

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

Possible work of the CDDH on conscientious objection to compulsory armed military service in Europe

**Document transmitted by
the European Bureau
for Conscientious Objection (EBCO)**

Introduction

1. This document has been transmitted to the Secretariat by the European Bureau for Conscientious Objection (EBCO) with a view of a possible resumption, by the CDDH, of the work on conscientious objection to the compulsory military service.
2. At its 104th meeting (29 October 2020) the Bureau welcomed this document.
3. In view of the consideration of this item by the CDDH at its 93rd meeting (14-16 December 2020) the Bureau, while reiterating the interest of the matter, proposed to the Steering Committee that possible work in this area should take place at the beginning of the next biennium (2022-2023).

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INTRODUCTION

1. This survey aims at providing comprehensive information regarding the recognition *de jure* and implementation *the facto* of the right to conscientious objection to compulsory armed military service in the Council of Europe member states.
2. The first part gives an overview on the international and regional human rights legal frameworks, soft law or nonbinding instruments and jurisprudence on the matter.
3. The second part gives information on countries where military service is still compulsory, countries where it has been suspended or abolished, countries where armed forces are organised in other modalities as well as information on the timing of recognition of conscientious objection. Information on the national implementation of the right to conscientious objection, including types and length of alternative service, is provided wherever available. This part covers conscientious objection of professional members of armed forces and the recognition of the status of refugee to conscientious objectors.
4. The third part focuses on a selection of recent best practices applied at national levels in relation to the availability of information on the status of conscientious objection and the procedure to claim it and the timing for the recognition.
5. The fourth part suggests some actions that could be considered at the Council of Europe level to bring the issue on the European political agenda again and propose how to collect updated data on the national implementation of the right.

II. THE RIGHT TO CONSCIENTIOUS OBJECTION TO MILITARY SERVICE AT THE INTERNATIONAL AND EUROPEAN LEVEL

A. THE INTERNATIONAL LEGAL FRAMEWORK

United Nations

6. Conscientious objection to military service refers to an objection to such service which derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives.¹
7. It is based on the right to freedom of thought, conscience and religion, as recognised in the *Universal Declaration of Human Rights* (art.18) and the *International Covenant on Civil and Political Rights*, Article 18, which states:²
 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

¹ UN Commission on Human Rights, Resolution, Conscientious objection to military service, (E/CN.4/RES/1998/77), 22nd April 1998.

² All 47 Council of Europe Member states are parties of the International Covenant on Civil and Political Rights, meanwhile the First optional protocol of the International Covenant on Civil and Political Rights (related to Individual communication) is into force in all 47 Council of Europe member states except Monaco, Switzerland and United Kingdom.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
8. Those international instruments of the United Nations do not make direct reference to conscientious objection to military service, but the right is derived from the interpretation of the freedom of thought, conscience and religion made by the Human Rights Committee and other UN offices and bodies. Moreover, the terms "religion" and "belief" are to be broadly interpreted, since Article 18 of the Covenant protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief, and its application is not limited to traditional religions or to religions and beliefs with institutional characteristics or practices analogous. Therefore, a State would be in violation of Article 18 of the Covenant if it recognised the right to conscientious objection only for members of registered religious organizations whose teaching prohibits the use of arms.³

Council of Europe

9. Article 9 on Freedom of thought, conscience and religion the *European Convention on Human Rights* also does not explicitly refer to the right to conscientious objection. However, the European Court of Human Rights considers that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.⁴
10. The *European Social Charter*, in its Article 1.2 on the right to work states that the Parties undertake to protect effectively the right of the worker to earn his living in an occupation freely entered upon. This entails the elimination of all forms of discrimination in employment and the prohibition of forced labour. The European Committee of Social Rights, in a Decision on merits,⁵ states that the obligation to perform civilian service cannot, as such, be considered a form of forced labour and further it states that conscientious objectors who perform alternative civilian service are not workers who earn their living in an occupation freely entered upon.⁶ However, it considers that alternative civilian service may amount to a restriction on the freedom to earn one's living in an occupation freely entered upon.⁷

³ See Human Rights Committee, Concluding observations on the second periodic report of Kyrgyzstan CCPR/C/KGZ/CO/2, 23rd April 2014, para. 23.

⁴ *Bayatyan v. Armenia*, Application no. 23459/03, Grand Chamber judgment of 7 July 2011, para. 110.

⁵ *Quaker Council for European Affairs (QCEA) against Greece*, collective complain No. 8/2000, Decision on the merits of 25th April 2001.

⁶ *Ibid.* para. 22.

⁷ *Ibid.* para. 23.

European Union

11. The *Charter of Fundamental Rights of the European Union* is the only regional human rights instrument that explicitly recognizes the right to conscientious objection in its Article 10 on freedom of thought, conscience and religion, in accordance with the national laws governing the exercise of this right.

Organisation for Security and Co-operation in Europe

12. Human rights, the rule of law and democracy are one of the three pillars of the concept of Security and co-operation of the Organisation for Security and Co-operation in Europe (OSCE). Indeed, already in the founding document, OSCE defines “*respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief*” as one of the principles guiding the relations between participating States.⁸

B. NON-BINDING INSTRUMENTS AND SOFT LAW

United Nations - The Office of the High Commissioner for Human Rights (UN OHCHR)

13. In the last decades, the UN OHCHR has submitted many reports on conscientious objection to military service both to the Commission on Human Rights and to the Human Rights Council. The analytical report delivered in 2017⁹ deals with new developments in the international legal framework, best practices and remaining challenges. The remaining challenges that concerned the UN OHCHR include, inter alia:
- (i) Lack of recognition or implementation of the right to conscientious objection to military service and alternative service.
 - (ii) Repeated trial or punishment (ne bis in idem principle) and stigmatisation as holders of a criminal record and public disclosure of their personal information.
 - (iii) Restrictions on the right of freedom of expression for those who publicly support conscientious objectors and the implementation of the right.
 - (iv) Unjust procedures during the consideration of the application. States that do not accept claims of conscientious objection as valid without any inquiry process should establish independent and impartial decision-making bodies and there should always be a right to appeal to an independent and civilian judicial body.
 - (v) Nature of the alternative service and discriminations. States should ensure that alternative service is compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive character.

⁸ Conference on Security and Co-Operation in Europe Final Act, Helsinki 1975, para. VII.

⁹ UN OHCHR, Analytical Report on Conscientious objection to military service, 1st May 2017(A/HRC/35/4).

14. In the most recent report of 2019,¹⁰ the UN OHCHR focuses on approaches and challenges about application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards. Therefore, the application procedures should comply, as a minimum, with the following criteria:
- (i) Availability of information about the right to conscientious objection and the means of acquiring objector status.
 - (ii) Cost-free access to application procedures.
 - (iii) Availability of the application procedure to all persons affected by military service also for professional members of the armed forces and for reservists.
 - (iv) Recognition of selective conscientious objection for who believe that the use of force is justified in some circumstances but not in others.
 - (v) Non-discrimination based on the grounds for conscientious objection and between groups.
 - (vi) No time limit on applications: before the commencement of military service, or at any stage during or after military service.
 - (vii) Independence and impartiality of the decision-making process.
 - (viii) Good faith determination process.
 - (ix) Timeliness of decision-making and status pending determination.
 - (x) Right to appeal after any decision on conscientious objector status.
 - (xi) Compatibility of alternative service, whether of a non-combatant or civilian character, with the reasons for conscientious objection.
 - (xii) Non-punitive conditions and duration of alternative service.
 - (xiii) Freedom of expression for conscientious objectors and those supporting them.
15. Moreover, in Report on Youth and Human Rights of 2018,¹¹ the right to conscientious objection to military service is listed between challenges and discrimination encountered by young people more than any other group;¹² because the age at which young men and women are drafted in many States is around 18 years.¹³ Also, the report states that, regrettably, some States do not recognize or fully implement the right to conscientious objection to military service in practice.¹⁴

¹⁰ UN OHCHR, Approaches and challenges regarding application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, 24th May 2019 (A/HRC/41/23).

