development of theoretical bases of the citizens of the Republic of Belarus of the constitutional right to replace military service by alternative service, constant improvement of legislation in this area and to develop practical recommendations for the correct application of existing legislation with regard to alternative service are relevant.

¹ The constitution of the Republic of Belarus 1994 (with amendments and annexation). – Minsk: Belarus, 2004.

² On State Fingerprinting Registration: The Law of the Republic of Belarus, Nov 4, 2003 No. 236-Z (with amendments and annexation in force from July 3, 2009)// National Register of Legislative Acts of the Republic of Belarus. – 2003. - № 124.

³ On military duty and military service: The Law of the Republic of Belarus, Nov 5, 1992 No. 1914-XII (redaction from July 16, 2008)// National Register of Legislative Acts of the Republic of Belarus. – 2003. - № 85. -2/976.

⁴On some measures for regulation housing relations (together with the Regulations on the procedure for registration of citizens in need of better housing, providing housing public housing): Decree of the President of the Republic of Belarus, Nov 29, 2005 No. 565 (redaction from May 21, 2009)// National Register of Legislative Acts of the Republic of Belarus. – 2005. - № 190. - 1/6977.

⁵ On the status of the constitutional legality in the Republic of Belarus in 1998: Decision of the Constitutional Court of the republic of Belarus, January 28, 1999 No. P-75/99// Consultant Plus: Belarus. *Techologia 3000* [Electronic Resource] / Inc. “YrSpectr”, National Centre of Legal Information of the Republic of Belarus. – Minsk, 2010.

⁶ On the status of the constitutional legality in the Republic of Belarus in 1999: Decision of the Constitutional Court of the republic of Belarus, January 31, 2000 No. P-92/2000// Consultant Plus: Belarus. *Techologia 3000* [Electronic Resource] / Inc. “YrSpectr”, National Centre of Legal Information of the Republic of Belarus. – Minsk, 2010.

⁷ On certain issues relating to the implementation of article 57 of the Constitution of the Republic of Belarus: Decision of the Constitutional Court of the republic of Belarus, May 26, 2000 No. P-98/2000 // Consultant Plus: Belarus. *Techologia 3000* [Electronic Resource] / Inc. “YrSpectr”, National Centre of Legal Information of the Republic of Belarus. – Minsk, 2010.

The fact that conscientious objection is regulated in detail in the framework of the United Nations, the Council of Europe and other international organizations, it is needed to start studying the issue from researching existing international legal standards.

Why study international legal regulation of the right to alternative service is relevant? The specifics of this problem caused for researching specific literature on this issue highlighting various aspects of the international legal regulation of the right to alternative service. The author has studied the work of the following academics: M. Nowak, T. van Boven, J. e Brito, T. Vospernik, C. Evans, M. Major, H. Takemura, K. Musalo, M. Maskey. Among Russian scientists this question was studied by A. Klibanov, R. Maranov and I. Zakharova. The lack of a comprehensive study on the issue further underlines the relevance of the chosen theme of diploma studies.

The relevance of this work is that it represents the first comprehensive study of international legal standards for the universal and regional levels of the institute of alternative service, with a view to formulating proposals on perfection of the legislation of the Republic of Belarus and the implementation of international standards in Belarusian legislation.

Theoretical significance of the thesis is compose form the development of practical recommendations, including draft amendments and supplements into the law "On military duty and military service" and the draft law "On alternative civil service in the Republic of Belarus" in order to update the legislation governing citizens constitutional right to replace military service with alternative service.

The legal base of the thesis ground on the Constitution of the Republic of Belarus, the law of the Republic of Belarus "On military duty and military service", decrees of the President of the Republic of Belarus, Order of the Inter-Parliamentary Assembly of States members of the Commonwealth of Independent States No. 14-11 "The model law on alternative (non-military) service", the decision of the Constitutional Court "On certain issues relating to the implementation of article 57 of the Constitution of the Republic of Belarus", as well as international legal acts, regulating the issues of realization by citizens of their right to alternative service.

The thesis is a comprehensive analysis of international legal regulation of alternative service as part of the universal (the United Nations) and regional and international organizations (Council of Europe).

The goals of the following thesis are:

1. identification of international legal standards of alternative service in the framework of the United Nations;
2. a comprehensive analysis of the case law on alternative service of the European Commission on human rights and the European Court of human rights;
3. study of the constitutional and legal safeguards of the right to replace military service to alternative service in the Republic of Belarus;
4. study of the Belarusian judicial practice on of alternative service;
5. formulation of suggestions and recommendations to improve Belarusian legislation on military service and the drafting of a bill on alternative service, in order to ensure that citizens of the Republic of Belarus can fulfil the constitutional right to civil service, in order to create a coherent and consistent system of legislative and other normative legal acts regulating the performance of alternative service.

CHAPTER I. UNIVERSAL LEGAL FRAMEWORK OF THE RIGHT TO ALTERNATIVE SERVICE

1.1. The concept of the right to freedom of thought, conscience and religion

The right to conscientious objection is a part of the right to freedom of thought, conscience and religion. This right is pinning under the following international legal instruments of the United Nations:

○ Universal Declaration of Human Rights (UNDHR) (1948), article 18⁸:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

○ International Covenant on Civil and Political Rights (ICCPR) (adopted in 1966, for the Republic of Belarus has entered into force in accordance with the Decree of the Presidium of the Supreme Soviet of the Republic of Belarus in 1973) para 1 of article 18⁹:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

○ International Convention on the Elimination of All Forms of Racial Discrimination (signed on in 1965, entered into force for the Republic of Belarus in accordance with the Decree of the Presidium of the Supreme Soviet of the Republic of Belarus in 1969), article 5 (d) (VII)¹⁰:

(...), States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin (...): d) VII) The right to freedom of thought, conscience and religion.

Superior position among these international legal instruments takes the ICCPR, at the time of its drafting and adoption for the first time was a discussion of the right to conscientious objection to military service¹¹.

The right to freedom of thought, conscience and religion is an inalienable human right. Of particular importance and significance of this right is at the present stage of the pluralism of religions. In order to avoid discrimination and abuse against freedom of thought, conscience and religion must clearly represent its borders.

During the development of the art. 18 of the ICCPR States parties could not reach a compromise, combining the requirements of various legal systems. Thus the Soviet Union spoke of the need to restrict this right to public morals and the Islamic States were afraid to acknowledge this right, because it can be a precursor widespread atheism¹².

⁸ Universal Declaration of Human Rights/Human Rights: International Instruments and Their Implementation. Vol. 1./reduced by E. Kuznetsova. -Minsk: Amalthea, 2009.- p. 78-82.

⁹ International Covenant on Civil and Political Rights/Human Rights: International Instruments and Their Implementation. Vol. 1./reduced by E. Kuznetsova. -Minsk: Amalthea, 2009.- p.82-94.

¹⁰ International Convention on the Elimination of All Forms of Racial Discrimination/Human Rights: International Instruments and Their Implementation. Vol. 2./reduced by E. Kuznetsova. -Minsk: Amalthea, 2009.-p. 3-11.

¹¹ Takemura H., International Human Right to Conscientious Objection to Military Service and Individual Duties to Disobey Manifestly Illegal Orders.

¹² Ibid.

The right to freedom of thought and conscience implies the right of everyone to take any views freely and independently of any external influence¹³. This means that everyone is free to adopt any religion, have any views and beliefs and the State could not expose the right of limitation by means of threats, state propaganda and coercion.

The right consists of three elements which are the right to freedom of thought, freedom of conscience and the right to freedom of religion. The right to freedom of thought means that everyone can follow any belief, to change their beliefs throughout life, abandon them, take other beliefs and to express them freely. This, we believe, is only one limitation, as provided in paragraph 3 of article 18 of the ICCPR, it must not violate the rights and freedoms of others and be offensive to others. Other restrictions under this article, public security, public policy, and health is not entirely applicable to this right.

The right to freedom of conscience is enshrined in paragraph 1 of article 18 of the ICCPR ("everyone has the right to freedom of thought, conscience and religion.") and not reflected in other articles, so it is not quite clear how to put into practice, particularly in respect of the right to conscientious objection to military service. Dictionary of religious language, the notion of "conscience" treats as "inner voice, telling us about the moral truth, on higher values on our dignity"¹⁴.

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The right to freedom of religion is the right to have or adopt a religion or belief, either individually or in community with others and in public or private, in worship, observance, practice and teaching. This right can take two forms: passive and active. The first form does not require any external manifestation, the second – involves the various rites and rituals, wearing special clothes, adherence to a certain way of life within a certain period or lifelong learning, requires some routine feeding, etc.

Limitations that may be imposed on these rights are laid down in para 3 of art. 18. This article describes the limitations for only two rights: the right to freedom of religion and freedom of expression. In para 1 of this article the right to freedom of opinion is not mentioned. Difference of opinion on religion that beliefs can be both non-sectarian nature. Restriction of these rights can only be set when this is due to the requirements of public safety, order, health, morals or the rights and freedoms of others.

Under the public security is, above all, national security in case of external or internal political or military threat¹⁶. Order implies the tranquility of others (in the case of, for example, prayer, worship, etc.) in case of epidemics, for example, a State may also impose legitimate restrictions of this right (compulsory vaccination)¹⁷.

As shown above, the right to conscientious objection to military service is not secured in any of the above-mentioned international legal instruments. Art. 8 of the ICCPR securing a ban on forced or compulsory labour further explained that, among other things, this term does not mean "any service of a military character and, in countries where conscientious objection is recognized conscientious objection is

¹³ Facilitation Freedom of Religion or Belief: A Deskbook/ Tore Lindholm, eds. – Koninkrijke Brill. NV. – 2004.

¹⁴ The Oxford Russian Dictionary, 3rd ed. - Oxford, New York etc.: Oxford University Press, 2000.

¹⁵ Azarov A.. Russian-English Dictionary of Religious Vocabulary. -M., 2002.

¹⁶ Facilitation Freedom of Religion or Belief: A Deskbook/ Tore Lindholm, eds. – Koninkrijke Brill. NV. – 2004.

¹⁷ Ibid.

recognized, any service provided by law of conscientious objectors". This is the only mention in the ICCPR of the law.

Raises the question of the definition of that right. Article 8 of the ICCPR speaks of "conscientious objection". In English there is no single term for the translation of the English term "conscientious objection to military service" or French "objection de conscience". If English can be translated as "renunciation to conscientious"¹⁸ and as "conscientious objection to military service, citing his beliefs"¹⁹; in French the term translated as "renunciation of military service for conscientious objection"²⁰. Apparently, it is the French translation of the term found in article 8 of the ICCPR. In our view, this term is not entirely successful, as it includes three motive-the reasons for refusal of military service: political, religious and ethical reasons. It is not clear from this notion, for political reasons may have failed to perform military service. Often people refuse to perform military service because of pacifist views, but, in our view, such beliefs are rather convictions of conscience, on the definition of objections, which was given earlier. Therefore, it seems appropriate to use the term "conscientious objection", not specified in the actual notion of refusal reasons.

Thus, the right to conscientious objection to military service is reflected in the main international instruments, although this right is not explicitly in their provisions, it is a component of the right to freedom of thought, conscience and religion.

1.2. Individual communications to the Human Rights Committee on the question of conscientious objection to military service

For a more thorough analysis of the issue of conscientious objection to military service should refer to the jurisprudence of the United Nations Human Rights Committee (HRC).

The HRC considered the following deeds (are subject to time the judgment):

- Paavo Muhonen v Finland. Communication No. 89/1981²¹;
- L.T.K v Finland. Communication No. 185/1984 [35]²²;
- Aapo Jarvinen v Finland. Communication No. 259/1988²³;
- Henricus Antonius Godefriedus Maria Brinkhof v the Netherlands. Communication No. 402/1990²⁴;
- Dr. J.P. v Canada. Communication No. 446/1991²⁵;
- Westerman v the Netherlands. Communication No. 682/1996²⁶;
- Foin v France. Communication No. 666/1995²⁷;
- Maille v France. Communication No. 689/1996²⁸;
- Nicolas & Venier v France. Communication Nos. 690/1996 and 691/1996²⁹;
- Yeo-Myung and Yoon Bum-Jin Choi v the Republic of Korea. Communication Nos. 1321/2004 and 1322/2004³⁰.

¹⁸ Andrianov, S. Anglo-Russian law dictionary/S.n. Andrianov, S. Berson, etc. -M., 2003.

¹⁹ The Oxford Russian Dictionary, 3rd ed. - Oxford, New York etc.: Oxford University Press, 2000.

²⁰ Matchkovsky G. Franco-Russian law dictionary. -M., 2004.

²¹ Muhonen v. Finland, Comm. No. 89/1981. U.N. Doc. A/40/40.

²² L.T.K. v. Finland, Comm. No. 185/1984. U.N. Doc. A/40/40.

²³ Aapo Jarvinen v. Finland, Comm. No. 295/1988. U.N. Doc. A/45/40.

²⁴ Brinkhof v. The Netherlands, Comm. No. 402/1990. U.N. Doc. CCPR/C/48/D/402/1990.

²⁵ J.P. v. Canada, Comm. No. 446/1991. U.N. Doc. A/47/40.

²⁶ Westerman v. The Netherlands, Comm. No. 628/1996. U.N. Doc. A/55/40.

²⁷ Foin v. France, Comm. No. 666/1995. U.N. Doc. A/55/40.

²⁸ Maille v. France, Comm. No. 689/1996. U.N. Doc. A/55/40.

²⁹ Venier&Nicolas v. France, Comm. Nos. 690/1996 & 691/1996. U.N. Doc. No. A/55/40.

³⁰ Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea, Comm. Nos. 1321/2004 and 1322/2004. U.N. Doc. CCPR/C/88/D/1321-1322/2004.

The authors of all these reports referred to the violation of article 18 of the International Covenant, recognizing the objectors from military service for reasons of conscience.

The first message, in which the applicant was referring to a violation of article 18 of the International Covenant, was the communication of Paavo Muhonen v Finland. It is particularly meaningful. In its consideration of the question, since the HRC for the first time in practice recognized the right to conscientious objection to military service.

The applicant was a citizen of Finland, who refused to perform military service due to the contradiction of the very nature of military service, his beliefs. Due to the fact that the claimant was unable to appear in person at the designated authority, which shall decide on the possibility of refusing military service, it was not recognized as a person who refuses to perform military service, and he was sentenced to imprisonment. Having studied the circumstances of the case, the Commission acknowledged that the right to refuse military service on grounds of conscience is not recognized for a citizen automatically, and is authorized by the competent authority whose task is to study the reasons for such denial.

In 1984 he received a new communication L.T.K. v Finland, in which the Commission recognized the right to conscientious objection to military service. The plot is that a citizen of Finland refused to perform military service because of his ethical convictions that prevent the passage of military service. The Finnish authorities did not grant him the opportunity to perform non-military service or alternative service. Furthermore, Mr. Muhonen was the beginning of the trial, after which he was sentenced to imprisonment for refusal to perform military service. The author claimed that the Finnish State has violated articles 18 and 19 of the International Covenant.

The HRC following its consideration of the communication, it had declared that the International Covenant does not provide for the right to conscientious objection to military service.

