

**IN THE NAME OF THE RUSSIAN FEDERATION**  
**The Constitutional Court of the Russian Federation**

**Judgment**

**of 30<sup>th</sup> October, 2014 No. 26-II/2014**

**on the case concerning the review of constitutionality of Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription” in connection with the request of the Parliament of Chechen Republic.**

The Constitutional Court of the Russian Federation composed of the President V.D.Zor’kin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar’, G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Mel’nikov, Yu.D.Rudkin, N.V.Seleznev, O.S.Khokhryakova, V.G.Yaroslavtsev,

with participation of the Representative of the Parliament of Chechen Republic, candidate of legal sciences Kh.M.Dadayev, Plenipotentiary Representative of the Council of Federation to the Constitutional Court of the Russian Federation A.I.Alexandrov, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

guided by Article 125 (Item “a” of Section 2) of the Constitution of the Russian Federation, Sub-Item “a” of Item 1 of Section 1, Sections 3 and 4 of Article 3, Articles 36, 74, 84, 85 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open session considered the case on the review of constitutionality of Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription”.

The reason for the consideration of the case was the request of the Parliament of Chechen Republic. The ground for the consideration of the case was the

discovered uncertainty of whether the legislative provision contested in the request conforms to the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur S.P.Mavrin, statements of representative of parties, interventions by representatives invited to the hearing: M.A.Mel'nikova from the Ministry of Justice of the Russian Federation, Ye.A.Struchkova from the Ministry of Defence of the Russian federation, T.A.Vasilyeva from the Prosecutor General of the Russian Federation, having examined submitted documents and other materials, the Constitutional Court of the Russian Federation

**e s t a b l i s h e d:**

1. Item 1 of Article 3 of the Federal Law of 2<sup>nd</sup> July, 2013 No. 170-Φ3 “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription” Section 1 of Article 16 of the Federal Law of 27<sup>th</sup> July, 2004 No. 79-Φ3 “On State Civil Service of the Russian Federation” was supplemented by Item 11, according to which a citizen of the Russian Federation cannot be admitted to state civil service and a state civil servant cannot stay on state civil service in the event of his recognition as having not done military service on conscription having no legal grounds for it, in accordance with the conclusion of a conscription commission (with the exception of citizens having done military service on contract).

In the opinion of the Parliament of Chechen Republic, this legislative provision, linking impossibility to enter state civil service and stay on this service to the recognition of a citizen of the Russian Federation as having not done military service on conscription without legal grounds for it, breaks the principle of equality in respect of realization by citizens of the right freely to use his labour skills and to choose the type of activity and occupation, abrogates and derogates human and civil rights and freedoms, as well as, extending effect of the restriction established by it to persons, who were admitted to state civil service prior to entry

of the said Federal Law into force, groundlessly deteriorates the position of such persons, which does not conform to the Constitution of the Russian Federation, its Articles 6 (Section 2), 15 (Section 1), 17 (Section 1), 19, 32 (Section 4), 37 (Section 1) and 55 (Sections 2 and 3).

Thus, proceeding from the requirements of Articles 74, 84 and 85 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the subject-matter of consideration by the Constitutional Court of the Russian Federation on the present case is Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription” as hindering admittance of a citizen to state civil service and doing state civil service in the event of his recognition as having not done military service on conscription having no legal grounds for it, in accordance with the conclusion of a conscription commission.

2. According to the Constitution of the Russian Federation, labour shall be free; everyone shall have the right freely to use his labour skills and to choose the type of activity and occupation (Article 37, Section 1); citizens of the Russian Federation shall enjoy equal access to state service (Article 32, Section 4).

One of the kinds of state service, concluding contact on doing which citizen realizes the right freely to use his labour skills and to choose type of activity, is the state civil service constituting professional service activity of citizens on the posts of state civil service on ensuring execution of powers of federal state bodies, state bodies of subjects of the Russian Federation, persons substituting state posts of the Russian Federation and persons substituting state posts of subjects of the Russian Federation (Item 1 of Article 5 of the Federal Law of 27<sup>th</sup> May, 2003 No. 58-Φ3 “On the System of State Service of the Russian Federation”, Section 1 of Article 3 of the Federal Law “On State Civil Service of the Russian Federation”). This kind of activity, as the Constitutional Court of the Russian Federation repeatedly pointed out, is exercised in public interests, which determines particular legal status of state civil servants, including rights and duties of state civil servants,

restrictions imposed on them, connected with state civil service, as well as guarantees afforded to them.

