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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## Conscientious objection to military service

### Analytical report of the Office of the United Nations High Commissioner for Human Rights\*

#### *Summary*

In the present report, the Office of the United Nations High Commissioner for Human Rights analyses developments since 2017, promising practices and remaining challenges concerning conscientious objection to military service. It is a welcome development that some States have adopted laws and regulations introducing a genuine alternative service of a civilian nature and decriminalizing conscientious objection, leading to the release of imprisoned objectors. However, many individuals seeking to exercise the right to conscientious objection to military service continue to face violations of that and other rights because some States and de facto authorities do not recognize that right or fail to ensure its full implementation in practice.

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## I. Introduction

1. In its resolution 20/2, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) 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”.
2. In response to notes verbales and a call for inputs inviting the various stakeholders to provide relevant information pursuant to resolution 20/2 for the third quadrennial report in 2022,<sup>1</sup> OHCHR received 28 contributions, which are available on the OHCHR website for public consultation.<sup>2</sup>
3. The present report outlines the international legal framework, with particular attention paid to developments since 2017 (sect. II) and State law and practice, both in terms of promising practices (sect. III) and remaining challenges (sect. IV). Lastly, the report contains conclusions and recommendations concerning laws, policies and practices relating to conscientious objection to military service (sect. V).

## II. International legal framework, in particular new developments

### A. Right to conscientious objection to military service

4. In 12 resolutions, the Commission on Human Rights and the Human Rights Council have recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.<sup>3</sup> While the Covenant does not explicitly refer to a right to conscientious objection to military service as a separate right, the Human Rights Committee has commented that such a right could be derived from article 18, as the obligation to use lethal force might seriously conflict with freedom of conscience and the right to manifest one’s religion or belief.<sup>4</sup>
5. The Human Rights Committee found a right to conscientious objection to military service in five Views on individual communications adopted since 2017.<sup>5</sup> In *Jong-bum Bae et al. v. Republic of Korea*, the Committee reiterated that the right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion, entitling any individual to exemption from compulsory military service if it cannot be reconciled with the individual’s religion or beliefs.<sup>6</sup> The Committee reiterated that this right must not be impaired by coercion and recalled that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibited the use of arms, was incompatible with article 18 (1) of the Covenant.<sup>7</sup> In the five Views cited, the Committee also recalled that the fundamental character of the freedoms enshrined in article 18 (1) of the Covenant was reflected in the fact that the provision could

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<sup>1</sup> See [A/HRC/23/22](#), [A/HRC/35/4](#) and [A/HRC/47/41](#).

<sup>2</sup> See <https://www.ohchr.org/en/calls-for-input/calls-input/call-inputs-ohchr-report-conscientious-objection-military-service-50th>.

<sup>3</sup> Commission on Human Rights resolutions 1987/46, 1989/59, 1991/65, 1993/84, 1995/83, 1998/77, 2000/34, 2002/45 and 2004/35 and Human Rights Council resolutions 20/2, 24/27 and 36/18.

<sup>4</sup> General comment No. 22 (1993).

<sup>5</sup> *Durdyev v. Turkmenistan* (CCPR/C/124/D/2268/2013); *Dawletow v. Turkmenistan* (CCPR/C/125/D/2316/2013); *Nazarov et al. v. Turkmenistan* (CCPR/C/126/D/2302/2013); *Jong-bum Bae et al. v. Republic of Korea* (CCPR/C/128/D/2846/2016); and *Petromelidis v. Greece* (CCPR/C/132/D/3065/2017).

<sup>6</sup> *Jong-bum Bae et al. v. Republic of Korea*, para. 7.3.

<sup>7</sup> *Ibid.*, paras. 7.3–7.5.

not be derogated from, even in a time of public emergency, as stated in article 4 (2) of the Covenant.<sup>8</sup> Similarly, the Working Group on Arbitrary Detention and other special procedures of the Human Rights Council have strongly considered that the right to conscientious objection to military service is part of the absolutely protected right to hold a belief under article 18 (1) whose internal freedom cannot be restricted by States (*forum internum* approach).<sup>9</sup>

6. In July 2021, in *Petromelidis v. Greece*, the Committee found a violation of article 18 (1), as the author had been convicted for his refusal to perform compulsory military service as a conscientious objector, taken together with the failure of Greece to provide him with an alternative service that was not punitive or discriminatory.<sup>10</sup> Furthermore, the Committee held that both his pretrial detention and post-conviction imprisonment as punishment for the legitimate exercise of freedom of religion and conscience amounted to arbitrary detention under article 9 (1)<sup>11</sup> and a violation of article 14 (7), as he had been convicted and punished repeatedly for his objection to performing compulsory military service, while his refusal was based on the same constant resolve grounded in reasons of conscience.<sup>12</sup> With regard to freedom of movement, the Committee found, for the first time, a violation of article 12 (2) in the case of a conscientious objector who was prohibited from leaving his country, not only because of the excessive duration of the restriction on the author's freedom to leave Greece (on account of repeated call-ups, warrants for his arrest and convictions), but also since the restriction had been imposed for having legitimately exercised his right to freedom of conscience.<sup>13</sup>

7. In concluding observations adopted since 2017, the Human Rights Committee and the Committee on the Elimination of Discrimination against Women have stressed that State parties should ensure the legal recognition of conscientious objection to military service.<sup>14</sup> The Human Rights Committee has also noted that related legislation should be accessible without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection.<sup>15</sup> The terms "religion" and "belief" are to be broadly interpreted, since article 18 of the Covenant protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief, and its application is not limited to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.<sup>16</sup> The Human Rights Committee has stressed that any alternative service for conscientious objectors should be of a civilian nature<sup>17</sup> and must be neither punitive nor discriminatory in nature or duration by comparison with military service.<sup>18</sup>

8. The Beirut Declaration on Faith for Rights emphasizes that freedom of thought and conscience precede all freedoms, for they are linked to human essence, to an individual's right to choice and to freedom of religion or belief.<sup>19</sup> As highlighted in the corresponding 18 commitments and #Faith4Rights toolkit, article 18 of the Covenant does not permit any limitations whatsoever on freedom of thought and conscience, which are absolutely protected

<sup>8</sup> *Nazarov et al. v. Turkmenistan*, para. 7.3; *Dawletow v. Turkmenistan*, para. 6.3; *Durdyyev v. Turkmenistan*, para. 7.3; *Jong-bum Bae et al. v. Republic of Korea*, para. 7.3; and *Petromelidis v. Greece*, para. 9.3.