¹¹ UN OHCHR, Report on Youth and human rights, 2th 8 June 2018, (A/HRC/39/33).

¹² Ibid. part. V letter D, paras. 53-56.

¹³ Ibid. para 53.

¹⁴ Ibid. para. 56.

United Nations - The Human Rights Committee¹⁵

16. In its General Comment No. 22 of 1993, the Human Rights Committee gives the authoritative interpretation of the Article 18 of the ICCPR and states that right to refuse to perform military service could be derived from this provision, inasmuch as the obligation to use lethal force might seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.¹⁶ Moreover, the Human Rights Committee raised and is raising the issue of conscientious objection in its consideration of the reports of states party under the ICCPR. The recognition and implementation aspects that emerge in each Concluding Observations depend on the national provisions and the *de facto* situation of the state under reporting.¹⁷

United Nations - The Human Rights Council

17. The Human Rights Council, and previously the Commission on Human Rights, have recognised the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion. The Human Rights Commission resolution of 1989,¹⁸ addressed the UN member states as it follows:
- (i) Appeals to States [...] to enact legislation and to take measures aimed at exemption from military service on the basis of a genuinely held conscientious objection to armed service;
 - (ii) Reminds States [...] to introduce various forms of alternative service which are compatible with the reasons for conscientious objection; and
 - (iii) Appeals to Member States [...] to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is valid in a specific case.
18. In 30 years the Human Rights Council and the Human Rights Commission have adopted by consensus 11 resolutions on the rights to conscientious objection to military service. In more recent resolutions, the Human Rights Commission and subsequently the Human Rights Council have added, inter alia, the following:
- (i) Emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service;
 - (ii) Reiterates that States must not discriminate against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights; and

¹⁵ The Human Rights Committee produces decisions, comments, resolutions and case law based on consensus that rank highly in the interpretation of the ICCPR, even though there are not internationally binding.

¹⁶ Human Rights Committee, General Comment n. 22 (48) (art. 18), 27 September of 1993 (CCPR/C/21/Rev.1/Add.4), Para 11.

¹⁷ See, inter alia: Concluding observations on the fourth periodic report of Azerbaijan, 16th November 2016, (CCPR/C/AZE/CO/4), paras. 34-35; Concluding observations on the fifth periodic report of Austria, 3rd December 2015 (CCPR/C/AUT/CO/5), paras. 33-34; Concluding observations on the second periodic report of Greece, 3rd December 2015 (CCPR/C/GRC/CO/2), paras. 37-38.

¹⁸ Human Rights Commission, Resolution on Conscientious objection to military service, 8th March 1989 (E/CN.4/RES/1989/59)

(iii) Encourages States [...] to consider granting asylum to those conscientious objectors compelled to leave their country of origin because they fear persecution.

19. The Special Rapporteur on freedom of religious or belief has dealt with several cases of conscientious objection in individual communications and country visits since the 80s.¹⁹ Indeed, already in 1992 in his annual report, the Special rapporteur established a set of criteria concerning cases of conscientious objection.²⁰ The Working Group on Arbitrary Detention considers that the detention of conscientious objectors is a *per se* violation of article 18 (1) of the ICCPR and such a detention will therefore usually lack a legal basis.²¹ Moreover, when the Working Group determines that the deprivation of liberty of conscientious objectors to military service is arbitrary, it will require the relevant State to immediately release the individuals involved and to accord them an enforceable right to compensation and other reparations and to expunge their criminal records.
20. Finally, in the Universal Periodic Review, the recognition and implementation of the right to conscientious objection in line with UN Human rights standards have been object of recommendations in all cycles.²²

Council of Europe

21. The Parliamentary Assembly (PACE) and the Committee of Ministers of the Council of Europe started to reference the conscientious objection to military service in the '60. The first document that mentioned the issue is the Resolution 337 (1967) of the PACE on the right of conscientious objection which established the following basic principles:
- (i) Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service.
 - (ii) This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights.²³
22. Also, this resolution offered a list of procedural rules and gave some rules on how the alternative service must be realised. The PACE reiterated its position in the Recommendation 816 (1977) which asked to the Committee of Ministers to urge the governments of member States to bring their legislation into line with the principles adopted by the Assembly.²⁴

¹⁹ The most recent references: Communication no. OL 3/2019 - Greece on Information received concerning the recently adopted law (4609/2019), which regrettably fails to recognize the status of conscientious objectors (COs) to military service in accordance with international human rights standards; Report on the Country visit to Cyprus A/HRC/22/51/Add.1 (2012), paras. 67-69 and 87.

²⁰ Report submitted by Mr. Angelo Vidal d'Almeida Ribeiro. Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20, 10th March 1986 (E/CN.4/1992/52), para. 185.

²¹ Methods of work of the Working Group on Arbitrary Detention, 13rd July 2017 (A/HRC/36/38), para. 8.

²² See, inter alia: Report of the Working Group on the Universal Periodic Review, Finland, 14th July 2017 (A/HRC/36/8), para. 100.84; Report of the Working Group on the Universal Periodic Review, Greece, 8th July 2016 (A/HRC/33/7), paras. 136.15, 136-16.

²³ Resolution 337 (1967) of the PACE on the Right of conscientious objection, para A.1 and A.2.

²⁴ Recommendation 816 (1977) of the PACE on the Right of conscientious objection, para 4 letter a.

23. Following the Parliamentary Assembly recommendations, the Committee of Ministers adopted in 1987 Recommendation R (87) 8, encouraging member states to recognise the right to conscientious objection to military service and inviting the governments of member States which had not yet done so to bring their national law and practice in line.
24. Moreover, after the Recommendation on the Human Rights of conscripts adopted in 1998,²⁵ the PACE in its Recommendation 1518 (2001) raised concern on the fact that the position of conscientious objectors still differs considerably from one country to another, and differences in the law unfortunately result in varying levels of protection.²⁶ Therefore, the PACE invited member States to introduce into their legislation:
- (i) the right to be registered as a conscientious objector at any time: before, during or after conscription, or performance of military service;
 - (ii) the right for permanent members of the armed forces to apply for the granting of conscientious objector status;
 - (iii) the right for all conscripts to receive information on conscientious objector status and the means of obtaining it;
 - (iv) genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character.²⁷
25. In 2006, the PACE adopted the Recommendation 1742 (2006) concerning human rights of members of the armed forces. In this Recommendation, it called upon the member states to introduce into their legislation the right to be registered as a conscientious objector at any time (before, during or after military service) and the right of career servicemen to be granted such status.²⁸
26. In 2010, the Committee of Ministers passed Recommendation CM/ Rec(2010)4, which recalled that members of the armed forces have the right to freedom of thought, conscience and religion. Therefore, conscripts should have the right to be granted conscientious objector status, and professional members of the armed forces should be able to leave the armed forces for reasons of conscience.²⁹

European Union

27. Before the recognition of the right to conscientious objection in the Charter of Fundamental Rights of the European Union (Article 10.2), the European Parliament adopted two resolutions on conscientious objection. The first is the *Macciocchi Resolution* (1-646/82) of February 1983, which, *iter alia*, pointed out that no court or commission can penetrate the conscience of an individual and that a declaration setting out the individual's motives must therefore suffice in

²⁵ Recommendation 1380 (1998) of the PACE on the Human rights of conscripts, see para. 8.

²⁶ Recommendation 1518 (2001) of the PACE on the Right of conscientious objection, point 4.

²⁷ *Ibid.* para 5, 5.1-5.4.

²⁸ Recommendation 1742 (2006) of the Parliamentary Assembly of the Council of Europe on Human rights of members of the armed forces, para 9.7.

