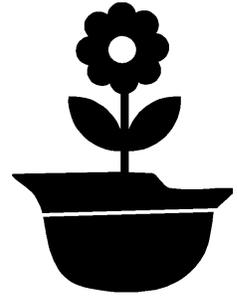


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**REPORT TO THE COMMITTEE FOR CIVIL LIBERTIES, JUSTICE AND HOME  
AFFAIRS OF THE EUROPEAN PARLIAMENT**

Conscientious Objection in Europe 2007

**Brussels, 15 June 2008**

# EUROPEAN BUREAU ON CONSCIENTIOUS OBJECTION

## Report to the Committee for Civil Liberties, Justice and Home Affairs of the European Parliament

### Conscientious Objection in Europe 2007

#### INTRODUCTION

In Paragraph 16 of the Resolution on conscientious objection in the member states of the Community of 19 January 1994 (the Bandres Molet and Bindi Resolution) the Committee on Civil Liberties of the European Parliament was instructed "to draw up an annual report on the application by the Member States of its resolutions on conscientious objection and civilian service, and to involve the European Bureau for Conscientious Objection." The Committee was reminded of this commitment in a resolution passed by the European Youth Forum at its Council of members in Brussels on 9<sup>th</sup> and 10<sup>th</sup> November 2008.

In furtherance of the Bandres Molet and Bindi Resolution, the European Bureau for Conscientious Objection has the pleasure to submit the following evidence on the application by the Member States of the European Parliament's resolutions on conscientious objection and civilian service during the calendar year 2007.

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## I

### RESOLUTIONS OF THE EUROPEAN PARLIAMENT

As well as the “Bandres Molet and Bindi” Resolution itself (B), the right of conscientious objection to military service has featured in three resolutions of the European Parliament: the “Macciocchi” Resolution of 7 February 1983 on conscientious objection; (M) the “Schmidbauer” Resolution of 13 October 1989 on conscientious objection and alternative civilian service; (S) and the “De Gucht” Resolution of 11<sup>th</sup> March 1993 on respect for human rights in the European Community. (D)

These Resolutions also endorse the following statements by other bodies:

Resolution 337 (1967) and Recommendation 816 (1977) of the Parliamentary Assembly of the Council of Europe,  
Recommendation R(87)8 of the Committee of Ministers of the Council of Europe,  
General Comment 22 of 20<sup>th</sup> July 1993 on Article 18 of the International Covenant on Civil and Political Rights, made by the Human Rights Committee set up under that Covenant,  
Resolution 1989/59 of the UN Commission on Human Rights. (The more comprehensive text adopted by that body in its Resolution 1998/77 occurred subsequently to the European Parliament’s resolutions, and therefore has not been explicitly endorsed by the Parliament.)

The principles embodied in these various resolutions are:

- that the right of conscientious objection to military service “whether armed or unarmed” (S1) “should be incorporated as a fundamental right in the legal systems of the Member States (D46), even those “which do not have ( or no longer have) conscription and military and civilian service” (B14)
- that a conscientious objection may develop at any time, including while performing military service (as stated in 1989/59 and subsequent resolutions of the UN Commission on Human Rights), with the consequence that the right includes to be permitted to withdraw from such service on grounds of conscience (M2), and more generally to apply for conscientious objector status at any time (D49)
- that conscientious objectors may base their refusal to perform military service on religious, ethical or philosophical grounds or reasons of conscience (B2)
- that “sufficient information is made available on conscientious objector status” (D49), and specifically that call-up papers should be accompanied “by a statement on the legal position with regard to conscientious objection”(S2)
- that “no court or commission can penetrate the conscience of an individual” (M3) and therefore “a declaration setting out the individual’s motives should suffice in order to obtain the status of conscientious objector”(S4)
- that the procedures “should be designed in such a way that they involve no additional waiting period and administrative complications” (M7)
- that “an effective means of appeal is made available” (D49, expanding on S8). (Recommendation R(87)8 of the Committee of Ministers of the Council of Europe had previously specified that “The appeal authority shall be separate from the military administration and composed so as to ensure its independence (para 7).
- that States should “refrain from subjecting conscientious objectors to imprisonment” (UN

