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REPORT TO THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS OF THE EUROPEAN PARLIAMENT

**Conscientious objection to military service
in Europe 2011/12**

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FOREWORD by Friedhelm Schneider, EBCO President

When EBCO submitted its last annual report to the European Parliament, in May 2011, we were still hampered by the jurisprudence of the European Court of Human Rights, which had not explicitly recognised the right of conscientious objection to military service.

7th July 2011 is a date which will forever be remembered by conscientious objectors. For that was when, in the case of *Bayatyan v Armenia*, the Grand Chamber of the European Court of Human Rights decided, with only the Armenian judge dissenting, that conscientious objection to military service, as a manifestation of deeply held religious or other beliefs, is protected under the European Convention on Human Rights, whether or not there are appropriate provisions in national law.

As the present report shows, the European Court of Human Rights has not been slow to follow the *Bayatyan* precedent in a number of further cases from Turkey and Armenia itself. In the process, it has also underlined that the repeated prosecution of, and systematic deprivation of civil rights from, those who have not performed military service constitutes inhuman and degrading treatment, and that persons who do not agree to be recruited should continue to be treated as civilians and should not be put before military courts on military disciplinary charges. Nevertheless, conscientious objectors in Greece continue to appear before military courts. Meanwhile, in the UK, the case of former Leading Medical Assistant Michael Lyons displays the limitations of procedures to consider applications for release by serving members of the military who have developed conscientious objections if these procedures are not sufficiently independent of the military chain of command.

In most of the European Union and candidate and potential candidate countries the problematic and anachronistic practice of conscription into obligatory military service is no longer taking place. In most cases, however, it has formally been suspended rather than abolished. In some Member States registration for military service continues. And there has been no progress on related issues of grave concern to EBCO. Several Member States have not yet raised their minimum recruitment age to 18, and continue to give the military privileged access to schools for recruitment purposes; the end of conscription in Germany has seen an increased level of military presence in schools. The situation of serving members of the armed forces has already been mentioned. And military expenditure continues to be largely shielded from the effects of the economic crisis, which consequently fall even more heavily on social welfare programmes.

The right of conscientious objection to military service is explicitly mentioned in Article 10.2 of the Fundamental Rights Charter of the EU (which came into force with the adoption of the Lisbon treaty). It however receives surprisingly little attention from the European Parliament. The issue is no longer mentioned neither in the Parliament's annual report on human rights in the world. Nor does it feature in the annual reports of the European Agency for Fundamental Rights. It is high time that violations of the human right of conscientious objection to military service were highlighted in the human rights framework of the European Union.



In July this year, the Human Rights Council of the United Nations adopted the first resolution on conscientious objection to military service since it replaced the Commission on Human Rights in 2006. The resolution mandated a report on recent developments, which should lead to a substantive resolution in 2013. The new jurisprudence from the European Court of Human Rights, and other normative developments at the international level covered in this report make it more urgent than ever that the European Parliament too should turn its attention to a new resolution embodying the advances in thinking since the Bandres Molet and Bindi Resolution of 1994. In the coming months EBCO will be engaging with members of your Committee in an attempt to find sponsors for a new resolution.

Finally, I cannot end this introduction without paying tribute to my predecessor as President of EBCO, Gerd Greune, whose sudden death on 24^h August at the age of 63 shocked us all. Gerd was one of the founders of EBCO, and also a former Secretary-General of the International Peace Bureau. Up to his death he was actively involved in many countries in his roles as President and Secretary-General of the Institute For International Assistance and Solidarity, and Development Director of the Arab Media Internet Network. His loss is a great blow to the entire European peace movement.



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1. INTRODUCTION

In furtherance of Paragraph 16 of the Resolution on conscientious objection in the member states of the Community of 19 January 1994 (the Bandrés Molet and Bindi Resolution), under which the Committee on Civil Liberties of the European Parliament was instructed "*to draw up an annual report on the application by the Member States of its resolutions on conscientious objection and civilian service, and to involve the European Bureau for Conscientious Objection,*" the European Bureau for Conscientious Objection has the pleasure to submit the following evidence on the application by the Member States of the European Parliament's resolutions on conscientious objection to military service and civilian service since its last report of May 2011.



2. DEVELOPMENTS SINCE MAY 2011

2.1 INTERNATIONAL STANDARDS AND JURISPRUDENCE

2.1.1 European Court of Human Rights

2.1.1.1 Bayatyan v Armenia

In this judgment¹ delivered on Thursday 7th July 2011, the Grand Chamber of the Court declared unequivocally – only the “national judge”, Judge Gyulumyan, on the seventeen-person panel dissenting – that conscientious objection to military service is protected under Article 9 of the European Convention on Human Rights and Fundamental Freedoms – the right to freedom of thought, conscience and religion. In so doing, it ended decades of prevarication on the issue and explicitly overturned the majority judgment initially delivered in this case by a seven-person Chamber of the Court on 27th October 2009.

Vahan Bayatyan, a Jehovah's Witness, had been convicted and imprisoned in 2003 for his refusal, on grounds of conscientious objection, to perform military service. Armenia at that time had no provisions for conscientious objectors to military service. He had lodged a complaint under several Articles of the European Convention, but only part of the complaint under Article 9 had been found admissible, the effect being that the Court was at last obliged to rule “on the applicability of Article 9 to conscientious objectors” (para 99 of the judgment), which as it noted it had not previously done. The previous negative case law on this issue had come from preliminary hearings before the former Commission between 1964 and 1983 (paras 93, 94 and 95). In two cases (*Thlimenos v Greece*, decided in 2000, and *Ülke v Turkey*, decided in 2006), “the issue of conviction for conscientious objection was brought before the Court,” (para 97) which had however both times explicitly chosen not to consider the applicability of Article 9, having found violations under Article 14 (discrimination) and Article 3 (inhuman or degrading treatment), respectively.

In 2009 the Chamber judgment had followed the old Commission jurisprudence in ruling that when dealing with conscientious objection to military service, Article 9 must be read in conjunction with the reference to the subject in Article 4 § 3 (b), which states “For the purpose of this article the term 'forced or compulsory labour' shall not include... any service of a military character or, in case of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service”. The Court in *Bayatyan* decisively reversed this line of argument, stating that it “is not convinced that this interpretation of Article 4 § 3 (b) reflects the true purpose and meaning of this provision. In the Court’s opinion, the *Travaux préparatoires* confirm that the sole purpose of sub-paragraph (b) of Article 4 § 3 is to provide a further elucidation of the notion “forced or compulsory labour”. In itself it neither recognises nor excludes a right to conscientious objection and should therefore not have a delimiting effect on the rights guaranteed by Article 9.” (para 100). In this

1 Application No.23459/03, Grand Chamber Judgment of 7th July, 2011



finding, the Court agrees with the interpretation of the almost identical wording in Articles 18 and 8, respectively, of the International Covenant on Civil and Political Rights first expressed by the United Nations Human Rights Committee in *Yoon & Choi v Republic of Korea* in 2006.

The Court noted (para 103) that at the time in question, apart from Armenia only four member states of the CoE had not implemented legislation providing for conscientious objection to military service, and three even of them (the exception being Turkey) had incorporated the right in their Constitutions. Having noted also the developments in "various international fora", the Court concluded that "at the material time there was already a virtually general consensus on the question in Europe and beyond." (para 108).

On this basis, "and in line with the "living instrument" approach," the Court ruled unequivocally "that ... Article 9 should no longer be read in conjunction with Article 4 § 3 (b)." (para 109). The Court gives short shrift to Armenia's preposterous argument that "Given the established case-law on this matter, they could not have foreseen the possibility of a new interpretation of Article 9 by the Court and consequently could not have made their actions comply with that possible 'new approach'," (para 79), pointing out that "Armenia itself was a party to the ICCPR and had, moreover, pledged when joining the Council of Europe to introduce a law recognising the right to conscientious objection." (para 108).

As far as Vahan Bayatyan himself was concerned: the Court considered that his "failure to report for military service was a manifestation of his religious beliefs. His conviction for draft evasion therefore amounted to an interference with his freedom to manifest his religion as guaranteed by Article 9 § 1". (para 112).

Article 9 § 2 of the Convention does permit limitations of the freedom to manifest one's religion or beliefs. The Court was however dismissive of Armenia's arguments in this respect. "The Government referred to the need to protect public order (...) The Court, however, does not find [this] to be convincing in the circumstances of the case, especially taking into account that at the time of the applicant's conviction the Armenian authorities had already pledged to introduce alternative civilian service and, implicitly, to refrain from convicting new conscientious objectors." (para 117).

Moreover, given that "almost all the member States of the Council of Europe which ever had or still have compulsory military service have introduced alternatives to such service in order to reconcile the possible conflict between individual conscience and military obligations.", the Court was clear that "a State which has not done so enjoys only a limited margin of appreciation and must advance convincing and compelling reasons to justify any interference." (para 123).

In this instance, the Court found that "Since no alternative civilian service was available in Armenia at the material time, the applicant had no choice but to refuse to be drafted into the army if he was to stay faithful to his convictions and, by doing so, to risk criminal sanctions. Thus, the system existing at the material time imposed on citizens an obligation which had potentially serious implications for conscientious objectors while failing to allow any conscience-based exceptions and penalising those who, like the applicant, refused to



perform military service. In the Court's opinion, such a system failed to strike a fair balance between the interests of society as a whole and those of the applicant." (para 124). It reiterated "that pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position (...). Thus, respect on the part of the State towards the beliefs of a minority religious group like the applicant's by providing them with the opportunity to serve society as dictated by their conscience might, far from creating unjust inequalities or discrimination as claimed by the Government, rather ensure cohesive and stable pluralism and promote religious harmony and tolerance in society." (para 126).

The conclusion was that Bayatyan's conviction constituted an interference with his freedom of thought, conscience, and religion which was not necessary in a democratic society. The Court accordingly found a violation, and awarded €10,000 for non-pecuniary damage, and a further €10,000 in respect of costs and expenses.

Ironically, although in part the *Bayatyan* case hinged on the fact that he was not allowed to avail himself of the alternative service arrangements which were introduced in 2003, the majority of conscientious objectors to military service imprisoned in recent years in Council of Europe member states have been fellow Jehovah's Witnesses in Armenia itself who found that the alternative service was not clearly civilian in nature, that the arrangements were under the close supervision of the military authorities, and that requirements such as the swearing of a military oath and the wearing of military uniforms were unacceptable to them.

