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## **ANNUAL REPORT**

### **Conscientious objection to military service in Europe 2013**

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**Athens, October 2013**





## **FOREWORD by Friedhelm Schneider, EBCO President**

This Report combines into one annual overview updates from the Reports made since 2007/8 to Committee on Civil Liberties, Justice and Home Affairs of the European Parliament and in 2011 to the Council of Europe. It covers developments in the past year and the current situation in the entire Council of Europe area (including Belarus which although surrounded by Council of Europe members is not at present itself a full member). We are very grateful to Derek Brett for having once more worked out this detailed and comprehensive Annual Report.

Through the kind hospitality of MEP Nikos Chrysogelos the Annual Report will be launched in a public event at the Office of the European Parliament in Greece on Friday 4<sup>th</sup> October 2013, on the eve of EBCO's Assembly.

We chose to meet this year in Athens in order to express our solidarity with Greek conscientious objectors, who have suffered increasing harassment in the last year. Details of the unacceptable treatment of conscientious objectors in Greece are documented in the report. At present none are imprisoned, although the threat is there, but the repeated call-ups and prosecutions for their continued refusal of military service on grounds of conscience are not in accordance with international standards and the financial penalties suffered are a considerable burden.

Turkey also features heavily in the report. There too there can be a continuing cycle of call-ups and imprisonments. So far Turkey has responded inadequately to the criticisms of the European Court of Human Rights and the UN Human Rights Committee. In the last year EBCO has been faced with an increasing number of asylum seekers from Turkey. We have tried to assist their claims and express dismay that one conscientious objector was returned to Turkey where he is now imprisoned. Not wanting to go back to Turkey to perform military service may not in itself be a ground for asylum, but when the person is a conscientious objector who would refuse military service, the cycle of imprisonments which he would face in the absence of any legal provisions clearly amounts to persecution.

One section of the report focusses on Armenia and Azerbaijan who are very late in fulfilling the accession criteria set by the Council of Europe more than ten years ago. The fact that Armenia seems at last to have drafted an alternative service law to the satisfaction of the Venice Commission may finally open new perspectives, nevertheless the development needs to be observed. Although it is good that there are currently no conscientious objectors in prison in Azerbaijan, there is however still no sign of a law there.

At the European level, EBCO is delighted that many years of lobbying have at last borne fruit in a strong endorsement of the right of conscientious objection to military service in the Annual Report on the situation of fundamental rights in the European Union by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament and in the subsequent resolution dated 12th December 2012. We welcome furthermore the European Union's decision to promote the right of conscientious objection to military service elsewhere in the world in its new Guidelines on the promotion and protection of freedom of religion or belief.



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Likewise we appreciate the newly-adopted resolution 24/17 of the United Nations Human Rights Council which replaces the 15-year-old Commission on Human Rights resolution 1998/77 as the definitive statement by the United Nations community on conscientious objection to military service.

On the whole we have to observe again that the progress made in the field of international law and institutions often is not implemented in practice. We are extremely concerned about on-going violation of the right to conscientious objection to military service, and we see that there seems to exist a de facto-impunity for states that do not respect this right. This situation is harmful for the human right of conscientious objection itself as well as for the credibility of institutions and states that should guarantee the respect of human rights.



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# 1 DEVELOPMENTS SINCE THE PREVIOUS REPORT (SEPTEMBER 2012)

## 1.1 INTERNATIONAL AND REGIONAL ORGANISATIONS AND MECHANISMS – STANDARDS AND JURISPRUDENCE

### 1.1.1 European Court of Human Rights

After the spate of judgements following the landmark case of *Bayatyan v Armenia* (see Section 2.1.1.1 of the previous report), no new judgements regarding conscientious objection to military service as such have been reported by the European Court of Human Rights, although further cases from Armenia, Azerbaijan and Turkey are pending before the Court and an application from Greece was submitted in September (see Section 1.2 below).

However, in a case decided in November 2012<sup>1</sup> the Court found that seventeen conscientious objectors from Armenia had been unlawfully detained (in violation of Article 5 of the European Convention on Human Rights and Fundamental Freedoms) in 2005 / 2006 when they “deserted” from alternative service, because there was at the time no law authorising such charges. Fuller details are given in the article on Armenia in Section 3.1 below.

### 1 1 2 European Union

#### 1.1.2.1 European Parliament Report and Resolution on fundamental rights in the European Union

The Committee on Civil Liberties, Justice and Home Affairs (“LIBE”) of the European Parliament, to which EBCO has been making regular submissions as mandated in Paragraph 16 of the Resolution on conscientious objection in the member states of the Community of 19 January 1994 (the Bandrés Molet and Bindi Resolution), at last included in its Annual Report on the situation of fundamental rights in the European Union (2010 - 2011) a reference to the right of conscientious objection to military service, which is guaranteed under Article 10.2 of the European Charter of Fundamental Rights.

In Paragraph 102 of the report, adopted in the Committee by 32 votes to 24, the European Parliament “*Regrets that young people in some Member States are still being prosecuted and sentenced to imprisonment because the right to conscientious objection to military service is still not adequately recognised, and calls on the Member States to stop persecution of and discrimination against conscientious objectors*”.

Moreover, the same wording was adopted as Paragraph 106 of the Parliament’ resolution of 12<sup>th</sup> December 2012 on the situation of fundamental rights in the EU (2010-2011).

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1 *Khachatryan and Others v. Armenia* (application no. 23978/06), Chamber Judgment of 27<sup>th</sup> November 2012.





### 1.1.2.2 Guidelines on Freedom of Religion or Belief

On 13 June 2013, in a recommendation to the EU Council, the Parliament turned its attention to the promotion and protection of the right of conscientious objection to military service outside the EU area. The recommendation (2013/2082(INI)) on the draft EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief included the wording:

*"The right to conscientious objection*

*(m) The Guidelines should include the right to conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion; the EU should call on states with a system of compulsory military service to allow for an alternative service of a non-combatant or civilian character, in the public interest and not of a punitive nature, and to refrain from punishing, including through prison sentences, conscientious objectors for failure to perform military service; "*

The guidelines themselves, produced as a result of the Strategic Framework and Action Plan on Human Rights and Democracy that was adopted on June 25, 2012, were adopted on 24<sup>th</sup> June by the Foreign Affairs Council of the European Union, meeting in Luxembourg.

In paragraph 41 of the guidelines the European Union observes "Several states do not recognise the right to conscientious objection to military service as part of the legitimate exercise of the freedom of religion or belief, deriving from Article 18 of the ICCPR.", and paragraph 42 includes the commitment,

*"The EU will [...] g) Encourage States to respect the right to conscientious objection to military service, based on one's religion or belief, and allow for an alternative service of a non-combatant or civilian character."*

### 1.1.2.3 Resolution on the situation of Syrian refugees in neighbouring countries

On 23<sup>rd</sup> May 2013 the European Parliament passed a resolution on the situation of Syrian refugees in neighbouring countries, which made specific reference to the situation of conscientious objectors and deserters. Details are given in Section 4.1 below.

## 1.1.3 United Nations

### 1.1.3.1 Human Rights Committee

#### 1.1.3.1.1 Jurisprudence

At its 106<sup>th</sup> Session (October – November 2012) the Committee adopted Views on a further communication regarding the imprisonment of Jehovah's Witness conscientious objectors in the Republic of Korea. *Jong-nam Kim et al v Republic of Korea*<sup>2</sup>, concerned no fewer than 388 Jehovah's Witnesses each of whom had

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2 Communication No. 1786/2008; Views adopted on 25<sup>th</sup> October 2012. CCPR/C/106/D/1786/2008



been imprisoned for eighteen months for refusing on grounds of conscience to perform military service. The number of objectors was even greater than it the earlier case of *Min-Kyu Jeong et al v Republic of Korea*, but the facts of the individual cases were identical. The Committee was once again unanimous in finding a violation of Article 18 (freedom of thought, conscience, and religion) of the International Covenant on Civil and Political Rights; the majority followed the groundbreaking decision in the earlier case, by ruling that, as *"the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience, and religion"* *"it entitles any individual to an exemption from compulsory military service if the latter cannot be reconciled with the individual's religion or beliefs."* and that there had therefore been a violation of Article 18, Paragraph 1, the rights in which are not subject to any limitation. As previously, four members of the Committee signed individual concurring opinions which however followed the reasoning the Committee had adopted in the case of *Yoon & Choi v Republic of Korea* in 2006, namely that the State had not shown good reasons in the individual cases why their rights under Article 18 should be limited. A further concurring opinion, by Mr. Salvioli, provides a more detailed analysis of the majority position, and concludes *"States parties should adopt legislation to amend their domestic law, in such a way that compulsory military service becomes a thing of the past and an example of a form of repression that should never have existed. Until this comes to pass, when examining the reports of States parties, and in its case law on individual cases, the Committee should maintain its progressive approach towards conscientious objection to compulsory military service."*

#### 1.1.3.1.2 Consideration of State Reports

The Human Rights Committee's consideration of the reports of Turkey (October 2012), Finland and Ukraine (both July 2013) are reported in Section 1.2 below in the articles concerning those States. In the July 2013 Session, the Committee also considered the Second Periodic Report of Tajikistan (which is not in the Council of Europe area) and in its Concluding Observations observed:

*"The Committee reiterates its previous concern (CCPR/CO/84/TJK, para 20) about the State party's lack of recognition of the right to conscientious objection to compulsory military service, and at the absence of alternatives to military service (art. 18).*

***The State party should take necessary measures to ensure that the law recognizes the right of individuals to exercise conscientious objection to compulsory military service, and establish, if it so wishes, non-punitive alternatives to military service.***<sup>3</sup>

The question of conscientious objection to military service is also included in the List of Issues prepared by the Committee for the examination of the report of Bolivia in October 2013:

***"Please provide information on the legal status of objection to military service. In particular, please provide information on the measures adopted to recognize in law and in practice conscientious objection to military service."***<sup>4</sup>

3 CCPR/C/TJK/CO/2, 23<sup>rd</sup> July 2013, Para 21.

4 CCPR/C/BOL/Q/3, 29<sup>th</sup> April 2013, para 20.



### **1.1.3.2 Human Rights Council**

#### **1.1.3.2.1 Report and resolution on conscientious objection to military service**

As mandated by Resolution 20/2 of 5<sup>th</sup> July 2012 (see EBCO report 2011/2012, Section 2.1.5.1) the United Nations High Commissioner for Human Rights prepared for the 23<sup>rd</sup> Session of the Human Rights Council an "Analytical report on conscientious objection to military service" (UN Document A/HRC/23/22 of 3<sup>rd</sup> June 2013). EBCO was one of thirteen non-governmental organisations which submitted evidence for the compilation of the report. Evidence was also submitted by sixteen States, including Council of Europe members Bosnia & Herzegovina, Croatia, Finland, Georgia, Greece, Lithuania, Montenegro, the Russian Federation, Serbia, Slovenia and Ukraine, and the Council of Europe itself.

At its following session, on 27<sup>th</sup> September 2013, the Human Rights Council adopted without a vote Resolution A/HRC/RES/24/17 "Conscientious objection to military service", proposed by Croatia, Costa Rica and Poland, and co-sponsored by 34 other States, including Council of Europe members Austria, Belgium, Bosnia and Herzegovina, Czech Republic, Estonia, France, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Luxembourg, Montenegro, Romania, Slovakia, Slovenia, Spain, Switzerland, and the United Kingdom of Great Britain and Northern Ireland.

The full text of the resolution as adopted is:

*The Human Rights Council,*

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

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

*Reaffirming also* that the right to freedom of thought, conscience and religion shall include freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching, and that no one shall be subject to coercion which would impair one's freedom to have or to adopt a religion or belief of one's choice, as well as that freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others,

*Recalling* article 14 of the Universal Declaration of Human Rights, which recognizes the right of everyone to seek and enjoy in other countries asylum from persecution,

*Recalling also* all previous relevant resolutions and decisions, including Human



Rights Council resolution 20/2 of 5 July 2012 and Commission on Human Rights resolutions 2004/35 of 19 April 2004 and 1998/77 of 22 April 1998, in which the Commission recognized the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights and general comment No. 22 (1993) of the Human Rights Committee,

*Noting* general comment No. 32 (2007) of the Human Rights Committee, in which it stated that repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military based on the same constant resolve may amount to punishment in breach of the legal principle *ne bis in idem*,

*Recognizing* that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives,

*Aware* that persons performing military service may develop conscientious objections,

1. *Recognizes* that the right to conscientious objection to military service can be derived from the right to freedom of thought, conscience and religion or belief;
2. *Takes note* of the analytical report on conscientious objection to military service presented by the United Nations High Commissioner for Human Rights to the Human Rights Council at its twenty-third session pursuant to resolution 20/2;<sup>5</sup>
3. *Encourages* all States, relevant United Nations agencies, programmes and funds, intergovernmental and non-governmental organizations and national human rights institutions to cooperate fully with the Office of the High Commissioner by providing relevant information for the preparation of the next quadrennial analytical report on conscientious objection to military service, in particular on new developments, best practices and remaining challenges;
4. *Takes note* of the publication by the Office of the High Commissioner of a guide entitled *Conscientious Objection to Military Service* (2012);
5. *Acknowledges* that an increasing number of States recognize conscientious objection to military service not only for conscripts but also for those serving voluntarily, and encourages States to allow applications for conscientious objection prior to, during and after military service, including reserve duties;
6. *Recognizes* that an increasing number of States that retain compulsory military service are taking steps to ensure the establishment of alternatives to military service;
7. *Welcomes* the fact that some States accept claims of conscientious objection to military service as valid without inquiry;

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5 A/HRC/23/22.



8. *Calls upon* States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection to military service is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;
9. *Urges* States with a system of compulsory military service, where such provision has not already been made, to provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature;
10. *Emphasizes* that States should take the necessary measures to refrain from subjecting individuals to imprisonment solely on the basis of their conscientious objection to military service and to repeated punishment for refusing to perform military service, and recalls that repeated punishment of conscientious objectors for refusing a renewed order to serve in the military may amount to punishment in breach of the legal principle *ne bis in idem*;
11. *Calls upon* States to consider releasing individuals imprisoned or detained solely on the basis of their conscientious objection to military service;
12. *Reiterates* that States, in their law and in practice, must not discriminate against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights;
13. *Encourages* States, subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee as set out in the Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, to consider granting asylum to those conscientious objectors to military service who have well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service;
14. *Also encourages* States, as part of post-conflict peacebuilding, to consider granting and effectively implementing, amnesties and restitution of rights, in law and in practice, for those who have refused to undertake military service on grounds of conscientious objection to military service;
15. *Affirms* the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service;
16. *Welcomes* initiatives to make such information widely available, and encourages States, as applicable, to provide information to conscripts and persons serving voluntarily in the military services about the right to conscientious objection to military service;
17. *Urges* States to respect freedom of expression of those who support conscientious objectors or who support the right of conscientious objection to military service;
18. *Encourages* States to use the information contained in the above-



mentioned report and guide of the Office of the High Commission and in the present resolution to consider introducing appropriate legislation, policies and practices regarding conscientious objection to military service, and to address any discriminatory provisions therein, and to inform the enforcement of an adequate legal framework to ensure that the right can be respected in practice;

19. *Invites* States to consider including in their national reports, to be submitted to the universal periodic review mechanism and to United Nations human rights treaty bodies, information on domestic provisions related to the right to conscientious objection;

20. *Decides* to continue consideration of this matter under the same agenda item in accordance with its annual programme of work.

#### **1.1.3.2.2 Resolution on Eritrea**

Although Resolution 24/17 was the first substantive resolution of the Human Rights Council on the subject of conscientious objection to military service, and as such replaces the previous definitive statement of the United Nations standards on the issue in Resolution 1998/77 of the former Commission on Human Rights, another important “first” had been achieved in Resolution 23/21, on the situation of human rights in Eritrea, adopted (also without a vote) on 14<sup>th</sup> June 2013, at the Council's previous session.

Operative paragraph 3d of the resolution “*Calls upon* the Government of Eritrea, without delay [...] To put an end to the system of indefinite national service, 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.”

This is believed to be the first time that conscientious objection to military service has been included in recommendations made by the Human Rights Council as a whole, or by its predecessor, the Commission on Human Rights, to an individual state. (The recommendations made in the course of the Universal Periodic Review process, to be discussed in the following Section, are made by individual States taking part in the Working Group, and are not endorsed by the Council.)

#### **1.1.3.2.3 Universal Periodic Review**

##### **1.1.3.2.3.1 Republic of Korea**

The issue of conscientious objection to military service, which had often been overlooked during the first cycle of the Human Rights Council's “Universal Periodic Review” (UPR) process, received unprecedented attention during the review of the Republic of [ie South] Korea in the second cycle, which took place on 1<sup>st</sup> November 2012.

In the state report for the second UPR cycle, Korea made further responses to the recommendations on conscientious objection to military service made by Slovenia and the United Kingdom in the first cycle.

The Government finds it difficult to introduce alternative services for



conscientious objectors to military draft, considering the prevailing security threats on the Korean peninsula, the challenge in securing military personnel if alternative services are introduced, and the widely-shared criticism based on the fairness of military obligation. The Constitutional Court delivered a ruling [2008hun-ga22] on 30 August 2011 that the application of the penal provision of the *Military Service Act* against conscientious objectors does not infringe the freedom of conscience guaranteed by the Constitution. However, the Government plans to continue thoroughly reviewing and researching on introducing alternative military services to conscientious objectors, considering national security conditions and surroundings, and the agenda is incorporated into the second NAP (The number of conscientious objectors stood at 728 in 2009, 721 in 2010 and 633 in 2011).<sup>6</sup>

In the second cycle, the United Kingdom submitted three written questions in advance, one of which read:

*"Could you please inform us whether the Government of the Republic of Korea will grant an unconditional amnesty to all conscientious objectors to military service and if it intends introduce alternatives to military service?"*

In the working group itself, the Republic of Korea received the following recommendations:

*"With regard to conscientious objection, adapt existing national legislation so that alternative services to military service effectively have a civilian nature and that they are placed under the monitoring of civilian authorities (France); Abolish imprisonment and establish a non-military service for conscientious objectors (Germany); Ensure that the right to conscientious objection to military service is observed (Poland); Recognise the right to conscientious objection to military service and introduce alternative service in line with international standards (Slovakia); Recognise conscientious objection to military service as a right, guaranteeing an alternative community service to the military service of a truly civilian character (Spain); Immediately introduce an alternative military service option for conscientious objectors, ensuring it has a non-combatant or civilian character and is not of a punitive nature (USA); Introduce alternative service for conscientious objectors (Australia)."*<sup>7</sup>

In its statement Hungary also *"encouraged the Republic of Korea [...] to introduce alternative service for conscientious objectors before the next UPR cycle"*<sup>8</sup>

The response of the Korean delegation in the Working Group was:

*"Given the special security situation of the Republic of Korea, the introduction of an alternative system for conscientious objectors to military service could be considered when positive changes in inter-Korean relations as well as the security landscape occurred, and when a national social consensus for accepting such an alternative system existed. The Constitutional Court had ruled that the clause in the Military Service Act was constitutional. A bill to amend the Military*

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6 A/HRC/WG.6/14/KOR/1, 13<sup>th</sup> August 2012, para 74 and footnotes.