<sup>9</sup> See, for example, *A/HRC/42/39*, para. 60 (b); *A/HRC/WGAD/2019/84*, para. 42; and communication AL TKM 2/2020.

<sup>10</sup> *Petromelidis v. Greece*, para. 9.6.

<sup>11</sup> *Ibid.*, para. 9.8.

<sup>12</sup> *Ibid.*, para. 9.11.

<sup>13</sup> *Petromelidis v. Greece*, para. 9.9. See also [https://www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2022-03-21-EBCO\\_Annual\\_Report\\_2021\\_0.pdf](https://www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2022-03-21-EBCO_Annual_Report_2021_0.pdf).

<sup>14</sup> *CCPR/C/ERI/CO/1*, para. 38; and *CEDAW/C/ERI/CO/6*, para. 11.

<sup>15</sup> *CCPR/C/TJK/CO/3*, para. 46; *CCPR/C/BLR/CO/5*, para. 48; and *CCPR/C/UKR/CO/8*, para. 30.

<sup>16</sup> Human Rights Committee, general comment No. 22 (1993), para. 2.

<sup>17</sup> *CCPR/C/ERI/CO/1*, para. 38; and *CCPR/C/LTU/CO/4*, para. 26.

<sup>18</sup> *CCPR/C/TJK/CO/3*, para. 46; *CCPR/C/BLR/CO/5*, para. 48; and *CCPR/C/UKR/CO/8*, para. 30.

<sup>19</sup> *A/HRC/40/58*, annex I, para. 5. See also <https://www.ohchr.org/en/faith-for-rights>.

under international human rights law, covering all ethics and values a human being cherishes, whether of a religious nature or not.<sup>20</sup>

9. During an intersessional seminar on the challenges and opportunities for young people in the field of human rights, held by the Human Rights Council in 2021, the High Commissioner noted that young people encountered challenges in several areas, including conscientious objection to military service.<sup>21</sup> In a 2018 report on youth and human rights, the High Commissioner pointed out that conscientious objection to military service concerned young people more than any other group and regretted the lack of implementation of jurisprudence and of recommendations made in international and regional human rights instruments, and the fact that some States did not recognize or implement fully the right to conscientious objection to military service in practice.<sup>22</sup> In November 2018, the European Youth Forum adopted a comprehensive resolution on the right to conscientious objection to military service, which recalls that article 10 (2) of the Charter of Fundamental Rights of the European Union and article 12 of the Ibero-American Convention on Rights of Youth recognize the right to conscientious objection.<sup>23</sup>

10. Participants in the intersessional workshop on the right to peace, held by the Human Rights Council in 2018, recommended that human rights education should focus on non-discrimination, religious tolerance, the prohibition of propaganda for war and the right to conscientious objection to military service.<sup>24</sup> One submission reiterated the proposal that had been put forward by 692 civil society organizations for a draft declaration on the human right to peace, which stated in proposed article 7 (1) that individuals had the right to conscientious objection to military service.<sup>25</sup> The updated draft declaration also welcomes the advisory opinion by the Inter-American Court of Human Rights of 15 November 2017 on the environment and human rights, in which the Court implicitly recognizes the right to peace as an inherent right of the human being, in accordance with article 29 (c) of the American Convention on Human Rights.<sup>26</sup>

11. Some States that have not ratified the International Covenant on Civil and Political Rights do not recognize the universal applicability of the right to conscientious objection to military service. For example, Singapore reiterated in its contribution to the present report that Human Rights Council resolution 20/2 went beyond what was prescribed in international law and applicable human rights instruments. It indicated that article 29 of the Universal Declaration of Human Rights recognized that the exercise of the rights and freedoms of an individual was subject to limitations to meet the requirements of public order and the general welfare of society. It further stated that national defence was a fundamental sovereign right under international law and that national service enjoyed overwhelming public support, with 96 per cent of Singaporeans polled in 2020 agreeing that it was necessary for the security and prosperity of the country.<sup>27</sup> During the third cycle of the universal periodic review in 2021, Singapore noted the recommendation to enact laws that would allow for a civil service alternative to military service for those who refused military service on grounds of conscience.<sup>28</sup> During the third cycle, the Human Rights Council continued to address the right

<sup>20</sup> A/HRC/40/58, annex II, commitment I; and <https://www.ohchr.org/Documents/Press/faith4rights-toolkit.pdf>, pp. 13–14.

<sup>21</sup> A/HRC/49/32, para. 6.

<sup>22</sup> A/HRC/39/33, paras. 53–56.

<sup>23</sup> [https://tools.youthforum.org/policy-library/wp-content/uploads/2021/04/0160-18\\_Resolution\\_conscientious\\_objection\\_FINAL\\_0.pdf](https://tools.youthforum.org/policy-library/wp-content/uploads/2021/04/0160-18_Resolution_conscientious_objection_FINAL_0.pdf).

<sup>24</sup> A/HRC/39/31, para. 70.

<sup>25</sup> A/HRC/39/31, para. 26. See also <http://aeditdh.org/wp-content/uploads/2017/09/Draft-UN-Declaration-HRP-20.9.17.pdf> and contribution from Conscience and Peace Tax International.

<sup>26</sup> See [https://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf), para. 66, and <http://aeditdh.org/wp-content/uploads/2019/07/Universal-Declaration-HRP-14.7.19.pdf>.

<sup>27</sup> See also A/HRC/35/4, para. 9.

<sup>28</sup> A/HRC/48/16, para. 59.159, and A/HRC/48/16/Add.1, para. 32.

to conscientious objection to military service with regard to eight additional States under review.<sup>29</sup>

12. The Office of the United Nations High Commissioner for Refugees (UNHCR) noted that the right to conscientious objection also applied to partial or selective objectors, who believed that the use of force was justified in some circumstances but not in others and that it was therefore necessary to object in those other cases.<sup>30</sup>

13. At the regional level, the European Court of Human Rights continues to view conscientious objection to military service as an external manifestation of an individual's religion or belief (*forum externum* approach), which may be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.<sup>31</sup> One contributor to the present report noted that the *forum externum* position of the European Court of Human Rights had not resulted in it finding that any of the permissible limitations on manifestation of religion or belief had been applicable in the cases it had considered.<sup>32</sup>

## **B. Right of serving members of the armed forces, including conscripts and volunteers, to make claims of conscientious objection to military service**

14. The Human Rights Council has repeatedly stressed the importance of the availability of information about the right to conscientious objection to military service and the means of acquiring conscientious objector status for all persons affected by military service.<sup>33</sup> It has acknowledged that an increasing number of States have recognized conscientious objection to military service, not only for conscripts but also for those serving voluntarily, and has encouraged States to allow applications for conscientious objection prior to, during and after military service, including reserve duties.

