

Contribution: The right to conscientious objection to military service: Where do we stand in Europe?ⁱ

Dear workshop participants,

As a representative of the European Bureau for Conscientious Objection (EBCO), I have been asked to give you an update on the situation of conscientious objection to military service in Europe.

Enjoying participatory status with the Council of Europe EBCO advocates for the full recognition of the right to conscientious objection as a human right and for the non-discriminatory implementation of this right both in the framework of European institutions and on the level of Council of Europe member states. This includes monitoring situations where the treatment of conscientious objectors is inconsistent with European human rights standards and supporting conscientious objectors who in breach of international law face discrimination and prosecution.

The Council of Europe, as you know, was the first European institution to explicitly focus on the human right to conscientious objection as a fundamental aspect of the right to freedom of thought, conscience and religion which is guaranteed under Article 9 of the European Convention of Human Rights as well as under Article 18 of the International Covenant on Civil and Political Rights (ICCPR).

Between 1967, the first resolution on the subject, and 2011, the *Bayatyan versus Armenia* landmark ruling of the European Court of Human Rights, there has been significant progress at the international human rights level. Notwithstanding, in terms of implementation of the applicable legal norms, numerous discriminations against conscientious objectors persist at the national level.

Statistically, the most frequent cases of discrimination against conscientious objectors are to be observed in states that adhere to the system of conscription.

Currently, 17ⁱⁱ of the 46 Council of Europe member states maintain compulsory military service. Among them, 5 states have reintroduced conscription in recent years after its suspension.

To this day **Turkey** is the only CoE Member State who has not yet recognised the right to conscientious objection. Turkey continues to prosecute conscientious objectors and to ignore the judgements which the European Court of Human Rights has pronounced since 2006 in favour of Turkish conscientious objectors. Many different penalties are imposed on those who refuse to perform military service. As a result, conscientious objectors face ongoing arrest warrants; they are involved in a life-long

cycle of prosecutions and imprisonment. On the whole they are exposed to a situation of “civil death” which excludes them from social, cultural and economic life. „Civil death“ – this wording was first used by the European Court of Human Rights in his judgement *Ülke versus Turkey* (2006). The clear statements of the European Court have continuously been disregarded by Turkish authorities. Occasionally they helped conscientious objectors from Turkey to achieve refugee status in European countries (e.g. Italy, Cyprus, France). It should be noted that the issue of refugee protection for persecuted objectors requires more in-depth consideration – especially in view of the Russia-Ukraine war.

A comparatively dramatic situation for conscientious objectors persists in **Azerbaijan**. Azerbaijan undertook on accession to the Council of Europe in 2001 that it would adopt a law on alternative service in compliance with European standards by January 2003. 20 years later it has still not done so. To this day Azerbaijani conscientious objectors are imprisoned even though the constitution stipulates the option of alternative service.(Art. 76)

Subsequent to my introductory remarks I am going to add an exemplary list of long-term shortcomings documenting the lingering disrespect of human rights standards for conscientious objectors in some Council of Europe member states. In this context I refer particularly to Recommendation 1518 (2001) of the Parliamentary Assembly entitled „Exercise of the right of conscientious objection to military service in Council of Europe member states“ and to the Committee of Ministers‘ Recommendation (2010)⁴ on human rights of members of the armed forces. Please note that this list is exemplary and non-exhaustive!

1. The right to be registered as a conscientious objector **at any time**ⁱⁱⁱ is not respected in Greece nor in Armenia where applications for alternative service can be made only before military call-up.
The acceptance of the right to conscientious objection only in peace time contravenes the International Covenant on Civil and Political Rights (ICCPR), emphasizing that the right to freedom of thought, conscience and religion is non-derogable even in a time of public emergency (ICCPR Article 4(2)). This did not prevent Ukrainian authorities from suspending in times of warfare its legislation on conscientious objection and from blocking any accession to alternative service. If fit for military service all males in age from 18 to 60 are prohibited from leaving Ukraine. Despite their willingness to serve for instance in hospitals or rescue teams conscientious objectors are systematically prosecuted and sentenced to imprisonment for evading conscription.
2. The authority responsible for the examination of requests to be recognized as a conscientious objector must be **separate from the military administration**. Here again Greece is not in line with the requested standards. The motivation of Greek conscientious objectors is examined by a special committee with military participation which falls under the authority of the Ministry of Defence. In

Lithuania, too, the final decision on the recognition of conscientious objector status is taken by the national defence system institution.

