

Additional regional human rights standards about conscientious objection

The Conscientious Objection Documentation Center (CODOCE – KETEAS) would like to draw the attention to a number of additional and already existing regional standards on the issue, that have not been included in the previous analytical report as well as some newly adopted ones, concerning two areas: that of fair independent and impartial procedures to consider applications for conscientious objection to military service and the one of non-punitive, non-discriminatory duration of alternative service.

1. Fair, independent and impartial procedures to consider applications for conscientious objection to military service

New development

In a recent case ¹, the European Court of Human Rights (ECtHR) examined the issue of the procedures to consider the applications for conscientious objector status, and especially that of the composition of the body conducting the assessment of such applications.

The Court considered mainly that a Board made up primarily of servicemen does not guarantee procedural efficiency and that 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.

Additional regional standards

The Conscientious Objection Documentation Center (CODOCE – KETEAS) would also like to draw the attention to a number of additional and already existing regional standards on the issue, that have not been included in the previous analytical report and which go beyond the standard set by the ECtHR in the *Papavasiliakis V Greece* case.

More specifically:

a) The **Parliamentary Assembly of the Council of Europe** has stated that:
“2. Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, **the decision-taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality.** [emphasis added]
3. Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, its decision shall be subject to control by at least one other administrative body, composed likewise in the manner prescribed above, and subsequently to the control of at least one independent judicial body.
4. The legislative authorities should investigate how the exercise of the right claimed can be made more effective by ensuring that objections and judicial appeals have the effect of suspending the armed service call-up order until the decision regarding the claim has been rendered.
5. Applicants should be granted a hearing and should also be entitled to be represented and to call relevant witnesses.”²

b) The then called **Special Rapporteur on religious intolerance**, has set as

¹ CEDH, *Affaire Papavasiliakis v. Grèce*, 66899/14, 15.9.2016.

² Council of Europe, [Parliamentary Assembly, Resolution 337 \(1967\)](#), Right of conscientious objection, paras. b2, b3, b4 and b5.

international standard the following:

“Conscientious objectors should be given full information about their rights and responsibilities and about the procedures to be followed when seeking recognition as conscientious objectors, bearing in mind that application for the status of conscientious objector has to be made within a specific time frame. The decision concerning their status should be made, when possible, by an impartial tribunal set up for that purpose or a by (sic) regular civilian court, with the application of all the legal safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent, civilian judicial body. **The decision-making body should be entirely separate from the military authorities** and the conscientious objector should be granted a hearing, and be entitled to legal representation and to call relevant witnesses.”³ [emphasis added]

This standard is nowadays included in the international standards of the **Special Rapporteur on freedom of religion or belief**.⁴

Note: It is obvious that the an “independent, civilian judicial body” examining the appeals, as well as a “regular civilian court” at first instance, are bodies entirely separate from the military authorities. Therefore there would be no need to include the phrase “The decision-making body should be entirely separate from the military authorities”. Consequently it is obvious that this phrase refers to the “impartial tribunal set up for that purpose” at first instance and was included in order to guarantee its civilian nature. Furthermore, the Special Rapporteur seems to largely follow the standards of the Parliamentary Assembly of CoE which guarantee the civilian nature of the decision-making body at first instance.

c) **The European Parliament:**

“3. Points out that no court or commission can penetrate the conscience of an individual and that a declaration setting out the individual's motives must therefore suffice in the vast majority of cases to secure the status of conscientious objector.”⁵

Subsequently the **European Parliament** has stated:

“whereas no court and no committee can examine a person's conscience”, [...]“4. Urges that, in order to be recognized as a conscientious objector, a declaration setting out the individual's motives should suffice in order to obtain the status of conscientious objector”.⁶

2. Non-punitive, non-discriminatory duration of alternative service

New development

The **UN Human Rights Committee**, examining the case of Austria where the alternative civilian service is 50% longer than the military service (9 months compared to 6 months)⁷, has noted “that the length of the civilian alternative service to military service for conscientious objectors is longer than military service and may be punitively long if not based on reasonable and objective grounds”,

³ 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. [Can be accessed from: <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>].

⁴ International Standards on freedom of religion or belief, I3k, <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/IstandardsI3k.aspx>

⁵ European Parliament, Resolution on conscientious objection, (1-546/82), [known as Macciocchi Resolution], 7 February 1983, as published in the Official Journal of the European Communities [C68](#), 14 Μαρτίου 1983, para. 3 (page 15).

⁶ European Parliament, Resolution on conscientious objection and alternative service, (A3-15/89), [known as Schmidbauer Resolution], 13 October 1989, as published in the Official Journal of the European Communities [C291](#), 20 November 1989, para. A (page 123) and para. 4 (page 124).

⁷ UN Human Rights Committee, List of issues in relation to the fifth periodic report of Austria, Addendum, Replies of Austria to the list of issues, ([CCPR/C/AUT/O/5/Add.1](#)), 4 August 2015, para. 139.

suggesting that in this case there would be a violation of Articles 18 and 26 of the ICCPR. Subsequently it encouraged the State Party “to ensure that the length of service alternative to military service required for conscientious objectors is not punitive in nature”.⁸

This new position of the Human Rights Committee has slightly advanced and made more clear a position that the Committee had already taken many years ago in the case of Poland⁹, where it has stated that: “15. The Committee notes that the duration of alternative military service is 18 months, whereas for military service it is only 12 months (arts. 18 and 26).

The State party should ensure that the length of alternative service to military service does not have a punitive character.” (a position which has been omitted from the previous analytical report).

These recommendations made by Human Rights Committee in the case of Poland and especially in the case of Austria prove that the limit of 50% additional time **does not guarantee** a non-punitive and non-discriminatory alternative civilian service. Even if this limit is considered sufficient (by the European Committee of Social Rights) in order to guarantee compliance with the European Social Charter, it is not necessarily sufficient (according to the UN Human Rights Committee) in order to guarantee compliance with the ICCPR.

Additional regional standard

The **European Parliament** has repeatedly stated that alternative service should not be longer than military service. In 1993 it has stressed “that an alternative civilian service should be provided for, of the same length as military service, so that it is not seen as a sanction or deterrent”.¹⁰ In 1994 it called “on the Member States to ensure that compulsory military service and civilian service performed at institutions which do not come under the supervision of the Defence Ministry are of the same length, pursuant to paragraph 51 of its aforementioned resolution of 11 March 1993 on respect for human rights in the EC”.¹¹ In 2003, it called specifically Greece “to introduce forms of alternative service which do not last longer than compulsory military service”.¹²

⁸ UN Human Rights Committee, Concluding observations on the fifth periodic report of Austria, ([CCPR/C/AUT/CO/5](#)), 3 December 2015, paras. 33-34.

⁹ UN Human Rights Committee, Concluding observations of the Human Rights Committee, POLAND, [fifth periodic report of Poland], ([CCPR/CO/82/POL](#)), 2 December 2004, para. 15.

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, para. 51, as it has been published in the Official Journal of the European Communities C 115, 26 April 1993, [Minutes of the sitting of Thursday, 11 March 1993](#), page 183.

¹¹ European Parliament, Resolution on conscientious objection in the Member States of the Community, (A3-0411/93), 19 January 1994, para. 9, as it has been published in the Official Journal of the European Communities C 44, 14 February 1994, [Minutes of the sitting of Wednesday, 19 January 1994](#), page 105.

¹² European Parliament, [Resolution on the situation concerning basic rights in the European Union \(2001\) \(2001/2014\(INI\)\)](#), para 42, text adopted on 15 January 2003.