Commission on Human Rights Resolution 1989/59; D50 and B11 condemned such action)

that States with compulsory military service should introduce for conscientious objectors “various forms of alternative service which are compatible with the reasons for conscientious objection” (UN Commission on Human Rights Resolution 1989/59)

that alternative civilian service should not be “seen as a sanction or deterrent” (D51, expanding on M4), or “punitive in nature” (B4). It should therefore be “organized in such a way as to respect the dignity of the person concerned and benefit the community” (M4) and “not exceed the period of normal military service including military exercises following the period of basic military training” (M5; D51 stated more briefly that it should be “of the same length as military service” ; B9 called on the Member States to ensure compliance with this recommendation)

that “individuals performing alternative service” must not be “denied their constitutional and/or civil rights” (S3); and should “enjoy the same rights as conscripts engaged in armed military service, both in social terms - in respect of access to vocational training, for example -and in terms of pay”(B10, expanding on S6 and S10)

that “a clear distinction should be made between civilian alternative service activities and vacancies on the job market, this to be agreed upon with the trade unions” (S7)

that those engaged in alternative civilian service should be able “to choose to perform it in another Member State or in a developing country as part of a cooperation programme (B7, expanding on M4, S9 and 13, and D52). This service “should also be able to be performed with organizations in other member States, without the need for reciprocity, and even when there is no conscription in the country concerned”.(B8)

The resolutions also call for harmonisation of legislation in this field (B7), for the explicit incorporation of this right in the European Convention (M9, S11 and B14), for the “Commission to ask the member states of the European Union and the countries which have applied for accession to comply with the principles laid down (in these resolutions)” (B15)

B6 also “Calls upon the Member States to study... the experience of those which have abolished compulsory military service, in favour of fully professional armed services”

## II

### IMPLEMENTATION OF THE RESOLUTIONS BY MEMBER STATES - OVERVIEW

Legislative recognition. All member states of the European Union which retain any legal basis for conscription into obligatory military service include provisions permitting the recognition of conscientious objectors and their allocation to an alternative service. However those member states which have purely voluntary armed forces with no provisions for conscription have generally refrained from enshrining in their legislation any reference to a right of conscientious objection to military service.

#### Ability to manifest a conscientious objection at any time

Of the member states which maintain conscription, Denmark, Finland, Germany, and Sweden permit applications by conscripts at any time - including during the performance of full-time military service and afterwards, when classified as reservists. The others require conscripts to register their objection before call up to military services, and in general have no provisions for application by reservists (Austria alone provides a limited “window” of one year after the end of military service.)

The ability to manifest a conscientious objection “at any time” must however also include the ability to do this subsequently to having volunteered for a career in the armed forces. In this respect, as discussed at more length in Section IV i below, there is much room for improvement in legislation and practice in member states.

#### Nature of objections accepted

In Cyprus and Lithuania there is no clear indication in the legislation of the nature of objections which may be accepted. Elsewhere the wording of the relevant legislation clearly covers objections of any religious or ethical nature. There is however considerable cause for doubt about the implementation in practice of the legislation in Greece, see Section IV ii below.

It should also be noted that up to the suspension of conscription in 2006, Romania would accept as conscientious objectors only members of specified religious denominations. This anomaly in the legislation ought to be remedied, even while obligatory military service is not being imposed in practice.

#### Provision of information

Austria provides an example of good practice in this respect. With the initial summons to register for military service is included information about the possibility of applying for recognition as a conscientious objector, and a form for the purpose may be downloaded from the website of the civilian service agency. In Greece, by contrast, the only information officially provided is a statement that “Applications under Law 2510/1997 are possible”, which conveys nothing to those not already aware of the relevant legislation.

