



# **European Bureau for Conscientious Objection**

35 Van Elewyck Street, 1050 Brussels, Belgium  
Tel: +32 2 648 5220, Fax: +32 2 648 6988  
ebco@ebco-beoc.org / www.ebco-beoc.org

## **Annual Report**

# **Conscientious Objection to military service**

**in Europe**

# **2015**

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**Researched by  
Martina Lucia Lanza**

**Edited by  
Derek Brett**

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## Foreword by Friedhelm Schneider, EBCO President

In September 2014 Heiner Bielefeldt, the United Nations Special Rapporteur on Freedom of Religion or Belief, speaking at a side event to the Human Rights Council, observed: "Conscientious objection to military service is a specific issue, but not a side issue!".

One year on, in October 2015, the European Bureau for Conscientious Objection, for the first time launches its Annual Report "Conscientious objection to military service in Europe 2015" in Geneva, immediately before the Session of the UN Human Rights Committee which will deal with the reports of Greece and the Republic of Korea - two states in which the right of conscientious objection to military service continues flagrantly to be violated.

Monitoring the situation of conscientious objectors in Europe during the last year we discover a sad continuity of problems on three levels:

1) Conscientious objection to military service has been acknowledged as a human right in the framework of the Council of Europe and the United Nations system of international law. Nevertheless there remain a number of states that notwithstanding having signed the European Convention of Human Rights or the International Covenant on Civil and Political Rights persistently refuse any non-discriminatory implementation of the right of conscientious objection. In Greece the change of government did not halt the obsessive prosecution of non-religious conscientious objectors far beyond the age of 45 when they are no longer liable for conscription. In Turkey conscientious objectors continue to be exposed to arbitrary repression by military and police authorities. EBCO is deeply disturbed that in the context of a militarized inner state conflict escalation Alper Sapan and Polen Ünlü, members of our Turkish affiliate VR-DER were among those murdered in the Suruç massacre on 20 July 2015 while on their way to carry out relief work in Kobane. This Report is dedicated to their memory

2) Looking at developments in Ukraine and the surrounding region, we note again the tendency to deny the right of conscientious objection to military service, just when it is most relevant – in time of war. Ukraine (and Lithuania) has reintroduced military conscription shortly after suspending it. In Ukraine, only members of certain religious minorities may be recognised as conscientious objectors. Other Ukrainians who do not want to fight against their neighbours or long-time fellow citizens are forced to become draft evaders and/or asylum seekers - draft evasion has become a mass phenomenon.

3) With regard to the areas of armed conflict in Ukraine and the Middle East the topic of conscientious objectors seeking refugee status has become a matter of increased urgency. Satisfying the criteria established by UNHCR regarding claims to refugee status related to military service is a complicated and sophisticated process (see EBCO Annual Report 2014). Meanwhile the tendency of some states to exclude refugee claims by listing safe countries of origin is a matter of grave concern to EBCO. A country declared as safe in most instances for repatriation is not necessarily a country which respects the right of conscientious objection to military service.

The respect of the right of conscientious objection to military service is an important indicator of the credibility of the human rights orientation of a society or a state. It is EBCO's commitment to stimulate this perspective of freedom of conscience and to work for its implementation.





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## 1 DEVELOPMENTS SINCE THE PREVIOUS REPORT (October 2014)

### 1.1 INTERNATIONAL AND REGIONAL ORGANISATIONS AND MECHANISMS

#### 1.1.1 COUNCIL OF EUROPE

##### 1.1.1.1 European Court of Human Rights

The most significant new judgements of the European Court of Human Rights have concerned issues of human rights in the armed forces, rather than conscientious objection itself.

The case of **Lyalyakin v. Russian federation** (application no. 31305/09) concerned a complaint by a conscript about degrading treatment when he was caught trying to escape from the army, including appearing undressed in front of other soldiers.

The Court, whilst recognising the need to maintain military discipline within the army, found that the conscript's public humiliation had been unnecessary and could not be justified merely as a means of preventing his escape from the unit.

Furthermore, there are at least 2 cases about conscientious objection and the violation of Freedom of thought, conscience and religion (Art. 9 ECHR) pending before the Court: **Papavasilakis v. Greece** (application no. 68899/2014) and **Kanatli v. Turkey** (application no. 18382/2015).<sup>1</sup>

##### 1.1.1.2 Committee of Ministers of the Council of Europe

At the 1212th meeting in November 2014 the Committee of Ministers closed by final Resolution the examination of the **case Bayatyan v. Armenia** of European Court of Human Rights (ECtHR application no. 23459/03), regarding the conviction to prison of conscientious objectors.

The Committee of Ministers, after has examined the action report provided by the Armenian government indicating the measures adopted, was satisfied that all the measures required have been adopted.

In particular, in its 2014 annual report, the Committee of Ministers underlined that at the moment in Armenia the duration of alternative military and labour services was reduced to 30 and 36 months respectively. The alternative labour service is currently organized and supervised by relevant Government Agencies and no military control is allowed.<sup>2</sup>

At the 1237<sup>th</sup> meeting in October 2015 the Committee of Ministers adopted a Compilation on Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights drafted by the Steering Committee for Human Rights (CDDH).

The compilation was prepared in response to a proposal stemming from a thematic debate in the Council of Europe's Committee of Ministers, in December 2012, on "freedom of religion and the situation of religious minorities".<sup>1</sup> The aim of the compilation is to provide

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<sup>1</sup> For more details about the Conscientious objector Murat Kanatli see the paragraph about the Cyprus country.

<sup>2</sup> Council of Europe, Committee Of Ministers, 8th Annual Report of the Committee of Ministers 2014, March 2015, pp. 167-168.



a comprehensive overview of all the existing Council of Europe standards and the links to other rights contained in the European Convention on Human Rights as well as the jurisprudence of the European Court of Human Rights interpreting these rights.

As regards conscientious objection to military service, the compilation reaffirmed the recommendations included in the 2010 Resolution on human rights of members of armed forces.<sup>3</sup> In this Resolution, the Committee of Ministers recommend to member States:

- *For the purposes of compulsory military service, conscripts should have the right to be granted conscientious objector status and an alternative service of a civilian nature should be proposed to them;*
- *Professional members of the armed forces should be able to leave the armed forces for reasons of conscience;*
- *Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible;*
- *Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body;*
- *Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience;*
- *Members of the armed forces should be informed of the rights mentioned in paragraphs above and the procedures available to exercise them.*

Moreover, the Compilation analysed some jurisprudence cases, such as the case of *Bayatyan v. Armenia* of ECtHR (application no. 23459/03) and the collective complaint decision *Quaker Council for European Affairs against Greece* lodged at the European Committee of Social Rights (Complaint No. 8/2000).

Furthermore, the Compilation underlined that the manner in which the alternative service is regulated by the State has also been considered by other Council of Europe bodies:

- The Commissioner for Human Rights has stressed that the right to conscientious objection to military service should be guaranteed in all parts of Europe. He added that when this right is recognised by law or practice, there should be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; and no discrimination against conscientious objectors because they have failed to perform military service; also, the alternative service should not be punitive in terms of having a much longer duration.<sup>4</sup>
- The European Committee of Social Rights clearly stated in its Conclusions regarding Estonia: Under Article 1§2 of the Charter, alternative service may not exceed one and a half times the length of armed military service.<sup>5</sup>
- The Venice Commission has in a legal opinion regarding Armenia recalled that any form of control over alternative service should be of civilian nature and in order to alleviate any

<sup>3</sup> Council of Europe, Committee of Ministers, Resolution CM/Rec(2010)4

<sup>4</sup> Human Rights Comment by Thomas Hammarberg posted on 2 February 2012.

<sup>5</sup> European Committee of Social Rights, Conclusions 2008, Estonia, Article 1.2.





ambiguity, the amendment should explicitly state that the military have no supervisory role in the day-to-day operational supervision of those who perform alternative service.<sup>6</sup>

### 1.1.1.3 Council of Europe Commissioner For Human Rights

The Commissioner for Human Rights visited **Armenia** from 5 to 9 October 2014. In his Report following the visit, the Commissioner commended the Armenian authorities for effectively addressing the long-standing issue of the right to conscientious objection. However, he regretted to note that acts of non-combat violence, sometimes resulting in deaths, have continued to occur in the Armenian army. He calls upon the Armenian authorities to intensify their efforts to tackle this problem, in particular through effective investigations of allegations of human rights abuse.

## 1.1.2 EUROPEAN UNION

### 1.1.2.1 Court Of Justice Of The European Union

As related in the 2014 Report, on June 2014 the Court of Justice of the European Union, which sits in Luxembourg, held a hearing in the case of conscientious objector **André Shepherd**, a former United States serviceman who is seeking asylum in Germany.

After one tour of duty in Iraq, as an Apache helicopter mechanic, in 2004 Shepherd returned on leave to his unit stationed in Katterbach, Germany. There he reflected on the actions to which he had contributed, and read widely about the effects of U.S. military action on the civilian population in Iraq. This led him to believe that should he return to Iraq he would be an accomplice to war crimes. He investigated the possibility of applying for release as a conscientious objector, but was told that as his was a "selective" objection it would almost certainly be denied. Detailed for a second tour of duty in 2007, Shepherd went "absent without leave", and the following year applied for asylum in Germany. This application was turned down, but Shepherd lodged an appeal with the *Bayerisches Verwaltungsgericht München* (Bavarian Administrative Court, Munich), arguing among other things that under Qualification Directive 2004/83/EC issued by the Council of the European Union, he should not be returned to the USA, where he would face persecution. Article 9 para 2 of the Directive states: "Acts of persecution (...) can, inter alia, take the form of: (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include (...) a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes." In September 2013, the German court postponed the case in order to request an advisory opinion from the Court in Luxemburg, which is the authoritative interpreter of EU law, and posed eight specific questions.

On 25th June 2014, the two parties (the Federal Republic of Germany and Shepherd, represented by his lawyer, Reinhard Marx) were questioned by the five judges hearing the case. There were also interventions by the European Commission, and by the United Kingdom and Greece (all EU member states are entitled to state their opinions on an issue before the court). The Netherlands had submitted written comments in advance, but did not participate in the hearing. The German refugee organisation Connection e.V., which is supporting Shepherd, sent an observer and organised a press conference following the hearing, at which Shepherd himself and his lawyer spoke; EBCO was also represented by two observers.

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<sup>6</sup> CDL-AD(2011)051 Opinion on the draft law on amendments and additions to the law on alternative service of Armenia, adopted by the Venice Commission at its 89th Plenary Session (Venice, 16-17 December 2011), paragraph 38.



On 11th November 2014, the «Advisory Opinion»<sup>7</sup> by Advocate General Eleanor Sharpston was published.

After her considerations on the questions asked by the German National Authority, she concluded that:

- The Article 9(2)(e) of Council Directive 2004/83/EC of 29 April 2004 extends to military personnel who do not directly participate in combat, where such personnel could, in performing military service, be led to instigate or otherwise participate in the commission of crimes or acts of the kinds referred to in that provision.

- In assessing whether that is the case, the national authorities must consider: (i) whether there is a direct link between the acts of the person concerned and the reasonable likelihood that war crimes might be committed, because his actions comprise a necessary element of those crimes and without his contribution or all the contributions made by individuals in his situation, the war crimes or acts would not be possible; (ii) whether there are objective grounds for considering that the person concerned could be involved in committing war crimes. In that regard, it is inconsistent with Article 9(2)(e) of Directive 2004/83 to apply: (a) a criminal standard of proof (such as 'beyond all reasonable doubt') or (b) principles derived from international criminal law.

- The fact that the authorities in an applicant's country of nationality prosecute war crimes does not preclude him from invoking Article 9(2)(e) of Directive 2004/83; whether there is a prosecution before the International Criminal Court is likewise of no relevance in that regard.

- The existence of a mandate from the United Nations Security Council covering the conflict in question does not preclude claims for refugee status based upon Article 9(2)(e) of Directive 2004/83.

- A person who refuses to perform military service cannot qualify for refugee status under Article 9(2)(e) of Directive 2004/83 unless either he has first had recourse, unsuccessfully, to any available procedures for claiming the status of conscientious objector or no such procedures are plausibly available to him.

