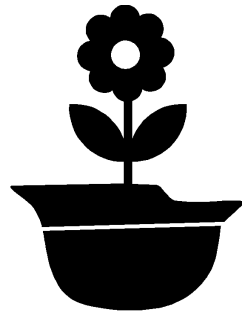


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REPORT TO THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS OF THE EUROPEAN PARLIAMENT

Conscientious Objection in Europe 2010/11

Brussels, May 2011



SUMMARY

"Europe's Farewell to conscription" is the title of one of the tables in this Report to the Committee on Civil Liberties, Justice, and Home Affairs of the European Parliament. It charts how since 1960 - when conscription was enforced on the territory of 32 of the 36 present day Member States, Candidate Countries, and Potential Candidate Countries of the European Union - it will from 1st July 2011, when the German armed forces become entirely composed of volunteers, be retained in only seven: Austria, Cyprus, Denmark, Estonia, Finland, Greece and Turkey.

Of course the end of military service does not mean the end of militarisation. This report also documents the size of military forces maintained by EU member states, and the level of military expenditure. Nevertheless, it might seem strange that our principal recommendation should continue to be that the European Parliament adopt a new resolution on conscientious objection to military service. There are however important reasons for this.

First, of course, although the trend towards the "professionalisation" of armed forces may seem unstoppable, it has not yet run its course. The seven states which retain military service do not all have provision for the exercise of the right of conscientious objection which meets acceptable standards. Candidate country Turkey remains of particular concern; alone in the entire Council of Europe area it still does not even *acknowledge* the right, and conscientious objectors there are subject to severe persecution.

Second, what is happening in Germany is typical. Military service is formally suspended, not abolished. Obligatory registration continues. In Germany and elsewhere, governments retain the right to reintroduce conscription if circumstances demand. This is most likely to be in the context of war or similar national emergency. In such circumstances, conscientious objection is more directly relevant, but at the same time conscientious objectors generally arouse less public sympathy. It is important that the standards to be applied are set in calmer times.

Third, it is necessary to protect the rights of those who develop conscientious objections while serving in the armed forces, whether or not their original decision to join was voluntary. One of the most important advances in standards during the period covered by this report was Recommendation CMRec(2010)4 to member states by the Committee of Ministers of the Council of Europe on human rights in the armed forces, of which Paragraph 42 states "Professional members of the armed forces should be able to leave the armed forces for reasons of conscience." Our report focusses 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. This is not so uncommon an occurrence as is sometimes assumed. In fact only in Germany is legislation embodying this possibility in regular use, and there in 2010 there were no fewer than 370 applications from contract soldiers for release on the grounds of conscience, the majority successful.



Fourth, clearly formulated high *domestic* standards for the implementation of the right help the EU and its member states to help protect conscientious objectors in parts of the world where recognition has not advanced so far, whether by granting them asylum in Europe or urging better provision in their home countries. Although the present report concerns only the European Union, it may be noted that since the Autumn of 2010 EBCO has given substantial support to the conscientious objectors' movement in Belarus, and to the first recorded persons to seek the right of conscientious objection in Egypt and Algeria – in the latter case conducting a successful campaign for the release of the conscientious objector released. In November 2011 EBCO will co-host a conference in St Petersburg with the intention of giving support to campaigns for better CO provisions in Russia and other “Commonwealth of Independent States” countries.

It is now seventeen years since the European Parliament passed a resolution on conscientious objection to military service. There have since been enormous steps forward in both state practice and international standards. This report documents not only the Recommendation of the Committee of Minister of the Council of Europe regarding human rights of members of the armed forces, but also two further important developments in the jurisprudence of the Human Rights Committee under the International Covenant on Civil and Political Rights.

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.



CONTENTS

1. INTRODUCTION	7
2. DEVELOPMENTS SINCE JANUARY 2010	8
2.1 INTERNATIONAL STANDARDS AND JURISPRUDENCE	8
2.1.1 Committee of Ministers of the Council of Europe.....	8
2.1.2 European Court of Human Rights	8
2.1.3 UN Human Rights Committee	9
2.1.4 Proposed UN Declaration on the Right of Peoples to Peace.....	10
2.1.5 Universal Periodic Review Process of the UN Human Rights Council.....	11
2.2 DEVELOPMENTS WITHIN MEMBER STATES AND CANDIDATE COUNTRIES	11
2.2.1 Suspension of conscription	11
2.2.2 Legislative amendments and proposals	14
2.2.3 Prosecution and imprisonment of conscientious objectors.....	16
3. SPECIFIC ISSUES WITHIN THE EUROPEAN UNION.....	21
3.1 SERVING MEMBERS OF THE ARMED FORCES.....	21
3.2 RECRUITMENT OF PERSONS AGED UNDER 18	22
3.3 PROTECTION OF CONSCIENTIOUS OBJECTORS AS REFUGEES.....	22
3.4 MILITARY EXPENDITURE.....	24
RECOMMENDATIONS	25
ANNEX.....	26





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 previous reports, 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 2010.



2. DEVELOPMENTS SINCE JANUARY 2010

2.1 INTERNATIONAL STANDARDS AND JURISPRUDENCE

2.1.1 Committee of Ministers of the Council of Europe

Recommendation CM Rec (2010) 4, on the human rights of members of the armed forces, adopted by the Committee of Ministers on 24th February 2010, is such an important document that the complete text of the recommendation and appendix is annexed for reference to this report. Within its capacities, EBCO will seek to monitor the implementation of all parts of the recommendation by all Council of Europe member states.

Paragraphs 41 to 46, in section H of the appendix, deal specifically with conscientious objection. Of particular significance is paragraph 42, which states unequivocally, "Professional members of the armed forces should be able to leave the armed forces for reasons of conscience." Paragraphs 43 to 46 address implementation:

"Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience" and, finally, "Members of the armed forces should be informed of [these rights] and the procedures available to exercise them."

2.1.2 European Court of Human Rights

On 7th July 2010, the European Court of Human Rights issued an interim directive that the Turkish Government "suspend all penal actions" against Barış Görmez and "not execute any sentence issued" against him until the Grand Chamber of the Court renders its judgment in the case of *Bayatyan v. Armenia*. An application was filed on March 17, 2008, and is pending with the ECHR on behalf of Mr. Görmez and three other Turkish Jehovah's Witnesses who are conscientious objectors. The Turkish Government has disregarded this directive (see section 2.2.3, below).

The Grand Chamber hearing referred to – in the case of *Bayatyan v Armenia* (Application No. 23459/03) – was held on 24th November 2010. In this case the Chamber judgement delivered on 27th October 2009 had contained the surprising assertion that conscientious objection to military service is not protected under the European Convention on Human Rights. As of mid-May 2011 the Grand Chamber judgement had not been announced.



The amicus brief submitted jointly to the Grand Chamber by five international (UN-accredited) non governmental organisations – Amnesty International, Conscience and Peace Tax International, Friends World Committee for Consultation (Quakers), International Commission of Jurists, and War Resisters International – may be accessed on those organisations' websites.

