

GREECE: APPLICATION PROCEDURES FOR OBTAINING THE STATUS OF CONSCIENTIOUS OBJECTORS TO MILITARY SERVICE IN ACCORDANCE WITH HUMAN RIGHTS STANDARDS

SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER ON HUMAN RIGHTS PURSUANT TO HUMAN RIGHTS COUNCIL RESOLUTION 36/18

INTRODUCTION

Amnesty International would like to express its gratitude for the opportunity to contribute to the Office of the High Commissioner for Human Rights' report on "different approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards" (HRC resolution 36/18).

Amnesty International is currently conducting an internal review of aspects of the situation of conscientious objectors in different countries, as well as exploring and developing a more detailed position on this issue. At the present, the information which the organization is in a position to submit on this specific question focuses on Greece.

In this submission Amnesty International identifies three particular aspects of the procedures in Greece, the relevant recommendations we have made to the Greek authorities, and recommendations of Greek human rights bodies such as the Greek National Commission for Human Rights (GNCHR) and the Greek Ombudsman. We also note relevant international standards which Amnesty International has drawn on in developing its own recommendations in each of these three areas.

The three different aspects of the application procedures we examine are:

- time limits, including the question of applications for conscientious objector status by serving members of the armed forces (whether conscripts or voluntarily enlisted);
- formal requirements and conditions resulting in disqualification (especially irrefutable presumptions);
- as well as the issue of procedures and composition of the body responsible for assessing the applications.

A. TIME LIMITS ON APPLICATIONS FOR CONSCIENTIOUS OBJECTOR STATUS AND THE QUESTION OF APPLICATIONS BY SERVING SOLDIERS (WHETHER CONSCRIPTS OR VOLUNTEERS/PROFESSIONAL STAFF)

Legislation and practice in Greece

In Greece there are strict time limits for applying for conscientious objector status, up until the date a conscript is due to report for military service. It is explicitly stated that applications submitted after enlistment into the Armed Forces are not accepted.¹

Therefore, there is no possibility for conscripts to apply for conscientious objector status during military service.

Similarly, there is no provision in the Greek legislation for professional members of the armed forces (that is, individuals who have enlisted voluntarily) to apply for conscientious objector status. In the past, a professional member of the armed forces who refused to continue because he had developed a conscientious objection was repeatedly sentenced and imprisoned.²

According to an oral response of officials during a recent meeting in the Ministry of National Defence,³ nowadays a professional member of the armed forces can quit, however he/she should pay a considerable amount of money for leaving before the end of his/her contract.

Amnesty International's recommendations

- The right to conscientious objection should be recognized at any time, before, during, or after performing the military service. Therefore no time limits should be applicable for submitting a request to be recognized as a conscientious objector.
- The right to conscientious objection should be recognized also for the professional members of the armed forces.

These recommendations are based on or supported by:

- The freedom to change religion or belief as set out in international human rights law.⁴
- International standards and recommendations regarding the right to conscientious objection during military service, by the **UN Human Rights Committee**⁵, the then **UN Commission on Human Rights**⁶ and its successor, the **UN Human Rights Council**.⁷

¹ 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 B 1854/2005, Article 1, paragraphs 2-4.

² Amnesty International, "Greece: Professional soldier Giorgos Monastiriotis is a prisoner of conscience and must be released", 21 September 2004, Index number: EUR 25/011/2004. Available at: <https://www.amnesty.org/en/documents/eur25/011/2004/en/>
Amnesty International Report 2011, Index number: POL 10/001/2011, p. 154. Available at: <https://www.amnesty.org/en/documents/pol10/001/2011/en/>

³ Meeting between Amnesty International Greece's representatives and the Alternate Minister of National Defence and other officials, on 24 October 2018, about the issues concerning the right to conscientious objection.

⁴ Universal Declaration of Human Rights Article 18, similarly International Covenant on Civil and Political Rights Article 18; see also Human Rights Committee, General Comment 22, UN Doc. CCPR/C/21/Rev.1/Add.4, para. 5).

⁵ UN Human Rights Committee, Concluding observations on the fourth periodic report of Spain, (CCPR/C/79/Add.61), 3 April 1996, paras. 15 and 20. Available at <http://undocs.org/CCPR/C/79/Add.61>

⁶ UN Commission on Human Rights, Resolution 1993/84, para. 2. Also Resolution 1995/83, para. 2.

