



16/11/2016

## **EUROPEAN SOCIAL CHARTER**

Comments by the Greek National Commission for Human Rights  
(GNCHR) on the 26<sup>th</sup> national report  
on the implementation of the 1961 European Social Charter

submitted by

**THE GOVERNMENT OF GREECE**

(Article 1§2 for the period  
01/01/2011 – 31/12/2014)

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*HELLENIC REPUBLIC*  
**GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

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**GNCHR submission**  
**regarding the continuous violation of Article 1§2 of the**  
**European Social Charter in the case of alternative service for**  
**conscientious objectors in Greece**

*The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 and is functioning in accordance with the UN Paris Principles. Thirty-two institutions whose activities cover the field of human rights are currently represented in the GNCHR (independent authorities, departments of university-level educational institutions, trade unions, NGOs, political parties and ministries).*

## **GNCHR submission regarding the continuous violation of Article 1§2 of the European Social Charter in the case of alternative service for conscientious objectors in Greece<sup>1</sup>**

The Greek National Commission for Human Rights (hereinafter “GNCHR”) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 in accordance with the UN Paris Principles. Its members are nominated by institutions whose activities cover the field of human rights: NGOs, trade unions, independent authorities, universities, bar associations, political parties, Parliament and the Administration. Member to the GNCHR is also Amnesty International, international human rights NGO with a consultative status to the Council of Europe.

The GNCHR takes this opportunity, in light of the recent judgment *Papavasylakis vs Greece* of September 15, 2016 by the European Court of Human Rights (ECtHR, Chamber judgment)<sup>2</sup> and in view of the upcoming Conclusions XXI-1 (2016) by the European Committee of Social Rights, to pick up and re-address an issue to which the GNCHR has repeatedly commented upon: the freedom of conscience. In the said judgment, the Court decided a case concerning the authorities’ refusal to grant the applicant the status of conscientious objector and to allow him to do alternative civilian work instead of military service. The Court held that there had been a violation of Article 9 (freedom of thought, conscience and religion) of the Convention, finding that the applicant did not enjoy the necessary procedural safeguards in having his request for alternative civilian service examined. The Court considered in particular that the Greek authorities had failed in their duty to ensure that the interviewing of conscientious objectors by the army’s Special Board took place in conditions that guaranteed procedural efficiency and the equal representation required by domestic law. In this respect, it noted that: the applicant had been interviewed by a Board made up primarily of servicemen, two of the civilian members of the Board being absent but not replaced; the Minister of Defence’s final decision, on the basis of a draft ministerial decision following the Board’s proposal, did not afford the requisite safeguards of impartiality and independence; the scrutiny of the Supreme Administrative Court concerned only the lawfulness of the decision, not the merits, and was based on the assessments of the Special Board. The Court essentially condemned Greece for violating Article 9 of the ECHR (freedom of thought, conscience and religion) by also quoting, to this end, an extensive excerpt of observations made by the GNCHR on the topic.<sup>3</sup>

Indeed, the GNCHR has shown sustained interest in matters relating to freedom of conscience. In particular, it has repeatedly dealt with chronic violations of the rights of conscientious objectors while constantly underscoring the need for harmonization of the Greek legislation with international and European human rights’ standards.<sup>4</sup> Already back in 2001, the GNCHR highlighted the need for the taking of comprehensive legislative initiatives on the issue of conscientious objectors, with special focus

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<sup>1</sup> GNCHR’s Rapporteur: Foivos Iatrellis, deputy member to the GNCHR designated by the Greek Department of Amnesty International. Submission edited by Anna Irene Baka, PhD, Legal Officer at the GNCHR.

<sup>2</sup> CEDH, *Affaire Papavasylakis v. Grèce*, 66899/14, 15.9.2016.

<sup>3</sup> [GNCHR Observations](#), 20.1.2016, pp. 5-6 (in Greek).

