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EUROPEAN SOCIAL CHARTER

Comments by Amnesty International on the
3d National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF GREECE

Follow-up to collective complaints:

No. 15/2003, No. 30/2005, No. 49/2008, No. 65/2011, No.
66/2011, No. 72/2011, No. 76/2011, No. 77/2012, No.
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AMNESTY INTERNATIONAL SUBMISSION TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS ON THE 3rd NATIONAL REPORT OF GREECE: THE RIGHT TO CONSCIENTIOUS OBJECTION AND GREECE'S COMPLIANCE WITH ARTICLE 1 § 2 OF THE EUROPEAN SOCIAL CHARTER

This submission seeks to provide comments in accordance with Rule 21 A of the European Committee of Social Rights (hereinafter the Committee) on Greece's 3rd National Report. The comments herein focus on the right to conscientious objection and on Greece's compliance with Article 1 § 2 (the right of a worker to earn his/her living in an occupation freely entered upon) of the European Social Charter.

In this submission, Amnesty International wishes to provide information on:

1. The length of alternative service continuing to be punitive and discriminatory and thus in breach of 1 § 2 of the Charter and other international human rights standards;
2. The additional time spent by conscientious objectors, practically outside the labour market while waiting to be recognized as such. The organization considers that this also affects the right of conscientious objectors to earn a living through an occupation freely entered upon. This is particularly relevant since 2019 due to an apparent suspension of the procedures to examine applications for the recognition of conscientious objectors for over a year.

1. PUNITIVE AND DISCRIMINATORY LENGTH IN BREACH OF ARTICLE 1 § 2 OF THE EUROPEAN SOCIAL CHARTER

1.1. BACKGROUND

On 25 April 2001, the Committee found in its decision on the merits of Complaint No. 8/2000 Quaker Council for European Affairs (QCEA) v. Greece¹ that the situation was not in conformity with European Social Charter (hereinafter the Charter) in respect of the service alternative to military service, on the ground that its length was excessive. In its subsequent conclusions, the Committee pointed out that under Article 1§2 of the Charter, alternative service may not exceed one and a half times the length of military service and found that the situation was still not compatible with Article 1§2 of the Charter.²

In its Conclusions XX-1/2012,³ the Committee noted that outside the reference period the length of alternative service had been reduced and considered that the situation had been brought into conformity with the Charter. This has been repeated in the context of the monitoring of the aforementioned complaint (Findings 2015).⁴

¹ Decision on the merits: Quaker Council for European Affairs v. Greece, Collective Complaint No. 8/2000, 25 April 2001, <http://hudoc.esc.coe.int/eng?i=cc-08-2000-dmerits-en>

² European Committee of Social Rights, Conclusions XIX-1 - Greece - Article 1-2, <http://hudoc.esc.coe.int/eng?i=XIX-1/def/GRC/1/2/EN>.

³ European Committee of Social Rights, Conclusions XX-1 - Greece - Article 1-2, <http://hudoc.esc.coe.int/eng?i=XX-1/def/GRC/1/2/EN>.

⁴ Assessment of the follow-up: Quaker Council for European Affairs v. Greece, Collective Complaint No. 8/2000, <http://hudoc.esc.coe.int/eng?i=cc-8-2000-Assessment-en>

However, in 2016, following comments from the European Bureau for Conscientious Objection (EBCO-BEOC)⁵ and from the Greek National Commission for Human Rights (GNCHR)⁶ that considered that the situation was not in conformity with Article 1§2 of the Charter (noting that there was a discriminatory treatment for two categories of conscientious objectors: those who are required to do a full 15-month alternative service instead of the full 9-month military service and those who are required to do a reduced 5-month alternative service instead of a reduced 3-month military service), the Committee requested anew that in the next report Greece “provide information on this issue”.⁷

However, in its 3rd National Report,⁸ Greece failed to provide information on this issue. In particular, despite referring to “Developments regarding the Collective Complaints against Greece (2000-2014)”, Greece failed to cite Complaint No. 8/2000 and therefore to inform the Committee on recent developments on this issue.

1.2 CURRENT LENGTH OF ALTERNATIVE SERVICE

Amnesty International has continuously expressed concern that the alternative civilian service in Greece is of a punitive and discriminatory nature because of its length. Currently, for those liable to full service, the alternative civilian service is 15 months, compared to 9 months of military service for the vast majority of conscripts, i.e. those serving in the Army (amounting to 66.7% additional time). For those who would be liable to reduced military service of 3 months in any branch of the armed forces, they are required to serve 5 months of alternative service (a similar 66.7% additional time).

These two categories concern the majority of conscientious objectors, and according to the Committee’s standards, the situation is not in conformity with Article 1§2 of the Charter.