2.1.3 UN Human Rights Committee

The jurisprudence relating to conscientious objection to military service under the International Covenant on Civil and Political Rights (ICCPR), has since the beginning of 2010 seen two important developments, both as the result of individual “communications” under the Optional Protocol to the ICCPR submitted by conscientious objectors in the Republic of Korea (South Korea) who had suffered the usual eighteen-months imprisonment for refusing military service.

On 23rd March 2010, during its 98th Session, the Human Rights Committee (the body of independent legal experts charged with overseeing the implementation of the ICCPR) adopted its “Views” on communications from eleven conscientious objectors, a Catholic, a Buddhist, and nine who did not indicate any religious adherence. [UN Document CCPR/C/98/D/1593-1603/2007: *Eu-Min Yung et al v Republic of Korea*, issued 30th April 2010].

On this occasion, the Committee reiterated the conclusions it had previously reached with regard to two Jehovah's Witnesses from South Korea [UN Document CCPR/C/D1321-1322/2004: *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea*, issued 23rd January 2007], 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”. By applying this to a diverse group of objectors, including persons with no religious affiliation, the Committee reinforced the principle that it had first elaborated in 1993, namely that “there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs”. [Human Rights Committee, General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18). 30th July, 1993, para 11.] Significantly, too, on this occasion the Committee was unanimous, including the author of one of the dissenting opinions on *Yoon & Choi*.

On 24th March 2011, during its 101st Session, faced with communications from 100 further Jehovah's Witnesses, the Committee went beyond the precedent they had set in *Yoon & Choi*. In fact in its “Views” on the latest communications [UN Document CCPR/C/101/D/1642-1741/2007 *Min-Kyu Jeong et al v Republic of Korea*, issued on 5th April 2011] the Committee repeated wording from the second dissenting opinion in that case, by a member attending his final Session of the Committee, who felt that the majority had not stated strongly enough that conscientious objection “entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual’s religion or beliefs. The right must not be impaired by coercion. (...) Repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibit the use of arms, is incompatible with article 18, paragraph 1 of the Covenant.”. Crucially, in this latest case, the Committee states that conscientious objection to military service “inheres in the right to



freedom of thought, conscience and religion". Only three members signed a minority opinion that the Committee should have based its decision on the position it took in *Yoon & Choi*, namely that conscientious objection is a protected *manifestation* of religion or belief.

If conscientious objection to military service is in fact an inherent part of the freedom of thought, conscience, and religion, as the Committee now maintains, rather than simply a manifestation of religion or belief, the question of permissible limitations does not arise. No limitations are permissible. While the rulings in earlier cases were made on the basis that the Republic of Korea had not shown that its complete lack of provision for conscientious objectors to military service was necessary with reference to the permissible grounds for limitation listed in Article 18.3 of the ICCPR, this latest decision follows the previous dissenting opinion in finding that Article 18.3 (which applies to manifestations of religion or belief, not to the freedom of thought, conscience and religion itself) is not engaged.

The implication of this latest decision is that all parties to the ICCPR, *including all EU members* are under an absolute obligation under Article 18.1 to respect the right of conscientious objection to military service, at the very least in its most basic form of personal unwillingness to bear arms – no circumstances can justify exceptions to this. This obligation under the ICCPR is irrespective of what interpretation is put by the European Court of Human Rights upon Article 9 of the European Convention on Human Rights and Fundamental Freedoms, which is very close in wording to Article 18 of the ICCPR – the forthcoming Grand Chamber judgement in the case of *Bayatyan v Armenia* (see 2.1.3 above) will be the first occasion for the Court to make an authoritative statement on the application of Article 9 to conscientious objection.

2.1.4 Proposed UN Declaration on the Right of Peoples to Peace

In Resolution 14/3, adopted on 17th June 2010, the UN Human Rights Council invited its Advisory Committee – an elected body of independent experts – to prepare a draft declaration on the right of peoples to peace. The Advisory Committee has appointed a six-member drafting group, with Dr. Wolfgang Heinz of the *Deutsches Institut für Menschenrechte* (German Human Rights Institute) as Rapporteur, and a progress report (UN Document A/HRC/17/39 of 28th March 2011) will be discussed during the Seventeenth Session of the Human Rights Council (30th May - 17th June 2011).

The Progress Report identifies seven "Core Dimensions":

- A. International peace and security
- B. Disarmament
- C. Human security
- D. Resistance to oppression
- E. Peacekeeping
- F. Right to conscientious objection and freedom of religion or belief, and
- G. Private military and security companies

Under (F) the "Proposed standards" are:

"1. Individuals have the right to conscientious objection and to be protected in



the effective exercise of this right.

2. States have the obligation to prevent members of any military or other security institution from taking part in wars of aggression or other armed operations, whether international or internal, which violate the principles and norms of international human rights law or international humanitarian law. Members of any military or other security institutions have the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms. The duty to obey military superior orders does not exempt from the observance of these obligations, and disobedience of such orders shall in no case constitute a military offence.

3. Individuals have the right to expect that States pay special attention to help solve conflicts related to religious and ethnic issues in cooperation with civil society."

2.1.5 Universal Periodic Review Process of the UN Human Rights Council

In the consideration of **Estonia** during the Tenth Session of the Working Group on the Universal Periodic Review (February 2011), Slovakia noted "the lack of clear grounds for accepting or rejecting an application for an alternative to military service." and recommended that Estonia "Ensure that the right of conscientious objection to military service is upheld and clarify the grounds for acceptance or rejection of such claims". Estonia accepted this recommendation. (UN Document A/HRC/17/17, paras. 58 and 77.77)

During the same session **Slovenia** made recommendations on conscientious objection to military service to Georgia and Paraguay.

2.2 DEVELOPMENTS WITHIN MEMBER STATES AND CANDIDATE COUNTRIES

2.2.1 Suspension of conscription

Germany

The German parliament approved amendments to the conscription law on 15 December 2010, which will suspend conscription from 1 July 2011 on. The last conscripts will start their compulsory military service on 3 January 2011 for six months.

Besides suspending conscription in peace time, the medical examination of potential recruits will also be suspended. Registration, however, will be extended to women. According to a new article 58 of the conscription law, the local authorities will have to hand over names and addresses of German youth - boys and girls - who will turn 18 in the following year, to the local military authorities (Kreiswehrersatzamt) at the beginning of the year, for the purpose of "sending information about a service in the Armed Forces". This means that in fact 16-17 year old youth can be contacted by the military, and can (and will) be sent



military propaganda. While it is possible to object to this, this will need to happen in the year before the data will be passed on to the military authorities. This means some who turns 18 in May of year x will need to object to his or her data being passed on in year x-2, as the age of 16.

The amendments to the conscription law also include new regulations for a voluntary military service for men and women of initially six months basic training, which can be extended by up to 17 months.