7 A/HRC/22/10, para 124.53.

8 Ibid, para 44.



*Service Act to introduce alternative military service had been introduced, but discarded, in the National Assembly.*<sup>9</sup>

In the written responses in advance of the adoption of the UPR Report in February 2013, the Republic of Korea did not list the group of recommendations on this subject as “enjoying its support”, reiterating its arguments:

*“The introduction of alternative service is difficult when taking into account factors such as the special security situation of the Republic of Korea, the procurement of military resources under a conscription system, the equal burden sharing of military duties, and the lack of public consensus. Nevertheless, the Government will examine the issue while taking into consideration the future changes in the security situation and formation of public consensus.”*<sup>10</sup>

#### **1.1.3.2.3.2 Sixteenth Session of the UPR Working Group, April 2013**

Among the fourteen states reviewed in the sixteenth session were Turkmenistan, Uzbekistan, Colombia and Azerbaijan.

In the course of his statement in the working group, on **Turkmenistan** the ambassador of Slovenia said “*We also regret that the government has not yet taken a position on our previous recommendations regarding visits by special procedures and regarding conscientious objection to military service, which we would like to reiterate.*” Unfortunately, this part of his statement was not reflected in the summary report of the working group, and the recommendations concerned were not included in the list.

Turkmenistan did however accept a recommendation from the USA, that it “*Call for and support reform to laws that restrict freedom of religion and expression; in particular protect the rights of conscientious objectors, and ensure that individuals are not punished for expressing their opinions.*”<sup>11</sup> Turkmenistan indicated in its replies<sup>12</sup> that the issues raised in the recommendation are currently being explored.

In the Working Group on **Uzbekistan**, Slovakia recommended that Uzbekistan “*Recognise the right to conscientious objection, ensuring that conscientious objectors are not subjected to reprisals*”. Slovenia went into more detail, calling on Uzbekistan to “*Fully recognise the right of conscientious objection to military service without discrimination as to the religion of belief on which the objection is based, and provide civilian alternative service compatible with international standards.*”

Despite all the evidence to the contrary, Uzbekistan listed both recommendations among those which it considered were already implemented or in the course of implementation.

An advance question from Slovenia to **Colombia** had yet adopted any specific legislation that refers to or regulates the right to conscientious objection with

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9 Ibid, para 64.

10 A/HRC/22/10, 16<sup>th</sup> January 2013, para 30.

11 A/HRC/24/3, Para 113.74

12 A/HRC/24/3/Add.1, 4<sup>th</sup> September 2013.





regard to military service. Sadly, no answer was given in the working group, and the issue did not feature in the discussion.

Slovenia had also put an advance question to **Azerbaijan**, in which, referring back to the recommendation it had made during the first cycle of the UPR, it asked, "*How and when will the Government of Azerbaijan give practical effect to the Constitutional provision allowing conscientious objection to military service.*" During the working group itself, Slovenia regretted the lack of information on this issue, but although it referred to the previous recommendation, this was not repeated.

#### **1.1.3.2.4 Special Procedures of the Human Rights Council**

The previous report, in sections 2.1.1.1 and 2.1.5.2 mentioned the communication from a number of Special Procedures to Armenia regarding the imprisonment of conscientious objectors, and also the visit of the Special Rapporteur on Freedom of Religion or Belief to Cyprus. The follow up on the communication, and the Special Rapporteur's report to the Human Rights Council on his visit will be reported below in the articles dealing with the countries concerned.

Outside the Council of Europe area, the Working Group on Arbitrary Detention and the Special Rapporteurs on Freedom of Religion or Belief and Freedom of Expression addressed a joint urgent appeal to the USA in December 2012, with regard to the case of servicewoman Kimberly Rivera.<sup>13</sup>

During a deployment in Iraq Rivera had become convinced that she was morally unable to take human life, but was not aware of the possibility of applying for release as a conscientious objector, and despite meeting with an army chaplain to discuss her crisis of conscience was not informed of this possibility. Instead, in 2007, between deployments, she had travelled with her family to Canada, where they claimed refugee status. In January 2009 this was rejected, and she was ordered to leave the country or face deportation. On Monday 16<sup>th</sup> September 2012, Justice Near of the Canadian Federal Court judge denied Rivera's request for a stay of removal. Lawyers for the Department of Justice argued that she would not be detained when she crossed the border, and Justice Near accepted that argument, finding the possibility of her arrest and detention in the USA to be only "speculative". Last minute appeals (including from Archbishop Desmond Tutu) to immigration minister Jason Kenney to grant the family status in Canada on humanitarian and compassionate grounds having proved unsuccessful, Rivera presented herself alone at the border between Gananoque Ontario and Fort Drum New York on 20<sup>th</sup> September. Her family, crossed separately, so that her four minor children (two of whom had been born in Canada) would not have the traumatic experience of seeing the "speculative" arrest and detention of their mother, which indeed took place immediately she had crossed the border.<sup>14</sup> After four days' imprisonment, Rivera was handed over to the military authorities and was transferred to Fort Carson, Colorado, where on 29<sup>th</sup> April 2013 a court martial found her guilty of desertion and sentenced her to 14 months imprisonment. This confirms the fear of the Special Procedures that Rivera faced

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13 USA 34/2012, 20<sup>th</sup> December 2012, A/HRC/23/51, p.28.

14 War Resisters Support Campaign (<http://resisters.ca>), "Conscientious objector to the Iraq war detained by the US military", 20<sup>th</sup> September, 2012



victimisation for the publicity received by the case and for her public statements regarding her conscientious objections. Under a pre-trial agreement, she is to serve ten months of her sentence. Although Amnesty International declared her a prisoner of conscience, while held at Fort Carson awaiting the court martial proceedings,<sup>15</sup> the USA classified her during that time as having rejoined her unit,<sup>16</sup> so granted no allowance for time already served. Rivera, who is expecting her fifth child in December is thus destined to set an unenviable first – the first conscientious objector to give birth while imprisoned, possibly, given the frequent practice in the USA, while shackled.

## **1.2 DEVELOPMENTS WITHIN COUNCIL OF EUROPE STATES**

### **1.2.1 Armenia: adoption of new law**

There are hopes that amendments to the Alternative Service Law, and to the Law on Implementing the Criminal Code, both of which came into force on 8<sup>th</sup> June 2013 may finally bring Armenia into line with the commitment it made on accession to the Council of Europe in 2001 and end the widespread imprisonment of Jehovah's Witness conscientious objectors. Details are given in the context of the historical background in Section 3.1 below.

### **1.2.2 Austria: conscription maintained**

In a referendum held on 20<sup>th</sup> January, Austrian citizens voted to maintain conscription. Figures released by the interior ministry, when all votes except postal votes had been counted, showed that the proposal had been rejected by a margin of 59.8% to 40.2%.

### **1.2.3 Azerbaijan: amnesties but still no law**

The two known imprisoned conscientious objectors Fakhraddin Mirzayev and Kamran Mirzayev (no relation), both Jehovah's Witnesses, benefited from an amnesty which was approved on 7 May by parliament, the Milli Mejlis, to mark what would have been the late President Heydar Aliev's 90<sup>th</sup> birthday. Prisoners who fell under the terms of the amnesty had their cases reviewed and were gradually released.

Fakhraddin Mirzayev was amnestied on 22 May after eight months' imprisonment and Kamran Mirzayev was amnestied on 20 June after three months' imprisonment, Jehovah's Witnesses told Forum 18. Both had been imprisoned under Article 321.1 of the Criminal Code, which states: "Evasion without lawful grounds of call-up to military service or of mobilisation, with the purpose of evading serving in the military, is punishable by imprisonment for up to two years [in peacetime]". Both had been arrested in the courtroom and imprisoned when their verdicts were handed down.

Fakhraddin Mirzayev, a 20-year-old Jehovah's Witness from Gyanja, was sentenced at Gyanja's Kapaz District Court on 25<sup>th</sup> September 2012 to one year's imprisonment. On 21<sup>st</sup> November 2012 Gyanja Appeal Court upheld the decision

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15 War Resisters International (wri-irg.org), CO Alert: "USA: Ongoing detention of conscientious objector Kimberly Riveira", 4<sup>th</sup> October, 2012.

16 Reply to Urgent Appeal 34/2012, op cit, dated 8<sup>th</sup> April 2013.



of the lower court. He was included in the list of political prisoners in Azerbaijan prepared by Christoph Strässer, Rapporteur of the Council of Europe Parliamentary Assembly Committee on Legal Affairs and Human Rights on 22<sup>nd</sup> January 2013 (Doc. 13079 Add).

Kamran Mirzayev is an 18-year-old Jehovah's Witness who lived in Baku, but is originally from the town of Goychay [Göyçay] in central Azerbaijan. He was sentenced to nine months' imprisonment on 12<sup>th</sup> March 2013 at Goychay Court. He appealed to Sheki Appeal Court, but on 15<sup>th</sup> May 2013 a panel of three judges chaired by Judge Humbat Salimov rejected his appeal, Jehovah's Witnesses told Forum 18.

Happily the amnesties mean that no conscientious objectors are currently incarcerated in Azerbaijan, but there is still no word of the introduction of legal provisions to fulfil the terms of the admission criteria to the Council of Europe (see the historical review in Section 3.2, below). Nor have the original convictions been overturned. After his release, Fakhraddin Mirzayev's appeal to Azerbaijan's Supreme Court in Baku, was heard on 4th June. However, a panel of three judges chaired by Judge Imran Hajigayibov rejected his appeal, Jehovah's Witnesses told Forum 18.

[Abridged from "AZERBAIJAN: CONSCIENTIOUS OBJECTORS AMNESTIED, IMAM AND DRIVER NOT FREED", by Felix Corley, Forum 18 News Service, 28th June 2013.]

#### **1.2.4 Belarus: an alternative service law at last?**

An Alternative Service Law (described by another source as an "Unarmed Military Service Law") was included in Belarus' Legislative Programme for 2013, approved by presidential decree on 3 January and published on the government's legal website pravo.by on 5 January. It assigns preparation of the Law to the Council of Ministers and to the National Centre for Legislation and Legal Research. It envisages completion of work on the draft text in July 2013 and its presentation to the Lower House of Parliament in October 2013.

"If all goes well and according to the plan", the Law will be adopted "at the earliest by summer 2014", Vera Chaushnik of the National Centre for Legislation and Legal Research told Forum 18 from the capital Minsk on 9<sup>th</sup> January. Chaushnik, the Deputy Head of the Department of Social Legislation at the National Centre for Legislation and Legal Research, said that consultations have already taken place among state agencies about the proposed new Law. "A deadline has now been given in the Legislative Programme," she told Forum 18. "It is very rare indeed when laws included in the Programme signed by the President don't get adopted."

Forum 18 reminded Chaushnik that a similar proposed Law had been removed from the 2010 Legislative Programme at the last minute. She acknowledged this, but insisted that the Law is in the 2013 Programme and has been approved by all ministries and state agencies, including the Defence Ministry. In July 2010, following the withdrawal of the previous draft law a group of non-governmental organisations drew up and publicly presented proposals for an Alternative Service Law. The government made no response to these proposals. This was already



long after the country's Constitutional Court ruled in May 2000 that an alternative to compulsory military service should be introduced "urgently".

Asked whether the draft Law will be published before it reaches Parliament to allow public debate, Chaushnik said this was possible. "But not every draft Law is published for public discussion."

Jehovah's Witness Dmitry Smyk, who has been convicted and punished for conscientious objection to military service, cautiously welcomed the news. He told Forum 18 that he hoped the issue would be resolved through legislation. Civil society group "For Alternative Service" stated that "this raises the hope that the gap in the law, which since 1994 has been an obstacle to realising individuals' constitutional rights, will be removed".

Meanwhile, military conscription is used to silence political opposition. Currently conscripted Youth Front activist Pavel Sergei was on Sunday 6<sup>th</sup> January 2013 prevented by military commanders from attending church.

[Abridged from: "BELARUS: ALTERNATIVE SERVICE LAW "EARLIEST BY SUMMER 2014"?" by Felix Corley, Forum 18 News Service, 10<sup>th</sup> January 2013.]

### **1.2.5 Cyprus: report of the SR on Freedom of Religion or Belief**

In March 2013, Heiner Bielefeldt, UN Special Rapporteur on Freedom of Religion or Belief, reported to the Human Rights Council on his visit to Cyprus the previous April.

On the subject of conscientious objection to military service, he stated:

*"In the southern part, the Special Rapporteur had the impression that the topic of conscientious objection to military service does not receive much public attention and that the few existing cases have not led to larger public discussion. Those who refuse military service for reasons of conscience are given the option of doing either unarmed military service (special service) or alternative civilian service. Unarmed military service is carried out in the National Guard and conscientious objectors neither carry weapons nor participate in any activities relating to weapons. Unarmed military service is between three and five months longer than the period of time the individual would have to serve in the military service. The alternative civilian service is carried out in the public sector within areas relating to the protection of the environment or in the social sector. Alternative military service is between seven and nine months longer than the period of time for military service. Since 2008, approximately 10 to 12 conscientious objectors each year have reportedly served at various public offices in the southern part.*

*"In the northern part, there seem to be no provisions dealing with this issue, which means that conscientious objectors face the risk of punitive measures. The Special Rapporteur did not succeed in receiving any details about the numbers of conscientious objectors in the northern part and the consequences they may confront for refusing to serve in the military. However he received information regarding one person who declared his conscientious objection in 2009 and has refused to participate in the annual reservist service in the northern part. In December 2011, his case was transferred from a "military court" to the*



"constitutional court" in the northern part and is currently pending. Five further individuals have reportedly submitted written refusals to take part in military training in the north.

"The Special Rapporteur would like to reiterate that a right to conscientious objection can be derived from article 18 of the International Covenant on Civil and Political Rights, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. Conscientious objectors should be exempted from combat but may be required to perform comparable alternative service of various kinds, which should be compatible with their reasons for conscientious objection. They may also be asked to perform alternative service useful to the public interest, which may be aimed at social improvement, development or promotion of international peace and understanding. The decision concerning their status should be made, where possible, by an impartial tribunal set up for that purpose or by a regular civilian court, with the application of all the legal safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent civilian judicial body. The decision-making body should be entirely separate from the military authorities and the conscientious objector should be granted a hearing, entitled to legal representation and able to call relevant witnesses. With regard to time limits for applying for conscientious objector status, the Special Rapporteur would like to emphasize that conscientious objection may develop over time, even after a person has already participated in military training or activities, and thus strict deadlines should be avoided."<sup>17</sup>

In his "Recommendations to the de facto authorities in the northern part of the island", the Special Rapporteur included "*The right to conscientious objection to military service should be recognized. Conscientious objectors should have the option to perform alternative civilian service which should be compatible with their reasons for conscientious objection and have no punitive effects.*"<sup>18</sup>

### **Kanatli case goes to Constitutional Court**

Meanwhile, on 16<sup>th</sup> May 2013, the "Constitutional Court" in the North of the island heard the case of conscientious objector and EBCO Board member Murat Kanatli, which had been referred to it by the military court. It seems likely that the Court will find that there is a gap in the relevant legislation rather than a direct conflict with the Constitution, but the precise implications will only become clear when the judgement is formally issued.

### **1.2.6 Finland: Human Rights Committee still not satisfied**

On the 12<sup>th</sup> July 2013 the United Nations Human Rights Committee considered the Sixth Periodic Report of Finland under the International Covenant on Civil and Political Rights.

In its Concluding Observations on Finland's Fifth Report, the Human Rights Committee had "regret[ted] that the right to conscientious objection [was] acknowledged only in peacetime, and that the civilian alternative to military

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17 A/HRC/22/51/Add.1, 24<sup>th</sup> December 2012, paras 67 – 69.

18 Ibid, para 87.



service [was] punitively long. It reiterate[d] its concern [raised during the consideration of Finland's Third and Fourth Periodic Reports, submitted in 1989 and 1995, respectively] at the fact that the preferential treatment accorded to Jehovah's Witnesses has not been extended to other groups of conscientious objectors", and it had recommended "The State party should fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime; it should also end the discrimination inherent in the duration of alternative civilian service and the categories that can benefit from it"<sup>19</sup>

Finland's response in the Sixth Report was:

"The legislation on non-military service has been reformed by passing a new Non-Military Service Act (1446/2007), which entered force in 2008. This overall reform was intended to make the legislation meet the requirements of the Finnish Constitution and international human rights treaties also in a state of emergency.

"The new Non-Military Service Act contains provisions on the processing of non-military service applications in special conditions, i.e. during serious disturbances to normal conditions and during mobilization. Centre for Non-Military Service is responsible for ordering persons liable for non-military service to enter service and for placing them during special conditions.

"Approving an application in special conditions requires that the applicant's conviction be investigated by the Investigation Committee of Conviction of Persons Liable for Military Service, appointed by the Government and operating under the Ministry of Employment and the Economy. The composition of the Committee and the eligibility criteria for its members are laid down by law.

"If the President of the Republic has issued a decision on extra service and partial or general mobilization of the defence forces by virtue of the Conscription Act (1438/2007), non-military service applications lodged after this decision are processed in the conviction investigation procedure. The Investigation Committee investigates the nature and permanence of the applicant's conviction and its impact on performing the service stipulated in the Conscription Act.

"The procedure applies both to those conscripts who have applied for non-military service instead of service as a conscript and to those who have applied for non-military service after service as a conscript or women's voluntary military service. The conviction is also investigated in respect of those persons liable for military service who have lodged an application for non-military service just before the President's decision on extra service and partial or general mobilization of the defence forces and whose application has not yet been approved.

"The new Non-Military Service Act shortened the continuous term of non-military service by one month. The period of non-military service is 362 days. When determining the length of the period, the legislator took account of the overall burden caused by the different forms of service. The term of military service is either 180, 270 or 362 days depending on the training provided to the conscript.

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<sup>19</sup>CCPR/CO/82/FIN of 2 December 2004, para.14



Unlike military service, non-military service does not involve participation in reservist training.