On 22 August 2011, the UN Working Group on Arbitrary Detention, together with the Special Rapporteurs on Freedom of Religion or Belief, and on Freedom of Peaceful Assembly and Association, and the Independent Expert on Minority Issues, sent a communication² to the government of Armenia regarding the continued imprisonment of 72 Jehovah's Witnesses for their conscientious objection to military service. Between the receipt of that communication and the examination of Armenia's State Report by the UN Human Rights Committee in July 2012 (see Section 1.1.4.3 below), no new imprisonments of conscientious objectors were reported, and many of those already imprisoned completed their sentences, so that the number in detention dropped to 30. But no conscientious objectors were released early, and pending prosecutions were deferred, not dropped. On 14th March 2012, the very day when Armenia's policy of imprisoning conscientious objectors was criticised by the Parliamentary Assembly of the Council of Europe (see Section 1.1.3 below), the first new sentence was handed down, but the young man concerned was released pending appeal. Over the next six months this happened in a further fifteen cases, none of the appeals having yet been heard, but in the month of August 2012 two objectors were imprisoned immediately following conviction. As of September 2012, a further 23 conscientious objectors were awaiting trial for their refusal of both military

2 Quoted in UN Document A/HRC/19/44, p.64, Case No ARM/1/2011.



service and the alternative service available.³ There is therefore every reason to suppose that the dip in the number of imprisonments was merely temporary.

Meanwhile Armenia claims to be drafting a Bill to meet the concerns of the Council of Europe. The text has however not yet been made public; at the end of 2011 a preliminary draft was found to be unsatisfactory by the Venice Commission of the Council of Europe and by the Organisation for Security and Co-operation in Europe.

2.1.1.2 Erçep v Turkey

This was the first case⁴ in which the Court cited the Grand Chamber judgment in *Bayatyan*. Like *Bayatyan*, it concerned a Jehovah's Witness, Yunus Erçep, (baptised at the age of 13), who refused on grounds of conscience to perform military service.

The facts were summarised as follows:

"The applicant was declared fit to perform military service on 6 January 1997 and was called up for the first time in March 1998. Under the relevant legislation people who failed to report for duty when called for military service were regarded as deserters.

"Each time a new call-up period began, criminal proceedings for failure to report for duty were brought against the applicant in the Trabzon Military Criminal Court. He was sentenced to several terms of imprisonment for failing to report for duty following approximately 15 call-ups.

"In a judgment of 7 May 2004 the military court decided to impose an aggregate sentence totalling seven months and 15 days' imprisonment. On 3 October 2005 Mr Erçep began serving his sentence. Five months later he was released on license.

"On 6 October 2006 Parliament passed a new law under which military courts no longer had jurisdiction to try civilians. The criminal proceedings still pending were transferred to the ordinary courts. Since then Mr Erçep has been tried before the criminal courts on the same charge. Since March 1998, more than 25 sets of proceedings have been brought against him. As a result of his persistent refusal to perform military service he faces further criminal proceedings with each new call-up."⁵

In its decision the Court observed that it "had recently reviewed its case-law concerning conscientious objectors, in its Grand Chamber judgment in *Bayatyan v Armenia*. In that judgment it had noted that Article 9 did not explicitly refer to a right to conscientious objection. However, it considered that opposition to military service, where it was motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience, constituted a conviction or belief of sufficient importance to attract the

3 Forum 18 News Service (www.forum18.org) "Armenia: Jailings of conscientious objectors resume", 20th September 2012.

4 Application No.43965/04, Chamber Judgment of 22nd November 2011.

5 Press Release No. ECHR 254 (2011) issued by the Registrar of the Court, 22nd November 2011.



guarantees of Article 9. In the today's [sic] case the Court observed that Mr Erçep was a member of the Jehovah's Witnesses, a religious group that had consistently opposed military service. There was no reason to doubt that his objection was motivated by anything other than genuinely-held religious beliefs.

"In Turkey, all citizens declared fit for national service were required to report for duty when called up and to perform military service. No alternative civilian service existed. Conscientious objectors had no option but to refuse to enrol in the army if they wished to remain true to their convictions. In so doing, they laid themselves open to a sort of "civil death" because of the numerous sets of criminal proceedings which the authorities invariably brought against them; they could face prosecution for the rest of their lives.

"The Court considered that that situation was not compatible with law enforcement in a democratic society. In virtually all the member States of the Council of Europe (47 European countries) which still had military service, some form of civilian service had been introduced in order to provide alternatives for people opposed to military service for reasons of conscience.

"The Court took the view that the numerous convictions imposed on Mr Erçep because of his beliefs, in a situation where no form of civilian service offering a fair alternative existed in Turkey, amounted to a violation of Article 9."⁶

Moreover, "Mr Erçep complained of the fact that, as a civilian, he had had to appear before a court made up exclusively of military officers. The Court observed that, despite being accused of an offence under the Military Criminal Code, the applicant was, for criminal-law purposes, not a member of the armed forces but a civilian. Furthermore, it was clear from a judgment of the Jurisdiction Disputes Court dated 13 October 2008 that, in Turkish criminal law, a person was considered to be a member of the armed forces only from the time he or she reported for duty with a regiment.

"The Court considered it understandable that the applicant, a civilian standing trial before a court composed exclusively of military officers, charged with offences relating to military service, should have been apprehensive about appearing before judges belonging to the army, which could be identified with a party to the proceedings. In such circumstances, a civilian could legitimately fear that the military court might allow itself to be unduly influenced by partial considerations.

"Acknowledging that the applicant's doubts about the independence and impartiality of that court could be regarded as objectively justified, the Court held that there had been a violation of Article 6 § 1 [the right to a fair trial] in that regard."⁷

Notably, this decision of the Second Chamber was unanimous, including Judge Işıl Karakaş, sitting as the national judge.

2.1.1.3 Bukhataryan v Armenia and Tsaturyan v Armenia

These two cases (*Bukharatyan v Armenia*⁸ and *Tsaturyan v Armenia*⁹), decided

6 Ibid

7 Ibid

8 Application No. 37819/03, Chamber Judgment of 10th January 2012

9 Application No. 37821/03, Chamber Judgment of 10th January 2012



separately by the Third Section on 10th January 2012, concerned facts almost identical to those in *Bayatyan*, as the Court itself observed (paragraph 36 of the *Bukharatyan* judgment). Both Hayk Bukharatyan and Ashot Tsaturyan had, after exchanges with the recruitment authorities and the courts in which they explained their conscientious objection to military service and their willingness to perform an alternative civilian service eventually in 2003 been sentenced to two years' imprisonment, but had been released on parole after six months. The Court had no hesitation in applying the reasoning it had followed in *Bayatyan* in order to find a breach of Article 9; the Armenian judge continued to dissent, repeating the arguments that she had used in the Grand Chamber case.

2.1.1.4 Femi Demirtaş v Turkey

This judgment¹⁰ appeared on 17th January 2012. Feti Demirtaş, the complainant, is a Jehovah's Witness who had been forcibly recruited in 2005 despite having indicated his conscientious objection in letters addressed to the Minister of Defence. He subsequently faced before military tribunals no fewer than nine charges of "persistent disobedience" relating to successive incidents between June 2005 and December 2006 when he had refused to put on military uniform. On several occasions he suffered beatings while under arrest, and at least once was been forcibly undressed and put into uniform. When he had lodged complaints regarding his treatment in detention he had been threatened with disciplinary proceedings for doing so. In total he spent 554 days in detention before his release at the end of June 2007,¹¹ having been found unfit on psychiatric grounds for military service with effect from December 2006 and having been accordingly acquitted of the final charge. In November 2008 he was formally sentenced to a total of "six months and 45 days" imprisonment on three of the earlier charges, but as this did not exceed the time he had previously spent in provisional detention it did not lead to a fresh imprisonment.

The Court had no hesitation in deciding that, following *Bayatan v Armenia*, there had been a breach of Article 9 of the Convention (freedom of thought, conscience, and religion), and, following *Ülke v Turkey*, a breach of Article 3 (cruel, inhuman and degrading treatment). It also followed the precedent set in *Erçep v Turkey* in November 2011 in finding a breach of Article 6 (right to a fair trial) in that a conscientious objector had been tried and convicted before a military tribunal, this notwithstanding the fact that, unlike Erçep, Demirtaş had been, although against his will actually incorporated into the army. It is encouraging that, as in *Erçep*, Turkey did not contest this point. It is also encouraging that, like *Erçep*, this judgment was unanimous.

2.1.1.5 Savda v Turkey

The case of Halil Savda¹² was the first concerning a conscientious objector who was not a Jehovah's Witness to come before the Court after the *Bayatyan*

10 Application No. 5260/07, Chamber Judgment of 17th January 2012

11 "European Court again obligates Turkey to protect rights of conscientious objectors"

<http://www.jw-media.org/tur/20120123.htm> 23rd January 2012

12 Application No. 42730/05, Chamber Judgment of 12th June 2012



judgement.

The earlier facts of Savda's repeated call-ups, prosecutions and imprisonments have been widely reported, having in May 2008 been the subject of a groundbreaking "Opinion" by the United Nations Working Group on Arbitrary Detention. (See the reports submitted by EBCO to the European Parliament in 2009 and 2010).

On 21st April 2008, shortly before the Working Group on Arbitrary Detention considered the case, Savda "was transferred to a military hospital, where psychological tests were conducted. A panel of military doctors diagnosed an "anti-social personality" disorder and concluded that he was unfit for military service. On 25th April 2008, having been exempted from military service, he was discharged from his regiment."¹³ But despite the Working Group's "Opinion" he was required to serve out the remainder of the sentences, being finally released on 25th November 2008. Even so, Turkey tried to argue to the European Court of Human Rights that the case was inadmissible because of the previous referral to the Working Group on Arbitrary Detention, an argument over which the Court wasted little time as the complaints before it were of degrading treatment, lack of fair trial, and denial of the freedom of thought, conscience and religion - with no reference to arbitrary detention.

Following the previous jurisprudence, it was unsurprising that the Court found a violation of Article 3 (inhuman or degrading treatment), and that the lack of independence of the military tribunal constituted a violation of Article 6.1. What was most encouraging about this case was that they were not distracted by the complicated background from finding a breach of Article 9 (freedom of thought, conscience, and religion). Savda is a Kurd, and in the 1990's had twice been convicted on charges alleging support of the banned militant Kurdish separatist organisation the PKK, and involving also the possession of an illegal firearm – his subsequent declaration of conscientious objection had however denounced violence on both sides of the Kurdish conflict and he had become "a leading member of the anti-militarist movement in Turkey, running a website set up by "War Resisters International" (an association founded in 1921 to promote non-violent action against the causes of war)."¹⁴

In finding a breach of Article 9, the Court recalled that in *Bayatyan* the Grand Chamber had "held that opposition to military service, where it was motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constituted a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.

