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Submission

**to the quadrennial analytical report 2017 on conscientious objection to military
service of the UN High Commissioner of Human Rights**

The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 and is functioning in accordance with the UN Paris Principles. Thirty-two institutions whose activities cover the field of human rights are currently represented in the GNCHR (independent authorities, departments of university-level educational institutions, trade unions, NGOs, political parties and ministries).

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Submission by the Greek National Commission for Human Rights (GNCHR) to the quadrennial analytical report 2017 on conscientious objection to military service of the UN High Commissioner of Human Rights¹

Introduction

The Greek National Commission for Human Rights (hereinafter “GNCHR”) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 in accordance with the UN Paris Principles. Its members are nominated by institutions whose activities cover the field of human rights: NGOs; trade unions; independent authorities; universities; bar associations; political parties; Parliament and the Administration. Member to the GNCHR is also Amnesty International, international human rights NGO with a consultative status to the Council of Europe.

The GNCHR has shown sustained interest in matters relating to freedom of conscience. In particular, it has repeatedly dealt with chronic violations of the rights of conscientious objectors while constantly underscoring the need for harmonization of the Greek legislation with international and European human rights’ standards.² Already back in 2001, the GNCHR highlighted the need for the taking of comprehensive legislative initiatives on the issue of conscientious objectors, with special focus on such matters as the lack of independence and impartiality of competent authorities when deciding the status of conscientious objectors; the length of alternative service being significantly longer than that of the military service and the repeated punishment of conscientious objectors in violation of the principle *ne bis in idem*.

With this submission, the GNCHR would like to contribute to the quadrennial analytical report 2017 by exploring further areas of interest and providing additional international, especially regional human rights standards, with particular attention to new developments. Furthermore the GNCHR would like to comment on the issue of the duration of alternative civilian service in Greece which was mentioned in the section of “State Law: Best Practices” of the previous report due to the state report. Finally the GNCHR provides an analytical report on the remaining challenges as of State law and practice in Greece.

Additions on the section about the international legal framework, with particular attention to new developments

Fair, independent and impartial procedures to consider applications for conscientious objection to military service (new development)

In the case *Papavasilakis vs Greece* of September 15, 2016³, the European Court of Human Rights (EctHR) examined for the first time the issue of the composition of the board examining the applications for conscientious objector status.

¹ Rapporteur: Foivos Iatrellis, deputy member to the GNCHR designated by the Greek Department of Amnesty International. Submission edited by Anna Irene Baka, PhD, Legal Officer at the GNCHR.

² See, indicatively:

http://www.nchr.gr/images/English_Site/ANTIRRISIES/Recommendations_bill_article64_2005.pdf,

http://www.nchr.gr/images/English_Site/ANTIRRISIES/Conscientious_of_objectors_2004.pdf,

http://www.nchr.gr/images/English_Site/ANTIRRISIES/Alternative_social_work_2001.pdf

³ CEDH, *Affaire Papavasilakis v. Grèce*, 66899/14, 15.9.2016.

The Court considered mainly that:

- a Board made up primarily of servicemen does not guarantee procedural efficiency
- a Minister of Defence’s final decision, on the basis of a draft ministerial decision following the Board’s proposal, does not afford the requisite safeguards of impartiality and independence; especially where, as in the present case, the person concerned was interviewed by a board composed of a majority of senior army officers.

The right of freedom of expression for those who publicly support conscientious objectors and conscientious objection to military service

In the case of *Savda v. Turkey* (no. 2) (no. 2458/12), the ECtHR found a violation of article 10 of ECHR (Freedom of expression). As stated in the press release, Savda had been “sentenced to a five-month prison sentence on the ground that he had incited the population to evade military service by means of a public statement; the [Turkish] court noted in particular that Mr Savda was a conscientious objector and that he had called on persons who did not define themselves as conscientious objectors to evade military service”.

