ÖZET

AB ÜLKELERİNDE VE TÜRKİYE'DE VİCDANİ RET HAKKI
Yazıcıol Aslı

SOSYAL BİLİMLER ENSTİTÜSÜ AB KAMU HUKUKU VE AB ENTEGRASYONU
YÜKSEK LİSANS PROGRAMI
Tez Danışmanı: Prof. Emmanuel MAGANARIS

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Avrupa Birliği'ne üyelik sürecinde, aday ülkelerin üyelik için karşılaması gereken kriterler Kopenhag Zirvesi'nde somut bir şekilde belirlenmiş olup, literatüre de Kopenhag Kriterleri olarak geçmiştir. Buna göre, siyasal açıdan aday ülkenin hukukun üstünlüğünü kabul etmiş, demokrasini sürekliliğini sağlayacak sağlam kurumlara sahip, insan haklarına saygılı ve azınlıkları koruyan bir devlet politikası izlemesi gerekmektedir. Bu bağlamda, aday ülke konumunda olan Türkiye'de insan haklarına saygı duyulması ve bunların güçlendirilmesi hem adaylık süreci bakımından önemli, hem de demokratik toplumun bir gereğidir. Bu nedenle bu tezde, AB ülkelerinin hemen hepsinde tanınmış olup, Türkiye'de tanınmamış olan, ve Avrupa İnsan Hakları Sözleşmesi m. 9'da tanınmış olan düşünce, din ve vicdan özgürlüğü kapsamında değerlendirilmesi gereken vicdani ret hakkı ele alınmıştır. Vicdani ret hakkı bir kimsenin, politik, dini, felsefi ve benzeri düşünce ve kanaatleri sebebiyle askerlik yapmayı ya da askerlik hizmetinin herhangi bir safhasında yer almayı reddetmesidir.

Birinci bölüm olan giriş bölümünde, kısaca tez konusunun neden seçildiği ve Türkiye'de vicdani ret hakkının tanınıp tanınmayacağı sorunsalı üzerinde durulacağı açıklanmıştır. İkinci bölümde, vicdani reddin tanımına, vicdani ret hakkında genel bilgilere ve vicdani ret hakkının tarihçesine yer verilmiştir. Üçüncü bölümde Avrupa Birliği Parlamentosu'nun vicdani ret hakkı kapsamında yayınladığı önergeler üzerinde durulmuştur. Dördüncü bölümde, AB ülkelerinin her birinde zorunlu askerlik hizmeti, askerlik hizmeti yerine sivil kamu hizmeti olup olmadığı ve vicdani ret hakkının tanınmış olup olmadığı incelenmiştir. Beşinci bölümde Türkiye'de vicdani ret hakkı, vicdani retlerini açıklayanların kronolojik sıralaması, tarihçe, zorunlu askerlik konularına geniş olarak yer verilmiştir. Altıncı bölümde, Türkiye'de vicdani retlerini ilan eden vicdani retçilerin ve bu hakkı savunanların bundan sonra yaşadıkları süreçler anlatılmıştır. Yedinci ve son bölümde ise tartışma ve sonuç bölümüne yer verilmiştir. Bu bölümde, askerlik hizmetinin Türk halkının gözündeki önemi ve devlet politikası olarak askerlik hizmetine verilen önem vurgulanmış, Türkiye'de vicdani ret hakkının tanınıp tanınmayacağı tartışılmıştır.

Anahtar Kelimeler: zorunlu askerlik, askerlik hizmeti, sivil hizmet, asker kaçağı, insan hakları

ABSTRACT

THE RIGHT TO CONSCIENTIOUS OBJECTION IN EU MEMBER STATES AND TURKEY
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In the process of candidacy to European Union, having been respectful to human rights is extremely important and one of the main criteria for joining the EU, especially if we consider the EU's perspective and sensitivity on human rights issues. Any country seeking membership of the European Union (EU) must conform to the conditions set out by Article 49 and the principles laid down in Article 6(1) of the Treaty on European Union. Relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995. To join the EU, a new Member State must meet three criteria: mainly political, economic areas and community acquis. The political criteria is; stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The role of human rights should not be ignored for the candidate countries to join the EU and for a democratic society ,too. Therefore, the subject of this dissertation is the right to conscientious objection which must be considered as a part of article 9 of the European Convenntion On Human Rights, regulating the freedom of thought, conscience and religion. The right to conscientious objection is recognised in almost every EU member state contrary to Turkey. A conscientious objector is an individual whose personal thoughts and beliefs are inconsistent with military service, or sometimes with any duty in the armed forces.

In the first part, the reasons why such a subject was choosen and whether inTurkey the right to conscientious objection may be recognised or not was briefly expalined. In the second part, general information, definition and history of the conscientious objection were described. In the third part, the resolutions having been published by the EU Parliement were cited. In the fourth part, the status of the right to conscientious objection in every Member State was analysed. In the fifth part, the right to conscientious objection in Turkey, the chronology of the conscientious objectors, history and conscription were deeply examined. In the sixth part, the cases concerning the conscientious objectors and the process they had to dealt with after having been declared their objection were indicated. In the seventh part, the high importance of the military duty in the eye of the Turkish society and the strict governmental policy as to the military service were explained and the quarry whether the right to conscientious objection might be recognised or not in Turkey was discussed.

Key Words: conscription, military service, alternative civilian service, human rights

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1. INTRODUCTION

In the process of candidacy to European Union, having been respectful to human rights is extremely important and one of the main criteria for joining the EU, especially if we consider the EU's perspective and sensitivity on human rights issues. Any country seeking membership of the European Union (EU) must conform to the conditions set out by Article 49 and the principles laid down in Article 6(1) of the Treaty on European Union. Relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995. To join the EU, a new Member State must meet three criteria: mainly political, economic areas and community acquis. The political criteria is; stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Therefore one can not ignore the role of human rights to join the EU.

In contrast with what has been mentioned above, Turkey has a bad reputation on human rights issues and been the violating human rights. The annual development reports of the EU Commission regarding Turkey's candidacy process have emphasized several times that, the infringement of human rights should have been ceased and the government should take necessary action for the remedy of the current situation.

The high importance of the human rights in the Community's perspective and Turkey's being unable to prevent the violations of human rights as much as necessary, are the motives that inspired me to investigate the right to conscientious objectiona as a human right that is not recognised in Turkey.

Regarding Turkey's bad reputation concerning the human rights issues and failure to take necessary action to exercise them, in this dissertation the right to conscientious objection as a human right is focuesd on which Turkey has not recognised yet contrary to the inter-governmental agreements. Also, the present situation of the EU Member States is compared with Turkey, regarding the compulsory military service and the recognition of the right to conscientious objection. Moreover, examples of some

significant cases concerning the right to consicentious objection are given from Turkey which are very impressive to indicate the point of view of theTurkish government on that issue. Finally, in the conclusion section, civil military relations in Turkey are analysed to have a better understanding of why the armed forces play a great role in the political life of our country and the answer is to be found to the question whether the right to consicentious objection might be recognised or not in Turkey. While doing so, also the practice and the current position of the conscientious objectors in Turkey is focused on.

During the research process the official web sites of the War Resisters Association, Amnesty International, European Bureaou for Conscientious Objection was examined and some of the reports published on these web sites were cited. Also the books of Ayşegül Altınay "The myth of the military-nation: militarism, gender, and education in Turkey" Altınay, Ayşe Gül and Bora, Tanıl, "Ordu, militarizm ve milliyetçilik" Modern Türkiye'de Siyasi Düşünce: Milliyetçilik" and the articles of Ayşe Nilüfer Narlı such as "Governance and The Military: Perspectives for Changes in Turkey", "Aligning Civil Military Relations" "Transformation of the Turkish Military and Path to Democracy" , "Nadire Mater, Mehmedin Kitabı"were examined.

The right to conscientious objection is described within its historical development and the coscription and the right to conscription in EU Member States are handled.Consription in Turkey, the right to conscientious objection and the situation of the conscientious objectors in Turkey are also handled in details. Cases regarding the conscientious objection are mentioned to make a beter understanding on the issue. Finally in the conclusion section, the historical roots of military in Turkey, the point of view to the armed forces and the influences of the EU reforms as to the political life in Turkey and how the EU candidacy process played a role in the military's intervening in the political affairs of our country. Then a comparison between Greece and Turkey is made regarding the recognition of the right to conscientious objection and the status in both of the countries to answer the question whether the right to consceintious objection is to be recognised in Turkey.

2. DEFINITION AND GENERAL INFORMATION[1]

A conscientious objector is an individual whose personal thoughts and beliefs are inconsistent with military service, or sometimes with any duty in the armed forces. Conscientious objectors have special legal status in some countries, which make an increase in the duration of their conscription duties. For example, Sweden allows conscientious objectors to choose a service in the "weapons-free" branch, such as an airport fireman, nurse or telecommunications technician. Some may also refuse such service as they feel that they still are a part of the military organization. The grounds for their refusal to serve are varied. Some conscientious objectors do refuse, because of religious reasons — particularly, the members of the historic peace churches are pacifist by doctrine, and Jehovah's Witnesses, while not strictly speaking pacifists, refuse to take part in the armed forces for the reason that they believe Christians should be neutral in worldly disputes and they follow God's command at Isaiah 2:4 to " *Not learn war anymore*" . Other objections may originate from a deep sense of responsibility toward humanity as a whole, or from simple denial that any government should have that kind of moral authority.

When their beliefs brought to actions that conflict with their society's legal system or government, historically, many conscientious objectors have been executed, imprisoned, or punished. From nation to nation, the legal definition and status of conscientious objection has modified over the years. Religious beliefs were a starting point in many nations for legally granting conscientious objection status. Acceptable grounds for granting conscientious objector status have become broadened in many countries.

There are various views about the degree of pacifism in the early Christian Church. Within the Roman Empire avoiding military service was not a problem, because the legions and other armed forces were largely composed of volunteers. Some legionaries who converted to Christianity were able to reconcile warfare with their Christian beliefs

[1] www.historylearningsite.co.uk./conscientiousobjectors.htm

which is formalized in the Just War theory. This option became more normal after Theodosius I made Christianity an official religion of the Empire. In the 11th century, there was a further shift of opinion in the Latin-Christian tradition with the crusades, strengthening the idea and acceptability of Holy War. Objectors became a minority.

Feudalism (an economic, political, and social system in medieval Europe, in which land was held by vassals in exchange for military and other services given) imposed various forms of military obligation, before and after the crusading movement (which was composed of volunteers). But the demand was to send someone rather than any particular person. Those who did not wish to fight, for whatever reason, were left alone if they could pay or persuade someone else to go.

Because of their conscientious objection to take part in military service, whether armed or unarmed, Jehovah's Witnesses (Dharmic religions are a group of religions that originated from Hinduism. There are currently four Dharmic religions: Hinduism, Buddhism, Jainism, Sikhism) have often faced imprisonment or other penalties. In Greece, for instance, before the introduction of alternative civilian service in 1997, hundreds of Witnesses were imprisoned, some for three years or even more for their refusal. In Armenia, young Jehovah's Witnesses have been imprisoned (and remained in prison) because of their conscientious objection to military service. In Switzerland, virtually every Jehovah's Witness is exempted from military service. The Finnish government exempts Jehovah's Witnesses from the draft completely. In 1996 the May 1 Watchtower reversed its stance and "civilian service" is now accepted.

For believers in Dharmic Religions (Dharmic religions are a group of religions that originated from Hinduism. There are currently four Dharmic religions: Hinduism, Buddhism, Jainism, Sikhism) , the opposition to warfare may be based on either the general idea of ahimsa, non-violence, or on an explicit prohibition of violence by their religion, e.g. for a Buddhist, one of the five precepts is "Pānātipātā veramaṇi sikkhāpadam samādiyāmi," or "I undertake the precept to refrain from destroying living creatures," which is in obvious opposition to the practice of warfare. The 14th Dalai Lama, the highest religious authority in Tibetan Buddhism, has stated that war "should be relegated to the dustbin of history." On the other hand, many Buddhist sects,

especially in Japan, have been thoroughly militarized, warrior monks (*yamabushi* or *sóhei*) participating in the civil wars. Hindu beliefs do not go against the concept of war, as seen in the Gita. Both Sikhs and Hindus believe war should be a last resort and should be fought to sustain life and morality in society.

Some practitioners of pagan religions (, particularly Wicca, may object on the grounds of the Wiccan rede, which states "An it harm none, do what ye will" (or variations). The threefold law may also be grounds for objection.

Some conscientious objectors are unwilling to serve the military in any capacity, while others accept noncombatant roles. Alternatives to military or civilian service include serving an imprisonment or other punishment for refusing conscription, falsely claiming unfitness for duty by feigning an allergy or a heart condition, delaying conscription until the maximum drafting age, or seeking refuge in a country which does not extradite those wanted for military conscription. Avoiding military service is sometimes labeled draft dodging, particularly if the goal is accomplished through dishonesty or evasive maneuvers. However, many people who support conscription will distinguish between "bona fide" *conscientious objection* and *draft dodging*, which they view as evasion of military service without a valid excuse. (A **draft dodger**, **draft evader** or **draft resister**, is a person who avoids ("dodges") or otherwise violates the conscription policies of the nation in which he or she is a citizen or resident, by leaving the country, going into hiding, attempting to fraudulently obtain conscientious objector status, or by open resistance (civil disobedience).)

2.1. HISTORY

The first European Institution, indeed the first international organization of states, to formally recognize conscientious objection to military service was the **Parliamentary Assembly of the Council of Europe.**

In September 1965 Amnesty International(an international non-governmental organization which defines its mission as "to conduct research and generate action to prevent and end grave abuses of human rights and to demand justice for those whose rights have been violated." Founded in the UK in 1961, AI draws its attention to human rights abuses and campaigns for compliance with international standards.

raised with the Council the question of conscientious objection in relation to Article 9 (freedom of conscience, thought and religion) of the European Convention on Human Rights. The Council asked the Max Planck Institute for Comparative Public Law and International Law, Germany, to prepare a study of the situation in the member states, as a result of which the Consultative Assembly on 26 January 1967 adopted Resolution 337, including the following 'basic principles:

"*Persons liable to conscription for military service who, for reasons of conscience or profound conviction, arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service. This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law states which are guaranteed in Article 9 of the European Convention on Human Rights."*

The concept of conscription - compulsory military service by all able-bodied males on behalf of the state - dates back to mediaeval obligations to monarchs and overlords, and then was formalized as a permanent institution in the Revolutionary France of 1793, whence it spread throughout continental Europe during the 19th century. The international recognition of the right to conscientious objection in 1967 is, by contrast, a relatively recent phenomenon. European recognition of conscientious objection began to

emerge at the beginning of the 20th century and became more widespread after the Second World War.

Conscientious objection, however, has historical roots going back much further, and linked with the major religious movements which have left their mark on the history of Europe.

Countries with a Protestant tradition, with the exception of Switzerland, were the first to make provision for conscientious objectors. Exemptions from service were granted in Holland as early as 1549 and 1580. In 1757 a British law allowed exemption from compulsory militia service, and in the early 19th century Napoleon granted exemption to Protestant Anabaptists.

The Protestant countries of continental Northern Europe were the first to incorporate this right into their legislation. Norway did so in 1900, Denmark in 1917 (it was not involved in the First World War), Sweden in 1920, the Netherlands even wrote it into their constitution in 1922, and Finland enacted it in 1931.

Anglo-Saxon tradition stood further apart. The former militia system in Britain fell into disuse in the early 19th century, and the continental system of universal male conscription was not adopted. The former British colonies, such as the USA, Canada, Australia, New Zealand, likewise did not adopt universal conscription, which may be contrasted with the former Spanish colonies of Latin America, where conscription became, and largely remains, the norm.

In 1916 the British government felt constrained to introduce military conscription, because voluntary recruitment could not keep pace with the ever-increasing casualties of the First World War. It was acknowledged, however, to be an extremely controversial measure, and it was seen essential, as a compromise, to incorporate provision for conscientious objection from the beginning. The whole island of Ireland, then part of the United Kingdom, was exempted from conscription, for fear of a popular revolt. Conscription, with the right of objection, was reintroduced in Britain from 1939 to 1960. The issue in the UK has been whether conscription should exist at all, in contrast

to continental Europe, where conscription has traditionally been taken for granted, and the issue has been controversy over conscientious objection.

The Catholic countries of Europe - apart from Ireland, where conscription has never been adopted - took half a century longer than their Protestant counterparts to recognize the right to object. France and Luxembourg recognized it in 1963, Belgium in 1964, Italy in 1972, and Spain in 1976, after the death of Franco (confirmed in the new constitution of 1978). Portugal included the right in its new 1976 constitution, following the "carnation revolution". The religiously "mixed" country of West Germany had the issue decided for it by the occupying Allies, who insisted, at British instigation, upon recognition of conscientious objection being incorporated into the post-war re-introduction of conscription in 1955.

The difference between countries with Protestant and Catholic traditions may be explained by the political consequences of different theological perceptions of the role of the faithful, and therefore of the individual citizen. Under Protestantism, Christians see themselves as having a direct relationship with God, to whom they are individually and personally responsible, under conscience, for their actions. In Catholicism, the Church seeks to be the mediator with God, and to take corporate responsibility, by papal decree, for moral issues.

Protestants, moreover, include a number of different churches, each with its own characteristics derived from the conscientious belief in a particular view of doctrine and organization. These include, especially, the historic 'peace' churches - the Anabaptists, the Mennonites, the Nazarenes, the Dukhobors, and the Quakers. Religious freedom and the freedom of conscience are the foundations, which guarantee the equilibrium of these societies.

Catholicism, on the other hand, has imbued societies where it is the dominant religion with a more submissive attitude towards the hierarchy and dogma of the Church. Thus, Pope Pius XII proclaimed, in his 1956 Christmas message, that a Catholic citizen "cannot invoke his or her own conscience in order to refuse to render the services and perform the duties established by law". This did not, however, prevent certain young

Catholics, such as the Belgian Jean van Lierde[2], from declaring themselves conscientious objectors. It may be that such a stand influenced the Second Vatican Council, in 1962-63, to pronounce that "it seems equitable that the laws should provide with humanity for those who, for reasons of conscience, refuse to use weapons, provided, however, that they agree to serve the human community in another way".

A special case in Europe is that of Greece, which delayed until 1997 before enacting a law allowing alternative civilian service for religious conscientious objectors, after many calls from the European Parliament and other international pressure. Even then, the law applies only to members of the Orthodox Church, which has never supported conscientious objectors - not surprisingly, in view of the close links between Greek nationalist fervor, the Greek state and the Greek Orthodox Church.

Conscientious objection arising from non-religious - humanist, socialist, anarchist - motives developed in Europe from the early 20th century, particularly in the aftermath of World War I. It found concrete expression in the establishment in 1921, at Bilthoven, Netherlands, of the War Resisters' International (WRI), with its founding Declaration, "War is a crime against humanity. We are therefore determined not to support any kind of war and to work for the abolition of all causes of war". The WRI (named in conscious imitation of the Socialist and Communist Internationals) soon began to collaborate with another international organization, this time with Protestant motivation and ecumenist aims, the International Fellowship of Reconciliation (IFOR), founded in 1919, also at Bilthoven.

Two Belgian nonviolent anarchists, Lio Campion and Hem Day (pseudonym for Marcel Dieu) caused a great stir in 1933 when they were tried for refusing conscription, and contributed to increased commitment in humanist circles to recognition of conscientious objection. This was the background to a common parliamentary struggle by humanists and Christians when Jean van Lierde began his conscientious objection in 1949, which culminated in legalization for conscientious objection in 1964. The freethinker Louis

[2] http://www.wri-irg.org/news/2006/vanlierde.htm; Jean Van Lierde, Honorary President of the European Bureau for Conscientious Objection, and founder of this European CO network in 1986, who died in Brussels on 15 December 2006, was the main figure behind the long political struggle for the recognition of the right to CO in Belgium, which resulted in 1964 in the law creating alternative civilian service.

Lecoin[3] underwent a long hunger strike to bring about recognition of conscientious objection in France in 1963.

In the former Soviet bloc of Central and Eastern Europe conscientious objection was not allowed. The needs of a totalitarian militarist state were incompatible with recognition of freedom for citizens expressing opinions at variance with official doctrine, as was the case with conscientious objectors.

There had originally been a decree of the Council of People's Commissars in Soviet Russia, signed by Lenin [4]on 4 January 1919, which established conscientious objection for those with a religious motivation, but under Stalin it ceased to be applied from 1929-30 onwards. Exceptionally, conscientious objection was recognized in East Germany by a decree of 7 September 1964, which allowed the performance of unarmed military service. The Protestant Church, often the focus of resistance to East German state oppression, was undoubtedly influential in this decision.

Since the dismantling of the Soviet bloc, Poland (1988), Hungary (1989), Lithuania (1990), Estonia (1991), Czech Republic and Slovakia (1992), Ukraine (1996), Bulgaria (1998) have begun to implement a right to conscientious objection.

To return to international pronouncements: the Human Rights Commission of the UN first formally recognized the right to conscientious objection on 10 March 1987, and appealed to states to implement it. In a later resolution of 22 April 1998 the Commission welcomed "the fact that some states accept claims of conscientious objection as valid without inquiry". This was in line with a European Parliament resolution of 7 February 1983, which acknowledged "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". West Germany acted upon such a principle for a short

[3] http://en.wikiquote.org/wiki/Louis_Lecoin; was born September 30, 1888 and died, age 83 on June 23, 1971. He was a French antimilitarist, pacifist, anarchist.

[4] http://en.wikipedia.org/wiki/Vladimir_Lenin; **Vladimir Ilyich Lenin** was a Russian revolutionary, a communist politician, the main leader of the October Revolution, the first head of the Russian Soviet Socialist Republic and from 1922, the first *de facto* leader of the Soviet Union. He was named by Time Magazine as one of the 100 most influential people of the 20th century.[1] His contributions to Marxist theory are commonly referred to as Leninism.

period, but the only state in Europe now putting it into effect is Sweden, where there is a free choice for all young men between military service and civilian service.

The question of attempting to test the validity of a particular conscientious objection serves to highlight the fact that legal provision for objection by no means prevents hardships and injustice. Although Britain can claim some credit for refusing to bring in conscription without simultaneous provision for conscientious objection, almost a third of objectors in the First World War - 6000 out of 16000 - ended up in prison because of the way the system was administered. Injustices in other countries have included the running of tribunals by the military, with an obvious in-built bias, putting 'alternative service' schemes under the control of the military, and setting the period of alternative service up to twice as long as military service. At the other extreme, conscientious objectors in Germany (including the annexed Austria) were executed during the Second World War, and as late as 1949 two objectors were executed in Greece.

The Council of Europe Parliamentary Assembly returned to the issue of objection to military service in Resolution 1518 of 23 May 2001, recommending that the right of conscientious objection be formally incorporated into the European Convention on Human Rights. A particular factor influencing the Council was that five member states, Albania, Armenia Azerbaijan, Macedonia and Turkey had no provision at all for conscientious objection, and two others, Cyprus and Russia, had no effective provision.

Real liberty of conscience is to be gained only by the abolition of military conscription. In Europe, apart from Ireland, where it has never existed (not even in Northern Ireland), and Britain, where it has been an emergency measure only, conscription has now been abolished in Luxembourg, Belgium the Netherlands and Spain, and is being phased out in France and Italy.

2.1.1. History of Conscientious Objectors' Day

International Conscientious Objectors' Day is closely linked to the International Conscientious Objectors' Meeting (ICOM). Between 1981 and 1997, ICOM was organised every year by groups affiliated to War Resisters' International[5]. It was held in the Netherlands, Spain, France, Slovenia, Austria, Hungary, Turkey, Colombia, and Chad, among others. While in the first years the focus was on the exchange of ideas and international networking among active conscientious objectors, later an additional objective was added. In countries where the situation of conscientious objectors was particulary difficult (and in some cases still is), the international presence of activists lead to a strengthening of the COs living in the country and their initiatives. Not only the strategy of conscientious objection was developed, but on a very practical level the importance of the group in the country itself was increased. Unfortunately there was no such meeting for years now.

ICOM, in which regularly 100 activists from more than 20 countries participated, forms the background of the International Conscientious Objectors' Day. For the first time ICOM 1985 decided to use 15 May, and to develop a focus for action on conscientious objection. This was meant to raise awareness for the difficult situation of conscientious objectors in specific countries or for thematical links on the international level. Focus countries were Greece (1986), Yugoslavia (1987), Poland (1988), South Africa (1989), Spain (1990), Turkey (1992), former Yugoslavia (1993), Colombia (1995). There were thematic focusses too: forced service for women (1991), and asylum for women and men who refused military service or deserted from the army (1993). In 2001, the War Resisters' International Council Meeting decided to focus on the situation of conscientious objectors and deserters in Angola. The focus for 2002 will be the Balkans region.

Although ICOM didn't meet for years, 15 May is establised as a joint day of action. In many places groups refer to 15 May in their work on conscientious objection. At the same time public meetings, vigils, demonstrations, actions, seminars, campaigns and

[5] http://en.wikipedia.org/wiki/War_Resisters%27_International; **War Resisters' International** or **WRI** is an international anti-war organization with members and affiliates in over thirty countries. Its headquarters are in London, UK.

may other activities are taking place in many parts of the world. Although nowadays many groups use the day for their own specific issue on conscientious objection, and there is only a limited joint focus, it is still a day which highlights that the issue of conscientious objection is not a national, but an international issue, and that international networking provides the special strength of the conscientious objectors' movement.

3. RESOLUTIONS OF THE EU PARLIAMENT REGARDING THE CONSCIENTIOUS OBJECTION

In order to determine whether conscientious objection as a human right, it has to be legally recognised by either national or international legislative bodies. As the scope of this dissertation is to look into the right to conscientious objection in EU Member States, the legislation of the EU Institutions in that regard should be reviewed.

With a meeting at the Turkish Delegation to the European Union in Brussels on the occasion of the Annual General Meeting in February 2006, the European Bureau for Conscientious Objection started its campaign for the recognition of the right to conscientious objection according to the standards set out by the Council of Europe, United Nations, the European Parliament and other international bodies in this candidate country for the European Union.

The EBCO Turkey Campaign will focus on European institutions - the European Parliament, the Council of Europe, the European Commission - to protect human rights including Article 10 of the EU Charter for Fundamental Rights[6], which recognises the right of conscientious objection in all EU member states. This Charter has been signed by the Turkish government in 2004.

The EBCO Turkey Campaign intends to build on local partnership including lawyers associations, human rights defenders and organisations of conscientious objection and seeks the dialogue with the Turkish authorities on this issue.

Here you can find resolutions dealing with conscientious objection passed by the EU-Parliament.

[6] http://www.europarl.europa.eu/charter/pdf/text_en.pdf; EU Charter of Fundamental Rights, Article 10/2: "The freedom of consciense is recognised in accordance with the national laws governing the exercise of this right."

