

Christophe Barbey
Siernes Picaz road 46
CH-1659 Flendruz
Switzerland
+41 26 925 80 66 / +41 79 524 35 74
www.infodroit.ch / cb@infodroit.ch

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Conscientious objection in Switzerland

*Quadrennial report on Conscientious Objection by the
Office of the United Nations High Commissioner on Human Rights*

Introduction

1° The present submission is made by Infodroit.ch's legal clinic for persons doing civil service instead of military service¹. The clinic serves soldiers and conscientious objectors alike providing to all information by maintaining a website and through a phone and e-mail consultancy. It provides neutral and direct orientation on the options given, as well as legal and psychological counsel to more than 300 persons a year.

2° This submission is supported by "Conscience and Peace Tax International"² and the "Center for Global Nonkilling"³. These two international organizations have ECOSOC special consultative status and are active in Geneva.

3° Local Swiss peace and support organizations such CIVIVA⁴ (an organization representing the persons doing civil service), the Center for Non-violent Action (CENAC⁵, who for a long time brought support to conscientious objectors) and the Group for a Switzerland without Army⁶ (who did so as well) as well as various other grass-root peace organizations are made aware of this submission and may bring their support later.

4° The Swiss government is made aware of it through the office running the civil service⁷ and as accurate through other governmental services.

General situation regarding conscientious objection in Switzerland

5° There is in Switzerland a mandatory draft for all males fit for service⁸.

6° Civil service was granted to conscientious objectors by a constitutional vote in 1992⁹ and then by the law in 1996¹⁰. Until 2009, their conscientiousness motives were examined by a special commission¹¹. Since then, doing a civil service for half longer than the time they still have to serve in the army at the moment of their demand of admission to the civil service is considered a sufficient "proof by the facts" of their motives¹².

7° Civil service can be asked for at any time, both from civilian life or while serving in the army¹³. However, there is a few weeks delay before the admission process to the civil service is completed, therefore making it hard to ask for from military recall periods¹⁴.

8° Military service is usually done through an initial training period of around 5 month and then by serving 5 to 8 recall periods of three or four weeks, usually yearly and if needed up to the

age of 34, totaling 260 days of service for soldiers. Officers and sub-officers cannot refuse advancement and most of them are required to serve longer¹⁵.

9° If the initial training period to military service has not been completed, the person doing civil service must do an initial 6 month period and then short periods of at least 26 days until all the days due are done, similarly before the age of 34¹⁶.

10° The civil service is well accepted by the population. They are presently around 44,000 persons enlisted in the civil service¹⁷ while 167,000 are assigned to military service¹⁸.

11° They are more than 5,000 positions available for civil service at any time, all serving public interests, mostly in health, social, educational and emergency services, as well as in agricultural, environmental, cultural and international cooperation programs. Various short trainings are mandatory or available for persons doing the civil service¹⁹.

12° However, after the suppression of the consciousness exam in 2009 and thereafter a sharp augmentation of persons demanding the civil service (from around 2,500 in 2009 to 6,000 yearly by now), there have been fierce debates in parliament, including to augment the length of service or to make admission to the civil service. However, the situation is stabilized and to the exception of the small criminalization described hereafter, no worsening of the situation is expected.

13° Nevertheless, as we will show hereafter, improvements should be made.

Main problems encountered by conscientious objectors

Mandatory tax for those that do not serve

14° Persons due to serve either in the military or in the service civil who do not serve for a full year for any reasons (because the army does not call them or for personal reasons such as studies, residing outside the country, or more rarely an impossibility to get a job leave or for family reasons) as well as most persons unfit to serve have to pay a mandatory tax of 3% of their revenue.

15° The tax goes to the general budget of the State and is refunded to the persons who complete the totality of the days they are assigned to do throughout their life.

