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International Standards on Conscientious Objection to Military Service

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Human Rights & Refugees

This publication is part of QUNO's ongoing commitment to ensuring the full recognition of the right to conscientious objection to military service in law and practice. A reflection on the impact of over six decades of work towards this can be found here: <https://quno.org/long-term-commitment/>

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QUNO's belief in the inherent worth of every individual leads us to work for the promotion and protection of human rights for all. Our Human Rights & Refugees programme raises up the concerns of marginalized groups, so they are better understood by international policy makers, which leads to stronger international standards. Frontline organizations can use these strengthened international standards as a tool to limit suffering, improve lives and challenge the root causes of injustice. Our work focuses on conscientious objectors to military service, children of prisoners, children of parents sentenced to death or executed, migrants and refugees. For more information or to share comments and feedback, please contact:

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Introduction

The issue of conscientious objection to military service has been addressed within the United Nations (UN) human rights system in a number of ways.¹ Most notable is the Human Rights Committee² in both individual cases and when considering State reports under the International Covenant on Civil and Political Rights, as well as in its General Comments No. 22 on Article 18 and No. 32 on Article 14 of the Covenant.³ The UN Human Rights Council and (former) UN Commission on Human Rights have adopted resolutions on the subject. The Special Procedures of

the Human Rights Council have taken up the issue, and it has also arisen in the Universal Periodic Review (UPR) system. Furthermore, the European Court of Human Rights Grand Chamber has ruled that conscientious objection to military service is protected under the European Convention of Human Rights.⁴ In 2013, the Office of the UN High Commissioner for Refugees issued Guidelines on Claims to Refugee Status related to Military Service.⁵ In 2019, at the request of the Human Rights Council the Office of the UN High Commissioner for Human Rights issued a report on human rights compliant application procedures for conscientious objector status.⁶

1 Two useful resources are Office of the UN High Commissioner for Human Rights: *Conscientious Objection to Military Service* (UN, Geneva, February 2013), and War Resisters' International, Quaker United Nations Office, Geneva, *Conscience and Peace Tax International and Centre for Civil and Political Rights: A Conscientious Objector's Guide to the International Human Rights System* <http://www.co-guide.info>

2 The Human Rights Committee is the body of independent experts which oversees the implementation of the International Covenant on Civil and Political Rights. All States parties to the Covenant are required to report to the Committee on a regular basis. The Committee examines the report in a public dialogue with representatives of the State and adopts Concluding Observations highlighting improvements needed as well as progress made. The Committee also produces General Comments clarifying and interpreting the Covenant's provisions. In those States which are also parties to the First Optional Protocol, individuals can send the Committee complaints alleging violations of the Covenant.

3 Human Rights Committee General Comment No. 22 (CCPR/C/21/Rev.1/Add.4 of 30 July 1993), 'The right to freedom of thought, conscience and religion (Article 18)' and General Comment No. 32 (CCPR/C/GC/32 of 23 August 2007), Article 14 'Right to Equality before Courts and Tribunals and to Fair Trial'.

4 European Court of Human Rights Grand Chamber *Bayatyan v Armenia*, application no. 23459/03 (20 July 2011).

5 United Nations High Commissioner for Human Rights: *Guidelines 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, 3 December 2013)*. In 1978, UN General Assembly resolution 33/165 had called for international protection for those required to leave their country because of their refusal to serve in military or police forces used to enforce apartheid. See also the Opinion of Advocate General Sharpston of the Court of Justice of the European Union in the case of *Andre Lawrence Shepherd (Case C-472/13)* in relation to Article 9(2)(e) of the EU Qualification Directive 2004/83/E (delivered on 11 November 2014).

