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## **ANNUAL REPORT**

**Conscientious Objection  
to Military Service  
in Europe  
2016**

**Athens, November 2016**

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## FOREWORD by Friedhelm Schneider, EBCO President

In January 2016 two dates illustrate the contradictory developments which continue to mark the situation of conscientious objectors in Europe:

On 27 January 2016 the centenary of the British Military Service Act 1916 brings to mind the first legal provision implementing explicitly the right of conscientious objection to military service. The consequences of this first conscience clause in military legislation were determined by ambiguity and arbitrariness: 6.500 objectors were given conditional exemption and told to perform alternative service by finding work of national importance. Another 6.000 war resisters were incarcerated, over 100 of them died as a result of the conditions of their imprisonment. The example of the first CO legislation in Great Britain reveals that legal provisions for conscientious objectors are insufficient as long as they do not clearly implement liberal human right standards.

The date of 24 January 2016 reminds a less historical, however significant anniversary. Ten years earlier the European Court of Human Rights had proclaimed its judgement in the case of the Turkish conscientious objector *Ülke against Turkey*. The court found that the applicants' repeated convictions and imprisonment amounted to "civil death" and degrading treatment within the meaning of Article 3 of the European Convention on Human Rights. The Turkish government was summoned to amend its legislation and *to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs*. A decade later the pioneering judgement in favor of Osman Murat Ülke and other Turkish conscientious objectors is still disobeyed by Turkey.

The non-execution of the Ülke judgement can be seen as symptomatic for the stagnation that has been prevailing in 2016 wherever the situation of conscientious objectors should have been improved. This is in particular the case of Greece where in less than one year three different international human rights institutions have pointed out serious violations of human rights of conscientious objectors. Even though the UN Human Rights Council, the UN Human Rights Committee and the European Court of Human Rights (in the case of *Papavasiliakis v. Greece*) expressed their serious concern about the on-going discrimination of Greek conscientious objectors, the Greek government did not react nor undertake the necessary legislative steps in order to comply with international human right standards.

That things are stagnating or even going backwards can furthermore be observed in other contexts related to the issue of conscientious objection to military service: The situation of conscientious objectors applying for refugee status is – depending on the state where the application is filed – subject to many imponderables. There seems to be imminent a reversal of the trend to abolish or suspend conscription, the system of which generates the majority of problems conscientious objectors are exposed to. Finally the escalating conflict at the borders of the Council of Europe creates situations that hamper the implementation of human rights.



Fortunately after all there have been some gleams of light in the darkness: In January 2016 an amnesty was pronounced for all Greek objectors who had declared their objection before 1998 when the current law on conscientious objection entered into force. No compensation, however, was granted for all fines and prison sentences imposed to this group of early objectors.

Supported by an international network of solidarity and lobby work the Ukrainian journalist and conscientious objector Ruslan Kotsaba was acquitted in July 2016. He had been arrested in February 2015 because of his appeal to refuse a mobilization that would lead to fratricide. In Rojava, Kurdish region where a many years long struggle is being waged against ISIS, the right of conscientious objection has been recognized by the government of the Cizre canton in April 2016.

After its General Assemblies held in London (14 May 2016) and in Athens (19 November 2016) the European Bureau of Conscientious Objection expresses once more its concern that the credibility of international Human rights institutions on the European and United Nations level will strongly be damaged if the implementation of their resolutions and judgements cannot be achieved. It will consequently stay an important task for human rights NGOs to remind national governments of their responsibility to publicize and to execute the binding requests of international Human rights institutions.



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# 1. DEVELOPMENTS SINCE THE PREVIOUS REPORT (OCTOBER 2015)

## 1.1 INTERNATIONAL AND REGIONAL ORGANISATIONS AND MECHANISMS

### 1.1.1 Council of Europe

#### 1.1.1.1 European Court of Human Rights

**Enver Aydemir v Turkey** (application no.25012/11, judgment of 7<sup>th</sup> June 2016)

Details of Enver Aydemir's story were given in the EBCO Report 2011. As a devout Muslim, he had claimed a conscientious objection to service in the armed forces of the secular Turkish state. He subsequently made an application to the European Court of Human Rights claiming that his treatment at the hands of the Turkish authorities had violated Article 9 (right to freedom of thought, conscience and religion) and Article 3 (prohibition of inhuman or degrading treatment) of the European Convention.

The Court rejected the application under Article 9, choosing to narrow the definition of conscientious objection to include only "a firm, fixed and sincere objection to participation in war in any form or to the bearing of arms". It would have been remarkable if they had accepted the principle of selective objection; unfortunately this was never going to be the case which was going to achieve this breakthrough, and as always the negative verdict creates a legal precedent and encourages the Court to adopt a statement of position which together present future cases with a higher hurdle. Nevertheless, it seems rather strange that the Court should have defined Aydemir's objection as "political".

Under Article 3, the Court did however find a violation, in that Aydemir had been assaulted while in pre-trial detention on 24<sup>th</sup> and 25<sup>th</sup> December 2009, and that the authorities had failed to exercise due diligence in conducting the investigation; they had not taken a statement from Aydemir until more than a month after the filing of his complaint, and criminal proceedings against the perpetrators were still pending.

One promising aspect is that the finding of a violation of Article 3 was also based on the fact that he had been repeatedly prosecuted and convicted for refusal to wear military uniform. The Court considered that "the cumulative effect of his criminal convictions was likely to repress his intellectual personality". They thereby seem to accept that because of the beliefs on which it was based his repeated refusal to wear military uniform was a single offence, but without being prepared to label him a conscientious objector. This creates an interesting precedent.

**Papavasilakis v. Greece** (application no.66899/14, judgment of 15<sup>th</sup> September 2016)

The judgement of the European Court of Human Rights in this case of is truly groundbreaking, representing the first time that any international judicial instance has found a violation of the human rights of an objector from a State which has legislative provisions recognising the right of conscientious objection to military service.



Leonidas Papavasiliakis had applied to the Greek authorities for recognition as a conscientious objector and to be admitted to alternative civilian service instead of military service, but his application had been turned down.

The Court held, unanimously, that there had been a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights, in particular because the Greek authorities had failed in their duty to ensure that the interviewing of conscientious objectors by the Special Board took place in conditions that guaranteed procedural efficiency and the equal representation required by domestic law. Mr Papavasiliakis had been interviewed by a Board made up primarily of servicemen, two of the civilian members of the Board being absent but not replaced. Moreover, the civilian domestic court to which the decision had been appealed had not examined the facts of the case; the tribunal had claimed that Papavasiliakis' could not be a conscientious objector as he was not a baptised Jehovah's Witness, even though he had been brought up in that faith.

**Savda v Turkey (no. 2)** (application no. 2458/12; judgment of 15<sup>th</sup> November 2016)

In 2012, Halil Savda was in the first non-religious conscientious objector to successfully claim a violation of Article 9 (right to freedom of thought, conscience and religion) of the European Convention. Meanwhile he had also become widely quoted as an example of the reach of the notorious Article 318 of the Turkish Constitution. On 1st August 2006, he and four others met in front of the Israeli Consulate in Istanbul to read a statement declaring their solidarity with Israeli conscientious objectors. In August 2008, he was sentenced to five months imprisonment on the grounds that by so doing he had "incited the population to evade military service".

He subsequently made an application to the European Court of Human Rights with regard to this case. Not surprisingly, in its Judgment released on Tuesday 15th November, the Court found a violation of Article 10 (freedom of expression) of the European Convention. A full analysis of the judgement will be included in the EBCO Report for 2017.

### 1.1.1.2 European Committee of Social Rights

In 2000, the Quaker Council for European Affairs (QCEA), then represented by EBCO Board member Tim Brown, lodged a **case against Greece under the European Charter for Social Rights**. Every four years, the European Committee on Social Rights (hereinafter "ECSR" or "The Committee"), which oversees the implementation of the Charter, produces a follow-up report.

In **Conclusions XIX – 1**, November 2008,<sup>1</sup> the ECSR noting that the lengths of different periods of alternative service to replace armed military service were:

- 23 months for those who would have had to serve a full armed military service of 12 months;
- 17 months for those who would have had to serve a reduced armed military

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1 Conclusions XIX-1 – Greece, available on HUDOC database of the European Court of Human Rights ([hudoc.esc.coe.int/eng?i=XIX-1/def/GRC/1/2/EN](http://hudoc.esc.coe.int/eng?i=XIX-1/def/GRC/1/2/EN))



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service of 9 months;

- 11 months for those who would have had to serve a reduced armed military service of 6 months;
- 5 months for those who would have had to serve a reduced armed military service of 3 months.

It stated that, even though the situation in Greece had improved significantly, it was still not compatible with Article 1§2 of the Charter.

In **Conclusions XX-1** (2012),<sup>2</sup> the ECSR stated:

“Service alternative to military service

The Committee recalls that it had previously noted that armed military service lasts twelve months. Certain conscripts may only serve nine months, others six and some three. There are two forms of replacement for armed military service: unarmed military service and alternative service.

The two types of service differ in length. The Committee considered that the periods of unarmed military service to replace armed military service were compatible with Article 1§2 of the 1961 Charter, whereas it found that the length of the alternative service to armed military service was excessive and not in conformity with the Charter.

However, the Committee notes that the situation has been amended and unarmed military service has been abolished further duration of alternative service has been reduced, the alternative service duration has been set as follows:

- at 15 months for those who would be required to serve full military service,
- at twelve months for those who would be required to serve nine months military service,
- at nine months for those who would be required to serve six months military service
- and at five months for those who would be required to serve three months military service.

The Committee considers that this brings the situation into conformity with the Charter but notes that these changes occurred outside the reference period. Therefore during the reference period the situation was not in conformity with the 1961 Charter.”

In preparation for the conclusions which will be published in December, both QCEA itself and EBCO communicated with the Committee. EBCO's letter is reproduced below.

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<sup>2</sup> Conclusions XX-1- Greece available on HUDOC database of the European Court of Human Rights ([hudoc.esc.coe.int/eng?i=XX-1/def/GRC/1/2/EN](http://hudoc.esc.coe.int/eng?i=XX-1/def/GRC/1/2/EN))



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Violation of Article 1§2 of the European Social Charter in the case of alternative service for conscientious objectors in Greece

*The European Bureau for Conscientious Objection (EBCO) would like to draw the attention of the European Committee of Social Rights (ECSR) to the violation of "the right of the worker to earn his living in an occupation freely entered upon", in the case of conscientious objectors in Greece.*

*The European Committee of Social Rights (hereinafter "ECSR" or the "Committee") has consistently stated that under Article 1§2 of the Charter, alternative service may not exceed one and a half times the length of armed military service. Nevertheless at present the alternative service of Greek conscientious objectors (15 months) continues to be 67% longer than the military service (9 months) that 93% of Greek conscripts have to do in the army.*

*This is why EBCO would like to urge the ECSR to induce the Greek government to bring in line the Greek provisions for alternative service with Article 1 §2 of the European Social Charter and to reduce correspondingly the duration of alternative service for conscientious objectors.*

*As the Committee's conclusions on Greece are expected to be issued soon I would be very grateful to you to disseminate the following information to the members of the European Committee of Social Rights.*

*Thank you very much in advance.*

*Yours sincerely,*

*Friedhelm Schneider*

*President*

*European Bureau for Conscientious Objection*

In its 2012 findings, the ECSR failed to note that for those who would be required to serve three months military service, the alternative service of five months was 67% longer, and thus in breach of Article 1§2 .

Furthermore, the assumption that armed military service lasts twelve months is erroneous. Full service is, 9 months in the Army (Ground Forces) and 12 months in the Navy and the Air Force. But only a very minority of conscripts does not serve in the Army. According to the International Institute for Strategic Studies (The Military Balance 2015, p.100), the number of conscripts in the Army was 45,000, the number in the Navy is 1,600 and in the Air Force 1,790. So 93% serve in the Army.

Furthermore, according to the current provisions,<sup>3</sup> conscripts in the Navy and the Air Force who, after initial training, spend their military service in units in Thrace, the Eastern Aegean islands or the Dodecanese archipelago - the regions closest to the eastern borders - are released after 9 months (or 8 months, for those liable to reduced service of 9 months). Thus the proportion of Greek conscripts who are liable to a maximum of 9 months service is even higher than 93%.

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<sup>3</sup> See decision of the Minister of Defence No Φ.421.4/13/209290 of 17 December of 2009



The comparison for different categories of full or reduced service can be seen in the following table:

**Tab. 1. Greece - Categories of full or reduced Military and Alternative Civilian service**

	<b>Military Service</b>	<b>Alternative Civilian Service</b>
Full service	12 months (Navy, Air Force) 7% of conscripts	<b>15 months</b> (25% more than in the Navy-Air Force, <b>but 67% more than in the Army.</b> )
	<b>9 months (Army)</b> 93% of conscripts	
Reduced service (A)	9 months (Navy, Air Force), 8 months (Army)	12 months (33% more than in the Navy, Air Force, 50% more than in the Army)
Reduced service (B)	6 months	9 months (50% more)
Reduced service (C)	3 months	5 months <b>(67% more)</b>

The Ministry of National Defence has repeatedly referred to the fact that the ECSR has stated that the situation has been brought in conformity with the European Social Charter.<sup>4</sup> In response to these claims, the misconception of the European Committee on Social Rights has been highlighted in a Parliamentary question<sup>5</sup>

The European Committee on Social Rights' conclusions will be published in December 2016, but it is possible that they have already been drafted. We do not know whether our input will have been received in time to persuade them to reconsider their erroneous interpretation of the situation in 2012. Even if not, the discriminatory length of alternative service in Greece is an issue which will not go away.

### 1.1.1.3 Council of Europe Commissioner for Human Rights

Although the Commissioner has visited two times Ukraine since last year<sup>6</sup>, neither of his reports following visits raised the issue of conscientious objection even if in war time.

Also his annual activities report for 2015 did not speak of this issue.

<sup>4</sup> See the answers (in Greek) of the Deputy Minister of National Defence: of 20/8/2015 to the question No 4218/29-7-2015, of 26/11/2015 to the question No 781/3-11-2015, and of 23/12/2015 to the question No 955/9-11-2015 on the Hellenic Parliament website ([www.hellenicparliament.gr](http://www.hellenicparliament.gr)).

<sup>5</sup> See Question No 1716/7-12-2015 (in Greek) of Mr. Karagiannidis, MP of the governing SYRIZA party.

<sup>6</sup> From 29 June to 3 July 2015 and from 21 to 25 March 2016.



## 1 1 2 European Union

### 1.1.2.1 European Parliament

Last resolution on the situation of fundamental rights in the European Union regards 2013-2014 years<sup>7</sup> and it did not speak about conscientious objection.

In June 2016, European Parliament published a study that examines the follow-up given to the aforementioned resolution and also it has the aim of support the preparation of the report on the situation of fundamental rights in the European Union (2015).

Also this study does not raise the issue. Therefore, for this year, nearly all activities of the European Parliament in relation to Conscientious objection and/or Freedom of Religion and Belief regard third countries.