#### Acceptance of a declaration of conscientious objection

Denmark, Germany, Finland and Sweden accept an appropriately-worded declaration (sometimes of an officially-prescribed format) as sufficient to give a potential conscript formal recognition as a conscientious objector, without requiring an interview or other detailed examination of the claim. A small minority of objectors who insist on formulating their claim in a non-standard manner may find it rejected. In Greece, Estonia, and Poland, however, all applications are subject to approval following interview by a body set up for this purpose, and appointed by the Ministry of Defence. Although Austria does not require a personal interview, applications to

perform alternative service are automatically rejected if the applicant has been convicted for a crime of violence, has held a firearms licence, or has served in the constabulary (*Wachkörper*) of regional authorities. Similar restrictions applied in various other member states before the suspension of conscription.

#### Uncomplicated procedures

Austria, Denmark and Finland all provide a standard application form for the use of conscientious objectors. The application process in Greece, see Section IV ii below, is the most complicated in Europe.

#### Appeals process

Generally, there is now a procedure whereby those who have not been recognised by the military authorities as conscientious objectors may appeal to the civilian courts, such appeals having a suspending effect on the call up to military service. This procedure may however not be readily accessible, in particular prohibitive cost may place it out of reach to many of those affected.

#### Non-imprisonment of conscientious objectors.

Several Member States retain legal provisions which permit the imprisonment of conscientious objectors who persist in their refusal to perform military service or the alternative service to which they are assigned. In practice, however, such cases are usually dealt with by fines or suspended sentences.

#### Alternative service which is compatible with the reasons for conscientious objection

No member state requires those whom it recognises as conscientious objectors to bear arms. There are however doubts as to whether in Cyprus and Lithuania a genuine civilian service exists for those whose objection is to any form of uniformed or military service. In Sweden, the alternative service as at present constituted is part of a system of “total defence”, and administered by the Ministry of Defence. It is estimated that about 400 conscripts per annum object to participating in this system. Elsewhere, provisions allowing objectors a choice between alternative service placements cater for those who feel that some placements would in time of war be explicitly complementary to armed service, but in most member states a minority of “total objectors” take the view that the entire system, including alternative service, is inescapably part of the state military structure, and are unable to co-operate with it.

Other conscientious objectors do not object to alternative service in itself, but refuse to perform it in protest at its discriminatory length and other conditions by comparison with military service.

#### Non-punitive nature of alternative service

Best practice in this respect is found in Germany and Sweden, where the length and other conditions of alternative service are the same as for those performing military service. At the other extreme, Poland and Estonia still require from conscientious objectors double the length of service which they do from those performing military service. There is no indication that the reservist duties required in practice would significantly reduce the discrepancy between the two categories.

It should be noted that in its view on the case of *Foin v France* ( Communication no. 666/1995; view adopted 3<sup>rd</sup> November 1999), the UN Human Rights Committee found that any differences between the length of military and alternative service must be based on “reasonable and objective criteria”, valid in a particular case, and expressly dismissed the State’s argument that a different

length “was the only way to test the sincerity of the applicant’s convictions”. By the time of this decision France itself had suspended conscription, but elsewhere the acceptance of a declaration of conscientious objection is often counterbalanced by a discrepancy which seems to act only as a test of sincerity. The effect is however punitive.

In many member states, the other conditions of alternative service have become less punitive over the years. It should however be noted that in Austria new payment arrangements brought in the year 2000 resulted in most conscientious objectors receiving approximately half the rate of remuneration of those performing military service..

#### Rights of those performing alternative service

With the exceptions noted in the previous paragraph, and the section on Greece, conscientious objectors generally enjoy similar rights to those performing military service. In important respects these do not equate to the normal rights of the civilian population; in particular they may not include the right to strike or otherwise engage in trade union activities. These issues require more attention

#### Possibilities for alternative service in other countries

In Germany and Austria there are provisions allowing a slightly longer period of voluntary work completed abroad to be accepted as discharging the alternative service requirement..

