



Closing the Implementing Gap:

Application Procedures Enabling the Exercise of the Right to Conscientious Objection to Military Service

Introduction

The Implementation Gap

Despite recognition by the Commission on Human Rights, the Human Rights Council, the Human Rights Committee, Special Procedures and regional human rights courts of the right to conscientious objection to military service, those seeking to exercise this right continue to face violations of this and other rights due to non-recognition of the right or a failure to fully implement it. The continuing challenges are documented in the Analytical Report of the Office of the High Commissioner for Human Rights on Conscientious Objection to Military Service ([A/HRC/35/4](#)).

Therefore, although the right to conscientious objection to military service is established as part of the right to freedom of thought, conscience and belief there is a significant implementation gap. The lack of implementation falls into two main categories

- i. non-recognition of the right: where there is no provision for conscientious objection to military service (and often as a result, conscientious objectors face further rights violations related to punishment for seeking to exercise the right, including arbitrary detention)
- ii. incomplete implementation of the right: where there is provision in legislation or policy for conscientious objection to military service but rights violations persist due to, for example, limitations on what grounds conscientious objection is recognised, the process by which conscientious objectors are recognised, punitive alternative service, discrimination because of conscientious objection.

The absolute non-recognition of conscientious objectors to military service is a question of political will, the human rights system continues to work to address this by reiterating the existence of the right and highlighting continuing violations, including through a growing body of jurisprudence from the Human Rights Committee and the Working Group on Arbitrary Detention. The HRC addresses this through its consensus resolutions recognising the rights and the calls for full recognition in law and policy.

Incomplete implementation is a result of a mix of political will, technical capacity, lack of prioritisation and oversight. Through resolution 36/18 the Human Rights Council is seeking to work to close the implementation gap by requesting a report from the Office of the High Commissioner for Human Rights on procedures for application and determination of conscientious objector status, a specific aspect of the implementation gap.

Recommendations and guidance in this report will complement the Office of the High Commissioner for Human Rights' handbook on conscientious objection (published in 2012),¹ this covers standards and practice but does not draw out detailed guidance on implementation.

Why Human Rights Compliant Application Procedures Matter

The process by which an individual can be recognised as a conscientious objector is key to the translation of recognition of the right on paper into realisation of the right in practice. It is perhaps the most significant aspect in ensuring the right *de facto* as well as *de jure*. Failure to ensure a rights compliant application and recognition process results in violations of the right to conscientious objection of military service because it prevents the exercise of the right. The UN High Commissioner for Refugees' Protection Guideline 10 states that the possibility to exercise the right in practice is relevant when undertaking refugee status determination for those fleeing because they are unrecognised conscientious objectors.² Failure to put in place a fair and effective recognition process can be evidence of persecution. The Protection Guideline highlights that barriers to recognition can be procedures or societal, for example the risk of being persecuted for applying:

However, where ... the procedure for requesting alternative service is arbitrary and/or unregulated; or the procedure is open to some but not all, further inquiries need to be undertaken. In cases where the applicant has not availed him or herself of the existing procedures it would be important to understand their reasons for not doing so. If found that the reasons relate to a well-founded fear of being persecuted for publicly expressing his or her convictions, this would need to be factored into the overall analysis.³

Best Practice

Acceptance of claims as valid without inquiry

The best practice is to accept statements of conscientious objection on face value without further examination. This is welcomed in Human Rights Council resolution 24/17:

Welcomes the fact that some States accept claims of conscientious objection to military service as valid without inquiry⁴

Such a system would for example require only a simple letter for form through which conscientious objectors state their objection. On receipt of this the relevant authorities would release the

¹ [Conscientious Objection to Military Service \(HR/PUB/12/1\)](#)

² UN High Commissioner for Refugees Guideline on International Protection No.10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/13/10/Corr. 1. of 12 November 2014, paras 10-20

³ UN High Commissioner for Refugees Guideline on International Protection No.10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/13/10/Corr. 1. of 12 November 2014, paras 10-20

⁴ Human Rights Council Resolution 24/17 Conscientious objection to military service, A/HRC/RES/24/17 of 8 October 2013, para.7

conscientious objector from military service. This best practice should be applicable to all conscripts, recruits, serving military personnel or reservists. If there is conscription this prima facie acceptance of conscientious objection can be applicable regardless of whether there is alternative service or not. Such a system is best practice as it is the fullest recognition and implementation of the right of freedom of thought, conscience and belief as it is based on an acknowledgment that this is an internal/personal matter that it is inherently difficult for someone else to judge.