²⁹ Recommendation of the Committee of Ministers CM/ Rec (2010)4 on Human rights of members of the armed forces, letter H, paras 40-41.

the vast majority of cases to secure the status of conscientious objector.³⁰ The second one is the *Schmidbauer Resolution* (A3-15/89) of October 1989, in which, the European Parliament, inter alia, called for the right to be granted to all conscripts at any time to refuse military service, whether armed or unarmed, on grounds of conscience, with full respect for the principles of freedom and equal treatment for all members of society.³¹

European Youth Forum

28. The European Youth Forum³² adopted in November 2018 a comprehensive resolution on the right to conscientious objection to military service.³³ Starting from the consideration of the right to conscientious objection as a “youth right”, the resolution seeks to draw attention to the rights' violations faced by young conscientious objectors to military service and to contribute to ending these violations by calling on all European States to review their policies to ensure they are in line with the rights covered in the resolution.

Organisation for Security and Co-operation in Europe

29. At the Copenhagen Conference on the Human Dimension in 1990, the participating States agreed to consider introducing various forms of alternative service, which are compatible with the reasons for conscientious objection, in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature.³⁴ These commitments are reflected also in the Code of Conduct on politico-military aspects of security of 1994:³⁵
- (i) Each participating State will ensure that the recruitment or call-up of personnel for service in its military, paramilitary and security forces is consistent with its obligations and commitments in respect of human rights and fundamental freedoms.
 - (ii) The participating States will reflect in their laws or other relevant documents the rights and duties of armed forces personnel. They will consider introducing exemptions from or alternatives to military service.
30. More recently, the Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel deals with conscientious objection to military service in detail and lists best practices and recommendations.³⁶

³⁰ European Parliament, Resolution on conscientious objection, (1-546/82), [known as Macciocchi Resolution], 7 February 1983, as published in the Official Journal of the European Communities C 68, 14 March 1983, paras. 2-3 (page 15).

³¹ European Parliament, Resolution on conscientious objection, (A3-15/89), [known as Schmidbauer Resolution], 13 October 1989, as published in the Official Journal of the European Communities C 291, 20 November 1989, paras. D and G.1 (page 123-124).

³² European Youth Forum is the platform of the national youth councils and international non-governmental youth organisations in Europe.

³³ Resolution on the right to conscientious objection to military service in Europe, adopted by the European Youth Forum General Assembly, Novi Sad, Serbia, 22-24 November 2018.

³⁴ Document of the Copenhagen meeting of the conference on the human dimension of the Csce, 1990, para. 18.4

³⁵ Document DOC.FSC/1/95 adopted at the 91st Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation in Budapest on 3 December 1994 (see FSC/Journal No. 94). Paras. 27-28.

³⁶ Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel Published by the OSCE Office for Democratic Institutions and Human Rights, OSCE/ODIHR 2008.

C. RELEVANT JURISPRUDENCE

United Nations

31. The UN Human Rights Committee's caselaw has shifted from characterising the right as derived from the right "to manifest" one's religious or belief (so-called *forum externum*) and thus subject to certain restrictions in Article 18.3 of the ICCPR,³⁷ to viewing it as inherent in the right to freedom of thought, conscience and religion in Article 18.1 itself (so-called *forum internum*) without any restrictions.
32. In its earlier jurisprudence, the Working Group on Arbitrary Detention considered conscientious objection to military service to be a manifestation of one's conscience, which could be subject to limitations under Article 18.3 of the ICCPR that are prescribed by law.³⁸ However, a more progressive approach that ensures more comprehensive protection of human rights is now warranted and the Working Group takes the view that detention of a conscientious objector is a violation *per se* of Article 18.1 of the ICCPR.³⁹ Moreover, in its opinions, it has stated that repeated prosecution and incarceration of conscientious objectors should not be used to force individuals to change their beliefs.⁴⁰

European Court of Human Rights

33. The European Commission of Human Rights⁴¹ had, in a series of decisions,⁴² maintained that Article 4.3 (b) of the Convention excluded from the notion of forced labour the compulsory military and alternative service, the choice whether or not to recognise conscientious objectors remained within the competence of the Member States.
34. The Court examined the applicability of Article 9 of the Convention to conscientious objectors, starting in the case of *Bayatyan v. Armenia*.⁴³ The Grand Chamber reversed the Chamber judgement and found a violation of Article 9 of the Convention stating that it was mindful of the fact that the restrictive interpretation of Article 9 applied by the Commission was a reflection of the ideas prevailing at the material time;⁴⁴ but the Convention is a living instrument which must be interpreted in the light of present-day conditions.⁴⁵ Opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to service in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.⁴⁶ The case of *Bayatyan v. Armenia* can be seen as a milestone case, because starting from it the Court has changed its interpretation of the right to freedom of conscience and belief and has included the conscientious objection

³⁷ Limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

³⁸ Opinion No. 16/2008, para. 36.

³⁹ See opinions No. 69/2018, paras. 19–20; No. 40/2018, para. 44; and No. 43/2017, para. 34.

⁴⁰ Annual report of the Working Group on Arbitrary detention, December 2001 (E/CN.4/2001/14), paras. 91–94.

⁴¹ The European Commission of Human Rights ceased to exist when the Court became permanent on November 1998.

⁴² *Grandrath v. Germany* (application no. 2299/64), *G.Z. v. Austria* (application no. 5591/72), *X. v. Germany* (application no. 7705/76), *N. v. Sweden* (application no. 10410/83), *Peters v. the Netherlands* (application no. 22793/93), *Heudens v. Belgium* (application no. 24630/94).

⁴³ *Bayatyan v. Armenia* [GC], no. 23459/03, 7 July 2011.

⁴⁴ *Ibid.* para 101.

⁴⁵ *Ibid.* para 102.

⁴⁶ *Ibid.* para. 110.

between the actions protected under Article 9 in a series of cases with a strong resemblance to that case.⁴⁷

35. Moreover, the protection of Article 9 has been extended also to cases concerning applicants who mentioned no religious but a pacifist belief and or an antimilitaristic philosophy;⁴⁸ and also that person has not to necessarily adhere to an actual religion or be a member of a pacifist organisation to be recognised as a conscientious objector.⁴⁹
36. Likewise, the fact that a State provides exemption from compulsory military service and introduces an alternative civilian service is not sufficient to ensure compliance with the right to conscientious objection as secured under Article 9 of the Convention. There is, in the first place, a positive obligation on the national authorities to provide an accessible procedure for establishing whether claimers are entitled to conscientious objector status.⁵⁰ Secondly, the alternative service system arrangements must be suited to the requirements of the individual's conscience and beliefs in such a way as to ensure that it is a genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character.
37. In relation to Article 3 of the European Convention on Human Rights, in the case of *Ülke v. Turkey*,⁵¹ the Court found a violation on the prohibition of inhuman or degrading treatment of the Convention, holding in particular that the applicable legal framework (which did not recognise conscientious objection on any ground) did not provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs. The Court stated the numerous criminal prosecutions against the applicant and the cumulative effects of the criminal convictions which resulted from them and the constant alternation between prosecutions and terms of imprisonment, together with the possibility that he would be liable to prosecution for the rest of his life, had been disproportionate to the aim of ensuring that he did his military service. Moreover, the clandestine life amounting almost to "civil death" which the applicant had been compelled to adopt was incompatible with the punishment regime of a democratic society.⁵²
38. In relation to freedom of expression, in two judgements the Court found a violation of Article 10 of the Convention because the it considered that inciting to evade the military service – but not exhorting the use of violence, armed resistance or uprising - cannot in itself justify the interference with the right to freedom of expression of the applicant.⁵³

⁴⁷ *Bukharatyan v. Armenia* (application no. 37819/03); *Tsaturyan v. Armenia* (application no. 37821/03), *Erçep v. Turkey* (application no. 43965/04); *Feti Demirtaş v. Turkey* (application no. 5260/07); *Buldu and Others v. Turkey* (application no. 14017/08).

⁴⁸ *Savda v. Turkey* (application no. 42730/05); *Tarhan v. Turkey* (application no. 9078/06).

⁴⁹ *Papavasiliakis v. Greece* (application no. 66899/14), Judgment of 15 September 2016, paras 51-52.

⁵⁰ *Ibid.* paras. 51, 52, 54 and 60.

⁵¹ *Ülke v. Turkey* (application no. [39437/98](#)), Judgment of 24 January 2006.