16° Following a judgment by the European Court of Human Rights (Gloor v. Switzerland, 2009²⁰) persons declared unfit to the army who are willing to serve, if the army can adapt to their condition, have the possibility to do so. However, this possibility is mainly only open on an appeal procedure, available only for 30 days after the recruitment days have taken place²¹. Worse a person wanting to do so, must first demand to serve, the army must design a certain type of service compatible with the person's condition and only thereafter can that person, if she wants to, ask for the civil service.

Demanding to serve instead of paying should be a simple option or demand at the recruitment, not an appeal procedure.

Recruitment

17° Persons wanting to do the civil service have first to be fit for the army and therefore incorporated therein. The recruitment period, two days, is entirely under the supervision of the army²². Presently, the army takes yearly around 65% of the men in age of serving²³. Half of the ones it does not take are left out for psychiatric reasons, which is much more than the proportion of persons suffering from such type of illness in civil life²⁴. This leaves too large a margin to the army to leave out persons that could be fit for service but that claim outright that they want to do the civil service or that would want to serve, but in the civil service, instead of paying the tax described above.

A civilian participation and overview of the recruitment procedure would guarantee a better access to the civil service to those who are fit for service.

Length of service in the civil service

18° International jurisprudence considers that the length of the civil service should not be of punitive nature and should not exceed twice as much as the military service. Switzerland has a 1.5 ratio in the law, but the facts differ from the law²⁵. In practice, many soldiers, because of their studies will do their initial military training period (5 months) around the age of 23 or 24. Then they will often miss recall periods for various reasons, therefore never finishing the total amount of days they are assigned to do before reaching the age limit, thus never having to do the leftover days. To our knowledge, the army does not publish the number of days never accomplished or the number of soldiers who have days dropped when they reach the age limit.

19° Conversely, the law on the civil service is totally strict. Persons doing the civil service must, at the age of 27, have no more than one period of 26 days to do in every remaining year until the age of 34, otherwise they must do the excess number of days at once. It is not unusual to see some of them face criminal charges for being late on their duties, while there is no such offence for soldiers late on theirs.

This discrimination should be addressed.

20° As a result, 96% of the persons doing civil service have accomplished all their days when being liberated from the civil service²⁶.

21° The latest figure we have from the army dates back to 2010 and at that time only 71.8% of the days required by soldiers were effectively done. The figure is based on the percentage of soldiers late in their duties at any given time and not on how many days were left unaccomplished when the soldiers were liberated, so it is only partially accurate. However indicative the figure is, and once deducted the number of days undone at the civil service, it still gives of 2.061 ratio of days done by persons doing the civil service: more twice as many days as the ones done by soldiers²⁷.

22° So far, our clarification demands have not been met.

To be able to know if the length of the civil service is not excessive, the army should publish the number of days left undone by soldiers.

Criminalization if not entering into military service while asking for the civil service

23° Until the 1st of July 2016, a soldier who asked for the civil service and did not yet receive an admission decision and did not show up to serve in the army while he still legally should, would have benefited of an amnesty for its refusal to serve. However, the military criminal code has recently then been amended and such a person will be fined for its refusal to serve. The criminal code, reads (translation by the author of this submission):

“Art. 84. Failure to serve in case of admission to civilian service, duty without weapon and inability to serve.

1. Are liable to a fine the person who commits one of the offenses set out in article 81 to 83, if they are:

A. Persons admitted to the civil service;

B. Persons assigned to the unarmed service;

C. Persons who were declared unfit for military service and who were already unfit for committing the offense.

2. In minor cases, the offender is disciplined.

3. If the author was unable to enter service at the time of the offense, he shall not incur any punishment.²⁸”

The legal consultancy receives a more or less a dozen demands yearly of persons who take their decision to ask for the civil service too late to have the admission decision taken before they should enter the army. It is too soon to not know of any case of prosecution upon this disposition or of the options left to demonstrate that the person is unable to enter into service at the time the offense is committed (§ 3 of the article described above).