With the suspension of conscription, substitute service for conscientious objectors also needs to be suspended. A draft law aimed primarily at establishing a new, federal voluntary service, which also includes the regulations for the suspension of substitute service, has been presented the German government. According to the draft, substitute service will also be suspended from 1 July 2011 on. But from the same date on a new voluntary service, open for women and men, will be available, administered by the former Federal Agency for Substitute Service (Bundesamt für Zivildienst), which will be renamed "Federal Agency for Family and Civil Society" (Bundesamt für Familie und zivilgesellschaftliche Aufgaben). The new voluntary service will last 6, 12, or 24 months, and it is planned that there will be about 30,000 places initially.

This new voluntary service on a federal level is in addition to existing voluntary service schemes of the German states (Länder), the Voluntary Social Year and the Voluntary Ecological Year.

(Source: War Resisters International: CO-Update, January 2011, No. 62)

Sweden

On 1st July 2010, the last Swedish conscripts were demobilised. Henceforth, the authorities expect 3000-4000 young men and women per annum to apply for a three-month voluntary military training programme, at the end of which the most suitable individuals will be invited to continue military careers.

(Source: <http://www.barentsobserver.com/sweden-abolishes-military-conscription.4785432-116321.html>)

Serbia (Potential Candidate Country)

Radio Srbija reported on 16 July 2010 that from 1 January 2011 Serbia would have fully professional armed forces. According to an interview of Minister of Defence Dragan Sutanovac with Ekonom:east Magazine, the plan is to have 10600 professional soldiers and 2000 places for those who wish to serve voluntarily. According to the report of Radio Srbija there are already 8,000 applications, of which 1,600 (20%) are from women.

The goal of the professionalisation is to enable the army to perform certain tasks and mission, both internally and through cooperation with armed forces of allies and partner countries, so the head of the Obligations Department of the Serbian Ministry of Defence, colonel Dragoslav Lackovic, in an interview with Radio Srbija. At present, Serbia is part of several UN missions, among them MINURCAT (in the Central African Republic and Chad), UNMIL (United Nations Mission in Liberia), and MONUC (United Nations Organization Mission in the Democratic Republic of the Congo). However, Serbia's contribution is generally small, and more on the level of military observers or medical personnel.



Alongside a professional service in the Armed Forces, which will be open for men and women, there will also be the option of a "voluntary military service", although this is only open for men. Certain benefits come with the three months of voluntary military service: the possibility to freeze their studies, to pass the driving exam free of charge, or to be eligible to work in the army afterwards. It might also be possible to apply for a job with security agencies, which will soon be regulated by law.

According to colonel Dragoslav Lackovic, eligible for professional military service *"are all Serbian citizens who meet the conditions. It means being physically fit for military service, which is to be established by a competent commission. Also, if the applicant had worked previously in other state bodies, that employment should not have been ceased because of serious violations of work discipline; they must not have previous convictions to prison sentences of more than six months; and they need to be under the age of 30."* There are also other conditions, *"i.e. that the candidate had done regular military service under arms, except for the female applicants; at least high-school education is necessary, except for the infantrymen and sentry service. The logistics service requires adequate professional education for the service at issue, and the applicants for driving service need a C-category driving license and grade-8 education"*. Colonel Lackovic added that each candidate has to go through three-month training, and at the moment there are some 500 candidates in training centers. Only after passing the exam, they will sign a contract.

According to the report by Radio Srbija, the National Parliament or the President can annul the decision [to abolish conscription], in case of an emergency or war.

Overview

In 1960, conscription applied on the territory of 32 of the 35 present-day EU Member States, Candidate Countries and Potential Candidate Countries (Ireland, Malta and candidate country Iceland were the exceptions). Once German conscription ceases on 1st July 2011, obligatory military service will remain in only seven of the thirty-five (Austria, Cyprus, Denmark, Estonia, Finland, Greece, and Turkey). The following table charts the transformation:

Europe's farewell to conscription

Last conscript demobilised:

Iceland	not applicable – no armed forces
Ireland	conscription never imposed
Malta	conscription never imposed
UK	1963
Luxembourg	June 1969
Belgium	February 1995
Netherlands	1996
France	2001
Spain	December 2001
Slovenia	September 2003
Czech Rep	December 2004
Italy	December 2004
Portugal	December 2004



Slovakia	2004
Hungary	July 2005
Bosnia-Herzegovina	December 2005
Montenegro	July 2006
Romania	December 2006
Bulgaria	2007
Latvia	2007
Macedonia	2007
Albania	2009
Lithuania	2009
Poland	October 2009
Albania	January 2010
Sweden	July 2010
Serbia	January 2011
Germany	July 2011
Austria	not yet
Cyprus	not yet
Denmark	not yet
Estonia	not yet
Greece	not yet
Finland	not yet
Turkey	not yet

In Denmark, the duration of alternative service for conscientious objectors is equal to that of military service; in the other member states which retain conscription 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

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

2.2.2 Legislative amendments and proposals

Greece

Following the Decision of the Greek Minister of Defence No.F.421.4/1/280115 (FEK 111/07-02-2011), the length of the civilian service in Greece was reduced to 15 months, while the length of the military service remains 9 months for the vast majority of the conscripts who serve in the land forces.

Turkey (Candidate Country)

Plans drawn up by the General Staff of the Turkish Armed Forces for a new, "*uniform compulsory military service*" were reportedly to be sent to the office of the Prime Minister at the end of September 2010. The new scheme envisaged that every male citizen would be required to serve for nine months regardless of their level of education would replace the existing conscription system, in which



the length of service ranges from six months for university graduates to 15 months for those without university education, with the option for those living abroad to serve just one month and pay an exemption fee. The new conscription rules will also provide longer periods of training for new recruits, including a special 45-day weapons training program to be given to all soldiers following their basic training.

Critics say the plan was drawn up without taking into consideration civilian political decisions.

Retired military judge Umit Kardas stressed that political authorities should decide the function of the military and establish its principles and only after that should such a programme be prepared. *"For domestic security there is still an army unit called the gendarmerie. Using gendarmerie forces is very outdated. Instead there should be rural police. But this decision should be made by the civilian authorities"*, he told *Today's Zaman*.

He also pointed out that Turkey has been developing its relations with its neighbours, but they are still considered as threats by the military. *"This mentality should also change. Then the technological needs of the army should be determined. Conscripts are also working as waiters in military bases and as drivers for retired generals. Is this really necessary? Only once the principles regarding the scope of the army have been decided can decisions be made about the future of compulsory military service"*, he emphasised, adding that asking everyone to join the military for nine months will not create a professional army, just a standard approach to conscription.