Four years later, the HRC was a new message from Mr. Järvinen. His complaint raised two important aspects: firstly, the Finnish authorities did not want to recognize the validity of the beliefs that are contrary to the nature of military service; Secondly, he complained about the discriminatory nature of the length of alternative service. With regard to the first issue of the HRC had referred to article 26 of the International Covenant, which prohibits any discrimination, among other signs on to religion, political or other beliefs. The HRC recognized that bodies responsible for taking decisions on the part of the citizens' opinion, make it quite hard, due to the lack of mechanisms to verify their truthfulness³¹. In relation to the length of alternative service the HRC recognized its fairness and objectivity, what is more, the absence of the discriminatory nature of the increase term of alternative service³².

By the time the communication of Henricus Antonius Godefriedus Maria Brinkhof v the Netherlands, HRC has adopted general comment No. 22, in which it requested during the consideration of the communication³³. The authors of the communication have argued that recognition of the right to conscientious objection to military service for some categories of citizens, and disregard for others. Thus, under the law of the Netherlands (as it is known, such a rule is and in other States) Jehovah's witnesses have been automatically recognized objectors from military service for reasons of conscience. The HRC recognized the inadmissibility of such practices. The HRC had called on States to establish equal opportunities for citizens, regardless of the

³¹ Takemura H., International Human Right to Conscientious Objection to Military Service and Individual Duties to Disobey Manifestly Illegal Orders.

³² Ibid.

³³ General comment No. 22//Official website of the Office of the High Commissioner for human rights [Electronic resource]. -2011. - Available at:-http://www2.ohchr.org/english/bodies/icm-mc/docs/8th/HRI.GEN.1.Rev9_ru.pdf- Date of access: 16.04.2011.

nature of their beliefs, and decided that the existence of such a provision (automatic exemption from military service for adherents of the sect of Jehovah's witnesses) in the Dutch law violates article 18 of the International Covenant.

Communication of Dr. J.P. v Canada referred to is not the recognition of the right to conscientious objection to military service, and the validity of the payment of tax payments to the military, who does not recognize military service on grounds of conscientious objection. The author of the communication was a woman who was a member of the Quaker sect, followers of Protestant religious currents, preaching pacifism and charity. The HRC recognized her complaint inadmissible, because the matter is not in the plane of the article 18 of the International Covenant.

The following communication of Westerman v the Netherlands – affect the question of inadmissibility of criminal prosecution for refusal to perform military service. Mr. Westermann, a Dutch national, refused to perform military service on grounds of conscience, in which he was refused, moreover, he was accused of committing a criminal offence. The Committee recognized that the right to freedom of opinion does not mean the rejection of all the law imposes obligations and does not constitute any immunity from criminal liability in cases of non-performance of obligations. HRC, investigating all the circumstances of the case, not a violation of article 18, however, the members of the Commission: Mr. Bhagwati, Mr. Henkin, Mrs. Quiroga, Mr. Pocar and Mr. Scheinin voiced their opinion (dissenting), that conscience is a legitimate form of refusal to perform military service if these beliefs demonstrate the intangible reasons for refusal to perform military service due to the use of violent methods that can be used during service.

The next communication was on Foin v France case, Maille v France and Nicolas and Venier v France should be merged into a single group, as the respondent State on them has one State – France. The authors have referred to the violation of article 26 of the International Covenant, because French law requires twice the period of alternative service, rather than to the military. This matter has already been examined by the HRC to Aapo Jarvinen v. Finland in 1988, HRC once again pointed out that the difference in timing of alternative and military service is allowed on grounds of reasonableness and fairness. Dissenting members of the HRC, Mr. Ando, Mr. Klein and Mr. Kretzmer's proposal confirmed the view of HRC, pointing out that the difference in the length of alternative service and military might, due to various conditions of these services³⁴.

The last time the issue of recognition of the right to conscientious objection to military service in 2004, HRC considered. in respect of communication of Yeo-Myung and Yoon Bum-Jin Choi v the Republic of Korea. Due to the fact that in South Korea was the Institute of military service, two Korean Jehovah Witness' have individual communications to the HRC, accusing South Korea of violating article 18 (1) of the International Covenant. The HRC delivered a judgment that is not found in the message is a violation of the right to freedom of conscience and religion. The case was handed down two individual opinions. The representative of Argentina Hipólito Solari Yrigoyen agreed that tried, sentenced and imprisoned for refusing to perform military service is inappropriate and violates the right to freedom of religious belief, in accordance with paragraph 1 of article 18. Dissenting opinion revealed its progressive realization of this right.

³⁴ Marie-France Major, 'Conscientious Objection to Military Service: The European Commission on Human Rights and the Human Rights Committee', California Western International Law Journal, Vol.32, No.1.

Thus, examining the circumstances of all 10 messages, which were considered in the Commission on this issue, the following conclusions can be drawn:

- The HRC recognized the possibility of a longer period of alternative civilian service, rather than military, on the grounds of "reasonable and objective circumstances", i.e., due to various conditions of alternative service and military.
- The HRC found that the possibility of refusing military service should be available to all citizens, that is, not be discriminatory. Furthermore, no one may be privileged citizens who belong to a specific religion, adhering to any particular belief, compared to others.
- The HRC recognized that this right is inherent, albeit subject to limitations as to ensure national security, public order, health, morality.
- The HRC found that the payment of taxes on military expenditures was beyond the plane of the right to freedom of thought, conscience and religion.

1.3. General comment No. 22 on article 18 of the International Covenant on Civil and Political Rights

Under article 40 of the International Covenant on Civil and political rights, one of the functions of the Human Rights Committee was the adoption of the so-called general comments. The purpose of the General comments-to encourage further implementation of the International Covenant, the improvement of reporting procedures, the promotion and protection of human rights³⁵. Furthermore, as stated in the introduction to the General comments, the goal is to "teach all States parties, with such knowledge, in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; propose measures to improve the reporting procedure and to stimulate the activities of these States and international organizations in the promotion and protection of human rights"³⁶.

General comment on article 18 of the International Covenant was adopted July 20, 1993 at the forty-eighth session of the Human Rights Committee. They include 11 articles and contribute to better understanding and implementation of article 18 of the International Covenant.

The paper noted that freedom of thought and freedom of conscience are protected equally with freedom of religion and belief. These rights are inalienable and cannot be restricted even during a State of emergency. Right enshrined in art. 18 of the Covenant must be implemented without any discrimination or limitation based on religion and belief.

From these provisions it can be concluded that the right to conscientious objection to military service should be granted to all, irrespective of their commitment to the community, a sect, a religious group, i.e. If at the national level, a rule which

³⁵ Marie-France Major, 'Conscientious Objection to Military Service: The European Commission on Human Rights and the Human Rights Committee', California Western International Law Journal, Vol.32, No.1.

³⁶ General comment No. 22//Official website of the Office of the High Commissioner for human rights [Electronic resource]. -2011. - Available at:-http://www2.ohchr.org/english/bodies/icmc/docs/8th/HRI.GEN.1.Rev9_ru.pdf- Date of access: 16.04.2011.

would grant the right of adherents of any particular religious groups, but he on others, it would violate the provisions of the International Covenant.

Para. 3 Comments pointed out the illegality of forced disclosure of thought and its commitment to a religion or belief. This means that a person who refuses to perform military service for reasons of conscience is not obliged to give the reasons why. Moreover, national legislation should be consolidating the rule that when applying for military service had a duty to reveal their beliefs and commitment to religion. It would also violate the norms of international law.

Para. 4 Comments reveals the wording enshrined in article 18 of the International Covenant ", either alone or in community with others and in public or private, to manifest one's religion. Thus, the term "worship" includes rituals and ceremonies, in which faith manifests itself directly, as well as various inherent in them, including the building of places of worship, the use of ritual formulae and objects, the display of symbols and observance of holidays and days of rest. Observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of a particular religion or belief shall include such activities, is closely related to the religious groups of their basic Affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications"³⁷.

It should be noted that not only persons who refer to their religious views and beliefs are protected by article 18, this right also applies to persons holding atheistic beliefs, which was enshrined in section 5 comments. Better embodiment in national legislation on criminal liability for persons who refuse to perform military service for reasons of conscience, or the use of physical force to such individuals is inappropriate and violates the commitments made by States parties upon ratification of the International Covenant.

In the limits section 8 Comments set forth the following: restrictions are not allowed not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, in particular for reasons of State security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they, and be proportionate. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner³⁸.

A distinctive feature of the Comments is that the right to conscientious objection to military service they display from article 28 of the International Covenant, not of article 18, arguing that "the obligation to use lethal force may be in serious conflict with the freedom of conscience and the right to manifest one's religion or belief"³⁹. Furthermore, again emphasized the inadmissibility of discrimination against conscientious objectors on conscience "on the basis of the nature of their particular beliefs, just as there should be no discrimination against conscientious objectors because they have failed to perform military service"⁴⁰.

³⁷ Klibanov, A. Religious sectarianism and modernity – Moscow, Nauka, 1969.

³⁸ General comment No. 22//Official website of the Office of the High Commissioner for human rights [Electronic resource]. -2011. - Available at:-http://www2.ohchr.org/english/bodies/icm-mc/docs/8th/HRI.GEN.1.Rev9_ru.pdf- Date of access: 16.04.2011.

³⁹ Ibid..

⁴⁰ Ibid.

Thus, the document recognizes the right of conscientious objection to military service, encourages States parties to provide country - specific reports on the subject.

1.4. Resolutions of the UN Commission on human rights on the question of conscientious objection to military service

Within the framework of the UN Commission on human rights from 1993 till 2004 adopted the following Resolution on the matter:

1. Resolution 1989/59 of March 8, 1989⁴¹;
2. Resolution 1993/84 in 1993⁴²;
3. Resolution 1993/83 of March 8, 1995⁴³;
4. Resolution 1998/77 on April 22, 1998⁴⁴;
5. Resolution 2000/34 of April 20, 2000⁴⁵;
6. Resolution 2002/45 from April 23, 2002⁴⁶;
7. Resolution 2004/35, adopted in 2004⁴⁷.

For the first time, the right to conscientious objection was recognized By HRC in 1989, which recognized the right to conscientious objection as a legitimate exercise of the right to freedom of thought, conscience and religion ". Since 1989, had so far been 7 resolutions one after another confirmed the existence of the rights under art. 18 of the International Covenant and urged States to take measures to implement the resolutions.

Resolution of 1993 highlighted that "the right to conscientious objection to military service derives from principles and reasons of morality, including profound convictions which are based on religious, ethical or other similar reasons. Moreover, the resolution stressed that this right is "a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of human rights and in the International Covenant".

HRC in March 10, 1993, adopted resolution 1993/84, which drew the attention of States to the conscription system, as well as recommendations for various forms of alternative service which are compatible with the right of refusing military service for conscientious objection. It was stressed that various forms of alternative service should a non-combatant or civilian character, include public interest and not be inherently a form of punishment⁴⁸.

Resolution 1995, reiterated the provisions embodied in previous Resolutions, adding that "persons who are in military service should not be deprived of the right to conscientious objection to military service" and calling upon States "if they have not done so to adopt the legislative and other measures aimed at exemption from military service due to the failure of the bearing of arms for political or religious-ethical beliefs"⁴⁹.

⁴¹ UN Commission on Human Rights. U.N. Doc E/CN.4/Res/1989/59.

⁴² UN Commission on Human Rights. U.N. Doc E/CN.4/Res/1993/84.

⁴³ U.N. Commission on Human Rights. UN Doc E/CN.4/ 1995/176.

⁴⁴ UN Commission on Human Rights. U.N. Doc E/CN.4/Res/1998/77.

⁴⁵ UN Commission on Human Rights. U.N. Doc E/CN.4/Res/2000/34.

⁴⁶ UN ECOSOC. U.N. Doc E UN ECOSOC Res 2002/45.

⁴⁷ UN Commission on Human Rights. U.N. Doc E/CN.4/Res/2000/34.

⁴⁸ Report of the High Commissioner for human rights AGAINST of conscientious objection to military service. , U.N. Doc. A/HRC/9/24.

⁴⁹ Ibid.

A distinctive feature of the 1998 Resolution, was focusing particular attention on the issue of non-military nature of alternative service, in addition, it should be public and inherently not be punitive. Due to the fact that at the time of adoption of the resolution had been handed down decisions on individual communications, the HRC document called States to review domestic criminal legislation, since in some States provided for criminal liability for refusing to perform military service.

1.5. Reports of the Office of the High Commissioner for human rights

The Office of the High Commissioner for human rights, in its report in March 2002, noted the trend in the implementation of the right to conscientious objection to military service at the national level. First, alternative military service provided for the legislation of many States. Secondly, in many States the case for recognition of the right to conscientious objection to military service are considered during the oral proceedings to determine the validity of the complaint. Thirdly, most non-governmental organizations referred to the fact that the right to conscientious objection recognized international human rights monitoring bodies as deriving from the fundamental rights of freedom of religion and conscience⁵⁰.

The report of the High Commissioner for human rights for 2004, "civil and political rights, including the question of conscientious objection to military service", it was noted that "conscientious objection to military service in the context of international law shows that this right is based on the existing rules in the field of human rights, guaranteeing freedom of conscience and religion". In addition, the report represented the analysis of best practices of States with regard to the law, namely, paid particular attention to the following aspects:

- accept a request from the objector from military service without further examination;
- process of adoption of the decision must be independent, impartial and non-discriminatory;
- conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or other reasons;
- this right must be available before and during military service;
- various forms of alternative service should be compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature;
- to those who refuse to perform military service are not subjected to repeated punishment for failure to perform military service;
- not be permitted discrimination against conscientious objectors in relation to conditions of service, or any economic, social, cultural, civil or political rights;
- to grant asylum to persons objecting to military service on conscientious, who are forced to leave their country of origin because they fear persecution owing to their refusal to perform military service;
- all persons affected by military service should be provided with information on the right to refuse military service on grounds of conscience and the means of acquiring the status of person refusing military service on grounds of conscience⁵¹.

⁵⁰ Ibid.

⁵¹ Civil and political rights, including the question of objection to military service on grounds of conscience. U.N. doc. E/CN. 4/2004/55.

Considering the analytical report of the Office of the High Commissioner for human rights on best practices in relation to conscientious objection to military service at the sixty-second session of the Commission on human rights identified the main issues dealt with by the law⁵²:

- recognition of the right to conscientious objection to military service;
- the grounds on which it may be granted exemption from military service on grounds of conscience;
- the process for obtaining such exemption;
- the provision;
- duration;
- conditions of alternative service;
- the rights of those who refused substitute service;
- whether alternative service the same rights and social benefits as military service;
- What is the length and conditions of alternative service and can be repeated punishment for failure to perform military service⁵³.

The Office of the High Commissioner listed the main criteria on which military service could be replaced by alternative:

- physical unfitness;
- family circumstances (for example, only son, taking care of elderly parents, the only person in the family);
- military service by other members of the family;
- child victims of human rights violations;
- release time study or release for those who had achieved some success in education;
- the official work in religious organizations;
- belonging to some categories of workers;
- citizens residing abroad;
- persons convicted of immoral crimes deeply;
- naturalized citizens⁵⁴.

