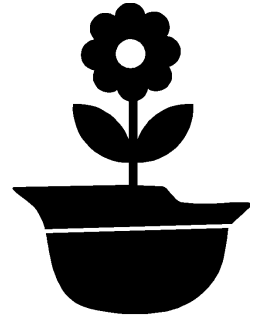


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REPORT TO THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS OF THE EUROPEAN PARLIAMENT

Conscientious Objection in Europe during 2008

Brussels, 30 September 2009

SUMMARY

This report on conscientious objection in Europe during 2008 has been prepared for the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, which has been instructed by the Bandrés Molet and Bindi Resolution in 1994 *"to draw up an annual report on the application by the Member States of its resolutions on conscientious objection and civilian service, and to involve the European Bureau for Conscientious Objection"*.

The right to conscientious objections has been widely recognised in Europe and during 2008 we have seen some improvements including the decisions of Lithuania and Poland to suspend compulsory military service, and legislative amendments in Cyprus and Finland.

However, various problems still exist:

Conscientious objectors still face persecution and imprisonment and in some countries there is no possibility for conscientious objection for conscripts or professional soldiers during their military service.

Cases of imprisonment persist in Finland, Germany and Turkey while in Greece conscientious objector Lazaros Petromelidis was processed in military court for the 15th time for the same offence.

At least 10 countries accepted 17 year old children for voluntary recruitment into the armed forces.

Turkey is the only E.U. candidate country still refusing to recognise conscientious objection to military service, mistreating and repeatedly imprisoning conscientious objectors, while the public reporting on and the discussion of this issue is stifled by prosecutions under Article 318 of the Criminal Code, under which *"alienating people from the military duty"* shall be sentenced to imprisonment for a term of six months to two years, and if the act is committed through the medium of the press and media, the penalty shall be increased by half.

By looking in depth at the situation in different states, a range of issues of general applicability can be highlighted. To illustrate this, Germany has been chosen for special attention in this year's report. Although it is in many respects a model of good practice, Germany does exemplify a number of problems shared with other member states. The main issues of concern are: the imprisonment of conscientious objectors, the random element in call-up procedure, the juvenile recruitment and the protection of conscientious objectors as refugees.

EBCO recommends that the European Parliament adopts a new resolution on the subject of conscientious objection to military service to incorporate developments in thinking since the last resolution from Bandrés Molet and Bindi in 1994.

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1. INTRODUCTION

In furtherance of Paragraph 16 of the Resolution on conscientious objection in the member states of the Community of 19 January 1994 (the Bandrés Molet and Bindi Resolution), under which the Committee on Civil Liberties of the European Parliament was instructed "*to draw up an annual report on the application by the Member States of its resolutions on conscientious objection and civilian service, and to involve the European Bureau for Conscientious Objection,*" the European Bureau for Conscientious Objection has the pleasure to submit the following evidence on the application by the Member States of the European Parliament's resolutions on conscientious objection and civilian service during the calendar year 2008.

2. DEVELOPMENTS DURING THE CALENDAR YEAR 2008

2.1 INTERNATIONAL STANDARDS

The Ibero-American Convention on Young People's Rights, which entered into force on 1 March 2008, explicitly recognises the right to conscientious objection. Article 12 of the Convention reads: "*Young people have the right to form a conscientious objection against compulsory military service.*" It also includes a commitment of states to create legal instruments to safeguard this right, and to progressively end compulsory military service. The Convention has been ratified by Bolivia, Costa Rica, the Dominican Republic, Honduras, Spain and Uruguay.

The United Nations Working Group on Arbitrary Detention published two "opinions" on individual cases which made clear that any detention of a conscientious objector for non-performance of military service could be arbitrary. In its Opinion No. 8/2008 (Colombia), concerning conscientious objectors Carlos Andres Giraldo Hincapie and Frank Yair Estrada Martin, the Working Group states: "*La detención contra quienes se han declarado expresamente objetores de conciencia no tiene sustento jurídico ni base legal y su incorporación al ejército contra su voluntad es en clara violencia a sus postulados de conciencia, lo que puede vulnerar el artículo 18 del Pacto Internacional de Derechos Civiles y Políticos.*"

Also, in its Opinion No 16/2008 (**Turkey**) in the case of conscientious objector Halil Savda, the Working Group elaborated on the question of imprisonment of conscientious objectors to military service. In its previous opinions, the Working Group considered any subsequent imprisonment following the first imprisonment as arbitrary detention, while now the Working Group considered any imprisonment, including the first imprisonment, as arbitrary detention.

Latest developments at the UN are summarised in the pamphlet "International Standards on Conscientious Objection to Military Service", by Rachel Brett, published by the Quaker United Nations Office, Geneva, in November 2008, and available in English, French, German or Spanish from the website www.quno.org.

The issue of conscientious objection to military service was also the subject of a report (UN Document No: A/HRC/9/24) by the United Nations High Commissioner for Human Rights to the Ninth Session of the Human Rights Council, September 2008.

2.2 DEVELOPMENTS WITHIN MEMBER STATES AND CANDIDATE COUNTRIES

2.2.1 Suspension of conscription

Lithuania

Minister of National Defence Juozas Olekas signed an order on discontinuation of compulsory basic military service on 15 September. Conscript Administration Service will continue administrating all the youth having reached the age of military service; however, conscription and medical examination will not be conducted. The Service will also be in charge of promotion of professional military service. The order came into force on September 15. According to the order, persons of compulsory military service will continue the duty until the date of discharge on 1 July 2009. (Source: Ministry of National Defence, Compulsory basic military service discontinued, 15 September 2008, <http://senas.kam.lt/index.php/en/168627>).

Poland

Poland's defence minister, Bogdan Klich, announced in August 2008 that the country will move towards a professional army and that from January, only volunteers will join the armed forces. The decision means that by October 2009, when the last draftees complete their nine months of compulsory service in the ranks, Poland should have a conscript-free army. (Source: The Telegraph: Poland ends army conscription, 5 August 2008, <http://www.telegraph.co.uk/news/worldnews/europe/poland/2505447/Poland-ends-army-conscription.html>).

E.U.