In its resolution on the situation in **Eritrea**,<sup>8</sup> the European Parliament *urges the Government of Eritrea to put an end to the system of indefinite national service by demobilising the conscripts who have completed their mandatory 18 months' service and effectively ending the practice of engaging conscripts in forced labour after that period, to provide for conscientious objection, and to end the compulsory practice of all school students spending their final year of schooling in a military training camp; calls on the Eritrean Government to ensure that no one undertakes military training before they reach 18 years of age and that no members of the population past the normal conscription age are conscripted.*<sup>9</sup>

Also in the same resolution, European Parliament urges Eritrea to end the '*guilt-by-association*' policies that target family members of those who evade national service, seek to flee Eritrea or fail to pay the 2 % income tax imposed by the government on Eritrean expatriates.<sup>10</sup>

Furthermore, in its resolution on the systematic mass murder of religious minorities committed by **ISIS**<sup>11</sup>, the European Parliament *expresses its view that the persecution, atrocities and international crimes amount to war crimes and crimes against humanity; stresses that the so-called 'ISIS/Daesh' is committing genocide against Christians and Yazidis, and other religious and ethnic minorities.*<sup>12</sup> The European Parliament, inter alia gross human rights violations, mentioned the fact that Yazidi children have been forcibly recruited as soldiers.<sup>13</sup>

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

8 European Parliament resolution of 10 March 2016 on the situation in Eritrea (2016/2568(RSP)).

9 Ibid., para. 3.

10 Ibid., para. 13.

11 European Parliament resolution of 4 February 2016 on the systematic mass murder of religious minorities by the so-called 'ISIS/Daesh' (2016/2529(RSP))

12 Ibid., para. 2.

13 Ibid., para. G.



Moreover, last June, the **European Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance** has publicized its annual report on the State of Freedom of Religion or Belief in the world (2015).<sup>14</sup>

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

In the Report, the intergroup raises the issue of conscientious objection in relation to the getting worse situation of Jehovah's Witnesses in **Turkmenistan**, which are prosecuted for their refusal of military service (see section 1.1.3.1.1).<sup>15</sup>

Moreover, the Report speaks about the strong discrimination against Jehovah's Witnesses in **Eritrea**. In 1994, the members of this religious minority lost their citizenship after they refused to participate in Eritrea's 1993 referendum, and suffer for their conscientious objection to military service.

Due to this extreme discrimination by a regime that has been called "the North Korea of Africa", hundreds of thousands of people are fleeing the country.<sup>16</sup>

### **1.1.3 United Nations**

#### **1.1.3.1 Human Rights Committee**

##### **1.1.3.1.1 Jurisprudence**

In this section, the report summarizes three communications which adoption of views by the Human Rights Committee has been the 29<sup>th</sup> October 2015 (115<sup>th</sup> session).

All the three cases concern the situation of conscientious objectors on religious ground (Jehovah's Witnesses) in Turkmenistan.

#### **Case of Mahmud Hudaybergenov (Communication no. 2221/2012)**

##### **State party: Turkmenistan**

The author of the communication is **Mahmud Hudaybergenov**, a Turkmen national born on 29 January 1990 and Jehovah's Witness since 2003.<sup>17</sup>

In the fall of 2008, he was called up by the State party's Military Commissariat to perform military service. He states that he has explained that he was not able to perform military service as his faith did not allow him to take part in any kind of military activity.

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14 The European Parliament Intergroup on Freedom of Religion or Belief and Religious Tolerance, The State of Freedom of Religion or Belief in the world 2015, Annual Report, June 2016.

15 Ibid., p. 74.

16 Ibid., p. 36.

17 Human rights Committee, CCPR/C/115/D/2221/2012, published the 22<sup>nd</sup> December 2015, parr. 1.1., 2.1.



The Military Commissariat gave him severally deferrals because of his health until early 2011, when he was again called up for military service.

On 9 August 2011, the Court convicted him of evading military service and sentenced him to 24 months' imprisonment (article 219 (1) of the Criminal Code).

Moreover, the Court indicated that the author had partially admitted his guilt as he had agreed to be a Jehovah's Witness and because of this, he believed that it was wrong to "bear arms or learn war".

The author was arrested in the courtroom and detained for 18 days in the temporary holding facility DZ-D/7 in Dashoguz. After, he was transferred to the LBK-12 prison (located in Seydi) and placed in an isolation cell for 10 days upon arrival.

During his imprisonment, he has been beaten repeatedly by the guards. In particular, in September 2011, the director of the prisons' working facilities for detainees kicked him in the chest, slapped him several times and used his palms to hit him in the area around his ears. The author stated that his left ear hurt for a month afterwards. The author further claimed that the director used to hit him with a wire on his back and that on a different occasion; he hit him from morning until lunchtime.<sup>18</sup>

Finally, he stated that he has been suffering from kidney pain since his imprisonment.

The author claims that:

- his imprisonment because of his religious beliefs in itself constituted inhuman or degrading treatment within the meaning of article 7 of the Covenant;
- to be the victim of a violation of article 7 of the Covenant on account of the conditions at the LBK-12 prison (harsh climate conditions, overcrowded, health issues)<sup>19</sup>;
- he was ill-treated by the prison staff while in the LBK-12 prison again in violation of article 7 of the Covenant;
- his prosecution, conviction and imprisonment for refusing to perform compulsory military service because of his religious beliefs and conscientious objection have violated his rights under article 18 (1) of the Covenant.

In the State party's observations, the State reported that *the criminal offence committed by the author had been determined accurately according to the Criminal Code of Turkmenistan, and that according to article 41 of the Constitution, protection of Turkmenistan was the sacred duty of every citizen and general conscription was compulsory for male citizens of Turkmenistan.*<sup>20</sup>

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18 Ibid., para. 5.3

19 In its Concluding Observations, the UN Committee against Torture expressed concern regarding ongoing physical abuse and psychological pressures by LBK-12 prison staff, including collective punishment, ill-treatment as a "preventive" measure, the use of solitary confinement, and sexual violence and rape by prison officers or inmates. See CAT/C/TKM/CO/1, para. 18

20 Ibid., para. 4.



In addition, the State party declares that *the author did not meet the criteria of persons to be exempted from military service as provided for under article 18 of the Law on Military Duty and Military Service.*<sup>21</sup>

The Committee, after has declared the claims admissible and recalling its jurisprudence and its General Comment n. 22 (1993) on freedom of thought, conscience or religion<sup>22</sup> - and in the absence of any other pertinent or contrary information on file and the fact that Turkmenistan were not refuted the allegations of the author of the case – decides that there are the follow violations:

- Article 7: ill-treatment of the author by the prison guards;
- Article 10 paragraph 1: deplorable prison conditions at the LBK-12 prison;
- Article 18 paragraph 1: absence in the State of an alternative to compulsory military service and repression of the refusal to be drafted for compulsory military service exercised against persons whose conscience or religion prohibit the use of arms.

Therefore, the Committee concludes that *the State party is also obligated, inter alia, to expunge the author's criminal record and to provide him with adequate compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future, which includes the adoption of legislative measures guaranteeing the right to conscientious objection.*<sup>23</sup>

## **Case of Ahmet Hudaybergenov (Communication no. 2222/2012)**

### **State party: Turkmenistan**

The author of the communication is **Ahmet Hudaybergenov**, a Turkmen national and Jehovah's Witness born in 1990.

On 1<sup>st</sup> October 2008, he was called by the Military Commissariat to perform his compulsory military service. In compliance with the summons, he met with representatives of the Military Commissariat and explained that his religious beliefs did not permit him to perform military service.

On 4<sup>th</sup> September 2010, the author was arrested by the police and detained - without a court order - for nine days.

After this period on detention, he was tried before the Turkmenabat City Court which sentenced him to 18 months' imprisonment for refusing military service (article 219 (1) of the Criminal Code).

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21 Ibidem.

22 Human Rights Committee, CCPR/C/21/Rev.1/Add.4, published the 27<sup>th</sup> September 1993.

23 Human Rights Committee, CCPR/C/115/D/2221/2012, published the 22<sup>nd</sup> December 2015, para. 9.



Following the conviction, the author was placed first in a detention facility in Turkmenabat (for 18 days) and after he was transferred to the LBK-12 prison in Seydi.

In both facilities, he was beaten by guards and also, only in the second one, he had been confined in a bare concrete cell.

He was released on 20 March 2012.

The author claims that:

- his imprisonment because of his religious beliefs in itself constituted inhuman or degrading treatment within the meaning of article 7 of the Covenant;
- to be the victim of a violation of article 7 of the Covenant on account of the conditions at the LBK-12 prison (harsh climate conditions, overcrowded, health issues);
- his prosecution, conviction and imprisonment for refusing to perform compulsory military service because of his religious beliefs and conscientious objection have violated his rights under article 18 (1) of the Covenant. He notes that he repeatedly informed the Turkmen authorities that he was willing to fulfil his civic duties by performing genuine alternative service; however, the State party's legislation does not provide for the possibility of performing alternative service.

In the State party's observations, the State reported that *the criminal offence committed by the author had been determined accurately according to the Criminal Code of Turkmenistan, and that according to article 41 of the Constitution, protection of Turkmenistan was the sacred duty of every citizen and general conscription was compulsory for male citizens of Turkmenistan.*<sup>24</sup>

In addition, *the author had not met the criteria of persons eligible for exemption from military service as provided for under article 18 of the Law on Military Duty and Military Service*<sup>25</sup>.

The Committee, after has declared the claims admissible and recalling its jurisprudence and its General Comment n. 22 (1993) on freedom of thought, conscience or religion<sup>26</sup> - in the absence of any other pertinent or contrary information on file and the fact that Turkmenistan were not refuted the allegations of the author of the case - decides that there are the follow violations:

- Article 7: ill-treatment of the author by the prison guards;
- Article 10 paragraph 1: deplorable prison conditions at the LBK-12 prison;
- Article 18 paragraph 1: absence in the State of an alternative to compulsory military service and repression of the refusal to be drafted for compulsory

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24 Human Rights Committee, CCPR/C/115/D/2222/2012, published the 23<sup>rd</sup> December 2015, para. 4.

25 Ibidem.

26 Human Rights Committee, CCPR/C/21/Rev.1/Add.4, published the 27<sup>th</sup> September 1993.



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military service exercised against persons whose conscience or religion prohibit the use of arms.

Therefore, the Committee concludes that *the State party is obligated, inter alia, to expunge the author's criminal record and to provide him with adequate compensation. The State party is also under an obligation to avoid similar violations of the Covenant in the future, which includes the adoption of legislative measures guaranteeing the right to conscientious objection.*<sup>27</sup>

## **Case of Sunnet Japparow (Communication no. 2223/2012)**

### **State party: Turkmenistan**

The author of the communication is **Sunnet Japparow**, a national of Turkmenistan born in 1990. He is a Jehovah's Witness.

In December 2008, he was called by the Military Commissariat to perform his compulsory military service. After a medical examination he was declared fit to serve.

He had explained in writing in a letter addressed to the Military Commissariat that as a Jehovah's Witness, his religious beliefs did not permit him to perform military service.

On 23 November 2010, the author was arrested and taken into custody until mid-December, when he was tried before the Turkmenabat City Court and convicted to 18 months' imprisonment (article 219 (1) of the Criminal Code).

Following his trial, the author was kept in a "24-hour detention cell" for 17 days.

On 1<sup>st</sup> January 2011, he was transferred to the LBK-12 prison in Seydi where he had been imprisoned since the 8<sup>th</sup> May 2012.

During his detention, Mr Japparow slept in a pea coat because of the cold; the prison was also very hot in the summer. In addition, he contracted tuberculosis.

The author claims that:

- his imprisonment because of his religious beliefs in itself constituted inhuman or degrading treatment within the meaning of article 7 of the Covenant;
- to be the victim of a violation of article 7 of the Covenant on account of the conditions at the LBK-12 prison (harsh climate conditions, health issues);
- his prosecution, conviction and imprisonment for refusing to perform compulsory military service because of his religious beliefs and conscientious objection have violated his rights under article 18 (1) of the Covenant.

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<sup>27</sup> Human Right Committee, CCPR/C/115/D/2222/2012, published the 23<sup>rd</sup> December 2015, para. 9.



In the State party's observations, the State party reported that the author's case had been determined accurately according to the Criminal Code of Turkmenistan. The State party further noted that *under article 41 of the Constitution, the protection of Turkmenistan was the sacred duty of every citizen and that the performance of military service was compulsory for male citizens.*<sup>28</sup>

In addition, the State notes that *the author had not met the criteria of persons eligible for exemption from military service as provided for under article 18 of the Law on Military Conscription and Military Service.*<sup>29</sup>

The Committee, after declared the claims admissible and recalling its jurisprudence and its General Comment n. 22 (1993) on freedom of thought, conscience or religion<sup>30</sup> - in the absence of any other pertinent or contrary information on file and the fact that Turkmenistan were not refuted the allegations of the author of the case - decides that there are the follow violations:

- Article 10 paragraph 1: deplorable prison conditions at the LBK-12 prison;
- Article 18 paragraph 1: absence in the State of an alternative to compulsory military service and repression of the refusal to be drafted for compulsory military service exercised against persons whose conscience or religion prohibit the use of arms.

Therefore, the Committee concludes that *the State party is obligated, inter alia, to expunge the author's criminal record and to provide him with adequate compensation. The State party is also under an obligation to avoid similar violations of the Covenant in the future, which includes the adoption of legislative measures guaranteeing the right to conscientious objection.*<sup>31</sup>

#### **1.1.3.1.2 Consideration of state reports**

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

### **115° session (October-November 2015)**

The issue of conscientious objection to military service featured in the Committee's examination of no fewer than three State Reports: those of Austria, Greece, and Republic of Korea.

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28 Human Rights Committee, CCPR/C/115/D/2223/2012, published the 17<sup>th</sup> December 2015, para. 4.

29 Ibidem.

30 Human Rights Committee, CCPR/C/21/Rev.1/Add.4, published the 27<sup>th</sup> September 1993.

31 Human Rights Committee, CCPR/C/115/D/2223/2012, published the 17<sup>th</sup> December 2015, para. 9.



In the Concluding Observations on **Austria**, the Committee notes that the length of the civilian alternative service to military service for conscientious objectors is longer than military service and may be punitively long if not based on reasonable and objective grounds. As a consequence, the Committee recommends to the State party to ensure that the length of service alternative to military service required for conscientious objectors is not punitive in nature.<sup>32</sup>

In the Concluding Observations on **Greece**, the Committee *reiterates its previous concern about (a) the length of alternative service which is much longer than military service; (b) the composition of the Special Committee and its reported lack of independence and impartiality, especially when hearings are held without all members present; (c) reports indicating discrimination on the basis of different grounds of objection to service; and (d) repeated punishment of conscientious objectors, in violation of the principle of ne bis in idem (arts. 14 and 18).*<sup>33</sup>

Therefore, the Committee recommends to the State party to:

*The State should take measures to review its legislation with a view to recognising the right to conscientious objection to military service, encompassing an alternative to military service that is accessible to all conscientious objectors and is not punitive or discriminatory in terms of its nature, cost or duration. The State party should also avoid repetitive punishment in violation of the ne bis in idem principle and consider placing the assessment of applications for conscientious objector status under the full control of civilian authorities.*<sup>34</sup>

In the Concluding Observations on **The Republic of Korea**, the Committee stresses its concern in the absence of a civilian alternative to military service. It also notes with concern that personal information of conscientious objectors may be disclosed online (art.18).<sup>35</sup>

Therefore, the Committee recommends to the State party to:

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

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

*(c) Ensure the legal recognition of conscientious objection to military service, and provide conscientious objectors with the possibility to perform an alternative service of civilian nature.*<sup>36</sup>

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32 Human Rights Committee, Concluding observations on the fifth periodic report of Austria, Advanced unedited version, paras. 33-34.