- In assessing whether a person who refuses to perform military service may be considered to be a member of a particular social group for the purposes of Article 10(1)(d) of Directive 2004/83, it is necessary to take into account: (i) whether he holds a conviction of sufficient cogency, seriousness, cohesion and importance; (ii) whether by virtue of that conviction he meets the requirements of the first indent of Article 10(1)(d) in that his objection stems from a belief that is fundamental to his conscience; and (iii) whether individuals who hold such convictions are perceived as being different in their country of origin within the meaning of the second indent of Article 10(1)(d).

- In so far as an applicant relies upon Article 9(2)(b) and Article 10(1)(d) of Directive 2004/83, it is necessary for the competent national authorities to assess whether a dishonourable discharge from the army and a prison sentence is discriminatory because the applicant is a member of a particular social group. In making that assessment it is necessary to consider whether there are social groups in the country concerned that are comparable to that to which the applicant claims to belong in that such groups are similarly situated and whether the applicant's group is likely to be subject to different treatment by virtue of the fact that it might be subject to court martial proceedings and/or dishonourable discharge and whether any apparent difference in treatment could be justified.

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<sup>7</sup> Court of Justice of the European Union, OPINION OF ADVOCATE GENERAL SHARPSTON Case C-472/13 Andre Lawrence Shepherd v Bundesrepublik Deutschland, 11 November 2014.



– In so far as an applicant relies upon Article 9(2)(c) of Directive 2004/83, it is necessary for the competent national authorities to assess whether prosecution or punishment for desertion is disproportionate. In that regard it is necessary to consider whether such acts go beyond what is necessary for the State concerned to exercise its legitimate right to maintain an armed force.

On 26th February 2015, the Court of Justice decided on the Shepherd's case and ruled that the Article 9(2)(e) of Council Directive 2004/83/EC must be interpreted as meaning that:

- it covers all military personnel, including logistical or support personnel;
- it concerns the situation in which the military service performed would itself include, in a particular conflict, the commission of war crimes, including situations in which the applicant for refugee status would participate only indirectly in the commission of such crimes if it is reasonably likely that, by the performance of his tasks, he would provide indispensable support to the preparation or execution of those crimes;
- it does not exclusively concern situations in which it is established that war crimes have already been committed or are such as to fall within the scope of the International Criminal Court's jurisdiction, but also those in which the applicant for refugee status can establish that it is highly likely that such crimes will be committed;
- the factual assessment which it is for the national authorities alone to carry out, under the supervision of the courts, in order to determine the situation of the military service concerned, must be based on a body of evidence capable of establishing, in view of all the circumstances of the case, particularly those concerning the relevant facts as they relate to the country of origin at the time of taking a decision on the application and to the individual position and personal circumstances of the applicant, that the situation in question makes it credible that the alleged war crimes would be committed;
- the possibility that military intervention was engaged upon pursuant to a mandate of the United Nations Security Council or on the basis of a consensus on the part of the international community or that the State or States conducting the operations prosecute war crimes are circumstances which have to be taken into account in the assessment that must be carried out by the national authorities;
- the refusal to perform military service must constitute the only means by which the applicant for refugee status could avoid participating in the alleged war crimes, and, consequently, if he did not avail himself of a procedure for obtaining conscientious objector status, any protection under Article 9(2)(e) of Directive 2004/83 is excluded, unless that applicant proves that no procedure of that nature would have been available to him in his specific situation.

In conclusion, the Court (Second chamber) ruled that **the measures incurred by a soldier because of his refusal to perform military service**, such as the imposition of a prison sentence or discharge from the army, **may be considered**, having regard to the legitimate exercise, by that State, of its right to maintain an armed force, **not so disproportionate or discriminatory as to amount to acts of persecution for the purpose of the Article 9(2)(e) of Directive 2004/83.**<sup>8</sup>

In this moment, the case of André Shepherd is returned to the national authorities, that have the task of ascertaining whether that is indeed the case.

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<sup>8</sup> Court of Justice, Judgment of the Court (Second Chamber) in the Case C-472/13 Andre Lawrence Shepherd v Bundesrepublik Deutschland, 26 February 2015.



### 1.1.2.2 European Parliament

Neither the Annual report on human rights and democracy in the world 2013<sup>9</sup> nor the resolution on the situation of fundamental rights in the European Union (2013-2014)<sup>10</sup> spoke of conscientious objection.

However, the resolution approved on 10 June 2015 on the 2014 Commission Progress Report on **Turkey**, as candidate country to the European Union, stressed the need to recognise the right to conscientious objection to compulsory military service (Paragraph 28).

Also in June, the **European Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance** has publicized its annual report on the State of Freedom of Religion or Belief in the world (2014).

The European Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance is a group of like-minded MEPs dedicated to ensuring the EU, in its external actions, promotes and protects the right to freedom of religion or belief.

In the Report, the intergroup stated that: *Freedom to manifest one's religion or belief includes many different forms which represent also other human rights, such as freedom of speech, freedom of assembly, and the freedom to teach, promote, and publicly express religion or belief, as well as the right to conscientious objection against military service, to name just a few.*<sup>11</sup>

Furthermore, in relation to the situation in Tajikistan, the Report specified that, since 2007, Jehovah's Witnesses have been completely banned by the government, because of their opposition to military service.<sup>12</sup>

### 1.1.3 UNITED NATIONS

#### 1.1.3.1 HUMAN RIGHTS COMMITTEE

##### 1.1.3.1.1 JURISPRUDENCE

#### **Case of Young-kwan Kim et al (Communication no. 2179/2012)**

##### **State party: Republic of Korea**

At its Session in October 2014 (112th session), Human Rights Committee adopted the view on the case of Young-kwan Kim et al. .

The authors of the communication are 50 individuals, all nationals of the Republic of Korea and Jehovah's Witnesses.

They claim to be victims of violations by the Republic of Korea of their rights under articles 9 and 18 of the International Covenant on Civil and Political Rights because they have been

<sup>9</sup> European Parliament resolution of 12 March 2015 on the Annual Report on Human Rights and Democracy in the World 2013 and the European Union's policy on the matter (2014/2216(INI)).

<sup>10</sup> European Parliament resolution of 8 September 2015 on the situation of fundamental rights in the European Union (2013-2014) (2014/2254(INI)).

<sup>11</sup> The European Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance, The State of Freedom of Religion or Belief in the world 2014, Annual Report, June 2015, p. 15.

<sup>12</sup> Ibid., p. 47.



sentenced to 18 months imprisonment for refusing, on the basis of their religious belief, to be drafted for military service.

The authors assert that *"the State party's refusal to recognize their right to conscientious objection to military service, under penalty of imprisonment, constitutes a violation of article 18, paragraph 1, of the Covenant"*<sup>13</sup> and also that *"their detention due to their conscientious objection constitutes a violation by the State party of article 9 of the Covenant, which prohibits arbitrary detention and guarantees an enforceable right to compensation."*<sup>14</sup>

Therefore, the authors request that *"their criminal records be expunged and that the State party provide them with adequate compensation and take necessary measures to avoid similar violations of the Covenant in the future."*<sup>15</sup>

The State party argues that the shift in jurisprudence of the Committee concerning the issue of conscientious objection is erroneous in two respects: *"First, the Committee claims that conscientious objection is an absolute right that is non-derogable even in exigencies under article 4 of the Covenant. In these circumstances, the claim of conscientious objection could be extended as a justification for acts such as refusal to pay taxes or refusal of mandatory education. Second, the Committee claims that the State party violated the right of individuals to choose whether to declare conscientiously held beliefs. However, if that right were violated by a State party's failure to introduce an alternative service system, then it would follow that the individuals must prove their conscience in order to benefit from alternative service, which would also in turn be regarded as a violation of the right to choose whether to declare conscientiously held beliefs, according to the same logic. Therefore, the views of the Committee are not compatible with the nature of an alternative service system."*<sup>16</sup>

After this reasoning, the State shows that it could have various practical problems if it recognised an alternative service. First of all, *"the State party would be unable to recruit enough military manpower if it acknowledged an exemption from conscription or allowed for alternative service;"*<sup>17</sup> secondly, *"alternative service would undermine social cohesion, stable pluralism in a religiously diverse society and the public order by compromising fairness in military service obligations and creating unfair disparities between those engaged in compulsory military service and alternative service."*<sup>18</sup> Finally, it point out that *"It is in practice difficult to introduce an alternative service system, owing to conditions such as the current security situation, restrictions on individual freedom due to military service and a lack of consensus among democratic communities."*<sup>19</sup>

Finally, the State party's observations ends underlining that *"it has been making continuous efforts to consider conscientious objection and the introduction of alternative service systems in order to protect and ensure the right to religion and conscience to the fullest extent possible and in order to respect the views of the Committee. The State party announced its plan, in September 2007, to introduce a system of assigning social services to those who refuse conscription owing to religious belief, on condition that there is a public consensus and there is no shift in this position. Thus, once such consensus is determined*

<sup>13</sup> CCPR/C/112/D/2179/2012, published the 14<sup>th</sup> January 2015, para. 3.1

<sup>14</sup> Ibid., para. 3.2

<sup>15</sup> Ibid., para. 3.3

<sup>16</sup> Ibid., para. 4.2

<sup>17</sup> Ibid., para. 4.3

<sup>18</sup> Ibidem

<sup>19</sup> Ibidem



*by way of research on public opinion and on the positions of relevant Ministries and institutions, the State party will consider the introduction of an alternative service system".<sup>20</sup>*

The Committee, after has declared the claims admissible, decides that *"the authors' claim that their rights under article 18, paragraph 1 of the Covenant have been violated, owing to the absence in the State party of an alternative to compulsory military service, as a result of which their failure to perform military service on account of their religious conscience led to their criminal prosecution and imprisonment."*<sup>21</sup>

Also, *"the Committee considers that the authors' refusal to be drafted for compulsory military service derives from their religious beliefs, which, it is uncontested, were genuinely held, and that the authors' subsequent convictions and sentences amounted to an infringement of their freedom of conscience, in breach of article 18, paragraph 1 of the Covenant. Repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibit the use of arms, is incompatible with article 18, paragraph 1 of the Covenant."*<sup>22</sup>

About the violation of article 9 paragraph 1, the Committee observes that *"the Covenant provides that no one may be subjected to arbitrary arrest or detention. [...] Just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant is arbitrary, so is detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant. Consequently, the Committee also finds that article 9, paragraph 1, of the Covenant has been violated with respect to each author."*<sup>23</sup>

Therefore, the Committee concludes that the facts reveal violations by the Republic of Korea of articles 9, paragraph 1; and 18, paragraph 1, of the Covenant and that *"the State party is under an obligation to provide the authors with an effective remedy, including expunging their criminal records and providing them with adequate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future, which includes the adoption of legislative measures guaranteeing the right to conscientious objection."*<sup>24</sup>

At the present, the dialogue between the Committee and the Republic of Korea about the follow-up of this individual complain is still ongoing.

## **Case of Zafar Abdullayev (Communication no. 2218/2012) State party: Turkmenistan**

At its Session in March-April 2015 (113th session), the Human Rights Committee adopted the view on the case of Zafar Abdullayev.