3.1. THE MACCOCCHI RESOLUTION

3.1.1. Resolution of 7 February 1983 on conscientious objection

The European Parliament,

a) having regard to Article 9 of the European Convention on Human Rights, which guarantees the right to freedom of thought conscience and religion,

b) having regard to Resolution 337 (1967) and Recommendation 816 (1977) of the Consultative Assembly of the Council of Europe on the right of conscientious objection,

c) having regard to the laws of the Member States of the European Community regarding the right of conscientious objection,

d) having regard to the case law of the Court of Justice of the European Communities and the Joint Declaration of Parliament, Council and Commission in which these institutions stressed the prime importance they attach to the protection of fundamental rights as derived in particular from the European Human Rights Convention,

e) having regard to motions for resolutions Doc. 1-796/80, Doc. 1-803/79 and Doc 1-244/80,

f)having regard to Petitions Nos 14/80, 19/80, 26/80 and 42/80,

g) having regard to the report of the Legal Affairs Committee and the opinion of the Political Affairs Committee (Doc. l-546/82),

1. Recalls that the right to freedom of thought, conscience and religion is a fundamental right;

2. Notes that protection of freedom of conscience implies the right to refuse to carry out armed military service and to withdraw from such service on grounds of conscience;

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;

3.2. THE SCHMIDBAUER RESOLUTION

3.2.1. Resolution of 13 October 1989 on conscientious objection and alternative civilian service

The European parliament,

a) having regard to Petitions Nos. 81/85, 95/86, 260/87, 349/68, 495/88,. 510/88 and 519/88,

b) having regard to the Macciocchi report (Doc. 1-546/82) on conscientious objection and to the fact that close on six years after adoption of the resolution of 7 February on conscientious objection (OJ No. C 68, 14.3.1983, p. 14) no initiative has been taken on these lines either by the governments of the Member States or by the Commission,

c) having regard to recommendation No R(87)8 of the Committee of Ministers of the Council of Europe regarding conscientious objection to compulsory military service adopted by the Committee of Ministers on 9 April 1987 at the 406th meeting of the Ministers' Deputies,

d) having regard to Written Question No. 2830/86 by Mrs. Dury and others to the Council on conscientious objection (OJ No. C 117, 4.5.1987, p. 44),

e) having regard to Written Question No. 1649/66 by Mr Boesmans to the Commission on the situation of conscientious objectors in Greece (OJ No. C 133, 18.5.1987, p. 28),

f) having regard to Written Question No. 1650/86 by Mr. Boesmans to the Commission on the situation of conscientious objectors in Belgium (OJ No. C 133, 18.5.1987, p. 28),

g) having regard to Articles 100 (approximation of laws), 7 (prohibition of discrimination on grounds of nationality), 48(2) (free movement of persons), 50 (exchange of young workers) and 117 and 118 (common social policy) of the EEC Treaty,

h) having regard to the declaration of the.European Council meeting in Fontainebleau on 25 and 26 June 1984 calling for the setting-up of national committees of European volunteer development "workers to recruit young Europeans wishing to offer their services to Third World development projects,

i) having regard to the recommendation of 5 March 1987 of the United Nations commission on Human Rights,

j) haying regard to the report of its Committee on Petitions and the opinion of the Committee on Legal Affairs and Citizens' Rights (Doc. A 2-433/88 = A 3-15/89),

A. whereas no court and no committee can examine a person's conscience,

B. whereas all conscripts must be entitled to refuse military service, whether armed or unarmed, on grounds of conscience, with full respect for the principles of freedom and equal treatment of members of society,

C. mindful that the existing inequalities and the penalties applied by some Member States to conscientious objectors - which are the result of differing geographical, social and cultural determinants - create unequal living conditions in the Member States and are thus detrimental to the process of European integration,

D. mindful that the differences and discrimination contained in the rules governing the recognition of Conscientious objection and laying down the arrangements for the performance of alternative civilian service have consequences for the entry of young people into the world of work and for freedom of movement within the Community and that they have a grave impact on the opportunities of young people in Europe in regard to vocational training, employment, social security and political and trade union rights,

E. whereas conscientious objection cannot constitute non-participation in the defence of the community but may be seen as another way of practising such participation in the light of the particular conditions and requirements in the Member States, as confirmed, inter alia, by the Italian Constitutional Court in Judgment No. 164 of 25 May 1985,

F. emphasizing the need to enable those performing alternative service to participate in the development of Third World countries and in the war on starvation with consequential recognition of the potential contribution from conscientious objectors to reducing the threats to our security,

G. whereas the common involvement of young people in a programme for the Third World will contribute to mutual understanding and hence encourage the process of European integration and European solidarity with the less developed regions of the world,

1. Calls for the right to be granted to all conscripts at any time to refuse military service, whether armed or unarmed, on grounds of conscience, with full respect for the principles of freedom and equal treatment for all members of society;

2. Calls for call-up papers to be accompanied, where this is not already the case, by a statement on the legal position with regard to conscientious objection;

3. Urges the Member States concerned to ensure that individuals performing alternative service are not denied their constitutional and/or civil rights and that their dignity is preserved;

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;

5. Urges that the length of alternative service should be allowed to exceed the duration of ordinary service only by half as much again to compensate for periods of reserve training by those performing military service;

6. Calls for persons performing alternative service to be safeguarded against exploitation and for individuals in civilian service to receive the same pay as conscripts;

7. Calls for a clear distinction to be made between civilian alternative service activities and vacancies on the job market, this to be agreed on with the trade unions;

8. Calls for the introduction of a national appeals procedure;

9. Calls for conscientious objectors who are recognized as such in the Member State of which they are nationals to be allowed, where appropriate and provided the individual concerned so requests to participate in programmes of alternative service in another Member State and for their release from alternative service in their own country as a result of such participation;

10. Urges that conscripts who perform alternative service should be given the opportunity of taking part in regular training and further vocational training,equivalent to that offered during military service;

11. Calls on the Commission and the Member States to press for the right to alternative civilian service to be incorporated in the European convention for the Protection of Human Rights and Fundamental Freedoms, as a human right;

12. Calls on the Member States to take all the necessary steps to amend their legislation to bring it into line with this resolution and the resolution of 7 February 1983;

13. Instructs the Commission to draw up a programme of development projects in the Third World in which all conscientious objectors from the Member States can, where appropriate and provided they so request, participate; such participation should release them from alternative service in their own country;

14. Believes that the Member States should recognize and support the NGOs that deal with alternative service and conscientious objectors and calls on the Commission to give similar recognition and support to the European Bureau of Conscientious Objection;

15. Instructs its President to forward this resolution to the Commission, the Council, the Foreign Ministers meeting in European Political Cooperation, the Defence Ministers and the governments and parliaments of the Member States.

3.3. THE DE GUCHT RESOLUTION

3.3.1. Resolution on respect for human rights in the European Community (annual report of the European Parliament)

[Only those extracts relevant to conscientious objection are listed below]

The European Parliament,

a) having regard to its resolution of 13 October 1989 on conscientious objection,

A. whereas respect for human rights is the foundation of democracy and constitutes a basic principle of Community integration,

B. having regard to Community action to promote human rights in the world,

C. having regard to the principle of interference on humanitarian grounds, as recognized by the international community in UN Security Council Resolution No. 688,

F. whereas jurisdiction over respect for human rights in the Member States lies with national courts and the relevant organs of the Council of Europe,

G. whereas up to now, Community law, the common legal principles of the Member States and the rules of international law have provided protection of fundamental rights against the actions of Community institutions and bodies,

H. whereas, however, there are no specific checks on whether human rights are respected in Community law,

I. whereas there is no body of law setting out the fundamental rights of European citizens and guaranteeing protection of those rights within the Community legal order,

Conscientious objection;

1. Considers that the right of conscientious objection, as recognized by Resolution 89/59 of the UN Commission on Human Rights on conscientious objection against

military service, should be incorporate as a fundamental right in the legal systems of the Member States;

2. Notes, however, that this right is not included in any international human rights agreement and therefore falls within the sovereign power of each State;

3. Calls for common principles to be defined with a view to eliminating discrimination between European citizens with respect to military service;

4. Considers that these common principles should include minimum guarantees to ensure that:

a) sufficient information is made available on conscientious objector status,

b) conscientious objector status can be applied for at any time, including during military service,

c) an effective means of appeal is made available should the conscientious objector status be refused;

5. Condemns the trials and imprisonment of conscientious objectors In the Member States, many of whom have been regarded as prisoners of conscience by Amnesty International;

6. Stresses 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;

7. Encourages the introduction at Community level of alternatives to military service as part of Third World development aid programmes or assistance cooperation with the countries of Eastern Europe;

8. Condemns, in particular, the practice in Greece which treats conscientious objectors as criminals and condemns them to long periods of imprisonment in military prisons;

3.4. RESOLUTIONS ON DESERTERS FROM FORMER YUGOSLAVIA

3.4.1. Resolution on deserters from the armed forces of states in former Yugoslavia

The European Parliament,

A. aware that among the hundreds of thousands of refugees from former Yugoslavia there are many deserters and draft evaders,

B. alarmed at reports that recruitment and conscription are deliberately used as a measure against persons who are critical of the government and that conscription also affects members of ethnic groups such as the Albanians of Kosovo and the Hungarians of Vojvodina, as well as some, such as Roma Gypsies, who do not even possess citizenship of the country,

C. concerned at reports that deserters and draft evaders who have taken refuge in Member States of the Community face deportation back to their country of origin where they would risk severe repercussions, in flagrant violation of the European Convention on human rights,

D. aware that the Danish Directorate for Immigration has decided that desertion from, or evading conscription into, the Serb and Montenegrin armed forces are not grounds for granting asylum

E. recalling the statement of the UNCHR that anybody refusing to take part in 'an internationally condemned war action' is deserving of 'international protection',

F. regarding the encouragement of draft evasion and desertion from the Serbian and Montenegrin armed forces as in accordance with the policy pursued by the Community and its Member States towards the aggressive policies of Serbia and Montenegro,

G. having regard to the fact that draft evaders and deserters, given their response to the international community's appeal for peace, could play an important role in the reconstructin of post war Yugoslavia;

1. Calls on the international community to develop standards to protect deserters and draft evaders who do not wish to take part in nationalist wars which it has unequivocally condemned;

2. Calls on the Council and the Member States to consider what arrangements might be made to give sanctuary to the deserters and conscientious objectors not serving in the various armed forces fighting on the territory of former Yugoslavia;

3. Calls on the Member States to provide deserters and draft evaders from the former Yugoslavia with a legal status instead of allowing them to be deported back;

4. Urges the Danish Minister of the Interior to make available to deserters and draft evaders from the Serb and Montenegrin armed forces permission to stay until they can return safely,

5. Calls on all Member States to weaken the military power of the aggressors in former Yugoslavia by encouraging desertion and draft evasion by making clear that they will grant asylum to deserters and draft evaders from the armed forces of aggressor states;

6, Calls on the Member States and the Commission to develop programmes and projects which seek to provide possibilities for training or further education for these deserters and draft evaders

7. Instructs its President to forward this resolution to the Commission, the Council, the UNCHR, the President of the Folketing and the Danish Refugee Appeals Board.

3.5. THE BANDRES MOLET AND BINDI RESOLUTION

3.5.1. Resolution on conscientious objection in the Member States of the Community

The European Parliamnet

Having regard to the motions for resolutions by:

a) Mr Kostopoulos on recognition of the right of conscientious objection to military service and alternative arrangements for non-military or social service (B3-0248/91),

b) Mr von Wechmar and others on behalf of the LDR Group on persecution of conscientious objectors and of ethnic minorities in Greece '(B3-0623/92),

c) Mr Sisó Cruellas on the performance of military service by young people who reside in a Member State of which they are not nationals (B3-0459/92),

d) having regard to its resolutions of 7 February 1983 on conscientious objection, 13 October 1989 on conscientious objection and alternative civilian service, 21 January 1993 on religious freedom in Greece and the compulsory declaration of religion on the Greek identity card, 11 March 1993 on respect for human rights in the European Community (annual report of the European Parliament), and 22 April 1993 on the mention of religion on Greek identity cards,

e) having regard to written questions Nos 1241/90, 1242/90, 1389/90, 2295/90, 2645/90, 2646/90. 2898/90, 2905/90, 2908/90, 130/91, 694/91 and 1449/91,

f) having regard to petitions Nos 34/92, 161/92, 184/93 and 343/93,

g) having regard to resolution 1989/59 of the United Nations Commission on Human Rights,

h) having regard to Recommendation R(87)8 of the Committee of Ministers of the Council of Europe

i) having regard to Article F of the EU Treaty and Articles.. 100, 7, 8a and 48(2) of the EC Treaty

j) having regard to Rule 45 to its Rules of Procedure,

k) having regard to the report by the Committee on Civil Liberties and Internal Affairs (A3-041 1/93),

A. deploring the lack of response to its resolutions of 1983 and 1989 referred to above. especially the possibility of refusing for reasons of conscience to fulfil an obligation to perform military service,

B. stating once again that the protection of human rights and fundamental freedoms is one of the European Community's main duties, as is stipulated inter alia in the Preamble to the Maastricht Treaty,

C. whereas conscientious objection to military service is inherent to the concept of freedom of thought, conscience and religion, as recognized in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

D. whereas the United Nations Commission on Human Rights confirmed this interpretation on 20 July 1993 in its general comments on Article 18 of the International Covenant on Civil and Political Rights,

E reiterating the fact that the right of conscientious objection is a principle recognized under the law of all Member States in which military service is compulsory, with the exception of Greece, which is the only country where unarmed military service exists, but that the provisions governing this right vary widely between Member States which, as far as young people are concerned, acts as an obstacle to European integration,

F. having regard to its resolutions of 14 June 1991 and 21 November 1991 on European citizenship in which it stated inter alia that the status of European citizenship implies that the human rights and fundamental freedoms of all citizens must be protected and that discrimination against citizens on the basis of the Member State to which they belong can not be tolerated under any circumstances,

1. Considers conscientious objection to be a real subjective right, as recognized by resolution 1989/59 of the United Nations Commission on Human Rights, closely connected with the exercise of individual freedoms and, therefore, that community service may take the form of either military or civilian service,

2. Believes that 'conscientious objector' should be taken to mean someone who. faced with an obligation to perform military service, refuses to do so on religious, ethical or philosophical grounds or for reasons of conscience and calls on all Member States to adopt this definition,

3. Subscribes to the basic principles defined by the Committee of Ministers of the Council of Europe in its recommendation R(87)8 on conscientious objection to compulsory military service and considers that this recommendation is a minimum basis for provisions concerning civilian service which should link all the Member States of the Council of Europe,

4. Points out that conscientious objection is an issue of international importance, as is demonstrated by the resolution adopted by the United Nations Commission on Human Rights in 1989, the Recommendation adopted by the Committee of Ministers of the Council of Europe in 1987 and its resolution of 1989, all of which include the right of conscientious objection to military service among the various rights and stipulate that alternative civilian service not be punitive in nature.

5. Is convinced that the right of conscientious objection derives from the human rights and fundamental freedoms which the Union undertakes to respect pursuant to Article

F(2) of the EU Treaty and, therefore, that the harmonization of legislation in this field falls within the competence of European Community;

6. Calls on the Member States to study, as a matter of common interest, the experience of those which have abolished compulsory military service, in favour of fully professional armed services. accepting that all citizens of a Member State should enjoy the same rights and fulfil the same obligations,

7. Calls therefore on the Commission to submit as soon as possible,

a) a proposal for the harmonization of legislation and minimum guarantees of the protection of the right of conscientious objection, such as those laid down in paragraph 49 of its aforementioned resolution of 11 March 1993 on respect for human rights in the European Community, with a view to eliminating the current discrimination between Member States,

b) a proposal for the establishment of a European civilian service open to both conscientious objectors and volunteers from the Member States

c) an exchange programme allowing those engaged in alternative civilian service to choose to perform it in another Member State or in a developing country as part of a cooperation programme;

8. Considers that this service should also be able to be performed with organizations in other Member States, without the need for reciprocity and even when there is no conscription in the country concerned,

9. Calls 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;

10. Believes furthermore that conscientious objectors performing civilian service must enjoy the same rights as conscripts engaged in armed military service, both in social terms - in respect of access to vocational training, for example - and in terms of pay;

11. Condemns those states where objectors are imprisoned, as asserted by Amnesty international, and calls on the Greek Government in particular to take the necessary steps as a matter of urgency to conform to the principles laid down in this resolution;

12. Emphasizes that freedom of religious belief is firmly established as one of the basic individual rights set out in the Universal Declaration of Human Rights and the European Convention on Human Rights and restates therefore the views set out in its aforementioned resolutions of 21 January 1993 and 22 April 1993 on the compulsory decalaration of religion on the identity cards;

13. Calls for the right of conscientious objection and the right to civilian service to be incorporated in a protocol to the European Convention on Human Rights;

14. Calls on the Member States of the European Union which do not have (or no longer have) conscription and military and civilian service nevertheless to guarantee the fundamental right of conscientious objection;

15. Calls on the Commission to ask the Member States of the European Union and the countries which have applied for accession to comply with the principles laid down in its aforementioned resolutions of 7 February 1983, 13 October 1989 and 11 March 1993 and in this resolution;

16. Instructs its Committee on Civil Liberties to draw up an annual report on the application by the Member States of its resolutions on conscientious objection and civilian service, and to involve the European Bureau for Conscientious Objection;

17. Instructs its President to forward this resolution to the Council, the Commission and

the governments and parliaments of the Member States and the countries which have applied for accession.

4. REPORTS ANALYSING THE CONSCIENTIOUS OBJECTION STATUS IN EUROPEAN UNION COUNTRIES[7]

4.1. AUSTRIA

4.1.1. Conscription

Conscription is enshrined in Article 9(a) and 19(a) of the Constitution and is further regulated by the 1990 Defence Law (Wehrgesetz).

The length of military service is 8 months. Conscripts may also serve for 6 months and serve theremaining two months at a later stage in reservist units.

All men between the ages of 18 and 35 are liable for military service. Reservist duties apply for15 years after completion of military service, and up to the age of 50 or 65 for officers.

In 2004, a government commission concluded a review of the future of the Austrian armed forces. The report of the commission includes several proposals, including a reduction of the duration of military service to six months, possibly by 2007. Chancellor Schüssel has proposed reducing it to 6 months by 2006 already. The reform commission has also discussed the possible abolition of conscription by 2010. As the report of the reform commission still needs to be discussed by the Austrian Parliament, no decisions have been made yet.

4.1.2. Statistics

The armed forces comprise 40,000 troops, including 17,000 conscripts. Every year approx. 49,000 young men reach conscription age. Approx. 75 per cent are recruited.

[7] www.ebco-beoc.eu/country reports, 2004

4.1.3. Legal Basis

The right to conscientious objection has been legally recognized since 1974. The right to conscientious objection is included in Article 9(a) of the Constitution, which states that citizens who refuse to perform military service for reasons of conscience must perform an alternativeservice. Its further legal basis is laid down in the 1986 Law on Civilian Service (Zivildienstgesetz).

4.1.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

According to Article 2 of the Law on Civilian Service, the right to conscientious objection applies to "those who can't perform military service because they - except in cases of personal emergency - denounce for reasons of conscience to use armed violence against people and performing military service may get them into conflict with their conscience".

4.1.5. Time Limits

There are several time limits for submitting CO applications (Law on Civilian Service, Article 2.2).

Applications must be made within six months of receiving the notification of fitness for military service, but at least two days before receiving call-up papers for military service.

Applications cannot be made by serving conscripts. Applications can be made after completion of military service, but in this case the application needs to be made within three years of the first day of military service. After this period, reservists can no longer make a CO application.

There are no legal provisions for the right to conscientious objection for professional soldiers.

The Law on Civilian Service only applies to conscripts and does not contain provisions for professional soldiers.

4.1.6. Procedure

Applications must be made to the Ministry of Interior. The Ministry has produced a standard form, which basically states that the applicant agrees with the wording of Article 2 of the Law on Civilian Service.

Since 1991, no personal interviews take place. Consequently, applications are almost automatically granted, provided they are submitted within the time limits. An application may be rejected if the applicant has been convicted for a criminal offence, if the applicant is employed by the state police, if the applicant has a gun licence, or if the applicant's objections to the use of violence are considered to be conditional and politically motivated (Law on Civilian Service, Article 5(a)). If the application is rejected, there is a right of appeal to a civil court.

4.1.7. Substitute Service

The length of substitute service is 12 months. This is one and a half times the length of military service.

Substitute service is administered by the Ministry of Interior. Substitute service may be performed in several institutions in the public sector, such as hospitals, social work and emergency relief. It may also be performed with non-governmental organisations, such as the Austrian Red Cross.

COs may also perform a 14 month voluntary service abroad. COs who have completed such service, which usually consists of peace work or social work, are exempt from substitute service.

After completion of substitute service, COs have reservist duties up to the age of 50. During time of war or emergency, COs may be called up for "extraordinary civilian service", which consists of several unarmed duties such as emergency aid (Law on Civilian Service, Article 21).

So far, COs have never been called up for reservist duties in practice .In 2000, the government greatly reduced the payment of COs. Before 2000, COs were paid by the government and received approximately the same payment as conscripts in the armedforces. Now, the salaries of COs have to be partially paid for by the employing organisations themselves. The government has set guidelines on appropriate payment, but as these are very low this effectively means that CO salaries have been cut by half. Austrian CO groups have lodged several complaints with the Constitutional Court, which has in fact ruled that the new payment regulations are a violation of the constitutional right of free choice between military and civilian service. As the Constitutional Court did not rule which body is to be responsible for increasing CO salaries, the issue has still not been settled.

Consequently, in practice the payment of COs remains far below the payment of conscripts in the armed forces.

4.1.8. Practice

The following table gives the number of granted CO applications in recent years:

1999 7,348
2000 6,326
2001 8,249
2002 8,932

2003 9,596
2004 10,335

Parallel to the review of the armed forces and the planned reduction of the length of military service, the future of substitute service is also the subject of political debate. In 2004 the government installed a commission, chaired by the president of the Austrian Red Cross, to draw up a proposal for the future of substitute service and its consequences for the Austrian health and social sector. The commission presented its final report in January 2005 and proposes reducing the length of substitute service to 9 months. The commission has also proposed models for the development of voluntary or compulsory service for young people, in case conscription is abolished. The report of the commission will be further discussed by the Austrian Parliament.

4.1.9. Background

During the 1990s there were several cases of COs whose applications had been rejected because they were not submitted within the time limit. They continued to refuse military service and were consequently sentenced to up to one year's imprisonment under the Military Penal Code for "failure to comply with call-up orders". Around 1997 this attracted considerable international attention and some of the COs concerned were in fact adopted as prisoners of conscience by Amnesty International. In 1997, Schwechat District Court acquitted a CO of these charges and ruled that he could not be reproached for not knowing about the time limits, especially because the authorities had made no particular efforts to inform the public aboutthe introduction of the time limits.

Since 1998, there have been no known cases of COs being imprisoned after not submitting their CO applications within the time limit.

4.2. BELGIUM

4.2.1. Conscription

Belgium was one of the first Western European countries to end conscription. In December 1992 the Law on Conscription was amended and became applicable only to conscripts drafted in 1993 and earlier. The last conscripts were called up for military service in 1993. Since March 1995 the Belgian armed forces consist of professional soldiers only. Conscription is, in fact, suspended. It may be reinforced during time of war or time of emergency by a government decision.

4.2.2. Conscientious objection

Belgium was one of the last Western European countries to legally recognize the right toconscientious objection in 1965. During the 1990s approx. 2,500 CO applications were made per year, about 98 per cent of which were granted.

In 1992 the Law on Conscientious Objection was amended and only became applicable to men who were born before 1975. Consequently, men who are born after 1975 have no opportunity to claim the right to conscientious objection to military service.

The right to conscientious objection is not included in the Belgian Constitution. In 1995, Belgian peace organisations proposed amending the Constitution to include the right to conscientious objection in it. This proposal was, however, rejected by the Belgian government.

Belgian peace organisations have also proposed creating a register of those who want to guarantee their right to conscientious objection in case conscription is reinforced by a government decision. However, the government has not been willing to set up such a register.

Consequently, no legal provisions on conscientious objection exist. There are no legal provisions for the right to conscientious objection for professional soldiers.

4.3. BULGARIA

4.3.1. Conscription

Conscription is enshrined in Article 59.1 of the 1991 Constitution. It is further regulated by the 1995 Law on Defence and Armed Forces.

The length of military service is 9 months, and 6 months for university graduates. All men between the ages of 18 and 30 are liable for military service. Reservist obligations apply up to the age of 55.

During the last decade, the Bulgarian armed forces are being reformed and transformed to comply with NATO standards. No decision has been made on the abolition of conscription, but the government has announced a reduction of the length of military service to just 45 days by 2010. According to the Ministry of Defence, there is even a chance that a 45 day military service will be introduced before 2010.

4.3.2. Statistics

The armed forces comprise 51,000 troops, including conscripts. Every year, approx. 53,000 young men reach conscription age.

4.3.3. Legal basis

The right to conscientious objection is included in Article 59.2 of the 1991 Constitution, according to which: "The carrying out of military obligations, and the conditions and procedure for exemption there from or replacing them with alternative service, shall be established bylaw."

Further provisions on conscientious objection are laid down in the 1998 Law for Replacement of Military Obligations with Alternative Service. The Law has been amended several times.

4.3.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

According to Article 3 of the 1998 Law: "All Bulgarian male citizens, liable to conscription for military service, have the right to apply for replacement of their military obligations with an alternative service as a practice of their constitutional right of freedom of conscience, freedom of thought and free choice of religion if they do not want to serve with arms."

4.3.5. Time limits

There is a time limit for submitting CO applications, as applications can only be made before starting military service. Applications can thus not be made by serving conscripts and reservists.

The length of military service was reduced from 18 months in 1997 and from 12 months in 2000. 'Military service will be just 45 days in 2010', The Sofia Independent, 28 July 2004.

There are no legal provisions for the right to conscientious objection for professional soldiers

The 1998 Law only applies to conscripts and does not contain any provisions for professional soldiers.

4.3.6. Procedure

Applications must be made to the local military commander who forwards it to the Alternative Service Commission (Ministry of Welfare & Labour). This Commission consists of representatives of the Ministry of Defence, the Ministry of Religious Affairs and a medic, and is chaired by a lawyer. A personal interview may be part of the procedure, but this is not necessarily the case.

The Commission takes its decisions by an open vote ballot with a two thirds majority. If the application is rejected, there is a right of appeal to an administrative court.

4.3.7. Substitute service

The length of substitute service is 13.5 months, and 9 months for university graduates. This is one and a half times the length of military service.

Substitute service is administered by the Ministry of Welfare & Labour. It can only be performed in state institutions, more specifically “in state and municipal institutions, welfare organisations, state and municipal health service, environment protection, public utilities, civil defence, the armed forces and other sectors of the national economy which do not require the use of arms” (Article 5.1).

Substitute service cannot be performed in "trade companies, associations and foundations with idealistic or political purposes or trade unions" (Article 6.2).

The 1998 Law allows the Ministry of Defence to set an annual quota for the number of people who are allowed to do substitute service (Article 6.4).

After completing substitute service, COs are included in the reserves. In case of mobilization or war, COs may be called up to serve in the armed forces, but they may not be given "work connected to the use or carrying of arms" (Article 49.2).

4.3.8. Practice

Since the law on alternative service entered into force on 1 January 1999, not many applications have been made. Exact figures are not available, but the number of applications is estimated to be at most 50 per year.

The right to conscientious objection is not widely known about in Bulgaria. The Bulgarian government has been criticized regularly for not fully informing conscripts about the possibility of substitute service. Most conscripts are apparently not aware about the application procedure for substitute service. Moreover, human rights observers have claimed that the application procedure is unclear.

There are no figures available about the percentage of applications that is granted. In the past, CO groups have expressed concern that the inclusion of a member of the Ministry of Religious Affairs in the Alternative Service Commission might mean that religious grounds would primarily be recognized. Moreover, the Alternative Service Commission annually requires a listof religious organisations who forbid their members to bear arms. It is, however, difficult to assess to what extent applications on non-religious grounds are granted as no such applications are known to have been made.

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Although substitute service was introduced in 1999, it is still not organised effectively. The Ministry has not managed to find sufficient workplaces where substitute service can be performed.

Consequently, COs may have to wait for several years before they can actually start their substitute service. Until now, most COs have served in hospitals and as construction workers outside the armed forces.

4.3.9. Background

Although the right to conscientious objection was included in the Bulgarian Constitution in 1991, further legislation was only introduced in 1998. Between 1991

and 1998, COs could only perform an unarmed military service within the armed forces in the so-alled‘construction battalions’. During this period, 12 COs (all of them Jehovah's Witnesses) who refused to perform unarmed service, were sentenced to between 10 and 18 months’ imprisonment under Article 361 of the Criminal Code for “failing to respond to call-up for military service”. Four of them made a complaint to the European Court of Human Rights, accusing the Bulgarian government of violating their constitutional right to freedom of conscience of religion by failing to adopt legislation on conscientious objection. In 2001, the European Court and the Bulgarian government agreed on a friendly settlement. According to the settlement, all criminal proceedings against COs in the 1991-1998 period have to be dismissed, substitute service will have to be of equal length as compared to military service, and substitute service needs to be civilian without military involvement.

The Bulgarian government has only partially implemented the friendly settlement. In 2002 the government announced an amnesty for all persons who had been convicted under Article 361 of the Criminal Code between 13 July 1991 and 31 December 1998. In 2003, the length of substitute service was reduced from twice to one and a half times the length of military service. This is still not in line with the friendly settlement, because its Article 14(b) clearly states that: “such service shall be similar in duration to that required by the law on military service then in force”.

4.4. CYPRUS

4.4.1. Conscription

Conscription is regulated by the National Guard Law (20/1964).Conscription is also enshrined in Article 129 of the 1960 Constitution, according to which "The Republic shall have an army of two thousand men of whom sixty per cent shall be Greeks and forty per cent shall be Turks. Compulsory military service shall not be instituted except by common agreement of the President and the Vice-President of the Republic."