6 Office the UN High Commissioner for Human Rights: *Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards (A/HRC/41/23, 24 May 2019)*

The UN Standards

The right of conscientious objection to military service

Both the Human Rights Committee and the UN Human Rights Council have recognised the right of conscientious objection to military service as part of the right to freedom of thought, conscience and religion enshrined in Article 18 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

The Human Rights Committee considers that “the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion. It entitles any individual to exemption from compulsory military service if the latter cannot be reconciled with the individual’s religion or beliefs. The right must not be impaired by coercion.”⁷ In its case law on the subject the Committee repeatedly finds that States have violated Article 18 by failing to provide for conscientious objection to military service.⁸

7 Jong-nam Kim et al. v. The Republic of Korea (CCPR/C/106/D/1786/2008 Communication No. 1786/2008 of 1 February 2013), para. 7.4

8 Most recently in: Danatar Durdyev v Turkmenistan (CCPR/C/124/D/2268/2013 Communication No. 2268/2013 of 6 December 2018)

The Committee has definitively laid to rest suggestions that conscientious objection is not protected under the Covenant either because it was not recognised specifically (an argument it had already addressed in its General Comment 22 on Article 18),⁹ or because of the reference to conscientious objection which is included in Article 8. Article 8 concerns the prohibition of forced labour. Its paragraph 3 states that for these purposes, the term forced or compulsory labour does not include “any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors”. Since 2007, the Committee has consistently stated in its case law that “article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of article 18 of the Covenant”.¹⁰

9 In 1993, the Human Rights Committee stated in its General Comment 22 on Article 18 that a claim of conscientious objection to military service can be derived from the right to freedom of thought, conscience and religion inasmuch as the use of lethal force seriously conflicted with the individual’s convictions.

10 Yoon and Choi v Republic of Korea (CCPR/C/88/D/1321-1322/2004 of 23 January 2007) and all its subsequent cases concerning conscientious objection to military service. This was an important clarification as in an early case (L.T.K. v Finland (Case No. 185/1984)), while ruling the case out at a preliminary stage, the Committee had suggested that the wording of Article 8 precluded a requirement on

Under the Covenant, Article 18(1), which covers both the right to freedom of thought, conscience and religion and the right to manifest one's religion or belief, is non-derogable even during times of national emergency threatening the life of the nation.¹¹ Some restrictions on the right to manifest one's religion or belief are permitted by Article 18(3) of the Covenant, but these are not relevant to the question of conscientious objection to military service because of the Committee's position that this is inherent in the right rather than a manifestation of it. In any case, these restrictions are only those which are "prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" and any "such restriction must not impair the very essence of the right in question".¹² Thus these possible limitations cannot

all States to provide for conscientious objection to military service. In 2011, the European Court of Human Rights (Grand Chamber) in *Bayatyan v Armenia* followed the same line as the Human Rights Committee in resolving the similar argument which had arisen under the European Human Rights Convention Article 4(3)(b) which is almost identical to Article 8(3)(c)(ii) of the Covenant. The Inter-American Commission on Human Rights has not addressed the issue of conscientious objection to military service since these developments in the Human Rights Committee and European Court of Human Rights but has a similar provision, Article 6(3)(b) of the American Convention on Human Rights to that of the Covenant and European Human Rights Convention.

11 International Covenant on Civil and Political Rights, Article 4.

12 *Yoon and Choi v Republic of Korea* (CCPR/C/88/D/1321-1322/2004 of 23 January 2007).

be used to justify or excuse making no provision for conscientious objection.¹³

In September 2013, the UN Human Rights Council adopted (without a vote), resolution 24/17 which "Recognizes that the right to conscientious objection to military service can be derived from the right to freedom of thought, conscience and religion", and re-stated and developed the provisions of the former UN Commission on Human Rights resolutions going back to 1989.¹⁴ This was reaffirmed by consensus in 2017 in resolution 36/18.¹⁵

Reporting in 2019 on its position on conscientious objection to military service the Working Group on Arbitrary Detention¹⁶ drew on the cases they have decided to state that: "the right to conscientious objection to military service is part of the absolutely protected right to hold a belief under article 18 (1) of the Covenant, which cannot be restricted by States".¹⁷

13 In its General Comment 22, the Human Rights Committee observed that "national security" is not one of the permitted grounds of limitation listed in Article 18, unlike in relation to some other Articles of the Covenant.

14 Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013.