The author explains that he has never been charged with a criminal or administrative offence other than his repeated criminal convictions as a conscientious objector. He was baptized as a Jehovah's Witness.<sup>25</sup>

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<sup>20</sup> Ibid., para. 4.6

<sup>21</sup> Ibid., para. 7.2

<sup>22</sup> Ibid., para. 7.4

<sup>23</sup> Ibid., para. 7.5

<sup>24</sup> Ibid., para. 9

<sup>25</sup> CCPR/C/113/D/2218/2012, published the 19th May 2015, para. 2.1



The author claims that:

- his imprisonment on account of his religious beliefs in itself constituted inhuman or degrading treatment within the meaning of article 7 of the Covenant.;<sup>26</sup>
- he was ill-treated by the prison guards of the LBK-12 prison, again in violation of his rights under article 7 of the Covenant;<sup>27</sup>
- to be the victim of a violation of article 7 of the Covenant on account of the conditions at the LBK-12 prison (harsh climate conditions, overcrowded, health issues);<sup>28</sup>
- he was convicted twice for his refusal to accept military service owing to his religious beliefs. He notes that, under article 219 paragraph 1 of the Criminal Code, refusing the call-up for military service is punishable by imprisonment for a maximum of two years and that article 18 paragraph 4 of the Law on Conscription and Military Service permits repeated call-up for military service;<sup>29</sup>
- his criminal prosecutions, convictions and imprisonment have violated his rights under article 18 paragraph 1 of the Covenant. He notes that he repeatedly informed the Turkmen authorities that he was willing to fulfil his civic duties by performing genuine alternative service; however the State party's legislation does not provide for the opportunity to perform any alternative service.<sup>30</sup>

In the State party's observations, *"the State party informed the Committee that, inter alia, the author's case has been "carefully considered by the relevant law enforcement bodies of Turkmenistan and no reason had been found to appeal the court decision". The criminal offence committed by the author was "determined accurately according to the Criminal Code of Turkmenistan". It further notes that, under article 41 of the Constitution, "protection of Turkmenistan is the sacred duty of every citizen". General conscription is compulsory for male citizens. In addition, the author did not meet the criteria for persons to be exempted from military service as provided for under article 18 of the Law on Military Conscription and Military Service."*<sup>31</sup>

The Committee, after has declared the claims admissible - in the absence of any other pertinent or contrary information on file and the fact that Turkmenistan were not refuted the allegations of the author of the case - decides that there are the follow violations:

- Article 7: ill-treatment of the author by the prison guards;<sup>32</sup>
- Article 10 paragraph 1: deplorable prison conditions at the LBK-12 prison;<sup>33</sup>
- Article 14 paragraph7: no one shall be liable to be tried or punished again for an offence of which they have already been finally convicted;<sup>34</sup>
- Article 18 paragraph 1: absence in the State of an alternative to compulsory military service 7.6 and repression of the refusal to be drafted for compulsory military service exercised against persons whose conscience or religion prohibit the use of arms.<sup>35</sup>

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<sup>26</sup> Ibid., para. 3.1

<sup>27</sup> Ibid., para. 3.2

<sup>28</sup> Ibid., para. 3.3

<sup>29</sup> Ibid., para. 3.4

<sup>30</sup> Ibid., para. 3.5

<sup>31</sup> Ibid., para. 4

<sup>32</sup> Ibid., para. 7.2

<sup>33</sup> Ibid., para. 7.3

<sup>34</sup> Ibid., para. 7.5



Therefore, the Committee concludes that the facts reveal violations by Turkmenistan of articles 7, 10 paragraph 1, 14 paragraph 7 and 18 paragraph 1 of the Covenant<sup>36</sup> and that *"State party is under an obligation to provide the author with an effective remedy, to include an impartial, effective and thorough investigation of the author's claims falling under article 7, prosecution of any person(s) found to be responsible; expunging of his criminal record; and full reparation, including appropriate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future, including the adoption of legislative measures guaranteeing the right to conscientious objection."*<sup>37</sup>

At the present, the dialogue between the Committee and Turkmenistan about the follow-up of this individual complain is still ongoing.

### 1.1.3.1.2 CONSIDERATION OF STATE REPORTS

The Human Rights Committee has continued to raise the issue of conscientious objection to military service in its consideration of the reports of states party under the International Covenant on Civil and Political Rights.

#### **112° session (October-November 2014)**

In its October-November 2014 session, in its Concluding Observations on **Israel**, the Committee remains concerned that:

*"at the proceedings before the special Committee in charge of recommending to the competent authorities to grant or reject an individual's application for exemption from compulsory military service for reasons of conscience and at its lack of independence given that its membership comprises only one civilian member and all the rest serve as officials of the armed forces. The Committee reiterates its concern that individuals whose conscientious objection applications are rejected may be repeatedly imprisoned for their refusal to serve in the armed forces"*<sup>38</sup>

Therefore, the Committee *"reiterates its previous recommendation that the special Committee making recommendations to the competent authorities on conscientious objection applications be made fully independent, and proceedings before it include hearings and provide for a right to appeal against negative decisions. The State party should also refrain from repeated imprisonment for refusal to serve in the armed forces that may constitute a violation of the principle of ne bis in idem."*<sup>39</sup>

#### **113° session (March-April 2015)**

No one of the Concluding Observations of the States under report (Cambodia, Côte d'Ivoire, Croatia, Cyprus, Monaco and Russian federation) in this session spoke about conscientious objection.

Nevertheless, in the List of Issues in relation to the fifth periodic report of **Austria**, the Committee asked to *provide information on the justifications for the differentiation between the length of substitute civilian service for conscientious objectors and that of military*

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<sup>35</sup> Ibid., para. 7.8

<sup>36</sup> Ibid., para. 8

<sup>37</sup> Ibid., para. 9

<sup>38</sup> CCPR/C/ISR/CO/4, published the 21<sup>th</sup> November 2014, para. 23

<sup>39</sup> Ibidem





service. Also it asked to indicate whether the State party is considering raising the minimum age for voluntary recruitment into the armed forces to 18 years.<sup>40</sup>

The State party replied as follow:

*The difference in terms of length between basic military service and civilian service (service time of 6 and 9 months respectively) must be considered from a holistic perspective taking account of the level of exertion involved in the two services and – according to the supreme courts – does thus not violate the principle of equality.<sup>41</sup>*

Moreover, its List of Issues to the second periodic report of **Greece**, the Committee asks to “clarify the maximum length of military, navy and air force service. Please respond to reports that in the majority of cases, the duration of civilian service is 6 months longer than military service. How does the State party ensure that the Special Committee works independently and that persons submitting applications on the grounds of conscientious objection have the right to appeal the Committee’s decision? Please also clarify if and to what extent repeated punishment is inflicted by Greek military courts to conscientious objections for the same act of refusing the military service.”<sup>42</sup>

The State party replied as follow:

- Currently, the duration of the military service for the compulsorily enlisted personnel in the Army is 9 months. However it may be reduced to 8 or 6 months, provided that the conscript meets certain social criteria. In the Navy and the Air Forces the duration of full military service is 12 months and of the reduced one is 9 or 6 months. Those who object to armed military service on ideological or religious grounds may apply to obtain the status of conscientious objectors. This means that they are bound to offer civilian social service, performed in services of the public sector. [...] At present, the duration of civilian social service is 15 months (full service) and can be reduced to 12 or 9 months, in proportion to the categories of reduced armed service, on the basis of social criteria.

- A Special Committee examines if the persons seeking to be recognized as conscientious objectors meet the relevant conditions and, following its opinion, the Minister of National Defence decides if the alternative (civilian) service status may be granted to the applicant. The establishment, operation and responsibilities of that Committee are defined by the law. [...] The composition of the Committee guarantees an objective opinion, since: (a) except for the two senior Officers who participate as members, the Committee also includes two distinguished university professors specializing in the humanities, whose opinion is given particular weight, as well as a State legal adviser. In addition, the Committee is subject to the general provisions of article 7 of the Code of Administrative Procedure, which establishes the impartiality of administrative bodies; (b) the opinion of the Committee, although not subject per se to judicial review, due to its advisory character, can be judicially reviewed in case an appeal has been filed against the final decision of the Minister of National Defense before the Council of State (Supreme Administrative Court); the same applies to the lawfulness of the establishment of the Committee. Furthermore, the national law provides for full interim judicial protection for those who file such an appeal in order to defer their obligation to join the Armed Forces for as long as the legal proceedings last.

- It is to be clarified that some persons refuse both the military and the alternative service and do not recognize the role of the Special Committee on political and ideological grounds. As a result, the abovementioned persons deliberately ignore the calls of Recruiting Offices

<sup>40</sup> CCPR/C/AUT/Q/5, published the 28<sup>th</sup> April 2015, para. 18

<sup>41</sup> CCPR/C/AUS/Q/5/Add.1, published the 4<sup>th</sup> August 2015, para. 139.

<sup>42</sup> Human Rights Committee, List of issues in relation to the second periodic report of Greece, Advanced unedited version, para. 24.



*to join the Greek Armed Forces, while, at the same time, they do not have the possibility to obtain the status of conscientious objector, since they deny participating in the procedure before the Special Committee. Only in such cases Greek Military Courts file a new charge though Prosecutor's Departments for multiple acts of refusal to perform military service and inflict repeated punishment for each of these offenses. Such measures, which, according to the case-law of the Greek Supreme Court (Arios Pagos) do not violate the fundamental principle of "ne bis in idem", are a direct consequence of the refusal to recognize the institutional guarantees provided in an efficient and also sufficient way for the protection of their rights.*<sup>43</sup>

The information submitted from Greece is, in part, different from that submitted from International Fellowship of Reconciliation NGO (IFOR).

For instance, about the duration of the civilian service, IFOR states that *"Under the 1998 Act, the duration of alternative service was set at 36 months, exactly twice the normal duration of military service. When the duration of military service was reduced by six months in 2003, an equal reduction was made in the duration of alternative service. This meant that military service of 12 months was matched by alternative service of thirty months, two-and-a-half times as long."*<sup>44</sup>

The Concluding Observations on Greece will be diffused during the October-November 2015 session (115<sup>o</sup> session) of the Committee.

Moreover, in its List of Issues to the fourth periodic report of **Republic of Korea**, the Committee asks to *"report on the progress made with respect to the introduction of alternative civilian service for conscientious objectors. Please also report on the status of proposed legislation aimed at publicizing on the Internet the names of those who refuse to serve in the military."*<sup>45</sup>

The State party replies as follow:

- *The Government's position on introducing alternative services for the conscientious objectors remains unchanged as stated in the state report. In November 2014, after the submission of the state report, the Military Manpower Administration conducted a national survey on the conscientious objectors and the result shows that 58.3% of the public opposes the introduction of alternative service. It is still hard to envisage introducing an alternative service in the midst of the continuing insecure situation of the country.*
- *Article 81-2 of Military Service Act was newly established in July 2015, allowing the Commissioner of the Military Manpower Administration to publish on the internet website the personal information of those who evade military service, without justifiable grounds except for disease or imprisonment, by staying abroad or refusing physical examination or enlistment, and matters concerning non-compliance with the duty. To this end, the Committee for Deliberation on Cases of Evasion of Military Service is established in the regional military manpower offices. The Committee notifies tentative persons that their personal information will be disclosed, gives them an opportunity to explain, deliberates*

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<sup>43</sup> CCPR/C/GRC/Q/2/Add.1, published the 4<sup>th</sup> August 2015, paras 130-132

<sup>44</sup> International Fellowship Of Reconciliation, Submission to the 113th Session of the Human Rights Committee for the attention of the Country Report Task Force on GREECE, Prepared in December 2014.

<sup>45</sup> CCPR/C/KOR/Q/4, published the 28<sup>th</sup> April 2015, para. 21



*after 6 months of notification considering the status of their military service fulfilment, and decides whose personal information will be disclosed.*<sup>46</sup>

Information is also supplied by: Amnesty International (AI), European Association of Jehovah's Christian Witnesses (EAJCW) and International Fellowship of Reconciliation (IFOR). In their recommendations and statement they ask or underline, inter alia:

- *South Korea takes positive steps to stop human rights violations against all peaceful citizens, including Jehovah's Witnesses (EAJCW);*<sup>47</sup>

- *To immediately and unconditionally release all individuals imprisoned solely for exercising their right to refuse to perform military service in absence of a genuinely civilian alternative and refrain from imprisoning conscientious objectors in the future;* (AI);<sup>48</sup>

- *There is a general feeling that the popular mood in the Republic of Korea is [...] becoming less hostile towards conscientious objectors. Some recent opinion polls [...] have for the first time shown a majority in favour of introducing a civilian alternative service. That said, the underlying assumption that the implementation of international human rights obligations should be subject to plebiscite is of course false and dangerous* (IFOR).<sup>49</sup>

The Concluding Observations on Republic of Korea will be diffused during the October-November 2015 session (115<sup>o</sup> session) of the Committee.