Practice Examples

Austria

Applications are made on a standard form with the conscientious objectors stating that they agree with standard wording on the objection, based on the legislation on civilian service. Since 1991 no interviews are carried out and the application is in effect accepted without further inquiry (although it should be noted that there are some criteria which mean that applications can be rejected).

Norway

Since 2001 applications for conscientious objector status can be made by signing a form available from the Ministry of Justice. No further examination or interview is required. Since 2011, when alternative service was suspended, conscientious objectors are exempted from military service with no further action required.

Switzerland

Since 2009 conscientious objectors can request a form from the Ministry of Economic Affairs; applicants must state a conflict of conscience with military service but are not required to explain the reasons for this. This form is accepted without further examination.

A more complex application and determination process is only necessary where statements of conscientious objection are not accepted as valid without further inquiry. Where this is the case the Human Rights Council:

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 to military service is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;⁵

Therefore, whilst a determination process is not required by human rights law (so long as there is a means of conscientious objectors being recognised) it is essential that any process that is in place be in line with international human rights law so as not to violate the right of conscientious objection to military service, inherent in the right of freedom of thought, conscience and belief.

⁵ Human Rights Council Resolution 24/17 Conscientious objection to military service, A/HRC/RES/24/17 of 8 October 2013, para.8

Principles 1 and 2 and 3 (below) relate to processes with prima facie acceptance. Where best practice is not in place, all the Principles below should be followed to enable processes that are in accordance with international human rights law and the realisation of the right to conscientious objection to military service.

Principles for Human Rights Compliant Application Procedures

Principle 1: Transparency (Right of Access to Information)

For conscientious objectors to exercise their right there must be accessible information about how to apply, including to whom to apply, any time frames and any criteria on which the decision will be based. This information must be freely available, easily accessible and in all relevant languages. This information must be in the public domain and should be sent to all conscripts along with any notices regarding their call up. It should also be issued to all serving military personnel.

The Human Rights Council:

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;

Welcomes initiatives to make such information widely available, and encourages States, as applicable, to provide information to conscripts and persons serving voluntarily in the military services about the right to conscientious objection to military service;⁶

The Special Rapporteur on Freedom of Religion and Belief has commented on the importance of transparent procedures for conscientious objectors.⁷ The Human Rights Committee has also been clear in its Concluding Observations about the requirement of transparency about both process and criteria for granting conscientious objector status:

The State party should pass specific regulations on conscientious objection so as to ensure that this right can be effectively exercised, and guarantee that information about its exercise is properly disseminated to the entire population.⁸

The State party should clarify the grounds under which applications for an alternative to military service are accepted or rejected and take relevant measures to ensure that the right to conscientious objection is upheld.⁹

Civil society are an important source of information regarding the right to conscientious objection, especially where States fail to meet their duties to make information accessible. The right of freedom of expression and access to information requires that States do not prohibit the dissemination of

⁶ Human Rights Council Resolution 24/17 Conscientious objection to military service, A/HRC/RES/24/17 of 8 October 2013, paras 15 and 16

⁷ Report of the Special Rapporteur on Freedom of Religion and Belief, A/HRC/19/60/Add.1, para 64(g)

⁸ Human Rights Committee Concluding Observations on Paraguay CCPR/C/PRY/CO/2 of 24 April 2006, para 18.

⁹ Human Rights Committee Concluding Observations on Estonia CCPR/C/EST/CO/3, para 14

information regarding the right to conscientious objection to military service.¹⁰ The Human Rights Council:

Urges States to respect freedom of expression of those who support conscientious objectors or who support the right of conscientious objection to military service;¹¹

Practice Examples

Austria

In Austria relevant information is sent out with recruitment papers and the form can be downloaded from the Civilian Services Agency's website.

Hungary (Past Practice)

When conscription was in force (until 2015) the recruitment papers listed the possibility of civilian service without requiring a statement of conscientious objection.

USA (Past Practice)

When conscription was in force (until 1973) information regarding conscientious objection was sent out with call up papers.