33 Human Rights Committee, Concluding observations on the second periodic report of Greece, Advanced unedited version, para. 37.

34 Ibid., para. 38.

35 Human Rights Committee, Concluding observations on the fourth periodic report of the Republic of Korea, Advanced unedited version, para. 44.

36 Ibid., para. 45.



Following the precedent set in the case of Turkey in 2012, the Committee also included this concluding observation among those on which it requested the State within twelve months to provide a follow-up report on implementing action taken. The follow-up report from the State Party has not yet been made public.

## 116<sup>o</sup> session (March 2016)

### *States under review*

No one of the Concluding Observations of the States under report (Costa Rica, Namibia, New Zealand, Rwanda, Slovenia, South Africa, Sweden) in this session speak about conscientious objection.

### *Country Task force*<sup>37</sup>

Nevertheless, in the List of Issues in relation to the fourth periodic report of **Azerbaijan**, the Committee asked to *describe the efforts made towards adopting the necessary legal provisions regulating the status of conscientious objectors to military service, and to ensure that conscientious objectors do not face prison sentences.*

The State party replied as follow:

*In accordance with the provisions of the Article 2 of the third part of the Law on "The basis of military conscription in Azerbaijan" dated June 10, 1992, the citizens of the Republic of Azerbaijan who could not be taken to military service for their beliefs and other grounds have to pass alternative service (labour service) within the period of 24 months.*<sup>38</sup>

The Committee, also before during the second cycle of review, stated that *the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.*<sup>39</sup>

Moreover, in its Submission Prior to the Adoption of the List of Issues, the European Association of Jehovah's Christian Witnesses (EAJCW) underlines that *Article 76(2) of the Constitution of Azerbaijan provides for alternative service rather than regular military service where one's religious beliefs conflict with military service. However, there is no legislation in force to establish a mechanism for the Constitution's provision of alternative service.*<sup>40</sup>

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37 The Country Task Force is a working method which principal purpose is to identify in advance the questions which will constitute the principal focus of the dialogue with the representatives of the reporting State. Since 1999 the lists of issues has been adopted at the session prior to the examination of the State report, thereby allowing a period of two to four months for States parties to prepare for the discussion with the Committee.

38 Human Rights Committee, CCPR/C/AZE/Q/4/Add.1, published the 9<sup>th</sup> August 2016, para. 164.

39 Human Rights Committee, CCPR/CO/73/AZE, published the 12<sup>th</sup> November 2001, para. 21.

40 European Association of Jehovah's Christian Witnesses (EAJCW), Submission to the UN Human Rights Committee Prior to the Adoption of the List of Issues, 17<sup>th</sup> December 2015, para. 62.



Furthermore, in its List of Issues to the seventh periodic report of **Colombia**, the Committee said that *It would appreciate receiving information about measures taken to implement its previous recommendation (para. 22) that the State party should adopt legislation recognizing and regulating conscientious objection so as to provide the option of alternative service, without the choice of that option entailing punitive effects.*<sup>41</sup>

The cited recommendation regards the previous Concluding Observations to the sixth periodic report in which the Committee *asked to the State party to adopt legislation recognizing and regulating conscientious objection so as to provide the option of alternative service, without the choice of that option entailing punitive effects, and should review the practice of "round-ups".*<sup>42</sup>

The practice of *round-ups* - in Spanish *batidas* or *retadas* - is a mean to checking who has carried out military service; *whereby young men who cannot provide proof of their military status are apprehended on the streets or in public places.*<sup>43</sup>

In 2008, the UN Working Group on Arbitrary Detention has stated that this practice has no juridical foundation or legal basis.<sup>44</sup>

In its reply to the List of Issues, Colombia cites a directive of January 2015 on instructions and recommendations for the recruitment of regular, high-school-graduate and peasant soldiers and the handling of applications from conscientious objectors, and also a protocol, issued in February 2015, on support and guidance for establishing the military status of citizens who visit the Ombudsman's Office.<sup>45</sup>

Unfortunately, no additional information are given about the content of these quoted documents and on how they work.

## 117<sup>o</sup> session (June 2016)

### *States under review*

In the Concluding Observations on the second periodic report of **Kazakhstan**, the Committee states that *the State party should ensure the legal recognition of conscientious objection to military service, and provide for alternative service of a civilian nature for conscientious objectors.*<sup>46</sup>

Indeed, the Committee reaffirms this after noting that *the State party has failed to implement its previous recommendation (see CCPR/C/KAZ/CO/1, para. 23) and review its legislation to recognize a person's right to conscientious objection to military service and to provide for alternative military service.*

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41 Human Rights Committee, CCPR/C/COL/Q/7, published the 26<sup>th</sup> April 2016, para. 23.

42 Human Rights Committee, CCPR/C/COL/CO/6, published the 4<sup>th</sup> August 2010, para. 22.

43 Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention, A/HRC/10/21/Add.1, published the 4<sup>th</sup> February 2009, Opinion 8/2008, pp. 110-114.

44 Ibid. p. 114.

45 Human Rights Committee, CCPR/C/COL/Q/7/Add.1, published the 18<sup>th</sup> August 2016, para. 98.

46 Human Rights Committee, CCPR/C/KAZ/CO/2, published the 9<sup>th</sup> August 2016, para. 46.



The Committee's previous recommendation was as follows: *The Committee encourages the State party to take necessary measures to review its legislation with a view to providing for alternative military service. The State party should also ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service, which they should be able to exercise before the commencement of military service and at any stage during military service.*<sup>47</sup>

In greater detail, under the Kazakh Constitution, citizens may not voluntarily decline to perform military service with the exception of cases provided for by law.

The Military Duty and Military Service Act provides for citizens to be excused from military service if they have taken a holy order or are permanently employed in a registered religious association.

#### *Country Task Force*

The Committee, in its List of Issues prior to submission of the fourth periodic report of **Lithuania**, asks to *provide information, in the light of the reintroduction of conscription in 2015, on the opportunities for alternative service for conscientious objectors. Please indicate the conditions necessary to qualify for alternative service, the duration that alternative service and the number of requests for an alternative service made since the reintroduction of conscription.*<sup>48</sup>

Indeed, Lithuania suspended obligatory military service in 2008, between the submission of its Second and Third Periodic Reports under the International Covenant on Civil and Political Rights (ICCPR). In the circumstances, the Human Rights Committee did not find it necessary to return in the Concluding Observations on the Third Periodic Report to the issue of conscientious objection to military service, which had featured in both of its previous sets of Concluding Observations.

However, in 2015 conscription was re-imposed, therefore the previous reservations about the provisions for conscientious objectors are again valid.

Furthermore, the Committee, in its List of issues in relation to the second periodic report of **Turkmenistan**, asks to indicate what steps have been taken to:

*(a) amend the relevant legislation to recognize the right to conscientious objection to compulsory military service and introduce alternative civilian service for conscientious objectors; and*

*(b) halt all prosecutions of individuals who refuse to perform military service on grounds of conscience and release those individuals who are currently serving prison sentences for such a refusal.*<sup>49</sup>

Under Article 38 of the Constitution, all men are obliged to perform "general military service" and there is no legal provision for conscientious objection to military service.

Moreover, the State party replied that a not compulsory military service is not acceptable for national mentality. In its point of views, Turkmen male citizens are

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47 Human Rights Committee, CCPR/C/KAZ/CO/1, published the 19<sup>th</sup> August 2011, para. 23.

48 Human Rights Committee, CCPR/C/LTU/QPR/4, published the 16<sup>th</sup> August 2016, para. 22.

49 Human Rights Committee, CCPR/C/TKM/Q/2, published the 29<sup>th</sup> July 2016, para. 21.



brought up in the spirit of high national patriotism and the military service is the very essence of the "sacred duty"; and moreover "the protection of the Fatherland" is equivalent to their honor and dignity.<sup>50</sup>

## 118° session (October-November 2016)

### *States under review*

In its Concluding Observations on the fourth periodic report of **Azerbaijan**, the Committee is concerned about the absence of specific legislation giving effect in practice to the constitutional provision (article 76, para. 3) on alternative service in cases where one's religious beliefs conflict with military service.<sup>51</sup>

Therefore, the Committee recommends to Azerbaijan as follows: *The State party should adopt without delay necessary legislation with a view to translating into practice the constitutionally recognized right of conscientious objection to military service, without limitation on the category of conscientiously held beliefs, should provide for alternative service of a civilian nature for conscientious objectors and repeal all sanctions against them.*<sup>52</sup>

Moreover, in its Concluding Observations on the seventh periodic report of **Colombia**, the Committee does not raise the issue of conscientious objection.

Even if, during the Committee meeting of 20<sup>th</sup> October, a Committee expert underlined that a process to recognise the right to conscientious objection to military service is underway, but there are still problems.<sup>53</sup>

These problems include, inter alia, the fact that the military are entitled of the process of recognition of the CO status. This is hardly appropriate and, as a consequence, only COs on religious ground have been recognised right now.

However, a related issue raises in the Concluding Observations is the military recruitment and the practice of *round-ups* (see 116° Session).

While welcoming the jurisprudence of the Constitutional Court, where it is established that round-ups involve incurring on arbitrary detentions (judgments C-879 of 2011 and T-455 of 2014) and the State party's assertion that these practices are not carried out, the Committee is concerned to learn that cases were reported during the period under review.<sup>54</sup>

Therefore, the Committee recommends to the State party to take more robust measures to ensure that no person is subjected to arbitrary detention, including

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50 Human Rights Committee, CCPR/C/TKM/Q/2/Add.1, published the 23<sup>rd</sup> May 2016, para. 21 (Russian version).

51 Human Rights Committee, Concluding Observations on the fourth periodic report of Azerbaijan, Advance unedited version, para. 34.

52 Ibid. para. 35.

53 Podcast on [www.webtv.un.org](http://www.webtv.un.org)

54 Human Rights Committee, Concluding Observations on the seventh periodic report of Colombia, Advance unedited version, para. 34 (Spanish version).



arbitrary detention for the purposes of military recruitment; and to ensure that all allegations of arbitrary detention are promptly, thoroughly and impartially investigated and that perpetrators are prosecuted and punished.<sup>55</sup>

A final remark on the review of Colombia could be address to the issue of use and recruitment of children by illegal armed groups.<sup>56</sup>

The Committee is concerned about the allegations of cases of use and recruitment of children - especially indigenous and Afro-Colombians - by illegal armed groups arising from the demobilization of paramilitary organizations.

Therefore, the State party should continue and intensify its efforts to:

- Effectively prevent the use and recruitment of children by illegal armed groups;
- Ensure in practice that all child victims are treated as victims, regardless of the illegal armed group from which they have been disassociated;
- Ensure that all children receive adequate protection and care for their physical and psychological recovery and the restoration of their rights; and
- Prosecute and punish those responsible.

The State party should also take effective measures to ensure in practice that children are not involved in intelligence or civic-military activities.

### **1.1.3.2 Human Rights Council**

#### **1.1.3.2.1 Resolutions**

Taking into account all resolutions adopted during sessions held from October 2015 (30<sup>th</sup>, 31<sup>st</sup>, 32<sup>nd</sup> and 33<sup>rd</sup>), only in the resolution about the human rights situation in Eritrea there are references on the compulsory military service and the violation of the right of CO.

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

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

The Human Rights Council expresses *grave concern at the widespread use of indefinite conscription into national/military service, a system that constitutes forced labour, and the reported forced conscription of children under the age of 18 into military service, and regretting that the fear and experience of a lengthy national service causes large numbers of Eritreans to leave the country.*<sup>58</sup>

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55 Ibid., para. 35.

56 Ibid., paras. 40-41

57 Human Rights Council, Situation of human rights in Eritrea, Resolution A/HRC/RES/32/24, 15<sup>th</sup> July 2016.

58 Ibid., preamble.



Therefore, the resolution called on Eritrea *to put an end to the system of indefinite national service by demobilizing national service conscripts who have completed their mandatory 18 months of service, as announced by the Government of Eritrea, and by effectively ending the practice of engaging them in forced labour after such a period, to provide for conscientious objection to military service, and to end the compulsory practice of all children undertaking the final year of schooling in a military training camp.*<sup>59</sup>

Furthermore, giving the insecurity condition of this country, in June 2014 a Commission of Inquiry was established by the Human Rights Council, in order to investigate all alleged violations of human rights in Eritrea.<sup>60</sup>

In its second report of June 2016,<sup>61</sup> the Commission has emphasized that mandatory military/national service is not necessarily a human rights violation. What distinguishes the military/national service programme in Eritrea from those in other States is:

- (a) its open-ended and arbitrary duration, which routinely exceeds the 18 months, frequently by more than a decade;
- (b) the use of conscripts as forced labour in a wide range of economic activities, including private enterprises; and
- (c) the rape and torture perpetrated in military camps, and other conditions that are often inhumane.<sup>62</sup>

Conditions of military/national are so abysmal that the Commission has considered it one of the way by which the Government violates the right to life.<sup>63</sup>

Indeed, the Commission obtained reliable evidence of extrajudicial killings of conscripts. For example, on 3 April 2016, as military/national service conscripts were being transported through the centre of Asmara, several conscripts jumped from the trucks on which they were travelling. Soldiers fired into the crowd, killing and injuring an unconfirmed number of conscripts and bystanders.<sup>64</sup>

The Government has on many occasions stated that prolonged military/national service is necessitated by external threats, including the occupation by Ethiopia of Eritrean territory and United Nations sanctions. In the view of the Commission, *these do not justify the open-ended and arbitrary nature of the State's military/national service programmes, nor do they explain the use of conscripts to carry out non-military work, including for State-owned and other enterprises.*<sup>65</sup>

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59 Ibid., par. 6, letter e).

60 Human Rights Council, Situation of human rights in Eritrea, A/HRC/RES/26/24, 14<sup>th</sup> July 2014.

61 Human Rights Council, Report of the commission of inquiry on human rights in Eritrea, A/HRC/32/47, 9<sup>th</sup> May 2016.