### III

#### DEVELOPMENTS DURING THE CALENDAR YEAR 2007

##### i) INTERNATIONAL STANDARDS.

In a “View” published on 23<sup>rd</sup> January 2007 (CCPR/C/88/D/1321-1322/2004: Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea), the Human Rights Committee established under the International Covenant on Civil and Political Rights (ICCPR) found the Republic of Korea to have violated Article 18, Paragraph 1 of the Covenant, in the case of two conscientious objectors who had been imprisoned for refusing military service. The Committee found that the conviction and imprisonment of the conscientious objectors amounted to a restriction on their ability to manifest their religion or belief; that such a restriction must fall within the permissible limits set out in Article 18, Paragraph 3 of the Covenant and must not impair the essence of the right in question. The Committee did not find that the actions of the State Party met these criteria; it ruled that the objectors were entitled to compensation and that the State was under an obligation to avoid similar violations in future.

This View is significant for three reasons.

First, it makes clear that conscientious objection to military service is protected under the Covenant. Views adopted by the Committee on individual cases have quasi-judicial status, and all member states of the European Union are parties to the Covenant.

Second the view applies to a State where there was no legislative recognition of a right of conscientious objection to military service. The lack of legal provisions was not deemed an acceptable reason for refusal to consider an accommodation with individual conscientious objectors.

Third, the Committee dismissed the relevance of Article 8 of the ICCPR to the question of recognition of conscientious objection. Article 8 concerns the prohibition of forced labour, and is almost identical to Article 4 of the ECHR, which the (former) European Commission had considered to preclude an obligation to recognise conscientious objection.

Although the human Rights Committee’s Views are not binding on the European Court of Human Rights, they have persuasive value and are likely to be taken into consideration in deciding future cases concerning conscientious objection to military service.

In 2007, the Human Rights Committee also agreed its General Comment No. 32, concerning Article 14 of the ICCPR (published 23<sup>rd</sup> August). In the section on the principle “ne bis in idem”, the prohibition of repeated punishment, paragraph 55 of the General Comment refers explicitly to the repeated punishment of conscientious objectors, in the following words: “Repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.” The comment cites among other authority the opinion of the UN Working Group on Arbitrary Detention on the case of Turkish conscientious objector Osman Murat Ülke (Opinion No. 36/1999; UN Document reference E./CN.4/2001/14/Add. 1, para. 9); the same facts were also the subject of a case (No 39437) before the European Court of Human Rights, which in a judgment published on 24<sup>th</sup> January 2006 ruled that the repetitive character of the punishments and the situation of “civil death” to which the complainant was reduced by virtue of his non-performance of military service together constituted inhuman and degrading treatment in violation of Article 3 of the European Convention on Human Rights and Fundamental Freedoms. (but see further developments reported in Section V ii, below).

Article 10.2 of the Charter of Fundamental Rights of the European Union, approved by the European Parliament on 12<sup>th</sup> December, and incorporated in the Treaty of Lisbon, signed on the following day, states: “The right to conscientious objection is recognised in accordance with the national laws governing its exercise.”

In an interpretative statement, the Chairman of the Parliament’s Committee on Constitutional Affairs, MEP Jo Leinen, noted that this was the first explicit reference in a legally binding international codification to the right of conscientious objection to military service as an integral part of the freedom of thought, conscience and religion. ‘Mr. Leinen continued:

“It should also be noted that liberal legal regulations for conscientious objectors do not yet exist in all EU member states: Greece is an often quoted example. But also for the remaining states with all-volunteer armies, the duty arises from the Charter of Fundamental Rights to grant the right to refuse military service. Since each soldier – man or woman – is responsible and continues to be responsible to his or her own conscience, freedom of conscience must also be guaranteed in conflict situations. This possibility is also to be recognized legally and implemented liberally.

“Article 10 (2) of the EU Charter leaves the exact wording of such laws to the national level. The scope of interpretation, however, is essentially limited by the precept to maintain the article's fundamental content and by the principle of anti-discrimination. The paragraph's position in the Charter (Chapter II - Freedoms) furthermore justifies the need for a clearly liberal forming of the right to refuse military service.”