⁷ UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 5. Available at <http://undocs.org/A/HRC/RES/24/17>

- Recommendations of the Parliamentary Assembly of the Council of Europe,⁸ the Committee of Ministers of the Council of Europe,⁹ the European Parliament,¹⁰ and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE.¹¹
- Recommendations regarding the right to conscientious objection for volunteers/professional staff, by the Parliamentary Assembly of the Council of Europe,¹² the Committee of Ministers of the Council of Europe,¹³ and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE.¹⁴ The UN Human Rights Council too appears to move towards this direction by stating that it “acknowledges that an increasing number of States recognize conscientious objection to military service not only for conscripts but also for those serving voluntarily”.¹⁵
- Explicit standards and recommendations against strict time limits of the UN Special Rapporteur on freedom of religion or belief (both in the case of Greece¹⁶ as well as in cases of other states¹⁷).

Recommendations of Greek bodies:

- The GNCHR has recently referred to the fact that the right to conscientious objection during military service, as well for volunteers/professional soldiers, has not been recognized in Greece yet, as one of the remaining challenges.¹⁸ It had already addressed the issue since 2004, on the occasion of the prosecution of a professional member of the Greek Navy who had refused to participate in the war in Iraq, asking that the term “conscientious objector” be interpreted in a broader way and that the chronological point of the expression of conscientious objection should be extended.¹⁹

B. FORMAL REQUIREMENTS AND CONDITIONS RESULTING IN DISQUALIFICATION

Legislation and practice in Greece

In Greece, persons who have obtained a permit to carry a weapon or who have applied for such a permit, as well as persons who participate in individual or collective activities of shooting events, hunting and similar activities that are directly related to the use of weapons; and persons who have been convicted of a crime relating to the use of weapons,

⁸ Council of Europe, Parliamentary Assembly, Recommendation 1518 (2001), para. 5.1.

⁹ Council of Europe, Committee of Ministers, Recommendation CM/Rec (2010) 4 “Human Rights of members of the armed forces”, para. 41.

Council of Europe, Committee of Ministers, Recommendation No. R(87)8, 9 April 1987, para. 8.

¹⁰ European Parliament, Resolution on respect for human rights in the European Community (annual report of the European Parliament), (A3-0025/93), 11 March 1993, as it has been published in the Official Journal of the European Communities C 115, on 26 of April 1993, para. 49 (p. 183). See also European Parliament, Resolution on conscientious objection and alternative service, (A3-15/89), , as published in the Official Journal of the European Communities C291, 13 October 1989, para 1 (p. 124), where there is the term “at any time”.

¹¹ OSCE, ODIHR, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, 2008, Chapter 10 Conscientious Objection to Military Conscription and Service, 4. Best Practices and Recommendations, p. 85 [second point]. Available at <https://www.osce.org/odihr/31393?download=true>

¹² Council of Europe, Parliamentary Assembly, Recommendation 1518 (2001), para. 5.2.

¹³ Council of Europe, Committee of Ministers, Recommendation CM/Rec (2010) 4 “Human Rights of members of the armed forces”, paras. 42 - 46.

¹⁴ OSCE, ODIHR, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, 2008, Chapter 10 Conscientious Objection to Military Conscription and Service, 4. Best Practices and Recommendations, p. 85 [second point]. Available at: <https://www.osce.org/odihr/31393?download=true>

¹⁵ UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 5. Available at <http://undocs.org/A/HRC/RES/24/17>

¹⁶ UN Economic and Social Council, Commission on human rights, Civil and political rights, including the question of religious intolerance, Addendum, Summary of cases transmitted to Governments and replies received, E/CN.4/2006/5/Add.1, 27 March 2006, paras. 138-139. Available at <http://undocs.org/E/CN.4/2006/5/Add.1>

¹⁷ A/HRC/19/60/Add.1, para. 56; A/HRC/22/51/Add.1, para. 69.