15 Human Rights Council resolution 36/18 (A/HRC/RES/36/18) of 3 October 2017

16 The Working Group on Arbitrary detention is a Special Procedure of the UN Human Rights Council.

17 Report of the Working Group on Arbitrary Detention (A/HRC/42/39, 16 July 2019) para. 60(b)

Scope/extent of the right of conscientious objection

The identification of conscientious objection to military service as inherent in the right to freedom of thought, conscience and religion makes clear that it can be based on a religious or other belief or on conscience. The Human Rights Committee in General Comment 22 gives a broad scope to the terms religion and belief, stating:

Article 18 protects theistic, non-theistic and atheistic beliefs, ... Article 18 is not limited in its applications to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.¹⁸

The Committee has specifically addressed this issue in Concluding Observations on State reports under the Covenant, for example:

The Committee therefore expresses its concern that no measures appear to have been taken to extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in

conscience, as well as beliefs grounded in all religions (art. 18). The Committee reiterates its previous recommendation (CCPR/C/UKR/CO/6, para. 12) and stresses that alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection.¹⁹

Similarly, in the case of *Eu-min Jung et al v Republic of Korea*, the Committee specifically identified that “the authors’ subsequent conviction and sentence amounted to an infringement of their freedom of conscience” in addition to being a violation of their freedom of religion or belief.²⁰

This broad definition ties in with Human Rights Council resolution 24/17 which recognises “that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising

18 Human Rights Committee General Comment 22, para. 2.

19 Human Rights Committee, Concluding Observations on Ukraine (CCPR/C/UKR/CO/7 of 26 July 2013), para.19. See also Human Rights Committee Concluding Observations on Kyrgyzstan (CCPR/C/KGZ/CO/2 of 23 April 2014), para. 23 recommending that provisions for conscientious objectors be brought in “bearing in mind that article 18 also protects freedom of conscience of non-believers.”

20 *Eu-min Jung et al v Republic of Korea* (CCPR/C/98/D/1593-1603/2007 of 14 April 2010), para. 7.4.

from religious, ethical, humanitarian or similar motives”.²¹

In other words, it is clear that although conscientious objection may be based on a formal religious position, this is not required. Indeed, both the Committee and the Council have made clear that no discrimination is permitted between the religion or belief on which the objection is based.²² This is echoed clearly by the Office of the UN High Commissioner for Human Rights:

The reasons for an individual’s conscientious objection are varied and may not be 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 specifically named religions, nor limited to religious objection.²³

Equally, a person may become a conscientious objector after joining the

armed forces, whether as a conscript or as a volunteer. Such a situation may arise in the context of a change of religion or belief in general, or in relation to the specific issue or act of military service. The general freedom to change one’s religion or belief is recognized in Article 18(1) of the Covenant, 22 and Article 18(2) prohibits “coercion which would impair” the individual’s freedom to have or adopt a religion. The 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”.²⁴ This is also explicitly recognized in UN Human Rights Council resolution 24/17 which states “persons performing military service may develop conscientious objections”.²⁵ Thus, any arrangements for conscientious objectors must allow for applications after joining the armed forces, or even after completion of military service, for example by those listed as reservists or subject to further

21 Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013 and reaffirmed in Human Rights Council resolution 36/18 (A/HRC/RES/36/18) of 3 October 2017

22 Human Rights Committee General Comment 22, para 11; Human Rights Council Resolution 24/17.

23 Office the UN High Commissioner for Human Rights: Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards (A/HRC/41/23, 24 May 2019)

24 Human Rights Committee, Concluding Observations on Chile (CCPR/C/CHL/CO/5 of 18 April 2007), para. 13. Followed in subsequent reviews.

25 Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013, preambular paragraph 8, reaffirmed in Human Rights Council resolution 36/18 (A/HRC/RES/36/18) of 3 October 2017

call-up or training. In a joint dissenting opinion on a European Court of Human Rights case three judges stated:

It has been understood for decades that alleged conscientious objectors “whose views are late in crystallising” cannot “be deprived of a full and fair opportunity to present the merits” of their claims (see, for example, the US Supreme Court case of *Ehlert*, cited above, 103).²⁶

In 2010, the Committee of Ministers of the Council of Europe explicitly recognised that professional members of the armed forces as well as conscripts should be able to leave the armed forces for reasons of conscience in their Recommendation on “human rights of members of the armed forces”.²⁷

The UN General Assembly implicitly recognized selective objection (i.e. conscientious objection to a particular conflict or weapon use) and cases of non-recognition of selective objectors have been addressed by both the Special Rapporteur on Freedom of Religion and Belief and the Working Group on Arbitrary Detention. The Office of the UN

26 European Court of Human Rights *Dyagilev v Russia*, Application no. 49972/16), Joint Dissenting Opinion of Judges Pinto de Albuquerque, Keller and Schembri Orland, para. 33

27 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.