### **114<sup>o</sup> session (June-July 2015)**

In its List of Issues prior to submission of Fifth report of **Belarus**, the Committee asks to *"report on the status of the draft law on conscientious objection to military service introduced in the House of Representatives in November 2014. Please indicate, inter alia, whether any draft or adopted legislation extends the right of conscientious objection against military service to persons who hold non-religious beliefs, whether the length of alternative service is equal to the duration of military service and, if not, what are the reasons justifying any such difference"*.

The Human Rights Committee, in its concluding observations on the Fourth Periodic Report of Belarus under the International Covenant for Civil and Political Rights, considered in October 1997, recommended *"that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be passed at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22."*<sup>50</sup>

Until now, Belarus doesn't reply to the List of Issues. The replies of the State party to this list of issues will constitute its fifth periodic report.

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<sup>46</sup> Human Rights Committee, List of issues in relation to the fourth periodic report of the Republic of Korea, Addendum, Replies of the Republic of Korea to the list of issues, Advance unedited version, received 31<sup>th</sup> July 2015, paras 67-68.

<sup>47</sup> European Association of Jehovah's Christian Witnesses, Complementary Submission to the UN Human Rights Committee subsequent to the adoption of the List of Issues Fourth report of the Republic of Korea, 22 September 2015, p. 5

<sup>48</sup> Amnesty International, Republic Of Korea Submission To The United Nations Human Rights Committee, September 2015, p. 15

<sup>49</sup> International Fellowship of Reconciliation, Submission to the 115th Session of the Human Rights Committee Republic Of Korea, p. 4

<sup>50</sup> CCPR/C/79/Add.86, 19<sup>th</sup> November 1997, para.16.



## 115° session (October-November 2015)

### Some updates

Some of the Concluding Observations of the States under report in this last session speaks about conscientious objection.

In particular, in the Concluding Observations on **Austria**, the Committee notes that the length of the civilian alternative service to military service for conscientious objectors is longer than military service and may be punitively long if not based on reasonable and objective grounds. As a consequence, the Committee recommends to the State party to ensure that the length of service alternative to military service required for conscientious objectors is not punitive in nature.<sup>51</sup>

Moreover, in the Concluding Observations on **Greece**, the Committee *reiterates its previous concern about (a) the length of alternative service which is much longer than military service; (b) the composition of the Special Committee and its reported lack of independence and impartiality, especially when hearings are held without all members present; (c) reports indicating discrimination on the basis of different grounds of objection to service; and (d) repeated punishment of conscientious objectors, in violation of the principle of ne bis in idem (arts. 14 and 18).*<sup>52</sup>

Therefore, the Committee recommends to the State party to:

*The State should take measures to review its legislation with a view to recognising the right to conscientious objection to military service, encompassing an alternative to military service that is accessible to all conscientious objectors and is not punitive or discriminatory in terms of its nature, cost or duration. The State party should also avoid repetitive punishment in violation of the ne bis in idem principle and consider placing the assessment of applications for conscientious objector status under the full control of civilian authorities.*<sup>53</sup>

In the same way, in the Concluding Observations on **The Republic of Korea**, the Committee stresses its concern in the absence of a civilian alternative to military service. It also notes with concern that personal information of conscientious objectors may be disclosed online (art.18).<sup>54</sup>

Therefore, the Committee recommends to the State party to:

*(a) Immediately release all conscientious objectors condemned to a prison sentence for exercising their right to be exempted from military service;*

*(b) Ensure that the criminal records of conscientious objectors are expunged, that they are provided with adequate compensation and that their information is not publicly disclosed; and*

*(c) Ensure the legal recognition of conscientious objection to military service, and provide conscientious objectors with the possibility to perform an alternative service of civilian nature.*<sup>55</sup>

<sup>51</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Austria, Advanced unedited version, paras. 33-34.

<sup>52</sup> Human Rights Committee, Concluding observations on the second periodic report of Greece, Advanced unedited version, para. 37.

<sup>53</sup> Ibid., para. 38.

<sup>54</sup> Human Rights Committee, Concluding observations on the fourth periodic report of the Republic of Korea, Advanced unedited version, para. 44.

<sup>55</sup> Ibid., para. 45.



Following the precedent set in the case of Turkey in 2012, the Committee also included this concluding observation among those on which it requested the State within twelve months to provide a follow-up report on implementing action taken.

### 1.1.3.2 Human Rights Council

#### 1.1.3.2.1 Resolutions

The Human Rights Council expressed concern for the national policy of Democratic Republic People's Republic of Korea that prioritises military spending over citizens' access to food.<sup>56</sup>

#### 1.1.3.2.2 The monitoring of the situation of human rights in Eritrea

For the third year running, the resolution in the Human Rights Council on **Eritrea**<sup>57</sup> included a reference to conscientious objection.

The resolution called on Eritrea to put an end to the system of indefinite national service by demobilising the national service conscripts who have completed their mandatory 18 months of service, and by effectively ending the practice of engaging them in forced labour after such a period, to provide for conscientious objection to military service, and to end the compulsory practice of all children spending the final year of their schooling in a military camp.

Furthermore, giving the insecurity condition of this country, in June 2014 a Commission of Inquiry was established by the Human Rights Council, in order to investigate all alleged violations of human rights in Eritrea.

In addition to Mr. Mike Smith (Australia), the members are Mr. Victor Dankwa (Ghana), and Ms. Sheila B. Keetharuth (Mauritius), who also serves as the UN Special Rapporteur on the situation of human rights in Eritrea.

In the report of June 2015,<sup>58</sup> in relation to the indefinite duration of the military service, the Commission stressed that *no form of conscientious objection is allowed, and even persons with disabilities are conscripted for active military training and service instead of civil service. Authorities regularly conduct mass round-ups (giffas) to seize draft evaders and deserters in an indiscriminate manner. This often involves excessive use of force, occasionally leading to death, and the forced entrance into and search of private homes. Leaving national service is equally challenging, and often is only possible when the individual deserts and flees the country.*

*Indeed, the indefinite duration of national service, its terrible conditions – including arbitrary detention, torture, sexual torture, forced labour, absence of leave and the ludicrous pay – and the implications it has for the possibility of any individual to found a family, conduct a family life and have favourable conditions of work make national service an institution where slavery-like practices are routine.*

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<sup>56</sup> Human Rights Council, Situation of human rights in the Democratic People's Republic of Korea, Resolution A/HRC/28/L.18, 23<sup>th</sup> March 2015.

<sup>57</sup> Human Rights Council, Situation of human rights in Eritrea, Resolution A/HRC/RES/29/18, 2<sup>th</sup> July 2015.

<sup>58</sup> Human Rights Council, Report of the commission of inquiry on human rights in Eritrea, A/HRC/29/42, 4<sup>th</sup> June 2015.



Furthermore, the Commission underline that - although *the conscription of citizens into national service is a prerogative of sovereign States* - **this practice should not, however, result in the complete denial of the individual's freedoms and rights.**

*National service in Eritrea is based on conditions and measures that are not proportionate, reasonable or necessary in the interest of national defence. National service as implemented by the Eritrean authorities involves the systematic violation of an array of human rights on a scope and scale seldom witnessed elsewhere in the world. In particular, the commission finds that national service violates the rights of Eritreans to life; to liberty and security; not to be tortured or subject to cruel, inhumane or degrading treatment; to be treated with humanity and inherent dignity of the human person while deprived of liberty; to be recognized everywhere as a person before the law; to enjoy freedom of thought, conscience, religion, expression and movement; to privacy and family life; to education; to the highest attainable standard of physical and mental health; not to be subjected to forced labour; and to gain one's life by work freely chosen or accepted. It also violates the right of children not be forcibly enrolled in armed forces.*

The Commission recommended that the Government of Eritrea:

- (a) Discontinue indefinite national service by limiting it to 18 months for all current and future conscripts, as envisaged by the Proclamation on national service;
- (b) Provide full and transparent information on the implementation of the recent announcement concerning the return of the duration of national service to 18 months for persons recruited as of 2014;
- (c) Provide for conscientious objection by law, in accordance with international norms; and provide for and grant exemptions from national service for reasons relating to physical or mental health issues or family needs;
- (d) Establish and apply lawful procedures for the apprehension of draft evaders and deserters, and ensure that they are charged and tried by a court in accordance with international standards;
- (e) Adopt a military code that, inter alia, forbids and punishes ill-treatment, exploitation and harassment of conscripts, and that sets standards for their living conditions, including provision of food and shelter;
- (f) Establish a complaint mechanism for conscripts to raise allegations of ill-treatment and to obtain redress;
- (g) Stop the forced recruitment of children under the age of 18 years into military training.

### 1.1.3.2 Universal Periodic Review

In 2014 the UPR process of **San Marino**, with regard to the raise of minimum age for the military recruitment to the age of 18, Slovenia asked to San Marino what steps have been taken in order to modify article 3 of act No. 15 of 26 January 1990 on the exceptional circumstances in which all citizens aged between 16 and 60 may be conscripted.<sup>59</sup>

The State delegation replied at this advance question explaining that the delay in the amendment of that provision was due to the fact that the measure was part of a more complex ongoing reform concerning the reorganization of the military corps and its regulations.<sup>60</sup>

<sup>59</sup> Advanced questions submitted to San Marino, add.1.

<sup>60</sup> Report of the Working Group on the Universal Periodic Review, San Marino, A/HRC/28/9, 24<sup>th</sup>



Also Estonia called upon San Marino to review the law on extraordinary military conscription and withdraw the relevant clauses of that law to bring it into compliance with Optional Protocol to the Convention on the rights of the Child rights on Children in Armed Conflict.<sup>61</sup>

Moreover, one of the major disappointments of the first cycle of the Universal Periodic Review had been that Turkey escaped any questioning of its record with regard to conscientious objection to military service. This omission was put right in February 2015, when **Turkey** was reviewed in the second cycle. Croatia, Germany and Slovenia all recommended that Turkey should recognise the right of conscientious objection to military service and put in place civilian alternative service arrangements for conscientious objectors.<sup>62</sup> Sadly, the toothlessness of the process was revealed when Turkey responded that these recommendations did not enjoy its support.<sup>63</sup>

Also in 2015 the UPR process of **Armenia** introduced the conscientious objection issue. Indeed, Armenia had amended the Law on "Alternative Service" in 2013 and the new one distinguished between "alternative military" and "alternative civilian" services, these amendments end the prosecution of conscientious objectors.

The Netherland and the Republic of Korea welcomed the progress in alternative military service.<sup>64</sup>

In the review of others two States - US and Honduras - raised some issues about the behaviour of military troops and the militarization of the country.

In the review of **United States**, Democratic People's Republic of Korea asks to take legal and administrative measures to address civilian killings by military troops during and after the invasion of Afghanistan and Iraq; meanwhile Slovenia stresses the need of redouble efforts to prevent sexual violence in the military and ensure effective prosecution of offenders and redress for victims.<sup>65</sup>

About the militarization of **Honduras**, United Kingdom and Switzerland were concerned about the intention to use military police to tackle security, and continued high levels of impunity and difficulties by significant sectors of society in accessing justice and the resulting increase of militarization of the country.<sup>66</sup>

Costa Rica, Norway and United States went beyond and have asked for strengthen the security apparatus without involving the military apparatus.<sup>67</sup>

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December 2014, para. 20.

<sup>61</sup> Ibid. para. 52.

<sup>62</sup> Report of the Working Group on the Universal Periodic Review, Turkey, A/HRC/29/15, 13<sup>th</sup> April 2015, paras. 151.12, 151.13, 151.14.

<sup>63</sup> Report of the Working Group on the Universal Periodic Review, Turkey, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/29/15/Add.1, 20<sup>th</sup> June 2015.

<sup>64</sup> Report of the Working Group on the Universal Periodic Review, Armenia, A/HRC/29/11, 13<sup>th</sup> April 2015, paras. 28, 33.

<sup>65</sup> Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/30/12, 30<sup>th</sup> July 2015, paras. 176.204, 176.258.

<sup>66</sup> Report of the Working Group on the Universal Periodic Review, Honduras, A/HRC/30/11, 15<sup>th</sup> July 2015, paras. 92, 97.