62 Ibid., par. 35.

63 Ibid., par. 50.

64 Ibid., par. 51.

65 Ibid., par. 67.



It also determines that, the programmes serve primarily to boost economic development and to maintain control over the Eritrean population in a manner inconsistent with international law.<sup>66</sup>

Therefore, the Commission has found that there are reasonable grounds to believe that Eritrean officials have committed the crime of enslavement, a crime against humanity, in a persistent, widespread and systematic manner since no later than 2002.<sup>67</sup>

In the part of the report dedicated to recommendations, the Commission issues to the Eritrean Government recommendations related specifically to the military/national service as follows:

*(a) Discontinue indefinite military/national service by limiting it to 18 months for all current and future conscripts, as stipulated by the Proclamation on national service;*

*(b) Put an immediate end to torture and ill-treatment, sexual violence and the enslavement of conscripts;*

*(c) Provide conscripts with humane living conditions, including with regard to food, health care and shelter;*

*(d) Cease the practice of using conscripts, detainees and members of the militia and reserve army as forced labour;*

*(e) Establish an independent complaint mechanism for conscripts to raise allegations of ill-treatment and to obtain redress;*

*(f) Ensure that military commanders responsible for human rights abuses are held accountable.<sup>68</sup>*

#### **1.1.3.2.3 The monitoring of the situation of human rights in the Syrian Arab Republic**

In August 2011, the Human Rights Council established an independent international Commission of Inquiry with a mandate to investigate all alleged violations of international human rights law since March 2011 in the **Syrian Arab Republic**.<sup>69</sup>

Since the real beginning of its activity,<sup>70</sup> the Commission stated the killing of military who refused to execute orders to fire at civilians. Moreover a number of conscripts was allegedly killed by security forces because after orders to aim directly at residential areas they chose to fire in the air to avoid civilian casualties.

In 2012, the Commission reported that while the level of defections is not yet having an operational impact, they had a psychological effect on the troops. Also, the

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66 Ibid., par. 68.

67 Ibid., par. 69.

68 Ibid., par. 121.

69 Human Rights Council, Resolution S-17.1, August 2011, seventeenth special Session.

70 Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/S-17/2/Add.1, 23<sup>rd</sup> November 2011, p. 11.



Government faced difficulties in drafting new recruits; as those called in for mandatory military service refuse to report.<sup>71</sup>

Before the conflict began, the compulsory service length was 22-24 months, and prospective conscripts would present themselves to local conscription offices to collect their military service papers on reaching 18.

In 2013 the Commission reported that the official conscription systems was disintegrating, at the same time that the Government has been a need for military personnel becomes ever more urgent. As a consequence, with many young men evading official conscription systems, the Government was enlisting young men arrested at checkpoints or during attacks on civilian areas.<sup>72</sup>

Since 2014, the Commission started to report that the Government forces and pro-government militias have been recruiting and using children in hostilities.

Indeed, pro-government militias armed and used children from the age of 13 at checkpoints in Aleppo, Dara'a and Tartus. In October 2013, in Ataman (Dara'a), children from the age of 14 were armed and trained by popular committees.<sup>73</sup>

Also, non-State armed groups have perpetrated the war crime of enlisting and using children below the age of 15 to participate actively in hostilities.

In detail, Children were recruited and used by Ahrar al-Sham, several affiliated groups of anti-Government Free Syrian Army (FSA), Jabhat al-Nusra and ISIS. In late 2013, children were observed in combat roles with FSA-affiliated groups in Tamoura (Aleppo), with Jabhat Al-Nusra in Al-Hasakah, and with ISIS in Ar Raqqa and Aleppo. Children were wounded during active combat.<sup>74</sup>

With regard to activities from 2015, the Commission has also started to repeatedly recommending *to ban effectively the recruitment and use of children in hostilities, and guarantee effective protection of child rights, including access to education and protection from child labour.*<sup>75</sup>

Moreover, in August 2016, the Commission has broadcasted an in-depth analysis focus on ISIS Crimes Against the Yazidis, emphatically entitled "They came to destroy".<sup>76</sup>

Prior to this, the Commission has already repeatedly reported that Yazidi young children are ripped from their families and forced into ISIS training camps: *ISIS continues to recruit and train boys as young as six in the use of weapons. Yazidi boys,*

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71 Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/21/50, 16<sup>th</sup> August 2012, p. 61.

72 Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/22/59, 5<sup>th</sup> February 2013, p. 83.

73 Ibidem

74 Ibidem

75 Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/33/55, 11<sup>th</sup> August 2016, letter g), p. 20.

76 Human Rights Council, The independent international commission of inquiry on the Syrian Arab Republic, "They came to destroy": ISIS Crimes Against the Yazidis, A/HRC/32/CRP.2, 16<sup>th</sup> June 2016.



*abducted from Sinjar in northern Iraq in August 2014, were brought into the Syrian Arab Republic and separated from their mothers. They are trained alongside underage Syrian boys. Reports of youth training camps known as "cub camps" continue to emerge from Dayr Az-Zawr and Hasakah.*<sup>77</sup>

In the analysis of August 2016, the Commission immediately reports that ISIS has committed the crime of genocide as well as multiple crimes against humanity and war crimes against the Yazidis.<sup>78</sup>

The transfer of Yazidi children from their own families and placing them with ISIS fighters is systematic and it is indicated as one of the means used by ISIS to destroy the Yazidis.

In detail, the Yazidi boys are forced to attend indoctrination and military training sessions led by ISIS fighters acting as instructors. The boys' daily programme consists of sessions in Quranic recitation as well as military exercises, including being taught to use AK47s, hand grenades, and Rocket Propelled Grenades.

After completing the training, Yazidi boys are distributed according to the needs of the terrorist group. Some have become fighters on the battlefield while others are deployed to guard ISIS bases or to perform other duties as their commanders require.<sup>79</sup>

The Human Rights Council, starting from the resolution on the human rights situation in the Syrian Arab Republic of its 30<sup>th</sup> session (14 September to 2 October 2015), has been condemning in the strongest terms the gross and systematic abuse of women's and children's rights by the so-called Islamic State in Iraq and the Levant (Daesh), and – among others violations - the forced recruitment and abduction of children.<sup>80</sup>

The 2016 is the sixth year of war and flagrant violations of human rights and international humanitarian law continue unabated, aggravated by blatant impunity. The Commission has declared that the call for peace is imperative.<sup>81</sup>

#### **1.1.3.2.4 Universal Periodic Review**

#### **23<sup>rd</sup> UPR Session (2-13 November 2015)**

In the first Cycle of UPR, **Georgia** supported the recommendation (submitted by Slovenia) on reducing the length of alternative service for conscientious objectors so that it was the same length as the military service.<sup>82</sup>

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77 Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/30/48, 13<sup>th</sup> August 2015, par. 75, p. 11.

78 Human Rights Council, The independent international commission of inquiry on the Syrian Arab Republic, "They came to destroy, Ibid., summary.

79 Ibid., parr. 94-97, p. 19.

80 Human Rights Council, Resolutions: A/HRC/RES/30/10 par. 5, A/HRC/RES/31/17 par. 9, A/HRC/RES/32/25 par. 8, A/HRC/33/L.30 par. 9.

81 Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, A/HRC/31/68, 11<sup>th</sup> February 2016, summary.

82 Human Rights Council, A/HRC/17/11, published the 16<sup>th</sup> March 2011, para. 105.63.



IFOR and Conscience and Peace tax international, in their joint submission, underline that *although this recommendation "enjoyed the support of Georgia", there has been no report of any action to implement it.*<sup>83</sup>

Moreover, they are afraid that since 2008 the ratio between the duration of military service and civilian alternative service may have become more discriminatory.

The basic period of military service has been reduced to 12 months but the duration of alternative service has remained unchanged at 24 months. This means that it is twice as long as military service.<sup>84</sup>

Nevertheless, in the working group report there are not any recommendations in relation to this issue.

### **24<sup>th</sup> UPR session (18-29 January 2016)**

No one of the report of the States under review (Namibia, Niger, Mozambique, Estonia, Paraguay, Denmark, Belgium, Palau, Somalia, Seychelles, Solomon Islands, Latvia, Sierra Leone and Singapore) in this UPR session speak about conscientious objection.

However, **Somalia** has received different recommendations related to the recruitment of children by armed forces and groups.

In its presentation, Somalia stated that it *had continued its efforts to secure the release and reintegration of children recruited by armed forces and groups. Accordingly, the Government had established the Serendi Rehabilitation Centre, whose purpose was to rehabilitate adults and children who had formerly fought in armed groups, before reintegrating them into society.*<sup>85</sup>

While welcoming its efforts, many states<sup>86</sup> were concerned about the recruitment of child soldiers and recommended to double the efforts and to full implement the Action Plan on ending the recruitment and use of children signed in 2012.

### **25<sup>th</sup> UPR session (2-13 May 2016)**

#### **Greece**

The UPR process of **Greece** introduces the conscientious objection issue, especially in relation to the punitive length and the discriminatory availability of the alternative service.

Two Countries – respectively Uruguay and Slovenia – recommend as follows:

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83 IFOR and Conscience and Peace tax international, UPR submission Georgia, March 2015, (joint submission 14).

84 Ibidem.

85 Human Rights Council, A/HRC/32/12, published the 13<sup>th</sup> April 2016, para. 18.

86 They are: Malaysia (para. 135.49), Australia (para. 135.52), Slovakia (para. 135.53), Uruguay (para. 135.54), Japan (para. 135.55), Italy (para. 136.27), Canada (para. 136.89) and Germany (para. 136.97).



- Review the current legislation with a view to recognizing an alternative to military service, which is accessible to all conscientious objectors and is not punitive or discriminatory;

- Consider changes in legislation and practice in order to ensure that individuals who express conscientious objection to compulsory military service on the grounds of freedom of thought, conscience, disability, and/or religion do not face harassment or prosecution, and that they have the opportunity to perform civilian service of equal length to the one of military service.<sup>87</sup>

In its voluntary commitments and replies, Greece affirms that *the less onerous nature of civilian service justifies a longer duration than that of military service*. Also that *the duration of alternative service is within reasonable limits and proportionate*. Consequently, Greece does not accept these recommendations.<sup>88</sup>

The 21<sup>st</sup> of September 2016, in its statement for the consideration of the UPR outcome of Greece, IFOR recalls the view of the Human Rights Committee.

In its last Concluding Observations on Greece (October 2015), the Committee found that the nature, cost and duration of alternative service was currently punitive and discriminatory in comparison with military service, and indicated also that it was disturbed by reports that there was "discrimination on the basis of different grounds of objection to service", and "repeated punishment of conscientious objectors, in violation of the principle of *ne bis in idem*".<sup>89</sup>

Moreover, IFOR calls upon Greece to reconsider its arrangements for conscientious objectors to military service in order to bring these into line with international standards.

### **Tajikistan**

In the information provided by "other relevant stakeholders" to the universal periodic review of **Tajikistan**, NGOs refer to case of torture and ill-treatment against conscripts and underline the lack of a law on alternative service.<sup>90</sup>

In particular, a joint submission of NGOs reports human rights violations committed by representatives of military commissariats against conscripts, including arbitrary arrests and inhuman treatment. The submission states as follows:

*Arbitrary arrests and inhuman treatment of conscripts, violations of medical examination procedure and non-transparent decision-making process of conscription commission remain typical violations committed by representatives of military commissariats within recruitment period. Victims of forcibly conscriptions become not only young people, but also their parents and human rights defenders, who try to prevent such arrests and detention. Military representatives use all types of method to*

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87 Human Rights Council, A/HRC/33/7, published the 8<sup>th</sup> July 2016, paras. 136.14, 136.15.

88 Human Rights Council, A/HRC/33/7/Add.1, published the 2<sup>nd</sup> September 2016, Advance version, p. 3.

89 Human Rights Committee, CCPR/C/GRE/CO/2, published the 3<sup>rd</sup> December 2015, paras. 37 and 38.

90 Human Rights Council, A/HRC/WG.6/25/TJK/3, published the 19<sup>th</sup> February 2016, paras. 20, 21 and 52.



*bring young people to the military commissariats including beating, insulting and blackmailing. Almost 50 % of young soldiers serving in military units have been forcibly recruited.*<sup>91</sup>

Fortunately, in the same Joint Submission, they reports that, in 2014, the President issued an order to eliminate all forms of illegal conscriptions and, as consequences of that order, the number of cases of arbitrary arrests and forcible deployment of conscripts decreased.<sup>92</sup>

Nevertheless, a coalition of six public associations of Tajikistan remembers that *a law on alternative service does not exist, and that the refusal of mandatory military service based on conscience convictions is considered as evasion of military service and results in administrative or criminal charges.*<sup>93</sup>

In the Report of the Working Group<sup>94</sup>, different States<sup>95</sup> commend the measures taken since last UPR process to prevent the use of torture but no one refer directly to the torture and ill-treatment committed by military representatives.

In conclusion, only Argentina recommends to implement *the right to conscientious objection to compulsory military service.*<sup>96</sup>

In its commitments and replies to the review, Tajikistan does not accept Argentina's recommendation because it contradicts the Tajiki Constitution.<sup>97</sup>

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

##### **Working Group on Arbitrary Detention**

##### **Opinion No. 42/2015 concerning Irina Zakharchenko and Valida Jabrayilova (Azerbaijan)**

##### **Adopted in seventy-fourth session (30 November-4 December 2015)<sup>98</sup>**

Ms. Zakharchenko, 54 years of age, and Ms. Jabrayilova, 37 years of age, are residents of Baku and members of the Jehovah's Witnesses minority religious community in Azerbaijan. Ms. Zakharchenko is a person with disability.

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91 Human Right Matter (Germany), Office for Civil Freedoms (Tajikistan), Saint Petersburg Regional Human Rights Organization "Soldiers Mothers of Saint-Petersburg" (Russian Federation), Human Rights Group "Citizen. Army. Law" (Moscow, Russia); Report to the Universal Periodic Review on situation with human rights of the armed forces personnel in Tajikistan, (Joint Submission 4).

92 Ibidem.

93 Bureau on human rights and rule of law, Office of civil freedoms, Public Fund "Legal Initiative", Rights and prosperity, NANSMIT, Human Rights Center, With the support of FIDH (International Federation for human rights), Report n.1 Civilian and political rights, (Joint Submission 5).

94 Human Rights Council, A/HRC/33/11, published the 14<sup>th</sup> July 2016

95 Inter alia: Italy, Republic of Korea and Philipppines.

96 Ibid., para 118.47.

97 Human Rights Council, A/HRC/33/11/Add.1, published the 7<sup>th</sup> September 2016, Advanced Edition (Russian language).

98 Working Group on Arbitrary Detention, Opinion No. 42/2015 concerning Irina Zakharchenko and Valida Jabrayilova (Azerbaijan), A/HRC/WGAD/2015/42, 15<sup>th</sup> March 2016.



On 5 December 2014, police arrested Ms. Zakharchenko and Ms. Jabrayilova in the midst of their religious activity: that day the two women were sharing their faith offering - without charge - a brochure entitled "Teach your children", designed to aid parents in teaching their children Bible stories and lessons.

On 17 February 2015, the Authority charged Ms. Zakharchenko and Ms. Jabrayilova under article 167-2.2.1 of the Penal Code of the Republic of Azerbaijan, which prohibits production, import, sale or distribution of religious literature by an organized group without having obtained the appropriate approval. In that same day, the Court decided to place them in pretrial detention.

The deprivation of the liberty of the two women – since the adoption of the opinion – has been for 10 months.

