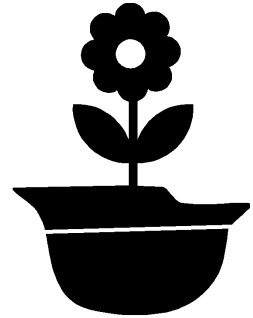


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REPORT TO THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS OF THE EUROPEAN PARLIAMENT

Conscientious Objection in Europe 2009/10

Brussels, May 2010

Corrections to 2008 Report:

The following errors in the “Focus on Germany” section of the 2008 report were picked up too late to be corrected in the published version.

The correct spelling in German of the military service law is *Wehrpflichtgesetz*.

The *Wehrpflichtgesetz* alone governed the arrangements for conscientious objectors until 1984; it was only in that year that a *Kriegs-dienstverweigerungsgesetz* was introduced.

And when we reported that since 1999 the number of young men performing civilian service has exceeded that performing military service it should have been made clear that this referred to those performing military service as conscripts, not to the entire personnel of the German armed forces.



SUMMARY

EBCO's report for the year 2009 on conscientious objection in Europe differs from its predecessors in that it does not restrict itself strictly to developments within the calendar year. This is primarily because it was felt to be important to include two important developments in the elaboration of standards which occurred during the preparation of the report in the early months of 2010 – the Recommendation of the Committee of Ministers of the Council of Europe on Human Rights in the Armed Forces and the Views adopted by the UN Human Rights Committee in the cases of *Eu-min Yung et al v Republic of Korea*. Having chosen to include these decisions it would have been illogical to ignore developments in the early months of 2010 regarding some of the other issues reported on. That said, no attempt is made at a comprehensive coverage of relevant events beyond the end of the calendar year 2009; the intention is that this will be done in the normal fashion in the EBCO Report for 2010.

The year 2009 saw a further reduction in the number of EU member states which require military service of their citizens. The Swedish government decided in March that conscription would end with effect from July 2010, leaving only seven of the 27 EU member states still enforcing conscription. Nevertheless, as this report highlights, progress towards adequate recognition of the right of conscientious objection in Greece is still painfully slow, and in candidate country Turkey there is still no legislative recognition of the right. Cyprus falls between the two; in half of the island the legislation is woefully inadequate, in the other half the right of conscientious objection is not recognised at all.

The increasing “professionalisation” of EU armed forces does not mean the end of conscientious objection as an issue – our report focusses also on the woeful lack of provision in most EU member states for the release of persons who originally joined the armed forces voluntarily but who, sometimes as a direct result of their experiences, subsequently became conscientious objectors.

It is sixteen years since the European Parliament passed a resolution on conscientious objection to military service. Since then there have been enormous steps forward in both state practice and international standards. EBCO strongly urges the European Parliament to work on a new resolution which would bring the EU back to its rightful place leading, rather than following, the gathering international consensus on this issue.



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1. INTRODUCTION

In furtherance of 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), under which 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,*" and following its reports for the calendar years 2007 and 2008, 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 since the beginning of 2009.

2. DEVELOPMENTS SINCE JANUARY 2009

2.1 INTERNATIONAL STANDARDS AND JURISPRUDENCE

2.1.1 Committee of Ministers of the Council of Europe

On 24th February 2010, the Committee of Ministers of the Council of Europe adopted Recommendation CM Rec (2010) 4, on the human rights of members of the armed forces. Ranging over the complete field of human rights, it represents a major move forward, and an abandonment of the exceptionalism with which the armed forces have traditionally been treated.

Section H specifically addresses the freedom of thought, conscience and religion. It reads:

“40. Members of the armed forces have the right to freedom of thought, conscience and religion, including the right to change religion or belief at any time. Specific limitations may be placed on the exercise of this right within the constraints of military life. Any restriction should however comply with the requirements of Article 9, paragraph 2, of the Convention. There should be no discrimination between members of the armed forces on the basis of their religion or belief.

41. For the purposes of compulsory military service, conscripts should have the right to be granted conscientious objector status and an alternative service of a civilian nature should be proposed to them.

42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.

44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

45. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.

46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.”



2.1.2 European Court of Human Rights

Lawyers acting for the Peace Tax Seven were informed in February 2009 that their application to the European Court of Human Rights had not been admitted.

The seven had brought a joint case through the English courts calling for a judicial review of whether their individual convictions for tax offences - which had arisen from their conscientious objection to the use for military expenses of the taxes for which they were liable - were in this regard in conformity with the Human Rights Act which had enshrined the European Convention on Human Rights in UK domestic law, but the courts ruled that it was not within their competence to review the Strasbourg jurisprudence in this matter.

By not admitting the application, the European Court of Human Rights declined to consider the case on its merits and did not therefore give an authoritative ruling on the applicability of the guarantees of freedom of conscience in Article 9 of the Convention to the area of taxation for military purposes.

On 12th March 2009, the Court issued judgements in the cases of Lang v Austria (Application No 28648/03), Gutl v. Austria (Application No. 49686/99) and Löffelmann v. Austria. (Application no. 42967/98):

“Gerhard Lang, is an Austrian national who was born in 1969 and lives in Altmünster (Austria). He is a Jehovah's Witness and is an elder (Ältester) for the community which involves providing pastoral care, leading church services and preaching. Relying in particular on Articles 4 (prohibition of forced labour), 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of the European Convention on Human Rights, he complained that he had not been exempt from military service, unlike members of other recognised religious societies holding comparable religious functions. The European Court of Human Rights considered the Austrian Military Service Act discriminatory and held, by six votes to one, that, as a result of the application of that Act, Mr Lang had not been exempt from military service, in violation of Article 14 in conjunction with Article 9. The Court awarded Mr Lang 12,664.36 euros (EUR) for costs and expenses

The other two cases also concern Austrian nationals: Markus Gütl who was born in 1977 and lives in Belgrade (Serbia); and, Philemon Löffelmann who was born in 1976 and lives in Maissau (Austria). They are members of the Jehovah's Witnesses. Relying in particular on Articles 9 (freedom of thought, conscience and religion) and 14 (prohibition of discrimination) of the European Convention on Human Rights, they complained of having been forced to perform civil service in lieu of their military service while members of other recognised religious societies holding religious functions comparable to theirs were exempted from that requirement. The European Court of Human Rights held unanimously that there had been a violation of Article 14 in conjunction with Article 9 of the Convention on account of discrimination against the applicants on the ground of their religion. The Court awarded Mr Gütl 4,000 euros (EUR) in respect of non-pecuniary damage and 8,462.30 EUR in respect of cost and expenses and Mr Löffelmann 4,000 EUR in respect of non-pecuniary damage and 10,698.53 EUR in respect of cost and expenses”

(Case summaries from Human Rights Without Frontiers International Newsletter “Religious Intolerance and Discrimination”, 30th March 2009, www.hrwf.net).



In a further case relating to military taxation, although not involving conscientious objection, the Court on 30th April found for the complainant in the case *Glor v Switzerland* (Application No.13444/04). Having been adjudged not fit for military service, on the grounds of diabetes which had to be regulated by insulin injections, he had been required to pay the supplementary tax of 3% levied on male citizens of the relevant age who in a given tax year do not perform military service or the alternative civilian service required of conscientious objectors. The complainant was perfectly willing to perform military service; in civilian life he was able to earn his living by driving a heavy goods vehicle and saw no reason why he should not perform a similar role in the context of military service. In a judgement which was highly critical of the logic of the system, the Court found for the complainant on the grounds of discrimination, because had his disability been more severe he would not have been liable for the tax. Switzerland was subsequently refused leave to appeal to the Grand Chamber.

A Chamber judgement delivered on 27th October 2009 in the case of *Bayatyan v Armenia* (Application No. 23459/03), concerning a Jehovah's Witness who was sentenced to two and a half years in prison following his refusal of military service on the grounds of conscientious objection, contained the surprising assertion that conscientious objection to military service is not protected under the European Convention on Human Rights. In coming to this decision, the Chamber had relied not on Article 9 of the Convention (freedom of thought, conscience and religion) but on Article 4 (forced labour), which includes the words "For the purposes of this article, the term 'forced or compulsory labour' shall not include... any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service".

The relevant international documents cited did not include the "Views" adopted by the United Nations Human Rights Committee in 2006 in the cases of *Yeo-Bum Yoon* and *Myung-Jin Choi v Republic of Korea*, in which the Committee had stated that the almost identical wording of the equivalent article of the International Covenant on Civil and Political Rights "itself neither recognises nor excludes a right of conscientious objection", and in which they found that conscientious objection to military service was a protected manifestation of the freedom of thought, conscience, and religion. The *Bayatyan* case is being appealed to the Grand Chamber, and it to be hoped that the Grand Chamber will bring the interpretation of the European Convention in this respect into line with that of the International Covenant. (see also next item – UN Human Rights Committee)



2.1.3 UN Human Rights Committee

In an unanimous decision published on 14th April 2010 regarding communications from eleven further conscientious objectors in South Korea, the Human Rights Committee reiterated and reinforced its earlier conclusions in the cases of *Yeo-Bum Yoon and Myung-Jin Choi*, stating that for all eleven their "conviction and sentence amounted to an infringement of their freedom of conscience and a restriction on their ability to manifest their religion or belief". Significantly, whereas Yoon and Choi had both been Jehovah's Witnesses, the latest complainants included a Catholic, a Buddhist and nine who did not cite a religious allegiance; the decision therefore confirms the principle of not discriminating with regard to the nature of the beliefs leading to the conscientious objection.