<sup>67</sup> Ibid., paras. 125.45, 126.11, 125.12.



## 1.2 DEVELOPMENTS WITHIN COUNCIL OF EUROPE STATES

### Belarus

The EBCO Annual Report for 2014 reported that a draft law on alternative service, which would at last implement the provision which had been included in the 1994 Constitution, was under preparation. In the end, the Last June was approved the Belarus' first-ever Alternative Service Law.

Yet under the Law – whose provisions take effect from 1 July 2016 – only young men with a religious objection will be eligible to apply, preventing those with other pacifist convictions from applying.<sup>68</sup> The length of alternative service will be twice as long as the comparable military service. And young men already undertaking military service will not be eligible to apply for alternative service if they change their views.

Human rights defenders and the Jehovah's Witnesses point out that there is a lack of clarity in the way even those with a religious objection – for example those from communities' that have not historically been pacifist – will be assessed. This makes it impossible to know until the new system is in operation whether even all young men with a religious conscientious objection will be able to undertake alternative civilian service.

Eleven days after the official publication of the Law, an investigator opened a criminal case against Jehovah's Witness conscientious objector **Viktor Kalina**. He faces punishment of up to two years' imprisonment if convicted of refusing military service on grounds of religious conscience. His trial on 17 August was held not at the court but at Brest Military Conscription Office. Kalina likened it to a *show trial* as five more young men who chose not to go to the army were present at the hearing, and officials "decided to show them the consequences".

Kalina has been told he will be summoned when the date is set for the trial to resume. He is not under arrest as the trial proceeds, but remains under travel restrictions.<sup>69</sup>

Another Jehovah's Witness conscientious objector **Dmitry Chorba** was also charged on 11 June, but the criminal case against him was closed on 30 June. However, he fears that he might be called up again in the autumn.

No other similar cases against Jehovah's Witness conscientious objectors are currently underway.

### Belgium

The 2015 is the 50th anniversary of the legal recognition of CO in Belgium and there was organized some events in the country.

In January, took place an exhibition for the 50th anniversary which title was "Artisans de la paix".

Furthermore, the municipality of Watermaal-Bosvoorde (in Dutch) or Watermael-Boitsfort (in French), one the districts of the Brussels region, organized on Sunday 12 July 2015 a ceremony in the city hall to celebrate the 50th anniversary of the Belgian Conscientious Objection law. The first Belgian Conscientious Objectors were recognised in 1965.

<sup>68</sup> Felix Corley, BELARUS: Alternative Service Law "a bad law. But it exists and that's good.", Forum18 News Service (forum18.org), 18<sup>th</sup> June 2015.

<sup>69</sup> Olga Glace, BELARUS: Criminal trial of conscientious objector a show trial?, Forum18 News Service (forum18.org), 26<sup>th</sup> August 2015.





The Mayor Olivier Deleuze invited EBCO's Vice-President Sam Biesemans, who is also resident of the municipality, to speak at the ceremony about the history of CO.

Jean Van Lierde, the most famous Belgian objector (also first EBCO President), was also a resident of Watermael-Boitsfort. The municipality will commemorate him in 2015 with an exhibition and a film projection about him. Next year, it will be 10 years after his death.

This public recognition helps to remind us that COs have an important role in the promotion of Peace and Human Rights in our society.

## Czech Republic

In April 2015, The Czech government announced plans to create a register of citizens who would be willing to volunteer for military service.

The Czech Prime Minister Bohuslav Sobotka said that the move was in response to threats from Islamic State and insecurity in Ukraine.

Speaking to Radio Praha, Reserve General Andor Šándor said "We don't want to get back to the conscript army that we used to have until 2005. The professional army will be preserved. Under the current legislation, the government can call all men and women to fight in the army if the country has been threatened. The new legislation wants to make it so the government has the right to register people that are able and want to serve the army in normal peacetime."

The bill is planned to take effect in 2017, and would require 100,000 men and women take part in a medical examination as they turn 18 each year, to determine whether or not they would be able to serve in the Czech military.<sup>70</sup>

## Cyprus

### North Cyprus

In the northern part of Cyprus the military service and the annual reservist service are compulsory for male citizens above 18 years old. The militarisation of the island is not limited to the compulsory military service and reservist service; the civilians are being tried before military courts, the police is under the control of the Turkish army, there are lessons taught by soldiers at schools, the cities and rural areas are under the direct physical invasion of the Turkish army for the last 40 years.

### Murat Kanatli

Murat Kanatli, an EBCO Board member, had declared his conscientious objection on ideological grounds in 2009 and has since refused each year to participate in the annual compulsory military exercises in the northern part of Cyprus.

Court case for 2010 and 2011 are still opened. Murat asked for a referral to the Constitutional court on the basis that the Court where an individual is tried should be

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<sup>70</sup> War Resisters' International, "Czech Republic to introduce register of military volunteers", 19<sup>th</sup> June 2015, ([www.wri-irg.org](http://www.wri-irg.org)).



independent and objective/impartial. On these grounds since on the basis of the law the Military Court is under the auspices of the Army then these cases are not fair trials.

Also, Kanatli saw his petition against Turkey for breach of human rights accepted by the European Court of Human Rights on 5<sup>th</sup> August 2015. The case, which was given the file number 18382/2015, is based on breach of the European Convention of Human Rights, namely articles five, six and nine; the right to liberty and security, the right to a fair trial, and freedom of thought, conscience and religion, respectively.

### **Haluk Selam Tufanlı**

On 4 December 2014, Turkish Cypriot conscientious objector **Haluk Selam Tufanlı** (60) was sentenced to 10 days in prison for objecting to participate in the annual one-day compulsory military training in the northern part of Cyprus on the basis of his conscientious objection. Haluk Selam Tufanlı refused to participate in the reservist call up in 2011 and has been in an ongoing trial since 5th November 2013. The military court in Lefkoşa/Nicosia (territory of northern Cyprus) found him guilty of 'noncompliance with the mobilization call'.

The 9<sup>th</sup> December 2014 was proclaimed the international day of Action for his Freedom and solidarity actions happened in different countries such as Turkey, Greece and United Kingdom.

### **Amendment of the Military Law**

The parliament of the northern part of Cyprus is still discussing the issue of the amendment of the Military Law to add Conscientious Objection but it is still uncertain whether CO will be included or not.

### **More declared conscientious objectors**

Up to the present are 14 persons who have declared their conscientious objection in the northern part of Cyprus:

Salih Askeroğlu (24 September 1993), Murat Kanatlı (15 May 2009), Haluk Selam Tufanlı (8 December 2011), Faika Deniz Paşa (8 December 2011), Cemre İpçiler (8 December 2011), Nevzat Hami (8 December 2011), Ceren Goynuklu (8 December 2011), Halil Karapaşaoğlu (24 October 2013), Ahmet Karakaşlı (24 December 2013), Tegiye Birey (24 December 2013), Süleyman Tarık Sakallı (15 April 2014), Halil Sayın (15 May 2014), Didem Gürdür (15 May 2014), Reşat Korel (15 May 2014).

### **Republic of Cyprus**

Conscientious objection has been recognised in the Republic of Cyprus (the internationally-recognised state in the south of the island), but not in full conformity with international standards.

Both the old law and the new one of 2011 include the possibility for the conscientious objector to serve alternative military service (unarmed) in military units instead of only alternative social service. The right for alternative social service is removed for the conscientious objector with an exemption on medical grounds, as well as for all those exempt from military service on medical grounds.



Application to gain CO status, with the required supporting documents, is made to the military services and a Special Committee examines this application (after examination of the Physical Condition of the applicant by another Committee). This Special Committee comprises of two professors of higher education with a specialization in philosophy, social or political sciences or psychology, one law officer of the Law Office of the Republic and two higher officers of the Military Force, one of the Conscription Office and one of the Health Department of the Army. The decision of the Special Committee is passed on to the Minister of Defence who has the final say and if his decision is opposite to that of the Special Committee, it has to be justified in writing. The Special Committee may call the applicant for an oral interview, but can also decide without interview.

Alternative social service is performed in posts of the public services sector and consists of serving in services of public utilities or undertaking public duties within the field social care and environmental protection.

In 2013 a number of reservist objectors came to light. One individual has made an application to the military services stating his conscientious objection and requesting not to participate in military reservist call ups but instead to do alternative social service. His case was examined; he was called for an interview and after many months has received an answer that he is accepted as a conscientious objector. However as of the beginning of October 2014, he has not been sent call-up papers for "alternative social reserve service".

## Finland

The current Finnish law on conscription applies to all men between ages 18 and 60 years old.

During the year when the eighteenth birthday takes place, all men are called up for a mandatory medical test and draft day to test fitness and abilities of the conscripts.

Draft day dodgers get a fine and a new order to attend a draft day, recurring dodgers may be arrested and drafted forcibly.

COs who refuse army service and the alternative service option are given an unconditional jail sentence of 173 days or half of their remaining (theoretical) time in alternative service. This sentence can since 2013 be converted to house arrest by the judge. There were about three dozen cases last year. The most recent conviction was of to Visa Savolainen whose 173 day sentence under house arrest begun on 27th October 2015. House arrests easily revert to custodial sentences if the CO under the scheme breaks strict rules even slightly.

However, Jehovah's Witnesses have been exempted from any kind of service by a special law since 1985. In its concluding observations on Finland's latest report in 2013 the UN Human Rights Committee recommended that Finland cease this discriminatory practice and extend its treatment of Jehovah's Witnesses to other COs. The then Finnish government did not do anything to act on this recommendation, nor has the current government done so.

Alternative service lasts 347 days while military service lasts either 165, 245 or 362 days. The most common length of military service is 165 days, thus the duration of alternative service is more than double.

COs can be employed by any governmental, local or non-governmental organisation. Despite this, there exists a chronic lack of service places mainly do the high costs that fall largely upon the organisations taking on CO's in service.

Of some 30,000 liable for conscription each year, 7% are CO's and about 25% are exempt for health reasons.



After military service, all who complete their service are placed in the army reserves, and are required to take part in reserve exercises, if they are called upon. The size of the reserve is currently over 900,000 men.

Under the Finnish law it is possible to gain CO-status after the completion of military service by a simple announcement to the relevant authorities which lead to 5-day training in the alternative service centre. The purpose of this training is to act as a deterrent to prevent mass resignations from the army reserve. In 2015 the number of trained soldiers to choose to becoming COs is expected to be well over 1,000, in contrast to the previous year's couple of hundred.

## Greece

Although the left-wing Syriza is now the majority political party the Ministry of Defence is in the hands of its small right-wing nationalist coalition partner.

Nowadays, no conscientious objector are being imprisoned enters the jail, but you have to pay the 6.000 Euros fine plus suspension fines when needed.

Therefore, harassment of conscientious objectors continues and they have to face a lot of trials:

- 16/06/15: Dimitris Sotiropoulos, member of the Association of Greek COs. Appeal military court in Athens;
- 17/06: Thanos Xatziaggelou, anarchist and total objector. First instance court in Athens;
- 26/06: Mixalis Tolis, total objector, member of "Xypolito Tagma" (group promoting total objection in Greek). Appeal court in Thessaloniki;
- 21/10: Yannis Glarnetatzis, president of the Association. Appeal court in Thessaloniki;
- 09/12: Tassos Batas, member of the Association. Appeal court in Athens;
- 17/12: Xaralambos Akrivopoulos, member of the Association. Appeal court in Thessaloniki.

### Dimitris K. Sotiropoulos

The 16th June, **Dimitris K. Sotiropoulos** was found guilty again on an insubordination charge and was sentenced to 10-month suspended imprisonment after a clearly unfair trial with problematic procedures by the Appeal Military Court of Athens.

Sotiropoulos, 48 years old and a founding member of the Greek Association of Conscientious Objectors, has refused to enlist since 1992, declared publicly his opposition to violence and militarism, and asked to perform an equal alternative civilian service. At first instance, on 13 May 2014, and having already been exempted from conscription as a father of 3 children, he was convicted on an insubordination charge and sentenced to 10-month suspended imprisonment, 23 years after his initial insubordination.