High Commissioner for Human Rights includes recognition of selective objectors in the minimum criteria for human rights compliant application procedures.²⁸

Equally, any payment in lieu of military service is not the same as, nor a substitute for, recognition of conscientious objection.²⁹

Legislative framework

The Human Rights Committee has consistently stated in its decisions that in addition to reparations for individual conscientious objectors whose rights have been violated “the State party is under an obligation to avoid similar violations of the Covenant in the future, including the adoption of legislative measures guaranteeing the right to conscientious objection.”³⁰ Similarly, the

28 Office the UN High Commissioner for Human Rights: Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards (A/HRC/41/23, 24 May 2019), para. 60(d)

29 Human Rights Committee, Concluding Observations on Syria (CCPR/CO/84/SYR of 9 August 2005), para. 11.

30 *Zafar Abdullayev v Turkmenistan* (CCPR/C/113/D/2218/2012 of 19 May 2015); this line is followed in other cases including: *Mahmud Hudaybergenov v Turkmenistan* (CCPR/C/115/D/2221/2012 of 22 December 2015); *Sunnet Japparow v Turkmenistan* (CCPR/C/115/D/2223/2012 of 15 December 2015); *Ahmet Hudaybergenov v Turkmenistan* (CCPR/C/115/D/2222/2012 of 23 December 2015); *Anatoly Poplavny v Belarus* (CCPR/C/115/D/2019/2010 of 30 December 2015) Individual opinion of Committee member

Working Group on Arbitrary Detention has said: “All States should adopt appropriate legislative or other measures to ensure that conscientious objector status is recognized and attributed.”³¹ This was echoed in the subsequent Human Rights Council resolution on arbitrary detention which “encourages all States: To consider reviewing laws and practices that may give rise to arbitrary detention, in accordance with the recommendations of the Working Group”.³²

The European Court of Human Rights has also found that legislative reforms recognising conscientious objection to military service are part of an appropriate means of redress to end the violations found by the Court³³. It has stated that legislation on conscientious objection is necessary, in line with commitments made by the State in acceding to the Council of Europe.³⁴

Sarah Cleveland (concurring); Dovran Bahramovich v Turkmenistan (CCPR/C/117/D/2224/2012 of 26 September 2016); Matkarim Aminov v Turkmenistan (CCPR/C/117/D/2220/2012 of 27 September 2016); Akmurad Nurjanov v Turkmenistan (CCPR/C/117/D/2225/2012 of 19 September 2016); Shadurdy Uchetov v Turkmenistan (CCPR/C/117/D/2226/2012 of 26 September 2016)

31 Report of the Working Group on Arbitrary Detention (A/HRC/42/39, 16 July 2019) para. 60(d)

32 Human Rights Council Resolution 42/22 (A/HRC/RES/42/22 of 8 October 2019), para. 5(i)

33 European Court of Human Rights, *Erçep v Turkey*, Application no. 43965/04, 22 November 2011

34 European Court of Human Rights, *Mushfig Mammadov and Others v. Azerbaijan*, Application no. 14604/08, 17 January 2020

Decision-making process

Trying to judge another person’s conscience or the sincerity of their belief is an inherently difficult task. The UN Human Rights Council has welcomed “the fact that some States accept claims of conscientious objection as valid without inquiry” (Resolution 24/17), but if there is to be an inquiry then it must be undertaken by an “independent and impartial decision-making” body. The Human Rights Committee has expressed concern about “determinations ... by military judicial officers in individual cases of conscientious objection”³⁵ and has encouraged “placing the assessment of applications for conscientious objector status under the control of civilian authorities”³⁶. The European Court of Human Rights found in *Erçep v Turkey* that as a civilian a conscientious objector being tried by an entirely military tribunal called into question the independence and impartiality of the proceedings and was a violation of Article 6 (right to fair trial) of the European Convention of Human Rights. In a 2020 judgment out of line with these standards and its own previous decisions, a narrow majority in the European Court of Human Rights found that there had not been a violation

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

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

of Article 9 of the European Convention on Human Rights despite the rejection of application for conscientious objector status being overseen by a military recruitment commission that includes members who are military personnel.³⁷ The dissenting opinion of three Judges notes that “composition of the commissions, ... appears to be less conducive to independence than the framework in certain other High Contracting Parties.”

