

SUBMISSION

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SWITZERLAND

Military service, conscientious objection and related issues

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INTRODUCTION

1. Despite some positive elements, the Swiss legislation concerning conscientious objectors to military service still falls short from being in line with the international law and the international and regional human rights standards. IFOR has consistently raised a range of concerns related to conscientious objection to military service and related issues in Switzerland.ⁱ

2. In the context of the current cycle of the Universal Periodic Review, IFOR would like to focus mainly on three problematic aspects, analysing them separately and also in interrelation with each other: a. the punitive duration of the alternative civilian service, b. the criminalisation of conscientious objectors who refuse or fail to perform such a punitive and discriminatory alternative civilian service and c. the fact that in such cases conscientious objectors are tried by military courts in violation of the right to fair trial.

MAIN ISSUES OF CONCERN

a. Punitive duration of the alternative civilian service

3. According to the reply of the Federal Office of Civilian Service of Switzerland to the Questionnaire about European Bureau for Conscientious Objection (EBCO)'s Annual Report 2020 (by e-mail on 26/01/2021):

“Civilian service duty lasts 50% longer than regular military service.”ⁱⁱ

Indeed, according to the information provided by EBCO, the Civilian service lasts 390 days (13 months), which is 150% of military service.ⁱⁱⁱ

4. Such an increased duration of the alternative civilian service contravenes most of the international human rights standards.

Specifically:

- According to the **European Committee of Social Rights (ECSR) of the Council of Europe**, the alternative service should not exceed in length 1.5 times [50% increase] the length of military service.^{iv}
- However, according to the **UN Human Rights Committee**, an increase of the length of alternative service of 50%^v compared to that of military service “may be punitively long if not based on reasonable and objective grounds”.^{vi}
- According to the **OHCHR**, “Any duration longer than that of military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria. Equalizing the duration of alternative service with military service should be considered a good practice.”^{vii}
- The **European Parliament** has repeatedly stated that the length of alternative service should be the same and not last longer than the military service.^{viii}

5. Therefore, the current duration of alternative civilian service appears to comply only with the first standard set by the ECSR, but not with the others, and it is in sheer contravention with the standard of the European Parliament.

As for the UN standards, the State under review has not provided reasonable and objective grounds for such an increase.

6. On the contrary, from the response of the Federal Office of Civilian Service of Switzerland to EBCO, which explicitly states that “Readiness to undertake civilian service, which lasts one and a

half times as long as military service is regarded as sufficient proof for conscientious objection”^{ix}, it is understood that **the State under review is rather maintaining such a punitive duration of alternative civilian service in order to establish the sincerity of the conscientious objectors**. However, according to the **jurisprudence of the Human Rights Committee** when the reasoning of a State party is rather based on the argument that the differentiation in length of service is the only way to test the sincerity of an individual’s convictions, then, in the Committee’s view, such argument does not satisfy the requirement that the difference in treatment is based on reasonable and objective criteria.^x

b. Criminalisation of conscientious objectors who refuse or fail to perform the punitive and discriminatory alternative civilian service

7. The criminalisation of conscientious objectors for failing to perform both the military service and an alternative civilian service can be hardly considered as necessary in a democratic society, even in the cases where such an alternative civilian service is considered non-punitive and non-discriminatory. In this regard, worth noting that according to international law, States have the obligation to exempt conscientious objectors from military service but they do not have an obligation to impose an alternative civilian service instead.

8. For example, Norway has virtually exempted conscientious objectors without requiring an alternative civilian service (apart possibly from a 3-week start up course in Civil Protection and 2 days a year as training).^{xi}

9. In Finland, Jehovah’s Witnesses had been simply exempted for years (1985-2019) without requirement to perform the (punitive) alternative civilian service, and the Human Rights Committee had asked the State to “extend the preferential treatment accorded to Jehovah’s Witnesses to other groups of conscientious objectors”.^{xii} Unfortunately, Finland opted instead to remove the exemption from military and civilian service accorded to Jehovah’s Witnesses, in contrast to the Committee’s previous recommendations to extend such exemption to other groups of conscientious objectors, something which raised the concerns of the Committee.^{xiii}

10. In the case of Switzerland, not only an alternative civilian is imposed, but such an alternative civilian service, as it has been previously explained, is punitive and discriminatory, and moreover, the failure to perform it entails serious penal consequences.

11. According to the information provided by EBCO, “failure to perform military service is punishable under Article 8 of the Military Criminal Code”. Furthermore: “Conscientious objectors refusing all forms of service are tried and sentenced by military courts to jail sentences of 8 to 14 months.