The ECtHR has considered that "inciting the population to evade military obligations" cannot in itself suffice to justify the interference with the applicant's freedom of expression. It observed in particular, that while the statements contained in the declaration at issue give a connotation hostile to military service, they do not, however, exhort the use of violence, armed resistance or uprising, and they cannot be seen as a hate speech or speech with a capacity to harm. In the Court's view, these are the essential elements that should be taken into account in the context in which the speech was delivered. [see paragraph 26].

While this rationale has been already used in the case-law of ECtHR (*Onaran v. Turkey* (no. 65344/01), §27, 5 June 2007) it is worth noting that in this case Savda had been specifically condemned by the Turkish courts for calling on persons **who did not define themselves as conscientious objectors** to evade military service.

Furthermore, as far as it concerns imprisonment, it is important to note that both in the cases of *Onaran* [para. 29] and *Savda* [para. 29], the ECtHR has found that it was “not necessary in a democratic society”.

Comment about best practices and the case of Greece

In the analytical report on conscientious objection to military service of the UN High Commissioner of Human Rights of 2013, in the third part titled “State law and practice: best practices” it is mentioned:

“45. Greece reported that it had an alternative civilian service that was slightly longer than military service and that the period of service varied according to the length of service in the respective branches in the armed forces.” It is unclear whether this paragraph refers to the variations of the duration of military service between the Army and the Navy/Air Force, or/and between different categories of conscripts according to their family status. But the fact is that the alternative civilian service is not “slightly” longer, and according to the UN Human Rights Committee is discriminatory and punitive. The GNCHR has consistently stated that the duration of alternative civilian service is punitive and discriminatory for at least two out of the four categories according to their family status. (For more details, please see the relevant chapter about the punitive duration of

alternative civilian service in Greece). Therefore, it is unreasonable to include the case of Greece in the chapter about best practices.

State law and practice: remaining challenges in the case of Greece

Lack of recognition of the Right to Conscientious Objection as such

Despite the recognition by the UN Human Rights Committee (and all the other international human rights bodies) of the Right to Conscientious Objection as inherent to the Right of freedom of thought, conscience and religion, which “entitles **any individual** to an exemption from compulsory military service if this cannot be reconciled with that individual’s religion or beliefs”⁴[emphasis added], the Greek State still fails to recognize this right as such, both at governmental and judicial level. The Ministry of National Defence - referring also to previous relevant rulings of the Council of State, the highest administrative court - has repeatedly stated even in recent years that “In any case, no personal right of exemption from military service for the conscientious objectors is enshrined in the Constitution, but merely a possibility, which exist under the terms and conditions of the Law, which has been voted by the organised bodies of the State (Council of State decisions 2561/2001, 284/2003)”⁵. The Council of State has repeatedly stated in the past that “on the one hand, it is not enshrined neither in the Constitution, nor in the above provisions of the articles 4 (paras. 1, 2, 3), 9 (para. 1), and 10 (para. 1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, an individual right of exemption of Greeks capable to bear arms, from the obligation to conscription for reasons of “conscientious objection”, but it is constitutionally tolerable, in view of the above, provided there are serious reasons of public interest and the proper operation of the army is not affected, the establishment of unarmed military service or also of another kind of compulsory (e.g. social) service for those refusing to perform their military obligations for reasons of religious or ideological beliefs”⁶.

Discrimination between conscientious objectors based on the grounds of conscience

The UN Human Rights Committee in its concluding observations has expressed concerns about “reports indicating discrimination on the basis of different grounds of objection to service” and asked for the alternative civilian service to be “accessible to all conscientious objectors”⁷. Similarly Greece received a recommendation during the Universal Periodic Review by the Human Rights Council to: “Review the current legislation with a view to recognizing an alternative to military service, which is accessible to all conscientious objectors...”.⁸ Unfortunately Greece has rejected entirely all recommendations concerning conscientious objectors.⁹ The GNCHR expressed its

4 UN Human Rights Committee, Communication No. 1642-1741/2007, Jeong et al. v. Republic of Korea ([CCPR/C/101/D/1642-1741/2007](#)), 27 April 2011, para. 7.3.