"In the present case, the Court noted that Mr Savda complained not only about specific actions on the part of the State, but also about the latter's failure to have enacted a law implementing the right to conscientious objection. It noted that the Government had put forward no convincing or compelling reason that would justify this failure. The Government was unable to explain in what way

13 Press Release No. ECHR 250 (2012) issued by the Registrar of the Court, 12th June 2012.

14 Ibid.



recognition of the right to conscientious objection was incompatible, in the contemporary world, with the State's duties in relation to territorial integrity, public safety, the prevention of disorder and protection of the rights of others.

"The Court noted that Mr Savda's case was characterised by the absence of a procedure to examine his request for recognition of conscientious objector status. His request was never examined by the authorities, who merely made use of criminal-law provisions penalising the refusal to carry out military service. The Court emphasised the State's obligation to provide a regulatory framework introducing a mechanism to protect the rights of individuals. In the absence of a procedure to examine requests for the purpose of establishing conscientious objector status, the obligation to carry out military service was such as to entail a serious and insurmountable conflict with an individual's conscience. There was therefore an obligation on the authorities to provide Mr Savda with an effective and accessible procedure that would have enabled him to have established whether he was entitled to conscientious objector status, as he requested. A system which provided for no alternative service or any effective and accessible procedure by which the person concerned was able to have examined the question of whether he could benefit from the right to conscientious objection failed to strike the proper balance between the general interest of society and that of conscientious objectors. It followed that the relevant authorities had failed to comply with their obligation under Article 9 of the Convention."¹⁵

Yet again, it is encouraging to note that the verdict was unanimous.

2.1.1.6 Tarhan v Turkey

Mehmet Tarhan¹⁶, like Savda a Kurd, declared his conscientious objection in October 2001. On 8th April 2005, he was arrested for his refusal of military service, and was eventually sentenced to 25 months' imprisonment on 10th October 2006. Meanwhile, however, in March 2006 he had been released with orders to present himself to "his" military unit, which he did not do. He is therefore considered a deserter and, although he is not in hiding, is at risk of arrest at any time. In finding a violation of Article 3 of the Convention, the court cited its 2006 judgment in the case of Osman Murat Ülke especially its reference to the "civil death", suffered by those who have not discharged the military service obligation. The court also makes particular reference to the treatment of Tarhan while in detention, especially the forcible cutting of his hair and beard against his will.

The Court, which was once again unanimous, also found a breach of Article 9, following argumentation similar to that used in *Savda*, which it does not however cite.

2.1.2 Council of Europe Commissioner for Human Rights

On 2nd February 2012, the Council of Europe's Commissioner for Human Rights,

¹⁵ Ibid

¹⁶ Application No. 9078/06. Chamber judgment of 17th July 2012



Thomas Hammarberg, demanded that the right to conscientious objection to military service should be guaranteed in all parts of Europe.

In his blog post, he stated: *"People should not be imprisoned when their religious or other convictions prevent them from doing military service. Instead they should be offered a genuinely civilian alternative. This is now the established European standard, respected in most countries – but there are some unfortunate exceptions."*

Hammarberg referred to the Bayatyan v Armenia judgment of the European Court, and observed that *"no less than seven Council of Europe members have put objectors in prison in recent years"*. He then singled out Armenia, Azerbaijan, and Turkey for imprisoning conscientious objectors.

He also highlighted the issue of Article 318 of the Turkish Criminal Code: *"The problem in Turkey is compounded by restrictions to freedom of expression. The Turkish Criminal Code (Article 318, formerly Article 155) has been used to prosecute non-violent expressions of support for conscientious objection. This has given rise to several judgments of the Strasbourg Court finding violations of Article 10 of the European Convention on free speech. The Court has held that a newspaper article with such a message cannot be considered as incitement to immediate desertion. However, the Turkish Criminal Code treats dissemination through the press as an aggravating circumstance. Among many others, Halil Savda, himself a conscientious objector, has been condemned several times under Article 318 for speaking in public in favour of the right to conscientious objection."*

The blog post closes: *"Conscientious objection is a human right. It is thus high time that all member states complied with their commitments and recognised this right effectively."*

2.1.3 Parliamentary Assembly of the Council of Europe (PACE)

On 14th March 2012, the PACE issued its annual report on Armenia's progress in honouring its accession commitments to the Council of Europe.

It observed that bringing Armenia's Alternative Service Law in line with European and international standards "has taken an excessively long time, especially given that persons that refuse both military and alternative service are being arrested and sentenced to prison, in contradiction with Armenia's commitments to the Council of Europe," and called on Armenia to "adopt without delay the necessary amendments to the Law on Alternative Service, taking into account the Venice Commission's comments on them; freeze the prosecution of conscientious objectors pending the adoption of the new law and refrain from requesting pre-trial detention for the persons concerned; use all legal means available to the authorities to release those convicted – or in pre-trial detention -for refusing to serve in the absence of a proper civilian alternative service on conscientious grounds."¹⁷

¹⁷Forum 18 News Service (www.forum18.org) "Armenia: Jailings of conscientious objectors resume", 20th September 2012.



2.1.4 UN Human Rights Committee

The Human Rights Committee is a “Treaty Body” set up under the International Covenant on Civil and Political Rights, and consisting of eighteen independent experts elected by the States Parties to the Covenant (of which there were 167 as of September 2012).

It has three principal functions. It agrees “General Comments”, which are authoritative interpretations of articles of the Covenant. It examines “Periodic Reports” from States Parties on their implementation of the Covenant. And, with regard to those States Parties which have ratified the Optional Protocol giving a right of individual petition, it considers and publishes quasi-judicial “Views” on individual communications alleging violations of the Covenant.

2.1.4.1 General Comment No 34

At its 102nd Session, in July 2011, the Committee agreed the text of General Comment No. 34,¹⁸ on Article 19 of the International Covenant on Civil and Political Rights (Freedom of opinion and expression).

Two paragraphs of the General Comment are particularly relevant to restrictions on the ability to discuss or report on conscientious objection to military service. These are paragraphs 23 and 38, quoted below with the most significant wording highlighted (and without the many footnoted references in the original text):

“23. States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 [of Article 19 of the Covenant] **may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.** Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.

38. As noted earlier in paragraphs 13 and 20, concerning the content of political discourse, the Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all

18 UN Document No. CCPR/C/GC/34, published on 12th September 2011.



public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty, desecration, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. **States parties should not prohibit criticism of institutions, such as the army or the administration.**

2.1.4.2 Atasoy and Sarkut v Turkey

At its March 2012 meeting, the Human Rights Committee decided on the first case brought to it by conscientious objectors from Turkey, two Jehovah's Witnesses, Cenk Atasoy and Arda Sarkut¹⁹. During 2007 and 2008 both had communicated repeatedly with the recruitment authorities explaining their conscientious objection to military service. The response had been that they could not be exempted from National Service; meanwhile they had received repeated call-up notices. Both had indicated that they were perfectly prepared to perform an alternative civilian service; Atasoy "explains that the responses he has received from the Ministry of National Defence state that he cannot be exempted from national service. However, he argues that he has not asked to be so exempt; he has merely stated that he cannot perform such service in the way requested by the State."²⁰ Sarkut's employer, Mersin University, had dismissed him at the request of the military recruitment office and had upheld that decision on appeal. He has been unemployed since 2007 and claims that "the Ministry of National Defence has prevented him from being employed at a place that 'pays social security'."²¹ For his part, Atasoy expects "that he will continue to be invited to call-ups and eventually imprisoned"; he also fears that pressure will be put on his employer to dismiss him.

The Committee was unanimous in finding a violation of Article 18. The majority followed the precedent set the previous year in *Jeong et al v Republic of Korea*²² - and highlighted in EBCO's 2010/11 Report: "The Committee reiterates that the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if the latter cannot be reconciled with the individual's religion or beliefs. The right must not be impaired by coercion... The Committee recalls that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibits the use of arms, is incompatible with article 18, paragraph 1, of the Covenant."²³

¹⁹Views adopted on Communications 1853/2008 and 1853/2008, *Atasoy & Sarkut v Turkey*, 29th March, 2012 (CCPR/C/104/D/1853-1854/2008, issued 19th June 2012).

²⁰Ibid, para 2.3.

²¹Ibid, para 2.7.

²²Views adopted on Communications 1642/2007 to 1741/2007, *Min-Kyu Jeong et al v Republic of Korea*, 24th March, 2011 (CCPR/C/101/D/1642-1741/2007, issued 5th April 2011).

²³*Atasoy & Sarkut v Turkey*, paras 10.4 and 10.5



The significance of this formulation is that if *inherent in* the freedom of thought, conscience, and religion the right of conscientious objection to military service may not be limited in any circumstances.

Four members of the Committee subscribed to the minority opinion authored by Mr. Numan which held that the finding of a violation should have been based on the reasoning in the earlier (2006) cases of *Yoon & Choi*, where the Committee had (like the European Court of Human Rights in *Bayatyan v Armenia*) treated conscientious objection to military service as a *manifestation* of religion or belief, which meant that it had to consider whether the State had “identified any empirical reasons why its refusal to accommodate conscientious objection to military service would be necessary for one of the legitimate purposes listed in [article 18, paragraph 3 of the Covenant]”²⁴, namely “to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”.

Three other members of the Committee subscribed to the individual opinion by Sir Nigel Rodley justifying the approach taken by the majority, in which he observed “The implication of relying on that provision is that circumstances could be envisaged in which the community interests contemplated by the provision could override the individual’s conscientious objection to military service. This goes against all our experience of the phenomenon of conscientious objection. It is precisely in time of armed conflict, when the community interests in question are most likely to be under greatest threat, that the right to conscientious objection is most in need of protection, most likely to be invoked and most likely to fail to be respected in practice. Indeed, I do not for a moment believe that the Committee would ever use an analysis of article 18, paragraph 3, to prevent a person from successfully invoking conscientious objection as a defence against legal liability. In my view the underlying issue concerns not article 18 alone, but article 18 in the penumbra of article 6, the right to life, the right that from its earliest days the Committee described as the ‘supreme right’... the value underlying that right – the sanctity of human life – puts it on another plane than that of other deep human goods protected by the Covenant. The right to refuse to kill must be accepted completely.”²⁵

This opinion was supported and expanded upon by Mr. Salvioli, who concluded: “It would be impossible to produce figures on how many people in the course of history have had their beliefs flouted by being forced to do military service against their will, or have been persecuted or imprisoned for refusing to take up arms; many others were made to kill or died in armed conflicts in which they did not choose to take part. The recent jurisprudence of the Human Rights Committee on the subject of conscientious objection to military service is not only based on solid legal grounds; it also pays a belated but well deserved homage to those victims.”²⁶

24 Ibid, Appendix I, at p.13.

25 Ibid, Appendix II, at pp 15, 16.

26 Ibid, Appendix III, para 19.



2.1.4.3 Examination of State Reports under the International Covenant on Civil and Political Rights

The issue of conscientious objection to military service was mentioned by the Committee in its “concluding observations” on the examination of the State Reports of Kazakhstan²⁷, Kuwait²⁸, Turkmenistan²⁹, and Armenia³⁰.