The favourable treatment provided to Jehovah's witnesses by law remains in force (Act on the exemption of Jehovah's witnesses from military service under certain conditions, 645/1985), and it has not been extended to other groups of conscientious objectors. In 2003 the Ministry of Defence set up a working group to examine the need to amend the legislation. Possible amendments of the legislation were discussed on the basis of the working group's report, submitted in 2007, but no amendments were made. The examination of the issue continues."<sup>20</sup>

In the "List of Issues" on the Sixth Report, the Committee asked:

"Please provide up-to-date information on the progress made in the consideration of possible amendments to the Act on the exemption of Jehovah's Witnesses from military service under certain circumstances [...] Please comment on a) cases of conscientious objectors to military service who are reported to be imprisoned for refusing alternative service and b) the compatibility of the duration of alternative service with the Covenant."<sup>21</sup>

Finland responded in writing:

*"Act on the Exemption of Jehovah's Witnesses from Military Service in Certain Cases:*

"A number of studies have been conducted on bringing the Act on the Exemption of Jehovah's Witnesses from Military Service in Certain Cases (645/1985) in line with the constitutional equality principle. For instance in 2007, a broad-based committee studied alternative ways of ensuring compliance with the Constitution, but none of the alternatives was considered to solve the multifaceted problem in a self-evident manner. On 27 September 2012 the Ministry of Defence appointed a rapporteur to evaluate the alternative solution models by 30 April 2013, for decision on any further measures. Thus, the question is still unresolved.

*"Conscientious objection:*

"Section 118 of the Conscription Act (1438/2007) contains provisions on refusal of military service. According to this section, a conscript refusing military service will be punished in the same manner as for refusing non-military service under the Non-Military Service Act (1446/2007). The punishment consists of unconditional imprisonment for a period corresponding to half of the objector's remaining service time. The service time refers to the period which, under the Non-Military Service Act, would have been the period of non-military service if the person had applied for such service on the date of refusal.

"Only a few conscripts in each contingent refuse military service. They are persons who refuse non-military service, too. All cases of suspected refusal of military service are referred to a prosecutor for consideration of charges.

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20 CCPR/C/FIN/6, 12<sup>th</sup> September, 2011, paras 29 – 35.

21 CCPR/C/FIN/Q/6, 23<sup>rd</sup> November, 2012, para 16.



"The relevant penal provisions have not been amended after 1 January 2008, when the current Conscription Act took effect.

"In February 2013 the service periods of both military and non-military service were shortened by 15 days. The longest service period is now 347 days long. This change influences the selection of the sanction imposed for refusal of military service.

"Chapter 6, section 11a of the Criminal Code provides that if the preconditions laid down in the Code are fulfilled, a perpetrator sentenced to unconditional imprisonment for the maximum of six months may, instead of imprisonment, be sentenced to a monitoring sentence for an equal period of time. One of the preconditions for imposing a monitoring sentence is that the perpetrator has consented to it.

"The sentenced person's performance of the monitoring sentence is monitored by means of technical devices and by other means as stipulated in the act on the monitoring sentence (330/2011). The sentence consists of an obligation on the sentenced person to stay in his or her dwelling, to participate in activities ordered for him or her – e.g. monitoring meetings – and to engage in work, training, action programmes or similar activities maintaining or promoting his or her functioning capacity and social skills.

"Because of the shortened service periods, the imprisonment sentenced for refusal of military service is now shorter than six months in all cases and thus makes a monitoring sentence possible. Earlier, when the maximum imprisonment was longer than six months, a monitoring sentence was not possible in all cases.

"Monitoring sentences have been imposed for refusals of military service. In one case a monitoring sentence could not be imposed because the sentenced person did not consent to it (Helsinki Court of Appeal, ruling no. 334 of 1 Feb. 2013, reg. no. SO 12/282)."<sup>22</sup>

A submission to the Committee from the Finnish Union of Conscientious Objectors (Aseistakieltäytyjäliitto) expanded on the information about durations of service:

"The duration of alternative service was shortened to 362 days on 1<sup>st</sup> of January 2008 when the current Civilian Service Act came into effect. Prior to that the duration was 395 days. Both the duration of of military service and the duration of civilian service were shortened by 15 days on 1<sup>st</sup> February 2013. At the moment there are three possible service times for the conscripts in military service: 165 days "or training in the rank and file", 255 days "for training for demanding duties that require special and professional skills" and 347 days "for officers, non-commissioned officers and conscripts trained for especially demanding duties" (Conscription Act 1438/2007, section 37), whereas the duration of civilian service is always 347 days. The duration of civilian service is therefore over twice the duration of the shortest military service."

They reported also: "The rapporteur appointed by the Ministry of Defence to evaluate the alternative solution models in September 2012 published his rapport

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22 CCPR/C/FIN/Q/6/Add.1, 16<sup>th</sup> May, 2013, paras 142 – 150.





in May 2013. Three alternative solution models were presented, and the extension of preferential treatment accorded to Jehovah's Witnesses to some other groups of conscientious objectors was mentioned as one of the possible solution models. Despite of that the question still remains unsolved and the Ministry of Defence has not given any law proposal to amend the Act 645/1985."

Regarding the "monitoring sentences", they observed: "The legislation leaves the decision to give a monitoring sentence instead of a prison sentence to the sentencing court. Although the majority of conscientious objectors have been sentenced to monitoring sentence since its introduction, prison sentences remain possible. If the perpetrator breaks the conditions of monitoring sentence, its execution can be interrupted and the person in question sentenced to prison. Our organisation is aware of a case, when conscientious objector's monitoring sentence was interrupted because he had missed the curfew set for him on three occasions.

Finally, they produced an update on numbers: "According to the information sent to our organisation by Statistics Finland, during the year 2011 18 conscientious objectors were sentenced for refusing both military and alternative service. Official statistics of year 2012 are not yet available, but according to the same source 40 such cases were reported to police during the year."

In its concluding observations, the Committee states: "While welcoming the legislative changes allowing for non-military services applications during mobilizations and serious disturbances and the fact that total objectors can be exempted from unconditional imprisonment, the Committee reiterates its concerns that the length of non-military service is almost twice the duration of the period of service for the rank and file and that the preferential treatment accorded to Jehovah's Witnesses has not been extended to other groups of conscientious objectors (art. 18).

**The State party should fully acknowledge the right to conscientious objection and ensure that the length and the nature of the alternative to service do not have a punitive character. The State party should also extend the preferential treatment accorded to Jehovah's Witnesses to other groups of conscientious objectors."**<sup>23</sup>

### 1.2.7 Greece: a wave of prosecutions

In the past year there has been a wave of arrests and prosecutions of conscientious objectors in Greece. At first the developments seemed hopeful. There were (relatively) light sentences, and even acquittals, but gradually events appeared to constitute a systematic persecution of conscientious objection activists.

#### Menelaos Exioglou

On 18<sup>th</sup> December 2012, 29-year-old Menelaos Exioglou, who had in August 2010 refused his call-up to military service, and also to apply for the discriminatory alternative service appeared before the military court of Larisa on 18<sup>th</sup> Dec 2012 on charges of insubordination. Angelos Nikolopoulos, EBCO Secretary General, who had been a co-signatory of the original joint declaration of objection signed

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23 CCPR/C/FIN/CO/6, para 14.



by Exioglou on Conscientious Objection day, 15<sup>th</sup> May 2010, testified on Exioglou's behalf. Amnesty International also sent an observer. The Court rejected the request of the defence that it deem itself not competent to try a civilian and found Exioglou guilty and sentenced him to four months' imprisonment, suspended for one year, the lightest sentence ever handed down to a total objector in Greece. This was however in addition to an automatic "administrative fine" of €6,000 for draft evasion. Anyone who owes more than €5,000 to the state may be sentenced to imprisonment by the civic courts.

Sadly, this was not the end of the case. On Thursday 18<sup>th</sup> April 2013, Exioglou was arrested at his home in Thessaloniki, on a warrant issued by the Military Prosecutor of Athens. He was held overnight in the Police Station of Ano Poli (in Thessaloniki). He was transferred to Athens where on Saturday 20<sup>th</sup> April the military court postponed his trial to 30<sup>th</sup> April and authorised his release. Subsequently the trial was again postponed to 20<sup>th</sup> June.

On 20<sup>th</sup> June he received a further five-month sentence, suspended for one year. Dimitris Sotiropoulos observed the trial on behalf of EBCO. Lazaros Petromelidis testified on behalf of Exioglou, and that same evening he himself was arrested (see below).

Meanwhile, a number of other conscientious objectors had been arrested or prosecuted.

### **Nikolaos Karanikas**

Karanikas (aged 44) was arrested on Wednesday 20<sup>th</sup> February, and charged with draft evasion. He had first been arrested and convicted on this charge in 1995, two years before there was any recognition of conscientious objection in Greek legislation. In October 1995 he was sentenced to four years imprisonment by a military court for "insubordination in a period of general mobilization". Amnesty International declared him a prisoner of conscience. After an appeal to a military court in December 1995, his sentence was reduced to one year imprisonment, suspended for 3 years. On his release, however, Karanikas was served with a second call up to military service, and when he refused was charged with desertion. In the year 2000, a military court absolved Nikolaos Karanikas from this charge. In the same year, he applied for conscientious objector status (now possible in Greece), and applied to undertake substitute service in lieu of military service. The army rejected his application, claiming that he had already served in the army whilst he was imprisoned in a military jail, and could therefore not apply for substitute service. Karanikas has therefore never been permitted to undertake substitute service, even though he has declared himself willing to do so.

On Friday 22<sup>nd</sup> February, his trial was postponed until Friday March 8<sup>th</sup>. On Monday 25<sup>th</sup> February, however, a policeman issued him with a fresh military call-up paper, asking him to present himself at a military camp at Grevena (West Macedonia) on March 20<sup>th</sup>.

Karanikas is a very active and well known person. Many people attended the trial on 8<sup>th</sup> March, something that always impresses the members of the court. Perhaps unprecedentedly, the president of the court accepted all ten applications to testify in the defence: normally, the courts do not accept more than four or five. Those testifying were:

Friedhelm Schneider, President of the European Bureau for Conscientious



Objection

Michalis Tremopoulos, former member of the European Parliament (Greens)

Tasos Kourakis, member of the Greek parliament (SYRIZA – left party)

Triantafyllos Mytafidhs, member of the Municipal Council of Thessaloniki

Ifigeneia Kamtsidou, Professor of Constitutional Law (University of Thessaloniki)

Konstantinos Tsitselikis, Professor of Human Rights (University of Thessaloniki) and member of the Board of the Hellenic League for Human Rights

Alexis Mpenos, Professor of Medicine (University of Thessaloniki)

D. K., President of the Blinds' Association of Northern Greece

Michalis Maragkakis, first Greek non-religious CO

Yiannis Glarnetatzis, president of the Greek Association of Conscientious

Objectors

Amnesty International and War Resisters International were also represented in the court, the latter by veteran Greek conscientious objector Lazaros Petromelidis.

The witnesses highlighted the participation of Karanikas in social movements and activities at a local and national level. Almost all described him as a person dedicated to the struggle for human rights, struggling against social exclusion for twenty years.

All the witnesses testified also that Karanikas had not been aware of an outstanding call up paper, something that the court accepted. The internal correspondence among the various military offices proved that after his acquittal in the year 2000, Karanikas had never been called to the army again. Possibly, this was had been a mistake by the military, who later tried to cover this up by arresting him.

Karanikas' lawyers tried to focus the case on the development of the European jurisprudence, mentioning the cases of *Savda and Erzep vs Turkey*, and the case of *Bayatyan vs Armenia*. They asked the court to acquit Karanikas' on the basis of the European Court of Human Rights rulings. Although it was obvious that the members of the Court were inclined to acquit Karanikas they were but not ready to discuss on the issues raised by the European decisions. They did not want the responsibility of introducing something new to the Greek legal system. So they found Karanikas innocent, but simply on the grounds of the failure to issue an official call-up paper since 2000, so that he could not be aware of his "obligation" to serve the army.

On 11<sup>th</sup> June, Karanikas was arrested in Thessaloniki in respect of the call-up issued of 25<sup>th</sup> February, to which he had not responded. He was released pending a trial which was set for 2<sup>nd</sup> July. On 20<sup>th</sup> June, he was issued with a new call-up notice for 7<sup>th</sup> July.

**Dimitris K**

In March, Dimitris K, a Jehovah's Witness, was subjected to the €6,000 administrative fine for "insubordination" following a third call-up to military service. His request to be recognized as a conscientious objector had been rejected by the Minister on 29<sup>th</sup> August 2011, on the grounds that he "did not connect to alleged beliefs (religious, because of his upbringing by Jehovah's Witnesses) integration, and action on this doctrine". An application to the Council



of State to overturn the Minister's decision was unsuccessful. It seems that the point at issue was that although brought up as a Jehovah's Witness he had not personally been baptised.

Faced with a second call-up he had submitted a second request to be recognized as a conscientious objector. This request was ignored, so he submitted a third request, protesting against the non-response to the second request. The Military Service authorities rejected the third request by letter, without giving a reason. On receiving a third call-up in March 2013, he submitted a fourth request. The Army's reply simply referred to the two previous rejections.

### **Charalabos Akrivopoulos**

The case of Charalabos (Babis) Akrivopoulos was featured in an article in the London newspaper "The Independent" in May:

Aged 37, Akrivopoulos was nearing the end of a suspended sentence for insubordination when, on 19<sup>th</sup> March 2013 he was arrested and charged again.

"I knew already that I was going to be arrested. The recruiting office kept calling me for weeks prior to my arrest and asking me to enlist for service," he says. He was kept for half a day in a detention centre in his home town of Veroia, then transferred to a naval court in Piraeus, where he was charged with 'disobedience in a time of peace'.

"I was afraid when they arrested me, because I had never been to jail before. But my parents and friends from the Association of Greek Conscientious Objectors supported me," he says. The trial was postponed until October, to allow Akrivopoulos the chance to consider taking alternative service instead.

Each time he refuses military service, he will be sent to prison – and fined €6,000, which he cannot afford. But alternative service is hardly a bed of roses. "It is punitive, because it is six months longer than the military service, and it is controlled by the Ministry of Defence. We cannot do this service [with] non-governmental organisations, like Amnesty International; they actually use us as workers in hospitals, post offices and the like," explains Akrivopoulos. "And you have to pass an interview before you are accepted as a CO. The people that interview us do not have a clue what pacifism and non-violence is about – some of them are even army officers!"

Akrivopoulos is not religious, but has a long-standing moral commitment to non-violence. "I am a pacifist; peace, love and non-violence is what I believe in. I refuse to bear arms and harm total strangers. I also refuse to put these total strangers in the awkward position of having to kill me. I believe that all people should live in peace and nations should learn to solve their disputes with dialogue and mutual concessions."

Mandatory military service is not popular with many young people in Greece, he suggests. "They don't want to sacrifice months or years of their life, having to follow orders from ridiculous people," claims Akrivopoulos. "It is very hard for them having to lose their freedom and go to the army. Most people look upon their time of service as totally wasted time."

Not many, however, take a stand against it as a CO; the military has made this even more unattractive. "There are only a handful of objectors; most young men are afraid to refuse service," suggests Akrivopoulos. "They are afraid they will have to face jail, and that they would not be able to work or have a passport –



you can't travel abroad if you are a total CO. They are also afraid of the €6,000 fine."

And Akrivopoulos has a cynical view of such fines, suggesting that the current, highly conservative, government is not only stepping up an attack against those on the political left, but is also using objections to military service as a way of raising cash: "It is also a time of great economic crisis for Greece, and the state is very anxious to collect money. They hope that many of us older disobedients will buy ourselves out of the army". This can be done if you're over 35 – if you are able to pay €10,000 for the privilege.

Abridged from "The price of pacifism: refusing to go to war is finally seen as a brave act" by Holly Williams, in The Independent, 18<sup>th</sup> May 2013

### **Michalis Tolis**

Tolis, aged 30, was arrested on Monday 3rd June 2013, and brought to the police station of Ioannina. He was charged with insubordination and transferred to Athens where he was brought in front of the military court on Wednesday 5th June.

Tolis, an active member of the Greek antimilitaristic movement and a total objector, was one of three conscientious objectors on ideological grounds who issued a joint declaration of their objection on 19th September 2011. In it they state: *"We refuse to man this murderous machine which exists for preserving your interests inside and outside of the field called the Greek state. We refuse to be the meat for your bombshells. We refuse to become the numbers for the geostrategic shares during treaties signed for "peace" or "war". We refuse to serve the brutality and further brutalization of this world, either with the growing militarization of everyday's life, during times of "peace", or with our participation in campaigns, ethnic cleansings, genocides, rapes, destructions and murders during times of "war".*

On 5<sup>th</sup> June his trial was postponed, and a new date has not been fixed. Meanwhile he too was released.

### **Dimitris Sotiropulos**

On 28<sup>th</sup> May, 47-year-old Dimitris Sotiropoulos appeared in court charged with "insubordination" (draft evasion) in a period of general military mobilization, for which he was prosecuted in 1994, even though he ceased to be liable for conscription in 2008, when his third child was born (Greek law exempts persons with three children from military service), and is now over the age for military service.

### **Lazaros Petromelidis**

Between 1993 (before the first legislation in Greece) and 2009, Petromelidis had faced no fewer than sixteen trials as a result of his conscientious objection to military service. On an appeal heard in the Appeal Military Court of Athens on 31<sup>st</sup> March 2009, a 36 month sentence of imprisonment on two counts of insubordination had been reduced to 18 months, and he had been given leave to appeal to the Supreme Court, meanwhile remaining free against a €7,000 bail paid at the time of the first instance hearing. In view of the prohibitive cost, the appeal to the Supreme Court never went ahead, but no further action was taken until 20<sup>th</sup> June 2013, when Petromelidis, now in his 50<sup>th</sup> year and thus well past the age of liability for military service testified in the Military Court of Athens on



behalf of Menelaus Exioglou (see above). That same evening he was arrested in order to serve the 18-month sentence.

The Greek Association of Conscientious Objectors intervened, and the following morning he was given the option of "buying off" his sentence for €5,431. Supporters quickly gathered the relevant amount, and within 24 hours Petromelidis walked free.

Nevertheless, of all the cases this perhaps raises the greatest number of different worrying questions.

### **Nikos Krontiras**

46-year-old Nikos Krontiras will appear in court on 14 November 2013 charged with "insubordination" (draft evasion) for the period 1987-2011, even though he is now over the age for military service.

### **K. I.**

45-year-old K. I. will appear in court soon charged with "insubordination" (draft evasion) for the period 1999-2012, even though he is now over the age for military service.

### **Open letter and subsequent developments**

In response to these various cases, EBCO's affiliate, the Greek Association of Conscientious Objectors, issued the following open letter on 1<sup>st</sup> July:

The current year is one of the worst periods in the history of Conscientious Objection in Greece, as measured by the number of prosecutions. Long-forgotten charges have been re-activated in a deliberate attempt to suffocate the objectors personally and financially.

Six trials and over ten arrests of longstanding ideological objectors who had never concealed their personal data (place of living etc), are proof of recruitment offices' immediate and aggressive reaction to the growing number of new conscientious objection objectors.

The new aggressive interventionism of the military has spread to every sector of the citizens' everyday lives. The change in the way the objectors are treated by the courts is obvious. Their cases are judged in court sessions on days when there are no other cases, so that their testimony may not be heard by third parties. Trials are held in closed session with access limited to a few supporters of the "accused" and on the other the policemen and the military policemen.

