

**SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
FOR THE QUADRENNIAL ANALYTICAL REPORT  
ON CONSCIENTIOUS OBJECTION TO MILITARY SERVICE  
(50<sup>th</sup> session of the UN Human Rights Council)**

The International Fellowship of Reconciliation is a spiritual based peace movement which started in 1914 at the outbreak of WWI. Conscientious objection to military service is one of its historical roots and of the main topics of its current work at the UN in Geneva.

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## INTRODUCTION

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The International Fellowship of Reconciliation welcomes the opportunity to submit input for the quadrennial report of the OHCHR on the right to conscientious objection to military service and expresses its appreciation for this important work.

This contribution is based on IFOR's research and report compilation work on the right to conscientious objection to military service, and largely on the work undertaken for UN State Reviews within the Universal Periodic Review process of the Human Rights Council and within the Human Rights Committee.

Following an overview of main aspects concerning the right to conscientious objection, since the last quadrennial Report, this submission provides a compendium of some country-based analyses on the right to conscientious objection and related issues with presentation of local developments, good practices and remaining challenges.

The right to conscientious objection to military service is directly linked to the right to life and the main purpose of the United Nations “to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace“.<sup>1</sup>

Additionally, IFOR would like to emphasize the importance of the collective effort within the UN system and particularly at the Human Rights Council regarding the right to conscientious objection to military service. During the 36<sup>th</sup> session of the Council, following the presentation of the last OHCHR thematic report, Resolution A/HRC/36/L.20 on conscientious objection was adopted without a vote<sup>2</sup>.

It is also important to encourage attention to this right during regular state review procedures, then to invite member states to accept recommendations on this issue and to provide assistance in efforts to fully implement this human right.

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<sup>1</sup> <https://www.un.org/en/about-us/un-charter/chapter-1>

<sup>2</sup> [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/36/L.20](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/L.20)

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## OVERVIEW

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The right to conscientious objection to military service is a human right inherent to the right to freedom of thought, conscience and religion, and "it entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or belief".<sup>3</sup>

In this *overview* a number of main issues related to the right to conscientious objection are listed -accompanied with some cases-, highlighting developments, good practices and remaining challenges. These issues will then be detailed in the section dedicated to the *country-based analyses*.

### **NEW DEVELOPMENTS**

#### **- UN jurisprudence**

- In December 2021, the UN Human Rights Committee published its Views concerning the *Petromelidis v. Greece* case, finding violations of Articles 9(1), 12(2), 14(7) and 18(1) of ICCPR<sup>4</sup>. The decision of the UN Human Rights Committee in a longstanding case of a Greek conscientious objector advances relevant jurisprudence, significant for conscientious objectors in other countries as well.<sup>5</sup>

#### **- Recognition of the right to conscientious objection**

- In March 2017, in **Israel** the army recognized refusal to serve in the occupation as conscientious objection for the first time in 13 years, as it decided to release Tamar Ze'evi after she had spent a total of 118 days in prison.<sup>6</sup>

In July 2018 Ayelet Brachfeld was recognized as a conscientious objector, after 4 prison terms and a total of 100 days in prison.<sup>7</sup>

More recently in August 2021, after 4 prison sentences and 49 days in jail, Shlomo was finally recognized as a conscientious objector and was released from Israeli military service.<sup>8</sup>

Unfortunately, these developments are exceptions in the Israeli practice<sup>9</sup>.

#### **- Alternative service**

- **Belarus** has successfully implemented alternative civilian service in 2016, but it does not extend it to those called up for reserve duty who had served earlier or had never served.

#### **- Imprisonment of conscientious objectors**

The number of conscientious objectors in prison in some countries is slightly decreasing from past years

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<sup>3</sup> Human Rights Committee, General Comment n. 22 1993 and Communication 1321/2004.

Human Rights Council resolution 24/17 (A/ HRC/24/17) of 27 September 2013 and reaffirmed in Human Rights Council resolution 36/18 (A/HRC/ RES/36/18) of 3 October 2017.

<sup>4</sup> Human Rights Committee, Views adopted by the Committee under the Optional Protocol, concerning communication No. 3065/2017, Advance unedited version, [CCPR/C/132/D/3065/2017](https://www.refuser.org/refuser-updates/shlomo-released), 6 December 2021, para. 10.

<sup>5</sup> <https://ebco-beoc.org/node/518>

A detailed presentation of the case and the decision of the Human Rights Committee is provided in the Greece analyses in the following section.

<sup>6</sup> <https://www.972mag.com/idf-releases-conscientious-objector-after-110-days-in-prison/>

<sup>7</sup> <https://www.972mag.com/idf-releases-conscientious-objector-after-100-days-in-military-prison/>

<sup>8</sup> <https://www.refuser.org/refuser-updates/shlomo-released>

<sup>9</sup> See country-based analyses in the next section.

for instance in the **Republic of Korea** where such number used to be quite high.

- In **Turkmenistan**, on May 8<sup>th</sup> 2021, 16 known jailed conscientious objectors – all Jehovah's Witnesses – who were serving terms of one to four years were freed under amnesty.<sup>10</sup>

- **South Korea's** Supreme Court in 2018 ruled that religious or moral concerns could be legitimate reasons to refuse military service<sup>11</sup>. Following the Supreme Court ruling, South Korea has pardoned hundreds of men previously convicted for failing to serve and released those still serving time from prison<sup>12</sup>.

- **Claims for refugee status by conscientious objectors**

Courts in some countries are declaring conscientious objectors eligible for asylum.

- In **Italy** the Cassation Court has upheld at the beginning of 2022 the asylum request of a Ukrainian man who fled the Donbass to avoid conscription. In 2017, Divonchuk Dmytro, a 20-year-old Ukrainian citizen from Donbass arrived in Italy and applied for political asylum due to conscientious objection as he had refused to enlist in his country's army. The Court of Cassation has now granted him political refugee status, overturning the ruling: "A conscientious objector who refuses to serve in the army in his country of origin must be granted political refugee status if his enlistment entails the risk of involvement, even indirectly, in a conflict characterised by the commission, or high probability, of war crimes or crimes against humanity".<sup>13</sup>

## **GOOD PRACTICES**

- **Availability of information**

- In **Austria** the information concerning the application for the recognition of conscientious objector status is available on the website regarding obligatory military service.

- **Application procedures**

- In **Switzerland** the entire application process and administration of alternative service is under civilian organizations.

- **Protection of conscientious objectors' personal data**

- In **Greece** the Hellenic Data Protection Authority found that the certificate of military status should not reveal that someone has performed alternative service (which virtually meant revealing that someone is a conscientious objector), but only that he does not have military duties anymore.<sup>14</sup> This is important to eliminate discriminations of conscientious objectors, for example as to employment.

- **Conscientious objection in time of emergency/war**

- In **Greece** until 2019 there was a provision in the legislation<sup>15</sup> that was giving the power to the Minister of National Defence in times of war to suspend all the provisions about alternative service and

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<sup>10</sup> [https://www.forum18.org/archive.php?article\\_id=2656](https://www.forum18.org/archive.php?article_id=2656)

<sup>11</sup> <https://edition.cnn.com/2018/11/01/asia/south-korea-conscientious-objectors-intl/index.html>

<sup>12</sup> <https://thediplomat.com/2020/07/south-koreas-conscientious-objectors-are-getting-an-alternative-to-military-service/>

<sup>13</sup> <https://www.quotidianopiemontese.it/2022/03/06/la-cassazione-accoglie-la-richiesta-di-asilo-di-un-ucraino-fuggito-dal-donbass-per-evitare-larruolamento/>

<sup>14</sup> Hellenic Data Protection Authority, [Decision 3](#), 13/1/2022 [in Greek].

<sup>15</sup> Law 3421/2005, Article 65(2).

thus to virtually annul any kind of recognition of conscientious objection in times of war. This provision was abolished in 2019.<sup>16</sup>

- **Provisions for conscientious objection also in case of suspension of conscription**

▪ In **Portugal**, where conscription is suspended, all citizens who turn 18 years old in a given year must be present at the commemorations of National Defence Day.<sup>17</sup> and “The right to objection of conscience still applies to military obligations imposed upon Portuguese citizens.”<sup>18</sup> which means that those with conscientious objections are not required to participate in National Defence Day.<sup>19</sup>

- **Freedom of expression**

▪ In **Greece**, in 2019 it was abolished<sup>20</sup> article 202 of the Greek Penal Code, which stated that "whoever intentionally incites or provokes a person who has the obligation to be conscripted not to obey to the call when he is called up to the army" is punished with imprisonment up to 3 years, and in case of war with imprisonment up to 10 years. This could potentially restrict the right to freedom of expression for those who publicly support conscientious objection to military service.

## **REMAINING CHALLENGES**

- **Recognition of the right to conscientious objection**

In some countries, such as **Singapore** and **Tajikistan**<sup>21</sup> for instance, the right to conscientious objection to military service is not recognized and objectors are victims of various human rights violations. In other cases, it can be observed that there is not a full implementation of the right which still results on discrimination and violations of the rights of conscientious objectors.<sup>22</sup>

In some countries it is persistent a discrimination based on the different grounds for conscientious objection.

▪ Currently, **Turkey** is the only member state in the Council of Europe that has not recognised the right to conscientious objection to military service.

▪ In **Eritrea**, there is no recognition of conscientious objection, liability for military service is universal and imposed by random forcible recruitment; the duration of the service is indefinite, as it can be the incarceration of conscientious objectors and those attempting to leave the country to avoid military service put their lives at risk. The indefinite conscription into national military service has been identified as amount to enslavement by the UN Special Rapporteur on the situation of human rights in Eritrea.<sup>23</sup>

▪ In **Finland** the law which completely exempted Jehovah's Witnesses from both military and alternative service was abolished on 1<sup>st</sup> April 2019.<sup>24</sup> This was the opposite of the UN's Human Rights

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<sup>16</sup> Law 4609/2019, Article 23(6).

<sup>17</sup> CCPR/C/PRT/4, 25<sup>th</sup> February, 2011, para 109.

<sup>18</sup> Ibid, para 208.

<sup>19</sup> War Resisters International [http://wri-irg.org/programmes/world\\_survey/country\\_report/en/Portugal](http://wri-irg.org/programmes/world_survey/country_report/en/Portugal) (23<sup>rd</sup> October, 2008).

<sup>20</sup> Law 4619/2019.

<sup>21</sup> [https://www.forum18.org/archive.php?article\\_id=2625](https://www.forum18.org/archive.php?article_id=2625)

<sup>22</sup> The European Bureau for Conscientious Objection releases each year a report concerning the countries of the area of the Council of Europe, which provides details on the status quo of the right to conscientious objection in the region.

The recent 2021 report is available at [https://ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2022-03-21-EBCO\\_Annual\\_Report\\_2021\\_0.pdf](https://ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2022-03-21-EBCO_Annual_Report_2021_0.pdf)

<sup>23</sup> Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Eritrea, 24 July 2017 (A/HRC/35/39).

<sup>24</sup> Act on the Exemption of Jehovah's Witnesses from Military Service in Certain Cases (330/2019).

Committee recommendation,<sup>25</sup> namely to extend the preferential treatment accorded to Jehovah's Witnesses to other groups of conscientious objectors.

- In **Greece**, according to official figures, from 2020 until March 2022, while the percentage of recognition of conscientious objectors on religious grounds is almost 97%, the percentage of acceptance for those citing ideological (non-religious) grounds, has fallen to 27%.<sup>26</sup>

Of particular concern is the lack of recognition of the right to conscientious objection to conscript during the military service, servicemen and reservists.

In 2010 the Committee of Ministers of the Council of Europe recommended that "Professional members of the armed forces should be able to leave the armed forces for reasons of conscience."<sup>27</sup>

- In **Belarus** authorities claim that those who previously performed military service do not have the right to conscientious exemption from reservist training.<sup>28</sup>

In addition, also those who objected before the introduction of alternative service in 2016, can face prosecutions as showed by Mozol's case.<sup>29</sup> In December 2021, the UN Human Rights Committee asked Belarus to respond in the case of 33-year-old Jehovah's Witness conscientious objector Dmitry Mozol. In February 2021, a court in Pinsk fined him four months' wages for refusing call-up to reservist military training on grounds of conscience. He failed to overturn the criminal punishment on appeal. Alternative service was introduced only in 2016, after Mozol was initially called up.

- The Criminal Code of **Ukraine** sets out that avoidance of conscription for active military service is punishable by up to three years of imprisonment (art. 335).

- In **Greece** there is no recognition of the right to conscientious objection for those serving voluntarily in the armed forces/professional staff. There is only possibility for resignation which in certain cases entails paying a considerable amount of money.<sup>30</sup>

#### - **Total or selective objectors**

In its Guidelines on International Protection<sup>31</sup> the UNHCR states that "Conscientious objection to military service refers to an objection to such service which "derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives."<sup>32</sup> Such an objection is not confined to absolute conscientious objectors [pacifists], that is, those who object to all use of armed force or participation in all wars. It also encompasses those who believe that "the use of force is justified in some circumstances but not in others, and that therefore it is necessary to object in those other cases" [partial or selective objection to military service].<sup>33</sup> A conscientious objection may develop over time, and thus volunteers may at some stage also raise claims based on

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<sup>25</sup> Human Rights Committee, concluding observations on the sixth periodic report of Finland (CCPR/C/FIN/CO/6) published the 22 August 2013, para. 14.

<sup>26</sup> Amnesty International, Connection e.V., European Bureau for Conscientious Objection (EBCO), International Fellowship of Reconciliation (IFOR), War Resisters' International (WRI), "Greece: Give Charis Vasileiou and Nikolas Stefanidis a fair examination of their grounds for conscientious objection under an amended legislative framework in line with international law and standards", Joint NGOs Statement, 21 March 2022, EUR 25/5374/2022. Available at: <https://www.amnesty.org/en/documents/eur25/5374/2022/en/>

<sup>27</sup> CM/Rec(2010)4, 24<sup>th</sup> February 2010.

<sup>28</sup> [https://www.forum18.org/archive.php?article\\_id=2710](https://www.forum18.org/archive.php?article_id=2710)

<sup>29</sup> Ibid.

<sup>30</sup> Permanent Mission of Greece to the Office of the United Nations and other International Organizations in Geneva, [Verbal Note](#) on Conscientious Objectors, 14 August 2019, Ref. No. 6175.4/AS 1237, attached response of the Hellenic National Defence General Staff, paras. 2b and 2c.

<sup>31</sup> No. 10.

<sup>32</sup> See, UN Commission on Human Rights, Resolution 1998/77, "Conscientious Objection to Military Service", E/CN.4/RES/1998/77, 22 April 1998, available at: <http://www.refworld.org/docid/3b00f0be10.html>. The Commission was replaced by the UN Human Rights Council in 2006.

<sup>33</sup> See, UN Conscientious Objection to Military Service, E/CN.4/Sub.2/1983/30/Rev.1, 1985 (the "Eide and Mubanga-Chipoya report"), available at: <http://www.refworld.org/pdfid/5107cd132.pdf>, para. 21. See also, paras. 128-135 regarding persecution in the context of conscientious objection to conflicts which violate basic rules of human conduct.

conscientious objection, whether absolute or partial.”<sup>34</sup>

The UN General Assembly has already, since 1978, implicitly recognized one type of selective objection in its resolution 33/165, in which it recognised the right of all persons to refuse service in military or police forces which are used to enforce apartheid, and called upon Member States to grant asylum or safe transit to another State to persons compelled to leave their country of nationality solely because of a conscientious objection to assisting in the enforcement of apartheid through service in military or police forces.<sup>35</sup>

In this regard, worth noting that human rights organisations, including prominent Israeli organisations such as Yesh Din<sup>36</sup> and B’ Tselem<sup>37</sup>, and prominent international organisations such as the International Federation for Human Rights (FIDH)<sup>38</sup>, Human Rights Watch<sup>39</sup> and Amnesty International<sup>40</sup>, denote a system of apartheid by Israel against the Palestinians.

As highlighted by the OHCHR, “The Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion or belief have also taken up cases of selective conscientious objectors (E/CN.4/2005/6/Add.1, opinion No. 24/2003; A/HRC/23/51, case No. USA 34/2012).”<sup>41</sup>

The OHCHR has explicitly stated that “States should ensure that the right to object applies both to pacifists and to selective objectors who believe that the use of force is justified in some circumstances but not in others”<sup>42</sup> and has included among the minimum criteria for application procedures to comply with international human rights norms and standards, the:

“Recognition of selective conscientious objection.

The right to object also applies to selective objectors who believe that the use of force is justified in some circumstances but not in others”.<sup>43</sup>

- In **Israel** the status of conscientious objector is very rarely recognized. We have only three cases since 2017 on more than 22 known applications<sup>44</sup>. In practice, Israel does not recognise someone as a conscientious objector unless he/she is considered by the Special Military Committee as “clearly pacifistic”.

- In **Finland** there are two criminal offences with which total objectors can be charged.

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<sup>34</sup> UNHCR, *Guidelines on International Protection No. 10*, HCR/GIP/13/10/Corr. 1, 12 November 2014, p. 1, available at: <https://www.unhcr.org/publications/legal/529efd2e9/guidelines-international-protection-10-claims-refugee-status-related-military.html>

<sup>35</sup> Available at: <https://undocs.org/pdf?symbol=en/A/RES/33/165>

<sup>36</sup> Yesh Din, *The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*, June 2020, available at: <https://www.yeshdin.org/en/the-occupation-of-the-west-bank-and-the-crime-of-apartheid-legal-opinion/>

<sup>37</sup> B’ Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid*, 12 January 2021, available at: [https://www.btselem.org/publications/fulltext/202101\\_this\\_is\\_apartheid](https://www.btselem.org/publications/fulltext/202101_this_is_apartheid)

<sup>38</sup> See “Canada : résolution sur la position du Canada à l’égard de la Palestine, Résolution adoptée par le 38e Congrès de la FIDH”, published on 25 May 2013, available at: <https://www.fidh.org/fr/regions/ameriques/canada/canada-resolution-sur-la-position-du-canada-a-l-egard-de-la-palestine-13779>

See also: FIDH Statement, “The international community must hold Israel responsible for its crimes of apartheid”, 28 April 2021, available at: <https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/the-international-community-must-hold-israel-responsible-for-its>

<sup>39</sup> HRW, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021, available at: <https://www.hrw.org/news/2021/04/27/abusive-israeli-policies-constitute-crimes-apartheid-persecution> Full report at: <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>

<sup>40</sup> <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>

<sup>41</sup> 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, (A/HRC/41/23), 24 May 2019, para. 26. Available at: <https://undocs.org/A/HRC/41/23>

<sup>42</sup> Analytical report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/35/4, 1 May 2017, para. 63. Available at: <https://undocs.org/A/HRC/35/4>

<sup>43</sup> 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, (A/HRC/41/23), 24 May 2019, para. 60(d). Available at: <https://undocs.org/A/HRC/41/23>

<sup>44</sup> See Israel country analysis in the next section.

Since November 2020, there have been 44 reports of the offence of refusal to perform non-military service. In addition, there have been several reports of the offence of refusing military service.<sup>45</sup>

#### - **Availability of information**

In several countries it is reported that young people and servicemen are not provided with the necessary information concerning the possibility to apply for conscientious objection.

This is an issue which involves many countries where there is conscription, such as **Belarus, Bolivia, Cyprus, Finland, Russia, Ukraine**, for instance.

#### - **Compliance with the ruling of international institutions**

In spite of the decisions of international organizations or the commitment of states within these same institutions regarding the right to conscientious objection, compliance is still disregarded.

- **Azerbaijan**, as reported in the country-based report by Forum 18, has not yet passed an alternative civil service law despite a further decision from the European Court of Human Rights (ECtHR) in Strasbourg concerning the matter. An adviser in the Presidential Administration's Human Rights Protection Unit indicated that the regime has no plans to introduce a civilian alternative to compulsory military service.<sup>46</sup> On October 7<sup>th</sup> 2021, the European Court of Human Rights (ECtHR) in Strasbourg issued a decision that Azerbaijan had violated the human rights of two Jehovah's Witness young men, Emil Mehdiyev and Vahid Abilov, who had been convicted in 2018 for refusing compulsory military service on grounds of conscience.

Furthermore, ahead of its accession to the Council of Europe in January 2001, Azerbaijan promised "to adopt, within two years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions, allowing them instead to choose (when the law on alternative service has come into force) to perform non-armed military service or alternative Civilian service".<sup>47</sup>

- **Turkey** is not complying with ECHR judgements. On June 4<sup>th</sup> 2020, the Council of Europe Committee of Ministers' Deputies urged Turkey to stop prosecuting conscientious objectors and take the necessary measures to address the judgements of the European Court of Human Rights under the Ülke Group of cases (total of seven cases).<sup>48</sup> Reminding Turkey of the lack of any progress in law, in its recent decision, the Committee of Ministers asked Turkey to submit an action plan with concrete steps addressing the ECtHR findings.

- **Bolivia** does not yet include the right to conscientious objection as an exemption from military service in its regulatory framework, failing to comply with several international calls. In 2005 from the Inter-American Commission on Human Rights in the Alfredo case Diaz Bustos v Bolivia<sup>49</sup>, in 2013 from the Human Rights Committee in its Concluding Observations<sup>50</sup>, in 2020 from the Inter-American Commission on Human Rights in the case José Ignacio Orias Calvo v Bolivia<sup>51</sup>. It is concerning as well that

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<sup>45</sup> Information received from the Finnish Union of Conscientious Objectors (AKL) in December 2020.

<sup>46</sup> <https://www.forum18.org/archive.php?query=&religion=all&country=23>

<sup>47</sup> [https://www.forum18.org/archive.php?article\\_id=2695](https://www.forum18.org/archive.php?article_id=2695)

<sup>48</sup> European Court of Human Rights, Case Ülke v Turkey (Application No. 39437/98), Judgement of 24<sup>th</sup> January 2006; European Court of Human Rights, Case Ercep v Turkey (Application No. 43965/04), Judgement of 22<sup>nd</sup> November 2011; European Court of Human Rights, Case of Feti Demirtas v Turkey (Application No. 5260/07), Judgment of 17<sup>th</sup> January 2012; European Court of Human Rights, Case of Savda v Turkey (Application No. 42730/05), Judgment of 12<sup>nd</sup> June, 2012; European Court of Human Rights, Case of Tarhan v Turkey (Application No. 9078/06). Judgment of 17<sup>th</sup> July 2012; European Court of Human Rights, Case Buldu and others v Turkey (Application No. 14017/08), Judgement of 3<sup>rd</sup> June 2014; European Court of Human Rights, Case Enver Aydemir v Turkey ((Application No. 26012/11), Judgement of 7<sup>th</sup> June 2016.

<sup>49</sup> Report 52/04.

<sup>50</sup> CCPR/C/Bol/CO/3.

<sup>51</sup> Report 147/20.

it ratified the Ibero-American Convention on the Rights of Youth in 2008, but with reservations to Article 12, which includes the right of youth to conscientious objection to military service.<sup>52</sup>

### **- Imprisonment, repeated trials, punishment of conscientious objectors and violation of the *ne bis in idem* principle**

Imprisonment of conscientious objectors to military service, apart from a violation of art 18(1) of ICCPR, also constitutes a violation of art. 9(1) of ICCPR. The Human Rights Committee has highlighted that the detention as punishment for legitimate exercise of freedom of religion and conscience is arbitrary.<sup>53</sup>

The practice of repeated imprisonment of conscientious objectors constitutes a violation of art. 14(7) of ICCPR and also of art 18(2) of ICCPR, as stated by the UN Working Group on Arbitrary Detention.<sup>54</sup>

The Human Rights Committee has repeatedly stated that “repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience”<sup>55</sup> and has found a violation of Article 14 (7) of ICCPR in various cases of conscientious objectors in other countries.<sup>56</sup>

The concept of repeated punishment “tantamount to compelling a person to change his or her convictions and beliefs” can be found also in opinions of the UN Working Group on Arbitrary Detention on individual cases of conscientious objectors, including in Israel and Turkey.<sup>57</sup>

Worth noting also that the Committee has referred to such opinions of the UN Working Group on Arbitrary Detention on individual cases, and the exact paragraphs, when it commented on the issue of repeated punishment of conscientious objectors.<sup>58</sup>

Conscientious objectors continue to be imprisoned in various countries, such as **Turkmenistan**<sup>59</sup>, **Singapore**<sup>60</sup>, **Eritrea**<sup>61</sup>, **Tajikistan**<sup>62</sup>, **Israel**<sup>63</sup>.

- IFOR is aware of two Jehovah’s Witnesses currently imprisoned as conscientious objectors in **South Korea**<sup>64</sup> and twenty others imprisoned in **Eritrea**<sup>65</sup> where there is a system of indefinite National Service.

- In **Azerbaijan**, in July 2018, Barda District Court convicted Emil Mehdiyev (who refused to perform military service on grounds of conscience and offered to do an alternative civilian service which does not exist in Azerbaijan) and handed down a one-year suspended prison term, and required that he live under probation for one year. Ganca Appeal Court rejected his appeal in October 2018. The Supreme

<sup>52</sup> Law 3854 of 2008 <http://www.gacetaoficialdebolivia.gob.bo/normas/busquedag1?q=convencion+iberoamerica>.

<sup>53</sup> See Young-kwan Kim et al v. Republic of Korea, para. 7.5 and Petromelidis v. Greece, para. 9.8.

<sup>54</sup> Report of the Working Group on Arbitrary Detention, E/CN.4/2001/14.

<sup>55</sup> See the Committee’s general comment No. 32 (2007) on article 14: right to equality before courts and tribunals and to a fair trial, para.

<sup>56</sup> Available at: <https://undocs.org/en/CCPR/C/GC/32>

<sup>57</sup> See communication *Zafar Abdullayev v Turkmenistan* para 7.4 and 7.5. See also *Nasyrlayev v. Turkmenistan*, para. 8.5, *Nurjanov v. Turkmenistan*, para. 9.7, *Aminov v. Turkmenistan*, para. 9.5, *Matyakubov v. Turkmenistan*, para. 7.5, *Petromelidis v. Greece*, para. 9.11.

<sup>58</sup> Working Group on Arbitrary Detention, Opinion 16/2008 (Turkey), para. 39. Available at: <http://undocs.org/A/HRC/10/21/Add.1>

See also: Opinion No. 24/2003 (Israel), para. 30. Available at: <http://undocs.org/E/CN.4/2005/6/Add.1>

Opinion No. 36/1999 (Turkey) para. 9. Available at: <http://undocs.org/E/Cn.4/2001/14/add.1>

<sup>59</sup> See General Comment No. 32 of the Human Rights Committee, 23 August 2007,

CCPR/C/GC/32, para. 55, referring with the note 113 exactly to the United Nations Working Group on Arbitrary Detention, Opinion No. 36/1999 (Turkey), E./CN.4/2001/14/Add. 1, para. 9 and Opinion No. 24/2003 (Israel), E/CN.4/2005/6/Add. 1, para. 30.

<sup>60</sup> <https://www.ecoi.net/en/document/2025552.html>.

<sup>61</sup> <https://www.jw.org/en/news/legal/by-region/singapore/jehovahs-witnesses-in-prison/>.

<sup>62</sup> <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26439&LangID=E>.

<sup>63</sup> [https://www.forum18.org/archive.php?article\\_id=2629](https://www.forum18.org/archive.php?article_id=2629).

<sup>64</sup> <https://www.timesofisrael.com/israeli-conscientious-objector-released-from-military-prison/>

<sup>65</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fISR%2f47719&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fISR%2f47719&Lang=en)

<sup>66</sup> <https://www.jw.org/en/news/legal/by-region/south-korea/jehovahs-witnesses-in-prison/>

<sup>67</sup> As of March 2022. <https://www.jw.org/en/news/legal/by-region/eritrea/jehovahs-witnesses-in-prison/>

Court rejected his final appeal in April 2019.<sup>66</sup> He filed his appeal to the ECtHR<sup>67</sup> on October 7<sup>th</sup> 2019. Another similar case concerns Vahid Abilov who was sentenced to a one-year suspended prison term in September 2018 and after the rejection of his domestic appeals, filed his appeal to the ECtHR<sup>68</sup> in October 2019.

- In December 2020, in **Finland** at least 13 total objectors who were once acquitted, were subjected to another trial and sentenced to imprisonment by district courts. All of them have appealed to the Court of Appeal.<sup>69</sup>

- **Israel** continues to routinely imprison conscientious objectors to military service for their refusal to perform military service.<sup>70</sup> They are usually condemned to short sentences in military prisons but on release are ordered immediately to report to service and given their refusal this leads to a further imprisonment because the punishment for failure to perform military service does not entail exemption from military duties.

According to the information provided by media, the maximum number of prison terms for a conscientious objector has been 8, and the maximum total time spent in prison by a conscientious objector has been 150 days. The repeated imprisonment of conscientious objectors constitutes a violation of the principle of ne bis in idem.<sup>71</sup>

- In **Tajikistan**, on January 7<sup>th</sup> 2021, Khujand Military Court, despite his offer to perform alternative civilian service, jailed Rustamjon Norov for three and a half years, the longest known sentence Tajikistan has handed down to a conscientious objector. The court claimed the 22-year-old Jehovah's Witness conscientious objector falsified his medical history to evade compulsory military service, charges he denies.<sup>72</sup>

On November 1<sup>st</sup> 2020 another jailed conscientious objector, fellow Jehovah's Witness Jovidon Bobojonov, was freed after serving nine months of a two-year prison term.<sup>73</sup>

- The UN Human Rights Committee's Decision, published on 17 September 2019<sup>74</sup>, ruled concerning **Turkmenistan** that the right to freedom of religion or belief of former conscientious objectors Juma Nazarov, Yadgarbek Sharipov, and Atamurad Suvhanov had been violated by their jailing.<sup>75</sup>

- In **Greece** punishment for insubordination does not entail exemption from military duties, consequently, the conscientious objectors are repeatedly called-up, and repeatedly punished.

It is worth noting that when conscientious objectors are tried by military court there is a violation of international standards.

The Human Rights Committee has already stated, specifically in the case of conscientious objectors that it “deplores [...] their punishment by military courts”.<sup>76</sup>

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

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<sup>66</sup> [https://www.forum18.org/archive.php?article\\_id=2665](https://www.forum18.org/archive.php?article_id=2665)

<sup>67</sup> Mehdiyev v. Azerbaijan. Application No. 52773/19.

<sup>68</sup> Abilov v. Azerbaijan. Application No. 54768/19.

[https://www.forum18.org/archive.php?article\\_id=2665](https://www.forum18.org/archive.php?article_id=2665)

<sup>69</sup> Ibid.

<sup>70</sup> See the Appendix to the report submitted by IFOR to the 134<sup>th</sup> Human Rights Committee [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fISR%2f47719&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fISR%2f47719&Lang=en).