Principle 2: Accessibility (Right of Freedom from Discrimination)

In line with the right to freedom from discrimination, a central tenet of international human rights law, the procedures for applying for status as a conscientious objector must be equally available to all. Non-discrimination based on the grounds for the conscientious objection is covered in Principle 3 on full applicability because of its centrality to the exercise of the right. Ensuring the process is in all relevant languages is covered in Principle 1 on Transparency. Other aspects of accessibility include ensuring that there is no barrier due to cost or when status is applied for.

In several countries a criminal record is a bar to be recognised as a conscientious objector. Given that the offence may have no bearing on the belief on which the objection is based or in cases where it did the person may have subsequently changed beliefs this is a distinction that cannot be justified as proportionate to the intended aims and as such is discriminatory.

- i) No discrimination on grounds of cost

The process for applying for status as a conscientious objector must be free and there should be no charge to get status. The Human Rights Committee has criticised the potential for discrimination where there is a cost attached to being exempted from military service:

¹⁰ For example, Article 318 of the Turkish Penal Code criminalises "alienating the public from military service", and in 2013 this was amended to specifically address statements or conduct that "encourage and inspire people to desert or not to participate in military service".

¹¹ Human Rights Council Resolution 24/17 Conscientious objection to military service, A/HRC/RES/24/17 of 8 October 2013, para 17

The Committee is also concerned about the exemption fee that can be paid in lieu of doing military service, and the discrimination that may result therefrom (arts. 18 and 26 of the Covenant).¹²

Practice Examples

Many countries that recognise conscientious objection do not charge for the application process or require a financial contribution in lieu of military service.

ii) No limitation to conscripts

It is often mistakenly thought that the right to conscientious objection to military service only arises for conscripts. However, given that the right to change one's religion or belief is fundamental to freedom of religion or belief it must be recognised that serving conscripts, those who volunteered for military roles and reservists can all develop a conscientious objection. As the Human Rights Council recognised:

Aware that persons performing military service may develop conscientious objections¹³

The Human Rights Council went on to say that it:

Acknowledges that an increasing number of States recognize conscientious objection to military service not only for conscripts but also for those serving voluntarily, and encourages States to allow applications for conscientious objection prior to, during and after military service, including reserve duties;¹⁴

Therefore, there can be no limit on who can apply for conscientious objector status. Application processes must be open to conscientious objectors who are already performing military service, who volunteered to join the military or who are reservist. The right to change belief is also relevant in considering how much weight should be given to prior actions when assessing an application, outlined below (Principle 5: Good Faith Determination Process).

The Human Rights Committee has clarified:

Human Rights Committee has specifically applied the possibility of changes in religion or belief in this context, for example, when recommending the adoption of legislation on conscientious objection to military service to a reporting State, "recognizing that conscientious objection can occur at any time, even when a person's military service has already begun".¹⁵

And as a result, has recommended:

¹² Concluding observations of the Human Rights Committee on Mongolia CCPR/C/MNG/CO/5 of 2 May 2011, para. 23

¹³ Human Rights Council Resolution 24/17 Conscientious objection to military service, A/HRC/RES/24/17 of 8 October 2013, preamble

¹⁴ Human Rights Council Resolution 24/17 Conscientious objection to military service, A/HRC/RES/24/17 of 8 October 2013, para 5

¹⁵ Human Rights Committee, Concluding Observations on Chile (CCPR/C/CHL/CO/5 of 18 April 2007), para. 13.

the State party to take necessary measures to ensure that the law clearly stipulates that individuals retain the right to exercise conscientious objection even during the performance of military service¹⁶

The Committee of Ministers of the Council of Europe has also specifically included serving soldiers in their recommendations:

Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.¹⁷

Practice Examples

Georgia

In 2012 the Supreme Court of Georgia ruled that alternative civilian service must be available to those called up for reservist duty.

Germany

In 2012 the Federal Administrative Court ruled that all citizens must have the possibility to refuse military service at any time, regardless of the type of duty in the army.

Switzerland

Applications can be made before, during or after service. Serving soldiers and reservists can apply for status as conscientious objectors.

United Kingdom

Serving military personnel in all three branches of the UK's military are able to apply for discharge as conscientious objectors. It should be noted that information on how to apply is not in the public domain.