Specificity of the legal status of state civil servants determined, among other things, by the nature of tasks of state civil service and the need to maintain high level of its administration predetermine, in its turn, the right of the federal legislator to introduce particular rules of entering state civil service and rules of doing it, as well as to bring forward to persons entering state civil service and substituting posts of state civil servants, specific requirements, concerning not only their professional training, business qualities, but moral level as well.

Establishment of such rules and requirements, within the meaning of the legal position of the Constitutional Court of the Russian Federation, formulated in reference to various kinds of professional activity, connected with the exercise of public functions (judgments of 6<sup>th</sup> June, 1995 No. 7-II and of 21<sup>st</sup> March, 2013 No. 6- II, rulings of 1<sup>st</sup> July, 1998 No. 84-O, of 1<sup>st</sup> December, 1999 No. 219-O, of 3<sup>rd</sup> October, 2002 No. 233-O, of 20<sup>th</sup> October, 2005 No. 378-O, of 22<sup>nd</sup> October, 2008 No. 538-O-O and others), in itself cannot be regarded as violation of the right of Russian citizens to equal access to state service (Article 32, Section 4) and the right freely to use his labour skills and to choose the type of activity and occupation (Article 37, Section 1), fixed by the Constitution of the Russian Federation.

At the same time, carrying out legal regulation of relations in the field of state service, the federal legislator is obliged to ensure the balance of constitutionally protected values, public and private interests, not to use excessive, but only necessary measures, strictly determined by constitutionally approved goals, observing the principles of justice, equality and proportionality; in order to exclude the possibility of disproportionate restriction of human and civil rights and freedoms in a concrete law-applying situation the norms containing restrictions, connected with access to state service, proceeding from constitutional criteria of appraisal of legislative regulation of rights and freedoms which are represented by the abovementioned principles, must be formally definite, precise and not admitting broad interpretation and, consequently, arbitrary application; restrictions

of rights and freedoms of citizens themselves must in any case not have retroactive effect, infringe on the very essence of the right and lead to loss of its main content (judgments of the Constitutional Court of the Russian Federation 15<sup>th</sup> July, 1999 No. 11-II, of 27<sup>th</sup> May, 2008 No. 8-II, of 30<sup>th</sup> June, 2011 No. 14-II, of 18<sup>th</sup> July, 2013 No. 19-II, of 21<sup>st</sup> March, 2014 No. 7-II and others).

3. According to Article 15 (Section 2) of the Constitution of the Russian Federation, bodies of public authority, officials and citizens are obliged to observe the Constitution of the Russian Federation and laws. Non-observance of this general legal requirement by a citizen wishing to realize his right to choose the type of activity and occupation by way of entering state service and doing such service, and thereby manifestation of disrespectful attitude towards legal order based on this requirement can call in question the ability of such citizen to responsible and conscientious fulfilment of duties of state service, which in any case are linked to realization of public functions and determined by particular legal status of a state servant.

Accordingly, the federal legislator, introducing some or other restrictions linked to entering state service and doing it, determined by the status of state servants and the nature of tasks placed on them, has the right to set special rules of access to any type of state service, including state civil service, and among other things to envisage certain consequences of both fulfilment and non-fulfilment by a citizen wishing to realize his constitutional right to equal access to state service of duties placed on him by the Constitution of the Russian Federation and laws.

3.1. As follows from Article 59 (Sections 1 and 2) of the Constitution of the Russian Federation, defence of the Fatherland as one of the constitutional duties of a citizen of the Russian Federation can be realized by him, in particular, by means of doing military service in accordance with federal law, which at present is the Federal Law of 28<sup>th</sup> March, 1998 No. 53-Φ3 “On Military Duty and Military Service”.