15. In 2019, the Working Group on Arbitrary Detention stressed that persons performing military service who might not have had conscientious objections might develop such objections as they proceeded with their service.<sup>34</sup> When the Working Group determines that the deprivation of liberty of conscientious objectors to military service is arbitrary, it will require the relevant State to immediately release the individuals involved, to accord them an enforceable right to compensation and other reparations, and to expunge their criminal records.<sup>35</sup> The Working Group will also request the State to bring its laws, particularly the provisions found to have resulted in the arbitrary deprivation of liberty of conscientious objectors, into conformity with the State's commitments under international human rights law.<sup>36</sup>

<sup>29</sup> A/HRC/36/8, para. 100.84 (Finland); A/HRC/37/11, paras. 132.94–132.106 (Republic of Korea); A/HRC/39/3, para. 116.59 (Turkmenistan); A/HRC/39/6, para. 121.23 (Colombia); A/HRC/41/14, paras. 131.108–131.122 (Eritrea); A/HRC/44/14, paras. 45.184–45.185 (Turkey); A/HRC/49/5, para. 130.76 (Greece); and A/HRC/49/12, para. 123.69 (Tajikistan).

<sup>30</sup> See <https://www.refworld.org/pdfid/5cb474b27.pdf>, pp. 186–189 (paras. 3 and 11); and A/HRC/41/23, para. 26.

<sup>31</sup> European Court of Human Rights, *Adyan and others v. Armenia*, application No. 75604/11, judgment of 12 October 2017, para. 72; *Mushfig Mammadov and others v. Azerbaijan*, applications Nos. 14604/08, 45823/11, 76127/13 and 41792/15, judgment of 17 October 2019, paras. 92–99; and *Aghanyan and others v. Armenia*, applications Nos. 58070/12 and 21 others, judgment of 5 December 2019, para. 13.

<sup>32</sup> See contribution from Quaker United Nations Office. See also Heiner Bielefeldt and Michael Wiener, *Religious Freedom Under Scrutiny* (Philadelphia, University of Pennsylvania Press, 2019).

<sup>33</sup> See Council resolutions 24/17 and 36/18.

<sup>34</sup> A/HRC/42/39, para. 60.

<sup>35</sup> *Ibid.*, para. 62.

<sup>36</sup> *Ibid.*

### C. Decision-making process for applications for conscientious objector status and alternative service

16. The Human Rights Council has called upon States that do not accept claims of conscientious objection to military service as valid without an inquiry to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection to military service is genuinely held in a specific case.<sup>37</sup>

17. In 2019, OHCHR stressed that application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards should comply, as a minimum, with the following criteria: (a) availability of information; (b) cost-free access to application procedures; (c) availability of the application procedure to all persons affected by military service; (d) recognition of selective conscientious objection; (e) non-discrimination on the basis of the grounds for conscientious objection and between groups; (f) no time limit on applications; (g) independence and impartiality of the decision-making process; (h) good faith determination process; (i) timeliness of decision-making and status pending determination; (j) right to appeal; (k) compatibility of alternative service with the reasons for conscientious objection; (l) non-punitive conditions and duration of alternative service; and (m) freedom of expression for conscientious objectors and those supporting them.<sup>38</sup>

### D. Prohibition of repeated trial or punishment of conscientious objectors

18. In 2021, the Human Rights Committee recalled that repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military might amount to punishment for the same crime if such subsequent refusal was based on the same constant resolve grounded in reasons of conscience.<sup>39</sup> In the case of *Petromelidis v. Greece*, the Committee observed that the author had been tried and punished three times in respect of five charges of insubordination by the same military court on account of his refusal to perform compulsory military service at different periods. The Committee considered that his refusal to serve was, on all occasions, based on the same reasons of conscience and he had been convicted for the same offence comprising the same actus reus, irrespective of the fact that his convictions concerned the commission of the same offence at different points in time, and the Committee thus concluded that his rights under article 14 (7) of the Covenant had been violated. In addition, the Committee observed that article 9 (1) provides that no one may be subjected to arbitrary arrest or detention. The Committee recalled that the notion of “arbitrariness” was not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.<sup>40</sup> It further recalled that just as detention as punishment for the legitimate exercise of freedom of expression is arbitrary, so too is detention as punishment for the legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.<sup>41</sup>

19. In 2019, the Working Group on Arbitrary Detention stressed that repeated prosecution and incarceration of conscientious objectors should not be used to force individuals to change their beliefs.<sup>42</sup> The Working Group considers that the detention of conscientious objectors is a per se violation of article 18 (1) of the Covenant and such detention will therefore usually

<sup>37</sup> See Council resolutions 24/17 and 36/18.

<sup>38</sup> [A/HRC/41/23](#), para. 60.

<sup>39</sup> *Petromelidis v. Greece*, para. 9.11. See also Human Rights Committee, general comment No. 32 (2007), paras. 54–55; *Abdullayev v. Turkmenistan* (CCPR/C/113/D/2218/2012), paras. 7.4–7.5; [CCPR/C/GRC/CO/2](#), paras. 37–38; and [CCPR/C/GRC/QPR/3](#), para. 20.

<sup>40</sup> *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.1, and *van Alphen v. Netherlands* (CCPR/C/39/D/305/1988), para. 5.8.

<sup>41</sup> *Petromelidis v. Greece*, para. 9.8.

<sup>42</sup> [A/HRC/42/39](#), para. 60.

lack a legal basis according to category I of its methods of work.<sup>43</sup> Moreover, given that the detention of conscientious objectors results from the exercise of the right to freedom of thought, conscience and religion under article 18, it will also often fall within category II. In addition, category III violations of the right to a fair trial may also be found in any individual case. Finally, when the detention of conscientious objectors to military service involves discrimination on the basis of religion or belief, it will amount to a category V violation.<sup>44</sup>

## E. Claims to refugee status

20. The Human Rights Council has encouraged States, subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee, as set out in the Convention relating to the Status of Refugees and its 1967 Protocol, to consider granting asylum to those conscientious objectors to military service who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service, when there is no provision, or no adequate provision, for conscientious objection to military service.<sup>45</sup> UNHCR has noted that a well-founded fear of persecution may arise after an applicant has left her or his country of origin, owing to circumstances arising in the country of origin during the applicant's absence and/or as a result of her or his own actions after she or he has left the country of origin, for example for having expressed objections or taken a stance against a situation of armed conflict and violence.<sup>46</sup>