Of the 27 member states of the European Union, only eight were conscripting men into obligatory military service after the end of 2008. They are: **Austria, Cyprus, Denmark, Estonia, Finland, Germany, Greece and Sweden.**

2.2.2 Legislative amendments

Cyprus

A new National Guard Law, No. 61(I)/2008, amending Law 88(I)/2007, was published on 18th July 2008. Provisions relating to conscientious objection are as follows:

Article 4 §1, 2: All the citizens of the Republic, from the January 1st of the year during which they complete 18 year old until December 31st of the year during which they complete 50 year old, have obligation to military service (normal and reservist service).

Article 4 §3: Those conscripts, who due to their religious or ideological convictions, refuse to serve military service and are recognized as conscientious objectors, are obliged to serve special military service or alternative service.

Article 4 §4: Those conscripts who are deemed unfit for military service for health reasons are obliged to serve alternative service, provided that the Special Medical Council deems that they are fit for such service.

Article 5 §1: The length of the military service is 25 months, except if the Ministerial Council determines a shorter one.

On 17 December 2008 the Ministerial Council reduced the length of the military service from 25 to 24 months.

Article 5A §1: Those conscripts, who for reasons of conscience refuse to fulfil the obligation to military service invoking their religious or ideological convictions, can be recognised as conscientious objectors.

Article 5A §2: The reasons of conscience raised must be derived from a general perception of life, based on conscientious religious, philosophical or moral convictions, which are inviolably implemented by the person and are expressed by holding a respective attitude.

Article 5A §3: They are not recognized as conscientious objectors the conscripts who:

- a) possess a license for carrying gun or hunting or have asked to be granted such a license, as well as those participating in individual or collective activities of shooting games, hunting or other similar activities, having immediate relation with the use of guns, or
- b) have been convicted or have a prosecution pending against them for offence related to use of guns, ammunition or illegal violence, regardless if they have been rehabilitated or not according to the provisions of the Law on Rehabilitation of Offenders.

Article 5B §1: The length of the special military service and the alternative service of the conscript who is recognized as conscientious objector is equal to the one he would serve if he served military service increased by as follows:

- a) For special military service:
 - i) 5 months if he would serve military service of 18 months up to full service
 - ii) 4 months if he would serve military service of 12 months up to less than 18 months
 - iii) 3 months if he would serve military service less than 12 months
- b) For alternative service:
 - iv) 9 months if he would serve military service of 18 months up to full service
 - v) 8 months if he would serve military service of 12 months up to less than 18 months
 - vi) 7 months if he would serve military service less than 12 months.

Article 5B §2: The length of the alternative service for the conscript who is deemed unfit for military service by the Special Medical Council but is fit for alternative service, is equal to this that he would serve if he served military service, full or reduced, increased by 5 months.

Article 5B §3: The obligation to reservist service, as well as the time which is not considered as time of special military service or alternative service, are fulfilled without increase in time.

Article 5Г §1: The special military service is fulfilled exclusively in units and services of the Force, which are determined by Ministerial Decision, by assigning to the conscript duties and specialisations which do not involve use or training in use of weapons.

Article 5Г §2: The alternative service is fulfilled in services of institutions of the public sector, which are determined by Ministerial Decision, following communication with the Chief of each institution and consists in providing services of common benefit, or executing duties serving the public and in priority the social domain and the environmental protection.

Article 5Δ §1: The type of the application of a conscript for his recognition as a conscientious objector, the documents that should be attached, the deadline for their submission, the enlistment procedure for those obliged to serve special military service or alternative service, as well as every detail necessary for the implementation of the provisions referring to the conscientious objectors, are determined by Ministerial Decree, published in the official Gazette of the Republic.

Article 5Δ §2: The application of a conscript for his recognition as a conscientious objector, together with the documents determined, are submitted to the competent Recruiting Office of the Force.

Article 5Δ §3: An application of a conscript, which is not submitted or is not accompanied by the required documents, within the defined deadline, is considered as not submitted and the conscript has the duty to enlist in the Force in order to serve military service or reservist service, depending on the case.

Article 5E: The recognition of a conscript as conscientious objector and his enlistment in the Force for serving special military service or his disposal in institution of the public sector for serving alternative service, is done by decision of the Minister, following the procedure of articles 5D, 5ST and 5Z.

Article 5Z §1: Special Committee is established, whose aim is to examine the existence of the requirements to recognise a conscript as conscientious objector and to provide relative opinion to the Minister.

Article 5Z §2: The Special Committee has five members, including its president, and consists of:

- a) two professors of universities specialised in philosophy or social – political sciences or psychology,
- b) a law officer of the Legal Service of the Republic, and
- c) two high officers of the Force, one of the Recruiting and one of the Sanitary Body.

Article 5Z §3: The president and the members of the Special Committee are appointed by the Minister, following communication, either with their Director, or with the Commander of the Force, regarding its officers members.

Article 5Z §4: The member officer of the Recruiting Body has the role of the introducer and secretary of the Special Committee.

Article 5Z §13: The Special Committee examines the cases of the conscripts who ask to be recognised as conscientious objectors and gives them the opportunity to be heard, except if their application is deemed justified through the documents they submit. The Special Committee can make relative self-appointed research or ask the help and consultation of special experts, depending on the case, if this is deemed necessary.

Article 5Z §14: In those cases that the Special Committee deems that the presence of the conscript before them is necessary, but he, although invited, does not present himself on the date set by them, his application is examined, but the fact of his absence is recorded in the relative minutes.

Article 5Z §15: The Special Committee, before concluding to its opinion, takes into consideration whether:

- d) the submitted application and the necessary documents are complete
- e) the raised and maybe exposed reasons of the applicant are adequately justified
- f) the real overall profile and the other realities known to the Special Committee do not create doubts for the allegations of the applicant included in its application or in his oral statements and explanations during his hearing before the Committee.

Article 5Θ §3: The conscript, who is serving alternative service

- a) has no military status and is not under the jurisdiction of Military Court
- b) is considered as if he is enlisted in the Force
- c) does not cover regular job post in the institution of the public sector in which he is placed, but, regardless of the provisions of any other law, is equal to the employees of this institution only in regard to the working hours, the medical care and, according to the provisions of §6 the disciplinary responsibility.

Article 5Θ §6: If a conscript is found guilty for disciplinary breach during his alternative service, according to the law of the institution of the public sector in which he is placed, he is subject, apart from the provisions of that law, to the disciplinary penalty of extension of his alternative service up to 40 days for each breach, depending on the severity of the breach.