For those who would be liable to a reduced military service of 8 months in the Army (the branch which normally has more conscripts than the others), the alternative service is 12 months and for those who would be liable to 6 months of military service in any branch of the armed forces, the alternative service is 9 months. However, according to international human rights standards (see section 1.3. below), in these cases the length of alternative service could also be considered punitive and discriminatory, if it is not justified on reasonable and objective grounds.

1.3. RECENT DEVELOPMENTS

In May 2019, Law 4609/2019 entered into force introducing inter alia amendments in provisions on alternative service of Law 3421/2005, including granting a discretionary power to the Minister of National Defence to reduce the length of alternative service down to 12 months in order to bring it closer to the length of military service.⁹

However, the new legislative provisions failed to guarantee in law a length of alternative service which would be always non-punitive, non-discriminatory and compatible with Article 1§2 of the Charter and other regional and international human rights standards. Instead, they left the determination of the length of alternative service to the discretion of the Minister of National Defence. Furthermore, they did not amend an article in the Law 3421/2005¹⁰ which provides that in principle the length of alternative service is double to that of military service, in contravention of international human rights standards.

A subsequent Ministerial Decision by the then Alternate Minister of National Defence was published on 24 June 2019¹¹ which, following the recommendations of the Human Rights Committee¹² and other bodies¹³, reduced the length of the

⁵ Comments from European Bureau for Conscientious Objection (EBCO-BEOC) on the 26th report <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b6cc3>

⁶ Comments from the Greek national Commission for Human Rights (GNCHR) on the 26th report <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806bdb99>

⁷ European Committee of Social Rights, Conclusions XXI-1 - Greece - Article 1-2, <http://hudoc.esc.coe.int/eng?i=XXI-1/def/GRC/1/2/EN>

⁸ 3rd National Report on the implementation of the European Social Charter submitted by the Government of Greece, 12 March 2020, <https://rm.coe.int/greece3-en-simplified-report-collective-complaints/16809ce324>

⁹ Article 23 para. 1 of Law 4609/2019.

¹⁰ Law no. 3421/2005, Article 60, para. 1.

¹¹ Decision Φ .421.4/4/216913 Σ .4045, Official Journal (FEK) Vol. B, 2477/24.6.2019.

¹² UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, CCPR/C/GRC/CO/2, paras. 37-38. Available at <http://undocs.org/CCPR/C/GRC/CO/2>

¹³ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Greece, (A/HRC/33/7), 8 July 2016, recommendation

full alternative service to 12 months and the length of the three categories of reduced alternative service to (almost) the same length as for the reduced military service.

However, this Ministerial Decision was later annulled by the Joint Decision of the new Deputy Ministers of Finance and National Defence in October 2019, which reinstated the previous length for all categories.¹⁴

The reduction and subsequent increase of the length of alternative service for all categories raises serious doubts that the additional time for any category is justified on reasonable and objective grounds.

1.3 OTHER INTERNATIONAL AND REGIONAL STANDARDS ABOUT THE LENGTH OF ALTERNATIVE SERVICE

- The **UN Human Rights Committee** so far has not set a specific ratio between alternative and military service. Nevertheless, in its recommendations it has inferred that an increase of the length of alternative service of 50% compared to that of military service could also be punitive. Specifically, in the case of Austria, where the increase is 50% (9 months of alternative service compared to 6 months of military service)¹⁵, it noted that the length of alternative service is longer than that of military service and that it “may be punitively long if not based on reasonable and objective grounds”, referring not only to Article 18 of the ICCPR, concerning freedom of thought, conscience and religion, but also to Article 26 concerning discrimination. The Human Rights Committee encouraged the state party to ensure that the length of alternative service will not be punitive in nature.¹⁶ Similarly in the case of Greece, the UN Human Rights Committee in 2015 expressed its concern about “the length of alternative service for conscientious objectors, which is much longer than military service” and recommended Greece to review its legislation in order, *inter alia*, for the alternative service not to be punitive or discriminatory in terms of duration.¹⁷
- The **European Parliament** has repeatedly asked for the length of alternative service to be equal with that of military service.¹⁸ Furthermore, the European Parliament has specifically asked Greece “to introduce forms of alternative service which do not last longer than compulsory military service”.¹⁹

2. FURTHER DISCRIMINATION: ADDITIONAL TIME SPENT OUTSIDE LABOUR MARKET BEFORE RECOGNITION AS A CONSCIENTIOUS OBJECTOR

According to the Committee, “*The Contracting Parties to the Charter who have accepted Article 1 § 2 undertake “to protect effectively the right of the worker to earn his living in an occupation freely entered upon”. According to the Committee’s interpretation of this provision, the right to earn one’s living through an occupation freely entered upon entails the elimination of all forms of discrimination in employment [...]”*.²⁰

136.15 (Uruguay), 136.16. Available at: <https://undocs.org/A/HRC/33/7>

UN Special Rapporteur on freedom of religion or belief, Communication GRC 3/2016, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?glD=22834>

¹⁴ Joint Decision of the Deputy Minister of Finance and the Deputy Minister of National Defence Φ.421.4/7/228631/Σ.6400/24-09-2019 (Official Journal vol. B 3697/4-10-2019).