Objection during or toward the end of military or civilian alternative service can be punished with 1 to 8 months in prison. Approximately 40 young men are sentenced to prison terms every year.”^{xiv}

12. Any punishment of a conscientious objector refusing or failing to perform a punitive alternative civilian service, and especially a prison sentence, constitutes a severe violation of human rights, including the right to freedom of thought, conscience and religion, the right to freedom from discrimination, and (in case any actual detention takes place) constitutes an arbitrary detention in violation of the right to liberty.

13. This is corroborated also by recent jurisprudence of the Human Rights Committee in the case of a conscientious objector in Greece who did not perform the punitive alternative civilian service.^{xv} It is also corroborated by recent concluding observations of the Human Rights Committee, in the equivalent case of Finland, where the alternative service is considered punitive, and therefore the Committee has asked the State party to “halt all prosecutions of individuals who refuse to perform military

service on grounds of conscience and release those who are currently serving related prison sentences”.^{xvi}

14. In such cases, the State is under an obligation to provide the conscientious objector (who has been punished for failing to perform a punitive alternative civilian service), with an effective remedy. This requires it to make full reparation to individuals whose rights have been violated. Accordingly, the State is obligated, *inter alia*, to expunge the conscientious objector’s criminal record, to reimburse all sums paid as fines and to provide adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.^{xvii}

c. Violation of the right to fair trial of conscientious objectors tried by military courts

15. According to the information provided by EBCO, “failure to perform military service is punishable under Article 8 of the Military Criminal Code” and “Conscientious objectors refusing all forms of service are tried and sentenced by military courts”.^{xviii}

16. Any trial of civilian by a military court raises issues of fairness.

The European Court of Human Rights has repeatedly ruled against the trial of civilians by military courts or courts with even some participation of military judges (“composed, even if only in part, of members of the armed forces”) finding a violation of article 6.1 of the ECHR.^{xix}

17. However, there are additional reasons (other than being civilians) why conscientious objectors should not be tried by military courts.

The European Court of Human Rights, in cases of conscientious objectors tried by military courts, has considered that: “It was understandable that, as a conscientious objector being prosecuted for offences of a purely military nature before a tribunal made up exclusively of military officers, the applicant should have been apprehensive about being tried by judges who were attached to the armed forces, which could be equated to a party to the proceedings. As a result, he could legitimately have feared that the Air Force Command Tribunal might allow itself to be unduly influenced by one-sided considerations. The applicant’s doubts as to the independence and impartiality of the tribunal could therefore be said to have been objectively justified.”^{xx}

18. Or, as it has been put in the “Draft principles governing the administration of justice through military tribunals”: “By definition, in such cases military tribunals would be judges in their own cause”.^{xxi}

Consequently, the European Court of Human Rights has repeatedly ruled against the trials of conscientious objectors by military courts, finding a violation of article 6.1 of the ECHR.^{xxii}

19. IFOR would like to also highlight that in the “Draft principles governing the administration of justice through military tribunals”, it is explicitly stated that: “Conscientious objectors are civilians who should be tried in civil courts, under the supervision of ordinary judges”.^{xxiii}

SUGGESTED RECOMMENDATIONS

1. Reduce the duration of the alternative civilian service to a comparable length with that of military service, and as a best practice, to equal length.
2. End the criminalisation of conscientious objectors who refuse or fail to perform the (punitive and discriminatory) alternative civilian service and provide effective remedies to those who have been already criminalised.
3. Amend the legislation so that a conscientious objector to military service cannot be tried by a military court under any circumstances.