Article 5I: The conscript who has completed his special military service or alternative service has the obligation to special reservist service or alternative reservist service, respectively, of the same duration with the one served by those who have served military service. A conscript, who is recognised as conscientious objector after having served military service, has the obligation to special reservist service.

Article 5IA §1: A conscript who was recognised as conscientious objector and is serving special military service or alternative service, loses this status and is obliged to serve military service in the following cases:

-
- a) After an application of the conscript and corresponding decision of the Minister
 - b) With the occurring of any of the reasons for which, according to article 5A §3, he can not be recognised as conscientious objector, and
 - c) With his exercise of syndicalistic activity or his participation in strike.

Article 5IΓ: In case of mobilization because of war or other emergency, the provisions for the alternative service of the conscientious objectors can be suspended by decision of the Minister, and those conscientious objectors who are serving alternative service are placed among the ones who are liable to special military service.

Finland

The new Alternative Service Act came into force in the beginning of the year and shortened both the duration of substitute service (from 395 days to 362 days) and maximum punishment of total objectors (from 197 days to 181 days). Unlike its predecessor, the Act remains applicable in time of war or general mobilisation.

E.U.

The duration of the alternative service remained extremely punitive in relation to that of the military service in **Poland** (18 vs 9 months, 100% longer), **Estonia** (16 vs 8 months, 100% longer), **Finland** (12 vs 6 months in most of the cases, 100% longer) and **Greece** (17 vs 9 months, 89% longer), punitive in **Lithuania** (18 vs 12 months, 50% longer) **Austria** (9 vs 6 months, 50% longer) and **Cyprus** (33 vs 24 months, 37,5% longer), and non punitive in **Denmark** (4 vs 4 months, equal), **Sweden** (7,5 vs 7,5 months, equal) and **Germany** (9 vs 9 months, equal).

2.2.3 Imprisonment of conscientious objectors

The reports in this section are adapted from CO Alerts issued during 2008 by War Resisters International, which can be consulted at http://www.wri-irg.org/programmes/co_alerts.

Finland

SEBASTIAN SALMINEN, a 21-years old total objector from Oulu, went to prison on 6 October 2008. He had been ordered to perform his military service in the Infantry Brigade of Sodankylä. He refused and was sentenced to prison for 195 days by the Oulu district court (Oulun käräjäoikeus) on 27 November 2007. The charge was "refusing conscription". He noted in his trial that his refusal is a "personal contention based on his pacifist conviction". The Helsinki appeal court (Helsingin hovioikeus) shortened the sentence to 178 days on 30 July 2008, in the light of the new Alternative Service Act.

JUHANA HIRVONEN, a 27-years old set designer from Helsinki, who had refused conscription in July 2007, was sentenced to prison for 179 days after appeal, and began his sentence on 9th October. In his trial he stated that his responsibilities as a human are not towards the state but towards other people. He also stated that armed force does not help society and a functioning society does not necessarily need a machine of violence such as the military.

MATTI PETTERI PÖNTIÖ was sentenced to 56 days imprisonment by Loviisa District Court on 26th August 2008, and served his sentence from 11th November 2008 to 6th January 2009. Pöntiö broke off his substitute service on 17 April 2008 after about 8 months of service, declaring *"I refuse to continue my substitute service from this day on. I see the Finnish substitute service system as a forced, punitive extension of the compelled militarist duty, which is upheld by means which hurt basic human rights. Even this ostensible compromising alternative gives no freedom of opinion for my pacifist world view. I consider the so called total objection as an only option for my conscience although it might be against our traditional national way to act and although I will probably be punished by prison sentence because of it. I regret that I did not make this decision already in the beginning of my substitute service. My humanitarian duty is to criticise those social institutions and cultural phenomenon which work against humanity, not to accept them."*

Germany

SILVIO WALTHER, called up on 9 April 2008 to a unit based in Bad Reichenhall, was sentenced to periods of administrative detention or "disciplinary arrest" of 7 days, 10 days, 14 days and 21 days on 16th April, 25th April, 6th May, and 2nd June, respectively. Together with a "temporary detention" on the night of 16th April, having refused the medical examination necessary for formal admission to administrative detention, the detentions totalled 42 days, served between 17th April and 8th August – interrupted between 26th May and 18th July.

Two further cases were reported on 7th October:

PATRICK SANDER from Berlin, who had been supposed to present himself for military service on 1st October was arrested by military police at 11pm on 6th October and taken by to the military police commando in Berlin, and was transferred the next day to the 4th Fernmeldebatallion in Prenzlau. Patrick Sander had previously declared: *"I am neither prepared to take up arms, not to kill a human being. (...) I won't do a substitute service because I am not prepared to kill, to give up my reason and to act against my conscience. Also, I refuse to submit to the arbitrariness with which the state recruits conscripts and people in substitute service."*

JAN-PATRICK EHLERT from Flensburg answered the summons to present himself on Friday 1st October to the 18th Luftwaffenausbildungsregiment in Strausberg, but refused to comply with any order. The following Monday being a national holiday in Germany he was given a permit to go home over the weekend, but was required to present himself again on 6th October.

It was expected that both Sander and Ehlert would undergo periods of administrative detention.

Greece

On 20th May, conscientious objector LAZAROS PETROMELIDIS was tried in absentia by the Naval Court of Piraeus on two charges of insubordination and sentenced to three years imprisonment. Petromelidis had first declared his conscientious objection in March 1992, at a time when Greece did not recognise the right to conscientious objection. He has been passed through more than a dozen trials and has been jailed 3 times. An appeal to the Supreme Court is pending.

Turkey

ISMAEL SAYGI, who had declared his conscientious objection on 15th November 2006, while on leave after having served seven months of military service, was taken into custody on 16th March 2008 after an ID check, and after a hearing in a military court, was sent to Maltepe Military Prison; on 26th March he was transferred to Sarikamis Military Prison near Kars.

During a solidarity action for Ismail Saygi, held on 27th March, conscientious objector HALIL SAVDA was arrested on charges of desertion. Savda had been released on 28th July 2007 from six months imprisonment on charges of "persistent disobedience with the intention of fully evading military service", under Article 88 of the Military Penal Code, having refused to wear a uniform, to shave and to join military assemblies during a previous attempt to conscript him. The latest arrest was because he had not reported for military service following his release. The long sequence of imprisonments of Savda since December 2004 was already under consideration by the UN Working Group on Arbitrary Detention; in the Opinion decided upon on 9th May 2008, reported in Section 2.1 above, the Working Group found that all the imprisonments, including the current one, constituted arbitrary detention.