<sup>4</sup> See, indicatively: [http://www.nchr.gr/images/English\\_Site/ANTIRRISIES/Recommendations\\_bill\\_article64\\_2005.pdf](http://www.nchr.gr/images/English_Site/ANTIRRISIES/Recommendations_bill_article64_2005.pdf), [http://www.nchr.gr/images/English\\_Site/ANTIRRISIES/Conscientious\\_of\\_objectors\\_2004.pdf](http://www.nchr.gr/images/English_Site/ANTIRRISIES/Conscientious_of_objectors_2004.pdf), [http://www.nchr.gr/images/English\\_Site/ANTIRRISIES/Alternative\\_social\\_work\\_2001.pdf](http://www.nchr.gr/images/English_Site/ANTIRRISIES/Alternative_social_work_2001.pdf)

on such matters as the lack of independence and impartiality of competent authorities when deciding the status of conscientious objectors; the length of alternative service being significantly longer than that of the military service and the repeated punishment of conscientious objectors in violation of the principle *ne bis in idem*.

The GNCHR wishes to take this opportunity and urgently draw the attention of the European Committee of Social Rights (ECSR) to the *continuous* violation of “the right of the worker to earn his living in an occupation freely entered upon”, *in the vast majority of the cases* of conscientious objectors in Greece.

The ECSR has consistently stated that under Article 1§2 of the European Social Charter, alternative service for conscientious objectors may not exceed one and a half times the length of armed military service (50% additional time).

The GNCHR has adopted this criterion since 2004.<sup>5</sup>

For years the ECSR has found a violation of Article 1§2 of the European Social Charter in the case of alternative service for conscientious objectors in Greece.<sup>6</sup> In its [26<sup>th</sup> National Report](#) on the implementation of the European Social Charter, the Greek Government claims (page 21) that the situation has been brought in conformity with the European Social Charter, stating a relevant comment of ECSR in Conclusions XX - 1 (2012).

Indeed, in 2012, in its Conclusions XX-1<sup>7</sup>, the ECSR has again found a violation of Article 1§2 for the referenced period (01/01/2007 - 31/12/2010), but for the first time stated that:

“However, the Committee notes that the situation has been amended and unarmed military service has been abolished further duration of alternative service has been reduced, the alternative service duration has been set as follows:

- at fifteen months for those who would be required to serve full military service,
- at twelve months for those who would be required to serve nine months military service,
- at nine months for those who would be required to serve six months military service and
- at five months for those who would be required to serve three months military service.

The Committee considers that this brings the situation into conformity with the Charter but notes that these changes occurred outside the reference period.”

This conclusion was obviously based in an unclear perception of the situation reflected in the sentences: “The Committee recalls that it had previously noted that armed military service lasts twelve months. Certain conscripts may only serve nine months, others six and some three.” In fact, the armed military service for the vast majority of conscripts was, and still is, 9 months not 12. This unclear perception of the situation has been highlighted in the Greek Parliament by an MP of the main governing party.<sup>8</sup>

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<sup>5</sup> GNCHR, [Recommendations](#) regarding Conscientious Objectors and the Scheme of Alternative Civil-Social Service (2004), recommendation (a).

<sup>6</sup> See for example ECSR, [Conclusions XIX-1 - Greece - Article 1-2](#), 24/10/2008.

<sup>7</sup> ECSR, [Conclusions XX-1 - Greece - Article 1-2](#), 07/12/2012.

<sup>8</sup> See [Question No 1716/7-12-2015](#) (in Greek) of Mr. Karagiannidis, MP of the governing SYRIZA party.

The real situation is reflected in the following table:

|                                   | Military Service            | Alternative Civilian Service  |
|-----------------------------------|-----------------------------|---|
| Full service                      | 12 months (Navy, Air Force) | <b>15 months</b><br>(25% more than in the Navy-Air Force,<br><b>but 67% more than in the Army</b> ) |
|                                   | <b>9 months (Army)</b>      |   |
| Reduced service (First category)  | 9 months (Navy, Air Force)  | 12 months<br>Additional time than in the Navy, Air Force, 50% more than<br>the Army)                |
|                                   | 8 months (Army)             |   |
| Reduced service (Second Category) | 6 months                    | 9 months (50% additional time)  |
| Reduced service (Third Category)  | 3 months                    | <b>5 months (67% additional time)</b>   |

**The GNCHR would like to point out that it is not possible to have a uniform conclusion on whether the situation has been brought in conformity with Article 1§2 of the European Social Charter, since the situation differs substantially between the different categories, and 2 of them, representing the vast majority of cases, continue to suffer from a disproportionate restriction of their right to earn their living in an occupation freely entered upon:**

1) It is obvious that in the case of those who would be required to serve 3 months of military service [Reduced service (Third Category)], the alternative service of 5 months exceeds one and a half times the length of the armed military service, as the additional time is **67%**. Considering, especially, that those falling in this category are persons in special family conditions, it is imperative not to overlook as minor this discrimination and violation of their rights.