(UN Document CCPR/C/98/D/1593-1603/2007: *Eu-Min Yung et al v Republic of Korea*)

2.1.4 UN Special Rapporteur on Freedom of Religion or Belief

In her 2009 report to the General Assembly of the United Nations, the Special Rapporteur on Freedom of Religion or Belief, Ms Asma Jahangir, identifies conscientious objection to the performance of military service as an issue of concern in some States, and observes:

"The Special Rapporteur welcomes the fact that a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced compulsory military service with alternative national service. However, certain domestic legislation remains problematic in terms of the eligibility to and conditions of conscientious objection. The Special Rapporteur recommends a thorough review of these laws from the perspective of their compliance with international standards and best practices."

(UN Document A/64/159, para 16.)

2.1.5 Universal Periodic Review Process of the UN Human Rights Council

The issue of conscientious objection to military service has featured in the consideration of a number of State Reports under the Universal Periodic Review (UPR) process of the UN Human Rights Council, including those of EU Member State Finland and Potential Candidate Country Serbia.

Finland

The only EU member state yet to have been questioned on this issue is Finland. In the very first session of the UPR Working Group, in February 2008, "The United Kingdom (...) welcomed the attempts to end discrimination against conscientious objectors through the reforms of the Non-Military Service Act. However, it encouraged Finland to go further in reducing the duration of non-



military service and to establish parity between the length of non-military service and the average, rather than the longest possible, length of military service.”

(UN Document No. A/HRC/8/24, 23 May 2008, para 36).

(Unfortunately, because the word “recommend” was not used, this was not listed as a formal recommendation – in subsequent Sessions, states noted and adapted to the secretariat practice in this respect.)

Serbia

The issue was raised with Potential Candidate Country Serbia in the Third Session of the Working Group.

The Russian Federation asked whether the legislation provided for the possibility of substituting alternative civil services for military services.

The full transcript of of Serbia's response reads:

“One question was related to conscientious objection and civil serving. According to the Constitution, conscientious objectors can be called to serve their military duty without obligation to carry weapons in line with the law. In the territory of the Republic of Serbia, 1,730 organisations and institutions have been nominated for civil service; they are public healthcare services, social welfare, public utility and providing skills to disabled persons. The civil service lasts for nine months and at the moment the ration is 49% to 51% to the benefit of people who want to serve under arms.”

Slovenia asked, “What steps has the Government of Serbia taken to provide the conscientious objection to military service and to equalize the length of alternative and military service?” and recommended: “ To reinstate civilian control of decision-making in relation to applications for conscientious objection to military service, to expand the time during which applications can be made, to remove the exclusion of all those who have ever held a firearms license from being recognized as conscientious objectors, and to equalize the length of alternative and military service.”

(UN Document A/HRC/WG.6/3/L.10, paras 30, 33, 51 and 57(16); the direct transcript is taken from the UN podcast of the session)

The Serbian Government responded in writing to Slovenia's recommendation when the draft report was adopted at the Tenth Session of the Human Rights Council:

“29. In the RS, the right to conscientious objection is adequately regulated by legal regulations, and civil control has been established both when it comes to decisions during the procedure of submitting conscientious objection and the realization of forms of military service on the basis of the said right. Certain proposals and recommendations of the Republic of Slovenia have already been incorporated into the Draft Law on Civilian Service, which is in parliamentary procedure. With the passage of that law, civil control regarding civilian service would be laid out in detail, so that the members of the Appeals Commission shall not be members of the Ministry of Defense, except for the Commission president. This will



reduce the possibilities of abuse on the part of the First Instance Commissions and organizations or institutions, thereby ensuring total civil control over civilian service.

30. The duration of civilian service equals nine months, which is the shortest relative to countries that have civilian service as a way of regulating military service. The equalization of military and civilian service **is not possible**, because a soldier serving armed military duty spends an uninterrupted six months in his unit, while a person in civilian service spends eight hours in his assigned organization or institution, is free on weekends and has the right to regular and awarded leave. The proposal “to invalidate the exception of those who have held weapon permits from the right to conscientious objection” is in absolute collision with the arguments of the institution of conscientious objection and, thus, **cannot be accepted.**”

(A/HRC/10/78/Add.1 of 18 March 2009, paras 29 and 30)

Questions from EU Members to other States

Slovenia has also raised the issue of conscientious objection to military service with Colombia, Eritrea, Israel, Turkmenistan and Uzbekistan. The United Kingdom put a question to the Republic of Korea.

2.1.6 Constitutional Court of Colombia

In a decision published on 14th October 2009, the Constitutional Court of Colombia dismissed a challenge that the law on military recruitment was unconstitutional, as it did not contain provisions for the exemption of conscientious objectors, but decided nevertheless that in the light of the constitutional guarantees of the freedom of conscience, and its obligations under international instruments, it was incumbent upon Colombia to legislate for the exemption of conscientious objectors from military service, and that pending the introduction of appropriate legislation individual conscientious objectors must be able to invoke the constitutional provisions in order to enforce the right .

Although this is a domestic ruling, it is highly significant because Colombia is one of the few states in the world which has persisted in claiming that there is no right of conscientious objection to military service, and hitherto the Government has used rulings by the Constitutional Court to argue that the clause in the constitution regarding the duty of military service trumps all other considerations.

The same logic would apply in EU Candidate Country Turkey (see section 4 below), which like Colombia (and in company with all other member states of the Council of Europe) is a party to the International Covenant on Civil and Political Rights, and is bound by the jurisprudence under that Covenant to respect the right of conscientious objection to military service whether or not there are appropriate provisions in the military recruitment legislation.



2.1.7 World Council of Churches

Following the production of a report on conscientious objection to military service within the context of its “Decade to Overcome Violence” project, the Central Committee of the World Council of Churches in September 2009 made its first pronouncement for many years on the subject. The full text of their “Minute” reads:

1. The World Council of Churches (WCC) and other civil society organizations urged the United Nations in 1973 to recognize conscientious objection to military service as “a valid expression of the right of freedom of conscience” and make alternative means of service available to conscientious objectors. The Statement on the Question of Conscientious Objection to Military Service from 1973 says that the WCC and its partner organizations “believe that the time has come for the Commission (on Human Rights) to take a decisive step towards the international recognition of the right of conscientious objection to military service”. Four considerations were cited as a basis for that belief: growing concern among religious communities, respect for the right to freedom of thought and for the integrity of the individual, the role of youth in promoting peace, and the fact that the lack of alternatives to armed service leads to a waste of human resources and prison terms of young people with deeply held convictions.

2. Succeeding years have seen recognition granted in international forums and a UN covenant on civil and political rights. The ecumenical movement, through the Conciliar Process for Justice, Peace and the Integrity of Creation, leading up to the 1990, Seoul, Korea Convocation on JPIC, reaffirmed the right to conscientious objection. As a result, conscientious objection to military service in principle has reached new levels of protection under the freedoms of thought and religion, as well as freedom of conscience.

3. A report by the UN High Commissioner for Human Rights in 2006, however, revealed serious shortfalls in many countries in recognizing and exercising the right to conscientious objection to military service and found that conscientious objectors are often subject to penalization, discrimination and imprisonment. The WCC central committee then called for a study in the light of that report.

4. The WCC study shows that in many places churches face challenges of conscientious objection. Their responses include initiatives to support conscientious objectors in some countries. Three observations provide an overview of church positions on the issue: Historic Peace Churches strongly encourage their members to refuse participation in any military actions. Meanwhile, they respect the freedom of the individual decision. Other churches consider that both civilian service and military service may be Christian options. Finally, while many, and perhaps most churches, do not have an official position on the issue, the study found no evidence of these churches speaking against conscientious objection.

5. The study suggests that a consensus position among churches is to affirm the right of conscientious objection so that individuals who feel they cannot bear weapons for religious or other reasons of conscience should have the possibility to object without being submitted to discrimination or punishment.

6. It is also noted that in some countries where there is a right to conscientious objection to military service, some Christians have become sensitive to the use of their tax money for



supporting war, and in some cases have faced government action against them because of their conscientious objection to paying for war. This development of conscientious objection deserves further study and consideration.

7. As the Decade to Overcome Violence affirms the biblical foundations, especially as expressed in the Sermon on the Mount: The merciful, the peacemakers and the persecuted are blessed in the Beatitudes; and Jesus teaches love even for one's enemies (Matthew 5: 6-9).

Therefore, the central committee of the WCC, meeting in Geneva, Switzerland, 26 August - 2 September 2009:

A. Reiterates existing WCC policy and reaffirms its support for the human right of conscientious objection for religious, moral or ethical reasons in accordance with the Universal Declaration of Human Rights (1948) and other international laws, as churches have an obligation to support those who refuse to take part in violence.