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- ⁱ See for example IFOR's 2014 submission to the Human Rights Committee: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fHCS%2fCHE%2f17832&Lang=en
- ⁱⁱ <https://ebco-beoc.org/switzerland>
- ⁱⁱⁱ <https://ebco-beoc.org/switzerland>
- ^{iv} See for example Council of Europe, European Committee of Social Rights, *European Social Charter (Revised): Conclusions 2008 (vol. I)*, Estonia – Article I, p. 231.
- ^v As in the case of Austria: UN Human Rights Committee, List of issues in relation to the fifth periodic report of Austria, Addendum, Replies of Austria to the list of issues, (CCPR/C/AUT/Q/5/Add.1), 4 August 2015, para. 139. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FAUT%2FQ%2F5%2FAdd.1&Lang=en
- ^{vi} UN Human Rights Committee, Concluding observations on the fifth periodic report of Austria, (CCPR/C/AUT/CO/5), 3 December 2015, paras. 33-34. Available at <http://undocs.org/CCPR/C/AUT/CO/5>
- ^{vii} OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, 24 May 2019, para. 60, (1). Available at: <http://undocs.org/A/HRC/41/23>
- ^{viii} European Parliament, Resolution on respect for human rights in the European Community (annual report of the European Parliament), (A3-0025/93), 11 March 1993, para. 51, as it has been published in the Official Journal of the European Communities C 115, 26 April 1993, [Minutes of the sitting of Thursday, 11 March 1993](#), page 183. Resolution on conscientious objection in the Member States of the Community, (A3-0411/93), 19 January 1994, para. 9, as it has been published in the Official Journal of the European Communities C 44, 14 February 1994, [Minutes of the sitting of Wednesday, 19 January 1994](#), page 105. See also in the case of Greece: Resolution on the situation concerning basic rights in the European Union (2001) (2001/2014(INI)), para 42, text adopted on 15 January 2003. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2003-0012+0+DOC+XML+V0//EN>
- ^{ix} <https://ebco-beoc.org/switzerland>
- ^x UN Human Rights Committee, Views on Communication N° 666/1995, *Foin v. France*, (CCPR/C/67/D/666/1995), 9 November 1999, para. 10.3. Available at: <https://undocs.org/CCPR/C/67/D/666/1995>; UN Human Rights Committee, Views on Communications No. 690/1996 & 691/1996, *Marc Venier and Paul Nicolas v. France*, (CCPR/C/69/D/690/1996 & 691/1996), para. 10.4. Available at: <http://hrlibrary.umn.edu/undocs/session69/view690-691.htm>
- ^{xi} <https://ebco-beoc.org/norway>
- ^{xii} Human Rights Committee, Concluding observations on the sixth periodic report of Finland, CCPR/C/FIN/CO/6, 22 August 2013, para. 14. Available at: <https://undocs.org/CCPR/C/FIN/CO/6>
- ^{xiii} Human Rights Committee, Concluding observations on the seventh periodic report of Finland, (CCPR/C/FIN/CO/7), 1 April 2021, para. 36. Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/FIN/CCPR_C_FIN_CO_7_44648_E.pdf
- ^{xiv} <https://ebco-beoc.org/switzerland>
- ^{xv} See: *Petromelidis v. Greece* (CCPR/C/132/D/3065/2017). Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fc%2f132%2fd%2f3065%2f2017&Lang=en
- ^{xvi} Human Rights Committee, Concluding observations on the seventh periodic report of Finland, (CCPR/C/FIN/CO/7), 1 April 2021, para. 36. Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/FIN/CCPR_C_FIN_CO_7_44648_E.pdf
- ^{xvii} See for example: *Petromelidis v. Greece*, para. 11.
- ^{xviii} <https://ebco-beoc.org/switzerland>
- ^{xix} E.g. *Onaran v. Turkey* (65344/01), 5 June 2007; *Düzgören v. Turkey*, (56827/00), 9 November 2006; *Ergin v Turkey (No.6)* (47533/99), 4 May 2006; *Öcalan v. Turkey* [GC], (46221/99), 12 May 2005; *Canevi and Others v. Turkey*, (40395/98), 10 November 2004; *Şahiner v. Turkey*, (29279/95), 25 September 2001.
- ^{xx} Excerpt from the Information Note on the Court's case-law No. 148, January 2012, *Feti Demirtaş v. Turkey* (5260/07) Judgment 17.1.2012 [Section II], as published in the website of the ECtHR: <http://hudoc.echr.coe.int/eng?i=002-5>
- ^{xxi} UN Economic and Social Council, Commission on Human Rights, (E/CN.4/2006/58), 13 January 2006, Draft principles governing the administration of justice through military tribunals, Principle No. 6 “Conscientious objection to military service”, para. 22. Available at: <https://digitallibrary.un.org/record/571377?ln=en>
- ^{xxii} ECtHR, *Ercep v Turkey* (43965/04), 22 November 2011, para. 70; *Savda v Turkey* (42730/05), 12 June 2012, para. 111; *Feti Demirtaş v Turkey* (5260/07), 17 January 2012, para. 125; *Bouldu and others v. Turkey*, (14017/08), 3 June 2014, para. 99.
- ^{xxiii} UN Economic and Social Council, Commission on Human Rights, (E/CN.4/2006/58), 13 January 2006, Draft principles governing the administration of justice through military tribunals, Principle No. 6 “Conscientious objection to military service”, para. 22. Available at: <https://digitallibrary.un.org/record/571377?ln=en>