The witnesses who finally testified in defence of Sotiropoulos were Nikos Chrysogelos (former Green MEP), Afroditi Stambouli (SYRIZA MP) and Sam Biesemans (EBCO's Vice-President).

At the same day, a meeting have been placed between Mr Sam Biesemans, EBCO's Vice-President and Mr Giorgos Varemenos, President of the Defence Committee, and other members of the committee, in the Greek parliament. The main objective was discussing



about the problems of Greek conscientious objectors and the right to conscientious objection to military service.

### **Yannis Glarnetatzis**

The application of appeal of conscientious objector **Yiannis Glarnetatzis** is examined before the Appeal Military Court of Thessaloniki on Wednesday 21 October 2015. He was found innocent for procedural reasons, because the military revoked his CO status without first calling him for a hearing.

At first instance, on 19 September 2013, **Yiannis Glarnetatzis** was sentenced on insubordination charges to one year imprisonment suspended for two years. The trial took place in absentia, since the summons and, then, the judgment were sent to an outdated address, and not to the current one, which he had declared himself in the military court a few months before the trial, when he testified as a witness in defence of conscientious objector Nikos Karanikas. So, not only he was sentenced without defending himself, but the conviction was considered final, leading further to the removal of his political rights for the period of the suspension, since insubordination is the only misdemeanour punishable by this penalty. Eventually **Yiannis Glarnetatzis** was informed about his conviction by the taxation authorities, who found him in the right direction to pay the judicial costs a few months later. Immediately after that **Yiannis Glarnetatzis** filed an appeal, which was deemed within the deadline by decision of the Appeal Military Court on 23 October 2014.<sup>71</sup>

In addition, several conscientious objectors on ideological grounds have their applications for civilian service rejected by the Minister of Defence following negative opinions by the relevant Special Committee of the Ministry of Defence. This unacceptable practice continues and it is a vicious circle. These young persons are then called up for military service, and if they do not enlist, they are repeatedly persecuted, since insubordination is considered a permanent offence in the Greek legislation. So an endless circle of arrests and penal convictions begins, with suspended imprisonment sentences accompanied with huge administrative penalties of 6000 euros for each insubordination charge.

In conclusion, EBCO is extremely concerned at the statements of the Greek Minister of Defence that he considers the introduction of voluntary conscription for women.<sup>72</sup> Not only this would be a further promotion of militarism and nationalism in the Greek society, but it would also create new discrimination: According to articles of mass media and women organisations the Minister of Defence examines the possibility that the women who will enlist voluntarily will gain points for being hired in public positions, will be fully covered by health insurance and their serving time will be calculated for their pension.<sup>73</sup>

### **Italy**

During the 2015 spring, a pacifist and non-violent network of associations has picked up 50.000 signatures in order to present a popular initiative law to the Italian parliament.

The network gets together all the more important Italian organization working on peace and nonviolence issues and it's coordinated by the Beoc member's Movimento nonviolento.

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<sup>71</sup> EbcO Press release, 20 October 2015 (<http://ebco-beoc.org>)

<sup>72</sup> Statements quoted in Ministry of National Defence's website in July 2015 and also in October 2015 ([www.mod.mil.gr](http://www.mod.mil.gr)).

<sup>73</sup> See e.g. [news.in.gr](http://news.in.gr) and <http://tomov.gr> (Greek language)



The law concerns the institution of a disarmament and non-violent department for the civil defence; which main goal is to become a defence instrument in alternative to the military one. Moreover, the draft of law designed the department as supervisor to the peace civil corps and for a Peace and disarmament research institute that will be created more over.

Nowadays, the popular initiative law is waiting for the beginning of the parliamentary process, which has to start before the end of the current legislature (March 2018). If the parliamentary process doesn't start by March 2018 the draft law will fall and the works won't continue during the next legislature.

## Lithuania

In Lithuania conscription, which had been suspended with effect from the beginning of 2009, was restored on 4<sup>th</sup> March, when Parliament approved the decision of the 'State Defence Council'. The reason was a feeling of threat from Russia, who in December carried out military exercises in Kaliningrad (a Russian enclave on Lithuania's south-western border). Lithuanian President Dalia Grybauskaitė called conscription a 'quick and cost-effective way to bolster the country's army', with conscript soldiers costing about half as much as professionals. The 'State Defence Council' has proposed mobilising about 3,500 people into the military for training each year. Men aged 19 to 26 and graduates of higher education institutions up to age 38 will be called up.<sup>74</sup>

The first call-up took place May 11th, when 2/3 of the 3,000 spaces to be filled were met by volunteers. Nothing has been reported about whether arrangements for conscientious objectors have been put in place, but presumably if an instance occurred the previous legislation would apply.

In June, two women, Tiskevic-Hasanova and Neringa Rekasiute, created a series of photos, exploring the issue of conscription.

The photo series features 14 men of conscription age exploring issues related to the military, gender, their families, and conscription, having been photographed with tears on their cheeks and wearing military camouflage clothing. In The Guardian, Rekasiute said "The men in the photographs are crying because in social media and mass media in Lithuania, the common opinion of people is that you have to 'man up', not to be a 'cry baby', not act as 'a coward' and go to the army. That those nine months won't change anything in your life. To have a different opinion about conscription and masculinity is absolutely unpopular. We wanted to say that there is nothing wrong with tears and expressing emotions."

Despite expressing support for the military in general, Rekasiute said that they still faced criticism for questioning the Lithuanian government's strategy of using conscription.<sup>75</sup>

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<sup>74</sup> Brock, H., War Resisters International: Propaganda, Ukrainian desertion and conscription in Lithuania ([www.wri-irg.org/Propaganda-Ukrainian-desertion-conscription-Lithuania](http://www.wri-irg.org/Propaganda-Ukrainian-desertion-conscription-Lithuania)), 4 March 2015.

<sup>75</sup> War Resisters International, "Portraits of men explore conscription and gender in Lithuania", (<http://www.wri-irg.org/node/24667>), 19 June 2015.



## Turkey

### Ali Fikri Işık

Fifty-six-year-old conscientious objector **Ali Fikri Işık** is due to appear in front of Çorlu Military court the 22th October 2014 - facing three separate charges of 'desertion' that could carry a prison sentence of around two-and-a-half years.

Ali Fikri Işık has not presented himself for military service since 20 January 1993, although he was not arrested until 9 June 2012, when he was charged with 'desertion'. He declared his conscientious objection on the day of his arrest, stating that he had been imprisoned and tortured in detention after the military coup in 1980 and he opposes militarism and "refuses to take part in the war".

During the first hearing of his case at Edirne Military Court on 14 August 2012, he repeated the reasons for his conscientious objection to military service in a declaration made in Kurdish. He was released from prison for two days on 17 October 2012 on the condition he join his unit (which he did not). On 15 November 2012 he presented himself to the Edirne Military Prosecutor, where he again told the authorities that he refused to perform military service.

On 27 February 2013, Ali Fikri Işık was sentenced to one year and 15 days in prison for one count of 'desertion'. This sentence was later confirmed by the Military Appeals Court. He was detained the same day on another count of 'desertion', which he protested by going on hunger strike. He was released on 13 March 2013, but his prosecution on three counts of 'desertion' is continuing. He has in fact been declared 'unfit for military service' on 21 February 2014.<sup>76</sup>

### Mehmet Tarhan

In February 2015, a military court in the Central Anatolian province of Sivas has sentenced conscientious objector **Mehmet Tarhan**, to 15 months in jail. The verdict was transformed to a fine of 9,000 Turkish Liras, for "failing to obey orders." Mehmet is appealing the verdict. Mehmet's struggle against the Turkish military has been running for over a decade.

Tarhan became conscientious objector on October 27, 2001, detained on April 8, 2005 and was sent to the military unit in Tokat province on April 10, 2005. He objected to wearing military uniform and to performing compulsory military service and so he was sent to Sivas Military Prison.

Conscientious objector went on a hunger strike since his hair and beard were cut off without his permission and he was battered there by other soldiers because he refused to perform his military service. Tarhan resorted to the ECtHR (application No. 9078/06) and the European Court ordered Turkey to pay 10 thousand Euros for the penalty.<sup>77</sup>

### Suruc massacre: Two Conscientious objectors among those killed

In 20<sup>th</sup> of July 2015, many young people from different cities took the road for the reconstruction of Kobanê which is the city that has been resisting against the attacks of ISIS

<sup>76</sup> War resisters' international, CO-Alert, 22 October 2014 ([www.wri-irg.org](http://www.wri-irg.org)).

<sup>77</sup> War resisters' international, "Conscientious Objector Tarhan Released Facing Civil Death", 18 September 2015, ([www.wri-irg.org](http://www.wri-irg.org)).



for several months. Those young people wanted to re-build the city which was destroyed by war and bring life back to the children who are sentenced to death in the pillaged land.

But they could not succeed. Everlasting war policy turned to a bomb and exploded right at the middle of the crowd of young people who were resisting to build the peace. Tens of people lost their lives and hundreds of them were injured. One of those young people who had lost her life is **Polen Ünlü** who declared her conscientious objection in 2012 by saying "That war does not murder only men, but it murders women as well." **Alper Sapan** is also one of those young people who had murdered in the massacre, and also one of conscientious objectors who declared his conscientious objection in May 2014 by saying "For the world where there is no war, no nation, no border; for freedom, I am listening to my heart and rejecting the military service."<sup>78</sup>

Our colleagues in Vicdani Ret Derneği (VR-DER) the Turkish CO Association, report that although they are all profoundly shocked by the carnage in Ankara on 10<sup>th</sup> October, they are not aware that any of their members were among the casualties.

### **International symposium (5-6 September 2015)**

VR-DER held an international symposium on conscientious objection on 5-6 September in Istanbul. The meetings were packed, and at the end of the symposium, over 20 COs went to Galatasaray Square and publicly declared their conscientious objection.

### **Legislative updates**

No legislative moves have followed since the 2014 report, although on 2th December 2014 the Turkish government opened its occasional program that allows for a conscription exemption fee. The plan exempted from military conscription all Turkish men older than 28, provided they pay a lump sum of 18,000 Turkish lira (about € 6,730). Such regulations have been made four times: in 2011, 1999, 1992 and 1987.

## **Ukraine**

In May 2014 Ukraine reintroduced conscription and the Ukrainian government announced a general mobilization.

In January 2015 the government changed rules for call ups: men from 20 to 60 years old are liable for military service. The call-up procedure starts with, as first step, an announcement letter to registry at a recruitment office and to get a medical inspection and after they should get a call-up.

Also liable for registration are men who were declared as unfit before and/or didn't do their military service. Also women between 20 and 50 who already got a military training are liable for military service.

Postponements are possible for parliamentarians, students and fathers of at least three underages.

It spreads the word that also young people that are studying abroad received letters from the Ukrainian government calling them up to military service. Indeed, antimilitarists in

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<sup>78</sup> Association of Conscientious Objection (VİCDANI RET DERNEĞİ), declaration, 25 July 2015





Spain (Alternativa Antimilitarista-MOC) have spoken out in solidarity with young Ukrainians studying in the country who have been recalled.<sup>79</sup>

New recruits are trained for 26 days before they could be sent to the war zone.

Ukraine provided legal instruments to an Alternative Service only for ten particular religious organizations, as like as Adventists, Jehovah's Witnesses or Baptists.

On 18th June 2015, the Ukrainian military began its sixth wave of conscription. This follows several other conscription 'waves' aimed at increasing the Ukrainian military by 50,000 people – a process that has only been 50% successful, with many desertions, and people travelling to work abroad to avoid conscription. Peter Mehed, the Ukrainian Deputy Defence Minister, said that further waves of conscription could take place if the military did not reach its target this time.<sup>80</sup>

However, the High court in Ukraine has affirmed that the right to conscientious objection must still be recognised "even in times of civil unrest and war" after a Jehovah's Witness CO, **Vitaliy Shalaiko**, was accused of evading previous rounds of conscription. Thousands of Jehovah's Witnesses throughout Ukraine have faced the issue of neutrality during mobilization. Those who face criminal charges for evading military service can now rely on the legal precedent established in Vitaliy Shalaiko's case.<sup>81</sup>

Recruiters routinely raid public spaces, block entrances to shopping centres and other public spaces before conducting checks on young men – those found to have been evaded the draft are taken away. To counter this, Ukrainian activists are developing internet tools, such as collating information of regular sites used by recruiters on online maps and allow individuals worried about being forcibly recruited to avoid the spaces that recruiters are regularly found at.