21. In 2019, the Working Group on Arbitrary Detention reminded States to respect, protect and fulfil the right to personal liberty of conscientious objectors to military service by exercising due diligence to prevent their expulsion, return (refoulement) or extradition to another State where there are substantial grounds for believing that they would be in danger of being subjected to arbitrary deprivation of liberty.<sup>47</sup>

22. In its general comment No. 4 (2017), the Committee against Torture noted that violations of the right to freedom of thought, conscience and religion were indications of the complainant's personal risk and that the Committee would assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in case of the complainant's deportation.<sup>48</sup>

## III. Promising practices

### A. Alternative service

23. In November 2021, the Human Rights Committee noted with appreciation that Armenia had put in place a genuine alternative service of a civilian nature, accessible to all conscientious objectors, including Jehovah's Witnesses, and it welcomed the release of all conscientious objectors imprisoned for refusing to perform military service or the former alternative to military service. However, the Committee was concerned that the new civilian alternative to the military service remained discriminatory in duration compared with military service and that the draft law on freedom of conscience and religious organizations still

<sup>43</sup> See [A/HRC/WGAD/2017/43](#), [A/HRC/WGAD/2018/40](#), [A/HRC/WGAD/2018/69](#) and [A/HRC/WGAD/2019/84](#). For the Working Group's definition of the five categories of arbitrary detention, see <https://www.ohchr.org/en/about-arbitrary-detention>.

<sup>44</sup> [A/HRC/42/39](#), para. 61.

<sup>45</sup> See Council resolutions 24/17 and 36/18.

<sup>46</sup> <https://www.refworld.org/pdfid/5cb474b27.pdf>, p. 226.

<sup>47</sup> [A/HRC/42/39](#), para. 63. See also contributions from Connection e.V. and Quaker United Nations Office; <https://quno.org/resource/2021/5/report-conscientious-objection-military-service-and-refugee-status-determination>; and Özgür H. Çınar, "Conscientious objectors seeking asylum: a comparative perspective", *International Journal of Human Rights*, vol. 25, No. 2 (2021).

<sup>48</sup> Para. 45.

contained vaguely formulated limitations and excessive restrictions on freedom of conscience and religious belief.<sup>49</sup>

24. In July 2019, the Special Rapporteur on freedom of religion or belief commended the Government of Greece for proposing to take steps to reduce the burden and discrepancy of the alternative civilian service for conscientious objectors as compared to service in the armed forces.<sup>50</sup> However, the Special Rapporteur noted that the legislation did not fully address concerns regarding conscientious objection raised by the Human Rights Committee: for example the alternative service did not appear to be accessible to all conscientious objectors in a manner that was not punitive or discriminatory in nature, cost or duration. In August 2019, Greece responded that the adoption of law L.4609/19 and resultant ministerial decisions had eliminated the different treatment of conscientious objectors as compared to individuals undertaking military service, as the length of alternative service had become equal to the length of military service in the armed forces.<sup>51</sup> However, one contributor noted that the reduction in the length of alternative service was annulled by the next government in October 2019, thus reinstating the previous length of alternative service.<sup>52</sup> In December 2021, Greece accepted the recommendation of the universal periodic review to revise its national legislation with a view to recognizing the right to conscientious objection to military service, envisaging an alternative to military service to which all conscientious objectors would have access and that would not be punitive or discriminatory in its nature, cost or duration.<sup>53</sup>

25. Denmark reported that the length of conscientious objection service was equal to the length of the military service from which the conscript was transferred. In their call-up papers, all Danish conscripts received a letter containing information about the right to refuse military service for conscientious reasons, the procedure of applying for conscientious objector status and the length and types of work they might undertake in the civilian service.<sup>54</sup>

## **B. Recognition of the right to conscientious objection to military service for conscripts and those serving voluntarily**

26. Conscientious objection is not exclusively an issue in States with conscripted armed forces; it may arise at any point during the careers of professional members of the armed forces and can thus also occur in States without a draft system.<sup>55</sup> A number of States have recognised conscientious objection also for serving members of the armed forces, including Czechia, Germany, Romania, Slovakia, Slovenia, Spain, Switzerland and the United Kingdom of Great Britain and Northern Ireland.<sup>56</sup>

27. In February 2018, the Republic of Korea supported a recommendation of the universal periodic review to consider releasing those people imprisoned or detained because of their conscientious objection to military service and to consider removing the corresponding charges from their criminal record.<sup>57</sup> The Human Rights Committee noted with satisfaction the decision of 28 June 2018 of the Constitutional Court of the Republic of Korea, requiring that alternatives to military service be offered to conscientious objectors.<sup>58</sup> Furthermore, on 13 July 2018, the Government removed the personal information of conscientious objectors from public disclosure, judging that it was no longer appropriate to reveal their personal information.<sup>59</sup> Furthermore, opinion No. 40/2018 of the Working Group on Arbitrary Detention was cited in the closing statements before the Supreme Court on 30 August 2018

<sup>49</sup> [CCPR/C/ARM/CO/3](#), paras. 35–36.

<sup>50</sup> See communication OL GRC 3/2019.

<sup>51</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35128>.

<sup>52</sup> See contribution from the Greek National Commission for Human Rights.

<sup>53</sup> [A/HRC/49/5](#), para. 130.76, and [A/HRC/49/5/Add.1](#), para. 3.

<sup>54</sup> See contribution from Denmark.

<sup>55</sup> [A/HRC/41/23](#), para. 22. See also <https://www.osce.org/files/f/documents/6/5/480143.pdf>, p. 127.

<sup>56</sup> See <https://www.osce.org/files/f/documents/6/5/480143.pdf>, p. 139. See also contributions from European Organisation of Military Associations and Trade Unions and [Infodroit.ch](#).

<sup>57</sup> [A/HRC/37/11](#), para. 132.106, and [A/HRC/37/11/Add.1](#), para. 30.

<sup>58</sup> See <https://www.ohchr.org/en/press-releases/2018/11/un-review-reveals-concrete-progress-human-rights-experts-say?LangID=E&NewsID=23812>.