⁵² *Ibid.* para 62.

⁵³ *Savda v. Turkey* no. 2 (Application no. 2458/12), Judgment of 15 November 2016, para. 26; *Onaran v. Turkey* (Application no. 65344/01), Judgment of 5 June 2007, para. 27.

European Social Committee

39. The European Committee of Social Rights, in a Decision on merits,⁵⁴ considers that alternative civilian service may amount to a restriction on the freedom to earn one's living in an occupation freely entered upon. Therefore, alternative service comes within the scope of Article 1.2 of the European Social Charter.⁵⁵ In this specific collective complain against Greece, it found that the length of the alternative service to armed military service was excessive and not in conformity with the Charter. Therefore, the conditions and modalities for the performance of alternative civilian service, compared to military service, constitute a disproportionate restriction on the freedom guaranteed by Article 1.2 of the Charter. More recently, the same Article 1.2, together with Art. 26.2,⁵⁶ has been at the core of a pending and admitted collective complain against Ireland deals with the fact that members of the Irish Defence Forces do not have the ability to discharge from the armed forces on grounds of conscientious objection and have this reason recorded.⁵⁷

III. THE RIGHT TO CONSCIENTIOUS OBJECTION TO MILITARY SERVICE AT THE NATIONAL LEVEL

A. ABOLITION OR SUSPENSION OF THE COMPULSORY MILITARY SERVICE

40. The general trend is towards a professionalisation of the armed forces and the abolishing or suspension of the compulsory military service. Some countries have abolished compulsory military service (e.g. United Kingdom and Luxemburg) and others have suspended it (e.g. Belgium, France, Germany and Italy) in time of peace. That means that in case of abolition, new legislation would be required to reintroduce it, meanwhile in case of suspension the legislation remains on the statute books and could be rapidly reactivated in the event of war, general mobilisation or national emergency.

41. The vast majority of Council of Europe Member states that have abolished or suspended the compulsory military service has done it during the 2000s (17 states from 2000 to 2009); only United Kingdom (1963), Luxemburg (1969), Belgium (1995) and Netherland (1996) have done it during the decades before. Moreover, there is a third group of states that has abolished or suspended conscription during 2010s: Albania (2010), Sweden (2010), Serbia (2011), Germany (2011), Ukraine (2012) and Georgia (2016).

B. COMPULSORY MILITARY SERVICE AND ALTERNATIVE SERVICE

42. In 17 of 47 member States of the Council of Europe conscription is still enforced: Armenia, Austria, Azerbaijan, Cyprus, Denmark, Estonia, Finland, Georgia, Greece, Lithuania, Moldova, Norway, the Russian Federation, Sweden, Switzerland, Turkey and Ukraine.

43. Conscription is also imposed by the *de facto* authorities in a number of territories which are not internationally recognised: Abkhazia and South Ossetia (Georgia), Nagorno-Karabakh

⁵⁴ Quaker Council for European Affairs (QCEA) against Greece, collective complain No. 8/2000, Decision on the merits adopted the 25th April 2001.

⁵⁵ Ibid. para. 23.

⁵⁶ Art. 26.2 (The right to dignity at work) of the European Social Charter: to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

⁵⁷ European Organisation of military associations (EUROMIL) v. Ireland, complain no. 164/2018 of 15 May 2018.

(Azerbaijan), Transnistria (Moldova), the self-styled “Turkish Republic of Northern Cyprus” (Turkey), the “Autonomous Republic of Crimea”(Russian Federation) and “Peoples Republics” of Donetsk and Luhansk (Ukraine).

44. Moreover, Andorra, Liechtenstein, Monaco, and San Marino maintain a token military for ceremonial purposes only, and Iceland has never had a military, although it does maintain a paramilitary coastguard. In none of these countries has conscription ever applied.



45. Apart from Turkey, all Council of Europe member States have over the course of the years recognised conscientious objection to military service or at least indicated the intention of making alternative service available. The progressive recognition of conscientious objection has - more or less - followed the same timing path of the abolition of compulsory military service.
46. Indeed, the vast majority of Council of Europe member states (20 out of 47) has recognised the right during the '90 and only North Macedonia and Armenia have recognised it after (respectively in 2001 and 2003). Meanwhile, very few countries have recognised it in the first half of the last century: United Kingdom (1916), Denmark (1917), Sweden (1920), Netherlands (1922), Norway (1922), Finland (1931) and Germany (1949).⁵⁸
47. The adoption of the first act or the constitutional provision does not mean that such provisions are implemented in the same year. Indeed some countries were not implemented the arrangements for years⁵⁹ and or the initial legislation was not in line with International and European human rights standards.
48. Finally, during the last ten years, the general trend towards a professionalisation of the army seems to have gone a backward. In fact, conscription into compulsory military service was reinstated, after having been abolished, namely in Ukraine (2014), Lithuania (2015)⁶⁰, Georgia (2017), Sweden (2018)⁶¹ while other governments have reintroduced mandatory national

⁵⁸ The Federal Republic of Germany recognised conscientious objection in 1949, the recognition in the German Democratic Republic dated from 1964.

⁵⁹ E.g. Azerbaijan recognised the right in its Constitution in 1995 but an alternative civilian service is still not available.

⁶⁰ Some 3, 500-4,000 Lithuanian citizens of conscript age (19-26) for a period of 9 months are enlisted each year. There is also a possibility to do this service on a voluntary basis - male and female citizens of Lithuania of age 18-38 years are invited to enlist for the service on a voluntary basis. (see Lithuanian Armed forces website www.kariuomene.kam.lt)

⁶¹ Recruitment to the Swedish Armed Forces is partly voluntary and partly conscription based. Individual motivation, interest and will are important criteria. This new conscription is high selective and includes both women and men. In 2018,

service programmes into political debates or are going to test young training on military and other fields.⁶² On the contrary, in 2018, Moldova stated that conscription will be replaced with the employment of military professionals.⁶³

Duration of military and alternative service

49. The length of military and civilian or alternative service diverges significantly from country to country. The shortest duration of services is 4 months (Denmark), meanwhile the longer services are 24 months the military and 36 months the alternative one (Armenia).⁶⁴ Any duration of alternative service longer than that of military service has to be based on reasonable and objective criteria, in order to be in line with international standards.⁶⁵ However, it has been considered significantly longer when it is one and half or 18 months longer than the military service.⁶⁶

CoE Member states (Alphabetic order)	Military service	Alternative service	Ratio to military service duration
Armenia	24 months	36 months	1.5
Austria	6 months	9 months	1.5
Azerbaijan	18 months	Alternative service is not available	
Cyprus	14 months	19 months	1.4
Denmark	4 months	4 months	1
Estonia	8 months	8 months	1
Finland	5.5 - 11.6 months	11.6 months	1 - 2.1

it has regarded very small numbers: 4.000 coscripts selected from about 100.000 male and women that turn 18 that year (see www.government.se/articles/2017/03/re-activation-of-enrolment-and-the-conscription/).

⁶² E.g. Croatia in 2017 (see www.vecernji.hr/vijesti/od-2019-uvodi-se-obvezni-light-vojni-rok-do-30-dana-1145838), Italy in 2019 (see www.ilsole24ore.com/art/arriva-mini-naja-sei-mesi-caserma-e-12-crediti-formativi-l-universita-ABazhbiB?refresh_ce=1), French Universal national Service in 2019 (see www.theguardian.com/world/2019/jun/19/rollout-of-compulsory-civic-service-for-young-people-in-france-sparks-criticisms)

⁶³ Moldova's annual information exchange on the implementation of the OSCE Code of Conduct on Politico-Military Aspects of Security, May 2019, section 3.1.

⁶⁴ The figures quoted is for the normal basic military service in the army, before any adjustments to reflect rank, educational qualifications and other criteria. Source of the figures: European Bureau for Conscientious Objection (EBCO), Annual report conscientious objection in Europe 2019, February 2020, p. 31, except for figures about Sweden (source: Central Intelligence Agency (CIA) The World Factbook); Lithuania (source: The Constitutional Court of The Republic Of Lithuania, ruling of 4 July 2017, no. kt9-n7/2017 on case no 10/2016).

