

Conscientious objection to military service

Conscience and Peace Tax International (CPTI) submission for the Thematic Report by the Office of the United Nations High Commissioner for Human Rights, 2022

1) Conscription and conscientious objection in the world today

As will be discussed later in this submission, conscientious objection to military service may arise in a variety of situations. It remains however most common in situations of “conscription”, where military service is imposed obligatorily by legal means.

In recent years the phrase “voluntary conscription” has sometimes been used to indicate the possibility of enlisting for a short period of military training and/or service equivalent to that usually associated with conscript service, rather than committing to a full-length professional military career. An example is **Croatia**. As long as there is no allowance for imposing this service, it should be regarded as military service of a voluntary, contractual nature, and the use of the term “conscription” should be avoided. This applies also in the increasing number of States, including **Finland, Germany, Norway** which in recent years have given women the opportunity to sign on *voluntarily* for military service equivalent to that performed by male conscripts.

Having said this, there are two related “grey areas” where what *appears* to be voluntary enlistment takes place within a conscription system. The first is where the number of persons liable for conscription greatly exceeds the manpower requirements of the armed forces, and the decision is made to enlist first those who express willingness to serve. In some States, such as **Chile** and **Denmark** the entire annual quota of conscripts has for the past decade or so been filled in this way. However this does not mean that military service has become entirely voluntary; any change in the balance of numbers would automatically result in the enlistment of less willing recruits. The other is the provision in a number of States (**Austria, Bolivia, Cyprus...**) to allow those liable for military service to opt, subject to certain conditions, to perform it earlier than usually required. Although indeed the time of enlistment is thus voluntary, the service itself remains obligatory, which incidentally means that where such early enlistment takes place before the eighteenth birthday it ought to be regarded as a breach of the age limit set in the Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict.

A forthcoming publication by CPTI identifies 19 Member States of the UN which do not currently maintain any armed forces. To those might be added four which have paramilitary forces only; **Costa Rica**, which formally abolished its armed forces in 1948, **Mauritius**, **Panama** (since 1994) and **Iceland**, which although a member of the NATO alliance, to which it supplies facilities, itself maintains only a 250-strong coastguard.

In 39 further UN Member States, by our estimate, military service has always officially been voluntary. The majority are former British colonies; even when conscription was introduced in the UK in the two World Wars of the 20th Century, it was never extended to colonial possessions. The list also notably includes **Saudi Arabia** and its neighbours **Bahrain** and **Oman**. To this category might be added **Ethiopia, Liberia** and **Sierra Leone**, all of which saw widespread forced recruitment by all parties in their civil wars of the late 20th Century.

Of this total of 62 States with no history of conscription, only two have, as far as is known, formally acknowledged the right of conscientious objection to military service – the Marshall Islands in its 1989 independence Constitution and Zimbabwe, in the 1979 Military Service Act, which contains provisions, never put into practice, which would allow the introduction of conscription, with appropriate alternative service arrangements for conscientious objectors.

In a further 49 UN member States where conscription formerly applied, it has been either abolished or suspended. These include **Montenegro, South Sudan** and **Timor Leste**, where conscription ended with independence, and **South Africa**, where the conscription of white males ended with the foundation of the post-apartheid state in 1994. In 27 of these – slightly more than half – effective provision for conscientious objectors was in place before the suspension of conscription (and where conscription has been suspended it is at least assumed to apply should the suspension be lifted). And in **Argentina** the suspension of conscription in 1994 was accompanied by the introduction of conscientious objection provisions.

In 19 of the current 193 UN member States where conscription is still in place there is effective provision for conscientious objectors (exemption or civilian alternative service). Effective does not of course necessarily mean satisfactory ; shortcomings of the provisions will be discussed in the section on challenges below.

This leaves perhaps 64 which currently have conscription with no effective provision for conscientious objectors. In most, the issue has never been raised. In some, there are doubts as to whether conscription is still enforced in practice; in others it is far from universal. In many African states, for example, the liability falls only on the minority who have completed secondary education, and the proportion of the eligible age group who actually serve in the armed forces is much smaller than in many States which rely on voluntary recruitment. Often, too, enrolment in the armed forces confers power or privileges, and is sought after rather than resisted.

A number of entities which are not UN Member States also have recognisable armed forces and in some cases impose conscription. Patchy information means that any listing must necessarily be subjective; it must also be accompanied with a disclaimer that it implies no recognition of the legitimacy, territorial claims, or name of de facto entities. That said, we believe that among such armed forces listed in The Military Balance 2022, conscription currently exists in Nagorno-Karabakh (Azerbaijan), Taiwan (Taipei, China in official UN terminology), in the “Turkish Republic of North Cyprus”, in Abkhazia and perhaps South Ossetia (Georgia), in Transdniestria (Republic of Moldova), in Rojava (the Kurdish-controlled region of Syria) and in the “People’s Republics” of Donetsk and Luhansk (Ukraine). To this list should be added the British colony of Bermuda, where a move to abolish conscription was last rejected by the courts in 2011. Various other opposition armed groups from time to time have exercised the effective non-temporary control of a given area which enables the imposition of systematic conscription rather than random forced recruitment. Outside the situations listed above this is probably currently closest to being realised in the case of various ethnic opposition armed groups in Myanmar, several of which are believed to conscript from their subject populations. Best documented is the Ta’ang ng State Liberation Army, which calls on each family to provide it with a recruit.