Since the Turkish army invaded the northern part of Cyprus in 1974, Cyprus is divided and the northern part of Cyprus is governed by a Turkish Cypriot administration. Actual conscription practice is thus not in line with the Constitution, as the armed forces comprise more than 2,600 troops and the 60/40 per cent ratio between Greek and Turkish members is not adhered to.

The length of military service is 26 months. Young men who come from a large family (a minimum of four children) may perform a shorter 13 months' service. A reduced term of service is also possible for repatriated Cypriots who have lived abroad.

All men between the ages of 18 and 50 are liable for military service. After completing military service, reservist obligations apply up to the age of 50. Reservist units are called up periodically.

4.4.2. Statistics

The armed forces comprise 10,000 troops, including 8,700 conscripts. Every year, approx. 6,500 young men reach conscription age; approx. 70 per cent are recruited.

4.4.3. Legal basis

In 1992, provisions for conscientious objection were included in Section 5 of the National Guard Law (Law 2/1992). There is no separate law on conscientious objection. Although Cyprus joined the Council of Europe in 1961, it did not introduce legal provisions for conscientious objection for several decades. The Cypriot government has always defended its repressive position towards conscientious objectors by referring to the Turkish occupation of the northern part of the island.

The right to conscientious objection is, in fact, enshrined in the Constitution. According to Article 10: "No person shall be required to perform forced or compulsory labour" but this shall not include "any service of a military character if imposed or, in case of conscientious objectors, subject to their recognition by a law, service exacted instead of compulsory military service".

4.4.4. Scope

According to Section 5 of the National Guard Law, religious, ethical, moral, humanitarian, philosophical and political motives may be accepted for a transfer to unarmed service.

4.4.5. Time limits

CO applications can only be made before starting military service. Applications can thus not be made by serving conscripts or reservists.

There are no legal provisions for conscientious objection for professional soldiers.

4.4.6. Procedure

Applications must be made to the Ministry of Defence, which makes a decision. No further details are known about the application procedure and the criteria that are used by the Ministry when deciding on applications.

4.4.7. Substitute service

Section 5 of the National Guard Law provides for a 36 months' unarmed military service within the armed forces, and a 42 months' 'unarmed military service outside the armed forces'.

It is not clear how far this 'unarmed military service outside the armed forces' can be considered to be a genuinely civilian substitute service. Although it is a non-uniformed service, the wording 'unarmed military service outside the armed forces' leaves some ambiguity concerning its non-military nature. A report issued by the Council of Europe in 2001 in fact concludes that Cyprus has no laws setting up a genuine alternative service.

It is not known where 'unarmed military service outside the armed forces' can be performed and what duties it entails. In fact the service does not seem to have been organised in practice yet and so far no COs seem to have been called up for it. In any case, after completing 'unarmed military service outside the armed forces', COs are still obliged to participate in reservist training within the armed forces.

During wartime or time of mobilisation, provisions for 'unarmed military service outside the armed forces' can be suspended by a decision of the Ministry of Defence (National Guard Law, Section 5A, Paragraph 10). COs would then be incorporated into unarmed military service within the armed forces.

4.4.8. Practice

It is not clear how far the application procedure functions in practice and how many CO applications have been made. According to the Minister of Defence in 2001, there are approx.imately 10 COs per year. Until 1992 COs were only allowed to do an unarmed military service within the armed forces. During the 1980s and 1990s many COs were imprisoned because they refused to perform unarmed military service. They could be sentenced to between two and fifteen months' imprisonment. Upon release, they could be called up again and, if they continued to refuse service, they were sentenced again.

All known cases of COs are members of religious denominations who forbid their members to bear arms, in particular Jehovah's Witnesses. Since 1997 Jehovah's Witnesses have apparently not been called up for service, pending the introduction of a substitute service outside the armed forces. In 2001 the Ministry of Defence announced that it would start calling up COs for 'unarmed military service outside the armed forces'. According to the Ministry of Defence, COs who had not been called up during previous years were to be called up as well. According to the Ministry, a total number of 300 COs were to be called up for service. However, it is not known if these 300 COs have been called up in practice, nor is it known for what kind of service they have been called up.

In 2002, the European Committee of Social Rights judged that the length of 'unarmed military service outside the armed forces', being more than one and a half times the length of military service, is a violation of Article 1.2 of the European Social Charter. According to the Committee, the length of substitute service is a violation of "the right of the worker to earn his living in an occupation freely entered upon". Nevertheless, the Cypriot government has not showed any intention of reducing the length of 'unarmed military service outside the armed forces'. In November 2002, there were five trials against five reservists who refused to participate in reservist military exercises and claimed their right to conscientious objection. The Ministry of Defence rejected their CO applications because the National Guard Law does not allow reservists to apply for CO status. Two of the COs on trial had actually been tried in the past for refusing

military service. In November 2002, their cases were suspended pending a revision of the National Guard Law. So far, the National Guard Law has not been revised. Pending a revision of the law, the legal position of reservist COs remains unclear.

Most COs are members of the Jehovah's Witnesses. It is not known how CO applications that are made on non-religious grounds would be treated by the authorities, although the National Guard Law does not specifically restrict the right to conscientious objection to religious grounds.

4.5. TURKISH REPUBLIC OF NORTHERN CYPRUS

Since the Turkish army invaded the northern part of Cyprus in 1974, the northern part of Cyprus is ruled by a Turkish Cypriot administration. In 1983, it proclaimed 'The Turkish Republic of Northern Cyprus' (TRNC). The entity has not been recognized by any country except Turkey. TRNC has its own armed forces and conscription system. Conscription is included in Article 74 of the Constitution and is regulated by the 2000 Military Service Law (59/2000).

All men between the ages of 19 and 30 are liable for military service. The length of military service is 15 months. A reduced term of service is possible for those who are considered as Turkish Cypriot citizens and who reside abroad.

The right to conscientious objection is not legally recognized. In 1993, there was one known case of a conscientious objector. He was sentenced to 39 months' imprisonment, but he was released early. There are no known recent cases of COs.

4.6. CZECH REPUBLIC

4.6.1. Conscription

In 2001, the Czech government decided to end conscription. The government initially intended to suspend conscription by 2007, but the transformation process into professional armed forces proceeded faster than was initially anticipated. In April 2004 the last 3,600 conscripts were called up for military service. Since 1 January 2005 the armed forces consist of professional soldiers only.

Conscription is suspended and it may be re-introduced if this is considered to be necessary by the government.

4.6.2. Conscientious objection

The right to conscientious objection was legally recognized shortly after the Velvet Revolution of 1989. During the 1990s the number of COs was in fact considerable. In 2003, 8,600 COs were performing substitute service, which was approximately the same as the number of conscripts serving in the armed forces.

The right to conscientious objection is still included in Article 15.3 of the Constitution, according to which "No individual may be forced to perform military duties if this is contrary to his or her conscience or religious faith or conviction." In case conscription is reintroduced, the Law on Civilian Service will apply again.

It is not known if there are legal provisions on the right to conscientious objection for professional soldiers. According to a study that was issued by the Council of Europe in 2001, the "regular servicemen's right to conscientious objection" is recognized. The study does not give any further information about a possible application procedure for professional soldiers who wish to be discharged from the armed forces because of conscientious objection.

According to another source, there are no legal provisions for conscientious objection for professional soldiers.

When conscription applied, legal provisions on conscientious objection were laid down in the Law on Civilian Service. This law actually contains time limits for submitting CO applications, as applications may only be made within 30 days of receiving call-up for service and not by serving conscripts. This provision would practically exclude professional soldiers from claiming the right to conscientious objection. In addition, the law does allow reservists to claim the right to conscientious objection, but only before 31 January of the calendar year in which they have been called up.

4.7. DENMARK

4.7.1. Conscription

Conscription is enshrined in Article 81 of the 1953 Constitution and is further regulated by the 1980 National Service Law.

The length of military service is between 3 days and 14 months, depending on the branch of the armed forces and the rank attained. Most conscripts perform a 9 months' military service.

All men between the ages of 18 and 30 are liable for military service. The National Service Law does not cover the self-governing territories of the Faroe Islands and Greenland. If a young man moves to mainland Denmark after living in one of those territories for ten years or more, he is not liable for military service.

As in most European countries, the number of available conscripts is much higher than the number considered necessary by the armed forces. Denmark is, however, the only European country where the actual selection of conscripts takes place by balloting. Selection takes place by drawing lots during medical examination. Firstly, conscripts who have applied to serve voluntarily are drafted, whatever lot number they might have. (Most conscripts in the armed forces – approx. 60 percent – have actually volunteered to serve). From the remaining conscripts only those with the lowest number are drafted, until the necessary amount is reached. The lots are actually not drawn by the conscripts themselves, but by the military authorities. Apparently, this is because someone once ate his lot ticket, which meant the draft had to be suspended that day in order to find out which lot number had been eaten.

In 2004 the government and major opposition parties agreed on a reform of the armed forces, laid down in the 'The Danish Defence Agreement 2005–2009'. Conscription will remain in place, but the Agreement envisages a future reduction of military service to 4 months.

4.7.2. Statistics

The armed forces comprise 27,900 troops, including 5,750 conscripts. Every year, approx. 30,000 young men reach conscription age; approx. 30 per cent are recruited.

4.7.3. Legal basis

The right to conscientious objection has been legally recognized since 1917. Denmark was in fact the first European country to introduce a law on conscientious objection. At present, the right to conscientious objection is regulated by the 1987 Civilian Service Act (588/87), as amended in 1992 and 1998.

4.7.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.
According to Article 1 of the Civilian Service Act: "Conscripts for whom military service in any form is judged, from available information, to be incompatible with the dictates of their conscience, may be exempted from military service on condition that they are engaged in other national work, which is not, however, serving any military purposes".

4.7.5. Time limits

Applications can be made before and during military service. Applications that are made by serving conscripts should be more elaborate and should include an explanation as to when and where the applicant's conflict of conscience started. Approx. 20 per cent of CO applications are actually believed to be made by serving conscripts.

It is not known if there are legal provisions for the right to conscientious objection for professional soldiers.

4.7.6. Procedure

Applications must be made to the Conscientious Objections Administration Board (Ministry of Interior). Applications must be made with a standard form that is available at the Ministry.

Since 1968 there is no personal interview during the application procedure and applications are not individually examined. Consequently, applications are almost automatically granted.

4.7.7. Substitute service

Since 1986, the length of substitute service is the same as military service: between 3 days and 14 months, depending on which part of the armed forces one would otherwise have served in.

As most conscripts perform a 9 months' military service, most COs perform a 9 months' substitute service.

Substitute service is administered by the Ministry of Interior. It can be performed in government institutions like hospitals, social work and cultural institutions, but also with peace and environmental organisations. Substitute service starts with a six days' introduction course, during which COs are informed about their rights and duties.

4.7.8. Practice

For the last fifteen years, the number of CO applications is relatively stable at between 600 and 900 per year. Almost all applications are automatically granted. According to the Danish government, applications are rejected if they are considered to be solely based on political grounds.

Every year, approx. 25 COs refuse to perform both military service and substitute service. All of them are believed to be Jehovah's Witnesses. Refusal to perform substitute service is punishable with a fine and a term of imprisonment equivalent to the length of time that someone should have served (Civilian Service Act, Article6). Since 1996, Jehovah's Witnesses receive a suspended sentence that is replaced by a probationary term of one year under the provision that the committer does not commit an offence.

4.8. ESTONIA

4.8.1. Conscription

Conscription is enshrined in Article 124 of the 1991 Constitution and is further regulated by the 2000 Defence Forces Service Act.

The length of military service is 8 months, and 11 months for officers and conscripts serving in some specialist positions.

All men between the ages of 19 and 27 are liable for military service. After completion of military service, conscripts may be called up for reservist duties every five years.

4.8.2. Statistics

The armed forces comprise 3,800 troops, including 1,500 conscripts. Every year, approx. 11,000 young men reach conscription age; approx. 15 per cent are recruited.

4.8.3. Legal basis

The right to conscientious objection is recognized in Article 124 of the 1991 Constitution, according to which: “Any person who refuses to serve in the Defence Forces for religious or ethical reasons shall be obligated to participate in alternative service, in accordance with procedures established by law”.

The 2000 Defence Forces Service Act includes further provisions on conscientious objection and substitute service. The law requires the government to pass further legislation implementing the right to conscientious objection, but this has not happened. The previous Military Service Act of 1994 contained similar provisions.

4.8.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

According to Article 4.1 of the Defence Forces Service Act: “A person eligible to be drafted who refuses to serve in the Defence Force for religious or moral reasons is required to perform alternative service pursuant to the procedure prescribed by law”.

4.8.5. Time limits

CO applications can only be made before starting military service. Article 76 of the Defence Forces Service Act mentions the option of a transfer from military service to substitute service, but there are no provisions for a transfer vice versa. Applications can thus not be made by serving conscripts or reservists.

There are no legal provisions for the right to conscientious objection for professional soldiers.

4.8.6. Procedure

Written applications must be made to the national defence department (Ministry of Defence).The department may invite the applicant for a personal interview. If the application is rejected, there is a right to appeal with the Defence Forces Service commission or administrative court (Article 72).

4.8.7. Substitute service

The length of substitute service is 16 months. This is twice the length of military service. According to the Defence Forces Service Act, substitute service can be performed in “structural units in the area of government of the Ministry of Internal Affairs or the Ministry of Social Affairs and which are engaged in rescue, social care or

emergency work" (Article 73). COs shall not against their will be required to handle weapons or other means of warfare (Article 76.1).

After completion of substitute service, COs "shall be registered in the register of persons liable to service in the Defence Forces" (Article 78). Consequently, COs may still have to serve in the armed forces as reservists. Article 78 states that reservist duties should not violate the guarantees that are laid down in Article 76.1, which suggests that reservist duties of COs entail unarmed duties within the armed forces.

Substitute service is not available in practice. The Defence Forces Service Act requires the government to implement further regulations on the organisation of substitute service, but the government has not managed to do so. In fact, the previous 1994 Law on Military Service also required the government to pass further regulations on substitute service, but this never happened either.

4.8.8. Practice

The number of CO applications is believed to be low. The Estonian government stated in 1999 that less than 50 CO applications were made per year. In previous years, the number was similarly low. Between 1993 and 1995, only nine CO applications were made. Recent figures are not known, but the number is believed to be similarly low. There are no CO groups or human rights organisations campaigning on the issue. This may be explained by the fact that conscription is not enforced very strictly and only a small number of conscripts are actually needed by the armed forces.

It is not known how the application procedure functions in practice. Although the Defence Forces Service Act does not restrict the right to conscientious objection to religious grounds, the wording of Article 72.2 is confusing, as it states that the National Defence Department may make an inquiry to the religious organisation that is specified by the applicant. It is not known if this means that it is more difficult to obtain CO status on secular grounds.

As substitute service is not available in practice, most COs are in practice not called up to serve. According to the Estonian government, only 11 COs have ever performed substitute service. They were called up in 1996 and performed substitute service with the Estonian Rescue Board.

4.9. FINLAND

4.9.1. Conscription

Conscription is enshrined in Article 127 of the 1999 Constitution and is further regulated by the 1998 Military Service Law (19/1998).

The length of military service is 180, 260 or 362 days, depending on the rank attained and the branch of the armed forces where service is performed. Approx. 50 per cent of all conscripts perform a 180 days' military service.

All men between the ages of 18 and 30 are liable for military service. Reservist obligations apply up to the age of 50 and up to the age of 60 for officers. According to the Military Service Law, reservist training lasts between 40 and 100 days. In practice reservists are called up for considerably shorter periods of time.

Apart from medical and social reasons, exemption is granted to the citizens of the Ahvenanmaa (Aland) islands. This is a so-called demilitarised area, of which the population is Swedish speaking. The majority of its population has stated in the past that it wants to be part of Sweden.

Since 1985, Jehovah's Witnesses are legally exempt from service in peacetime, on providing proof of membership and participation in its activities.

4.9.2. Statistics

The armed forces comprise 24,500 troops, including 11,500 conscripts. Every year, approx 34,000 young men reach conscription age; approx. 80 per cent are recruited.

There are no plans to abolish conscription. According to the Defence White Paper of 2004, the conscription system will remain in place and not be significantly reformed,

although the number of conscripts that will actually be called up for service will be slightly reduced in the future.

4.9.3. Legal basis

The right to conscientious objection has been legally recognized since 1931. Its present legal basis is the 1991 Civilian Service Act (1723/91).

4.9.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

According to Article 1 of the Civilian Service Act: "A person liable for military service who avers that serious reasons of conscience founded on religious or ethical conviction prevent him from carrying out the service laid down in the Military Service Act will in peacetime be exempted from such service and assigned to civilian service as provided for in this Act".

4.9.5. Time limits

There are no time limits for submitting CO applications. Applications can thus be made before, during and after military service (Civilian Service Act, Article 6).

Serving conscripts must apply to the regimental commander, after which they must be released from duty immediately. Reservists must apply to the commander of the military province or to the non-military service training centre in Lapinjärvi.

There are no legal provisions for conscientious objection for professional soldiers. The Civilian Service Act only applies to conscripts and it contains no provisions for professional soldiers.

4.9.6. Procedure

Applications must be made to the Ministry of Defence. Applications can be made with a standard application form that is available from the Ministry. Since 1987, there is no personal interview during the application procedure.

Consequently, applications are almost automatically granted.
Substitute service

The length of substitute service is 395 days. In 1998, the length of military service was reduced from 240 days to 180 days (for most conscripts). The duration of substitute service remained the same, which means that substitute service now lasts more than twice as long as military service.

Substitute service is administered by the Ministry of Labour. It can be performed with both government institutions and non-governmental (non-profit) organisations. Most COs perform their substitute service in social and health care institutions, public offices, schools, universities, libraries and cultural institutions.

There is a lack of places where substitute service can be performed. The Civilian Service Act stipulates that the Ministry of Labour is responsible for the assignment of workplaces, but in practice most COs find a workplace themselves. If a CO does not manage to find a workplace in time, he is obliged to serve in a special training centre in Lapinjärvi.

After completing substitute service, COs have no reservist duties during peacetime. The legal position of COs in wartime is not quite clear. Article 1 of the Civilian Service Act stipulates that COs are assigned to substitute service during peacetime, but the law does not specify the position of COs during wartime. According to the Military Service Law, COs must join the defence effort during wartime, but the law does not specify what kind of service they are supposed to do. Consequently, it remains unclear if COs may be called up for military service during wartime.

4.9.7. Practice

In recent years, the number of CO applications is relatively stable at between 2,000 and 2,500 per year. Almost all applications are granted. According to the Finnish government in 1999: "neither the grounds for the application nor the personal conviction are interpreted in any way".

4.9.8. Total objectors

Since the length of substitute service has become twice as long as military service in 1998, the number of total objectors has increased significantly. Since 1999, approx. 70 COs declare themselves total objectors annually. Some total objectors protest in particular against the punitive length of substitute service, others are unconditional total objectors. Since 1999, 49 total objectors have been adopted as prisoners of conscience by Amnesty International.

Total objectors may be sentenced according to two different laws, depending on whether they first applied for legal recognition as conscientious objectors or not. Total objectors who obtain CO status and subsequently refuse to perform substitute service are sentenced for civilian service offences under Article 26 of the Civilian Service Act. Total objectors who did not apply for CO status are usually sentenced for refusing military service under Article 39 of the Military Service Law.

Most total objectors are sentenced to 196 days' imprisonment, which is half the length of substitute service. Total objectors are usually imprisoned in open prisons.

The following table gives the number of total objectors that has been sentenced to imprisonment in recent years:

1998 33

1999 53

2000 44

2001 61
2002 76

By November 2004, 25 total objectors were serving prison sentences.

The case of Jussi Hermaja is of special interest. He applied for asylum in Belgium, the only country within the European Union that accepts asylum applications from other EU Member States. His application was rejected by both the Foreigners Department and the Commissariat for Refugees. In 2004, the Raad van State rejected Hermaja's appeal. If Hermaja returns to Finland, he would be sentenced to imprisonment, but so far the Finnish state has not called for Hermaja's extradition. Hermaja has also made an appeal against the rejection of his asylum request with the European Court of Human Rights. His case is still pending.

4.9.9. Background

The current controversy about the punitive length of substitute service is actually not new for Finland. Between 1987 and 1991, substitute service also lasted twice as long as military service, which also resulted in an increasing number of total objectors.

Since 1998, the Finnish Parliament has twice discussed a reduction of the length of substitute service but there was no majority to do so. In November 2004, the United Nations Human Rights Committee called upon the Finnish government to reduce the length of substitute service. In addition, the Committee also called for a clear legal protection of the right to conscientious objection during wartime and for an equal treatment between Jehovah's Witnesses and other total objectors, as since 1985 Jehovah's Witnesses are legally exempt from service altogether.

Remarkably enough, the punitive length of Finnish substitute service has not been condemned by the European Parliament or the Parliamentary Assembly of the Council of Europe. In 2003 the Council of Europe Committee of Ministers stated that it agrees with the Assembly that alternative service should be neither a deterrent nor punitive in

character, but it also stated that "in certain cases, the less onerous duties of civilian service may justify a longer duration than that of military service" and that member states enjoy a certain discretion on the length and organisation of the alternative service.

The draft version of the 2003 Report on Fundamental Freedoms in the European Union did contain comments on the punitive length of the Finnish substitute service. These comments were however voted out by a 366/143/22 votes majority. A majority of the European Parliament apparently agreed with the Finnish Socialist MEP Ulpu Ilvari, according to whom it is "a matter for every country to judge for themselves how alternative service is organised and not the EU."

4.10. FRANCE

4.10.11. Conscription

France was the first country in the world to introduce conscription in 1793.In 1997, the French government decided to suspend conscription. The last conscripts were called up for military service in 2001. Since 2002 the armed forces consist of professional soldiers only.

Conscription has been replaced by a compulsory one day "rendez-vous citoyen" (national day of preparation for national defence). All young men and women between the ages of 16 and 18 are obliged to participate in this day. On this day, people have civil status and do not have to bear arms or wear a uniform or be subjected to military discipline. Participation in the "rendez-vous citoyen" is a necessary condition for taking part in final examinations or obtaining a diploma in state universities.

According to the Law on National Service Reform (97-1019), the government may reintroduce conscription at any time. The legislation providing for national service has in fact not been repealed.

4.10.12. Conscientious objection

The right to conscientious objection was legally recognized in 1963. French CO legislation was restrictive and did not comply with international standards on conscientious objection.

COapplications could only be made before starting military service and not by serving conscripts, and substitute service lasted twice as long as military service. Compared to other European countries, the number of COs in France has always remained relatively low. During the 1990s approx. 6,000 CO applications were made per year, which was only 3 per cent of all eligible conscripts.

With the suspension of conscription in 2002, the 1983 Law on Conscientious Objection (Law 83/605) became applicable only to men born before 31 December 1978. Consequently, young men who are born after 1979 have no possibility of claiming the right to conscientious objection.

There are no legal provisions for conscientious objection for professional soldiers.

4.11. GERMANY

4.11.1. Conscription

Conscription is enshrined in Article 12.1 of the 1949 Constitution and is further regulated by the 1956 Law on Military Service.

The length of military service is 9 months. All men between the ages of 18 and 23 are liable for military service. Reservist obligations apply up to the age of 45.

In recent years, the future of conscription has been discussed extensively in Germany. So far the government has decided to maintain conscription, but the size of the armed forces and the number of conscripts has been reduced significantly.

Consequently, fewer and fewer conscripts are actually called up for service. Since 2004, men who are married or who live together with a partner are legally exempt from service. In addition, the maximum drafting age has been reduced from 28 to 23 years. Men who have not yet been called up by the age of 23 thus get exempt from service. In previous years this was actual practice already, but in 2004 these grounds for exemption were included in the Law on Military Service.

4.11.2. Statistics

The armed forces comprise 190,000 troops, including 60,000 conscripts (2004). Every year approx. 415,000 young men reach conscription age.

In the next years the armed forces will be further reduced and the government plans to further reduce the number of conscripts to 47,000 by 2010. Consequently even fewer conscripts will be called up for service in the future. In 2005, 67,000 conscripts were called up for military service; from 2007 onwards this will be 55,000.

4.11.3. Legal basis

The right to conscientious objection is included in Article 4b of the 1949 Constitution. Legal provisions are laid down in the 2003 Law on Conscientious Objection. The new Law on Conscientious Objection entered into force on 1 November 2003.

4.11.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

According to Article 1 of the Law on Conscientious Objection, CO status is to be granted to those who refuse military service for reasons of conscience as described in the Constitution. Article 4b of the Constitution in fact states that "no one shall be compelled to perform armed war service contrary to his conscience".

4.11.5. Time limits

There are no time limits for submitting CO applications. Applications can thus be made before, during and after military service, by both serving conscripts and reservists. Applications that are made by serving conscripts are usually decided on in two to four weeks.

Approx. 2,500 CO applications per year are actually made by serving conscripts. Approx. 1,000 applications per year are made by reservists.

4.11.6. Procedure

Applications must be made to the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health). Applications must include a reference to Article 4b of the Constitution. No personal interview takes place and applications are not individually examined.

Consequently, almost all applications are automatically granted. If the application is rejected, there is a right to appeal to the administrative court.

4.11.7. Professional soldiers

The right to conscientious objection also applies to professional soldiers. Some provisions on conscientious objection for professional soldiers are laid down in a government decree of 21 October 2003. The application procedure for professional soldiers who wish to be discharged from the armed forces because of conscientious objection is comparable with the application procedure for conscripts.

Applications must be made to the local military commander and must include a motivation letter in which the applicant explains in more detail how and when his/her problems of conscience started. The application is forwarded to the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health), which makes a decision. The Federal Office may ask the opinion of the military commander or the personnel office. If the Federal Office has doubts about the application, it may order the applicant to attend for a personal interview. In practice, this does not seem to happen often. The Federal Office needs to make a decision on the application within 8 weeks.

If a professional soldier is recognized as a conscientious objector he needs to be released from the armed forces immediately (2003 Government Decree, Article 3.2).The application procedure is the same during wartime or time of emergency or during combat (2003 Decree, Article 3.6).

It is believed that every year approx. 80 professional soldiers ask for discharge from the armed forces because of conscientious objection. There are no detailed figures available about the number of applications granted, but most applications are reportedly being granted.

The military authorities regard a release from the armed forces which is based on conscientious objection as a release on someone's own initiative. This means that a professional soldier who has been recognized as a conscientious objector, needs to pay back the costs of any courses that (s)he has followed in the military and that have a civilian use.

4.11.8. Substitute service

The length of substitute service is 9 months, which is the same length as military service. The length of substitute service was actually reduced from 10 months in 2004, meaning that after 40 years, substitute service now has the same duration as military service.

Substitute service is administered by the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health). Substitute service is mainly performed in social welfare institutions, such as hospitals, nursing and working with handicapped people.

The salaries of COs are partially paid for by the employing organisation and partly by the government. A few placements are made with (non-profit) non-governmental organisations.

COs who have completed one year of voluntary work abroad, mostly ecological or social work, do not have to perform substitute service.

After completing substitute service, COs have no reservist duties. During wartime the right to conscientious objection is guaranteed and COs may not be called up for military service.

4.11.9. Practice

In the previous ten years approx. 150,000 CO applications were made per year. Most

applications (approx. 95 per cent) are granted.

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The following table gives the number of granted CO applications in recent years:

2000 146,099
2001 143,312
2002 153,925
2003 147,809
2004 115,779

The following table gives the number of COs performing substitute service in recent years:8
2000 124,063
2001 118,252
2002 112,378
2003 103,948
2004 82,046

The number of placements in substitute service is supposed to be similar to the number of conscripts in the armed forces - as laid down in the government agreement. However, in recent years there are actually more COs in substitute service than conscripts serving in the armed forces. For example, in 2004 78,343 conscripts performed military service and 82,046 COs were called up for substitute service.

This inequality will, in fact, be increasing in the coming years. The Federal Office has stated in 2005, 90,000 COs were called up for substitute service. By comparison, in 2005 only 67,000 conscripts will be called up for service in the armed forces. Still, the number of COs by far exceeds the number of available workplaces.

Consequently, a considerable number of COs are not called up for substitute service and are in practice exempt from service altogether. This trend will continue in the coming years.

Most COs (approx. 80 per cent) perform their substitute service within the health sector. The contribution of COs to the German health sector has often been cited as an obstacle for the abolition of conscription. Charitable organisations regularly stated that the abolition of conscription would have serious consequences for the future of the health sector as it would be financially impossible to replace all COs by regular paid staff.

