

Connection e.V.

Internationale Arbeit für Kriegsdienstverweigerer
und Deserteure aus Kriegsgebieten



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Reg: Submission re: Resolution 20/2 of the Human Rights Council on “conscientious objection to military service” – conn/en/02/17

Dear Sirs and Madams,

We are very grateful for being given the opportunity to hand over a submission re: resolution 20/2 of the Human Rights Council on “conscientious objection to military service”. As a non-governmental organization assisting conscientious objectors internationally we have focused our submission on the questions of conscientious objection and asylum.

1. Connection e.V. is a Germany-based organization founded in 1993. Since then, the organization has worked on conscientious objection and desertion worldwide. By networking with organizations in different countries, we are able to provide information about the situation of conscientious objectors in, for example, Armenia, Azerbaijan, Belarus, Colombia, Egypt, Eritrea, Israel, South Korea, Syria, Thailand, Turkey, Ukraine, and the United States.

Conscientious objection in states of war and societal tension

2. Parties to a war frequently take questionable measures to recruit and deploy men (and women) considered fit for military service. In addition to conscription, measures such as the following may also take effect:

- Suspension of existing legislative exceptions and exemptions from military service;
- Mobilization of young men and women, as well as of reservists, for combat missions;
- Imposition of restrictions on the recognition of conscientious objectors, such as subjecting applications to the decision-making of military institutions, curbing timelines for application filing, implying applicants are traitors, and narrowing application criteria to specific religious exceptions;
- Increasing the threat of sanctions and the severity of punishment for desertion or draft evasion;
- Recruitment of children and adolescents;
- Unlimited military service – a ‘stop-loss order’;
- Denial of conscientious-objection application rights to soldiers and reservists.

3. Furthermore, recruits and soldiers face a highly polarized society, which generally knows only friends and enemies. In such an atmosphere, individuals who do not conform to this pattern are excluded or perceived as enemies of society. The interactions between government, military or non-state armed groups and society increase. As a result, men and women who evade military service, declare their conscientious objection, or desert are regarded as political opposition and stigmatized as traitors.

4. Men and women who evade military service, declare their conscientious objection or desert in the face of persecution or the threat of prosecution, frequently go into hiding or seek protection in other countries. However, as a rule, this kind of persecution or prosecution is not deemed to be a criterion for determining refugee status under the 1951 Convention; mainly because – it is argued – it constitutes only a prosecution of the offence (i.e. the act of draft evasion or desertion) rather than political persecution, which is directed at the person. Such a stance ignores the question of conscience and, in the light of legal developments, cannot be accepted any longer.

Persecution of particular social groups

5. Because of their convictions derived from legal, moral, religious, ethnic or political beliefs, individuals who evade military service, declare their conscientious objection or desert and who are exposed to persecution, face prosecution or persecution by government or non-state armed groups. Regardless of their motives, the individual acts are construed as expressions of hostility towards the goals of the government or non-state armed group.

6. Moreover, it is not only the state, government and military that consider said individuals as opponents of the state's agenda, but also society itself. The following two cases may serve as examples.

7. In South Korea, where the human right of conscientious objection is not recognized, parliament adopted an amendment to military law on December 9, 2014. As a result of this amendment the Military Manpower Administration is authorized to disclose so-called "draft dodgers" on the website of the Military Manpower Administration. This occurred (amongst other similar events) on December 20, 2016. A list of 237 individuals, complete with names, ages and addresses, was published on the Administration website. As a result of this measure, conscientious objectors and draft evaders are "named and shamed", denounced as traitors, stigmatized and discriminated against.

8. In Turkey, where the human right of conscientious objection is not recognized either, conscientious objectors are not only liable to be punished several times for their convictions, but are also confronted with lifelong conscription duties. This, in turn, means that after serving a prison sentence they are eligible to be drafted again and therefore at risk of repeated punishment. The only chance of escape from this vicious circle is evasion of recruitment. In effect, individuals who do so forfeit their civil rights. They are neither able to obtain a passport nor be employed in a legal workplace. Their freedom of movement is restricted, and are at constant risk of being recruited and prosecuted; they must not open a bank account, and are not entitled to participate in elections. The European Court of Human Rights called this situation a "civil death" in 2006 (*Ülke v. Turkey*, application no. 39437/98). Most recently, in January 2017, a directive of the Turkish government required all employers to have their employees' military status checked.