United States of America

Military personnel who develop a conscientious objection to military service may apply for reassignment to non-combatant duties or discharge from the Armed Forces under Department of Defense Directive 1300.6

iii) No time limits on applications

Time limits suggest that there is only a defined period in which someone is allowed to exercise their right to freedom of religion and belief. Therefore, there can be no legitimate time limits on when someone can apply for conscientious objector status. See the quote from the Human Rights Committee above regarding right to change beliefs.

¹⁶ CCPR/C/SVK/CO/3 (CCPR, 2011) Human Rights Committee, para. 15

¹⁷ Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces (24 February 2010), Section H, paras 40-46, para 42

Practice Examples

Norway

There are no time limits to apply for conscientious objector status. Serving conscripts can apply for status as conscientious objectors (and must be assigned to non-combatant duties pending release from military service).

Principle 3: Full Applicability (Right to Freedom of Thought, Conscience and Belief; Right of Freedom from Discrimination)

The reasons for individuals' conscientious objection are varied, they are not limited to religious beliefs. Conscientious objector status must therefore be available for all regardless of the basis of their conscientiously held objection. For example, it must not be limited to specific named religions, nor limited to religions objection. Moreover, it should encompass selective objectors, for example those who object on grounds of conscience to a particular conflict or weapon use.

The Human Rights Council recognises:

that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives¹⁸

The Human Rights Committee has unequivocally stated that "there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs".¹⁹ The Committee has expanded on this in its concluding observations.²⁰

Practice examples

Finland

Applicants can give religious or ethical reasons for the objection.

Greece

Article 59 of the relevant domestic law (Law 3421/2005) says conscientious objector 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" and that 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".

¹⁸ Human Rights Council Resolution 24/17 Conscientious objection to military service, A/HRC/RES/24/17 of 8 October 2013, preamble

¹⁹ General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18), CCPR/C/21/Rev.1/Add.4, 30 July 1993

²⁰ For example: Human Rights Committee, Concluding Observations on Ukraine CCPR/C/UKR/CO/7 of 26 July 2013, para.19; Human Rights Committee Concluding Observations on Kyrgyzstan CCPR/C/KGZ/CO/2, para. 23; Human Rights Committee Concluding Observations on Finland CCPR/C/FIN/CO/6

Principle 4: Impartiality of Decision-Making Processes (Right of Due Process)

In line with the protection of the right to due process, the impartiality of those who make the decision is essential. This encompasses the independence of the decision-making authority and the requirement of a good faith decision making process. Processes that contain unreasonable requirements are not good faith and are not impartial.

a) Independence of decision-making authority

If the decision-making process sits within the branch of government that has a vested interest in retaining the conscript or member of the armed forces it is not impartial. The Human Rights Council calls for “independent and impartial decision-making bodies”.²¹ The Human Rights Committee has expressed concern about “determinations... by military judicial officers in individual cases of conscientious objection”²² and has encouraged “placing the assessment of applications for conscientious objector status under the control of civilian authorities”.²³ In more recent Concluding Observations the Human Rights Committee has recommended placing “assessment of applications for conscientious objector status under the full control of civilian authorities.”²⁴

Practice examples

Germany

The decision is made by the Federal Office for Family and Civic Engagement (BAFzA, formerly: Bundesamt für Zivildienst) (KDV § 2 (2) and § 2 [1]).

Switzerland

Applications are made to the Ministry of Economic Affairs.

b) Good Faith Determination Processes

Whilst it is not a requirement that all applicants are granted status, it must be possible for some to be recognised as conscientious objectors to military service. The criteria must not be unreasonable in nature and any information requested must be reasonable and relevant. Given the breadth of beliefs upon which conscientious objection to military service can be based it is not appropriate to have a closed list of factors which “prove” conscientious objection. However, it is important that any exploration of a person’s beliefs through written applications or in-person interviews or hearing be manifestly reasonable.²⁵

²¹ Human Rights Council Resolution 24/17 Conscientious objection to military service, A/HRC/RES/24/17 of 8 October 2013, para 8

²² Human Rights Committee, Concluding Observations on Israel, July 2003 (CCPR/CO/78/ISR), para. 24

²³ Human Rights Committee, Concluding Observations on Greece, March 2005 (CCPR/CO/83/GRC), para. 15.