EU Member State Germany and Candidate Country are among the States to be examined at the Committee’s 106th Session, in October 2012. The “List of Issues” on Turkey's initial report under the Covenant includes the following paragraphs:

“Please provide information on the reasons for failure to recognize conscientious objection to military service. Please provide any information on steps being undertaken to bring legislation and practice relating to conscientious objection to military service in line with the Covenant. Please provide information on the reasons for failure to recognize conscientious objection to military service. Please provide any information on steps being undertaken to bring legislation and practice relating to conscientious objection to military service in line with the Covenant.

“Please provide information on the names and situation of individuals convicted for refusal to undertake military service. Indicate: (a) the charges against the individuals; (b) the courts in which the convictions were made; (c) the sentences handed down; (d) the names of individuals currently undergoing sentences; (e) whether an individual can be convicted more than once for refusal to perform military service; if so, (f) the names of any individuals convicted more than once for refusal to undertake military service; (g) treatment of individuals while serving their sentences; and, (h) recognition in law and practice of individuals’ civil rights once sentences have been served. Please respond to the allegation that Halil Savda faces ongoing risk of imprisonment under article 318 of the Turkish Penal Code for freely expressing his support for conscientious objectors to military service.”³¹

In its written replies, Turkey refuses to acknowledge the developments in recent years in the interpretation of the International Covenant and the European Convention (for which the Human Rights Committee and the European Court of Human Rights, respectively, are the definitive sources), stating in reply to Question 21:

“Turkey is not among the countries, referred to in article 8 paragraph 3 (a) (ii) of the Covenant, where conscientious objection to military service is recognized. Military service is compulsory in Turkey.”

and in reply to Question 22:

“Turkey respectfully reiterates its position that Article 18 of the Covenant is not applicable to the cases of individuals refusing to undertake military service.

“Furthermore, Turkey believes that providing the names of all concerned individuals without their consent, in a document which will be made public by the Committee would not be appropriate.”³²

27 UN Document CCPR/C/KAZ/CO/1, issued on 19th August, 2011, para 23.

28 UN Document CCPR/C/KUW/CO/2, issued on 18th November, 2011, para 22.

29 UN Document CCPR/C/TKM/CO/1, issued on 19th April, 2012, para 16.

30 Adopted 25th July 2012, to appear in UN Document CCPR/C/ARM/CO/2-3, para 25.

31 UN Document CCPR/C/TKY/Q/1, issued on 12th May, 2012., paras 21, 22.

32 UN Document CCPR/C/TKY/Q/1/Add 1, 11th August, 2012., pps 31, 32.



Slightly more promising in tone is the second paragraph of the answer to Question 21:

"There is an ongoing debate in a variety of circles with regard to the possibility of providing a compulsory civil service as an alternative to military service. The result of this vibrant debate will determine the Government's decision on this issue."³³

In the context of asylum policy, conscientious objection to military service also comes up in the "List of Issues" for the examination of the German report, one paragraph of which reads: "Please provide information on the application of Section 34a (2) of the Asylum Procedures Act prohibiting suspension orders in cases of transfers to another State participating in the Dublin-II system. Please explain the mechanisms that have been put in place to ensure that the "fast track" asylum determination procedure that is undertaken at the State party's airports, particularly at Frankfurt airport, complies with due process and does not breach the principle of non-refoulement. Please provide data on the number of cases that have been disposed of under this procedure during the reporting period. Please provide information on the State party's practice regarding asylum applications of conscientious objectors."³⁴

As this List of Issues was prepared much later than that on Turkey, no written replies had been received as of mid-September. (The provision of written replies, although increasingly common, is in fact optional.)

2.1.5 UN Human Rights Council

The Human Rights Council of the United Nations should be clearly distinguished from the Human Rights Committee. The Council is a subsidiary body of the General Assembly, and is composed of 47 UN Member States, elected by the General Assembly on a rotating basis for three year terms (after two terms on the Council a State may not be re-elected for the following year). All other UN Member States can participate in meetings of the Council, but do not have voting rights.

2.1.5.1 Resolution 20/2

On 5th July 2012, the Human Rights Council adopted without a vote a procedural resolution on Conscientious Objection to Military Service, proposed by Croatia, Costa Rica and Poland, and joined by 39 co-sponsors, including the following EU Member States: Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and UK; and Candidate or Potential Candidate Countries Albania, Bosnia-Herzegovina, Macedonia (FYR), Montenegro and Serbia.

The full text of the resolution reads:

"The Human Rights Council,

³³ Ibid, p. 31

³⁴ UN Document CCPR/C/GER/Q/6, issued on 21st August, 2012, para 11.



Bearing in mind that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Reaffirming that it is recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that everyone has the right to life, liberty and security of person, as well as the right to freedom of thought, conscience and religion and the right not to be discriminated against,

Recalling all previous relevant resolutions and decisions, including Human Rights Council decision 2/102 of 6 October 2006 and Commission on Human Rights resolutions 2004/35 of 19 April 2004 and 1998/77 of 22 April 1998, in which the Commission recognized the right of everyone to have conscientious objection 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 and general comment No. 22 (1993) of the Human Rights Committee,

1. *Requests* the Office of the United Nations High Commissioner for Human Rights to prepare, in consultation with all States, relevant United Nations agencies, programmes and funds, intergovernmental and non-governmental organizations and national human rights institutions, a quadrennial analytical report on conscientious objection to military service, in particular on new developments, best practices and remaining challenges, and to submit the first report to the Human Rights Council at its twenty-third session, under agenda item 3;

2. *Encourages* all States, relevant United Nations agencies, programmes and funds, intergovernmental and non-governmental organizations and national human rights institutions to cooperate fully with the Office of the High Commissioner by providing relevant information for the preparation of the report on conscientious objection to military service;

3. *Calls upon* all States to continue to review, as appropriate, their laws, policies and practices relating to conscientious objection to military service, including by considering, inter alia, introducing alternatives to military service, in the light of the present resolution.³⁵

Conscientious objection to military service had been a standing sub-item on the agenda of the former Commission on Human Rights, and in the last years of the Commission there had been a resolution on the subject in alternate years; the last comprehensive text appeared in 1998, subsequent resolutions starting by reaffirming Resolution 1998/77. When in 2006 the Commission was replaced by the Human Rights Council, the issue was not included in the simplified agenda, and although the report from the Office of the High Commissioner for Human Rights (OHCHR) which had been requested in Resolution 2004/35 was submitted to the Human Rights Council during its first year, it was not discussed, and there has not previously been a resolution on the subject at the Human Rights Council. This new resolution reinstates periodic reports from the OHCHR on developments relating to conscientious objection, and thus provides the background for substantive resolutions in future years.

³⁵Human Rights Council, Resolution 20/2, adopted without a vote on 5th July 2012, and included in the Report of the Twentieth Session, A/HRC/20/2, 2nd August 2012, pp.9-10.



2.1.5.2 Special procedures of the Human Rights Council

As noted above in connection with the case of *Bayatzan v Armenia*, on 22nd August 2011 the UN Working Group on Arbitrary Detention, together with the Special Rapporteurs on Freedom of Religion or Belief, and on Freedom of Peaceful Assembly and Association, and the Independent Expert on Minority Issues, sent a communication³⁶ to the government of Armenia regarding the continued imprisonment of 72 Jehovah's Witnesses for their conscientious objection to military service.

The new Special Rapporteur on Freedom of Religion or Belief, Professor Heiner Bielefeldt, mentioned the issue of conscientious objection to military service in his reports to the Human Rights Council on both of the country visits "missions" he had undertaken during his first year in office: to Paraguay from 23rd to 30th March 2011³⁷, and to the Republic of Moldova, from 1st to 8th September, 2011³⁸.

From 29th March to 5th April 2012, the Special Rapporteur visited Cyprus. The report on his visit will be presented to the Human Rights Council in March 2013, but in the press release at the conclusion of his visit he made the following comment: "Conscientious objection to military service is also part of freedom of thought, conscience, religion or belief. In the north, there seems to be no legal provision dealing with issue, which means that conscientious objectors face the risk of punitive actions. In the south, new legislation provides for the right to conscientious objection, even though the duration of alternative service by far exceeds the duration of military service."

2.2 DEVELOPMENTS WITHIN MEMBER STATES AND CANDIDATE COUNTRIES

2.2.1 Suspension of conscription

2.2.1.1 Germany

³⁹ As anticipated in our previous report the final cohort of conscripts in the German armed forces, who had started their obligatory military service on 3rd January, were demobilised on 1st July 2011. The medical examination of potential recruits was also suspended. Registration for military service was however maintained, and for the first time extended to women.

The suspension of conscription brought also the suspension of civilian service; the law effecting this also established a new federal voluntary service (*Bundesfreiwilligendienst*, or BFD), open to women and men of all ages, which

36 Quoted in UN Document A/HRC/19/44, p.64, Case No ARM/1/2011.

37 UN Document A/HRC/19/60/Add.1, 26th January 2012.

38 UN Document A/HRC/19/60/Add.2, 27th January 2012.

39 This section is based on War Resisters International: CO-Update, January 2011, No. 62, supplemented by later information provided by Friedhelm Schneider.



would be administered and co-financed by the former Federal Agency for Civilian Service (*Bundesamt für den Zivildienst*), now renamed the "Federal Agency for Family and Civil Society" (*Bundesamt für Familie und zivilgesellschaftliche Aufgaben*). The new voluntary service - which is an addition to the existing voluntary service schemes of the German states (*Länder*), and those under the Voluntary Social Year and the Voluntary Ecological Year programmes, has a standard duration of 12 months, but is flexible in this respect subject to a minimum of 6 and a maximum of 24 months. The 35,000 places offered in the first year were oversubscribed, some 20% being taken by persons aged over 50.

The amendments to the conscription law also include new regulations enabling both men and women to sign up for a Voluntary Military Service ("*freiwilliger Wehrdienst*") of between 12 and 23 months. The first six months are a probationary period during which the agreement can be terminated by either party. (By comparison, before the suspension of conscription, conscripts had been permitted on the conclusion of the compulsory six months to sign up if they chose for an extra 17 months' service.) Fifteen thousand places per year will be available.