The main form of realization of this constitutional duty is doing military service on conscription, to which, according to the said Federal Law, are subject

male citizens at the age from 18 to 27, being or obliged to be on a military register and not staying in the reserve (Sub-Item “a” of Item 1 of Article 22), with the exception of citizens, released from fulfilment of the military duty, conscription to military service, citizens, to whom delay of conscription to military service is granted, as well as citizens, not subject to conscription to military service (Item 2 of Article 22).

In accordance with Articles 23 and 24 of the Federal Law “On Military Duty and Military Service”, concretizing the provisions of Item 2 of its Article 22, released from fulfilment of military duty are citizens, recognized as unsuitable for military service due to state of health; released from conscription to military service are citizens, recognized as limitedly suitable for military service due to state of health, doing or having done military service in the Russian Federation, doing or having done alternative civil service, having done military service in other states in cases envisaged by international treaties of the Russian Federation; to release from conscription to military service are entitled citizens, having scientific degree envisaged by the state system of scientific certification, being sons (own brothers) of military servicemen, having done military service on conscription, dead (deceased) in connection with fulfilment of duties of military service, as well as citizens, having done military training, dead (deceased) in connection with fulfilment of duties of military service during doing military training, and citizens, dead as a result of mutilation (wounding, injury, contusion) or disease, received in connection with fulfilment of duties of military service during doing military service on conscription, after dismissal from military service or after dismissal from military training or end of military training; not subject to conscription to military service are citizens, serving penalty in form of mandatory works, corrective works, limitation of liberty, arrest or deprivation of liberty, having unremoved or non-cancelled criminal record for commission of a crime, citizens, in respect of whom inquiry or preliminary investigation is being conducted or whose criminal case has been handed over to court, as well as citizens, having the

right to delay of conscription to military service in connection with family circumstances, receipt of education and other grounds enumerated in Article 24.

Thus, the Federal Law “On Military Duty and Military Service” determines categories of citizens of the Russian Federation, who are released – for a certain term or without indication of a term – from fulfilment of their constitutional duty of defence of the Fatherland by way of doing military service on conscription. Besides, as soon as, according to Sub-Item “a” of Item 1 of Article 22 of the said Federal Law, only male citizens are subject to conscription to military service, then, accordingly, the duty of doing military service on conscription is not extended to female citizens of the Russian Federation.

3.2. The attitude of a citizen of the Russian Federation towards his constitutional obligation to observe the Constitution of the Russian Federation and laws is manifested, in particular, also in his attitude towards the constitutional duty of defence of the Fatherland by way of doing military service on conscription, fulfilment of which already in itself characterizes him as a person, able to responsibly and conscientiously carry out professional activity linked to realization of public functions and, consequently, may quite justly be regarded as a particular reputational requirement, which the state may bring forward to persons pretending to occupy a post of a civil servant. Realization of this requirement can be ensured by means of legislative establishment of both preferences during entering state service of a certain type for persons having done military service on conscription with subsequent transfer to the reserve in the established order and restrictions of access to it for persons having not done military service on conscription in the absence of grounds envisaged by law for release from fulfilment of military duty, conscription to military service or delay of conscription.

Carrying out legal regulation of relations in the field of state civil service with consideration of the specificity of its tasks and simultaneously pursuing the object of increase of the prestige and attractiveness of military service on conscription within the framework of his discretionary powers, the federal legislator ascribed to circumstances, in the presence of which a citizen cannot be admitted to state civil

service, and a state civil servant cannot stay on state civil service, recognition of a person as having not done military service on conscription having no legal grounds for it, in accordance with the conclusion of a conscription commission (Item 11 of Section 1 of Article 16 of the Federal Law “On State Civil Service of the Russian Federation” in the wording of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription”).

The adduced normative regulation is aimed at non-admission to state civil service of persons having not fulfilled – in the absence of grounds envisaged by law for their release from fulfilment of military duty, conscription to military service or delay of conscription – duty of defence of the Fatherland by way of doing military service on conscription, placed on them by the Constitution of the Russian Federation, and thereby having ignored the general legal requirement to observe the Constitution of the Russian Federation and laws, i.e. persons, having not manifested respective moral and ethical qualities which state civil servants, exercising functions placed on them in public interests, must possess.