Where an entity is unrecognised or its status is disputed, it can be hard to persuade it to abide by international legal standards. It is not however impossible, and, as mentioned in para 58 of the previous report, in 2013 Transdniestria joined Bermuda and Taiwan in making alternative service provisions for conscientious objectors. It has also been reported in 2016 that the authorities in the Cizre canton of Rojava were exempting conscientious objectors from the conscription which had been imposed since 2014, but we have no more recent information on the situation.

In January 2019, the Council of Ministers in the self-styled “Turkish Republic of North Cyprus” submitted to the Parliament a draft amended Military Service Act including provisions for conscientious objection. The Parliamentary Committee of Law, Political Affairs and Foreign Relations subsequently held discussions on the draft with interested parties, including the Initiative for Conscientious Objection in Cyprus, the Human Rights Foundation, the Military, the Ministry of

Foreign Affairs, the State Prosecutor and an international Jehovah's Witnesses association. Following a change of Government, however, the draft was withdrawn in the Autumn of 2019, and there have been no further developments on this front. Meanwhile, three cases brought by conscientious objectors from northern Cyprus against Turkey as the occupying power have been deemed admissible and are pending before the European Court of Human Rights.¹

In a case concerning the imprisonment of Artur Avanesyan, a Jehovah's Witness conscientious objector from Nagorno Karabakh, the European Court of Human Rights on 20th July 2021 found against Armenia, as exercising effective control of the territory. Military recruitment legislation in Nagorno-Karabakh is closely modelled on that of Armenia, but has not been updated to reflect the latest changes, including the provision of civilian alternative service for conscientious objectors.

2) Changes over time, including in the conditions of alternative service, with a particular emphasis on the last four years

After the dramatic advances in previous decades in the number of States recognising and implementing the right of conscientious objection to military service, there have been few changes in recent years. Indeed the number of states which might be categorised as having conscription with effective arrangements for conscientious objectors peaked at around the millennium but this is because such States have been disproportionately represented among those which have now suspended or abolished conscription. In fact, the two major changes in State legislation and practice in recent years have been singularly significant.

The first, in Armenia, in fact took place just before the latest period, but does not seem to have been quoted in the previous Report., On 2nd May 2013, Armenia passed amendments to the Alternative Service Law and to the Law on Implementing the Criminal Code, which had after long years of debate been approved by the Venice Commission. Both came into effect on 8th June 2013, instituting a clearly civilian alternative service for conscientious objectors, a service which has proved acceptable to the Jehovah's Witnesses, who had accounted for the vast majority of the hundreds of conscientious objectors jailed over the years. The final fourteen jailed conscientious objectors were released on 12th November 2013, and there have been no reports of new imprisonments.

Then, in July 2018, the Constitutional Court in South Korea, overturning its previous jurisprudence, ruled that the right of conscientious objection to military service was protected by the Constitution, and instructed the Government to bring in legislation providing alternative civilian service for conscientious objectors by the end of 2019.. On 27th December 2019, a *Legislative Bill on Incorporation* and a *Bill on Service of Alternative Military and Amendment to Military Service Act* were duly passed by the National Assembly. The detail of this initial legislation fell far short of established good practice; some shortcomings will be discussed in the following section, but it nevertheless marks a watershed.

For over half a century, the Republic of Korea had been responsible for imprisoning more conscientious objectors than all other States put together. The vast majority, over 18,000 had been Jehovah's Witnesses. By the end of 2018, all but 13 of the several hundred currently-imprisoned objectors had been released, and the remainder were freed in the early months of 2019. Objectors who cited non-religious motivations however continued to be imprisoned, but a decision of the Supreme Court on 23rd February 2021 for the first time exempted two non-religious objectors from

¹ Murat Kanatli v. Turkey (18382/15), Haluk Selam Tufanli v. Turkey (29367/15), Halil Karapasaoglu v. Turkey (40627/19)

military service, and on 24th June 2021 the Supreme Court upheld the lower court's acquittal of Si-woo, a pacifist objector who also identifies as queer.

The Republic of Korea and Armenia had been the two States which imprisoned by far the greatest number of conscientious objectors. Under the new arrangements, not all applicants are recognised in Republic of Korea, so a number of imprisonments continue – as of January 2022, War Resisters' International listed five imprisoned conscientious objectors - but in Armenia there have been no reports of new imprisonments.

Following these developments, imprisonments of conscientious objectors for their refusal of military service where a civilian alternative is not available have come to our attention only in Singapore (seventeen Jehovah's Witness objectors in prison as of January 2022), Turkmenistan, Eritrea, Azerbaijan (where the constitutional recognition of the right of conscientious objection to military service has still not been followed by implementing legislation) and Egypt. Even Turkey, which still refuses to recognise the right, has recently avoided imprisoning conscientious objectors, imposing fines instead; the possibility of imprisonment is still however allowed for in law.

Encouragingly, in Turkmenistan all sixteen currently imprisoned conscientious objectors were among 1,035 prisoners freed under a decree signed by President Gurbanguly Berdymukhamedov on 7th May to mark the impending Muslim Night of Omnipotence.² In the past, very few conscientious objectors had benefited from this annual tradition. Moreover, no subsequent trials and convictions of conscientious objectors have been reported, although as no legislative changes are envisaged the situation could again deteriorate..

It is also encouraging that the slight regression noted in paragraph 45 of the previous report - the introduction or reintroduction of conscription in a number of States - has not progressed any farther in the past four years. Indeed what has been described as "voluntary conscription" in Croatia seems not to involve or allow for any obligatory nature of the new service, so the term "conscription" is inappropriate.

Another encouraging development in this period has been the repeal of provisions in the law in **Finland** and **Greece** which formerly enabled the suspension of the conscientious objection provisions in time of war, exactly when one would think they were most needed.