Both the Federal Voluntary Service and the Voluntary Military Service are in fact paid, but whereas those performing Federal Voluntary Service receive an allowance of €330 per month, the remuneration for Voluntary Military Service is between €777 and €1146 per month.

Under a new article 58 of the conscription law, local authorities must at the beginning of each year provide to the local military authorities (*Kreiswehrersatzamt*) the names and addresses of all boys and girls who will turn 18 in the following year, for the purpose of "sending information about service in the Armed Forces". It is possible for individuals to opt out of this, but only in the year before the data will be passed on to the military authorities – in effect in the calendar year of the sixteenth birthday.

2.2.2 Legislative amendments and proposals

2.2.2.1 Finland

As already mentioned with regard to the Universal Periodic Review of the UN Human Rights Council Finland's second report under the procedure stated that "The Monitoring Sentences Act (330/2011), ... enables electronically supervised home arrest instead of a prison terms for total objectors declining both military and non-military service."⁴⁰

A report quoted by War Resisters' International⁴¹ gives more detail. The provisions, which were to come into effect in November 2011, applied to all persons sentenced to imprisonment of six months or less, and were expected to yield significant savings, the cost being approximately a third of that of incarceration. As the "tariff" for refusal of national service is 50% of the time not served, and the maximum duration of service is 12 months, this ought in

40 UN Document A/HRC/WG.6/13/FIN/1, 7th March 2012, Para 127

41 YLE.fi: [Conscientious objectors may soon avoid prison](#), 31 August 2011



principle to apply to all conscientious objectors.

Application of this provision should remove Finland from the list of states which imprison conscientious objectors, in breach of the internationally agreed standards.⁴²

2.2.2.2 Turkey

On 22nd November 2011, Prime Minister Recep Tayyip Erdoğan announced details of a proposed law to enable those over 30 to purchase exemption from military service on payment of TL30,000 (between €10,000 and €15,000), while stating firmly that the recognition of conscientious objection to military service was still not on the agenda.⁴³ The new proposal is an expansion of a longstanding scheme under which Turkish citizens returning from abroad might on payment of a fee discharge their military service obligation by undertaking just one month of training. This and other arrangements whereby military service may be commuted into a financial payment are wholly inappropriate as an alternative for conscientious objectors, and moreover unjust in that they provide an option only for those with the ability to pay, and institutionalises what has been dubbed a “poverty draft”.

An all-party “Constitutional Reconciliation Commission” was set up in 2011 with a view to drafting a replacement for the Constitution produced by the military government in 1980. Civil society input into the process was to be accepted until the end of April 2012, but organisations were encouraged to make their contributions before the end of 2011. It is believed that several proposals received have included the constitutional recognition of a right of conscientious objection to military service.

2.2.3 Prosecution and imprisonment of conscientious objectors

With the change in Finnish legislation reported in the previous paragraph, the practice of imprisoning conscientious objectors to military service has almost disappeared. This still remains possible in Greece, but in recent years the courts have invariably chosen in the first instance to impose suspended sentences.

Thus within the EU itself in the last year the only individual case of detention resulting from conscientious objection to military service which has come to the notice of EBCO is that of former Leading Medical Assistant Michael Lyons in the UK. As this concerned a serving member of the armed forces it will be discussed below in the relevant section of this report.

The situation in Candidate Country Turkey, where a number of conscientious objectors have been arrested and detained in recent months, remains far more disturbing, but in Turkey, as also in Greece and Cyprus, there have been positive developments in the domestic courts.

42 UN Commission on Human Rights, Resolution 1998/77, Operative Paragraph

43 “Some happy, some still disappointed / no right to conscientious objection” Today's Zaman, 22 November 2011



Cases known to EBCO which have come to court since May 2011 are detailed below, country by country.

2.2.3.1 Cyprus

On 8th December 2011, the military court in Lefkosa (northern Nicosia) decided to transfer the case of **Murat Kanatli** to the Constitutional Court on the basis of the freedom of thought and expression arguments which had been brought by his defence team, citing the European Court of Human Rights decision in the case of *Bayatyan v Armenia*. Kanatli, an EBCO Board member, declared his conscientious objection on ideological grounds in 2009 and has since refused each year to participate in the annual compulsory day of reserve service in the northern Cypriot armed forces, or to pay the fines which have now been levied with regard to 2009, 2010 and 2011. On 14th June 2011 he was summoned to appear in court on charges relating to his refusal in 2009. The case was successively postponed to July 5th, July 26th, September 29th, October 25th, November 24th and December 8th. Representatives of EBCO were in court to support Kanatli in September, October, November and December.

Haluk Selam Tufanli was one of five persons to declare themselves as conscientious objectors outside the military court on 8th December, the day the decision was made to transfer the Kanatli case to Constitutional Court. He had been called for reservist service in November 2011 but refused. At the beginning of March 2012 he was served with notice of a fine for his "no show". He has refused to pay; his court appearance is pending.

2.2.3.2 Greece

On 13th December 2011, **Gerasimos Koroneos** was sentenced by the Military Court of Ioannina to six months' imprisonment, suspended for three years on charges of insubordination. Koroneos, a conscientious objector on ideological grounds, is a total objector and refused to serve both the military and the civilian service in 2008. Despite the fact that he has always been a civilian, never having enlisted in the army, he was tried and sentenced on military disciplinary charges, before a military court. In the case of *Ercep v Turkey*, decided just weeks earlier, the European Court of Human Rights had found a similar situation to constitute a violation of Article 6 of the European Convention – right of fair trial. (see Section 2.1.1.2 above).

On 5th June 2012, **Nikolaos Xiarhos** was acquitted on a charge of desertion. In 1989, at the age of 22, Xiarhos, then a professional soldier in the Greek Navy, took leave and went to Sweden where he was baptized as a Jehovah's Witness. He came back to Greece in November 2006 and was sentenced to 6 years imprisonment for desertion. This was, in September 2008, reduced by the Appeal Military Court of Athens to 3 years imprisonment suspended for 5 years. On 8th August 2010 he was sent a bill of indictment by the Judicial Council of the Naval Court of Piraeus for a second charge of desertion, covering the period from the day of initial trial in the Military Court until June 2007 when his resignation was accepted. On 16th February 2011, the Judicial Council of the Appeal Military Court



of Athens heard his appeal against this indictment. In March 2011 his appeal was rejected and 3000 Euros bail was imposed, which he paid. The substantive trial on the second charge was originally set for 12th January 2012, but was postponed to 5th June because of a lawyers' strike. Had he been found guilty, the existing suspended sentence would have taken effect. In the hearing the prosecutor suggested that he should be declared innocent because there is no offence on the grounds that you can not force a person who wants to resign from the army to keep working until the army decides whether his resignation will be accepted. He even said that this law is against the constitution. EBCO testified that a conviction would effectively be a second conviction for the same "offence" of seeking to leave the navy on grounds of conscientious objection. In the event, the Court justified its decision on the grounds that there was no evidence of intention to commit a second offence.

The case of Jehovah's Witness **Dimitrios Pitsikalis** is still pending before the Greek courts. Pitsikalis had applied for civilian service on religious grounds on 17th May 2000. His application was rejected and the reason given was that he didn't turn out on time for the medical examinations. His case was to be judged for the third time in the State Council on 23rd January 2012 but it was postponed to 2nd April and then again to 1st October.

2.2.3.3 Turkey

The case of **Baris Görmaz**, a Jehovah's Witness who had undergone an uninterrupted sequence of imprisonments since 2007 for refusing successive call-ups, was reported at length in EBCO's 2011 Report. On 16th March 2012 Görmaz was finally and definitively acquitted by Isparta Military Court. In its decision the court found that under Article 90 of the Turkish Constitution, which makes international treaty obligations applicable in domestic courts, the European Court's rulings in *Bayatyan v Armenia* and *Ercep v Turkey* should be taken into account.

İnan Süver also featured in EBCO's 2011 Report. He was held in various prisons on three charges of desertion from 5th August 2010 until 9th December 2011. Meanwhile, on 26th November 2010 he was declared unfit for military service. Nevertheless, on 12th September 2012 he was arrested in Istanbul during a routine identity check, having been sentenced in absentia to a five-month prison sentence for "jailbreak", over the incident in April 2011 when, while serving one of his desertion sentences, he discharged himself from hospital and went home, where he was rearrested the following day. His lawyer states that his psychological health has deteriorated and that he is suffering from severe anxiety. In December 2011, Amnesty International, who considers İnan Süver a prisoner of conscience, issued an urgent action expressing concerns for his health following the Gülhane Military Medical Academy's conclusion that he had a 'psychological illness'. His re-imprisonment puts his health at further risk.⁴⁴

Muhammed Serdar Delice, who after five months of military service went

44 Amnesty International, "Document - Turkey: Further information: Conscientious objector is re-arrested: İnan Süver - Further information on UA: 175/10 Index: EUR 44/016/2012 Turkey, 14th September 2012



absent and on 2nd March 2010 declared his conscientious objection, on the basis of his Muslim religious beliefs, to serving in the army of a secular state, was arrested on 27th November 2011, on charges of desertion. On 24th February 2012 the Malatya Military Court sentenced Delice to 10 months imprisonment, but in view of the time already spent in detention ordered his release pending appeal against sentence. In its decision the court found that under Article 90 of the Turkish Constitution, which makes international treaty obligations applicable in domestic courts, the European Court's ruling in *Bayatyan v Armenia* should be taken into account, but did not accept the parallel with that case, as the basis of Bayatyan's conscientious objection in his Jehovah's Witness faith was clear, and as Delice had not declared himself a conscientious objector until after some months of military service.

The distinction made in the treatment of the cases of Delice and Jehovah's Witness Baris Görmaz (reported above) raises the question of whether the readiness of the Turkish courts (as opposed to the Government, see section 2.1.4.3 above) to take account of the jurisprudence of the European Court of Human Rights might be tempered by a narrow interpretation of conscientious objection to military service as a group right pertaining perhaps narrowly to Jehovah's Witnesses or more broadly to members of recognised pacifist organisations, while denying it by definition to, for example, individual practising Muslims. But Delice is not the first Turk to claim that service in the armed forces of an explicitly secular state is incompatible with his interpretation of Islam – a position which, although less familiar, is intrinsically parallel with that customarily espoused by Jehovah's Witnesses. On the other hand, the Delice verdict came before the European Court of Human Rights pronounced on the cases of non-religious objectors Halil Savda and Mehmet Tarhan (see sections 2.1.1.5 and 2.1.1.6 above).