## ii) DEVELOPMENTS WITHIN MEMBER STATES

### Suspension of conscription into obligatory military service

**Bulgaria** The final cohort of conscripts was recruited in February 2007 and completed their nine-months service on 25<sup>th</sup> November.

**Latvia** Under legislation promulgated in 2004, the Latvian Armed Forces have been manned entirely by volunteers since the beginning of 2007.

Of the 27 member states of the European Union, only ten will be conscripting men into obligatory military service in 2008. They are: Austria, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Lithuania, Poland and Sweden (see next paragraph). Military service for women has always been voluntary in all member states.

**Sweden** In a study on the development of the Armed Forces over the next 20 years, published on 21<sup>st</sup> December 2007, the Swedish Armed Forces recommended a move to completely voluntary recruitment during peacetime. A parliamentary committee was established at the beginning of December 2007 to study the practicalities of abolishing obligatory military service. The committee is due to report in February 2009, with revised legislation coming into effect from 2010.

### Legislative Amendments

#### **Cyprus**

The parliament has approved an amended National Guard Law put forward by the Council of Ministers in June 2007. Under this Law, military service was reduced from 26 months to 25 months and alternative service for conscientious objectors from 42 months to 34 months. Military service was made obligatory for members of the Maronite, Latin and Armenian communities; it was previously obligatory only for members of the Greek Cypriot Community.

#### **Finland**

An amendment to Non-Military Service Act and Decree was passed by the Parliament. With effect from January 2008, it shortens alternative service for conscientious objectors from 13 months to 11 months. It also removes the anomaly whereby the availability of alternative service to conscientious objectors in Finland was suspended in time of war or national emergency.

### Imprisonment of conscientious objectors

Cases which came to the notice of EBCO in 2007 were Antti Rautiainen of **Finland** - imprisoned for sixteen days for non-payment of fines resulting from his refusal of repeated call-ups between 1997 and 2001 - and in **Germany** the repeated military arrest and imprisonment of Alexander Hense, Jonas Grote and Moritz Kagelman. This list may however not be exhaustive.

## IV

### PARTICULAR CONCERNS WITHIN THE EUROPEAN UNION

#### 1) Serving members of the armed forces

The resolutions of the European Parliament repeat that the right to manifest a conscientious objection to military service applies to everyone at any time, including during the performance of such service. The right of conscientious objection to military service implies not only the right to refuse such service, but, recognising that a conscientious objection may develop over time, also the ability to seek release from that service. As stated by the Chairman of the European Parliament's Constitutional Committee (quoted in Section III i above on page 8), this right must extend to all serving members of the armed forces, including "professional" personnel who volunteered to join in the first instance. Article 18 of the Universal Declaration of Human Rights states explicitly that the freedom of thought, conscience and religion includes the freedom to change religion or belief. This not only means that the individual should be free to change denominational adherence, but also that in matters of conscience he or she must not be considered unable to develop convictions which might appear incompatible with his or her earlier actions or decisions. Although the principle is true in any circumstances, it might be particularly noted that the decision to embark upon a military career is often made at a relatively young age, when many people's fundamental beliefs are still in the course of development.

There are however considerable doubts about the extent to which the right to release from military service on grounds of conscience has been realised in practice within the European Union. Only in Germany and the UK are procedures known to exist whereby contracted serving members of the armed forces may apply for release having developed a conscientious objection; although their very existence is commendable, the procedures in the UK certainly do not fully accord with the relevant elements of the general criteria set out in European Parliament resolutions and set out above (provision of information, acceptance of a declaration, uncomplicated processes, independent appeal opportunities etc). There have been reports that such releases are theoretically possible in other member states (for instance in a survey of provisions on conscientious objection issued by the Committee on Legal Affairs and Human Rights of the Council of Europe in May 2001), but no details have been given and there is no indication that actual instances have ever occurred. Subject to further information, it seems probably that such reports have been based on questionable interpretation of legal provisions, inadequate understanding of the issues involved, or both.