5 [Response](#) of the then Deputy Minister of National Defence to the [Question 248/26-07-2013](#) in the Parliament. See also the [response](#) of the then Minister of National Defence to the [Question 23129/21-9-2011](#).

6 Council of State, decision A1948/2007, para. 3. For the non-recognition of a right to conscientious objection see also decisions A526/2001 (7-membered chamber), A4508/2001, para. 4, A4509/2001, para. 6, A284/2003, para. 4, A260/2004, para. 7, A2452/2006, para. 2.

7 UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, [CCPR/C/GRC/CO/2](#), paras. 37-38.

8 UN, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Greece, [A/HRC/33/7](#), 8 July 2016, recommendation 136.15 (Uruguay).

9 UN, Human Rights Council, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, [A/HRC/33/7/Add.1](#), 2 September 2016, page 3, recommendations 136.15 and 136.16.

discontent for this rejection.¹⁰

The Greek Ombudsman, which is a member to the GNCHR, had previously stated that there is a “constant practice of unequal treatment”, of those objecting on ideological grounds in comparison to those objecting on religious ones.¹¹

Such discrimination is also reflected in the official statistics. While the percentage of recognition of conscientious objectors on religious grounds is constantly about 96% to 100%, the percentage of recognition of conscientious objectors on ideological grounds is usually around or even below 50%. (see Addendum: Table of recognition of conscientious objectors in Greece 2007 – 2015).

Lack of recognition of the Right to Conscientious Objection in a period of war

As stated in the previous analytical report¹², the UN Human Rights Committee has stated that a “State party should fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime”¹³. Despite that, in Greece, in a period of war the provisions for alternative service can be suspended by decision of the Minister of National Defence¹⁴. Consequently, in such case, conscientious objectors should be obliged to serve military service.

Lack of recognition of the Right to Conscientious Objection during military service

The amendment of legislation in 2010¹⁵, gave the opportunity to those who had served for some time in arms, in the past, to claim the status of conscientious objectors, provided that in the meantime their beliefs have been changed. But this provision cannot be implemented, for the time being, for those who have started to serve their compulsory military service, as it contravenes the deadlines for submission of documents, which establish that: “Applications submitted after enlistment of those interested, in the Armed Forces, are not accepted”¹⁶. Therefore the “The right of serving members of the armed forces, including conscripts and volunteers, to make a claim of conscientious objection to military service”, as cited in the previous analytical report,¹⁷ has not been recognised.

10 GNCHR, [Press release](#) on the occasion of another conviction of Greece for conscientious objectors' issues [ECtHR, Papavasiliakis V. Greece, 15.9.2016], 27.9.2016.

11 Greek Ombudsman, Examination of applications for recognition of conscientious objectors [in Greek], <http://www.synigoros.gr/?i=metaxeirisi.el.imnode2.264999>

12 UN High Commissioner of Human Rights, [Analytical report on conscientious objection to military service](#), 3 June 2013, A/HRC/23/22, para. 11.

13 UN Human Rights Committee, Concluding observations on the fifth periodic report of Finland, [CCPR/CO/82/FIN](#), para. 14.

14 See [Law 3421/2005](#), article 65, paragraph 2, as it was amended by the [Law 3883/2010](#), article 78, passage ιε.

15 See [Law 3883/2010](#), article 78, passage γ, which amended the subparagraph α, of paragraph 3, of the article 59, of [Law 3421/2005](#), (Government's Gazette 302/A), stating that “They are not deemed as conscientious objectors and they are not subsumed in the relevant provisions a. those who have served in arms for any period of time, in the Greek or foreign armed forces or in the Security Forces”, by adding the phrase “after adoption of the beliefs that prevent them from fulfilling armed military service for reasons of conscience”.

16 See decision of the Minister of National Defence No Φ.420/79/81978/Σ.300 (2) “Unarmed military service and alternative service for conscientious objectors”, Government's Gazette [1854B/2005](#), Article 1, paragraph 2-4.

