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European Bureau for Conscientious Objection

35 Van Elewyck street, 1050 Brussels, Belgium
ebco@ebco-beoc.org / www.ebco-beoc.org



United Nations
Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10
Switzerland

Reference: Your letter of 12 October 2018 concerning resolution 36/18 of the Human Rights Council on "Conscientious objection to military service"

7 December 2018

Dear Mrs Prouvez,

The European Bureau of Conscientious Objection (EBCO) welcomes the decision of the Human Rights Council to initiate "a report on different approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards". We are very grateful to the Office of the High Commissioner for Human Rights for the preparation of this report.

Please find below the contribution we would like to make as relevant NGO in the field of conscientious objection to military service. As we were informed that some of our partner organisations will provide you with a comprehensive overview containing detailed material from a wide range of countries, we decided to bring to mind the international standards we consider to be essential in the context of the mentioned report.

Before analyzing the international standards and recommendations with regard to application procedures for obtaining the status of conscientious objector to military service, we would like to emphasize that the UN Human Rights Committee has explicitly recognized that: “The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles **any** individual to an exemption from compulsory military service if this cannot be reconciled with that individual’s religion or beliefs. The right must not be impaired by coercion”.¹ [Emphasis added].

Therefore, considering:

- that nobody knows better than oneself if military service cannot be reconciled with his/her religion or beliefs;
- the fundamental human rights’ principle of individual self-determination;
- and the fact that no court or committee can penetrate and examine someone’s conscience, (as it has been also pointed out by the European Parliament – see below);

it is our position that any procedure of inquiry/examination of applications which can potentially risk to pressure or violate the conscience of the applicant, infringes on his/her right to conscientious objection to military service.

Consequently it is our position that the status of conscientious objector should be granted by respecting the declaration of the applicant as valid without inquiry.

Such a position is supported by various international standards and recommendations.

International standards and recommendations against inquiry/in favour of acceptance without inquiry

- The **European Parliament** has repeatedly pointed out that “no court or commission can penetrate the conscience of an individual” / “no court and no committee can examine a person’s conscience” and has urged “that, in order to be recognized as a conscientious objector, a declaration setting out the individual’s motives should suffice in order to obtain the status of conscientious objector”.²

¹ UN Human Rights Committee, Communication No. 1642-1741/2007, Jeong et al. v. Republic of Korea (CCPR/C/101/D/1642-1741/2007), 27 April 2011, para. 7.3. Available at <http://undocs.org/CCPR/C/101/D/1642-1741/2007>

² European Parliament, Resolution on conscientious objection and alternative service, (A3-15/89), [known as Schmidbauer Resolution], as published in the Official Journal of the European Communities [C291](#), 13 October 1989, para. A (page 123) and para. 4 (page 124).

See also: 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, para. 3 (page 15).

- Already since 1998, the then **UN Commission on Human Rights** has welcomed “the fact that some States accept claims of conscientious objection as valid without inquiry”.³
- Its successor, the **UN Human Rights Council**, has also welcomed “the fact that some States accept claims of conscientious objection to military service as valid without inquiry”⁴

Worth noting also that national bodies have also challenged the capability of a committee to judge someone’s conscience. For example, the **Greek Ombudsman** has stated: “The personal interview as a mean to ascertain reasons of conscience is controversial *per se*, insofar it submits an internal esprit to an examination of sincerity.”⁵

As already stated, the position of the organizations of conscientious objectors is that there should be no committee of examination and that all applications should be accepted. However, we would like to stress that if a state does not follow this best practice and subjects applications to examination, it should follow, as a minimum, the international standards and recommendations about the procedures, and especially as of the independence and impartiality of the relevant body.

International standards and recommendations about procedures, including the independence and impartiality of the body examining the applications

- The **Parliamentary Assembly of the Council of Europe**, has set specific basic principles as for the procedure: Persons liable for military service should be informed, when notified of their call-up or prospective call-up, of the rights they are entitled to exercise; where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, the decision-taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality; the decision shall be subject to control by at least one other administrative body, composed likewise in the manner prescribed above, and subsequently to the control of at least one independent judicial body; it should be ensured that objections and judicial appeals have the effect of suspending the armed service call-up order until the decision regarding the claim has been rendered; applicants should be granted a hearing and should also be entitled to be represented and to call relevant witnesses.⁶

³ UN Commission on Human Rights, [Resolution 1998/77](#), Conscientious objection to military service, 22 April 1998, (E/CN.4/RES/1998/77), para. 2.