The issue of human rights in the armed forces, including the provisions for conscientious objection, is currently being studied in depth by a sub-group of the Council of Europe's Committee of Experts on the Development of Human Rights, and it is to be hoped that this study will result in the formulation of new standards..

*As the OSCE/DCAF Handbook has been published only now in 2008 following a series of meetings in 2006, and as it would be rather difficult to reconcile some of its analysis with the rest of this report, my inclination would be to save it for the 2008 report.*

For the right of conscientious objection to be fully recognised in the situation of serving members of the armed forces, it is necessary that a release specifically on such grounds be available, and that such a release be treated as "honourable". Conscientious objectors should not be discharged on conditions equivalent to those whose performance of their duties has been inadequate, nor in principle should their discharge be subject to any penalties or potential impediments, such as the requirement to reimburse the cost of training. The procedure for applying for release should be clear and uncomplicated, and a person who applies for release on grounds of conscientious objection should not as a result come under pressure to accept discharge on other grounds -

descriptions such as “incompatibility with military life” or “compassionate reasons” inevitably carry the implied stigma of some form of inadequacy on the part of the person concerned. In particular it is essential that release as a result of conscientious objection must be clearly distinguished from release on mental health grounds, as some conscientious objectors, in common with other former armed forces personnel, may exhibit symptoms of post-traumatic stress disorder following combat experience. Conscientious objection is not given due respect when it is treated as equivalent to any decision to terminate a contract of employment early; it is essential that an application for release on grounds of conscientious objection has immediate suspending effect - operational reasons can never justify keeping a conscientious objector in active service any longer than is practicable. Military contracts are more restrictive than those for civilian employment, but in any case the concept of a conscientious objector working out a period of notice in the front line makes no sense, morally or militarily. It should also be noted that whereas a civilian employment contract can in extremis come to an end as a result of the employee’s refusal to continue to carry out its terms, such a refusal can be subject only to civil penalties consistent with the contract. By contrast breach of a military contract of employment will usually lead to a court martial and criminal penalties, which can include lengthy imprisonment.

Of particular relevance to the situation of volunteer members of the armed forces is the case of conscientious objection only to a particular conflict or military operation, which is often termed “selective” objection. This may result from the moral development of the objector, but in other situations may represent his or her being faced with a specific situation which was not reasonably foreseeable at the time of volunteering, or be associated with the perceived illegality of the action concerned.

ii) Possible reintroduction of conscription Most of the member states which have ceased in recent years to enforce conscription have retained legal provisions enabling its reintroduction in the event of war or national emergency. In such cases **it is important that appropriate arrangements for conscientious objectors should be assured. Where the arrangements which applied at the time when conscription was suspended were not in line with best practice, improvements should be made in advance of any possible future reintroduction;** some examples have been given in the preceding section. EBCO will in coming years be involved in the monitoring of the precise situation in this respect, and in suggesting remedial action where appropriate.

iii) The situation in Greece Various resolutions of the European Parliament have referred specifically to the iniquitous conditions facing conscientious objectors in Greece. In 1997, Greece did finally make provision for the performance of a civilian alternative to obligatory military service by recognised conscientious objectors. However despite this legislation there are still serious concerns about the situation. In many respects Greek legislation and practice is not consistent with the principles laid out in the resolutions of the European parliament. Information on the possibility of declaring a conscientious objection to military service is not provided to conscripts in a readily comprehensible format. There are strict time limits for application, and the technical requirements, which include the provision of certificates from the police and the forest service that the objector does not have any convictions and has never had a firearms licence or a hunting permit are arbitrary and difficult to fulfil. Conscientious objectors are assessed by a tribunal which is dominated by the military. Very few grounds for recognition are accepted - most successful applications have been made by Jehovah’s Witnesses; applications from members of the majority Greek Orthodox church being routinely