The report called on States that had not recognized the right of conscientious objection to military service, to recognize this right and ensure its implementation. And in the States did not recognize such a right, or where it does not fully conform to international standards and to call for the lifting of the deadlines for the submission of complaints by persons wishing to acquire the status of objector from military service on grounds of conscience, to facilitate access to information on the issues and make it more understandable, to create such conditions under which military service on grounds of conscience would not be restricted to only persons of certain religions and to ensure that the right to conscientious objection had and representatives of other religions, as well as supporters of beliefs, unrelated to religion. Moreover, the report called on to provide the opportunity for such citizens of unarmed service and alternative civilian service; In

⁵² Ibid.

⁵³ General comment No. 22//Official website of the Office of the High Commissioner for human rights [Electronic resource]. -2011. - Available at:-http://www2.ohchr.org/english/bodies/icm-mc/docs/8th/HRI.GEN.1.Rev9_ru.pdf- Date of access: 16.04.2011.

⁵⁴ Analytical report of the Office of the High Commissioner for human rights on best practices in relation to conscientious objection to military service. U.N. doc. E/CN. 4/2006/51.

addition, States should take measures to ensure that no alternative service was the nature of punishment⁵⁵.

During its consideration of the annual report of the UN High Commissioner for human rights on conscientious objection to military service in 2008, was accentuated by the judgement of the HRC for individual communication of citizens against the Republic of Korea last judgement of the European Court of human rights in the case of Ülke vs. Turkey, made a brief country profile. The Office of the High Commissioner for human rights asserted that will continue to deal with this issue, with the aim to "provide States, intergovernmental and non-governmental organizations, human rights advisers, lawyers and academics guidance in the area of applicable law and practice in this area"⁵⁶.

Thus, the reports of the High Commissioner for human rights, not only reaffirm that the right to conscientious objection to military service is an implementation of the right to freedom of thought, conscience and religion, but also outline the border of such a law. For example, the procedure for recognition of conscientious objection, conditions and place of the performance of alternative service, the possible reasons for refusal of military service, etc.

⁵⁵ Ibid.

⁵⁶ Report of the High Commissioner for human rights AGAINST of conscientious objection to military service. , U.N. Doc. A/HRC/9/24.

CHAPTER 2. INTERNATIONAL LEGAL REGULATION OF THE RIGHT TO ALTERNATIVE SERVICE AT THE REGIONAL LEVEL (THE COUNCIL OF EUROPE)

Today the right to conscientious objection can be best dealt with in the framework of the European system of human rights protection. This is most widely developed in the case law of the European Court of human rights. In Europe, the main challenge for the promotion and protection of human rights and fundamental freedoms for the Council of Europe, the aim of which is the adoption and development of the institutions of democracy, human rights and the rule of law across Europe. Within this international intergovernmental political organization in 1950, was adopted by the European Convention for the protection of human rights and fundamental freedoms (ECHR). This international instrument has developed an international mechanism for the protection of human rights, which includes the European Court of human rights (hereinafter - ECTHR).

Under the ECHR, which came into force in 1953, States parties shall guarantee the basic civil and political rights inherent in the rule of law, not only to its citizens, but also to all persons "within their jurisdiction". It should be noted that the ECHR does not need to be an integral part of the national legal systems.

The Republic of Belarus is not a member of the Council of Europe and the ECHR. However, the existing case law that emerged, the ECHR and the official position of the Court with respect to the individual provisions of the Convention, guaranteeing the freedom of thought, conscience and religion, is of fundamental importance to our country. Study European experience will in future develop and adopt legislation on alternative service.

2.1. Documents of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe on the issue of conscientious objection to military service

The principal deliberative organ of the Council of Europe's Parliamentary Assembly (PACE), which was composed of delegates from the parliaments of all the Member States. Within the framework of its mandate, the Assembly issues recommendations addressing them to the Committee of Ministers. These recommendations are not binding. Implementation of the recommendations are in the competence of the Committee of Ministers. In addition, PACE is authorized to pass resolutions and decisions which are in the competence of the PACE, or the views of the Assembly may speak on any question. As the resolution of the Parliamentary Assembly's recommendations are not binding.

Within the framework of the Parliamentary Assembly adopted the following documents on the right to conscientious objection to military service:

1. Resolution 337 (1967) On the Right of Conscientious Objection⁵⁷;

⁵⁷ Council of Europe (2012) 'Resolution 337 (1967) on the right of conscience objection', available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta67/ERES337.htm>, accessed 28 April 2012.

Recommendations of the Parliamentary Assembly on non-military service;

1. Recommendation 478 (1967) On the Right of Conscientious Objection⁵⁸;
2. Recommendation No. 816 (1977) On the Right of Conscientious Objection to Military Service⁵⁹;
3. Recommendation No. 1518 (2001), Exercise of the right of conscientious objection to military service in Council of Europe member states⁶⁰.

It should be noted that PACE has adopted numerous measures to recognize the right to conscientious objection on grounds of religious or other beliefs. Thus, the PACE adopted its first resolution and recommendations on the right to refuse military service in 1967, the PACE resolution 337 clearly determined that the question of human rights is one of the main "conscripts are based on motives of conscience or profound conviction of religious, ethical, moral, humanitarian, philosophical or similar nature, refuse to serve in the armed forces shall have the personal right to be exempted from the obligation to perform such service. Particular attention should be paid to the justification of the refusal, as philosophical convictions because the resolutions and recommendations of other European and international institutions tend to list only the religious, moral, ethical and humanitarian "motivation as an example framework for informed denial. PACE, in the same resolution, clearly indicates that the right to deliberate refusal to perform military service should be understood as a logical continuation of the fundamental rights of individuals embodied in article 9 of the ECHR in the framework of the rule of law in democratic States of the Council of Europe.

According to the lawyer H. Takemura, offering to include this right in the content of the Convention or as a separate recommendation to Governments, PACE had a pretty ambitious goal to ensure, among other things, changes in the national legislation of different countries (which must be consistent with the principles set out in recommendation 1967 (Recommendation 816 on the right to deliberate refusal to perform military service) thus, the PACE recommended that the Committee of Ministers "to instruct the Commission of human rights experts to formulate proposals for implementation of the principles set the PACE resolution 337, through a Convention or a recommendation to Governments so as to ensure that the right to a conscious refusal could be closely incorporated into the legal system of all Member States of the Council of Europe "⁶¹. the Committee of Ministers of the Council of Europe's steering and decision-making body. It submitted to the Ministers for Foreign Affairs of all Member States or their permanent diplomatic representatives in Strasbourg. The Committee of Ministers is both a governmental body which are discussed on the basis of national approaches to European society, and a collective forum where in joint debate are pan-European approaches to their solution.

⁵⁸ War Resisters' International (2012) 'Recommendation 478 (1967) on the right of conscientious objection', available at: <http://wri-irg.org/node/10694>, accessed 28 April 2012.

⁵⁹ Council of Europe (2012) 'Recommendation No. 816 (1977) On the Right of Conscientious Objection to Military Service', available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta77/EREC816.htm>, accessed 28 April 2012.

⁶⁰ Council of Europe (2012) 'Recommendation No. 1518 (2001), Exercise of the right of conscientious objection to military service in Council of Europe member states', available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta01/EREC1518.htm>. – Date of access: – 28.04.2012.

⁶¹ Takemura H. (2009) *International Human Right to Conscientious Objection to Military Service and Individual Duties to Disobey Manifestly Illegal Orders*, Berlin: Springer.

Article 15 (b) of the Statute of the Council of Europe⁶² confers power to make recommendations to the Committee of Ministers to Member States on those issues on which it adopted a common position. According to article 20 of the Charter, to make recommendations, you must:

- the unanimous vote of all representatives participating in the voting;
- a majority of the representatives entitled to participate in the work of the Committee. However, at a meeting of the 519 (November 1994), the permanent representatives have decided to make the voting process more flexible and have entered into a "gentleman's agreement", under which no delegation would not require the application of the rule of unanimity in adopting recommendations. Recommendations are not binding on member countries.

The Committee of Ministers adopted the following recommendation concerning the deliberate refusal of military service - Recommendation No. R (87) from April 9, 1987 regarding conscientious objection to compulsory military service⁶³.

The Committee of Ministers refused to act in accordance with the recommendations of pace. H. Takemura argues that some Member States already solved the problem of conscientious refusal of military service within the framework of national legislation, moreover, some Member States of the Council of Europe, for various reasons, were unable to force a change in legislation and, finally, some of the States of the Council of Europe, which supported the idea contained in recommendation No. 478, quite sceptical, it is possible to reach thanks to the work of the Council of European international arrangement on a conscious rejection of services.

According to the lawyer of the Lippmann, a number of Member States of the Council of Europe have expressed doubt that the work of the Council of Europe could lead to the creation of an international agreement on the conscious rejection of military service⁶⁴.

Despite this omission of the Committee of Ministers, the Parliamentary Assembly adopted in 1977, a recommendation which is much closer to the recommendation of 1967, in the annex to the Recommendation is taken almost verbatim from are the principles contained in Resolution 377. Note, however, that between the recommendations of 1967 and 1977, there are marked differences. The last separate emphasis is placed on the Governments of Member States of the Council of Europe who has not introduced a conscious rejection of military service in the national legislation. Recommendation later calls on these Governments to bring national legislation into line with the principles adopted in resolution 1967 g. Recommendation 816 dated 1977, also suggested that the Committee of Ministers to supplement the ECHR right to deliberate refusal to perform military service. However, this time the PACE Recommendation was not followed by any action on the part of Ministers: by the time they had not yet been able to work on this recommendation, on the basis of the same reasons that they were inactive in the event the recommendation of 478 1967.

⁶² Council of Europe (2012) 'Charter of the Council of Europe', available at: <http://conventions.coe.int/Treaty/rus/Treaties/Html/001.htm>, accessed 21 April 2011.

⁶³ Council of Europe (2012) 'Charter of the Council of Europe', available at: [http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-dev-fa_docs/CM_Rec\(87\)08.en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-dev-fa_docs/CM_Rec(87)08.en.pdf), accessed 28 April 2012..

⁶⁴ Damarad, V., Kavaliyeva, E., Pashkevich, M., Tankacheva, E. (2010) *Alternative Civilian Service. Standards and Approaches to Reform: A Collection of Articles and Documents*: Mensk: Monolitera.

In 1987, the Committee of Ministers made the first steps towards the recognition of the right to conscientious objection to military service in 1987, Recommendation R (87) 8. Although the Recommendations do not contain explicit provisions on the need to protect the right to conscientious objection to military service as an international human rights within the framework of European law, it expressed the wish that "the right to deliberate refusal to perform compulsory military service has been recognized in all Member States of the Council of Europe and regulated on the basis of uniform principles. In the text of the recommendation States that "any subject to conscription for military service of the man who for reasons of profound convictions of conscience refuses to participate in actions involving the use of weapons, should have the right to be released from the obligation to perform such service. In 1987, also urging that "...the Governments of the Member States-because they have not yet done so to align their national legislation and legal practice into line ... " the most important principle.

Despite the actual likeness of the provisions of resolution 337 of 1967 (adopted by the Consultative Assembly of the Council of Europe) and Recommendation R (87) 8 of 1987 (adopted by the Committee of Ministers of the Council of Europe), there are some key differences in the principles relating to the right to deliberate refusal to perform military service. The first difference is that in Recommendation R (87) 8 recognition of the right to deliberate refusal to perform military service is based solely on "compelling reasons of conscience", any clarification or specific examples of reasons for refusal of conscious.

The second difference is that in Recommendation R (87) 8 (unlike Resolution 337 from 1967, and recommendations from 816 1977) does not give a clear opinion that the right to deliberate refusal to perform military service originates from the fundamental human rights enshrined in article 9 of the ECHR, namely, of the right to freedom of thought, conscience and religion.

Despite this Recommendation R87 8 is progressive leadership in terms of alternative service. First, is that alternative service "is in favour of civil and public interest", despite the fact that there is a provision allowing States to "in addition to the civil service to provide those" whose opposition is no weapons ", an opportunity to perform military service without arms in their hands. Secondly, at its core, "alternative service must not be of a punitive nature".

The importance of the introduction of possible alternative civil service for those who refuse military service, as is evident from the recommendation R (87) 8, the European Committee of social rights by the introduction of alternative civilian service in Greece as meaningful progress in Recommendation R (87) 8 of The Quaker Council for European Affairs (QCEA) against Greece.

The next important step was the Council of Europe is associated with the crisis in the former Yugoslavia in the mid-1990 's. The number of men who fled the former Yugoslavia because it refused to participate in a armed clashes, at least 100000 people. Many of them were arrested, persecuted, condemned and deprived of their liberty for their refusal to perform military service, while others have fled the country or been displaced within the country for fear of cruel punishments. Having heard the report of the Rapporteur of the Parliamentary Assembly in June 1994, the Parliamentary Assembly adopted resolution 1042 (1994) about conferring and draft evaders in the army in the former Yugoslavia. In its resolution, the Assembly refers to the recommendations of the 1977, 816. With regard to the right to deliberate refusal to perform military service, which is recognized as a human right. The Assembly regrets that neither Croatia nor the Federal Republic of Yugoslavia does not recognize this right

in practice, that in both countries, men have been severely punished for refusing to participate in military operations, which are recognized by the international community of a serious violation of international law and human rights (particularly "ethnic cleansing"). Rapporteur's report that preceded the Resolution 1042 (1994), has concluded that "renunciation of participation in the fratricidal war, condemned by the international community for serious violations of international humanitarian law in the former Yugoslavia should be considered grounds for granting political asylum" deserters and persons objecting to recruitment in the countries of the former Yugoslavia. The Assembly considered the possibility of establishing the status of objectors and deserters and persons from Amnesty Croatia evaders, as a condition for considering the application by Croatia for accession to the Council of Europe.

Such strong statements and clearly concerted action by European States in support of the objectors from the former Yugoslavia could be viewed with irony, because a majority of the States members of the Council of Europe also includes the North Atlantic Alliance. Millions of leaflets dropped by NATO aircraft in various parts of the Federal Republic of Yugoslavia, certainly influenced the increase in the number of persons who knowingly refusing to face conflict in Kosovo. The allies accused of indifference to disturbing future of objectors and their families. Disadvantages of Recommendation R87 (8) were more or less addressed and corrected in the Recommendation 1518 from 2001, which adopted the Parliamentary Standing Committee on behalf of the Parliamentary Assembly of the Council of Europe May 23, 2001 first, the Assembly noted that "the right to deliberate refusal to perform military service for more than 30 years been a constant concern of the Council of Europe". Secondly, the Assembly considered the right to freedom of thought, conscience and religion is enshrined in the UDHR and the ECHR, as a fundamental aspect of wilful refusal.

Such improvements can be seen from the practice of Member States, as described in part 3: "[a majority] of the Council of Europe have a right to conscientious in their Constitution or legal system. There are only five States of the Council of Europe, in which this right has been recognized. The recommendation stated that the position of those who refuse to perform military service "completely deficient" even in States where a right to conscientious, it was recognized as the overall situation is very different in different States.

The right to deliberate refusal to perform military service was provided through the ECHR, the Commission and the Council of Europe on Legal Affairs and human rights recommended to incorporate it into the ECHR and fundamental freedoms, through the Protocol, which makes editing in clause 3 (b) of article 4 and article 9 of the Convention.