MEHMET BAL, who had declared himself a conscientious objector when he first presented himself for military service in October 2002, was detained by plain clothes police on 8th June 2008 on the basis of an arrest warrant for desertion following his failure to report back for military service in April 2003, at the end of a temporary release, supposedly to enable him to recover from "a social disturbance of his personality". He had been stopped and asked to produce his ID while taking a walk with a friend in his neighbourhood. Without checking via radio or phone the plain clothes officers immediately said there was an arrest warrant out for him, and that they would take him to the police station, which implies that they were specifically targeting him, rather than carrying out a random check. Bal was first brought to Gayrettepe police station in Istanbul, and from there to the 2nd Motorised Military Police Station Command. He was subsequently incarcerated in Hasdal Military Prison.

3. SPECIFIC ISSUES WITHIN THE EUROPEAN UNION

3.1 SERVING MEMBERS OF THE ARMED FORCES

Increasing attention is being given within Europe to the question of the ability of serving "professional" members of the armed forces to obtain release. This issue was covered in two reports which appeared in 2008:

The O.S.C.E. Office for Democratic Institutions and Human Rights (ODIHR) published a "Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel". In the chapter on conscientious objection, it gives a list of states which claim that their legislation "provides a legal right for conscientious objection for professional soldiers", including E.U. members **Germany, Poland, Slovakia** and **Spain**.

By contrast, the report "Professional soldiers and the right to conscientious objection in the European Union", published in October 2008 as "Information against war, repression and for another society No. 5 – Documentation produced for Tobias Pfluger MEP" concludes that only **Germany, the Netherlands** and **the United Kingdom** recognise that professional soldiers can turn into conscientious objectors.

There are a number of reasons for the apparent inconsistency between the two reports. Careful reading of the O.S.C.E. report (partly funded by the Netherlands) reveals that the Netherlands failed to answer the questionnaire sent out in the preparation of the report. Release from **the United Kingdom** armed forces for conscientious objectors, although explicitly covered in military regulations, is not a legal right, but is handled as a compassionate issue. **Poland, Slovakia** and **Spain** all have provisions enabling serving members of the armed forces to apply for early release from the full contracted term of their service. Although a conscientious objector might seek to use such a provision, in none of these three countries is it specifically addressed at conscientious objection. There is generally a requirement to pay back training and other costs, which penalises those who use this route by contrast with those discharged on other grounds, health, injury, even misconduct. In the case of **Poland**, the constitutional court in 1999 upheld the requirement that a serviceman seeking release must make this payment in full before the release could take effect; this means that it is not a feasible option for many who are theoretically entitled to apply. Such provisions cannot be considered to constitute recognition of conscientious objection as a legal right.

Of particular relevance to the situation of volunteer members of the armed forces is the case of conscientious objection only to a particular conflict or military operation, which is often termed "selective" objection. This may result from the objector being faced with a specific situation which was not reasonably foreseeable at the time of volunteering, or be associated with the perceived illegality of the action concerned. The O.S.C.E. questionnaire asked states whether they recognised selective conscientious objection. Of the E.U. member states replying, **the Czech Republic, Finland, Ireland** and **Lithuania**,

together with the candidate country **Croatia**, said that they did not recognise selective objections. **Austria, Belgium, Denmark, Germany, Poland, Portugal** and **Sweden**, together with **Serbia-Montenegro** however claimed that they did. The practical implications are not however clear. The one case where a selective objection was unambiguously recognised was that of Pfaff in **Germany** (see Section 5, below).

3.2 RECRUITMENT OF PERSONS AGED UNDER 18

Under the Optional Protocol (OPAC) to the Convention on the Rights of the Child, all conscription of persons aged under 18 is prohibited, as is their deployment in armed conflict.

However, according to the "Child Soldiers Global Report 2008", published by the Coalition to Stop the Use of Child Soldiers (www.child-soldiers.org), **Austria, Cyprus, France, Germany, Hungary, Ireland, Luxembourg, Malta, the Netherlands**, and **Poland** all accepted persons aged 17 for voluntary recruitment into the armed forces.

In **Belgium**, the provisions governing conscription, currently suspended, had not been amended to bring them into conformity with the Optional Protocol by excluding 17-year-olds.

In **Estonia** the arrangements were such that, depending on the date of birth, persons could be called up before their eighteenth birthday.

In **the United Kingdom** the minimum age for voluntary recruitment is 16. As of April 2007 there were 1,000 non-officer members of the regular forces (principally the army) aged 16, and 3,470 (including 355 women) aged 17. Approximately a third of all recruits into the British armed forces join before the age of 18.

At its annual conference in March 2008 the National Union of Teachers (NUT), the principal teachers' trade union in the U.K., debated concerns about military recruitment campaigns in schools, particularly in the most disadvantaged areas, and passed a resolution committing the NUT to "*support teachers and schools in opposing Ministry of Defence recruitment activities that are based upon misleading propaganda*".

A particular quirk of the situation in the United Kingdom is that (except for a provision allowing release within the six months after initial recruitment) all recruits are required to serve a minimum of four years after their eighteenth birthday. This means that those who are youngest when they join are required to serve for longer than older recruits, even though it would normally be considered that the younger the age at which a decision is made the more likely it is that it will be reconsidered in the course of personal development.

In all cases where persons have made the decision to join the armed forces before the age of eighteen there must be a greater risk that this is an ill-considered decision made while one's beliefs are still developing. The rights of such persons who subsequently develop conscientious objections to military service are thus in particular need of protection.

4. PARTICULAR CONCERNS IN CANDIDATE COUNTRY TURKEY

The situation regarding conscientious objection in Turkey remains of especially acute concern. The three aspects reported here – prosecutions under Article 318 of the criminal code, repeated imprisonment of conscientious objectors, and mistreatment in military custody - were all criticised in Section 2.2 of the European Commission's "Turkey 2008 Progress Report" under the admission criteria, issued in November 2008.

4.1 ARTICLE 318 OF THE CRIMINAL CODE

Alone among E.U. member states and candidate countries, Turkey persists with an outright refusal to recognise conscientious objection to military service, and public reporting on and discussion of the issue is stifled by prosecutions under Article 318 of the Criminal Code, under which "*alienating people from the military duty*" shall be sentenced to imprisonment for a term of six months to two years, and if the act is committed through the medium of the press and media, the penalty shall be increased by half.