All this is no surprise to us. Greece has the worst record among the 27 EU countries and the 4th worst among the 47 member countries of the Council of Europe (behind only Turkey, Azerbaijan and Armenia) regarding violations of the rights of conscientious objectors and year after year SIPRI's figures show it spending the highest proportion of GDP on armaments of any EU country.

### **The violation of rights that have been imposed during June alone include:**

- a. The arrest of Micalis Tolis in Ioannina (03/06)



- b. The arrest and trial of Nikos Karanikas (44 years old) in Thessaloniki
- c. The trial and repeated sentencing of Menelaos Exioglou (already convicted in December 2012) in Athens (20/6)
- d. The arrest of Lazaros Petromelidis (50 years old) on the same day he supported Exioglou as a witness in court, in Piraeus (20/6) and his release only after the payment of €5500.

We already know that further trials have been scheduled within the next six months, there are already trials scheduled for Karanikas, Exioglou, Tolis, Akrivopoulos, Niotis and Sotiropoulos, at least these are the ones we know till now. At the same time an automatic €6000 fine is imposed on total objectors and people who want to serve an alternative civilian service but are rejected by the so called Conscience Committee a fine of 6000€ is imposed. The European Court of Human Rights has ruled that conscientious objection to military service is a fundamental human right and also that civilians should not be tried before military courts for their refusal of military service. Moreover, the United Nations' Human Rights Committee has declared that repeated prosecution of conscientious objectors for their refusal of military service is tantamount to repeated punishment for the same offence and therefore contrary to the International Covenant on Civil and Political Rights. Greece, regardless of all these decisions is trying to morally, physically and economically eliminate all those trying to exercise the right of conscientious objection to military service.

We call upon social and political groups, parties, organizations, every sensitive and democratic citizen in Greece and abroad to stand up for our effort, supporting the fund raising for the prosecuted objectors with any amount available. As repression spreads over Greek society, whoever invokes the word "rights" tend to be characterized as "enemy of the state" and it seems that the first imprisonment of a conscientious objector is closer than any time in the past ten years.

Since the publication of the letter, there have been no further reports of arrests on ancient charges. However it will be noted that a number of the outstanding trials have been postponed to the Autumn.

Meanwhile, however, at the end of July the "special committee" announced its decisions on applications made the previous Autumn by four members of the Greek Association of Conscientious Objectors. Three of the four were rejected, and the objectors ordered to report for military service in September. It is difficult to make firm conclusions from such small numbers, but the implication is that it is becoming harder even for those who are prepared to accept the punitive conditions of the alternative service to be recognised as conscientious objectors in Greece.

### **Antonis Kanatas**

Meanwhile, an earlier prosecution has now resulted in an application to the European Court of Human Rights. Antonis Kanatas from Korinthos, born in 1982, applied for the status of conscientious objector on ideological grounds of conscience on 19th September 2011 and he was interviewed by the special committee of the Ministry of Defence on 2<sup>nd</sup> April 2012. The committee issued a



negative opinion on his application, and on 10<sup>th</sup> September 2012 the Minister of Defence rejected his application. On 20<sup>th</sup> October 2012 Antonis lodged an appeal to the State Council with his lawyer Timotheos Sigalas. This was examined and rejected on 18<sup>th</sup> February 2013. An application to the European Court of Human Rights was lodged at the beginning of September 2013; a decision on admissibility is currently awaited. Meanwhile, the cost in legal fees of "exhausting domestic remedies" so as to make it possible to take the case to the European Court of Human Rights has been in the region of €3,500.

### The Greek Government's Position

On 29<sup>th</sup> May 2013, at an event in Geneva, War Resisters International raised with the Greek Mission to the United Nations the ongoing persecution of conscientious objectors in Greece. This resulted in the following response from the Greek Ministry of Defence (<http://wri-irg.org/node/22490>):

Received: 12<sup>th</sup> September 2013

#### REFER.:

- a. Constitution of Greece
- b. Penal Code
- c. Military Penal Code
- d. Code of Criminal Procedure
- e. Act 3421/2005 'Recruitment of Greeks and other Provisions' Gazette issue 302/13-12-2005, volume A'), following its amendment by Act 3883/2010, article 78, (Gazette issue 167/24 Sep.2010,vo1. A')
- f. E. 420/79/81978/5.300/21-12-2005 Decision of Hellenic Minister of National Defence (Gazette issue 1854/29-12-05,voI.B1) , as amended by P.429.1 /1 /280116/8.21 /11-1-11 Decision of Hellenic Minister of National Defence (Gazette issue 111 B')
- f. R. no. 3132/28 June 2013/MOFA/04 Human Rights Directorate
- g. R. no. P 6170 /44/8.1084/2 July 2013/ Perm.Rep.Geneva
- i. F. 900/96/60613/8. 490/8 July 2013/Mod.Greece/Gen.Dir. for Nat.Def. and Intern.Relations

1. Following the presentation of the NGO "WAR RESISTERS' INTERNATIONAL", where specific reference was made to GREECE, we wish to inform you of the following:

a. In accordance with the Greek Constitution Article 4, para. 4, ref. (a), military service is compulsory for all male Greeks to contribute to the defence of the Fatherland (National Defence). This applies to all male Greek citizens from 1<sup>st</sup> January of their 19<sup>th</sup> year of age until 31<sup>st</sup> December of their 45<sup>th</sup> year of age, in compliance with article 1 of ref.(e).

b. It is an armed military service normally performed in units and services of the Hellenic Armed Forces. Alternative civilian service is a form of national service performed in lieu of conscription by those recognised as conscientious objectors, under articles 59-65 of ref. (e), on religious or moral grounds. The aforementioned alternative form of national service subject to the terms and conditions of the relevant Act, (e), is based on the interpretative clause of Article 4, para.6 ,ref. (a), where it is explicitly specified that the law provides for mandatory performance of other services outside the Armed Forces (alternative





service) by those having substantiated conscientious objection to performing military service.

c. If the request made for a status of conscientious objector is rejected, those concerned must conscript into the Armed Forces a month after the relevant rejection decision has been issued, under article 4, para.2, ref.(f). If they fail to report for conscription by certain deadlines, they are declared draft evaders, under article 51, para.1,ref.(e). Additionally, those recognised as conscientious objectors, who fail to report to the organisations/institutions they have been assigned to, by the specified deadline, are also declared draft evaders.

d. To be noted, that those performing alternative civilian service, are not military and therefore, they do not fall within the competence of military justice if they commit criminal offences. Instead, they come under the jurisdiction of civilian criminal courts. However, as concerns the offence of draft evading only (for the aforementioned reasons), they come under the jurisdiction of military justice. Those condemned for refusing to perform military service and serving a prison sentence of equal length or even longer than the alternative civilian service they would perform if granted the status of a conscientious objector, after being released from jail and, in compliance with article 65, para. 1, ref. (e), are exempt from draft calls.

e. Draft evading constitutes a substantial, of wilful negligence, perpetuate offence and as such, seamlessly subject to direct response to court. The perpetration of the offence is continued until a specific fact puts an end to that perpetuate illegal situation. Then the crime starts being statute-barred. In cases of flagrant misdemeanour, the public prosecutor has the power to issue a warrant for the perpetrator's arrest in compliance with article 275, para.3, ref.(d).

f. Cases that suspend the perpetration of the crime of draft evading, in compliance with article 51, para.3, ref.(e) are, completing 45 years of age, conscripting into the Armed Forces, being arrested for draft evading, reporting to a military judiciary authority, or a conscription office, a decision taken by the military medical board to declare a draft evader unfit for conscription (I5) or to grant a draft evader a deferment on health grounds. Draft evasion is also suspended as soon as a draft evader gets detained in a prison or by any authority, upon admission to a rehabilitation centre, or upon enlistment into tactical foreign armed forces, provided one has been officially granted draft deferment.

g. In accordance with article 32, ref.(c), those declared draft evaders are punished by imprisonment for a term not exceeding two years. Any offence punished by imprisonment constitutes a misdemeanour, in compliance with article 18, ref.(b). Misdemeanours are statute-barred after five years have passed as provided for by article 111, ref.(b), unless limitation period expires, in which case the deadline is extended.

2. Therefore, it is concluded that conscription is mandatory up to the age of 45 for all male Greek citizens. Should anyone, without justifiable cause, fail to report for military or alternative civilian service, Armed Forces or Services must declare them draft evaders.



Draft evasion status is stopped for the above mentioned reasons and then draft evaders' conscription is scheduled again. For as long as one fails to perform military or alternative civilian service, they shall be prosecuted for the perpetuate crime of draft evasion, once more. Finally, the crime of draft evasion is stopped when those prosecuted reach the age of 45. Then, such misdemeanours start being statute-barred and prosecution stops after five years have passed. Consequently, military service may not be compulsory after the 45<sup>th</sup> year of age, but penal sanctions continue to exist for the draft evasion offence that has not been statute- barred.

### **EBCO's concerns**

EBCO has ongoing concerns regarding the discriminatory length and other conditions of alternative service in Greece, and regarding the "Special Committee" on applications for recognition by conscientious objectors, which is not clearly independent of the military and rejects a large proportion of the applications it considers.

There are however more specific concerns regarding the spate of cases in the last twelve months.

First, and most fundamental, **no one** should be punished for his/her refusal on grounds of conscience to perform military service.

Second, even in a situation where such punishments are imposed, repeated call-ups to military service followed by repeated convictions breach the principle of *ne bis in idem* – that no one should be punished twice for the same offence.

Third, although hitherto only suspended sentences have been handed down, many of the objectors have suffered periods of arbitrary detention before being brought before the courts.

Fourth, although civilians challenging their incorporation in the military, all the objectors have been tried by military tribunals on military disciplinary charges.

Fifth, it seems that the relevant call-up notices had not always been delivered before individuals were charged with failure to respond.

Sixth, even though only suspended sentences are handed down, the "routine administrative fines" of €6,000 each time that charges are brought represent a substantial hardship for the individuals concerned. References to the buying off of sentences of imprisonment and to the possibility of buying out of military service altogether hint at a wider system of financial extortion.

Seventh, there appears to be a genuine danger that what is supposedly a suspended sentence may be activated when someone who is living under such a sentence is brought before the courts for a different instance of the same offence – the refusal of military service.

Eighth, timing of arrests and placing of charges seems to have been arbitrary, following several years after the alleged "offence", even though the persons charged had done nothing to conceal their whereabouts.



Ninth, this “arbitrary” timing seems in one case to have had direct party political motives and in another (Petromelidis) to have represented a direct reprisal against a human rights defender.

Tenth, the Sotiropoulos and particularly Petromelidis cases also seem to represent a cynical stretching to the limitations set out in the relevant laws. Both were brought before the courts after the age of liability for military service, under a provision that charges for “insubordination” remain valid until the 50<sup>th</sup> birthday. Petromelidis was arrested shortly before his 50<sup>th</sup> birthday; he had earlier received his final call-up notice just as he approached the maximum age of 45.

### **1.2.8 Italy: first objector honoured**

On 23<sup>rd</sup> November 2012, marking the 40<sup>th</sup> anniversary of the law which first introduced alternative service for conscientious objectors in Italy, the University of Pisa conferred the award of *laurea honoris causa* on Pietro Pinna, now aged 87, who in 1948 had been the first recorded Italian conscientious objector on non-religious grounds to military service.

### **1.2.9 Russian Federation: civil society under threat**

The “foreign agents” law of November 2012 has been widely reported, and there is therefore no need to go into details here. And of course its effects are felt across the whole of civil society. But EBCO must express its deep concern that our partner organisations working in the fields of freedom of conscience, anti-militarism and alternative civilian service are among those which feel under particular threat from its provisions. Moreover, EBCO itself, as an international civil society network, is potentially undermined by the precedent set by such chauvinist legislation.

#### **Civilian service still discouraged**

An article published by AFP on 23<sup>rd</sup> March 2012 detailed how, despite the existence of alternative civilian service in Russia, the military establishment still contrived to discourage take up:

Russia is discouraging requests from conscientious objectors to swap compulsory military service for stints of alternative service, a rights activist complained Monday. "The main problem is that following the strategy of the General Staff the government is doing all it can to torpedo everything that concerns citizens' rights to alternative service," said Sergei Sorokin, a member of the Moscow Helsinki Group. "The government is doing all it can not to let this happen," Sorokin told reporters. "Hundreds of thousands of people are fighting for this right."

Under Russian law, young men who qualify as conscientious objectors must do one-and-a-half years of alternative service, compared to a year for regular military service. The service involves doing menial jobs for the military or working as post officer workers, hospital orderlies or carers in orphanages. [...] Very few people take up this option, Sorokin said, blaming hostility from the military and even courts. Sorokin said that requests to carry out alternative service were frowned up by officialdom and frequently rebuffed by different layers of the civilian and military bureaucracy. Some 300,000 young men are drafted each year, while only 800-900 young men opt to carry out alternative



service. But Sorokin believes a quarter of all draftees might opt for the alternative if the government did not discourage them.

Of the young men currently carrying out alternative service, around 500 are Jehovah's Witnesses. The rest want to skip the draft for a variety of other reasons including their convictions or simply a desire to avoid brutal hazing or accidents that are frequent in the Russian army. [...] Many would-be Russian draftees pay bribes to avoid being drafted. An average bribe is between 100,000 roubles (\$3,385) and 300,000 roubles (\$10,155), according to Sorokin's estimates.

### **Crackdown on draft dodgers**

An article published by the Interfax news agency on 9<sup>th</sup> October 2012 reported:

"The Russian government has submitted to the State Duma a bill suggesting that military draft dodgers should be barred from civil service jobs. The bill amends "certain legislative acts of Russia for building up the prestige and attractiveness of military service by conscription."

A briefing note published on the government website said that citizens who had served in the Armed Forces by conscription would enjoy preferences in recruitment for civil service jobs and inclusion in administrative reserves.

The preferences will be legalized with amendments to the Federal Law on Civil Service. The amendments would bar military service dodgers from civil service. "The rule will not apply to citizens who did not serve in the Armed Forces for grounds listed by Russian laws," the note said."

Presumably the final sentence means that those who have performed alternative civilian service would not be affected by the proposals.

### **Trade union for alternative servicemen**

Meanwhile, despite all the negative developments, civil society has been continuing to organise itself. On 28<sup>th</sup> May 2013 current and former alternative servicemen met in Saint-Petersburg, Murmansk and Voronezh with the purpose of creating regional offices of the Interregional Trade Union of Alternative Servicemen. Another office will be set up in Moscow in the near future.

The idea of creating such a trade union appeared shortly after the adoption of the Alternative Civilian Service Law in Russia in 2004. The importance of such an institution for the demilitarization of Russian society and the adoption of non-violent ideas cannot be underestimated. The next step will be registration with the Ministry of Justice.

#### **1.2.10 Switzerland: two negative referendum results**

On 9<sup>th</sup> June 2013, the population endorsed by 78.5% to 21.5% the new tightened asylum law which the Government had introduced the previous autumn. Normally, legislative changes in Switzerland are put to referendum before they take effect, but in this instance the Council of State had voted to bring the changes into effect as an emergency measure; this referendum thus



simply confirmed changes which had already taken effect. The most notorious feature was a clause stating that deserters and conscientious objectors would not be considered as eligible for asylum – a proposal which had started as a response to the decision of a tribunal in 2005 to grant asylum in Switzerland to an Eritrean who claimed conscientious objection to military service, and had been presented as the first part of a strategy to prevent Switzerland from being flooded with Eritrean refugees.

On 22<sup>nd</sup> September 2013, an initiative which would have abolished obligatory military service and created a voluntary civilian service open to men and women alike was rejected in a national referendum, 73.2% voting against. The canton of Uri registered the highest “no” vote, 85%; Geneva the lowest, 57.9%. Much of the commentary observes that, particularly because the initiative had been proposed by GSoA/GSSA (Group for a Switzerland without an Army), it was treated by many voters as a general vote of confidence in the army rather than to the specific question posed.

### **1.2.11 Turkey: appears before the UN Human Rights Committee**

On Wednesday 17<sup>th</sup> and Thursday 18<sup>th</sup> October 2012, the Initial Report of Turkey under the International Covenant on Civil and Political Rights (ICCPR) was examined by the United Nations Human Rights Committee. Turkey had been later in ratifying the ICCPR than most European States; it did not do so until 2004, and then, like many countries, it took far longer than it should have to actually produce its first (“initial”) report. Hence this was the first time a delegation from the Turkish government had met with the Committee to discuss Turkey's implementation of the ICCPR.

As mentioned in our 2012 Report (Section 2.1.4.3) the “List of Issues” prepared by the Committee in advance contained the following questions:

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

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



to military service.”<sup>24</sup>

In its written replies, Turkey stated in reply to the first question:

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

and to the second:

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

“Furthermore, Turkey believes that providing the names of all concerned individuals without their consent, in a document which will be made public by the Committee would not be appropriate.”<sup>25</sup>

It did however refer to a “vibrant” “ongoing debate in a variety of circles with regard to the possibility of providing a compulsory civil service as an alternative to military service.”<sup>26</sup>

The first Committee member to speak on the subject reminded Turkey that, ten years before it ratified the Covenant the Committee had in 1993 issued a “General Comment” on Article 18 in which it stated that a right of conscientious objection to military service could be derived from that article. So they could not claim that at the time of ratifying they had not known how the Covenant would be interpreted. There was no justification for their assertion that the descriptive reference in Article 8 (forced labour) meant that Article 18 (freedom of religion or belief) was not applicable to conscientious objection. (It may be noted that the Human Rights Committee had in 2006 dismissed this line of argument in its “Views” on the case of *Yoon & Choi v Republic of Korea*, and that in 2011 the European Court of Human Rights had done likewise in *Bayatyan v Armenia* with regard to the equivalent Articles of the European Convention on Human Rights and Fundamental Freedoms.)

The Committee member proceeded to remind Turkey of the Views which the Committee had adopted in March 2012 in the cases of *Atasoy & Sarkut v Turkey* (see our 2012 Report, section 2.1.4.2). These two Jehovah's Witnesses had been repeatedly imprisoned for refusing to perform military service, and one of whom had also been dismissed from his job as a University lecturer on the instructions of the military authorities. The Committee had found 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.” She pointed out that Turkey had not reported to the Committee on its implementation of these Views.

Subsequently, member after member of the committee returned to the question of Turkey's arrangements for conscientious objection, to the failure to bring in

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24 UN Document CCPR/C/TKY/Q/1, issued on 12<sup>th</sup> May, 2012, paras 21, 22.

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

26 Ibid, p. 31



any legislation, the repeated imprisonment of conscientious objectors, the restrictions on the freedom of expression with regard to conscientious objection, the particular humiliations suffered by gay conscientious objectors.