2) But most importantly, the situation has not been brought in conformity with Article 1§2 of the European Social Charter, in the case of those required to serve full military service, which constitute the majority of conscripts. The GNCHR notes that the vast majority of them serve in the Army<sup>9</sup>, where **the military service is of 9 months (not 12)**. Furthermore, even some of the conscripts serving full service in the Navy or the Air Force are requested to serve only 9 months instead of 12, if they remain for the entire military service in units in the regions of Thrace, the islands of eastern Aegean Sea and Dodecanese islands, which means in the areas close to the eastern borders.<sup>10</sup> Therefore the real percentage of those serving only 9 months is greater than 93%, while the one of those serving 12 months is less than 7%. **Therefore, the vast majority serve only 9 months. Consequently, the alternative service of 15 months (67% additional time) exceeds one and a half times the length of armed military service served by the vast majority of conscripts and is in breach of Article 1§2 of the European Social Charter.**

The GNCHR would further like to point out that in the quasi-totality that is aware of, conscientious objectors in Greece first receive a call up to serve 9 months in the Army, and when they apply for conscientious objector status, (and provided they obtain this status) they receive a call up paper to serve 15 months of alternative civilian service. This illustrates the clear discrimination on an individual base.

<sup>9</sup> According to the International Institute for Strategic Studies, the number of conscripts in the Army is 45,000, while the number of those in the Navy is 1,600 and in the Air Force is 1,790. According to these figures, 93% of conscripts serve in the Army while only 7% serve in the Navy and the Air Force. International Institute for Strategic Studies, The Military Balance 2015, p.100.

<sup>10</sup> Decision of the Minister of Defence No Φ.421.4/13/209290/17-12-2009.

But even in the rare case that a conscientious objector would receive an initial call up to serve 12 months in the Navy or Air Force, it would be unreasonable to consider that for him the alternative civilian service of 15 months is not in breach of Article 1§2 of the European Social Charter. This would mean that it would be permissible to require him to serve an alternative civilian service of up to 18 months instead of 15 months. Such differentiation, based solely in their initial assignment in different branches of the armed forces, would create unreasonable discrimination between conscientious objectors of the same family category.

Finally the GNCHR would like to highlight that international human rights institutions continue to consider that the length of alternative civilian service in Greece is not in conformity with international human rights law and standards.

The **UN Human Rights Committee**, has found a violation of Article 18 of ICCPR, reiterating its previous concerns about the length of alternative service for conscientious objectors, which is much longer than military service, and stating that: “The State party should take measures to review its legislation with a view to recognizing the right to conscientious objection to military service, encompassing an alternative to military service that is [...] not punitive or discriminatory in terms of its nature, cost or duration.”<sup>11</sup>

**Amnesty International**, an international human rights NGO which has consultative status to the Council of Europe, and which participates in GNCHR, has stated that: “Those who have a conscientious objection to carrying out military service are required to perform an alternative civilian service of 15 months, which is much longer than the nine months’ military service in the Land Forces, where the majority of conscripts serve. As such it has a punitive nature and discriminates against conscientious objectors to military service, and therefore it is incompatible with European and international human rights standards.”<sup>12</sup> Amnesty International has repeatedly asked the Greek authorities to “reduce the duration of alternative service so that is not punitive or discriminatory”.<sup>13</sup>

### **Multiple discriminations in the case of conscientious objectors who are above 35 years of age**

Furthermore, the GNCHR would like to draw the attention of the ECSR to the multiple discriminations in the case of conscientious objectors who are above 35 years of age. According to the Greek legislation, conscripts who are above 35 years of age are entitled to serve a minimum of 20 days of military service and to buy out the remaining part of their duty.<sup>14</sup> Conscientious objectors who are above 35 years of age are also entitled to buy out after serving a minimum of 40 days of alternative service the remaining part of their much longer duty.<sup>15</sup> [Note: this provision for conscientious objectors was first adopted in 2011, during the referenced period, with the minimum alternative service set at 3 months<sup>16</sup>, while the

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<sup>11</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, CCPR/C/GRC/CO/2, paras. 37-38.