This restriction, connected with access to state civil service and conditioned by bringing forward to state civil servants increased reputational requirements, constitutes particular disqualifying obstacle for persons, having not done military service on conscription without legal grounds for it, introduced by the federal legislator proceeding from the admission that access of such persons to state civil service can not only derogate the prestige of military service in itself, but also decrease the authority of state civil service as an indispensable condition of successful fulfilment of tasks placed on it, including those connected with protection of the fundamentals of constitutional system of the Russian Federation (Articles 2 and 4; Article 5, Section 3; Article 15, Section 2; Article 18 of the Constitution of the Russian Federation), and thereby create obstacles for effective exercise by bodies of state authority of their powers.

Accordingly, the establishment by Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect

of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription” of a restriction of access to state civil service for persons, recognized as having not done military service on conscription without legal grounds for it by the conclusion of a conscription commission, pursues constitutionally significant object of preservation and proper functioning of public legal order and as such does not contradict the Constitution of the Russian Federation.

4. According to Item 1<sup>1</sup> of Article 28 “Duties of Conscription Commission on Conscription of Citizens to Military Service and Work Order of Conscription Commission” of the Federal Law “On Military Duty and Military Service” in the wording of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription”, which entered into force as from 1<sup>st</sup> January, 2014, in the interconnection with Item 34 of the Statute on Conscription to Military Service of Citizens of the Russian Federation, approved by the Resolution of the Government of the Russian Federation of 11<sup>th</sup> November, 2006 No. 663 (in the wording of the Resolution of the Government of the Russian Federation of 20<sup>th</sup> May, 2014 No. 465), the conclusion on recognition of a citizen as having not done military service on conscription having no legal grounds for it is passed by a conscription commission during enrollment in the reserve under the condition that he did not do military service having no legal grounds for it beginning from 1<sup>st</sup> January, 2014 and at this was (was obliged to be) on military registration and was subject to conscription to military service.

Thus, respective conclusion of a conscription commission may not be passed with regard to citizens who did not do military service on conscription (in the absence of grounds envisaged by law for release from fulfilment of military duty, conscription to military service or delay of conscription), but by 1<sup>st</sup> January, 2014 have already been enrolled in the reserve. Thereby restriction, introduced by Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of

Prestige and Attractiveness of Military Service on Conscription” and connected with entering state civil service and its doing, may not be applied to citizens – both entering state civil service and being on state civil service – who did not do military service on conscription, but by 1<sup>st</sup> January, 2014 were enrolled in the reserve. Other interpretation of this legislative provision would not accord with authentic will of the federal legislator aimed, as follows from the title of this Federal Law, at taking measures on increase of the prestige and attractiveness of military service on conscription, which contemplates as their addressee citizens, subject to conscription to military service.

As to citizens having entered state civil service before the indicated date and subject to conscription to military service, they in the event of passing in their respect in the established procedure of a conscription commission’s conclusion on recognition as having not done military service on conscription without legal grounds for it cannot be excluded from the sphere of effect of respective restriction, otherwise they would receive unjustified advantages when realizing constitutional right to equal access to state service as compared with citizens, in respect of whom analogous conclusion of a conscription commission has also been passed and who pretend to substitute posts of state civil service. Meanwhile, both categories of citizens, equally recognized as having not done military service on conscription in the absence of legal grounds for it, from the point of view of the goal of the restriction, introduced by Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription”, can be regarded as persons being in equal or similar circumstances. Accordingly, legal position, by virtue of which observance of the constitutional principle of equality, guaranteeing protection against all forms of discrimination during realization of rights and freedoms, means, apart from anything else, ban to introduce restrictions of rights of persons belonging to one and the same category, which have no objective and reasonable justification,

repeatedly expressed by the Constitutional Court of the Russian Federation, extends to legal relations with their participation.

5. Non-fulfilment by a citizen of the Russian Federation of the constitutional duty of defence of the Fatherland by way of doing military service on conscription in the absence of grounds envisaged by law for release from fulfilment of military duty, conscription to military service or delay of conscription contemplates, as a rule, commission of actions by him or inaction, which are conjugate with non-observance of obligations on military registration, envisaged by the Federal Law “On Military Duty and Military Service”, or testify to evasion of conscription to military service and for interruption of which the legislation in force provides for mechanisms entailing administrative or criminal responsibility.