B. Calls upon WCC member churches, wherever they are in a position to do so, to uphold the right of refusal to bear and use arms and to encourage church members to uphold that right as well.

C. Deplores the situation that men, women and children in many parts of the world are forced into armed service under governments and also under non-governmental forces or paramilitary organizations.

D. Encourages member churches to address their respective governments and military organizations to recognize and honour conscientious objection to military service as a human right under international law.

E. Calls upon churches to encourage their members to object to military service in situations when the church considers armed action illegal or immoral.

F. Encourages churches to study and address the issue of military or war taxes and of alternatives to military service.

G. Calls upon all Christians to pray for peace, abandon violence and seek peace through nonviolent means.

(WORLD COUNCIL OF CHURCHES CENTRAL COMMITTEE MINUTE ON THE RIGHT OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE, Adopted in Geneva 1st September, 2009)

The text is taken from the World Council of Churches website at:
<http://www.oikoumene.org/en/resources/documents/central-committee/geneva-2009/reports-and-documents/report-on-public-issues/minute-on-the-right-of-conscientious-objection-to-military-service.html> ,
where there is also a link to the background report.



2.2 DEVELOPMENTS WITHIN MEMBER STATES AND CANDIDATE COUNTRIES

2.2.1 Suspension of conscription

Lithuania

On 1st July 2009, the last conscripts left the Armed Forces of Lithuania. This completes the transition of the Lithuanian Armed Forces to a volunteer force.

The relevant law "On the Principles of Organisation of the Lithuanian Armed Forces", had been passed on 13th March 2008. This authorised parliament to set the number of conscripts to be recruited each year, with the aim of eventually reaching a "zero quota" - i.e. suspending conscription.

As detailed in our 2008 report, an order to discontinue compulsory basic military service came into force on 15th September of that year. Thereafter, the Conscript Administration Service has continued to register those liable for military service, but not to perform medical examinations or any other part of the conscription process.

On 3rd April 2009 the Constitutional Court confirmed the constitutionality of the new arrangements.

(Source: War Resisters International: CO-Update, October 2009, No. 51)

Poland

The last batch of 3,200 conscripts completed their nine months of military service at the end of September 2009. One hundred of them had agreed to undergo a trial of a new training regime designed for future volunteer recruits. According to an article in *Gazeta Wyborcza*, the obligation to register for military service will continue; it will however be possible to do this by e-mail.

(Source: War Resisters International: CO-Update, May 2009, No. 47)

Sweden

On 19 March 2009, the Swedish government announced that conscription would cease by 1st July 2010, as part of a package of military reforms. It will be reintroduced only if the country's security situation worsens. With this move, a tradition of more than 100 years of conscription will come to an end. *"Staff support will be modernized so that voluntary service constitutes the foundation for the staffing of the force instead of compulsory military service,"* the defence ministry said in a statement. Sweden will henceforth rely on a part-volunteer, part-professional military.

Under the previous arrangements most conscripts had to undergo military service of 2 periods totalling around 11 months. However, in recent years, only about 8,000 of an annual cohort of 120,000 liable for conscription have in practice been called up. This has led to a sharp decline in the numbers who have felt it necessary formally to apply for conscientious objector status, from upwards of 2,000 per annum in the mid 1990's to a mere 160 and 128 in 2005 and 2006, respectively. In consequence, EBCO is alarmed to note, the institutions which formerly provided non-military basic training for conscientious objectors in Sweden have been closing down, with the result that conscientious objectors are instead initially assigned to the "training reserve"

(Source: War Resisters International: CO-Updates, April 2009, No. 46, & October 2009, No. 51)



With effect from January 2010, obligatory military service has also ended in Potential Candidate Country **Albania**.

In Potential Candidate Country **Serbia** the Defence Ministry has announced that it will fully professionalise the army by mid-2011 and abolish compulsory conscription of all able-bodied males older than 18.

Overview:

When Swedish conscription ceases on 1st July 2010, only seven (Austria, Cyprus, Denmark, Estonia, Finland, Germany, and Greece) of the twenty-seven EU member states will still be conscripting men into obligatory military service. Candidate countries Croatia and Macedonia, and Potential Candidate Countries (PPC) Albania, Bosnia-Herzegovina and Montenegro have also abolished or suspended conscription.

In Denmark and Germany, the duration of alternative service for conscientious objectors is equal to that of military service; in the other states it remains punitive:

Austria	3 months (50%)	longer
Cyprus	9 months (37.5%)	longer
Estonia	8 months (100%)	longer
Greece	6 months (66.7%)	longer, after latest announced reductions
Finland	6 months (100%)	longer than basic military service
Serbia (PCC)	3 months (50%)	longer.

In Candidate Country Turkey there is no provision for alternative service for conscientious objectors.

2.2.2 Legislative amendments and proposals

Germany

In June 2009 the German Law on Civilian Service (*Zivildienstgesetz*) was again amended: The first part of the latest amendment came into force on 1st January 2010. With effect from that date, civilian service is officially understood as service deepening the personal and social development of conscientious objectors ("*Zivildienst als Lerndienst*"). Training courses aimed at increasing awareness and developing personal, professional or social skills are offered together with meetings for reflection on the experience of alternative service as an integral part of alternative service – with effect from 2011 some courses and seminars will be obligatory.

EAK (the Protestant Association for Conscientious Objectors) observes that on one hand it is positive that civilian service is no longer seen merely as an equivalent burden to that of military service. On the other hand the quality of the educational component will depend on whether such critical ideas as non-violence, constructive conflict management and conflict prevention will be promoted. There are fears that the Family & Youth Ministry (which is responsible for alternative service) prefers an individualistic conformist educational program rather than fostering the critical reflection on political subjects, taking into account the motivation for conscientious objection, which is favoured by EAK.

(Source. E-mail from Friedhelm Schneider, *Frieden und Umwelt*, 19th October, 2009)



Cyprus

According to a report ("Compulsory army service reduction off the cards 'for now'") in the Cyprus Mail of 11th March 2009, the Council of Ministers had postponed further action on the previously announced plan to reduce military service to 19 months. The proposal had linked the progressive shortening of military service to arrangements whereby 18-year-old high-school graduates would start their military service in July, while those who were not yet 18 in July would – as in the past – begin military service in January. Politicians had however argued that this two-tier conscription would cause social problems, and Minister of Defence Costas Papacostas was quoted as saying, "*Due to the stance taken by the majority of the political parties it is very difficult for the Ministry to move forward, because we do not wish to do something with which the political scene disagrees.*". Although the proposal would be reintroduced, it was now too late for it to take effect in 2009. The separate proposal for the reform of the National Guard had also been halted for the time being, because the Defence Ministry believes that the two proposals are complementary.

As mentioned in the 2008 EBCO Report, military service had in December of that year been reduced from 25 to 24 months, as the first step in the process, and there has been no suggestion that this change might be reversed.

Denmark

Denmark's "Defence Commission", set up in 2007 to provide direction to the government's 2010-14 National Defence Plan, reported in March 2009. This advocates retaining conscription, but recommends a broad debate "into the future value" of conscription, according to a report released in March 2009. The commission's report calls for defence spending be increased by 10% - 15% to accommodate a rapid expansion of Denmark's land forces and important equipment procurement programmes.

A report in the Copenhagen Post of 25th June 2009 indicated that the Danish parliament had reached agreement on a major funding boost for the military. The issue of conscription had also been discussed as part of the defence budget negotiations and parliament would examine farther whether all 18-year-old women as well as men should be obliged to attend the newly introduced "Danish Defence Days" (*Forsvarets dag*).

At present, there are more conscripts than the armed forces need. Therefore in practice only between a third and a half of the number eligible are called up for military service. Selection is by drawing lots at the time of the "Defence Day", which is also when medical examination takes place. Priority is given to those who volunteer, thus most "conscripts" in the armed forces have in fact volunteered to serve.

Source: War Resisters International: CO-Update, July-August 2009, No. 49



Turkey (Candidate country)

A report in "Today's Zaman" on 26th. May 2009 indicated that the Turkish military is proposing a far-reaching modernisation, but will maintain conscription. The proposed bill, which has been forwarded to the Ministry of Defence for review, introduces a mixed system made up of both professional and conscripted army units.

If the bill passes, university graduates, who currently are required to serve a short-term national service of six months, will have to serve for 12 months. The service duration for males who have not graduated from a higher-education institution will remain 15 months.

The draft bill leaves all tasks requiring specialisation to professional soldiers, but relies on conscripts to meet the need for ordinary soldiers. The professionalisation of specialised tasks is the continuation of a 2007 regulation issued by the General Staff which transformed six brigades under the Gendarmerie and the Land Forces commands into completely professional units.

The Turkish military, which has traditionally recruited conscripts to meet its demand for doctors, will be hiring doctors on a contract basis from now on. The new rules will also make it more difficult for specialised personnel to leave the army. Officers wishing to resign will have to pay a fee to leave.