Five of the Council of Europe, who do not have recognized the right to deliberate refusal to perform military service at the time of the adoption of Recommendation 1518, were listed in the report, the Rapporteur of the Commission on Legal Affairs and human rights of those States were May 4, 2001 Albania, Armenia, Azerbaijan, the Former Yugoslav Republic of Macedonia and Turkey⁶⁵.

2.2. The case law of the European Court of human rights on the realization of the right to alternative service

⁶⁵ Takemura H. (2009) *International Human Right to Conscientious Objection to Military Service and Individual Duties to Disobey Manifestly Illegal Orders*, Berlin: Springer.

When designing the ECHR the drafters intended for the purpose of protecting and promoting human rights and fundamental freedoms in Europe towards a collective exercise of certain rights contained in the UDHR. As shown above, the ECHR not only provides for civil and political rights and freedoms, but also established a mechanism to ensure compliance with the commitments undertaken by States parties to the Convention. Monitoring of compliance with obligations assumed by three bodies: the European Commission of human rights (established in 1954), European Court of human rights (established in 1959) and the Council of Europe's Committee of Ministers, comprising the Ministers for Foreign Affairs of the States parties and their representatives.

It should be noted that the case law of the ECHR is a force that causes the ECHR, which constitutes. Thus, Donna Gomien, writes:" the practice of application of the Convention by those two bodies (at the time of the publication of the statements there were two bodies-the European Commission on human rights (hereinafter European Commission) and the European Court of human rights – V.D.) " enriches its content, giving it shape and vitality beyond its scope. Their interpretation of the concepts such as the rule of law and a democratic society, are the backbone of the European system of human rights and provide clear guidance to the States of Central and Eastern Europe who seek to become part of this system"⁶⁶.

Under this head will be considered in detail the case law of the European Commission of human rights and the European Court of human rights.

a) The European Commission of human rights (case law, 1954-October 1999)

It should be noted that a system of monitoring compliance with the ECHR had been altered in connection with the entry into force of Protocol 11 to the Convention in 1998, instead of the two-level control mechanism of the Commission on human rights and the Court was retained by a supervisory body to the ECHR, which led to changes in the structure of the Court and complaints procedures, while preserving the former jurisdiction of the Court. The need for reform of the monitoring mechanism has been motivated by the complexity and duration of a complaints procedure, which could not exceed 9 years. In the new version of the 2nd chapter of the ECHR Court became a permanent body⁶⁷.

So, turning to the jurisprudence of the European Commission, who served until October 31, 1999, H. Takemura with reference to research scientists Decker and Saw in the magazine New York University notes that the Commission was right to conscientious objection is not from the article. 9 ECHR and of article 4.

During his tenure, the Commission considered the following case on the question of conscientious objection to military service:

- Grandrath v the Federal Republic of Germany, Complaint No. 2294/64 from 1966;
- X v. Austria. Complaint No. 5591/72 of 1973;
- X v. the Federal Republic of Germany. Complaint No. 7705/76 of 1977;

⁶⁶ Gomien, D. (1995) *Short Guide to the European Convention of Human Right, Reference Charts*, Strasbourg: Council of Europe.

⁶⁷ Paulava, L. (2005) *Human Rights Law Training Manual*, Minsk: Belarusian State University.

- Seven v Sweden. Complaint No. 8811/79 of 1982;
- N. v Sweden. Complaint No. 10410/83 of 1984;
- A. v Switzerland. Complaint No. 10640/83 of 1984;
- Johansen v Norway. Complaint No. 10600/83 of 1985;
- Arrowsmith v Great Britain. Complaint No. 7050/75 of 1978;
- Autio v Finland. Complaint No. 17086/90 of 1991;
- X. v. Belgium. Complaint No. 24631/94 of 1995;
- Raninen v Finland. Complaint No. 20972/92 of 1996;
- Thlimmenos v Greece. Complaint No. 34369/97 of 1998.

Of paramount importance to the formation of the Institute of alternative service was first introduced in the Commission on human rights and its decision in the case of *Grandrath v the Federal Republic of Germany*. The applicant in this case was a citizen of Germany, who was a member of the Jehovah's witnesses and during the period under review in the present case, the period served as the sect as a teacher the Bible. Like all other members of this sect, he denies not only military, but also any other type of alternative service. The claimant requested that the Regional Commission on alternative service Dusseldorf excused from the performance of alternative service. Test Board for conscientious objectors from military service on grounds of conscience and the District Commission on alternative service Dusseldorf recognized conscientious objector's conscientious but the Minister of labor and social protection rejected the complainant. The complaint to the Minister's decision was rejected by the Administrative Court and the refusal of the applicant to perform alternative service, he was prosecuted. Düsseldorf District Court found the applicant guilty of evasion of the law on alternative civilian service and sentenced him to eight months ' imprisonment. Decision of the Düsseldorf Regional Court appeal was rejected, but the sentence was commuted to six months ' imprisonment. Request for reconsideration was rejected by the Supreme Court of the land. The Federal Constitutional Court dismissed the complaint of the applicant in the decision of the Administrative Court, District Court and provincial court as manifestly ill-founded. In a complaint to the European Commission of human rights, the complainant referred to the violation of art. 9 ECHR, art. 14 of the ECHR and article 4 together and article 9 of the ECHR.

The complainant claimed that his right to freedom of conscience and religion enshrined in article 9 of the ECHR had been violated. He said that freedom of conscience is a fundamental freedom, based on natural law, which must be respected to the extent that it does not violate the rights of others. In addition, the claimant also stated that he was a priest of the sect of Jehovah's witnesses, and this fact is yet another ground for excluding him from service. In his view, the main element of the freedom of religion is the release of the priests of his military and alternative service. The claimant stated that if he was to perform alternative service, you would not be able to perform their religious duties in full (the execution of the function, the Bible teacher visit parishioners, courses of missionary schools).

The Government insisted that the performance by the claimant of their religious duties would not be affected by alternative service. In addition, he had the same opportunities to carry out their religious duties, as it is in any case worked full-time in their everyday life.

The complaint was declared admissible and relevant to all the necessary criteria.

In the opinion of the Commission on human rights, the question of breach of article 9 of the Convention should be addressed from two sides. On the one hand, you have to find

out whether the applicant would have prevented the civil service that he had to perform, to practise their religion. On the other hand, it is necessary to determine whether a violation of art. 9 directly to the fact that the complainant was ordered to perform a service that is contrary to his conscience or religion. Having examined all the circumstances of the case, the Commission concluded that the article 9 of the Convention itself has not been violated. With regard to art. 14 and art. 4 the Commission came to the following conclusion: the problem is, is it possible to recognize the existence of discrimination against the claimant's rights set forth in article 4, namely the right not to be subjected to forced or compulsory labour. The wording of paragraph 3 article. 4 really eliminates the term "forced or compulsory labour" military and alternative civilian service. Consequently, the fact that these categories of services within the scope of art. 4 and that they are governed by this article is controversial. In German law on alternative service provides for the possibility of exemption from compulsory service only for those members of the clergy, whose functions involve prolonged and continuous pursuance of religious duties. But in this case, the Commission concluded that in the present case Article 14 in conjunction with article 4 of the Convention has not been violated.

Thus, in its first decision on the question of alternative service, the Commission on human rights recognized that the civil service can be conscientious objectors are said to conscientious as an alternative to military service and, accordingly, the conviction of conscience does not give you the right to be exempted from such service⁶⁸.

The cases shows that consideration of article 9 of the Convention in the light of conscious rejection of military service, the Commission will interpret the freedom of conscience and religion as not to include the right to be exempted from military service in countries with conscripts. *H. v. Austria*, the Commission clarifies that the phrase "in States that have accepted their" contained in the text of paragraph 3 (b) of the article. 4 of the Convention, said that the issue of recognition of the legitimacy of those who refuse to perform military service, was left to the discretion of the High Contracting Parties. If a person is recognized as lawful a conscientious, high hand takes the decision and for alternative service. Later, in the decision on admissibility *Autio v Finland*, the Commission summarized its own practice as follows: "the right to conscientious, as such, does not guarantee the Church. 9 ECHR or any other provision of the Convention or the protocols thereto ". Such a conclusion was reached on the basis of a number of cases that the Commission considered in this case *X v. Austria* occupied pride of place among them". In turn, according to generalized interpretation of Commission, States are not required by virtue of article 9 of the ECHR to recognize the applicant person consciously objecting to military service.

The Commission therefore found that article 9, clarifying paragraph 3 (b) of article 4 of the Convention, does not impose on the State the obligation to recognize persons who knowingly evading military service, and, therefore, does not provide for special arrangements for the exercise of their right to freedom of conscience and religion, in the light of the issue of mandatory military service.

Returning to the case *Autio v Finland*, the Commission determined that the petitioner's complaint, however, is within the competence of article 9, where a claimant indicates

⁶⁸ Damarad, V., Kavaliyeva, E., Pashkevich, M., Tankacheva, E. (2010) *Alternative Civilian Service. Standards and Approaches to Reform: A Collection of Articles and Documents*: Mensk: Monolitera.

libellous duration of civilian service in lieu of military in the light of the right to freedom of thought, conscience and religion⁶⁹.

The following deserve attention in the work of the Commission on human rights is provided by the case of *Johansen v. Norway*. It is interesting that the complainant, as in the previous case, referring to its pacifist refused to perform both military and civil service. Applicant a citizen of Norway, as a pacifist, opposed to military service, as well as the civil service, since, in his view, the purpose of such a service is to maintain respect for military service. Decision of the Ministry of Justice, the applicant was found to be a person objecting to military service for reasons of conscience, he was released from military service. He was summoned to the Office of the civilian conscripts for the 16-month-old civil service, where he stated that he does not want to bear any kind of service. In accordance with the usual practice, the complainant was released and his case has been referred to the Ministry of justice. Under Norwegian law, there are no other reasons other than medical ones, for exemption from military and civil service. In accordance with art. 20 Of Norway for exemption from military service, persons refusing to perform civilian service can be placed in a special camp or institution under the administration of the prison administration to hold life in the camp or facility.

In his complaint to the European Commission of human rights, the complainant referred to the violation of art. 5, 6, 7, 9 of the ECHR. With regard to art. 5 of the Convention, the complainant claimed that the only possible legal grounds for his detention is paragraph 1 (b) of article 5, which says on the lawful arrest or detention of a person for non-compliance with a judgment of a court or in order to secure the fulfilment of any obligation prescribed by law. With regard to art. 6 of the Convention, the complainant was of the opinion that there has been an unjust trial by an independent and impartial judiciary. He also claimed that in reality is a punishment, and that therefore it should be given a proper sentence and should be given guarantees provided under paragraphs 2 and 3 article. 6 of the ECHR. Complaining on the infringement of art. 7, the applicant argued that the Norwegian law provides for a maximum penalty of imprisonment of up to three months for failure to fulfil obligations under the military service, whereas it must be enclosed in prison for sixteen months. And, finally, the applicant complained that the State make it do exactly what his conscience prevents him from doing, and this is, in his opinion, a breach of art. 9 of the Convention. Taking into account all causes and investigating all the circumstances of the case, the complaint was declared inadmissible⁷⁰.

In the *A v Switzerland* in 1984, the European Commission of human rights found that the Convention does not provide for persons who knowingly refuses to perform military service, the right to exemption from military service, but left the possibility that the decision to grant this right to the discretion of each State party to the Convention. The wording of paragraph 3 (b) of article 4 of the Convention, was the rationale for this interpretation "in States that have accepted them"⁷¹.

In the *Seven v Sweden*, the Commission considered that the application of general law on persons who have certain belief objection is not consistent with these standards does not violate section 1 article 9 ECHR. According to Western lawyers Harris, O'Boyle and Warbrick, the Commission was of the continuity that the refusal to conform to the

⁶⁹ Supra.

⁷⁰ Damarad, V., Kavaliyeva, E., Pashkevich, M., Tankacheva, E. (2010) *Alternative Civilian Service. Standards and Approaches to Reform: A Collection of Articles and Documents*: Mensk: Monolitera.

⁷¹ Ibid.

general norms of the legislation is not an implementation of direct religious practice or appreciation of conscience⁷².

The next case to be considered as part of this work, as the pacifist beliefs. A citizen of Sweden (N v. Sweden) as a journalist, received a summons to perform military service, but being on their convictions a pacifist, he had intended to give it the performance of military service, which advised the Government, having written the appropriate letter to set out all the reasons. The claimant sought to themselves the same concessions as are accorded to members of the religious sect Jehovah's witnesses, namely exemption from military service. The Government has decided not to take any action with respect to the complainant's letter. The complainant was accused of draft evasion and sentenced to 2 months ' imprisonment. Grounds for making such accusations is a claimant, for military service. The decision of the Court of appeal of western Sweden has decided to reduce the sentences of up to 1 month. The complainant appealed to the Supreme Court, but he dismissed the appeal.

The claimant asserted that he was not released from military service because of his personal accusations are non-religious in nature. The complainant complained about a violation of art. 14 ECHR in conjunction with art. 4, 5, 9 and 10. He, as a person refusing military service because of their beliefs, was not released from military service, but was sentenced to imprisonment for evasion of military service, while members of the religious sect Jehovah's witnesses are exempt from military service and unpunished.

The only question you need to answer the Commission: whether an objective and reasonable justification within the Church. 14 Convention difference in Sweden between the applicant and the members of the religious group Jehovah's witnesses with regard to conscription and the consequences of non-compliance with this obligation. The Commission noted that a system of compulsory military service imposes stringent obligations on its citizens. This obligation would be acceptable only if it is based on equal treatment and the release of its implementation is based on solid facts. If some citizens are exempt from military service without valid reasons, the question of discrimination against other citizens.

Limitation of national authorities to release from any kind of service easily explainable and understandable-this is due to the risk of fraud on the part of people wanting to just evade military service, feigning opponents of compulsory service as a whole. The Board noted that the members of the sect of Jehovah's witnesses are a comprehensive set of rules of conduct, which covers many aspects of daily life. Adherence to these rules is strictly controlled by members of the religious community. One of these rules entails renunciation of military or alternative service. Membership in Jehovah is supported by evidence that the refusal of compulsory service is based on genuine religious convictions. However, only certificates without belonging to a religious community with similar characteristics is not sufficient for compulsory service.

On the basis of the foregoing, the Commission considered that membership in the religious sect Jehovah's witnesses is an objective factor for a high degree of probability that the service would not be granted to a person who simply wants to evade service, because it is unlikely that people join the sect only to avoid compulsory military or alternative service. The same high probability not have existed if exemption from service was also provided and the people on his personal opposition to any form of compulsory

⁷² Ibid.

service, or members of different pacifist groups and organizations. This complaint was declared inadmissible by the Commission⁷³.

Last reviewed case in the work of the European Commission on human rights prior to its transformation is that of Thlimmenos against Greece. Although this case did not directly affect the article. 9 ECHR and the right to freedom of thought, conscience and religion, and, for the most part, affect the Church. 14 ECHR would be reviewed in the framework of this chapter.