3) International standards and jurisprudence

In general, the advances in jurisprudence have, following the qualitative leap of the previous decade (Yoon & Choi v Republic of Korea), Bayatyan v Armenia) been quantitative, case law piling up regarding these States and being extended to others.

a) Human Rights Committee

To the previous jurisprudence of the Human Rights Committee have been added Views in the cases of:

Danatar Durddyev v Turkmenistan (CCPR/C/124/D/2268/2013, 6th December 2018), Jong-bum Bae et al v Republic of Korea (CCPR/C/128/D/2846, 29th June 2020), and Lazaros Petromilidis v Greece (CCPR/C/134/D/3065/2017, 6th December 2021).

² See Corley, F. "Turkmenistan: 16 conscientious objectors freed; Muslim prisoners of conscience remain", Forum 18 News Service, https://www.forum18.org/archive.php?article_id=2656, 10th May, 2021.

The first two largely restated the existing jurisprudence regarding the States in question; the most recent case (described in detail in the Annual Report for 2021 of the European Bureau for Conscientious Objection, submitted separately) is of more interest, as it concerns a situation where there was provision for conscientious objection, but found the detention of an unrecognised conscientious objector arbitrary under article 18.1, of the Covenant that repeated punishments were in breach of the principle *ne bis in idem*, and thus of Article 14.7, and that the restrictions on freedom of movement had constituted a breach of Article 12.2 – the first time such a violation had been found in the case of a conscientious objector. Moreover, in an interesting partly dissenting opinion one member of the Committee suggested that the case should also have been examined under Article 26, and that, following *Foin v France*, a violation should have been found by virtue of the discriminatory conditions of alternative service.

In Concluding Observations on States parties' reports under the International Covenant on Civil and Political Rights, the Human Rights Committee has addressed:

Lithuania - The Committee notes the information provided by the State party that military service based on conscription has not taken place since its reintroduction in 2015, as quotas have been fulfilled by volunteers. However, it is concerned that the alternative national defence service does not provide for alternative civil service independent of military control and supervision and the institutions of the national defence system, and that salaries are not comparable to those of military service (arts. 18 and 26). **The State party should ensure that the Law on National Conscription provides for conscientious objection in a manner consistent with articles 18 and 26 of the Covenant, ensuring that it provides for an alternative to military service outside of the military sphere and not under military command and on comparable salary terms, bearing in mind that article 18 protects freedom of conscience based on religious and non-religious beliefs.**

Belarus - The Committee notes the adoption of the Alternative Service Act in 2015, but remains concerned that conscientious objection to military service can be exercised on religious grounds only and is not extended to persons who hold non-religious beliefs grounded in conscience. It is also concerned at the difference in the length of alternative service compared with military service between those with and without higher education, with alternative service for the latter category being twice as long as military service. While noting that the justification given for this difference is to prevent abuses and avoid an increase in the number of requests for alternative service, the Committee is concerned at the discriminatory and punitive aspects of this difference (arts. 18 and 26). **The State party should take measures to review its legislation with a view to recognizing the right to conscientious objection to military service without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection, and to ensuring that alternative service is not punitive or discriminatory in nature or duration by comparison with military service.**

Finland "The Committee is concerned that the Act Repealing the Act on the Exemption of Jehovah's Witnesses from Military Service in Certain Cases (330/2019) has removed the exemption from military and civilian service accorded to Jehovah's Witnesses, in contrast to the Committee's previous recommendations to extend such exemption to other groups of conscientious objectors (CCPR/C/FIN/CO/6, para. 14). It also notes with concern that the regular duration of alternative non-military service amounts to the longest period of military service and that, while such alternative service is under the direction of the Ministry of Employment and the Economy, military personnel still take part in relevant working groups and committees determining the nature and duration of alternative service. It is also concerned about the insufficient dissemination of information about the right to conscientious objection and alternatives to military service (art. 18). The State party should: (a) ensure that alternatives to military service are not punitive or discriminatory in terms of their nature or duration and remain of a civilian nature, outside military command; (b) halt all prosecutions of individuals who refuse to perform military service on grounds of conscience and release those who are currently serving related prison sentences; and (c) intensify its efforts to raise

awareness among the public about the right to conscientious objection and the availability of alternatives to military service.”

Armenia “take all measures necessary to ensure that the civilian alternative to the military service is not discriminatory in duration by comparison with the military service”

and, in the absence of a report **Eritrea** - The Committee is concerned that the length of national service, initially stipulated by the National Service Proclamation No. 82/1995 for a period of 18 months, has been extended by a mandatory national service programme (Warsay-Yikealo) for an indefinite period. It is further concerned that the indefinite duration of military and civil service reportedly remains one of the main causes for the departure of Eritreans from the State party. It is also concerned about allegations that national service conscripts are deployed for labour in various posts, including mining and construction plants owned by private companies, while receiving very little or no salary. The Committee is further concerned that the State party does not recognize the right to conscientious objection to military service and does not provide for alternative military service (arts. 6, 8 and 18).

The State party should limit the length of mandatory military and national service to a maximum period of 18 months, in accordance with international standards. It should ensure the legal recognition of conscientious objection to military service and provide for alternative service of a civilian nature for conscientious objectors. It should also refrain from subjecting persons in military service to activities that may amount to forced labour.