<sup>12</sup> Amnesty International, “Greece: Stop arbitrary prosecutions and arrests of conscientious objectors”, 4 November 2013, Index number: EUR 25/017/2013.

<sup>13</sup> See for example: Amnesty International, “Greece: Amnesty International Submission to the UN Universal Periodic Review, May 2016”, 26 February 2016, Index number: EUR 25/3538/2016.

<sup>14</sup> Decision of the Deputy Minister of National Defence No Φ.429.1/21/286731/Σ.3153/9-6-2016, (Government’s Gazette B 1798/17-6-2016), art. 1, para. 1.

<sup>15</sup> Decision of the Deputy Minister of National Defence No Φ.429.1/22/286730 Σ. 3152/9-6-2016, (Government’s Gazette B 2020/5-7-2016, art. 1, para. 1.

<sup>16</sup> Decision of the Minister of National Defence Φ.429.1/20/28181/Σ.397/11-01-2011 (Government’s Gazette B 517/5-4-2011), Art. 1, para. 1.

minimum military service was 1.5 months since 2004<sup>17</sup>]. Thus, given that the cost of a month of alternative service, according to the law,<sup>18</sup> cannot be less than the cost of a month of military service and has been fixed as equal (810 euros)<sup>19</sup> on the one hand, and that the conscientious objectors have to buy out a greater number of months on the other hand, the said provisions result to a much higher cost, up to several thousands of euros, for the conscientious objectors in order to buy out the same (undone) duty.

This evident discrimination, because of conscientious objection based on religion or political opinion, has been also pointed out by the Greek Ombudsman<sup>20</sup> as well as Amnesty International<sup>21</sup>. Given the large amounts of money concerned, these provisions affect seriously the economic situation and subsequently the social rights of conscientious objectors and their families. According to the ESC Preamble “the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin”. According to the Revised ESC (ratified by Greece on 18/03/2016), Part V, Article E – Non-discrimination, “The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

The situation is aggravated by the fact that, as mentioned above, alternative service is not only longer, but excessively longer than military service in breach of Article 1§2 of ESC (or Revised ESC, Part I, Article 1) for at least 2 categories of conscientious objectors: those requested to perform full alternative service of 15 months instead of full military service of 9 months, and those requested to perform a reduced alternative service of 5 months instead of a reduced military service of 3 months.

Finally, the length of the minimum alternative service of 40 days, in comparison with the length of the minimum military service of 20 days, [as well as the initial minimum alternative service of 3 months in comparison with the minimum military service of 1.5 month, during the referenced period] constitutes an additional violation of Article 1§2 of ESC (or Revised ESC, Part I, Article 1).

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<sup>17</sup> Joint Decision of the Minister of Economy and Finance and the Minister of National Defence No Φ.420/87/81428/Σ.254/6-9-2004 (Government’s Gazette B 1370/6-9-2004), art.1, para. 2. Decision of the Deputy Minister of National Defence No Φ.429.1/10/150128/10-1-2006, (Government’s Gazette B 61/24-1-2006), Art.3, para. 2. Replaced by Decision of the Minister of National Defence No Φ.429.1/3/280118/Σ.23/11-1-2011, (Government’s Gazette B 111/7-2-2011), art. 2.

<sup>18</sup> Law 3883 (Government’s Gazette A 167/24-9-2010), art. 79, para. 2.

<sup>19</sup> Joint Decision of the Minister of Finance and the Minister of National Defence No Φ.429.1/ 19/281812/4-3-2011 (Government’s Gazette B 517/5-4-2011), Art. 1., para.1.

<sup>20</sup> <http://www.synigoros.gr/resources/160202-dt.pdf>

<sup>21</sup> <https://www.amnesty.gr/news/articles/article/3946/antirrisies-syneidisis-i-diethnis-amnistia-zita-ameses-tropopoiiseis>