⁶⁵ UN OHCHR, Approaches and challenges regarding application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, May 2019 (A/HRC/41/23), paras. 57-58.

⁶⁶ European Committee of Social Rights case law on Article 1.2 of the European Social Charter.

Georgia	12 months	24 months	2
Greece	9 months	15 months	1.7
Lithuania	9 months	10 months	1.1
Norway	12 months	Alternative service is not required	
Republic of Moldova	12 months	12 months	1
Russian Federation	12 months	18 months	1.5
Sweden	9- 12 months	No information available	
Switzerland	260 days	390 days	1.5
Turkey	12 months	Alternative service is not available	
Ukraine	12 months	18 months	1.5

50. In Norway, conscientious objectors do not have to perform a civil service since 2012; on the contrary in Azerbaijan and Turkey alternative service does not result to be available. Finally, in the new Swedish military system there is the possibility to apply for a weapon free status, but it is not clear if it is possible to perform an alternative service.⁶⁷

Alternative service: type and other aspects

51. Even if there are no updated comparative studies, in general the alternative service is performed in the public sector and the kind of activities depends on the office where the conscientious objector is assigned, such as hospitals, social services, fire brigades.⁶⁸ Also, in few countries there is an additional possibility to perform a military not-armed service related to various auxiliary tasks e.g. cooking, cleaning and maintenance of vehicles.⁶⁹ Moreover, in Austria there is another type of alternative service that is a voluntary year service with non-governmental non-for-profit organisations, to be performed abroad or in Austria itself.

52. The alternative service can be performed in the territory of residence of the conscientious objector or in another region,⁷⁰ or the person can be obliged to perform it away from his or her residence.⁷¹

⁶⁷ European Bureau for Conscientious Objection (EBCO), Annual report conscientious objection in Europe 2019, February 2020, p. 18

⁶⁸ E.g. Greece, Russian Federation and Finland.

⁶⁹ E.g. in Armenia, Cyprus, Georgia.

⁷⁰ E.g. Russian Federation.

⁷¹ E.g. Greece.

53. In relation to the civilian character of the alternative service, this aspect leaves room for ambiguity and there is not always a completely separation from the military sector. Therefore, the authority that organised and supervised the alternative service could be related to the Ministry of Defence⁷² or under civilian Ministries.⁷³
54. Except for the figures about duration and other scattered and not official information, there is a lack of availability of official and updated figures on the status of conscientious objector in Council of Europe official languages and there is not any recent comparative study specific on the specific matter⁷⁴. As a consequence, it is not possible to reproduce comparable figures such as the yearly number of applications, ground of the requests (religious, moral, etc), the percentage of acceptance, sector where alternative service is performed and so on. Therefore, a generic figure that can give a little help could be the number of conscripts for year 2018, even if this figure is not available for all countries.⁷⁵

CoE Member state (Alphabetic order)	Total strength of armed forces	Number of conscripts
Armenia	44.800	18.950
Austria	no figures available	
Azerbaijan	no figures available	
Cyprus	12.000	10.700
Denmark	no figures available	
Estonia	6.600	3.300
Finland	21.500	12.950
Georgia	20.650	4.350
Greece	142.350	49.250
Lithuania	no figures available	
Norway	23.250	7.200
Republic of Moldova	5.150	2.200
Russian Federation	no figures available	
Sweden	29.750	4.000

⁷² E.g. Cyprus, Greece, Lithuania.

⁷³ E.g. in Austria, alternative service is under the Ministry of Interior and voluntary services depend on the Social Ministry.

⁷⁴ The most recent comparative study is: The right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council for European Affairs, 2005. Moreover, in December 2012, the Steering Committee For Human Rights of the Council of Europe (CDDH) published a compilation of member states answers on the Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec(2010)4 on human rights of members of the armed forces (CDDH(2012)016 Final). In this questionnaire there are questions also about the compulsory military service (no. C1), the type of alternative service (H2.1) and the conscientious objection for conscripts and professional members (no. H1-H5).

⁷⁵ Source of the figures: European Bureau for Conscientious Objection (EBCO), Annual report conscientious objection in Europe 2019, February 2020, pg. 26-27 as published by the International Institute for Strategic Studies in "The Military Balance 2019".

CoE Member state (Alphabetic order)	Total strength of armed forces	Number of conscripts
Switzerland	21.450	18.500
Turkey	no figures available	
Ukraine	no figures available	

C. PROFESSIONAL AND VOLUNTARY MEMBERS OF THE ARMED FORCES AND CONSCIENTIOUS OBJECTION

55. The recognition of the status of conscientious objection to professional members of the armed forces is an issue that deserves attention. Indeed, the UN OHCHR, PACE and CM and other international bodies have already been concerned about it and recommended the recognition.⁷⁶ Currently, only a limited number of Council of Europe member States explicitly recognise the status of conscientious objectors to professional members of the armed forces;⁷⁷ even if many member states underline that professional members have a contract and, therefore, there is the possibility to discharge or leaving for any reasons.⁷⁸
56. In this context, a collective complain is under the evaluation of the ESC and it is related to the fact that members of the Irish Defence Forces do not have the ability to discharge from the armed forces on grounds of conscientious objection and have this reason recorded.⁷⁹
57. Finally, in September 2019 the administrative court of Halle/Saale (Germany)⁸⁰ ruled in a case that the army had been overstating the repayments legally due to a professional soldier that developed conscientious objection.⁸¹

D. CONSCIENTIOUS OBJECTORS AS REFUGEES IN COUNCIL OF EUROPE MEMBER STATES

58. Pursuant to Article 14 of the UN Universal Declaration of Human Rights, everyone has the right to seek and to enjoy asylum from persecution. The UN Human Rights Council and, previously, the UN Commission on Human Rights, encouraged States to consider granting asylum to those conscientious objectors to military service who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision. In 2013, United Nations High Commissioner for

⁷⁶ See UN OHCHR, *ibid.*, A/HRC/41/23, 2019, paras. 22-25 and section IV Conclusions and recommendations criterion c); PACE Recommendation 1742 (2006) para 9.7, Recommendation of the CM Rec (2010)4 on Human rights of members of the armed forces, letter H, paras 40-41.

⁷⁷ UN OHCHR, *ibid.*, A/HRC/41/23, 2019, based on the submission by the European Organisation of Military Associations. See also - OSCE/ODIHR, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, 2008, pp. 83-84;

⁷⁸ Steering Committee for Human Rights of the Council of Europe (CDDH), *Compilation of member states answers on the Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec (2010)4 (CDDH(2012)016 Final)*, questions H1-H5.

⁷⁹ *European Organisation of military associations (EUROMIL) v. Ireland*, complain no. 164/2018 of 15 May 2018.

⁸⁰ *Verwaltungsgericht Halle/Saale: Judgement 5 A 621/17 HA of 24 September 2019.*

⁸¹ *European Bureau for Conscientious Objection (EBCO), Annual Report Conscientious objection in Europe 2019*, February 2020, p. 15.

Refugees (UNHCR) provide a new legal interpretive guidance.⁸² The UNHCR outlines five common types of claims for asylum, *inter alia*, objection to state military service for reasons of conscience when the national law does not adequately provide for conscientious objectors and when conditions of the state military service are so harsh as to amount to persecution e.g. it involves forms of slavery.