Universal Periodic Review (UPR)

In the Third Cycle of the UPR, depressingly few recommendations related to conscientious objection to military service. The recommendation to Singapore was however especially significant. Singapore is not party to the ICCPR, therefore the UPR is the only forum in which it can be meaningfully challenged on this issue. Nevertheless, in the first two cycles it contrived to escape without either questions or recommendations.

c

Recommendations were made to:

Finland that it release prisoners detained as conscientious objectors to service and ensure that civilian alternatives to military service are not punitive or discriminatory and remain under civilian control. (Uruguay)⁶⁵
(Finland noted this recommendation and stated that the aim in preparing legislation is to ensure that various service alternatives are as equal as possible. Non-military service authorities will continue to develop the system in cooperation with various authorities.)

Republic of Korea,- To recognise conscientious objection to military service and introduce an alternative

non-punitive service, with a genuine civil character and of a comparable length (Australia, Canada, Croatia, France, Germany, Mexico; Portugal, Switzerland, USA).

- To release individuals imprisoned or detained solely on the basis of their conscientious objection to military service (Costa Rica, Croatia, Panama).

Turkey - Consider revising the current law according to which the right to conscientious objection to military service is a criminal act (Croatia);

Consider the introduction of civil service for conscientious objectors to military service (Croatia);

Singapore - Enact laws that will allow for a civil service alternative to military service for those who refuse military service on grounds of conscience (Croatia);

Greece - Revise its national legislation with a view to recognizing the right to conscientious objection to military service, envisaging an alternative service to military service to which all conscientious objectors have access to and that is not punitive or discriminatory in its nature, cost or duration (Panama)

Consider amending the legislation in order for conscientious objectors to be able to perform alternative civilian service in their place of residence (Croatia)

In addition, **Austria** noted a recommendation from Croatia related to military service which stated “141.63 Increase the minimum age for voluntary recruitment to 18 in line with the recommendation of the Committee on the Rights of the Child (Croatia)”³. This relates to the option for early completion of military service discussed in Section 1 above-

In the Human Rights Council, Resolution 36/18, while mandating the 2019 report on application procedures, merely reaffirmed the content of previous resolutions.

Conscientious objection to military service has however also featured in a number of other reports and/or resolutions of the Human Rights Council:

Resolution 35/35, 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.

In his Report on Youth and Human Rights 4 the High Commissioner for Human Rights comments “regrettably, some States do not recognize or fully implement the right to conscientious objection to military service in practice”, and identifies this as one of the four principal areas in which young people encounter difficulty in exercising their rights.

The Working Group on Arbitrary Detention chose the detention of conscientious objectors to military service as one of four thematic focuses for its 2019 report, restating its position⁹ that while each case depends on its own facts, the detention of conscientious objectors is a per se violation of article 18 (1) of the Covenant.¹

In the subsequent Human Rights Council resolution 42/22 encourages States to “consider reviewing laws and practices that may give rise to arbitrary detention, in accordance with the recommendations of the Working Group;”

3 A/HRC/47/12.

4 (A/HRC/39/33)⁵ published on 28 June 2018,

Special Procedures

In July 2019, the special rapporteur on Freedom of religion or belief addressed a communication to Greece regarding various aspects of the revised law 4609/2019 which did not address the concerns raised in an earlier communication⁵, particularly “That the new requirement to reapply for CO status after postponement imposes an additional punitive burden on applicants.

That [despite] the discretionary power enshrined in Article 23 (1), allowing the Minister of National Defence to reduce the length of full alternative civilian service, [...] the actual length of full alternative civilian service remains 12 months, versus 9 months for military service. A reduction in length, and by extension greater equality, is therefore not fully guaranteed.

That an additional financial burden is placed upon COs due to their comparatively lower salaries and the higher costs associated with buying out time of alternative service as compared to buying out time serving in the armed forces.”

He also reiterated “the Human Rights Committee’s concluding observations regarding the nature of alternative civilian service, namely the length of alternative civilian service as compared to military service (CCPR/CO/83/GRC para. 15), the burden on COs being required to complete the alternative service away from their place of residence; as well as concerns regarding the “repeated punishment of conscientious objectors, in violation of the principle of *ne bis in idem*.” (CCPR/C/GRC/CO/2 para. 37-)”

On 10th December, 2020, the Special Rapporteur on Freedom of Religion and Belief, supported by four other mandates (Arbitrary Detention, Freedom of Expression, and Minority Issues) addressed a communication to Turkmenistan "concerning the detention of Messrs. Sanjarbek Saburov and Elder Saburov, two members of the Jehovah's Witness religious minority, who were convicted in August 2020 for the second time for their conscientious objection to perform the mandatory military service in Turkmenistan". The special procedures regretted Turkmenistan's criminalisation of conscientious objection and the absence of alternatives to military service, and noted with concern that the brothers had been twice tried and sentenced for the same "offence", in breach of the principle of *ne bis in idem*. "Replies to communications" received by 31st July 2021 have been made public. They did not include one from Turkmenistan

European Court of Human Rights

In October 2017, the European Court of Human Rights ruled in the case of *Aydan et al v Armenia*⁶ that there had been a violation of Article) of the European Convention (freedom of thought, conscience, and religion) of 42 Jehovah’s Witnesses who had been imprisoned for refusing to complete an alternative service which they argued was not truly civilian in nature. Since the case of *Bayatyan*, the facts in which dated back to 2003, Armenia had made an alternative service available; the step forward in this judgement was to find that a service which was not clearly outside the military establishment was not an adequate alternative for all conscientious objectors to military service.

A more recent case against Armenia, regarding a conscientious objector in Nagorno-Karabakh, is discussed in Section 1, above.

⁵ 31 October 2016 (ref. no. GRC 3/2016)

⁶ Application no. 75604/11, Judgement of 12th October, 2017

In October 2021, the Court of Human Rights issued a decision that **Azerbaijan** had violated the human rights of two Jehovah's Witness young men, Emil Mehdiyev and Vahid Abilov, who had been convicted in 2018 for refusing compulsory military service on grounds of conscience.