Presently, the Turkish military includes about 10,000 professional soldiers in ranger units for the fight against "terrorism". The plan is to increase the number of professional soldiers to 40,000. According to Today's Zaman, "according to the new Bill, first class privates who join the fight against terrorism will have to at least have a high school degree. These individuals will have a monthly salary of TL 1,500, which will go to as high as TL 2,500 with compensation and benefits. The number of personnel in the Special Forces Command, currently at 5,000, will first be increased to 7,000 and then to 10,000. To serve in anti-terrorism activities, troops here will have to have undergone at least one and a half years of basic training. The Special Forces Command will set up four stations in the cities of Batman, Siirt, Şırnak and Tunceli in order to better coordinate anti-terrorism efforts. The salaries of professional troops in the Special Forces Command will range between TL 1,600 and TL 3,500."

At a press conference held on 29th April 2009, Chief of General Staff General İlker Başbuğ stated that the Turkish Armed Forces were currently managing to recruit only about 65% of their manpower needs.

Source: War Resisters International: CO-Update, June 2009, No. 48



2.2.3 Imprisonment of conscientious objectors

Finland

Four conscientious objectors are known to have been sentenced to imprisonment in Finland in Autumn 2009:

Juuso Aitio from 1st September 2009 to 1st March 2010 in the Käyrä detention centre;

Lauri Kuukka from 7th September 2009 to 1st March 2010 in the Kommunso detention centre;

Ossi Louhivaara from 30th September 2009 to 28th March 2010 in the Kerava detention centre; and

Otto Savonen, from 19th October 2009 to 18th April 2010 in the Kuopio detention centre.

(Source: War Resisters' International, prisoners for peace database at: <http://wri-irg.org/programmes/pfp?page=1>)

United Kingdom

See Section 3.1 "Serving members of the armed forces", below, for an account of the case of Lance Corporal **Joe Glenton**.

Turkey (Candidate Country)

Enver Ayedemir was arrested and detained on 24th December 2009. For full details see the account of the situation in Turkey in Section 4 below.



3. SPECIFIC ISSUES WITHIN THE EUROPEAN UNION

3.1 SERVING MEMBERS OF THE ARMED FORCES

The issue of conscientious objection for serving members of the armed forces was the subject of a parliamentary hearing organised on 22nd January 2009 by the Sub-committee for Security and Defence of the European Parliament. Speakers were Johan Galtung, Professor of Peace Studies, Transcend, Oslo, Norway, Peter Rowe, Professor of Law, University of Lancaster, UK and Andreas Speck, War Resisters International, London, UK .

At the end of 2009, the Council of Europe "expert group on the Human rights of members of the armed forces" completed the study on which it had embarked in June 2007. As reported in Section 2.1.1 above, this led to a Recommendation on the subject from the Committee of Ministers of the Council of Europe.

The individual case of Giorgos Monastiriotis, who became a conscientious objector while serving in the Greek navy, is reported in Section 5.

A case which arose in December 2009 is likely to lead to the first imprisonment of a woman conscientious objector in Finland. Although it was dealt with under the conscription legislation, there is no conscription of women in Finland; all women in the Finnish armed forces have in fact entered as volunteers. During the first 45 days of service female volunteers have a right to discontinue their service without any consequences, but after this "trial period" they become subject to the same terms of service as male conscripts; Finland's law on conscientious objection thus applies also to female volunteers..

According to the army's statistics, 522 women applied for voluntary military service in 2009. The number has been quite stable. There have been only a few cases of women applying for conscientious objection after the trial period, who then performed the rest of their service as substitute service.

However the new case relates to a woman (because she lives in a garrison town she does not wish her identity to be revealed although she welcomes publicity for her case) who had performed 11 of her 12 months of military service before it was interrupted in November 2008 because of medical reasons. Since beginning military service her opinions on the military had changed, and she was also influenced by the fact that the military did not offer her appropriate surgical treatment when she got a physical injury during the service. She sees this as an example of how the military does not respect basic human rights.

She applied for recognition as a conscientious objector, and was accepted, but not wishing to perform substitute service, which she saw as an appendage of the military, she publicly declared her objection on 6th December 2009, Finnish Independence Day (a very militarist event in the country), stating: *"I don't want to support a machinery of violence by any means, because it is not creating a happy and just future for us. Militaristic activities only sow and feed hatred and bitterness. We should use all our resources for building and maintaining a sustainable future."* For refusing substitute service she is, under the provisions of the Alternative Service Act, liable to a sentence of two weeks' imprisonment

Source: War Resisters International: CO-Update, January 2010, No 53



Although he has not at any stage formally applied for recognition as a conscientious objector, the case of Lance Corporal Joe Glenton of the British army is also of concern to EBCO.

Glenton, from York, joined the army in 2004. During his first tour of duty with the Royal Logistic Corps in Afghanistan he had been strongly affected by the incident on 2nd September 2006 in which 14 men were killed when an RAF Nimrod spy plane exploded over Afghanistan shortly after undergoing air-to-air refuelling.

Deployed again the following year, Glenton sought medical attention for post-traumatic stress disorder (PTSD), but was accused of being a coward and a malingerer. Seven months into the second tour of duty he left his unit and subsequently travelled in South-East Asia and Australia.

In 2009 he returned to the UK, and handed himself in at the beginning of August 2009, after two years and six days' absence. First, however, he had delivered the following letter to British Prime Minister Gordon Brown,

Dear Mr Brown,

I am writing to you as a serving soldier in the British Army to express my views and concerns on the current conflict in Afghanistan.

It is my primary concern that the courage and tenacity of my fellow soldiers has become a tool of American foreign policy.

I believe this unethical short-changing of such proud men and women has caused immeasurable suffering not only to families of British service personnel who have been killed and injured, but also to the noble people of Afghanistan. I have seen qualities in the Afghan people which have also been for so long apparent and admired in the British soldier. Qualities of robustness, humour, utter determination and unwillingness to take a step backwards.

However, it is these qualities, on both sides, which I fear will continue to cause a state of attrition. These will only lead to more heartbreak within both our societies.

I am not a general nor am I a politician and I cannot claim any mastery of strategy. However, I am a soldier who has served in Afghanistan, which has given me some small insight.

I believe that when British military personnel submit themselves to the service of the nation and put their bodies into harm's way, the government that sends them into battle is obliged to ensure that the cause is just and right, i.e. for the protection of life and liberty.

The war in Afghanistan is not reducing the terrorist risk, far from improving Afghan lives it is bringing death and devastation to their country. Britain has no business there.

I do not believe that our cause in Afghanistan is just or right. I implore you, Sir, to bring our soldiers home.

After a preliminary hearing, and while awaiting court martial on charges of desertion, Glenton was arrested and charged with five counts of "disobeying a lawful order" for various anti-war statements in the media and for speaking at an anti-war rally in London on 24th October 2009. He was released on bail in December 2009 under the condition that he would not make any further public statements. Subsequently the charges of disobeying lawful orders were



dropped, and the charge of desertion was reduced to being absent without leave. His lawyer had made it clear that in defending himself on the desertion charge he intended to call expert evidence on the question whether the war in Afghanistan was in accordance with international law.

Despite a diagnosis of PTSD having been confirmed, Glenton was convicted on 5th March 2010 on the charge of going absent without leave, and was sentenced to nine months' imprisonment in the notorious "Military Corrective Training Centre" at Berechurch, near Colchester.

3.2 RECRUITMENT OF PERSONS AGED UNDER 18

EBCO remains concerned by the continuing recruitment of persons aged under 18 into the armed forces of EU member states.

The 2008 report quoted the "Child Soldiers Global Report 2008", published by the Coalition to Stop the Use of Child Soldiers (www.child-soldiers.org), which showed that **Austria, Cyprus, France, Germany, Hungary, Ireland, Luxembourg, Malta, the Netherlands, and Poland** all accepted persons aged from the age of 17, and the United Kingdom from the age of 16, for voluntary recruitment into the armed forces, and that the conscription legislation in Belgium (currently suspended) and Estonia did not adequately exclude the possibility of persons being called up before their eighteenth birthday.

In Germany in particular, the recruitment of persons aged under 18 is likely to increase when the duration of High School education is reduced from 9 to 8 years (a process which has already begun in some regions.). There are, too, concerns about the increasing military propaganda that is addressed to children under the pretext of sport and adventure events or school information.

3.3 PROTECTION OF CONSCIENTIOUS OBJECTORS AS REFUGEES

The resolutions of the European Parliament do not refer specifically to the situation where conscientious objectors are obliged to flee their country and seek political asylum. This was however included in Resolution 1998/77 of the U.N. Commission on Human Rights, paragraph 7 of which "*encourages States, subject to the circumstances of the individual case meeting the other requirements of the refugee definition as set out in the 1951 Convention relating to the Status of Refugees, to consider granting asylum to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service and there is no, or no adequate, provision for conscientious objection to military service*".



An encouraging development in this respect was that on 23 March 2010, the National Assembly of Serbia passed a new Amnesty Law, which will allow many Serbian expatriates to return to Serbia without fear of being arrested. According to the law, all citizens who have avoided military duty or service, or wilfully left the Serbian Army from 18 April 2006 until the new law comes into force, will be granted amnesty.

The law covers the following offences of the Penal Code of Serbia: Article 394 (Evasion of Military Service), Article 395 (Evasion of Registration and Inspection), Article 396 (Failure to Provide Material Resources), Article 397 (Evasion by Self-disablement and Deceit) and Article 399 (Absence Without Leave and Desertion).