Columnist Lale Kemal said that the army did not work with the government, Parliament or professional associations for the young men, such as trade chambers, in preparing its proposal. *"Such an attitude is an indication of their desire to continue with their military tutelage,"* she argued. *"Another issue that has to be addressed is what is the meaning of military service. Our Constitution indicates that service to the country can be either in the public sector or the military, but despite this the army is making military service the only way to serve the country,"* she said, adding that working as a police officer should be seen as serving the country, but that the military does not want to give any exemptions for police officers. *"Minister of Interior Beşir Atalay announced that police would be exempt from military service, but Chief of General Staff Gen. Işık Koşaner denied that. This also shows that while they were preparing this suggestion they did not consult with the civilian authority,"* Kemal pointed out.

Another issue neglected in the military's proposal is the position of conscientious objectors. Oğuz Sonmez, from the Conscience Objection for Peace Platform, noted that Turkey has failed to live up to its responsibilities in this respect. *"There are discussions about a professional army, but the situation of conscientious objectors is not mentioned much during these discussions. We think even if Turkey recognises this right, the duration of public service in lieu of military service will be longer than compulsory military service,"* Sonmez said.

State Minister Egemen Bağış, Turkey's chief EU negotiator, said only seven countries in the European Union have compulsory military service and that even they recognize the right of conscientious objection. *"Instead of having an*



amateur army with 1 million men, it is more reasonable to have a professional army with fewer men," he said. Bağış added that it is wrong to use young men who have only received a couple of months of training to fight terrorism in southeastern Anatolia. "In particular, those soldiers who are on duty in southeastern Anatolia should receive the best possible training and be equipped very well. They should consider their duty a professional job," he said.

(Sources: "Army's new plan for uniform service falls short of expectations", Today's Zaman, 31 August 2010; "Turkish military finalizes work on new conscription regulations", Hurriyet Daily News, 28 September 2010)

2.2.3 Prosecution and imprisonment of conscientious objectors

As far as is known, no conscientious objectors have spent time in prison in the EU in 2011 on charges relating to their refusal to perform military service. This is a very welcome development.

Greece

Although only suspended sentences have been handed down in the last two years, Greece continues to prosecute conscientious objectors.

As reported in the January/February 2011 edition of EBCO's newsheet "The Right to Refuse to Kill", **Evangelos Mihalopoulos**, a conscientious objector on ideological grounds, who refused to serve the punitive civilian service in 2007 was sentenced by the Military Court of Athens to 8 months suspended imprisonment on 19 February 2010. On 2 February 2011 he appeared before the Appeal Military Court of Athens on charges of insubordination.

On February 16, the Judicial Council of the Appeal Military Court of Athens heard the appeal of **Nikolaos Xarhos** against the bill of indictment by the Judicial Council of the Naval Court of Piraeus for a second charge of desertion. Nikolaos Xarhos was a professional soldier. In 1989 he took leave and went to Sweden where he was baptized as a Jehovah's Witness. He came back to Greece in November 2006 and was sentenced to 6 years imprisonment for desertion. He appealed against this verdict and was sentenced by the Appeal Military Court of Athens to 3 years imprisonment suspended for 5 years. On 8 August 2010 he was sent a bill of indictment by the Judicial Council of the Naval Court of Piraeus for a second charge of desertion for the period starting from the day of his trial in the appeal military court until June 2007 when his resignation was accepted.

On February 23, 2011 **Avraam Pouliasis** was tried by the Military Court of Athens on charges of insubordination. Avraam Pouliasis, a conscientious objector on ideological grounds, was called up for military service before 1998, when there was no civilian service, and he refused to serve. Now he is 48 years old, and not liable for conscription any more.

Finally, on March 22, 2011 conscientious objector **Babis Akrivopoulos** was sentenced by the Naval Military Court of Piraeus to 8 months imprisonment suspended for 2 years for insubordination, because he refused to serve the compulsory military service and the discriminatory and punitive substitute civilian service still practiced in Greece.



Sweden

Despite the end of compulsory military service in Sweden three months earlier, a 20-year-old conscript was convicted for desertion in September 2010.

The man, who hails from Halland in western Sweden, dropped out of his mandatory military service the previous winter after serving for just a few days, the Hallandsposten newspaper reports.

The man was among the last crop of Swedes forced into service under the country's conscription laws, but life as a soldier, professional or otherwise, didn't sit well with the 20-year-old Halland native. According to the newspaper, the man quit the military because the setting reminded him of the death of a close relative, causing him to become depressed.

But the district court in Halmstad wasn't sympathetic to the man's reasons for deserting, sentencing him to two weeks in prison, despite pleas by the man's attorney that the court refrain from handing out any punishment in the case.

(Source: The Local, 7th September 2010)

Turkey (Candidate Country)

The situation of conscientious objectors in Turkey remains of severe concern to EBCO.

Among Jehovah's Witnesses imprisoned in Turkey is **Baris Görmez**, the subject of the interim directive from the European Court of Human Rights reported in Section 2.1.2 of this Report. Ignoring the interim directive, on January 26, 2011, the military court in Isparta sentenced Görmez back to the military prison where he has been since November 5, 2007. The court made this decision after conferring with the Republic of Turkey Ministry of Justice.

"Barış is essentially caught in a never-ending revolving door because current laws in Turkey do not allow for conscientious objection to military service," states Ahmet Yorulmaz, a spokesperson for Jehovah's Witnesses in Turkey. Yorulmaz continues, "As soon as he finishes one prison term, Barış is sentenced to another because his Bible-trained conscience does not allow him to wear a military uniform or bear arms. The decision by the Isparta Military Court and the Ministry of Justice to ignore the ECHR directive sadly confirms that there is no end in sight for this type of injustice in Turkey."

Görmez is 33 years old, a Turkish citizen, and a former professional basketball player. He has consistently stated that he would be willing to perform alternative civilian service if this option was available. After more than three years of incarceration, Barış has not wavered in his determination to maintain his firm Bible-based conviction to abstain from learning war, in spite of difficulties he has endured. Even before arriving at prison, cruel attempts were made by the military police to coerce Barış to change his religious beliefs and take up arms. He was hit, kicked, and stepped on while the soles of his feet were beaten with a club. At seven feet tall, Görmez also faces a constant challenge in prison. In order to sleep, he must either pull two beds together or contort into an



uncomfortable position each night.

(Source: "Turkish court ignores directive from ECHR: Conscientious objector sentenced to ninth consecutive prison term" jw-media.org 26th February, 2011)

Enver Aydemir was sentenced to ten months imprisonment by Eskişehir military court on Tuesday 30 March 2010, on charges of desertion. Aydemir refuses military service based on his religious beliefs as a Muslim. He refuses to be part of a secularist military.

He was first called up to serve in a gendarmerie unit in the north-western Turkish province of Bilecik. He was brought to his unit by force. After declaring his conscientious objection, Aydemir was arrested on 24 July 2007, and sent to Eskişehir military prison, where he spent several months in pre-trial detention. On 4 October 2007, he was released by the court, and ordered to again report to his unit in Bilecik. However Aydemir did not follow this order.

He was again arrested on 24 December 2009, after a routine police check in Istanbul revealed an outstanding arrest warrant, and after several days was again transferred to the military prison in Eskişehir. While in prison, he faced further disciplinary punishment for refusing to wear the prison uniform and disobeying orders.