rejected as not having the support of the Church authorities. The possibilities for recognition are so slim that objectors generally seek other means of avoiding military service. The length and conditions of alternative service are punitive and although the service itself is performed for civilian organisations it is allocated and monitored by the military authorities. In particular, objectors may not be allocated to alternative service in their home area or in the six largest cities (Athens, Salonica, Patras, Volos, Larissa and Iraklion) - the sole reason for this apparently being in order to make such service less attractive. Disciplinary offences and breaches of the terms of engagement committed by those performing alternative service are not subject to appropriate sanctions within the terms of the alternative service, but can - altogether inappropriately - lead to the recognition of their conscientious objection being revoked, and military service being required. Conscientious objectors who persist in their refusal to perform military service are liable to repeated call-up and imprisonment; they are also suffer permanent discrimination in civil matters, being disenfranchised - unable either to vote or to stand for election - excluded from employment in the public sector, and forbidden to leave the country, obtain a passport, or serve on a merchant ship plying outside territorial waters. A particularly iniquitous feature of the Greek legislation is that, far from being exempt from military service, as they would be in most other countries, persons liable to military service who have taken up permanent residence in Greece after having performed military service in another state are by definition precluded from recognition as conscientious objectors.

In 2001 the European Committee on Social Rights (Quaker Council of European Affairs v. Greece; Complaint No. 8/2000; Decision on the merits 25 April 2001) found that the disproportionate duration of alternative service constituted a violation of Article 1.2 of the European Social Charter - "the right of the worker to earn his living in an occupation freely entered upon". In response to this and other criticism, particularly to the effect that alternative service lasted more than twice as long as military service, the Greek government in 2004 amended its legislation so that for any individual conscientious objector the length of alternative service would be exactly one month less than the length of military service he would have faced, given his personal and family circumstances; the maximum became 23 months, as against 12 months' military service. Some of the restrictions on the freedom of movement and the civil rights of those performing alternative service were also eased.

**The Greek government should now be encouraged to make further reforms to bring its provisions for recognising the rights of conscientious objection and its arrangements for alternative service fully in accordance with European norms.**

iv) The situation in Cyprus.

Despite the 2007 revision to the National Guard Law, the legislation concerning conscientious objection in Cyprus remains punitive in nature and there are doubts as to whether a genuine civilian alternative service actually operates in practice - the legislation refers to "unarmed military service outside the armed forces".

It should also be noted that these provisions only apply in the part of the island under the control of the national government. There are no provisions for conscientious objection to military service in the northern part of Cyprus; where male residents aged between 19 and 30 are liable to military service of 15 months, under the provisions of Law 59/2000 passed by the "Turkish Republic of Northern Cyprus". The fact that this entity, not being internationally recognised, has no legal authority to require obligatory military service cannot detract from the rights of the

conscientious objectors affected by the de facto conscription imposed. In this respect, the responsibility of Turkey, as the controlling power is engaged under international law.

*I could not trace the reference to the case which was quoted in our meeting. Can anyone help tidy this argument up?*

It may be noted that in December 2007 a new initiative was launched in Northern Cyprus, campaigning for the recognition of the right of conscientious objection to military service to be explicitly mentioned in the “constitution” of the unrecognised republic.

v) The situation in Lithuania

As indicated in the summary under the different questions, there are considerable doubts as to whether the legislation concerning conscientious objection to military service in Lithuania is being implemented in a systematic fashion and therefore of whether the option of truly civilian service is in practice available to conscientious objectors in Lithuania.

## CONCERNS IN CANDIDATE COUNTRIES

### i) Overview

Developments in candidate countries and potential candidate countries have largely mirrored those in member states. At the end of 2007 **Croatia** joined fellow candidate country **Macedonia** and potential candidate countries **Bosnia-Herzegovina** and **Montenegro** in suspending obligatory military service. There is a functioning system of alternative service in potential candidate country **Serbia** (but see below for an outline of some shortcomings in the current situation). Provisions on conscientious objection were included in the 2003 Law on Military Service in potential candidate country **Albania**; EBCO is still seeking detailed information on their implementation in practice. The situation in candidate country **Turkey** is however unique and of great cause for concern.