4.11.10. Total objection

COs who refuse to perform both military and substitute service are usually sentenced to between 62 and 84 days of military arrest, over periods of 7, 14 and 21 days. Afterwards they may be prosecuted under Article 109 of the Military Penal Code for disobeying orders and "refusal to perform national military service". They are sentenced by district courts, which mean that the sentences can vary.

Those who have been granted CO status and state that they cannot perform substitute service for reasons of conscience, but who promise to work in social welfare institutions for a certain amount of time get exempt from substitute service. Obviously, this option was introduced to facilitate Jehovah's Witnesses, who refuse to perform substitute service but comply with it if they are sentenced to do it.

4.12. GREECE

4.12.1. Conscription

Conscription is enshrined in Article 4.6 of the 1975 Constitution and is further regulated by Law 731/1977, as amended in 1988 (1763/1988).

The length of military service is 12 months, and 17 months for officers. Certain categories, such as children from large families and men having two or more children, may perform a shorter term of service of 3, 6 or 9 months.

All men between the ages of 18 and 50 are liable for military service. This includes all males born to either a Greek father or mother. They automatically acquire Greek citizenship, regardless of whether they wish to possess Greek citizenship and regardless of whether they also hold citizenship of another country.

Reservist obligations apply up to the age of 50. Reservists are periodically called up for reservist training.

Since 1976 Greece is in a formal state of mobilisation, which was announced because of the Cyprus conflict and the tension with neighbouring Turkey. During periods of general mobilisation or war, the Ministry of Defence has an unlimited right to decide on matters concerning conscription (Law 1763/1988, Article 8.7).

4.12.2. Statistics

The armed forces comprise 162,000 troops, including 119,000 conscripts. Every year, approx. 85,000 young men reach conscription age. Approx. 75 per cent are recruited.

4.12.3. Legal basis

The right to conscientious objection is legally recognized with the 1997 Law on Conscientious Objection (2510/1997). The Law entered into force on 1 January 1998. Before 1998, the right to conscientious objection was not legally recognized.

4.12.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

According to Article 18.1 of the Law on Conscientious Objection, CO status may be granted to "those who invoke their religious or ideological convictions in order not to fulfil their draft obligations for reasons of conscience". Article 18.2 stipulates that the reasons of conscience "are considered to be related to a general perception of life, based on conscientious religious,
philosophical or moral convictions, which are inviolably applied by the person and are expressed by a corresponding behaviour".

In 2000 the Greek Constitution was in fact amended, in order to ensure the constitutionality of the legal recognition of non-religious grounds for conscientious objection.

4.12.5. Time limits

There is a strict time limit for submitting CO applications. Applications can only be made before starting military service, at the latest on the day before enlistment into the armed forces.

According to Article 18.4(a) of the Law on Conscientious Objection: "those who have carried arms for whatever length of time in the Greek or foreign armed forces or in the

security forces" cannot be considered as conscientious objectors. CO applications can thus not be made by serving conscripts or reservists.

4.12.6. Professional soldiers

There are no legal provisions for conscientious objection for professional soldiers. The Law on Conscientious Objection only applies to conscripts. In addition, Article 18.4(a) effectively excludes professional soldiers from claiming the right to conscientious objection.

In 2003 the first known case occurred of a professional soldier who asked to be discharged from the armed forces because of conscientious objection. In May 2003, he publicly announced that he refused to participate in the war in Iraq. In September 2004, he was charged for desertion and convicted by the Piraeus Navy Court Martial to three years and four months' imprisonment. His trial took place without any lawyer or witnesses for the defendant. He made an appeal and applied for postponement of his imprisonment until his appeal is judged. In October 2004, the Athens Appeal Court granted the request for postponement. In January 2005, the Piraeus Naval court sentenced him to five months' imprisonment on suspension in case of appeal.

4.12.7. Procedure

CO applications must be made to the Ministry of Defence. The application must include a copy of the applicant's criminal record and documents proving that the applicant does not have a gun licence or a licence for hunting (Law on Conscientious Objection, Article 18.4(b) and (c)).

Applications are considered by a committee, which falls under the authority of the Ministry of Defence. The committee consists of a legal expert, two university professors who are
specialized in philosophy, psychology or social science, and two military officers (one of them a psychiatrist). Applicants may be ordered for a personal interview with the

committee, during which they need to prove their "stable, permanent and inviolable pacifist attitude of life and behaviour", as laid down in Article 18.2 of the Law on Conscientious Objection.

The committee makes a consultative decision, which needs to be confirmed by the Ministry of Defence. The Ministry of Defence usually accepts the consultative decisions of the committee.

If the application is rejected, there is a right of appeal to the civil court within five days of receiving the decision.

4.12.8. Substitute service

The length of substitute service is 23 months, which is almost twice the length of military service. In some cases, due to family reasons, COs are allowed to perform a shorter service of at least 15 months.

The Law on Conscientious Objection also provides for an unarmed military service within the armed forces from 4 months and 15 days to 18 months. So far, no COs have chosen to perform this unarmed military service.

Substitute service is administered by the Ministry of Defence. Article 21.3 of the Law on Conscientious Objection in fact stipulates that COs who are performing substitute service "are considered as quasi enlisted in the armed forces".

According to the Law on Conscientious Objection, substitute service may be performed in various institutions in the public sector. In practice, most COs perform substitute service on remote islands. Substitute service cannot be performed in Athens, Thessaloniki and four other big cities, nor can it be performed in the place of birth, origin or residence of the CO. This is, in fact, a discriminatory treatment of COs in comparison with conscripts in the armed forces, because most military units are situated within close range of big cities.

According to Article 21/5, CO status may be withdrawn in cases where the CO commits a disciplinary or criminal offence, is absent from duty, carries out trade union activities or participates in strikes.

The right to conscientious objection is not legally recognized during wartime. According to Article 24/2, substitute service may be suspended during wartime by the Ministry of Defence and COs may be called up for unarmed military service within the armed forces.

4.12.9. Practice

Since the Law on Conscientious Objection entered into force on 1 January 1998, approx. 150 CO applications are believed to be made per year. Most applicants are members of religious denominations who forbid their members to bear arms, in particular Jehovah's Witnesses, but there are also COs who refuse military service for pacifist secular reasons. The number of CO applications is low, which is probably partly due to the strictness of the application procedure and the harsh conditions of substitute service. Moreover, the Greek authorities have been criticized for not informing new conscripts about the application procedure for substitute service. The information for new recruits in fact merely states that "applications under Law 2510/1997" are available, but it does not give any additional details about the application procedure.

It is not clear what percentage of CO applications is granted. There appears to be a discriminatory treatment of non-religious COs, with applications from Jehovah’s Witnesses always being accepted if the full required documentation is present, whereas COs who do not relate their conscientious objection to membership of a particular religious denomination are often unsuccessful. According to Amnesty International, the committee has suggested the blanket rejection of applications that are made on non-religious ideological grounds.

According to the Greek government, 758 out of 771 CO applications that had been made between 1998 and June 2003 had been granted. It is not clear, however, if this number includes the applications that have not been taken into consideration because they were not submitted within the time limit or because they were not accompanied by the required documentation. Numerous CO applications have, in fact, been rejected because they were not submitted within the time limit or because they were not accompanied by documentation, such as a copy of the criminal record or documents proving non-ownership of a gun licence. In fact, in many cases, local authorities have reportedly refused to provide COs with these documents.

It is not known how many COs are currently performing substitute service. In 1999, approx. 200 COs were believed to be performing substitute service. Since the Law on Conscientious Objection entered into force, approx. 40 COs agreed to perform substitute service, but have rejected their posting as a protest against the punitive duration and conditions of substitute service. The Greek authorities have started criminal proceedings against some of these COs.

A CO who does not report for substitute service in time becomes an 'Anipótaktos' (objector to conscription) and may be prosecuted under military law and lose his CO status. This section of the Greek Law on Conscientious Objection is confusing, because it leaves COs in a 'legal limbo' situation in which it is unclear if they are to be prosecuted by the civilian or military authorities.

Refusing substitute service is considered as ‘insubordination’ and is punishable by up to six months’ imprisonment during peacetime. Upon release, COs may again be called up for military service.

The practice of trying COs for more than one case of draft evasion or insubordination is, in fact, a violation of Article 14.7 of the International Covenant on Civil and Political Rights, according to which "No one shall be liable to be tried or punished again for an offence for which he has been finally convicted or acquitted in accordance with the law and penal procedure of each country".

The continuing harsh treatment of COs is best exemplified by the case of Lazaros Petromelidis. Petromelidis has been persecuted since 1992 when he declared his conscientious objection, when the right to conscientious objection was not yet legally recognized. In 1999 he was recognized as a conscientious objector but he refused to perform substitute service because of its punitive nature. His CO status was withdrawn and he was consequently called up for military service again, which he again refused. Over the years, Petromelidis has been passed through a dozen trials, has been jailed three times and was sentenced to a 20 month suspended sentence in 1999. In December 2004, Petromelidis was eventually sentenced to 30 months' imprisonment for two charges of insubordination dating from 1999 and 2003.

4.12.10. Draft evasion

Apart from the COs mentioned above, there are a considerable number of draft evaders who have not responded to their call-up for military service. Many of them may be considered as COs, particularly because the right to conscientious objection was not legally recognized until 1998.

Thousands of draft evaders have changed address and live in hiding in Greece. Many draft evaders have in fact left Greece in order to avoid call-up for military service. Officials estimate their number as between 8,000 and 35,000, but CO groups have estimated the number of draft evaders as between 40,000 and 70,000.

Draft evaders remain liable for criminal prosecution up to the age of 51. In exceptional circumstances draft evaders may be allowed to enter Greece for a maximum period of 15 days or three months, providing they can prove evidence of serious personal or family reasons. Draft evaders can buy off criminal prosecution, on the condition that they complete military service.

The payment is at least 100,000 GDR (approximately 300 Euros) per month of military service, which must be paid as a lump sum.

4.12.11. Background

Greece has a long history of repression of COs. Since the 1950s, approx. 3,500 COs have been imprisoned. Initially most COs were members of the Jehovah's Witnesses, but since the 1980s there was also a growing number of COs who are inspired by secular, pacifist or other motives.

Although the right to conscientious objection is legally recognised since 1998, the Law on Conscientious Objection is clearly not in line with several international standards on conscientious objection. Both the Greek Ombudsman and the National Commission on Human Rights have called for a reduction of the duration of substitute service and have urged the removal of the application procedure and substitute service from the Ministry of Defence.

Over the years, the Greek government has been urged on numerous occasions by several intergovernmental bodies to bring its policy towards COs in compliance with international standards on conscientious objection.

In 2001, the European Parliament adopted a resolution in which it called on Greece to recognise the right to conscientious objection to military service without restrictions and without reference to any religious grounds, to introduce forms of alternative service which do not last longer than compulsory military service and to immediately release all those serving prison sentences in this connection.

In 2001, the European Committee of Social Rights concluded that the duration of substitute
service amounts to a disproportionate restriction on "the right of the worker to earn his living in an occupation freely entered upon" and is a violation of Article 1.2 of the European Social Charter, as substitute service keeps COs away from the labour market for an amount of time which is disproportionately longer than conscripts in the armed forces.

In 2003, the European Parliament in its Annual Report on Fundamental Freedoms called upon Greece to recognize the right to conscientious objection without restrictions, to introduce a substitute service that is of equal duration to military service and to release all those serving prison sentences in this connection.

4.13. HUNGARY

4.13.1. Conscription

In February 2003, the Hungarian government announced that it would end conscription by August 2005. During the last years of conscription, some categories were no longer called up for military service (men over 23, married men and men having children).

The transformation process into professional armed forces went faster than initially anticipated. The last 2,000 conscripts were discharged from military service in November 2004. Since December 2004 the armed forces consist of professional soldiers only.

Conscription is in fact suspended. In November 2004, the Hungarian Parliament accepted the modification of the Constitution and the Defence Law. Accordingly, conscription is suspended during peacetime, but it may be reintroduced in case of emergency or during wartime.

4.13.1.2. Conscientious objection

The right to conscientious objection was legally recognized in 1989, following a liberal revolt in the Communist Party. Since 1993, CO applications were no longer individually examined and personal interviews no longer took place. Since then, the number of CO applications increased significantly from 500 to approx. 5,000 applications per year.

There are no legal provisions for conscientious objection for professional soldiers.

When conscription applied, the Law on Civilian Service allowed for CO applications to be made by serving conscripts, but only until the military oath was taken (after performance of three weeks' military service). This provision practically excludes professional soldiers from claiming the right to conscientious objection.

4.14. IRELAND

4.14.1. Conscription

Conscription has never existed in Ireland.

According to Article 28 of the Constitution and Article 54 of the Defence Act, conscription may be introduced in case of national emergency.

There is no further legislation on conscription and there never has been since Ireland became independent as the Irish Free State in 1922.

4.14.2. Conscientious objection

It is not known if there are legal provisions for conscientious objection for professional soldiers. According to one source, it is believed that soldiers who develop conscientious objection may seek discharge from the armed forces. No further information is available.

4.15. ITALY

4.15.1. Conscription

In November 2000, the Italian Parliament decided to end conscription. It was initially planned to end conscription by 2007, but the transformation process into professional armed forces went faster than anticipated. In March 2003, the Parliament adopted a law that advanced the end of conscription. Accordingly, young men born after 1985 were no longer called up for military service. The last conscripts were called up in February 2004 and since 1 January 2005 the Italian armed forces consist of professional soldiers only.

Conscription is in fact suspended. According to Law 331/2000, conscription may be reintroduced in case of war or national emergency.

Conscription is still included in Article 52 of the Constitution, according to which: "The defence of the country is the sacred duty of every citizen, Military service is compulsory within the limits and the manner laid down by law".

4.15.2. Conscientious objection

The right to conscientious objection was legally recognized in 1972.Since 1989 substitute service was of the same duration as military service. Previously, substitute service lasted 8 months longer than military service, but in 1989 the Constitutional Court ruled that the longer duration of substitute service was unconstitutional.

After the reduction of the duration of substitute service the number of CO applications increased significantly. By the end of the 1990s there were approx. 80,000 COs per year. During the final years of conscription there were actually more COs performing substitute service than conscripts serving in the armed forces.

Legal provisions for conscientious objection are laid down in the 1998 Law on Conscientious Objection (230/1998). If conscription is reintroduced in case of war or national emergency, Cos will be called up to serve in civil protection or the Red Cross (Article 13/4).

There are no legal provisions for conscientious objection for professional soldiers.

In addition, according to Article 2 of the 1998 Law on Conscientious Objection, the right to conscientious objection to military service does not apply to those "who have presented a
request within less than two years to serve in the Military Armed Forces" or any other government institutions which involve the use of weapons. This restriction practically excludes professional soldiers from claiming the right to conscientious objection.

4.16. LATVIA

4.16.1. Conscription

Conscription is regulated by the 1997 Law on Military Service. The length of military service is 12 months, and 9 months for university graduates.

All men between the ages of 19 and 27 are liable for military service. Reservist duties apply up to the age of 55.

Apart from medical and social reasons, exemption may also be granted to graduates of state universities who have completed a voluntary military training during their studies. The Latvian government has announced that it will phase out conscription by 2007. The armed forces are planned to consist solely of professional soldiers by 2007.

4.16.2. Statistics

The armed forces comprise 4,800 troops, including 1,600 conscripts. Every year, approx. 20,000 young men reach conscription age; approx. 10 per cent are recruited.

4.16.3. Legal basis

The right to conscientious objection is legally recognized by the 2002 Law on Alternative Service. The Law entered into force on 1 July 2002. Before 2002, the right to conscientious objection was not legally recognized.

4.16.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

According to Article 1 of the Law on Alternative Service, the purpose of the Law is “to

guarantee freedom of human thought, conscience and religious beliefs by linking such freedom with the duty of a citizen towards the State".

4.16.5. Time limits

CO applications can only be made before starting military service. Article 5.5 of the Law on Alternative Service mentions the possibility of transfer from substitute service to military service, but there are no legal provisions for a transfer vice versa. Applications can thus not be made by serving conscripts or reservists.

There are no legal provisions for conscientious objection for professional soldiers. The Law on Alternative Service only applies to conscripts.

However, provisions on conscientious objection were practically abolished again in 1993. The 1997 Law on Military Service contained some provisions on conscientious objection, but called for the introduction of further legislation.

4.16.6. Procedure

CO applications must be made to the local conscription centre (Ministry of Defence). The Law on Alternative Service does not specify if applications are individually examined and if there is a personal interview. According to the Latvian government, applications are decided on by a commission consisting of members of the Ministry of Defence and the National Human Rights Commission.

The Law on Alternative Service contains no specific regulations on the right to appeal in case the application is rejected. However, all conscripts may appeal against decisions concerning call-up for regular military service within ten days to the local conscription centre (Ministry of Defence). This option is apparently also available for conscripts whose CO applications are rejected.

4.16.7. Substitute service

The length of substitute service is 24 months, and 18 months for university graduates. This is twice the length of military service.

Substitute service is administered by the Ministry of Defence. According to Article 4.1 of the Law on Alternative Service, substitute service may be performed in both government institutions and non-governmental organisations working in areas like social care, health care and fire fighting. The exact list of institutions where substitute service may be performed is proposed by the Ministry of Defence, in cooperation with (local) government institutions. It is not known how far substitute service has been organised in practice.

4.16.8. Practice

The Law on Alternative Service entered into force on 1 July 2002. By the end of 2002, no CO applications had been made yet. According to the Latvian government in October 2003, the number of CO applications is low. The government also stated that all applications had been approved so far. More detailed figures are not known.

The number of applications is believed to be still low and most likely confined to members of the Jehovah's Witnesses. The only known cases of COs applying for substitute service before 2002 were in fact Jehovah's Witnesses. There are no CO groups or human rights organisations campaigning on conscientious objection.

4.16.9. Background

Before the Law on Alternative Service was passed in 2002, there were not many known cases of COs either. The only known cases were in 1999 when two Jehovah's Witnesses refused military service and applied for an alternative service outside the armed forces, which was not available at the time. Their requests were first denied by the authorities, but in 2000 they got exempt from service altogether. Their cases attracted considerable

international attention, which seems to have contributed to the introduction of the Law on Alternative Service.

5 A 2001 report by the Council of Europe concluded from a Latvian government response submitted in 1999 that "regular servicemen's right of conscientious objection is recognized" in Latvia. (Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001). The text of the government response is not publicly available, but the conclusions drawn in the report are probably the result of a misunderstanding. In 1999, the Law on Alternative Service had not even been passed, so at that time the right to conscientious objection was not even legally recognized for conscripts.

In 2003, the United Nations Human Rights Committee in its concluding observations on Latvia's periodic report, expressed its concern about the punitive length of substitute service being twice as long as military service. The duration of substitute service is in fact remarkable, because the Ministry of Defence publicly stated in 2000 that "the length of alternative service would be the same as military service".

The comments by the United Nations Human Rights Committee have apparently been discussed within the Latvian government. In April and July 2004, amendments to the Law on Alternative Service reducing the length of substitute service to one year were sent for discussion to the Cabinet of Ministers. By February 2005, the length of substitute service has apparently still not been reduced.

4.17. LITHUANIA

4.17.1. Conscription

Conscription is enshrined in Article 139 of the 1992 Constitution and is further regulated by the1996 Law on National Conscription (1593/1996).

The length of military service is 12 months, and 6 months for university and college graduates. All men between the ages of 19 and 26 are liable for military service. Reservist obligations apply up to the age of 35.

4.17.2. Statistics

The armed forces comprise 12,190 troops, including 3,740 conscripts. Each year approx. 26,000 young men reach conscription age; approx. 10 per cent are recruited.

4.17.3. Legal basis

The right to conscientious objection is enshrined in Article 139 of the 1992 Constitution, according to which "Citizens of the Republic of Lithuania are to serve in the national defence or to perform alternative service in the manner established by law". Further provisions for conscientious objection are laid down in the 1996 Law on National Conscription.

4.17.4. Scope

According to Article 4 of the Law on National Conscription, substitute service is available for "those who due to religious or pacifist beliefs may not serve under arms".

This wording suggests that both religious and secular grounds for conscientious objection are legally recognized. It is, however, unclear how the grounds for recognition are interpreted in practice. In fact, both in 1997 and 2004 the United Nations Human

Rights Committee called upon the Lithuanian government to "clarify the grounds and eligibility for performing alternative service to persons objecting to military service on grounds of conscience or religious belief".

4.17.5. Time limits

The Law on National Conscription does not specify if there are time limits for submitting CO applications. However, the absence of clear legal provisions implies that serving conscripts and reservists cannot apply for CO status. Moreover, the Lithuanian government has stated in the past that applications can only be made before starting military service.

Moreover, the government required COs to be members of religious pacifist organisations who forbid their members to bear arms. However, the government always maintained that no such organisations existed in Lithuania. (War Resisters' International: Refusing to bear arms: A world survey on conscription and conscientious objection to military service, 1998).

There are no legal provisions for the right to conscientious objection for professional soldiers.

4.17.6. Procedure

According to Article 20 of the Law on National Conscription, CO applications must be made to the regional conscription centre. The application must include a motivation letter and curriculum vitae. The application is decided on by a commission, consisting of representatives of public organisations, religious communities and educational institutes.

The Law does not specify if a personal interview is part of the application procedure. According to Article 20.1, a request for alternative service "must be reasonably grounded", but it is not known which criteria the commission uses to assess this.

It is not clear how far the application procedure is actually functioning. Article 20.2 requires the government to introduce further procedures to set up the commission. According to one source, the government announced in 2000 that a commission was to be established. This suggests that at least until 2000 no such commission existed.

4.17.7. Substitute service

According to Article 23.2 of the Law on National Conscription, the length of substitute service is 18 months. This is one and a half times the length of military service.

In practice, substitute service is not organised and only an unarmed military service within the armed forces is available.

The Law on National Conscription provides for both an unarmed military service within the armed forces and a substitute service outside the armed forces. The option of unarmed military service is included in Article 22.1, according to which: "citizens shall complete alternative national defence service within the national defence system" (…) "They shall be appointed to serve in positions which do not require using coercion and weapons". Substitute service is dealt with in Article 22.2: "By decision of the Government, alternative national defence service as civil-type socially useful labour, may be completed in other state institutions". The Law requires the government to introduce further procedures on the organisation of substitute service, but so far this has not happened. Consequently, only an unarmed service within the armed forces is available.

In May 2004, the United Nations Human Rights Committee called upon the Lithuanian government to ensure that the right to conscientious objection is respected "by permitting in practice alternative service outside the armed forces".

According to the US State Department in September 2004, the Lithuanian government was believed to be exploring the possibility of introducing a substitute service outside

the armed forces. However, no concrete steps seem yet to have been taken to introduce a substitute service outside the armed forces.

4.17.8. Practice

Not many CO applications are made. According to figures provided by the Lithuanian government, between 1993 and 1997 no CO applications were made at all. Figures for recent years are not available, but the number of applications is believed to be low. There are no human rights organisations or CO groups campaigning on the issue.

The only known recent CO applications were made by several Jehovah's Witnesses in 2003. They were assigned to perform unarmed military service within the armed forces. They refused this service and appealed against their call-up. They were initially sentenced to a fine and one year's imprisonment by a local court. In February 2004 Klaipeda District Court overturned this ruling and their appeals were granted. It is not known if they will not be called up for service at all or if their cases are still pending.

4.18. LUXEMBOURG

4.18.1. Conscription

Conscription was abolished in 1967. The armed forces comprise 900 troops and consist of professional soldiers only.

4.18.2. Conscientious objection

There are no legal provisions for conscientious objection for professional soldiers. There are no known cases of professional soldiers seeking discharge from the armed forces because of conscientious objection.

4.19. MALTA

4.19.1. Conscription

Conscription has never existed in Malta. The armed forces comprise 2,140 troops and consisist of professional soldiers only.

4.19.2. Conscientious objection

There are no legal provisions for conscientious objection for professional soldiers.
The government stated in 1988 that: "As military service is voluntary, the question of 'conscientious objection' does not arise".

4.20. NETHERLANDS

4.20.1. Conscription

In 1992 the Dutch Parliament decided to suspend conscription. The last conscripts were called up for military service in 1996. Since January 1997 the armed forces consist of professional soldiers only.

Conscription is still included in Article 97 of the Constitution, according to which: "All Dutch nationals who are capable of doing so shall have a duty to cooperate in maintaining the independence of the state and defending its territory... This duty may also be imposed on residents of the Netherlands who are not Dutch nationals". According to Article 98: "To protect its interests, the State shall maintain armed forces which consist of volunteers and which can also consist of conscripts... Compulsory service in the armed forces and the power to postpone the call-up in active service shall be regulated by an Act of Parliament".

With the suspension of conscription in 1997 the Law on Conscription was amended. Young men are still registered for military service at the age of 17. They receive a notice of registration from the Ministry of Defence, but they are not called up for medical examination or military service.

Conscription may be re-enforced during wartime or time of emergency. In that case, all registered conscripts up to the age of 45 may be called up for military service.

4.20.2. Conscientious objection

The right to conscientious objection has been legally recognized since 1920. Its further legal basis was laid down in the 1962 Law on Conscientious Objection.

During the 1980s, approx. 3,000 CO applications were made per year, which was approx. 8 per cent of eligible conscripts. During the last years of conscription the

number of COs actually increased, as many applicants tried to delay their call-up for service hoping that they would not be called up at all.

The right to conscientious objection is included in Article 99 of the Constitution, according to which: "The conditions on which exemption is granted from military service because of serious conscientious objection shall be specified by Act of Parliament".

Following the suspension of conscription in 1997, the Law on Conscientious Objection was amended.

When conscription applied, CO applications could only be made after medical examination.

Consequently, only conscripts who were declared fit for military service were able to make a CO application. Following the suspension of conscription, young men are no longer called up for medical examination. This means that young men have no possibility of making a CO application, although all registered conscripts may be called up for military service if conscription is re-established.

In the late 1990s, Dutch peace groups started a campaign to enable people to be registered as conscientious objectors during peacetime. During the discussion on the Law on Conscientious Objection by the Parliamentary Defence Commission in 2002, several political parties in fact called upon the Ministry of Defence to enable men to claim the right to conscientious objection during peacetime. However, the Ministry of Defence did not want to introduce such a register. The Ministry considered it to be too expensive to make the necessary administrative efforts to set up such a register.

Since the suspension of conscription, one conscript has actually tried to obtain recognition as a conscientious objector. After receiving information about his registration, he made a CO application to the Ministry of Defence. His application was, however, not taken into consideration by the Ministry.

4.20.3. Professional soldiers

The Law on Conscientious Objection applies to both conscripts and contract soldiers. According to Article 3, reasons of conscientious objection by both conscripts and the military may be considered by the Ministry of Defence as deep and profound.

It is not known if there is an application procedure for professional soldiers who wish to be discharged from the armed forces because of conscientious objection. It is believed that, in the past, several professional soldiers who asked to be discharged from the armed forces because of conscientious objection were granted honourable leave. There are no known recent cases of professional soldiers seeking discharge because of conscientious objection.

According to the Ministry of Defence in 2004, professional soldiers who have conscientious objection to particular campaigns of the armed forces, for example deployment in Iraq, do not have the right to claim conscientious objection to participation in these particular campaigns.

According to the Ministry, professional soldiers who have conscientious objection to a particular army campaign may only seek discharge from the armed forces.

4.21. POLAND

4.21.1. Conscription

Conscription is enshrined in Article 85 of the 1997 Constitution and is further regulated by the 1999 Law on the Obligation to Defend the Republic of Poland.

The length of military service is 10 months, and 3 months for university graduates. Instead of performing military service, students may also participate in military training during their studies.

All men between the ages of 18 and 28 are liable for military service. Reservist obligations apply up to the age of 50, but in practice most conscripts are not called up for reservist training in peacetime.

During the past decade, in its attempts to comply with NATO standards, the Polish government has reduced the size of the armed forces and increased the number of professional soldiers.

The number of conscripts in the armed forces has been reduced and will be further reduced in future. The duration of military service has been reduced and will be further reduced to 9 months in 2006. There are no known plans to abolish conscription.

4.21.2. Statistics

The armed forces comprise 87,000 troops, including 39,000 conscripts. Every year, approx. 330,000 young men reach conscription age; approx. 20 per cent are recruited.

4.21.3. Legal basis

The right to conscientious objection has been legally recognized since 1988 and is included in Article 85 of the Constitution, according to which “Any citizen whose

religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service in accordance with principles specified by statute".

Its present legal basis is the new Law on Alternative Service, which entered into force on 1 January 2004. The 1999 Law on the Obligation to Defend the Republic of Poland also contains provisions on conscientious objection.