In its response, among others arguments, the Government notes that *there are a number of cases in which activity of Jehovah's Witnesses was accompanied by violations of Azerbaijani legislation. Since Azerbaijan, which is still in a state of war, with 20 per cent of its territory under occupation, has not adopted legislation on alternative service, legal action has been taken against some followers of this community who refuse to serve in the army.*<sup>99</sup>

In its further comments, the source considers that it is absurd to suggest Ms. Zakharchenko and Ms. Jabrayilova should be deprived of their liberty because Azerbaijan has failed to adopt a law on alternative service and has imprisoned Jehovah's Witnesses who conscientiously objected to military service.<sup>100</sup>

In the discussion, the WG states that *the Government's argument [...] is irrelevant to the deprivation of liberty of Ms. Zakharchenko and Ms. Jabrayilova.*

In this regard, the Working Group also notes that *more than six years previously, the Human Rights Committee expressed concern that no legal provision in Azerbaijan regulated the status of conscientious objectors to military service. Accordingly, in 2009, the Committee recommended that Azerbaijan adopt at an early date a law exempting conscientious objectors from compulsory military service and providing for alternative civilian service (see CCPR/C/AZE/CO/3, para. 14).*<sup>101</sup>

In conclusion, the opinion of the WG is that: *the deprivation of liberty of Ms. Zakharchenko and Ms. Jabrayilova is arbitrary, being in contravention of articles 7, 9 and 18 of the Universal Declaration of Human Rights and articles 9, 18 and 26 of the International Covenant on Civil and Political Rights; it falls within categories II, III and V of the categories applicable to the consideration of the cases submitted to the Working Group.*<sup>102</sup>

## 1.2 DEVELOPMENTS WITHIN COUNCIL OF EUROPE STATES

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99 Ibid., Par. 28

100 Ibid., Par. 34.

101 Ibid., Par. 42.

102 Ibid., Par. 49.



### 1.2.1 Azerbaijan

Azerbaijan is one of the sixteen states of the Council of Europe area in which conscription is still enforced. Despite a commitment made before it joined the Council of Europe in 2001, the country has no alternative civilian service, and conscientious objectors are still punished.

On 12<sup>nd</sup> of November 2015, 20-year-old conscientious objector **Kamran Shikhaliyev** failed in his appeal against his second trial on the same charges. He has already been sent to serve his sentence of a year in a military disciplinary unit in Salyan Region south of Azerbaijan's capital Baku.<sup>103</sup>

**Shikhaliyev** is one of 20 known prisoners of conscience punished by the Azerbaijani authorities for exercising the right to freedom of religion or belief. A total of 17 are serving criminal sentences, and further three are known to be in pre-trial detention.

Five former prisoners of conscience have been freed since the beginning of 2015, either on completing their prison terms or through presidential pardon.<sup>104</sup>

### 1.2.2 Belarus <sup>105</sup>

Belarus' first-ever Alternative Service Law was passed in June 2015, and its provisions took effect from 1<sup>st</sup> July 2016.

Only young men with a religious objection are eligible to apply, preventing those with other pacifist convictions from applying.<sup>106</sup> The length of alternative service is twice as the comparable military service. And young men already undertaking military service are not eligible to apply for alternative service if they change their views. In all these respects, the provisions are not in conformity with international standards.

Conscientious objectors continued to be prosecuted right up until the date when the law came into effect.

#### **Victor Kalina**

Indeed, only eleven days after the official publication of the Law, an investigator opened a criminal case against Jehovah's Witness conscientious objector Viktor Kalina (22) on the charge of "Refusal of call-up to military service".<sup>107</sup>

Unusually, the hearing took place not at the court but in the auditorium of Brest Military Conscription Office: a *show trial* with the aim of deterring other young men

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103 Felix Corley, AZERBAIJAN: Conscientious objector (again) one of 20 current prisoners of conscience, Forum18 News Service (forum18.org), 19<sup>th</sup> November 2015.

104 Ibidem.

105 Even if Belarus is not a Council of Europe member state, this report speaks about the situation of CO in that country for further information.

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

107 Olga Glace, BELARUS: "Alternative service exists, not for me", Forum18 News Service (forum18.org), 3<sup>rd</sup> August 2016.



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from refusing military service.

This first criminal trial ended in September 2015 and Kalina was acquitted.

After the acquittal, Brest General Prosecutor's Office protested against the District Court's decision to acquit Kalina. However, on 13 October 2015 Judge Nikolai Shestak of Brest Regional Court confirmed its decision, noting that Kalina "uses his constitutional right to ask for alternative rather than military service which contradicts his ethical and religious views, and he should not bear responsibility for the evasion of military call-up procedures".

Furthermore, the General Prosecutor's Office filed a protest to the Supreme Court insisting that Kalina's reasons for refusing military service were not well-grounded and that laws and facts had been wrongly interpreted. The General Prosecutor also claimed that a Constitutional Court decision of 26 May 2000 stated that "it should be agreed, considering exceptional circumstances, with the practices of special conditions provided by the relative authorities to allow the citizens to fulfil their duty in a manner which does not violate their religious convictions".

The May 2000 Constitutional Court ruling (decision R-98/2000) called for the "urgent" adoption of an Alternative Service Law or an amendment to the Law on Military Obligation and Military Service to introduce a mechanism for alternative service. It said that before such legal changes are made, the authorities must allow citizens to perform service "that does not violate their religious convictions".

The Supreme Court supported Deputy General Prosecutor's argument, overturning Kalina's original acquittal and stating in its 18<sup>th</sup> March 2016 decision that, to meet conscientious objectors' religious beliefs, the Defence Ministry established the Railway Troops. In this military formation, no oath is required and individuals are exempted from military studies, bearing weapons or overt military equipment, and other military duties.

Following the Supreme Court's decision to overturn Kalina's original acquittal, the case returned to Brest's Moscow District Court for a second trial. After that, Kalina was again charged and the 18<sup>th</sup> May 2016 the Regional Court convicted and fined him 21,000,000 old Belarusian Roubles (about 930 euros).

He appealed against this decision but the Regional Court rejected it on 24<sup>th</sup> June, only few days after the come in force of the Belarusian Alternative Service Law.

Kalina commented that "alternative service exists now, but not for me."<sup>108</sup>

The punishment also suspends Kalina from military service for two years, the period over which he may pay the large fine. Asked if he expects any call-up notifications soon, Kalina explained that he is a "criminal" now and after paying the fine he expects that he will be conscripted again for military service.

### **Dmitry Chorba**

In February 2016, another Jehovah's Witness conscientious objector Dmitry Chorba (24) was still being called up despite the failure of one criminal and two administrative

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108 Ibidem.



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cases against him the year before.<sup>109</sup>

In April 2015 Chorba requested exemption from military service as it contradicts his religious beliefs and asked to do civilian alternative service.

Since 2000, **several other conscientious objectors** to military service have been tried and convicted. These include Jehovah's Witness Dmitry Smyk, Messianic Jew Ivan Mikhailov, non-religious pacifist Yevhen Yakovenko, and non-religious pacifist Andrei Chernousov.

### 1.2.3 Belgium

At the beginning of May 2016, the association *Agir pur la paix* honoured the memory of Jean Van Lierde, the most famous Belgian objector (also first EBCO President) who died 10 years ago (1926-2006).<sup>110</sup>

During the homage there was a vernissage and they showed "Thou Shalt Not Kill" - also known as *L'objecteur* - an 1961 French film directed by Claude Autant-Lara.

### 1.2.4 Bulgaria

Conscription in Bulgaria was abolished in 2008. To the disquiet of antimilitarists, however the Ministry of Defence announced early in 2016 that they would create a register of all young people in the country between 18 and 32 years old, who would be eligible for military training in case of war or a national emergency, a clear hint that a return to compulsory military service is being contemplated.<sup>111</sup>

### 1.2.5 Cyprus

#### Northern part of Cyprus

Provision for conscription was made in Article 74 of the Constitution of the "TRNC". The arrangements are currently regulated by the Military Service Law (No. 59/2000), which stipulates that all men aged between 19 and 30 are liable to fifteen months service in the "Security Forces" (GKK) - reduced to 12 months for University graduates.

Until the age of 40, all those who have served in the GKK are also required to report each year for a nominal day of reserve training.

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109 Olga Glace, BELARUS: Colonel claims Constitution "nonsense", human rights treaties "not important", Forum18 News Service (forum18.org), 5<sup>th</sup> February 2016

110 Agir pour la pax, Expo « Objection de conscience et hommage à JVL », news available on [www.agirpouurlapaix.be](http://www.agirpouurlapaix.be).

111 Balkan Insight, *Military Register Sparks Conscription Fear in Bulgaria*, 25 February 2016.



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There is no provision for conscientious objectors to be excused military and reservist service or to substitute a service of a civilian nature.

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

### **Murat Kanatli**

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

Cases for 2010 and 2011 are still open before the Constitutional court. Indeed, Murat asked for a referral to the Constitutional court on the basis that the Court where an individual is tried should be independent and objective/impartial. On these grounds since on the basis of the law the Military Court is under the auspices of the Army then these cases are not fair trials. Murat Kanatli went to prison for 10 days after the Military court found him guilty of "non-compliance with the mobilization call in 2009".

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

### **Haluk Selam Tufanlı**

Conscientious objector Haluk Selam Tufanlı refused to participate in the reservist call up in 2011 and has been in an ongoing trial since 5<sup>th</sup> November 2013. The military court in Lefkoşa/Nicosia (in the northern part of Cyprus) found him guilty of 'noncompliance with the mobilization call in December 2014 and was imprisoned for 10 days.

Currently cases regarding two subsequent years are still open before the Constitutional court.

### **Nuri Silay**

In January 2016, Nuri Silay (33), a co-founder of the CO initiative association, wrote a letter to the Military to be recognised as CO.

The military informed him that they cannot accept his letter because there is still no law in the Northern part of Cyprus that recognize the right to conscientious objection, so technically they rejected him.

Two lawyers have applied for high administrative courts and it will be the first case that will challenge the system on regular military service.

Now Nuri lives in the Republic of Cyprus and he could be arrested if he crosses to the northern part. In his declaration of conscientious objection, he said: *We are witnesses*



*to destruction and ferocities created by wars fought all around the world, specifically in Cyprus but in the Middle East in general. With this, my objection with all my existence to take part in an army which impose guns on us and teaches/proposes to kill, an army which only serves war is not treachery but in service to humanity.<sup>112</sup>*

In conclusion, at the present time there are not open cases in front of the Military court. All the 6 cases (2 Murat Kanatli, 2 Haluk Tufanli, 2 Hilmi Hami) are moved up at the Constitutional Court and all of them are waiting for the decision.

### **More declared conscientious objectors**

Up to the present are 17 persons who have declared their conscientious objection in the northern part of Cyprus:

Salih Askeroğlu (24 September 1993), Murat Kanatlı (15 May 2009), Haluk Selam Tufanlı (8 December 2011), Faika Deniz Paşa (8 December 2011), Cemre İpçiler (8 December 2011), Nevzat Hami (8 December 2011), Ceren Goynuklu (8 December 2011), Halil Karapaşaoğlu (24 October 2013), , Tegiye Birey (24 December 2013), Süleyman Tarık Sakallı (15 April 2014), Halil Sayın (15 May 2014), Didem Gürdür (15 May 2014), Reşat Korel (15 May 2014), Hilmi Hami (2013), Erman Dolmaci (1 June 2015), Davita Gunay (14 August 2015), Nuri Silay (28 January 2016), Emrah Karayaprak (12 August 2016).

### **Republic of Cyprus**

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

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

In July 2016 a new law has passed and reduces the Military service from 24 to 14 months and the alternative social service to a maximum of a plus 5 month increment (total 19 months maximum). The alternative social service used to be a maximum of plus 9 month increment on the military service length that is a total of 33 months maximum.

Application to gain CO status, with the required supporting documents, is made to the military services and a Special Committee examines this application (after examination of the Physical Condition of the applicant by another Committee). This Special Committee comprises of two professors of higher education with a specialization in philosophy, social or political sciences or psychology, one law officer of the Law Office of the Republic and two higher officers of the Military Force, one of the Conscription Office and one of the Health Department of the Army. The decision of the Special Committee is passed on to the Minister of Defence who has the final say

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112 War Resisters' International, "Nuri Silay - My Conscientious Objection", 3<sup>rd</sup> February 2016, [www.wri-irg.org](http://www.wri-irg.org).



and if his decision is opposite to that of the Special Committee, it has to be justified in writing.

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

### **New COs recognised**

Two 17-18 year old Greek Cypriots have been recognized as conscientious objectors on ideological grounds. In August 2016, they had received notification from the Ministry of Defence and they started their 19-month alternative social service at a hospital.

### **Latest updates**

After the IV reporting cycle at the UN Human Rights Committee - in 2015 - CO initiative (Association of Cypriot conscientious objectors) reported that the situation is getting better little by little: there are more objectors who accept civil service and more possibility to challenge the service.

Moreover, the CO initiative confirms that the information provided by the Ministry of Defense and the National Guard on their website is much more transparent than it was few years ago, when it was not possible to get the application form for alternative service online or anywhere else without personal attendance at the relevant offices.<sup>113</sup>

## **1.2.6 Finland**

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

COs who refuse army service and the alternative service option are given an unconditional jail sentence of 173 days or half of their remaining (theoretical) time in alternative service. This sentence can since 2013 be converted to house arrest by the judge.

Only Jehovah's Witnesses have been exempted from any kind of service by a special law since 1985.

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

### **Otto Absetz**

Total objector Otto Absetz began a sentence of 99 days imprisonment on 30<sup>th</sup> August 2016.

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113 EBCO General Assembly, May 2016.



Absetz had previously been sentenced to "home detention" for 173 days in March 2014 for "refusal of civilian service" by Eastern Uusimaa district court.

He started to serve his sentence in August 2014, but the implementation of the sentence was interrupted by the prison authorities in November 2014 because he had "breached the conditions of home detention". A new trial was held and he was sentenced to serve the unfulfilled part of the original sentence in prison.

Absetz's refusal is based on the fact that the current Finnish legislation on conscription is discriminatory, and treats people differently, according to their sex and religion. He also said that he opposes militarism in all its forms, and regards the length of substitute service as punitive.<sup>114</sup>

### **Risto Miinalainen**

The most recent conviction was of Risto Miinalainen, who is 19 years old student at high school. He started 173-day sentence 4th October 2016. Mr Miinalainen is going to lodge an individual complaint about his sentence to European Court of Human Rights. Other human rights bodies have already criticised the Finnish legislation. Repeatedly, and most recently in 2013, the United Nation's Human Rights Committee has criticised Finland's substitute to military service, which is twice the basic length of military service, and therefore punitive. In its concluding observations of July 2013 the committee urged Finland to extend the privileges granted to Jehovah's Witnesses to other conscientious objectors. So far Finnish government has done nothing to solve these problems. Approximately 50 total objectors will be sentenced to prison or home detention this year.

### **1.2.7 Greece**

Greece operates a system of obligatory military service, applicable to all male citizens, which it defines as persons of Greek descent, whether or not born or resident in Greece. The basic term of service has been steadily reduced in the course of recent years, from 19 months to 18 months in the late 1990's, to 16 months in 2001, and to 12 months in 2003. It now stands at nine months in the army but can be longer, up to twelve months, in the air force and the navy.