<sup>59</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34327>.



and the Government stated that the subsequent reversal of the jurisprudence of the Court could result in objectors in detention being eligible to file a claim for compensation.<sup>60</sup> The Working Group anticipated that this jurisprudential development would benefit all those in the country who had been subjected to the previous legal regime, while it should serve as an example to other countries.<sup>61</sup>

28. Subsequently, the Special Rapporteurs on freedom of expression and on freedom of religion or belief welcomed the decision by the Supreme Court of 1 November 2018 to decriminalize conscientious objection in the Republic of Korea, by holding that moral and religious beliefs were valid reasons for objecting to military service. They noted that this decision was in line with the country's obligations under international human rights law and hoped that it would have an immediate impact on the situation of over 900 conscientious objectors in the country, in particular the more than 250 conscientious objectors who were imprisoned. The two Special Rapporteurs welcomed the initiation of a legislative process to introduce into law an alternative to criminal service, urging the authorities to ensure that such law in content and process would continue the human rights approach of the Supreme Court, with a view to providing a framework for an alternative to military service that would be in line with international human rights law.<sup>62</sup> The Government reported that no persons were imprisoned for conscientious objection as of November 2019, with 1,879 conscientious objectors having been granted special parole<sup>63</sup> and 654 persons having started alternative service in 2020–2021.<sup>64</sup> However, one contributor noted that objectors who cited non-religious motivations continued to be imprisoned, but a decision of the Supreme Court on 23 February 2021 for the first time exempted two non-religious objectors from military service and on 24 June 2021 the Supreme Court upheld the acquittal by a lower court of a pacifist objector who also identified as queer.<sup>65</sup>

### **C. Applications during mobilization or in the absence of a peace agreement**

29. Submissions referred to the encouraging development that legal provisions in Finland and Greece that had previously enabled the provisions relating to conscientious objection to be suspended in time of war had been repealed.<sup>66</sup> In another submission it was noted that the recognition of conscientious objection to military service by the Republic of Korea was a recent example of legal recognition by a State, despite the absence of a peace agreement.

### **D. Fair, independent and impartial procedures to consider applications for conscientious objection to military service**

30. The Human Rights Council has welcomed the fact that some States have accepted claims of conscientious objection to military service as valid without an inquiry.<sup>67</sup> One contributor pointed out that the procedure in Switzerland was rather simple and efficient, as the admission decision was automatically given once the applicant for alternative service had participated in an information day and confirmed in writing his conscientious motives, which were not verified and did not need to be exposed.<sup>68</sup>

<sup>60</sup> [A/HRC/42/39](#), para. 72. See also [https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/ROK-Reply\\_to\\_letter\\_WGAD\\_2019-02-25\\_10-50-23.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/ROK-Reply_to_letter_WGAD_2019-02-25_10-50-23.pdf).

<sup>61</sup> [A/HRC/42/39](#), para. 64.

<sup>62</sup> See communication OL KOR 4/2018.

<sup>63</sup> [CCPR/C/KOR/5](#), paras. 169–171.

<sup>64</sup> See contribution from Republic of Korea.

<sup>65</sup> See contribution from Conscience and Peace Tax International.

<sup>66</sup> See contributions from the Greek National Commission for Human Rights, Conscience and Peace Tax International and War Resisters' International.

<sup>67</sup> See Council resolutions 24/17 and 36/18.

<sup>68</sup> See contribution from Infodroit.ch.

## IV. Remaining challenges

31. It remains problematic that not all States recognize the right to conscientious objection to military service for all who are affected and in all circumstances, or that some States fail to fully implement international human rights law and standards, as reflected in the concluding observations and Views of United Nations treaty bodies, the recommendations of special procedure mandate holders and the judgments of regional human rights courts. In order to close this implementation gap, the Human Rights Council has been encouraged<sup>69</sup> to mandate expert seminars to inform reports and technical guidance tools on one or more of the following thematic areas: monitoring of application procedures using the criteria in the OHCHR report on approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards of May 2019;<sup>70</sup> discriminatory access to exercising the right to conscientious objection to military service and discrimination against conscientious objectors, whether recognized or not; practice-sharing on how States have moved towards implementation; model legislative and policy provisions; conscientious objection and serving military personnel; and a study of the linkages between the right to conscientious objection to military service and the right to peace.

### A. Lack of recognition or implementation of the right to conscientious objection to military service and alternative service, repeated trial or punishment

32. In March 2022, the Special Rapporteur on freedom of religion or belief noted that conscientious objectors from religious or belief minorities, frequently those holding pacifist tenets, had faced compulsory conscription, at times violating their right to conscientious objection to military service.<sup>71</sup> He referred to reported cases of prosecutions and arbitrary detentions of members of the Druze community by Israel and of Jehovah's Witnesses, including in Armenia, Azerbaijan and Eritrea, when they rejected military service as conscientious objectors.<sup>72</sup>

33. In June 2017, the Human Rights Council reiterated its call on the Government of Eritrea to provide for conscientious objection to military service.<sup>73</sup> In May 2020, the Special Rapporteur on the situation of human rights in Eritrea noted that four Jehovah's Witnesses had died in prison and 52 remained imprisoned because they were conscientious objectors.<sup>74</sup> Three of them had been held for over 25 years, without charge. In May 2021, the Special Rapporteur welcomed their release on 4 December 2020, together with 25 other Jehovah's Witnesses; however, another 20 remained in prison.<sup>75</sup> One contributor noted that the security police "continue extrajudicially detaining Jehovah's Witnesses in inhuman conditions".<sup>76</sup>

34. In 2017, the Human Rights Committee remained concerned about the continued failure of Turkmenistan to recognize the right to conscientious objection to compulsory military service and the repeated prosecution and imprisonment of Jehovah's Witnesses who refused to perform compulsory military service. The Committee recommended that Turkmenistan revise its legislation without undue delay, with a view to clearly recognizing the right to conscientious objection to military service, provide for alternative service of a civilian nature outside the military sphere and not under military command for conscientious objectors, halt all prosecutions of individuals who refused to perform military service on grounds of conscience and release those who were currently serving prison sentences.<sup>77</sup> In

<sup>69</sup> [A/HRC/39/31](#), paras. 26, 66 and 70, and see contribution from Quaker United Nations Office.

<sup>70</sup> [A/HRC/41/23](#).

<sup>71</sup> [A/HRC/49/44](#), para. 31.

<sup>72</sup> *Ibid.*

<sup>73</sup> Resolution 35/35, para. 8 (c).

<sup>74</sup> [A/HRC/44/23](#), para. 46.

<sup>75</sup> [A/HRC/47/21](#), para. 48.

<sup>76</sup> Contribution from Office of Public Information, Jehovah's Witnesses.

<sup>77</sup> [CCPR/C/TKM/CO/2](#), paras. 40–41.

December 2020, four special procedure mandate holders referred to the detention of two members of the Jehovah's Witnesses religious minority, who were convicted in August 2020 for the second time for their conscientious objection to performing mandatory military service in Turkmenistan.<sup>78</sup> The special procedure mandate holders deeply regretted the criminalization of conscientious objection under article 219 of the Criminal Code and the absence of alternatives to military service, recalling the numerous affirmations by international human rights mechanisms of the absolute right to conscientious objection.