4.2 REPEATED IMPRISONMENT OF CONSCIENTIOUS OBJECTORS

Cases of the imprisonment of declared conscientious objectors are listed in Section 2.2.3 above. There have also in the past been numerous instances of the imprisonment and repeated imprisonment of Jehovah's Witnesses for refusing on grounds of conscientious objection to perform military service, and at least two cases (Yunus Erçep and Feti Demitas) are currently pending before the European Court of Human Rights. Although E.B.C.O. has received no reports of fresh imprisonments of Jehovah's Witness conscientious objectors in the course of 2008, it is possible that some did occur.

A particular concern in Turkey is the continued liability for military service, even after imprisonment for refusing such service, which can lead to indefinitely repeated call-ups and sentences of imprisonment. In a 2006 judgement (Ülke v. Turkey), the European Court of Human Rights criticised both this and the state of "*civil death*" to which those who had not performed military service were condemned by their inability to do anything which required documentation from the state. In 2008 there were no reports of any further attempts to arrest Ülke, but the Turkish Government has still not implemented the judgement of the European Court of Human Rights.

As reported in section 2.1 above, the United Nations' Working Group on Arbitrary Detention in 2008 issued a similar criticism of Turkey over the repeated imprisonment of Halil Savda.

To quote from paragraphs 38, 39, 43 and 44 of the Working Group's Opinion No. 16:

"The Government of Turkey has not put forward any arguments justifying the absence of any legislation accommodating conscientious objectors, possibly allowing for alternative services as a substitute for military service, as is the case in many other States, and for the necessity of criminal prosecution of conscientious objectors, which might potentially provide justification for a limitation on the right to freedom of religion or belief. (...) .In the view of the Working Group, it has been established that the limitations on Mr. Savda's right to freedom of religion or belief as a genuine conscientious objector is not justified in the present case (...) Accordingly, the criminal prosecution, sentencing and deprivation of liberty of Mr. Savda for holding and manifesting his belief and conscience is arbitrary in terms of category II of the Working Group's categories. [ie resulting from the exercise of the rights and freedoms guaranteed by Article 18 - freedom of thought, conscience and religion - of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights.] The Working Group, on previous occasions, has already declared arbitrary the detention of conscientious objectors following a second conviction on the grounds that this would be tantamount to compelling a person to change his or her convictions and beliefs for fear of not being subjected to criminal prosecution for the rest of one's life, being incompatible with the principle of double jeopardy or ne bis in idem, (...) Consequently, under the circumstances of this case, also Mr. Savda's second conviction to a prison term of six months by the Military Court on 12 April 2007 for insubordination since 25 November 2007, as upheld by the Military Court of Cassation, violates his right to fair trial. (...) the Working Group considers that the case in question warrants the rendering of an Opinion also regarding the periods Mr. Savda spent in detention between 16 and 28 December 2004, between 7 December 2006 and 2 February 2007, as well as between 5 February 2007 and 28 July 2007. The reasons for this position are the Group's wish to develop its jurisprudence on a matter of principle and particular importance. It is very likely that Mr. Savda will be arrested, detained and imprisoned time and again and may spend years after years in prison for failing to serve in the Army at least until he has reached the age limit, if any, after which Turkish citizens are not more obliged to perform their military service. Such scenario is real, taking into account the provisions of the Military Penal Code as it is in force at present, unless the country changes its laws, including possibly its Constitution, in order to provide for an alternative to military service for conscientious objectors or implements any other measure to bring the situation into conformity with the international human rights instruments accepted by the Republic of Turkey, or seizes to make it a crime or a disciplinary offence to refuse performing such service. Moreover importance is attached to the matter beyond Mr. Savda's individual fate. (...) In the light of the foregoing, the Working Group renders the following Opinion: The deprivation of liberty of Mr. Halil Savda during the periods between 16 and 28 December 2004, between 7 December 2006 and 2 February 2007, as well as between 5 February and 28 July 2007 was arbitrary."

A circular published by the Turkish Ministry of Justice in July 2008 represents a potential easing of the pressure on new conscientious objectors entering the system for the first time. According to the circular, recruiting offices no longer have the authority to take those evading military service into custody; in order to take an evader into custody, a judge's decision will be required. Moreover, the circular states that evaders who serve their sentences for evading; will not be taken to Recruiting Office, but will be expected to report themselves.

The circular, which makes reference to the European Convention on Human Rights, furthermore states that if the Prosecutor's Office decides that there is no need for further prosecution, evaders will not be arrested or taken into custody, and that the Recruiting Offices will have no authority to oppose to the Prosecutor's judgement. The judgement will be sent to the presidency of the relevant recruiting Office for information only. This implies that objectors come under the authority of the civilian courts as long as they declare their objection before enlistment. It is not clear, however, whether it would assist an objector who answers the summons to report to the military and at that point declares his objection; nor of course does it in any way affect the legal provisions which still allow repeated prosecution of conscientious objectors.

In practice, a tendency has also been noted in the Turkish military to accelerate the issue of a report that a conscientious objector is "*psychosocially unfit for military service*", which, while not closing the case, does mean that they are no longer detained.

(Source: Communications to EBCO from Feyda Sayan, Turkey)

4.3 MISTREATMENT IN THE TURKISH MILITARY

One feature which is peculiar to Turkey is that no upper age is specified for liability to military service. The judgement of the European Court of Human Rights in the case of *Taştan v. Turkey*, delivered on 4 March 2008, concerned an applicant who had been forced to do military service at the age of 71. The press release of the Court summarises the case:

"Mr Taştan stated that he had been a shepherd since his childhood and that he worked for local villagers in exchange for clothes, food and a roof over his head in winter. He maintained that his wife died in childbirth and that he stopped working to look after their son. As a result, the villagers – annoyed that he wasn't working for them anymore – denounced him as a deserter. He also claimed to be illiterate and to speak only Kurdish. On 15 February 2000 the applicant was called up to do military service and taken by gendarmes to the military recruitment office of Şanlıurfa. He was certified medically fit to perform military service and transferred to Erzincan (Turkey), where he underwent military training for recruits for one month. He was forced to take part in the same activities and physical exercises as 20-year-old recruits. Mr Taştan alleged that he was subjected to degrading treatment during his training, such as being offered cigarettes by his hierarchical superiors in exchange for posing with them for a photo, and had been the target of various jokes. As he had no teeth, he had had problems eating at army barracks; he had also suffered from heart and lung problems on account of temperatures dropping to as low as minus 30°C. Lastly, he alleged that he had had no means of communicating with his son throughout the entire period of his military service. After his military training the applicant was transferred to the 10th infantry brigade in Erciş (Van), where his state of health deteriorated. He was examined by a doctor on two occasions and then admitted to Van Military Hospital, before being transferred to Diyarbakir Military Hospital (Turkey). On 26 April 2000 he finally obtained a certificate exempting him from military service on grounds of heart failure and old age. The