Greece was at the time the last member state of the European Union (EU) to make provision for alternative civilian service for conscientious objectors - doing so only in Act No.2510/1997, which entered into force on 1<sup>st</sup> January 1998. This was replaced by Act No.3421/2005 ("Recruitment of Greeks and other Provisions"), which in turn was amended by Act No.3383/2010, of 24<sup>th</sup> September 2010.

In January 2016, Greece adopted a new law amending certain provisions concerning military service (Law 4361/2016).

The law was another missed opportunity to bring the legislation about COs in line with international human rights law and standards. The most important changes affecting COs are:

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114 War Resisters' International, "FINLAND: Total objector Otto Absetz imprisoned", 1<sup>st</sup> September 2016, ([www.wri-irg.org](http://www.wri-irg.org)).



- An end to pending prosecutions of those who had declared their conscientious objection publicly or through letter to the authorities, before the first law came into force (1<sup>st</sup> January 1998). The new Law does not apply to those who publicly declared their conscientious objection only after that date. Moreover, whereas Article 27 of law 2915/2001 explicitly cleared criminal records resulting from sentences imposed before 1<sup>st</sup> January 1998, the new law seems to be silent about criminal records arising from convictions since that date; nor have we heard of any form of compensation having been offered to anyone affected.

- Men who are 35 years old can buy out of military or alternative service, having served for a minimum period, now halved to 20 days military service or 40 days (twice as long!) alternative service. Moreover, the charge for buying out is €810 for each month of service saved, so that for conscientious objectors the cost is several thousand Euros more than for military conscripts. The Ombudsman condemned this as flagrant discrimination, and the discrepancy was also criticised by Amnesty International.

- Before the new law, alternative service postings could not be in the two major prefectures (Attica and Thessaloniki), the four largest cities elsewhere (Herakleion, Larissa, Patras and Volos) or the "conscript's" place of origin or of permanent residence. Most of this provision is repealed, but not the part relating to the "place" of permanent residence, the definition of which has now been widened to include the entire administrative region. This means that, while the State is now able to employ COs in the largest cities, COs themselves risk being given placements even farther from home.

Under art. 12, paragraph 8 of Law 4361/2016, Anastasios Batas was finally acquitted on 14 June 2016, at the age of 51, after 4 trials and 21 years after he declared his conscientious objection. Batas had served part of his military service in the Navy in 1994. After nine-and-a-half months he interrupted the service by obtaining a one-year postponement, during which he declared his conscientious objection and asked to perform alternative service, for which at that time there was no provision. Even when legislative provision was made, persons who had, like Batas, served in armed or security forces in the past for any period of time were excluded from its provisions. This exclusion was removed only by Law 3883 published on 24 September 2010, by which time Batas had passed the age of liability for military service. In 2012, without his knowledge, he was convicted in absentia by the Naval Court of Piraeus for insubordination in previous years and sentenced to a prison sentence of fifteen months, suspended for three years. By the time he discovered about the fact that he had been sentenced, the deadline to lodge for an appeal had already expired, and thus his appeal was rejected by the Military Court of Appeals. He appealed to the Supreme Court which referred the case back to the Military Court of Appeals, where proceedings opened in November 2015, but were adjourned several times.

A provision in a further new law (No. 4411/2016, passed in August 2016), which is not specifically addressed at COs, has we believe been used in the case of another CO leading to his acquittal. Under article 8, convictions for offences punishable with sentences of up to two years (which in peace time is the maximum sentence for a single charge of insubordination) committed before 31/03/2016, are eliminated - provided that in the next two years the person will not commit another offence punished with a sentence of six months or more. This is not necessarily of any assistance to those who are still within the age of liability for military service, who are



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always at risk of a new prosecution.

One encouraging sign is that during the debate in Parliament the Deputy Minister of National Defence, Mr. Vitsas, said that the comprehensive arrangement of issues concerning conscientious objectors should not pertain to the Ministry of National Defence, and that the Ministry of Interior and the Ministry of Justice should undertake a relevant legislative initiative. However to date there are no concrete moves to free conscientious objectors from the ultimate control of the Minister of Defence.

As reported above (Section 1.1.3.1.2) the discriminatory length of alternative service and the lack of independence and impartiality of the Special Committee which assesses applications were criticised by the UN Human Rights Committee in Autumn 2015, and procedural irregularities on the part of the Special Committee by the European Court in the case of Papavasiliakis (see Section 1.1.1.1). Greece's treatment of COs was also the source of recommendations in the Human Rights Council's Universal Periodic Review.

It is important to realise that the difference in duration does not simply mean that those who perform alternative service forego a much longer period of educational and career development, not to mention earning potential, but that, as in at least one case known to EBCO, the additional duration can be longer than leave of absence from one's civilian career can be obtained, leaving no option but to resign.

There is discrimination between objectors on the basis of the reasons for objection. In general, Jehovah's Witnesses are recognised automatically whereas almost half of what the authorities classify as "ideological" objectors, as well as objectors citing religious grounds without being able to produce documentary support, are refused recognition. The Papavasiliakis case illustrates very clearly the extent to which the decision is based on formal documentation. Papavasiliakis' beliefs deriving from his upbringing as a Jehovah's Witness were challenged during an interview to which he would not even have been summoned had he been able to provide a certificate of baptism as a Jehovah's Witness.

### **Arrests and prosecutions**

Arrests and prosecutions of total objectors and COs whose applications had been rejected and continued to resist enlistment continued during 2016. Trials in military courts on charges of "insubordination" resumed, after a pause of several months due to a lawyers' strike.

Several other social and economic rights are violated by the current regime for COs. In particular, every prosecution entails an automatic administrative fine of €6,000, augmented by surcharges until paid. Each trial brings a bill of €200 for court expenses, before any costs for the CO's own legal representation. In many cases prison sentences might be avoided or reduced by recourse to the "buying out" procedures, but only at a further heavy financial burden which puts the possibility out of reach for many objectors. As the offence of "insubordination" is treated as persisting as long as the CO remains under the obligation to perform military service but does not enlist, there is no limit to the frequency of prosecutions; and the statute of limitations, which has been successfully invoked in at least one case to prevent prosecution on charges filed more than twenty years previously cannot assist those who are still within the age of liability for military service.



EBCO is aware of cases where individual COs have already become subject to at least three administrative fines (ie a total of €18,000 before any other costs or surcharges), and sometimes to two within a year. The resultant debts can lead to extreme poverty, confiscation of property including houses (certain COs have already gone to administrative courts in order to suspend or at least delay the confiscation of their properties), to being refused the necessary paperwork to start a business, and potentially to additional sentences of imprisonment, which can under Greek law be imposed on those owing debts of more than €50,000 to the State.

At least four categories of COs are affected without differentiation by these violations. Some are “total objectors” who refuse any form of military or alternative service. Some have refused specific alternative service postings in protest at their punitive nature when compared with military service. Some who are willing to perform alternative service have nevertheless not been recognised by the State authorities as COs. And a final category is those who have, in a completely illogical and arbitrary fashion, had their recognition as COs withdrawn in punishment for disciplinary offences in the course of their alternative service.

### 1.2.8 Lithuania

As mentioned in last year's EBCO Report, conscription in Lithuania was reinstated from May 2015, reflecting a general increase in political tensions in the region and specifically responding to Russian military exercises in the Kaliningrad enclave, which Lithuania separates from the remainder of Russia.

The initial decision was made for a limited period of five years; however in March 2016 the State Defence Council decided to recommend to the Seimas (parliament) that the reintroduction of conscription be made permanent.<sup>115</sup>

### 1.2.9 Russian Federation<sup>116</sup>

The right to conscientious objection was introduced in the Russian Constitution of 1992. In 2002, Russian Federation adopted the Federal Law No 113 on Alternative Civil Service (ACS Law) which entered into force in 2004.

A serviceman could be assigned to civilian or military organizations; which are included in an open list that is annually updated and published by the *Labour Agency* (civilian authority entrusted with the organization of ACS).

Where alternative servicemen are assigned to entities operated by the military authorities, such as military plants or defense construction facilities, they are only

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115 War Resisters' International, “Lithuania: conscription may become permanent” [www.wri-irg.org](http://www.wri-irg.org), 25<sup>th</sup> April 2016.

116 Information in this paragraph is provided by «Citizen. Army. Right», “On the implementation of the right to conscientious objection to military service in Russia in 2004—2016”, publication made within the project “There is a Choice! - promoting ACS in Russia”, Moscow 2016.



employed in workshops which produce civilian products or at construction sites of civilian facilities.

When the law No 113 was first adopted, the duration of the alternative civil service was 42 months in civilian organizations and 36 months for service in military organizations; while the length of regular military service was 24 months.

In 2008, a military reform in Russia reduced the duration of both types of service by half: to 12 months the regular military service; and the alternative civil service to 21 months in civilian entities and to 18 months in military entities.

Some aspects of the Law No 113 are consistent with international standards, inter alia:

- any type of beliefs and convictions - religious, philosophical, ethical, political - make one eligible to apply for alternative service instead of military duty;
- alternative service may be performed by working for organizations owned by the federal or regional government (however, alternative servicemen cannot be employed by entities owned by the local self-government or by private entities, either commercial or nonprofit);
- the general labor legislation is used as regulatory framework for ACS, with certain exceptions reflecting the alternative service specifics;
- alternative servicemen may continue to live at their habitual residence; if a serviceman is assigned to serve in a different location, he should be provided with free lodging in a dormitory.

However, and notwithstanding that the initial duration was reduced, the ACS Law still contains a number of unfounded restrictions of citizens' rights.

Inter alia, the following provisions are specifically designed to make ACS unattractive:

- The law prioritizes the exterritorial principle of alternative service, meaning that alternative servicemen are almost always forced to serve outside their home region;
- Citizens in active military service are not allowed to opt out of military service for CO reasons ;
- The application for alternative service must be filed with a military draft committee six months prior to the draft campaign. Missing this deadline is the reason why most applications are denied;
- The serviceman is not allowed to choose from the list of available alternative service vacancies;



- A person in alternative service does not receive any pay other than wages corresponding to his position, even if it could be below the subsistence minimum.

Moreover, the military authorities' involvement in the procedure is a cause of problems. There have been reports about arbitrary and abusive acts by draft committee officers and draft boards, such as unmotivated rejection of applications, unlawful denials of requests for alternative service and attacks against conscientious objectors' dignity.

While challenges persist, some of the problems have been successfully addressed.

For example, the efforts of the *All-Russian NGO Coalition for Democratic ACS*<sup>117</sup> have resulted in a number of favorable judicial precedents (including some rulings of the Russian Constitutional Court) confirming that the procedure of applying for alternative service is that of notification, and one cannot be denied this option for merely formal reasons, such as missing the deadline for application.

Regarding with figures, and according to official data, during 13 years of operation of the Law (2004-2016) a positive decision on the replacement of military duty with alternative civilian service was taken in 90% of cases.

At the same time, human rights defenders annually record cases of refusals to accept applications from citizens wishing to opt for ACS. Accordingly, there is no precise data on how many applications were filed in reality and how many attempts were made to apply (i.e. the official data includes only those applications that were satisfied).

Furthermore, in recent years the List of job placements includes more than 100 kinds of jobs, professions and positions, and more than 600 organizations where conscientious objectors might be sent. Thus, there are about 5000 job opportunities for conscientious objectors. As for the 15<sup>th</sup> July 2016, 1123 citizens are passing ACS and 4472 had passed it from 2004.

In conclusion, *Citizen. Army. Right* stated that the situation with the right of conscientious objectors may be described as satisfactory.

In general, the ACS legislation and the accessibility and openness of the ACS system offer Russian citizens reasonable opportunities to defend and implement their anti-war choices.

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<sup>117</sup> A community of civil society organizations advocating for a socially-beneficial, not discriminatory model of alternative service in Russian Federation.



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### 1.2.10 Switzerland

In October 2016, the Swiss military authorities finally relented and decided that a young man could present himself<sup>118</sup> next year for military service despite the fact that he had originally been found unfit for military service because he was a vegan and refused to wear leather!

In most countries, the problem faced by young men is how to avoid military service. In Switzerland, this is relatively easy. A large proportion of those called up are able to produce documents sufficient to obtain exemption on health grounds. Conscientious objectors have little difficulty in being recognised as long as they are prepared to perform an alternative service which is longer and less well paid than military service. But Switzerland is unique in the number of cases of young men who appeal against rejection for military service. Why is this?

One answer is the pervasiveness in the national culture of the citizens' militia which in Switzerland fulfils the role of the increasingly professional armed forces of other European countries. The chances of rising to the top even in civilian employment depend heavily on one's part-time rank in the Swiss army.

Another explanation may be found in the European Court case of *Glor v Switzerland* (see EBCO Report 2010) A Swiss man of "military age" who has not already completely fulfilled his military of alternative service requirement must pay 3% of his income in any year in which he does not perform any service as an additional "military tax".

### 1.2.11 Turkey

The situation in Turkey has continued to deteriorate in the course of the year.

War Resisters' International (WRI), in collaboration with Connection e.V. in Germany and nonviolent activists and WRI members from Turkey sent a delegation to the Southeast of Turkey April 26 to 29, 2016. Seven peace and human rights activists visited different organizations and institutions in Diyarbakir and Cizre. The delegation's report of massacres, curfews, displacements and other atrocities makes chilling reading.

On 15<sup>th</sup> May antimilitarists and conscientious objectors gathered at the Tahir Elçi City Forest in Amed in the province of Diyarbakir to declare their "determination for the demilitarization of Amed", and to support and stress the importance of the peace process. The invitation said "We call everyone who wants to say no to war, massacres and pillages; and everyone who defends the green of nature against the green of militarism." The Ministry of Environment And Urbanization had recently changed the regulations for the city forest, which has vital importance as a green corridor and source of fresh air for the city, in order to permit building and construction for military-use in the area. "With the security dam built in the valley of Goderne and the guardhouse built on the ancient city of Dakyanus," says the Tahir Elçi City Forest Co-

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118 20 Minutes (Genève), "L'armee perd son bras de fer contre un végane tetu", 19<sup>th</sup> October 2016, p3.



ordination, with the loss of this lung< “the city will be completely besieged. [As] in the case of Sur, the city is being left to the hands of militarism, and Amed transform[ed] into a “garrison town” under the evasion of “safety”.

The military action in the South-East has over the border into Syria, where supposedly part of an international coalition against DAISH or “Islamic State”, Turkey has concentrated on attacking Kurdish forces. One good piece of news came from Rojava, a *de facto* autonomous Kurdish region in Syria, which in 2015 had introduced a Mandatory Military Service Law to conscript 21-30 year olds. In April 2016 came the news that the government of Cizre, one of the three cantons which make up the autonomous region has recognised the right to conscientious objection.<sup>119</sup>

Since these events the situation has worsened following the attempted Military coup d'état of 15<sup>th</sup> July 2016.