<sup>71</sup> CCPR/C/ISR/CO/4, para. 23.

<sup>72</sup> [https://www.forum18.org/archive.php?article\\_id=2629](https://www.forum18.org/archive.php?article_id=2629)

<sup>73</sup> Ibid.

<sup>74</sup> C/126/D/2302/2013. <https://undocs.org/CCPR/C/126/D/2302/2013>

<sup>75</sup> [https://www.forum18.org/archive.php?article\\_id=2656](https://www.forum18.org/archive.php?article_id=2656)

<sup>76</sup> Human Rights Committee, *Concluding Observations* on the initial report of Armenia (CCPR/C/79/Add.100), 19 November 1998, para. 18. Available at: <https://undocs.org/CCPR/C/79/Add.100>

supervision of ordinary judges”.<sup>77</sup>

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, equivalent to Article 14(1) of the ICCPR.<sup>78</sup>

#### - Application procedures

Several countries do not comply with the international human rights standards on the procedures and the body examining applications for conscientious objector status.

The then UN Special Rapporteur on religious intolerance, since many years had set the relevant standards: “The decision concerning their status should be made, when possible, by an impartial tribunal set up for that purpose or by a regular civilian court, with the application of all the legal safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent, civilian judicial body. The decision-making body should be entirely separate from the military authorities and the conscientious objector should be granted a hearing and be entitled to legal representation and to call relevant witnesses.”<sup>79</sup>

The same standards continue to be cited by the UN Special Rapporteur on freedom of religion or belief<sup>80</sup> and the Office of the United Nations High Commissioner for Human Rights (OHCHR).<sup>81</sup>

The OHCHR has determined that “Independent and impartial decision-making bodies should determine whether a conscientious objection to military service is genuinely held in a specific case. Such bodies should be placed under the full control of civilian authorities”.<sup>82</sup> In the same report, the OHCHR has set up several minimum criteria so that application procedures are in line with international human rights norms and standards.<sup>83</sup> The OHCHR has also cited acceptance of applications without inquiry as a best practice.<sup>84</sup>

Since 1998, the then UN Commission on Human Rights has welcomed the fact that some States accept claims of conscientious objection as valid without inquiry.<sup>85</sup> The same has been repeated by its successor, the UN Human Rights Council.<sup>86</sup>

The Human Rights Committee has repeatedly stated in the case of Israel that “the special Committee making recommendations to the competent authorities on conscientious objection applications be made

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<sup>77</sup> 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://undocs.org/E/CN.4/2006/58>

<sup>78</sup> ECtHR, *Ercep v Turkey* (43965/04), 22 November 2011, para. 70; *Savda v Turkey* (42730/05), 12 June 2012, para. 111; *Feti Demirtas v Turkey* (5260/07), 17 January 2012, para. 125; *Bouldu and others v. Turkey*, (14017/08), 3 June 2014, para. 99.

<sup>79</sup> Report submitted by Mr. Angelo Vidal d Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986 (E/CN.4/1992/52), 18 December 1991, para. 185. (page 178). Available at: <https://undocs.org/E/CN.4/1992/52>

<sup>80</sup> A/HRC/6/5, para. 22, available at: <https://undocs.org/A/HRC/6/5>, A/HRC/19/60/Add.1, para. 56, available at: <https://undocs.org/A/HRC/19/60/Add.1>,

A/HRC/22/51/Add.1, para. 69, available at: <https://undocs.org/A/HRC/22/51/Add.1>

<sup>81</sup> OHCHR, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/35/4), 1 May 2017, para. 17. Available at: <http://undocs.org/A/HRC/35/4>

<sup>82</sup> 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, (A/HRC/41/23), 24 May 2019, para. 60 (g). Available at: <https://undocs.org/A/HRC/41/23>

<sup>83</sup> 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, (A/HRC/41/23), 24 May 2019, pp. 14 and 15. Available at: <https://undocs.org/A/HRC/41/23>

<sup>84</sup> OHCHR, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/35/4), 1 May 2017, para. 34. Available at: <http://undocs.org/A/HRC/35/4>  
See also [A/HRC/23/22](https://undocs.org/A/HRC/23/22), para. 48 and [E/CN.4/2006/51](https://undocs.org/E/CN.4/2006/51), para. 36.

<sup>85</sup> UN Commission on Human Rights, [Resolution 1998/77](https://undocs.org/A/HRC/RES/1998/77), Conscientious objection to military service, 22 April 1998, (E/CN.4/RES/1998/77), para. 2.

<sup>86</sup> UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 7. Available at <https://undocs.org/A/HRC/RES/24/17>

fully independent, and proceedings before it include hearings and provide for a right to appeal against negative decisions”.<sup>87</sup> Similarly, in the case of Greece the Committee has recommended to “consider placing the assessment of applications for conscientious objector status under the full control of civilian authorities”.<sup>88</sup>

Worth noting also that the Parliamentary Assembly of the Council of Europe, to which Israel is an Observer,<sup>89</sup> has set specific basic principles as for the procedure: Where the decision regarding the recognition of the right to conscientious objection is taken in the first instance by an administrative authority, the decision-taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality; the decision shall be subject to control by at least one other administrative body, composed likewise in the manner prescribed above, and subsequently to the control of at least one independent judicial body; it should be ensured that objections and judicial appeals have the effect of suspending the armed service call-up order until the decision regarding the claim has been rendered; applicants should be granted a hearing and should also be entitled to be represented and to call relevant witnesses.<sup>90</sup>

The access to data concerning applications for the recognition of conscientious objection and outcomes and related issues is difficult in many countries; thus, the local civil society is often the main source for attempted comprehensive data, such as in **Bolivia** and **Ukraine** for instance.

- In **Colombia**, for instance, the competence to recognise the right to conscientious objection lies with the same authority that carries out military recruitment, which denotes a lack of objectivity and impartiality that delegitimises its exercise through a process that prioritises evidence over substance. This procedural treatment generates gaps of inequality and discrimination, for instance, between those who can provide evidence backed by an ecclesiastical authority and those who do not have this possibility. An example is given by the response<sup>91</sup> to the conscientious objector Sergio Sáenz<sup>92</sup>, who based his declaration on non-religious beliefs.

- In **Greece** there is the problem of independence and impartiality as of the procedures for granting conscientious objection status which is still not under the full control of civilian authorities. Decision is still taken by the Minister of National Defence after a recommendation of a 5 membered committee which still has military participation (in 2019 the number of military officers was reduced from 2 to 1).<sup>93</sup>

- In **Uzbekistan** application for conscientious objection cannot be submitted at any time and applications are not accepted without investigation.

## - **Alternative service**

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<sup>87</sup> CCPR/C/ISR/CO/4, para. 23.

<sup>88</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Greece, (CCPR/C/GRC/CO/2), 3 December 2015, paras. 37-38. Available at <http://undocs.org/CCPR/C/GRC/CO/2>

<sup>89</sup> <https://www.coe.int/en/web/portal/47-members-states>

<sup>90</sup> Council of Europe, Parliamentary Assembly, [Resolution 337 \(1967\)](#), Right of conscientious objection, paras. b2, b3, b4 and b5.

<sup>91</sup> Response to File No. 531228 dated 26 January 2021.

“A través del cual le exigen (i) número de resolución de la entidad emitida por el Ministerio del Interior. (ii) certificado de existencia y representación de la Institución a la que pertenece; (iii) certificado de vinculación del líder religioso que emite certificación, (iv) no se indica fecha ni certificados de sacramentos recibidos en el marco de la religión católica; (v) sede donde regularmente se congrega, actividades específicas que realiza, horarios, programa de estudios, (vi) números telefónicos de feligreses que indiquen bajo la gravedad de juramento que han sido testigos de sus actividades religiosas (iv) demás documentos y elementos de prueba (fotos, videos etc..) que acrediten la sinceridad de sus convicciones; es decir, que sean claras, profundas, fijas y sinceras en que fundamenta su solicitud.”

<sup>92</sup> His request was not processed because he had to belong to a legally constituted church that would certify it, and he had to have the testimony of two or more members of the congregation who, under oath, would certify his status as a conscientious objector within the church.

<sup>93</sup> Article 23 para. 2 of Law 4609/2019.

The UN Human Rights Commission, already in its resolution 1998/77, set out criteria for alternative service, and those criteria have been recalled also by the UN Human Rights Committee and the UN Human Rights Council<sup>94</sup>.

Indeed, UN bodies recommend that States with a system of compulsory military service provide various forms of alternative service which are compatible with the reasons for conscientious objection and which are not punitive. Therefore, the State has to provide forms of alternative service compatible with the reasons of conscience, also for those that are total objectors, or preferably avoid asking them to perform any kind of alternative service.

- In the **Republic of Korea**, alternative service is punitive and under the control of military authorities and conscientious objectors serve it in correctional facilities. According to Amnesty International, 36 months makes South Korea's alternative service the longest in the world, causing the NGO to label it an "alternative punishment."<sup>95</sup>

- **Turkmenistan** received repeated international calls, for example by the UN Human Rights Committee, to introduce a genuine civilian alternative to compulsory military service, to stop prosecuting and punishing conscientious objectors, and to compensate those it has punished. The UN Human Rights Committee has published 13 Decisions in favour of 15 conscientious objectors from Turkmenistan, all of them Jehovah's Witnesses.<sup>96</sup>

- In **Uzbekistan** the law discriminates against the majority of potential conscientious objectors, who are not granted access to alternative service. This includes those who do not belong to a registered religious organisation, whose religious communities are not prepared to require such a stance, and of course any whose conscientious objection is based on non-religious (ethical, humanist or pacifist) grounds. Additionally, alternative service is not performed completely outside the military.

- In **Ukraine** only religious objectors belonging to ten particular confessions listed in the governmental decree are allowed to apply for replacement of compulsory military service with the 27 months alternative non-military service.<sup>97</sup>

The alternative service can be performed only in the public sector.

In 2021, for instance, there has been the case of Ukrainian protestant conscientious objectors in the Rivne region whose right has been violated.<sup>98</sup>

- In **Belarus** the law allows only individuals who have completed alternative civilian service to be exempted from reservist military training (see Mozul's case)<sup>99</sup>.

#### - **Conscientious objection in time of emergency/ war**

Freedom of thought, conscience and religion is a non-derogable right and it should continue to apply regardless of a situation of armed conflict.

- In **Ukraine** Conscientious objection and alternative service are not foreseen by the Ukrainian

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<sup>94</sup> See, inter alia, Human Rights Council Resolution on Conscientious objection to military service of 8 October 2013 (A/HRC/RES/24/17).

<sup>95</sup> <https://www.amnesty.org/en/latest/news/2019/12/south-korea-alternative-to-military-service-is-new-punishment-for-conscientious-objectors/>

<sup>96</sup> [https://www.forum18.org/archive.php?article\\_id=2656](https://www.forum18.org/archive.php?article_id=2656)

<sup>97</sup> "Provisions on the procedure for alternative (non-military) service" and "List of religious organizations whose beliefs do not allow the use of weapons", URL: <https://zakon.rada.gov.ua/laws/show/2066-99-%D0%BF#Text>.

<sup>98</sup> Parag. 79 of the thirty-first report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the human rights situation in Ukraine (1 August 2020 to 31 January 2021), based on the work of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU).

<https://www.ohchr.org/Documents/Countries/UA/31stReportUkraine-en.pdf>

<sup>99</sup> [https://www.forum18.org/archive.php?article\\_id=2710](https://www.forum18.org/archive.php?article_id=2710)

legal framework for individuals drafted through emergency mobilization, resulting in the risk of enlistment contrary to a person's religious beliefs.<sup>100</sup>

During the current ongoing war, all male 18-60 years old are compelled not to flee the country in order to enforce total military mobilization.<sup>101</sup> Summons to mandatory military service are handed over to men trying to cross border<sup>102</sup>. The order was enacted not by the law but by letters of Administration of the State Border Guard Service.<sup>103</sup>

It results that the above prohibition has no exceptions for conscientious objectors to military service. Sasha and Nikita, for instance, are two young pacifists who don't want to fight and are now stranded in Lviv as internally displaced persons.<sup>104</sup>

#### - Freedom of expression

In some countries expressing publicly antimilitaristic views or one's objection to the military can be criminalized.

- In **Turkey** in 2018 the Office of the Chief Prosecution in Diyarbakir, has opened an investigation against the co-chair of the Conscientious Objection Association, Merve Arkun. The Association has reported that the investigation was due to a press conference they organised two years before on International Conscientious Objectors Day.<sup>105</sup>

- In **Ukraine** the journalist and pacifist Ruslan Kotsaba is currently under trial<sup>106</sup> because of a video posted in 2015 to express opposition to the military mobilization for armed conflict in eastern Ukraine<sup>107</sup>. He has already spent over 500 days under arrest and has been victim of assaults<sup>108</sup> by haters for whom there is still impunity.

#### - Military booklet

Completion of mandatory military service is often necessary to access services and rights such as employment.

In some countries, such as **Bolivia** and **Colombia**, a military booklet is issued. In many cases this generates a phenomenon of corruption or illegal buying and selling of these documents that are necessary to live. Those who do not obtain a military booklet are denied the exercise of fundamental rights. One of the consequences is, for instance, exclusion from the labor market and introduction to illegal work.

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<sup>100</sup> UN High Commissioner for Refugees (UNHCR), International Protection Considerations Related to the Developments in Ukraine – Update III, September 2015

<sup>101</sup> <https://theconversation.com/why-banning-men-from-leaving-ukraine-violates-their-human-rights-178411>

<sup>102</sup> <https://fakty.com.ua/ua/ukraine/20220307-czina-cholovichoyi-chesti-shho-vidomo-pro-uhylnykiv-na-kordoni-i-yaka-vidpovidalnist-za-habar/>

<sup>103</sup> On February 24<sup>th</sup>, 25<sup>th</sup> and March 17<sup>th</sup>. <https://ips.ligazakon.net/document/FN073409?an=1>  
<https://ips.ligazakon.net/document/view/fn073457>

<sup>104</sup> <https://www.instagram.com/p/CaxMFGOKfW7/c/17920321619132077/>

<sup>105</sup> <https://vicdaniret.org/dernek-esbaskanimiz-merve-arkuna-sorusturma/>

<sup>106</sup> In Kolomyia City District Court of Ivano-Frankivsk Region.

The High Specialized Court on Civil and Criminal Cases in 2017 quashed the acquittal and ordered a retrial. Then several judges and local courts recused from the case; the court ordered to return formal accusation for further investigation, but the order was quashed by the appellate court; and now, judges Kalyniuk, Berkeshuk, and Veselov will examine 58 witnesses of the supposed political impact of Ruslan's video blog and pass their judgment.

<sup>107</sup> Ruslan Kotsaba was arrested on 7 February 2015 in Ivano-Frankivsk, 130 km south-east of Lviv, after he posted a video describing the conflict as “the Donbas fratricidal civil war”. He also expressed opposition to military conscription of Ukrainians to take part in the conflict. He was then named as Amnesty International's first Ukrainian prisoner of conscience in five years. He has already spent 524 days under arrest and was duly acquitted in 2016. <https://www.amnesty.org/en/latest/news/2015/04/ukraine-suspicious-deaths-need-credible-investigations/>

<sup>108</sup> [https://www.coe.int/en/web/media-freedom/detail-alert?p\\_id=sojdashboard\\_WAR\\_coesojportlet&p\\_lifecycle=0&p\\_p\\_col\\_id=column-4&p\\_p\\_col\\_count=1&sojdashboard\\_WAR\\_coesojportlet\\_alertId=102265091](https://www.coe.int/en/web/media-freedom/detail-alert?p_id=sojdashboard_WAR_coesojportlet&p_lifecycle=0&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR_coesojportlet_alertId=102265091)

- In **Bolivia** the *libreta militar* is the legal requirement to access rights such as employment or being elected to public office. It is the hallmark to entrench the prevailing conditions of socio-economic and cultural exclusion and force adolescents and young people into compulsory military service.

#### - **Violation of other rights of conscientious objectors**

In continuity with what it has been stated in the previous paragraph, conscientious objectors may face several violations of fundamental rights.

- In **Turkey** male citizens who have not performed military service are unable to undertake any activities which require documentation from the state; this is a consequence of their status and of the fact that any interaction with the authorities may result in a new charge.

This situation has been defined as “civil death” by the European Court of Human Rights.<sup>109</sup>

- In **Greece** Insubordinates are prohibited from leaving the country. This affects also conscientious objectors who are declared insubordinates. In the case of Petromelidis, the Human Rights Committee found a violation of Article 12(2) of ICCPR, since the restriction on his freedom to leave from Greece has been imposed on him "for having legitimately exercised his right to freedom of conscience"<sup>110</sup>

#### - **Illegal recruitment**

Whenever there is an illegal recruitment practice, there is a deliberate obstruction of the exercise of the right to conscientious objection and it can be observed arbitrary detention of conscripts.

- In **Ukraine** hunting for conscripts in the streets, but also inside dorms and hostels for students, to deliver them to the military assembly point against their will is the usual activity of police during the draft period.<sup>111</sup> United Nations Human Rights Monitoring Mission in Ukraine documented 11 cases of arbitrary detention of conscripts by the representatives of the military between May and August 2019.<sup>112</sup>

- In **Colombia** irregular recruitment practices “batidas” persist -and is recently increasing-, ignoring rulings from the Constitutional Court<sup>113</sup>, recruitment regulations and compliance with the peace agreement.<sup>114</sup> It does happen in parks, in the public transport system, for instance. In February 2022 it has been registered an attempt by the army to illegally recruit in Medellin.<sup>115</sup>

#### - **Juvenile recruitment**

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<sup>109</sup> European Court of Human Rights, Case Ulke v Turkey (Application No. 39437/98), Judgement of 24<sup>th</sup> January 2006, para. 62.

<sup>110</sup> Human Rights Committee, Views adopted by the Committee under the Optional Protocol, concerning communication No. 3065/2017, Advance unedited version, [CCPR/C/132/D/3065/2017](https://www.unhcr.org/refugees/cpr/C/132/D/3065/2017), 6 December 2021, paras. 9.9, 10.

<sup>111</sup> "Military commissariats are hunting for conscripts again," <https://tsn.ua/ukrayina/viyskkomati-znovu-viyshli-na-polyuvannya-na-prizovnikiv-chomu-tak-vidbuvayetsya-i-scho-z-cim-roboti-1452870.html>; "Military commissariat searched student dormitory for conscripts," <https://delo.ua/economyandpoliticsinukraine/v-kieve-voenkomy-ustroili-v-5-utra-rejd-v-obsche-360396/>; "Draft in Rivne oblast: 8 boys are detained against their will," <https://radiotrek.rv.ua/news/osinniy-pryzov-na-rivnenshchyni-hloptsiv-try-mayut-8-dniv-proty-ih-voli-advokat-fotovi-deo-241741.html>.

<sup>112</sup> Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 16 May to 15 August 2019, [https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16May-15Aug2019\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16May-15Aug2019_EN.pdf).

<sup>113</sup> Sentence C-879/11 - *Measures to compel those who have not complied with the obligation to register in order to define their military situation - They cannot consist of arbitrary detentions that violate personal liberty or judicial confidentiality.*

<sup>114</sup> Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 37<sup>th</sup> session, 26 February-23 March 2018. National, regional and international human rights law stipulates that military forces are not responsible for citizen security, the fight against organised crime, coexistence and development. In exceptional situations, the National Police may require military assistance, which must be provided in accordance with the principle of police primacy and with strict civilian control. The tasks of coexistence and development are the exclusive responsibility of the civilian authorities".

<sup>115</sup> <https://www.eltiempo.com/colombia/medellin/reclutamiento-del-ejercito-de-jovenes-sin-libreta-militar-en-medellin-651651>

Despite the fact that the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>116</sup> encourages states to end the recruitment of persons under the age of 18, a worrying number of states continue to do so.

In 2018 Child Soldiers International, published a rights-based analysis of child recruitment titled “Why 18 Matters”<sup>117</sup>, condemning the ongoing recruitment of children by 46 states worldwide, including **Germany** and **United Kingdom**, for instance. The analysis mentioned above highlights the education system as a setting where military recruitment is promoted, such as in the **U.S.A.** for instance, contrary to the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups.

Military culture is often embedded in the education system in many countries such as in **Israel** where uniformed soldiers are present in schools teaching classes. In some other countries young people are exposed to special programs run directly by the military.

All these practices constitute a violation of the Right of the Child and inhibit young people from developing their own decision regarding enlistment, free from external pressures and cultural, social and economic conditioning, as well as preventing the exercise of their right to conscientious objection.

- In **Bolivia** young people are involved in pre-military service<sup>118</sup>. In Ruling 0037/2016, which addressed the issue of minors performing compulsory active military service, the court contemplated that minors performing pre-military service do not generate violations of rights in the framework of this modality of definition of military status, under the concept that the purpose is not military instruction and weapons. This differs from the reality where these practices do occur.

- In **Austria**, according to information received from the *Arbeitsgemeinschaft Wehrdienstverweigerung*, the Austrian military has liaison officers with each secondary school and university and maintains a presence at the last school year through so-called ‘information events’.<sup>119</sup>

- In **Finland**, the Finnish Defence Forces launched the ‘Intti tutuksi’ project, “Get to know the army” for children between 15 and 16 years old.<sup>120</sup>

- In **Ukraine** the course "Zakhyst Vitchyzny" ("Defense of the Fatherland") is a mandatory part of the curriculum of basic schools in Ukraine aimed at national patriotic education, i.e., to inform students about the Armed Forces of Ukraine and prepare them to military service.

#### - **Reintroduction of conscription**

It should be noted that conscription has been reintroduced in some countries, such as **Georgia** in 2017, and **Sweden** in 2018, following to **Ukraine** in 2014 and **Lithuania** in 2015.

In some other countries where conscription has been suspended or abolished, draft registration is still required and is mandatory to receive government benefits, such as in the **U.S.A.**<sup>121</sup>; occasionally, there are concerning reports of proposals or political statements regarding the reintroduction of mandatory military service such as, for instance, in **Croatia**<sup>122</sup>, **France**<sup>123</sup>, **Honduras**<sup>124</sup>, **Italy**<sup>125</sup> and **Slovenia**<sup>126</sup>.

#### - **Claims for refugee status by conscientious objectors**

<sup>116</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>

<sup>117</sup> <https://resourcecentre.savethechildren.net/document/why-18-matters-rights-based-analysis-child-recruitment/>

<sup>118</sup> Directiva General de Reclutamiento para el servicio Premilitar No. 06/16 Categoría 2016-2017.

<sup>119</sup> War Resisters’ International, World Survey of Conscription and Conscientious Objection to Military Service: Austria Country Report and Updates, 2016 edition, at [https://wri-irg.org/en/programmes/world\\_survey/country\\_report/en/Austria](https://wri-irg.org/en/programmes/world_survey/country_report/en/Austria).

<sup>120</sup> <https://maavoimat.fi/-/intti-tutuksi-koululaisille>.

<sup>121</sup> <https://www.sss.gov/register/who-needs-to-register/>

<sup>122</sup> <https://www.total-croatia-news.com/politics/53301-defence-minister-mario-banozic-reintroducing-conscription-being-considered>

<sup>123</sup> <https://www.marianne.net/politique/droite/peut-on-retablir-le-service-militaire-obligatoire-commme-le-souhaite-michel-barnier>

<sup>124</sup> <http://www.hondurastierralibre.com/2018/05/honduras-con-un-tajante-no-responden.html>

<sup>125</sup> <https://informa-press.it/reintrodurre-leva-obbligatoria-proposta/>

<sup>126</sup> <https://www.total-slovenia-news.com/politics/5790-bill-to-reintroduce-conscription-in-slovenia-fails-at-first-vote-in-parliament>

Conscientious objectors are eligible for refugee status if they are at risk of persecution in their own country<sup>127</sup>. As the UN Special Rapporteur on the human rights of migrants stated, in his 2020 report to the Human Rights Council, the act of seeking asylum is lawful<sup>128</sup>.

Additionally, international protection should be granted as well to those who refuse to take part in ongoing armed conflicts. Directive 2011/95 of the Council of the European Union establishes that persons prosecuted for refusing to commit aggression are considered refugees<sup>129</sup>; in the judgment in the Shepherd case, the European Court of Justice<sup>130</sup> has provided the definition that this refers to "all military personnel, including logistical and support personnel".

Of particular relevance is the 2020 ruling of the European Court of Justice in the case *Ez v Germany*: "in a context of a general civil war characterized by the repeated and systematic commission of war crimes or crimes against humanity by the army using conscripts, it is irrelevant that the person concerned does not know his future military area of operation." and "if the possibility of refusing military service is not provided for by law in the country of origin, it cannot be relied upon against the person concerned that such person has not formalized his/her refusal in a particular proceeding and has fled his/her country of origin without making him/herself available to the military administration."<sup>131</sup>

In **Russia** and **Belarus**, for instance, some people are evading involvement in the current war against Ukraine which is a violation of international law. If they evade service, refuse, or desert, they face prosecution. This can justify protection under the EU *Qualifications Directive* on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection.<sup>132</sup>

- In **Germany**, for instance, fewer asylum seekers from Eritrea, fleeing the indefinite national service, receive refugee recognition. Moreover, those who have not been recognised as refugees and have only been granted subsidiary protection or protection against deportation are requested to obtain their passports from the Eritrean embassy. The persons concerned must again submit completely to the requirements of the Eritrean services such as the issuing of a passport which is only provided by the Eritrean mission abroad if a letter of repentance is signed beforehand.<sup>133</sup> The person signing<sup>134</sup> thus surrenders to imprisonment and punishment without any legal basis.

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<sup>127</sup> Guidelines on international protection n. 10 <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&docid=529ee33b4&skip=0&publisher=UNHCR&type=THEMGUIDE&querysi=guidelines%20international%20protection&searchin=title&display=10&sort=date>

<sup>128</sup> Parag. 67 A/HRC/44/42.

<sup>129</sup> Art. 9(2)(e), 12(2)(a).

<sup>130</sup> <https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-02/cp150020en.pdf>

<sup>131</sup> Case of a Syrian evader C-238/19 <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-11/cp200142en.pdf>

<sup>132</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>

<sup>133</sup> European Asylum Support Office (EASO European Union agency), "Eritrea –National service, exit, and return", September 2019, p. 56, available here: <https://www.easo.europa.eu/news-events/easo-publishes-country-origin-information-coi-report-eritrea>.

<sup>134</sup> For the letter of repentance in Tigrinya and English see: Tilburg School of Humanities, Discussion paper: "The 2% Tax for Eritreans in the diaspora – Appendices", June 2017, p. 24, available here: <https://www.dsp-groep.eu/wp-content/uploads/The-2-Tax-for-Eritreans-in-the-diaspora-Appendices.pdf>.

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## COUNTRY-BASED ANALYSES

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### Angola<sup>135</sup>

#### *Military Service and Conscientious Objection*

The Military Service Law (*Lei Geral do Serviço Militar*), No. 1/93, of 26<sup>th</sup> March 1993, stipulates that all male citizens are required, in the year of their eighteenth birthday, to register for military service. Liability to perform military service (Article 2, Paragraph 1 of Law 1/93) applies from 1<sup>st</sup> January of the year of the 20<sup>th</sup> birthday until 31<sup>st</sup> December of the year of the 45<sup>th</sup> birthday. Women with academic qualifications in certain fields are also required to register for military service (Article 24 of Law 1/93). Article 10, Paragraphs 5-7 of Law 1/93 states that persons liable for military service who are conscientious objectors will perform an appropriate civilian service, to be the subject of specific implementing regulations.<sup>136</sup> As far as is known, however, such regulations have never been promulgated, and no Angolan conscientious objectors have performed an alternative civilian service. Angolan antimilitarist organisations insist that conscientious objectors are not in practice released from military service, exemptions being given only to persons with disabilities or severe illness, and to students for the duration of their studies, provided that they have registered for military service.

The duration of obligatory military service is two years, but this may as necessary be extended or reduced by one year on the authority of the National Assembly if “conditions of service permit”.<sup>137</sup>

Each January the Ministry of Defence issues a decree calling on male citizens entering their eighteenth year, whether or not resident in Angola, to register. In the longer term, the Committee on the Rights of the Child, in examining Angola's Initial Report under the Optional Protocol to the CRC, recorded its concern “about the low birth registration rate, with a considerable divide between urban and rural areas, and (...) that the legal requirement for all children to obtain an identification card by the age of 10 is not always implemented in practice, which may lead to under-age recruitment into the armed forces.”<sup>138</sup> The procedure leading from registration to call-up and actual incorporation in the armed forces is much less clearly documented.

Under article 29 of the Military Penal Code (*Lei dos Crimes Militares*), No. 4/94, of 28<sup>th</sup> January 1994, those who fail to report for military service – including conscientious objectors - are liable to a sentence of two years imprisonment followed by military service of twice the normal length, i.e., four years.

Deserters may be sentenced to between two and eight years of imprisonment in times of peace and eight to twelve years in time of war. In practice it is alleged that during the civil war deserters were either summarily executed or posted to the front line.

Under Article 1, Paragraph 3 of Law 93/1 no person may obtain employment nor enrol in any educational establishment who has not registered for or performed any military service required of him. Access to public services is also restricted. Together, these lead to lifelong educational and economic disadvantage,

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<sup>135</sup> Based on the report submitted to the 34<sup>th</sup> session of the Universal Periodic Review.

<sup>136</sup> 5.Os cidadãos nacionais do sexo masculino com idade compreendida entre os 20 e 45 anos. objectores de consciência, nos termos da lei, prestarão Serviço Militar na modalidade do serviço cívico adequado a essa situação.

6 As disposições do número anterior são aplicáveis aos cidadãos do sexo feminino objectores de consciência, na situação a que se refere o artigo 24.º da presente Lei.

7 O serviço cívico tem âmbito nacional e será objecto de regulamentação própria.

<sup>137</sup> Coalition to Stop the Use of Child Soldiers (London), Child Soldiers Global Report 2008, p. 46.

<sup>138</sup> CRC/CO/OPAC/AGO/CO/1, para 18.

compounded by social exclusion. Angolans outside the country who do not register may find that they are denied consular assistance and may have difficulty in renewing their passports. All these disadvantages are compounded by the persecution suffered particularly by “non-traditional” churches; an unknown number of whose members might be potential conscientious objectors.