¹⁸ Greek National Commission for Human Rights, Submission to the quadrennial analytical report 2017 on conscientious objection to military service of the UN High Commissioner of Human Rights (February 2017), p. 6-7.

http://www.nchr.gr/images/pdf/apofaseis/antirisies_suneidisis/Submission%20of%20the%20GNCHR%20to%20the%20quadrennial%20analytical%20report%202017.pdf

¹⁹ GNCHR, Recommendations regarding Conscientious Objectors and the Scheme of Alternative Civil-Social Service (2004)

ammunition or unlawful violence or persons against whom criminal proceedings for the above are pending, cannot be considered under the legislative provisions for granting conscientious objector status.²⁰

Furthermore, according to the initial legislation, persons who had served for any period of time in Greek or foreign armed forces or security services could not be considered. However, after the legislation was amended in 2010, this provision applies only if they have served in armed forces or security services *after* they have adopted the beliefs said to prevent them from performing their military duties for reasons of conscience.²¹ Therefore, this amendment gave the opportunity for those who have changed beliefs to apply for conscientious objector status. However this applies only in case of previous service in armed forces or security services, but not in the cases mentioned above about shooting events, hunting, convictions or prosecutions for crimes, and so on.

Amnesty International's recommendation

- Amnesty International has recommended in the case of Greece the abolition of conditions which automatically disqualify applicants from being considered as conscientious objectors.²²

In arriving at this position, the organization took into account the following considerations:

- some of the disqualifying conditions (such as those related to hunting, shooting events and other activities related to the use of weapons) appear to be irrelevant to the issue of conscientious objection to military service;
- the fact that someone is merely prosecuted for a crime does not necessarily mean that they are guilty and the relevant provision appears to contravene the presumption of innocence;
- convictions for unlawful violence are not necessarily related to the use of guns and the use of lethal force;
- even in cases where someone has been convicted in the past, through a fair trial, for a crime related to the use of weapons/ammunition or lethal violence, an automatic disqualification would not take into consideration their right to change their beliefs since then.
- It is also worth noting that such disqualifying conditions appear to be based on a requirement that an individual seeking to be recognized as a conscientious objector is absolutely opposed to the use of lethal force in any circumstances, and therefore to participation in any military forces under any circumstances, whereas in fact someone might have a conscientious objection to enlist in a specific army or take part in a specific war because of its aims or the manner in which it is being waged (selective conscientious objection), while not holding an absolute objection to taking part in all wars, all armies or any use of lethal force in any circumstances whatsoever.
- Therefore, in addition to the standards noted in section A above relating to the freedom to change one's beliefs, Amnesty International's recommendation is based on the explicit recommendation of the OHCHR that at least certain disqualifying conditions be treated as rebuttable presumptions;²³
- the recommendation of the **Greek Ombudsman** concerning the abolition of automatic disqualifiers (see below).

Recommendations of Greek bodies

²⁰ Law 3421/2005, article 59, paras 3b and c.

²¹ Law 3421/2005, article 59, para 3a, as it stands today after replaced by article 78c, law 3883/2010.

²² Amnesty International, "Greece: A new law for conscientious objection – another opportunity lost?" Public Statement, 13 September 2010, para. 3, (in Greek).

²³ UN Office of the High Commissioner for Human Rights, Conscientious Objection to Military Service, New York and Geneva, 2012, Part II, Chapter E, 2. Formal requirements and conditions resulting in disqualification, p. 54.

- The **Greek Ombudsman**, already since 1999, has recommended the abolition of automatic disqualifiers in order to have a more flexible and realistic approach on a case by case basis.²⁴

C. PROCEDURES AND COMPOSITION OF THE BODY RESPONSIBLE FOR ASSESSING THE APPLICATIONS

Legislation and practice in Greece

The final decision on applications for granting conscientious objectors status is taken exclusively by one person, the (Alternate) Minister of National Defence²⁵ after a non-binding²⁶ recommendation of a five-member Special Committee consisting of two military officers, two university professors and one member of the State's Legal Council as president. The members of the Committee are appointed by a Joint Decision of the Minister of National Defence, along with the Minister of Economy and Finance and the Minister of Education.²⁷ The Committee can have a session when the members who are present are more than those absent,²⁸ which means with only three members present, and thus the three attending a particular session could comprise a majority of military officers.