¹⁵ UN Human Rights Committee, List of issues in relation to the fifth periodic report of Austria, Addendum, Replies of Austria to the list of issues, (CCPR/C/AUT/Q/5/Add.1), 4 August 2015, para. 139. Available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FAUT%2FQ%2F5%2FAdd.1&Lang=en

¹⁶ UN Human Rights Committee, Concluding observations on the fifth periodic report of Austria, (CCPR/C/AUT/CO/5), 3 December 2015, paras. 33-34. Available at <http://undocs.org/CCPR/C/AUT/CO/5>

¹⁷ UN Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, CCPR/C/GRC/CO/2, paras. 37-38. Available at <http://undocs.org/CCPR/C/GRC/CO/2>

¹⁸ European Parliament, Resolution on respect for human rights in the European Community (annual report of the European Parliament), (A3-0025/93), 11 March 1993, para. 51, as it has been published in the Official Journal of the European Communities C 115, 26 April 1993, Minutes of the sitting of Thursday, 11 March 1993, page 183. Resolution on conscientious objection in the Member States of the Community, (A3-0411/93), 19 January 1994, para. 9, as it has been published in the Official Journal of the European Communities C 44, 14 February 1994, Minutes of the sitting of Wednesday, 19 January 1994, page 105.

¹⁹ Resolution on the situation concerning basic rights in the European Union (2001) (2001/2014(INI)), para 42, text adopted on 15 January 2003, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2003-0012+0+DOC+XML+V0//EN>

²⁰ Decision on the merits: Quaker Council for European Affairs v. Greece, Collective Complaint No. 8/2000, 25/04/2001, para. 20. Available at: <http://hudoc.esc.coe.int/eng?i=cc-08-2000-dmerits-en>

In this regard, another aspect affecting the right to earn a living in an occupation freely entered upon and which constitutes a form of discrimination in employment concerns the time spent before fulfilling one's duties and getting a relevant certificate of military status.

This certificate shows whether a person has served a military or alternative service and whether he has still military duties or not. Obtaining such certificate showing fulfilment of duties is crucial for further employment opportunities, especially in the public sector, where having performed military or alternative service is always a requirement, and therefore it is virtually impossible to work in the public sector before serving. However, the relevant certificate may also be requested in the private sector too. In any case, the imminent departure of an individual to perform military or alternative service could be a strong disincentive for any employer in the private sector when deciding whether to hire this individual.

In this respect, it should be taken into consideration that the real time spent outside of employment opportunities by conscientious objectors is much longer than the equivalent time for conscripts serving in the armed forces, not only because the alternative service is longer as such, but also because of the additional time of several months the conscientious objectors have to wait before they are recognised as such. This is due to the lengthy procedures of examination of applications for recognition of conscientious objectors, as well as because of additional unjustified delays (see sections 2.1 and 2.2 below). Moreover, this longstanding situation has been aggravated in recent times because of a virtual suspension of such examination procedures since May 2019 (see section 2.3).

2.1 LENGTHY PROCEDURES OF EXAMINATION OF APPLICATIONS FOR RECOGNITION OF CONSCIENTIOUS OBJECTORS

Amnesty International is concerned by the long delays in the application process for alternative service, noting that the period between the date someone is initially called up for military service and the date they report for alternative service is normally one of several months, but may now be over one year. There are several factors which contribute to such delays:

Firstly, all conscripts are meant to report for military service on specific dates each year. Those who declare their conscientious objection must submit an application and supporting documents within a specific and restricted period of time of a few weeks: after they are called up for military service and until the date they are supposed to join the armed forces. Therefore, there is no possibility to start the procedures earlier and save time.

Secondly, all conscripts, for both military and alternative service, undergo certain medical examinations to determine if they are considered competent for service by a competent Health Committee. However, while the military conscripts' medical examinations take place during their time of service, applicants for conscientious objector status are given 30 days to conclude numerous medical examinations, and report to the relevant Health Committee – during a period of time outside the period of service.