35. In November 2021, the Human Rights Committee recommended to Ukraine "that alternatives to military service should be available to all conscientious objectors without discrimination as to the nature of their beliefs justifying the objection (be they religious beliefs or non-religious beliefs grounded in conscience), and should be neither punitive nor discriminatory in nature or duration by comparison with military service". It urged Ukraine to ensure that "cases of abduction and arbitrary detention of conscripts are promptly, thoroughly and independently investigated, that perpetrators are prosecuted and punished and that victims are provided with effective remedies, including adequate compensation".<sup>79</sup>

36. At the regional level, an atheist who believes "in life, in non-violence, in love and in collaboration over imposition" claimed that Bolivia had infringed his human rights for not exempting him from complying with obligatory military service on account of his right to conscientious objection.<sup>80</sup> On 9 June 2020, the Inter-American Commission on Human Rights found his petition admissible, noting that in its future decision on the merits of the case "the Commission shall take into account the current conception of the content and scope of the rights invoked by the alleged victim" and that "human rights treaties are living instruments, with interpretation that must go side by side with the evolution of times and current lifestyles".<sup>81</sup>

## **B. Restrictions on the right to freedom of expression for those who publicly support conscientious objectors and conscientious objection**

37. Advocacy of, or expressing support for, conscientious objection to military service may be an offence in some countries.<sup>82</sup> Recalling its previous concluding observations, in August 2021 the Human Rights Committee asked Turkey to elaborate on the compatibility of article 318 of its Criminal Code, which criminalized "alienating the public from military service", with the Covenant and discuss whether it intended to repeal such provisions.<sup>83</sup>

38. In March 2018, the report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights referred to alleged intimidation and reprisals concerning Navruz Tahirovich Nasyrlyayev, who claimed that Turkmenistan had violated his rights through his repeated prosecution, conviction and imprisonment as a conscientious objector.<sup>84</sup> The Human Rights Committee noted with concern that, subsequent to Mr. Nasyrlyayev's submission of a communication thereon, his family home was raided by the police, and family members and guests had been subjected to mistreatment.<sup>85</sup> The Human Rights Committee recalled that any act of pressure, intimidation or reprisal against a person who had submitted a communication, or his or her relatives, constituted a breach of the State party's obligations under the Optional Protocol to the Covenant to cooperate with the Committee in good faith in implementing the provisions of the Covenant.

<sup>78</sup> See communication AL TKM 2/2020.

<sup>79</sup> [CCPR/C/UKR/CO/8](#), paras. 29–30.

<sup>80</sup> See <https://www.oas.org/en/iachr/decisions/2020/boad1384-16en.pdf>.

<sup>81</sup> *Ibid.*, para. 12. See also

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BOL/INT\\_CCPR\\_CSS\\_BOL\\_47709\\_E.doc](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BOL/INT_CCPR_CSS_BOL_47709_E.doc).

<sup>82</sup> See contribution from Quaker United Nations Office.

<sup>83</sup> [CCPR/C/TUR/QPR/2](#), para. 21.

<sup>84</sup> [A/HRC/36/31](#), para. 59, and annex I, paras. 84–85.

<sup>85</sup> See [CCPR/C/117/D/2219/2012](#).

### C. Conscientious objection for those serving voluntarily in the armed forces

39. One contributor noted the challenge of encouraging all States to recognize the importance of conscientious objection being available to individuals in voluntary military service and acknowledge that it falls under freedom of thought, conscience and religion in the same way as conscientious objection in the context of conscription, thereby allowing for the reasonable expectation that an individual's opinions and beliefs may change and develop over time depending on the circumstances. An example of this challenge could 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 belonging to the Defence Forces is voluntary.<sup>86</sup>

40. One communication to the Human Rights Committee concerned a woman who had voluntarily joined the military of the United States of America, but during her deployment in Iraq had developed sincere moral and religious objections to the actions of the United States in the conflict, which led to her desertion and move to Canada.<sup>87</sup> She maintained that, in compliance with United States military regulations, she was not entitled to a discharge with the status of conscientious objector in 2007, as she was a "selective objector", while United States Department of Defence directive No. 1300.06 defined a conscientious objector as someone who has a firm, fixed and sincere objection to participation in war in any form or the bearing of arms, by reasons of religious training or belief.<sup>88</sup> In its decision of July 2017, the Human Rights Committee noted the author's opposition to the military involvement of the United States in the conflict in Iraq and her refusal to be associated with condemned military conduct.<sup>89</sup> However, the Committee considered that the communication fell short of substantiating her claim that, by removing her to the United States, Canada had exposed her to a risk of irreparable harm such as that contemplated in articles 6 and 7 of the Covenant.<sup>90</sup>

### D. Unjust procedures during consideration of applications

41. In March 2022, the Human Rights Committee reiterated its concern about the predominantly military nature of the membership of the Special Military Committee in Israel that decides on requests for conscientious objection to compulsory military service and reiterated its recommendation that Israel take concrete measures to diversify the membership of the Committee with a view to making it fully independent and impartial. Israel should also put an end to the practice of repeated punishment and imprisonment of conscientious objectors, which might amount to a violation of the right not to be tried or punished again for the same offence.<sup>91</sup>

42. In December 2021, the Human Rights Committee asked Greece about the measures taken to provide all conscientious objectors with an alternative to military service that would not be punitive or discriminatory in terms of its nature, cost or duration, and for information on the measures taken to ensure respect for the *ne bis in idem* principle to avoid inflicting repetitive punishments on conscientious objectors.<sup>92</sup> The Greek National Commission for Human Rights noted that the law explicitly prohibits conscientious objectors from performing alternative service in their region of residence and that it had consistently demanded that the possibility of repeated prosecutions for refusal to perform military service be abolished.<sup>93</sup>

<sup>86</sup> See contribution from European Organisation of Military Associations and Trade Unions. See also <https://hudoc.esc.coe.int/eng?i=cc-164-2018-dmerits-en>, paras. 41–44.

<sup>87</sup> CCPR/C/120/D/2196/2012, paras. 2.1–2.2. See also A/HRC/35/4, para. 13.

<sup>88</sup> CCPR/C/120/D/2196/2012, para. 5.4.

<sup>89</sup> Ibid., paras. 3.3 and 7.4.

<sup>90</sup> Ibid., paras. 7.4–7.5.

<sup>91</sup> CCPR/C/ISR/CO/5, paras. 46–47, and CCPR/C/ISR/CO/4, para. 23.

<sup>92</sup> CCPR/C/GRC/QPR/3, para. 20, referring to CCPR/C/GRC/CO/2, para. 38.