Two days after the coup, **Vicdani Ret Derneği** (Conscientious objection association of Turkey) issued the following statement:

*“Let’s Resist against the Spiral of Violence and Militarist Imposition*

*Military coups have brought along human rights violations in every location they have taken place. In every place where the army has taken control by force, the violence has been further institutionalized and the societies who witness the coups have been stuck in spirals of violence. The process we have been living since July 15 night is making us experience a variety of this spiral of violence. On one side military coup scenarios are being put into practice by “Peace at Home Council”, on the other side AKP government’s so called “democratic moves” are on the agenda.*

*This equation will enable AKP to further centralize the government by gathering the power in one hand and apply the totalitarian methods even more. Later in this process, the law enforcement forces can be controlled directly by the government; fascism and militarism will be more institutionalized under the name of “democratization”.*

*Yesterday night, the people who were on the streets during the military coup attempt against Erdoğan’s government were rained bullets and countless people were killed. On the other hand, even though the government says that “the coup has been suppressed by the public”, the calls made by the government and the people who have been in the streets upon these calls since yesterday night are a fascist mobilization rather than a democratization move. The sentence “I’m the Chief Commander” which Erdoğan repeated oftentimes yesterday provides a basis for militarism and militarist culture to strengthen even more so.*

*The soldiers who were under orders in accordance with the obligatory military service law were being declared “heroes” while they were destroying cities in Kürdistan and “martyrs” when they died doing so; on the other hand, the soldiers who got arrested or surrendered after taking part in the military coup attempt under the same chain of command were subjected to torture and lynch on the streets. In the media, there are photos of soldiers whose throats were cut. While the conscientious objectors who refuse to die and kill are being charged with “insubordination”, the soldiers who obey*

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119 War Resisters' International, CO Update No. 91 (March/April 2016)



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*orders of their superiors are facing charges of "high treason".*

*During the process we are living through, refusing military service, not taking up arms is of course important; but unfortunately it is not enough. Yesterday night in Atatürk Airport, the people shouting "Kill for you, die for you!", the politicians saying "Congratulations to who have spilled blood."; clearly show that a militarist and paramilitarist spiral of violence has been set to motion.*

*Our part in this process as conscientious objectors is not only to refuse obligatory military service and taking up arms but also to resist getting stuck in this spiral of violence and against the militarist imposition."*

The wave of arrests, imprisonment, dismissals and other harassments of those deemed to be opponents of the AK Government continues as this Report goes to press, with no sign of abating.

### **Article 318**

Conscientious objector **Yannis Vasilis Yaylali** was sentenced to 7 months and 15 days of prison on 6<sup>th</sup> January 2016 under Article 318 of the Turkish penal code (alienating people from military service) for his articles that defend conscientious objection and oppose the war going on in Kurdish regions. He faces two more prosecutions on similar charges.

He made a statement after the decision: *"Article 318 was rarely used in the last years, until the war began again last year. The state is increasing its pressure on all war resisters, anti-militarists and conscientious objectors in the times of war. They're trying to silence us but we won't give in."*

It is therefore very welcome that the European Court of Human Rights should in a judgement just as this report was going to press (see section 1.1.1.1) have condemned the notorious use of Article 318 against well-known conscientious objector Halil Savda.

### **1.2.12 Ukraine**

In 2014 conscription was reintroduced in Ukraine. A large number of young men have avoided call up either by hiding within the country or by fleeing abroad. There is a legal right to conscientious objection in Ukraine but it is restricted to certain religious minorities. Serving soldiers and reservists have no legal right to conscientious objection. The penalty conscientious objectors face for their refusal of military service is three to five years imprisonment.

On February 2016, Draft Law 4020 has been adopted by the Ukrainian government. The law, instigated by President Poroshenko, allows the President, in 'special circumstances' e.g. during military mobilisation, to give only one month's notice of the draft. Notice is given in the media.

However, conscientious objectors who wish to apply for an alternative service need to apply two months before their call up. So in theory, if this practice is applied, it may



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make impossible to take advantage of the right of alternative service.<sup>120</sup>

### **Ruslan Kosaba story<sup>121</sup>**

Ruslan Kotsaba is 49 years old and father of two daughters. In 2004 and 2014 he had actively supported the “orange revolution” and the Maidan protests. In 2015 he voted for Poroshenko as president. As a journalist he had travelled to the Donbas area several times and reported from both sides of the front. He denounced the military action of the Ukrainian government in the Eastern part of the country and called for a negotiated settlement of the conflict. In a video appeal to President Poroshenko he said in January 2015: “I’d rather go to prison for two to five years than take a deliberate decision to kill my compatriots in the Eastern part. I say to all who listen to me: I refuse the mobilization and I call all reasonable people to refuse the mobilization. It is hell, a horror. It’s not acceptable that people are killed in the 21st century because they want to secede.”

Kotsaba was arrested on 5 February 2015 and thereafter was held in pretrial detention. He is suffering from the effects of a heart attack and has to take medication daily. In winter the temperature in his prison cell – he was in solitary confinement most of the time – often was near freezing.

During a court hearing at the beginning of February 2016, Ruslan Kotsaba said: “I have become a pacifist at the front... What’s going on in the Eastern part is a civil war with international interference on both sides, it’s fratricide.” As a journalist he was obliged to hear also the separatist viewpoint. “Freedom of opinion, freedom of thought, freedom of belief – that is civilization. They are currently trying to take it away from us.”

He was sentenced to three and a half years imprisonment by the city court of Ivano-Frankivsk (Western Ukraine) on 12<sup>nd</sup> May 2016. The court found him guilty of “obstructing the legitimate activities of the Ukrainian Armed Forces”.

The prosecutor had additionally required to sentence him for treason against the Ukrainian state and had asked for a sentence of 13 years imprisonment. The time Kotsaba spent in pretrial detention – almost 15 months – will be counted twice so that the remaining prison term is about one year.

On 14<sup>th</sup> July 2016, the Appeals Court of Ivano-Frankivsk Oblast declared journalist Ruslan Kotsaba not guilty of treason and released him from custody.<sup>122</sup>

### **1.2.13 United Kingdom**

The 2016 is the Centenary of the CO legislation in United Kingdom (1916-2016).

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120 Human Rights Without Frontiers, Rights of conscientious objectors in Ukraine threatened; Institute of Religious Liberty, Принят законопроект Президента, усложняющий альтернативную службу, 18th February 2016

121 Source: Connection e. V. (Germany) and German Peace Society - United Antimilitarists (DFG-VK)

122 Ukrayinska Pravda, “Appeals Court Clears Journalist Kotsaba Over Draft Dodging”, [www.pravda.com.ua](http://www.pravda.com.ua), 14<sup>th</sup> July 2016



Even though, this law has been an important achievement, at the same time it reveals that legal provisions for CO are insufficient as long as they do not clearly implement liberal human right standards.

Indeed, figures are quite meaningful:

- 2.000 Local Tribunals were set up around Britain to judge the sincerity of men who applied for exemption from military service.
- 16.000 men who received call-up papers applied for exemption from military service on grounds of conscientious objection. The known outcome is as follows:
  - o Some 400 men out of these 16.000 were granted absolute exemption.
  - o 6.500 COs were given conditional exemption and told to perform alternative service by finding work of national importance.
  - o 5.000 were granted non-combatant status within the army.
  - o About 2.500 applications were turned down completely.
- 6.000 of the 16.000 COs who applied refused to accept the Tribunals' decisions - and as a result spent much of the war in prison. Over 100 of them died as a result of the conditions of their imprisonment.<sup>123</sup>

To mark the centenary, EBCO for the first time held its General Assembly in the United Kingdom on Saturday 14<sup>th</sup> May. The following day participants joined in the annual conscientious objector's day commemoration of conscientious objectors worldwide, held under the auspices of First World War Peace Forum, a network of English pacifist associations at the Conscientious Objectors stone in Tavistock Square, London.

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<sup>123</sup> Oliver Haslam, Refusing to kill. Conscientious objection and human rights in the first world war, published by the Peace Pledge Union, London 2014 (revised edition)



## 2. OVERVIEW OF NATIONAL PROVISIONS

### 2.1 CONSCRIPTION

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

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

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

**Tab. 2. Years of abolition of conscription in states within the Council of Europe area**

Country	Year (ascending order)
UK	1963
Luxembourg	June 1969
Belgium	February 1995
Netherlands	1996
France	2001
Spain	December 2001
Slovenia	September 2003
Czech Republic	December 2004
Italy	December 2004



Country	Year (ascending order)
Portugal	December 2004
Slovakia	2004
Hungary	July 2005
Bosnia-Herzegovina	December 2005
Montenegro	July 2006
Romania	December 2006
Bulgaria	2007
Latvia	2007
Macedonia (former Yugoslav Republic of)	2007
Croatia	January 2008
Poland	October 2009
Albania	January 2010
Sweden	July 2010
Serbia	January 2011
Germany	July 2011

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

Belarus has to add to this list, It is not Council of Europe member state; but also for its citizens military service is still compulsory.

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

Kosovo, the other territory within the region whose status is currently unclear, in January 2009 established a "non-military" security force, armed with small arms and light vehicles only, with responsibilities for crisis response, civil protection and explosive ordinance disposal.



## 2.2 RECOGNITION OF CONSCIENTIOUS OBJECTION

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

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

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

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

**Tab. 3. First Recognition of Conscientious Objection to Military Service in States within the Council of Europe area<sup>124</sup>**

Year (ascending order)	Country	Provision
1916	United Kingdom	Military Service Act, 27 <sup>th</sup> Jan.
1917	Denmark	Alternative Service Act, 13 <sup>th</sup> Dec.
1920	Sweden	Alternative Service Schemes Act, 21 <sup>st</sup> May
1922	Netherlands	Constitutional amendment
1922	Norway	Civilian Conscript Workers Act, 24 <sup>th</sup> March
1931	Finland	Alternative Service Act, 4 <sup>th</sup> June
1949	Germany	In principle in the Grundgesetz "Basic Law" of the Federal Republic of Germany, Art. 4. The first provisions in the German Democratic Republic dated

<sup>124</sup> Even if Belarus is not in Council of Europe area, when available tables indicate Belarusian information.



Year (ascending order)	Country	Provision
		from 1964
1955	Austria	National Service Act
1963	France	Act No. 1255/63, 21 <sup>st</sup> December
1963	Luxembourg	Act of 23 <sup>rd</sup> July, Art. 8)
1964	Belgium	Act of 3 <sup>rd</sup> June
1972	Italy	Act No. 772/1972
1976	Portugal	Constitution, Article 41
1978	Spain	Constitution
1988	Poland	Constitution, Art. 85
1989	Hungary	Constitution, Art. 70
1990	Croatia	Constitution, Article 47.2
1990	Latvia	Law on Substitute Service of the Latvian Soviet Socialist Republic
1990	Lithuania	Law on Alternative Service of the Lithuanian Soviet Socialist Republic
1991	Bulgaria	Constitution, Article 59.2
1991	Estonia	Constitution, Article 124
1992	Moldova	Alternative Service Act, No. 633/91
1992	Cyprus	National Guard Act, No. 2/1992, 9 <sup>th</sup> Jan.
1992	Czechoslovakia	Civilian Service Act, No.18/1992 – now the Czech Republic and Slovakia
1992	Georgia	Military Service Act, Art. 12
1992	Serbia and Montenegro	Constitution, Art. 58 – Montenegro gained independence in 2006
1992	Slovenia	Constitution
1993	Russian Federation	Constitution, Art. 59.3
1994	Belarus	Constitution, Art. 57.



Year (ascending order)	Country	Provision
		First Alternative Service Law in 2015.
1995	Azerbaijan	Constitution, Art. 76
1996	Bosnia- Herzegovina	parallel Defence Acts in the Federation and in the Republika Srpska
1996	Romania	Act No. 46/1996, Art. 4
1996	Switzerland	Civilian Service Act
1996	Ukraine	Constitution, Art. 35.3
1997	Greece	Act No. 2510/97
1998	Albania	Constitution, Art. 166
2001	Macedonia (FYR)	Defence Act, Art. 8
2003	Armenia	Alternative Service Act

## 2.3 OBLIGATORY MILITARY SERVICE AND ALTERNATIVE SERVICE

The relative durations in the countries which retain conscription is as follows. The figure quoted is for the normal basic military service in the army, before any adjustments to reflect rank, educational qualifications etc.. The only change which has occurred in 2016 is that Belarus has at last made alternative service arrangements, but of a punitive duration.

**Tab. 4. Duration of military and civilian service in states within the Council of Europe area**

Country	Military service duration (ascending order)	Civilian service duration	Ratio to military service
Denmark	4	4	1
Austria	6	9	1.5
Finland	5.5	11.5	2.09
Estonia	8	8	1



<b>Switzerland</b>	260 days	390 days	1.5
<b>Greece</b>	9	15	1.7
<b>Norway</b>	12	no alternative service required of conscientious objectors	
<b>Moldova</b>	12	12	1
<b>Ukraine</b>	12	18	1.5
<b>Russian Federation</b>	12	18	1.5
<b>Georgia</b>	12	24	2
<b>Belarus</b>	18	27	1.5
<b>Azerbaijan</b>	18	no alternative civilian service	
<b>Cyprus</b>	24	33	1.4
<b>Armenia</b>	24	42	1.75
<b>Turkey</b>	12	no alternative civilian service	

## 2.4 CONSCRIPTS AND CONTRACT OR PROFESSIONAL SOLDIERS

**Tab. 5 Number and percentage of conscripts<sup>125</sup>**

	Total strength of armed forces	Number of conscripts	As % (Ascending order)
<b>Cyprus<sup>126</sup></b>	12.000	10.700	89,2%
<b>Switzerland</b>	20.800	17.450	83,9%
<b>Turkey</b>	510.600	359.500	70,4%
<b>Finland</b>	22.200	13.650	61,5%

125 Unless otherwise specified, all figures are the estimates for November 2015 as published by the International Institute for Strategic Studies in "The Military Balance 2016". This source does not give numbers of conscripts serving in the Austrian, Azerbaijani, Belarussian or Ukrainian armed forces.

126 Republic of Cyprus only. The number of conscripts currently serving in the North is not known.



<b>Ukraine</b>	204.000	-	"just over 50%"
<b>Estonia</b>	5.750	2.500	43,5%
<b>Armenia</b>	44.800	18.950	42,3%
<b>Moldova</b>	5.350	2.200	41,1%
<b>Russian Federation<sup>127</sup></b>	798.000	303.230	38,0%
<b>Greece</b>	142.950	48.950	34,2%
<b>Norway</b>	23.550	6.700	28,5%
<b>Georgia</b>	20.650	4.050	19,6%
<b>Denmark</b>	17.200	1.250	7,3%

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

**Swiss figures** regard the number of conscripts serving at any given time. After the initial training period, military service in Switzerland is performed in anything up to seven three-week periods of duty spread over the following ten years. According to Swiss Government figures the 7,600 who began their initial period of military training on 31st October brought the number of new conscripts enlisted in 2016 to approximately 22,000.

With regard to **Moldovan figures**, conscription into Government armed forces cannot be applied in the secessionist Transdnistria region, which enforces its own conscription and has introduced provisions for conscientious objectors. No data on the Transdnistrian armed forces are available.

Similarly to what said before, with regard to **Georgia** conscription cannot be enforced in the secessionist Abkhazia and South Ossetia region. These regions enforce their own conscription, but we have no data on their armed forces.