For instance, according to the Administrative Offences Code of the Russian Federation failure of a citizen, being or obliged to be on military registration, to appear on summons (notice) of a military commissariat or other body exercising military registration, at the established time and place without good reason, failure to appear at established term to a military commissariat for enrollment in military registration, removal from military registration and making amendments to documents of military registration in case of move to a new place of residence, located beyond the bounds of the territory of a municipal entity, place of stay for a term of more than 3 months or exit from the Russian Federation for a term of more than 6 months or entry into the Russian Federation, as well as non-reporting in the established term to a military commissariat or other body exercising military registration about change of family status, education, place of work or position, about move to a new place of residence located beyond the bounds of the territory of a municipal entity or place of stay entails warning or imposition of an administrative fine in the amount of 100 to 500 roubles (Article 21.5); cases on these administrative offences are considered by military commissariats (Article 23.11).

In case of evasion of a conscript of conscription to military service, respective materials are sent by the conscription commission or by head of division of a

military commissariat on municipal entity to head of investigatory body of the Investigatory Committee of the Russian Federation in the place of residence of the conscript for resolution of the question of calling him to account in accordance with the legislation (Item 12 of the Statute on Conscription to Military Service of Citizens of the Russian Federation). Evasion of conscription to military service in absence of legal grounds for release from this service is punished by a fine in the amount of up to 200,000 roubles or in the amount of the convict's salary or another income for a period of up to 18 months, or by forced works for the term of up to 2 years, or by arrest for the term of up to 6 months, or by deprivation of liberty for the term of up to 2 years (Section 1 of Article 328 of the Criminal Code of the Russian Federation).

As follows from Item 1 of Article 3 of the Federal Law "On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription", recognition of a citizen as having not done military service on conscription without grounds envisaged by law for release from fulfilment of military duty, conscription to military service or delay of conscription is admitted, irrespective of making him administratively or criminally answerable for non-fulfilment of duties on military registration or evasion of conscription to military service, on the basis of the conclusion of a conscription commission, passing of which means extension to such citizen of the restriction of access to state civil service.

Passing the conclusion on recognition of a citizen as having not done military service on conscription without legal grounds for it, the conscription commission is not bound by the need to appraise actual facts, due to which this citizen did not do military service, establishment of the facts of presence or absence of objective conditions or good reasons for non-fulfilment of his constitutional duty of defence of the Fatherland, as well as facts of making him administratively or criminally answerable for commission of actions (inaction), connected with guilty non-fulfilment of duties on military registration or evasion of conscription to military

service. At the same time, since situations are not excluded where a citizen did not do military service on conscription on reasons not depending on him, determined by some objective circumstances (for example, if on the territory where a citizen of a call-up age lived, events connected with conscription to military service were not held), it is contemplated that members of a conscription commission, acting in the procedure provided for by Section III of the Statute on Conscription to military Service of Citizens of the Russian Federation, impartially and thoroughly study documents that they have and pass their conclusion on the basis of collegiality and equally taking into consideration all circumstances in consequence of which the citizen did not fulfil his constitutional duty of defence of the Fatherland by way of doing military service on conscription.

Observance of rights and lawful interests of a citizen, recognized as having not done military service on conscription without legal grounds for it, is provided with the possibility to question the conclusion of a conscription commission in court, which during consideration of his application in the procedure of Chapter 25 of the Civil Procedure Code of the Russian Federation is obliged to research in essence actual circumstances and has no right, as the Constitutional Court of the Russian Federation repeatedly pointed out, to confine itself to establishment of formal conditions of application of the norm, because other would lead to substantial encroachment upon the right to court protection, fixed by Article 46 (Section 1) of the Constitution of the Russian Federation (judgments of 6<sup>th</sup> June, 1995 No. 7-II, of 28<sup>th</sup> October, 1999 No. 14-II, of 14<sup>th</sup> July, 2003 No. 12-II, of 12<sup>th</sup> July, 2007 No. 10-II and others). In this sense, appraisal of proofs allowing, in particular, to estimate presence or absence of grounds for passing in respect of the citizen of conclusion on his recognition as having not done military service on conscription without legal grounds for it and reflection of its results in judicial decision comes out as one of the manifestations of discretionary powers of the court, necessary for administration of justice and following from the principle of independence of judicial power which, however, does not contemplate the possibility of arbitrary and unlawful appraisal of these proofs.