In practice, the Committee does not summon baptised Jehovah's Witnesses having a certificate from their church, who are automatically granted conscientious objector status, only those citing other religious grounds or ideological (non-religious) grounds for their conscientious objection. This practice has been considered by the Greek Ombudsman as "a continuous practice of unequal treatment".²⁹

According to the GNCHR referring to official figures from 2007 to 2015: "While the percentage of recognition of conscientious objectors on religious grounds is consistently about 96% to 100%, the percentage of recognition of conscientious objectors on ideological grounds is usually around or even below 50%.³⁰

A person whose application has been rejected may appeal to the (Alternate) Minister of National Defence to change the decision (in practice, the appeal is examined by the same Committee, which recommends again to the Minister), and/or to the Council of State, that is the Supreme Administrative Court.

In 2016, the European Court of Human Rights judgment in the *Papavasilakis vs Greece* case³¹ found a violation of Article 9 of the ECHR (freedom of thought, conscience and religion) in the case of an applicant interviewed by a committee made up primarily of members of the armed forces. Specifically, the Committee had examined the case of the claimant in the presence of three – out of a total of five – members, two of whom were military officers, which resulted in them being the majority. The two civilian members who were absent were not replaced. The Court stressed that the independence of the members of the competent body constitutes one of the fundamental conditions for the effectiveness of the examination of a case of a conscientious objector. It also pointed out that in this case the fact that the final decision was taken by the Minister of National Defence does not afford the requisite guarantees of impartiality and independence, while

²⁴ Ombudsman, Special Report, "The scheme of alternative civilian-social service. Proposals of reform." (1999), Part I, Chapter 3, "The subsumption to the status of alternative civilian social service", (in Greek).

²⁵ Law 3421/2005, article 62 para.1

²⁶ According to the decision of the Minister of National Defence No Φ.420/79/81978/Σ.300 (Government's Gazette B 1854/2005), 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.

²⁷ Law 3421/2005, article 62 para. 2.

²⁸ Decision of the Minister of National Defence No Φ.420/79/81978/Σ.300 (Government's Gazette B 1854/2005), article 3, paragraph 2.

²⁹ Ombudsman, Special Report 2013, "Combating discrimination", p. 110. Available in Greek at <https://www.synigoros.gr/resources/docs/10-diakriseis.pdf>

³⁰ Greek National Commission for Human Rights, Submission to the quadrennial analytical report 2017 on conscientious objection to military service of the UN High Commissioner of Human Rights (February 2017), p. 6. See also Addendum, p. 13-14.

http://www.nchr.gr/images/pdf/apofaseis/antirisis_suneidisis/Submission%20of%20the%20GNCHR%20to%20the%20quadrennial%20analytical%20report%202017.pdf

³¹ European Court of Human Rights, Case of Papavasilakis v. Greece, (66899/14), 15 September 2016. Available at <http://hudoc.echr.coe.int/eng?i=001-166850>

the Council of State (the Supreme Administrative Court), does not examine the merits of the case, but only the lawfulness of the decision and is based on the assessments of the Special Committee.

Subsequent to this judgment of the European Court -- which also pointed out³² that the law appears to require equal representation between the military members and the representatives of civil society (the university professors) -- the Council of State, the Supreme Administrative Court of Greece, has found that the examination is problematic even when one of the two professors is absent (when both of military members are present), and in one such case annulled a relevant decision of the Alternate Minister of National Defence, after a recommendation made by a Committee of four members (two military officers, one professor and one member of the State's Legal Council as president).³³

In response to the ECtHR judgment, the government asserts that further instructions have been given to ensure that similar violations will be avoided in the future, specifically if certain members of the Committee are unable to attend a session.³⁴ However, up until the date of this submission there has been no amendment of the legislation. Even if the legislation had been amended in order for the Committee to have sessions only with its full composition, or only when there is an equal number of military members and university professors present, or in order to reduce permanently the number of military members to a single one, the entire procedure would still have been under the Ministry of National Defence, with the Minister taking the decision after recommendation of a not entirely civilian body.

Amnesty International's recommendation

- Amnesty International has called on the Greek authorities to ensure that, in line with the recommendation by the UN Human Rights Committee regarding Greece and its repeated expressions of concern about the Special Committee's composition, the assessment of applications for conscientious objector status be placed under the full control of civilian authorities (i.e. be transferred from the Ministry of National Defence) by a panel with a wholly civilian composition.