## Austria<sup>139</sup>

### *Conscientious objection to military service*

Obligatory military service in Austria was introduced by the 1955 Defence Act (*Wehrgesetz*). Implementing regulations permitted conscientious objectors to perform 12 months’ non-combatant service in the medical or clerical corps, as against 9 months of normal military service.<sup>140</sup>

Legislative recognition of conscientious objection came with the Civilian Service Act (*Zivildienstgesetz*) of 1974. Initially, the duration of civilian service was the same as that of military service. All claims of conscientious objection were scrutinised individually and involved a personal appearance in front of the investigating commission. The amending Act (*ZDG-Novelle*) of 1991 abolished this process, but simultaneously increased the length of the Civilian Service to 10 months, the duration of military service then being 8 months. There were further increases to 11 months in 1994 and to 12 months in 1996. Most recently, Act No. 106/2005 reduced the duration of military and civilian service to six months and nine months respectively, thus maintaining the existing 150% ratio.

Under the *Wehrgesetz*,<sup>141</sup> males are obliged to register for military service during the calendar year of their 17<sup>th</sup> birthday; thus, those born in 2003 are being registered in 2020. Section 18a mandates an obligatory medical examination in the year of the 18<sup>th</sup> birthday. The only absolute exemptions are for priests, members of holy orders, theological students training for a career in the ministry, or those who following such studies are engaged in pastoral work or spiritual teaching - provided that they are members of “recognised religions”<sup>142</sup>. In the cases of *Gütl v. Austria* and *Löffelmann v. Austria* the European Court of Human Rights<sup>143</sup> found violations because the Jehovah’s Witnesses, having the status only of a “registered religious community” do not benefit from these exemptions.

Written information about civilian service for conscientious objectors is provided at the time of the medical examination.<sup>144</sup>

Applications to perform Civilian Service must incorporate a declaration of conscientious objection. Helpfully, the application form which may be downloaded from the website of the *Zivildienstverwaltung* provides a pre-printed declaration; all that the applicant must do is add his signature.

A conscientious objector is however free to make a declaration in his own words, and the application need not be made on the prescribed form; it may even in the first instance be registered orally.<sup>145</sup> This could be important in view of the strict time limits which apply.

Under the *Zivildienstverwaltung*,<sup>146</sup> application to perform Civilian Service must be made within six

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<sup>139</sup> Based on the report submitted by IFOR to the 37th Universal Periodic Review.

<sup>140</sup> Prasad, D. & Smythe, T., *Conscription - a World Survey: Compulsory Military Service and Resistance to it*, London, (War Resisters International), 1968, pp 10, 11.

<sup>141</sup> Section 10.1

<sup>142</sup> See paras 290 - 320 of the Austria's Fourth Periodic Report under the ICCPR (CCPR/C/AUT/4). and the list at [www.help.gv.at/Content.Node/82/Seite.820100.html](http://www.help.gv.at/Content.Node/82/Seite.820100.html)

<sup>143</sup> Applications nos. [49686/99](#) and [42967/98](#); judgements of 12 March, 2009.

<sup>144</sup> *Zivildienstgesetz*, para 5.1

<sup>145</sup> Reply of the Austrian Government to the questionnaire on “best practices concerning the right of everyone to have conscientious objections to military service”, circulated by the Office of the High Commissioner on Human Rights, 2003.

<sup>146</sup> Article 1.2

months of receiving notification of fitness for military service following first registration; there is no possibility of a transfer to Civilian Service after call-up. Moreover, those who have completed obligatory military service may subsequently declare themselves conscientious objectors to reserve service, but there is a twelve-month delay before this declaration takes effect.

Under Article 5a(1), those who have an unexpunged criminal record for an offence involving violence or the threat of violence with the use of a firearm or explosives are debarred from performing Civilian Service. In the case of a genuine character reform or conversion the requirement thereafter to perform armed military service would seem a bizarre form of double punishment for past misdemeanours. Members of the constabulary (*Wachkörper*) of regional authorities are also debarred from Civilian Service (Article 5a(2)); presumably on the grounds that they will have carried weapons. Article 6(3)(3) implies that having held a firearms licence for any purpose debar a person from Civilian Service. Also, recognition as a conscientious objector is withdrawn if the person is known to have subsequently carried a firearm. Gamekeepers, for instance, are thus completely debarred from recognition.

Arrangements for alternative service placements are under the authority of the Ministry of Agriculture, not the Ministry of Defence.

In the List of Issues on Austria's Fifth Periodic Report under the International Covenant on Civil and Political Rights, the Human Rights Committee asked, "Please provide information on the justification for the differentiation between the length of substitute civilian service for conscientious objectors and that of military service, in particular indicating whether such differentiation is based on reasonable and objective criteria."<sup>147</sup>

Austria's reply was: "The amendment to the Civilian Service Act of 1991 facilitated access to alternative civilian service by eliminating the examination of conscientious objection. Following this amendment, alternative civilian service became more attractive and easier to access. Young men who choose to perform alternative civilian service, are not subject to Military Criminal Law and Disciplinary Law, do not have to wear uniforms and most importantly do not have to live in barracks. In order to address these advantages compared with military service, the Austrian legislature extended the duration of alternative civilian service compared with the length of conscript military service.

"Military and civilian service are mandatory public services in line with Article 9a of the Federal Constitutional Law. This service is based on compulsory military service – regardless of the fact that the activity performed by the person doing civilian service is not a military one. The difference in terms of length between basic military service and civilian service (service time of 6 and 9 months respectively) must be considered from a holistic perspective taking account of the level of exertion involved in the two services and – according to the supreme courts – does thus not violate the principle of equality.

To explain the increase in the duration of civilian alternative service by saying that civilian service became more attractive once there was no longer an examination of claims of conscientious objection implies that the increase was indeed intended to discourage applications for civilian service. It is hard to see how this can be achieved without creating discriminatory and punitive conditions for alternative service. That Austria abandoned the individual examination of claims of conscientious objection is welcome – there is an inherent impossibility in probing the inner motivations of another person. However, to substitute a form of trial by ordeal is not satisfactory. Austria itself before 1991 did not find that the facts it listed necessitated requiring conscientious objectors to serve for longer. Other States<sup>148</sup> where similar differences in the conditions of service apply have not felt precluded from equalising the durations. Nor is it clear that the examples quoted really contribute to "the level of exertion". Does being

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<sup>147</sup> CCPR/C/AUT/Q/5, 28<sup>th</sup> April 2015, para 18.

<sup>148</sup> Denmark, Estonia, Moldova and (before they suspended conscription) also Albania, Germany, Italy and Sweden.

provided with a free uniform really involve extra exertion? Are no civilian service placements residential? In any case, equally significant to the individuals involved is the length of time which the service takes from the rest of life, from education, career development and earning potential. All that changed in 1991 was that whether to perform military or civilian service became a free choice, and as already noted the constitutional court has defined this as a right, so there should be no interference with the unimpeded exercise of this choice.

Whenever governments impose punitive conditions on civilian service, this seems to be based on the misconception that otherwise no one will opt for military service. In fact, only for a minority of young men would the classic caring placement in a mental or geriatric institution seem more attractive than military activities. It might also be observed that those who freely opt for military service will almost certainly make more satisfactory soldiers than those who serve reluctantly.

In its Concluding Observations, the Committee “notes that the length of the civilian alternative service to military service for conscientious objectors is longer than military service and may be punitively long if not based on reasonable and objective grounds” and recommends that “The State party is encouraged to ensure that the length of service alternative to military service required for conscientious objectors is not punitive in nature.”<sup>149</sup>

### ***Serving members of the military***

Austria is a member of the Council of Europe, whose Committee of Ministers recommended in 2010:

“Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.

Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.

Members of the armed forces should be informed of [these] rights (...) and the procedures available to exercise them.”<sup>150</sup>

The Council of Europe's follow-up questionnaire.<sup>151</sup> asked “Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.”

Austria replied “Not foreseen within the Austrian system. Professional members of the armed forces can leave the armed forces by notice of the termination of their contract. There are no measures in preparation to change this system.”

### ***Juvenile recruitment***

Although no recruit is subject to mandatory call-up until after his eighteenth birthday (Article 9.1), from

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<sup>149</sup> CCPR/C/AUT/CO/5, 3rd December 2015, paras 33 and 34.

<sup>150</sup> CM/Rec(2010)4, 24<sup>th</sup> February 2010, paras 42 – 46.

<sup>151</sup> See, Council of Europe, Steering Committee for Human Rights (CDDH) Questionnaire on the implementation of Committee of Ministers Recommendation CM/Rec(2010)4 on human rights of members of the armed forces: COMPILATION OF MEMBER STATES' ANSWERS, CDDH(2012)016,Final, Strasbourg, 27<sup>th</sup> December 2012.

his seventeenth birthday, a citizen may with parental consent anticipate the summons to enlist for obligatory military service. Also, males who enlist voluntarily at the age of 17 are obliged to complete the contractual period of service. Only female volunteers are permitted to leave early.

Austria is also one of the States in which the armed forces maintain close links with the education system for recruitment purposes: “According to information received from the Austrian *Arbeitsgemeinschaft Wehrdienstverweigerung*, the Austrian military has liaison officers with each secondary school and university and maintains a presence at the last school year through so-called ‘information events’.”<sup>152</sup>

IFOR would draw attention to the 2018 report “Why 18 Matters”<sup>153</sup>, which documents the disproportionately adverse effect of recruitment at a young age and calls on all States to adopt a “straight-18” policy.

## **Bolivia<sup>154</sup>**

### **1. Lack of legislation on the right to contentious objection**

The Human Rights Committee’s first review of the State of Bolivia during its 35<sup>th</sup> session (Supplement No. 40 (A/44/40) of 29 September 1989<sup>155</sup> expressed concern regarding the penalties imposed on those persons who did not perform the military service (which was not answered by the State).

There was initial silence during the Third periodic report process<sup>156</sup> in response to the issues mentioned in paragraph 20 on conscientious objection (Article 18 ICCPR)<sup>157</sup>.

Finally, in its observations of 2013, the Committee expressed its concern that “there is no alternative civilian service that permits conscientious objectors to exercise their rights in accordance with the provisions of the Covenant” (Art. 18) and recommended the State party should “promulgate legal provisions that recognize the right to conscientious objection to military service and establish an alternative to military service that is accessible to all conscientious objectors and is not punitive or discriminatory in terms of its nature, cost or duration”.<sup>158</sup>

Recently, the state of Bolivia appeared on two occasions in the Regional Protection of Human Rights System due to its lack of protection and guarantees of “Articles 13(1), 22 and 23 (freedom of thought, freedom of movement and residence, and the right to participate in government, respectively) of the American Convention”<sup>159</sup> and Conscientious Objection to military service. The first case brought before the Commission on Human Rights was that of conscientious objector Alfredo Díaz Bustos, which ended on 27 October 2005 with a friendly settlement, in which the state undertook to include the right to conscientious objection to military service in the preliminary draft legislation at the time and to promote its

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<sup>152</sup> War Resisters’ International, *World Survey of Conscription and Conscientious Objection to Military Service: Austria Country Report and Updates*, 2016 edition, at [https://wri-irg.org/en/programmes/world\\_survey/country\\_report/en/Austria](https://wri-irg.org/en/programmes/world_survey/country_report/en/Austria).

<sup>153</sup> Child Soldiers International, *Why 18 Matters*, London, 2018.

<sup>154</sup> Based on the report submitted to the 134<sup>th</sup> Human Rights Committee.

<sup>155</sup> Compilation of concluding observations of the Human Rights Committee on Latin American and Caribbean countries (1977 – 2004). Center for Human Rights, Faculty of Law, University of Chile and the Office of the United Nations High Commissioner for Human Rights (OHCHR) – regional representation for Latin America and the Caribbean-. Pp. 78 – 90 (paras. 416 and 438)

<sup>156</sup> CCPR/C/BOL/3 Third periodic report of the Plurinational State of Bolivia of 25 August 2011.

<sup>157</sup> CCPR/C/BOL/Q/3. Para. 20 “Freedom of thought, conscience and religion (arts. 18 and 26). Paragraph 20. Please provide information on the legal status of objection to military service. In particular, please provide information on the measures adopted to recognize in law and in practice conscientious objection to military service.”

<sup>158</sup> CCPR/C/BOL/CO/3 Concluding observations on the Third periodic report of the Plurinational State of Bolivia. 6 December 2013.

<sup>159</sup> Report no. 52/04 Petition 14/04 admissibility. Alfredo Diaz Bustos Bolivia, 13 October 2004, Para. 32. <http://cidh.org/annu-alrep/2004eng/Bolivia.14.04eng.htm>

approval.<sup>160</sup> However, to date, these individual commitments by the State have not been fulfilled and as a result, and on the grounds of lack of legislation, conscientious objectors are not recognised by the Military Institution, preventing them from the exemption to military service as a result of said right<sup>161</sup>. This rejection led to the admission of a second case by the IACHR on 9 June 2020 for alleged violations of Articles 8 (Right to a Fair Trial), 11 (Right to Privacy), 12 (Freedom of Conscience and Religion), 13 (Freedom of Thought and Expression), 23 (Right to Participate in Government), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, with regards to Article 1(1) (Obligation to Respect Rights).<sup>162</sup>

At the fourth session, it is a matter of concern that the State of Bolivia, in its report on recommendation 21 of the Third report, responded that it is working on “the revision of the military service bill, which provides for a social, non-military alternative to military service<sup>163</sup>”. Furthermore, the Armed Forces offer as an additional alternative, “the Bolivian Navy Search and Rescue Service and the Bolivian Air Force Search and Rescue Service”<sup>164</sup>.

It is clear that, in practice, the State has no interest in including the right to conscientious objection as an exemption from military service in its regulatory framework, failing to comply with the Committee's recommendations and Human Rights Council Resolution 42/22<sup>165</sup>. Even more concerning is the fact that it ratified the Ibero-American Convention on the Rights of Youth in 2008, but with reservations to Article 12, which includes the right of youth to conscientious objection to military service.<sup>166</sup>

## 2. Inadequate processes for the recognition of conscientious objectors

In 2016, the Plurinational Constitutional Court of Bolivia, in Judgement 0265/2016-S2 of 23 March 2016, reviewed the case of a conscientious objector who claimed non-religious beliefs. Although it is indeed positive that under the new Constitution of 2009 the Constitutional Court's interpretation recognised the right to conscientious objection in the context of freedom of thought, and that this right “may not be ignored or rendered ineffective for lack of legislation”<sup>167</sup>, this Judgement raises concerns about a

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<sup>160</sup> Inter-American Commission on Human Rights: REPORT no. 97/05; PETITION 14/04; FRIENDLY SETTLEMENT; ALFREDO DÍAZ BUSTOS – BOLIVIA, 27 October 2005, Para. 16, I, d and e. "d) in accordance with international human rights law, to include the right to conscientious objection to military service in the preliminary draft of the amended regulations for military law currently under consideration by the Ministry of Defence and the armed forces; e) together with the Deputy Ministry of Justice, to encourage congressional approval of military legislation that would include the right to conscientious objection to military service.”

<sup>161</sup> Plurinational Constitutional Court of Bolivia. Judgement 0265/2016 – S2. “II.2. In note MD-SD-DGAJ-UGM 2948 of 20 August 2015, Reymi Luis Ferreira Justiniano, Minister of Defence, responded to the now plaintiff, regarding his position of not performing military service, invoking religious beliefs. The legal report MD-DGAJ-UGM 113/15 of 13 August 2015, established that, as stated in Article 108.12 concordant with Article 249 of the Constitution: “Every Bolivian will be obliged to perform military service in accordance with the law”, i.e. it is compulsory for all men to do so. Furthermore, Article 4 of the Constitution states that: “The State respects and guarantees freedom of religion and spiritual beliefs, according to their view of the world. The State is independent of religion.” Since the concept of conscientious objection is not defined by the State, persons with the age to perform military service cannot invoke this right as an exemption to the inexcusable constitutional duty of every Bolivian (p. 6).” IACHR Report no. 147/20. Petition 1384-16, admissibility report. “9. [...] The State of Bolivia cannot be held liable for alleged violation to a figure not foreseen in its juridical system [...]”

<sup>162</sup> IACHR Report no. 147/20. Petition 1384-16. Admissibility report. Jose Ignacio Orias Calvo v. Bolivia. <https://www.oas.org/en/iachr/decisions/2020/boad1384-16en.pdf>

<sup>163</sup> CCPR/C/BOL/4 of 1 March 2019 Recommendation 21 para. 173. “The Bolivian State, through the Ministry of Defence, is currently reviewing the military service bill, which envisages a social, non-military alternative to compulsory military service that complies with international standards on conscientious objection. The alternative social forms of service envisaged include working in protected areas, working on national highways, working to raise literacy levels and any other forms of service that might be required for the development of the country. This regulatory proposal has been submitted to the high command of the armed forces.”

<sup>164</sup> Ibidem. para. 174 “174. On the other hand, the Armed Forces have indicated that the Bolivian Navy Search and Rescue Service and the Bolivian Air Force Search and Rescue Service could offer alternatives to compulsory military service.”

<sup>165</sup> A/HRC/RES/42/22 of 8 October 2019

<sup>166</sup> Law 3854 of 2008 <http://www.gacetaoficialdebolivia.gob.bo/normas/busquedag1?q=convencion+iberoamerica>.

<sup>167</sup> Judgement 0265/2016 S2. III. 4 analysis of the specific case: “[...] Based on this understanding, it is also necessary to point out that, while the right to conscientious objection may not be ignored or rendered ineffective for lack of legislation (i.e. the invocation and effectiveness of the right are recognised), it is no less true that the exercise of this right is not absolute and its invocation does not have an automatic effect. Inasmuch as there is the objector's right, there is also a counterpart to the constitutional duty to perform military service, which is a responsibility of all male citizens who turn 18.”

possible domestic procedure, since it would be ignoring international protection standards.

On the one hand, the conscientious objector would be required to externalise his or her principles to demonstrate an honest and immutable behaviour<sup>168</sup>, which is initially incompatible with the pro homin principle in favour of the objector's human dignity. Furthermore, the “general freedom to change one's religion or belief is recognised in Article 18(1) of the Covenant, and Article 18(2) prohibits coercion which would impair the individual's freedom to have or to adopt a religion”<sup>169</sup>. This also promotes a process which is contrary to the principle of good faith<sup>170</sup>, and UN Human Rights Council Resolution 24/17, which states that persons performing military service may exercise conscientious objection, is disregarded<sup>171</sup>.

Lastly, the procedure for recognising conscientious objection is left to the military, which is contrary to what has been stated by the Committee in several of its observations<sup>172</sup> since it can lead to the disregard of every citizen's legitimate right, as reiterated by the European Court of Human Rights in *Dyagilev v. Russia*.

### 3. Lack of an alternative service

While the State recognises that it has to establish regulations for the civilian alternative service – which is why it is drafting a preliminary bill<sup>173</sup> – it should be noted that, according to a press release, draft legislation with the same purpose was introduced in 2017 but was not approved<sup>174</sup>. It is striking that in domestic practice, the State doesn't seem to consider it a necessity to provide an *alternative* to military service.

In addition to the above, in Bolivia there is a very favourable perception of the role played by the Armed Forces and, therefore, of the need for military service as the place where the youth are born and trained in political, labour and socio-cultural aspects<sup>175</sup>. There is also a limited understanding of the grounds for

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<sup>168</sup> Plurinational Constitutional Court of Bolivia. Judgement 0265/2016 – S2 “In this context, in order to protect and exercise the right to conscientious objection, the objector must prove that his or her convictions or beliefs define and condition his or her performance, actions and external behaviour, i.e. that the alleged peaceful outlook on life is shown externally with an important impact on his or her life. Otherwise, should these convictions or beliefs remain an inner manifestation, there will be no way to ensure the exercise of such right. From the foregoing, it can be concluded that when the violation of the right to conscientious objection is alleged, the conscientious objector must meet certain requirements, and it is not sufficient to merely manifest his or her personal convictions or beliefs, found in his or her inner self, and these must be externalised through honest and immutable behaviour.

<sup>169</sup> Quaker United Nations Office(QUNO), *International Standards on Conscientious Objection to Military Service*, Revised Edition: 2021, p. 5

[https://quno.org/sites/default/files/resources/QUNO%20Conscientious%20Objection%20-%20International%20Standards\\_Revised%202021\\_FINAL.pdf](https://quno.org/sites/default/files/resources/QUNO%20Conscientious%20Objection%20-%20International%20Standards_Revised%202021_FINAL.pdf)

<sup>170</sup> Recommendations from the Office of the UN High Commissioner for Human Rights Report on approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards. The conclusions make it clear that such application procedures must meet at least the following criteria: “[...] Good faith determination process. Application procedures should be based on reasonable and relevant criteria and should avoid the imposition of any conditions that would result in the automatic disqualification of applicants.”

Annex to the International Standards on Conscientious Objection to Military Service (2021) [https://quno.org/sites/default/files/resources/QUNO%20Conscientious%20Objection%20-%20International%20Standards\\_Revised%202021\\_FINAL.pdf](https://quno.org/sites/default/files/resources/QUNO%20Conscientious%20Objection%20-%20International%20Standards_Revised%202021_FINAL.pdf)

<sup>171</sup> Ibidem. P. 6 cit. 25 Human Rights Council Resolution 24/17 (A/HRC/24/17) adopted on 27 September 2013, para. 8 of the Preamble, reaffirmed in Human Rights Council Resolution 36/18 adopted on 3 October 2013 (A/HRC/RES/36/18).

<sup>172</sup> CCPR/CO/78/ISR. Para. 4, CCPR/CO/83/GRC. Para. 15.

<sup>173</sup> Idem. P. 36.

<sup>174</sup> Social service is presented as an alternative to military service. July Rojas Medrano. Note of 10 August 2017. <https://www.lostiempos.com/actualidad/nacional/20170810/plantean-servicio-social-como-alternativa-al-militar>

<sup>175</sup> Preamble or reasons of Supreme Decree No. 3078 of 8 February 2017 - Authorising the conscription of 17-year-olds – “That in Bolivia military service is, given its constitutional basis, very valuable and important for the current social context as well as the cultural importance that performing this duty has for rural and urban populations, and for young people who, in most cases, finish high school at the age of 16. That the search for opportunities in the life of every young man is reflected in political, labour and socio-cultural aspects. In many cases, these aspects arise from performing military service, as a duty and a requirement to aspire to certain jobs or positions within their communities and as part of their culture, since the military service originated before Bolivia was born as a Free, Independent and Sovereign State. The Inca Empire recruited young people to form armies, hence the military service was already considered mandatory.

<http://www.gacetaoficialdebolivia.gob.bo/normas/buscar/3078>

conscientious objection<sup>176</sup>, mainly in the face of a pacifist or nonviolent vision, limited to the refusal to use weapons or following military training<sup>177</sup>.

This idea has led to considering the exemption from military service on the understanding that there are non-combat or non-military modes of performing military service and alternative civic-military services, such as the Bolivian Navy Search and Rescue Service or the Air Force Search and Rescue Service, available to comply with the constitutional duty of military service.

The modalities proposed by the State are contrary to the Human Rights Committee's declarations, where it has systematically stated that an alternative service to military service should lie outside the military sphere and not remain under military orders<sup>178</sup>. The European Court of Human Rights has also stated that: "*Furthermore, the right to conscientious objection guaranteed by Article 9 of the Convention would be illusory if a State were allowed to organise and implement its system of alternative service in a way that would fail to offer – whether in law or in practice – an alternative to military service of a genuinely civilian nature and one which was not deterrent or punitive in character*" (Adyan and others v. Armenia, 75604/11, 67, 12 October 2017)<sup>179</sup>.

More specifically, by establishing a 2-year alternative service<sup>180</sup>, the Bolivian Navy and Air Force Search and Rescue Services<sup>181</sup> violate the United Nations standards: "*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*"<sup>182</sup>.

In addition, entry criteria (personal interview and limited places) are very restrictive, which is why it cannot be considered as a broad alternative.

#### **4. Voluntary military service, female military service and voluntary pre-military service<sup>183</sup>**

In Plurinational Constitutional Judgement No. 0037/2016 of the Supreme Constitutional Court, the State

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<sup>176</sup> CASA (Colectivo de Coordinación de Acciones Socioambientales (Collective for the Coordination of Socio-environmental Actions)), a member of RAMALC, a Latin American network, published a video in January 2022 which provides an insight into the Bolivian military service: <https://www.youtube.com/watch?v=CDr7QIksUfA>

<sup>177</sup> Plurinational Constitutional Court of Bolivia. Judgement 0268/2016 – S2 "Every citizen, regardless of their religious or personal convictions, is obliged to comply with this constitutional mandate, given its social relevance and significance. It should be kept in mind, that the purpose of the current military doctrine is not exclusively waging war, imposing force, or subjugating the weakest, but also fulfils a series of activities, for example, training aimed at serving society, such as assistance in the case of natural disasters, safeguarding national security and democratic processes through compliance with good governance decrees, protecting the environment and natural resources, parks and natural reserves, supporting and assisting in the improvement of state bond efficiency, and the technical training of conscripts among many others. In short, the current military view and doctrine cannot be understood as an action or duty contrary to peace as a supreme value, nor is it an incitement for hatred and war as the plaintiff mistakenly understands [...]. According to what has been stated, even though conscientious objection has been proven by an individual, it does not constitute an obstacle to evade the constitutional duty of military service, which in lieu thereof can be a compulsory social service, since, as has been explained, this service includes a series of tasks that go beyond the limited understanding that the plaintiff has of it".

IACHR Report no. 147/20. Petition 1384-16, admissibility report. 9. "Lastly, (THE STATE) specifies that there are up to six ways to obtain the military service record, including methods that do not involve assisting or participating in combat training of any kind.

<sup>178</sup> *Atasoy and Sarkut v Turkey* (CCPR/C/104/D/1853-1854 / 2008) and *Jong-nam kim and others v Republic of Korea* (CCPR/C/101/D/1786/2008)

<sup>179</sup> *Affaire Mushfig Mammadov and others v. Azerbaijan* final 17/01/2020. Para. 94.

<sup>180</sup> The Bolivian Navy Search and Rescue Service initiates calls for the "Voluntary military service". Vice-Ministry of Communication Policies of the Plurinational State of Bolivia. "This 'Voluntary military service' is two years long, with attendance every Saturday, which enables high school and university students, as well as professionals to specialise, among others, in water, mountain and jungle rescue activities, first aid techniques, firefighting, and response to natural disasters, in the service of the Bolivian nation and people.

Requirements include: applicants must be 18-30 years old, must present a birth certificate and a valid identity card, and must pass the admission tests which include a medical examination and a personal interview." <https://www.comunicacion.gob.bo/?q=20200716/30036>

<sup>181</sup> International Fellow of Reconciliation UPR SUB Bolivia 34th session. Nov. 2019 para. 10 "[1] It however pointed out that some forms of obligatory military service were unarmed Thus "through Bolivia's Civil Aviation Law (Law 2902 of 2004) and Ministerial Resolution No. 1152 of August 25, 2000, provision is being made to award a military service certificate free of charge to young volunteers in the Bolivian Air Force's search and rescue squads who meet the requirements and perform that service once a week for two years. In short, [...] in practice there is an alternative to compulsory military service."

<sup>182</sup> OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military services in accordance with human rights standard, (A/HRC/41/23), 24 May 2019, para. 60. criterion (1).

<sup>183</sup> Law 954 of 14 June 2017.

amended its domestic legislation regarding the conscription of minors to enable those aged between 17 and 18 to perform military service. However, the following year, Law 954 of 2017 was issued, which regulated voluntary military service providing three modalities: *voluntary military service* for 17-year-old men, *female military service* for 18-year-old women, and *voluntary pre-military service* for men and women in their penultimate year of high school which can be accessed from the age of 16.<sup>184</sup>

The same Judgement – in order to justify the participation of minors through *voluntary pre-military service* (voluntary military service for 17-year-olds hadn't been considered yet) – stated: "*It is necessary to make a distinction between what is meant by Military Service and what Pre-Military Service implies. The former is the performance of military activities by young civilians, while the latter is a prior instruction provided to conscripts before joining the armed forces, i.e., its purpose is the socialisation of the conscript so that he can, if necessary, adapt to the military sphere, acquiring basic knowledge about the role and organisation of the armed forces [...]*".

Although there is no weapon training, these “voluntary” modalities can be considered a form of “conscription, training and use” which are prohibited by the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (A/RES/54/263).

In the context of the prevailing socio-economic and cultural conditions<sup>185</sup> and the legal practices that limit access to rights such as employment<sup>186</sup>, a passport, or a pilot licence among others, the real possibility of the adolescent and his family making a free and voluntary decision is disputable. Especially for economically vulnerable families if we bear in mind that in order to continue exercising the right to education, the “process of deferring military service for university students aged 18 to 22 has to be undertaken, which requires a payment of Bs1500, equivalent to approximately \$US 218.”<sup>187</sup>

## **Finland<sup>188</sup>**

### ***Compulsory military service***

According to the Constitution of Finland, every Finnish citizen is obligated/obliged to participate in national defence. Every male Finnish citizen aged 18-60 is liable for military service, and women can apply to military service on a voluntary basis. A person liable for military service must complete either armed or unarmed military service, or non-military (civil) service. After completing military service, conscripts are mustered out into the Finnish Defence Forces' reserve.<sup>189</sup> Therefore, military service includes conscription, refresher training, and service during mobilisation, as well as participation in call-ups and examination of fitness for service. A man liable for military service is either in service as a conscript, in the reserve or in the auxiliary reserve.

The duration of military service (conscription) is 165, 255 or 347 days, depending on the duties trained for.

### ***Exemption from military and alternative service***

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<sup>184</sup> Pre-Military Service Conscription General Directive No. 06/16 Category 2016-2017. VII. Admission criteria: “Be 16 YEARS OLD by 31 December or 17 YEARS OLD at most, when applying.” [https://www.mindef.gob.bo/mindef/sites/default/files/files/Requisitos\\_Premilitar\\_2017.pdf](https://www.mindef.gob.bo/mindef/sites/default/files/files/Requisitos_Premilitar_2017.pdf)

<sup>185</sup> CASA (Colectivo de Coordinación de Acciones Socioambientales (Collective for the Coordination of Socio-environmental Actions)), a member of RAMALC, a Latin American network, published a video in January 2022 which provides an insight into the Bolivian military service: <https://www.youtube.com/watch?v=CDr7QlksUfA>

<sup>186</sup> Civil servants without a military service record can be prosecuted and dismissed. ANF. 18/07/2018. <https://www.lostiempos.com/actualidad/pais/20180718/funcionarios-que-no-tienen-libreta-militar-pueden-ser-procesados>

<sup>187</sup> Idem p. 13. P. 5.

<sup>188</sup> Based on the report submitted to the 131<sup>st</sup> session of the Human Rights Committee and the research for the submission to the 41<sup>st</sup> session of the Universal Periodic Review.

<sup>189</sup> The Finnish defence forces website: <https://puolustusvoimat.fi/en/finnish-conscription-system>.