In this case the applicant is a national of Greece. In his complaint to the ECHR, he claimed that the authorities had refused to appoint him to the post of Auditor (as confirmed by decision of the Executive Board of the Hellenic Institute of Auditors) because he had been convicted in a criminal case for disobedience to wear military uniform explanation of his religious beliefs. He was referring to a violation of section 1 article. 6, art. 9, art. 14 of the ECHR and article 1 of Protocol 1.

With regard to article 9, the complainant claimed that his accusation of rebellion and the subsequent refusal of the authorities to appoint him to the post of Auditor violate his right to freely express their religious beliefs. The Government argued its position that such a waiver was a forced measure necessary in a democratic society. The complainant refused to serve in the armed forces, according to Greek legislation, there is only the possibility of unarmed military service, there is no alternative service, since it could give rise to abuse. As a result, the Commission considered that it did not consider it necessary to consider this issue, due to the fact that the sanction applied to the complainant, was not proportional, and rule prohibiting appoint persons accused of committing serious crimes in certain positions, must be applied without distinction.

In addition, the Commission recognized the claim of a violation of article 1 of the Protocol because it was filed on the expiry of the period provided in the Convention. However, the Commission decided that there had been a violation of section 1 article 6 of the ECHR and article 14 in conjunction with article 9 of the ECHR. The Commission considered that article. 14 apply, because the case falls under art. 9, and in this case, there has been a violation of the rights set forth in art. 14. (a) it is a violation of the right not to be discriminated against in respect of the use, the rights enshrined in the Convention, not only in the event that the State is drawn differently by different individuals in the same circumstances, without providing objective and logical explanation, but also when a State without providing objective and logical reasons appealed to different people in different situations. In the present case, the objective and logical reasons for refusing the consolidating legislation governing access to the profession of Auditor, different treatment of persons convicted for refusal of military service on religious grounds, compared to persons convicted of certain serious crimes, did not exist⁷⁴.

Thus, summarizing the activities of the European Commission of human rights for refusing the conscientious objection to military service, the Commission found no violations of art. 9 of the ECHR, which is linked to the freedom of thought, conscience and religion. Instead, the Commission considered a conscious refusal from the point of view of the Church. 4 of the ECHR. Paragraph 3 (b) of the article. 4 Convention similar to the PM (3) (c) (ii) of the Church. 8 MPGP. As you can see from the above decisions,

⁷³ Damarad, V., Kavaliyeva, E., Pashkevich, M., Tankacheva, E. (2010) *Alternative Civilian Service. Standards and Approaches to Reform: A Collection of Articles and Documents*: Mensk: Monolitera.

⁷⁴ Supra.

the Commission has found the need to consider the right to a conscious refusal in accordance with article 9, taking into account the provisions of paragraph 3 (b) of the article. 4 in countries that have accepted them⁷⁵.

With regard to the violation of art. 14 of the ECHR, the Commission shall determine the importance of a "high degree of probability that the exemption from service shall not be granted to persons who just want to evade service." Nevertheless, the Commission has not determined the point after which the extension become disproportionate, and never found a violation by the Convention because of the alternative service system, which operates in these States. The Commission does not recognize the right of persons to be released from the performance of alternative service in those States where the Institute of alternative service already exists. In addition, the Commission considers that States have the right to imprison those who refuse to perform alternative service, and in the case of repeated refusal, if necessary, to oblige conscripts to fulfil their commitments, as shown by the decision in the case of *Raninen v Finland*⁷⁶.

b) The European Court of Human Rights

According to lawyers Decker and Fresa, the European Court of human rights has trend towards acceptance of non-military service for religious or moral reasons, as a legitimate way to avoid serving in the army⁷⁷. Historical and cultural backgrounds may be justification for some indecisiveness acknowledged the right to conscientious objection to military service, the ECtHR. The Court took a more conservative views than the Human Rights Committee. Unlike the Committee, ECHR does not operate a system of "General comments", which allows the Human Rights Committee to change its position. The ECtHR's position was consistent with the practice of the European Commission, and does not identify any of the progressive attitude towards the right to deliberate refusal to serve in the army.

In the case of *Ulke v. Turkey*, ECHR ruled that Turkey had violated article 3 of the ECHR in respect of its nationals. According to the story, a Turkish citizen Ulke was nine times tried eight times was imprisoned and held a total of 701 days in military prison for refusing to perform military service. Thus, the claimant was drafted into the Turkish army, but refused to undergo military service for the reason that had a strong pacifist beliefs. Court in Ankara handed down the decision to deprive the applicant of freedom for a period of six months. Arriving in the Regiment, he refused to wear a uniform. As a result of a year and a half, the complainant was eight times is guilty of persistent insubordination. In addition to charges for refusing to wear a uniform, twice he was accused of desertion because refused to accede to the location of its parts. In his complaint, the complainant claimed that he had been persecuted for his pacifist beliefs and position a conscious rejection of military service. In the complaint, he referred to the church calendar. 3, 5, 8 and 9 of the ECHR.

Studying the circumstances of the case in the light of article 3 of the ECHR, the Court noted that the facts which led the applicant, practically coincided with those that formed the basis of the complaint and on the remaining articles. The Court accordingly found no need for a separate decision on the complaint on the cent. 5, 8 and 9 of the ECHR. Although the Court determined that compulsory military service is contrary to the provisions of the ECHR, it decided that the repeated prosecution of the applicant, all

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

suffered the punishment, as well as the constant alternation of processes of prosecution and the execution of the penalty in view of the possibility that the applicant may be prosecuted for the rest of their lives, are disproportionate to the aim of ensuring that he undertook military service.

January 24, 2006, the European Court of human rights held unanimously that there had been a violation of article 3 of the ECtHR.

October 17, 2007, the Committee of Ministers of the Council of Europe adopted an interim resolution on the case of Ulke v. Turkey, in which called on Turkish authorities to execute the decision of the European Court of human rights.

It can be concluded that the European Convention for the protection of human rights and fundamental freedoms virtually does not limit a State's discretion in making decisions about individuals consciously refusing military service.

The value of the ESC is large enough, since it plays an important role in the politico-legal guidance for formulating economic and social policies of States parties, as well as providing substantial assistance to the ECHR in decisions on complaints of violations of the right to conscientious objection to military service.

Thus, in the Quaker Council for European Affairs (Quaker Council for European Affairs) v. Greece (complaint No. 8/2000 of 2000) ERT received a collective complaint from those who refuse to perform military service. The Committee decided that the duration of alternative service was out bound to military service and, accordingly, the situation in Greece, conflict with article 2 h. 1 ESC. This position in its consideration of the situation based on the fact that for the time that was the difference in timing of alternative and military service, persons deprived of the right to earn his livelihood by performing work they have chosen of their own free will. Para. 2 art. 1 ESC does not consider a private matter of conscious denial or alternative service, but rather addresses the ways for the effective protection of the right to work and enables to support themselves in voluntarily selected method of employment”.

The practice of CEAS is particularly important, as neither the Human Rights Committee or the European Court of human rights has not considered the issue of alternative service for conscientious objectors, military service, from the point of view of the right to work. The Committee asked the question the duration of alternative service for conscientious objectors, military service, subject to the provisions of para 2, art. 1 ESC and, thus, the interpretation of the provisions of the Charter on distributed areas which traditionally are outside the competence of the economic rights and employment issues. This extends the range of issues and legal areas related to the right to deliberate refusal to perform military service.

The decision on the Group complained later influenced the process of examining the national reports. The practice of the Committee in this regard, the systematic and progressive. Once the Committee's decision on collective complaint starts system study of related issues in the countries of the Charter, the next consideration of reports of the States concerned. After determining that the situation in Greece is contrary to article 2 para. 1 ECR in that period of alternative service in proportion to the duration of military service, the Committee raised the issue in respect of each of the States and concluded

that the situation in Greece was not in accordance with the situation in other States signatories⁷⁸.

⁷⁸ Damarad, V., Kavalieva, E., Pashkevich, M., Tankacheva, E. (2010) *Alternative Civilian Service. Standards and Approaches to Reform: A Collection of Articles and Documents*: Mensk: Monolitera.

Chapter 3. Legal Regulation of Alternative Service in Belarus

*“Thou shalt not kill”
[Ex. 34: 14-26]*

*“Blessed are the peacemakers, gracious, expelled for the truth; Jesus teaches love even
for their enemies”
[The sermon on the mount, Matthew 5: 6-9]*

In accordance with art. 57 of the Constitution of the Republic of Belarus every Belarusian citizen has the right to replace military service with alternative. The conditions and procedure for the substitution of military service, alternative service shall be defined by law. Such a law is currently not. The need for it follows not only the Constitution but also from international commitments, to be followed by the Republic of Belarus after the entry into force of the United Nations.

Substitute military service or alternative civilian service without arms for religious, political, or ethical reasons recognized in many countries. In doing so it provides longer than compulsory military service term. This service is the most labour-intensive and not prestigious works, such as psychiatric hospitals, nursing homes, social care services, the disabled and pensioners, to support positions in fire protection, etc.⁷⁹

The lack of a law on alternative civilian service makes it difficult to realize the right to its passage. However, in accordance with the art. 137 of the Constitution this right is directly and can be implemented and pending the approval of legislation. However, being called commissions show that conscripts for realization of the given law are turned away or accused of a criminal offence evasion of military service. But, due to the fact that such a rejection of call-up boards directly contrary to the norms of the Constitution, it can be challenged in court.

As shown by the jurisprudence of the Court, the latter tend to satisfy such claims, applying directly to the art. 57 of the Constitution, nullifying a judgement of a lower court, which provides for a penalty of imprisonment for refusal to perform military service on art. 435 of the Criminal Code of the Republic of Belarus.

No actual possibility perform alternative service in place of military if for this reason not be grounds for restricting the constitutional rights and freedoms of citizens enshrined in the Constitution of the Republic. Moreover, the right to perform alternative service stems directly from the right to freedom of thought, conscience and religion, as laid down in the Universal Declaration of Human Rights⁸⁰ and in the International Covenant on Civil and Political Rights⁸¹, ratified by our country and which have been implemented in the Belarusian legislation, first of all, the Constitution of the Republic of Belarus.

In this chapter you will learn legal regulation of the right to perform alternative service in our country, will begin with a review of the jurisprudence, are mapped to existing copyright legislation on alternative service and on the basis of the foregoing, will produce recommendations on the elaboration of a draft law on alternative service in our country.

⁷⁹ Kudashkin, A., Fadeev, K. (ads.) (1999) *Federal Law Commentary On Military Duty and Military Service*, Moscow: Sparta.

⁸⁰ Kuznetsova, E. (2009) *Human Rights: International Instruments and Their Implementation*, Mensk: Amalfea. P. 78-82.

⁸¹ Ibid. P. 82-94.

3.1 Constitutional Legal Regulation of the Alternative Civilian Service in Belarus

In accordance with the hierarchy of legal acts (art. 10 of the Law “On Legal Acts of the Republic of Belarus”).⁸² the Constitution of the Republic of Belarus has the Supreme legal force (art. 137 of the Constitution and article 10 of the Law “On Legal Acts of the Republic of Belarus” after the Constitution of the hierarchy followed by laws, decrees and orders of the President, decisions of the Chambers of the Parliament, decrees of the Council of Ministers of the Republic of Belarus, decisions of the plenum of the Supreme Court of the Republic of Belarus and of the higher economic court of the Republic of Belarus, acts of the Prosecutor General of the Republic of Belarus and other acts of State bodies (part 4, art. 10 of the Law “On Legal Acts of the Republic of Belarus”).

Prof. Vasilevich gives the following hierarchy of normative legal acts of the Republic of Belarus:

1. Constitution;
2. Constitutional laws;
3. International treaties of the Republic of Belarus;
4. Laws, decrees, ordinances;
5. Judgments of Chambers of Parliament;
6. Resolutions of The Government;
7. Regulations of the National Bank;
8. Acts of ministries;
9. Acts of local councils of Deputies;
10. Acts of local executive and administrative bodies.⁸³

Prof. Pavlova, based on an analysis of the Constitution offers the hierarchical relationship of regulatory acts:

1. Generally recognized principles of international law;
2. Constitution;
3. Ratified international treaties;
4. Laws, decrees, decrees of the President of the Republic of Belarus, the international obligations deriving from treaties not subject to ratification, and the customary rules of international law;
5. Acts of inter-State entities, to which the Republic of Belarus, subordinate legislation, adopted by the Council of Ministers, the Supreme Court, the higher economic court, the Attorney-General⁸⁴.

From the above hierarchy of legislative acts and art. 8 of the Constitution of the Republic of Belarus, therefore, it can be concluded on the basis of generally recognized principles of international law are of primary importance for the Republic of Belarus. In respect of the subject headed the principle of respect for human rights and fundamental freedoms. This principle has been enshrined in the preamble of the Charter of the United Nations, which calls upon States parties to the United Nations "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person", which was also reflected in article 55 of the Charter, "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex,

⁸² Law on Legal Acts of the Republic of Belarus 2000.

⁸³ Vasilevich, R. (2003) *The Law on Legal Acts of the Republic of Belarus. Commentary*, Mensk: Interpresservis. P. 40.

⁸⁴ Paulava, L. (1999) 'International Law in the Legal System of States', *Belarusian Journal of International Law and International Relations*, 3 (6).

language or religion". Many of the provisions of the Universal Declaration were later transformed into the Constitution of the Republic of Belarus, as well as the provisions of the International Covenant on Civil and political rights. Para. 1 art. 8 of the Constitution stipulates that "the Republic of Belarus recognizes the supremacy of the universally recognized principles of international law and ensures that its legislation". Art. 18 of the Constitution provides that "the Republic of Belarus in its foreign policy on the principles of equality of States, non-use of force or threat of force, the inviolability of borders, peaceful settlement of disputes, non-interference in the internal affairs of States and other universally recognized principles and norms of international law." Art. 2 of the Constitution proclaims that "man and his rights, freedoms and guarantees of their implementation shall be the Supreme value and aim of society and the State. The State is responsible to the citizens for creating conditions for the free and dignified personality development ... ", a arts. 21 ensures that the rights and freedoms of citizens of the Republic of Belarus is the highest goal of the State ... The State guarantees the rights and freedoms of Belarusian citizens, as enshrined in the Constitution, laws and international obligations ".

It should be noted that in addition to the primacy of the Constitution among its most important corporate properties include the fact that it is the core of the legal system. It is the whole system of current legislation, including the local regulations. This norm has direct effect. This means that the Constitution takes precedence in all cases, including the holes in the legislation, i.e. where the development of constitutional provisions was not enacted a law or law is not brought into line with the Constitution.⁸⁵

Also, in accordance with article 57 of the Constitution of the Republic of Belarus: "protection of the Republic of Belarus – the duty and sacred duty of a citizen of the Republic of Belarus. Order of military service, the grounds and conditions for exemption from military service, or the substitution of an alternative are determined by law.

Following after the Constitution in a hierarchical "ladder" are laws. At this point, mention the alternative service are two laws: the Law "On Military Conscription and Military Service"⁸⁶ and the Law on State Fingerprinting Registration "⁸⁷.

Due to the fact that the law on military duty and military service "is the main regulatory legal act regulating the military service, after the Constitution and the decrees of the President he has supreme legal force with respect to all other normative legal acts (art. 11 of the Law On Legal Acts of the Republic of Belarus ".