While incarcerated, Delice was reportedly tortured, beaten by fellow inmates and subjected to what he claims were systematic demands for protection money. His lawyer has lodged a complaint with the Human Rights Commission of the National Assembly.⁴⁵

45 <http://www.bianet.org/english/freedom-of-expression/134877-conscientious-objector-delice-on-hunger-strike>, 20th December 2011



3. OVERVIEW

3.1 OBLIGATORY MILITARY SERVICE IN EU MEMBER STATES, CANDIDATE COUNTRIES AND POTENTIAL CANDIDATE COUNTRIES

In 1960, conscription applied on the territory of 32 of the 35 present-day EU Member States, Candidate Countries and Potential Candidate Countries (Ireland, Malta and candidate country Iceland were the exceptions). It has since been abolished or suspended in 25 of them.

| | |
|--------------------|--|
| UK | last conscript demobilised in 1963 |
| Luxembourg | last conscript demobilised in June 1969 |
| Belgium | February 1995 |
| Netherlands | 1996 |
| France | 2001 |
| Spain | December 2001 |
| Slovenia | September 2003 |
| Czech Rep | December 2004 |
| Italy | December 2004 |
| Portugal | December 2004 |
| Slovakia | 2004 |
| Hungary | July 2005 |
| Bosnia-Herzegovina | December 2005 |
| Montenegro | July 2006 |
| Romania | December 2006 |
| Bulgaria | 2007 |
| Latvia | 2007 |
| Macedonia | 2007 |
| Croatia | last conscript demobilised in January 2008 |
| Lithuania | 2009 |
| Poland | October 2009 |
| Albania | January 2010 |
| Sweden | July 2010 |
| Serbia | January 2011 |
| Germany | July 2011 |

This leaves only seven of the thirty-five which still impose conscription: Member States Austria, Cyprus, Denmark, Estonia, Finland and Greece, and Candidate Country Turkey.



In these seven, the (basic) duration (in months) of military service and of alternative civilian service is as follows:

| | Military service duration | Civilian service duration | Ratio to military service |
|---------|----------------------------------|----------------------------------|----------------------------------|
| Denmark | 4 | 4 | 1 |
| Austria | 6 | 9 | 1.5 |
| Finland | 6 | 12 | 2 |
| Estonia | 8 | 8 | 1 |
| Greece | 9 | 15 | 1.7 |
| Cyprus | 24 | 33 | 1.4 |
| Turkey | 24 | no alternative civilian service | |

In many cases, however, the legislation enabling conscription has merely been suspended and can be brought back into effect by an executive decision in the event of national emergency or general mobilisation. In some instances, for example the Netherlands, and now Germany, registration for military service has been retained without any formal means being made available to indicate that one is a conscientious objector. In France and in Denmark conscription has been replaced by obligatory attendance at a one-day course run by the armed forces; in Denmark the "Danish Defence Day" is obligatory for 18-year-old males and optional for females and it is possible to enrol in the armed forces there and then; in France, liability for the "call-up day for defence preparation" applies to both sexes from the age of 16; more details are given in Section 4.2 on juvenile recruitment.

3.2 CONCERNS IN CANDIDATE COUNTRY TURKEY

The several conscientious objection cases against Turkey which have been decided by the European Court of Human Rights are reported in Section 2.1. The other parts of Section 2 give an update on current conscientious objection cases within Turkey, and on the possibility of legislative amendments.

There are two other major causes for concern in Turkey. One is the continued failure to implement judgements of the European Court of Human Rights, most notoriously the judgement from as long ago as 2006 in the case of Osman Murat Ülke.

The Committee of Ministers of the Council of Europe has expressed its grave concern at Turkey's continued failure to implement the judgment of the ECtHR in this case, and indeed that eighteen months later, in July 2007, Ülke was once more forced to go into hiding, having been summonsed to present himself in order to serve the outstanding sentence. At its most recent human rights meeting, on 2nd December 2011, the Committee of Ministers "took note with satisfaction the political will and determination expressed at the highest political level to take the necessary measures" to execute the judgments in Ülke and certain other cases, and "strongly encouraged the Turkish authorities to transfer this political will and determination into concrete action, in particular with regard to the execution of the [...] cases." It "noted, however, with regret that no



concrete information has been provided by the Turkish authorities [...], in particular [...] as to whether there is still an arrest warrant against the applicant in the case of Ülke and, if so, whether the Turkish authorities intend to withdraw it." They "reiterated their call to the Turkish authorities to take concrete action and provide tangible information" in time for the March 2012 meeting, "with a clear timetable for the necessary measures to be taken in the form of an action plan."⁴⁶

In response to representations from the European Union, Article 155 of the Turkish Criminal Code, entitled "alienating the people from the armed forces" was with effect from 1st July 2005 replaced by a new Article 318. The substantive wording and the interpretation have not however changed. The European Commission noted in 2009 that under Article 318 "Public statements on the right to conscientious objection have led to convictions."⁴⁷

Those affected have included those publicly declaring their own conscientious objection, and those declaring support for other conscientious objectors, in Turkey and elsewhere. Ülke's first arrest and conviction was under the then Article 155, relating to an incident at a press conference in 1995 when he publicly burned his call-up papers, while announcing his conscientious objection with the words "I do not want to kill people." Following his own imprisonment for refusing military service, Halil Savda has been twice convicted of offences under Article 318. In June 2008 he was sentenced to five months imprisonment for a press statement in support of two Israeli conscientious objectors, a sentence which was upheld on appeal in March 2011. In June 2010, Savda and three others were sentenced to six months imprisonment for a statement in support of Enver Ayedemir. An appeal against this sentence is pending. On 6th December 2011, when attempting to travel to a meeting in Paris organised by Amnesty International, Savda was, because this conviction appeared on his record, prevented from leaving the country, arrested and held in detention for 25 hours. On 24th February 2012, Savda was arrested to serve the prison sentence handed down in June 2008. Amnesty International declared him a prisoner of conscience.

3.3 NORWAY AND SWITZERLAND

Norway and Switzerland are neither Member States of the EU nor Candidate Countries. Apart from Norway's Arctic border with Russia both however are surrounded by the EU and have close relations with the neighbouring Member States. Both retain conscription.

In Switzerland male citizens are required to attend an initial period of eighteen weeks military training at around the age of 20, followed by service in the mobilisation reserve until at least their mid-30s. Reserve service includes attendance at regular target practice and, at approximately two-yearly intervals,

46 Committee of Ministers of the Council of Europe, 1128(DH) Meeting of the Ministers' Deputies, 2nd December 2011, Decisions in Cases Nos. 21 and 22 ([CM/Del/Dec\(2011\)1128/21 / 06 December 2011](#))

47 Commission of the European Communities, Enlargement Strategy and Main Challenges 2009-2010, Turkey Progress Report 2009, para 2.2, Human Rights and the Protection of Minorities, "Observance of international human rights law", 14th October 2009, p.22.



at refresher courses, typically of seventeen days' duration. The total military service liability is 260 days. Civilian service is available for conscientious objectors, but it has a punitive duration of 390 days, half as much again as military service. Objectors' organisations also point out that whereas most conscripts do not perform the full 260 days of military service, all those performing civilian service are required to complete 390 days, so that the discrepancy in practice is even greater.

In Norway, by contrast, the government announced on 1st July 2011 that substitute service for conscientious objectors would end later in the year. According to Minister of Justice Knut Storberget, the reform will mean that conscientious objectors to military service will in the future no longer be called up for a substitute service, but will simply be exempted from military service. According to the press release, there has been an ever decreasing number of applicants for conscientious objection in recent years, from over 3,000 applicants about 10 years ago to the current level of about 350. Meanwhile the need of the Armed Forces for military personnel has been declining. Accordingly, Norway has no need to send conscientious objectors to a substitute service, said Justice Minister Knut Storberget. A draft bill was submitted for public consultation in July.

In anticipation of the new bill, conscientious objectors would no longer be called up for substitute service. Those already serving would however continue to serve, but not beyond the end of the year.⁴⁸

⁴⁸ War Resisters International, "Norway: end of substitute service for conscientious objectors" in CO Update No.67, August 2011.



4. ONGOING CONCERNS

4.1 SERVING MEMBERS OF THE MILITARY

4.1.1 Recommendation CM/Rec(2010)4

Last year's EBCO Report contained the text of Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe, on Human Rights in the Armed Forces, and drew particular attention to paragraphs 42 and 43, concerning the right to be released on grounds of conscientious objection. We observed that of all EU states only Germany and the Netherlands have legal provisions enabling this, although procedures for compassionate release in such circumstances are included in military regulations in the UK.

No changes in this respect have come to EBCO's attention in the past year. On 4th July 2012, however, the ministers' deputies agreed to send a questionnaire to all Member States of the Council of Europe. Regarding the section concerning conscientious objection, this included the following questions:

H.2 Do conscripts have the rights to be granted conscientious objector status?

H.2.1 If so, is an alternative service of a civilian nature available?

H.2.2 If not, please explain why and whether any measure is in preparation.

H.3 Are conscientious objectors exposed to sanctions, disciplinary measures or judicial prosecutions?

H.4 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.

H.5 Are there measures in place to ensure that conscripts and members of the armed forces are informed, respectively, of the right to be granted conscientious objector status and to leave the armed forces for reasons of conscience and of the procedures available to exercise these rights?

EBCO looks forward with interest to the publication of the results of this survey.

4.1.2 Michael Lyons

Meanwhile, the case of former Leading Medical Assistant Michael Lyons in the UK illustrates that even where formal procedures for release from military service on the grounds of conscientious objection exist on paper their practical implementation may leave a lot to be desired.



On 5th July 2011, a Court Martial in Portsmouth found Lyons guilty of wilfully disobeying an order, stripped him of his rank, and dismissed him from the Royal Navy with effect from the end of an eight-month period of detention to be spent in the "Armed Forces Correctional Establishment" at Berechurch Hall, Colchester.

The background to the charge was described in the 2011 EBCO Report. The incident arose out of a request by Lyons to be excused weapons training while his application for release on grounds of conscientious objection was pending. After several hours of consultation it was decided high up the chain of command that rather than be given a direct answer to his request he should be confronted with an explicit order to take a weapon, confronting him with the dilemma that, should he obey, this would inevitably be cited as an argument against his claim to be a conscientious objector.

It will be recalled that paragraphs 43 and 45 of CM/Rec(2010)4 state, respectively, "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." and "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." Given the complicated facts, it could be argued that the Lyons court-martial did not breach the letter of these recommendations. Nevertheless it quite blatantly ran contrary to their spirit. In particular, far from being transferred to non-combat duties, Lyons (who as a full-time member of medical personnel would in any case qualify under the Geneva Conventions as a non-combatant) was, while his conscientious objection appeal was pending, sent on a firearms course for the first time in six years. In the intervening period he had served on submarines, where for very good reason small arms are not issued to *any* personnel.