Currently, all Finnish males must perform military- or alternative service, save for a particular status for those who are living in Åland Islands.

The law which completely exempted Jehovah's Witnesses from both military and alternative service was abolished on 1<sup>st</sup> April 2019.<sup>190</sup> This was the opposite of the UN's Human Rights Committee recommendation,<sup>191</sup> namely to extend the preferential treatment accorded to Jehovah's Witnesses to other groups of conscientious objectors.

### ***Recognition of CO and alternative service***

Applications to non-military service (“siviilipalvelus” in Finnish) must be accepted automatically by the law before (at the call-up) and during military service, and it is available also for reservists. Still, there are some matters that implicate that non-military service is not fully under civilian control.

In the Working Group to Examine the Needs of Changes to Non-Military Service Act, which was active in 2017-18, there were members from The Ministry of Defence, military headquarters and The Union of Conscripts. Those military parties are deciding about the issues concerning conscientious objectors to military service. The human rights expertise and interests of non-military servicemen was left mostly on the shoulders of the member from The Union of Conscientious Objectors. He raised up and defended alone the concerns and recommendations that The Human Rights Council has previously iterated.

### ***Punitive length of alternative service***

The alternative service is 347 days long. The length of the alternative, non-military service is potentially punitive: it lasts more than double the shortest period of military service (165 days).

### ***Procedural aspects: lack of information available on alternative service***

The *Non-Military Service Act* obligates authorities to provide information about the possibility of applying for non-military service. Section 104 of the Act says/states: “The Ministry of Employment and the Economy, the Centre for Non-Military Service, and the Defence Forces must provide those liable for conscription with sufficient information on the possibility to apply for, and the content of, non-military service.”

Finnish males receive a call-up letter in the year they turn 18 years old. In the letter there is a call-up notice, a questionnaire to ascertain military service and state of health. In the call-up notice, there is not any information about non-military service or the possibility of opting for it.<sup>192</sup>

Together with the notice letter, Finnish males receive a guidebook for military service.<sup>193</sup> The non-military service is presented in a short paragraph of 14 lines, and there is only a sentence about the application procedure that says: “For information on how to apply for non-military service go to [siviilipalveluskeskus.fi](https://siviilipalveluskeskus.fi)<sup>194</sup>, contact your regional office or ask personnel during the call-up”.<sup>195</sup>

In addition, during the call-ups, non-military service is presented by the Armed forces in a hasty manner. Sometimes the manner of speaking makes non-military service sound suspicious and negative for them and for Finnish society, thus resulting in a form of social pressure on young males. Indeed, the Finnish

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<sup>190</sup> Act on the Exemption of Jehovah's Witnesses from Military Service in Certain Cases (330/2019).

<sup>191</sup> Human Rights Committee, concluding observations on the sixth periodic report of Finland (CCPR/C/FIN/CO/6) published the 22 August 2013, para. 14.

<sup>192</sup> The questionnaire is available here (Finnish):

[https://puolustusvoimat.fi/documents/1948673/11361558/PEVIESTOS\\_Kyselylomake\\_palvelusta\\_fi\\_2018.pdf/9e06e00d-ec77-5b25-3b23-f0fedf53bd85](https://puolustusvoimat.fi/documents/1948673/11361558/PEVIESTOS_Kyselylomake_palvelusta_fi_2018.pdf/9e06e00d-ec77-5b25-3b23-f0fedf53bd85)

<sup>193</sup> Guidebook “Conscript 2020. A guide for you to carry out your military service” published by the Finnish Defence Forces, available here (English): <https://intti.fi/documents/1948673/2258487/Conscript+Guide+2018/08f3c6e6-6fae-4305-b765-53d4847a7893/Conscript+Guide+2018.pdf>

<sup>194</sup> Civil service website Ed.

<sup>195</sup> Ibid. dem. Pag. 17: “For information on how to apply for non-military service go to [siviilipalveluskeskus.fi](https://siviilipalveluskeskus.fi), contact your regional office or ask personnel during the call-up.”

Union of Conscientious Objectors (AKL)<sup>196</sup> has been collecting experiences from the participants who have not got enough information in the call-ups.<sup>197</sup>

According to these accounts, the insufficient and sometimes biased information that young men received during their call-up, added to the fact that before/prior to the call-up they only received official information about conscription, leads to the conclusion that information on alternative service is far from sufficient and there is (little or) no real choice between military and alternative service.

### ***The right of conscientious objection for serviceman***

The Non-Military Service Act's Section 13 states: "Non-military service applications must be processed without delay. Call-up boards or Defence Forces regional offices must approve all applications that comply with the requirements laid down in Section 12. Commanders of military units and the Centre for Non-Military Service must pass on all applications submitted to them to a Defence Forces regional office for approval. Call-up boards and Defence Forces regional offices must without delay notify the Centre for Non-Military Service that the non-military service application has been approved." Nevertheless, the right to apply for non-military service during the army service often presents difficulties such as denial and unjustified delay.

The Finnish Union of Conscientious Objectors (AKL) receives dozens of contacts every year from military servicemen who wish to change to non-military service, but who face denial or procrastination by the armed forces.<sup>198</sup>

### ***Criminal offences and total objectors***

Total objectors are eligible persons that do not want to perform any service included in the Finnish conscription system.

Some total objectors complain about the entire conscription system and refuse to perform civilian service under any circumstances. Some others primarily criticise the shortcomings of the civilian service system. There are two criminal offences with which total objectors can be charged, and it depends on the way they express their objection:

- Refusal to perform non-military service (Non-Military Service Act, Section 74). This is the most common offence, concerning cases when, having applied for non-military service, an eligible man refuses to perform it.
- Refusing military service (Conscription Act, Section 118). This offence applies when an eligible man refuses the military service without applying before to non-military service.

Almost a hundred of total objectors were acquitted from district courts in 2018 and 2019 because adjudication was seen as discriminatory when compared to Jehovah's Witnesses who were exempted from conscription.

After the abolition by law of the exemption for Jehovah's Witnesses (1<sup>st</sup> April 2019), the situation for total objectors changed and the preceding law was again applied.

Those who refused military service before the change of law, on the principle of the law at the time of commencing service, were acquitted, even though court proceedings were held after the repeal of the Exemption Act.

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<sup>196</sup>The Union of Conscientious Objectors (AKL Aseistakieltäytyjäliitto) is a grassroots, Finnish, anti-militarist peace organisation founded in 1974. It works in the interest of conscientious objectors, but it is also a non-military youth organisation. Website: <https://akl-web.fi/en>.

<sup>197</sup> The same issues are raised by the interviewees of semi-structured, thematic interviews related to a Finnish study about the reasons why some conscripts raise critical voices concerning their relationship with conscription and their role as reservists. The interviewees were reservists who were resigning from reserve status (no. = 33) and persons liable for non-military service (no. = 38). Jarkko Kosonen, Puustinen Alisa and Tallberg Teemu, "Saying no to military service – obligation, killing and inequality as experienced problems in conscription-based military in Finland", *Journal of Military Studies*, 2019; 8 (special issue), p. 46–57 (available here: <https://content.sciendo.com>).

<sup>198</sup> Information received from the Finnish Union of Conscientious Objectors (AKL) in September 2020.

According to the Non-Military Service Law, those who refused after the change and who have not been sentenced to imprisonment, will be called upon again to serve their non-military service. The length of the imprisonment is half the unperformed non-military service time (173 days), because a day of imprisonment is considered by law as two days of non-military service.

Since November 2020, there have been 44 reports of the offence of refusal to perform non-military service. In addition, there have been several reports of the offence of refusing military service.<sup>199</sup>

Moreover, in December 2020, at least 13 total objectors who were once acquitted, were subjected to another trial and sentenced to imprisonment by district courts. All of them have appealed to the Court of Appeal.<sup>200</sup>

### ***The rights of the child***

The Finnish Defence Forces run many programmes and projects to get in touch with Finnish underage males and females.

In 2016, the Finnish Defence Forces launched the five-year project “Get to know the army” (in Finnish, ‘Intti tutuksi’) whose targets are children of 15 and 16 years old.<sup>201</sup> The project expects to get in touch with every school and reaches approximately one third of 9<sup>th</sup> graders every year (22,000 pupils)<sup>202</sup> from all the country.

The ‘Intti tutuksi’ project consists of visits to garrisons that offer students an introduction to military equipment and tasks. The aim is to prepare children for conscription and voluntary military service for women.

During the visit, students can perform different tasks. One of the most questionable is the possibility of shooting with laser rifles that are remarkably similar to weapons used by draftees, but also the possibility of having a demonstration on how to use an anti-tank weapon.<sup>203</sup>

Also, the Intti Familiarisation Day, a day for familiarisation youngsters with the armed forces, also offers visits to military garrisons for 6<sup>th</sup>-grade children (11 years old). Children can try out the conscripts’ equipment, including rifles.<sup>204</sup>

The Finnish Defence Forces are often present at events that attract many youngsters, such as study fairs and gaming fairs. At their exhibition stand, the armed forces often offer the option to try simulations.<sup>205</sup>

This situation, together with the insufficient and biased information on alternative service before and during call-up, strengthens the conclusion that there is no real and balanced choice between military and alternative service.

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<sup>199</sup> Information received from the Finnish Union of Conscientious Objectors (AKL) in December 2020.

<sup>200</sup> Ibid.

<sup>201</sup> Official website of the programme (in Finnish) <https://maavoimat.fi/-/intti-tutuksi-koululaisille>.

<sup>202</sup> Local newspapers that give news about the project in specific areas (in Finnish):

Kouvolan Sanomat <https://kouvolansanomat.fi/uutiset/lahella/daed2f7e-815e-46df-9765-f9dd963a6eac>, Karjalainen <https://www.karjalainen.fi/uutiset/uutis-alueet/maakunta/item/101880>, Lestijoki <https://www.lestijoki.fi/uutinen/572109> and Lappeenrannan uutiset <https://www.lappeenrannan uutiset.fi/paikalliset/1751220>.

<sup>203</sup> Both questionable activities are described in the newspaper article “Recruitment to the army starts as early as high school - for a 15-year-old girl, it worked in four hours” (in Finnish), on Yleisradio Oy (Finland’s national public broadcasting company) website: <https://yle.fi/uutiset/3-10973737>.

<sup>204</sup> Local newspaper Reimari” website <http://www.reimari.fi/2017/09/19/intti-tutuksi-kuudesluokkalaisille/>

<sup>205</sup> *Ruotuväki* (official magazine of the Finnish Defense Forces) website <https://ruotuvaki.fi/-/puolustusvoimien-osasto-kuhisi-uteliaita-nuoria-studia-messuilla>; Armed forces at the Informatic fair “Digitoday”, magazine “Ilta-Sanomat” <https://www.is.fi/digitoday/esports/art-2000005781725.html>

## Georgia<sup>206</sup>

### I. Military Service

Georgia inherited the Soviet model of 24 months' obligatory military service for all males aged between 18 and 27, with Spring and Autumn call-ups each year. The duration of military service was reduced in 1995 to 18 months. In 2010, it was further reduced to 12 months (briefly increased in 2012 to 15 months<sup>207</sup>). Exemptions include priests,<sup>208</sup> persons who are the only son in their family, orphans, or who are themselves fathers.<sup>209</sup> Students in higher education may postpone until after graduation.

In the late 1990's, the manpower of the armed forces was over 30,000, but numbers were subsequently reduced, partly by a policy of "professionalisation" aimed at obtaining NATO membership.

In 2002, an amendment to the Law on Military Service and Conscription instituted three categories of military service - mandatory, contract and career/reserve. "Contract" troops, male or female, could volunteer for an initial period of three years, after which they would have the option of signing up for a long-term military career; the intention being that such volunteers would eventually form two-thirds of military personnel.<sup>210</sup> In 2006, parliament approved a further increase in the number of "contract" personnel, bringing the proportion of conscripts down to 20%.<sup>211</sup> Another Bill transformed the voluntary reserve force set up in 2002 into an obligation on all men between 27 and 40 to attend 24 (18 if University graduates) days' military training every two years.<sup>212</sup> Volunteers may be accepted into military reserve service from the age of 18.<sup>213</sup>

It was planned to abolish conscription altogether from the end of 2009.<sup>214</sup> However, although the policy of boosting professionalisation by a greater use of contract servicemen (whose initial period of service was increased to four years)<sup>215</sup> was continued, the Russian invasion of South Ossetia in 2008 stopped talk of an imminent end to conscription. The proposal was however revived by in January 2013. As part of a stepwise transition to a fully professional army over four years,<sup>216</sup> the target for the Spring call-up was sharply reduced to 1,650, as compared with a total of 4,347 recruits in the two 2012 call-ups.<sup>217</sup>

In July 2016, the Minister of Defence announced the abolition of obligatory military service. As in Ukraine two years earlier, this referred only to conscription into military forces under the Ministry of Defence. The Ministry of Internal Affairs and the Ministry of Corrections continued to conscript, and it is reported that they called up 75% of those eligible.<sup>218</sup> And as in Ukraine, only one military call-up did not take place; under a new Government the first new conscripts were called up in February 2017.

Military service is currently 12 months as before, but conscripts have "weekends off" and are paid the equivalent of \$21 per month, as compared to \$3 previously.<sup>219</sup> The latest estimate is that conscripts' number approximately 4,350, about 20% of the army's strength. The reports of non-military conscription

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<sup>206</sup> Based on the report submitted by IFOR to the 130th Human Rights Committee.

<sup>207</sup> Democracy and Freedom Watch, "Georgia extends military service to 15 months", 16<sup>th</sup> February 2012 and "Georgia to end the draft by 2016" 9<sup>th</sup> January 2013.

<sup>208</sup> Bundesamt für Flüchtlinge (Swiss Federal Refugee Office), *Focus: Georgien - Wehrdienst*, Bern, 22<sup>nd</sup> November 2000.

<sup>209</sup> Danish Immigration Service, *Report on roving attaché mission to Georgia, 14<sup>th</sup> to 27<sup>th</sup> October 2000*, reproduced on the website of the UN High Commissioner for Refugees (www.unhcr.org) under "research/evaluation".

<sup>210</sup> Immigration and Refugee Board of Canada, op. cit.

<sup>211</sup> Institute for War and Peace Reporting, *Caucasus Reporting Service No. 370*, 14<sup>th</sup> December, 2006 and *No.384*, 22<sup>nd</sup> March, 2007.

<sup>212</sup> Liklikadze, K. "Georgia creates army reserves", Institute for War and Peace Reporting, *Caucasus Reporting Service No. 384*, 22<sup>nd</sup> March 2007.

<sup>213</sup> Replies to the List of Issues on Georgia's Initial Report under the Optional Protocol to the Convention on the Rights of the Child on children involved in armed conflict. (CRC/C/GEO/OPAC/Q1/Add.1), 17<sup>th</sup> September 2019, para. 60.

<sup>214</sup> Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008*, p. 149.

<sup>215</sup> *The Military Balance 2013*, op. cit., p. 220.

<sup>216</sup> Democracy and Freedom Watch, "Georgia to end the draft by 2016", 9<sup>th</sup> January, 2013.

<sup>217</sup> Democracy and Freedom Watch, "Spring recruitment for the military has started", 8<sup>th</sup> February, 2013.

<sup>218</sup> Agenda.ge news online, "Georgia's Defence Ministry abolishes compulsory conscription", Tbilisi, 27<sup>th</sup> June 2016.

<sup>219</sup> Agenda.ge news online, "Compulsory military service reintroduced in Georgian Armed Forces", Tbilisi, 14<sup>th</sup> February 2017.

imply therefore that among the 5,400 Border Guards, under the control of the Interior Ministry, and the unknown number serving under the Ministry of Corrections there are at least 16,000 conscripts.<sup>220</sup>

The conscripts employed by the Ministry of Corrections, in particular, complain that their training is not military and that they are employed as prison guards. Others describe their role as that of “lack-eyes”.<sup>221</sup> Conscription in Georgia would probably thus come under the ILO definition of forced labour.

## **II. Conscientious objection and alternative service**

The first recognition of conscientious objection to military service was in the 1997 Law on Alternative Service, effective from January 1998. Under Article 4 “Those conscripts who according to the legislation must perform military service but refuse to do so because military service of any sort is incompatible with their conscience, may be called up to perform civilian service in times of peace”.<sup>222</sup> Article 5 specifies appropriate placements.

New regulations introduced in 2001 put the administration of alternative service under the Ministry of Labour, Health and Social Affairs. However, applications are still considered by the relevant regional or municipal Recruitment Commission. No details or statistics relating to their proceedings are made public. Appeals against their decisions, with a suspensive effect, can be made to the Central Recruitment Commission.<sup>223</sup>

In 2002, a system of “buying-out” of the obligatory military service requirement was instituted in as part of the downsizing of the armed forces (according to one source, formalising a practice which, illicitly, was already widespread). Within the first month of its operation, 124 persons made use of the provision.<sup>224</sup>

We believe that complete “buying out” is no longer possible, but until the age of 25 up to two deferments of 18 months can be purchased for 2000 lari (approximately \$600) each.<sup>225</sup>

No challenges to alternative service decisions have come to our attention since 2012, when “In two cases reported by the Jehovah’s Witnesses involving alternative service [...], the Ministry of Defence denied initial requests for exemptions, but granted the requests in follow-up appeals. Authorities granted the appeal of one Jehovah’s Witness in which the individual was fined for non-fulfilment of military or alternate service but denied the appeals of three others.”<sup>226</sup>

## **III. Duration of alternative service**

Article 6 of the 1997 Law on Alternative Service set its duration at 36 months.<sup>227</sup> This was subsequently reduced in parallel with military service, and now stands at 24 months. This however remains twice as long as that of military service.

## **IV. Military training in the education system**

In the declaration made in 2010 on accession to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) Georgia stipulated that the minimum age for recruitment into obligatory military service was 18 years.

In its initial report under the OPAC, Georgia confirmed that “the Law on Military Obligations and

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<sup>220</sup> Figures from *The Military Balance 2020*, op. cit., p. 189.

<sup>221</sup> European Bureau for Conscientious Objection (EBCO), *Annual Report 2018*, Brussels, 18<sup>th</sup> January 2019, p. 22.

<sup>222</sup> Stolwijk, M., *The Right to Conscientious Objection in Europe: A Review of the Current Situation*, Quaker Council for European Affairs, Brussels, 2005, p. 30.

<sup>223</sup> Initial Report of Georgia under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/GEO/1), 16<sup>th</sup> November, 2018, para. 10.

<sup>224</sup> Immigration and Refugee Board of Canada, op. cit.

<sup>225</sup> Law on Military Duty and Military Service, Article 5.

<sup>226</sup> United States State Department, Bureau of Democracy, Human Rights and Labor, *International Religious Freedom Report for 2012: Georgia*.

<sup>227</sup> Article 6.

Military Service provides the possibility for persons to learn in high military educational institution under 18 as an exception. However, the Law establishes that the person may become the *Junker* (student) of high military educational institution only by the consent of parents.”<sup>228</sup> The State also stresses that *Junker* are not considered members of the armed forces.<sup>229</sup>

In 2010 a “Cadets' Military Lyceum” was established in Kutasi “for boys under the age of 17 years who have completed nine grades of education.” In 2013 this was extended to girls. As of Summer 2019, 143 boys and 42 girls, all aged between 15 and 18 were about to proceed to the second or third year of training.<sup>230</sup> Georgia confirmed that cadets went through the basic military training course, including the use of weapons.<sup>231</sup>

In its Concluding Observations on Georgia’s Initial Report under the OPAC, the Committee on the Rights of the Child recommends “that the State party take measures to ensure that students below the age of 18 years at higher military educational institutions are exempt from military training that involves the handling of firearms and military discipline.”<sup>232</sup> “While noting the State party’s information that the curriculum of the Giorgi Kvinitadze cadets military lyceum [...] is approved by the Ministry of Education and that pupils in that institution are considered civilians and not military service members” the Committee expressed concern “about the State party’s information that children in that institution undergo basic military training, including training on firearms with live ammunition at the age of 16 years.”<sup>233</sup>, and recommends that students “are not trained in the use of weapons and live ammunition.”<sup>234</sup>

## V. Abkhazia and South Ossetia

The Georgian government does not enjoy effective control of Abkhazia and South Ossetia, so is not answerable for the human rights situation there. It might however be noted that the de facto administrations in these regions maintain armed forces and both have enforced a form of conscription. Unusually for an internationally unrecognised administration, the de facto authorities in Abkhazia have considered legislation to introduce provision for conscientious objection,<sup>235</sup> but details are hard to obtain, and the Jehovah’s Witnesses, most likely to wish to avail themselves of such provisions, remain formally banned, expressly because of their refusal of military service.<sup>236</sup>

In Abkhazia, pupils in the final two years of secondary school receive two hours per week “pre-conscription training for civil defence”. There have also been some reports of premature conscription of 17-year-olds.<sup>237</sup>

## Germany<sup>238</sup>

### 1. Conscientious objection of professional members of the armed forces

#### *Recognition of the right to Conscientious objection*

Despite the fact that since 2011 military service is no longer compulsory, the right to refuse to render

<sup>228</sup> CRC/C/GEO/OPAC/1 op cit (see footnote n. 19), para. 46.

<sup>229</sup> Ibid. para. 47.

<sup>230</sup> CRC/C/GEO/OPAC/Q1/Add.1, op. cit.), para. 14.

<sup>231</sup> Ibid, para. 15.

<sup>232</sup> CRC/C/GEO/OPAC/CO, 30<sup>th</sup> October, 2019, para. 21.

<sup>233</sup> Ibid, para. 22.

<sup>234</sup> Ibid, para. 23.

<sup>235</sup> Bundesamt für Flüchtlinge (Swiss Federal Refugee Office), *Focus: Georgien - Wehrdienst*, Bern, 22<sup>nd</sup> November, 2000.

<sup>236</sup> United States State Department, Bureau of Democracy, Human Rights and Labor, *International Religious Freedom Report for 2011: Georgia*.

<sup>237</sup> *Child Soldiers Global Report 2008*, op. cit., p. 149.

<sup>238</sup> Based on the report submitted by IFOR to 133<sup>rd</sup> Human Rights Committee.

military service involving the use of arms on grounds of conscience remains enshrined in Article 4 (3) of the Basic Law:

*“No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.”*

Indeed, military service is suspended during peacetime, but it is still compulsory in case of state of emergency and for national defence (wartime).

### ***Procedural aspect: the application***

Decisions on whether an individual is entitled to recognition as a conscientious objector are taken by the Federal Office of Family Affairs and Civil Society Functions upon application.

The application must contain reference to the fundamental right to conscientious objection as defined in the first sentence of Article 4 (3) of the Basic Law. A full Curriculum vitae must be enclosed with the application, as a detailed description of the person’s reasons for refusing to render military service.

### ***Procedural aspect: decision making process and timing issue***

The Federal Office of Family Affairs and Civil Society Functions will recognise the applicant as a conscientious objector if:

- the application is complete,
- the reasons set out can support the right of conscientious objection, and
- the application as a whole and any other facts known to the Federal Office do not provide any reason to doubt the correctness of the details provided.

If there is any doubt as to the correctness of the details, the applicant will be given one month’s time to respond to the issues raised. If doubts remain, an oral hearing (interview) may be held. This interview is not open to the public.

If an application is rejected, the applicant may file a complaint with the Federal Office. The decision taken by the Office following such a complaint may be appealed in the courts. An appeal should be lodged with the competent administrative court.

In 2018, 127 requests for discharge on grounds of conscience were accepted: 41 basic soldiers, 63 non-commissioned officers and 23 officers. The acceptance rate of requests is 60-70%.<sup>239</sup>

Similarly, in 2019, 126 requests for discharge on grounds of conscience were accepted; and of these only 25 were approved in first instance and others are still in process. In 2019, 27 recognized conscientious objectors have been dismissed officially from the army.<sup>240</sup>

About the timing issue, there are not official figures about the duration of the recognition procedure for professional members. It has been estimated that it lasts between 9 and 10 months, at least for cases without complaint or appeal procedures.<sup>241</sup>

Indeed, it has been reported a case of a female member of the armed forces that was successfully helped by a law firm to enforce her application without any appeal. The process for her application lasted 9 months to come to an end.<sup>242</sup>

Generally, applicants have to remain within the armed forces until their application is accepted.

Even if during this long period they should perform a type of military service that does not bring them into conflict with their conscience, they are exposed to a high psychological pressure because comrades

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<sup>239</sup> European Bureau for Conscientious Objection (EBCO), Annual report Conscientious objection in Europe 2019, February 2020.

<sup>240</sup> European Bureau for Conscientious Objection (EBCO), Annual report Conscientious objection in Europe 2020, February 2021, based on the answer that was given on 30 June 2020 by the German Government to a request of the parliamentary group DIE LINKE available here (in German): <https://dipbt.bundestag.de/doc/btd/19/204/1920480.pdf>.

<sup>241</sup> Information from Mr. Friedhelm Schneider (DE), member of the European Bureau for Conscientious Objection (EBCO), January 2021.

<sup>242</sup> German Law firm “Korzus und Partner”, blog post available here (in German): <https://korzus-partner.de/erfolgreicher-kdv-antrag-ohne-widerspruchs-oder-klageverfahren-neues-aus-dem-soldaten-und-wehrrecht/>.

and superiors are usually informed about the application. This can lead to a long period of cutting ties and avoiding in an environment disapproving their decision.

In order to improve the situation of professional members of armed forces that develop a conscientious objection, it would be necessary to reduce the time for the recognition and possibly grant an (unpaid) leave starting from the filing of the application.

### ***Financial aspect of the recognition***

Conscientious objectors who are recognized during their contract period of serving as professional soldier meet regularly financial problems.

Indeed, recruits have to pay back their training costs. The army can insist that this is done as a lump sum, rather than in staged payments.

In this context a judgement has been pronounced in September 2019 by the administrative court of Halle/Saale: the court ruled that the army had been overstating the repayments legally due.<sup>243</sup> The maximum repayment required is the amount fixed by the federal law concerning the promotion of education and training, that students, pupils and trainees can apply for (in 2019 it was 853€ per month).<sup>244</sup>

## **2. The new voluntary military service in the area of homeland security**

Beginning on 1<sup>st</sup> September 2020, Germany started a new Voluntary military service in the area of homeland security ("Freiwilliger Wehrdienst im Heimatschutz").

Whereas the *traditional* voluntary military service can be done for a duration between 7 and 23 months and requires the readiness to serve out of area, the new homeland security service is to be fulfilled exclusively in Germany: 7 months of military and civil training followed by 5 months of reserve duties in 6 years.

As for the normal voluntary military service, this new type of service is open for 17 years old underaged recruits.

Many grassroot associations have expressed their concern about this new military service. For instance, the Action Committee Service for Peace (AGDF) and the Protestant association for conscientious objection and Peace (EAK) stated that the new voluntary service is being created with the aim to increase the recruitment of minors in the German armed forces.<sup>245</sup> In addition, this service includes training of fire-arms for underage volunteers and increases the mix between military and civilian duties and responsibilities which may lead to an expansion of military activities in domestic territory.

Moreover, it is not clear if and how the right to conscientious objection would be recognised to those who will develop an objection during the training or after as a reservist.

On 1<sup>st</sup> July 2021 the second contingent of participants started to do their voluntary military service in homeland security<sup>246</sup>.

## **3. Recruitment of 17-year-old voluntary children**

In Germany, the minimum age for voluntary recruitment into the armed forces is 17 years.

This issue has been already raised the concern of the UN Committee on the Rights of the Child (CRC) in its Concluding Observations to the Germany initial report under the Optional protocol on the

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<sup>243</sup> European Bureau for Conscientious Objection (EBCO), op cit., p. 15.

<sup>244</sup> Verwaltungsgericht Halle/Saale: Judgement 5 A 621/17 HA of 24 September 2019.

<sup>245</sup> Action Committee Service for Peace (AGDF) and the Protestant association for conscientious objection and Peace (EAK), Press release of 27/08/2020 is available here (in German): [www.evangelische-friedensarbeit.de/artikel/2020/evangelische-friedensarbeit-neuer-freiwilliger-wehrdienst-ist-ein-taeschungsmanoever](http://www.evangelische-friedensarbeit.de/artikel/2020/evangelische-friedensarbeit-neuer-freiwilliger-wehrdienst-ist-ein-taeschungsmanoever).

<sup>246</sup> Press release of EAK Westfalen - Evangelische Arbeitsgemeinschaft für Kriegsdienstverweigerung und Frieden, Region Westfalen (Protestant Association for Conscientious Objection and Peace, Westphalia region): <https://www.evangelische-friedensarbeit.de/artikel/2021/schiessuebungen-fuer-17-jaehrige>.

involvement of children in armed conflict (CRC/C/OPAC/DEU/CO/1, para. 11), and as well in its List of issues in relation to the combined third and fourth periodic reports of Germany (CRC/C/DEU/3-4, para. 17).

In 2019, 1,706 17-year-old recruits enrolled in the armed forces, the ratio of underage soldiers represented 8.5 % of the total number of commencements of duties (compared to 8.4 % in 2018).<sup>247</sup> The total number of under-18s entering the Bundeswehr (German army) per year rose from 1,2 in 2012 to 2,1 in 2017.<sup>248</sup>

Remarkably, there has always been a significant number of underage recruits who quit the army during their 6 months long probationary period, usually at their own request.<sup>249</sup> Indeed, military legislation allows recruits of any age to request discharge within the first six months of training, but child recruits have no ongoing right to leave after this point, even if they are still below the age of 18.

The armed forces, in their recruiting campaigns, systematically play down the risks of military actions. In 2019 out of underage persons recruited by the army 467 terminated their contract already during their probationary period (6 months). In 2020 (reduced recruitment rate because of Covid) out of 1,148, 236 17-years old military newcomers resigned during the first months of their service<sup>250</sup>.

Instead of moving in the direction of avoiding the recruitment of minors, the State party has decided to recruit minors under the age of 17 also for the new voluntary military service in the area of homeland security.

#### **4. Grant asylum to conscientious objectors that flee their countries**

##### ***Asylum status to Eritrean conscientious objectors***

Germany, along with other Western European countries, currently receives large numbers of asylum claims from Eritreans where there is no recognition of conscientious objection, liability for military service is universal and imposed by random forcible recruitment; the duration of the service is indefinite<sup>251</sup>, as it can be the incarceration of conscientious objectors and those attempting to leave the country to avoid military service put their lives at risk.

The 2018 Peace agreement between Eritrea and Ethiopia, formally ending the border war, has not changed the human rights situation in the country.