Thirdly, after completing such medical examinations, and if considered competent for service by the Health Committee, applicants wait for their applications to be examined by a Special Committee. Apart from examining the application and supporting documents, the Special Committee may summon the applicant for interview. This is particularly the case for those conscientious objectors who are not Jehovah's Witnesses, i.e. those citing other religious grounds and those citing ideological grounds.

The period between the conclusion of the medical examinations and the examination by the Special Committee may vary in practice from several weeks to several months.

Fourthly, after examining the applications and conducting the interview, the Special Committee submits a non-binding recommendation to the Minister of National Defence, who takes the decision. According to the Ministerial Decision regulating the procedures,²¹ the Ministerial Decision of granting conscientious objector status or rejecting the application should be issued within two months after the recommendation of the Special Committee.

²¹ Decision Φ .420/79/81978/£.300 of the Minister of National Defence, Journal (FEK) Vol. B, 1854/29-12-2005, article 4, para 1.

Finally, those recognized as conscientious objectors are given a period of time, normally of certain days or weeks, to report for alternative service in the appointed public institution. This is necessary, since the conscientious objectors are required to move outside their place of residence and will often need to seek accommodation.

Overall, the period between the date someone is initially called up for military service and the date he reports for alternative service is normally one of several months, however, in some cases it has lasted over one year.

2.2 FURTHER UNJUSTIFIED DELAYS

Throughout the years, Amnesty International has also received information by conscientious objectors about further and unjustified delays in the processing of their applications. In this regard it is worth noting that the Association of Greek Conscientious Objectors and the European Bureau for Conscientious Objection have publicly stated in February 2019 that there are cases of conscientious objectors who had waited for one year before they were placed for alternative service.²² They have called for the conscientious objectors to be recognized and placed for alternative service within two months after submitting their application.²³

The aforementioned situation has been aggravated in recent times as the entire procedure of examination of applications has been virtually suspended (see section 2.3 below).

2.3 RECENT DEVELOPMENTS: SUSPENSION OF THE PROCEDURES IN PRACTICE FOR OVER A YEAR

Among the amendments introduced by Article 23 para. 2 of Law 4609/2019, which entered into force on 3 May 2019, was the change in the composition of the Special Committee examining applications for the recognition of an individual as a conscientious objector. Under the new law, the number of military officers in the Special Committee was reduced from two to one, and the number of university professors increased from two to three. This legislative amendment rendered the previous composition of the Special Committee no longer valid, which required the appointment of new members.

In order for new members to be appointed to the Special Committee, a Joint Ministerial Decision by the Ministers of National Defence, of Finance and of Education is required. However, in a communication with officials of the Ministry of National Defence in late May 2020, Amnesty International was informed that the publication of such Ministerial Decision was still pending.²⁴ This practically means a suspension of the procedure of examination of applications for over a year which results in challenges finding employment. Even after the Special Committee is appointed, a significant delay of the already lengthy procedures might occur because of the backlog of applications that has been created.

RECOMMENDATIONS TO THE COMMITTEE

Amnesty International calls the European Committee of Social Rights to urge Greece to:

- Immediately issue a Ministerial Decision to reduce the length of alternative service in conformity with Article 1§2 of the Charter and other international human rights standards, and in this sense to consider reinstating the length of alternative service for all categories to the levels set by the previous Ministerial Decision of the 24 June 2019,²⁵ which had brought for the first time the situation in conformity with Article 1§2 of the Charter.
- Amend as soon as possible the relevant legislation in order to permanently guarantee a length of alternative service which must always be non-punitive, non-discriminatory and compatible with Article 1§2 of the Charter

²² (In Greek) Submission by the European Bureau for Conscientious Objection and the Association of Greek Conscientious Objectors to the Alternate Minister of National Defence, February 2019, para. 8. Available at: <https://ebco-beoc.org/node/451>.

²³ (In Greek) Submission by the European Bureau for Conscientious Objection and the Association of Greek Conscientious Objectors to the Alternate Minister of National Defence, February 2019, para. 8. Available at: <https://ebco-beoc.org/node/451>.

²⁴ Phone communication with Ministry of Defence, 29 May 2020.

²⁵ Decision Φ .421.4/4/216913 Σ .4045, Official Journal (FEK) Vol. B, 2477/24.6.2019.

and other regional and international human rights standards. Furthermore, repeal the provision which allows an alternative service of even a double length compared to that of military service (Law 3421/2005, article 60, para. 1) – a provision which contravenes 1§2of the Charter and other relevant international and regional human rights standards.

- Immediately resume the procedures of examination for recognition of conscientious objectors and take urgent measures to address the backlog of applications. Take all appropriate measures to reduce the period of time between the submission of applications and the issuance of the decision of recognition and mitigate the disadvantages of any delays.