4.21.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

4.21.5. Time limits

There is a time limit for submitting CO applications. Applications can only be made before starting military service, at the latest by the time of receiving the call-up order for military service. Applications can thus not be made by serving conscripts or reservists.

There are no legal provisions for conscientious objection for professional soldiers. According to the Polish government, professional soldiers who develop conscientious objection may seek to dissolve their employment contract without specifying the reason, with appropriate notice. If a soldier's contract is dissolved, he needs to repay an equivalent of the costs of accommodation, board and uniforms obtained during the period of studies or instruction.

4.21.6. Procedure

Applications must be made to the local 'voivod' (local government) commission. The commission consists of five members, three of whom must be present in order to make a decision. At least two of the commission members are specialists in ethical or religious issues.

The commission conducts a personal interview with the applicant, after which it makes a decision. If the application is rejected, it is possible to make a new CO application within six months of the first decision. If the application is rejected again, an appeal can be made to the alternative service commission at a higher level and then to the administrative court.

4.21.7. Substitute service

The length of substitute service is 18 months, and 6 months for university graduates. Substitute service is administered by the Ministry of Labour, in cooperation with local governments. It can be performed in government institutions in areas like health care, nursing, social work and environmental protection. Substitute service may also be performed with religious organisations that have received public benefit status, and with non-governmental organisations that have been approved by the Ministry.

After completing substitute service, COs are not called up for reservist duties in peacetime. According to the 1999 Law on the Obligation to Defend Poland, the right to perform substitute service is suspended during wartime. Consequently, COs may be called up for military service during wartime.

4.21.8. Practice

It is believed that in both 2003 and 2004 approx. 4,000 CO applications have been made. Exact figures are not available.

The Polish government has, in fact, given different statistics about the number of CO applications in recent years. The following table gives the number of CO applications and the number of granted applications in recent years. The first table is based on the figures provided in Poland's periodic report to the United Nations Human Rights Committee in 2004; the second table is based on information provided by the Polish government in August 2004.

Applications Applications granted
2000 6,327 3,991
2001 4,410 2,848
2002 4,851 2,861

Applications Applications granted
2000 3,372 2,361
2001 3,147 2,243
2002 3,153 2,394

As the statistics show, the Polish application procedure is rather strict and only approx. 60 per cent of applications are granted. This has been the case ever since the early 1990s.

Considering the percentage of recognized CO applications, Poland has, in fact, the strictest application procedure of all European countries having CO legislation. Until 2004 CO applications were decided on by a commission that consisted of both civilian and military members. Under the new Law on Alternative Service that entered into force in 2004, the commission no longer has military members. It is not yet clear if this means that applications will be granted more liberally.

There is a shortage of places where substitute service can be performed. This has actually been the case ever since substitute service became available in the early 1990s. In 2000, 1,420 Cos were assigned to substitute service, 1,803 in 2001, and 1,780 in 2002.

As these statistics show, the number of COs who are assigned to substitute service is far less than the number of recognized COs. Consequently, COs may have to wait for several years before they can start substitute service.

According to the Polish government, by 31 December 2002 there were 9,181 COs waiting for an assignment to start their substitute service. Eventually, they may also get exempt from service altogether or get transferred to the
reserves.

In November 2004, the United Nations Human Rights Committee called upon the Polish government to reduce the length of substitute service. The Committee noted that the duration of substitute service was 18 months, compared to 12 months' military service and stated that the Polish government "should ensure that the length of alternative service to military service does not have a punitive character".

4.21.9. Background

In the past, Polish CO groups have regularly claimed that CO status is mostly granted to absolute pacifists and members of religious denominations who forbid their members to bear arms. During the 1990s there were dozens of Roman Catholic COs whose applications were rejected and who continued to refuse military service. They were sentenced to fines and imprisonment for "refusing to perform military service". The most recently known case occurred in 1998 when a CO was sentenced to six months' imprisonment. His CO application was rejected on the ground that the Roman Catholic religion does not constitute sufficient grounds for conscientious objection. Since 1999, there are no known similar cases of COs being imprisoned.

4.22. PORTUGAL

4.22.1. Conscription

In 1999 the Portuguese government announced the abolition of conscription and started a transformation process into fully professional armed forces. The last conscripts were called up for military service in 2004. Since November 2004, the armed forces consist of professional soldiers only.

4.22.2. Conscientious objection

The right to conscientious objection was legally recognized in 1976. There are no legal provisions for the right to conscientious objection for professional soldiers.

When conscription applied, legal provisions on conscientious objection were laid down in Law 7/1992. This law only applied to conscripts. CO applications could only be made before starting military service. Article 13 practically excludes professional soldiers from claiming the right to conscientious objection. According to this Article, the right to conscientious objection does not apply to those whose work includes bearing arms, have a licence to do so or whose work is connected with the manufacture of arms and armaments.

4.23. ROMANIA

4.23.1. Conscription

Conscription is enshrined in Article 52 of the Constitution, as amended in 2003, and is further regulated by the 1996 Law on the Preparation of the Population for Defence (46/1996).

The length of military service is 8 months, and 4 months for university and college graduates. All men aged between the ages of 20 and 35 are liable for military service. Reservist obligations apply up to the age of 50.

The Romanian government has announced that it plans to abolish conscription in 2007.(Conscription still exist in Romania by September 2007). The transformation into fully professionalized forces in order to comply with NATO standards has been planned for some time. Since the 1990s, the size of the Romanian armed forces and the number of conscripts has been reduced significantly. In 2003 the Ministry of Defence announced that a bill had been drafted to gradually phase out conscription by 2007. It is not known if and when this bill has been discussed by the Romanian Parliament.

In 2003 the Constitution was in fact amended in order to allow for the abolition of conscription.

4.23.2. Statistics

The armed forces comprise 97,000 troops, including 29,600 conscripts. Every year, approx. 170,000 young men reach conscription age; approx. 35 per cent are recruited.

4.23.3. Legal basis

The right to conscientious objection is regulated by the 1996 Law on the Preparation of the Population for Defence (1996/46) and the 1997 Government Decree ‘As regards the

way of execution of the alternative service law according to the provision of Article 4 from Law 46/1996' (618/1997).

4.23.4. Scope

Only religious grounds for conscientious objection are legally recognized. According to Article 4 of the 1996 Law: "Citizens who, for religious reasons, refuse military service under arms shall perform alternative utilitarian service, according to present law".

The grounds for recognition are further restricted by Article 6.3 of the 1997 Government Decree, which states that the right to conscientious objection only applies to "members of religious groups that do not allow the discharge of military service under arms".

The religious groups concerned are named in a list that is made by the State Secretariat for Religious Denominations. The list includes the Pentecostals, Adventists, Baptists, Seventh Day Adventists and Jehovah's Witnesses.

4.23.5. Time limits

There is a strict time limit for submitting CO applications. Applications must be made within 15 days of receiving call-up papers. Applications can thus not be made by serving conscripts or reservists.

4.23.6. Procedure

Applications must be made to the Ministry of Defence. The applicant must state in his application to which church or religious group he adheres. The Ministry of Defence checks the application with the State Secretariat for Religious Denominations. Applications are onlyn granted if the mentioned religion is included in the government list. If the application is rejected, there is no right to appeal with the civil court.

4.23.7. Substitute service

The length of substitute service is 12 months, and 6 months for high school graduates. This is one and a half times the length of military service.

Substitute service is administered by the Ministry of Defence. According to Government Decree 618/1997, substitute service can be performed in public institutions, independent administrations and trade companies working in social and medical assistance, industrial construction, and protection of the environment, agriculture and forestry (Article 2.2).

4.23.8. Practice

It is not known how many CO applications are made. According to the Ministry of Defence, between 1991 and 1998, 1,670 conscripts had applied for
an alternative service. Most of them were members of the Jehovah's Witnesses and other religious denominations who forbid their members to bear arms. Pending the introduction of Government Decree 618/1997, their call up for service was postponed, but they were supposed to be called up for substitute service by 1998. It is not known how many CO applications have been made since 1998, nor is it known how far substitute service has been organised in practice.

In 2000 there were 29 known cases of Jehovah's Witnesses who refused to perform substitute service. They had reservations about its length and nature as, at that time, substitute service lasted twice as long as military service. Moreover, they felt discriminated against because ordained priests of officially recognized religious organisations are legally exempt from military service.

Court rulings were inconsistent. Some of them were charged under Article 354 of the Criminal Code for failure to report for military service; some of them were acquitted. In October 2001, the Supreme Court ruled that the failure to report for substitute service is not provided for in the Criminal Code. Since this Supreme Court ruling there have been

no new cases of Jehovah's Witnesses refusing to perform substitute service. Some of the Jehovah's Witnesses concerned actually lodged a complaint with the European Court of Human Rights. They accused the Romanian authorities of discrimination because ordained ministers of officially recognized religious organisations are legally exempt from military service. Their cases are believed to be still pending.

There are no known cases of conscripts claiming the right to conscientious objection on nonreligiousgrounds. Under the present legislation, they would clearly not be able to obtain CO status and they would not be allowed to perform substitute service.

The Romanian government has been under national and international pressure to recognize secular pacifist grounds for conscientious objection. In 1998 the National Coalition for Civil Service was formed. The Coalition is a network of youth and human rights organisations campaigning for CO legislation that complies with international standards. At the end of 1998, the Coalition had 70 member organisations representing 70,000 people.

In 1999, the United Nations Human Rights Committee expressed its concern that Romania "did not provide for the right to conscientious objection without discrimination" and called upon the Romanian government to amend its practice.

However, the Romanian government has never been willing to widen the grounds for recognition and include secular pacifist grounds for conscientious objection. Consequently, the only way for non-religious COs to avoid military service is by bribing draft officials or by evading call-up. Draft evasion is punishable by a fine of between 500,000 and 3 million lei. Furthermore, failure to report for military service is punishable by one to five years' imprisonment under Article 354 of the Criminal Code.

4.24. SLOVAK REPUBLIC

4.24.1. Conscription

Conscription is enshrined in Article 15 of the 1992 Constitution and is further regulated by Law 331/1992.(After amending the 1992 Constitution, **Article 18** of the Slovakian Constitution still retains the conscription.)

"(1) No one shall be send to perform forced labour or forced services.
(2) Provisions of paragraph 1 of this Article shall not apply to:
a) labour lawfully imposed on prisoners or on persons serving a sentence, which is replacing imprisonment,
b) military service or other service performed instead of compulsory military service ,
c) service lawfully required in cases of natural disasters, accidents or other danger, which is threatening the lives, health or considerable property values,
d) activity imposed by law for the protection of life, health or rights of other people,
e) minor municipality services on the basis of a law."

Since 1 January 2004, the length of military service is 6 months. In some cases, military service may be shortened. This so-called "compensatory service" is available for conscripts having children or being the sole breadwinner.

All men between the ages of 18 and 30 are liable for military service. Reservist duties apply up to the age of 55.

The Slovakian government has decided to phase out conscription by 2006. The last conscripts will probably be drafted in 2005. The transformation process into professional armed forces in order to comply with NATO standards has been going on for several years. Parallel to this process, military service was shortened from 12 to 9 months in 2000 and to 6 months in 2004.

4.24.2. Statistics

The armed forces comprise 22,000 troops, including 3,500 conscripts (2004). Every year,
approx. 45,000 young men reach conscription age.

4.24.3. Legal basis

The right to conscientious objection is enshrined in Article 25 of the 1992 Constitution, according to which "No one shall be forced to perform military service if it is contrary to his or her conscience or religion". Further regulations are laid down in the 1995 Civilian Service Act (207/1995).

4.24.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

According to the Civilian Service Act, citizens may refuse military service on the basis of a declaration stating that it is contrary to his conscience or religion.

4.24.5. Time limits

There is a strict time limit for submitting CO applications. Applications must be made within 30 days of the conscription board's decision on fitness for military service (Article 2.2).

Applications that are not submitted within this time limit are not taken into consideration. Applications can thus not be made by serving conscripts or reservists.

There are no legal provisions for the right to conscientious objection for professional soldiers.

4.24.6. Procedure

Applications must be made to the local conscription committee (Ministry of Defence), which makes a decision.

4.24.7. Substitute service

The length of substitute service is nine months. This is one and a half times the length of military service.

Substitute service is administered by the Ministry of Defence. According to the Slovakian government, substitute service can be performed in state and municipal organisations in the areas of health care, social service and environmental protection, but also with nongovernmental organisations and religious organisations.

4.24.8. Practice

There are no detailed figures available about the number of CO applications.
The number of applications was believed to be relatively low, but reportedly increased after the reduction of the length of substitute service in 2000. It appears that there is a shortage of workplaces where substitute service can be performed. According to a media report of September 2002, 6,000 COs were waiting for assignment to substitute service.

Since the introduction of time limits in 1995, there have been several cases of COs who have continued to refuse military service after their CO applications were rejected because they had not been submitted in time. They were usually convicted for refusal to perform military service under Article 269 of the Criminal Code. Some COs were sentenced to 12 to 18 months' imprisonment.

Since 1997 there have been no known cases of COs being imprisoned after not submitting their application within the time limit.

4.25. SLOVENIA

4.25.1. Conscription

In 2002 the Slovenian government decided to end conscription. The last conscripts were called up for military service in 2003. In January and April 2003, 1,290 conscripts were called up for service. The call-up of July was cancelled. Since 2004 the armed forces consist of professional soldiers only.

4.25.2. Conscientious objection

The right to conscientious objection was legally recognized since Slovenia became an independent country in 1992. Since 1995 the length of substitute service was in fact the same as military service (7 months). Slovenia was thus one of the few European countries where substitute service and military service had the same duration. Slovenian CO legislation was liberal in other respects as well, as there were no time limits for submitting CO applications and applications could be made by both serving conscripts and reservists.

It is not clear if there are legal provisions for conscientious objection for professional soldiers. A study published by the Council of Europe in 2001 suggests that professional soldiers may apply for CO status.2 No further information is available and it remains unclear if there is an application procedure for professional soldiers who wish to be discharged from the armed forces for reasons of conscientious objection.

When conscription applied, the right to conscientious objection was legally regulated by the Military Service Act. This law actually only applied to conscripts so it provides no legal basis for the recognition of the right to conscientious objection for professional soldiers.

4.26. SPAIN

4.26.1. Conscription

The Spanish government initially planned to end conscription by 2003, but the last conscripts were already called up for military service in 2001. Since 2002 the armed forces consist of professional soldiers only.

Conscription and the right to conscientious objection are still included in Article 30 of the Constitution, according to which: "Citizens have the right and duty to defend Spain (…) The law shall determine the military obligations of Spaniards and regulate conscientious objection with its due guarantees".

4.26.2. Conscientious objection

The history of conscientious objection in Spain is relatively short. The right to conscientious objection was included in the Spanish Constitution in 1978, after which the Law on Conscientious Objection (Law 8 and 48/1984) was introduced in 1984. The first COs performed substitute service in 1988. During the 1990s, the number of COs increased every year. By 1997 Spain was in fact the European country with the highest number of COs. In 2000 there were approx. 120,000 COs, which was in fact approx. 70 per cent of all eligible conscripts.

The high number of COs was, in fact, believed to be a main reason why the Spanish government decided to suspend conscription earlier than was initially planned.

There are no legal provisions for conscientious objection for professional soldiers. In recent years, there are no known cases of professional soldiers seeking discharge from the armed forces because of conscientious objection.

4.27. SWEDEN

4.27.1. Conscription

Conscription is regulated by the 1994 Total Defence Service Act (1809/94), which brought together all previously existing legislation on military service.

The length of military service is 7.5 months, between 10 and 15 months for officers, and between 18 and 20 months for those serving in the navy. All men between the ages of 18 and 47 are liable for military service.

Swedish defence policy is based on the concept of total defence, which means that all inhabitants are obliged to participate in national defence in case of emergency or war. Total defence consists of military service, civil defence service and general service. Conscription only takes place into military service and civil defence service. General service does not involve any form of training, but means that one may be called up for service in time of war or emergency.

All Swedish citizens (both men and women) and all foreigners living in Sweden are liable for general service between the ages of 16 and 70. In recent years, the total defence system has been reviewed extensively. Apart from the Green Party, there seems to be political consensus to maintain conscription in the future.

In 2000, a government commission even proposed making military service compulsory for women as well, but this proposal was eventually withdrawn. Although conscription will remain in place, the number of conscripts that is needed by the armed forces is decreasing. Consequently, fewer and fewer young men are actually recruited.

4.27.2. Statistics

The armed forces comprise 33,900 troops, including 15,900 conscripts. Every year, approx. 50,000 young men reach conscription age. Approx. 40 per cent are recruited.

After medical examination, conscripts are assigned to either military service, civil defence service or the training reserve. Those assigned to the training reserve (approx. 60 per cent of eligible recruits) are not called up for any service in peacetime.

4.27.3. Legal basis

The right to conscientious objection has been legally recognized since 1920. Its present legal basis is the 1994 Total Defence Service Act (1809/94).

4.27.4. Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to the Total Defence Service Act, CO status is to be granted if someone "can be assumed as having such a personal conviction about the use of weapons against another person so that this conviction is inconsistent with a combatant role" (Chapter 3, Par. 16).

4.27.5. Time limits

There are no time limits for submitting CO applications. Applications can be made by serving conscripts. In this case, the applicant must explain more elaborately how and why his problems of conscience started. His military service needs to be postponed until the application is decided on (Chapter 3, Par. 19). The Total Defence Service Act does not contain specific provisions for reservists, but the wording of Chapter 3, Par. 19 suggests that the procedure for reservists is the same as for serving conscripts.

There are no legal provisions for the right to conscientious objection for professional soldiers.

4.27.6. Procedure

Applications must be made to the National Service Administration (Ministry of Defence). Since 1991, personal interviews are no longer part of the application procedure. Applications that are submitted before starting military service, or within six months of obtaining knowledge about call-up for service, are approved without further investigation (Chapter 3, Par. 18). Consequently, most applications are almost automatically granted.

4.27.7. Substitute service

The length of substitute service is 7.5 months, which is the same as military service. Substitute service is administered by the National Service Administration (Ministry of Defence).

Substitute service can be performed in institutions of civil defence, such as fire protection, rescue service, social work and maintenance work on railways and roads. Substitute service does not have an entirely non-military character as the Ministry of Defence administers it and it is clearly linked to the total defence system. COs are granted noncombatant status, which means that they are guaranteed not to be involved in using weapons or "such activities that are combined with actual combat tasks, e.g. maintaining order or guard duty" (Chapter 1, Par. 6).

However, the Ministry of Defence has been criticized regularly for not informing conscripts about the possibility of applying for non-combatant status. The difference between COs having non-combatant status and other conscripts serving in civil defence service is often unclear to new conscripts.

During wartime, all conscripts who have served in the civil defence service are given a war posting with a civil defence institution, such as the national railways administration or the civil aviation administration (Total Defence Service Act, Chapter 2, Par. 13). The Total Defence Service Act does not contain specific provisions on the wartime posting

of COs, and it does not specify if and how the non-combatant status of COs is guaranteed during wartime.

In the past, Swedish CO groups have expressed concern that it is not clear how far the National Service Administration makes a distinction in its administration between COs having non-combatant status and other conscripts in the civil defence service.

4.27.8. Practice

Every year, between 1,500 and 2,000 CO applications are made. Approx. 90 per cent of applications are granted. According to the Swedish government, applications are not granted if they are solely based on political motives. As most applications are not individually examined, it is not clear how such an assessment is made.

4.27.9. Total objectors

According to the Swedish government, approx. 400 conscripts per year refuse to perform both military service and substitute service.

Violations of total defence service regulations are punishable under Chapter 10 of the Total Defence Service Act. Total objectors are usually fined and receive a conditional sentence. After a year they will receive a new call-up. Those who continue to refuse service are usually sentenced to up to four months' imprisonment. The law permits a conscript to be called-up an indefinite number of times, but in practice it is rare for more than two call-up orders to be issued.

There are no Jehovah's Witnesses amongst the total objectors. Since 1966, Jehovah's Witnesses are legally exempt from military service, on proving membership and participation in its activities.

4.28. UNITED KINGDOM

4.28.1. Conscription

Conscription was abolished in 1960 and the last conscripts were released from military service in 1963.

4.28.2. Conscientious objection

There is a procedure for professional soldiers who wish to be discharged from the armed forces for reasons of conscientious objection. The procedure is laid down in Instruction No. 6 (D/DM(A) 7/5/3(M1(A)) 'Retirement or discharge on the grounds of conscience'. The Instruction applies to all serving members of the army, including part-time members and reservists.

The Ministry of Defence considers the Instruction as a confidential document and it is actually forbidden to publish the Instruction outside the army. There are believed to be similar instructions for the navy and the air force, but the content of these instructions is not known.

According to the Instruction, religious, moral or political reasons of conscientious objection may qualify as reasons of conscientious objection and may lead to honourable discharge from the armed forces. This includes reasons of conscientious objection against particular campaigns, such as the involvement of the British armed forces in Iraq.

4.28.3. Procedure

Serving members of the armed forces must make a written application to their commanding officer. They may apply for discharge from the armed forces because of conscientious objection, or they may apply for an alternative posting if they wish to remain in the armed forces but object to participating in particular campaigns.

The commanding officer conducts an interview with the applicant. The applicant may be required to provide further evidence, which could be a statement about the sincerity of the applicant by (for example) a religious minister or someone else who knows the applicant well.

The commanding officer usually consults the army chaplain about the sincerity of the application, regardless of whether the application is made on religious or non-religious grounds. The commanding officer will then submit a report to the division commander. Thereport includes a recommendation as to whether the application should be approved. If the application is rejected, applicants have the right to forward their case to the Advisory Committee on Conscientious Objection (ACCO). This is an independent committee of civilians appointed by the Lord Chancellor and chaired by a lawyer. The Committee presently consists of a Chairman and Vice-Chairman who are both legally qualified and a number of lay members who are not required to have any formal qualifications.

The ACCO orders the applicant to attend a hearing, during which the Committee makes an assessment of the sincerity of the applicant. A hearing by the ACCO needs to be attended by the Chairman or the Vice-Chairman plus two lay members. The commanding officer is also represented at the hearing. The hearings are held in public and applicants are allowed to be accompanied by family members, friends or a solicitor. After the hearing, the ACCO makes a consultative decision, which needs to be confirmed by the Ministry of Defence. Reservists may also apply for the procedure for conscientious objection. During the war in Iraq in 2003 and 2004, many reservists have actually been called up for service.

Reservists receive a call-up order to report themselves to a military base on a particular date. Upon receiving the call-up order, reservists legally become a serving member of the armed forces.

Reservists should state their conscientious objection when responding to the call-up order. Written applications must be made to the military unit that has sent the call-up order. In their application, reservists should make clear if they wish to remain in the reservist forces and if they wish to be called up during times of national emergency.

Applications are assessed by a military panel. As the panel does not decide on the same day, applicants usually get a deferment after which the application is further decided on at a later stage.

If the application is rejected, reservists also have the right to refer their case to the Advisory Committee on Conscientious Objection. The procedure with ACCO is the same as for serving members of the armed forces. Pending the procedure with ACCO, applicants should be granted a deferment.

4.28.4. Practice

It is difficult to assess how many members of the armed forces apply for a discharge from the armed forces for reasons of conscientious objection, as the Ministry of Defence does not provide detailed statistics. Discharge on grounds of conscientious objection is classified by the Ministry of Defence as a form of Compassionate Discharge.

Consequently, the overall figures on discharge because of conscientious objection are merged with personal, medical, family or employment commitments (for reservists).

However, during the war in Iraq in 2003 and 2004 dozens of applications for conscientious objection have reportedly been made. It is believed that the Ministry of Defence is restrictivein granting professional soldiers honourable discharge because of conscientious objection.

There are cases of soldiers being discharged for being "an unsuitable officer", for "service no longer required" or being medically or temporarily unfit for further service, when they actually asked for discharge because of conscientious objection.

It is not known either what percentage of CO applications is granted. The Ministry of Defence does not publish detailed statistics. Moreover, the initial decision on applications is made by individual commanders and it is difficult to obtain an overview of these decisions. Serving members of the armed forces who make a CO application may be sentenced by their commander for refusing a lawful order to up to 60 days' confinement. As such sentences are given in closed trials, without legal representation, it is impossible to assess how many such trials take place. Only when such cases reach the court-martial phase, may they become publicly known.

The application procedure for conscientious objection is not widely known about. The Ministry of Defence considers Instruction 6 as a restricted confidential document and the military authorities do not provide accurate information about the application procedure. In fact, the High Court of Justice stated in a judgement in 2004 that "the call-out materials (…) do not mention conscientious objection expressly. In that respect, it would seem that the information provided to the recalled reservist could be improved". In addition, members of the British armed forces are limited in their right to free speech. It is a punishable offence to publicly speak about controversial issues "directly, indirectly or anonymously". This means that conscientious objectors are not inclined to openly speak about their cases in the media.

Consequently, many members of the armed forces are not aware of the existence of the Instruction, the legal possibility of seeking discharge on grounds of conscientious objection or referring their case to ACCO in case the application is rejected by an individual commander. In fact, between 1970 and 2003 ACCO has only dealt with 36 cases. In 11 cases, the applicants were honourably discharged as conscientious objectors.

Because of the lack of information about the application procedure for conscientious objection, many COs may turn to other ways of avoiding service. Serving members of the armed forces who go absent without leave to avoid a posting become liable for

prosecution for desertion. In such cases, it is actually not possible to refer a case to ACCO. ACCO does not deal with cases of applicants who are "absent without leave or deserters, the subject of pending disciplinary action, undergoing a sentence of imprisonment or detention".

Reservists who do not respond to their call-up order to report at a military base may also become liable for prosecution for desertion. It is believed that in many cases of reservists not responding to call-up orders, the Ministry of Defence refrains from prosecution because it wants to avoid the publicity that may accompany court-martialling them. In some other cases reservists have been sentenced for going absent without leave. The latest known case occurred in October 2004 when a reservist was sentenced to the loss of nine days' pay and seven days' privileges.

5.THE RIGHT TO CONSCIENTIOUS OBJECTION IN TURKEY

5.1. THE CHRONOLOGY OF COs IN TURKEY[8]

1990: With the help of the daily *Günes* and the weekly *Sokak*, Vedat Zencir and Tayfun Gönül announced their conscientious objection. This was the first public declaration in Turkey.

1992: After the 7th International Conscientious Objectors Meeting in France it was decided to hold the next meeting in Turkey. This was to be the first meeting outside Turkey, in a country where militarism had entered family life.

1992: In December the Association of War Resisters (SKD) was founded in İzmir.

1993: On 16 January six persons declared their conscientious objection in the office of the association and continued the campaign "no to military service" that had started in 1990.

1993: Between 10 and 17 July ICOM was held in Ören (Milas) with participation of 90 people from 40 countries.

1993: In the Turkish Republic of Northern Cyprus Salih Askeroğul declared that he would not conduct military service. An international campaign was launched for him. This was followed by a ban of the SKD.

1993: In autumn an Association of War Resisters (SKD) was founded in İstanbul.

1993: On 8 December the channel HBB interviewed Aytek Özel, chair of the SKD and a CO in the program Anten. The producer Erhan Akyıldız and the reporter Ali Tevfik Berber were arrested onorder of the Chief of Staff and tried at a military court. Thus, civilians were first tried at a military court.Arrest warrants were issued for Aytek Özel and the CO. During their trial Erhan Akyildiz and Ali Tevfik Berber were released. They received the minimum sentence of two months' imprisonment. On 8 February 1994 Aytek Özel surrendered to the military court in Ankara and was sentenced to one

[8] www.wri.org.tr/2007

year, 15 days' imprisonment. Because of the double standard of the press this case did not get public attention. The important element of this case was the fact that after the state security court had ruled not to be competent ,the way was opened for civilians to be tried at military courts.

1994: The banned SKD in İzmir was refounded with a slight change in name: Izmir War Resisters Association (ISKD)

1994: On 20 March DEP (Democracy Party) deputy Zübeyir Aydar introduced a draft law on "conscientious objection".

1994: On 10 April 25 deputies of the SHP (SocialDemocrat Populist Party) launched a draft law to avoid that civilians could be tried at military courts.