Lyons' conviction was appealed to the Court Martial Appeal Court, an independent civilian tribunal, and the case was heard in October 2011, shortly before the date set for his release (he was not required to serve the full formal duration of his conviction). On the somewhat circular argument that as his appeal to the Advisory Committee on Conscientious Objection (ACCO) had subsequently been turned down he was "not" a conscientious objector, the Appeal Court felt it had to rely on the uncontested facts that an order had been given and had not been obeyed, and uphold the conviction. They did however express severe dissatisfaction with procedural irregularities in ACCO's handling of the case, and called for a clarification of the rules.

The case raised interesting wider questions about the British armed forces' interpretation of the Geneva Conventions. More disturbingly, however, in both the ACCO hearing and the subsequent court-martial the operational necessities connected with conducting an unpopular military campaign – unquestioning obedience to orders, *esprit de corps*, exemplary sentencing "*pour décourager les autres*" weighed far more heavily than any consideration of the individual conscientious objection. On the arguments put forward it was impossible to imagine that anyone detailed for service in Afghanistan could ever qualify as a conscientious objector.



4.2 JUVENILE RECRUITMENT

EBCO remains deeply concerned about the number of EU Member States which accept into their armed forces persons aged under 18.

The "Child Soldiers Global Report 2008"⁴⁹ showed that **Austria, Cyprus, France, Germany, Hungary, Ireland, Luxembourg, Malta, the Netherlands, and Poland** all accepted persons aged from the age of 17, and the **United Kingdom** from the age of 16, for voluntary recruitment into the armed forces, and that the conscription legislation in **Belgium** (currently suspended) and **Estonia** did not adequately exclude the possibility of persons being called up before their eighteenth birthday. As far as is known, the situation has not changed in any of these EU member states.

In **Germany**, for example, there were in 2005 1,229 males and females aged 17 serving in the German armed forces; in 2006 the figure was 903. Service could begin from the seventeenth birthday; applications could in fact be made much earlier. The normal procedure was that those applying for such early entry went through a medical examination six months before their seventeenth birthday. Although safeguards were in place to ensure that they would not be involved in any function requiring the use of firearms, including armed guard duty, seventeen-year-old volunteers could receive firearms training. Even more disturbing is the fact that 16-year-olds may join the border guard and police services and that, even if not in an armed role, persons aged under 18 may perform active duty in these armed services.

When Germany made its initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Committee on the Rights of the Child expressed its unease about the recruitment age:

"The Committee notes that the age for the recruitment of volunteers at 17 is valid only with the consent of their legal representatives and that those volunteers are not allowed to be deployed to armed duty.

"The Committee notes that the great majority of States parties to the Protocol do not permit voluntary recruitment of children. The Committee therefore encourages the State party to raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard."⁵⁰

Far from implementing this recommendation, there is evidence that since the end of conscription Germany has increased its military recruitment campaigns aimed at persons aged under 18. Education Ministries from 8 of the 16 "Bundesländer" have signed a cooperation contract with the army enabling the presence of specially qualified representatives of the army ("Jugendoffiziere") in schools (and sometimes their participation in teacher training). So far, in only one "Land", Rheinland-Pfalz, has the Education Ministry signed an additional cooperation treaty with peace organizations in order to strengthen civilian perspectives of

49 Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2008*, London, 2008, p151.

50 CRC/C/OPAC/DEU/CO/1, 13 February 2008, paras 10, 11.



peace work and non-violent conflict resolution in schools.

For instance, Bravo, Germany's most popular youth magazine, aimed at 12 – 19 year olds, carries a video on its You Tube channel headlined: "Action, Adrenaline, Adventure! The challenge of your life is waiting! Army Adventure Camps 2012". The video offers 'free' trips to the beaches of Sardinia or the mountains of Berchtesgaden, where the adventure camps are held. Meanwhile on Bravo's main website, a slim young girl wearing a rucksack proclaims "outdoor fashion is in", above an article detailing what readers might want to wear at the free Army Adventure Camp being held 'at the beach or in the mountains.'⁵¹

In all of this, the German armed forces were simply following precedents set in the **UK**, which routinely recruits from the age of 16. A new booklet from the Coalition to Stop the Use of Child Soldiers⁵² details, among other issues, how those who join at under 18 are contractually obliged to serve not just for the standard four years, but must count that from the date of their eighteenth birthday, so that after a very short probation period they have no opportunity of release until the age of 22, how the commitment not to deploy under-18's in combat is frequently "accidentally" breached, the systematic bullying faced by many young recruits, and the severe mental and social problems often encountered in later life by those who have been juvenile recruits.

In **France**, with the suspension of conscription a new Book 1 of the National Service Code was introduced, including revised registration (*recensement*) requirements (L113). Formerly applicable only to males at the age of seventeen, they now apply to all persons at the age of sixteen. A new Chapter (L114) deals with "Defence education and the call-up for defence preparation" (*L'enseignement de la défense et l'appel de préparation à la défense*). This quotes from the Education Code: "The principles and organisation of national and European defence and the general organisation of the reserves" are an obligatory part of the secondary school curriculum "in order to reinforce the army-Nation bond and sensibilise youth to their duty of defence."⁵³ This teaching is to be complemented by the one-day "Call-up for defence preparation" which all are required to attend between registration and the eighteenth birthday; the obligation to make good any failure to fulfil this obligation persists until the 25th birthday. Both registration and attendance at the "Call-up day" are preconditions for admission to all public examinations and competitions (L113-4, L114-6). The "Call-up day" gives an overview of the aims and organisation of the national defence system, together with the possibilities of enlistment in the armed forces or the reserves. Those attending are required to provide proof of a recent medical examination (L114-3). The one day course can be extended into a period of military training, at the request of the candidate, and subject only to medical clearance (L114-12). The military training is open to all between the ages of 16

51 The Local, "Army lures Bravo readers with 'free' trips" Published: 18 Sep 2012

52 Coalition to Stop the Use of Child Soldiers (www.child-soldiers.org), Catch 16-22:

Recruitment and retention of minors in the British Armed Forces, London, March 2011

53 "Les principes et l'organisation de la défense nationale et de la défense européenne ainsi que l'organisation générale de la réserve font l'objet d'un enseignement obligatoire dans le cadre de l'enseignement de l'esprit de défense et des programmes de tous les établissements d'enseignement du second degré. Cet enseignement a pour objet de renforcer le lien armée-Nation tout en sensibilisant la jeunesse à son devoir de défense." (L114-1)



and 30 (L115-1); it does not entail admission to the armed forces as a volunteer, for which application can be made only after the age of 18 (L121-1).

Among the items of information handed out at the “Call-up day” is an explanation of the procedures to produce consent forms for organ donations, and the possibility of registering one’s objection to this (L114-3). This would appear to be the only form of conscientious objection mentioned; despite the direct relationship of the registration procedures to the suspended system of obligatory military service, and the overt function of the “call-up day” as a military recruitment exercise, there is no provision to allow either those affected to register themselves as conscientious objectors to military service, still less for them, or (as they are generally minors) their parents, to express a conscientious objection to participation in the day.

We do not at present know of any EU State where military training is in fact part of the secondary education curriculum, as it is in some parts of the world, but military cadet forces are attached to many educational establishments.

These are just some aspects of a wide trend towards insidious militarisation in the education system. But what is actually happening is poorly documented. The need to share information internationally has only recently been recognised. What happens within a particular State may be taken for granted by its inhabitants, who do not realise there are different models elsewhere. Or often within a particular State only those who encounter the issue directly in the course of their professional work may realise exactly what is happening.

Our partner organisation War Resisters' International is launching a major global exercise of information gathering and sharing regarding all aspects of militarisation in the education system (and strategies to counter it). We anticipate that our future reports to the European Parliament will draw in detail of this project.

4.3 CONSCIENTIOUS OBJECTORS AS REFUGEES

European countries receive a large number of asylum requests from persons fleeing recruitment in countries where the right of conscientious objection to military service is not accepted.

Some are from Turkey, but many more from Eritrea, a country where the conditions of military service and the treatment of conscientious objectors are arguably the worst in the world.

In July 2012, the United Nations Human Rights Council passed by consensus a resolution which “Condemns [among other human rights abuses in Eritrea] “(c) The forced conscription of citizens for indefinite periods of national service, which could amount to forced labour, the alleged coercion of minors into the military and the mining industry, as well as the intimidation and detention of family members of those suspected of evading national service in Eritrea; [and] (d) The shoot-to-kill practice employed on the borders of Eritrea to stop Eritrean citizens



seeking to flee their country".⁵⁴

Not only is military service in Eritrea indefinite for both men and women, so is the detention of those who are "foolish" enough to declare themselves as conscientious objectors. The first three recorded conscientious objectors in Eritrea, all Jehovah's Witnesses, continue, if still alive, to be incarcerated in extremes of temperature in shipping containers at Sawa Military Camp in the desert, as they have been since 1993, when the Eritrean state was in the course of breaking away from Ethiopia. Despite its small population, thousands of its people each year risk being shot to escape over the border to the relative safety of Sudan. Many more die from the hazards of the onward journey to Europe. And yet those who arrive and apply for asylum are often treated with suspicion, particularly former woman- and child-soldiers. In the EBCO Report for 2009 the case was reported of two young sisters who had been forcibly recruited in Eritrea but were denied asylum in Greece because their tales were held to be suspiciously similar.

EBCO is particularly concerned that many of those fleeing Eritrea to avoid military service ought to be considered as conscientious objectors although they may never have encountered the term and are therefore unable to define themselves as such.

EBCO would encourage all member states of the EU to give sympathetic consideration to applications for asylum from those who are fleeing military service in countries where there is no provision for conscientious objection (which applies for example in Turkey, Iran, Azerbaijan and both Koreas, as well as Eritrea), or where the provisions are inadequate, and may well not be available to the individual objector, as for example in Israel, or, as for instance discussed with regard to Armenia in Section 2.1.1.1 above, the alternative service available is not of a truly civilian nature.

We would draw attention to the United Nations High Commissioner for Refugees' guidance on this subject:

"Where military service is compulsory, refugee status may be established if the refusal to serve is based on genuine political, religious, or moral convictions, or valid reasons of conscience. (...) In conscientious objector cases, a law purporting to be of general application may, depending on the circumstances, nonetheless be persecutory where, for instance, it impacts differently on particular groups, where it is applied or enforced in a discriminatory manner, where the punishment itself is excessive or disproportionately severe, or where the military service cannot reasonably be expected to be performed by the individual because of his or her genuine beliefs or religious convictions..."⁵⁵

Finally, in the current situation, EBCO would encourage all EU Member States to give sympathetic consideration to asylum claims from deserters from the Syrian armed forces, given the strong likelihood that they would otherwise be ordered

⁵⁴ Human Rights Council, Resolution 20/20, adopted without a vote on 6th July 2012, and included in the Report of the Twentieth Session, A/HRC/20/2, 2nd August 2012, pp.50-52, para 1.