<sup>93</sup> See contribution from the Greek National Commission for Human Rights.

43. In March 2021, the Human Rights Committee expressed concern that in Finland military personnel still took part in working groups and committees determining the nature and duration of alternative service.<sup>94</sup> Furthermore, the Committee expressed concern that Act No. 330/2019 had removed the exemption from military and civilian service accorded to Jehovah's Witnesses, in contrast to the Committee's previous recommendations to extend such exemption to other groups of conscientious objectors.<sup>95</sup>

44. According to one submission, in August 2017 Colombia adopted a law regulating various fields of military recruitment, including applications for conscientious objection. However, the composition of the examination commission, which includes four officials from the relevant military district authority, would fail to meet standards of impartiality and independence.<sup>96</sup>

## E. Disproportionate length of alternative service

45. A longer length of civilian alternative service for conscientious objectors in comparison to the length of military service infringes upon articles 18 and 26 of the Covenant if it is not based on reasonable and objective grounds.<sup>97</sup> The Human Rights Committee has noted with concern that the regular duration of alternative non-military service in Finland amounts to the longest period of military service and has recommended ensuring that alternatives to military service are not punitive or discriminatory in terms of their nature or duration.<sup>98</sup>

46. As regards Belarus, the Human Rights Committee was concerned at the difference in the length of alternative service compared with military service between those with and without higher education, with alternative service for the latter category being twice as long as military service. While noting that the justification given for this difference was to prevent abuse and avoid an increase in the number of requests for alternative service, the Committee expressed concern at the discriminatory and punitive aspects of the difference.<sup>99</sup>

47. In November 2019, Special Rapporteurs raised concerns about punitive elements in a draft alternative service bill in the Republic of Korea, such as the length of 36 months for alternative service and the exclusive emphasis on serving in places of detention, which meant that many conscientious objectors might be transferred from a situation of incarceration to a situation where they performed alternative service in prison.<sup>100</sup> The Government responded in February 2020 that conscientious objectors would initially be stationed in a correction facility with accommodation and other service facilities for the early implementation of alternative service; however, the Government would continuously review the expansion of fields of alternative service.<sup>101</sup>

48. In October 2017, the European Court of Human Rights noted that the duration of alternative service might be a relevant factor to consider when determining whether it could be perceived as being deterrent or punitive in character. It referred to the findings of the European Committee of Social Rights and of the Commissioner for Human Rights of the Council of Europe to the effect that the length of alternative service might not exceed 1.5 times the length of armed military service.<sup>102</sup> In Armenia, the alternative labour service was

<sup>94</sup> CCPR/C/FIN/CO/7, para. 36.

<sup>95</sup> CCPR/C/FIN/CO/6, para. 14. See also contribution from the Finnish Union of Conscientious Objectors.

<sup>96</sup> A/HRC/41/23, para. 42. See also contribution from Asociación Cristiana Menonita para Justicia, Paz y Acción No Violenta.

<sup>97</sup> A/HRC/41/23, para. 57.

<sup>98</sup> CCPR/C/FIN/CO/7, paras. 36–37.

<sup>99</sup> CCPR/C/BLR/CO/5, para. 47.

<sup>100</sup> See communication OL KOR 4/2019. See also contributions from the Office of Public Information, Jehovah's Witnesses and War Resisters' International.

<sup>101</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35166>.

<sup>102</sup> European Court of Human Rights, *Adyan and others v. Armenia*, judgment of 12 October 2017, paras. 46, 48 and 70.

significantly longer and in the opinion of the Court that must have had a deterrent effect and contained a punitive element.

## **F. Discrimination based on sexual orientation and gender identity**

49. On 22 March 2022, the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity warned that “the military operation by the Russian Federation and the ensuing armed conflict in Ukraine will destroy decades of progress in the fight against discrimination and violence based on sexual orientation and gender identity”.<sup>103</sup> The Independent Expert referred to the example of transgender and gender-diverse people whose legal identity documents do not correspond to their gender or physical presentation, who encounter severe difficulties at checkpoints, border crossings, reception centres, health facilities and other critical locations, including challenges in securing medical exemption from male-only compulsory military service.<sup>104</sup>

## **G. Conscientious objection in occupied and other territories**

50. In its resolution 76/179 on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, the General Assembly urged the Russian Federation to respect freedom of thought, conscience and religion or belief without discrimination on any grounds and to end the practice of criminal prosecution of the inhabitants of Crimea who resisted conscription into the armed or auxiliary forces of the Russian Federation.<sup>105</sup> In its reports on the human rights situation in Ukraine in 2020 and 2021, OHCHR noted that in the Autonomous Republic of Crimea and the city of Sevastopol, the tenth conscription campaign in 2019 drafted approximately 3,000 men into the armed forces of the Russian Federation, in violation of international humanitarian law.<sup>106</sup> The criminal law of the Russian Federation, as applied in Crimea, prescribes fines, correctional labour and imprisonment for up to two years for draft evasion.<sup>107</sup> Furthermore, military draft offices in Crimea have denied the requests of male Jehovah’s Witnesses to carry out alternative civilian service in exercise of their right to conscientious objection. In one case, a 17-year-old boy received a conscription notice during the conscription campaign in spring 2020 and the military draft commission considered his application for alternative civilian service during a pro forma four-minute-long hearing, concluding that the applicant had “failed to demonstrate sufficient reasons that his moral and ethical beliefs are incompatible with military service”, without any explanation of their reasoning.<sup>108</sup>

51. Despite the concerns raised by the Special Rapporteur on freedom of religion or belief concerning the Transnistrian region of the Republic of Moldova,<sup>109</sup> since February 2018 conscientious objectors who visit the region have reportedly been required to perform military service, even though they no longer live in the Transnistrian region. Another amendment to the law of December 2019 gives priority to the personnel needs of the de facto authorities.<sup>110</sup>

52. With regard to the northern part of Cyprus, following the recommendation of the Special Rapporteur on freedom of religion or belief that the de facto authorities should recognize the right to conscientious objection to military service,<sup>111</sup> a draft amendment,

<sup>103</sup> See <https://www.ohchr.org/en/press-releases/2022/03/ukraine-protection-lgbti-and-gender-diverse-refugees-remains-critical-un>.

<sup>104</sup> Ibid. See also contribution from Centre for Law and Social Justice, University of Newcastle, Australia.

<sup>105</sup> Paras. 6 (o) and 6 (w).

<sup>106</sup> See, for example, [https://www.ohchr.org/Documents/Countries/UA/29thReportUkraine\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/29thReportUkraine_EN.pdf), para. 13.