The Minister of Justice, who headed the delegation, assured the Committee that Turkey was taking note of the judgements from the European Court on Human Rights, and the Committee's own decision in *Atasoy and Sarkut*. He argued that the 180 days which Turkey had been given to respond in that case had not yet elapsed. As one member of the Committee observed, the tone of his responses was so different to that of the written replies that it was difficult to know which to believe.

In its "Concluding Observations", the Committee returned to these issues in three separate paragraphs.

Paragraph 10 states "The Committee is concerned about the discrimination and alleged acts of violence against people on the basis of their gender identity and sexual orientation, and about the social stigmatization and social exclusion of LGBT persons in terms of their access to health services, education, or to their treatment in the context of the regulations concerning compulsory military service and while serving in the military."

In Paragraph 24 the Committee expresses its concern "that human rights defenders and media professionals continue to be subjected to convictions for the exercise of their profession" including "through the excessive application" of (among others) Article 318 (prohibiting criticism of the military) of the Criminal Code "thereby discouraging the expression of critical positions or critical media reporting on matters of valid public interest, adversely affecting freedom of expression in the State party." It recommends that **"The State party should ensure that human rights defenders and journalists can pursue their profession without fear of being subjected to prosecution and libel suits, having in mind the Committee's General Comment No. 34.<sup>27</sup> In doing so, the State party should:**

[...] **(b) Provide redress to journalists and human rights activists who are subjected to criminal prosecution and imprisonment in contravention of articles 9 and 19 of the Covenant;**

**C. Bring relevant provisions of the Criminal Code into line with article 19 of the Covenant and apply any restrictions within the strict terms of this provision.**

And in Paragraph 23, the Committee states that it "is concerned that conscientious objection to military service has not been recognized by the State party. The Committee regrets that conscientious objectors or persons supporting conscientious objection are still at risk of being sentenced to imprisonment and that, as they maintain their refusal to undertake military service, they are practically deprived of some of their civil and political rights such as freedom of movement and right to vote. (arts. 12, 18 and 25)", and recommends, **"The State party should adopt legislation recognizing and regulating**

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<sup>27</sup>As detailed in Section 2.1.4.1 of the previous report, General Comment 34 dealt with Article 19 of the ICCPR (freedom of opinion and expression)



**conscientious objection to military service, so as to provide the option of alternative service, without the choice of that option entailing punitive or discriminatory effects and, in the meantime, suspend all proceedings against conscientious objectors and suspend all sentences already imposed.”<sup>28</sup>**

Furthermore, this last was one of the three paragraphs of the concluding observations on which the Committee stipulated, "the State Party should provide, within one year, relevant information on its implementation of the Committee's recommendations" <sup>29</sup> This was the first time early follow-up had been sought on a recommendation regarding conscientious objection to military service.

Sadly, there is no indication that Turkey has done much to follow up on this recommendation, or on the Committee's Views in *Atasoy & Sarkut*. No more has been heard about the possible creation of an alternative civilian service.

As for the individual case, following the Committee's adoption of its Views, Cenk Atasoy had petitioned the Turkish Ministry of Justice. He received this reply, dated 28<sup>th</sup> December 2012:

"In your letter to the attention of our Ministry, you state that due to your being one of conscientious objectors, tens of lawsuits were filed based on the claim that you committed the crime of evasion of enlistment for each call-up term within a period of six (6) years, that in December 2008, you applied to the United Nations Human Rights Committee, that the Committee adopted a decision on 29.03.2012 stating that Turkey violated the article 18 of the Convention on International Civil and Political Rights, regulating the Freedom of Thought, Conscience and Religion which Turkey is a party, that as from that date, you informed our office that you will not apply to any Military Recruitment Office to explain your being one of conscientious objectors and demanded the Ministry of Justice to close any file on the matter.

By the statutory decree dated 26.08.2011 numbered 650, Human Rights Department President's Office within the International Law and Foreign Affairs Directorate General of our Ministry. By this statutory decree, our Department is assigned the duty of preparing the Defense of the State concerning applications other than certain types of applications connected to the international relations and foreign policy of Turkey, to take related measures concerning execution of violation decisions about our State by the European Court of Human Rights.

By the change of the related regulation on 31.03.2011, the crime of evasion of enlistment was converted to administrative pecuniary penal fine from penalty limiting freedom. In addition, based on the article 89 of the Military Service Law numbered 1111, after the decision concerning the administrative pecuniary penal fine becomes certain without any acceptable excuse about those committing the crime of evasion of enlistment, they will be penalized by imprisonment sentence.

As a requirement of legal security, only Republic Prosecutors are authorized to adopt decisions starting an interrogation or not about someone. The Ministry of

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28 CCPR/C/TUR/CO/1, 2<sup>nd</sup> November 2012, Para 23

29 Ibid, Para 26 current and former alternative servicemen met





Justice has no authority to evaluate the matter.

Therefore, since you are required to relay the matter to related judicial authorities, our office did not carry out any procedure."

Atasoy's Counsel confirms that, following the judgement of the European Court of Human Rights in the cases of *Ercep v Turkey*, *Feti Demirtas v Turkey* and *Savda v Turkey* (see the previous report, Sections 2.1.1.2, 2.1.1.5 and 2.1.1.6, respectively) most cases of refusing the call-up to military service are now heard in the civilian courts which in the first instance generally impose fines rather than sentences of imprisonment. Conscientious objectors are however still not spared repeated call-ups and prosecutions. However the Ministry of Justice's statement seems to imply that if objectors exhaust all appeal possibilities and refuse to pay the fines the courts may again revert to imprisonment.

Atasoy and Sarkut have not received any compensation from the Turkish state, and their position with regard to military service does not appear to have been resolved. As the "offences" for which they had previously been imprisoned had been under the military penal code, however, they were not liable to a criminal record, so it has not been necessary for such records to be expunged.

Meanwhile, some new cases of imprisonment have been recorded. On 27<sup>th</sup> February, Ali Fikri Isik was sentenced to serve 1 year and 15 days in Edirne Military Prison for 'desertion'. He had already served four-and-a-half months for 'draft evasion'. He declared his conscientious objection whilst on trial in the military court.

Most disturbingly, Onur Erden, whose request for asylum was rejected by the authorities in Cyprus after he had managed to cross from the Turkish-controlled north of the island, was returned to Istanbul via Jordan on Thursday, July 11<sup>th</sup>. He was arrested after his appearance in the court and transferred to military prison in Kasimpasa Naval Base in Istanbul.

Davut Erkan, a lawyer from the Conscientious Objection Association (VR-DER) reported after his meeting with the objector:

"Conscientious Objector Onur Erdem's demand for political asylum was rejected by Cyprus, he was deported and returned to Turkey. As he had been charged for desertion by Military Prosecutor of Gallipoli (Gelibolu) with an arrest warrant, he appeared in the Office of Kasimpasa Military Prosecutor. There, he was decided to be brought to Gallipoli in custody. Now he's in Kasimpasa Military Prison, and expected to be transferred to Gallipoli in two days. There he will appear in court, and possibly he's going to be arrested and face a lawsuit. Until now, all the conscientious objectors in Turkey faced torture and abuse under arrest. It is the same for Onur Erdem too, and we are worried about this. All people and institutions who are conscious about the subject, must make a response immediately."

Onur Erdem had declared his conscientious objection in March 2011. Previously he served in the military for 3 months in 2006 after which he deserted and had been imprisoned several times. He still has standing convictions for his desertions.



Protestant Pastor Kerem Koc, who was called up to military service on 15<sup>th</sup> November 2012, declared his conscientious objection in a letter to the Turkish military authorities, in which he emphasised his willingness to perform a civilian alternative service, but stated, "I cannot support an institution in which militarist world views and politics are sovereign, and where hatred leads brother to kill brother over race, religion, or language. For this reason, I will not be part of any armed force. Human beings are created in God's image, and are more important than any geopolitical boundaries or notions of ethnic territory. I believe people should live together in peace."

On 10<sup>th</sup> December he received a reply stating that all Turks were equal before the law and that military service was obligatory. There could be no conscientious objection.

To the best of our knowledge Koc remains at liberty, but he and his family have been subjected to abuse and threats from extreme nationalist elements.

### **1.2.12 Ukraine: Will conscription really end?**

On 8<sup>th</sup> and 9<sup>th</sup> July 2013, the Seventh Periodic Report of Ukraine under the International Covenant on Civil and Political Rights (ICCPR) was examined by the United Nations Human Rights Committee.

Paragraph 24 of the List of Issues prepared by the Committee in advance read:

"Please indicate whether the State party has taken any steps to amend its legislation (CCPR/C/UKR/7, para. 187) in order to extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions (CCPR/C/UKR/CO/6, para. 12). Please provide information on the justifications for the differentiation in the length of civilian service compared with that of military service, in particular indicating whether such differentiation is based on reasonable and objective criteria. Please also supply information on the number of applications for alternative service based on conscientious objection and the number of those resolved positively."

In its report, Ukraine had stated that "Cabinet of Ministers decision No. 2066 of 10 November 1999 adopting legal and regulatory instruments for the implementation of the Alternative (Civilian) Service Act established, in particular, the following list of religious organizations whose doctrine prohibits the use of weapons:

- (a) Adventists-Reformists;
- (b) Seventh Day Adventists;
- (c) Evangelical Christians;
- (d) Evangelical Christians – Baptists;
- (e) "The Penitents" or Slavic Church of the Holy Ghost;
- (f) Jehovah's Witnesses;
- (g) Charismatic Christian Churches (and churches assimilated to them according to registered statutes);
- (h) Union of Christians of the Evangelical Faith – Pentecostals (and churches assimilated to them according to registered statutes);
- (i) Christians of Evangelical Faith;
- (j) Society for Krishna Consciousness."



In its Concluding Observations the Committee stated:

19. While taking note of the State party's plans towards an all-volunteer army as of 2017, the Committee notes that the provisions of the Law on Military Service which permit conscription remain in force, as does the Law on Alternative (Non-Military) Service, and that according to the statistics provided by the State party several hundred young men have performed such service in recent years (CCPR/C/UKR/Q7/Add.1). The Committee therefore expresses its concern that no measures appear to have been taken to extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions (art. 18).

**The Committee reiterates its previous recommendation (CCPR/C/UKR/CO/6, para. 12) and stresses that alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection, and should neither be punitive nor discriminatory in nature or duration by comparison with military service.**

In fact, a new year message from the Minister of Defence indicated that during 2013 conscription would be suspended and the army would switch to an all-contract force.<sup>30</sup> This means that the Autumn 2013 call-up ought to be the last. However statements by the Ministry of Internal Affairs indicate that they consider the suspension of conscription applies only to the army and they anticipate continuing to conscript into the forces under their control, including the police.

Our colleagues in the Center for Civil Liberties in Kiev observe that the entire reform process is complicated by its lack of transparency and legal basis. According to the current legislation there are two recruitment rounds each year. The numbers to be recruited, and the proposed changes in the nature of military service are based solely on Presidential Decree so these are purely arbitrary decisions at the whim of senior figures in the state establishment. This means that unfolding circumstances may again lead to further postponement of the end to conscription. A particular concern is the desire of the internal troops and police to retain conscription in order to maintain and enhance their ability to react to political protest. There is a growing number of protests, the majority of them peaceful, but Ministry of Internal Affairs police are increasingly being used to place unreasonable restrictions on the freedom of assembly, and the reliance on conscripts for this purpose is also growing.

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<sup>30</sup> "Defense Ministry projects suspension of military conscription in 2013" Ukrainian News Agency, 29<sup>th</sup> December 2012, at: <http://un.ua/eng/article/428087.html>



## 2 OVERVIEW: MILITARY SERVICE, CONSCIENTIOUS OBJECTION AND MILITARY EXPENDITURE IN COUNCIL OF EUROPE STATES

### 2.1 CONSCRIPTION

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. It has subsequently been abolished or suspended in 25 of them. The date on which the last conscript was demobilised in each is as follows:

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



This leaves fifteen States still enforcing conscription: Armenia, Austria, Azerbaijan, Belarus, Cyprus, Denmark, Estonia, Finland, Georgia, Greece, 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>31</sup> There is no suggestion that recruitment is not voluntary.

## 2.2 RECOGNITION OF CONSCIENTIOUS OBJECTION

With the solitary exception of Turkey (see Section 1.2.11) all the States 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:

1916: United Kingdom

1917: Denmark

1920: Sweden

1922: Netherlands

Norway

1931: Finland

1949: Germany (In principle in the “Basic Law” of the German Federal Republic. At the time Germany was demilitarised; alternative service followed the introduction of conscription in 1959. There were no conscientious objection provisions in the territory of the former German Democratic Republic until unification in 1989.)

1955: Austria

1963: France

1972: Italy

1976: Portugal

1978: Spain

1980: Belgium

1988: Poland

1989: Hungary

1990: Croatia

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<sup>31</sup>International Institute for Strategic Studies (London), *The Military Balance 2013*, p171.



- 1991: Bulgaria (in the Constitution; implementing legislation did not follow for several years)  
Czechoslovakia (which split the following year into the Czech Republic and Slovakia)  
Estonia  
Moldova
- 1992: Cyprus (the National Guard Law introduced the possibility of unarmed military service)  
Slovenia  
Yugoslavia (ie. Serbia and Montenegro)
- 1993: Russian Federation (in the Constitution; implementing legislation did not follow until 2004)
- 1994: Belarus (in Constitution; implementing legislation under consideration. See Section 1.2.4)
- 1995: Azerbaijan (in the Constitution. Still no implementing legislation. See Section 1.2.3)
- 1996: Bosnia-Herzegovina  
Lithuania  
Romania  
Switzerland  
Ukraine
- 1997: Georgia  
Greece
- 1998: Albania
- 2001: Macedonia (former Yugoslav Republic of)
- 2002: Latvia
- 2003: Armenia (Law on Alternative Service. See Section 1.2.1)

It was reported in the year 2000 that the authorities in the secessionist Georgian republic of Abkhazia were contemplating the introduction of conscientious objection provisions. It is not known if this was carried out, but there have been no reports of the imprisonment of conscientious objectors there since 2002.

## **2.3 OBLIGATORY MILITARY SERVICE AND ALTERNATIVE SERVICE**

In the countries which retain conscription the (basic) duration (in months) of military service and of alternative civilian service is as follows:



	<b>Military service duration</b>	<b>Civilian service duration</b>	<b>Ratio to military service</b>
Denmark	4	4	1
Austria	6	9	1.5
Finland	6	12	2
Estonia	8	8	1
Switzerland	260 days <sup>32</sup>	390 days	1.5
Greece	9	15	1.7
Norway	12	no alternative service required of objectors	
Moldova	12	12	1
Ukraine	12	18	1.5
Russian Federation	12	18	1.5
Georgia	15	24	1.6
Belarus	18	no alternative civilian service	
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

In those countries which maintain conscription, there is considerable variation in how heavily the armed forces rely on conscripts. Figures given in "The Military Balance 2013" (which may vary in accuracy) are as follows:

	<b>Total strength of armed forces</b>	<b>Number of conscripts</b>	<b>% of total</b>
Cyprus	15,500	10,700	89
Switzerland	23,100	19,700	85
Turkey	510,600	354,500	69
Finland	22,200	13,650	61
Armenia	48,850	29,500	60
Ukraine	129,950		"about 50"
Estonia	5,750	2,500	43
Moldova	5,350	2,100	39
Greece	144,350	45,350	31
Norway	24,450	7,700	31
Georgia	20,650	4,050	20
Denmark	16,430	1,750	11
Russian Federation	845,000	82,000 <sup>33</sup>	10

(The number of conscripts in the Austrian, Azerbaijani and Belarusian armed forces is not quoted.)

An alternative way of measuring how militarised a society is, is to compare the entire armed forces manpower, conscript, contract and professional, with the

<sup>32</sup>In fact many conscripts do not perform the full 260 days, so the discrepancy between the length of military and alternative service is in practice greater.

<sup>33</sup>Other sources (see Section 1.2.9 above) refer to 300,000 conscripts per annum being called up, which would imply a rather more credible proportion, probably between 30% and 35%.



population, especially the young male population, which provides the bulk of military recruits.

	<b>Male population reaching 19 in 2013<sup>34</sup></b>	<b>Total armed forces active strength</b>	<b>As %</b>
Greece	52,754	144,350	273.6 (conscripts 86.0)
Armenia	23,470	48,850	208.1 (conscripts 125.6)
Cyprus	8,167	15,500 <sup>35</sup>	189.8
Russian Federation	693,843	845,000	121.8 (conscripts ?43.2) <sup>36</sup>
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)
Slovenia	9,818	7,600	77.4
Malta	2,554	1,950	76.4
Norway	32,290	24,450	75.7 (conscripts 23.8)
Turkey	700,079	510,600	72.9 (conscripts 50.6)
Georgia	29,723	20,650	69.5 (conscripts 13.6)
Portugal	62,208	42,600	68.5
Finland	32,599	22,200	68.1 (conscripts 41.9)
Montenegro	3,120	2,080	66.7
Croatia	28,334	18,600	65.6
Serbia	43,945	28,150	64.1
Italy	288,188	181,450	63.0
Spain	217,244	135,500	62.4
Romania	117,798	71,400	60.6
France	396,050	228,850	57.8
Lithuania	20,425	11,800	57.8
Belgium	59,655	32,650	54.7
Ukraine	246,397	129,950	52.7 (conscripts c.26)
Latvia	10,482	5,350	51.0
Slovakia	31,646	15,850	50.1
Switzerland	46,562	23,100	49.6 (conscripts 42.3)
Austria	48,108	23,250	48.3
Germany	405,468	196,000	48.3
Czech Republic	49,999	23,650	47.3
Hungary	59,237	26,500	44.7
Albania	31,986	14,250	44.6
Denmark	37,913	16,430	43.3 (conscripts 4.6)
Poland	221,889	96,000	43.3
United Kingdom	385,989	165,650	43.1
Bosnia-Herzegovina	26,601	10,550	39.7
Sweden	54,960	20,500	37.3
Netherlands	103,462	37,400	36.1
Ireland	28,564	8,900	31.2
Luxembourg	3,263	900	27.6
Moldova	28,213	5,350	19.0 (conscripts 7.4)

34 Source: The CIA World Factbook ([www.cia.gov](http://www.cia.gov))

35 Including the forces of the self-styled "Turkish Republic of North Cyprus", but not Turkish or other foreign forces.

36 See footnote on previous page.





## 2.5 MILITARY EXPENDITURE

Yet another measure of militarisation is given by military expenditure figures. This year we combine information from the Stockholm International Peace Research Institute (SIPRI) and the International Institute for Strategic Studies to give updated figures.