9. Generally, whenever there is a state of war or societal tension, governments or militaries use or enact laws and rules to determine the military status of all individuals with service obligations. This may be implemented by means of a duty to carry a military certificate, or on occasions such as

issuing identity papers, opening a bank account, matriculation, or taking up a job. There is no crime other than this for which such a wide-ranging control mechanism has been established.

10. Individuals who evade military service, declare their conscientious objection or desert, and who are denied the right to formally declare their conscientious objection, have to face extensive administrative measures which entail expulsion from society and denial of basic civil and human rights. Having to live in illegality is forced upon “offenders” by these measures.

11. Individuals who evade military service, declare their conscientious objection or desert and who are denied the right to formally declare their conscientious objection, have to face social stigmatizing and discrimination arising from administrative measures. Consequently, they are confronted with persecution beyond and in addition to legal prosecution, for example, limited employment opportunities, inability to access or complete education, and exclusion from society.

12. Because of the issues discussed above, consciences objectors should be regarded as a particular social group under the 1951 Convention, and be protected accordingly. This corresponds with the definition presented by the UNHCR in various opinions about membership of these groups: *“a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.”* (Guidelines on International Protection, HCR/GIP/02/02, May 7, 2002, Point 11).

13. Accordingly, the UNHCR regards conscientious objectors as a particular social group, *“given that they share a belief which is fundamental to their identity and that they may also be perceived as a particular group by society. Individuals with common past experience, such as child soldiers, may also constitute a particular social group. This may also be the case for draft evaders or deserters, as both types of applicants share a common characteristic which is unchangeable; a history of avoiding or having evaded military service. In some societies deserters may be perceived as a particular social group given the general attitude towards military service as a mark of loyalty to the country and/or due to the differential treatment of such persons [for example, discrimination in access to employment in the public sector] leading them to be set apart or distinguished as a group. The same may be true for draft evaders. Conscripts may form a social group characterized by their youth, forced insertion into the military corps or their inferior status due to lack of experience and low rank.”* (Guidelines on International Protection No. 10, November 12, 2014, HCR/GIP/13/10/Corr. 1, Point 58).

14. We therefore believe that there is a need for individuals who evade military service, declare their conscientious objection or desert, and who are in danger of persecution, to be acknowledged as a particular social group under the 1951 Convention.

Absolute, partial or selective objection

15. Both the Human Rights Committee and the UN Human Rights Council have recognised the right of conscientious objection to military service as part of the right to freedom of thought, conscience and religion enshrined in Article 18 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights (UN Human Rights Council, resolution 24/17 (A/HRC/24/17) September 27, 2013).

16. Under Article 18(1) of the Covenant, which covers both the right to freedom of thought, conscience and religion, and the right to manifest one's religion or belief, is non-derogable even during times of national emergency threatening the life of the nation.

17. Furthermore, the European Court of Human Rights, which monitors compliance with the European Convention on Human Rights (ECHR), stated in a decision of the Grand Chamber in the case of *Bayatyan v. Armenia* "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 (ECHR)" (application no. 23459/03), which protects the freedom of thought, conscience and religion.

18. Decisions to evade military service, to declare conscientious objection or to desert are most frequently taken under conditions of war or societal tensions and result from specific personal and social situations. Quite often, these decisions do not include a general and principled objection to deployment of any kind. However, they may constitute the initial stage of such a decision-making process. Even a selective or partial objection is based on a conviction that rejects participation in an armed mission and the use of weapons.

19. The motives of men and women who evade military service, declare their conscientious objection or desert, do not invariably meet the frequently invoked motivational premise required for recognition as conscientious objectors, viz. the rejection of *any* war and use of arms. However, their decision originates from a deep-seated conviction precisely because it is based on personal experience and has grown from observations of the social environment or warfare.