Turkish Government maintained that, in accordance with the practice followed in similar cases, the applicant's personal records relating to his military service had been destroyed. The Court found that calling the applicant up to do military service and keeping him there, making him take part in training reserved for much younger recruits than himself, had been a particularly distressing experience and had affected his dignity. It had caused him suffering in excess of that which would be involved for any man in being obliged to perform military service and had, in itself, amounted to degrading treatment within the meaning of Article 3. The Court ruled that Turkey had violated Article 3 (prohibition of inhuman or degrading treatment) taken in conjunction with Article 13 (right to an effective remedy) of the European Convention on Human Rights."

There were frequent reports of severe mistreatment of conscientious objectors while in detention. Mehmet Bal alleged he was manhandled at the 2nd Motorised Military Police Station Command following his arrest on 8th June, and that the guards tried to wake him up by pouring hot water over him. According to reports from his lawyers, who visited him on 11th June in Hasdal Military prison, during his first day there a senior officer took him into a prison ward and ordered other prisoners to "do what is necessary to remind him of prison rules". Five or six prisoners beat his face and body with a plank of wood. At some stage Mehmet Bal passed out from the beatings, and was taken to a cold shower so that he would regain consciousness and the beating continued. After the attack, Mehmet Bal was taken to Gumussuyu Military Hospital for treatment. Although he could not move his neck, legs and arms, he was not admitted to the hospital, and was taken back to the prison on a stretcher.

Even more disturbing was the case of Ismael Saygi who withdrew his declaration as conscientious objector while in Sarikamis Military Prison, near Kars, which is notorious for maltreatment. Saygi had been transferred to Sarikamis from Maltepe Prison, Istanbul, where he had suffered constant abuse and in particular had been so severely beaten by other inmates that he was to be taken to Erzurum Military Hospital to be treated for the damage sustained to his nose. He was however first able to see his lawyer and told him that he was being charged with desertion and that he had decided that after serving the resulting sentence he would complete his military service. While respecting his decision, his solidarity group expressed deep disquiet regarding the circumstances under which it had been made.

5. FOCUS ON GERMANY

Principal sources for this section are:

- Schneider, F. "Objection de conscience et service civil en Allemagne" (<http://ebco-beoc.eu/pdf/index/200803/ObjectiondeconscienceetservicecivilenAllemagne.PDF>, March 2008)

and the sections on Germany in:

- Professional soldiers and the right to conscientious objection in the European Union, (Information against war, repression and for another society No. 5 – Documentation produced for Tobias Pfluger MEP, October 2008), and
- Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation (Quaker Council for European Affairs, Brussels, 2005).

5.1 BACKGROUND / POSITIVE ASPECTS

It is not the function of this annual report to rank E.U. member states by their record on conscientious objection, focussing repeatedly on the unchanged situation in a very few states, as though there was no room for improvement elsewhere. By looking in depth at the situation in different states, a range of issues of general applicability can be highlighted. To illustrate this, Germany has been chosen for special attention in this year's report. Although it is in many respects a model of good practice, Germany does exemplify a number of problems shared with other member states.

Article 4.3 of the 1949 Constitution (*Grundgesetz*) stated "*No one may be forced against his conscience to perform armed military service.*" Accordingly, when a law establishing obligatory military service (*Wehrpflichtgesetz*) was passed in 1956, it contained provisions for the recognition of conscientious objection. Although the first conscripts did not begin their military service until 1st April 1959 the first 2,447 applications from conscientious objectors had already been examined in 1958. In 1960 a "*substitute service*" law was passed and in the following year the first groups of conscientious objectors began performing civilian service.

From the beginning, the legal provisions for conscientious objectors established that the possibility of applying for conscientious objector status was open to everyone without time limits. Thus conscripts could lodge an application after their military service had begun, but – an even rarer example of good practice – it was unambiguously established that the right extended to those who had voluntarily embarked on a professional military career. Approximately 70 professional members of the armed forces apply each year for release on the grounds of conscientious objection; it is believed that most applications are accepted.

1973 saw a minor but significant change in terminology; henceforth *Ziviler Ersatzdienst* (civil substitute service) became simply *Zivildienst* (civilian service). With effect from 1984, men (the provisions of the *Wehrpflichtgesetz* and the

Kriegsdienstverweigerungsgesetz do not apply to women, even by choice) who lodged an application before being called up to military service no longer had to defend their position in a personal interview. In 2003, the military authorities ceased to be involved in the assessment of applications. The duration of civilian service was gradually shortened; finally, from October 2004 it was set at nine months, equal to that of military service.

The annual number of applications for recognition exceeded 100,000 per annum for the first time in 1991, since then it has fluctuated at around 150,000 – equivalent to something over a third of those reaching the age of liability for military service. In recent years approximately 85% have been accepted. Since 1999, the number of young men performing civilian service has been greater than the number performing compulsory military service. In October 2007 there were 69 932 objectors performing civilian service; officially classified as 42,152 in hospitals or residential care institutions, 16,677 *“technical or practical assistance in various social institutions”*, 2,671 in environmental protection, 1,891 as ambulance crew, 1,738 individual care of severely disabled persons, 1,734 mobile social work (eg *“meals on wheels”*), and the remainder in various agricultural, transport and administrative functions. The portrayal of conscientious objectors in popular culture has changed in response; they are no longer seen as egoists who are too lazy to do military service; most television hospital dramas now feature a conscientious objector performing his civilian service as one of the most sympathetic characters.