Most **Danish conscripts** serve only a four-month period of military training. By analogy with Switzerland, it is likely that this figure represents only those actively performing military service at any given time. The number called up each year is thus probably three times as large. Even so, priority is given to those who volunteer to perform military service. Those conscripts who would have preferred not to serve are actually a minority – a rare but not unique situation; the same is true in Chile.

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

127 Number of conscripts is the estimate by "Citizen, Army, Law" dated 2013. ("The Military Balance 2016" does not give conscript numbers from Russian Federation).



Tab. 6 Total armed forces active strength and percentage

Country	Male population reaching 21 in 2014 <sup>128</sup>	Total armed forces active strength <sup>129</sup>	As % (Ascending order)
Greece	52.754	144.350	274.8% (conscripts 91.7%)
Armenia	23.470	44.800	190.9% (conscripts 80.7%)
Cyprus	8.167	15.500 <sup>130</sup>	189.8% (conscripts 167.7%)
Russian Federation	693.843	771.000	110.7% (conscripts 43.5%)
Bulgaria	33.444	31.300	93.6
Belarus	51.855	48.000	92.6%
Azerbaijan	76.923	66.950	87.0%
Estonia	6.688	5.750	86.0% (conscripts 37.3%)
Norway	32.290	24.450	79.9% (conscripts 28.0%)
Slovenia	9.818	7.600	77.4%
Malta	2.554	1.950	76.4%
Turkey	700.079	510.600	72.9% (conscripts 51.4%)
Georgia	29.723	20.650	69.5% (conscripts 13.6%)
Finland	32.599	22.200	68.1% (conscripts 41.9%)
Montenegro	3.120	2.080	66.7%
Serbia	43.945	28.150	64.1%
Spain	217.244	133.250	61.3%
Italy	288.188	176.000	61.1%
Romania	117.798	71.400	60.6%
Croatia	28.334	16.550	58.4%
Portugal	62.208	34.600	55.6%
France	396.050	222.200	54.3%

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

129 Source: The Military Balance 2015 (Institute of Strategic Studies, London).

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



Country	Male population reaching 21 in 2014 <sup>128</sup>	Total armed forces active strength <sup>129</sup>	As % (Ascending order)
<b>Belgium</b>	59.655	30.700	51.5%
<b>Latvia</b>	10.482	5.310	50.7%
<b>Lithuania</b>	20.425	10.250	50.2%
<b>Slovakia</b>	31.646	15.850	50.1%
<b>The FYR Macedonia</b>	16.144	8.000	49.6%
<b>Ukraine<sup>131</sup></b>	246.39749.3	121.550	(conscripts 25%)
<b>Austria</b>	48.108	22.500	46.8%
<b>Switzerland</b>	46.562	21.250	45.6% (conscripts 38.4%)
<b>Denmark</b>	37.913	17.200	45.4% (conscripts 3.3%)
<b>Germany</b>	405.468	181.550	44.8%
<b>Poland</b>	221.889	99.300	44.8%
<b>Hungary</b>	59.237	26.500	44.7%
<b>Czech Republic</b>	49.999	21.000	42.0%
<b>United Kingdom</b>	385.989	159.150	41.4%
<b>Bosnia-Herzegovina</b>	26.601	10.500	39.5%
<b>Netherlands</b>	103.462	37.400	36.1%
<b>Ireland</b>	28.564	9.350	32.7%
<b>Sweden</b>	54.960	15.300	27.8%
<b>Luxembourg</b>	3.263	900	27.6%
<b>Albania</b>	31,986	8,000	25.0%
<b>Moldova</b>	28.213	5.350	19.0% (conscripts 7.8%)

## 2.5 MILITARY EXPENDITURE

Yet another measure of militarisation is given by military expenditure figures. This table, drawn up on the same basis as that in the previous report, shows the level of

<sup>131</sup> Government armed forces only



military expenditure as reported by the Stockholm International Peace Research Institute (SIPRI) for 2015. It should be noted that SIPRI's figures are given in US dollars which are here converted to Euros; in some cases the year-on-year changes therefore partly reflect exchange rate fluctuations.<sup>132</sup>

**Tab. 7. Military expenditure in states within the Council of Europe area**

<b>Country<sup>133</sup></b>	<b>Military Expenditure million € 2015</b>	<b>% change from 2014</b>	<b>€ per capita</b>	<b>As% of GDP</b>
<b>Albania</b>	149	-1,9%	53,9	1,1%
<b>Armenia</b>	503	-4,9%	168,1	4,5%
<b>Austria</b>	2.851	-22,1%	333,2	0,7%
<b>Azerbaijan</b>	3.394	-15,7%	360,4	4,6%
<b>Belarus</b>	813	-26,0%	86,3	1,2%
<b>Belgium</b>	4.683	-19,7%	413,1	0,9%
<b>Bosnia-Herzegovina</b>	182	-18,9%	47,2	1,0%
<b>Bulgaria</b>	743	-21,0%	103,6	1,4%
<b>Croatia</b>	849	-13,7%	200,4	1,6%
<b>Cyprus</b>	397	-16,4%	441,6	1,8%
<b>Czech Republic</b>	1.998	-12,1%	189,8	1,0%
<b>Denmark</b>	3.891	-22,3%	687,4	1,2%
<b>Estonia</b>	513	-10,3%	390,2	2,0%
<b>Finland</b>	3.347	-18,3%	611,7	1,3%
<b>France</b>	57.146	-18,3%	889,9	2,1%
<b>Georgia</b>	367	-15,7%	99,4	2,4%
<b>Germany</b>	44.262	-15,2%	541,9	1,2%
<b>Greece</b>	5.711	-4,4%	522,5	2,6%
<b>Hungary</b>	1.149	-12,1%	116,6	0,8%

<sup>132</sup> Figures in USD are converted in Euros using the 2016 yearly average exchange that is 1 USD/0,89 Euros (source: [www.usforex.com](http://www.usforex.com) and [cambi.bancaditalia.it](http://cambi.bancaditalia.it)).

<sup>133</sup> SIPRI estimates: Georgia, Luxemburg, Macedonia and Serbia.



<b>Country<sup>133</sup></b>	<b>Military Expenditure million € 2015</b>	<b>% change from 2014</b>	<b>€ per capita</b>	<b>As% of GDP</b>
<b>Ireland</b>	1.118	-16,5%	240,4	0,4%
<b>Italy</b>	26.787	-22,9%	439,5	1,3%
<b>Latvia</b>	321	-4,5%	158,6	1,0%
<b>Lithuania</b>	530	25,0%	181,5	1,1%
<b>Luxembourg</b>	341	2,0%	607,3	0,5%
<b>Macedonia, FYR</b>	121	-19,4%	58,2	1,1%
<b>Malta</b>	63	-6,5%	147,0	0,6%
<b>Moldova</b>	26	-16,3%	7,3	0,4%
<b>Montenegro</b>	73	-17,4%	116,6	1,6%
<b>Netherlands</b>	9.970	-12,0%	588,7	1,2%
<b>Norway</b>	6.627	-12,9%	1.271,3	1,5%
<b>Poland</b>	11.753	-0,4%	309,2	2,2%
<b>Portugal</b>	4.140	-12,3%	397,9	1,9%
<b>Romania</b>	2.788	-2,4%	140,4	1,4%
<b>Russian Federation</b>	74.630	-21,4%	510,1	5,4%
<b>Serbia</b>	814	-23,8%	113,6	2,0%
<b>Slovak Rep.</b>	1.093	-1,6%	201,5	1,1%
<b>Slovenia</b>	457	-17,0%	221,7	1,0%
<b>Spain</b>	15.847	10,8%	341,6	1,2%
<b>Sweden</b>	6.042	-18,2%	611,6	1,1%
<b>Switzerland</b>	5.360	-8,8%	650,6	0,7%
<b>Ukraine<sup>134</sup></b>	4.070	-10,0%	95,2	4,0%
<b>United Kingdom</b>	62.315	-8,3%	959,6	2,0%

134 Highly uncertain data.



## 2.6 RECRUITMENT AGES

Although the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict encourages states to end all recruitment of persons below the age of 18, a disturbing number of European states continue to do this. Worse, some breach the absolute prohibitions in the Optional Protocol by placing servicemen aged under 18 at risk of active deployment, or by allowing conscripts to enlist before their eighteenth birthday. Full details are given in the table below.

**Tab. 8. Recruitment ages in states within the Council of Europe area**

Country	Age
<b>Albania</b>	19
<b>Armenia</b>	18, but 17 year old cadets at military higher education institutes
<b>Austria</b>	17 "voluntary" early performance of obligatory military service
<b>Azerbaijan</b>	17 year olds at cadet military school are classed as "on active service"
<b>Belarus</b>	18, but 17 year old cadets at the Military Academy
<b>Belgium</b>	On completion of secondary education, regardless of age
<b>Bosnia-Herzegovina</b>	18
<b>Bulgaria</b>	18
<b>Croatia</b>	18
<b>Cyprus</b>	16 (including "voluntary" early performance of obligatory military service)*
<b>Czech Republic</b>	18
<b>Denmark</b>	18
<b>Estonia</b>	18 (alone in the CoE area has signed but not ratified the OPAC)
<b>Finland</b>	18
<b>France</b>	17
<b>Georgia</b>	18, but possibly boys under 17 at the "Cadets' Military Academy". It is believed that the general recruitment age may now have been raised to 20.
<b>Germany</b>	17
<b>Greece</b>	17*
<b>Hungary</b>	18



Country	Age
<b>Ireland</b>	18 (Not clear whether this applies to "apprentices")
<b>Italy</b>	18
<b>Latvia</b>	18
<b>Lithuania</b>	18
<b>Luxembourg</b>	18 (raised from 17 in 2007)
<b>Macedonia (FYR)</b>	18
<b>Malta</b>	17.5 nominally, but de facto no recruitment under 18 since 1970
<b>Moldova</b>	18
<b>Montenegro</b>	18
<b>Netherlands</b>	17
<b>Norway</b>	18 but from the year of the 17 <sup>th</sup> birthday in military schools
<b>Poland</b>	18
<b>Portugal</b>	18
<b>Romania</b>	18
<b>Russian Federation</b>	18 but from the age of 16 in military schools
<b>Serbia</b>	18
<b>Slovakia</b>	18
<b>Slovenia</b>	18
<b>Spain</b>	18
<b>Sweden</b>	18
<b>Switzerland</b>	18
<b>Turkey</b>	18, but under „National Defence Service Law“ 3634, 15-18 year olds may be deployed in civil defence forces in the event of a national emergency“
<b>Ukraine</b>	18 but from the age of 17 in military schools
<b>United Kingdom</b>	16

Careful reading of the legislation in both Greece and Cyprus shows that a person is defined as reaching the age of 18 on the first of January of the year of the 18th birthday. In Greece the conscription age is officially 19, thus effectively 18, but



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

Germany is one of the States which adheres to the Optional Protocol in its underage recruitment, nevertheless the trend in numbers is alarming. On 1<sup>st</sup> November 2016 **1.576** members of the Bundeswehr (out of about 21.000 new recruits which corresponds to a rate of 7,2 %) had not yet reached the age of majority. This is the highest level ever reached. In 2011 (the year when conscription was suspended) 689 recruits (4,7% of the new recruits) were under 18 years old.

## 2.7 SERVING MEMBERS OF THE MILITARY

No new developments have been reported regarding serving members of the armed forces European citizens who develop conscientious objections. (See section 2.7 of the 2015 EBCO Report.)

However, in the one country which does have clear legal provisions to deal with requests for release on such grounds, namely Germany, The Federal Office of Family Affairs and Civil Society Functions (Bundesamt für Familie und zivilgesellschaftliche Aufgaben, BAFzA) which is responsible for the recognition of CO's, published its latest figures:

- From 30 June 2014 to 30 June 2016 469 soldiers made application for release on the grounds of conscientious objection (407 male and 62 female soldiers)
- From 1st July 2014 to 30 June 2016 the Office handled 644 applications (there seems to have been an accumulation of applications from the year before).
- 431 applications have been accepted (66,9%), 160 applications have been rejected (24,8%), 53 applications have been withdrawn or were inadmissible (8,2%).

Officers or officer candidates who were recognized as CO after having completed a professional training in the army had to pay back training costs of between 1.200 and 69.000 Euros.



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### 3. CONSCIENTIOUS OBJECTORS AS REFUGEES

Asylum continues to be a growing issue for conscientious objectors and others fleeing to Europe to escape embroilment in the armed conflicts in Ukraine, Syria, and Turkey, forcible recruitment in Eritrea, and imprisonment in the Republic of Korea.

Sadly, EBCO is not aware of any successful asylum claims on these grounds in 2016.

However, in the UK, The Upper Tribunal has issued a new Country Guidance case on Eritrea, which goes much further than previous guidance on recognising the real dangers for Eritrean asylum seekers returning to Eritrea (especially for those who are classified as "deserters"). It is available at: <https://www.freemovement.org.uk/new-country-guidance-case-eritrea-finds-real-risk-return>

Final publication of the 2015 Report was delayed in order to report the "Advisory Opinion" of the European Court of Justice regarding conscientious objector **André Shephard**'s application for asylum in Germany. Had the Court followed the excellent draft by Advocate General Eleanor Sharpston of the answers to the eight questions posed by the German Administrative Court, it would have given help to a tribunal which wished to make a favourable decision. It will however be remembered that in its final opinion the Court largely disregarded the Advocate General's advice, so although a disappointment it was hardly a surprise that when it again heard the case on the facts, on Wednesday 16th November, the German Administrative Court turned down Shephard's application for asylum. There will be an appeal.

Like the Savda 2 judgment, (see Section 1.1.1.1) this development came too close to the publication of the present Report to be discussed in detail. A full analysis of the case will however appear in the 2017 EBCO Report.



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## 4. NEW PUBLICATIONS

The most important new publication of 2016 is the 700-page "Freedom of Religion or Belief: an International Law Commentary" by Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, published in March by Oxford University Press. Section 1.3.11 deals with conscientious objection; it gives the authoritative summary of the latest international jurisprudence by three of the leading academic experts on freedom of religion or belief; Heiner Bielefeldt has just completed six years as the UN's Special Rapporteur on Freedom of Religion or Belief.



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## 5. RECOMMENDATIONS

EBCO will be presenting this report to the European Parliament, to the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe, and to various State authorities. In each case we will accompany it with a set of targeted recommendations.

Meanwhile we repeat our general recommendations, applicable to all European States:

- 1) if they have not already done so, to **abolish all compulsory military service**, and meanwhile refrain from prosecuting or otherwise harassing conscientious objectors and provide a non-punitive and non-discriminatory **alternative service** of purely civilian nature.
- 2) to ensure that it is possible **for all conscientious objectors to avoid enlistment in the armed forces** and for all serving members of the armed forces or reservists to obtain release without penalties should they develop conscientious objection.
- 3) to immediately cease any recruitment into the armed forces of **persons aged under 18**.
- 4) to accept **applications for asylum** from all persons seeking to escape military service in any country where there is no adequate provision for conscientious objectors.
- 5) to decrease **military expenditure** and increase social spending.
- 6) to introduce **peace education** in all parts of the education system.