59. Indeed, in Europe, there is a growing number of asylum-seeking cases on grounds of conscientious objection from lodged by nationals of Syria, Ukraine, Eritrea, Turkey and Azerbaijan. Switzerland granted asylum to a Syrian citizen of Kurdish ethnicity who fled the country because of the threat by the secret service Idarat al-Amn as-Siyasi and he neither wanted to continue working as a spy nor to enter military service.⁸³ Italy, has at least 4 cases of recognition of asylum and subsidiary protection from different territorial courts since 2016 in connection with Ukraine.⁸⁴ A huge number of young Eritrean men fled the country to avoid the indefinite conscription into national/military service that amount to enslavement.⁸⁵ Therefore, many European countries have to deal with an increase of claims from young Eritrean men avoiding national service.⁸⁶

IV. BEST PRACTICES

60. Many states that have suspended compulsory military service contemplate the possibility of **resorting to conscription in wartime** while preserving the right to conscientious objection in peacetime.⁸⁷ As best practice, the Slovak Republic states that its Act on alternative service at the time of war recognise the possibility to every person that may be subject to conscription to deny the emergency military service for religious reasons or reasons of conscience.⁸⁸
61. ***The recognition of the status of conscientious objector without an examination, inquiry or interview*** is based on the assumption that no a court and no committee can examine a person's conscience,⁸⁹ and therefore a declaration setting out the individual's motives should suffice in order to obtain the status of conscientious objector. In certain States, such as Austria, Norway and Switzerland (and in Germany before the abolition of conscription), applications for status of conscientious objection to military service are accepted without examination or interview.

⁸² UNHCR, 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, 3 December 2013 (HCR/GIP/13/10). These Guidelines replace the UNHCR's Position on Certain types of draft evasion (1991).

⁸³ Switzerland – Federal Administrative Court, 18. February 2015, D-5553/2013, available at www.asylumlawdatabase.eu/en.

⁸⁴ Civil Court of Bologna, Decision No. (classified) of the 14th October 2016 and Decision No. (classified) of the 26th May 2017, Civil Court of Napoli, Decision No. (Classified) of June 2016 (all three available at www.meltingpot.org), Civil Court of Rome, Decision No. 11044/2018 of 21 August 2018, available at www.asylumlawdatabase.eu/en.

⁸⁵ Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Eritrea, 24 July 2017 (A/HRC/35/39).

⁸⁶ On this issue: European Bureau for Conscientious Objection (EBCO), Annual report conscientious objection in Europe 2017, December 2017, p. 52.

⁸⁷ Quaker Council for European Affairs (QCEA), The right to conscientious objection in Europe: A Review of the Current Situation. Researched and written by Marc Stolwijk, 2005, pp. IX-X.

⁸⁸ Steering Committee For Human Rights of the Council of Europe (CDDH), Compilation of member states answers on the Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec (2010)4 (CDDH(2012)016 Final), p. 260.

⁸⁹ *Inter alia*, European Parliament, Resolution A3-15/89 of 1989; UN Commission on Human Rights, Resolution 1998/77.

62. The **availability of information on alternative service**, including information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, widely available to all persons affected by military service is a practice gaining traction. In Austria, all the necessary forms for applying for recognition as a conscientious objector could be found on the governmental website regarding obligatory military service. In addition, in this country a voluntary year in a non-for-profit organisation (even abroad) can substitute the period of alternative service.
63. In Denmark, Estonia and in the Republic of Moldova the **normal durations of military and alternative service had been made equal**.
64. At the European level, the Parliamentary Assembly of the Council of Europe,⁹⁰ the Committee of Ministers of the Council of Europe⁹¹ and the European Parliament⁹² have all recommended that legislation include the **right to be registered as a conscientious objector before, during or after conscription or performance of military service**.
65. In Switzerland, Article 19 of the Law on civilian service allows applicants to file a request for admission to civilian service at any time. In Norway, there are no time limits to apply for conscientious objector status and all duties involving the bearing of arms are suspended until the decision on the application from a serving conscript for recognition as a conscientious objector which must be made within four weeks.⁹³ In Finland, section 13 of the Non-Military Service Act (2007) requires applications to be processed without delay and the status of reservist objectors is recognised from the moment when their application is received.⁹⁴ In the Russian Federation, applications for permission to perform alternative civilian service are examined within a month of the deadline for its submission. This time limit may be extended by a month if the commission requests additional documents. A judicial appeal may be filed against a refusal of the call-up commission to permit alternative civilian service. In such cases, implementation of the decision is stayed until the court makes a final decision (Alternative Civilian Service Act, sect. 15).
66. The Parliamentary Assembly of the Council of Europe⁹⁵ and the Committee of Ministers⁹⁶ recommended that **professional members of the armed forces** be able to leave the armed forces for reasons of conscience. Specific procedures for the recognition of conscientious objection of member of professional armed forces are available in Germany and in the United Kingdom, even if in this last country official and public information are not easy to obtain. Also, it results that in Netherlands it is recognised, even if it not clear if specific procedures are available.⁹⁷In 2018 in Germany, official figures said that 127 requests for discharge on grounds of conscience were accepted: 41 basic soldiers, 63 non-commissioned officers and 23 officers. The acceptance rate of requests is 60-70%.

⁹⁰ Recommendation 1518(2001), para. 5.1.

⁹¹ Recommendation CM/Rec (2010)4, para. 40 and recommendation No. R (87) 8, paras. 4 and 8.

⁹² Resolution on Respect for Human Rights in the European Community (<http://aei.pitt.edu/5756/1/5756.pdf>), para. 49.

⁹³ UN OHCHR, Conscientious Objection to Military Service, HR/PUB/12/1, p. 53.

⁹⁴ European Bureau for Conscientious Objection (EBCO), Annual Report Conscientious objection in Europe 2018, April 2019, p. 18.

⁹⁵ Recommendation 1518 (2001).

⁹⁶ Recommendation CM/Rec(2010)4.

⁹⁷ The Law on Conscientious Objection applies to both conscripts and contract soldiers. According to Article 3, reasons of conscientious objection by both conscripts and the military may be considered by the Ministry of Defence as deep and profound (source: Quaker Council for European Affairs (QCEA), The right to conscientious objection in Europe: A Review of the Current Situation, 2005, p. 50).

V. CONCLUDING REMARKS

67. It has been nineteen years from the last PACE recommendation on the right to conscientious objection to military service⁹⁸ and ten years from the last CM recommendation that has mentioned it.⁹⁹ The issue should require more attention in the European political agenda.
68. It is suggested that a new detailed recommendation by the Committee of Ministers to member States on the *de jure* recognition and *de facto* implementation of the right could be useful to raise awareness on the topic again. It could be accompanied by some best practices and a compilation of criteria on the procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards.
69. This compilation can be based on the list prepared by the UN OHCHR in its 2019 report on this topic (A/HRC/41/23). Therefore, inter alia, it could include the following criteria:
- (i) Availability of information
 - (ii) Cost-free access to application procedures
 - (iii) Availability of the application procedure to all persons affected by military service
 - (iv) Non-discrimination on the basis of the grounds for conscientious objection and between groups
 - (v) No time limit on applications
 - (vi) Availability of the legal provision also in wartime
 - (vii) Independence and impartiality of the decision-making process and right to appeal
 - (viii) Compatibility of alternative service with the reasons for conscientious objection
 - (ix) Non-punitive conditions and duration of alternative service
 - (x) Freedom of expression for conscientious objectors and those supporting them.
70. Moreover, this recommendation should mention some problems going beyond the item of conscientious objection to compulsory military service:
- (i) The non-execution of judgements of the ECtHR regarding the right to conscientious objection,
 - (ii) Professional and voluntary members that develop conscientious objection after joining the armed forces,

⁹⁸ PACE, Recommendation 1518 (2001), Exercise of the right of conscientious objection to military service in Council of Europe member states.

⁹⁹ CM, Recommendation CM Rec (2010) 4, Human Rights of members of the armed forces.