⁵⁵ UNHCR, Guidelines on international protection: religion-based refugee claims, (2004), para 26.



to commit war crimes, crimes against humanity, and grave breaches of International Humanitarian Law, except when it is clear that the individual concerned intends to return to Syria to take part in the conflict from the other side. The precedent to be followed here of that of Russian deserter Krotov, who successfully applied for asylum in the UK by arguing that as he was about to be sent to Chechnya there was a high probability that he would be embroiled in such abuses.⁵⁶

4.4 MILITARY EXPENDITURE

Combining information from the Stockholm International Peace Research Institute (SIPRI)⁵⁷ and the International Institute for Strategic Studies⁵⁸ we have produced the following figures (any inaccuracies are the responsibility of EBCO), which in a time of economic austerity speak for themselves.

| | Military Expenditure 2011 | % change from 2010 | per capita | % of GDP |
|--------------------|--------------------------------------|-------------------------------|-----------------------|---------------------|
| Albania | € 141,000,000 | - 2.6 % | € 47 | 1.5 % |
| Austria | € 2,577,000,000 | - 5.9 % | €314 | 0.9 % |
| Belgium | € 4,016,000,000 | - 1.9 % | €385 | 1.1 % |
| Bosnia-Herzegovina | € 177,000,000 | +2.7 % | € 38 | 1.4 % |
| Bulgaria | € 567,000,000 | -19.2 % | € 80 | 1.5 % |
| Croatia | € 783,000,000 | + 2.1 % | €175 | 1.7% |
| Cyprus | € 385,000,000 | + 3.3 % | €344 | 2.1 % |
| Czech Republic | € 1,780,000,000 | - 9.8 % | €175 | 1.1 % |
| Denmark | € 3,489,000,000 | +0.2 % | €631 | 1.4 % |
| Estonia | € 266,000,000 | +1.8 % | €208 | 2.7 % |
| Finland | € 2,856,000,000 | +7.5 % | €543 | 1.5 % |
| France | €44,900,000,000 | - 1.4 % | €690 | 2.2 % |
| Germany | €33,563,000,000 | - 3.5 % | €412 | 1.3 % |
| Greece | € 5,855,000,000 | +4.7 % | €544 | 2.6 % |
| Hungary | € 994,000,000 | -4.7 % | €100 | 1.0 % |
| Ireland | € 935,000,000 | -5.3 % | €200 | 0.6 % |
| Italy | €24,772,000,000 | -10.1 % | €406 | 1.5 % |
| Latvia | € 212,000,000 | +2.7 % | € 96 | 1.1% |
| Lithuania | € 319,000,000 | - 1.2 % | € 90 | 1.0 % |
| Luxembourg | € 201,000,000 | +5.2 % | €400 | 0.4 % |
| Macedonia (FYR) | € 95,000,000 | - 6.9 % | € 46 | 1.3 % |
| Malta | € 45,600,000 | 0 | €112 | 0.7 % |
| Montenegro | € 63,100,000 | +7.0 % | € 95 | 2.0 % |
| Netherlands | € 8,459,000,000 | - 2.9 % | €508 | 1.4 % |
| Poland | € 6,968,000,000 | +4.2 % | €181 | 1.9 % |
| Portugal | € 3,353,000,000 | -11.1 % | €312 | 1.9 % |
| Romania | € 1,540,000,000 | - 6.8 % | € 70 | 1.2 % |
| Serbia | € 681,000,000 | - 4.7 % | € 93 | 2.1 % |
| Slovakia | € 760,000,000 | -14.3 % | €139 | 1.1 % |
| Slovenia | € 513,000,000 | -13.5 % | €257 | 1.4 % |
| Spain | €10,898,000,000 | - 5.2 % | €233 | 1.0 % |
| Sweden | € 4,890,000,000 | +1.3 % | €538 | 1.2 % |
| Turkey | €12,831,000,000 | +5.9 % | €163 | 2.3 % |
| United Kingdom | €45,008,000,000 | - 0.4 % | €718 | 2.5 % |

56 Krotov v Secretary of State for the Home Department [2004] EWCA Civ 69 (11th February, 2004).

57 SIPRI Military Expenditure Database 2011, <http://milexdata.sipri.org>, published April 2012.

58 The Military Balance 2012 (Routledge, March 2012)



5. NEW PUBLICATIONS

Following the advances during 2011 in the jurisprudence of the UN Human Rights Committee and of the European Court of Human Rights, an updated version has been produced of:

Brett, R. International Standards on Conscientious Objection to Military Service, (Quaker United Nations Office, Geneva, November 2011).

This can be downloaded in English, French, Spanish, German or Russian from www.quno.org.

Mention was also made in Section 4.2 of the report Catch 16-22: Recruitment and retention of minors in the British Armed Forces, published in March 2011 by the Coalition to Stop the Use of Child Soldiers (now Child Soldiers International) (www.child-soldiers.org).



6. RECOMMENDATIONS

EBCO recommends:

- **to the European Parliament:**

- that it prepare a new resolution on conscientious objection to military service to incorporate the advances which have been made in the recognition of this right since the Bandres Molet & Bindi resolution of 1994.

- that (given that the right of conscientious objection to military service is explicitly mentioned in the EU's Charter of Fundamental Rights, which came into force with the adoption of the Lisbon Treaty) this issue be included in the Parliament's annual report on human rights in the world.

- that the Parliament also encourage the European Agency for Fundamental Rights to include this issue in its annual reports.

- **to all EU Member States, Candidate Countries and Potential Candidate Countries:**

- that if they have not already done so they suspend (or preferably abolish) all obligatory military service.

- that (in accordance with Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe) they make it possible for all serving members of the armed forces to obtain release on the basis of conscientious objection.

- that they cease enlistment into the armed forces on any basis of persons aged under 18.

- that they give sympathetic consideration to applications for asylum from all persons seeking to escape military service in any country where there is no adequate provision for conscientious objectors.

- that they reconsider the necessity for the current levels of military expenditure with particular reference to the current economic situation.

EUROPEAN UNION 2012

NO ARMED FORCES: *Iceland*

NO CONSCRIPTION:

Albania, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Montenegro, Netherlands, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

NON PUNITIVE CIVILIAN SERVICE:

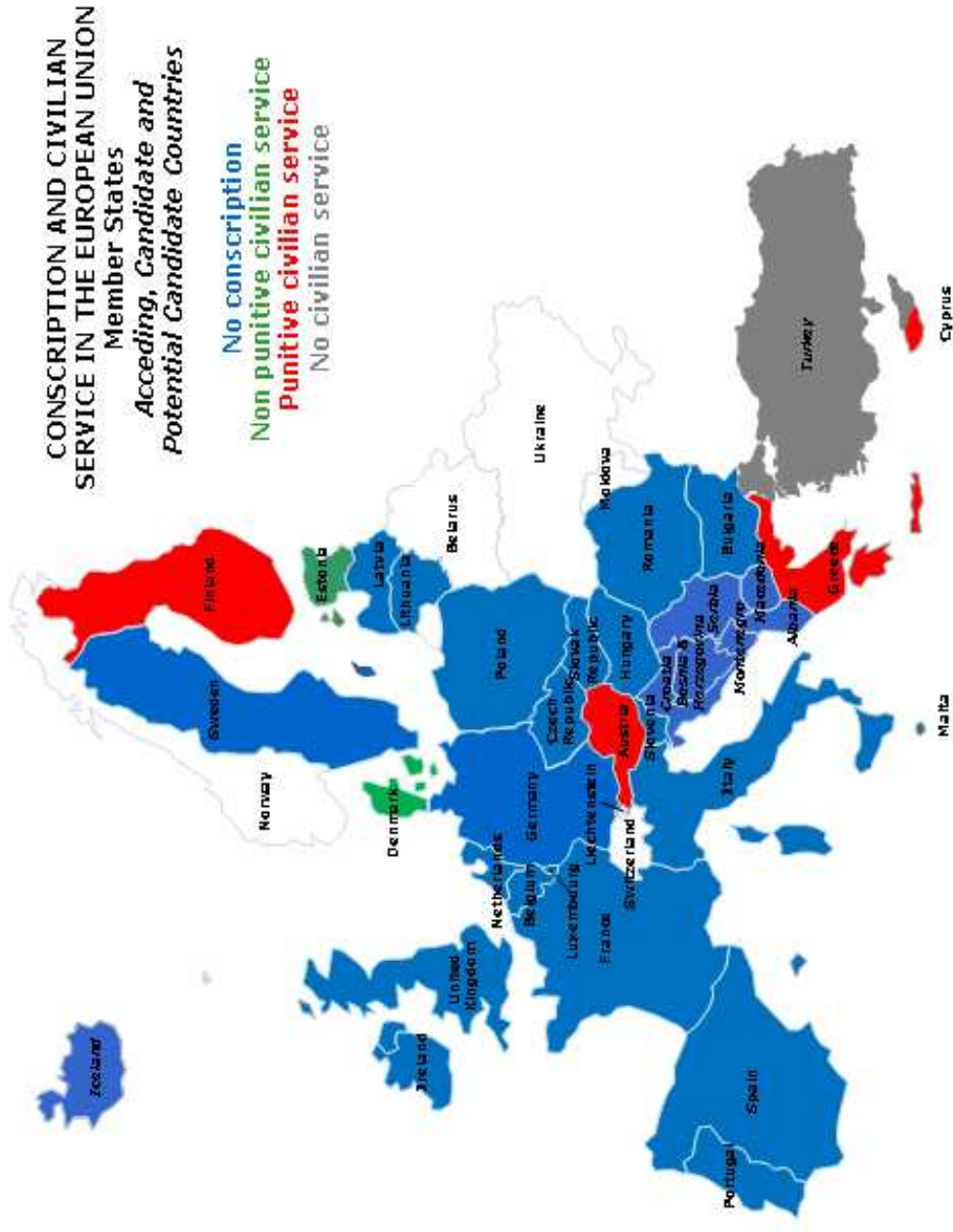
Denmark (4 vs 4 months, equal), Estonia (8-12 vs 8-12 months, equal).

PUNITIVE CIVILIAN SERVICE:

Austria (9 vs 6 months, 50% longer), Cyprus (33 vs 24 months, 37,5% longer), Greece (15 vs 9 months, 66,7% longer), Finland (12 vs 6 months in most of the cases, 100% longer).

NO CIVILIAN SERVICE OPTION:

Turkey and the northern part of Cyprus (under Turkish control).



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