Following sentencing on 30 March, Aydemir was formally released in recognition of the time he had already spent in prison, but was taken to the Bilecik 2nd Gendarmerie Private Education Unit, where he was again ordered to complete his military service. It was reported that he was then returned to Eskişehir military prison, to await a new trial on charges of disobeying orders.

On his next appearance before the military court he was sent to a hospital in Ankara for a mental-health evaluation. Hospital staff declared him "anti-social" before even giving him a proper medical examination, he said. When he was in the hospital, Aydemir said, "I just hung around in the garden." While doctors declared him unfit for military service, they also warned other patients to steer clear of him, he added.

He was eventually released at the beginning of September 2010.

(Sources: War Resisters' International, CO Alert dated 1 April 2010; "Turkey's First 'Muslim Objector' free but still defiant", Hurriyet Daily News and Economic Review, 4 September 2010.)

Inan Suver, who had first declared his conscientious objection in a letter to the military authorities in 2009, was detained in Istanbul on 5 August 2010 and transferred to the military prison in Izmir on 23 August. On 24 August, he appeared in front of the Aegean Armed Forces Command Court. The Court confirmed the charges of "infringement of leave" and ordered that he remain in pre-trial detention. Suver restated his conscientious objection during the hearing. According to information published by Amnesty International, Suver has been convicted and imprisoned on charges of "desertion" on at least three previous occasions. He has reported that while serving his prison sentence for desertion at Şirinyer Military Prison in İzmir he was severely beaten by prison guards. His outstanding sentences from the three previous convictions totalled 35 months.



On 21 April, 2011 Süver escaped from the Manisa Saruhanlı Open Prison. One day later, he was arrested in Izmir and taken to the Buca Prison (Izmir). Süver started a hunger strike after he was arrested in Izmir. On 3 May, he was given a 20-day isolation punishment because he insisted on continuing the hunger strike and was transferred to the E Type Closed Prison in Manisa (western Turkey). Süver had begun and abandoned hunger strikes on two previous occasions during his imprisonments. Süver's father Yasin Süver met his son at the Manisa E Type Closed Prison on 4 May and afterwards reported that İnan was in very poor health.

(Sources: War Resisters' International, CO Alert dated 6 August 2010; "Turkey: Conscientious Objector on Hunger Strike for 14 Days", BIA News Centre, 5 May 2011)

The situation of conscientious objectors in Turkey was commented on in the progress report of the European Commission on its membership application:

"Judicial proceedings against conscientious objectors on religious grounds continued. Public statements on the right to conscientious objection have led to convictions. Implementation of ECtHR judgments regarding *conscientious objectors* is still pending. Turkey has adopted no legal measures to prevent repetitive prosecution and conviction of conscientious objectors. Several members of the Jehovah's Witness's community face court cases as conscientious objectors. A military court rejected the right to conscientious objection.

(European Commission: Turkey Progress Report, 9th November 2010, SEC(2010)1327, Section 2.2 Human Rights and the protection of minorities, p.25.)

EBCO is also concerned about the continuing use in Turkey of Article 318 of the Penal Code "*alienating the people from the military*" to stifle discussion of conscientious objection.

In January 2011, this was used by the Eskişehir Public Prosecutor's Office to file an indictment against five people – conscientious objector Halil Savda, director Mehmet Atak, writer Fatih Tezcan, Enver Aydemir's father, Ahmet Aydemir, and his lawyer Davut Erkan in Eskişehir regarding a press release issued during the court case against Enver Aydemir at Eskişehir military court in January 2010. In the statement they had underlined that no one is born a soldier but a baby, making reference to the popular Turkish motto "*Every Turk is born a soldier.*" They added that they go to Ordu only for hazelnuts. Ordu is a city in the Black Sea region of Turkey famous for its hazelnuts, and the word "ordu" in Turkish also means army.

The Eskişehir public prosecutor claimed in his indictment that these statements are intended to "alienate the people from the military," defined as a crime in Article 318 of the Turkish Penal Code (TCK), which stipulates imprisonment from six months to two years for people who are found guilty of this act. If members of the media are found guilty of such discouragement, the punishment is increased by half.

(Source: War Resisters' International, CO Update No.63, February 2011.)



In a separate case, on 3 March 2011 the Court of Appeal upheld the sentence of five months' imprisonment received by Halil Savda from the Sultanahmet 1st Court of First Instance in Istanbul on 2 June 2008 under the same Article 318, regarding a statement of solidarity with two Israeli conscientious objectors which had appeared in the press on 1st August 2006.

(Source: CO Alert issued by War Resisters' International on 7 March 2011.)



3. SPECIFIC ISSUES WITHIN THE EUROPEAN UNION

3.1 SERVING MEMBERS OF THE ARMED FORCES

Despite the inclusion in the recommendation from the Committee of Ministers of the Council of Europe (see Section 2.1.1), of the statement that "Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.", very few EU member states have clear procedures to enable this. In Germany and the Netherlands the legal provisions regarding conscientious objection to military service do not specifically relate to conscripts. It is believed that the **Netherlands** provisions have on occasion permitted the release of "professional" soldiers, but no details are known. In **Germany**, by contrast, many contract soldiers "Zeitsoldaten" apply for release under the conscientious objection provisions. A parliamentary reply on 30th March 2011 (*Bundestag: Antwort des Parlamentarischen Staatssekretärs Thomas Kossendey vom 30.03.2011 auf Schriftliche Fragen des Bundestagsabgeordneten Paul Schäfer, Drucksache 17/5422 (Auszug)*) revealed that 204 such applications had been lodged in 2008 and 370 in 2010, with a further 96 in the first two months of 2011. (Applications are generally successful; there has not been a contested refusal within the last few years.) These figures contradict the popular view that very few volunteers are ever likely to become conscientious objectors, and implies that the very low number of cases recorded elsewhere reflects the complicated and little-known application procedures rather than the underlying reality.

In the **United Kingdom**, no legal provisions govern the release of professional members of the armed forces on grounds of conscientious objection, but separate regulations within the three services (Army, Navy, and Air Force) govern the procedures which may allow a conscientious objector to be discharged on compassionate grounds. If the application is rejected within the service, there is a right of appeal to the Secretary of State for Defence through the independent Advisory Committee on Conscientious Objection (ACCO). The procedures are swathed in mystery: the regulations themselves are not a public document and statistics on applications are not routinely made public. However following a "Freedom of Information" request in January 2011, the Ministry of Defence stated that there had in total been nine CO applications between 2001 and 2010, of which six were successful.