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<sup>79</sup> War resisters international, CO-Update, March-June 2015, No. 87 (wri-irg.org).

<sup>80</sup> War resisters international, CO-Update, July-August 2015, No. 88 (wri-irg.org).

<sup>81</sup> "High Court of Ukraine Upholds Right to Conscientious Objection During Military Mobilization", newsroom, Jehovah's Witness website (jw.org), 28<sup>th</sup> August 2015.



## 2 OVERVIEW OF NATIONAL PROVISIONS

### 2.1 CONSCRIPTION

In 2012, EBCO's Annual Report optimistically bid farewell to conscription. In the previous twelve months the final conscript had been demobilised in Serbia and in Germany, bringing to 25 the number of states within the Council of Europe area which had suspended or abolished conscription since 1963. None had re-imposed it, and there seemed good reason to suppose that even in those countries where it was formally suspended the habit of relying on a well-trained and equipped professional army would persist.

Sadly, since then things have gone backward. In 2012, Ukraine announced the end of military conscription. As our colleagues in country observed at the time, conscription itself was however not abolished; young men were instead drafted into the troops of the interior ministry, used for internal repression. As reported above, in the spring of 2014, military conscription was reintroduced and the Government announced a general mobilisation. And in March 2015, also in response to a perceived threat from Russia, Lithuania, which had suspended conscription in 2009, followed suit.

Andorra, Liechtenstein, Monaco, and San Marino maintain a token military for ceremonial purposes only. Iceland has never had a military, although it does maintain a small paramilitary coastguard. In none of these has conscription ever applied, which has also been the case in Ireland and Malta. Otherwise, in 1960, there was conscription in every country of what is now the Council of Europe area. The date on which the last conscript was demobilised in each country is as follows:

**Tab. 1. Years of abolition of conscription in states within the Council of Europe area**

Country	Year (ascending order)
UK	1963
Luxembourg	June 1969
Belgium	February 1995
Netherlands	1996
France	2001
Spain	December 2001
Slovenia	September 2003
Czech Republic	December 2004
Italy	December 2004
Portugal	December 2004
Slovakia	2004
Hungary	July 2005
Bosnia-Herzegovina	December 2005
Montenegro	July 2006



Country	Year (ascending order)
Romania	December 2006
Bulgaria	2007
Latvia	2007
Macedonia (former Yugoslav Republic of)	2007
Croatia	January 2008
Poland	October 2009
Albania	January 2010
Sweden	July 2010
Serbia	January 2011
Germany	July 2011

In sixteen states of the Council of Europe area conscription is still enforced. They are Armenia, Austria, Azerbaijan, Belarus, Cyprus, Denmark, Estonia, Finland, Georgia, Greece, Lithuania, Moldova, Norway, the Russian Federation, Switzerland, Turkey and Ukraine.

Conscription is also imposed by the *de facto* authorities in a number of territories which are not internationally recognised: Abkhazia and South Ossetia (Georgia), Nagorno-Karabakh (Azerbaijan), Transdniestria (Moldova), and the northern part of Cyprus.

Kosovo, the other territory within the region whose status is currently unclear, in January 2009 established a "non-military" security force, armed with small arms and light vehicles only, with responsibilities for crisis response, civil protection and explosive ordinance disposal. The personnel of this force number some 2,500, to which, under a law of July 2010, 800 reserves have now been added.<sup>82</sup> Recruitment is voluntary.

## 2.2 RECOGNITION OF CONSCIENTIOUS OBJECTION

With the solitary exception of Turkey (see Section 1.2 Turkey) all the States in the Council of Europe area which have had conscription, have over the course of the years explicitly recognised conscientious objection to military service or have at least indicated the intention of making alternative service available.

The accompanying table gives the dates of the first explicit reference, in either legislation or a constitutional document, either to conscientious objection to military service or to an alternative service for conscientious objectors. This should not be taken as implying that arrangements in accordance with modern international standards were in place from the date quoted; constitutional provisions in for example the Bulgaria and the Russian Federation were not implemented in legislation for many years. In many cases the initial legislation applied only to very narrowly-defined groups, or merely made an unarmed military service available.

The persecution of conscientious objectors often persisted – and in some places still persists – long after a law was in place. Recognition of conscientious objection to military service is also beginning to reach places which are not internationally-recognised states.

<sup>82</sup> International Institute for Strategic Studies (London), *The Military Balance 2014*, p. 134.



In June 2015 was approved the Belarus' first-ever Alternative Service Law, although the first recognition had been in the 1994 Constitution. Yet under the Law, only young men with a religious objection will be eligible to apply, preventing those with other pacifist convictions from applying (see Section 1.2 Belarus).

**Tab. 2. First Recognition of Conscientious Objection to Military Service in States within the Council of Europe area**

Year (ascending order)	Country	Provision
1916	United Kingdom	Military Service Act, 27 <sup>th</sup> Jan.
1917	Denmark	Alternative Service Act, 13 <sup>th</sup> Dec.
1920	Sweden	Alternative Service Schemes Act, 21 <sup>st</sup> May
1922	Netherlands	Constitutional amendment
1922	Norway	Civilian Conscript Workers Act, 24 <sup>th</sup> March
1931	Finland	Alternative Service Act, 4 <sup>th</sup> June
1949	Germany	In principle in the Grundgesetz "Basic Law" of the Federal Republic of Germany, Art. 4. The first provisions in the German Democratic Republic dated from 1964
1955	Austria	National Service Act
1963	France	Act No. 1255/63, 21 <sup>st</sup> December
1963	Luxembourg	Act of 23 <sup>rd</sup> July, Art. 8)
1964	Belgium	Act of 3 <sup>rd</sup> June
1972	Italy	Act No. 772/1972
1976	Portugal	Constitution, Article 41
1978	Spain	Constitution
1988	Poland	Constitution, Art. 85
1989	Hungary	Constitution, Art. 70
1990	Croatia	Constitution, Article 47.2
1990	Latvia	Law on Substitute Service of the Latvian Soviet Socialist Republic
1990	Lithuania	Law on Alternative Service of the Lithuanian Soviet Socialist Republic
1991	Bulgaria	Constitution, Article 59.2
1991	Estonia	Constitution, Article 124
1992	Moldova	Alternative Service Act, No. 633/91
1992	Cyprus	National Guard Act, No. 2/1992, 9 <sup>th</sup> Jan.



<b>Year (ascending order)</b>	<b>Country</b>	<b>Provision</b>
1992	Czechoslovakia	Civilian Service Act, No.18/1992 – now the Czech Republic and Slovakia
1992	Georgia	Military Service Act, Art. 12
1992	Serbia and Montenegro	Constitution, Art. 58 – Montenegro gained independence in 2006
1992	Slovenia	Constitution
1993	Russian Federation	Constitution, Art. 59.3
1994	Belarus	Constitution, Art. 57. First Alternative Service Law in 2015.
1995	Azerbaijan	Constitution, Art. 76
1996	Bosnia-Herzegovina	parallel Defence Acts in the Federation and in the Republika Srpska
1996	Romania	Act No. 46/1996, Art. 4
1996	Switzerland	Civilian Service Act
1996	Ukraine	Constitution, Art. 35.3
1997	Greece	Act No. 2510/97
1998	Albania	Constitution, Art. 166
2001	Macedonia (FYR)	Defence Act, Art. 8
2003	Armenia	Alternative Service Act



## 2.3 OBLIGATORY MILITARY SERVICE AND ALTERNATIVE SERVICE

The relative durations in the countries which retain conscription is as follows. The figure quoted is for the normal basic military service in the army, before any adjustments to reflect rank, educational qualifications etc..

The only change which has occurred in 2015 is that Belarus has at last made alternative service arrangements, but of a punitive duration.

**Tab. 3. Duration of military and civilian service in states within the Council of Europe area**

Country	Military service duration	Civilian service duration	Ratio to military service
Denmark	4	4	1
Austria	6	9	1.5
Finland	5.5	11.5	2.09
Estonia	8	8	1
Switzerland	260 days	390 days	1.5
Greece	9	15	1.7
Norway	12	no alternative service required of conscientious objectors	
Moldova	12	12	1
Ukraine	12	18	1.5
Russian Federation	12	18	1.5
Georgia	15	24	1.6
Belarus	18	27	1.5
Azerbaijan	18	no alternative civilian service	
Cyprus	24	33	1.4
Armenia	24	42	1.75
Turkey	24	no alternative civilian service	



## 2.4 CONSCRIPTS AND CONTRACT OR PROFESSIONAL SOLDIERS

**Tab. 4 Number and percentage of conscripts**

	Total strength of armed forces	Number of conscripts	As %
<b>Cyprus<sup>83</sup></b>	12.000	10.700	89,2%
<b>Switzerland</b>	21.250	17.900	84,2%
<b>Turkey</b>	510.600	359.500	70,4%
<b>Finland</b>	22.200	13.650	61,5%
<b>Ukraine</b>	129.950	-	"just over 50%"
<b>Estonia</b>	5.750	2.500	43,5%
<b>Armenia</b>	44.800	18.950	42,3%
<b>Moldova</b>	5.350	2.200	41,1%
<b>Russian Federation<sup>84</sup></b>	771.000	30.3230	about 35%
<b>Greece</b>	144.350	48.350	33,5%
<b>Norway</b>	25.800	8.050	31,2%
<b>Georgia</b>	20.650	4.050	19,6%
<b>Denmark</b>	17.200	1.250	7,3%

The number of conscripts in the Austrian, Azerbaijani and Belarussian armed forces is not known.

An alternative way of measuring how militarised a society is to compare the entire armed forces manpower: conscript, contract and professional, with the population, especially the young male population, which provides the bulk of military recruits.

This is done in the table on the next page.

<sup>83</sup> Republic of Cyprus only. The number of conscripts currently serving in the North is not known

<sup>84</sup> Number of conscripts for 2013 provided by "Citizen, Army, Law". All other figures are from "The Military Balance 2015". It is probable that the proportion of conscripts is declining.



Tab. 5 Total armed forces active strength and percentage

Country	Male population reaching 21 in 2014 <sup>85</sup>	Total armed forces active strength <sup>86</sup>	As %
Greece	52.754	144.350	274.8% (conscripts 91.7%)
Armenia	23.470	44.800	190.9% (conscripts 80.7%)
Cyprus	8.167	15.500 <sup>87</sup>	189.8% (conscripts 167.7%)
Russian Federation	693.843	771.000	110.7% (conscripts 43.5%)
Bulgaria	33.444	31.300	93.6
Belarus	51.855	48.000	92.6%
Azerbaijan	76.923	66.950	87.0%
Estonia	6.688	5.750	86.0% (conscripts 37.3%)
Norway	32.290	24.450	79.9% (conscripts 28.0%)
Slovenia	9.818	7.600	77.4%
Malta	2.554	1.950	76.4%
Turkey	700.079	510.600	72.9% (conscripts 51.4%)
Georgia	29.723	20.650	69.5% (conscripts 13.6%)
Finland	32.599	22.200	68.1% (conscripts 41.9%)
Montenegro	3.120	2.080	66.7%
Serbia	43.945	28.150	64.1%
Spain	217.244	133.250	61.3%
Italy	288.188	176.000	61.1%
Romania	117.798	71.400	60.6%
Croatia	28.334	16.550	58.4%
Portugal	62.208	34.600	55.6%
France	396.050	222.200	54.3%
Belgium	59.655	30.700	51.5%
Latvia	10.482	5.310	50.7%
Lithuania	20.425	10.250	50.2%
Slovakia	31.646	15.850	50.1%
The FYR Macedonia	16.144	8.000	49.6%
Ukraine <sup>88</sup>	246.39749.3	121.550	(conscripts 25%)
Austria	48.108	22.500	46.8%
Switzerland	46.562	21.250	45.6% (conscripts 38.4%)

<sup>85</sup> Source: The CIA World Factbook ([www.cia.gov](http://www.cia.gov)).