According to the law, offences committed since 18 April 2006 until the day the new law comes into force fall under the amnesty. In the event that criminal proceedings have already been started, they will be stopped.

Serbian Justice Minister Snezana Malovic told parliament: "We have about 40,000 conscripts living abroad and annually about 5,000 are seeking to postpone or avoid service". "Most such conscripts are in constant fear of arrest whenever they come to Serbia".

This issue is also of particular significance for refugees from Eritrea.

According to the United Nations High Commissioner for Refugees (UNHCR), Eritrea was in 2007 the world's third largest country of origin for individual asylum-seekers/refugees after Iraq and Somalia (both of which have much larger populations). In 2008 there was a 34% increase in the number of Eritreans seeking asylum in industrialized countries; in total in 2008 and 2009, according to the most recent UNHCR figures, over 12,000 Eritreans (or one in every 500 of the population) sought asylum in the European Union. Obviously many who fled the country did not get as far as the EU.

In April 2009, the UNHCR issued a new set of "Eligibility guidelines for assessing the international protection needs of asylum-seekers from Eritrea". In its summary of the situation, UNHCR states: "(...) three main trends in the claims can be identified. First, a significant number of Eritrean nationals are fleeing military conscription. Secondly, there are Eritreans fleeing the country on account of religious persecution. The third typology in the asylum claims can be grouped together under the broad category of human rights violations (...)"

UNHCR "considers that most Eritreans fleeing their country should be considered as refugees according to the criteria contained in the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol, and/or the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), particularly on the grounds of "political opinion" (both real and imputed) and "religion". In this respect, the groups considered to have a presumption of eligibility include, but are not limited to, draft evaders/deserters, political opponents or dissidents (real or perceived), journalists and other media professionals, trade unionists and labour rights activists, members of religious minorities, women with particular profiles and homosexuals." (p

"Since 2003, a mandatory final year (12th grade) has been added to the secondary school curriculum, which students must attend at Sawa military training centre under military authority and including military-type training.



Students approaching conscription age have reportedly fled the country in the thousands or have gone into hiding. Furthermore, Eritreans are reportedly subjected to repeated periods of service far exceeding the statutory limit of 18 months.

"The Proclamation on National Service sets out the penalties for military violations, including for attempting to avoid national service by deceit or self-inflicted mutilation, escape from, and flight from active national service or registration. The standard sanction is a fine (...) and/or two years' imprisonment. For those who fled abroad specifically to avoid military service and who did not return before the age of 40, the punishment increases to five years' imprisonment or until the person reaches the age of 50. Rights to own land, to obtain an exit visa, to work and other "privileges" can also be suspended.(p.14)

"In addition (...), the penalties stipulated in the Eritrean Transitional Penal Code (ETPC) also cover military violations, including failure to enlist, or re-enlist, seeking fraudulent exemptions, desertion, absence without leave, refusal to perform military service and infliction of unfitness (injury to avoid service). The punishment ranges from six months' to 10 years' imprisonment depending on the gravity of the act. During emergencies or mobilizations, the penalties are significantly more severe. Desertion is the most severely sanctioned and entails imprisonment for up to five years, but in times of mobilization or emergency this can increase from five years to life, or, in the gravest cases, death, for desertion from a unit, post or military duties or for failure to return to them after an authorized period of absence. Since military courts are not operative, punishment for military offences is carried out extrajudicially, and has been widely reported to include "shoot to kill" orders, detention for long periods, torture and forced labour. Draft evaders/deserters are reported to be frequently subjected to torture, while conscientious objectors can face extreme physical punishment as a means of forcing them to perform military service.

"Furthermore, extrajudicial executions are allegedly ordered by local commanders and carried out in front of military units for what might be serious military offences. In practice, the punishment for desertion or evasion is thus severe and disproportionate such as to constitute persecution.

"Even where a claim is not based on actual political opinion, or not perceived by the draft evader or deserter as being an expression of political opinion, refusal to perform military service may nevertheless amount to imputed political opinion. (...) Military service has become politicized in Eritrea and actual or perceived evasion or desertion from military service is regarded by the Eritrean authorities as an expression of political opposition to the regime. Persons who evade or desert military service are regarded as disloyal and treasonous towards the Government, and are punished for their perceived disloyalty. Hence, persons of, or approaching, military service age, who are medically fit, are at risk of persecution on return to Eritrea as actual or perceived draft evaders or deserters on the ground of imputed political opinion.

"There are also cases where the performance of military service would require the individual's participation in military action contrary to his or her genuine political, religious or moral convictions, or to valid reasons of conscience. Refusal to perform military service on the ground of religious convictions may give rise to a well-founded fear of persecution, where such convictions are proved genuine and they are not taken into account by the authorities in requiring the applicant to perform military service. Moreover, conscientious objection itself may be regarded as a form of political opinion, and conscientious objectors, or some



particular class of them, could constitute a particular social group. (...) Whether an objection to performing military service for reasons of conscience can give rise to a valid claim to refugee status should also be considered in light of developments in this field, including the fact that an increasing number of States have introduced alternatives to compulsory military Eritrea, the likelihood of prosecution and/or the severity of punishment must be examined in order to determine whether they amount to persecution. To this effect, disproportionate, excessive or arbitrary punishment may well amount to persecution.

"While the unimplemented Eritrean Constitution guarantees freedom of thought, conscience and belief, conscientious objection is not recognized under Eritrean law. In addition, no alternative or substitute service is offered to conscientious objectors, including members of the Jehovah's Witness faith affiliation, who make themselves available for national service on condition that they are not required to carry arms. Although members of other religious groups, including Muslims – one of the four State-sanctioned religions –, have been reportedly imprisoned for failure to undertake military service, Jehovah's Witnesses continue to be subjected to harsher treatment, such as dismissal from civil service; revocation of business licenses; eviction from Government housing; and denial of identity cards, passports and exit visas. Conscientious objectors, particularly Jehovah's Witnesses, may thus be at risk of persecution, on the ground of their religion, imputed political opinion or membership of a particular social group, for draft evasion or desertion.

Moreover, a pattern of sexual violence against female conscripts exists within the military. Some female conscripts are reportedly subjected to sexual harassment and violence, including rape.⁹³ There have been reports of female conscripts coerced into having sex with commanders, including through threats of heavy military duties, harsh postings, and denial of home leave. Refusal to submit to sexual exploitation and abuse is allegedly punished by detention, torture and ill-treatment, including exposure to extreme heat and limitation of food rations. No effective mechanism for redress or protection exists within or outside the military, and perpetrators generally go unpunished. Women, who become pregnant as a result, are decommissioned and are likely to experience social ostracism from their families and communities as unmarried mothers, and may resort to committing suicide to escape the cycle of abuse. In light of the pervasive gender-based violence within the military and its serious consequences, women draft evaders/deserters may be at risk of persecution as a particular social group.

"Family members and relatives of draft evaders and deserters may also be at risk of persecution due to the practice of substitute service and/or punitive fines and imprisonment, and could be considered, in this respect, as a particular social group. Since 2005, the Government has instituted measures to address the widespread evasion of and desertion from military service, including: arrest of family members, mostly parents, of children who have not reported to the military training camp at Sawa for their final year of high school or have not reported for national service; imposition of fines on families of draft evaders; forced conscription of family members, particularly the father, of the draft evader; and withdrawal of trade Furthermore the authorities reportedly do not grant exit visas to those of military age. Among those routinely denied exit visas are men up to the age of 54, regardless of whether they have completed national service, and women under the age of 47,¹⁰¹ as well as students wanting to study abroad.¹⁰² Individuals of, or approaching, draft age, who leave Eritrea illegally, will be at risk of persecution as a (perceived) deserter or draft



evader upon return to Eritrea. This is equally true for those who have completed active national service or have been demobilized, given that all persons of draft age are subject to national service and, as such, are liable to be recalled.

EBCO calls upon EU member states to give sympathetic treatment to all asylum claims from conscientious objectors and others who have fled Eritrea in order to avoid military service.

3.4 MILITARY EXPENDITURE

It is salutary to note that at a time of financial crisis, when social expenditures are suffering widespread cuts, EU member states are not uniformly cutting military expenditure, and that in .

	Defence Budget (million €)		% increase or decrease	2010 per capita
	2008	2010		
Austria	2030	2120	+ 4.4	259
Belgium	2850	2870	+ 0.7	276
Bulgaria	792	756	- 4.6	105
Cyprus	365	377 (2009)	+ 3.3	343*
Czech Republic	2155	1887	- 12.4	185
Denmark	3033	3310	+ 9.2	602
Estonia	292	259	- 11.2	199
Finland	2420	2720	+12.4	591
France	30380	32100	+ 5.7	498
Germany	29500	31100	+ 5.4	378
Greece	4160	4320 (2009)	+ 3.9	404*
Hungary	1400	1344	- 4.0	136
Ireland	1000	1031	+ 3.1	246
Italy	16400	15500	- 3.5	267
Latvia	368	187	- 49.2	85
Lithuania	370	213	- 42.5	59
Luxembourg	120 (later figures not available)			245*
Malta	33.4	37.8	+13.2	93
Netherlands	8090	8550	+ 5.7	512
Poland	6549	5909	- 6.9	153
Portugal	1790	1970	+10.1	184
Romania	2259	1876	- 17.0	85
Slovakia	996	986	- 2.0	179
Slovenia	546	589 (2009)	+ 7.9	295*
Spain	8140	7840 (2009)	- 3.7	194*
Sweden	4117	3787	- 9.0	416
United Kingdom	48481	47287	- 2.5	774

(*- latest year available)

Calculations by EBCO based on information contained in the Military Balance 2010 (International Institute for Strategic Studies, London)



4. PARTICULAR CONCERNS IN CANDIDATE COUNTRY TURKEY

The situation regarding conscientious objection in Turkey remains of especially acute concern.