	<b>Military Expenditure 2012</b>	<b>% change from 2011</b>	<b>per capita</b>	<b>% of GDP</b>
Albania	€ 143,000,000	+ 1.5 %	€ 48	1.5 %
Armenia	€ 341,000,000		€101	3.8 %
Austria	€ 2,513,000,000	- 2.5 %	€306	0.8 %
Azerbaijan	€ 2,479,000,000		€258	4.6 %
Belarus	€ 593,000,000		€ 62	1.3 %
Belgium	€ 3,957,000,000	- 1.5 %	€379	1.1 %
Bosnia-Herzegovina	€ 179,000,000	+1.5 %	€ 46	1.2 %
Bulgaria	€ 579,000,000	+ 2.1 %	€ 82	1.5 %
Croatia	€ 746,000,000	- 4.7 %	€167	1.7 %
Cyprus	€ 367,000,000	- 4.6 %	€323	2.1 %
Czech Republic	€ 1,728,000,000	- 2.9 %	€170	1.1 %
Denmark	€ 3,456,000,000	- 0.5 %	€623	1.4 %
Estonia	€ 327,000,000	+22.8 %	€256	1.9 %
Finland	€ 2,849,000,000	-0.2 %	€541	1.5 %
France	€45,858,000,000	+2.1 %	€699	2.3 %
Georgia	€ 356,000,000		€ 78	2.9 %
Germany	€35,621,000,000	+ 6.1 %	€438	1.4 %
Greece	€ 5,087,000,000	- 13.1 %	€472	2.5 %
Hungary	€ 808,000,000	-18.8 %	€ 81	0.8 %
Ireland	€ 902,000,000	-3.5 %	€191	0.6 %
Italy	€26,455,000,000	+ 6.8 %	€432	1.7 %
Latvia	€ 203,000,000	-4.2 %	€ 93	0.9 %
Lithuania	€ 318,000,000	- 0.3 %	€ 90	1.0 %
Luxembourg	€ 265,000,000	+32.0 %	€521	0.6 %
Macedonia (FYR)	€ 103,000,000	+ 8.1 %	€ 48	1.3 %
Malta	€ 41,300,000	-9.4%	€101	0.6 %
Montenegro	€ 62,000,000	+1.7 %	€ 94	1.8 %
Moldova	€ 17,000,000		€ 5	0.3 %
Netherlands	€ 7,655,000,000	- 9.5 %	€458	1.3 %
Norway	€ 5,425,000,000		€1149	1.4 %
Poland	€ 7,278,000,000	+4.5 %	€189	1.9 %
Portugal	€ 2,940,000,000	-12.3 %	€273	1.8 %
Romania	€ 1,700,000,000	+ 10.4 %	€ 78	1.2 %
Russian Federation	€70,603,000,000		€495	4.4 %
Serbia	€ 643,000,000	- 5.6%	€ 88	2.2 %
Slovakia	€ 798,000,000	+ 5.0 %	€146	1.1 %
Slovenia	€ 415,000,000	-19.2 %	€208	1.2 %
Spain	€ 8,974,000,000	- 17.7 %	€191	0.8 %
Sweden	€ 4,831,000,000	-1.2 %	€531	1.2 %
Switzerland	€ 3,757,000,000		€470	0.8 %
Turkey	€14,147,000,000	+10.3 %	€177	2.3 %
Ukraine	€ 3,796,000,000		€ 85	2.7 %
United Kingdom	€47,334,000,000	+ 5.2 %	€751	2.5 %



## 2.6 RECRUITMENT AGES

In September 2012, Child Soldiers International (formerly the Coalition to Stop the Use of Child Soldiers) marked ten years since the coming into force of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (OPAC) with the publication of Louder than words: An agenda for action to end state use of child soldiers.

The report gives an update on minimum recruitment ages world wide, but also highlights a disturbing number of situations, including in the Council of Europe area, where persons aged under 18 who are students at various military academies may be treated as members of the armed forces. With respect to Azerbaijan, the Committee on the Rights of the Child had noted that its declaration on ratification of the OPAC "states that 'persons, who are meeting the defined requirements of the military service, may voluntarily enter and be admitted in age of 17 to the active military service of the cadets' military school' thus allowing situations in which persons under the age of 18 years could be involved in armed conflict."<sup>37</sup> The logic is that if the students are members of the armed forces, the school is no longer protected under International Humanitarian Law as an educational establishment, but in time of armed conflict becomes a legitimate target. Meanwhile, if it comes under attack the students, as members of the armed forces would be obliged to defend it.

The table on the next page summarises the current situation in the Council of Europe area.

In line with the stipulation in the OPAC, most States stipulate that 18 is the minimum age for conscription. EBCO remains however concerned about the various remaining loopholes. In Cyprus, the legislation refers to the calendar year in which persons turn 18, making it clearly possible that some might be called up before their actual 18<sup>th</sup> birthday. The same applies to the currently-suspended conscription legislation in Montenegro – the same inherited provision in Serbia was repealed in 2009. Over and above that, Cyprus, along with Austria, is one of the States in which young men can "volunteer" to perform their obligatory military service early. This clearly breaches the spirit of the OPAC. They may not have been compulsorily recruited at the age of 17, but the result is that they are serving with the status of conscripts before their eighteenth birthday.

The Committee on the Rights of the Child has also raised the concern that in Liechtenstein and San Marino (not included in the table) there exists the theoretical possibility that persons aged under 18 might be mobilised in time of war, and has encouraged these micro-states to amend their legislation so as to definitively preclude this.

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37 CRC/C/AZE/OPAC/CO/1, 3<sup>rd</sup>. February 2012, para 13.



## Minimum voluntary recruitment ages in the Council of Europe area

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 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	17 ("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	18
Hungary	18
Ireland	18 (raised from 17 by a decision announced in June 2012. Not clear whether this will automatically apply to "apprentices")
Italy	18 but not clear whether action has yet been taken to remove an anomaly regarding officer recruitment competitions.
Latvia	18
Lithuania	18
Luxembourg	18 (raised from 17 in 2007)
Macedonia (former Yugoslav republic)	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	17? but amendments to raise this to 18 were proposed in 2009
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

The continued recruitment age of 16 in the United Kingdom stands out. Child Soldiers International, in conjunction with Forces Watch has in recent months brought out two further important studies bearing on the issues raised:

One Step Forward: the case for ending recruitment of minors by the British armed forces (April 2013), and



The Last Ambush?: aspects of military mental health, by David Gee (August 2013) which by a detailed analysis of the data shows that those who were initially recruited at ages lower than 18 remain at higher risk of injury and of developing mental health problems at all stages of their military career.

On the wider aspects of the militarisation of youth, and with a global perspective, War Resisters International published in August 2013 Sowing seeds: the militarisation of youth and how to counter it, edited by Owen Everett.

## 2.7 SERVING MEMBERS OF THE MILITARY

The questionnaire on follow-up to Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe, on Human Rights in the Armed Forces, mentioned in last year's report (Section 4.1.1), has yielded a wealth of information, although of variable detail, and will repay further study, at least as a basis for further information.

Of particular interest are the replies to question H.4: "Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation."

No fewer than 25 of the States who responded<sup>38</sup> answered in the affirmative.

Some referred to the possibility of terminating the military service contract. In the case of Italy this was qualified by a reference to complying with article 933 of the Military Code regarding the "obligations remaining in service contracts at the time of incorporation or at the end of the training courses". Switzerland stated that contracts of employment in the military could be terminated on the same basis as any civilian contract of employment, while for those performing militia service (the majority) the possibility of applying to transfer to alternative service was available at any time.

Such replies were mirrored by those of a number of other states who had however answered "no" on the basis that they did not have specific rules and procedures in place regarding conscientious objectors.

Some - Georgia, Norway, Poland, Sweden answered "yes" but gave no details at all.

Hungary stated, "As military service is voluntary, it is possible to leave the armed forces at any time, except in status [sic] of emergency." This reservation seems to imply that the right of conscientious objection is not available precisely when it is most likely to arise!

Luxembourg said yes, but that no case of a member of the armed forces wanting to leave had ever been recorded!

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<sup>38</sup>No replies were received from Albania, Azerbaijan, Cyprus, Latvia, Malta, Monaco, Montenegro, the Russian Federation, Turkey, or the United Kingdom. (In the last-named it is known that there are administrative procedures under which service personnel who develop conscientious objections may apply for release.) The replies from Andorra, Iceland and Liechtenstein simply indicated that in the absence of armed forces the questionnaire was irrelevant.



Ireland stated that "All members of the Defence Forces may voluntarily seek their discharge [...] without being required to state a particular reason." It however added that no cases of reasons of conscience had been recorded and there was "no specific measure in place in the Defence Forces that relates to conscientious objectors." Portugal similarly stated that members of the military had the right to request to leave, while stating that specific provisions for conscientious objectors were not envisaged.

Others - Denmark, Macedonia (former Yugoslav republic), Serbia, Slovenia - state blandly that service personnel may leave at any time and for any reason, or without giving reasons. More details would be needed of the notice period and terms of severance, in order to assess whether the provisions are adequate in cases of conscientious objection.

Finland states vaguely, "on notification basis".

Armenia states "Professional members of the armed forces may leave the armed forces by their own free will, including for religious belief purposes. The law of the Republic of Armenia on military serving provides that they may refuse from military service by presenting a petition."

Moldova indicates "Moldovan state policy is focused on defining an individual's religious orientation prior to their enrolment in military service. A person once enrolled in [...] military service is *not expressly prohibited to express his or her religious beliefs* but the State's policy in this sense is leaded, hypothetically, by the principle of secularity while that person is under the military service" [emphasis added]. Therefore "under the statutory provisions, if a professional member of the armed forces becomes a member of any religious organisation while in service he becomes incompatible *de jure* with his military status. As a consequence he can withdraw himself from a military service. If there is a lawsuit in this regard [...] the matter must be brought before the domestic court that will decide." It will be noted that, subject to interpretation, this interesting slant on the subject does not apply only to conscientious objectors or necessarily to all conscientious objectors.

Spain is vague on details, but indicates, "There are different procedures to follow to resign from the armed forces dependent on the different categories and contracts but finally it is always a free decision of the individual which cannot be limited by any authority. Therefore reasons of conscience might be a personal reason to resign from the armed forces.

The Czech Republic indicates that there is an administrative procedure with the possibility of judicial review.

Romania stated: "There are no specific legal provisions, but [under Article 85 of] Law 80/1995 on the military personnel statute, it is possible to request to leave the armed forces for reason of conscience."

France quotes Article L4139-13 of the Defence Code, which states that professional members of the armed forces may request the resiliation of their contracts for "exceptional reasons", and adds "Grounds of conscience, if firmly based, could constitute such a reason." In this instance, and dealing with a sizeable military such as that of France, it would be useful to know how many



such instances there have been in recent years. The precise conditions would vary as to the status ("career" or "contract") of the person, and on the training received in the course of the service and funded by the Ministry of Defence. (If this means that the full imputed costs of training would have to be refunded, it could in many cases represent a possibly unsurmountable obstacle to the implementation of the right.) Under Article R4125-1 of the Defence Code, in the case of refusal an appeal could be made in the first instance to the military appellate tribunal and ultimately challenged in a civil court.

Lithuania likewise indicates that the Law on the Organisation of the National Defence System and Military Service "provides that a serviceman [...] may terminate service prior to the expiry of a term undertaken under the contract solely in accordance with the procedure laid down by the Minister of Defence and on his decision for recognised valid reasons. While not specifically mentioned in the said procedure [...], reasons of conscience would constitute a recognised valid reason." Again, if the request is turned down there is a right of appeal to a court.

Germany states "Each soldier can request to be accepted as a conscientious objector. He has to present the request, the arguments, a curriculum vitae, and a police certificate. The decision lies with the Federal Office of Family Affairs and Civil Society Functions, which is under the responsibility of the Federal Ministry for Family Affairs, Senior Citizens, Women, and Youth."

It might be noted that in 2012, the first full year since the suspension of conscription, 346 conscientious objection applications were registered (316 professional soldiers, 28 reservists, 2 others).

The Netherlands reports: "The Act on Conscientious Objection to Military Service (*Wet gewetensbezwaren militaire dienst*) provides the legal framework for members of the armed forces leaving the armed forces for reasons of conscience. The Minister of Defence may approve a request for acknowledgment of serious conscientious objections of a member of the armed forces (art 3)." The acknowledgment of serious conscientious objections results in full exemption from military service and dismissal from the armed forces (art. 9)". "The request can be reviewed by the Administration Jurisdiction Division of the Dutch Council of State [...]" (art.7b).

Finally, it might be noted that Estonia did not reply, explaining that it depended exactly what the question meant. "... under certain conditions service contract can be terminated. However member of the defence forces can not refuse to comply with a lawful order." This brings to mind the stipulation in paragraph 43 of the Recommendation "Pending the examination of their requests [conscientious objectors] should be transferred to non-combat duties, where possible." Unfortunately, this aspect was not examined in the questionnaire. But evidently wherever a request for release on grounds of conscience is not differentiated from one on any other grounds there can be no safeguard against the objector being confronted with a lawful order which nevertheless is incompatible with the reasons for his or her objection.

The Draft Report has not yet been definitely treated by the Committee of Ministers - a decision concerning the follow-up has still to be taken.



### 3 FOCUS ON ARMENIA AND AZERBAIJAN

In 1949, when the Council of Europe was founded, many of the member states imposed conscription with no provisions for conscientious objectors, and respect for the right of conscientious objection to military service was therefore not among the organisation's founding principles. As outlined in Section 2.1, above, the practice of member states changed dramatically over subsequent decades, and was matched by developing standards at the Council of Europe level. First, in 1967, came Resolution 337 of the Parliamentary Assembly, then in 1987 Recommendation R(87) 8 of the Committee of Ministers, eventually supplemented by a further Resolution of the Parliamentary Assembly, Resolution 1581/2001. In 1996 and 1997, Switzerland and Greece respectively introduced alternative service for conscientious objectors, leaving just Turkey among the then members of the Council of Europe still imposing conscription without any recognition of conscientious objection (a situation which, as reported in Section 1.2.11 sadly persists to this day.)

When the Council of Europe began admitting new members in Eastern Europe and the former Soviet Union the new consensus was reflected by the inclusion of conscientious objection to military service among the issues routinely included in the "accession criteria", and most of the new members had introduced some form of civilian alternative service within a few years of joining. The two glaring exceptions have been Armenia and Azerbaijan, which is the reason for this specific case study.

#### 3.1 ARMENIA: movement at last

In our previous Report (Section 2.1.1.1, we drew attention to the groundbreaking judgement by the Grand Chamber of the European Court of Human Rights in the case of *Bayatyan v Armenia*,<sup>39</sup> and to the chamber judgements in two subsequent cases with similar facts,<sup>40</sup> all three reached with the sole dissent of the "national judge", Alvina Gyulumya.

In 2001, the Parliamentary Assembly of the Council of Europe, in recommending the admission of Armenia to membership, had recorded:

"The Parliamentary Assembly takes note of the letters from the President of Armenia, the speaker of the parliament, the Prime Minister and the chairmen of the political parties represented in the parliament, and notes that Armenia undertakes to honour the following commitments: (...) to adopt, within three years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force, to perform non-armed military service or alternative civilian service."<sup>41</sup>

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39 Application No.23459/03, Grand Chamber Judgment of 7<sup>th</sup> July, 2011

40 *Bukharatyan v Armenia*, Application No. 37819/03, and *Tsaturyan v Armenia*, Application No. 37821/03, Chamber Judgements of 10<sup>th</sup> January 2012. (Section 2.1.1.3 of the EBCO Report to the European Parliament, 2012)

41 Parliamentary Assembly of the Council of Europe (PACE) Opinion No.221 of 28<sup>th</sup> June, 2000, para 13.



Vahan Bayatyan, a Jehovah's Witness, had nevertheless been imprisoned in 2003 for his refusal, on grounds of conscience, to perform military service, requesting that he be permitted to perform the new alternative civilian service when it became available; indeed a Law on Alternative Service was passed on 12<sup>th</sup> December 2003, and came into effect on 1<sup>st</sup> July 2004. On 27<sup>th</sup> January 2004, the Parliamentary Assembly of the Council of Europe welcomed the adoption of this law, but pointed out "that Armenia undertook on joining the Council of Europe to pardon conscientious objectors serving prison terms" and expressed "its indignation at the fact that twenty or so young people who refuse to perform military service are still in prison."<sup>42</sup> (Armenia has subsequently<sup>43</sup> claimed that 38 conscientious objectors were indeed pardoned when the Law was adopted. But of course its commitment had been to pardon *all* conscientious objectors, and pending – not upon – the adoption of the Act.)

In the event, the Law on Alternative Service did not however put an end to the imprisonment of conscientious objectors in Armenia. The first 23 persons to enrol for alternative service started their placements early in 2005.<sup>44</sup> By the end of the year, however, all 23 had withdrawn, complaining that the placements were not truly civilian in nature and that they were to all intents and purposes treated as unarmed members of the military. Nineteen of the Jehovah's Witnesses brought a case to the European Court of Human Rights, which was decided in November 2012.<sup>45</sup> The Court found unanimously (including even the Armenian judge) that 17 of them, who had been held for several months on charges (later dropped) of "desertion from military service" had been unlawfully detained, in violation of Article 5 of the European Convention, because there was no basis in the Law on Alternative Service for such detention. This loophole was closed in the 2006 revision of the Law, which introduced an offence of desertion from alternative service. Meanwhile, the behaviour of the Armenian authorities provided a perfect illustration of the fact that there was indeed no clear conceptual distinction between military and alternative service.

The Court "awarded compensation of €6,000 to each of the 17 conscientious objectors. The government was also required to pay a total of €10,000 in costs for all the applicants (...) This judgment became final on 27<sup>th</sup> February 2013, with compensation payable by 27<sup>th</sup> May. The government allocated the funds to meet the €112,000 total at its 8<sup>th</sup> May meeting. It paid the compensation in mid-May, the Justice Ministry and Jehovah's Witnesses both confirmed to Forum 18."<sup>46</sup>

From 2005, Jehovah's Witnesses who were called up to military service refused also to perform the alternative service, on the grounds that it was not truly civilian. In this they received the backing of the Council of Europe. In a resolution

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42 Parliamentary Assembly of the Council of Europe, Resolution 1361, "Honouring of obligations and commitments by Armenia", 27<sup>th</sup> January 2004.

43 Reply dated 31<sup>st</sup> January 2012 to Communication from UN Special Procedures, hyperlink from A/HRC/19/44, p.64, Case No ARM/1/2011.

44 All but one were Jehovah's Witnesses, the other, Pavel Karavanov, was a Molokan, a member of a Russian protestant church founded in the 18<sup>th</sup> Century, whose members are known for their pacifism, and had been excused military service in imperial days.

45 *Khachatryan and Others v. Armenia* (application no. 23978/06), Chamber Judgment of 27<sup>th</sup> November, 2012.