<sup>107</sup> [A/HRC/47/58](#), para. 38.

<sup>108</sup> [https://www.ohchr.org/Documents/Countries/UA/30thReportUkraine\\_EN.pdf](https://www.ohchr.org/Documents/Countries/UA/30thReportUkraine_EN.pdf), para. 114.

<sup>109</sup> [A/HRC/19/60/Add.2](#), paras. 53 and 69.

<sup>110</sup> See contribution from Office of Public Information, Jehovah’s Witnesses.

<sup>111</sup> [A/HRC/22/51/Add.1](#), paras. 68 and 87.

which would have included conscientious objection and alternative service, was discussed by a “parliamentary committee” in February 2019.<sup>112</sup> Following a change of the de facto authorities, however, the draft was withdrawn during autumn 2019. Three cases brought by conscientious objectors from the northern part of Cyprus against Turkey have been deemed admissible and are pending before the European Court of Human Rights.<sup>113</sup>

53. In the case of *Avanesyan v. Armenia*, the European Court of Human Rights dealt with the refusal of a Jehovah’s Witness to perform military service for reasons of conscience and his conviction for draft evasion. The applicant was born in a town in Nagorno-Karabakh and has held an Armenian passport since 2012.<sup>114</sup> Following a summons, he was arrested in Yerevan and handed over to the police in Nagorno-Karabakh, where he was sentenced in 2014 to two and a half years’ imprisonment. In its judgment of 20 July 2021, the European Court of Human Rights found no particular circumstances in the case, which took place prior to the recent hostilities between Armenia and Azerbaijan, that would require it to depart from its findings in previous judgments, in which it had held that, at the relevant time, Armenia exercised effective control over Nagorno-Karabakh and that it was therefore under an obligation to secure the rights and freedoms set out in the European Convention on Human Rights in that territory. The Court noted that while alternative civilian service was available in Armenia to conscientious objectors such as the applicant, he was not able to take advantage of that option because he was apparently considered liable for military service in Nagorno-Karabakh, where, unlike in Armenia, the right to conscientious objection was not recognized.<sup>115</sup> Even assuming that the applicant was a “citizen” of Nagorno-Karabakh, as was argued by the Government, the Court held that Armenia was responsible for the acts and omissions of the authorities in Nagorno-Karabakh. The applicant had no possibility, or was deprived of the possibility, of performing alternative civilian service instead of military service and the Court concluded that the authorities had failed to make appropriate allowances for the exigencies of his conscience and beliefs.<sup>116</sup>

## V. Conclusions and recommendations

54. **There have been important legal developments in recognition of conscientious objection to military service at the international, regional and national levels since OHCHR presented the previous analytical report in 2017.**

55. **Some States have adopted laws and regulations introducing a genuine alternative service of a civilian nature and decriminalizing conscientious objection to military service, leading to the release of imprisoned objectors. Furthermore, some States have explicitly recognized conscientious objection, not only for conscripts but also for serving members of the armed forces. Also, the personal information of conscientious objectors, which had previously been disclosed publicly, has been removed from public disclosure, in line with recommendations from international human rights mechanisms. Some States have repealed legislation that had previously enabled the provisions relating to conscientious objection to be suspended in time of war.**

56. **Nevertheless, many individuals seeking to exercise the right to conscientious objection to military service continue to face violations of that and other rights, because some States and de facto authorities do not recognize that right or fail to ensure its full implementation in practice. Of particular concern are cases of punishment, arbitrary detention and repeated trial of unrecognized conscientious objectors, often persons belonging to religious or belief minorities and those holding pacifist tenets. Moreover, in some States that have recognized conscientious objection, the alternative service**

<sup>112</sup> [A/HRC/41/23](#), para. 9.

<sup>113</sup> See contribution from Conscience and Peace Tax International and [https://www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2022-03-21-EBCO\\_Annual\\_Report\\_2021\\_0.pdf](https://www.ebco-beoc.org/sites/ebco-beoc.org/files/attachments/2022-03-21-EBCO_Annual_Report_2021_0.pdf), p. 27.

<sup>114</sup> European Court of Human Rights, *Avanesyan v. Armenia*, application No. 12999/15, judgement of 20 July 2021, para. 5.

<sup>115</sup> *Ibid.*, para. 57.

<sup>116</sup> *Ibid.*, para. 58.

arrangements are not accessible to all conscientious objectors and are punitive or discriminatory in nature or duration by comparison with military service. There also remain undue restrictions on freedom of expression for those who support conscientious objectors or the right to conscientious objection.

57. To bring them into line with international human rights norms and standards, national laws, policies and practices relating to conscientious objection to military service should be guided by the following points:

(a) The right to conscientious objection to military service derives from the right to freedom of thought, conscience, religion or belief pursuant to article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

(b) All persons affected by military service should have access to information about the right to conscientious objection and the means of acquiring objector status;

(c) The process of applying for status as a conscientious objector should be free and there should be no charge for any part of the whole procedure;

(d) The application procedure should be available to all persons affected by military service, including conscripts, professional members of the armed forces and reservists;

(e) The right to object applies both to pacifists and to selective objectors who believe that the use of force is justified in some circumstances but not in others;

(f) Alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs;

(g) Conscripts and volunteers should be able to object before the commencement of military service, or at any stage during or after military service;

(h) No inquiry process is required by international law and consideration should be given to accepting claims of conscientious objection to military service as valid without such a process;

(i) States that do not accept claims of conscientious objection as valid without an inquiry should establish independent and impartial bodies under the full control of the civilian authorities;

(j) Application procedures should be based on reasonable and relevant criteria and should avoid imposing any conditions that would result in automatically disqualifying applicants;

(k) The process for consideration of any claim of conscientious objection should be timely and all duties involving the bearing of arms should be suspended pending the decision;

(l) After any decision on conscientious objector status, there should always be a right to appeal to an independent civilian judicial body;

(m) Conscientious objectors should not be repeatedly punished for not having obeyed a renewed order to serve in the military;

(n) States should release individuals who are imprisoned or detained solely based on their conscientious objection to military service;

(o) Alternative service must be compatible with the reasons for conscientious objection, be of a non-combatant or civilian character, be in the public interest and not of a punitive character;

(p) Any longer duration of alternative service in comparison to military service is permissible only if additional time for alternative service is based on reasonable and objective criteria;



(q) **The personal information of conscientious objectors should not be disclosed publicly by the State and their criminal records should be expunged;**

(r) **Those who support conscientious objectors or who promote the right to conscientious objection to military service should fully enjoy their freedom of expression.**

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