An unfortunate decision of the Court s went in favour of the **Russian Federation** in the case of Diagylev.⁷

The applicant, a Jehovah's Witness, complained about the dismissal of his request to be assigned to civilian instead of military service. He alleged in particular that military recruitment commissions in Russia were not independent from the military authorities. In judgement which seemed inconsistent with that in *Papasivilakis v Greece*⁸, held that there had been no violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights. The decision had been by the narrowest of margins, four to three, and one might speculate that had the case been reviewed by the Grand Chamber it would have been overturned, as in the watershed *Bayatyan* case. However leave to appeal was not granted.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

It should be noted that on 9th June 2020 the Inter-American Commission on Human Rights ruled admissible the petition brought by Jose Ignatius Orias Calve, a conscientious objector from Bolivia.

Although Article 12 of the Inter-American Convention on Human Rights, on freedom of conscience and religion is very similar to Article 9 of the European Convention, there has been very little jurisprudence on conscientious objection in the Inter-American system. The most positive development there had hitherto been the Friendly Settlement, again involving Bolivia, reached with Alfredo Diaz Bustos, in 2005, in which the Bolivian Ministry of Defence agreed to "*Include, in accordance with international human rights law, the right to conscientious objection to military service in the preliminary draft of the amended regulations for military law currently under consideration by the Ministry of Defense and the armed forces*"; and to "*encourage together with the Deputy Ministry of Justice, congressional approval of military legislation that would include the right to conscientious objection to military service.*"⁹ This was however simply a voluntary commitment on the part of the State (which, incidentally, it has never honoured, hence the current case) and did not involve any finding that the recognition of conscientious objection was a treaty obligation. The only Court decision in the Inter-American system was a negative one earlier the same year in a case involving Chile¹⁰ - predating the groundbreaking jurisprudence of the European Court of Human Rights and the UN Human Rights Committee in *Ulke v Turkey*,¹¹ *Yoon and Choi v Republic of Korea*,¹² and *Bayatyan*

7 *Dyagilev v. Russia* (application no. 49972/16) , Chamber Judgment (Third Section) of 10th March 2020.

8 European Court of Human Rights, *Papavasilakis v. Greece*, application No. 66899/14, judgement of 15 September 2016 (referred to in paragraph 11 of th previous report)

9 Inter-American Commission on Human Rights: REPORT N° 97/05; PETITION 14/04; FRIENDLY SETTLEMENT; ALFREDO DÍAZ BUSTOS v BOLIVIA October 27, 2005, para 16, I, d and e

10 Inter-American Commission on Human Rights, Report No 43/05, Case 12.219, Vera et al v Chile, 10th March, 2005

11 EUROPEAN COURT OF HUMAN RIGHTS Chamber Judgement *Ülke v Turkey*, Application no. 39437/98, 24th January 2006

12 HUMAN RIGHTS COMMITTEE (88th Session) Communications Nos. 1321/2004 and 1322/2004 (Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v Republic of Korea) Views adopted 3rd November 2006 UN Document ref: CCPR/C/88/D/1321-1322/2004 (23rd January 2007)

v Armenia.¹³ - and influenced heavily by the consideration that as in recent years Chile had fulfilled its annual conscription quota with willing recruits only, the likelihood of the applicants suffering personal harm was slight.

Encouragingly, in this latest admissibility decision, the Inter-American Commission observes that its background report on the Bustos case, to which the Bolivian State refers, was prepared “*fifteen years ago in a context in which the development of international law of human rights and own interpretative standards of the Inter American System were different. On this matter, when ruling on the present case the Commission shall take into account the current conception of the content and scope of the rights invoked by the alleged victim. Since human rights treaties are living instruments, with interpretation that must go side by side with the evolution of times and current lifestyles. Such evolutionary interpretation is consequent with the general rules of interpretation set forth in article 29 of the American Convention, as with the Vienna Convention on the Law of Treaties.*”¹⁴

4) Remaining challenges

Many of the challenges in the list below (which itself is not exhaustive) are encountered in several States, of which the examples quoted here rely heavily on the quality of our local information sources.

a) imprisonments of conscientious objectors for their refusal of military service where a civilian alternative is not available (see Section 2, above)

b) failure to legislate for the right, **Israel** is the most egregious case. The right of conscientious objection has never been enshrined in law. Such exemptions from military service as have been granted, have been entirely at the discretion of an internal committee of the Israel Defence Force; individual objectors have no right to be considered by the committee, and there is no appeal against its decisions.

Azerbaijan by contrast, enshrined the right in its 1995 Constitution, but has never introduced the implementing legislation which would make it accessible in practice.

In **Colombia**, the Constitutional Court in 2008 overturned its earlier jurisprudence to rule that the right of conscientious objection to military service was guaranteed by the constitution, read in conjunction with Colombia's international treaty commitments, and called on the legislation to enable conscientious objectors to opt for a civilian alternative service. Despite several attempts over the years, such legislation has never been promulgated, and individual objectors can obtain the right only through a *tutella* action in the courts, usually after the fact of recruitment.

c) imprisonment and repeated imprisonment of unrecognised conscientious objectors. **Israel**, once again, is the most egregious example. Objectors, male or female, can receive up to ten short sentences of imprisonment in military penal facilities, deliberately calculated to persuade them to change their mind and agree to perform military service – this in violation of the prohibition in Article 18 of the ICCPR on coercion to change religion or belief - , before eventually being labelled as unfit for military service (with negative consequences which will be discussed below. However there are a number of other States, notably **Turkey**, **Greece** (see the Petromilidis case discussed in section 3) and **Turkmenistan** (see the communication from special procedures, also discussed in Section 3 above) where likewise punishment for the refusal of military service does not discharge the liability, but leads instead to a fresh call-up and potentially further punishment, refusal being treated as a continuing offence. This practice has been condemned by both the Human