### ii) The Situation in Turkey

There is no legislative recognition of the right of conscientious objection to military service in Turkey. Turkey is now the only member of the Council of Europe to be in this situation. Moreover, Article 318 of the Penal Code criminalises “Turning the people against military service”, a provision which is used to limit discussion of, and dissemination of information about, even the concept of conscientious objection..

Conscientious objectors face repeated call-up to perform military service. Because their objection is not recognised, they are treated as members of their armed forces and are punished under the military penal code for disobeying orders or for desertion. No limit of time or number is set on the proceedings which can be brought against any on individual. In civilian life those who have not performed military service are unable to obtain any form of authorisation from the authorities, they cannot work in the public sector, leave the country, obtain a passport or have their marriage recognised for civil purposes.

A judgment of the European Court on Human Rights in January 2006 (*Ülke v Turkey* - application no.39437/98), found that the repeated imprisonment of a conscientious objector for failure to perform military service and his subsequent lack of civil status constituted inhuman or degrading treatment.

Far from implementing the decision, the Turkish military prosecutors office in July 2007 issued a renewed arrest warrant for Ülke on charges. In a decision reached at its meeting on 17<sup>th</sup> October, the Committee of Ministers of the Council of Europe

“URGES the Turkish authorities to take without further delay all necessary measures to put an end to the violation of the applicant's rights under the Convention and to adopt rapidly the legislative reform necessary to prevent similar violations of the Convention;

“INVITES in particular the Turkish authorities rapidly to provide the Committee with information concerning the adoption of the measures required by the judgment;”

and “DECIDES to examine the implementation of the present judgment at each human rights meeting until the necessary urgent measures are adopted.”

Other cases concerning the repeated imprisonment of conscientious objectors in Turkey are currently pending before the ECHR, and further cases have been referred to the UN Working Group on Arbitrary Detention.

**It is a matter of urgency that Turkey be persuaded to introduce legislation recognising and implementing the right of conscientious objection to military service and to cease the persecution of past conscientious objectors.**

### iii) The Situation in Serbia

After some initial difficulties, arrangements for conscientious objectors in Serbia to perform civilian alternative service are now well established, and the proportion of those liable for military service who avail themselves of this legislation is one of the highest in the world. However the entire system remains too closely under the control of the army, which decides on applications for conscientious objector status, allocates placements with no appeal possibilities, and adjudicates on all disputes concerning the performance of alternative service. The length of alternative service is punitive in comparison with military service, and conscientious objectors do not receive the same remuneration as those performing military service.

Another concern in the case of Serbia is the refusal to allow retrospective recognition of the conscientious objector status of those who left the country in order to avoid participating in the wars of the early 1990s, when there was no recognition of conscientious objection to military service in the legislation of the then Yugoslavia. On re-entering the country such persons remain liable to the requirement to perform military service, without any alternative service option. Amendments to the military service legislation raised the age of liability from 27 to 35 years.

## VI.

### RECOMMENDATIONS

- ❖ Article 10 of the Charter for fundamental rights of the European Union needs further attention to guarantee this fundamental right in all member states without any discrimination whatsoever.
- ❖ Discriminations of conscientious objectors within the EU need to be addressed by the Ombudsman, Parliament and the Commission.
- ❖ No EU citizen should be punished for his conscious decision to perform military service
- ❖ European Voluntary service should be open for conscientious objectors.
- ❖ Development service and civil peace services need support from the European Commission and the European Parliament.
- ❖ Human rights reports of the European Union should include the question of conscientious objection and the protection of human rights defenders in this field including refugee status for objectors from countries where they expect punishment, for objectors refusing to serve in unjustified wars or intervention specifically not covered by the UN Charter.

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These sources have been supplemented and updated by information supplied by EBCO members.