4.1 GENERAL

Section 2.2 of the European Commission's "Turkey 2009 Progress Report" under the enlargement strategy, issued on 14th October 2009, noted that Turkey had still "not adopted legal measures to prevent repetitive prosecution and conviction of conscientious objectors", (p14), that "prosecutions and convictions continue on the basis of Article 318 of the TCC[Turkish Criminal Code] (on discouraging people from military service)"(p18) and that "Judicial proceedings against conscientious objectors on religious grounds have continued. Public statements on the right to conscientious objection have led to convictions." (p22)

4.2 REPEATED IMPRISONMENT OF CONSCIENTIOUS OBJECTORS

In March 2009, the Committee of Ministers of the Council of Europe had adopted a second Interim Resolution in the case of Ülke. In this case, decided in January 2006, the European Court of Human Rights found that the applicant's repeated convictions and imprisonment for having refused to perform compulsory military service on account of his beliefs as a pacifist and conscientious objector amounted to degrading treatment in violation of the European Convention on Human Rights. Despite the European Court's judgement, the Committee of Ministers heard that the applicant had been summonsed in July 2007 to present himself in order to serve his outstanding sentence resulting from a previous conviction. He was at present in hiding and is wanted by security forces for execution of his sentence.

In its Interim Resolution, the Committee of Ministers strongly regretted that, despite the Committee's first Interim Resolution, no concrete steps had been taken by the Turkish authorities to bring to a close the continuing effects of the violation. Therefore, the Committee strongly urged Turkey to take without further delay all necessary measures to put an end to the violation of the applicant's rights. It further urged Turkey to make the legislative changes necessary to prevent similar violations of the Convention.

The Committee announced that it would continue examining the implementation of the Ülke case at each human rights meeting until the necessary urgent measures are adopted.

(Source: Press Release from the **Council of Europe Directorate of Communication** Strasbourg, 25th March, 2009).



The latest conscientious objector to suffer repeated imprisonment and mistreatment in Turkey is Enver Ayedemir, who had first declared his conscientious objection on 24 July 2007 after being forcefully taken to the Bilecik 2. Gendarmerie Commandership to perform military service. Refusing to serve in a secularist military because of his religious convictions, Ayedemir was arrested and transferred to Erzurum 1st Tactical Air Force Commandership Military Prison on 31 July 2007. There he was physically attacked and forced by ten soldiers to wear the military uniform. Aydemir was imprisoned in Erzurum for more than two months while awaiting trial on insubordination charges, and suffered physical ill treatment on more than one occasion. He was released by the court on 24 October 2007 and ordered to report to the military unit in Bilecik. Not being escorted by soldiers, Aydemir went home and never reported to the military unit.

His new arrest, on 24 December 2009 was on the same charges. The arrest took place in Istanbul while on his way to a conscientious objection conference where he was to be a panellist. He was first taken to the Doğancılar police station and then to a military police station. Later that evening he was taken to court, arrested and temporarily sent to the Maltepe military prison. Aydemir was not permitted to see his lawyer, Davut Erkan, until 26 December. After that meeting, his lawyer reported that on entering the prison, Aydemir had been beaten because he refused to wear the military uniform. He had then been stripped of his own clothing and kept in his underwear in the cold until the next morning. In protest at this mistreatment Aydemir commenced a hunger strike. Some days later he was again beaten by an army officer and forcibly dressed in a military prison uniform.

On 30th March 2010, the Eskişehir military court sentenced Aydemir to 10 months in prison on charges of desertion. Given the time he had already spent in prison, he was then formally released, but was then returned to the Bilecik 2nd Gendarmerie Private Education Unit, where he was again ordered to complete his military service, and on refusal was arrested and transferred to Eskişehir military prison, to await a new trial on charges of disobeying orders.



4.3 THE CONSCIENTIOUS OBJECTION DEBATE, FREEDOM OF EXPRESSION AND "PAID EXEMPTION"

An article in Bianet on 25th March throws an interesting light on the current state of the debate about military service in Turkey. An abridged version follows.

Ömer Faruk Eminağaoğlu, president of the Union of Judges and Prosecutors (YARSAV) said in an interview with the Zaman newspaper that the constitution did not specify "military service" when it talked about "service to the country". He argued that it was military and not legal rules that made conscientious objection impossible.

This prompted Radikal newspaper writer Ersin Tokgöz to criticise Eminağaoğlu, accusing him of trying to legitimise his own exemption from military service on medical grounds by saying that service to the country need not necessarily mean military service.

However, Oğuz Sönmez of the Pacifist Initiative (Savaş Karşıtları) pointed out that the YARSAV president had defended the right to conscientious objection before he got his medical report." Sönmez cited an article that Eminağaoğlu wrote for Radikal newspaper on 22 July 2005 as evidence.

Sönmez however agreed with Tokgöz, "who says that all statements concerned with the military service face punishment under the arbitrary application of Article 318 for 'alienating the public from military service', and that it is never clear who will be put on trial or not, and who will be acquitted or sentenced."

[Article 318 of the Turkish Penal Code reads:

- 1- Anyone who gives incentives or suggests or encourages or spreads propaganda which will alienate people from military service will receive a penalty of between six months and two years imprisonment.
- 2- If the offence is committed by the use of press and broadcasting, the penalty increases by half.]

"[Conscientious objectors] Halil Savda and Doğan Özkan were easily convicted," Somnez continued, "journalist Perihan Mağden is on trial, singer Bülent Ersoy has been acquitted. Decisions on a totally abstract accusation are left up to the judges."

Sönmez emphasises that Eminağaoğlu is not the first lawyer to have defended conscientious objection, pointing out that the Office of Chief of Staff has published in its own magazine articles by Ersin Kaya supporting conscientious objection.

Minister of Defence Vecdi Gönül has announced that the number of young men who are obliged to do military service is 14,306,525. Around a million of these have postponed military service (e.g. for education reasons) or are dodging the draft.

Sönmez points out that this number includes conscientious objectors, draft dodgers and those who cannot go to the military for financial or other reasons. "In Turkey, military service continues to represent social and political oppression."

He further criticised the government for not making any changes following the European Court of Human Rights decision in the Ülke case [see previous Section of this report].

Meanwhile, constitutional law expert Ertuğrul Cenk Gürcan has said that it is possible to make conscientious objection legal. He suggests that there could be a



solution for those demanding to pay instead of doing military service, for those who do not want to carry arms, and for those who do not want to join the army because of family or financial problems: "We do not have to marginalise conscientious objection in the name of preserving Turkey's social and political structure. It can be left up to the individual. Those who want to, could work as teachers, nurse's aids, etc. in order to carry out public service. In summary, if there was a choice of services, this problem could be solved." He added that current resistance to conscientious objection was not legal but political

A growing number of people is joining the call for exemption from military service on a large scale. Around 16,000 people have come together as the "Platform for Paid Exemption", which has written to pop singer Tarkan, who benefitted from the rule that anyone employed abroad for more than three years can pay to be exempted from military service (only doing one month nominal basic training) and to Emine Erdoğan, wife of the Prime Minister. They are collecting signatures and are planning to write to the President, the Prime Minister, the commanders of the armed forces, MPs, NGOs, newspapers, columnists and other media organs.

One of the arguments of the platform is that the men who do their military service often lose their jobs. Many are also employers themselves, and have to dismiss their employees, thus adding to the already high number of unemployed people. "Our aim is not to be a burden to our country, but to be of use", says the platform, appealing to the Minister of Finance, Kemal Unakitan: "If a paid exemption was passed, at least 250,000 people would apply. Even if we ignore the money that this would raise, let us assume that these 250,000 people directly or indirectly provide work to four people. If these people go to the army, then 1 million people will be left unemployed in addition to themselves, meaning an increase of 1,250,000 unemployed." They have demanded that Unakitan put forward a new proposal for paid exemption.

Minister of Defence Vecdi Gönül has replied to the demands, saying: "According to Law 111, when there are more soldiers than needed, the General Staff tells the Ministry of Defence, and paid exemption is applied to the excess number of people. But at the moment paid exemption is not on the agenda. The General Staff has announced that there are not enough people applying to do their military service." Spokesperson of the General Staff, General Metin Gürak has confirmed that the Turkish Armed Forces are not working on such a proposal.