Nevertheless, fewer and fewer asylum seekers from Eritrea receive refugee recognition in Germany. In 2015 the Federal Office for Migration and Refugees (BAMF - Bundesamt für Migration und Flüchtlinge) recognized 95.5% of Eritrean asylum seekers as refugees.<sup>252</sup> In the following years this rate of protection has fallen massively. Increasingly, Eritreans are only granted subsidiary protection, which goes hand in hand with a much less favourable legal status. The number of persons who simply receive a so-called “prohibition on deportation” (*Abschiebungsverbot*) or even a refusal of permit altogether has also increased considerably. In 2018, a reduced number of 39.5% of Eritreans received refugee protection, and

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<sup>247</sup> Parliamentary Commissioner for the Armed Forces, Annual Report 2019 (Printed paper 19/16500), 28 January 2020, pp. 31-32, available here (in English): <https://www.bundestag.de/en/parliament/commissioner>.

<sup>248</sup> Fifth and Sixth Periodic Reports of the Federal Republic of Germany on the United Nations Convention on the Rights of the Child, Annex 1, Para 280.

<sup>249</sup> Concerning the last published figures see Bundestag paper 19/3965 of 24/08/2018 (in German): <http://dip21.bundestag.de/dip21/btd/19/039/1903965.pdf>.

<sup>250</sup> <https://www.evangelische-friedensarbeit.de/artikel/2021/hohe-abbrecherquoten-bei-minderjaehrigen-bundeswehr-rekruten>.

<sup>251</sup> Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Eritrea, 24 July 2017 (A/HRC/35/39).

<sup>252</sup> German Federal Office for Migration and Refugees (BAMF- Bundesamt für Migration und Flüchtlinge), The Federal Office in figures for 2015 (2016), available here (in German): <https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/BundesamtinZahlen/bundesamt-in-zahlen-2015.html?nn=284738>

49.7% received subsidiary protection.<sup>253</sup>

Therefore, two German grass-root associations PRO ASYL and Connection e.V. concluded that the changed situation in Eritrea is in no way a reason for the increasingly restrictive decision-making practice for Eritrean refugees. Rather, it seems to be based on the political will to significantly reduce the recognition rates in Germany.<sup>254</sup>

Moreover, those who have not been recognised as refugees and have only been granted subsidiary protection or protection against deportation are requested to obtain their passports from the Eritrean embassy. This means that the persons concerned must again submit completely to the requirements of the Eritrean regime services such as the issuing of a passport which is only provided by the Eritrean mission abroad if a letter of repentance is signed beforehand.<sup>255</sup>

## Greece<sup>256</sup>

Despite certain positive steps in the 2019 amendments of certain legislative provisions for conscientious objectors in the context of a new law<sup>257</sup> and subsequent Ministerial Decisions, serious violations of human rights of conscientious objectors and Greece's obligations towards them remain unaddressed, as it has been pointed out also by Amnesty International.<sup>258</sup> The failure of the new legislation to recognize the right to conscientious objection to military service in accordance with international human rights standards has been pointed out by the Special Rapporteur on freedom of religion or belief, in a communication to the new elected Greek authorities on July 11<sup>th</sup> 2019.<sup>259</sup>

Most importantly, the new Greek government, instead of responding to the concerns of the Special Rapporteur by implementing the recommendations of the Human Rights Committee, has moved towards annulling recent positive amendments about conscientious objectors, such as the reduction of the length of alternative civilian service done by the previous government.

### A) MAIN VIOLATIONS OF THE RIGHT TO CONSCIENTIOUS OBJECTION

#### 1) Punitive and discriminatory alternative civilian service

##### i) Insufficient benefits or/and salary

The Human Rights Committee has requested Greece to review the legislation in order for the alternative service in Greece not to be punitive and discriminatory, referring *inter alia* to the cost of the service.<sup>260</sup>

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<sup>253</sup> German Federal Office for Migration and Refugees (BAMF- Bundesamt für Migration und Flüchtlinge), Statistics on Asylum for the year 2018 (2019), available here (in German): [https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/Asylgeschaeftsbericht/201812-statistik-anlage-asyl-geschaeftsbericht.pdf?\\_\\_blob=publicationFile&v=5](https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/Asylgeschaeftsbericht/201812-statistik-anlage-asyl-geschaeftsbericht.pdf?__blob=publicationFile&v=5).

<sup>254</sup> PRO ASYL and Connection e.V., Statement on the occasion of the hearing “Conscientious Objection. on the Run - the Human Rights Situation in Eritrea and Germany“, December 9, 2019, in the Bundestag in Berlin. Translated from German, original available here: [https://www.proasyl.de/wp-content/uploads/PRO\\_ASYL\\_Broschuere\\_EritreaimFokus.pdf](https://www.proasyl.de/wp-content/uploads/PRO_ASYL_Broschuere_EritreaimFokus.pdf).

<sup>255</sup> European Asylum Support Office (EASO European Union agency), “Eritrea –National service, exit, and return”, September 2019, p. 56, available here: <https://www.easo.europa.eu/news-events/easo-publishes-country-origin-information-coi-report-eritrea>.

<sup>256</sup> Based on the report submitted by IFOR to the 133<sup>rd</sup> Human Rights Committee.

<sup>257</sup> Law 4609/2019, especially Articles 22-23, available at: <https://www.e-nomothesia.gr/kat-enoples-dynameis/nomos-4609-2019-phek-67a-3-5-2019.html> (in Greek).

<sup>258</sup> Unprecedented, Unacceptable and Contrary to International Law, the increase of alternative service for conscientious objectors, Amnesty International, Greek Section, Press Release of 16 October 2019, available at: <https://www.amnesty.gr/news/articles/article/22571/protofanis-aparadekti-kai-antitheti-sto-diethnes-dikaio-i-ayxisi-tis>;

Government must uphold its commitments to conscientious objectors, Amnesty International, Greek Section, 15 May 2019, available at <https://www.amnesty.gr/news/press/article/22170/i-kyvernisi-na-tirisei-tis-desmeyseis-tis-pros-toys-antirrisies-syneidisis>;

Greece: Observations on the Right to Conscientious Objection, Serious Violations of Greece's Obligation towards Conscientious Objectors Remain Unaddressed in Proposed Bill despite Some Positive Steps, 20 March 2019, Index number: EUR 25/0088/2019, available at: <https://www.amnesty.org/en/documents/eur25/0088/2019/en/>.

<sup>259</sup> UN Special Rapporteur on freedom of religion or belief, Communication [GRC 3/2019](https://www.unhcr.org/refugees/3/2019), 11 July 2019.

<sup>260</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Greece, (CCPR/C/GRC/CO/2), 3 December 2015, para. 38.

According to the legislation<sup>261</sup>, conscientious objectors performing alternative service are either entitled food and housing, without any salary whatsoever, or otherwise receive a monthly salary, set by ministerial decision since 2005 to € 223.53, but it is prohibited by law to be paid any other amount of money for any reason.

For those conscientious objectors provided food and housing, but no salary whatsoever, it is hardly possible to have a decent living, especially considering the extensive period of time (15 months of alternative service) for which they should remain without any salary. Obviously, such a situation is even more unbearable for conscientious objectors of lower income.

Furthermore, they are discriminated in comparison to conscripts serving in the armed forces. Conscripts, despite the fact that they are also provided food and housing inside the military premises, nevertheless, they receive certain amount of money – while conscientious objectors do not. Furthermore, conscripts receive certain personal items, while conscientious objectors do not.

As for those conscientious objectors who are not provided food and housing, the salary they receive is completely insufficient to provide an adequate standard of living according to international human rights standards. In 2015, when the minimum salary was less than the current one, namely it was € 586.08 or € 510.95 for workers under 25 years of age,<sup>262</sup> the Committee on Economic, Social and Cultural Rights had raised concerns that it was not sufficient to provide workers and their families with a decent living in line with article 7 of the ICESCR.<sup>263</sup> Accordingly, the € 223.53 for conscientious objectors are absolutely insufficient to provide them with an adequate standard of living in terms of Articles 7 and 11 of the ICESCR.

In addition, there is no provision whatsoever to adjust the salary of conscientious objectors according to the rental prices of the area where the alternative service is performed.

An additional discrimination concerns the fact that while conscripts serving in the armed forces receive a free pass for certain public transportation means,<sup>264</sup> conscientious objectors do not. This issue had been brought to the parliament since 2011, and the then Minister of National Defence had replied he would look at it,<sup>265</sup> but this issue does not appear to have been resolved.

## ii) Discrimination as of the location of service

The alternative service consists in the provision of services of public benefit in areas other than the place of residence, which in 2016<sup>266</sup> was further extended to the entire region of residence. There is no such explicit restriction for conscripts serving in the armed forces who might be able to perform part of their service in the region of their residence.

According to the Human Rights Committee, “the requirement to perform such services away from places of permanent residence” can be one of the factors rendering the conditions of alternative service in a country “punitive in nature”.<sup>267</sup> In the case of Greece, the Human Rights Committee, indeed referred

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<sup>261</sup> Law 3883/2010, article 78, passage k [α], which has amended the sub-paragraph d of the renumbered paragraph 2 of article 64 of the law 3421/2005. Joint ministerial decision 2/24407/0022/09-06-2005 (Official Journal Vol. B. 858) titled “Definition of monthly compensation of conscientious objectors”.

<sup>262</sup> Replies of Greece to the list of issues, (E/C.12/GRC/Q/2/Add.1), 6 August 2015, para. 54. Available at: <http://www.un-docs.org/E/C.12/GRC/Q/2/Add.1>

<sup>263</sup> UN Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Greece, (E/C.12/GRC/CO/2), 27 October 2015, paras. 19-20.

Available at: <http://www.undocs.org/E/C.12/GRC/CO/2>

<sup>264</sup> See for example the relevant page of the Urban Rail Transport S.A. (in Greek): <http://www.stasy.gr/index.php?id=74>

<sup>265</sup> See the response of the Minister of National Defence of the 9 March 2011, to the report No 3444/18-02-2011 of MP Dritsas concerning a relevant letter of the Association of Greek Conscientious Objectors.

Available in Greek in: [https://www.hellenicparliament.gr/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-Elexou?pcm\\_id=4b306b9a-03e9-43ed-a33d-0557f26162aa](https://www.hellenicparliament.gr/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-Elexou?pcm_id=4b306b9a-03e9-43ed-a33d-0557f26162aa)

<sup>266</sup> Law 4361/2016, Article 12, para. 9.

<sup>267</sup> UN Human Rights Committee, Concluding observations on the sixth periodic report of the Russian Federation, (CCPR/C/RUS/CO/6), 24 November 2009, para. 23.

also to the nature of the service.<sup>268</sup>

The Greek National Commission for Human Rights has consistently stated that the geographical criterion for the completion of the alternative social service should be in conformity with the same rules that apply to regular armed military service.<sup>269</sup> Currently conscientious objectors are not allowed to serve in the region of their residence, a restriction which does not apply to conscripts serving in the armed forces.<sup>270</sup>

A further discrimination related to the location of service comes in conjunction with the issue of length. While conscripts performing the entire period of their military service in certain eastern border areas are provided with a reduction of 3 months of military service (9 months instead of 12 months), there is no provision for reduction of the length of alternative service for those conscientious objectors performing the entire period of alternative service in the same or any other border areas.

### iii) Punitive and discriminatory length

Following international recommendations, in June 2019 a Ministerial Decision by the then Alternate Minister of National Defence reduced the length of the full alternative service from 15 to 12 months and the length of the three categories of reduced alternative service to (almost) the same length as for the reduced military service. However, in contravention of international and regional human rights standards and the recommendations of the Human Rights Committee<sup>271</sup> and the Special Rapporteur on freedom of religion or belief,<sup>272</sup> this Ministerial Decision was annulled in October 2019 by the Joint Decision of the new Deputy Ministers of Finance and National Defence, which reinstated the previous length for all categories.<sup>273</sup> This case of reduction by one government and subsequent increase by the next one, within only a few months, illustrates how the determination of the length of alternative civilian service is based rather on political considerations instead of reasonable and objective criteria.

In a separate recent development, in February 2021, a Joint Decision of the same Ministers increased the length of the full military service in the Army, where the vast majority of conscripts serve, from 9 to 12 months, making it equal to that in the Navy and Air Force.<sup>274</sup>

However, even after this development, the length of the full alternative civilian service continues to be significantly and unjustifiably longer (15 months, that is, 3 months longer than the military service). According to the UN standards “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.”<sup>275</sup>

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Available at <http://undocs.org/CCPR/C/RUS/CO/6>

<sup>268</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Greece, (CCPR/C/GRC/CO/2), 3 December 2015, para. 38.

Available at <http://undocs.org/CCPR/C/GRC/CO/2>

<sup>269</sup> GNCHR, Recommendations regarding Conscientious Objectors and the Scheme of Alternative Civil-Social Service, 10.6.2004, recommendation h.

Available at: [http://www.nchr.gr/images/English\\_Site/ANTIRRISIES/Conscientious\\_of\\_objectors\\_2004.pdf](http://www.nchr.gr/images/English_Site/ANTIRRISIES/Conscientious_of_objectors_2004.pdf)

<sup>270</sup> Submission of the GNCHR to the quadrennial analytical report 2017 on conscientious objection to military service of the UN High Commissioner of Human Rights, p. 10. Available at: <https://www.nchr.gr/en/decisions-positions/68-conscientious-objectors/324-submission-of-the-gnchr-to-the-quadrennial-analytical-report-2017-on-conscientious-objection-to-military-service-of-the-un-high-commissioner-of-human-rights.html>

<sup>271</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Greece, (CCPR/C/GRC/CO/2), 3 December 2015, paras. 37-38

<sup>272</sup> UN Special Rapporteur on freedom of religion or belief, [Communication GRC 3/2016](#), 31 October 2016. UN Special Rapporteur on freedom of religion or belief, [Communication GRC 3/2019](#), 11 July 2019.

<sup>273</sup> Joint Decision of the Deputy Minister of Finance and the Deputy Minister of National Defence Φ.421.4/7/228631/Σ.6400/24-09-2019 (Official Journal vol. B 3697/4-10-2019).

<sup>274</sup> Joint Decision of the Alternate Minister of Finance and the Deputy Minister of National Defence Φ.421.4/1/322490/Σ. 1493/26-02-2021 (Official Journal vol. B 853/4-3-2021).

<sup>275</sup> 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, ([A/HRC/41/23](#)), 24 May 2019, para. 60, criterion (l).

Furthermore, the European Parliament has repeatedly asked for the length of alternative service to be equal with that of military service, both in general,<sup>276</sup> as well specifically in the case of Greece.<sup>277</sup>

Worth noting also that apart from the category of full service, there are three categories of reduced service and that the length of the third category of reduced alternative civilian service is 67% longer compared to the equivalent category of reduced military service (5 months compared to 3). Considering that this specific third category of reduced service concerns persons of a particularly vulnerable family status, this significant additional length of the alternative service (67% longer, beyond any international human rights standards) becomes an important human rights issue.

An additional issue is that of discrimination as of the length of a service when this is performed in its entirety at the borders, as it has been previously described. While certain conscripts performing a military service at the eastern borders have a duty of only 9 months, conscientious objectors serving in the same areas have a duty of 15 months, that is, 67% longer.

#### **iv) Discrimination as of cost for conscientious objectors above 33 years of age**

The Human Rights Committee, has requested Greece to review the legislation in order for the alternative service in Greece not to be punitive and discriminatory, referring *inter alia* to the cost of the service.<sup>278</sup>

The law provides the opportunity for conscripts of certain age to perform only a small part of their service and buy out the rest. An amendment of the legislation in 2019 partially addressed some aspects of the discrimination faced by conscientious objectors in this regard: the age above which someone is entitled to buy out was made equal for conscientious objectors and conscripts performing military service (33 years) and the minimum period of alternative service required to be actually performed before buying out the rest, was made equal to that of the equivalent minimum period of military service (20 days). However, the most significant aspect of the discrimination remained unaddressed. The law provides that the amount of money for each month of military service, should be equal to the amount of money for a month of alternative service. However, given the greater length of alternative service, the overall amount of money for buying out the same duty is greater for conscientious objectors. Considering that the amount of money for each month has been set to € 810 euros, this means that the conscientious objectors during the previous years have been required to pay thousands of euros more than the conscripts and even in the current situation, where the full alternative service is 3 months longer, they are required to pay up to € 2,430 more.

Such discrimination has been pointed out by the Ombudsman,<sup>279</sup> the GNCHR,<sup>280</sup> Amnesty

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<sup>276</sup> 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.

<sup>277</sup> 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>

<sup>278</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Greece, ([CCPR/C/GRC/CO/2](#)), 3 December 2015, para. 38.

<sup>279</sup> [in Greek] Συνήγορος του Πολίτη, «Ο Συνήγορος του Πολίτη για την άρση του προστίμου ανυποταξίας», Δελτίο Τύπου 2/2/2016. Διαθέσιμο στο: <https://www.synigoros.gr/?i=human-rights.el.danews.345630>

Συνήγορος του Πολίτη, Ειδική Έκθεση «Ο θεσμός της εναλλακτικής πολιτικής-κοινωνικής υπηρεσίας. Προτάσεις αναμόρφωσης.» (1999), κεφ. 2. «Η διάρκεια της Ε.Π.Κ.Υ.». Διαθέσιμη στο [https://www.synigoros.gr/?i=human-rights.el.enallaktiki\\_upiresia.38783](https://www.synigoros.gr/?i=human-rights.el.enallaktiki_upiresia.38783)

<sup>280</sup> Greek National Commission for Human Rights, Submission to the quadrennial analytical report 2017 on conscientious objection to military service of the UN High Commissioner of Human Rights (February 2017), pp. 10-11.

[http://www.nchr.gr/images/pdf/apofaseis/antirisis\\_suneidisis/Submission%20of%20the%20GNCHR%20to%20the%20quadrennial%20analytical%20report%202017.pdf](http://www.nchr.gr/images/pdf/apofaseis/antirisis_suneidisis/Submission%20of%20the%20GNCHR%20to%20the%20quadrennial%20analytical%20report%202017.pdf)

GNCHR [submission](#) regarding the continuous violation of Article 1§2 of the European Social Charter in the case of alternative service for conscientious objectors in Greece (11.11.2016), chapter. «Multiple discriminations in the case of conscientious objectors who are above 35 years of age», p. 5-6.

International<sup>281</sup> and the Special Rapporteur.<sup>282</sup>

## 2) Inadequate procedure of examination of applications for conscientious objector status

The decision on applications for recognition of conscientious objectors is taken by the Minister of National Defence after a non-binding recommendation by a five-membered special committee with military participation. The Human Rights Committee has expressed concerns about “the composition of the Special Committee and its reported lack of independence and impartiality”. Consequently, the Human Rights Committee reiterated its recommendation to Greece to “consider placing the assessment of applications for conscientious objector status under the full control of civilian authorities”.<sup>283</sup>

Following a judgement of the European Court of Human Rights in 2016,<sup>284</sup> an amendment of the legislation in 2019 reduced the number of military officers in the committee from two to one.<sup>285</sup> While this is a step in the right direction, the amended provision continues to be in contravention of the recommendations of the Human Rights Committee by not requiring the new Special Committee to be wholly civilian and ensuring that the decision of granting conscientious objector status is not made by the Minister of National Defence. As a result, the amended legislation still fails to place the assessment of applications for conscientious objector status under the full control of civilian authorities. This has been recognised by the OHCHR<sup>286</sup> the Special Rapporteur on freedom of religion or belief,<sup>287</sup> the Greek National Commission for Human Rights,<sup>288</sup> Amnesty International<sup>289</sup>, the European Bureau for Conscientious Objection<sup>290</sup> and others.<sup>291</sup>

An additional problem of the procedures is the lack of an effective appeal procedure. In theory, there are two kinds of available appeal procedures, the administrative one (“aitisi therapeias”), and the judicial one.

The judicial appeal can be submitted to the Council of State, the Supreme Administrative Court of Greece. However, apart from the (prohibitive for many conscientious objectors) cost of such an appeal, the other problem is that “the scrutiny performed by the Supreme Administrative Court in the event of an appeal against the Minister of National Defence’s decision, it extends only to the lawfulness of the decision and not to the merits of the case and is based on the assessments made by the members of the special committee”, as it has been pointed out by the European Court of Human Rights.<sup>292</sup>

As for the administrative appeal (“aitisi therapeias”), the problem is that it is considered under the very

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<sup>281</sup> Amnesty International, Greece: Observations on the right to conscientious objection - “serious violations of Greece’s obligations towards conscientious objectors remain unaddressed in proposed bill despite some positive steps,” 20 March 2019, Index number: EUR 25/0088/2019, p. 3, Chapter 4. “Buying off alternative service.” Available at: <https://www.amnesty.org/en/documents/eur25/0088/2019/en/>

<sup>282</sup> UN Special Rapporteur on freedom of religion or belief, Communication [GRC 3/2019](https://www.unhcr.org/refugees/3/2019), 11 July 2019, p. 3.

<sup>283</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Greece, ([CCPR/C/GRC/CO/2](https://www.unhcr.org/refugees/3/2019)), 3 December 2015, paras. 37-38.

<sup>284</sup> ECtHR, [CASE OF PAPAVALAKIS v. GREECE](https://www.echr.coe.int/ViewDoc.aspx?id=159272), Application No 66899/14, 15.9.2016

<sup>285</sup> Article 23 para. 2 of Law 4609/2019 (in Greek).

<sup>286</sup> 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, ([A/HRC/41/23](https://www.unhcr.org/refugees/3/2019)), 24 May 2019, para. 41.

<sup>287</sup> UN Special Rapporteur on freedom of religion or belief, Communication [GRC 3/2019](https://www.unhcr.org/refugees/3/2019), 11 July 2019, pp. 2 and 5.

<sup>288</sup> (in Greek) ΕΕΔΑ, Παρατηρήσεις επί των άρθρων 18, 21 και 22 του Σχεδίου Νόμου του Υπουργείου Εθνικής Αμυνας “Ρυθμίσεις Μέριμνας Προσωπικού Ενόπλων Δυνάμεων, 19 Μαρτίου 2019, σελ. 6. Available at: [https://www.nchr.gr/images/pdf/apofaseis/antirrisies\\_suneidisis/EEDA\\_paratiriseis\\_SxN\\_Antirrisies%20suneidisis\\_2019.pdf](https://www.nchr.gr/images/pdf/apofaseis/antirrisies_suneidisis/EEDA_paratiriseis_SxN_Antirrisies%20suneidisis_2019.pdf)

<sup>289</sup> Amnesty International, Obligation towards Conscientious Objectors Remain Unaddressed in Proposed Bill despite Some Positive Steps, 20 March 2019, Index number: EUR 25/0088/2019, pp. 2-3, available at: <https://www.amnesty.org/en/documents/eur25/0088/2019/en/>.

<sup>290</sup> Joint Submission by the European Bureau for Conscientious Objection (EBCO) and the Association of Greek Conscientious Objection (AGCO) to the UN Universal Periodic Review 39th session of the UPR Working Group, Oct-Nov 2021, 25 March 2021. Available at: <https://ebco-beoc.org/node/492>

<sup>291</sup> See for example: Submission by War Resisters' International (WRI) to the UN Universal Periodic Review 39th session of the UPR Working Group, Oct-Nov 2021, 25 March 2021, p. 2-3. Available at: [https://wri-irg.org/sites/default/files/public\\_files/2021-04/wri-upr\\_submission-greece-25-03-2021.pdf](https://wri-irg.org/sites/default/files/public_files/2021-04/wri-upr_submission-greece-25-03-2021.pdf)

<sup>292</sup> ECtHR, [CASE OF PAPAVALAKIS v. GREECE](https://www.echr.coe.int/ViewDoc.aspx?id=159272), Application No 66899/14, 15.9.2016, para. 65.

same procedure as the initial application, that is, by the Minister of National Defence, after recommendation by the same special committee, which includes a military officer. Therefore, the same issues of independence and impartiality remain under this procedure.

### 3) Discrimination between different categories of conscientious objectors

The Human Rights Committee has expressed concerns about “reports indicating discrimination on the basis of different grounds of objection”<sup>293</sup>, echoed by the Special Rapporteur on freedom of religion or belief<sup>294</sup> and the OHCHR.<sup>295</sup> Such discrimination has been pointed out since several years by the Greek Ombudsman,<sup>296</sup> who mainly identified a discrimination between those applicants citing religious grounds and those applicants citing ideological grounds. As it has been pointed out by the European Court of Human Rights: “In this connection, the Court observes that in his recommendation of 2013 the Greek Ombudsman pointed out that, while for conscientious objectors classified as “religious”, the special committee required no more than a certificate from the religious community concerned and did not even call them to an interview, “ideological” objectors were often required to answer questions concerning sensitive personal information ...”<sup>297</sup>

However, a more careful study reveals an even more complex situation. The discrimination is not only or simply between those citing religious and those citing ideological grounds, but also between different religious grounds. The case of Mr. Petros Sotiropoulos, a Christian Evangelist who spent more than ten years in failed attempts to be recognised as conscientious objector on religious grounds, cited by the Special Rapporteur in 2016 is illustrative.<sup>298</sup> According to the information we received, after all these years and after the aforementioned communication by the Special Rapporteur explicitly citing his case, Mr. Sotiropoulos has been finally granted conscientious objector status but still not on religious grounds, but rather because of a second application he had submitted, this time on ideological grounds.

Furthermore, IFOR has received alarming information about the case of a conscientious objector who cited religious grounds, he has been indeed granted conscientious objector status, and has performed alternative civilian service, but he has been officially recognised as a conscientious objector “on ideological grounds” instead of religious ones. This case illustrates on the one hand the fact that Greek authorities do not want to appear giving conscientious objectors status on religious grounds to persons of religious beliefs other than Jehovah’s Witnesses, and on the other hand, that one cannot rely on official statistics.

Another category of conscientious objectors who face difficulties to be granted conscientious objector status are those Jehovah’s Witnesses who are not yet baptised. In this regard, conscientious objectors had to appeal to the Council of State which ruled that baptism cannot be the only mean to prove the adoption of a dogma.<sup>299</sup>

A further category is that of persons who have been raised in a family of Jehovah’s Witness, have adopted the same pacifist ideas and beliefs which prevent them from performing a military service, but for other reasons, have not become Jehovah’s Witnesses. The Papavasilakis’ case, examined by the European

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<sup>293</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Greece, ([CCPR/C/GRC/CO/2](#)), 3 December 2015, para. 37.

<sup>294</sup> UN Special Rapporteur on freedom of religion or belief, [Communication GRC 3/2016](#), 31 October 2016, p. 2. UN Special Rapporteur on freedom of religion or belief, [Communication GRC 3/2019](#), 11 July 2019, p. 5.

<sup>295</sup> 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, ([A/HRC/41/23](#)), 24 May 2019, para. 29.

<sup>296</sup> [in Greek] Συνήγορος του Πολίτη, Ειδική Έκθεση 2013, «Καταπολέμηση των διακρίσεων», Κεφ. «Διακρίσεις λόγω θρησκευτικών ή άλλων πεποιθήσεων, παράγραφος «Εξέταση αιτήσεων αναγνώρισης αντιρρησιών συνείδησης», σελ. 110. Available at <https://www.synigoros.gr/resources/docs/10-diakriseis.pdf>

<sup>297</sup> ECtHR, [CASE OF PAPAVALAKIS v. GREECE](#), Application No 66899/14, 15.9.2016, para. 62.

<sup>298</sup> UN Special Rapporteur on freedom of religion or belief, [Communication GRC 3/2016](#), 31 October 2016, pp. 2-3.

<sup>299</sup> Council of State, Decision A1045/2018.

Court of Human Rights, is illustrative of this category and of the problems they face.<sup>300</sup> Despite the judgement of the ECtHR in this case, which *inter alia* led to a recognition of Papavasiliakis as a conscientious objector<sup>301</sup>, other similar cases still face problem. IFOR is aware of a very similar case, that of Haris Vassileiou, whose application has been rejected, and his appeal at the Council of State (the Supreme Administrative Court) is pending.

Finally, the category of conscientious objectors on ideological grounds is also still facing problems and discrimination. An illustrative case is the one of A.V., whose application has been rejected, and his administrative appeal (“aitisi therapeias”) is pending. One of the most alarming elements of this case is that the special committee took into consideration for its negative recommendation to the Minister, the fact that A.V. has sincerely declared before the special committee that perhaps he might not be able to perform the alternative service because of his difficult financial situation in conjunction with the punitive conditions of the alternative service (see above in part C1(i)). A conscientious objector should never be deprived of his right to conscientious objection because of his financial situation. And the fact that someone might not be able to perform (or conclude) a punitive alternative civilian service should never be the reason to be deprived of his conscientious objector status and face punishment.

#### **4) Punishment of certain categories of conscientious objectors**

##### **i) Categories of conscientious objectors who are punished**

Certain categories of conscientious objectors in Greece, who, for one reason or the other, do not perform the punitive and discriminatory alternative civilian service face punishment as “insubordinate”. Such categories are the following:

➤ Those whose applications for conscientious objector (CO) status have been unfairly rejected because of the problematic procedure of examination. In this case they are required to perform military service and if they insist in their conscientious objection, they are declared insubordinate and face the relevant punishment (see below).

➤ Those who are granted CO status, but because of the punitive conditions (cost, location of service, duration), they find themselves unable to conclude the service. In that case, their CO status is revoked and they are required to perform certain months of military service and if they insist in their conscientious objection, they are declared insubordinate and face the relevant punishment.

➤ Those who commit a disciplinary offence during their alternative service, which results in their CO status being revoked. In that case, they are required to perform months of military service and if they insist in their conscientious objection, they are declared insubordinate and face the relevant punishment.

➤ Most often, those who refuse to perform the (punitive and discriminatory) alternative civilian service, including, but not limited to, those self-identified as “total objectors”. They are also declared insubordinate and face the relevant punishment. As it has been made known by groups of total objectors and media reports,<sup>302</sup> in February 2019 alone, at least three total objectors have been sentenced by the Military Court of Athens to (suspended) sentences of 12 and 18 months of imprisonment, respectively. In March 2019, the trial of another total objector, who is being repeatedly prosecuted, has been postponed. In May 2019, the trial of another total objector who is being repeatedly prosecuted, has been also postponed.

Taking into consideration the punitive and discriminatory character of the alternative civilian service as well the inadequate procedures of examination for CO status, as they have been pointed out by international and regional human rights bodies, none of the aforementioned categories of conscientious

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<sup>300</sup> ECtHR, [CASE OF PAPAVALAKIS v. GREECE](#), Application No 66899/14, 15.9.2016.

<sup>301</sup> See document [DH-DD\(2018\)930](#)

<sup>302</sup> [https://www.efsyn.gr/ellada/koinonia/186788\\_meteores-diataxeis-gia-antirrisies-syneidisis](https://www.efsyn.gr/ellada/koinonia/186788_meteores-diataxeis-gia-antirrisies-syneidisis)

objectors should be punished.