As previously mentioned, whatever the assessment process no discrimination is permitted “among conscientious objectors on the basis of the nature of their particular beliefs.”³⁸ In *Papavasylakis v. Greece* the European Court of Human Rights found that the necessary procedural safeguards were not in place. In this case the applicant was interviewed by a board consisting of military personnel and the final decision, based on the recommendations of this board, was made by the Ministry of Justice. The Court held that this did not meet safeguards of impartiality and independence.³⁹

These and other developments in standards and State practice are the

basis for the 2019 Office of the High Commissioner for Human Rights’ report on application procedures. This report concludes with a 13-point checklist of minimum criteria for human rights compliant application procedures reflecting the current international standards, covering accessibility, transparency, and independence. This checklist is included in full as an annex.

Alternative Service

Alternative Service in lieu of compulsory military service is not required⁴⁰ but is not prohibited, provided that it is compatible with the reasons for the conscientious objection, of a civilian character, in the public interest and not of a punitive nature. In addition to civilian alternative service, unarmed military service may be provided for those whose objection is only to *personally* bearing arms.⁴¹ The Human Rights Committee has consistently stated that it must be a civilian alternative to military service “outside of the military sphere and not under military command. The alternative service must not be of a punitive nature but must rather be of a real service to the community and compatible with

37 European Court of Human Rights, *Dyagilev v Russia*, Application no. 49972/16, 10 March 2020

38 Human Rights Committee General Comment 22, para. 11.

39 European Court of Human Rights, *Papavasylakis v. Greece*, Application 66899/14, 15 December 2016

40 See, for example, *Friendly Settlement in Alfredo Diaz Bustos v Bolivia*, Case 14/04, Report No. 97/05, Inter-Am. C.H.R., OEA/Ser.L/V/II.124 Doc. 5 (2005).

41 UN Human Rights Council resolution 24/17.

respect for human rights.”⁴² The term “punitive” covers not only the duration of alternative service but also the type of service and the conditions under which it is served. For example, the Human Rights Committee has concluded that service outside of the home area, that is paid below subsistence level and includes restrictions on freedom of movement is punitive.⁴³

In *Adyan and Others v. Armenia* the European Court of Human Rights stated that where alternative service is available for conscientious objectors to military service “that fact alone is not sufficient to conclude that the authorities have discharged their obligations under Article 9 of the Convention.” The Court must also assess if the allowances made are “appropriate for the exigencies of an individual’s conscience and beliefs”. The Court held even though alternative service was provided for there was nonetheless a violation of Article 9 because the service was not sufficiently separated from the military and was of a punitive length.⁴⁴

42 *Atasoy and Sarkut v Turkey* (CCPR/C/104/D/1853-1854/2008 of 19 June 2012), para. 10.4 and *Jong-nam Kim et al v Republic of Korea* (CCPR/C/101/D/1786/2008 of 1 February 2012), para. 7.4.

43 Human Rights Committee, Concluding Observations on the Russian Federation (CCPR/C/RUS/CO/6 of 24 November 2009) para. 23.

44 European Court of Human Rights *Adyan and Others v. Armenia* Application no. 75604/11, 12 January 2018; followed in European Court of Human Rights *Aghanyan and Others v. Armenia*, Applications nos. 58070/12 and 21 others, 5 December 2019

Duration of alternative service

The question of the length of alternative service in comparison to the length of military service has been the subject of several cases considered by the Human Rights Committee. However, in 1999 the Committee settled on the test which it has subsequently applied. This starts from the requirement that the alternative service must not be discriminatory. This does not preclude a different duration to that of military service but any difference in length in a particular case must be “based on reasonable and objective criteria, such as the nature of the specific service concerned, or the need for a special training in order to accomplish that service.”⁴⁵

Non-discrimination

As already mentioned, no discrimination is permitted “among conscientious objectors on the basis of the nature of their particular beliefs.”⁴⁶ The UN Human Rights Committee has also expressed concern regarding differences in length of alternative service depending on the person’s level of education.⁴⁷

Equally no discrimination as to the

45 *Foin v France* (Communication No. 666/1995), CCPR/C/D/666/1995, 9 November 1999.