Thus, the Law On Military Conscription and Military Service" the reference to alternative service contains 5 times: in art. 17, explaining the procedure for accepting, withdrawing from military service and exemption from military service (part 6), in art. 31 governing exemption from military service and reserve service (part 1), art. 36 establishing the modus operandi of call-up boards of appeal for citizens to urgent military service and reserve service (part 1), art. 67 on enrolling in stock (part 1) and art. 70, prescribes the procedure for military and special duties (part 1).

Due to the fact that, since the basic law this legislation uses the term "alternative service" and this term is used for the first time (the Constitution cannot contain essentially the interpretation of terms), he or she must be given an interpretation which

⁸⁵ Vasilevich, R. Supra. P. 40.

⁸⁶ Law on Conscription and Military Service of the Republic of Belarus 1992.

⁸⁷ Law on State Fingerprinting Registration of the Republic of Belarus 2003.

usually resides in the first articles of the regulation. Such an interpretation should be descriptive, clear and concise (art. 49 of the rules of preparation of normative legal acts)⁸⁸.

Art. 3 of the above mentioned law stipulates the legislation of the Republic of Belarus in the sphere of execution of military duty, thus, the basic legislation is the Constitution, followed by the law "on military conscription and military service", international treaties and other legislative acts of the Republic of Belarus. In other words, the law is a fundamental act of legislation, because there is no specific law regulating alternative service and to regulate the basic provisions of the alternative service. In particular, consolidate the concept of alternative service, the grounds on which it is granted, the application for alternative service, as well as the reference to the Office that is responsible for taking a decision on it.

When working with the law and its examination of remains incomprehensible that such "alternative service", what are its principles and status. On the basis of a detailed analysis of the Act, it can be concluded that the law only briefly finds mention of alternative service, moreover, such reference is contained only in articles on "procedural matters" – reception, deregistration, exemption from military service, being called commissions, etc., but not interpreted and applied the term "alternative service" in art. 1 explain the basic terminology and concepts, even though the term is mentioned in the Act.

The author has elaborated amendments into the Law On military duty and military service, on the basis of art. 40 of the Constitution of the Republic of Belarus [4] and section 12 of the rules of preparation of normative legal acts) [10], which were sent to the Office of constitutional law of the national centre of legislation and legal research of the Republic of Belarus (with additions and amendments to the law "on military conscription and military service" can be found in Annex 1).

The law on State fingerprinting registration the term "alternative service "is mentioned only once in para 1.1 of the art. 7 "mandatory fingerprint registration", which requires citizens of the Republic of Belarus alternative service recruits to undergo mandatory fingerprint registration.

Thus, in spite of the above laws, the term "alternative service" is the place to be in 1992 (the year of the law "on military conscription and military service"), is not clear so far that the legislator meant by this term.

There are several decrees, containing a reference to the alternative service. Thus, Decree of the President of the Republic of Belarus "on some measures to regulate housing relations"⁸⁹ confer on persons performing alternative service may be listed for improvement of living conditions at the place of residence (section 33.1 of the present Decree). The following decree on approval of the regulations on the exercise of voluntary and mandatory Government fingerprinted "⁹⁰, para. 7 regulates compulsory public fingerprinted for persons performing alternative service. Decree "on confirmation of the regulation about the order of service in reserve"⁹¹, establishes that a person past alternative service be separated from service in reserve in reserve (para. 41 of the

⁸⁸ Presidential Decree on Measures for Improve Legal Activities 2003.

⁸⁹ Presidential Decree on Some Measures on Regulating Housing Relationships 2005.

⁹⁰ Presidential Order on Approval of the Regulations on the Exercise of Voluntary and Mandatory State Fingerprint Registration 2004.

⁹¹ Presidential Order on Confirmation of the Regulation about the Order of Service in Reserve 2008.

present Decree). Thus the mention of alternative service is reflected in the three orders of the President of the Republic of Belarus that regulate three completely different spheres – housing matters, transfer to the reserve and State fingerprinting registration. Following the position in the hierarchy of legal acts by Government Decree.

So, in our legislation the following decisions with reference to alternative service:

- Decision of the Council of Ministers "on approval of the regulations on military integration"⁹² – para. 5.5 establishes that citizens have alternative service shall be subject to military integration.

Decision of the Council of Ministers "on approval of the regulations for hostels and Model lease residential premises public housing in a hostel»⁹³ – gives persons performing alternative service may be on seeking accommodation in the hostel.

The next link in the hierarchy occupied by Decree of the ministries. At the moment there are only 2 Orders of the Ministry of the Interior "on approval of the instructions on the exercise of its governmental fingerprinted"⁹⁴ and "on approval of the instructions on how to use the armed forces of the Republic of Belarus and of the Republic of Belarus transport forces regulations on the procedure for service in reserve. The first of which regulates the passage of Government fingerprinted, and the second order of dismissal, an alternative service in the reserve. The second legal act right, note the following past or ongoing dismissal of reservists to perform alternative service shall be carried out on the basis of the order of the Commander of a military unit for infantry after the receipt of the relevant documents. In other words, regardless of where the alternative service person, taking into account that, as a rule, this happens in health, education, social sector, dismissal of an employee by the signing of the order of the Commander of a military unit on the front part. That is absolutely unacceptable and contrary to the very essence of alternative service that was shown in chapters 1 and 2 of the present work. Namely, by its very nature, the Institute of alternative service is a social one, justified needs of society and the State, in return for military service citizens, to motivate its refusal by deep religious, ethical or humanitarian motives, that is, alternative service must not be implemented in organizations, subordinated to the armed forces of the Republic of Belarus, this function should be the responsibility of the Ministry of labour and social protection.

Separately, mention should be made of the decision by the Constitutional Court on certain issues relating to the implementation of article 57 of the Constitution of the Republic of Belarus "⁹⁵, the Constitutional Court stated the legislator for the legislative gap that gives rise to conflicts between individual citizens and the State, as are not provided with the full realization of the right of citizens of the Republic of Belarus guaranteed by the Constitution, does not define the boundaries of their implementation. Moreover, the Court emphasized, because art. 57 of the Constitution guarantees the right to perform alternative service in the Republic of Belarus, the law on alternative service was due to be adopted later, 2 years after the entry into force of the Constitution, namely, until March 30, 1996, pursuant to art. 4 the Act "on the procedure for the entry

⁹² Decision of the Council of Ministers of the Republic of Belarus on Approval of the Regulations on Military Integration 2001.

⁹³ Decision of the Council of Ministers of the Republic of Belarus on Confirmation of the Regulation About Hostels and Model Lease Residential Premises Public Housing in a Hostel 1999.

⁹⁴ Decree of Ministry of Internal Affairs on Approval of the Instructions of Fingerprinted Procedure 2005.

⁹⁵ Decision of the Constitutional Court of the Republic of Belarus on Certain Issues Relating to the Implementation of Article 57 of the Constitution of the Republic of Belarus 2000.

into force of the Constitution of the Republic of Belarus"⁹⁶ (at this point the legislation had lost its legal force), which has not been enforced either by the Supreme Soviet of the 12th convocation, nor by the Supreme Soviet of the 13th convocation, moreover, they were not resolved "questions about terms and conditions replace military service with alternative, as well as on its passage through the adoption of a special law or by making the relevant amendments and additions to the law" on compulsory universal military service ". Further the decision emphasizes that "despite the fact that it is now more than six years (decision was made in 2000) the constitutional law on alternative service, the relevant law has yet been passed. In this respect, the Constitutional Court has repeatedly drawn attention in his Epistles on the State constitutional legality". Just note that 17 years have elapsed, and the law pursuant to article 17 of the Constitution, despite the decision of the Constitutional Court and the annual Messages on constitutional legality, has still not been adopted.

Despite the binding nature of the decisions of the Constitutional Court, as provided for in article 10 of the law "on the Constitutional Court of the Republic of Belarus" ⁹⁷, where it is stated that the Constitutional Court's decision taken within its competence are obligatory for execution in the territory of the Republic of Belarus all State bodies, enterprises, institutions, organizations, officials and citizens. For the avoidance of non-execution of decisions of the Constitutional Court is punishable in accordance with the legislation of the Republic of Belarus. 10 of the law "on the Constitutional Court of the Republic of Belarus" and art. 87 the rules of the Constitutional Court⁹⁸. The law contains no indication of a certain type and the level of responsibility for failure to comply with the decisions of the Constitutional Court, which enables you to create a situation where the Constitutional Court decides that point to specific legislative gaps (as in this case) and allows you to leave them unimplemented owing to lack of liability for non-performance. Control over execution of decisions of the Constitutional Court is entrusted to the corresponding structural unit of the Secretariat of the Constitutional Court in accordance with art. 86 Rules of the Constitutional Court.

The President of the Constitutional Court of the Republic of Belarus Mr. Miklašvič during a direct telephone line with the readers of the newspaper "Respublika" (the Republic) follows the failure of the aforementioned decision, commented on the Constitutional Court "for the execution of the decisions of the Constitutional Court are often needed for quite a long time. This is due, inter alia, to the improvement of law through the adoption of laws, the Elimination of gaps and contradictions in the legislation. Sometimes you want to enact new laws governing the legal relationship. The example you cited (failure to comply with the decisions of the Constitutional Court concerning the introduction of alternative military service), there is a long history. Even 10 years ago, the Constitutional Court has made a decision on this issue, the attention of legislators that directly in our Constitution provides for the right to perform alternative military service. But to address this issue, there are many obstacles. Currently on alternative service are given orders by the head of State to prepare legislation. We hope that this issue will be resolved"⁹⁹.

In accordance with art.1 of the law "on normative legal acts of the Republic of Belarus" decision of the Constitutional Court is an act of legislation (regulations, constitute laws of the Republic of Belarus) and not a legislative act and its legal force superior to

⁹⁶ Law on the Enforcement of the Constitution of the Republic of Belarus 1994.

⁹⁷ Law on the Constitutional Court of the Republic of Belarus 1994. .

⁹⁸ Rules of Procedure of the Constitutional Court of the Republic Belarus 1997.

⁹⁹ Risnik, S., Ynchik. L. (2011) 'Decisions of the Constitutional Court are binding for execution ...', available at: <http://respublika.info/5194/line/article45509/>, accessed 14 July 2012.

decisions of the plenum of the Supreme Court of the Republic of Belarus and of the higher economic court of the Republic of Belarus, due to the fact that the Constitutional Court of the Republic of Belarus, the body of judicial control of the constitutionality of normative legal acts in the State exercising judicial power by the Constitutional Court (art. 5 of the code of the Republic of Belarus on the judicial system and status of judges).¹⁰⁰

His main task in accordance with article 6 of the code is to ensure the primacy of the Constitution and its direct activities on the territory of the Republic of Belarus, as well as conformity of normative legal acts of the State bodies of the Constitution, the rule of law in norm-setting and enforcement, as well as other issues stipulated by the Constitution of the Republic of Belarus (that is, the adoption of a special law on alternative service for the realization of the right enshrined in article 57 of the Constitution). The General and economic courts are designed to protect personal rights and freedoms, socio-economic and political rights of citizens, as well as to ensure the correct application of the law in the administration of Justice, in order to facilitate the strengthening of the rule of law and the prevention of offences (part 2, art. 6 of the code of the Republic of Belarus on the judicial system and status of judges). Thus, the Constitutional Court is not a part of the judicial system because it does justice to the true sense of the word, however, its decisions have greater legal force in relation to the decisions of the plenary Supreme Court and the higher economic court. In article 9 of the law "on the Constitutional Court of the Republic of Belarus"¹⁰¹, which establishes the legal force of decisions of the Constitutional Court does not contain a direct reference to the validity of the decisions of the Constitutional Court for Rulings of the plenum, exactly like other regulatory legal acts with the Constitution.

Accordingly, you can select the message of the Constitutional Court. Message of the Constitutional Court shall be adopted in the form of decisions of the Constitutional Court, and, as described above, have a higher legal force of Decisions of the plenum. In accordance with para. 2 art. 36 of the law "on the Constitutional Court of the Republic of Belarus"-analysis of constitutional legality in the Republic of Belarus is made out as the message of the Constitutional Court President and the houses of Parliament. Accordingly, the messages have the same legal effect as the decision by virtue of para 8 art. 10 of the law "on normative legal acts of the Republic of Belarus"), which States that "the validity of statutes, regulations, instructions, rules and regulations are legally effective regulation to which they are approved. Therefore, messages are equivalent position with the decisions of the Constitutional Court.

Thus, annual message of the Constitutional Court, the President and the houses of Parliament clarified the status of the constitutional legality in the Republic under article 9 h. 22 code of Belarus on the judicial system and status of judges and the para. 44 of the law on the Constitutional Court of the Republic of Belarus ".

Reference to the alternative service are two decisions of the Constitutional Court, "on the status of the constitutional legality in the Republic of Belarus in 1998"¹⁰², where the Constitutional Court drew attention to the fact that there still laws directly arising from the Constitution, namely on alternative military service (chapter IV) and the condition

¹⁰⁰ Code of the Republic of Belarus on the Judicial System and Status of Judges. 2005.

¹⁰¹ Law on the Constitutional Court of the Republic of Belarus 1994. .

¹⁰² Decision of the Constitutional Court of the Republic of Belarus on the Status of the Constitutional Legality in the Republic of Belarus in 1998 1999.

of the constitutional legality in the Republic of Belarus in the year 2000 "¹⁰³, where the Constitutional Court reaffirms, the right to replace military service with alternative, in particular religious beliefs, as set out in the decision of the Constitutional Court on May 26, 2000, "on certain issues relating to the implementation of article 57 of the Constitution of the Republic of Belarus".

A special place in the hierarchy of normative legal acts are Of the Inter-Parliamentary Assembly of States members of the Commonwealth of Independent States (hereinafter - Regulation MPA). In order to understand what is the place in the hierarchy of legal acts are the author to the MPA, the Commonwealth of Independent States (CIS). Thus, in accordance with section 7 of the interparliamentary cooperation "Charter of the CIS Interparliamentary Assembly holds interparliamentary consultation, discusses cooperation within the Commonwealth, is developing joint proposals in the area of activity of the national parliaments (article 26), moreover, the Inter-Parliamentary Assembly consists of parliamentary delegations (art. 27)¹⁰⁴.

In accordance with the "regulations on the development of model legislation and the recommendations of the Inter-Parliamentary Assembly of States members of the Commonwealth of independent States"¹⁰⁵ the model legislation of the Commonwealth of independent States-legislation of a recommendatory nature adopted by the Inter-Parliamentary Assembly in accordance with the established procedure for the formation and implementation of a coherent legislative activity of the Inter-Parliamentary Assembly of the States parties on issues of common interest, bring the laws of the Member States of the Commonwealth into line with international treaties concluded within the framework of the Commonwealth, and in other international treaties, which the States members of the Commonwealth is very desirable in order to achieve the common objectives (para. 1.2).

The CIS model law is an approximation of the legal regulation of specific species (groups) of public relations in the Commonwealth States (para. 1.3 "provisions on the development of model legislation and the recommendations of the Inter-Parliamentary Assembly of States members of the Commonwealth of Independent States).