It was also in Germany that the Federal Administrative Court in 2005 made a groundbreaking decision for the recognition of selective objection, in the case of Major Florian Pfaff. Pfaff had been demoted following refusal to work on computer software which would be used in the invasion of Iraq, which he believed to be illegal. The court found that his belief that the assignment was illegal constituted a genuine conscientious objection, and on that ground it ordered the reinstatement of his former rank without finding it necessary to rule on the substantive question of whether the order he had refused was illegal, simply on whether the belief was reasonable, regarding which it observed *“there were and still are serious legal objections to the war against Iraq launched on 20 March 2003 by the USA and the UK, relating to the UN Charter's prohibition of the use of violence and other provisions of international law. The US and UK governments could not use as their basis for the war either decisions of the UN Security Council authorising them to go to war, or the right to self-defence set out in Article 51 of the UN Charter”* (BVerwG 2 WD 12.04)

5.2 ISSUES OF CONCERN

5.2.1 Imprisonment of conscientious objectors

There is in Germany a sizeable minority of *“total objectors”* who feel in various ways that even the so-called civilian service remains a substitute military service and that enrolment in it represents a compromise with the militarist system which violate their consciences. A measure introduced in 2002 which enabled

those who had performed a year of recognised voluntary service of a social or ecological nature to present this as an “*alternative*” to the “*substitute*” service was sufficient to meet the scruples of most Jehovah's Witnesses, hitherto the largest group of total objectors, but each year several young men who refuse any form of national service are called up – the cases which occurred in 2008 are detailed in Section 2.2.3 of this report, including the victims' explanation of their objections. Thus it is that even in the country with the largest number of recognised conscientious objectors in the world there are still some whose conscientious objection leads them to face imprisonment.

Refusal to perform military service is treated as desertion, punishable under Article 16 of the Military Penal Code by imprisonment of up to five years (or three years if the “deserter” recants and rejoins his unit within one month). Under certain circumstances refusers may be charged with disobeying military orders (articles 19 and 20) or being absent without leave (article 15), for which offences the normal maximum penalty is three years' imprisonment. These provisions are mirrored in the Law on Civilian Service (*Zivildienstgesetz*), last amended on 17th May 2008.

In practice, the courts have rarely imposed imprisonment in recent years, handing down suspended sentences, community service orders, or fines. However, total objectors who have been called up to military service have characteristically been placed under disciplinary arrest. A Ministry of Defence decree dated 21st April 2008 ruled that objectors should serve at least two arrests of 21 days each before the case is passed on to the criminal justice system for prosecution. In practice, objectors have often served three, and sometimes four disciplinary arrests.

That persons should be detained at all because of their conscientious objections was condemned in paragraph 50 of the de Gucht resolution and paragraph 11 of the Bandrés Molet and Bindi Resolution. Repeated disciplinary arrest is however particularly alarming. The official purpose of disciplinary arrest is to change the behaviour of the person concerned - it is not a means of punishment. In the case of a conscientious objector this thus constitutes a direct interference with the freedom of thought, conscience and religion.

5.2.2 Random element in call-up procedure

Over 400,000 young men each year reach the age of military service in Germany. However the need for conscripts has been steadily falling. In 2004 the number of conscripts serving was given by the Ministry of Defence as 78,343. In May 2008 the figure was 59,841, by 2010 it is projected to be approximately 47,000. Even these figures exaggerate the proportion of young men performing military service. Of the 2008 figure 24,351 were conscripts who had exercised the option to voluntarily extend their service to 23 months. Thus in fact only 35,490 conscripts were performing their initial nine months service. In 2007 there had been 161,488 applications for recognition as conscientious objectors. The remainder, over 200,000, were either exempted or simply not called up.

The excess supply of potential conscripts was recognised by amendments to the Law on Military Service promulgated in 2004. Married men and men living with a partner were henceforth automatically exempted. Also, in normal circumstances, call-up could take place only up to the age of 23. Men who pass that age without having been called up cease to be liable for military service in time of peace.

The Ministry of Defence's own figures indicate that over 40% of those eligible pass the age of liability without being called upon; no clear and systematic rules determine who escapes military service in this way.

It may be observed that this context redoubles concern about the military detention of total objectors. This does not occur, even in the first instance, as the inexorable result of a refusal to accept a universal obligation. In fact, between 2004 and 2006 no-one who was known to be a total objector was called up. In 2007 there seems to have been a distinct change of policy, towards the deliberate punishment of total objectors.

The number of recognised conscientious objectors who are willing to perform civilian service exceeds the available number of placements, but by a much smaller margin than the potential supply of recruits exceeds the needs of the armed forces. Thus a person who declares himself a conscientious objector thereby increases the likelihood that he will be in practice among the minority who perform some sort of national service.

In May 2008, 187,871 of the 247,712 personnel of the German armed forces were volunteers employed on a professional basis. The conscripts were not entirely self-selecting, but at least half of the male population had, one way or another, ensured that they were not liable for military service.

Effectively, Germany has a volunteer army, like the countries to its west (**the Netherlands, Belgium, Luxembourg, France, the U.K., Ireland, Spain, Portugal**) and – with the “professionalisation” of the Polish and Albanian armed forces – a swathe of countries to the east (**Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Croatia, Bosnia-Herzegovina, Albania, Montenegro, Romania, Bulgaria, Macedonia**).

The maintenance of conscription serves no military purpose. The burden is not equally shared. It weighs more heavily on conscientious objectors than on the population at large. The more fundamental the objection, the greater the penalty. In fact, it seems paradoxically to be the need to make alternative arrangements for staffing the health and social services were the obligatory civilian service for conscientious objectors to disappear, rather than any military exigencies, which is the biggest obstacle to Germany following its neighbours and abolishing conscription, at least in peacetime.

5.2.3 Juvenile recruitment

Germany is one of the states in which voluntary enlistment in the armed forces is possible, with parental consent, at the age of 17. According to the Child Soldiers Global Report 2008 (Coalition to Stop the Use of Child Soldiers, London), there were in 2005 1,229 males and females serving in the German armed forces; in

2006 the figure was 903. Service could begin from the seventeenth birthday; applications could in fact be made much earlier. The normal procedure was that those applying for such early entry went through a medical examination six months before their seventeenth birthday. Although safeguards were in place to ensure that they would not be involved in any function requiring the use of firearms, including armed guard duty, seventeen-year-old volunteers could receive firearms training.

Although these provisions are consistent with the letter of the Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict, E.B.C.O. strongly believes that they are inconsistent with the spirit of that convention which Germany has ratified.

E.B.C.O. is even more disturbed by the fact that 16-year-olds may join the border guard and police services and that, even if not in an armed role, persons aged under 18 may perform active duty in these armed services.