Sönmez of the Pacifist Initiative said, "The General Staff is aware of the relaxation this would create in society and how employed people would benefit, and that is why it is not giving permission. At the moment civil war is aimed for, and nationalist discourses are more prominent than ever. Paid exemption would only create problems for the army." He finds the claim that there are not enough soldiers "ridiculous".

Paid exemption was last applied after the Gölcük earthquake in Turkey in 1999. 72,000 people made use of this programme, which provided the government with an extra income of 1,066,000 German Marks. [The exemption fee had, tellingly, been set in that currency.]

Source: Bianet, 25th March 2009
(<http://www.bianet.org/english/kategori/english/113360/renewed-discussions-about-military-service>)



5. FOCUS ON GREECE

In 1997, Greece was by 19 years the last of the then members of the European Union to accept conscientious objection to military service. The state of its legislation and the treatment of conscientious objectors continue to give cause for concern - as does the militarised nature of Greek society as a whole. However EBCO has been encouraged by a more receptive attitude on the part of the Greek authorities in recent months, and presents this analysis of the current shortcomings with some hope that it may be accepted as constructive criticism within Greece itself.

5.1 BACKGROUND

Law 2510/1997, which came into force on 1st January 1998, was the first provision in Greek legislation for the recognition of conscientious objection to military service, and making substitute service available for conscientious objectors. In many respects the provisions of the Law, and its implementation in practice, fell far short of international standards:

a) Ministry of Defence control of the arrangements for substitute service and of the assessment of persons applying to perform such service on grounds of conscientious objection.

b) Punitive duration and other conditions of alternative service. In particular, alternative service must be performed away from the conscientious objector's home area, and not in the four major cities. There are severe restrictions on freedom of movement.

c) Lack of information on the possibility of applying for recognition as a conscientious objector. Within approximately 40 pages of information provided to those facing call-up for military service, there is just one sentence which reads "Applications under Law 2510/1997 are possible." This is meaningless to those 18-year-old potential recruits who do not already know what the subject of that law is. Moreover, the obscurity of that reference is compounded by -

d) Strict time-limits for the submission of any application for recognition as a conscientious objector, accompanied by all the required documentation. Applications must be received at the latest on the day before that set for enlistment, with no postponement permitted. Over the years, this has meant that a large proportion of applications have in practice been rejected on purely procedural grounds, without being considered on their merits

e) Restrictive definition of conscientious objection and arbitrary refusal of recognition. A specific aspect of this is the stipulation that no one who has served in the Greek or any other armed forces may be recognised as a conscientious objector. Indeed, whereas most States excuse from military service anyone liable who has already performed such service in another State, any ethnic Greek who applies for Greek citizenship having formerly performed military service in another country is required to perform a supplementary period



in the Greek armed forces. Also excluded, for no logical reason, is anyone who has ever held a firearms licence (applicants have to provide a certificate from the police showing that they have never done so, or been a member of a hunting club).

The application of the system in practice has also been marked by discrimination between conscientious objectors on the grounds of religious adherence:

To the end of 2008, when the Law on Alternative Service had been in force for eleven years, 1425 applications had been received, of which 1402 (over 98%) had been accepted. These applications were classified by the Ministry of Defence as being on "religious" or "ideological" grounds. Within the small minority of applications on "ideological" grounds, only 47% had been accepted. In the latest three years, the figures for acceptances had been:

2006: On "religious" grounds: 102 of 102. On "ideological" grounds: 0 of 2
2007: On "religious" grounds: 174 of 174 On "ideological" grounds: 2 of 4
2008: On "religious" grounds: 110 of 110. On "ideological" grounds: 1 of 2. ac
Acceptance rate on "religious" grounds 100%; on "ideological" grounds 37.5%.

All fundamental beliefs are equally protected by the international standards on freedom of thought, conscience, or religion. To separate them into those deemed "religious" and "other" is a primary act of discrimination, even before the differential treatment of the two categories is taken into account. Indeed the question is thus raised of whether even the favourable decisions are really based on proof of the objection or proof of the denominational adherence of the applicant.

5.2 RECENT POSITIVE DEVELOPMENTS

Military service in Greece has been progressively reduced to nine months in the Army and twelve months in the Navy and Air Force. The Navy and Air Force are to be entirely "professionalised" from 2012, but conscription into the army will continue.

On 2nd December 2009 the Greek Ministry of Defence met with NGOs having an interest in conscientious objection issues. The Ministry was represented by the Minister's Legal Advisor Mr. Spiridonas YIANNAKAKIS, Military Judge Mr. Odysseas KAMPOLIS and Military Officer Mr. Evangelos MIHALOPOULOS; the NGO representatives present were Mr. Nikolaos KOMINIS, Board Member of the Greek Section of Amnesty International, Ms. Alexia TSOUNI, General Secretary of the European Bureau for Conscientious Objection and Mr. Angelos NIKOLOPOULOS, General Secretary of the Greek Association of Conscientious Objectors.

The NGO delegation asked for immediate amendments to the Greek law and practice in order to stop the prosecutions of conscientious objectors and bring alternative service in line with the European and international standards and recommendations, which require, among other things, that:



- individuals who object to compulsory military service on grounds of conscience have the opportunity to perform a non-punitive, non-discriminatory, genuinely civilian alternative service;
- individuals be allowed to register as conscientious objectors at any time before, during or after their conscription or performance of military service;
- information on the status of conscientious objector and the means of obtaining such status be readily available to all those liable to be conscripted to the armed forces.

Although no firm commitments could have been expected from such a meeting, Mr. Yiannakakis indicated that the Minister of National Defence would examine the recommendations in depth with a view to improving the institution of alternative service both in law and in practice.

Subsequently, on 14th April 2010, the Minister announced that the duration of alternative service would be reduced from the present 17 months to 15 months, as compared with the standard military service of 9 months. While this is of course a step in the correct direction, it still does not bring Greece into line even with the most lenient interpretation of the current international standards, as the duration of alternative service remains one-and-two-thirds that of military service.

On April 22nd 2010, the plenary session of the Greek Council of State found that **Evangelos Delis**, who had served in the Greek army in 1992 but who subsequently converted to "being one of Jehovah's Witnesses", had the right to object to serving as a reservist in the military. When called up for reserve training, Delis requested that he be treated as a conscientious objector and, as such, be assigned to alternative civilian service. This request was denied at first instance, on the grounds that a reservist did not have the right to make such a claim.

Citing Articles 13 and 5 of the Greek Constitution, Articles 9 and 14 of the European Convention on Human Rights, and Article 18 of the United Nations International Covenant for Civil and Political Rights, on January 15, 2010, the Council of State ruled that regulations for conscientious objection must be read in such a way that a person has the right to change his religion even after having served in the military and has the right to claim conscientious objector status.

This ruling ends one of the more blatant injustices of the Greek military recruitment system. Quite apart from the question of change of religion, it had meant that anyone who had first been called up to military service before the 1997 Law came into effect had never had the opportunity to apply for recognition as a conscientious objector.



5.3 ISSUES OF CONCERN

Despite the positive developments reported in the previous section, most of the shortcomings of the 1997 Law persist. Over and above this there are concerns about the continuing practice in dealing with conscientious objectors and a number of related issues.

5.3.1 Continued prosecution of conscientious objectors and arbitrary refusal of recognition.

On 31st March 2009, the Appeal Military Court of Athens found conscientious objector **Lazaros Petromelidis** guilty on two charges of insubordination, and sentenced him to eighteen months imprisonment. This represented a halving of the sentence handed down in absentia by the Naval Court of Piraeus in May 2008. Petromelidis had been left at liberty pending the appeal on payment of €7,000 bail. Execution of the latest sentence has been suspended until the hearing of his pending appeal to the Supreme Court, the highest domestic court.

In 1998 Petromelidis had been recognized as conscientious objector and was asked to perform a civilian service of 30 months, 7.5 times the length of the military service for which he would have been liable; moreover the placement he was given was at a distance of 600 km from his residence place. He refused to perform such a punitive civilian service, thus under Greek law forfeited the right to a civilian service and was called up to perform military service. His refusal to do this had already resulted in two sentences of imprisonment. The previous convictions were 20 months suspended in 2003 and 5 months in prison in 2006. His appeals for both convictions to the Supreme Court were rejected. All in all Petromelidis has experienced 16 trials at Greek Military courts.

On 18th February 2010, the appeal was heard against the third conviction of **Giorgos Monastiriotis**.

Monastiriotis, who had joined the Greek Navy on a five-year contract, refused, citing conscientious reasons, to follow his unit in May 2003 when the frigate "Navarino" on which he was serving was sent to the Persian Gulf. He is the first Greek professional soldier known to refuse to participate in the recent war in Iraq on the basis of his conscientious objection and to declare his resignation from the Navy for this reason. In his public refusal in May 2003, he stated that: "*I refuse on grounds of conscience to participate in or contribute by any means to the relentless massacre of the Iraqi people... My refusal is also a minimal act of solidarity with the Iraqi people as well as to the peaceful sentiments of the Greek people.*" On 13 September 2004 he was arrested and sentenced to 40 months' imprisonment for desertion by the Naval Court of Piraeus. He was taken immediately to prison in Corinth where he remained imprisoned for 22 days until his temporary release pending his appeal hearing. On 17 January 2005 he was sentenced again by the Naval Court of Piraeus to 5 months' imprisonment for a second desertion charge, because he did not return to his unit after his release. He appealed and was released until his appeal trial. On 15 March 2006 he was fired by the army. On 31 October 2006 he was sentenced by the Appeal Military Court of Athens to 24 months' imprisonment suspended for 3 years for the first desertion charge. On 21 February 2008 he was sentenced again by the Naval Court of Piraeus to 10 months' imprisonment suspended for 3 years for the third



and last desertion charge, because he did not return to his unit after his second release.