17 UN High Commissioner of Human Rights, [Analytical report on conscientious objection to military service](#), 3 June 2013, A/HRC/23/22, paras. 25-27.

Lack of recognition of the Right to Conscientious Objection for those serving voluntarily in the armed forces/professional staff

Currently there are no provisions in the Greek legislation recognising the Right to Conscientious Objection for professional soldiers. Considering also the previously mentioned provision that “Applications submitted after enlistment of those interested, in the Armed Forces, are not accepted”, this is not possible for those voluntarily enlisted.

In the past, the GNCHR had addressed a letter to the Minister of National Defence (03.12.04), concerning the cases in which a professional soldier expresses his conscientious objection in relation to a particular military operation (e.g. the war in Iraq). The views expressed were: (a) that the term “conscientious objector” be interpreted in a broader way and (b) that the chronological point of its expression be extended.¹⁸

Lack of fair, independent and impartial procedures to consider applications for conscientious objection to military service

The final decision on applications for granting conscientious objectors status is taken exclusively by one person, the (Deputy) Minister of National Defence¹⁹ after a non-binding²⁰ recommendation of a 5-membered Special Committee (commonly called Committee for the Examination of Conscience) consisted in 2 military officers, 2 university professors and 1 member of the State's Legal Council as president. The members of the Committee are appointed by a common decision of the Minister of National Defence, along with the Minister of Economy and Finance and the Minister of Education.²¹ The Committee can have a session when the members who are present are more than those absent,²² which means with only 3 members present, and thus, even with a majority of military officers.

The UN Human Rights Committee in its concluding observations of 2015 has reiterated its previous concerns about “the composition of the Special Committee and its reported lack of independence and impartiality, especially when hearings are held without all members present” and recommended to “consider placing the assessment of applications for conscientious objector status under the full control of civilian authorities”.²³

The Commissioner for Human Rights of the Council of Europe has also recommended the transfer of responsibilities for granting conscientious objector status from the Ministry of Defence to an independent civilian department.²⁴

18 See in [Recommendations](#) regarding Conscientious Objectors and the Scheme of Alternative Civil-Social Service, 10.6.2004.

19 [Law 3421/2005](#), article 62 para.1

20 According to the decision of the Minister of National Defence No Φ.420/79/81978/Σ.300 (Government's Gazette [1854B/2005](#)), article 3, paragraph 6, the Special Committee gives not only the opinion but also a draft of a ministerial decision, but if the Minister of Defense disagrees with the content of this draft, another one is prepared according to his/her orders.

21 [Law 3421/2005](#), article 62 para. 2.

22 Decision of the Minister of National Defence No Φ.420/79/81978/Σ.300 (Government's Gazette [1854B/2005](#)), article 3, paragraph 2.

23 UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, [CCPR/C/GRC/CO/2](#), paras. 37-38.

24 Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the Hellenic Republic, 2-5 June 2002, [CommDH\(2002\)5](#), para. 18. See also: Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, [Follow-up report on the Hellenic republic \(2002 – 2005\)](#), 29 March 2006, para. 34.

The GNCHR has consistently supported such recommendations, stating that “the authority deciding whether a person should be assigned to an alternative service or not, must be independent and should not include members of the military administration”. And, in any case, the GNCHR has consistently asked for the decisions of rejection to be fully reasoned and for the composition of the Committee for the Examination of Conscience to be amended by adding another 2 civilian, i.e. non military, members, one from the Ministry of Interior and one from the Ministry of Health.²⁵

The Greek Ombudsman has challenged the procedure of examination of objectors through interview stating that “Personal interview as a mean to ascertain reasons of conscience is controversial *per se* insofar it submits an internal esprit to an examination of sincerity”. It has also expressed concerns about problems in the composition and the operation of the committee such as frequent absence of non-military members and insufficient justification of rejections.²⁶