Use of the model law as a whole or certain of its provisions by the parliaments of the States parties to the MPA takes two forms: formulation and adoption of the parliaments of those States domestic regulations and amendments to the regulations adopted by the Inter-Parliamentary Assembly of the States parties (section 8.3 "provisions on the development of model legislation and the recommendations of the Inter-Parliamentary Assembly of States members of the Commonwealth of independent States).

Assuming that Order MPA CIS regulatory legal act of education, of which the Republic of Belarus, moreover, bearing in mind the decision of the Economic Court of the Commonwealth of independent States from 23. 01.1997¹⁰⁶, which explained that the legal status of the IPA CIS is not configured properly ", and based on a hierarchy of legal

¹⁰³ Decision of the Constitutional Court of the Republic of Belarus on the Status of the Constitutional Legality in the Republic of Belarus in 1999 2000.

¹⁰⁴ Decision of the Council of Heads of State of the CIS on the adoption of the Charter of the Commonwealth of Independent States 1994. .

¹⁰⁵ Resolution of the Inter-Parliamentary Assembly of States Members of the CIS on the Model Law in the CIS 2005.

¹⁰⁶ Decision of the Economic Court of CIS on the Interpretation of the Judgment of the Council of Heads of Government of the CIS on the Overall Situation of International (Intergovernmental) Bodies of the CIS and the Tentative Agreement of the Interstate (Intergovernmental) Body of the CIS 1994.

acts, proposed by Prof. Pavlova, Order MPA CIS have a higher legal authority than regulations established by the Council of Ministers, the Supreme Court, the higher economic court and the Attorney General¹⁰⁷.

With a view to implementing the recommendations contained in the decisions of MPA in accordance with the Convention on the MPA (art. 11)¹⁰⁸ CIS Council Secretariat monitors the use of model legislation with a view to improving the process of model-making.

At the moment, this body had adopted three such Decrees: "the model law" on alternative (non-military) service "(hereinafter referred to as the CIS model law)"¹⁰⁹ the model law "on employment"¹¹⁰ and "the model law" on professional sports"¹¹¹. A decision on the model law "on alternative (non-military) service" is essential, because it gives specific recommendations for the development of national legislation, namely the legislator to draft a Bill. The remaining Orders-on model law "on employment" and "the model law" on professional sports "- regulates the size of unemployment benefits to citizens, retired from the alternative service (art. 33 of the model law" on employment ") and the legal basis of the professional sports club to terminate an employment contract with a professional athlete for his call to perform alternative service (art. 7 of the model law on professional sports").

The CIS model law implements mainly "Asian" model of alternative service. "Asian" model of alternative service is characterized by the fact that it is against the backdrop of intolerance towards non-traditional religious denominations; service is usually provided for "family reasons" for vulnerable sections of the population (persons from families with many children, etc.) or as a form of punishment (tried to) may be granted to those who, for health reasons, are not able to perform military service; Office of alternative service is carried out by the military Ministry and its field structure; those performing alternative service are listed on the account of the Ministry of defence a portion of their wages, and limited in other rights. "Asian model" opposed by the "European" model, which is considered more liberal and adhere to international standards established by the UN and the Council of Europe¹¹², as described in chapters 1 and 2 of this paper.

A detailed analysis of the law shows the following. Despite the fact that the recommendations of the Committee of the Council of Ministers of the Council of Europe (1987) OSCE Copenhagen agreement (1990), and the resolution of the European Parliament (October 13, 1989), moreover set forth the obligation of States to inform and inform citizens on alternative service, the CIS model law does not reflect the responsibility of the State. It should be noted that the Act significantly reduces the list of grounds on which alternative service may be provided, specifying only the religious beliefs and marital status (preamble of the Act). Following a negative moment of the law was proposed in the law system of alternative service. The CIS model law did not provide for the creation of special Government alternative service by distributing control functions between the existing military and civilian authorities. Direct organizing and monitoring functions assigned to the Ministry of defence and the "local

¹⁰⁷ Paulava, L. Supra. P. 6.

¹⁰⁸ Convention on the Inter-Parliamentary Assembly of Member States of the CIS 1995.

¹⁰⁹ Resolution by the Inter-Parliamentary Assembly of CIS on the Model Law on Alternative (Non-military) Service 1999.

¹¹⁰ Resolution by the Inter-Parliamentary Assembly of CIS on the Model Law on Employment 1999.

¹¹¹ Resolution by the Inter-Parliamentary Assembly of CIS on the Model Law on Professional Sport 2007.

¹¹² Damarad, V., Kavalieva, E., Pashkevich, M., Tankacheva, E. (2010) *Alternative Civilian Service. Standards and Approaches to Reform: A Collection of Articles and Documents*: Mensk: Monolitera.

bodies of executive power" (art. 18). Military commissariats during all stages of alternative service are intimately involved in the fate of the conscripts. A similar Office in full corresponds to "Asian" model, because the creation of alternative service is necessary because alternative service is not just a labor services, and a special form of the public service.¹¹³

The CIS model law contains only an indication that alternative service is available in all enterprises, organizations and establishments, regardless of their departmental affiliation, ownership, and economic conditions (art. 5), leave the fields and industries to perform alternative service, which is a significant disadvantage because you lose the very essence of alternative service as a form of conscious and conscientious service to society becomes a serving service. In addition, the CIS model law does not regulate the status of persons performing alternative service, which considerably aggravates the situation of conscripts and limits their freedom of opinion. Thus, the law provides that persons performing alternative service is part of the wages and is credited to the current account of the Ministry of defence. In other words, the Finance Department directly conscripts, which directly contradicts their beliefs. And, finally, the latest negative feature of the Act is the lack of regulation of the timing of alternative service. Taking into account the fact that the CIS model law contains only recommendations for national legislation, however, the lack of clearly specified rules on the duration of alternative service in practice creates a situation where national laws (there is every reason to believe that the Belarusian law goes in the same direction) to substantially lengthen the term of alternative service, compared with the military.

Along with the negative aspects of this law, the following positive situation. First, the CIS model law contains an express prohibition to perform alternative service in the military forces and agencies, as well as the arrangement of the right not to participate in the production and maintenance of weapons (art. 1). And, secondly, art. 30 establishes the right of a citizen, alternative service is not required to perform military duties.

Thus, it can be concluded that – the CIS model law has in many conflicts with international standards for the performance of alternative service, established by the UN (Chapter 1 of this work) and the Council of Europe (Chapter 2 of this work). The author has every reason to believe that the Belarusian Parliament in the development of the draft law on alternative service "will be guided by the provisions of the CIS model law on that subject. This conclusion is based on the study of the law on alternative service of Moldova¹¹⁴ and Ukraine¹¹⁵, which have been developed on the basis of the CIS model law.

Based on the analysis of the Belarusian legislation and regulatory instruments of the Commonwealth of independent States could be drawn up following the hierarchy of laws and regulations governing the implementation of the constitutional right to alternative service:

1. Universal Declaration of Human Rights;
2. The Constitution of the Republic of Belarus;
3. Law On Military Duty and Military Service;
4. Law On State Fingerprinting Registration;
5. Decree On Some Measures to Regulate Housing Relations;

¹¹³ Supra, p.69.

¹¹⁴ Supra, pp. 327-333.

¹¹⁵ Supra, pp. 355-360.

6. Decree On Approval of the Regulations on the Exercise of Voluntary and Mandatory Government Fingerprinted;
7. Decree On Confirmation of the Regulation About the Order of Service in Reserve;
8. Model law of the Parliamentary Assembly of the CIS On Alternative (Non-Military) Service;
9. Decision of the Belarusian Constitutional Court On Certain Issues Relating to the Implementation of Article 57 of the Constitution;
10. Decision of the Belarusian Constitutional Court On the Status of the Constitutional Legality in the Republic of Belarus in 1998;
11. Decision of the Belarusian Constitutional Court On the Status of the Constitutional Legality in the Republic of Belarus in 2000;
12. Decision of the Council of Ministers On Approval of the Regulations on Military Integration;
13. Decision of the Council of Ministers On Confirmation of the Regulation About Hostels and Model Lease Residential Premises Public Housing in the Dormitory.

In summary, I would like to note that our legislators went on the road, based on the principles of the rule of law and humanitarian principles constitutionally enshrining in the Constitution very progressive right – the right to alternative service. Despite the fact that neither within 2 years after the adoption of the Constitution, neither during the 17 years since the adoption of the Constitution, without the decision of the Constitutional Court and without listening to the annual Messages of the Constitutional Court, referring to the definition of "alternative service" in laws, Decrees and regulations, the law on alternative service was adopted, moreover, an outline for the preparation of draft legislation for the 2011 year¹¹⁶ does not contain the draft law on alternative service ". Moreover, section "legislation on defence" concept of perfecting the legislation of the Republic of Belarus¹¹⁷, which contains directions for military reform does not contain mention of alternative service.

Analysis of open sources media allows you to reveal 6 cases of jurisprudence, when citizens of military service have tried to exercise their constitutional right to alternative service. You must therefore point out that all these cases is the common reason-motivations to perform alternative service. All recruits defended in court by their right to alternative service on grounds of religious beliefs which prevented military service, based on the concept of non-violence. Thus, in chronological order, the following situation (information gathered from open sources media):

2000

- Vaukavysk, A. Botvin, a member of the religious community of Jehovah's witnesses¹¹⁸;
- Rechitsa, V.Gulaj, a member of the religious community of Jehovah's witnesses¹¹⁹.

2009

- Gomel, D. Smyk, a member of the religious community of Jehovah's witnesses¹²⁰;

¹¹⁶ National Legal Internet Portal of the Republic of Belarus (2012) 'Presidential Order on Approving the Plan for the Preparation of Draft Legislation for the 2011 year', available at: <http://www.pravo.by/main.aspx?guid=3871&po=P31100010&p2={NRPA}>, accessed 14 July 2012.

¹¹⁷ National Legal Internet Portal of the Republic of Belarus (2012) 'Presidential Decree on the Concept of Improving the Legislation of the Republic of Belarus 2002', available at: <http://pravo.by/main.aspx?guid=3871&po=P30200205>, accessed 14 July 2012.

¹¹⁸ Roman Maranov (2000) *Alternative service in the CIS-countries and the Baltic States*, Moscow: Kniga.

¹¹⁹ Ibid.

¹²⁰ Olga Khvojn (2010) 'Alternative without Alternatives', available at: <http://www.novychas.org/society/%D0%B0%D0%BB%D1%8C%D1%82%D1%8D%D1%80%D0%BD%D0%B0%D1%82%D1%8B%D0%B2%D0%B0-%D0%BF%D0%B0%D0%BA%D1%83%D0%BB%D1%8C->

- Minsk, I. Mikhailov, a member of the Jewish-messianic congregation "New Covenant"¹²¹;

2010

- Gomel, E. Yakovenko¹²²;
- Gomel, A. Tsyanyuta¹²³;

2011

- Minsk, A. Presniak.

There is reason to believe that in 2000, Botvin case was one of the first reported in the media, in fact, you can think that this was one of the first cases in the district military enlistment office to demand the provision of alternative service. Despite the statement of refusal to perform alternative service on grounds of religious beliefs, A. Botvin was taken to the military unit, related to railway troops, where he was forced to undergo military service¹²⁴. In 2000, the first sentence under article 435 of the Penal Code of the Republic of Belarus (hereinafter referred to as the Criminal Code) evasion of military service "¹²⁵ for refusing to serve in the army for religious reasons against V. Gulaya and was sentenced to 1.5 years of imprisonment with compulsory labour.

In the future the practice of prosecution for the requirement to provide alternative service – was confirmed in 2009-2010. Thus, D. Smyku, I. Mikhailov were charged with tax evasion in response to church activities. 435 of the Criminal Code D. Smyk was sentenced by the District Court of Gomel fined 100 basic units, but after 7 months of trials (the hearing of the appeal in the Gomel regional court, which upheld the sentence unchanged and the Supreme Court, which sent a protest to the Gomel regional court) was acquitted, waiving the fine¹²⁶.

On and the situation is largely Michaylau. similar: the Court of the Minsk region found guilty and the punishment appointed Mikhailau to three months of arrest, the Minsk regional court and cassation complaint has been endorsed by and Mikhailau. Mena suppression was changed to the place, the Court of Minsk district acquitted Mikhailau, not finding corpus delicti in his actions, and after one month the Minsk regional court rejected the Prosecutor's protest at the acquittal¹²⁷.

[%D0%BD%D0%B5-%D1%9E-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B5](#), accessed 4 December 2010.

¹²¹ Author Unknown (2010) 'Political Prisoner Ivan Mikhailau Acquitted', available at: <http://www.svaboda.org/content/article/1927547.html>, accessed 4 May 2010.

¹²² Monitoring Group of Civil Campaign For Alternative Civilian Service in Belarus (2011) 'Eugene Yakovenko convicted on para. 25.1.3 of the Administrative Code of Belarus Because he did not Appear on the Recruitment Activities', available at: http://yhrm.org/news/regions/belarus/evgenii_yakovenko_priznan_vinovnym_po_st_2513_koap_rb_v_neyavke_na_meropriyatiy, accessed 16 April 2011.

¹²³ Author Unknown (2011) 'Young Front Activist Andrei Tsyanyuta will Serve at Transport Troops', available at: <http://www.belaruspartisan.org/bp-forte/?page=100&news=48636>, accessed 16 April 2011.

¹²⁴ Maranov, R. Supra.

¹²⁵ National Legal Internet Portal of the Republic of Belarus (2012) 'Criminal Procedural Code of the Republic of Belarus', available at: <http://www.pravo.by/main.aspx?guid=3871&po=hk9900295&p2={NRPA}>, accessed 6 May 2012.

¹²⁶ Author Unknown (2011) 'Demanded Alternative Service - Got Huge Fine', available at: <http://www.svaboda.org/content/article/1871570.html>, accessed 16 April 2011.

¹²⁷ Author Unknown (2011) 'Believer was Arrested for Evasion of Military Service', available: <http://www.svaboda.org/content/article/1927547.html>, accessed 16 April 2011.

There is another case of realizovyaúših their right to alternative service. In February 2010, e. Yakovenko was found guilty of violating article 25.1.3 the code of administrative offences of the Republic of Belarus (hereinafter referred to as the administrative code of Belarus) – failure to appear in the military enlistment office "¹²⁸ and he was assigned a fine of 5 basic units for failing to appear without good reason to call. The Court did not take into consideration the testimony of witnesses for the defence, who confirmed the treatment e. Yakovenko to the military enlistment office at the place of residence a statement for alternative service. Not accepting the verdict, e. Yakovenko appealed, and the Board on civil cases of the Gomel regional court has cassation complaint on the decision of the Gomel regional court by lifting fine. A few days later, e. Yakovenko was summoned by the investigator as a defendant, para. 1. 435 of the Criminal Code and sentenced Gomel District Court to one year's imprisonment for tax evasion, the regional court of Appeal upheld the decision of the lower court. Criminal record with e. Yakovenko was removed automatically because it fell under an amnesty in honour of the 65 anniversary of the victory¹²⁹.

Analyzing the validity of criminal penalties on para. 1 art. 435 of the Criminal Code, the following should be noted. In accordance with scientific and practical commentary on the Criminal Code to the art. 435 of the Criminal Code, the objective side of corpus delicti – avoidance of conscription-expresses the failure: medical examination (ex#amination), a medical examination (examination), meeting the draft Commission; appearance to citizens in military commissariat, the conscription (prefab) item to send to the duty station; being in the military commissariat, the age (compilation) paragraph before submitting to the duty station; send to the citizens¹³⁰.