46 Human Rights Committee General Comment 22, para. 11; UN Human Rights Council resolution 24/17.

47 Human Rights Committee Concluding Observations on Belarus (CCPR/C/BLR/CO/5 of 22 November 2018), para. 47

terms or conditions of service is permitted in law or practice between those who do military service and those who do alternative service. Nor may conscientious objectors subsequently be subjected to discrimination in relation to any economic, social, cultural, civil or political rights because they have not done military service.⁴⁸

Access to information about conscientious objection

The importance of making information available to all affected by military service (not only to first time conscripts) is stressed by UN Human Rights Council resolution 24/17, and has also been taken up by the Human Rights Committee in Concluding Observations, to ensure that people know about the right of conscientious objection and also how to acquire conscientious objector status.⁴⁹ It is included as the first point on the Office of the UN High Commissioner for Human Rights' checklist for human rights compliant application procedures: "All persons affected by military service should have access to information about the right to conscientious objection and the means of acquiring objector status."

48 Human Rights Committee General Comment 22, para. 11; UN Human Rights Council resolution 24/17, para. 12

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

The European Court of Human Rights found a violation of the Article 10 protection of freedom of expression in *Savda v Turkey* where the applicant was convicted of inciting the population to evade military service through a public statement.⁵⁰ The Office of the UN High Commissioner for Human Rights states: "The right to freedom of expression and of access to information requires States not to prohibit the dissemination of information on the right to conscientious objection to military service."⁵¹

Punishment of unrecognised conscientious objectors

Unrecognised conscientious objectors may not be punished for their refusal to undertake, or continue in, military service on grounds of conscience.

For several years the Human Rights Committee found violations of the principle of *ne bis in idem* for conscientious objectors who were punished more than once for refusal to undertake military service. However, in 2015, the Human Rights Committee found that imprisonment, and not just

50 European Court of Human Rights *Savda v Turkey* (no.2) Application no. 458/12, 15 February 2017

51 Office the UN High Commissioner for Human Rights: Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards (A/HRC/41/23, 24 May 2019), para. 17

repeat imprisonment, of conscientious objectors was a violation of article 9 of the Covenant, stating: “Just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant is arbitrary,⁵² so is detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.”⁵³ The Human Rights Committee has subsequently called for the expunging of criminal records of those prosecuted.⁵⁴

Similarly, the UN Working Group on Arbitrary Detention’s position has evolved from finding repeated imprisonment of conscientious objectors to be arbitrary detention⁵⁵ to recognising that detention of a conscientious objector is a violation of article 18(1) of the Covenant *per se*. The Working Group set out its key principles

52 See communication No. 328/1988, *Zelaya Blanco v. Nicaragua*, Views adopted on 20 July 1994, para. 10.3.

53 *Young-kwan Kim et al. v Rep. of Korea* (CCPR/C/112/D/2179/2012 Communication No. 2179/2012 views adopted on 14 January 2015), para. 7.5

54 *Human Rights Committee Zafar Abdullayev v Turkmenistan* (CCPR/C/113/D/2218/2012 of 19 May 2015)

55 Opinion No. 36/1999 (TURKEY): United Nations: Working Group on Arbitrary Detention (E/CN.4/2001/14/Add.1); Working Group on Arbitrary Detention Recommendation No. 2 (E/CN.4/2001/14); and Opinion No. 24/2003 (ISRAEL) E/CN.4/2005/6/Add. 1.

and understanding in a decision in 2018⁵⁶ and further clarified its position in its 2019 report to the UN Human Rights Council:

While each case depends on its own facts, the Working Group considers that the detention of conscientious objectors is a *per se* violation of article 18 (1) of the Covenant and such a detention will therefore usually lack a legal basis according to category I [no legal basis to justify the deprivation of liberty]. Moreover, given that the detention of conscientious objectors results from the exercise of the right to freedom of thought, conscience and religion under article 18 of the Covenant, it will also often fall within category II [deprivation of liberty for exercise of a protected right]. Finally, when the detention of conscientious objectors to military service involves discrimination on the basis of religion or belief, it will amount to a category V violation [deprivation of liberty on discriminatory grounds].⁵⁷