13 EUROPEAN COURT OF HUMAN RIGHTS, GRAND CHAMBER JUDGMENT. Case of Bayatyan v Armenia (Application no. 23459/03) 7th July 2011

14 Inter-American Commission on Human Rights: REPORT N° 147/20; PETITION 1384-16. José Ignacius Orias Calve – Bolivia, Report on Admissibility, 9th June 2020,

Rights Committee and the Working Group on Arbitrary Detention as a breach of the principle of *non bis in idem*.

In **Turkey** the continuing liability for arrest dissuades conscientious objectors from any contact with public authorities, or even registering in a hotel.

d) unduly limited criteria for legal recognition of conscientious objectors typically meaning that only objectors whose motives are religious and who can prove membership of a relevant denomination – for instance in **Ukraine** there is a list of ten specific churches. An objector who does not belong to one of these is not eligible for recognition. Similar restrictions have been criticised by the Human Rights Committee in **Belarus** (see previous Section) and as mentioned in para 41 of the previous report, in **Kyrgystan**

e) strict time limits for lodging applications, often combined with information about the possibilities which is obscurely worded (**Greece**) or not supplied at all to potential conscripts (**Russian Federation**). By definition, time limits also usually rule out the possibility of applying after the beginning of military service.

Even where there is a possibility of release on grounds of conscientious objection, information about this is not readily available to serving members of the armed forces (see next section). In the **UK** and the **USA**, voluntary organisations – At Ease and GI Hotline – provide information to servicemen seeking release on such grounds (if they hear of them)

f) non-independence from the military authorities of decision making bodies, Most notoriously in **Israel**, but this is also a particular problem in also **Greece** and the **Russian Federation**, as raised in the European Court cases of Papasivilakis and Diagelev, respectively.

g) often, but not exclusively, associated with (f) - inconsistent and arbitrary decision-making. Some curious reasons given for rejecting claims to be conscientious objectors in **Israel** – not being vegan enough, or not refusing the help of the police, are almost legendary. Quite apart from the limitations mentioned under (d) this frequently favours objectors whose motives are religious. In **Greece** figures recently obtained by Amnesty International show that in the two years to March 2022, 97% of applications on religious grounds (mainly from Jehovah's Witnesses) were accepted, as against only 27% from what were classified as "ideological" objectors. In the **Russian Federation** this resulted in an abrupt reversal when the Jehovah's Witnesses were (nonsensically) branded as a "terrorist organisation" - from being a massive advantage, JW membership instantly went to the other extreme.

h) arbitrary automatic removal of recognition for irrelevant reasons such as disciplinary offences in the course of alternative service (**Greece**). Parallel to this is the requirement that those who have postponed reapply for recognition.

i) - discriminatory or punitive conditions of alternative service. This can be most clearly measured by differences between the durations of military and civilian alternative service, which States often try to justify by the particular conditions and restricted liberty of military life. However some States have found no problem in equalising this; in others it is openly admitted that the conditions of alternative service are seen as a means of limiting the number of applications.. Discrimination also occurs in remuneration; in a number of States including **Austria** and **Switzerland** the remuneration is set lower – in Switzerland at the same total spread over a longer period of service. This does not take into account the fact that alternative service is usually a more costly option, without the free accommodation and clothing which accompany the restricted liberties of military life. In **Greece**, where board and lodging comes with the alternative service placement there is no financial remuneration whatsoever; the remuneration otherwise was criticised by the Committee on Economic, Social and Cultural Rights as "not sufficient to provide workers and their families with

a decent living in line with article 7 of the ICESCR.”¹⁵ Other examples are that in **Greece** and the **Russian Federation** are provisions that, unlike military service, alternative civilian service cannot be performed in the home region.

It should also be taken into account that the greater duration of alternative service may also be more expensive in terms of income and career-advancement possibilities foregone, sometimes directly in that there is less latitude to be absent from one’s usual employment.

j) - generally inequitable conditions restricting the ability of the poorest or otherwise more disadvantaged member of society to escape military service, not only the disproportionate direct and indirect costs of alternative service. There can as for example in **Bolivia** and **Colombia** be variable charges for the provision of the *libreta militar* – the all important document certifying that military service obligations have been fulfilled, but also buying out, often through bribes, but sometimes as in **Turkey** and **Greece** through official schemes. CPTI does not distinguish the buying out of military service obligations from other forms of military tax, and wholeheartedly condemns any such scheme.

Less directly, the more privileged have a greater opportunity to use expensive medical advice to obtain health exemptions or (where travel is not restricted) to remain abroad until after the age of liability

k) populist calls to retreat from established good practice – for instance in eg in **Switzerland** for the reinstatement of tribunals, which would be a step back from the acceptance without enquiry principle. (Historically, when **Austria** abolished tribunals, it at the same time retreated from the previous good practice of having equal durations of military and alternative service.) Likewise the concluding observations of the Human Rights Committee on **Finland** (see previous section) regretted that, called upon to extend to other objectors the treatment granted to Jehovah’s Witnesses, it had instead brought their treatment into line with that of other objectors.

l) restrictions on the freedom of movement of males of or approaching military service age . See the Human Rights Committee’s views in *Petromilides v Greece* (previous Section) Such restrictions also exist in **Egypt** **Turkey** and, from a very young age, **Eritrea**. Since the Russian invasion they have notoriously also been imposed in **Ukraine**.

m) discrimination against those who have not performed military service. Restrictions on access to education, public or private employment, voting rights etc are widespread. In **Turkey**, in particular, this can lead to the phenomenon which in the 2006 *Ulke* case the European Court of Human Rights characterised as “civil death”, (and which the Committee of Ministers continues to criticise in its follow-up on the unimplemented judgements in the “Ulke Group” of seven cases) where no dealings requiring official documentation, including eg registration of marriage or the birth of children, are possible.