- (iii) Conscientious objectors as asylum-seekers fleeing countries where the right is not recognised or is not implemented in line with International and European standards.
71. As it has been done in the case of the CM Recommendation on Human rights and armed forces of 2010, an in-depth questionnaire on national provisions and figures is essential to obtain a worthy picture on the current situation on the matter. The questionnaire could include specific questions for countries where the military service is compulsory and other questions for the other Council of Europe member states.
72. Firstly, about questions for countries where military service is compulsory, some figures (related to more years) that could be useful are:
- (i) No. of conscripts and percentage on the youth cohort and on members of armed forces.
 - (ii) No. of claim for conscientious objection and on which grounds (religious, pacifist, political and other beliefs) and percentage in relation to the relative no. of conscripts.
 - (iii) No. and percentage of accepted and denied claims and raisons of denied.
 - (iv) No. of conscientious objectors that have performed the alternative service, and sector in which the alternative service has been performed.
 - (v) No and percentage of reservists that claim for conscientious objection.
73. Moreover, questions should regard national provisions and procedures for obtaining the status of conscientious objector to military service and the related alternative service. Those questions could regard the following aspects: gender and age of the call-up, different legal provision in peace time and war time; type of military service (only compulsory, mix of voluntary and compulsory, ballot and so on), type of procedure to obtain the status (no procedure, application form, interview etc), composition of the decision body, responsibility for the application procedure (Ministry of Defense, Ministry of Justice and so on), timing for the application (before the call-up, before and during the service...), availability of information, economic and social treatment of conscientious objectors and a comparison with conscripts, type of alternative service and comparative length with the different type of military service, compulsory periodical military training after the military service and conscientious objection for reservists.
74. Secondly, about questions for the other Council of Europe member states, some relevant topics could be:
- (i) Abolition or suspension of conscription and legal provision in wartime.
 - (ii) Available procedures for conscription of professional members of the armed forces: type of procedure (no inquiry procedure, application form, interview etc), composition of the decision body, responsibility for the application procedure (Ministry of Defense, Ministry of Justice and so on), economic treatment of the conscientious objectors.

- (iii) Cases of claims for refugee status and humanitarian protection of conscientious objectors or deserter compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service or for their human rights activism in favour of conscientious objectors.
 - (iv) Future project to reintroduce compulsory military service or other kind of military training.
75. The Council of Europe could moreover consider providing technical guidance and legal assessment for parliamentary members, governments and lawmakers that would like to improve their legislation in line with international standards and or the possible new CM recommendation. The technical guidance could be based on a booklet on the matter comprising best practices; or can be activated upon specific request of the Council of Europe member state and it can take the form of legal assessment on a draft law or similar.

* * *

Appendix 1

Timing of recognition of conscientious objection

Year and act of first recognition of the right to conscientious objection and of abolition/suspension of the compulsory military service

CoE Member states (Alphabetical order)	Year of recognition of the right to conscientious objection (first act)	Year of abolition/suspension of the compulsory military service
Albania	1998 Constitution, art. 166	January 2010
Andorra	/	No standing army
Armenia	2003 Alternative service act	Compulsory military service
Austria	1955 National service act	Compulsory military service
Azerbaijan	1995 Constitution, art. 76	Compulsory military service
Belgium	1962 Law on Conscription	February 1995
Bosnia and Herzegovina	1996 Defence act	December 2005
Bulgaria	1991 Constitution art. 59.2	2007
Croatia	1990 Constitution art. 47.2	January 2008
Cyprus	1992 National guard act. 2/1992	Compulsory military service
Czech Republic	1992 Civilian Service act 18/1992 of Czechoslovakia	December 2004
Denmark	1917 Alternative service act	Compulsory military service
Estonia	1991 Constitution art. 124	Compulsory military service
Finland	1931 Alternative service Act	Compulsory military service
France	1963 Act No. 1255/63	2001
Georgia	1992 Military service act, art. 12	2016 (reintroduced in February 2017)
Germany	1949 Basic law of the Federal Republic of Germany art. 4 - The first provision in the German Democratic Republic dated from 1964	July 2011
Greece	1997 Act. no. 2510/97	Compulsory military service
Hungary	1989 Constitution art. 70	July 2005
Iceland	/	No standing army
Ireland	/	Never applied Compulsory military service
Italy	1972 Act. 772/1972	December 2004
Latvia	1990 Law on Substitute of the Latvian Soviet Socialist Republic	2007
Liechtenstein	/	No standing army
Lithuania	1990 Law on Substitute of the Lithuanian Soviet Socialist Republic	2009 (reintroduced in March 2015)
Luxembourg	/	No standing army
Malta	/	Never applied Compulsory military service

Monaco	/	No standing army
Montenegro	1992 Constitution art. 58 of Serbia and Montenegro	July 2006
Netherlands	1922 Constitutional amendment	1996
North Macedonia	2001 Defence act art. 8	2007
Norway	1922 Civilian Conscript workers act	Compulsory military service
Poland	1988 Constitution art. 85	October 2009
Portugal	1976 Constitution art. 41	December 2004
Republic of Moldova	1992 Alternative Service act no. 633/91	Compulsory military service
Romania	1996 Act no. 46/1996 art. 4	December 2006
Russian Federation	1993 Constitution art. 59.3	Compulsory military service
San Marino	/	No standing army
Serbia	1992 Constitution art. 58 of Serbia and Montenegro	January 2011
Slovak Republic	1992 Civilian Service act 18/1992 of Czechoslovakia	2004
Slovenia	1992 Constitution art.123.2	September 2003
Spain	1978 art. 30.2	December 2001
Sweden	1920 Alternative service schemes act	July 2010 (reintroduced in January 2018)
Switzerland	1996 Civilian Service act	Compulsory military service
Turkey	no recognition	Compulsory military service
Ukraine	1996 Constitution art. 35.3	2012 (reintroduced in May 2014)
United Kingdom	1916 Military service act	1963

Appendix 2

Essential soft law and jurisprudence

Note: this soft law and jurisprudence regard Council of Europe member states. This said, some documents of other countries, or documents not related to a specific country, are also quoted if relevant.

United Nations - Office of the High Commissioner for Human Rights (UN OHCHR)

Reports on conscientious objection

A/HRC/41/23 (2019)
 A/HRC/35/4 (2017)
 A/HRC/23/22 (2013)
 A/HRC/9/24 (2008)
 A/HRC/4/67 (2007)
 E/CN.4/2006/51 (2006)
 E/CN.4/2004/55 (2004)

Other reports

Report on Youth and Human Rights A/HRC/39/33, June 2018.

United Nations - Human Rights Committee

General Comment n. 22 (48) (art. 18) of 27 September of 1993 (CCPR/C/21/Rev.1/Add.4)

Concluding Observations

Concluding observations on the fourth periodic report of Azerbaijan, November 2016
 Concluding observations on the fifth periodic report of Austria CCPR/C/AUT/CO/5, December 2015
 Concluding observations on the second periodic report of Greece CCPR/C/GRC/CO/2, December 2015
 Concluding observations on the second periodic report of Kyrgyzstan CCPR/C/KGZ/CO/2, April 2014

Views adopted

No. 2268/2013, Danatar Durdyev v. Turkmenistan, Views adopted on 17 October 2018
No. 2220/2012, Aminov v. Turkmenistan, Views adopted on 14 July 2016
No. 2224/2012, Matyakubov v. Turkmenistan, Views adopted on 14 July 2016
No. 2227/2012, Yegendurdyev v. Turkmenistan, Views adopted on 14 July 2016
No. 2219/2012, Nasyrlyev v. Turkmenistan, Views adopted on 15 July 2016
No. 2225/2012, Nurjanov v. Turkmenistan, Views adopted on 15 July 2016
No. 2226/2012, Uchetov v. Turkmenistan, Views adopted on 15 July 2016
No. 2218/2012, Abdullayev v. Turkmenistan, Views adopted on 25 March 2015
No. 2221/2012, Mahmud Hudaybergenov v. Turkmenistan, Views adopted on 29 October 2015
No. 2222/2012, Ahmet Hudaybergenov v. Turkmenistan, Views adopted on 29 October 2015
No. 2223/2012, Japparow v. Turkmenistan, Views adopted on 29 October 2015
No. 2179/2012, Young-kwan Kim et al. v. Republic of Korea, Views adopted on 15 October 2014
No. 1786/2008, Jong-nam Kim et al. v. Republic of Korea, Views adopted on 25 October 2012
Nos. 1853-1854/2008, Atasoy and Sarkut v. Turkey, Views adopted on 29 March 2012
Nos. 1642-1741/2007, Jeong et al. v. Republic of Korea, Views adopted on 24 March 2011
Nos. 1593-1603/2007, Jung et al. v. Republic of Korea, Views adopted on 23 March 2010
Nos. 1321-1322/2004, Yoon and Choi v. Republic of Korea, Views adopted on 3 November 2006