As a result of the latest appeal, the sentence for the last conviction was halved, and again suspended for three years.

Whereas EBCO welcomes the shortening on appeal of the sentences handed down, and that the sentences are suspended so that Greece refrains from further imprisonment of these conscientious objectors, it must nevertheless be stressed that in the cases of both Monastiriotis and Petromelidis the multiple charges violate the principle of "ne bis in idem", in accordance with the principle set out by the UN Human Rights Committee in Paragraph 55 of its General Comment No. 32, *"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."*

Friday 19th February 2010 saw the first court appearance of **Evangelos Mihalopoulos**, board member of the Greek Association of Conscientious Objectors who had refused to perform either military service, or, because of its punitive length, alternative service. He was given an eight-month sentence, suspended for three years.

EBCO is disturbed also to note that the refusal to accept a claim of conscientious objection from anyone who has performed military service – unacceptable in itself - has been interpreted in a particularly restrictive and inequitable fashion. There were at least five cases in 2009 when conscientious objectors were refused recognition because during the recruitment process, and before their applications could be considered, they had been obliged for administrative reasons, and against their will, to spend a night in barracks, and were therefore deemed to have commenced military service although they had never accepted enlistment in any form.

5.3.2. Restrictions on freedom of expression

According to Article 202 of the Greek Penal Code "Inciting those who have duty of military service":

- 2 Whoever in whatever way induces or incites on purpose a person serving in the army to disobey duty of service shall be sentenced to imprisonment for a term of up to three years,
- 3 The same sentence is imposed on whoever induces or incites on purpose a person who has duty to enlist to disobey the call-up to the army.
- 4 In time of war, armed revolt, or general mobilisation, the above sentence may be increased to up to ten years imprisonment.
- 5 The above penalties apply only if the offence concerned is not subject to more severe penalties under another law"

EBCO is disturbed at the potential for using this article to punish or deter discussion of the right to conscientious objection to military service.



5.3.3 Failure to protect conscientious objectors as refugees

One refugee case in Greece in 2009 concerned two sisters from Eritrea who had escaped forcible recruitment and abuse in the Eritrean army. Despite the ample evidence to the contrary (see the extensive quotation from UNHCR in section 3.3 of this report) the tribunal chose to find that there was no known history of forced recruitment in Eritrea and also, despite the fact that their experiences had been shared, to disbelieve the girls because of the similarity of their stories.

Another case which came to attention in 2009 concerned **Ridvan Celik**, born in Turkey on 2 March 1969, who had refused to serve his compulsory military service for reasons of conscience in September 1991 and was forced to flee Turkey for this reason. He then immediately asked international protection as refugee in Greece, according to the provisions of Geneva Convention (1951), explaining his situation in his application for political asylum to the Ministry of Public Order:

"My name is Ridvan Celik. In September 1991 I was called up by the Turkish authorities to enlist in the army, in order to serve my military service in the Diyarbakır province (Southeastern Turkey – North Kurdistan), where, at that time, there were battles between Kurdish partisans and Turkish forces. Given that I didn't wish to get involved as a soldier in these battles, which had taken on the dimensions of a civil war, I fled from my country three days after I received the call-up paper for performing my military service."

However, on 27 January 1992, the Minister of Public Order rejected his application. On 24 August 2000 the Turkish authorities removed his Turkish citizenship. On 18 July 2002 Mr. Celik applied for residence permit in Greece on humanitarian grounds, but on 23 September 2002 he was informed that this application was also rejected. On 19 June 2003 Mr. Celik applied for status of stateless person, according to the provisions of New York Convention (1954).

On 6th December 2009 Mr. Celik was arrested in Heraklion (Crete) as one of being in a group of 20 persons on their way to a demonstration on the anniversary of the killing of Alexandros Grigoropoulos by a policeman in Athens. He was the only one of the group whose detention was not temporary; his trial was set for the summer of 2010, but the police in Heraklion issued a deportation decision against him, and on 24th December 2009 he was transferred to the Attica Aliens Department.

Following an international campaign, including an intervention by EBCO, Ridvan Celik was released on 30th December and permitted to lodge a further asylum claim, which is still pending.



5.3.4 Violence directed against conscientious objectors

On Tuesday 24th February, 2009 at around 10 pm, an attempt was made to throw a hand grenade through a window into a public meeting against the new armaments plan hosted by the Greek Association of Conscientious Objectors in the Migrants' House at 13A Tsamadou Street in Exarchia. It was solely through the good fortune that only the outer panel of the window's double glazing broke and the grenade bounced back and exploded in the empty street that there were no injuries; had the grenade exploded in the room there could well have been fatalities. As it was some damage was caused to the pavement and windows in surrounding buildings were broken.

It is not known whether the attack was specifically targeted at the Association of Conscientious Objectors; the building known as the Migrants' House, also houses a number of left, feminist, homosexual and immigrant groups. A short time before the attack, the daily Greek language courses for non-native speakers, attended by dozens of immigrants, had been taking place.

This attack was not the first one against conscientious objectors in Greece. The extreme-right Organisation of Young Noiseless Raiders attempted to put a bomb at the trial of conscientious objector Pavlos Nathanail in 1991, a total objector who was prosecuted because he refused to serve his military service. Previous year also, in April 2008, there was a bomb threat telephone call against a public event on conscientious objection organized by the Greek Section of Amnesty International, with the participation of EBCO, on the occasion of the ten-year anniversary of the law on conscientious objection

The latest attack was symptomatic of a general rise in right-wing pro-militarist violence. There are suspicions that the grenade used might have illicitly come from military sources. It is also disturbing that the police have had no success in attempts to trace the perpetrator.



6 PUBLICATIONS ON CONSCIENTIOUS OBJECTION

The English language edition of Cinar, O. H. and Usterci, C. Conscientious Objection: resisting militarised society, the expanded version of the proceedings of the January 2007 Istanbul conference on conscientious objection, was published by Zed Books, London, in May 2009. The book had already appeared in Turkish.

In Muller, J. Th., and de Zayas, A., The Case Law of the UN Human Rights Committee: A Handbook (N.P.Engel, Kehl am Rhein, Germany, 2009) there is a section on "Conscientious objection to military service, military activities and expenditures (pp. 347 – 353) in which the authors focus in particular on the 3rd November 2006 decision on the cases of Myung-Jin Choi and Yeo-Bum Yoon v The Republic of Korea, concluding (p.353) "The authors consider the Committee's Views [ie. judgement] in this case living proof of the dynamic nature of jurisprudence. Indeed, the Covenant need not be "administered" just as a catalogue of static norms. It is for the Committee to interpret it in the spirit of the drafters and in a manner consistent with the object and purpose of the Covenant, which should be understood as living law."

On 23rd April 2010, War Resisters International, London, published Women Conscientious Objectors: An Anthology, edited by Ellen Elster and Majken Jul Soerensen



7. RECOMMENDATIONS

We reiterate the recommendation in the 2008 report, namely that the European Parliament adopts a new resolution on the subject of conscientious objection to military service to incorporate developments in thinking since the resolution of 19th January 1994 (“the Bandrés Molet and Bindi Resolution”) and that such a resolution should include calling on E.U. member states and candidate countries:

a) to consider how soon they can replace all obligatory military service by service on a contract / voluntary footing,

b) to ensure, meanwhile, that the duration of any alternative service required of conscientious objectors is no longer than the one of the military service; the administration of alternative service, including the examination of applications and any ensuing court process, falls entirely under civilian authority; conscientious objectors have the right to claim conscientious objector status at any time, both up to and after entering the armed forces; the right to conscientious objection applies at all times, even in time of war; the status of conscientious objector, and therefore the right to alternative civilian service, is never revoked, whether for carrying out trade union activities, for participating in a strike or for disciplinary breaches; there are no problems in the application procedure, no restrictions on the ones who wish to serve alternative service, and no special committees to judge their conscience; and finally that there is adequate and timely 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,

c) to refrain in all circumstances from imprisoning those who have refused on grounds of conscience to perform military service or an alternative service to which they have been allocated,

d) to make legislative provision for the release without penalty of any “professional” member of the armed forces who becomes a conscientious objector,

e) to cease at an early date all recruitment into the armed forces, including for training purposes, of persons aged under 18, and

f) to grant asylum to conscientious objectors who would not be able to avoid military service if they returned to their own country, subject to the circumstances of the individual case meeting the other requirements of the refugee definition as set out in the 1951 Convention relating to the Status of Refugees, and in particular to grant asylum when it is sought by military personnel who would not otherwise be able to escape serving in military actions which have not been authorised by the United Nations.