In the recent judgment *Papavasilakis vs Greece* of September 15, 2016 by the European Court of Human Rights (ECtHR, Chamber judgment)²⁷, the Court decided a case concerning the authorities’ refusal to grant the applicant the status of conscientious objector and to allow him to do alternative civilian work instead of military service. The Court held that there had been a violation of Article 9 (freedom of thought, conscience and religion) of the Convention, finding that the applicant did not enjoy the necessary procedural safeguards in having his request for alternative civilian service examined. The Court considered in particular that the Greek authorities had failed in their duty to ensure that the interviewing of conscientious objectors by the army’s Special Board took place in conditions that guaranteed procedural efficiency and the equal representation required by domestic law. In this respect, it noted that: the applicant had been interviewed by a Board made up primarily of servicemen, two of the civilian members of the Board being absent but not replaced; the Minister of Defence’s final decision, on the basis of a draft ministerial decision following the Board’s proposal, did not afford the requisite safeguards of impartiality and independence; the scrutiny of the Supreme Administrative Court concerned only the lawfulness of the decision, not the merits, and was based on the assessments of the Special Board. The Court essentially condemned Greece for violating Article 9 of the ECHR (freedom of thought, conscience and religion) by also quoting, to this end, an extensive excerpt of observations made by the GNCHR on the topic.

Punitive duration of alternative civilian service

The current duration of military and alternative service is shown at the following table:

	Military Service	Alternative Civilian Service
Full service	12 months (Navy, Air Force)	15 months (25% more than in the Navy-Air Force, but 67% more than in the Army)
	9 months (Army)	

25 GNCHR, [Observations](#) on article 12 of the bill of the Ministry of National Defence “Settlement of issues concerning transfer of soldiers, care for staff and other provisions” (Conscientious Objectors), (20.1.2016), III, Special Observations on article 12 of the bill, para. 4 [in Greek]. See also: [Recommendations](#) regarding the Scheme of Alternative Civil- Social Service, 5.7.2001; [Recommendations](#) regarding Conscientious Objectors and the Scheme of Alternative Civil-Social Service, 10.6.2004, recommendations e and f. [Observations](#) on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR) (5.12.2013), Article 18, Conscientious Objectors, page 25.

26 The Greek Ombudsman, Examination of applications for recognition of conscientious objectors [in Greek], <http://www.synigoros.gr/?i=metaxeirisi.el.imnode2.264999>

27 CEDH, *Affaire Papavasilakis v. Grèce*, 66899/14, 15.9.2016.

Reduced service (First category)	9 months (Navy, Air Force)	12 months (33% additional time than in the Navy, Air Force, 50% more than in the Army)
	8 months (Army)	
Reduced service (Second Category)	6 months	9 months (50% additional time)
Reduced service (Third Category)	3 months	5 months (67% additional time)

The UN Human Rights Committee in its concluding observations of 2015 has reiterated “its previous concerns about the length of alternative service for conscientious objectors, which is much longer than military service” and has stated that Greece should take measures to review its legislation with a view to recognizing the right to conscientious objection to military service, encompassing an alternative to military service which will be not punitive or discriminatory in terms of duration.²⁸

The European Parliament since 2003 has called on Greece to introduce forms of alternative service which do not last longer than compulsory military service.²⁹

Similarly Greece received recommendations during the Universal Periodic Review by the Human Rights Council to: “Review the current legislation with a view to recognizing an alternative to military service, which is [...] not punitive or discriminatory” or even that the conscientious objectors should “have the opportunity to perform civilian service of equal length to the one of military service”.³⁰ Unfortunately Greece has rejected entirely all recommendations concerning conscientious objectors.³¹ The GNCHR expressed its discontent for this rejection.³²

Since 2004 the GNCHR has adopted the criterion of the European Committee of Social Rights (ECSR) that, in order to be in conformity with the European Social Charter, the alternative service for conscientious objectors may not exceed one and a half times the length of armed military service (50% additional time).³³ The GNCHR has found³⁴ that the situation has not been brought in conformity with this criterion as far as it concerns two categories of conscripts:

- Those who would be required to serve 3 months of military service [Reduced service (Third Category)], for whom the alternative service of 5 months exceeds one and a half times the length of the armed military service, as the additional time is 67%. Considering, especially, that

28 UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, [CCPR/C/GRC/CO/2](#), paras. 37-38.

29 [European Parliament resolution](#) on the situation concerning basic rights in the European Union (2001) (2001/2014(INI)), 15 January 2003, para. 42.