However, this is clearly a minor form of punishment upon some of the persons asking for the civil service. And should they have to serve anyhow despite their conscientious motives, it is a major infringement on their freedom of consciousness.

It is also a very pernicious legal move, because as the fines will never be higher than the legal costs of contesting them, it would take a very dedicated (and quite rich) person to contest the fine or the new law altogether.

Therefore, we recommend to such persons to announce their absence by mail or phone stating a moral impossibility to show up. And to the legal authorities, we recommend to consider that the refusal to serve because of conscientiousness motives should be considered as legitimate, including for an absence at military service.

Wage

24° Persons doing civil service are awarded 80% of their salary as compensation²⁹. If they did not have a previous salary (and many persons do their civil service right after the end of their studies, often to avoid being late on their civil service duties), then unless they prove they would have worked if they did not have the service to do, they receive a minimum allocation that barely covers what is considered the minimal standard of living in Switzerland. The result is having persons serving the country and the community at large but still being in need of demanding social welfare.

Having a count of how many of these persons face such a situation should be done and accordingly, either provide for help directly from the organization of the civil service or give a raise of the minimum compensation awarded.

25° Refusal to participate in the military budget

Differing from others countries we know of (Belgium³⁰, Germany³¹, Great Britain³², Spain³³ and United States³⁴), we are not aware of any persons refusing to pay the part of their taxes going to the military budget. However, this could change in the future. Presently, the budget of the army is 6.9 % of the total federal budget³⁵.

26° Rehabilitation of past time convicted conscientious objectors

Until 1992, all conscientious objectors regularly served rather heavy prison sentences (between six months and a year and half, very rarely on parole) and had because of it, they had a criminal record. All the inscriptions in these records have by now been taken out due to the passage of time³⁶. Nevertheless there is something outrageous in the fact that what is presently commonly accepted, conscientious objection and civil service has not yet been accounted for and forgiven for the past.

A moral recognition of these persons is long overdue.

Conclusion

Considering that a civil service has been a demand in Switzerland for more than a century, the progress of the last two decades is highly noticeable. The soon two million days of service done by persons doing civil service are a highly needed and a well recognized contribution to public interests and to the well-being of the people.

However, the army still holds the upper hand on the access to civil service, which is not a free choice, but is only open to those that are found by the army fit for military service.

Further, persons doing civil service face greater economical burdens and most likely discrimination regarding the length of their service.

Generally speaking, the civil service, as the military service, adds heavy strains on career choices of young men, moreover if they are taught army and violence practices, rather than peacemaking. As such, adding peace to the world rather than compromising with war and the tools of war (armies and weapons), conscientious objectors deserve pride and honor.