⁴ UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 7. Available at <http://undocs.org/A/HRC/RES/24/17>

⁵ Ombudsman, Special Report 2013, “Combating discrimination”, p. 110. Available in Greek at <https://www.synigoros.gr/resources/docs/10-diakriseis.pdf>

⁶ Council of Europe, Parliamentary Assembly, [Resolution 337 \(1967\)](#), Right of conscientious objection, paras. b2, b3, b4 και b5.

- The then **UN Special Rapporteur on religious intolerance**, since many years had set the relevant standards: “The decision concerning their status should be made, when possible, by an impartial tribunal set up for that purpose or by a regular civilian court, with the application of all the legal safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent, civilian judicial body. The decision-making body should be entirely separate from the military authorities and the conscientious objector should be granted a hearing, and be entitled to legal representation and to call relevant witnesses.”⁷ The same standards continue to be cited till today by the **UN Special Rapporteur on freedom of religion or belief**.⁸ The **Special Rapporteur on freedom of religion or belief**, since 2006, has adopted and stressed the recommendations of the UN Human Rights Committee to Greece, to consider placing the assessment of applications for conscientious objector status under the control of civilian authorities.⁹
- The **Commissioner for Human Rights of the Council of Europe** has also explicitly recommended (in the case of Greece) the “transfer of administrative responsibilities as regards granting conscientious objector status from the Ministry of Defence to an independent civilian department”.¹⁰
- The **UN Human Rights Committee** has repeatedly expressed its concerns when the assessment of applications is under the control of the Ministry of Defence, especially when military officers form part of the composition of the relevant panel/committee, referring to lack of independence and impartiality. And it has repeatedly recommended to place the assessment of applications for conscientious objector status “entirely under”/“under the full control of civilian authorities” (e.g. concluding observations on Greece¹¹, Russia¹², Israel¹³).¹⁴

⁷ Report submitted by Mr. Angelo Vidal d Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986 (E/CN.4/1992/52), 18 December 1991, para. 185. [Available through <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Annual.aspx>].

⁸ International Standards on freedom of religion or belief, I3k, <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/IstandardsI3k.aspx>

⁹ UN Economic and Social Council, Commission on human rights, Civil and political rights, including the question of religious intolerance, Addendum, Summary of cases transmitted to Governments and replies received, E/CN.4/2006/5/Add.1, 27 March 2006, para. 139. Available at: <http://undocs.org/E/CN.4/2006/5/Add.1>

¹⁰ Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the Hellenic Republic, 2-5 June 2002, [CommDH\(2002\)5](#), para. 18.

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

Available at <http://undocs.org/CCPR/C/GRC/CO/2>

Also previously: UN Human Rights Committee, Concluding observations on the initial report of Greece, (CCPR/CO/83/GRC), 25 April 2005, para. 15. Available at <http://undocs.org/CCPR/CO/83/GRC>

¹² UN Human Rights Committee, Concluding observations on the sixth periodic report of the Russian Federation, (CCPR/C/RUS/CO/6), 24 November 2009, para. 23.

Available at <http://undocs.org/CCPR/C/RUS/CO/6>

¹³ UN Human Rights Committee, Concluding observations on the third periodic report of Israel (CCPR/C/ISR/CO/3), 3 September 2010, para. 19.

Available at: <http://undocs.org/CCPR/C/ISR/CO/3>

¹⁴ In this context we refer to the example of Germany where even CO applications of professional soldiers are determined by an entirely civilian authority (Bundesamt für Familie und zivilgesellschaftliche Aufgaben, BAFzA = Federal Office for Family and Civil Society Affairs). You can find a description of the current application procedure on the website of EBCO member EAK under <https://eak-online.de/kdv-antragsverfahren-und-auswirkungen>.

Hoping that the aforementioned considerations will be useful for the preparation of your report we will be pleased to give you any further information you require.

Yours sincerely

A handwritten signature in black ink, appearing to read 'F. Schneider', written in a cursive style.

Friedhelm Schneider
President of the European Bureau for Conscientious Objection

EBCO was founded in Brussels in 1979 as an umbrella structure for national associations of conscientious objectors in the European countries to promote the right to conscientious objection to preparations for, and participation in, war and any other type of military activity as a fundamental human right. It enjoys participatory status with the Council of Europe since 1998 and is a member of its Conference of International Non-Governmental Organisations since 2005. It provides expertise and legal opinions on behalf of the Directorate General of Human Rights and Legal Affairs of the Council of Europe. It is involved in drawing up the annual report of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament on the application by the Member States of its resolutions on conscientious objection and civilian service, as determined in the "Bandrés Molet & Bindi Resolution" of 1994. It is a full member of the European Youth Forum since 1995.