1994: On 17 May İstanbul SKD and the German Peace Organizationin Frankfurt held simultaneous press conferences. During these conferences twopersons in Turkey and 11 Turkish citizens in Frankfurt declared their conscientious objection. Gökhan Demirkıran, Arif Hikmet İyidoğan, Mehmet Sefa Fersal and Osman Murat Ülke were arrested on charges under Article 155 Turkish Penal Code (TPC, alienating people from military service). The four defendants were tried at the military court of the General Staff. On 29 August 1995 the Court passed its verdict. Gökhan Demirkıran was sentenced to four months' imprisonment, Arif Hikmet İyidoğan was sentenced to six months and Mehmet Sefa Fersal was sentenced to two months' imprisonment. Osman Murat Ülke was acquitted. Gökhan Demirkıran, Sefa Fersal and Osman Murat Ülke had been in prison for three weeks and Arif Hikmet İyidoğan for a total of 13 weeks.

1994: Izmir SKD participated in the ICOM meeting in Colombia.

1995: Izmir SKD participated in the ICOM meeting in Greece.

1995: Immediately after the verdict of 29 August Osman Murat Ülke was taken to Cankaya Draft Office. After the formalities Mr Ülke was told to join his unit. He returned to Izmir and declared his conscientious objection by burning the papers on 1 September.

1996: In January an antimilitarist initiative was founded. In 1998 the prefix Istanbul was added to form the Istanbul Antimilitarist İnitiative(IAMI).

1996: On 7 October, more than one year after Osman Murat Ülke had burned his papers he was arrested on orders of the military prosecutorat the General Staff. He was put in Mamak Military Prison (Ankara). He did not abide by the military rules, since he was "no soldier". On day 24 ofhis hunger strike his demands were met. After that he would not be forced to act like a soldier by for instance wearing military clothing or lining up. Later he was released and send to a unit in Bilecik. (Meanwhile the court case against him concluded on 29 January 1997. Ülke was sentenced to 6 months' imprisonment under Article 155 TPC).

1996: Towards the end of 1996 solidarity committees with Osman Murat Ülke were founded in Antalya, İstanbul, İzmir and Ankara.

1996: On 1 December the committee in İstanbul held an action in Mis Sokak forming a "broken rifle" with their bodies and the following day only female supporters held a picnic outside Eskisehir Military Prison, where Ülke was being held.

1997: On 6 March Osman Murat Ülke was sentenced to 6 months' imprisonment for refusal to obey orders, since he had refused to wear military clothes and respond to other orders when he was sent to his unit in Bilecik. The trial was held at a military court in Eskisehir. After the hearing of 29 December 1996 the Court ordered his release and Ülke did not return to the unit. When Ülke attended the hearing on 29 January 1997 he was arrested and taken to the unit in Bilecik. When he refused to wear military clothes and respond to other orders another court case was initiated. This time four different charges were brought against him: evading draft, desertion, refusal to obey orders and cheating in order not to do military service. In summary up to 15 years' imprisonment were demanded for him. After the hearing of 29 May 1997 Ülke was released.

1997: Until 9 October Osman Murat Ülke stayed free, since he did not return to the unit after 29 May 1997. He went to a court session by his own will and was arrested on 9 October and on 23 October he was sentenced to 10 months' imprisonment for evading

draft, desertion and refusal to obey orders. The Court had dropped the charge of cheating in order not to do military service.

1997: On 1 December, the day ofsolidarity with prisoners for peace, Vedat Zencir declared hisconscientious objection in front of Izmir State Security Court for the secondtime after 7 years. Afterwards he filed an official complaint against himself.

1997: On 10 December the Human Rights Association awarded Osman Murat Ülke the Human Rights Prize.

1998: On 22 January another trial was launched against Osman Murat Ülke, because between 29 May and 9 October 1997 he had not gone to the unit in Bilecik and committed the "crime" of desertion. In just one hearing Ülke was sentenced to 10 months' imprisonment. He was released since he had served the term. He was taken to the draft office in Eskisehir and from here he was transferred to the unit in Bilecik. When he refused to follow military discipline he was again taken to Eskisehir Military Prison.

1998: Military institutions announced that it was no crime "to defend the right to conscientious objection, but it was a crime to invite others to be conscientious objectors".

1998: In April six persons of the Initiative "Freedom of Thought" signed the press release of Osman Murat Ülke and filed an official complaint against themselves.

1998: During the hearings of 19 March, 2 April, 4 May, 15 May and 11 June Ülke repeated that he was a conscientious objector and refused any cooperation with institutions that aimed at, established or continued relations of domination. Once again he faced the vicious circle of being sent to the unit, refuse order, being aing arrest and put in prison.

1998: On 15 May some 400 spectators watched the festival on World Day of Conscientious Objection in İstanbul.

1998: On 6 and 7 October a panel and press conference was held on behalf of the second anniversary of Osman Murat Ülke's first imprisonment. After the press conference the artists Suavi and Şanar Yurdatapan and one person from İAMİ were charged under Article 155 TPC.

1999: In March Osman Murat Ülke was released with the order to join his unit, but he went home.

1999: On 15 May a press conference was held at the Istanbul branch of the HRA on behalf of World Day of CO. Following the press statement the executives of the HRA and three people of IAMI were charged with having staged an illegal demonstration and distributed leaflets. The court found itself not responsible and the court case turned into charges under Article 155 TPC for the three members of IAMI.

2001: On 27 October Mehmet Tarhan declared his conscientious objection for the first time in Ankara. At a press conference he said: "I condemn every kind of violence and believe that joining or condoning violence will only result in new violence and everyone will be responsible for the consequences. I think that wars caused by power-mongering states are first and foremost a violation of the right to life. The violation of the right to life is a crime against humanity and no international convention or law can justify this crime, regardless of any rationale. I therefore declare that I won't be an agent of such crime under any circumstances. I will not serve any military apparatus."

2002-2003: On 24 October 2002 Mehmet Bal declared to be a conscientious objector, while being already a soldier. He was transferred to the military prison in Adana. On 27 November, Mehmet Bal was released, and got order topresent himself to the recruitment office. There he got order to report to "his" unit within two days - which he didn't do. He was charged under Article 155 TPC, but acquitted on 22 January 2003. The following day he was arrested again, but released from military prison a few days later. In a military hospital in Mersin doctors gave him three months holidays to recover, because of "a social personality disorder". He was ordered to report to the medical academy of the Turkish military in Ankara at the end of this three months period. He did not go to Ankara. Currently there are six court cases against him on desertion, offending the period of leave and disobeying orders.

2004: Mehmet Tarhan repeated his conscientious objection on 27 October 2004. On 8 April 2005 he was detained in Izmir and, refusing to take military orders, he was taken to a unit in Tokat. Between 11 April and 10 June 2005 he was held in Sivas Military Prison. During this time fellow prisoners abused him. Only after his lawyer was informed and intervened the abuses stopped. Mehmet Tarhan was released on 9 March 2006.

2004: On 25 November 2004 Halil Savda was taken to a unit in Tekirdağ-Beşiktepe. He declared that he would not take military orders as a result of his conscientious held beliefs. He received a disciplinary punishment of 7 days and was charged at Corlu Military Court with refusal to obey to orders. On 28 December 2004 Halil Savda was released on the condition that here turns to the unit. Halil Savda went home. On 4 January 2005 Halil Savda was sentenced to 106 days' imprisonment. On 13 August 2006 the Military Court of Cassation quashed the verdict pointing at shortcomings in the taking of evidence. On 7 December 2006 Corlu Military Court started to hear the case again. Halil Savda participated and was arrested. Despite the fact that his time in prison was longer than the sentence he received he was not released, There have been allegation of torture and degrading treatment in prison.

2007: On 28 July 2006 the Military Court of Cassation confirmed a sentence of 6 months' imprisonment against Halil Savda. While another sentence of 15.5 months' imprisonment was pending at the Military Court of Cassation Halil Savda was released from prison on 9 March 2006, since he had already served 1.5 months of this sentence. He was again imprisoned on 7 December 2006, while several trial against him continued. He was released on 28 July 2007 on condition that he joins the military unit.

5.2. Conscription

Conscription is enshrined in Article 72 [9]of the 1982 Constitution. Its further legal basis is the Law on Military Service (1111/1982) and Law for Reserve Officers and Reserve Military Servants (1076).

[9] http://www.constitution.org/cons/turkey/part2.htm; National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in the public service shall be regulated by law.

The length of military service is 15 months. University graduates may perform 8 months' military service, or 12 months if they are trained to become reserve officers. Certain professional groups (doctors, teachers, civil servants) may be permitted to perform special service.

All men between the ages of 19 and 40 are liable for military service. Men who have not fulfilled their military service by the age of 40 and who have not been legally exempt from service, may still be called up after the age of 40.

Students may postpone their military service up to the age of 29, or up to the age of 36 in the case of postgraduate students. After completion of military service, reservist duties apply up to the age of 40.

Different military service regulations apply for Turkish citizens who are living abroad. They can postpone their service up to the age of 38, for a period of three years at a time. Turkish citizens living abroad may also partially buy themselves out of military service by paying a sum of 5,112 Euros. However, in this case they still need to perform a one-month military service.

Turkish citizens who live abroad and who possess dual nationality may get legally exempt from service, on the condition that they lived abroad before the age of 18 and that they performed military service in another country. Exemption on this ground is only possible if the length of military service that has been performed in another country is considered to be comparable to the length of service in Turkey.

5.3. Statistics

The armed forces comprise 514,000 troops including 391,000 conscripts. Every year, approx. 640,000 young men reach conscription age.

In recent years, the share of conscripts in the armed forces has been reduced by 17 per cent, mainly by reducing the length of military service. In 2003, the length of military service was reduced from 18 months. The Turkish government plans to increase the number of professional soldiers in the future, but it has no plans to abolish conscription.

5.4. Legal basis

The right to conscientious objection is not legally recognized in Turkey.

Although Article 24.1 [10]of the 1982 Constitution guarantees the right to freedom of conscience, the Constitution does not widen this to include the right to conscientious objection to military.

A temporary regulation has been in place which also allowed young men living in Turkey to buy themselves out of service and do a one-month military service. This regulation applied to men born before 1 January 1973 and applications needed to be made before 4 May 2000. 70,000 Turkish men reportedly applied for this regulation.
According to Article 72 of the Constitution: "Fatherland service is the right and duty of every Turk. How this service in the armed forces or public sector is carried out or is supposed to be carried out is prescribed by law". Thus the Constitution does, at least in theory, allow fatherland service to be a non-military service.

However, Turkish legislation does not provide for a substitute service or for an unarmed military service within the armed forces.

The Turkish government has never considered introducing legislation on conscientious

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[10] http://www.constitution.org/cons/turkey/part2.htm; **Freedom of Thought and Opinion** Article 25: "Everyone has the right to freedom of thought and opinion.No one shall be compelled to reveal his thoughts and opinions for any reason or purpose, nor shall anyone be blamed or accused on account of his thought and opinions".

objection. A brochure published by the armed forces in 1999 in fact states: "In our laws there are no provisions on exemption from military service for reasons of conscience. This is because of the pressing need for security, caused by the strategic geographic position of our country and the circumstances we find ourselves in. As long as the factors threatening the internal and external security of Turkey do not change, it is considered to be impossible to introduce the concept of 'conscientious objection' into our legislation".

The Turkish government has disassociated itself from the United Nations Commission on Human Rights Resolution 1998/77, which affirms the right to conscientious objection to military service as a legitimate exercise of the freedom of thought, conscience and religion as laid down in Article 18 [11]of the Universal Declaration of Human Rights and Article 19 [12]of the International Covenant on Civil and Political Rights. The Turkish government does not recognise the right to conscientious objection to military service as stated in these two international instruments.

The Council of Europe and the United Nations have regularly called upon Turkey to legally recognise the right to conscientious objection. In March 2004, the Parliamentary Assembly of the Council of Europe stated that: “Despite Turkey’s geostrategic position, the Assembly demands that Turkey recognises the right to conscientious objection and introduce an alternative civilian service”.

In another development, the European Court of Human Rights has recently admitted the case of Osman Murat Ülke, a CO who was sentenced to imprisonment in 1996 (see: Practice). His complaint to the European Court is mainly based on the claim that his arrest and imprisonment for conscientious objection are a violation of Article 9 of the European Convention, which guarantees the right to freedom of thought and conscience.

[11] http://www.un.org/Overview/rights.html; Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

[12] http://www.un.org/Overview/rights.html; Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

He made his complaint in 1997, which was finally admitted in 2004. The admission of the case means that the Court will judge if conscientious objection is part of the right to freedom of thought and conscience as mentioned in the Convention.

5.5. Practice

Since the 1990s, there are a small number of COs who publicly state that they refuse to perform military service for non-religious, pacifist reasons. The Turkish language actually makes a distinction between conscientious objectors (vicdani retci) and draft evaders (asker kacagi).

The first known Turkish CO was Osman Murat Ülke, a Turkish citizen who grew up in Germany and returned to Turkey. In 1995 he publicly declared that he was a conscientious objector and refused to perform military service. Since then, dozens of others have followed. Between 1995 and 2004 approx. 40 men have openly declared themselves as conscientious objectors, mostly by making a public statement or giving media interviews about their reasons for refusing military service.

COs may be punished under Article 63 of the Turkish Military Penal Code for avoiding military service. COs who attract media attention or publish articles about their refusal to perform military service may also be punished to between six months' and two years' imprisonment under Article 318 of the Turkish Criminal Code for "alienating the people from the armed forces".

In 2004, a new Criminal Code was introduced (Law No. 5237). According to Article 308 of the new penal code alienating people from the armed forces is still punishable with a period of 6 months to two years imprisonment. Under the previous Criminal Code, "alienating people from the armed forces" was punishable under Article 155 with a similar term of imprisonment.

In the past, there have been several cases of COs who have been sentenced under these two articles. The most well known case was Osman Murat Ülke, who was arrested in

October 1996 and during the following years spent a total of 30 months in prison on several charges of disobeying orders. In some other cases, COs have been acquitted of the charges by military court.

In recent years, it appears that the Turkish authorities have refrained from harsh punishment ofCOs. This may have been caused by the fact that previous trials of COs attracted considerable (international) attention and the Turkish authorities may wish to avoid further attention for the issue of conscientious objection.

However, as long as there are no legal provisions for their right to conscientious objection, the legal position of COs remains vulnerable and they may still be subject to criminal prosecution.

In 2004 there were five known cases of COs. In May 2004, one CO was briefly arrested after he publicly declared that he refused to perform military service. The police arrested him briefly, but subsequently released him again. So far, the police have not attempted to arrest him again. In October 2004, four COs publicly declared their conscientious objection. In December 2004, one of them was arrested and held in military prison. His case is believed to be still pending.

Previously, in 2003 one CO openly stated his conscientious objection. He was arrested in January 2003, but was released after some days pending trial. The military doctors gave him a three months' holiday to recover from what they diagnosed as "a social disturbance of his personality". His case is believed to be still pending.

Apart from the secular COs mentioned above, some members of religious denominations who forbid their members to bear arms, in particular Jehovah’s Witnesses, have also refused to perform military service. Members of Jehovah's Witnesses have regularly been sentenced toimprisonment under Article 63 of the Penal Code for avoiding military service. In recent years, Jehovah's Witnesses are reportedly regularly allowed to perform unarmed military service within the armed forces. They have complied with this.

However, in some cases, members of Jehovah's Witnesses have still been sentenced to imprisonment. In 2003 and 2004, several Jehovah's Witnesses were imprisoned for not taking the military oath and/or refusing to carry weapons. They are usually sentenced to one month's imprisonment, after which they are released pending trial.

5.6. Draft evasion

Draft evasion and desertion are widespread. The exact number of draft evaders is not known, but the number is estimated to be approx. 350,000.

Draft evasion is prompted by the risk of being sent to serve in South Turkey and poor conditions and human rights violations within the armed forces. There have been regular reports of Kurdish conscripts in particular being subjected to discriminatory treatment, especially when they are suspected of having separatist sympathies.

For years, the Turkish armed forces have been involved in heavy fighting with the PKK [13]in South Eastern Turkey. In 1999 a ceasefire was agreed between the Turkish government and the PKK, but the situation has remained tense ever since. All conscripts may be sent to serve in South Eastern Turkey as postings of conscripts are usually decided at random by computer.

There is a sizeable group of conscripts of Kurdish origin who refuse to perform military service because they do not want to fight against their own people. Many Kurdish draft evaders have, in fact, left Turkey and applied for asylum abroad.

Draft evasion and desertion are punishable under the Law on Military Service and the Turkish Military Penal Code. Turkish law actually makes a distinction between evasion of military
registration, evasion of medical examination, evasion of enlistment and desertion.

[13] The Kurdistan Workers' Party (Kurdish: *Partiya Karkerên Kurdistan* or PKK, also called KADEK, Kongra-Gel, and KGK)[10] is a militant Kurdish organization whose goal is to to create an independent, socialist Kurdish state in Kurdistan, an area that comprises parts of southeastern Turkey.

According to Article 63 of the Penal Code, draft evasion is punishable (in peacetime) by imprisonment of:

- One month for those who report themselves within seven days;
- Three months for those who are arrested within seven days;
- Between three months and one year for those who report themselves within three months;
- Between four months and 18 months for those who are arrested within three months;
- Between four months and two years for those who report themselves after three months;
- Between six months and three years for those who are arrested after three months;
- Up to ten years' imprisonment in the case of aggravating circumstances, such as self-inflicted injuries, using false documents (Articles 79-81 of the Penal Code).

Desertion is punishable under Articles 66-68 of the Penal Code with up to three years' imprisonment. Deserters who have fled abroad may be sentenced to up to five years' imprisonment, and up to ten years in case of aggravating circumstances (Article 67). Monitoring of draft evasion and desertion is strict.16 The registration of conscripts is, in fact, one of the most effective government registrations in Turkey. Draft evaders and deserters may be arrested after routine checks such as traffic control. They are not able to leave Turkey, as the military registration number is included on identity documents. In addition, police and gendarma authorities are responsible for finding draft evaders and deserters and may conduct house searches and arrest them.

There are no detailed figures available on the scale of prosecution of draft evaders and deserters, but military courts are believed to deal with approx. 60,000 cases per year that are connected to draft evasion. About half of these cases reportedly deal with cases of conscripts going absent for less than a week, mostly conscripts who do not report themselves back in time after a period of leave.

Prison sentences of less than one year's imprisonment for evasion of registration/examination for enlistment or for desertion are generally commuted into

fines, which must be paid after the end of military service. Sentences for draft evasion for periods longer than three months, when the draft evader has not reported himself voluntarily, may not be commuted into a fine.

Suspended sentences may not be imposed for evasion of registration/examination or enlistment or for desertion.

Those who are convicted for draft evasion must still complete their term of military service. Repeated offenders may thus be sentenced again. Prison sentences for repeated offenders may not be commuted into fines.

Those convicted to less than six months' imprisonment usually serve their prison sentence in military prisons; those convicted to over six months' imprisonment are imprisoned in regular prisons. After serving their prison sentence, they still need to perform the remaining term of their military service.

Different sources make different assessments of the extent to which Kurdish conscripts face discriminatory treatment within the armed forces. This has, in fact, been the subject of debate in many asylum cases of Turkish/Kurdish draft evaders and deserters in Western European countries.

In addition to the sentences outlined above, Turkish citizens can also have their citizenship withdrawn if they live abroad and do not return to perform military service within a certain time limit (Article 25(c) of the Turkish Nationality Law No. 403). The names of individuals who have forfeited their citizenship are published in the official Government Gazette.

Over the years, thousands of Turks have, in fact, forfeited their citizenship. Those who have lost their citizenship in this way may apply to get their citizenship restored, but their applications may only be accepted if they complete their military service.

In December 2000, the Turkish government adopted an amnesty law. The amnesty law applied to various crimes, including draft evasion. The amnesty law applied to draft evaders and deserters who reported themselves to the authorities before 23 April 1999. Although they were freed from criminal prosecution under Articles 63-68 and 70-75 of the Penal Code, they still remained liable for military service. Those who had not reported themselves to the authorities by the April 1999 were not granted amnesty.

6. SIGNIFICANT CASES IN RESPECT TO CONSCIENTIOUS OBJECTION IN TURKEY

6.1.THE CASE OF MEHMET TARHAN

Mehmet Tarhan (born 1978) was imprisoned for refusing military service in Turkey as a conscientious objector. Tarhan had been sentenced to four years in a military prison for disobedience after refusing to wear a military uniform, a sentence that is evidently the longest ever given for such an offense in Turkey. He was released in March 2006 after spending several months in prison.

According to Tarhan, he was born into a Kurdish peasant family. At the age of 17 he worked as a government employee in Diyarbakır. During this time he worked with KAOS GL (an independent political and cultural LGBT group) and Lambda Istanbul (a LBGT civil society initiative). He also became involved in and supported anti-military efforts. Tarhan credits his sexual and ethnic identity with causing him to question militarism.

During his days in prison he was offered and accepted to join Jury of Conscience of World Tribunal on Iraq

Tarhan first publicly objected to military service in October 2001. At a press conference in Ankara he said, "I condemn every kind of violence and believe that joining or condoning violence will only result in new violence and everyone will be responsible for the consequences. I think that wars caused by power-mongering states are first and foremost a violation of the right to life. The violation of the right to life is a crime against humanity and no international convention or law can justify this crime, regardless of any rationale. I therefore declare that I won't be an agent of such crime under any circumstances. I will not serve any military apparatus.

In Turkey, all men face conscription for up to 15 months. Under Turkish law, there is no provision for conscientious objection, even though Turkey is a member of the United Nations, which acknowledges conscientious objection as a human right. In January

2006, the European Court of Human Rights (ECHR) sentenced Turkey for violation of article 3 of the European Convention on Human Rights (prohibition of degrading treatment) in a case dealing with conscientious objection.

Tarhan could have avoided military service by stating that he is gay. However, the Turkish military perceives homosexuality as an "illness" and requires anal examination and visual "evidence" to support such a claim. Mehmet did not want to be classified as "ill" and instead sought to be classified as a conscientious objector.

Tarhan was arrested in April of 2005 and tried the next month on charges of insubordination under Article 88 of the Turkish Military Penal Code.[10] Mehmet was convicted, at which point the military prosecutor released Tarhan, stating that Tarhan had already spent the same amount of time in prison as he would be required to serve if sentenced.

However, upon release Tarhan was again told to serve in the military. When he refused, he was again arrested and placed on trial. This time he was sentenced to four years in prison. Tarhan began serving his prison sentence in late 2005. He was unexpectedly released in March 2006. This release is believed to be political in nature due to international pressure becoming bad publicity, as he has not been acquitted and still considered to be "at large"; he can be recaptured and re-imprisoned at the whim of the authorities.

According to Tarhan's sister, Emine Tarhan, Tarhan had been tortured in prison and his life threatened by other inmates

rotests in support of Tarhan have been held around the world and his imprisonment has attracted the attention of organizations like Amnesty International

Turkish author and poet Perihan Magden was prosecuted and acquitted in Turkey for writing a column in support of Tarhan and his call for conscientious objection.

6.2. THE CASE OF OSMAN MURAT ÜLKE

Osman Murat Ülke is the founder of Turkish War Resisters Organizatıon and was awarded the prize of "human rights" by the year 1997. He is the first conscientious objector in Turkey who was arrested for his refusal to take part in the armed forces and declaration of his conscientious objection. After 1 year he declared his objection on the 1st September 1995, he was arrested for violating Turkish Penal Code, article 154, which states the crime of "alienating people from the armed forces".

Osman Murat Ülke had to deal with a long termed trial process for his declaration of his conscientious objection, refusal to take part in the armed forces and violating the article 154 of Turkish Penal Ccode. His case finally brought before the European Court of Human Rights.

Here can be found the decision of the Court:

6.2.1. Chamber Judgement ÜLKE v. TURKEY

The European Court of Human Rights has today notified in writing its Chamber judgment in the case of ***Ülke v. Turkey*** (application no. 39437/98).

The Court held unanimously that there had been **a violation** of Article 3 of the European Convention on Human Rights (prohibition of degrading treatment).

Under Article 41 of the Convention (just satisfaction), the Court awarded the applicant 10,000 euros (EUR) for pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in French.)

Principal facts

The applicant, Osman Murat Ülke, is a Turkish national who was born in 1970.

Until 1985 he lived in Germany, where he completed part of his schooling. He then went to Turkey, where he continued his education, eventually going on to university. In

1993 he became an active member of the Association of Opponents of War ("the SKD"), founded in 1992. Until late 1993 he represented the SKD at various international colloquies in a number of different countries. After the SKD's dissolution in November 1993 the Izmir Association of Opponents of War ("the ISKD") was founded and the applicant served as its chairman from 1994 to 1998.

The applicant was called up in August 1995, but refused to do his military service on the ground that he had firm pacifist convictions, and he burned his call-up papers in public at a press conference. On 28 January 1997 the court of the general staff in Ankara sentenced him to six months' imprisonment and a fine. Noting in addition that the applicant was a deserter, the court ordered the military prosecutor attached to the general staff court to enlist him.

On 22 November 1996 the applicant was transferred to the 9th regiment, attached to the Bilecik gendarmerie command. There he refused to wear uniform. Between March 1997 and November 1998 the applicant was convicted on eight occasions of "persistent disobedience" on account of his refusal to wear military uniform. During that period he was also convicted on two occasions of desertion, because he had failed to rejoin his regiment.

In total, the applicant served 701 days of imprisonment as a result of the above convictions. He is wanted by the security forces for execution of the remainder of his sentence and is at present in hiding. He has dropped all forms of associative and political activity. He has no official address and has broken off all contacts with the administrative authorities. He has been sheltered by the family of his fiancée, with whom he has been unable to contract a legal marriage. He has also been unable to recognise the child born from their union as his son.

Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 22 January 1997 and transmitted to the European Court of Human Rights on 1 November 1998. It was declared admissible on 1 June 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul **Costa** (French), ***President***,
András **Baka** (Hungarian),
Rıza **Türmen** (Turkish),
Karel **Jungwiert** (Czech),
Mindia **Ugrekhelidze** (Georgian),
Antonella **Mularoni** (San Marinese),
Elisabet **Fura-Sandström** (Swedish), ***judges***,
and also Sally **Dollé**, ***Section Registrar***.

Summary of the judgment

Complaints

The applicant complained that he had been prosecuted and convicted on account of his convictions as a pacifist and conscientious objector. He relied on Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private and family life) and 9 (right to freedom of thought, conscience and religion) of the Convention.

Decision of the Court

Article 3

The Court noted that, despite the large number of times the applicant had been prosecuted and convicted, the punishment had not exempted him from the obligation to do his military service. He had already been sentenced eight times to terms of imprisonment for refusing to wear uniform. On each occasion, on his release from prison after serving his sentence, he had been escorted back to his regiment, where, upon his refusal to perform military service or put on uniform, he was once again convicted and transferred to prison. Moreover, he had to live the rest of his life with the risk of being sent to prison if he persisted in refusing to perform compulsory military service.

The Court noted in that connection that there was no specific provision in Turkish law governing penalties for those who refused to wear uniform on conscientious or religious grounds. It seemed that the relevant applicable rules were provisions of the military penal code which made any refusal to obey the orders of a superior an offence. That legal framework was evidently not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs. Because of the unsuitable nature of the general legislation applied to his situation the applicant had run, and still ran, the risk of an interminable series of prosecutions and criminal convictions.

The numerous criminal prosecutions against the applicant, the cumulative effects of the criminal convictions which resulted from them and the constant alternation between prosecutions and terms of imprisonment, together with the possibility that he would be liable to prosecution for the rest of his life, had been disproportionate to the aim of ensuring that he did his military service. They were more calculated to repressing the applicant's intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will. The clandestine life amounting almost to "civil death" which the applicant had been compelled to adopt was incompatible with the punishment regime of a democratic society.

Consequently, the Court considered that, taken as a whole and regard being had to its gravity and repetitive nature, the treatment inflicted on the applicant had caused him severe pain and suffering which went beyond the normal element of humiliation inherent in any criminal sentence or detention. In the aggregate, the acts concerned constituted degrading treatment within the meaning of Article 3.

Articles 5, 8 and 9

The Court noted that the facts which the applicant complained of were practically the same as those which underlay the complaints examined in the previous parts of the judgment. It accordingly took the view that it was not necessary to give a separate ruling on the complaints under Articles 5, 8 and 9.

6.3. THE CASE OF HALİL SAVDA[14]

Halil Savda was born in southeastern Anatolia, Turkey in 1974 (in the Cizre district of Şırnak province). Savda is a graduate of primary school.

The Turkish government believes that Halil Savda is either a supporter or member of the Kurdish Workers Party ("PKK") – a militant group listed as a terrorist organization by a number of states and organizations including the United States, NATO, and the European Union. According to the U.S. Navy, the PKK's goal has been to create a democratic and independent Kurdish state in a territory which it claims is Kurdistan, an area that comprises parts of south-eastern Turkey, north-eastern Iraq, north-eastern Syria and north-western Iran.