ACCO itself was convened for the first time this century in December 2010, to adjudicate on the case of LMA (Leading Medical Assistant) Michael Lyons. In the Summer of 2010 Lyons, who had hitherto served in the submarine branch, although mainly on shore, had been detailed for posting to Afghanistan. During pre-posting briefings he had been disturbed to be learn, as he explained to ACCO, "*that even going out as a medic with all good intention, if you're at a patrol base or forward operating base, it's likely you'll have to use your weapon and will have to turn civilians away who are in need of medical aid.*" This had led him to do some further research as a result of which he came to the conclusion in Afghanistan he would be obliged to do things which were contrary to his conscience and that he therefore had no choice but to apply for release from the



Navy as a conscientious objector. His Commanding Officer supported his application, expressing the view that he was "immature and naive" but there was no doubt that his conscientious objection was genuine. A chaplain however expressed the view that the objections as stated were political in nature, and it appears that this view was accepted first by the Navy authorities then by ACCO. However as of May 2011 a formal decision by the Secretary of State had not yet been notified to Lyons. At the earliest opportunity, however, Lyons has meanwhile applied for early release through normal channels, giving the minimum twelve months notice.

Quite apart from the nature of the rejection, a particularly disturbing aspect of this case is that while his appeal to the ACCO was pending, Lyons was, as part of pre-mission training, detailed to a range for firearms training. He attended, but asked in view of his pending conscientious objection appeal to be excused participation. After some hours of consultation the decision was taken to order him to proceed to the armoury, take a weapon and proceed to the range. When he refused, he was arrested and charged with "wilful disobedience of a lawful order". At a preliminary hearing on 20 May 2011, his counsel argued that the case should be stayed, the order in the circumstances not having been lawful. If this argument is not accepted, the Court-Martial proceedings are likely to take place in June or July 2011.

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 EBCO 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.

As far as is known, the situation has not changed in any of these EU member states.

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".

In **Germany** the Federal Bureau of Migration and Refugees announced in April 2011 that it was denying the asylum application of US AWOL soldier Andre Shepherd. In its negative decision, the Federal Bureau writes, *"whether the helicopters he maintained and their crews actually participated in specific illegal actions (contrary to international law) has neither been stated sufficiently, nor can it be determined specifically otherwise. According to the applicant's statements, he himself was also not able, during his first Iraq deployment, to find out details on the missions of the helicopters serviced by him or his unit. Accordingly, the applicant's deliberations on the potential participation of 'his' helicopters in possible illegal acts and war crimes constitute at most conjectures or a hypothetical possibility."*

Peace and refugee-aid organisations in Germany that support André Shepherd denounced the decision of the Federal Bureau, and announced that they would continue to support him in his suit. *"This shows that the German authorities are seeking to avoid any conflict with the USA, at the expense of those who put their bodies on the line to oppose the war in Iraq, which even the Federal government at the time considered to be in violation of international law,"* said Rudi Friedrich of the support network for conscientious objectors, Connection e.V.. Attorney-at-law Reinhard Marx stated: *"With this rejection and its interpretation of the EU Qualification Directive, which is contrary to European law, the Federal Bureau is attempting to destroy the protection for deserters and conscientious objectors envisaged by the Directive. The background for this is obviously the intention of the German government to give priority to German legal principles over European law."*

André Shepherd himself showed himself to be disappointed, but also willing to keep up the struggle. *"I hoped that the Federal Bureau of Migration itself would*



accept my application for political asylum. I am still not willing to participate in a crime against humanity, and consider it my right to do so without threat of prosecution. The U.S. military gave me no choice but to go AWOL and seek protection here in Germany."

Andre Shepherd has lodged an appeal against the decision of the Federal Bureau denying him asylum in Germany.

3.4 MILITARY EXPENDITURE

The year 2010 at last saw the effects of the economic crisis making their way through to the military expenditure by EU States, but it is noticeable that the most dramatic cuts fall in relatively small countries, with the budgets of the major spenders only slightly trimmed.

	Defence Budget (million €)		% increase or decrease	2010 per capita
	2009	2010		
Austria	2110	2120	+ 0.5	253
Belgium	2850	2750	- 3.5	257
Bulgaria	749	463	- 38.2	62
Cyprus	378	376	- 0.5	428
Czech Republic	2131	1938	- 9.1	186
Denmark	2959	2872	- 6.0	508
Estonia	256	251	- 2.2	187
Finland	2820	2710	- 3.9	507
France	33000	32200	- 2.4	514
Germany	31200	31100	- 0.3	379
Greece	7820	7300	- 6.7	653
Hungary	1174	1026	- 12.6	103
Ireland	1030	909	- 11.8	198
Italy	15500	15500	0	258
Latvia	246	190	- 22.6	85
Lithuania	348	245	- 29.6	75
Luxembourg	N.K.	420	N.K.	855
Malta	36	43	+19.4	105
Netherlands	8700	8500	- 2.3	510
Poland	5299	6346	+19.7	167
Portugal	1820	2410	+32.4	225
Romania	1649	1626	- 1.4	77
Slovakia	720	828	+15.1	153
Slovenia	550	588	- 6.5	272
Spain	7840	7690	+ 1.9	173
Sweden	3442	4210	+22.3	453
United Kingdom	43560	42940	- 1.4	694

(*- latest year available)

Calculations by EBCO based on information contained in the [Military Balance 2011](#) (International Institute for Strategic Studies, London)



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.



ANNEX

RECOMMENDATION CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states on human rights of members of the armed forces

(Adopted by the Committee of Ministers on 24 February 2010 at the 1077th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, *inter alia*, by promoting the adoption of common rules;
(...)

Recommends that the governments of the member states:

- 1. ensure that the principles set out in the appendix to this recommendation are complied with in national legislation and practice relating to members of the armed forces;**
- 2. ensure, by appropriate means and action, including, where appropriate, translation, a wide dissemination of this recommendation among competent civil and military authorities and members of the armed forces, with a view to raising awareness of the human rights and fundamental freedoms of members of the armed forces, and to providing training aimed at increasing their knowledge of human rights;**
- 3. examine within the Committee of Ministers the implementation of this recommendation two years after its adoption.**

Appendix to Recommendation CM/Rec(2010)4

1. This recommendation concerns the enjoyment of human rights and fundamental freedoms by members of the armed forces in the context of their work and service life.

General principles

2. Whilst taking into account the special characteristics of military life, members of the armed forces, whatever their status, shall enjoy the rights guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, "the Convention") and the European Social Charter and the European Social Charter (revised) (hereafter, "the Charter"), as well as other relevant human rights instruments, to the extent that states are bound by them.
3. According to Article 15 of the Convention and Article 30 of the European Social Charter, in time of war or other public emergency threatening the life of the nation, states may derogate from certain of their obligations under the Convention and the Charter to the extent strictly required by the exigencies of the situation and provided that such measures are not inconsistent with their other obligations under international law.



4. Derogations under Article 15 of the Convention shall not be permitted in relation to the following rights: the right to life, except in respect of deaths resulting from lawful acts of war, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, the principle that no punishment can be inflicted without a law and the right not to be tried or punished twice.