## ii) The punishment for insubordination

Being declared as “insubordinate” entails risk of arrest at any given moment. In recent years the arrest and detention in these circumstances, as documented by Amnesty International,<sup>303</sup> last from some hours to a couple of days, until either the “insubordinate” is brought before a military court for a trial, or – more often – his trial is scheduled for a later date and he is released.

The punishment for each period of insubordination includes in all cases:

- An administrative fine of €6,000, which is increased as long it remains unpaid, and can result also to confiscation of property.
- A prison sentence up to 2 years. It is often, but not always, a suspended sentence, depending on the criminal record. Furthermore, it is usually eligible to be converted to a financial penalty of several thousands of euros – which is different from the administrative fine cited above.
- Further sanctions, such as: deprivations of the right to be employed in the public sector, and for those who have been irrevocably convicted for insubordination or desertion, the deprivation of the right to exercise a profession which requires a special permission by the authority and of the right to vote and to be elected. The “insubordinate” or deserters are prohibited from migrating abroad or from being employed in ships travelling abroad, and from having a passport issued or renewed, except for the insubordinate residing in foreign countries.

## B) VIOLATIONS OF FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW IN THE CASE OF CONSCIENTIOUS OBJECTORS IN GREECE

### 1) Repeated punishment of conscientious objectors in violation of *ne bis in idem*

Punishment for insubordination does not entail exemption from military duties, (unless someone has actually served a prison sentence equal or greater than the length of alternative service he would have been required to perform if he had been recognised as a conscientious objector,<sup>304</sup> which nowadays does not occur in practice). Consequently, the conscientious objectors are repeatedly called-up, and repeatedly punished. In theory, such a repeated punishment is unlimited as of the number of sentences and fines, and in practice IFOR is aware of cases of conscientious objectors who have been punished (at least) 5 times (e.g. the case of Lazaros Petromelidis, see further below).

Such a repeated punishment is in violation of the *ne bis in idem* principle (Article 14.7 of ICCPR), as it has been found by the Human Rights Committee<sup>305</sup> in its concluding observations on Greece, a position highlighted also by the current and previous Special Rapporteurs on freedom of religion or belief.<sup>306</sup> The WGAD, besides the violation of Article 14.7 of ICCPR<sup>307</sup>, has also found that “repeated incarceration in cases of conscientious objectors is directed towards changing their conviction and opinion, under

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<sup>303</sup> See for example, Amnesty International, “Greece: Stop arbitrary prosecutions and arrests of conscientious objectors”, 4 November 2013, Index number: EUR 25/017/2013.

<https://www.amnesty.org/en/documents/eur25/017/2013/en/>  
Amnesty International, Annual Report 2017/2018, Greece. <https://www.amnesty.org/en/countries/europe-and-central-asia/greece/report-greece/>

<sup>304</sup> Law 3421/2005, article 65, para. 1.

<sup>305</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, CCPR/C/GRC/CO/2, paras. 37-38. Available at <http://undocs.org/CCPR/C/GRC/CO/2>

<sup>306</sup> UN Special Rapporteur on freedom of religion or belief, [Communication GRC 3/2016](#), 31 October 2016. UN Special Rapporteur on freedom of religion or belief, [Communication GRC 3/2019](#), 11 July 2019.

<sup>307</sup> Working Group on Arbitrary Detention, Opinion 16/2008 (Turkey), para. 39.

Available at <http://undocs.org/A/HRC/10/21/Add.1> (p. 139). And previously: Opinion No. 24/2003 (Israel), para. 30-31. Available at <http://undocs.org/E/CN.4/2005/6/Add.1> (p. 18)

Opinion No. 36/1999 (Turkey) para. 10. Available at <http://undocs.org/E/Cn.4/2001/14/add.1> (p. 53)

threat of penalty”,<sup>308</sup> and thus it contravenes also Article 18, paragraph 2 of the ICCPR, which prohibits “coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.

## 2) Failure to provide access to an effective remedy including adequate reparations

Despite consecutive amendments of the relevant legislation, Greece has always failed to recognize the violations of the right to freedom of thought, conscience and religion and of other human rights, committed to this day against conscientious objectors and provide effective remedy. This includes those who had declared their conscientious objection before the establishment of the alternative civilian service in 1998.

Despite a legislative provision of 2016<sup>309</sup> which ended pending cases of prosecution against those who had declared their conscientious objection before 1998, by which it was implicitly admitted that they should have not been prosecuted, nevertheless, Greece has failed to address the cases of those already sentenced and punished and provide them adequate reparations.

An illustrative case is that of Lazaros Petromelidis, who had declared his conscientious objection since 1992, and until 2014 he has been sentenced for five different periods of insubordination (merged in three cases before military courts), has been deprived of his liberty at least four times (87 days in total), has paid two financial penalties instead of imprisonment (corresponding to four sentences) and has faced multiple violations of his human rights, including the right to leave his country, for many years. Lazaros Petromelidis has been repeatedly declared a prisoner of conscience by Amnesty International”.<sup>310</sup>

In December 2021, the Human Rights Committee published its Views concerning the *Petromelidis v. Greece* case, finding violations of Articles 9(1), 12(2), 14(7) and 18(1) of ICCPR<sup>311</sup>. This case is very important for the following reasons:

- In terms of admissibility, the Committee examined the case as a whole despite some of the court proceedings been ended many years ago, as they were all connected to the same obligation to perform compulsory service and the conscientious objection to it.
- Furthermore, the Committee found that Petromelidis didn't need to exhaust domestic remedies for each and every sentence he had. This is important for conscientious objectors who are repeatedly punished.

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<sup>308</sup> United Nations, Economic and Social Council, Commission on Human Rights, Report of the Working Group on Arbitrary Detention “Civil and political rights, including the question of torture and detention”, ([E/CN.4/2000/4](#)), (Recommendation 2: detention of conscientious objectors), paras. 91-94.

<sup>309</sup> Law 4361/2016, Article 12, para. 8.

<sup>310</sup> Amnesty International, “Greece: conscientious objectors must not be penalized”, 05/06/2001, AI Index EUR 25/002/2001. Available at: <https://www.amnesty.org/en/documents/EUR25/002/2001/en/>

Amnesty International, “GREECE Conscientious objector Lazaros Petromelidis at risk of imprisonment”, (31/3/2002) April 2002, AI Index: EUR 25/007/2002.

Available at: <https://www.amnesty.org/en/documents/eur25/007/2002/en/>

Amnesty International, “Greece: Conscientious objector faces imprisonment”, 16/04/2002, AI Index EUR 25/008/2002. Available at: <https://www.amnesty.org/download/Documents/116000/eur250082002en.pdf>

Amnesty International, “Greece: To be in the army or choosing not to be: The continuous harassment of conscientious objectors”, 31/5/2003, AI Index: EUR 25/003/2003.

Available at: <https://www.amnesty.org/en/documents/eur25/003/2003/en/>

Amnesty International, “Greece: Petromelidis's Promethean trials”, 13 December 2004, AI Index: EUR 25/015/2004. Available at: <https://www.amnesty.org/download/Documents/96000/eur250152004en.pdf>

Amnesty International, “Greece: Punished for their beliefs: how conscientious objectors continue to be deprived of their rights”, 11/5/2005, AI Index: EUR 25/007/2005.

Available at: <https://www.amnesty.org/en/documents/eur25/007/2005/en/>

Amnesty International, “Greece: Lazaros Petromelidis repeatedly convicted for his beliefs”, 20/6/2008, AI Index: EUR 25/003/2008. Available at: <https://www.amnesty.org/en/documents/EUR25/003/2008/en/>

Amnesty International, “Greece: Stop arbitrary prosecutions and arrests of conscientious objectors”, 4/11/2013, AI Index: EUR 25/017/2013. Available at: <https://www.amnesty.org/en/documents/eur25/017/2013/en/>

<sup>311</sup> Human Rights Committee, Views adopted by the Committee under the Optional Protocol, concerning communication No. 3065/2017, Advance unedited version, [CCPR/C/132/D/3065/2017](#), 6 December 2021, para. 10.

- In terms of the merits, while it is not the first time that the Committee has examined a case involving a punitive and discriminatory alternative service,<sup>312</sup> this is the first case where the conscientious objector has not reported for such service at all.
- It is also interesting that this time the case was examined under article 18(1) about freedom of thought, conscience and religion, while in the previous cases it was under article 26 about discrimination – although in an interesting partly dissenting opinion a member of the committee opined that they should have examined it also under article 26 and should have found an additional violation.
- Worth noting also that the Committee found for the first time a violation of article 12(2) in a case of a conscientious objector who was prohibited from leaving his country.
- Furthermore, the Committee found violations not only of the *ne bis in idem* principle, for multiple sentences, but also of article 9 about arbitrary detention, which means that not only the following sentences were a violation, but he was not supposed to be imprisoned in the first place.
- Finally, it is important that the Committee not only calls for full reparation of Petromelidis himself, but also reiterates it's call to Greece to review the legislation.

## Israel<sup>313</sup>

### *Non-recognition of the right to conscientious objection to military service according to international human rights standards*

Israel applies conscription to male and female citizens with the exception of certain minorities.

The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion.<sup>314</sup>

Despite the above, as well previous concluding observations by the Human Rights Committee,<sup>315</sup> Israel still fails to recognise the right to conscientious objection to military service, in accordance with the international human rights standards.

In the Annex II of its periodic report, the State Party cites two cases of female applicants, where the “Committee determined that the reasons for [...] exemption request do not constitute general conscientious objection to military service and therefore her request was denied.”<sup>316</sup>

In order to understand the term “general conscientious objection” one needs to examine previous reports of the State Party to UN treaty bodies. For example, in previous written replies to CAT the State Party, referring to the High Court of Justice decision H.C.J. 7622/02 *David Zonsien v. Military Advocate General*, cites:

“the Court in Zonsien distinguishes between a general conscientious objection and a selective conscientious objection. The former is unrelated either to the circumstances of time and place or to the army's policy, but rather stems from the lack of correlation between the nature of the

<sup>312</sup> See Frédéric Foin v. France (CCPR/C/67/D/666/1995); Marc Venier and Paul Nicolas v. France (CCPR/C/69/D/690/1996).

<sup>313</sup> Based on the report submitted to the 134<sup>th</sup> session of the Human Rights Committee.

<sup>314</sup> See, Min-Kyu Jeong et al. v. Republic of Korea (CCPR/C/101/D/1642-1741/2007), para. 7.3; Jong-nam Kim et al. v. Republic of Korea, para. 7.4; Abdullayev v. Turkmenistan, para. 7.7; Mahmud Hudaybergenov v. Turkmenistan, para. 7.5; Ahmet Hudaybergenov v. Turkmenistan, para. 7.5; Sunnet Japparow v. Turkmenistan, para. 7.6; Akmurad Nurjanov v. Turkmenistan, para. 9.3; Shadurdy Uchetov v. Turkmenistan, para. 7.6; Dawletow v. Turkmenistan, para. 6.3 and others.

<sup>315</sup> CCPR/CO/78/ISR, para. 24; CCPR/C/ISR/CO/3, para. 19; CCPR/C/ISR/CO/4, para. 23.

<sup>316</sup> Annex II, paras. 164, 165. Available at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fADR%2fISR%2f37480&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fADR%2fISR%2f37480&Lang=en)

individual and that of army service (and is therefore acceptable). Oppositely, the selective objection is a result of ideological and political beliefs and is directly linked to the prevailing circumstances under which duties need to be performed by the army. Inherent in the army system is the fact that individuals do not choose what orders to fulfil or not. Selective objection signals discrimination and consequently dismantles the unity needed in every army.” (para. 264).<sup>317</sup>

This interpretation is the core of Israel’s non-recognition of the right to conscientious objection to military service in accordance with the international human rights standards. In practice, Israel does not recognise someone as a conscientious objector unless he/she is considered by the Special Military Committee as “clearly pacifistic”.

Worth noting that even conscientious objectors with explicit pacifistic views are not recognised and are punished in case they cite anything that can be perceived by the Special Military Committee as “ideological and political beliefs”, for example any opposition to the occupation of Palestinian territories, or the treatment of the Palestinians by Israel.

The practice of Israel clearly contravenes international human rights standards and results in flagrant violations of article 18 of ICCPR.

### ***Non-independence of the body examining applications for exemption for reasons of conscience***

Despite previous *Concluding Observations* of the Human Rights Committee, Israel continues to have a “Special Military Committee” examining the applications, with military members, with the exception of a civilian member.

This contravenes all international human rights standards, (as well regional standards, e.g., of the Council of Europe), that the examination procedures should be placed under the full control of civilian authorities (i.e., be transferred from the military / the Ministry of National Defence) by a panel with a wholly civilian composition.<sup>318</sup> And results in violation of Article 18 and other articles of the Covenant.

### ***Trials of conscientious objectors by military courts***

In its 5<sup>th</sup> Report Israel cites: “277. In the event that such a person continues to disregard the orders given to him/her by his/her commander to complete the enlistment process, the military authorities may order disciplinary proceedings and even file a criminal indictment in a military court against him/her.”

Trials of conscientious objectors by military courts constitute a violation of the right to fair trial, and therefore of article 14(1) of the ICCPR.

### ***Imprisonment of conscientious objectors***

Not only does Israel not recognise the right to conscientious objection to military service in accordance with the international human rights standards, but it also punishes conscientious objectors with imprisonment. Recently, conscientious objectors have been imprisoned for several days or weeks, but the overall imprisonment is of several months, as in the cases cited in Annex II submitted by the State Party.

Apart from the two cases cited in the Annex II of the State Party's report, IFOR has compiled a non-

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<sup>317</sup> Written replies by the Government of Israel to the list of issues (CAT/C/ISR/Q/4) to be taken up in connection with the consideration of the fourth periodic report of Israel (CAT/C/ISR/4), available at:

<https://www.un.org/unispal/document/auto-insert-180587/>

See also previous submission of IFOR and CPTI, September 2012, available at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fISR%2f18241&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fISR%2f18241&Lang=en)

. The submission refers to similar text in the Written Replies of Israel to the Human Rights Committee.

<sup>318</sup> In this regard see also the Joint Public Statement of Amnesty International, Connection e.V., EBCO, IFOR, and WRI about Greece where there is also military participation in the equivalent Committee: “Greece: Charis Vasileiou should have a fair examination of his grounds for conscientious objection under an amended legislative framework in line with international law and standards”, 2 September 2021, available at: <https://www.amnesty.org/en/documents/eur25/4670/2021/en/>

exhaustive list of further 22 cases of conscientious objectors imprisoned since 2016.<sup>319</sup> According to the information provided by media, regarding these cases, the maximum number of prison terms for a conscientious objector has been 8, and the maximum total time spent in prison by a conscientious objector has been 150 days.

***Repeated imprisonment of conscientious objectors in violation of the ne bis in idem principle (art. 14(7)) and article 18(2)***

In Israel, punishment for failure to perform military service does not entail exemption from military duties. Conscientious objectors are thus repeatedly imprisoned.

In the case of Israel, the Human Rights Committee in its previous *Concluding Observations* reiterated “its concern that individuals whose conscientious objection applications are rejected may be repeatedly imprisoned for their refusal to serve in the armed forces (arts. 14 and 18)” and concluded that “The State party should also refrain from repeated imprisonment for refusal to serve in the armed forces that may constitute a violation of the principle of ne bis in idem.”<sup>320</sup>

**Portugal<sup>321</sup>**

In its Fourth Periodic Report under the International Covenant on Civil and Political Rights, Portugal makes two cross-referenced statements regarding military service “Ordinary military service ceased to be required in 2004. However, exceptional recruitment is still possible, in case the fundamental needs of the armed forces cannot be met through contract or volunteer recruitment (Act 174/92, of 21-9, as amended by Organic Act 1/2008, of 6-5). All citizens who turn 18 in a given year must be present at the commemorations of National Defence Day.”<sup>322</sup> and “The right to objection of conscience still applies to military obligations imposed upon Portuguese citizens.”

It has been confirmed that this indeed means that those with conscientious objections are not required to participate in National Defence Day.<sup>323</sup>

These features represent an example of very good practice. First, with the suspension of conscription it is made clear that arrangements for conscientious objectors will be in place should it ever be reimposed. And second, the replacement of military service by the obligation to attend a day's programme directed towards “sensibilisation” on military issues (and encouraging voluntary recruitment) has been accompanied by provisions enabling conscientious objectors. This has not been the case in, for example, France, where similar “days” were instituted when conscription ended.

The only outstanding issue with regard to conscientious objection is therefore the situation of serving members of the armed forces.

Portugal is a member state of the Council of Europe, the Committee of Ministers of which recommended in 2010:

“42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should

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<sup>319</sup> See the Appendix to the report submitted by IFOR to the 134<sup>th</sup> Human Rights Committee [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fISR%2f47719&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fISR%2f47719&Lang=en).

<sup>320</sup> CCPR/C/ISR/CO/4, para. 23.

<sup>321</sup> Based on the report submitted to the 128<sup>th</sup> Human Rights Committee.

<sup>322</sup> CCPR/C/PRT/4, 25<sup>th</sup> February, 2011, para 109.

<sup>323</sup> War Resisters International [http://wri-irg.org/programmes/world\\_survey/country\\_report/en/Portugal](http://wri-irg.org/programmes/world_survey/country_report/en/Portugal) (23<sup>rd</sup> October, 2008).

be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.

44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

45. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.

46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.”<sup>324</sup>

With particular reference to this recommendation, it is therefore appropriate that any member state of the Council of Europe be asked what would happen in the event that a “professional” member of the armed forces developed a conscientious objection to military service.

## **Singapore<sup>325</sup>**

### ***Conscientious objection to military service***

#### **Duration and age for compulsory service**

Singapore maintains a system of compulsory military service. Under the Enlistment Act<sup>326</sup> all citizens and permanent residents aged not less than 18 years and not more than 40 years (50 years in the case of those with specific skills or expertise) may be required under the authority of the Armed Forces Council to report for enlistment for national (military) service.

Those enlisted are liable to full-time service of two years; the liability is extended by six months in the case of those who attain the equivalent of a certain rank, even if subsequently demoted. Outside the period of full-time service there is a requirement of “operationally ready”, or reserve, service which “will not in the aggregate exceed 40 days annually”<sup>327</sup>.

#### **Not recognition of the right to conscientious objection**

Singapore does not recognise the right to conscientious objection on any grounds (religious, pacifist, political and so on).

In a series of resolutions that were adopted without a vote, both the Human Rights Council and the previous Commission on Human Rights recognised the right of everyone to have conscientious objections to military service as 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 article 18 of the International Covenant on Civil and Political Rights.

In its contribution to the Analytical report of the Office of the United Nations High Commissioner for Human Rights on Conscientious objection to military service (2017)<sup>328</sup>, Singapore stated that “where individual beliefs or actions run counter [to the right of national defence], the right of a state to preserve national security must prevail.”

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<sup>324</sup> CM/Rec(2010)4, 24<sup>th</sup> February 2010.

<sup>325</sup> Based on the report submitted by IFOR to the 38<sup>th</sup> Universal Periodic Review.

<sup>326</sup> Act 25 of 21<sup>st</sup> May 1970, amended on numerous occasions, most recently by Act 53 of 2018 (Date of commencement 1 February 2019). Text available on “Singapore Statutes” at <https://sso.agc.gov.sg/Act/EA1970>.

<sup>327</sup> Singapore Enlistment Act, Para 14 (ii).

<sup>328</sup> Office of the United Nations High Commissioner for Human Rights, report on Conscientious objection to military service A/HRC/35/4 (2017), country contribution available at <https://www.ohchr.org/Documents/Issues/RuleOfLaw/ConscientiousObjection/Singapore.pdf>

### **Fine and conviction for refusing enlistment or avoiding military service**

Under Para 4(2) of the Enlistment Act, any person failing without lawful excuse to present himself for registration when summoned is liable on conviction to a fine of up to S\$10,000 (approximately US\$ 7.370 at 2020 exchange rates) or a term of imprisonment of up to three years, or both.

Moreover, the court may order him to present himself for registration on or before a specific date, whereafter he may incur a further fine increasing at the rate of S\$50 (US\$ 36.8) per day (Para 4 (3)). Para 33 specifies similar penalties for any person who fails to report for actual enlistment when summoned – even if abroad –, or otherwise attempts to evade military service, and for any person found guilty of aiding or abetting such action.

Under para. 26 of the Enlistment Act, “Any person required [...]to report for enlistment [...] shall, from such date and time as may be specified, be subject to military law. [Acts] relating to the armed forces shall apply to the person [...] notwithstanding that he has not complied with the order.” This means that in practice conscientious objectors who refuse enlistment are tried by military tribunals and are subsequently incarcerated in the Singapore Armed Forces Detention Barracks.

As they have by definition not enlisted, they remain civilians and it is not appropriate that they should be subjected to military justice or detained in military prison.

### **Data about conscientious objectors**

There is not official information available about how many conscientious objectors there have been and there are and how many of them are imprisoned.

All recorded conscientious objectors in Singapore have been Jehovah's Witnesses and this religious minority is the only available source of information.

It is believed that the unwillingness of their members to perform military service was the principal reason for the government decision in 1972 that “the group's existence was prejudicial to public welfare and public order”, leading to the deregistration of the church.<sup>329</sup> Individual Jehovah's Witnesses have however subsequently continued to refuse military service.

Currently, eleven young men (between 19 and 25 years old) who are Jehovah's Witnesses are imprisoned in Singapore for their conscientious objection to military service. Three of them are serving a second sentence because they refused to change their stance after serving their first prison term.<sup>330</sup>

### **Violation of the *Ne bis in idem* principle**

Indeed, the serving of a sentence for refusing enlistment does not discharge the obligation to enlist. In 2014, It has been reported that Jehovah's Witnesses who “declined” military service were typically sentenced to 15 months of military camp in the first instance, and on again refusing were sentenced to a further 24 months of prison.<sup>331</sup>

About the *ne bis in idem* principle, the Human Rights Committee stated: “Repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.”<sup>332</sup>

In the last cycle of the UPR, there have been 15 recommendations regarding the ratification or to facilitate acceding to the International Covenant on Civil and Political Rights.<sup>333</sup> Singapore noted them.

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<sup>329</sup> Order No. 179 of the Minister for Home Affairs pursuant to section 24.1 of the Societies Act.

<sup>330</sup> Information available on the official Jehovah's Witnesses website ([www.jw.org](http://www.jw.org)) available at <https://www.jw.org/en/news/legal/by-region/singapore/jehovahs-witnesses-in-prison/>

<sup>331</sup> Human Rights Without Frontiers International, Freedom of Religion or Belief Annual Report 2014, p. 67.

<sup>332</sup> CCPR/C/GC.32, 23 August 2007, Section IX “NE BIS IN IDEM”, para. 55.

<sup>333</sup> Recommendations: 166.3 (Costa Rica, Japan, Mauritius), 166.4 (Israel), 166.9 (Latvia), 166.11 (Sweden), 166.12 (Republic of Korea, Thailand), 166.13 (Ghana), 166.14 (France), 166.15 (Montenegro, South Africa), 166.16 (Slovenia), 166.17 (Finland), 166.18 (Portugal), 166.19 (Kazakhstan), 166.24 (Namibia), 166.32 (Czech Republic), 166.44 (Sierra Leone).

Even if the country stated that it may not be party to a particular human rights treaty yet, it does not mean that our outcomes are not already fully or largely in compliance with its objectives;<sup>334</sup> this is not the case of the right to freedom of thought, conscience and religion (Article 18 of the International Covenant on civil and political rights).

The recognition of the human right to conscientious objection to military service has never been raised during the two past cycles of UPR of Singapore.

### ***The rights of the child and underage recruitment***

Under the Voluntary Early Enlistment Scheme (“VEES”), children who have reached the age of 16 years and 6 months may be voluntarily recruited into the Singapore Armed Forces. Such voluntary recruitment is subject to documentary proof of age, the written consent of a parent or legal guardian, and the fully informed consent of the recruit.

In its Concluding observations of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2014),<sup>335</sup> the Child Rights Committee regretted that:

- (a) A volunteer having entered the Singapore Armed Forces under the Voluntary Early Enlistment Scheme is able to request release from volunteer services only by giving three months’ notice in writing;
- (b) Underage volunteers are subject to military law, and, accordingly, subject to trial by the Subordinate Military Court.

The Committee recommended that Singapore considers discontinuing voluntary recruitment under the age of 18, and that it takes all necessary measures to:

- (a) Significantly reduce the notice required to be given by underage volunteers to request release;
- (b) Ensure that no underage volunteer is subject to military law or to trial by the Subordinate Military Court and that, if charges are brought against underage volunteers, trials are held in civilian courts and are consistent with the standards on juvenile justice set out in the Convention.<sup>336</sup>

More recently, in its *concluding observations* on the combined fourth and fifth periodic reports of Singapore (2019), the Child Rights Committee recommended that the State party, inter alia:

- (a) Consider reviewing its position and raise the minimum age for voluntary recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard;
- (b) Expeditiously establish an independent complaints mechanism outside the Ministry of Defence for members of the armed forces;
- (c) Urgently reduce the current release period of three months for underage volunteers.

During the last cycle of UPR, two recommendations called on Singapore to stop the recruitment of underage.<sup>337</sup>

Singapore noted the recommendations, and its legislation remains not in line with the Convention on the rights of the child and its Optional Protocol on the involvement of children in armed conflict.

### ***Restrictions on civil society***

In Singapore, there is no organisation that support conscientious objectors and their rights. This is not because conscientious objection is not an issue, rather this lack is related to the restrictions on the freedom of opinion and expression, right to peaceful assembly and freedom of association.

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<sup>334</sup> Report of the Working Group on the Universal Periodic Review\*Singapore Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/32/17/Add.1), para. 5.

<sup>335</sup> CRC/C/OPAC/SGP/CO/1.

<sup>336</sup> CRC/C/OPAC/SGP/CO/1 paras 11-12.

<sup>337</sup> Report of the Working Group on the Universal Periodic Review (A/HRC/32/17), second cycle, Recommendation 166.176 (Raise the minimum age to 18 of young people eager to join the army (Haiti)) and Recommendation 166.177 (Harmonize the definition of the child in domestic law and put an end to the voluntary recruitment of minors into the army (Belgium)).

Last in order of time, in 2019, Human rights groups strongly criticized the Protection from Online Falsehoods and Manipulation Act (POFMA), meant to regulate “fake news”. Introduced by the government to “protect society” from online falsehoods created by “malicious actors,” the law gave the authorities excessive and overly broad powers to clamp down on dissenting views. The law provided for severe criminal penalties of up to 10 years’ imprisonment, and required social media companies, such as Facebook, to remove content or display prominent corrections on their platforms at the government’s direction.<sup>338</sup>

UN Human rights experts urged, as well, the Government of Singapore to ensure fundamental freedoms of expression and assembly after the conviction of human rights defender Jolovan Wham for organizing an assembly without a permit.<sup>339</sup>

“Singapore should act to amend the Public Order Act with a view to ensuring that it is consistent with international human rights law and standards, particularly as they relate to the exercise of the rights to freedoms of expression and assembly,” the experts added.<sup>340</sup>

Although, during the Second cycle, Singapore supported 4 recommendations regarding the realization of peaceful demonstrations and to ensure that freedom of opinion and expression are encouraged and protected,<sup>341</sup> there is still strong concern in the exercise of those freedoms and rights.

## **Tajikistan<sup>342</sup>**

### **Conscientious objection to military service**

#### ***Duration and age for compulsory service***

Tajikistan maintains a system of compulsory military service.

According to the Universal Military Obligations and Military Service Act, male citizens aged from 18 to 27 years who are registered with the military authorities or are required to be registered and are not entitled to a deferral or exemption are subject to call-up for military service in the armed forces or other troops or military units, in the ranks or as sergeants.

The following persons are exempted from call-up: (a) those who have been declared unfit or partially unfit for military service on medical grounds; (b) those who are performing or have performed military or alternative service; (c) those who have performed military service in another State; and (d) those who hold a master’s degree or a doctorate. Persons who have an unexpunged or outstanding conviction for an especially serious or serious offence may not be called up for military service.

#### ***The failure to recognise the right to conscientious objection***

Tajikistan does not recognise the right to conscientious objection on any grounds and has not introduced a possibility for a genuinely civilian alternative service.

Indeed, article 1.3 of the Law on Military Duty and Military Service states that alternative service may

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<sup>338</sup> Amnesty international, Human Rights in Asia- Pacific, Review of 2019 available at <https://www.amnesty.org/download/Documents/ASA0113542020ENGLISH.PDF> . See also Asian Forum for Human Rights and Development (FORUM-ASIA), CIVICUS: World Alliance for Citizen Participation and The International Commission of Jurists (ICJ) Singapore: Open letter to parliamentary candidates and political party leaders to prioritise fundamental freedoms, 03 July 2020, available at <https://www.forum-asia.org/?p=32256> .

<sup>339</sup> The UN experts: Mr. David Kaye (USA), Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. Michel Forst (France), Special Rapporteur on the situation of human rights defenders; Mr. Clément Nyaletsossi Voule (Togo), Special Rapporteur on the rights to freedom of peaceful assembly and of association. Press release of 29 January 2019, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24126&LangID=E>.

<sup>340</sup> Ibid.

<sup>341</sup> Report of the Working Group on the Universal Periodic Review (A/HRC/32/17), Second Cycle, Recommendations n. 166.89 (Costa Rica), 166.91 (Mexico), 166.201 (France), 166.202 (New Zealand).

<sup>342</sup> Based on the report submitted by IFOR to the 39<sup>th</sup> Universal Periodic Review.

be carried out in accordance with legislation, but there is no specific mention of conscientious objection, and proposals to draft such legislation have hitherto come to nothing.

This human rights violation has been the object of repeated concerns of the UN Human Rights Committee.

In its 2004 Concluding Observations, the UN Human Rights Committee recommended that the State party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service.<sup>343</sup>

This concern was reiterated in the 2013 Human Rights Committee's Concluding Observations.<sup>344</sup>

Eventually, this concern was restated in the Concluding Observations adopted on 18 July 2019:

"The State party should step up its efforts to adopt the legislation necessary to recognize the right to conscientious objection to military service without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection, and to ensure that alternative service is not punitive or discriminatory in nature or duration by comparison with military service."<sup>345</sup>

It is noticeable, therefore, the unwillingness of Tajikistan to put its legislation in line with international human rights standards related to the right of freedom of conscience and belief.

### ***Figures about conscientious objectors and the ban of the activity of Jehovah's Witnesses***

It is not available an official information about how many conscientious objectors there have been and there are and how many of them are imprisoned.

All recorded conscientious objectors in Tajikistan are Jehovah's Witnesses and this religious minority is the only available source of information.