E.B.C.O. would urge Germany to cease all recruitment of persons under 18 into any armed body acting under the authority of the state, as well as banning any such recruitment by non-state actors.

5.2.4 Protection of conscientious objectors as refugees

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

Germany, along with other Western European countries, currently receives large numbers of asylum claims from Eritreans. In Eritrea, there is no recognition of conscientious objection, liability for military service is universal, and imposed by random forcible recruitment, the duration of service is indefinite, as can be the incarceration of conscientious objectors, and those attempting to leave the country to avoid military service put their lives at risk. When conscientious objection to military service forms part of an asylum claim from an Eritrean, this adds even more weight to the very strong case for sympathetic treatment.

A different group of conscientious objectors who have been forced to flee their country are members of the U.S.A.'s armed forces who have concerns of a conscientious and legal nature with that country's military operation in Iraq. Such selective objections are not recognised by the U.S.A. and those who have left the country to avoid deployment to Iraq face long terms of imprisonment on their return. The largest number, probably over 200, have at one time or another crossed the border to Canada, where the House of Commons (the lower house of

the Parliament) on 3rd June 2008 passed a resolution (not binding of the Government, which did not support it) which would have given permanent residence status to any conscientious objector to military action which lacked the sanction of the United Nations.

A large number of United States' servicemen are based in Europe, particularly Germany, and on 27th November 2008 U.S. Army Specialist André Shepherd applied for asylum in Germany, the first objector to the U.S. action in Iraq to seek asylum in Europe.

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

This case will be followed with great interest, particularly in the light of the German precedent set in the Pfaff case (see Section 5.1 above) concerning the recognition of selective conscientious objections. There is a strong argument that Shepherd would face persecution were he returned to the U.S.A. because of his refusal to participate in the war in Iraq. Article 9 para 2(e) of European Union Council Directive 2004/83/EC, states: "*Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of: ... (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include... a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.*"

6. RECOMMENDATIONS

We recommend that the European Parliament adopts a new resolution on the subject of conscientious objection to military service to incorporate developments in thinking since the last resolution from Bandrés Molet and Bindi in 1994:

Suggested elements of such a resolution should include calling on E.U. member states and candidate countries:

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

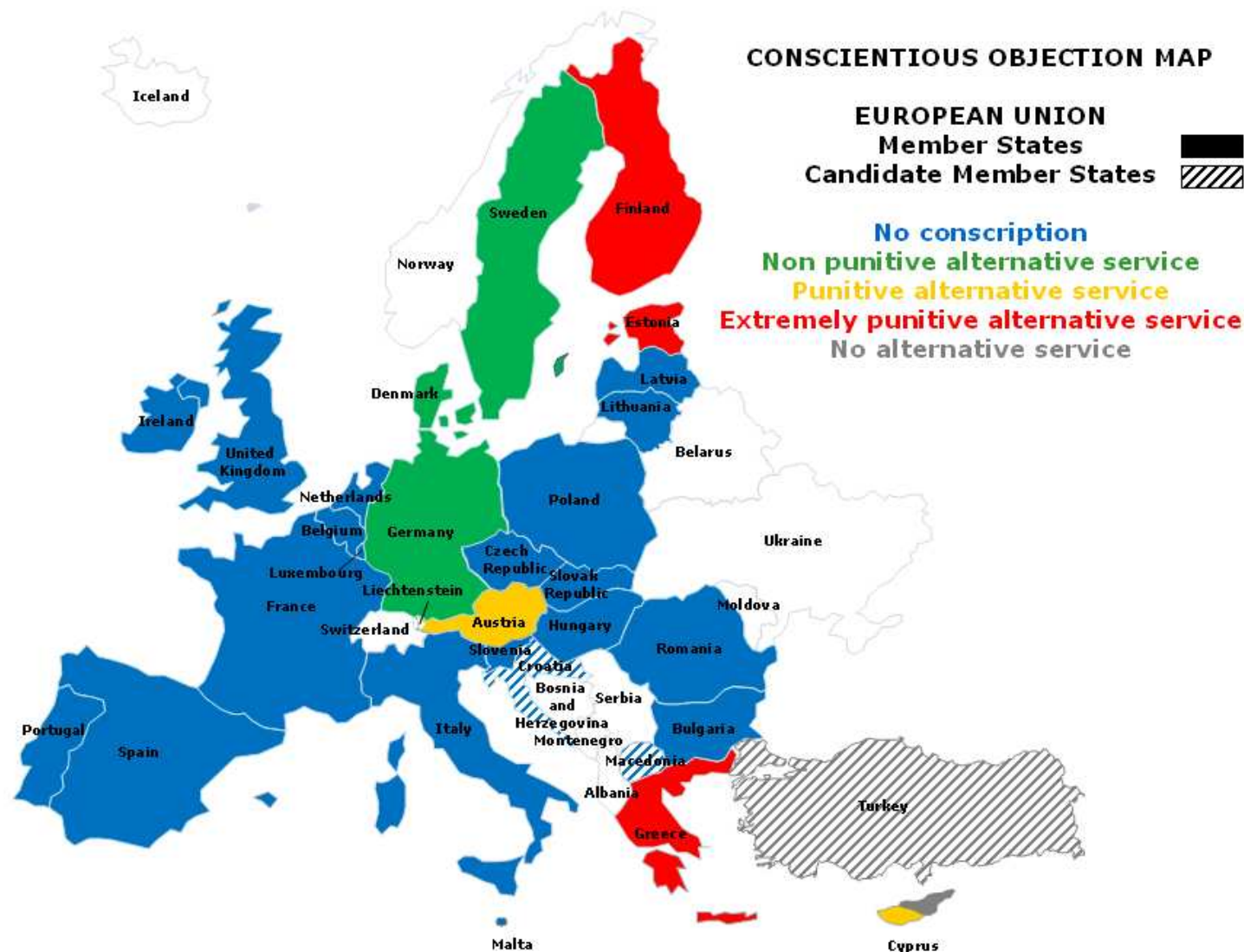
b) to ensure, meanwhile, that the duration of any alternative service required of conscientious objectors is no longer than the one of the military service; the administration of alternative service, including the examination of applications and any ensuing court process, falls entirely under civilian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

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

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

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

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



* Conscientious objection in EU in the end of 2008 (source: EBCO report for 2008)