5. The following rights and freedoms should be respected and implemented in accordance with the accompanying principles:

A. Members of the armed forces have the right to life.

6. Members of the armed forces should not be exposed to situations where their lives would be avoidably put at risk without a clear and legitimate military purpose or in circumstances where the threat to life has been disregarded.

7. There should be an independent and effective inquiry into any suspicious death or alleged violation of the right to life of a member of the armed forces.

8. Member states should take measures to encourage the reporting of acts which are inconsistent with the right to life of members of the armed forces and to protect from retaliation those reporting such acts.

9. Members of the armed forces should never be sentenced to death or executed.

B. No member of the armed forces shall be subjected to torture or to inhuman or degrading treatment or punishment.

10. Member states should take measures to protect members of the armed forces from being subjected to torture or inhuman or degrading treatment or punishment. Particular attention should be given to more vulnerable categories such as, for example, conscripts.

11. Where members of the armed forces raise an arguable claim that they have suffered treatment in breach of Article 3 of the Convention, or when the authorities have reasonable grounds to suspect that such treatment has occurred, there should promptly be an independent and effective official investigation.

12. Member states should take measures to encourage the reporting of acts of torture or ill-treatment within the armed forces and to protect from retaliation those reporting such acts.

13. Members of the armed forces, notably when deprived of their liberty should be treated with humanity and with respect for the inherent dignity of all human beings.

C. Members of the armed forces shall not be used for forced or compulsory labour.

14. Military service or service exacted instead of compulsory military service should not be considered as constituting forced or compulsory labour. The nature and duration of service exacted instead of compulsory military service should not be punitive, disproportionate or unreasonable compared to that of military service.



15. Members of the armed forces should not be used to perform tasks incompatible with their assignment to the national defence service, with the exception of emergency and civil assistance carried out in accordance with the law.

16. The authorities should not impose on professional members of the armed forces a length of service which would constitute an unreasonable restriction on their right to leave the armed forces and would amount to forced labour.

D. Military discipline should be characterised by fairness and procedural guarantees should be secured.

17. Each member state is competent to organise its own system of military discipline and enjoys a certain margin of appreciation in the matter. However, only conduct likely to constitute a threat to military discipline, good order, safety or security may be defined as a disciplinary offence. The severity of any punishment should be proportionate to the offence.

18. Collective punishment should be prohibited.

19. The acts or omissions by members of the armed forces which constitute disciplinary offences, the procedures to be followed at disciplinary hearings, the types and duration of punishment that may be imposed, the authority competent to impose such punishment and any right of appeal should be provided for in law.

20. Any allegation of infringement of the disciplinary rules by a member of the armed forces should be reported promptly to the competent authority, which should investigate it without undue delay.

21. Members of the armed forces charged with disciplinary offences should be informed promptly, in detail, of the nature of the accusations against them. Where Article 6 of the Convention applies, they should have the right to a fair hearing. They should also be given the opportunity to appeal to a higher and independent body.

E. Members of the armed forces enjoy the right to liberty and security.

22. No member of the armed forces should be deprived of his or her liberty except in cases provided for under Article 5, paragraph 1, of the Convention, and in accordance with a procedure prescribed by law.

23. For as long as recruitment of persons under the age of 18 into military service continues, these persons should be detained only as a measure of last resort and for the shortest possible appropriate period of time. Furthermore, if detained, they should be held separately from adults, unless this is against their best interests.

24. Members of the armed forces who are arrested or detained should be informed promptly of:

- the reasons for their arrest or detention;
- any charge against them;
- their procedural rights.

25. When members of the armed forces are arrested or detained in relation to a criminal



offence, they should be brought promptly before a judge or other official authorised by law to exercise judicial power and be entitled to trial within a reasonable time or to release pending trial.

26. Members of the armed forces who are deprived of their liberty should be entitled to take proceedings by which the lawfulness of the detention should be decided speedily by a court and their release ordered if the detention is not lawful.

27. Any disciplinary penalty or measure which amounts to deprivation of liberty within the meaning of Article 5, paragraph 1, of the Convention should comply with the requirements of this provision.

F. Members of the armed forces enjoy the right to a fair trial.

In criminal matters

28. The guarantees of a fair trial should apply to all proceedings that qualify as criminal under the Convention on account of the nature of the offence and the seriousness of the potential penalty as well as its purpose, be they qualified as disciplinary or criminal in national law.

29. In order to safeguard the independence and impartiality of judicial authorities acting in criminal proceedings, there should be a clear separation between the prosecuting authorities and those handing down the court decision.

30. Members of the armed forces charged with a criminal offence should be given full access, to the same extent as in criminal proceedings against civilians, to the criminal case file and have the right to present their defence.

31. Members of the armed forces who are found guilty of an offence should, to the same extent as in criminal proceedings against civilians, be able to appeal to a competent and independent higher authority which ultimately should be an independent and impartial tribunal that fully complies with the requirements of Article 6 of the Convention.

In civil matters

32. Any exclusion of the right to have access to a tribunal for the determination of members of the armed forces' civil rights and obligations should be expressly provided for by law and should also be justified on objective grounds in the public interest.

Procedural safeguards of military courts

33. The organisation and operation of military courts, where they exist, should fully ensure the right of everyone to a competent, independent and impartial tribunal at every stage of legal proceedings.

34. Members of the armed forces should have the right to a public hearing at a competent court. The holding of sessions in camera should be exceptional and be authorised by a specific, well-grounded decision the lawfulness of which is subject to review.



G. Members of the armed forces have the right to respect for their private and family life, their home and correspondence. Any interference by a public authority with the exercise of this right shall comply with the requirements of Article 8, paragraph 2 of the European Convention on Human Rights.

35. Where states rely on national security in order to impose restrictions on the right to respect for private and family life, they should only do so where there is a real threat to national security.

36. Members of the armed forces should not be subjected to investigations into the most intimate aspects of their private life unless there is a suspicion of a criminal offence having been committed or it is required for the purposes of highest-level security clearance.

37. Conscripts should as far as possible be posted near their family and home. Postings of professional members of the armed forces far from those close to them and their homes should not be imposed as a disciplinary punishment, but only for reasons of operational effectiveness.

38. Where members of the armed forces are posted abroad, they should, as far as possible, be able to maintain private contacts and reasonable means should be provided to this end. Where those close to them accompany the members of the armed forces who are posted abroad, assistance programmes for them should be organised before, during and after deployment.

39. Members of the armed forces who are parents of young children should enjoy maternity or paternity leave, appropriate childcare benefits, access to nursery schools and to adequate children's health and educational systems.

H. Members of the armed forces have the right to freedom of thought, conscience and religion. Any limitations on this right shall comply with the requirements of Article 9, paragraph 2 of the European Convention on Human Rights.

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.

I. Members of the armed forces have the right to freedom of expression. Any restrictions on the exercise of this freedom shall comply with the requirements of Article 10, paragraph 2, of the European Convention on Human Rights.