Thus, Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription” – to the extent to which provision contained in it within its constitutional-law meaning in the system of legal regulation connects effect of the restriction of access to state civil service for citizens, recognized as having not done military service on conscription having no legal grounds for it, with the conclusion of a conscription commission, which is passed in respect of a concrete citizen on the basis of research of all circumstances, having determined his non-fulfilment of the constitutional duty of defence of the Fatherland by way of doing military service on conscription, and may be questioned in the judicial procedure, - conforms to the Constitution of the Russian Federation.

6. Restriction of access to state civil service, established by Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription”, actually contemplates for citizens, recognized in accordance with the conscription commission’s conclusion as having not done military service on conscription in the absence of legal grounds for it, indefinite ban on substitution of posts of state civil service.

This restriction, arising by virtue of the fact of recognition of a citizen in an established procedure as having not done military service on conscription without legal grounds for it, is by its nature comparable with administrative and criminal penalties in the form of ban on substitution of certain posts (including posts of state civil service), envisaged by the Administrative Offences Code of the Russian Federation and the Criminal Code of the Russian Federation – disqualification and deprivation of the right to substitute certain posts and to be engaged in certain activity respectively. But these kinds of penalties are applied solely on the ground of a court decision and contemplate that the ban established by them has exclusively fixed-term character: disqualification for the term of 6 months to 3 years (Sections 1 and 2 of Article 3.11 of the Administrative Offences Code of the

Russian Federation), and deprivation of the right to substitute certain posts and to be engaged in certain activity for the term of 1 year to 5 years as the main kind of penalty and for the term of 6 months to 3 years as the supplementary kind of penalty, and in cases specially envisaged by respective articles of the Particular Section of the Criminal Code of the Russian Federation – for the term of up to 20 years as the supplementary kind of penalty (Section 2 of Article 47 of the Criminal Code of the Russian Federation).

Consequently, Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription”, introducing for citizens, recognized in accordance with the conscription commission’s conclusion as having not done military service on conscription without legal grounds for it, restriction of entering state civil service and of its doing having no time-limits of effect, puts such citizens in the exercise of the right to equal access to state service (Article 32, Section 4) and the right freely to use his labour skills and to choose the type of activity and occupation (Article 37, Section 1), fixed by the Constitution of the Russian Federation, in the worse position compared with those citizens for whom the ban on substitution of certain posts comes out as a penalty for the commission of an administrative offence or crime.

Besides, with regard to persons having committed crimes and having criminal record, the Federal Law “On State Civil Service of the Russian Federation” (Item 2 of Section 1 of Article 6) envisages restrictions, connected with entering state civil service and being on state civil service, only in the presence of criminal record, not removed or cancelled in the procedure established by federal law. Thereby it is contemplated that persons having committed crimes, i.e. actions, having the largest degree of public danger among all kinds of offences, on expiry of the term of cancelling criminal record or after removal of criminal record have no obstacles against substitution of posts of state civil service and, accordingly, for realization of the said constitutional rights – unlike citizens, recognized in accordance with the

conclusion of a conscription commission as having not done military service on conscription without legal grounds for it and as a result indefinitely deprived of the right to substitute posts of state civil service.

Thus, Item 1 of Article 3 of the Federal Law “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription” – to the extent it contemplates establishment for citizens, recognized in accordance with the conclusion of a conscription commission as having not done military service on conscription without legal grounds for it, of indefinite ban on substitution of posts of state civil service – does not meet constitutional requirements of coordination, reasonableness and justice as well as proportionality of possible restrictions of constitutional rights and freedoms, and therefore does not conform to the Constitution of the Russian Federation, its Articles 32 (Section 4), 37 (Section 1) and 55 (Sections 2 and 3).