Brazil is among a number of countries where those who have not performed military service cannot vote and cannot stand for election

Even in the **USA**, where conscription has not been enforced since 1973, persons in some states who have not registered for military service (even if they would have applied for recognition as conscientious objectors) are unable to attain official ID documents or driving licenses.

This is sometimes imposed by the unnecessary requirement to produce proof of military status.

The effects of this have been examined by the Ombudsman in **Greece**¹⁶ who makes also reference

15 UN Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of Greece, (E/C.12/GRC/CO/2), 27 October 2015, paras. 19-20. Available at: <http://www.undocs.org/E/C.12/GRC/CO/2>

16 Quoted in War Resisters’ International input for Anti-Discrimination Law Guide, 15 December 2020, p. 11. Available at: https://wri-irg.org/sites/default/files/public_files/2021-01/wri_input_for_anti-discrimination_law_guide.pdf

to laws and regulations about personal data protection, including the Regulation (EU) 2016/679 about the protection when processing personal data, which requires that “Personal data shall be: [...] (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’)”.¹⁷ According to the analysis of the Ombudsman, if the purpose of the military status certificate is to certify that the person has no military duties pending, then the reference to the manner, the time and the place where someone has fulfilled such duties is unnecessary for the purpose and therefore it is illegal. Furthermore, as pointed out by the Ombudsman, in their reports the conscientious objectors complain that such certificate may lead to unfavorable treatment in labour market. The Ombudsman recognises that the reference to further (unnecessary) data indeed renders such persons vulnerable to discrimination in terms of employment and that this is not only related to religious beliefs but also to other fields of discrimination such as on grounds of disability or chronic condition, which can be inferred by the detailed reference to the manner someone has fulfilled or even has been exempted from military duties.¹⁸

In **Israel** and **Turkey** conscientious objectors are frequently discharged from military obligations by being found to have a mental or social disorder (including, in Turkey, homosexuality) which can misleadingly lead to similar disadvantages.

In much of Latin America, the “*libreta militar*” is required to access education, employment and public services. It is available at a discriminatory rate to those who have been exempted (See *Bustos v Bolivia*, referenced under Inter-American Commission in the previous Section), but not at all to those who have refused, as in **Colombia**.

n) Legitimate checks on documentation can descend into irregular recruitment procedures, most notoriously in the *batidas* in **Colombia** where those without the necessary documentation are elisted on the spot without due process. This practice has repeatedly been criticised in the High Commissioner’s reports from the Office in Bogota, and in 2008 was condemned as arbitrary detention by the Working group on Arbitrary Detention, but reports from local sources indicate that it has not ceased. During 2020, there were similar reports from **Ukraine**

o) violations of the freedom of expression of those advocating or supporting the right, most notoriously through Article 318 of the criminal code in **Turkey**. This has also been seen in the repeated prosecutions, apparently politically motivated, of the **Ukrainian** journalist Ruslan Kotsaba following his public statement that he would refuse to join the armed forces in order to fight against fellow Ukrainians

p) (o) can expand to repression of organisations supporting conscientious objectors. The use in the **Russian Federation**, of the so-called “foreign agents law” is notorious, and there was much coverage of the closure early in 2022 of the renowned human rights organization “Memorial”. Surviving organisations such as the Soldiers Mothers of St Petersburg and Citizen, Army, Law have effectively wound down their work on conscientious objection. Similar legislation in **Turkey** led the conscientious objectors organisation VR-DER in Istanbul to decide to formally cease operations early in 2022.

17 Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Chapter II Principles, Article 5 Principles relating to processing of personal data, para 1 (c). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EL#d1e1797-1-1>

18 War Resisters’ International input for Anti-Discrimination Law Guide, 15 December 2020, p. 11. Available at: https://wri-irg.org/sites/default/files/public_files/2021-01/wri_input_for_anti-discrimination_law_guide.pdf

q) the introduction of compulsory pre-recruitment activities into the school programme as in **France and Denmark**; in the case of France now supplemented by a form of obligatory national service which although applying at a pre-recruitment age and thus not formally constituting conscription – participants are not considered members of the armed forces – nevertheless contains a strong militarist element, but is not accompanied by any provisions for conscientious objection.

5) The situation of serving members of the military, even those who initially volunteered, who develop conscientious objections.

The most important standard-setting document in this field is Recommendation CM Rec(2010)4 of the Council of ministers of the Council of Europe, on Human Rights in the Armed Forces, which includes the stipulation, that serving members of the military should have the right to leave on grounds of conscience (para42).

Likewise, most of such information as exists on state policy and practice in this area may be found in the replies to the questionnaire sent to member states in follow-up to the recommendation. In reply to question H4 “Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure...”, no fewer than 25 States responded in the affirmative (and three more pointed out that as they had no armed forces the question did not arise). In most, however, it seemed that conscientious objectors simply had the opportunity to avail themselves of provisions for voluntary or exceptional termination of their military service contracts, which might involve financial or other penalties. Only in Germany and the Netherlands did it seem that serving members of the military could explicitly register as conscientious objectors.