In 1993, Savda was arrested and detained for one month in his home province of Sirnak. After being detained, the State Security Court charged him with supporting the PKK. Savda was ultimately convicted of "supporting an illegal organization" and sent to prison for three years. Upon being released from prison in 1996, Savda was called up for mandatory military service. Although Savda completed his basic training at the military base, he refused to report to his assigned unit after basic training.

Shortly thereafter, in 1997, Savda was arrested and charged by the State Security Court for his "membership in an illegal organization", the PKK. Given his prior association with this organization, the Adana State Security Court sentenced Savda to 15 years in prison. Savda was scheduled to be released from jail in 2012. However, following a change in Turkish Penal Code, Savda was released on November 18, 2004. Immediately after being released from jail for his 1997 conviction, Savda was detained for his earlier desertion from mandatory military service. Savda was held in isolation at Antep for six days. After his short isolation, Savda was sent to his previously assigned military unit in the city of Çorlu in Tekirdağ Province.

[14] http://en.wikipedia.org/w/index.php?title=Halil_Savda&action=edit&section=5 cited 22 August 2008

When Savda involuntarily arrived at the Çorlu military base in late November 2004, he immediately refused to join his assigned military unit. Savda argued that he could not physically serve as a soldier because of the torture he endured in jail since 1993. He then wrote a letter to the Turkish Commander declaring himself to be a conscientious objector - demanding that Turkey recognize the right to conscientious objection. On November 26, 2004, Savda was arrested at the Çorlu Military Prosecutor's Office where he declared once again that he would not "serve in the military as it contradicted his conscience and beliefs." On December 16, 2004, Savda appeared before the Çorlu Military Court. At trial, Savda argued "I believe that the responsibility of war does not only belong to those who wage it, but to everyone who condones it. With my conscientous objection, I would like to show that I do not want to bear this responsibility and that by refusing to be silent about militarism I am refusing to be a part of it." The Military Court found Savda guilty of "insisting on disobeying" his requirement as a Turkish citizen to serve the Turkish military. The Military Court ordered his immediate arrest, and transferred Savda from the military unit to Corlu Military Prison. Savda, however, was released from custody less than two weeks later.

After being released from custody, Savda began to publicly campaign against the Turkish law requiring military participation. On October 23, 2006, Savda officially announced the founding of the Conscientious Objection Platform ("COP") - declaring that the objective of the Platform is "the legalization of conscientious objection" in Turkey. On December 7, 2006, less than two months after forming the COP, Halil Savda was arrested and detained once again when he attended a trial session in Çorlu Military Court on charges of "persistent disobedience" of Turkish law.

A week after his December 7th arrest, Attorney Kadriye Doğru went to visit Savda at the military prison but was refused access to Savda. According to Doğru, there was no reasonable justification for her being denied access, and that "her meeting was hindered on completely arbitrary grounds". She asked the military prosecutor for justification for being denied admission, and the prosecutor responded that "he is not in the position to give (a justification)". According to Doğru, "Neither the code of criminal procedure, the military criminal code, nor the code of military criminal procedure include any clause

which could be used to hinder a detainee in prison from meeting a lawyer. This situation is an obstruction of the right to defense."

On January 25, 2007, Savda's Trial Attorney, Suna Coşkun, was able to get Savda released from custody while his trial was ongoing. Upon being released, however, Savda was ordered to the Tekirdağ Beşiktepe 8th Mechanized Brigade. With knowledge of Savda's beliefs, his 2004 conviction, and his current trial, the Brigade officer ordered Savda to wear military uniform. Savda repeated that he is a conscientous objector and that he would not perform military service, which included wearing military uniform. Upon this statement, Halil was presented to the Çorlu Military Prosecutor with the charge of "insistent insubordination." The Military Prosecutor, however, sent Savda back to the military unit where Savda would be subjected to severe harassment. At the Disciplinary Ward of the 8th Mechanized Brigade, a sergeant major, two guardians and an officer pushed Savda to the wall face-on, kicked his legs apart and began hitting him – causing his face to swell. Savda was placed in a room at the military base where he was forced to sleep without bed or blankets. In response, Savda protested his inhumane treatment by conducting a 5 day hunger strike.

Savda was ultimately convicted by the Çorlu Military Court for disobeying orders (for refusing to wear military uniform) and desertion (for failing to report to his military unit). On March 15, 2007, the Military Court sentenced Savda to 15 months imprisonment. Then, on April 12, 2007, the Military Court sentenced Savda to an additional six months imprisonment, bringing his total prison time up to 21 and ½ months. In accordance with Turkish practice, the court did not go into the reasoning for the sentence. The judicial justification for a second sentence may be released when the written judgment is made available. Nevertheless, even when he is released from prison, Halil Savda will likely not be set free. Based on historical practice, Savda will either be sent back to his military unit, or be forced to live a clandestine life.

The Savda sentence arguably goes against the spirit of the judgment of the European Court of Human Rights from January 2006. In January 2006, the European Court of Human Rights found that Turkey had violated article 3 of the European Convention on Human Rights ("ECHR"), specifically the prohibition of degrading treatment, in a case

dealing with conscientious objector Osman Murat Ulke. The Court in Ulke noted: "The numerous criminal prosecutions against the applicant, the cumulative effects of the criminal convictions which resulted from them and the constant alternation between prosecutions and terms of imprisonment, together with the possibility that he would be liable to prosecution for the rest of his life, had been disproportionate to the aim of ensuring that he did his military service. They were more calculated to repressing the applicant's intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will. The clandestine life amounting almost to "civil death" which the applicant had been compelled to adopt was incompatible with the punishment regime of a democratic society."

Although ECHR has found Turkey guilty on the case of conscientious objector Murat Ülke, no step has been taken by the government of Turkey to make necessary legal changes to comply with the ruling. In fact, according to the COP, the treatment of Savda reasonably suggests that Turkey is completely ignoring the ruling made by the ECHR in early 2006. Turkey continues to punish individuals concurrently for the same offense. It is arguable that unless there is a change in the law, or a change of heart on the part of the military and their courts, conscientious objectors in Turkey will be condemned to endlessly repeated convictions for the same act, an effective life imprisonment sentence.

According to War Resisters' International ("WSI"), the March 15, 2007 sentence of Savda constitutes a violation of Article 9 of the European Convention on Human Rights, and Article 18 of the International Covenant on Civil and Political Rights ("ICCPR" allowing for freedom of thought, conscience, and religion), both of which Turkey has signed and ratified. Furthermore, the WSI argues that the April 12, 2007 sentence violates not only the aforementioned articles, but also constitutes a violation of Article 14 paragraph 7 of the ICCPR, which states that "no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country".

6.4. THE CASE OF PERİHAN MAĞDEN

Perihan Mağden (born 1960) is a Turkish writer of prose and poetry and is a columnist for the newspaper *Radikal*. She was tried and acquitted on July 27, 2006 in Turkey for calling for opening the possibility of conscientious objection to mandatory military service in that country. Her prosecution has been criticized by human rights groups around the world and comes several months after a Turkish court dropped a case against Turkish writer Elif Şafak, who had been charged with "insulting Turkishness" in her novel *The Bastard of Istanbul*.

Mağden was born in 1960 in Istanbul. After graduating from Robert College of Istanbul, she pursued her education at Istanbul's prestigious Boğaziçi University, Department of Psychology. She has spent some time at Yaddo, the famous artists' community. Mağden is a single mother, supported by her writing, who lives in Istanbul with her daughter.

Nobel Prize winner Orhan Pamuk has called Mağden "one of the most inventive and outspoken writers of our time." According to Pamuk, "The way (Mağden) twists and turns the Turkish language, the delight she takes in the thrust and pull of popular culture, and her brilliant forays into subjects that everyone thinks about and then decides not to put into words, 'just in case'--these have earned her the love of her readers and the respect of her fellow writers."

In addition to writing editorial columns for Turkish newspapers, Mağden has also published fictional novels and a collection of poetry. Mağden's novel *İki Genç Kızın Romanı* (*Two Girls*), published in 2005 by Serpent's Tail, was praised for pushing "Turkish beyond its conventional literary patterns" and compared to J.D. Salinger's Catcher in the Rye for the way she had captured adolescent anguish

Mağden was prosecuted by the Turkish government in relation to a December 2005 column in the weekly news magazine *Yeni Aktuel*. In the column she strongly defended the actions of Mehmet Tarhan, a young Turkish man jailed for his refusal to perform mandatory military service. In this column, titled "Conscientious Objection is a Human Right," Mağden stated that the United Nations, of which Turkey is a member, acknowledges conscientious objection as a human right.

In response to the column, the Turkish military accused her of attempting to turn the Turkish people against military service and filed a complaint against her. A warrant was issued for her arrest in April 2006 and her trial was in late July; the most severe sentence she could have faced if convicted under Article 301 of the Turkish Penal Code was three years' imprisonment. Under Turkish law, there is no provision for conscientious objection to mandatory military service.

When asked about her situation, Mağden replied, "It's shocking that they are putting me on trial. I've no idea what will happen. The case could finish tomorrow or it could stretch on and on. The unnerving thing about the courts is they are so unpredictable, it's like a lottery. It's torture."

She was acquitted July 27, 2006. The court ruled in her favour, asserting that her opinions were covered by the freedom of expression and were not a crime under the Turkish penal code.

Mağden is one of several journalists and writers charged for "threatening Turkey's unity or the integrity of the state."

The next year, she received a fourteen month suspended sentence for insulting Aytac Gul, then governor of Yuksekova.

Mağden's arrest has been condemned by human rights and writing organizations both within Turkey and around the world. In a show of support for Mağden, newspapers in Turkey have republished the column that led to criminal charges against her.

In addition, the prosecution of Mağden was closely watched by the European Union, which is in negotiations with Turkey over that country's possible membership in the organization. Her arrest is seen as complicating the negotiations.

7. DISCUSSION AND CONCLUSION

Military service in Turkey is so important that, one without rendering his military service can not be considered as a "man" in the public's opinion. The situation of a draft evader in Turkey is very similar to the position of those who were called as *infamis* in the ancient Roman Law, having been unable to use his civil rights. A draft evader who is drafted but refuses to serve his military service for whatever reason, such as conscience, religion, personal thoughts and beliefs, political or philosophical views might be judged and put into prison as long as he does not render his military duty. Not only he commits a crime according to Turkish law, but also he is an unrespectful man in the eye of the society.

In order to evaluate the significant role of the military in the domestic and foreign policy of the Turkish Republic and the exaltation of militarism, the structure of the society and the history of the country, its roots back to the Otoman Empire period, should be reviewed to make a better analyse.

During the Ottoman Empire period, the spheres having played a dominant social and political role were the Sultan, high ranking officers and Ulema, considered as the ruling class. The Ottoman nation which was a combination of Muslims and non-Muslims neither had rights to intervene in and nor had a direct effect over the politics and the government of the Empire. There was a contest among the groups of the ruling class to gain power over the State policy which resulted a serious effect on the foundation of the modern Turkish state.[15]

Lybrer, who pointed out the dominant role of the military institution in formation and protection of the Ottoman Empire stated that " The Ottoman Empire has been an army before it was anything else. In fact, army and the government were one. War was the

[15] Karabelias, G., *Civil-Military Relations: A Comperative Analysis of the Role of the Military in the Political Transformation of Post War Turkey and Greece:1980-1995,* Final Report submitted to North Atlantic Treaty Organization (NATO) in June 1998

external purpose and the government was the internal purpose of one institution, composed one body of men".

The intention of the Ottoman Sultans to maintain political control over the cavalry corps and to empower the central governmental authority, they founded the Janissaries who were directly governed by them. By time, Janissaries realised their own corporate strength and had begun to play a gerater role over the political affairs of the Empire. The appearence of the weak Sultans resulted to a weaker central government and Janissaries left the mentality that "Janissaires are for the benefit of the Empire" and developed a new mentality that "the Empire is for the benefit of the Janissaries". Despite the fact that the Ottoman Sultan Mahmut the Second succeded in abolishing the Janissaries, the attempts of the Sultans to decline the political role of the military by creating a modern, western-oriented army did not work out. With the impetus of the weaker Sultans and the French Revolution, the military institution which had become more dominant, led the Sultan to introduce the firs constitution of the Turkish history in 1876. Thus, the powers of the Sultan were restricted and reduced by the emmphasis of the armed forces.

Later on, during the First World War, Turkish armed forces, defaeted the Greek forces having occupied the Western Anatolia, had become the most powerful political group in the new Turkish State. The armed forces were also the head of the movement of the resistance against the occupants in Anatolia.

After the foundation of the modern Turkish Republic, the only members that Atatürk entrusted to reach his goal of creating a country which was western-oriented, modern and based on Western ideals was the military institution, for the reason that,. in the first years of the Turkish Republic, the Country was deprived from well-educated elites as a result of their death during the First World War. Moreover, the Greek elites were sent back to their motherland according to the provisions of Lousanne and the Armenian elites had already been deported by a law adopted during the First World War. As a result, the only element that Ataturk could entrust was the military.

Atatürk had foreseen that the armed forces would be the safeguard of the Turkish Republic, democracy and revolutions in the future. Hence, he made certain that all the political and state institutions were infiltrated with personnel who had a military background. Besides, he had never hidden his sympathy and warm feelings towards the military and he entrusted the military more than the civilians to accomplish his goals set out for the new, modern Turkish State.

Consequently, a contest occured between the civilians and the Turkish armed forces. The military institution has never wanted to lose its supremacy over the country's political affairs and continiually intervened in the politics. Therefore, three coups staged by the military through the history of the Turkish State. In the coup staged in 1960, the military institution wanted to guarantee that its impact over the country policy would no longer be declined. This motive led the military to establish the National Security Council which have had great control in either domestic or foreign affairs and reduce the powers of the Grand National Assembly.

After the 1960 coup, two more coups were staged again in 1971 and 1980. The common purpose of those three interventions were to initiate the country's political life. However, the military, stated that the only reason was to save the country from the chaos it had been through and to stop anarchy and violance all over the country.

Similar to Turkey, Greece was also exposed to military inteventions. The last intervention between the period of 1967-1973 had great effects over the country. Until this intervention, the military was very prestigious in the country, because after the Second World War, there had been a big struggle between the right and left political groups throughout the country and the army defeated the rebellions and ceased the struggle. Thus, the military gained a very respectful situation in the country.

Apart from Turkey, the junta regime was never supported in Greece. After the seven year of junta regime, the actors and the heads of the junta were put into trial and sentenced to lifetime imprisonment. The military has never intervened in the politics again ever after. The status of the military officers is no more diffrent than the other

government officers in Greece. As for Turkey, the status of the military institution is still exceptional. The actors of the military interventions were never put on trial. They were even supported by the most of the society and some of the politicians. Surprisingly, some of the politicians and some part of the socitey still belives in the necessity of the military intervention in the politics.

The common support and entrust of the society towards the military institution have not only historical but also sociological grounds. First of all, Turkey has had ongoing historical conflicts between its neighbour countries and a constant fear of losing its territorial integrity. These two main factors have formed the social and cultural structure of the Turkish State. There are major convictions which have a great influence int he perception of the Turkish citizens to the military and which make it difficult to diminish te role of the armed forcess in the legislation and decision making process. These convictions are: ”Every male Turk is born as a soldier” and the military does not only protect Turkey against internal and external enemies, but it also ensures secularism and democracy in Turkey.”[16] In addition, the Muslim belief considering that a soldier who dies while defending his country goes to heaven increases the importance of military service in the eyes of the Turkish society and these convictions led the Turkish society to adopt and internalize the militarist values. As a result, the approach of the society towards the conscientious objectors has been very harsh and strict and the major role of the military has never changed until the 1990’s.

In the late 1990’s, voices raised against the military budget and both the elites and the public began to question how the military budget was being used, since the military budget was not subject to the inspection of Turkish Court of Auditors. The lack of transparency was began to be criticised by the intellectuals such as Prof. Ahmet Insel, Osman Ulagay, Ilter Turkmen and Hasan Cemal. The criticism over the lack of transparency in the military expenses and the high defence budget and the improportionity of the defense budget, in comparison to education and health expenses, attracted public attention and the military was first subjected to criticism in the history of the country.

[16] See Ayse Nilufer Narli, Aligning Cicil Military Relations In Turkey: Transparency Building in Defence Sector and the EU Reforms,2001

In 1999, Tukey became a candidate country for the EU membership and the European Commission first issued an "accesssion partnership document" indicating the reforms and the standards that Turkey was to comply with before the accession negotiations had started. These reforms and standards were mentioned in order to make Turkey meet the Copenhagen criteria. In the Accession Partnership Document, the Commission underlined that, a number of reforms should be made and a number of measures should be taken in order to remedy the civil rights and the human rights regime and also to decline the constitutional powers of the Turkish Armed forces.

Meanwhile, the AKP (Adalet ve Kalkınma Partisi, Justice and Develpment Party) won the 2002 national parliament elections, and introduced a number of legistations in 2003 and 2004 called EU harmonisation packages which aimed to the following :

a) Transformation of the role of the National Security Council (NSC) and the NSC General Secretariat;
b) Removal of the NSC representatives from the civilian boards;
c) Full accountability of the military to the elected representatives
and full parliamentary control of the defence budgeting;
d) Limiting the competency of military courts

a) Transformation of the role of the NSC and NSC General Secretariat

The 6th and 7th EU harmonisation reform package brought changes in the structure of the NSC and its General Secretariat in 2003: A number of fundamental changes were made to the legal framework of the National Security Council with a view to aligning relations between civil and military authorities on practice in EU Member States. First, the advisory nature of the NSC was confirmed in a law implementing the amendment of October 3, 2001 relating to article 118 of the Constitution, which also increased the number of civilians in the NSC at the beginning of 2003. The 7th Harmonisation package brought amendments to the Law on the National Security Council (Law No:2945, 1983). It re-defined the functions of the NSC with an amendment to the Article 4. Accordingly, the scope of the NSC's involvement in political affairs is

confined to national security issues: the NSC is to determine national security concept and develop ideas about the security in accordance with the state's security approach and recommend these security views to the Council of Ministers. Another amendment to the Law on the National Security Council abrogated the provision that "the NSC will report to the Council of Ministers the view it has reached and 165 its suggestions". It is not going to discuss "security" in a broader term but in particular terms confining to national security issues.

Secondly, the 7th Reform Package brought changes in the functions of the NSC General Secretariat that previously functioned as an executive organ. The package introduced the fundamental changes, listed below, to the duties, functioning and composition of the NSC General Secretariat.

A) Removal of Articles 9 and 14 of the Law on the NSC and the Secretariat General of the NSC which empowered the Secretariat General to follow up, on behalf of the President and the PM, the implementation of any recommendation made by the NSC.
B) Abrogating the provisions authorising unlimited access of the NSC to any civilian agency. It deleted Article 19 that read: " *the Ministries, public institutions and organizations and private legal persons shall submit regularly, or when requested, non-classified and classified information and documents needed by the Secretariat General of the NSC* ".
C) An amendment of Article 13 limited the competencies of the Secretariat General to the functions of a secretariat of the NSC.
D) Abrogation of the confidentiality of the staff of the Secretariat General of the NSC made it more accountable to the parliament
and the public.
E) An amendment of Article 5 modified the frequency of the meetings of the NSC and it increases the time period between regular NSC meetings from one to two months. Moreover, the NSC is to convene upon the proposal of the PM and the approval of the President.
F) Cancellation of the prerogative of the Chief of General Staff to convene a meeting.

G) An amendment of Article 15 revised the appointment procedure of the Secretary General of the NSC; the Secretariat General is appointed upon the proposal of the PM and the approval of the President, allowing a civilian to serve in this office. The amendment provides that the post National Security Council General Secretariat will no longer be reserved exclusively for a military person. In August 2003, it was decided to appoint a military candidate to replace the outgoing General Secretariat for one year. In early July 2004, the names of the potential civilian candidates for the post appeared in the press,[168] and in September, Mr. Yigit Alpogan, who served for the Ministry of Foreign Affairs, was appointed to the post.

Consequently, the NSC which functioned as a coordinating organ, was made an advisory body with no executive powers and with a majority of civilians.

b) Removal of Military Representatives from the Civilian Boards:

The EU harmonization packages diminished the NSC's influence on the civilian boards influencing the education and art and broadcasting policies. First, with the 19 July 2003, 6th harmonisation package, the representative of the NSC General Secretariat on the Supervision Board of Cinema, Video and Music was removed by an amendment to the Law No: 3257. The Sixth Clause in Six Paragraph of Law 3257, that is, "The National Security Council General Secretariat" was repealed from the paragraph.[170] However, there remained a representative of the National Security Council on other civilian boards such as the High Audio-Visual Board (RTUK) and the High Education Board (YOK).

Later in the year 2004, the package of ten constitutional amendments eliminated the military influence in the decision-making of these two boards. In May (2004), with an amendment to the Article 131, which previously authorised the military representative on High Education Board, the military representative was removed. With the 8th EU Harmonisation package various amendments in the Constitution were approved. Removal of the military representatives on the High Audio-Visual Board (RTUK) and the High Education Board (YOK) was among the amendments that were approved.[171] Later, in an attempt to abolish the influence of the military on high councils, the right of the Chief of General Staff to appoint a member to the High-Education Board and to the

High Audio-Visual board was eliminated by the 9th EU Harmonisation Package, passed in June 2004.

c) Full Accountability of the Military to the Parliament:

A number of reforms executed in 2003-2004 provide the institutional and legal framework for full accountability of the military to the parliament. They improve constitutional principles for transparency of defence budgeting and expenditures by expanding the mandate of the Court of Auditors to audit military expenses and by the new law on Public Financial Management and Control. The first one is the amendment to the Law of the Court of Audits (see below), included in the 7th Reform package. Article 7 - The following article has been added to the Law on the Court of Auditors No. 832 dated 21.2.1967:"Additional Article 12- Upon the request of the Presidency of the Turkish Grand National Assembly based on the decisions of Parliamentary inquiry, investigation and specialized committees, the Court of Auditors may, within the limits of the matter requested, audit the accounts and transactions of all public bodies and institutions, including privatisation, incentives, loan and credit practices, and with the same procedure, audit all types of institutions and organizations, funds, establishments, companies, cooperatives, unions, foundations and associations and similar entities with regard to use of public means and resources, regardless of whether or not they are subject to the auditing of the Court of Auditors. The results of the audits are submitted to the Presidency of the Turkish Grand National Assembly to be evaluated by the relevant commissions. Despite a few objections from the army, the government went ahead with the reforms to increase parliamentary oversight.

The second one is the Law on Public Financial Management and Control (Law No: 018; Enacted on:10/12/2003) that brings extra-budgetary funds into the overall state budget; and it requires more detailed information and documents to beattached to the budget proposals, including the defence budget proposals. Third, with the Constitutional amendment package, passed in Parliament in May 2004, the Court of Audit has had wider mandate to inspect accounts and state property owned by the Armed Forces without any exemption and secrecy consideration.

d) Limiting the Competency of Military Courts:

The 7th harmonisation package included the decision to abolish the trial of citizens in military courts. It brough an amendment to the Military Criminal Code and the Law on the Establishment and Trial Procedures of Military Courts (Law No: 353, dated 25 October 1963).
Consequently, it aligned the detention procedures of the military courts with those of other courts.
All these four categories of reforms referred to above have aligned the civil-military relations by increasing the civilian control of the armed forces. Now, the civilian authority has constitutional tools to control the defence policy making and budgeting.

Monitoring of draft evasion is very stirct as well . The registration of conscripts in fact is the most effective government registrations in Turkey. The point of view of the government is also very strict as to the military service and the recognition of the right to conscientious objection and unlikely to change in the near future. For instance; the duration of the military service has been reduced in the recent years but it can not be supposed that conscription may be totally abolished from the Constituition.

However, in almost every Member State, conscription has been abolished from their constitutions and is no longer defined as a crime. In addition, alternative civilian service is recognised instead of mandatory military service. As for Turkey, even supporting the idea of the recognition of conscientious objection might be considered as a crime. According to Article 301 of the Turkish Penal Code, for example, insulting the armed forces is punishable. Also, the attitude towards conscientious objectors in Turkey is very harsh almost wanting to show that, there will be no mercy or toleration to the draft evaders and deserters. Ill treatment and humiliation can not be tolerated in any case, so more public attention and the support of the non-governmental organisations are required to attract the attention of the government authorities to make amendments and remedies in the Turkish Military Penal Code and Military Code.

7.1.THE SATAUS OF CONSCIENTIOUS OBJECTORS: A COMPARISON OF TURKEY AND GREECE

7.1.1.The Case of Greece :[17]

For decades, Greece had refused to recognise the right to conscientious objection to military service. One of the main reasons is that, Greece is the only European Union country to remain in mobilisation since the Second World War. A state of war existed with Albania from 1940 to 1981. For the last 29 years and until recently Greece remained in a state of general mobilisation following the Turkish invasion and occupation of 33% of Cyprus.

Conscription was established, directly and expressly, in Article 4, paragraph 6, of the 1975 Constitution. According to this all Greek males who are capable of bearing arms - with sole essential criteria being their physical and mental capacity to bear arms and respond to military life - are obliged to contribute to the country's defence, as determined by the law. Conscription is further regulated by Law 731/1977, as amended in 1988 (1763/1988).

All Greek men from the first of January of the year during which they become 19 years of age until the 31st of December of the year during which they complete their 45th year are obliged to serve in the Armed Forces. This includes all males born to either a Greek father or mother, who automatically acquire Greek citizenship and thus become liable for military service - regardless of whether they wish to possess Greek citizenship and regardless of whether they also hold citizenship of another country. In practice, the majority of Greeks complete their military service between the ages of 20 and 30. Reservist obligations apply up to the age of 50; reservists are periodically called up for reservist training.

According to current legislation, the duration of full military service is twelve (12) months for the Army, Navy, and Air Force. Subject to the periodic needs of the Armed Forces, and after a decision of the Minister of Defence, it is possible that enlistees will be released either before the completion of the military service or, in some cases, after a longer period of service.

[17] http://wri-irg.org7conscientious objection to military service in greece2009

In certain cases, conscripts or soldiers are eligible for reduced service - to 3, 6, 9 or 12 months. Those eligible include (but are not confined to): the widowed father of at least one alive minor or unfit for any work child, one who served under a military capacity in the regular armed forces of another state for a period of time of at least six months, anyone who has an unfit for work wife, the only or the eldest son of deceased parents.
Conscripts coming under the following categories are eligible for deferment of their military service: students, candidate students of higher school or university and those obtaining sea service, those with a brother in service, permanent foreign residents, persons serving for the Armed Forces of a foreign Country, those signed up as sailors, naturalized aliens, persons coming from a country of the former Eastern Block or Turkey, hospitalised, confined or exiled persons and deferment on certain medical grounds.
Older conscripts are granted the possibility to serve only a certain part of their military service and, according to their age and marital status, buy off the remaining time.

A)Conscientious objection to military service:

The right to conscientious objection is legally recognised with the 1997 Law on Conscientious Objection (2510/97), which came into effect on 1 January 1998. According to article 18, paragraph 1 of this law, *"Those who invoke their religious or ideological convictions in order not to fulfil their draft obligations for reasons of conscience, may be recognized as conscientious objectors"*. Applicants for CO status are expected to make out a specific case relating the grounds of their objection *"with a general perception of life, based on conscientious religious, philosophical or moral convictions, which are inviolably applied by the person and are expressed by a corresponding behaviour"* (article 18, para 2). It should be noted that the amendment to the constitution which recognises CO status on non-religious grounds was made only recently - in 2000.