46 Corley, F., 4<sup>th</sup> June 2013.





of January 2007,<sup>47</sup> the Parliamentary Assembly of the Council of Europe was “disappointed to note that the current law, as amended in 2005 and subsequently in June 2006, still does not offer conscientious objectors any guarantee of “genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character”, as provided for by Council of Europe standards”. The law was also singled out for critical comment in a speech by the Secretary General of the Council of Europe at Yerevan State University on 5<sup>th</sup> November 2007, in which he observed “For Armenia to comply with the undertaking made on accession, the law needs to be ‘in compliance with European standards’, and this is not yet the case.”<sup>48</sup> More recently, the United Nations’ Human Rights Committee observed “The Committee is concerned that the Alternative Military Service Act, as amended in 2004 and 2006, still does not guarantee conscientious objectors a genuine alternative service of a clearly civilian nature. The Committee is also concerned that conscientious objectors, overwhelmingly Jehovah’s Witnesses, are still imprisoned when they refuse to perform military service and the existing alternative military service (...). The State party should put in place a real alternative to military service, which is genuinely non-military in nature, accessible to all conscientious objectors, and neither punitive nor discriminatory in nature, cost or duration. The State party should also release all conscientious objectors imprisoned for refusing to perform the military service or the existing alternative to military service.”<sup>49</sup>

In April 2011 a number of fresh amendments to the 2003 Act were laid before the national assembly. Asked for advisory opinions on the proposed revisions, both the Venice Commission of the Council of Europe and the Organisation for Security and Co-operation in Europe (OSCE) criticised them as still not instituting a fully civilian service of a duration which is not punitive by comparison with military service.

Meanwhile, imprisonment of conscientious objectors continued. As noted in the previous report (Section 2.1.1.1), between the receipt of a “communication”<sup>50</sup> from the UN Working Group on Arbitrary Detention, together with the Special Rapporteurs on Freedom of Religion or Belief, and on Freedom of Peaceful Assembly and Association, and the Independent Expert on Minority Issues, regarding the continued imprisonment of 72 Jehovah’s Witnesses for their conscientious objection to military service, and the examination of Armenia by the Human Rights Committee in July 2012, no new imprisonments of conscientious objectors were reported, and many of those already imprisoned completed their sentences, so that the number in detention dropped to 30. But no conscientious objectors were released early, and pending prosecutions were deferred, not dropped. On 14<sup>th</sup> March 2012, the very day when Armenia’s policy of imprisoning conscientious objectors was criticised by the Parliamentary Assembly of the Council of Europe, the first new sentence was handed down, but the young man concerned was released pending appeal. Over the next six months this happened in a further fifteen cases, none of the appeals having yet been heard, but in the month of August 2012 two objectors were imprisoned

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47 Parliamentary Assembly of the Council of Europe, Resolution 1532, “Honouring of obligations and commitments by Armenia”, 23<sup>rd</sup> January 2007

48 War Resisters International, “Armenia: no progress for conscientious objectors”, CO Update No. 15 November 2007

49 UN Document CCPR/C/ARM/CO/2, 31<sup>st</sup> August 2012, Para 25

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



immediately following conviction. As of September 2012, a further 23 conscientious objectors were awaiting trial for their refusal of both military service and the alternative service available.<sup>51</sup> In all, by Forum 18's estimate, some 275 Jehovah's Witness conscientious objectors have been imprisoned since the Law on Alternative Service came into force.<sup>52</sup>

In December 2012, in reply to a follow-up communication from the Special Rapporteurs on Freedom of Religion or Belief and on Minorities Issues,<sup>53</sup> Armenia indicated that "14 criminal cases (...) against members of "Jehovah's Witness" religious organisation, that have refused to perform compulsory military or alternative service, are currently in the pre-trial stage, another 11 criminal cases are being considered by the first instance court, 9 cases are being proceeded by the Court of Appeals, 3 are in the Cassation court, while 32 convicts are currently serving their sentences in the penitentiaries of the RA Ministry of Justice." Following discussions with the Venice Commission the draft law had been "further elaborated" and it was planned to resubmit it to the Venice Commission.

The amended draft law was presented to the Venice Commission early in 2013, and as a result Justice Minister Hrair Tovmasyan presented two sets of amendments to Parliament on 27<sup>th</sup> February 2013. On 18 March, deputies approved both in the first reading with 103 in favour and just one (Deputy Shushan Petrosyan of the ruling Republican Party) against. In the second (and final) reading on 2 May, 65 deputies voted in favour and two against. The amendments were signed into law by President Serzh Sarkisyan on 21<sup>st</sup> May, and entered into force on 8<sup>th</sup> June.

Article 3.1 of the Law as amended makes alternative service available to all conscientious objectors, irrespective of the beliefs on which the objection is founded.

Article 5 retains the previous reference to two forms of alternative service:

a.) "Alternative military service" which is not connected with bearing, keeping, maintaining or using weapons;

and b.) "Alternative labour service" not connected with the armed forces.

The durations are however reduced, from 36 to 30 months for "Alternative military service" and from 42 to 36 months for "Alternative labour service". This compares with 24 months for normal military service.

To apply for alternative service, an applicant must in person go to their local Military Commissariat and submit a written application within a specified time period. Within 30 days of the application being registered, the Regional Military Commissariat shall ascertain under the Conscription Law whether the applicant can be either exempted from military service or given deferred military service. If not, the application must be sent to the Republican Committee.

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51 Forum 18 News Service ([www.forum18.org](http://www.forum18.org)) "Armenia: Jailings of conscientious objectors resume", 20<sup>th</sup> September 2012.

52 Corley 4<sup>th</sup> June 2013

53 ARM 1/2012, 18<sup>th</sup> October 2012, and reply dated 24<sup>th</sup> December 2012, see A/HRC/23/51, p.95.



Article 3.2, as previously, does not allow individuals once they are performing either military or alternative service to change their minds and transfer to the other. "We haven't had such a case of an individual performing military service changing their views and wanting to transfer to alternative service," Jehovah's Witness lawyer Ispiryan told Forum 18. "But this could be an issue."

Decisions on alternative service applications are made by the "Republican Committee". Under Article 4 this is a standing committee made up of one representative each from: the Territorial Administration Ministry; the Healthcare Ministry; the Labour and Social Affairs Ministry; the Education and Science Ministry; the Police; the Defence Ministry; and the Department for Ethnic Minorities and Religious Affairs.

Danielyan of Collaboration for Democracy, Ishkhanyan of the Armenian Helsinki Committee and Ispiryan of the Jehovah's Witnesses raise questions over the composition of the Republican Committee and the vagueness over the way it is supposed to operate. "What if the Defence Ministry representative ends up having the decisive voice?" Danielyan pointed out.

Article 8 states that applicants must be notified in advance of the time and location of the meeting at which their application will be decided on, and they can attend this meeting. The Republican Committee can require the applicant to be present.

"Religious studies experts, psychologists and other professionals, representatives of the locations where alternative service is performed, religious and social organisations, and others persons can", under Article 18.2, "be invited to the Republican Committee's meeting." However, there is no indication of the basis on which such invitations shall be issued. For example, Article 18.2 might allow a religious leader of one faith to have an input into a decision on the application of someone from a different faith. "The role of such individuals and what input they might give remains unclear," Ispiryan notes.

Applications must under Article 8.1 be decided upon by the Republican Committee within one month. Decisions are valid if voted for by two thirds of participating members, if more than half of the seven Committee members are present. Such decisions must be sent to the applicant and the relevant Regional Military Commissariat within 10 days.

The Republican Committee also decides on the type of alternative labour service to be performed by successful applicants. Possible types of work are decided on by the government, but no indication is given of which part of the government makes this decision.

(...)

The Republican Committee can under Article 9 reject alternative service applications if:

"1) The citizen who applied for alternative service has been invited twice to the meeting of the Regional Conscription Committee and failed to appear for unjustifiable reasons, or;



- 2) The applicant has submitted false information;
- 3) The application is obviously groundless."

"It remains unclear on what basis the Republican Committee will take its decisions," Danielyan of Collaboration for Democracy told Forum 18. "It is difficult to foresee how this provision will be applied," Jehovah's Witness lawyer Ispiryan told Forum 18. "Conscientious convictions are hard to prove."

(...)

The amendments to the Alternative Service Law do not lay down any appeal procedure or conditions. They merely state in Article 8.1.4 that "if the Republican Committee makes a decision to reject the application, it must state the basis for doing so and the procedure for appealing against the decision".

(...)

Article 14 states that alternative labour service is performed in state agencies, Article 14.3 stating that there will be "no military supervision", Article 14.2 indicating that "supervision of the performance and organisation of alternative labour service is carried out by state agencies".

Jehovah's Witness lawyer Ispiryan particularly welcomes the declaration that there can be no military supervision of alternative labour service, which was introduced into the Alternative Service Law amendments between the first and second readings.

However, Article 17.1 states that under Article 13 alternative labour service workers "appear before the Military Commissariat to depart for alternative service", travelling to the alternative service location at their own expense. The location of this should, under Article 17.4, be no more than 30 kilometres (19 miles) away or expenses will be reimbursed.

But Article 14.2 states that "the head of the organisation, where the alternative labour service is carried out, decides his type of work, the regulations and conditions, and within three days notifies this in writing to the Military Commissariat". Article 14.3 states that "an alternative labour worker can be transferred to another organisation or another place of service upon agreement or initiative of the Republican Committee".

Article 18.1 lays down that: "the Director of the place of alternative labour service familiarises the worker with the rules of internal discipline of the organisation and the details of the work to be performed". Article 18.2 requires the Director "to ensure the same working conditions for the alternative labour worker, as they would be required to provide for a contracted or employed worker who does the same kind of work."

Article 21.3 states that: "Alternative labour workers shall be held responsible for unauthorised leave of absence from the place of service in the same way prescribed by law for compulsory military service servicemen".

(...)



Changes to the Law on Implementing the Criminal Code allow people convicted of conscientious objection who are serving their sentence, or have been paroled, or whose sentence was not applied conditionally, to apply before 1<sup>st</sup> August 2013 to perform alternative service. If this is granted their criminal records will be removed.

Prisoners must apply to the administration of their prison. Time they have already served counts towards the total required length of alternative service. "The prison administration tells them within seven days if the transfer is approved or not," Jehovah's Witness lawyer Ispiryan told Forum 18. "But it does not make clear who takes the decision." He also notes that a prisoner nearing the end of a two-year sentence might choose not to apply for alternative service, as they would then have to conduct just over a year of alternative civilian service to reach the new specified length of such service of three years. "It is a bit unfair that prison time counts exactly the same as alternative service time," Ispiryan told Forum 18. "But each individual will decide for themselves whether to apply for a transfer. This is of course a personal decision."

(...)

The amendments to the Law on Implementing the Criminal Code allow individuals convicted for conscientious objection to military service to apply to have their criminal records expunged, but they do not address the issue of compensation for conscientious objectors who have been imprisoned.

(...)

"Our main concern was that alternative civilian service should not be under military control," Jehovah's Witness lawyer Artur Ispiryan told Forum 18 News Service from the Armenian capital Yerevan on 5 June. "This appears to have been resolved." But both he and human rights defenders Stepan Danielyan of Collaboration for Democracy and Avetik Ishkhanyan of the Armenian Helsinki Committee point to other possible concerns. These include the Defence Ministry's role in decisions on applications for alternative service, unclear wording of some articles, and the length of alternative service.

All three stress that how the legal changes are implemented will be crucial. "All will depend on where young conscientious objectors are sent to serve, and how they will react to the provisions on offer," Ishkhanyan told Forum 18 from Yerevan on 5 June. "This will need close monitoring."

(...)

The amendments to the Law on Implementing the Criminal Code should allow the 33 young men imprisoned for refusing military service, the six more who have been convicted and await imprisonment, the further six whose trials have begun and the 29 young men who are being investigated for prosecution to apply to be transferred to alternative civilian service, Forum 18 notes.

(...)

The reduction in length from 42 months of alternative service under military control to the 36 months of alternative labour service is welcomed by Danielyan



of Collaboration for Democracy, Ishkhanyan of the Armenian Helsinki Committee and Ispiryan of the Jehovah's Witnesses. But they note that this is 50 per cent longer than military service.

[Abridged from "ARMENIA: NEW LEGAL AMENDMENTS TO END CONSCIENTIOUS OBJECTOR JAILINGS?", by Felix Corley, Forum 18 News Service, 6<sup>th</sup> June 2013]

### 3.2 AZERBAIJAN: amnesties but still no law

Article 2, Part 3 of the "Military Conscription in the Republic of Azerbaijan (Basic Principles) Act", dating back to 1992, which states that those who "for reasons of belief... cannot be called up to active military service are required to perform alternative service (civilian conscription) for a period of 24 months." On its own, however, this provision has no practical effect; it does not define the beliefs which will justify release from the obligation to perform military service. On 4<sup>th</sup> February 2005, the Supreme Court of Azerbaijan had found, with regard to Jehovah's Witness conscientious objector, Mahir Bagirov, that a similar provision which had subsequently been incorporated as Article 76 of the 1995 Constitution<sup>54</sup> in fact conferred no right of conscientious objection to military service in the absence of specific implementing legislation.<sup>55</sup>

Such implementing legislation has been long promised, but has never materialized.

In 1991, the parliament of the Azerbaijani Soviet Socialist Republic had reportedly passed a law on alternative service.<sup>56</sup> This was never officially published, let alone implemented, and seems to have been allowed to lapse with the dissolution of the Soviet Union and the creation of an independent state of Azerbaijan. In 1998, a new draft law was brought forward but was rejected by the Parliament (*Milli Majlis*).<sup>57</sup>

Upon accession to membership of the Council of Europe in 2000, Azerbaijan undertook to produce legislation on conscientious objection by January 2003, but failed to do so. There were reports early in 2004 that a draft law on alternative service (which is of course not necessarily the same thing) was about to be submitted to Parliament, but this did not happen.<sup>58</sup> A draft was however eventually sent for review to the Council of Europe and was returned on 23<sup>rd</sup> October 2006.

In February 2008 the Council of Europe's Commissioner for Human Rights complained that no further action had been taken, and noting that "the issue has not received the treatment it deserves", urged "a speedy adoption of a law

54 The wording after amendment in 2002 reads: "If serving in the armed forces runs counter to a person's convictions, then in the cases specified in the legislation it is permitted to replace military service by alternative service."

55 Corley, F., "Azerbaijan: Supreme court claims constitutional right does not exist.", Forum 18 News Service, (<http://www.forum18.org>), 10<sup>th</sup> February 2005.

56 Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, London, 1998.

57 Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council on European Affairs, Brussels, 2005, p9.

58 Ibid



establishing an alternative civilian service.”<sup>59</sup> A subsequent resolution of the Parliamentary Assembly of the Council of Europe included the recommendation that "the law on alternative civilian service should be adopted without further delay, in line with Azerbaijan's accession commitment".<sup>60</sup>

Meanwhile, in May 2008, Safa Mirzayev, described as "the head of the Azerbaijani Parliament's Administration", had been reported by a news agency as stating that a draft had been approved by "international organisations", and was ready to be adopted at the Parliament's spring session. However civil society sources complained that the text was still being treated as top secret, and that there had been no public consultation about the drafting.<sup>61</sup> After the resolution of the Parliamentary Assembly of the Council of Europe, an Azerbaijani member of the Assembly was quoted as stating that the introduction of this draft law was now the only outstanding item from the "accession criteria", but that nevertheless the implementation of the law would be conditional upon the return of Nagorny Karabakh to Azerbaijani control.<sup>62</sup> The implicit use of a restriction on the human rights of one's own citizens as a bargaining counter in a dispute over sovereignty would seem to have a rather twisted logic.

Still no details of the progress of the parliamentary consideration emerged, and the draft law remained unpublished. However, speaking at a further press conference in September 2008, Mirzayev gave a strong indication that it would impose discriminatory and punitive conditions on any alternative service allowed to conscientious objectors, thus vindicating fears that the secrecy surrounding the process served to conceal aspects of the proposals which were not in compliance with international standards. Mirzayev's remarks as reported included: "The term of military service gradually becomes shorter in Europe. The term is six-month in most countries. Only people, who do not join the military service for their conviction, pass to an alternative service in Europe. They participate in public services, renovation of hospitals and cities. The attitude towards military service is different in Azerbaijan because of the war condition. Therefore, we should not implement this task as Europeans" (...) "alternative service should be long-term and its terms should be more difficult than the army service to prevent people to divert from the military service under some pretexts" (...) "Local and international experts do not agree with my position and say that it does not meet the international standards. However, the Law on Alternative Service will be adopted in any case and form."

At the Human Dimension Implementation Meeting of the Organisation for Security and Co-operation in Europe in October 2008, Azerbaijan again insisted that the draft law was currently under consideration by Parliament<sup>63</sup>, but gave no

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59 Council of Europe, Report by the Commissioner for Human Rights, Mr. Thomas Hammerberg, on his visit to Azerbaijan (3<sup>rd</sup> - 7<sup>th</sup> September 2007), Strasbourg, 20<sup>th</sup> February 2008, Chapter 3, III, B.

60 Parliamentary Assembly of the Council of Europe, Resolution 1614 (2008), 24 June 2008, para. 24.1.

61 Corley, F., "Azerbaijan - conscientious objector freed", Forum 18 News Service (<http://www.forum18.org>), 14<sup>th</sup> May, 2008.

62 TrendNews "Azerbaijani Delegation in PACE Opposes Fulfillment of Some Obligations Before Council of Europe", 25<sup>th</sup> July 2008, quoted in War Resisters International, CO Update No. 40, August 2008 (<http://wri-irg.org/pubs/upd-0808.htm>)

63 "Reply of Azerbaijani delegation on the matters that allegedly stated to be of concern



details.

As already noted, no further information was forthcoming in response to an advance question submitted by Slovenia for the Universal Periodic Review Working Group of the Human Rights Council in February 2009, which asked "When does the Government of Azerbaijan plan to introduce legislation to give practical effect to the Constitutional provision allowing conscientious objection to military service?"<sup>64</sup>

The issue was raised again in the consideration of Azerbaijan's Third Periodic Report under the ICCPR in July of that year, the Human Rights Committee noting in its Concluding Observations. "The Committee remains concerned that no legal provision regulates the status of conscientious objectors to military service (art. 18).

"The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civilian service of equivalent length be adopted at an early date in compliance with article 18 of the Covenant and the Committee's general comment No. 22 (1993) on article 18 (Freedom of thought, conscience or religion).<sup>65</sup>

Meanwhile amendments to the Religion Law and corresponding sections of the Criminal Code which were adopted by the Parliament on 8<sup>th</sup> May 2009 have the opposite purpose, namely to further penalise conscientious objectors and their religious communities. Article 4 of the amended Religion Law criminalises "refusing or declining to fulfil obligations determined by the law for his/her religious beliefs". It also states that "substituting the fulfillment of one responsibility by another may only be allowed in cases provided for by the legislation of the Republic of Azerbaijan". This appears to confirm that conscientious objectors to military service cannot exercise their constitutional right to perform a substitute civilian service. Article 12 of the Law enables the banning of religious organisations for "inciting people to refuse to execute duties required by the law".<sup>66</sup>

It was reported in September 2010 that a draft Law on Alternative Service was on the Parliament's programme of work for the second half of the year, although there was no sign of a text. However in February 2011 it was reported that the draft had been removed from the programme of work for the first half of that year. Since then, there has been no further word of it.<sup>67</sup>

On 2<sup>nd</sup> February 2012, the Council of Europe's Commissioner for Human Rights, Thomas Hammarberg, stated in his blog post, "*People should not be imprisoned*

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in Azerbaijan" at the Human Dimension Implementation Meeting of the Organisation for Security and Co-operation in Europe, (HDIM/DEL/453/08), 8<sup>th</sup> October 2008.