It was already known that in the USA and the UK (which did not respond to the CoE questionnaire) there are procedures set out in military regulations (but not formally made public) for the handling of applications for release on grounds of conscience.

The issue was interestingly raised in a case brought by Euromil (European Organisation of Military Associations and Trade Unions) against Ireland before the European Committee of Social Rights, claiming the right of members of the armed forces to leave for reasons of conscience. This particular case was dismissed after a consideration of the means available for discharge; the Committee did not feel that the specific issue of conscience fell within its remit, thus leaving a rather wider margin of appreciation for the policies of the State.

6) Conscientious objectors and asylum

For some years young men have been leaving Ukraine rather than become involved in the civil conflict there. Many are doubtless now seeking to get away from the prospect of military service in Russia. And following the Russian invasion of Ukraine, potential conscientious objectors in **Latvia** fear that the reintroduction of conscription there may be imminent.

Before then, there were those fleeing the conflicts in **Afghanistan, Syria and Eritrea** - in the latter two often seeking to avoid personal embroilment through conscription.

The current mood in Europe is more welcoming to refugees from Ukraine - partly because they are closer in culture but also for political reasons. But of course the Ukrainians are turning back at the

border all *male citizens* of under sixty, so that almost all of the refugees are women and children, which also probably endears them more to the recipient countries - sad news for (male) conscientious objectors.

At the time of writing several initiatives are under way calling for the granting of asylum to persons deserting from or seeking to avoid conscription into the armed forces of **Russia** and **Belarus**. There are plenty of precedents from the early 1990's for the granting of asylum to those avoiding involvement in military actions condemned by the international community (such as the war in Yugoslavia) or where obeying orders might lead to involvement in the commission of war crimes or crimes against humanity (the Krotov case in the UK, concerning the Russian military action in Chechnya). And recently, an article in the Sydney Morning Herald of 9th March reported that deserters from the armed forces of Myanmar are on such grounds being granted protection, and in a couple of cases possibly formal asylum, in Australia.

Such asylum decisions are not necessarily linked with conscientious objection, being based on obligations under international humanitarian law; they need not be linked to conscientious objection, but are equally valid where the motive is simply one of self-preservation. Claims based purely on conscientious objection receive far less support and indeed in the current political situation Ukrainian conscientious objectors might well face opposition because they are refusing to fight on the "right" side.

CPTI would argue that, just as they sometimes impose arms embargos, Governments ought to refrain from returning anyone to a situation of armed conflict such a policy would after all be in accordance with Article 6 of the International Covenant on Civil and Political Rights (right to life) and with the spirit of the UN Declaration of 2012 on the Human Right to Peace. Of course we would further argue that no-one should be unwillingly returned to face conscription or punishment for refusal of military service.

The earlier asylum case of André Shepherd, who deserted from the armed forces of the **USA** while based in **Germany** has still not been finally resolved. The Court of Justice of the European Community referred the case back to the Munich Administrative Court, which in November 2016 rejected Shepherd's asylum application. Shepherd's attorney lodged an appeal the following year, but the case is still pending.

7) Non-military forms of conscientious objection

It should be noted that although conscientious objection to military service has usually concerned conscription into armed forces, it has wider ramifications. Serving members of the armed forces, even those who initially signed up voluntarily may develop conscientious objections either as their personal convictions change over time or in response to new requirements placed upon them. Civilians, too, may express objections to requirements that they assist the "war effort", or military activities more generally, or take part, for instance, in the manufacture of arms or munitions. And in particular, civilians in numerous States have objected to contributing through their taxes to military expenditure, the issue which is the *raison d'être* of Conscience and Peace Tax International.

Since the last report there has been no significant progress on this issue. The international jurisprudence is frozen with the Human Rights Committee's decision on *J.P. v Canada*, and subsequent inadmissibility decisions, and a number of inadmissibility decisions in the European Court on Human Rights. The last attempt to introduce a Bill in the UK ran out of parliamentary time in 2017. A new Bill is however pending in the House of Representatives in the USA. Many

persons in those countries and others, notably Germany and Canada nevertheless seek vainly to have their tax payments ring-fenced against use for military expenditure. Meanwhile in Switzerland, although numbers are not reported, it is believed that each year short imprisonment sentences are handed down on a small number of young men who have not fulfilled military or alternative service requirements, and have refused to pay the extra 3% income tax imposed. Many Eritreans living abroad likewise refuse to pay the 2% income tax demanded by Eritrea, thus jeopardising their chances of ever returning home.

States tend to argue that even were it not undesirable in principle, to accommodate such objections would be impossible in practice, and in so far as they have been aired, these arguments have hitherto proved persuasive in international tribunals.

We respectfully submit that the issues of principle and practicality are essentially the same as for the more familiar objection to obligatory military service. Of course, just as military objectors would welcome the situation where no one enlisted, tax objectors would like no one to pay towards military expenditure, thus respectively denying the manpower and funding needed to sustain war. But in neither instance is such a situation likely in the foreseeable future, and such changes would come about by political routes long before they would result from the respect of individual conscience. A seemingly telling argument against tax objection is that it is undemocratic, giving the wealthy an unequal influence on policy. But again, just as few conscientious objectors to military service object to performing an alternative which is neither punitive nor discriminatory, and is entirely civilian in nature, so no serious tax objector is asking for a reduction in tax bill, just for a change in how the allocation of the individual payment is accounted.

This submission was prepared in March 2022 by

Derek Brett

Representative of CPTI at the UN in Geneva

derekubrett@gmail.com

(41) 77 444 4420

to whom all comments and queries should be addressed