20. In its Guidelines on International Protection No. 10 the UNHCR states that "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.' Such an objection is not confined to absolute conscientious objectors [pacifists], that is, those who object to any use of armed force or participation in any wars. It also encompasses those who believe that 'the use of force is justified in some circumstances but not in others, and that therefore it is necessary to object in those other cases' [partial or selective objection to military service]. A conscientious objection may develop over time, and thus volunteers may at some stage also raise claims based on conscientious objection, whether absolute or partial." (HCR/GIP/13/10/Corr. 1, November 12, 2014, Point 3).

21. The Advocate General of the European Court of Justice, Eleanor Sharpston, stated on November 11, 2014 that "the term 'conscientious objection' has more than one meaning. It is understood to cover pacifists (such as Quakers) where the objection to military action is absolute. (53) It may also refer to persons who object to a particular conflict on legal, moral or political grounds or who object to the means and methods used to prosecute that conflict." (European Court of Justice, C-472/13, Point 53).

22. We therefore deem it necessary to expand the definition of conscientious objection under the International Declaration of Human Rights and the International Covenant on Civil and Political Rights to include selective or partial objection to military service.

Objection to internationally condemned wars and acts

23. In the Rome Statute, international criminal law stipulates that crimes against peace, war crimes, crimes against humanity or acts contrary to the purposes and principles of the United Nations be prosecuted through the International Criminal Court. Governments and non-state armed groups are required to adhere to international and war law in cases of armed conflicts.

24. Refugee-protection claims of individuals who evade military service, declare their conscientious objection or desert and are subjected to persecution, may also be associated with objections to a specific armed conflict or the means and methods of warfare. The initial objection refers to the unlawful use of force [*jus ad bellum*], while the latter refers to the means and methods of warfare as regulated by international humanitarian law [*jus in bello*] as well as to international human rights and international criminal law. Both of these objections refer to enforced participation in conflict activities that the applicants consider to contravene basic rules of human conduct.

25. For instance, Article 9 2.(e) of the Qualification Directive of the European Union states that persons claiming refugee status (applicants) be protected from performing military service in a conflict associated with crimes or acts within the scope of crimes against international law. (Directive 2011/95/EU). This can be considered as an implementation of international law.

26. As borne out by claim-examination practice, refugee claims originating from this group of persons are required to meet exacting standards. In particular, the applicant is required to prove that there is a reasonable likelihood of being forced to participate in crimes against international law. The UNHCR, for instance, defines this as follows: “Where the applicant’s objection is to the methods and means employed in an armed conflict [that is, the conduct of the one or more of the parties to the conflict], it is necessary to make an assessment of the reasonable likelihood of the individual being forced to participate in acts that violate standards prescribed by international law. The relevant standards can be found in international humanitarian law [*jus in bello*], international criminal law, as well as international human rights law, as applicable.” (Guidelines on International Protection No. 10, Point 26).

27. Taking this stance to its logical conclusion means that these persons would be denied refugee status under the 1951 Convention if their assertion were attributed an unreasonable likelihood of being forced to participate in crimes against international law. Therefore, an individual could be deported to their country of origin where he/she would again face recruitment and deployment.

28. The condition of “reasonable likelihood” gives rise to an absurd result. Moreover, if such crimes are (probabilistically) assessed as infrequent or rare occurrences, individuals are faced with being forced to commit crimes against international law in the course of military action. After all, the question of how often and to what extent the risk of war-crime involvement may arise is not central to the decisions of most objectors – rather, it is being under threat of this contingency that matters to them. Similarly, it is not the frequency of war crimes that is made punishable by international criminal law, but war crimes themselves.

29. The requirement “to make an assessment of the reasonable likelihood of the individual being forced to participate in acts that violate standards” results in a further restriction for applicants. The applicant has to decide whether to evade, object or desert at a time when the nature of warfare is still unclear. However, an assessment of their application is conducted afterwards. Were an applicant to wait until the nature of warfare is clear or internationally condemned, an escape would be

much more difficult and the likelihood of being forced to take part in these kinds of actions is greatly increased.

30. Therefore we see the need to ensure that individuals who opt out of internationally condemned wars or actions, who evade military service, declare their conscientious objection or desert, are protected under the 1951 Convention, even if there is only a low or unreasonable likelihood of being forced to take part in actions which violate international criminal law.

For more information please be free to contact us.

Sincerely

Rudi Friedrich
-General Secretary-