64 [http://www.upr-info.org/IMG/pdf/ADVANCE\\_QUESTION\\_TO\\_AZERBAIJAN-Add.1.pdf](http://www.upr-info.org/IMG/pdf/ADVANCE_QUESTION_TO_AZERBAIJAN-Add.1.pdf). (It is possible that Azerbaijan may respond during the adoption of the UPR report in the Eleventh Session of the Human Rights Council in June 2009.)

65 CCPR/C/AZE/CO/3 (July 2009), Para. 19.

66 See Corley, F., "Azerbaijan: Religion Law amendments contradict themselves", Forum 18 News Service (<http://www.forum18.org>), 14<sup>th</sup> May, 2009.

67 Corley, F., "Azerbaijan: Continued defiance of the UN and the Council of Europe" Forum 18 News Service (<http://www.forum18.org>), 22<sup>nd</sup> February 2011.





*when their religious or other convictions prevent them from doing military service. Instead they should be offered a genuinely civilian alternative. This is now the established European standard, respected in most countries – but there are some unfortunate exceptions."*

Hammarberg referred to the *Bayatyan v Armenia* judgment of the European Court, and observed that *"no less than seven Council of Europe members have put objectors in prison in recent years"*. He then in particular singled out Armenia, Azerbaijan, and Turkey. The blog post closes: *"Conscientious objection is a human right. It is thus high time that all member states complied with their commitments and recognised this right effectively."*

In the absence of specific legislation, conscientious objectors regularly declare themselves when required to register for military service, citing the constitutional provisions. Azerbaijan is one of many states where the numbers liable to obligatory military service greatly exceeds the actual capacity of the armed forces, and in practice most objectors are not called up. An Azerbaijani government source in 2002 quoted a figure of no fewer than 2,000 "youths evading the army on religious grounds", by which he referred to members of the Jehovah's Witnesses, Hare Krishna, and some Protestant churches. It was suggested that such persons should be liable to criminal prosecution.<sup>68</sup>

The general experience of such conscientious objectors has continued to be that after a degree of harassment by the military recruitment authorities they have not been forced into military service.<sup>69</sup> However there have now been some prosecutions under Article 321.1 of the Criminal Code, which sets a penalty of up to two years' imprisonment for evading military service.

Two prosecutions of Jehovah's Witness conscientious objectors were launched in 2002, but eventually dropped. These were followed in 2004 by the case of Mahir Bagirov, quoted above. Then on 21<sup>st</sup> July 2006, a six month suspended sentence was handed down by Sabail District Court, Baku, in the case of Mushfiq Mammedov, who had been held in Bayil investigative prison in Baku from his arrest on 28<sup>th</sup> April until he was released into house arrest by court order on 26<sup>th</sup> May.<sup>70</sup> In October 2007, Jehovah's Witness Samir Husneyov was sentenced by the Geranboy District Court in the west of the country to ten months' imprisonment for refusing military service. Between January and April 2008 he was held in Penal Colony No. 16 in the Bina district of Baku. Two appeals against his conviction were turned down, but on the second occasion, on 1<sup>st</sup> May 2008 the Regional Appeal Court in Gyanja ruled that the initial sentence had been excessive and ordered his immediate release. This decision does not however expunge his criminal record.<sup>71</sup> A joint application by Mammedov and Husenyov dated 7<sup>th</sup> March 2008 is pending before the European Court on Human Rights.<sup>72</sup>

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68 Stolwijk, op. cit. p.10

69 Corley, 14<sup>th</sup> May 2008, op. cit.

70 Corley, F., "Azerbaijan: Jehovah's Witness conscientious objector sentenced", Forum 18 News Service (<http://www.forum18.org>), 26<sup>th</sup> July 2006.

71 Corley, 14<sup>th</sup> May 2008, op. cit.

72 European Association of Jehovah's Christian Witnesses, "Religious Freedom Concerns in Azerbaijan", Oral Statement to the Human Dimension Implementation Meeting of the Organisation for Security and Co-operation in Europe (HDIM/NGO/363/08), 7<sup>th</sup> October 2008.



On June 5<sup>th</sup> 2008, a second prosecution on the same charges was initiated against Mammedov,<sup>73</sup> and in December 2010 the Supreme Court rejected the final appeal against a fine imposed on that occasion.

On 16<sup>th</sup> July 2010, Farid Mammedov (no relation of Mushfiq) was sentenced to nine months' imprisonment under Article 321.1. Although the Court specified that the sentence would not be carried out immediately, Mammedov was arrested in Baku Appeal Court on 10<sup>th</sup> September 2011, as soon as his appeal was turned down, and was sent to a labour camp. On 25<sup>th</sup> January, 2011 the Supreme Court rejected his final appeal.<sup>74</sup> Having completed his sentence in June 2011, Farid Mammedov filed his own application to the European Court of Human Rights on 18th July 2011.

On 23<sup>rd</sup> July 2012, Jehovah's Witness Amid Zohrabov, from Lokbatan near Baku, was forcibly conscripted into the army and transported to Unit No. 707 in Gazakh Region in north-west Azerbaijan. Zohrabov had first been called up in 2007. He had immediately told the Conscription Office of his conscientious objection to military service and his readiness to do a fully civilian alternative service. "The Conscription Office accepted this and didn't insist that he had to go to the army," Jehovah's Witnesses noted. However, in May 2012 Zohrabov was again called up. He was summoned to the Conscription Office on 19 July and then again on 23 July, when he was forcibly recruited. Following a letter of complaint from his parents to the commanding officer of the Unit, he was freed on 7 August.<sup>75</sup>

The two subsequent imprisonments and later amnesties are detailed in Section 1.2.3, above.

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73 Ibid.

74 Corley, F. "Azerbaijan: Continued defiance of the UN and the Council of Europe" Forum 18 News Service (<http://www.forum18.org>), 22<sup>nd</sup> February 2011.

75 Corley, F. "Azerbaijan: Ramadan mosque bans; JW jailed; Church ban upheld" Forum 18 News Service (<http://www.forum18.org>), 12<sup>th</sup> August 2012.



## 4 CONSCIENTIOUS OBJECTORS AS REFUGEES

EBCO continues to be concerned about the treatment of conscientious objectors who leave countries where they would be forced to perform military service, in order to seek asylum elsewhere.

As noted in section 1.2.10 above, no attempt was made by the Swiss Government to disguise the fact that the changes to the asylum law to disqualify deserters and conscientious objectors were intended to reduce the number of **Eritreans** admitted to the country. Thousands of Eritreans continue to flee one of the most brutal military regimes in the world, many end up seeking asylum in European countries.

Our attention has however this year been drawn more to refugees from Syria and Turkey.

### 4.1 SYRIA

Many of those fleeing the crisis in Syria have done so not just for safety, but to avoid being themselves drawn in to the growing conflict there.

Syria imposes conscription on all male citizens. It has never recognised the right of conscientious objection to military service. As has been widely documented, within the last two and a half years, many conscripts – and indeed professional members of the armed forces – have found themselves not defending the State, but under orders to turn their arms on their fellow citizens.

The United Nations High Commission for Refugees has recognised that all conscientious objectors to military service should be protected against return to States which have no provision – or no adequate provision – in this respect, as did the former Commission of Human Rights in Resolution 1998/77. At the time of the Yugoslav and Chechen wars, international jurisprudence went further, and recognised as refugees those who refused to serve in, or deserted from, armed forces where there is a strong likelihood that they will be ordered to commit war crimes or crimes against humanity.

Even so, in February this year, the Greek immigration authorities sought to return to Syria a member of the Syrian air force, who had deserted rather than obey orders to bomb civilian areas. EBCO helped to draw attention to the case and mobilise international pressure to reverse this decision.

Even Greece now seems to have realised that under the current situation, no person should be returned to Syria against his or her will, when fleeing involvement *on either side* in the conflict. Asylum seekers from Syria still however suffer indefinite imprisonment in appalling conditions, justified by the authorities on the grounds that they do not have adequate proof of identity. Not surprisingly, many of those fleeing from their own government were unable to bring with them any official documentation.

On 23<sup>rd</sup> May, the European Parliament passed a resolution on the situation of Syrian refugees in neighbouring countries (2013/2611(RSP)). In this, it gave welcome acknowledgment of the particular difficulties faced by deserters and



conscientious objectors.

Preambular paragraph C reads:

"whereas thousands of those of who have fled Syria have deserted from the armed forces to escape having to commit war crimes or crimes against humanity, or are evading military service for similar reasons;"

In the resolution, the Parliament

"Notes that all deserters from Syria are entitled to further protection, being at risk on other grounds than those set out in paragraph 26 of the UNHCR guidelines, namely 'excessive or disproportionately severe' punishment, possibly amounting to torture, inhuman or degrading treatment or even arbitrary execution" (para 6)

"Calls for the EU to take appropriate, responsible measures regarding the possible influx of refugees into its Member States;" (para 15),

and with obvious reference to the situation in Greece:

"Calls for the Member States immediately to cease their reported use of prolonged detention periods and the practice of refoulement, which are in direct violation of international and EU law" (para 16)

A subsequent practice which has caused concern is that of illegal push-backs of Syrian refugees from Greece to Turkey Amnesty International in its recently published report: Greece: Frontier Europe: Human rights abuses on Greece's border with Turkey (<http://amnesty.org/en/library/info/EUR25/008/2013/en>)

"Greece, on the frontier of the European Union (EU), has been a major entry point for migrants and refugees for the most part seeking to travel through to other EU countries. [...] Those who arrive in Greece are sometimes "pushed back" (an illegal and often-dangerous practice of returning intercepted migrants) to Turkey. For those who are not pushed back, detention – often in appalling conditions – is the routine fate."

For example the Association of Free Syrian Expatriates in Greece told EBCO that on 14 September 2013 a boat with 54 refugees departed from Izmir (Turkey) and arrived in Ikaria island (Greece). There were 14 refugees from Syria among them, including 3 women and 2 twin girls of 7 years old each one. The Greek local people brought food and clothes to the refugees but then the Port Police arrived and transferred the refugees to another place of the island, after taking their mobile phones. They told them that they will transfer them to the reception center of Samos island. They were all transferred on a big military ship on which there were around 20 Greek men with black hoods covering their faces. These men had truncheons with electricity on the touch and beat the refugees, including the women and the girls. They also took their papers and money. They approached Turkey and they threw a plastic inflatable boat on the sea and took all the refugees out of the ship. They just gave them two plastic bottles of water, after taking out their stickers, so that there is no evidence of the greek origin of the bottles. Later on some Turkish fishermen found the refugees and they called the Turkish Port Police who finally took them on the turkish land. Some of the



refugees were transferred to Turkish hospital because there were beaten by the Greeks. Later on, on Sunday 28<sup>th</sup> September, a similar incident took place between the Turkish coast and the greek Chios island, with some of the refugees who had tried to pass on September 14<sup>th</sup>. The same greek military ship pushed them back to Turkish waters. One of the refugees recognised one of the Greek hooded man, and so did the Greek man who told him: "You again! Second time?"

## 4.2 TURKEY

In the course of the last twelve months EBCO has become aware of conscientious objectors from Turkey seeking asylum in at least seven European countries. In a number of cases we have been able to supply letters of support based on confirmation of their *bona fides*, usually from our Turkish contacts in VR-DER.

There is still some reluctance in many countries to entertain asylum claims from persons avoiding military service in Turkey. The requirement to perform military service, and the possibility, if appropriate, of prosecution for evasion are seen as laws of general applicability, and not as the sort of persecution which might justify an asylum claim.

When one is talking about a conscientious objector, who because of his religion or belief cannot be reasonably expected to perform military service, however, the situation is very different. In the absence of any provisions on the subject in the military recruitment regulations, such a person will be obliged to refuse the call-up to military service, will face prosecution, and on all past experience imprisonment, and on release will be faced with a new call-up. Unless he yields to such coercion to abandon his beliefs (which is incidentally prohibited under article 18.2 of the International Covenant on Civil and Political Rights and article 9.2 of the European Convention on Human Rights and Fundamental Freedoms) he will again refuse, and will face a potentially endless cycle of prosecutions and imprisonments. Even if at liberty he will find himself in the situation which the European Court of Human Rights described as "civil death" because of the inability to access any official documentation without a military service record. When a conscientious objector is returned to Turkey, he faces blatant and severe persecution.

EBCO was very disturbed by the decision of the Cypriot authorities not only to deny asylum to Turkish conscientious objector and deserter Onur Erden, but also to return him to Turkey, where he was immediately detained by the military authorities, as described in Section 1.2.11.

It is very encouraging that the "Operational Guidance Note: Turkey" issued by the UK Border Agency in May 2013 takes full account of the European Court of Human Rights findings in the cases of *Savda v Turkey*, *Ercep v Turkey*, and *Ulke v Turkey*, and largely reverses the UK authorities' earlier cautious advice, stating:

"Where an individual is able to demonstrate that [refusal to perform military service] is for reasons of their conscience and conviction, then the rationale of the decision in *HJ(Iran)* applies and the individual cannot be expected to modify their beliefs in order to avoid persecution. In such cases a grant of Humanitarian Protection may be appropriate. In addition, case owners should also consider whether the Turkish authorities would perceive the refusal to perform military service as being for a Refugee Convention reason. If this is the case then a grant of Asylum rather than Humanitarian Protection would be appropriate."



### 4.3 USA: André Shepherd

Finally, we must report interesting developments in the case of André Shepherd, a US serviceman who is seeking asylum in Germany.

To recap: After completing training as an Apache helicopter airframe mechanic, U.S. Army Specialist André Shepherd had been posted to a unit based at Katterbach in Germany, but currently deployed at a forward operating base near Tikrit in Iraq. His experiences during the six months he spent in Iraq led Shepherd to question the legitimacy of the U.S.A.'s military operation there, and on return to Germany he investigated the possibility of applying for release as a conscientious objector, but was told that as his case was a "selective" objection to the war in Iraq, it would almost certainly be denied. On April 11<sup>th</sup> 2007, he went "absent without leave" and on 27<sup>th</sup> November 2008 applied for asylum in Germany, where he had been living "underground".

The German Federal Bureau of Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) turned the application down on 31<sup>st</sup> March 2011, arguing "whether the helicopters he maintained and their crews actually participated in specific illegal actions (contrary to international law) has neither been stated sufficiently, nor can it be determined specifically otherwise. According to the applicant's statements, himself was also not able, during his first Iraq deployment, to find out details on the missions of the helicopters serviced by him or his unit. Accordingly, the applicant's deliberations on the potential participation of 'his' helicopters in possible illegal acts and war crimes constitute at most conjectures or a hypothetical possibility."<sup>76</sup> An appeal against this decision was lodged with the Munich Administrative Court, but the hearing initially set for January 2013 was cancelled. At the beginning of September 2013, the Court postponed the case in order to request a ruling from the European Court of Justice in Luxembourg on "the degree to which an involvement in military hostilities is necessary, in order to offer the right of refugee status to a military deserter, who will be punished for his desertion".<sup>77</sup> At issue is the Qualification Directive 2004/83/EC issued by the Council of the European Union, is intended to protect those who would face persecution on return to their home country. 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." As this is a matter of European Union law, the European Court of Justice is the appropriate body to issue such a ruling, even though this issue is very different from the trade disputes which have hitherto predominated in its jurisprudence. The reference has been registered by the European Court of Justice under the number C-472/13. A date for the hearing has not yet been fixed.

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<sup>76</sup> Press release by Connection e.V., Offenburg, Germany, 7<sup>th</sup> April 2011.

<sup>77</sup> Press release by Connection e.V., Military Counseling Network e.V. and Pro Asyl, Frankfurt-am-Main, Germany, 10<sup>th</sup> September, 2013.



## 5. NEW PUBLICATIONS

There have been a number of important publications with regard to conscientious objection to military service and related issues in the past year. Some, dealing with juvenile recruitment and the militarisation of youth, have already been mentioned in Section 2.6.

In February 2013, the Office of the UN High Commissioner for Human Rights published a Guide on Conscientious Objection to Military Service. This Guide, referred to in Operative Paragraph 4 of Human Rights Council Resolution 24/17, brings together applicable international standards and jurisprudence relating to conscientious objection to military service and also addresses the implementation of alternative service to military service for those States that have established programmes of this kind. It is available from the United Nations Publication Service, reference HR/PUB/12/1, ISBN 978-92-1-154196-0, UN Sales No. E.12.XIV.3 or may be downloaded as a pdf from the High Commissioner's website [www.ohchr.org](http://www.ohchr.org) via "Publications" and "Special Issues".

In May 2013, War Resisters' International, the Quaker United Nations Office (Geneva), Conscience and Peace Tax International, and the Centre for Civil and Political Rights unveiled a new on-line Conscientious Objector's Guide to the International Human Rights System, compiled by Andreas Speck, which is intended to assist those seeking to use the international and regional human rights mechanisms in order to protect conscientious objectors and advance the right to conscientious objection. The guide is accessible in English and Spanish at <http://co-guide.org>

On the International Day of Conscientious Objection, 15<sup>th</sup> May 2013, Joe Glenton, conscientious objector and deserter from the British army in Afghanistan, published his memoir Soldier Box.

Looking forward to the centenary of the outbreak of the First World War, and to counter the expected wave of associated militaristic propaganda, the Fellowship of Reconciliation (England) has, in association with Pax Christi, the Peace Pledge Union, Quaker Peace and Social Witness and the Women's International League for Peace and Freedom Opposing World War One: Courage and Conscience – An information briefing about conscientious objection and peace activism in the First World War.

Finally, it is important to mention issue No.1-2013 of Cahiers de la Réconciliation, published by MIR (Mouvement Internationale de la Réconciliation) France, 68 rue de Babylone, 75007, Paris ([www.mirfrance.org](http://www.mirfrance.org)) which contains (in French) the proceedings of EBCO's *Colloque "L'objection de conscience aujourd'hui"* in Paris on 18<sup>th</sup> October 2012.



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## 6. RECOMMENDATIONS

**EBCO recommends to all the European countries:**

- if they have not already done so they abolish all obligatory military service, and meanwhile stop harassing and prosecuting conscientious objectors.**
- that (in accordance with Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe) 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.**
- that they cease enlistment into the armed forces on any basis of persons aged under 18.**
- that 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.**
- that they reconsider the necessity for the current levels of military expenditure with particular reference to the current economic situation.**