The federal legislator must, proceeding from requirements of the Constitution of the Russian Federation and taking account of legal positions, expressed by the Constitutional Court of the Russian Federation in the present Judgment, make amendments to operating legal regulation aimed at its perfection in the part establishing restrictions, connected with entering state civil service and its doing, in order – preserving the balance of public and private interests – to eliminate lack of coordination of legal provisions concerning negative consequences of non-fulfilment by a citizen of the Russian Federation of constitutional duty of defence of the Fatherland by way of doing military service on conscription and thereby exclude the possibility of disproportionate restriction of rights of citizens, recognized in the procedure established by legislation as having not done military service on conscription without legal grounds for it.

Proceeding from the above and guided by Articles 71, 72, 74, 75, 78, 79, 86 and 87 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

**h e l d:**

1. To recognize Item 1 of Article 3 of the Federal Law of 2<sup>nd</sup> July, 2013 No. 170-ΦЗ “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription” as conforming to the Constitution of the Russian Federation:

to the extent to which the provision contained in it, introducing for citizens, recognized as having not done military service on conscription having no legal grounds for it, in accordance with the conclusion of a conscription commission, restriction, connected with entering state civil service and its doing, establishes for persons having not fulfilled constitutional duty of defence of the Fatherland by way of doing military service on conscription placed on them (in absence of grounds envisaged by law for release from fulfilment of military duty, conscription to military service or delay of conscription) disqualifying obstacle for access to state civil service, conjugate with increased reputational requirements to state civil servants as persons, exercising respective activity in public interests, and thereby pursues the constitutionally significant object of preservation and appropriate functioning of public legal order;

to the extent to which the provision contained in it within its constitutional-law meaning in the system of operating legal regulation contemplates no application of the restriction established by it, connected with entering state civil service and its doing, to legal relations with participation of citizens who did not do military service on conscription, but by 1<sup>st</sup> January, 2014 were enrolled in the reserve and does not exclude its application to citizens having entered state civil service prior to 1<sup>st</sup> January, 2014, who by this date were subject to conscription to military service, in case of passing in their respect in the established order of the conclusion of a conscription commission on recognition as having not done military service on conscription having no legal grounds for it;

to the extent to which the provision contained in it within its constitutional-law meaning in the system of operating legal regulation connects effect of the

restriction of access to state civil service for citizens recognized as having not done military service on conscription having no legal grounds for it with the conclusion of a conscription commission, which is passed in respect of a concrete citizen on the basis of research of all circumstances having determined non-fulfilment by him of the constitutional duty of defence of the Fatherland by way of doing military service on conscription, and may be questioned in judicial procedure.

2. To recognize Item 1 of Article 3 of the Federal Law of 2<sup>nd</sup> July, 2013 No. 170-ΦЗ “On Amendments to Individual Legislative Acts of the Russian Federation in Respect of Realization of Measures on Increase of Prestige and Attractiveness of Military Service on Conscription” as not conforming to the Constitution of the Russian Federation, its Articles 32 (Section 4), 37 (Section 1) and 55 (Sections 2 and 3), to the extent to which the provision contained in it contemplates establishment of an indefinite ban on substitution of posts of state civil service for citizens, recognized as having not done military service on conscription having no legal grounds for it, in accordance with the conclusion of a conscription commission.

3. The federal legislator must, proceeding from requirements of the Constitution of the Russian Federation and taking account of legal positions, expressed by the Constitutional Court of the Russian Federation in the present Judgment, make amendments to operating legal regulation aimed at its perfection in the part establishing restrictions, connected with entering state civil service and its doing, in order – preserving the balance of public and private interests – to eliminate lack of coordination of legal provisions concerning negative consequences of non-fulfilment by a citizen of the Russian Federation of the constitutional duty of defence of the Fatherland by way of doing military service on conscription and thereby exclude the possibility of disproportionate restriction of rights of citizens, recognized in the procedure established by legislation as having not done military service on conscription without legal grounds for it.

4. The present Judgment shall be final and shall not be subject to any appeal, it shall come into force from the day of its official publication, shall be directly applicable and shall not require confirmation by other authorities and officials.

5. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta, the Collection of Laws of the Russian Federation and the official Internet-portal of legal information ([www.pravo.gov.ru](http://www.pravo.gov.ru)). The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court  
of the Russian Federation

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