Moreover, on 11 October 2007 the Ministry of Culture cancelled the legal registration of the Religious Association of Jehovah's Witnesses, effectively banning the activity of Jehovah's Witnesses throughout the country. The Ministry of Culture justified its banning decision, inter alia, on individual Jehovah's Witnesses who refused military service "asking instead that alternative service be provided".<sup>346</sup>

The decision to cancel legal registration in turn exposes unregistered religious groups to detention and harassment for engaging in religious activities.

### ***Arbitrary detention of conscientious objectors***

As determined by the UN Working Group on Arbitrary Detention in its deliberation No. 9,<sup>347</sup> the legislation allowing military recruitment by means of arrest and detention by the armed forces or repeated imprisonment of conscientious objectors to military service may be deemed arbitrary if no guarantee of judicial oversight is available. The Working Group has, on occasion, found the detention of conscientious objectors in violation of, inter alia, article 9 of the Universal Declaration of Human Rights and articles 9 and 18 of the International Covenant on Civil and Political Rights.<sup>348</sup>

Hereinafter, the details about the two more recent and well-known individual cases of arbitrary detention of conscientious objectors.

#### **- The case of Norov Rustamjon**

The Jehovah's Witness Norov Rustamjon (22 years old) is currently imprisoned in Tajikistan for his

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<sup>343</sup> CCPR/CO/84/TJK, para. 20.

<sup>344</sup> [CCPR/C/TJK/CO/2](#), para. 21.

<sup>345</sup> [CCPR/C/TJK/CO/3](#), para. 46.

<sup>346</sup> EAJCW - European Association of Jehovah's Christian Witnesses Submission to the Universal Periodic Review, 17 September 2015, available at: [https://www.upr-info.org/sites/default/files/document/tajikistan/session\\_25\\_-\\_may\\_2016/eajcw\\_european\\_association\\_of\\_jehovahs\\_christian\\_witnesses\\_upr25\\_tjk\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/tajikistan/session_25_-_may_2016/eajcw_european_association_of_jehovahs_christian_witnesses_upr25_tjk_e_main.pdf)

<sup>347</sup> Working Group on Arbitrary Detention, COMPILATION OF DELIBERATIONS, para 64.

<sup>348</sup> See, for example, Working Group, opinions No. 8/2008 (Colombia) and 16/2008 (Turkey); see also, Human Rights Committee, Yoon and Choi v. Republic of Korea, communications Nos. 1321/20041322/2004, Views adopted on 3 November 2006.

conscientious objection to military service.<sup>349</sup>

In 2016, Mr. Norov voluntarily reported to the local conscription office. He presented himself as a conscientious objector and requested alternative civilian service. The following year, he repeated the process and for the next three years Mr. Norov was not summoned for compulsory military service.

However, on September 24<sup>th</sup> 2020, Mr. Norov was summoned to the district conscription office. The conscription officers questioned him for three hours and declared him fit to perform military service.

Mr. Norov and his father reported to the prosecutor's office on October 1<sup>st</sup> and Mr. Norov was held in custody for two days without a formal charge and preventing him from consulting with his lawyer.

On October 3<sup>rd</sup>, Mr. Norov was transferred to a military unit in the city of Khujand, some 300 kilometres away from his family in Dushanbe. On October 17<sup>th</sup>, a Tajik military court accused him of falsifying his medical history to evade military service and ordered him into pretrial detention.

On January 7<sup>th</sup> 2021, Mr. Norov was sentenced to three and a half years of detention.

#### **- The case of Daniil Islamov**

(UN Working group on Arbitrary Detention opinion 43 of 2017 and Human Rights Committee individual complain n. 3603/2019)

The case of the Jehovah's Witness Daniil Islamov has been object of the opinion 43 of 2017 of the UN Working Group on Arbitrary Detention (WGAD) and more recently of an individual communication to the Human Rights Committee.

In April 2017, Daniil Islamov (18 years old) received his military call-up and presented himself to the enlistment office. He informed the military officials that his religious conscience did not allow him to perform military service and explained that he would be willing to perform alternative civilian service. The Military Commissariat rejected Mr. Islamov's request, stating that no alternative civilian service was available in Tajikistan. On that same day, April 22<sup>nd</sup> 2017, Mr. Islamov was arrested, transferred to a military prison and placed in detention without a court hearing or trial.

On July 31<sup>st</sup> 2017, Mr. Islamov was charged under article 376(1) of the Criminal Code of Tajikistan for evading military service. He remained in military detention, where officers repeatedly tried to force him to take the military oath and to put on a military uniform.

On October 5<sup>th</sup> 2017, the UN Working Group on Arbitrary Detention rendered its opinion.<sup>350</sup>

The WGAD underlined that the right to conscientious objection is well established in international law and derives from article 18 of the Covenant. The Human Rights Committee has specifically recommended that Tajikistan provides for alternatives to military service in such cases (see CCPR/C/TJK/CO/2, para. 21). In the present case, it is also without doubt that Mr. Islamov's fate derives directly from his religious expression as a Jehovah's Witness.<sup>351</sup>

Therefore, the WGAD rendered the opinion that the deprivation of liberty of Daniil Islamov, being in contravention of articles 9, 18 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.<sup>352</sup>

Consequently, the WGAD requested the government of Tajikistan to take the steps necessary to remedy the situation of Mr. Islamov without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the International Covenant on Civil and Political Rights.<sup>353</sup>

The WGAD considered that the appropriate remedy would be to release Mr. Islamov immediately and

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<sup>349</sup> Information available on the official Jehovah's Witnesses website ([www.jw.org](http://www.jw.org)) available at [www.jw.org/en/news/legal/by-region/tajikistan/jehovahs-witnesses-in-prison/](http://www.jw.org/en/news/legal/by-region/tajikistan/jehovahs-witnesses-in-prison/).

<sup>350</sup> Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 43/2017, concerning Daniil Islamov (Tajikistan), A/HRC/WGAD/2017/43, 5 October 2017.

<sup>351</sup> Ibid. para 36.

<sup>352</sup> Ibid. para 38.

<sup>353</sup> Ibid. para 39.

to accord him an enforceable right to compensation and other reparations, in accordance with international law.<sup>354</sup>

The WGAD also stated that among the follow up actions were that within six months of the date of transmission of the October 2017 Opinion the government should inform the Working Group "*whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Tajikistan with its international obligations in line with the present opinion*".

On October 13<sup>th</sup> 2017, the military court disregarded the WGAD's opinion and convicted Mr. Islamov of "evasion by an enlisted serviceman of fulfilment of military service obligations" under Article 376(1) of the Criminal Code of the Republic of Tajikistan. He was sentenced to six months in prison.

On January 11<sup>th</sup> 2018, the Military Collegium of the Supreme Court of Tajikistan unilaterally rejected Daniil Islamov's appeal for acquittal and upheld Mr. Islamov conviction on the charge of evading military service. The hearing was conducted in a closed court.

On February 17<sup>th</sup> 2018, Mr. Islamov was transferred from the prison in Kurgan-Tube to the Yavans one.

On April 13<sup>th</sup> 2018, Mr. Islamov was released after having served his sentence in full.

In its 2019 Report, the WGAD<sup>355</sup> informed that no further actions have been taken to implement the opinion.

On January 24<sup>th</sup> 2019, Mr. Islamov filed an individual communication to the UN Human Rights Committee.

### ***The second cycle of the UPR***

Tajikistan had undergone the second review cycle within the UPR procedure of the UN Human Rights Council in 2016. 203 recommendations were provided by the state members, of which Tajikistan has accepted 151 recommendations.

There have been 7 recommendations on the theme Freedom of thought, conscience and religion (D42).<sup>356</sup> Argentina, in its recommendation 118.47, invited to the state-party to "*take the measures necessary to eliminate restrictions on freedom of worship, including the possibility of exercising the right to conscientious objection to compulsory military service*".

Tajikistan accepted this recommendation as "*it believes that it is already being fulfilled. Freedom of religion is guaranteed to every person in Tajikistan and there are no restrictions on peaceful religious activity, either for individuals or for groups. Specific locations are designated where people can perform religious rites. Certain requirements exist with regard to receiving a religious education and disseminating religious literature. These measures are necessary to protect the rights of children and to prevent the incitement of religious hatred, and they have been developed in accordance with international human rights standards*".<sup>357</sup>

This recommendation is far away from being fulfilled: the country's legislation has failed to recognise and implement the right to conscientious objection to compulsory military service on the grounds of religious or other beliefs.

### **The rights of the child and underage recruitment**

In its Concluding observations of the Optional Protocol to the Convention on the Rights of the Child, on

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<sup>354</sup> Ibid. para 40.

<sup>355</sup> A/HRC/39/45, 2 July 2018.

<sup>356</sup> These recommendations are: 118.46 (Sierra Leone), 118.47 (Argentina), 118.58 (Czech Republic), 118.10 (Austria), 115.87 (Singapore), 118.45 (Poland), 118.49 (Turkey).

<sup>357</sup> Report of the Working Group on the Universal Periodic Review\* Tajikistan Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/33/11/Add.1, 7 September 2016), p. 5.

the involvement of children in armed conflict (2017),<sup>358</sup> the Committee on the Rights of the Child (CRC) is seriously concerned that the legislation of the State party does not explicitly criminalize the recruitment and use of children under 18 years of age in hostilities, by the armed forces and non-State armed groups. The Committee<sup>359</sup> is also concerned that the recruitment of children under 15 years of age has not been defined as a war crime in the State party's legislation.<sup>360</sup>

## Turkey<sup>361</sup>

### *1. Failure to recognise the right to conscientious objection to military service*

Since 2012 (last Concluding Observations), conscientious objection to military service has not been addressed by legislation, rather the focus has been reducing the duration of the military service in general and introducing the possibility of a shortened military service by payment.

In 2019, it was adopted a new Law on Conscription (Askeralma Kanunu, AK, hereafter)<sup>362</sup> which reduced the compulsory military service to six months for every man between the age of 20-41 years old (cadets) and twelve months for reserve officers and officers.<sup>363</sup>

Moreover, shortened military service through payment has become possible under the Turkish military service system. Under article 9 of the Law on Conscription, those who pay an amount of fee established every 6 months (from January to June 2021 it is 39,788 Turkish Lira, approximately 3,900 Euro - 4,700 US\$)<sup>364</sup> and complete one month of basic military training obtain an exemption from the remaining months of military service.

The performance of a month of basic military training is not fitting for individuals who declare conscientious objection to military service.

Additionally, those who have been assigned evader status and those who are draft evaders cannot benefit from this option,<sup>365</sup> and it is not available in times of war and mobilisation.<sup>366</sup>

Moreover, the amount of the payment is far from being accessible to all: it is much more than the Turkish net minimum wage (2,825 Turkish Lira, approximately 250 Euro – 302 US\$).

### **Draft evaders and deserters**

Draft evaders and deserters are tracked and subject to a continuous cycle of administrative fines and criminal proceedings.

Draft evaders and deserters are tracked in accordance with Article 26.1 of the Law on Conscription and reported to the Ministry of Interior in order to ensure their apprehension to perform their military service obligation. Those who are apprehended are brought to the nearest recruitment branch during working hours. Where there is no recruitment branch nearby or outside of working hours, evaders and deserters are issued an official record and released immediately.

Article 24.1 of the Law on Conscription lays out the administrative monetary fines given to draft evaders and deserter by the recruitment branch. Those who voluntary surrender to the authorities have to pay 5

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<sup>358</sup> CRC/C/OPAC/TJK/CO/1

<sup>359</sup> CRC/C/OPAC/TJK/CO/1 paras 16-17.

<sup>360</sup> CRC/C/OPAC/TJK/CO/1 paras 20-21.

<sup>361</sup> Based on the report IFOR submitted to the 132nd Human Rights Committee.

<sup>362</sup> Law No 7179 on Conscription (Askeralma Kanunu), 26.06.2019, Official Gazette No. 30813, 25.06.2019.

<sup>363</sup> Articles 3 and 5 of Law No 7179 on Conscription.

<sup>364</sup> Turkish Ministry of National Defence website, FAQ on military service and payment, available (in Turkish) at: <https://asal.msb.gov.tr/Askeralma/icerik/sikca-sorulan-sorular>

<sup>365</sup> Article 9.6 Law No 7179 on Conscription.

<sup>366</sup> Article 9.7 Law No 7179 on Conscription.

TL per day (0.49 Euro – 0.59 US\$), starting from the day they became draft evaders or deserters. Those who are apprehended are due to pay 10 TL per day (0.98 Euro – 1.18 US\$). Administrative monetary fines must be paid within a month from the date the official record is issued.

Conscientious objectors who fail to fulfil this obligation risk to be repeatedly apprehended after each 15 days and to have an official report issued.

Under Article 63 of the Military Criminal Code No 1632, those who do not surrender to perform their military service “after the administrative fine under Article 89 of the Law on Military Service is final” will be sentenced to imprisonment for up to 3 years depending on the duration of desertion.

### **No measures to address the Judgments of the European Court of Human Rights (Ülke Group of cases)**

On June 4<sup>th</sup> 2020, the Council of Europe Committee of Ministers’ Deputies urged Turkey to stop prosecuting conscientious objectors and take the necessary measures to address the judgements of the European Court of Human Rights under the Ülke Group of cases (total of seven cases).<sup>367</sup> Reminding Turkey of the lack of any progress in law, in its recent decision, the Committee of Ministers asked Turkey to submit an action plan with concrete steps addressing the ECtHR findings before 21<sup>st</sup> June 2021.

The Ülke group of cases are a total of seven cases under the enhanced supervision of the Committee of Ministers. They pertain to violations of Article 3, the prohibition of torture, inhuman and degrading treatment, Article 9, the right to freedom of thought, conscience and religion and Article 6, the right to fair trial, of the European Convention on Human Rights. They stem from the applicants’ repetitive convictions and prosecutions for having refused to carry out compulsory military service due to their religious beliefs or convictions as pacifists and conscientious objectors.<sup>368</sup>

### **Figures about Conscientious objectors**

In its List of issues prior to the initial report of Turkey,<sup>369</sup> the Human Rights Committee required detailed information and figures about conscientious objectors and their criminal cases. The State did not address the issue in its initial report nor after.

The Turkish association for conscientious objection (VR-Der)<sup>370</sup> submitted an application to the Ministry of National Defence requesting information on how many persons applied for exemption as conscientious objectors between 2016-2020. The Ministry’s response stated that “there is no legal possibility to fulfil your request”.<sup>371</sup>

In 2019, the Turkish Minister of National Defence, Hulusi Akar, answering the questions of the deputies after the presentation of the 2020 budget of his Ministry, stated that “Regarding conscientious objection, in our country of 82 million, 28 persons applied in 2017, 23 persons in 2018, and 18 persons so far in 2019.”<sup>372</sup>

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<sup>367</sup> European Court of Human Rights, Case Ulke v Turkey (Application No. 39437/98), Judgement of 24<sup>th</sup> January 2006; European Court of Human Rights, Case Ercep v Turkey (Application No. 43965/04), Judgement of 22<sup>nd</sup> November 2011; European Court of Human Rights, Case of Feti Demirtas v Turkey (Application No. 5260/07), Judgment of 17<sup>th</sup> January 2012; European Court of Human Rights, Case of Savda v Turkey (Application No. 42730/05), Judgment of 12<sup>nd</sup> June, 2012; European Court of Human Rights, Case of Tarhan v Turkey (Application No. 9078/06). Judgment of 17<sup>th</sup> July 2012; European Court of Human Rights, Case Buldu and others v Turkey (Application No. 14017/08), Judgement of 3<sup>rd</sup> June 2014; European Court of Human Rights, Case Enver Aydemir v Turkey ((Application No. 26012/11), Judgement of 7<sup>th</sup> June 2016.

<sup>368</sup> European Bureau for Conscientious Objection (EBCO-BEOC), Annual report on conscientious objection to military service in Europe 2020, Published the 15<sup>th</sup> of February 2021, available at <https://www.ebco-beoc.org/reports>.

<sup>369</sup> Human Rights Committee, List of issues to be taken up in connection with the consideration of the initial report of Turkey, published the 4<sup>th</sup> of May 2012 (CCPR/C/TUR/Q/1) paras 21-22.

<sup>370</sup> Vicdani Ret Dernegi (Vr-Der) <https://vicdaniiret.org/>

<sup>371</sup> Application for information by the author on 26 March 2021 request number 2101413343 and response sent on 30 March 2021.

<sup>372</sup> Bianet (Bağımsız İletişim Ağı, lit. "Independent Communication Network", Turkish, press agency based in Beyoğlu, Istanbul), “Akar: Vicdani Retle İlgili Çalışmamız Yok” (“Akar: We Have No Study on Conscientious Objection”), 21 November 2019, available (in Turkish) at: <https://m.bianet.org/bianet/vicdani-ret/216162-akar-vicdani-retle-ilgili-calismamiz-yok>

These figures are related only to conscientious objectors who have decided to inform the authorities about their objection, even knowing they will face detention and fines. It is unknown how many Turkish young men are hiding themselves, in order to avoiding the military service and the persecution.

## ***2. Violations of other human rights of conscientious objectors***

Keeping their refusal to undertake military service, conscientious objectors are practically deprived of some of their human rights such as freedom of movement and right to vote.

Indeed, once a conscientious objector to military service evades the draft or deserts the military, public authorities identify the person as draft evader or deserter. This status becomes part of the information linked to their national identity number and information.

Therefore, Turkish male citizens who have not performed military service are unable to undertake any activities which require documentation from the state; this is a consequence of their status and of the fact that any interaction with the authorities may result in a new charge.

This situation has been defined as “civil death” by the European Court of Human Rights.<sup>373</sup> More in details, there are mainly three types of restrictions to their human rights:

1. Denial of the opportunity to earn one’s living: according to the law objectors cannot work in either public or private sectors as it is a crime to employ a draft evader. Objectors are forced to live unemployed or work illegally in uninsured jobs;
2. Ne bis in idem violations: objectors face everlasting administrative fines and criminal cases for the same offence, in violation of the *ne bis in idem* principle;
3. Deprivation while avoiding new charges: as every check and report to military authorities means getting another administrative fine and/or criminal, objectors avoid any possibility to be intercept by authorities. As a consequence, in their everyday life, conscientious objectors are deprived to:
  - Applying for passport, driving licence, marriage and so on.
  - Having a legal entity such as opening a bank account or acquiring a tax number for private or commercial activity.
  - Reporting a crime to law enforcing authorities.
  - Participating in public affairs and the right to vote.
  - Staying in a hotel or other kind of accommodation facility.
  - Driving or walking in public space.
  - Using public transport and traveling (inside the country and abroad).

In relation to the right to vote, it is concerning that even Osman Murat Ülke<sup>374</sup> continues to be subject to restrictions. Even though the Turkish authorities are under an obligation to eliminate any consequences of the violation on Ülke, his status in Turkey remains “soldier” and “deserter”. Therefore, in accordance with Article 67 of the Constitution he cannot vote.

Before the March 31<sup>st</sup> 2019 general elections, he received his voter card. However, on the day of the election, when he went to the polling station, he was told that there was a note indicating that he could not vote, and the electoral officers did not allow him to do so.

## ***3. Restrictions on the freedom of expression of objectors and those who support them***

In Turkey, the criticism of military is prohibited under article 318 of the Penal Code. The article establishes as follows:

(1) Any person who encourages or uses repetition which would cause the persons to desert or have the

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<sup>373</sup> European Court of Human Rights, Case Ülke v Turkey (Application No. 39437/98), Judgement of 24<sup>th</sup> January 2006, para. 62.

<sup>374</sup> European Court of Human Rights, Case Ülke v Turkey (Application No. 39437/98), Judgement of 24<sup>th</sup> January 2006.

effect of discouraging people from performing military service, shall be sentenced to a penalty of imprisonment for a term of six months to two years. (2) Where the act is committed through the press or broadcasting, the penalty shall be increased by one half.

As documented by VR-Der,<sup>375</sup> this is mostly used against objectors and those who support them and applied to declarations of objectors or statements – even on social media - by anti-militarist or anti-war organisations.

In 2013, this article of the Penal Code was amended to specifically address statements or conducts that “encourage and inspire people to desert or not to participate in military service”.

It continues to exceed the admissible limitations on Freedom of Expression, as set out by the Human Rights Committee in 2011, in two ways: “States parties should not prohibit criticism of institutions, such as the army or the administration,”<sup>376</sup> and that Article 19.3 of the ICCPR “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”<sup>377</sup>

### **Domestic cases against VR-DER (Turkish association for conscientious objection)**

In 2016, following a press statement by VR-DER in connection to the International Conscientious Objectors Day (May 15<sup>th</sup>), in Diyarbakır, an investigation was initiated by the Diyarbakır Chief Public Prosecutor’s Office against four people, including the association co-chair Merve Arkun and the association lawyer Davut Erkan. The investigation resulted in a “no reason for prosecution” decision.

In 2019, based on several posts published on VR-DER’s website and its social media accounts, Furkan Çelik, one of the founding members of the association, was sued on the charge of "alienating the public from military service" under Article 318 of the Turkish Penal Code. On February 6<sup>th</sup> 2020, he was acquitted at the first hearing.

On November 13<sup>th</sup> 2020, a new prosecution has started against VR-DER, due to a news story posted on VR-DER’s official website and social media.

## **Turkmenistan<sup>378</sup>**

### **A) Non-recognition of the right to conscientious objection to military service**

Turkmenistan applies conscription to all male citizens.

Military service for men between the ages of 18 and 27 is generally two years long.<sup>379</sup>

The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual religion or beliefs. The right must not be impaired by coercion.

A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human

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<sup>375</sup> Turkish association for conscientious objection, Vicdani Ret Dernegi (Vr-Der) <https://vicdaniret.org/>

<sup>376</sup> Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, published on 12<sup>th</sup> September 2011, para 38.

<sup>377</sup> Ivi, para 23.

<sup>378</sup> Based on the report submitted by IFOR to the 134th Human Rights Committee.

<sup>379</sup> Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: [https://www.forum18.org/archive.php?article\\_id=2656](https://www.forum18.org/archive.php?article_id=2656)

See also: The International Institute for Strategic Studies (IISS) - The Military Balance 2020, p. 210.

rights.<sup>380</sup>

Despite the above, as well previous Concluding Observations and numerous Views adopted by the Committee under the Optional Protocol, Turkmenistan still fails to recognise the right to conscientious objection to military service.

According to the third periodic Report submitted by Turkmenistan:

“136. The Constitution provides that every citizen has a sacred duty to defend Turkmenistan. Military service is compulsory for all male citizens. Article 41 of the Constitution provides that the defence of Turkmenistan is the sacred duty of every citizen. Military service is compulsory for all male citizens. Article 18 of the Military Duty and Military Service Act lists the grounds for exemption from conscription.”<sup>381</sup>

However, no details are provided about the grounds for exemption from conscription and there is no indication that there can be exemption on grounds of conscience, religion or belief.

To this date, Turkmenistan not only does not recognise the right to conscientious objection to military service as such, but also, in practice, does not offer any civilian alternative to its compulsory military service, in contravention of Article 18 (1) of ICCPR.

## **B) Imprisonment of conscientious objectors**

Turkmenistan not only does not recognise the right to conscientious objection to military service and does not provide a civilian alternative service to its compulsory military service, but also criminalises conscientious objectors who are punished with imprisonment.

Conscientious objectors to military service generally face prosecution under Criminal Code Article 219, Part 1. This punishes refusal to serve in the armed forces in peacetime with a maximum penalty of two years of imprisonment or two years of “corrective labour”.

Criminal Code Article 219, Part 2, punishes refusal to serve in the armed forces in peacetime "by means of inflicting injury to oneself, or by simulation of illness, by means of forgery of documents, or other fraudulent ways".

Punishment is a jail term of one to four years.

There have been at least two known cases of use of Article 219, Part 2, to punish a conscientious objector (Mr. Azat Ashirov and Mr. Serdar Dovletov).<sup>382</sup>

Furthermore, there has been at least one case of a conscientious objector who has been punished under Criminal Code Article 344, Part 2, Mr. Bahtiyar Atahanov, as he was first forcibly conscripted and then punished as a soldier trying to avoid his obligations and received a four-year ordinary regime labour camp term.<sup>383</sup>

Sentencing and imprisonment of conscientious objectors to military service, usually Jehovah’s Witnesses, is a longstanding practice in Turkmenistan. In December 2011, Conscience and Peace Tax International reported that “More than 30 conscientious objectors have been sentenced under Article 219(1) since 1999”.<sup>384</sup>

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<sup>380</sup> See, Min-Kyu Jeong et al. v. Republic of Korea (CCPR/C/101/D/1642-1741/2007), para. 7.3; Jong-nam Kim et al. v. Republic of Korea, para. 7.4; Abdullayev v. Turkmenistan, para. 7.7; Mahmud Hudaybergenov v. Turkmenistan, para. 7.5; Ahmet Hudaybergenov v. Turkmenistan, para. 7.5; Sunnet Japparow v. Turkmenistan, para. 7.6; Akmurad Nurjanov v. Turkmenistan, para. 9.3; Shadurdy Uchetov v. Turkmenistan, para. 7.6; Dawletow v. Turkmenistan, para. 6.3 and others.

<sup>381</sup> CCPR/CTKM/3, 29 June 2020, [Date received: 27 March 2020], para. 136.

<sup>382</sup> Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: [https://www.forum18.org/archive.php?article\\_id=2656](https://www.forum18.org/archive.php?article_id=2656)

<sup>383</sup> Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: [https://www.forum18.org/archive.php?article\\_id=2656](https://www.forum18.org/archive.php?article_id=2656) And Felix Corley, “TURKMENISTAN: Conscientious objector jailed for four years”, *Forum 18*, 23 July 2019. Available at: [https://www.forum18.org/archive.php?article\\_id=2495](https://www.forum18.org/archive.php?article_id=2495)

<sup>384</sup> Conscience and Peace Tax International, Submission to the 104th Session of the Human Rights Committee: March 2012, TURKMENISTAN, Conscientious objection to military service and related issues, Submission updated December 2011. Available at:

According to Forum 18, 6 conscientious objectors were freed under amnesty in 2014. Since 2014, courts punished conscientious objectors with “corrective labour” or suspended prison terms, (and/or the state withheld 20 percent of their salary for one to two years as a penalty - as Mr. Kerven Kakabayev had experienced in 2014<sup>385</sup> and Mr. Eldor Saburov in 2017<sup>386</sup>) rather than imprisonment. In February 2015 it released the last Jehovah’s Witness imprisoned for conscientious objection.<sup>387</sup> However, imprisonments resumed in January 2018. Courts handed down 32 known convictions and jailing of conscientious objectors since Turkmenistan resumed such jailing in January 2018. Courts jailed 12 conscientious objectors in 2018, two of them for two years and 10 for one year. Courts jailed 7 conscientious objectors in 2019, one of them for four years, one for three years, one for two years and four for one year. Courts jailed 5 conscientious objectors in 2020, four of them for two years and one for one year. Courts jailed 8 conscientious objectors in 2021, seven of them for two years and one for one year.<sup>388</sup> This means that recently the jail terms for conscientious objectors to military service are between one and four years.

Imprisonment of conscientious objectors to military service, apart from a violation of art. 18 (1) of IC-CPR, also constitutes a violation of art. 9 (1) of ICCPR.

The Human Rights Committee has repeatedly stated in recent years “*that just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant is arbitrary, so too is detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.*”<sup>389</sup>

On May 8<sup>th</sup> 2021, the authorities of the state party freed from prison all 16 of Turkmenistan known jailed conscientious objectors - all of them Jehovah's Witnesses- in a prisoner amnesty.<sup>390</sup>

To the date of the submission, IFOR does not have information of conscientious objectors currently imprisoned in Turkmenistan.<sup>391</sup>

The amnesty for conscientious objectors, while being a step in the right direction, should not obfuscate the situation. There is no information that the state party has made any moves towards offering a genuinely civilian alternative to those unable to perform compulsory military service on grounds of conscience. This means that conscientious objectors could be imprisoned again at any moment.

### **C) Repeated imprisonment of conscientious objectors in violation of the ne bis in idem principle**

In Turkmenistan, punishment for failure to perform military service does not entail exemption from military duties. Therefore, those who have been punished, even if they have served prison sentence,

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en)

<sup>385</sup> Turkmenistan Ignores the Right to Freedom of Conscience, *jw.org*, 28 March 2018. Available at: <https://www.jw.org/en/news/legal/by-region/turkmenistan/ignores-right-to-freedom-of-conscience/>

<sup>386</sup> AL TKM 2/2020, 10 December 2020. Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25740>

<sup>387</sup> Turkmenistan Ignores the Right to Freedom of Conscience, *jw.org*, 28 March 2018. Available at: <https://www.jw.org/en/news/legal/by-region/turkmenistan/ignores-right-to-freedom-of-conscience/>

<sup>388</sup> Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: [https://www.forum18.org/archive.php?article\\_id=2656](https://www.forum18.org/archive.php?article_id=2656)

<sup>389</sup> See Young-kwan Kim et al. v. Republic of Korea, para. 7.5, *Petromelidis v. Greece*, para. 9.8.

<sup>390</sup> “Turkmenistan Releases 16 Brothers From Various Prisons”, *jw.org*, 8 May 2021. Available at:

<https://www.jw.org/en/news/jw/region/turkmenistan/Turkmenistan-Releases-16-Brothers-From-Various-Prisons/>

See also Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: [https://www.forum18.org/archive.php?article\\_id=2656](https://www.forum18.org/archive.php?article_id=2656)

<sup>391</sup> For example, the official website of the Jehovah’s Witnesses does not provide information for imprisoned conscientious objectors in Turkmenistan as of December 2021. <https://www.jw.org/en/news/legal/by-region/world/jehovahs-witnesses-in-prison/> Equally, War Resisters’ International does not cite imprisoned conscientious objectors from Turkmenistan in its Prisoners for Peace List issued on the 1<sup>st</sup> of December 2021. Available at: <https://wri-irg.org/en/story/2021/december-1st-support-and-write-prisoners-peace>

remain subject to call-up and if they persist in their refusal may be sentenced for a second time. As this is seen as a repeat offence, such persons may be subject to a stricter prison or work-camp regime.<sup>392</sup>

The Human Rights Committee has repeatedly stated that “*repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience*” and has found a violation of Article 14 (7) of ICCPR in at least five different cases of conscientious objectors in Turkmenistan.<sup>393</sup>

On December 10<sup>th</sup> 2020, four UN Special Procedures including the Working Group on Arbitrary Detention wrote to Turkmenistan's government expressing "serious concern" about the second sentences handed down in August 2020 to 2 conscientious objectors, Sanjarbek Saburov and Eldor Saburov. Besides regretting the criminalisation of conscientious objection in the first place, they also pointed out: “*Furthermore, we note with concern that Mr. Sanjarbek Saburov and Mr. Eldor Saburov have been tried and convicted twice for the same alleged offence, for which they had been finally convicted in the past, in accordance with the national law and penal procedure, and which is a violation of the rule against double jeopardy, or non bis in idem, enshrined in article 14(7) of the International Covenant on Civil and Political Rights.*”<sup>394</sup> To the date of this submission, no response of the authorities of Turkmenistan appears in the relevant UN website.