30 UN, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Greece, [A/HRC/33/7](#), 8 July 2016, recommendation 136.15 (Uruguay), 136.16 (Slovenia).

31 UN, Human Rights Council, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, [A/HRC/33/7/Add.1](#), 2 September 2016, page 3, recommendations 136.15 and 136.16.

32 GNCHR, [Press release](#) on the occasion of another conviction of Greece for conscientious objectors' issues [ECTHR, Papavasiliakis V. Greece, 15.9.2016], 27.9.2016.

33 GNCHR, [Recommendations](#) regarding Conscientious Objectors and the Scheme of Alternative Civil-Social Service, 10.6.2004, recommendation a. See also [Observations](#) on article 12 of the bill of the Ministry of National Defence “Settlement of issues concerning transfer of soldiers, care for staff and other provisions” (Conscientious Objectors), (20.1.2016), III, Special Observations on article 12 of the bill, para. 1 [in Greek].

34 GNCHR [submission](#) regarding the continuous violation of Article 1§2 of the European Social Charter in the case of alternative service for conscientious objectors in Greece (11.11.2016)

those falling in this category are persons in special family conditions, it is imperative not to overlook as minor this discrimination and violation of their rights.

- Those who would be required to serve full military service, which constitute the majority of conscripts. The GNCHR notes that the vast majority of them serve in the Army³⁵, where the military service is of 9 months (not 12). Consequently, the alternative service of 15 months (67% additional time) exceeds one and a half times the length of armed military service served by the vast majority of conscripts.

Furthermore, the minimum alternative service for conscientious objectors above 35 years of age (40 days) is double (100% additional time) in comparison with the minimum military service (20 days).³⁶

Punitive conditions and discrimination against conscientious objectors in comparison to conscripts serving in armed forces

Conscientious objectors' groups complain about the conditions of alternative service and about discrimination in comparison to conscripts serving in armed forces, in various aspects, such as for example the fact that there are no explicit provisions about free transportation or reduction in fares for the conscientious objectors.³⁷

The UN Human Rights Committee in its concluding observations noted that Greece should take measures to review its legislation with a view to recognizing the right to conscientious objection to military service, encompassing an alternative to military service which will be not punitive or discriminatory not only in terms of duration but also in terms of nature and cost.³⁸

The GNCHR has consistently stated that the geographical criterion for the completion of the alternative social service should be in conformity with the same rules that apply to regular armed military service.³⁹ Currently conscientious objectors are not allowed to serve in the region of their residence⁴⁰, a restriction which does not apply to conscripts serving in the armed forces.

The GNCHR has also raised the issue of the multiple discriminations in the case of conscientious objectors who are above 35 years of age.⁴¹ According to the Greek legislation, conscripts who are above 35 years of age are entitled to serve a minimum of 20 days of military service and to buy out

35 According to the International Institute for Strategic Studies, the number of conscripts in the Army is 45,000, while the number of those in the Navy is 1,600 and in the Air Force is 1,790. According to these figures, 93% of conscripts serve in the Army while only 7% serve in the Navy and the Air Force. International Institute for Strategic Studies, *The Military Balance 2015*, p.100.

36 [Law 4361/2016](#) (Government's Gazette 10/1.2.2016), article 12, paras. 6-7.

37 See the [report](#) of MP Theodoros Dritsas No 3444/18.2.2011 to the Ministry of National Defence and the Ministry of Infrastructure, Transportations and Networks, with a relevant open letter of the Association of Greek Conscientious Objectors. See also the replies of the Minister of National Defence and the Deputy Minister of Infrastructure, Transportations and Networks.