<sup>86</sup> Source: The Military Balance 2015 (Institute of Strategic Studies, London).

<sup>87</sup> Including the forces of the self-styled "Turkish Republic of North Cyprus", but not Turkish or other foreign forces.

<sup>88</sup> Government armed forces only





Country	Male population reaching 21 in 2014 <sup>85</sup>	Total armed forces active strength <sup>86</sup>	As %
<b>Denmark</b>	37.913	17.200	45.4% (conscripts 3.3%)
<b>Germany</b>	405.468	181.550	44.8%
<b>Poland</b>	221.889	99.300	44.8%
<b>Hungary</b>	59.237	26.500	44.7%
<b>Czech Republic</b>	49.999	21.000	42.0%
<b>United Kingdom</b>	385.989	159.150	41.4%
<b>Bosnia-Herzegovina</b>	26.601	10.500	39.5%
<b>Netherlands</b>	103.462	37.400	36.1%
<b>Ireland</b>	28.564	9.350	32.7%
<b>Sweden</b>	54.960	15.300	27.8%
<b>Luxembourg</b>	3.263	900	27.6%
<b>Albania</b>	31,986	8,000	25.0%
<b>Moldova</b>	28.213	5.350	19.0% (conscripts 7.8%)



## 2.5 MILITARY EXPENDITURE

Yet another measure of militarisation is given by military expenditure figures. This table, drawn up on the same basis as that in the previous report, shows the level of military expenditure as reported by the Stockholm International Peace Research Institute (SIPRI) for 2014. The apparent changes from the figures in last year's report should be treated with caution; SIPRI's figures are given in US dollar which are here converted to Euros, so they partly reflect exchange rate fluctuations.

**Tab. 6. Military expenditure in states within the Council of Europe area**

Country	Military Expenditure million € 2014	% change from 2013	€ per capita	As% of GDP
Albania	123	-24,5%	38	1,0%
Armenia	428	5,8%	143	4,2%
Austria	2961	0,9%	348	0,8%
Azerbaijan	3258	4,1%	343	4,6%
Belarus	890	1,4%	96	1,2%
Belgium	4.718	-0,8%	425	1,0%
Bosnia-Herzegovina	182	1,3%	48	1,1%
Bulgaria	761	-7,0%	106	1,6%
Croatia	796	-8,6%	185	1,5%
Cyprus	385	-0,2%	321	2,0%
Czech Republic	1.839	-2,9%	172	1,0%
Denmark	4052	5,5%	724	1,3%
Estonia	463	6,3%	356	2,0%
Finland	3.317	-3,6%	614	1,4%
France	56.626	-0,2%	877	2,2%
Georgia	353	-5,0%	82	2,3%
Germany	42.232	-2,5%	511	1,2%
Greece	4.834	-11,7%	436	2,2%
Hungary	1.059	-3,8%	107	0,9%
Ireland	1.083	-0,4%	230	0,5%
Italy	28.099	-8,8%	460	1,5%
Latvia	272	5,6%	136	1,3%
Lithuania	343	6,3%	114	0,8%
Luxembourg	270	1,7%	540	0,5%
Macedonia, FYR	121	5,4%	58	1,3%
Malta	54	11,1%	136	0,6%
Moldova	25	3,0%	7	0,4%
Montenegro	71	18,3%	119	1,7%
Netherlands	9.169	-2,5%	546	1,2%
Norway	6.157	-8,0%	1.207	1,4%
Poland	9.545	13,2%	250	1,9%



Country	Military Expenditure million € 2014	% change from 2013	€ per capita	As% of GDP
Portugal	3.819	-12,2%	360	1,9%
Romania	2.311	0,8%	107	1,3%
Russia/USSR	76.783	-3,8%	539	4,5%
Serbia	864	3,3%	91	2,3%
Slovak Rep.	898	2,6%	163	1,0%
Slovenia	446	-3,2%	212	1,0%
Spain	11.575	1,0%	246	0,9%
Sweden	5.976	0,7%	622	1,2%
Switzerland	4.753	3,5%	580	0,8%
UK	54.984	6,4%	866	2,2%
Ukraine	3.658	-8,3%	81	3,1%

## 2.6 RECRUITMENT AGES

No changes to minimum recruitment ages have been announced in the past 12 months. However some amendments to the information presented in the 2014 EBCO Report have come to light, and are reflected in the asterisked items in the table below.

**Tab. 7. Recruitment ages in states within the Council of Europe area**

Country	Age
Albania	19
Armenia	18, but 17 year old cadets at military higher education institutes
Austria	17 "voluntary" early performance of obligatory military service
Azerbaijan	17 year olds at cadet military school are classed as "on active service"
Belarus	18, but 17 year old cadets at the Military Academy
Belgium	On completion of secondary education, regardless of age
Bosnia-Herzegovina	18
Bulgaria	18
Croatia	18
Cyprus	16 (including "voluntary" early performance of obligatory military service)*
Czech Republic	18
Denmark	18
Estonia	18 (alone in the CoE area has signed but not ratified the OPAC)
Finland	18
France	17
Georgia	18, but possibly boys under 17 at the "Cadets' Military Academy"
Germany	17
Greece	17*
Hungary	18
Ireland	18 (Not clear whether this applies to "apprentices")
Italy	18
Latvia	18



Country	Age
Lithuania	18
Luxembourg	18 (raised from 17 in 2007)
Macedonia (FYR)	18
Malta	17.5 nominally, but de facto no recruitment under 18 since 1970
Moldova	18
Montenegro	18
Netherlands	17
Norway	18 but from the year of the 17 <sup>th</sup> birthday in military schools
Poland	18*
Portugal	18
Romania	18
Russian Federation	18 but from the age of 16 in military schools
Serbia	18
Slovakia	18
Slovenia	18
Spain	18
Sweden	18
Switzerland	18
Turkey	18, but under „National Defence Service Law“ 3634, 15-18 year olds may be deployed in civil defence forces in the event of a national emergency”
Ukraine	18 but from the age of 17 in military schools
United Kingdom	16

\* Careful reading of the legislation in both Greece and Cyprus shows that a person is defined as reaching the age of 18 on the first of January of the year of the 18th birthday. In Greece the conscription age is officially 19, thus effectively 18, but voluntary recruitment is permitted from the beginning of the year of the 18th birthday. In Cyprus, the conscription age is 18, meaning, under the legislative definition, that all men become liable for conscription at the age of 17. This is a clear violation of Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC). Worse, the age for voluntary recruitment is set at 17 – meaning potentially 16 – and as in Austria there is provision for conscripts to opt to perform their obligatory military service from the age of 17. It is always questionable whether this really should be defined as voluntary recruitment, and therefore technically permitted under OPAC, but of course in the case of Cyprus this therefore means that some *conscripts* may be enlisting at the age of 16.

Happier is the correction in the case of Poland, which confirmed to the Committee on the Rights of the Child in September 2015 that:

*Amendments to the Act on General Obligation to Defend the Republic of Poland and on Amendments to Certain Other Acts (adopted on 27 August 2009) guaranteed that only persons who are over 18 years may be recruited to compulsory or voluntary military service.*



## 2.7 SERVING MEMBERS OF THE MILITARY

No new developments have been reported regarding serving members of the armed forces European citizens who develop conscientious objections. (See section 2.7 of the 2014 EBCO Report.)

However it was reported that in the one country which does have clear legal provisions to deal with requests for release on such grounds, namely Germany, no fewer than 314 contract soldiers (*Berufssoldaten*) applied in 2013 for release as conscientious objectors.

The recognition of conscientious objection also for members of the armed forces had shown its importance in the case of **André Shepherd** (see paragraph 1.1.2.1).

The former United States serviceman reflected on the actions to which he had contributed, and read widely about the effects of U.S. military action on the civilian population in Iraq. This led him to believe that should he return to Iraq he would be an accomplice to war crimes. In this case, if in the country of origin of Shepherd should be the possibility for members of the military to require conscientious objection for a specific mission, probably Shepherd would asked it, in order to not return in Iraq and at the same time to continue to be a member of military.

If there were provisions similar to that in force in Germany in other countries, how many members of the military might apply?



### 3 CONSCIENTIOUS OBJECTORS AS REFUGEES

Since the Syrian crisis erupted in 2010/11, EBCO has been calling on deaf ears for a more receptive approach to those who are fleeing not just as potential victims, but simply to escape embroilment on either side in the conflict. Nothing happened, nothing happened, and now the scale of the problem is larger than anyone can handle. Almost anyone fleeing Syria, irrespective of circumstances, can now make a convincing claim for refugee status. By and large, the cynical response has been to do everything possible to ensure that such persons do not enter the EU in the first place. Meanwhile, EBCO called from the outset for action to stop persons returning to Syria to re-engage in the armed conflict. Only after the rise of IS was this taken seriously by the affected European states.

EBCO has in 2015 not been involved in supporting further asylum claims from Turkish conscientious objectors. This obviously is a consequence of the more subtle approach now adopted by the Turkish authorities, which, while retaining the threat of eventual incarceration, now in the first instance impose fines. This both creates less immediate incentive to flee the country and makes a refugee claim harder to substantiate. The political situation in Turkey is however at present so volatile that this might rapidly change.

We are however gratified to learn that (without our assistance) Yeda Lee, a conscientious objector from South Korea was in 2014 granted asylum in France, particularly given the current EU moves to define certain countries as *safe* so that no asylum claims from them would even be considered. For most people, South Korea is one of the safest places in the world, but decidedly not for conscientious objectors.

Meanwhile, there is a new flow of persons leaving Ukraine in order to avoid being embroiled in either side of that conflict. To date we have heard of none being granted asylum as a conscientious objector.

Finally, EBCO must express its concern that the UNHCR guidelines which were quoted in full in the 2014 report were in December 2014 amended, without any public announcement, seemingly in response to criticisms by just one respected refugee lawyer who felt that they gave undue weight to the recent majority jurisprudence of the Human Rights Committee, especially in so far as it contradicted the decision of the British House of Lords in the case, decided in 2004, of Sepet and Bulbul – a case which was decided only by discounting a very full submission by UNHCR itself, and which preceded all the recent developments in international jurisprudence, including that of the European Court of Human Rights. There are obviously issues here which must be debated.



## 4 NEW PUBLICATIONS

In January 2015 the Quaker UN Office published an update – effectively a third edition of the booklet “International Standards on Conscientious Objection to Military Service” by Rachel Brett. Whereas the 2011 edition is still available for downloading from QUNO's website ([www.quno.org](http://www.quno.org)) in French, Spanish, German and Russian translation, the updated version, which covers developments in jurisprudence right up to the *Young-Kwan Kim and al v Republic of Korea* reported in Section 1.1.3.1.1 above, is available only in English.

Two publications overlooked in 2014 have also come to our notice.

The office of the *Defensoria del Pueblo* (ombudsman) in Colombia produced a handbook *Servicio militar obligatorio: Incorporación, reclutamiento y objeción de conciencia en Colombia*, which is a significant contribution to the debate on the subject between the political and judicial authorities in that country.

And among the books which appeared in the United Kingdom to mark the centenary of the outbreak of the First World War was *The Courage of Cowards: The Untold Stories of First World War Conscientious Objectors* by Karyn Burnham, published by Pen and Sword Books of Barnsley, South Yorkshire.



## 5. RECOMMENDATIONS

EBCO recommends to all the European countries that:

- 1) if they have not already done so, they abolish all compulsory military service, and meanwhile stop harassing and prosecuting conscientious objectors and provide a non-punitive and non-discriminatory alternative service of purely civilian nature.
- 2) they make it promptly possible on the basis of conscientious objection for all conscripts not to be incorporated in the army and for all serving members of the armed forces to obtain release without penalties.
- 3) they cease enlistment into the armed forces on any basis of persons aged under 18.
- 4) they accept applications for asylum from all persons seeking to escape military service in any country where there is no adequate provision for conscientious objectors.
- 5) they decrease military expenditure and increase social spending.
- 6) they introduce peace education in all levels of schools.