#### **D) Conditions of imprisonment and ill-treatment of conscientious objectors**

Torture and other ill-treatment of conscientious objectors to military service, as well inappropriate conditions of imprisonment have been longstanding issues in Turkmenistan.<sup>395</sup>

The Human Rights Committee has found violations of articles 7 and/or 10 of ICCPR in at least 9 cases of conscientious objectors in Turkmenistan.<sup>396</sup>

Considering, also, the overall situation of conditions of imprisonment or in the labour camps, and especially during the Covid-19 pandemic, taking into consideration the failure of the authorities to protect the right to health,<sup>397</sup> the above issues remain of great concern.

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<sup>392</sup> Conscience and Peace Tax International, Submission to the 104<sup>th</sup> Session of the Human Rights Committee: March 2012, TURKMENISTAN, Conscientious objection to military service and related issues, Submission updated December 2011.

Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en)

<sup>393</sup> See the Committee's general comment No. 32 (2007) on article 14: right to equality before courts and tribunals and to a fair trial, paras. 54–55. See also communication *Zafar Abdullayev v Turkmenistan* para 7.4 and 7.5. See also *Nasyrlayev v. Turkmenistan*, para. 8.5, *Nurjanov v. Turkmenistan*, para. 9.7, *Aminov v. Turkmenistan*, para. 9.5, *Matyakubov v. Turkmenistan*, para. 7.5.

<sup>394</sup> AL TKM 2/2020, 10 December 2020. Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25740>

<sup>395</sup> For the situation in previous years see: Conscience and Peace Tax International, Submission to the 104<sup>th</sup> Session of the Human Rights Committee: March 2012, TURKMENISTAN, Conscientious objection to military service and related issues, Submission updated December 2011. Available at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en)

<sup>396</sup> Communication No. 2218-2012 (*Abdullayev v. Turkmenistan*), Communication No. 2219-2012 (*Nasyrlayev v. Turkmenistan*), Communication No. 2220-2012 (*Aminov v. Turkmenistan*), Communication No. 2221-2012 (*Hudaybergenov v. Turkmenistan*), Communication No. 2222-2012 (*Hudaybergenov v. Turkmenistan*), Communication No. 2223-2012 (*Japparow v. Turkmenistan*), Communication No. 2224-2012 (*Matyakubov v. Turkmenistan*), Communication No. 2226-2012 (*Uchetov v. Turkmenistan*), Communication No. 2227-2012 (*Yegendurdyev v. Turkmenistan*)

<sup>397</sup> See for example Amnesty International Annual Report, part on Turkmenistan, available at:

<https://www.amnesty.org/en/location/europe-and-central-asia/turkmenistan/report-turkmenistan/>

## Ukraine<sup>398</sup>

### 1. Conscientious objection to military service

#### *Compulsory military service*

Ukraine has been looking for a long time to move from conscription to a full professional army. In 2013, mandatory conscription was suspended by the Defence Ministry in order to switch to a volunteer contract-based service. Yet, on 2<sup>nd</sup> September 2014, a new law was signed “regulating the procedure for military recruitment of personnel on contracts and simplifying the conscription procedure”<sup>399</sup>.

Military recruitment in Ukraine and relevant issues are regulated by:

- the Constitution of Ukraine,<sup>400</sup>
- the Law of Ukraine "On the Armed Forces of Ukraine"<sup>401</sup>
- the Law of Ukraine "On Military Duty and Military Service,"<sup>402</sup>
- the Law of Ukraine "On the Alternative (Non-Military) Service,"<sup>403</sup>
- the Law of Ukraine "On Mobilization Preparation and Mobilization,"<sup>404</sup>
- the Law of Ukraine "On Unified State Register of Persons, Liable for Military Service,"<sup>405</sup>
- Criminal Code of Ukraine,<sup>406</sup>
- Code of Ukraine on Administrative Offences,<sup>407</sup>
- other regulations of draft, alternative service, and patriotic education

According to the Law on Military Duty and Military Service, ““Ukrainian male citizens who are physically qualified for military service, over 18 years old and older, but who have not reached the age of 27, and who have no right for exemption from military service will be conscripted”.

Women who are fit for military service in terms of health, age and family status are included in the list of registered persons liable for military service<sup>408</sup> and, in peacetime, can perform military service only on a voluntary (contractual) basis.

Meanwhile, in wartime, women doing certain categories of job who have been registered with enlistment offices can be called into military service or involved in other defence activities.<sup>409</sup>

#### *Recognition of conscientious objection and alternative service*

Article 35 paragraph 4 of the 1996 Constitution stipulates that:

“If performance of military service is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) duty.”

#### *Reasons of conscientious objection*

To have the right to alternative service, a citizen must belong to a religious organization forbidding the use of weapons and have own beliefs contradictory to military service.<sup>410</sup>

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<sup>398</sup> Based on the report submitted by IFOR to the 133<sup>rd</sup> Human Rights Committee.

<sup>399</sup> BBC, Ukraine reinstates conscription as crisis deepens, 02/05/2014; War Resisters' International (WRI), Propaganda, Ukrainian desertion and conscription in Lithuania, 03/03/2015

<sup>400</sup> Constitution of Ukraine, URL: [http://www.ccu.gov.ua/sites/default/files/constitution\\_2019\\_eng.doc](http://www.ccu.gov.ua/sites/default/files/constitution_2019_eng.doc).

<sup>401</sup> The Law of Ukraine "On the Armed Forces of Ukraine" in Ukrainian, URL: <https://zakon.rada.gov.ua/laws/show/1934-12>.

<sup>402</sup> The Law of Ukraine "On Military Duty and Military Service" in Ukrainian: <https://zakon.rada.gov.ua/laws/show/2232-12>.

<sup>403</sup> The Law of Ukraine "On the Alternative (Non-Military) Service" (Ukr.) <https://zakon.rada.gov.ua/laws/show/1975-12>.

<sup>404</sup> The Law of Ukraine "On Mobilization Preparation and Mobilization" (Ukr.) <https://zakon.rada.gov.ua/laws/show/3543-12>.

<sup>405</sup> The Law of Ukraine "On Unified State Register of Persons, Liable for Military Service" in Ukrainian, URL: <https://zakon.rada.gov.ua/laws/show/1951-19>.

<sup>406</sup> Criminal Code of Ukraine, URL: <https://www.legislationline.org/documents/action/popup/id/16257/preview>.

<sup>407</sup> Code of Ukraine on Administrative Offences, in Ukrainian, URL: <https://zakon.rada.gov.ua/laws/show/80731-10>.

<sup>408</sup> Law on Military Duty and Military Service, art. 1 part 1.

<sup>409</sup> Law on Military Duty and Military Service, art. 1 para. 12.

<sup>410</sup> Article 2 of the Law of Ukraine "On the Alternative (Non-Military) Service".

In 1999 Cabinet of Ministers of Ukraine approved a list of eligible religious organizations which includes ten confessions: Adventist Reformists, Seventh-day Adventists, Evangelical Christians, Evangelical Baptist Christians, Pokutnyky, Jehovah's Witnesses, Charismatic Christian Churches, Christians of the Evangelical Faith, Christians of the Gospel Faith and Krishna Consciousness Society.<sup>411</sup>

This list has never been updated since its adoption.

Ukraine limits the recognition of the right only to short-listed religion beliefs. Therefore, any other reason of conscience, including profound convictions arising from ethical, pacifist, humanitarian or similar motives, is not taken into account.

### ***Length of alternative service***

An amendment of 18<sup>th</sup> May 2004 replaced the specific stipulations regarding the duration of alternative service with a general provision that it would be one-and-a-half times that of the military service which would be otherwise required from the person concerned.

Therefore, the length of alternative service is normally 27 months and 18 months for persons with a high school degree.

### ***Procedural aspects: timing***

Citizens can apply for alternative service after their military registration but not later than two months before the start of the conscription determined by Presidential Decree.<sup>412</sup>

In recent years, in the practice, the period of time between the publication of the Presidential Decree and the date of the start of the conscription has been less than two months.

However, there is a recent decision of the Kherson Circuit Administrative Court claiming that the non-compliance with the term cannot be the sole reason for denial in application since it must be checked if the applicant holds authentic religious beliefs<sup>413</sup>.

### ***Procedural aspects: decision-making body***

The 1999 Act and its subsequent amendments made an important advance towards good practice by placing the processing of applications for recognition of conscientious objector status and the administration of alternative service under the local state administration.

The usual administrative practice consists in the creation of local alternative service commissions with advisory power, while the final decision is up to the local state administration.

The Ukrainian Pacifist Movement<sup>414</sup> indicated that the composition of the alternative service commissions varies in composition. Usually, they are chaired by the deputy chief of the State administration or Self-government body and other members such as officials from administrative divisions with functions of military policy, youth policy, labour and social care, and always one or more members represent local military commissariat. The inclusion of representatives from civil society is rare, and they never have the majority.

For instance, in Kyiv oblast administration, members of the commission on the alternative service representing civil society are usually around 5 out of 20 members and the commission has only advisory power.<sup>415</sup>

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<sup>411</sup> List of religious organizations, doctrine of which don't allow the use of weapons, approved by the Cabinet of Ministers of Ukraine, in Ukrainian, URL: <https://zakon.rada.gov.ua/laws/show/2066-99-%D0%BF>.

<sup>412</sup> Article 9 of the Law of Ukraine "On Alternative (Non-Military) Service"

<sup>413</sup> Decision of Kherson Circuit Administrative Court No. 83213002of 23.07.2019 in Ukrainian: <https://youcontrol.com.ua/en/catalog/court-document/83213002/>.

<sup>414</sup> The Ukrainian Pacifist Movement has been founded in 2019 by the participants of peaceful protests against conscription in Kyiv. Information provided for editing of the EBCO annual report on conscientious objection to military service in Europe 2019.

<sup>415</sup> About the Kyiv Oblast State Administration commission on alternative service, in Ukrainian, <http://koda.gov.ua/normdoc/prokomisiyu-u-spravakh-alternativnoi/>.

### ***Procedural aspects: types of service and information available***

Cabinet of Ministers of Ukraine has approved the list of jobs for citizens conducting alternative service, including health and social care, collective, community and personal services, construction, production of electricity, gas and water, agriculture, hunting and forestry, fisheries, mining industry, manufacturing industry, and transport.

From the above list of jobs, it can be concluded that it is not possible to perform alternative service in the private sector, including even charities and other civil society organisations.

In addition, local sources document that local public administrations seem to have no workplaces available for conscientious objectors, so they cannot perform their alternative service and possibly they could be prosecuted for failing to fulfil their duty.<sup>416</sup>

It can be assumed that, rather than a lack of workplaces, there is a specific will of making the alternative service less attractive.

### ***Procedural aspects: choice of the institution***

Those who apply to perform alternative service have no choice as to which placement they are assigned to (Article 13).

It has been reported that the alternative service is not popular among Ukrainians due to prohibitive regulations. About five hundred of persons, each year, serve it.

23-year non-military servicemen interviewed by the radio reported: "instead of weapons bears broom and shovel and cleans out the grounds and entrances of high-rise buildings"; he stated that the first time the job was hard physically and psychologically and he shamed to tell friends about it.<sup>417</sup>

### ***No information about the remuneration for the alternative service***

Meanwhile the alternative service is documented by labour contract, it is not clear how much it is remunerated. It seems that alternative servicemen should earn at least minimal remuneration (near US \$ 185/month).

The lack of information about the payment aspect, together with the greater length and the lack of workplace available, makes it even more punitive than the military service.

### ***Disciplinary offences***

Article 8 of the 1999 Act provides a list of disciplinary offences in the performance of alternative service for which the recognition of conscientious objector status may be completely inappropriately withdrawn and the military service requirement reinstated. The list includes among the offences the participation in strikes.

### ***Criminal code: desertion and dodging***

The Criminal Code of Ukraine sets out that avoidance of conscription for active military service is punishable by up to three years of imprisonment (art. 335).

Article 336 stipulates that evasion from being drafted under the mobilization process is punished with limitation of freedom for a period time from two to five years.

Article 337 on "Evasion from military registration or military exercise" stipulates for the following:

1) evasion of the person liable to military service from the military registration after the warning made by a corresponding military enlistment office shall be punishable with a fine in the amount of up to UAH 850.00 (approx. 31 US \$) or correctional labour for the period of up to two years, or arrest for up to six

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<sup>416</sup> Information from Ukrainian Pacifist Movement, December 2020.

<sup>417</sup> "Alternative service: the unused potential," Radio Deutsche Welle (03.04.2013), in Ukrainian, URL: <https://www.dw.com/uk/a-16716791>.

months;

2) evasion of the person liable to military service from drill (or checkout) or special training shall be punishable with a fine in the amount of up to UAH 1 190 or arrest for up to six months.

Starting from the fact that the right to conscientious objection is recognised only on religious grounds, desertion remains one of the most common crimes in the Ukrainian army.

Indeed, from 2014 to 2018, the Armed Forces of Ukraine lost more than 33,000 people to desertion. As of early 2019, about 9,300 troops had deserted from the Ukrainian army. This is more than 4.5 percent of the total number of servicemen approved by the Verkhovna Rada in 2015.<sup>418</sup>

According to official judicial statistics, 16,806 people in 2014-2018 were punished for the mentioned forms of refusal of military service, 2,744 of them sentenced to imprisonment.<sup>419</sup>

Moreover, on that period, 149 Ukrainians were punished by the court's sentences under the article of the Criminal Code of Ukraine referring to evasion of military service by self-mutilation, 26 of which were deprived of liberty.<sup>420</sup>

### ***Service in the military reserve in special period (wartime)***

In the current "special period" proclaimed by the presidential decree in 2014, all discharged conscripts are counted in military reserve; it means they are regularly summoned to military gatherings and after 6 months of discharge from conscription can be mobilized to military service in any time, including their involvement into armed conflict in Eastern Ukraine.<sup>421</sup>

Conscientious objection and alternative service are not foreseen by the Ukrainian legal framework for individuals drafted through emergency mobilization, resulting in the risk of enlistment contrary to a person's religious beliefs.<sup>422</sup> The religious beliefs of conscientious objectors summoned during the waves of emergency mobilization in the context of the current conflict are often reportedly as ignored by conscription offices.<sup>423</sup>

### ***Liberty of movement and freedom to choose own residence and leave to any country***

From the moment of an announcement of mobilization, citizens registered for military duty are prohibited to change their place of residence without the consent of a military commissar<sup>424</sup>.

Moreover, an application to receive an international Ukrainian passport may be denied due to a lack of military service, thus preventing the individual from traveling abroad.

### ***Freedom of opinion and expression: Ruslan Kotsaba case***

In January 2015, Ruslan Kotsaba, Ukrainian journalist and a supporter of the *Maidan protests*, made a public declaration against the military mobilization imposed under the martial law in that period of the armed conflict in Ukraine.

He uploaded the video of himself stating the following declaration on YouTube:

"I know that the mobilization is declared under martial law. I would rather go to prison than go into civil war now and kill my compatriots who live in the East. Don't argue with conscription. I will not take part

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<sup>418</sup> Global security website, Ukraine military personnel. [www.globalsecurity.org/military/world/ukraine/personnel.htm](http://www.globalsecurity.org/military/world/ukraine/personnel.htm).

<sup>419</sup> The Truth seeker (*Newspaper in Kyiv*), President Zelensky Must Stop Military Sadism, 12.08.2019.

<sup>420</sup> Ibid.

<sup>421</sup> Law of Ukraine on Mobilisation Preparation and Mobilisation, see in particular article 22.

<sup>422</sup> UN High Commissioner for Refugees (UNHCR), International Protection Considerations Related to the Developments in Ukraine – Update III, September 2015

<sup>423</sup> The Institute of Religious Freedom reports highly restrictive approaches and entail criminal prosecution of conscientious objectors as draft evaders. Institute of Religious Freedom, *Alternative (Non-Military Service): Path of Reforms or Verdicts*, 10 September 2015, [http://www.irs.in.ua/index.php?option=com\\_content&view=article&id=1596%3A1&catid=37%3Aart&Itemid=64&lang=ru](http://www.irs.in.ua/index.php?option=com_content&view=article&id=1596%3A1&catid=37%3Aart&Itemid=64&lang=ru)

<sup>424</sup> Law of Ukraine from October 21, 1993, of No. 3543-XII About mobilization preparation and mobilization; Ilyashev & Partners, Mobilization: medical contraindications and legal reservations, 04/07/201

in this fratricidal war".<sup>425</sup>

A few weeks later he was arrested and charged with "treason" and "obstruction of the legitimate activities of the armed forces of Ukraine"<sup>426</sup>. After 16 months of pre-trial detention under inhumane conditions, the court in Ivano-Frankivsk sentenced him to 3.5 years in prison.

The Court of appeal acquitted him shortly afterwards. However, the public prosecutor's office requested that the trial be reopened, which the Supreme Court followed in June 2017.

In the last two years, a total of 14 Courts have referred the case to each other. Starting from November 2020, the last trial has been holding at the Court in Kolomyja.<sup>427</sup>

On 22<sup>nd</sup> January 2021, before a hearing, Ruslan Kotsaba has been subjected to a physical aggression by far-right militants that sprayed with a fire extinguisher chanting "Death to the enemies! Ukraine above all!".

On June 25<sup>th</sup> he was victim of an attack with the green chemical "Seljonka" by a neo-Nazi group at the Ivano-Frankivsk railway station and received ophthalmological treatment at the hospital.<sup>428</sup>

The following in person hearings have been postponed and he will be on trial again on 20<sup>th</sup> September 2021.

During the years, many NGOs repeatedly called for the acquittal from 2016 to be confirmed and for the criminal proceedings to be stopped.<sup>429</sup>

## **2. Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and liberty and security of person**

### ***Arbitrary detention for the purposed of military recruitment***

In September 2019 military commissariats of Kyiv sent to the police 34,930 cases of evaders from the conscription.<sup>430</sup>

Military commissariat of Lviv Oblast reported that two-thirds of summoned conscripts did not appear at draft stations, so the police was asked to search for them.<sup>431</sup>

Hunting for conscripts in the streets, but also inside dorms and hostels for students, to deliver them to the military assembly point against their will is the usual activity of police during the draft period.<sup>432</sup>

United Nations Human Rights Monitoring Mission in Ukraine documented 11 cases of arbitrary detention of conscripts by the representatives of the military commissariat who do not have the right to apprehend individuals only from May to August 2019.<sup>433</sup>

<sup>425</sup> [https://static1.squarespace.com/static/54c00acde4b022a64cd0266b/t/60105c995e88385525d2fb1c/1611685017801/2020-12-07\\_The+Ruslan+Kotsaba+Story.pdf](https://static1.squarespace.com/static/54c00acde4b022a64cd0266b/t/60105c995e88385525d2fb1c/1611685017801/2020-12-07_The+Ruslan+Kotsaba+Story.pdf).

<sup>426</sup> He was arrested on 7 February 2015 in Ivano-Frankivsk, 130 km south-east of Lviv.

He was then named as Amnesty International's first Ukrainian prisoner of conscience in five years. He spent 524 days under arrest and was duly acquitted in 2016.

<sup>427</sup> Connection e.V (German Ngo), "The Ruslan Kotsaba story, last updated: December 7, 2020", available here: [www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2020-12-07\\_The%20Ruslan%20Kotsaba%20Story.pdf](http://www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2020-12-07_The%20Ruslan%20Kotsaba%20Story.pdf).

<sup>428</sup> [https://www.coe.int/en/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesoportlet&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-4&p\\_p\\_col\\_count=1&sojdashboard\\_WAR\\_coesoportlet\\_alertId=102265091](https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_count=1&sojdashboard_WAR_coesoportlet_alertId=102265091)

<sup>429</sup> More details about international solidarity with Ruslan Kotsaba on the European Bureau for conscientious objection's web site ([www.ebco-beoc.org](http://www.ebco-beoc.org)).

<sup>430</sup> "35K young people in Kyiv dodge army," Ukrinform news agency, in Ukrainian, URL: <https://www.ukrinform.ua/rubric-kyiv/2787291-u-kievi-vid-armii-kosat-majze-35-tisac-osib.html>.

<sup>431</sup> "At Lviv Oblast only one third of summoned conscripts came to military commissariat voluntarily," in Ukrainian, URL: <https://zaxid.net/na-lvivshhini-lishe-tretina-prizovnikov-dobrovilno-priyshla-v-komisariati-pislya-otrimannya-povistok-n1494606>.

<sup>432</sup> "Military commissariats are hunting for conscripts again," <https://tsn.ua/ukrayina/viyskkomati-znovu-viyshli-na-polyuvannya-na-prizovnikov-chomu-tak-vidbuvayetsya-i-scho-z-cim-roboti-1452870.html>; "Military commissariat searched student dormitory for conscripts," <https://delo.ua/economyandpoliticsinukraine/v-kieve-voenkomy-ustroili-v-5-utra-rejd-v-obsche-360396/>; "Draft in Rivne oblast: 8 boys are detained against their will,"

<https://radiotrek.rv.ua/news/osinniy-pryzov-na-rivnenshchyni-hloptsiv-trymayut-8-dniv-proty-ih-voli-advokat-fotovi-deo-241741.html>.

<sup>433</sup> 26 Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine 16 May to 15 August 2019, [https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16May-15Aug2019\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16May-15Aug2019_EN.pdf).

For example, Yehor Potamanov was abducted by police and military commissariat during the raid after young conscripts in the streets of the city and he was taking his sick father to the hospital with his brother. Protesting against the abduction, Yehor Potamanov resorted to a week-long hunger strike and refused to take a military oath.<sup>434</sup>

According to Dmytro Tyshchenko, brother of Yehor Potamanov, hundreds of conscripts were abducted the same way in the streets of Kharkiv during the summer. Three of them cut their veins and one hanged himself in desperate attempts to get an exemption from draft on the ground of mental disorder.<sup>435</sup> Abducted conscripts' requests to meet with their relatives were refused since authorities tried to conceal bruises and injuries caused by violent transportation to the military commissariat. Police failed to conduct an effective criminal investigation of abduction, inhuman treatment, and abuses of power during the so-called hunting for draftees<sup>436</sup>

In May 2020, the draft law no. 3553 has been presented to the Parliament by President Zelensky; it seems that the draft law includes, inter alia, the legalization of police hunting for draftees in the streets with forcible transfer to army recruitment centres.<sup>437</sup>

### 3. The rights of the child

#### *The "Defense of the Fatherland" course: Armed forces involved in education*

The course "Zakhyst Vitchyzny" ("Defense of the Fatherland") is a mandatory part of the curriculum of basic schools in Ukraine aimed at national patriotic education, i.e., to inform students about the Armed Forces of Ukraine and prepare them to military service.

For the course, from 1.5 to 2 hours weekly must be scheduled for studies in 10 and 11 classes of basic school and 18 hours for military field training at military units or military commissariats, including rifle shooting.<sup>438</sup> Ministry of Defense of Ukraine regularly reports about cooperation between schools and armed forces in different forms, such as master classes in weaponry<sup>439</sup> and production of camouflage costumes for soldiers at the schools.<sup>440</sup>

#### *Military schools and age for enrolling*

The UN Committee on the Right of the Child noted in its Concluding Observations that according to the Military (General Conscription and Service) Act (art. 20) the minimum age for enrolling in higher military academies or higher education institutes with military studies departments is 17 years of age.<sup>441</sup>

This legal provision has not changed since then, and Ukrainian underage can enrol in higher military academies or higher education institutes with military studies departments.

It is necessary to specify that, according to the law, higher military academies or higher education institutes with military studies departments are part of the Armed forces.

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<sup>434</sup> President Zelensky Must Stop Military Sadism, <https://truth.in.ua/en/public/729/>.

<sup>435</sup> Even military commissariats admit self-harm among conscripts, see <https://armyinform.com.ua/2019/09/vijskovyj-komisar-deyaki-pryzovnyky-vdayutsya-navit-do-chlenoushkodzhennya/>.

<sup>436</sup> Ukrainian Pacifist Movement in Kyiv protested against cruelties of conscription, URL: <https://truth.in.ua/en/public/758/>.

<sup>437</sup> Information from the Ukrainian Pacifist Movement.

<sup>438</sup> Syllabus of the course "Defense of the Fatherland" for primary schools, adopted by the Order of the Ministry of Education and Science of Ukraine No 826 of 30.07.2015, <https://ips.ligazakon.net/document/view/MUS25406>.

<sup>439</sup> "Rivne's military unit organized master class for school students, teaching them to disassemble and assemble weapons," Ministry of Defense of Ukraine (2018), (in Ukrainian): <http://www.mil.gov.ua/news/2018/02/04/rivnenski-vijskovi-proveli-majster-klas-dlya-shkoly-ariv-z-rozbirannya-zbirannya-zbroi/>.

<sup>440</sup> "Lviv school students produce camouflage for defenders of the Fatherland," Ministry of Defense of Ukraine (2014), (in Ukrainian) <http://www.mil.gov.ua/news/2014/11/25/lvivski-shkolyari-vigotovlyayut-maskuvalni-zasobi-dlya-zahisnikiv-vitchizni/>.

<sup>441</sup> Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict Concluding observations: Ukraine, CRC/C/OPAC/UKR/CO/1, 11 April 2011, para. 15.

### ***Registration of pre-conscripts ("prypyska") at age of 17***

All male citizens 17 years old (so-called pre-conscripts, "dopryzovnyky") are subjects to registering at the draft stations by the military commissariats at the place of their residence.

Procedure of military registration of pre-conscripts ("prypyska") includes their call to military commissariat for medical examination and their listing in the register of persons liable for compulsory military service. Then, registered conscripts of the age defined by the law are summoned for the procedure of conscription that includes passing a conscription commission and being sent to military units<sup>442</sup>

Usually, conscripts wait several days or weeks for transportation to the military units in detention, at extremely uncomfortable assembly points and family members have difficulties trying to see them.

### **Uzbekistan<sup>443</sup>**

#### ***Shortcomings of the alternative service provisions***

The right of conscientious objection to military service is not explicitly recognised.

Individual conscientious objection is not recognised at all; conscientious objectors may benefit only from group rights as members of religious denominations. Alternative service is described as “available to citizens [who] belong to registered religious organizations whose members are not allowed to bear arms or serve in the armed forces.” Although it may be felt that a conscientious objection is implicit in such a definition, it should be noted that this is a group right rather than an individual right, and that indeed the reference to a prohibition handed down by the religious denomination is in direct contradiction to the concept of individual conscience. Even the Jehovah's Witnesses, whose record of conscientious objection to military service worldwide is not in doubt, initially had difficulty in reconciling themselves to a formulation which implied an authoritarian edict rather than an individual decision of conscience.

The law discriminates against the majority of potential conscientious objectors, who are not granted access to alternative service. This includes those who do not belong to a registered religious organisation, whose religious communities are not prepared to require such a stance, and of course any whose conscientious objection is based on non-religious (ethical, humanist or pacifist) grounds.

In practice, access to alternative service is restricted even for adherents of qualifying denominations. An ongoing issue in Uzbekistan is the difficulty for religious communities of registering under the Freedom of Conscience and Religion Organizations Act.

The decision on whether to assign an applicant to alternative service is not taken by an independent body. Under article 37(2) of the Law of 12<sup>th</sup> December 2002, this decision is made by the draft commission of the military commissariat.

The application cannot be made at any time. The application and evidence must be presented before military service is due to begin. After that point there is no provision for transfer to alternative service.

Alternative Service is not performed completely outside the military: it would appear that under the 1992 Law those who performed Alternative Service were required to follow two months' basic military - including weapons - training before they could commence their non-military service. The reforms of 2002/2003, while still inadequate, have brought some rationalisation: those performing Alternative Service will, according to the statement quoted above, henceforth be required to be trained in “a military

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<sup>442</sup> Instruction of the Cabinet of Ministers of Ukraine on organization of conscription of citizens of Ukraine and recruiting for contracted service (in Ukrainian) <https://zakon.rada.gov.ua/laws/show/352-2002-%D0%BF>.

<sup>443</sup> Based on the report submitted to the 128<sup>th</sup> Human Rights Committee.

skill that does not involve the bearing of arms”.

Applications are not accepted without investigation. Those claiming to be conscientious objectors must not only provide a certificate to prove that they belong to a religion accepted for this purpose; they must also provide convincing written and oral explanations of their objection.

The conditions of alternative service are not equivalent to those of military service. Whereas the length of military service was set in 1992 as 18 months (12 months for graduates of higher education) and reduced in the December 2002 amendments to 12 and 9 months respectively, the lengths of alternative service were set at 24 months and 18 months and have not been shortened. The discrepancy has thus increased, and the duration of alternative service is now exactly double the length of the equivalent military service. It is believed that in the past some of those admitted to alternative service were permitted to remain in their usual job, but a quarter of their pay was deducted by the state. The pay for those performing alternative service, according to the previously quoted statement by the Chairman of the State Religious Affairs Committee, is 80% of that for those performing military service (who also receive free food and clothing). There is also some doubt as to whether all alternative service assignments are truly to “work in the public interest”, in accordance with the wording of Human Rights Council resolutions on the subject.

### ***Military Recruitment in Practice***

The lack of individual cases can perhaps be explained by the relatively low incidence of military recruitment in practice. From the figures given under “basic information” it is clear that if the twelve months’ military service requirement were to be applied anything like universally Uzbekistan would have well over 200,000 conscripts per year. But the entire strength of the armed forces, conscript and professional together, is a mere 48,000.

A “Law on Service in the Armed Forces Reserve” of April 2003, attempted to tackle this discrepancy by instituting a self-funding “mobilisation /conscription reserve” in which, for a payment of 25 times the minimum wage (approximately \$140), conscripts would be certified as having duly performed their military service after a period of training, possibly one month.<sup>444</sup> It has also been reported that, while in the cities the payment of bribes to avoid military service is common, in rural areas with high unemployment, by contrast, the financial, social security and future employment benefits of military service are much coveted and bribes are paid *in order to* be conscripted.

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<sup>444</sup> “Fee instituted for military reserve in Uzbekistan” Radio Free Europe - Radio Liberty Newswire, 18<sup>th</sup> June 2003 ([www.rferl.org/newswire/2003/06/2-TCA/tca-180603.asp](http://www.rferl.org/newswire/2003/06/2-TCA/tca-180603.asp)).