38 UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, [CCPR/C/GRC/CO/2](#), para. 38.

39 GNCHR, [Recommendations](#) regarding Conscientious Objectors and the Scheme of Alternative Civil-Social Service, 10.6.2004, recommendation h. [Observations](#) on article 12 of the bill of the Ministry of National Defence "Settlement of issues concerning transfer of soldiers, care for staff and other provisions" (Conscientious Objectors), (20.1.2016), III, Special Observations on article 12 of the bill, para. 6 [in Greek].

40 [Law 4361/2016](#) (Government's Gazette 10/1.2.2016), article 12, para. 9, replacing the para. 1, article 61, of the [Law 3421/2005](#).

41 GNCHR [submission](#) regarding the continuous violation of Article 1§2 of the European Social Charter in the case of alternative service for conscientious objectors in Greece (11.11.2016)

the remaining part of their duty.⁴² Conscientious objectors who are above 35 years of age are also entitled to buy out after serving a minimum of 40 days of alternative service the remaining part of their much longer duty.⁴³ Thus, given that the cost of a month of alternative service, according to the law,⁴⁴ cannot be less than the cost of a month of military service and has been fixed as equal (810 euros)⁴⁵ on the one hand, and that the conscientious objectors have to buy out a greater number of months on the other hand, the said provisions result to a much higher cost, up to several thousands of euros, for the conscientious objectors in order to buy out the same (undone) duty. This evident discrimination, because of conscientious objection based on religion or political opinion, has been also pointed out by the Greek Ombudsman⁴⁶ as well as Amnesty International⁴⁷.

Restrictions on the right of freedom of expression for those who publicly support conscientious objectors and conscientious objection to military service

In the previous analytical report there is a chapter about the “Restrictions on the right of freedom of expression for those who publicly support conscientious objectors and conscientious objection to military service”, where the case of Turkey and its article 318 of the Penal Code is mentioned.⁴⁸ It is the same legal provision concerning the ECtHR case *Savda v. Turkey* (no. 2) (no. 2458/12), mentioned above. The equivalent provision to the article 318 of the Turkish Penal Code, is the article 202 of the Greek Penal Code, according to which “whoever intentionally incites or provokes a person who has the obligation to be conscripted not to obey to the call when he is called up to the army” is punished with imprisonment up to 3 years, and in case of war with imprisonment up to 10 years.

To the knowledge of the GNCHR this article has not been (recently and to date) used against those who publicly support conscientious objectors and conscientious objection to military service.

In an action of solidarity with 20 prosecuted Turkish conscientious objectors, 20 Greek conscientious objectors have publicly challenged this provision in 2010⁴⁹, but there were no reports of prosecution.

Nevertheless such a contingency cannot be precluded in the future.

Repeated punishment of conscientious objectors

UN Human Rights Committee in its concluding observations have raised concerns and recommended Greece to avoid the repeated punishment of conscientious objectors, in violation of

42 Decision of the Deputy Minister of National Defence No Φ.429.1/21/286731/Σ.3153/9-6-2016, (Government’s Gazette B 1798/17-6-2016), art. 1, para. 1.

43 Decision of the Deputy Minister of National Defence No Φ.429.1/22/286730 Σ. 3152/9-6-2016, (Government’s Gazette B 2020/5-7-2016, art. 1, para. 1.

44 [Law 3883/2010](#) (Government’s Gazette A 167/24-9-2010), art. 79, para. 2.

45 Joint Decision of the Minister of Finance and the Minister of National Defence No Φ.429.1/ 19/281812/4-3-2011 (Government’s Gazette B 517/5-4-2011), Art. 1., para.1.

46 <http://www.synigoros.gr/resources/160202-dt.pdf>

47 <https://www.amnesty.gr/news/articles/article/3946/antirrisies-syneidisis-i-diethnis-amnistia-zita-ameses-tropopoiiseis>

48 UN High Commissioner of Human Rights, [Analytical report on conscientious objection to military service](#), 3 June 2013, A/HRC/23/22, para. 64.