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- ¹ <http://www.infodroit.ch/spip.php?rubrique13>
- ² www.cpti.ws
- ³ www.nonkilling.org
- ⁴ <http://www.civiva.ch/index.php?id=20&L=2>
- ⁵ <http://www.non-violence.ch>
- ⁶ <http://gsoa.ch/english>
- ⁷ <https://www.zivi.admin.ch/zivi/fr/home.html> (In French, Italian or German).
- ⁸ Constitution, article 59 covers both forms of service, as well as the exemption tax and other issues. It is available in English here (unofficial) or in all national languages (in the right upper corner of the page): French, German, Italian and Retho-Romanche: <https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a59>.
- ⁹ Popular vote on a change of the constitution accepting an alternative service to military service, result of the vote: <https://www.admin.ch/ch/f/pore/va/19920517/det379.html>. The text voted (art. 59) has been slightly changed and improved when the full revision of the constitution occurred in 1999.
- ¹⁰ The *law on the civil service* (in the three official languages, here French): <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html>
- ¹¹ Previous articles 16 to 18 of the law on the civil service, available here: <https://www.admin.ch/opc/fr/classified-compilation/19950281/200901010000/824.0.pdf>
- ¹² Article 8, law on the civil service, length: <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html#a8>. Admission to the civil service, still articles 16 to 18: <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html#a16>
- ¹³ Law on the civil service Article 16. <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html#a16>
- ¹⁴ The law says the demand for civil service must be done three months before the next military period to be liberated from it <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html#a17>. However, the administration runs faster and as soon as the admission is approved, the person is liberated from all military duties.
- ¹⁵ Age limits are in the law, numerous articles. Number of days to be done and military ranks are also described in ordinances.
- ¹⁶ Ordinance on the civil service, article 37: <https://www.admin.ch/opc/fr/classified-compilation/19960464/index.html#a37>.
- ¹⁷ Idem
- ¹⁸ http://www.vtg.admin.ch/content/vtg-internet/fr/media/publikationen/download/vtg-internet/fr/publications/verwaltung/organisation/fsta/Kurzfassung_ARMA_2016-f.pdf, p. 3.
- ¹⁹ <https://www.zivi.admin.ch/zivi/fr/home/dokumentation/nsb-news.msg-id-65365.html>
- ²⁰ *Glor v. Switzerland*: [http://hudoc.echr.coe.int/fre#{"languageisocode":\["ENG"\],"appno":\["13444/04"\],"documentcollectionid":\["CHAMBER"\],"itemid":\["001-92525"\]}](http://hudoc.echr.coe.int/fre#{)
- ²¹ And the procedure is not even clearly described in law. The possibility is mentioned in an annex, and specified as such at letter E. <https://www.admin.ch/opc/fr/classified-compilation/20031592/index.html#app1> For what we know it is usually orally mentioned at the recruitment.
- ²² In fact, the law only says it is the federal government, not the army who is in charge of the recruitment. <https://www.admin.ch/opc/fr/classified-compilation/19950010/index.html#a11> and article 120. Then there is directly an ordinance by the ministry of defense <https://www.admin.ch/opc/fr/classified-compilation/20010419/index.html>.
- ²³ <http://www.vbs.admin.ch/fr/ddps/faits-chiffres/armee.html> at the very end of the page.
- ²⁴ The army has not recently published statistics on the refusals at the recruitment (it used to do so) and none can still be found in the Internet. However, we hold this proportion to be true and at least one old article on the topic was found. <http://www.amge.ch/2005/08/08/letat-psychique-des-jeunes-appeles-inquiete-letat-major-de>
- ²⁵ Human Rights Committee: *Foin v France* (Communication No. 666/1995), CCPR/C/D/666/1995, 9 November 1999, para. 10.3, among others. See also: Rachel Brett: *International Standards on Conscientious Objection to Military Service*. Quino 2011.
- ²⁶ <https://www.zivi.admin.ch/zivi/fr/home/dokumentation/nsb-news.msg-id-65365.html>
- ²⁷ Days of service in the army, 260×1.5 (days in civil service) $- 4\% = 385$ Days done in the army $260 \times 71.8\% = 186.7$. $385 / 186.7 = 2.061$. <http://www.infodroit.ch/spip.php?article44>
- ²⁸ <https://www.admin.ch/opc/fr/classified-compilation/19270018/index.html#a84>
- ²⁹ <https://www.admin.ch/opc/fr/classified-compilation/19520192/index.html> (more details on demand). <http://www.infodroit.ch/spip.php?rubrique22>
- ³⁰ <http://www.vredesbelasting.be/>
- ³¹ <http://www.netzwerk-friedenssteuer.de>
- ³² <http://www.conscienceonline.org.uk>
- ³³ <http://www.sinkuartel.org/es/kemmoc/acciones/867-2015-12-30-19-50-05.html>
- ³⁴ <http://nwtrec.org>, <http://www.peacetaxfund.org>
- ³⁵ https://www.efv.admin.ch/efv/fr/home/finanzberichterstattung/bundeshaushalt_ueb/ausgaben.html
- ³⁶ <https://www.admin.ch/opc/fr/classified-compilation/19370083/index.html#a369>