Moreover, according to the commentary, this offence is a continuing one and can be done only with the direct intent. In above mentioned situations (D. Smyk, I. Mikhailov, E. Yakovenko) Court has not been set, however, these citizens were found guilty of such an offence. Moreover, the commentary explained that the "valid reasons of failure by its law duties involved in military service could be considered on a case by case basis in a variety of circumstances, such as illness, denying his ability to appear for item collection; death or serious illness of his loved ones; the phenomenon of the spontaneous nature (fire, accident, transportation, etc.); the detention of the recruit authorities; non-receipt or delay in receipt of them, through no fault of his own, etc. The reasons for non-appearance must be confirmed by the documents of the competent authorities concerned.¹³¹ Thus shows that the list does not include the existence of applications for alternative service.

There is reason to believe that there is a conflict between the provisions of art. 435 of the criminal code and article 3 h. 25.1 the administrative code. Thus, art. 435 of the criminal code, which establishes liability for the failure of military conscription is in aggregate form, and am 3 St. 25.1 existing administrative code administrative wrongfulness defined clearer signs. In addition, provisions of the art. 435 of the criminal code and

¹²⁸ National Legal Internet Portal of the Republic of Belarus (2012) 'Code of Administrative Offences of the Republic of Belarus', available at: <http://www.pravo.by/main.aspx?guid=3871&po=hko300194&p2={NRPA}>, accessed 2 May 2012.

¹²⁹ Author Unknown (2011) 'Belarusian Court Sentenced "Objector" on Conscience to Deprivation of Liberty, available at: www.civitas.ru/news.php?code=8513, 16 April 2011.

¹³⁰ OSCE Human Dimension Commitments (2006), 2nd edition. Vol. 1, p. 995.

¹³¹ Ibid.

article 3 h. 25.1 the administrative code are blanketnyj in nature. Wrongfulness in this case clarifies the provisions of the law "on military conscription and military service"¹³².

Thus, judicial practice has shown that people who want to exercise their constitutionally guaranteed right to alternative service, and challenged the denial of this right by the district military commissariats in the courts are faced with forced administration of military units (in the case of Botvina) or guilty of criminal punishment for tax evasion activities recruitment (b. Gulay, Smyk, Mikhailau, and Yakovenka).

The development of the draft law on alternative service

February 18, 2010, the President of the Republic of Belarus Alyaksandr Lukashenka ordered the Secretary of Security Council of Belarus Leanid Maltsau develop a law on alternative military service¹³³. By September 1, 2010 the draft developed by the Council of Ministers of the Republic of Belarus would be discussed. According to the website of the campaign "for alternative service in Belarus," the Bill has already been developed, but it is classified "confidential" and it cannot be found in the public domain¹³⁴.

January 26, 2010, the President of the Constitutional Court of the Republic of Belarus Piotr Miklashevich at the press conference made a presentation on the status of the constitutional legality in the Republic of Belarus in 2009 "to a question from a journalist about an alternative service in our country, Mr. Miklashevich has emphasized that the Constitutional Court in 2000, twice considered" questions on this issue. The Court raised the issue of the need at the legislative level, a mechanism for the implementation of the provisions on the possibility of alternative service. But, unfortunately, to date, the relevant law for such a service we don't have. This shows that certain decisions of the Constitutional Court for a long time is not executed. But legislation should go in the direction that the rights and freedoms of citizens are properly regulated and an effective mechanism for their implementation¹³⁵.

For the moment there is only one project of the law "on alternative service" by V. Novosiad, which in 2000-2004, was a Deputy of the House of representatives of the National Assembly of the Republic of Belarus. This was the first and only bill on alternative service "in our country"¹³⁶. In 2004, the draft was rejected by the House of representatives.

Analyzing the author's draft by V. Novosiad, the following should be noted. First, according to the Bill, under the alternative service is a special kind of work that is entered instead of military service. Secondly, the draft substantially restricted the grounds providing alternative service only religious and pacifistic. Thirdly, the duration of alternative service draaft greatly exceeds the duration of military service and is 27 months, and for persons with higher education-18 months. Fourthly, the draft gives a closed list of duty to perform alternative service: Organization of Republican and

¹³² Vasily Marchuk (2012) 'The Ratio of the New Code of the Republic of Belarus on Administrative Offences Under the Criminal Code of the Republic of Belarus', available at: <http://www.lawbelarus.com/repub2008/sub07/text07241.htm>, accessed 21 May 2012.

¹³³ Author Unknown (2011) 'In Belarus Will Develop a Law on Alternative Service', available at: <http://korrespondent.net/world/1048850-v-belarusi-razrabotayut-zakon-ob-alternativnoj-sluzhbe>, accessed 16 April 2011.

¹³⁴ Fiodar Maslennikov (2011) 'Where is the Law?', available at: http://ags.by/?page_id=243, accessed 16 April 2011.

¹³⁵ Vasil Sluchny (2011) 'Pyotr Miklashevich: Not All of the Decisions of the Constitutional Court are Executed', available at: <http://www.euramost.org/?artc=13267>, accessed 16 April 2011.

communal property, related to social protection, health, environmental protection, construction, housing and utilities, on farms and in factories of societies of persons with disabilities and a patronage service organizations Belarusian Society of the Red Cross.

In September 2009 the Campaign 'For Alternative Civilian Service in Belarus'¹³⁷ was created by students, lawyers, and professors¹³⁸.

The main aim of the campaign is to raise awareness of citizens on alternative service, drawing attention to this issue with a view to influencing the early adoption of the law. Moreover, the campaign held a monitoring duty potential of alternative service, sending such requests in social centres, hospitals and forests. Campaign lawyers are legal aid to persons who want to perform alternative service, but were unable to do so because of the lack of appropriate legislation, in the form of advice to young people, to defend their interests in court proceedings and in analysing the international judicial experience.

July 7, 2010, the campaign For alternative civilian service in Belarus» wrote to the interdepartmental working group on the elaboration of a draft law "on alternative civil service" proposals on the content of law elaborated by the Working Group of youth and human rights organizations and concerned citizens. These proposals included the approaches to the conceptual content of the future Bill on the most important points. Namely:

- the concept of alternative service and its principles;
- the duration of alternative service;
- location of alternative service and their definitions;
- procedure for the consideration of the application of alternative service and action on it;
- social and labour rights of persons performing alternative service¹³⁹.

From the point of view of the author's distinctive is that significantly extend the list of Proposals, which is linked to the performance of alternative service and religious; philosophical; political (concept of non-violence, pacifism, anti-militarism); ethical, moral and other. As you can see from this list, the list is open and may include other beliefs that cannot be attributed to the above mentioned grounds, but define the behavior of the person and his or her attitude to military service not less. For example, such beliefs often formed humans emerging from armed conflict or facing consequences, victims of violence, citizens whose relatives people have died, been injured or have suffered other suffering (including the "hazing") during his military service. Moreover, the Proposal recommends that you configure the length of alternative service is not more than 1.5 times the length of military service, limiting the maximum period of 27 months, alternative service for persons with higher education-not more than 18 months.

Compared with the draft law "on alternative service", rejected by the House of representatives in 2004 year, offers, Furthermore, significantly expanded the list of places to perform alternative service without restricting places of Republican enterprises of alternative service and communal property. Moreover, the Proposal stresses that duty

¹³⁷ Official Web-Page of the Civil Campaign For Alternative Civilian Service in Belarus, available at: <http://ags.by>.

¹³⁸ Yaugen Valoshin (2011) 'Does Alternative Service Spoil the War Capability of Our Army?', available at: <http://www.zvyazda.minsk.by/ru/issue/article.php?id=54733>, accessed 16 April 2011.

¹³⁹ AGS. BY (2011) 'Proposals on the Draft of the law on Alternative Service', available at: <http://ags.by/?p=9353>, accessed 16 April 2011.

to perform alternative service can not be "Organization of housing, industrial and agricultural sectors, as well as organizations subordinate to the Ministry of defence of the Republic of Belarus". In addition, passage of such a service can be an organization whose activity is connected with the education, charity and other socially useful activity"¹⁴⁰.

On the basis of the foregoing, the legal regulation of the right to perform alternative service in the Republic of Belarus is next. As shown above, the basic legislation on the right to perform alternative service, is the country's basic law, the Constitution, the legal act establishing the procedure for the performance of alternative service, despite the repeated calls of "" in the annual communications and the decision of the Constitutional Court of the Republic of Belarus is still not accepted, thus depriving potential conscripts exercise their constitutional right. As you can see from the jurisprudence, judicial decisions have a criminal punishment for tax evasion in military service, citizens seeking to exercise their constitutional right that has not been adopted by the international community, particularly the international organization "Amnesty International"¹⁴¹.

Despite the decision of the Constitutional Court of the Republic of Belarus and the order of the President of the Republic of Belarus alternative service act has yet been adopted, moreover, in drafting the Plan year 2011¹⁴² is not listed.

¹⁴⁰ Ibid.

¹⁴¹ Amnesty International (2011) 'Belarus: Conscientious Objector Unlawful Detention', available at: <http://www.amnesty.org/en/library/info/EUR49/001/2010/en>, accessed 16 April 2011.

¹⁴² National Legal Internet Portal of the Republic of Belarus (2011) 'Presidential Order on Approving Of the Plan for the Preparation of the Draft Legislation for 2011', available at: , accessed 14 July 2012.

Conclusion

On the basis of the study produced the following theoretical conclusions and proposals for action. From the point of view of international human rights law, alternative service is the same as a human right, the right to life, liberty and security of person, judicial protection and other. The right to alternative service is a corollary of the right to freedom of thought, conscience and religion is enshrined in the Universal Declaration of human rights, the European Convention for the protection of human rights and fundamental freedoms and other international instruments. This thesis found its embodiment in the jurisprudence as the UN Committee on human rights and regional judicial bodies – the European Court of human rights. The Constitution of the Republic of Belarus has the right to perform alternative service that fully meets international standards.

As shown above, chapter I of the work, the right to conscientious objection to military service is enshrined in the basic international legal instruments mentioned above, however, this right is not explicitly requested by the specific provisions of these acts, although it is a component of the right to freedom of thought, conscience and religion. In addition, the UN Commission on human rights established the possibility of a longer period of alternative service, compared with the military on the grounds of "reasonable and objective circumstances". Moreover, the UN Commission on human rights recognized the possibility of refusing military service, alternative service must not be discriminatory. Moreover, the Commission has recognized this right as an integral and not subject to limitation, namely, in the case of the protection of State security, public order, health or morals.

Next, as shown in the analysis of general comment No. 22 on article 18, of the International Covenant on Civil and political rights is the only document in the UN system, which recognizes the right of conscientious objection to military service, and encourages States parties to provide country-specific reports on the subject. The Commission has adopted a number of resolutions on the issue of military service. The first such resolution was adopted in 1989, "recognized the right to conscientious objection as a legitimate exercise of the right to freedom of thought, conscience and religion". Reports of the High Commissioner for human rights had reaffirmed that the right to conscientious objection to military service is an implementation of the right to freedom of thought, conscience and religion, as well as the reports are possible reasons for refusal to perform military service.

Case law of the European Court of human rights, as noted in chapter II of this work went on different path – the Court has found that the need for compulsory military service runs counter to the provisions of the European Convention, however, multiple prosecutions, the totality of the claimant suffered punishment as well as the constant alternation of processes of prosecution is disproportionate to the objective.

But in the Republic of Belarus no special normative act, which regulates the flow and other related effects that creates a legislative gap and the real possibility of the realization of the right to alternative service. However, the right to alternative service is enshrined in the Basic Law of our State Constitution, moreover, the decision of the Constitutional Court of the Republic of Belarus, as well as the annual Messages of the Constitutional Court of the Republic of Belarus, is mentioned on alternative service. However, special regulation of the Institute in our country. As demonstrated by the jurisprudence, analyzed in detail in chapter III of this work – people who want to exercise their constitutionally guaranteed right to alternative service shall be guilty of a

criminal offence evasion of recruitment activities or face forced administration of military units.

In the course of writing a dissertation, the author has spoken at scientific conference in the Republic of Belarus and abroad, as a result of statements which have been published by the author^{143 144 145 146 147 148 149 150 151 152}. The author acted with the report on the scientific and practical conferences: 17th International Conference of students, postgraduates and young researches "Lomonosov" (2010), international scientific-practical Conference "actual issues of modern international law", dedicated to the memory of the Prof. Blichenko (2010), the international scientific-practical forum of students, postgraduates, young scientists and practitioners of "the principles of the rule of law and human rights" (2010), international read on international law in Odessa (2010) and others.

In addition, the author became a sponsor of the alternative civilian service. Standards and approaches to reform. This compilation was released to the public potential impact on the emergence of alternative service in Belarus.

Its theoretical development author has realized during the work on the proposals on the content of the law elaborated by the Working Group of youth and human rights organizations and concerned citizens who were sent to the interdepartmental working group on the elaboration of a draft law "on alternative civil service" (Annex 3).

Practical proposals and recommendations to improve legislation on alternative service set out in the draft law on introducing changes and additions into the law of the Republic of Belarus "on military duty and military service" and a bill on alternative service in the Republic of Belarus ", which is contained in Annex 1 and 2.

¹⁴³ Damarad, V. (2009) 'The Right to refuse Military Service Because of Political, Religious and Ethical Reasons as a Component of the Right to Freedom of Thought, Conscience and Religion', *International Scientific Reports of Associate Professors, Postgraduates, Students and Young Scientists*.

¹⁴⁴ Damarad, V (2010) 'International Legal Regulation of the Right to Conscientious Objection to Military Service in the Framework of the UN', *Collection of Scientific Articles of Postgraduates, Masters and Students*.

¹⁴⁵ Damarad, V. (2010) 'Right to Conscientious Objection to Military Service: Legal Regulation on the Universal and Regional Levels', *International Scientific Reports of Associate Professors, Postgraduates, Students and Young Scientists*.

¹⁴⁶ Damarad, V. (2010) 'Right to Conscientious Objection to Military Service at the Universal Level', *Scientific Reports of Associate Professors, Postgraduates, Students and Young Scientists*.

¹⁴⁷ Damarad, V., Kavalieva, E., Pashkevich, M., Tankacheva, E. (2010) *Alternative Civilian Service. Standards and Approaches to Reform: A Collection of Articles and Documents*: Minsk: Monolitera.

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¹⁵⁰ Damarad, V. (2011) 'The Problems of Drawing the Draft of the Alternative Civil Service', available at: <http://scls.eu/en/en-rooting-european-standards-in-belarusian-law/20-implementation/58-alternative-service>, accessed 16 April 2011.

¹⁵¹ Damarad, V. (2010) 'Case Law on Alternative Service in the Framework of the Inter-American Court of Human Rights', *Collection of International Conference Reports in memory of Prof. P. Kazanski*.

¹⁵² Damarad, V. (2010) 'Conscientious Objection to Military Service: Legal Analysis of the Article 18 of the International Covenant on Civil and Political Rights 1966', *Selected Reports of the Scientific Forum "The Rule of Law and Human Rights"*.

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