There are no legal provisions for conscientious objection for professional soldiers. The Law on Conscientious Objection applies only to conscripts.
The following groups are automatically excluded from applying for CO status:

1) persons who have already reported for armed duty either in Greek or foreign military forces or any security forces (like customs, police etc.), non regarding its length.
2) persons in possession of a hunting permit or having applied for one or being active in hunting associations. This means that all hunters, about 300,000 Greek men in the age for conscription, are excluded.
3) persons who have been prosecuted or sentenced for the possession of arms or ammunition, or illegal use of violence. So even if the prosecution was based on wrong assumptions, the person is excluded from the acknowledgement as a CO.
The following procedures must be adhered to when applying for CO status:
a) Acknowledgement of CO status comes only through a decision of the Defence Minister based on the statement of a committee which is made after reviewing the application or after a personal hearing.
b) According to Article 20 of Law 2510/1997, all CO claims are examined by a special committee which falls under the authority of the Ministry of Defense. The committee consists of one legal expert who acts as chairperson, two university professors (specialised in the fields of political science, sociology or law) and two military officers of high rank (one from the recruitment office and one psychiatrist of the armed forces).
c)Applicants may be ordered to participate in a personal interview with the commission, during which they are expected to make their case relating the grounds of their objection *"with a general perception of life, based on conscientious religious, philosophical or moral convictions, which are inviolably applied by the person and are expressed by a corresponding behaviour"* (as laid down in Article 18, para 2 of the Law). The committee makes a consultative decision but the MOD usually accepts the decisions of the committee. If an applicant is refused CO status, he can make an appeal and a petition for postponement of the enlistment, which he must bring to the authorities within 5 days from the date he makes the petition.
d) According to par. 4 of article 18 of the Law, applicants must produce a variety of documents & certificates - such as a copy of the applicant's criminal record proving that a person has not been convicted or even prosecuted of a violent crime, a certificate from the local Police Station verifying that a person has not applied for a gun licence and another certificate from the Forest Public Service confirming that a person does not have a license for hunting.

The time limit for submitting CO applications states that applications can only be made before starting military service - the deadline is the day before enlistment.

B)Problems concerning the right to conscientious objection:

The Law on Conscientious Objection does not comply with several UN and international standards on CO. There are a number of problems with the exclusions listed above as well as with the actual application procedure for COs:

a) By denying the right to conscientious objection to any person falling within the strict categories listed above, including to serving conscripts, reservists and professional soldiers, the law relies on an extremely narrow definition of "*religious or ideological convictions"* and does not allow for the capacity to change. Although Greek law recognizes the right of conscientious objectors to switch at any time from substitute service to military service, it contains no provision for conscientious objection developed during military service - the possibility of which is recognized in UN Commission on Human Rights resolutions 1993/84 and 1998/77: "persons performing compulsory military service should not be excluded from the right to have conscientious objections to military service"(1993/84) and "persons performing military service may develop conscientious objections" (1998/77). In fact the law actively excludes serving conscripts from applying for CO status.

b) Due to the strict deadlines and bureaucracy involved in the provision of certificates, in several cases, applicants have not been able to respond in time for the CO application deadline because many public services do not issue the various documents/certificates that are required by the recruitment office in a timely manner.

c) The deadlines and the exclusions above do not take into account the fact that information on the option of CO is not made freely available to potential conscripts.

This lack of information paired with the sporadic referral of CO applicants to the relevant authorities often results in applications for CO being initiated when it is too late and their right to apply for CO has already been revoked. This lack of information is contrary to Article 8 of the UN Commission on Human Rights resolution 1998/77 which "affirms the importance of the availability of information about the right to

conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service". [18]

This lack of transparency is also apparent in the fact that applications must be made to the Ministry of Defence. The interviewing committee for CO applicants is set up and controlled by the MOD and contains 2 members of military personnel. Given that the military has an active interest in keeping the number of COs to a minimum, in order to be fair and impartial, applications should be considered by an entirely civilian panel void of conflicting interests and the entire process should be overseen by a civilian body, as called for in Article 3 of the UN Commission on Human Rights resolution 1998/77.

d) It is worth noting here that the laws, procedures and practices relating to CO in Greece often result in the real number of COs being distorted. For the reasons identified above, Greek men of conscription age (and potential COs) avoid military service by going into hiding, claiming exemption under another law - often by 'playing the crazy card', by arrangements with the unit itself, or by other methods ('side-door CO'). This means that official figures on the number of COs often do not reflect the reality of CO in Greece.

C) Problems with the provision of substitute service:

Despite its provision under Greek law, the conditions for substitute service are clearly punitive and discriminate against COs as illustrated below:

COs are discriminated against with substitute service that is considerably longer than military service, currently twice the time of military service minus 1 month. This extended length effectively represents a form a punishment for conscientious objectors. It is in clear breach of several internationally recognised standards:

a) Firstly, it is in breach of Article 6 of UN resolution 1998/77 which reiterates an affirmation made in a previous resolution: "States, in their law and practice, must not discriminate against conscientious objectors in relation to their terms and conditions of service, or any economic, cultural, civil or political rights".

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18 http://www.unhchr.ch/huridocda/huridoca.nsf/FramePage/Subject+objection+En?OpenDocument cited 22 May, 2008

b) Secondly, it is in breach of the 1987 Council of Europe recommendation regarding CO.

c) Thirdly, it contradicts earlier UN Human Rights Committee decisions, most recently Foin vs France, which found that any disparity in length is only permissible if it is based on "objective and reasonable criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service"

d) Finally, as highlighted by Quaker Council For European Affairs (QCEA) collective complaint no.8, the punitive length of substitute service is in breach of Part 2, Article 1, paragraph 2 of the European Social Charter which provides that "With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake; to protect effectively the right of the worker to earn his living in an occupation freely entered upon".

According to Article 24, para 2 of the law, in the case of war the measures setting out substitute service can be suspended by the decision of the MOD. COs performing substitute service will then be incorporated into the compulsory unarmed military service. This part of the law contradicts Part 2, Article 18, paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR) which states that "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others". It is also in breach of Article 4, paragraph 2 of ICCPR, which states that: "No derogation from Article 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made [...]".

Conscientious objectors having been sentenced for their 'offence' are usually called up for military service again. This practice of trying COs for more than one 'offence' of draft evasion or desertion is contrary to 3 important, internationally recognised standards.

Firstly, it violates UN standards on the right to a fair trial. More specifically, regarding conscientious objection, this practice contravenes Article 5 of United Nations Commission on Human Rights Resolution 1998/77 which "Emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service, and recalls that no one shall be liable or punished again for an offence for which he has

already been convicted or acquitted in accordance with the law and penal procedure of each country."

In addition, it contravenes Commission on Human Rights resolution 2002/45 which takes note of recommendation 2 of the Working Group on Arbitrary Detention aimed at preventing the judicial system of States from being used to force conscientious objectors to change their convictions.

Further, it is in contradiction to Article 14 paragraph 7 of the International Covenant on Civil and Political Rights (ICCPR): "No one shall be liable to be tried or punished again for an offence for which he has been finally convicted or acquitted in accordance with the law and penal procedure of each country."

Although COs are theoretically entitled to free food and shelter, often this is not possible and the prescribed salary of 210.70 is not usually enough - even to cover rent. Indeed, in Greece, welfare payment for unemployed people is significantly more given that the average monthly payment is 320.25(minimum=311.25; maximum=329.25). This amounts to economic discrimination against COs which clearly violates Article 6 of the United Nations Commission on Human Rights Resolution 1998/77.

The majority of COs are required to serve far from home. Law 2510/97, article 19 excludes the Districts of Athens and Thessaloniki from places suitable for an objector to carry out substitute service, and a subsequent ministerial decision (based on the law) added 4 more big cities of high population in the list of this exclusion. The law also excludes COs from serving at the place that he lives, at his place of his origin or at his place of birth (the place of origin and place of birth are considered distinct, so, for example, if a CO were born in a hospital in another town, this town will also be excluded!).

It would not be unfair to emphasize that the above wide exclusion rather tends to render the everyday life of an objector as difficult as possible (without access to many facilities), whereas big military units are still around several big cities of Greece. These punitive measures also suggest that the state is trying to eliminate the possibility of a CO serving somewhere that he could have accommodation for free (eg. a relatives' house). So, in practice, COs have to pay rent which means that only the richer COs can perform the substitute service, which clearly discriminates against those unable to pay.

Once again, this practice is in contradiction to Article 6 of the United Nations Commission on Human Rights Resolution 1998/77.

COs who are in the process of being tried for their 'offence(s)' are refused the right to leave the country and their relatives have in some cases been harassed by police. According to Article 14, paragraph 2 of the International Covenant on Civil and Political Rights (ICCPR) "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." Therefore, COs in the process of being tried for their 'offence(s)' should retain their rights as Greek citizens, including the right outlined in Article 13 of the Universal Declaration of Human Rights, which states that: *"everyone has the right to leave any country, including his own, and to return to his country."*

A recognised CO who does not report for substitute service on time, becomes an "Anipótaktos" (objector to conscription) and is prosecuted under the military law. As an "Anipótaktos" he looses his CO status. This section of Greek CO law is extremely confusing since it leaves COs in a 'limbo' situation between the military and civilian authorities. This is illustrated in the case of Lazaros Petromelidis who was told by a Thessoloniki military court in February 2004 that he could not be tried because he is a civilian. However, since civilian courts have no process for issues related to military law, he was left without recourse to either military or civilian authorities. The legalities of such issues are therefore extremely ill-thought out and confused.

According to Article 21, para 2 of the law, the time-frame within which COs serving substitute service must report for duty is determined as starting from the date that a summons from relevant military authorities of the Ministry of National Defence is sent. If a CO does not report for duty by the date stated in the said letter, he faces being charged with insubordination as described above. Given the strict punishment for not reporting for duty on time, it is unreasonable that the summons commences from the date it is actually sent and thus a COs prompt arrival for duty relies on the infallibility of the Greek postal service. Importantly, the period of time given to COs to report for substitute service is not specified by law and is therefore open to any interpretation.

A recruiting office can use its discretionary powers to deprive an objector of his right to do substitute service and revoke his status as a CO (provided for in chapter C, article 21,

para 5 of Law 2510/97). This occurs as a form of punishment for non-performance of his duty or for a commitment of any disciplinary offence inside the public institution or even for any irregular absence from his duties.

This means that even in the event of a one day or a one hour absence, according to the judgment of his supervisor, a CO can have his status revoked. These discretionary powers also apply in the event of a CO participating in trade unionist activities, for example in a strike. In cases such as these where a CO has his status revoked, he is then forced, under Paragraph 6 of the article, to serve the remaining part of his military obligations in the army. However, only half the time spent at the place of substitute service is considered, so that if a CO has done 4 months of substitute service, the authorities consider that he has done only 2 months. In addition to this, in every case, a CO must do at least 6 months of military service, regardless of the amount of time already spent doing substitute service. The same applies in the event that a CO changes voluntarily from the substitute to the military service.

This aspect of the Law is extremely discriminatory for 2 reasons: firstly, a disciplinary offence should not result in the loss of CO status, and secondly, according to Article 6 of the United Nations Commission on Human Rights Resolution 1998/77, COs should not be discriminated against so that they lose political rights such as the right to strike or take industrial action.

Indeed, the Greek Ombudsman has declared the practice unacceptable and has requested that the MOD withdraw the current provision that allows the recruiting offices to deprive COs of their CO status and call them again to serve a military service.

One of the most important issues regarding the problems of COs in Greece is that the substitute service is totally controlled by the Ministry of Defence, even in the initial stage of examining the applications for CO status. Indeed, Article 21, para 3 (b) considers "those who serve an alternative civil service [...] as quasi enlisted in the armed forces". Although the recognized objectors are - supposedly, under the terms and conditions of service - not subjected to a military legal status but remain civilians, the control of substitute service being in the hands of the MOD causes a contradiction with wide-ranging implications, particularly for those who may have their CO status revoked

and face trial in a military court!

According to the international standards and recommendations, the entire institution of substitute service should have a completely civilian character, so if a committee is provided in order to examine the applications, it should have no military members and should not report to military authorities. As such, Article 3 of the United Nations Commission on Human Rights Resolution 1998/77 "Calls upon States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate against conscientious objectors on the basis of the nature of their particular beliefs." Therefore, an independent civilian authority should replace the above committee of the Ministry of Defense, as the Greek National Commission for Human Rights and the Greek Ombudsman have also suggested.

D) Development of CO in Greece:

Greece has a long history of repression of COs. For decades Greece refused to recognise the right to conscientious objection. Since the 1950's, approximately 3,500 COs have been imprisoned. Initially most were Jehovah's Witnesses, but since the 1980's there has been a growing number of other COs inspired by secular, pacifist, political or other motives.

The right to CO was first recognised under Greek law on 1st January 1998, almost 11 years after the first non-religious CO appeared, and it establishes the possibility for a substitute service. Greece was the last EU country to recognise the right to CO. During 1997, about 250 Jehovah's Witnesses were serving prison sentences for exercising their right to CO on religious grounds. In the first 3 months after the law recognising CO came into force, about 80-100 people applied for CO status. Of these, 9 were non-religious COs and the rest religious (Jehovah's Witnesses). By 1999, there were more than 200 COs performing substitute service. Until June 2003, 771 applications for CO status had been submitted, of which 758 were accepted.

Before the recognition of CO and since (due to the complexity of procedures and the discriminatory treatment COs face), many potential conscripts and COs have attempted

to avoid military service through alternative 'side-door' means. Conscripts may claim exemption by moving abroad for long periods of time, by 'playing the crazy card' (getting certified as mentally ill), by enrolling as students, by arrangements with the unit itself, or by other methods. This means that in addition to the known cases of CO, there are several others which are not officially reported so that often, official figures on the number of COs do not reflect the reality of CO in Greece. Officials estimate the number of Greek men in hiding as between 8,000 and 35,000, but CO support groups estimate the number to be somewhere between 40,000 and 70,000.

The lack of transparency regarding the whole process of performing military or substitute service means that often conscripts are not even aware that they have the right to apply for CO status. So, the number of applications for CO status is dependent on the military providing conscripts with the information necessary to make their application in time and be referred to the committee.

Over the years, the Greek government has been urged on numerous occasions by several inter-governmental bodies to bring its policy towards COs in compliance with international standards on conscientious objection, including:

In August 1999, the Ombudsman for Citizen's Rights (Citizen's Advocate) issued a series of constructive recommendations including: the partial demilitarisation of the substitute service, a decrease in the length of service, the abolition of the unconstitutional possibility to change the status of a CO back to that of a draftee, the introduction of the same special categories of shorter service as for military service and the inclusion of NGO's to the groups of institutions in which such service can be carried out.

In 2001, the European Parliament in a resolution, called on Greece to recognise the right to conscientious objection to military service without restriction, and without reference to any religious grounds, to introduce forms of substitute service which do not last longer than compulsory military service and to release immediately all those serving prison sentences in this connection.

In the same year, following a collective complaint by the Quaker Council for European Affairs (QCEA), the European Committee of Social Rights concluded that the duration of substitute service amounted to a disproportionate restriction on "the right of the worker to earn his living in an occupation freely entered upon" and violates Article 1.2

of the European Social Charter, as substitute service keeps COs away from the labour market for a time disproportionately longer than conscripts in the armed forces.

Also in 2001, the National Committee for Human Rights (an independent administrative authority) asked that the management of substitute service must not be under the jurisdiction of the Ministry of National Defence, and that this service must be 'reasonably' longer than the military service.

In 2003, the European Parliament in its Annual report on Fundamental Freedoms in the European Union called upon Greece to recognise the right to conscientious objection without restrictions, to make substitute service the same length as military service and to release immediately all those serving prison sentences in this connection.

Some small steps have been taken to bring Greek CO law in line with relevant international standards. For example, in the summer of 2001 there was a reduction in the length of substitute service for some COs according to the period of military service they were obliged to serve before being recognised as COs (instead of an extra 18 months on top of the duration of military service across the board, it became an extra 16 months for those with 1 child, an extra 14 months for those with 2 children and an extra 12 months for those with 3 children). More recently, in August 2004 the law was amended so that now conscientious objectors complete their substitute service after serving twice the time of military service minus 1 month.

However, despite these small steps, for the most part the recommendations of national and international bodies have been ignored.

E) Conclusion:

Although Greece recognises the right to conscientious objection and makes the provision for substitute service, there remain several problems and discriminatory practices against conscientious objectors and the provision of substitute service is riddled with complications and thus further discriminates against COs.

Length of substitute service is discriminatory and punitive.

Greek CO law excludes whole groups from applying for CO status. There is no case by case decision and the capacity to change one's convictions is not taken into account.

Conscientious objectors should have the right to claim conscientious objector status at any time, both up to and after entering the armed forces.

Bureaucratic procedures prevent people from exercising their right to CO.

Substitute service must be under civilian authority and not under military authority (Ministry of Defence) - including in the examinations of applications for conscientious objection.

The provision of substitute service must never be derogated from, including in time of war.

Under present procedures, COs are tried more than once for the same offence.

Conscientious objectors who carry out trade unionist activities or participate in a strike during their substitute service can have their CO status revoked.

Conscientious objectors (with legal proceedings against them) must recover their full civil and personal rights, including that of travel outside the country, the right to a passport and identity card, and the right to vote.

These concerns raised above are also raised by United Nations and international recommendations, laws and standards. It is abundantly clear that Greek CO laws, practices and guidelines are not in compliance with such standards.

F)Case Studies:

Below are examples of conscientious objectors who have been denied their CO status due to the problematic exclusions and procedures under Greek CO law as well as COs who have experienced problems relating to the provision of substitute service and those who have been discriminated against due to their status as COs:

1. Lazaros Petromelidis:

This case is interesting because it illustrates several of the problems relating to conscientious objection and the provision of substitute service for Greek COs. His case exemplifies the continuing harsh treatment of COs by the Greek authorities and the extremely time-consuming nature of the legal struggles they face.

In particular, it highlights the following:

1) Length of substitute service is discriminatory and punitive.

2) Substitute service must be under civilian authority and not under military authority (Ministry of Defence) - including in the examinations of applications for conscientious objection.

Under present procedures, COs are tried more than once for the same offence.

Conscientious objectors (with legal proceedings against them) must recover their full civil and personal rights, including that of travel outside the country, the right to a passport and identity card, and the right to vote.

Lazaros Petromelidis declared his conscientious objection to military service in 1992 before the recognition of the right under Greek law. He was eventually granted CO status in January 1999. He was then ordered to serve substitute service for 30 months - seven-and-a-half times longer than he would serve as a non-CO - in a town 550 km (340 miles) away from his family home.

Due to this overt discrimination, Lazaros did not present himself for service and appealed instead to the highest court in Greece. Meanwhile, his prosecution for his initial draft evasion was still pending and on April 15 1999, Petromelidis was convicted to 4 years imprisonment. He was released after just 2.5 months after the official Greek Ombudsman clearly expressed in a special report on CO that Petromelidis' requests were justified. Despite this, on being released from prison, Petromelidis was called to start military service again and because he again refused to comply, a further arrest warrant was produced for the same offence.

When, on 17 September 2002, Petromelidis appeared in court to ask for postponement (due to the absence of his lawyer) of his trial for not performing the substitute service, he was immediately arrested for a new offence - a second count of insubordination for failing to register for service when called-up by the Navy a few months previously. He was put in prison for 3 days before being bailed.

Petromelidis' trial for the initial charge of failing to perform the grossly punitive substitute service finally took place on 12 June 2003 and he was given a 20 month suspended (for 3 years) sentence (out of a maximum of 24). On 18 September 2003 Petromelidis was acquitted of his second 'offence' of "insubordination". However, since then, having lost his CO status, he has been repeatedly called up to perform military service and consequently accused and prosecuted again for draft evasion every time.

On 16th December, he was due to appear before the Naval Court of Piraeus on two charges of "insubordination", dating from 26 July 1999 and 3 July 2003. He chose not to appear since if he did, they could arrest him for more recent draft evasions. However, since he did not appear, they sentenced him in his absence to 2 ½ years imprisonment. Once again, Lazaros Petromelidis is under imminent threat of arrest.

Lazaros Petromelidis' case highlights the injustice in Greek provisions for conscientious objectors. Lazaros is a married father of an 11-year old son and for the past 8 years he has worked in support of socially excluded groups. He has experienced first-hand the discrimination and poor treatment of COs in Greece.

The punitively long substitute service he was prescribed is in breach of Article 4 of UN Commission on Human Rights Resolution 1998/77. It contradicts previous UN Human Rights Committee rulings, for example, Foin vs France, since any disparity in length that discriminates against COs on the basis of their conscience constitutes a violation of the principle of equality set forth in article 26 of the ICCPR. It is also in contradiction to the 1987 Council of Europe recommendation regarding CO.

Lazaros has been tried more than once for insubordination thus violating Article 5 of UN Commission on Human Rights Resolution 1998/77. This is also in contradiction to Article 14 paragraph 7 of the International Covenant on Civil and Political Rights (ICCPR) and UN Commission on Human Rights resolution 2002/45 taking note of recommendation 2 of the Working Group on Arbitrary Detention aimed at preventing the judicial system of States from being used to force conscientious objectors to change their convictions.

Further, Article 13 of the Universal Declaration on Human Rights, has been contravened because Petromelidis has been refused the right to leave his country (due to his refusal to serve the punitively long substitute service, his ensuing classification as an "Anipótaktos" and resulting loss of his CO status and prosecution for desertion).

2) Giorgios Monastirotis:

Monastiriotis' case illustrates how:

Greek CO law excludes whole groups from applying for CO status: there is no case by case decision and the capacity to change one's convictions is not taken into account.

Conscientious objectors should have the right to claim conscientious objector status at any time, both up to and after entering the armed forces.

Under present procedures, COs are tried more than once for the same offence.

Giorgios was a professional soldier with the Greek army. He was ordered to go to the Persian Gulf in May 2003 but refused on the grounds that the war in Iraq was unjust. He left the Navy rejecting it as a mechanism that is used for the repression of people's

movements. He was arrested and brought to a military (naval) court without a lawyer on 13th September 2004. He received a sentence of 3 years and 4 months. On 5th October 2004 his demand to be released till the Appeal Court was examined. Monastiriotis was not present at this second "trial" (he was in jail) but his lawyer brought several witnesses, including a former Minister of Justice of the Socialist Party, and Monastiriotis was released until the Appeal Court trial without any conditions. Shortly after this Monastiriotis was called to join the Navy and again he refused. For this 'offence' he was sentenced on 18th January 2005 to 5 months' imprisonment on suspension in case of appeal, for desertion. This means that Monastiriotis has been tried twice for the same 'offence' of desertion.

Monastiriotis' case illustrates how Greek CO law is in contradiction to Article 5 of UN Commission on Human Rights Resolution 1998/77 as well as Article 14 paragraph 7 of the ICCPR and UN Commission on Human Rights resolution 2002/45 which takes note of recommendation 2 of the Working Group on Arbitrary Detention aimed at preventing the judicial system of States from being used to force conscientious objectors to change their convictions.

In addition, the exclusion under Greek CO law, of professional soldiers from applying for CO status is in contradiction to UN Commission on Human Rights resolution 1998/77 which recognises that "persons performing military service may develop conscientious objections".

3) Felix Alexanidis:

This case illustrates how:

a) Greek CO law excludes whole groups from applying for CO status: there is no case by case decision and the capacity to change one's convictions is not taken into account.

b) Conscientious objectors should have the right to claim conscientious objector status at any time, both up to and after entering the armed forces.

Felix Alexanidis, an ethnic Greek, was born in Georgia in 1970 but obtained Greek nationality in 1999. From 1989 to 1991 he had performed military service in the Russian army. Following this period Felix Alexanidis moved to Greece and became a Jehovah's Witness. He was then called up to perform three months of military service in Greece, but applied for CO status due to his religious beliefs. However, since the Greek legislation does not recognize as conscientious objectors those men who developed

conscientious objection after entering the armed forces, the Greek authorities rejected his application on 22 November 2002. He has appealed to the Council of State where his case is still pending. Since 2002 his case has had 3 postponements, now the new date of his trial has been set for October 2005. Currently he is legally out of the army, because the Council of State has granted him suspension of his military duties until the decision on his case.

In not allowing for the capacity to change (or only allowing it in the direction of the military), the exclusions set out in Greek CO law result in genuine COs being denied their status.

The denial of CO status to Felix Alexanidis is in contradiction to UN Commission on Human Rights resolution 1998/77 which recognises that "persons performing military service may develop conscientious objections".

4) Nikolaos Tsakonas, Dimitrios Pakkidis, Dimitrios Pitsikalis & Christos Chaknakis:

These cases highlight the fact that at present, bureaucratic procedures prevent people from exercising their right to CO.

These COs - all of them Jehovah's Witnesses - were denied the opportunity to apply for their CO status because in each case the authorities failed to provide the necessary documents in time and therefore the men didn't have the full documentation to pass on to the military to claim their CO status.

It is clear from these examples that the procedures CO applicants must complete in order to be given their CO status are inadequately thought out and result in several cases in genuine COs being denied their rightful status.

5) Ioannis Chryssovergis:

This case again highlights:

a) the punitive nature of substitute service for Greek COs, and

b) the practice of trying COs more than once for the same 'offence'.

Ioannis Chryssovergis was called up for enrolment in the Greek army in March 1988 and was suspended from military duties for one year on grounds of ill-health. On 25 August 1989 he wrote to the Athens enrolment military office declaring his

conscientious objection to military service and in January 1990 he refused to report for military duties when he was called up in Thebes. In 1992 he was charged with insubordination. On 1 January 1993 he was banned from leaving the country.
In March 1998 he applied for CO status and in June 1998 he was recognized as a conscientious objector and called to serve 30 months of substitute service (instead of 3 months of military service - given the right to buy exemption from 9 months of a 12-month service without being granted the right to pay a sum of money in lieu of part of that service, as provided by law for the military service). He started his substitute service in Sidirokastro on 8 December 1998. On 13 February 1999 he applied to the State Council in protest at the discriminatory treatment against conscientious objectors and requested that he should be allowed to pay a sum of money in lieu of part of his substitute service and that the length should not be punitive. On 8 June 1999 he walked out having served six months of his substitute service (twice the length of the military service he would have served). He was repeatedly called up to serve 12-month military service and he has refused to enrol. As a result, he is apparently at risk of arrest and imprisonment on charges of insubordination or desertion.
Once again, the punitively long substitute service prescribed in this case is in breach of Article 4 of UN Commission on Human Rights Resolution 1998/77. In addition, it contradicts previous UN Human Rights Committee rulings, see Foin vs France, and the disparity in length constitutes a violation of the principle of equality set forth in article 26 of the ICCPR. It is also in contradiction to the 1987 Council of Europe recommendation regarding CO.

Being tried more than once for the same 'offence' violates Article 5 of UN Commission on Human Rights Resolution 1998/77 and is in contradiction to Article 14 paragraph 7 of the ICCPR as well as to UN Commission on Human Rights resolution 2002/45 taking note of recommendation 2 of the Working Group on Arbitrary Detention aimed at preventing the judicial system of States from being used to force conscientious objectors to change their convictions.

7.1.2. The Situation In Turkey:

Turkish law punishes conscientious objectors under articles 58 and 87 of the Turkish Military Criminal Code, which provide imprisonment ranging from two months to two years for “undermining national resistance” and “wilfully disobeying an order” respectively. Conscientious objectors may also be punished under article 318 of the Turkish Criminal Code for “alienating the public from the institution of military service,” which carries a possible prison term of up to four and a half years.
Turkish citizens who have followed their conscience in rejecting military service continue to be subjected to outright persecution by legal and other means.
Patriotic service is a right and duty for every Turkish citizen", states article 72 of the Turkish constitution. Military service is thus a seemingly inevitable part of a Turkish man's life, and the thought that a man who is not physically unfit would not serve in the country's military can almost not be voiced in public. Turkey as a military-nation and the myth that "every Turk is born a soldier" has been carefully crafted since the early times of the new Turkish republic, and only recently does this myth begin to show cracks because of the democratic reforms for EU harmonisation.

Conscription can hardly be abolished from the Turkish Constitution because of mainly the moral reasons and the terrorist strikes in the Southeastern region of Turkey.Having been discussed above, many COs have been ill- treated and tried more than once for the same offense, disobedience or desertion, contradictory to resolutions of the UN Commission on Human Rights and provisions of the International Covenant on Civil and Political Rights. The practice of not recognizing the right to CO to military service is also contrary to Article 90 of the Turkish Constitution stating that ”…international agreements approved by the Parliament are the equivalent of the national legislation and in case of conflict have supremacy over national legislation.” According to this provision of the Turkish constitution, the practice of which CO is not recognized under Turkish law does not comply with the international standards. Despite the fact that the right to CO is a human right and recognized by the UN which Turkey is also a member, Turkish authorities do not intend to recognize the right to CO. However, with the process of candidacy for being a full member for the EU, Turkey has achieved a more

civilian democracy by diminishing the role of the armed forces in the political affairs of the country. Since Turkey has recently started to establish a new, civil democracy, it is too early to discuss the abolishing of the conscription in the near future. Moreover, on the road to the EU, the right to CO will be recognized and enshrined to national legislation inevitably.

Alternative civilian service might be a solution instead of rendering military service but with the same duration as the military service. Also, condensing the period of compulsory service might be another solution. Since most of the people in Turkey suppose that, military service is a venerable duty towards the country, it is hard to abolish the conscription completely.

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