This recommendation is based on:

- recommendations specifically on Greece by the **UN Human Rights Committee**,³⁵ the **UN Special Rapporteur on freedom of religion or belief**,³⁶ and the **Commissioner for Human Rights of the Council of Europe**.³⁷
- further international standards and recommendations to other states by the **UN Human Rights Committee**,³⁸ the **UN Special Rapporteur on religious intolerance**³⁹ and its successor the **UN Special Rapporteur on freedom of religion or belief**,⁴⁰ the **Parliamentary Assembly of the Council of Europe (PACE)**,⁴¹ and the **Committee of Ministers of the Council of Europe**.⁴²

³² Ibid. paras. 59, 63.

³³ Council of State, judgement 1318/2017.

³⁴ DH-DD(2018)930: Communication from Greece.

³⁵ UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, (CCPR/C/GRC/CO/2), paras. 37-38.

UN Human Rights Committee, Concluding observations on the initial report of Greece, (CCPR/CO/83/GRC), 25 April 2005, para. 15.

³⁶ UN Economic and Social Council, Commission on human rights, Civil and political rights, including the question of religious intolerance, Addendum, Summary of cases transmitted to Governments and replies received, (E/CN.4/2006/5/Add.1), 27 March 2006, para. 139.

UN Special Rapporteur on freedom of religion or belief, Communication GRC 3/2016, 31 October 2016.

³⁷ 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.

³⁸ UN Human Rights Committee, Concluding observations on the sixth periodic report of the Russian Federation, (CCPR/C/RUS/CO/6), 24 November 2009, para. 23.

UN Human Rights Committee, Concluding observations on the third periodic report of Israel (CCPR/C ISR/CO/3), 3 September 2010, para. 19.

³⁹ Report submitted by Mr. Angelo Vidal d'Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986 (E/CN.4/1992/52), 18 December 1991, para. 185 (page 178).

⁴⁰ International Standards on freedom of religion or belief, I3k, <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/IstandardsI3k.aspx>

⁴¹ Council of Europe, Parliamentary Assembly, Resolution 337 (1967), Right of conscientious objection, b. Procedure, paras. 2.2, 2.3, 2.4 and 2.5.

⁴² Council of Europe, Committee of Ministers, Recommendation No. R (87) 8, regarding conscientious objection to compulsory military service, paras. 5-7.

Comments and recommendations of Greek bodies

- The **Ombudsman** has stated: “The personal interview as a means to ascertain reasons of conscience is controversial *per se*, insofar it submits an internal esprit to an examination of sincerity.”⁴³
- The **Greek National Commission for Human Rights** has repeatedly recommended: “The competent 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. [...] In any case, the decisions of rejection by the Committee for the Examination of Conscience should be fully reasoned and the composition of the Committee for the Examination of Conscience should be amended by adding another two civilian members, one from the Ministry of Interior and one from the Ministry of Health”.⁴⁴

Further regional standards

- The **European Parliament** has repeatedly pointed out that “no court or commission can penetrate the conscience of an individual” and has favoured the position that a declaration setting out the grounds should suffice for somebody to be recognized as a conscientious objector.⁴⁵

⁴³ Ombudsman, Special Report 2013, “Combating discrimination”, p. 110. Available in Greek at <https://www.synigoros.gr/resources/docs/10-diakriseis.pdf>

⁴⁴ GNCHR Observations on article 12 of the Bill of the Ministry of National Defence (20.1.2016), p. 5, para. 4, (in Greek).

Also: Submission of the GNCHR to the quadrennial analytical report 2017 on conscientious objection to military service of the UN High Commissioner of Human Rights (February 2017), p. 8.

Recommendations regarding the Scheme of Alternative Civil-Social Service (2001)

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), p. 25.

Recommendations regarding Conscientious Objectors and the Scheme of Alternative Civil-Social Service (2004), recommendations e and f.

⁴⁵ European Parliament, Resolution on conscientious objection, (1-546/82), 7 February 1983, as published in the Official Journal of the European Communities C 68, 14 March 1983, para. 3 (page 15). See also European Parliament, Resolution on conscientious objection and alternative service, (A3-15/89), as published in the Official Journal of the European Communities C291, 13 October 1989, para. A (page 123) and para. 4 (page 124).