56 Opinion No. 40/2018 (Republic of Korea): United Nations Working Group on Arbitrary Detention (A/HRC/WGAD/2018/40) of 17 September 2018

57 Report of the Working Group on Arbitrary Detention (A/HRC/42/39) 16 July 2019, paras. 59-64

Conclusion

Conscientious objection to military service is recognised in international law as inherent in the right to freedom of thought, conscience and religion enshrined in Article 18 of the Universal Declaration of Human Rights as well as Article 18 of the International Covenant on Civil and Political Rights. States are, therefore, under an obligation to make provision for conscientious objection to military service in their domestic law and implement it in practice. Implementation in practice also requires that information about conscientious objector status and how to apply for it is available to (potential) conscripts and those already in the armed forces, whether conscripts or volunteers/professionals, and that recruitment methods⁵⁸ and decision making processes permit such applications to be made and acted on.

58 The Inter-American Commission on Human Rights (*Piché Cuca v Guatemala*, Report No. 36/93, Case 10.975, and Fourth Report on the Situation of Human Rights in Guatemala, QEA, Ser.L/V/II,83; Doc. 16 rev.; June 1, 1993, chapter III) has found that forced recruitment is a violation of the rights of personal liberty, human dignity and freedom of movement under the American Convention on Human Rights, and has noted that the conscription process must enable the individual to challenge the legality of their recruitment. See also the UN Working Group on Arbitrary Detention (above).

Annex

Recommendations from Office of the UN High Commissioner for Human Rights Report on Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards⁵⁹

IV. Conclusions and recommendations

60. There are different approaches and human rights challenges with regard to application procedures for obtaining the status of conscientious objector to military service. To be in line with international human rights norms and standards, such application procedures should comply, as a minimum, with the criteria given below.

(a) Availability of information

All persons affected by military service should have access to information about the right to conscientious objection and the means of acquiring objector status.

(b) Cost-free access to application procedures

The process for applying for status as a

conscientious objector should be free, and there should be no charge for any part of the whole procedure.

(c) Availability of the application procedure to all persons affected by military service

The right to conscientious objection should be recognized for conscripts, for professional members of the armed forces and for reservists.

(d) Recognition of selective conscientious objection

The right to object also applies to selective objectors who believe that the use of force is justified in some circumstances but not in others.

(e) Non-discrimination on the basis of the grounds for conscientious objection and between groups

Alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs; there should be no discrimination between groups of conscientious objectors.

(f) No time limit on applications

No time limit should be applicable for the submission of a request to be recognized as a conscientious objector. Conscripts and volunteers should be

⁵⁹ Office the UN High Commissioner for Human Rights: Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards (A/HRC/41/23, 24 May 2019)

able to object before the commencement of military service, or at any stage during or after military service.

(g) Independence and impartiality of the decision-making process

Independent and impartial decision-making bodies should determine whether a conscientious objection to military service is genuinely held in a specific case. Such bodies should be placed under the full control of civilian authorities.

(h) Good faith determination process

Application procedures should be based on reasonable and relevant criteria, and should avoid the imposition of any conditions that would result in the automatic disqualification of applicants.

(i) Timeliness of decision-making and status pending determination

The process for consideration of any claim of conscientious objection should be timely so that applicants are not left waiting for an unreasonable length of time for a decision. As matter of good practice, all duties involving the bearing of arms should be suspended pending the decision.

(j) Right to appeal

After any decision on conscientious objector status, there should always be a right to appeal to an independent civilian judicial body.

(k) Compatibility of alternative service with the reasons for conscientious objection

Alternative service, whether of a non-combatant or civilian character, should be compatible with the reasons for conscientious objection.

(l) Non-punitive conditions and duration of alternative service

The conditions for alternative service should be neither punitive nor have a deterrent effect. Any duration longer than that of military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria. Equalizing the duration of alternative service with military service should be considered a good practice.

(m) Freedom of expression for conscientious objectors and those supporting them

The personal information of conscientious objectors should not be disclosed publicly by the State, and their criminal records should be expunged. States should neither discriminate against conscientious objectors in relation to their civil, cultural, economic, political or social rights nor stigmatize them as “traitors”. Those who support conscientious objectors or who support the right of conscientious objection to military service should fully enjoy their freedom of expression.



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