49 “Come to arrest us! 20 Greek conscientious objectors commit the same offence in solidarity with 20 prosecuted Turkish conscientious objectors” [in Greek], 12.2.2010. <http://www.antirrisies.gr/node/797>

the principle of *ne bis in idem*.⁵⁰

Greece has also received a recommendation during the Universal Periodic Review by the Human Rights Council to: “Consider changes in legislation and practice in order to ensure that individuals who express conscientious objection to compulsory military service on the grounds of freedom of thought, conscience, disability, and/or religion do not face harassment or prosecution...”.⁵¹ Unfortunately Greece has rejected entirely all recommendations concerning conscientious objectors.⁵² The GNCHR expressed its discontent for this rejection.⁵³

The GNCHR has consistently demanded the abolition of the possibility of continuous and repeated prosecutions of conscientious objectors for their refusal to perform military service, in violation of the *ne bis in idem* principle.⁵⁴

50 UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, [CCPR/C/GRC/CO/2](#), paras. 37-38.

51 UN, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Greece, A/HRC/33/7, 8 July 2016, recommendation 136.16 (Slovenia).

52 UN, Human Rights Council, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, [A/HRC/33/7/Add.1](#), 2 September 2016, page 3, recommendations 136.15 and 136.16.

53 GNCHR, [Press release](#) on the occasion of another conviction of Greece for conscientious objectors' issues [ECtHR, *Papavasiliakis V. Greece*, 15.9.2016], 27.9.2016.

54 GNCHR, [Recommendations](#) regarding Conscientious Objectors and the Scheme of Alternative Civil-Social Service, 10.6.2004, recommendation c. [Observations](#) on article 12 of the bill of the Ministry of National Defence “Settlement of issues concerning transfer of soldiers, care for staff and other provisions” (Conscientious Objectors), (20.1.2016), III, Special Observations on article 12 of the bill, para. 2 [in Greek].

Addendum:

Table of recognition of conscientious objectors in Greece 2007 – 2015

Year	Petitions	Religious grounds	Ideological grounds	Total
2007	Submitted	174	4	178
	Approved	174	2	176
	Rejected	0	2	2
	Percentage of recognition	100%	50%	99%
2008	Submitted	110	2	112
	Approved	110	1	111
	Rejected	0	1	1
	Percentage of recognition	100%	50%	99%
2009	Submitted	167	3	170
	Approved	165	0	165
	Rejected	2	3	5
	Percentage of recognition	99%	0%	97%
2010	Submitted	99	4	103
	Approved	98	3	101
	Rejected	1	1	2
	Percentage of recognition	99%	75%	98%
2011	Submitted	129	3	132
	Approved	125	1	126
	Rejected	4	2	6
	Percentage of recognition	97%	33%	95%
2012	Submitted	158	17	175
	Approved	157	7	164
	Rejected	1	10	11
	Percentage of recognition	99%	41%	94%
2014	Submitted	102	17	119
	Approved	98	10	108
	Rejected	4	7	11
	Percentage of recognition	96%	59%	91%
2015	Submitted	104	22	126
	Approved	100	11	111
	Rejected	4	11	15
	Percentage of recognition	96%	50%	88%

Sources:

- **For the year 2007:** <http://www.ellinikos-stratos.com/stratologia/antirisies.asp> . See also [response](#) of the then Minister of National Defence to the [Question 23129/21-9-2011](#)., at the Parliament, on 11/10/2011. <http://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/7499874.pdf>
- **For the years 2008 – 2012:** [Response](#) of the then Deputy Minister of National Defence to the [Question 248/26-07-2013](#), at the Parliament, on 20/8/2013 <http://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/8171771.pdf> (For the years 2008-2010 See also [response](#) of the then Minister of National Defence to the [Question 23129/21-9-2011](#) at the Parliament, on 11/10/2011. <http://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/7499874.pdf>)
- **For the years 2014-2015:** Speech of the Deputy Minister of National Defence at the Permanent Commission of National Defence and Foreign Affairs of the Parliament, on 14/1/2016 (morning session) ([video](#)).

Note: there are no available data for 2013.