3. Conscientious objector status shall be granted to persons“ who for **reasons of conscience or profound conviction** arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service.“^{iv} In some CoE member states as Greece a clearly preferential treatment of religious applications is to be observed. The currently suspended Law on Alternative Non-Military service in Ukraine restricts the accession to alternative service to the members of 10 religious minority groups who represent less than 2% of the population.
4. As to the **regulations of alternative service** which should have neither punitive nor discriminatory character the majority of conscription states show deficiencies in the implementation of human rights standards. This concerns a disproportionate duration of alternative service and various deficits of social security for conscientious objectors. In its recent judgement *Teliatnikov v. Lithuania (2022)* the European Court of Human Rights found that the "alternative national defence service is intrinsically linked to military service, and therefore cannot be seen as separate civilian service" – which constitutes a violation of Article 9 of the European Convention on Human Rights.^v
5. To this day the right of **professional members of the armed forces** to leave the armed forces for reasons of conscience is not self-evident at all. An example of this challenge in action can be seen in the Irish Defence Forces whereby an individual does not have the right to be discharged from the military by reason of conscientious objection, justified by the state by virtue of the fact that the Defence Forces is voluntary. In this context a collective complaint lodged by EUROMIL against Ireland was rejected by the European Committee of Social Rights in 2020.^{vi}

The request of a professional soldier to leave the army for reasons of conscience „should be **examined within a reasonable time**“^{vii}. Nevertheless extreme retardation in the processing of applications remains a major problem for soldiers who are obliged to hold out in their military unit after having filed their request on discharge on grounds of conscience. In Germany the time they have to spend in a superincumbent context of pressure and social exclusion may often last more than one year - especially when, as it occurs frequently, the competent recognition authority puts forward doubts or questions concerning the applicant's explanatory statement on his/her conscientious objection to military service. Moreover this time frame is extended once more if an objector refused at first instance must induce a judicial appeals procedure.

In December 2012 Thomas Hammarberg, former Human Rights Commissioner of the Council of Europe, published his human rights comment on the right to conscientious objection to military service. He underlined: „The agreed standards should be implemented... Conscientious objection is a human right. It is thus high time that all member states complied with their commitment and recognised this right effectively.“^{viii}

About ten years later this statement has lost none of its validity.

Let me conclude with a supplementary remark: Due to the given time limit I did not comment the following issues:

- the problem of paying back qualification costs for former professional soldiers recognised as conscientious objectors,
- the problem of soldiers who have not yet reached the age of majority.
- I limited myself to the current member states of the Council of Europe without taking into account the situation in Russia and Belarus which would be another important issue.

Thank you for your attention.

Friedhelm Schneider
European Bureau for Conscientious Objection (EBCO)
friedhelm.schneider@gmx.de
<https://ebco-beoc.org/>

ⁱ To the article as a whole cf. European Bureau for Conscientious Objection: Annual Report Conscientious Objection to Military Service in Europe 2022/23, Brussels 12 May 2023, available at: https://ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2023-05-12-EBCO_Annual_Report_2022-23.pdf

ⁱⁱ Armenia, Austria, Azerbaijan, Cyprus, Denmark, Estonia, Finland, Georgia (reintroduced in 2017), Greece, Latvia (reintroduced in 2023), Lithuania (reintroduced in 2015), Moldova, Norway, Sweden (reintroduced in 2018), Switzerland, Türkiye, Ukraine (reintroduced in 2014)

ⁱⁱⁱ Recommendation 1518 (2001) Exercise of the right of conscientious objection to military service in Council of Europe member states, para. 5.i.

^{iv} CoE Assembly Resolution 337 (1967) para. A.1.

^v Cf. EBCO Annual Report 2022/23 p.8

^{vi} See EUROMIL v Ireland Complaint No. 164/2018

^{vii} Recommendation CM/Rec (2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces, Para.43.

^{viii} <https://www.coe.int/de/web/commissioner/-/the-right-to-conscientious-objection-to-military-service-should-be-guaranteed-in-all-parts-of-euro-1>