²⁴ Human Rights Committee Concluding Observations on Greece CCPR/C/GRC/CO/2, para 38

²⁵ Based on information provided by NGOs working in Israel the lines of questioning and interpretation of past behaviours demonstrate a process that is not in good faith. For example, lines of questioning have included whether an applicant has worked as a waiter in a restaurant serving meat. Answering yes to this has led to a

UNHCR's Protection Guideline Number 10 looks at this issue from the perspective of refugee status determination for those claiming asylum on grounds of risk of persecution flowing from their conscientious objection to military service. Their guidance to those undertaking refugee status determination is:

Establishing the genuineness and/or the personal significance of an applicant's beliefs, thoughts and/or ethics plays a key role in claims to refugee status based on objection to military service, in particular conscientious objection [see IV. A. (i)-(ii)].⁹² The applicant needs to be given the opportunity during the individual interview to explain the personal significance of the reasons behind his or her objection, as well as how these reasons impact on his or her ability to undertake military service. Eliciting information regarding the nature of the reasons espoused, the circumstances in which the applicant has come to adopt them, the manner in which such beliefs conflict with undertaking military service, as well as the importance of the reasons to the applicant's religious or moral/ethical code are appropriate and assist in determining the credibility of the applicant's statements.²⁶

Practice examples

Finland

Whilst the applicant must give the religious or ethical reason that prevents them from completing their service, they are not required to give detailed reasons for their decision and the application must be approved if it has been properly made.

Germany

In 2012 86.57% of applicants were granted conscientious objector status (374 out of 432 soldiers).

Principle 5: Appealability (Right of Access to Justice)

In line with the right of access to justice applicants must have access to appeal if their application is rejected. The Human Rights Committee is clear on this point.²⁷

Practice Examples

determination that a pacifist belief is not strongly held if a person is willing to serve meat. Similar questioning has been reported in regard to wearing leather. Other lines of questioning have included whether the applicant would be willing to provide assistance to a wounded soldier again with a positive answer being interpreted as a willingness to support military operations. These lines of questioning are manifestly unreasonable and indicate that the determination process is not in good faith but rather a process through which the applicant must go with little possibility of recognition as a conscientious objector.

²⁶ UN High Commissioner for Refugees Guideline on International Protection No.10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/13/10/Corr. 1. of 12 November 2014, para 64

²⁷ Human Rights Committee Concluding Observations on Israel CCPR/C/ISR/CO/4 of 21 November 2014, para. 23

Colombia

Unsuccessful applicants can appeal to the same board they applied to and to a national commission.

Germany

The decision of the Federal Office for Family and Civic Engagement can be challenged in court (although a national NGO reports that the rate of successful appeal is relatively low).

Principle 6: Non-punitive

No part of the process should be or appear to be punitive. A punitive process with the effective, intentional or not, of deterring applicants is a barrier to the exercise of the right as such a violation of it. The process should be timely, so that that the applicant is not left waiting an unreasonable time for a decision. The conscientious objector must be at liberty whilst their application is determined. There should be not other form of retribution or reprisal for seeking to exercise this right, it is not a crime.

Practice Examples

Finland

Section 13 of the Non-Military Service Act 2007 requires that the application be dealt with without delay. A conscript who applies for non-military service will be discharged immediately.

Germany

During the application procedure the applicant (a serving member of the military) has to continue serving but should be relieved from duty to bear arms. In case the supervising officer does not follow through with this, the applicant can apply to be relieved themselves.

Examples of Procedures

Conclusion

In addition to the process barriers that application of these principles would remove, there are social barriers to the exercise of the right to conscientious objection.²⁸ Improvements in the procedures to recognise conscientious objectors should be coupled with efforts to eradicate stigma against those seeking to exercise this right.

There are examples of good practice in line with international law but no one States has all elements fully human rights compliant. Therefore, we would welcome a greater sharing of this practice amongst States and technical assistance to increase the compliance of States with the principles outlined above, all of which are derived from existing international law.

²⁸ See: Emily Graham (Quaker United Nations Office, 2014) Conscientious objectors to military service: Punishment and discriminatory treatment

We recommend that the OHCHR report, once issued, be used to support implementation in States where technical capacity and lack of prioritisation are the biggest challenge and can be used by relevant UN agencies and National Human Rights Institutions to support steps towards better implementation.