47. The right to freedom of expression includes freedom to hold opinions and to receive and impart information and ideas. The exercise of these freedoms by everyone, including members of the armed forces, carries with it duties and responsibilities. It may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary. Such measures should be proportionate, should not be arbitrary and should be reasonably foreseeable.

48. Any restrictions on freedom of expression which are imposed where there is a real threat to military discipline, given that the proper functioning of the armed forces is not possible without legal rules designed to prevent members of the armed forces from undermining it, should respect the above-mentioned requirements. These restrictions may concern, for example, how military duties are performed or whether the political impartiality of the armed forces is affected.

J. Members of the armed forces have the right to have access to relevant information.

49. Potential recruits should be provided with full and detailed information about all aspects of recruitment, the induction process and the specific nature of the commitments involved in enlisting in the armed forces. In the case of potential recruits who are under the age of 18, this information should also be provided to their parents or legal guardians.

50. Former and current members of the armed forces should have access to their own personal data, including medical records, upon request.

51. Current and, where applicable, former members of the armed forces should have access to information with regard to their exposure during service to situations, either past or present, which were or are potentially hazardous to their health.

52. Access to information may however be restricted if the documents requested are objectively considered to be classified, or if the restrictions aim to protect national security, defence or international relations. Such restrictions should be duly justified.



K. Members of the armed forces have the right to freedom of peaceful assembly and to freedom of association with others. Any restrictions placed on the exercise of this right shall comply with the requirements of Article 11, paragraph 2 of the European Convention on Human Rights.

53. No restrictions should be placed on the exercise of the rights to freedom of peaceful assembly and to freedom of association other than those that are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

54. Members of the armed forces should have the right to join independent organisations representing their interests and have the right to organise and to bargain collectively. Where these rights are not granted, the continued justification for such restrictions should be reviewed and unnecessary and disproportionate restrictions on the right to assembly and association should be lifted.

55. No disciplinary action or any discriminatory measure should be taken against members of the armed forces merely because of their participation in the activities of lawfully established military associations or trade unions.

56. Members of the armed forces should have the right to join political parties, unless there are legitimate grounds for certain restrictions. Such political activities may be prohibited on legitimate grounds, in particular when a member of the armed forces is on active duty.

57. Paragraphs 53 to 56 should not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces.

L. Members of the armed forces enjoy the right to vote and to stand for election.

58. Any restrictions on the electoral rights of members of the armed forces which are no longer necessary and proportionate in pursuit of a legitimate aim should be removed.

59. Member states may impose restrictions on membership in the armed forces during a member's candidacy or, following election, during the term of office.

M. Members of the armed forces have the right to marry.

60. Members of the armed forces should have the right to marry and to form civil partnerships in accordance with the rights of civilians.

N. All members of the armed forces enjoy the right to protection of their property.

61. The property of members of the armed forces, in particular conscripts, retained upon joining the armed forces should be returned at the end of military service.

O. Members of the armed forces should be provided with accommodation of an adequate standard.



62. Where accommodation is provided for members of the armed forces and their families, in particular sleeping accommodation, this should allow, as far as possible, for some privacy. It should also meet basic requirements of health and hygiene.

P. Members of the armed forces should have the right to receive fair remuneration and a retirement pension.

63. Professional members of the armed forces should receive remuneration for their work such as will give them a decent standard of living. This remuneration should be paid on time.

64. Men and women in the armed forces should be entitled to equal pay for equal work or work of equal value.

65. Full-time professional members of the armed forces should be entitled to an adequate retirement pension, which should be paid on time, without any discrimination.

Q. Members of the armed forces should have the right to dignity, health protection and security at work.

66. Members of the armed forces should have the right to the protection of their dignity at work, including the right not be subjected to sexual harassment.

67. Members of the armed forces should be entitled to periods of rest. Periods of rest should, as far as possible, also be included in military training and planning of operations. Professional members of the armed forces should be entitled to paid holiday.

68. Where members of the armed forces may or have been exposed to epidemic, endemic or other diseases, appropriate measures should be taken to protect their health.

69. Member states should take appropriate measures to prevent accidents and health problems arising out of, linked with or occurring in the course of members of the armed forces' work, particularly by minimising the causes of hazards inherent in the military working environment.

70. Members of the armed forces should enjoy access to health care and the right to receive medical treatment.

71. Medical care should be provided as quickly as possible to members of the armed forces during military operations.

72. Where members of the armed forces are injured in service, adequate health care and, where appropriate, allowances should be provided to them. There should also be a system of compensation and, where appropriate, allowances in cases of death in service of members of the armed forces.

73. An appropriate compensation scheme should be available to persons leaving the armed forces who have been injured or become ill as a result of service.



74. Professional members of the armed forces leaving the armed forces should be provided with appropriate benefit packages and programmes preparing them for civilian life.

R. Members of the armed forces should have the right to decent and sufficient nutrition.

75. Members of the armed forces should be provided with an appropriate diet that takes into account as far as possible their age, health, religion, and the nature of their work.

76. Clean drinking water should be available to members of the armed forces at all times.

S. Members of the armed forces enjoy rights and freedoms without any discrimination.

77. In the context of the work and service life of members of the armed forces, as well as with respect to access to the armed forces, there should be no discrimination in relation to their human rights and freedoms based on any grounds such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The principle of non-discrimination will not be violated if the distinction between individuals in analogous situations has an objective and reasonable justification in the pursuit of a legitimate aim, such as maintaining combat effectiveness, and if the means thus employed are reasonably proportionate to the aim pursued.

78. Members of the armed forces should have the right to bring allegations of discrimination in relation to their rights and freedoms before the relevant national authorities.

T. Special attention should be given to the protection of the rights and freedoms of persons under the age of 18 enlisted in the armed forces.

79. States should ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces. Where member states recruit persons under the age of 18 they should maintain safeguards to ensure, as a minimum, that:

- such recruitment is genuinely voluntary;
- such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- such persons and their parents or legal guardians are fully informed of the duties involved in such military service;
- such persons provide reliable proof of age prior to acceptance into national military service.

80. Persons under the age of 18 within the armed forces should have the right to such protection and care as is necessary for their well-being and may make representations about their welfare, including the conditions of their employment or military service.

81. Every person under the age of 18 within the armed forces should have the right to maintain on a regular basis a personal relationship and direct contact with both of his or her parents or legal guardian(s).

82. Member states should take all feasible measures to ensure that members of the armed forces who have not attained the age of 18 do not take part in combat situations.



U. Members of the armed forces should receive training on human rights and international humanitarian law.

83. Members of the armed forces should receive training to heighten their awareness of human rights, including their own human rights.

84. During training, military members of the armed forces should be informed that they have a duty to object to a manifestly unlawful order amounting to genocide, a war crime, a crime against humanity or torture.

V. Members of the armed forces should have the possibility of lodging a complaint with an independent body in respect of their human rights.

85. Members of the armed forces who claim to have been victims of harassment or bullying should have access to a complaint mechanism independent of the chain of command.