United Nations - Human Rights Commission

Resolutions (adopted without a vote)

E/CN.4/RES/2004/35 (2004)
E/CN.4/RES/2002/45 (2002)
E/CN.4/RES/2000/34 (2000)
E/CN.4/RES/1998/77 (1998)

E/CN.4/RES/1995/83 (1995)
E/CN.4/RES/1993/84 (1993)
E/CN.4/RES/1991/65 (1991)
E/CN.4/RES/1989/59 (1989)

United Nations - Human Rights Council

Resolutions (adopted without a vote)

A/HRC/RES/36/18 (2017)
 A/HRC/RES/24/17 (2013)
 A/HRC/RES/20/02 (2012)

United Nations - Special rapporteur on freedom of religion and beliefs

- Communication no. OL 3/2019 – Greece, July 2019
- Report on the Country visit to Cyprus A/HRC/22/51/Add.1, 2012
- Rapporteur's Digest on Freedom of Religion or Belief Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications, 2012
- Annual report to the Human Rights Council A/HRC/6/5, July 2007
- Summary of cases transmitted to Governments and replies received E/CN.4/2006/5/Add.1, March 2006
- Report on the Country visit to Greece A/51/542/Add.1, 1996
- Annual Report to the Commission on Human Rights E/CN.4/1992/52, March 1986

United Nations - Working group on arbitrary detention

- Report of the Working Group on Arbitrary Detention, A/HRC/42/39, July 2019
- Report of the Working Group on Arbitrary Detention E/CN.4/2001/14, December 2000

Opinions adopted

No. 69/2018 (Republic of Korea)
 No. 40/2018 (Republic of Korea)
 No. 43/2017 (Tajikistan)
 No. 16/2008 (Turkey)
 No. 8/2008 (Colombia)
 No. 24/2003 (Israel)

United Nations - Universal Periodic Review

- Report of the Working Group on the Universal Periodic Review, Finland, A/HRC/36/8, July 2017
- Report of the Working Group on the Universal Periodic Review, Greece, A/HRC/33/7, July 2016

United Nations - Other Human Rights Council subsidiary bodies

Report of the Special Rapporteur on the situation of human rights in Eritrea, Resolution A/HRC/35/39, 24th July 2017

United Nations High Commissioner for Refugees (UNHCR)

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), December 2013.

Council of Europe

Parliamentary Assembly (PACE)

Resolution 337 (1967) on the Right of conscientious objection

Recommendations to the Committee of Ministers

- Recommendation 1742 (2006) on Human rights of members of the armed forces.
- Recommendation 1518 (2001) on the Right of conscientious objection.
- Recommendation 1380 (1998) on the Human rights of conscripts.
- Recommendation 816 (1977) on the Right of conscientious objection.

Committee of Ministers (CM) Recommendations

- Recommendation No. R (87) 8 regarding conscientious objection to compulsory military service
- Recommendation CM/ Rec (2010)4 on Human rights of members of the armed forces

European Court of Human Rights

Jurisprudence on conscientious objection (Articles 3,9,10 of the ECHR)

- Dyagilev v. Russia, application no. 49972/16
- Mushfig Mammadov and others v. Azerbaijan, Applications nos. 14604/08, 45823/11, 76127/13 and 41792/15
- Papavasiliakis v. Greece, application no. 66899/14
- Aghanyan and others v. Armenia, Applications nos. 58070/12 and other 21;
- Savda v. Turkey (no.2), application no. 2458/12
- Aydan and others v. Armenia, application no. 75604/11
- Buldu and Others v. Turkey, application no. 14017/08
- Feti Demirtaş v. Turkey, application no. 5260/07
- Tarhan v. Turkey, application no. 9078/06
- Savda v. Turkey, application no. 42730/05
- Erçep v. Turkey, application no. 43965/04
- Tsaturyan v. Armenia, application no. 37821/03
- Bukharatyan v. Armenia, application no. 37819/03
- Bayatyan v. Armenia, application no. 23459/03
- Ülke v. Turkey, Application no. 39437/98
- Thlimmenos v. Greece, Application no. 34369/97
- Heudens v. Belgium, application no. 24630/94
- Peters v. the Netherlands, application no. 22793/93
- N. v. Sweden, application no. 10410/83
- X. v. Germany, application no. 7705/76
- G.Z. v. Austria, application no. 5591/72
- Grandrath v. Germany, application no. 2299/64

European Committee on Social Rights

Jurisprudence related to conscientious objection (art. 1.2 of the ESC)

- European Organisation of military associations (EUROMIL) against Ireland, complain no. 164/2018.
- Quaker Council for European Affairs (QCEA) Against Greece, Complaint No. 8/2000.

European Union

Parliament resolutions on conscientious objection

- Resolution A3-15/89, [known as Schmidbauer Resolution], 13 October 1989,
- Resolution 1-546/82, [known as Macciocchi Resolution], 7 February 1983.

European Youth Forum

Resolution on the right to conscientious objection to military service in Europe, adopted by the European Youth Forum General Assembly, Novi Sad, Serbia, November 2018

National jurisprudence**Germany**

Verwaltungsgericht Halle/Saale: Judgement 5 A 621/17 HA of 24 September 2019

Italy

- Civil Court of Rome, Decision No. 11044/2018 of 21 August 2018
- Civil Court of Bologna, Decision No. (classified) of the 26th May 2017
- Civil Court of Bologna, Decision No. (classified) of the 14th October 2016
- Civil Court of Napoli, Decision No. (Classified) of June 2016

Lithuania

The Constitutional Court of The Republic of Lithuania, ruling of 4 July 2017, no. kt9-n7/2017 on case No.10/2016

Switzerland

Federal Administrative Court, 18. February 2015, D-5553/2013.

* * *

Essential bibliography

(In descending chronological order of publication)

- European Bureau for Conscientious Objection (EBCO), Annual Report Conscientious objection in Europe 2019, February 2020.
- Council of Europe/European Court of Human Rights, Factsheet – Conscientious objection, December 2019.
- Council of Europe/European Court of Human Rights, Directorate of the Jurisconsult, Guide on Article 9 of the Convention – Freedom of thought, conscience and religion, Updated on August 2019.
- European Bureau for Conscientious Objection (EBCO), Annual Report Conscientious objection in Europe 2018, April 2019.
- European Bureau for Conscientious Objection (EBCO), Annual Report Conscientious objection in Europe 2017, December 2017.
- European Bureau for Conscientious Objection (EBCO), Annual Report Conscientious objection in Europe 2016, December 2016.
- UN OHCHR, “Conscientious objection to military service”, HR/PUB/12/1, UNITED NATIONS PUBLICATION, 2012.
- Council of Europe, Steering Committee For Human Rights of the Council of Europe (CDDH) Compilation of member states answers on the Questionnaire on the implementation of Committee of Ministers' Recommendation CM/Rec(2010)4 on human rights of members of the armed forces (CDDH(2012)016 Final).
- Quaker United Nations Office (QUNO), International Standards on Conscientious Objection to Military Service by Rachel Brett, November 2011.
- OSCE Office for Democratic Institutions and Human Rights (ODIHR), Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, 2008.
- Quaker Council for European Affairs (QCEA), The right to conscientious objection in Europe: A Review of the Current Situation. Researched and written by Marc Stolwijk, 2005.
- Directorate General of Human Rights Council of Europe, Conscientious objection to compulsory military service, booklet, 2002.
- European Bureau for Conscientious Objection (EBCO) and Heinrich Böll Stiftung, European Union without Compulsory Military Service Consequences for Alternative Service. A comparative study on the policies in EU-member states by Gerd Greune (resp.) and Michela Lai, Ed. by the Heinrich-Böll-Foundation, Brussels Office, 2000.